

Tasks relating to the advance drafting of amending legislation to give effect to agreements reached at CODESA

A. Phase I

1. Transitional Executive Committee and Preparatory Councils.

Arthur Chaskalson

2. Electoral Commission
Electoral Law

Bulelani Ngcuka
Essa Moosa
George Bizos
Dennis Davis
(Heinz Klug)
Frene Ginwala

3. Reincorporation of TBVC states including Citizenship

Zitwa

~~Albie Sachs~~
Dullah Omar
Bulelani Ngcuka

4. Other Phase I Transitional Arrangements such as a Media Council.

Kadir Asmal
Pius Langa
Louis Skweyiya

B. Phase 2 The Interim Constitution

Overall : Fink Haysom
Arthur Chaskalson

Question: An interim constitution which is institutionally distinct from the final Constitution or, one that mirrors the final Constitution?
How distinct should this constitution be from the present? Should it clearly signal a rupture, or should it pave the way for the real constitutional rupture?

1. Formal and Symbolic Elements
Boundaries, name, flags, anthems (re: citizenship see 4 above)
These issues are intensely political questions. Dangerous to alter, unacceptable to leave as are.

2. Elections to and structure of Constituent Assembly/Legislature

re: National/Regional List and Senate (See para 3.1, 3.2)

- i) Propose that regional list members sit as a senate for purposes of 4.9 of WG 2 Working Document
- ii) One vote once
- iii) No loading for minorities in a senate.
- iv) No constitution-making function for senate.

Question : What will function of Senate be? How will it be composed if 2(i) is not followed? Can we abandon Senate altogether?

3. Interim Executive Composition and Powers

Issues:

- i) Multiparty executive in the nature of an enforced coalition.
- ii) Decision-making requiring 66% of a majority cabinet composed in proportion to electoral support rather than consensus;
- iii) Deadlock breaking mechanism?
- iv) Presidency/Prime Minister, who will perform ceremonial functions in the interim?
- v) Executive will not have any role in relation to constitutional decisions.
- vi) Ministerial control of departments, or cabinet oversight of all departments?
How do ministerial posts get allocated?
- vii) Cabinet accountability to interim legislature?
- viii) How will decisions be made in regard to extraordinary situations, e.g. war, states of emergency etc?

4. Justiciable Political and Civil Rights (para 3.5)

These should not deal with policy matters which will be the subject of the CMB but limited to a minimum core of rights protecting the citizenry during the transition and ensuring fair political competition.

5. Constitutional Principles binding the Constituent Assembly (para 3.8)

Fink Haysom
Albie Sachs
 Dullah Omar

Draw on WG 2 commonalities and Steering Committee proposals regarding

outstanding issues, save for the property clause which needs re-working (see attached document).

6. Functioning of Constituent Assembly as a CMB
Chairpersons;
Majorities for adoption of specified clauses, and for adoption of constitution as a whole (proposal : 66.6%);
Committees;
Timescales;
Public participation

7. Regional and local government during Phase II (para 3.6 and 3.2.3)
Boundaries
Functions
Powers

Zola Skweyiya
Dullah Omar
Albie Sachs
Bulelani Ngcuka

8. Amendments to Phase 2 Constitution, including those aspects dealt with in 7 above (see paras 3.2, 3.7 and 4).

Question: Rigid - as favoured by IFP - or amenable to piecemeal amendment which may draw support from the NP in line with its belief in piecemeal constitutional engineering?

9. Provisions to enforce timescales (para 4).

Such provisions must deal with the failure to reach agreement and the status of the interim constitution in that event. Are fresh elections a sufficient incentive to resolve differences?

10. Establishment and functioning of mechanism to adjudicate on whether constitutional principles are enshrined in the new constitution (see para 3.8.2)

11. Appointment of judges and functioning of judicial system "according to the principles underlying a constitutional state" (see para 3.4)

12. Necessary transitional provisions regarding termination or assumption of

obligations acquired by previous regime e.g. contracts, taxation, criminal law.
(See also para 1.3)

13. Special measures governing the armed forces, the police, and intelligence institutions (see attached draft policy proposal)

Fink Haysom
Kadir Asmal

**GENERAL CONSTITUTIONAL PRINCIPLES
AREAS OF COMMONALITY - PREPARED BY WORKING GROUP 2
STEERING COMMITTEE 12.5.92**

1. South Africa will be a united, sovereign state in which all will enjoy a common South African citizenship.
2. South Africa will be democratic, non-racial and non-sexist.
3. The constitution shall be the supreme law.
4. There will separation of powers between the legislature, the executive and the judiciary with appropriate checks and balances.
5. The judiciary will be independent, non-racial and impartial.
6. There will be a legal system that guarantees the equality of all before the law.
7. There will be representative and accountable government embracing multi-party democracy, regular elections, universal adult suffrage, a common voters role and, in general, proportional representation.
8. The diversity of languages, cultures and religions will be acknowledged.
9. All will enjoy universally accepted human rights, freedoms and civil liberties including freedom of religion, speech and assembly which will be guaranteed by an entrenched and justiciable Bill/Charter of Fundamental Rights.
10. Government shall be structured at national, regional and local levels.
 - 10.1 At each level there shall be democratic representation.
 - 10.2 Each level of government shall have appropriate and adequate legislative and executive powers, duties and functions that will enable each level to function effectively; such powers, duties and functions to be entrenched in the constitution.

- 10.3 In addition to the powers, duties and functions entrenched in the constitution, each level of government may delegate powers, duties and functions to other levels of government.
- 10.4 The general principles of the constitution including the terms of the Bill/Charter of Fundamental Rights shall apply to each level of government.
11. The new constitution shall provide for effective participation of minority political parties consistent with democracy.

provided that racial discrimination may not be practised."

3.4 Draft principle on the role of traditional leaders:

"The constitution should define a suitable role for traditional leaders consistent with the objective of a united, non-racial, non-sexist, democratic South Africa."

3. Draft principles prepared by the Steering Committee on 23.3.92 and not yet discussed by the Working Group.

3.1 Draft principle on economic freedom, governmental intervention and economic systems:

"The constitution should provide for the promotion of the improvement in the quality of life of all South Africans by enabling economic growth, human development, social justice and equal opportunities for all."

3.2 Draft principle on the Bill/Charter of Fundamental Rights:

"There shall be a justiciable bill/charter of fundamental rights which shall ensure inter alia :

- universally accepted human rights and freedoms;
- civil liberties including freedom of religion, speech and assembly;
- the equality of all before the law;
- property rights, provided that legislation may in the public interest authorise expropriation against payment of reasonable compensation which shall in the event of a dispute be determined by a court of law.

The constitution shall enable the implementation of measures to help address the racial and gender inequities caused by past discrimination."

3.3 Draft principle on the accommodation of the diversity of languages, cultures and religions:

"The constitution at all levels of government shall accommodate and protect the right of citizens to practice their religion, enjoy their culture and use their own language both as individuals and in association with others. This shall include the right of citizens where practicable to have their children educated in their mother tongue and the right of citizens to establish educational institutions reflecting their language, culture and religion,

(This document was not circulated amongst the regions and branches of the ANC but shall be discussed at the policy conference)

INSTITUTIONS

1. TOWARDS THE CREATION OF LEGITIMATE SECURITY APPARATUSES

For several decades the regime has relied on its formidable police, defence and intelligence structures to maintain the system of apartheid and minority rule, and suppress popular resistance to that system. As a result of Total Strategy, the whole of South African state and society became militarized.

National security was pursued primarily through military and para-military means. The effects of this approach security are evident: high levels of violence and crime; economic decline; regional arms races; destabilization, and perpetual insecurity throughout the subcontinent.

The South African security institutions themselves developed a racist, closed, secretive, undemocratic structure, lacking legitimacy in the eyes of the people. The process of democratization underway in our country will not be complete without addressing this problem.

On the other hand, Umkhonto we Sizwe - the People's Army - represented the cutting edge in the struggle for a non-racial and democratic society. Viewed by the majority of South Africans as a liberating force its popular support was demonstrated at countless rallies, marches and demonstrations.

The challenge is to address not only the security institutions and their composition but also to go deeper and address the very nature of security policy itself. Such a policy should cover a realistic assessment of threats to peace; territorial integrity; personal security and basic principles governing security institutions.

2. A NEW APPROACH TO SECURITY

The ANC believes that national and regional security should not be restricted to military, police and intelligence matters but as having political, economic, social and environmental dimensions.

Underdevelopment, poverty, lack of democratic participation, the abuse of human rights etc are regarded as grave threats to the security of people. Since they invariably give rise to conflict between individuals, communities and countries, they threaten the security of states as well.

The ANC is committed to the following principles which underly a new approach to security in a democratic South Africa:

- South Africa shall be committed to resolving internal and external conflict primarily through non-violent means.
- National security and personal security shall be sought primarily through efforts to meet the social, political, economic and cultural needs of the people.
- South Africa shall pursue peaceful and co-operative relations with neighbouring states.
- The security institutions shall be bound by the principle of civil supremacy and subject to public scrutiny and open debate.
- The security institutions shall endeavour to be reflective of the national composition of South African society. In this regard a programme of affirmative action shall be implemented.
- The security institutions shall be accountable and answerable to the public through a democratically elected parliament.
- The security institutions shall respect human rights, non-racism and democracy, and act in a non-discriminatory manner towards the citizenry.
- The security institutions shall be politically non-partisan.

3. A NEW APPROACH TO DEFENCE:

The ANC is committed to the formation of a new Defence Force incorporating personnel from all armed forces committed to the new constitution. The primary role of the Defence Force shall be the defence of the country's sovereignty and territorial integrity; to act in support of the civilian authority in the case of emergencies; to act in support of the neighbouring states in fulfilling requests and agreements; and fulfill their obligations in accordance with international agreements. The principles of this new approach to defence include:

- South Africa shall have a Defence Force in which all South

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- Africans shall be entitled to serve.
- The Defence Force shall at all times uphold and adhere to the constitution.
- The principle of civil supremacy over the armed forces and be accountable to the public through parliament.
- The defence force shall respect the ideals of democracy, non-racialism, non-sexism, national unity and national reconciliation.
- The Defence Force shall endeavour to reflect of the national composition of South African society. In this regard a programme of affirmative action shall be implemented.
- The Defence Force shall be politically non-partisan.
- The Defence Force shall respect and uphold the Bill of Rights.
- The Defence Force shall respect the rights of the soldier as citizen.
- The core of the Defence Force shall be a permanent volunteer force.
- The Defence Force shall be bound by international law, treaties and conventions governing the use of force and the conduct of war.
- The Defence Force shall be defensive in its orientation and its strategy.

4. A NEW APPROACH TO POLICING

The ANC is committed to the creation of a single police service. The primary function of policing is the prevention of crime and to guarantee citizens personal security and the free and peaceful exercise of their rights as defined in the constitution. The principles governing the new police service shall be:

- The police service shall respect the ideals of democracy, non-racialism, national unity and national reconciliation and act in a non-discriminatory nature.
- The police must be accountable to society, through the law, a professional Code and at a community level.
- Policing shall be based on community support and participation
- Police shall be accountable to society and the community

it serves.

- There shall be a professional code to which the police shall adhere.
- Policing priorities and methods shall be determined in consultation with local communities.
- Policing shall be structured as a civilian, service function and the police shall be committed to demilitarize their structures and operations.
- Police shall adhere to the doctrine of minimum force.
- Policing shall be subject to public scrutiny and open debate.
- Allegations of police misconduct shall be dealt with by independent complaints and investigations mechanisms.

5. A NEW APPROACH TO INTELLIGENCE

The ANC believes that the role of intelligence service shall be to gather, collate and evaluate information that pertains to the security of the state and its citizenry. The role of the intelligence service shall be to act in the interests of the country as a whole. The principles of intelligence shall be:

- A civilian agency shall be responsible for strategic intelligence
- The police and military shall be restricted to tactical and operational intelligence.
- The national intelligence service shall not engage in monitoring the lawful activities of legal political organizations or individuals without due authorisation from democratic authorities.
- Intelligence activities shall be regulated by relevant legislation, the Bill of Rights, constitution and appropriate Code of Conduct.
- The intelligence community shall be accountable to parliament and subject to multi-party parliamentary oversight.
- The public shall have the right to information gathered by any intelligence agency subject to the limitations consistent with a democratic South-Africa. ^{only} society
- Intelligence needs shall be balanced against the rights and privacy of the individual.