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The ANC's aim is to ensure that the transition process is speedy, legitimate, inclusive, smooth and successful. Its clear objective is to arrive at a firmly constructed non-racial, non-sexist and democratic South Africa.

The TDA has been drafted in the form of an amendment to the existing racist tricameral constitution. It is not a new constitution. We do not wish to spend months and years battling over the terms of an interim constitution. What is needed is a constitutional arrangement for transition from a racist structure of government to a democratic one. The TDA is a legal means of ensuring the necessary constitutional continuity between the old order and the new. It provides for the step by step replacement of racist power with full democracy. At its heart, lies a democratically elected

TDA2

AMENDMENTS TO NEGOTIATIONS COMMISSION DOCUMENT

Amend the introduction as follows:

Replace the first page with the following:

This booklet is about the ANC's proposals for a Constituent Assembly and an Interim Government of National Unity (IGNU) to be followed by a Government of National Unity and Reconstruction (GNUR).

The proposals are based on agreements reached at CODESA as well as common positions arrived at between the ANC and the Government. Basically they involve a procedure whereby the present Tricameral Parliament will pass a law providing for an orderly and legally correct transition from the present racist constitution to a new democratic one. The ANC has accordingly drafted a proposal for what such a law should look like. This is called the Transition to Democracy Act (TDA). The TDA contains the ANC proposals for the period leading up to the election of a Constituent Assembly and for the period following the elections.

These proposals are the result of discussions in the ANC National Negotiations Consultative Forum, ANC Regional Negotiations structures and discussions within the tripartite alliance and the Patriotic Front. The ANC Negotiations Commission has produced this book for ANC branches and other grassroots structures so that our members are informed about the ANC's proposed Transition to Democracy Act and are able to participate in the political process.

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Constituent Assembly charged with the function of drafting a new constitution in accordance with prescribed procedures and agreed general principles.

Chapter 1 of this booklet sketches the transition process. Chapter 2 of this booklet looks at the Transition to Democracy Act proposed by the ANC. It sets out the steps whereby the present government structures will be abolished and a new government put in their place. It also lays down the rules and procedures in terms of which Constituent Assembly and the new government structures will work.

I am not so sure that there is any advantage in dividing up the booklet into two sections because there will be a very large degree of overlap. I would recommend a diagram that summarises the transition to be followed by a setting out of the TDA. However, on the basis that the present format is found to be more convenient, I make the following textual comments.

1. Chapter 1 The Transition Process

This should remain basically as it is save that there should be a separate box dealing with the list system, preferably with our proposals for how the list should be adopted - if we cannot at this stage give the details, then at least we can establish the general principle of a participatory process for arriving at the final national and regional lists.

The main omission relates to the Government of National Unity and Reconstruction. I accordingly propose a complete new section for the last page of Chapter 1. It should read as follows:

The coming elections will elect a new democratic parliament. This new parliament will function in two phases.

Phase 1 will be the period of drawing up a new constitution. We envisage a time scale of approximately nine months. During this period the elected parliament will function as a Constituent Assembly to draft the new constitution. It will also choose a new President and Interim Government of National Unity to run the country while the constitution is being adopted. Thirdly it will pass laws necessary for the country during that period.

Phase 2. This phase will last for a period of not more than five years from the date of elections for the Constituent Assembly. The new government will continue to function under the control of Parliament. It will convert itself into a Government of National Unity and Reconstruction. It will be responsible for phasing in regional and local government structures as provided for in the new constitution. It will carry through the reconstruction of the army, the police force, the prison service and the civil service. It will also initiate programmes of reconstruction in the spheres of health, education, access to land and other areas of special concern to the people.

In other words, when you vote you will be electing the Parliament that will draft the new constitution and that will create the government that will be in office during the years of transition and reconstruction.

3. Interim Government of National Unity (IGNU)

The interim government (interim means temporary) governs in the period before the new constitution is adopted. In this period, laws and decisions are made according to rules and procedures agreed on through negotiations. Once the new constitution is adopted, the IGNU will convert itself into the Government of National Unity and Reconstruction.

The precise details of how the IGNU and the GNUR will function are still being worked out. The objective however will be to achieve joint responsibility for the difficult process of transition. It will be important to avoid deadlocks and paralysis of government.

4. Government of National Unity and Reconstruction (GNUR)

Once the new constitution has been adopted by the Constituent Assembly, its operation will have to be phased in. The government elected by parliament to serve as an Interim Government of National Unity will now transform its functions and become a Government of National Unity and Reconstruction.

Basically it will be the same government under the same President but its tasks will be different.

In the first place, it will see to the establishment new institutions provided for by the new democratic constitution. These would include regions and regional government as well as local authority areas and local government. Elections at these levels will have to be held. The appropriate civil service and local authority administrations will also have to be put in place.

Another new institution that might have to be put in place would be a Senate. The ANC is sympathetic to the idea of a Senate or Upper House based on regional representation. It would have power to reflect on legislation and propose amendments. The Senate could possibly be phased in during the period of the Government of National Unity and Reconstruction.

Secondly, it will direct the transformation of the civil service and the security forces in conformity with the principles of the new constitution.

Thirdly, it will in conjunction with the unions and business embark upon a programme of putting the South African economy on a new, more productive and more equitable foundation.

Fourthly, it will initiate programmes of reconstruction in areas such as health, education, housing and welfare.

5. New elections in terms of the new constitution.

After the agreed term of the Government of National Unity and Reconstruction has expired fresh elections will be held in terms of the new constitution. The majority party or group of parties in the new parliament will then be able to decide whether to continue with a GNU or not. In other words, the period of prescribed coalition government will have come to an end.

COMMENTS ON CHAPTER 2 THE TRANSITION TO DEMOCRACY ACT

Readers might be confused by the statement that the TDA abolishes the whole Tricameral Parliament. In fact, the Tricameral Parliament will continue for several months after it has adopted the TDA. I therefore propose the following:

Instead of the heading **2. Abolishes the present government structures** we put

2. Provides for the abolition of the present government structures.

The TDA sets out the mechanism for abolishing the whole Tricameral Parliament. This includes all three houses of parliament, the President's Council and the many separate government departments that apartheid created for different race groups. These separate departments - such as health and education - are brought together into single departments. The National Party government has always said that these services are provided separately for different race groups because they are the "own affairs" of the communities concerned. The TDA will do away with the difference the law has made between own affairs and general affairs.

3. Reincorporates the TBVC states.

The TDA reincorporates the TBVC states by changing the boundaries of South Africa back to what they were in 1910. These states themselves will also need to take the necessary steps to be incorporated back into South Africa. For example, they will need to pass similar Acts that dissolve their governments.

The 1910 boundaries will serve as an interim arrangement while new areas of regional government are being determined.

4. Provides for the future of regions.

The Constituent Assembly has the task of deciding the new boundaries for regions. The ANC believes the regions should not be changed in the interim period as this will interfere with the work of the CA. The only change the TDA makes to regions is to scrap the homeland boundaries. This is done by changing the boundaries of South Africa back to how they were in 1910 with the Cape, Natal, OFS and Transvaal.

Regional and local government are not immediately affected by the TDA and remain in place. In the case of the homelands, the civil service and administration will

continue to exist and do their work. However, they will now be answerable to the provincial administration structures of the province that they are in and not to a homeland government. For example, Lebowa will become part of the Transvaal and the Lebowa civil service and administration will not be part of the Transvaal Provincial Administration.

Since the TDA was drafted, the ANC and the Government have arrived at a common position about how new regional boundaries and functions will be determined. An independent Commission on Regions will be established. Its first task will be to determine the boundaries of regions for the purposes of regional lists to be used in the elections for the Constituent Assembly. Afterwards, it will make recommendations covering the whole area of regional government in South Africa, that is, about the boundaries, the powers and functions of regions in a democratic South Africa. These recommendations will then be submitted to the Constituent Assembly for adoption or amendment. The Constituent Assembly will have the final say.

The TDA will have to be amended to take account of this development.

5. Creates a new parliament.

The Act creates a new parliament of one house - called the National Assembly. The National Assembly will consist of 400 members who are elected by all South Africans in democratic elections. This includes all the citizens of the TBVC states. The election will take place by proportional representation - which is explained in Chapter 1, page x.

Parliament will sit in Cape Town and will start one week after the elections. It will continue until a new constitution is adopted. This cannot take longer than 2 years. The business of the National Assembly is open to the public and the press.

Functions of Parliament - Phase 1

Parliament has three functions:

- To draw up the new constitution, that is, it functions as a **Constituent Assembly**.

- To choose the President who will form the Interim Government of National Unity while the Constitution is being drafted.

- To pass laws during that period.

Functions of Parliament - Phase 2

Parliament will have the function of supervising the activities of the Government of National Unity and Reconstruction and passing all the laws necessary for reconstruction and good government.

6. Creates an Interim Government of National Unity (IGNU).

The TDA lays out certain rules and procedures for the way will operate in the interim period. These rules are aimed at ensuring joint responsibility for the speedy and smooth introduction of democracy.

7. Provides for the transformation of the Interim Government of National Unity (IGNU) into the Government of National Unity and Reconstruction (GNUR).

A new chapter will have to be written into the TDA to take account of the different functioning of the Government of National Unity after the constitution has been adopted. It will operate according to rules and procedures agreed to in advance. These will be basically the same as those governing the IGNU.

National Unity

* Decision making in the National Assembly

All decisions in the National Assembly must be supported by two thirds (66%) of the representatives. This is except for special decisions - such as changing this Act - which must be supported by 80% of the representatives.

* Committees of the National Assembly

Committees that are formed to carry out the work of the National Assembly, must include representatives from every

party in the government. The number of representatives that each party has depends on **proportional representation** e.g. If a party has 50% of the representatives in the National Assembly, it is able to have 50% of the members in any Committee.

*** Multi-party Cabinet (Multi-party Government?)**

The Cabinet is made up of Ministers who have responsibility for different areas of government - for example, Education, Finance, Defence. Usually the President has a discretion to appoint the whole Cabinet. In countries where there is a coalition government (that is a government made up of more than one party) the party leaders bargain for positions on the basis of their strength in Parliament. The Prime Minister or the President has the last word. If no agreement can be reached, then the coalition breaks down and fresh elections are held.

Coalitions can be agreed to for the sake of getting majority support in Parliament. In some countries they are established as a means of achieving national unity in the face of grave crisis.

The TDA accepts the principle of a prescribed coalition government for a limited period. The President must appoint a Cabinet that includes representatives from all parties that have more than 5% of the seats in the National Assembly. Parties are given representatives (or Ministers) in the Cabinet according to **proportional representation**. When the President appoints Ministers from political parties other than his or her own, he or she must do so in agreement with the leader of that political party. If he or she wishes to remove a Minister from the Cabinet this must be done in consultation with the political party of which the Minister is a member.

(IMPORTANT NOTE: AT THE NEC DEBATE WE ASSUMED THAT THE GNU PRINCIPLES WOULD APPLY TO THE CABINET ONLY, THAT IS, ABOUT 20 PERSONS. IF I REMEMBER CORRECTLY, THE TDA REFERS TO THE WHOLE OF THE GOVERNMENT, INCLUDING DEPUTY MINISTERS, AND THIS COULD COME TO ABOUT 40. PLEASE CHECK AND MAKE THE APPROPRIATE TEXTUAL AMENDMENTS. SHOULD WE SPEAK OF A MULTI-PARTY CABINET OR A MULTI-PARTY GOVERNMENT?)

*** Powers of the President**

The President is elected by majority (at least half of the National Assembly). The President has an important role to

play in establishing the Interim Government of National Unity which then becomes the Government of National Unity and Reconstruction.

The precise powers and functions of the President are still being negotiated. In line with the concept of a Government of National Unity and Reconstruction his powers must be such as not to permit deadlock and paralysis on the one hand, while encouraging a high degree of consensus on the other. The ANC position is that the President should have the normal powers of a head of government, save that in limited, defined matters of special importance, a two thirds majority of Ministers will be necessary.

The TDA will have to be refined in the light of final agreement on these questions.

*** Flag and national anthem in the interim period**

The TDA includes Nkosi Sikelel iAfrika alongside Die Stem as the national anthems of South Africa. The TDA makes provision for a flag in the interim period, if it is decided that this is necessary.

*** Language**

The TDA gives the National Assembly the power to declare official languages for particular areas or regions.

8. Creates a Constituent Assembly

The National Assembly will function as the Constituent Assembly and will draw up the new constitution. All decisions in the CA must be made by two thirds majority. The CA will adopt each article of the constitution and the constitution as a whole.

The National Assembly sitting as a Constituent Assembly will have complete powers to adopt a new constitution. The constitution will however have to conform with and not in any respect contradict certain agreed constitutional principles. These are the broad principles based on democracy and non-racism that have already been agreed to at CODESA, both in the Declaration of Intent and in Working Group 2. These principles do not deal with the details of the constitution. Further principles may be added to those already agreed upon. A complete and final list will be attached to the TDA and form part of it.

The TDA provides for the setting up of a Constitutional Panel consisting of between 7 and 11 suitably qualified persons to ensure that the principles have been complied with.

The work of the CA must be completed within a certain time frame. This means that the interim period is not indefinite. The TDA provides a deadlock breaking mechanism: If the new constitution is not adopted by two thirds of the CA, then new elections will be held and a new CA elected. The new CA will have only 6 months to adopt the constitution. If the constitution is not adopted by two thirds of the new CA, then a referendum will be held. If 55% of the people support the constitution that has been proposed by the CA, then it will be adopted. But if less than 55% of the people support it, then a third election must be held. A new CA will be elected and will again draw up a constitution. They will be able to adopt the constitution by support from a simple majority (at least half).

In the light of common positions arrived at between the ANC and the Government with regard to a Government of National Unity continuing for some years, it will be necessary to review the deadlock breaking mechanism mentioned in the TDA. It is to be hoped that in the light of the almost universal awareness of the need to get a new constitution in place and to revive the economy, the work of the Constituent Assembly will not take more than nine months. Within the broad framework of non-racial, non-sexist democracy there can be sufficient give and take to achieve a high degree of consensus. This was the experience in Namibia, and there is no reason why we should not be able to show the same degree of maturity.

Termination of the TDA

The TDA will function in three phases.

Firstly, it will govern the period from its adoption until the election of the Constituent Assembly.

Secondly, it will cover the period from the election until the adoption of a new constitution.

During these two phases it will operate as the sole constitutional document in South Africa.

Once a new constitution has been adopted by the Constituent Assembly, the TDA will continue to operate with an agreed

lifespan as part and parcel of the new constitution. In other words, it will constitute part of the transitional arrangements in the new constitution. In this respect the TDA will be binding for a limited period on the makers of the new constitution. Once that period has expired, then the TDA will fall away. The new constitution will then operate in an unfettered way according to what is agreed on at the Constituent Assembly.