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THESE ARE DRAFT MINUTES AS APPROVED BY THE CHAIR. THEY ARE CONFIDENTIAL AND RESTRICTED TO MEMBERS OF THE WORKING GROUP, WG3SC, THE DAILY MANAGEMENT COMMITTEE AND THE MANAGEMENT COMMITTEE. THEY ARE STILL SUBJECT TO RATIFICATION BY THE WG3SC AT ITS NEXT MEETING.

See eect ib eae CHa aoe CODESA WG3SC HELD ON MONDAY 4 MAY 1992

PRESENT:

Delegates (see Addendum A)

C Coleman (secretary)

K Kweyama-Makgabo (minutes)

P Kleynhans (rapporteur)

A Ggqokoma (rapporteur)

#### 1. OPENING OF THE MEETING AND WELCOME

P Maduna opened the meeting at 09H20.

#### 2. MINUTES OF WG3 MEETING OF 27 APRIL 1992

2.1 The WG3SC suggests that Section 5 of WG 3 minutes of 27 and 28 April should mention that the submissions were "received and noted" by the Working Group and Section 10.2.3 of the Working Group Minutes of 27 and 28 April be changed to read: The matter was not pursued any further.

2.2 It was agreed that P Maduna act.as the convenor of the Technical Committee in his capacity as chair of the Working Group.

23 The chair reported that the SABC had: apologised for its incorrect reflection of the first report of the Technical Committee. The SABC committed themselves to releasing a jointly agreed statement to correct this.

#### 3. TECHNICAL COMMITTEE REPORT

The Technical Committee met on Saturday 2 May 1992. No new report was available for todayâ\200\231s meeting. However, progress had been made. The Technical Committee would meet

again and overnight compile a report, based on feedback and reports from principals of the

delegations. This report would then be tabled to the Working Group on Tuesday.

#### 4. MINUTES OF WG3SC

The minutes of 27 April 1992 were ratified as tabled.

#### 53 AGENDA OF WORKING GROUP 3

5.1 The Agenda of WG 3 would be as proposed in the documentation.

5.2 It was pointed out that Tuesdayâ\200\231s meeting is likely to be delayed to enable the

Technical Committee to complete its work on the report.

#### 6. CLOSURE

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STEERING COMMITTEE 3/MINUTES/04 MAY

The meeting closed at 09H40.

ADDENDUM A

MEMBERS OF WG3SC PRESENT AT MEETING OF 4 MAY 1992, 09H20

KM Andrew

D de Villiers

L Landers

PMH Maduna

T Mbeki

RH Mopeli

LL Mtshizana

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REPORT OF WORKING GROUP 3 TO CODESA 2

#### ASSIGNMENT

The assignment given to the Working Group was to consider  
the issue of interim government/transitional

arrangements/transitional authority.

#### TERMS OF REFERENCE

To investigate, canvass 4all possibilities and their  
application and report upon all proposals and \_ make  
recommendations with regard to the manner in which the  
country may be governed and managed until the introduction

of a new constitution.

To identify the key issues, processes and problems that need  
to be addressed.

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

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MODUS OPERANDI OF WORKING GROUP

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

5.1 Method of bringing into being of Interim Arrangements

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

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

522.."1 Structure

a Functions

The Legislature with respect\*to the period leading up to an election \*

5.4.1 Structure

5.8.2 Functions

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

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

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

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

Submissions received from outside parties relating to the Terms of Reference of the Working Group were also duly considered.

To take forward its exploratory discussion the Working Group appointed a Technical Committee, charged with addressing both details of consensus areas emerging and other areas needing discussion. The reports of the Technical Committee formed the basis of the agreements ultimately reached in the Working Group.

#### INTRODUCTION TO AGREEMENTS REACHED \*

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.

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.

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.

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

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constitutional principles.

#### BASIC POINTS OF DEPARTURE

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

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law, enabling legislation will be required.

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.

There should be an overarching council. One of its tasks will be to familiarise itself with events and developments on the broader political scene in government and elsewhere.

It will be able to intervene within its terms of reference



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

participation.

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.

TRANSITIONAL EXECUTIVE STRUCTURE

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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).

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

The TEC will be vested by legislation agreed to by Codesa with powers necessary to enable it to carry out, its

functions.

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.

The sub-councils will report to the TEC and their decisions will be subject to confirmation/amendment by the TEC.

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The TEC will be able to delegate powers to the sub-councils.

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.

The TEC will be kept informed of and will be able to ask for and be entitled to receive information in regard to proposed legislation including bills, proclamations and regulations,

and of executive actions and contemplated executive actions

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

on free political participation.

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.

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.

If the government, administration or party concerned is of the opinion that the necessity of the bill, proclamation, regulation or action in its area of application outweighs its adverse impact referred to in paragraph 26, the matter

may be referred to the independent election commission.

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.

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

governments/administrations.

#### INDEPENDENT COMMISSIONS

##### 30. Independent Election Commission |

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 Kabuiabion, who will be

appointed by the State President on the

recommendation of Codesa.

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

agreed to by Codesa.

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

to by Codesa.

#### SUB\200\224COUNCILS AND THEIR AREAS OF RESPONSIBILITY

32. Provision will be made in the empowering legislation to be approved by Codesa for the appointment of the following sub-councils. In this section \200\230regional governments\200\231 will be considered to include provincial administrations, self-governing and TBVC states which have elected to cooperate

and work within the transitional executive structure.

##### 32.1 Regional and Local Government

This sub-council will acquaint itself with developments in regional and local government; it will identify and take action in respect of aspects of regional and local

government that may impact on the levelling of the

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

#### 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.

#### 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: THC; 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; itawi lek take steps to identify and to prevent within its powers all developments in this field which in its opinion will impact adversely upon peace and stability, the levelling of the playing fields, free political participation or the transition to democracy. The functions of this

sub-council will depend upon decisions taken in Working

Group 1.  
32.4 Defence

This sub-council will acquaint itself with developments concerning defence and military formations at all levels of government (central, regional or local) and including all other participants in the TEC; it will take steps to identify and promote all developments in this field which in its opinion may impact Eayvourenly 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 iwhich 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.

Foreign Affairs

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

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.

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-â\200\224COUNCILS

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.

Such legislation will include a provision empowering sub-â\200\224-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-â\200\224COUNCILS

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

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power to recommend at its discretion that the TEC be

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enlarged to accommodate them, provided that they commit themselves to comply with and implement the decisions of the TEC, and in that event, the State President will make the necessary appointment. The : removal and replacement of members of the TEC, and the temporary appointment Of 4a 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.

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 â\200\224 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.

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.

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.

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

#### MEETINGS OF THE TEC AND ITS SUB-â\200\224COUNCILS

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.

All Ministers of governments/administrations participating in the TEC whose departments may be affected by the functioning of a Ain ceeencti.cand 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.

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HOW DECISIONS WILL BE MADE

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

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STATES OF EMERGENCY

44. This issue will depend on decisionÂ® taken in Working Group  
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IMPLEMENTATION AND TIME FRAMES

Subject to Paragraph 12 and &greement by Codesa to the

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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

Matters requiring further discussion are as follows:

Composition of the TEC

Composition of the sub-councils

Composition, powers and functions of the Independent

Election Commission

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Sub-council on foreign affairs

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

CONCLUSION

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

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