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COUNTDOWN TO NEGOTIATIONS - 4

by

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MISSION ACCOMPLISHED

This is the last issue of Countdown as a separate publication. The first issue came out in April 1986, pointing out that the then State President, Mr P W Botha, had committed himself at the beginning of the year to power sharing and equal opportunities, treatment and justice for all. He also said that South Africa had outgrown 'the outdated concept of apartheid.'

The Institute decided to launch a regular monitor to take stock of the country's moves away from apartheid and towards political power sharing and equality before the law. At that stage most of the apartheid laws were still on the statute book but Institute research had convinced us, contrary to popular wisdom, that the erosion of apartheid was unstoppable. So confident of this were we in fact, that we decided it was necessary to bring Countdown out every three or four months to keep pace with the gathering speed of change. We were delighted to record the abolition of the pass laws in only the second issue.

As constitutional negotiations loomed, we also used Countdown to monitor the removal of obstacles standing in their way. This is the fourth issue called Countdown to Negotiations.

Now that negotiations have begun, we will monitor them in our publication Fast Facts, which will be sent

automatically to all subscribers to Countdown. Meanwhile, this last issue of the old Countdown starts with a constitutional scene-setter defining the key issues facing the Convention for a Democratic South Africa (CODESA), and also listing the major points of agreement and disagreement among some of the key participants.

It goes on to examine how the various political organisations have changed or stuck to their positions on issues related to the negotiations. Next it looks at the constitutional proposals of various parties available at the time of writing; these are also represented in diagrammatic form for quick reference. After that there is a brief section on some of the electoral systems proposed. Finally, Countdown 20 records the key developments leading up to CODESA as the various obstacles to constitutional negotiations were cleared away.

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A. CONSTITUTIONAL SCENE-SETTER

On 20 and 21 December 1991 the Convention for a Democratic South Africa (CODESA) held its first meeting. A declaration of intent committing the signatories to a multiparty democracy with regular elections based on universal franchise on a common voters' roll and a separation of the powers of the executive, the legislature and the judiciary, was signed by all CODESA participants except the Inkatha Freedom Party and the Bophuthatswana delegation.¹

CODESA also appointed five working groups to deal with a range of issues. The first group will look at creating a climate for free political participation and the role of the international community. The second group has been asked to explore general constitutional principles and define or reach consensus on a constitution making body. The third group will examine the composition and structure of an interim government/transitional authority. The fourth group will investigate the future of the 'independent' homelands. The fifth group has been asked to determine time-frames and target dates for tasks being undertaken by CODESA. The working groups were due to begin their work on 2 February and prepare reports for CODESA 2, which is likely to take place in March 1992.²

ISSUES AHEAD

1. Who is there and who isn't?

Nineteen organisations are so far involved in CODESA. The major absentees are: the Pan-Africanist Congress (PAC), the Azanian People's Organisation (AZAPO), the Conservative Party (CP), the Afrikaner Weerstandsbeweging (AWB) and other right-wing organisations. Although the Inkatha Freedom Party (IFP) was present at CODESA, its president, Chief Mangosuthu Buthelezi, withdrew from the IFP delegation.

● CP and other right-wing groups

The CP has consistently rejected invitations to join the constitutional negotiations.³ The party says that it will participate only if the right of the Afrikaner to self-determination is recognised. The Boere Vryheidsbeweging, the Vereniging van Oranjerwerkers, the Boerestaat Party and the AWB have also rejected participation in CODESA.⁴ However, there are persistent reports that a faction of the CP believes it should join CODESA.

● PAC and AZAPO

While the PAC participated in the preparatory meeting for CODESA, as agreed to by the 'patriotic front' formed with the African National Congress (ANC) in October 1991, the organisation now says that it will not participate. AZAPO also refuses to participate. Both want an elected constituent assembly to write a new constitution.

● Traditional leaders

The IFP insists that the Zulu monarchy has a separate delegation at CODESA. As a result of CODESA's refusal to agree to this, Chief Buthelezi withdrew from the

IFP delegation. The ANC suggested that the Zulu king, as well as other paramount chiefs, be allowed to observe CODESA and that the king be allowed to address the meeting. The IFP refused to accept this suggestion.⁵ The National Party (NP) said that it hoped a way could be found to enable the Zulu monarch as well as other traditional leaders with special status, to become involved in negotiations.⁶

2. Who will negotiate the new constitution? CODESA, or some other body? Who will rule the country in the meantime?

● Constituent assembly or not?

The ANC and its erstwhile partners in the 'patriotic front' came out strongly for an elected constituent assembly to be responsible for writing a new constitution. The Democratic Party (DP) has recently also called for an elected constitutional conference in which both the majority party in the conference and the majority party in parliament will have to agree to any constitutional changes.

Three of the major political parties, the NP, the IFP and the CP, remain strongly opposed to this proposal. The NP has, however, suggested that an elected transitional government (see below) could conduct 'further negotiations about a final constitution'.⁷

● Interim government or not?

At the CODESA meeting in December 1991 the state president, Mr F W de Klerk, said that the NP was 'almost ready to propose a plan' favouring the negotiation and drawing up of an interim constitution by CODESA. This constitution would then require approval by a referendum involving all South Africans conducted on a racial basis.⁸ The constitution would be amended by Parliament, whereafter elections based on universal franchise would be held for an interim government.⁹ The NP says its proposals for an interim government will be based on its own constitutional proposals, which favour a bicameral parliament and a forced multiparty presidency (see below).¹⁰ The party envisages that this government will last for at least 'one and probably several parliamentary terms'.¹¹

The ANC wants power on certain issues such as the police, the defence force and the South African Broadcasting Corporation to be transferred to an unelected interim government during the negotiations. The party does not foresee this government lasting for more than 18 months - until a constituent assembly is instituted.¹² The PAC initially opposed an interim government but later called for an interim authority to ensure that free and fair elections were held for a constituent assembly. The DP wants a multiparty transitional government to control functions such as expenditure, the broadcasting services and the security forces. The state president together with a multi-

party council of leaders, appointed by CODESA, would exercise all executive functions.

The IFP is against an interim government, preferring the present government to remain in place until elections are held for a nonracial government under a new constitution.

3. What about the TBVC states?

The government and the IFP want the homelands to be reincorporated only after negotiations with them. The ANC, the PAC and AZAPO want all homelands to be reincorporated into South Africa - without the option of choice. Already Bophuthatswana has warned that it will not automatically comply with a decision by CODESA or any other constitutional forum to rejoin South Africa. It has said that its reincorporation would depend on whether its citizens and the Bophuthatswana administration favour such reincorporation.¹³ CODESA has agreed to take decisions by 'sufficient consensus', but has decided that if an organisation is materially affected by a decision with which it disagrees, it shall be deemed that there is not sufficient consensus.¹⁴

4. What about the contents of a new constitution?

The overriding issue is: What limitations will be placed upon the exercise of power? Such limitations can take place by both vertical differentiation and horizontal differentiation of power.

- Vertical differentiation

This would involve the devolution of power from the centre to regional and local government structures in a unitary state. Some political organisations believe that the powers allocated to regional and local government structures should be at the discretion of the central government and held by grace of central government. This is essentially like the old elected provincial councils; it will be remembered how easy it was for Mr P W Botha's government to abolish such structures. The alternative favoured method would be for regions or states to have autonomous powers and be able to act independently of the central government in specified areas.

In a federal system the powers devolved to the states are usually clearly defined in the constitution and they remain the preserve of the states. Certain issues of national import such as defence and foreign affairs would be the preserve of the central government.

- Horizontal differentiation

This would involve the separation of the powers of the legislature, the executive and the judiciary. An independent judiciary would be able to interpret not only the constitution but would also be able to pronounce on the legality of any legislation emanating from parliament. A bill of rights would also limit the exercise of the power of government. An independent judiciary would ensure the protection of the rights of citizens. The question is whether this document will be used as a sword or a shield: whether it will be used merely to protect the rights of citizens or whether it will be used (as the ANC seems

to want) to give citizens certain claims to things such as housing and health.

Likewise a separation of the powers of the executive and the legislature will mean that the executive will not be able to exert undue influence on the legislative process.

- Parliamentary voting procedures

This refers to the way in which decisions are taken in the legislature - either by an ordinary majority of members or by a loaded majority (eg 75%). Such loaded majorities might also be reserved for specific issues, particularly those thought vital to particular groups, including minorities. Another method - minority vetoes over specific issues - is not likely to be favoured.

Another method would be to force coalitions by reserving seats in the legislature and/or the cabinet for minorities. Both houses of parliament might be required to pass legislation before it has legal force.

- Coalition Cabinet

In order to ensure that majority power does not go unchecked, methods could be introduced to ensure the presence of minorities in the executive as well as the legislature. The voting system is likely to be the least controversial method of ensuring this. Proportional representation with its tendency to produce coalition governments would fit into this category.

5. Where do the major players - the ANC, the DP, the IFP and the NP - agree?

- Proportional representation (PR) is the voting system of choice amongst all the above organisations. The precise type of PR system to be employed might well be a matter for debate.

- All opt for a bicameral parliament. The difference comes in the way in which these legislatures are structured and their voting procedures.

- All want a bill of rights and an independent judiciary.

- All call for three tiers of government: central government, regional government and local government. Once again the composition and functioning of the various levels of government differ from proposal to proposal.

- All choose an executive state president plus a prime minister to head the cabinet. However, they differ on the composition and functioning of the presidency and the cabinet.

- All agree that regional government will be based on economic and geographic considerations rather than on ethnic considerations.

6. What are their major differences?

- They disagree on the degrees of autonomy of the

various levels of government. The ANC wants power to be delegated from central government to regional and local government structures - thus these structures will hold power at the grace of central government rather than independently. The DP, the NP and the IFP all want a much stronger devolution of power to autonomous regional/state structures. They want these structures to hold autonomous powers over specific interests affecting them, while the central government would hold power over communal issues such as defence and foreign affairs.

- There are also divergences on regional representation in the legislatures. The NP, the DP and the IFP all call for the regions to have equal representation in the legislature regardless of size. The NP, however, goes further and says that all parties with a specified minimum amount of representation in a region's legislature should have an equal amount of representation of that region's allotted seats in the second house of the central parliament. The ANC caters only marginally for regional representation in the central legislature through its electoral system - proportional representation on a national and regional list system. The ANC does not make specific provision for the regions to be represented in any of the legislative chambers. The NP further provides for municipal and sub-municipal legislatures to hold power over certain matters in municipal and neighbourhood areas respectively.

- The organisations also differ on the types of decision-making procedures to be employed at the various levels of government. The NP, the DP and the IFP want both houses to pass legislation before it can have legal force. This gives each house a virtual veto over the other. The ANC wants the power to initiate legislation primarily vested in its national assembly. While the senate would have the power to delay such legislation it would not have the power to veto it.

- The structure and powers of the president are areas of possible conflict. The NP's proposals call for a multiparty body, the presidency, consisting of the leaders of the three largest parties in the first house of parliament, to be vested with the executive function. The ANC and the DP want a single executive president. While the IFP calls for an executive president, it also wants the administrative power at central government level to be vested

in the prime minister.

The composition of the cabinet is a further point of divergence between the organisations. The DP and the NP call for a multiparty cabinet. While the NP's cabinet will be appointed by the multiparty presidency and will be obliged to carry out the policies of the presidency, the DP's proposals call for the cabinet to be drawn from all parties with more than ten percent of the vote - in proportion to their electoral support countrywide. The IFP wants cabinet members to be designated by the prime minister and then to be appointed by the president. The ANC wants the president to appoint the cabinet.

- The adoption of a policy of affirmative action is also likely to be a point of much debate. The ANC's bill of rights calls for affirmative action while both the NP and the DP reject this. The NP says that while it is committed to addressing social and economic inequalities in society, that the type of 'punitive or discriminatory affirmative action', as proposed by the ANC would be counter-productive.¹⁵

- While all the organisations agree on a bill of rights, there is some debate over whether it should merely protect the rights of citizens or whether it should go beyond this and grant citizens claims to the so-called 'second generation rights' such as the right to work and housing. The DP and the NP argue that such rights would be unenforceable by a court of law.

7. What of one civil service?

Another important issue is likely to involve the integration of the civil service. Both the ANC and the IFP propose the appointment of a civil service commission charged with the recruitment and supervision of civil servants and ensuring that the civil service is representative of all population groups. The IFP says that special provisions might be required initially to upgrade blacks in the civil service. The ANC says that the commission should implement an affirmative action programme in regard to appointments to senior positions. The DP wants a senior appointments commission to give advice to the prime minister on the appointment of key senior civil servants. The party also calls for the continuing affirmative action in each government department. The NP wants a public service commission to be responsible for the public service.

B. HOW POSITIONS HAVE CHANGED

Two years have passed since 2 February 1990, when the state president, Mr FW de Klerk, lifted the bans on various black organisations. Since then these organisations have had to compete in the political market place and have come forward with clearer policy directives. They have also had to reassess policies in the hope of attracting wider support. Formerly inflexible stances have thus become flexible as constitutional negotiations proper loom ahead. Other parties, not least the National Party itself, have also adapted.

THE PROCESS

Constituent assembly

Government/National Party (NP): The party was against the idea from the outset. In January 1991 Mr De Klerk said that the representatives of all parties with proven support rather than an elected constituent assembly should negotiate a new constitution.¹⁶ This position remains unchanged.

African National Congress (ANC)/South African Communist Party (SACP): The ANC remains formally committed to a constituent assembly elected on a single voters' roll by universal adult franchise.¹⁷

Azanian People's Organisation (AZAPO): From the outset AZAPO called for a constituent assembly.¹⁸ In March 1990 the president of AZAPO, Mr Pandelani Nefolovhodwe, said that such an assembly should be created as soon as the government could no longer retain power or had handed over power to the people.¹⁹ AZAPO's position is unchanged.

Democratic Party (DP): Initially the leader of the DP, Dr Zach de Beer, expressed 'strong reservations' about the immediate institution of a constituent assembly. He argued that before an assembly could be elected there should be prolonged debate over constitutional issues to ensure public understanding of what was at stake. Otherwise elections would have little to do with the terms of a new constitution.²⁰ In February 1991 he said that there could be a place for some kind of assembly once the constitution had been drafted and submitted to a referendum.²¹ In September the party proposed the election of a 200-member constitutional forum to draw up a new constitution. The forum would attempt to reach decisions by consensus but should it not be able to do so, could decide with a 'positive' vote of 70%, providing both the majority party in the forum and the majority party in Parliament also agreed.²²

Inkatha Freedom Party (IFP): The IFP rejected a constituent assembly on the grounds that it 'contradicted the whole idea of negotiations as compromise and bargaining'. Such an assembly would limit the need to find

consensus since one party could dominate it numerically and write provisions into the constitution to benefit itself alone.²³ In June 1991 the IFP advocated negotiating democratic change immediately and implementing it without delay.²⁴ The party still holds this position.

Pan-Africanist Congress (PAC): The PAC has consistently demanded that a constituent assembly be elected to negotiate a new constitution.²⁵ The 'masses' should be afforded the opportunity to discuss the proposed constitution with their political organisations and parties before and during debate in the assembly.²⁶ This is still the PAC's position.

Interim government

Government/NP: Initially the minister of constitutional development, Dr Gerrit Viljoen, indicated that the government had no intention of relinquishing any of its powers to an interim government. He indicated, however, that 'informal channels' could be negotiated to allow extra-parliamentary groups to influence decision making but that this would only be advisory.²⁷ In February 1991, however, Mr De Klerk said that consideration would be given to transitional arrangements on the various legislative and executive levels to give the leaders of the various negotiating parties and organisations a voice in the formulation of important policy decisions.²⁸ In May Dr Viljoen outlined three possible options. The first was the emergence of an 'informal leadership corps' in the negotiation forum that would 'inevitably have a persuasive influence on government and legislative decisions'. The parties to negotiation might eventually give a formal structure to this corps and a council of 'negotiating leaders' could emerge to provide consultative input to the government. The second option was to change the constitution to accommodate people in the cabinet who were not members of Parliament. The third option was the emergence of joint multiparty working groups, specialising in various fields of government, to provide guidance to established government institutions.²⁹

In September 1991 the secretary general of the NP, Dr Stoffel van der Merwe, described a newspaper report claiming that a collective leadership system would be a forerunner to a government of national unity, as 'premature speculation' but he conceded that such a development was not a 'total fantasy'.³⁰ In response to the demand for an interim government by the 'patriotic front' conference, Dr Viljoen said the government would be prepared to make changes to the constitution if the ANC did not want dramatic changes in order to achieve the interim arrangement it wanted.³¹

ANC/SACP: The ANC has insisted on an interim government.³² The organisation said that the present govern-

ment should resign and return to an interim government on another basis.³³ This call was intensified in August 1991 after revelations that the government had given funds covertly to the IFP. In the same month, however, Mr Mandela revealed that the 'modalities of the installation and composition of an interim government could be a matter for discussion' and that only two principles would be insisted upon: 'inclusivity and an unambiguous time frame'.³⁴ Outlining his organisation's views regarding the functioning of an interim government, the secretary general of the ANC, Mr Cyril Ramaphosa, said that the police, the defence force and the South African Broadcasting Corporation would be regulated by it. He added that it would also run elections, and repeal remaining apartheid legislation.³⁵

AZAPO: AZAPO has opposed the installation of an interim government on the basis that it would amount to the co-option of blacks to administer apartheid. It has instead called for the resignation of the present government and the institution of a constituent assembly.³⁶ In August 1991, however, the organisation issued a joint statement with the PAC outlining the conditions under which it thought an 'interim authority' should be set up. It should have a clear mandate and a limited life, should not implement apartheid legislation and should not co-opt liberation movements and other organisations as 'co-managers of apartheid'.³⁷

Conservative Party (CP): In February 1991 the CP dismissed the concept of an interim government and said that the Afrikaner would never allow another group to govern over him. It was not interested in power sharing, which was what an interim government would have amounted to.³⁸ In August 1991 the leader of the CP, Dr Andries Treurnicht, said that the CP would regard it as treason if the NP succumbed to the ANC's demand for an interim government without first consulting white voters by means of a referendum.³⁹

DP: In July 1990 the DP said that the present government should remain in place but that it should consult widely so that the views of black leaders could be taken into account.⁴⁰ In February 1991 Dr De Beer said that the government should take a lower profile and that decision making should be increasingly delegated to ad-hoc bodies that included disenfranchised people.⁴¹ In September 1991, however, following revelations that the government had given funds to the IFP the chairman of the DP's parliamentary caucus, Mr Colin Eglin, said that the NP government was incapable of steering South Africa through the difficult period of transition.⁴² In a discussion paper the DP proposed that the anticipated multiparty conference work towards a transitional government of reconciliation composed of 'significant sections (if not all) of the NP, the ANC, the DP, the IFP and other democratic parties and organisations'. This transitional government would aim at:

- preserving the constitutional and legal continuity of government;
- building credibility, legitimacy and acceptability

of government decisions and policies by broadening the base of government;

- ensuring impartial stewardship of key government functions such as broadcasting, the security forces and expenditure;
- ensuring stability and the loyalty of the public service; and
- promoting shared responsibility and building goodwill between participating political groups.

The party further suggested the formation of multiparty cabinet committees which would be consulted before any legislation could be introduced or any executive action taken. A council of leaders appointed by the multiparty conference and having representatives from all the major political parties would, together with the state president, exercise all executive functions as well as execute the decisions of the multiparty conference. The party advocated the integration of the public service during the transition period, starting with the foreign missions and military wings of the ANC and PAC; the development of underdeveloped areas; the development of skills for blacks, especially in the area of administration; the negotiation of new national symbols and the negotiation and institution of interim local government structures.⁴³

IFP: The IFP argued that the present government should remain in place⁴⁴ but that it should take into account the views of its negotiation partners during the transitional period.⁴⁵ This position is unchanged.

PAC: The PAC initially strongly rejected the idea of an interim government on the basis that it would result in the co-option of the liberation movements to administer apartheid.⁴⁶ In August 1991, however, the organisation called for an 'independent interim authority' to ensure that free and fair elections were held for a constituent assembly.⁴⁷ The secretary general of the PAC, Mr Benny Alexander, said that the main concerns of AZAPO, the ANC and the PAC in the transitional period were the control of the security forces, the state media and the electoral process.⁴⁸ He added that the PAC would attempt to persuade the ANC to accept its suggestion of an 'independent interim authority'.⁴⁹ Following the conclusion of the 'patriotic front' conference in October 1991, the PAC together with the ANC and other members of the front, called for the installation of an interim government.⁵⁰

QwaQwa: QwaQwa's ruling Dikwankwetela Party released its constitutional proposals in December 1991 calling for a federal South Africa comprised of all the territory which formed the union of South Africa before 31 May 1961. The proposals also called for the inclusion of 'such territories as may from time to time be declared by an act of parliament to be part of the Federal Republic of South Africa'.⁵¹ It called for a division of power between the central government and autonomous regional governments, with 'substantial functions being allocated to each level of government'.⁵²

The constitutional convention

Government/NP: In January 1991 Dr Viljoen said that the 'independent' homelands would probably have observer status only at negotiations.⁵³ However, in April the government had changed this position. Mr De Klerk said that the 'independent' homelands would be part of the multiparty conference since their futures would also be discussed there.⁵⁴

In February 1991 the NP said that the conference should consist of the representatives of all political organisations with proven support. The conference agenda would include:

- seeking agreement on the main principles for a new constitution;
- broadening political involvement during the transition; and
- the composition and functioning of the constitutional negotiation forum itself.⁵⁵

ANC: The ANC said that it wanted all political parties and organisations with a proven constituency included in a neutrally convened multiparty conference.⁵⁶ In August 1991 Mr Ramaphosa suggested that the first item on the agenda of the conference be the institution of an interim government.⁵⁷

AZAPO: AZAPO rejected participation in a multiparty conference, saying that it would not be in a position to liberate black people.⁵⁸ In November 1991 the organisation decided not to accept an invitation to attend the preparatory meeting for the multiparty conference because it would 'emasculate' any constituent assembly.⁵⁹ Later in the month the organisation called for negotiations with the South African government 'about the setting up of a constituent assembly' to be chaired by a neutral mediator at a neutral venue outside South Africa.⁶⁰

CP: The CP rejected the multiparty conference because it saw it as being aimed at negotiating away the right of the Afrikaner to self-determination.⁶¹ The party said that although it was not against negotiations in principle there would be no prospect of its joining negotiations if the right of every group to self-determination was not recognised.⁶²

DP: In September 1991 the party said that the multiparty conference should reach agreement on:

- procedures for the negotiation of a new constitution and the appointment of facilitators;
- a set of basic constitutional principles;
- procedures to ensure the legality, continuity and legitimacy of the new constitution; and
- the details of a transitional government including an interim bill of human rights which would contain a code of conduct for political parties.⁶³

IFP: In July 1991 the IFP called for the immediate convening of a multiparty conference with the responsibility of working out its own basic rules, mechanics and

logistics. It said that the final decisions of such a conference should be legitimised by a referendum.⁶⁴

PAC: Shortly after Mr De Klerk's speech on 2 February 1990 the president of the PAC, Mr Zephania Mopheng, declared that the 'time had not yet come for compromise and that anybody who entered into negotiations with the government would be discrediting the African masses'.⁶⁵ The PAC said that it would be prepared only to discuss the establishment of a constituent assembly.⁶⁶ In May 1990 the organisation outlined conditions under which it would be prepared to enter into negotiations with the government. It would do so only if the government committed itself to majority rule, the redistribution of land and resources and a constituent assembly.⁶⁷

At the end of August 1991 the government sent a formal invitation to the PAC to participate in negotiations⁶⁸ but this invitation was turned down. In January 1991 Mr Alexander said that the PAC would not participate in the proposed multiparty conference if it was not an elected body.⁶⁹

The PAC's involvement in the 'patriotic front' as a co-convenor, however, resulted in a change in its attitude on participation in the multiparty conference. The front called for the multiparty conference to be convened as a matter of urgency.⁷⁰ The organisation, however, insisted on referring to these talks as 'pre-constituent assembly' talks rather than a multiparty or all-party conference.⁷¹ This change in policy resulted in the youth wing of the PAC, the Pan-Africanist Students' Organisation, criticising the PAC leadership and threatening to withdraw completely from the PAC.⁷²

Prior to the preparatory meeting on the 29 and 30 of November 1991 for the multiparty conference, the PAC said it would insist that the modalities for the election of a constituent assembly be discussed at the conference.⁷³ On the final day of the meeting the PAC pulled out, accusing the ANC and the NP of secretly having worked out all the main decisions in advance. It said that it would decide whether or not to attend CODESA at its national conference to be held on 16 December 1991.⁷⁴ In the event, the PAC decided to boycott CODESA.

Referendum

Government/NP: Shortly after initiating his reform programme Mr De Klerk promised that he would insist on any constitution's being approved by the electorate of the House of Assembly. He said that this option would also be available to voters in the other two houses of Parliament and that it might be necessary to undertake a referendum among 'other sections of the population'.⁷⁵ Subsequently Dr Viljoen told Parliament that a general referendum would have to be held for the whole of the South African population to give legitimacy to any new constitutional proposals.⁷⁶

A Referendums Amendment Bill, which extended the

referendum franchise to all South Africans of 18 years and older, including Africans, was tabled in Parliament. While it deleted references to the Population Registration Act of 1950 in the Referendums Act of 1983, the bill also contained a clause empowering the state president to allow multiple referendums to take place simultaneously 'to ascertain the views of different categories of voters' either on the same matter or on different matters.⁷⁷ Clearly this last provision would make it possible for the government to hold a referendum among whites. But it could also be used to conduct a referendum among all South Africans, regardless of race.

In November 1991 Dr Viljoen said that the referendum undertaking to the white electorate could be fulfilled either by holding a separate referendum, or by holding simultaneous multiple referendums in which the total number of votes, as well as the votes of the white electorate or those of other population groups, could be established separately.⁷⁸

DP: In February 1991 the DP advocated a referendum of all citizens to legitimise the new constitution.⁷⁹

IFP: The IFP said that any decisions resulting from the multiparty conference should be legitimised by a referendum based on universal adult suffrage but that it would not go back to the 'drawing board' with Mr De Klerk if a whites-only referendum rejected the proposals.⁸⁰

MEMBERSHIP AND ALLIANCES

Government/National Party (NP): After having an exclusively white membership since its inception, the NP extended membership to all races in February 1991.⁸¹ Thirty-five MPs from the House of Representatives had joined the party by the end of July and in September the state president, Mr F W de Klerk, claimed that the majority of whites, coloured people and Indians, as well as a substantial percentage of Africans, were looking to the NP to 'secure their hopes and allay their fears'. (See *QC Twenty*.) In October 1991 a former Labour Party MP, Mr Andrew Julies, was elected as one of the vice chairmen of the NP in the Cape.⁸²

African National Congress (ANC): Despite the fact that the organisation had denounced homeland leaders in the past, in April 1990 the ANC announced that it would talk to homeland leaders who 'confessed their mistakes and worked with the masses'.⁸³

In October 1991 several homeland leaders attended the patriotic front conference.⁸⁴ In July 1991 the president of the ANC, Mr Nelson Mandela, expressed concern about the organisation's failure to attract coloured, Indian and white people.⁸⁵ In September Dr Allan Boesak was elected chairman of the ANC's western Cape region. Just prior to the election Mr Mandela urged that the strong coloured presence in the western Cape be reflected in the ANC's regional executive.⁸⁶

Afrikaner Weerstandsbeweging (AWB): The AWB said that it had decided to approach all right-wing organisations in South Africa with a view to forming a united front 'against the combined onslaught of communism, the NP and the ANC'.⁸⁷

Democratic Party (DP): Membership of the DP was open to all races prior to 2 February 1990.⁸⁸ In February 1991 the leader of the DP, Dr Zach De Beer, said that any alliance would have to include at least part of the ANC and part of the NP, the IFP, the LP and the PAC.⁸⁹ In June the party rejected a proposal by one of its MPs, Mr Roger Hulley, that it form a parliamentary pact with the NP. Instead it decided to investigate the possibility of forming a broad centrist alliance of political parties.⁹⁰ The DP attended the 'patriotic front' conference as an observer.

Inkatha Freedom Party (IFP): In July 1990 the IFP opened its membership to all races and by June 1991 claimed to have a white membership of some 100 000 members.⁹¹ In April 1990 the president of the IFP, Chief Mangosuthu Buthelezi, said that while his party was looking at alliance politics, the chances of an alliance with the NP remained remote while apartheid was still in place.⁹² In January 1991 the party ruled out any alliance with the ANC.⁹³ In July 1991 the IFP reiterated that it was not negotiating an alliance with any political party, including the NP or the ANC. The party also rejected the idea of a 'patriotic front'.⁹⁴

Labour Party (LP): Following the defection of 35 members of the House of Representatives to the NP, the leader of the LP, the Rev Allan Hendrickse, said that the 'attempts by the NP to gain control in the House of Representatives had led to a break in the healthy relationship that existed between the NP and the LP'.⁹⁵ In August the leaders of the PAC and the LP held talks on a 'patriotic front'⁹⁶ and the party accepted an invitation to attend the 'patriotic front' conference.⁹⁷

Pan-Africanist Congress (PAC): In July 1990 the president of the PAC, Mr Zephania Mothopeng, said that there was no prospect of the PAC's uniting with the ANC.⁹⁸ However, in October 1991 the PAC and the ANC co-convoked the 'patriotic front' conference aimed at unifying anti-apartheid forces on the demands for a constituent assembly and an interim government.⁹⁹ In July 1991 the PAC, which had denounced homeland leaders in the past, announced that it had no objection to the participation of homelands in a patriotic front as long as 'they turned their back on the past' and agreed to calls for an interim government.¹⁰⁰ In November, just before the preparatory conference for the multiparty conference, the PAC claimed that it had information which indicated that the ANC and the government had already reached agreement on an interim government, joint decision making on future legislation, the lifting of all remaining sanctions and several other issues.¹⁰¹ Both the ANC and the government denied the charges. The PAC, however insisted that its information was reliable and

accused its patriotic front partner, the ANC, of duplicity and deceit.¹⁰²

CONSTITUTIONAL MATTERS

National Party (NP): In September 1989 the NP released a five-year plan of action advocating a constitutional system with more than one voters' roll, possibly including a common voters' roll.¹⁰³ The party planned to protect racial minorities through such mechanisms. Dr Viljoen said that the NP believed in 'own representation' for groups but added that there would probably be a separate voters' roll for those who did not want to belong to a particular group.¹⁰⁴

In April 1990 Dr Viljoen revealed that one of the models the party was looking at was a two-chambered parliament with the lower house being elected on the basis of one-person one-vote. The upper house would be based on the concept of each geographic unit in South Africa being given equal representation plus the elected representatives of each race group.¹⁰⁵

However, by August, when the NP released its latest constitutional proposals calling for a multiparty cabinet and bicameral parliament elected by proportional representation, all references to racial groupings had been abandoned. The new proposals did not attempt to provide specific protection for race groups. Instead the proposals provided protection for (undefined) minorities. (For details see *Constitutional Systems*.)

Bophuthatswana: In 1989 the president of Bophuthatswana, Chief Lucas Mangope, outlined two options for his country's constitutional future as follows:

- the merging of Bophuthatswana and Botswana; and
- reincorporation into a federal South Africa.¹⁰⁶

In 1990 Chief Mangope added a further option and said that Bophuthatswana would 'not be against becoming part of a South African economic federation based loosely on the European Economic Community pattern', provided apartheid and the structures that supported it were destroyed.¹⁰⁷ In April 1991 Chief Mangope outlined the basis on which Bophuthatswana would consider reincorporation into a federal South Africa.¹⁰⁸ (For details see *Constitutional Systems*.)

In December 1991, a member of the Bophuthatswana cabinet, Mr Rowan Cronje, said that a decision about the reincorporation of Bophuthatswana into South Africa would have to be taken by the people of Bophuthatswana in conjunction with the Bophuthatswana and South African governments.¹⁰⁹

African National Congress (ANC): In July 1988 the ANC declared its support for a unitary state with universal adult suffrage based on the principle of one-person one-vote.¹¹⁰ In April 1991 the ANC released its draft

constitutional proposals calling for a bicameral legislature based on proportional representation. This was the first time that the organisation officially endorsed a bicameral parliament based on a system of proportional representation.¹¹¹ (For further details see *Constitutional Systems*.)

The head of the ANC's constitutional committee, Mr Zola Skweyiya, was quoted as having said that the ANC favoured a 'unitary government with some federal characteristics'.¹¹² Mr Skweyiya denied, however, that the ANC was considering a federal system. Although the powers of regional and local government would be delegated, the central government would have to ensure that its policies were supported by regional and local structures and that there was enough popular participation in policy formulation.¹¹³

Conservative Party (CP): In September 1989 the CP called for partition and self-determination.¹¹⁴ However, in 1990 the CP's spokesman on law and order, Mr Koos van der Merwe, said that the party accepted it could not force models on other groups and would in future only demand self-determination for the Afrikaner in his own state.¹¹⁵ The leader of the CP, Dr Andries Treurnicht, admitted that a separate white state would be smaller than the present (white-designated) South Africa.¹¹⁶

Democratic Party (DP): The DP's call for a federal state has changed little over the years. The party did, however, initially advocate cultural councils, widely regarded as councils representing the cultures of the different race groupings. It said that on specific issues such as language, culture or religion concurrent majorities - of all cultural councils, - would be necessary.¹¹⁷ The party has, however, dropped the idea of cultural councils from its newest package of constitutional proposals.

Inkatha Freedom Party (IFP): The IFP wanted a nonracial multiparty democracy in a united South Africa with one sovereign parliament. It said, however, that it would be prepared to compromise on its ideal of one-person one-vote in a unitary state.¹¹⁸ In December 1991 the IFP unveiled its draft constitutional proposals in which it called for a bicameral parliament elected by proportional representation on a common voters' roll. Although the party said that its proposals would be adaptable to both a unitary or a federal system, the strong autonomy of the states and their relationship to the central government is typical of a federal system.

Labour Party (LP): Initially the LP favoured a nonracial geographic federation based on the four provinces together with the homelands.¹¹⁹ In May 1991, however, the party declared itself in favour of a simple federal structure with between 15 and 20 nonracial states which would cut through existing boundaries.¹²⁰ Mr Tommy Abrahams MP (LP) said that the LP believed that it would not make sense to have 'patchwork quilt' territories such as KwaZulu and advocated instead geographic federal boundaries.¹²¹

Pan-Africanist Congress (PAC): In March 1991 the PAC said that it wanted to see a unitary state with universal adult suffrage on a nonracial basis and African majority rule.¹²² The PAC has not produced detailed constitutional proposals and the above stance is largely unchanged. In May 1990 the organisation did, however, advocate that a constituent assembly be elected by proportional representation rather than by a simple plurality or first-past-the-post system.¹²³ A simple plurality system would have been more compatible with its idea of African majority rule, proportional representation would have been more likely to produce a coalition. The PAC's preference for proportional representation over the 'first-past-the-post system' signalled a policy shift in that proportional representation was designed to ensure that minorities were also represented

in the legislature.

The preparatory meeting for the multiparty conference was held at the end of November 1991. It was attended by 22 political parties and organisations, including the ANC, the DP, the IFP, the NP and the four independent homelands. Although invitations were extended to AZAPO and the CP, these organisations refused to participate in the meeting.

A preparatory meeting for the multiparty conference was subsequently held on 29 November 1991 where it was resolved to invite two judges, Mr Justice Ismail Mohamed and Mr Justice Piet Shobart, to chair the multiparty conference, renamed the Convention for a Democratic South Africa (CODESA).

C. CONSTITUTIONAL SYSTEMS

In anticipation of constitutional negotiations, political parties and organisations have been working on their constitutional proposals for a new South Africa.

Government/National Party (NP): In August 1991 the NP released its constitutional proposals advocating a bicameral legislature and a multiparty cabinet. Legislation would have to be passed by both houses of parliament. The NP proposes that the first house of parliament be elected using the PR system with universal franchise. Legislation will be passed by simple majority except for entrenched issues, where a greater majority (eg two thirds) might be needed. In the second house each region will be allocated an equal number of seats, and each party represented in a region's legislative body and which has a minimum amount of electoral support will be allocated an equal number of these seats. This house will be able to initiate legislation only on circumscribed matters which affect the specific interests of minorities and the regions. It will also deliberate and pass, by weighted majority, any legislation which deals with these issues plus those amending the constitution and entrenched legislation. It will also deliberate on those bills approved by the first house for which increased majorities are not required and will itself pass these by simple majority.

The executive will be composed of a collective multiparty body known as the presidency, plus a multiparty cabinet. The presidency will consist of the leaders of the three largest parties in the first house or as many additional leaders (in order of support) as may be required to represent the majority of voters. Decisions would be taken by consensus and the chairmanship would rotate on an annual basis. A state president may also be elected from the ranks of the presidency on such a basis. The presidency will appoint ministers to a multiparty cabinet which will be obliged to carry out the policies of the presidency. The presidency and the cabinet will be impeachable by a motion of no-confidence in the two houses.

Regional governments will be geographically based on the present nine development regions. A legislative council will be elected for each region using PR in electoral districts within such regions. However, a part of the legislature might also be 'indirectly nominated' by third-tier structures or by subregions (see above). Decision-making procedures would make provision for the protection of minority interests and other pre-determined matters. The regional executive authority would consist of the five leaders of those political parties which have a pre-determined minimum amount of representation in the legislative council. The executive committee would function as one unit with each member responsible for a specific portfolio.

The NP said that there might be a need for subregions or district authorities for districts with 'particular

interests and cohesion'.

At local government level, the party favoured a national local government act arising out of national constitutional negotiations and establishing the broad principles and structural framework for local government. Local government systems would then be negotiated by the residents of an area and a charter promulgated for that local authority. It emphasises that local government would be an autonomous, elected tier of government with its own area of jurisdiction vested with legislative, fiscal and executive authority. Only one nonracial local authority would be established for each town or city. Councils would be elected on a ward basis, delineation taking into account both voter numbers and property valuation. Half the councillors would probably be elected on a common voters' roll on which the names of all residents would appear while the other half would probably be elected by a voters' roll containing only the names of owners, ratepayers and lessees. Again the party insists that at this level special decision-making measures such as increased majorities be employed for certain circumscribed 'sensitive matters'. The proposals further call for geographical neighbourhoods to be allowed the option of 'self-determination' over community interests by forming neighbourhood councils. These geographical areas will be decided on a voluntary basis and the neighbourhood council will be elected by all residents of a neighbourhood. It would have the power to levy additional taxes on its residents for specific projects within its area of jurisdiction. The following autonomous powers would be allocated to it in respect of its neighbourhood:

- it would regulate norms and standards for the residential environment;
- it would grant licences and permits for property use;
- it would provide communal facilities;
- it would provide for security matters and civil protection; and
- it would be responsible for any such other matters that may be allocated to it through other legislation, eg education and welfare.

African National Congress (ANC): In April 1991 the ANC published a discussion document in which it outlined its proposals for a new constitution for South Africa. In it the organisation rejected the vesting of political rights in different linguistic, cultural, ethnic or religious groups and advocated the following:

- a unitary state with a bill of rights;
- the reincorporation of the 'independent' homelands; and
- a three-tiered system of government consisting of central, regional and local government (described above).

It recommended that the central government consist of an executive, headed by an elected president who would also be head of state and would act in consultation with

a cabinet of ministers headed by a prime minister appointed by the president. The president would hold office for a maximum of two terms of five years each and would be impeachable only by a two-thirds majority of the national assembly (see below). The document suggested that the legislature consist of two houses of parliament. The upper house or national assembly, would be elected on the basis of PR; the power to enact legislation would primarily be vested in it. The lower house, or senate, would also be elected on the basis of PR, but provision would be made for regional representation. The document stressed that the senate would be neither a 'corporatist chamber made up of interest groups' nor would it represent 'ethnic interests'. It would be the custodian of the constitution and would have the power to refer any matter concerning the interpretation or application of the constitution to the appropriate court for its decision. Where appropriate, the senate would be able to delay legislation in the national assembly but would not have the power to veto legislation.¹²⁴

Outlining the proposed functions of central government, the document said that these would include foreign affairs, defence, security, economic, fiscal and tax policy, creating a national policy framework and the provision of resources for problems in education, employment, health, housing, nutrition and social welfare. It would also be charged with ensuring that all areas have an equal access to national resources. It also proposed that provision be made for elected regional governments with delegated powers and wide discretion to prioritise matters, provided that this does not conflict with national policies. The proposals argued that the division of the regions be based on population distribution, availability of economic resources, communications and an urban/rural balance rather than on racial or ethnic divisions. They would be charged with carrying out the basic tasks of government at regional level together with the functions presently vested in the provincial administrations. The document proposed a system of nonracial local government in integrated areas which would be responsible for the day-to-day tasks most directly affecting citizens.¹²⁵

The ANC also recommended an independent judiciary responsible for the application of the laws of the land and the interpretation of the constitution. It would have the power to set aside as well as review unconstitutional legislation and actions. An independent constitutional court appointed either by the president on the advice of a judicial service commission or by some other democratic method and accountable only to the constitution, would be created. The organisation said the court should consist of judges, legal practitioners and academics. It also called for regular elections based on universal and equal suffrage on a common voters' roll. The ANC said that it favoured a system of PR with regional and national lists. In May 1991 the deputy president of the ANC at the time, Mr Nelson Mandela, told a meeting at the University of Stellenbosch that structural guarantees would be built into a new constitution to ensure that whites would

not be dominated by blacks.¹²⁶

Afrikaner Volkswag: The leader of the Afrikaner Volkswag, Professor Carel Boshoff, said that the solution to South Africa's problems lay in two 'volk' states, one for Afrikaners and one for coloured people.¹²⁷

The Afrikaner state would be in the north-western Cape with the Orange River, the Olifants River and Doorn River as growth points. The coloured state would be in the southern Cape and would stretch from Mossel Bay to Saldahna Bay.

Bophuthatswana : In May 1991 the president of Bophuthatswana, Chief Lucas Mangope, said that Bophuthatswana was 'not against becoming part of a South African economic federation based loosely on the European Economic Community pattern', provided apartheid and the structures that support it were destroyed.¹²⁸ However, at the end of April Chief Mangope said that his government would consider changing its constitutional position only if constitutional negotiations produced some sort of federal structure with a strong devolution of power to the regions.¹²⁹ He said that the federal regions or constituent states should be formed on the following basis:

- absolute freedom of association whereby the people in a given region would decide where and with whom they wished to associate;
- a total disregard for the inconsistencies of historical demarcations enforced by colonial rulers or apartheid - new, logical regions or nation states should evolve in the process of negotiation;
- regions having a sound economic base; and
- the level of autonomy of regions being a matter for the inhabitants of a region to decide for themselves.¹³⁰

Conservative Party (CP) : The leader of the CP, Dr Andries Treurnicht, said that partition was the only solution to South Africa's social and economic problems.¹³¹ At its Transvaal congress in September 1991 the deputy leader of the CP, Dr Ferdi Hartzenburg, told delegates that once the CP took power it would negotiate the borders of different states 'with the other 12 nations within the country'. He added, however, that white South Africa was what was left after the 'independent' and non-independent homelands had been taken away.¹³²

Democratic Party (DP) : At the end of August 1991 the DP released a policy discussion paper on constitutional proposals for South Africa. The proposals espoused a federal system with eight to 12 federal states and a bicameral parliament. The plan called for a three-tiered government structure with central (federal), regional (state), and local government established 'as far as practical on the same basis' (described below). It also advocated an independent judiciary and a separation of the powers of the legislature and the executive as well as an entrenched constitution, capable of being changed only by special majorities and procedures. It said that the

'constitution must be supreme' (sovereign) and capable of interpretation by a constitutional court, which would also interpret a bill of human rights. It also recommended the appointment of federal judges by a judicial appointments commission, representing the judiciary and the legal profession and approved by the senate. An 'ombudsperson' would investigate the abuse of power or violation of basic rights and freedoms by the executive, military or the police.

The legislature would consist of two houses, a national assembly and a senate. These houses would have equal powers except in respect of appropriation and other money bills where the national assembly would be able to veto objections from the senate. The national assembly would be elected by means of PR at five-year intervals and would consist of 350 members. The senate, together with its legislative functions, would be elected every seven years at the same time that the president was elected, and would also have the power to approve treaties and senior appointments to the public service - recommended by the president. In all, 66 of the 100 senators would be directly elected by constituents, while 33 senators would be indirectly elected by all municipal councillors in a state sitting together as an electoral college. In all cases PR would be employed and each state would be allowed to elect an equal number of senators. The president of the senate would be appointed by the president.

The executive would consist of a president and a prime minister appointed by him, plus a cabinet appointed by the president on the advice of the prime minister. The cabinet would be drawn from all parties with more than 10% of the vote, in proportion to their electoral support countrywide. A directly elected executive president would be appointed for seven years using PR and a system of run-offs to ensure majority support. The following powers would be allocated to the president:

- he would be commander-in-chief of the defence force;
- he would appoint the prime minister, the president of the senate and the cabinet;
- he would formulate foreign policy and appoint ambassadors (with the senate's approval);
- he would have the power to declare states of emergency and national disaster;
- he would have the power to declare referenda;
- he would have the power to commute criminal sentences, declare amnesties and grant pardon;
- he would have the power to confer titles and honours; and
- he would be required to address both houses annually on the state of the nation.

A member of the national assembly capable of forming a cabinet which enjoyed the support of the assembly, would be appointed prime minister by the president. He would hold office for the term of the national assembly and would allocate portfolios within the cabinet. If the prime minister and the cabinet ceased to enjoy the support of the national assembly then the president could

dissolve the assembly. According to a member of the committee which drafted the proposals, Mr James Selfe, the prime minister would be responsible for the day-to-day running of the country and 'all those responsibilities not already allocated to the president'.¹³³

The DP further advocates a system of inter-house standing committees wherein the members of each house would vote separately, except for a standing committee set up to resolve a deadlock between the two houses. Standing committees would be empowered to introduce legislation. There would be a standing committee to oversee the activities of the security forces and one to oversee 'clandestine' operations by the intelligence services. There would also be a standing committee for each department of state and they would oversee financial matters, including the budget of each department.

The federal government would be empowered to exercise 'those powers essential to the national interest'. These could include foreign affairs, economic affairs, defence, mineral and energy affairs, foreign trade, water affairs, borrowing on the credit of the government, labour, national transportation, currency, citizenship, customs and excise, emigration and inter-state commerce.

The party favoured the reincorporation of the 'independent' homelands after negotiations with representatives of these homelands. It proposed the delineation of between eight and 12 states with the following criteria in mind: the rejection of states based on race or ethnicity, a community of interests of the population of an area, economic viability and potential, and administrative effectiveness. Like the NP, the DP offers the possibility of the states' being created along the lines of the present nine economic development regions. Alternatively, they would be drawn up on a 'metropol-peripheral' basis or by creating units of roughly equal population and/or wealth and power and/or geographic size.

The states would control health, local government, education, police, prisons, town planning, licensing, local taxation, roads, nature conservation, land settlement and tourism promotion. A federal finance council comprising representatives of the federal government, state governments and expert bureaucrats would be established to examine state and federal budgets to determine the amount of revenue and loan funds which each state could claim from the federal treasury. Certain agencies, such as the federal investigation bureau, may require joint management by both central and regional structures. Joint committees of federal and state governments may also be established for the purpose of liaison and communication.

Inkatha Freedom Party (IFP): In December 1991 the IFP released its draft constitutional proposals advocating a bicameral parliament elected by proportional representation on a common voters' roll plus a bill of rights. The party advocated a division of power between a state

president and a prime minister who would head the cabinet.

The party suggested a state president with the power to:

- recall or dissolve parliament;
- appoint the prime minister;
- appoint the cabinet;
- appoint the chief justice and other judges of the supreme court;
- appoint the state governors;
- appoint and accredit ambassadors;
- appoint senior public servants;
- appoint senior officers of the armed forces;
- declare states of emergency or martial law; and
- extend clemency or pardon.

The president would also be commander-in-chief of the armed forces.

The state president would appoint a member of the national assembly who appeared to enjoy the confidence of the assembly, as prime minister.

The prime minister would designate cabinet ministers to be appointed by the state president and would preside over the cabinet. He would also be the head of the central government and the administration of the country. The proposals make provision for an executive council presided over by the state president and consisting of the prime minister and members of the cabinet.

The legislature would consist of an upper house (senate) and a lower house (national assembly). While any house would be empowered to initiate legislation (except on taxes and the budget, which would be the sole preserve of the national assembly), such legislation would have to be passed by both houses and assented to by the state president.

The senate would comprise 180 members representing the states or 'special interests' and its proceedings would be presided over by the president of the senate. The national assembly would comprise 400 members elected by proportional representation and would be presided over by a speaker.

The IFP proposed the division of the country possibly into ten states with metropolitan Johannesburg as the tenth state. States would be determined along economic, territorial, cultural, linguistic and political lines. The IFP said that it accepted the nine development regions as 'worthy of study and geographic amendment' to determine areas of jurisdiction for second tier government. Each state would have a legislature elected by proportional representation plus an executive headed by a premier or a governor, who would represent the central government and the state president in his state. There would be a meeting of the state president and the state governors, presided over by the state president,

at least once a year.

The proposals suggested that the state executive committees reflect all the parties represented in the legislature, in order to encourage co-operation and reconciliation. The powers of the states would be clearly set out in the constitution and they would have the sole right to legislate on these specified matters unless they specifically request otherwise. Likewise, the states would have no jurisdiction to legislate on matters reserved for the central government. The party also suggested that provision be made in the constitution for the negotiated reincorporation of the independent homelands. The proposals also suggested that the powers of traditional rulers be recognised.

The IFP suggested an independent judiciary composed of a supreme court in each state plus an appellate division which would be the highest court in the country. The chief justice of South Africa would be appointed by the state president in consultation with the prime minister. The judiciary would be able to interpret laws as well as pronounce upon the validity of legislation passed by Parliament. Provision was also made for entrenched clauses which would require special provisions before they could be amended.

The party also suggested a civil service commission to take charge of supervision and recruitment of the public service, and ensure that the public service was representative of all groups.

The proposals called for professional armed forces and security services which would owe allegiance to the constitution only. These forces would be the responsibility of the state president and a state security council.

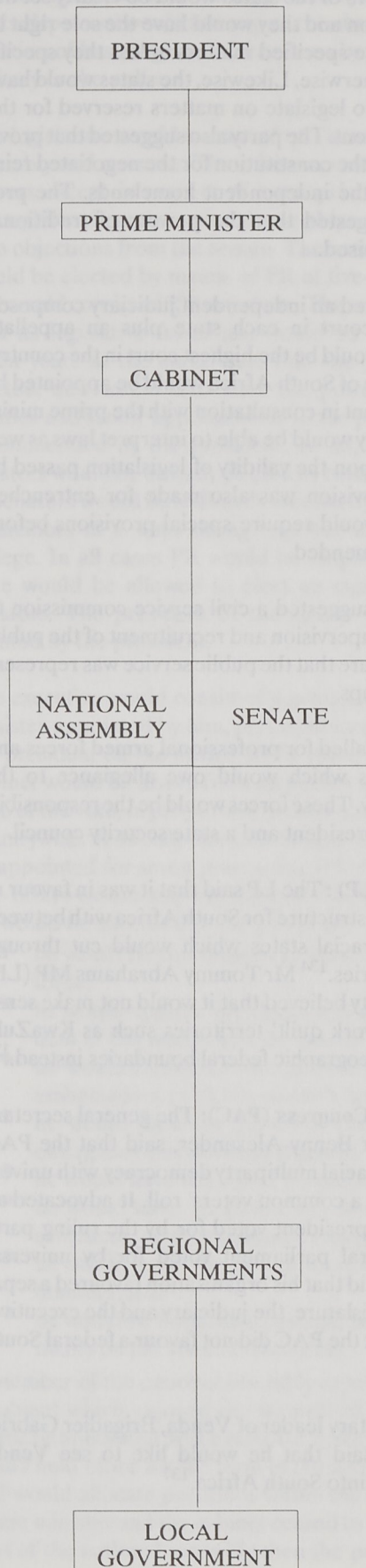
Labour Party (LP): The LP said that it was in favour of a simple federal structure for South Africa with between 15 and 20 nonracial states which would cut through existing boundaries.¹³⁴ Mr Tommy Abrahams MP (LP) says that his party believed that it would not make sense to have 'patchwork quilt' territories such as KwaZulu and advocates geographic federal boundaries instead.¹³⁵

Pan-Africanist Congress (PAC): The general secretary of the PAC, Mr Benny Alexander, said that the PAC stood for a nonracial multiparty democracy with universal franchise on a common voters' roll. It advocated an executive state president voted for by the ruling party and a unicameral parliament voted for by universal franchise. He said that his organisation favoured a separation of the legislature, the judiciary and the executive. He stressed that the PAC did not favour a federal South Africa.¹³⁶

Venda: The military leader of Venda, Brigadier Gabriel Ramushwana, said that he would like to see Venda reincorporated into South Africa.¹³⁷

African National Congress (ANC)

FIRST TIER



PRESIDENT: An executive president will be elected by parliament for a maximum of two terms of five years each. He will be impeachable by a two-thirds majority of the national assembly. He will also be the head of state.

PRIME MINISTER: The prime minister will be appointed by the president and will head the cabinet.

CABINET: The cabinet will be appointed by the president. The president will act in consultation with the cabinet.

BICAMERAL PARLIAMENT: The national assembly will be elected by proportional representation on a common voters' roll and will have the power to enact legislation primarily vested in it. The senate will be elected by proportional representation but provision will also be made for about half the seats to be elected by the regions. This chamber will have the power to refer matters concerning the interpretation or application of the constitution to the appropriate court for its decision. Where applicable, it will be able to delay legislation in the national assembly but will not be able to veto it.

The functions of central government will include foreign affairs, defence, security, economic and tax policy, providing resources for reforms in health, housing, nutrition, employment and social welfare, creating a national policy framework and ensuring that all areas have an equitable access to national resources.

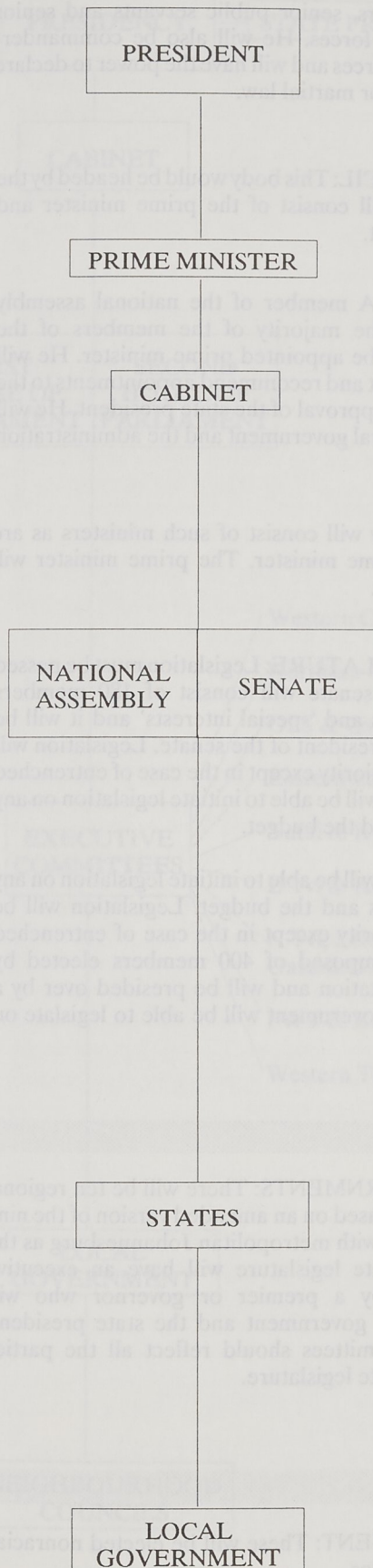
SECOND TIER

REGIONAL GOVERNMENTS: These will be elected regional governments with powers delegated from central government. They will have wide powers of discretion to prioritise matters, provided this does not conflict with national policies. Regional divisions will be based on population distribution, availability of economic resources, communications and an urban/rural balance rather than on racial or ethnic divisions. The regional legislatures will carry out tasks (delegated) at regional level together with those functions presently vested in the provincial administrations.

THIRD TIER

LOCAL GOVERNMENT: These will be nonracial local government bodies in integrated areas. They will be responsible for the day-to-day tasks most directly affecting citizens. Power will be delegated from regional government level.

Democratic Party (DP)



FIRST TIER

PRESIDENT: A directly elected executive president will be appointed for a seven-year period. He will be commander-in-chief of the defence force, will appoint the prime minister as well as the cabinet and the president of the senate. He will make foreign policy and appoint ambassadors, will declare states of emergency and national disaster, will declare referenda and plebiscites, and he may commute criminal sentences and grant pardon, and may confer titles.

PRIME MINISTER: The prime minister will be a member of the national assembly capable of forming a cabinet. He will hold office for the life of the national assembly and will allocate portfolios within the cabinet.

CABINET: This will be a multiparty cabinet drawn from all the parties with more than 10% of the vote in proportion to their electoral support.

BICAMERAL LEGISLATURE: The national assembly will be elected by proportional representation for a period of five years and will consist of 350 members. It will have equal powers to the senate, except in respect of money bills, where it will be able to veto objections by the senate.

The senate will be elected for a period of seven years at the same time as the president. Together with its legislative powers the senate will also have the power to approve treaties and senior appointments to the public service that have been recommended by the president. Of the 100 members, 66 will be directly elected by constituents, while 33 will be indirectly elected by all municipal councillors in a state sitting as an electoral college. The other member will be the president of the senate. Each state will be allocated an equal number of (state) senators and the president of the senate will be appointed by the president. A series of inter-house standing committees, including one for each state department, will be formed. A federal finance council will decide on the revenue and loans each state will get from the federal government.

SECOND TIER

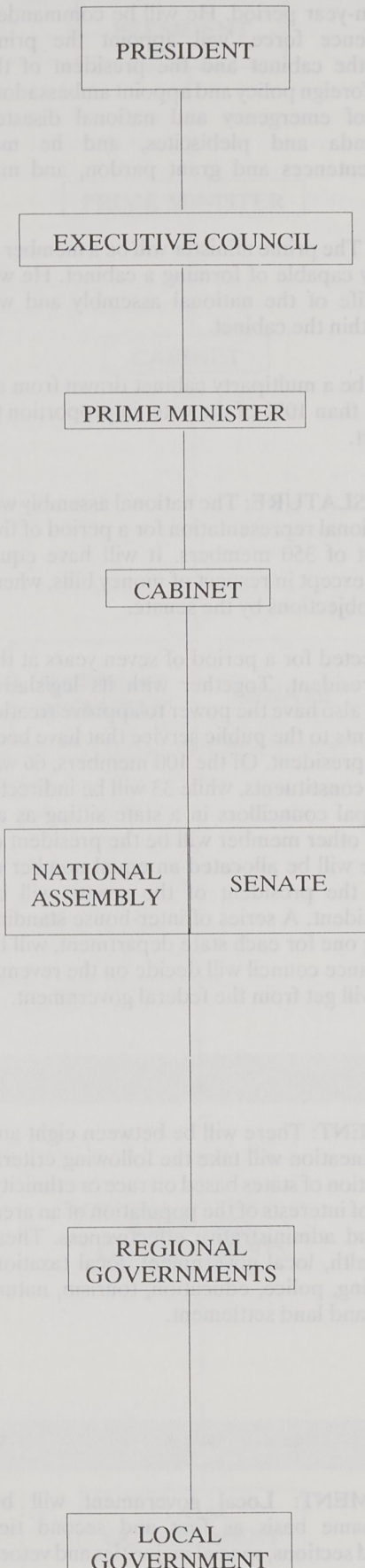
STATE GOVERNMENT: There will be between eight and 12 federal states. Delineation will take the following criteria into account: the rejection of states based on race or ethnicity; a definite community of interests of the population of an area; economic viability; and administrative effectiveness. These states will control health, local government, local taxation, licensing, town planning, police, education, tourism, nature conservation, prisons and land settlement.

THIRD TIER

LOCAL GOVERNMENT: Local government will be established on the same basis as first and second tier structures. Entrenched sections, special majorities and vetoes will be employed at local government level.

Inkatha Freedom Party (IFP)

FIRST TIER



PRESIDENT: An executive state president. He will appoint the prime minister, the cabinet, the chief justice, the state governors, ambassadors, senior public servants and senior officers of the armed forces. He will also be commander-in-chief of the armed forces and will have the power to declare states of emergencies or martial law.

EXECUTIVE COUNCIL: This body would be headed by the state president and will consist of the prime minister and members of the cabinet.

PRIME MINISTER: A member of the national assembly enjoying support of the majority of the members of the national assembly will be appointed prime minister. He will preside over the cabinet and recommend appointments to the cabinet subject to the approval of the state president. He will be the head of the central government and the administration of the country.

CABINET: This body will consist of such ministers as are designated by the prime minister. The prime minister will preside over this body.

BICAMERAL LEGISLATURE: Legislation must be passed by both houses. The senate will consist of 180 members representing the states and 'special interests' and it will be presided over by the president of the senate. Legislation will be passed by simple majority except in the case of entrenched clauses. This chamber will be able to initiate legislation on any subject except taxes and the budget.

The national assembly will be able to initiate legislation on any subject including taxes and the budget. Legislation will be passed by simple majority except in the case of entrenched clauses. It will be composed of 400 members elected by proportional representation and will be presided over by a speaker. The central government will be able to legislate on matters reserved.

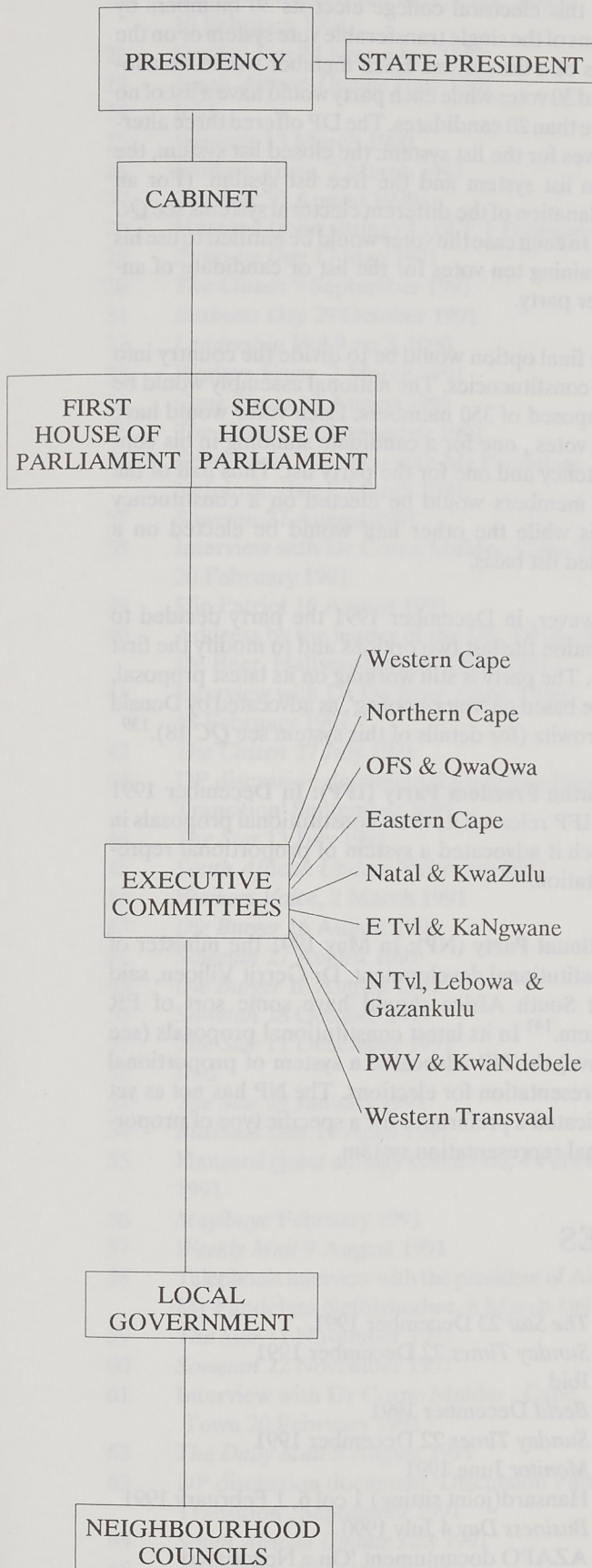
SECOND TIER

REGIONAL GOVERNMENTS: There will be ten regional legislatures possibly based on an amended version of the nine development regions with metropolitan Johannesburg as the tenth state. Each state legislature will have an executive committee headed by a premier or governor who will represent the central government and the state president. These executive committees should reflect all the parties represented in the state legislature.

THIRD TIER

LOCAL GOVERNMENT: These will be elected nonracial local government bodies.

National Party (NP)



FIRST TIER

PRESIDENCY: This will be a multiparty body consisting of the leaders of the three largest parties in the first house of parliament or the leaders of as many parties as might be required to represent a majority of the electorate. The office of state president as well as that of prime minister will rotate between the parties in the presidency on an annual basis. Decision making will be by consensus.

CABINET: This will be a multiparty cabinet appointed by the presidency and obliged to carry out the policy of the presidency.

BICAMERAL PARLIAMENT: Legislation must be passed by both houses of parliament. The first house of parliament will be elected by universal franchise on a common voters' roll using proportional representation. Here legislation in most cases will be passed by a simple majority. However, increased majorities (eg two-thirds) might be necessary to pass legislation on certain circumscribed matters.

The second house of parliament will be composed of representatives from each regional legislature, in equal numbers. Each party obtaining a certain minimum amount of electoral support in elections for a region's legislative body will be allocated an equal number of that region's seats in this house. This house will only be able to initiate legislation on matters specifically affecting the interests of minorities and the regions.

SECOND TIER

REGIONAL LEGISLATURES: There will be nine regional legislatures based on the present nine development regions. Each region will be divided into electoral divisions and the regional legislatures will be elected using proportional representation. A part of each regional legislature may also be nominated by third tier or subregional structures. Each regional legislature will have its own executive authority consisting of three to five leaders from those parties which have a predetermined minimum representation in the legislature. Each member will hold a portfolio and the committee will act collectively as a unit.

THIRD TIER

LOCAL GOVERNMENT: City councils will be elected on a ward basis. The wards will be delimited on the basis of voter numbers and property valuation. The NP suggests a combination model in which half the city council will be elected by all residents and the other half will be elected by owners, lessees and ratepayers. Special decision-making procedures such as increased majorities may be required for some matters.

NEIGHBOURHOOD COUNCILS: Residents of geographical areas within a municipal area may decide to form neighbourhood councils. Members of these councils will be elected by the residents of the neighbourhood concerned. They will probably have autonomy over licensing, communal services, security matters and civil protection, the regulation or norms and standards for the residential environment and other matters, such as education and welfare, that may be allocated to them by local, regional or central government.

D. ELECTORAL SYSTEMS

African National Congress (ANC): In April 1991 the ANC outlined its choice of electoral system in a discussion document. It recommended the proportional representation (PR) system using a combination of the fixed national list system and a fixed regional list system. This amounted to each party presenting a list determined by itself for voters to endorse at both the national and the regional level. The ANC envisaged, however, that each voter would be allocated only one vote which would serve to elect both national and regional-based deputies. This would work by allocating half the seats in the legislature to the regions and the other half to the parties at national level. Seats would be divided between the different regions in proportion to the number of registered voters in each region. The electorate would then cast their votes for their party's regional list for their particular region, and seats in these regions would be allocated proportionally to each party according to its electoral support. The votes for each region would then be aggregated for each party to determine its national support. The amount of national support that each party acquired would determine where its national list would be cut off (ie how many seats it would be allocated). The ANC suggested, however, a 5% threshold to ensure the exclusion of fringe parties from the legislature.¹³⁸

Democratic Party (DP): In its draft constitutional proposals the DP called for an electoral system based on PR. It suggested three possible voting systems. The first entailed dividing the country into 100 constituencies, each constituency sending three representatives to the national assembly. Each voter would have three votes, two for candidates of his choice and one for a political party of his choice. Each political party would present a list of candidates for the purposes of this third vote. This would result in 300 members being elected by constituencies plus an additional 50 members being elected from the national party lists. A 3% threshold would be provided for the first election with a 5% threshold in subsequent polls.

The second option would be to divide the country into ten states, each with roughly the same amount of representation. Each state would be divided into 50 wards and

each ward would elect six people to a 300-member state legislature. Each state legislature would also act as an electoral college to elect 30 members to a 300-member national assembly. The party recommended that this electoral college elect its 30 members by means of the single transferable vote system or on the basis of a list system. Each member would be allocated 30 votes while each party would have a list of no more than 20 candidates. The DP offered three alternatives for the list system: the closed list system, the open list system and the free list system. (For an explanation of the different electoral systems see *QC 18*.) In each case the voter would be entitled to use his remaining ten votes for the list or candidate of another party.

The final option would be to divide the country into 175 constituencies. The national assembly would be composed of 350 members. Each voter would have two votes, one for a candidate standing in his constituency and one for the party list. Thus half of the 350 members would be elected on a constituency basis while the other half would be elected on a closed list basis.

However, in December 1991 the party decided to abandon the last two options and to modify the first one. The party is still working on its latest proposal, to be based on 'voter-pooling', as advocated by Donald Horowitz (for details of this system see *QC 18*).¹³⁹

Inkatha Freedom Party (IFP): In December 1991 the IFP released its draft constitutional proposals in which it advocated a system of proportional representation.¹⁴⁰

National Party (NP): In May 1991 the minister of constitutional development, Dr Gerrit Viljoen, said that South Africa should have some sort of PR system.¹⁴¹ In its latest constitutional proposals (see above) the NP advocated a system of proportional representation for elections. The NP has not as yet indicated a preference for a specific type of proportional representation system.

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