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There is some confusion and even doubt over the wisdom of our calling for an interim government. Many of our supporters see this as leading to some form of cooption, when the object is in fact to achieve precisely the opposite.

Those that recognize the object nevertheless doubt the possibility of its achievement. Consequently, they too tend to assume that the outcome could be undesirable

The sequence of the development of the peace process

There is a degree of confusion over the way in which we see the process unfolding. It may therefore be worthwhile to briefly outline the sequence of events:

- a. The removal of the obstacles in the way of negotiations
- b. Negotiations over the principles that should form the basis of the new constitution, agreement over the basic objectives [section 16 of the Harare Declaration, basically a nonracial, democratic state] and the transition mechanism
- c. Establishment of an interim government
- d. Election to a Constituent Assembly

Nd.

e. Adoption of a new constitution

f. Election of a new government under this constitution

What is at stake in this question?

Whoever manages the process of transition can determine the extent to which the process is democratic and also condition the outcome, the extent to which the negotiating table is actually used to satisfy popular demands. For us, both the process and the result must be democratic.

government that person does so under fundamentally different condition from the existing government

The government is naturally adamantly opposed to this demand precisely because it wants to manage transition in a way that does not concede full democracy. It also claims that transitional authorities and constituent assemblies are inappropriate in a situation where we confront a sovereign and independent state. While the achievement of an interim government is not going to

depend on legal niceties, it is important that we do not simply accept these claims of sovereignty and independence. In 1910 Britain handed over South Africa to the white section of the population. That was legal then, just as slave-based states were legal at one time.

80 years later international law considers the creation of states through the denial of self-determination as contrary to rights from which there can be no deviation. In other words, forcible denial of self-determination to a people is regarded as equivalent to slavery and genocide -internationally criminal. A state created on such a basis, it can be argued, is illegal today, irrespective of the legal status at the date of its creation. [This leaves aside additional arguments that can be harnessed in the light of the internationally criminal character of apartheid itself]

For us, an interim government must ensure that transition is towards national liberation and peace. The continued rule of the Nationalist government over this period can ensure that transition ends with something less than a nonracial, nonsexist, democratic state.

What are the various options?:

a. The existing government controlling the entire process. i.e.

being left to decide on the limits of freedom of speech, political association and movement. It would be their responsibility to ensure that security forces operate fairly etc

Little imagination is required to conclude that they cannot be relied on to ensure that they meet their obligations. In fact, they have an interest in ensuring that the process is used in a way that favours their own goals. They have shown in Namibia, in the run up to independence, that they are quite willing to use state powers to favour those whom they support and to obstruct their opponents. Even in the period of talks about talks, within the country, the government has consistently used its powers as a government, to dictate the terms of agreements, or modify what has been agreed by itself in meeting with the ANC. [See article in February Mayibuye, page 18: Hostages in the government's hands]

For that reason, Deputy President Nelson Mandela has said:

Since the signing of the Pretoria Minute, we have come to recognise that our own commitment to see the process move along as swiftly as possible, is not yet matched by that of the government. It is becoming increasingly clear that, in spite of our initiative, the government is dragging its feet in carrying out its undertakings to clear away the obstacles in the path to real

negotiations.â\200\231

b. The involvement of some outside party. Do we want this? Will we be able to determine the composition of such an outside body? It
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Commonwealth interim authority. This is especially so if it is constituted at our suggestion. Yet the mechanisms of international politics are such that the composition of these forces is often dominated by people from reactionary states

The key question is control over the process. Through control you can ensure that the goals of the process are met. Through others acting as guarantors of this process, your influence is only indirect, as a petitioner

c.An interim government, comprising the â\200\230major playersâ\200\231in the South African constitutional negotiations.

An immediate problem is how and who is to decide, who the major players are?. At the outset, one can say that the ANC and government are major parties. But does Inkatha get included and PAC,AZAPO etc? What will be the implications of excluding any or all of these?

This will have to be discussed more fully within our own ranks and our final position will have to be struggled for. The value of the suggestion for the convening of an all-party conference/congress may be that it will be a forum that can ensure that the establishment of an IG is not an ANCâ\200\224NP government arrangement alone.' This relates to the factors that should, I think guide us, ' _' _â\200\224" In" ' thEâ\200\230tomp o S i t i on O f an ' IG 2â\200\231 ' " "â\200\235â \200\224_ 'â\200\224" _ â\200\231 "M â\200\230 _' _â\200\234â\200\230_" " _'" _â\200\224 i. The IG must enjoy authority and for that it must be representative

ii. It must enjoy legitimacy and for that. it must primarily represent the majority of the people and therefore, not fringe groupings or those entirely antagonistic to the objects of the process. Where one draws the line is debatable, especially when .there has not been a test of support of all the parties 3

iii VThe interim government must function effectively and this is where the need to include other parties is important. There is no point in representativity and legitimacy and indeed legal authority where there is not effective operation of such a government. It becomes necessary, therefore, to include all parties whose contribution is essential to the achievement of the tasks of the IG. If Inkatha will have the capacity to destabilise a government through inclusion, it must be out. If it is more likely to

destabilise from outside its inclusion must be considered

The interim government is not elected and considerations other than representativity have to come into play especially when one is considering the question of effectiveness. We can learn from the example of the United Nations. When it was established, one forum, the General Assembly, provided for all states to be represented on the basis of equality. In contrast, the Security Council provided for 5 powers to be permanent members with a right of veto or put positively, whose consent is required for many crucial measures to be adopted.

This was necessary because these powers were in the best position, because of their military strength, to make a contribution to world peace and the avoidance of war.

In the same way, we have to depart from the principle of representativity' where it can make the tasks of the IG more effective

Object of the Interim Government

It is crucial to achieve clarity on this, how we understand the concept of an IG. If we don't have a common understanding the way is open for continued confusion. We need to define an IG in a way that leaves no doubt that it is completely different from cooption,

in fact, as said at the beginning, directly contradictory to that.

The object of the IG is not merely to oversee an election process and ensure impartiality. It is impartial in terms of freedom of political activity and the election process. But it must be very

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It is essential that we have :3 common understanding that the

objective of the process, seen as a whole, is to achieve a nonracial democratic state. The principles guiding the process of negotiations remain those set out in Article 16 of the Harare

Declaration. This requires the transfer of power to the people.

The IG, despite being a caretaker administration, must be conceived and should act to get rid of remnants of apartheid, as part of the process of democratisation. The IG is not a recipe for â\200\230power sharingâ\200\231 nor dual power. It must focus itself on the transfer of power. The duty of the ANC to ensure the transfer of power to the people is stressed in the recent keynote address of Cde Nelson Mandela at the opening of the December 1990 Consultative

conference:

â\200\230We have repeatedly made it plain that in the eyes of the 8 % of the South African population who were born black, this government and its predecessors since Union, based on the will of a minority, have no moral claim on

authority. That being the case, it is our absolute and inalienable right to employ every legitimate device to ensure that they transfer power to the people as speedily as possible. the ANC shall under no circumstances compromise this universally recognised right of our people.

The demand for an Interim government is the most revolutionary demand of the day because it displaces the illegitimate existing government and, also, because it does that without an open mind as to the outcome. The outcome must be agreed majority rule.

We are not the only ones thinking about this

We need to be fully aware that it is not only us who are thinking about this, but also the other side. We need to be aware of the possibility that they will try to pre-empt our plan for an IG, with something that bears an outward similarity to it.

We need to be sufficiently astute to recognize what is wrong and respond in a manner that enables the South African public to see this. Better still, we should, through struggle articulate a conception of an IG which becomes dominant. Instead of us having to displace their bogus scheme, they would have to try and sell

theirs against the background of ours.

Moves of the SA government

The government has already taken steps to forestall our demand.

They have made constitutional changes allowing for the appointment

of a black cabinet ministers. They are presently talking of a new

partisan 'riot control' force. They are planning to release

ministers to work full time on negotiations, removed from the cut

and thrust of daily politics. This is meant to create an

appearance of a distinction between those involved in government as

a government and those who represent the Nationalist Party as full-

time negotiators. There is talk of the formation of

a 'super cabinet' which would leave existing power relations intact

but would provide for inclusion of ANC leaders as part of the

existing authority.

We need to anticipate the tactics they may employ. One of the

characteristics of the FW de Klerk period has been an attempt to

pre-empt our demands by making dramatic gestures meeting aspects of

the demands. In this situation not accepting what is offered

appears petty. Take for example the release of the leaders. This

received so much publicity that it was used as the reason for

lifting sanctions etc. The significance of Cde Mandela's release

dwarfed the continued incarceration of thousands of others.

The government bottom line on an interim government, at this stage, appears to be one where they remain fully in control but draw in leading ANC figures at various levels. If it can remain symbolic, one should not be surprised if ANC leaders are offered very high governmental positions. This would be a very dramatic gesture and the pressures would be very great for us to accept.

To avoid being trapped we need our conception to be very clearly elaborated and popularised, so that ordinary people understand the need and character of the demand; Attempts to meet it in part must be exposed against a clear understanding of the need that has to be met and the minimum conditions for achieving this

We would need to be able to explain that if the .existing constitutional order remains intact, any transitional arrangement would be cooption and the goal would definitely not be transfer of power.

Another possibility is that the government may claim to recognise the untenability of its being a player and referee, but offer as a mediating party, some body or individual, directly accountable to themselves e.g. the SA Law Commission. This was the sort of idea grasped onto in relation to the judiciary, by Dr Zac De Beer after the judgment in the Neethling trial.

A mediator may be necessary, but a mediator is not an interim government nor a constituent assembly. It is not even necessary to show the lack of independence of some of such officials. All we need to do is ask what has to be done. Can it be done by the law commission or a judge. The answer is no.

What are minimum requirements for an IG, following objectives?

*The way that the IG is structured, its powers and its functions must provide for the ANC, SA-government and all other participants to relate, within the government, on the basis of equality of status and power. There must be no possibility of one party making the decisions and others bearing responsibility for these. There must be no chance of us taking responsibility for actions which we do not authorise

*There must be clarity regarding the relationship of the IG to the existing legislature, executive, judiciary, other areas of administration, the military, the police and the civil service. Put briefly, the IG cannot compete for power with the existing parliament. The present parliament must go, as must the present cabinet. Within an interim arrangement one cannot go much beyond

that. In other words, one cannot at this point in time, take over all elements of administration. That requires an election and will be part of a comprehensive policy implemented after liberation. An interim government cannot start to implement a total social programme. There is also too little time to integrate the security forces

Nevertheless, all sections of the administration fall under and are directly accountable to the IG. Problems there will undoubtedly be, but the principle of responsibility needs first to be clearly understood. The interim government will be the supreme legal authority, to whom the security forces and the civil service would be accountable.

*There must be clarity as to the objectives, along the lines of those found in Article 16 of the Harare Declaration. We need to see this as part of a process with a definite objective. Where that objective is not shared, there is no possibility of negotiations succeeding. That there is not such agreement now, does not mean that the possibility of agreement is never going to be there. Logic, supplemented by judicious mass action, sometimes has a powerful persuasive effect

'Agreement over objectives does not refer to detail. For example, there may be agreement over universal suffrage, but whether or not there is to be a unicameral or bicameral parliament, may still

need to be negotiated.

*There also needs to be agreement as to the precise steps required to achieve these objectives, so that disagreement as to routes to be taken are reduced to a minimum

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The IG would have to demarcate constituencies, decide on the voting system, broad guidelines for the election process etc.

*There needs to be agreement as to the time frame involved in the existence of an IG. The likelihood of sabotage is increased over time. At the same time, there must be sufficient time for the IG Itoâ\200\230create the framework for transition

*The responsibility of each party needs to be clear

*The Interim Government would have to take control of public corporations, including the SABC and ensure that their use was compatible with freedom of political activity and not to prejudice any legitimate political forces

THE DEMAND FOR A CONSTITUENT ASSEMBLY

The entire alliance and probably the entire democratic movement, PAC, AZAPO, WOSA, progressive Bantustan leaders like General Holomisa and numerous others have declared their support for a constituent assembly as the appropriate mechanism for the creation of a new constitution. It is at this point of time both a key democratic demand and also a key unifying factor. We need however to guard against assuming that this is all that can bind us to these other forces, and because there is not the same degree of unanimity around the demand for interim government, erect the campaign for a CA as the campaign of the day. [The tendency of some of the propaganda on February 1st had that effect. In particular, the slogan suggesting that the CA is the first step to a People's parliament.]

Before elaborating on the demand for a CA let us briefly consider alternative ways of making a new constitution:

*The government favours a multiparty conference as the appropriate negotiation forum, a forum where the support that parties command will not be accurately measured, where consensus will have to be achieved between forces with massive and demonstrable support and those with little or no support.

In such situations the question of compromise gets erected into an overriding and permanent good, when in fact compromise is dictated by the way in which the negotiation set up has been arranged. In the Lancaster House negotiations the EWâ\200\230 was forced to accept reserved seats for whites, not because this was a justified compromise, but because the way the Lancaster House negotiations were arranged=9du_EI:â\200\224Â§_EsÃ© _'.CÂfe_m_[11_l_t,_iï-\202l_et_e_11____e.9sitÂ»!ing_91%_o t_tha black

vote] as the equals of the Muzorewa puppets [who ultimately received a mere 3% of the vote in the black elections.]

The ANC is prepared to compromise and to take steps to ensure that we achieve not just an ANC constitution but a truly South African constitution. But that does not mean seeking consensus at all costs with grouplets which may have no support whatsoever

The fact that a large percentage of the population supports the constitutional vision of one or other party is a factor that must be taken into account in the outcome of negotiations. This becomes irrelevant in a round table conference.

For these reasons it is essential that we do not allow the All Party Congress that we are seeking to be transformed into a negotiating body. We must anticipate that there will be considerable pressure, locally and internationally to take that path. We need to prepare for it and ensure that we cannot be depicted as unreasonable in insisting on a democratic constitution-mWIï-\202aw

making process

*Another alternative constitution-making mechanism is to have a deal struck between the ANC and the government, possibly one or two other groupings. The result may be a very fine constitution, reflecting our fundamental aspirations. This would then be submitted for ratification by a nonracial referendum. It is important that we do not take this option. The result may be democratic but the process would not be.

The people need to feel that they have been part of the process of creating the new SA, including making its first democratic constitution. We must not score a victory on their behalf.

The demand for a Constituent assembly is a demand for normal democratic practices to be brought to bear in the negotiation process. We are saying that people should elect, by one person one vote, representatives to a constituent assembly. The representatives would be elected on the basis of what they stand for and the type of constitution their organisation favours. If the people favour Inkatha and they get 70% of the vote it means that Inkatha gets the democratic right to have a dominant say in the shape of the constitution.

Equally, all people and parties have the opportunity to be elected, provided they obtain some percentage of the vote. The CA approach

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to constitution-making is therefore, both inclusive and democratic.
It is essential that an interim government be speedily installed to
oversee elections to a Constituent Assembly. This would enable us
to make a constitution of lasting significance.
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