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AFRICAN NATIONAL CONGRESS

NATIONAL EXECUTIVE COMMITTEE

6 - 7 MAY 1992

AFRICAN NATIONAL CONGRESS
NATIONAL EXECUTIVE COMMITTEE

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SECTION A

FOR NEC DELIBERATIONS

ELECTION STRATEGY

ELECTION STRATEGY FOR A CONSTITUENT ASSEMBLY \ INTERIM LEGISLATURE

1 INTRODUCTION

- 1.1** It is urgent that we develop an election strategy. If we succeed in reaching agreement on an elected constituent assembly based on proportional representation and one person one vote, we shall have no more than a short space of a few months in which to mobilise people a) to vote and b) to vote for the ANC.
- 1.2** At the same time in order to win agreement at Codesa for an elected constituent assembly, we need to ensure that the Patriotic Front forces within Codesa are consolidated around our demands for a two phase interim government and for an elected constituent assembly. The key to getting agreement on these issues depends, firstly, on the degree to which we succeed in consolidating the Patriotic Front forces in Codesa, and the progress we make at the bilateral level with the government. We have to ensure that questions of regionalism, regional lists and a non-elected constitution making body are deprived of any potential to erode the cohesion of the Patriotic Front forces in Codesa.
- 1.3** It is our view that a proper election strategy is capable of addressing both these problems simultaneously. In this regard it is necessary that we a) define the objectives of an election strategy; b) define the social forces which need to be mobilised into the camp of democracy; c) determine the form in which the democratic forces will participate in the elections; d) develop an approach for an election platform of the democratic forces; and e) develop a perspective for the conduct of the election campaign.

2 OBJECTIVES OF AN ELECTION STRATEGY

- 2.1** We focused the content of our struggle for liberation around the central demands for national democracy. In order to achieve this goal we have sought to mobilise our people in terms of two camps: the camp of the anti-apartheid forces, and the camp of those supporting apartheid. The centrality of the ANC and its allies was the bedrock of the anti-apartheid forces.

2.2 As we move through the current and coming phase of the struggle we need to bring this same focus but centred this time around the question of democracy. On the basis of this heritage, it is important that this focus should be redirected towards the camp of democracy and the camp of anti-democratic forces. Such a refocus brings to the fore the need to win our demand for an elected constitution making body (Constituent Assembly) as well as win the forthcoming elections.

2.3 Thus, achieving a democratic system and realising democracy in practice becomes the central focus of our electoral strategy.

3 THE SOCIAL FORCES FOR DEMOCRACY

3.1 In order to maintain its power, the rulers of our country sought to divide our people on racial and ethnic lines. Along this path they created institutions aimed at enhancing such divisions.

3.2 For our part, we strove to build the unity of our people. In this process, we constantly sought to outflank the divisive tendencies that the regime tried to exploit. Accordingly, we encouraged a proliferation of organisations and structures on the basis that this would provide a range of vehicles which would enable us to reach out to our people at the grassroots level in both the urban and rural areas in order to draw them into active struggle. In other words, we saw the proliferation of these organisations as strengthening the mobilisation of the people and the leadership role of the ANC.

3.3 In terms of class forces, we recognised that the overwhelming majority of our people were the working people and those eking out a living in the rural areas. We also recognised that the system of race rule placed objective constraints on the middle strata of our population whose rightful place was in the liberation struggle. We also moved from the premise that we needed to encourage and draw anti apartheid forces within the white community into the struggle for national democracy.

3.4 In focusing on democracy, these same social forces remain the basis of our election strategy. It would be premature to think of reshaping the ANC at this stage along traditional class lines.

3.5 With regard to the proliferation of organisations which exist in our country today, our emphasis should remain a dynamic one. We should avoid a mechanical approach centred around questions which prematurely seek to determine whether an organisation should disband or continue to exist. This type of question should evolve its answers in the course of consolidation the democratic forces, building the democratic platform and establishing cohesion amongst the democratic forces in the work of the constituent assembly as well as the interim legislature. In this process some organisations may well disband or merge with the ANC; others may continue to exist by developing a closer identity with the camp of the democratic forces led by the ANC. The ANC should at all times be seen to be the force encouraging the process of national unity, lending unity to the diversity of our people, giving shape to the social compact of the diverse and contradictory social forces in our society, giving content to non-racialism and non-sexism and being the cementing agency of the democratic forces. Along this path we enhance and ensure the leadership role of the ANC.

4 IN WHAT FORM SHOULD THE DEMOCRATIC FORCES PARTICIPATE IN THE ELECTIONS?

4.1 In organisational terms, the democratic forces which we seek to mobilise under the umbrella of the ANC are spread across the structures of the ANC and its allies, viz the SACP and Cosatu. They are also to be found in the multiplicity of the organs of civil society, in trade unions that have not yet come within the fold of Cosatu, in professional organisations and business groupings, in parties which have come into existence through the bantustan and tricam system, in organisations and structures which exist amongst the traditional leaders and the religious organisations.

4.2

In addition, we need to be extremely mindful that the white community in general and the parties belonging to the white community will be under going an immense process of transformation, redefinition and realignment. Accordingly the constituency in this community will require from us a constant search for viable ways in which we can ideologically and organisationally impact upon it. Theoretically, we have always challenged the claim of white parliamentary parties to be the authentic and unique spokespersons of the white community. We are now in the phase where our assertion to be the leading force of democracy for the entire peoples of our country must find adequate organisational expression. We shall be doing so in the context where the ruling nationalist Party will be seeking to carry its white constituency and its image as the representative of the whites into a future which reaches into the black constituencies.

4.3

In practical terms four options stand out with regard to the form in which we should participate in the elections:

4.3.1

An ANC List - We could campaign in terms of a straight ANC list. Such a list would be drawn up by the leadership of the ANC in consultation with its regions. All those elected would act as a cohesive body acting in accordance with ANC decisions. All other organisations belonging to the democratic/Patriotic Front forces as well as our alliance partners would then be expected to campaign on their own with the possibilities of entering into election pacts. The additional disadvantage of this approach is that it restricts our capacity to draw in the trade unions, civics, and other organs of civil society. Our base is narrowed and the possibilities of creating a public awareness that the elections involve two camps - the camp of democracy, and the anti democratic camp - is blurred.

4.3.2

An ANC alliance list - This would widen our base but still exclude a number of forces. Furthermore, it would enable the anti-democratic forces to raise the issue of the ANC-CP alliance to the forefront of the election campaign. In this way, public perception would be focused incorrectly.

4.3.3 *An ANC pact list* - This would involve putting together a number of bilateral or multilateral pacts. The very exercise would be fraught with all sorts of inbuilt tensions. Instead of emphasis being placed on national unity and the cohesion of the democratic forces, attention would fall more on the independence of the parties involved in such pacts. Along this path the constituent assembly and interim legislature would increasingly become sites of the sort of horse trading that goes on in the House of Delegates

4.3.4 *An ANC (Democratic Front or Patriotic Front) list* - This approach could avoid the negative tendencies inherent in the idea of an ANC Pact list as outlined above. It has the potential for us to engage the entire spectrum of democratic forces into the process of developing an ANC (PF) list, as well as the election platform of the democratic forces organised under the overall leadership of the ANC. Such an approach should have the added flexibility which would give us the capacity to draw in leading individuals from our society who belong to the patriotic and democratic camp. This approach enhances our strategy to fight the elections as well as win our positions in the negotiations process around the perception that both these exercises involve a struggle between the forces of democracy and the forces against democracy.

5 GUIDELINES FOR A NATIONAL LIST

From the above it is clear that we recommend that our approach should centre around the concept of an ANC (democratic front or Patriotic Front) list. In this regard, it is important that we have a clear set of guidelines which determine the way in which we construct such a national list:

- 5.1** Through a process of consultation, the list will be put together by the ANC.
- 5.2** Our alliance partners viz. the SACP and Cosatu would be enabled to bring forth their lists and suggestions.

- 5.3** The ANC regions would be encouraged to bring forward names for such a list via a process of heightened branch and regional activities, almost akin to the US primaries.
- 5.4** The autonomous structures of the ANC, viz. the Women's League and the Youth League would engage in a similar exercise
- 5.5** We would also reach into all the individuals and structures of the democratic forces - the bantustan and tricam parties, the NIC/TIC, the civics, religious groupings, sporting and cultural bodies, teachers organisations, traditional leaders etc - in order to draw them into the process.
- 5.6** The ANC would take all these suggestions into account with a view to putting together a balanced list which would take into account regional, class, gender, as well as racial and ethnic factors.
- 5.7** Such a list would then be taken to the tripartite alliance for approval.
- 5.8** The culmination of the process would be to organise mass conferences/rallies of the PF forces where the lists would be presented for public approval.
- 5.9** In constructing the national lists, we should bear in mind that if there are for example 400 seats in the constituent assembly, then our lists will have to be structured in blocks, each block reflecting the spread of the overall list, but prioritised in such a way that the public shall have a very clear understanding that if the ANC were to win only 200 seats, then which of the 400 names would place in this first 200. If the ANC were to win 250 seats, then which of the 400 names would find a place.

DEVELOPING AN ELECTION PLATFORM

- 6.1** Essential to having an ANC (PF) list is a clear perspective for developing a common platform which would unite the democratic forces. There is every likelihood that the elections would have a twofold character - a) elections for the constituent assembly and b) such elections would simultaneously establish an interim legislature. At the same time, after a democratic constitution has been adopted, either fresh elections would have to be held in order to establish a parliament in conformity with such a constitution, or the constituent assembly/ interim legislature would become the new parliament if it is not in contradiction with the terms of the new constitution.
- 6.2** The implications of the above are that the election platform in the first place would have to be built around the work of the constituent assembly. Accordingly concrete constitutional proposals would form the key element of our platform.
- 6.3** Secondly, on the basis of ANC initiatives, the democratic forces would have to be drawn into a process whereby the second aspect of an election platform dealing with the economic and social goals of an ANC (PF) government. In this regard, the forthcoming ANC policy conference could provide an important starting point in this process not only for the ANC structures, but also for the organisations we shall be drawing into the camp of the democratic forces. In this way, we shall be initiating a process which will involve the elaboration of the election platform, the election strategy, as well as the campaigning strategy.

Naive.

[21st April 1992]

- ① Regal/natl. lists.
Creates/solves problems.
- ② Economic advancement -
natl. vision
A better life: !!
- ③ Professionalise -

CODESA DOCUMENTS

N W C

CODESA DOCUMENTS 29/04/92

1. Report on Traditional Leaders (page 1)
2. WG1; Subgroup 1 (page 2)
(political prisoners, repressive legislation,
exiles, funding of political parties, state media)
3. WG1; Subgroup 2 (page 19)
(security matters)
4. WG2 - Constitution Making Body (page 27)
5. WG2 - General Constitutional Principles (page 28)
6. WG3 - Phase I of Interim Government (page 31)
7. WG4 - TBVC States (page 36)



FINAL REPORT AND RECOMMENDATION FROM THE SUB-COMMITTEE ON THE PARTICIPATION OF THE ZULU KING AND OTHER TRADITIONAL LEADERS IN CODESA TO THE MANAGEMENT COMMITTEE ON 27 APRIL 1992

The sub-committee hereby submits its report and recommendation to the Management Committee. A summary of all oral and written submissions has been distributed to the Management Committee. A full report of all submissions has been tabled with the Chairperson.

1. The sub-committee has agreed that the Zulu King and other Traditional Leaders should have participation at Codesa. It was also agreed that there should be, in principle, no difference between the participation of the Zulu King and other Traditional Leaders.
2. The sub-committee has agreed that participation should take the form of one delegation from each of the four provinces consisting of 12 delegates and 5 advisers. The administrations would be requested to facilitate with the bringing together of the Traditional Leaders, but not to prescribe as to who should form part of the delegations.
3. For the province of the Transvaal, the sub-committee agreed that there should be equal representation from each of the 6 regions within the province. That would mean two representatives from each region and that the delegates will decide on their advisers.
4. On the form of participation, after consideration of the written and oral submissions and from discussions within the sub-committee, the following two points of view have emerged:
 - 4.1 The four delegations should have participation in Codesa in a special way. The full four delegations would participate in the plenary sessions of Codesa. They should also form themselves into a consultative advisory group with a special status to advise and intervene. The consultative advisory group would have access to all the documentation in Codesa and identify the specific issues affecting Traditional Leaders and see where they would like to make an input or an intervention within the working groups. They will have the right to participate in debate within the working groups to influence decisions and intervene where necessary on issues affecting Traditional Leaders. The four delegations would not form part of the consensus. The summary of oral and written submissions refers.
 - 4.2 The four delegations should be afforded full participation in Codesa as all other participatory parties/organisations/administrations in Codesa and would function at all levels of Codesa. The summary of oral and written submissions refers.
 - 4.3.1 The four delegations will have a right to participate in plenary sessions.
 - 4.3.2 They will have a similar right to participate in the Working Groups.
 - 4.3.3 Recognising that the traditional leaders have a vital role in guiding and unifying our people, which is made possible by standing above party politics and concentrating on the general interest of the nation, the standing rules remain with regard to reaching agreement.
 - 4.3.4 In keeping with the above, the delegations of the traditional leaders would participate in the structures of Codesa as decided by CODESA 2.

CONVENTION FOR A DEMOCRATIC SOUTH AFRICA

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DRAFT REPORT BY SUBGROUP 1 OF WORKING GROUP 1 OF CODESA ON ITS DELIBERATIONS ON ITS TERMS OF REFERENCE

27 APRIL 1992

1. THE TERMS OF REFERENCE

The Terms of Reference of SG1 are the following:

1.1 "Completing the reconciliation process"

- a) The finalisation of matters relating to the release of political prisoners and political trials
- b) The return of exiles and their families
- c) The amendment and/or repeal of any remaining laws militating against free political activity, including the elimination of all discriminatory legislation
- q) Any other matters which the Working Group may consider relevant to its brief.

The SG also agreed to discuss the matter of refugees.

2. FINALISATION OF MATTERS RELATING TO THE RELEASE OF POLITICAL PRISONERS AND POLITICAL TRIALS

2.1 The matter was extensively discussed at a SG1 meeting on 11 February 1992

2.2 The South African Government reported on progress made with the release of political prisoners since the agreements reached between the South African Government and the ANC in the Groote Schuur and Pretoria Minutes. It was reported that the South African Government and the ANC had signed an agreement on 30 June 1991 deeming that finality had been reached in the matter of political prisoners. It was further reported that bilateral mechanisms involving the South African Government and the ANC were in place and that meetings were taking place on an ongoing basis.

2.3 The ANC maintained that the issue of political prisoners remained unresolved and called for:

2.3.1 an unconditional amnesty for all remaining political prisoners;

2.3.2 a revisitation of existing bilateral agreements between the South African Government and the ANC within the context of CODESA;

2.3.3 the creation of a CODESA - structured mechanism to control and monitor the release of political prisoners;

2.3.4 the granting of permanent indemnity to all persons to whom temporary indemnity had been granted in terms of the Indemnity Act, 1991

- 2.4 The SG agreed (11/2/92) that the release of political prisoners is a priority in the completion of the reconciliation process.
- 2.5 There was support for, but not consensus on (11/2/92), for the proposal that the principle of a general amnesty should be considered.
- 2.6 The SG agreed (11/2/92) that, in view of the existing bilateral agreements between the South African Government and the ANC, the said Parties should pursue their bilateral talks relating to political prisoners and the return of exiles and report to the SG on progress made. The bilateral discussions should also deal with the matters raised in paragraph 2.3 above.
- 2.7 At subsequent meetings of the SG the South African Government and the ANC reported that discussions between them as envisaged in paragraph 2.6 were continuing and that a report will in due course be made to Working Group 1.
- 2.8 The SG further agreed (21/4/92) that, with the exception of the reports on the bilateral meetings between the South African Government and the ANC, any further discussions in SG1 on the issue of political prisoners will be conditional on submissions being received on the current existence and detention of political prisoners.

3. RETURN OF EXILES AND THEIR FAMILIES

- 3.1 This matter was not discussed in the SG except for referring it to bilateral discussions between the South African Government and the ANC - refer paragraph 2.6 above.

4. AMENDMENT AND/OR REPEAL OF ANY REMAINING LAWS MILITATING AGAINST FREE POLITICAL ACTIVITY, INCLUDING THE ELIMINATION OF ALL DISCRIMINATORY LEGISLATION.

- 4.1 The SG agreed (9/3/92) that their approach to paragraph (c) of their Terms of Reference should be the following:
- 4.1.1 Firstly, there needs to be acceptance of the principle of free political activity.
- 4.1.2 Secondly, there needs to be agreement on the definition of/ general principles underpinning/ guidelines for free political activity.
- 4.1.3 Thirdly, attention must be given to specific pieces of legislation.
- 4.2 Regarding 4.1.1 the SG reached informal consensus (9/3/92) on the following;
- 4.2.1 This SG1 of Working group 1 recognises that a climate for free political participation is an essential element of the transitional phase towards and in a democratic South Africa and
- 4.2.2 that the process of democracy requires that all participants in the political process should be free to participate peacefully in that process without fear and on an equal footing and on the basis of equality with other participants.
- 4.2.3 The South African Government and the NP expressed their reservations on paragraph

4.2.2. reserving their point of view until a full resolution dealing with principles governing free political activity was debated.

4.3 Definition of/general principles underpinning/guidelines for free political activity

4.3.1 There is general, though not formalised, consensus within the SG on the necessity to formulate a definition of or the principles underpinning free political activity

4.3.2 Various oral and written submissions on the content of such definition/principles have been made and a motion tabled.

4.3.3 The SG has not reached consensus on a definition of/general principles underpinning free political activity.

4.4. The following categories of legislative measures offending against free political activity were identified:

4.4.1 Emergency legislation:

4.4.2 Security legislation:

4.4.3 Measures affecting the funding of political Parties and organisations:

4.4.4 Measures interfering with freedom of assembly and association:

4.4.5 Measures affecting the free flow of information and access to the media.

4.5 The SG appointed a task force (9/3/92) to inquire into the reform of Emergency and Security legislation. The task forces met several times and made appropriate suggestions for consideration by the SG.

4.6 Emergency Legislation

4.6.1 The SG reached preliminary consensus (21/4/92) on the following;

4.6.1.1 A State of Emergency should only be declared on the advice of a multi-party interim executive /cabinet/interim government council.

4.6.1.2 The proclamation of a State of Emergency or an unrest area and any regulations issued in terms thereof should be objectively justiciable in a court of law on, inter alia the following grounds:

4.6.1.2.1 whether the factual situation existing at the time justify the declaration of the state of emergency or unrest area in terms of criteria laid down in the Public Safety Act, 1953;

4.6.1.2.2 whether the exigencies of the situation justify the powers conferred by regulations made in terms of the proclamation of the state of emergency or unrest area.

4.6.2 Support and opposition were expressed for the desirability of retaining the power conferred in the Public Safety Act, 1953 to declare a state of emergency retrospectively.

4.6.3 The SG discussed the desirability of including in the Public Safety Act;

- 4.6.3.1 **Extended provisions for Parliamentary control of a state of emergency;**
- 4.6.3.2 **A provision for certain non - derogable rights;**
- 4.6.3.3 **Provisions providing for certain procedural control in respect of detention without trial.**

4.6.4 **The SG agreed that delegations will refer the matters referred to in this paragraph 4.6 to their principals.**

4.7 **Security Legislation**

4.8 **Procedure**

Regarding the procedure to be followed in the repeal and/or amendment of legislative measures militating against free political activity, the SG agreed (17/2/92) that the following three options (not necessarily exhaustive or mutually exclusive) should be examined:

- 4.8.1 **separate pieces of legislation amending/repealing individual statutes or the use of a General Law Amendment Act.**
- 4.8.2 **The enactment of an Interim Bill of Rights against which offending legislation can be tested.**
- 4.8.3 **Amendment/repeal of offending legislation combined with the enactment of a statute dealing with freedom of speech, assembly and association against which any outstanding offending measures can be tested.**

4.9 **Questions**

The following written questions were tabled:

4.9.1 **ANC to the South African Government and all other Parties or organisations that support an Interim Bill of Rights (17/2/92);**

4.9.1.1 **How long will an Interim Bill of Rights be in effect?**

4.9.1.2 **Who will provide assistance to test legislation?**

4.9.1.3 **What mechanism will be used?**

4.9.1.4 **South Africa is a country without a history of a Bill of Rights, where judges have worked under a sovereign system, how will the judiciary suddenly address the issues that arise before them?**

4.9.1.5 **Who will take initiative to bring the action to invalidate the whole list of laws?**

4.9.2 **ANC to the South African Government (21/4/92);**

4.9.2.1 **Are persons who entered the territory of the Republic of South Africa originally as migrant labourers but who have since become long term residents in the Republic, as well as their offspring, ever accorded South African citizenship, or**

eligible for citizenship by naturalisation or their children by virtue of their birth?

4.9.2.2 What is the status of alien women who are married to South African citizens and the right of such women (either as migrants or permanent residents) to become South African citizens?

4.9.3 Neither 4.9.1 nor 4.9.2 has yet been replied to.

5. REFUGEES

5.1 The issue of Mozambican refugees in South Africa was raised by the Venda government. The SG agreed to discuss the matter.

5.2 The SG resolved that the Venda Government, Ximoko Progressive Party, United People's Front and Inyandza National Movement make a joint proposal to the SG regarding the position of refugees.
The following proposal was made on 23/3/92:

5.2.1 That all refugees in South Africa, the TBVC states and self governing territories be treated in accordance with international accepted standards under the auspices of the High Commissioner for Refugees.

5.2.2 That an independent body be formed by CODESA to look into the registration of all refugees in consultation with the High Commissioner for refugees.

5.2.3 That all areas where there are refugees be identified.

5.2.4 That the South African Government refrain from awarding premature citizenship to immigrants and mercenary refugees immediately.

5.2.5 That we are aware that white refugees are treated different and therefore propose that all refugees irrespective of colour or race be treated equally.

5.2.6 That we condemn in the strongest terms any deportation or repatriation of the refugees whilst the civil war is still on and before reconstruction services are rendered.

5.2.7 That we condemn any form of exploitation of the refugees by farmers and business people.

5.2.8 That we condemn in the strongest terms the alleged sale of refugees.

5.3 The SG agreed (23/3/92) that it would request the South African Government to respond to the proposal.

5.4 Questions:

The ANC posed the following questions to the South African Government on 23/3/92:

5.4.1 Whether the government is practising racism with respect to the Mozambican refugees who are black?

- 5.4.2 Is the South African Government treating the present refugees in the same way that they treated the Portuguese and white Zimbabwean refugees when those countries became independent?
- 5.4.3 Is there a difference between the South African Government's treatment of white and black refugees and immigrants?
- 5.4.4 How does the South African Government relate to the UN system that guides the treatment of refugees?

The South African government has not yet responded to the above questions.



SG1 of WG1 of CODESA reports as follows on its meeting of 27 April 1992:

1. REFUGEES

1.1 There was substantial support , within the SG for the following:

- 1.1.1 That an appeal be made to the South African government to consider:**
 - 1.1.1.1 Whether the UNHCR could play a constructive role in the resolution of the Mozambican refugee problem;**
 - 1.1.1.2 Making suitable appeals for international assistance to deal with the refugee problem;**
 - 1.1.1.3 Whether the registration of refugees would assist to ameliorate the problem in the interim period;**
 - 1.1.1.4 Investigating allegations regarding the abuse of refugees and arms smuggling by refugees**
- 1.1.2 That an appeal be made to concerned Parties and governments to make direct submissions to the South African government regarding problems experienced by them in respect of refugees and that they suggest possible solutions**
- 1.2 There was sufficient consensus within the SG that a joint task force of the South African government and other involved Parties and governments be formed to address the problem of Mozambican refugees.**

2 EMERGENCY LEGISLATION

- 2.1 The SG reached sufficient consensus on paragraph 5.3.2.1. (a) of the minutes of 21/4/92 adding the following sentence thereto : "This would only be effective once such a body has been instituted"**
- 2.2 The SG reached sufficient consensus on paragraph 5.3.2.1. (b) of the minutes 21/4/92**
- 2.3 The Parties agreed to refer paragraph 5.3.2.2 of the minutes of 21/4/92 to their principals.**
- 2.4 The SG reached sufficient consensus on paragraph 5.3.2.3 of the minutes of 21/4/92.**

3.

SECURITY LEGISLATION

The SG discussed a report by the task force on the reform of security legislation and agreed to refer the said report to principals with a view to facilitating consensus of Working Group 1

ITEM (J)

FUNDING OF POLITICAL PARTIES

REPORT S/G3 TO W/G1 - DATED 27 APRIL 1992

There is consensus that the provision of the prohibition of Foreign Financing of Political Parties Act No 51 of 1968 with regard to the receipt of foreign funds by Political Parties be suspended until a date 6 (six) months from the date of the General Election in terms of the provisions of a negotiated new constitution for South Africa.

REPORT S/G3 TO W/G1 - 27 APRIL 1992

- K) The fair access to public facilities and meeting venues
- L) The advisability of statutory provisions guaranteeing equal opportunity for all parties to establish and maintain their own means of mass communication
- P) The advisability of fair and reasonable access for political parties to all potential voters, wherever they may reside
- Q) Any other matters which the Working Group may consider relevant to its brief
- N) The fostering of a spirit of tolerance amongst political parties
- O) The role of intensive and continuous educative and informative campaigns in respect of political tolerance, the working of democracy and the processes of CODESA
- Q) Any other matters which the Working Group may consider relevant to its brief

Various submissions were received dealing with the above items.

The Subgroup was however unable to discuss these matters due to a lack of time.

ITEM (F)

POLITICAL NEUTRALITY OF UNFAIR ACCESS TO STATE CONTROLLED
STATUTARILY INSTITUTED MEDIA (PARTICULARLY TE SABC AND SATV)
INCLUDING THESE OF THE TBVC STATES

REPORT BY S/G3 TO W/G1 - DATED 27 APRIL 1992

A. INDEPENDENT BODY

1. Independent Body

There is consensus that an independent, neutral body be established to regulate the telecommunication sector.

There is also consensus that such an indepentant body be created in terms of an act of Parliament.

2. Functions

There is consensus that such an indepentant body would have at it's principle functions:

1. The regulation of the utilisation of the electromagnetic spectrum including the allocation of licenses and the determination of license condition according to an agreed set of standards.

2. The appointment of a suitable structure to monitor the proper exercise of licence conditions.

3. Powers

Myburgh shall prepare a list of all the powers from the papers submitted which such an independent body should have.

4. Name of Independent Body

To stand over.

5. Constitution of Independent Body

Qualifications of members: Members of the Independent Body shall be South-African Citizens of merits who act in the public interest.

Furthermore no board member should be an office bearer of any political organization or have a vested interest in the film and broadcasting industries, or any other conflicting interest.

Board members should divest of any economic interest in the media and/or political office. Regional, language, cultural and gender considerations need to be taken into account during the nomination process. In addition to competent and widely respected persons, account shall be taken of expertise in the following fields: News and journalistic affairs, broadcasting, education, technological, religious, business, legal, film, advertising, entertainment, culture, public relations.

6. Appointment Procedures

There is consensus, that organs of civil society be invited, inter alia by advertisement in the press, to nominate names to either Codesa or the interim structure whichever is appropriate at the time, bearing in mind the urgency of the matter, for purposes of preparing a short list of names from which the board of the independent body can be appointed.

7. Accountability and Finance

There is general agreement that the Independent Body shall be accountable to the executive of the interim constitutional authority provided that once a representative Parliament come into being such a body shall be accountable to parliament or one of its standing

committees, provided that the independens of such a
body shall not be impinged upon in any way
whatsoever.

The extent of the Independent Body accountability shall
be dependant upon of the method of financing such a body.
In this regard various methods are possible and are at
present subject to consideration.

8. Jurisdiction

No consensus. Discussion to continue.

9. Licensing procedures, conditions and standards

There is general agreement that the above matter should
be devolved upon the Independent Body.

10. SABC

As part of the negotiating process the issues

of the reconstitution of the SABC and the monitoring of its present performance should be referred to the steering committee for a recommendation to the Working Group.

11. Complaints/Disputes and Monitoring

The Independent Body shall, with Parliamentary approval by way of legislation, set up such structures as may be necessary inter alia.

1. for adjudicating disputes
2. for monitoring the efficiency of the licensee and to ascertain whether licensees comply with their licence conditions.
3. for investigating complaints and for giving effect to remedial actions.

12. Code of Conduct

The Independent Body shall lay down the standards to be complied with by licenced broadcasters (such standards could be included in a Code).

Individual Broadcasters shall compile a Code of Conduct to which they will have to comply and which could be made a condition of their licences.

REPORT OF SUBGROUP 2 WORKING GROUP 1

1. TERMS OF REFERENCE

The terms of reference of SG2 are the following:

"CONTINUING THE SECURITY AND SOCIO-ECONOMIC PROCESS"

- (d) Political intimidation
- (e) The termination of the use of military and/or violent means or the threat thereof of promoting the objectives/views of a political party or organisation
- (g) The successful implementation of the National Peace Accord
- (h) The prevention of violence-related crime and matters giving rise thereto
- (i) The composition and role of the security forces in South Africa and the TBVC states
- (m) The need for an improvement in socio-economic conditions
- (n) The fostering of a spirit of tolerance amongst political parties
- (q) Any other matters which the Working Group may consider relevant to its brief

2. The SubGroup agreed to discuss the above terms of reference under the following themes: :

- 2.1 Stability (d,g,h)
- 2.2 Security (e,i)
- 2.3 Development (m)
- 2.4 Co-Operation (n).

3. Stability.

3.1 Political Intimidation

There was consensus on the following:

3.1.1 That all political disputes between parties be resolved peacefully

3.1.2 The definition of Political Intimidation:

Any action or set of actions committed by any individual, organisation, political party, government represented at CODESA, as well as the self governing territories or any agency of such government or self governing territory, that is designed by the use or the threat of use of force or violence to disrupt or interfere with the legal rights of an individual, for instance:

3.1.2.1 Right to freedom of expression or opinion

3.1.2.2 Right of freedom of association

3.1.2.3 Right of freedom of movement

3.1.3 In particular, the following shall be considered forms of political intimidation, to :

3.1.3.1 kill, injure, apply violence to, intimidate or threaten any other person's political beliefs, words, writings or actions;

3.1.3.2 remove, disfigure, destroy, plagiarise or otherwise misrepresent any symbol or other material of any other political party or organisation;

3.1.3.3 interfere with, obstruct or threaten any other person or group travelling to or from or intending to attend, any gathering for political purposes;

3.1.3.4 seek to compel, by force or threat of force, any person to join any party or organisation, attend any meeting, make any contribution, resign from any post or office, boycott any occasion or commercial activity or withhold his or her labour or fail to perform a lawful obligation; or

3.1.3.5 obstruct or interfere with any official representative of any other political party or organisation's message to contact or address any group of people;

3.1.3.6 to possess, carry or display dangerous weapons or firearms by members of the general public when attending any political gathering, procession or meeting.

3.2 Prevention of violence related crime:

3.2.1 Consensus was reached on:

3.2.1.1 The need for government security forces to bring those responsible for the smuggling of AK 47's and other illegal weapons into the country from the neighbouring states to book as a matter of urgency.

3.2.1.2 The need for political parties to adhere to the guidelines as set out in the National Peace Accord in so far as mass action is concerned.

3.2.1.3 The need for the improvement of socio-economic conditions to curb the high crime rate.

3.2.2 Consensus was not reached on the following:

3.2.2.1 The use of the death penalty as a deterrent to criminal activity.

3.2.2.2 A call by Codesa on the lifting of sanctions as a means of improving socio-economic conditions.

3.3 The National Peace Accord

After discussion with representatives of the National Peace Secretariat and the National Peace Committee the Sub-Group adopted the following guidelines for its discussion in relation to the successful implementation of the National Peace Accord:

3.3.1 Implementation of provisions:

3.3.1.1 RDRC/LDRC including task descriptions

3.3.1.2 Justices of Peace

- 3.3.1.3 P.R.O.
- 3.3.1.4 Inclusion of tribal/Local Authorities
- 3.3.1.5 Socio-economic aspects of the NPA

3.3.2 Policing

- 3.3.2.1 Police Board
- 3.3.2.2 Special investigation units:
 - 3.3.2.2.1 Violence/Intimidation
 - 3.3.2.2.2 For police itself
- 3.3.2.3 Community participation/relations
- 3.3.2.4 Neighbourhood watch groups
- 3.3.2.5 Dangerous weapons

3.3.3 Joint Monitoring Commission

- 3.3.3.1 Formations
- 3.3.3.2 Complaints officers

3.3.4 Security Forces

- 3.3.4.1 Joint Command
- 3.3.4.2 Programmes of reorientation

3.3.5 Budget and infrastructure problems

3.3.6 Goldstone Commission

3.3.7 Co-ordination between 3 levels of NPA

3.3.8 Legal enforceability

- 3.3.8.1 Special Courts
- 3.3.8.2 Draft Bill

3.3.9 Education programmes/publicity

3.3.10 Liaison

- 3.3.10.1 NPC and organisations
- 3.3.10.2 NPA and CODESA

3.3.11 General

- 3.3.11.1 Parties participating in Codesa who are not signatories to the NPA.
- 3.3.11.2 Dealing with accusations of transgressions of the NPA by signatories.
- 3.3.11.3 Self-protection units.
- 3.3.11.4 Adherence of political parties to the code of conduct as provided for in the NPA.

4. Consensus was reached on the following:

- 4.1 Regarding the implementation of the NPA it was agreed :

- 4.1.1 That a fulltime Chairperson/officer/employee/s be appointed by consensus by each RDRC on the understanding that at least one such functionary will be appointed and that the said functionary will be remunerated for his/her services by the NPA;
- 4.1.2 That delegates to RDRC's and LDRC's who suffer financially as a result of their participation in NPA activities be reimbursed;
- 4.1.3 That organisations participating in the NPA activities be requested not to vary the appointment of delegates to RDRC's and LDRC's as this seriously inhibits the progress of the work of the NPA;
- 4.1.4 That permanent offices with appropriate staff and equipment be established in each area for which a RDRC has been formed;
- 4.1.5 That the NPS should seek to facilitate the participation of delegates on NPA structures, having special regard for the normal work commitments of delegates;
- 4.1.6 That the reference to "Business representatives" in clause 7.4.4.3 of the NPA be interpreted to include representatives from professional organisations;

4.2 Regarding Justices of the Peace it was agreed that:

- 4.2.1 In view of the current preparation of legislation to implement clause 7.5 of the NPA, we recommend that the legislation be put before parliament during its current session;
- 4.2.2 We urge all signatories to the NPA to ensure that the process of consultation required by clause 7.5.1 of the NPA to precede the appointment of Justices of the Peace, proceed expeditiously in anticipation of legislation being passed to provide for matters pertaining to the appointment, powers, etc of the Justices of the Peace;

4.3 Regarding Police Reporting Officers, as provided for in clause 3.2.4 of the NPA, it was agreed that:

- 4.3.1 All police reporting officers already nominated be appointed to their positions forthwith;
- 4.3.2 In the appointment of members of the special investigative unit appointed in terms of clause 3.2.4.1 of the NPA, sensitivity regarding the acceptability and credibility of members of the SAP be taken into account.

4.4 Regarding the inclusion of representatives of tribal authorities in the RDRC's provided for in clause 7.4.4.4, it was agreed that:

- 4.4.1 The NPA makes special efforts to include representatives of relevant local and tribal authorities into all RDRC and LDRC structures;
- 4.4.2 Special efforts be made to create an awareness of the NPA amongst tribal and local authorities.

4.5 Regarding measures to facilitate socio-economic reconstruction and development, it was agreed that:

- 4.5.1 It should be recommended to the NPA and the RDRC's that they appoint sub-committees on socio-economic reconstruction and development as a matter of urgency;
- 4.5.2 Members of such sub-committees appointed i.t.o. clause 5.7 of the NPA should not

only consist of members of the relevant RDRC, but should primarily consist of people with knowledge and expertise in the relevant fields.

4.6 Regarding the Police Board it was stated that:

- 4.6.1 The names of the proposed members of the Board have been finalised and that the Board will be appointed within the next week or two:
- 4.6.2 The Board will consist of 22 members, 11 of whom will be nominated by the NPC; 5 will be from the SAP and 6 from the police forces of the self-governing territories.
- 4.6.3 It was agreed that the Police Board, in addition to their other functions and duties:
 - 4.6.3.1 Advise on ways in which the procedures of the special units appointed in terms of 3.2.4.1 can be given greater public credibility.
 - 4.6.3.2 Advise on ways in which the credibility and support for the police in the community could be improved.
 - 4.6.3.3 That the reports by the special police investigative units appointed i.t.o. clause 3.2.2.6 which are made available to the NPC, be distributed to the relevant RDRC's and LDRC's as a matter of standard procedure.

4.7 Regarding relations between the community and the police:

- 4.7.1 It was agreed that in many areas improvement of the relationship between the community and the police can contribute towards the resolution of conflict and that all factors that create alienation between the police and communities be addressed urgently by means of inter alia:
- 4.7.2 Facilitating police/community liaison, including workshops between relevant parties:
 - 4.7.2.1 Ensuring strict adherence by all parties to the provisions of that accord.
- 4.7.3 It was recommended to the NPC that they take active steps to achieve greater support for the police and co-operation by communities in effective planning.

4.8 Regarding the recommendations of the RDRC's:

- 4.8.1 In relation to the SAP, the Venda Police Force, the Kangwane Police Force, the Gazankulu Police Force, the Kwandebele Police Force and the Lebowa Police Force, it was agreed that the RDRC's could make recommendations to the relevant police authorities as to:
 - 4.8.1.1 The selection of top police officers for township police stations:
 - 4.8.1.2 The appointment of officers commanding and members of special police investigation units established i.t.o. clause 3.2.2.6.
 - 4.8.1.3 Where circumstances permit, determining the nature of police action in conflict areas, ie. the nature of security force action, the duration of their action, the SAP and SADF mix in these actions, the timeous negotiations between the security forces and community leaders to defuse hostility, etc.

4.9 Regarding self protection units/neighbourhood watch groups as provided for in clause 3.7 of the NPA.

4.9.1 It was agreed that

4.9.1.1 we recommend to the NPA that the RDRC/LDRC's take urgent steps to encourage the formation of nonpartisan community based self protection groups/neighbourhood watch groups, as provided for in clause 3.7 of the NPA, in order to promote peace and the effective combat of crime. These self protection units/neighbourhood watch groups should work in close cooperation with the relevant police authorities.

4.9.1.2 We further recommend that the RDRC's/LDRC's should take steps to monitor the activities of such formations and to encourage cooperation between such formations and the relevant police authorities.

4.10 Regarding dangerous weapons and the possession of illegal fire-arms, it was agreed that:

4.10.1 Stronger sentences and other measures be imposed for the possession of illegal firearms and the possession, carrying and displaying dangerous weapons or other firearms in contravention of the regulations issued as provided for in 3.6.4 of the NPA.

4.10.2 The police increase their searches for illegal firearms and other dangerous weapons.

4.10.3 A record be kept of the political affiliation (if any) of persons arrested for the possession of illegal fire-arms or dangerous weapons.

4.10.4 The above should be undertaken within the context of impartial policing.

4.11 Regarding Joint Monitoring Commissions it was agreed that:

4.11.1 Regional monitoring commissions be created in each RDRC region.

4.11.2 That these monitoring commissions be constituted from amongst the parties and organisations represented on these RDRC's and/or drawn from independent, local monitoring agencies or persons.

4.11.3 That persons serving on these monitoring commissions be given the necessary training and certification to enable them to efficiently perform their functions in an impartial and objective manner.

4.11.4 That the assistance of both local and international monitoring agencies be considered in the training and development of the above-mentioned regional monitoring commissions.

4.11.5 That the functions of these regional monitoring commissions be:

(i) to monitor the compliance by NPA signatories to the codes of conduct as provided for in the Accord.

(ii) to monitor the behaviour of parties and organisations at grass roots in relation to violence.

(iii) to monitor the compliance of parties and organisations to the NPA after it has been brought to their attention that they have been in violation of the Accord.

4.11.6 Political parties and members of dispute resolution committees should refrain from making inflammatory remarks in relation to the causes of violence, and should desist from apportioning blame based on unsubstantiated evidence while such matters are under review or investigation by the commission.

4.11.7 RDRC's should facilitate liaison between political parties, the relevant police authorities and the regional monitoring commissions.

4.12 Regarding the security forces, it was agreed that this issue be dealt with in conjunction with items (e) and (i) of the terms of reference of WG1SG2.

4.13 Budget and infrastructure problems

It was agreed:

4.13.1 That Codesa calls on the international community to provide financial and other assistance to facilitate the successful implementation of the NPA.

4.13.2 That we recommend to the National Peace Secretariat that it prepares and submits a budget to government outlining the funding requirements of the peace process, as provided for in clause 6.12.5 of the NPA.

4.13.3 That we further recommend to the National Peace Secretariat to take active steps to solicit assistance from local sources in order to obtain funding for the NPA. These steps could include the holding of peace musical concerts, peace sports events, and other such activities; together with approaches to the business sector in this regard.

5. Outstanding matters for discussion:

5.1 Goldstone Commission

5.2 Co-ordination between 3 levels of NPA

5.3 Legal enforceability

5.3.1 Special Courts

5.3.2 Draft Bill

5.4 Education programmes/publicity

5.5 Liaison

5.5.1 NPC and organisations

5.5.2 NPA and CODESA

5.6 General

5.6.1 Parties participating in Codesa who are not signatories to the NPA.

5.6.2 Dealing with accusations of transgressions of the NPA by signatories.

5.6.3 Self-protection units.

5.6.4 Adherence of political parties to the code of conduct as provided for in the NPA.

6. Security

6.1 Role and the Composition of Security forces in South Africa and the TBVC states:

There was consensus on the following:

- 6.1.1 All participants at Codesa commit themselves to the peaceful settlement of political disputes.
- 6.1.2 That national security in South Africa shall be sought primarily through efforts to meet the social, political and economic needs of the people.
- 6.1.3 That the security forces in South Africa shall:
 - 6.1.3.1 be bound by the principle of constitutional supremacy.
 - 6.1.3.2 be politically non-partisan
 - 6.1.3.3 be committed to resolving conflict primarily through non-violent means
 - 6.1.3.4 respect human rights, non-racialism and democracy
 - 6.1.3.5 strive to be representative of South African society as a whole.
- 6.1.4 The need for the implementation of mechanisms that will ensure the public accountability of the security forces.
- 6.1.5 The need for the implementation of codes of conduct for the security forces, with the proviso that they would be further discussed and finalised in the future.
- 6.1.6 The need for the implementation for a programme of orientation designed with the view to improve security force - community relations, specifically with regard to the respect for human rights, non-racialism and democracy.

6.2 Matters still to be discussed after consultation with principals:

- 6.2.1 Multi-party control of the security forces.
- 6.2.2 The reconstitution of the security forces with a view to establishing new, national, legitimate and representative security forces, inclusive of SADF, MK, the security forces of the TBVC states and self-governing territories.
- 6.2.3 The termination of all operations and the use of methods by the security forces that limit free political activity.

6.3 Matters still to be discussed

- 6.3.1 The termination of the use of military and/or violent means or the threat thereof of promoting the objectives/views of a political party or organisation.
- 6.3.2 The need for an improvement in socio-economic conditions.
- 6.3.3 The fostering of a spirit of tolerance amongst political parties.

WORKING GROUP 2 STEERING COMMITTEE PROPOSAL ON CMB 27.4.92

1. Codesa shall agree to legislative instruments that would make provision for a constitution making body operating within the framework of an interim constitution.
2. Codesa shall consult governments of the self-governing states and other interested parties in the drafting of the legislative instrument / interim constitution.
3. Codesa shall agree on a set of general constitutional principles.
4. The interim constitution shall make provision for:
 - 4.1 An elected parliament with the power to:
 - 4.1.1 In terms of agreed procedures, draft a new constitution which shall not be in conflict with the general constitutional principles
 - 4.1.2 Act as an interim legislature in terms of such special majorities and general constitutional principles which may be agreed to.
 - 4.2 The composition and procedures of an interim executive.
 - 4.3 Justiciable civil and political rights during the transition.
 - 4.4 The balance between the executive, legislature and judiciary according to the principles underlying a constitutional state.
 - 4.5 Regional boundaries for the purposes of elections.
 - 4.6 Elections for the national assembly on the basis of proportional representation, half the seats being allocated through national lists and half being allocated through regional lists.
 - 4.7 Decision making on all matters relating to the constitution to be taken in general by a special majority.
 - 4.8 Decisions on matters relating to regional structures and the distribution of power between central, regional and local levels of government to require a special majority of the regional representatives in the NA in addition to a special majority of all the delegates in the NA.
5. Codesa shall agree upon special mechanisms to ensure that the NA completes the work of drafting and adopting the new constitution within a specified period of time.

AREAS OF AGREEMENT AND AREAS ON WHICH NO AGREEMENT YET EXISTS ON ASSIGNMENT 1 OF WORKING GROUP 2 PREPARED BY THE STEERING COMMITTEE 27.4.92

1. Areas of Agreement

1.1 Provisional Areas of Commonality that Already Exist

- 1.1.1 South Africa will be a united, democratic, non-racial, non-sexist, sovereign state.
- 1.1.2 The constitution shall be the supreme law.
- 1.1.3 The diversity of languages, cultures and religions will be acknowledged.
- 1.1.4 All will enjoy universally accepted human rights, freedoms and civil liberties including freedom of religion, speech and assembly.
- 1.1.5 There will be separation of powers between the legislature, the executive and the judiciary with appropriate checks and balances.
- 1.1.6 The legislative branch of government will embrace multi-party democracy, regular elections, universal adult suffrage, a common voters roll and in general proportional representation.
- 1.1.7 The judicial branch of government will include:
 - 1.1.7.1 A judiciary that will be independent, non-racial and impartial.
 - 1.1.7.2 An entrenched and justiciable Bill/Charter of Fundamental Rights.
 - 1.1.7.3 A legal system that guarantees the equality of all before the law.
- 1.1.8 All will be entitled to enjoy common South African citizenship.

(The Working Group agreed that the above areas of commonality, as well as the key issues to be addressed which were identified, were interim proposals which would be subject to amendment and additions in the course of the Working Group's work (Minutes 11.2.92). The Working Group also agreed that parties could make written proposals to the Steering Committee regarding additions to the areas of commonality and key issues to be addressed and that the Steering Committee would consider amending the documents accordingly (Minutes 17.2.92))

CODESA

Metro.

3 Reservations

Overide Metro Transfer

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STEERING COMMITTEE WORKING GROUP 2 DOCUMENT 21 APRIL

Government / Overide

X Note:

Neither

implies or rejects (Minutes 2.3.92)

1.2 The Balance Between Central, Regional and Local Government

- 1.2.1 Government shall be structured at national, regional and local levels.
- 1.2.2 At each level there shall be democratic representation.
- 1.2.3 Each level of government shall have appropriate and adequate legislative and executive powers, duties and functions that would enable each level to function effectively; such powers, duties and functions to be entrenched in the constitution.
- 1.2.4 In addition to the powers, duties and functions entrenched in the constitution, each level of government may delegate powers, duties and functions to the lower level of government.
- 1.2.5 The general principles of the constitution, including the terms of the Bill/Charter of Fundamental Rights shall apply to each level of government.

(The Working Group agreed unanimously that the principles imply that all levels of government will have fiscal powers defined in the constitution and that this agreement should be considered when the Working Group's report is drawn up for Codesa 2 (Minutes 2.3.92). At the meeting of 23 and 24.3.92, the IFP informed the Working Group that it wished to re-open discussion on this principle.)

1.3 The Participation of Political Minorities

- 1.3.1 A new constitution shall provide for effective participation of minority political parties consistent with democracy.

(Minutes 9.3.92)

(The Working Group also agreed that this principle does not imply or reject:

- * Constitutional prescription for the participation of minority political parties in any executive structure of government;
- * Simple majoritarianism;
- * Veto powers by minority political parties on any issue.)

2. Issues on Which No Agreement Yet Exists

- 2.1 Economic freedom, government intervention and economic systems.
- 2.2 Accommodation of the diversity of languages, cultures and religions.
- 2.3 Role of Traditional Leaders.
- 2.4 The Bill/Charter of Fundamental Rights including:
 - 2.4.1 Its nature and scope
 - 2.4.2 Affirmative action

① Soc-econ-workers
 ② Econ. clause
 ③ Property leaders - schools

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STEERING COMMITTEE WORKING GROUP 2 DOCUMENT 21 APRIL

2.4.3 Second generation rights

2.5 Self-determination

2.6 New items proposed, namely:

2.6.1 The role of standing committees in the formulation of legislation.

2.6.2 Government will be open, accessible and accountable.

2.6.3 Power sharing.

3. Draft Principles on 2.1 to 2.4 Above Prepared by the Steering Committee on 23.3.92

3.1 Draft principle on economic freedom, governmental intervention and economic systems:

"The constitution should provide for the promotion of the improvement in the quality of life of all South Africans by enabling economic growth, human development, social justice and equal opportunities for all "

3.2 Draft principle on the Bill/Charter of Fundamental Rights:

"There shall be a justiciable ^{enforceable} bill/charter of fundamental rights which shall ensure inter alia :

- universally accepted human rights and freedoms;
- civil liberties including freedom of religion, speech and assembly;
- the equality of all before the law;

As to personal property

- ^{a system of just and secure} property rights, provided that legislation may in the public interest authorise expropriation against payment of ^{reasonable} compensation which shall in the event of a dispute be determined by a court of law.

The constitution shall enable the implementation of measures to help address the racial and gender inequities caused by past discrimination."

3.3 Draft principle on the accommodation of the diversity of languages, cultures and religions:

"The constitution at all levels of government shall accommodate and protect the right of citizens to practice their religion, enjoy their culture and use their own language both as individuals and in association with others. This shall include the right of citizens where practicable to have their children educated in their mother tongue and the right of citizens to establish educational institutions reflecting their language, culture and religion, provided that racial discrimination may not be practised."

3.4 Draft principle on the role of traditional leaders:

"The constitution should define a suitable role for traditional leaders consistent with the objective of a united, non-racial, non-sexist, democratic South Africa."

WORKING GROUP 3

REPORT BY THE TECHNICAL COMMITTEE TO THE STEERING COMMITTEE WG3 - 27 April 1992

TERMS OF REFERENCE

1 The terms of reference of the Technical Committee were to 'take forward the exploratory discussion, addressing both details of consensus areas emerging (as per 7.10, 7.11 and 7.12) and other areas needing to be discussed to prepare the ground for future meetings of the Working Group' (Draft Minutes WG3, 6 and 7 April 1992, 7.13). Points 7.11 and 7.12 which are pertinent to this report, read as follows:

7.11 In summarising the discussions on the Transitional Executive Authority, the chairman indicated that there appears to be ~~emerging~~ consensus among delegations inter alia on points raised by J Cronin that there shall be:

- * An Interim Joint Council (variously called an Interim Government Council, a Joint Preparatory Council, etc.) which
- * Shall have executive powers, and be part of one executive structure;
- * Shall have a multi-party character;
- * Shall have as its primary purpose the levelling of the political playing field;
- * Shall have committees (or preparatory councils); and
- * Shall have various functions and powers which are subject to further negotiation.

7.12 The question of the Transitional Committees/Preparatory Councils, their functions, composition and relationship to present Government structures was discussed.

INTRODUCTION

1. The technical committee decided to focus on a model appropriate for the first stage of a two stage transition. The model is ultimately dependent upon agreement being reached in respect of stage 2.2.
2. It has already been agreed by WG3 on 2 March 1992 that there is a need for the creation of a transitional executive structure.
3. Subject to the possible consolidation of the tricameral parliament and the general/own affairs departments, there seems to be broad agreement that the existing executive and legislative structures should remain in place during stage 1.
4. During discussion, areas of agreement and disagreement were identified. These, and issues which were identified as calling for further discussion, are dealt with in this report.

BASIC POINTS OF DEPARTURE

5. There is a need for a level playing field and a climate favourable to free and fair elections and free political participation. From this flows the primary need for statutory structures to prepare for the institution of a constitution-making body/transitional government and for these structures to focus on the overarching objectives of the achievement and maintenance of a level political playing field and a climate favourable to free and fair elections and free political participation. In this regard particular areas of concern should be identified and there should be councils for the identified areas. Thereafter the tasks of each council should be described as well as the executive powers that it would require in regard to such tasks. Since the councils must always act within the law, enabling legislation may be required. It should also be possible for the councils to propose legislation.
6. It is possible that actions may be taking place or legislation considered outside the councils' defined areas of concern, which may have a negative impact on such areas. Councils should be able to identify these and to submit that such actions should not take place or legislation not be proceeded with.
7. There should be an overarching council. One of its tasks will be to familiarise itself with events and developments on the broader political scene in government and elsewhere. It will be able to intervene if something is happening elsewhere that may negatively affect the levelling of the political playing field or the ensuring of a climate favourable to free political participation, by addressing itself to the appropriate quarters.
8. The terms of reference of the overarching body should be the levelling of the playing field and the ensuring of a climate for free political participation and the conduct of free and fair elections while the individual councils should have the same terms of reference but in specific fields.

THE WAY FORWARD

9. These basic points of departure suggest that the Working Group proceed by considering the following items seriatim:
 - 9.1 The identification of the councils and/or independent commissions and their areas of responsibility.
 - 9.2 The description of the tasks of each council and/or independent commissions.
 - 9.3 The description of the powers of each council and or independent commission.

- 9.4 The composition of the overarching council, councils and/or independent commissions.
- 9.5 The description of the tasks and powers of the overarching council. 9.6 The financing and administration of the overarching council, sub-councils and independent commissions. 9.7 The method of decision-making for each of the bodies.

The following is hereby submitted to facilitate the progress of the Working Group:

THE TRANSITIONAL EXECUTIVE STRUCTURE

10. The transitional executive structure will be constituted by legislation agreed to by Codesa, will have a multi-party character and will be vested with effective executive powers. The structure will include an overarching council, herein referred to as the TEC (Transitional Executive Council).
11. The TEC will have sub-councils which will be given specific responsibilities in relation to areas of particular concern in the preparatory phase. The sub-councils will report to the TEC and their decisions will be subject to confirmation by the TEC.
12. The TEC will in addition be able to delegate powers to the sub-councils to enable them to act on their own within the scope of their delegated powers.
13. The transitional executive structure will have Cabinet status and its decisions will be binding on and implemented by the government. (In the Government's view this will only be the case if decisions are taken by consensus).
14. It has been proposed that in addition to the TEC and the sub-councils, the transitional executive structure should include an Election Commission and a Media Commission to assume responsibility for matters pertaining to the holding of free and fair elections, and to the functioning of the media during the period that the transitional executive structure is in place. These Commissions should be constituted by legislation to be approved by Codesa. They should report to but be independent of the TEC, and should be vested with powers sufficient to enable them to carry out their functions effectively, and to implement the decisions that they take. The Commissions should consist of persons of high standing from a broad cross-section of the population. The formal appointment of such persons should be made by the State President on the recommendation of the Codesa Management Committee. An alternative suggestion was that a sub-council of the TEC should be appointed to assume responsibility for elections, and that the media should only be given attention in so far as it may be of concern in elections. It was proposed that the possibility of appointing an election commission could be dealt with by the TEC and its sub-council on elections. During discussion of this issue it was suggested that it may be necessary to have both the independent Commissions and a sub-council. Another suggestion was that the Commissions should be appointed by the sub-council which would define the precise functions which they should perform.

COMPOSITION OF THE TEC AND SUB-COUNCILS

15. The TEC will be appointed by the State President on the recommendation of the Codesa Management Committee. (See paragraph 31). Should parties not presently in Codesa wish to participate in the TEC and its sub-councils, the TEC will have the power to recommend at its discretion that the TEC be enlarged to accommodate them, and in that event, the State President will make the necessary appointments. Save for agreement that the TEC must have a multi-party character, the precise criteria according to which recommendations for appointments to the TEC and the admission of new participants will be made, have not been determined. The removal and replacement of members of the TEC, 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 on the recommendation of the TEC. Alternatively, it was proposed that the Codesa Management Committee should decide whether parties

from outside Codesa should be accommodated on the TEC and should make the recommendations concerning the substitutions.

16. A sub-council will consist of a Cabinet Minister and will ordinarily have five other members who will be formally appointed by the State President on the recommendation of the TEC/Management Committee of Codesa. If the area of concern dealt with by a sub-council includes the area of activity of a department of state, the Cabinet Minister will be responsible for such a department. There may be special circumstances in which more than six members will be necessary for the proper functioning of a sub-council and the enabling legislation will make provision for this. Each member of the TEC will be a member of at least one sub-council, and it will be possible for a person to sit on more than one of the sub-councils. The TEC and its sub-councils should in total not consist of more than thirty persons.

SUB-COUNCILS AND THEIR AREAS OF RESPONSIBILITY

17. Defence and Law and Order: Sub-councils should be appointed for each of defence and law and order. These are obviously crucial areas as far as climate and levelling the playing fields are concerned. It was agreed that conclusions reached in Working Group 1 and bilaterally would be relevant to the institution and the precise powers and functions of the sub-councils.
18. Regional and Local Government: The financial arrangements between central government and regional and local authorities are complex and crucial to the finding of negotiated solutions on the questions of regionalism and local government. Regional and local government bear directly upon the day to day lives of the electorate. The granting of permission to hold meetings and the like can influence the outcome of an election. Regional boundaries may also become relevant depending upon the method of voting at the election and the provisions of any "interim constitution" that may be adopted. Local government is the site of considerable friction which has an impact upon the climate in which the election will be held. It was felt that in the circumstances there should be a sub-council for regional and local government.
19. Finance: There should be a sub-council for government finance. Its precise functions were left over for subsequent discussion.
20. Foreign Affairs: The advantages of appointing a sub-council for foreign affairs were recognised, but there was a difference of opinion as to whether the creation of such a sub-council was justified or not.
21. Sub-councils for urbanisation, housing, and economic affairs would not be able to make any meaningful impact in relation to such matters in the comparatively short period during which it is contemplated that the transitional structures will be in place, and it was accordingly not appropriate for such sub-councils to be appointed. The TEC should, however, have the capacity to become involved in negotiations and the decision-making process in relation to issues (including matters concerned with urbanisation, housing and economic affairs) which could have an impact on the levelling of the playing fields, or the creation and maintenance of a climate in which free and fair elections can be conducted. A way of accommodating this need should be devised.

POWERS OF THE TEC

22. The Government will be required to act in accordance with decisions of the TEC (its view being that such decisions should be by consensus).
23. Decisions of the sub-councils will be subject to confirmation by the TEC.
24. The TEC will have power to delegate authority to sub-councils to take decisions within the scope of the delegated authority and to implement them.

25. Provision should be made for the TEC in appropriate circumstances to give attention to matters that are relevant to the process of transition but which fall outside the area of activity of a sub-council. The TEC must also be able to call for the appointment of additional sub-councils should that prove to be necessary.

POWERS OF THE SUB-COUNCILS

26. The sub-councils will need to have the necessary powers to fulfil their responsibilities and carry out the tasks assigned to them. Until these responsibilities and tasks have been more precisely defined, it will not be possible to specify the exact powers of sub-councils.
27. The authority of the sub-councils should be obtained for the passing of new regulations or proclamations within the relevant area of responsibility. An alternative view was that this should depend on decisions taken in that regard by the TEC.
28. Members of a sub-council should have access to all information (including departmental and government records) relevant to the work of their sub-council.
29. In the defined areas of responsibility of the sub-councils one view was that the powers and discretions of ministers will be exercised only in accordance with the decisions of the sub-councils. An alternative view was that this matter is adequately covered in paragraph 22 above.

HOW DECISIONS WILL BE MADE

30. Agreement has still to be reached as to whether decisions of the TEC and the sub-councils should be taken on the basis of total consensus (unanimity) or substantial consensus (to be defined). The resolution of this issue will be facilitated by clarity on the areas of responsibility, tasks and powers of the TEC and its sub-councils.

MEETINGS OF THE TEC

31. All members of sub-councils may be present at meetings of the TEC, and should be present when matters relating to their sub-council are being discussed. Members of sub-councils who are not members of the TEC will be entitled to speak only on matters concerned with the work of their sub-council, and will not be part of the decision-making process at the TEC. An alternative view was that all members of sub-councils should be full members of the TEC.

CONCLUSION

32. The Technical Committee, despite having met on four occasions, found that as a result of time constraints, several issues remained that could not be dealt with.

WORKING GROUP 4

SECOND REPORT BY THE RAPPORTEURS - 27 APRIL 1992

INTRODUCTION

- 1 This report is an attempt to construct a proposal which might form the basis of consensus for Working Group 4. We need to emphasise three aspects at the outset:
 - 1.1 We believe that the positions put forward by the parties are so divergent that no consensus is possible unless all concerned are willing to make modifications or concessions, as is implied in any process of negotiation. It seems to us that deadlock is the only alternative to a process of mutual concessions.
 - 1.2 We have attempted to accommodate what seem to be the bottom-line positions of all concerned, and have then tried to put together a possible consensus position by suggesting adaptations on issues where there is or may be flexibility. Our proposal can only be accepted if all parties are prepared to modify their positions.
 - 1.3 This proposal does not in any way purport to represent the views of the Working Group. It comprises the views of the rapporteurs on a possible basis for consensus, as mandated by WG4 on 22 April 1992.

FOUR FUNDAMENTAL STARTING-POINTS

- 2 All parties accept that a fundamental purpose of Codesa is, as stated in the Declaration of Intent.

'to bring about an undivided South Africa with one nation sharing a common citizenship, patriotism and loyalty, pursuing amidst our diversity, freedom, equality and security for all irrespective of race, colour, sex, or creed; a country free from apartheid or any other form of discrimination or domination.'

The Bophuthatswana government is not a signatory to the Declaration of Intent, and has consistently stated that it reserves its position. This must of course be accepted and respected. However, this does not detract from the fact that the goal set out above is a fundamental goal of Codesa. The Bophuthatswana government will decide on its attitude once it sees what content is given by Codesa to these and other principles in the Declaration of Intent.

- 3 A second fundamental starting-point is contained in the terms of reference of WG4, namely that the signatories to the Declaration of Intent

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'recognise the need to provide for the meaningful and democratic participation of all the people living in the TBVC states in the process of drawing up and adopting a new constitution for South Africa as well as in all possible transitional arrangements.'

- 4 A third fundamental starting-point emerges from the discussions in WG4, as was pointed out by the Bophuthatswana government representative on 22 April: since an early meeting of WG4, what has been in issue is not the principle of re-incorporation. None of the parties objects in principle to re-incorporation. What is really in issue is this: if re-incorporation of any TBVC state is to take place, on what conditions is this to happen, at what stage is it to take place, and what will the consequences be.
- 5 A fourth fundamental starting-point emerges from the structure of Codesa itself. This is the premise of the representivity of the parties and their delegates. It has been accepted that the delegates are entitled to speak on behalf of their various constituencies.

THE DECISION WHETHER OR NOT TO RE-INCORPORATE

- 6 The decision whether or not a TBVC state should be re-incorporated - like the original decision on independence - can not be made unilaterally by the South African government. The active consent of the government of the state concerned is necessary.
- 7 As the attitudes of the TBVC governments are not identical, it follows that the decision whether or not to re-incorporate should be looked at separately in respect of each of the TBVC states.
- 8 The attitude of the RSA government is that the decision whether or not to re-incorporate is that of the government and people of the state concerned. If this approach is followed, the question in each case is:
- 8.1 what is the attitude of the government concerned? and
- 8.2 what is the attitude of the people of that state?
- 9 In two cases (Transkei and Venda), the governments concerned have already decided that re-incorporation should take place. They have further stated that in their view, the people of their state have already adequately expressed themselves in favour of re-incorporation.
- 10 The question is then whether this adequately meets the requirements for re-incorporation. This raises the question of who is to determine whether the people of a particular state want re-incorporation. Two options in this regard are:

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- 10.1 The government of a state should determine, according to means decided upon by it, whether its people have adequately expressed their wishes; or
- 10.2 The RSA government should have the right to determine whether the people of a TBVC state have adequately expressed their wishes.
- 11 In our view, the better course is for the TBVC government itself to decide what means should be used to determine whether its people have adequately expressed their wishes. We say this for the following reasons:
- 11.1 When constitutional independence was granted, the SA government left it to the government of the territory concerned to decide whether its people wanted constitutional independence. The same principle should apply here.
- 11.2 It would be constitutionally anomalous for the RSA government to decide what the people of a TBVC state really want, to attempt to implement or monitor any testing of the wishes of the people in an independent state, or to decide how their wishes should be established.
- 11.3 As pointed out above, the premise of the Codesa structure is that the TBVC governments speak on behalf of their people. There is no reason to deviate from this premise when one particular aspect - re-incorporation - is being considered.
- 12 If this view is adopted, it would remain the prerogative of any TBVC state to decide (for example) that it will not be satisfied as to the wishes of its people until a referendum has been held.

RE-INCORPORATION, CONSTITUTION-MAKING AND INTERIM GOVERNMENT

- 13 The constitution-making process is a matter which is being dealt with by WG2. It is this, more than any question of 'extension of the terms of reference', which makes problematic the proposal that a comprehensive referendum covering the RSA and the TBVC states be held on the new constitution. It would be futile for WG4 to base the entire process of re-incorporation on a comprehensive referendum if in fact no such referendum is contemplated by the Working Group which has been given direct responsibility for this matter (see in this regard WG2 term of reference 2.1.4(d)).
- 14 Indications are that WG2 is likely to agree that constitutional principles are to be settled by Codesa, and the terms of the constitution will be finalised by an elected body.
- 15 WG3 is dealing with the question of transitional arrangements or interim government. While that Working Group has not yet made its decisions, indications are that at some stage the functions of interim government will be exercised by an elected body, but that this will not happen immediately.

- 16 The proposals of WG4 with regard to the role of TBVC governments and citizens in both the constitution-making process and interim government should be harmonised with the likely results of WG2 and WG3.
- 17 With regard to the constitution-making process:
- 17.1 The TBVC governments clearly have a role in determining the principles on which a new South African constitution is to be based. This is already happening in Codesa. It can and should continue. Re-incorporation is not necessary for this to take place.
- 17.2 Once a constitution-making body has been elected to finalise the constitution, the TBVC governments will have no role in this process. The same would in fact apply to the SA government. It will be the elected representatives of the people who have this task.
- 18 With regard to interim government:
- 18.1 The question of the role of the TBVC governments in the non-elected phase of interim government or transitional authority is a matter on which WG4 should liaise with WG3. WG4 can not make its own decision without reference to WG3.
- 18.2 We suggest that WG4 should propose, at such a joint meeting, that TBVC governments should be entitled to participate in the non-elected phase of interim government. In that phase, this is the only way in which effect can be given to the terms of reference of WG4, namely that the people of the TBVC states should participate in all possible transitional arrangements.
- 18.3 Where a TBVC government elects to participate in the non-elected phase of interim government, mutuality would require that the interim government should have the same jurisdiction in that TBVC state as it has in the RSA.
- 18.4 Once an interim government or transitional authority has been elected, the TBVC government (like the RSA government) will in principle have no role in interim government. If some residual role is envisaged for existing government structures, the role of the TBVC governments will be a matter for further discussion.

RE-INCORPORATION AND CITIZENSHIP

- 19 While there is an obvious link between the questions of re-incorporation and restoration of citizenship, the two questions are not identical. The key differences are these:

- 19.1 19.1.1 Re-incorporation of any TBVC state requires the active consent of the TBVC government concerned and its people. In contrast.
- 19.1.2 Citizenship is a matter for the state concerned, and does not require any action by any other state. South Africa has already, in 1986, restored SA citizenship to a large number of TBVC citizens. The RSA Minister of Home Affairs stated that according to conservative estimates, 1,75 million TBVC citizens were entitled to South African citizenship as a result of the Restoration of South African Citizenship Act. The TBVC governments were not required to take any action, or even to give their consent, to this. Neither was any 'testing of the will' necessary. All that was required was the passing of an Act by South Africa.
- 19.2 19.2.1 Re-incorporation is a complex process, which may well take a considerable period before it is completed, as is shown by the work done by sub-groups 3 and 4. It is very likely that the process of establishing a new constitution will be well advanced before re-incorporation is completed. In contrast,
- 19.2.2 The restoration of citizenship can be speedily achieved by the enactment of South African legislation.

This difference is directly relevant to the second fundamental starting-point (paragraph 3 above). If the agreed participation by the people (as opposed to the governments) of the TBVC states in drawing up and adopting a new constitution and in transitional arrangements is to await re-incorporation, the people will be excluded from a very large part of the process.

- 19.3 There is no necessary inconsistency between the continued existence of the TBVC states, and restoration of citizenship. Dual citizenship is a well-known phenomenon, and is already common in South Africa, as a result of the Restoration of South African Citizenship Act.
- 20 If South African citizenship is now restored to TBVC citizens:
- 20.1 The people concerned will be able to participate in the constitution-making process and in transitional arrangements, as stipulated by the terms of reference; and
- 20.2 This will have no consequences for the constitutional status of the TBVC states.

All TBVC citizens will then be placed in the same position as those who have already had their citizenship restored by the Restoration of South African Citizenship Act.

- 21 At the time when constitutional independence was conferred on the TBVC states, the affected South African citizens had no choice whether or not they were to remain South African citizens. Their citizenship was removed by Act of the South African Parliament.
- 22 It would be logically consistent to restore the citizenship of TBVC citizens by a similar mechanism.

THE PRACTICAL IMPLICATIONS OF THIS APPROACH

- 23 If this approach is followed, the practical implications in general are as follows:
- 24 The TBVC governments will continue to participate in the constitution-making process, probably through Codesa, until an elected body is created to finalise the new constitution.
- 25 A constitution-making body will be elected by all South African citizens, which will include citizens of the TBVC states.
- 26 Some or all of the TBVC states will participate in the first (non-elected) phase of interim government. It is likely that only those governments which have already decided in principle in favour of re-incorporation would participate in this phase of interim government, because the interim government would also have jurisdiction in their areas. [This paragraph is entirely tentative, and depends on the outcome of the joint discussions between WG3 and WG4.]
- 27 Once an elected body has taken responsibility for interim government, a key question is the area over which the interim government will exercise authority. This would presumably include all those states which have decided upon re-incorporation. The governments concerned, like the South African government, would have to have the necessary legislation enacted to give effect to this.

THE EFFECT OF THESE PROPOSALS ON THE GOVERNMENTS AND CITIZENS OF THE TBVC STATES

- 28 The Transkei government would
- 28.1 make a formal decision to re-incorporate.
- 28.2 participate in the settling of constitutional principles.
- 28.3 participate in the first phase of interim government, which would also have jurisdiction over Transkei. [Note: Again, we assume for the sake of illustration that this would be the outcome of the discussions between WG3

and WG4. Other options are possible, and the proposals could be modified accordingly.]

28.4 participate in the elected phase of interim government

28.5 enact the necessary legislation to give effect to 28.3 and 28.4 above.

29 The Bophuthatswana government would

29.1 participate in the settling of constitutional principles. These principles would contain the basic principles and values of a new constitution, which it wishes to see before making any decision.

29.2 then decide whether it wishes to re-incorporate. Unless there is a change in its attitude, it would hold a referendum before making this decision.

29.3 decide whether to participate in the first phase and/or the elected phase of interim government, as set out in 28.3, 28.4 and 28.5 above.

30 The Venda government would participate on the same basis as Transkei [para 28].

31 The Ciskei government would

31.1 participate in the settling of constitutional principles.

31.2 decide whether, and if so when, to hold a referendum.

31.3 decide whether to participate in the first phase and/or the elected phase of interim government on the basis set out in 28.3, 28.4 and 28.5 above.

32 The citizens of the TBVC states would participate in the election of the constitution-making body, and in the election of the second phase of interim government, as prescribed in the terms of reference for WG4.

CONCLUSION

33 We submit this report as a possible basis for consensus in Working Group 4. We would be very happy to answer questions on the thinking behind this report, and to explain it further.

Rapporteurs
27 April 1992

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**PERSPECTIVES ON
CODESA II**

DRAFT INTERNAL ANC MEMORANDUM CONCERNING OUR PERSPECTIVES FOR CODESA II

1. Codesa II is scheduled to take place in exactly one month's time. During the past week we have had to take stock of where the process stands and what prospects we can hold out for Codesa II.
2. It is clear that by the time we reach Codesa 2, it will not be possible for all the substantive issues to be addressed in the Working Groups. It is therefore necessary that we ask ourselves what sort of expectations we hold for Codesa II.
3. Two possibilities arise:
 - 3.1. Either Codesa II agrees on a package of substantive agreements which unmistakably show that the process of removing white monopoly of political power and replacing it with a democratic order can be realised through those agreements; or
 - 3.2. Codesa II simply records progress reports which isolate very clearly the nature of the blockages and where the responsibility for these blockages lies. On this basis Codesa II will have to address the prospects and future of the negotiation process.
4. With regard to the first option, we need a very clear understanding amongst ourselves as to what sort of package at Codesa II would constitute substantive progress. At this stage, the following elements belong to that package:
 - 4.1. First and foremost, we need an agreement on the constitution making body. Agreement in this case must include:
 - 4.1.1. That it is an elected body based on one person one vote;
 - 4.1.2. That its tasks include drafting and adopting a democratic constitution;
 - 4.1.3. That it will be a single chamber body;
 - 4.1.4. That its decisions will not be subject to any veto or overriding powers by any other structure.

4.2. The conditions under which the elections for the above mentioned constitution making body take place are such that no single political player serves as a referee. In particular, this means that interim governing arrangements have to centre around two phases:

4.2.1. The first phase must remove the conduct and the holding of elections from the hands of the present regime. In a manner that satisfies all the parties that the elections shall be free and fair.

Amnesty for all pol. prisoners and exiles.

4.2.2. There should be substantive agreements creating a climate of free political activity. This must cover:

4.2.2.1. The removal of all legislation circumscribing and impeding free political activity. This can be attended to by a general law asserting certain basic civil and political rights combined with an omnibus law repealing all legislation impeding free political activity in general and by specific reference to particular acts.

4.2.2.2. Agreements confining the activities of the security forces in such a way that they cannot intervene or interfere with the right to free political activity and in the electoral process.

4.2.2.3. Agreements ensuring a moratorium by government on any unilateral restructuring at the socio-economic, political, security force and foreign policy levels.

4.2.2.4. Control over state media to ensure impartial and fair coverage.

4.3. Agreement on the second phase of the interim arrangements which would come into place on the basis of the elections for the constitution making body and which would enable the interim government to reflect the power relations that emerge in such an election while at the same time accommodating power sharing arrangements.

- 4.4.** Agreement restoring citizenship to all those who have been deprived of it as a result of the regime's bantustan policies. Such restoration must go together with their right to participate freely and fully in the elections for the constitution making body.
- 5.** Paragraph 4 encapsulates a package catering for all the critical elements. Without all these elements any agreements reached on parts of the package will not hang together. At the same time, we must be realistic as to the form in which and the detail with which each of these elements need to be addressed at Codesa II. It would then be possible for Codesa II to mandate Codesa III to address the outstanding issues within a specified time period. (eg a month to 6 weeks) so that we can move with the agreements reached at Codesa II to Codesa III with a clear understanding that the package itself or any elements of it would only be implemented after Codesa III. With regard to implementation of agreements exceptions would be made in the case of the removal of legislation impeding free political activity and control over state media to ensure impartial and fair coverage. These should be implemented as soon as possible after Codesa II.
- 6.** In terms of the above:
- 6.1.** We need to ensure that Codesa II has clear, in-principle and properly fleshed out agreements covering:
- 6.1.1.** The constitution making body
 - 6.1.2.** The first phase of interim governing arrangements which would ensure the holding of the elections.
 - 6.1.3.** The repeal of legislation impeding free political activity
 - 6.1.4.** The restoration of citizenship of those in the TVBC states and their right to full and free participation in the elections.
 - 6.1.5.** Control over state media
- 6.2.** This would leave a category of agreements which belong to the package but may not have been addressed in sufficient detail at Codesa II. These would require clear and tight in-principle agreements with the understanding at Codesa II that they belong to the package. This would relate to:

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- 6.2.1. Phase 2 of the interim arrangements
 - 6.2.2. The details and mechanisms ensuring that the security forces are held outside of the political processes
 - 6.2.3. The role of the international community (if it has not already been dealt with or with regard to aspects which arise later)
 - 6.2.4. The stages and steps by which these TVBC states are reincorporated.
7. In terms of the above, time frames must be set according to the content of the different phases. In the same way constitutional amendments and interim constitutional arrangements will have to be framed in terms of the phases. The life span of the transitional constitutional arrangements will thereby be defined by the each of the phases leading to the adoption of the new constitution by the constitution making body.
8. What tactics do we adopt if the above perspective is not realised at Codesa II? We are of the view that Codesa II should not be postponed; that it should be used to clearly set out our positions; isolate the regime for its refusal to measure up to its public commitments to help bring about a democratic system and its persistence in wanting to be both player and referee and imposing a white veto. We should do this in such a way as to insist that the negotiation process no longer resides under the control of the regime.

14th April, 1992.

**ANC ELECTIONS
COMMISSION**

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Report of NWC sub-committee on Elections

14th April 1992

This is a report and recommendations arising out of two meetings held by the Organising Department, the DIP and the Elections Commission as mandated by the NWC.

1. Significance of elections for the Constituent Assembly and our approach.

Elections are a key part of our people determining their own future and can be seen as the culmination of hundreds of years of struggle against colonialism and for national liberation. The elections must be seen as a contest between apartheid and democracy.

Being elections for a Constituent Assembly, people would be voting over who should draw up a new constitution. This would in fact be a more fundamental question than who should govern. In reality they would choose whether this should be a truly democratic constitution, or one that provides for something less, the retention of white privilege in one or other form.

Even if there is a period of transitional government, by consensus between parties with unequal popular support, it would be important that the electorate has spoken. It would mean that within that consensus government, the ANC would speak with the known support of a certain proportion of the population. Obviously the greater that number the more significant will be our role in the interim government and constitution making.

Equally, we need to concentrate our minds on the disastrous meaning of an electoral defeat. Let us understand very clearly what it would mean to lose an election. Let us understand that we have to win and win overwhelmingly. That is what the people want.

The key question is how do we equip ourselves to run an election campaign. The elections must be seen as our largest campaign for the attainment of political power. It therefore involves substantial organisational tasks.

We must regard the preparations for elections as urgent since the regime, knowing we need time to organise, might try and spring them on us early.

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2. Our broad organisational approach

Our broad organisational approach can be seen in three parts.

- 2.1. Firstly - how do we strengthen our organisational capacity? This becomes crucial when we discover that, according to Development Bank figures 71% of voters are concentrated in 4 regions and some of those 4 regions are our weakest. This is an indication of the work that needs to be done. These figures show our organisational weakness in relation to where our voters are.
- 2.2. Secondly, we need an integrated approach. We need to gear the whole movement for this task. The structures to guide this process must be located within ANC national and regional structures. Parallelism would undermine our organisation.
- 2.3. Thirdly the ANC's mass approach and outside input are not mutually exclusive. We must use our wealth of experience in mass struggle and infuse it with the experience of elections experts.
- 2.4. Fourthly, violence is becoming the biggest obstacle to conducting free and fair elections. The conditions under which elections have to be conducted take into account such problems as violence and lack of free political activity in many parts of the country. Therefore the removal of this impediment must feature prominently in our work in Codesa and in our mass action.

3. Phases of election strategy

Work for the elections falls into two phases. The first phase can be seen as the preparatory phase and the second phase is the running of the Campaign itself.

3.1. The preparatory phase

This phase has the following elements. These elements are not listed in sequence or in order of importance. They should not be mechanically separated but blended into each other and intertwined. They should run concurrently as part of the preparatory process.

The first element is that of sensitising the mass of our people to the issue of elections generally. We need to put the issue of elections on the agenda and raise it wherever we find ourselves. We need to start talking about it everywhere so that our people get used to the idea that elections are coming and that it involves them. This should not be confined to the ANC alone. The concept of elections needs to spread to the four corners of our country. It must be taken there by the church, by the trade unions and by all the organs of civil society. This part of the preparatory work is not about telling people to vote for the ANC. It is about telling people about exercising their democratic right and the

importance of voting in general.

The second element deals with information gathering. One aspect of this is the identification of constituencies and target groups. A base line poll is necessary in this phase if factual evidence and not sentiment is going to determine what course of action we take. Another aspect is information that needs to be gathered at regional and branch level about our constituencies. What are the issues that concern are people (in order of priorities), what languages are spoken in our areas (for the production of propaganda), can most of the people in our locality read or do we need to produce visual material etc. etc. This information will be vital to our message getting across to our people and must be gathered and processed systematically.

The third element is voter education. This should include voter identification as well as registration. Our people must learn to participate in the democratic process in a way that is completely new to them. How do you vote, how do you select a candidate, what is a candidate, what identification will they need to register etc. etc.

The fourth element in this preparatory phase is that of training our cadres to organise and prepare our people in this new context.

As many of our cadres should be used in this preparatory phase as possible enabling voters to get used to them so that when we mount the actual ANC campaign, the public know those faces and trust them and therefore identify with the ANC.

Voter educational material should be prepared for this phase with an emphasis on visuals.

3.2. The second phase - the ANC election campaign

This phase is the implementation of the election campaign. It has its own phases and plan.

4. Political message

This is key to the whole campaign and needs to be discussed fully. A small group has been set up to make proposals for a structured discussion on this.

5. Structures

5.1. Electoral Commission

The Commission's tasks are to strategise on broad political and organisational approaches to the elections and to share regional and sectoral experiences.

The Electoral Commission should be composed of:

- * 5 NEC members, 2 of whom are NWC assigned to full time electoral work
- * a secretariat of 3 people
- * Fourteen representatives from the regions
- * reps from:
 - DIP - TGO
 - Organising
 - Legal and Constitutional
 - Land Commission
 - Negotiations Commission
 - DAC
 - Public Relations
 - Women's League
 - Youth League
 - Cosatu
 - SACP

N.B. Guidance on how ANC/SACP alliance is going to handle the elections will determine where the SACP features in our structures.

5.2. Head Office Planning Committee

The Planning Committee deals with operational strategy. It must plan the unfolding of the campaign. It must supervise the work of the management structure (see below). This committee should be easy to convene and strategically powerful. It should be composed of:

- * NWC/NEC (as above)
- * reps from:
 - * Secretariat
 - * Organising Department
 - * DIP
 - * YL
 - * WL
 - * TGO
 - * Negotiations Commission

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* Legal and Constitutional

* Cosatu

5.3. Management Structure

This full time committee would see to the implementation of the campaign. It should be headed by two NWC members working with the elections commission secretariat.

5.4. Electoral Forum

This should be made up of the Election Commission, structures of civil society and our allies in the broad Patriotic Front. The function of this forum is to enable us to mobilise outside of our ranks in order to reach as wide an audience as possible and to ensure immediate co-ordination among our patriotic front allies.

6. Opinion polls

Opinion polls are central to an election campaign. Polls should be conducted throughout the campaign until the eve of the election. The first one should take place immediately to find out the views and attitudes towards the ANC. It should be conducted nationally amongst the various population groups and sectors.

A small group has been set up to find out who could best conduct this poll and how it could be funded.

6. Funding

Funding and the provision of resources will be crucial. A small group was mandated to find out from TGO what funds have already been provided for the elections, voter education etc. and who is managing those funds.

Technical - publicity.

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