

STATEMENT BY THE CONSTITUTIONAL COMMITTEE ON THE QUESTION OF DEMOCRACY AND THE FUTURE OF MINORITIES IN SOUTH AFRICA

Our principal task, operating under the guidance of the NEC, has been to find appropriate constitutional formulations to give effect to the long-standing aim of our organisation to end apartheid and introduce non-racial democracy and equal rights for all in South Africa. We are guided by the Freedom Charter and various other documents produced over the years by our organisation. Since these documents reflect universally held values, we are able to benefit from international documents produced in decades of struggle by all humanity against oppression and injustice.

The main argument used against us is that in the conditions of South Africa what is called simple majority rule will inevitably lead to oppression of minorities. Accordingly, it is said, there have to be special safeguards for minorities in the Constitution, even if this requires departures from the normal principles of democracy. What is our answer?

In the first place, we in the ANC have always been against oppression of any kind, whether of the majority or of the minority. Our fundamental position is that South Africa belongs to all who live in it. We are not seeking the right to abuse and humiliate others in the way they have done to us, but, rather, to end the whole system whereby people are treated on the grounds of their race and not as human beings. What is required to bring this about is the ending of white privilege and arrogance, not the ending of the white people, nor the denial of their rights.

Secondly, we believe that a Constitution will have a crucial role to play in achieving this end. Trust and goodwill are important, but they are no substitute for clear and precise legal arrangements. We want a written Constitution that sets out in clear and precise terms the way our government in the future shall be chosen, how it shall be constituted and the manner in which it shall function. In addition, we wish to set out in the Constitution certain core values of our new society which can become the basis for building a new South Africa in a manifestly just and equitable way.

Thirdly, our view is that the best guarantees against oppression or domination lie in strengthening democracy, not weakening it. Any attempt to introduce special electoral or governmental privileges for any section of the population will turn out badly for that section by highlighting their exclusion from the mainstream, and hence their vulnerability. It will also undermine respect for the Constitution as a whole by reducing its principled coherence and integrity. We do not want an egg that is good in parts and rotten in others; the whole egg must be good.

② Following on from the above, we set out a number of features of modern democratic governments that we feel strengthen democracy and as such provide firm and effective guarantees against oppression or domination of minorities, as of majorities, as of individuals. Because these are built into the very heart of the Constitution, they are sometimes referred to as institutional or structural guarantees. They may be listed as follows:

A separation of powers in government. Virtually all governments accept that governmental power shall be divided between the law-making bodies [legislature], the organs that carry out the law [the executive] and the institutions that see to it that the law is obeyed [the judiciary]. Much of the time of the Constitutional Committee is spent trying to find ways of ensuring that a democratically elected legislature is a vigorous and respected body that is not cowed by or a mere rubber stamp for the executive. Similarly, constitutionalism implies a strong role for a representative and independent judiciary that will prevent the executive from behaving in an arbitrary way and ensure that Parliament functions within the letter and the spirit of the Constitution that has brought it into being.

Territorial division of the country into regions and local authorities.

It is obvious that an over-centralised government in which all decisions are taken at the top and the people are left out of the process is not good government. We favour effective and accountable national government for national tasks, effective and accountable regional government for regional tasks and effective and accountable local government for local tasks. We favour decentralisation, local participation and local initiative. What we are against is schemes to lock the riches of country, the beautiful suburbs and industrial areas, into autonomous territorial units while the majority of the people are forced to live in the country's backyards.

Election by proportional representation.

We believe that we are the first major political organisation in the country to come out unequivocally for proportional representation. Our reasons are partly practical - it is a relatively simple system, easy to operate, suitable for a country where many people are illiterate, and not dependent on drawing constituency boundaries in a country divided by group areas. Yet our main consideration is a principled one, namely, that we wish to see all significant currents of opinion in our country represented in Parliament [and all the other law-making bodies]. Experience in Namibia proved that PR contributed strongly to national unity - without damaging the interests of SWAPO, it ensured that all meaningful groupings in the country were represented in the Constituent Assembly, which is now the first Parliament. We would far rather do battle with our political opponents with arguments inside Parliament than be confronted by their weapons outside.

③ An entrenched Bill of Rights.

We are the only political organisation to have published a draft Bill of Rights for analysis and discussion by our members, as well as by South Africans at large and the international community. As a part of the Constitution, the Bill of Rights becomes part of the basic law of the country. It establishes a framework of values and principles within which the legislature and the executive have to operate. It cannot easily be amended. It is the most direct safeguard against any form of oppression and abuse of individuals and minorities. Instead of proposing bizarre schemes for special voters rolls or proportional representation in the Cabinet or part-time Presidents, persons concerned with minority rights should be looking closely at the Bill of Rights and seeing to it that it is really copper-bottomed.

The draft that we have presented not only guarantees all the universally accepted political, civil and legal rights, it expressly outlaws any form of domination on the grounds of race, colour, creed etc. It also gives strong guarantees in relation to language rights and rights related to religious belief and practice. Finally, it secures space for what have been called organisations of civil society, that is for social, cultural, religious, trade union and other voluntary, non-governmental organisations, which, in addition to constituting a vehicle for community expression, serve as a guarantee against monopolisation of public life by the government or the ruling party.

An independent judiciary headed by a Constitutional Court.

Once more, in our search for a just system which will ensure that the Constitution is interpreted in a way acceptable to the broadest strata of South Africans, we have proposed the establishment of a representative and independent Constitutional Court.

A civil service, army and police force that function according to the principles of representativity, competence, impartiality and accountability.

Finally, in dealing with the massive inequalities created by apartheid in relation to nutrition, education, health, access to land, housing, employment and social welfare, we propose a form of law-governed re-distribution based upon fair procedures. The Bill of Rights will set out principles universally accepted in democratic countries with mixed economies, namely, those of equal protection, affirmative action, an expanding floor of minimum social rights within the limits of available resources, and the directing of resources from wealthier regions to poorer ones. Provision is made for the payment of just compensation in the case of the taking of property. These are constitutional mechanisms to ensure that the process of opening up genuinely equal opportunities for all is an equitable one and that far from leading to the collapse of the economy, puts it on a much broader and more secure basis.

What all these mechanisms amount to is a series of constitutionally structured guarantees acknowledged in all democratic societies as being appropriate and effective protections against oppression or domination. Their strength comes precisely from the fact that they are not specifically designed to protect the privileges of the whites, but intended to secure the fundamental rights and freedoms of all South Africans, including the whites. It could well be that in the short transitional period of an Interim Government, there would be a sharing of governmental positions on an agreed basis of political quotas, but the objective of such an arrangement would be to move from apartheid to democracy, not to tie apartheid notions forever into the Constitution.