

CISKEI DELEGATION

The purpose of Codesa is to negotiate a new constitution for South Africa and bring about free and fair elections once that constitution has been drawn up.

The need for a level playing-field to realise this objective is accepted by all participants. It is also accepted that it is not provided by the South African Government at present.

Some of the reasons given for not fulfilling this role are:

that the present Government cannot be player and referee at the same time;

that it is not broadly representative of all South Africans;

that it dominates the playing-field and cannot create the right climate necessary for a truly democratic process.

There seems to be sufficient consensus that there is a need for an interim government, which would be able to improve the internal climate as it would, inter alia, have more credibility and impartiality, thereby reducing violence and promoting peaceful political activity. It is also expected that such an interim government would improve the external climate and pave the way for economic development. In creating such an interim government the mistakes of the past should be avoided.

Many delegations have expressed the opinion that any interim arrangements should guarantee continuing efficient Government with legal and constitutional continuity.

The Ciskei Government has stated previously that it is absolutely convinced:

- that any interim arrangements should not pre-determine the nature of the ultimate outcome of negotiations at Codesa;
- that there should not be any domination of any group during the negotiating process;
- that negotiations for a new constitution and the manner in which South Africa should be governed until the introduction of the new constitution should be two separate processes.

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The Ciskei Government opposes elections for an interim government and for the establishment of an interim legislature.

Arguments against elections for an interim government include (but are not necessarily confined to) the following:

- that such elections would almost certainly aggravate the presently unfavourable political climate, would be divisive and would be seen as a threat to minorities;
- that such elections, if based on a two-phase arrangement, as suggested by some, would result in a pre-election, post-election and final government after the present government (which means four governments in a row), would, inter alia, cause problems with continuing government efficiency and legal and constitutional continuity;
- that such elections would create an interim government dominating minority groups.

Arguments against the establishment of an interim legislature include (but are not necessarily confined to) the following:

- that elections for such a legislature would not, in the present climate of violence and intimidation, be free and fair;
- that such a legislature would not allow for inclusiveness, as the basis for democratic participation at parliamentary level will only be determined at a later stage, i.e. when the new constitution is drawn up;

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- that many voters in elections for such a legislature would be likely to vote on a "gut feeling" (as they have to make decisions before they know exactly what to decide on), instead of voting on rational grounds, based on sufficient information to enable them to do so;
- that the establishment of a "transitional parliament" would be a threat to the creation of the new constitution on a democratic basis, as the present Parliament would have abdicated its sovereignty and the new parliament would not yet be in place and have assumed sovereign powers, leading to a constitutional vacuum and chaos.

The Ciskei Government is, therefore, of the opinion that an interim government negotiated at CODESA should serve until elections under the new constitution, while creating the right climate for these elections. We believe that this can be achieved, given enough time.

Many of the objections against elections for an interim government and legislature apply equally to interim elections for a constituent assembly but:

- such elections would in addition pre-determine the outcome of the constitution, as the majority delegations would dominate the negotiating process;
- such elections would lock parties into fixed positions determined by pre-election positions and therefore obstruct flexibility in the writing of the constitution;
- such elections would negate the accepted principle of consensus during the negotiations, if majority decisions would be taken, as suggested by some.

The Ciskei Government is, therefore, of the opinion that a constitution-making forum should not be elected, but that CODESA should form the nucleus of that body, that it should be as inclusive as possible, avoiding domination and that it should not be involved in the politics of governing but should concentrate exclusively on its task to negotiate the new constitution on a consensus basis.

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The Ciskei Government believes that inclusiveness and wide support for an interim government and constitution-making body will be the best guarantee for an end-product of Codesa which is acceptable to as large a section of the population as possible.

CISKEI GOVERNMENT
THE TRANSITIONAL EXECUTIVE

PURPOSE : To govern South Africa during the transition period up to the implementation of the new constitution in accordance with principles agreed upon by CODESA.

- OBJECTIVES :
1. To ensure broad representation and inclusiveness of the transitional executive in order to create greater acceptability, legitimacy and credibility of the Government.
 2. To "level the playing-field".
 3. To create a climate conducive to peaceful political activity and free and fair elections by, inter alia, recommending, amending or repealing all laws militating against such a climate.
 4. To ensure Government impartiality, particularly in the control of the public media, the budget and the security forces, by recommending amendments of the relevant laws.
 5. To promote co-responsibility of all members of the transitional executive for all executive decisions and executive acts.
 6. To build trust between the participants in the transitional executive.
 7. To ensure efficient continuation of the public service, based on loyalty and a commitment to the national interest.

THE CONSTITUTION-MAKING FORUM

The Ciskei Government reiterates that it is opposed to an elected constitution-making forum and proposes that CODESA shall continue to supervise the determination of the basic principles to be embodied in the draft constitution, for the following reasons:

1. That such elections would almost certainly aggravate the presently unfavourable political climate, would be divisive, would be seen as a threat to minorities, would not be free and fair as they would most likely result in intimidation and no confidence in the secrecy of the vote.

2. That such elections would not allow for inclusiveness of minorities and that the forum (and the constitution this forum would write) would not form a sound basis catering for the diversities in South Africa and would therefore not be conducive to lasting unity in the country.
3. That in such elections many voters would be ill-informed and act irrationally, instead of voting on rational grounds based on sufficient information to enable them to do so.
4. That such elections would lock parties into fixed positions determined by pre-election positions and therefore inhibit flexibility in the writing of the constitution.
5. That such elections would negate accepted principles of consensus during the negotiations; if majority decisions would be taken, as has been suggested, the process of writing the constitution would be moved to the field of political contest.
6. That an important purpose of the constitution would be thwarted, as the majorities would be able to decide what protection minorities would have in the constitution, without these minorities participating in these decisions.
7. That interim elections would enable majorities to entrench their powers in the constitution, resulting in majority domination before guarantees against such domination and a totalitarian regime are entrenched.
8. That elections would be held before the due process controlling such elections has been entrenched in the constitution.

The Ciskei Government is convinced that:

- (a) the task of drafting a new constitution for South Africa differs in principle from the task of governing the country on a day-to-day basis, and that, accordingly,
- (b) the constitution-making body should be a body composed in another manner than the transitional executive is composed.

Many of the objections against elections for an elected constitution-making forum apply equally to elections for an interim government and also include (but are not necessarily confined to) the following:

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That such elections, if based on a two-phase arrangement, as suggested by some, would result in a pre-election and post-election transitional government and final government after the present government which would not be conducive to continuing legal and constitutional continuity.

That in order to "level the playing-field" majorities should not be allowed to dominate the transitional government before constitutional safeguards are in place, protecting the rights of minorities and that an interim government should necessarily be inclusive.

In view of the purpose and the objectives set out above, the Ciskei Government submits:

1. that the South African Government's proposals for a "transitional constitution" and "transitional councils" apparently imply the following, which makes it difficult for Ciskei at this stage to support such proposals:
 - (a) that the present South African constitution will be repealed in its entirety and replaced by a "transitional constitution" as an interim measure, the contents of which are not yet known, while the necessary safeguards have not yet been spelled out;
 - (b) that the proposed "transitional councils" will have a certain measure of executive powers, there being uncertainty as to their relationship to the South African executive (the cabinet);
2. that Ciskei, though a sovereign independent state at this stage, has a contingent interest in the structure of the ultimate South African constitution, as it will apply for re-incorporation into the greater South Africa once it is certain what the constitutional structure of the new South Africa will be; and, therefore, Ciskei should participate in the constitution-making forum;
3. that the necessity for and advantages of a "transitional constitution" for South Africa have not been demonstrated, while such a transitional constitution, as proposed by the South African Government, pre-empts the determination of the principles to be embodied in the ultimate South African constitution, which principles are the responsibility of CODESA Working Group 2, and have not yet been finalised.

In Conclusion:

In order to enable the Ciskei Government to make a meaningful contribution to the process of establishing a transitional executive and possible amendments to the existing constitution or the creation of a transitional constitution, it is imperative that the queries and objections raised in this document be answered.

The Ciskei Government believes that the successful outcome of negotiations for a new South Africa will depend on adequate safeguards for avoiding domination of the process of change prior to the first ballot in terms of the ultimate South African constitution.

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CISKEI GOVERNMENT

TRANSITIONAL GOVERNMENT AND CONSTITUTION-MAKING BODY

The purpose of CODESA is to negotiate a new constitution for South Africa and to bring about free and fair elections once that constitution is in place.

The Ciskei Government supports negotiations at CODESA for a constitution which will firmly entrench the rights and responsibilities of all South African citizens, which will entrench all the guarantees for a truly democratic united non racial South Africa with a federal form of government and which will determine the boundaries of such federal structures.

The Ciskei Government believes that taking into consideration the diversity of interests and cultures, during the negotiating process, will be essential for the creation of a stable and lasting constitutional dispensation.

The Ciskei Government is of the opinion that a level "playing-field" is necessary to arrive at a constitution acceptable to all and that a level "playing-field" must be created for a referendum to decide on this constitution.

The task of drafting a new constitution and the task of governing South Africa during the transitional period are two separate and different processes which should not be controlled by the same body.

The Constitution-making Body

A forum, as inclusive as possible, free of domination by majorities should write the constitution. It is essential for this forum to be free of domination as it should determine the rights of majorities and protect the rights of minorities. All delegations at CODESA who have expressed the wish to be part of the new South Africa, including the Ciskei delegation, should be part of this process.

It is, therefore, quite clear that CODESA is the correct forum to negotiate the new constitution on a consensus basis.

The Transitional Government

Preparing a climate for a referendum and free and fair elections is the responsibility of the government.

There seems to be sufficient consensus at CODESA Working Group 3 that the present South African Government, being a one party government, cannot fulfil this role and that a transitional government must create the level "playing-field" necessary for a referendum and free and fair elections.

A transitional government should be free of domination and not pre-determine the outcome of the negotiating process for a new constitution taking place at CODESA.

Such a government should improve the internal climate as it would, inter alia, have more credibility and impartiality, thereby reducing violence and promoting peaceful political activity while it should also be able to improve the external climate and pave the way for economic development.

Economic development will be essential for peaceful and democratic constitutional development as the problems of constitutional development without economic development are clearly demonstrated elsewhere in the world.

A transitional South African Government should be as inclusive as possible and all delegations at CODESA from within the borders of the Republic of South Africa should be represented on a basis of equality.

Such a transitional government should be in the best position to create a climate conducive for a referendum which should take place once CODESA has agreed on the principles to be entrenched in the new constitution.

While the Ciskei delegation must take part in the constitution-making process, because these negotiations will determine its future, the Ciskei can not be part of a transitional government for South Africa as the government of an independent sovereign state. It is, however, considered important for the Ciskei delegation to take part in the negotiations to bring about a transitional government in South Africa because such a government will influence the future of South Africa to which the Ciskei has committed itself.

In conclusion the Ciskei Government submits:

- That it is, therefore, clear that the Ciskei Government is totally opposed to interim elections before the new constitution is in place because of the effect it would have on a level "playing-field" for the writing of the constitution and for the effect it would have on a level "playing-field" for a transitional government;
- That interim elections would merely tip the "playing-field" in the opposite direction and that further arguments against such elections have already been tabled by the Ciskei delegation in Working Group 3;
- That it must be emphasised again that a distinction should be made between the Ciskei Government, which has to take the interest of all its citizens (especially those citizens not represented at CODESA by their organisations) into consideration, and political groups who promote their own ideals and political power;
- That the Ciskei Government does not support or oppose any political group which is engaged in peaceful political activity as agreed upon in the Peace Accord;

- That the Ciskei Government is committed to re-incorporation into a non-racial united South Africa but reserve the right to negotiate a defined authority for the region it shall form part of, to protect existing economic policies and strategies for its economic development, to protect its civil service and existing infra-structures and to protect the right of the people of the region to promote their interests;
- That the Ciskei Government, as the de facto and de jure government, considers itself a facilitator for orderly and efficient transitional government and socio-economic development while keeping the "playing-field" level until its people can make an informed decision on their future at a referendum for the new constitution.

The position of the Ciskei Government is therefore that the question of elections or a referendum is premature at this stage. Re-incorporation of the Ciskei into the new South Africa can only take place when the people of the Ciskei know what they are going to re-join and know that in doing so they will be better off than they have been in the past. The citizens of the Ciskei must make such an informed decision at a referendum in a climate conducive to peaceful political activity.

Such referendum can only be held when

- (a) the principles as a basis for the new constitution for South Africa have been clearly formulated;
- (b) the boundaries of the region to be created have been drawn;
- (c) the electoral system and process has been crystallized; and
- (d) the interests mentioned in (a), (b) and (c) above have been statutorily entrenched.