



ANC

Negotiations Bulletin

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The People Shall Govern!

The Negotiating Forum meeting of 2 July 1993 has accepted the demands of the ANC. The call made in the Harare Declaration has been vindicated.

At the onset of negotiations, the ANC in endorsing the call made in the Harare Declaration made the following demands, that:-

- * the Constitution of a new South Africa must be drafted and adopted by a democratically elected Constituent Assembly;
- * the Constituent Assembly must be sovereign and bound only by agreed and democratic principles;
- * the NP minority regime cannot be both player and referee in the process of transition;
- * there must be a levelling of the playing fields and the creation of a climate for free and fair elections.

The Agreements reached were as follows:-

Steps to a New Constitution

1. The Multi-Party Negotiating Process (MPNP) shall adopt constitutional principles providing for both strong regional government and strong national government;
2. These constitutional principles shall be binding on the Constituent Assembly and shall be justiciable by a constitutional court;
3. A Commission on Delimitation/Demarcation will make recommendations on regional boundaries for the purposes of elections and regional government during the transitional period;
4. The MPNP shall agree on legislation to make provision for the levelling of the playing field and promoting conditions conducive for the holding of free and fair elections;

5. The MPNP shall agree on details of discriminatory legislation to be repealed;
6. The MPNP shall agree on a transitional constitution (i.e. Transition to Democracy Act).

Binding Constitutional Principles

The following are the only principles that would bind the Constituent Assembly, which would otherwise be sovereign:-

1. The Constitution shall provide for the establishment of one sovereign state with a democratic system of government a common citizenship and committed to achieving equality between men and women and people of all races;
2. The Constitution shall be the supreme law of the land, shall prohibit racial, gender and all other forms of discrimination and promote racial and gender equality and national unity.

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3. There shall be a **separation of powers** between the legislature, executive and judiciary, with appropriate **checks and balances** to ensure accountability, responsiveness and openness;
4. The **judiciary** shall be **competent, independent and impartial** and shall have the power and jurisdiction to safeguard and endorse the constitution and all fundamental rights;
5. There shall be representative government embracing **multi-party democracy, regular elections, universal adult suffrage, a common voters roll, and in general, proportional representation**;
6. Provision shall be made for **freedom of information** so that there can be open and accountable representation at all levels;
7. Formal legislative procedures shall be adhered to by legislative organs at all levels of government;
8. The **diversity of language** and culture shall be acknowledged and protected, and conditions for their promotion shall be encouraged;
9. **Collective rights of self-determination** in forming, joining and maintaining organs of civil society, including linguistic, cultural and religious associations, shall, on the basis on non-discrimination and free association, be recognised and protected;
10. All shall enjoy universally accepted **fundamental rights**, freedoms and civil liberties, protected by entrenched and justiciable provisions in the constitution;
11. The legal system shall ensure the **equality of all before the law** and an equitable legal process. The principle of equality before the law includes laws, programmes or activities that have as their object the amelioration of the conditions of the disadvantaged, including those disadvantaged on the grounds of race, colour or gender;
12. The institution, status and role of **Traditional Leadership**, according to indigenous law, shall be recognised and protected in the Constitution. Indigenous law like, common law, shall be recognised and applied by the courts subject to the provisions of the fundamental rights contained in the Constitution and to legislation dealing specifically therewith;
13. Provision shall be made for participation of **minority political parties** in the legislative process in a manner consistent with democracy;
14. **Amendments** to the constitution shall require special procedures involving specified majorities;
15. Government shall be structured at national, regional and local levels;
16. At each level of government there shall be democratic representation. This principle shall not derogate from the provision of Principle 12.
17. Each level of government shall have appropriate and adequate legislative and executive powers and functions that will enable each level to function effectively. The **allocation of powers** between different levels of government shall be made on a basis which is conducive to financial viability at each level of government and to effective public administration, and which promotes national unity, legitimate regional autonomy and cultural diversity;
18. A framework for local government powers, duties, functions and structures, shall be set out in the Constitution. The comprehensive powers, duties, functions and other features of local government shall be set out in parliamentary statutes and or regional legislation;
19. The powers and functions of the national and regional levels of government shall include exclusive and concurrent powers as well as the power to perform functions for other levels of government on an agency or delegation basis;
20. National and Regional governments shall have fiscal powers and functions which will be defined in the Constitution. The framework for local government referred to in paragraph 18 shall make provision for appropriate fiscal powers and functions for different categories of local government;
21. Each level of government shall have a constitution right to an **equitable share of revenue** collected nationally so as to ensure that Regions and local governments are able to provide basic services and execute the functions allocated to them in the Constitution.
22. **A Financial and Fiscal Commission**, representing inter alia each of the Regions, shall recommend equitable fiscal and financial allocations to the Regional governments from revenue collected nationally, after taking into account the national interest, disparities within the Regions as well as the population and developmental needs, administrative responsibilities and other legitimate interests of each of the Regions.
23. The following criteria shall be applied in the **allocation of powers** to the national government and the Regional governments:-

General

- * The national governments shall not exercise its powers (exclusive or concurrent) so as to encroach upon the geographical, functional or institutional integrity of the Regions;
- * Where it is necessary for the maintenance of essential national standards, the maintenance of economic unity, the maintenance of national security or the prevention of unreasonable action taken by one region which is prejudicial to the interests of another region or the country as whole, the constitution shall empower the national government to intervene through legislation or such other steps as may be defined in the constitution;
- * The essential principles of the constitution including the fundamental rights contained therein shall apply to all organs of the state at all levels of government;

National Government

- * Where there is necessity for South Africa to speak with one voice, or to act as a single entity - in particular in relation to other states - powers should be allocated to the national government;
- * Where uniformity across the nation is required for a particular function, then legislative power over that function should be allocated predominantly, if not wholly, to the national government;
- * Where minimum standards across the nation are required for the delivery of public services, the power to set such standards should be allocated to the national government;
- * The determination of national economic policies, and the power to promote inter-Regional commerce and protect the common market in respect of the mobility of goods, services, capital and labour, should be allocated to the national government;

Concurrent Powers

- * Where mutual co-operation is essential or desirable or where it is required to guarantee equality of opportunity or access to a government service, the powers should be allocated concurrently to the national government and the regional government;
- * In the event of a dispute concerning the legislative powers allocated by the Constitution concurrently to the national and regional governments which cannot be resolved by a court on a construction

of the Constitution, precedence shall be given to the legislative powers of the national government;

Residual Powers

- * The Constitution shall specify how powers which are not specifically allocated in the constitution to the national government or to a regional government, shall be dealt with as necessary ancillary powers pertaining to the powers and functions allocated either to the national or regional governments.
24. Notwithstanding the provision of any other clause, the right of employers and employees to join and form employer organisations and trade unions and to engage in collective bargaining shall be recognised and protected.
 25. The independence and impartiality of a **Commission for Administration, a Reserve Bank, an Auditor General and an Ombudsman** shall be provided for and safeguarded by the Constitution in the interests of the maintenance of effective public finance and administration and a high standard of professional ethics in the Civil Service.
 26. Every member of the **security forces** (police, military and intelligence) and the security forces as a whole shall be required to perform his or her duties and functions and exercise his or her powers in the national interest and shall be prohibited from furthering or prejudicing party political interest.

Transitional Constitution

The Technical Committee has been instructed to draft a Constitution for the period of transition (i.e. Transition to Democracy Act) that shall make provision for:

- * The election according to a system of proportional representation of a Constituent Assembly, legislature and national government for the transitional phase which will include a national and regional component. With regard to constitution making, this Constitution shall provide for dead-lock breaking and special majorities by which decisions will be taken;
- * The election of regional legislatures and the establishment of regional governments in the transition;
- * The powers, functions and structures of regions for the transitional period;
- * Fundamental human rights on a justiciable basis during the transitional period;
- * A Constitutional Court to ensure the justiciability of the Constitutional Principles, of the fundamental rights and of the Constitution itself.

Levelling the Playing Field & Promoting Conditions Conducive to the Holding of Free and Fair Elections

1. Independent Electoral Commission (IEC)

An IEC shall be established. The object shall be to administer and conduct a free and fair democratic electoral process of the new Parliament/Constituent Assembly/ Regional Governments, including responsibility for any other matter connected therewith. Draft legislation is being prepared in this regard.

2. Independent Media Commission (IMC) & Independent Broadcasting Authority (IBA)

An IMC shall be established. The object will be to ensure:

- * equitable treatment of political parties by broadcasting services;

- * that State financed publications and State-information services are not used to advance the interest of any political party;

so as to contribute towards the promotion and creation of a climate favourable to free political participation and a free and fair election. Draft legislation is being prepared in this regard.

3. Repeal of Repressive & Discriminatory Legislation

The Negotiating Council has discussed two reports of this Technical Committee and has agreed that a "Higher Code" should be established to deal with this legislation. The Technical Committee will take into account discussion and debate in the Negotiating Council and present a final report in due course.

4. Transitional Executive Council (TEC)

The establishment of a TEC and its sub Councils is agreed to. The Technical Committee has been instructed to draft legislation accordingly.

Election Date

The Negotiating Forum having adopted the reports and recommendations tabled by the Negotiating Council;

"Hereby:

1. Confirms the date for the election as the 27 April 1994;

2. Instructs the Negotiating Council to:

- 2.1 Take note of the fact that a constitution for the transition period will have to be adopted and to identify the other agreements to be reached as well as the implementation steps to be taken before the election can take place;

- 2.2 Prepare time scales for the agreements and the implementation steps to be undertaken for the election to take place;

- 2.3 Determine whether the election can be held on an earlier date than the 27 April 1994 if a final settlement on the substantive issues should be reached earlier; and

- 2.4 Determine the precise number of days over which the elections will be held in co-operation with the Independent Election Commission.

The Way Forward

The Technical Committees are now engaged in preparing the necessary reports and draft legislation. The next meeting of the Negotiating Council on 19 July. This meeting will consider the report of the Technical Committees.

It is hoped that the draft legislation would be finally prepared and agreed to during August. This would open the way for the establishment of the Transitional Executive Council.

Notice

This Bulletin is intended merely to inform and stimulate discussion. The views contained herein do not necessarily reflect the official views of the NEC of the ANC.