

VOLUME I OF CONSOLIDATED DOCUMENT

CONSTITUTION-MAKING BODY/PROCESS

1. General Constitutional Principles

1.1 The Declaration of Intent contains six general principles:

"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 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."*

(cf Declaration of Intent, pages 2 & 3)

1.2 In this regard, an Addendum was subsequently appended to the Declaration as a clarification to the above principles:

"For the avoidance of doubt as to the interpretation of the Declaration of Intent it is declared by its signatories that irrespective of their individual interpretive views thereof, no provision of the Declaration of Intent, interpreted alone or in conjunction with any other provision thereof shall be construed as -

- 1. favouring or inhibiting or precluding the adoption of any particular constitutional model, whether unitary, federal, confederal, or otherwise, consistent with democracy;*

2. *preventing any participant from advocating the same or the separation, in terms of any constitutional model, of powers between a central government and the regions; during the proceedings of CODESA or any of its committees or Working Groups;"*

(cf Addendum to Declaration of Intent, page 4)

- 1.3 In addition to the above, the Management Committee issued a further clarification to the effect that the Declaration of Intent must be understood to allow any participant to make submissions on the question of self-determination.

- 1.4 The question of constitutional principles which would be binding on a Constitution-Making Body (CMB) was part of the Terms of Reference of Working Group 2. The following areas of commonality with regard to general constitutional principles were prepared by the Steering Committee and submitted to the Working Group on 12 May 1992:

- "1. *South Africa will be a united, sovereign state in which all will enjoy a common South African citizenship.*
2. *South Africa will be democratic, non-racial and non-sexist.*
3. *The constitution shall be the supreme law.*
4. *There will separation of powers between the legislature, the executive and the judiciary with appropriate checks and balances.*
5. *The judiciary will be independent, non-racial and impartial.*
6. *There will be a legal system that guarantees ~~they~~ equality before the law.*
7. *There will be representative and accountable government embracing multi-party democracy, regular elections, universal adult suffrage, a common voters role and, in general, proportional representation.*
8. *The diversity of languages, cultures and religions will be acknowledged.*
9. *All will enjoy universally accepted human rights, freedoms and civil liberties including freedom of religion, speech and assembly which will be guaranteed by an entrenched and justiciable Bill/Charter of Fundamental Rights.*
10. *Government shall be structured at national, regional and local levels.*
 - 10.1 *At each level there shall be democratic representation.*
 - 10.2 *Each level of government shall have appropriate and adequate legislative and executive powers, duties and functions that will*

enable each level to function effectively; such powers, duties and functions to be entrenched in the constitution.

10.3 In addition to the powers, duties and functions entrenched in the constitution, each level of government may delegate powers, duties and functions to other levels of government.

10.4 The general principles of the constitution including the terms of the Bill/Charter of Fundamental Rights shall apply to each level of government.

11. The new constitution shall provide for effective participation of minority political parties consistent with democracy."

(cf pages 43 - 44)

1.5 The Steering Committee also prepared a report dated 27 April 1992 recording the areas on which no agreement yet existed:

"2. Issues on Which No Agreement Yet Exists

2.1 Economic freedom, government intervention and economic systems.

2.2 Accommodation of the diversity of languages, cultures and religions.

2.3 Role of Traditional Leaders.

2.4 The Bill/Charter of Fundamental Rights including:

2.4.1 Its nature and scope

2.4.2 Affirmative action

2.4.3 Second generation rights

2.5 Self-determination

2.6 New items proposed, namely:

2.6.1 The role of standing committees in the formulation of legislation.

2.6.2 Government will be open, accessible and accountable.

2.6.3 Power sharing.

3. Draft Principles on 2.1 to 2.4 Above Prepared by the Steering Committee

on 23.3.92

3.1 Draft principle on economic freedom, governmental intervention and economic systems:

"The constitution should provide for the promotion of the improvement in the quality of life of all South Africans by enabling economic growth, human development, social justice and equal opportunities for all."

3.2 Draft principle on the Bill/Charter of Fundamental Rights:

"There shall be a justiciable bill/charter of fundamental rights which shall ensure inter alia :

- universally accepted human rights and freedoms;*
- civil liberties including freedom of religion, speech and assembly;*
- the equality of all before the law;*
- property rights, provided that legislation may in the public interest authorise expropriation against payment of reasonable compensation which shall in the event of a dispute be determined by a court of law.*

The constitution shall enable the implementation of measures to help address the racial and gender inequities caused by past discrimination."

3.3 Draft principle on the accommodation of the diversity of languages, cultures and religions:

"The constitution at all levels of government shall accommodate and protect the right of citizens to practice their religion, enjoy their culture and use their own language both as individuals and in association with others. This shall include the right of citizens where practicable to have their children educated in their mother tongue and the right of citizens to establish educational institutions reflecting their language, culture and religion, provided that racial discrimination may not be practised."

3.4 Draft principle on the role of traditional leaders:

"The constitution should define a suitable role for traditional leaders consistent with the objective of a united, non-racial, non-sexist, democratic South Africa." "

2. Constitution-Making Body

- 2.1 The Working Group 3 Report to CODESA 2 recorded commonality ~~pages~~
~~48 & 49~~ in the following terms:

"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 ~~elect~~
parliament under an interim constitution with the power to draft in term of agreed procedures a new constitution 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."

- 2.2 This Report also recorded the following understanding:

"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."

- 2.3 The memorandum prepared by the Chairman and ~~Secrefa~~ Working Group 2, dated 22 June 1992, which appears ~~pages~~ **33 - 44** records the following basis approach:

"1. Basic approach: Constitution making within the framework of a Transitional/Interim Constitution

1.1 CODESA shall agree to and draft transitional/interim constitution. This constitution shall be submitted to parliament for legislation within two months of this agreement and all parties within Codesa in parliament commit themselves to supporting such legislation.

1.2 The ~~transitional~~/interim constitution shall make provision for the constitution making process through which, and the constitution making body by whom, a final constitution shall be drafted and adopted."

(cf page 36)

- 2.4 Working Group 2 was seized with three proposals which appear ~~pages~~ **34 - 35**, aimed at resolving the deadlock which had arisen. All three proposals were based on the premise that the elected National Assembly would draft and adopt

the final constitution.

- 2.5 From the point of view of constitution making, the National Assembly shall be elected on the basis of proportional representation and universal adult suffrage, half the seats being allocated through national lists and half through regional lists, in order to ensure proper representation of regions.

(cf paragraphs 3.1.2, 3.2.1, page 37)

- 2.6 On the binding nature of the constitutional principles, the following was recorded:

"3.8.1 CODESA shall agree on a set of general constitutional principles t enshrined in the final constitution and which shall not be contradicted by any provision of the final constitution.

3.8.2 The transitional/interim constitution shall contain an entrenched provision prescribing that the final constitution shall give effect to paragraph 3.8.1 and shall establish an independent mechanism which will be the only body to determine that the general constitutional principles have been enshrined and not contradicted in the final constitution; which determination may only be initiated by a party in the NA."

(cf page 39)

- 2.7 On the question of time frames and deadlock-breaking for the CMB, the following is recorded:

"4. Special Mechanisms

Codesa shall agree on special mechanisms to ensure that the national assembly completes the work of drafting and adopting the final constitution within a specified period of time. The transitional/interim constitution shall remain in force until replaced by the final constitution."

(cf page 39)

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ON THE QUESTION OF INTERIM GOVERNANCE AS A RESULT OF THE FIRST ELECTIONS

1. The Working Group 3 Report records the following:

"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."

(cf page 48)

2. The Interim Constitution (as distinct from the final constitution) shall be agreed upon in CODESA.
3. The Interim Constitution shall make provision for the following:

"3.1 A Legislature

The legislative authority shall vest in a democratically elected interim/transitional parliament consisting of a National Assembly and a Senate functioning in terms of the special majorities and general constitutional principles agreed upon.

3.1.1 The structure and role of the Senate must still be agreed upon.

3.1.2 The National Assembly shall be elected on the basis of proportional representation and universal adult suffrage, half the seats being allocated through national lists and half through regional lists in order to ensure proper representation of regions."

(cf page 37)

"3.3 An Executive

3.3.1 Executive authority shall vest in a multiparty executive in accordance with the principle of an interim/transitional government of national unity.

3.4 The separation of powers

There shall be a separation of powers between the executive, legislature and judiciary according to the principles underlying a constitutional state.

3.5 Fundamental Rights

CODESA shall agree on justiciable fundamental rights which shall form part of and shall be entrenched in the transitional/interim constitution.

3.6 Regional Government

3.6.1 *CODESA shall agree on the boundaries, powers, duties and functions of regional governments.*

3.6.2 *Provision shall be made for regional government and/or the phasing in of such government with the boundaries, powers, duties and functions as referred to in paragraph 3.6.1.*

3.6.3 *The transitional/interim constitution shall entrench regional government and its boundaries, powers, duties and functions in the transitional phase and the transitional/interim constitution shall in this regard not be amended without the agreement of all the parties in the National Assembly until the adoption of a new constitution in terms of the procedures set out in 3.2.*

3.7 Provisions regarding amendments to the transitional/interim constitution.

Amendments shall only be of force and effect if:

3.7.1 *They do not contradict the set of constitutional principles referred to in paragraph 3.8.1.*

3.7.2 *They have been adopted according to the procedures set out in paragraph 3.2."*

(cf page 38)

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INDEPENDENT ELECTION COMMISSION

Status: The extracts are from the Reports of Working Groups 1, 3 & 4. All three Reports were endorsed by the respective Working Groups and tabled at CODESA 2.

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.
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.

(cf Working Group 3 Report, paragraphs 30.1 - 30.2 pages 54-55)

3. 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.

(cf Working Group 3 Report, paragraph 32.6, page 58)

4. In the defined areas of responsibility of sub-councils of the TEC, ministerial powers and discretion 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.

(cf Working Group 3 Report, paragraph 28, page 28)

5. In the event of any dispute arising as to whether any specific matter or sphere of activity 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.

(cf Working Group 3 Report, paragraph 33, page 58)

6. 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 the 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. Bophuthatswana Government recorded its reservation in this paragraph.]

(cf Working Group 4 Report, paragraph 3.1.3, page 66)

7. Purpose of the elections

The elections would be "for an elected parliament ~~under~~ constitution with the power to draft in terms of agreed procedures a new constitution and to act as an interim legislature".

(cf Working Group 3 Report, paragraph 9, page 48)

8. Funding of political parties

Provisions of the Prohibition of Foreign Financing of Political Parties Act No 51 of 1968 with regard to the receipt of foreign funds by political parties shall be suspended until a date 6 (six) months from the date of the General Election in terms of provisions of a negotiated new constitution for South Africa.

(cf Working Group 1 Report, paragraph 13(i), page 24)

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THE AMENDMENT AND/OR REPEAL OF ANY REMAINING LAWS MILITATING AGAINST FREE POLITICAL ACTIVITY, INCLUDING THE ELIMINATION OF ALL DISCRIMINATORY LEGISLATION

Status: Extracts from the Report of Working Group 1. The Report was endorsed at Working Group level and was tabled at CODESA 2.

1.1 Laws militating against free political activity

1.1.1 Approach

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

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

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

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

1.1.2 General principle

Regarding 1.1.1.1 it was agreed that:

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

1.1.2.2 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.

1.1.2.3 The South African Government and the NP expressed their reservations on paragraph 1.1.2.2 reserving their point of view until a full resolution dealing with principles governing free political activity was debated.

1.1.3 Definition of/general principles underpinning/guidelines for free political activity

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

1.1.3.2 Various oral and written submissions on the content of such

definition/principles were made and a motion tabled.

1.1.3.3 No consensus has yet been reached on a definition of/general principles underpinning free political activity.

1.1.4 Specific measures

Regarding 1.1.1.3 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:

1.1.4.1 Emergency measures;

1.1.4.2 Security measures;

1.1.4.3 Measures affecting the funding of political Parties and organisations;

1.1.4.4 Measures affecting the freedom of assembly and association;

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

1.1.5 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.

1.1.6 Emergency Legislation

1.1.6.1 It was agreed that

1.1.6.1.1 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;

1.1.6.1.2 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:

1.1.6.1.2.1 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;

1.1.6.1.2.2 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;

1.1.6.1.3 The provision in the Public Safety Act, 1953, that a State of Emergency can be declared retrospectively, should be repealed.

1.1.6.1.4 It is desirable to include in the Public Safety Act, 1953:

1.1.6.1.4.1 Extended provisions for Parliamentary control of a State of Emergency;

1.1.6.1.4.2 A provision for certain non-derogable rights;

1.1.6.1.4.3 Provisions for certain procedural controls over detention without trial.

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

1.1.7 Security Legislation

It was agreed that

1.1.7.1 Special measures are necessary to deal with the threat to the public peace and order during the transitional period;

1.1.7.2 In the light of 1.1.7.1, 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 legislation in line with the criteria mentioned in 1.1.7.1., and to remove the emphasis from national security

1.1.7.3 A task group be appointed to undertake the task referred to in 1.1.7.2, taking cognisance of relevant discussions by and submissions to SG1.

1.1.8 Procedure

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

1.1.8.1 separate pieces of legislation amending ~~along~~ individual statutes and/or the use of a General Law Amendment Act;

1.1.8.2 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.

1.1.8.3 the enactment of an Interim Bill of Rights against which offending legislation can be tested;

1.2 Discriminatory Legislation

1.2.1 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:

1.2.1.1 Discriminatory legislation ~~will~~ impedes the creation of a climate for free political activity. Such legislation must be identified by WGI and amended/repealed as soon as possible.

1.2.1.2 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.

1.2.1.3 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.

1.2.1.4 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.

1.2.1.5 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.

1.2.2 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 proposal are incomplete it was agreed that the task group constituted in terms of para 1.1.7.3 above, or any other mechanism set up by Codesa, discuss the proposals regarding discriminatory legislation which falls within categories 1.2.1.1 and 1.2.1.3 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.

- 2 **Political Intimidation: "Any action or set of actions committed by an 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, for instance: the Right to freedom of expression or opinion; the Right of freedom of association; the Right of freedom of movement"**

It was agreed that:

- 2.1 All political disputes between parties be resolved peacefully.
- 2.2 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:

- 2.2.1 the right to freedom of expression or opinion;
- 2.2.2 the right of freedom of association;
- 2.2.3 the right of freedom of movement.
- 2.3 In particular, the following shall be considered forms of political intimidation:
- 2.3.1 to kill, injure, apply violence to, intimidate or threaten any other person or his/her political beliefs, words, writings or actions;
- 2.3.2 to remove, disfigure, destroy, plagiarise or otherwise misrepresent any symbol or other material of any other political party or organisation;
- 2.3.3 to interfere with, obstruct or threaten any other person or group travelling to or from or intending to attend, any gathering for political purposes;
- 2.3.4 to seek to compel, by force or threat of force, any person to join an 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
- 2.3.5 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;

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

(cf Working Group 1 Report, paragraphs 6 & 7, pages 10 - 14)

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ON MATTERS RELATING TO POLITICAL NEUTRALITY OF, AND FAIR ACCESS TO THE STATE-CONTROLLED/STATUTORILY-INSTITUTED MEDIA (PARTICULARLY THE SABC & SATV), INCLUDING THOSE OF THE TBVC STATES

Explanatory Note: Two structures have been envisaged: firstly, an independent body to regulate the telecommunications sector; and secondly, an Independent Media Commission.

Status: These extracts are from the Report of Working Group 1. The Report was endorsed at Working Group level and tabled at CODESA 2. The Working Group 3 Report also refers to the need for an Independent Media Commission.

1.1 Independent Body To Regulate Telecommunications Sector

1.1.1 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.

1.1.2 Functions

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

1.1.2.1 The regulation of the ~~ilist~~ allocation of the electromagnetic spectrum, including the allocation of licences and the determination of licence conditions according to an agreed set of standards.

1.1.2.2 The appointment of a suitable structure to monitor the proper exercise of licence conditions.

1.1.3 Powers

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

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

1.1.3.2.1 To ensure that a wide range of telecommunication services, including regional and community broadcasting program services, is available throughout South Africa.

- 1.1.3.2.2 To ensure fair and effective competition in the provision of such and related services.
- 1.1.3.2.3 To ensure fair and equitable opportunity to opinion formers to express their views freely.
- 1.1.3.2.4 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.
- 1.1.3.2.5 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.
- 1.1.3.2.6 To work out guidelines for the impartiality of news and current affairs programmes on all broadcasting services.
- 1.1.3.2.7 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.
- 1.1.3.2.8 To deal with complaints by the public and political parties.
- 1.1.3.2.9 Such other powers as may be expedient.

1.1.4 Name of Independent Body

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

1.1.5 Constitution of Independent Body

It was agreed that:

1.1.5.1 Members of the Independent Body shall be South African ~~and~~ ^{Citiz} merit who act in the public interest.

1.1.5.2 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.

1.1.6 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.

1.1.7 Accountability and Finance

1.1.7.1 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.

1.1.7.2 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.

1.1.8 Licensing procedures, conditions and standards

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

1.1.9 SABC

There was no consensus on a proposal regarding the immediate reconstitution of the Board of the SABC.

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

1.1.9.1 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;

1.1.9.2 The first such meeting to take place before Codesa II;

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

1.1.10 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:

- 1.1.10.1 adjudicating disputes;
- 1.1.10.2 monitoring the efficiency of the licensee and to ascertain whether licensees comply with their licensee conditions;
- 1.1.10.3 investigating complaints and ~~giving~~ giving effect to remedial actions

1.1.11 Code of Conduct

- 1.1.11.1 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).
- 1.1.11.2 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.

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

- 1.1.12.1 affirmative action
- 1.1.12.2 cross-ownership restrictions

1.2 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.

(cf Working Group 1 Report, paragraph 9, pages ? -?)

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THE TRANSITIONAL EXECUTIVE COUNCIL AND SUB-COUNCILS

Status: The Report from which the following extracts are made was approved of in Working Group 3 and tabled at CODESA 2.

Introduction to agreements reached

1. 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 democratic constitution and the installation of a new government in accordance with the provisions of such constitution.
2. 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.
3. 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.
4. 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

5. 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.

6. It is possible that action may take place or legislation be considered outside the council defined areas of concern, which may have a negative impact on such areas. Council should be able to identify these and within their powers require that such actions should not take place or legislation not be proceeded with.
7. 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 if something is happening elsewhere that may negatively affect the levelling of the political playing field or ensuring of a climate favourable to free political participation.
8. 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

9. A transitional executive structure will be ~~instituted~~ 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).
10. 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

11. The TEC will be vested by ~~legislation~~ agreed to by Codesa with powers necessary to enable it to carry out its functions.
12. 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.
13. The sub-councils will report to the TEC and their decisions will be subject to confirmation/amendment by the TEC.
14. The TEC will be able to delegate powers to ~~the sub-councils~~.
15. 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.

16. 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 of all participating governments/administrations that may impact on the levelling of the political playing field and on free political participation.
17. 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.
18. 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.
19. 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 18 hereof, the matter may be referred to independent election commission.
20. 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.
21. The decisions of the TEC made within its terms of reference and its powers as set above will be binding on and will be implemented by all participants including governments/administrations.

Independent commissions

22. Independent Election Commission

- 22.1 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.
- 22.2 The composition, powers (which shall include the power to resolve disputes as contemplated in paragraphs 19, 20 and 25 hereof) and functions of the Commission shall be enacted in legislation to be agreed to by Codesa.

23. 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

24. 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.

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

24.2 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 political playing field and on free political participation, and to facilitate the 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.

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

24.4 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 any 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 also depend upon decisions taken in Working Group 1.

24.5 Foreign Affairs

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

24.6 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.

25. In the event of any dispute arising as to whether any specific matter or sphere of activity 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

26. 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.
27. 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

28. The TEC will be appointed by the State President on the recommendation of Codesa. It will consist of at least one member from each of the governments/administrations which 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 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.

29. 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 the 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.
30. 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 the conditions of service will be prescribed in the legislation under which they are constituted.
31. 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.
32. The size of the Transitional Executive Structure will be kept as small as is reasonably possible.

Meetings of the TEC and its sub-councils

33. 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.
34. 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

35. 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 18 hereof, the matter may be referred for adjudication as contemplated in Paragraphs 19, 20 and 25 hereof.

States of emergency

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

Implementation and time frames

37. Subject to Paragraph 12 [of the original Report] 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

38. Matters requiring further discussion are as follows:

38.1 Composition of the TEC

38.2 Composition of the sub-council

38.3 Composition, powers and functions of the Independent Election Commission

38.4 Sub-council on foreign affairs

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

Conclusion

40. In view of the fact that this report covers the first stage of the transition, further discussion is required concerning the details of stage two (as envisaged in paragraph [of the original Report]).

(cf Working Group 3 Report, paragraphs 9 - 48 [Conclusion], pages 48 - 63. NB: The paragraphs have been renumbered for purposes of reference within the current document)

VOLUME I OF CONSOLIDATED DOCUMENT

MATTERS RELATING TO VIOLENCE, SECURITY FORCES AND ALL ARMED FORMATIONS

Status: The extracts are from the Reports of Working Groups 1 & 3. Both Reports were endorsed by their respective Working Groups and tabled at CODESA 2.

1. Law and Order, Stability and Security

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

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

(cf Working Group 3 Report, paragraphs 32.3 and 32.4, pages 56 - 58)

3. The Composition and role of the security forces in South Africa and the TBVC states

It was agreed that:

- 3.1 All participants at Codesa commit themselves to the peaceful settlement of political disputes.
- 3.2 National security in South Africa should be sought primarily through efforts to meet the social, political and economic needs of the people.

3.3 The security forces in South Africa shall:

3.3.1 be bound by the principle of constitutional supremacy;

3.3.2 be politically non-partisan;

3.3.3 be committed to resolving conflict primarily through non-violent means;

3.3.4 respect human rights, non-racialism and democracy;

3.3.5 strive to be representative of South African society as a whole.

3.4 For the purpose of addressing our terms of reference, the WG is satisfied that 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 above-mentioned principle and agrees that the details of such councils be worked out by WG3.

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

3.6 Codes of Conduct for the security forces should be agreed to ~~and implemented~~

3.7 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.

3.8 The following matters are outstanding

3.8.1 The composition of the security forces

3.8.2 Operations of the Security Forces that may limit free political activity

(cf Working Group 1 Report, paragraph 12, pages 23 - 24)

4. The Successful implementation of the National Peace Accord

In the light of the current levels of violence that is devastating the prospects of peace stability in our country, all political parties, organisations, government and administrations, participating in CODESA, in order to signify our common purpose to bring an end to political violence, recommit ourselves both in letter and spirit to the NPA.

Signed: 14 September 1991.

In doing so, we once again join hands in the pursuit of our ~~common~~ ~~national~~ objectives; peace and stability for all in our country.

In rallying behind this common objective we acknowledge that the act of having signed the NPA binds us much more than the content of the NPA itself. From that we cannot escape since we have committed ourselves to the NPA and in this way, have given it life and meaning.

SG2 received several submissions on the implementation of the NPA. In addition, Dr Antonie Gildenhuys, 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:

4.1 General

It was agreed that

4.1.1 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.

4.1.2 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 that 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.

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

It was agreed that:

4.2.1 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;

4.2.2 Delegates to RDRC's and LDRC's who suffer financially as a result of their participation in NPA activities be reimbursed;

4.2.3 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;

4.2.4 Permanent offices with appropriate staff and equipment be established in each area provided for in clause 3.7.5 of the NPA;

4.2.5 The NPS should seek to facilitate the participation of delegates on NPA structures, having special regard for the normal work commitments of delegates;

4.2.6 The reference to "Business representatives" in clause 7.4.4.3 of the NPA be interpreted to include representatives from professional organisations.

4.3 Justices of the Peace (Clause 7.5 of the NPA)

It was agreed that:

4.3.1 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.

4.3.2 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.

4.4 Police Reporting Officers (clause 3.2.4 of the NPA)

It was agreed that:

4.4.1 All police reporting officers already nominated be appointed to their positions forthwith.

4.4.2 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.

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

It was agreed that:

4.5.1 The NPC makes special efforts to include representatives of relevant local and tribal authorities into all RDRC and LDRC structures.

4.5.2 Special efforts be made to create an awareness of the NPA amongst tribal and local authorities.

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

It was agreed that:

4.6.1 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;

4.6.2 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.

4.7 The Police Board (Clause 3.3 of the NPA)

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

4.7.1.1 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;

4.7.1.2 should advise on ways in which the credibility of the police in the community could be improved;

4.7.2 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.

4.8 Relations between the community and the police

4.8.1 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:

4.8.1.1 Facilitating police/community liaison, including workshops between relevant parties;

4.8.1.2 Ensuring strict adherence by all parties to the provisions of the NPA.

4.8.2 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.

4.9 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:

- 4.9.1 The selection of top police officers for township stations;
- 4.9.2 The appointment of officers commanding and members of special police investigation units established in terms of clause 3.2.2.6.;
- 4.9.3 Where circumstances permit, determine 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.

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

It was agreed that:

4.10.1 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 4.7.5. of the NPA.

4.10.2 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.

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

4.12 Dangerous weapons and the possession of illegal fire-arms

It was agreed that:

4.12.1 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.

4.12.2 The police increase their searches for illegal firearms and other dangerous weapons.

4.12.3 A record be kept of the political affiliation (if any) of persons arrested for the possession of illegal fire-arms or dangerous weapons.

4.12.4 The above be undertaken in the context of impartial policing.

4.13 Monitoring Commissions

It was agreed that:

4.13.1 Regional monitoring commissions be created in each RDRC region.

4.13.2 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.

4.13.3 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.

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

4.13.5 The functions of these regional monitoring commissions be:

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

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

4.13.5.3 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.

4.13.6 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.

4.14 Budget and infrastructure problems

It was agreed that

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

4.14.2 It be recommended to the National Peace Secretariat that it prepares an

submits a budget to government outlining the funding requirements of the peace process, as provided for in clause 6.12.5 of the NPA.

4.14.3 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.

4.15 Commission of Enquiry Regarding the Prevention of Public Violence and Intimidation

It was agreed to recommend to the NPS and NPC:

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

4.15.2 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.

4.16 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 provided for in clause 9.6 of the NPA.

4.17 Transgressions of the NPA by political parties

It was agreed that

4.17.1 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.

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

4.18 Outstanding matters for discussion:

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

4.18.1 Co-ordination between 3 levels of government

4.18.2 Education Programmes/Publicity.

4.18.3 Liaison between NPC and organisations and NPC and Codesa.

5 The prevention of violence-related crime and matters giving rise thereto

5.1 It was agreed that:

5.1.1 Government security forces ~~shd~~ 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.

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

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

5.2 Consensus could not be reached on the following:

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

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

(cf Working Group 1 Report, paragraphs 10 & 11, pages 17 - 23)

VOLUME II OF CONSOLIDATED DOCUMENT

DRAFT PROPOSALS RELATING TO THE INDEPENDENT ELECTION COMMISSION

1. Aims

Proposals for the establishment of an Independent Election Commission (IEC), charged with the responsibility of conducting the elections, monitoring the election process and the elections, and to act as adjudicator and arbitrator on matters related thereto.

2. The Independent Election Commission

2.1 The IEC shall be appointed by the State President upon the recommendation of the Multi-Party Forum.

2.2 The IEC shall consist of 15 members.

2.3 The Chairperson and Deputy Chairperson/s of the IEC shall be appointed by the State President on the recommendation of the Multi-Party Forum.

2.4 In order to enable the IEC act impartially and in a non-partisan way, the following conditions and criteria shall apply:

2.4.1 The IEC will consist of respected and suitably qualified persons, drawn from a broad cross-section of the population, all of whom shall be eligible voters.

2.4.2 Four shall be suitably qualified persons seconded by the UN, EEC, Commonwealth and the OAU.

2.4.3 Members of the IEC shall be appointed in their individual capacities and not as representatives of any political parties, organisations, administrations, governments and/or interest groups.

2.4.4 Appointees shall divest themselves of any political office while serving on the IEC.

2.4.5 No member of the IEC shall be an office-bearer or hold any political party/organisation or candidate in the election.

2.4.6 Members of the IEC shall not hold any other office which may give rise to a conflict of interest while serving on the IEC.

2.5 Vacancies in the IEC: Vacancies shall be filled by the State President, on the recommendation of the Multi-Party Forum (MPF) or Transitional Executive Council (TEC), whichever is appropriate at the time.

3. Functioning of the IEC

- 3.1 Members of the IEC shall serve on a full-time basis for ~~the definite~~ term of the IEC.
- 3.2 All decisions of the Commission shall be taken by means of a vote and a simple majority shall be sufficient to bind the Commission.
- 3.3 In the event of a deadlock, the Chairperson of the Commission shall have a casting vote.

4. Status of the IEC

- 4.1 The IEC shall be independent of all governmental organisations.
- 4.2 The composition, powers and functions of the IEC shall be enacted in legislation to be agreed to by the MPF.
- 4.3 The IEC shall be independent of the TEC.
- 4.4 In the event that the TEC decides to establish a Sub-council on Elections, such appointment will not interfere in any way with the independence or powers of the IEC.
- 4.5 The sole obligation of the IEC to ~~other~~ organ of government shall be to supply written reports to the TEC, on its decisions in respect of the organisation and conduct of the elections.

5. Accountability and Finance

- 5.1 The IEC shall liaise with the TEC and the Independent Media ~~Commis~~ (IMC) on matters pertaining to the work of these bodies.
- 5.2 The IEC shall, from time to time, determine a budget to meet the reasonable costs of carrying out its powers, duties and functions in accordance with the enabling legislation.
- 5.3 The budget shall be presented to the TEC for approval and action.
- 5.4 The South African Government shall provide the funds necessary to cover the budget of the IEC.
- 5.5 A revenue account shall be established by the IEC, and all funds made over to it shall be paid into such account, and all expenses and disbursements incurred by it shall be paid out of such account.
- 5.6 The books and accounts of the IEC shall be subject to audit by the Auditor

General.

6. Powers, duties and functions of the IEC

- 6.1 The IEC shall have the sole and ultimate responsibility for the organisation, conduct and supervision of the election.
- 6.2 In announcing the results of the election, the IEC shall have the responsibility of certifying whether, and to what extent, the elections have been free and fair.
- 6.3 In particular the IEC shall:

- 6.3.1 Administer the conduct of the elections.

- 6.3.2 Monitor the election process and the elections in order to: (a) ensure that the process and the elections are free and fair, and (b) enable the IEC to eventually certify the results of the elections.

In the execution of this function, the IEC may make use of, and act in conjunction with, local and international observers.

- 6.3.3 Act as an adjudicator and arbitrator on matters related to the election process and the elections referred to it by political parties, organisations, the public at large and/or the TEC.

In the execution of this function, the IEC may involve international participation.

- 7. In order to discharge effectively and impartially the functions outlined in paragraph 6 above, the IEC shall supervise and establish separate and independent structures to execute each of the three tasks contained in paragraphs 6.3.1, 6.3.2 and 6.3.3 above. Each of these structures shall be accountable to, and co-ordinated by, the IEC. Provision shall be made for the UN, EEC, Commonwealth and OAU to second four suitably qualified persons to serve in each of these three structures.

- 8. The IEC shall be empowered to promulgate rules and regulations necessary for the discharge of its functions.

9. Eligibility of voters

All South African citizens 18 (eighteen) years and above. This will include citizens of the TBVC states.

NB: This will need further elaboration. Provision is also needed for disqualifications.

Questions that arise are: citizens still in exile or resident abroad; persons of unsound mind; citizens who are under a declaration of allegiance to some country other than South Africa; etc.

10. Registration of political parties/organisations for purposes of elections

All parties intending to participate in the elections shall be required to register with IEC.

NB: There is need for the MPF to agree upon measures ~~and phase~~.

11. Administering the elections

The IEC shall be empowered, inter alia, to:

- 11.1 Make provision for the identification of eligible voters.
- 11.2 Determine whether any changes are necessary to citizenship laws.
- 11.3 Formulate a Code of Conduct for potential political parties and ensure that each party commits itself to peaceful electioneering and solemnly and publicly commits itself to such a Code of Conduct. Such a Code of Conduct should include suitable penalties for violations of the Code.
- 11.4 Receive and regulate the registration of parties that wish to participate in the elections.
- 11.5 Determine and supervise campaign funds and election expenditure.
- 11.6 Promulgate rules and regulations for political ~~advertising~~
- 11.7 Educate the public about the electoral process through voter education programmes using radio, television and other means.
- 11.8 Set up an appropriate machinery throughout the country and appoint appropriate staff for the purposes of fulfilling its functions.
- 11.9 Make provision for and ensure that no voter votes more than once, that ballot boxes are properly sealed, that counting of votes is conducted in a manner that ensures accuracy and reliability.

12. Monitoring the election process, in order to ensure that the elections are free and fair

The IEC shall be empowered, inter alia, to:

- 12.1 Set up the necessary structures, countrywide, to observe, monitor and verify the entire process of elections, before, during and after polling.

- 12.2 Make suitable provision for the international community organisations to participate in this process.
- 12.3 Take steps to prevent any intimidation.
- 12.4 Promulgate rules and regulations, in order to prevent corrupt legal practices, and other offences relating to the elections.

13 Adjudication & Arbitration

The IEC shall be empowered, inter alia, to:

- 13.1 Serve as a final arbiter of any claims or disputes submitted by persons, political parties, organisations, administrations, governments and the TEC.
- 13.2 Establish appropriate machinery throughout the country for the speedy investigation of complaints concerning electoral irregularities, refusal of access to venues or meetings, and access to voters, intimidation and breaches of a Code of Conduct for political parties.

14 General

The IEC shall be empowered to make such other arrangements as may be necessary for the proper exercise of its functions.

VOLUME II OF CONSOLIDATED DOCUMENT

DRAFT PROPOSALS ON AMENDMENT AND/OR REPEAL OF LAWS MILITATING AGAINST FREE POLITICAL ACTIVITY, INCLUDING THE ELIMINATION OF ALL DISCRIMINATORY LEGISLATION

1. A Technical Sub-Committee should be set up to draft legislation amending and/or repealing laws militating against free political activity, including the elimination of a discriminatory legislation, based on gender and/or race.
 - 1.2 The technical sub-committee may also set up specialised sub-committees each to give similar attention to legislation in the Transkei, Bophuthatswana, Venda and Ciskei.
2. In the preparation of such drafts, this Sub-Committee shall be guided by the Report Working Group 1 and the Report of the Gender Advisory Committee (GAC).
3. The Report containing the draft laws would be tabled for discussion at the Plannin Committee, thereafter submitted to the Negotiating Council, and, finally, settled at t level of the Negotiating Forum.

VOLUME II OF CONSOLIDATED DOCUMENT

DRAFT PROPOSALS ON MATTERS RELATING TO STATE-CONTROLLED MEDIA

1. Two mechanisms are involved in this regard:

- 1.1 Independent Telecommunications Authority
- 1.2 Independent Media Commission

2. The Independent Telecommunications Authority (ITA)

- 2.1 **Aim**

The creation and establishment of an Independent, neutral body to regulate the telecommunications sector, whose principal tasks are:

- 2.1.1 The regulation of the utilization of the electromagnetic spectrum, including the allocation of licenses and the determining of licence conditions according to an agreed set of standards.

- 2.1.2 The appointment of a suitable structure to monitor the proper exercise of licence conditions.

- 2.2 The report of Working Group 1 on this matter is sufficiently detailed to enable an technical sub-committee to prepare a draft legislative framework.

- 2.3 From the point of view of structure we propose the following:

- 2.3.1 An executive type of structure made up of respected and suitably qualified persons drawn from the broad cross section of the population and representatives of the technical committees.

- 2.3.2 Technical committees dealing with:

- * Electronic media
- * Telecommunications

- 2.4 The ITA and IMC as well as Boards of Broadcasters will operate in accordance with the following guidelines:

- 2.4.1 An Act of Parliament which sets out broad principles.

- 2.4.2 Code(s) of Conduct broadly set out in Party Negotiations and finalised by the ITA and IMC themselves.

3. The Independent Media Commission (IMC)

3.1 Aim

The aim of an IMC is the levelling of the media playing fields in the period leading up to the elections, in respect of:

3.1.1 The monitoring of the electronic media, to ensure the impartiality, fairness and compliance with licensing conditions and fair access to such media.

3.1.2 The monitoring of governmental media, including those in the TBVC states, to ensure their neutrality and impartiality.

3.2 Composition

3.2.1 The IMC shall consist of ... members, appointed by the State President in consultation with the Multi-Party Forum (MPF) / Transitional Executive Council (TEC), whichever is appropriate at the time.

3.2.2 The MPF/TEC shall decide on the mechanisms for the appointment of the IMC, including public nominations by political parties/organisations and interest groups, as well as a representative and transparent process.

3.2.3 Criteria for appointment to the IMC

3.2.3.1 Appointees shall be South Africans of merit and high standing.

3.2.3.2 They shall perform their duties in the public interest.

3.2.3.3 Appointees shall divest themselves of any political office while serving on the IMC.

3.2.3.4 Appointees shall not be office-bearers of any political party/organisation or have a vested interest in the media industry.

3.2.3.5 The IMC shall collectively reflect the cross-section of the South African population.

3.2.3.6 The IMC shall have within its ranks individuals with the necessary legal expertise.

3.3 A member of the IMC:

3.3.1 Shall hold office for such a term as designated for the IMC.

3.3.2 May vacate his/her office for reasons pertaining to the ~~criteria~~ mentioned in 3.2 above and/or accepted by the TEC.

3.3.3 May, in the case of 3.3.2 above, be replaced in accordance with the procedure for the nomination of the IMC in the first place.

3.4 Chairperson

The Chairperson of the IMC shall be appointed by the State President in consultation with the MPF/TEC, whichever is appropriate at the time.

3.5 Powers, functions & duties

3.5.1 In order to attain the objectives set out in paragraph 3.1 above, the IMC shall monitor:

3.5.1.1 The programme content of the electronic media for breaches of licensing conditions and the provisions of any Code of Conduct. In this regard, it shall act in co-operation with any similar structure set up for the regulation of the telecommunications sector.

3.5.1.2 Governmental media, to ensure that they do not favour or prejudice any political party/organisation.

3.5.2 The IMC shall serve as adjudicator for the hearing of complaints against inaccuracies or partiality, or the denial of fair access on the part of electronic media, and shall have the power to order the rectification of any offensive conduct.

3.5.3 The IMC shall oversee the transformation of broadcasting, including the integration of TBVC broadcasters into the new dispensation, and resolve any disputes that may arise, for instance: between the ITA and Board/s of broadcasters.

3.5.4 The IMC shall execute its functions in a manner which ensures the necessary effectiveness. It may:

3.5.4.1 Consult any person for the purposes of obtaining expert advice on any matter; and

3.5.4.2 Appoint sub-committees to perform such functions and duties as it may determine, from time to time.

3.6 Accountability, Finance & Referral

3.6.1 The IMC shall operate as an independent body.

3.6.2 It shall liaise with the ITA, the Independent Election Commission (IEC) and the TEC on matters pertaining to the work of these bodies.

3.6.3 The IMC may, in its discretion, refer any matter involving transgression by a licensee of licensing conditions to the ITA, for such action as may

be deemed necessary.

3.6.4 The IMC shall be afforded the necessary finance to carry out its functions, and, in this regard, it shall be accountable to the TEC.

3.7 Structure

The IMC shall have a Secretariat and such infrastructure as it may deem necessary to carry out its functions.

3.8 Term of Office of IMC:

Subject to review by the Interim Parliament.

3.9 Code of Conduct

3.9.1 The IMC shall carry out its functions and exercise its powers in accordance with a Code of Conduct for all licensed broadcasters, as well as one specifically applicable to the national service broadcaster (SABC and public broadcasters of the TBVC territories).

3.9.2 Such a Code of Conduct would form part of the licensing conditions of the ITA.

3.9.3 Matters which could be contained in any Code of Conduct will, inter alia, cover the following:

3.9.3.1 Public media should serve society as a whole and be independent of political parties.

3.9.3.2 All parties shall be afforded fair and reasonable access to air their views, including such aspects as the right of reply, prime-time access, public withdrawals by offending parties, etc.

3.9.3.3 Broadcasters must be impartial in dealing with news, commentary, interviews and current affairs programmes.

3.9.3.4 Privacy of sources of media workers' information shall be protected.

3.9.3.5 Programmes shall take into account cultural and language diversity within society.

3.9.3.6 Broadcasters should promote peace, justice, democracy and freedom of thought, conscience and religion.

3.10 Print media

The IMC shall liaise with the Media Council on election matters pertaining to the print media.

VOLUME II OF CONSOLIDATED DOCUMENT
RELATING TO THE TEC AND ITS SUB-COUNCILS

1. We propose that a technical sub-committee be established.
2. This technical sub-committee should take as its reference point the consolidated report on this question appearing in Volume 1.
3. It would draft the above in the form of a systematic and itemised set of proposals to formulate discussion in the Planning Committee and thereafter in the Negotiating Council.
4. Those aspects of the report in Volume 1 referred to above for which other specialised technical sub-committees have been created, for example, the Independent Election Commission and the Independent Media Committee, shall be excluded from its terms of reference.

VOLUME II OF CONSOLIDATED DOCUMENT

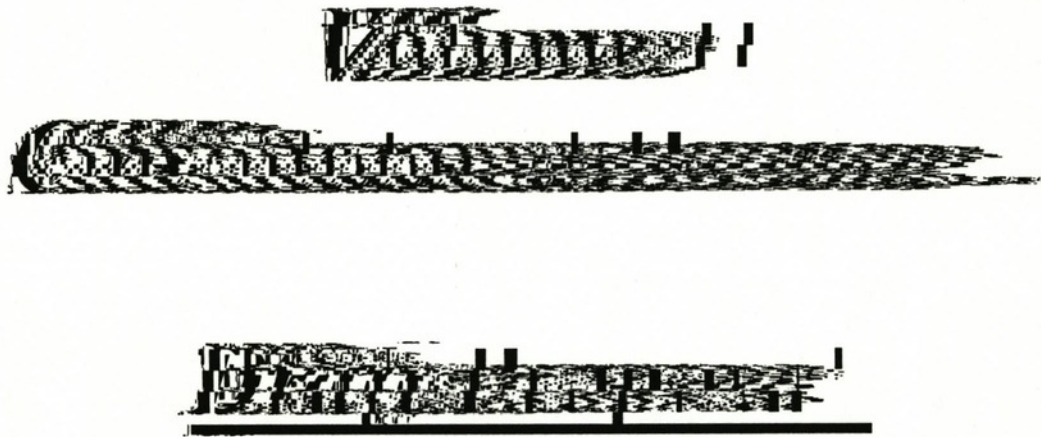
RELATING TO VIOLENCE, SECURITY FORCES & ALL ARMED FORMATIONS

1. Whilst the subject matter of these proposals needs to be treated globally, it is necessary to sub-divide the issues in terms of three major categories:
 - 1.1 Strengthening the National Peace Accord process in order to ensure greater effectiveness.
 - 1.2 Establishing and defining the powers of Multi-Party structures which address the question of all armed formations including those established and controlled by the State/Administrations.
 - 1.3 Devising any other measures which would assist in addressing the question of violence.
2. Volume 1 Section 4, under the title, "The successful implementation of the National Peace Accord", sets out a number of proposals which were arrived at after consideration of information provided by the National Peace Committee.
 - 2.1 We propose that a technical sub-committee be established to look into these proposals.
 - 2.2 This sub-committee should include at least one person from the National Peace Committee/National Peace Secretariat.
 - 2.3 The technical sub-committee should be required to produce a set of proposals for approval by the Multi-Party Forum.
3. **Security forces and all armed formations**

We propose that this issue be given to a technical sub-committee which would be charged with drawing up proposals relating to the TEC in the form of a legislative framework, which would then be processed for systematic discussion in the Negotiating Council.
4. **Other measures**

We propose that the Planning Committee create a separate technical committee to propose these proposals.

 - 4.1 Amongst such proposals the technical committee should be requested to look into and develop the idea of a peace corps/brigades which would be organised from the youth, unemployed and women with a programme and structure aimed at peace, reconstruction and reconciliation.



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<i>Independent Election Commission</i>	<i>x</i>	
<i>Interim Governance</i>		<i>x</i>
<i>Amendment and/or Repeal of Laws</i>	<i>x</i>	
<i>State-Controlled/Statutorily-Instituted Media</i>		
<i>TEC and Sub-Councils</i>	<i>x</i>	
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SUBMISSIONS TO THE TECHNICAL COMMITTEE ON VIOLENCE

Submissions received and dealt with:

- 2.1 Opening statement by Dr FT Mdlalose, National Chairperson of the IFP, to the Negotiating Council, 26 April 1993
- 2.2 Resolution to ensure peaceful conditions for constitutional negotiations and free political activity in South Africa
- 2.3 Solidarity Party
- 2.4 Inyandza National Movement
- 2.5 Venda Government
- 2.6 Submission to the Negotiating Council: United Peoples Front
- 2.7 South African Government proposals to the Technical Committee on Violence as to measures to be taken to curb violence, 13 May 1993
- 2.8 African National Congress Submissions to Technical Committee on Violence, 12 May 1993
- 2.9 South African Government proposals for strengthening the National Peace Accord, 13 May 1993
- 2.10 Office of the Military Council, Republic of Transkei: Recommendations on the formulation of a negotiations agenda, 28 April 1993
- 2.11 Submission by the Democratic Party, 10 May 1993
- 2.12 Government of the Republic of Bophuthatswana - Initial submission on violence
- 2.13 Ciskei Government submission - Violence
- 2.14 Submission by the Afrikaner Volksunie
- 2.15 Venda Government position paper on violence
- 2.16 Input by Transkei Government
- 2.17 Comments on draft National Peace Accord: Republic of Ciskei
- 2.18 Violence and prospects for democracy in South Africa:
HW Vilakazi
- 2.19 Proposal for stopping violence among Africans: HW Vilakazi
- 2.20 Proposal for a march/ rally for end of violence among Africans:
HW Vilakazi

Submission by the Conservative Party to the Technical Committee on Violence Position Paper on causes of violence which threaten the negotiation process and the effective

implementation of the NPA: Cape Delegation of Traditional Leaders, 23
April 1993

2.23 Report of the Gender Advisory Committee to Codesa 2

2.24 Submission: Natal Indian Congress, 13 May 1993

2.25 Report of the directorate: Internal Peace Institutions, 1993

New submissions:

2.26 Submission to the Technical Committee on violence: Ximoko Progressive Party
16 May 1993

2.27 Violence: Second input by the Transkei Government

2.28 Press statement by the honourable Justice RJ Goldstone, 8 March 1993

2.29 Position paper on causes of violence which threaten the negotiating process and
the undermining of the effective implementation of the National Peace Accord:
Cape Delegation of Traditional Leaders

2.30 Submission to the Technical Committee on Violence: Intando Yesizwe

2.31 Submission: Transvaal/ Natal Indian Congress

2.32 Supplementary submission to violence: Ciskei Government

2.33 Submission on violence: United People's Front

2.34 Submission: Inyandza National Movement

2.35 First position paper of the Inkatha Freedom Party, 18 May 1993

Consolidated Document

Based on CODESA
Reports

April 1993

Introductory Note

This document is structured according to topics and not according to the working groups from which specific points emerged. It was compiled in terms of a decision taken by the Negotiating Forum on the 1 April 1993. According to the decision this document, together with the Summary of CODESA Agreements and the Document of CODESA Agreements for Multi-Party Planning Conference, will form a trilogy of documents to facilitate the work of the Negotiating Council in their deliberations and to enable all participants to address the issues in full. Cross references in this document refer to the Document of CODESA Agreements.

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2.	<i>Amendment and/or repeal of any remaining laws militating against free political activity, including the elimination of discriminatory legislation</i>	14
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VIOLENCE, SECURITY FORCES AND ALL ARMED FORMATIONS

Status: The extracts are from the Reports of Working Groups 1 & 3. Both Reports were endorsed by their respective Working Groups and tabled at CODESA 2.

1. 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 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.

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

(cf Working Group 3 Report, paragraphs 32.3 and 32.4, pages 56 - 58)

3. The Composition and role of the security forces in South Africa and the TBVC states

It was agreed that:

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

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- 3.2 National security in South Africa should be sought primarily through efforts to meet the social, political and economic needs of the people.
- 3.3 The security forces in South Africa shall:
 - 3.3.1 be bound by the principle of constitutional supremacy;
 - 3.3.2 be politically non-partisan;
 - 3.3.3 be committed to resolving conflict primarily through non-violent means;
 - 3.3.4 respect human rights, non-racialism and democracy;
 - 3.3.5 strive to be representative of South African society as a whole.
- 3.4 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 above-mentioned principle and agrees that the details of such councils be worked out by WG3.
- 3.5 Mechanisms should be implemented to ensure the public accountability of the security forces.
- 3.6 Codes of Conduct for the security forces should be agreed to and implemented.
- 3.7 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.
- 3.8 The following matters are outstanding:
 - 3.8.1 The composition of the security forces
 - 3.8.2 Operations of the Security Forces that may limit free political activity

(cf Working Group 1 Report, paragraph 12, pages 23 - 24)

4. The Successful implementation of the National Peace Accord

In the light of the current levels of violence that is devastating the prospects of peace and stability in our country, all political parties, organisations, government and

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administrations, participating in CODESA, in order to signify our common purpose to bring an end to political violence, recommit ourselves both in letter and spirit to the NPA.

In doing so, we once again join hands in the pursuit of our common belief and objectives; peace and stability for all in our country.

In rallying behind this common objective we acknowledge that the act of having signed the NPA binds us much more than the content of the NPA itself. From that we can, none of us, escape since we have committed ourselves to the NPA and in this way, we have given it life and meaning.

SG2 received several submissions on the implementation of the NPA. In addition, Dr Antonie Gildenhuys, 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:

4.1 General

It was agreed that:

4.1.1 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.

4.1.2 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 bearer(s) 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.

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

It was agreed that:

4.2.1 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

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his/her services by the NPA;

- 4.2.2 Delegates to RDRC's and LDRC's who suffer financially as a result of their participation in NPA activities be reimbursed;
- 4.2.3 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;
- 4.2.4 Permanent offices with appropriate staff and equipment be established in each area provided for in clause 3.7.5 of the NPA;
- 4.2.5 The NPS should seek to facilitate the participation of delegates on NPA structures, having special regard for the normal work commitments of delegates;
- 4.2.6 The reference to "Business representatives" in clause 7.4.4.3 of the NPA be interpreted to include representatives from professional organisations.

4.3 Justices of the Peace (Clause 7.5 of the NPA)

It was agreed that:

- 4.3.1 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.
- 4.3.2 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.

4.4 Police Reporting Officers (clause 3.2.4 of the NPA)

It was agreed that:

- 4.4.1 All police reporting officers already nominated be appointed to their positions forthwith.
- 4.4.2 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.

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

It was agreed that:

4.5.1 The NPC makes special efforts to include representatives of relevant local and tribal authorities into all RDRC and LDRC structures.

4.5.2 Special efforts be made to create an awareness of the NPA amongst tribal and local authorities.

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

It was agreed that:

4.6.1 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;

4.6.2 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.

4.7 The Police Board (Clause 3.3 of the NPA)

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

4.7.1.1 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;

4.7.1.2 should advise on ways in which the credibility of the police in the community could be improved;

4.7.2 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.

4.8 Relations between the community and the police

4.8.1 It was agreed that in many areas improvement of the relationship

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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:

4.8.1.1 Facilitating police/community liaison, including workshops between relevant parties;

4.8.1.2 Ensuring strict adherence by all parties to the provisions of the NPA.

4.8.2 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.

4.9 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:

4.9.1 The selection of top police officers for township stations;

4.9.2 The appointment of officers commanding and members of special police investigation units established in terms of clause 3.2.2.6.;

4.9.3 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.

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

It was agreed that:

4.10.1 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 4.7.5. of the NPA.

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4.10.2 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.

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

4.12 Dangerous weapons and the possession of illegal fire-arms

It was agreed that:

4.12.1 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.

4.12.2 The police increase their searches for illegal firearms and other dangerous weapons.

4.12.3 A record be kept of the political affiliation (if any) of persons arrested for the possession of illegal fire-arms or dangerous weapons.

4.12.4 The above be undertaken in the context of impartial policing.

4.13 Monitoring Commissions

It was agreed that:

4.13.1 Regional monitoring commissions be created in each RDRC region.

4.13.2 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.

4.13.3 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.

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

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4.13.5 The functions of these regional monitoring commissions be:

- 4.13.5.1 to monitor the compliance by the NPA signatories to the code of conduct as provided for in the Accord;
- 4.13.5.2 to monitor the behaviour of parties and organisations at grassroots level in relation to violence;
- 4.13.5.3 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.

4.13.6 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.

4.14 Budget and infrastructure problems

It was agreed that:

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

4.14.2 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.

4.14.3 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.

4.15 Commission of Enquiry Regarding the Prevention of Public Violence and Intimidation

It was agreed to recommend to the NPS and NPC:

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

4.15.2 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.

4.16 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.

4.17 Transgressions of the NPA by political parties

It was agreed that:

4.17.1 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.

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

4.18 Outstanding matters for discussion:

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

4.18.1 Co-ordination between 3 levels of NPA.

4.18.2 Education Programmes/Publicity.

4.18.3 Liaison between NPC and organisations and NPC and Codesa.

5 The prevention of violence-related crime and matters giving rise thereto

5.1 It was agreed that:

5.1.1 Government security forces should bring those responsible for the smuggling of AK47s and other illegal weapons into the country from the

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neighbouring states to book as a matter of urgency.

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

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

5.2 Consensus could not be reached on the following:

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

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

(cf Working Group 1 Report, paragraphs 10 & 11, pages 17 - 23)

**AMENDMENT AND/OR REPEAL OF REMAINING LAWS MILITATING
AGAINST FREE POLITICAL ACTIVITY, INCLUDING THE ELIMINATION
OF ALL DISCRIMINATORY LEGISLATION**

Status: Extracts from the Report of Working Group 1. The Report was endorsed at Working Group level and was tabled at CODESA 2.

1.1 Laws militating against free political activity

1.1.1 Approach

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

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

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

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

1.1.2 General principle

Regarding 1.1.1.1 it was agreed that:

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

1.1.2.2 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.

1.1.2.3 The South African Government and the NP expressed their reservations on paragraph 1.1.2.2 reserving their point of view until a full resolution dealing with principles governing free political activity was debated.

1.1.3 Definition of/general principles underpinning/guidelines for free political activity

1.1.3.1 There was agreement on the necessity to formulate a definition of, or the

principles underpinning, free political activity.

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

1.1.3.3 No consensus has yet been reached on a definition of/general principles underpinning free political activity.

1.1.4 Specific measures

Regarding 1.1.1.3 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:

1.1.4.1 Emergency measures;

1.1.4.2 Security measures;

1.1.4.3 Measures affecting the funding of political Parties and organisations;

1.1.4.4 Measures affecting the freedom of assembly and association;

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

1.1.5 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.

1.1.6 Emergency Legislation

1.1.6.1 It was agreed that:

1.1.6.1.1 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;

1.1.6.1.2 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:

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- 1.1.6.1.2.1 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;
- 1.1.6.1.2.2 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;
- 1.1.6.1.3 The provision in the Public Safety Act, 1953, that a State of Emergency can be declared retrospectively, should be repealed.
- 1.1.6.1.4 It is desirable to include in the Public Safety Act, 1953:
 - 1.1.6.1.4.1 Extended provisions for Parliamentary control of a State of Emergency;
 - 1.1.6.1.4.2 A provision for certain non-derogable rights;
 - 1.1.6.1.4.3 Provisions for certain procedural controls over detention without trial.

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

1.1.7 Security Legislation

It was agreed that:

- 1.1.7.1 Special measures are necessary to deal with the threat to the public peace and order during the transitional period;
- 1.1.7.2 In the light of 1.1.7.1, 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 legislation in line with the criteria

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mentioned in 1.1.7.1., and to remove the emphasis from national security

1.1.7.3 A task group be appointed to undertake the task referred to in 1.1.7.2, taking cognisance of relevant discussions by and submissions to SG1.

1.1.8 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:

1.1.8.1 separate pieces of legislation amending/repealing individual statutes and/or the use of a General Law Amendment Act;

1.1.8.2 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.

1.1.8.3 the enactment of an Interim Bill of Rights against which offending legislation can be tested;

1.2 Discriminatory Legislation

1.2.1 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:

1.2.1.1 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.

1.2.1.2 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.

1.2.1.3 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.

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1.2.1.4 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.

1.2.1.5 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.

1.2.2 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 proposal are incomplete and it was agreed that the task group constituted in terms of para 1.1.7.3 above, or any other mechanism set up by Codesa, discuss the proposals regarding discriminatory legislation which falls within categories 1.2.1.1 and 1.2.1.3 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.

1.2.3 In its report to CODESA 2 the Gender Advisory Committee recommended "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." This had to be done in accordance with a schedule of acts to be provided by the GAC.

2. Political Intimidation: "Any action or set of actions committed by an 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, for instance: the Right to freedom of expression or opinion; the Right of freedom of association; the Right of freedom of movement"

It was agreed that:

2.1 All political disputes between parties be resolved peacefully.

2.2 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:

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- 2.2.1 the right to freedom of expression or opinion;
 - 2.2.2 the right of freedom of association;
 - 2.2.3 the right of freedom of movement.
- 2.3 In particular, the following shall be considered forms of political intimidation:
- 2.3.1 to kill, injure, apply violence to, intimidate or threaten any other person or his/her political beliefs, words, writings or actions;
 - 2.3.2 to remove, disfigure, destroy, plagiarise or otherwise misrepresent any symbol or other material of any other political party or organisation;
 - 2.3.3 to interfere with, obstruct or threaten any other person or group travelling to or from or intending to attend, any gathering for political purposes;
 - 2.3.4 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
 - 2.3.5 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;
 - 2.3.6 the possession, carrying or displaying of dangerous weapons or firearms by members of the general public when attending any political gathering or meeting.

(cf Working Group 1 Report, paragraphs 6 & 7, pages 10 - 14)

**POLITICAL NEUTRALITY OF, AND FAIR ACCESS TO STATE-CONTROLLED/
STATUTORILY-INSTITUTED MEDIA, INCLUDING THOSE OF
THE TBVC STATES**

Explanatory Note: Two structures have been envisaged: firstly, an independent body to regulate the telecommunications sector; and secondly, an Independent Media Commission.

Status: These extracts are from the Report of Working Group 1. The Report was endorsed at Working Group level and tabled at CODESA 2. The Working Group 3 Report also refers to the need for an Independent Media Commission.

1.1 Independent Body To Regulate Telecommunications Sector

1.1.1 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.

1.1.2 Functions

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

1.1.2.1 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.

1.1.2.2 The appointment of a suitable structure to monitor the proper exercise of licence conditions.

1.1.3 Powers

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

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

1.1.3.2.1 To ensure that a wide range of telecommunication services, including regional and community broadcasting program services, is available

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throughout South Africa.

- 1.1.3.2.2 To ensure fair and effective competition in the provision of such and related services.
- 1.1.3.2.3 To ensure fair and equitable opportunity to opinion formers to express their views freely.
- 1.1.3.2.4 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.
- 1.1.3.2.5 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.
- 1.1.3.2.6 To work out guidelines for the impartiality of news and current affairs programmes on all broadcasting services.
- 1.1.3.2.7 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.
- 1.1.3.2.8 To deal with complaints by the public and political parties.
- 1.1.3.2.9 Such other powers as may be expedient.

1.1.4 Name of Independent Body

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

1.1.5 Constitution of Independent Body

It was agreed that:

- 1.1.5.1 Members of the Independent Body shall be South African Citizens of

merit who act in the public interest.

1.1.5.2 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.

1.1.6 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.

1.1.7 Accountability and Finance

1.1.7.1 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.

1.1.7.2 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.

1.1.8 Licensing procedures, conditions and standards

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

1.1.9 SABC

There was no consensus on a proposal regarding the immediate reconstitution of the Board of the SABC.

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

1.1.9.1 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;

1.1.9.2 The first such meeting to take place before Codesa II;

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

1.1.10 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:

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

1.1.11 Code of Conduct

- 1.1.11.1 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).
- 1.1.11.2 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.

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

- 1.1.12.1 affirmative action
- 1.1.12.2 cross-ownership restrictions

1.2 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.

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(cf Working Group 1 Report, paragraph 9, pages 14 - 17)

INDEPENDENT ELECTION COMMISSION

Status: The extracts are from the Reports of Working Groups 1, 3 & 4. All three Reports were endorsed by the respective Working Groups and tabled at CODESA 2.

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.
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.

(cf Working Group 3 Report, paragraphs 30.1 - 30.2 pages 54-55)

3. 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.

(cf Working Group 3 Report, paragraph 32.6, page 58)

4. In the defined areas of responsibility of sub-councils of the TEC, ministerial powers and discretion 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.

(cf Working Group 3 Report, paragraph 28, page 28)

5. 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.

(cf Working Group 3 Report, paragraph 33, page 58)

6. 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. [The Bophuthatswana Government recorded its reservation in this paragraph.]

(cf Working Group 4 Report, paragraph 3.1.3, page 66)

7. Purpose of the elections

The elections would be "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".

(cf Working Group 3 Report, paragraph 9, page 48)

8. Funding of political parties

Provisions of the Prohibition of Foreign Financing of Political Parties Act No 51 of 1968 with regard to the receipt of foreign funds by political parties shall be suspended until a date 6 (six) months from the date of the General Election in terms of the provisions of a negotiated new constitution for South Africa.

(cf Working Group 1 Report, paragraph 13(i), page 24)

THE TRANSITIONAL EXECUTIVE COUNCIL AND SUB-COUNCILS

Status: The Report from which the following extracts are made was approved of in Working Group 3 and tabled at CODESA 2.

Introduction to agreements reached

1. 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.
2. 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.
3. 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.
4. 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

5. 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

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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.

6. 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.
7. 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 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.
8. 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 prejudge constitutional options.

The transitional executive structure

9. 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).
10. 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

11. The TEC will be vested by legislation agreed to by Codesa with powers necessary to enable it to carry out its functions.
12. 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.
13. The sub-councils will report to the TEC and their decisions will be subject to confirmation/amendment by the TEC.

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14. The TEC will be able to delegate powers to the sub-councils.
15. 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.
16. 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 of all participating governments/administrations that may impact on the levelling of the political playing field and on free political participation.
17. 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.
18. 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.
19. 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 18 hereof, the matter may be referred to the independent election commission.
20. 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.
21. 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

22. Independent Election Commission

22.1 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.

22.2 The composition, powers (which shall include the power to resolve disputes as contemplated in paragraphs 19, 20 and 25 hereof) and functions of the Commission shall be enacted in legislation to be agreed to by Codesa.

23. 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

24. 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.

24.1 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.

24.2 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.

24.3 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 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.

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

24.5 Foreign Affairs

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

24.6 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.

25. 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

26. 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.
27. 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

28. The TEC will be appointed by the State President on the recommendation of Codesa. It will consist of at least one member from each of the 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 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.
29. 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.
30. 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.

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31. 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.
32. The size of the Transitional Executive Structure will be kept as small as is reasonably possible.

Meetings of the TEC and its sub-councils

33. 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.
34. 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

35. 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 18 hereof, the matter may be referred for adjudication as contemplated in Paragraphs 19, 20 and 25 hereof.

States of emergency

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

Implementation and time frames

37. Subject to Paragraph 12 [of the original Report] 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

38. Matters requiring further discussion are as follows:
- 38.1 Composition of the TEC
 - 38.2 Composition of the sub-councils
 - 38.3 Composition, powers and functions of the Independent Election Commission
 - 38.4 Sub-council on foreign affairs
39. Legislation is required to give effect to the agreements contained herein.

Conclusion

40. In view of the fact that this report covers the first stage of the transition, further discussion is required concerning the details of stage two (as envisaged in paragraph 4 [of the original Report]).

(cf Working Group 3 Report, paragraphs 9 - 48 [Conclusion], pages 48 - 63. NB: The paragraphs have been renumbered for purposes of reference within the current document)

CONSTITUTION-MAKING BODY/PROCESS

1. General Constitutional Principles

1.1 The Declaration of Intent contains six general principles:

"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 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."*

(cf Declaration of Intent, pages 2 & 3)

1.2 In this regard, an Addendum was subsequently appended to the Declaration as a clarification to the above principles:

"For the avoidance of doubt as to the interpretation of the Declaration of Intent, it is declared by its signatories that irrespective of their individual interpretive views thereof, no provision of the Declaration of Intent, interpreted alone or in conjunction with any other provision thereof shall be construed as -

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1. *favouring or inhibiting or precluding the adoption of any particular constitutional model, whether unitary, federal, confederal, or otherwise, consistent with democracy;*
2. *preventing any participant from advocating the same or the separation, in terms of any constitutional model, of powers between a central government and the regions; during the proceedings of CODESA or any of its committees or Working Groups;"*

(cf Addendum to Declaration of Intent, page 4)

- 1.3 In addition to the above, the Management Committee issued a further clarification to the effect that the Declaration of Intent must be understood to allow any participant to make submissions on the question of self-determination.
- 1.4 The question of constitutional principles which would be binding on a Constitution-Making Body (CMB) was part of the Terms of Reference of Working Group 2. The following areas of commonality with regard to general constitutional principles were prepared by the Steering Committee and submitted to the Working Group on 12 May 1992:

- "1. *South Africa will be a united, sovereign state in which all will enjoy a common South African citizenship.*
2. *South Africa will be democratic, non-racial and non-sexist.*
3. *The constitution shall be the supreme law.*
4. *There will separation of powers between the legislature, the executive and the judiciary with appropriate checks and balances.*
5. *The judiciary will be independent, non-racial and impartial.*
6. *There will be a legal system that guarantees the equality of all before the law.*
7. *There will be representative and accountable government embracing multi-party democracy, regular elections, universal adult suffrage, a common voters role and, in general, proportional representation.*
8. *The diversity of languages, cultures and religions will be acknowledged.*

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9. *All will enjoy universally accepted human rights, freedoms and civil liberties including freedom of religion, speech and assembly which will be guaranteed by an entrenched and justiciable Bill/Charter of Fundamental Rights.*
10. *Government shall be structured at national, regional and local levels.*
 - 10.1 *At each level there shall be democratic representation.*
 - 10.2 *Each level of government shall have appropriate and adequate legislative and executive powers, duties and functions that will enable each level to function effectively; such powers, duties and functions to be entrenched in the constitution.*
 - 10.3 *In addition to the powers, duties and functions entrenched in the constitution, each level of government may delegate powers, duties and functions to other levels of government.*
 - 10.4 *The general principles of the constitution including the terms of the Bill/Charter of Fundamental Rights shall apply to each level of government.*
11. *The new constitution shall provide for effective participation of minority political parties consistent with democracy."*

(cf pages 43 - 44)

- 1.5 The Steering Committee also prepared a report dated 27 April 1992 recording the areas on which no agreement yet existed:
 - "2. Issues on Which No Agreement Yet Exists
 - 2.1 *Economic freedom, government intervention and economic systems.*
 - 2.2 *Accommodation of the diversity of languages, cultures and religions.*
 - 2.3 *Role of Traditional Leaders.*
 - 2.4 *The Bill/Charter of Fundamental Rights including:*
 - 2.4.1 *Its nature and scope*

2.4.2 *Affirmative action*

2.4.3 *Second generation rights*

2.5 *Self-determination*

2.6 *New items proposed, namely:*

2.6.1 *The role of standing committees in the formulation of legislation.*

2.6.2 *Government will be open, accessible and accountable.*

2.6.3 *Power sharing.*

3. *Draft Principles on 2.1 to 2.4 Above Prepared by the Steering Committee on 23.3.92*

3.1 *Draft principle on economic freedom, governmental intervention and economic systems:*

"The constitution should provide for the promotion of the improvement in the quality of life of all South Africans by enabling economic growth, human development, social justice and equal opportunities for all."

3.2 *Draft principle on the Bill/Charter of Fundamental Rights:*

"There shall be a justiciable bill/charter of fundamental rights which shall ensure inter alia :

- universally accepted human rights and freedoms;*
- civil liberties including freedom of religion, speech and assembly;*
- the equality of all before the law;*
- property rights, provided that legislation may in the public interest authorise expropriation against payment of reasonable compensation which shall in the event of a dispute be determined by a court of law.*

The constitution shall enable the implementation of measures to help address the racial and gender inequities caused by past

discrimination."

3.3 *Draft principle on the accommodation of the diversity of languages, cultures and religions:*

"The constitution at all levels of government shall accommodate and protect the right of citizens to practice their religion, enjoy their culture and use their own language both as individuals and in association with others. This shall include the right of citizens where practicable to have their children educated in their mother tongue and the right of citizens to establish educational institutions reflecting their language, culture and religion, provided that racial discrimination may not be practised."

3.4 *Draft principle on the role of traditional leaders:*

"The constitution should define a suitable role for traditional leaders consistent with the objective of a united, non-racial, non-sexist, democratic South Africa." "

(cf pages 41 - 42)

2. **Constitution-Making Body**

2.1 The Working Group 3 Report to CODESA 2 recorded commonality, on *pages 48 & 49*, in the following terms:

"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.*"

2.2 This Report also recorded the following understanding:

"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*

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of the transition, including an interim constitution, and general constitutional principles."

- 2.3 The memorandum prepared by the Chairman and Secretary of Working Group 2, dated 22 June 1992, which appears on *pages 33 - 44*, records the following basis approach:

"1. Basic approach: Constitution making within the framework of a Transitional/Interim Constitution

1.1 CODESA shall agree to and draft a transitional/interim constitution. This constitution shall be submitted to parliament for legislation within two months of this agreement and all parties within Codesa in parliament commit themselves to supporting such legislation.

1.2 The transitional/interim constitution shall make provision for the constitution making process through which, and the constitution making body by whom, a final constitution shall be drafted and adopted."

(cf page 36)

- 2.4 Working Group 2 was seized with three proposals which appear on *pages 34 - 35*, aimed at resolving the deadlock which had arisen. All three proposals were based on the premise that the elected National Assembly would draft and adopt the final constitution.
- 2.5 From the point of view of constitution making, the National Assembly shall be elected on the basis of proportional representation and universal adult suffrage, half the seats being allocated through national lists and half through regional lists, in order to ensure proper representation of regions.

(cf paragraphs 3.1.2, 3.2.1, page 37)

- 2.6 On the binding nature of the constitutional principles, the following was recorded:

"3.8.1 CODESA shall agree on a set of general constitutional principles to be enshrined in the final constitution and which shall not be contradicted by any provision of the final constitution.

3.8.2 The transitional/interim constitution shall contain an entrenched provision prescribing that the final constitution shall give effect to paragraph 3.8.1 and shall establish an independent mechanism which

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will be the only body to determine that the general constitutional principles have been enshrined and not contradicted in the final constitution; which determination may only be initiated by a party in the NA."

(cf page 39)

- 2.7 On the question of time frames and deadlock-breaking for the CMB, the following is recorded:

"4. Special Mechanisms

Codesa shall agree on special mechanisms to ensure that the national assembly completes the work of drafting and adopting the final constitution within a specified period of time. The transitional/interim constitution shall remain in force until replaced by the final constitution."

(cf page 39)

TRANSITIONAL/INTERIM CONSTITUTION

1. The Working Group 3 Report records the following:

"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.*"

(cf page 48)

2. The Transitional/Interim Constitution (as distinct from the final constitution) shall be agreed upon in CODESA.
3. The Transitional/Interim Constitution shall make provision for the following:

"3.1 A Legislature

The legislative authority shall vest in a democratically elected interim/transitional parliament consisting of a National Assembly and a Senate functioning in terms of the special majorities and general constitutional principles agreed upon.

3.1.1 *The structure and role of the Senate must still be agreed upon.*

3.1.2 *The National Assembly shall be elected on the basis of proportional representation and universal adult suffrage, half the seats being allocated through national lists and half through regional lists in order to ensure proper representation of regions."*

(cf page 37)

"3.3 An Executive

3.3.1 *Executive authority shall vest in a multiparty executive in accordance with the principle of an interim/transitional government of national unity.*

3.4 The separation of powers

There shall be a separation of powers between the executive, legislature and judiciary according to the principles underlying a constitutional state.

3.5 Fundamental Rights

CODESA shall agree on justiciable fundamental rights which shall form part of and shall be entrenched in the transitional/interim constitution.

3.6 Regional Government

3.6.1 *CODESA shall agree on the boundaries, powers, duties and functions of regional governments.*

3.6.2 *Provision shall be made for regional government and/or the phasing in of such government with the boundaries, powers, duties and functions as referred to in paragraph 3.6.1.*

3.6.3 *The transitional/interim constitution shall entrench regional government and its boundaries, powers, duties and functions in the transitional phase and the transitional/interim constitution shall in this regard not be amended without the agreement of all the parties in the National Assembly until the adoption of a new constitution in terms of the procedures set out in 3.2.*

3.7 Provisions regarding amendments to the transitional/interim constitution.

Amendments shall only be of force and effect if:

3.7.1 *They do not contradict the set of constitutional principles referred to in paragraph 3.8.1.*

3.7.2 *They have been adopted according to the procedures set out in paragraph 3.2. "*

(cf page 38)

Report to the Negotiating Council on
The Consolidated Document, Violence and the Transition Process

1. On 1 April 1993 the Negotiating Forum received a Report on the Transition Process. This included a "Summary of CODESA Agreements" and a "Document of CODESA Agreements". The Forum thereupon decided that a sub-committee consisting of M.Maharaj, B.Ngubane and SS van der Merwe would draft a Consolidated Document giving an overview of CODESA reports and agreements that will together with the "Summary of CODESA Agreements" and the "Document of CODESA Agreements" form a trilogy of documents to facilitate the work of the Negotiating Council in their deliberations and would further enable all participants to address the issues in full.
2. At its subsequent meeting on the same day the Planning Committee decided that the sub-committee should also consider what technical committees might be needed.
3. The Planning Committee herewith submits the following documents:
 - a. Consolidated Document based on CODESA reports. (Page 15 - 55, cf Agenda Item 6.1)
 - b. A document containing the Planning Committee's proposals for the appointment of technical committees on some of the topics covered in the Consolidated Document together with proposed terms of reference for each technical committee. [Proposals on technical committees for the rest of the topics will follow]. (Page 59 - 74, cf Agenda Item 6.2.2)
 - c. A document with proposals in respect of the Resolution on Violence adopted by the Negotiating Forum on 1 April 1993. (Page 56 - 58, cf Agenda Item 6.2.1)
4. These documents are submitted to the Negotiating Council to facilitate discussion on substantive issues arising therefrom in the meeting of the Negotiating Council on Monday 26 April 1993.

Negotiating Forum: Resolution on Violence

**Proposals submitted to the
Negotiating Council : 26 April 1993**

1. On 1 April 1993 the Negotiating Forum adopted a Resolution on Violence. A copy is attached.
2. In the concluding paragraphs the Forum resolved
 - to identify the issues that cause violence, threaten the negotiating process and undermine the effective implementation of the National Peace Accord;
 - to mandate the Negotiating Council to establish what urgent steps and mechanisms are required to resolve those issues as a matter of national priority.

The Negotiating Council has to report on these issues to the next meeting of the Negotiating Forum.

- 3.1 That the entire question of violence shall be constantly on the agenda of the Negotiating Council and the Planning Committee and that all parties will be afforded the opportunity at all times to bring concrete proposals to be considered as further steps to what is currently being done in order to curb violence.
- 3.2 In the meantime we recommend the following practical steps to be taken immediately in order to enhance the peace process and curb the violence:
 - 3.2.1 That the Negotiating Council adopt a draft declaration on Monday 26 April 1993 further committing all participants to peace and negotiations and calling upon all their supporters and the public at large to take active steps to promote peace.
 - 3.2.2 That the process initiated by the National Peace Accord and its structures be strengthened. In this regard the Consolidated Document contains a number of proposals for the strengthening of the Peace Accord Process. These proposals together with any other proposals emanating from the experience of the National Peace Committee plus any proposals that may be forthcoming from participants should constitute a basis for a Technical Committee to be set up whose task it would be to prepare a systematic set of proposals for the strengthening of the Peace Accord process. Technical Committees' proposals shall be submitted to the Planning Committee, further processed by it and be brought to the Negotiating Council for finalisation. The Executive Committee of the National Peace Committee shall be asked to nominate three persons to constitute the Technical Sub-Committee.

3.2.3 Security Forces and Armed Formations

This is the question that requires urgent attention, both in its own right and because of its impact on the negotiating process. The Consolidated Document on pages one and two contains the recommendations as they emerge in the CODESA process. We propose that, if the Negotiating Council approves the Technical Committee recommended on the TEC, that this issue should be entrusted to the same Technical Committee with the proviso that the Technical Committee address this question as a matter of priority.

The report of the Technical Committee shall be tabled before the Planning Committee for it to further process the proposals and submit them to the Negotiating Council for finalisation.

3.2.4 Other measures

We propose as an additional and immediate measure that the Negotiating Council appoint a Technical Sub-Committee to conceptualise and work out ways and means to bring about the formation of a peace corps through which especially the young people of our country can become actively involved in bringing about peace in the community, reconstruction, training and reconciliation.

This report shall be tabled and further processed at the Planning Committee with a view to bringing the proposal to the Negotiating Council.

4. All the above recommendations shall be submitted to the Negotiating Council on Monday 26 April 1993 for consideration and decisions. All parties are urged to come forward with additional suggestions on an ongoing basis.

ISSUES FOR DECISION

1. The Forum's Programme and Functions

- 1.1 The starting and ending time of the different sessions
- 1.2 What is the form and content of the report to the Forum in respect of:
 - 2.1.1 Mechanisms and procedures
 - 2.1.2 Violence
 - 2.1.3 The Transitional Process (including CODESA Agreements, phases and the Role of the International Community)
 - 2.1.4 The Way Forward
- 1.3 Who should, in each case, do the presentation?
- 1.4 Who should sit on the low podium? 1 Chair, 2 Assistant's from the Negotiating Council and any other administrative help?
- 1.5 Is it necessary to have a special rostrum or just a ~~the~~ main table on a low podium?
- 1.6 What documentation is necessary for the Forum?

Suggestions are as follows:

- * Agenda
- * Standing Rules
- * Composition and Structure of the Multi-Party Negotiating Forum
- * Summary of CODESA Agreements
- * Speaker request cards

2. Media

A report will be available during the course of the meeting from the Communication Committee.

VOLUME II OF CONSOLIDATED DOCUMENT

DRAFT PROPOSALS ON AMENDMENT AND/OR REPEAL OF LAWS MILITATING
AGAINST FREE POLITICAL ACTIVITY, INCLUDING THE ELIMINATION OF
ALL DISCRIMINATORY LEGISLATION

1. A Technical Sub-Committee should be set up to draft legislation amending and/or repealing laws militating against free political activity, including the elimination of all discriminatory legislation, based on gender and/or race.
 - 1.2 The technical sub-committee may also set up specialized sub-committees each to give similar attention to legislation in the Transkei, Venda, Bophuthatswana and the Ciskei.
2. In the preparation of such drafts, this Sub-Committee shall be guided by the Report of Working Group 1 and the Report of the Gender Advisory Committee (GAC).
3. The Report containing the draft laws would be tabled for discussion at the Planning Committee, thereafter submitted to the Negotiating Council, and, finally, settled at the level of the Negotiating Forum.

REPORT ON CODESA AGREEMENTS

To the Sub-Committee of the Facilitating Committee - 18 March 1993

1. Issue

We were asked to present a summary of CODESA agreements to the next meeting of the Sub-Committee.

2. The Declaration of Intent

At its first plenary meeting the Convention for a Democratic South Africa (CODESA 1) adopted the Declaration of Intent. Afterwards an Addendum was added. By way of this solemn agreement the subscribing parties committed themselves to bringing about a democratic South Africa with a new constitution. The Declaration and its Addendum appear on pages 1-4 in the bound volume marked CODESA Agreements

3. Working Groups

In pursuance of the objectives to which Parties committed themselves in the Declaration of Intent, five Working Groups were set up by CODESA 1. All Parties were represented in each of the Working Groups.

The terms of reference can be summarised as follow

3.1 Working Group 1

Working Group 1 was required to address itself to the creation of a climate for free political activity which included the need for the levelling of the playing field.

It was also required to make recommendations on the role the International Community could play in the period leading up to the introduction of a new constitution.

The full terms of reference of Working Group 1 appear on pages 5-6

3.2 Working Group 2

Working Group 2 was charged with the drawing of a set of constitutional principles to be embodied in the new constitution and with the making of recommendations on the appropriate body/process to draft that constitution.

The full terms of reference of Working Group 2 appears on pages 30-31

3.3 Working Group 3

Working Group 3 was required to make recommendations on the manner in which the country may be governed and managed until the introduction of the new constitution. A key focus of its task related to ensuring the levelling of the playing field.

The full terms of reference of Working Group 3 appears on page 45

3.4 Working Group 4

Working Group 4 had to deal with the future of the TBVC states on the basis that all the people living in the TBVC states should enjoy meaningful and democratic participation in the process of drawing up and adopting a new constitution for South Africa as well as in all possible transitional arrangements.

The full terms of reference of Working Group 4 appears on pages 64-65

3.5 Working Group 5

Working Group 5 was charged with the task of providing time frames, identifying the steps which would need to be taken by the Parties in CODESA in order to effect the implementation of agreements reached in CODESA.

The full terms of reference of Working Group 5 appears on pages 80-81

4. Reports of the Working Groups

Working Groups 1,3,4 and 5 agreed on reports to be submitted to the second CODESA Plenary Meeting (CODESA 2). Working Group 2 did not submit a report.

As Working Group 5 had to deal with the recording and implementation of substantive agreements reached in other forums, its report need not be included in this summary.

4.1 Working Group 1 Report: Climate of free political participation and the role of the international community.

The full text of all agreements appear on pages 7-29 of the Working Group 1 report.

The following aspects were dealt with by this Working Group:

4.1.1 Political prisoners and political trials

It was agreed that the release of political prisoners is a priority in the completion of the reconciliation process and that the South African Government and the ANC should pursue their bilateral talks relating to this matter in order to give effect to this.

4.1.2 The return of exiles and their families

This matter was referred to the bilateral talks between the South African Government and the ANC.

4.1.3 The amendment, and/ or repeal of any remaining laws militating against free political activity, including the elimination of all discriminatory legislation.

The Working Group endorsed the principle of free political activity and identified legislation that needed repeal or amendment.

4.1.4 Political Intimidation

The Working Group endorsed the need for all political disputes between Parties to be resolved peacefully and defined "political intimidation".

4.1.5 Political neutrality of, and fair access to state controlled/statutorily state instituted media, including those of the TBVC states

The Working Group agreed upon the establishment of an independent body to regulate the telecommunications sector. The question of an independent media committee was not dealt with on the basis that this will be addressed by Working Group 3.

4.1.6 The successful implementation of the NPA

A variety of agreements were reached aimed at strengthening the NPA and its implementation.

4.1.7 Prevention of violence related crimes and matters related thereto

Agreements on this Item were largely related to the question of strengthening the NPA.

4.1.8 Composition and role of the security forces in South Africa and the TBVC states

The Working Group agreed on the principles which should apply to the security forces.

4.1.9 Funding of political parties

The Working Group 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.

4.1.10 Fair access to public facilities, meetings and venues

4.1.11 Fair and reasonable access of political parties to all potential voters

4.1.12 Assignment 2: The role of the international community

The Working Group agreed to set up a task group to invite a neutral independent international body in relation to the process of elections.

4.2 Working Group 2

Working Group 2 was unable to file a report to CODESA 2.

The Management Committee at its meeting on 15 June (an extract of the MC minutes to this effect can be found on page 32) agreed that the last Chairpers of Working Group 2 and the Secretary of Working Group 2 be requested to prepare a report on the status of discussions in Working Group 2 prior to CODESA 2.

This report was prepared in the form of memorandum which appears on pages 33-44 and to which are attached the following annexures.

Annexure A: Entitled: Areas of agreement and areas on which no agreement yet exists on Assignment 1 of Working Group 2 prepared by the Steering Committee 27/4/92 , which appears on pages 40-42

Annexure B: Entitled: General Constitutional Principles of Commonality - prepared by Working Group 2 Steering Committee 12/5/92, which appears on pages 43 -44

Annexure C:Entitled: Working Group 2 Steering Committee proposal on a Constitution Making Body 13/5/92 as amended 16.30h 13/5/92 , as appears on pages 36-39

4.2.1 On the basis of this document it should be noted that with regards to Assignment 1: General Constitutional Principles, the Steering Committee document on Areas of Commonality including the principles on the Balance between Central, Regional and Local Government and the Participation of Political Minorities was tabled in the Working Group.

4.2.2 On Assignment 2: The Constitution making Body -Process

The Steering Committee proposal dated 13/5/92 was tabled at the Working Group. This proposal defined three phases, namely:

Phase 1: The present CODESA phase

Phase 2: The transitional/Interim constitution drafted by CODESA and legislated by the present parliament

Phase 3 The final constitution drafted and adopted by the National Assembly in terms of provisions of the Transitional/Interim constitution.

4.2.3 The only issue on which there was no agreement which is reflected in this document, is the issue of the percentages in terms of which the final constitution shall be adopted by the National Assembly.

4.2.4 The eventual deadlock in Working Group 2, however occurred on the following four issues:

4.2.4.1 interpretation of the time period in clause 1.1 of Annexure C

4.2.4.2 The percentages which should apply regarding the adoption of the different clauses of the final constitution

4.2.4.3 Whether there should be a role for the Senate in the adoption of the final constitution and future amendments to it

4.2.4.4 Special deadlock breaking mechanisms

4.3 Working Group 3: Interim /Transitional Arrangements

The full text of all agreements appears on pages 46-63

- 4.3.1 Working Group 3 agreed on a two-phased approach in respect of the Interim/Transitional arrangements. The first is a preparatory phase premised on facilitating the transition to a democratic constitution, and, in particular the levelling of the playing field, and ensuring a climate favourable to free political participation and the holding of free and fair elections.
- 4.3.2 The report set out the structures necessary for phase 1, their powers and the manner in which decisions would be taken. There will be an overarching Transitional Executive Council which, together with its sub-councils, to be vested by legislation with powers necessary to enable them to carry out their functions. The transitional executive structure will function in conjunction with the existing legislative and executive structures. Some of the powers and functions it should have are spelt out.
- 4.3.3 The Terms of Reference of the Transitional Executive Council shall be the facilitation of the transition to a democratic constitution, including the levelling of the playing field, and it shall ensure that a climate conducive to free political participation and the holding of free and fair elections, exists.
- 4.3.4 The Transitional Executive Council will consist of at least one member of the governments/administrations who commit themselves to comply with and implement its decisions and at least one member each of the political organisations participating in CODESA, making the same commitment. Other parties can be admitted by the Transitional Executive Council.
- 4.3.5 Members of the Transitional Executive Council will be fulltime executives
- 4.3.6 The sub-councils shall operate within the same terms of reference, but shall be given specific responsibilities in particular areas of concern which will be identified for each sub-council. Every sub-council will have a multi-party character and will ordinarily consist of up to six members.

- 4.3.7 The following sub-councils were agreed upon ~~and~~ areas of responsibility described:
- 4.3.7.1 Regional and local government
 - 4.3.7.2 Finance
 - 4.3.7.3 Law and Order, Stability and Security
 - 4.3.7.4 Defence
- 4.3.8 Regarding the sub-council on Foreign Affairs it has been agreed that, due to the unique character thereof, there is a need for broader discussion concerning it.
- 4.3.9 It was also agreed that there be an Independent Election Commission with responsibility for the holding of free and fair elections.
- 4.3.10 There may be a need for an election sub-council to provide services and information to an Independent Election Commission. The Transitional Executive Council will decide whether or not there is a need for such a sub-council.
- 4.3.11 The Independent Election Commission will be independent of the Transitional Executive Council and will consist of respected suitably qualified persons drawn from the broad cross section of the population.
- 4.3.12 The Transitional Executive Council and sub-councils will endeavour to take their decisions by consensus. Where consensus cannot be achieved, a majority of at least 80% will be sufficient for a decision. If a party is of the opinion that a minority view should have prevailed, the matter can be referred for adjudication to the Independent Election Commission.
- 4.3.13 It was also agreed that there be an Independent media Committee in accordance with recommendations from Working Group 1
- 4.3.14 It was agreed that the agreements reached with regard to phase 1, as well as its implementation, would be dependent upon agreement being reached in respect of phase 2, including the interim constitution and the general constitutional principles.

4.4 Working Group 4 : The future of the TBVC states

The full text of all agreements appear on pages 66-79

The report recorded:

- 4.4.1 Agreement in principle to the reincorporation of the TBVC states
- 4.4.2 Agreement that the TBVC states will participate in the transitional arrangements as projected by Working Group 3, on the understanding that these arrangements shall impact mutatis mutandis on the TBVC governments and territories in the same way that they impact upon the South African government and the territory of the RSA.
The Bophuthatswana government reserved its position
- 4.4.3 Agreement that the TBVC states shall take part fully in the process of constitution making and the 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 vote in a national election shall signify support for, or rejection of reincorporation thus constituting a test of the will of the people. (Reservations were expressed by the Bophuthatswana government)
This will lead to the restoration of South African citizenship to all citizens of the TBVC states who would have been South African citizens had the TBVC states not come into existence. (Reservations by the Bophuthatswana government were expressed)
- 4.4.4 Consensus was reached on a number of issues in relation to the practical, financial and administrative effects of reincorporation.

5. The Multi-Party Negotiations Planning Conference

This summary which has dealt with the Declaration of Intent, the agreements recorded in the reports, of Working Groups 1,3 and 4 and the status of discussions in Working Group 2, its Steering Committee and the Management Committee, outlines the substantive issues as well as the manner and the degree to which they were dealt with in CODESA.

In terms of paragraph 4.2 and 4.3 of Resolution 2 of the Planning Conference held on

March 1993, these constitute the substantive issues which are referred to.

This resolution requires the first meeting of the reconvened Multi-Party negotiation Forum to determine inter alia:

" 4.2 how to accommodate the views of those participants who were not in CODESA in relation to the agreements reached in CODESA;

" 4.3 how these agreements can serve as a constructive foundation for the resumed/commenced negotiations process to build on".

A copy of the entire records of what transpired in CODESA, which encompasses 13 volumes, has been put together and can be made available to the parties who were not CODESA and have since joined the Multi-Party Negotiations Forum.

REPORT ON PARTICIPATION

1. Issue

We were asked to report on how the issue of participation was handled in the CODES process

2. Before CODESA 1

2.1 In a series of bilateral and multilateral meetings between political parties and organisations, governments/administrations and others, agreement was reached on the parties asked to attend a Preparatory Meeting. In the process a whole range of criteria was considered, but eventually political reality was the deciding factor.

2.1.1 A set of political parties/organisations were agreed upon

2.1.2 In the case of the TBVC territories, the existing Administrations were agreed upon

2.1.3 The South African government as the governing authority was agreed to

2.1.4 Together the above constituted the list of parties invited to the Preparatory meeting. The same list was used for CODESA 1 (including those that were invited but did not attend the Preparatory Meeting) For the list of participants/invitees see Annexure A

3. CODESA 1

3.1 The first CODESA plenary meeting (CODESA 1) appointed a Management Committee representative of all participating parties. Concerning further participation, the Management Committee was instructed as follows:

3.1.1 That the present application by organisations to join CODESA, as well as other ways and means to expand CODESA, should be attended to by the Management Committee

- 3.1.2 That the Management Committee investigate appropriate mechanisms for adequate representation of women in the various structures created by CODESA.
- 3.1.3 That the Management Committee lay down principles and guidelines with regard to further participants for the interim and that these guidelines and principles will afterwards be submitted to CODESA 2 for confirmation.
- 3.1.4 That, in this regard, the Management Committee should consider three categories:
 - 3.1.4.1 The King of the Zulus
 - 3.1.4.2 Traditional leaders
 - 3.1.4.3 Other participants in terms of rule 1.1, namely political parties, political organisations and administrations.

4. After CODESA 1

- 4.1 Regarding the King of the Zulus and traditional leaders, the Management Committee summarised its report to CODESA as follows:

" To summarise, therefore, The Management Committee has agreed that Traditional leaders be represented at CODESA according to the provinces; it has further resolved that in dealing with this matter no distinction should be made between the King of the Zulus and the other traditional leaders; and, lastly, the Management Committee still has to finalise the recommendations regarding the form in which participation shall take place.

5. Regarding the admission of other further participants, the Management Committee reported as follows:

- 5.1 " It will be recalled that when CODESA 1 was held, a number of organisations had indicated that they, too, would like to be admitted as participants. A number of applications were also received after CODESA 1. It was agreed at CODESA that this matter had to be investigated first before the criteria for admission could be formalised. To this end a newspaper search to establish the type of coverage which each applicant had received over the preceding year, was conducted. A

questionnaire was also formulated with a view to establishing, amongst other things, the popularity of the relevant organisations, the level of their support and the extent of their activities in their sphere of operation. This was all done in an attempt to establish whether these parties could strictly speaking, be referred to as political parties and also whether they could be regarded as having proven substantial support. Of the 19 parties which applied, eight had not responded to the questionnaire at the time the matter was discussed by the Management Committee and nine other parties had their applications turned down. One of the remaining two parties has withdrawn its application and the other application has been held over".

- 5.2 The questionnaire was sent to organisations applying to participate under cover of a letter informing them that only political parties, organisations and administrations are eligible as participants while interest groups can make written submissions to Working Groups. A copy of the questionnaire is attached (see page 87)

6 Conclusion

In summary the position during CODESA therefore, was as follows:

- 6.1 The political parties/organisations that were agreed to in launching the Preparatory Meeting were accepted as participants. Those on the list who did not attend, continued to be invited. A full list of the participants/invitees appears in Annexure A
- 6.2 Further political parties/organisations applying were processed in order to determine whether they had proven substantial support as reflected in paragraph 5, no new participants were accepted
- 6.3 The TBVC states were represented by existing Administrations
- 6.4 The South African Government was a participant
- 6.5 In the case of traditional leadership agreement was reached that they would participate in the form of 4 provincial delegations
- 6.6 A gender Advisory Committee was set up composed of representatives of each of the participants
- 6.7 Interest groups (defined as organisations not regarded as political parties) were refused participant status. Provision was made for interest groups to make

submissions to Working Groups.

1. Way forward with regard to CODESA Agreements

- 1.1 The Subcommittee is therefore expected to advise the Facilitating Committee as to the most effective way in which these agreements can serve as a constructive foundation and ensure that the views of those participating who were not in CODESA, are taken into account, so that the process can be taken forward

From the point of view of the reconvened Multi-Party negotiating Forum, the full plenary sessions and the Multi Party Forum sessions are the critical points which the participants register formal agreement/reservations etc.

- 1.2 It is further assumed that such agreements shall have emerged through the discussions, in the Facilitating Committee/Negotiations Council. The issue therefore revolves around how to ensure that all participants, including those present in CODESA shall be enabled to participate fully in constructing agreements.

One of the ways would be to consider the following:

- 1.2.1 Working Group 1 and 3 reports provide a fairly comprehensive set of agreements which relate to Phase 1 of the transition. This phase deals with the levelling of the playing field, ensuring free political activity and the composite powers and duties of certain structures. The structures referred to are the Transitional Executive Council and its sub-councils, the Independent Election Commission, the Independent telecommunications Authority and the Independent Media Committee.

The agreements provide a sufficient basis for the Facilitating Committee to set up one or more drafting committees whose task it would be to translate the agreements into the form of draft legislation.

Such drafting committees could be composed of individuals with the necessary expertise and who would serve on such technical committees, not as representatives of their parties/organisations.

The draft legislation would therefore be without prejudice to the views of the participants. In this way the draft legislation would be concrete and would facilitate accommodating the views of the participants in the form of approving, amending, substituting

and/or introducing new clauses to the proposed draft legislation.

These drafts could be processed, again, on a without prejudice basis, by the Planning Committee and then taken to the Negotiations Council, before they are tabled at the Negotiations Forum.

The end product would be agreement/reservation by participants in the form of legislation to be enacted by the current parliament and amending the existing 1983 constitution.

Some aspects of such legislation may become parts of the Transitional/Interim constitution.

The Negotiations Forum would thereafter determine when such agreed legislation is to be enacted.

The effect of this approach would be effective accommodation of the views of all participants and finally of the draft legislation.

1.2.2 Constitution Making

The Working Group 2 Steering Committee approach isolated three phases:

The CODESA phase: This related to what has been dealt with above in terms of phase 1

The Transitional/Interim constitution: which needs be negotiated in the resumed Multi-Party Negotiations Forum and which would deal with the interim governmental structures and include the protection of basic civil and political rights.

The constitution would also incorporate the general constitutional principles negotiated at the Multi-Party Forum and which would be binding on the Constitution Making Body.
That is to say the final constitution shall be drafted and adopted in terms of the provisions of the Transitional/Interim constitution.

In this regard Working Group 2 discussions assumed an elected Constitution Making Body. All options which were under consideration referred to the National Assembly functioning as a Constitution Making Body.

On this basis Working Group 2 did not complete the task of

agreeing on the general constitutional principles and some of the procedures relating to the functioning of the Constitution Making Body.

This, therefore, is an aspect that requires ~~attention~~ ^{attention} by the resumed Multi-Party Forum.

1.2.3 The future of the TBVC states has been dealt with in agreements interspersed between Working Groups 1, 3 and 4.

1.3 From the point of view of the transition process these would find their natural place in the following two sets of instruments:

1.3.1 The draft legislation dealing with the TEC and phase 1 in general

1.3.2 The transitional constitution to be agreed at the Multi_Party Forum

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(Referred to Addendum B in the agenda of the Sub-Committee for 18/3/93)

REPORT ON STANDING RULES

To the Sub-Committee of the Facilitating Committee - 18/3/92

1. Issue

We were asked to investigate the issue of the Standing Rules, including dispute resolving mechanisms and deadlock breaking mechanisms, and to report to this Sub-Committee.

2. CODESA Standing Rules

A copy of the CODESA Standing Rules of Procedure for Plenary Sessions is attached (Annexure A)

3. Standing Rules for the next Forum

3.1 A proposed draft set of Standing Rules of Procedure for the next Forum is attached (Annexure B)

3.2 These were drafted for the structures developed at the Sub-Committee's meeting of 9 March 1993. Should these structures be changed, the rules will also have to be adjusted

3.3 The formula for decision making adopted by the Facilitating Committee at its meeting on 5/3/93, has been incorporated in the draft Rules

4. Dispute Resolving and Deadlock Breaking Mechanisms

- 4.1 The formula for arriving at decisions, is in itself the best deadlock breaking mechanism that can be suggested at this stage
- 4.2 The proposed structures at different levels are beneficial for dispute resolution.
Any particular issue can be dealt with at levels ranging from technical committees through the ten member Planning Committee (individuals and not party representatives), the Negotiating Council composed of delegation leaders only and the Multi-Party Negotiating Forum up to the full plenary. In some cases groups will function in camera where solutions can be sought through explorative giving and taking, while in other cases the presence of media representatives and observers may persuade parties not to act unreasonably. The panel system of chairing and chairing back-up serves as a further dispute resolution mechanism.
- 4.3 If it should become necessary, employing professional facilitators can be considered, but we do not believe that the available professional facilitating skills are particularly useful in a national processes as opposed to legal, commercial or labour negotiations. The best political facilitators are already involved in the process as party representatives. If they, with their combined intimate knowledge of the issues at stake, cannot find solutions, professionals who are unfamiliar with the intricacies of the issues will find it very difficult to be of help.

5. Task Groups

This assignment was given to Messrs Maharaj, Matthews, Moseneke and Van der Merwe. Mr Moseneke was not available for the assignment. The report is therefore submitted by the remaining three.

(Referred to as Addendum C on Agenda of the Sub-Committee for 18/3/93)

[NAME OF FORUM]

STANDING RULES OF PROCEDURE

1. Application

These Rules of Procedure apply at Plenary meetings and at meetings of the Negotiating Forum and the Negotiating Council.

2. Participants

The participating parties entitled to be represented at meetings are those listed in the List of Participating Parties annexed hereto. The Negotiating forum can add parties to or delete parties from the list.

3. Delegates

Each participating party shall be entitled to be represented by:

3.1 Ten delegates at Plenary meetings

3.2 Three delegates and two advisers at meetings of the Negotiating Forum

3.3 One delegate and one adviser at meetings of the Negotiating Council

4. Each participating party shall submit and register the names of its delegates and

advisers with the [name of the forum] Administration.

5. Delegates can be substituted by alternatives to be registered with the Administration in advance
6. Advisers can be substituted at any time provided that the substituting advisers are registered with the Administration in advance and that the leaders of the delegations notify the Chairpersons whenever an adviser is substituted during the course of a meeting
7. In the event of a dispute concerning the credentials of a delegate or an adviser, the issue will be decided by the meeting itself upon the receipt of a actual report and recommendation of the Planning Committee.

8. Agreements and Decisions

All agreements are to be arrived at and decisions taken by general consensus.

9. If general consensus cannot be achieved, the method of sufficient consensus will be used

10. Sufficient consensus means that:

10.1 There is a lack of general consensus

10.2 There is enough agreement from enough participating parties to enable the process to move forward

10.3 Parties who disagree can record their objections or rejections formally, but will, in the spirit of cooperation, not hinder the process from going forward

11. The ruling that there is consensus/sufficient consensus or not, shall be taken by the Chair in his or her discretion. This can however be challenged by any party who disagrees. The meeting will then deal with it as is appropriate

[Annexed hereto is a photocopy of an additional view on the aspect by Mr Joe Matthews. This view is different from the one presented in this paper

12. Quorum

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

13. Speeches and interventions

Every delegate shall be entitled to speak

14. If a speaking order has been agreed upon, the Chair shall call the speakers in that order
15. In general, the Chair shall call on speakers in that order in which they signify their desire to speak. The Chair however, shall ensure that each delegation is afforded a reasonable opportunity to speak
16. The Chair shall apply the standard rules applicable to meetings, accept as otherwise stipulated herein
17. Plenary meetings shall be chaired by an independent Chairperson or Chairpersons to be decided upon by the Negotiating Council
18. The Negotiating Forum and the Negotiating Council shall be chaired by a core panel of Chairpersons, appointed on merit and capability by the Negotiating Council from its own ranks and serving on a rotating basis
19. Minutes and Documentation

The proceedings of Plenary meetings shall be recorded and transcribed and copies of the transcript made available to all delegates
20. The proceedings of meetings of the Negotiating Forum and Negotiating Council shall be recorded in full, but only agreements and decisions shall be minuted
21. Media

All Plenary meetings shall be open to the media
22. The Negotiating Forum and the Negotiating Council shall itself decide on whether, and if so which of its meetings shall be open to the media
23. These Rules of Procedure can be amended by the Negotiating Council

THE OUTCOME OF APPLICATIONS TO CODESA

The organisations which did not reply to the questionnaire and had their applications turned down were the following

1. Boerevolk Party
2. Boerentia Party
3. Mighty Sofasonke Party
4. Pan African Congress of South Africa
5. United Conciliation Party
6. Venda National Party
7. Mnyamana Action Party
8. United Asian Front

The following were rejected after consideration by the Management Committee on 27-28 April 1992:

1. Afrikaner Party
2. Federal Independent Democratic Alliance
3. Freedom Party of South Africa
4. Insika National Party
5. Merit People's Party

6. People's Party of South Africa
7. Reform Party of South Africa

Management Committee agreed to postpone consideration of the following 2 applications until after CODESA 2:

1. National Seoposengwe Party
2. People's Progressive Party

The application by the Joint Executive Authority for KwaZulu was withdrawn at the Management Committee meeting on 27-28 April 1992

On Violence - MPC discussion

Dr FT Mdalose IFP - National Chairman

18 September 1998

1. Preamble

The road to a new South Africa must go through negotiations, involvement of public b public information, electioneering and a clean new Republic of South Africa government. Trust among negotiators - is a sine qua non.

Openness as we discussed must be assured.

No fear of ASSASSINATIONS, ATTACKS, VIOLENCE

No negotiations can be meaningfully pursued without these assurances. Violence militates against all of this. Many factors are at the base of violence:-
Socio-economic factors, criminality and political violence.

2. Political violence

Every month has seen tens and hundreds of deaths of a political nature brought abo throughout South Africa. The biggest culprits are the private armies. Assassinations o public figures and attacks on families of known members of certain parties.

Destruction of private property:-Houses, cars and shops. These are carried out systematically by well trained personnel.

AK 47 - the commonest weapon, ~~armies~~ have been located in certain places and in possession of certain personnel. Some have been found enroute into South Africa in th hands of members of certain private armies or certain organisations.

There can be no meaningful negotiations as ~~long~~ political violence is perpetrated.

Implicated in this political violence are private armies: MK, APLA, Witwolve and military elements of the extreme right.

We South Africans have buried too many bodies.

3. Solutions

Disbandment of privatemies.
Surrendering of arms caches.
Rehabilitating of private army personnel.

MINUTES OF THE MEETING OF THE SUBCOMMITTEE ON THE PARTICIPATION OF THE ZULU KING AND OTHER TRADITIONAL LEADERS IN CODESA HELD AT 10H00 ON TUESDAY 3 MARCH 1992 AT THE WTC

PRESENT: TJ Mohapi (Convenor)
TT Matanzima
FT Mdlalose
J Slovo
J Zuma

T Eloff (secretary, minutes)

1. The Chairperson's opening remarks

The chairperson welcomed the members and reiterated the importance of the work of the subcommittee.

2. Adoption of the agenda

The agenda was adopted after "Ratification of the minutes of the previous meeting and matters arising" was added as item 3.

3. Ratification of the minutes of the previous meeting and matters arising

3.1 Ratification

The minutes of the meeting of 24 February were ratified, with the amendment that Mr S had apologised and had not been present at the meeting.

3.2 Matters arising

3.2.1 List of experts to give evidence

It was agreed to add the following names to the list of experts to be invited to submit evidence to the subcommittee:

- * Prof RB Mqoke (Unitran)
- * Prof CF Manona (Unitran)
- * Mr VJ Matthews (Durban)

It was further agreed to invite Mr Matthews to give written or oral evidence to the next meeting of the subcommittee.

It was agreed that Mr Slovo will investigate whether the report of the La Commission (of Justice Olivier) was in any way beneficial to the proceedings of the subcommittee that he will communicate with the secretary in this regard.

3.2.2 Expenses with regard to persons giving evidence

- * It was agreed in principle that expenses should be met.
- * With regard to the experts, further negotiations between the Administration and the experts was necessary.
- * With regard to traditional leaders giving evidence, it was agreed that, if necessary, the travel and accommodation costs of a limited number of traditional leaders from each region will be carried.

3.2.3 The hearing of evidence by the subcommittee

It was agreed that a follow-up letter to the heads of delegations of all administrations should be written in which the following should be communicated:

- * The subcommittee would like to meet with six traditional leaders from each region to hear evidence.
- * The meetings for the hearings would take place at the World Trade Centre on the following dates and times:

Wednesday 18 and Thursday 19 March, 10H00-17H00.
- * Heads of Administrations should please indicate who would come and which date and time was appropriate.
- * It was also agreed to invite a 6-person delegation of CONTRALESA to do the same.

4. Submissions and applications received to date

It was noted that, before the meeting, the following applications/submission had been received:

- * King G Zwelithini
- * Transkei Kings and Chiefs
- * King DM Mabhoko - Ndzundza Mabhoko Royal Kraal
- * Batlokwa Tribe National Council
- * The Lebowa College of Magoshi
- * Paramount Chief EM Mabena II of Kwandebele

The following new applications/submissions were handed out:

- * Mopeli Chiefs' Council - Qwaqwa
- * Contralesa
- * Batlokoa Chiefs' Council

5. Presentation by Dr Viljoen

Dr G van N Viljoen addressed the meeting on the issue of the participation of the Zulu King at the view of the SA Government in this regard (see addendum A - available later).

After the subcommittee had questioned Dr Viljoen, the chairperson thanked him for his present

6. Progress report to the Management Committee

It was agreed that the secretary would prepare a draft for the chairperson, who will approve and amend it (if necessary) before it is circulated to members.

7. Date of the next meeting

It was agreed that, in the light of the deadline of 12 March 1992 for written submissions, as was the hearings on 18 and 19 March 1992, the subcommittee should have a planning meeting on 16 March. The time will be determined between the Chairperson and the secretary and communicated to members. This will be dependent on other meetings taking place on 16 March.

The meeting adjourned.

5.4 Recess for Codesa

- 5.4.1 It was agreed to discuss the dates for Codesa 2 in conjunction with the ideas of a recess for Codesa as the two issues are linked.
- 5.4.2 It was agreed that Codesa would not meet the week beginning 13 April and that next meetings of Codesa would be on 21 and 22 April 1992.
- 5.4.3 It was agreed that Codesa 2 would take place on 15 and 16 May 1992. It was agreed that these should be firm dates.

POLITICAL PARTIES

We accept the following:

1. that violence has increased since the opening of the political process following 2 February 1990
2. and the various reports of the Goldstone Commission which identify political rivalry as a major trigger of violence

These points point to a connection between rivalry/competition and violence.

While robust political competition in a democratic society is both healthy and necessary there are unacceptable forms of political competition. These include:

- Inflammatory speeches
- Behaviour of political parties are unacceptable

I think that it is one of the remedies. The perception of the membership of the various parties involved in multi-party negotiations are increasingly losing confidence in the process. Hence there is an escalation of violence. We suggest that the MPNP should send definite signals to restore confidence in the process and thereby stem the tide of violence. In our view this can only be done by the speed installation of the TEC and establishing a government of national unity.

Accept the Goldstone Commission report in that rivalry is one of the major causes of violence

REMEDIES

1. Speeding up of the process/ swift pace
 - Swift progress through the various stages towards a democratic dispensation
2. Self-restraint and discipline within political parties
 - Legislation is not sufficient in curbing violence and peace ultimately rests on the self-discipline of political parties
3. Accountability or responsibility within political parties

4. Fraternization including local pacts, brotherhood/sisterhood, rally for African people, meeting of leaders

DANGEROUS WEAPONS

- Enlist the aid of political parties to ban the possession or display of dangerous and automatic weapons in public.
- Encourage political parties not to use violence against other people.
- Call on parties to make contributions on how to control automatic weapons.
(Will have a more detailed discussion)

MASS ACTION

- Explicit compliance with guidelines as set in "Goldstone Commission" reports and in National Peace Accord.
- Urge political parties to follow procedures as recommended in "Goldstone Commission" reports and in the National Peace Accord.
- Mass action is seen as vehicle for criminal acts.
- Mass action is not properly structured.
- Mass action not to be stopped

INTELLIGENCE

- Accept that information gatherings is acceptable as long as it does not harm citizens and destruct their property.
- Agreement for free exchange of information between parties
- The motive of intelligence work by political parties is condemned
- Intelligence agencies used for misinformation that lead to death and destruction
Use of intelligence agencies to undermine other political parties.
- Responsibility of political parties to inform parties/ organisations/ Law and Order if it is suspected that action is going to be taken.
- Recognise legal purpose of information gatherings.

SA GOVERNMENT

INTELLIGENCE AGENCIES: SMEAR CAMPAIGNS/ POLITICAL DEMISE

- Information at our disposal suggests that DMI and/or other individuals within these organisations has been operated with a seperate agenda and not to serve the purposes of the Government.
- Military inntelligence is for gathering information and not for the carrying out of activities.
- Investigation by independent commission is essential.
- Await the outcome of the Goldstone Commission investigation.
- If allegations are proved to be correct, a freedom of information act will be considered.

The existence of armed formations belonging to political parties or organisations has no justification in the country during this period of multi-party negotiations to bring about a peaceful constitutional transition for a new and extended democracy for South Africa. However, and whilst recognising the historical reality that such armed formations had in fact been established, I recommend:

1. That any such existing armed formations of such parties and or organisations should be phased out in terms of a phased approach dealing with ie the pre-TEC stage, the TEC stage and the stage after the election of a transitional government.
2. As the whole matter of armed formations is clearly related to the question of the establishment of the TEC its functions and powers this matter be referred to the Technical Committee dealing with the establishment of TEC, for further consideration.
3. As the availability of particularly unlicensed automatic assault rifles have contributed to a large extend to the ever increasing number of people being killed with such weapons, political parties and organisations and members of such organisations who possess unlicensed firearms in their capacity as members of such organisations should immediately place such weapons under credible impartial control.
4. That all such parties and organisations should immediately cease recruiting for and training of recruits for such formations.

5. That any person found in possession of an unlicensed firearm should be dealt with in terms of the provisions of the relevant law and that all parties/ organisations should make a clear statement that such persons shall not be eligible for any indemnity.

2. Violence against Women

- 2.1 Because of the criticism that issues relating to gender and women were neglected at the two CODESAs, this Technical Committee wishes to repeat the limits of its mandate at the outset. This report relates only to those issues of gender and women which have a bearing on violence during the period of time ending with the installation of a new government.
- 2.2 When a previous report was discussed in the Negotiating Council, several of the parties referred to "violence against women". This phrase requires definition. Also necessary is to identify the democratic principles which are involved, as well as recommendations.

2.2.1 Crimes Involving and Against Women

2.2.1.1 Criminal legislation outlaws a range of violent acts which do not mention gender or exclude women. Thus women have the same protection from the law prohibiting (for example) theft and assault. Gender here is incidental to the crime. As such violence against women are indistinguishable from crimes against men.

2.2.1.2 Measured by the gender of victims, however, some criminal acts are associated with women far more than men. Although not impossible with men, the statistics on rape in South Africa (and elsewhere) bear this out. Thus violence through sexual means and sexual acts by means of violence have become known as the primary ingredient of the phrase "violence against women". It is worth noting that the scope of circumstances in which rape could occur, has broadened over time. Criminal legislation now considers rape possible within the context of marriage, for example, while the

EXECUTIVE SUMMARY

REPORT NUMBER THREE OF THE TECHNICAL COMMITTEE ON VIOLENCE: 27 MAY 1993

The Committee has started dealing with issues which relate to the responsibilities of political parties. This report covers three areas - political rivalry, negotiating process, and mass action.

A number of recommendations on political rivalry are made, all with the intent of getting political parties more committed to and working with acceptable forms of political rivalry in an effort to reduce politically motivated violence.

A number of issues relating to violence and the negotiation process are raised. The Committee believes these will need to be addressed by the Negotiating Council and its members, in order to attempt to reduce this potential for violence while the negotiating process is proceeding.

The Committee is proposing that the parties at the Negotiating Council consider alternative views regarding the introduction of a moratorium on mass action for a limited time during the negotiating process. However, the fundamental right to mass action is supported, but requesting parties which do exercise that right to observe some specific requirements when so doing.

The Committee has dealt with more areas but is not ready to include them in a report.

**REPORT NUMBER THREE OF THE TECHNICAL COMMITTEE ON
VIOLENCE: 27 MAY 1993**

1. INTRODUCTION

1.1 Based on the submissions to this Committee, we identified a number of violence "issues" which have been allocated into six major areas of resolution, being:

- 1.1.1 Political Parties
- 1.1.2 South African Government
- 1.1.3 Other Governments and Administrations
- 1.1.4 Armed formations
- 1.1.5 Peace Structures
- 1.1.6 Other

1.2 This report deals with the issues which pertain to Political Parties. Those "issues" cover the causes, potential causes, and manifestations of violence. The following are the issues identified:

- 1.2.1 "Killing" talk by political leaders/ inflammatory speech; speeches inciting violence;
- 1.2.2 Political parties creating a climate for violence/ tactics and strategies implemented either overtly or covertly;
- 1.2.3 Private political armies;
- 1.2.4 Mass action;
- 1.2.5 Hostels;
- 1.2.6 The threat of violence emanating from the Right-wing.
- 1.2.7 The need for political reconciliation between the ANC and the IFP and the inability of these parties to effectively spread joint messages of peace and political tolerance;
- 1.2.8 Concerted efforts to derail the negotiation process by political activists/ parties/ others;
- 1.2.9 Impatience with the pace of constitutional negotiations
- 1.2.10 Freedom of political participation/ association/ assembly;
- 1.2.11 Political intolerance;
- 1.2.12 Political intimidation;
- 1.2.13 Leaders of political parties not doing enough to promote political tolerance;
- 1.2.14 Some parties at the Multi-Party Negotiating Process have failed to sign the National Peace Accord;

- 1.2.15 Failure of signatories to the National Peace Accord to meet;
- 1.2.16 Certain parties have failed to suspend the armed struggle;
- 1.2.17 Parties have failed to accept responsibility and accountability for contraventions of the Peace Accord and political violence committed by their members/ supporters;
- 1.2.18 Failure of parties to co-operate with security forces;
- 1.2.19 Dangerous weapons;
- 1.2.20 Lack of constructive mobilisation of African leadership;
- 1.2.21 Covert and clandestine operations.
- 1.2.22 Political rivalry and fear of losing political support
- 1.2.23 Despondency that the negotiation process will not yield the desired party political results;
- 1.2.24 Lack of control by political formations of their rank and file members;
- 1.2.25 Deteriorating socio-economic conditions
- 1.2.26 Improper conduct by the police in the course of investigations
- 1.2.27 Lack of capacity by police to effectively investigate acts of political violence;
- 1.2.28 Fear of change on the part of people with vested interests in the constitutional status quo;
- 1.2.29 Unlawful and politically biased activities and actions of security forces and/ or individuals in such forces;
- 1.3 On further consideration of these issues, five areas of critical concern have been identified: political rivalry; political negotiations, weapons, mass action, covert and clandestine operations.
- 1.4 This report deals only with those issues on which the Committee has managed to make progress to date i.e. political rivalry, political negotiations and mass action.

2. POLITICAL RIVALRY

- 2.1 Robust yet peaceful political rivalry is a healthy and necessary feature of democracy. However the democratisation process has been accompanied by forms of political rivalry and methods of mobilisation which go well beyond what is politically acceptable.
- 2.2 It is well known that violence has increased substantially since February 2nd, 1990, when a more competitive and open political process was initiated. Considerably increased political rivalry has become a trigger of violence. It is

useful to quote from one of the submissions before us: "political rivalry is a major trigger of violence". (Goldstone Commission report)

2.3 Unacceptable forms of conduct include:

- inflammatory rhetoric;
- creating a climate for and inciting violence either overtly or covertly;
- political intolerance; and
- political intimidation.

2.4 Experience has shown that legislation alone can not put an end to violence. Consequently it is recommended that:

2.4.1 All parties which are signatories to the National Peace Accord report to the Multi-Party Negotiating Process on steps taken by them to commit themselves to the Code of Conduct for Political Parties as contained in the National Peace Accord.

2.4.2 Non-signatories to the National Peace Accord should sign it and commit themselves to its Code of Conduct for Political Parties.

2.4.3 Parties should accept responsibility and accountability for any contravention in the Code of Conduct for Political Parties of the National Peace Accord by members/supporters.

2.4.4 Political parties should promote peaceful politics to their members and the public at large. In this regard this Technical Committee suggests that the Negotiating Council consider the following:

2.4.4.1 Re-emphasising the importance of bilateral discussions between rival organisations;

2.4.4.2 Re-emphasising the importance of leadership meetings between rival organisations;

2.4.4.3 Re-emphasising the importance of joint public meetings as a mechanism to demonstrate the commitment of rival political leaderships and organisations to peace;

2.4.4.4 Re-emphasising the importance of meetings of grassroots supporters of rival organisations; and

2.4.4.5 The importance of public education programmes.

- 2.4.5 All parties should establish mechanisms, within their own organisations, for dealing with transgressions of the National Peace Accord by their party members.
- 2.4.6 Those parties to the MPNP who are not signatories of the Peace Accord should report to the Negotiating Council on steps taken by them to deal with unlawful, violent and unacceptable conduct on the part of their members and supporters
- 2.4.7 All parties which have not yet suspended violence should do so immediately.
- 2.4.8 Political leaders and supporters of political parties/organisations must refrain from making speeches inciting violence.
- 2.4.9 All parties should co-operate with the police in solving violent crimes.

3. VIOLENCE AND THE NEGOTIATION PROCESS

- 3.1 The Committee recognises there is a direct relation between the lack of a political agreement regarding the future South Africa and the phenomenon of violence. Different Parties/Organisations/Administrations have differing perceptions, hopes, fears and expectations regarding the negotiating process. Equally there are differing perceptions, hopes, fears and expectations regarding the process amongst the general public. These differences have led to confusion, tension, division, despondency and anger and are playing a significant role in the proliferation of political violence.
- 3.2 The Committee has identified the following issues which it recommends should be addressed by the Negotiating Council:
 - 3.2.1 Widespread concern regarding the pace and urgency of negotiations;
 - 3.2.2 Fears that the negotiating process will not deliver sufficiently to meet the expectations of the organisations in the MPNP, their constituencies and the wider public.
 - 3.2.3 Covert and overt actions to derail the negotiating process;
 - 3.2.4 Fear of change among people with vested interests the constitutional status quo;

- 3.2.5 Lack of confidence and trust between political leadership;
- 3.2.6 A lack of confidence and truspolitical leadership;
- 3.2.7 The flow of information about the negotiation process has not led to an adequate and constructive public comprehension thereof;
- 3.2.8 The retention of the armed struggle as an official policy by political organisations
- 3.2.9 Parties to the MPNP send out conflicting signals regarding their commitment to the negotiating process and keep armed options open;
- 3.2.10 The potential for even higher levels of violence if the negotiations reach deadlock.
- 3.3 The Committee believes that with the exception of 3.2.7 all of the issues which have been identified are fundamentally political in nature and require resolution by those represented at the Negotiating Council themselves.
- 3.4 As far as 3.2.7 is concerned the Committee proposes that the Negotiating Council consider authorising a body of the Multi-Party Negotiating Process to speak to the Media on behalf of the Multi-Party Negotiating Process itself. This means that in addition to the variety of party-political and other Press conferences which already occur, there will be an opportunity for the Multi-Party Negotiating Process to regularly address the South African public with one voice.

4. MASS ACTION

- 4.1 Mass action is taken to cover all acts of mass protest gatherings, marches, boycotts etc.
- 4.2 Recently, as the various institutions involved in mass action and its regulation have worked together in accordance with guidelines formulated through structures of the Peace Accord, there has been a number of mass actions, particularly marches and rallies, which have proceeded without violent

incidents. However a number of unregulated and ill disciplined mass actions also have occurred, which have led to violence and loss of life.

- 4.3 The Goldstone Commission has investigated mass action and has produced two reports on the regulation of gatherings which cover many aspects of mass action. These reports have proposed *modus operandi* for the regulation of gatherings and a Bill to consolidate legislation pertaining to public gatherings, to provide for general measures setting out procedures, requirements, powers, and responsibilities of local and state authorities, the police and organisers of gatherings, and to provide for matters incidental thereto.
- 4.4 Although the Committee supports the general thrust of the Bill, it believes that certain amendments are required in order to ensure that all parties support the provisions of the Bill. The Committee proposes that the National Peace Committee should be requested to submit the necessary amendments.
- 4.5 As is stated in the preamble to the Bill, every person has the right to express their view on any matter freely in public and enjoy the protection of the state while doing so. Mindful that all persons have this right but mindful also of the tense and violent political environment in our country, the following views have been expressed in this Committee:
 - 4.5.1 The right to demonstrate is fundamental and cannot be taken away. Nevertheless, in the current climate mass action leads to unnecessary deaths and a moratorium should be placed on it.
 - 4.5.2 The right to demonstrate is fundamental and cannot be taken away. A moratorium on mass action could in fact increase political pressure and would be counter productive in the search for peace.
 - 4.5.3 All members of the committee agree that if and when the right to demonstrate publicly is exercised every party doing so must:
 - 4.5.3.1 Give priority to the need to promote peace;
 - 4.5.3.2 Avoid deliberate provocation of opponents;
 - 4.5.3.3 Ensure that the structures of the Peace Accord are kept fully informed and are utilized to maximum effect;

4.5.3.4 Commit themselves to negotiate in good faith with all relevant parties regarding demonstrations;

4.5.3.5 Bind themselves to comply with all agreements reached regarding demonstrations;

4.5.3.6 Comply with provisions of the Goldstone Bill once agreement has been reached on amendments to it, and once it has been enacted.

Violence originates in one of two perceptions regarding the negotiation process: (i) that the breakthroughs, turning points, and victories proclaimed from negotiation forums are hollow or meaningless to the common man and woman; and (ii) that the pace of the negotiations does not match the urgency people perceive necessary to solving their problems. The consequence of both of these perceptions are cynicism about and a loss of confidence in political leadership. Violence often follows in the wake of these perceptions.

We urgently recommend greater efforts by political parties to inform their supporters of claims, events, issues, problems and other developments related to negotiations. Besides lacking information, understanding of negotiations also is shaped by cultural and other factors (like literacy). We urge these factors be taken into account with greater dissemination of information [We shall return to the theme of culture elsewhere].

Finally, we urgently recommend suitable acceleration in the pace of the Multi-Party Negotiating Process and other negotiations involving political parties.

1.4 WEAPONS

Having noted that the availability of particularly assault weapons such as AK47 automatic assault weapons contribute to violence and that a vast number of people have been killed with such weapons,

It is recommended

- 1.4.1 That where persons and organisations possess unlicensed firearms, arms caches and explosives, these should be placed under credible impartial control without further delay;
- 1.4.2 That mechanisms should be devised which would meet the requirements for satisfying the control stipulated in paragraph 1 above;
- 1.4.3 That no person and organisation should in any way be involved in bringing into the Republic of South Africa or in manufacturing any such assault weapon or

other unlicensed firearm or explosives contrary to the provision of any existing law;

- 1.4.4 That political parties and organisations should publicly condemn any form of smuggling such weapons into the country for any purpose whatsoever;
- 1.4.5 That political parties and organisations should commit themselves and publicly appeal to the public at large and their supporters in particular to refrain from being in possession of such assault weapons and other unlicensed firearms or explosives and furthermore that such people and supporters be informed on a continuous basis that such actions are against the law and what they should obey the law in this regard;
- 1.4.6 That people found in possession of such weapons and firearms should be prosecuted vigorously and that an appeal be made to the judicial authorities to meet out severe punishment to those found guilty;
- 1.4.7 That a publicity action including advertisements in all the media be launched with a view to bringing this message to the attention of all citizens;
- 1.4.8 That political leaders should impress the importance of these recommendations as a whole on the leaders of all the sub-structures and affiliated organisations of their respective organisations and make an earnest appeal to the leaders of such sub-structures and affiliated organisations that they should ensure that these recommendations are conveyed and explained to their members and that such members be requested to co-operate in ensuring that proper effect is given thereto;
- 1.4.9 That the contents of such message should also be brought to the attention of religious, cultural, service, welfare and similar organisations;
- 1.4.10 That parties and organisations recommit themselves to the high value which they attach to life and that nobody should be deprived thereof by any means whatsoever.

3. MASS ACTION

Although the Committee supports the general thrust of the Bill, it believes that certain amendments are required in order to ensure that all parties support its provisions. The Committee proposes that the National Peace Committee should be requested to submit the necessary amendments.

As is stated in the preamble to the Bill, every person has the right to express their view on any matter freely in public and enjoy the protection of the state while doing so. Mindful that all persons have this right but mindful also of the tense and violent political environment in our country that any party or organisation undertaking mass action:

- 3.1 Give priority to the need to promote peace;
- 3.2 Avoid deliberate provocation of opponents;
- 3.3 Ensure that the structures of the Peace Accord are kept fully informed and are utilized to maximum effect;
- 3.4 Commit themselves to negotiate in good faith with all relevant parties regarding demonstrations;
- 3.5 Bind themselves to comply with all agreements reached regarding demonstrations;
- 3.6 Comply with provisions of the Goldstone Bill once agreement has been reached on amendments to it, and once it has been enacted.

The Technical Committee received a submission recommending a moratorium on mass action.

Two views were expressed in the Committee regarding the proposal:

- 1.5.1 That mass action had led to unnecessary deaths and a moratorium should be placed on it.
- 1.5.2 The right to demonstrate is fundamental and can not be taken away but that parties should always:

The Committee decided to refer the question of a decision regarding mass action to the Negotiating Council.

1.6 POLITICAL PARTIES: INTELLIGENCE

Information-gathering and research are acceptable activities of political parties. Legitimate activities, however, are at times connected with campaigns of disinformation and covert and/or otherwise illegal operations. These poison the political atmosphere, infringe the privacy of political parties and supporters thereof, harm citizens, and damage and destroy property.

Consequently, the section(s) of the Peace Accord regarding illegal activities should be redefined so as to include the actions of political parties and/or agencies and individuals acting on behalf of political parties. We urge parties to commit themselves anew to compliance with the amended Peace Accord, and renewed vigilance in monitoring of possible transgressions.

CONTRIBUTIONS NOT DEALT WITH

1

In dealing with the sub-category of POLITICAL PARTIES it was agreed that apartheid and the struggle against apartheid produced dynamics in South African society which, over a period of time, have resulted in the spiralling violence now experienced with all its causes and manifestations.

Various reports of the Goldstone Commission and numerous other submissions have identified political rivalry as a major trigger of violence.

It is further noted that political developments aimed at the democratisation of South Africa, initiated after February 2, 1990, have not alleviated the conflict and this also points to a direct connection between political competition/ tactics and strategies and violence.

While robust political expression in a democratic society is both healthy and necessary, information has been brought to the attention of the Technical Committee which indicates that there exists in South Africa unacceptable forms of political behaviour which need to be urgently addressed by the relevant parties concerned.

We list for the attention of the Negotiating Council the majority of the issues this Technical Committee was requested to address with regard to POLITICAL PARTIES and violence to indicate the scope of views in this regard.

It is the intention of this Committee, in further submissions, to analyse in more detail these purported causes of violence (relating to POLITICAL PARTIES) and to structure/analyse information for debate in the Negotiating Council. As indicated above there will also follow submissions relating to: The South African Government, other Governments or Administrations, National Peace Accord structures, armed formations and points groups in the category "other".

(Ms S Vos)

2

There would appear to be a strong possibility if not probability, that as the political process of change continues to unfold and hopefully gains momentum on an continuing basis, confidence will return to the public of South Africa and that in itself will have a significantly positive effect towards the curbing and elimination of violence. Visible progress towards a democratic dispensation becomes therefore a matter of urgency to stem the present role of violence. The public should at the same time be kept adequately informed of progress made in this regard.

Self-restraint and discipline within political parties can hardly be over-emphasized. Experience shows that legislation alone is not sufficient in curbing violence. It therefore becomes incumbent on all parties to educate and motivate their members that peace ultimately rests on the self-discipline of the members of those parties which genuinely strive towards a true democratic dispensation.

Accountability or responsibility for transgressions of the National Peace Accord should be provided for in the structures of all parties.

(Adv P Oosthuizen)

3. PROPOSAL TO MOBILIZE THE AFRICAN COMMUNITY FOR ENDING VIOLENCE

- 3.1 The particular violence which is currently the most serious political problem in our country, for the overwhelming majority of our people, is the violence within the African community. The African family seems to be at war with itself.
- 3.2 The people involved in this particular violence are largely not middle-class, or upper-class, or educated African people, overwhelmingly lower-class people in rural, semi-rural, or urban areas. Culturally, these are essentially non-Western people.
- 3.3 We must look at the people involved in this violence, and identify those mechanisms which the traditions and cultures and history of these African people designed specifically for putting out such fires, and make use of these cultural mechanisms to put out this fire of violence in the African political community, in the medium of the culture of the people concerned.
- 3.4 Once violence is an ongoing phenomenon, on the scale and frequency characteristic of the current African community, then we must agree that the entire African community has become poisoned, or sick, spiritually, emotionally, and mentally. A holistic approach, involving the entire African community, must be adopted and implemented, first, so as to make possible and more probable the pre-empting and prevention of individual incidences of violence, as well as making the entire community healthy.
- 3.5 This is crucially important for the political, social, and spiritual health of the entire country. Peace, brotherhood, sisterhood, unity, friendship, and humanism, among African people. The overwhelming majority of this country, is a pre-condition to peace, brotherhood, sisterhood, unity, friendship, and humanism, between the African community and the White community, the African community and the Indian community, and between the African community and the Coloured community. Peace, unity and humanism within the African community is a pre-requisite for peace, unity and humanism within the entire country. If Africans are frightfully divided, and are fighting among themselves, with which section shall White community make peace?

- 3.6 We propose the mobilization of the COLLECTIVE LEADERSHIP and CULTURE of the African people, towards ending this violence.

We suggest the staging of an event - and march and rally-around which we should focus, mobilize, and organize the attention of the African community - and the entire country- in a way similar to the manner in which the emotions, minds, and attention of our people were focussed, mobilized, and organized, around the event of the release of Dr Nelson Mandela from prison on that entire day in 1990. That focus of the press, mass media, and statements, and mobilized the imagination, emotions, and minds of the entire South African community, and of the entire world, around the freedom struggle of this country, whose symbol he had become.

- 3.7 We propose a march/rally of the entire African community, led by His Majesty King Goodwill Zwelithini, Paramount Chiefs, other traditional leaders, the top political, religious, and civic organizations, such as IFP, ANC, PAC, AZAPO, President Mangope, Brigadier Gqozo, General Holomisa and other leaders of independent and self-governing territories, Bishop Lekganyane of the ZCC, Archbishop Tutu, and other leaders of African churches, Traditional Healers, Izangoma, Hostel Associations, Women's organizations, Trade Unions, Sports Associations, etc, etc. We may even consider inviting leaders of neighbouring African countries.

The focus of the march/rally shall be ending violence within the African community, and affirmation and forging of bonds of brotherhood, sisterhood, and humanism, among African people.

- 3.8 The dominant medium shall be African culture. This emphatically does not exclude non-Africans from participating in the march/rally. All we are saying is that, since this war is within the African community, the African family wants to talk to itself; and since the overwhelming majority of the African community is culturally non-Western, the event should be conducted through the medium of African culture.

- 3.9 WHAT SHALL HAPPEN AT THE CLIMAX OF THE MARCH/RALLY?

- 3.9.1 Short speeches, focussing on brotherhood, sisterhood, and humanism among African people.
- 3.9.2 Prayers, short religious rituals, by leaders of African traditional religions, and by leaders of African Christian Churches, eg ZCC, etc.
- 3.9.3 Rituals for peace - Izangoma, Izinyanga, ISIKHALO, etc
- 3.9.4 Cultural items: traditional dances, songs, etc.
- 3.9.5 Role for leaders from neighbouring countries.

THROUGH THIS EVENT, WE ANNOUNCE A NATIONAL AGENDA FOR PEACE, BROTHERHOOD, SISTERHOOD, AND HUMANISM AMONG AFRICAN PEOPLE IN THE ENTIRE COUNTRY. IT IS ONLY AFTER SUCCESS IN THIS EFFORT CAN WE GET A COMMITMENT FROM THE MASSES OF AFRICAN PEOPLE FOR PEACE, BROTHERHOOD, SISTERHOOD, UNITY AND HUMANISM OF ALL PEOPLE WITHIN OUR COUNTRY.

Once this national agenda has been announced, and African people's emotions and imaginations have been ignited around this issue of peace and humanism, then, and only then, can we successfully implement this programme of peace at the local level.

(Prof H Vilakazi)

Given the sources of information accepted by this committee (on 12 May 1993) and the suggestions received at the meetings with the Negotiating Council (on 18 May 1993), we identified 29 "issues" of violence which pertain to political parties. "Issues" refer to the causes and manifestations of violence, as well as the steps by which violence can be addressed.

On further consideration of the 29 issues on 25 May 1993, we identified five areas of critical concern: political competition/rivalry; [the various negotiation processes and perceptions thereof?]; dangerous weapons; mass action; and illegal operations.

STEPS