

NOTES FOR THE NEGOTIATION COMMISSION ON THE ROLE
OF WORKING GROUP I

Background

Item I: Working Group I was originally envisaged by the ANC to deal only with the creation of a climate for free political participation. In the pre-CODESA discussions, however, it was agreed that two assignments would be allocated to this Group, the addition being the role of the international community which we had anticipated would be a separate Group.

Query: Should the Group deal separately and consecutively with its two assignments or should it break up into sub-groups and deal with the assignments simultaneously? Apart from the issue of expertise and resources, we must consider the inter-relationship of the two areas.

Climate for Free Political Participation

Item II: The Working Groups are obliged to investigate and report upon all proposals in relation to its work and to make recommendations where agreement is obtained. However, paragraph 1.1.4 enjoins this Working Group to consider whether and how the listed items should be "addressed".

Query: Does this mean that the Working Group is expected to have a discussion on whether the topic should be "addressed" at all. Any party is entitled to make proposals but it seems to me that the issue of a major discussion and possible recommendation is a matter which may require preliminary discussion. From our point of view, what will be of importance is the meaning we attach to the theme of this assignment, the context of the Working Group and the distinction between a "climate for negotiations" and a "climate for free political participation"

Item III: The Declaration of the OAU Ad-Hoc Committee on Southern Africa, (the Harare Declaration) which was adopted in the same form by the Non-Aligned Movement and in a similar form by the United Nations General Assembly specifies that the creation of a "Climate for Negotiations" is an essential stage of the transitional phase towards democracy. Some of these minimum preconditions have not yet been fully met.

The creation of a climate for free political participation must go further than such a minimum set of preconditions for negotiations. 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. The political process must be fair and free in form and substance. This is particularly so where one party has special access to the state institutions and public resources and have 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.

Finally, it is obvious that where political violence is pervasive, one can not 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, which we must pursue strenuously, 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.

Query: Should our priorities, in the light of our interpretation of the topic, be on items (a), (b), (c), (f), (g), (i), (j), (k), (l), (n) and (p) which we proposed in the first place. Many of these items will need changes in the law while others will require a strong political will on the part of the Interim Government. Some of the topics will need to be discussed in the Working Group dealing with Interim Government.

Item IV: Attention is drawn to items proposed by the NP or other groups. The chief among these, arising out of paragraph 1.1.4 are: (d), (e) - where the issue of MK will doubtless be raised, - (h), (m), where we may have to turn to the National Peace Accord proposals on improving socio-economic conditions.

Query: We will need to discuss our policy position on these additional topics especially as (m) may constitute a trap to draw up into economic policy and a discussion on sanctions.

Item V: Paragraph 1.1.3 expects the Working Group to identify areas of "commonality and aspects where agreement already exists between participating delegations." We will have to be careful about any a priori assumptions about agreement on these topics as so much turns on the details and interpretation. We will have to guard against premature agreement, while trying to ensure that the Working Group does not get bogged down in details.

Query: Is it a fruitful exercise at this stage to identify certain areas where agreement already exists?

The Role of the International Community

Item VI: This assignment may well prove to be the most complex, controversial and difficult of all. There is, in principle, no reason as to why effective machinery should not be established by the parties to negotiations in CODESA to deal with the range of issues which require urgent action. In other words, there could be a purely internal solution to the issue of creating conditions for confidence building and consensus by relying solely on structures established by COSESA.

If this approach is adopted then, the Working Party will need to refer to the process by which decision-making on a whole range of issues will take place, how deadlock will be broken and the extent to which it is possible to identify "watch dogs", relying solely on South Africa resources, who will ensure the compliance by the parties with agreements reached.

As far as mediation is concerned, the Working Party will need to discuss the extent to which there are parties inside our country which have the moral authority and the political power to act as an effective mediator and to ensure that binding decisions are arrived at and to enforce these decisions.

Finally, the Working Group will have to determine the extent to which effective supervision, monitoring or control can be exercised over the sensitive issues of security and law enforcement, including the restructuring of the police etc., the conduct of the whole electoral process, access to the publicly-owned media and decisions taken in relation to controversial matters.

Query: However, there are two dimensions that we will have to look at if we are to rely entirely on South African resources. Firstly, there is the extraordinary power differential between a government which has state power and the ANC which does not have the resources or capacity to ensure a level playing field; neither is there the existence in South Africa of people or bodies with sufficient impartiality or clout to ensure that agreements entered into will be carried out or where intervention may be accepted by the major parties. Secondly, there is now in existence a rich history of international assistance in situations where an illegitimate authority/government is attempting to transform itself to a democracy. This ranges from the purely technical and legal aspects of conducting a democratic parliamentary election (under the UN Programme of Advisory Services and Technical Assistance in the Field of Human Rights) to a more avowedly political and mediation role for a range of international organisations, from the OAU to the European Community, and not limited to the UN.

Item VII: We must therefore work on the basis that some form of international participation is both necessary and desirable. This should be done under two headings, participation by the international community and the possible modes of participation.

Participation by the International Community

The Working Group must identify the most appropriate body or body of persons or organ of an international organisation which is best qualified or most appropriate to assist in the period of transition. The Working Group should recognise that different ad hoc arrangements could be made for different purposes, depending on the specific objective or task to be dealt with.

The Working Group should therefore investigate the possibility of the involvement of the United Nations, the Organisation of African Unity, the Commonwealth and the Non-Aligned Movement and the extent to which any distinction ought to be made in the role of the international community in the period before elections for the constituent assembly and during the election period itself.

Modes of Participation by the International Community

The Working Group should therefore investigate the extent to which the international community can assist

in the transition period. The options available are not exclusively limited to the following:

- (i) 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;
- (ii) The necessity or otherwise of a peace-keeping force in order to provide security, to ensure the maintenance of order and compliance with agreements reached by the parties;
- (iii) 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;
- (iv) 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 interpretation and application of the agreements;
- (v) 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";
- (vi) 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 inquiry or for the deployment of a UN or other international mission of experts for effective investigation and decision-making;
- (vii) 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;

- (viii) The extent to which UN or other international participants could, if necessary, supervise and control vital areas of national administration;
- (ix) 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;
- (x) 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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