



ANC

Negotiations Bulletin

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Focus on the Transitional Constitution

The Multi-Party Negotiations Process at its Negotiations Council meeting recently agreed to instruct the Technical Committee on Constitutional matters to draft a Transitional Constitution.

This Bulletin attempts to answer the following questions, viz.:-

- * What is the need for a Transitional Constitution?
- * What is a Transitional Constitution?
- * For how long does it last?
- * How does it affect the final Constitution?

What is the need for a Transitional Constitution?

The ANC's proposals for the transition are based on the following principles:-

- * A democratic South Africa can only come about when elected representatives of the people draft and adopt a constitution.
- * It is necessary to hold an election for this purpose.
- * Free and fair elections can only take place if there is a levelling of the playing fields and a climate is created which is conducive for the holding of such elections.
- * The NP regime cannot be trusted to be both player and referee in the process of transition.

Accordingly, the ANC has proposed that four structures should manage this process of transition.

- * Whilst the NP regime would still remain the government of the day, it would be the Transitional Executive Council (TEC) that would have the final responsibility for those areas of government that would affect the creation of a climate conducive for the holding of free and fair elections. Such a body be the Transitional Executive Council (TEC). This structure would be multi-party in nature.
 - * To level the playing field in the media and to remove all bias, especially in the radio and television, an Independent Media Commission should be established. Such a body should be totally independent and free of any party political interference.
 - * To secure that the elections are run fairly and freely, an Independent Electoral Commission should be established. This structure too should be free of all party political interference.
 - * Once an election is held, an Interim Government of National Unity should be established to take responsibility for the administration of the country until a new and democratic constitution has been adopted.
- To enable the above structures to work, it is necessary to ensure that
- * the multi-party TEC has the authority to prevent legislation/actions that would adversely effect the creation of a climate conducive for the holding of elections;

- * the TBVC states are reincorporated and their citizens allowed to vote;
- * all South African citizens, black and white, are able to vote;
- * an elected Constituent Assembly shall draft and adopt the new Constitution;
- * a new democratic and non-racial Interim Government of National Unity is able to govern until the new Constitution has been adopted.

The present apartheid constitution does not allow for this process to take place. It is therefore necessary to have a Transitional Constitution (or, Transition to Democracy Act) to allow this process to take place.

What is a Transitional Constitution?

To give the process of transition legal effect, it is therefore necessary to amend the constitution. It is not necessary to waste much time in drafting a new constitution for this purpose. The country simply cannot afford it. The ANC has therefore proposed that the present constitution should be amended only in so far as is necessary to enable the process of transition to take place. The ANC has already produced a draft of this constitution. The ANC refers to this as the Transition to Democracy Act (TDA). This draft was submitted to the Multi-Party Negotiating Process.

Similarly, many parties in the negotiation process have submitted their proposals on the transitional Constitution. It is now for the relevant Technical Committee to consider these and provide the Negotiating Council with a recommendation for approval. This is due to take place shortly.

For how long does it last?

As soon as the Transitional Constitution has been agreed to by all parties, it would then be placed before Parliament. Parliament shall then pass the necessary legislation to put the Transitional Constitution (Transition to Democracy Act) into effect.

This amended Constitution would then continue through the election of the Interim Government of National Unity and last until

the new Constitution has been drafted by the Constituent Assembly. The Constitution adopted by the Constituent Assembly then replaces the Transitional Constitution. The new Constitution allows for the Constituent Assembly to be transformed into a Parliament and the Interim Government of National Unity is replaced by a Government of National Unity and Reconstruction.

How does it affect the final Constitution?

The final Constitution would be that constitution which has been drafted and adopted by the elected members of the Constituent Assembly. It is *not* the Transitional Constitution or an amended version of it. The Transitional Constitution does no more than provide for the legal framework within which the final (new) Constitution would be drafted.

The Transitional Constitution (or, Transition to Democracy Act) thus affects the final Constitution in that it would provide for:-

- * the constitutional principles agreed to by all parties. These principles would form the framework within which the new Constitution would be drafted;
- * the percentage of representatives in the Constituent Assembly that would have to vote in favour of provisions of the Constitution for it to be adopted;
- * deadlock breaking mechanisms in the event that agreement could not be reached in the Constituent Assembly.
- * a limited time frame within which the new Constitution should be drafted, failing which, a referendum and or fresh elections would take place. This would ensure that a new Constitution, one that replaces the Transitional Constitution, is adopted.

NOTICE

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