

tda

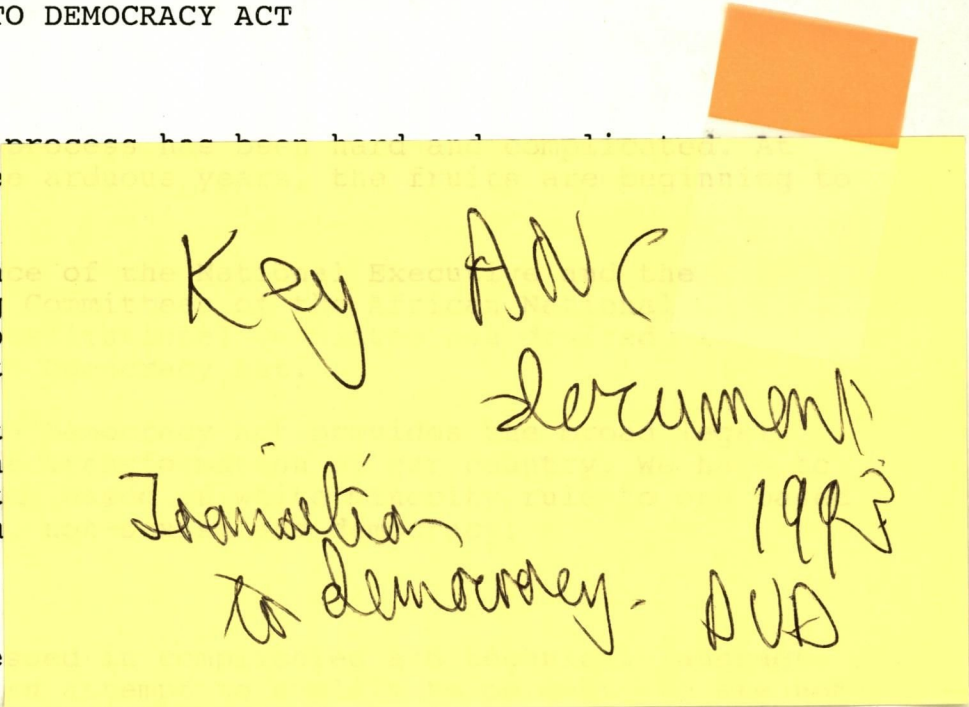
STEPPING STONES TO FREEDOM, PEACE AND EQUALITY
THE TRANSITION TO DEMOCRACY ACT

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Experience in the first year of negotiations showed that it was not enough to reach agreement on general principles. There also had to be agreement on the exact way in which the principles were to be implemented.

Thus, it was agreed that political prisoners should be released and exiles allowed to return. The ANC relied on the government to draft and implement the necessary laws. This turned out to be a mistake. Unclear legislation was drafted which left all crucial decisions in the hands of the government. The result was that conflict was increased

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STEPPING STONES TO FREEDOM, PEACE AND EQUALITY

THE TRANSITION TO DEMOCRACY ACT

The negotiation process has been hard and complicated. At last, after three arduous years, the fruits are beginning to appear.

Under the guidance of the National Executive and the National Working Committees of the African National Congress, the Constitutional Committee has drafted The Transition to Democracy Act.

The Transition to Democracy Act provides the broad legal framework for the transformation of our country. We have to move from a system based on white minority rule to one based on non-racialism, non-sexism and democracy.

The Act is expressed in complicated and technical language. What follows is an attempt to explain to persons who are not lawyers what it means. [Lawyers are not barred from reading this document, however].

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Thus, it was agreed that political prisoners should be released and exiles allowed to return. The ANC relied on the government to draft and implement the necessary laws. This turned out to be a mistake. Unclear legislation was drafted which left all crucial decisions in the hands of the government. The result was that conflict was increased

rather than reduced. Eighteen months later, hundreds of political prisoners were still in jail. Negotiations broke down, partly on this question. *because of this.*

The draft ^{TDA} law does two things. In the first place, it contains the substance of the ANC's proposals for how the transition to democracy is to be effected, giving special emphasis to the role of elections for a Constituent Assembly. Secondly, it establishes the precise legal mechanisms for achieving the transition.

Discussing a draft law therefore accelerates the negotiating process. It also forces all the parties to pay attention to the total package of issues.

The draft law is at present being discussed at bilateral level with the government and with other parties and administrations. It will be submitted to the multilateral conference as representing the ANC proposals.

The provisions have also ~~where appropriate~~ been made available to foreign governments and to all those outside and inside the country interested in the ending of apartheid.

THE OBJECTIVES OF THE TDA

We have no secret agenda in the ANC. We want full democracy and guaranteed rights for all. The TDA sets out the quickest and most secure way of getting there. fairest

The basic overall goal of the document is to promote the speedy transition from apartheid to democracy. Although many racist laws have been repealed, the whole South African constitutional order continues to be based on apartheid.

U Nelson Mandela still does not have the vote. He cannot be a Member of Parliament, nor can he be President or a Cabinet Minister. The same exclusion based on race applies to seventy per cent of the South African population.

We still have the racially constituted Tricameral Parliament. Government Departments continue to be divided on the grounds of race. The results are disastrous for the majority. They receive less than do the whites in terms of money expenditure and get much poorer services, *as we can see in relation to black education. the quality of*

We shocking differences
The Grand Apartheid schemes of Dr. Verwoerd continue to divide our country. We still do not have a common system of government and a common citizenship. The Bantustan and homelands set-up is totally inconsistent with democracy and non-racialism and must be replaced.

We must all be equal ^{its.} with equal ^{rights} & responsibilities, independently of race, colour or creed.

The first goal is accordingly to get a completely new constitution based on non-racism and non-sexism. In order to achieve this speedily, the TDA focuses only on the essential changes need to get a new constitution-making body in place. It seeks to avoid prolonged controversy over the terms of interim arrangements. Prolonged uncertainty will not help the country. A succession of constitutions would confuse the people.

The basic scheme offers a clear, workable and speedy. The essence is to elect.

Thus, the TDA eliminates all the complications, delays and strife that would ensue if attempts were made to impose an Interim Constitution on the country. Instead, it accepts the basic framework of the present constitution, but progressively strips it of its racist and undemocratic character. The objective is not to replace it with a half-democratic constitution which will last for some time, but a fully democratic one which will endure forever.

The present racist const. We want

The second goal is to ensure that the new constitution is achieved in a manner which gives it maximum legitimacy and acceptance. We want the overwhelming majority of our people to feel that this is their constitution. We need a constitution that is accepted internationally as marking the final elimination of apartheid.

This requires a process that is as fair and inclusive as possible. Everyone must be given a chance to participate on an equal basis. The procedures and basic principles must correspond to internationally accepted standards. The more participation there is, the richer will be the inputs, and the better the outcome.

At the same time, no-one should be able to say afterwards that they are not bound by the constitution because they were not given a fair chance to take part in its elaboration. The constitution will be the basic law of the country, and everybody will owe it allegiance.

Thirdly, the documents seek to follow legally correct procedures at all times. This is consistent with the negotiating process. While we totally reject the legitimacy of the present government and of the Tricameral Parliament, we negotiate with their representatives. The objective is to dismantle the institutions they represent. They have an important role to play in this respect. The binding nature of the new constitution will be strengthened if those who lose their previous monopoly of power give their legal assent to the changes.

But

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We want the people in the Dream Park, to be part of the process of change. Negotiations mean that they must give their legal assent to change and do further, if means that they must accept that they will be bound by the new Const.

But we want the country to be governed lawfully the whole time. We do not want any period where the country is ruled by people who have seized power for themselves.

There will accordingly be step by step transformation. Correct legal form will be followed throughout. The goal is to achieve profound constitutional change while maintaining constitutional continuity. Power will be transferred from a racial minority to the people as a whole. It will be done in such a manner as to encourage all South Africans to consider themselves part of the people as a whole. They will accept the new constitution not because it has been forced upon them, but because they will have contributed towards the way it has been brought into being.

might have been. Offered. Bal of forces. Advant. inherent. solution.

The fourth consideration underlying the document is that the process of transition to democracy be as smooth as possible. We want the new democratic government to be able to take over machinery of government that functions. We want as little economic disruption as possible. The tasks facing a democratic government will be enormous.

The majority of the people have suffered grievously under apartheid. They will expect the new government progressively to deliver to them the opportunities and services which apartheid has denied them.

It will be the enemies of democracy who will attempt to disrupt government and make it ineffective. Our goal will be to keep the machinery of government functioning. We will want to ensure that services are maintained, extended to all and improved. We wish to see crime reduced rather than increased. We will need time to train up a new generation of technicians and experts drawn from the whole of society.

All this requires that the transition process be as smooth as possible.

THE BASIC ELEMENTS OF THE TRANSITION TO DEMOCRACY ACT

The TDA has been drafted in the form of an amendment to the existing racist constitution. Its function is to introduce such changes as are necessary to enable the present racist constitution to be replaced by a new non-racial, non-sexist democratic constitution.

It is not a new constitution.

Rather:

It introduces drastic changes to be made on a step by step basis into the existing racist constitution. More especially, it:

1. Creates conditions for the holding of free and fair elections;
2. *Then*, On the basis of these elections:
 - a) It establishes machinery for the elaboration of a new constitution;
 - b) Provides for the creation of a government of national unity to function in the period while the new constitution is being drafted.
 - c) Makes provision for a new law-making body to replace the Tricameral Parliament during this period.

3. It also makes provisional arrangements for a number of important questions during this ^{transition} period, namely:

guaranteeing basic freedoms of speech, association and religion;

the flag;

the national anthem;

the capital cities and seats of government.

The Period leading to Elections

ESSENTIAL FEATURES OF THE CHAPTER DEALING WITH THE CREATION OF A TRANSITIONAL EXECUTIVE COUNCIL

This section sets out to give legal force to the agreements reached in Working Group Three at CODESA. It deals with the period before elections are held. In fact, its basic purpose is to create conditions so that free and fair elections can be held.

At the moment the government is player, referee and rule-maker at the same time. It controls the electronic media, the police force and the army. It runs the civil service. It is in charge of the department which issues identity documents. It controls the country's budget. It has a vast army of secret agents under its wing. It will also be a major contender - through the National Party - in the elections.

In any country, the party in office has many advantages. In South Africa, however, the National Party got into office by means of a racist constitution. ~~It is not the normal incumbent government.~~ It completely lacks legitimacy. The

elections are being held precisely to pave the way for the adoption of a completely new constitution.

Even if its record were spotless, ~~it~~ ^{the NP govt} could not be expected to be impartial in supervising its own conduct during elections. As it is, large sections of ~~the government~~ ^{they have been party of} have a shocking record of recent dirty tricks, disinformation, misuse of public funds, corruption and abuse of office. These abuses and misuses of power have been particularly prominent in the fields of security, documentation and information.

It is in the interests of ~~the National Party~~ ^{the present govt} as well as of everyone else that ~~it~~ not be left in sole charge of the election process. If it does well at the polls, no-one should be able to say that it achieved its vote through fraud or other irregular means.

What the ~~draft law~~ ^{TDA} does is to establish a ~~transitional executive council~~ ^T to ensure joint responsibility for government in certain key areas. These are the areas that directly or indirectly impinge on the electoral process and the context in which elections take place.

The TEC would function with the assistance of sub-councils in the following areas:

regional and local government:

law and order, stability and security;

defence;

finance;

foreign affairs.

The TEC shall consist of one person from each body represented at CODESA. This means CODESA as reconstituted, whatever its name might be. Thus, the PAC would be entitled to a member if it participated in the new CODESA. The same would apply to the Conservative Party. The only conditions are: ^{that:} ^{being represented on the TEC} ^{for a party}

they agree to facilitate the transition to a democratic order in South Africa;

endeavour to create a climate favourable to free and equal political participation;

promote conditions conducive to the holding of free and fair elections;

and agree to carry out decisions of the TEC.

THE CHAPTER DEALING WITH A MEDIA COMMISSION

[This section is still being worked on. In essence, it will establish an Independent Media Commission. The function of this Commission will be to ensure that during the election campaign the SABC ceases to be the information arm of the National Party. Internationally accepted norms of open broadcasting and fair access to the media will have to be guaranteed.]

THE CHAPTER DEALING WITH THE INDEPENDENT ELECTION COMMISSION

[This section is still being elaborated.]

*The IEC - role: ~~appeal~~
~~disputing~~
resolving conflicts (or*