

MINUTES OF MEETING OF THE ANC CONSTITUTIONAL COMMITTEE HELD ON 7
AUGUST 1992 IN JOHANNESBURG

1. PRESENT: ZOLA SKWEYIYA
FINK HAYSOM
DULLAH OMAR
ESSA MOOSA
BULELANI NGCUKA
PENUEL MADUNA
PIUS LANGA

2. REPORT

- 2.1 Comrade Zola Skweyiya reports on briefing meetings with the Negotiations Commission. The Negotiation Commission met on two or three occasions to discuss the question of regions.
- 2.2 It was agreed that it would be improper to demarcate areas as this would be the work of the Constituent Assembly. The provincial boundaries of 1910 is to be retained and the TBVC States and the self-governing States will have to resort under such provincial boundaries. This will come into operation after the elections for a Constituent Assembly. This is provided for in the Transition to Democracy Act.
- 2.3 As a starting point, we need to evolve a model and we might have to depart from such model as negotiations proceed. Once we have a framework, that is a model, we could look into the question of reincorporation, legislation, financing, etc.
- 2.4 The administrative structures of the homelands could be incorporated into the respective provinces. The question arises what happens to the political structures. This is a political question which needs to be addressed by the ANC. The Constitutional Committee should discuss these issues and submit its recommendations to the NEC.

- 2.5 We need to look at the reintegration of the administrative structures, the judicial structures and political structures and make the necessary recommendations.

3. TRANSITION TO DEMOCRACY ACT

- 3.1 Comrade Fink Haysom gives us an overview of the Act. He took us through the powers and functions of the Administrator and Provincial Council as provided for in the Transition to Democracy Act.
- 3.2 There are two options for the system of Regional Government. The one option is where the State President appoints both the Administrator and the Executive Council.
- 3.3 The second option would be where the Provincial Council is elected and would exercise both legislative and delegative powers. The Administrator could be either be elected or nominated by the State President.
- 3.4 When it comes to the reincorporation of the homeland into provinces, one needs to take into consideration the broader political function and powers of the homelands. The political super-structure of the homelands could be phased out, but it could create a problem with our supporters. Some of the functions could however be reincorporated into the national political structure, i.e. police, army, prisons, etc.
- 3.5 The question arises whether one should have an elected Provincial Council or a nominated Provincial Council. It was generally felt that the Provincial Council should be accountable to the regions. To avoid tensions between the centre and the regions, the following was proposed:

- 3.5.1 The Administrator should be appointed, but the Provincial Councillors should be elected.
 - 3.5.2 All Provincial laws to be ascertained to by the State President and any Provincial law which is repugnant to national laws, will not be ascertained to.
 - 3.5.3 Provincial laws cannot be *ultra vires*.
 - 3.5.4 It was also proposed that we could argue for a nominated Provincial Council, but we could concede elections as a matter of compromise. There could however be a political demand for Provincial elections. Elections however can obstruct the work of the Constituent Assembly as people could form regional power bases.
 - 3.5.5 Tension between centres and regions can be real and can hold dangers.
 - 3.5.6 Whatever system we propose, it must be uniform throughout the country.
- 3.6 The following further proposals were made:
- 3.6.1 That the demarcation must be on Provincial basis.
 - 3.6.2 That powers of Provincial authorities be limited.
 - 3.6.3 That there are three options for the type of Provincial Council.
 - 3.6.3.1 Elected Council;
 - 3.6.3.2 Council appointed by the centre;
 - 3.6.3.3 Executive Provincial Committee in proportion to party list to administer the regions;

- 3.6.3.4 That we need to define the powers of the Regional structures;
 - 3.6.3.5 That we should come with a democratic position by being consistent throughout;
 - 3.6.3.6 That we are talking of transition, hence the question of being undemocratic cannot be argued strongly. It is the function of the Constituent Assembly to work out the type of Regional Government best suited to the country;
 - 3.6.3.7 That we need to have an elected Regional Government. Even if they are nominated by the centre, they could still have legitimacy.
 - 3.6.3.8 That we must concentrate on functions and powers of the Provincial or Regional Government.
 - 3.6.3.9 That the existing functions of the Provincial Government is in the field of licence, health, road repairs, traffic, racing, Municipal services, education (white), housing, culture, library, museums. It also approves ordinances of Local or Municipal authorities.
- 3.7 One needs to define the political function of Regional Government, namely what executive powers will be vested in such Council and what legislative powers will be vested in such Council.

4. REINCORPORATION

- 4.1 At the moment we have different administrations such as Local Affairs, General Affairs, Black Local Authorities, etc. We have to develop a vision for reincorporation. We need to spell out the process. It is a complex issue dealing with economy, the land question, fiscal matters, etc. It was

suggested that we have a special meeting to workshop the idea.

- 4.2 We might need a Reincorporation Commission to phase in reincorporation and harmonisation during the period of transition. The centre could establish a Commission to address these issues. They will play an administrative role. It is suggested that the TBVC states which agree to reincorporation should immediately revert to states of self-governing territories.
- 4.3 The Commission could deal with the consequences of reincorporation and deal with facilitation of reincorporation. The Commission's functions, duties and powers to be spelt out. The question of where the Commission should be located and to whom it shall be accountable, is a political question.
- 4.4 The question arises whether there should be provision for a Commission during the transitional arrangements and how the TBVC states would be governed during the interim arrangements.
- 4.5 For homelands there is a period before elections and there is a period after the elections. The periods of Transitional Executive Council (TEC) should be adequately addressed. The question of implementing by legislation the agreement of Working Group 3 provides for weak intervention. It leaves the Government in the hands of De Klerk. We need to ask ourselves the question whether the agreements are adequate and whether we should not go beyond those agreements.
- 4.6 The Government is working on an Interim Constitution and we need to be able to respond to the powers of TEC.

- 4.7 We need a special meeting to discuss the question of the powers, functions, of TEC and the agreements of Group 3. It is proposed that a special meeting be called for Friday 14 August 1992 and that other members of the ANC be invited to such meeting. We should not react. We should put forward proposals. Once these agreements are translated into legal provisions, one realises that those agreements are weak on Phase 1. It was proposed that Arthur be present.

5. LOCAL GOVERNMENT IN TRANSITION

- 5.1 The Interim National Government Act provides for Local Government. The Transitional Constitution would make provision for all levels of Government.
- 5.2 We should leave Local Government to the Constituent Assembly, but we should have a memorandum of our position on Local Government.

6. THE FUNDAMENTAL BILL OF RIGHTS ACT

- 6.1 The question to be answered is whether we require a separate Act to be called the Fundamental Bill of Rights Act or whether it should form part of the transition to the Democracy Act.
- 6.2 The Fundamental Bill of Rights Act has not yet been drawn. The question of what should be included needs to be discussed. Do we include all three generation rights or are we confining it only to civil and political rights. It is proposed that we should have a minimum set of rights for the transitional period.
- 6.3 We should have a simple clause relating to freedom of association, expression, assembly, organising, etc., which could be included in the Transition to Democracy Act. Another proposal was that we should

simply allude to the United Nations Universal Declaration on civil and political rights. The third proposal was whether we should have a comprehensive Bill of Rights.

- 6.4 It was finally agreed that we do not want a separate Bill of Rights. We should have a clause in the Transition to Democracy Act to the following effect:

"Notwithstanding any law to the contrary, there shall be freedom to organise political parties, freedom of assembly, freedom of association and include the proposals made to the Goldstone Commission on marches, demonstrations, rallies, etc."

- 6.5 We should give all 3 options to the NEC but motivate the simple clause. The motivation is that the Bill of Rights should be drawn up by the Constituent Assembly. A comprehensive Bill of Rights would provide for a long drawn-out Interim Constitution.
- 6.6 The playing field must first be levelled before we can introduce a comprehensive charter.

7. WORKSHOP ON REGIONS AND REINCORPORATION

- 7.1 A workshop should be arranged between members of the Constitutional Committee and certain other people such as Paul Daphne, Phillip van Ryneveld, Job Mgororo, Frances Wilson, Norman Bruiners, Francis Titus, Prof Ripinga, Jaya Josie and others.
- 7.2 We should also ask people from the homelands who are sympathetic to attend. It is important that this workshop look into the whole question of Regional and Local Government. This should be a sub-committee of the Constitutional Committee. The blue document could be used as the

basis for discussion. They must consider the question of powers, duties, functions and the relationship between Central, Regional and Local Government.

- 7.3 It was suggested that this group should meet within the next two weeks. Bulelani was requested to draw a memorandum for setting out the motivation and objectives of this group.

8. WORK SCHEDULE

The following work schedule for the Constitutional Committee was identified:

- 8.1 Meeting for workshop to discuss regions, demarcation, functions and powers.
- 8.2 Meeting of workshop of the Transitional Executive Council to work out its functions, powers and duties. (This meeting was scheduled for 20 August 1992.)
- 8.3 The Draft Constitution should be finalised.
- 8.4 Negotiations Commission meeting scheduled for 13 August 1992.

9. MEMORANDUM ON REGIONS

- 9.1 We should prepare a document setting out our position on regions up to phase 2, making provision for limited powers and interim structures.
- 9.2 We should also set out proposals for Regional Government for presentation to the Constituent Assembly. They are the ten regions with similar powers to the provinces and fiscal powers to be limited to traffic, property, etc. The question of taxation such as VAT to be left to the Central Government. The document should further clarify the following:

- 9.2.1 That there shall be regions.
- 9.2.2 That they shall have agreed regional powers.
- 9.2.3 That they shall have concurrent authority. It however can be vetoed by the National Government, particularly matters of national interest. These are issues that can be dealt with by the Constituent Assembly.

9.3 We also need to respond to the Government's proposal on Local and Regional Government. Kader to bring such response to the next meeting on 20 August 1992.

10. GENERAL

- 10.1 On restructuring of the legal system - what are we doing about it. Comrade Maduna, Kader and Pius to work on the matter. The document to be given to the DIP for publication.
- 10.2 For the information of members, the Constitutional Committee meets on the first Friday of each and every month.
- 10.3 Kader to let Committee have document on Regional Government.

The meeting terminated at 4.30 p.m.