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Number 93

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 proportionai representation at a constitution making body, legislature and national government for the transitionai phase which win include a national and regional component;  
the election of regional iegislatures and the establishment of regional governments in the transition:

' the powers, functions and structures of regions for the transitional period;  
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' fundamental human rights;

t a constitutional court;

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

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The foliowing structures are envisaged in the recommendations:

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' A Constitution Making Body (6MB) 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 regionai list;

" A Senate which is made up of 10 representatives from each of the regions andisindirectly electeq fromlthe Regional Legislatures; i

' 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 biuameral in that oii legislation must he passed by both the National Assembly and the Senate.

' RegionalLegisla-tures -The Commission . u: I Region: 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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30 July, 1993

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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 region and the various powers, functions and duties of regional structures.

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The Election

The election would:-

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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.

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Constitution Making Body

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The body that would draft and adapt the Constitution (Lo. 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: a f

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 (Le. should there be 8 regions

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

Time Frame: - 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

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Interim Legislature

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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 Senate.  
of that particular region.

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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.

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Regiona/ Executives

' 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

' inconsistent with the national constitution or constitutional principles and must be approved by the Constitution Making Body.

## Outstanding issues

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 Newtiating Council.

2. Implementation of the Transitional Constitution - The draft outline pievided 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 developed.

3. Citizensz 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 Negotiations Committee and detailed instructions are to be given to the Committee.

5 Fundamental nights - 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

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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. 5

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

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

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DRAFT INTERIM C ONSTITUTION  
RECOMMENDED BY THE TECHNIL  
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CMB O  
" 'Juicameral  
2 200 22001- 80!!!)07-480500  
NAT. ASSEM-  
BLY  
200 - National List  
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REGIONAL LEGISLA-  
TURES (3- 10)  
Votes: No. of seats  
50 000  
Regional Constitutions,  
if any, subject to approval by CMB.  
Interim  
Legislature  
Interim Regional  
Governance  
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