

Submission by the African National Congress

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To the Technical Committee on the Transitional Executive Council

Date : 12 May, 1993

[Note : Further submissions will be made on or before 19 May, 1993 on the question of the powers, duties and functions of the sub-councils.]

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 create a climate for free political participation in which -
 - (a) there will be no impediment to legitimate political activities;
 - (b) there will be no intimidation;
 - (c) political parties and organisations will be free to canvass support from voters, to organise and hold meetings, and to have access to voters for such purposes;
 - (d) the power of government will not be used to favour or prejudice any political party or organisation;
 - (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;
 - (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, in consultation with the Transitional Executive Council, or if such function has been delegated by the Transitional Executive Council to a sub-council, in consultation 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:

- (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 exercise all or any of the functions and powers referred to in section 6, or powers necessary for the achievement of the purposes referred to in Section 6, and 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) to appoint a secretary and such other officers and employees as may be required for the proper performance of its functions, and to fix the remuneration and terms of employment of such officers and employees;
- (f) to request officers in the Public Service to be seconded to it in terms of section 13(6) of the Public Service Act, 1957 (Act No 54 of 1957) in order to assist it in the performance of its functions;
- (g) any other power reasonably needed by it to enable it to achieve its purposes and to carry out its functions.

4. (a) All governments will keep the Transitional Executive Council informed of, and will provide it 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 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.
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5. (a) All governments, administrations and participants will keep the Transitional Executive Council informed and the Transitional Executive Council will be entitled to ask for and to receive from them, 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.
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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 purposes and powers as set out in annexure A.
- (c) A sub-council on defence which shall have the purposes and powers as set out in annexure B.
- (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;
 - (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 purposes and powers set out in annexure C.
- (f) Sub-council of elections which shall have the purposes and powers set out in annexure D.
- (g) 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.

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 Executive 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 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.

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.
 - (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 subparagraph (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, notwithstanding attempts to reach consensus, such consensus has not been achieved, 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.

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

 - (d) If a decision taken in terms of sub-section (b) hereof, is not referred to the Independent Election Commission in terms of sub-section (c) 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 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.
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.