

CODESA Working Group 3 - South African Government - 23 March 1992

PROPOSALS FOR TRANSITIONAL ARRANGEMENTS

1. Since 1910 South Africa has had consecutive constitutions that gave only certain sections of her population representation in national structures of government. That era of our constitutional history came to an end with the steps announced by the State President on 2 February 1990, and sanctioned in the referendum of 17 March 1992. With the mandate of those who elected it, the Government can now proceed with vigour on the road of reform to a new negotiated democratic constitution securing equal representation for every South African citizen and eliminating domination.
2. In continuation of the process the Government proposes that negotiations should begin as soon as possible with a view to the formulation of a transitional constitution amending the *Republic of South Africa Constitution Act 110* of 1983. In order to make the necessary preparations for the implementation of such a transitional constitution, it is proposed that structures with broadly representative membership be created by statute without delay. This will ensure that all interested parties can be assured of an opportunity of participating in the preparation, planning and implementation of a transitional constitution.
- 3.1 With a view to meaningful discussion, consideration and negotiation thereof in CODESA, the Government will make its proposals for a transitional constitution available in the form of draft legislation towards the end of April.
- 3.2 It is accepted that the parties participating in the negotiations concerning a transitional constitution, do so under the following conditions:
 - Decisions in this regard are taken by consensus.
 - The question of political violence in general and the bilateral understandings in inter alia paragraph 3 of the Pretoria Minute and the DF Malan Accord, are solved decisively.

- Everything that can harm South Africa and all its people is effectively opposed by participants.
- The transitional constitution is implemented only when a general and satisfactory situation of order and stability has been established in the South African community.

3.3 The draft transitional constitution that will be presented to CODESA, will be formulated within the following framework:

Parliament

Parliament is composed of two Houses, namely a National Assembly and a Senate.

The National Assembly is elected according to a system of proportional representation. Every South African citizen above the age of 18 can vote and be elected.

If sufficient progress is made with the negotiation process concerning a system of regional government, the Senate is composed of regional representatives. Should sufficient progress not be made in this regard, the Senate can initially be composed of members of existing legislative bodies.

The Head of State

A Presidency is formed by the leaders of the three to five strongest political parties jointly representing a majority in the proposed National Assembly as determined by a general election. The Presidency is the executive head of the Republic and it takes its decisions by consensus. The chairmanship of the Presidency rotates on a six monthly basis.

The Cabinet

The members of the Cabinet are appointed by consensus by the Presidency and need not be members of Parliament. The Cabinet functions under the direct guidance of the Presidency.

Charter of Fundamental Rights

When?
The Constitution, including an enforceable Charter of Fundamental Rights, is the supreme law of the Republic. The Constitution and Charter are justiciable by the Supreme Court of South Africa.

Further Transitional Measures

In order to maintain good government and to provide for the responsible management of the transition process, the Constitution contains extensive transitional provisions.

4. The following arrangements for the preparatory phase are now proposed for negotiation. As soon as the discussion and negotiations have proceeded to the point where the details can be discussed, a draft bill thereon will also be presented:

Transitional Councils

- 4.1 Transitional Councils are established for facilitating the planning and implementation of a next constitutional dispensation. Each Council is composed of six members designated by the Management Committee of CODESA and appointed by the State President together with one additional member appointed by the State President on the grounds of his expertise after consultation with the Management Committee of CODESA.
- 4.2 A person may be appointed as a member of more than one Transitional Council and the number of persons who are members of Transitional Councils may at no time exceed thirty.
- 4.3 A person who is a Minister or Deputy Minister in the present constitutional dispensation or who is a member of the Executive Committee of a Province, may also be appointed as a member of a Transitional Council.

- 4.4 Members of Transitional Councils receive the remuneration and benefits determined by the State President after consultation with the Management Committee of CODESA.
- 4.5 No one who is a member of more than one Transitional Council, or who is a member of a Transitional Council and holds an office mentioned in 4.3, is entitled to receive remuneration and benefits in respect of more than one of the capacities in which he serves.
- 4.6 The State President may, on the recommendation of the Management Committee of CODESA or the relevant Transitional Council, terminate the appointment of any member of a Transitional Council and appoint another person in his place. The State President may in the same manner appoint a member of another Transitional Council to act for a member of a Transitional Council who is temporarily indisposed or who is for any other reason incapable of attending meetings of that Transitional Council. The State President may dismiss any member of a Transitional Council on grounds of proven misconduct.
- 4.7 Transitional Councils take decisions by way of the consensus of all their members and they themselves decide on matters such as chairmanship and procedure.
- 4.8 Two or more Transitional Councils may meet together to discuss matters of mutual interest or of interest to any specific Transitional Council, or in general concerning the transitional process towards a new democratic constitution.
- 4.9 All the Transitional Councils meeting together constitute the Joint Transitional Council, which does not have any of the specific duties and functions of any of its constituent Transitional Councils, but may by way of consensus reach agreements on resolutions.
- 4.10 Detailed definitions of the duties, functions and activities of Transitional Councils can be described in the proposed legislation after negotiation. This may include the studying of existing legislation and making of

recommendations thereon and on new legislation in the area for which a Transitional Council is responsible.

4.11 The following Transitional Councils are proposed:

(a) The Transitional Council for Elections,

that is charged with the preparations and planning for the holding of elections under the transitional constitution and to ensure that they will be free and fair. The Transitional Council may adopt resolutions by consensus about any matter concerning its activities and shall initiate and co-ordinate those negotiations that it may consider necessary for the purposes of its activities.

(b) The Transitional Council for Regional Government

shall, having regard to existing provincial boundaries as well as political, geographic, demographic and economic determinants and after consultation with existing government authorities as well as knowledgeable persons and institutions, formulate proposals regarding the delimitation of the territory of the Republic into a number of provinces or federal component states which is politically and economically justifiable. The Transitional Council may adopt resolutions by consensus regarding any matter concerning its activities and shall initiate and co-ordinate those negotiations that it may consider necessary for the purposes of its activities.

(c) The Transitional Council for Local Government

shall, having regard to provincial and federal component state boundaries that may be proposed by the Council for Regional Government and the boundaries of existing local government areas as well as geographic, demographic and economic determinants and after consultations with existing government authorities as well as knowledgeable persons and institutions, formulate proposals regarding the delimitation of local

government areas in such a way that no local government area will be in more than one province or component state. The Transitional Council may adopt resolutions by consensus regarding any matter concerning its activities and shall initiate and co-ordinate those negotiations that it may consider necessary for the purposes of its activities.

(d) The Transitional Council for Government Finance

shall do planning and preparations relating to the handling of government finances in a next constitutional dispensation. The Transitional Council may adopt resolutions by consensus regarding any matter concerning its activities and shall initiate and co-ordinate those negotiations that it may consider necessary for the purposes of its activities, and more specifically regarding intergovernmental financing. This Transitional Council may be given the opportunity of making inputs regarding budgeting.

4.12 The possibility of instituting Transitional Councils for Law and Order (or Police) and for Defence can also be considered. In negotiations in this regard the progress made in Working Group 1 and in various bilateral negotiations will have to be taken into account. The institution of such Transitional Councils can not be properly discussed in Working Group 3 in isolation from those developments.

4.13 The possibility of instituting further Transitional Councils functioning in areas such as education, housing, health and international relations, can also be investigated.

5. The Government is convinced that these proposals are fair, constructive and justifiable. It is trusted that the proposals will contribute to the early reaching of agreement on the next step in the transition towards a fully representative democratic constitution.

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