

DEMOCRATIC PARTY

AGENDA ITEM: 7.2

"PURPOSES AND OBJECTIVES OF
PROPOSED INTERIM ARRANGEMENTS"

THE PROPOSALS WHICH FOLLOW DRAW FROM THE ORIGINAL
SUBMISSIONS PUT BY THE D.P. TO WORKING GROUP THREE,
BUT HAVE BEEN CONSIDERABLY ENRICHED AND EXPANDED BY
PROPOSALS MADE BY OTHER DELEGATES.

PURPOSE

GOVERN S.A. ACCORDING TO POLICIES AGREED UPON AT CODESA UNTIL THE ELECTION OF THE FIRST PARLIAMENT UNDER THE NEW CONSTITUTION.

ITEM 7.2

OBJECTIVES

- 1) TO PRESERVE CONSTITUTIONAL AND LEGAL CONTINUITY OF GOVERNMENT.
- 2) TO BUILD CREDIBILITY, LEGITIMACY AND ACCEPTABILITY OF GOVERNMENT BY BROADENING THE BASE.
- 3) TO ENSURE STATE IMPARTIALITY THROUGHOUT THE PERIOD, PARTICULARLY IN THE CONTROL OF THE PUBLIC MEDIA, BUDGET AND SECURITY FORCES.
- 4) TO LEVEL THE PLAYING FIELDS AND CREATE FREE AND FAIR CONDITIONS FOR ELECTIONS.
- 5) TO ENSURE STABILITY AND CONTAIN VIOLENCE.
- 6) TO ENSURE THE CONTINUATION OF SERVICE DELIVERY VIA THE CONTINUED LOYALTY AND COMMITMENT OF THE PUBLIC SERVICES.
- 7) TO PROMOTE CO-RESPONSIBILITY AND BUILD TRUST AND RECONCILIATION BETWEEN PARTICIPATING GROUPS.
- 8) TO EXPEDITE THE TRANSITION TO DEMOCRACY BY
 - * PREPARING OUR PEOPLE FOR A DEMOCRATIC FUTURE.
 - * DRAWING NON-PARTICIPATING GROUPS INTO THE PROCESS.
- 9) TO NEGOTIATE AND APPLY SOLUTIONS TO URGENT PROBLEMS EVEN BEFORE A NEW CONSTITUTION IS FINALISED.

CONSTITUTIONAL AND LEGAL CONTINUITY

WHAT DOES IT MEAN ?

1) LEGAL CONTINUITY

AS SOUTH AFRICA IS A SOVEREIGN STATE ENDOWED WITH SOVEREIGN STATE ORGANS, THERE SHOULD NOT BE A BREAK IN THE EXISTENCE AND VALIDITY OF SUCH ORGANS AND THEIR ACTIONS.

- AVOID VACUUMS AND UNCERTAINTIES IN LEGISLATIVE, EXECUTIVE AND JUDICIAL ARMS OF GOVERNMENT.
- LEGISLATION MUST PROVIDE FOR STATUS AND POWERS OF ALL BODIES, AND TRANSACTIONS AND LEGAL PROCEEDINGS WHICH COMMENCE NOW AND CONTINUE THROUGH INTERIM SHOULD BE FREE OF UNCERTAINTY.

2) CONSTITUTIONAL CONTINUITY

SUBSTANTIVE QUALITY OF GOVERNMENT SHOULD BE SUCH THAT CONSTITUTIONALITY AND LEGITIMACY WILL BE GUARANTEED (EVEN IF ORGANS OF PRESENT GOVERNMENT DO NOT DISPLAY THESE QUALITIES).

- * INTERIM ORGANS SHOULD STRIVE TO MEET REQUIREMENTS OF:-
 - ACCOUNTABILITY
 - REPRESENTATIVENESS
 - CONSTITUTIONALISM
 - DEMOCRACY
- * CONSTITUTIONALISM IMPLIES THAT THE POWERS OF THE STATE SHOULD BE DEFINED AND LIMITED BY LAW TO PROTECT THE INTERESTS OF SOCIETY.
- * THESE INTERESTS WILL BE FURTHER PROTECTED BY AN INTERIM BILL OF RIGHTS.

DEMOCRATIC PARTY

POLICY PROPOSALS FOR THE MANAGEMENT OF THE TRANSITION

(Submission to Codesa Working Group 3 on Thursday, 6th February, 1992)

1. INTRODUCTION

1.1 What is "Transition"?

1.1.1 South Africa is in a process of moving from minority domination to a new inclusive democracy. This process is commonly referred to as "the transition", and encompasses the passage of time and sequence of events that will, or should, take place between now and the date on which the new constitution for South Africa comes into operation.

1.1.2 There are two distinct features or processes which will characterize the transition:

- (a) the negotiation process itself from which a new constitution, economic system and social order must emerge; and
- (b) the manner in which the country is governed and managed until the introduction of a new constitution.

2. VISION

2.1 The Democratic Party is committed to working towards political orientation in South Africa in which democrats will naturally be drawn together. In the process of achieving this ideal, the Democratic Party will work for a convergence towards the democratic centre involving the coming together of significant sections (if not all) of the ANC, the NP, the IFP, the DP and other democratic parties and carrying the endorsement of millions of South Africans who are today without a political home. This should lead to a Government of National Reconciliation. Post-negotiation South Africa cannot successfully be administered without such a government inter alia because:

- (a) A government which cannot command the loyalty of the population as a whole will result in political volatility, while a government which cannot command the confidence of investors will result in economic stagnation;
- (b) The failure to bring about such a government will perpetuate the present "system" versus "struggle" politics, with all its inherent instability, violence, poverty, inefficiency and corruption;
- (c) There is no long-standing tradition of democracy in South Africa, and democratic procedures need to be carefully nurtured. Until the tradition of democracy is strengthened to withstand the strains of open, competitive and confrontational politics, and until the wrongs of the past have been righted, politics needs to be directed towards unity and consensus; and
- (d) Only a centrist alliance will be able adequately to maintain law and order, restore stability and create a climate attractive for investment.

2.2 The Democratic Party believes that a start must be made during the transitional period to build this democratic centre. To be successful, transition must be an inclusive process involving as broad a cross-section of South Africans as possible, both at leadership and community levels.

2.3 The DP also advocates an incremental approach to the transition. Very importantly, this involves the adaptation of the present constitution to accommodate transitional measures negotiated prior to the adoption of an entirely new constitution. Rather than suspending the constitution, or preserving it at all costs, the DP wishes to reconstruct the constitution in a way which will bring about real change without co-option at the same time as preserving constitutional continuity.

3. CONVENTION FOR A DEMOCRATIC SOUTH AFRICA

3.1 The DP believes that the negotiation and transition processes must commence with the first meeting of the Convention for a Democratic South Africa (CODESA). This body will continue to be the principal agent for the management of the transition.

3.2 To be effective, the conference must be as broadly representative of all shades of political opinion as possible, and all reasonable steps should be taken to secure the attendance by as many parties and movements as possible.

3.3 The purpose of CODESA should be to agree on:

- * the composition, functioning and powers of the body to be charged with drawing up the new constitution (the DP favours an elected Constitutional Conference);
- * a set of principles upon which the new constitution will be based.
- * the form and functioning of the governing authority during the process of transition from an apartheid South Africa to a new non-racial democracy (the DP favours a multi-party Transitional Government of National Reconciliation);
- * procedures to be followed to ensure the legal continuity and legitimacy of the new constitution; and
- * the participation of the TBVC states in the negotiation and transition process and the principle of their re-unification with South Africa under the new constitution; and
- * the drawing up and introduction of a Bill of Rights for the transitional period.

4. PROPOSALS FOR TRANSITIONAL GOVERNMENT

4.1 Introduction

4.1.1 However imperfect the present constitution may be, South Africa has an elected government recognized by the international community. Nevertheless the constitution excludes the vast majority of South Africans from participation in the formation of the government and accordingly lacks legitimacy.

4.1.2 South Africa therefore needs a Transitional Government of National Reconciliation, which must be the product of agreement at CODESA.

4.1.3 The objectives of the Transitional Government of National Reconciliation should be:

- * To preserve constitutional and legal continuity of government;
- * To build credibility, legitimacy and acceptability of government decisions and policies by broadening the base of government;
- * To promote, and as far as possible ensure, even-handed and impartial stewardship of key government functions, particularly control of government expenditure, of the broadcast media and of the security forces;
- * To ensure stability, and the continued loyalty and commitment of public servants; and
- * To promote shared responsibility and to build trust and goodwill between participating political groups.

In addition, such a transitional government would help to prepare the people of South Africa for the advent of a fully democratic constitution and would assist in containing violence and preventing the polarization and militarization of our politics.

4.2 The Council of Leaders

4.2.1 A Council of Leaders will be appointed by CODESA representing significant political parties or groupings and will include the State President.

4.2.2 The State President will exercise all executive functions provided for in the constitution on the advice of the Council of Leaders in the same manner in which he normally acts on the advice of the Cabinet.

4.2.3 In the event of an inability to reach consensus on a matter of significance, the Council may refer this dispute back to CODESA.

4.2.4 The State President and the Council of Leaders shall:

- * Give effect to decisions of CODESA; and
- * Resolve deadlocks which may be referred to them by the multi-party Cabinet committees.

4.2.5 The State President and the Council of Leaders may further together decide to:

- * Change the composition and structure of the Cabinet;
- * Provide for interim participative structures on provincial and local government level;
- * Broaden the representivity of the judiciary, public service and armed forces;
- * Appoint specialist commissions to investigate and resolve particular issues; and
- * Make appointments to various government advisory bodies.

4.3 Multi-Party Cabinet Committees

4.3.1 Each Cabinet Minister, or where it is practical, group of Cabinet Ministers, will in the execution of his or their responsibilities act on the advice of a multi-party cabinet committee, appointed by CODESA. The Minister(s) will be member(s) of the committees.

4.3.2 The multi-party cabinet committees will be consulted before legislation is introduced to parliament and before the Minister(s) exercise(s) the executive power vested in him/them, and he/she/they will not proceed with the legislation or executive action until the committee has given its advice, subject to reasonable time limits.

4.3.3 Should the Minister, or Ministers, be unwilling to follow the advice of a multi-party cabinet committee, the matter shall be referred to the Council of Leaders.

4.3.4 While the multi-party cabinet committees would be competent to give the Minister(s) any advice they saw fit, it is not anticipated that such committees would involve themselves in the day-to-day administration of the government departments.

4.4 Remuneration

4.4.1 Any person who serves on CODESA, the Council of Leaders, a multi-party cabinet committee or any commission set up by any of these bodies will be paid a salary drawn from the State Revenue Account: provided that persons already receiving a salary from the State shall not be entitled to receive a double salary for such service.

4.4.2 In addition, funds should be made available for the maintenance of secretariat and research services for persons serving on these bodies.

4.5 Integration of the Public Service

4.5.1 The composition of South Africa's public service should reflect the composition of the population far more than it does at present. In cases where political groupings control their own bureaucratic structures, a start can be made by negotiation to integrate these bureaucracies into the existing public service. In any event specialist commissions should be set up to negotiate

appropriate criteria for such issues as standards of education and training, efficiency and effectiveness, repatriation, pension and pay, promotion policy, re-orientation, command and control during the transition and compensation payable for the taking over of assets. A negotiated and appropriate affirmative action programme should also be commenced as soon as possible.

4.5.2 Of particular significance is the integration of the foreign missions of the ANC and the PAC, and the integration of their armed wings into the SADF and the SAP. (The issue of the integration of the armed forces is dealt with in more detail in the Democratic Party Position Paper "Containing Violence - The Peace Management Dimension")

4.5.3 The specialist commissions' reports will be submitted to the Council of Leaders for endorsement or amendment, and implementation.

4.6 Other Interim Arrangements

4.6.1 The Democratic Party believes that it is not necessary to wait for a new constitution to be finalized before negotiating and applying solutions to urgent problems facing the country, even if such solutions may be temporary and may change once the constitution is agreed to in its final form. It is, for example, urgently necessary to negotiate interim local government structures, and in this connection attention is drawn to the Democratic Party Position Paper "The Political and Structural Transformation of South African Cities : Principles, Processes and Policies". Other areas requiring urgent attention are the negotiation of measures for inclusive participation at regional/provincial levels of government, the development of underdeveloped areas and communities, the development of black skills, particularly in government and administration, and the negotiation of new national symbols.

4.6.2. Some progress has been made in this respect in a few important fields already, including sport, low cost housing and education. Significant success has also been made in addressing the issue of violence in the National Peace Accord, and success in lowering levels of political violence will be a critical determinant in the success of the transition. Another critical determinant of its success will be making change visible on the ground, and the Democratic Party's solution to some of these problems is contained in its position paper "Proposals for the Alleviation of Poverty, Hunger and Unemployment during the Transition". Equally important is the removal of residual "constitutional" apartheid and the counteracting of the effects of apartheid.

4.6.3 Transitional Constitutional Adaptations

4.6.3.1 While the formation of the Council of Leaders and the multi-party cabinet committees are essentially contractual arrangements between political parties, some changes will have to be made to the present constitution to sanction transitional structures and procedures, as outlined above, prior to the negotiation of an entirely new constitution.

4.6.3.2 In addition, Parliament should, as soon as possible, pass legislation abolishing the distinction between so-called "own affairs" and "general affairs", and providing for single,

functional departments of health, education, agriculture and so on, as well as for a unicameral legislature. Parliamentary procedure (including the appointment of joint committees) should be likewise amended. Other constitutional changes may also have to be enacted.

4.6.4 A Bill of Rights for the Transitional Period

4.6.4.1 CODESA should negotiate an interim Bill of Rights, covering basic rights, inter alia freedom of speech, of assembly, of movement, of association and of religion. Also included should be provisions outlawing race and gender discrimination of any nature, as well as protection against arbitrary arrest and detention.

4.6.4.2 Such a Bill ought also to contain a Code of Conduct for Political Parties, including an obligation to conduct their activities peacefully, the prohibition of intimidation and the obligation that financial statements be properly audited.

4.6.4.3 To have legal force, the Bill of Rights would have to be submitted to, and endorsed by, Parliament.

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(as adopted at the DP National Congress on 14 November 1991)

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4.6.4.3 To have legal force, the Bill of Rights would have to be submitted to, and endorsed by, Parliament.

5. PROPOSALS FOR THE PROCEDURES FOR THE NEGOTIATION OF A NEW CONSTITUTION

5.1 General Principles

5.1.1 The general principles upon which the constitution is to be based and procedures to be followed in the negotiation of a new constitution should be agreed to by CODESA, and will be binding on all parties.

5.2 Neutral Facilitation or other Chairmanship

5.2.1 The National Party cannot be both referee and participant in the negotiation process leading to a new constitution. CODESA may determine a permanent or rotating system of chairmanship from amongst the parties participating, or it may invite a neutral facilitator or facilitators to convene and chair meetings of the body or bodies established to undertake the task of drawing up the new constitution.

5.3 The Negotiation Commission and Secretariat

5.3.1 The facilitator or chairman designated by CODESA will be the head of a negotiation commission which will supervise the negotiation process. The duties of the commission will include providing facilities for the body or bodies negotiating the constitution, providing legal or other research and information, supervising the election of any body or bodies which may be agreed upon, ensuring compliance with any interim arrangements which may be negotiated, and certification of the results of an election held after the adoption of the new constitution.

5.3.2 The negotiation commission will be served by a secretariat.

5.3.3 The negotiation commission will have a budget, which will include the costs associated with meetings of the body or bodies set up to negotiate a new constitution, to be drawn from the State Revenue Account.

5.4 The Negotiation of the New Constitution

5.4.1 The DP believes that in order to provide an acceptable framework within which government can take place and at the same time to achieve political stability, the new constitution must be the product of negotiation by the representatives of all political groupings in South Africa.

5.4.2 As a first step in this process, CODESA, attended by representatives of all political parties and movements should reach agreement on the principles on which the new constitution should be based and the composition, functioning and powers of the body to be charged with drawing up the new constitution (the DP favours an elected Constitutional Conference).

5.4.3 Once agreement on these matters has been reached, a Constitutional Conference should be elected and charged with the task of drawing up the new Constitution.

5.4.4 In relation to the Constitutional Conference, the DP believes that:

5.4.4.1 The Constitutional Conference should consist of approximately 200 members. It will be elected on the basis of universal adult franchise, with each voter voting for a party of his or her choice, and will be constituted on a basis of proportional representation, with a cut-off of 1%.

5.4.4.2 The Constitutional Conference will sit only as long as it takes to negotiate a new constitution, or for two years, whichever is the shorter period, after which it will be dissolved. In the event of the constitution not having been finalized after two years, fresh elections for another Constitutional Conference will be held.

5.4.4.3 Having drawn up the constitution for submission to the people by way of a referendum, the Constitutional Conference will automatically dissolve.

5.4.4.4 The Constitutional Conference will be convened and chaired by the person or persons agreed to by CODESA. Committees of the Conference may be established, and will be chaired by a member of the negotiation commission. The Conference will be empowered to determine its own procedures, including the right to hold all or any part of its sessions in committee, but it will be bound to adhere to the constitutional principles established by CODESA.

5.4.4.5 The Constitutional Conference will endeavour to take decisions on the basis of consensus, especially in respect of such matters as the entrenchment of the constitution, the bill of Rights, the language issue and so on. Should it be unable to reach consensus, it may take decisions with a positive vote of seventy percent of the total number of its members, providing

(a) The majority Party represented in the Constitutional Conference would have to agree; and

(b) The majority Party in Parliament (which would also be represented in the Constitutional Conference) would have to agree.

5.4.5 Once the Constitutional Conference has approved a new constitution and each of the clauses thereof, it will be referred to the people of South Africa for approval and enactment by way of a referendum. After endorsement by such a referendum, it will become the new constitution of South Africa at the agreed date.

5.5 Constitutional Continuity

5.5.1 In order to ensure the legal continuity of South African constitutions, Parliament should pass enabling legislation which establishes the Constitutional Conference, provides for elections thereto, and which gives that body the legal competence to draw up a constitution for South Africa. This legislation should also make provision for set procedures to be followed, failing which the new constitution would be invalid, for the repeal of the present constitution upon the approval of the new constitution and for transitional measures contemplated in this document.

5.6 The Referendum

5.6.1 Parliament shall provide for the approval of the draft constitution by a referendum of all adult South Africans, and shall enact that the constitution will become law upon its approval by a majority of voters.

5.6.2 The referendum will be organized and supervised by the negotiation commission.

5.6.3 The constitution will become law when the negotiation commission has certified that a majority of voters have approved it in the referendum.

5.7 Elections under the New Constitution

5.7.1 Elections in terms of the new constitution will be held within three months of the constitution becoming law.

5.7.2 These elections will likewise be supervised by the negotiation commission or such other body as may be agreed upon by consensus by CODESA.