

250 Zambezi Road      Roma  
21 July 1989

The President  
African National Congress  
Lusaka.

Dear Comrade President

A Constitution for a Free South Africa

I am reporting on decisions taken at two meetings I attended this morning on De Klerk's 'Plan of Action' for which the Nasionale Party seeks a mandate from voters in the election of 6 September 1989. One was with members of the President's Office; the other with the Department of Legal and Constitutional Affairs (DLCA).

Ngoako, Edwin and I discussed the plan at some length. We agreed to meet next Tuesday to prepare a final report for submission to you. It will make special mention of certain 'key objectives' listed in the plan (p.4). They include

- a meeting of 'recognised leaders of all groups committed to the pursuit of peaceful solutions in talks and negotiations', a point repeated under the heading of 'Violence' on p.7: 'A democracy can be maintained only if all participants are adamantly committed to solving political differences peacefully and constitutionally. Therefore only people and organisations who have such a commitment to peace can be permitted to take part in the political process and in negotiations';
- a 'definite start, based on these negotiations and discussions, with the setting up of institutions to which the leaders of all groups can participate in the creation of a new system! ;
- re-assessment of 'the functions and powers of the head of state in a new system, his role or otherwise as head of government, and the manner in which he should be elected'

Other matters referred to in the plan that require our attention are:

- self-determination, 'independent' states, 'self-governing' areas that are said to embody the 'federal principle' (p 5);
- group rights, freedom of association and disassociation (p 6); their entrenchment in a new constitution (p 9);
- independence of the judiciary and law reform ( p 10)

Comment

The President's Office infers that

1. The NP's plan for talks and negotiations is so designed as to exclude the ANC and its allies;
2. The 'national Forum' created after the 1987 elections will be put up as the authentic and elected representatives of the African people;
3. De Klerk is thinking of going back to the earlier system of separating the functions of state president and prime minister;
4. His plan has been drawn up with several objectives in mind, such as:
  - i. the exclusion of ANC and the resistance movement from talks and negotiations;
  - ii vote-catching by assuring whites, Coloured and Indians that the NP would safeguard their privileges and profits, life styles and segregated suburbs;
  - iii continued repression of the resistance movement under the state of emergency;
  - iv. depriving the right-wing opposition led by the conservative party, AWB and HNP of their main propaganda weapon which is that the NP government has decided to introduce black majority rule.

#### Our options

1. Put the seal of our approval on candidates who publicly endorse our policy statements and proposed constitution. N.B. The enemy is bound to launch a vicious attack on candidates sponsored by us, calling them traitors, terrorists and communists.
  2. Call for a boycott of the elections, as in 1983-4, on the grounds that Africans have no vote and can't participate in top-level decision making. This approach may have a negative effect on the electorate. The response of the MDM should be tested by selective opinion polls.
- Issue a statement condemning the NP plan along the lines set out above and calling for adult franchise - votes for all South Africans on an equal footing and in a united country within the boundaries that existed in 1910.

#### The ANC's Draft Constitution

To write the statement referred to in the third option we need to revise and improve our Constitutional Guidelines, taking into account criticisms and comments, together with proposals set out in the report of the Olivier Commission on Human Rights and the NP's election manifesto.

This will be a big undertaking, which ought to be completed in the

first two weeks of August to allow for revision and approval by the NEC, printing and circulation. The DLCA considered various ways of tackling the problem and made the following observations.

1. The department is seriously understaffed. Its attempts to recruit qualified personnel have failed partly for security reasons, partly because persons approached are reluctant to work in Zambia.
2. The department's standing is low among leaders, who regard it as a service organisation, useful for settling domestic disputes, monitoring property transactions and leases, advising members on trial and arranging their defence, or sitting on the disciplinary tribunal. Efforts to enlarge the staff will continue.
3. Steps should be taken at once to improve the department's ability to handle the revision of the constitutional guidelines. The department, after considering different possibilities, recommends the appointment of a Constitution Commission, headed by an NEC member, competent and willing to work intensively and continuously for three or four weeks with the existing constitution committee, which will be absorbed in the Commission, until the task has been accomplished.

I was asked to put these proposals before you, Comrade President, for consideration and discussion.

Maatla !