

17 November 1993

The SA Government and the African National Congress hereby submit to the Negotiating Council a package of proposed solutions relating to certain outstanding constitutional and electoral issues.

BILATERAL UNDERSTANDING ON OUTSTANDING CONSTITUTIONAL ISSUES BETWEEN THE SOUTH AFRICAN GOVERNMENT AND THE AFRICAN NATIONAL CONGRESS

1. Decision-making in Cabinet:

The Cabinet shall function in a manner which gives consideration to the consensus seeking spirit underlying the concept of a Government of National Unity as well as the need for effective government.

2. Government of National Unity:

National elections will not be held under a New Constitution adopted by the Constitutional Assembly until 1999, unless the Cabinet loses the confidence of Parliament.

3. Boundaries, Powers and Functions of SPR's:

The provisions of the New Constitution to be adopted by the Constitutional Assembly, regarding the boundaries, powers and functions of provinces, and any amendment thereto, will require the approval of the Senate with a two-thirds majority. If the deadlock-breaking mechanism comes into operation, a sixty percent majority in the Senate will be required.

4. SPR Constitutions:

Immediately after the first elections, a provincial legislature shall be entitled to adopt a constitution for their province. The provincial constitution must be consistent with the constitutional principles and the national constitution, and, when the final constitution is adopted, consistent with that constitution. The constitutional court shall certify that the provincial constitution complies with the constitutional principles and the relevant national constitution.

5. **Clause 32 of the Electoral Bill:**

- (a) In the first elections for national and SPR legislatures a single ballot paper will be used.
- (b) A proposed formulation for Schedule 5 of the Constitution is submitted herewith.

6. **Deadlock-breaking Mechanisms:**

Should the employment of a deadlock-breaking mechanism in the making of a new constitution become necessary, the deadlock-breaking procedures provided for in clause 68(9) will culminate in the adoption of the new constitution by a majority of 60%.

SCHEDULE 5

System for the Election of the National Assembly and SPR Legislatures

Nomination of candidates and compilation of party lists

1. Parties registered in terms of the Electoral Act, 1993, shall nominate candidates for election to the National Assembly and SPR legislatures on lists of candidates in accordance with the provisions of the Electoral Act, 1993, and compile such lists in accordance with the provisions of this Schedule.
2. The 400 seats in the National Assembly shall be filled in the following way:
 - (a) 200 seats from regional lists, with a fixed number being allocated to each region by the Independent Electoral Commission taking into account available scientifically based data in respect of voters and representations by interested parties and with due regard to the following distribution:

Western Cape	-	21 seats
Eastern Cape	-	26 seats
Northern Cape	-	4 seats
Natal	-	40 seats
Orange Free State	-	15 seats
North West	-	17 seats
Northern Transvaal	-	20 seats
Eastern Transvaal	-	14 seats
PWV	-	43 seats
 - (b) 200 seats from the national list in order to restore proportionality in accordance with the total number of votes cast for each party in the national election.
3. A list of candidates submitted by a party for election to the National Assembly shall contain the names of not more than 400 candidates in such fixed order of preference as that party may determine.
4. A list of candidates may consist of -
 - (i) both a national and regional lists; or
 - (ii) regional lists,and in such proportions as that party may determine in the case of a list referred to in paragraphs (i) and (ii).
5. For the purpose of filling the two hundred seats in the National Assembly contemplated in item 2(a), the total number of votes cast in a region shall be divided by the number of seats plus one in that region and the result, disregarding fractions, shall be the quota of votes per seat.
6. The total number of votes cast in favour of a registered party, shall be divided by the quota of votes per seat and the result shall, subject to item 7, determine the number of seats allocated to that party.

7. Where the formula set out in item 6 yields a surplus not absorbed by the number of seats allocated to the party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties, and any undistributed seat or seats (in terms of the formula set out in item 6) shall be awarded to the party or parties concerned in sequence of the highest surplus.
8. For the purpose of filling the 200 seats contemplated in item 2(b), the total number of votes cast in a general election shall be divided by 400 plus one and the result, disregarding fractions, shall be the quota of votes per seat.
9. The total number of votes cast in favour of a registered party, shall be divided by the quota of votes per seat and the result shall, subject to items 10 and 11, determine the number of seats allocated to that party.
10. Where the formula set out in item 9 yields a surplus fraction not absorbed by the number of seats allocated to the party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties, and any undistributed seat or seats (in terms of the formula set out in item 9) shall be awarded to the party or parties concerned in sequence of the highest surplus to be a maximum of 5 seats so allocated: Provided that subsequent allocations shall be made in sequence to those parties having the highest average number or votes per seat already gained.
11. The number of seats allocated to a party in accordance with the provisions of items 8, 9 and 10 shall be reduced by the number of seats a party gained in accordance with the provisions of items 5, 6 and 7 and the result shall be the seats allocated in terms of item 2(b).
12. Where a party -
 - (i) submitted lists of candidates as contemplated in section 3(i) its representatives in the National Assembly shall be allocated from regional lists in accordance with the provisions of items 5, 6 and 7 and from the national lists in accordance with the provisions of items 8, 9, 10 and 11.
 - (ii) submitted lists of candidates as contemplated in item 3(ii) its representatives in the National Assembly shall be allocated in accordance with the provisions of items 5, 6 and 7, with the remainder of its seats in terms of items 8, 9, 10 and 11 being allocated from regional lists in the same proportion as those allocated in terms of items 5, 6 and 7; Provided that surplus fractions shall be disregarded save that unallocated seats shall be allocated to regions in sequence of the highest surplus fractions.
13. In the case of a list of candidates containing less candidates than a party is entitled to, that party -

- (i) shall only be allocated the number of representatives on its list; and
 - (ii) shall forfeit its entitlement to any further representation in excess of the representation so allocated.
14. The provisions of item 13 shall mutatis mutandis apply to each regional list referred to in item 4(i) and (ii) in respect of which a list of candidates was submitted by that party.
15. In the event of a party forfeiting its entitlement to representation in terms of items 13 and 14 -
- (i) a new quota shall be determined on the following basis:
 - (a) the total number of votes cast, minus those votes cast for all parties referred to in the said items, shall be divided by the seats plus one, still to be allocated to the other parties; and
 - (b) the quotient of such division shall be the new quota; and
 - (ii) a new determination of the allocation of representatives in respect of such other parties shall then mutatis mutandis be made as provided for in items 5, 6, 7 and 8, 9, 10 and 11 respectively.
16. In the event of a party being entitled to an additional number of representatives in terms of the provisions of item 15, and its lists of candidates then does not contain a sufficient number of candidates, the process as provided for in items 13, 14 and 15 shall repeat itself until all representatives have been allocated.

Election of members of SPR legislatures

17. A list of candidates submitted by a party for election to a SPR shall contain the names of not more than the number of seats being contested.
18. A list of candidates of a party shall consist of a single list in such fixed order of preference as that party may determine.
19. The provisions of items 5, 6 and 7 shall apply mutatis mutandis to the election of the members of an SPR legislature contemplated in section 101 of this Constitution. The quota of votes per seat shall be determined by dividing the total number of votes in each region by the number of seats plus one for each SPR.

Manner of casting and counting votes

20. The manner of casting and counting of votes in the election of the National Assembly and the election of each SPR shall be in accordance with the provisions of the Electoral Act, 1993.

Declaration of support by one party of another party

21. (1) If a party wishes to contest the election of one or more SPR legislatures, but does not wish to contest the election in the National Assembly, it may, within the time and in the manner prescribed by the Electoral Act, 1993, declare that it supports a party which has entered the election of the National Assembly, and if it makes such declaration, all votes cast in its favour shall, for the purpose of the election of the National Assembly, be deemed to be a vote in favour of such other party.
- (2) If a party wishes to contest the election of the National Assembly, but does not wish to contest the election of one or more of the SPR legislatures, it may, within the time and in the manner prescribed by the Electoral Act, 1993, declare that it supports a party which has entered the election of a SPR legislature, and if it makes such declaration, all votes cast in its favour shall, for the purpose of the election of the relevant SPR legislature, be deemed to be a vote in favour of such other party.
- (3) If a party wishes to contest the election of one or more SPR legislatures but does not wish to contest the election of all SPR legislatures, it may, within the time and in the manner prescribed by the Electoral Act, 1993, declare that it supports a party which has entered the election of the SPR legislatures that it is not contesting, and if it makes such a declaration, all votes cast in its favour shall, for the purposes of the elections of the SPR legislatures that it is not contesting, be deemed to be a vote in favour of such other party.
- (4) For the purposes of subitems (2) and (3), a party may support different parties in the different SPR's.

Designation of representatives

22. After the counting of votes has been concluded, the number of representatives of each party have been determined and the election had been certified by the Independent Electoral Commission as having been free and fair,

- (i) the Independent Electoral Commission shall within two days thereafter designate from each list of candidates published in terms of section 24 of the Electoral Act, 1993, the representatives of each party in each legislature; and
- (ii) following the designation in paragraph (i), if a candidate's name appear on more than one list for the National Assembly or on a list of both the National Assembly and a SPR legislature and he is due for designation as a representative in more than one case, the political party concerned shall within two days thereafter indicate to the Independent Electoral Commission in which legislature the candidate shall serve or which component he or she will represent, as the case may be, in which event his or her name is deleted from the other components or lists.
- (iii) The Independent Electoral Commission shall forthwith publish the list of names of representatives in all legislatures.

Supplementation of lists of candidates

- 23. No lists of candidates of a party for any legislature shall be supplemented prior to the designation of representatives as contemplated in item 21.
- 24. Lists of candidates may after the designation of representatives in terms of item 21 had been finalized, be supplemented by the addition of an equal number of names at the end of the applicable list, when:
 - (i) a representative is elected as President or other executive office which requires him to resign as a representative from a legislature;
 - (ii) a representative is elected as member of the Senate;
 - (iii) a candidate is eligible for representation in both the National Assembly and a SPR legislature and his name is deleted from a list in terms of item 16(ii); or
 - (iv) a vacancy has occurred and the appropriate list of candidates of the party concerned is depleted.
- 25. Lists of candidates of a party published in terms of section 24 of the Electoral Act, 1993, may be supplemented on one occasion only at any time during the first 12 months following the date on which the designation of representatives in terms of item 21 had been finalized, in order to fill vacancies which may subsequently occur: Provided that any such supplementation shall be made at the end of the list.
- 26. The number of names on lists of candidates as supplemented in terms of item 24 shall not exceed the difference between the number of seats in the National Assembly or a SPR legislature and the number of representatives of a party in any such legislature.

Reviewal of lists of candidates by a party

27. A party may review its undepleted lists as supplemented as provided for in items 23, 24 and 25, within 7 days after the period referred to in item 24, and annually thereafter, until the date on which a party has to submit lists of candidates for an ensuing election.

Vacancies

28. In the event of a vacancy having occurred in the representation of a party in any legislature -
- (i) such vacancy shall forthwith be filled by the Secretary of that Legislature, by the designation of the candidate at the top of the appropriate list of candidates of the party concerned, as representative of that legislature; or
 - (ii) if the party concerned no longer exist at the time the vacancy has to be filled, the vacancy shall be filled in the manner mutatis mutandis as provided for in items 5, 6 and 7 as well as items 8, 9, 10 and 11 in respect of the remaining parties represented in a legislature.