

**A GOVERNMENT OF NATIONAL UNITY UNDER THE
TRANSITIONAL CONSTITUTION**

Discussion Paper

1. The transitional Constitution shall provide for the establishment of a national executive to be designated the *Government of National Unity*.
2. The executive power of the Republic shall vest in the State President, who shall exercise his powers in terms of the transitional Constitution.
3. The Government of National Unity shall consist of the State President, an Executive Council and a Cabinet.
4. The State President shall be elected by Parliament by majority vote at its first session.
5. The State President shall be **Head of State** of the Republic and shall exercise the following powers *after consultation* with the Executive Council:
 - (a) the appointment of times for the sessions of Parliament and for its prorogation;
 - (b) addressing any session of Parliament;
 - (c) the conferment of honours;
 - (d) appointing, accrediting, receiving and recognizing ambassadors, plenipotentiaries, diplomatic representatives and other diplomatic officers, consuls and consular officers;
 - (e) entering into and ratifying international conventions, treaties and agreements;

- (f) assenting to, signing and promulgating laws validly passed by Parliament, or referring such laws back to Parliament in the event of procedural shortcomings in the legislative process;
 - (g) convening the Cabinet for the purposes of consultation or the resolution of disputes among the members of the Cabinet or the political parties represented in the Cabinet;
 - (h) referring disputes of a constitutional nature between political parties represented in Parliament or between organs of the state at any level of government to the Constitutional Court or other appropriate institution or body for resolution.
6. All other powers and functions shall be exercised and performed by the State President *on the advice* of the Executive Council.
 7. Political parties that occupy at least fifty of the four hundred seats in the National Assembly and who express their wish to the State President to serve in the Executive Council, may each designate one person to serve in the **Executive Council**.
 8. The parties to which the members of the Executive Council belong, must jointly occupy more than 200 of the seats in the National Assembly.
 9. Alliances and mergers of political parties after the election shall not be taken into account for the purposes of the composition of the Executive Council, except if it should be imperative in order to satisfy the minimum requirements for the formation of an Executive Council.
 10. The State President shall chair the meetings of the Executive Council, but shall not vote in such meetings.
 11. To be binding, a decision of the Executive Council must be supported by members whose parties jointly occupy at least 75% of the total number of the seats in the National Assembly occupied by the parties represented in the Executive Council.

12. Should the Executive Council consist of three members, each of whose party occupies more than 100 seats in the National Assembly, a decision shall be binding if it is supported by two members.
13. The Executive Council shall be responsible for the management of the Cabinet and its members shall attend and alternately chair the meetings of the Cabinet in cycles of three months in accordance with the number of seats in the National Assembly occupied by the parties represented in the Executive Council in descending order.
14. There shall be twenty-two portfolios in the Cabinet grouped in the following categories:

Category I

Defence
 Finance
 Foreign Affairs
 Justice
 National Education
 Police

Category II

Agriculture and Forestry
 - Health and Public Welfare
 - Housing
 Labour Relations
 - Land

Category III

Economic Affairs
 Internal Affairs
 Regional Affairs + Local
 - Technology, Minerals and Energy

Category IV

Culture and Sport
 Post and Telecommunications
 Tourism and the Environment
 Transport

Category V

Correctional Services
 Public Works
 Water Affairs

15. Each political party occupying more than 20 seats in the National Assembly may nominate persons to be appointed to the Cabinet in proportion to the support that such party has in the National Assembly relative to the support of the other parties represented in the Cabinet.
16. The State President shall, *in consultation with the Executive Council*, appoint the nominees to the Cabinet portfolios in such a manner that every party shall be allotted portfolios, in the numerical order of the categories, in as many different categories as may be possible.

IGNU

Suddenly we are confronted with the possibility that one of our principal demands will be realised, and we are not sure exactly what it is that we are winning.

The concept of an Interim Government [IG] was established in the Harare Declaration [and re-affirmed in the UN Declaration?]. It corresponds to the necessity to have special arrangements in the period of transition from an apartheid state to a non-racial one.

An IG by its very nature can never be satisfactory. It represents an ad hoc form of dealing with a crisis situation. It is intended to be temporary in nature. It is undemocratic. Its life and character depend on the function it is to serve. There is no prototype IG. The forms of IG vary with the circumstances that bring them into being. All that they have in common is that they represent a temporary authority to enable a more permanent and legitimate authority to be established.

Different from a caretaker government:

IGs vary with the circumstances that necessitate their creation. They could merely be a caretaker administration holding the reins of power when an old government has lost the confidence of the legislature. In this case, there is no interruption of legitimacy, no institutional crisis, only a crisis of government. The function of the caretaker government is simply to ensure that basic government does not break down until a new government is chosen. At the same time, it guarantees that conditions are created for such a new government to be chosen.

~~In South African conditions, this could theoretically happen, if, say, the National Party split so that it lost its majority in the white chamber, but the President still had a majority in the body that elected him; De Klerk could then create a government based on all parties in the Tricameral, except the KP. He could declare that, pending new elections, the caretaker government would govern the country. This would really be an interim administration that saw to it that essential functions were maintained until a new government was installed. Its interim character would consist of two things: it would have a pre-determined short-life, and it would not undertake new initiatives, or complete controversial projects of the previous government.~~

A caretaker government presupposes that the constitution remains static and the institutions the same; what changes is merely the ~~arrangement~~ of the incumbency.

IG AFTER WAR OR REVOLUTION

Another situation, quite different in nature, is that of an IG created after the total collapse of the previous legal and

constitutional order. This might occur after a successful revolution, where not only do the previous holders of office vanish from the scene, but their organs of power are destroyed. Alternatively, an occupying or puppet power might be driven out by successful invasion or victorious uprising, and pending the reconstruction of government and the re-establishment of full legitimacy for new rulers, an IG might be installed.

In both cases, it is the victorious insurrectionaries or the successful invading/liberatory forces which establish the IG to take over the immediate ^{substantial} ~~necessity~~ functions of government. The objective is to ensure supply of the basic necessities of life, maintain basic order in society and prepare the way for ~~the normalisation of of public life~~ and the installation of a properly chosen government.

In South Africa, such a situation could theoretically arise if there were a broad-based insurrectionary uprising; say, for example, a Gang of Eight in the security forces purported to seize power, and were in turn overthrown by a broad-based coalition of forces, the latter could agree to the formation of an IG on which they were all represented. Its objective would be to protect the country against further coups, ensure the functioning of the public administration and rule the country until a new government could be chosen according to acceptable procedures.

The situation we are faced with is different from both the above. It is neither a case of governmental crisis, nor one of insurrectionary overthrow.

The question of IG in South Africa presents itself in quite a different and specific context. The analogy is with the process of de-colonisation. There is, however, one vital difference, namely, the end of colonial-type domination is not accompanied by the departure of the colonial power. ~~In other words~~, sovereignty is transformed and enlarged rather than ^{reverted or} relinquished.

In other words, in both cases there is a tr. of power, but the way it takes place is diff.
The phrase transfer of power in the South African context ~~thus~~ needs to be looked at carefully.

In the case of normal or typical de-colonisation, power is transferred from ~~the~~ colonial state to representatives of the formerly colonised one. The result is a severance of sovereignty - two sovereign states exist where only one existed before. Thus, Algeria becomes independent of France, Kenya of the U.K., Mozambique of Portugal. The process in Zimbabwe is slightly different, in that it is first necessary for UDI to be renounced and for Britain to resume its authority as sovereign colonial power for the process of granting independence to be completed. In the case of Namibia, the UN assumes responsibility under the Mandate, and in terms of a treaty signed between various states and South Africa, and endorsed by the UN, Namibia accedes to independence.