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Introduction

This booklet talks about the ANC's proposals for a Constituent Assembly (CA) and an Interim Government of National Unity (IGNU).

This is the second booklet in a series. The first booklet is Seven Steps to Democracy. Seven Steps to Democracy explains how the ANC approaches the whole transition period, from where we are today (resuming multi-party talks) to the creation of a democratic, a and non-sexist South Africa.

The ANC Negotiations Commission has produced this booklet for ANC members and other organisations, to inform people about the proposed Transition to Democracy Act, and enable them to participate in the political process.

In Book 1, we looked at The Transition Process: 7 Steps to Democracy

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The ANC plans that the change from the old, apartheid government to a new and democratic government will happen in seven steps. These are:

1. Bi-lateral and multi-party talks (now happening)
2. The Transitional Executive Committee - a body appointed by all the parties, which will oversee the period before the elections, and â\200\234level the playing fieldâ\200\235 so that all people can participate in the elections.
3. The democratic elections - one person one vote; which elect:
4. The Constituent Assembly (CA) and Interim Government of National Unity (IGNU) - this writes a new constitution, and governs the country until it is adopted.
5. Adoption of the new Constitution.
6. The Government of National Unity and Reconstruction: where the new structures created by the democratic constitution are â\200\234phased inâ\200\235.
7. Elections under the new Constitution: the creation of a truly democratic non-racial and just government.

In this book, we will look at the ANCâ\200\231s proposals for what happens after multi-party talks (that is, at steps 2, 3, and 4).

We agree
that we need a new constitution:

The ANC and the Government have come to some agreements on what the next steps of the transition to democracy will look like. These agreements were made at CODESA and during bi-lateral talks.

The parties at CODESA agreed that before the Interim Government and the Constituent Assembly can take power, the present tri-cameral parliament must pass a law to dissolve itself and put these structures in place. This law will also give procedures and structures for the government for the interim period, before the new constitution is written and adopted.

We do not wish to spend months and years arguing about how the transition occurs. The transition must take a short time and it must give the democratic movement a fair chance.

Therefore, this law will be an amendment to the existing racist tricameral constitution. It is NOT a new constitution. But this law

WILL make it possible for us to write a new, democratic constitution.

The ANC says:

The ANC has written a proposal for what this law will look like. This is called the Transition to Democracy Act (TDA). The TDA contains the ANC's proposals for how the country will be run until a new constitution is written and in place.

The main purpose of this law is to make it possible for people to choose their own representatives, and for these representatives to form a new and democratic government.

This proposal is the result of discussions in the ANC National Negotiations Consultative Forum, ANC regional negotiations structures, and discussions within the tripartite alliance and the Patriotic

What is the Transition to Democracy Act?

The TDA covers this period:

The TDA:

- guarantees free political activity
- abolishes the present government structures
- * reincorporates the TBVC states
- * keeps regions the same
- * puts in place the new elected parliament
- * puts in place the new elected IGNU
- puts in place the new elected Constituent Assembly
- + sets a time limit on the transition.

Elections

Parliament (400
people elected)

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(Adoption of new Constitution)

What is a constitution -
and why do we need a
new one?

The constitution is the highest law in the land. This means that the rights and duties contained in the constitution cannot be changed by other laws. It means the courts must uphold and protect these rights.

The present constitution gives all power to the white people. Africans are not allowed to be part of the central government. Indians and coloureds can only vote for their own houses in the tricameral parliament: these houses are very weak. This constitution was written by a white minority government and only whites were allowed to vote on whether it should be adopted.

We believe all the people of South Africa must have a chance to

help shape the new constitution and the new government. Every-

one must be able to vote for people to represent them. These representatives will write the constitution, to form a government that reflects what the people who elected them want. These representatives must be chosen in free and fair elections. An elected body of this sort is called a Constituent Assembly (CA).

The constitution of a country says:

» how the government is structured

» who chooses the government

what the government's duties to the people are
what the rights of the people are

« what the duties of the people are to the country.

How proportional representation works: The new elected parliament will be made up of 400 representatives. If the ANC wins 60% of all the votes in the country, then the ANC will have 60% of the representatives in the parliament. That means that out of 400 representatives, 240 will be from the ANC. If the

If the National Party win 10% of the votes in the country, then 10% of

the representatives will be from the National Party. They will have 40 representatives.

To do this, we must hold free and fair elections. This system of proportional representation is used in many countries in the world. It is used in Namibia. Every South African over 18 years old will be allowed to vote - men

and women, white and black, in the cities and in the bantustans. This system is different from the election system used for the tricameral parliament. People vote for the party they support. The vote must be secret. Then, people voted for individuals who There must be independent monitors who make sure that the votes represented their area in parliament. In the coming elections, are counted correctly. however, we will not vote for individuals, but for parties.

Who do we vote for? For

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When we vote, we will choose the party they prefer. The parties will choose who will be their representatives in parliament. The number of representatives that a party has in parliament will depend upon the number of votes that the party wins in the elections. This is called proportional representation.

How does the TDA
work?

The TDA guarantees free
political activity

The Act states that everyone has the right to freedom of speech,
freedom to join organisations of their choice, and freedom to move
around the country. Organisations have the right to hold political
gatherings to influence the governme People can not be
detained Ee or security forces,

in searches or raids.

Any law that goes against these rights will no longer exist once the
TDA is passed. No structure of government, including police or
local government, may try to take these rights away from people.

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The TDA gets rid of present
government structures

The TDA gets rid of the whole tricameral parliament. This includes
allthree existing houses of parliament, and the President's Council.
The TDA will decrease the enormous power that the President
holds in the tricameral parliament.

The TDA also gets rid of all the separate government departments
that apartheid created for different race groups. In each areathese
separate departments come together to form a single department.
There will be one Department of Health, and one Department of
Education. The National Party government has said they give dif-
ferent services to different race groups because they are the â\200\234own
affairsâ\200\235 of the different communities. The TDA will get rid of â\200\234own
affairsâ\200\235: the different communities will be concern of the nation.

The TDA reincorporates the TBVC states

The TDA reincorporates the TBVC states by changing the bounda-

ries of South Africa back to what they were in 1910. These â\200\234statesâ\200\235
will have need to pass their own Acts, to dissolve their governments

and make them part of the South African alii Cp eo

The TDA keeps the regions the same

The Constituent Assembly has the task of deciding the new

boundaries for regions. The ANC believes that the regions should not be changed for the interim period, because this might interfere with this task of the CA.

The only change that the TDA makes to regions is to scrap the homeland boundaries. The homelands will then become part of the Cape, Natal, OFS and Transvaal - as they were in 1910.

Regional and local government are not changed by the TDA. They remain in place. In the case of the homelands, the civil service and administration continue to exist and to do their work. However, they must now answer to the administration of the province and not to a homeland government. For example, Lebowa will become part of the Transvaal, and the Lebowa civil service and administration

will become part of the Transvaal Provincial Administration.

The TDA puts in Place the New
Elected Parliament

The TDA says that there will be a new parliament, made up of the 400 members who are elected in the first democratic elections (see page xxx). This will be called the National Assembly. It will act as the Constituent Assembly.

Parliament will sit in Cape Town. It will start one week after the elections. It will continue until a new constitution is adopted. This cannot take longer than two years.

The business of the National Assembly is open to the press and to the public.

What does the new
elected parliament do?

The new elected parliament has two functions:

- * It will draw up the new constitution. It will function as the Constituent Assembly.

- + It will run the country until the new constitution is adopted. It will govern according to rules and procedures that promote national unity. It will function as the Interim Government of National Unity.

The interim government (interim means temporary) governs in the period after the elections, but before the new constitution is adopted. In this period, laws and decisions are made according to rules and procedures agreed on through negotiations. > \ ok :

The interim government is a government of national unity because it must strive to build national unity between the different parties who are elected to the parliament. For instance, many governments can pass laws when more than half the parliament agrees. The IGNU may need two thirds of the parliament to agree to pass | some laws. But these issues must still be negotiated.

The TDA puts in Place the Interim Government of National Unity

The TDA provides certain rules and procedures for the way that the government operates in the interim period. These procedures are aimed at building national unity by ensuring that laws and decisions can only be made if there is a large amount of support for them.

These rules and procedures are:

- Decision making in the National Assembly: all decisions in the National Assembly must be supported by two thirds (66%) of the representatives. Some special decisions (such as changing the TDA) must have support from 80 % of the representatives.

+ Committees of the National Assembly: Committees that are

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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 in the committee will also depend on proportional representation. (For instance, if a party has 60% of the representatives in the National Assembly, it will have 60% of the members in any Committee.)

+ Powers of the State President: The State President is elected by a majority - at least half - of the National Assembly. In the past [the State President had a great deal of power. He could make some decisions on his own, and some with the support of the Cabinet.

In the IGNU, the power of the State President will be reduced. He can only make decisions with the support of two thirds of the Cabinet.

+ A multi-party Cabinet: The Cabinet is made up of Ministers who have responsibility for different areas of government - for instance, for Education, Finance, or Defence.

In most countries the State President appoints the whole Cabinet, in (: . Ah ~ oh yA ls

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choosing only members of his own party. But the TDA says that the State President must appoint a Cabinet that includes representatives from every party that has more than 5% of the seats in the National Assembly. Parties will have Ministers according to proportional representation.

When the State President appoints Ministers from a political party that is not his own party, the leader of that political party must also agree to the appointment. If the State President wishes to remove a Minister from the Cabinet, he must also consult with the political party that the Minister belongs to.

- the flag and national anthem in the Interim period: The TDA includes Nkosi Sikelel' iAfrica alongside Die Stem as the national anthem of South Africa. The TDA says the National Assembly can choose a flag for the interim period if they feel it is necessary.

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

The TDA puts in Place the Constituent Assembly

The National Assembly will function as the Constituent Assembly, and will draw up the new constitution. The CA will adopt each article of the constitution and the constitution as a whole.

Time frame: The work of the National Assembly in writing the constitution must be completed within a certain amount of time. The interim period must not go on for too long.

The TDA provides a way to break a deadlock:

- + If the new constitution is not adopted by two thirds of the National Assembly, new elections must be held to elect a new Constituent Assembly. The new Constituent Assembly must adopt a new constitution in six months.

«If two thirds of the new Constituent Assembly still do not agree on a new constitution, a referendum will be held. If 55% of the people support the constitution proposed by the new Constituent Assembly, it will be adopted.

- + But if less than 55% of the people support it, then a third election must be held. A third Constituent Assembly must be elected, and

it will again draw up a constitution. However, this constitution will be able to adopt the constitution by support from a simple majority (at least half).

The Constituent Assembly has finished its work when the new constitution has been adopted. The TDA will be automatically repealed. The National Assembly must now begin to work according to the new constitution.

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