

CONSTITUENT ASSEMBLY AND INTERIM GOVERNMENT.

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Q:What is a constitution?

A:A constitution deals with the rules of government, who has rights and what these rights are, how the country is run etc.

In South Africa, the apartheid constitution deals with rights for whites only. They make the laws and these laws are used to oppress and exploit the black majority

Q:What type of constitution does the ANC want in its place?

A: The ANC wants to see a constitution where 'The People Shall Govern!', where all have the vote and all have a say in making the new South Africa. We want all South Africans to participate in making this constitution so that it will not simply be an ANC constitution but a truly South African one.

Q:But has there ever been any constitution made by the people?

A:Certainly there has never been a South African constitution made by the people. Every South African constitution has been imposed from above, starting with conquest. There are examples of countries where there has been popular participation.

But perhaps we should rather look at our own history for inspiration. The Freedom Charter is not a constitution, but the way it was made shows how ordinary people can be involved in deciding issues vital to their lives. Some 36 years ago millions of South Africans were involved in a process, through which they explained what they disliked about apartheid South Africa and what type of conditions they wanted in a future, democratic state.

To make a democratic constitution also means involving ordinary people in discussing and saying what they want in their future.

Q:But how can you achieve this in making a constitution?

A:The Constituent Assembly is the democratic method favoured not only by the ANC but also PAC, AZAPO, WOSA and most democratic formations.

The Constituent Assembly will have the sovereign power to make a new constitution. Delegates will be elected on the basis of one person one vote and these delegates will be mandated by the electorate as to the type of constitution wanted.

Delegates will of course be representatives of organisations. If an organisation gets a high percentage of the vote it will get a larger say in the way the constitution is shaped. It has that say because more people have supported their vision than that of others.

Q:But won't that scare off the smaller parties?

A: The call for a constituent Assembly is both democratic and inclusive. Even the small parties can get representation provided they get a percentage of the vote. There must be some cut off point, say 3% minimum and if you get that you should get 3 seats in a hundred vote chamber or 12 seats in a 400 seat chamber.

Another way in which smaller parties can be assured of some say in the decision making is if the voting procedure, the decision-making process in the Constituent Assembly is not by a simple majority. A simple majority means getting say 51 out of 100 votes, as opposed to demanding that decisions must be taken by a two-thirds or three quarter majority, that is 67 or 75 votes out of 100. In Namibia, the Constituent Assembly had to take decisions by a two-thirds majority. Swapo got 57% of the seats which meant that it could not automatically ensure that its views became decisions.

The ANC has not taken a view on this, but it may be that in the interests of having a constitution to which most people are reconciled, if not in total agreement, we should allow a decision-making process by 2/3 majority or some such proportion. Where you operate by a simple majority and an organisation has 51% of the seats, there is little incentive to seek a compromise that is likely to ensure that all organisations feel that they have played a part in making the constitution. A two third majority requirement may ensure that the new constitution is not simply an ANC constitution but a South African one.

Q:WHAT IS AN INTERIM GOVERNMENT?

A: An interim government is an authority created to oversee the process of transition. Interim means temporary. It is not a permanent structure, just a government established for a limited purpose.

It is a government established to take the place of the existing, apartheid government and ensure that we complete the process of ridding ourselves of apartheid and creating a democratic constitution.

Q: *But what is the difference between that and a Constituent Assembly?*

A: The constituent assembly is an elected body, created to make a new constitution. The interim government cannot make this constitution. It is there to create the conditions for a new constitution to be made.

Q:But why does one need an interim government if one has got a constituent assembly?

A:*In the first place, a common reason given for needing an interim government is just to ensure that elections for a*

constituent assembly are free and fair.

But the reasons are broader. We cannot trust the apartheid government to rule over this period, because it uses its power, already during this pre-negotiations period, to favour some organisations at the expense of others. It is also likely to use its power, as a government, to try to ensure that the process does not lead to fundamental change.

There has to be agreement as to the goals of the entire process. The government will have to accept, as the Harare Declaration demands; that the result of negotiations must be a nonracial, nonsexist and democratic state. If that is agreed on, whoever manages the transition must ensure that it proceeds in a way that ensures that those goals are met

Q: But the government will never agree to the interim government or creating a democratic state?

A: If that is the case obviously we are making a mistake in trying to negotiate. But it was our struggle that forced them to talk in the first place. It was our struggles that unbanned the ANC and the Communist Party. It was our struggles that freed our leaders.

And it is our struggles that will force them to realize that we need peace and that there cannot be peace while apartheid exists, something they may already recognize. They will also have to see that there cannot be lasting peace until we have a democratic state.

If we can force them to see this they may find the idea of an interim government more acceptable. But ultimately our most persuasive argument is our strength on the ground, the people making the demands on the streets which the leaders make in discussions with the government

Q: Ok. Accepting that you can get an interim government, how can you ensure that the civil service and security forces are loyal and carry out the decisions of the government?

A: That's a difficult question and obviously also a key one for the success of any interim administration. We cannot replace the civil service in so short a time. In any case, we are not talking of an elected government. The interim government is a structure negotiated between the main parties. It cannot embark on substantial social change, nor set in place a new civil service

This means that the question of the civil service in general, many of whom are Conservative party or even AWB supporters and the security forces in particular is a big problem.

Before we wilt under the pressure of this problem we should remember that the alternative, right now is to have no authority over them and leave that authority to the existing government. The different question that we face under an interim government is that *that government has the legal authority to command*

obedience from the civil service, but may have difficulty in enforcing it.

Having an interim government including the Nationalist Party may obviously make it easier to secure enforcement though we may well find that the interim government is itself a force within which struggles continue, to try and limit or frustrate the process on the one side or to see it through to the most progressive conclusion on the other.

People like van Zyl Slabbert indicate that this is a crucial area of difference between our situation and that of Namibia. But even in Namibia the South African security forces were able to get away with a lot of things

I think this is an area where we may have to consider some form of international monitoring force. But that still leaves the problem of how we ensure that the force functions loyally. Monitoring can report on their misdemeanours but it does not provide us with an authority that will carry out its duties in accordance with the law

I don't think that we have the answers to these problems yet. This is a situation where we need more discussion and input from all levels of the alliance, so that we can solve the difficulties.

But we need also to remember that the period of operation of the Interim government *must not be a period of demobilisation of the people*. It is precisely in periods of transition when their actions can be decisive in staving off counter-revolution. That is why it is crucial that ordinary people understand what is at stake and prepare to defend the unfolding of democracy.

Q: You've referred to the Interim Government as not being elected. How will it be created?

A: The composition and manner of establishment of an interim government will have to be negotiated through some or other means. The value of the suggested All Party Congress is that this may be a suitable forum for securing agreement to the formation of an interim government

Who composes it must depend on the considerations that one considers most crucial in the transition period. To secure general confidence the government must, without the benefit of elections, *be representative of the aspirations of most South Africans*. That would mean that the ANC at the very least should be in it and for the whites, the Nationalist Party. Which other parties are in it, should perhaps be determined not merely by questions of *legitimacy*, but by considering whether their inclusion or exclusion would best facilitate the work of the Interim government.

Equally, what ministries the various parties hold is something over which there will have to be negotiations. We cannot lay claims or lay down rules now.

Q: *Something I can't understand is why the ANC and SACP place so much weight on the demand for an Interim Government and why is the government so adamantly opposed to it?*

A: The question of an Interim Government is central to the process of transition. The Nationalist Party wants to control the whole process, ensuring that there isn't mass involvement and that the result is something short of total liberation.

We want that process to be overseen by an Interim Government which will have *sovereign authority and ensure that there is freedom of political activity and that the process unfolds towards the only acceptable result- a nonracial, nonsexist, democratic South Africa.*

So the struggle for an Interim Government is at the centre of the question of what type of transition we want, how it happens and what its outcome should be. That is why it is so bitterly contested.

Q: *I still worry-can't this whole thing turn into an elaborate form of cooption?*

A: It's certainly likely that the government would like to present a form of cooption as one way of dealing with the process of transition. They might offer ANC leaders top governmental positions, as long as they -the NP -remain in charge.

That is unacceptable to us. We want a situation where we have authority within any interim structure and where there is no possibility of our being held responsible for anything we do not authorise. We want an interim government which forms part of the process of transfer of power to the people. If we use our power we will achieve that.

Q:*The government in its objections to both the Constituent Assembly and Interim Government, points to the fact that it is a sovereign authority in an independent state. Is this not a valid objection?*

A: We should not simply accept this claim of sovereignty and independence. The South African state was created by the violent conquest of the people. The British handed over power to a section of the South African population, the whites and called it an independent state. That was a normal way of doing things in 1910. It is no longer normal, in fact the international community regards the denial of self-determination, by force as equivalent to an international crime.

Consequently we can argue that the South African state is not truly independent, since the people have never really exercised sovereignty. The South African state is in reality a colonial state, with the unique fact that colonising power and colonised are not separated by oceans but occupy the same territory.

To perpetuate such a situation is not through an exercise of sovereignty but illegitimate and illegal occupation. The real squatter in South Africa is the apartheid state.

Q: In what sequence do you envisage this process unfolding. Some people are under the impression that one gets a constituent assembly before an Interim government. Could you clarify these issues?

A: The phase where we are now is in fact one of pre-negotiations, where we aim at removing obstacles in the way of proper negotiations, in particular the release of political prisoners, the return of exiles, the repeal of security legislation.

At the same time we are trying to form an alliance with as wide a range of forces as possible, in a Patriotic Front in order to facilitate this process and take it further into the All Party Congress. We envisage an all party congress taking place once all the obstacles are removed. We would like to go into that Congress as a bloc, agreed on the way the transition should be handled and what the ultimate goals should be

At the APC we would like to secure agreement as to the goals of the process, listed in Article 16 of the Harare Declaration, basically the establishment of a nonracial, nonsexist, democratic state.

There must also be agreement over the establishment of an Interim government to oversee the process and this IG would then oversee elections to a CA. The CA makes the new constitution and could be converted into a new legislature -as happened in Namibia.

Q: It has been said that the IG is only there for a limited period, say 18 months at the most and that it cannot embark on a broad social programme. But what happens during that period. Does it not have to take decisions on schools and all sorts of aspects of people's existence

A: It is important to remember that the IG has not got a mandate from the electorate. It cannot decide whether or what type of mixed economy there should be or embark on a radical land reform.

At the same time people will obviously have expectations from any government which includes the ANC, even if we say it is purely temporary for a limited purpose. It will in fact have to make some decisions on day-to-day matters and without being a long-term programme, the decisions should obviously be in line with the overall objectives of securing social justice in a democratic nonracial, nonsexist state.[March 1991]