



# ANC

## Negotiations Bulletin

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### Elections Date Set 27 April 1994

The most important victory gained at the negotiations table yet has been the agreement on a date for the first ever non-racial elections - 27 April 1994. This however has to be finalised at the meeting of the next Negotiating Council on the 15 June 1993 so as to maximise consensus.

During the debate on this resolution, 17 parties (led by the ANC and including the NP regime) supported the resolution. The CP objected to it and the IFP and other COSAG members reserved their support for it.

In Bulletin 26 we reported on the submissions made by the ANC to the Technical Committees of the Multi-party Negotiations Process. There are three further developments which have taken place since:-

- \* the SABC Board was appointed on the 31st May, 1993;
- \* the Technical Committees presented their reports to the Negotiating Council meeting of the 1st June;
- \* the Negotiations Council instructed the Technical Committee on Constitutional matters to draft a transitional constitution that would lead up to the drafting and adoption of the democratic constitution by an elected Constituent Assembly.

### The New SABC Board

A Panel was appointed through multi-party negotiations to process the applications for appointment to the Board. The panel consisted of a number of judges and other respected people.

This panel was to operate without any political interference or involvement. The panel carried out its work and produced a list of appointees. The NP regime was not satisfied with this list. It complained that it had too great a bias in favour of the ANC.

FW De Klerk summoned the panel to a meeting and ensured that a new list was drafted replacing 7 members of the Board. The ANC has strenuously objected to the political interference by F W De Klerk and called on all people appointed, and who were not on the original list, to refuse to accept the appointments. The ANC believes that the first list produced by the panel should be the list accepted.

### Technical Committee Reports

The various Committees prepared reports based on the submissions made. The following is a summary of their reports.

#### 1. *Constitutional Matters*

##### General

There were two broad positions adopted in the submissions by the various parties. The difference in the submissions is between those parties who believe that the constitution should

be drafted by the Multi-Party Negotiating Process (i.e. IFP & COSAG), and those (ANC, the Patriotic Front & NP Government) who want the constitution to be drafted and adopted by an elected Constituent Assembly.

### General Constitutional Principles

The Constituent Assembly would be bound by these agreed principles when drafting the constitution. The following general constitutional principles were recommended for agreement:

- \* The constitution shall provide for the establishment of a single sovereign state and a common South African citizenship;
- \* The constitution shall be the supreme law of the land and shall prohibit racial and all other forms of discrimination. It shall promote racial and gender equality and national unity;
- \* There shall be a separation of powers between the legislature, executive, and judiciary, with appropriate checks and balances to ensure accountability and openness;
- \* There shall be representative government embracing multi-party democracy, regular elections, universal adult suffrage, a common voters roll and proportional representation;
- \* The diversity of languages, cultures and religions shall be acknowledged, promoted and protected;
- \* The collective rights of organs of civil society shall be protected and recognised;
- \* All shall enjoy universally accepted fundamental rights, freedoms and civil liberties;
- \* The status of traditional leaders shall be acknowledged and recognised in an appropriate manner in the constitution;
- \* Provision shall be made for the participation of minority political parties in the legislative process in a manner consistent with democracy;

The following are principles dealing with the allocation of powers to different levels of government:

- \* Government shall be structured at national, regional and local levels;
- \* Each level of government shall have democratic representation, appropriate legislative and executive powers and functions;
- \* The powers and functions of each level of government shall be defined in the constitution. Amendments to the constitution in this regard shall require the approval of a specified majority of the legislatures of the regions. If the amendment concerns specific regions only, the approval of the legislatures of such regions will also be needed;
- \* The powers and functions of each level of government may include exclusive and concurrent powers;
- \* Each level of government shall have fiscal powers which will be defined in the constitution;
- \* In the event of a dispute concerning the legislative power allocated by the constitution concurrently to the national and regions governments, precedence shall be given to the legislative powers of the national government.
- \* Where it is necessary for the maintenance of national standards, the maintenance of economic unity, the maintenance of national security or the prevention of action taken by one region which is prejudicial to the interests of another region or the country as whole, the constitution shall empower the national government to intervene through legislation or such other steps as may be defined in the constitution;
- \* Where it is necessary for South Africa to speak with one voice, or to act as a single entity, powers should be allocated to the national government;

## 2. Fundamental Rights during the Transition

The Technical Committee in its report dealt with the following:-

- \* those fundamental rights and freedoms which are to be entrenched during the transition;

- \* the criteria for the limitation and suspension of rights and freedoms;
- \* means and mechanisms for the adjudication of such rights and freedoms during the transition.

Rights and freedoms that qualify for entrenchment during the transition are those that would:-

- \* facilitate free and fair election; and
- \* free, fair and full consultation amongst people and groups of people in regard to all matters relevant to the transition; or
- \* their exclusion would limit or detrimentally affect the freedom, fairness or completeness of the process of transition

The inclusion of these rights and freedoms should also not pre-empt or unduly limit the right or power of a constitution making body to draft a Bill of Rights, or determine laws aimed at socio-economic reconstruction, or remove or correct the imbalances which exist and which have been brought about by unfair or undemocratic practices.

While suspension should only occur in the form of a state of emergency declared by the executive, this should be reviewable by the courts. And, such suspension of rights and freedoms would not imply immunity of State officials for their unlawful conduct during such emergency.

### **3. Transitional Executive Committee (TEC)**

The Technical Committee recommended that a TEC be constituted with executive powers. Each party in the negotiations process shall be entitled to one representative in the TEC. The objective is to facilitate the transition to a democratic order by:

- \* creating and promoting a climate for free political participation;
- \* promoting conditions conducive to the holding of free and fair elections;

The TEC shall have the power to request information relating to its mandate and initiate or participate in negotiations in respect of its mandate. The TEC will operate through the following sub-councils:-

- \* local government,
- \* law and order, stability and security;
- \* defence;
- \* finance; and \* foreign affairs

### **4. Independent Electoral Commission (IEC)**

The IEC shall comprise of between 7 and 11 members. It shall function independent of and separate from the State or government. The objective of the IEC is to:

- \* assume the responsibility for the administration and conduct of the elections;
- \* supervision of the electoral process;
- \* monitoring and evaluation of the process;
- \* determining the results thereof; and
- \* adjudicating issues affecting the elections and the conduct of political parties.

### **5. Independent Media Commission (IMC)**

The objectives of the IMC is:

- \* to ensure equitable treatment of political parties by broadcasting services;
  - \* to ensure that state-financed publications are not used to advance the interests of any political party;
- so as to contribute towards the promotion and creation of a climate favourable to free political participation and a free and fair election.

### **6. Repeal of Repressive Legislation**

The Technical Committee studied legislation that was discriminatory in the area of free political activity and free and fair elections.

It recommended the preparation of a 'higher code' by which to judge the validity of laws, administrative actions. Such a code would establish the necessary judicial, administrative and political structures to pronounce on the validity of objectionable laws.

## 7. Violence

The Technical Committee recommended the following:-

- \* All parties in the Multi-Party Negotiating Process must sign the National Peace Accord. Parties infringing the Accord should be penalised.
- \* parties were invited to make recommendation on the Peace Corps;

Robust yet peaceful political rivalry is a healthy and necessary feature of democracy. However the present process has seen forms of political rivalry and methods of mobilisation which go well beyond what is politically acceptable.

The Committee also recognised that there is a direct relation between the lack of a political agreement regarding the future South Africa and the phenomenon of violence. The Negotiating Council was requested to consider this together with the covert and overt actions taken to derail the negotiating process.

With regard to the question of Mass Action, reference was made to the Goldstone Commission report. The right to demonstrate is fundamental and cannot be taken away. However, parties engaged in mass action should;

- \* give priority to promoting peace;
- \* avoid deliberate provocation;
- \* ensure that structures of the Peace Accord are kept fully informed; and
- \* commit themselves to negotiate in good faith.

**Armed formations, including the SADF and SAP** - it was recommended that there be multi-party control over these during the transitional period. It would then be the responsibility of the elected government to ensure integration of these formations. (This is in accordance with the proposal made by the ANC.)

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## Transitional Constitution

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At the meeting of the Negotiating Council of the 1 June 1993, it was accepted that there was a clear linkage between constitutional

principles, the constitution making process and constitutional structures, powers and functions of regions. This has been the position adopted by the ANC.

Accordingly the Council resolved that:-

- \* the Council would proceed to negotiate and endeavour to agree on the constitutional principles recommended by the Technical Committee together with the principle of the allocation of powerst (See report above);
- \* there is a need to adopt a constitution for the transitional period (which the ANC refers to as the Transition to Democracy Act). This is to be negotiated by the Multi-Party Negotiating Process.

The Technical Committee on Constitutional matters was instructed to make recommendations on:-

- \* the powers, functions and structures of the regions during the transitional period;
- \* the constitution-making process to be followed, including the structures that need to be established to that purpose;
- \* The procedures to be followed in the drafting and adoption by the Multi-Party Negotiating Forum of a constitution for the transitional period;
- \* The procedure to be followed thereafter in the drafting and adoption of a Constitution *by an elected constitution-making body.*

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## The Way Forward

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Substantial agreement has already been achieved. The date for elections has already been set for the 27 April 1994. It is hoped that in the course of the next few meetings agreement would also be reached to establish the Transitional Executive Council (TEC).

What South Africa needs now is a positive signpost that we are irreversibly proceeding toward a peaceful and democratic country. Agreement on both the election date and the installation of the TEC would do just that.

### Notice

This Bulletin is designed merely to inform and stimulate discussion. The views contained herein do not necessarily reflect the official policy of the NEC of the ANC.