



ANC

Negotiations Bulletin

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Focus on Draft Constitution

The Technical Committee on Constitutional Matters produced a draft outline of a transitional constitution. This draft was produced on the basis of the submissions made by the various political parties and organisations.

This draft was only tabled for discussion on 26 July, 1993 so as to enable all parties to consider it and to ensure the maximum possible consensus.

In producing this draft, the Technical Committee was instructed to make provision for:-

- * the election according to a system of proportional representation of a constitution making body, legislature and national government for the transitional phase which will include a national and regional component;
- * the election of regional legislatures and the establishment of regional governments in the transition;
- * the powers, functions and structures of regions for the transitional period;
- * fundamental human rights;
- * a constitutional court;

On the basis of the above, the Technical Committee recommended the following:-

Structures

The following structures are envisaged in the recommendations:

- * **A Constitution Making Body (CMB)** or Constituent Assembly (CA) which is made up of the joint sitting of the National Assembly and the Senate;
- * **A National Assembly** made up of 400 representatives, 200 of which are elected on a national list and 200 on a regional list;
- * **A Senate** which is made up of 10 representatives from each of the regions and is indirectly elected from the Regional Legislatures;
- * **Interim Legislature** is made up of the National Assembly and the Senate. Law during the period of the transitional constitution would be passed by the Interim Legislature. This structure is bicameral in that all legislation must be passed by both the National Assembly and the Senate.
- * **Regional Legislatures** - The Commission on Regions is presently preparing a report on the number of regions there should be. Regional Legislatures in respect of each of these regions would be directly elected.

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- * **Constitutional Court** - would be established for purposes of ensuring that constitutional proposals conform to the agreed Constitutional Principles.
- * **Commission on Regional Government** - This Commission shall be established by the State President within 30 days of the Constitution coming into effect. The Commission shall advise national and regional government on the establishment and consolidation of administrative institutions and structures. It shall also make recommendations to the CMB on the finalisation of the number and boundaries of the various regions and the various powers, functions and duties of regional structures.

The Election

The election would:-

- * take place on the basis of **proportional representation**;
- * **directly** give rise to two structures, a National Assembly and Regional Legislatures.
- * **indirectly** give rise to a Senate. The Senate is elected from the representatives sitting in the Regional Legislatures and is therefore indirectly elected.

Constitution Making Body

- * The body that would draft and adopt the Constitution (i.e. the CMB or Constituent Assembly) should be elected. This body is sovereign and is entitled to draft and adopt a new constitution subject only to the limitation of the agreed constitutional principles;
- * The CMB would be made up of a **National Assembly** and a **Senate** sitting as one structure;
- * The CMB would be chaired by the President of the Senate;
- * The CMB would have a total of approximately 480 representatives - 200 from the national list, 200 from the regional list and 80 representatives from the Senate (i.e. should there be 8 regions

that are agreed to). The CMB would therefore have a stronger component of regional over national representatives;

- * **Time Frames** - Allowance is made for the Constitution to be adopted **within 2 years**;
- * **Decision Making** - The Constitution shall be adopted by a **two-thirds majority**;
- * **Deadlock Breaking** - Should a two-thirds majority not be obtained, a constitutional panel of experts would then be appointed to recommend an appropriate amendment. This recommendation could then be agreed to by a two-thirds majority. In the event that this majority is not obtained, the relevant recommendation would then be submitted to a national referendum to accept or reject. On approval of a 60% majority in the referendum the Constitution would then be adopted.

Should the necessary majority not be obtained, Parliament would then dissolve and a general election shall be held. The newly elected Constitution Making Body would then adopt the Constitution on the basis of an ordinary majority.

Interim Legislature

- * Legislation may be introduced in either the National Assembly or the Senate and shall be passed by a majority of the total number of the members in both Houses;
- * Legislation affecting the exercise of powers or functions allocated to a particular region shall, in addition, also be approved by a majority of the Senators of that particular region.

Regional Legislatures

- * Regional Legislatures would be elected at the time of the National Legislature for each of the number of regions agreed to during multi-party negotiations;
- * Each regionally elected representative would require 50 000 votes. The number of representatives in each Regional Legislature would therefore be determined by the number of voters in that region.

Regional Executives

- * The Executive of a Region shall be elected by the Regional Legislature and shall consist of **ten members**;
- * The Executive of a Region shall elect from its own members a **Premier**;
- * Each member of the Executive shall be responsible for the administration of one or more of the departments of the Region to be established by the Premier.

Regional Constitutions

- * A Regional Legislature may, if it deems necessary, adopt a constitution for that region by a **two thirds majority**;
- * Such a regional constitution shall not be inconsistent with the national constitution or constitutional principles and must be approved by the Constitution Making Body.

Outstanding issues

There are a number of issues which the Technical Committee have not addressed in its recommendation. These are issues in respect of which the Committee has requested direction from the Negotiating Council. The issues are as follows:-

1. ***National Symbols and Languages*** - the issues relevant here are the anthem, coat of arms and symbols. These were identified as political and not technical matters and therefore required recommendations of the Negotiating Council.
2. ***Implementation of the Transitional Constitution*** - The draft outline provided by the Technical Committee is designed to come into effect only after the election. Constitutional provisions with regard to the period leading up to the election still has to be developed.
3. ***Citizenship in the Transition*** - legislation ensuring that citizenship to all South Africans including those in the TBVC states and the right to vote still need to be enacted.

4. ***The Executive*** - i.e. the Interim Government of National Unity was not discussed by the Technical Committee. This would have to be discussed in the Negotiating Council and detailed instructions are to be given to the Committee.
5. ***Fundamental Rights*** - this is to be dealt with by a separate Technical Committee and has therefore not been included.
6. ***The Judiciary*** - the composition and structure of the Judiciary and the Constitutional Court has as also not been dealt with yet.

The Way Forward

The ANC on receipt of the above recommendations carried out widespread consultations. The draft was discussed by our Constitutional Committee, the National Negotiations Consultative Forum (which includes the ANC Regions), the Youth and Women's Leagues and members of the Tripartite Alliance and the National Working Committee.

The Draft is presently being debated in the Negotiating Council. A further report on agreements reached will be provided in future Bulletins.

Notice

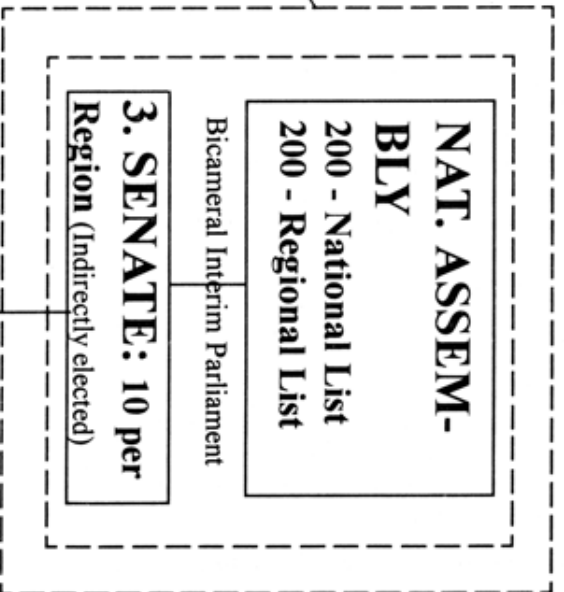
This Bulletin is intended merely to inform and stimulate discussion. The views contained herein do not necessarily reflect the official views of the NEC of the ANC.

**DRAFT INTERIM CONSTITUTION
RECOMMENDED BY THE TECHNICAL COMMITTEE**

CMB

* Unicameral
* 200 + 200 + 80 / 100 = 480 / 500

ELECTIONS
27 April '94



**Interim
Legislature**

REGIONAL LEGISLATURES (8 - 10)
Votes= No. of seats
50 000

**Interim Regional
Governance**

Regional Constitutions,
if any, subject to approval by CMB.