

MCH91-71-4-2 See of out's
at back

PRELIMINARY PROPOSALS of the
INYANDZA NATIONAL MOVEMENT
concerning the CONSTITUTION MAKING BODY and
the CONSTITUTION MAKING PROCESS

- 1 **HOW FAR SHOULD CODESA TAKE THE PROCESS ?**
- 1.1 CODESA should formulate general constitutional principles which cannot be contradicted by the constitution-making body in the formulation of a new constitution for South Africa. This process is already underway and it should be continued until every issue of principle, which any party wants to have decided and which Working Group 2 (WG2) decides to address, has been resolved.
- 1.2 CODESA (WG2) should, by drafting a new Constitution Act to be passed by the Tricameral Parliament, formulate the constitution of the constitution-making body (hereafter referred to as "the Constituent Assembly", the name we propose for that body), including its powers. A sub-group of WG2 (Sub-Group 1) should be appointed to draft the Constitution Act. The sub-group (and the other sub-groups referred to below) should be entitled to co-opt technical experts to assist it.
- 1.3 CODESA (WG2) should determine the regulations for the election of the Constituent Assembly (such regulations being based upon the existing Electoral Act), the appointment of an Electoral Commission with defined

powers and the regulations for the conduct of the prior referendum (such regulations being based upon the existing Referendum Act). Sub-groups of WG2 should be appointed: one to draft the Constituent Assembly's electoral regulations - including the composition and powers of the Electoral Commission (Sub-Group 2), another to draft the referendum regulations (Sub-Group 3). Their draft regulations should be incorporated within the Constitution Act to be drafted by Sub-Group 1, for adoption in due course by the Tricameral Parliament.

2 THE PROCESS OF ESTABLISHING THE CONSTITUENT ASSEMBLY

2.1 Upon completion of all of CODESA's work there ought to be a national referendum wherein the people of South Africa will be asked if they approve of the resolutions adopted by CODESA, which will by implication include:

including TBVC(?)

2.1.1 the demise of the Tricameral Parliament;

2.1.2 the establishment of a Constituent Assembly to negotiate and agree upon a new constitution and to assume the powers of parliament;

2.1.3 the re-incorporation of the TBVC states within South Africa.

2.2 The Electoral Commission established by CODESA (and incorporated within the Constitution Act to be passed by the Tricameral Parliament) should supervise the referendum and the election of the Constituent Assembly.

2.3 If the majority of South African citizens (including those who are citizens of

recognised after by CA
(ii), Regul. lists would ensure also
representation on party lists
(iii) Advisers as here.

[Re French Const. for]

A: I.G. + Presidents appted on interim basis
by Zircan, President until new
Natl. Assembly.

Would be an Interim Const.

~~Analysis~~ ^{Prop.}: Shouldn't reincorp. of TBVC
follow new Const

A: Partic. in CODESA tells them
what is involved. Express their
views in free elects.

the self-governing and of the TBVC states) vote in favour of CODESA's resolutions, then the Tricameral Parliament will be required to ~~pass~~^{pass} the appropriate statute referred to herein. Our motivation for recommending a referendum before the Tricameral Parliament meets to pass the new Constitution Act is that it will promote the process of national reconciliation to have all of the parties within CODESA campaigning together for the same result. The value of this process cannot be over-estimated.

2.4 Assuming the successful outcome of the proposed national referendum, the Tricameral Parliament must pass a new Constitution Act (referred to in 1.2 above) containing the following provisions:

- 2.4.1 repealing the existing constitution;
- 2.4.2 transferring all the powers of parliament to a Constituent Assembly to be elected, including the power to form an interim government;
- 2.4.3 describing the composition, structure and electoral process for the establishment of the Constituent Assembly;
- 2.4.4 enabling the rapid and efficient registration of all citizens (including those in the self-governing and TBVC states) as voters;
- 2.4.5 setting a time limit for the conclusion of a new constitution by the Constituent Assembly (which should be a maximum of 2 years), failing which the election of a new Constituent Assembly should occur, which should hold office for a maximum of the same period;
- 2.4.6 appointing a State President (with a procedure for his/her

too long!!

well perhaps separate listing.

But even if Rep voted against,
must accept outcome of referendum.
Follow-up: If authoritarian compulsion,
no agreement. If by agreement,
it works.

A: CODESA must persuade, that
is the route to go.

Ximoko: We only ask questions for
clarity? Can we discuss issues?

Would referendum by all people
require TRUC (states against will?)

- ② Party lists - with a regional rep?
- ③ Status of 4 advisers?

A: By Chair - at end of day, when all
submissions in, a steering com.
reports - we can debate fully.

Chris: TRUC states should be persuaded
to abide by outcome. Perhaps won't be

replacement and possible removal from office) to hold office until a new constitution has been adopted and implemented by the Constituent Assembly;

2.4.7 prescribing a procedure for the replacement or removal from office on good cause of the State President by the Constituent Assembly;

2.4.8 appointing the interim government established by CODESA to be the government for the period until the Constituent Assembly is established;

? !!!
2.4.9 accepting the re-incorporation of the TBVC states within South Africa as self-governing territories;

2.4.10 providing for the continuation of the self-governing territories and the provinces and their governments and assemblies until new regional governments and assemblies are constituted and elected in terms of a constitution to be adopted by the Constituent Assembly.

2.5 The existing self-governing states and the re-incorporated TBVC states should continue to administer their territories in terms of the Self-Governing Territories Act, 1971, (and the provinces in terms of their empowering legislation), until such time as the Constituent Assembly has adopted a new constitution, which will make provision for the establishment of regional government, and the first regional assemblies have been elected.

3 THE CONSTITUENT ASSEMBLY

Follow-up - Might affect detail
of final Principles if we
checks a balances
Viljoen: No checks a balances, no
R of Rs. - Supr. Ct. Shouldn't
in interim have the or a or
Transitional R of Rs - justiciable
by S. Ct!

(2) Practical re TRVC states.
No dismantling till new structures.
But 'accepts TRVC states as
incorporated'? Does this mean
unilateral by RSA? or TRV Parks?
A: Principles re R of Rs would
be sufficient. We don't need
int. R of Rs.

(2) SA was 1 country. People of SA
shall decide, or be binding.
Ref. should take notice in territories as

3.1 Composition

- 3.1.1 The Constituent Assembly should be unicameral.
- 3.1.2 The Constituent Assembly should have one seat for every 50 000 registered voters (approximately 340 seats).
- 3.1.3 The election of the Constituent Assembly should be by proportional representation, with a threshold of 2% of the total votes cast in the election.
- 3.1.4 Party lists for the election of party candidates to the Constituent Assembly should ~~should~~ be divided between a national list and a list which reflects reasonable geographical representation.
- 3.1.5 The allocation of seats in the Constituent Assembly should be done by comparison between the number of votes in favour of the party concerned as a proportion of the total number of votes cast in favour of all of the parties entitled to seats in the Constituent Assembly.
- 3.1.6 Every party represented in the Constituent Assembly should be entitled to have up to 4 advisers in the Constituent Assembly.
- 3.1.7 The Constituent Assembly should elect its own Speaker and Deputy-Speaker and it should determine its own procedures.

Bisker: Would I.G. be established
by CODESA or CA?

A: Two stages. CODESA-accepted
until CA elected

Funke: (Lukatha): Bazzano is 'elections'
How in climate of violence? If WC1 fails?

A: WG1 must finish its business - with
integrated & I.G. controlled police force.

Follow-up: Suppose violence does not go away?

A: Violence must abate before process
in place.

Follow-up: Putting cart before the horse -
a powerful CA before a Constitution -
without a Bill of Rights. People of
homelands are not creatures of apth.

['out of order']

Leah: Checks & balances. What is magic
about $\frac{2}{3}$ majority? Shouldn't constit.
m. body have more checks & balances?

A: State President independent
procedure - itself
time limit.

3.2 The legal status of the Constituent Assembly

3.2.1 The legal status of the Constituent Assembly should be that of parliament - with the concurrence of the State President its decision should be that of the supreme legislature.)

3.2.2 The Constituent Assembly should have a limited term of office of two years. If it has not completed its work during that period the State President should be obliged to require new Constituent Assembly elections.)

3.3 The authority of the Constituent Assembly

3.3.1 The Constituent Assembly should be empowered to appoint an interim government (other than the President) for the duration of its term of office.

3.3.2 The Constituent Assembly should be entitled to make laws necessary for the proper function of government during the period of its office.

3.3.3 The principal duty and authority of the Constituent Assembly should be to produce a new constitution for South Africa, which shall include a justiciable Bill of Rights.

3.3.4 The Constituent Assembly should not be entitled to deviate from the constitutional principles adopted by CODESA. *contradict?*

Looney: Would Dem Affairs continue?

A: Not thought through. Perhaps
Ngemanda (SACP): Homelands are not just regional entities - they control lives of people as national entities.

A: They will be caretaker bodies only.

Van Heerden (NP): Why 29% threshold?
Will there be vote-pooling?

A: 5% is too high. But we don't want a lot of disruptive small groups.

No views on second.

Uijien: Genl. principles - not contradicted:

How can we ensure that CA does not deviate from principles

A: Needs to be addressed. An interdict from ordinary courts - a possibility?

Sumts (Biker): ① Can't deviate from genl. principles. - apply to legislator.

A: Would assume so.

② When TRUC states come in?

A: after referendum - as s.g. state.
Rabie: Won't Const. Act be writing Const?

A: No.

3.4 The method of functioning of the Constituent Assembly

3.4.1 Ordinary laws to be passed by the Constituent Assembly should be passed by majority decision of those present and voting.

3.4.2 Provisions of a new constitution, the Constitution Act which is ultimately produced by the Constituent Assembly and the Bill of Rights, should be adopted by a two thirds majority.

3.5 The status of the decisions of the Constituent Assembly

3.5.1 The decisions of the Constituent Assembly should be binding upon the Constituent Assembly, and those decisions which take the form of an Act of Parliament should be deemed to be Acts of Parliament upon promulgation of them by the State President.

3.5.2 If the Constituent Assembly makes a decision by the required majority the State President should be obliged to give effect to that decision.

Leon: If CA legislates as well as
drafts Constit, shouldn't it
have a diff form?

Chris - Must replace Tricam - 2 yrs.
maximum - will be form of
natl. unity.

Rabie (NP): Why not call C.A. - as National
Assembly - & why interim govt.

A: Many interim measures - instits such
as Const. Ct. 1/ The President has
power to call elections. - 1/ 2 years
max. 3/ It's bound by decisions of
CODESA ∴ not a Natl. Assembly.

Ngubane: No checks & balances, even
if only for 2 years

A: 2-4, 7 - removal of President.

Could be shorter than 2 years - say!

Lockey (L.P.): If Tricam. drafts
2.4.10 - self governing etc. - continue
until regnl. govt elected?

A: We want some checks & balances.
Regional struct. stay in place to
administer - until const. paper is adopted