

MECHANISM FOR DRAWING UP OF THE CONSTITUTION:
A NOTE FOR THE WORKING GROUP TO BE HELD ON
28 NOVEMBER 1991

1. The key issue is whether the All Party Conference (APC) will be made the forum for settling the terms of the constitution, or whether this will be done by an elected constituent assembly. The National Party and its supporters will want as much power as possible to be vested in the APC.
2. The National Party has committed itself in public on several occasions to the proposition that a referendum will be held at which the opinion of white voters (or possibly the existing electorate) will be secured before the constitution is adopted. Politically it will be extremely difficult for the National Party to depart from this position. A possible compromise between the position of the National Party and that of the ANC Alliance would be for the following mechanisms to be adopted:
 1. Determination of constitutional principles by the APC.
 2. A national referendum on the constitutional principles, at which a sub-count of votes of the existing electorate is taken.
 3. Elections for a constituent assembly to draw up the constitution.
 4. Deliberations within the constituent assembly in regard to the terms of the constitution.
 5. The final adoption of the constitution by the constituent assembly.
 6. Implementing the legal process according to which the new constitution will have the force of law.
 7. Elections under the new constitution for the various organs of government.
3. In this context the question will arise whether there should be a "mini" bill of rights guaranteeing civil and political rights necessary for free and fair elections.
4. Logically the debate must commence with the question of principle. If the principle of a constituent assembly is accepted, then issues to be debated will include:
 - (a) Should there be a "mini" bill of rights, and if so, what should its terms be
 - (b) If there is to be a referendum on constitutional principles

- (i) How and by whom the question to be put to the electorate will be formulated
 - (ii) How the referendum will be conducted, and in particular how voters will be identified and where they will be permitted to vote. This includes issues such as the rights of exiles, persons de-nationalised under the homeland legislation, and generally the rights of the very many people who will be entitled to vote, but who are not formally on a voters roll.
 - (iii) The age at which people will qualify to vote in the referendum
 - (iv) The period of time to be allowed for the purposes of conducting the referendum
 - (v) The supervision of the referendum including access to the media etc.
- (b) Elections for the constituent assembly
- (i) The powers to be vested in the constituent assembly
 - (ii) The terms of the legislation according to which the constituent assembly will be constituted and empowered to carry out its functions
 - (iii) The electoral system for the constituent assembly - i.e. presumably proportional representation
 - (iv) The specification and identification of persons entitled to vote for the constituent assembly. Presumably this will cover the same issues as have already been identified in the discussion on a referendum.
 - (v) The period of time to be set aside for the purpose of conducting elections for the constituent assembly
 - (vi) The supervision of the electoral process, including access to the media etc.
 - (vii) The procedure to be followed by the constituent assembly in its debates, and how that procedure should be determined.
 - (viii) Who should preside at the constituent assembly

(ix) How will decisions be taken by the constituent assembly - i.e. by a simple majority, or by special majorities.

(c) Implementation of the decisions of the constituent assembly

There must be absolute clarity on how the decisions of a constituent assembly will be implemented. The precise route to be followed must be mapped out clearly so that legal form is given to such decisions.

26 November 1991