

23



WORKING GROUP 1  
SUBGROUP 3  
INTERNAL SUBMISSIONS  
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●  
CONVENTION FOR A DEMOCRATIC SOUTH AFRICA

●  
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## RAPPORT

On points of agreement and points of disagreement on:

Item (f)

Political neutrality of and fair access to State controlled/statutorily instituted media (particularly the SABC and SATV) including those of the TBVC states.

### 1. **PRINCIPLES**

There is no absolute consensus on the proposals. It would, however, appear that after further deliberations and clarification of certain terms and concepts and with the necessary modification to the principles put forward by a number of the parties, consensus on these principles can be reached.

The principles as proposed by the various parties can be found in the following submissions:

SA Government

: Position Paper on the regulation of the electronic media 02-03-92. See par. 1.2 and 1.3.

- SA Government : Stand Point on political neutrality of and fair access to State controlled/statutorily instituted media (particularly the SABC and SATV) including those of the TBVC states. See par. 1, 2, 3, 4 (b), 5, 6 (a), p. 4, par. (b).
- African National Congress : Media Structures in the interim. See par. 4 - 8.
- Democratic Party : Principles for an independent broadcasting regulatory authority to open access and ensure fairness. See p. 3 and 7.
- Dikwantkwetla Party : Creation of a climate for free political participation. See par. 1.1.4 (f).

- Inyandza National Movement : Submission on intensive and continuous educative and information campaigns in respect of political tolerance. See p. 2, par. 2.
- Labour Party : Letter from Bell, Dewar and Hall. See annexure p. 1, par. 3.
- United Peoples' Front : Submission. Re Par. (f).
- Solidarity Party : Creating a culture and popularity for free political participation . See lines 2/3, 7/8, 13/14, 21/22 and 23.
- Venda : Are there any statutory provisions which prevent any political party from establishing and continuing this with means of mass communication and from

exercising press freedom, or from enjoying access to established print media in Venda?

## 2. STRUCTURES

### (a) Independent Body

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

### (b) Should such a body be a permanent or an interim body?

No consensus has been reached on this question.

### (c) Functions, duties and powers of such a body

No consensus has been reached on the functions, duties and powers which such an independent body should have.

With regard to the various proposals relating to the functions and duties of such a body, see the following position papers:

- (i) African National Congress : See par. 10.1.2 and 10.1.3.

- (ii) Democratic Party : See p. 2 (Radio regulation), p. 4  
(Fines and/or loss of licence).
- (iii) Transkei : See p. 2, par. 4 (c) (d) and par. 5.
- (iv) SA Government (standpoint): Page 3, par. c.

As the documents which have a bearing on the questions of the functions and the duties of an independent body were only submitted at the most recent meeting of this sub-group, the questions of functions and duties have not been discussed in full and all the parties have not as yet had an opportunity to react thereto. No doubt further papers will deal with this issue.

- (d) **Name of independent body. The following names for such a body have been suggested:**

Independent Communications Authority / SA Communications Authority

The Commission for Telecommunication

(e) **Constitution of independent body**

No consensus has as yet been reached on the composition and constitution of such an independent body.

Democratic Party : Page 5

Dikwankwetla Party : Par. 1.1.4 (f)

African National Congress: Par. 10.1.1

Transkei : Page 3, par. 7

The question of the composition of the constitution of such an independent body has not yet been debated fully and further position papers on this aspect will no doubt be submitted once the character and the purpose of such an independent body have been agreed upon.



(f) **Appointment procedures**

No consensus has been reached on this aspect for the reasons set out in par. (e) above. Cognisance should, however, be taken of the following submissions thus far:

Transkei : Par. 7

Democratic Party : Page 6

(g) **Accountability**

This aspect has not yet been discussed by the parties.

See SA Government's document on questions asked, par. 1 (c) and 2.

(h) **Finance**

The financing of such an independent body has also not yet been discussed.

Democratic Party : Page 6

(i) **Staffing**

The staffing of such an independent body has not yet been discussed.

(j) **Licensing procedures, conditions and standards**

Accept for some of the broad principles referred to in par. 1 above, this aspect has yet not been canvassed fully. See however:

SA Government (position) : Par. 3.1, 3.5.

SA Government (standpoint) : Page 5, par. 1

**3. SABC BOARD AND OTHER BOARDS**

No consensus has been reached regarding the restructuring of the SABC Board.

SA Government (questions) : Page 3, ultimate par. on page 2.

African National Congress : Par. 9.2.2

Democratic Party : Page 1, par. 2

Venda (Statutory Provisions) : See par. 1 and ultimate par. under heading "electronic media".

|                          |   |                         |
|--------------------------|---|-------------------------|
| SA Government (Position) | : | Par. 5.                 |
| Dikwantkwetla Party      | : | Par. 1.1.4 (f).         |
| Transkei                 | : | Par. 4 (b).             |
| United Peoples' Front    | : | Page 1 (f)              |
| Solidarity Party         | : | Par. 3.                 |
| Labour Party             | : | Annexure, p. 2, par. 1. |

#### 4. MEDIA COMMISSION

No consensus reached on this issue.

|                           |   |        |
|---------------------------|---|--------|
| African National Congress | : | Par. 9 |
|---------------------------|---|--------|

**5. MEDIA COUNCIL (RE-STRUCTURED)**

No consensus reached.

SA Government (standpoint) : Page 5, par. 2, par. 6 (a)

SA Government (questions) : Par. 3

SA Government (position) : Par. 1.4

**6. COMPLAINTS TRIBUNAL / OMBUDSMAN**

No consensus has been reached.

Transkei : Par. 9

SA Government (position) : Par. 4

Venda : Par. 5 under par. (f)

Democratic Party : Par. 3

**7. MONITORING**

No consensus has been reached. It should be noted that all political parties are at liberty to monitor any broadcasting.

Labour Party : Par. 3

African National Congress : Par. 12

Transkei : Par. 6

**8. CODE OF CONDUCT**

No consensus was reached on this question.

SA Government (standpoint) : Page 5, par. 1

SA Government (questions) : Par. 3

SA Government (position) : Par. 5

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LABOUR PARTY  
OF  
SOUTH AFRICA

SUBMISSION TO CODESA WORKING GROUP 1 (SUBGROUP 3)

LP's STANCE ON FREEDOM  
OF THE  
AIRWAVES  
IN  
SOUTH AFRICA

POLITICAL FREEDOM in South Africa

is intimately involved with broadcasting and, to ensure

an unbiased system, the issue of future

IMPARTIALITY AND NEUTRALITY

of the electronic media

need to be addressed on the basis of the following principles.

**A. LEVEL IN THE BROADCASTING SYSTEM**

The L.P. accepts the following levels in a future broadcasting system:

Public Service Broadcasting  
Commercial Broadcasting and  
Community Broadcasting

**B. PRINCIPLES OF A FUTURE BROADCASTING SYSTEM**

1. The core of the broadcasting system shall be the public broadcasting system which is required to set genre standards.
2. The broadcasting system shall remain accountable to the broad society and not to its sources of funding.
3. Having regard to defective systems in the past, as well as the multicultural nature of South Africa, the broadcasting system shall be responsible for popular entertainment, unbiased information and for educational programming.
4. Local content material shall be included initially on a reasonable basis and thereafter be upgraded progressively.
5. The broadcasting of news and actuality programmes shall be fair, impartial and balanced at all times, and for the purpose of monitoring, at least three independent structures shall be appointed to undertake such activities.
6. An Independent Broadcasting Authority shall be called into life by way of statute and have such compositions, powers, functions and duties as may be agreed upon by Codesa.
7. All broadcasting shall adhere to a Code of Conduct and ensure fair, open and impartial reporting.
8. Education broadcasting shall be developed by way of a channel or channels specifically devoted thereto.

9. The question of training of personnel in broadcasting and other journalistic/video/film skill shall be prioritised into worthwhile strategies to give urgency and immediacy of the democratic processes.
10. In the area of language the policy in broadcasting shall be consistent with the national language policy.

-END-



**A PAPER FOR DISCUSSION**

**SUBMITTED TO CODESA WORKGROUP 1 - SUBGROUP 3 BY THE RELEVANT DEPARTMENTS ON THE REGULATION OF TELECOMMUNICATIONS, INCLUDING THE ELECTRONIC MEDIA**

1. Introduction:

1.1. At the meeting of Codesa on 2 March 1992 consensus was reached that a permanent commission ("Commission"), politically neutral and independent should be established by an Act of Parliament to regulate the whole of the telecommunication sector, including sound and television broadcasting services, in a manner conducive to serving in a democratic manner, the public interest of all people in Southern Africa at community, regional and national level. In the pursuit of its mission, the Commission for telecommunication would pay special attention to the educational and enlightenment needs of all communities.

1.2. The consensus that all telecommunication services shall forthwith be regulated by one competent neutral body, has not been reached too soon. Communication technology is transforming the world into a global village. Telecommunication is playing a vital role in this process. Today we are in immediate reach of even the remote areas of the world with some form of telecommunication.

1.3. The purpose of this chapter is to put forward salient features regarding -

- a. the composition, appointment, structure, duties, functions, powers, procedures and accountability of the Commission; and
- b. a proposed complaints tribunal to adjudicate on inter alia alleged bias and unfairness in the
  - (i) presentation of news and actuality programmes
  - (ii) access allowed to interest groups, opinion formers and political parties.

1.4. A list of definitions used in this Paper is set out in annexure "A".

1.5. The proposed licensing function of the Commission with regard to broadcasting is explained in more detail in Chapter II.

At the outset a clear distinction must be drawn of the role of the Commission as a policy making and regulating body in juxtaposition to the managerial, editorial and financial policies of the management of the public service broadcaster and other licencees.

## 2. Composition and appointment of the Commission:

2.1. The Commission would often have to deal with very complex and highly specialised matters which may have a major impact on the development of our country and its people, especially in the areas of politics, technology, education, security and economics. In fact the networks of satellites, radio, cable and electronic tele-information systems have become the mainstay of business, transport, government, national economies and almost all other geo-human endeavours.

It is crucial to our planning for the future and our adjustment to current problems and needs. The major powers are spending billions of dollar a year to improve the speed, capacity, adaptability and reliability of their telecommunication infrastructures which, have, with the available sophisticated computerised attachments, become one of their most critical national assets.

2.2. To ensure adequate broadcasting and other telecommunication services in Southern Africa, the envisaged Commission for Telecommunication will be faced with a mammoth assignment to engineer a viable adaption to the increasing exacting communication and information demands. The commissioners should therefore be persons of high standing with sufficient experience and functional expertise to direct and regulate viable research and development and timeous adaption. They should not be involved in politics or the State administration or have any vested interests in the industry

or related industries. Furthermore it is suggested that the Commission should consist of not less than five persons complementing each other in the appropriate areas and having the support of a highly qualified and motivated staff, structured along the lines of the different regulatory functions.

The Commissioners should, like judges, be appointed by the State President. To assist in the protection of their neutrality and independence, they should be appointed (and be re-appointable) for terms of up to five years at a time, and if appointments are not renewed, adequate special pension arrangements should apply.

### 3. Duties and Functions:

3.1. It shall be the duty of the Commission

- (a) to discharge its functions in a manner which it considers is best calculated -
  - (i) to ensure that a wide range of telecommunication services are available throughout South Africa
  - (iii) to ensure fair and effective competition in the provision of such services and related services;
  - (iii) to ensure fair and equitable opportunity to opinion formers to express their views freely;

- (iv) to ensure optimum affordable research and development with a view to improve the utilisation for the available electromagnetic spectrum and to introduce new technologies to improve signal quality; and

3.2. The Commission shall have the following functions:

- (a) The regulation (as put forward by the Minister) of the electromagnetic frequency spectrum by inter alia -
- (i) planning and co-ordinating spectrum usage;
  - (ii) assigning/allocating all frequencies and licensing the use of radio transmitting apparatus;
  - (iii) monitoring of spectrum usage;
  - (iv) specifying technical standards to ensure safety, quality, conformity and efficiency;
  - (v) representing South Africa on international spectrum regulatory bodies such as ITU, CCIF, IFRB etc.
- (b) Regulating of broadcasting and related telecommunications to the public by inter alia -
- (i) ensuring independent viable management-funding;

(ii) determining (having due regard to the public interest) licensing conditions and codes relating to programme content and other related telecommunications directed at the public;

(iii) issuing, amending and revoking broadcasting and related licences, permits and related regulatory instruments;

(iv) objective monitoring of adherence to licensing conditions and codes.

(v) resolving disputes and arbitrating between broadcasters;



(vi) Creation of bodies to ensure adherence to monitoring, broadcasting licence conditions and codes.

(vii) Ensuring that a licensed broadcaster properly discounts in its policy management and monitoring:

- the state of public opinion concerning programmes included in licensed services; and

- any effects of such programmes on the attitudes or behavior of viewers, listeners and subscribers.

(c) The regulation of other telecommunication services, including telecommunication lines and attachments thereto by inter alia -

(i) regulating Telecom's service (e.g. quality of service, tariffs);

(ii) licensing such telecommunication services, including lines and attachments;

(iii) promoting infrastructure and service expansion;

(iv) specifying technical standards to ensure network quality, safety and the efficient use of resources;

(v) monitoring licences and network operation.

(d) The promotion of relevant research and development.

In this regard the Commission will have to keep track with -

(i) the viability of new technologies for improved exploitation of the electromagnetic spectrum and the development of telecommunication services; and

(ii) the latest developments in any related field of research.

#### 4. Powers of the Commission for Telecommunication:



4.1. The Commission shall within the confines of its mandate be empowered by statute to licence or permit the rendering of all types of telecommunication services, subject to such conditions, standards, norms and codes as may be negotiated with interested parties, which they may consider necessary to exploit in a democratic manner, the electromagnetic frequency spectrum as well as the relevant terrestrial and spatial telecommunications technology.

4.2. A licence may include for a telecommunications service, conditions requiring the payment by the licence holder to the Commission (whether on the grant of a licence or at such times thereafter as may be determined by or under the licence, or both) of a fee or fees of an amount or amounts so determined, within statutory confines.

5. Procedures:

5.1. The Commission will follow procedures which are fair and in accordance with the principles of natural justice, properly balanced for expediency and the privacy of individuals and organisations.

5.2. In particular such procedures shall include provisions

- (a) requiring the publication of applications and the lodging of objections;
- (b) making the audi alteram partem principle applicable;

- (c) obliging the commissioners to give reasons for all decisions.

6. Accountability:

The Commission shall -

- (a) exercise its powers and perform its duties within the framework of the enabling legislation, policy and other directives approved of by parliament;
- (b) annually submit a budget to parliament for approval;
- (c) annually make a report to parliament on its activities;
- (d) annually table its financial statements and the auditor's report in parliament and which could be the subject matter for a standing committee of parliament;
- (e) be obliged to submit certain major decisions of national importance for the approval of parliament (e.g. the issuing of additional television licences, provision of channels and frequencies, the substitution of the PAL-standard and decisions affecting Telkom SA's position in certain defined areas).

7. Interim period: A tribunal to adjudicate on complaints and the role of the Media Council:

Some notes have already been submitted on these items. Further elaboration is to follow;

8. Since the Postmaster-General is seized with considerable powers in relation to licences, and since his powers will in future evolve upon the Commission, due consideration will have to be given to the question as to the nature of the Commission's powers in relation to those of the management of a broadcasting service, to ensure adherence to licensing conditions.

**DRAFT GENERAL PROVISIONS ABOUT LICENSED TELECOMMUNICATION  
SERVICES**

CHAPTER I: - FOR DISCUSSION

DRAFT GENERAL PROVISIONS ABOUT LICENSED TELECOMMUNICATION SERVICES:

In this chapter due note has been taken of British and EC-Countries regulatory measures - also to ensure good communication in the "global village". Where reference is made to the Commission in any executive capacity, it will have to entail and involve support institutions such as monitoring bodies, a complaints tribunal, the media council and the independent management of a broadcasting service. An allocation of duties and functions may have to be negotiated with special reference and due regard to the vested positions of existing broadcasters.

1. The Commission for Telecommunication (Commission) shall do all that they can to ensure that every licensed service complies with the following requirements, namely-
  - (a) that nothing is included in broadcast programmes or other services which offend against good taste or decency or is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling or is likely to be otherwise undesirable in terms of Section 47(2) of the Publications, Act 42 of 1974;
  - (b) that any news given (in whatever form) in its programmes is presented with due accuracy, neutrality and impartiality;
  - (c) that due impartiality is preserved on the part of the person

providing the service as respects matters of political or industrial controversy or relating to current public policy;

(d) that due responsibility is exercised with respect to the content of any of its programmes which are religious programmes, and that in particular any such programmes do not involve-

(i) any improper exploitation of any susceptibilities of those watching the programmes, or

(ii) any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination; and

(e) that its programmes do not include any technical device which, by using images of very brief duration or by any other means, exploits the possibility of conveying a message to, or otherwise influencing the minds of, persons watching the programmes without their being aware, or fully aware, of what has occurred.

2. In applying subclause (1) (c) a series of programmes may be considered as a whole.

3. The Commission shall-

(a) draw up, negotiate with interest parties, and from time to time review, a set of standards and relate it to acceptable codes giving guidance as to the rules to be observed in connection with the application of subclause (1) in relation to licensed services;

(b) do all that they can to secure that the provisions of the set of standards are observed in the provision of licensed services;

4. Without prejudice to the generality of subclause (1), the Commission shall do all that they can to secure that political parties are afforded fair equitable access to prime time broadcast programmes.

5. The rules specified in the set of standards referred to in subclause (3) shall, in particular, take account of the following matters-

(a) that due neutrality should be preserved on the part of person providing a licensed service as respects major matters falling within subclause (1) (c) as well as matters falling within that provision taken as a whole; and

(b) the need to determine what constitutes a series of broadcast programmes for the purposes of subclause (2).

6. The rules so specified shall, in addition, indicate to such extent as the Commission consider appropriate-

- (a) what due impartiality does and does not require, either generally or in relation to particular circumstances;
- (b) the ways in which due impartiality may be achieved in connection with broadcast programmes of particular descriptions;
- (c) the period within which a broadcast programme should be included in a licensed service if its inclusion is intended to secure that due impartiality is achieved for the purpose of subclause (1) (c) in connection with that programme and any broadcast programme previously included in that service taken together; and
- (d) in relation to any inclusion in a licensed service of a series of broadcast programmes which is of a description specified in the rules-
  - (i) that the dates and times of the other broadcast programmes comprised in the series should be announced at the time when the first programme so comprised is included in that service, or



(ii) if that is not practicable, that advance notice should be given by other means of subsequent broadcast programmes so comprised which include material intended to secure, or assist in securing, that due impartiality is achieved in connection with the series as a whole; and those rules shall, in particular, indicate that due impartiality does not require absolute neutrality on every issue or detachment from fundamental democratic principles.

7. The Commission shall publish the set of standards drawn up under subclause (3), and every revision of it, in such manner as they consider appropriate.

GENERAL PROGRAMME STANDARDS FOR LICENCED PROGRAMME SERVICES:

2.-(1) The Commission shall draw up, negotiate with interest parties and from time to time review, broadcast programme standards specifying-

- (a) as to violence and sex, to be observed with respect to the showing of violence or sex, or the inclusion of sounds suggestive of violence or sex, in programmes included in licensed services particularly when large numbers of children and young persons may be expected to be watching the programmes;
- (b) in regard to appeals for donations, the rules to be observed with respect to the inclusion in broadcast

programmes and adverts of appeals for donations;

(c) advertising and sponsorship rules, as to such other matters concerning standards and practice for such programmes as the Commission may consider advisable for inclusion in programme standards and licence conditions, and the Commission shall do all that they can to secure that the provisions of the programmes standards and licence conditions are observed in the provision of licensed services.

(2) In considering what other matters ought to be included in the programme standards and licence conditions in pursuance of (1)(c), the Commission shall have special regard to programmes included in licensed services in circumstances such that large numbers of children and young persons may be expected to be watching the programmes.

(3) The Commission shall, in drawing up or revising the standards under this clause, take account of such of the international obligations of the Republic as the International Telecommunications Union or the Department of Foreign Affairs, may notify to them for the purpose of this subclause.

(4) The Commission shall publish the set of broadcast programme standards drawn up under this clause, and every revision of it, in such manner as they consider appropriate.

## MONITORING BY COMMISSION OF PROGRAMMES INCLUDED IN LICENSED SERVICES

3.- (1) For the purpose of maintaining supervision over the programmes included in licensed services the Commission may make and use recordings of those programmes or any part of them.

(2) A licence shall include conditions requiring the licence holder-

(a) to retain, for a period not exceeding 90 days, a recording of every programme included in the licensed service;

(b) at the request of the Commission, to produce to them any such recording for examination or reproduction;

(c) at the request of the Commission, to produce to them any script or transcript of a programme included in the licensed service which he is able to produce to them.

1. Nothing in this paper shall be construed as requiring the Commission, in the discharge of their duties as respects licensed service and the programmes included in them, to view such programmes in advance of their being included in such services.

## LICENCING OF NATIONWIDE, REGIONAL, LOCAL AND COMMUNITY BROADCASTING AND RELATED TELECOMMUNICATION SERVICES:

4. The Broadcasting Act, No 73 of 1976 and the Radio Act, No 3 of 1952 as well as other relevant provisions in other acts will

appropriately amended. All licenced broadcasters, including the SABC, will be subject to the regulatory provisions administered by the Commission.

APPLICATION FOR BROADCAST LICENCES:

5. (1) Where the Commission, after due viability studies and research as well as Parliamentary approval, decide to provide a new television channel licence, or a radio programme service licence, they shall publish, in such manner as they consider appropriate, a notice-
- (a) stating that they propose to grant such a licence;
  - (b) specifying-
    - (i) the community, local or regional area in the Republic or other regulated area for which the service is to be provided, if it is not a nationwide service.
    - (ii) if the service is to include the provision of different programmes for the different parts of that area, or (as the case may be) the different communities living within it, for which such programmes are to be provided,

- (iii) if the service is to be provided only for specific periods, the times of the day or the days of the week (or both) between or on which it is to be provided, and
  - (iv) if the service is to be a television channel service, the areas in the Republic for which it is to be provided and the times of the day between which it is to be provided;
- (c) inviting applications for the licence and specifying the closing date for such applications, and
- (d) specifying-
- (i) the fee that would be payable on any application made in pursuance of the notice, and
  - (ii) the percentage of qualifying revenue for each accounting period that would be payable by an applicant if he were granted the licence.
- (e) specifying a date on which the Commission will consider the applications.
- (2) The Commission shall, when publishing a notice under subclause (1), publish with the notice general guidance to applicants for the licence in question which contains examples of the kinds of

programme whose inclusion in the service proposed by any such applicant under subclause (3) (b) would be likely to result in a finding by the Commission that the service would comply with the requirements specified.

(3) Any application made in pursuance of a notice under this clause must be in writing and accompanied by the fee specified in the notice and any other information on the form specified by the Commission.

(4) The Commission shall, as soon as reasonably practicable after the date specified in a notice under this clause as the closing date for applications, publish in such a manner as they consider appropriate-

(a) The following matter, namely-

(i) the name of every person who has made an application to them in pursuance of the notice,

(ii) the proposals submitted by him under subclause (3) (b), and

(iii) such other information connected with his application as the Commission consider appropriate; and

(b) a notice-

(i) inviting representations to be made to them with respect of any matters published by them in accordance with paragraph (a) (ii) and (iii) above, and

(ii) specifying the manner in which, and the time by which,

any such representations are to be so made.

6. (1) Procedure to be followed by Commission in connection with consideration of application for licences will be prescribed.

(2) Where the service to be provided under the licence is a television channel service, the requirements referred to in subclause (1) (a) would include-

- (a) that a sufficient amount of time is given in the programmes included in the service to news programmes and current affairs programmes which (in each case) are of high quality and deal with both national and international matters, and that such news programmes are broadcast at intervals throughout the period for which the service is provided and, in particular, at peak viewing times;
- (b) that a sufficient amount of time is given in the programmes so included



- (c) that a sufficient amount of time is given in the programmes included in the service to religious programmes and programmes intended for children;
- (d) that (taken as a whole) the programmes so included are calculated to appeal to a wide variety of tastes and interests;
- (e) that a proper proportion of the matter included in those programmes is of Southern Africa origin; and
- (f) that in each year or other specified period not less than 30 per cent of the total amount of time allocated to the broadcasting of qualifying programmes in the service is allocated to the broadcasting of a range and diversity of local productions of which a fair percentage must be independent local productions.

DURATION AND RENEWAL OF LICENCES:

7. (1) A television channel licence shall continue for a period of ten years, and may be renewed on one or more occasions for a period of ten years beginning with the date of renewal.

(2) A sound broadcast licence shall continue for a period determined by the Commission but not exceeding seven years and may be renewed for further periods not exceeding 7 years

at a time.

(3) Other telecommunications licences shall continue for such periods as are determined by the Commission for each category and may be renewed.

PROVISION OF NEWS PROGRAMMES:

8. (1) Any broadcasting programme service licence may include conditions requiring the licence holder-

(a) to broadcast in the licensed service, in encoded or unencoded form news programmes of high quality dealing with national and international matters;

(b) to broadcast such programmes in that service at intervals throughout the period for which the service is provided, and in particular at peak viewing times, and may be publish a standard giving effect to paragraph 1 (b).

PARTY POLITICAL BROADCASTS:

9. (1) Subject to subclause (2). A broadcasting programme service licence shall include-
- (a) conditions requiring the licence holder to include party political broadcasts in the licensed service; and
  - (b) conditions requiring the licence holder to observe such rules with respect to party political broadcasts as the Commission may determine in a programme standard.
- (2) Without prejudice to the generality of paragraph (b) of subclause (1), the Commission may for the purpose of that subclause-
- (a) indicate the registered political parties on whose behalf party political broadcasts may be made; and
  - (b) in relation to any political party on whose behalf such broadcasts may be made, the length and frequency of such broadcasts.
10. (1) Any broadcasting programme service licence may include conditions requiring the licence holder to include in the licenced service such announcements concerning relevant programme schedules as the Commission may determine.

PROMOTION OF EQUAL OPPORTUNITIES IN RELATION TO EMPLOYMENT BY  
LICENCE HOLDER:

11. (1) Any broadcasting programme service licence may include conditions requiring the licence holder to observe the merit principle and make arrangements for promoting, in relation to employment by him, equality of opportunity between men and woman and between persons of different interest groups.

ENFORCEMENT OF LICENCES:

POWER TO DIRECT LICENSEE TO BROADCAST CORRECTION OR APOLOGY OR  
NOT TO REPORT PROGRAMME

12. (1) If the Commission are satisfied
- (a) that the holder of a broadcasting programme licence has failed to comply with any condition of the licence, and

(b) that failure can be appropriately remedied by the inclusion in the licenses service of a correction or apology ( or both),

they may direct the licence holder to include in the licensed service a correction or apology (or both) at such time or times, as they may determine.

POWER TO IMPOSE FINANCIAL PENALTY OR SHORTEN LICENCE PERIOD:

13. 1(1) If the Commission are satisfied that the holder of a broadcasting programme licence has failed to comply with any condition of the relevant licence or with any direction give by the Commission under or by virtue of any licence provision of this paper, they may (subject to the following provisions of this clause) serve on him-

(a) a notice requiring him to pay, within a specified period, specified financial penalty to the Commission;

(b) a notice reducing the period for which the licence is to be in force by a specified period not exceeding two years;

(c) a notice suspending the licence for a period not exceeding one month; or

(d) a notice that the Commission will take over the management and control of a service or station or channel for a particular period, with or without compensation to the licence holder.

(2) The amount of any financial penalty imposed on any person in pursuance of subclause (1) (a)-

(a) shall, if such a penalty has not previously been so imposed on that person during any period for which his licence has been in force, not exceed 3 per cent of the qualifying revenue of his last complete accounting period; and

(b) shall, in any other case, not exceed 5 per cent of the qualifying revenue for that accounting period (as so determined)

and in relation to a person whose first complete

accounting period falling within the relevant period has not yet ended, paragraphs (a) and (b) above shall be construed as referring to 3, or (as the case may be) 5, per cent of the amount which the Commission estimate to be the qualifying revenue for that accounting period (as so determined).

(3) The Commission shall not serve on any person such a notice as is mentioned in subclause (1) (a) or (b) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.

(4) Where a licence is due to expire on a particular date by virtue of a notice served on any person under subclause (1) (b), the Commission may, on the application of that person, revoke that notice by a further notice served on him at any time before that date, if they are satisfied that, since the date of the earlier notice, his conduct in relation to the operation on the licensed service has been such as to justify the revocation of that notice.

ANNEXURE "A"

DEFINITIONS

In this paper

"Broadcasting programme service" means a telecommunication service consisting in the radiation of information sounds, visible images or signs or signals which takes place by means of radio and is intended for general reception in the Republic or other regulated area;

"Radio" means electromagnetic waves of frequencies lower than 300 GHz radiated in terrestrial or other space without an artificial conductor;

"Regulation" includes licencing, issuing of permits and other instruments; supervising utilisation in terms of the conditions; penalising transgressions of licence conditions;

"Telecommunications service" means a service consisting in the transmission or radiation of information, sound, visible images, or signals, with or without tangible conductors, including a dedicated satellite telecommunications service; and



"Television broadcasting" means the initial transmission by wire or radiation by means of radio, including that by satellite, in unencoded or encoded form of television programme intended for general reception by the public. It includes the communication of programmes between undertakings with a view to their being relayed to the public. It does not include communication services providing items of information or other messages on individual demand such as telecopying, electronic data banks and other similar services.

27/3  
WGI SG3

TO: CODESA WORKING GROUP ONE - SUBGROUP THREE

FROM: GOVERNMENT DELEGATION - SUBGROUP THREE

DATE: 27 MARCH 1992

RE: POSITION PAPER: TERMS OF REFERENCE (SECTION  
1.1.4 (O)) - FOR DISCUSSION ON MONDAY 30 MARCH  
1992

**GOVERNMENT POSITION PAPER ON CODESA COMMUNICATION**  
(Working Group One: Sub-Working Group Three)

1. **PURPOSE OF PROPOSAL**

According to its Terms of Reference (sec. 1.1.4.(o)), Working Group 1 of Codesa has a major responsibility to address the issue of

"intensive and continuous educative and informative campaigns in respect of political tolerance, the working of democracy and the processes of Codesa".

Opinion surveys conducted by private sector researchers on behalf of the South African Communication Service indicate that there is widespread ignorance of Codesa and a general need for more information about the process.

Widespread awareness and support for Codesa will be essential for the success of the initiative.

The purpose of this proposal is to secure the approval of Working Group 1 for a full-scale communication campaign to inform the SA population about:

- \* the processes of Codesa, including:
  - the events which gave rise to Codesa 1;
  - the functioning of Codesa 1 and its Working Groups;
  - the Declaration of Intent;
  - the prospects for Codesa 2; and
  - the further development of the negotiation process after Codesa 2.
- \* basic human rights and liberties;
- \* the working of democracy; and
- \* political tolerance.

2. **TERMS OF REFERENCE (1.1.4.(o))**

As is evident from the above-quoted terms of reference, the proposed communication campaign falls directly within the ambit of Working Group 1. To ensure maximum credibility such a communication campaign should be carried out under the aegis of Codesa itself, and not of one of the parties.

3. **COMMUNICATION NEEDS OF THE POPULATION**

Recent opinion surveys conducted amongst all population groups indicated an alarming degree of ignorance and a strong desire to be informed concerning Codesa and the negotiation process.

38,3% of respondents in PWV townships indicated that they did not know what Codesa was and 58% stated that they were not adequately informed on the Codesa negotiations. 50,6% of major communities in the Western Cape indicated that they were unaware of Codesa and 71% said that they wished to be better informed about the process.

It is likely that even those who knew something of Codesa had only the most rudimentary understanding of the processes involved. It is also likely that awareness levels of Codesa among rural communities are even lower.

Most of the respondents expressed a preference to be informed about Codesa via the mass media, especially TV and radio. In general they expressed a need to be informed about the goal and functions of Codesa, the progress being made with negotiations and the likely outcome of this process.

Special interest groups e.g. women's organisations and business groups countrywide, have also expressed a specific need for regular information relating to Codesa.

#### 4. COMMUNICATION THEMES

The following themes need to be communicated to the people:

- Democracy

- \* democratic culture
- \* common values - peace, prosperity, progress, participation
- \* the rôle of a basic Charter of Human Rights
- \* political tolerance
- \* freedom of expression
- \* democracy as a process.

- Codesa

- \* What is Codesa?
- \* How does Codesa operate? (management committee, working groups, sub-groups, consensus)
- \* Assignments given to the working groups and progress made within each group.

## 5. COMMUNICATION STRATEGY

The proposed communication campaign would entail:

- intensive and comprehensive planning;
- well co-ordinated implementation management;
- monitoring and evaluation of progress;
- a comprehensive media campaign, including:
  - \* Advertising:
    - TV/Radio/outdoor/print/exhibitions/ and
    - T-shirts/posters/stickers/direct
    - promotion mail shots;
  - \* Liaison:
    - media/grassroots/foreign visitors;
  - \* Publications; and
  - \* Videos and films.

## 6. COMMUNICATION APPROACH

The overall communication campaign would have to be:

- impartial, objective and informative;
- relevant;
- comprehensive;
- professional.

In order to ensure that the above communication approach is manifested in all communication actions, joint planning is envisaged.

## 7. TARGET GROUPS

The campaign would primarily be aimed at the broad SA population. The following audiences would also be important target groups:

- Local and foreign media
- Special interest groups, e.g.
  - \* the private sector (business, trade and industry, labour and trade unions, agriculture, etc.)
  - \* the public sector (state and semi-state departments)
  - \* churches of all denominations
  - \* women's and youth organisations
  - \* opinion formers (individuals and organisations)
  - \* tertiary and secondary education levels (universities, colleges, schools).

8. FUNDING

The proposed communication campaign would require a considerable budget, probably no less than R15 million.

9. RECOMMENDATIONS:

The success of Codesa will depend on the degree of support which the process enjoys from the broad population. The largest possible number of South Africans should therefore be effectively informed about Codesa. They should at the very least have a working understanding of its basic objectives and processes. This is particularly so because all eligible South Africans may soon have to participate in a general election which will arise from agreements reached at Codesa.

Indeed, it is difficult to talk of a democracy in circumstances in which so many South Africans have no, or little, knowledge of the process in which they will be asked to participate.

It is recommended that Working Group 1:

- urgently approve the proposed communication campaign;
- draw up a comprehensive communication strategy;
- investigate and negotiate possible sources of funding; and
- appoint an organisation with the necessary infrastructure and capability to immediately implement such a campaign.

~~CONFIDENTIAL~~  
WORKING PAPER ON THE FUNDING OF POLITICAL PARTIES

1. INTRODUCTION

1.1 A comparative study of the position regarding the funding of political parties in other countries reveals that some countries have stringent measures regulating this matter, whilst in other countries little or no constraints exist.

1.2 It will be noted from the annexure that -

1.2.1 in some countries political parties receive state assistance, either directly or indirectly;

1.2.2 expenses with regard to election campaigns in some countries are being restricted;

1.2.3 several countries prohibit the funding of political parties from foreign sources; and

1.2.4 although no country interferes with establishment of political parties, some countries do have legal requirements with regard to the registration of such parties with the view of participating in elections and/or to qualify for direct or indirect state assistance, and/or other benefits.

2. POSITION IN SOUTH AFRICA

2.1 It will be noted from the Annexure that political parties in South Africa receive no direct aid from the State. However, political representatives receive some indirect assistance: e.g. free access to public broadcasting media during elections, and limited assistance with regard to the free mailing of electoral matter.

2.2 Legislation also exists which -

2.2.1 requires political parties to register in order to qualify for formal participation in elections (Section 36 of the Electoral Act, 1979 (Act 45 of 1979));

- 2.2.2 prohibits the funding of political parties from abroad (Prohibition of Foreign Financing of Political Parties Act, 1968 (Act 51 of 1968));
- 2.2.3 regulates the disclosure of the receipt of money from outside the Republic by or for certain organisations and persons (Disclosure of Foreign Funding Act, 1989 (Act 26 of 1989));
- 2.2.4 restricts expenses of political parties during election campaigns (Chapter IV of the Electoral Act, 1979 (Act 45 of 1979)); and
- 2.2.5 exempts political parties from certain restrictions with regard to the collection of contributions in the Republic (Section 33 of the Fund-raising Act, 1979 (Act 107 of 1978)).

### 3. POSSIBLE GUIDELINES FOR THE FUTURE

- 3.1 The registration of political parties is an internationally accepted practice and such a requirement, although not necessarily on the same basis as laid down in the present Electoral Act, should be retained in a future dispensation.
- 3.2 The registration of a political party should lead to benefits for those political parties such as -
  - 3.2.1 the right to fund-raising in order to function properly within a democratic system; and
  - 3.2.2 the receiving of some or other form of state assistance, directly or indirectly.
- 3.3 No political party, whether registered or not, should be allowed to receive funds from abroad. However, the following options could be considered.

Firstly, in view of the present constitutional reforms and the broadening of democracy, it could be considered as an interim arrangement to adopt legislation in order to suspend the operation of the Prohibition of Foreign Financing of



Political Parties Act, 1968 (Act 51 of 1968), as soon as possible and until the expiry of a period of 6 months from the date of the first general election held in terms of new constitutional arrangements.

Secondly, it is proposed that political parties are funded by the State, either directly, or indirectly by way of funding of the democratic process.

Thirdly, it is proposed that foreign funding of political parties be allowed, subject to adapted provisions of the Disclosure of Foreign Funding Act, 1989 (Act 26 of 1989), providing for the disclosure of such funds either to a Committee of Parliament or to Parliament itself.

*(An amalgam of these options may be indicated)*

- 3.4 Political parties should adhere to an Ethical Code of Conduct.
- 3.5 Expenses with regard to election campaigns should be restricted and statements of such expenses should be open for public scrutiny, and where direct state assistance is involved, also scrutiny by the Auditor-General.

4. VIEWS OF THE WORKING GROUP WITH REGARD TO THE FOREGOING GUIDELINES

- 4.1 It is desirable that the Government be advised timeously of the attitude of the working group with regard to the possible guidelines as set out in paragraph 3 above. In particular the working group's point of view regarding the 3 options contained in paragraph 3.3 is requested.

ANNEXURE

Political Parties

|     | <u>Country</u> | <u>Legislation</u> | <u>Registration</u> | <u>Control of Finances</u> | <u>Restriction on Electoral Expenses</u> | <u>State Assistance:</u>    |                   | <u>Foreign Funding Allowed</u> | <u>Ethical Code of Conduct</u> |
|-----|----------------|--------------------|---------------------|----------------------------|--|-----------------------------|-------------------|--------------------------------|--------------------------------|
|     |                |                    |                     |                            |  | <u>Directly (Subsidies)</u> | <u>Indirectly</u> |                                |                                |
| 1.  | Argentina      | Yes                | Yes                 | No                         | Unknown                                  | Unknown                     | Unknown           | Unknown                        | Unknown                        |
| 2.  | Austria        | Yes                | Yes                 | Yes                        | Yes                                      | Yes                         | Yes               | Yes                            | Unknown                        |
| 3.  | Belgium        | Yes                | Unknown             | Yes                        | Yes                                      | Unknown                     | Yes               | Unknown                        | Yes                            |
| 4.  | Canada         | Yes                | Yes                 | No                         | Yes                                      | Yes                         | Yes               | Yes                            | No                             |
| 5.  | Denmark        | Yes                | Yes                 | No                         | No                                       | Yes                         | Yes               | Yes                            | No                             |
| 6.  | Finland        | Yes                | Yes                 | Yes                        | No                                       | No                          | Yes               | Yes                            | No                             |
| 7.  | France         | Yes                | Yes                 | Yes                        | Yes                                      | Yes                         | Yes               | No                             | No                             |
| 8.  | Germany        | Yes                | Yes                 | Yes                        | Unknown                                  | Yes                         | Unknown           | No                             | No                             |
| 9.  | India          | Yes                | Yes                 | Yes                        | Yes                                      | Unknown                     | Yes               | Yes                            | Unknown                        |
| 10. | Italy          | Yes                | Yes                 | Yes                        | No                                       | Yes                         | Yes               | Yes                            | No                             |
| 11. | Japan          | Yes                | Yes                 | Yes                        | Yes                                      | Yes                         | Yes               | No                             | No                             |
| 12. | Netherlands    | No                 | Yes                 | Yes                        | No                                       | No                          | Yes               | Yes                            | No                             |
| 13. | Norway         | No                 | No                  | No                         | No                                       | No                          | Yes               | Yes                            | No                             |
| 14. | South Africa   | Yes                | Yes                 | No                         | Yes                                      | No                          | Yes               | No                             | No                             |
| 15. | Switzerland    | Yes                | Yes                 | No                         | No                                       | No                          | Yes               | Yes                            | No                             |
| 16. | United Kingdom | Yes                | No                  | No                         | Yes                                      | Yes                         | Yes               | No                             | No                             |
| 17. | United States  | Yes                | Yes                 | Yes                        | No                                       | Yes                         | Yes               | No                             | No                             |

## STATUTES OF THE REPUBLIC OF SOUTH AFRICA — CONSTITUTIONAL LAW

**PROHIBITION OF FOREIGN FINANCING OF POLITICAL  
PARTIES ACT  
NO. 51 OF 1968**

[ASSENTED TO 29 MAY, 1968]

[DATE OF COMMENCEMENT: 5 JUNE, 1968]

(Afrikaans text signed by the State President)

as amended by

Constitutional Affairs Amendment Act, No. 104 of 1985

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**ACT**

To prohibit the receipt by political parties of financial assistance from abroad.

[Long title substituted by s. 5 of Act No. 104 of 1985.]

1 and 2. . . . .

[Ss. 1 and 2 repealed by s. 1 of Act No. 104 of 1985.]

3. **Prohibition of receipt of financial assistance from abroad.**—(1) No political party or member of such a party and no other person shall from outside the Republic receive within the Republic, or bring or cause to be brought into the Republic, any money which, on the ground of a donation or on any other ground, is intended to be used, or in the discretion of such political party, member or other person may be used, to further the interest of any political party or the candidature of himself or any other person who has been nominated or may be nominated as a candidate for any election in terms of the Electoral Act, 1979 (Act No. 45 of 1979), or any other law to which the State President has by proclamation in the *Gazette* applied the provisions of this section, or to combat any aim or principle of a political party.

(2) For the purposes of this section "money" includes anything which can be cashed or be converted into money.

[S. 3 substituted by s. 2 of Act No. 104 of 1985.]

4. **Offences and penalties.**—Any person who contravenes any provision of this Act shall be guilty of an offence and liable on conviction—

(a) in the case of a first conviction, to a fine of not more than three thousand rand or imprisonment for a period of not more than twelve months or to both such fine and such imprisonment; and

(b) in the case of a second or subsequent conviction, to a fine of not more than ten thousand rand or imprisonment for a period of not more than two years or to both such fine and such imprisonment.

[S. 4 substituted by s. 3 of Act No. 104 of 1985.]

5. **Short title.**—This Act shall be called the Prohibition of Foreign Financing of Political Parties Act, 1968.

[S. 5 substituted by s. 4 of Act No. 104 of 1985.]

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**UNITED PEOPLE'S FRONT'S SUBMISSION TO CODESA ON STATE CONTROLLED MEDIA TO  
SUB-GROUP 3 OF WORKING GROUP 1**

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The emphasis in this instance falls on the composition of the present structure of media institutions that are controlled by the state. The purpose of Codesa's endeavours coming changes and to level the ground so that all parties have equal chance - no party should be placed on higher ground because they have very good and sympathetic friend in state controlled media.

It is patently clear to all and sundry that there has always been a very close relationship between SABC and the Government. If the Government subscribes to the principle of freedom of speech which entails the right to express one's opinion and the right to receive and disseminate information freely, then it should be willing and prepared to have those bodies that have a history of having actively taken steps to restrict a free flow of information or went to great lengths to censure or distort information, completely restructured.

Reluctance to move speedily to change the situation could be indicative of the fact that in fact the Government is not prepared to give up its apparatus which would be very useful in maintaining the status quo. Is it not a wholesome principle of our law that provides that justice should not only be done but must manifestly be seen to be done? It would definitely take a little more than just indicating that SABC is now on its own, to remove the perception that the camaraderie that lasted for all these years, would continue. Something more concrete and visible has to be done to change attitudes and inspire confidence in the general public. After all, the principle is that no possibility should be created which could in turn create the impression that prejudice would result.

One of the most credible ways of dealing with this issue would be to restructure the boards of the corporations. These would include those of the TVBC states. The prevailing suspicions that the prejudices of the past are likely to continue to exist, would be removed. To this end, the sole rights of the governments to appoint members of the boards should be discontinued. This does not help much in the way of inspiring confidence in the neutrality and impartiality of these boards.

There is presently no shadow of a doubt that the media, the electronic media in particular, is most powerful and there is nothing which would bar the government from using this media. The situation as it now exists is such that the government rather than the society as a whole, is likely to be served by the electronic media. To ensure an unbiased service to all the people of this country, a more representative controlling body will have to be called into being. Such control should remain in place during the Interim Government until a permanent suitable and acceptable constitution has been agreed upon and which would enshrine the rights and procedures regulating the media.

#### The Commission

The Commission should be made up of people in whom all parties would have confidence. This can be achieved if all interested parties are properly consulted so that they could also make inputs as to suitable candidates. If this is not done and the government decides who would sit on the Commission, the impression created would be that the government is for 'good reason' is being prescriptive once more again.

If the commission would be as representative as it should be, it would ensure that the crucial principle that broadcasting should be impartial and neutral is not relegated to the backwaters.

#### Printed Media

As regards the printed media, the position should be that there be a code of conduct that has to be complied with by all parties. In consonance with the principle of freedom of expression, the media should be free to pursue their own editorial policy.

The unnecessary restrictions that are statutorily imposed on newspapers should be removed.

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