

# THE CORPORATE EXAMINER

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INTERFAITH CENTER ON CORPORATE RESPONSIBILITY

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## **Corporate Responsibility from the Ground Up: The South African Council of Churches “CODE OF BUSINESS CONDUCT”**

**By Donna Katzin**

*In August 1993 as this special Corporate Examiner is written, opponents of apartheid around the world eagerly anticipate the historic moment when South Africans establish a representative transitional government to launch the country's first non-racial elections. Shortly afterwards the South African democratic movement is expected to call for lifting international sanctions and an end to South Africa's economic isolation. This special issue presents the CODE OF BUSINESS CONDUCT produced by the South African Council of Churches as a standard for all businesses and investors in South Africa to observe. The author of this special issue is Donna Katzin, Director of ICCR's South Africa Program.*

### **A New Challenge for a New Time**

On the eve of the transfer of power toward political democracy, South Africa's churches have taken up the challenge to build a just economy, pursuing economic democracy and social transformation in light of their faith. A crucial part of their plans includes setting priorities and parameters for a constructive, creative and

cooperative corporate role in building the economic foundation for a just, stable and prosperous South Africa.

On July 8, 1993, the twenty-fifth National Conference of the South African Council of Churches issued a “CODE of CONDUCT for BUSINESS OPERATING in SOUTH AFRICA” (the CODE). These standards mark the culmination of more than a year's work by the South African churches in consultation and collaboration with a wide range of labor and political organizations, business leaders and academics. They articulate concerns of a broad spectrum of South African society.

This CODE challenges international religious partners and business alike to develop effective and innovative responses to new voices and new times in South Africa. It further suggests that South Africa may be able to transform its political system as well as its economy and society. The CODE could also set a precedent for partnerships and corporate responsibility in other societies grappling with transformation.



*"Kairos" has to do with timing and doing things at the right moment. On the eve of an agreement in South Africa...there is welcome good news. But this generates many tasks [compelling us] to get together on our response to that change.*

*Investments without restructuring will simply perpetuate the old order in economic terms.*

*When in place, a code [of corporate conduct] will help insure that old unjust patterns are not repeated or perpetuated.*

—Rev. Frank Chikane, General Secretary, South African Council of Churches, June 9, 1993.

These new developments further challenge the South African democratic movement and its international supporters to embrace a vision of a new South Africa and translate it into an innovative and workable model. The standards, precedents and relationships established now will set the stage for corporate behavior in South Africa for years to come.

#### **The Economy: A Matter of Faith**

The "CODE of BUSINESS CONDUCT" reflects the South African religious community's understanding that economy is a matter of faith. Since 1986 when the SACC called for economic sanctions as a necessary tool to eradicate apartheid, South African churches have embraced economic strategies in the struggle for democracy.

During the last couple of years, a negotiated path to majority rule and a time when sanctions would no longer be necessary became concrete possibilities. This new reality followed a series of events in South Africa, including the release of Nelson Mandela and other political prisoners, De Klerk government reforms in 1990 and the Conference for a Democratic South Africa (CODESA). Though there was much to rejoice about, the South African religious community understood it would take more than elections based on a universal franchise to reverse the legacy of decades of distorted, discriminatory development.

In February, 1992, the SACC, Southern African Catholic Bishops Conference (SACBC), Institute for Contextual Theology (ICT) and Kagiso Trust convened a conference in Broederstroom, South Africa. Titled "Towards a Code of Investment—Ethics for South Africa's International Economic Relations," the conference proclaimed:

*"Our goal for achieving life-enhancing economies, as well as our commitment to address the injustices we witness around us, impel us to address the economic policies of a liberated South Africa."*

Following that meeting, the SACC and SACBC organized an Ecumenical Task Force on Economic Matters composed of prominent South African theologians and economists, who further articulated this commitment in May 1993:

*"Our Faith calls us to a pastoral concern for the people of our country who are victims of apartheid injustice and mismanagement of the economy of this country. We are also called to a prophetic responsibility to proclaim the values of God's reign over and against the systematic economic distortions and imbalances created by apartheid...."*

*"We commit ourselves to the mission of bringing about an economy for South Africa that is worthy of all the country's inhabitants called as they are to show forth the image of God in their lives, activities and interactions."*

— "The Church, the Poor and Business:  
A Proclamation on Ethical  
Corporate Conduct in South Africa,"  
Ecumenical Task Force on Economic Matters,  
May 1993

Anguish over the suffering created by the severely distorted and deteriorating apartheid economy impelled South African churches to accelerate the translation of its theology into practice. The Broederstroom conference mandate called on the churches to establish the Task Force on Economic Matters; urge businesses to adhere to ethical codes of conduct in keeping with South African priorities for transforming their society; encourage the future government to formulate an investment policy, promoting "holistic, democratic and sustainable development"; and support liberation and labor movement efforts to develop a code and mechanism for monitoring business behavior. This was their first systematic step toward corporate responsibility.

#### **Forerunners to the CODE**

The Congress of South African Trade Unions (COSATU), the country's largest labor federation, had, in fact, been working for several years on issues of economic planning and corporate responsibility. While in the late 1980s COSATU began to map out economic alternatives for a new society after apartheid, several of its member unions had explored the implications for businesses in greater detail.

The Chemical Workers Industrial Union (CWIU), for



example, had developed a "fair disinvestment procedure" as part of its campaign to cushion the impact on its members of economic sanctions which the union supported. More than two dozen international companies whose workers were represented by CWIU agreed to meet with the union to discuss the recommended procedure, including Caltex, Ciba-Geigy, Colgate Palmolive and Gillette.

The CWIU procedure required companies to share information with workers about the planned disinvestment; to negotiate with the union on the disinvestment package; to maintain existing contracts and working conditions during the process; to provide separation pay, wages for a guaranteed period after the disinvestment announcement and employer contributions to employee retirement funds. These standards—particularly the required corporate disclosure and work with unions—helped shape some of the recommendations for corporate reinvestment in a democratic South Africa.

Other unions, including the National Union of Mineworkers (NUM), the National Union of Metalworkers of South Africa (NUMSA) and the South African Clothing and Textile Workers Union (SACTWU) also spelled out conditions for foreign investment and "socially regulated trade" in South Africa after sanctions ended. They further called on COSATU and its allies to develop a code to define what SACTWU called "socially acceptable standards for trade and investment" after sanctions.

#### **COSATU and ANC Principles**

In the spring of 1992, following its March Economic Policy Conference, COSATU issued its own Code of Conduct for Multi-National Companies Investing in South Africa. This code outlined basic standards for equal opportunity and treatment on the job, creation and security of employment, education and training, working and living conditions provided by companies, workers' rights and policies relating to science and technology, corporate responsibility programs and disinvestment.

Meanwhile, the African National Congress (ANC), working from a national macro-economic perspective, had developed its own economic policy proposals, including its "Revised ANC/Alliance Draft Foreign Investment Policy." These positions were initially designed to stimulate discussion within their own membership in order to formulate the ANC program for a vital, competitive, stable, predictable and productive economy. They further aimed to develop policies which would inform the legislation of a democratic government.

The final section of the ANC/Alliance document clarified expectations:

*"Foreign investors will be expected to comply with domestic regulations regarding industrial relations, worker health and safety, the environment, affirmative action, and the education and training of their employees. Where current regulations are inadequate, we will expect foreign and domestic firms to comply with suitable alternative standards, which may be drawn from international protocols, from the national regulations of other countries, or devised by local interested parties.*

*"We will support the process of devising a voluntary Code of Conduct for Investors covering such issues, by civic, labour and business parties, monitored by an independent authority, which all investors, local and foreign will be persuaded to sign."*

Though talks at the national level to end apartheid were suspended following the Boipatong and Bisho massacres in June and September 1992, negotiating parties began moving closer to resuming discussions in the fall. With renewed prospects for a negotiated settlement and a democratic call to end economic pressures, came a clear mandate to direct anticipated post-sanctions investment in South Africa. During this period religious, labor and liberation movement representatives continued to discuss guidelines for corporate conduct.

#### **Platform of Guiding Principles for Foreign Investors**

On November 13, 1992, COSATU and the ANC presented their joint *Platform of Guiding Principles for Foreign Investors* to more than 150 corporate representatives, socially responsible investors and anti-apartheid activists attending the "National Conference in Support of the African National Congress and Other Democratic Forces for a New South Africa" in New York City. The document spelled out basic standards for workers' rights, affirmative action, environmental protection, training and education, employee working and living conditions, job security and support for black business.

*(continued on page 5)*

*After sanctions are lifted it must not be business as usual. There has got to be a code of conduct for business in South Africa, for a kind of investment that seeks to turn around the dispossession of power and empower the dispossessed.*

— Archbishop Desmond Tutu, 21 May 1993



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**CODE of CONDUCT for BUSINESS OPERATING in SOUTH AFRICA**  
**South African Council of Churches**  
**July 1993**

**Introduction**

The apartheid system has historically burdened South Africa with gross economic distortions, stagnation, secrecy, severe discrimination and natural devastation. It has deprived the country's workers, communities and environment of the fundamental rights written into international conventions upheld in other countries.

In order to reverse this crippling legacy and to improve the economic well-being of all South Africans, investment by both South African and multinational companies needs to be reshaped in the image of an equitable, democratic and life-enhancing society.

It is out of this grave concern and motivation based on ethical religious considerations that the South African Council of Churches, meeting in conference on 8 July 1993, takes this initiative to introduce and support this code of conduct. The code outlines ways in which business can play a constructive and creative role in partnership with workers, communities and other members of civil society, to lay the economic foundations for a stable and prosperous South Africa.

While these standards are also expected to inform the policies of a democratically elected government, in the interim, they are designed to apply to companies operating in South Africa.

**1. Equal Opportunity:**

Companies should insure that their operations are free from discrimination based on race, sex, religion, political opinion or physical handicap, and implement affirmative action programs designed to protect the equal rights and treatment of the historically disadvantaged.

**2. Training and Education:**

Companies should develop and implement training and education programs to increase the productive capacities of their South African employees in consultation with the trade union movement.

**3. Workers' Rights:**

Companies should recognize representative unions and uphold their employees' rights to organize openly, bargain collectively, picket peacefully and strike without intimidation or harassment.

**4. Working and Living Conditions**

Companies should maintain safe and healthy work environment and strive to ensure that the working and living conditions they provide accord with relevant international conventions.

**5. Job Creation and Security**

Companies should strive to maintain productive employment opportunities and create new jobs for South Africans.

**6. Community Relations**

Companies should share information about their practices and projected plans with communities affected by their operations and develop social responsibility programs in ongoing consultation with representative bodies in these communities.

**7. Consumer Protection**

Companies should inform consumers of any possible dangers associated with their products and cooperate with consumer protection and broader community organizations to develop and uphold appropriate product safety and quality standards.

**8. Environmental Protection**

Companies should utilize environmentally sound practices and technologies, disclose how and in what amounts they dispose of their waste products and seek to minimize hazardous waste.

**9. Empowerment of Black Businesses**

Companies should strive to improve the development of black-owned South African businesses by purchasing from and sub-contracting to such firms.

**10. Implementation**

Companies should cooperate with monitors established to implement these standards by disclosing relevant information in a timely fashion. □

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(continued from page 3)

The *Platform* further called on companies to disclose relevant information to designated monitors of their performance. It also affirmed the proponents' intention for these principles to be incorporated into the future democratic government's laws on domestic and foreign investments alike.

#### **An Ethical Approach to the Economy**

Meanwhile, the Ecumenical Task Force on Economic Matters continued its deliberations, consulting a broad spectrum of political, union and community leaders, as well as business representatives. In May 1993, the Task Force presented a document which was adopted by the National Executive Committee of the SACC: "The Church, the Poor and Business: A Proclamation on Ethical Corporate Conduct in South Africa."

This thirteen-page statement built on the foundation laid at Broederstroom by spelling out more detailed guidelines for domestic and foreign businesses' relations with their workers, communities, consumers and the environment—as well as their potential contribution to national transformation and development. It issued a clarion call to maintain such standards well after the election of a democratic government. Not only was this document designed as an instrument of reflection to encourage more active participation by South Africa's faith community in economic affairs. It was also intended to have an impact on the behavior of companies and the future government.

#### **International Call for a Code**

Two weeks later in Utrecht, Netherlands, the SACC and World Council of Churches (WCC) convened an Ecumenical Conference on Ethical Investment in a Changing South Africa. At the outset, the sixty U.S., European and African participants acknowledged that while the theological groundwork had been laid and guiding principles outlined, as yet there was no broad-based code for corporate conduct in a new South Africa.

The conference urged the SACC to take the lead by completing development of an appropriate code in consultation with other "interested constituencies" to guide the conduct of both domestic and foreign corporations in South Africa. It further recommended that the SACC create an effective mechanism to monitor business behavior as soon as possible, and called on ecumenical partners to provide the necessary financial and technical support.

The conference further recommended that churches around the world respond to an anticipated call by the South African democratic movement to lift sanctions by first, discontinuing economic pressures except for exist-

ing embargoes on strategic materials; second, encouraging new investment and aid for all Southern Africa to be arranged, during South Africa's transition period, with the Transitional Executive Council rather than existing white minority authorities; and third, urging "business to share creatively and responsibly in the reconstruction process." The conference further committed participants to support these efforts to develop a code by providing immediate financial and technical assistance. It concluded that after the call to life sanctions, "ecumenical partners will cooperate in a new enterprise: the development of a just, democratic and sustainable society in South Africa."

#### **CODE of CONDUCT: Ten Commandments**

Less than a month later, at its 25th National Conference, the SACC presented and approved a ten-point "CODE of CONDUCT for BUSINESS OPERATING in SOUTH AFRICA." The CODE begins with the

*"It is true that we need higher investment, including foreign investment, to restructure and revitalise the economy and to ensure that, at least, the basic needs of the poor are met. However, it needs to be realized that no simple injection of foreign capital would help appreciably unless a more just way of ordering economic affairs in our own country is found.*

*"Investment projects as well as business ventures are unacceptable if they maintain the grim tradition of economic growth that benefits only a tiny, racially defined minority of the population...."*

*"Even after the establishment of a democratic dispensation, the poor in South Africa will continue, for some period at least, to suffer from vast inequalities in income, wealth, living standards and power. In these circumstances, we cannot assume that management and investors will necessarily act in the interests of society as a whole. Rather, we must work to foster an ethical approach to the economy.*

*"Thus this statement of ethical standards for corporate responsibility is necessary. Even after the establishment of democracy, a representative government will not be able to immediately introduce legislation to enforce the standards of responsible investment found in most democratic countries.*

— "The Church, the Poor and Business:  
A Proclamation on Ethical Corporate Conduct  
in South Africa,"  
Ecumenical Task Force on  
Economic Matters,  
May 1993



premise that apartheid has severely distorted and damaged South Africa's economy and environment and deprived workers and communities of their rights:

*"In order to reverse this crippling legacy and to improve the economic well-being of all South Africans, investment by both South African and multinational companies needs to be reshaped in the image of an equitable, democratic and life enhancing society."*

It proceeds to spell out immediate standards for corporate behavior with regard to workers, communities, consumers, the environment, black business and code monitors. These guidelines are also "expected to inform the policies of a democratically elected government."

#### **Comparing the Codes — A Difference of Focus**

The COSATU Code, *Platform of Guiding Principles* and SACC "Code of Corporate Conduct" support the same basic employment, environmental and affirmative action standards for responsible corporate conduct in a democratic South Africa. Moreover, they all underscore the importance of corporate accountability to workers and South African society as a whole by emphasizing the need to comply with a still-to-be-created monitoring mechanism. Nonetheless, given their respective, albeit overlapping constituencies, the three sets of standards differ slightly in focus.

#### **Emphasis on Workers**

As logic would suggest, the COSATU Code places the strongest emphasis on workers' and union rights, occupational safety and health and the transfer of technology. It requires companies to abide by South African law and International Labor Organization conventions as minimum standards and reiterates that companies deciding to disinvest should do so according to an agreed disinvestment procedure.

The COSATU code also underscores the importance of disclosure of information, in general, and, in particular, consultation with trade unions and affected communities about corporate social responsibility programs "designed to build self-reliance."

#### **From Principles to Government Policy**

The *Platform of Guiding Principles* incorporates the ANC's objective to empower black business—one of the major planks in its majority empowerment strategy. Moreover, it presents the rationale for campaigning for these principles during the "interim phase" of the transition to democratic rule and underscores the intention

to translate the principles into future government policy and legislation.

#### **Reconstruction and Reconciliation**

The SACC CODE reflects the churches' commitment not only to reconstruction but also to reconciliation. It builds on the work of the Ecumenical Task Force on Economic Matters by requiring companies to work with the communities in which they operate. It calls on companies to inform local communities about business practices and plans which would affect communities and consult with representative local bodies on an ongoing basis to shape and implement their social responsibility programs. This process is designed to strengthen working relationships between companies and their neighbors as well as to promote the development of the most useful social projects.

But as important as the SACC CODE's high standards for business behavior, is the development of an inclusive and dialogical process. Through this CODE, the SACC issues a cordial invitation to the corporate community to embark with the rest of South African society on a new enterprise: the creation of a just and viable society.

#### **A Bold Step Forward**

For South African churches the "CODE of CONDUCT" marks a brave and bold step into the economic arena. Confronting apartheid's economic inequalities and devastation, which continue to impose massive suffering and to sabotage community reconciliation, South African churches are impelled to act. Unencumbered by any need to win an election or mandate to work in alliance with a campaigning party, they may be freer than other code advocates to play a prophetic role. In the future, they may also be spared many of the difficult compromises which will inevitably confront a new government.

In developing its work on corporate responsibility, the SACC, SACBC and their Ecumenical Task Force on Economic Matters have engaged a broad spectrum of organizations, including the ANC, Pan Africanist Congress, their respectively aligned union federations COSATU and the National Council of Trade Unions (NACTU), as well as economists of many persuasions and members of the business community. This process, in itself, has the potential to provide a kind of social cement, which will be important to shape a new kind of corporate responsibility.



Since the CODE will be voluntary (at least until a future government is able to legislate its own standards), it can only be strengthened by broad support, including backing by the corporate community. This is not a foregone conclusion, however, since the CODE sets new criteria which have not been standard practice for businesses in South Africa and, in some instances, have been bones of contention. In this context the task of the churches and their allies will be to create the legitimacy and consensus necessary to put the CODE into practice, and to establish an effective monitoring mechanism with the participation of the business community and support from leading labor, community and political organizations. In the process they will need to maintain a delicate balance between their roles as potential partners with business and critics to prick the corporate conscience.

The SACC and SACBC confront a similar challenge in their work with the future government. On one hand their positions and relationships may enable them to impact a new administration's policies. On the other, should legislation and implementation fall short of their standards, the churches and their partners in civil society are likely become independent advocates of responsible investment.

### The Broader Challenge

The South African religious community along with the unions and political organizations working for corporate responsibility face a broader challenge. Will they be able to take advantage of their historic opportunity to create the framework for a new economy which reverses the legacy of apartheid and builds a new kind of just and participatory society? Will they be able to work simultaneously for political and economic democracy?

The principles, practices and precedents established now are likely to have an abiding impact on the behavior and role of business in the South African economy for decades to come. If South African corporate responsibility advocates are able to implement their codes effectively with the willing participation of the business community, they will have created a unique vehicle for constructing a cooperative, equitable and empowering economy on the rubble of apartheid. If not, South African society may be doomed to place a modern mask on the old inequalities and injustices which have long characterized apartheid capitalism.

### New Premises for Partnership

As history turns a corner, South Africans are clearly articulating their own economic and social priorities as the country's leading religious, labor and political institutions write codes for the conduct of both domestic and foreign investors. This means codes written in other countries are no longer legitimate. Moreover international campaigners now face the difficult task of maintaining the momentum of the anti-apartheid movement,

*Under the apartheid system, government and business systematically deformed the economy. Today South Africa has one of the most unequal distributions of income and wealth in the world; a shrinking economy in which only half the work force can find formal employment; high costs, gross over concentration of ownership and markets, and corrupt management. The sobering reality is that the correction of these structural distortions will require years of cooperation between the new democratic government, its partners in civil society and the international community.*

— Utrecht Statement, 12 June 1993

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while switching strategies and broadening support to reverse apartheid's crippling legacy and promote the democratic development of a new South Africa.

For those organizations and companies which have advocated democracy in South Africa, the acid test of their rhetoric will be the extent to which they support the authentic voices of South African majority organizations—and the standards they set.

For those institutions, including socially responsible investors, which have maintained policies promoting sanctions, divestment or anti-apartheid shareholder activism, this will soon mean a shift to supporting investment in a new South Africa—according to the specific standards set in the country.

For faith-based organizations the next stage of the partnership will demand financial and technical support for new strategies developed by the South African religious community, such as the CODE of CONDUCT. Co-religionists abroad will be invited, in the spirit of the Utrecht Conference, to urge companies in their own countries to abide by the CODE and share information about their companies' conduct in South Africa.

For the companies themselves, this CODE and period in South Africa's history present a unique opportunity. There have been a wide range of corporate approaches to South Africa. Some firms left South Africa out of con-

viction or under pressure. Many of the companies remaining in the country had worked to make a social contribution through Sullivan Principle programs and other measures. The new CODE equalizes expectations for South African and international companies alike. Moreover, as corporations in the post-sanctions era explore opportunities to enter or expand in new markets in South and Southern Africa, they can help reduce risks and shape their own investment environments.

By working collaboratively with unions, communities and religious organizations then can contribute to the stability of the communities and economy in which they operate. Their support for the CODE will also improve their visibility and public image as cooperative partners in the new process of community and nation-building in South Africa. It is also likely to win support at home from socially responsible investors and purchasers.

The new partnerships for corporate responsibility are, above all, part of an evolving process. Without doubt there will be mistakes and setbacks, as there have been throughout South Africa's difficult and jarring journey to a negotiated democratic dispensation. The important thing for both CODE advocates and companies alike is to move now beyond old positions and to demonstrate the vision, courage and commitment to join in that process.

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**PLATFORM OF GUIDING PRINCIPLES**

**FOR FOREIGN INVESTORS**

ANC/COSATU position presented to the National Conference in Support of the African National Congress and Other Democratic Forces for a New South Africa.  
November 13-15, 1992  
Riverside Church, New York City

**1. Introduction**

- 1.1 The apartheid legislative process that governs investment at present is a major obstacle to growth and development. In this context the process of foreign investment needs to be assessed with care.
- 1.2 At present the basic ILO Conventions do not apply across South Africa. Discriminatory practices are widespread, and the lack of transparency in government is hiding corruption and inefficiency, and promoting political violence and destabilization. Measures to protect the environment are weak, weakly implemented or non-existent. Investment in such a context will, therefore, not automatically contribute to growth, development or the eradication of apartheid.

**2. GUIDING PRINCIPLES**

We therefore propose that any investment after the lifting of the policy of economic sanctions should be guided by the following principles:

**2.1 Workers' Rights**

Companies should uphold workers' rights including the recognition of representative unions and their rights to bargain collectively, to strike, to picket peacefully, and strike breakers will not be hired.

2.2 Investment should enhance employment creation.

**2.3 Equality of Opportunity**

Companies will eliminate all discrimination on the basis of race, religion, sex, political opinion or physical handicap and will implement affirmative action programs.

**2.4 Environmental Protection**

Investment must incorporate environmentally sound and clean practices and technology.

(more)

**CAPITAL DISTRICT COALITION  
AGAINST APARTHEID & RACISM  
P.O. BOX 3002  
ALBANY, N.Y. 12203**





# AFRICAN NATIONAL CONGRESS

## *Observer Mission to the United Nations*

4/92

### 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).



### 1. THE NAME OF THE CMB *Constituent Making Body*

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

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 from 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" *they say it does not respect minority rights*

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.

*Confusing* **CRITICAL INTERPOLATION ON THE PROPOSAL FOR A BICAMERAL CMB ?**

*a second house?*  
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 other, 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.



*7 regional representation is good but when reg. minority gets more representation*

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** - *to draft constitution*

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 *constituting body*

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 Constitutionnel which decides on questions of the constitutionality of proposed laws submitted to it from Parliament, and which enjoys considerable prestige. Members of the





# AFRICAN NATIONAL CONGRESS

*Mission to the United States*

## NEC RESOLUTION ON NEGOTIATIONS AND NATIONAL RECONSTRUCTION

Further to our adopted document "Negotiations, a Strategic Perspective" this meeting of the NEC decides as follows:

1. We reject the National Party's power sharing proposal either for a permanent or fixed period.
2. In the interest of reconstruction and peace and the need to minimise the potential threat to democratic advance from divisive forces in the period immediately following the adoption of the new constitution, we declare our support for an Interim Government of National Unity (IGNU) which would exist up to the point of the adoption of the new constitution. After the adoption of the new constitution the IGNU would continue in the same form as a Government of National Unity and Reconstruction in order to phase in structures provided for in the new constitution.

The GNUR would exist for a specified limited duration, whose term would come to an end by the first election under the new constitution, which would be held no later than five years after the elections for the CA.

3. Such a GNUR shall be governed by the overriding principle that minority parties shall not have the powers to paralyse the functioning of the executive or to block the process of restructuring, more particularly:

(a) It shall be made up of an executive in which there will be proportional representation of all the parties elected to the CA subject to a minimum threshold of 5% of the seats in the Constituent Assembly.

(b) The President shall be elected by a simple majority of the Constituent Assembly

(c) Representatives of minority parties in the cabinet shall be appointed by the President in consultation with the leaders of each party in question. The President shall have the right to insist on an alternative if the person proposed by such leader is, for specified reasons, unacceptable.

(d) In general the President shall exercise his or her executive powers after consultation with the cabinet.

(e) In the case of certain specified powers the President shall exercise his or her powers in consultation with the parties represented in the cabinet. In the event of a disagreement the President's decision shall require support from 2/3 of the members of cabinet.

(f) The specified powers mentioned in (e) are still to be negotiated and before an agreement is reached in this regard a detailed mandate will have to be obtained from the NWC sitting with either the chairperson or secretary of each region.



4. The meeting further reaffirms its positions concerning the Constituent Assembly that the Constituent Assembly shall be a sovereign constitution-making body which will be bound only by agreed general constitutional principles. It should be composed of representatives elected on the basis of national and regional lists. It would take decisions by a two thirds majority. Matters pertaining to the powers and functions of regions will also require an additional two thirds majority of the regional representatives sitting as a whole. The Constituent Assembly should complete its work as quickly as possible and not later than nine months after its election.

The NEC will continue to negotiate the issue of an effective deadlock breaking mechanism which would be used in case the Constituent Assembly is unable to conclude its work within the specified time frame.

5. The meeting of the NEC resolved that work should continue to build a national consensus on the question of future regional government, through discussions with other parties and organisations. All decisions concerning the powers, functions, boundaries and structure of regional government should be decided by the Constituent Assembly. Any Commission on Regions that may be established by a multi-party forum would, apart from delimiting electoral regions for the Constituent Assembly elections, only make recommendations to this Assembly.

#### 6. Programme of Reconstruction and Development

In endorsing the package concerning inter alia a Government of National Unity, the NEC affirmed that such arrangements must, during the transition period itself, be reinforced by an effective programme of reconstruction and democratic transformation.

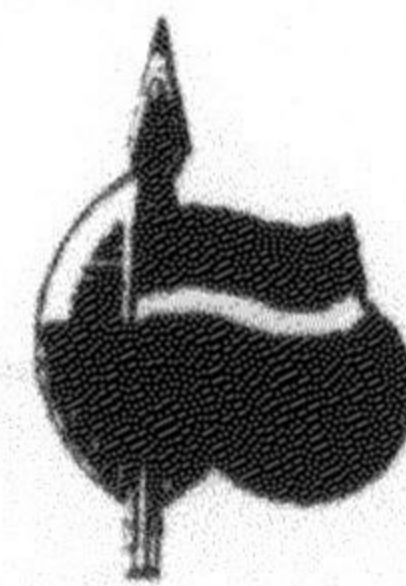
The ANC immediately needs to embark on a process to consolidate its ranks, supporters and those of the broad democratic forces around a transitional strategy to empower the oppressed majority. This will entail:

- (i) identifying those key sections of the organs of state that require restructuring as a matter of priority.
- (ii) evolving an affirmative action programme, with definite time frames, to reconstruct the organs of state in conformity with a democratic society;
- (iii) a far-reaching programme of social and economic reconstruction to address the pressing needs of the majority of South Africa;
- (iv) a process of consultation and mobilisation of mass democratic forces and the convening of a conference on reconstruction and broad strategy. Such a conference to be held within four months.



# African National Congress

51 Plain Street  
Johannesburg 2001  
P O Box 61884  
Marshalltown 2107



Tel: (011) 330-7000  
Fax: (011) 330-9090  
Telex: 421252

## ANC RESOLUTION ON SANCTIONS

The National Executive Committee of the ANC, meeting in Johannesburg from 16-18 February 1993:

Having reviewed the process leading to the democratic election of a Constituent Assembly and the formation of an Interim Government of National Unity;

Confirming its resolve to ensure the earliest possible establishment of a Transitional Executive Council, its sub-structures, the independent Electoral and Media Commissions and the enactment of a Transition to Democracy Act;

Convinced that this is essential to enable free and fair elections to take place;

Reaffirming that international sanctions against apartheid have played a critical role in the struggle for a united, democratic, non-racial and non-sexist South Africa;

Recalling the resolution on sanctions adopted by the National Conference of the ANC in July 1991 for a phased approach to sanctions;

Further recalling the decision of the Tripartite Alliance Seminar on Sanctions of October 4, 1991, which made recommendations about sanctions affecting diplomatic relations, gold coins, trade and trade credits, new investment, loans and other financial matters;

Recommends to all the democratic movement of our country and all our allies internationally that:



**AFRICAN NATIONAL CONGRESS**

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**AS ADOPTED AT NATIONAL CONFERENCE  
28 - 31 MAY 1992**

**(FINAL PUBLICATION TO FOLLOW)**



expanding industry through the substitution of hitherto imported manufactured goods for the wealthy minority. There has also been an emphasis on strategic industries such as arms and petro-chemicals. This led to the emergence of a significant manufacturing sector in our country, but one which is generally uncompetitive in terms of international costs and prices.

A2.7 The alienation of land from the indigenous people and the denial of the African majority's rights to land and political power in our country are intimately connected. The agricultural sector in South Africa is currently experiencing a deep crisis. Debt levels of white farmers have reached critical proportions.

A2.8 These problems have led to rapidly increasing unemployment and a serious decline in living standards. Furthermore, they have deprived the black youth of opportunities to realise their talents.

A2.9 Our people remain divided. We do not know each other. We are prevented from developing a national vision, in terms of which, we would see our country through the eyes of all its citizens, and not just one group or the other. We live apart, physically separated, spiritually alienated, frightened of getting too close, knowing that we have different life-chances and different views of what change means. We are ruled by a multiplicity of fragmented departments, boards, councils and ministries. Apartheid has left us apart.

#### A3. POLICIES FOR TRANSFORMATION

A3.1 In this context it is vital that the ANC develops a clear response. This response must be aimed both at establishing a new and democratic political dispensation that replaces the racist and undemocratic apartheid constitution and addresses the legacy of apartheid in the broader socio-economic sphere.

A3.2 This document is a direct response to the above challenges. It sets out for discussion a comprehensive set of guidelines highlighting the ANC's broad policy response to all the major areas of political, social and economic life. The document is structured so as to highlight the strong relationship between the creation of political democracy and social and economic transformation.

A3.3 It is critical, however, that we honestly face up to the extent of the problems confronting our country. They are not going to be solved overnight and there are no easy or quick solutions. The problems run deep and resources are limited. Accordingly, the policies proposed here represent our broad vision. These policies highlight our ultimate goals, which will need to be transformed into effective and realisable programmes in the short-term.

A3.4 In other words, we will need to establish priorities both within each of the different policy areas and between these broad areas. These priorities must be arrived at through democratic discussions and decision making processes and we must establish just and efficient mechanisms for implementing these decisions. Progress will also depend on involving as many sections of our society as possible in finding solutions.

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## B. A DEMOCRATIC CONSTITUTION FOR SOUTH AFRICA

### B1. BASIC PRINCIPLES

B1.1 Sovereignty vests in the people of South Africa. Their will shall be expressed by their democratically elected representatives in periodic free and fair elections. These elected representatives will adopt a constitution which shall be the highest law of the land guaranteeing their basic rights.

B1.2 The goal of the ANC, ever since it was formed in 1912, has been to give all the people of our country, the chance to choose their own government. That is why generations of our leaders and members have set their sights on the objective of a new and democratic constitution which would at last remove the colonial status of the African people, abolish all forms of discrimination, and recognise the basic equality of all South Africans.

B1.3 We are proud of our role in pioneering democracy and constitutionalism in our land, especially through the Freedom Charter. None has fought harder for freedom and democracy than we have. The people will finally have won the right to choose their own government. At the same time they will have the right to remove any government through periodic elections.

B1.4 Our constitution shall not only guarantee an accountable non-racial, non-sexist and democratic structure of government, but shall also empower all citizens to shape and share in the many aspects of life outside government.

B1.5 Our constitution shall guarantee the space for civic bodies, trade unions and the numerous other organisations which people create to deal with their every day problems and aspirations. These are the institutions of civil society which are crucial if we are to have a deep and thorough democratic order.

B1.6 Our task now is to rally all South African patriots around the principles for which we have always stood, namely, of equality, mutual respect, dignity and promotion of basic



and functions of regional government will need to be balanced with those of the urban and rural local authorities in order to avoid conflict.

#### B3.6 Traditional Leaders

The institution of chieftainship has played an important role in the history of our country and chiefs will continue to have an important role to play in unifying our people and performing ceremonial and other functions allocated to them by law. The powers of Chiefs shall always be exercised subject to the provisions of the constitution and other laws. Provision will be made for an appropriate structure consisting of traditional leaders to be created by law, in order to advise parliament - on matters relevant to customary law and other matters relating to the powers and functions of chiefs. Changes in the existing powers and functions of chiefs will only be made by parliament after such consultation has taken place.

#### B4. THE EXECUTIVE

B4.1 The ANC proposes that the Head of State be a President with both ceremonial and executive powers. The President should be elected by the National Assembly. He or she will have a fixed term of office and be available for re-election only once. The President will appoint and supervise the functioning of the cabinet, acting through and in liaison with a Prime Minister who will be directly accountable to President and responsible to the National Assembly.

#### B5. A BILL OF RIGHTS

##### B5.1 Introduction

B5.1.1 A central place in the Constitution will be occupied by a Bill of Rights. This will set out certain basic rights and freedoms as universally understood which no future government will normally be able to take away except by special majority. Basically, it will enshrine principles for which we have fought all our lives. At the heart of the Bill of Rights lies the notion of the fundamental equality of all men and women, irrespective of race, colour or creed.

B5.1.2 The Bill of Rights will guarantee that South Africa in a multi-party democracy in which people enjoy freedom of association, speech and assembly and the right to change their government. Furthermore, the public have a right to know what is being done in their name - we believe in a strong right to information and a firm guarantee regarding the free circulation of ideas and opinions.

B5.1.3 The Bill of Rights shall be binding upon the State and organs of government at all levels and where

appropriate, on social institutions and persons.

B5.1.4 The Bill of Rights will be enforced by the courts, headed by a separate newly created Constitutional Court, which will have the task of upholding the fundamental rights and freedoms of all citizens against the state or any body or person seeking to deny those rights. The judges will be independent, and will consist of men and women drawn from all sections of the community on the basis of their integrity, skills, life experience and wisdom.

B5.1.5 The Bill of Rights shall secure the rights of all persons in all spheres of life, including housing, education employment and access to facilities and such protection shall be ensured without discrimination on the ground of race or gender.

B5.1.6 The Bill of Rights must guarantee language and cultural rights.

B5.1.7 It must acknowledge the importance of religion in our country. It must respect the diversity of faiths and give guarantees of freedom of religion.

B5.1.7 The rights of the child; the duties of all citizens; environmental rights; the rights of disabled persons; and the right not to be discriminated against or subjected to harassment because of sexual orientation.

B5.1.8 The ANC is against capital punishment and will seek to have it outlawed in the Bill of Rights.

##### B5.2 Worker's rights

B5.2.1 Workers have fought long and hard for their right to set up independent trade unions, their right to engage in collective bargaining and their right to strike. These rights must be protected in the Bill of Rights, which should be supplemented by a Workers' Charter. This charter should set out all those rights that workers throughout the world have gained for themselves. The State will be a signatory to the International Labour Organisation (ILO) conventions. The Bill of Rights will also prohibit slave labour the exploitation of children and discrimination in the work place.

##### B5.3 Human rights for women

B5.3.1 Special emphasis will have to be given to the realisation of women's emancipation.

B5.3.2 Women are discriminated against and subordinated in every area of public and private life. They have inferior access to education and employment and are



mechanisms to ensure that there is an enforceable and expanding minimum floor of entitlements for all, in the areas of education, health and welfare. It will commit the courts to take into account the need to reduce malnutrition, unemployment and homelessness when making any decisions.

B5.6.2 Pensions should immediately be equalised in respect of race and gender, and all future governments should be constitutionally committed to embark upon programmes to ensure that every household has electricity, clean water and access to waste disposal.

B5.6.3 Special agencies linked to Parliament and the courts should be set up so as to ensure that national, regional and local authorities apply appropriate shares of their budgets to achieving these rights, taking into account the problems of limited resources and affordability. Removing the inequalities to which the majority of the people have been subjected, both by law and in practice, cannot be left either to paternalism or chance. We cannot have a nation if half the people live in darkness, half in light.

#### B6. AFFIRMATIVE ACTION

B6.1 There is strong support in this country for the idea of affirmative action, and some resistance. While taking on a variety of forms, affirmative action means special measures to enable persons discriminated against on grounds of colour, gender and disability to break into fields from which they have been excluded by past discrimination. The ANC proposes affirmative action with a view to establishing a law-governed, progressive and equitable way of ensuring advancement without on the one hand freezing present privileges or on the other going over to arbitrary compulsion. The issue has to be handled with both firmness and sensitivity.

B6.2 The constitution will make it clear that seeking to achieve substantive equal rights and opportunities for those discriminated against in the past should not be regarded as a violation of the principles of equality, non-racialism and non-sexism, but rather as their fulfilment. Unless special interventions are made, the patterns of structured advantage and disadvantage created by apartheid and patriarchy replicate themselves from generation to generation.

B6.3 We do not support giving positions to unqualified people simply on the grounds of race or gender. What we will insist on, however, is that the hundreds of thousands of highly merit-worthy persons who have been unjustifiably kept out of jobs, denied advancement in their careers and excluded from training, be given their due. Those who have been kept back by apartheid, education and by sexist

assumptions should be given special backing to catch up. The rich life experiences, knowledge of languages, and cultural diversity of those previously discriminated against should be seen as enriching the contribution of individual South Africans.

B6.4 We look to advancement taking place primarily through application of the principles of equal protection, good government and an expanding floor of minimum rights, that is, our constitution will be profoundly non-racial and non-sexist, but it will not prevent taking the realities of race and gender discrimination into account in certain specified areas and in order to meet well-defined goals when trying to achieve real equality.

B6.5 Special attention will have to be given to intensive training and the opening up of careers and advancement for those held back by past discrimination. Management in both the public and private sectors will have to be deracialised so that rapidly and progressively it comes to reflect the skills of the entire population. Equity ownership will also have to be extended so that people from all sections of the population have a stake in the economy and the power to influence economic decisions.

B6.6 Gender relations in the home have created dependency and subordination for most women in our society. The domestic division of labour has resulted in women performing a range of activities which are unacknowledged for their contribution to social production and reproduction, stability and wealth creation. This situation will be redressed through efforts to recognise unpaid work. The need to actively recognise such work is vital since it affects the nature of broader socio-economic policy formulation. In addition there needs to be a commitment to equal pay for work of equal value in various sectors of the economy.

B6.7 ANC policies favour affirmative action for disadvantaged sectors of our population. This policy will apply with equal vigour to the marginalised youth in South Africa. Special attention should be given to young women, who are affected by both apartheid and patriarchy.

B6.8 Affirmative action policies will be aimed at the full integration of youth into our society, in a meaningful and progressive way.

B6.9 Special measures are necessary to advance the interests of the most disadvantaged, especially in rural areas and all legislative and administrative bodies shall be obliged to adopt policies which shall implement this approach.

B6.10 Special mechanisms will be necessary to advance and monitor affirmative actions programmes.



B11.1 The Constitution must guarantee not only that people are free to speak their minds, but that people can benefit from the free circulation of ideas and information, and be exposed to different philosophies and ways of seeing the world. The right to information must be secured, together with a free press and public media, which is controlled neither by the state nor by political parties, but by an impartial and independent broadcasting authority. There should be a commitment to the constitutional principles of non-racialism and non-sexism.

B11.2 The Constitution is the guardian of our liberties. It should guarantee space to each and every person to live out his or her life in dignity, either alone or in association with others. Freedom of the individual, freedom of civil society and good government according to constitutional principles, go hand in hand. The struggle for freedom and justice never ends.

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## C. A NEW SYSTEM OF LOCAL GOVERNMENT

### C1. BASIC PRINCIPLES

C1.1 The ANC believes that there is a need for strong and effective local government to replace the racist, sexist, undemocratic, tribalist and corrupt structures which presently exist. As a result of the large disparities between local areas and regions, a strong central government is required to address the legacy of apartheid and to ensure more balanced forms of local development. Strong local government will be complemented by regional government whose primary tasks will be to ensure integrated and coordinated local development planning, the provision of appropriate regional services and to provide support to those local authorities which lack resources, particularly in the rural areas.

C1.2 Within this framework, local government will:

C1.2.1 Play a crucial role in building democracy in a future South Africa. Local government will bring government closer to the people and actively involve them in decision-making and planning processes which affect them;

C1.2.2 Play a key role in development and in the equitable redistribution and re-allocation of local authority services. It will address as a priority the disparities in our cities, towns and villages which have resulted from the policies of apartheid. The promotion of the needs and interests of disadvantaged

sections of communities will therefore become a major focus of local government activities.

### C2. RESTRUCTURING LOCAL GOVERNMENT

C2.1 During the past decade, communities have waged intense struggles against apartheid local government - struggles over issues affecting their daily lives, such as housing, health, transport, water and electricity provision. There has been widespread rejection of the corrupt, financially unviable and undemocratic racial local government system.

C2.2 The restructuring of local government is part and parcel of the dismantling of the apartheid system. No meaningful restructuring can take place at the local level unless it is part of a process of national transformation.

### C3. A POLICY FRAMEWORK FOR LOCAL GOVERNMENT

C3.1 The ANC envisages a new system of local government in South Africa which will operate within the context of the national constitutional framework. At the same time, local government will have the scope to take local initiatives, provided these do not conflict with national policy.

C3.2 Non-racial, non-sexist and democratic local government

C3.2.1 A future system of local government must not only assert non-racialism and non-sexism, but will need to actively build non-racialism and non-sexism in processes designed to counter decades of discriminatory government. The ANC is committed to ensuring that mechanisms are built into the system to enable women to participate in decision making and administrative structures at all levels of regional and local government.

C3.2.2 All racially-based local government structures will be abolished. De-racialising local government must mean more than an equal opportunity to vote. The fragmented nature of South African cities, towns and village needs to be addressed and each city and town will be unified under a single municipality, with a single non-racial voters' roll and a single tax base. Villages, commercial farming areas and rural towns will be brought together under rural district councils.

C3.2.3 Women must be actively brought into the decision making process. Programmes must be designed to equip women with skills to enable them to participate and have to be launched. In this regard, special attention will have to be paid to the rural areas where women are disproportionately located.

C3.3 Democratic and accountable local government



education, roads and public transport, parks, community facilities (including recreation and sport) and environmental protection. Furthermore, it is essential that future local government has a specific responsibility for encouraging local commercial, industrial and agricultural economic development within regional and national frameworks. In view of the circumstances, it may be necessary for rural local governments to have slightly different powers and functions to urban local government.

#### C4.3 Finance

- C4.3.1 The ANC believes that national government has a duty to ensure that conditions are created to meet the basic needs of the population. This will be achieved partly by a fairer, progressive and more efficient system of taxation and government spending.
- C4.3.2 Local government should be able to raise revenue for the implementation of its policies, assisted by higher levels of government where appropriate. The existing system of local government financing, where the poorest areas are expected to pay for all their own services while the rich areas share that burden with business, must end. All areas which are functionally linked should form a single tax base. The metropolitan level should be the focus of revenue collection in metropolitan areas. National government will have to exercise some control over the nature and extent of local government taxation and borrowing in order to ensure efficiency and balance in the overall fiscal system, borrowing which compromises the long term autonomy of local authorities or the country as a whole must be avoided.
- C4.3.3 Service charges should be affordable. They should not be set in such a way that the burden of extending services to areas deprived by apartheid falls mainly on those areas. To combat poverty, subsidisation of essential services for those who cannot afford to pay, will be necessary. It will be the responsibility of local government to ensure the provision and maintenance of all services according to acceptable standards.
- C4.3.4 Tax resources must be distributed appropriately between each level of government and between different authorities on each level. Because of regional inequality and the nature of taxes collected, this will require the transfer of resources from higher to lower levels of government. New institutions will have to be developed to ensure this happens efficiently and democratically, preventing unwarranted interference in the autonomy of each level of government.

- C4.3.5 New institutions will be developed to improve efficiency, transparency and accountability in government spending.

#### C4.4 Local government structures

- C4.4.1 "One city, one municipality"  
To overcome the legacy of apartheid, the ANC envisages that each city and town will be unified under a single municipality. Where commuter suburbs are far removed from the city, consideration will be given to a two-tier system of local government. This will ensure that local needs are addressed, without excluding these areas from the benefits of being part of the city.
- C4.4.2 Strong metropolitan government  
i) The key issues facing our cities - disparities in services provision, rapid urban growth, the housing crisis and inefficient apartheid city structure - cannot be effectively addressed by lower-tier authorities, whose focus is too local.  
ii) The ANC believes that the metropolitan tier would be an appropriate tier to address these issues. This tier will control the primary sources of urban finance, and be responsible for allocating funds for development and services. It will coordinate the provision of city-wide services and allow democratic control over broader development decisions. It will set the policy framework for that metropolitan area, within which the lower tier(s) would operate.
- C4.4.3 Effective rural local government  
South Africa's rural areas differ in important respects from urban areas. The ANC believes that it is therefore appropriate to create District Councils within rural areas. This will enable rural communities to develop their own responses to the particular development challenges that they face. In partnership with central and regional government, these councils will be responsible for coordinating development and servicing of rural areas.  
In order to increase community participation and involvement in District Council decisions and activities, it may be necessary to institute development structures at a village or ward level which would fall under the District Council.
- C4.5 Civil society
- C4.5.1 The ANC believes that all legislative and executive power at the local level must be constitutionally



**AFRICAN NATIONAL CONGRESS**

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## I. INTRODUCTION

### 1. THE ANC'S VISION FOR THE FUTURE

- 1.1 The basic objectives of ANC policy are fourfold:
- 1.1.1 To strive for the achievement of the right of all South Africans, as a whole, to political and economic self-determination in a united South Africa;
  - 1.1.2 To overcome the legacy of inequality and injustice created by colonialism and apartheid, in a swift, progressive and principled way;
  - 1.1.3 To develop a sustainable economy and state infrastructure that will progressively improve the quality of life of all South Africans; and,
  - 1.1.4 To encourage the flourishing of the feeling that South Africa belongs to all who live in it, to promote a common loyalty to and pride in the country and to create a universal sense of freedom and security within its borders.
- 1.2 These are not mutually exclusive goals. On the contrary, the future of our country depends on the harmonious and simultaneous realisation of all four. The advancement of the majority of people will, in the medium-and-long-term, release hitherto untapped and suppressed talents and energies that will both boost and diversify the economy. Developing the economy will, in turn, provide the basis for overcoming the divisions of the past without creating new ones. Finally, the achievement of a genuine sense of national unity depends on all of us working together to overcome the inequalities created by apartheid.
- 1.3 The beacons guiding these advances are equal rights, non-racialism, non-sexism, democracy and mutual respect. A broad, inclusive approach, free of arrogance or complexes of superiority or inferiority, is fundamental.
- 1.4 We have to develop a truly South African vision of our country, one which is not distorted by the prejudices and sectarianism that has guided viewpoints on race and gender, in the past. We have to rely on the wisdom, life experiences, talents and know-how of all South Africans, women and men. There can be no "apartheid" in finding solutions to the problems created by apartheid.
- 1.5 This document does not present a rigid ANC blue-print for the future of South Africa, to which our supporters will be expected to rally and our opponents required to submit. Rather, the document represents a set of basic guidelines to policies we intend to pursue. These ideas will be developed through discussion within the ANC, and through consultation with the broadest spectrum of South African

public opinion. The policies will be adapted according to these processes and on the basis of experience.

### A2. OUR PROBLEMS RUN DEEP

- A2.1 It is necessary to dwell on the problems which will be faced by the first government which is elected under a new democratic constitution. It will help create an understanding of the magnitude of the tasks involved in transforming our country into one where everyone can enjoy a basic standard of living combined with peace and security. It will underline the fact that there are choices to be made and priorities to be established.
- A2.2 Past minority governments and the current apartheid regime have pursued active political and social policies which, amongst other things, have led to: extreme levels of poverty and disease in the rural areas; the creation of urban ghettos where people have been denied access to even the most basic means of survival as a result of severely limited access to decent homes, electricity, water-borne sewerage, tarred roads, and recreational facilities; an education system preparing the majority of South Africans for lives of subordination and low income wage jobs; a social security system geared almost entirely to fulfilling the needs of the white minority; a health system that has seriously neglected the well-being of most South Africans; the social and political marginalisation of the majority of people, the African community in particular, their exclusion from public life and decision making as well as the denial of their culture.
- A2.3 Gender discrimination has either excluded or subordinated the nature of women's participation in all socio-economic and political institutions. Combined with apartheid, this has resulted in African women being the most exploited and poverty stricken section of the South African population.
- A2.4 Both the political system of apartheid and the pattern of economic development in our country, have been responsible for these developments. The white minority have used their exclusive access to political and economic power to promote their own sectional interests at the expense of black people and the country's natural resources. Black people have been systematically excluded and disadvantaged economically with the result that South Africa has one of the most unequal patterns of income and wealth distribution in the world.
- A2.5 Since the mid-1970s, the South African economy has stagnated. An average growth rate of 6% in the 1960s declined to 3% in the 1970s and is now below 1%. Unemployment is estimated at over 40% of the economically active population.
- A2.6 For over forty years, economic strategy was based on



expanding industry through the substitution of hitherto imported manufactured goods for the wealthy minority. There has also been an emphasis on strategic industries such as arms and petro-chemicals. This led to the emergence of a significant manufacturing sector in our country, but one which is generally uncompetitive in terms of international costs and prices.

A2.7 The alienation of land from the indigenous people and the denial of the African majority's rights to land and political power in our country are intimately connected. The agricultural sector in South Africa is currently experiencing a deep crisis. Debt levels of white farmers have reached critical proportions.

A2.8 These problems have led to rapidly increasing unemployment and a serious decline in living standards. Furthermore, they have deprived the black youth of opportunities to realise their talents.

A2.9 Our people remain divided. We do not know each other. We are prevented from developing a national vision, in terms of which, we would see our country through the eyes of all its citizens, and not just one group or the other. We live apart, physically separated, spiritually alienated, frightened of getting too close, knowing that we have different life-chances and different views of what change means. We are ruled by a multiplicity of fragmented departments, boards, councils and ministries. Apartheid has left us apart.

### A3. POLICIES FOR TRANSFORMATION

A3.1 In this context it is vital that the ANC develops a clear response. This response must be aimed both at establishing a new and democratic political dispensation that replaces the racist and undemocratic apartheid constitution and addresses the legacy of apartheid in the broader socio-economic sphere.

A3.2 This document is a direct response to the above challenges. It sets out for discussion a comprehensive set of guidelines highlighting the ANC's broad policy response to all the major areas of political, social and economic life. The document is structured so as to highlight the strong relationship between the creation of political democracy and social and economic transformation.

A3.3 It is critical, however, that we honestly face up to the extent of the problems confronting our country. They are not going to be solved overnight and there are no easy or quick solutions. The problems run deep and resources are limited. Accordingly, the policies proposed here represent our broad vision. These policies highlight our ultimate goals, which will need to be transformed into effective and realisable programmes in the short-term.

A3.4 In other words, we will need to establish priorities both within each of the different policy areas and between these broad areas. These priorities must be arrived at through democratic discussions and decision making processes and we must establish just and efficient mechanisms for implementing these decisions. Progress will also depend on involving as many sections of our society as possible in finding solutions.

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## B. A DEMOCRATIC CONSTITUTION FOR SOUTH AFRICA

### B1. BASIC PRINCIPLES

B1.1 Sovereignty vests in the people of South Africa. Their will shall be expressed by their democratically elected representatives in periodic free and fair elections. These elected representatives will adopt a constitution which shall be the highest law of the land guaranteeing their basic rights.

B1.2 The goal of the ANC, ever since it was formed in 1912, has been to give all the people of our country, the chance to choose their own government. That is why generations of our leaders and members have set their sights on the objective of a new and democratic constitution which would at last remove the colonial status of the African people, abolish all forms of discrimination, and recognise the basic equality of all South Africans.

B1.3 We are proud of our role in pioneering democracy and constitutionalism in our land, especially through the Freedom Charter. None has fought harder for freedom and democracy than we have. The people will finally have won the right to choose their own government. At the same time they will have the right to remove any government through periodic elections.

B1.4 Our constitution shall not only guarantee an accountable non-racial, non-sexist and democratic structure of government, but shall also empower all citizens to shape and share in the many aspects of life outside government.

B1.5 Our constitution shall guarantee the space for civic bodies, trade unions and the numerous other organisations which people create to deal with their every day problems and aspirations. These are the institutions of civil society which are crucial if we are to have a deep and thorough democratic order.

B1.6 Our task now is to rally all South African patriots around the principles for which we have always stood, namely, of equality, mutual respect, dignity and promotion of basic



human rights. After so many decades of struggle and sacrifice, we must achieve a constitution that guarantees that oppression, discrimination, inequality and division will never stalk our land again.

11.7 We want a country that is unified, open, non-racial, non-sexist, democratic and free. We must abolish all forms of discrimination, domination, privilege or abuse. We must ensure that the basic rights and freedoms of all are respected. We must see to it that the religious, linguistic and cultural variety of our land is fully acknowledged, and that no person shall be subjected to any forms of oppression or abuse. We do not want new forms of tyranny to replace the old.

11.8 South Africa has never had good government for all. Government has until now always been used to harass, divide and humiliate the great majority of South Africans, while securing privilege and relatively high standards of service for the minority. We need a constitution that guarantees a high quality of government service for all. The public service must be based on the principles of representivity, competency, impartiality and accountability. For the first time we envisage a public service that is drawn from and serves the interests of the public as a whole.

## 2. POPULAR REPRESENTATION AND PARTICIPATION

### 2.1 THE VOTE

The achievement of the vote will signal the achievement of full citizenship and legal equality for all. Elections will be a fundamental element of a democratic political life in our country. From now onwards government shall maximise popular participation and be accountable and responsible to the people.

2.2 To promote a non-racial, non-sexist, participatory democracy that will cater for the diversity of our people, appropriate structures, and checks and balances must ensure the active participation of all in political life and prevent the abuse or oppression of anyone.

2.3 The ANC opposes the entrenchment of race and ethnic group rights in the constitution and stands for one person one vote on a common voters roll, with each vote being of equal value. All South African citizens above the age of eighteen (18) will be entitled to vote. Such votes will be exercised by all voters within the 1910 boundaries of South Africa.

2.4 In keeping with this democratic, inclusive and balanced approach, the ANC proposes the election of representatives by the system of proportional representation provided that proportional representation may be supplemented by the other democratic electoral systems at local level. People will vote for party lists and parties will then get a share

of representatives in proportion to their share of the total vote. An appropriate threshold will be fixed, below which a party will not be allocated seats.

H2.5 In order to ensure that regional and local interests are represented and to enhance the accountability of the National Assembly, we propose that there be a single vote which will count towards both the national and regional lists of parties. We believe that such lists should be compiled with sensitivity to gender.

H2.6 All elections at a central, regional and local level shall be conducted by an independent electoral commission, which shall enjoy freedom from governmental and political control.

### B3. STRUCTURES OF GOVERNMENT

B3.1 South Africa shall be a unitary state in which there shall be government at local, regional and national levels. The Bill of Rights and principles of non-racialism, non-sexism and democratic accountability shall apply at all three levels of government.

B3.2 The ANC favours a Parliament consisting of the national assembly and senate. The national assembly will be elected by universal suffrage on a common voter's roll according to proportional representation. It will control the national budget and have primary responsibility for the preparation and adoption of the country's main laws. The senate will be representative of regions and be directly elected and have the power to review, refer and delay legislation. It will also have special responsibility for promoting regional development and for ensuring respect for the principles of the Bill of Rights. It will not have these powers, however, in regard to legislation dealing with the budget.

B3.3 Parliament shall determine what powers the regions should have, taking into consideration that certain functions are best performed at a regional level, provided the overriding authority of the central parliament is recognised.

B3.4 Powers of regional and local government should be harmonised with the powers of central government bearing in mind that in case of conflict the constitution and national legislation should prevail. In essence regional government would have to function broadly within the framework of national policy. Regional government should not be able to contradict national policy as expressed in the laws of the country, but should influence the shaping of these policies and play a significant role in developing mechanism for implementation.

B3.5 The ANC believes that regional government should have powers to co-ordinate and plan development. But the powers