

THE BLACK SASH**NATIONAL CONFERENCE : JULY 1994****PRESIDENTIAL ADDRESS**

Our last National Conference, in Pietermaritzburg at the beginning of April 1993, seems light years away. It seems light years away because since then we have travelled a long journey as a nation and we have finally reached that new place, the longed for and struggled for "new" South Africa.

It was in that April, sixteen months ago, that multi-party negotiations resumed again after many months of stalled talks following the collapse of Codesa 2. There was a very real sense that the country was close to collapse, that negotiations should resume of urgently and that an election date be set as soon as possible. This time 25 political parties took part in what was called the Multi-Party Negotiating Council and seven committees of technical experts were appointed to make recommendations on those issues that (it had been agreed) needed to be put in place before elections could take place. The seven committees were charged with drafting an interim constitution with constitutional principles and details on the form that the state would take, drafting a bill of fundamental rights, making recommendations on the strengthening of the peace accord in order to reduce violence, the repealing of repressive legislation, and the drafting of legislation that would bring into being the Independent Electoral Commission, the Independent Media Commission and the Transitional Executive Council.

The path of this negotiating process was not to be a smooth one. Soon after talks resumed in April Chris Hani was assassinated and the country was brought to the brink of civil war. Violence of a criminal, political and covert nature continued unabated especially in Natal and the Transvaal. There were those who were bent on disrupting the negotiations and preventing the elections from taking place. The AWB stormed the World Trade Centre, in an grandiose display of their crude aggression and violent attacks on whites such as the St James Church massacre, claimed to be the work of APLA, took place. Groups such as COSAG and the Freedom Alliance, consisting of the Inkatha Freedom Party, Bophutatswana, Ciskei and the white right wing withdrew from talks and even spoke of civil war should their demands not be met and should the process and the elections proceed without them. In the end, after countless attempts at negotiation and even international mediation and after holding the country to ransom for several months the IFP and the Volksfront did join in the elections and did test their electoral support.

It is important not to forget that what was achieved in this process of negotiations and the elections that followed them is nothing short of a miracle. It took a lot of determination, pragmatism, an awful lot of horse-trading, mature leadership and huge compromise on the part of all of those involved in negotiations. The world, and at times we South Africans were not sure that the leaders would be able to come to agreement on all of the issues that needed to be in place

before the election, nor that the country would have time to prepare for the elections nor that violence and political intolerance could be brought sufficiently under control in order to hold free and fair elections. But happen it did. As if by some divine intervention peace descended and millions of South Africans expressed their common will to vote in the first ever all-inclusive democratic elections. Despite delays, bungling, sabotage and some questionable electoral practices in KwaZulu and the Transkei, the election was declared sufficiently free and fair and we finally experienced the heady joy of becoming the proud and equal citizens of this new nation.

SO WHAT IS NEW ABOUT THE NEW SOUTH AFRICA ?

Now that we have arrived at the new South Africa, what is different from before ? To begin with, there are some very fundamental changes in the structure and type of governments and in the limitations placed on these governments.

1. We no longer have (thirteen) governments based on race or ethnicity. Gone overnight are the political entities that were the white, coloured, Indian and ten homeland governments. Not gone however are their bureaucracies who live on to haunt us and wait anxiously to be absorbed into the new structures.

In their place are non-racial governments with a 400 member National Assembly including a President, two vice-presidents and 27 Cabinet Ministers. There is also a 90 member Senate which has been nominated by the provincial legislatures, and nine provincial parliaments with a total of 425 members. When one visits Parliament now, a visible change is very apparent, not only in the racial composition of the members, but in the increased number (still not 54%) of women MPs.

2. The constituency-based Westminster-style "winner takes all" governments have gone. In their place are governments elected on a system of proportional representation and governments of national and regional unity. When it became clear in late 1992 that in order for a negotiated settlement to proceed some sort of power sharing (specifically with the Nationalist Party) would be necessary, this form of government was proposed and accepted. So, for the next five years we have a government of national unity (GNU), and nine regional governments whose executive members include representatives of all of those parties who gained more than 5% of the votes.

In a government of national unity policy is determined by agreement of the major parties. It is interesting that the Nationalist Party should now be considering quitting the government of national unity, when this form of government was mooted in order to satisfy their demands. Perhaps the ANCs majority in all but two of the provincial parliaments effectively nullifies the power of the other parties who might well be more comfortable in opposition rather than in unity.

While the provincial governments and their legislatures are in place, what their powers will be and what budgets they will have is not yet clear. There is a list of 29 areas in which the provincial governments will potentially have legislative and executive authority. It is however far from obvious which specific

competencies belong to the central government and which to the provinces. The provinces are hopelessly unequal in terms of assets and resources. A means of addressing at least the grosser imbalances in assets and resources will have to be hammered out - either a method of reallocating resources or a system of compensation for those provinces who do not inherit an infrastructure. Add to this the fact that for some provinces like the PWV it has been relatively easy to transform the TPA into the new provincial authority. Compare this to the Eastern Cape which has the unenviable task of integrating two former homelands with the old provincial structure.

We will need to understand which powers are devolved to the various levels of government, and to know who the responsible ministers are in order to monitor relevant legislation and lobby where necessary.

3. The third tier of government, local government, is still in the process of being restructured but few of the interim local authorities are in place. For a while now local government in some parts of the country has collapsed and so have the services that would normally be supplied by those local authorities. There is an urgent need to get these interim local authorities into place and also a need to prepare for local authority elections as soon as possible. Given that local government is the form of government that is most accessible to the people, it is important that it too is legitimated through elections. Before these elections can take place though, voters rolls must be drawn up. This could delay these elections well into next year. We will have to consider what role the Black Sash is able play a role in relation to local authorities and their future elections. Given the success of our voter education campaign, perhaps voter education for local authority elections ?

4. The most crucial change to our system of government is that whereas the old apartheid system rested on the supremacy of parliament, South Africa's first non-racial democracy is underpinned by the supremacy of the constitution.

Politicians and the laws emanating from the popularly elected parliament are constrained by the present interim constitution.

The two major constitutional constraints on the power of the politicians are the Bill of Rights and the constitutional principles, both of which are enshrined in the constitution.

All laws have to be consistent with the Bill of Rights and the "final" constitution, scheduled to be drafted by the Constitutional Assembly (composed of the National Assembly and the Senate), has to be consistent with the more than thirty constitutional principles.

The 11-member Constitutional Court becomes an extremely important and powerful body. It is the final arbiter on constitutional matters, and is empowered to test laws against the constitution and reject them if they fail to comply with it. It is more-over, mandated to test the final constitution against the prescribed constitutional principles. The new constitution will only become law if and when it is certified as being consistent with the constitutional principles.

The Constitutional Court offers any citizen the opportunity to challenge violations of rights. Marj Brown has already initiated our first "class action" The Black Sash is approaching the Constitutional Court on behalf of black pensioners. The action is challenging particular administrative practices of the TPA and is based on Section 24 of Chapter Three of the Constitution - the right to procedurally fair administrative action.

I want to raise an issue here that I realise is sensitive, but it involves serious principles and therefore must be raised. The Black Sash is very concerned about the extent of the amendments to the Interim Constitution which will be required if Mr Liebenberg is to be appointed as Minister of Finance.

We believe that these amendments will violate fundamental principles agreed to during the negotiating process.

Section 88 (b) and (e) of the Constitution of the Republic of South Africa, 1993 make it clear that Cabinet Ministers must be appointed from among the elected members of Parliament.

We have always opposed the system introduced by the previous regime of allowing the State President to appoint non-elected persons to cabinet posts and we agreed with the negotiators in their determination that members of the Cabinet should be fully accountable to the electorate through being elected on a Party list as members of Parliament.

Even though it seems that it is legally possible to violate constitutional principles until such time as we have a permanent Constitution, we think that the principles, as agreed, should be adhered to in the interests of establishing democratic and accountable government for the future.

We feel very strongly that a constitution, which is the result of prolonged negotiation and which has been ratified by the people in a democratic election, must be jealously preserved and must not be amended with regard to its principles just because it prevents a government from doing something that it wants to do. It is essential that this basis for constitutional government be upheld as we try to promote a culture of human rights in our country.

We are aware of the very difficult situation caused by the resignation of Mr Keys as Minister of Finance and of the dangers of a sudden crash on the Stock Exchange and of loss of confidence by the private sector in the management of the country's financial affairs.

But we cannot afford to be careless about the meaning of democratic constitutional government.

We urge you to appoint the next Minister of Finance from among the elected members of the Parliament and to leave the Interim constitution untouched in this respect. Mr Liebenberg could serve as special advisor to the Minister of Finance and the Cabinet if this is necessary to avoid instability in the financial markets.

It is essential that these things are made a matter for public debate. We fear that if the Constitution is amended to provide for Mr Liebenberg to be appointed some interested party may take the issue to the Constitutional Court and the resulting uncertainty, which would be prolonged as the slow legal process went on, would do more damage than would be caused by the reversal of the decision to appoint Mr Liebenberg to the position after public discussion during the next few months.

5. While an important aspect of the recent elections has been the legitimisation of the newly-elected governments and the entrenching of the new constitution, these elections were about more than a transfer of power to these new bodies. The ANC won a majority on the promise of putting in place a programme that begins to address the basic needs of the majority of the population and redresses the massive inequalities in our society. The ANC has set out its plans to accomplish these objectives and more in its comprehensive Reconstruction and Development Programme (RDP). The RDP has been generally well received and accepted as the policy framework within which the government, business, NGOs and civil society will co-operate within partnerships in the next five years.

Six basic principles, linked together, make up the political and economic philosophy that underlies the whole RDP...An (1) integrated programme, (2) based on the people, that (3) provides peace and security for all and (4) builds the nation, (5) links reconstruction and development and (6) deepens democracy.

The RDP document sets out the key five programmes as:

- * meeting basic needs
- * developing our human resources
- * building the economy
- * democratising the state and society and
- * implementing the RDP.

On reading the document, I can see many areas in which the Black Sash could contribute to the RDP. It would be useful for us to meet with those responsible for the RDP programme in each of our regions to discuss how we could contribute our resources and skills to achieving the goals mutual to the RDP. We too believe that the gross maldistribution of South Africa's resources is unjust and must be addressed.

The RDP sets out an ambitious programme and is going to require all of the resources the country can harness. Economic factors are going to place real constraints on needs, promises and expectations. The Government of National Unity is well aware of this and has committed itself to financial accountability and tight management - they must be held to this principle.

While I am on the issue of gross maldistribution, I would like to talk about the gravy train. The gravy train, a legacy of the past administration, is already bursting to the seams with the civil servants and politicians of the old order with their large salary, retrenchment and retirement packages that are guaranteed and have placed a massive debt burden on the new state.

Concern is being voiced (which we echo) that the new government is climbing on to the gravy train. The new politicians have accepted the Melmet commission's recommendations on salaries and MPs and their senior civil servants are receiving pay packages as absurdly inflated as the Nats of old. Jeremy Cronin of the SACP said in this past Sunday's Sunday Times that "Salary scales for public office must be urgently reviewed. This and the restructuring of the civil service must be subject to open debate. We certainly need an effective state, but it must be lean and it must be clean." Most seriously, the yawning gap between the 17 million South Africans who are living in poverty and new elite is as wide as ever. Accepting these salaries does not bode well for the credibility of the new government amongst their own constituency.

6. Democratising the state and society is one of the five RDP programmes and is an aim shared by the Black Sash. It is critical that we break with our authoritarian, unaccountable past and put in place a political culture that is democratic, accountable, open, inclusive and transparent.

In the past year there have been heartening instances of processes being opened up to public opinion and scrutiny. Examples are the calling for public nominations and the televised screenings of the interviews for the SABC Board. Quite a change from the previous appointments of the party faithful which were made by the President.

It seems that the process around the selection of the members of the Constitutional Court is to be made more transparent. The Court is made up of a president who is advocate Arthur Chaskalson and was recently appointed by President Mandela, four judges who will be selected from sitting Supreme Court judges by the President, Cabinet and Chief Justice and six judges selected by the President from a list of 10 submitted by the Judicial Services Commission. The Judicial Services Commission has advertised in the press for nominations from any person or organisation, and they will hold public interviews before selecting their candidates. Advocate Chaskalson has also indicated a willingness to hear representations on the issue of whether or not constitutional court proceedings should be televised. Given the enormous powers that this court will wield, this openness bodes well.

The Next Five Years

I have said before that I believe that we have a unique opportunity to put in place something different from the past, and that we have five years in which to do it. I will tell you why I think that the next five years are so important. Firstly, it is five years until the next general election in 1999. In that time the new government will have to demonstrate to the electorate that it has begun to deliver the promises that it made during the elections. There are expectations of an improved life from a highly politicised population some of which must be met. The RDP must work and deliver what it sets out to do, thus ensuring that the democratic process is credible and that people are able to derive real benefits from the franchise.

Another reason why I think that the next five years are important is that I believe that the outside world is likely to make aid and loans available to South Africa over this period of time in the hopes that South Africa will become sub-Saharan Africa's economic generator. South Africa would not normally qualify for the aid that we receive because our per capita gross national product (GNP) is more than R8500 and is classified as an upper middle income country. There is justifiable caution (also expressed in the RDP) that loans and aid from international organisations like the IMF and the World Bank not be allowed to dictate internal economic and development policies. It is however acknowledged that overseas aid and investment is necessary to assist South Africa's reconstruction.

I have such a strong sense that this is an important time in South Africa's history. That South Africans have surprised the world, and given them a sense of hope, when we managed to move from what seemed to be a hopeless, conflict-ridden deadlock to a negotiated settlement. We have to make that settlement stick. It is a huge task and a challenging one.

There is so much still to do and I believe that everyone's contribution is valuable. I believe particularly that organisations like the Black Sash have an important role to play. I think back with a great sense of pride and achievement at what the members and staff of the Sash were able to contribute towards these elections and I know that South African society would be poorer without an organisation like the Black Sash.

Jenny de Tolly
Cape Town, 28 July 1994.