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Demokratiese Party
Democratic Party

SUBMISSION BY THE DEMOCRATIC PARTY
TO THE TECHNICAL COMMITTEE ON THE TRANSITIONAL EXECUTIVE COUNCIL

One Nation. One Future. Een Nasie. Een Toekoms.

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The Technical Committee on Transitional Executive Council
& Sub-Councils
Multi-Party Negotiating Process
P O Box 307
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Dear Sirs

The Democratic Party is in general agreement with the Codesa report on a Transitional Executive Council and Sub-Councils. There are, however, some aspects with which we do not agree and others on which we would like to elaborate. We submit our thoughts on these matters for your consideration.

1. Paragraph 1 refers

The DP accepts the need for two stages. However, we believe that the first election should only be for a constitution-making body which would not also be an interim parliament or government. After such a body had written a new constitution, a referendum would be held followed by the first parliamentary election under the new constitution. While the new constitution is being written, the TEC would continue as before, save that its composition would be amended so that only parties with representation in the constitution-making body will remain on the TEC and its range of responsibilities would increase.

2. Paragraph 24.2 refers

The Finance Sub-Council should be given positive as well as negative responsibilities and become a Finance and Socio-economic Development Sub-Council. Development is often highly politicised and controversial in South Africa, but it should not grind to a halt during the transition period. Political controversies over housing, education, health, etc. can cause violence and reduce the possibilities for free political participation. One therefore needs to have some form of multi-party control and responsibility for socio-economic development.

3. Paragraph 24.5 refers

There is a role for a sub-council on Foreign Affairs. It could assist with improving trade, finance, sporting and other international relationships as well as liaising with foreign monitoring groups and ensuring an even-handed approach during the transition period.

4. Paragraphs 28 and 29 refer

- 4.1. Members of governments/administrations should not be members of the TEC and its sub-councils but should make their inputs as provided for in paragraphs 33 and 34. "The TEC and its sub-councils will be responsible for, inter alia, monitoring the actions of governments and administrations and would be better equipped to do so if an arms-length relationship is maintained.
- 4.2. No political organisation should have more than one representative on any sub-council.

We trust that these comments will be of value to you in your deliberations. We also enclose a copy of our policy position paper on the transition which sets out our points of view in more detail.

Yours faithfully



K M ANDREW
CO-ORDINATOR : DP NEGOTIATING TEAM

DEMOCRATIC PARTY POLICY POSITION PAPER ON THE TRANSITION

1. Introduction

1.1 What is "Transition"?

1.1.1 South Africa is already in a process of moving from a political system characterized by minority domination, to a new, inclusive democracy. This process is commonly referred to as "the transition", and encompasses the passage of time and sequence of events that will, or should, take place between now and the date on which the new constitution for South Africa comes into operation.

1.1.2 There are two distinct features or processes which will characterize the transition:

- (a) the negotiation process itself from which a new constitution, economic system and social order must emerge; and
- (b) the manner in which the country is governed and managed until the introduction of a new constitution.

2. The Multi-Party Conference

2.1 Introduction : Codesa and the last year

2.1.1 On 20th and 21st December 1991, the Convention for a Democratic South Africa met in Johannesburg and resolved to adopt a declaration of intent and to establish a number of working groups to negotiate

- conditions under which elections could be held
- constitutional principles, and the process by which a new constitution should be negotiated
- transitional government and administrative arrangements
- the reincorporation of the TBVC countries, and
- time-frames and methods of implementing decisions made by Codesa.

2.1.2 Codesa was an endorsement of the position which the Democratic Party adopted at its 1991 Congress. The fact that it was able to be convened at all, given the suspicion and mutual hostility of the various parties and organizations in South Africa at that time, was remarkable; the fact that it made rapid and substantive progress was nothing less than miraculous. However, following a meeting of the Management Committee of Codesa on 15th June 1992, proceedings of Codesa were adjourned, and have remained deadlocked ever since.

2.2 Despite the evident shortcomings of Codesa itself, the DP believes that the negotiation and transition processes must still commence with the holding of a Multi-Party Conference (MPC), which should be more inclusive than Codesa. This body will

- Negotiate, and cause to be implemented, those measures necessary for the holding of free and fair elections;

- Negotiate the powers, restraints, composition and terms of office of the Transitional Council, the Council of Leaders, and any subsidiary sub-committees of such bodies; and
- Negotiate the constitutional principles which will guide and bind the Constitutional Conference when it draws up the new constitution, as well as the procedures to be followed by the Constitutional Conference.

3. Proposals for Transitional Government

3.1 The Transitional Council

- 3.1.1 However imperfect the present constitution may be, South Africa has an elected government recognised by the international community. Nevertheless the constitution excludes the vast majority of South Africans from participation in the formation of the government and accordingly lacks legitimacy.
- 3.1.2 It is, therefore, necessary to create a Transitional Council with a multi-party character, which must be the product of agreement at the Multi-Party Conference.
- 3.1.3 The broad objectives of the Transitional Council should be:
- To create conditions under which free and fair elections can take place;
 - To preserve constitutional and legal continuity of government;
 - To build credibility, legitimacy and acceptability of government decisions and policies by broadening the base of government;
 - To promote and, as far as possible, ensure even-handed and impartial stewardship of key government functions, particularly control of government expenditure, of the broadcast media and of the security forces;
 - To ensure stability, and the continued loyalty and commitment of public servants;
 - To promote shared responsibility and to build trust and goodwill between participating political groups; and
 - To prepare for and to facilitate the transition to a democratic constitution.
- 3.1.4 The initial and primary purpose of the Transitional Council (and any sub-councils it may choose to create) will specifically be the achievement of a level playing field, the creation of a climate favourable to free political participation and the holding of free and fair elections for a Constitutional Conference and for a new democratic parliament.
- 3.1.5 Decisions of the Transitional Council (and any sub-councils it may create) will be made on the basis of consensus. Should it/they be unable to reach consensus, it/they may take decisions with a positive vote of eighty percent of the total number of its members.
- 3.1.6 Until a new parliament has been elected and a new government formed, the Transitional Council will function with the existing legislative and executive structures.
- 3.1.7 After elections for a Constitutional Conference have been held, the composition of the Transitional Council will be adjusted so that only parties with representation at the Constitutional Conference will be represented on the Transitional Council. The number of members that a party or organization has on the Transitional Council shall be in proportion to the number of votes it received in the election, provided that no party shall have fewer

than two, nor more than six, members on the Council.

3.1.8 After such elections for the Constitutional Conference, the Transitional Council may expand its range of responsibilities and the number of sub-councils, which would act as multi-party cabinet committees. Such sub-councils/multi-party cabinet committees would interact closely with bodies such as the National Economic and Housing Forums.

3.1.9 The Transitional Council will also deliberate and decide upon the nature and scope of the involvement of the international community in the monitoring of the electoral process, or of other events requiring such monitoring.

3.2 The Council of Leaders

3.2.1 After the elections for the Constitutional Conference, the six parties receiving the most votes shall be entitled to nominate a person to serve on the Council of Leaders; provided that no party receiving less than three per cent of the votes shall be entitled to representation on the Council of Leaders.

3.2.2 The chairing of the Council of Leaders shall rotate amongst its members on a monthly basis.

3.2.3 The State President will exercise all executive functions provided for in the constitution on the advice of the Council of Leaders in a manner in which he normally acts on the advice of the Cabinet.

3.2.4 In the event of an inability to reach consensus on a matter of significance, the Council of Leaders may refer this dispute back to the Transitional Council.

3.2.5 The State President and the Council of Leaders shall:

- Give effect to decisions of the MPC; and
- Resolve deadlocks which may be referred to them by the Transitional Council, sub-councils of the Council or multi-party Cabinet committees.

3.2.6 The State President and the Council of Leaders may further together decide to:

- Change the composition and structure of the Cabinet;
- Provide for interim participative structures on provincial and local government level;
- Set up procedures for the reintegration of the TBVC and national states;
- Broaden the representivity of the judiciary, public service and armed forces;
- Appoint specialist commissions to investigate and resolve particular issues; and
- Make appointments to various government advisory bodies.

3.3 Multi-Party Cabinet Committees

3.3.1 Each Cabinet Minister, or where it is practical, group of Cabinet Ministers, will in the execution of his, her or their responsibilities act on advice of a multi-party cabinet committee, appointed by the Transitional Council.

3.3.2 The multi-party cabinet committee will be consulted before legislation is introduced to parliament and before the Minister(s) exercise(s) any executive power vested in

him/her/them, and will not proceed with the legislation or executive action until the committee has given its advice, subject to reasonable time limits.

- 3.3.3 Should the Minister, or Ministers, be unwilling to follow the advice of the multi-party cabinet committee, the matter shall be referred to the Transitional Council, and in the event of this body not being able to resolve the dispute, to the Council of Leaders.

3.4 Transitional Constitutional Adaptations

- 3.4.1 While the formation of the Council of Leaders, the Transitional Council and the Multi-Party Cabinet Committees are essentially political contracts between consenting parties, some changes will have to be made to the present constitution to sanction transitional structures and procedures, as outlined above, prior to the negotiation of an entirely new constitution.

- 3.4.2 Specifically, Parliament should, as soon as possible, pass legislation abolishing the distinction between so-called "own affairs" and "general affairs", and providing for single, functional departments of health, education, agriculture and so on, as well as for a unicameral legislature. Parliamentary procedure (including the appointment of joint committees) should be likewise amended, and Ministers' Councils abolished.

3.5 A Bill of Rights for the Transitional Period

- 3.5.1 The MPC should negotiate an interim Bill of Rights, covering basic rights, *inter alia* freedom of speech, of assembly, of movement, of association and of religion. Also included should be provisions outlawing race and gender discrimination of any nature, as well as protection against arbitrary arrest and detention.

- 3.5.2 Such a Bill ought also to contain a Code of Conduct for Political Parties, including an obligation to conduct their activities peacefully, the prohibition of intimidation and the obligation that financial statements be properly audited.

- 3.5.3 To have legal force, the Bill of Rights would have to be submitted to, and endorsed by, Parliament.

4. Proposals for the Procedures for the Negotiation of a New Constitution

4.1 Principles

- 4.1.1 The principles upon which the constitution is to be based and procedures to be followed in the negotiation of a new constitution should be agreed to by the Multi-Party Conference, and will be binding on all parties.

4.2 Neutral Facilitation or other Chairmanship

- 4.2.1 The MPC may determine a permanent or rotating system of chairing from amongst the parties participating, or it may invite a neutral facilitator or facilitators to convene and chair meetings of the body or bodies established to undertake the task of drawing up the new constitution.

4.3 The Independent Negotiation Commission and Secretariat

- 4.3.1 The facilitator or person designated by the MPC to chair its proceedings will be the head of an independent negotiation commission which will supervise the negotiation process. The duties of the commission will include providing facilities for the body or bodies negotiating the constitution, providing legal or other research and information, supervising the election of any body or bodies which may be agreed upon, ensuring compliance with any interim

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arrangements which may be negotiated, and certification of the results of an election held after the adoption of the new constitution.

4.3.2 The negotiation commission will be served by a secretariat.

4.3.3 The negotiation commission will have a budget, which will include the costs associated with meetings of the body or bodies set up to negotiate a new constitution, to be drawn from the State Revenue Account.

4.4 The Negotiation of the New Constitution

4.4.1 In order to ensure that the forum charged with the task of negotiating the new constitution is representative of the widest cross-section of political opinion, while simultaneously having a high degree of popular legitimacy, the Democratic Party proposes that the Multi-Party Conference agree to the election of a Constitutional Conference, whose only task will be to draw up a new constitution.

4.4.2 The Constitutional Conference will be elected on the basis of universal adult franchise, with each voter voting for a party of his or her choice, on a basis of proportional representation, with a cut off of 1%. The elections will be supervised by the negotiation commission.

4.4.3 The Constitutional Conference should consist of 200 members.

4.4.4 The Constitutional Conference will sit only as long as it takes to negotiate a new constitution, or for nine months, whichever is the shorter period, after which it will be dissolved. In the event of the constitution not having been finalized after nine months, fresh elections for another Constitutional Conference will be held.

4.4.5 The Constitutional Conference will be convened and chaired by the person or persons agreed to by the MPC. Committees of the Conference may be established. The Conference will be empowered to determine its own procedures, including the right to hold all or any part of its sessions in committee.

4.4.6 The Constitutional Conference will endeavour to take decisions on the basis of consensus, especially in respect of such matters as the entrenchment of the constitution, the Bill of Rights, the language issue and so on.

4.4.7 Decisions of the Constitutional Conference will be bound by the constitutional principles agreed to by the MPC, and where it has been unable to achieve consensus, the Constitutional Conference shall make decisions on the basis of a positive vote of seventy per cent of the total number of its members.

4.4.8 The Constitutional Conference shall also negotiate the process and timing of a phased implementation of the new constitution, if this is desirable and/or necessary.

4.4.9 Once the Constitutional Conference has approved a new constitution and each of the clauses thereof, it will be put to the voters of the country by way of a referendum and upon endorsement at such a referendum it will become the new constitution.

4.4.10 Adjudication of Disputes during the Negotiation Period

In the event of differences or disputes during the negotiation period around the interpretation of the constitutional principles and procedures to which the Constitutional Conference will be bound to adhere, it is recommended that the Appellate Division appoints a panel of three judges of appeal to adjudicate on such disputes. The decision of the panel will be final and binding on the parties.

4.5 Constitutional Continuity

In order to ensure the legal continuity of South African constitutions, Parliament should pass enabling legislation which establishes the Constitutional Conference, provides for elections thereto, and which gives that body the legal competence to draw up a constitution for South Africa. This legislation should also make provision for set procedures to be followed, failing which the new constitution would be invalid, for the repeal of the present constitution upon the approval of the new constitution and for transitional measures contemplated in this document.

4.6 Elections under the New Constitution

- 4.6.1 Subject to agreement on the phasing in of the new constitution, elections in terms of the new constitution will be held within three months of the constitution becoming law.
- 4.6.2 These elections will likewise be supervised by the negotiation commission or such other body as may be agreed upon by consensus by the MPC.

NATIONAL SYMBOLS

The Democratic Party favours an incremental approach, involving the combining of symbols until such time as new symbols are agreed to. In particular, Nkosi Sikelel iAfrika and Die Stem ought to be played at all official occasions until a single national anthem is decided upon.