

AFRICAN NATIONAL CONGRESS

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**REPORTS FROM COMMISSIONS
TO PLENARY**

NATIONAL POLICY CONFERENCE

28-31 MAY 1992

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Rep. by Ede Pius Louga
REPORT ON CONSTITUTION (not presented to Commission)

Insert

PREAMBLE:

The adoption of the contents of the document is to be considered as providing general policy guidelines. We accept that decisions in other commissions, rules of construction and interpretation may make necessary for those responsible for formulating the policy document as a whole, the Bill of Rights and Constitutional Proposals to make verbal stylistic and other changes.

In so far as the Constitutional Principles and Structures for a Democratic South Africa and the Bill of Rights have not been expressly amended they shall continue to guide the ANC in matters they deal with therein.

B.1. BASIC PRINCIPLES

B1.1 Insert:

Sovereignty rests in the people of South Africa. Their will shall be expressed by their democratically elected representatives in periodic free and fair elections. These elected representatives will adopt a constitution which shall be the highest law of the land guaranteeing their basic rights.

and alter the first sentence to read:

The goal of the ANC, ever since it was formed in 1912, has been to give all the people of our country, the chance to choose their own government.

B1.2. Should now read:

We are proud of our role in pioneering democracy and constitutionalism in our land, especially through the Freedom Charter. None has fought harder for freedom and democracy than we have. The people will finally have won the right to choose their own government. At the same time they will have the right to remove any government through periodic elections.

B1.3. To be broken up as follows:

Our constitution shall not only guarantee an accountable non-racial, non-sexist and democratic structure of government, but shall also empower all citizens to shape and share in the many aspects of life outside government

[New Clause]

Our constitution shall guarantee the space for civic bodies, trade unions and the numerous other organisations which people create to deal with their every day problems and aspirations. these are the institutions of civil society which are crucial if we are to have a deep and

thorough democratic order.

B1.4. Our task now is to rally all South African patriots around the principles for which we have always stood, namely, equality, mutual respect, dignity and promotion of basic human rights. After so many decades of struggle and sacrifice, we must achieve a constitution that guarantees that oppression, discrimination inequality and division will never stalk our land again.

B1.5. We want a country that is unified, open, non-racial, non-sexist, democratic and free. We must abolish all forms of discrimination, domination, privilege or abuse. We must ensure that the basic rights and freedoms of all are respected. We must see to it that the religious, linguistic and cultural variety of our land is fully acknowledged, and that no person shall be subjected to any form of oppression or abuse. We do not want new forms of tyranny to replace the old.

B1.6 South Africa has never had good government for all. Government has until now always been used to harass, divide and humiliate the great majority of South Africans, while securing privilege and relatively high standards of service for the minority. We need a constitution that guarantees a high quality of government service for all. The public service must be based on the principle of representativity, competence, impartiality and accountability. For the first time we envisage a public service that is drawn from and serves the interests of the public as a whole.

B2 Insert heading: POPULAR REPRESENTATION AND PARTICIPATION.

B2.1 Becomes: THE VOTE.

B2.1 Delete first sentence in B2.1 and Insert:

The achievement of the vote will signal the achievement of full citizenship and legal equality for all. Elections will be a fundamental element of a democratic political life in our country. From now onwards government shall maximise popular participation and be accountable and responsible to the people.

And Add:

To promote a nonracial, nonsexist, participatory democracy that will cater for the diversity of our people, appropriate structures, and checks and balances must ensure the active participation of all in political life and prevent the abuse or oppression of anyone.

B2.2 Becomes:

The ANC opposes the entrenchment of race and ethnic group rights in the constitution and stands for one person one vote on a common voters roll, with each vote being of equal value. Such votes will be exercised by all voters within the 1910 boundaries of South Africa.

B2.3 Is changed to read:

In keeping with this democratic, inclusive and balanced approach, the ANC proposes the election of representatives by the system of proportional representation provided that proportional representation may be supplemented by the other democratic electoral systems at local level. People will vote for party lists and parties will then get a share of representatives in proportion to their share of the total vote. An appropriate threshold will be fixed, below which a party will not be allocated seats.

B2.4 Is changed to read:

In order to ensure that regional and local interests are represented and to enhance the accountability of the National Assembly, we propose that there be a single vote which will count towards both the national and regional lists of parties. We believe that such lists should be compiled with sensitivity to gender.

Add new clause B2.5:

All elections at a central, regional and local level shall be conducted by an independent electoral commission, which shall enjoy freedom from governmental and political control.

B.3. STRUCTURES OF GOVERNMENT

B3.1 To be altered as follows

South Africa shall be a unitary state in which there shall be government at local, regional and national levels. The Bill of Rights and principles of non-racialism, non-sexism and democratic accountability shall apply at all three levels of government

B3.2 To be altered as follows:

The ANC favours a Parliament consisting of the national assembly and senate. The national assembly will be elected by universal suffrage on a common voter's roll according to proportional representation. It will control the national budget and have primary responsibility for the preparation and adoption of the country's main laws. The senate will be representative of regions and be directly elected and have the power to review, refer and delay legislation. It will also have special responsibility for promoting regional development and for ensuring respect for the

principles of the Bill of Rights. It will not have these powers, however, in regard to legislation dealing with the budget.

B3.3 Insert:

Parliament shall determine what powers the regions should have, taking into consideration that certain functions are best performed at a regional level, provided the overriding authority of the central parliament is recognised.

B3.4 Insert:

Powers of sub-national government should be harmonised with the powers of central government bearing in mind that in case of conflict the constitution and national legislation should prevail. In essence regional government would have to function broadly within the framework of national policy. Regional government should not be able to contradict national policy as expressed in the laws of the country, but should influence the shaping of these policies and play a significant role in developing mechanism for implementation.

B3.5 Insert:

The ANC believes that regional government should have powers to co-ordinate and plan development. But the powers and functions of regional government will need to be balanced with those of the urban and rural local authorities in order to avoid conflict.

B3.6 Insert: Traditional Leaders

The institution of chieftainship has played an important role in the history of our country and chiefs will continue to have an important role to play in the future in unifying our people and performing ceremonial and other functions allocated to them by law. The powers of Chiefs shall always be exercised subject to the provisions of the constitution and other laws. Provision will be made for an appropriate structure consisting of traditional leaders to be created by law, in order to advise parliament - on matters relevant to customary law and other matters relating to the powers and functions of chiefs. Changes in the existing powers and functions of chiefs will only be made by parliament after such consultation has taken place.

B4. THE EXECUTIVE

B4.1 To be altered as follows:

The ANC proposes that the Head of State be a President with both ceremonial and executive powers. The President should be elected by the National Assembly. He or she will have a fixed term of office and be available for election only once. The President will appoint and supervise the functioning of the cabinet, acting through and in liaison

with a Prime Minister who will be accountable to the President and responsible to the National Assembly.

B5. A BILL OF RIGHTS

B5.1.1 The second sentence reads as follows:
This will set out certain basic rights and freedoms as universally understood which no future government will normally be able to take away except by special provision in the constitution and by a special majority.

B5.1.2. Is amended as follows:
The Bill of Rights will guarantee that South Africa is a multi-party democracy in which people enjoy freedom of association, speech and assembly and the right to change their government. Furthermore, the public have a right to know what is being done in their name - we believe in a strong right to information and a firm guarantee regarding the free circulation of ideas and opinions.

Add new clause:

The Bill of Rights shall be binding upon the State and organs of government at all levels and where appropriate, on all social institutions and persons.

B5.1.3. The first sentence altered by inserting "separate" between "headed by a..." and "...newly...".

B5.1.4. Alter as follows:
The Bill of Rights shall secure and protect the rights of all persons in all spheres of life, including housing, employment, education and access to facilities, and such protection shall be ensured without discrimination on the grounds of race or gender.

B5.1.5. Now reads:
The Bill of Rights must guarantee freedom from discrimination, in particular language, religion and cultural rights must be protected.

B5.2 Workers' rights.

Now reads:

Workers have fought long and hard for their right to set up independent trade unions, their right to engage in collective bargaining and their right to strike. These rights must be protected in the Bill of Rights, which should be supplemented by a Workers' Charter. This Charter should set out all those rights that workers throughout the world have gained for themselves. The state will be a signatory to the International Labour (ILO) conventions.

The Bill of Rights will also prohibit slave labour and the exploitation of children and discrimination in the work place.

B5.3.2. Delete "...in our organisation."

B5.3.4 Amend the first sentence as follows:
Women should be able to walk in the streets freely without fear of assault and should be able to feel safe and free from violence in their own homes.
Replace the last sentence with: Guardianship should be shared between partners. Violence in personal relationships is inconsistent with recognition of the integrity of persons. Therefore rape in marriage should be outlawed.

B5.3.6 Delete "enforceable" in the second sentence.

B5.4 Substitute heading:
The right to home and family life.

B5.4.1. Should now read:
People shall be free to form families on a voluntary and equal basis. Subject to the principles of free choice and equality, appropriate legal recognition shall be given to all matrimonial unions. Single parent families shall have adequate legal recognition and support.

And
B5.4.2 The Bill of Rights should support the provision of homes, employment and utilities such as light and water, so as to repair the damage done by apartheid and the migrant labour system, and in order to give real meaning to the right to home, family and life.

5.5.2 and 5.5.3: Replace with:

5.5.2 Property rights impose obligations and their exercise should not be in conflict with the public interest.

5.5.3. The taking of property shall only be permissible according to law and in the public interest, which shall include the achievement of the objectives of the Constitution

5.5.4. Any such taking shall be subject to just compensation which shall be determined by establishing an equitable balance between the public interest and the interest of those affected.

5.5.5 In the case of a dispute regarding compensation, provision shall be made for recourse to a special independent tribunal, with an appeal to the Courts.

5.5.6. Legislation on economic matters shall be guided by the principle of encouraging collaboration between the

public, private, co-operative, communal and small-scale family sectors with a view to reducing inequality, promoting growth and providing goods and services for the whole population.

[The original B 5.5.4 becomes B 5.5.7]

B5.6.1 Delete ANC's in the first sentence.

B6. AFFIRMATIVE ACTION

B6.1 Delete in the first sentence "...and equally strong resistance...".

B6.2 In the first sentence replace "real equal rights by substantive equal rights" and insert "of equality" after principles.

B6.3 The last sentence revised as follows:
The rich life experiences, knowledge of languages and cultural diversity of those previously discriminated against should be seen as enriching the contribution of individual South Africans.

B6.5 Delete "business" in the second sentence:

B6.6 In the second sentence unrecognized is replaced by unacknowledged and social reproduction is replaced by social production and reproduction.
In the last sentence currently recognised sectors is replaced by various sectors.

B6.7 The first sentence is altered to read:
ANC policies favour affirmative action for disadvantaged sectors of our population.....

Insert the following three new paragraphs:

B6.9 Special measures are necessary to advance the interests of the most disadvantaged, especially in rural areas and all legislative and administrative bodies shall be obliged to adopt policies which shall implement this approach.

6.10 Special mechanisms will be necessary to advance and monitor affirmative actions programmes.

6.11 The State shall become a party to the large number of human rights conventions and in particular those dealing with racism, gender discrimination and the rights of children, which apartheid has until now rejected. In this way we shall assert our rightful place in the international community.

B7. THE PUBLIC SERVICE, DEFENCE AND POLICE

B7.1. To be altered as follows.

The whole of the civil service will have to be opened up so as to make it a truly South African civil service, and not the administrative arm of a racial minority. The civil service should be impartial in its functioning, efficient in its operations and accountable to parliament and accessible to the broad community it serves

Insert new paragraph before B7.2:

There shall be a national, defence and police force and a prison service. These should all be non-racial and non-sexist in character, comprising personnel that are well-trained, disciplined, humane and loyal to the constitution. They should enjoy the full confidence of the population at large

B7.2 Amended to read as follows:

The ANC proposes that a full-time independent office of the Ombud should be created with wide powers to investigate complaints against members of the public service and other holders of public office and to investigate allegations of corruption, abuse of their powers, rudeness and maladministration. The ombud shall have power to provide adequate remedies. He shall be appointed by and answerable to parliament.

B8. THE RULE OF LAW

B8.2 Amended to now read:

The laws of the country will be there to advance and uphold the rights of everybody on an equal basis, regardless of colour, gender, language, religion or culture. There will be no part of South Africa from which the law and the Constitution will be excluded

B8.3 Delete and replace by:

Those who are most vulnerable in our society should be able to invoke the constitution and law to protect themselves-whether in prison, on the farms or as domestic workers.

In B8.4 'and/or' replaced by 'and'.

B8.5 To read as follows:

Without interfering with its independence and with a view to ensuring that justice is manifestly seen to be done in a non-racial and non-sexist way and that the wisdom, experience and competent judicial skills of all South Africans are represented on a bench, which shall be transformed in such a way as to consist of men and women drawn from all sections of South African society.

Insert after B8.5 A new clause:

Maximum provision should be made for the participation of laypeople in the administration of justice.

Delete B8.7 in original document

8.7 and 8.8 in the text are replaced by paragraph 9 of the Report of the Drafting Committee with the following minor grammatical changes and new heading:

Personal Security and Crime

(a) The first priority in any strategy to combat crime is to understand and address the crime producing conditions that prevail in our society. In place of ideologies and official practices that diminish the value of life or place one life above another the ABC will elevate the importance and dignity of all human beings, and commits itself to deal with the pressing needs of the majority of South Africans

(b) Secondly, the ANC declares that there will be no respect for the institutions that enforce law and order unless the people respect the law. This they will do if the laws are just and if they participate both in their making and enforcement. A just criminal justice system will enhance respect for the courts and obedience to the law.

(d) Finally, the ANC believes that a prison service for the country must play its part not simply in restraining convicts ut in rehabilitating convicted persons. Apartheid's overcrowded and authoritarian jails are crime factories which dehumanise their inmates, feeding a culture of violence and despair. The ANC asserts that adequate resources must be made available for the human accommodation, education, training and job placement of convicts. Failure to do so will only lead to expenditure on an ever increasing number of new jails. For this reason the ANC proposes programmes that promote reparation and compensation to the victims and service to the community in place of incarceration. The ANC is against any inhumane and cruel punishment.

Add new section

ACCOUNTABILITY DURING A STATE OF EMERGENCY

In the context of a Bill of Rights, 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 bay Parliament and for the first time, by the judiciary, in accordance with internationally accepted standards. The Constitution will provide for the recognition and protection as far as possible of fundamental rights during the period of emergency, including access to their legal representatives, doctor family and the courts.

RESOLUTION

ON RECOGNITION OF THE SERVICE GIVEN AND SACRIFICES MADE BY COMBATANTS IN THE STRUGGLE AGAINST THE APARTHEID

RECALLING and honouring the service given and sacrifices made by compatriots in the struggle in the national interest against apartheid and for a non-racial and non-sexist democratic South Africa,

WE RESOLVE

1. That the acknowledgments, entitlements and benefits recorded to ex-combatants of the SADF, the police and prison services, be accorded to ex-combatant of MK;
2. That existing and past legislation covering the rights of ex-service men and women be extended to cover ex-combatants of MK with immediate effect and paying special attention to War Graves, Memorials, gratuities, disability and pension rights, resettlement, housing and education grants.
3. That the same principles be extended to cover ex-political prisoners and the families, the families of those who lost their lives in the struggle against apartheid, and persons who were victimised in the course of participating in the struggle against apartheid.
4. That these principles apply on a non-sectarian basis to all ex-combatants in the struggle against apartheid.

ANC Policy Process - The Way Forward

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Resolution on the ANC Policy Guidelines for a Democratic South Africa

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Recognising the importance of the Document for members of the ANC, the broad democratic movement and all South Africans, we resolve that:

- 1) It be translated into all languages and be accompanied by other forms of media to make them accessible to all;
- 2) That regions undertake