A new democratic government would promote growth in way compatible with preserving and protecting our natural environment. All laws and regulations relating to the emission of noxious waste would be reviewed with a view of its potentially serious implications for the environment. A future democratic government would implement OAU resolutions prohibiting the dumping of toxic waste from abroad.

Our unique natural heritage would best be protected by responsibly harnessing it in the interests both of local communities and the country as a whole.

4.6 Developing our Human Resources

The success of a national development strategy depends to a considerable extent on developing our human resources.

A future democratic, non-racial and non-sexist government would need to take action to correct existing racial and gender inequalities in the workplace. This would be done not only by legislation but by investing and redirecting resources. A comprehensive programme of education, training and skills acquisition will have to be developed for workers in industries and within the state sector. Many more opportunities need to be created for black people and women to acquire technical, professional and managerial skills.

Policies of Affirmative Action, favouring black people and women, need to be promoted both in the public and private sectors. Black women - in townships, squatter settlements and rural areas - have been particularly discriminated against and constrained by the labour policies of the state. These disadvantages have been reinforced by the limitations created by inadequate social services and power/gender relations within the family. A future democratic, non-racial and non-sexist state would give top priority to applying affirmative action principles to black women. A democratic state would seek to correct these gender inequalities by means of legislation to secure women's rights. A vigorous programme of training will be needed to provide many more opportunities for women and provision would need to be made for special needs of women in such areas as ante and post natal care.

The content of all education and training programmes in technikons, universities, schools and other institutions will need to be critically examined to ensure that they are appropriate for changing labour market needs and contribute to affirmative action policies. The general level of education needs to be raised, particularly literacy and numeracy levels.

The current policy of the state to create employment though deregulation and privatisation is not a solution. A democratic state would address employment creation through public works programmes, retraining and by the re-deployment of resources from apartheid-orientated projects into employment creating activities. Non-exploitative youth employment training schemes or unskilled and underskilled youth will be needed and unions and employers should be encouraged to develop and co-manage training schemes.

agreements with other countries. Given the wasting nature of our mineral assets, high priority would need to be given to the creation of resource based industries which add value to mineral products. In this regard research should be encouraged to identify areas for minerals beneficiation industries.

Attention would also need to be paid to the demands and needs of mine workers. Racist labour practices would need to be rooted out and substantial improvements made in mine workers' living standards and conditions of work. The feasibility of creating an inspectorate to police mining health and safety, mining legislation, transfer pricing and high grading would be investigated.

The ANC is concerned that the current conglomerate control of mining finance is an impediment to an alternative strategy for the sector. So too is the current trend towards privatisation and deregulation which amount to abdicating the state's responsibility for ensuring that the mineral wealth, which is the heritage of all South Africans, benefits the nation as a whole. A new government would need to explore various options in respect of ownership patterns in the mining industry and, in view of the sector's strategic importance for the achievement of national development objectives, consideration would have to be given to the nature and extent of state intervention and ownership.

4.4 Promoting Agricultural Development and Land Reform

South African agriculture is in major crisis both in the advanced capitalist sector and the black rural areas. Land distribution is a central national grievance while raising agricultural production is vital to the future economic prosperity of the country.

The ANC has established a land commission to conduct research and mobilise popular participation in formulating a policy of land reform. Priority in such a policy should be given to immediately returning to the land those removed from black freehold land or from plots held under labour tenancy agreements. Beyond this the aim of policy should be to ensure that those who benefit from a land reform programme are provided with support to enable them to raise productivity and output.

A future democratic government would assist and encourage rural producers engaged in various forms of production, including smallholder production, cooperatives and joint ventures. It would re-allocate credit facilities, support services and training programmes according to principles of Affirmative Action; ensure in particular that such services were provided in such a way that they positively discriminate in favour of women, who would be guaranteed access to land credit and training. Labour legislation would be enacted abolishing backward labour employment practices and farm workers would be encouraged to join unions. Rural community organisations would also be encouraged.

4.5 Promoting Environmentally Sound Growth

The national development policy of democratic, non-racial and non-sexist society would aim to promote a high employment, high wage, high productivity economy. Worker organisation would be encourage and organised labour provided with the facilities and rights to enable it to make its indispensable contribution to the formulation and implementation of economic policy. Government policy would seek to empower organised labour and promote greater industrial democracy.

5. Financing the Reconstruction

While the end of apartheid will undoubtedly create prospects for renewed inflows of foreign capital, it would be imprudent to rely on injections of resources from abroad to rescue us from the inherited economic plight. The ANC is of the view that the main emphasis in financing the reconstruction of the mixed economy should be placed on domestic savings. Foreign investment (which would be encouraged - see 8.2 below) should be seen as a supplement to domestic savings and not as a substitute. Inflationary financing through money creation should be avoided.

5.1 The Capital Market

Mobilising domestic savings requires a critical examination of the institutions of the capital market. The current capital market does not sufficiently direct savings into productive activity or into critical areas of infrastructure. Instead paper chases paper in a scramble for short term speculative profit. A new government would need to rationalise and restructure the financial sector and develop new institutional arrangements for both the primary and secondary bond markets. This is needed to make them more ordered and orientated towards meeting broader development objectives.

Current financial deregulation policies and monetarist policies exacerbate the problems of the present financial system. State intervention and regulation will be essential to correct these problems. Consideration will also have to be given to the establishment of new state owned financial institutions as well as to the transformation of existing bodies in order to direct international and domestic finance to the critical development needs of the country.

5.2 Taxation Policy

The other crucial mechanism for mobilising savings for investment is taxation policy. A future democratic state would need to undertake tax reform to make the taxation system more equitable and effective in many areas. The present tax burden is carried disproportionately by individuals through both personal direct taxation and indirect taxation. The ANC supports shifting more of the tax burden towards corporations (in part by closing loopholes) and applying the principle of progressive taxation - in which individuals with higher incomes pay proportionately more. Consideration will also be given to levying capital gains, wealth and higher estate taxes, particularly where speculative activities were concerned.

5.3 Exchange Controls

Exchange control policy would have to be managed in such a way that domestic savings are retained inside the country and destabilising speculative capital outflows are avoided. Exchange rate policy will need to be consistent with other macro economic policies. The present system of exchange controls should be continued, but modified to respond to changing circumstances and the overall development objectives of the new democratic state.

6. The Tasks of Government in Reconstructing the Mixed Economy

A future democratic, non-racial government would like any other government have the duty to set the general framework within which economic life takes place and take the lead in promoting a national development strategy to achieve the objectives identified above. While market relations are an essential component of a mixed economy, the ANC does not believe that market forces alone will result in anything but the perpetuation of existing disparities of income and wealth. The ANC thus envisages a future democratic government fulfilling this responsibility in the following ways:

6.1 Formulating a National Development Plan

Placing the economy on a new growth path will require government to initiate a macro economic planning process and to coordinate the contribution of all sectors and interest groups. The ANC believes that major attention should be paid to involving mass-based organisations in planning the re-construction and consulting widely with all significant interested parties. Preference should be given to incentive measures and to seeking consensus and cooperation in the implementation of new policies. Commandist or bureaucratic planning methods will be avoided.

6.2 Using Fiscal Policy as a means of Promoting *Growth* and *Redistribution*

The state budget is a major potential instrument of redistribution. A future democratic government would need to make major changes in the present patterns of allocation of expenditure items. Significant savings can be made through eliminating the duplications created by the present racially exclusive administrative structures. Significant savings can also be made by reducing expenditure on the security services. Such savings should be used to increase expenditure on education, health, housing and welfare services, particularly for the poorest and most deprived members of the community. Existing patterns of expenditure for each of these items should also be examined with a view to redistributing resources allocated to each department in accordance with the principles of affirmative action.

While the redistribution of expenditure patterns will make a significant contribution to an initial post-apartheid dividend, in the longer term financing these services will require increasing tax revenue. Over time economic growth could be expected to widen the tax base. But a future government will also need to undertake tax reform (see 5.2). Consideration will also have to be given to the

use of taxation policy as a means of providing incentives to industrial development.

Although the state budget can be a major instrument in promoting growth through redistribution, it will be imperative to recognise the limitations on what can be achieved in this way. We are aware of the destabilising impact which major financial imbalances have had on the South African economy and on re-distribution programmes in other countries. A future democratic government would need to avoid running up large budget deficits and break from the practice of the present government of financing budget deficits by large loans. Appropriate economic stabilisation policies, including monetary and exchange rate policies, would have to be used in conjunction with fiscal policy to counter-act any tendency towards macro-economic imbalances.

6.3 Turning the Public Sector into an Instrument for Development

The present public sector was established to meet the needs of successive minority governments. It is orientated towards serving specific sectional interest rather than the community as a whole and is often characterised by inefficiency and a bureaucratic style. Yet the public sector can play a vital role in shifting production towards meeting basic needs. Public corporations operating in such areas as transport, housing, electricity supply, road construction and water provision can all provide a major impetus to development through providing an infrastructural base. Major public works programmes not only respond to pressing needs, they also have the capacity to generate demand which through the multiplier effect can provide incentives to many other sectors.

A future democratic government will need to act to transform the public sector into a vehicle for development. But this does not mean creating large, profligate public corporations and parastatals. Public corporations should not become vehicles for the enrichment of large bureaucracies. They will need to operate within strict budgetary controls and be accountable through democratic processes to government and people. While it will be essential for public corporations to operate according to principles of cost efficiency, the experience of South Africa and other countries shows that when profit maximisation becomes the central criterion, services are often not provided or provided on a selective basis to poorer communities and areas. The ANC is thus staunchly opposed to the current government's plans to privatise the public utility corporations. These should remain part of the public sector and any public utilities which are privatised will be subject to immediate re-nationalisation.

In addition to public utility corporations, it is envisaged that planning processes for different sectors will lead to the identification of strategic enterprises whose role is central to the realisation of development objectives. It could be anticipated that there will be cases where the balance of evidence suggests that it would be advantageous to have public corporations operating in these areas. In such cases these would be established by the voluntary or on rarer occasions the compulsory purchase of existing enterprises or by the establishment of new public enterprises. In all such cases a future democratic government would bear in mind

the need to maintain confidence and bind itself to proceeding according to constitutional principles.

6.4 Maintaining High Standards of Economic Management

The ANC is conscious of the impact which macro-economic imbalances, including inflation, large scale budget deficits and deficits on the balance of payments, have had on the economy and people's living standards. We are also aware that such imbalances have presented critical obstacles to redistribution and economic development policies of governments in other countries. While the ANC sees monetary, exchange rate, tariff and fiscal policy as well as regulation in a number of fields as potential instruments of overall development policy, the imperative to avoid destabilising imbalances needs to be recognised. The precise policies in each of these areas will depend to a considerable extent on concrete conditions existing at the time a future democratic, non-racial government assumes office. High standards of financial management and discipline will, however, be a constant requirement.

6.5 Transforming Local Government into a Vehicle for Development

Local government can become a powerful tool of development. Local authorities are responsible for the provision of many goods and services as well as for managing the infrastructure central to realising development objectives. A future democratic government would, however, need to bring about significant reforms in the existing system of local government before it could achieve its potential in this regard. Separate black local authority structures would need to be abolished and state policies should encourage the integration of towns and cities into metropolitan management structures. The principle of financial self-sufficiency for poor communities should be replaced by the integration of divided urban areas into a single local tax base and by applying cross-subsidisation within metropolitan areas. A future government would foster the establishment of democratic, non-racial municipalities, while at the same time maintaining the involvement of mass-based organisations in the provision and control of certain services.

7. The Role of Civil Society

While a future democratic, non-racial government will have the duty to lead the restructuring process, other forces in civil society will also have an indispensable role to play if we are to achieve the goals of promoting *Growth* through *Redistribution*.

7.1 The Trades Unions

The ANC is committed to guaranteeing organised labour a central role in the formulation and implementation of all economic policy. Organised labour should be empowered and greater industrial democracy promoted. These are essential components of a strong civil society, independent of state and political party, with real economic and other power. To this end existing industrial relations legislation and practices need to be re-examined in order to guarantee full rights of workers to organise and participate in collective bargaining. The

scope of the collective bargaining process should also be widened to allow involvement by trades unions in investment planning.

7.2 Co-operative and Community Ventures

Cooperative and community based projects and ventures of various types have considerable potential both to produce goods and services needed by the people and generate employment. But their existence should not provide an excuse for inaction by government or business. Nor should such ventures be treated in a paternalistic fashion as mere objects of charity. Rather it needs to be recognised that the capacity of locally based ventures to contribute towards resolving problems of poverty and unemployment depends on the environment in which they have to operate. The ANC believes that a democratic, non-racial government should actively promote involvement by community-based organisations both in planning and in the execution of projects of various types. More resources need to be made available, not only from government coffers but also by changing the current restrictive practices of financial institutions towards small scale, community ventures. Support for such projects should, however, depend on their long term economic viability.

7.3 The Private Sector

Private business has a major role to play in the economy of a democratic, non-racial South Africa. The ANC believes that a future democratic government should actively strive to build confidence with the private sector and encourage maximum cooperation in pursuit of democratically defined development objectives. The placing of the economy on a new growth footing and the ending of international isolation will create many new opportunities for the expansion of the private sector.

At the same time, the ANC is concerned about a number of features of the currently existing private sector, which remains profoundly marked by its origins in apartheid society. These include:

- *First, the gross under-representation of black owned businesses and of black people in senior managerial positions. Only about 2% of the total assets of the private sector are owned by black people while over 90% of top managerial positions remain in the hands of whites.*

- *Second, the extreme centralisation of economic power in conglomerate hands. Over 80% of the shares traded on the Johannesburg Stock Exchange are controlled by four large conglomerates, which together dominate the vast bulk of production, distribution and exchange. This not only represents a massive concentration of power in the hands of the 1.000 odd white males who comprise the controlling boards of these companies, the conglomerate structure is in our view detrimental to the achievement of balanced economic growth in the interests of all the people of South Africa.*

A democratic, non-racial government would be obliged to address itself to both issues. It would seek to promote greater participation by black owned business

and encourage policies of Affirmative Action to correct existing racial and gender imbalances at all levels. It would also investigate the existing concentration of economic power with a view to promoting a more efficient and effective use of resources. The ANC would prefer that these essential reforms were carried out in co-operation with business, but if such co-operation were not forthcoming a future democratic government could not shirk its clear duty in this regard.

8. External Economic Relations

8.1 Basic Principles

The ending of apartheid will create many new opportunities for South Africa to increase its involvement in international economic relations. The new state will have a responsibility to guide, lead and set the general framework for such participation. The general principles which should guide such involvement will be compatibility with and benefit to overall development strategy. The new state will investigate the potential advantages of becoming members of international organisations and actively promote cooperation with all countries on mutually beneficial terms.

8.2 Foreign Investment

A future democratic state would encourage foreign investment in terms which are consistent with its developmental goals. Foreign investors would be encouraged to invest in activities which lead to increased employment and the development of local technological capacity. A law on foreign investment or an investment code would be needed to govern the rights and obligations of foreign investors. This should oblige foreign investors to follow labour practices acceptable to trades unions; to co-operate with government in achieving development goals; to operate in ways which are not detrimental to the environmental and to re-invest part of their profits to promote continued growth. In return, foreign investors would be given certain guarantees relating to the security of their investment and the right to repatriate part of profits earned. Consideration should be given to applying foreign investment regulations on a differential basis to provide specific incentives for investments in priority areas.

8.3 The Southern African Region

Significant opportunities will exist for a democratic, post-apartheid South Africa to expand its economic relations with its neighbours in the African continent and in the southern African region in particular. These openings could provide major opportunities for increased trade, investment and the provision of services. At the same time, it is imperative that we take account of existing regional imbalances and the damage caused to the economies of southern Africa by apartheid destabilisation. A future democratic government should actively seek to promote greater regional economic cooperation along new lines which would not be exploitative and which will correct imbalances in current relationships. The new state must be prepared to enter into negotiations with its neighbours to promote a dynamic and mutually beneficial form of co-operation and development. While all of us stand to benefit from such an arrangement, it

should be recognised that creating a new non-exploitative form of regional cooperation will require prioritising the interests of the most impoverished of our neighbours in certain areas, according to basic principles of affirmative action.

FORWARD TO A DEMOCRATIC ECONOMY!!

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AFRICAN NATIONAL CONGRESS

Observer Mission to the United Nations

AFRICAN NATIONAL CONGRESS (ANC) PROPOSAL: BODY AND PROCEDURES FOR DRAFTING A CONSTITUTION

The ANC proposes that:

1. The Constitution be drafted and adopted by a body to be elected according to the principle of universal franchise.

2. This body (which in this document will be called the Constituent Assembly) shall be as inclusive as possible.

3. All persons over the age of eighteen (18) living within the 1910 borders and regarded in international law as South Africans, shall be entitled to vote.

4. The system of proportional representation shall be used.

5. The Constituent Assembly (CA) shall consist of four hundred (400) delegates and have a steering committee which will lay down its procedures.

6. The Constituent Assembly shall elect from its own ranks a representative drafting commission consisting of 40 persons to work under its direction.

7. Decisions at the Constituent Assembly shall be by a two thirds majority.

8. The Constituent Assembly shall be obliged to enshrine the principles agreed upon by CODESA (Convention for a Democratic South Africa) in the new constitution and shall not contradict such principles.

9. The Constituent Assembly shall appoint an independent constitutional panel consisting of nine respected, representative and competent persons to hear any disputes concerning the application of clauses submitted to it by members of the Constituent Assembly.

10. Functioning within the above framework, the Constituent Assembly shall be legally entrusted with sovereign powers to draft and put into operation a new and binding constitution for South Africa. Towards a Democratic and All-inclusive Constitution-Making Body (CMB).

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1. THE NAME OF THE CMB

We prefer the term Constituent Assembly. This is the one most widely used internationally. It indicates that what we are doing is constituting a new South Africa out of the old, and that we function not as self-appointed individuals but as representatives sitting in solemn assembly with a proper mandate and appropriate procedures. The name in itself is not crucial. We could call it the Congress, after the body which drafted the first great modern Constitution - that of the USA. What matters is how it is chosen and how it functions, not who first came up with its name.

2. THE BODY MUST BE CREATED AND MUST FUNCTION IN A DEMOCRATIC WAY.

Since the objective is to install democracy in South Africa, the body must itself exemplify democracy. At the heart of democracy lies the question of choice and elections. Without elections there can be no democracy.

CODESA has a vital but limited function, namely, to create the conditions for the adoption of a new constitution, not to draft a new constitution itself. The fact that it is self-appointed is appropriate to its function, which is essentially that of negotiating the process of transition from apartheid to democracy. The broad support that it is receiving despite its non-democratic character derives from acceptance of its limited role. When it has established the foundation for the process of drafting a new constitution, its historic task will have been completed. Should it attempt to perpetuate itself and usurp the role of the body it was set up to create, CODESA will lose its prestige.

No one who genuinely supports democracy can fear elections. Once the racial and colonial myths are destroyed, there can be no justification for denying the principles and practice of democracy. Are we to say that elections are only good for whites in South Africa and blacks in other countries ? Are we to back democracy in Zambia and in Eastern Europe and deny it in our own land ?

The dream of the oppressed majority in this country ever since 1910 has been full participation as ordinary South Africans in elections and the choice of government. The National Convention that preceded the 1910 Constitution was based on whites-only elections for a whites-only convention. That ugly beginning to our constitutional life can only be expunged by non-racial elections for a non-racial convention. Elections thus have an historical healing role to play in our country. They are a part of the process of achieving independence from which the majority were excluded in 1910; they are a signal that true citizenship has at last arrived for all.

Elections will be proof that we really are in a new South Africa. They will signal a compelling acknowledgement of our common South African-ness. They will open the way to the development of a genuine and generous national vision, and encourage a sense of shared responsibility for the country's future.

When we say that it is elections that give the constitution-making proceedings legitimacy, we accordingly refer not just to formal international and internal legitimacy, but to subjective and moral legitimacy in the hearts of our people.

It might be difficult for those who take elections for themselves for granted to understand what it will mean to those who have been permanently excluded from the electoral process to at last have a chance to stand up and drop their ballot slip into the ballot box. What the voters will be asked to decide is who they wish to represent them in the body which drafts the constitution. By voting they identify actively with the whole process and hence take responsibility for its outcome.

There will be direct nexus through the elected representatives between each voter and the final product.

In this way, elections will take away the sense of distance and incomprehension which, unfortunately, at present separates the general South African public from CODESA.

Elections will be the first step in an open and public process. The people of our country should be entitled to know at each step exactly what is being done at the CMB in their name. Compromises openly struck, honestly agreed to for purposes of mutual advantage and frankly explained, have a much greater chance of being accepted than those negotiated in terms of secret agreements behind closed doors. The electoral process encourages openness and accountability. It places the issues before the people who take an interest in them because they know that their opinions can make a difference.

Ratification by referendum no good!

An after-the-event ratification can never be considered as a serious alternative to involving the public in elections for the CMB. Far from legitimising the process, it will ensure that the Constitution is born in an atmosphere of cynicism and indifference. A referendum is a useful means of testing public opinion in relation to issues where a simple "Yes" or "No" would be appropriate. It is a grotesque device for ensuring that a long complicated document corresponds to what the populace thinks is correct.

The public is placed in the invidious position of giving a simple "Yes/No" to a lengthy document, much of which will inevitably be in technical language, without the option of influencing its individual parts.

There is the added problem of persons being compelled to vote in favour of a constitution with which they might not agree, simply because to continue with the present racist constitution would be a greater evil.

All the practical problems and inconveniences said to relate to elections for a Constituent Assembly would apply to the holding of a referendum.

The arguments against the CMB being elected

The case for elections in the modern world is so strong that only someone very cut off from contemporary thinking would argue against it. As we understand it, none of the participants in Working Group 2 are actually against elections in principle.

Certain participants have, however, raised queries about the feasibility of elections in current conditions or about the desirability of granting what they call a "blank cheque" to an elected constituent assembly. It would be ungracious to suggest that they are opposed to elections because they fear that they themselves will not fare well if they lose their base in apartheid structures and are left to the mercies of the electorate. We accordingly treat the arguments on their merits.

(i) Violence

The first point made is that there is too much violence in the country for free elections to be held, and that elections would only encourage further violence (one assumes that this is meant to express a fear and not to convey a threat).

The danger of this argument is that if the existence of violence is accepted as a reason for not holding elections, then those who are fearful of losing an election will have a stake in maintaining the level of violence.

We are in fact convinced that far form contributing to violence, the holding of elections will provide an orderly and publicly supervised manner in which the contest for political leadership can be conducted. It will serve not as a source of violence but as an alternative to it.

The turning point in Namibia from a state of severe internal conflict to a state of peace was the holding of elections for the Constituent Assembly. The way in which the CA (Constituent Assembly) there conducted its business, based on extensive give and take, promoted national unity and has until now virtually eliminated political violence. We have no doubt that the same process would have the same beneficial results in South Africa.

What we should be concerned about is not the fact of holding elections, but how to ensure that voters are free to exercise their choice and that they are well-informed when doing so. Elections are held precisely so that different ideas can compete. The stronger the competition, the greater the need for elections.

(ii) **"Simple Majoritarianism"**

The second argument against having the constitution drafted by an elected Constituent Assembly is that this would amount to giving a blank cheque to an electoral majority without respecting the rights and interests of minorities. The term "majoritarianism" is used in this connection as though somehow it is inherently evil. Add the adjective "simple" and it becomes even worse.

This approach comes badly from people who hold office on the basis either of no elections at all or of elections based on principles of simple majoritarianism.
If the present government were to resign because it has been chosen by means of simple majoritarianism (times three), then its moral position as an opponent of majority rule would indeed be powerful. The same would apply if it were to impugn the validity of the recent referendum on the basis of its simple majoritarian nature, or to deny the validity of all legislation passed since Union in 1910; with one exception, such laws were always based on the approval of a simple majority of Members of Parliament who in turn had been elected on the basis of simple majority (or less) of voters.

The Presidents of France and the USA as well as the Prime Ministers of the United Kingdom and India have all been elected on the basis of "simple majoritarianism".

One cannot escape the conclusion that the arguments against majority rule are being advanced not so much because of the principle involved but because of dissatisfaction with whom the majority will be. Put simply, "simple majoritarianism" was good enough for the whites for 82 years, but will not be good enough for the blacks today, unless, that is, they promise to vote for the party presently in office, in which case the virtues of majority rule might re-assert themselves. The irony of the situation is that while we in the ANC firmly believe that the principle of free elections and majority rule lies at the heart of democracy, we do not support what has been called simple majoritarianism for South Africa. We, who have never benefitted from the Westminster system of government in the past, in fact have a much stronger claim to opt for a different system than those who for decades have been advantaged by it.

There are at least three major respects in terms of which our proposals differ from what is called simple majoritarianism.

More than 15 months ago, the ANC declared its support for the system of proportional representation. We did so for two basic reasons (in addition to the usual arguments).
In other words, a relatively large body would more easily accommodate the diversity of the South African nation than would a small one. We are of the view that it would be of great advantage for individuals and communities to feel that they are directly represented at the CA through persons they know and who will be able to report back and explain the proceedings to them.

It would not, of course, be necessary for the CA to work all the time in plenary. Our proposals for a drafting commission are set out below. This commission would be relatively small in size and would be responsible for the day-to-day technical carrying out of the wishes of the CA in relation to establishing draft terms for the new constitution.

A CRITICAL INTERPOLATION ON THE PROPOSAL FOR A BICAMERAL CMB

as a constituent assembly

One of the participants has made the proposal, apparently seriously, that the CMB be a bicameral body. We are unaware of any precedent anywhere in the world for such a procedure. Indeed, it seems to represent the kind of elementary confusion between the functions of a CMB and those of a legislature, that would fail a first year law or political science student. These are clear, democratic and manifestly fair ways of ensuring that the Constitution will emerge from an all-inclusive CA seeking consensus, and that the end result will be basically acceptable to all South Africans. Why create a complex and constitutionally monstrous Second House when manifestly legitimate and internationally acceptable means of achieving the same result are available?

We feel that constructing two Houses on the basis of assuming inevitable conflict between the majority and minorities, and then setting them against each other on a collision course, is designed to maximise rather than reduce differences.

It will encourage reciprocal intransigence rather than mutual attempts to find solutions. Sensitivity to the wishes of the minority cannot be achieved by insensitivity to the feelings of the majority. The upper House will come generally to be seen as the House of Losers, and bad Losers at that. What are elections for if losers take nearly all?

Already we hear the mocking phrase: "simple minoritarianism". One may also speak of the system of DR (Disproportionate Representation). How inclusive and nation-building can a process be that nullifies the wishes of seventy or eighty percent of the population? How inclusive is the process if the third of the population living in the TBVC states is excluded from it? What we need are not two houses at each other's throats, fearful of and antagonistic towards each to her, but a single, multi-faceted body representing the nation in all its variety and seeking to establish fair ground rules for the realisation of the principle that South Africa belongs to all who live in it.

This ad hoc and specially constructed bicameralism will be seen by the majority of South Africans and by the world at large as a reminder that the cadaver of apartheid still rules from the grave into which it was said to have been cast. The racial group rights idea at least had the virtue of honesty, declaring in effect that some people were inherently different from and more worthy than others. We now end up with the confusion that inevitably results from trying to democratise apartheid. Elections are held to choose losers. Minority parties undermine their moral position by being associated, whether they like it or not, with institutional chicanery.

Deadlock is built as a mathematical inevitability. The defensible principle of regional representation, and, possibly of over representation in favour of poor regions, is undermined by the principle of minority groups in the region ending up with more representation than the regional majority. Everything is brought into disrepute: elections, consensus, minority rights, even true bicameralism itself.

4. SOME PROCEDURAL ELEMENTS

The Drafting Commission

The drafting of the Namibian Constitution was considerably facilitated by the establishment by the CA of a drafting commission from its own ranks, supported by three independent legal advisors from outside. We propose that the CA for South Africa elect a drafting commission of approximately 40 persons from its own ranks. These need not be lawyers or political scientists, but should be persons with competence in drafting and in handling constitutional concepts. The commission should be chosen on the basis of proportional representation, subject to the right of every party represented in the CA having at least one member.

Provision should be made for legal and other advisors to participate in support of the respective parties as they have done at CODESA. The Commission would have the task of giving appropriate shape to the wishes of the CA, under whose direction it will function.

FUNCTIONING OF THE CMB

The CMB, which should function in Parliament in Cape Town, should be given four months to complete its work. Should it fail to do so, it should be compelled to dissolve itself so that new elections could be held. The threat of imminent elections would concentrate the minds of the delegates.

The CMB would at its first session elect a steering committee on the basis of proportional representation. This committee would be responsible for questions of management. It would propose rules of procedure and suggest the persons, drawn from the ranks of the CA, who

would chair sessions. It would attempt to achieve consensus wherever possible, but if an issue were to go to a vote, a simple majority should suffice.

The Drafting Committee, on the other hand, should take its decisions by a two thirds majority. It may submit majority and minority reports to plenary sessions

If a dispute arises in this committee or at the CA as to whether an agreed general principle has been ignored or contradicted, the problem should be referred to the steering committee, and if the steering committee in turn is unable to find a solution satisfactory to all, the issue shall be sent to the Constitutional Panel.

THE CONSTITUTIONAL PANEL

The Constitutional Panel would consist of nine persons selected on the basis of their integrity, representiveness and competence by the CA. We propose that they be chosen en bloc, with a vote of at least 80% in favour of the panel as a whole. This would conform with procedures in European countries where the Constitutional Court is nominated by Parliament.

The members of the Panel would not be members of the CA and would be independent in their functioning. They would entertain petitions by the Steering Committee, or by at least 15% members of the CA, in relation to whether draft proposals for the Constitution contradicts or fail to enshrine general principles agreed to at CODESA. They would also be called upon to verify that the Constitution, as finally adopted by the CA enshrined and did not contradict these principles.

The decision of the Panel shall be final and not subject to review by the CA or by the ordinary courts. While there are undoubtedly persons of great merit in the present judiciary, the court system as such is seen by the majority of South Africans as a creation of the apartheid government which appointed the judges and as lacking in legitimacy.

Many outstanding lawyers have in fact refused to serve as judges for this very reason. Only 1 out of approximately 150 judges is not white, and only 2 are not male; if issues of non-racialism and non-sexism arose, it would be manifestly inappropriate for them to be decided by all-white and all-male bodies.

In any event, the procedures and time frames of the ordinary courts would be such as totally to impede the proper functioning of the CA. Decisions at the CA will have to be taken swiftly so as to enable the constitution-drafting process to proceed.

The Panel will in fact function very much along the lines of the French Conseil Constitucionel which decides on questions of the constitutionality of proposed laws submitted to it from Parliament, and which enjoys considerable prestige. Members of the

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DECLARATION OF INTENT

We, the duly authorised representatives of political parties, political organisations, administrations and the South African Government, coming together at this first meeting of the Convention for a Democratic South Africa, mindful of the awesome responsibility that rests on us at this moment in the history of our country,

declare our solemn commitment:

1. **to bring about** an undivided South Africa with one nation sharing a common citizenship, patriotism and loyalty, pursuing amidst our diversity, freedom, equality and security for all irrespective of race, colour, sex or creed; a country free from apartheid or any other form of discrimination or domination;

2. **to work** to heal the divisions of the past, to secure the advancement of all, and to establish a free and open society based on democratic values where the dignity, worth and rights of every South African are protected by law;

3. **to strive** to improve the quality of life of our people through policies that will promote economic growth and human development and ensure equal opportunities and social justice for all South Africans;

4. **to create** a climate conducive to peaceful constitutional change by eliminating violence, intimidation and destabilisation and by promoting free political participation, discussion and debate;

5. **to set in motion** the process of drawing up and establishing a constitution that will ensure, inter alia:

   a. that South Africa will be a united, democratic, non-racial and non-sexist state in which sovereign authority is exercised over the whole of its territory;

   b. that the Constitution will be the supreme law and that it will be guarded over by an independent, non-racial and impartial judiciary;

   c. that there will be a multi-party democracy with the right to form and join political parties and with regular elections on the basis of universal adult suffrage on a common voters roll; in general the basic electoral system shall be that of proportional representation;

CONVENTION FOR A DEMOCRATIC SOUTH AFRICA
PO Box 307, Isando, 1600, South Africa

d. that there shall be a separation of powers between the legislature, executive and judiciary with appropriate checks and balances;

e. that the diversity of languages, cultures and religions of the people of South Africa shall be acknowledged;

f. that all shall enjoy universally accepted human rights, freedoms and civil liberties including freedom of religion, speech and assembly protected by an entrenched and justiciable Bill of Rights and a legal system that guarantees equality of all before the law.

We agree:

1. that the present and future participants shall be entitled to put forward freely to the Convention any proposal consistent with democracy.

2. that CODESA will establish a mechanism whose task it will be, in co-operation with administrations and the South African Government, to draft the texts of all legislation required to give effect to the agreements reached in CODESA.

We, the representatives of political parties, political organisations and administrations, further solemnly commit ourselves to be bound by the agreements of CODESA and in good faith to take all such steps as are within our power and authority to realise their implementation.

SIGNATURE(S)	REPRESENTING
✓	African National Congress
NO	Bophuthatswana Government
[illegible]	Ciskei Government
✓	Democratic Party
✓	Dikwankwetla Party
[illegible]	Inkatha Freedom Party

FINAL

AGREED TERMS OF REFERENCE FOR WORKING GROUPS FOR CODESA

WORKING GROUP 1

1. **FIRST ASSIGNMENT**

Creation of a climate for free political participation.

1.1 **Terms of Reference**

WHEREAS the parties at Codesa have committed themselves to the terms and objectives set out in the Declaration of Intent as amended from time to time

AND WHEREAS it has been nationally and internationally recognised that a climate for free political participation is an essential element of the transitional phase towards and in a democratic South Africa

AND WHEREAS democracy requires that all the participants in the political process should be free to participate in that process without fear and on an equal footing and on a basis of equality with the other participants

IT IS RECORDED that the terms of reference of the Working Groupon the Creation of a Climate for Free Political Participation shall be as follows:

1.1.1 To investigate and report upon all proposals and make recommendations with regard to the actions needed to be taken to foster and establish in South Africa a climate in which all individuals and organisations can participate freely, without interference or intimidation, in all political activity and, in particular, in the processes leading up to the introduction of a new constitution

1.1.2 To identify the key issues and problems that need to be addressed.

1.1.3 To identify of areas of commonality and aspects where agreement already exists between participating delegations.

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Telephone [illegible]

1.1.4 Specifically, but without vitiating the generality of the above, to consider whether and how the following issues should be addressed:

(a) the finalisation of matters relating to the release of political prisoners and political trials;

(b) the return of exiles and their families;

(c) the amendment and/or repeal of any remaining laws militating against free political activity, including the elimination of all discriminatory legislation;

(d) political intimidation;

(e) the termination of the use of military and/or violent means or the threat thereof of promoting the objectives/views of a political party or organisation;

(f) political neutrality of, and fair access to, State-controlled/statutorily instituted media (particularly the SABC and SATV), including those of the TBVC states;

(g) the successful implementation of the National Peace Accord;

(h) the prevention of violence-related crime and matters giving rise thereto;

(i) the composition and role of the security forces in South Africa and the TBVC states;

(j) the funding of political parties;

(k) the fair access to public facilities and meeting venues;

(l) the advisability of statutory provisions guaranteeing equal opportunity for all parties to establish and maintain their own means of mass communication;

(m) the need for an improvement in socio-economic conditions;

(n) the fostering of a spirit of tolerance amongst political parties;

(o) the role of intensive and continuous educative and informative campaigns in respect of political tolerance, the working of democracy and the processes of Codesa;

(p) the advisability of fair and reasonable access for political parties to all potential voters, wherever they may reside;

(q) any other matters which the working group may consider relevant to its brief.

2. SECOND ASSIGNMENT

Role of international community.

2.1 Terms of Reference

WHEREAS the parties at Codesa have committed themselves to the terms and objectives set out in the Declaration of Intent

AND WHEREAS the validity and acceptability of the process of transition and the outcome thereof internally and internationally, will depend on an open and fair process providing for full and effective participation of all South Africans

IT IS RECORDED that the Working Groupon the Role of the International Community shall have the following terms of reference:

2.1.1. To investigate, consider and report upon all proposals and make recommendations with regard to the role that the international community and/or organisations could be asked to play in the formal or informal processes involved in the period leading up to the introduction of a new constitution for South Africa.

2.1.2 To identify the key issues and problems that need to be addressed.

2.1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.

WORKING GROUP 2

1. **FIRST ASSIGNMENT**

General Constitutional Principles.

1.1 Terms of Reference

WHEREAS the parties at Codesa have committed themselves to the terms and objectives set out in the Declaration of Intent as amended from time to time

IT IS RECORDED that the Working Groupon GeneralConstitutional Principles shall have the following terms of reference:

1.1.1 To investigate and report upon all proposals and make recommendations with regard to general constitutional principles which should be enshrined in and not contradicted by any other provisions of a new constitution, provided that the present and future participants of CODESA shall be entitled to put forward freely to this Working Groupany proposal or matter consistent with democracy for discussion, consideration and recommendation.

1.1.2 To identify the key issues and problems that need to be addressed.

1.1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.

2. **SECOND ASSIGNMENT**

Constitution-making body/process

2.1 **Terms of Reference**

WHEREAS the parties at Codesa have committed themselves to the terms and objectives set out in the Declaration of Intent as amended from time to time to the establishment of a democratic South Africa, enjoying internal legitimacy and international acceptance

AND WHEREAS it has been agreed that a Working Groupon the constitution-making body/process shall be appointed by Codesa in order to formulate proposals and make recommendations on the appropriate body/process to draft a new constitution for South Africa

IT IS RECORDED that the Working Groupon a constitution-making body/process shall have the following terms of reference:

WORKING GROUP 2

1. **FIRST ASSIGNMENT**

General Constitutional Principles.

1.1 Terms of Reference

WHEREAS the parties at Codesa have committed themselves to the terms and objectives set out in the Declaration of Intent as amended from time to time

IT IS RECORDED that the Working Groupon GeneralConstitutional Principles shall have the following terms of reference:

1.1.1 To investigate and report upon all proposals and make recommendations with regard to general constitutional principles which should be enshrined in and not contradicted by any other provisions of a new constitution, provided that the present and future participants of CODESA shall be entitled to put forward freely to this Working Group any proposal or matter consistent with democracy for discussion, consideration and recommendation.

1.1.2 To identify the key issues and problems that need to be addressed.

1.1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.

2. **SECOND ASSIGNMENT**

Constitution-making body/process

2.1 Terms of Reference

WHEREAS the parties at Codesa have committed themselves to the terms and objectives set out in the Declaration of Intent as amended from time to time to the establishment of a democratic South Africa, enjoying internal legitimacy and international acceptance

AND WHEREAS it has been agreed that a Working Groupon the constitution-making body/process shall be appointed by Codesa in order to formulate proposals and make recommendations on the appropriate body/process to draft a new constitution for South Africa

IT IS RECORDED that the Working Groupon a constitution-making body/process shall have the following terms of reference:

2.1.1 To investigate and report upon all proposals and make recommendations with regard to an appropriate constitution-making body/process.

In respect of both the constitution-making process and body:

2.1.2 To identify the key issues and problems that need to be addressed.

2.1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.

2.1.4 In respect of a constitution-making process:

Specifically, but without vitiating the generality of the objective, to consider:

(a) to make recommendations to Codesa regarding the process through which a new constitution may be formulated;

(b) how far the process can be taken by Codesa itself;

(c) at what stage a special constitution-making body, if any, should be constituted;

(d) the role of referenda, if any, in the constitution-making process;

(e) legislative and administrative steps that may be required to reinforce the constitution-making process;

(f) the method of transferring constitutional authority to the new constitution and its structures at national, regional and local level;

(g) any other matters which the working group may consider relevant to its brief.

2.1.5. In respect of a constitution-making body:

In the event of it being recommended that there be a special constitution-making body, then specifically, but without vitiating the generality of paragraph 2.1.1, is to be considered:

(a) its composition

(b) its legal status

(c) its authority including limitations eg principles, procedures, etc that may have been agreed previously

(d) its method of functioning

(e) the status of its decisions

(f) should it be an elected body, the appropriate electoral process

(g) any other matter which the working group may consider relevant to its brief.

Interim

WORKING GROUP 3

ASSIGNMENT

Transitional arrangements/interim government/transitional authority.

1. **Terms of Reference**

WHEREAS the parties at Codesa have committed themselves in the terms set out in the Declaration of Intent as amended from time to time

AND WHEREAS it has been agreed that a Working Groupof Codesa should be appointed to consider the issue of interim government/transitional arrangements/transitional authority

IT IS RECORDED that the Working Group on transitional arrangements/interim government/transitional authority shall have the following terms of reference:

1.1 To investigate, canvass all possibilities and their application and report upon all proposals and make recommendations with regard to the manner in which the country may be governed and managed until the introduction of a new constitution.

1.2 To identify the key issues, processes and problems that need to be addressed.

1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.

WORKING GROUP 4

ASSIGNMENT

Future of TBVC states.

1. **Terms of Reference**

1.1 WHEREAS the parties at Codesa have committed themselves in the terms set out in the Declaration of Intent as amended from time to time

AND WHEREAS the parties recognise the need to provide for the meaningful and democratic participation, of all the people living in the TBVC states in the process of drawing up and adopting a new constitution for South Africa as well as in all possible transitional arrangements

AND WHEREAS the reality of the current existence of a number of separate but parallel institutions such as different administrations, civil services, armed forces, police forces and judiciaries as well as differing laws in certain instances which presently exist in South Africa, and the TBVC states; calls for a re-evaluation of this situation

AND WHEREAS in the event of re-incorporation the need to ensure that the lives and livelihood of people in the affected territories shall not be subjected to any unnecessary disruption

IT IS RECORDED that the terms of reference of the Working Group on the future Re-incorporation of the TBVC states are as follows:

1.1.1 To investigate and report upon all proposals and make recommendations with regard to the relationships between South Africa, the TBVC states and the people of those states under a new South African constitution.

1.1.2 To identify the key issues and problems that need to be addressed.

1.1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.

1.1.4 Specifically, but without vitiating the generality of the above to consider whether and how:

(a) to make recommendations to Codesa regarding the manner in which the constitutional status of the TBVC states may be affected by the outcome of negotiations within the framework of Codesa;

(b) the desirability or otherwise of the re-incorporation of such states;

(c) testing the will of the people concerned regarding re-incorporation or otherwise, of the TBVC states, by acceptable democratic means;

(d) strategies to keep the people of the TBVC states fully informed, especially to avoid unfortunate misunderstandings;

(e) the retention of business confidence, particularly in relation to existing investments in the TBVC states;

(f) land transfers by South Africa to these states;

(g) citizenship;

(h) any other matters which the working group may consider relevant to its brief.

1.1.5 If re-incorporation is decided upon in respect of any TBVC state, matters that will need to be addressed include:

(a) proposals for the re-incorporation into South Africa of a TBVC state;

(b) consider the question of transitional arrangements in those states which want to be incorporated;

(c) the time frames for such a re-incorporation and related processes;

(d) disposal/transfer of assets of TBVC governments;

(e) optimal use of existing infrastructure;

(f) review of development project priorities;

(g) good administration during transition;

(h) the formulation of appropriate measures and steps to be taken to ensure that in the process of re-incorporation of a TBVC state, interruption or disruption in administration and the rendering of services and in the daily lives of people in the affected areas are reduced to an absolute minimum;

(i) consider future of civil service in such states;

(j) the exact form of authority in the TBVC territories;

(k) harmonisation of legislation and taxation;

(l) orderly termination of bilateral and multilateral agreements and treaties;

(m) servicing and repayment of TBVC state debts;

(n) ensuring public accountability of actions taken for the purposes of re-incorporation;

(o) the identification of specific constitutional, legal and political measures and steps which will have to be taken to effect re-incorporation.

WORKING GROUP 5

ASSIGNMENT

Time frames and implementation of Codesa's agreements.

1. **Terms of Reference**

1.1 WHEREAS the parties at Codesa have committed themselves in the terms set out in the Declaration of Intent as amended from time to time.

AND WHEREAS it is necessary to record agreements which are reached at Codesa and to implement such agreements and, accordingly, to prepare in draft form the documentation which is required for effect to be given to such agreements

AND WHEREAS it has been agreed that a Working Groupon the Implementation of Agreements/Decisions shall be appointed by Codesa to identify the steps which need to be taken by the parties to Codesa

AND WHEREAS it is desirable to advise on the possible time frames and target dates

IT IS RECORDED that the terms of reference of the Working Groupon time frames and the implementation of Codesa's agreements/decisions are as follows:

1.1.1 To investigate and report upon all proposals and make recommendations with regard to appropriate time frames and target completion dates for all of the processes and assignments being undertaken by Codesa, its working groups and other bodies created as a result of agreements/decisions of Codesa.

1.1.2 To identify the key issues and problems that need to be addressed.

1.1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.

1.1.4 Specifically, but without vitiating the generality of the above, consider whether and how to address: