

"ALL IS NOT WELL IN SOUTH AFRICA"

By Mangosuthu Gatsha Buthelezi.

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I wish to give a very schematic indication of the present institutional situation of South Africa. An interim constitution was adopted on December 1993, and came into force in April 1994. In terms of such constitution, Provinces are established with a very limited amount of autonomy and with powers with respect to a number of subject matters which are listed in Schedule 6 of the Constitution. These are matters which, in countries such as the United States, are usually exercised by local Governments. In terms of the interim constitution the legislative and executive powers of Provinces are concurrent and not exclusive, and are subject to twenty-one broadly worded overrides which enable the central Government to exercise any legislative and executive function nominally ascribed to Provinces.

After the 1994 elections, the implementation of the Constitutional provisions has been extremely restrictive and has reduced provincial autonomy into almost nothingness. During the process of rationalization of powers between the national and provincial levels of government, central Government has retained all powers of substantive decision making and has reduced Provinces into mere administrative implementers of national policies. Central Government has developed national policies in each matter of provincial competence, to the point that, for instance, in the field of education, Provinces have no power in determining syllabi, curricula and requirements for teachers training and qualifications. Moreover, because of the overrides, no one of the existing law in the field of welfare, environment, consumer protection, trade and commerce, and provincial public media, has been assigned to Provinces, even if these are supposed to be areas of provincial competence.

In all other areas Provinces have been deprived of any power of autonomous decision making. With respect to casinos and racing, Provinces would not even have the power to decide how many casinos may be licensed and whether dog racing may be allowed. In health, housing, cultural affairs, provincial police and local government, provinces have been bound to follow strict central Government directions. Central Government has gone as far as legislating on matters relating to central Government's remuneration of traditional leaders, even though this is a provincial competence. Because of the withholding of central Government legislation which should have been assigned to Provinces, provincial competencies such as regional planning and development and urban and rural development have lost any significance, while central Government is in the process of adopting legislation which will centralize land planning and development and zoning.

Moreover, central Government has used the most restrictive interpretation possible of the areas of provincial competence to the point of excluding land affairs and water affairs from the provincial areas of competence on agriculture, regional planning and development, soil conservation, environment, local government, nature conservation, rural and urban development, traditional authorities, indigenous and customary law and other provincial functions which entirely depend on

land affairs or water affairs. Similarly central Government held that the competency on forestry is not part of agriculture and that the competence on forests are not part of environment, nature conservation, and soil conservation. The emasculation of provincial competence has gone as far as stating that provinces have no financial autonomy, subjecting their finance to a national auditing process. Similarly Provinces may not have their own civil service, but rather must employ part of a unified and centralized civil service under the control of the central Government which decide how many people are to be employed in any given provincial office and their conditions of service..

The list of central government actions which during the past 16 months have encroached upon provincial autonomy is too long to be even mentioned. The status of affairs forced the Premier of KwaZulu Natal to suspend the participation of his Province from the Intergovernmental Forum, a non-statutory and voluntary body used by the central Government to legitimize the process of rationalization.

Against this background the ANC has put forward firm proposals for the final Constitution to be adopted by May 10, 1996 which intends to transform Provinces into mere administrative implementers of central Government's policies. According to such proposals Provinces would have legislative competence only in the form of by-laws to be used to implement necessary national framework legislation. On all occasions national framework legislation would prevail over inconsistent provincial legislation. Moreover, the functions of the Senate would be limited to the adoption of legislation on provincial matters, depriving the Senate of any power with respect to other legislative matters.

The IFP has always proposed that the whole of South Africa, or at least some portions thereof, should be organised on the basis of the principles of federalism. Throughout South Africa, or at least with respect to some of the Provinces on an asymmetrical basis, Provinces should be entitled to operate as the primary government of the people. The IFP believes that on the basis of the principle of subsidiarity Provinces should be allowed to exercise all those powers and functions which can be adequately and properly exercised on provincial level, reserving for the central government only a limited and specifically identified list of powers and functions.

In all its constitutional proposals the IFP has not demanded for any Province in general, nor for the Province of KwaZulu-Natal, any greater degree of autonomy of what is enjoyed by German Lander or American member States. In fact, the National Party and the ANC had the daring to label some IFP proposals as secessionist and confederalist even though they were closely modelled after the German system, such as it was the case for a provincial constitutional court to guarantee the integrity of the provincial constitution and a provincial central bank with functions of economic development. We have moved away from some of these proposals but we are not willing to give up our fight for federalism. It must be realized that in regions such as KwaZulu-Natal there are entities such as the Zulu Nation who have always claimed and preserved their original sovereignty, and have unique social system consisting of its own body of laws and its own Kingdom with a Monarch, regiments and a system of traditional leaders. In the region of KwaZulu-Natal the Zulu Nation, which represents 85% of the population, has reached a deep unity of intents, purposes and

vision with the other people living in the Zulus' ancestral territory, and this united vision has been expressed by a common call for the autonomy of the region which has echoed continuously at least since the negotiations which lead to the 1910 Act of Union.

None of these fundamental constitutional issues were addressed during the negotiation process which produced the interim Constitution and preceded the April 1994 elections. Because of the failure of reaching this constitutional settlement, the IFP refused to participate in the electoral process until a breakthrough was reached on April 19, 1994 the solemn Agreement for Reconciliation and Peace was signed by President Mandela, Deputy President de Klerk and myself bringing about some constitutional amendments in addition to other amendments made on March 3, 1994. The Agreement provided that all the other outstanding constitutional issues and the claims and demands of the Zulu Nation for the restoration of a sovereign Kingdom of KwaZulu-Natal would become the object of international mediation to commence as soon as possible after the April 1994 elections. This solemn undertaking has been dishonoured, which caused the IFP to suspend its participation from the Constitutional Assembly which is drafting a constitution without the benefit of a constitutional settlement on the issues of federalism and pluralism having been reached by means of international mediation. The IFP has also given notice that it will not recognize the legitimacy of a constitution so produced.

This constitutional crisis is the background for the authoritarian and autocratic involution of our system of government. In fact, the ANC has inherited the autocratic and authoritarian legacy of form of government established during the apartheid era, and is actively working to expand on it so as to enable government to reach into and control all aspects of social and economic life. New labour relations legislation expands on the South African tradition of government's full involvement in labour matters, imposing centralized and nationwide corporative bargaining structures backed by a corporative statutory body operating on the basis of the coerced participation of trade unions, government, and trade and industry. Trade unions are given enormous powers, are subject to government registration and control and operate in a system characterised by agency shop and closed shop agreements.

The ANC is clearly bringing the labour relation and the productive system under government policy control. In addition, it is forcing a very pernicious plan of modernization of rural areas, based on forms of collective land property under government control and indirect administrations and on the state. This approach will sidetrack traditional leaders, transforming them into mere ceremonial figures under the control of the central Government, also remunerating them from the central Government rather than from their respective communities via the provincial Government. In doing so the ANC is bent to de-stabilize traditional communities creating a vast urban proletariat. The possible hidden purposes of this operations are somehow revealed by the fact that the ANC has proposed to eliminate from the new Constitution the present constitutional provision which protect the right of free-market entrepreneurship. Indeed, the ANC has proposed that the constitution should state that Parliament is the supreme law maker with respect to all "social and economic matters" which would open an enormous loophole in the notion of a rigid constitution which is the supreme law of the land.

The rule of constitutional law has progressively been eroded by the fact that the Constitution has been violated on many occasions, and when the violation would have been too egregious, on the basis of a few days procedure, the constitution has repetitiously been amended to fit the political agenda of the ANC. In this climate President Mandela has threatened to conduct unconstitutional house-to-house search and seizure though the Province of KwaZulu-Natal and to cut off central Government's funding to that Province. When faced with the fact that these actions are unconstitutional, the President threatened to tamper with the Constitution. The rule of law has also crumbled when President Mandela admitted that he gave the ANC snipers the order to shoot to kill the peaceful and harmless Zulus who marched in the proximity of the ANC headquarters on the day of the Shell House Massacre. Moreover the President avoided any responsibility for the fact that he obstructed and delayed the police investigation, also refusing to surrender the weaponry concerned..

The situation of violence against the IFP continues. After the integration of MK, the ANC's private army in the police and defence force, the defence force itself has been proven to have killed and tortured IFP members, merely on account of their political opinion. In the past few years over 400 IFP leaders and office bearers have been killed in a systematic plan of targeted assassination, and no one has been sentenced for any of these crimes. Over eleven thousand IFP members and sympathizers have also been killed in the low intensity civil war waged by MK against the IFP. People continue to die, and their lives are threatened on a daily basis. Very skillfully the ANC has orchestrated a propaganda campaign to blame the IFP for this violence, which indeed is destabilizing the IFP constituency and the IFP-led provincial government of KwaZulu-Natal. The local press has thus far refused to investigate the relevant fact and denounce what is happening in KwaZulu Natal.

The foregoing are just some of the main concerns rising out of the present juncture of South African politics. Many other issues are bound to come to the fore, because of the ANC's unwillingness to confront the fundamental issues of social, cultural and economic pluralism in our country. Moreover, I do not believe that we can respond to the enormous political pressures caused by the grave social injustice and imbalances of our country by resorting over and over to promises and government-driven centralized and bureaucratic solutions. The larger segments of our economy is under government control, while the private sector is characterised by monopolies and cartels. Demands for better social and economic conditions and greater direct political empowerment are mushrooming throughout our country, which has yet to develop a political vision capable of addressing them, establishing a truly modern and yet truly African socially conscious state.

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No. of pages : 5
(including cover sheet)

Message :
* Mr Stoll called for you (031) 7643498

* Kieren will be in Durban on Wed morning