

- (a) the need for a regularly updated comprehensive list of all the decisions, actions and processes involved;
- (b) the co-ordination of the activities of Codesa and its subsidiary bodies to ensure the greatest possible efficiency of the process towards a democratic South Africa;
- (c) the practicability of setting of target completion dates for all agreements/activities/decisions;
- (d) the monitoring of the process and the adjustment of targets whenever necessary;
- (e) the dissemination of up-to-date information in respect of progress made to all Codesa participants, interested parties and authorities;
- (f) to address the identification of legislation that needs to be enacted or amended;
- (g) to assist in formulating the terms of the legislation or amendments;
- (h) realistically attainable time frames;
- (i) practical effect of implementation of agreements;
- (j) the legality of the process in relation to time frames to be negotiated within the context of constitutional continuity;
- (k) any other matters which the working group may consider relevant to its brief.

Codesa set to fly after a little tinkering

THE major parties are nearing an advanced stage in designing a mutually acceptable "package" on how South Africa should be ruled during transition and how a final constitution should be drawn up.

It is a process not unlike that of building model aeroplanes. Each has been busily cutting and gluing pieces together, and showing the product of their labours to the others.

Each has then gone back and altered its model in the light of what it has seen, trying to make it look a little more like the others.

The ultimate object of the exercise is to settle on a single structure which includes parts taken from each - and can still fly.

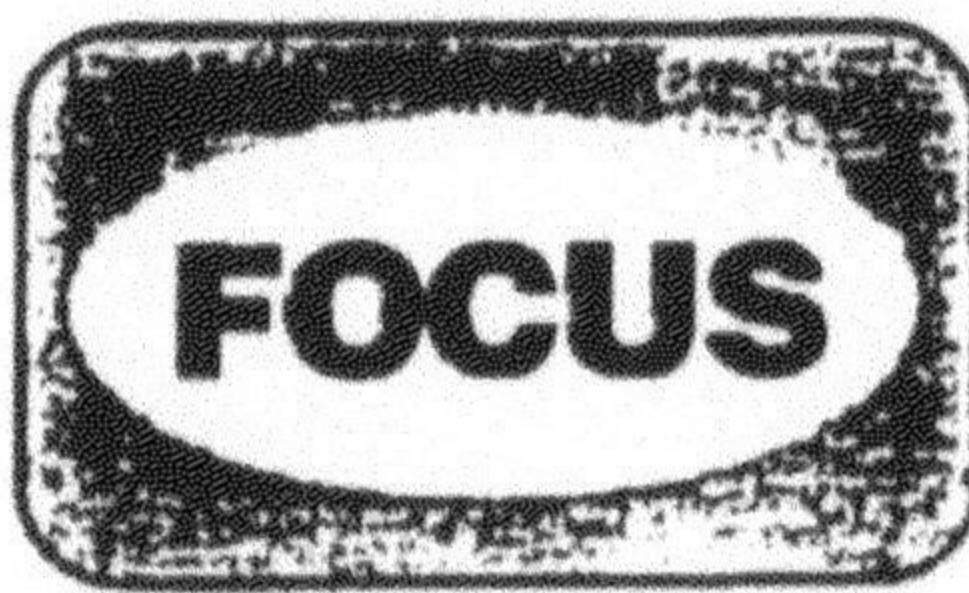
This is the context in which the ANC's latest model for interim government and constitution-making, presented at Codesa this week, should be seen. It is an adaptation of earlier positions, and includes clear attempts to address the Government's concerns; but without discarding the basic principles of the original design.

It will no doubt prompt a new, updated model from the Government side.

Sting

In two areas in particular, the latest ANC scenario seeks to satisfy - or at least take the sting out of - Government objections.

Firstly, the Government has insisted from the outset of the negotiations process that it will not accept a transitional arrangement which involves leaping into a "constitutional vacuum", or ceding power to an unelected body



The latest ANC blueprint for the transition period and beyond is both a concession and a challenge to the Government, a *Sowetan* Correspondent reports.

which will rule by decree.

The ANC had previously demanded that the present Parliament should be dissolved or suspended, and power transferred *in toto* to a representative, but unelected, body.

Now the ANC is proposing that the tricameral Parliament be maintained - possibly in a rationalised form - in order to give legislative effect to decisions taken by an "interim government council", appointed from the ranks of Codesa. This offers the Government a compromise: Parliament survives, but loses its ultimate authority.

Secondly the Government has been set against the idea of a constituent assembly drawing up a new constitution, ever since the ANC first proposed the body. Now, however, the ANC proposals offer the possibility that a CA could operate as a legislature subject to checks and balances at the same time as it performed its constitution-drafting function.

This would allow for an interim Cabinet operating under sufficient or even full consensus, and interim measures such as the requirement of a two-thirds majority for legislation to be passed. There would also

be agreement that all parties receiving more than five percent of the vote under proportional representation, would be represented in the CA.

In these and other areas, the ANC and Government positions are converging markedly - not to the extent that full agreement is imminent, but rather in the sense that the details of similar concepts are now being debated. Earlier on in the process, the competing basic concepts seemed wholly incompatible.

The ANC's detailed step-by-step plan for a two-step path towards a final negotiated solution, in a summarised form, would operate as follows:

PHASE ONE, which can only come into being once agreement has been achieved on the matter at Codesa, would seek to "level the political playing field". Interim structures would be charged with ensuring equal treatment for all political competitors, particularly regarding elections.

Codesa would appoint from its ranks an interim government council (IGC), in effect a supreme transitional cabinet with final powers over Parliament and homeland structures.

Beneath the IGC would operate independent commissions charged with overseeing elections, and ensuring equal access to the public media. There would also be four multi-party committees, enjoying final control in the key areas of security, the budget, foreign relations and local government.

The international community would be invited to become involved, at least at the level of the electoral commission.

Phase one would lead to elections for a constituent assembly. The first phase should not last for more than six months beyond the date of its inception.

PHASE TWO begins once the CA has been elected. All South Africans over 18 would vote on the basis of proportional representation.

The main task of the CA would be to draft a final constitution, but it would appoint an interim Cabinet and perform transitional legislative functions. The process of constitution-making should not exceed nine months, and incentives and penalties would be devised to ensure that the timetable was adhered to.

Sunset

The constitution itself could include "sunset" clauses to help ease the country into full-blooded democracy.

The new ANC "transitional package" takes the tactical fight to the Government: it cannot but demand a serious and considered response from Dr Gerrit Viljoen and his strategists. There are certainly still points of difference - the Government will argue that the IGC is still a form of "rule by decree", for example - but many of its elements will not be easily dismissed.

The likely next step is a revised Government plan, swallowing what it feels it can swallow from the ANC blueprint, and finessing those areas with which it still has problems. The model aeroplane-building route to agreement is a long one, requiring patience - but it has achieved an extraordinary amount thus far and is speeding up all the time.

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President de Klerk is now facing two urgent tasks, writes Allister Sparks

STAR 27/2/92

Danger lurks in the CP rift

THE Conservative Party's long wrangle over whether to participate in the referendum has revealed not only the deep divisions within that party but also the nature of its danger to South Africa.

For this was a dispute between the constitutionalists and the warhawks.

We know from Dr Andries Treurnicht that the executive committee met on Monday night and recommended a boycott.

They must have known, from the projections of polling specialists, that they will almost certainly lose the referendum, and so wanted to cloud the result with the statistical confusion a boycott would produce.

But when the recommendation was put to the parliamentary caucus on Tuesday morning, the constitutionalists in the party objected. There are reports they threatened to resign.

The reasons are clear. Apart from the stigma of running away from a fight, which is anathema in Afrikaner politics, a boycott decision carried implications that men like Koois van der Merwe and

other "verligtes" were not prepared to go along with.

It would mean the Conservative Party had abandoned the course of constitutional action to which it claims to be committed.

It has already spurned the opportunity to present its case for "self-determination" to Codessa. To spurn the opportunity to get the general election it has demanded — and which it can get by winning the referendum and having President de Klerk honour his pledge to resign — would be to leave no further constitutional options open to it.

The only option left would be the one of violent insurrection.

That is the course the constitutionalists balked at following. There is a fundamental rift here. In the end a vote was taken and the constitutionalists won. Ferdi Hartsenbergh and his hawks were defeated. But it must have been close.

This split will be reflected throughout the right-wing community. It is a major gain for Mr de Klerk. Round one goes to him. I predict he will win between 55 and 60 percent of the votes.

There are also other reasons for

this positive prediction.

Mr de Klerk's real masterstroke was putting himself on the line. This makes the official question on the ballot paper irrelevant: the real question is whether you want De Klerk or Treurnicht as President.

This enables Mr de Klerk to switch the focus away from general anxiety about where he is leading the country to stark horror at where Dr Treurnicht would lead it. He can paint a Doomsday scenario of the consequences of a Conservative attempt to return to apartheid — worse-than-ever sanctions, unemployment and general hardship as infuriated blacks and an outraged world rise up against a white community more isolated than ever.

It is a scenario the United States has already hinted at with a leak from Washington that it would put a Conservative government in South Africa in the same category as Iraq's Saddam Hussein — a regime so unacceptable that the US would launch a concerted campaign of sanctions and other measures to topple it.

Another factor is that for the first time in South Africa's history

the entire media — the English and Afrikaans Press and the SABC — will all be campaigning on the same side.

The Conservative Party will be swamped. It won't be able to concentrate its forces the way it did in Potchefstroom, where canvassers visited some voters seven times. Its forces will be thinly spread over the whole country in a short, sharp campaign.

But there is no room for complacency. The defeat of the Conservative Party in the referendum will not remove the right-wing threat.

It is likely to respond in two ways. One is that, with the chances of forcing an election gone, the arguments of those who have been pressing for the party to put its case for "self-determination" to Codessa will be greatly strengthened.

The other is that those itching to turn to revolutionary violence will feel there is no longer any point in holding off.

I believe the Conservative Party will split — and with that the likelihood of insurrectionary violence will increase.

This presents Mr de Klerk with

two urgent tasks. First, he must use the referendum to do what he has failed so lamentably to do until now, which is to get out into the country and explain himself to white voters.

Mr de Klerk must explain why he, a good Nationalist who devoted himself for years to the cause of apartheid, who led his people in that direction and filled their heads with nightmarish fears about what the alternative would be, suddenly changed two years ago and led his people towards that alternative.

The more I travel about South Africa, and the more I listen to phone-in radio shows, the more appalled I am at the scale of political confusion and inarticulate-ness that exists.

White South Africans have no tradition of thinking for themselves. Ours is a society that has followed leaders blindly and swallowed ideologies unquestioningly. Now suddenly these people have been abandoned by a President who has veered sharply off course without adequate explanation, leaving them milling about like lost sheep.

The other thing Mr de Klerk

must do is look to his security forces. With the prospect of a wing insurrection likely to increase after the referendum de Klerk cannot afford a police force and army whose reaction to put down such a rebellion open to question.

Some estimates put support for the CP and other far-right groups at between 50 and 60 percent in the police force and 80 percent in the army. This tends to senior command levels.

Mr de Klerk has been sanguine about this with his denials that there is any fifth column or "third force". He must act. He is looking to liberals and social democrats support him in the referendum and this we must do. There is no question of boycotting it.

grounds that a whites-only vote is unacceptable, for the "yes" vote is to aid Dr Treurnicht and there can be no more unacceptable than that.

But if we are to support him have the right to demand that he clean up his security forces. He is the Commandant Chief. He must assert authority. □

No 'soft targets' if ANC resumed ops — Hanani

By Sandra Lieberum

IF for some reason the ANC had to resume military operations, "soft targets" would be avoided, Mr Chris Hanani, general secretary of the SACP and chief of staff of Umkhonto we Sizwe, testified yesterday at the trial of ANC operative, Mr Jeremy Seeber, who placed a mini-limpet mine which injured three people.

Mr Hanani testified in mitigation of sentence. Yesterday Mr Seeber, (25), pleaded guilty before Mr J J Esterhuizen in the Johannesburg Regional Court to charges of attempted murder and contravening the Explosives Act.

Mr Seeber claimed that on September 26, 1986, while he was a Wits student, he received instructions from his commander and subsequently placed the mini-limpet mine in a towel dispenser of the gents' cloak room next to the upstairs bar in the Devonshire Hotel.

He said that he was acting as "a soldier of the ANC", and that the idea was to convey to the business community the message that they should stop supporting the government.

The prosecutor pointed out that the Devonshire Hotel was frequented not only by businessmen, but

also by a large number of Wits students.

Mr Hanani yesterday said that the command of the ANC and of Umkhonto we Sizwe, the military wing of the organisation "accept moral responsibility for acts carried out by its soldiers".

However, he pointed out that — "I was sitting in Lusaka. I didn't choose the target."

He further pointed out that the capacity of the mini-limpet mine was limited, and that he had spoken to Mr Seeber and knew that the target had first been reconnoitred.

According to Mr Hanani the issue at present was not "whether the act was right or wrong".

He said it had to be viewed against the backdrop of the Botha regime and the total onslaught strategy.

While the initial objectives of Umkhonto we Sizwe had been not to attack civilians during 1978/79 — in Luanda a decision was taken to begin a people's war and during 1985 at an ANC conference there was a call for an escalation in

the people's war and "the difference between hard and soft targets tends to disappear in an intensified struggle," Mr Hanani submitted.

According to him, the security forces had hit soft targets, namely civilians in cross-border raids and this had led to a hardening in the ANC attitude.

He confirmed a submission made by Mr Seeber that to disobey orders and not place the limpet mine, would have led to a court martial for Mr Seeber.

According to Mr Hanani, at the stage a section of the business community was making a lucrative profit out of armaments and military vehicles.

A further point of view expressed by Mr Hanani was that he did not think Mr Seeber should be punished for his act, just as it was not ANC strategy to advocate "Nuremberg-type trials" in South Africa for apartheid.

The witness reiterated that it was unlikely that Mr Seeber would commit similar acts, since at present the military operations have been suspended and the armed struggle would be suspended at a certain stage if all went well.

Mr Steven Friedman — a political scientist called by defence council, Mr G Marcus (instructed by Mr N Manóim) — told the court his assessment of the realities was that the ANC no longer had the capacity to wage a protracted guerrilla war.

The defence submits that Mr Seeber's actions were political, while the prosecution contends that

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SA-Russian linkage condemned by SACP

THE SA Communist Party yesterday condemned reports that the Russian Federation was set to upgrade diplomatic relations

with Pretoria when its Foreign Minister, Mr Andrei Kozyrev, arrived in South Africa today.

"The upgrading of diplomatic relations at this moment is premature and counter-productive," the SACP central committee said in a statement.

According to news reports, Mr Kozyrev, who would be in South Africa as the guest of Foreign Minister Pik Botha, would almost certainly sign an agreement establishing full ambassadorial relations.

Condemned

The two countries are presently represented by interest sections in Moscow and Pretoria, established late last year.

"The SACP condemns any attempt to upgrade diplomatic relations between the De Klerk regime and Russia," the statement said.

"It should come when we have interim arrangements in place so that full diplomatic relations would be with a more representative and legitimate authority.

"It is therefore a matter of great regret that the present Russian government should see fit to upgrade its diplomatic relations now.

Denounced

"We call on them not to take this premature and counter-productive step," the SACP said.

According to the SACP, at least eight political organisations in Russia had already denounced the reported move, "which was taken without consulting the Supreme Soviet of the Russian Federation".

Mr Kozyrev also visited South Africa in December when Russia was still part of the Soviet Union.
— Sapa.

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Security forces: No joint control, says Meyer

By Brian Stuart

CAPE TOWN. — There would be no "joint control" over security forces by a transitional government in South Africa, unless there was a negotiated arrangement approved by Parliament, Mr Roelf Meyer, Minister of Defence and chief National Party negotiator at Codesa, said yesterday.

Mr Meyer said there were still "elements of unconstitutional structures" in the ANC's proposals for transitional government, presented to Codesa on Monday.

"This is not acceptable to us. More particularly, no form of unconstitutional joint control over the security forces will be accepted by us."

Speaking at a media briefing on Codesa, Mr Meyer said it had yet to be decided within Codesa whether there would be more than one phase in establishing a transitional arrangement. For example, a first phase could mean additions to the cabinet, and a second

phase could include changes to Parliament.

"We haven't started on these discussions. What we have before us is a particular proposal (from the ANC), and I'm reflecting on that.

"I am pointing out what would not be acceptable from the National Party's point of view. Anything that we should do in the process of the transition should also be of a constitutional nature.

"Whatever change comes must be on a negotiating basis, and of course it will have to be approved by Parliament."

The NP was also opposed to any foreign involvement in transitional government in South Africa.

Mr Meyer said the ANC's document was not detailed, but there has been "an encouraging movement towards our own approach".

The attitude of the NP was that transitional arrangements must be constitutional, and the climate of violence must be

improved before progress could be made in this field. Thirdly, the NP would accept "nothing that is compatible with our own eventual constitutional goals and principles".

However, Mr Meyer said he believed it possible to achieve agreement within Codesa's Group 3 on a workable transitional government.

"The differences are not of such a nature that we cannot find each other. From all we have on the table, in terms of proposals for a possible transitional arrangement, the chances are good that we can find a negotiated settlement."

The acceptance of some form of transitional government would also depend on success achieved in lowering the climate of violence.

"It is obvious that we can't move forward to implementing a transitional model before we have reached satisfactory progress in addressing the subject of violence."

However, the subject of Umkhonto we Sirwe and the ANC commitment to "armed violence" remained a matter for bilateral negotiations between the government and the ANC. These talks were continuing.

Evidence inconsistent, Goldstone tells brigadier

A senior KwaZulu policeman was yesterday told by the chairman of the Goldstone Commission of Inquiry into Public Violence and Intimidation, Mr Justice Goldstone, that his evidence was inconsistent and contradictory.

Brigadier Sipho Mathe was giving evidence in Pretoria to the committee of the commission investigating alleged SADF funding of front organisations sponsoring violence.

He provided details about a group of 200 people trained at a military camp in the Caprivi Strip. He said 78 of the 200 trainees had been issued with KwaZulu Police (KZP) identity documents on their return to KwaZulu although they were not "fully fledged" members of the force.

Twenty-eight of them had been issued with firearms because they protected the chief minister. None of the other trainees had been given arms.

Mr Justice Goldstone pointed out to Brigadier Mathe that during the sitting of the committee in Cape Town earlier this month he had testified that all 200 trainees had received KZP ID cards.

"How could you make that mistake? Why did you give this evidence?" he asked. The brigadier was unable to explain.

Asked if it were possible that other trainees could have been issued with firearms by the KZP without his knowledge, the brigadier said: "It might be so. We are in the high ranks of the police. We do not know what is happening in the lower ranks."

He said it would be irregular if weapons had been issued against his orders. Other trainees were not issued with weapons because he had not seen any need to arm them.

Mr Justice Goldstone said his replies were not consistent. The brigadier had said earlier that the reason for the trainees not receiving firearms was that they were not fully fledged

members of the KZP.

Later the judge pointed out contradictory statements by the brigadier on the number of trainees incorporated into the KZP by June 1989.

Brigadier Mathe said he had had "no idea" what was going on at the sitting in Cape Town.

He had not had any legal representation there and had tried to help the commission by giving information at his disposal.

"I was not guessing but telling the commission what I knew or thought I knew," he said.

Counsel for the ANC, SACP and Cosatu, David Soggot, put it to Brigadier Mathe that the "postmaster in Ulundi would have done better".

The brigadier also came under fire from Mr Justice Goldstone for not providing the commission with information he had been asked for concerning the whereabouts and activities of those trained in the Caprivi Strip in 1986.

The brigadier said he did not remember the request. — Sapa.

Ex-Inkatha man's life 'threatened'

PRETORIA — Former Inkatha Youth Brigade assistant organiser Mbongeni Khumalo's life had been threatened by members of the organisation since his decision to make certain revelations about its activities to the Weekly Mail, a committee of the Goldstone commission of inquiry into public violence and intimidation heard yesterday.

Khumalo told the committee sitting in Pretoria that since he had given the information to the Weekly Mail and testified before the commission, he feared he would be killed.

The committee of the commission is investigating allegations of SADF funding of front organisations sponsoring violence.

Khumalo said the reason for his resignation from Inkatha in February 1989

was that he had observed contradictions in the organisation that suggested it was not promoting peace. He had observed "extensive leaks" between the SADF military intelligence and Inkatha and the fostering of violence by Inkatha.

Asked by counsel for Inkatha and the KwaZulu government, Louis Visser, why he had not brought his "disillusionment" with the organisation to its attention before resigning, he said it was not possible to do so and "still live".

Visser put it to Khumalo that what he had told the Weekly Mail and his evidence before the commission amounted to "gossip stories and inferences".

He said Khumalo had denied in an application for employment to the KwaZulu government that he had any criminal convictions, whereas he had several. — Sapa.

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Four die in ambush

FOUR men, believed to have been on their way to attack train commuters, were killed and five others injured during an early-morning ambush on a van in Tokoza on the East Rand yesterday.

By **IKE MOTSAPI**

Witnesses at the scene claimed the group included two white men - one of whom is believed to have died on the spot - but police have denied this.

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Another witness, who declined to be named, last night corroborated the version of other witnesses, saying he was "absolutely sure that I saw the body of a white person".

He told *Sowetan* the body of a white man wearing a blue shirt was among the slain men. Police have dismissed this as speculation.

This brings to 16 the known number of people killed in violence throughout the country since the weekend.

Yesterday's incident occurred about 7am, when three men fired shots at a panel van travelling near Angus railway station at Phola Park, Tokoza.

One of the men has been identified as Mr Doctor Shabangu of Mshayazafe Hostel and the three others have not yet been identified.

Shabangu was the driver of the "death kombi", according to Mr Isaac Ndzipho, who said the man was his neighbour at the hostel.

West Rand police spokesman Captain Eugene Opperman confirmed the incident.

He said unknown men opened fire at a white panel van with the registration number LYV 028T.

Opperman said the four men died instantly.

The injured were taken to hospital by ambulances which had rushed to the scene immediately after the

attack.

He dismissed rumours circulating at Phola Park that two white men who were allegedly in the "death kombi" had also been killed.

He said police could not confirm reports that the men "were stopped dead in their tracks" while on a mission to attack train commuters at Angus railway station.

"Police have in their possession statements made under oath from some eye-witnesses and investigations are still continuing," Opperman added.

However some witnesses, who declined to be named, told *Sowetan* that on Tuesday night squatters at Phola Park knew about an impending attack on train commuters.

"We have been looking for this kombi, which we know has been used by people responsible for train at-

FIVE KILLED IN AK-47 attack on minibus

STAR 27/2/92

By Guy Jepson
and Thabo Leshilo

The ANC and the IFP have differed fundamentally over the events surrounding yesterday's horrific AK-47 attack on a minibus outside Phola Park on the East Rand.

The death in Natalspuit Hospital yesterday afternoon of one of the critically injured gunshot victims brought to five the number of people — all men — who were killed.

At least four others were seriously injured.

Police spokesman Captain Eugene Opperman said initial reports indicated that three men armed with AK-47's opened fire on the minibus at about 6.50 am on the Old Vereeniging Road, near Phola Park.

Inkatha Youth Brigade leader Themba Khoza yesterday claimed that the victims were all Inkatha members and blamed the ANC for the "massacre".

He identified four of the dead as Benjamin Ngcobo, Muzikayifane Ndwandwe, Pat Manqele and Doctor Shabangu.

The ANC claimed that Phola Park residents shot at the minibus in retaliation shortly after its occupants opened fire on pedestrians in the vicinity of Angus Station.

Duma Nkosi, chairman of the ANC's Tokoza branch, also claimed that police shot dead one person and injured two others as they dispersed Phola Park residents minutes after the minibus was attacked.

Captain Opperman said police, who had arrived at the scene at about 7.15 am, returned fire after being shot at by unknown persons from the direction of Phola Park.

established, no one had been injured in the exchange of fire, and called on the ANC to produce the body.

Captain Opperman also said police had no knowledge of an earlier attack carried out by the minibus occupants.

At a press conference, Mr Khoza said the accuracy and methods of attacks in Soweto and other areas in the PWV against political opponents of the ANC made it evident that MK (Imkhonto wa Sizwe) operatives were responsible.

He said the only apparent reason for the continued existence of MK was to crush opponents of the ANC.

Mr Nkosi, in turn, said it was "hard to see how in the heat of the shooting people could identify the passengers in the minibus as IFP supporters".

He provided the following account of the attack:

Three vehicles, two minibuses and a panel van travelled down the Old Vereeniging Road at about 6.30 am. Their occupants began shooting at people near Angus Station, before driving down the road.

Phola Park residents investigated and then responded, "in complete self-defence".

Asked whether members of the local defence committee or MK had fired on the minibus, Mr Nkosi said he could not go that far but said it was "an open secret" that Phola Park had well-organised defence units.

A Natalspuit Hospital spokesman said yesterday that one of four victims being treated was "fighting for his life" in the intensive care unit.

Mawabo Lisa (21) of Phola Park, who was shot in the arm, said he was about to cross the railwayline on his way to work when he heard a shot and felt his arm was "wet". He did not see his assailants.

"I ran back to Phola Park

Autonomy for AGs welcomed

By Michael Sparks

A Bill granting attorney-general greater political autonomy, which was tabled in Parliament on Monday, has met with a favourable response from the attorneys-general of the Transvaal and the Free State.

Witwatersrand Attorney-General Klaus von Lieres and Wilkau welcomed the Bill, though he added there were a number of steps before it became legislation.

"I think the most valuable aspect of this new legislation is that it will be seen as additional assurance to the public of the political independence of the attorney-general's position," Mr von Lieres said.

This means that on an important case, an attorney-general could be called before a parliamentary committee, which von Lieres regarded as a good thing.

Free State Attorney-General Tim McNally said that although he had not seen the latest version of the Bill, he supported it.

"I am in favour of anything that underlines the independence of the attorney-general," Mr McNally said.

The new legislation means that although attorneys-general are still appointed by the State President, they no longer have to conform to requirements applicable to civil servants.

Reincorporation a test for Codesa consensus principle

THE question of what constitutes sufficient consensus is set to be seriously tested at Codesa for the first time as political groups differ on whether Bophuthatswana's refusal to be reincorporated prevents agreement on the future of the TBVC states.

Transkei's military leader Gen Bantu Holomisa confirmed yesterday that government delegates considered Bophuthatswana's rejection of reincorporation to be a bar to sufficient consensus.

In terms of Codesa's standing rules, groups should arrive at decisions by sufficient consensus, although the term is not specifically defined. However, it is widely interpreted to mean there should be broad support for a proposal, and that government and ANC should also agree.

But government and NP representatives have said sufficient consensus on reincorporation can be achieved only if the TBVC states themselves also agree.

As all the groups in Codesa, other than Bophuthatswana, had agreed in principle that the TBVC states should be reincorporated, Holomisa said he believed sufficient consensus had been achieved.

He suggested that groups may argue that since Bophuthatswana had not signed

TIM COMEN

the Codesa declaration of intent, they were in effect observers at Codesa, and their refusal should not be taken into account.

The Bophuthatswana government is not prepared to accept reincorporation even if authority is delegated to second and third-tier governmental structures in the region. It favours a confederal arrangement between independent states in the region and argues in favour of "extended boundaries that meet its historic claims".

Although the majority at Codesa have agreed on the principle of reincorporation, documents indicate differences on how the reincorporation should take place.

Views differ from the SACP's statement that government should simply invalidate the laws that nominally gave the territories their independence to Inkatha's view that the method should depend on the wishes of the residents of the territories.

There are also differences about the timing of reincorporation.

ANC delegates have argued that the process of constitutional change should be preceded by reincorporation, but Holomisa insists that reincorporation could take place only once the tricameral Parliament has been abolished.

Minister calls for impartial body

LINDA ENGBOM

CAPE TOWN — An impartial, permanent body to regulate the telecommunications industry and control use of the radio spectrum was needed, Transport and Posts and Telecommunications Minister Piet Welgemoed said in Parliament yesterday.

Presenting the Post Office Appropriation Bill, Welgemoed said overseas and SA consultants, appointed last year to advise on the regulation of the industry, had submitted their report. Already it was clear, he added, that an impartial body with a permanent administrative and professional infrastructure would be necessary.

"For this, comprehensive new legislation and the review of the Radio Act, the Post Office Act and other laws will be necessary. The Broadcasting Act may possibly also be implicated."

Of the total expenditure of R19.5m proposed for appropriation — mainly to cover administrative and personnel expenses — R3m has been earmarked for further consultancy work on the regulation of the industry and R1.7m for consultancy work on computerisation. Revenue of R20m has been budgeted for.

Telkom SA and the SA Post Office which, while owned by the state, were constituted like other public companies and would report separately from the department. The first reports of Telkom and SA Post Office would be tabled for the 18 months to end-March 1993.

Welgemoed said the companies were gradually becoming subject to open market forces and the disciplines of the market. The department's functions had been reduced to purely governmental and regulatory functions.

Welgemoed said of the more than 635 000 radio transmitter/receiving sets licensed for private radio communication, more than 500 000 had been installed in vehicles. There were long waiting lists in the PWV area where all the available frequencies had been taken up and where the use of the spectrum was the most intense.

Welgemoed said additional channels in the spectrum for private use could become available with their release by the SADF, Police and Transnet whose requirements had changed.

STAK

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Police captain admits ordering killings

PIETERMARITZBURG — South African Police Captain Brian Mitchell admitted in the Supreme Court yesterday he had ordered special constables to kill United Democratic Front members in Trust Feed in December 1988.

Captain Mitchell, who was testifying in his own defence, said his instruction had meant to convey to them that they were to attack groups of UDF members, and not to break into a house and attack women and children.

Although he had not specified exactly where the UDF members would be, he said he thought the special policemen would have got information as to which were UDF areas in Trust Feed from the local Inkatha leader, Jerome Gabela, with whom they were staying. He denied he had ever pointed out any house for the special policemen to attack.

He told the court that on the morning of December 3 1988, when he saw who they had in fact shot, he was shocked.

CITIZEN 27/2/92

Revolutionary

The attack allegedly resulted in the death of 11 people attending a funeral vigil. Captain Mitchell, two other policemen and four special constables are facing eleven charges of murder and eight of attempted murder as a result of the massacre.

Describing the politics of the area in which he was embroiled, Captain Mitchell said he saw himself as a soldier fighting in a civil war and he was on the side of the government. He also sympathised with Inkatha because they never made areas un-governable and he did not perceive them to be part of the "revolutionary onslaught".

When the judge asked him if, as station commander at New Hanover, he considered it proper to use special policemen to kill UDF members, Captain Mitchell said he felt he was a soldier at the time of a civil war.

Asked if special policemen were trained to carry out the orders of a senior officer, he replied: "Not unlawful orders." — Sapa.

United Nations
Centre  **against Apartheid**

Notes and Documents

12/91

May 1991

DISCUSSION DOCUMENT:
CONSTITUTIONAL PRINCIPLES AND STRUCTURES
FOR A DEMOCRATIC SOUTH AFRICA

by

the African National Congress of South Africa

[Note: This issue is published in pursuance of the Declaration on Apartheid and its Destructive Consequences in Southern Africa adopted by consensus on 14 December 1989 by the United Nations General Assembly at its sixteenth special session.

It contains a discussion document recently prepared by the Constitutional Committee of the African National Congress of South Africa (ANC), which is divided into two parts: the constitutional principles for a democratic South Africa; and the structure of a constitution for a democratic South Africa.

The views expressed herein are those of the author.]

91-17225

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Acknowledgement, together with a copy of the publication containing the reprint, would be appreciated.
United Nations, New York 10017

INTRODUCTION

Right of all South Africa's people to participate in constitution making

The African National Congress of South Africa (ANC) believes that all the people of South Africa should participate in the process of drawing up and adopting a new constitution for the country. This principle is enshrined in the demand for a constituent assembly made up of mandated representatives of the people elected in non-racial elections.

To assist this process of popular participation and ensure that discussion is not restricted to so-called experts, the ANC Constitutional Committee, on the instruction of the National Executive Committee, published various documents, inter alia:

"What is a constitution?" - to identify issues in the constitution-making process; and

"A draft Bill of Rights" - to identify fundamental human rights that should be enshrined in a Bill of Rights.

The objective of these documents was not to produce blueprints or position, but to assist our people in discussions around constitution-making to enable them to work out for themselves what they want to see in a new constitution and what they would like to see incorporated in a Bill of Rights.

A number of conferences, workshops and discussion meetings were also held over the last few months. Working papers on electoral systems, gender issues, local government, the land question, etc. were also prepared.

All these documents were widely distributed to all branches and regions, as well as to trade unions and other formations within the broad democratic movement.

Comments, criticisms and suggestions were invited. As a result of the discussions, inputs and responses received, the ANC Constitutional Committee has been able to formulate documents identifying principles and a possible structure for a new constitution. These documents reflect the views and responses received thus far.

In this package, therefore, will be found two documents: "Discussion document on constitutional principles"; and "Commentary on the structure of a constitution for a democratic South Africa".

We also make the following observations:

(a) While the documents reflect the broad thinking within ANC and allied organizations, they are not put forward as final positions or blueprints. They are meant for discussion and debate within the ANC branches, trade union movement and allied organizations - and indeed amongst all South Africa's people. We want to see our people, through their organizations, grapple with the ideas contained in the documents and come up with their own suggestions

and criticisms. This will enable ANC to arrive at a set of proposals based on the will of the people.

(b) Specific attention is drawn to some areas of discussion:

- (i) Should South Africa have a ceremonial president and a prime minister answerable to parliament, or an executive president (without a prime minister), answerable to parliament? The method of presentation of the issue in the documents does not mean that finality has been reached. The issue is open and must be discussed;
- (ii) How is the president to be elected? By direct elections, or by parliament?;
- (iii) What provisions should be included to avoid overcentralization and ensure democratic participation in government at central, regional and local levels. Also, what provisions could be included to ensure structured accountability of all officials and organs of government?;
- (iv) What should be the structure of parliament? Should it be bicameral (two houses, e.g., national assembly and senate) or unicameral (one house)? In either event, how will representatives be elected and what will be the function of the house(s). In the documents we make provision for two houses, but this also is still an open question;
- (v) Judiciary and administration of justice. This has been a burning issue in our country. We have a judiciary and a system of justice that are illegitimate. How to deal with these aspects represents a major problem. There is no final answer to this and the discussion in our documents represents an attempt to grapple with the problem.

It is imperative that branches, regions, trade unions, democratic formations generally, as well as a broad spectrum of our people - sympathetic or unsympathetic - discuss the issues raised and submit comments, criticisms and suggestions.

The question may be asked: Why not leave all these discussions to a constituent assembly? Are we not pre-empting the constituent assembly? Our answer is that we do see the constituent assembly as the mechanism that must adopt a new constitution. However, discussion on all constitutional issues must take place now to ensure that representatives to a constituent assembly are fully informed and mandated, and that popular participation in constitution-making is real. To postpone discussion on all these important issues until a constituent assembly is convened, will in reality mean that people would not be participating in the process.

In addition, it is clear that in the negotiation process, the various parties will be meeting to discuss the principles on which a new constitution should be based. In Namibia, the principles were imposed by the Contact Group and the constituent assembly was bound to work within the framework of those principles. We need to ensure that principles are not imposed upon our people but arise as a result of popular participation.

ANC appeals to all branches, trade unions, democratic formations and people generally to discuss these matters now. We invite comments, suggestions and criticisms. Send them to:

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I. CONSTITUTIONAL PRINCIPLES FOR A DEMOCRATIC SOUTH AFRICA

ANC envisages a united, democratic, non-racial and non-sexist South Africa, a unitary State where a bill of rights guarantees fundamental rights and freedoms for all on an equal basis, where our people live in an open and tolerant society, where the organs of government are representative, competent and fair in their functioning, and where opportunities are progressively and rapidly expanded to ensure that all may live under conditions of dignity and equality.

A. A united South Africa

When we speak of a united South Africa, we have in mind in the first place the territorial unity and constitutional integrity of our country. South Africa must be seen, as recognized by the international community, as a single, non-fragmented entity including Transkei, Bophuthatswana, Venda and Ciskei.

Secondly, we envisage a single citizenship, nation and a common loyalty. We speak many languages, have different origins and varied beliefs, but we are all South Africans.

Thirdly, all apartheid structures must be dismantled and replaced by institutions of government - central, regional and local - that are truly non-racial and democratic. They must form an integrated and coherent whole, be drawn from all the people and be accountable to the whole community.

Fourthly, there must be a single system of fundamental rights guaranteed on an equal basis for all through the length and breadth of the country. Every South African, irrespective of race, colour, language, gender, status, sexual orientation or creed should know that his or her basic rights and freedoms are guaranteed by the constitution and enforceable by recourse to law.

Fifthly, the flag, names, public holidays and symbols of our country should encourage a sense of shared South Africaness.

A unified South Africa requires a strong and effective parliament capable

of dealing with the great tasks of reconstruction, of overcoming the legacy of apartheid and of nation-building.

We believe that there is a need for a strong and effective central Government to handle national tasks, strong and effective regional government to deal with the tasks of the region and strong and effective local government to ensure active local involvement in handling local issues.

All such governmental structures and institutions shall be based on democratic principles, popular participation, accountability and accessibility. A unified South Africa shall not be an overcentralized, impersonal and overbureaucratized country. The precise relationship between central, regional and local governments can be worked out on the basis of acknowledging the overall integrity of South Africa and the existence of fundamental rights for all citizens throughout the land.

The regions should not be devised as a means of perpetuating privilege, ethnic or racial divisions along territorial zones, but should be based upon the distribution of population, availability of economic resources, communications and urban/rural balance.

National tasks would include external links and representation, defence and the basic security of the country, general economic, fiscal and tax policy, the creation of national policy framework, the furnishing of resources for eradicating racism and racial practices and for the tackling of the vast problems of education, health, housing, nutrition, employment and social welfare.

Regional tasks would include development and the carrying out of the basic tasks of the Government at a regional level, bearing in mind regional particularities and resources.

Without detracting from basic constitutional rights and freedoms, provision could be made for special recognition of languages in the different regions.

Local tasks cover all the day-to-day aspects of living that most directly and intimately affect the citizens in an integrated and non-racial local authority area. The active local involvement of all sections of the population will be necessary in the fulfilment of these tasks.

The central Government has the responsibility for ensuring that there is a common framework of principles and practices applicable to the whole country and for seeing to it that all areas of the country have equitable access to national resources. However, it is not the function of the central Government to involve itself in each and every decision that has to be taken at the regional or local levels. Such functions should clearly be delegated to these authorities and performed by them.

Similarly, when we speak of a united South Africa, we do not envisage the elimination of cultural, linguistic, religious and political differences. On the contrary, we regard the multiplicity of opinions, beliefs, faiths, tastes, cultures and preferences as contributing towards the richness and texture of

South African life. What the new constitution should avoid at all costs is vesting political rights in different linguistic, cultural, ethnic or religious groups.

A free South Africa must therefore ensure that these differences do not become the source of division or conflict or the means of perpetuating and promoting domination or privilege.

The new constitution must consistently and clearly affirm the fundamental principle of equal and undifferentiated citizenship so that the differences of culture, interest and personality can then express themselves in a constructive, free and non-conflictual way.

B. Democratic

The Government must be democratic in the universally accepted meaning of the term. It must be the Government of the people, by the people, for the people. It must be chosen by the people in free, fair and regular elections. It must be removable if it loses the confidence of the voters. Elections must be based on the principle of universal and equal suffrage on a common voters roll without distinction as to race, language, creed, class, social position, birth or gender. Illiterate voters should not be disadvantaged. The precise method of voting and the electoral system can be negotiated within the framework of these universal principles. ANC favours the system of proportional representation, with regional and national lists.

Secondly, the legislature should be representative of the people as a whole, reflecting such differences of political views and interests as may be present in the community at any particular time.

Thirdly, the institutions of government should not be restricted to any language or to any religious, racial, ethnic or cultural grouping. The central, regional and local government structures, including the law enforcement agencies and the administration of justice, should reflect the composition of South Africa as a whole and draw on the talents and life experience of all. Similarly, they should act in a fair and objective manner towards all, without fear, favour or prejudice.

Fourthly, the Government must be open. Apartheid South Africa has been a highly authoritarian society, characterized by arbitrary decision-making by officials and by excessive secrecy. All South Africans have the right to be informed about the issues and to know what the basis of governmental decision is. There is far too much fear of the Government. We must secure constitutional barriers to detention without trial, to spying on citizens, secret files, dirty-tricks departments, disinformation and the use of government money to promote party political objectives.

Fifthly, Government should be based on the principle of active involvement of the people. The existence of civic associations, religious bodies, ratepayers organizations, trade unions and other independent bodies should be encouraged. Similarly, the Government should collaborate with non-governmental organizations (NGOs), without interfering with their autonomy.

Finally, the Government should reflect the will of the majority, be effective but not all-powerful. It should operate within the framework of the constitution, acknowledging a separation of powers and the existence of fundamental rights and freedoms as guaranteed in a bill of rights.

C. Non-racial

A non-racial South Africa means a South Africa in which all the artificial barriers and assumptions that kept people apart and maintained domination, are removed. In its negative sense, non-racial means the elimination of all colour bars. In positive terms, it means the affirmation of equal rights for all. It presupposes a South Africa in which every individual has an equal chance, irrespective of his or her birth or colour. It recognizes the worth of each individual.

A non-racial constitution can be adopted rapidly, but a non-racial South Africa would take many years to evolve. Yet, although the massive discrepancies in education, health and living conditions imposed by decades of racial discrimination cannot be eliminated by constitutional declaration, the constitution must provide the positive means to reduce progressively the imbalances and inequalities and to ensure that everybody has an equal chance in life.

D. Non-sexist

The new constitution must reflect a commitment to full, free and equal participation in the new South Africa. Law and practice keep South African women out of their rightful place in helping to build democracy and enable a new nation to evolve, and they deprive them of their human rights as individuals.

The new Constitution must therefore:

- (a) Guarantee equal rights for women and men in all spheres of public and private life;
- (b) Create mechanisms whereby the discrimination, disabilities and disadvantages to which women have been subjected are rapidly removed;
- (c) Give appropriate recognition to reproductive and birth rights;
- (d) Guarantee constitutional protection against sexual violence, abuse, harassment or defamation;
- (e) Ensure that women are heard in all issues and that they participate actively in all levels of society.

E. Bill of rights

A bill of rights based on universally recognized principles of human rights should form an integral part of the new constitution. In particular, it should include guarantees to all South Africans against the violations of human rights associated with apartheid and stress the principle of the equal

dignity and worth of all South Africans.

The bill of rights should in a clear and unambiguous language guarantee the rights of personal freedom and political expression. It should also protect and enhance rights of the individual to practise her or his religion and culture and speak her or his language. It should acknowledge the importance of securing minimum conditions of decent and dignified living for all South Africans.

It should create mechanisms for enforcing these rights. In particular, the courts should have a primary role in ensuring that the bill of rights is operative. A constitutional court that enjoys the respect of all South Africans, that draws on the experience and talents of the whole population, that is independent and that functions in a manifestly fair and objective fashion, accountable only to the principles of the constitution, should be created.

Similarly, a human rights commission should be established to ensure that violations of human rights are investigated and appropriate remedies found, examine patterns of discrimination and make proposals for their elimination.

Finally, the post of ombudsman should be created to deal with questions of abusive, arbitrary, capricious, discourteous and corrupt exercise of office by any official.

F. Open society

The constitution should guarantee the free articulation of differences within the framework of equal rights and tolerance.

An open society requires guarantees for the free functioning of such NGOs as religious bodies, trade unions, sporting and cultural associations, subject only to respect for fundamental human rights as set out in the constitution.

NGOs should be encouraged to collaborate with the Government in furthering the aims of the constitution, without thereby compromising their identity or independence.

All men and women shall be entitled to all necessary information to enable them to make effective use of their rights as citizens, workers and consumers and to impart such information.

There should be freedom of the press and the media should be open, accessible and respond to all the views, opinions and interests of the community.

G. Civil, defence, police and prison services

The three principal qualities of the civil service, the defence, police and prison service, shall be: representativity, competence and impartiality.

(a) Representativity

All organs of government shall draw on the life experience and talents of all sectors of the community in such a manner as to instil a common South African perspective of public service. The present barriers based on race shall be eliminated and special steps shall be taken to redress patterns of discrimination attributable to apartheid.

(b) Competence

It is in the interest of the population of a free South Africa that the standard and quality of the public service be as high as possible. To attain this goal, and consistent with the principle of representativity, special programmes of training, retraining and advancement shall be undertaken to enable the best South Africans to give the best possible service to all their fellow citizens.

(c) Impartiality

The organs of government shall be accountable to parliament and to the whole community. It is not their function to serve the interests of any party or sectional grouping. Impartiality presupposes a balanced composition of the bodies concerned and a sensitivity to the needs and aspirations of all sections of the community.

There should be adequate control and supervision over the civil service, defence, police and prison service; an effective machinery to investigate complaints against these services and the provision of redress.

(d) Administration of justice

Without interfering with its independence, and with a view to ensuring that justice is manifestly seen to be done in a non-racial way, and that the wisdom, experience and judicial skills of all South Africans are represented on the bench, the judiciary shall be transformed in such a way as to consist of men and women drawn from all sectors of South African society.

In a free South Africa, the legal system shall be transformed to be consistent with the new constitution.

The courts shall be accessible to all and shall guarantee to all equal rights before the law.

H. Guarantees of opportunities for a dignified life for all

A new South Africa can never evolve if the White part of the population lives in relative luxury while the great majority of Black South Africans live in conditions of want, squalor and deprivation.

Appropriate constitutional expression must therefore be found to guarantee basic human rights in relation to nutrition, shelter, education, health, employment and welfare. Government should be under a constitutional duty to work towards the establishment of a guaranteed and expanding floor of

social, economic and educational rights for everybody.

It is particularly important that the constitution facilitate access to education, employment and land, so that people have real and effective opportunities for improving their situation and pursuing happiness.

II. STRUCTURE OF A CONSTITUTION FOR A DEMOCRATIC SOUTH AFRICA

South Africa shall be reconstituted as a non-racial, non-sexist, democratic and unitary republic.

South Africa shall consist of the whole territory recognized by the international community as South Africa and shall include the Transkei, Ciskei, Venda and Bophuthatswana:

(a) Provision will be made for the three branches of government: the executive, legislature and the judiciary;

(b) The head of the executive will be elected president and will also be the head of State. The question that arises is whether the president should be elected directly by the public and vested with greater executive powers, or whether s/he should be elected and answerable to parliament. This is a matter on which there must be greater public debate;

(c) The president will act in consultation with a cabinet of ministers headed by a prime minister. The president will appoint a prime minister and other members of the cabinet;

(d) The president may hold office for a maximum of two terms of five years each. He or she will be subject to removal only by a resolution passed for good cause by a two-thirds majority of the national assembly;

(e) The legislative branch of government will consist of two houses of parliament. The first house of parliament will be the national assembly, which will be elected on the basis of proportional representation by universal suffrage in which all persons will have an equal vote without regard to race, gender, ethnic origin, language or creed. The power of enacting legislation will primarily be vested in the national assembly;

(f) The second house of parliament will be the senate, which will also be elected according to universal suffrage without regard to race, gender, colour, ethnic origin, language or creed. The senate will neither be a corporatist chamber made up of interest groups (youth, labour, women or business, or other groups) nor will it represent ethnic or so-called "community" interests. The electoral system will, however, be different to that adopted for the election of the national assembly, and will make provision for representation on a regional but not on an ethnic basis;

(g) The senate will be the guardian of the constitution, with power to refer any dispute concerning the interpretation or application of the constitution to the appropriate court for its decision and the power to review. Where appropriate, the senate may delay the passage of legislation

passed by the national assembly, but it will not have the power to veto legislation;

(h) Elections for the presidency, national assembly and the senate will be held by secret ballot at periodic intervals of not more than five years and procedures will be enacted to ensure that the elections are genuine and are conducted in accordance with the principles and procedures consistent with those existing in a democracy;

(i) All South Africans shall be entitled to stand for election as president, member of parliament and to other elected offices. Elections will be supervised by an independent electoral commission, and conducted in accordance with the standard design to ensure that they are fair and free.

The national assembly will be elected on the basis of proportional representation. The rationale behind proportional representation lies in the following factors:

(a) It encourages participation by groups that have significant followings. This is more satisfactory than forcing political or subversive activity outside parliament. Fringe parties would be excluded by imposing a threshold of a 5 per cent of the vote;

(b) Votes in excess of 50 per cent would count and hence be an inducement to vote in areas where one party is dominant. Similarly, losing parties' votes in those areas would also contribute to their overall performance;

(c) It leads to a more exact political reflection of the popularity of parties;

(d) It avoids the time, expense and accusations of bias in the process of delimiting constituencies. This process can take months or years.

Proportional representation on the basis of a national party list system may present problems. Under such a system, there is no way of ensuring adequate regional or local representation. Party bureaucracies benefit at the expense of local party structures or local sentiment. There is little direct accountability to constituencies.

Accordingly, ANC favours incorporating elements of a national list and regional accountability into the electoral system. This could be done most simply by combining a national list with a regional list. For example, regions could be allocated, say, half of the total seats, to be divided between the different regions in proportion to the registered voters in each region. The remaining half of the seats could be allocated on a national basis. Voters would vote for a party within their region and the regional seats would be allocated between the parties according to the percentages obtained by each party in each region. The second stage would be for the regional votes to be aggregated so as to determine the national percentage of the total vote of each party. Each party would then be entitled to nominate the additional members needed to make up its total entitlement of seats from its national list.

The end result would be the representation of each party in the assembly in proportion to its total votes, but reflecting a regional choice of members as well. The system requires the electorate to cast one vote only. It will be easy to administer and easy for the voters to follow.

It is recommended that proportional representation, based on the list system, be the preferred system of voting for senate, regional and other elections.

It is important that there be a guarantee of free and fair elections and that procedures be enacted to see to this. It is therefore recommended that the conduct and supervision of all elections be vested in an independent electoral commission to oversee every aspect of elections from the printing of ballot papers to the adoption of regulations for access by parties to the public media, as well as fairness to all political parties by the public media.

There will be an independent judiciary responsible for the interpretation of the constitution and the application of the law of the land. The judicial power will include the power to review and set aside legislation and actions that are unconstitutional. A constitutional court, appointed by the president on the recommendation of a judicial service commission, or by other methods acceptable in a democracy, comprising of judges, practitioners and academics, would be set up.

Provision will be made for elected local and regional government on the basis of universal franchise without regard to race, gender, ethnic origin, language or creed. Local and regional government will exercise delegated powers but will have wide discretions in regard to the priorities to be pursued at these levels, provided always that such policies do not conflict with national policies. Functions presently vested in the provincial administrations will be vested in the regional government. The boundaries of local and regional districts will be determined with due regard to economic and development considerations and without regard to race, colour, ethnic origin, language or creed.

Provision shall be made for one common and equal citizenship acquired by birth, descent and naturalization in accordance with conventional standards. Provision will also be made for the restoration of South African citizenship to persons who have lost it as result of the denationalization process through the homelands policy, or as a result of having gone into exile for political reasons, and provision will also be made for the acquisition of South African citizenship by the spouses and children of such persons.

All languages of South Africa will have equal status. They will be set out in a schedule to the constitution and will include, in alphabetical order, the following: Afrikaans, English, Sesotho, Seswati, Sipedi, Tsonga, Tswana, Venda, Xhosa and Zulu.

The State shall take all reasonable and necessary steps to protect, promote and enhance the language rights of all the people of South Africa in relation to education and culture and in the functioning of the State at local, regional and national levels.

The language policy of the State shall be directed towards promoting and encouraging multilingualism and preventing the use of any language or languages for the purposes of domination or division.

The State shall, however, be empowered to make reasonable provision by law for the use of one or more of the languages in different regions of the country, or for specific purposes.

The question may, of course, be asked whether there should be one official language for the country. If this choice is made, it would mean the demotion of some languages or the promotion of a single one. Also, it would mean that the official language would be one which most of the people either do not speak or do not speak fluently.

It would seem therefore that the most appropriate thing to do is to give equal status to all languages subject to the right of the Government to give primacy to one or more languages in any region or throughout the State as the language of administrative communication or judicial record, or for other purposes, either throughout the State or in any area. But everyone should be entitled to use her or his language for purposes of communicating with the public service.

There will be a justiciable bill of rights leaving the way open for legitimate state action but affirming and protecting internationally recognized rights and freedoms, including equality before the law; freedom from detention without trial; protection against arbitrary arrest and detentions; protection against arbitrary search and seizure; prohibition of forced labour; the right to fair trial; prohibition of cruel and unusual punishment; protection of life, including the abolition of the death sentence; protection of women's rights; protection of children; freedom from discrimination; right to privacy; freedom of expression, including a free press; the right to information; freedom of religion and conscience; freedom of movement, including the right of citizens to leave and return to South Africa; trade union rights, including the right to work and the right to strike; the right to form political parties; the right to education, welfare and health care consistent with the needs of the people and the resources of the State; environmental rights; family and cultural rights; and provision for just compensation to be paid for property taken by the State.

We do not propose to discuss here the formulation of each right and the enforcement of rights as this has already been done in a detailed fashion in a discussion paper "The Draft Bill of Rights", published by ANC in November 1990.

Provision will be made for discrimination to be eliminated in substance, as well as in form. At all levels of government, the State will be empowered to pursue policies of affirmative action for the advancement of persons who have been socially, economically or educationally disadvantaged by past discriminatory laws and practices and in order to redress social, economic and educational imbalances in South Africa resulting from such discrimination with special regard to the maldistribution of land and the need for housing. Special provision will also be made to redress the added discrimination that has been suffered by women and the victims of forced removals.

All discriminatory legislation and all other legislation inconsistent with the bill of rights will be invalidated by the bill of rights. All other legislation will remain in force, unless repealed by parliament or set aside by a court under its power of judicial review.

There will be a public service commission charged with the responsibility of overseeing the recruitment, promotion and dismissal to and from posts in the civil service. Such a commission will also be required to implement an affirmative action programme in regard to appointments to senior positions in order to redress existing race and gender disparities. Provision will be made for a representative structuring of the public service, the police service and the defence services and to ensure that the public service will be accountable for its actions.

There will be an independent ombudsman with powers to investigate complaints against members of the public service, including the police and other holders of public and private power, and to investigate allegations of corruption.

The constitution will also make provision for a state of emergency to be declared when the life of the nation is threatened. Such a power will be subject to strict controls by parliament and the judiciary. The constitution will provide for the recognition and protection, as far as possible, of fundamental rights during the period of emergency.

The constitution will be subject to amendment only if a majority of two thirds of the national assembly approve of the amendment or if it is approved by two thirds of the votes cast at a national referendum.



AFRICAN NATIONAL CONGRESS

Observer Mission to the United Nations

Address to CODESA by Comrade Nelson R. Mandela
President of the ANC
20 December 1991

"...that where colonial, racial and apartheid domination exists, there can be neither peace nor justice."

In keeping with this spirit, CODESA must therefore lay the basis for the elimination of racial and apartheid domination.

It is only by decisive action in this regard that South Africa will be granted entry to the community of nations as a full member.

The strength of the CODESA initiative lies in the range of political parties and persuasions represented here. The presence of so many parties augurs well for the future. The diverse interests represented, speak of the capacity to develop consensus across the spectrum and of the desire to maximise common purpose amongst South African. Many parties here have already invested so much by way of preparing their constituencies for transformation. Above all else, the investment already made must spur us on to total commitment for the successful outcome of this convention.

Ons betreur die feit dat daar nog partye is wat hulself uit hierdie belangrike proses uitsluit. Na Kodesa is die situasie in ons land onomkeerbaar. Die dreigemente met burgeroorlog is onverantwoordelik en totaal onaanvaarbaar. Die tyd vir sulke praatjies is lankal verby. As hulle hierdie dreigemente uitvoer sal die wereld sien dat hulle die lyding van alle Suid Afrikaners will verleng, en die soeke na vrede in ons land wil verpes.

Maar een ding staan vas: die proses tot egte demokrasie is onstuitbaar. Die geskiedenis bied vir ons almal 'n unieke geleentheid. Om hierdie geleentheid vir die lensiesop van lee, negatiewe bravado ter verkwansel, is om die toekoms to ontken. Ons doen steed 'n beroep op sulke partye om nou, selfs in hierdie laat stadium, by Kodesa aan te sluit.

Die boodskap van die ANC deur Kodesa is eenvoudig, duidelik, en vir alle Suid Afrikaners, die tyd vir een Suid Afrika, een volk, een stem, een toekoms, is daar.

The National Convention in 1909 was a gathering of whites representing the four British colonies. It was also a betrayal of black people and a denial of democracy. The act of union entrenched colonial practices and institutions constitutionally. In its wake, our country has lived through eight decades of wasted opportunity. CODESA provides the first opportunity since to attempt to establish democracy in our country.

It is imperative that we also reach consensus on the definition of democracy. From the ANC's perspective, democracy entails:

- * That all governments must derive their authority from the consent of the governed;
- * No person or groups of persons shall be subjected to oppression, domination or discrimination by virtue of their race, gender, ethnic origin, colour or creed;

to open negotiations to ensure that notions of secret deals do not arise. This process will also hinge on the confidence by each participating party that the communication of developments be absolutely non-partisan. Consideration therefore needs to be given to the immediate establishment of the necessary mechanisms to ensure that the state-controlled media accurately and fairly represents the views of all participants. The means of establishing an interim government will not be participatory. Therefore the consensus at CODESA should curtail both its mandate and its lifespan.

The ANC remains fully committed to the installation of a government which can justly claim authority because it is based on the will of the people. This reality will have to be underpinned by a constitution which both engenders respect and enjoys legitimacy. There is a compelling urgency about this task. It is inconceivable that such a democratic constitution could be reached in any way but through the portals of an elected constitution-making body, namely a Constituent Assembly.

It is tragic that our country, so well endowed with natural resources has been reduced to an economic wasteland by the system of apartheid, based on greed and mismanagement. It is also distressing to note that the deplorable violence has reached such alarming proportions, and others threaten still more. These features are a direct consequence of the determination of a minority to maintain the power and privilege accrued by apartheid. There are large parts of our country where free political activity is still not possible, where law and order is still ruled by the jackboot and a large number of political prisoners remain incarcerated. In the spirit of our Convention we call upon the government to proclaim and immediate CODESA amnesty before Christmas for all remaining political prisoners throughout the country.

Nothing could be more irresponsible than for those of us gathered here to deny our people the right to peace and freedom of association and to deny our country its due economic growth.

As everybody here is aware, the ANC and the Government have been involved in bilateral discussions since May last year. There are still some matters dealt with in these bilateral talks which have not been finalised. We will continue these discussions, among other things, seeking to resolve the question of the control of all armed formations in the country, including Umkhonto we Sizwe.

We can only reverse the current situation if we set our sights on establishing true democracy. The national interest is far, far more important than the sectional interests represented by any party here. Everybody wants a place in the sun of a post-apartheid South Africa. No delegation here could possibly have been mandated by its constituency, however small, to attend Codes in order to annihilate itself.

Recognising this, however, we want to make a strong appeal to everybody present to place the compelling national concerns above narrow sectional interests.



AFRICAN NATIONAL CONGRESS

Observer Mission to the United Nations

Address to CODESA by Comrade Nelson R. Mandela
President of the ANC
20 December 1991

"...that where colonial, racial and apartheid domination exists, there can be neither peace nor justice."

In keeping with this spirit, CODESA must therefore lay the basis for the elimination of racial and apartheid domination.

It is only by decisive action in this regard that South Africa will be granted entry to the community of nations as a full member.

The strength of the CODESA initiative lies in the range of political parties and persuasions represented here. The presence of so many parties augurs well for the future. The diverse interests represented, speak of the capacity to develop consensus across the spectrum and of the desire to maximise common purpose amongst South African. Many parties here have already invested so much by way of preparing their constituencies for transformation. Above all else, the investment already made must spur us on to total commitment for the successful outcome of this convention.

Ons betreur die feit dat daar nog partye is wat hulself uit hierdie belangrike proses uitsluit. Na Kodesa is die situasie in ons land onomkeerbaar. Die dreigemente met burgeroorlog is onverantwoordelik en totaal onaanvaarbaar. Die tyd vir sulke praatjies is lankal verby. As hulle hierdie dreigemente uitvoer sal die wereld sien dat hulle die lyding van alle Suid Afrikaners will verleng, en die soeke na vrede in ons land wil verpes.

Maar een ding staan vas: die proses tot egte demokrasie is onstuitbaar. Die geskiedenis bied vir ons almal 'n unieke geleentheid. Om hierdie geleentheid vir die lensiesop van lee, negatiewe bravado ter verkwansel, is om die toekoms to ontken. Ons doen steed 'n beroep op sulke partye om nou, selfs in hierdie laat stadium, by Kodesa aan te sluit.

Die boodskap van die ANC deur Kodesa is eenvoudig, duidelik, en vir alle Suid Afrikaners, die tyd vir een Suid Afrika, een volk, een stem, een toekoms, is daar.

The National Convention in 1909 was a gathering of whites representing the four British colonies. It was also a betrayal of black people and a denial of democracy. The act of union entrenched colonial practices and institutions constitutionally. In its wake, our country has lived through eight decades of wasted opportunity. CODESA provides the first opportunity since to attempt to establish democracy in our country.

It is imperative that we also reach consensus on the definition of democracy. From the ANC's perspective, democracy entails:

- * That all governments must derive their authority from the consent of the governed;
- * No person or groups of persons shall be subjected to oppression, domination or discrimination by virtue of their race, gender, ethnic origin, colour or creed;

Address to CODESA by Comrade Nelson R. Mandela
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Chief Justice and Joint Chairpersons;
Leaders of Political Parties and Movements;
Distinguished Observers from International Organisations;
Members of the Diplomatic Corps;
Venerable Traditional and Religious Leaders of our People;
Comrades and Friends;
Last but not least - People of South Africa:

Today will be indelibly imprinted in the history of our country. If we, who are gathered here, respond to the challenge before us, today will mark the commencement of the transition from apartheid to democracy. Our people, from every corner of our country, have expressed their yearning for democracy and peace. CODESA represents the historical opportunity to translate that yearning into reality.

For eighty years, the ANC has led the struggle for democracy in South Africa. Along the route traversed during this period, many sacrifices were made by thousands upon thousands of our people. In the arduous battle between freedom and oppression, positions hardened and polarisation developed between the people and the state. Even when, in the absence of any other recourse, the ANC took up arms, our objective was to secure a political settlement in South Africa. In the past few years an environment more conducive to establishing mutual trust has been established.

South Africans of many persuasions recognise that this environment, and its constitutional product, CODESA, is the fruit of their sacrifices and struggle. They have a justifiable expectation that CODESA will set our country on the road to democracy.

Inasmuch as apartheid has been declared a crime against humanity and the problems of our country have engaged so much of the attention of the international community over decades, the presence of esteemed observers from key international organisations as guests of CODESA is most appropriate.

We welcome the guests from the United Nations Organisation; the Organisation of African unity; the Commonwealth; the European Economic Community and the Non-Aligned Movement. We trust that they will avail to the process now unfolding, their wisdom, insights and experience gained in many similar initiatives across the world.

All South Africans share the hope and vision of a land free of apartheid, where internal strife will have no place.

The ANC initiated the search for peace in our country. Since 1987 the ANC has intensively campaigned for a negotiated transfer of power. This campaign reached new heights in 1989 when the OAU, the Non-Aligned Movement and the UN General Assembly all adopted declarations supporting the position. All three declarations stated:

to open negotiations to ensure that notions of secret deals do not arise. This process will also hinge on the confidence by each participating party that the communication of developments be absolutely non-partisan. Consideration therefore needs to be given to the immediate establishment of the necessary mechanisms to ensure that the state-controlled media accurately and fairly represents the views of all participants. The means of establishing an interim government will not be participatory. Therefore the consensus at CODESA should curtail both its mandate and its lifespan.

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Recognising this, however, we want to make a strong appeal to everybody present to place the compelling national concerns above narrow sectional interests.

* All persons should enjoy the right to life;

* All persons should enjoy security in their persons and should be entitled to the peaceful enjoyment of their possessions, including the right to acquire, own or dispose of property, without distinction based on race, colour, language, gender or creed;

* All persons should have the right to hold and express whatever opinions they wish to subscribe to, provided that in the exercise of that right they do not infringe on the rights of others.

This quality of democracy will indeed only be possible when those who have borne the brunt of apartheid oppression exercise their right to vote in a free and fair election on the basis of universal suffrage. We can see no reason why an election for a Constituent Assembly should not be possible during 1992.

Ngesikhathi isimo sengcinezelo sidinga kuzathslazwe uANC akazange ahlehlele emuva kodwa wakhomba umhlalandlela. Manje ngoba isimo sesiyavuma yiyona futhi i ANC ehamba phambili ekuletheni uxolo kuleli lokhokho.

a kukhona abantu abadinga inkululeko eSouth Africa abantu abamnyama bayidinga manje ngoba isimo sabo somnotho nenhlalanhle siya ngokuba sibi nsuku zonke.

Ilungelo lokuvota iyona not ewumongo womzabalazo we nkululeko.

u1992 unyaka wamanqamu okufanele uluthe ukhetho lokuqala lwentando yeningi eSouth Africa.

CODESA, on its own, will not deliver democracy. In recording this fact, there is no attempt to demean CODESA. Even absolute consensus during the life of CODESA will still leave an apartheid constitution in place. We need to be reminded that this very constitution was declared null and void by the UN Security Council in 1983.

The invalidation of the prevailing constitution is the most persuasive argument in support of the view that the incumbent government is unsuited to the task of overseeing the transition to democracy must now compel it to make way for an interim government of national unity to supervise the transition.

This is the only cogent outflow from our deliberations at CODESA. The consensus which we arrive at will certainly have far-reaching implications for the birth of a new nationhood. None of us could be satisfied with circumstances where the consensus struck at this meeting is not translated into full legal force.

An interim government, important as it may be, is but the product of agreement between ourselves as political parties and organisations. It will not be the outcome of full participation by the people of our country. Negotiations, to be successful, must be owned and supported by the majority of South Africans.

In the absence of full participation, we must commit ourselves

History will judge us extremely harshly if we fail to turn the opportunity, which it now presents us with, into common good. The risks of further pain and affliction arising from violence, homelessness, unemployment or gutter education, are immense. No country or people can afford the extension of this anguish, even for a day. The approach which we adopt at CODESA must be fundamentally inclusive. The price of CODESA's failure will be far too great.

We must not trample on the confidence which our people have placed in the successful conclusion to these negotiations. It would be foolhardy to spurn the world for its efforts in assisting to secure peace and prosperity for South Africa. Our people and the world expect a non-racial, non-sexist democracy to emerge from the negotiations on which we are about to embark.

Failure of CODESA is inconceivable, so too is consensus without legal force. There is absolutely no room for error or obstinacy. The challenge which CODESA places before each one of us is to unshackle ourselves from the past and to build anew.

CODESA can be the beginning of reconstruction. Let our common commitment to the future of our country inspire us to build a South Africa of which we can all be truly proud.

TRANSLATION OF THE AFRIKAANS TEXT FROM NELSON MANDELA'S SPEECH

We regret the fact that there are still parties who exclude themselves from this important process. After CODESA the situation in our country is irreversible. Threats about civil war is irresponsible and totally unacceptable. The time for such talk is long past. If they execute these threats the world will see that they are prolonging the suffering of all South Africans, and poison the search for peace in our country.

But one thing stands fast: The process of moving towards democracy is unstoppable. History grants all of us a unique opportunity. To exchange this opportunity for a bowl of lentil soup of the past, and negative bravado, is to deny the future. We continue to call on such parties to join CODESA now, even at this late stage.

The message of the ANC through CODESA is straight forward, clear, and for all South Africans; the time for one South Africa, one nation, one vote, one future is here.

TRANSLATION OF THE ZULU TEXT IN NELSON MANDELA'S SPEECH

When oppression necessitated a struggle in South Africa the ANC never retreated but was in the vanguard. Now that the situation is conducive it is the ANC again that leads the way in the effort to bring peace to the land of our ancestors.

If there are people who need freedom in South Africa it is the black people. They need it now because their economic and welfare situation deteriorates daily.

The right to vote is the essence of the struggle for freedom.

1992 is the year that must bring the first democratic elections
in South Africa.



AFRICAN NATIONAL CONGRESS

Observer Mission to the United Nations

JOINT STATEMENT OF A MEETING OF PATRIOTIC FORCES IN CODESA

Delegations of the African National Congress, Inyandza National Movement, Intando yeSizwe, Labour Party, Natal Indian Congress, Transvaal Indian Congress, South African Communist Party, Transkei Government, United People's Front, Venda government and Ximoko Progressive Party met on 21 February to discuss the situation obtaining in our country. The meeting was convened to review progress with regard to the implementation of the decisions of the Patriotic Front Conference held in October 1991, in particular among those parties and organisations taking part in CODESA (Convention for a Democratic South Africa) and who support and uphold principles of the Patriotic Front.

The meeting noted progress in the efforts to bring about a united, non-racial, non-sexist and democratic South Africa. This is reflected in the successful holding of Codesa 1 and steady progress in the Working groups. The meeting resolved to ensure that matters under discussion in the Working Groups are expeditiously handled to bring about a peaceful and just society as soon as possible.

In this regard, the meeting condemned the decisions by the State President FW de Klerk to hold an all-white referendum. This amounts to giving white South Africans - a mere 15% of the population - the right of veto over negotiations and the future of our country.

South Africa has reached the stage at which it is today, thanks to the efforts of anti-apartheid forces over the years. White voters do not have exclusive right to decide the fate of the negotiation process. In this phase of multi-party negotiations and transition to democracy, such apartheid practices as the holding of a whites-only referendum have no place.

The meeting agreed that the parties and organisations will strive to ensure that the work of Codesa is not hampered by this referendum. We are keenly aware that the National Party government has got vested interest in prolonging the transition.