

**CONSTITUTIONAL PRINCIPLES: A NOTE FOR THE WORKSHOP
TO BE HELD ON 28 NOVEMBER 1991**

1. It is difficult to visualise how negotiations for a new constitution can continue if agreement is not reached at the All Party Conference (APC) on constitutional principles and the mechanisms to be adopted for drawing up the new constitution. It is unlikely that there will be agreement on the latter, unless there has first been agreement on the constitutional principles. The debate on the constitutional principles is therefore of crucial importance.
2. It can be anticipated that the representatives of the National Party at the APC, and of the most of the parties outside of the Patriotic Front, will want the constitutional principles to be as detailed as possible. They are likely to reject the principle of a constituent assembly and to argue that the APC is a suitable forum for settling the terms of the constitution. At the very least they are likely to argue that the constitutional principles must be contained in a rigid framework with the object of limiting as far as possible the effective power of a constituent assembly. It must be anticipated that there will be a long and protracted debate on these issues.
3. The Legal and Constitutional Committee of the ANC has published a working document on constitutional principles. Are there reservations in regard to these principles? If so, what are they? It is important that clarity be obtained on the negotiating position of the ANC Alliance before the negotiations commence.
4. The National Party and the Democratic Party have published documents outlining their positions in regard to the new constitution. As far as is known, none of the other parties have stated their positions save in the most general of terms.
5. The Legal and Constitutional Committee has prepared papers on the National Party's proposals. Papers on the Democratic Party's proposals can be prepared prior to the first meeting to the APC.
6. It is clear, however, from the documents that have already been published, and the statements that have been made in public debate, that there will be a very substantial difference between the ANC Alliance and the National Party (and other parties attending the APC) in relation to the constitutional principles. The debate around constitutional principles will be complicated by the fact that the debate is not simply between the ANC Alliance and the National Party and its supporters, but will include a variety of views likely to be expressed by other parties to the APC.

7. It will be important to record all decisions that are taken in as clear language as possible so that they do not subsequently become the subject of disputes in regard to interpretation. Consideration should be given to appointing a technical committee to service the needs of this working group.
8. The debate within the working group may be facilitated by distinguishing between structural and non-structural matters. The structural matters are those which affect the framework of the constitution. They are interdependent and should if possible be debated in a logical order. The non-structural matters do not affect the framework of the constitution, though they deal with important matters. They can be debated in any order and that debate can, if necessary, be pursued without awaiting the outcome of decisions on the structural matters.
9. The Structural matters include the following:
 - (i) The organisation of the state. Should there be a unitary state, or a federal state: should power be delegated by a central government, or should power be devolved through the constitution so as to make the various organs of government autonomous and not subject to the control of the central government.
 - (ii) Should there be a presidential system or a parliamentary system, and in either event, how should power be divided between the executive and the legislature.
 - (iii) How should the legislature be composed and function. In this context consideration will have to be given to whether there should be a uni-cameral or a bi-cameral legislature, and if a bi-cameral legislature, what the power and functions of the second house should be.
 - (iv) How should decisions be taken by the executive and the legislature within their allotted fields of power.
 - (v) What arrangements should be made for regional and local government. This depends partly on the outcome of the debate in regard to the matters raised under sub-paragraph (i) hereof.
 - (vi) What electoral systems should be adopted for the election of the President and various organs of government.
 - (vii) What rights and procedures (if any) should be entrenched in the constitution.

10. The Non-structural matters include the following:

- (i) The bill of rights
- (ii) Emergency powers
- (iii) Language policy
- (iv) National symbols
- (v) Reincorporation of the homelands
- * (vi) Administration^{of} and appointments to the civil service, including the police and the army
- (vii) The determination of procedures for financial matters such as the adoption of the budget and the control of spending

11. In paragraph 9 an attempt has been made to set out the structural matters in a logical order. Whether this is the best order for the debate to take place, is a matter for discussion. A position in regard to this should be taken prior to the commencement of the APC.

12. The contents of paragraphs 9 and 10 amplified and amended in the light of discussions which take place at the workshop, could serve as the basis for the agenda for the working group on constitutional principles.

26 November 1991