

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-committee of WG2 (Sub-Group 1) should be appointed to draft the Constitution Act. The sub-committee 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:
 - 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 The referendum should be administered in such a manner that the citizens of the TBVC states are recorded and counted both as South Africans and as citizens of those states. The reason for the referendum proposal is that the dual record will establish the support for re-incorporation of the particular

citizens of each such state. If the majority of the citizens of any of the TBVC states vote against re-incorporation within South Africa their wish should be respected, and that state ought not to be incorporated into South Africa. 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 setting a time limit for the conclusion of a new constitution by the Constituent Assembly (which should be a maximum of 1 year), failing which the election of a new Constituent Assembly should occur, which should hold office for a maximum of the same period;
 - 2.4.5 appointing a State President (with a procedure for his/her replacement and possible removal from office) to hold office until a new constitution has been adopted and implemented by the Constituent Assembly;

- 2.4.6 prescribing a procedure for the replacement or removal from office on good cause of the State President by the Constituent Assembly;
 - 2.4.7 appointing the interim government established by CODESA to be the government for the period until the Constituent Assembly is established;
 - 2.4.8 accepting the re-incorporation of the TBVC states within South Africa as self-governing territories;
 - 2.4.9 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, provinces and the re-incorporated TBVC states should continue to administer their territories in terms of the Self-Governing Territories Act, 1971, 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

3.1 Composition

- 3.1.1 The Constituent Assembly should be unicameral.
- 3.1.2 The Constituent Assembly should have one seat for every 100 000

registered voters (approximately 170 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, after the initial 10 persons on the list, reflect reasonable geographical representation, which regional spread should be approved in advance of the election by the Electoral Commission.
- 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.
- 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 one

year. 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 and a justiciable Bill of Rights.

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

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 75% 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 adoption 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.