

**MEMORANDUM SUBMITTED BY THE AFRICAN NATIONAL CONGRESS TO THE  
TECHNICAL SUB-COMMITTEE ON CONSTITUTIONAL ISSUES**

The African National Congress hereby places before the above Committee its position in relation to the following matters:

1. **FORM OF STATE**

South Africa shall be a united, non-racial, non-sexist and democratic state. South Africa shall be a sovereign state and must be seen, as recognised by the international community, as a single, non-fragmented entity including Transkei, Bophuthatswana, Venda and Ciskei.

Government in such a united sovereign state shall be structured at national, regional and local levels, in respect of which:

- i) At each level there shall be democratic representation;
- ii) At each level of government there shall be appropriate and adequate legislative and executive powers and functions that will enable each level to function effectively within the context of a united, democratic state. Such powers and functions may be entrenched in the constitution.
- iii) In addition to powers and functions entrenched in the constitution, each level of government may delegate powers and functions to other levels of government.
- iv) Powers and functions may be either exclusive or concurrent.
- v) *may be use* The national government shall have overriding powers in those matters that are not allocated exclusively in the constitution to the regional *or local* levels of government.
- vi) The general principles of the constitution, including the terms of the Bill of Rights shall apply, inter alia, at all levels of government.

2. **CONSTITUTIONAL PRINCIPLES**

The African National Congress proposes that the constitution-making body (the Constituent Assembly) shall draft and adopt a new constitution for South Africa on the basis of and within the framework of the following constitutional principles which shall be binding on it:

- i) South Africa shall be a united, sovereign state in which all persons shall enjoy a common South African citizenship.
- ii) South Africa shall be a democratic, non-racial and non-sexist state.

- iii) The constitution adopted by the Constituent Assembly shall be the supreme law.
- iv) There shall be separation of powers between the legislature, the executive and the judiciary with appropriate checks and balances. This, however, shall not exclude the executive being made accountable to the legislature.
- v) The judiciary shall be independent, non-racial, non-sexist and impartial.
- vi) Provision shall also be made for a Constitutional Court which enjoys the respect of all South Africans and draws on the experience and talents of the entire population.
- vii) All individuals shall enjoy universally accepted human rights, freedoms and civil liberties which shall be guaranteed by an enforceable/justiciable Bill of Rights.
- viii) There shall be representative and accountable government at all levels embracing multi-party democracy, regular elections, universal adult suffrage, a common voters roll and, in general, proportional representation.
- ix) There shall be freedom of association, including the right to form, join and maintain organs of civil society including trade unions, religious, residents, students, social and cultural societies.
- x) The diversity of languages, cultures and religions shall be acknowledged.
- xi) Special provision may be made for the appropriate recognition of traditional institutions at regional and local level.
- xii) The constitution shall develop and maintain a foundation for the emergence of national unity while respecting the linguistic, cultural and religious diversity of the nation.
- xiii) The constitution shall outlaw all forms of racism and discrimination based on race and gender in public and private life, subject only to the equality clause referred to hereunder:
- xiv) There shall be an equality clause which shall provide that:
  - i) Every individual shall be equal before and under the law and shall have the right to equal protection and equal benefit of the law without discrimination, and in particular without discrimination based on "race", ethnicity, colour, religion, sex or mental or physical disability. *inter alia,*
  - ii) Sub-section (i) above shall not preclude any law, programme or activity that has as its object the amelioration of disadvantaged individuals or groups, including those that are disadvantaged on grounds of

*or gender*  
of race, colour, ~~sex or~~ religion.

iii) All rights and freedoms contained in the constitution shall be guaranteed equally to all male and female persons.

3. CONSTITUTION-MAKING BODY - A CONSTITUENT ASSEMBLY

See Annexure 1.

4. TRANSITIONAL CONSTITUTION

The objective of all transitional arrangements is the following:

- i) The holding of elections based on one person one vote throughout South Africa (including the TBVC territories), such elections to be based on universal franchise of all persons without regard to "race", colour or creed. The elections would be for a Constituent Assembly, whose task would be to draw up and adopt a new constitution for the country.
- ii) Accordingly, all transitional arrangements must be directed with this objective in mind and also to ensure that mechanisms are in place to guarantee fair and free elections, free political activity and a level political playing field.
- iii) Subject to this objective, mechanisms must also be in place to provide for the governance of the country as from the date of elections and until a new constitution has been adopted.

In the light of the above, it is necessary for measures to be passed to legalise the entire process up to and including the adoption of the new constitution. The African National Congress proposes that appropriate measures be agreed upon including a Transition to Democracy Act. The Transition to Democracy Act will be the basic law or transitional constitution which will provide the legal basis for and give legal effect to all the agreements arrived at at the multiparty forum, to cover the complete transitional process leading to the adoption of the new constitution by the Constituent Assembly and the installation of the first government in terms of such constitution.

*Transition*  
5. REGIONAL AND LOCAL GOVERNMENT

See Annexure 2

6. TRANSKEI, BOPHUTHATSWANA, VENDA AND CISKEI

The African National Congress points out that not a single one of these entities enjoy international recognition. No state in the world has recognised these territories as independent states. In fact the international community has consistently condemned the SA Government's homeland policy in terms of which self governing states have been created, including the four so-called

independent states.

The African National Congress is firmly of the view that the four so-called independent states should be reincorporated into a united non-racial, non-sexist and democratic South Africa.

The African National Congress is also of the view that South African citizenship should immediately be restored to the people of the TBVC territories.

All the inhabitants of the TBVC territories are entitled to participate in all transitional arrangements as well as elections in every way and on the same basis as all other South African citizens. The ANC therefore believes that effect must be given to this position.