

10 december 1992

INTRODUCTION A delegation of the ANC, led by the Secretary General, Cyril Ramaphosa, met with senior members of the NP regime, led by Roelf Meyer, from the 2nd to the 4th December, 1992. This meeting was the first of a two-part bilateral meeting with the regime. The second part of the bilateral is to take place during the month of January 1993.

The meeting was approached in the context of the recognition that although the ANC and the NP regime have different and often contradictory policies, there is a shared responsibility to ensure that a multi-party negotiated transformation from the present situation to a democracy takes place rapidly.

THE AGENDA The meeting dealt with the following items on its agenda: the status of bilateral discussions; multilateral negotiations; time frames: elections; the independent media commission; Interim Government; the Constitution Making Body; the Transitional Executive Council; free political activity; violence; and unilateral restructuring. In this regard, various formulations were prepared for submission to the respective principals for finalisation.

BACKGROUND The bilateral between the ANC and the NP regime comes at a time when it is crucial that solutions be urgently found to the crisis that South Africa presently finds itself in.

BILATERAL In brief, the present bilateral signifies a recognition by the NP regime that it is unable to secure an early resolution of the present crisis unilaterally. It is also an acknowledgment of the centrality of the ANC in the process of transition.

The meeting recognised that the ANC and the NP regime were two parties among many in a multilateral process in which all parties share equal responsibilities. The meeting further recognised that, as they have done in the past, the ANC and the NP regime may again enter into agreements that will be binding on them but not on other parties. In appropriate cases, the two may seek to pursue common objectives set out in such agreements as recommendations to promote in the multilateral forum as well as in bilateral consultations with other parties. The two parties shall not seek to impose their ideas on others.

STATUS OF

BILATERAL

DISCUSSIONS

Detailed here below are the various proposals of the ANC that were tabled for discussion at the bilateral.

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TIME FRAMES The ANC proposes that elections take place towards the latter part of 1993. To achieve this, the following would have to be negotiated:-

1. a properly structured agenda and structure for multilateral negotiations;
2. restructuring of Codesa so as to ensure that it is more representative and is able to efficiently arrive at decisions;
3. that all proposals be tabled before Codesa in the form of draft legislation..

The following steps are necessary prior to elections: Codesa be reconvened, multilateral agreements concluded, legislation enacted to give effect to those agreements, and to enable the establishment of the Transitional Executive Council, Electoral and Media Commissions, transitional constitution and the electoral law.

Our main objectives in bilateral negotiations on broadcasting remain unchanged, namely to end SABC and TBVC broadcasting bias by establishing independent control and regulatory structures and ensure a free, fair and independent media. The objective is to ensure that the SABC, as a public broadcaster, is insulated from manipulation by any quarter.

The new SABC board, which is to take office in March 1993, should be appointed by an independent panel of eminent persons who are not office bearers of any political organisation. This panel in turn should be established by a process as distant as possible from the political organisations - preferably by the Independent Media Commission.

The Transitional Executive Council should be installed by agreement reached at Codesa. Its tasks would be to ensure that the playing field is leveled and that conditions for free and fair elections prevail. In this regard it would be necessary to strengthen the agreements entered into in Working Group 3 of Codesa.

Bantustans

Clearly, ensuring a free and fair political climate in the bantustans will be one of the most critical issues in the period of electioneering. The ANC proposes that consensus be reached on the following:-

1. A national framework for the elections and the powers of the Independent Elections Commission;
2. An over-riding electoral law that will, inter alia, address freedom of assembly and association, intimidation, use of public media, use of public facilities, access by canvassers to all areas including private property where employees are housed, the holding and conduct of meetings and the powers of policing agencies. The law should also empower the Electoral Commission to engage in effective monitoring and control of overt and covert public funds;
3. A national system for lodging complaints, compelling redress or remedy;
4. A single command structure for the police and security forces.

TRANSITIONAL

EXECUTIVE

COUNCIL

CREATING A

CLIMATE FOR

FREE AND FAIR

ELECTIONS

Repressive & Discriminatory Legislation

Repeal and amendment of all repressive and discriminatory legislation.

Covert Operations, Special Forces and Hit Squads

We need a mechanism for independent scrutiny, monitoring and investigation of covert operations and any budgetary allocations that have been made available for any covert work. This function should be entrusted to the Goldstone Commission, or any other Commission as may be appointed, acting together with the international observer teams. Such a structure would have to report to the Transitional Executive Council when it is installed. The National Security Management System and all other structures which are inconsistent with searching for a negotiated solution must be dismantled at all levels. All Special Forces must be disarmed and confined to barracks.

The TBVC areas should be reincorporated and citizenship of its people restored. The ANC proposes that such citizenship be restored before the Transitional Executive Council structures begin to function. Legislation to this effect must be passed by the regime.

#### 1. Reincorporation

Reincorporation should take place on the same day that the Interim Government is installed to ensure that these areas are reincorporated into the new political and constitutional order. Each one of the TBVC areas should be collapsed into the electoral regions which are still to be agreed upon for the purposes of elections.

REINCORPORATION OF THE

TBVC AREAS

TBVC AREAS

#### 2. The TEC and the TBVC areas

The TEC and its sub-councils should have jurisdiction over all the TBVC areas. They should participate in the TEC and its sub-councils as well as in the National General Election for the Constituent Assembly and the Interim Government. All armed formations should be brought under the joint control of the TEC and later the Interim Government.

The principles of the Electoral law for the first non-racial election were discussed. If confirmed by both principals a draft electoral law, based on the following principles, will be agreed to. This draft would then be placed before Codesa for approval. Such an electoral law should make provision for the framework in terms of which the elections will be conducted. In addition to the specific powers and functions of the Independent Electoral Commission the electoral law should make provision for the following matters:

1. How the Independent Electoral Commission will relate to the Transitional Executive Council to ensure that the elections are free and fair. This should include security for the participants in the election, and the command and deployment of security forces prior to and during the election.

2. The right to vote, which should be given to all South African citizens who have reached the age of 18 and living within the 1910 borders of South Africa. Special provision should be made for returning exiles and their spouses and for persons who have been ordinarily resident in South Africa for a continuous period of 5 years, but are not citizens.

3. The identification of voters, which should include SA/TBVC identity books and voter identification cards to be issued, by the Independent Electoral Commission according to criteria to be formulated by it.

4. Deposits to be made by parties wishing to participate in the election and the forfeiture of such deposits by parties which do not secure a minimum percentage of votes.

5. The establishment of a campaign finance fund to be controlled by the Independent Elections Commission. Parties can secure reimbursement of expenditure from the fund after election, and the "share of the fund" available to each participating party, will be in proportion to the number of seats won.

In addition, the ANC proposes that the first non-racial election should be held within six months from the date of the installation of the Transitional Executive Council. It would also be desirable if the elections be held over three days, one of which to be declared a Public Holiday.

All political parties intending to participate in the election should register with the Independent Electoral Commission. This body should be made up of between 7 and 11 suitably qualified South Africans. No person serving in this Commission should be an office-bearer of any political party or organisation and should serve in a full time capacity. The Commission should also be able to invite qualified experts from international bodies to assist it in its work. The Commission should have a budget of its own.

ELECTIONS

The proposal of the ANC in this regard has been developed as follows:-

1. Legislature

The elected Constituent Assembly will also act at the legislative arm of the Interim Government and would take its decisions by a simple majority

2. Executive

Composition and Structure - Cabinet shall be composed on a proportional basis of nominees of political parties whose representation in the interim parliament/ CA exceeds 5% of the total membership. The State President will be elected by a simple majority of the interim Parliament.

Decision-Making - The executive authority of the Republic shall vest in the State President acting in consultation with the Ministers who are members of the cabinet.

1. Composition

The Constituent Assembly shall consist of 400 members elected on the basis of proportional representation through national lists.

Alternatively, half the seats would be allocated through national lists and half through regional lists. In this event the country would be demarcated into electoral regions purely for the purpose of the first elections. The ANC would propose that the four provinces be used as electoral regions.

INTERIM

G OVERNMENT

OF NATIONAL

UNITY

CONSTITUTION

MAKING BODY

2. Threshold

Only those parties who receive at least 5% of the votes would qualify for representation in the Constituent Assembly.

3. Decision-Making

The Constituent Assembly will take all decisions relating to the adoption of a new constitution by two-thirds (2/3) majority.

4. Time-frames

The elected Constituent Assembly shall adopt a new constitution within nine months from the date of commencement of its meetings.

5. Constitutional Panel

A Constitutional Panel consisting of a maximum of 11 suitably qualified persons shall be appointed, as a whole, by the C.A. to determine disputes about the application of the general constitutional principles.

6 Constitutional Principles

The C.A. would be bound only by the following constitutional principles:

. South Africa will be a united, democratic, non-racial, non-sexist, sovereign state in which all will enjoy a common South African citizenship.

. The constitution shall be the Supreme Law.

. The diversity of languages, cultures and religions will be acknowledged.

c There will be a separation of powers between the legislature, the executive and the judiciary with appropriate checks and balances which may include parliamentary control of the Executive.

. There will be representative and accountable government embracing multi-party democracy, regular elections, universal adult suffrage and a common voters' role.

. The judiciary will be independent, non-sexist, non-racial and impartial.

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CONSTITUTION 6. Constitutional Principles (continued)

MAKING BODY 0 Government shall be structured at national, regional and local levels:  
 , . At each level there shall be democratic representation;

(contmued) . The national and regional levels of government shall have appropriate legislative, executive and fiscal powers (or appropriate access to central funds), duties and functions to be set out in the constitution;

. In addition to the powers, duties and functions set out in the constitution, the national and regional levels of government may delegate powers, duties and functions to the lower levels of government;

0 Powers, duties and functions may be concurrent;

. Central government shall have overriding powers in all matters that have not been delegated exclusively to the regional level of government, provided that the Constituent Assembly decides what these matters are;

. The general principles of the constitution, including the terms of the Bill of Rights shall apply to each level of government.

0 The constitution shall provide for effective participation of minority political parties consistent with democracy. This principle does not imply or reject a constitutional prescription for the participation of minority political parties in any executive structure of government.

0 The constitution shall provide for the promotion of the improvement in the quality of life of all South Africans by enabling economic growth, human development, social justice and equal opportunities for all;

. The constitution shall define a suitable role for traditional leaders consistent with the objective of a united. non-racial, non-sexist and democratic South Africa.

0 There shall be an enforceable Bill of Rights which shall ensure inter alia:-

Internationally accepted human rights and freedoms;

Civil liberties including freedom of religion, speech and assembly;

Equality before, and equal treatment under, the law. Affirmative

action measures shall be deemed not to contradict the equality

principle;

4. Measures to help address the racial and gender inequalities caused by past discrimination;

5. The protection of workers' rights;

6. The protection of gender rights;

7. The arotection of children's riohts.

The state and public sectors are currently being restructured. The objectives of such restructuring are:-

. to entrench the position of current civil servants and allies of the apartheid regime and

. to limit the ability of a democratic state to address inequalities.

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UNKATERAL

RESTRUC-

iTURING

The ANC insists that restructuring of all sectors ceases forthwith.

Where particular instances of restructuring is unavoidable, there should be bilateral ne otiations about these. .

The above proposals would be discussed further at the second part of the bilateral with the NP regime in January 1993. In the meantime, the channel of communication between the Secretary General of the ANC and Roelf Meyer for the regime would continue to meet to prepare for this bilateral.

GENERAL

The success of the bilateral would depend on the agreements reached with the reoime durin- the second art of the bilateral.