

SUBMISSION BY THE AFRICAN NATIONAL CONGRESS TO THE STEERING COMMITTEE OF WORKING GROUP 1 ON THE TERMS OF REFERENCE OF THE WORKING GROUP AND PERSPECTIVES

1. Working Group I has been allocated two assignments, namely :
  - 1.1 the creation of a climate for free political participation, and
  - 1.2 the role of the international community.

The Working Group will therefore be expected to decide how it is going to deal with the two assignments, whether simultaneously or consecutively. We suggest that the tasks be dealt with one after the other, as a simultaneous treatment of the assignments would unduly stretch the resources of delegations, leading to unsatisfactory results. In any event, discussions dealing with the modalities of the transition cannot be anticipated so easily at this stage. Until such time as there is some consideration given to transitional arrangements and interaction with Working Group III, it may be more satisfactory to begin with the first assignment. However, it is not necessary to be rigid about this.

2. The African National Congress therefore suggests, as a matter of priority, that the First Assignment be dealt with first by the Working Group.
3. Paragraph 1.1.3 enjoins the Working Group to identify areas of "commonality" and aspects where agreement already exists between participating delegations.
  - 3.1 With regard to "commonality", our view is that the proper occasion for identifying this is during the discussion of each item. It would be dangerous to commit participants to an agreement on commonality without such a discussion, since what might appear to be common cause at first blush could in fact later turn out to be subject to widely differing interpretations. Such an approach to "commonality" would save a great deal of anguish and disappointment.
  - 3.2 Aspects where agreements already exists include those which are covered by multilateral and bilateral agreements between some or all of the parties participating in CODESA. Other areas of agreement can only be identified following discussion and negotiation.
4. As the terms of reference stand at present, the Working Group has to decide not only how to deal with each item but also whether to deal with such items at all, without prejudice to the right of any party to raise a proposal. The Working Group must therefore decide which issues are going to be on its programme of discussion before decisions can be taken on the nature and number of sub-groups, should they be required. It may well be that from time to time during the process, issues may arise which need more detailed scrutiny and which can conveniently be dealt with by a special sub-group.
5. It is assumed, by reference to the preamble to the terms of reference, that there is broad agreement that a climate for free political participation does not exist. It follows therefore, that the Working Group must identify, catalogue, investigate and report on all the factors that militate against the existence of that climate and make recommendations on the steps to be taken to achieve the objective. In this regard, it must be noted that the brief of the Working Group goes very much further than the creation of a climate for negotiations.

6. The premise upon which democracy rests is that every adult should not only be free to participate in the political process without fear, but also that he/she should participate on an equal footing with others. For this condition to be met, each contending party must be placed on an equal footing in regard to access to the means of communication and in regard to access to the electorate. No party must have a preferential access to public funds and facilities. This is particularly so where one party has special access to the state institutions and public resources and has a history of bolstering allied parties through clandestine patronage. In short, the political playing field must be level. Any suspicion that the practices which took place in Namibia will be repeated here must be dispelled. There must be no lingering suspicion of partisanship, either because of the law or because of administrative practice. It is obvious that where political violence is pervasive, one cannot speak of a free political climate. What is required is a level of personal security guaranteed by the transitional authority supervising the process, as well as a level of political tolerance promoted by the political parties and the electorate.

In the light of the above, the main issues are concerned with the investigation and agreement upon the necessary steps to be taken to ensure that all the political parties are free to operate and that all their members are not prevented from playing a role in the political process.

7. 7.1 The main theme obviously is the creation of a climate for free political participation in the interim phase. Two categories of factors may be discerned, namely :
- 7.1.1 those that ensure that every individual must be free to participate in the political process without fear, undue interference or intimidation [see Paragraph 1.1.4 (a), (b), (c), (d), (g), (h), (n) and (o)]; and
- 7.1.2 those that are designed to level the political playing field [eg items (f), (i), (j), (k), (l), (m), and (p)].
- Item (e) seems to straddle both categories.
- 7.2 From a practical point of view, the topics mentioned in the preceding paragraphs may therefore be dealt with broadly under the following themes :
- 7.2.1 Activities which destabilise;
- 7.2.2 Dealing with the past, and
- 7.2.3 The rules of the game.
- 7.3 Some of these matters will be dealt with by the Interim Government/Transitional Authority in a global manner. Others may require an immediate reaction through legislative change.

8. As far as the Second Assignment is concerned, the African National Congress will submit a detailed memorandum on the necessity for the participation of the international community in the formal or informal processes involved in the period leading up to the introduction of a new constitution for South Africa, as described in the preamble to the Second Assignment.

9. The Working Group will be invited, following the reasons for the desirability of such intervention, to investigate the extent to which the international community can assist in the transition period. The options available are not exclusively limited to the following:

- 9.1 An investigation of the possibility of an international guarantee concerning the process of transition and, in particular, a guarantee of recognition of a definitive election for the transfer of authority, providing that it is certified as fair and free;
- 9.2 The necessity or otherwise for a peace-keeping force in order to provide security, to ensure the maintenance of order and compliance with agreements reached by the parties;
- 9.3 The necessity or otherwise of the appointment of a Special Representative in South Africa by the Secretary-General of the United Nations or by any other acceptable body who could participate in the capacity of an observer in the talks and in the negotiations and the extent to which such a Special Representative could convene negotiations and submit mediating proposals to overcome deadlocks;
- 9.4 Whether a limited international presence could monitor and verify the compliance by the mandated authorities of the tasks and obligations assigned to them under the agreements and use its good offices in the case of disagreement on the interpretations and application of the agreements;
- 9.5 Whether international participation could be used to secure the impartiality of the transitional government either by monitoring the operations of such a government or by being included in the transitional or interim government as a "deadlock breaker";
- 9.6 If the option of a peace-keeping force is rejected, the extent to which international participation could supervise and secure the impartiality of the transitional security mechanism. In particular, international participation could be utilised to expand national commissions of enquiry or for the deployment of a UN or other international mission of experts for effective investigation and decision-making;
- 9.7 The usefulness of observers from international and regional bodies to ensure that agreed procedures are followed and who could report back to their own constituencies;
- 9.8 The extent to which UN or other international participants could, if necessary supervise and control vital areas of national administration;
- 9.9 The extent to which the international community could provide machinery for the independent investigation of complaints against the security forces and sensitive areas of administration;
- 9.10 The extent to which international participation could assist a national electoral body - composed of representatives of all political parties - with the implementation of elections. Such a role could involve the monitoring and surveillance of all the aspects of importance for the holding of free and fair elections and the securing of a climate free of intimidation and fraud by a limited presence on the ground. Finally, such a body could assist by providing technical assistance and provide a conclusive judgement on the character of the elections.

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