

STATUS, IMPLEMENTATION AND LEGALISATION OF APC AGREEMENTS**1. INTRODUCTION**

The All Party Congress (APC) agenda is as follows:

- i) Creation of climate for free political activity.
- ii) Principles of new Constitution.
- iii) Mechanism for drawing up of Constitution.
- iv) Establishment of Interim Government.
- v) Reincorporation of Bantustans.
- vi) Role of the International Community.
- vii) Time frames for completion of process.

2. THE PROCESS

The items on the agenda will not be discussed seriatim, that is, one after the other in sequence. Working Groups will probably be established for each item on the agenda. These Working Groups will meet over a period of time simultaneously, each probably entrusted with one item on the agenda. Representatives in each Working Group will no doubt report to their respective principals from time to time. Assuming agreement is reached in each Working Group, it can be envisaged that ultimately a comprehensive agreement or a series of agreements will be arrived at on a wide range of issues under each head.

Together, these agreements will be designed to cover the whole transitional process leading to the installation of the first democratic government.

3. IMPLEMENTATION AND LEGALISATION OF AGREEMENT

The question facing us is this: how will this comprehensive agreement or series of agreements be implemented? What will their status be? What steps will have to be taken to ensure that the agreement/agreements become legalised and enjoy the force of law and constitutionality. The legalisation process is important to forestall challenges in a court of law to the legality of any of the agreed processes or mechanisms and also to ensure implementation and provide for legal enforcement. This means that the legalisation and legal implementation of the agreed processes should also be discussed at the APC.

4. TO BE RAISED AT WHAT STAGE

The question arises whether the problem of legalisation and implementation should be raised at the commencement stage of the APC meeting or only after comprehensive agreement has been reached on the various issues.

In this regard it must be borne in mind that every single item on the agenda will require comprehensive and detailed discussion. They will entail lengthy and comprehensive agreements.

The disadvantage of leaving the issue of implementation and legalisation to the end of the meeting, lies in the fact that one would be proceeding without any commitment from the governing party that it will implement them or that it will take all necessary steps to legalise the process. The government should be tied down from the outset. It seems preferable therefore that the issue be raised at an early stage to secure a clear commitment and undertaking from government to take all measures necessary to implement and legalise all processes and mechanisms agreed upon in the APC.

Whilst a general but unconditional commitment is required at the time of the commencement of the APC, the actual working out of the constitutional and legislative measures necessary cannot be worked out until there is final clarity on all the agreements arrived at. Consideration of the various issues must however take place now.

5. RESULT OF APC

The end result of the APC must be a comprehensive agreement or series of agreements spelling out with clarity and in detail every agreed step in the process commencing with the installation of the Interim Government and leading ultimately to the installation of the first government under the new democratic constitution.

The parties would then have to come to an agreement on the various measures that the South African government would have to take to give legal effect to the agreements and to secure their implementation. This would entail inter alia effecting appropriate amendments to the Republic of South Africa Constitution Act of 1983.

The amendments will also have to make provision for the dissolution at some stage in the process of the tricameral parliament itself and for the re-incorporation of the bantustans. At an early stage therefore, the Interim Government would be installed (to include the Bantustans) and at some stage or other a tricameral parliament itself will disappear. Sovereignty will pass to the Interim Government. Provision will have to be made for this.

In other words, having obtained the prior commitment of the SA Government to ensure the implementation of agreements and having arrived at an agreement on the totality of the processes and steps, agreed steps would be taken especially by the Government to implement including appropriate constitutional

amendments. This would usher in the life of the Interim Government. (The full workings thereof would also have been agreed upon in the APC). The various steps in the processes as well as time frames leading ultimately to the installation of the first government under the new democratic constitution would all be provided for.

The Bantustans themselves on the basis of the APC agreements, would also need to take constitutional steps to enable re-incorporation to proceed.

6. CONCLUSION

What is required therefore, is a total vision of the whole process and a recognition that the constitutional amendments cannot be of a piecemeal nature, but must be comprehensive, so as to ensure that the process itself is not aborted.

In the light of the above, consideration should be given to the setting up of an Implementation Commission entrusted with the task of making a study of the South African Constitution, the constitutions of the TBVC states as well as the kind of amendments and measures which may be necessary to guarantee implementation, legality and constitutional continuity.

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