

## **SOUTH AFRICA:**

## **THE COUNTDOWN TO ELECTIONS**



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Lawyers' Committee for Civil Rights Under Law 1450 G Street, N.W., Suite 400 ■ Washington, D.C. 20005 ■ (202) 662-8342

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### **SOUTH AFRICA: THE TRANSITION**

On Monday, September 7th, negotiating parties finalized the terms for the establishment of the Transitional Executive Council ("TEC" or "Council"), the primary institution that will oversee the transition to a new democratic era in South Africa.

It has been over three years since the release of Nelson Mandela from a South African prison. Yet his sizeable black constituency still cannot vote. The road to democracy in South Africa has been characterized by a slow, stop and start process during which tragedy and disappointment have often come on the heels of signs of hope and raised expectations.

In April of this year, a 26 member "Multi-party Negotiating Forum" was formed to negotiate the terms of the transition after the first such forum, the Convention for a Democratic South Africa ("CODESA") failed. Although parties from the far left and the far right have intermittently participated in the forum, the key players, are still regarded to be President de Klerk's National Party ("NP") and the African National Congress ("ANC"). The delay in the negotiations appears to have worked mainly in favor of the Government. Specifically, the ANC made significant concessions on three key issues: power-sharing, regionalism and the nature of the constitution-making process.

#### **KEY ISSUES**

##### **Power-Sharing**

Throughout the negotiations, a central issue of contention has been the Government's insistence that a traditional constitutional order based on majority-rule would not be sufficient to protect the interest of the white minority. President de Klerk has advocated instead, a government in which at every level of the legislative and executive branches a minority party would have effective power to veto initiatives sought by parties representing the majority of the population.

Initially, the ANC advocated a short transition process that would end in a winner-take-all election. However, the Congress changed its position late in 1992 at the insistence of Joe Slovo, one of the liberation movement's most respected leaders. Slovo contended that such an abrupt exclusion from power would heighten the likelihood of a backlash from white extremists and embittered moderates who would still have operational control of the Afrikaner dominated civil service and security forces. The ANC leadership accepted Slovo's analysis that a gradual process of transition marked by cooperation between the ANC and those now in power would minimize the threat to stability.

As a result of this policy shift, the ANC reached an agreement with the National Party to share power in a "Government of National Unity and Reconstruction" which would govern the country for at least 5 years after the election of a constituent assembly. All parties that win above 5% of the vote in the April 27th elections will have a proportionate number of seats in the Constituent Assembly/National Assembly and proportional representation in the Cabinet. The President will be chosen from the majority party, but would need the approval of two-thirds of the Cabinet for certain important decisions.

At the conclusion of the five year period of joint rule (1999), there will be an election for a new government based on the post-apartheid constitution, as adopted by the Constituent Assembly ("CA"). The ANC believes that the democratically elected CA will agree on a constitutional order based on traditional principles of majority-rule.

Polls and predictions released at the beginning of 1993 regarding the possible outcome of the first non-racial elections vary. According to one prediction, votes would be cast by the estimated 20 million electorate as follows: ANC - 60%; NP - 17%; Pan Africanist Congress ("PAC") - 8%; Conservative Party ("CP") - 6% and Inkatha Freedom Party ("IFP") - 5%, with the remaining votes distributed among other parties, none of which would reach the 5% threshold.<sup>1</sup> However, the NP fairs much better under a prediction made by two political scientists, Andrew Reynolds and Bernard Grofman, that the ANC would receive 40.6% of the vote, the NP 30.2%, the IFP 11.4%, and the CP 5.7%, with the PAC and others receiving less than 5%.<sup>2</sup>

Under the first scenario, the combination of ANC and PAC on the left would have sufficient strength, i.e. 68% (more than a two-thirds majority), to dominate a NP/CP/IFP alliance on the right. However, under the second scenario, the NP-led conservative alliance would have substantial power to block the exercise of the executive powers by an ANC President.

Some analysts view the latter scenario as the more probable one. The ANC claims the bulk of its support in communities that are increasingly violence ridden. The consequence of that violence may be that a large segment of ANC supporters don't vote because of fear for their safety. According to a recent poll commissioned by Matla Trust, a South African based organization which will be holding voter education workshops throughout the period leading up

to elections, 38% of the Africans surveyed claimed that the violence is likely to keep them away from the polls on election day. However, another recent poll indicates that the support for Mandela has risen among both blacks and whites. According to Markinor, a South African-based, Gallup-affiliated research service, Black support for Mandela rose from 65% in November 1992 to 74% in May 1993. His support among whites went from 3% to 14%. According to Markinor's chief analyst, the increased support for Mandela suggests that "his performance and display of leadership after Chris Hani's assassination have earned him new respect."<sup>3</sup>

### **Regional Powers**

A second hotly contested issue throughout the negotiations has been the nature of the post-apartheid state. The ANC's original position was that the future state be a unitary one, with a strong central government, as opposed to a decentralized confederation of semi-autonomous jurisdictions, as proposed by the Government. The ANC feared that the entrenchment of substantial powers in regional governments would enable localities (some of which stand a better chance of being under white control than the national government) to block initiatives to redress the social and economic inequalities created by apartheid.

However, in order to avoid further alienation of the IFP, a frequent detractor during the negotiations, the ANC has departed substantially from its original insistence on a highly centralized, unitary state. Now, according to Secretary General Cyril Ramaphosa, the ANC maintains that "regions are the levels where democracy and good government can be effectively practiced."<sup>4</sup> They have agreed to strong regional governments with a substantially greater devolution of power than originally envisaged.

The Multi-party Negotiating Forum has formulated a set of "constitutional principles," not yet formally adopted, which will be binding on the CA. The principles provide for democratically elected regional governments with "appropriate and adequate legislative and executive powers" to enable them to function effectively.

Regional governments are given both exclusive powers and certain other powers that are to be exercised concurrently with the national government. The current draft of the constitutional principles sets out a detailed 12 pronged prescription for the allocation of powers to the national and regional governments which includes an admonishment to the national government to refrain from exercising its powers "so as to encroach upon the geographical, functional or institutional integrity of the [regional governments]." Criterion such as the need to maintain uniform standards, security, economic unity or protection of the common market are used to justify exclusive or overriding powers granted to the national government. Criterion 9 directs the CA to grant the regional governments powers which are either exclusive or concurrent with the national government for "planning and development and delivery of services" and "in respect of aspects of government dealing with the specific socio-economic and cultural needs" of the regions' inhabitants. Concurrent authority will exist where mutual cooperation is desirable to guarantee equality or access to government services. The regions are granted veto power over national government initiatives to alter the allocation of power. Regional governments will also have a constitutional right to "an equitable share" of revenue generated nationally and will presumably have their own revenue raising competence.

During the interim government phase, the regions will be administered by an interim regional government that will be elected at the same time as elections for the CA. The powers, functions and structures of those regional governments during the transition period are presently being considered by a committee established by the Multi-party Negotiating Forum, and will be entrenched in an interim constitution. Regional boundaries are being set by a Delimitation Commission. While the interim regional dispensation will not be binding per se on how the CA gives shape to the final constitutional provisions, it will have substantial impact on it, since half of the representatives to the CA will be elected by regional representatives.

However, these agreements do not go far enough to satisfy repressive homeland governments and the conservative whites who see in federalism a means to maintain the status quo, insulated from internal or international reprisal by their new status as parts of a democratic whole. Under the leadership of the IFP, the newly formed Freedom Alliance has refused to endorse the April 27th election date until they are satisfied that their concept of regionalism will be entrenched in a permanent constitution, that a permanent constitution will be produced now by the unelected Multi-party Negotiating forum and that the formation of a permanent government will be the outcome of the April elections. Members of the Freedom Alliance are currently boycotting the multi-party forum and have resolved to enter any future negotiations as one unified entity.\*

### **The Nature of the Constitution-making Process**

On a number of occasions the multi-party talks have broken-down over disagreement about the process by which the constitution would be drafted. The NP and its allies, have sought to have the broadest possible scope of constitutional issues determined by the multi-party forum, rather than a democratically elected constituent assembly, in which they are likely to be minority parties. The ANC, initially adamant in favor of leaving decisions on all crucial constitutional questions to the elected constituent assembly, has yielded on this point.

The agreed process is that the unelected Multi-party Negotiating Forum will adopt an interim constitution that will govern the country during the transition period. The forum will also adopt constitutional principles that will be binding on the work of the subsequently elected constituent assembly. Special majorities will be required to adopt constitutional provisions in the constituent assembly and a constitutional court will exercise judicial review over the conformity of the final constitutional provisions with the earlier principles. This represents an important victory for the National Party which has secured for itself as part of the constitutional principles, the required participation of minority political parties in the legislative process. According to one political analyst: " The NP's strategy is to lock as many preconditions in as possible so that the ANC will not be in a position to dilute them once it is the majority party. In the end, [the

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\*Membership of the Freedom Alliance includes, the Inkatha Freedom Party/KwaZulu Government, the governments of the nominally independent Bophuthatswana and Ciskei homelands, Conservative Party and the Afrikaner Volksfront which is itself a coalition of white right wing groupings.

constituent assembly] will basically be left with filling in the detail of a new constitution, while the parameters within which it can maneuver are set by the multi-party forum, which is not an elected body."<sup>5</sup>

### **TIMETABLE**

The assassination of ANC and Communist Party leader Chris Hani in April, the arrest of 77 members, including the entire negotiating team, of the PAC in May, and the June 25th storming of the negotiations hall by armed white right-wing protestors, placed the negotiations perilously close to derailment. The continuation of negotiations in spite of those potentially paralyzing events is testament to the strong resolve, particularly of the ANC, to keep the talks on track. However, deadlines and timetables have rarely been met.

Based on the current status of the talks, the following timetable is being envisioned:

- **September 13-30, 1993** - Parliament convenes to enact a series of transitional measures, including the Transitional Executive Council Act, the Independent Electoral Commission Act and the Independent Media Commission Act.
- **Late November or Early December, 1993** - A Transitional Executive Council (TEC) will be established which will supervise critical aspects of the government to create a "level playing field" and "conditions conducive to a free and fair election." The TEC will include representatives of all major political parties and, through sub-councils, will exercise control over 7 broad areas to be discussed below. In addition to the TEC, two other transitional commissions an Independent Electoral Commission and an Independent Media Commission will be established.
- **November 22, 1993** - Parliament enacts an interim constitution and an electoral law setting the parameters for elections for a constituent assembly.

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<sup>5</sup>It is important to point out here that even after the enactment of these measures, none of the agreements contained therein will be implemented until all of the transitional measures, including the interim constitution and the election law, have been promulgated.

- **April 27, 1994\*** - All South Africans of voting age go to the polls to elect a single 400-member Constituent Assembly ("CA"), half of whom would be elected on the basis of proportional representation using a national party list, and the other half elected from regional lists. All parties receiving votes of 5% or more will be entitled to a proportionate number of seats in the CA. Members of the CA would also serve as the interim National Assembly (NA). Once constituted, the NA elects a president and appoints a cabinet pursuant to the requirement that all parties elected to the NA are represented in the cabinet - The Government of National Unity and Reconstruction (GNUR).
- **1994-1996** - The Constituent Assembly completes the process of drafting a new constitution.
- **1994-1999** - The GNUR continues to govern the country until the first elections under the new constitution are held, five years after the election of the CA.

## **TRANSITIONAL STRUCTURES**

### **The Transitional Executive Council**

On Thursday, September 23rd, the bill containing the terms for the establishment of the TEC was passed during the current special session of Parliament. The Council is expected to be fully constituted by the end of October.

The goals of the Council as articulated in the Transitional Executive Council Act are:

- to eliminate any impediments to legitimate political activities;
- to eliminate any form of intimidation which has a bearing on the transition;
- to ensure that all political parties are free to canvass support from voters to organize and hold meetings and to have access to all voters for the purposes thereof;

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\*A key government official who is responsible for monitoring elections recently told a South African newspaper that at this point, given all of the unresolved issues related to the elections, it would be "impossible to hold the elections on April 27th. The Weekly Mail & Guardian (SA), September 17, 1993.

- to ensure the full participation of women in the transitional and electoral structures and processes;
- to ensure that no Government or administration exercises any of its powers in such a way so as to advantage or prejudice any political party; and
- generally to create and promote conditions conducive to the holding of free and fair elections.

Each party currently participating in the Multi-party Negotiating Forum will be entitled to have one representative on the Council. Of the 26 parties that began the negotiation process earlier in the year, only 19 parties voted in favor of the establishment of a TEC. The Inkatha Freedom Party, the KwaZulu Government which is dominated by the IFP and the Conservative Party have boycotted the talks for the past two months. The governments of two nominally independent homelands, Bophuthatswana and the Ciskei specifically voted against the measure and the Pan Africanist Congress on the left and the conservative Afrikaner Volksunie party on the right, both abstained.

The three homeland governments, the Inkatha Freedom Party and most recently the PAC, have specifically stated that they do not intend to be represented on the TEC. However, the leading negotiators, the Government and the ANC have demonstrated a readiness to proceed on course whether or not some parties are left behind.

The extent and scope of the Council's authority have been the subject of much debate. The Government on the one hand, has insisted upon restricting the Council to a consultative role wherein it would consult with the Government solely on issues relating to the election. The ANC on the other hand, pushed for the TEC to have full control, or at least joint control with the Government, over strategic governmental functions such as the security forces and finance. The resulting compromise, which forms the basis for the final law, is that the powers of the TEC will be limited. Its mandate will be to assure free and fair elections solely, not to restructure apartheid institutions. It will not have authority to co-govern. Rather, by a 75% or 80% majority, depending on the subject matter, the TEC will have veto power over certain government initiatives. It will have the power to make inquiries and conduct investigations pertaining to matters that fall within the scope of its mandate and will also have primary control over a special peacekeeping force that it will create.

Both sides have attempted to frame the agreement as a victory for their respective constituencies. According to chief Government negotiator Roelf Meyer, "we are satisfied that this bill does not provide for a substitute of the Government in any way whatsoever, or joint control of the security forces." In contrast, Joe Slovo of the ANC maintains that the Council "has got enormous powers - the power to poke its nose into everything that has a bearing on a

free and fair election. It is not a toothless tiger."<sup>6</sup> While it remains to be seen how the TEC will operate in practice, possible Government resistance to TEC directives which is intimated in Meyer's statement, may threaten the chances for Slovo's vision to become a reality.

The Council will exercise its oversight in 7 broad areas through the establishment of Subcouncils. Where new areas of concern arise, additional Subcouncils may be added. The 7 Subcouncils currently envisioned will oversee transitional activity relating to: 1) Regional and Local Government and Traditional authorities; 2) Law and Order, Stability and Security; 3) Defence 4) Finance; 5) Foreign Affairs; 6) Status of Women; and 7) Intelligence.

### **Independent Electoral Commission**

A separate commission called the Independent Electoral Commission is also expected to be in place before the end of this year. Sitting on the IEC will be seven to eleven people chosen on the basis of their reputations for impartiality and fairness and who specifically do not have high political party profiles. According to the Independent Electoral Commission Act which was recently passed in Parliament, the role of the IEC will be: 1) to administer, organize, supervise and conduct, whether directly or indirectly, free and fair elections for the National Assembly and all other legislatures in terms of the Constitution; 2) to promote conditions conducive to free and fair elections; 3) to determine and certify the results of elections and to certify to what extent such elections have been free and fair; 4) to conduct voter education; and 5) to make and enforce regulations for the achievement of such objects.

Members of the international community will be able to participate on the Commission in an advisory capacity. Not more than 5 international experts will be invited to serve as non-voting members of the IEC. There will also be an International Advisory Committee which will advise the Commission on any matter regarding the performance of its functions.

## **POLITICAL VIOLENCE AND THE TRANSITION**

What has remained constant throughout the negotiations is the political violence which continues to pose the greatest threat to a successful transition to democracy in South Africa. The decline in the levels of violence that began towards the end of 1992 came to an abrupt halt in April, the month that Chris Hani was killed. In the days following the announcement of the date for the upcoming elections, violence reached a peak exceeded only in the period following the unbanning of the ANC and other political parties in 1990.\* Researchers and violence monitors who have simultaneously tracked the violence, negotiations and other political developments have

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\*The average number of deaths attributable to political violence for the first three months of 1993 was relatively low - 178, while the toll for April jumped to 259, followed by 302 for May. Human Rights Commission, "Summary Report on Repression for May, 1993. 580 were killed in July. Human Rights Commission, "Summary Report on Repression for July, 1993. September's death toll of 479 brought the monthly average for the year up to 338. HRC, "Summary Report on Repression for September, 1993."

concluded that the concurrence of increased violence with significant breakthroughs in the negotiations, points to a strategy to derail the transition through violence.

But, for the angry survivors of massacres and drive-by shootings in South Africa's townships and squatter camps, the violence is constant and the negotiations remote. Where they live, the double evils of political violence and economic deprivation are producing levels of frustration that threaten to alienate large segments of the population from a process whose success ultimately depends on their full participation in it.

The unemployment rate in the formal sector has risen to a high of 46%.<sup>7</sup> A recent survey indicates that only 15% of black South Africans feel that they are better off today than they were a year ago.<sup>8</sup> According to one analyst "blacks are showing an increasing trend of pessimism about the future" and they are continuing "to experience a deterioration in their families' economic situations."<sup>9</sup>

Escalating violence and the fear it instills do not bode well for the upcoming elections. In one recent poll 38% of the blacks surveyed said that fear of violence was likely to keep them away from the polls on election day.<sup>10</sup> This statistic is born out by the fact that even now, long before the elections, many township residents are discouraged and often prevented from fulfilling ordinary daily obligations. According to a school principal in Daveyton Township in the East Rand, "only two percent of our pupils are attending classes. We have to send children home as early as 11 a.m. in fear of possible attacks."<sup>11</sup>

The average township resident continues to view members of the police and military with suspicion, animosity and distrust. In a recent statement taken by the Johannesburg-based violence monitoring group, Peace Action, a resident who was accused by police of organizing a self-defence unit, related a horrific tale of his own torture at the hands the police. He states "they had to stop [the torture] when blood started coming out of my ears and nose. . . . I told them that their behavior was frightening me and making me hate them because of their actions."<sup>12</sup>

Efforts to quell the violence have largely failed. The National Peace Accord with its network of monitors and dispute resolution committees, the Goldstone Commission of Inquiry with its quasi-judicial powers, the international violence monitors of the United Nations, the Commonwealth and the Organization of African Unity, along with scores of South African peace activist organizations have produced only marginal impact.

Where concrete steps have been urged to curb the violence, the government's response has been half-hearted. While there is no doubt, for example, that members of the security

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<sup>7</sup>See Africa Watch, "South Africa: Half-Hearted Reform - The Official Response to the Rising Tide of Violence", May 1993. According to Africa Watch, its most recent investigation into the responsiveness of the South African government to the violence revealed that "although some minor efforts have been made, the steps taken fall

forces have engaged in acts of terrorism against civilians, adequate measures have yet to be taken to transform the security force culture of repression and intolerance. The bitter adversarial relationship between the African community and the security forces continues, along with the perception among township residents that the security forces cannot be relied upon to protect them. Little has changed since the report produced a year ago by an international team of police experts, which concluded that the South African Police displayed gross incompetence, bias, unresponsiveness to the concerns of township residents and investigation skills that were "woefully inadequate."<sup>13</sup> Clearly, there is an urgent need, as the elections draw near, to deploy in the townships a competent, unbiased police force that will have sufficient authority and legitimacy to neutralize the forces of destabilization.

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1. Survey conducted by Mark Orkin of the Community Agency for Social Enquiry (C.A.S.E.) in association with Research Survey.
2. A Shock in the Making? by Andrew S. Reynolds with a mathematical appendix by Bernard Grofman, University of California at Irvine, January, 1993.
3. Markinor Press Release on Socio-political Trends, July 1993.
4. Southscan (London) 12 March 1993 at 73.
5. The Weekly Mail (SA), May 21 to 27 1993 at 2.
6. The Washington Post, Sept. 8, 1993.
7. Southscan (London), September 10, 1993.
8. Markinor Press Release.
9. Id.
10. Markinor Press Release.
11. The Weekly Mail (SA), July 30-August 5, 1993.
12. Peace Action August Report.
13. P.A.J. Waddington, "Report of the Inquiry into the Police Response to and Investigation of Events in Boipatong on 17 June 1992", July 20, 1992.

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far short of a serious attempt to end the violence. . . . The government has been markedly reluctant to accede to even the most limited demands and recommendations of the ANC, independent human rights groups, violence monitors and independent commissions of inquiry." The observations of Africa Watch are born out by the example that even though residents of male hostels are repeatedly implicated in massacres and random violent attacks, and recommendations for addressing the violence have frequently included transformation or elimination of the hostels, undertakings to upgrade hostels into family units have not been treated with the urgency they deserve. Rather, hostels such as the infamous Nancefield hostel which are well known as flashpoints for violence have not been touched.

# South Africa: The Transition

