

MEMO

INTRODUCTION

The Constitutional Committee met on Friday 7 August 1992 to consider and formulate its position and recommendation on the issue of regions. This matter has been discussed at numerous previous meetings and this document represents the final position arrived at. All positions were arrived at unanimously, unless otherwise stated.

The Constitutional Committee considered regional demarcation and related matters in relation to the following:

1. elections;
2. regional government during the period of transition; and
3. proposals to be put forward as part of the ANC's constitutional proposals at the Constituent Assembly.

These matters should be clearly separated.

1. DEMARCATIION OF REGIONS FOR PURPOSE OF ELECTIONS

The proposal that half the seats in a Constituent Assembly be allocated to regions implies that elections cannot take place until such regions have been demarcated. The Constitutional Committee is of the view that if we are to proceed with regional lists, then the regional boundaries as at 1910 (excluding Walvis Bay) would be the only acceptable option.

To accept any other demarcation of regions for purpose of elections will create serious problems namely:

- a) The sovereignty of the Constituent Assemble will be undermined.

Any demarcation will inevitably have to be accompanied by the installation of regional governments in the demarcated regions. Whilst in theory it may be transitional, in practice because of the impact thereof, they would be virtually permanent. It would be difficult if not impossible for the Constituent Assembly to effect any change

- b) To demarcate new regions prior to the elections will cause considerable delay. It will mean elections will have to wait until demarcation has taken place. This process can take a very long time - even years. There



can therefore be no certainty as to when elections can take place.

The advantage of the provincial boundaries lies in the fact that they already exist and will cause the least practical problems in implementation as well as the least inconvenience and upheaval. Furthermore the use of the provincial boundaries will cut out any delay in elections.

## **2. DEMARCATION OF REGIONS FOR PURPOSE OF REGIONAL GOVERNMENT DURING THE TRANSITIONAL PERIOD**

The Constitutional Committee has noted the two phase period of transition which seems to be likely. Phase I seems to be the preparatory stage during which the playing field is levelled and elections occur. Phase II of the transition is the period from the time of the elections until the Constituent Assembly has completed its work and the first democratic government installed. The question is what does the ANC say about regional government during these two phases. The Constitutional Committee considered the issue of demarcation of regions as well as functions and powers during this period.

In relation to the above the Constitutional Committee believes that during this period the only viable option is to adopt the provincial boundaries as at 1910. Nothing must be done to undermine the sovereignty of the Constituent Assembly. It must also be borne in mind that transitional government (Phase II) will be in existence whilst the Constituent Assembly is doing its work. The Constituent Assembly will be seriously undermined if its hands are tied or if conflict developed between it and the interim regional governments with regard to issues being discussed at the Constituent Assembly. It must be remembered that some forces may seek to use regional structures for purposes of mobilisation.

With regard to interim regional government, the Constitutional Committee is of the view that its powers and functions should be clearly, specifically and narrowly defined. The central government should always have concurrent and overriding powers. Powers and functions should be similar to those granted to provincial councils under the old union constitution eg licences, health, roads, traffic matters, horse racing, aspects of housing, aspects of culture, libraries and museums.

The issue of fiscal powers is extremely important and they must be strictly limited to matters arising from the abovenamed functions. Under no circumstances whatever, should it be agreed that income tax or value added taxes etc be removed from the hands of central government. The



existence of separate state taxes and separate city taxes has caused severe problems in the United States. It is impossible in the US to introduce any uniform system of taxation. The German model is much better, in that central government is responsible for collection of taxes as well as for equalisation.

The following further issue must also be noted:

The tricameral administration as well as the various homeland administrations (including TBVC) should be and can easily be organised within the framework of the provincial boundaries. Reincorporation must be taken as given and that process must begin in Phase I of transition.

### 3. ANC PROPOSALS FOR REGIONS TO BE PUT TO THE CONSTITUENT ASSEMBLY

This issue must be clearly separated from issues discussed under 1 and 2 above. In this regard the ANC document on regions prepared by the Constitutional Committee is under discussion, and when the policy is finalised and adopted, it should be put to the Constituent Assembly as the ANC's proposal on this issue.

As to powers, the same proposals set out above should be incorporated. It is also recommended that the ANC should propose the establishment of a reincorporation commission, so as to ensure the harmonious reincorporation of the homelands. The House of Assembly administration can be used as a basis for reincorporation of all the administrations into a single national administration. Basically the provincial administrations can also be used as the basis for administration in the various regions. Some adjustments will however be necessary.

### SHOULD THE REGIONAL (PROVINCIAL) GOVERNMENT IN THE INTERIM PERIOD BE ELECTED OR APPOINTED?

The question arose whether in the transition period there should be an elected Council plus an Executive Committee and Administrator or whether there should be a Regional Executive Committee appointed by Central Government. There was no unanimity on the question.

#### a) An appointed Executive Committee

One view was that we should not give regional/provincial government undue stature during the period of transition, so as to reduce the possibility of regional mobilisation against the Constituent Assembly. It was suggested that the



Regional Executive Committee be appointed by the National Interim Government.

Alternatively

b) An elected Council

Another view was that there should be an elected Regional Council with elections taking place simultaneously with the elections for the Constituent Assembly. If there is an elected Council then the Regional Executive Committee could be appointed in one of three ways:

- 1) The National Interim Government appoints the Administrator and his/her Regional Executive Committee.
- 2) The Administrator is elected by the Regional Council and he/she then appoints members of the Executive Committee.
- 3) The Administrator is elected by the Regional Council, and the Regional Executive Committee is appointed on a proportional basis with parties having representation in accordance with the number of seats which they have won in the region.

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