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*Promoting knowledge
and understanding
of apartheid
and its effects.*

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SOUTHERN AFRICA DOCUMENTATION SERVICE

Dear Friend

I hope that you have received my letter and sample copy of Issue 1 of the Southern Africa Documentation Service sent in December 1991.

As you will be aware the Southern Africa Documentation Service seeks to provide a full range of the key documents pertaining to the peace process in South Africa on a regular basis to its subscribers.

In view of the successful meeting of the Convention for a Democratic South Africa (CODESA) held on the 21st and 22nd December, I am pleased to be able to send you an additional set of Documents as a further example of what the Service provides.

Please find enclosed copies of the Declaration of Intent, Agreed Terms of Reference for Working Groups for CODESA and a Joint Statement by International Observers to the first meeting of CODESA, Johannesburg 20 -21 December 1991.

If you have not taken out a subscription already I urge you to do so. A further copy of the subscription rates for the initial 6 month period is enclosed. The subscription entitles you to receive three Issues of the Service.

Please do not hesitate to contact me if you require any further information about the Documentation Service or the work of the Trust as a whole.

Yours sincerely,

Abdul S. Minty.

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JOINT STATEMENT BY INTERNATIONAL OBSERVERS
TO THE FIRST MEETING OF CODESA,
JOHANNESBURG 20-21 DECEMBER 1991

We, the observers to Codesa from the United Nations, the Organisation of African Unity, the Non-Aligned Movement and the Commonwealth, salute the South African people for the launching of their historic Convention. Codesa must herald the dawn of a new era of peace and justice. The broad objectives expressed in the Declaration of Intent are a most constructive and auspicious beginning for Codesa and give promise of attainment of true democracy for South Africa.

We express the hope that all the representatives of the South African people will join in the rebuilding of their country and that reason, good faith and patriotism will steer this challenging process to a successful conclusion.

Our presence at Codesa is a testimony of the profound commitment by the international community to encourage the emergence of a democratic non-racial South Africa with justice, security and well-being for all its citizens.

The following organisations were represented as observers to CODESA:

Commonwealth of Nations

United Nations Organisation

Organisation of African Unity

Non-Aligned Movement

European Economic Community

United Nations High Commissioner for Refugees

- d. that there shall be separation of powers between the legislature, executive and judiciary with appropriate checks and balances;
- e. that the diversity of languages, cultures and religions of the people of South Africa shall be acknowledged;
- f. that all shall enjoy universally accepted human rights, freedoms and civil liberties including freedom of religion, speech and assembly protected by an entrenched and justiciable Bill of Rights and a legal system that guarantees equality of all before the law.

We agree:

- 1. that the present and future participants shall be entitled to put forward freely to the Convention any proposal consistent with democracy.
- 2. that CODESA will establish a mechanism whose task it will be, in co-operation with administrations and the South African Government, to draft the texts of all legislation required to give effect to the agreements reached in CODESA.

We, the representatives of political parties, political organisations and administrations, further solemnly commit ourselves to be bound by the agreements of CODESA and in good faith to take all such steps as are within our power and authority to realise their implementation.

The above statement was signed by representatives of the following organisations:

African National Congress
Ciskei Government
Democratic Party
Inkatha Freedom Party
Intando Yesizwe Party
Natal/Tvl Indian Congress
National People's Party
South African Communist Party
United People's Front
Ximoko Progressive Party

Bophuthatswana Government
Democratic Party
Dikwankwetla Party
Inyandza National Movement
Labour Party of S.A.
National Party
Solidarity
Transkei Government
Venda Government

We, the South African Government, declare ourselves to be bound by agreements we reach together with other participants in CODESA in accordance with the standing rules and hereby commit ourselves to the implementation thereof within our capacity, powers and authority.

The above statement was signed by President De Klerk, on behalf of the National Party.

Nkosi sikeleli' iAfrika. Ons vir jou Suid Afrika.
Morena boloka sechaba sa heso. May the Lord bless our country.
Mudzimu Fhatutshedza Afrika. Hosi katekisa Afrika.



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DECLARATION OF INTENT

We, the duly authorised representatives of political parties, political organisations, administrations and the South African Government, coming together at this first meeting of the Convention for a Democratic South Africa, mindful of the awesome responsibility that rests on us at this moment in the history of our country,

declare our solemn commitment:

1. to bring about an undivided South Africa with one nation sharing a common citizenship, patriotism and loyalty, pursuing amidst our diversity, freedom, equality and security for all irrespective of race, colour, sex or creed; a country free from apartheid or any other form of discrimination or domination;
2. to work to heal the divisions of the past, to secure the advancement of all, and to establish a free and open society based on democratic values where the dignity, worth and rights of every South African are protected by law;
3. to strive to improve the quality of life of our people through policies that will promote economic growth and human development and ensure equal opportunities and social justice for all South Africans;
4. to create a climate conducive to peaceful constitutional change by eliminating violence, intimidation and destabilisation and by promoting free political participation, discussion and debate;
5. to set in motion the process of drawing up and establishing a constitution that will ensure, inter alia:
 - a. that South Africa will be a united, democratic, non-racial and non-sexist state in which sovereign authority is exercised over the whole of its territory;
 - b. that the Constitution will be the supreme law and that it will be guarded over by an independent, non-racial and impartial judiciary;
 - c. that there will be a multi-party democracy with the right to form and join political parties and with regular elections on the basis of universal adult suffrage on a common voters roll; in general the basic electoral system shall be that of proportional representation;



AGREED TERMS OF REFERENCE FOR WORKING GROUPS FOR CODESA

WORKING GROUP 1

1. FIRST ASSIGNMENT

Creation of a climate for free political participation.

1.1 Terms of Reference

WHEREAS the parties at Codesa have committed themselves to the terms and objectives set out in the Declaration of Intent as amended from time to time

AND WHEREAS it has been nationally and internationally recognised that a climate for free political participation is an essential element of the transitional phase towards and in a democratic South Africa

AND WHEREAS democracy requires that all the participants in the political process should be free to participate in that process without fear and on an equal footing and on a basis of equality with the other participants

IT IS RECORDED that the terms of reference of the Working Group on the Creation of a Climate for Free Political Participation shall be as follows:

- 1.1.1 To investigate and report upon all proposals and make recommendations with regard to the actions needed to be taken to foster and establish in South Africa a climate in which all individuals and organisations can participate freely, without interference or intimidation, in all political activity and, in particular, in the processes leading up to the introduction of a new constitution
- 1.1.2 To identify the key issues and problems that need to be addressed.
- 1.1.3 To identify of areas of commonality and aspects where agreement already exists between participating delegations.

1.1.4 Specifically, but without vitiating the generality of the above, to consider whether and how the following issues should be addressed:

- (a) the finalisation of matters relating to the release of political prisoners and political trials;
- (b) the return of exiles and their families;
- (c) the amendment and/or repeal of any remaining laws militating against free political activity, including the elimination of all discriminatory legislation;
- (d) political intimidation;
- (e) the termination of the use of military and/or violent means or the threat thereof of promoting the objectives/views of a political party or organisation;
- (f) political neutrality of, and fair access to, State-controlled/statutorily instituted media (particularly the SABC and SATV), including those of the TBVC states;
- (g) the successful implementation of the National Peace Accord;
- (h) the prevention of violence-related crime and matters giving rise thereto;
- (i) the composition and role of the security forces in South Africa and the TBVC states;
- (j) the funding of political parties;
- (k) the fair access to public facilities and meeting venues;
- (l) the advisability of statutory provisions guaranteeing equal opportunity for all parties to establish and maintain their own means of mass communication;
- (m) the need for an improvement in socio-economic conditions;
- (n) the fostering of a spirit of tolerance amongst political parties;
- (o) the role of intensive and continuous educative and informative campaigns in respect of political tolerance, the working of democracy and the processes of Codesa;
- (p) the advisability of fair and reasonable access for political parties to all potential voters, wherever they may reside;
- (q) any other matters which the working group may consider relevant to its brief.

2. SECOND ASSIGNMENT

Role of international community.

2.1 Terms of Reference

WHEREAS the parties at Codesa have committed themselves to the terms and objectives set out in the Declaration of Intent

AND WHEREAS the validity and acceptability of the process of transition and the outcome thereof internally and internationally, will depend on an open and fair process providing for full and effective participation of all South Africans

IT IS RECORDED that the Working Group on the Role of the International Community shall have the following terms of reference:

- 2.1.1. To investigate, consider and report upon all proposals and make recommendations with regard to the role that the international community and/or organisations could be asked to play in the formal or informal processes involved in the period leading up to the introduction of a new constitution for South Africa.
- 2.1.2 To identify the key issues and problems that need to be addressed.
- 2.1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.

WORKING GROUP 2

1. FIRST ASSIGNMENT

General Constitutional Principles.

1.1 Terms of Reference

WHEREAS the parties at Codesa have committed themselves to the terms and objectives set out in the Declaration of Intent as amended from time to time

IT IS RECORDED that the Working Group on General Constitutional Principles shall have the following terms of reference:

- 1.1.1 To investigate and report upon all proposals and make recommendations with regard to general constitutional principles which should be enshrined in and not contradicted by any other provisions of a new constitution, provided that the present and future participants of CODESA shall be entitled to put forward freely to this Working Group any proposal or matter consistent with democracy for discussion, consideration and recommendation.
- 1.1.2 To identify the key issues and problems that need to be addressed.
- 1.1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.

2. SECOND ASSIGNMENT

Constitution-making body/process

2.1 Terms of Reference

WHEREAS the parties at Codesa have committed themselves to the terms and objectives set out in the Declaration of Intent as amended from time to time to the establishment of a democratic South Africa, enjoying internal legitimacy and international acceptance

AND WHEREAS it has been agreed that a Working Group on the constitution-making body/process shall be appointed by Codesa in order to formulate proposals and make recommendations on the appropriate body/process to draft a new constitution for South Africa

IT IS RECORDED that the Working Group on a constitution-making body/process shall have the following terms of reference:

- 2.1.1 To investigate and report upon all proposals and make recommendations with regard to an appropriate constitution-making body/process.

In respect of both the constitution-making process and body:

- 2.1.2 To identify the key issues and problems that need to be addressed.

- 2.1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.

- 2.1.4 In respect of a constitution-making process:

Specifically, but without vitiating the generality of the objective, to consider:

- (a) to make recommendations to Codesa regarding the process through which a new constitution may be formulated;
- (b) how far the process can be taken by Codesa itself;
- (c) at what stage a special constitution-making body, if any, should be constituted;
- (d) the role of referenda, if any, in the constitution-making process;
- (e) legislative and administrative steps that may be required to reinforce the constitution-making process;
- (f) the method of transferring constitutional authority to the new constitution and its structures at national, regional and local level;
- (g) any other matters which the working group may consider relevant to its brief.

- 2.1.5. In respect of a constitution-making body:

In the event of it being recommended that there be a special constitution-making body, then specifically, but without vitiating the generality of paragraph 2.1.1, is to be considered:

- (a) its composition
- (b) its legal status
- (c) its authority including limitations eg principles, procedures, etc that may have been agreed previously
- (d) its method of functioning
- (e) the status of its decisions
- (f) should it be an elected body, the appropriate electoral process
- (g) any other matter which the working group may consider relevant to its brief.

WORKING GROUP 3

ASSIGNMENT

Transitional arrangements/interim government/transitional authority.

i. Terms of Reference

WHEREAS the parties at Codesa have committed themselves in the terms set out in the Declaration of Intent as amended from time to time

AND WHEREAS it has been agreed that a Working Group of Codesa should be appointed to consider the issue of interim government/transitional arrangements/transitional authority

IT IS RECORDED that the Working Group on transitional arrangements/interim government/transitional authority shall have the following terms of reference:

- 1.1 To investigate, canvass all possibilities and their application and report upon all proposals and make recommendations with regard to the manner in which the country may be governed and managed until the introduction of a new constitution.
- 1.2 To identify the key issues, processes and problems that need to be addressed.
- 1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.

WORKING GROUP 4

ASSIGNMENT

Future of TBVC states.

1. Terms of Reference

- 1.1 WHEREAS the parties at Codesa have committed themselves in the terms set out in the Declaration of Intent as amended from time to time

AND WHEREAS the parties recognise the need to provide for the meaningful and democratic participation, of all the people living in the TBVC states in the process of drawing up and adopting a new constitution for South Africa as well as in all possible transitional arrangements

AND WHEREAS the reality of the current existence of a number of separate but parallel institutions such as different administrations, civil services, armed forces, police forces and judiciaries as well as differing laws in certain instances which presently exist in South Africa, and the TBVC states: calls for a re-evaluation of this situation

AND WHEREAS in the event of re-incorporation the need to ensure that the lives and livelihood of people in the affected territories shall not be subjected to any unnecessary disruption

IT IS RECORDED that the terms of reference of the Working Group on the future Re-incorporation of the TBVC states are as follows:

- 1.1.1 To investigate and report upon all proposals and make recommendations with regard to the relationships between South Africa, the TBVC states and the people of those states under a new South African constitution.
- 1.1.2 To identify the key issues and problems that need to be addressed.
- 1.1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.
- 1.1.4 Specifically, but without vitiating the generality of the above to consider whether and how:

- (a) to make recommendations to Codesa regarding the manner in which the constitutional status of the TBVC states may be affected by the outcome of negotiations within the framework of Codesa;
- (b) the desirability or otherwise of the re-incorporation of such states;
- (c) testing the will of the people concerned regarding re-incorporation or otherwise, of the TBVC states, by acceptable democratic means;
- (d) strategies to keep the people of the TBVC states fully informed, especially to avoid unfortunate misunderstandings;
- (e) the retention of business confidence, particularly in relation to existing investments in the TBVC states;
- (f) land transfers by South Africa to these states;
- (g) citizenship;
- (h) any other matters which the working group may consider relevant to its brief.

1.1.5 If re-incorporation is decided upon in respect of any TBVC state, matters that will need to be addressed include:

- (a) proposals for the re-incorporation into South Africa of a TBVC state;
- (b) consider the question of transitional arrangements in those states which want to be incorporated;
- (c) the time frames for such a re-incorporation and related processes;
- (d) disposal/transfer of assets of TBVC governments;
- (e) optimal use of existing infrastructure;
- (f) review of development project priorities;
- (g) good administration during transition;
- (h) the formulation of appropriate measures and steps to be taken to ensure that in the process of re-incorporation of a TBVC state, interruption or disruption in administration and the rendering of services and in the daily lives of people in the affected areas are reduced to an absolute minimum;
- (i) consider future of civil service in such states;
- (j) the exact form of authority in the TBVC territories;
- (k) harmonisation of legislation and taxation;
- (l) orderly termination of bilateral and multilateral agreements and treaties;
- (m) servicing and repayment of TBVC state debts;
- (n) ensuring public accountability of actions taken for the purposes of re-incorporation;
- (o) the identification of specific constitutional, legal and political measures and steps which will have to be taken to effect re-incorporation.

WORKING GROUP 5

ASSIGNMENT

Time frames and implementation of Codesa's agreements.

1. Terms of Reference

- 1.1 WHEREAS the parties at Codesa have committed themselves in the terms set out in the Declaration of Intent as amended from time to time.

AND WHEREAS it is necessary to record agreements which are reached at Codesa and to implement such agreements and, accordingly, to prepare in draft form the documentation which is required for effect to be given to such agreements

AND WHEREAS it has been agreed that a Working Group on the Implementation of Agreements/Decisions shall be appointed by Codesa to identify the steps which need to be taken by the parties to Codesa

AND WHEREAS it is desirable to advise on the possible time frames and target dates

IT IS RECORDED that the terms of reference of the Working Group on time frames and the implementation of Codesa's agreements/decisions are as follows:

- 1.1.1 To investigate and report upon all proposals and make recommendations with regard to appropriate time frames and target completion dates for all of the processes and assignments being undertaken by Codesa, its working groups and other bodies created as a result of agreements/decisions of Codesa,
- 1.1.2 To identify the key issues and problems that need to be addressed.
- 1.1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.
- 1.1.4 Specifically, but without vitiating the generality of the above, consider whether and how to address:

- (a) the need for a regularly updated comprehensive list of all the decisions, actions and processes involved;
- (b) the co-ordination of the activities of Codesa and its subsidiary bodies to ensure the greatest possible efficiency of the process towards a democratic South Africa;
- (c) the practicability of setting of target completion dates for all agreements/activities/decisions;
- (d) the monitoring of the process and the adjustment of targets whenever necessary;
- (e) the dissemination of up-to-date information in respect of progress made to all Codesa participants, interested parties and authorities;
- (f) to address the identification of legislation that needs to be enacted or amended;
- (g) to assist in formulating the terms of the legislation or amendments;
- (h) realistically attainable time frames;
- (i) practical effect of implementation of agreements;
- (j) the legality of the process in relation to time frames to be negotiated within the context of constitutional continuity;
- (k) any other matters which the working group may consider relevant to its brief.