

**CODESA - GROUP FIVE**

**Issues Relating to the Proposed Electoral Law**

**MEMORANDUM**

We, together with all other parties are committed to submitting proposals to CODESA related to the electoral law before Monday, 27 April. A brief is to be drawn by a sub-group to be submitted to a drafting committee. Although the proposals do not have to be our final word on any particular issue pending the decisions of the other four groups, we should nevertheless consider formulating policy decision in relation to the number of matters.

An attempt will be made to identify the most important of the issues that are likely to arise.

We have collected the material related to elections in Zimbabwe, Namibia and Salvadore. We were reminded at the sub-group meeting by the NP representatives that we must not overlook the South African Electoral Act nor the electoral provisions in statutes

of the TPVC states. Papers have been written by Kadar Asmal Manuna. A number of institutes are operating in South Africa and they have proffered us their advice. While we and our allies will want to push for substantial changes in the procedures suitable for one person, one vote, based on a proportional representation system, the NP will want to retain as much of the existing procedures as possible. It is necessary therefore to identify the issues that are likely to be raised and prepare cogent arguments for the adoption of our proposals.

Some of the main issues such as the creation of the appropriate climate in the role of the international community will have to be decided in the other four groups and, when these decisions are made, modifications will probably have to be made to our proposals. The decisions in the other groups will probably be agreements of principle. What we have to consider is the detail in relation to some of the fundamental issues.

#### A. Who Will be Responsible for the Conduct of the Election?

The NP is likely to suggest that there is not much wrong in the present procedure. We can expect a suggestion that a chief electoral officer should be appointed by the Minister of Home Affairs. They may even suggest that if the Administrator-General was in overall charge in Namibia, why should it not be so in South Africa. They may in the of "interests of fairness" suggest that there should be a Troika of chief electoral officers. We should reject these proposals. We should insist that the first

election should be conducted by

### AN ELECTION COMMISSION

to be appointed by CODESA. As provided for in our proposals relating to the interim government or arrangement. A number of questions arise which must be answered fairly quickly. Some of these questions involve matters of policy and guidance should be given as soon as possible.

1. How many members?
2. Are they to be members representing parties, or prominent, wise persons?
3. What will be its relationship to the interim government structure?
4. What will be the commission's powers in relation to the employment of persons necessary to conduct the election; will civil servants be seconded to it; promulgate regulations; issue orders containing the media, local or other authorities to do certain acts; require the disclosure of information relating to sources of funds, etc.?
5. What will be its source of revenue?

6. Should it have local sub-committees or directors throughout the country?
7. Should employees in the Department of Home Affairs be appointed as controllers, electoral officers, presiding officers, polling officers and counting officers?
8. Should civil servants be excluded and, if so, where will the estimated 15 to 20 thousand persons responsible for the conduct of the election come from?
9. Should the judiciary, the legal profession and other suitably qualified persons be called upon to be trained to conduct the election, or should (the experienced) civil servants play a role and have the judiciary, the legal profession and other specially trained persons to supervise them?

A discussion on the role of election commissions in other parts of the world is contained in a memorandum headed *Election Commissions: Responsibilities and Composition* by Larry Garber of the National Democratic Institute for International Affairs, which is attached to this memorandum for the guidance of members. It may well be that the idea emerging from this memorandum that the electoral law should not be promulgated by the Tricameral Parliament, but by the electoral commission self. The Tricameral Parliament would only have to pass an act establishing an election commission and provide for the main bones of its coming

into being, and authorising it to promulgate the electoral law in terms of which the election is to be conducted.

### B. Who Will be Able to Vote?

It appears that there is agreement that all South African citizens by birth or descent or registration over the age of 18 years will be eligible to vote. Our policy is clear that there cannot be a free and fair election if any of the people in the TBVC states are excluded. A number of questions arise in relation to this and other issues:

1. Could a deeming provision that all those that lost their citizenship by the creation of the TBVC states are deemed to be South African citizens for the purposes of the election to be held whilst the intricacies of re-incorporation are still being looked into?
2. Although conviction and imprisonment for serious crimes may deprive one of the right to vote, surely this should not apply to political offences - what provision should be made in relation to this?
3. What provision should be made for those who were refused or deprived of their citizenship for political reasons or whose rights to be registered as citizens is adversely affected by lack of continuous permanent residence caused by exile?

### C. The Parties

The notion that the commission or any other body should have any discretion as to which parties and which parties may not participate in an election is an undemocratic one which we should avoid. The suggestion that a party advocating racist policies should not be allowed to participate should be rejected. In order that the election may be successfully conducted, there are however certain aspects that require attention:

1. Should there be a requirement in relation to the size of a party before it can be allowed to field a list of candidates? A balance has to be found between excluding those who can be shown to have no support at all, and their inclusion will only make the ballot paper unmanageable, and small parties which may be seen to be legitimately complained of unfairness if they are excluded. Minimum membership, submission of a number of signatures, a deposit of a sum of money, or a combination of any of these or other factors, may be thought appropriate.
2. If alliances are formed they would have to be timeously registered in order that they may be entered as such on the ballot paper.
3. There may be squabbles about names, colours and emblems which, no doubt, the commission will have to sort out.

#### **D. Registration of Voters**

Should a voters' roll be prepared for the first election? Time constraints and the advantage those who have already participated in election would have over us would suggest that we should adopt the attitude that there should not be a voters' roll for the first election.

#### **F. National or Regional List of Candidates**

The absence of a voters' roll and the determination of the regional boundaries will probably make it impossible to have regional lists for the first election. This does not mean that the centre will not have regard to regional interests in compiling the national list of candidates.

#### **G. Membership of the Constituent Assembly**

400 Members to the constituent assembly appears to be the predominant view. The minimum age to make one eligible to be elected to the assembly will have to be discussed.

#### **H. Identification of Voters on Polling Day**

The debate that is being conducted as to whether a registration document will be necessary or not, has to come to an end. If there are to be identity documents, steps ought to be taken right

away to compel the department to conduct a campaign to issue identity documents free of charge (including the photograph). We should bear in mind any system of identification which may lead to disputes on voting day should be avoided.

### I. The Role of the Security Forces

Ways will have to be found to balance between the undesirability of there being at or near polling stations on election day, and the need for peaceful behaviour to be maintained at the time of voting.

### J. The Role of the International Community and Monitoring Organisations

What is our attitude? Should they have mere observer status, or should an attempt be made to have them involved on an official or *quasi*-official basis?

### K. Special Votes

Although some arrangement may have to be made for those indisposed or out of the country, the recently extended system of special votes canvassed in people's homes and elsewhere days and weeks before the election are surely not acceptable.

### L. Other Issues Thought Necessary



Task groups  
Work

Del of 12  
5 advisers.  
+ 9 admin.  
+ 2 runners.

Undivided

Botswana streets.  
[ protocol,  
security,  
admin,  
media ]

ANC Prep.

Working groups

~~Equal status~~ Equal represent a N. to speak  
of particip.

Zidbreakers.

work of COOISA ~~work~~ directed  
<sup>forwards</sup>  
~~a view~~ <sup>to</sup> resolving  
the conflict in S.A.  
~~achievement of the~~  
objectives

Working groups

2 reps 2 assets

6 backups - incl admin,  
research  
NRC / regions / allies.



Zola Dullah Allie Bridget Photo  
1pm Pres - hours

Working groups: Zola, Pius  
Int'l ~~Pres~~ - Kader  
Red ~~Photo~~  
Kader Dullah & Louis

Pres S.G. Dep. Thab. JM  
all shops ~~Bar~~ ~~Mas~~ ~~tbl~~  
Kolinat Mokalab  
Sparg COSATU

allie  
Berl  
Bridg.

.G. - Archer & Zink  
Lynl - George, Essa.

6.7 NEC  
Jan 8  
10 Jan -  
10 Feb -  
10 Mar -

About 10 in each group  
4 attend - 2 talk 2 advise

Just/second week  
in January -  
groups 3 or best  
week.

COESA 2  
- mid-March?