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LABOUR PARTY OF SOUTH AFRICA

THE CONSTITUTION MAKING BODY

1. It is essential that the constitution making body universally be perceived to be legitimate given South Africa's constitutional and political history and the way successive governments have unilaterally imposed constitutional bodies on black people. It must therefore be a body elected by universal adult franchise.
2. There is wide and virtually unanimous support for a system of proportional representation. It will be necessary for Codesa to examine, research and debate the exact model of proportional representation that should be used for the purpose of electing a constitution making body. The German hybrid model combines the advantages of both the constituency and proportional representations systems. The Labour Party proposes that this model, with appropriate modifications should be seriously considered, taking into account the possibility that the constitution making body may simultaneously be part of an interim legislature.

A threshold of 1% would be more appropriate than a 5% threshold for South Africa.
3. Taking the population, demography and other relevant factors into account, the size of the body will have to be determined. The Labour Party proposes a body of 400 representatives.
4. The principal function of the constitution making body will be to debate, amend and ratify the provisions of a draft constitution, drawn up by an all-party group of constitutional experts, selected from the ranks of all in the constitution making body and assisted by their advisors. This body will be guided by the constitutional principles agreed to by Codesa. Disagreement in regard to the interpretation of the constitutional principles will have to be adjudicated on by a constitutional court set up in terms of legislation enacted by the interim legislature.

2.

5. Decisions by the constitution making body should be taken by substantial consensus except in cases of irreconcilable conflicts when a two thirds majority should be used to resolve deadlocks.
6. The constitution making body should simultaneously function as the democratically elected upper house of the interim legislature, the interim lower house of which should be constituted from the amalgamation of the representatives of the three chambers of the tri-cameral Parliament, all members of which should enjoy the same status and privileges. The lower house will concern itself with the enactment of necessary legislation required during this period, which will have to be approved by the democratically elected upper house, which will have a veto over all legislation passed by the lower house. Sovereignty with regard to the constitution making process will vest in the interim upper house (constitution making body). The demarcation between own and general affairs must be abolished. Once this has been done, the interim lower house (the amalgamated tri-cameral parliament) must function as a single house during the process of transition.
7. The self-governing and TBVC states will continue to function until the new regional constitutions come into being.
8. The amalgamated tri-cameral Parliament will, as the formal legal authority in South Africa, have to pass the necessary legislation setting up the constitution making body, the interim government and legislature.
9. The interim legislature will have to elect an interim chairman who will chair an interim executive responsible to the interim legislature. It should take the form of a government of National Unity during this period, the members of which could be drawn from both houses and even from outside of the interim legislature. The interim chairman shall execute his powers with the concurrence of the interim executive.
10. When all the working groups at Codesa have disposed of all their allocated tasks, the preparations for the election of the constitution making body should commence.
11. The constitution making body should plan to complete its task within a period of approximately 12 months.

3.

12. The constitution making body should simultaneously consider and draft the constitutions of the demarcated regions which will have to be compatible with the national constitution. Thus constitution making should commence simultaneously both from the top down and from the bottom up. Members elected on the national list should concern themselves with the national constitution and members elected by way of constituencies within 10 demarcated regions should concern themselves with the constitutions of their respective regions.
13. On the completion of the drafting, debating and passing of the constitution by the constitution making body, it must be submitted to the electorate for ratification by referendum.