

AFRICAN NATIONAL CONGRESS



NEC DOCUMENTS - 21-23 OCTOBER 1991

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MCH91-22-1-3

AFRICAN NATIONAL CONGRESS

National Executive Committee Meeting

21 - 23 October 1991.

I N D E X A.

	<u>DOCUMENT</u>	<u>PAGE</u>
1.	Agenda	1 - 2
2.	Minutes	3 - 7
3.	Interim Government	8 - 23
4.	Constituent Assembly	24 - 26
5.	Constitutional Principles	27 - 41
6.	Patriotic Front	42 - 49
7.	Recommendation from Sanctions Seminar	50 - 59
8.	Code of Conduct for NEC	60 - 62

DAY 2

1960

DATE : 21 - 22 October 1960

VENUE : Johannesburg

**AGENDA**

DAY 21 1960

1. Opening by the President.
2. Prayers.
3. Adoption of Agenda.
4. Confirmation of Minutes of last meeting.
5. Matters arising from Minutes.
6. Regional Reports.  
(To be presented by each region for 15 minutes.)
7. Discussion of Regional Reports.
8. Departmental Reports.  
(To be presented by ANC and YLC leaders of Departments for 15 minutes each.)
9. Discussion of Departmental Reports.
10. ANC Women's and Youth League Reports.
11. Discussion of League Reports.

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# AGENDA

1. Opening - State of the Nation.
2. Report Director on Political Conference.
3. Resolutions:
  - Interim Government.
  - Constitutional Assembly.
  - Role of International Community.
  - Constitutional Principles.



1. Opening.
2. Political from conference.
3. Paragraph 3 of Victoria Minutes as amended by 2.7.60 agreement.
4. Recommendations of Services Section including report from Commonwealth Heads of State Meeting 1/5/60.
5. Vote of thanks.
6. General.
7. Closure.

*Handwritten note:*  
Have been  
searched  
President's chair

**AFRICAN NATIONAL CONGRESS  
NATIONAL EXECUTIVE COMMITTEE MEETING.**

**DATE** : 21 - 23 October 1991.

**VENUE** : Johannesburg.

**DRAFT AGENDA.**

**Day 1.** 10h00

1. Opening by the President.
2. Apologies.
3. Adoption of Agenda.
4. Confirmation of Minutes of last meeting.
5. Matters arising from Minutes.
6. Regional Reports.  
(To be presented by each region for 15 minutes).
7. Discussion of Regional Reports.
8. Departmental Reports.  
(To be presented by NWC and NEC heads of Departments for 15 minutes each).
9. Discussion of Departmental Reports.
10. ANC Women's and Youth League Reports.
11. Discussion of Leagues Reports.

*COSATU Briefings  
SACP  
5-8 Dec Wabg.*

**Day 2.**

**09h00.**

1. Opening - State of the Nation.
2. General discussion on Political Conjuncture
3. Negotiations:
  - Interim Government.
  - Constituent Assembly.
  - Role of International Community.
  - Constitutional Principles.

**Day 3.**

**09h00.**

1. Opening.
2. Patriotic Front Conference.
3. Paragraph 3 of Pretoria Minutes as elaborated by D.F. Malan Agreement.
4. Recommendations of Sanctions Seminar including Report from Commonwealth Heads of State Meeting. *sports*
5. Code of conduct.
6. General.
7. Closure.

*Peace Accord  
Security  
President's closure.*

- 1. Attendance - As per Register.
- 2. Agenda -
  - 1. Agenda
  - 2. Minutes
  - 3. Report
  - 4. Report
  - 5. Report
  - 6. Report
  - 7. Report
  - 8. Report
  - 9. Report
  - 10. Report
  - 11. Report
  - 12. Report

**3. Minutes**  
 Minutes of the meeting held on 19 July 1981 were approved and requested the Secretary-General to make the necessary arrangements.

**4. Minutes of Executive Meetings**  
 Minutes of the NEC Meeting of 17 July 1981 were approved and adopted.

**5. International Scandals**  
 The Secretary-General presented a report on the decisions taken by the NEC that the NEC should have a comprehensive response to the revelations and that we should now intensify the campaign for an Islamic Government, and that our approach must be revised to meet the needs and level anti-apartheid forces and compel the regime to negotiate in good faith.

A report on the committees which the NEC had indicated was tabled. The Secretary-General also reported that various had been asked to discuss the matter on urgent basis.

Regional reports were presented and the Secretary-General thanked through all the reports were:-

- (a) Constanting procedure must be put on the floor of the Government.
- (b) Call for Islamic Government must be intensified.
- (c) Call for continuation of inquiry.
- (d) More action is necessary.
- (e) Call for resignation of Ministers Uthman and Pasha.
- (f) All Party program should be strengthened.
- (g) Links with Iraqis should be reviewed.

**6. Report**  
 Report from the Secretary-General on the interpretation of the Secretary-General's statement to the press on the scandal.

**7. Report from OIC**  
 Report from OIC about scandal and developments in Saudi Arabia was tabled by the Secretary-General.

**8. Report from OIC**  
 Report from OIC about scandal and developments in Saudi Arabia was tabled by the Secretary-General.

**9. Report from OIC**  
 The structure of the NEC had changed since the presentation by the Secretary-General.

The following issues were discussed:-

- Local Government should be reconstituted as a fully elected parliament.
- Arab League and other Islamic bodies should set up and organize in co-operation with army, security and intelligence departments.
- Negotiations Commission agreed that the Secretary-General should be an Negotiations Commission as a full member rather than half-time member.

NEC requested to look at how the NEC will be run if

# MINUTES

AFRICAN NATIONAL CONGRESS  
Minutes of the National Executive Meeting  
31 July 1991.

1. **Attendance** - As per Register.

2. **Apologies** - Comrades : N. Mandela  
T. Nkobi  
J. Zuma  
T. Mbeki  
B. Masekela  
S. Macozoma  
R. Suttner  
W. Mandela  
A. Lengisi (W. Cape)  
R. Molekane (ANC Youth League)

3. **Opening:**

Comrade Chairperson O.R. Tambo opened the meeting and requested Comrade Deputy President to make the opening remarks.

Comrade Deputy President said that we should give consideration to the Inkathagate scandal in the context of this scandal impacts on the negotiation process and how it affects the removal of obstacles to negotiations. We should also keep in mind that we have a constituency that we must account to.

4. **Minutes of Previous Meeting:**

Minutes of the NEC Meeting of 17 July 1991 were approved and adopted.

5. **Inkathagate Scandal:**

The Secretary-General presented a report on the decisions taken by the NWC that the ANC should have a comprehensive response to the revelations and that we should now intensify the campaign for an Interim Government, and that our approach must be guided by need to write and lead anti-apartheid forces and compel the regime to negotiate in good faith.

A report on the consultations which the NWC had initiated was tabled. The Secretary-General also reported that regions had been asked to discuss the matter on urgent basis.

Regional reports were presented and the central issues running through all the reports were:-

- (a) Unrelenting pressure must be put on de Klerk's Government.
- (b) Call for Interim Government must be intensified.
- (c) Call for Commission of Inquiry.
- (d) Mass action is necessary.
- (e) Call for resignation of Ministers Vlok and Malan.
- (f) All Party Congress should be consulted soon.
- (g) Links with Inkatha should be reviewed.

de Klerk's

Comrade Pallo Jordan gave a presentation on an interpretation of de Klerk's statement to media, following the scandal.

Report from OAU

Report from OAU about scandal and developments in South Africa was tabled by the Secretary-General.

Decision taken

After a lengthy discussion the NEC passed a resolution attached hereto marked Annexure "A" and also issued a press statement.

6. **Restructuring Proposals:**

The structure the NWC had agreed upon was presented by the Secretary-General.

The following issues were raised:-

- Local Government should be constituted as a fully fledged department.
- Marshalls and self-defence units should set up and organise in co-operation with army, security and organising departments.
- Negotiations Commission agreed that Comrade Thabo Mbeki should be on Negotiations Commission as a full member rather than half-time member.

NWC requested to look at how DIA will be run if

Comrade Thabo Mbeki is full member of Commission.

- Comrade Chris Hani's transfer from NWC to full-time party was deferred to next meeting.

**7. Relations between NEC and NWC:**

Following a question raised about the role of NEC members who are not on the NEC and are not called when NWC meetings are held whereas they are at Head Office.

It was agreed that the NWC had constitutional rights to hold meetings on its own but could draw other members of NEC in, on invitation to discuss specific issues.

**8. Patriotic Front:**

It was agreed that the NWC finalise the arrangements for the Patriotic Front conference.

APPROVED:

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PRESIDENT

-----  
CHAIRPERSON

-----  
SECRETARY-GENERAL.

E

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THIS MEETING FURTHER RESOLVES THAT THE ANC WILL IMMEDIATELY REVIEW ALL BILATERAL CONTACTS WITH INKATHA AT NATIONAL LEVEL

## RESOLUTION OF THE MEETING OF THE NATIONAL EXECUTIVE COMMITTEE

31 July, 1991

THIS MEETING OF THE NATIONAL EXECUTIVE COMMITTEE NOTING:

- 1) that the de Klerk administration has not addressed the essence of the demands put forward by the ANC and other anti-apartheid forces regarding government involvement in the violence and the secret funding of political activities;
- 2) that, instead, the government seeks to justify these crimes against the people of South Africa and the world;
- 3) that the regime is bent on continuing with secret projects aimed against their opponents, retaining ministers responsible for these criminal activities in public office, as well as maintaining and utilising the special counter-insurgency forces of the SADF and SAP; and
- 4) that the funds utilised for the purpose of destabilising the democratic movement and sabotaging the negotiating process accrue from taxes paid by the South African people as a whole;

AND FURTHER NOTING:

- 1) that the peace initiative by religious and business leaders is making some progress with regard to some of the measures needed to end the violence; and

- 2) that the apartheid government is the biggest obstacle to an open, free and fair transition to a democratic South Africa

THEREFORE REAFFIRMS:

- 1) our demands as contained in the NEC Statement of 31 July 1991, and further delegates the National Working Committee to work out concrete proposals on the implementation of the relevant demands;
- 2) the urgent and central demand for an Interim Government of national unity as the sovereign and impartial body to supervise the transition to a democratic South Africa, and further undertake to consolidate, broaden and activate the coalition of forces - both local and international - which support this demand, and to convene as soon as possible a conference to thrash out detailed positions on the Interim Government; and
- 3) our commitment to facilitate the convening of the All-Party Congress as soon as possible and to consult with our structures, allies and other forces in order to speed up the processes towards the setting up of an Interim Government of national unity.

THIS MEETING, FURTHER NOTING THAT THE ACHIEVEMENT OF OUR DEMANDS DEPENDS ON THE ACTIVE INVOLVEMENT OF THE MASSES OF THE PEOPLE IN SYSTEMATIC MASS ACTION, THEREFORE RESOLVES:

- 1) to mobilise the cross-section of the people of South Africa - at local, regional and national levels - into mass action along the following lines:
  - \* mass meetings and rallies
  - \* pickets
  - \* marches to SADF And SAP establishments and to offices of the Receivers of Revenue as well as any other government establishments
  - \* to consider, in consultation with other forces:
    - a national general strike, and
    - a campaign to boycott some taxes;

- 2) that the implementation of these actions will be undertaken in consultation with, and with the involvement of, the widest spectrum of forces nationally, regionally and locally; and



3) that the ANC will intensify the organisation and mobilisation of the international community to support the demands outlined above.

THIS MEETING FURTHER RESOLVES THAT THE ANC WILL IMMEDIATELY REVIEW ALL BILATERAL CONTACTS WITH INKATHA AT NATIONAL LEVEL.

INTERIM GOVERNMENT

## INTERIM GOVERNMENT

### What do we want by interim government?

1. The purpose of this memorandum is to identify the forms that interim government structures can take, and legal and practical issues that may be raised in the debate concerning interim government.

Three types of interim governmental structures are considered. They illustrate issues that may be raised in negotiations for interim government, and point to the type of decisions that will have to be taken. It is important that these issues be addressed, and that a detailed framework for the interim government be developed before negotiations are completed.

# INTERIM GOVERNMENT

### Transfer of sovereignty

The transfer of sovereignty to an interim government involves the transfer of legislative and executive functions from the tri-cameral parliament, cabinet and law affairs ministers councils to an interim government structure. This can only be done by repealing or amending the existing constitution, which would require the approval of each of the houses of the tri-cameral parliament. Without such approval the interim government would be unlawful and subject to challenge in the courts.

4. The new constitutional order thereby created - in effect an interim constitution - would have to provide for:
  - (a) the dissolution of the tri-cameral parliament, and

transfer administration and homeland governments;

- (b) the creation of an interim government in which would be vested the executive authority, and the power to amend and repeal existing laws, and to make new laws by proclamation;
- (c) the composition of the interim government and how it will take decisions;

The interim government would have to draw up a new constitution for a constituent assembly to be elected, and the mandate that the constituent assembly will have to draw up a new constitution.

- (d) transitional arrangements dealing with matters such as the administration of the country, the functioning of the judiciary, the enforcement of existing laws, and the handling of financial matters during the interim period.

5. The composition and functioning of interim government will have to be defined in the founding statute. Issues to be addressed will include:

- (a) who will participate in the interim government and how will such participation be determined? Will it include 'hardcore leaders' and parties in the tri-

INTERIM GOVERNMENTWhat do we mean by interim government?

- 1 The purpose of this memorandum is to identify the forms that interim government structures can take, and legal and practical issues that may be raised in the debate concerning interim government.
- 2 Three types of interim governmental structures are considered. They illustrate issues that may be raised in negotiations for interim government, and point to the type of decisions that will have to be taken. It is important that these issues be addressed, and that a detailed framework for interim government be established before negotiations are commenced.

TRANSFER OF SOVEREIGNTY

- 3 The transfer of sovereignty to an interim government involves the transfer of legislative and executive functions from the tri-cameral parliament, cabinet and own affairs ministers councils to an interim government structure. This can only be done by repealing or amending the existing constitution, which would require the approval of each of the houses of the tri-cameral parliament. Without such approval the interim government would be unlawful and subject to challenge in the courts.
- 4 The new constitutional order thereby created - in effect an interim constitution - would have to provide for
- (a) the dissolution of the tri-cameral parliament, own

- affairs administrations and homeland governments;
- (b) the creation of an interim government in which would be vested the executive authority, and the power to amend and repeal existing laws, and to make new laws by proclamation;
- (c) the composition of the interim government and how it will take decisions;
- (d) the holding of elections for a constituent assembly within a specified time, and the mandate that the constituent assembly will have to draw up a new constitution;
- (e) transitional arrangements dealing with matters such as the administration of the country, the functioning of the judiciary, the enforcement of existing laws, and the handling of financial matters during the interim period.

- 5 The composition and functioning of interim government will have to be defined in the amending statute. Issues to be addressed will include:
- (a) Who will participate in the interim government and how will such participation be determined? Will it include 'homeland leaders' and parties in the tri

-cameral parliament? What extra-parliamentary parties will be included?

(b) Will the office of President be retained, and if so, how will the President be chosen? Will there be a joint presidency, and if so, how will the joint presidents be chosen, and how will they take decisions. If the office of President is abandoned, who will perform the function of head of State, and who will preside at meetings of the interim government?

(c) Will existing departments of State remain in place? If so, who will assume responsibility for the functioning of the departments. Will there be a coalition of members responsible for each department, or will responsibility be allocated to individual members of the interim government, and if so, how will such allocation be made.

(d) What will happen to Provincial Administrations and Local Government organs, and how will responsibility for such matters be dealt with.

(e) For how long will the interim government last?

6 How decisions are to be taken will be of crucial importance. Will interim government call for government

by consensus? If so, what if consensus cannot be achieved, particularly in regard to vital issues concerned with the creation of conditions for the holding of free and fair elections, or the allocation of the budget. If consensus is necessary deadlock could result if a minor party is obstructive and chooses to block decisions by withholding its consent. A provision that resolutions be taken by majority decisions, even if a special majority is required, may be unsatisfactory; majorities could possibly be achieved by a combination of parties representing together a minority of the population. A possible way around this difficulty would be to require decisions by a majority, or a specific majority, with a veto power being given to certain of the major parties. But who will have the power of veto, and how will agreement be reached on this? And what will happen if decisions are vetoed and deadlock results? Could this lead to a power vacuum?

#### CONTROL OVER GOVERNMENT

7 This is less radical than a transfer of sovereignty. Under this procedure all or some of the existing legislative and executive structures would remain in place. An interim governing council would be constituted with the power to veto bills passed by parliament, and decisions taken by the cabinet, and with the power to repeal or amend existing laws and to make new laws by proclamation. In effect this would vest effective

control over the legislative and executive functions in the governing council, but would leave intact existing structures in so far as they may be necessary for the running of the country.

- 8 Once again, however, there will be difficulties in regard to decision making where there is disagreement within the governing council. If the veto power cannot be exercised because of the absence of consensus, or if important legislation or executive decisions cannot be taken because of disagreement within the governing council, effective power will reside in the old legislative and executive structures that are left intact.

#### REMOVAL OF CERTAIN FUNCTIONS FROM THE GOVERNMENT

- 9 This is the least radical of the possibilities. It involves the transfer of key functions relating to the holding of free and fair elections and the creation of conditions necessary for that purpose, to an independent council composed either of representatives of political parties or of people of acknowledged integrity. This council could be given the power to assume control over the security forces, to regulate and control access to the public media, to place a moratorium on controversial projects, to require the government to take or refrain from taking particular action, and generally to do everything necessary during the interim period to ensure political freedom and government impartiality at all

levels including law enforcement. The council would have to have wide powers, including the power to establish its own budget and to amend, repeal and make laws by Proclamation if it considers it necessary to do so to achieve its objects. Individual members of the council could be empowered to have access to government departments and government records. Decision making in the absence of consensus will again present a difficulty, but if the council is composed of people of acknowledged integrity, a provision that decisions be taken by a majority might be less objectionable than would be the case if the council consists of representatives of political parties.

September 1991

## NOTES ON THE WORKSHOP ON INTERIM GOVERNMENT

HELD ON 25 SEPTEMBER 1991

- 1 The workshop considered the background to the demand for interim government and the working paper of the constitutional committee on the issues raised by that demand. These notes should be read with the working paper which identifies the principal issues which will have to be addressed in formulating and implementing a system of interim government.
- 2 It was noted that interim government would call for an amendment to the present constitution, which in turn would require the approval of each of the houses of the tri-cameral parliament.
- 3 It was also noted that interim government would require consensus in regard to the participating parties, the manner in which government departments are to be administered and the manner in which decisions are to be taken.
- 4 This led to discussions which in particular dealt with
  - (a) The need for interim government
  - (b) The problems associated with interim government
  - (c) The forms that interim government could take.

- 5 The Need For Interim Government  
The following points were made in regard to the necessity for interim government:
  - (a) It is essential to the challenge to the legitimacy of the present regime.
  - (b) It will be a watershed marking the end of white minority rule.
  - (c) It is a requirement of the Harare Declaration.
  - (d) It commands widespread international support.
  - (e) It is required to prevent the abuse of governmental power by the Nationalist Party.
  - (f) It could break the present logjam and hasten the adoption of a democratic constitution
  - (g) The demand for interim government is a powerful mobilising factor.
- 6 The Problems Associated With Interim Government
  - (a) It will inevitably require decisions to be taken by consensus and this can lead to paralysis of government, and a continuation of existing laws and practices.

- (b) It will require the ANC to assume co-responsibility for government, without vesting in it the power to govern effectively.
- (c) It will lead to a loss of credibility because the ANC will be unable to do anything to improve the real conditions of the people.
- (d) It will weaken the ANC by making it assume co-responsibility for the actions of a hostile civil service over which it will have no effective control.
- (e) It may be confusing to people on the ground who may not understand why the ANC is part of a government which is doing nothing for them.
- (f) It will weaken the ANC by involving it in governmental responsibilities at a time when its energies should be devoted to mobilising for elections and putting its organisation in order.
- (g) It will in itself be made the subject of protracted negotiations, and even if these negotiations are resolved satisfactorily, the process of decision making by the interim government could lead to

delays, all of which could delay the transfer of power to a democratic government.

#### 7 The Forms Of Interim Government

Although there was an acceptance of the fact that there would be serious difficulties associated with the adoption and implementation of any form of interim government, there was substantial agreement that at the very least certain powers would have to be removed from the exclusive control of the Nationalist Party and vested in interim government structures. The discussions did not lead to any consensus on what would be the most appropriate solution. The three models identified in the working paper were referred to in the discussions. Some favoured model 1, whilst others favoured model 3. There was a suggestion that a fourth model could be devised which would combine aspects of model 1 with aspects of model 3, but it was argued that this would not in fact be possible, and that a choice would have to be made between these two models.

#### 8 Issues upon which there was substantial agreement

Certain issues were raised and appeared to enjoy a high degree of consensus. These issues were:

- 8.1 Interim government, whether related to broader or core governmental functions, must be given a constitutional and legal form. This is essential to

avoid legal, political and possibly armed insurrectionary challenges to interim government by the right wing or other disaffected parties. The legalisation of interim government is the responsibility of the Nationalist Party but the form it should take should be agreed upon at the All Party Congress (APC).

8.2 Interim government must be strictly and precisely related to the process of transition. If interim government is framed as an open ended process both in regard to its timing and its functions, it may persist indefinitely, or be prolonged at the whim of some of the many parties who participate in it. In this regard the following elements were viewed as crucial:

8.2.1 Interim government should be seen as part of a process towards a new constitution and not as an end in itself. The time for interim government will arise only after agreement has been reached on the process to be followed. The process should be the subject of discussions at the APC.

8.2.2 The APC should first agree upon on the basic principles of a new constitution. Such principles would provide a framework for the

Constitutional debate, as was the case in Namibia, and would later be given form at the Constituent Assembly. The function of securing such an agreement is: to obtain commitment to the process of transition; to secure a commitment to the principles underlying a new constitution; to prevent raising of artificial disagreements by one or more of the parties over principles designed to frustrate the adoption of a constitution at a time when the other parties believed that they had agreement on such matters; to assist in securing the Constituent Assembly as the mode of constitution-making on the grounds that once agreement has been reached on framework issues, the fear of the unknown is removed and the Assembly then becomes the appropriate forum for debate; and ultimately to shorten the life span of interim government.

8.2.3 If agreement is reached at the APC on principles for the new constitution, and on the convening of a Constituent Assembly to formulate the constitution within the framework of such principles, interim government, or interim government structures,



will be necessary for the period between the conclusion of the APC, and the holding of the first election under a new constitution. This should be a comparatively short period of not more than a year or two during which the principal parties would have a common goal - the adoption of a new constitution pursuant to an agreed process. This would reduce, though not eliminate, the difficulties of interim government. There was considerable support for the view that interim government should be limited to this period and be dependent upon agreement being reached at the APC on the principles of the constitution and the process to be followed in drafting and adopting its terms.

8.2.4 Once the principles have been agreed upon the APC must address in detail the duration, function and method of decision-making of interim government.

8.2.5 Whatever broader functions are performed by the interim government and whatever the manner in which those functions are performed certain key areas of government require specific powers/mechanisms of control. These

include:

- the functioning of the security forces;
- the holding of elections and all aspects of the political process related thereto;
- control over the public media;
- all 'controversial' projects which include political projects (such as those devolving legal powers to local authorities), and economic projects (such as privatisation, raising international loans, introduction or suspension of direct or indirect taxes, etc).

8.2.6 A positive role for the international community should be established at the APC in regard to both the interim government and the Constituent Assembly. It is highly unlikely that the international community will undertake a peacekeeping function in view of the cost. The role of the international community could, however, include the following:

- a monitoring function limited possibly to a provision whereby the international

community guarantees the fairness of the political process;

- facilitation and mediation in regard to decision-making (logjam breaking);
- vetting or approving day-to-day operational decisions of the security forces.

8.3 The workshop recognised that the ANC Alliance needed on the one hand to involve itself in interim government structures, but on the other to retain an independence from the interim government. A discreet distance from government would probably be required in respect of the leadership of the ANC, and the organisation itself must retain its ability to criticise. Interim government and its importance is related to the necessity of prying the hands of the Nationalist Party off the controls of government. It is a decisive break with unilateral exercise of power. It will not however mean ANC hegemony in the interim government nor necessarily effective control of the apparatuses of the state.

The workshop recognised that certain questions relating to the operation of interim government required further elaboration - whatever modality of interim government was selected. These include:

- 9.1 Which parties should participate in interim government and in what proportion to each other.
- 9.2 How would decisions be taken by the interim government? Would they be taken by consensus or by majority vote?
- 9.3 Should some of the parties have a 'veto power'?

(In view of the fact that interim government is unlikely to be established on the basis of a party allocation of departmental portfolios, joint government would presumably take place in regard to all the areas in respect of which the interim government will have jurisdiction. For these reasons the above three issues are critical.)

- 9.4 Should interim government be confined to the national level or should the principles of interim government also be applied at regional and local level?

9.5 Any interim constitution should ensure that the process to transition is not capable of reversal by the incumbents of the tri-cameral parliament. This means that the precise implications of interim government for the incumbents of the tri-cameral parliament must be addressed and more specifically, their continued employment and the future of 'own affairs' departments.

9.6 To what extent should an interim government attempt to respond to existing distortions in the provision of services and the structural inequalities of society?

10 The workshop ended on the basis that the delegates needed time to consult and to consider the implications of the matters that had been discussed. It was agreed that a follow up workshop was necessary and that papers should be prepared for such workshop in which details would be given of a structure for interim government under models 1 and 3 as well as a hybrid structure involving a combination of models 1 and 3.

October 1991

Document 3

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M E M O R A N D U M  
I N T E R I M G O V E R N M E N T W O R K S H O P

Summary and Proposals

1. INTRODUCTION

A critical assessment of modalities of interim government, and the process for establishing Interim Government was examined at a workshop on interim government, convened by the ANC Constitutional Committee and attended by representatives of the Alliance, on 25 September 1991 in Johannesburg. Vigorous debate took place, more especially in regard to two principal forms of interim government.

Model A, as more fully set out below, envisaged a full transfer of all existing governmental functions to a multi-party body of which the ANC would be a constituent member. This body is premised on the prior legal dissolution of the existing tri-cameral constitution and parliament and the assumption of responsibility for the administration of most of current government functions.

Model B envisaged the devolution of government powers to a body specifically entrusted with core functions related to the transitional process and possessed with a veto power with regard to other powers or functions of the executive. In Model B certain departments and/or aspects of existing government including the minutiae of day to day administration would continue to be performed by the existing government.

The implications of each of these modalities is more fully discussed below. However certain issues related to the process and to ancillary matters were canvassed by participants at the workshop.

## 2. ISSUES AGREED UPON BY PARTICIPANTS AT THE WORKSHOP

Certain issues were raised and appeared to enjoy a high degree of consensus. These issues were:

2.1 Interim government, whether related to broader or core governmental functions, must find constitutional and legal affect. This must be the responsibility of the nationalist party and is to be agreed upon at the All Party Congress. Interim Government should be "legalised" so as to avoid legal, political, and possibly armed insurrectionary challenges to Interim Government by the right wing or other disaffected parties.

2.2 Interim government must be strictly and precisely related to the process of transition. If Interim Government is framed as an open ended process both in regard to its timing and its functions, the Interim Government form may persist indefinitely or at the whim of the many parties which compose it. In this regard the following elements were viewed as crucial.

2.2.1 The All Party Conference shall first secure agreement on the basic principles of a new constitution. Such principles would amount to little more than a skeleton, similar to that followed in Namibia, which would later be given form at the constituent assembly. The function of securing such an agreement is: to obtain commitment to the process of transition; to secure a commitment to the principles underlying a new constitution; to prevent the frustration of the constitution-making process by means of disagreement over principles; to assist in securing the constituent assembly as the mode of constitution-making on the grounds that the

essential principles have already been agreed upon; and accordingly to shorten the life span of interim government.

2.2.2 Once the principles have been agreed upon the APC must set out in detail the duration, function and method of decision-making of interim government.

2.2.3 Whatever broader functions are performed by the Interim Government and whatever the manner in which those functions are performed certain key areas of government require specific powers/mechanisms of control. These include:

- the functioning of the security forces;
- the holding of elections and all aspects of the political process related thereto;
- control over the public media;
- all "controversial" projects which include political projects (such as those devolving legal powers to local authorities), and economic projects (such as privatisation, raising international loans, introduction or suspension of direct or indirect taxes).

2.2.4 A positive role for the international community should be established at the APC in regard to both the Interim Government and the constituent assembly. The role of the international community could include the following roles:

- A monitoring function which would also include a provision whereby the International Community guarantees the fairness of the political process;
- Facilitation and mediation in regard to

decision-making (logjam breaking);

- Vetting or approving day-to-day operational decisions of the security forces.
- It is highly unlikely that the international community will undertake a peacekeeping function in view of the cost.

2.3 The workshop recognised that the ANC Alliance needed to simultaneously involve itself in Interim Government structures but simultaneously retain an independence from the interim government. A discreet distance is required in respect of the leadership of the ANC as well as the freedom of action of the organisation generally. Interim Government and its importance is related to the necessity of prying the hands of the Nationalist Party off the controls of government. It is a decisive break with unilateral exercise of power. It will not however mean ANC hegemony in the Interim Government nor necessarily effective control of the apparatuses of the state.

### 3. IMPORTANT ISSUES REQUIRING FURTHER ELABORATION

The workshop recognised that certain questions relating to the operation of Interim Government required further elaboration - whatever modality of Interim Government was selected. These include:

- 3.1 Which parties should participate in Interim Government and in what proportion to each other.
- 3.2 How would decisions be taken by the interim

government? Would they be taken by consensus or by majority vote?

(In view of the likelihood that Interim Government is unlikely to be established on the basis of a party allocation of departmental portfolios, joint government would take place in regard to all the areas in respect of which the Interim Government will have jurisdiction. For these reasons the above two issues are critical.

- 3.3 Should Interim Government be confined to the national level or should the principles of Interim Government also be applied at regional and local level?
- 3.4 Any interim constitution should ensure that the process to transition is not capable of reversal by the incumbents of the tri-cameral parliament. What are the precise implications of Interim Government for the incumbents of the tri-cameral parliament, more specifically their continued employment and the future of "own affairs" departments.
- 3.5 To what extent should an Interim Government attempt to respond to existing distortions in the provision of services and the structural inequalities of the society.

## REFLECTIONS ON INTERIM GOVERNMENT

(J.S.)

1. The concept of an Interim Government as a transitional stage to the adoption of a democratic constitution was first articulated in the Harare Declaration. It received broad endorsement from the International Community.
2. However, while accepting that the Pretoria Government was not representative, the Western powers maintained (and continue to maintain) that, in International Law, the encumbant regime is, de facto, a legal government. It was therefore up to the citizens of South Africa to decide the process of its replacement. This approach was impliedly endorsed by the unanimous vote of the December '89 United Nations General Assembly which declared that during the transitional period, "transitional government arrangements" would have to be agreed to by South African political formations to take the country to a democratic order.
3. We, for our part (supported by the OAU), continue to assert the illegality and illegitimacy of the present regime. It could be argued that the insistence by the Western powers that the regime is de facto legal and legitimate is contradicted by their participation in an earlier decision of the Security Council which declared the current constitution "null and void" on the grounds that it violated the principles on which the UN was established.
4. Our contention that the regime is illegal and illegitimate is correct. It provides us a basis for maintaining that the regime is obliged to give way to a representative government. It certainly cannot claim the right to oversee the process of transition to a democratic order; a right which it maintains it has and which is at the foundation of its claim that

- (subject to some form of participation by its negotiating partners) the transformation must be dominantly controlled by itself.
5. Does our committment to the negotiating process detract from our contention that the regime is illegal and illegitimate? Clearly not. But we have to answer the further question: are we not, in practice, accepting the de facto legality and legitimacy of the regime by not only negotiating with it but also participating in joint structures both with the ruling party and government as, for example, in the Peace Accord? Again the answer is clearly no. The question of legality or legitimacy goes to the root of our strategic objective of speedily removing the Pretoria regime. On the other hand, the negotiating process relates to the tactical modalities of achieving this.
  6. It is my submission that when it comes to the tactical modalities, the question of the legitimacy or legality of the regime cannot be the overriding starting point. Indeed, it is an extreme committment to this starting point which, until recently, persuaded both PAC and AZAPO to stay clear of the negotiating process itself.
  7. How does all this relate, in practice, to the question of Interim Government? There is general concensus that (however the Interim Government is constituted) we accept that one of the key actors and participants in the Interim Government would inevitably be the representatives of the N.P. and the regime. This is a correct tactical position. It stems not from the legality or legitimacy of the present regime but from the de facto balance of forces within a framework in which we are attempting to negotiate power rather than to capture it outside the negotiating process.

8. It follows that our contention that the regime (with its parliament, executive, and other state structures) is illegal and illegitimate is only the strategic backdrop against which we have to determine our tactical options. A conflation of these two categories has, from time to time, clouded our discussions on the kind of interim government which we consider acceptable.
9. It flows from the above reasoning that the question of legality and legitimacy cannot be the overriding starting point for our elaboration of an acceptable structure for an Interim Government.
10. What then is the starting point for determining our approach to Interim Government? I believe it to be the following: to create an authority (acceptable to both the ANC and the democratic movement as a whole) with both power and resources which will take charge of all areas which are critical to ensure a free, fair and democratic election to a Constituent Assembly which will finally determine the country's constitution and from which will emerge the new executive state authority.
11. To attempt to go beyond this objective is both impractical and dangerous. It is impractical because we do not have the power to force the regime to dissolve the tri-cameral parliament, to abandon the whole of the existing constitution and to step down and hand over the whole state structure to an Interim Government.
12. In any case the dangers for the ANC, if it assumed co-responsibility in an Interim Government for the total exercise of state power during the short transition period become immediately apparent. More particularly

- a. Such an Interim Government would unavoidably be made up of a melange of organisations such as the ANC, the other organisations broadly encompassing the envisaged Patriotic Front, parties of the Tri-Cameral Parliament, perhaps various trade union centres, Bantustan parties, etc. etc. Since there will not be an election to determine the balance of representation, this mixture will in no way reflect support on the ground and each organisation would claim to assert its role and policies.
- b. Leaving aside the constitutional nightmare which would be created in the decision making processes by such a mixture (reminiscent of the National Party's constitutional proposal of 5 presidents) such an Interim Government will inherit a state in which all the key structures of apartheid will remain in place. As we know, the racist state is not just parliament and its executive; it includes the whole super-structure of white power - the army, police force, civil service, judiciary, local government, fiscal structures, etc. etc.
- c. There is no way in which this reality can be meaningfully altered during the relatively short transition period. Hence if you combine the unavoidable imbalance of representation such an Interim Government with the kind of super structure it will inherit, the ANC and its allies would be assuming part responsibility without the possibility of exercising real power. It would become part of a structure vested with complete responsibility for running the country. At the same time such an Interim Government would be a power structure which would be unable to address in any meaningful way the ongoing socio-economic crisis, to effectively transform the apartheid power institutions and the racial imbalances which it will inherit at every level. In such circumstances we run the grave risk of discrediting ourselves in the eyes of our constituency.

d. It has been argued that we would face a similar difficulty when the ANC takes power after a democratic election because we would not be able, overnight, to alter the apartheid inheritance. This is a spurious argument. There is an obvious difference between the two situations. In the one case the ANC will exercise dominant power which will enable it to begin the process of transformation, supported by a constituency which it will mobilise and educate to accept the reality that the transformation involves a process. In the other case, we will be only one part of a mixture of parties and we will be continuously forced into compromises to achieve a consensus necessary to run a complex country through an Interim Government which has total executive and administrative responsibilities.

e. In addition, if the Interim Government is given total responsibility for legislation and administration of the whole state, the effective participation by the ANC and its allies will absorb a massive proportion of talent and resources. There is a grave risk that these will be stretched to the point where we undermine effective attention to one of the principal and talent-absorbing tasks facing us, i.e. to build our organisation on the ground in preparation for an election victory.

13. What flows from the above submissions?

a. Our approach to Interim Government should not be over determined by the correct contention that the present regime is illegal and illegitimate.

b. We should not assume co-responsibility for running every sector of the apartheid state in the interim period in conditions which would give us responsibilities without effective power, as spelt out above.

c. The basic purpose of the Interim Government must be to assume those powers necessary to ensure that the playing fields for a forthcoming democratic election for a Constituent Assembly are level. This would involve giving the Interim Government complete control over areas such as security forces, army, the whole election process and other related areas which still need to be fleshed out.

d. It is implied that during the transition period the existing constitution would remain in place and the powers of the Interim Government referred to in 3. above would have to be given legislative endorsement by the tri-cameral parliament. It follows also that the existing tri-cameral executive would continue to have responsibility for those areas of administration not covered by the transfer of functions to the Interim authority.

e. Attention must be given to the role of the International community which should be involved in the whole process as the supervisory and monitoring force bucked by a threat of international sanctions if there is any substantial renegeing by the regime on the arrangements entered into.

14. It is conceded that many of the problems referred to above arising from the mixed character of the Interim Government (whose constituents will not represent the true balance of popular support on the ground) will not be completely overcome even if its functions are limited to the sole objective of ensuring a fair and free transition framework. But the narrow scope of its functions, if well defined and agreed to between all the major actors beforehand, will (apart from its other advantages) obviously reduce the areas of conflict between the participants. Prior agreement at the All Party Congress between all the major actors on a set of Constitutional Guidelines and the path towards adopting a new constitution



will also be an important factor in this regard.

CONSTITUENT ASSEMBLY

24 22

CONSTITUENT ASSEMBLY

1. HOW WILL THE CONSTITUENT ASSEMBLY BE BROUGHT INTO EXISTENCE? (The stages are envisaged):

1.1. Agreement will have to be reached at the APC on various aspects such as convening of the Constituent Assembly, its composition, its working powers, mode of decision-making, implementation of decisions as well as all matters relating to elections throughout the country (including howland), supervision of elections, ensuring they are fair and free etc. Some of the matters relating to Constituent Assembly also relate to Interim Government.

1.2. ON THE BASIS OF AGREEMENT REACHED, THE SOUTH AFRICAN GOVERNMENT WILL HAVE TO TAKE NECESSARY STEPS TO PASS LEGISLATION OF SUCH NATURE WHICH MAY BE NECESSARY TO GET THE ABOVE STAGES INTO BEING.

2. HOW WILL THE CONSTITUENT ASSEMBLY BE CHOSEN?

It is envisaged that the process will be a free and open one. It will be universal adult franchise. The system of voting will be similar to that of a system of proportional representation. A national list system is envisaged. The number of representatives suggested is 500.

The voting age will presumably be 18. Preparations for elections will include the registration of voters and the convening of a voters roll. To facilitate the voters roll the proposed voters identification documents across the board of voting. This seems to be preferable for some time because the delay and logistical problems are considerable.

The system will have to be fixed. An indicated agreement will have to be reached on the method of supervision and conducting the elections to ensure that they are free and fair. All this will take time but this may be shortened if parties agree on the principles which will define the broad parameters of the new constitution and there is an elected constituent assembly which would be required to function.

3. WHAT WILL THE POWERS OF THE CONSTITUENT ASSEMBLY BE?

The question which arises is whether the Constituent Assembly will have unrestricted power to settle the terms of the Constitution (within the framework of agreed principles) or will it only have the power to put forward an agreed draft which will be made the subject of a referendum. The Constituent

Assembly will receive to become the first National Assembly and a provision to that effect be incorporated into the Constitution.

In our situation we should decisively opt for the Constituent Assembly to be empowered to adopt the Constitution. Making the Constituent Assembly product subject to a referendum will result in delay and possibly further chaos.

One of the objections of those opposed to the Constituent Assembly formula is the possibility that the Constituent Assembly elections will result in an overwhelmingly black dominated body which will adopt a Constitution outside the framework of the agreed principles. This can be overcome by parties agreeing in advance to bind themselves to the agreed principles.

4. HOW WILL THE CONSTITUENT ASSEMBLY SUPPORT ITS EXISTENCE?

A provision for financing the functioning of the Constituent Assembly will have to be made. It may be decided that the Assembly shall elect its own Chairperson or that the existing party leaders or that a "Management" Management be appointed to provide for administration.

The Constituent Assembly should take steps to ensure that it is able to debate and act in the process of deliberation. It is envisaged that the Constituent Assembly should have the power to discuss private discussions which may arise in any deliberative process.

5. HOW WILL DECISIONS BE TAKEN?

In the case of simple a two-thirds majority for the adoption of the Constitution are envisaged. This two-thirds majority effect on all parties. It is envisaged that a two-thirds majority will also be required for amendments to the Constitution or for a limited number of amendments which the majority majority cannot be increased.

6. HOW WILL THE DECISIONS OF THE CONSTITUENT ASSEMBLY BE IMPLEMENTED?

Provision will have to be made in the APC agreement in this regard. There will also have to be clarity as to the relationship between the Constituent Assembly and the existing government (interim or otherwise). If the Constituent Assembly transforms itself into a National Assembly, this will have to be guaranteed in the APC agreement and legislation resulting therefrom.

# CONSTITUENT ASSEMBLY

CONSTITUENT ASSEMBLY

## 1. HOW WILL THE CONSTITUENT ASSEMBLY BE BROUGHT INTO EXISTENCE? Two stages are envisaged:

- 1) Agreement will have to be reached at the APC on various aspects such as convening of the Constituent Assembly, its composition, its workings, powers, mode of decision-making, implementation of decisions as well as all matters relating to elections throughout the country (including homelands), supervision of elections, ensuring they are fair and free etc. Some of the matters relating to Constituent Assembly also relate to Interim Government.
- 11) On the basis of agreement reached, the South African government will have to take agreed steps to pass legislation or such measures which may be necessary to set the agreed process into motion.

## 2. HOW WILL THE CONSTITUENT ASSEMBLY BE CHOSEN?

It is envisaged that an Interim Government structure will organise fair and free elections throughout the country. There must be universal adult franchise with a common non-racial voters roll and election conducted according to a system of proportional representation. A national list system is envisaged. The number of representatives suggested is 400.

The voting age will presumably be 18. Preparations for elections will include the registration of voters and the compilation of a voters roll. In Zimbabwe no voters roll was compiled. Instead identification documents formed the basis of voting. This seems to be preferable for South Africa because the delay and logistical problems are substantial.

The period set aside for the run of the elections and campaigning will have to be fixed. As indicated agreement will also have to be reached on the method of supervising and conducting the elections to ensure that they are free and fair. All this will take time but this may be shortened if parties agree on the principles which will define the broad parameters of the new constitution and within which an elected Constituent Assembly would be required to function.

## 3. WHAT WILL THE POWERS OF THE CONSTITUENT ASSEMBLY BE?

The question which arises is whether the Constituent Assembly will have unrestricted power to settle the terms of the Constitution (within the framework of agreed principles) or will it only have the power to put forward an agreed draft which will be made the subject of a referendum.

In Namibia the former course was followed. The Constituent

Assembly also resolved to become the first National Assembly and a provision to that effect was incorporated into the Constitution.

In our situation we should decisively opt for the Constituent Assembly to be empowered to adopt the Constitution. Making the Constituent Assembly product subject to a referendum will result in delay and possibly further chaos.

One of the objections of those opposed to the Constituent Assembly formula is the possibility that the Constituent Assembly elections will result in an overwhelmingly black dominated body which will adopt a Constitution outside the framework of the agreed principles. This can be overcome by parties agreeing in advance to bind themselves to the agreed principles.

## 4. HOW WILL THE CONSTITUENT ASSEMBLY CONDUCT ITS BUSINESS?

A formula for electing the Presiding Officer or Chairperson should be agreed upon. It may be decided that the assembly shall elect its own Chairperson or that the majority party decides or that an "independent" Chairperson be appointed to preside over discussions.

There is a very strong feeling in different regions that discussions in the Constituent Assembly should take place in public. Publicity enables people to know what is being said, to debate same and assist in the process of decision-making. This of course does not include private discussions which take place in any negotiation process.

## 5. HOW WILL DECISIONS BE TAKEN?

In the case of Namibia a two-thirds majority for the adoption of the Constitution was required. This had a reassuring effect on all parties. In our situation adoption by a two-thirds majority may also be advisable. However it may be necessary to devise a deadlock breaking mechanism where the requisite majority cannot be obtained.

## 6. HOW WILL THE DECISIONS OF THE CONSTITUENT ASSEMBLY BE IMPLEMENTED?

Provision will have to be made in the APC agreement in this regard. There will also have to be clarity as to the relationship between the Constituent Assembly and the existing government (interim or otherwise). If the Constituent Assembly transforms itself into a National Assembly, this will have to be guaranteed in the APC agreement and legislation resulting therefrom.

7. HOW WILL THE IMPLEMENTATION OF THE DECISIONS OF THE CONSTITUENT ASSEMBLY BE GUARANTEED?

The processes as well as the decisions reached must have the backing of the force of law and also be enforceable through court action. This means that all these areas will have to be discussed and agreed upon at the APC level, after which appropriate legislative measures will have to be taken to guarantee implementation.

CONCLUSION

Lastly, as to size, in Namibia provision was made for a Constituent Assembly consisting of 72 persons. In the case of Zimbabwe the Lancaster House agreement in 1979 provided for a Lower House of 100 members. (20 seats reserved for whites)

Taking into account our population size, size of country and regional dynamics, a Constituent Assembly consisting of 400 representatives seems appropriate.

Note: In the case of Namibia and Zimbabwe, very little time was given to the democratic forces to organise for elections. In the case of Zimbabwe the period was only two months.

L PRINCIPLES



# *Constitutional Principles for a Democratic South Africa*

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## *PART 1*

The African National Congress envisages a united, democratic, non-racial and non-sexist South Africa, a unitary State where a Bill of Rights guarantees fundamental rights and freedoms for all on an equal basis, where our people live in an open and tolerant society, where the organs of government are representative, competent and fair in their functioning, and where opportunities are progressively and rapidly expanded to ensure that all may live under conditions of dignity and equality.

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### *A UNITED SOUTH AFRICA*

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When we speak of a united South Africa, we have in mind in the first place the territorial unity and constitutional integrity of our country. South Africa must be seen, as recognised by the international community, as a single, non-fragmented entity including Transkei, Bophuthatswana, Venda and Ciskei.

Secondly, we envisage a single citizenship, nation and a common loyalty. We speak

many languages, have different origins and varied beliefs, but we are all South Africans.

Thirdly, all apartheid structures must be dismantled and replaced by institutions of government - central, regional and local - which are truly non-racial and democratic. They must form an integrated and coherent whole, be drawn from all the people and be accountable to the whole community.

Fourthly, there must be a single system of fundamental rights guaranteed on an equal basis for all through the length and breadth of the country. Every South African, irrespective of race, colour, language, gender, status, sexual orientation or creed should know that his or her basic rights and freedoms are guaranteed by the Constitution and enforceable by recourse to law.

Fifthly, the flag, names, public holidays and symbols of our country should encourage a sense of shared South Africanness.

A unified South Africa requires a strong and effective Parliament capable of dealing with the great tasks of reconstruction, of overcoming the legacy of apartheid and of nation-building.

We believe that there is a need for strong and effective central government to handle national tasks, strong and effective regional government to deal with the tasks of the

region, and strong and effective local government to ensure active local involvement in handling local issues.

All such governmental structures and institutions shall be based on democratic principles, popular participation, accountability and accessibility. A unified South Africa shall not be an over-centralised, impersonal and over-bureaucratised country. The precise relationship between central, regional and local governments can be worked out on the basis of acknowledging the overall integrity of South Africa and the existence of fundamental rights for all citizens throughout the land.

The regions should not be devised as a means of perpetuating privilege, ethnic or racial divisions along territorial zones but should be based upon the distribution of population, availability of economic resources, communications and urban/rural balance.

National tasks would include external links and representation, defence and ensuring the basic security of the country, general economic, fiscal and tax policy, the creation of national policy framework and the furnishing of resources for eradicating racism and racial practices and for the tackling of the vast problems of education, health, housing, nutrition, employment and social welfare.

Regional tasks would include development and the carrying out of the basic tasks of the government at a regional level, bearing in mind regional particularities and resources.

Without detracting from basic constitutional rights and freedoms, provision could be made for special recognition of languages in the different regions.

Local tasks cover all the day-to-day aspects of living which most directly and intimately affect the citizen in an integrated and non-racial local authority area. The active local involvement of all sections of the population will be necessary in the fulfillment of these tasks.

The central government has the responsibility for ensuring that there is a common framework of principles and practices applicable to the whole country and for seeing to it that all areas of the country have equitable access to national resources. However, it is not the function of central government to involve itself in each and every decision that has to be taken at the regional or local levels. Such functions should clearly be delegated to these authorities and performed by them.

Similarly, when we speak of a united South Africa we do not envisage the elimination of cultural, linguistic, religious and political differences. On the contrary, we regard the

multiplicity of opinions, beliefs, faiths, tastes, cultures and preferences as contributing towards the richness and texture of South African life. What the new Constitution should avoid at all costs is vesting political rights in different linguistic, cultural, ethnic or religious groups.

A free South Africa must therefore ensure that these differences do not become the source of division or conflict or the means of perpetuating and promoting domination or privilege.

The new Constitution must consistently and clearly affirm the fundamental principle of equal and undifferentiated citizenship so that the differences of culture, interest and personality can then express themselves in a constructive, free and non-conflictual way.

## DEMOCRATIC

The government must be democratic in the universally accepted meaning of the term. It must be the government of the people, by the people, for the people. It must be chosen by the people in free, fair and regular elections. It must be removable if it loses the confidence of the voters. Elections must be based on the principle of universal and equal suffrage on a common voters roll without distinction as to race, language, creed, class, social position, birth or gender. Illiterate



voters should not be disadvantaged. The precise method of voting and electoral system can be negotiated within the framework of these universal principles. The African National Congress favours the system of proportional representation, with regional and national lists.

Secondly, the legislature should be representative of the people as a whole, reflecting such differences of political views and interests as may be present in the community at any particular time.

Thirdly, the institutions of government should not be restricted to any language, religious, racial, ethnic or cultural grouping. The central, regional and local government structures including the law enforcement agencies and the administration of justice should reflect the composition of South Africa as a whole and draw on the talents and life experiences of all. Similarly, they should act in a fair and objective manner towards all, without fear, favour or prejudice.

Fourthly, government must be open. Apartheid South Africa has been a highly authoritarian society, characterised by arbitrary decision-making by officials and by excessive secrecy. All South Africans have the right to be informed about the issues and to know what the basis of governmental decisions is.

There is far too much fear of the government. We must secure constitutional barriers to detention without trial, to spying on citizens, secret files, dirty tricks departments, disinformation and the use of government money to promote party political objectives.

Fifthly, government should be based on the principle of active involvement of the people. The existence of civic associations, religious bodies, ratepayers organisations, trade unions and other independent bodies should be encouraged. Similarly government should collaborate with non-governmental organisations, without interfering with their autonomy.

Finally, government should reflect the will of the majority, be effective but not all-powerful. It should operate within the framework of the Constitution, acknowledging a separation of powers and the existence of fundamental rights and freedoms as guaranteed in a Bill of Rights.

### NON- RACIAL

A non-racial South Africa means a South Africa in which all the artificial barriers and assumptions which kept people apart and maintained domination, are removed. In its negative sense, non-racial means the elimination of all colour bars. In positive terms it means the affirmation of equal rights for all.

It presupposes a South Africa in which every individual has an equal chance, irrespective of his or her birth or colour. It recognises the worth of each individual.

A non-racial Constitution can be adopted rapidly but a non-racial South Africa would take many years to evolve. Yet, although the massive discrepancies in education, health and living conditions imposed by decades of racial discrimination cannot be eliminated by constitutional declaration, the Constitution must provide the positive means to reduce progressively the imbalances and inequalities and to ensure that everybody has an equal chance in life.

### NON-SEXIST

The new Constitution must reflect a commitment to full, free and equal participation in the new South Africa. Law and practice keep South African women out of their rightful place in helping to build democracy and enable a new nation to evolve, and deprive them of their human rights as individuals.

The new Constitution must therefore:

*guarantee equal rights for women and men in all spheres of public and private life;*

*create mechanisms whereby the discrimination, disabilities and disadvantages*

*to which women have been subjected are rapidly removed;*

*give appropriate recognition to reproductive and birth rights;*

*guarantee constitutional protection against sexual violence,*

*abuse, harassment or defamation;*

*ensure that women are heard in all issues and participate actively in all levels of society.*

### BILL OF RIGHTS

A Bill of Rights based on universally recognised principles of human rights should form an integral part of the new Constitution. In particular, it should guarantee all South Africans against the violations of human rights associated with apartheid and stress the principle of the equal dignity and worth of all South Africans.

The Bill of Rights should in clear and unambiguous language guarantee the rights of personal freedom and political expression. It should also protect and enhance rights of the individual to practise her or his religion and culture and speak her or his language. It should acknowledge the importance of securing minimum conditions of decent and dignified living for all South Africans.

It should create mechanisms for enforcing these rights. In particular, the courts should have a primary role in ensuring that the Bill of Rights is operative. A Constitutional Court that enjoys the respect of all South Africans, that draws on the experience and talents of the whole population, that is independent and that functions in a manifestly fair and objective fashion, accountable only to the principles of the Constitution, should be created.

Similarly, a Human Rights Commission should be established to ensure that violations of human rights are investigated and appropriate remedies found, examine patterns of discrimination and make proposals for their elimination.

Finally, the post of Ombud should be created to deal with questions of abusive, arbitrary, capricious, discourteous and corrupt exercise of office by any official.

## OPEN SOCIETY

The Constitution should guarantee the free articulation of differences within the framework of equal rights and tolerance.

An open society requires guarantees for the free functioning of non-governmental organisations, such as religious bodies, trade unions, sporting and cultural associations, subject only to respect for fundamental human rights as set out in the Constitution.

Non-governmental organisations should be encouraged to collaborate with the Govern-

ment in furthering the aims of the Constitution, without thereby compromising their identity or independence.

All men and women shall be entitled to all necessary information to enable them to make effective use of their rights as citizens, workers and consumers and to impart such information.

There should be freedom of the press, and the media should be open, accessible and respond to all the views, opinions and interests of the community.

## THE CIVIL, THE DEFENCE, POLICE AND PRISON SERVICES

The three principal qualities of the civil service, the defence, police and prison service shall be:

*representativity, competence and impartiality.*

### *Representativity*

All organs of government shall draw on the life experience and talents of all sectors of the community in such a manner as to instil a common South African perspective of public service. The present barriers based on race shall be eliminated and special steps shall be taken to redress patterns of discrimination attributable to apartheid.

### *Competency*

It is in the interest of the population of a free South Africa that the standard and quality of service of the public service shall be as high as possible. To attain this goal and consistent with the principle of representativity, special programmes of training, retraining and advancement shall be undertaken to enable the best South Africans to give the best possible service to all their fellow citizens.

### *Impartiality*

The organs of government shall be accountable to Parliament and to the whole community. It is not their function to serve the interests of any party or sectional grouping. Impartiality presupposes a balanced composition of the bodies concerned and a sensitivity to the needs and aspirations of all sections of the community.

There should be adequate control and supervision over the civil service, defence, police and prison service, an effective machinery to investigate complaints against these services and the provision of redress

### *Administration of justice*

Without interfering with its independence, and with a view to ensuring that justice is manifestly seen to be done in a non-racial way and that the wisdom, experience and judicial skills of all South Africans are represented on the bench, the judiciary shall be

transformed in such a way as to consist of men and women drawn from all sectors of South African society.

In a free South Africa, the legal system shall be transformed to be consistent with the new Constitution.

The Courts shall be accessible to all and shall guarantee to all equal rights before the law.

GUARANTEES  
OF  
OPPORTUNITIES  
FOR A  
DIGNIFIED  
LIFE FOR ALL

A new South Africa can never evolve if the white part of the population lives in relative luxury while the great majority of black South Africans live in conditions of want, squalor and deprivation.

Appropriate constitutional expression must therefore be found to guarantee basic human rights in relation to nutrition, shelter, education, health, employment and welfare. Government should be under a constitutional duty to work towards the establishment of a guaranteed and expanding floor of social, economic and educational rights for everybody.

It is particularly important that the Constitution facilitate access to education, employment and land, so that people have real and effective opportunities for improving their situation and pursuing happiness. □

## *The Structure of a Constitution for a Democratic South Africa*

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### **PART 2**

1. South Africa shall be reconstituted as a non-racial, non-sexist, democratic and unitary republic.

2. South Africa shall consist of the whole territory recognised by the international community as South Africa and shall include the Transkei, Ciskei, Venda and Bophuthatswana.

3.1 Provision will be made for the three branches of government: the Executive, Legislature and the Judiciary.

3.2 The head of the Executive will be an elected President who will also be the Head of State. The question that arises is whether the President should be elected directly by the public and vested with greater executive powers, or whether s/he should be elected by and answerable to Parliament. This is a matter on which there must be greater public debate.

3.3 The President will act in consultation with a Cabinet of Ministers headed by a prime minister. The President will appoint a prime minister and other members of the Cabinet.

3.4 The President may only hold office for a maximum of two terms of five years each. He or she will be subject to removal only by a resolution passed for good cause by a two thirds majority of the National Assembly.

3.5 The legislative branch of government will consist of two houses of Parliament. The first house of Parliament will be the National Assembly which will be elected on the basis of proportional representation by universal suffrage in which all persons will have an equal vote without regard to race, gender, ethnic origin, language or creed. The power of enacting legislation will primarily be vested in the National Assembly.

3.6 The second house of Parliament will be the Senate, which will also be elected according to universal suffrage without regard to race, gender, colour, ethnic origin, language or creed. The Senate will neither be a corporatist chamber made up of interest groups (youth, labour, women or business, or other groups) nor will it represent ethnic or so-called "community" interest. The electoral system will, however, be different to that adopted for

the election of the National Assembly, and will make provision for representation on a regional but not on an ethnic basis.

3.7 The Senate will be the guardian of the Constitution, with power to refer any dispute concerning the interpretation or application of the constitution to the appropriate court for its decision and the power to review. Where appropriate the Senate may delay the passage of legislation passed by the National Assembly, but it will not have the power to veto legislation.

3.8 Elections for the Presidency, National Assembly and the Senate will be held by secret ballot at periodic intervals of not more than five years and procedures will be enacted to ensure that the elections are genuine and are conducted in accordance with the principles and procedures consistent with those obtaining in a democracy.

3.9 All South Africans shall be entitled to stand for election as President, to Parliament and to other elected offices. Elections will be supervised by an independent Electoral Commission, and conducted in accordance with the standards design to ensure that the elections are fair and free.

4.1 The National Assembly will be elected on the basis of proportional representation. The rationale

behind proportional representation lies in the following factors:

a) It encourages participation by groups which have significant followings. This is more satisfactory than forcing political or subversive activity outside parliament. Fringe parties would be excluded by imposing a threshold of a 5% of the vote.

b) Votes in excess of fifty percent would count and hence be an inducement to vote in areas where one party is dominant. Similarly 'losing' parties votes in those areas would also contribute to their overall performance.

c) It leads to a more exact political reflection of the popularity of parties.

d) It avoids the time, expense and accusations of bias in the process of delimiting constituencies. This process can take months or years.

4.2 Proportional representation on the basis of a national party list system, may presents problems. Under such a system there is no way of ensuring adequate regional or local representation. Party bureaucracies benefit at the expense of local party structures or local sentiment. There is little direct accountability to constituencies.

4.3 Accordingly the ANC favours incorporating elements of a national list and regional accountability into the electoral system. This could be done most simply by combining a national list with a regional list. For example: regions could be allocated say half of the total seats, to be divided between the different regions in proportion to the registered voters in each region. The remaining half of the seats could be allocated on a national basis. Voters would vote for a party within their region and the regional seats will be allocated between the parties according to the percentages obtained by each party in each region. The second stage would be for regional votes to be aggregated so as to determine the national percentage of the total vote of each party. Each party would then be entitled to nominate from its national list, the additional members needed to make up its total entitlement of seats.

4.4 The end result will be the representation of each party in the assembly in proportion to its total votes, but reflecting a regional choice of members as well. The system requires the electorate to cast one vote only. It will be easy to administer and easy for the voters to follow.

4.5 It is recommended that proportional representation, based on the list system, be the

preferred system of voting for Senate, regional and other elections.

5. It is important that there be a guarantee of free and fair elections and that procedures be enacted to see to this. It is therefore recommended that the conduct and supervision of all elections be vested in an independent electoral commission to oversee every aspect of elections from the printing of ballot papers to the adoption of regulations for access by parties to the public media and fairness to all political parties by the public media.

6. There will be an independent judiciary responsible for the interpretation of the Constitution and the application of the law of the land. The judicial power will include the power to review and set aside legislation and actions which are unconstitutional. A Constitutional Court, appointed by the President on the recommendation of a judicial service commission, or by other methods acceptable in a democracy, comprising of judges, practitioners and academics would be set up.

7. Provision will be made for elected local and regional government on the basis of universal franchise without regard to race, gender, ethnic origin, language or creed. Local and regional government will exercise delegated powers but will have wide discretions in regard to the priorities to

be pursued at these levels, provided always that such policies do not conflict with national policies. Functions presently vested in the provincial administrations will be vested in the regional government. The boundaries of local and regional districts will be determined with due regard to economic and development considerations and without regard to race, colour, ethnic origin, language or creed.

8. Provision shall be made for one common and equal citizenship acquired by birth, descent and naturalisation in accordance with conventional standards. Provision will also be made for the restoration of South African citizenship to persons who have lost their citizenship as result of the denationalisation process through the homelands policy, or as a result of having gone into exile for political reasons, and provision will also be made for the acquisition of South African citizenship by the spouses and children of such persons.

9.1 All languages of South Africa will have equal status. They will be set out in a Schedule to the Constitution and will include in alphabetical order the following Afrikaans, English, Sipeedi, Sesotho, Seswati, Tsonga, Tswana, Venda, Xhosa, Zulu.

9.2 The State shall take all reasonable and necessary steps to protect, promote and enhance the



language rights of all the people of South Africa in relation to education and culture and in the functioning of the State at local, regional and national levels.

9.3 The language policy of the state shall be directed towards promoting and encouraging multilingualism and preventing the use of any language or languages for the purposes of domination or division.

9.4 The State shall, however, be empowered to make reasonable provision by law for the use of one or more of the languages in different regions of the country, or for specific purposes.

9.5 The question may, of course be asked whether there should be one official language for the country. But if this choice is made it would mean the demotion of some languages or the promotion of a single one. Also, it would mean that the official language would be one which most of the people either do not speak or do not speak fluently.

9.6 It would seem therefore that the most appropriate thing to do is to give equal status to all languages subject to the right of the Government to give primacy to one or more languages in any region or throughout the state as the language of administrative communication or judicial record, or

for other purposes either throughout the State or in any area. But every one should be entitled to use her or his language for purposes of communicating with the public service.

10.1 There will be a justiciable bill of rights leaving the way open for legitimate state action but affirming and protecting internationally recognised rights and freedoms including equality before the law; freedom from detention without trial, protection against arbitrary arrest and detentions; protection against arbitrary search and seizure; the prohibition of forced labour; the right to fair trial; the prohibition of cruel and unusual punishment, protection of life including the abolition of the death sentence; protection of women's rights; protection of children, freedom from discrimination; the right to privacy; freedom of expression including a free press; the right to information; freedom of religion and conscience; freedom of assembly; freedom of association; freedom of movement including the right of citizens to leave and return to South Africa; trade union rights including the right to work and the right to strike; the right to form political parties; the right to education, welfare and health care consistent with the needs of the people and the resources of the state; environmental rights; family and cultural rights, and providing for just compensation to be paid for property taken by the state.

10.2 We do not propose to discuss here the formulation of each right and the enforcement of rights as this has already been done in a detailed fashion in a discussion paper *The Draft Bill of Rights* published in November 1990 by the African National Congress.

11. Provision will be made for discrimination to be eliminated in substance as well as in form. At all levels of government the state will be empowered to pursue policies of affirmative action for the advancement of persons who have been socially, economically or educationally disadvantaged by past discriminatory laws and practices and in order to redress social, economic and educational imbalances in South Africa resulting from such discrimination with special regard to the maldistribution of land and the need for housing. Special provision will also be made to redress the added discrimination which has been suffered by women and the victims of forced removals.

12. All discriminatory legislation and all other legislation inconsistent with the Bill of Rights will be invalidated by the Bill of Rights. All other legislation will remain in force unless repealed by parliament or set aside by a court under its power of judicial review.

13. There will be a public service commission charged with the responsibility of overseeing the recruitment, promotion and dismissal to and from posts in the civil service. Such a commission will also be required to implement an affirmative action programme in regard to appointments to senior positions in order to redress existing race and gender disparities. Provision will be made for a representative structuring of the public service, the police service and the defence services and to ensure that the public service will be accountable for its actions.

14. There will be an independent Ombud with powers to investigate complaints against members of the public service including the police and other holders of public and private power and to investigate allegations of corruption.

15. The Constitution will also make provision for a state of emergency to be declared when the life of the nation is threatened. Such a power will be subject to strict controls by Parliament and the judiciary. The Constitution will provide for the recognition and protection as far as possible of fundamental rights during the period of emergency.

16. The Constitution will be subject to amendment only if a majority of two thirds of the national assembly approve of the amendment or if approved

by two thirds of the votes cast at a national referendum. □

April 1991

PATRIOT FRONT

41

## TOWARDS THE BROAD PATRIOTIC FRONT

### I. INTRODUCTION

The Patriotic Conference will be a working conference. The procedural agenda is as follows:

1. Opening of Conference by Presidents of ANC, PAC, AZAPO (also to deal with current political situation)

2. International Guest (Ghana Representative)

3. Transfer of Political Power: Government Arrangements and mechanisms towards it. This will include:

- \* All-Party Congress
- \* Interim Government
- \* Constitutional Processes
- \* Transitional Assembly

4. Agenda

5. Programme of Action: National and International

6. Finance: Fund and resource arrangements

7. Administration and Procedures

NB: The Conference might have to deal with commissions to consider some of the more detailed questions.

### II. PREPARATORY PROCESS

1. Consensus has been established with PAC and AZAPO on the All-Party Congress/PCAC and Interim Government/Transitional Authority. The working document containing the areas of agreement should be used as a basis for consultation with other prospective participants. The following categories of organisations need to be consulted:

- \* ANC Regions and the League
- \* Tripartite Alliance and NMM organisations
- \* Business Organisations e.g. NFFDC, FAPCOS

- \* Regional Councils
- \* Provincial Administrations

The agenda is undertaken within the next +10 days. For follow up refer 223

2. The Preparatory/Action Committee should start circulating drafts

2.1. Agreements

\* Constitutional Principles (including GAZPUN Declaration)

\* All-Party Congress/PCAC- \* Interim Government/Transitional Authority
- \* Transitional Assembly

\* Finance- \* Administrative work

2.2. Programme of Action: National and International

2.3. Finance: Fund and resource arrangements

2.4. Administration and Procedures

2.5. Programme of Action: National and International

2.6. Finance: Fund and resource arrangements

2.7. Administration and Procedures

### III. IMPLICATIONS OF THE EPF FOR THE ANC

1. The approach of the ANC to the EPF is based on the current premise provided by the three organisations viz:

- \* The immediate task of the broad liberation movement is the transfer of power to the masses as a whole.
- \* There are responsibilities for high a transfer of power to take place without negotiations based on the principles and transitional mechanisms agreed upon, and
- \* The formation of the broad patriotic front constitutes a crucial

## TOWARDS THE BROAD PATRIOTIC FRONT

### I. INTRODUCTION:

The Patriotic Conference will be a working conference. The proposed agenda is as follows:

1. Opening of Conference by Presidents of ANC, PAC, AZAPO (also to deal with current political situation)
2. International Guest (OAU Representative)
3. Transfer of Political Power: Constituent Assembly and modalities towards it. This will include:
  - All-Party Congress
  - Interim Government
  - Constitutional Principles
  - Constituent Assembly
4. Violence
5. Programme of Action (Internal and International)
6. Patriotic Front and relevant structures
7. Declaration and Resolutions

NB: The Conference might have to break into commissions to consider some of the more detailed questions.

### II. PREPARATORY PROCESS:

1. Consensus has been established with PAC and AZAPO on the All-Party Congress/PCAC and Interim Government/Transitional Authority. The working document containing the areas of agreement should be used as a basis for consultation with other prospective participants. The following categories of organisations need to be consulted:

- ANC Regions and the Leagues
- Tri-partite Alliance and MDM organisations
- Business organisations, e.g., NAFCOC, FABCOS

- Religious bodies
- Homeland parties/administrations.

This should be undertaken within the next +10 days. For follow up refer SGO.

2. The Preparatory/Liaison Committee should start formulating drafts:

2.1. Resolutions:

- Constitutional Principles (reaffirming OAU/UN Declaration principles)
- All-Party Congress/PCAC
- Interim Government/Transitional Authority
- Constituent Assembly
- Violence
- International work

On all the above *except international work* there is sufficient consensus. It is therefore necessary that at some level (e.g., International Departments), consultation should start among at least the three organisations to establish some consensus.

2.2. Programme of Action encompassing issues and forms of action on which all the components of the front can work together: positions at APC and campaigns around transitional mechanisms, violence, political prisoners, VAT, land, education, etc.

2.3. General Declaration: to sum up platform of the Broad Patriotic Front.

2.4. Structure and Principles of the Broad Patriotic Front.

### III. IMPLICATIONS OF THE BPF FOR THE ANC:

1. The approach of the ANC to the BPF is based on the common premise identified by the three organisations that:

- the immediate task of the broad liberation movement is the transfer of power to the people as a whole;
- there are possibilities for such a transfer of power to take place through negotiations based on the principles and transitional mechanisms agreed upon; and
- the formation of the broad patriotic front constitutes a crucial

element in empowering the oppressed and democratic forces for these tasks.

## 2. What principles will govern the Front?

2.1. The Front shall act as a united force on all those issues on which there is agreement.

2.2. Constituents of the Front shall retain their independence and sovereignty.

2.3. Constituents which agree on given issues which are not necessarily part of Front policy shall have the right to work together on those issues.

2.4. Constituents shall be entitled to co-operate with organisations which are outside the Front with the aim of advancing the process of transition.

2.5. Where appropriate, regular consultation will take place within the Front, even on those issues on which there might not be agreement.

## 3. How does this affect ANC work?

3.1. The coming together of various organisations ranging from WOSA to the homeland parties will help to maximise the efforts of forces interested in national liberation, and undermine those which are working to maintain the status quo.

3.2. Within the front, it will be necessary for the ANC to consolidate its relations with mass democratic forces and help give leadership to the front as a whole.

3.3. By affording it the opportunity to engage a variety of anti-apartheid forces, the front will, objectively, create better possibilities for the work of building the ANC and bringing more and more forces closer to its positions.

3.4. However there are in-built disadvantages that need to be guarded against. The holding of the Patriotic Conference will certainly create a general perception that there should be unity on each and every issue. Therefore, what the ANC does will subjectively be measured against positions of the PAC, AZAPO et al. Each time they cry foul on an

independent ANC initiative, the movement will be seen as riding roughshod over feelings of its allies and breaking the front. This applies to both internal and international initiatives. The front therefore accords these organisations a status they have not enjoyed thus far in this complex period.

3.5. The ANC has to find ways of minimising the effect of such perceptions. On the one hand, it is necessary - while projecting the importance of unity - to publicise the principles guiding the front including in particular the independence and sovereignty of the participants. On the other hand, it is even more crucial that on major initiatives of the ANC - particularly those on which there might be disagreement with PAC, AZAPO et al - the ANC is seen to act in consultation with, and with the support of, the majority of forces who constitute the BPF.

3.6. We should also ensure that the less resolute among the front allies do not abandon the alliance at critical moments. In-built mechanisms in the principles and structure of the Front should help to obviate such possibilities.

## 4. Structure:

4.1. The structure of the Front should be as loose as possible, yet allowing for effective consultation and joint actions. The Patriotic Conference should set up a Liaison Committee much broader than the present one. This committee could be composed as follows:

- \* 2 reps each from all the organisations - which might be too unwieldy; or

- \* 3 reps each from various categories of organisations e.g., national political parties, homeland parties and chiefs, trade unions, religious groups, students, professionals, business, etc.

It might be necessary to set up a small secretariat to follow up decisions, ensure communication, etc.

4.2. Within the Front decisions should be taken by consensus, with an agreement among, for e.g., over two-thirds of the constituent organisations being considered "sufficient consensus" for the front to act on an issue. Those who disagree should retain their right to abstain from such actions.

WORKING DOCUMENT:

**JOINT REPORT OF NATIONAL WORKING COMMITTEES  
OF ANC, PAC AND AZAPO  
ON TRANSITIONAL MECHANISMS**

**1. INTRODUCTION:**

1.1. This report reflects the areas of consensus among the National Working Committees of the ANC, PAC and AZAPO finalised at a joint sitting on 25 September 1991. The issues covered in the report are:

- \* All-Party Congress
- \* Interim Government/Transitional Authority.

1.2. The discussion was based on a report submitted by the Joint Subcommittee on Transitional Mechanisms which was constituted at a joint sitting of the NWC's on 10 September, 1991.

1.3. The three organisations proceed from the common premise that:

- \* the immediate task of the broad liberation movement in the current phase is the transfer of political power to the people;
- \* there are possibilities for such a transfer of power to take place through negotiations, which implies some form of contact with the regime;
- \* the only legitimate forum for the creation of a new constitution is a Constituent Assembly, elected on the basis of one-person, one-vote in a common voters' roll in a unitary state; and
- \* the formation of a broad patriotic front constitutes a crucial element in empowering the broad liberation movement for these tasks.

**2. ALL-PARTY CONGRESS/PRE-CONSTITUENT ASSEMBLY CONFERENCE:**

2.1. There needs to be a conference of various political parties and organisations to work out modalities for the transition.

2.2. Such a conference will be held after the patriotic front conference.

2.3. The conference will have, inter alia, the following agenda:

2.3.1. Interim Government/Transitional Authority.

2.3.2. Modalities towards the formation of a negotiating forum which will draw up a new constitution, i.e., Constituent Assembly.

2.3.3. Principles which will underpin the future constitution (for the liberation movement these are contained in the OAU/UN Declarations of 1989).

2.4. Participants:

2.4.1. Political parties/organisations will be eligible to take part in the APC/Pre-CA Conference. For the purpose of this working document, the definition of political parties/organisations does not include organs of civil society such as trade unions, religious bodies, business organisations, sporting bodies and civics.

2.4.2. Some of the more obvious prospective participants are: ANC, AZAPO, PAC, SACP, NUM (New Unity Movement), WOSA, NIC, TIC, BCMA NP, DP and other tri-cameral parties, IFP and other homeland parties, CP and other right-wing parties.

2.5. Convening mechanisms:

The following options were identified:

2.5.1. "Independent" facilitators acceptable to prospective participants.

2.5.2. A convening committee composed of 7 parties: ANC, AZAPO, PAC, IFP, NP, DP and CP.

2.5.3. The Patriotic Front.

The National Working Committees have identified option (2.5.1.) as the most viable.

2.6. Venue:

2.6.1. The APC/PCAC should be held at a neutral venue, i.e., a venue not associated with any of the parties, including the NP regime.

2.6.2. At least the preparatory consultations and the first sitting of the APC/PCAC should be held inside the country, subject to the condition in (2.6.1.).

2.6.3. Subject to (2.6.1.), the possibility of an external venue for the rest of the sittings of the APC/Pre-CA Conference should be explored.

### 2.7. Funding and infrastructure:

2.7.1. With regard to funding, it has been agreed that all parties should contribute to the extent that they can. In addition, funds will be raised locally and internationally. The funds should strictly be under the independent control of the APC/PCAC's relevant structures.

2.7.2. Administration and infrastructure for the APC/PCAC will be worked out in consultation with other prospective participants, with the same proviso that they will be under the independent control of the APC/PCAC.

### 3. INTERIM GOVERNMENT/TRANSITIONAL AUTHORITY:

3.1. In order to ensure an impartial and fair supervision of the transition, it is necessary to have a transitional authority/IG, the actual form of which will be negotiated at the APC/PCAC

3.2. Such an authority will have the following attributes:

3.2.1. It will control at least the following strategic areas:

- \* security forces and related matters
- \* electoral process
- \* state media
- \* defined areas of budget and finance.

Joint structures, which will be sovereign, will be set up to control these areas.

3.2.2. It shall not implement apartheid legislation.

3.2.3. It shall have a limited duration.

3.2.4. There will be a role for the international community in such areas as supervision and monitoring of the process.

3.3. The National Working Committees are of one view that all the three organisations prefer that the present regime and parliament should dissolve and make way for the transitional authority/IG.

**The Joint Meeting of the National Working Committees resolved to refer this report to the respective executives for final adoption.**

250991



WORKING DOCUMENT

AZAPO'S PROPOSALS

1. INTRODUCTION:

1.1 This report reflects areas of consensus among the National Working Committees of the ANC, AZAPO and PAC finalised at a joint sitting on 25 September 1991. The issues covered in the report are:-

- \* All-Party Congress
- \* Pre-Constituent Assembly Conference
- \* Interim Government and Transitional Authority

1.2 The discussion was based on a report submitted by the Joint Sub-committee on Transitional Mechanism which was constituted at a joint sitting of the NWC's on 10 September 1991.

1.3 The three organisations proceeded from the common premises that:-

- \* The immediate task of the broad liberation movement in the current phase is the transfer of political power to the people;
- \* Individual member organisations of the National Working Committee retain their right to pursue the struggle in all its manifestations, including the armed struggle, but that there are possibilities for a transfer of power to take place through negotiations, which implies some form of contact with the regime.
- \* The only legitimate forum for the creation of a constitution is a Constituent Assembly, elected on the basis of one-person, one vote in a common voter's roll in a unitary state; and
- \* The formation of a broad patriotic front constitutes a crucial element in empowering the broad liberation movement for these tasks.

2. PRE-CONSTITUENT ASSEMBLY CONFERENCE:

2.1 The ANC, AZAPO and PAC envisage a conference of the organisations within the P.F. and the parties and organisations within the regime to work out the modalities for the transfer of power from the minority to the majority through a CA.

2.2 Such a conference may be held after the regime has

accepted the concept of a Constituent Assembly.

2.3 The conference will have, inter alia, the following agenda:

2.3.1 Interim Government and Transitional Authority

2.3.2 Modalities towards the formation of a CA

2.3.3 Principles which will underpin the future constitution (for the liberation movement these are contained in the OAU/UN Declaration of 1989).

2.4 Participants:

2.4.1 Political parties/organisations will be eligible to take part in the Pre-CA Conference. For purposes of this working document, the definition of political parties/organisation does not include organs of civil society such as trade unions, religious bodies, business organisations, sporting bodies and civics.

2.4.2 Some of the more obvious prospective participants are ANC, AZAPO, BCM(A), PAC, SACP, NUM, WOSA and other political organisations within the PF, as well as the regime and its political parties and formations.

2.5 Convening Mechanisms:

The following options were identified:-

2.5.1 "Independent" facilitators acceptable to prospective participants

2.5.2 A Convening Committee composed of 7 parties; ANC, AZAPO, PAC, IFP, NP, DP and CP.

2.5.3 The Patriotic Front

The National Working Committee has identified option (2.5.1) as the most viable.

2.6 Venue:

2.6.1 The Pre-CA Conference should be held at a neutral venue i.e. a venue not associated with any of the parties; including the regime.

Conference was added

- 1.3 the 2nd para now reads "Individual member organisations)
- 2.1 Reads as follows "The ANC, AZAPO and PAC)
- 2.2 Now reads "Such a Conference may be held after the regime has accepted the CA".
- 2.3.1 Now reads: Interim G. and Transitional A.
- 2.3.2 Now reads: Modalities towards the formation of the CA
- 2.4.1 Delete APC
- 2.4.2 Is a new formulation
- 2.6.1 The last 4 words are changed to regime
- 2.6.2 Deleted
- 2.6.3 Deleted
- 2.7.1 APC should be deleted
- 2.7.2 APC should be deleted
- 3.1 Substitute the word "authority/IG with the word mechanism and delete APC

Approved by AZAPO's Leadership Forum 28/9/91

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Approved by AZAPO's Leadership Forum 28/9/91

## PAC RESPONSE

In response to the working document of the National Working Committees of PAC, ANC and Azapo the National Executive Council of the PAC decided the following:

1. The immediate task of the broad liberation movement in the current phase is the transfer of political power to the people.
2. The only legitimate and democratic forum for the creation of a new constitution is a CA, elected on the basis of one person one vote on a common voters roll in a unitary state.
3. The formation of a broad Patriotic Front constitutes a crucial element in empowering the broad liberation movement for these tasks.

### PATRIOTIC FRONT

The main tasks of the PF will be to:

- (a) Unite the people behind the call for the CA.
- (b) Demand for the establishment of a CA as the only democratic mechanism for the drawing up of the new constitution.
- (c) Discuss the modalities of setting up the CA with the regime at a pre-Constituent Assembly meeting.

### CONVENING MECHANISM

1. Independent facilitator(s) acceptable to prospective participants.
2. Neutral venue

### INTERIM TRANSITIONAL AUTHORITY

In order to ensure an impartial and fair supervision of the transition, it is necessary to have a transitional authority,

the actual form of which will be negotiated at the time the PF discusses the modalities of the CA with the regime and other interested parties.

Such an authority will have the following attributes:

It will control at least the following strategic areas:

1. Security forces and related matters
2. electoral process
3. defined areas of budget and finance

Joint structures, which will be sovereign, will be set up to control these areas:

It shall not implement apartheid legislation

It shall have a limited duration

There will be international participation in the interim transitional process.

Recommendations to the SEC

The Seminar convened in terms of the resolution of the 1970 National Conference of the NSC submits the following to the SEC:

This Seminar taking into consideration the decision of the NSC should advise that the major obstacle to the establishment of a permanent non-racial apartheid South Africa is the continued existence of the apartheid regime, and that urgent steps need to be taken to remove the all party Congress as a step towards removing the South African regime and installing an Interim Government of national unity according to agreed transitional arrangements and schedules of a transition to a democracy.

# RECOMMENDATIONS FROM SANCTIONS SEMINAR

1. With regard to Phase 1 of the following Conference and on sanctions, people to people sanctions should not be lifted as follows:

- all travel;
- sports;
- visas;
- all except sporting organizations and institutions that continue to practice apartheid;
- with the approval of the appropriate body providing that united non-racial consulting agents organizations have been established and that development programmes for sportsmen and sportswomen disadvantaged by apartheid are in place;
- all except sporting organizations and institutions that continue to practice apartheid, and with the exclusion of scientific exchanges as these have been used as a cover for military and security technological transfers.

2. With regard to Phase 2 we recommend that following the installation of an Interim Government of national unity, other sanctions excluding those mentioned in 1 above and including diplomatic isolation, gold sales, trade, trade credits, and investment, loans and other financial sanctions may be lifted at the request of the Interim Government.

3. With regard to Phase 3 we recommend that all remaining sanctions including the restrictions on the export of computers, technology and scientific exchanges which could be of relevance to the Army and the police or any of military nature. The all embargo on the arms embargo should be lifted as the situation of

4. That the SEC urgently convene an national and international consultation to consider the implications and implementation of this resolution.

Recommendations to the NEC

This Seminar convened in terms of the resolution of the 48th. National Conference of the ANC submits the following to the NEC:

This Seminar taking into consideration the decision of the NEC dated July 31st that the major obstacle to the establishment of a democratic non-racial no-sexist South Africa is the continued existence of the apartheid regime, and that urgent steps need to be taken to convene the All Party Congress as a step towards removing the South African regime and installing an Interim Government of national unity according to agreed transitional arrangements and modalities of a transition to a democratic order;

Recommends to the NEC that

1. With regard to Phase 1 A of National Conference Resolution on Sanctions, people to people sanctions should now be lifted as follows:

**air links;**

**tourism;**

**visas;**

**culture** - except against organisations and institutions that continue to practice apartheid;

**sport** - with the approval of the appropriate body provided that united non-racial controlling sports organisations have been established and that development programmes for sportsmen and sportswomen disadvantaged by apartheid are in place;

**education** - except against organisations and institutions that continue to practice apartheid, and with the exclusion of scientific exchanges as these have been used as a cover for military and security technological transfers.

2. With regard to Phase 1B we recommend that following the installation of an Interim Government of national unity, other sanctions excluding those mentioned in 3 below and including **diplomatic isolation, gold coins, trade, trade credits, new investment, loans and other financial sanctions** may be lifted at the request of the Interim Government.

3. With regard to Phase 1 C we recommend that **all remaining sanctions including the restrictions on the export of computers, technology and scientific exchanges which could be of relevance to the army and the police or are of military nature, the oil embargo and the arms embargo** should be lifted on the adoption of a democratic constitution and the holding of free and fair elections for a non-racial Parliament and a representative government.

4. That the NEC urgently carries out national and international consultations to consider the implications and implementation of this resolution.

A) A GENERAL UNIVERSAL TENDENCY TOWARDS THE ESTABLISHMENT OF POLITICAL SYSTEMS WHOSE FEATURES INCLUDE MULTI-PARTY DEMOCRACY, RESPECT FOR INDIVIDUAL HUMAN RIGHTS AND MOVEMENT AWAY FROM CENTRALLY-PLANNED ECONOMIES;

B) A TENDENCY TOWARDS THE DISAPPEARANCE OF THE COLD WAR AND A DEPARTURE FROM THE CONDUCT OF INTERNATIONAL RELATIONS ON THE BASIS OF A BI-POLAR WORLD ORDER, DOMINATED BY THE CONFLICTING INTERESTS OF THE SUPER-POWERS AND THE TWO MILITARY BLOCS, NATO AND THE WARSAW PACT, WHICH LATTER IS BEING PHASED OUT;

**COGNISANT** THAT THE RESOLUTE STRUGGLES WAGED IN SOUTH AFRICA BY OUR PEOPLE, UNDER THE LEADERSHIP OF THE ANC AND THE REST OF THE DEMOCRATIC MOVEMENT, SUPPORTED BY THE INTERNATIONAL COMMUNITY, HAVE RESULTED IN A SHIFT IN THE BALANCE OF FORCES INSIDE SOUTH AFRICA, A CIRCUMSTANCE WHICH IS LEADING TO THE REDFINITION OF THE RELATIONS BETWEEN SOUTH AFRICA AND THE REST OF THE WORLD;

**AWARE** THAT OUR FOREIGN POLICY MUST BE INFORMED BY THE UNDERSTANDING THAT SOUTH AFRICA HAS ENTERED A CRITICAL PERIOD IN THE STRUGGLE TO END THE APARTHEID SYSTEM AND ESTABLISH A NON-RACIAL AND NON-SEXIST DEMOCRACY AND THAT THE WHITE MINORITY REGIME HAS BEEN OBLIGED TO ACCEPT THE DEMAND FOR GENUINE NEGOTIATIONS, AS OUTLINED IN THE HARARE AND UN DECLARATIONS, WHICH, AMONG OTHERS, ENVISAGE THE FOLLOWING STRATEGIC STAGES:

A) THE REMOVAL OF OBSTACLES TO NEGOTIATIONS;

B) THE ACCEPTANCE OF INTERIM MECHANISMS TO OVERSEE THE

**ANC NATIONAL CONFERENCE: JULY, 1991. DURBAN, SOUTH AFRICA.**

**RESOLUTION ON THE FOREIGN POLICY OF THE ANC.**

THE 48TH NATIONAL CONFERENCE OF THE ANC, MEETING IN DURBAN, SOUTH AFRICA FROM 2 - 6 JULY, 1991:

**REAFFIRMING** THAT THE FREEDOM CHARTER, THE BASIC POLICY DOCUMENT OF THE ANC, CONSTITUTES THE FIRM FOUNDATION FOR THE CONDUCT OF THE ANC'S INTERNATIONAL RELATIONS;

**RECALLING** THE FOREIGN POLICY GUIDELINES ELABORATED AT AND ADOPTED BY THE ANC NATIONAL CONSULTATIVE CONFERENCES AT KABWE, 1985 AND JOHANNESBURG, 1990;

**FURTHER RECALLING** THE DECISIONS OF THE ANC-SPONSORED WORLD CONFERENCE AGAINST APARTHEID, FOR A DEMOCRATIC SOUTH AFRICA HELD IN ARUSHA, TANZANIA IN 1987;

**FURTHER REAFFIRMING** THAT BOTH THE HARARE DECLARATION OF THE ORGANISATION OF AFRICAN UNITY AND THE UNITED NATIONS DECLARATION ON APARTHEID AND ITS DESTRUCTIVE CONSEQUENCES IN SOUTHERN AFRICA DEFINE THE BASIS OF AN INTERNATIONALLY ACCEPTABLE SOLUTION OF THE SOUTH AFRICAN CONFLICT, AND THEREFORE OUTLINE THE PARAMETERS WITHIN WHICH THE RELATIONS BETWEEN SOUTH AFRICA AND THE REST OF THE WORLD CAN BE NORMALISED;

**RECOGNISING** THAT THE CONDUCT OF THE ANC'S FOREIGN POLICY MUST TAKE INTO ACCOUNT THE REALITIES OF CONTEMPORARY INTERNATIONAL RELATIONS, CHARACTERISED IN PART BY:

1. ON SANCTIONS.

THE PRIMARY OBJECTIVE OF SANCTIONS IS TO END APARTHEID. SINCE, DESPITE THE MEASURES WHICH THE REGIME HAS BEEN COMPELLED TO TAKE, APARTHEID IS STILL IN PLACE, THE INTERNATIONAL COMMUNITY MUST CONTINUE TO UTILISE THIS WEAPON TO MAINTAIN PRESSURE ON THE REGIME TO EXPEDITE FORWARD MOVEMENT TO THE ATTAINMENT OF THE OBJECTIVE OF A NON-RACIAL DEMOCRACY;

BECAUSE IT IS ESSENTIAL THAT THE SANCTIONS WEAPON IS NOT LOST, THE INTERNATIONAL COMMUNITY SHOULD BE URGED TO LISTEN TO THE VIEW OF THE DEMOCRATIC FORCES AND NOT SEEK TO REWARD THE APARTHEID REGIME. SANCTIONS MUST THEREFORE BE USED CREATIVELY IN ORDER TO ARREST THE EROSION THAT HAS OCCURRED, PUSH THE PEACE PROCESS FORWARD AND ATTAIN THE OBJECTIVE OF A DEMOCRATIC SOUTH AFRICA AS SPEEDILY AS POSSIBLE.

ACCORDINGLY, SANCTIONS SHOULD CONTINUE TO BE USED AS A NECESSARY FORM OF PRESSURE. SPECIFIED GROUPS OF SANCTIONS SHOULD BE USED TO ACHIEVE THE STRATEGIC OBJECTIVES LISTED BELOW, EACH ONE OF WHICH IS CRITICAL TO THE PROCESS OF TRANSFORMATION:

A) THE REMOVAL BY THE REGIME OF OBSTACLES TO NEGOTIATIONS, AS STIPULATED IN THE HARARE AND UN DECLARATIONS, AS WELL AS THE IMPLEMENTATION OF EFFECTIVE MEASURES BY PRETORIA TO END VIOLENCE;

B) THE INSTALLATION OF AN INTERIM GOVERNMENT ACCORDING TO

PERIOD OF TRANSITION FROM APARTHEID TO A NEW DEMOCRATIC ORDER;

C) THE ADOPTION OF A DEMOCRATIC CONSTITUTION, THE DEMOCRATIC ELECTION OF A REPRESENTATIVE PARLIAMENT AND THE ESTABLISHMENT OF A NEW GOVERNMENT;

ALSO AWARE THAT THE VICTORIES SCORED BY THE DEMOCRATIC FORCES, INCLUDING THE FACT THAT THE REGIME HAS BEEN OBLIGED TO REPEAL THE SO-CALLED LEGISLATIVE PILLARS OF APARTHEID, HAVE GIVEN RISE TO A TENDENCY AMONG A GROWING NUMBER OF COUNTRIES TOWARDS THE PREMATURE LIFTING OF SANCTIONS AGAINST THE APARTHEID REGIME AS A REWARD FOR THE MEASURES UNDERTAKEN BY THE DE KLERK REGIME;

COGNISANT OF THE FACT THAT WAYS AND MEANS SHOULD BE FOUND BY WHICH TO ARREST THE PROCESS OF THE EROSION OF SANCTIONS TO ENSURE THAT THE DEMOCRATIC MOVEMENT DOES NOT LOSE THIS WEAPON, WHICH WILL BE REQUIRED UNTIL A DEMOCRATIC CONSTITUTION HAS BEEN ADOPTED;

REAFFIRMING THAT THE MAIN THRUST OF OUR FOREIGN POLICY MUST BE THE ATTAINMENT OF THE OBJECTIVES CONTAINED IN THE HARARE AND UN DECLARATIONS, NAMELY, MOBILISING THE WORLD COMMUNITY TO ASSIST TOWARDS THE SPEEDY ERADICATION OF APARTHEID AS WELL AS HELPING TO MOVE THE PROCESS OF NEGOTIATIONS FORWARD TOWARDS THE CREATION OF A NON-RACIAL AND NON-SEXIST DEMOCRATIC SOUTH AFRICA;

NOW RESOLVES AS FOLLOWS:

53

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TRANSFORMATIONS WHICH WILL RESULT IN THE SUPPRESSION OF THE CRIME OF APARTHEID AND THE INSTITUTION OF A SOCIAL ORDER WHICH WILL UPHOLD THE OBJECTIVES CONTAINED IN THE UNIVERSAL DECLARATION ON HUMAN RIGHTS AND THE CHARTER OF THE UNITED NATIONS.

FURTHERMORE, THE WORLD ANTI-APARTHEID MOVEMENT SHOULD PREPARE ADEQUATELY FOR AN IMPORTANT POST-APARTHEID ROLE. SUCH A ROLE IS DICTATED BY THE ENORMOUS SOCIO-ECONOMIC INEQUALITIES THAT WILL REMAIN THE LEGACY OF APARTHEID AND THAT CANNOT BE ADDRESSED BY A HERE REMOVAL OF APARTHEID LEGISLATION FROM THE STATUTE BOOKS.

CONFERENCE RESOLVES THAT, WITHIN A YEAR, A CONFERENCE OF THE INTERNATIONAL ANTI-APARTHEID MOVEMENT SHOULD BE CONVENED IN SOUTH AFRICA TO ADDRESS THESE ISSUES.

3. ON THE MOBILISATION OF FINANCIAL AND MATERIAL ASSISTANCE.

THE INTERNATIONAL COMMUNITY SHOULD BE MOBILISED TO ASSIST THE ANC AND ITS ALLIES, THE FORCE THAT CONSTITUTES THE MAIN AGENT OF POLITICAL CHANGE IN SOUTH AFRICA, BY PROVIDING MATERIAL AND FINANCIAL RESOURCES TO HELP US REALISE THE FOLLOWING OBJECTIVES:

A) TO EMPOWER THE ANTI-APARTHEID FORCES TO CARRY OUT THE TASKS OF TRANSFORMING SOUTH AFRICA FROM AN APARTHEID TO A DEMOCRATIC SOCIETY. IN THIS CONTEXT, THE PEOPLE'S ARMY, UMKHONTO WE SIWE, NEEDS TO BE ASSISTED IN ORDER TO FACILITATE ITS FUTURE INTEGRATION INTO A NEW NATIONAL ARMY THAT WILL DEFEND THE COUNTRY AND THE DEMOCRATIC ORDER, WHILE UPHOLDING THE PRINCIPLES OF THE

AGREED TRANSITIONAL ARRANGEMENTS AND MODALITIES ON THE TRANSITION TO A DEMOCRATIC ORDER;

C) THE ADOPTION OF A DEMOCRATIC CONSTITUTION AND THE HOLDING OF FREE AND FAIR ELECTIONS FOR A NON-RACIAL PARLIAMENT AND A REPRESENTATIVE GOVERNMENT.

IN THIS CONNECTION, THE NATIONAL EXECUTIVE COMMITTEE, <sup>as a matter of urgency is called upon</sup> IN CONSULTATION WITH OUR ALLIES, TO DETERMINE THE PRECISE FORMULATION OF THIS PROCESS, ACTING IN BROAD CONSULTATION INTERNALLY AND IN COORDINATION WITH THE ANTI-APARTHEID FORCES WORLD WIDE. THESE FORCES INCLUDE THE OAU, THE UN AS WELL AS NON-GOVERNMENTAL ANTI-APARTHEID AND SOLIDARITY FORCES.

2. ON THE MOBILISATION OF ANTI-APARTHEID FORCES.

THE ANTI-APARTHEID MOVEMENT WORLD-WIDE HAS GREATLY ASSISTED IN CREATING AN EXTENSIVE WORLD CONSTITUENCY THAT HAS COMPELLED GOVERNMENTS TO PLACE THE ISSUE OF APARTHEID ON THEIR POLITICAL AGENDAS. THIS CONSTITUENCY HAS ALSO SERVED AS AN IMPORTANT SOURCE OF MATERIAL ASSISTANCE.

DURING THE PERIOD OF TRANSITION FROM APARTHEID TO DEMOCRACY, THE ROLE OF THE INTERNATIONAL ANTI-APARTHEID MOVEMENT WILL CONTINUE TO BE HIGHLY CRITICAL IN STRENGTHENING THE HAND OF THE DEMOCRATIC FORCES. IN THIS REGARD, THE ANTI-APARTHEID MOVEMENT HAS THE TASK TO SENSITISE THE INTERNATIONAL COMMUNITY TOWARDS ITS OBLIGATION OF ASSISTING THE PEOPLE OF SOUTH AFRICA TO EFFECT THE

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CONDITIONS OF PEACE, FRIENDSHIP AND COOPERATION.

C) TO PROMOTE PROGRAMMES DIRECTED AT THE PROTECTION OF THE ENVIRONMENT;

D) TO HELP CREATE A WORLD FREE OF NUCLEAR AND OTHER WEAPONS OF MASS DESTRUCTION. IN THIS REGARD, TO SEEK TO PROMOTE THE OBJECTIVES OF AFRICA AND THE INDIAN OCEAN AS NUCLEAR-FREE ZONES AND AREAS THAT WOULD ALSO BE FREE OF FOREIGN MILITARY FORCES AND BASES.

E) TO WORK TOWARDS THE ADMISSION OF THE DEMOCRATIC SOUTH AFRICA IN SUCH ORGANISATIONS AS THE SADCC, THE PTA, THE OAU, THE ADB, THE LOME CONVENTION, THE NON-ALIGNED MOVEMENT AND THE REESTABLISHMENT OF RELATIONS WITH THE WORLD BANK, THE IMF AND THE UNITED NATIONS.

5. ON ORGANISATIONAL MATTERS.

CONFERENCE RESOLVES THAT THE NEC SHOULD REACTIVATE THE COMMISSION ON INTERNATIONAL AFFAIRS, BEARING IN MIND THE NEW SITUATION, TO ENSURE WIDER PARTICIPATION WITHIN THE MOVEMENT WITH REGARD TO DISCUSSION OF FOREIGN POLICY QUESTIONS.

CONFERENCE FURTHER RESOLVES THAT ALL REGIONAL COMMITTEES OF THE ANC SHOULD ESTABLISH SUB-COMMITTEES ON INTERNATIONAL AFFAIRS WHICH WOULD LIAISE WITH THE DEPARTMENT OF INTERNATIONAL AFFAIRS ON FOREIGN POLICY QUESTIONS.

ENDS.

SOVEREIGNTY OF NATIONS, REGIONAL STABILITY AND INTERNATIONAL PEACE AND SECURITY;

B) TO ASSIST IN THE EVOLUTION OF DEVELOPMENT POLICIES THAT WILL ADDRESS THE SOCIO-ECONOMIC IMBALANCES RESULTING FROM APARTHEID, THROUGH TRAINING AND RESEARCH;

C) TO ASSIST POST-APARTHEID SOUTH AFRICA TO ELIMINATE THESE IMBALANCES AND MEET THE EXPECTATIONS OF THE PEOPLE. IN THIS REGARD, THE ANC MUST ENCOURAGE SUCH INITIATIVES AS THE ESTABLISHMENT OF A SOUTH AFRICAN DEVELOPMENT BANK ALONG SIMILAR LINES TO THE BANK OF RECONSTRUCTION AND DEVELOPMENT WITH REGARD TO EASTERN EUROPE.

4. ON REGIONAL AND INTERNATIONAL COOPERATION.

THE ANC, IN PURSUANCE OF THE OBJECTIVE OF A DEMOCRATIC SOUTH AFRICA, MUST PROMOTE REGIONAL AND INTERNATIONAL COOPERATION TO MEET THE FOLLOWING PERSPECTIVES:

A) FURTHER TO ADVANCE THE STRUGGLE FOR THE LIQUIDATION OF THE APARTHEID SYSTEM AND THE TRANSFORMATION OF SOUTH AFRICA INTO A NON-RACIAL AND NON-SEXIST DEMOCRACY;

B) ACTIVELY TO PROMOTE THE OBJECTIVES OF DEMOCRACY, PEACE, NATIONAL INDEPENDENCE, STABILITY, DEVELOPMENT AND PROSPERITY, AS WELL AS PROMOTE PAN-AFRICAN SOLIDARITY AND MUTUALLY BENEFICIAL COOPERATION AMONG THE PEOPLES, COMMITTED TO THE VIEW THAT SOUTH AFRICA AND ITS PEOPLE WILL LIVE WITH THE REST OF THE WORLD IN

55

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# Commonwealth News Release

## COMMONWEALTH COMMITTEE OF FOREIGN MINISTERS ON SOUTHERN AFRICA

Sixth Meeting, New Delhi,  
13-14 September, 1991

### Members of the Committee

1. The Hon. Mrs Barbara McDougall (Canada) - Chairperson; Senator The Hon. Gareth Evans (Australia); Dr Cedric Grant (Guyana); The Hon. Madhavsingh Solanki (India); The Hon. Datuk Abdullah Ahmad Badawi (Malaysia); The Hon. Major-General Ike O.S. Nwachukwu (Nigeria); The Hon. Ahmed Hassan Diria (Tanzania); The Hon. W.C. Wonani (Zambia); The Hon. Dr. Nathan Shamuyarira (Zimbabwe).

### CONCLUDING STATEMENT

#### Recent Developments in South Africa

2. The Committee noted that since its last meeting in London in February 1991 there had been further significant developments in South Africa. The Government had repealed the Land Acts, the Group Areas Act, the Development of Black Communities Act, the Population Registration Act and substantially amended the Internal Security Act. The outstanding issues which had held up the repatriation of the estimated 40,000 exiles had now been overcome as a result of the agreement reached between the Government and the United Nations High Commissioner for Refugees (UNHCR) on 16 August 1991. There had also been important progress on the release of political prisoners. The Committee welcomed all these developments as constituting yet another major advance towards negotiations between the Government and the acknowledged representatives of the black majority.

3. The Committee was, however, acutely conscious of the remaining difficulties in the way of progress. Many political prisoners were still held in South Africa, including in the so-called homelands. Their release must be addressed as a matter of urgency.

4. At the same time violence had emerged as a serious threat to the negotiating process. Right wing terrorism, designed to derail the reform process, had increased in scope and intensity. Of even greater significance were the recent press revelations which had compelled the Government to admit its secret funding of organisations opposed to the democratic anti-apartheid forces.

There was mounting evidence that elements of the security forces clarified had perpetrated acts of violence, including train massacres, and provided military training to opponents of the anti-apartheid forces. The Committee expressed its grave concern at these developments and their incalculable consequences.

5. The Committee noted the measures announced by President de Klerk on 30 July to put an end to these covert activities but stressed that the test of the Government's sincerity would be effective action to end the violence. The Committee called upon the South African Government to ensure the strict impartiality of the security forces and to exert full control over the far right wing elements.

6. The Committee welcomed the Peace Accord adopted on the final day of its Meeting, 14 September, which flowed from the National Peace Initiative taken by church and business leaders to bring together representatives of the Government, the African National Congress (ANC) and Inkatha Freedom Party. It saw the Peace Accord as the most comprehensive attempt yet to come to grips with the violence and stressed the importance of making the Accord work in practice in the months ahead. The Committee shared the hope that the adoption of the Accord would be followed by an All-Party Conference, paving the way for constitutional negotiations.

#### Negotiations

7. In the context of negotiations, the Committee observed that the recent revelations of secret Government funding of Inkatha and other organisations had eroded confidence in the Government's good faith. In the circumstances, the Government could not be both referee and player. The Committee therefore called for the establishment of appropriate transitional mechanisms, including an interim government, which would enable all the parties to participate fully and effectively in negotiations.

#### Commonwealth Response

8. The Committee recalled the objective of Commonwealth policy toward South Africa set by Heads of Government in New Delhi in 1983: the eradication of apartheid and the establishment of majority rule on the basis of free and fair exercise of universal adult suffrage by all the people in a united and non-fragmented South Africa. The measures adopted in Nassau in 1985, and in London in 1986, sought to impress on the Pretoria authorities the compelling urgency of dismantling apartheid and erecting the structures of democracy through negotiation. In Kuala Lumpur in 1989, it was emphasised that the purpose of sanctions was not punitive but to bring Pretoria to the negotiating table and keep it there until fundamental and irreversible change had been secured.

9. Support for negotiations had therefore been a central and consistent element of Commonwealth strategy. The Committee

reaffirmed its Abuja Commitment to provide material and professional assistance towards preparations for constitutional negotiations. In addition the Committee pledged the Commonwealth's readiness to assist in facilitating the actual process of negotiations, and in implementing the outcome of a negotiated settlement, in any way deemed appropriate by the parties. They shared the view of the OAU Ad Hoc Committee on Southern Africa, that the negotiation of a non-racial democratic constitution "is now the most urgent and pressing question".

#### Sanctions

10. The Committee recalled that at its London meeting last February it had agreed on a programmed management approach relating any change in the application of sanctions to real and practical steps towards the ending of apartheid rather than to mere statements of intent. In the period since then the South African Government had taken a number of practical steps towards the ending of apartheid, including the abolition of the legislative pillars of apartheid, the amendment of security legislation, the repatriation of exiles and the release of a significant number of political prisoners.

11. In recognition of the effective role that sanctions have played in bringing about change in South Africa, the need to continue to use effective forms of sanctions pressure to assure a successful final outcome, and the need to maintain the catalytic role played by the Commonwealth in shaping the international community's response in this context, the Committee has given close consideration to how the different categories of sanctions should be managed in the future.

12. In relation to the arms embargo - applied by the United Nations and supported by a variety of specific Commonwealth measures - the Committee agreed to recommend to governments that this not be lifted until a new post-apartheid South African government was firmly established with full democratic control and accountability.

13. In relation to economic sanctions and in particular financial sanctions, the Committee agreed to recommend to the Commonwealth Heads of Government Meeting (CHOGM) in Harare as follows :

- (a) that the most demonstrably effective of all sanctions, financial sanctions - including lending by international financial institutions like the IMF - should (subject to any contrary recommendation that might be made by agreement at the proposed All-Party Conference) be lifted only when agreement is reached on the text of a new democratic constitution; and
- (b) other economic sanctions, including trade and investment measures, should be lifted when appropriate transitional mechanisms had been agreed which would

enable all the parties to participate fully and effectively in negotiations.

14. In relation to the "people-to-people" sanctions, namely consular and visa restrictions, cultural and scientific boycotts, restrictions on tourism promotion and the ban on direct airlinks, the Committee agreed to recommend to CHOGM, Harare, that these now be lifted, having regard to :

- (a) the substantial progress that has been made in overcoming the four obstacles to negotiations previously identified (namely, repeal of the three "pillars" laws; review and amendment of security legislation; clearing the way for return of exiles; and release of political prisoners);
- (b) the signing into effect of the National Peace Accord on 14 September; and
- (c) the need to give external support and encouragement to and to achieve free interaction with, democratic anti-apartheid forces within South Africa;

and moreover

- (d) on the condition that any resumption of direct airlinks be on the basis that SAA and other South African airlines proceed with appropriate affirmative action programmes.

15. In relation to the sports boycott, the Committee agreed that it was appropriate that this continue to be lifted on the selective basis now being implemented in consultation with the democratic anti-apartheid forces, as set out in more detail below.

#### Sporting Contacts with South Africa

16. The Committee recalled that at its London meeting, it had agreed that Commonwealth support and encouragement for efforts towards unifying sport under non-racial administration was to be of the highest priority and that it was appropriate for those sporting codes which achieved unity to be recognised by the international community.

17. Following that meeting, governments and international sporting federations had addressed the question of sporting links with South Africa on a sport-by-sport basis. They had been guided in this matter by the views of representative non-racial sporting organisations in South Africa.

18. The Committee agreed that all Commonwealth restrictions in respect of a particular sport, including international competition, will be lifted once the following criteria had been met:

- \* the formal endorsement of the achievement of unity by the appropriate representative non-racial sporting organisation in South Africa
- \* re-admittance to the relevant international governing body
- \* agreement of the appropriate non-racial sporting organisation within South Africa to resume international competition.

19. In this regard, the Committee welcomed the decision of National Olympic and Sports Congress (NOSC) announced on 25 August, and endorsed by the African National Congress, that road running, amateur boxing, professional golf, taekwondo, and cricket (after 1 October) had met all the criteria for a return to international competition.

20. The Committee also stressed the need for assistance to sports men and women disadvantaged by apartheid and welcomed the assistance already being provided by Commonwealth members and sporting bodies.

#### Commonwealth Programmes:

##### Human Resource Development for a Post-Apartheid South Africa

21. The Committee welcomed the final Report of the Expert Group and commended it to Heads of Government, looking forward to the Commonwealth playing a significant role in the human resource development of post-apartheid South Africa as it had in the elimination of apartheid. It agreed that progress towards a non-racial democracy would be seriously constrained by the present apartheid structures. The education and training of members of the deprived majority to occupy strategic positions in the transition period and beyond would therefore be crucial to progress. The Committee endorsed the Report's strategy, with its emphasis on developing skills and institutions in a number of priority areas, including central administration, local government and technical services. The creation of a new civil service culture, with specific targets set for advancement of members of the deprived majority to top management positions during the transition period, was especially important. A start should now be made to support training and placements within South Africa in the interests of speed and cost-effectiveness. Members of the Committee pledged their governments' assistance in implementing the Report's recommendations, and were confident that other Commonwealth governments would wish to do likewise. They also underlined the potential for enhanced cooperation with the United Nations, whose Education and Training Programme for Southern Africa was evolving along similar lines, including the possibility of exchange placements and a joint donors' conference.

#### Mozambique

22. The Committee noted that despite an encouraging initial start, the Government and the RENAMO rebels had yet to sign a full ceasefire agreement and enter into substantive negotiations on the outstanding constitutional issues. It commended the Government for its efforts to bring about peace and reconciliation in Mozambique and appealed to those supporting RENAMO materially and otherwise to stop giving the rebels such support which was fuelling RENAMO intransigence. It urged all governments with influence on either side to spare no effort to bring the parties together.

23. The Committee commended the Special Commonwealth Fund for Mozambique (SCFM) for its significant contribution to Mozambique's priority needs, notably in the fields of transport and communications and institutional and human resource development. The Committee urged all Commonwealth governments to make additional pledges to the Fund to enable it to reach its target of pound sterling 10 millions envisaged for the full five financial years of operations to 1993.

#### Namibia

24. The Committee reiterated its view that Namibia's independence demonstrated that fundamental change to a non-racial democracy could be achieved through a democratic and negotiated process. Namibia's peculiar colonial legacy also necessitated continuing international support. The Committee therefore urged support for the Secretary-General's appeal for resources for the Enhanced Commonwealth Programme of Technical Assistance for Namibia, pending the full integration of the Programme into the CFTC's country programme operations. The Committee also expressed the hope that Walvis Bay, now jointly administered by South Africa and Namibia, would soon be re-integrated into Namibia in accordance with United Nations Security Council Resolution 432 (1978).

##### Commonwealth Plan of Action for the Promotion of Trade and Investment in Southern Africa

25. At Kuala Lumpur Heads of Government requested the Secretary-General to draw up a plan of action to promote trade and investment in the Front-Line and neighbouring states in order to reduce their dependence on South Africa. In view of the unfolding changes in South Africa and the region, the Committee agreed that a study be conducted, in consultation with SADCC and PTA member countries, to examine the implications of South Africa's reintegration into the regional economy; and in that context to suggest how best the Commonwealth and the wider world could assist the promotion of trade and investment in the region.

26. The Committee noted that South Africa's acts of destabilisation and other measures taken in defence of apartheid over the years had resulted in great material damage to the

economies of the countries of the region. With the end of apartheid in sight, the Committee appealed to the international community to adopt, in consultation with SADCC, the PTA and other interested parties, appropriate measures to help the reconstruction efforts of the countries of the region, so helping to eliminate the legacy of apartheid.

#### **LSE Centre**

27. The Committee noted the Report of the LSE Centre for the Study of the South African Economy and International Finance, established to monitor South Africa's links with the international financial community. It reiterated the importance it attached to the work of the Centre, in the context of the continuing need to exert pressure on South Africa, and in the longer-term as a means of assisting resource flows for the economic development of post-apartheid South Africa.

#### **Consultations**

28. The Committee greatly valued its consultations with Mr. Alfred Nzo and Mr. Mendi Msimang, members of the National Executive Committee of the African National Congress, Mr. Ahmed Gora Ebrahim, External Secretary for Foreign Affairs of the Pan-Africanist Congress of Azania; and Dr. Willie Breytenbach, Professor of African Studies at the University of Stellenbosch.

#### **Appreciation**

29. The Committee expressed its appreciation and gratitude to the Government and people of India for the warm hospitality and the excellent facilities provided for its Meeting.

# CODE OF CONDUCT FOR NEC

DRAFT PROPOSALS - RE: CODE OF CONDUCT FOR NEC MEMBERS

1. All NEC members based at Headquarters (HQ) or present in Johannesburg for official business shall keep the Secretary General (SG) or his deputy informed of tasks being carried out by them and shall (unless duties make it impossible) report to HQ or the office in which they are deployed on a daily basis.
2. No NEC member shall leave the country or travel to other parts of the country without the authority of the SG or his deputy. All applications for such travel must be made timeously and must specify the purpose of the trip, the period of absence and contact points throughout the journey. In the event of permission being refused, an appeal can be made to the President.
3. In the case of NEC members based in regions other than HQ their internal travel shall be undertaken in consultation with the Region to which they are attached. Permission to leave the country must however be obtained from the SG or his deputy.
4. Attendance at meetings of NEC and National Working Committee is obligatory and shall take precedence over any other meeting. If a member of the NEC is unable to attend because of any prior arrangement, he/she shall seek permission to be absent from the SG or his deputy.
5. The proceedings of the NEC and its working committee and other leading structures are confidential. No NEC member shall convey the contents of the proceedings without express or implied authorization. It shall also be the duty of NEC members to ensure the safety of all documents in their possession.
6. All NEC members shall be members of branches.
7. a) NEC members shall keep the SG or his deputy informed (through written reports where considered necessary) of all meetings and assignments carried out. With embassies and other official of governments, both local and foreign.  
b) All interviews with the media should be carried out with the knowledge of the DIP.
8. All requests by regions and other structures for NEC speakers or participants in meetings of any of the structures shall go through the organ in charge of allocating such speakers.

9. The NEC and Working Committee shall from time to time take steps to ensure that its members are not overburdened with too many responsibilities. For this purpose an immediate census shall be taken of the exact duties and responsibilities being carried out by each NEC member with a view to spreading work more equitably.
10. All members of the NEC shall strictly adhere to the letter and spirit of all decisions of the NEC.
11. All departmental heads shall regularly report the progress of their departments to the NEC and seek guidance on the broad thrust of their work.



