

AFRICAN NATIONAL CONGRESS

67 votes:

Max - 10

Rocky - 2

Yerb - 21

Dzis - 8

Sparg - 3

Ray - 23

National Executive Committee

16 - 18 February
1993

Documents 3



Negotiations Commission

Report to National Executive Committee
16 - 18 February, 1993

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SOME ISSUES CONCERNING THE POLITICAL-CONSTITUTIONAL
NEGOTIATIONS.

FEBRUARY 15, 1993.

ANC.

SAG/NP.

AN
APPROACH.

RE: THE CONSTITUENT ASSEMBLY.

Elected, sovereign.

Elected, limited
sovereignty with
regard to regions
and IGNU in
particular.

See
below.

RE: IGNU.

Limited duration,
(maximum 9 months):
based on majority
rule principle.

Unlimited duration,
(provided for in
the constitution):
power-sharing -

2 tasks
for IGNU:
govern
while

consensus decision
making and rotating
presidents.

constit-
ution is
being
drafted &
phase in
the new
constitu-
tion:
cease to
exist
after 1st
elections
visuali-
sed in
the cons-
titution.
Majority
party
supplies
executive
President
& propor-
tional
represe-
ntation
in Cabin-
et.

RE: REGIONAL GOVERNMENT.

Should be left
entirely to the CA.

Should be decided
before the CA &
reflected in
binding constitu-
tional principles.

TEC to
establish
Regional
Commiss-
ion to
determ-
ine elec-
toral
boundar-
ies &
recomm-
end to CA
powers,
duties,
functions
& struct-
ure of
region-
al gover-
nment -
CA to
decide.
Keep con-
stitutio-

nal prin-
ciple on
region-
al gover-
ment as
agreed at
CODESA WG
2.

RE: TRANSITIONAL CONSTITUTION.

Should be a short
legislative inst-
rument to provide
legal framework
for the period
of transition to
the implementa-
tion of the new
constitution, &
should include
a limited and
specified list
of civil and

Should be a complete
constitution with a
full and justiciable
Bill of Rights.

Extend
the
list of
justi-
ciable
rights
to inc-
lude
issues
such as
langua-
ge & a
property

political rights.

clause,
make all
rights
justic-
iable &
agree
legal
instit-
ution to
enforce
these
provisi-
ons
which
limit
parlia-
mentary
sovere-
ignty.

RE: CONSTITUTION DRAFTING PERIOD.

Should be a short
period of 3 to 9
months. If no

Should be 3 years. If
no agreement, a new
election.

Use only
election
as dead-

agreement, a
new election, &
ultimate approval
by simple major-
ity and refer-
endum.

lock
breaking
mechan-
ism. IG-
NU pro-
visions
address
other
conce-
rns.

RE: CA DECISION-MAKING.

By two-thirds major-
ity, sitting as
one chamber,
bound only by
agreed general
constitutional
principles.

By 70% - 75% major-
ities sitting as
two chambers, bound
by agreed constit-
utional principles,
amending the trans-
itional constitu-
tion.

Agree to
national
& regio-
nal lis-
ts with
additio-
nal pro-
viso for
two thi-
rds maj-
ority of
region-

al repr-
esentat-
ives on
region-
al matt-
ers.
For ord-
inary
legisla-
tive ma-
tters
it could
sit as 2
chambers.

The various proposals contained under the column - "AN APPROACH" - constitute an interdependent package. They should therefore be taken together as such a package. If agreed, they would represent a solution which would enable us to maintain our principled positions, address the concerns of our negotiating partners and enable the process of negotiations to move forward.

ENDS

COMPOSITION : 200 national list
200 regional list

DECISIONS : $\frac{2}{3}$ in general

For regions, $\frac{2}{3}$ of CMB as a whole +
 $\frac{2}{3}$ regional reps.

TIME FRAMES : ANC - 9 months
SAG - 3 yrs

DEADLOCK-BREAKING : ??

CONSTITUTIONAL PRINCIPLES

- * principle on regions to be included, but without powers, boundaries, functions
- * No principle on power-sharing

COMPOSITION

President elected by CMB

**+ proportional representation of parties
with > 5%, 10% of seats**

DECISIONS:

- * In general, President exercises executive authority after consultation with cabinet**
- * For specified powers, President exercises power in consultation with leaders of parties in cabinet representing at least 2/3 of cabinet**

TIME FRAME:

maximum of 5 years

REGIONS

1

TEC Appoints

**Delimitation
Commission**

**recommends
electoral
boundaries
to TEC**

**recommends powers,
functions, structures,
boundaries of regions
to CMB**

**BUT,
CMB has full authority
to decide**

2

*What if original, proposed
and final boundaries
differ?*

**Regional reps in CMB estab-
lish Interim Regional govt's
and oversee establishment
of elected Regional Govern-
ments i.t.o new constitution**

PROPOSAL ON HOW TO DEAL WITH ARMED FORMATIONS

PROBLEMS

VIOLENCE

SADF

MK

KZP

ETC

SOLUTIONS

**TRANSITION
PHASES**

ARMS

PERSONNEL

RECRUITMENT

ALL LISTS

ALL LISTS

MORATORIUM

AUDIT

AUDIT

CONTROL ?

CONTROL ?

**PRE -
TEC**

TEC

JOINT CONTROL

**INT.
GOVT
NAT.
UNITY**

NEW STRUCTURES

MEMORANDUM ON THE LEGISLATIVE FRAMEWORK FOR A TRANSITIONAL EXECUTIVE COUNCIL

1. The attached legislative framework addresses the agreement reached in Working Group 3 of Codesa concerning the purpose, structure and powers of the Transitional Executive Council.
2. The legislative framework should be incorporated into the Transition to Democracy Act as a transitional provision which will fall away when the constitution making body/legislature has been elected.
3. Separate Chapters of the Act should deal with the Independent Election Commission and the Media Commission which are crucial structures of the preparatory phase agreed to in Working Group 3.
4. The legislative framework deals with the powers of and the decision making process in the Transitional Executive Council and its sub-councils. There may be a need for additional detail, such as criteria for appointments to the Councils, the remuneration of Council members, the appointment of staff, the provision of the administrative infrastructure, etc. Once the language of the empowering sections has been settled, these matters of detail can be attended to. There should also be a definition section to avoid any uncertainty as to the terminology used.
5. The question of the powers of the sub-committees on law order stability and security, defence and foreign affairs are the subject of current discussions, and these provisions can be formulated when the discussions have been concluded.
6. To prevent the provisions dealing with the supply of information from being abused, section 12 of the framework requires all requests for information to be supported by at least one third of the members of the Transitional Executive Council.
7. Sections 14 and 15 deal with procedures for convening the Transitional Executive Council, and putting it on a business footing. These matters were not discussed at Codesa, but some provision for the "start up" and functioning of the Council is necessary.

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8. Section 16 makes provision for the appointment of conciliation committees to help achieve a consensus. This was not discussed at Codesa but is consistent with the underlying principle of "consensus where possible" and may facilitate the practical working of the Council.
9. Section 19 makes provision for the amendment of or changes to the Act if that becomes necessary for any reason.
10. Section 21 deals with budgetary matters which were not specifically discussed at Codesa. Clearly there must be some provision in the legislation regulating this matter.
11. Section 22 empowers the Transitional Executive council to function in Transkei, Bophuthatswana, Venda and Ciskei. Corresponding legislation will probably be necessary in the TBVC States to empower the Council to carry out its functions there.

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13 January 1993

LEGISLATIVE FRAMEWORK FOR A TRANSITIONAL EXECUTIVE COUNCIL

1. A Transitional Executive Council shall be constituted with executive powers for the following purposes:
 - (i) to prepare for and to facilitate the transition to a democratic order in South Africa;
 - (ii) to endeavour to create a climate favourable to free political participation in which there will be no intimidation, and political parties and organisations will as far as practicable be placed on an equal footing with each other;
 - (iii) to promote conditions conducive to the holding of free and fair elections in accordance with the provisions of (the Transition to Democracy Act).
2. (a) Notwithstanding the provisions of any other law, including the Republic of South Africa Act, 1983, executive authority, including the making of Proclamations, Ordinances and regulations, and any other discretions vested in the State President, Ministers or any other person by any law, which may have an impact on any of the purposes referred to in section 1, and which relate to -
 - (i) regional and local government;

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- (ii) law, order, stability and security;
- (iii) defence;
- (iv) any aspect of finance referred to in section 5(d);
- (v) any aspect of foreign affairs referred to in section 5(e);
- (vi) any other matter assigned to the Transitional Executive Council by the State President;

shall be exercised by the State President, Minister or person vested with such authority or discretion, jointly with the Transitional Executive Council, or if such function has been delegated by the Transitional Executive Council to a sub-council, jointly with such sub-council.

- (b) All Proclamations, regulations and government notices dealing with matters referred to in sub-section (a) shall be signed by the State President, Minister or other person concerned, and countersigned by a member of the Transitional Executive Council duly authorised thereto.

3. In addition to the executive power referred to in section 2, and the other powers referred to in this Act, the Transitional Executive Council will have the following powers:

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- (a) to request information from, and to have access to all records of, any government, administration or organisation participating in the Transitional Executive Council, insofar as such information or access to such record, is reasonably required by it for the purpose of exercising its functions;
 - (b) to delegate the exercise of any of its powers and functions to its sub-councils;
 - (c) to receive reports from and to confirm or amend decisions made by any of its sub-councils;
 - (d) to initiate or participate in negotiations with any government, administration, persons or bodies of persons in relation to any matter which in its opinion may be relevant to any of the purposes referred to in section 1;
 - (e) any other power reasonably needed by it to enable it to achieve its purposes and to carry out its functions.
4. (a) The Transitional Executive Council will be kept informed of, and will be provided with copies of all proposed legislation, including proclamations, bills and regulations of governments or administrations that may be relevant to the purposes referred to in section 1.
- (b) If the Transitional Executive Council has reason to believe that any proposed legislation, including bills, ordinances, proclamations, or regulations, other than those dealt with in section 2(a), will have an

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adverse impact upon any of the purposes referred to in section 1, it may, after taking into account the necessity for such legislation, require the government or administration concerned not to proceed therewith.

5. (a) The Transitional Executive Council will be kept informed of, and will be entitled to ask for and to receive, information in regard to proposed executive actions by any government or administration, or contemplated actions on the part of any other participant in the Transitional Executive Council, that may have an impact on any of the matters referred to in section 1.
- (b) If the Transitional Executive Council has reason to believe that the implementation of such executive or other action will have an adverse impact upon the purposes referred to in section 1 it may, after taking into account the necessity for such action as far as such government, administration or participant is concerned, require the government, administration or participant not to proceed therewith.
6. Without limiting in any way the powers vested in it by section 2, the Transitional Executive Council will have the following sub-councils which will report to it in such manner and at such times as it may determine:
 - (a) A sub-council on regional and local government which will have the following purposes -

- (i) to acquaint itself with developments in regional and local government;
 - (ii) to identify and, in accordance with powers delegated to it, to take action in respect of aspects of regional and local government that may have an impact on the purposes referred to in section 1;
 - (iii) to attend to matters delegated to it by the Transitional Executive Council.
- (b) A sub-council on law and order, stability and security which will have the following purposes:
(These purposes are still under discussion)
- (c) A sub-council on defence which shall have the following purposes:
(These purposes are still under discussion).
- (d) A sub-council on finance which shall have the following purposes:
- (i) to acquaint itself with developments in government finance at all levels of government, including all existing governmental authorities, be they on the central, regional or local government level;
 - (ii) to identify and, in accordance with powers delegated to it, to take action in respect of aspects of governmental finance at all levels which may have an impact on any of the purposes referred to in section 1;

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- (iii) to acquaint itself with any matter relevant to intergovernmental financing, and to make recommendations to the Transitional Executive Council in regard thereto;
 - (iv) to monitor and, in accordance with powers delegated to it, to prevent any attempt by any governmental body to favour directly or indirectly any political party or organisation above others;
 - (v) to monitor and, in accordance with powers delegated to it, to prevent any attempt by any government body, directly or indirectly, to prejudice any political party or organisation.
 - (vi) to deal with any other matter delegated to it by the Transitional Executive Council.
- (e) A sub-council on foreign affairs, which shall have the following purposes:
- (these purposes are still the subject of discussion).
- (f) Save where the terms of the delegation of powers to a sub-council by the Transitional Executive Council otherwise provide, all decisions of sub-councils will be subject to confirmation by the Transitional Executive Council, which if it decides to confirm a decision, may do so unconditionally or subject to amendments required by it.

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7. For the purposes of carrying out their functions in terms of this Act, the sub-councils shall have the same powers, including the right to request and be furnished with information, and to have access to records, as the Transitional Executive Council would have had, if such functions had been carried out by it.
8. All participants in the Transitional Executive Council, and all governments and administrations will be required to comply with requests made to them in terms of the provisions of this Act, by the Transitional Executive Council, and all decisions made in terms of this Act by the Transitional Executive Council, or a sub-council having delegated authority to do so, will be binding on and will be implemented by such governments, administrations and participants: Provided that-
 - (a) If in relation to a requirement of the Transitional Election Council made in terms of section 4(b), the government or administration concerned contends that the necessity for the proposed legislation outweighs its adverse impact, it may refer such issue to the Independent Election Commission for a decision thereon, and may only proceed with such legislation if the Independent Election Commission upholds its contention.
 - (b) If in relation to a requirement of the Transitional Executive Council made in terms of section 5(b), the government, administration or participant concerned contends that the necessity for the proposed action outweighs its adverse impact, it may refer such issue to the Independent Election Commission for a decision thereon, and may

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only proceed with such action if the Independent Election Commission upholds its contention.

9. Any differences as to whether or not in any particular instance a matter falls within the scope of the powers of the Transitional Executive Council, or one of its sub-councils, as provided for in sections 4(a), 5(a) or 6(a) to (e) or whether any proposed action or legislation including Proclamations, Ordinances or regulations will have an adverse impact on any of the purposes referred to in section 1, such difference may be referred by any government, administration or participant to the Independent Election Commission for its decision.
10. If any issue is referred by any government administration or participant to the Independent Election Commission for a decision, in accordance with the provisions of this Act, the Independent Election Commission shall as soon as possible, and after consideration of:
 - (i) the disputed issue;
 - (ii) the views expressed thereon by the members of the Transitional Executive Council; and
 - (iii) any other matter considered by the Independent Election Commission to be relevant to its decision

determine the difference and give its decision thereon.

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11. Any decision of the Independent Election Commission made in respect of any matter referred to it in terms of this Act shall be final and binding and not subject to appeal or review in any court.
12. A request to the Transitional Executive Council or to a sub-council thereof to procure information or to inspect records, pursuant to the powers which it has in terms of this Act, which is supported by at least one-third of the members of the Transitional Executive Council, shall be given effect to by the Transitional Executive Council or the sub-council, as the case may be, and the information gathered in consequence of such request or inspection, shall be made available to all members of the Transitional Executive Council.
13. (a) The Transitional Executive Council shall consist of a representative of each of the governments, administrations and organisations which constitute Codesa, which commit themselves to the achievement of the purposes set out in section 1 and which undertake to co-operate with and implement the decisions of the Transitional Executive Council.
- (b) Appointments to the Transitional Executive Council shall be made by the State President by proclamation in the Gazette: provided that in making such appointments, the State President shall act on the recommendations of the government, administration or organisation concerned.
- (c) If a member of the Transitional Executive Council loses the confidence of the government, administration or organisation which

recommended his or her appointment, the State President, on being advised thereof by such government, administration or organisation shall, by proclamation in the Gazette, remove such person from the Transitional Executive Council.

- (d) If a member of the Transitional Executive Council dies, resigns from office, or is removed from office in terms of sub-section (c) hereof, the government, administration or organisation previously represented by such member shall be entitled to a new representative on the Transitional Executive Council, and such appointment shall be made by the State President in accordance with the provisions of sub-section (b) hereof.
 - (e) Members of the Transitional Executive Council will be fulltime executives. (It will be necessary here to specify the procedures for determining the salaries and benefits of such executives, by whom their salaries will be paid, and what the terms and conditions of their service will be).
14. (a) The first meeting of the Transitional Executive Council shall be held at a date and a place to be determined by the Chairpersons of Codesa, which shall be a date not later than seven days after the Transitional Executive Council has been appointed in accordance with the provisions of this Act.
- (b) The notice in the Gazette announcing the appointment of the first members of the Transitional Executive Council, shall also specify the date and place of its first meeting.

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- (c) The Transitional Executive Council shall thereafter meet at least once in every week, and on such other occasions as it may from time to time determine.
- (d) The Chairpersons of Codesa shall preside at the first meeting the Transitional Executive Council. At this meeting the Transitional Executive Council shall appoint a secretary, who shall be a fulltime official of the Council, and shall decide upon the procedures to be followed in convening and conducting its meetings until rules governing such procedures have been made in terms of section 15.
- (e) The secretary shall -
 - (i) carry out all duties assigned to him or her by the Transitional Executive Council;
 - (ii) convene special meetings of the Transitional Executive Council if required to do so in writing by not less than one third of its members;
 - (iii) fix a time, date and venue for any meeting called in terms of sub-paragraph (ii) hereof which, save in the case of urgency, shall be convened on not less than three days notice to the members of the Transitional Executive Council: provided that an urgent meeting may be called on short notice if the calling of the meeting on short notice is ratified by the Transitional Executive Council at such meeting.

- (f) One-third of the members of the Transitional Executive Council shall constitute a quorum for any meeting.

15. The Transitional Executive Council shall be entitled to make rules not inconsistent with this Act, governing the convening and conduct of its meetings and those of its sub-councils, and the manner in which its business and affairs will be conducted.

16. (a) The Transitional Executive Council and its sub-councils will endeavour to take decisions on a consensus basis.

(b) If consensus cannot be achieved in relation to any matter the Transitional Executive Council may appoint a conciliation committee which will endeavour to promote the consensus between the members of the Council that is contemplated by sub-section (a).

(c) If, notwithstanding attempts which may have been made by a conciliation committee to promote consensus, such consensus has not been achieved or if the Transitional Executive Council fails to appoint a conciliation committee to promote such consensus, a decision which has the support of at least 80% of the members of the Transitional Executive Council shall be deemed to be a decision of the Council.

(d) If any government, administration or participant in the Transitional Executive Council wishes to refer a decision made in terms of sub-section (c) to the Independent Election Commission to be dealt with

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in accordance with the provisions of this Act, it shall refer such matter in writing to the such Commission not later than three days after such decision has been made.

- (e) If a decision taken in terms of sub-section (c) hereof, is not referred to the Independent Election Commission in terms of sub-section (d) hereof, it shall, after the expiry of the period of three days, become final and binding, and shall not be subject to appeal or review in any court.
17. (a) Meetings of the Transitional Executive Council may be attended by all members of sub-councils.
- (b) The Transitional Executive Council may invite any other person to attend its meetings, and at its discretion allow any person present at its meetings to speak.
- (c) Decisions of the Transitional Executive Council shall be taken only by the members thereof, and persons who are present at meetings, but are not members of the Transitional Executive Council, shall have no right to vote on any decision.
18. (a) Sub-councils will have a multi-party character, and unless the Transitional Executive Council considers that good cause exists therefor, shall consist of not more than six members.

- (b) Appointments to sub-councils, the removal and replacement of members of sub-councils, 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 by proclamation in the Gazette: provided that such appointment, removal, replacement, or temporary appointment will be made by the State President in accordance with the recommendations of the Transitional Executive Council.
 - (c) Members of sub-councils will be fulltime executives. (Provision will have to be made for salaries, by whom the salaries will be paid, and the conditions of service.)
19. (a) The State President, in consultation with the Transitional Executive Council, shall be entitled by way of Proclamation in the Gazette, and for the purposes referred to in section 1, to repeal or amend any of the provisions of this Act, or notwithstanding the provisions of any other law, to introduce new provisions into this Act, which shall take precedence over any other law that may conflict with such provisions.
- (b) Such Proclamation shall have the same force and effect as an Act of Parliament, and shall not be subject to appeal or review in any court.
20. This Act and any Proclamation made under section 19, shall, notwithstanding the Self-governing Territories Constitution Act, 1977 (Act

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No 21 of 1977), apply mutatis mutandis in every Self-governing Territory as defined in section 38(1) of that Act.

21. (a) The Transitional Executive council shall from time to time determine a budget to meet the reasonable costs of carrying out its powers and functions in accordance with the provisions of this Act.
- (b) If there is a dispute between the members of the Transitional Executive Council concerning the budgetary requirements of the Council, then pursuant to a request supported by at least one third of the members of the Council, such dispute shall be referred to the Independent Election Commission for a decision.
- (c) Any decision made by the Independent Election Commission in terms of sub-section (b) shall be final and binding and not subject to appeal or review in any court.
- (d) The South African Government shall provide the funds necessary to cover the budget of the Transitional Executive Council determined in accordance with sub-section (b) or (c).
- (e) A Revenue Account shall be established by the Transitional Executive Council, 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.
- (f) The books and accounts of the Transitional Executive Council shall be subject to audit by the Auditor-General.

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22. The Transitional Executive Council and its sub-councils shall be entitled to exercise the powers and functions conferred on them by this Act in Transkei, Bophuthatswana, Venda and Ciskei.

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ELECTION RELATED MATTERS

ANC POSITION	ANC-SAG AGREEMENT
1. The Independent Elections Commission The Elections will be conducted by the Independent Election Commission (IEC).	1. The Independent Elections Commision The IEC will have three tasks: (a) to conduct the Elections; (b) to monitor the Elections and the Elections process; and (c) to play an adjudication and arbitration role.
2. IEC Composition The IEC will comprise not less than 7 and not more than 11 respected and suitably qualified South Africans, none of whom will be representing political parties or organisations on the IEC. The IEC shall conduct the Elections impartially and in a non-partisan fashion.	2. IEC Composition The IEC will comprise not more than 11 persons who will not be representing any political parties or organisations on the IEC. The IEC shall act impartially and in a non-partisan fashion.
3. IEC Powers and Functions The powers, functions and duties of the IEC shall be defined in an electoral act. Some of the powers and functions of the IEC are spelt out in the ANC's proposed positions.	3. IEC Powers and Functions The agreement spells out some of the possible powers and functions of the IEC which can be included in an electoral law.
4. Voter Eligibility All South African citizens who have reached the age of 18 will be entitled to vote. All people living within the 1910 borders of South Africa will be entitled to vote. All those claiming SA citizenship by virtue of birth, descent, marriage or residence in SA for a minimum period of 5 years will be entitled to vote.	4. Voter Eligibility All South African citizens including citizens of the TBVC who would qualify in terms of Working Group 4 Agreements would be eligible to vote. The voting age is to be 18 or over.
5. Voter Identification All persons eligible to vote should be issued with voter identification cards. --- it would be ideal that both identity documents and voters' cards be the only means of identification.	5. Voter Identification Eligible voters shall be identified by means of the Identity Document. The IEC shall, however, be empowered to consider alternative means of voter identification such as official voters' cards, passports, etc. Provision must be made for the identification of eligible TBVC voters.

ANC POSITION	ANC-SAG AGREEMENT
6. Voter Education The IEC shall conduct voter education. In addition, parties will be entitled to establish their own voter education programmes. We need to consider asking the UN to assist in this regard.	6. Voter Education One of the functions of the IEC will be to educate the public about the electoral process through voter education programmes using radio, television and other means.
7. Finance and Administration The IEC will be responsible for its own budget and administration.	7. Finance and Adminis-tration The IEC will administer its own budget and appoint its own administrative staff.

ANC-SAG BILATERAL AGREEMENT ON ELECTIONS-RELATED MATTERS

- 1 The Sub-Committee dealing with elections-related matters came to the conclusion, and reported, that CODESA Working Group 3 foresaw three tasks for the Independent Electoral Commission (IEC), and the following functions from that:
 - 1.1 To act as adjudicator and arbitrator on matters related to the elections and election process referred to it by political parties, organisations, the public at large and/or the TEC;
 - 1.2 To monitor the elections and the election process in order to assure that the process and the elections will be free and fair and to enable it to eventually make an announcement or to issue a certificate to that effect. In the execution of this function, the IEC may make use of, and act in conjunction with, local and international observers;
 - 1.3 To administer the conduct of the elections in such a manner that the most knowledgeable, experienced, professional and effective persons and organisations will be utilized to facilitate the process and the elections.
2. The Sub-Committee concluded and recommends to the Plenary that it be proposed to the Multi-Party Planning Conference (MPPC) that the aforementioned functions be accepted as the terms of reference for the IEC and further that upon resumption of Multi-Party negotiations (CODESA), one of its first tasks would be to work out an electoral act and to nominate candidates for the IEC (as envisaged in the Report of Working Group 3). When considering the electoral act, the following suggestions should be taken into account:
 - 2.1 The maximum number of persons serving on the IEC shall be eleven;
 - 2.2 Incumbents shall be South Africans (broadly defined to take into account CODESA Working Group 4 Agreements). Political parties will not be represented as such. To enable the IEC to act impartially and in a non-partisan way:
 - 2.2.1 no appointee shall be an office-bearer or official of any political party or organisation or a candidate in the election;
 - 2.2.2 appointees shall divest themselves of any political office while they serve on the IEC;
 - 2.2.3 they shall serve full time;
 - 2.2.4 they shall not hold any other office which may influence their functioning on the IEC;

2.3 Vacancies will be filled in accordance with the following procedure:

Vacancies on the IEC will be filled by the State President on recommendations of the members of the TEC, constituting themselves as a multi-party meeting of the member-parties of CODESA.

2.4 When recommending the members of the IEC, CODESA should also agree on the chairperson and the deputy-chairperson (s).

2.5 Possible powers and functions of the IEC

2.5.1 To determine the eligibility of voters in the electoral process.

2.5.2 To determine (in the light of CODESA decisions) whether any changes are necessary in the citizenship laws.

2.5.3 To serve as final arbiter of any claims or disputes submitted by persons, political parties, organizations and the TEC.

2.5.4 To ensure in conjunction with other relevant bodies, fair and reasonable access to broadcasting for all political parties and organizations participating in the elections with appropriate rules.

2.5.5 To determine and supervise campaign funds and election expenditure.

2.5.6 To promulgate rules and regulations for political advertising.

2.5.7 To educate the public about the electoral process through voter education programmes using radio, television and other means.

2.5.8 To formulate a Code of Conduct for potential parties and ensure that each party commits itself to peaceful electioneering by solemnly and publicly committing itself to the Code of Conduct for Political Parties.

2.5.9 To receive and regulate the registration of parties who wish to participate in the elections.

2.5.10 To establish appropriate machinery throughout the country for the speedy investigation of complaints concerning electoral irregularities, refusal of access to venues for meetings, and access to voter, intimidation and breaches of the Code of Conduct for Political Parties.

2.5.11 To take steps to prevent intimidation.

2.5.12 To comment on any electoral legislation and settle same with the TEC and the legislature.

- 2.5.13 To appoint appropriate staff and set up offices for purposes of fulfilling its tasks.
- 2.5.14 To work out its own procedure, inter alia on the decision making mechanism.
- 2.5.15 To administer the budget which should be provided for and to account for same.
- 2.5.16 To make such other arrangements as may be necessary for the proper exercise of the Commissions' functions.

2.6 Voters

- 2.6.1 All South African citizens including citizen of the TBVC territories who would qualify in terms of Working Group 4 Agreements would be eligible. Voting age is to be 18 or over.
- 2.6.2 Eligible voters shall be identified by means of the Identity Document. The IEC shall, however be empowered to consider alternative means of voter identification such as official voters cards, passports, etc.
- 2.6.3 Provision must be made for the identification of eligible TBVC voters.

- 3. It is recommended that the IEC should appoint at the level of every electoral officer a person or panel of persons who, in its opinion will act objectively and have the confidence of political parties, to act on its behalf. Any person or party who is dissatisfied with a decision taken by the electoral officer must be able to appeal informally to this panel or person who can then confirm or replace the decision of the electoral officer appealed against. From there an informal appeal can lie to the IEC. Only after this course has been exhausted will recourse to the courts become available.

Key Personnel and IEC: Elections

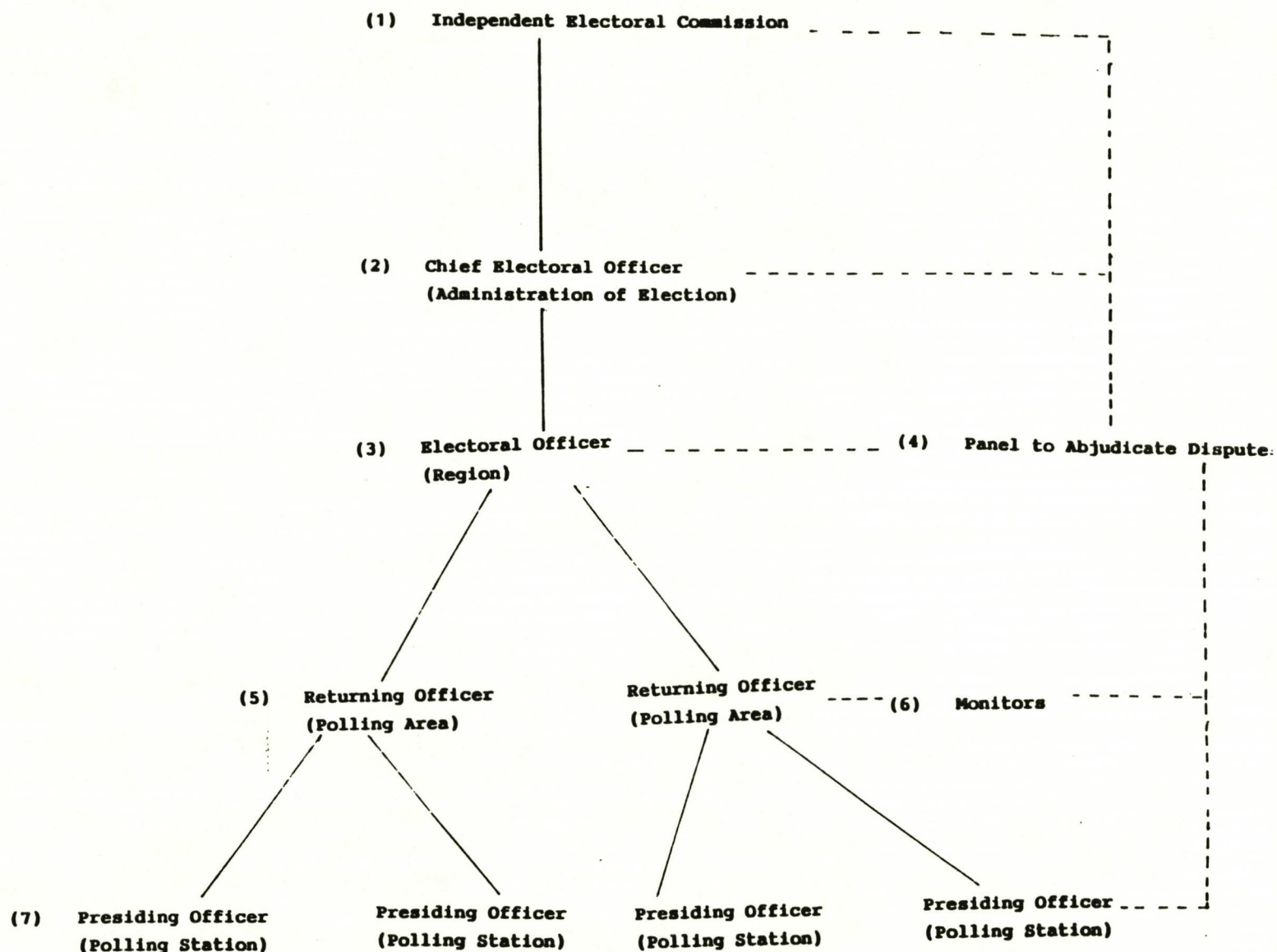
- 1) **I.E.C**
Independent Electoral Commission
 - Responsible for the "holding" of elections by checking, commenting and approval of actions of the Chief Electoral Officer
 - Acting as Adjudicator
 - Certifying each major step in election as free and fair
 - Informative guidance to Electorate

- 2) **Chief Electoral Officer**
Responsible for administration of election under the direction of IEC.

- 3) **Electoral Officer in charge** of a polling region consisting of a number of polling areas.
- 4) **Panel to Abjudicate Disputes.** Appropriate machinery to be established by IEC for the speedy investigation of complaints and settlement of disputes.

- 5) **Returning Officer in charge** of a polling area.
- 6) **Monitors:** Eyes and ears of Panel (4) and IEC

- 7) **Presiding Officer in charge** of polling station.
One or more polling stations can be established for a polling area, depending on number of voters and particular geographic circumstances in area.



REPORT ON MEDIA-RELATED MATTERS

This sub-group was mandated to discuss three issues:

- * Appointment of a new SABC Board
- * Independent Media Commission
- * Independent Telecommunications Authority.

These matters were discussed both in the build-up to and at the bilateral meeting.

I. APPOINTMENT OF A NEW SABC BOARD:

The "Memorandum of Understanding" on the appointment of a new SABC Board by 31 March which was agreed to on 19 January was adopted with some amendments. Copy is attached hereto.

II. INDEPENDENT MEDIA COMMISSION (IMC):

The ANC had submitted a draft document on the composition, powers and functions of the IMC. The NP Government had not formulated its own views on this issue; and it proposed that the matter be deferred for further discussion by the sub-committee. A report will be submitted at the next bilateral.

III. INDEPENDENT TELECOMMUNICATIONS AUTHORITY (ITA):

It was agreed that the CODESA WG I agreement on the ITA suffices as a basis for the drafting of legislation. Discussion on the ITA will therefore continue in the drafting committee presently constituted by Mr Pretorius, Mr Colyn, Mr Dison and Mr Markovitz. The NP Government has also indicated that the Minister of Posts and Telecommunications would be making proposals on interim arrangements with regard to licensing of new broadcasters.

MEMORANDUM OF UNDERSTANDING BETWEEN
THE ANC AND THE SOUTH AFRICAN GOVERNMENT
ON THE APPOINTMENT OF A NEW SABC BOARD BY 31 MARCH 1993

GENERAL PRINCIPLES:

The ANC and the SA Government confirm their consensus that:

- a) a transparent and participatory process should be set in motion for the appointment of a new SABC Board to replace the current Board whose term of office expires in March 1993;
- b) a new Board must be chosen through a process independent of the government of the day and party political interests and that this process must be open to public scrutiny and participation;
- c) the term of office of such a Board should be subject to review after national elections.

IMPLEMENTATION:

- 1. Consensus was reached that an independent appointment panel should appoint the new SABC Board. The process of constituting the appointment panel to appoint the SABC Board should be undertaken by judge(s). Such judge(s) will be part of and chair the appointment panel. No consensus was reached on who would be the judge(s).
- 2. (1) The ANC proposed the names of Mr Justice Mohammed and Mr Justice Schabert.
(2) The South African Government indicated that it would need to consult before settling on any names. In this regard, it was to

report back to the ANC during the first week of February.

3. Consensus was reached that the State President would appoint the judge(s) agreed upon. The judges will in turn inform political and other organisations that a new procedure for the appointment of the SABC Board is being set in motion. The judges will, in consultation with political parties, other interested groups and major role players:
 - (a) settle the procedure and relevant criteria for the appointment of the panel;
 - (b) settle the procedure and relevant criteria to be applied by the appointment panel; and
 - (c) receive nominations and select the appointment panel.
4. Consensus was reached that each political party and political organisation should, within one week of receipt of the communication from the judge(s), submit their proposals on the procedure and criteria for the appointment of the panel and the Board as well as for the nomination of not more than ten eminent South Africans of national standing to serve on the panel which is to select the new SABC Board. The submissions should be sent to the judge(s) and the closing date for nominations should be 8 February 1993.
5. (1) Consensus was reached that the judge(s) should have a further one week after the expiry of the above deadline to determine the procedure of constituting the panel and to select the appointment panel, of which they shall act as chairpersons. Therefore, the appointment panel should be selected and established by 15 February 1993.
 - (2) In addition the South African Government proposed that the judge(s) should also during this period settle the procedure and selection criteria to be applied by the appointment panel.

6. Consensus was reached that, at the same time as calling for nominations from the political parties and political organisations for the appointment panel, the judge(s) should advertise in the media, explaining the new appointment process and invite the public, including political and civil society organisations, to submit nominations for the new SABC Board. These nominations should include nominations (and motivations) for a chairperson and a vice-chairperson of the Board.
7. (1) Consensus was reached that the panel should comprise eminent South Africans of national standing who, in the opinion of the judge(s), have the support and confidence of the broad spectrum of South Africans - provided that the appointment panel should not include:
 - (a) persons who have a direct financial interest in any broadcasting and telecommunications-related matter, except insofar as such persons declare such financial interest and agree to divest themselves of such interest in a manner which satisfies the judge(s); or
 - (b) persons who are office-bearers of a political party or political organisation, except insofar as such persons declare such political involvement and agree to resign their positions in a manner which satisfies the judge(s).
- (2) The judge(s) may determine other criteria for the appointment of the panel as they may deem reasonably necessary.
- (3) No consensus was reached on how many eminent persons should serve on the panel:
 - (a) The South African Government proposed that the judge(s) should determine the number of eminent persons serving on the panel.
 - (b) The ANC proposed that the panel should comprise seven eminent persons.

8. Consensus was reached that the panel should continue to receive nomination from members of the public until 26 February 1993. The full list of nominations should be made available to the public.
9. Consensus was reached that by 8 March 1993 the panel should draw up a short list of potential new SABC members. The short list should be made public.
10. (1) Consensus was reached that interested parties should be entitled to make such representations in a manner and form which the panel deems expeditious.
(2) The South African Government did not agree with the ANC's proposal that the panel should then conduct a series of public hearings wherein the persons on the short list, subject to their availability for the SABC Board, should be called to appear and answer questions which the panel deems relevant.
11. Consensus was reached that:
 - (a) A final selection should be made and announced by 25 March 1993.
 - (b) This selection should include a chairperson and vice-chairperson of the Board.
 - (c) The Board, including the chairperson and vice-chairperson chosen by the panel, should broadly reflect the composition of the South African population as well as that of the various sectors of society which have an interest in the public broadcaster, for example, religious, financial, technical, cultural, educational, labour, business, media and sport. Special attention should also be given to gender in the selection of Board members.
 - (d) Persons chosen by the panel should not include:

- (i) persons who have a direct financial interest in any broadcasting-related matter, except insofar as such persons declare such financial interest and agree to divest themselves of such interest in a manner which satisfies the panel; or
 - (ii) persons who are office-bearers of a political party or political organisation, except insofar as such persons declare such political involvement and agree to resign their positions in a manner which satisfies the panel.
- (e) The panel may determine other criteria which it deems reasonably necessary for the appointment of the Board.
- 12. Consensus was reached that the list of new Board members should formally be handed over to the State President, who should be requested to appoint these new Board members and notify the appointment in the Gazette by 31 March 1993.
- 13. Consensus was reached that the new Board members should assume office or have their first Board meeting as soon as practically possible after appointment.
- 14. Consensus was reached that the appointment panel, and the secretariat assisting the two judges and the panel, should be funded by the Department of Home Affairs.

26 January 1993

REPORT OF THE SUB-COMMITTEE ON THE FUTURE OF THE
TBVC STATES TO PLENARY ON 25 JANUARY 1993

1. COMMON GROUND

1.1 SUB-COMMITTEE'S POINT OF DEPARTURE REGARDING THE
FUTURE OF THE TBVC STATES

The Sub-Committee is of the opinion that the agreements reached at Codesa should not be reversed or scrapped, since this will slow down the negotiation process.

The Sub-Committee is therefore in agreement that the Report of Working Group 4 to Codesa II, should be adhered to:

1.1.1 Re-incorporation

The Sub-Committee has no objection in principle to the re-incorporation of Transkei, Bophuthatswana, Venda and Ciskei;

1.1.2 Transitional Arrangements

The Sub-Committee agrees that the TBVC states should participate in transitional arrangements as proposed by Working Group 3 [and hopefully endorsed by a new multiparty forum] on the understanding that these arrangements shall *mutatis mutandis* impact on the participating TBVC governments;

1.1.3 Testing of the Will of the People

The Sub-Committee agrees that the people of the TBVC states shall take part fully in the process of constitution making and transitional arrangements, including elections, as was proposed by the Working Groups of Codesa II and by a new negotiating forum. 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;

1.1.4 Restoration of Citizenship

The Sub-Committee supports the agreement reached in Working Group 4 that citizenship be restored to the citizens of all the TBVC states who would have been South African citizens but for the constitutional independence of the TBVC states, immediately after testing of the will as envisaged in 1.1.3 above;

Note:

The Sub-Committee notes the reservation of Bophuthatswana with regard to 1.1.2; 1.1.3 and 1.1.4 above.

1.1.5 The Sub-Committee wishes to stress the fact that the recommendations of Working Group 4 are subject to the outcome of multiparty deliberations concerning constitutional and transitional arrangements.

1.2 CONSTITUTIONAL AND TRANSITIONAL DELIBERATIONS

The Sub-Committee wishes to underline the importance of the TBVC states participating in constitutional and transitional deliberations including deliberations concerning the question of regions, in future agreements.

1.3 PRACTICAL STEPS AFFECTING RE-INCORPORATION

The Sub-Committee agrees to the establishment of the undermentioned Standing Committees, as agreed upon by Sub-Committee 4 of Management Committee of Codesa, on 8 June 1992, namely:

A Standing Committee Juridical - composed of legal experts to consider how existing bilateral and multilateral agreements should be managed and to make recommendations regarding laws to be passed in order to give legal effect to agreements reached.

A Standing Committee for each of the TBVC states to consider administrative and practical implications of re-incorporation

The Sub-Committee further agrees that the framework used in the document, "Practical Steps/Effects of Re-incorporation" submitted by Minister R F (Pik) Botha on 22 January 1993 at the Presidency, be recommended to the Standing Committees when they conduct their work.

In this regard the Standing Committees should pay attention to the following aspects:

- (i) Preparatory arrangements;
- (ii) What is to be done;
- (iii) Aspects which should receive particular attention;
- (iv) Problems foreseen;
- (v) The effect of re-incorporation on corresponding government departments;
- (vi) The effect of re-incorporation on existing bilateral and multilateral agreements;
- (vii) Financial and personnel implications.

The **Sub-Committee** further agrees with **Sub-Committee 4** of the Management Committee of Codesa that the Standing Committees will report to a future Committee, or equivalent thereof, who will in turn report to a future Management Committee of a new multiparty negotiating forum.

The **Sub-Committee** agrees that the Standing Committees continue beyond a new multiparty forum, to assist in resolving any disputes that may arise in the future. In this case the **Sub-Committee** also recommends that in the event of TBVC states participating in Transitional Structures, that the Standing Committees be accommodated in and report to the Sub-Council on "Regional and Local Government" of the TEC.

Note:

The Sub-Committee notes the position of Minister Keikelame of Bophuthatswana as recorded in the minutes of Sub-Committee 4 of the Management Committee of Codesa on 8 June 1992, namely:

"(Bophuthatswana) would prefer that a Standing Committee on Administration work on the assumption that Bophuthatswana would not be re-incorporated".

1.4 **BOPHUTHATSWANA AND NON-REINCORPORATION**

In the light of Mr Keikelame's statement, a study on the present relations between South Africa and Bophuthatswana has been completed. This

study was tabled by Minister Botha on 22 January 1993 at the Presidency and a copy thereof is attached.

The **Sub-Committee** agrees that this document should be brought to the attention of the Government of Bophuthatswana in order to ensure that the implications of whatever decisions Bophuthatswana wishes to take, are fully understood. This is not intended as a threat. It is merely a recording of the current situation which a future Government of South Africa may wish to review.

1.5 **FREE POLITICAL ACTIVITIES IN THE TBVC STATES**

The **Sub-Committee** supports, in line with the Declaration of Intent of Codesa, the principle of free political activity and a levelling of the political playing field in South Africa as a whole, including the TBVC states. These Administrations should be persuaded to repeal legislation inhibiting free political activity.

The **Sub-Committee** agrees that this principle should be promoted in discussions between the South African Government and the TBVC states and other parties.

The **Sub-Committee** agrees that differences between political parties in the TBVC states should be resolved by means of bilateral and/or multilateral negotiation.

The **Sub-Committee** agrees that Transkei, Bophuthatswana and Venda should be persuaded to become signatories of the National Peace Accord in order to promote peaceful political activity.

2. **MEMBERS OF THE SUB-COMMITTEE**

The members of the **Sub-Committee** are, Mr Mathew Phosa of the African National Congress and Dr Chris Streeter representing the South African Government.

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Status of Bilateral Agreements

(as amended on the 10/12/93)

The Government and the ANC agreed that bilateral discussions and interaction between them in the course of the constitutional negotiation process, will take place within the following framework:

- 1 Both recognise that peaceful development of South Africa to a democracy is urgent and imperative.
- 2 They have different and often contradictory policies and objectives. At the same time both have a shared desire to ensure that South Africa moves expeditiously and successfully from the present situation to a new democratic order and that the factors essential to a healthy growing economy should be put in place as soon as possible.
- 3 They are two parties among many a multilateral process in which all parties share equal responsibilities. The two parties must ensure that the manner in which they conduct themselves upholds the independence and integrity of all parties and organisations involved in the negotiation forum.
- 4 As they have done in the past, the ANC and the Government may again enter into agreements which shall be binding on them. Such agreements shall not be binding on other parties. The two parties shall seek to pursue common objectives set out in such agreements as recommendations to promote the multilateral forum and progress in the negotiations process as well as bilateral consultations with other parties. The two parties shall not seek to impose their ideas on others. Recommendations shall be in a spirit of honesty and openness and commitment to any multilateral agreements that emerge.
- 5 It is crucial that the Government and the ANC approach discussions and agreements with utmost seriousness. They should relate to each other in a spirit of openness and good faith.
- 6 On this basis the two parties committed themselves to the speedy resumption of Codesa (in a restructured form) and confirm that they hold themselves bound by all the agreements so far reached in Codesa, including the *Declaration of Intent*. The two parties agreed to allow for and work towards ensuring that participation in Codesa becomes more representative in keeping with the principle of making the negotiations forum as inclusive as possible.

NEGOTIATIONS PLANNING CONFERENCE.

1. Purpose:

Facilitate resumption of Codesa.

2. AGENDA :

- (i) Assessment of current situation.
- (ii) Resumption of multilateral negotiations.

3. CONVENING :

After agreeing on above list principle of one - invites - one will be used to convene the Conference.

4. VENUE :

We are for holding it at World Trade Centre. Issue not settled as yet.

5. DATE :

25th February 1993

6. PANEL OF CHAIRPERSONS:

Names being considered include Cyril Ramaphosa, Roelf Meyer, Zain Titus Zac de Beer, Frank Mdlalose, and Chris de Jager.

7. SIZE OF DELEGATION :

+ _ 3 Participants (Will not be represented at level of leaders).

8. Invitees:

(a) Codesa participants plus C.P, AVU, PAC, Azapo, AWB and HNP.

(b) Government proposed that Bantustan administration should be invited also.

They argued that this would also resolve the issue of the Zulu King. We rejected this.

(c) Traditional leaders:

Agreed we find other ways to resolve this. Proposal for NEC:

- (i) Traditional leaders should participate with right to speak at Codesa plenary meetings.
- (ii) Be part of decision-making at these plenaries.
- (iii) They will not be members of Codesa Management Committee.
- (iv) They may attend the Management Committee as observers.
- (v) They shall have the right to make representation to the M.C on matters that affect them.
- (vi) They may participate on a provincial basis - this issue and the mechanics of it to be discussed with CONTRALESA.

9. MEDIA PRESENCE :

ANC position: Conference should be open to media. Government sees possible problems in this approach. Current suggestion: Conference should be open to print media only.

Trad. leaders not in TEC

AFRICAN NATIONAL CONGRESS PRESS STATEMENT ON THE BI-LATERAL HELD BETWEEN THE ANC AND THE SOUTH AFRICAN GOVERNMENT FROM THE 10TH -12TH FEBRUARY IN CAPE TOWN

An African National Congress delegation led by the ANC Secretary General, Cyril Ramaphosa, and a Government delegation led by the Minister of Constitutional Development, Mr Roelf Meyer, met from the 10th - 12th of February, 1993.

The meeting covered discussions of constitutional questions as well as preparations for the resumption of multi party negotiations.

The meeting reaffirmed agreement on an elected constitution making body to draft the new constitution. Decisions will be taken on the basis of specified majorities. Agreement was also reached that elections for this body would take place as early as possible.

To ensure free and fair elections the following issues were discussed:-

- * Suggestions for legislation for the Transitional Executive Council were discussed and will be finalised in due course. In this regard, the ANC provided the government with concrete proposals on the powers and functions of the TEC, and in particular, it's sub councils for law and order and defence. The government undertook to come back to the ANC on these issues.
- * It was agreed that an independent Electoral Commission would run elections.
- * An Independent Media Commission would be appointed.
- * These Commissions will play a crucial role in levelling the playing field prior to elections.
- * On the appointment of the SABC Board, it was agreed that a transparent process should be set in motion. On the basis of consultation with a wide range of forces including the Campaign for Independent Broadcasting (CIB), the ANC has proposed that Justice Mohammed and Schabbert should be appointed to initiate this process. The government promised to come back to the ANC on this issue early next week.

Also explored was the question of a Government of National Unity for a limited period after the adoption of a new constitution. Proposals in this regard will be taken back to principals.

Concerning the boundaries, powers and function of regions, it was agreed that decisions in this regard would be taken by the elected Constitution Making Body. Proposals and details in this regard are also being taken to principals.

The holding of a multi party planning conference was agreed to for a date during the course of February was agreed to, and which is to be confirmed by principals.

The infiltration of arms was also discussed. The ANC pointed out that in terms of the D F Malan Accord the necessary structures were set up to deal with this matter. In this regard the ANC has communicated with the South African government, and reiterated the following:

- * In keeping with the D F Malan Accord, The National Executive Committee issued clear instructions to all its structures and members that arms were not to be infiltrated into the country.

- Neither the National Executive Committee of the ANC, nor the Military Headquarters of Umkhonto We Sizwe, gave any instructions to the individuals recently arrested, or to any other persons, to infiltrate arms.
- No Regional Executive Committee and / or Regional Command of MK gave any such instruction to any member or structure of the ANC.

In addition, the ANC Southern Natal Region stated on 5 February that the regional leadership is fully committed to the letter and spirit of all bilateral agreements reached between the ANC and the De Klerk regime, including the D F Malan Accord.

The ANC's investigations into this incident are continuing. The ANC has offered to cooperate fully with the proposed investigation by the Goldstone Commission. The outcome of these investigations will determine our course of action, in keeping with the ANC policy and disciplinary procedures.

We reiterated our commitment to the peace process. In this regard the National Party government has a special responsibility to ensure that the security forces abide by the provisions of the National Peace Accord.

We have taken note that the Minister of Law and Order, Mr. Hernus Kriel, issued a statement yesterday trying to justify the government's blatant partiality in concentrating on the Swaziland border incident while they have tried to avoid publicity around the involvement of Inkatha Freedom Party members in arms smuggling. We believe that this is hypocrisy of the worst kind.

If the South African government responds positively to the concrete proposals which the ANC placed on the negotiating table, the realisation of a peaceful and democratic order is within our reach.

Issued by:
Cyril Ramaphosa
Secretary General - ANC
12th February, 1993

Time period.

President

Open.
Presentation

Open

Link with restructuring

~~Bilateral - capital~~ survive.

- 1). GNM - Reconstruction
- 2). Openness -
- 3). President.

① Not deal insatraf. - State economy.
reality. Not in power.
Land for peace. Time for democracy.

② 5 years - constit. making - crises
interim.

③ Openness

④ 1 GNUM