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OUTSTANDING MATTERS OR MATTERS NOT REACHED AGREEMENT UPON

1. WORKING GROUP 1

1.1 **The amendment and/or repeal of any remaining laws militating against free political activity, including the elimination of all discriminatory legislation**

1.1.1 **The definition of general principles underpinning free political activity (WG1 report 6.1.3.3. See also paragraph 6.1.2.3. of the said report.)**

1.1.2 **Specific measures (WG1 report 6.1.4):**

Regarding 6.1.1.3 various oral and written submissions were received about legislative measure which may offend against free political activity. The submissions dealt with the following broad categories of legislation:

6.1.4.1 Emergency measures;

6.1.4.2 Security measures;

6.1.4.3 Measures affecting the funding of political Parties and organisations;

6.1.4.4 Measures affecting the freedom of assembly and association;

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

1.1.3 **The recommendation that the timing of the implementation of the various agreed proposals be negotiated as a matter of urgency amongst the parties (WG1 report 6.1.6.2).**

1.1.4 **Security legislation (WG1 report 6.1.7):**

It was agreed that:

6.1.7.1 Special measures are necessary to deal with the threat to the public peace and order during the transitional period.

6.1.7.2 In the light of 6.1.7.1, the Internal Security Act 1982, and other relevant legislation be scrutinised with a view to the substitution of the said provisions so as to bring legislation in line with the criteria mentioned in 6.1.7.1, and to remove the emphasis from national security;

6.1.7.3 A task group be appointed to undertake the task referred to in 6.1.7.2, taking cognisance of relevant discussions by and submissions to SG1.

1.1.5 **Discriminatory Legislation (WG1 report 6.2):**

6.2.1 It was agreed that the following categories of discriminatory legislation can be identified and that individual legislative measures within each category should be dealt with in the manner outlined as being appropriate for that category:

6.2.1.1 Discriminatory legislation which impedes the creation of a climate for free political activity. Such legislation must be identified by WG1 and amended/repealed as soon as possible.

6.2.1.2 Discriminatory legislation which emanates from the nature of the

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tricameral constitution. This should be dealt with at the time and in the manner decided on by negotiation on the phasing out of the tricameral constitution and the own affairs dispensation.

- 6.2.1.3 Discriminatory legislation which need to be amended/repealed to support and enhance the process of democratisation. These should be identified as soon as possible and suitably amended/repealed.
- 6.2.1.4 Discriminatory legislation which needs to be removed in the interests of society. These should be dealt with at the relevant stage of the democratisation process.
- 6.2.1.5 Discriminatory legislation which would infringe upon an agreed Bill of Rights. These should be dealt with through the procedures that stand to be created in a new constitution which will include a justiciable Bill of Rights.

6.2.2 The WG received proposals on discriminatory legislation which falls in the above categories and which should be amended and/or repealed. The discussions on these proposals are incomplete and it was agreed that the task group constituted in terms of para 6.1.7.3 above, or any other mechanism set up by Codesa, discuss the proposals regarding discriminatory legislation which falls within categories 6.2.1.1 and 6.2.1.3 above with a view to making appropriate recommendations. Such task group or appointed body should report to Codesa or any other appropriate executive body that may be set up by Codesa.

1.2 The termination of the use of military and/or violent means or the threat thereof to promoted the objectives/views of a political party or organisation

This matter was not discussed separately, but dealt with within the broader context of the subject matter discussed in SG 2 (WG1 report 8).

1.3 Independent Body to Regulate Telecommunications Sector

1.2.1 The name of the Independent Body (either "SA Independent Telecommunications Authority" or "SA Independent Telecommunications Commission")(WG1 report 9.1.4.).

1.2.2 The immediate reconstitution of the Board of the SABC (WG1 report 9.1.9).

1.2.3 Affirmative action and cross-ownership restrictions (WG1 report 9.1.12).

1.4 The following matters relating to the implementation of the NPA should still be discussed (WG1 report 10.18):

10.18.1 Co-ordination between 3 levels of NPA.

10.18.2 Education Programmes/Publicity.

10.18.3 Liaison between NPC and organisations and NPC and Codesa.

1.5 Consensus could not be reached on the following (WG1 report 11.2):

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

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

1.6 The composition and role of the security forces in South Africa and the TBVC states

1.3.1 The composition of the security forces (WG1 report 12.8.1).

1.3.2 Operations of the security forces that may limit free political activity (WG1 report

12.8.2).

1.7 **The advisability of statutory provisions guaranteeing equal opportunity for all parties to establish and maintain their own means of mass communication.**

1.4.1 Not discussed due to a lack of time (WG1 report 15).

1.8 **The need for an improvement in socio-economic conditions**

1.5.1 Details were not discussed (WG1 report 16).

1.9 **The fostering of a spirit of tolerance among political parties**

1.6.1 No consensus on further recommendations (WG1 report 17).

1.10 **The role of intensive and continuous educative and informative campaigns in respect of political tolerance, the working of democracy, and the processes of Codesa (WG1 report 18):**

Various submissions dealing with the above matter were received, however, due to lack of time, the SG was unable to discuss the matter.

1.11 **Other matters which the WG may consider relevant to its brief (WG1 report 20):**

The WG agreed to discuss the issue of Mozambican refugees in the South Africa. It was agreed that a joint task force of the SA Government, and other involved parties and governments be formed to address the problem of Mozambican refugees, internal refugees and other displaced persons.

1.12 **The role of the International community**

1.7.1 Certain proposals were not discussed (WG1 report 21.4).

1.13 **The way forward**

The WG had insufficient time to discuss and agree on the future handling of matters falling within the ambit of its assignments and terms of reference. However, proposals are put forward for consideration by Codesa (WG1 report 22).

2. WORKING GROUP 2

Report outstanding.

3. WORKING GROUP 3

3.1 **Composition of the TEC (WG3 report 46.1)**

3.2 **Composition of the sub-councils (WG3 report 46.2)**

3.3 **Composition, powers and functions of the Independent Election Commission (WG3 report 46.3)**

3.4 **Sub-council on foreign affairs (WG3 report 46.4)**

3.5 **Legislation to give effect to agreements (WG3 report 47).**

4. WORKING GROUP 4

- 4.1 Strategies to keep the people of the TBVC states fully informed, especially to avoid unfortunate misunderstandings (WG4 report 4.1).
- 4.2 The time frames for such re-incorporation and related processes (WG4 report 4.2).
- 4.3 The exact form of authority in the TBVC territories (WG4 report 4.3)
- 4.4 Harmonisation of legislation and taxation (WG4 report 4.4).
- 4.5 Orderly termination of bilateral and multilateral agreements and treaties (WG4 report 4.5).
- 4.6 Ensuring public accountability of actions taken for the purposes of reincorporation (WG4 report 4.6).
- 4.7 The identification of specific constitutional, legal and political measures and steps which will have to be taken to effect reincorporation (WG4 report 4.7).

5. WORKING GROUP 5

- 5.1 The formulation of a structure of a Drafting committee (WG5 report 4.2.1).
- 5.2 The constitution of a drafting committee through the selection of experts (WG5 report 4.2.2).
- 5.3 The procedural rules relating to interaction between the Drafting Committee, existing CODESA structures and respective governments/ administrations regarding draft legislation (WG5 report 4.2.3).
- 5.4 Consideration of agreements arrived at in Working Groups and formulation of mechanisms for the implementation thereof.



REPORT OF THE GENDER ADVISORY COMMITTEE TO CODESA 2

Due to enormous public pressure about the lack of representation at CODESA of women, who form 53 % of the population, and subsequent suggestions and submissions by women's organisations, political parties and other organisations, the Management Committee of CODESA decided to form the Gender Advisory Committee. The GAC is a subcommittee of the Management Committee charged with the special task of looking into the Terms of Reference, minutes and decisions of each of the Working Groups, and those of the Management Committee, and advising on their gender implications. All CODESA participants have so far sent representatives to the GAC with the exception of the Bophuthatswana and Venda Governments.

The GAC met for the first time on 6 April and has diligently studied the Terms of Reference, minutes and most of the decisions already taken by the Working Groups as well as internal and external submissions from women's organisations and political parties, with an unusual spirit of unity. The GAC has reached consensus on many issues, but consensus was not reached on others.

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WORKING GROUP 1

1. Definition of "political intimidation - paras.:

7.1 All political disputes between parties be resolved peacefully;

7.2 Political Intimidation be defined as follows:

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, inter alia:

7.2.1 the right to freedom of expression or opinion;

7.2.2 the right of freedom of association;

7.2.3 the right of freedom of movement.

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

7.3.1 to kill, injure, apply violence to, intimidate or threaten any other person or his/her political beliefs, word, writings or actions;

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

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

2. Independent body to regulate telecommunications sector - paras.:

9.1 Independent Body to Regulate Telecommunications Sector

9.1.1 Establishment

It was agreed that an independent, neutral body be established to regulate the telecommunications sector, such body to be created in terms of an Act of Parliament.

9.1.2 Functions

It was agreed that such an Independent Body would have as its principal functions:

9.1.2.1 The regulation of the utilisation of the electromagnetic spectrum, including the allocation of licenses and the determination of licence conditions according to an agreed set of standards.

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

9.1.3 Powers

9.1.3.1 It was agreed that the powers of the Post Master General in relation to telecommunications shall be transferred to the Independent Body.

9.1.3.2 It was further agreed that the Independent Body would have the following powers:

- 9.1.3.2.1 To ensure that a wide range of telecommunication services, including regional and community broadcasting program services, is available throughout South Africa.
- 9.1.3.2.2 To ensure fair and effective competition in the provision of such and related services.
- 9.1.3.2.3 To ensure fair and equitable opportunity to opinion formers to express their views freely.
- 9.1.3.2.4 To ensure optimum affordable research and development with a view to improving the utilisation of the available electromagnetic spectrum and to introduce technologies to improve signal quality.
- 9.1.3.2.5 To ensure impartial control of all broadcasting by laying down norms and standards for more equitable and fair access for all political parties to air time on broadcasting services.
- 9.1.3.2.6 To work out guidelines for the impartiality of news and current affairs programmes on all broadcasting services.
- 9.1.3.2.7 To take punitive measures against broadcasters who violate provisions of the code of conduct, or to suspend or withdraw licences of licence conditions are not complied with.
- 9.1.3.2.8 To deal with complaints by the public and political parties.
- 9.1.3.2.9 Such other powers as may be expedient.

9.1.4 Name of Independent Body

It was agreed that such Independent Body should be called either SAITA (South African Independent Telecommunications Authority) or SAITCOM (South African Independent Telecommunications Commission) but there was no consensus on which of the two names is the most desirable.

9.1.5 Constitution of Independent Body

It was agreed that:

- 9.1.5.1 Members of the Independent Body shall be South African Citizens of merit who act in the public interest.
- 9.1.5.2 No board member shall be an office bearer of any political organisation or have a vested interest in the film and broadcasting industries, or any other conflicting interest.

9.1.6 Appointment Procedures

It was agreed that organs of civil society shall 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.

9.1.7 Accountability and Finance

9.1.7.1 It was agreed that the Independent Body shall be accountable to the executive of the interim constitutional authority, provided that once a representative Parliament comes into being such a body shall be accountable to Parliament or one of its standing committees; further provided that the independence of such a body shall not be impinged upon in any way whatsoever.

9.1.7.2 The extent of the Independent Body's accountability shall be dependent upon the method of financing such a body. In this regard various methods are possible and should be considered.

9.1.8 Licensing procedures, conditions and standards

It was agreed that the above matters should devolve upon the Independent Body.

9.1.9 SABC

There was no consensus on a proposal regarding the immediate reconstitution of the Board of the SABC.

It was however agreed that, since WG1 had reached consensus that an Independent Body to regulate the telecommunications sector be created at the earliest opportunity:

9.1.9.1 The Steering Committee of WG1 will initiate discussions with the chairperson of the Board of the SABC, and such representatives as he may determine, on the possible early reconstitution of the Board of the SABC, the appropriate ministry to be included in such discussions;

9.1.9.2 The first such meeting to take place before CODESA II;

9.1.9.3 The mechanism for monitoring the performance of the SABC be considered to at the same discussions.

9.1.10 Complaints/Disputes and Monitoring

It was agreed that the Independent Body shall, with Parliamentary sanction by way of legislation, set up structures as may be necessary, inter alia for:

9.1.10.1 adjudicating disputes;

9.1.10.2 monitoring the efficiency of the licensee and to ascertain whether licensees comply with their licensee conditions;

9.1.10.3 investigating complaints and for giving effect to remedial actions

9.1.11 Code of Conduct

9.1.11.1 It was agreed that the Independent Body shall lay down the standards to be complied with by licensed broadcasters (such standards could be included in a Code).

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

9.1.12 The following issues were raised but discussions have not been completed:

9.1.12.1 affirmative action

9.1.12.2 cross-ownership restrictions

9.2 Printed Media

The SA Government agreed to repeal Section 4 (a) and (b) of the Registration of Newspapers Amendment Act of 1982 which relate to Ministerial powers to cancel the registration of a newspaper. The repeal of these sections will be dealt with in a General Law Amendment Bill.

3. **Successful implementation of National Peace Accord - paras.:**

10.1 General

It was agreed that:

10.1.1 In so far as the promotion of peace is concerned, the leadership of organisations is urged urgently to come together at peace rallies and meetings and to be seen by all to be jointly and collectively working towards peace and stability in our country. These peace rallies and meetings should be held under the auspices of the NPS and should augment the efforts of religious leaders in this regard.

10.1.2 The successful implementation of the NPA is fundamental to the creation of a climate for free political activity, peace and stability in our country. In this regard, it is strongly recommended to the signatories of the NPA to take active steps to ensure that they appoint senior office bearer(s), whose specific responsibility it will be to manage the organisation/party's duties in regard to the NPA. It is further recommended that, where possible, such persons be relieved of all other organisational/party obligations to facilitate the above.

10.2 RDRC's and LDRC's (Clause 7.4 of the NPA)

It was agreed that:

10.2.1 A full time 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;

10.2.2 Delegates to RDRC's and LDRC's who suffer financially as a result of their participation in NPA activities be reimbursed;

10.2.3 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;

10.2.4 Permanent offices with appropriate staff and equipment be established in each area provided for in clause 3.7.5 of the NPA;

10.2.5 The NPS should seek to facilitate the participation of delegates on NPA structures, having special regard for the normal work commitments of delegates;

10.2.6 The reference to "Business representatives" in clause 7.4.4.3 of the NPA be interpreted to include representatives from professional organisations.

10.3 Justices of the Peace (Clause 7.5 of the NPA)

It was agreed that:

10.3.1 In view of the current preparation of legislation to implement clause 7.5 of the NPA, it be recommended that the legislation be put before parliament during its current session.

10.3.2 All signatories to the NPA be urged 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.

10.4 Police Reporting Officers (clause 3.2.4 of the NPA)

It was agreed that:

10.4.1 All police reporting officers already nominated be appointed to their positions forthwith.

10.4.2 In the appointment of members of the special investigation 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.

10.5 The inclusion of representatives of tribal authorities in the RDRC's (clause 7.4.4.4 of the NPA)

It was agreed that:

10.5.1 The NPC makes special efforts to include representatives of relevant local and tribal authorities into all RDRC and LDRC structures.

10.5.2 Special efforts be made to create an awareness of the NPA amongst tribal and local authorities.

10.6 Measures to facilitate socio-economic reconstruction and development (Clause 5.7 of the NPA)

10.6.1 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;

10.6.2 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.

10.7 The Police Board (Clause 3.3 of the NPA)

10.7.1 It was agreed that the Police Board, in addition to their other functions and duties:

10.7.1.1 should advise on ways in which the procedures of the special units appointed in terms of 3.2.4.1 can be given public credibility;

- 10.7.1.2 should advise on ways in which the credibility of the police in the community could be improved;
- 10.7.2 It was further agreed 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.
- 10.8 Relations between the community and the police
- 10.8.1 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:
- 10.8.1.1 Facilitating police/community liaison, including workshops between relevant parties;
- 10.8.1.2 Ensuring strict adherence by all parties to the provisions of the NPA.
- 10.8.2 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 policing.
- 10.9 Recommendations by RDRC's to the police
- 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:
- 10.9.1 The selection of top police officers for township stations;
- 10.9.2 The appointment of officers commanding and members of special police investigation units established in terms of clause 3.2.2.6;
- 10.9.3 Where circumstances permit, determining the nature of police action in conflict areas, i.e. the nature of security force action, the duration of their action, the SAP and the SADF mix in these actions, the timeous negotiations between the security forces and community leaders to defuse hostility, etc.
- 10.10 Self protection units/neighbourhood watch groups (clause 3.7 of the NPA)
- It was agreed that:
- 10.10.1 It be recommended to the NPC that 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 combatting of crime. These self protection units/neighbourhood watch groups should work in close cooperation with the relevant police authorities, as provided for in clause 3.7.5 of the NPA.
- 10.10.2 It be recommended to the RDRC'S/LDRC's to take steps to monitor the activities of such formations and to encourage between such formations and the relevant police authorities.
- 10.11 In relation to points 10.7 and 10.9 the meeting encourages all other police forces to adopt a similar approach.

10.12 Dangerous weapons and the possession of illegal fire-arms

It was agreed that:

- 10.12.1 Stronger sentences and other measures be imposed for the possession of illegal firearms and the possession, carrying and displaying of dangerous weapons or other firearms in contravention of the regulations issued as provided for in 3.6.4 of the NPA.
- 10.12.2 The police increase their searches for illegal firearms and other dangerous weapons.
- 10.12.3 A record be kept of the political affiliation (if any) of persons arrested for the possession of illegal fire-arms or dangerous weapons.
- 10.12.4 The above be undertaken in the context of impartial policing.

10.13 Monitoring Commissions

It was agreed that:

- 10.13.1 Regional monitoring commissions be created in each RDRC region.
- 10.13.2 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.
- 10.13.3 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.
- 10.13.4 The assistance of professional dispute resolution agencies be used in the training and development of such local/regional monitoring commissions.
- 10.13.5 The functions of these regional monitoring commissions be:
 - 10.13.5.1 to monitor the compliance by the NPA signatories to the code of conduct as provided for in the Accord;
 - 10.13.5.2 to monitor the behaviour of parties and organisations at grassroots level in relation to violence;
 - 10.13.5.3 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.
- 10.13.6 Political parties and members of RDRC's should refrain from making inflammatory remarks in relation to the causes of violence, and should desist from apportioning blame based on unsubstantiated evidence while matters are under review or investigation by the Commission.

10.14 Budget and infrastructure problems

It was agreed that:

- 10.14.1 CODESA calls on the international community to provide financial and other assistance to facilitate the successful implementation of the NPA.
- 10.14.2 It be recommended 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.

10.14.3 It be further recommended 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 include the holding of peace musical concerts, peace sports events, and other such activities; as well as approaches to the business sector in this regard.

10.15 Commission of Enquiry Regarding the Prevention of Public Violence and Intimidation

It was agreed to recommend to the NPS and NPC:

10.15.1 to take active steps to implement and monitor the implementation of the recommendations of the Commission.

10.15.2 to distribute timeously the relevant recommendations of the Commission to the relevant RDRC/LDRC and the political parties in order to ensure that these recommendations are implemented in accordance with the Code of Conduct for political parties as set out in the NPA.

10.16 Legal Enforceability

It was agreed that it be recommended to the NPC to take active and urgent steps to ensure the legal enforceability of the Code of Conduct for Political Parties as provided for in clause 9.6 of the NPA.

10.17 Transgressions of the NPA by political parties

It was agreed that:

10.17.1 The NPC take active steps to ensure that transgressing political parties, on presentation of the Commission's findings to them, respond in writing to the NPC, as provided for the NPA.

10.17.2 The findings of the Commission be made public in order to bring such parties to account for their transgression of the NPA.

10.18 Outstanding matters for discussion:

It was agreed that the following matters relating to the implementation of the NPA should still be discussed:

10.18.1 Co-ordination between 3 levels of NPA.

10.18.2 Education Programmes/Publicity.

10.18.3 Liaison between NPC and organisations and NPC and CODESA.

4. Composition and role of the security forces in South Africa and the TBVC States - para.:

12.4 For the purpose of addressing our terms of reference, the WG is satisfied that all the Security Forces should be placed under the control of interim/transitional governmental structures. In this regard, this WG takes notice of the proposals tabled in WG3 to set up preparatory councils including one or more specifically intended to deal with the Security Forces. The WG supports the said abovementioned principle and agrees that the details of such councils be worked out by WG3.

5. Funding of political parties - para.:

13. (i) Funding of Political Parties

It was agreed that the provisions of the Prohibition of Foreign Funding of Political Parties Act, 51 of 1986, 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 elections in terms of the provisions of a negotiated new constitution for South Africa.

WORKING GROUP 2:

No agreements yet.

WORKING GROUP 3:

1. Transitional executive structure - paras.:

9. As will appear from the agreements set out below, the Working Group was of the opinion that the transition to democracy involves two preliminary stages. The first stage is one during which preparations will be made for the holding of free and fair elections for an elected parliament under an interim constitution with the power to draft in terms of agreed procedures a new constitution and to act as an interim legislature. This stage favours the whole of the period up to and including the holding of the elections. The second stage covers the period from the holding of the elections to the adoption of a new democratic constitution and the installation of a new government in accordance with the provisions of such constitution.
10. During the first stage there is a need for a multiparty transitional executive structure to function in conjunction with existing legislative and executive structures, subject to the possible consolidation of the tricameral parliament and the general/own affairs departments. The purpose of the transitional executive structure will be to prepare for and to facilitate the transition to a democratic constitution to which CODESA is committed and in particular, the achievement of a level playing field and a climate favourable to free political participation and the holding of free and fair elections.
11. Legislation, including an amended or transitional constitution, is necessary to make provision for appropriate structures of government which will meet the needs of both stages.
12. The following agreements were reached in regard to the first stage of the transition. These agreements and their implementation are dependent upon agreement being reached by CODESA in respect of the second stage of the transition, including an interim constitution, and general constitutional principles.

BASIC POINTS OF DEPARTURE

13. 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 requirement for statutory structures to prepare for the institution of the elected parliament under an interim constitution, and for these structures to focus on meeting these needs. 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. It would also be possible for the councils to propose legislation. Since the councils must always act within the law, enabling legislation will be required.

14. It is possible that action may take place or legislation be 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 within their powers require that such actions should not take place or legislation not be proceeded with.
15. 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 within its terms of reference 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.
16. The terms of reference of the overarching body should be the facilitation of the transition to democracy including the levelling of the playing field and the ensuring of a climate for free political participation and for the conducting of free and fair elections, while the individual councils should have the same terms of reference but in specific fields. The powers, duties and functions vested in the transitional executive structure must be exercised in a manner that does not prejudice constitutional options.

THE TRANSITIONAL EXECUTIVE STRUCTURE

17. A transitional executive structure will be constituted by legislation agreed to by CODESA. It will have a multi-party character and will be vested with effective executive powers sufficient to fulfil its terms of reference. The structure will include an overarching council, herein referred to as the TEC (Transitional Executive Council).
18. The TEC will have sub-councils which will be given specific responsibilities in relation to areas of particular concern during stage one of the transition.

POWERS OF THE TEC

19. The TEC will be vested by legislation agreed to by CODESA with powers necessary to enable it to carry out its functions.
20. The TEC will have access to all information (including records of governments and other participants in the TEC) which may be required by it for the purpose of exercising its functions.
21. The sub-councils will report to the TEC and their decisions will be subject to confirmation/amendment by the TEC.
22. The TEC will be able to delegate powers to the sub-councils.
23. The TEC will be able to initiate or participate in negotiations in relation to issues which arise outside the defined areas of responsibilities of its sub-councils, if it is of the opinion that such issues 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.
24. The TEC will be kept informed of and will be able to ask for and be entitled to receive information in regard to proposed legislation bills, proclamations and regulations, and of executive actions and contemplated executive actions of all participating governments/administrations that may impact on the levelling of the political playing field and on free political participation.
25. The TEC will kept informed of and will be able to ask for and be entitled to receive information in regard to actions and contemplated actions on the part of participating political parties/organisations that may impact on the levelling of the political playing field and on free political participation.

26. If, when considering a proposed bill, proclamation, regulation or action, the TEC has reason to believe that it will have an adverse impact upon the maintenance of a climate for free political; participation and in which free and fair elections can be conducted, or will disturb attempt to level the political playing field, it may in pursuit of its objectives, taking into account its necessity, require the government, administration or party not to proceed with it.
27. If the government, administration or party concerned is of the opinion that the necessity of the bill, proclamation, regulation or action in its area of application outweighs its adverse impact referred to in paragraph 26, the matter may be referred to the independent election commission.
28. In the defined areas of responsibility of sub-councils of the TEC, ministerial powers and discretion in so far as they affect the levelling of the playing fields, the creation of a climate conducive to free and fair elections or free political participation will be exercised in consultation with the TEC, or a sub-council to which this function is delegated by the TEC. Any disagreement arising out of the provisions of this paragraph may be referred by any participant in the TEC to the Independent Election Commission.
29. The decisions of the TEC made within its terms of reference and its powers as set out below will be binding on and will be implemented by all participants including governments/administrations.

2. Independent Election Commission - paras.:

- 30.1 There shall be an Independent Election Commission to be given the responsibility for the holding of free and fair elections. The Commission will be independent of the TEC and will consist of respected and suitably qualified persons drawn from a broad cross-section of the population, who will be appointed by the State President on the recommendation of CODESA.

3. Sub-councils and their areas of responsibility - paras:

32.1 Regional and Local Government

This sub-council will acquaint itself with developments in regional and local government; it will identify and take action in respect of aspects of regional and local government that may impact on the levelling of the political playing fields and on a climate conducive to free political participation; and it will facilitate the process toward a democratic dispensation at regional and local levels.

32.2 Finance

This sub-council will acquaint itself with developments in government finance on all governmental levels (including all existing governmental authorities, be they on the central, regional or local government level), to identify and take actions in respect of aspects in that field that may impact on the levelling of the political playing field and on free political participation, and to facilitate this process towards a democratic dispensation addressing the field of governmental financing including intergovernmental financing. In particular, one of the prime purposes of this sub-council shall be to monitor and/or frustrate any attempt by any governmental body to favour one or other political party or organisation.

32.3 Law and Order, Stability and Security

This sub-council will acquaint itself with developments in law and order, stability and security at all levels of government (central, regional or local) and concerning all other participant in the TEC; it will take steps to identify and to promote all developments in this field which in this opinion may impact favourable upon the levelling of the playing fields and free political participation and the creation as far as possible of a climate of peace and stability; it will take steps to identify and to prevent within its powers all developments in this field which in its opinion will impact adversely upon peace and

stability, the levelling of the playing fields, free political participation or the transition to democracy. The functions of this sub-council will depend upon decisions taken in Working Group 1.

32.4 Defence

This sub-council will acquaint itself with developments concerning defence and military formations at all levels of government (central, regional or local) and including all other participants in the TEC; it will take steps to identify and promote all developments in this field which in its opinion may impact favourably upon the levelling of the playing fields and free political participation, and the creation as far as possible of a climate of peace and stability; it will take steps to identify and to prevent within its powers all developments in this field which in its opinion will impact adversely upon peace and stability, the levelling of the playing fields, free political participation or the transition to democracy. The functions of this sub-council will also depend upon decisions taken in Working Group 1.

34. The legislation agreed to by CODESA will make provision for the sub-councils to be given all powers necessary to enable them to carry out their effectively within their terms of reference.
35. Such legislation will include a provision empowering sub-councils to have access to all information (including records of governments/administrations and other participants in the TEC) which they may require for the purposes of carrying out their tasks within their term of reference.
36. The TEC will be appointed by the State President on the recommendation of CODESA. It will consist of at least one member from each of the government/administrations who commit themselves to comply with and implement the decisions of the TEC and at least one member from each of the political organisations participating in CODESA, provided that such organisations also commit themselves to comply with and implement the decisions of the TEC. Should parties not presently in CODESA wish to participate in the transitional executive structure, the TEC will have the power to recommend at its discretion that the TEC be enlarged to accommodate them, provided that they commit themselves to comply with and implement the decision of the TEC, and in that event, the State President will make the necessary appointment. 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.
37. A sub-council will have a multi-party character and will ordinarily consist of up to six members who will be formally appointed by the State President on the recommendation of the TEC. 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. This removal and replacement of members of a sub-council, 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.
38. Members of the TEC and its sub-councils will be full-time executives, will be provided with the infrastructure necessary to enable them to carry out their duties, and their conditions of service will be prescribed in the legislation under which they are constituted.
39. Members of the TEC may serve on one or more of the sub-council, or may be given special responsibility by the TEC of the sub-councils, within its terms of reference.
40. The size of the Transitional Executive Structure will be kept as small as is reasonably possible.
41. All members of sub-councils, and Ministers of governments/administrations participating in the TEC whose departments may be affected by the functioning of the TEC and its sub-councils, may attend meetings of the TEC by invitation speak on matters affecting their sub-councils or departments, and should attend when matters relating to their sub-councils or departments are being discussed.

42. All Ministers of government/administration participating in the TEC whose departments may be affected by the sub-councils, and who are not members of the sub-councils concerned, may attend meetings of the sub-councils and speak on matters affecting the functioning of their departments, and should attend by invitation if a matter affecting the functioning of their departments is being considered.
43. The TEC and the sub-councils will endeavour to take their decisions by consensus. Where consensus cannot be achieved a majority of at least eighty per cent will be sufficient for a decision of the TEC, provided that if any government, administration or party is of the opinion that the necessity for the minority opinion prevailing outweighs the adverse impact referred to Paragraph 26, the matter may be referred for adjudication as contemplated in Paragraphs 27,28 and 33.

WORKING GROUP 4:

1. Reincorporation - para. 3.1.1

All delegations have no objection in principle to the re-incorporation of the TBVC state.

2. Transitional arrangements - para. 3.1.2

The TBVC states will participate in transitional arrangements as proposed by Working Group 3, on the understanding that these arrangements shall mutatis mutandis impact on the TBVC governments and territories in the same way as they impact on the South Africa government and the RSA.

3. Testing of the will of the people - para.3.1.3

The people of the TBVC states shall take part fully in the processes of constitution making and transitional arrangement, including elections, as may be proposed by Working Groups 2 and 3. Their participation will be arranged in such a way that their votes in a national election shall signify support for or rejection of re-incorporation

4. Restoration of citizenship - para 3.1.4

Restoration of citizenship

South African citizenship will be restored to the citizens of all the TBVC states who would have been South African citizens but for the constitutional independence of the TBVC states, immediately after the testing of the will as envisaged in paragraph 3.1.3 above.

5. Land transfers - para 3.2.3

Working Group 4 has reached sufficient consensus on this matter that:

- 3.2.3.1 No further attempts be made to identify new land for transfer to the TBVC governments.

3.2.3.2 Land currently in possession of the South African Development Trust should remain in the hands of the Trust until its dissolution whereafter it will be transferred to the SA Government (successor in title.)

3.2.3.3 The moratorium should apply to all land in the Schedule to the Borders of Particular States Extension Act 2 of 1980 which has not yet been excised from South Africa.

3.2.3.4 This moratorium will apply to all TBVC States.

WORKING GROUP 5:

1. Sessions of Working Group 4 - para.5

It is recommended, therefore, that WG5 should only be brought into session when clear agreements and decisions concerning its Terms of Reference are forthcoming from Working Group 1 - 4.