
TOWARDS A NEW CONSTITUTION FOR SOUTH AFRICA

Why the IFP rejects a constituent assembly

With the remnants of statutory apartheid soon to be abolished, South Africa is moving closer to the dream of a truly democratic society. But fierce debate is raging on how a new constitution for South Africa should be formulated. The African National Congress/SA Communist Party alliance argues that this should be done through the mechanism of a Constituent Assembly. But as Inkatha Institute Director DR GAVIN WOODS points out, this route is fraught with pitfalls and loaded with potential for conflict...

The Inkatha Freedom Party has a number of objections to the demand that the future constitution of SA be formulated now via the mechanism of a proportionately-elected sovereign constituent assembly (CA) under the control of a similarly-structured interim government. These objections can be subsumed within the following four categories:

- The concept of negotiations,
- Present power relations,
- The potential for conflict, and
- The democratic nature of the process.

1. The concept of negotiations

Those proposing the CA mechanism appear to ignore the concept of negotiations connoting compromise, give and take, and bargaining. Successful negotiations ideally suggest a win-win scenario rather than one characterised by a win-lose result.

A CA could limit such vital multi-party negotiations because a party dominating the CA numerically could dominate the writing of the constitution, and because such "negotiations" could well minimise the scope for compromise and consensus. And, given current abnormal circumstances in

Demand for CA was not part of Harare Declaration

South African politics, such domination is possible.

From the perspective of the government, it has to be asked whether there is any point in agreeing to a negotiating mechanism which could well see it rendered impotent, where its input can be ignored.

Furthermore, the very positive and crucial process whereby political extremes are at present being nurtured towards greater convergence could be threatened by CA elections, because elections would be fought *more on rhetoric than on clear relevant issues*, thus locking parties into confrontational positions dominated by their militants. This would negate future attempts to compromise on the settlement being negotiated.

Additionally, the IFP is convinced that a negotiations process characterised by genuinely representative constitutional debates would be premised upon willing and free participation by all. It would be unhealthy for small parties to be intimidated and inhibited in expressing their views; unproductive for parties to compromise their principles by forming expedient alliances merely in order to block a dominant party gaining a unilateral advantage; and unfortunate if the quality of the debate were debased in order to play power politics and to secure the ascendancy of a single party over all.

It is interesting to note that the ANC's Harare Declaration makes no mention of a CA. Instead, it states that "the negotiating mechanism should be negotiated." A CA should thus not be elevated to the status of a precondition which is the implication behind the ANC's demands and its mass action campaign.

2. Existing power relations

The CA mechanism ignores critical realities. The NP and other political parties, and even the UN General Assembly have rejected any negotiating mechanism which ignores the current balance of power, which, contrary to the beliefs of some, is not based solely on numbers. The idea that one can legitimise a new constitution as technically *democratic before it is written and on the basis of numbers alone* is dangerously short-sighted. The real politik of SA is that without President De Klerk's constraining

influence, the white right wing/military has the potential to destabilise SA and to undermine any settlement. Just as the ANC must be strong enough to sell a settlement to its followers, so too must De Klerk. A CA, however, undermines this and thus threatens the potential for a settlement.

Those proposing the CA disregard the fact that the government is negotiating from a position of strength rather than weakness. Even though the mid-1980's urban uprising was crushed, the ANC's bases were pushed *north and the ANC admitted it lacked the capacity to intensify the armed struggle*, its militants

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act as though the government is about to be vanquished at a CA negotiating table. However, not only can SA not afford to allow winner-takes-all politics at this delicate stage in its history, but more to the point, the present regime, perhaps the most powerful on the continent, has sufficient power to resist it.

SA is in the midst of a power stalemate – the State cannot perpetuate minority rule, but the majority cannot overthrow the present government. When a power struggle between parties cannot be resolved by force, there is no automatic situation whereby opponents negotiate a settlement on the basis of numbers alone. Numbers cannot be the basis of the parties agreeing on new "rules of the game". Instead, the conflicting parties should accord each other equal status and negotiate on those terms. In SA, where the existence of several parties complicates the negotiations process, the same principle nevertheless applies.

3. The potential for conflict

There is a popular automatic correlation between elections for the CA and the composition of the first post-apartheid

Reconciliation must come before elections

government. This is so (a) because the CA victor is perceived as almost certainly underwriting its initial advantage into the new constitution in a way that will play to its constituency strengths (on issues such as electoral systems, devolution of power, restrictions on free political activities, etc); and (b) because if one contestant historically seeing itself as *the* representative of the people is already guilty of hegemonic politics in the pre-liberatory phase, as a CA victor, it is improbable that it would not further cement itself as the government-in-waiting by claiming victories throughout the constitutional development process at the expense of all other parties.

Heightened political tensions must therefore characterise these elections. That is, they would swing the negotiations process away from reconciliation towards conflict.

Because liberation movements view the CA as a mechanism for the transfer of power from "the regime" to "the people", and because negotiations to the Charterists are but another form of struggle, there is some suspicion that the major section of the ANC is less concerned with the national interest than it is with gaining power. Because negotiations have long been promoted by the ANC in "liberator" vs "collaborator" terms, there will be heightened conflict, violence and instability. And this could come from two sources.

If the ANC is already fighting the PAC, AZAPO and IFP in this pre-electoral period, an actual CA election could be catastrophically premature. And if the right wing is already destabilising the country through third force violence, then this is likely to intensify.

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The stakes are simply so high that elections free from violence and intimidation are virtually impossible. Together with current levels of euphoria, hatred and distrust, the result must be an explosive contest for power that threatens both negotiations and stability. What SA needs now is a democratic constitution rather than a contest for power. Elections must come later.

4. The democratic nature of the process

There is a suspicion that some of those promoting the CA mechanism are more concerned with expediency than with democracy. For instance, the juxtaposition of negotiations taking place within the context of a liberation struggle cannot be separated from a frequent insistence upon negotiations in stark bilateral terms – "the people" vs "the regime". (see ANC statements). This is a denial of democratic choice – why can't traditionalists vote for a more conservative representative without being denounced as traitors? Why must every homeland leader support one party? Is federalism really a crime? Given the history of interecine intolerance in SA, it seems unlikely that this "us-them" approach will be replaced by democratic tolerance and the encouragement of a pluralist political culture in the context of CA elections.

Again, there is some confusion over the term 'democracy'. From the Freedom Charter of the mid-1950s to the ANC's draft economic positions of 1990, an elite has drafted policy for subsequent ratification. The ANC knows that in representing its members, leaders do not simply follow instructions from below – they lead. If this were not the case, there would have been no armed struggle, no Groote Schuur Accord and no Pretoria Minute. Had President de Klerk told his constituency in the last white general election that he was going to unban the ANC, SACP and PAC, Treurnicht would probably now be President. But though people on all sides called "foul", representative democracy works that way. Does the ANC really believe that representation via a CA is the only democratic option? What about a post-negotiating referendum to ratify and legitimise a proposed constitution? How about options being put directly to the electorate?

In any event, the product of a CA is not necessarily democratic in that the process puts the cart before the horse. A CA-determined constitution cannot be said to enjoy popular legitimacy once it is formulated because it did not exist at the time that the CA elections are held.

Since the new constitution is likely to embody compromises which modify parties'

Dangers of violence and intimidation in premature elections for Constituent Assembly

official election manifestos, to ensure that it is legitimate, the populace must be offered the opportunity to ratify the constitution directly, in a referendum, for instance. People opposing a CA question the motives of those not wanting this direct endorsement by the people.

Also, one must ask whether the ANC is being particularly consistent in its demands for a CA. If the Harare Declaration finds it acceptable that the ANC and "the regime" agree on constitutional principles prior to their being fleshed out through an agreed mechanism (to the ANC, a CA), then by extension, the proposed "all-party conference" can fulfill this preparatory role. But one must then ask: if a non-CA (and thus supposedly non-democratic) bilateral or multilateral agreement on fundamental constitutional principles is acceptable to the ANC, then why is an expanded version of this – such as a national convention – inadequate to formulate the constitution itself? The ANC is in effect proposing a 'non-democratic' process to formulate and agree on principles which will in turn dictate to the pure democratic process (CA) it insists upon, severely circumscribing the sovereignty of the people. A case of mixed morality?

Conclusion

Perhaps it is important for the IFP to remind other political organisations of the lessons learnt from the only remotely significant experience that South Africa has had regarding multi-party negotiations within a constitutional development process – the Natal/KwaZulu Indaba – at which ninety five percent of the ideologically diverse participants (representing a significant cross section of South Africa's interest-groupings) were after nine months able to agree on a detailed constitutional model. Opinion polls at the time suggested that if the South African government had allowed the Indaba proposals to be put to the regional electorate, they would have been accepted by at least eighty percent of the adult population.

The fundamental lessons of this success story were:

- Invite parties with a recognisable constituency of reasonable size; and
- Allow the parties to settle down without any initial pressure for them to perform. Let them voice their pent-up grievances towards each other, and let them come to the table with their pre-conceived positions. Experience firmly demonstrates that participants will work through their initial hostility and distrust if there is the will to do so, in the process coming to realise that other parties' perspectives deserve to be considered and are not simply stupid. A mood of reconciliation then emerges, followed by common commitment or will to achieve a mutually acceptable result. Thus the setting is appropriate and conducive for real and fruitful negotiations.
- Within the multi-party deliberations small parties feel free to express themselves, but display an almost natural appreciation of the status and significance of the large parties.
- Decisions are reached without intense power plays, without false posturings and without contrived politicising. Therefore decisions are likely to be popular decisions. Should this Indaba format be followed in the formulation of a new South African constitution, it would be to the benefit of all. It will be particularly important to keep the people regularly and fully informed of progress made, orientating and even educating many as to the real issues being debated and addressed. This will help to replace euphoria-driven expectations with a more considered appreciation of what should or should not be done. In this way, the vote of the people in a post-negotiations referendum will thus be more realistically based than it would otherwise be. And finally, this would clear the way for the subsequent general election, contested on the basis of the political organisations' manifestoes reflecting their intentions as the future government. Most importantly, this political contest only takes place once inter-party reconciliation has taken place and once a minimal level of political understanding has been achieved by the electorate in a normalised rather than liberatory political environment. The Constituent Assembly approach is likely to achieve the exact opposite.