

**ANC**

**BRIEFING DOCUMENTS**

**FOR**

**CODESA II**

**15th & 16th May, 1992**







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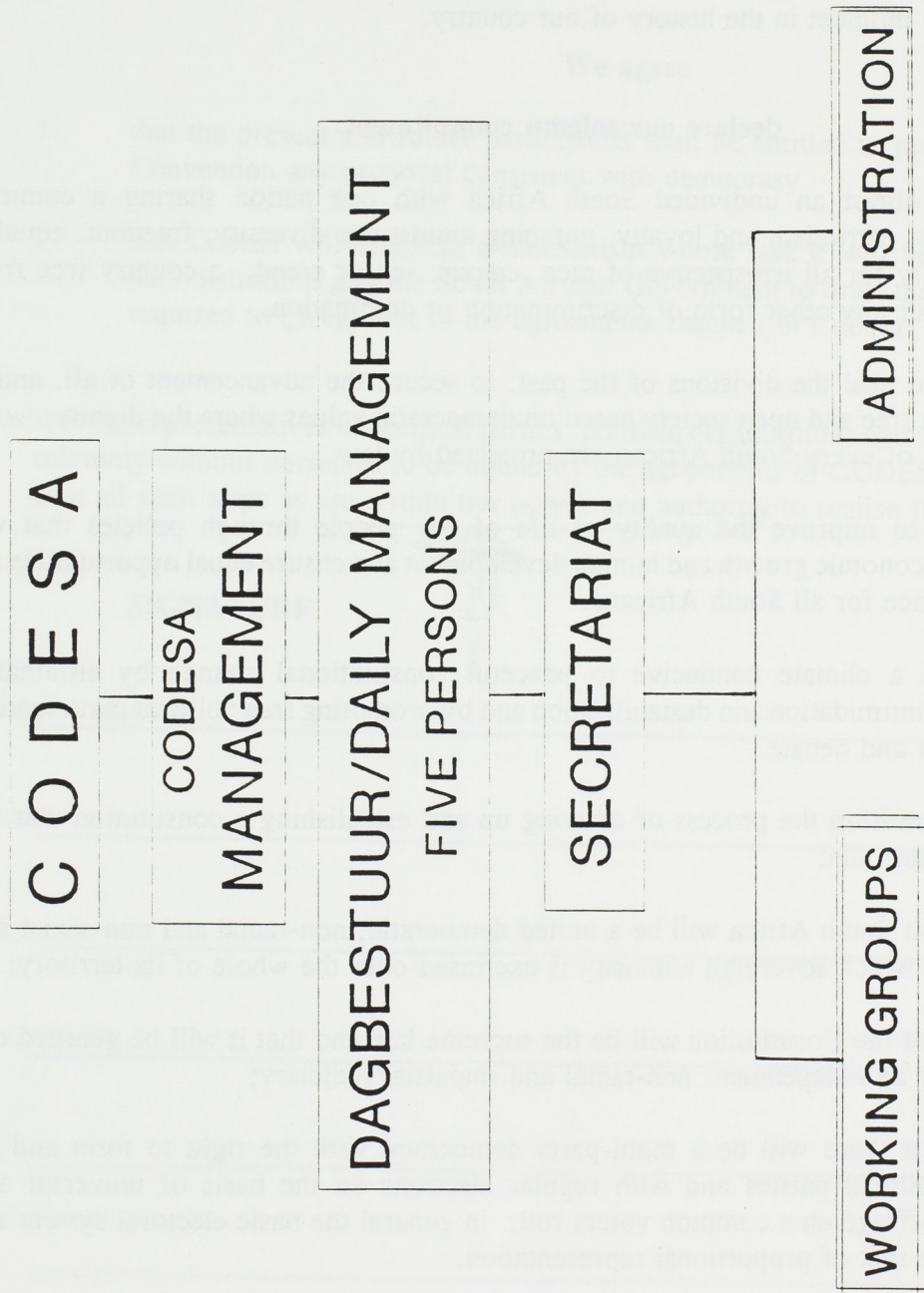
**15th & 16th May, 1992**

<b>Doc. No:</b>	<b>Document Title</b>
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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;
  - d. that there shall be a 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.

**SIGNATURE**



**REPRESENTING**

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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 <sup>legal</sup> capacity, <sup>legal</sup> powers and <sup>legal</sup> authority.

**SIGNATURE**

## REPRESENTING



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



## 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 Statement of Intent

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, report upon 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 Identification of the key issues and problems that need to be addressed.
- 1.1.3 Identification 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 thread thereof of promoting the objectives/views of a political party or organisation;
- (f) political neutrality of, and fair access to, State-controlled/statutory/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 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 Statement 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, report upon 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 Identification of the key issues and problems that need to be addressed.
- 2.1.3 Identification of 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 Statement of Intent

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

- 1.1.1 To investigate report upon 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.
- 1.1.2 Identification of the key issues and problems that need to be addressed.
- 1.1.3 Identification of areas of commonality and aspects where agreement already exists between participating delegations.
- 1.1.4 Specifically, that without vitiating the generality of the objective above, to consider the issues in Appendix A



## APPENDIX A

- "(a) The superiority of the constitution over ordinary law
- (b) The constitution will be rigid
- (c) Equality before the law
- (d) The ultimate power of interpretation of the constitution will repose in the judiciary
- (e) A clear division of the powers and functions of the Executive, Legislature and Judiciary
- (f) The principle of the vertical division of competencies: Genuine devolution of power
- (g) The electoral system will be based on the principle of equal franchise for adults and the principle of proportionality
- (h) The legislature will be divided bicamerally and each House of Parliament will be elected on a separate basis with each enjoying joint and several responsibilities
- (i) A justiciable bill of fundamental human rights will be enacted
- (j) The judiciary will be independent and enjoy security of tenure
- (k) The principle of checks and balances will be enshrined in the constitution
- (l) The definition of citizenship
- (m) The principle of accountability
- (n) A sovereign, democratic, non-racial and non-sexist state and society.
- (o) Unitary state with three tier levels of government.
- (p) Common voters' roll
- (q) Non-racial geographical federation or confederation
- (r) A cabinet representative of all the states
- (s) Judges appointed by an independent commission
- (t) A president as head of state
- (u) Official language(s)/predominant official language ✓
- (v) Guaranteed regular elections and the electoral system
- (w) A parliamentary system in which the Executive is responsible to Parliament.
- (x) Preservation of the Roman Dutch common law and judicial system
- (y) Financial control ✕
- (z) State security
- (aa) National symbols ✕
- (bb) Economic principles ✕
- (cc) Diversity of interests



- (dd) Constitutional continuity
- (ee) Any other matters which the working group may consider relevant to its brief."

## 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 Statement of Intent 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, report upon 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 Identification of the key issues and problems that need to be addressed.
- 2.1.3 Identification of 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 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

#### 3. ASSIGNMENT

Transitional arrangements/interim government/transitional authority.

##### 3.1 Terms of Reference

WHEREAS the parties at Codesa have committed themselves in the terms set out in the Statement of Intent

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:



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

#### WORKING GROUP 4

#### 4. ASSIGNMENT

Future of TBVC states.

#### 4.1 Terms of Reference

- 4.1.1 WHEREAS the parties at Codesa have committed themselves in the terms set out in the Statement of Intent.

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 Re-incorporation of the TBVC states are as follows:

- 4.1.1.1 To investigate, report upon 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.
- 4.1.1.2 Identification of the key issues and problems that need to be addressed.
- 4.1.1.3 Identification of areas of commonality and aspects where agreement already exists between participating delegations.
- 4.1.1.4 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.

4.1.1.5

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

### 5. ASSIGNMENT

Time frames and implementation of Codesa's decisions

#### 5.1 Terms of Reference

5.1.1 WHEREAS the parties at Codesa have committed themselves in the terms set out in the Statement of Intent

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:

- 5.1.1.1 To investigate, report upon 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.
- 5.1.1.2 Identification of the key issues and problems that need to be addressed.
- 5.1.1.3 Identification of areas of commonality and aspects where agreement already exists between participating delegations.
- 5.1.1.4 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.

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# **CONVENTION FOR A DEMOCRATIC SOUTH AFRICA**

## ***Standing Rules of Procedure for Plenary Sessions***

### **Participants**

1. (1) Participants in the Convention shall be the political parties and organizations, the South African Government, and those administrations listed in the Annexure hereto.  
(2) The Convention may resolve to admit additional participants.  
(3) The Convention may admit observers to its meetings, and such observers may be granted the opportunity by the Convention to address its meetings.

### **Delegates**

2. (1) Each participant shall be entitled to be represented by 12 (twelve) delegates who shall constitute its delegation. In addition, each delegation shall be entitled to name up to 5 (five) advisers.  
(2) A participant shall be entitled to substitute a member of its delegation with an alternate member.  
(3) Each participant shall submit and register the names of its delegates, alternates and advisers with the Secretariat at least 48 (forty-eight) hours before a plenary session of the Convention and shall likewise register the name of the leader of its delegation.  
(4) An alternate may not be substituted for a delegate without prior notification to the Secretariat.  
(5) Only duly accredited delegates may participate in the work of the Convention.  
(6) In the event of a dispute concerning the credentials of a delegate, the Management Committee shall rule on the matter.



## **Agreement**

3. (1) Every delegation shall, when called by the Chair to express its position on a proposal or matter before the meeting, have such position stated by the leader of the delegation or a spokesperson appointed by the leader of the delegation.  
  
(2) Agreement will be arrived at by general consensus or, failing that, by sufficient consensus.  
  
(3) Agreement by sufficient consensus will have been reached when consensus is of such a nature that the work of the Convention can move forward effectively.  
  
(4) Disagreeing participants shall have the right to record their objections or dissent.  
  
(5) When disagreement exists, the Chair will allow parties adequate time to consult amongst each other and with their principals before recording any position.

## **Quorum**

4. The Chair may declare a meeting open and permit the debate to proceed when delegates of at least two-thirds of the participants are present.

## **Speeches and Interventions**

5. (1) Every delegate shall be entitled to speak in the debate.  
  
(2) At the opening of a session, the Chair shall call the speakers in the order previously arranged by the Management Committee.  
  
(3) In general, the Chair shall call up speakers in the order in which they signify their desire to speak. The Chair, however, shall ensure that each delegation is afforded a reasonable opportunity to speak.  
  
(4) The Chair shall apply the standard rules applicable to meetings, except as otherwise stipulated herein or in terms of any resolution adopted under rule 9.

## **The Chair**

6. (1) Meetings shall be convened by the Management Committee, but otherwise controlled, adjourned and prorogued by the Chair, who shall be appointed by the Management Committee. The Management Committee shall provide assistance to the Chair in the performance of the Chair's functions as and when necessary.



- (2) If a duly appointed Chairperson finds it necessary to be absent from a meeting or any part thereof, the Management Committee may appoint a temporary replacement for the duration of such absence.

(3) A motion should be moved before it can be discussed.

### **Minutes and Documentation**

7. (1) The proceedings of plenary sessions of the Convention shall be recorded and transcribed as expeditiously as possible and the Secretariat shall make the transcript available to all delegates.
- (2) All other official meetings of the Convention, including meetings of Working Groups and the Management Committee shall be recorded in full, but only the decisions, recommendations and conclusions shall be minuted and sufficient copies made available to all participants by the Secretariat.
- (3) The Management Committee may, in its discretion, make available the full or partial text of any proceedings of the Convention.
- (4) A participant may request the Secretariat to circulate relevant documents to other participants.

### **Access of Media**

8. (1) All plenary sessions of the Convention shall be open to the media.
- (2) The Management Committee shall determine the extent to which the media shall have access to other meetings of the Convention.

### **Additional Rules of Procedure**

9. The Convention shall adopt whatever additional rules of procedure or make such arrangements as are necessary for the better performance of its business or the conduct of its meetings.

### **Miscellaneous**

10. (1) The Convention may set up committees, working groups or any such subsidiary organs as are necessary for the conduct of its business.
- (2) The Management Committee shall supervise the work of the Secretariat and

provide for the technical services of and assistance to the Convention, including the arrangements concerning the venue, security and expenses of the delegates.

(3) The Management Committee shall ensure that reasonable notice is given for the convening of all meetings of the Convention and the provision of the appropriate documentation.









## DRAFT (3) REPORT BY WORKING GROUP 1 ON THE EXECUTION OF ITS ASSIGNMENTS.

### Assignments and Terms of Reference

Working Group 1 was allotted the following assignments and accompanying Terms of Reference:

#### Assignment 1: The Creation of a Climate for Free Political Activity

- 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 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 for 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.

#### Assignment 2: The role of the International Community

- 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.

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

## 2 Formation of Sub-Groups

At its first meeting on 6 February 1992 the Working Group resolved to establish 3 sub-groups to deal with its Terms of Reference under the following headings:

- 2.1 Sub-Group 1: "Completing the Reconciliation Process"  
(a,b,c and q)
- 2.2 Sub-Group 2: "Continuing the Security and Socio-Economic Process"  
(d,e,g,h,i,m,n,o and q)
- 2.3 Sub-Group 3: "Creating a Climate and Opportunity for free Political Participation"  
(f,j,k,l,n,o and q)

It was further resolved that priority be given to assignment 1, and that assignment 2 be addressed on the basis that participating organisations may raise associated issues under assignment 1.

Thereafter the WG met in the Sub-Groups, until its second plenary meeting held on 23 April 1992. The WG held its last meeting on 5 May 1992.

During this period an elected Steering Committee of 9 members of the WG met on a regular basis to assess and guide the work of the Sub-Groups.

## 3 Administrative

- 3.1 The various organs of the WG 1 met as follows:

WG 1 Plenary	:	3	meetings;
WGSC	:	10	meetings;
Sub-Group 1	:	8	meetings;
Sub-Group 2	:	10	meetings;
Sub-Group 3	:	7	meetings;
Task Group	:	-	meetings;

- 3.2 The following submissions were received:

- |       |           |     |
|-------|-----------|-----|
| 3.2.1 | Internal: | 98  |
| 3.2.2 | External: | 102 |

Oral submissions:



3.2.3 Dr John Hall, chairperson of the National Peace Committee of the NPA.

3.2.4 Dr Antonie Gildenhuys chairperson of the National Peace Secretariat of the NPA.

3.3 Matters discussed, agreed on and outstanding are dealt with below according to the specific Terms of Reference.

#### 4 (a) The finalisation of matters relating to political prisoners and political trials.

4.1 The matter was extensively discussed by Sub-Group 1 on 11 February 1992.

4.2 The South African Government reported on progress made on the release of political prisoners since the agreements reached between the South African Government and the ANC in the Groote Schuur and Pretoria Minutes. It was reported that bilateral mechanisms involving the SA Government and the ANC were in place and that meetings were taking place on an on-going basis.

4.3 It was agreed that the release of political prisoners is a priority in the completion of the reconciliation process.

4.4 It was agreed that, in view of the existing bilateral agreements between the SA Government and the ANC, the said parties should pursue their bilateral talks relating to political prisoners and the return of exiles and report to the SG on progress made.

4.5 At subsequent meetings of the SG the SA Government and the ANC reported that discussions between them as envisaged in paragraph 4.4 were continuing satisfactorily and that a report will in due course be made to WG1. To date no such report has been received by WG1.

4.6 It was further agreed that, with the exception of the reports on the bilateral meetings between the SA Government and the ANC, any further discussions on the issue of political prisoners will be conditional on submissions being received on the current existence and detention of political prisoners.

#### 5 (b) The return of exiles and their families

This matter was briefly discussed in SG1 and referred to bilateral discussions between the SA Government and the ANC [refer paragraph 4.4 above].

#### 6 (c) The amendment and/or repeal of any remaining laws militating against free political activity, including the elimination of all discriminatory legislation.

6.1 Laws militating against free political activity.

6.1.1 Approach

It was agreed that the approach to the issue of laws militating against free political activity should be the following:

6.1.1.1 Firstly, there needs to be acceptance of the principle of free political activity.

6.1.1.2 Secondly, there needs to be agreement on the definition of general principles underpinning/guidelines for free political activity.

6.1.1.3 Thirdly, attention must be given to specific pieces of legislation.

#### 6.1.2 General principle

Regarding 6.1.1.1 it was agreed that:

6.1.2.1 a climate for free political participation is an essential element of the transitional phase towards and in a democratic South Africa; and

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

6.1.2.3 The South African Government and the NP expressed their reservations on paragraph 6.1.2.2 reserving their point of view until a full resolution dealing with principles governing free political activity was debated.

#### 6.1.3 Definition of/general principles underpinning/guidelines for free political activity

6.1.3.1 There was agreement on the necessity to formulate a definition of, or the principles underpinning, free political activity.

6.1.3.2 Various oral and written submissions on the content of such definition/principles were made and a motion tabled.

6.1.3.3 No consensus has yet been reached on a definition of/general principles underpinning free political activity, and the matter should be further discussed.

#### 6.1.4 Specific measures

Regarding 6.1.1.3 various oral and written submissions were received about legislative measures which may offend against free political activity. The submissions dealt with the following broad categories of legislation:

6.1.4.1 Emergency measures:

6.1.4.2 Security measures:

6.1.4.3 Measures affecting the funding of political Parties and organisations:

6.1.4.4 Measures affecting the freedom of assembly and association:

6.1.4.5 Measures affecting the free flow of information and access to the media.

#### 6.1.5 Task group

A task group was appointed to inquire into the reform of Emergency and Security legislation. The task group met several times and made appropriate recommendations.

#### 6.1.6 Emergency Legislation

6.1.6.1 It was agreed that:

6.1.6.1.1

A State of Emergency should only be declared on



the advice of a multi-party interim executive/cabinet/interim government council. This would only take effect once such a body has been instituted:

- 6.1.6.1.2 The proclamation of a State of Emergency or an unrest area and any regulations issued in terms thereof should be objectively justiciable in a court of law on, inter alia, the following grounds:
  - 6.1.6.1.2.1 whether the factual situation existing at the time justifies the declaration of the State of Emergency or unrest area in terms of criteria laid down in the Public Safety Act, 1953;
  - 6.1.6.1.2.2 whether the exigencies of the situation justify the powers conferred by regulations made in terms of the proclamation of the State of Emergency or unrest area;
  - 6.1.6.1.3 The provision in the Public Safety Act, 1953, that a State of Emergency can be declared retrospectively, should be repealed.
  - 6.1.6.1.4 It is desirable to include in the Public Safety Act, 1953:
    - 6.1.6.1.4.1 Extended provisions for Parliamentary control of a State of Emergency;
    - 6.1.6.1.4.2 A provision for certain non-derogable rights;
    - 6.1.6.1.4.3 Provisions for certain procedural controls over detention without trial.

6.1.6.2 It is recommended that the timing of the implementation of the various agreed proposals be negotiated as a matter of urgency amongst the parties.

#### 6.1.7 Security Legislation

##### It was agreed that:

- 6.1.7.1 Special measures are necessary to deal with the threat to the public peace and order during the transitional period;
- 6.1.7.2 In the light of 6.1.7.1, the Internal Security Act 1982, and other relevant legislation be scrutinised with a view to the substitution of the said provisions so as to bring it in line with the criteria mentioned in 6.1.7.1., and removing the emphasis on national security
- 6.1.7.3 A task group, consisting of K Asmal (ANC), H J Bester (DP-Convener), H J Coetzee (SA Govt), J Esternhuizen (Boputhatswana Govt), L V Ntsubane (Transkei Govt), E Samuels (Labour Party) MB Webb (Ciskei Govt) be appointed to undertake the task referred to in 6.1.7.2, taking cognisance of

relevant discussions by and submissions to SGI.

#### 6.1.8 Procedure

Regarding the procedure to be followed in the repeal and/or amendment of legislative measures militating against free political activity, it was agreed that the following three options (not necessarily exhaustive or mutually exclusive) should be examined:

- 6.1.8.1 separate pieces of legislation amending/repealing individual statutes and/or the use of a General Law Amendment Act;
- 6.1.8.2 amendment/repeal of offending legislation combined with the enactment of a interim statute dealing with freedom of association, assembly and speech against which any outstanding offending measures may be tested.
- 6.1.8.3 the enactment of an Interim Bill of Rights against which offending legislation can be tested;

#### 6.2 Discriminatory Legislation

6.2.1 It was agreed that the following categories of discriminatory legislation can be identified and that individual legislative measures within each category should be dealt with in the manner outlined as being appropriate for that category:

- 6.2.1.1 Discriminatory legislation which impedes the creation of a climate for free political activity. Such legislation must be identified by WGI and amended/repealed as soon as possible.
- 6.2.1.2 Discriminatory legislation which emanates from the nature of the tricameral constitution. This should be dealt with at the time and in the manner decided on by negotiation on the phasing out of the tricameral constitution and the own affairs dispensation.
- 6.2.1.3 Discriminatory legislation which need to be amended/repealed to support and enhance the process of democratisation. These should be identified as soon as possible and suitably amended/repealed.
- 6.2.1.4 Discriminatory legislation which needs to be removed in the interests of society. These should be dealt with at the relevant stage of the democratisation process.
- 6.2.1.5 Discriminatory legislation which would infringe upon an agreed Bill of Rights. These should be dealt with through the procedures that stand to be created in a new constitution which will include a justiciable Bill of Rights.

6.2.2 The WG received proposals on discriminatory legislation which falls in the above categories and which should be amended and/or repealed. The discussions on these proposals are incomplete and it was agreed that the task group constituted in terms of para 6.1.7.3 above, or any other mechanism set up by Codesa, discuss the proposals regarding discriminatory legislation which falls within categories 6.2.1.1 and 6.2.1.3 above with a view to making appropriate recommendations such task group or appointed body should report to Codesa or any other appropriate executive body that may be set up by Codesa.



It was agreed that:

7.1 All political disputes between parties be resolved peacefully.

7.2 Political Intimidation be defined as follows:

Any action or set of actions committed by any individual, organisation, political party, government represented at CODESA, as well as the self-governing territories or any agency of such government or self-governing territory, that is designed by the use or the threat of use of force or violence to disrupt or interfere with the legal rights of an individual, inter alia:

7.2.1 the right to freedom of expression or opinion;

7.2.2 the right of freedom of association;

7.2.3 the right of freedom of movement.

7.3 In particular, the following shall be considered forms of political intimidation:

7.3.1 to kill, injure, apply violence to, intimidate or threaten any other person or his/her political beliefs, words, writings or actions;

7.3.2 to remove, disfigure, destroy, plagiarise or otherwise misrepresent any symbol or other material of any other political party or organisation;

7.3.3 to interfere with, obstruct or threaten any other person or group travelling to or from or intending to attend, any gathering for political purposes;

7.3.4 to seek to compel, by force or threat of force, any person to join any party or organisation, attend any meeting, make any contribution, resign from any post or office, boycott any occasion or commercial activity or withhold his or her labour or fail to perform a lawful obligation; or

7.3.5 to obstruct or interfere with an official representative of any other political party or organisation's message to contact or address any group of people;

7.3.6 the possession, carrying or displaying of dangerous weapons or firearms by members of the general public when attending any political gathering or meeting.

3 (e) **The termination of the use of military and/or violent means or the threat thereof to promote the objectives/views of a political party or organisation.**

This matter was not discussed separately, but dealt with within the broader context of the subject matter discussed in SG2.

9 (f) **Political neutrality of, and fair access to the State-control-led/statutorily instituted media (particularly the SABC and SATV) including those of the TBVC states**

9.1 **Independent Body To Regulate Telecommunications Sector:**

9.1.1 Establishment

It was agreed that an independent, neutral body be established to regulate the telecommunications sector, such body to be created in terms of an Act of Parliament.

### 9.1.2 Functions

It was agreed that such an Independent Body would have as its principal functions:

- 9.1.2.1 The regulation of the utilisation of the electromagnetic spectrum, including the allocation of licences and the determination of licence conditions according to an agreed set of standards.
- 9.1.2.2 The appointment of a suitable structure to monitor the proper exercise of licence conditions.

### 9.1.3 Powers

9.1.3.1 It was agreed that the powers of the Post Master General in relation to telecommunications shall be transferred to the Independent Body.

9.1.3.2 It was further agreed that the Independent Body would have the following powers:

- 9.1.3.2.1 To ensure that a wide range of telecommunication services, including regional and community broadcasting program services, is available throughout South Africa.
- 9.1.3.2.2 To ensure fair and effective competition in the provision of such and related services.
- 9.1.3.2.3 To ensure fair and equitable opportunity to opinion formers to express their views freely.
- 9.1.3.2.4 To ensure optimum affordable research and development with a view to improving the utilisation of the available electromagnetic spectrum and to introduce technologies to improve signal quality.
- 9.1.3.2.5 To ensure impartial control of all broadcasting by laying down norms and standards for more equitable and fair access for all political parties to air time on broadcasting services.
- 9.1.3.2.6 To work out guidelines for the impartiality of news and current affairs programmes on all broadcasting services.
- 9.1.3.2.7 To take punitive measures against broadcasters who violate provisions of the code of conduct, or to suspend or withdraw licences if licence conditions are not complied with.
- 9.1.3.2.8 To deal with complaints by the public and political parties.
- 9.1.3.2.9 Such other powers as may be expedient.

### 9.1.4 Name of Independent Body

It was agreed that such Independent Body should be called either SAITA {South African Independent Telecommunications Authority (SAITA)} or SAICC {South African Independent Communications Commission (SAICC)} but there was no consensus on which of the two names is the most desirable.



#### 9.1.5 Constitution of Independent Body

##### It was agreed that:

9.1.5.1 Members of the Independent Body shall be South African Citizens of merit who act in the public interest.

9.1.5.2 No board member shall be an office bearer of any political organisation or have a vested interest in the film and broadcasting industries, or any other conflicting interest.

#### 9.1.6 Appointment Procedures

It was agreed that organs of civil society shall be invited, inter alia, by advertisement in the press, to nominate names to either CODESA or the interim structure, whichever is appropriate at the time, bearing in mind the urgency of the matter, for purposes of preparing a short list of names from which the board of the Independent Body can be appointed.

#### 9.1.7 Accountability and Finance

9.1.7.1 It was agreed that the Independent Body shall be accountable to the executive of the interim constitutional authority, provided that once a representative Parliament comes into being such a body shall be accountable to Parliament or one of its standing committees; further provided that the independence of such a body shall not be impinged upon in any way whatsoever.

9.1.7.2 The extent of the Independent Body's accountability shall be dependent upon the method of financing such a body. In this regard various methods are possible and should be considered.

#### 9.1.8 Licensing procedures, conditions and standards

It was agreed that the above matters should devolve upon the Independent Body.

#### 9.1.9 SABC

It was agreed that, since WG1 had reached consensus that an Independent Body to regulate the telecommunications sector be created at the earliest opportunity:

9.1.9.1 The Steering Committee of WG1 will initiate discussions with the chairperson of the Board of the SABC, and such representatives as he may determine, on the possible early reconstitution of the Board of the SABC, the appropriate ministry to be included in such discussions:

9.1.9.2 The first such meeting to take place before Codesa II:

9.1.9.3 The mechanism for monitoring the performance of the SABC be considered to at the same discussions.

#### 9.1.10 Complaints/Disputes and Monitoring

It was agreed that the Independent Body shall, with Parliamentary sanction by way of legislation, set up structures as may be necessary, inter-alia for:

- 9.1.10.1           adjudicating disputes;
- 9.1.10.2           monitoring the efficiency of the licensee and to ascertain whether licensees comply with their licensee conditions;
- 9.1.10.3           investigating complaints and for giving effect to remedial actions

#### 9.1.11 Code of Conduct

9.1.11.1           It was agreed that the Independent Body shall lay down the standards to be complied with by licensed broadcasters (such standards could be included in a Code).

9.1.11.2           Individual Broadcasters shall compile a Code of Conduct to which they will have to comply and which could be made a condition of their licenses.

9.1.12   The following issues were raised but discussions have not been completed:

- 9.1.12.1           affirmative action
- 9.1.12.2           cross-ownership restrictions

#### 9.2   Printed Media

The SA Government agreed to repeal Section 4 (a) and (b) of the Registration of Newspapers Amendment Act of 1982 which relate to Ministerial powers to cancel the registration of a newspaper. The repeal of these sections will be dealt with in a General Law Amendment Bill.

### 10   (g) **The Successful implementation of the National Peace Accord**

SG2 received several submissions on the implementation of the NPA. In addition, Dr Antonie Gildennuys, chairperson of the National Peace Secretariat, and Mr John Hall, chairperson of the NPC, were invited to hold discussions with SG2 on the implementation of the NPA. In order to strengthen the NPA, the following matters were agreed to:

#### 10.1   General

It was agreed that:

- 10.1.1   In so far as the promotion of peace is concerned, the leadership of organisations is urged urgently to come together at peace rallies and meetings and to be seen by all to be jointly and collectively working towards peace and stability in our country. These peace rallies and meetings should be held under the auspices of the NPS and should augment the efforts of religious leaders in this regard.
- 10.1.2   The successful implementation of the NPA is fundamental to the creation of a climate for free political activity, peace and stability in our country. In this regard, it is strongly recommended to the signatories of the NPA to take active steps to ensure that they appoint senior office bearers whose specific responsibility it will be to manage the



organisation/party's duties in regard to the NPA. It is further recommended that, where possible, such persons be relieved of all other organisational/party obligations to facilitate the above.

#### 10.2 RDRC's and LDRC's (Clause 7.4 of the NPA)

It was agreed that:

- 10.2.1 A full time Chairperson/officer/employee/s be appointed by consensus by each RDRC on the understanding that at least one such functionary will be appointed and that the said functionary will be remunerated for his/her services by the NPA;
- 10.2.2 Delegates to RDRC's and LDRC's who suffer financially as a result of their participation in NPA activities be reimbursed;
- 10.2.3 Organisations participating in the NPA activities be requested not to vary the appointment of delegates to RDRC's and LDRC's as this seriously inhibits the progress of the work of the NPA;
- 10.2.4 Permanent offices with appropriate staff and equipment be established in each area provided for in clause 3.7.5 of the NPA;
- 10.2.5 The NPS should seek to facilitate the participation of delegates on NPA structures, having special regard for the normal work commitments of delegates;
- 10.2.6 The reference to "Business representatives" in clause 7.4.4.3 of the NPA be interpreted to include representatives from professional organisations.

#### 10.3 Justices of the Peace (Clause 7.5 of the NPA)

It was agreed that:

- 10.3.1 In view of the current preparation of legislation to implement clause 7.5 of the NPA, it be recommended that the legislation be put before parliament during its current session.
- 10.3.2 All signatories to the NPA be urged to ensure that the process of consultation required by clause 7.5.1 of the NPA to precede the appointment of Justices of the Peace, proceed expeditiously in anticipation of legislation being passed to provide for matters pertaining to the appointment, powers, etc of the Justices of the Peace.

#### 10.4 Police Reporting Officers (clause 3.2.4 of the NPA)

It was agreed that:

- 10.4.1 All police reporting officers already nominated be appointed to their positions forthwith.
- 10.4.2 In the appointment of members of the special investigation unit appointed in terms of clause 3.2.4.1 of the NPA, sensitivity regarding the acceptability and credibility of members of the SAP be taken into account.



10.5 The inclusion of representatives of tribal authorities in the RDRC's (clause 7.4.4.4 of the NPA)

It was agreed that:

- 10.5.1 The NPC makes special efforts to include representatives of relevant local and tribal authorities into all RDRC and LDRC structures.
- 10.5.2 Special efforts be made to create an awareness of the NPA amongst tribal and local authorities.

10.6 Measures to facilitate socio-economic reconstruction and development (Clause 5.7 of the NPA)

It was agreed that:

- 10.6.1 It should be recommended to the NPA and the RDRCs that they appoint sub-committees on socio-economic reconstruction and development as a matter of urgency;
- 10.6.2 Members of such sub-committees appointed i.t.o. clause 5.7 of the NPA should not only consist of members of the relevant RDRC, but should primarily consist of people with knowledge and expertise in the relevant fields.

10.7 The Police Board (Clause 3.3 of the NPA)

10.7.1 It was agreed that the Police Board, in addition to their other functions and duties:

- 10.7.1.1 should advise on ways in which the procedures of the special units appointed in terms of 3.2.4.1 can be given public credibility;
- 10.7.1.2 should advise on ways in which the credibility of the police in the community could be improved;

- 10.7.2 It was further agreed that the reports by the special police investigative units appointed i.t.o. clause 3.2.2.6 which are made available to the NPC, be distributed to the relevant RDRC's and LDRC's as a matter of standard procedure.

10.8 Relations between the community and the police

- 10.8.1 It was agreed that in many areas improvement of the relationship between the community and the police can contribute towards the resolution of conflict and that all factors that create alienation between the police and communities be addressed urgently by means of, inter alia:

- 10.8.1.1 Facilitating police/community liaison, including workshops between relevant parties;
- 10.8.1.2 Ensuring strict adherence by all parties to the provisions of the NPA.

- 10.8.2 It was recommended to the NPC that they take active steps to achieve greater support for the police and co-operation by communities in effective policing.



#### 10.9 Recommendations by RDRC's to the police

In relation to the SAP, the Venda Police Force, the Kangwane Police Force, the Gazankulu Police Force, the Kwandebele Police Force and the Lebowa Police Force, it was agreed that the RDRCs could make recommendations to the relevant police authorities as to:

- 10.9.1 The selection of top police officers for township stations;
- 10.9.2 The appointment of officers commanding and members of special police investigation units established in terms of clause 3.2.2.6.;
- 10.9.3 Where circumstances permit, determining the nature of police action in conflict areas, i.e. the nature of security force action, the duration of their action, the SAP and SADF mix in these actions, the timeous negotiations between the security forces and community leaders to defuse hostility, etc.

#### 10.10 Self protection units/neighbourhood watch groups (clause 3.7 of the NPA)

It was agreed that:

- 10.10.1 It be recommended to the NPC that RDRC/LDRC's take urgent steps to encourage the formation of nonpartisan community based self protection groups/neighbourhood watch groups, as provided for in clause 3.7 of the NPA, in order to promote peace and the effective combatting of crime. These self protection units/neighbourhood watch groups should work in close cooperation with the relevant police authorities, as provided for in clause 3.7.5. of the NPA.
- 10.10.2 It be recommended to the RDRC's/LDRC's to take steps to monitor the activities of such formations and to encourage cooperation between such formations and the relevant police authorities.

10.11 In relation to points 10.7 to 10.9 the meeting encourages all other police forces to adopt a similar approach.

#### 10.12 Dangerous weapons and the possession of illegal fire-arms

It was agreed that:

- 10.12.1 Stronger sentences and other measures be imposed for the possession of illegal firearms and the possession, carrying and displaying of dangerous weapons or other firearms in contravention of the regulations issued as provided for in 3.6.4 of the NPA.
- 10.12.2 The police increase their searches for illegal firearms and other dangerous weapons.
- 10.12.3 A record be kept of the political affiliation (if any) of persons arrested for the possession of illegal fire-arms or dangerous weapons.
- 10.12.4 The above be undertaken in the context of impartial policing.

#### 10.13 Monitoring Commissions

It was agreed that:

- 10.13.1 Regional monitoring commissions be created in each RDRC region.



10.13.2 These monitoring commissions be constituted from amongst the parties and organisations represented on these RDRC's and/or drawn from independent, local monitoring agencies or persons.

10.13.3 Persons serving on these monitoring commissions be given the necessary training and certification to enable them to efficiently perform their functions in an impartial and objective manner.

10.13.4 The assistance of professional dispute resolution agencies be used in the training and development of such local/regional monitoring commissions.

10.13.5 The functions of these regional monitoring commissions be:

10.13.5.1 to monitor the compliance by the NPA signatories to the code of conduct as provided for in the Accord;

10.13.5.2 to monitor the behaviour of parties and organisations at grassroots level in relation to violence;

10.13.5.3 to monitor the compliance of parties and organisations to the NPA after it has been brought to their attention that they have been in violation of the Accord.

10.13.6 Political parties and members of RDRC's should refrain from making inflammatory remarks in relation to the causes of violence, and should desist from apportioning blame based on unsubstantiated evidence while matters are under review or investigation by the Commission.

#### 10.14 Budget and infrastructure problems

It was agreed that:

10.14.1 Codesa calls on the international community to provide financial and other assistance to facilitate the successful implementation of the NPA.

10.14.2 It be recommended to the National Peace Secretariat that it prepares and submits a budget to government outlining the funding requirements of the peace process, as provided for in clause 6.12.5 of the NPA.

10.14.3 It be further recommended to the National Peace Secretariat to take active steps to solicit assistance from local sources in order to obtain funding for the NPA. These steps include the holding of peace musical concerts, peace sports events, and other such activities; as well as approaches to the business sector in this regard.

#### 10.15 Commission of Enquiry Regarding the Prevention of Public Violence and Intimidation

It was agreed to recommend to the NPS and NPC:

10.15.1 to take active steps to implement and monitor the implementation of the recommendations of the Commission.

10.15.2 to distribute timeously the relevant recommendations of the Commission to the relevant RDRC/LDRC and the political parties in order to ensure that these recommendations are implemented in accordance with the Code of Conduct for political parties as set out in the NPA.

#### 10.16 Legal Enforceability

It was agreed that it be recommended to the NPC to take active and urgent steps to ensure the legal



enforceability of the Code of Conduct for Political Parties as provided for in clause 9.6 of the NPA.

#### 10.17 Transgressions of the NPA by political parties

It was agreed that:

10.17.1 The NPC take active steps to ensure that transgressing political parties, on presentation of the Commission's findings to them, respond in writing to the NPC, as provided for in the NPA.

10.17.2 The findings of the Commission be made public in order to bring such parties to account for their transgression of the NPA.

#### 10.18 Outstanding matters for discussion:

It was agreed that the following matters relating to the implementation of the NPA should still be discussed:

10.18.1 Co-ordination between 3 levels of NPA.

10.18.2 Education Programmes/Publicity.

10.18.3 Liaison between NPC and organisations and NPC and Codesa.

#### 11 (h) **The prevention of violence-related crime and matters giving rise thereto:**

11.1 It was agreed that:

11.1.1 Government security forces should bring those responsible for the smuggling of AK47s and other illegal weapons into the country from the neighbouring states to book as a matter of urgency.

11.1.2 Political parties should adhere to the guidelines as set out in the National Peace Accord in so far as mass action is concerned.

11.1.3 Socio-economic conditions should be improved to curb the high crime rate.

11.2 Consensus could not be reached on the following:

11.2.1 The use of the death penalty as a deterrent to criminal activity.

11.2.2 A call by Codesa for the lifting of sanctions as a means of improving socio-economic conditions.

#### 12 (i) **The Composition and role of the security forces in South Africa and the TBVC states**

It was agreed that:

12.1 All participants at Codesa commit themselves to the peaceful settlement of political disputes.

12.2 National security in South Africa should be sought primarily through efforts to meet the social, political and economic needs of the people.

12.3 The security forces in South Africa shall:

- 12.3.1 be bound by the principle of constitutional supremacy;
- 12.3.2 be politically non-partisan;
- 12.3.3 be committed to resolving conflict primarily through non-violent means;
- 12.3.4 respect human rights, non-racialism and democracy;
- 12.3.5 strive to be representative of South African society as a whole.

12.4 For the purpose of addressing our terms of reference, the WG is satisfied that all the Security Forces should be placed under the control of interim/transitional governmental structures. In this regard, this WG takes notice of the proposals tabled in WG3 to set up preparatory councils including one or more specifically intended to deal with the Security Forces. The WG supports the said abovementioned principle and agrees that the abovementioned principle details of such councils be worked out by WG3.

12.5 Mechanisms should be implemented to ensure the public accountability of the security forces.

12.6 Codes of Conduct for the security forces should be agreed to and implemented.

12.7 A programme of orientation, designed with a view to improving security force-community relations, specifically with regard to the respect for human rights, non-racialism and democracy, should be implemented.

12.8 The following matters are outstanding:

- 12.8.1 The composition of the security forces
- 12.8.2 Operations of the Security Forces that may limit free political activity

13 (i) **Funding of Political Parties**

It was agreed that the provisions of the Prohibition of Foreign Funding of Political Parties Act, 51 of 1968, with regard to the receipt of foreign funds by political parties be suspended until a date 6 (six) months from the date of the general election in terms of the the provisions of a negotiated new constitution for South Africa.

14 (k) **The fair access to public facilities and meeting venues**

It was agreed that political parties and organisations should have fair access to public facilities and venues without discrimination. Regional interpretations of term "public facilities" were acknowledged.

15 (l) **The advisability of statutory provisions guaranteeing equal opportunity for all parties to establish and maintain their own means of mass communication**

The SG received various submissions on this matter, but was unable to discuss it due to a lack of time.

16 (m) **The need for an improvement in socio-economic conditions**



There was agreement on the need for an improvement in socio-economic conditions as an essential part of the reconstruction of societies. However, due to a lack of time, the matter was not further discussed.

17 **(n) The fostering of a spirit of tolerance among political parties**

The SG received various submissions on this issue. It was agreed that a spirit of tolerance needs to be fostered amongst political parties. However, there was no consensus on any further recommendations.

18 **(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**

Various submissions dealing with the above matter were received, however, due to a lack of time, the SG was unable to discuss the matter.

19 **(p) The advisability of fair and reasonable access for political parties to all potential voters wherever they may reside.**

It was agreed that all political parties and organisations should have the right to have reasonable freedom of access to their members, supporters and other persons in rural and urban areas, wherever they may be housed, on public or private property.

20 **(q) Other Matters which the WG may consider relevant to its brief**

The WG agreed to discuss the issue of Mozambican refugees in the South Africa. It was agreed that a joint task force of the SA government, and other involved parties and governments be formed to address the problem of Mozambican refugees, internal refugees and other displaced persons

21 **Assignment II: The Role of the International Community**

21.1 It was agreed that a neutral independent international body be invited to observe the process of elections and that a task group be set up to determine:

21.1.1 the terms of invitation;

21.1.2 the scope of responsibility;

21.1.3 funding and all other details concerning such an undertaking.

21.2 The WG welcomed the initiative of the international community concerning the developments in South Africa. In this regard they considered it helpful that members of the international community acquaint themselves with the circumstance surrounding the violence in our country through fact finding missions with a view to making independent, objective assessments of the facts and realities surrounding the violence.

21.3 The WG recommended that in addition to any other such missions referred to in 21.2, Codesa should invite an independent international mission.

21.4 Several other proposals were made concerning the possible role of the international community, but lack of time precluded any further discussion on them.

The WG has insufficient time to discuss and agree on the future handling of matters falling within the ambit of assignments and terms of reference. However, the following proposals are put forward for consideration by Codesa:

- 22.1 Various agreements reached require implementation by legislation. It was proposed that, in view of the past involvement in the participants with the relevant matters, and the existing expertise, the SC or WG1 be mandated to receive and consider draft legislation and make appropriate recommendations to the relevant authorities. They should report to Codesa on progress made.
- 22.2 Since the SC or WG1 has already commenced discussions with the chairman and representatives of the board of the SABC in terms of 9.1.9, it is proposed that they continue such discussions and report to Codesa on progress made.
- 22.3 Regarding the continuing bilateral discussions between the SA government and the ANC on the release of political prisoners and the return of exiles and their families (4.4 and 5 above) it is proposed that the concerned parties report to the SC or WG1 on progress made and agreements reached.
- 22.4 It is proposed that a task group with membership as set out in ..... be set up to discuss and make recommendations on:
  - 22.4.1 The implementation of agreed amendments to the public safety act 1953. ( ..... ).
  - 22.4.2 The substitution of current security legislation as referred to in ..... above.
  - 22.4.3 Proposals regarding amendments/appeal of discriminatory legislation as set out in ..... above.
- 22.5 The task group referred to in 22.4 above must report to SC or WG1.
- 22.6 It is proposed that Codesa decides on appropriate mechanisms to implement the decisions recorded in 21 above (the role of the international community).
- 22.7 It is proposed that a suitable mechanism, which could be WG1, its SC, or mechanism is stand to be created, be mandated to deal with outstanding matters referred to in paragraphs 6.1.3.3, 6.1.4, 10.18, 11.2, 15, 16, 17 and 18 above.
- 22.8 Recommendations by the SC or WG1 should be approved by WG1 in plenary or any other body set up by Codesa.











## REPORT OF WORKING GROUP 3 TO CODESA 2

### ASSIGNMENT

1. The assignment given to the Working Group was to consider the issue of interim government/transitional arrangements/transitional authority.

### TERMS OF REFERENCE

2. 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.
3. To identify the key issues, processes and problems that need to be addressed.
4. To identify areas of commonality and aspects where agreement already exists between participating delegations.

## MODUS OPERANDI OF WORKING GROUP

5. The Working Group conducted its work according to the following agenda:

5.1 Method of bringing into being of Interim Arrangements

5.2 Purposes, Objectives and Time Frames of Interim Arrangements with respect to the period leading up to an election

5.3 The Executive with respect to the period leading up to an election

5.3.1 Structure

5.3.2 Functions

5.4 The Legislature with respect to the period leading up to an election

5.4.1 Structure

5.4.2 Functions

5.5 Position of present RSA constitution with respect to the period leading up to an election

5.6 Position of the self-governing states with respect to the period leading up to an election

5.7 Role of the International Community with respect to the period leading up to an election

6. The Working Group invited all participating organisations to submit proposals regarding the Working Group's brief. All such proposals were duly considered by the Working Group during its deliberations.



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7. Submissions received from outside parties relating to the Terms of Reference of the Working Group were also duly considered.
8. To take forward its exploratory discussion the Working Group appointed a Technical Committee, charged with addressing both details of consensus areas emerging and other areas needing discussion. The reports of the Technical Committee formed the basis of the agreements ultimately reached in the Working Group.

## INTRODUCTION TO AGREEMENTS REACHED

9. As will appear from the agreements set out below, the Working Group was of the opinion that the transition to democracy involves two preliminary stages. The first stage is one during which preparations will be made for the holding of free and fair elections for an elected parliament under an interim constitution with the power to draft in terms of agreed procedures a new constitution and to act as an interim legislature. This stage covers the whole of the period up to and including the holding of the elections. The second stage covers the period from the holding of the elections to the adoption of a new democratic constitution and the installation of a new government in accordance with the provisions of such constitution.

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10. During the first stage there is a need for a multiparty transitional executive structure to function in conjunction with existing legislative and executive structures, subject to the possible consolidation of the tricameral parliament and the general/own affairs departments. The purpose of the transitional executive structure will be to prepare for and to facilitate the transition to a democratic constitution to which Codesa is committed, and in particular, the achievement of a level playing field and a climate favourable to free political participation and the holding of free and fair elections.
11. Legislation, including an amended or transitional constitution, is necessary to make provision for appropriate structures of government which will meet the needs of both stages.
12. The following agreements were reached in regard to the first stage of the transition. These agreements and their implementation are dependent upon agreement being reached by Codesa in respect of the second stage of the transition, including an interim constitution, and general constitutional principles.



## BASIC POINTS OF DEPARTURE

13. There is a need for a level playing field and a climate favourable to free and fair elections and free political participation. From this flows the requirement for statutory structures to prepare for the institution of the elected parliament under an interim constitution, and for these structures to focus on meeting these needs. In this regard particular areas of concern should be identified and there should be councils for the identified areas. Thereafter the tasks of each council should be described as well as the executive powers that it would require in regard to such tasks. It would also be possible for the councils to propose legislation. Since the councils must always act within the law, enabling legislation will be required.
14. It is possible that action may take place or legislation be considered outside the councils' defined areas of concern, which may have a negative impact on such areas. Councils should be able to identify these and within their powers require that such actions should not take place or legislation not be proceeded with.
15. There should be an overarching council. One of its tasks will be to familiarise itself with events and developments on the broader political scene in government and elsewhere. It will be able to intervene within its terms of reference

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if something is happening elsewhere that may negatively affect the levelling of the political playing field or the ensuring of a climate favourable to free political participation.

16. The terms of reference of the overarching body should be the facilitation of the transition to democracy including the levelling of the playing field and the ensuring of a climate for free political participation and for the conducting of free and fair elections, while the individual councils should have the same terms of reference but in specific fields. The powers, duties and functions vested in the transitional executive structure must be exercised in a manner that does not prejudice constitutional options.

#### THE TRANSITIONAL EXECUTIVE STRUCTURE

17. A transitional executive structure will be constituted by legislation agreed to by Codesa. It will have a multi-party character and will be vested with effective executive powers sufficient to fulfil its terms of reference. The structure will include an overarching council, herein referred to as the TEC (Transitional Executive Council).
18. The TEC will have sub-councils which will be given specific responsibilities in relation to areas of particular concern during stage one of the transition.



## POWERS OF THE TEC

19. The TEC will be vested by legislation agreed to by Codesa with powers necessary to enable it to carry out its functions.
20. The TEC will have access to all information (including records of governments and other participants in the TEC) which may be required by it for the purpose of exercising its functions.
21. The sub-councils will report to the TEC and their decisions will be subject to confirmation/amendment by the TEC.
22. The TEC will be able to delegate powers to the sub-councils.
23. The TEC will be able to initiate or participate in negotiations in relation to issues which arise outside the defined areas of responsibilities of its sub-councils, if it is of the opinion that such issues could have an impact on the levelling of the playing fields or the creation and maintenance of a climate in which free and fair elections can be conducted.
24. The TEC will be kept informed of and will be able to ask for and be entitled to receive information in regard to proposed legislation including bills, proclamations and regulations, and of executive actions and contemplated executive actions

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of all participating governments/administrations that may impact on the levelling of the political playing field and on free political participation.

25. The TEC will be kept informed of and will be able to ask for and be entitled to receive information in regard to actions and contemplated actions on the part of participating political parties/organisations that may impact on the levelling of the political playing field and on free political participation.
26. If, when considering a proposed bill, proclamation, regulation or action, the TEC has reason to believe that it will have an adverse impact upon the maintenance of a climate for free political participation and in which free and fair elections can be conducted, or will disturb attempts to level the political playing field, it may in pursuit of its objectives, taking into account its necessity, require the government, administration or party not to proceed with it.
27. If the government, administration or party concerned is of the opinion that the necessity of the bill, proclamation, regulation or action in its area of application outweighs its adverse impact referred to in paragraph 26, the matter may be referred to the independent election commission.



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28. In the defined areas of responsibility of sub-councils of the TEC, ministerial powers and discretions in so far as they affect the levelling of the playing fields, the creation of a climate conducive to free and fair elections or free political participation will be exercised in consultation with the TEC, or a sub-council to which this function is delegated by the TEC. Any disagreement arising out of the provisions of this paragraph may be referred by any participant in the TEC to the Independent Election Commission.

29. The decisions of the TEC made within its terms of reference and its powers as set out above will be binding on and will be implemented by all participants including governments/administrations.

**INDEPENDENT COMMISSIONS****30. Independent Election Commission**

30.1 There shall be an Independent Election Commission to be given the responsibility for the holding of free and fair elections. The Commission will be independent of the TEC and will consist of respected and suitably qualified persons drawn from a broad cross-section of the population, who will be appointed by the State President on the recommendation of Codesa.

30.2 The composition, powers (which shall include the power to resolve disputes as contemplated in paragraphs 27, 28 and 33 hereof) and functions of the Commission shall be enacted in legislation to be agreed to by Codesa.

31. Independent Media Commission: There will also be a Commission/Authority concerned with the media which will be instituted in accordance with recommendations made by Working Group 1. The composition, powers and functions of the Commission will be enacted in legislation to be agreed to by Codesa.

#### SUB-COUNCILS AND THEIR AREAS OF RESPONSIBILITY

32. Provision will be made in the empowering legislation to be approved by Codesa for the appointment of the following sub-councils. In this section 'regional governments' will be considered to include provincial administrations, self-governing and TBVC states which have elected to cooperate and work within the transitional executive structure.

##### 32.1 Regional and Local Government

This sub-council will acquaint itself with developments in regional and local government; it will identify and take action in respect of aspects of regional and local government that may impact on the levelling of the



political playing fields and on a climate conducive to free political participation; and it will facilitate the process towards a democratic dispensation at regional and local levels.

### 32.2 Finance

This sub-council will acquaint itself with developments in government finance on all governmental levels (including all existing governmental authorities, be they on the central, regional or local government level), to identify and take actions in respect of aspects in that field that may impact on the levelling of the political playing field and on free political participation, and to facilitate this process towards a democratic dispensation addressing the field of governmental financing including intergovernmental financing. In particular, one of the prime purposes of this sub-council shall be to monitor and/or frustrate any attempt by any governmental body to favour one or other political party or organisation.

### 32.3 Law and Order, Stability and Security

This sub-council will acquaint itself with developments in law and order, stability and security at all levels of government (central, regional or local) and concerning all other participants in the TEC; it will

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take steps to identify and to promote all developments in this field which in its opinion may impact favourably upon the levelling of the playing fields and free political participation and the creation as far as possible of a climate of peace and stability; it will take steps to identify and to prevent within its powers all developments in this field which in its opinion will impact adversely upon peace and stability, the levelling of the playing fields, free political participation or the transition to democracy. The functions of this sub-council will depend upon decisions taken in Working Group 1.

32.4 Defence

This sub-council will acquaint itself with developments concerning defence and military formations at all levels of government (central, regional or local) and including all other participants in the TEC; it will take steps to identify and promote all developments in this field which in its opinion may impact favourably upon the levelling of the playing fields and free political participation, and the creation as far as possible of a climate of peace and stability; it will take steps to identify and to prevent within its powers all developments in this field which in its opinion will impact adversely upon peace and stability, the levelling of the playing fields, free political participation or



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the transition to democracy. The functions of this sub-council will also depend upon decisions taken in Working Group 1.

### 32.5 Foreign Affairs

Due to the unique character of this sub-council there is a need for broader discussion concerning it.

### 32.6 Elections

There may be a need for an election sub-council to provide services and information to the Independent Election Commission. The TEC will decide whether or not there is a need for such a sub-council. The appointment of such a sub-council will not interfere in any way with the independence or powers of the Independent Election Commission.

33. In the event of any dispute arising as to whether any specific matter or sphere of action falls within the ambit of any of the above objectives, definitions and/or concepts, such dispute may be referred by any participant in the TEC or sub-council, as the case may be, to the Independent Election Commission.

## POWERS OF SUB-COUNCILS

34. The legislation agreed to by Codesa will make provision for the sub-councils to be given all powers necessary to enable them to carry out their tasks effectively within their terms of reference.
35. Such legislation will include a provision empowering sub-councils to have access to all information (including records of governments/administrations and other participants in the TEC) which they may require for the purpose of carrying out their tasks within their terms of reference.

## COMPOSITION OF THE TEC AND SUB-COUNCILS

36. The TEC will be appointed by the State President on the recommendation of . . . . . It will consist of at least one member from . . . . . governments/administrations who commit themselves to comply with and implement the decisions of the TEC and at least one member from each of the political organisations participating in Codesa, provided that such organisations also commit themselves to comply with and implement the decisions of the TEC. Should parties not presently in Codesa wish to participate in the transitional executive structure, the TEC will have the power to recommend at its discretion that the TEC be



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enlarged to accommodate them, provided that they commit themselves to comply with and implement the decisions of the TEC, and in that event, the State President will make the necessary appointment. The removal and replacement of members of the TEC, and the temporary appointment of a person as a substitute for a member who is absent or unable to perform his or her duties, will be made by the State President on the recommendation of the TEC.

37. A sub-council will have a multi-party character and will ordinarily consist of up to six members who will be formally appointed by the State President on the recommendation of the TEC. There may be special circumstances in which more than six members will be necessary for the proper functioning of a sub-council and the enabling legislation will make provision for this. The removal and replacement of members of a sub-council, and the temporary appointment of a person as a substitute for a member who is absent or unable to perform his or her duties will be made by the State President on the recommendation of the TEC.

38. Members of the TEC and its sub-councils will be full-time executives, will be provided with the infrastructure necessary to enable them to carry out their duties, and their conditions of service will be prescribed in the legislation under which they are constituted.

39. Members of the TEC may serve on one or more of the sub-councils, or may be given special responsibility by the TEC for matters outside the defined areas of responsibility of the sub-councils, within its terms of reference.
40. The size of the Transitional Executive Structure will be kept as small as is reasonably possible.

#### MEETINGS OF THE TEC AND ITS SUB-COUNCILS

41. All members of sub-councils, and Ministers of governments/administrations participating in the TEC whose departments may be affected by the functioning of the TEC and its sub-councils, may attend meetings of the TEC by invitation and speak on matters affecting their sub-councils or departments, and should attend when matters relating to their sub-councils or departments are being discussed.
42. All Ministers of governments/administrations participating in the TEC whose departments may be affected by the functioning of a sub-council, and who are not members of the sub-council concerned, may attend meetings of the sub-council and speak on matters affecting the functioning of their departments, and should attend by invitation if a matter affecting the functioning of their departments is being considered.



## HOW DECISIONS WILL BE MADE

43. The TEC and the sub-councils will endeavour to take their decisions by consensus. Where consensus cannot be achieved a majority of at least eighty per cent will be sufficient for a decision of the TEC, provided that if any government, administration or party is of the opinion that the necessity of the minority opinion prevailing outweighs the adverse impact referred to Paragraph 26, the matter may be referred for adjudication as contemplated in Paragraphs 27, 28 and 33.

## STATES OF EMERGENCY

44. This issue will depend on decisions taken in Working Group 1.

## IMPLEMENTATION AND TIME FRAMES

45. Subject to Paragraph 12 and agreement by Codesa to the provisions of this report, Codesa should ask its Management Committee (MC) to ensure that all outstanding matters required for implementation are resolved within agreed time frames. Once this is completed to its satisfaction, the MC is delegated the authority to activate and implement the agreements of this report.

## OUTSTANDING MATTERS

46. Matters requiring further discussion are as follows:

46.1 Composition of the TEC

46.2 Composition of the sub-councils

46.2 Composition, powers and functions of the Independent  
Election Commission

46.4 Sub-council on foreign affairs

47. Legislation is required to give effect to the agreements  
contained herein.

## CONCLUSION

In view of the fact that this report covered the first stage of  
the transition, further discussion is required concerning the  
details of stage two (as envisaged in paragraph 12).











## REPORT OF WORKING GROUP 4 TO CODESA 2

### 1 Terms of reference for Working Group 4.

A copy of the terms of reference of working group 4 is attached marked annexure A.

### 2 Explanation of the way working group 4 conducted its business.

2.1 Working group 4 created four sub groups to look at the following issues:

2.1.1 Sub group 1 - testing the will of the people

2.1.2 Sub group 2 - citizenship

2.1.3 Sub group 3 - practical, financial and administrative implication of reincorporation

2.1.4 Sub group 4 - constitutional, legal and political implications of reincorporation.

2.2 Each delegation was represented in the sub groups.

2.3 Working group 4 determined the terms of reference for each of the sub groups, based on its own Terms of Reference. Copies of the terms of reference are annexed marked annexure B,C,D and E.

2.4 Working group 4 held 10 meetings.

2.5 Submissions were received from members of the public and organisations.

### 3 Points of agreement reached:

3.1 Working group 4 reached consensus on the following issues:

#### 3.1.1 Re-incorporation

All delegations have no objection in principle to the re-incorporation of the TBVC states.

#### 3.1.2 Transitional arrangements

The TBVC states will participate in transitional arrangements as proposed by Working Group 3, on the understanding that these arrangements shall mutatis mutandis impact on the TBVC governments and territories in the same way as they impact on the South African government and the RSA.

#### 3.1.3 Testing the will of the people

The people of the TBVC states shall take part fully in the processes of constitution-making and transitional arrangements, including elections, as may be proposed by Working Groups 2 and 3. Their participation will be arranged in such a way that their votes in a national election shall signify support for or rejection of re-incorporation. The results of such an election shall constitute a sufficient test of the will of the people.



#### 3.1.4 Restoration of citizenship

South African citizenship will be restored to the citizens of all the TBVC states who would have been South African citizens but for the constitutional independence of the TBVC states, immediately after the testing of the will as envisaged in paragraph 3.1.3 above.

#### 3.1.5 Reservation

It is recorded that the Bophuthatswana government reserves its position in relation to paragraphs 3.1.2, 3.1.3 and 3.1.4.

### 3.2. Consensus was reached on a number of issues relating to the practical, financial and administrative effects of reincorporation.

#### 3.2.1 Reincorporation

Eighteen parties share the view that reincorporation of the TBVC States into the new South Africa is desirable. However, Bophuthatswana reiterates its preference for non-reincorporation, but states that every option which promises a better future or a future at least as good as its present position will be regarded as a feasible and realistic option for consideration.

The demarcation of functions and responsibilities on the first, second and third levels of government have not yet been decided. Where reference is made to future government responsibilities, it should be understood as being in accordance with the constitutional proposals and interim government arrangements formulated by Working Groups 2 and 3.

#### 3.2.2 Retention of Business Confidence and Taxation

The parties are unanimous that the process of reincorporation should be conducted in such a way that it ensures retention of business confidence. Working Group 4 recommends that:

- 3.2.2.1 Where there is a conflict between RSA legislation and that of the respective TBVC states, temporary exemptions be granted until the new legal system is in place, the details of which will be considered by a committee (see 11 below.)
- 3.2.2.2 The harmonization of labour legislation throughout South Africa including stipulations on a stable relationship with unions is needed to boost business confidence.
- 3.2.2.3 Working group 4 is unanimous that there should be harmonisation of the taxation regime. The tax system of the TBVC states should be brought in line with the applicable tax laws in the RSA. This process should apply to all forms of tax structures e.g. company tax, personal tax etc. The question of tax concessions may be considered in relation to regional development issues.
- 3.2.2.4 A formal statement of intent be issued by Codesa 2, by which



businesses are informed of the proposed harmonisation of legislation, specifically tax and labour legislation.

### 3.2.3 Land Transfers

Working Group 4 has reached sufficient consensus on this matter that:

- 3.2.3.1 No further attempts be made to identify new land for transfer to the TBVC governments.
- 3.2.3.2 Land currently in possession of the South African Development Trust should remain in the hands of the Trust until its dissolution, whereafter it will be transferred to the SA Government (successor in title.)
- 3.2.3.3 The moratorium should apply to all land in the Schedule to the Borders of Particular States Extension Act 2 of 1980 which has not yet been excised from South Africa.
- 3.2.3.4 This moratorium will apply to all TBVC States.

#### Reservation

Bophuthatswana indicates that such a moratorium could be perceived as a negative implication to be considered carefully.

Ciskei states that the moratorium should not apply to the transfer of land to individual communities who have not as yet received the land promised.

The meeting also notes the concern of the SA Government and the National Party about certain legal and contractual obligations which have to be fulfilled as well as land purchased from individual South African citizens which has not yet been transferred.

### 3.2.4 Disposal/Transfer of Assets and Liabilities

The parties share a common view that the assets and liabilities of these states should be transferred to the new government on reincorporation.

### 3.2.5 Optimal Use of Existing Infrastructure

Working Group 4 reached agreement that due care should be taken in ensuring that existing structures are optimally used during transition and after reincorporation.

- 3.2.5.1 It is recommended that all structures and functional operations such as education, health, unemployment insurance etc. should continue functioning during transition, until they are replaced by rationalized structures and operations.
- 3.2.5.2 Existing financial arrangements and transfers should continue

uninterrupted until they are replaced by new arrangements.

### 3.2.6 Review of Development Project Priorities

On reincorporation, prioritisation of development projects should form part of the national/regional prioritisation programme. The Development Bank of Southern Africa which has been closely linked with the development projects in these states could provide a useful service in this regard.

### 3.2.7 Good Administration during Transition

Efficient and accountable administration should be maintained during transition. The current administration should remain in place until orderly rationalisation takes place as a result of absorption into a non-racial national/regional service. The Subgroup proposes that:

- 3.2.7.1 Administration be reorganised around existing structures.
- 3.2.7.2 On reincorporation, personnel from the TBVC states should be absorbed into the national/regional structure.
- 3.2.7.3 The TBVC Administration should operate under the supervision of the Interim Government during transition.

#### Reservation

Bophuthatswana reiterates that this is only applicable once a decision in favour of reincorporation is taken.

- 3.2.7.4 Certain basic services will have to continue uninterrupted during transition. These are:
  - 3.2.7.4.1 The administration of justice
  - 3.2.7.4.2 Civil service
  - 3.2.7.4.3 Parastatals
  - 3.2.7.4.4 Security and other public services.

### 3.2.8 Future of the Civil Service

Civil servants should retain their existing salaries, benefits, conditions of service, etc. Any adjustment in the conditions of service should be occasioned by a process of rationalisation as a result of absorption into a non-racial national/regional service. It is recommended that:

- 3.2.8.1 There should be no retrenchment of workers in these administrations as a result of reincorporation prior to an extensive rationalisation programme in the new South African civil service.



### 3.2.9 Servicing and Repayment of TBVC Debts

The servicing and repayment of TBVC debts should be the responsibility of the new national/regional government as soon as the states have been reincorporated. The working group notes that a new government will have to consider how to deal with debt irregularities, if any.

### 3.2.10 Proposed Appointment of Committees

Working group 4 is unanimous that two committees be appointed to conduct investigations and to undertake consultation with concerned parties into various aspects as will be indicated in each case.

#### 3.2.10.1 Composition of Committees

Each committee should be a nine-member multi-party committee consisting of:

3.2.10.1.1 five representatives, one from each of the SATBVC administrations.

3.2.10.1.2 four representatives nominated by the remaining parties at Codesa.

#### 3.2.10.2 Terms of Reference of the Committees

A committee on the retention of business confidence and use of existing infrastructure will be tasked to investigate and make recommendations to the relevant parties on the following:

3.2.10.2.1 Harmonisation of tax regime.

3.2.10.2.2 Harmonisation of labour legislation.

3.2.10.2.3 Possibility of granting temporary exemptions from tax.

3.2.10.2.4 Introduction of export and other investment incentives.

3.2.10.2.5 Protection of existing tax concessions for a reasonable period.

3.2.10.2.6 Consideration of retention of Schedule 3 concessions under the Regional Industrial Development Programme.

3.2.10.2.7 Protection of existing investments.

3.2.10.2.8 Investigation of the causes and effects of mass action on business confidence.

### Reservation

The ANC expressed its concern that this should not prejudice its right to undertake mass action in general.

- 3.2.10.2.9 Whether the process of harmonisation should be implemented incrementally.
  - 3.2.10.2.10 Whether, where prejudices arise, exemptions should be granted for a definite period
  - 3.2.10.2.11 Whether the granting of exemptions should be fairly automatic up to a certain date.
  - 3.2.10.2.12 A close study of the taxation system to be undertaken.
  - 3.2.10.2.13 The whole question of optimal use of existing infrastructure during transition and after reincorporation.
  - 3.2.10.2.14 Any other matters relevant to the above issues.
- 3.2.10.3 A committee to look into the question of good administration during transition and the future of the civil service with particular regard to the following:
- 3.2.10.3.1 Reorganisation of administration around the existing structures.
  - 3.2.10.3.2 The subsequent absorption of the TBVC personnel on reincorporation.
  - 3.2.10.3.3 The following questions in regard to the civil service, security service, parastatals etc.
    - uniformity of salaries and conditions of service.
    - security and transferability of pension benefits.
    - assimilation and training of skilled staff.
    - appointment on merit i.e. qualifications, experience and ability irrespective of race, colour, creed or sex.
    - strict adherence to the IMF norm that the total civil service remuneration should not exceed 30% of the national/regional income.
    - rationalisation of excessive bureaucracy on a humane basis.



- 3.2.10.3.4 An extensive rationalisation programme of the public services involving the SATBVC states.
- 3.2.10.3.5 The appointment of a non-partisan body to implement the process of rationalisation.
- 3.2.10.3.6 Any other matters relevant to the above issues.

### 3.2.11 Practical Implications

The following will be the practical implications of reincorporation:

- 3.2.11.1 The reincorporated state will again fall under the geographic jurisdiction of the RSA.
- 3.2.11.2 That state's people will be South African citizens.
- 3.2.11.3 That state will become subject to the authority of the government of South Africa under the new constitution, interim or final.
- 3.2.11.4 The reincorporation process will have to be formally legislated through the relevant legislative bodies.
- 3.2.11.5 The "international" boundaries between that state and the RSA will fall away.
- 3.2.11.6 The need for diplomatic ties between the RSA and those states will fall away.
- 3.2.11.7 If all four TBVC states are reincorporated, South Africa would once more be undivided, thus achieving one of the main objectives of the Declaration of Intent signed by the parties to Codesa.
- 3.2.11.8 It is as well to mention that if any TBVC state were to decide not to be reincorporated, it would have to seriously consider the effects that decision would have on that state.

#### Reservation

The Bophuthatswana Government reconfirmed its position that, in the event of non-reincorporation, all existing bilateral agreements should continue to be in operation.

- 3.3 Consensus was also reached on mechanisms of addressing the political, legal and constitutional implications of reincorporation. It was agreed to establish a technical committee. This committee should consult the Gender Advisory Committee. It should investigate within the context of the terms of reference of sub group 4 of working group 4 the following:

- 3.3.1 the relationship between South Africa and the TBVC states during the transitional phase;

- 3.3.2 consider legislation that would be required to effect reincorporation;
- 3.3.3 consider legislation and/or measures that would level the political playing field;
- 3.3.4 harmonisation of legislation.

#### 4 Points not yet covered by working group 4 from the terms of reference

Mechanisms of dealing with some of the aspects of the terms of reference not yet covered by working group 4 are suggested in paragraphs 3.3 above.

- 4.1 strategies to keep the people of the TBVC states fully informed, especially to avoid unfortunate misunderstandings;
- 4.2 the time frames for such a re-incorporation and related processes;
- 4.3 the exact form of authority in the TBVC territories;
- 4.4 harmonisation of legislation and taxation;
- 4.5 orderly termination of bilateral and multilateral agreements and treaties;
- 4.6 ensuring public accountability of actions taken for the purposes of re-incorporation;
- 4.7 the identification of specific constitutional, legal and political measure and steps which will have to be taken to effect re-incorporation.

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## TERMS OF REFERENCE FOR WORKING GROUPS FOR CODESA

### 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.



# TERMS OF REFERENCE FOR SUB-COMMITTEE 1 "TESTING THE WILL OF THE PEOPLE"

## WORKING GROUP 4

### 1. Terms of Reference

IT IS RECORDED that the terms of reference of the Sub-Committee are as follows:

- 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.
- 1.2 To identify the key issues and problems that need to be addressed.
- 1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.
- 1.4 Specifically, but without vitiating the generality of the above to consider:
  - (a) testing the will of the people concerned regarding re-incorporation or otherwise, of the TBVC states, by acceptable democratic means;
  - (b) strategies to keep the people of the TBVC states fully informed, especially to avoid unfortunate misunderstandings;
  - (c) the method to be employed to test the feeling of the people (referendum? opinion poll? election?);
  - (d) deciding on who will be entitled to express an opinion (citizens? residents of TBVC states? and/or citizens also resident outside these states, within South Africa).

## TERMS OF REFERENCE FOR SUB-COMMITTEE 2 "CITIZENSHIP"

### WORKING GROUP 4

#### 1. Terms of Reference

IT IS RECORDED that the terms of reference of the Sub-Committee are as follows:

- 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.
- 1.2 To identify the key issues and problems that need to be addressed.
- 1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.
- 1.4 Specifically, but without vitiating the generality of the above to consider:
  - (a) the question of citizenship (dual citizenship? single citizenship?);
  - (b) the time-frames for the sub-committee to report;
  - (c) the proposal of the ANC;
  - (d) the proposal of the NPP.



# **TERMS OF REFERENCE FOR SUB-COMMITTEE 3 "THE ADMINISTRATIVE, FINANCIAL AND PRACTICAL EFFECTS OF REINCORPORATION OF THE TBVC STATES"**

## **WORKING GROUP 4**

### **1. Terms of Reference**

IT IS RECORDED that the terms of reference of the Sub-Committee are as follows:

- 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.
- 1.2 To identify the key issues and problems that need to be addressed.
- 1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.
- 1.4 Specifically, but without vitiating the generality of the above to consider:
  - (a) the retention of business confidence, particularly in relation to existing investments in the TBVC states;
  - (b) land transfers by South Africa to these states;
  - (c) disposal/transfer of assets of TBVC governments;
  - (d) optimal use of existing infrastructure;
  - (e) review of development project priorities;
  - (f) good administration during transition;
  - (g) 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;
  - (h) consider future of civil service in such states;
  - (i) servicing and repayment of TBVC state debts.

# **TERMS OF REFERENCE FOR SUB-COMMITTEE 4**

## **"THE POLITICAL, LEGAL AND CONSTITUTIONAL EFFECTS OF REINCORPORATION OF THE TBVC STATES"**

### **WORKING GROUP 4**

#### **1. Terms of Reference**

IT IS RECORDED that the terms of reference of the Sub-Committee are as follows:

- 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.
- 1.2 To identify the key issues and problems that need to be addressed.
- 1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.
- 1.4 Specifically, but without vitiating the generality of the above to consider:
  - (a) the exact form of authority in the TBVC territories;
  - (b) harmonisation of legislation and taxation;
  - (c) orderly termination of bilateral and multilateral agreements and treaties;
  - (d) ensuring public accountability of actions taken for the purposes of re-incorporation;
  - (e) the identification of specific constitutional, legal and political measures and steps which will have to be taken to effect re-incorporation.



## COMMENTS RECEIVED FROM PRINCIPALS ON REPORT OF WORKING GROUP 4 TO CODESA 2

1. Ciskei Government comments
2. Democratic Party comments
3. National Party comments
4. South African Government comments
5. South African Communist Party comments

2.2.1.1 The process of reincorporation should be conducted in such a way that it ensures retention of business confidence.

### 2.2.1.2 RETENTION OF BUSINESS CONFIDENCE AND TAXATION

2.2.1.2.1 Where there is a conflict between RSA legislation and that of the respective TBVC states, temporary exemptions should be granted until the new legal system is in place.

2.2.1.2.2 Labour legislation should be harmonised throughout South Africa including stipulations on a stable relationship with unions.

2.2.1.2.3 The taxation regime should be harmonised in respect of all forms of tax structures; the question of tax concessions may be considered in relation to regional development issues.

2.2.1.2.4 A commission is to be appointed to investigate and report to the relevant parties on the best means to retain business confidence and use of the existing infrastructure, with special reference to the matters listed in par. 11.1 of the annexure.

### 2.2.1.3 A MORATORIUM ON LAND TRANSFERS

2.2.1.3.1 No further attempts are to be made to identify new land for transfer to the TBVC governments.

## CISKEI GOVERNMENT COMMENTS

1. In regard to the first draft of the report of Working Group 4 to CODESA 2, Ciskei wishes to comment as follows:
2. "Ciskei has consistently on all previous occasions stated its position clearly on reincorporation into South Africa.

In regard to Ciskei's participation in an interim Government, our position is clear in that Ciskei will not participate in an interim Government at this stage but will remain a participant at Codesa and be part and participate in the constitution-making body.

Until the constitutional principles have been clearly stated and approved by Codesa, Ciskei will keep its options open. At that stage Ciskei will decide on reincorporation into South Africa.

The fundamental considerations on the part of the Ciskei Government is that Ciskei must be better off in the "New South Africa" than has been its circumstances."



# DEMOCRATIC PARTY COMMENTS

## COMMENTS ON

### FIRST DRAFT REPORT OF WORKING GROUP 4 TO CODESA 2

We wish to submit the following comments on the first draft report of Working Group 4 to Codesa 2:

#### 1.1 AD PAR 3.2:

We think it is inadvisable simply to state that: "A copy of the report is attached marked annexure F"; the main points contained in the annexure, reflecting consensual agreements arrived at in Working Group 4, should be presented to Codesa 2 so that their acceptance by Codesa 2 could represent final decisions with respect to the issues dealt with therein.

We therefore propose that par. 3.2 should be amended to read as follows:

3.2 "Consensus was reached on a number of issues relating to the practical, financial and administrative effects of reincorporation. The following is a summary of the main principles on which consensual decisions were taken; a copy of the full report is attached marked annexure F.

#### 3.2.1 RETENTION OF BUSINESS CONFIDENCE AND TAXATION

The process of reincorporation should be conducted in such a way that it ensures retention of business confidence.

3.2.1.1 Where there is a conflict between RSA legislation and that of the respective TBVC states, temporary exemptions be granted until the new legal system is in place.

3.2.1.2 Labour legislation should be harmonised throughout South Africa including stipulations on a stable relationship with unions.

3.2.1.3 The taxation regime should be harmonised in respect of all forms of tax structures; the question of tax concessions may be considered in relation to regional development issues.

3.2.1.4 A commission is to be appointed to investigate and report to the relevant parties on the best means to retain business confidence and use of the existing infrastructure, with special reference to the matters listed in par. 11.1 of the annexure.

#### 3.2.2 A MORATORIUM ON LAND TRANSFERS

3.2.2.1 No further attempts are to be made to identify new land for transfer to the TBVC governments.



3.2.2.2 This moratorium will apply to all TBVC states and to all land in the Schedule to the Borders of Particular States Extension Act 2 of 1980 which has not yet been excised from South Africa.

Reservations were expressed by the SA Government, Bophuthatswana and Ciskei; these are listed in the annexure under par. 4.

### **3.2.3 DISPOSAL/TRANSFER OF ASSETS AND LIABILITIES**

3.2.3.1 All assets and liabilities of the TBVC states should be transferred to the new government on reincorporation.

### **3.2.4 OPTIMAL USE OF EXISTING INFRASTRUCTURE**

3.2.4.1 All structures and functional operations such as education, health, unemployment insurance etc. should continue functioning during transition, until they are replaced by rationalised structures and operations.

3.2.4.2 Existing financial arrangements and transfers should continue uninterrupted until they are replaced by new arrangements.

### **3.2.5 REVIEW OF DEVELOPMENT PROJECT PRIORITIES**

3.2.5.1 On reincorporation priorities of development projects should form part of the national/regional prioritisation programme.

### **3.2.6 GOOD ADMINISTRATION DURING TRANSITION**

3.2.6.1 Efficient and accountable administration should be maintained during transition. The current administration should remain in place until orderly rationalisation takes place as a result of absorption into a non-racial national/regional service.

3.2.6.2 Administrations should be reorganised around existing structures.

3.2.6.3 Certain basic services such as the administration of justice, the civil service, parastatals and security and other public services will have to continue uninterrupted during transition.

3.2.6.4 The TBVC Administrations should operate under the supervision of the Interim Government during transition. (Bophuthatswana made the reservation that this is only applicable once a decision in favour of reincorporation is taken).



### **3.2.7 FUTURE OF THE CIVIL SERVICE**

3.2.7.1 Civil servants should retain their existing salaries, benefits, conditions of service etc until adjustments are made as a result of absorption into a non-racial national/regional service.

3.2.7.2 There should be no retrenchment of workers in these administrations as a result of reincorporation prior to and extensive rationalisation programme in the new South African civil service.

### **3.2.8 SERVICING AND REPAYMENT OF TBVC DEBTS**

3.2.8.1 The servicing and repayment of TBVC debts should be the responsibility of the new national/regional government as soon as the states have been reincorporated.

### **3.2.9 A COMMISSION IS TO BE APPOINTED TO LOOK INTO THE QUESTION OF GOOD ADMINISTRATION DURING TRANSITION AND THE FUTURE OF THE CIVIL SERVICE.**

The commission will deal with the various issues set out in par. 11.2 in the Annexure.

### **3.2.10 COMPOSITION OF THE COMMISSIONS**

3.2.10.1 The two commissions to be appointed should each be a nine-member multi-party commission consisting of five representatives, one from each of the SA and TBVC administrations and four representatives nominated by the remaining parties at Codesa.

### **3.2.11 RESERVATION BY BOPHUTHATSWANA**

The Bophuthatswana Government reconfirmed its position that, in the event of non-reincorporation, all existing bilateral agreements should continue to be in operation.

## NATIONAL PARTY COMMENTS

The National Party is in agreement with the contents of the First Draft Report.



## SOUTH AFRICAN GOVERNMENT COMMENTS

The position reached in WG4 regarding the Future of the TBVC states, as contained in the First Draft Report of WG 4 to CODESA 2, is based on the reaching of consensus in Working Groups 2 and 3.

Until such time as consensus has been reached in the above-mentioned Working Groups, the Government wishes to reserve its position on the acceptance of the First Draft Report of WG4 to Codesa 2.

The following changes need to be made to the First Draft Report of Working Group 4 to CODESA 2:

3.2 Addition: "...effects of reincorporation. Consensus was also reached on mechanisms of addressing proposals by the various parties which could not be thoroughly dealt with in the sub-committee. It was agreed to establish two multi-party commissions to deal with these matters. A copy of the report is attached ..."

4. Mechanisms for dealing with some of the aspects of the terms of reference not yet covered by Working Group 4 are suggested in paragraphs 3.2 and 3.3 above.

### Annexure F

Report on the Administrative, Financial and Practical Effects of Reincorporation

8.2 A single non-racial administration be created from existing "own" and "general" affairs as well as self-governing states as a starting point. On reincorporation, personnel from the TBVC states should be absorbed into the national/regional structure.

Note: Point 8.2 was included in the previous draft report both under the headings "Good Administration during Transition" and "Appointment of Commissions". It was agreed on 5 May that it not be repeated under the second heading, but the First Draft Report has now deleted this essential point. We request that this point be retained under both original headings to avoid any confusions which may arise. Further trimming of the document, by way of accepting or rejecting its recommendations should be done by the CODESA plenary. The present 8.2 then becomes 8.3 as in the final draft to the plenary of Working Group 4.

### Terms of reference of the Commissions

There is a lack of clarity in the setting out of the terms of reference. Points 11.1.9, 11.1.10 and 11.1.11 relate specifically to the question of harmonisation of taxation and should therefore be subpoints to 11.1.1 as follows:

- 11.1.3 Possibility of granting temporary exemptions from tax including 11.1.3
- (a) Whether the process of harmonisation should be implemented incrementally
  - (b) Whether, where prejudices arise, exemptions should be granted for a definite period
  - (c) Whether the granting of exemptions should be fairly automatic up to a certain date

The above proposals were made by our party and make no sense as they stand in the First Draft Report. Extracts from our original submission are attached.

11.2 As stated above, 8.2 above should be repeated as 11.2.2 as per the sub-committee 3 report of 4 May.



On the basis that reincorporation of the TBVC states is desirable:

(a) the retention of business confidence, particularly in relation to existing investments

\* the present situation

Both company and personal taxation are at rates which are lower than under central government. In some instances, businesses have used these opportunities simply as a means of evading the South African tax laws, rather than in attempts to develop the economic/industrial infrastructure in the TBVC states. This should cease immediately.



The focus of the industrial decentralisation incentive schemes have shifted from inputs to profitability and these schemes apply throughout the SATBVC. There appears to be no immediate need to address this issue at present, as the matter should be dealt with by a future government.

**\* key issues and problems**

Business confidence will best be maintained and improved, if there is clarity about the direction and pace of change, if there is a sense that, on balance, conditions for business will not deteriorate and if there is good administration during transition. Maintaining business confidence should not become an excuse for delaying appropriate harmonisation of taxation and regulation environments (legislation). The objective should be to protect the people against uncertainty, not to protect people against an inevitable future. In certain cases, phasing will be necessary to ensure that harmonisation is not overly disruptive.

**\* recommendations**

1. A formal Statement of Intent should be issued by CODESA 2 by which businesses are informed that on re-integration of TBVC and self-governing territories, the laws and regulations of the RSA and the relevant province will apply. Such a statement should relate both to company and personal income tax.
2. A multi-lateral commission to be set up by CODESA 2 to consider a plan for the harmonisation of taxation and regulation environments. This Commission to consist of representatives of the tax authorities of the TBVC states and to include representatives from organisations who would not have automatic representation - Democratic Party, ANC, etc.
3. The process of harmonisation could be implemented incrementally and the revenue would accrue to the TBVC administrations. A date would have to be established on which agreements on taxation, etc. between businesses and TBVC governments would terminate. This would presumably be the date of dissolution of the "independent" status of the TBVC administrations and the effective date of reincorporation into the central South African state.
4. If this will prejudice their businesses in any way, they should be permitted to be exempted for a defined period from South African laws and regulations, and instead, the agreement between the company and the TBVC administration can be maintained temporarily. This could be organised by applications to the commission to whom all businesses will have to apply for any exemptions,



ensuring that the body managing harmonisation will have full information about the implications of the change to all individual businesses where the businesses consider such implications to be harmful. Advantage gained out of harmonisation should not be a criteria for exemption. The Commission should ensure that tax avoidance ceases immediately.

5. Except where completely impractical, the granting of exemptions (upon application) should be fairly automatic up to a certain date, which would be the "deadline" for harmonisation. The setting of dates is necessary to ensure greater ease of administration of the national process - otherwise four sets of different dates for exemption will apply.





## REPORT OF WORKING GROUP 5 TO CODESA 2

### 1. Introduction

The Terms of Reference given to WG5 by CODESA 1 (Addendum) involved inter alia:

- 1.1. The monitoring of progress made in Working Groups 1-4
- 1.2. The establishment of time frames within which Codesa process should operate and
- 1.3. The identification of legislation emanating from the Codesa process and the drafting thereof.

In order to conduct its work more effectively, it was necessary to clarify how certain issues emanating from the other Working Groups should be dealt with, and after consultation with the DMC it was agreed that issues pertaining to the administrative process and procedure should be addressed by the DMC, and issues pertaining to political process and content should remain the responsibility of WG5.

### 2. Progress Made:

#### 2.1. Structure of WG5

It was decided at an early stage that WG5 should be divided into two Sub-groups; Sub-group 1 dealing with time frames, and Sub-group 2 dealing with legislation. Each Sub-group divided into 4 Task Groups, viz 1-4, which dealt with progress being made in Working Groups 1-4 respectively.

#### 2.2. Identification of key issues

After studying the minutes of the other Working Groups, WG5 identified and recorded those key issues which it felt should be addressed by Codesa.

#### 2.3. Modus Operandi of Working Group

In order to effectively carry out its duties, WG5 established the following:

- 2.3.1. A process of studying the minutes of the other WGs so as to identify tasks for WG5 such as establishing time frames and the need for legislation.
- 2.3.2. A mechanism for dealing with decisions which require draft legislation so that the final documents correctly fulfil the requirements arrived at by the Codesa process.
- 2.3.3. A proposal for a committee of suitably qualified experts to assist with the drafting of legislation.

#### 2.4. Proactive identification of required legislation



In the absence of firm proposals for new legislation, WG5 decided to be proactive and identified the following:

2.4.1. Discriminatory legislation

Using a Law Commission draft report, a list of 68 acts was examined to determine which contain racial and gender discriminatory provisions which may require attention.

2.4.2. Electoral Bill

Deciding that if truly democratic elections are to be held in the near future, a suitable electoral act will be required. WG5 began an examination of existing electoral acts in preparation for the drafting of a new act for South Africa.

3. Monitoring Role of Working Group 5

Problems were experienced by WG5 in endeavouring to monitor the Codesa process. This resulted in WG5 Steering Committee meeting with the DMC to discuss the problem which led to the following decision being taken:

"Copies of the minutes of all other Working Group plenary sessions, together with summaries of recommendations and agreements emerging from these plenaries, should be made available to WG5 at the earliest possible opportunity."

The lack of real progress in achieving the goals inherent in WG5's Terms of Reference is largely due to the lack of progress in the other Working Groups with regard to clear recommendations concerning time frames and the need for draft legislation.

4. Matters outstanding

4.1. Terms of Reference

Unfortunately, little progress has been made by WG5, the main reason being that by the very nature of its Terms of Reference its work is reactive rather than proactive. This has led to a certain degree of frustration on the part of the delegates serving on WG5.

4.2. Drafting of Legislation

While a mechanism for dealing with decisions that require draft legislation has been arrived at, the following are outstanding matters (see 2.3.2. and 2.3.3.):

4.2.1. The need and/or constitution of a Drafting Committee.

4.2.2. The constituting of a panel of experts

4.2.3. The interaction of a Drafting Committee with existing Codesa structures and



respective governments/administrations regarding draft legislation.

5. Recommendation

The dearth of work for WG5 emanating from other Working Groups has led to much frustration within WG5 and its members.

It is recommended, therefore, that WG5 should only be brought into session when clear agreements and decisions concerning its Terms of Reference are forthcoming from Working Groups 1-4.

# TERMS OF REFERENCE FOR WORKING GROUPS FOR CODESA

## WORKING GROUP 5

### ASSIGNMENT

Time frames and implementation of Codesa's decisions.

#### 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.

REPORT OF THE GENERAL  
COMMISSION

Due to mounting public pressure about the lack of representation in COTAC of women, who form 55 % of the population, and to the need to strengthen the role of women's organizations, national and other organizations, the Management Committee of COTAC decided to form the Women's Advisory Committee. The WAC is a sub-committee of the Management Committee charged with the responsibility of looking into the issues of relevance, women and development of women in the Working Group, and advise the Management Committee and advise on their gender orientation, and to liaise with the various women's organizations in the CAC with a view to strengthening their role in the Working Group.

The WAC was set up for the first time on 6 April and has since then been working on the issues of women and development of women in the Working Group. The WAC has been working on the issues of women and development of women in the Working Group, and has been working on the issues of women and development of women in the Working Group. The WAC has been working on the issues of women and development of women in the Working Group, and has been working on the issues of women and development of women in the Working Group.





## REPORT OF THE GENDER ADVISORY COMMITTEE TO THE MANAGEMENT COMMITTEE OF CODESA

Due to enormous public pressure about the lack of representation at CODESA of women, who form 53 % of the population, and subsequent suggestions and submissions by women's organisations, political parties and other organisations, the Management Committee of CODESA decided to form the Gender Advisory Committee. The GAC is a subcommittee of the Management Committee charged with the special task of looking into the Terms of Reference, minutes and decisions of each of the Working Groups, and those of the Management Committee, and advising on their gender implications. All CODESA participants have so far sent representatives to the GAC with the exception of the Boputhatswana and Venda Governments.

The GAC met for the first time on 6 April and has diligently studied the Terms of Reference, minutes and most of the decisions already taken by the Working Groups as well as internal and external submissions from women's organisations and political parties, with an unusual spirit of unity. The GAC has reached consensus on many issues, but consensus was not reached on others.





# 1. RECOMMENDATIONS AND ADVICE ON THE GENDER IMPLICATIONS OF ISSUES RAISED IN WORKING GROUP 01

## 1.1 The Free Political Participation of Women

Noting the Terms of Reference of Working Group 01, Items 1.1.4 (k), (p) and (o), the GAC recommends the following:

- 1.1.1 The rights of access of women to public facilities and meeting venues should be ensured, as should their right to meet with political organisations. This recommendation is necessary so that women can participate without fear and on an equal footing in the political process.
- 1.1.2 The right of access of political organisations to public facilities, and their right to meet with potential voters, is meaningless unless women may participate in the democratic process on an equal footing without fear of public or private harassment and intimidation.
- 1.1.3 That the roles mentioned here (Item 1.1.4 (o) of the Terms of Reference of Working Group 1) concerning educative and informative campaigns should be broadened to include specific educational campaigns informing women of, inter alia, their right to vote, particularly in areas where women are unlikely to be reached by usual media.

## 1.2 Agreements on Political Intimidation and Women

With regard to the agreement reached by sub group 2 of Working Group 1 on the Definition of Political Intimidation, the GAC recommends that the following additions be made to the activities which would, as per the aforesaid agreement, be considered, in particular, as forms of political intimidation (refer to Item 4.2 of the Minutes of the meeting of Sub-Group 2 of Working Group 1, 2 March):

- 1.2.1 To compel women, both within and outside the home, by virtue of the "power" vested in men with whom they may associate, to adopt a particular political position; or to similarly prevent women from engaging in free political activity.
- 1.2.2 To use political patronage in any form that threatens or denies an individuals political, social and economic rights, especially noting that women are frequently the victims of such practices.
- 1.2.3 To sexually harass any individual and thereby prevent him/her from the freedom of the right of expression/opinion, association and movement.

With regards to item 1.3.3 above the GAC defines sexual harassment, in general terms, as sexual advances without express consent, including innuendos or language of a defamatory or





offensive nature, in all spheres, including political, social and economic life and in the media.

### 1.3 Agreements of the Interpretation of the National Peace Accord

With regards to agreements reached by Sub-Group 2 of Working Group 1 re the implementation and interpretation of the National Peace Accord, the GAC recommends that the following additions be made (refer to Item 6.1.6 and Item 6.4.1, respectively, of the minutes of Sub-Group 2 of Working Group 1, on 7 April):

- 1.3.1 That the reference to "Business representatives" in clause 7.4.4.3 of the NPA be interpreted to include representatives from professional and women's organisations.
- 1.3.2 The NPA make special efforts to include representatives of relevant local and tribal authorities as well as local women's structures into all RDRC and LDRC structures.
- 1.3.3 With regards to item 1.4.2 above (and with specific reference to items 6.1.6, 6.3.2, 6.4.2, 6.5.2, 6.6.2, 6.6.3 and 6.8 of the minutes of the meeting of WG1 SG2, 7 April) the GAC recommends that as part of its input on the interpretation and implementation of the NPA Working Group 1 recommend that women be included in all structures created by the NPA, RDRC's and LDRC's to ensure that gender implications of all decisions and functions of these structures, are considered.

### 1.4 On the Security Forces, Free Political Activity and Women

Noting that the many acts of violence committed against women allegedly by the security forces are a source of grave concern, the GAC recommends that:

- 1.4.1 any such crime be immediately investigated;
- 1.4.2 violent crime against women be treated with stricter and more stringent disciplinary action;
- 1.4.3 when searches of homes are conducted, women police must accompany male police;
- 1.4.4 the position of high ranking officers who are unable or unwilling to maintain adequate control over their forces be urgently reviewed;
- 1.4.5 any peace keeping force should include women within their structures at all levels;
- 1.4.6 the gender sensitivity of these forces (refer to item 1.5.5) be monitored;
- 1.4.7 all individuals be informed of their rights with regard to the role and functions of these forces (refer to item 1.5.5);





- 1.4.8 these forces (refer to item 1.5.5) be trained to be gender sensitive and to ensure that they do not violate the rights of women.

Noting the lack of agreement in Working Group 1 over the definition of political prisoners, no recommendations with regards to the gender implications of this issue could be agreed upon.

The GAC also recommends that any Security Force established in the country, including the TBVC states, must begin to immediately redress race and gender imbalances both in their composition and functioning at all levels and introduce a Code of Conduct and norms which will create confidence among all the people of South Africa.

## 1.5 Working Group 01 Terms of Reference

The GAC proposes that Item 1.1.4 (c) of the Terms of Reference of Working Group 01 should be amended to read as follows:

"The amendment and/or repeal of any remaining laws militating against free political activity including the elimination of racial and gender discriminatory laws."

## 1.6 The Media in the Transition (Recommendation to Working Groups 01 & 03)

The GAC recommends that Working Group 1 and Working Group 3 agree upon a politically neutral Independent Communications Authority which shall:

- \* include gender conscious persons;
- \* facilitate media access for women;
- \* monitor and discourage sexist programmes, articles and advertising;
- \* encourage non-sexist, non-discriminatory publications;
- \* ensure the participation of women on all media bodies, at all levels;
- \* organise that radio and television programmes which educate women about the democratic process and their right to participate therein without fear of intimidation, are prepared as a matter of urgency





## 2. Recommendations and Advice on the Gender Implications of the Issues Raised in Working Group 02

### 2.1 Constitutional Principles

The GAC advises that:

- 2.1.1 It fully supports a Justiciable Bill of Fundamental Human Rights to be attached to the constitution.
- 2.1.2 It fully supports the concept of a qualified Equality Clause in the Bill of Rights and the Constitution.
- 2.1.3 It recommends that Working Group 2 address the problem of redressing and eliminating gender inequalities.
- 2.1.4 It recommends to WG 2 that they take note of the desirability of a document containing a set of ideals regarding gender issues, which should be accepted by a future Constitution Making Body as a document to be used by the courts to assist women in claiming and exercising their rights under the constitution and Bill of Rights to ensure gender equality.
- 2.1.5 The GAC further recommends to Working Group 02 that the Bill of Rights include some form of rights and protection for children.

### 2.2 Constitutional Language

The GAC recommends that the terms "men and women" and "men, women and children" be used wherever respectively appropriate, in the drafting of the Constitution, in place of the terms "people" or "persons".

### 2.3 On Agreements Reached Regarding Constitutional Principles

Regarding the "Provisional Areas of Commonality that Already Exist" in Working Group 02 as adopted by the Steering Committee of WG 02 on 27 April, the GAC recommends the following (refer to Document prepared by the Steering Committee of Working Group 2 on 27 April):

- 2.3.1 Item 1.1.3 should be amended to read "The diversity of languages, cultures and religions will be acknowledged, within the non-racial and non-sexist principles of the Constitution."
- 2.3.2 Item 1.1.7.1 should be amended to read "A judiciary that will be independent, non-racial, impartial, gender sensitive and inclusive of women."





- 2.3.3 Item 1.1.7.2 should be amended to read "An entrenched and justiciable Bill/Charter of Fundamental Rights, which will protect the rights of women and children."
- 2.3.4 Item 1.2.2 should read "At each level there shall be democratic representation, consistent with non-racial and gender sensitive principles."
- 2.3.5 Item 1.3.1 should read "A new constitution shall provide for effective participation of minority political parties consistent with democracy, non-racialism and non-sexism"

## 2.4 Constitution Making Body/Process

- 2.4.1 The GAC recommends that when drawing up the electoral procedures, methods should be sought to encourage full participation of women. This should apply to both encouraging women to exercise their political rights to campaign and stand for election as well as to vote. These provisions would include, among others, education programmes, elimination of sexual harassment (refer to item 1.3), drawing up of electoral lists and giving women reasonable exposure in the media.
- 2.4.2 The GAC strongly recommends that all parties include a fair proportion of women in their electoral lists. It is essential that women are evenly distributed within the lists, to ensure their inclusion in the elected body.
- 2.4.3 The GAC recommends that any committees set up by the Constitution Making Body must contain an adequate number of women.
- 2.4.4 The GAC recommends that the Constitution Making Body should consider a sub-committee to monitor and raise gender issues in the drafting of the Constitution and the Bill of Rights.
- 2.4.5 The above 4 proposals should apply to future elections at a local, regional and national government level.





### 3. Recommendations and Advice on the Gender Implications of the Issues Raised in Working Group 03

#### 3.1 The Funding of Programmes for Women

The GAC advises that Working Group 3 reach an agreement on the principle of funding and programmes to ensure the meaningful participation in, and education about the democratic electoral process.

In order that women be timeously informed about the franchise, and thus enabled to participate in interim elections without fear of pressure or intimidation, it is suggested that such agreement be expeditiously concluded.

#### 3.2 The Technical Report to the Steering Committee of Working Group 3

The GAC advises the Technical Committee, Working Group 3 and its Steering Committee on the following points concerning the Technical Committee's recommendations made on 27 April:

3.2.1 In addition to Item 7.1 of the report:

"\* Shall include women in its composition."

3.2.2 Item 10 of the report should state:

"The transitional executive structure will be constituted by legislation agreed to by Codesa, will have a multi-party character, including women and be . . ."

3.2.3 The reference to "persons" in line 14 of Item 10 of the report should be replaced by a reference to "men and women".

3.2.4 Line 5 of Item 14 of the report should read:

"Save for agreement that the TEC must have multi-party character, including women, the precise criteria . . ."

3.2.5 It is also recommended that the proposed TEC should include a Gender Structure, the exact nature of which is still to be determined.

#### 3.3 Women and Local Government

The GAC advises that special mechanisms be created to promote the participation and representation of women in local government structures, so that these structures more closely reflect the gender composition of the populace.

Any projects undertaken during the life of CODESA and the Interim or Future Governments should be aimed at the interests of all groups in local communities including women.





### 3.4 The Media in the Transition (Recommendation to Working Groups 01 & 03)

The GAC recommends that Working Group 1 and Working Group 3 agree upon a politically neutral Independent Communications Authority which shall:

- \* include gender conscious persons;
- \* facilitate media access for women;
- \* monitor and discourage sexist programmes, articles and advertising;
- \* encourage non-sexist, non-discriminatory publications;
- \* ensure the participation of women on all media bodies, at all levels;
- \* organise that radio and television programmes which educate women about the democratic process and their right to participate therein without fear of intimidation, are prepared as a matter of urgency

### 3.5 Women and the Foreign Service

Noting that South Africa's foreign relations have mainly been conducted by men, as from the interim government women should be trained, employed, promoted and recognised on an equal basis with men within the diplomatic service. Any existing discriminatory regulations and practices with respect to gender and race in South Africa's foreign service need to be removed.

### 3.6 Land and Women

The GAC wishes to place on record that no consensus could be reached on the following proposals concerning land and women:

**Proposal 1:** That Working Group 3 suggest an urgent Commission of Enquiry into legislation which prevents women's access to land ownership in South Africa and the TBVC states, and that the results of such an enquiry be immediately embodied in legislation.

**Proposal 2:** That Working Group 3: (1) look into those laws which prevent/inhibit women's ownership of or access to land in South Africa and the TBVC states, with the intention of amending or repealing those laws and (2) that there should be an immediate moratorium on the sale and transferral of all state property to private or corporate individuals and organisations.





#### **4. General Recommendations to Codesa (to all Working Groups)**

##### **4.1 Non-Sexist Language in CODESA documentation**

The GAC recommends that CODESA documents should explicitly define the word "person" as referring to both men and women.

##### **4.2 Gender Discriminatory Legislation**

The GAC recommends the repeal of all legislation in South Africa and the TBVC states which discriminates on the basis of race, creed or gender which circumscribe and impede free political, economic or social activity. We suggest that this be attended to by a general law asserting certain basic civil and political rights, combined with an omnibus law repealing all legislation in accordance with a schedule of Acts to be provided by the GAC. We advise Working Groups 1, 2, 3, 4 and 5 to assist in the identification of such legislation.

#### **5. Conclusion and The Way Forward**

In conclusion, and in view of the short period of time which the GAC had had at its disposal, the GAC wishes to point out that, as of 7 May, proposals and recommendations on the proceedings of Working Group 4 and 5 have not yet been formulated, and that there are certain areas in other Working Groups on which consensus has not yet been reached. The GAC would also wish to look at present discriminatory legislation which needs to be repealed or amended. The GAC therefore recommends that it continues with its work after CODESA II both in terms of uncompleted work, feed-back on its submissions from the relevant Working Groups and forthcoming agreements emanating from the various Working Groups and committees.







# REPORT OF THE GENDER ADVISORY COMMITTEE TO THE MANAGEMENT COMMITTEE OF CODESA

Due to enormous public pressure about the lack of representation at CODESA of women, who form 53 % of the population, and subsequent suggestions and submissions by women's organisations, political parties and other organisations, the Management Committee of CODESA decided to form the Gender Advisory Committee. The GAC is a subcommittee of the Management Committee charged with the special task of looking into the Terms of Reference, minutes and decisions of each of the Working Groups, and those of the Management Committee, and advising on their gender implications. All CODESA participants have so far sent representatives to the GAC with the exception of the Boputhatswana and Venda Governments.

The GAC met for the first time on 6 April and has diligently studied the Terms of Reference, minutes and most of the decisions already taken by the Working Groups as well as internal and external submissions from women's organisations and political parties, with an unusual spirit of unity. The GAC has reached consensus on many issues, but consensus was not reached on others.





## 1. RECOMMENDATIONS AND ADVICE ON THE GENDER IMPLICATIONS OF ISSUES RAISED IN WORKING GROUP 01

### 1.1 The Free Political Participation of Women

Noting the Terms of Reference of Working Group 01, Items 1.1.4 (k), (p) and (o), the GAC recommends the following:

- 1.1.1 The rights of access of women to public facilities and meeting venues should be ensured, as should their right to meet with political organisations. This recommendation is necessary so that women can participate without fear and on an equal footing in the political process.
- 1.1.2 The right of access of political organisations to public facilities, and their right to meet with potential voters, is meaningless unless women may participate in the democratic process on an equal footing without fear of public or private harassment and intimidation.
- 1.1.3 That the roles mentioned here (Item 1.1.4 (o) of the Terms of Reference of Working Group 1) concerning educative and informative campaigns should be broadened to include specific educational campaigns informing women of, inter alia, their right to vote, particularly in areas where women are unlikely to be reached by usual media.

### 1.2 Agreements on Political Intimidation and Women

With regard to the agreement reached by sub group 2 of Working Group 1 on the Definition of Political Intimidation, the GAC recommends that the following additions be made to the activities which would, as per the aforesaid agreement, be considered, in particular, as forms of political intimidation (refer to Item 4.2 of the Minutes of the meeting of Sub-Group 2 of Working Group 1, 2 March):

- 1.2.1 To compel women, both within and outside the home, by virtue of the "power" vested in men with whom they may associate, to adopt a particular political position; or to similarly prevent women from engaging in free political activity.
- 1.2.2 To use political patronage in any form that threatens or denies an individuals political, social and economic rights, especially noting that women are frequently the victims of such practices.
- 1.2.3 To sexually harass any individual and thereby prevent him/her from the freedom of the right of expression/opinion, association and movement.

With regards to item 1.3.3 above the GAC defines sexual harassment, in general terms, as sexual advances without express consent, including innuendos or language of a defamatory or





offensive nature, in all spheres, including political, social and economic life and in the media.

### 1.3 Agreements of the Interpretation of the National Peace Accord

With regards to agreements reached by Sub-Group 2 of Working Group 1 re the implementation and interpretation of the National Peace Accord, the GAC recommends that the following additions be made (refer to Item 6.1.6 and Item 6.4.1, respectively, of the minutes of Sub-Group 2 of Working Group 1, on 7 April):

- 1.3.1 That the reference to "Business representatives" in clause 7.4.4.3 of the NPA be interpreted to include representatives from professional and women's organisations.
- 1.3.2 The NPA make special efforts to include representatives of relevant local and tribal authorities as well as local women's structures into all RDRC and LDRC structures.
- 1.3.3 With regards to item 1.4.2 above (and with specific reference to items 6.1.6, 6.3.2, 6.4.2, 6.5.2, 6.6.2, 6.6.3 and 6.8 of the minutes of the meeting of WG1 SG2, 7 April) the GAC recommends that as part of its input on the interpretation and implementation of the NPA Working Group 1 recommend that women be included in all structures created by the NPA, RDRC's and LDRC's to ensure that gender implications of all decisions and functions of these structures, are considered.

### 1.4 On the Security Forces, Free Political Activity and Women

Noting that the many acts of violence committed against women allegedly by the security forces are a source of grave concern, the GAC recommends that:

- 1.4.1 any such crime be immediately investigated;
- 1.4.2 violent crime against women be treated with stricter and more stringent disciplinary action;
- 1.4.3 when searches of homes are conducted, women police must accompany male police;
- 1.4.4 the position of high ranking officers who are unable or unwilling to maintain adequate control over their forces be urgently reviewed;
- 1.4.5 any peace keeping force should include women within their structures at all levels;
- 1.4.6 the gender sensitivity of these forces (refer to item 1.5.5) be monitored;
- 1.4.7 all individuals be informed of their rights with regard to the role and functions of these forces (refer to item 1.5.5);





- 1.4.8 these forces (refer to item 1.5.5) be trained to be gender sensitive and to ensure that they do not violate the rights of women.

Noting the lack of agreement in Working Group 1 over the definition of political prisoners, no recommendations with regards to the gender implications of this issue could be agreed upon.

The GAC also recommends that any Security Force established in the country, including the TBVC states, must begin to immediately redress race and gender imbalances both in their composition and functioning at all levels and introduce a Code of Conduct and norms which will create confidence among all the people of South Africa.

## 1.5 Working Group 01 Terms of Reference

The GAC proposes that Item 1.1.4 (c) of the Terms of Reference of Working Group 01 should be amended to read as follows:

"The amendment and/or repeal of any remaining laws militating against free political activity including the elimination of racial and gender discriminatory laws."

## 1.6 The Media in the Transition (Recommendation to Working Groups 01 & 03)

The GAC recommends that Working Group 1 and Working Group 3 agree upon a politically neutral Independent Communications Authority which shall:

- \* include gender conscious persons;
- \* facilitate media access for women;
- \* monitor and discourage sexist programmes, articles and advertising;
- \* encourage non-sexist, non-discriminatory publications;
- \* ensure the participation of women on all media bodies, at all levels;
- \* organise that radio and television programmes which educate women about the democratic process and their right to participate therein without fear of intimidation, are prepared as a matter of urgency





## 2. Recommendations and Advice on the Gender Implications of the Issues Raised in Working Group 02

### 2.1 Constitutional Principles

The GAC advises that:

- 2.1.1 It fully supports a Justiciable Bill of Fundamental Human Rights to be attached to the constitution.
- 2.1.2 It fully supports the concept of a qualified Equality Clause in the Bill of Rights and the Constitution.
- 2.1.3 It recommends that Working Group 2 address the problem of redressing and eliminating gender inequalities.
- 2.1.4 It recommends to WG 2 that they take note of the desirability of a document containing a set of ideals regarding gender issues, which should be accepted by a future Constitution Making Body as a document to be used by the courts to assist women in claiming and exercising their rights under the constitution and Bill of Rights to ensure gender equality.
- 2.1.5 The GAC further recommends to Working Group 02 that the Bill of Rights include some form of rights and protection for children.

### 2.2 Constitutional Language

The GAC recommends that the terms "men and women" and "men, women and children" be used wherever respectively appropriate, in the drafting of the Constitution, in place of the terms "people" or "persons".

### 2.3 On Agreements Reached Regarding Constitutional Principles

Regarding the "Provisional Areas of Commonality that Already Exist" in Working Group 02 as adopted by the Steering Committee of WG 02 on 27 April, the GAC recommends the following (refer to Document prepared by the Steering Committee of Working Group 2 on 27 April):

- 2.3.1 Item 1.1.3 should be amended to read "The diversity of languages, cultures and religions will be acknowledged, within the non-racial and non-sexist principles of the Constitution."
- 2.3.2 Item 1.1.7.1 should be amended to read "A judiciary that will be independent, non-racial, impartial, gender sensitive and inclusive of women."





- 2.3.3 Item 1.1.7.2 should be amended to read "An entrenched and justiciable Bill/Charter of Fundamental Rights, which will protect the rights of women and children."
- 2.3.4 Item 1.2.2 should read "At each level there shall be democratic representation, consistent with non-racial and gender sensitive principles."
- 2.3.5 Item 1.3.1 should read "A new constitution shall provide for effective participation of minority political parties consistent with democracy, non-racialism and non-sexism"

## 2.4 Constitution Making Body/Process

- 2.4.1 The GAC recommends that when drawing up the electoral procedures, methods should be sought to encourage full participation of women. This should apply to both encouraging women to exercise their political rights to campaign and stand for election as well as to vote. These provisions would include, among others, education programmes, elimination of sexual harassment (refer to item 1.3), drawing up of electoral lists and giving women reasonable exposure in the media.
- 2.4.2 The GAC strongly recommends that all parties include a fair proportion of women in their electoral lists. It is essential that women are evenly distributed within the lists, to ensure their inclusion in the elected body.
- 2.4.3 The GAC recommends that any committees set up by the Constitution Making Body must contain an adequate number of women.
- 2.4.4 The GAC recommends that the Constitution Making Body should consider a sub-committee to monitor and raise gender issues in the drafting of the Constitution and the Bill of Rights.
- 2.4.5 The above 4 proposals should apply to future elections at a local, regional and national government level.





### 3. Recommendations and Advice on the Gender Implications of the Issues Raised in Working Group 03

#### 3.1 The Funding of Programmes for Women

The GAC advises that Working Group 3 reach an agreement on the principle of funding and programmes to ensure the meaningful participation in, and education about the democratic electoral process.

In order that women be timeously informed about the franchise, and thus enabled to participate in interim elections without fear of pressure or intimidation, it is suggested that such agreement be expeditiously concluded.

#### 3.2 The Technical Report to the Steering Committee of Working Group 3

The GAC advises the Technical Committee, Working Group 3 and its Steering Committee on the following points concerning the Technical Committee's recommendations made on 27 April:

##### 3.2.1 In addition to Item 7.1 of the report:

"\* Shall include women in its composition."

##### 3.2.2 Item 10 of the report should state:

"The transitional executive structure will be constituted by legislation agreed to by Codesa, will have a multi-party character, including women and be . . ."

##### 3.2.3 The reference to "persons" in line 14 of Item 10 of the report should be replaced by a reference to "men and women".

##### 3.2.4 Line 5 of Item 14 of the report should read:

"Save for agreement that the TEC must have multi-party character, including women, the precise criteria . . ."

##### 3.2.5 It is also recommended that the proposed TEC should include a Gender Structure, the exact nature of which is still to be determined.

#### 3.3 Women and Local Government

The GAC advises that special mechanisms be created to promote the participation and representation of women in local government structures, so that these structures more closely reflect the gender composition of the populace.

Any projects undertaken during the life of CODESA and the Interim or Future Governments should be aimed at the interests of all groups in local communities including women.





### 3.4 The Media in the Transition (Recommendation to Working Groups 01 & 03)

The GAC recommends that Working Group 1 and Working Group 3 agree upon a politically neutral Independent Communications Authority which shall:

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### 3.6 Land and Women

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**Proposal 1:** That Working Group 3 suggest an urgent Commission of Enquiry into legislation which prevents women's access to land ownership in South Africa and the TBVC states, and that the results of such an enquiry be immediately embodied in legislation.

**Proposal 2:** That Working Group 3: (1) look into those laws which prevent/inhibit women's ownership of or access to land in South Africa and the TBVC states, with the intention of amending or repealing those laws and (2) that there should be an immediate moratorium on the sale and transferral of all state property to private or corporate individuals and organisations.





#### **4. General Recommendations to Codesa (to all Working Groups)**

##### **4.1 Non-Sexist Language in CODESA documentation**

The GAC recommends that CODESA documents should explicitly define the word "person" as referring to both men and women.

##### **4.2 Gender Discriminatory Legislation**

The GAC recommends the repeal of all legislation in South Africa and the TBVC states which discriminates on the basis of race, creed or gender which circumscribe and impede free political, economic or social activity. We suggest that this be attended to by a general law asserting certain basic civil and political rights, combined with an omnibus law repealing all legislation in accordance with a schedule of Acts to be provided by the GAC.

We advise Working Groups 1, 2, 3, 4 and 5 to assist in the identification of such legislation.

#### **5. Conclusion and The Way Forward**

In conclusion, and in view of the short period of time which the GAC had had at its disposal, the GAC wishes to point out that, as of 7 May, proposals and recommendations on the proceedings of Working Group 4 and 5 have not yet been formulated, and that there are certain areas in other Working Groups on which consensus has not yet been reached. The GAC would also wish to look at present discriminatory legislation which needs to be repealed or amended. The GAC therefore recommends that it continues with its work after CODESA II both in terms of uncompleted work, feed-back on its submissions from the relevant Working Groups and forthcoming agreements emanating from the various Working Groups and committees.

