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**Working Group 3**

**Working Document Prepared for the Technical Committee - 21 April 1992**

**INTRODUCTION**

1. There are two broad scenarios involving the transition to democracy. They are:
  - 1.1 One which involves a two stage transition. A first stage which covers the period between Codesa 2 and elections for a constitution making body/transitional government, and a second stage which covers the period between the election of a constitution making body/transitional government and the adoption of a new constitution.
  - 1.2 The other which sees the transition as one stage covering the whole of the period between Codesa 2 and the adoption of a new constitution.
2. It was appreciated that the adoption of a particular model for transitional executive measures depends upon certainty as to the scenario to be adopted. In the case of the two stage scenario this includes certainty in regard to details of Stage 2, and also the approximate duration of Stage 1.
3. Subject to the possible consolidation of the tri-cameral parliament and the general affairs/own affairs departments, there seems to be broad agreement that the existing executive and legislative structure should remain in place during Stage 1 of the transition. The relationship between their powers, and the powers of a "transitional executive" needs to be negotiated.
4. The technical committee decided to focus on a model appropriate for the first stage of a two stage transition, on the assumption that the model could be adapted to a one stage transition should that scenario be adopted. The model is ultimately dependent upon agreement being reached concerning the details of Stage 2.
5. During discussion areas of agreement and disagreement were identified. These, and issues which were identified as calling for further discussion, are dealt with in this memorandum.

**A Transitional Structure**

6. It was agreed that there should be a temporary transitional/preparatory executive structure whose primary purpose will be to implement policies and measures directed towards improving the political climate and the levelling of the political playing fields, in order to facilitate the holding of free and fair elections, and to prepare for stage 2.

7. This structure will include a council which will be constituted by legislation agreed to by Codesa, will have a multi-party character and will be vested with effective executive powers. In this memorandum we refer to the council as the TEC (Transitional Executive Council), but it should later be given an appropriate name consistent with its status and functions.
8. The TEC will have sub-councils which will be given specific responsibilities in relation to the functioning of particular departments of State/areas of particular importance in the preparatory phase. The sub-councils will report to the TEC and their decisions will be subject to confirmation by the TEC.
9. The TEC will in addition be able to delegate powers to the sub-councils to enable them to act on their own within the scope of their delegated powers.
10. The TEC will have Cabinet status and its decisions will be binding on and implemented by the government. In the Government's view this will only be the case if decisions are taken by consensus.
11. It has been proposed that in addition to the TEC and the sub-councils, the temporary executive structure should include an Election Commission and a Media Commission to assume responsibility for matters pertaining to the holding of free and fair elections, and to the functioning of the media during the period that the temporary executive structure is in place. These Commissions should be constituted by legislation to be approved by Codesa. They should report to but be independent of the TEC, and should be vested with powers sufficient to enable them to carry out their functions effectively, and to implement the decisions that they take. The Commissions should consist of persons of high standing from a broad cross-section of the population. The formal appointment of such persons should be made by the State President on the recommendation of the Codesa management committee. An alternative suggestion was that a sub-council of the TEC should be appointed to assume responsibility for elections, and that the media should only be given attention in so far as it may be of concern in elections. It was proposed that the possibility of appointing an election commission could be dealt with by the TEC and its sub-committee on elections. During discussion of this issue it was suggested that it may be necessary to have both the independent Commissions and a sub-council. Another suggestion was that the Commissions should be appointed by the sub-council which would define the precise functions which they should perform. These differences have not yet been resolved, and will be addressed again at the next meeting of the Technical Committee.

### Composition Of The TEC And Sub-councils

12. The TEC will be appointed by the State President on the recommendation of the Codesa management committee. Should parties not presently in Codesa wish to participate in the TEC and its sub-councils, the TEC will have the power to recommend at its discretion that the TEC be enlarged to accommodate such representation, and in that event, the State President will make the necessary appointment. Save for consensus that the TEC must have a multi-party character the precise criteria according to which the management committee will make its recommendations for appointments to the TEC and the admission of new participants have not yet been determined. The removal and replacement of members of the TEC, and the temporary appointment of a person as a substitute for a member who is absent or unable to perform his or her duties, will be made by the State President on the recommendation of the TEC. Alternatively, it was proposed that the Codesa Management Committee should decide whether parties from outside Codesa should be accommodated on the TEC and should make the recommendations concerning the substitutions.
13. A sub-council will consist of a Cabinet Minister and will ordinarily have five other members who will be appointed by the State President on the recommendation of the TEC/Management Committee of Codesa. (If a sub-council is given the responsibility for a Department of State, the Cabinet Minister will be the minister responsible for such department). There may be special circumstances in which more than six members will be necessary for the proper functioning of a sub-council and the enabling legislation will make provision for this. Each member of the TEC will be a member of at least one sub-council, and it will be possible for a person to sit on more than one of the sub-councils. The TEC and its sub-councils should not consist of more than thirty persons.

### Departments/areas For Which Sub-councils Will Be Appointed

- 14.1 Defence and Law and Order: A sub-council or sub-councils should be appointed for defence and law and order. These are obviously crucial areas as far as climate and levelling the playing fields are concerned. The question whether there should be one or two sub-councils was left over for later discussion. It was agreed that conclusions reached in working group 1 and bilaterally would be relevant to this decision, as well as to the precise powers and functions to be vested in the sub-council\
- 14.2 Regional and Local Government: The financial arrangements between central government and regional and local authorities are complex and crucial to the finding of negotiated solutions on the questions of regionalism and local government. Regional and local government bear directly upon the day to day lives of the electorate. The

granting of permission to hold meetings and the like can influence the outcome of an election. Regional boundaries may also become relevant depending upon the method of voting at the election and the provisions of any "interim constitution" that may be adopted. Local government is the site of considerable friction which has an impact upon the climate in which the election will be held. It was felt that in the circumstances there should be a sub-council for regional and local government.

- 14.3 Finance: There was agreement that there should be a sub-council for government finance, but there was no agreement in regard to its functions. This issue was left over for subsequent debate.
- 14.4 Foreign Affairs: There are advantages to appointing a sub-council for foreign affairs, but a decision as to whether or not there should be such a sub-council was deferred until the next meeting of the Technical Committee.
- 14.5 It was agreed that sub-councils for urbanisation, housing, and economic affairs would not be able to make any meaningful impact in relation to such matters in the comparatively short period during which it is contemplated that the transitional structures will be in place, and that it was accordingly not appropriate for such sub-councils to be appointed. The TEC should, however, have the capacity to become involved in negotiations and the decision making process in relation to issues (including matters concerned with urbanisation, housing and economic affairs) which could have an impact on the levelling of the playing fields, or the creation or maintenance of a climate in which free and fair elections can be conducted. A way of accomodating this need should be devised.

#### **The Power Of The TEC**

15. Decisions of the sub-councils will be subject to confirmation by the TEC.
16. The TEC will have power to delegate authority to sub-councils to take decisions within the scope of the delegated authority and to implement them.
17. Provision should be made for the TEC in appropriate circumstances to give attention to matters that are relevant to the process of transition but which fall outside the area of activity of a sub-council. The TEC must also be able to call for the appointment of additional sub-councils should that prove to be necessary.

#### **The Power Of The Sub-councils**

18. Agreement was not reached in regard to the nature of the powers that should be vested in the sub-councils. The government accepted that it will be required to act in

accordance with decisions of the TEC (its view being that such decisions should be by consensus). It was proposed that the authority of the sub-councils should be obtained for the passing of new regulations or proclamations within the relevant department/area of work. The Government's attitude was that this should depend on decisions taken in that regard by the TEC. Members of the sub-councils should have access to all information (including departmental and government records) relevant to the work of the sub-council. The Government's attitude was that Ministers would otherwise retain the powers and discretions vested in them by law. Other participants felt that it was essential that the exercise of ministerial powers and discretions be subjected in all respects to the authority of the TEC. It was pointed out that the government's proposal meant that for all practical purposes effective power would remain vested in it, and that the TEC would not have the capacity to prevent the government from undertaking any action that it chose to take. On the other hand it was argued by members that every party represented on the TEC would have the same say as the government representative and that the TEC's major power lay in the fact that it constituted a political coalition between the parties in Codesa.

19. There was also disagreement
  - 19.1 as to the mandate of each sub-council;
  - 19.2 as to powers (if any) of the TEC and sub-councils in relation to the legislative process.
20. These disagreements will be addressed at the next meeting of the Technical Committee.

#### **How Decisions Will Be Made**

21. There is disagreement as to whether decisions of the TEC and the sub-councils should be taken on the basis of total consensus or substantial consensus (to be defined). The government favours total consensus. It was pointed out that a requirement of total consensus would enable a party opposed to the transition to frustrate the working of the transitional executive structures. A party may choose to join the TEC with that purpose in mind. On the other hand it was pointed out that such a situation would have to be dealt with politically through Codesa and that the process would have to continue without that party.

#### **Meetings Of The TEC**

22. All members of sub-councils may be present at meetings off the TEC, and should be present when matters relating to their sub-council are being discussed. Members of sub-councils who are not members of the TEC will be entitled to speak only on matters concerned with the work of their sub-

council, and will not be part of the decision making process at the TEC.

#### **Matters Still To Be Resolved**

- ⊙ 23.1 Should there be a joint or separate sub-councils for law and order and defence.
- 23.2 Should there be independent commissions or sub-councils or both for the elections and the media.
- 23.3 Should decisions of the TEC be by consensus or by substantial consensus.
- 23.4 What should the powers of the TEC and its sub-councils be in respect of
  - 23.4.1 executive actions
  - 23.4.2 the legislative process
- 23.5 How and in what circumstances will the TEC be able to act in relation to matters which are not concerned with the work of its sub-councils, and what powers will it have in respect of such matters.
- 23.6 Who will participate in the TEC.
- 23.7 What will the relationship be between the TEC on the one hand, and the State President, the cabinet, the legislature, the TBVC states, and the organs of regional and local government on the other hand.
- 23.8 According to what criteria will the Codesa Management Committee nominate the members of the TEC.
- 23.9 How will the budget of the TEC and its sub-councils be established.
- 23.10 What should the name of the TEC be.
- 23.11 What will the duration of the TEC be.
- 23.12 How and by whom will the date of the election be established.
- 23.13 How will civil and political rights be protected during the period that the TEC is in place.
- 23.14 Should the Tri-cameral parliament be consolidated and own affairs abolished.

## WORKING GROUP 3

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

#### TERMS OF REFERENCE

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

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

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

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

## INTRODUCTION

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

## BASIC POINTS OF DEPARTURE

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

## THE WAY FORWARD

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



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

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

#### THE TRANSITIONAL EXECUTIVE STRUCTURE

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

#### COMPOSITION OF THE TEC AND SUB-COUNCILS

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

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

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

#### SUB-COUNCILS AND THEIR AREAS OF RESPONSIBILITY

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

#### POWERS OF THE TEC

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

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

#### POWERS OF THE SUB-COUNCILS

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

#### HOW DECISIONS WILL BE MADE

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

#### MEETINGS OF THE TEC

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

#### CONCLUSION

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

## SECOND REPORT OF THE TECHNICAL COMMITTEE TO WORKING GROUP 3

### INTRODUCTION

1. There is substantial consensus that

1.1 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 a constitution making body/transitional government.

This stage covers 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 for the constitution making body/transitional government to the adoption of a new democratic constitution and the installation of a new government in accordance with the provisions of such constitution.

1.2. During the first stage there is a need for a multiparty transitional executive structure to function alongside existing legislative and executive structures. The primary 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.

1.3 During the second stage there will be an elected constitution making body/transitional government.

- 1.4 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.
  
2. The Technical Committee makes the following recommendations to Working Group Three in regard to the first stage of the transition. These recommendations are dependent upon agreement being reached in due course in respect of the second stage of the transition.

#### BASIC POINTS OF DEPARTURE

3. There is a need for a level playing field and a climate favourable to free and fair elections and free political participation. From this flows the primary need for statutory structures to prepare for the institution of a constitution-making body/transitional government and for these structures to focus on the overarching objectives of the achievement and maintenance of a level political playing field and a climate favourable to free and fair elections and free political participation. In this regard particular areas of concern should be identified and there should be councils for the identified areas. Thereafter the tasks of each council should be described as well as the executive powers that it would require in regard to such tasks. Since the councils must always act within the law, enabling legislation may be required. It should also be possible for the councils to propose legislation.
  
4. It is possible that actions may be taking place or legislation considered outside the councils' defined areas of concern, which may have a negative impact on such areas. Councils should be able to identify these and to submit that such actions should not take place or legislation not be proceeded with.

5. There should be an overarching council. One of its tasks will be to familiarise itself with events and developments on the broader political scene in government and elsewhere. It will be able to intervene if something is happening elsewhere that may negatively affect the levelling of the political playing field or the ensuring of a climate favourable to free political participation, by addressing itself to the appropriate quarters.
6. The terms of reference of the overarching body should be the levelling of the playing field and the ensuring of a climate for free political participation and the conducting of free and fair elections while the individual councils should have the same terms of reference but in specific fields.

#### **THE TRANSITIONAL EXECUTIVE STRUCTURE**

7. 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. The structure will include an overarching council, herein referred to as the TEC (Transitional Executive Council).
8. 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**

9. The TEC will be vested by legislation approved by Codesa with powers necessary to enable it to carry out its functions.
10. The TEC will have access to all information [including records of governments/administrations and other participants in the TEC] which may be required by it for the purpose of exercising its functions.
11. The sub-councils will report to the TEC and their decisions will be subject to confirmation/amendment by the TEC.
12. The TEC will be able to delegate powers to the sub-councils to enable them to act on their own.
13. 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.
14. In the defined areas of responsibility of sub-councils of the TEC, ministerial powers and discretion will be exercised jointly in consultation with the TEC. This function may be delegated by the TEC to a sub-council, in which event, the ministerial power and discretion will be exercised jointly in consultation with the sub-council concerned.

15. 15.1 The TEC will be kept informed of and will be able to ask for and receive information in regard to proposed legislation including bills, proclamations and regulations of all participating governments/administrations.
- 15.2 If at least one-third of the members of the TEC are of the opinion that a proposed bill, or proposed proclamation or regulation which has not been dealt with in terms of the procedure described in paragraph 14 hereof, is likely to have an adverse impact upon the maintenance of a climate in which free and fair elections can be conducted, or will disturb attempts to level the playing fields, such bill, proclamation or regulation shall not be proceeded with unless and until it has been considered by the TEC.
- 15.3 If upon consideration of a proposed bill, proclamation, or regulation as provided for in paragraph 15.2 hereof, the TEC has reason to believe that it will have an adverse impact upon the maintenance of a climate in which free and fair elections can be conducted, or will disturb attempts to level the playing fields, it will inform the government/administration concerned of its decision, in which event the government/administration will withdraw the proposed legislation.
16. If at least one-third of the members of the TEC are of the opinion that executive action taken or proposed to be taken by any government/administration is likely to have an adverse impact upon the maintenance of a climate in which free and fair elections can be conducted, or the levelling of the playing fields, and such action has not been agreed upon in terms of the procedure described in paragraph 14 hereof, such action shall not be continued or implemented if the TEC objects thereto.



17. The decisions of the TEC will be binding on and will be implemented by all participants including governments/administrations.
18. If any decision of the TEC or a sub-council made in terms of paragraphs 14, 15.3 or 16 hereof is disputed by any participant in the TEC, such dispute shall be referred to the Independent Election Commission referred to in paragraph 19 hereof which shall decide the dispute. The decision of the Independent Election Commission shall be final and binding on all participants.

#### **INDEPENDENT COMMISSIONS**

19. 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 persons drawn from a broad cross-section of the population, who will be appointed by the State President on the recommendation of Codesa. The composition, powers [which shall include the power to resolve disputes as contemplated in paragraphs 18 and 22 hereof] and functions of the Commission shall be enacted in legislation to be agreed to by Codesa.
20. There will also be a Commission/Authority concerned with the media which will be instituted in accordance with recommendations made by Working Group 1.

## **SUB-COUNCILS AND THEIR AREAS OF RESPONSIBILITY**

21. Provision shall be made in the empowering legislation to be approved by Codesa for the appointment of the following sub-councils:

### **21.1 Regional and Local Government**

This sub-council will acquaint itself with developments in the field of regional and local government; it will identify and take action in respect of aspects in that field 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 towards a democratic dispensation at regional and local levels. In this context regional governments shall be considered to include provincial administrations, self-governing and TBVC states on the assumption that the latter will be part of the TEC.

### **21.2 Finance**

This sub-council will acquaint themselves with developments in the field of governmental finance on all governmental levels (including all governmental authorities, be they on the central, regional or local 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.

21.3 Law and Order, Stability and Security: This sub-council will acquaint itself with developments in the fields of law and order, security and stability; It will take steps to identify and to 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 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.

21.4 Defence: This sub-council will acquaint itself with developments in the fields of defence and military formations; 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 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.

- 21.5 Foreign Affairs: Due to the unique character of this sub-council there is a need for broader discussion concerning its defined areas of responsibility than was possible in the technical committee.
- 21.6 Elections: There may be a need for an election sub-council to provide services and information to the Independent Election Commission. The TEC will decide whether or not there is a need for such a sub-council. The appointment of such a sub-council will not interfere in any way with the independence or powers of the Independent Election Commission.
22. In the event of any dispute arising as to whether any specific matter or sphere of action falls within the ambit of any of the above objectives, definitions and/or concepts, such dispute may be referred by any participant in the TEC or sub-council, as the case may be, to the Independent Election Commission for its decision, and in that event the provisions of paragraph 18, will apply to such dispute.

#### **POWERS OF SUB-COUNCILS**

- 23 The legislation to be approved by Codesa will make provision for the sub-councils to be given all powers necessary to enable them to carry out their tasks effectively.
24. 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 purpose of carrying out their tasks.

## COMPOSITION OF THE TEC AND SUB-COUNCILS

25. 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 governments/administration 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, other than the parties who control the participating governments/administrations, 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 decisions 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.
26. 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. The 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.

27. 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.
  
28. Members of the TEC may serve on one or more of the sub-councils, or may be given special responsibility by the TEC for matters outside the defined areas of responsibility of the sub-councils.
  
29. The size of the Transitional Executive Structure will be kept as small as is reasonably possible.

#### **MEETINGS OF THE TEC AND ITS SUB-COUNCILS**

30. All members of sub-councils, and Ministers of governments/administrations participating in the TEC whose departments maybe affected by the functioning of the TEC and its sub-councils, may attend meetings of the TEC and speak on matters affecting their sub-councils or departments, and should attend when matters relating to their sub-councils or departments are being discussed.
  
31. All Ministers of governments/administrations participating in the TEC whose departments may be affected by the functioning of a sub-council, and who are not members of the sub-council concerned, may attend meetings of the sub-council and speak on matters affecting the functioning of their departments, and should attend if a matter affecting the functioning of their departments is being considered.

### HOW DECISIONS WILL BE MADE

32. 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 required for a decision of the TEC. When consensus cannot be achieved in a sub-council, any dispute will be referred to the TEC for decision.

### DIFFERENCE OF OPINION

33. Differences of opinion existed in respect of the whole or part of the following paragraphs:

4, 5, 14, 15, 16, 17, 18, 21.1, 21.2, 21.3, 21.4, 32

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CODESA: WORKING GROUP 3

COMMENTS OF THE DIKWANKWETLA PARTY  
ON ASPECTS OF THE SECOND REPORT OF THE TECHNICAL COMMITTEE

The proposals made by the Working Group/Technical Committee are not on all aspects as clear as one would have wished for.

The report states that the primary purpose of the TEC will be "to prepare for and facilitate the transition to a democratic constitution ... and in particular, the leveling of the playing fields and a climate favourable to free political participation and the holding of free and fair elections".

There appears to be an incongruity between the functions on the one hand and on the other hand the powers envisaged for the TEC. The Committee seems to be in two minds whether an executive structure with executive powers is required or whether the TEC and its sub-councils should merely be empowered to act as a "watchdog organisation" monitoring the actions of governmental institutions with a view to ensuring the leveling of the playing field and conditions conducive to the development of a truly non-racial democratic society.



Paragraph 14 of the proposals states that "in the defined areas of responsibility of sub-councils of the TEC, ministerial powers and discretion will be exercised jointly in consultation with the TEC". Provision is also made for joint decisions with sub-councils in the event of powers being delegated by the TEC to such councils.

The objection has been raised that these proposals would constitute a doubling of executive power and result in "two governments governing the country". We are of the opinion that the way these proposals are structured at the moment, and especially the provisions contained in paragraph 14, this objection has not been met in a satisfactory way.

We are of the opinion that this objection may be overcome by clearly distinguishing between "joint decision-making" and "decision-making in consultation". We would suggest that provision shall be made for certain specific matters enumerated in the proposed parliamentary legislative measures, which shall be decided on by the minister or other executive authority concerned "in consultation" with the TEC or one of its sub-councils. Such a requirement would ensure that decisions on the enumerated matters will be without legal justification if the agreement of the appropriate council is not obtained. These councils would not be in charge of day-to-day executive operations and would not wield direct executive powers but on the other hand their consent on specific matters would be required prior to taking any executive action on any of the enumerated matters. It should therefore be stated clearly that the process of acting in consultation does not imply that the TEC or any of its sub-councils would per se be acting in an executive capacity.

We have often stated our position with regard to an interim executive and we are still of the opinion that the interim executive should be structured in such a way that no party should be in position to dominate or distort the negotiating process by taking unfair advantage of its position. We are further still of the opinion that for the interim a system of forced coalition government incorporating the strongest political groupings has much to commend itself. Within such an executive structure the different parties would be required to come to appropriate compromise solutions for which they will have to take responsibility.

In order to implement their monitoring function effectively the TEC should be empowered to request and obtain such information from government sources as they may require. We cannot however agree with the proposals for a general veto power on the part of the TEC and its sub-councils with regard to legislative measures as well as executive actions. We are in agreement with the need to establish such councils in order to facilitate the transitional phase towards a truly democratic society but we are of the opinion that the power of recommendation and advice would be sufficient to fulfill their task in this regard.

We cannot agree with the proposal contained in paragraph 18 in terms of which provision is made for an appeal procedure to the Independent Election Commission. In view of the dire economic position of the country and the precarious security situation such cumbersome procedures should not be allowed to paralyse or unduly impede on effective interim governmental action.

## THIRD REPORT OF THE TECHNICAL COMMITTEE TO WORKING GROUP 3

### INTRODUCTION

1. 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 covers 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.
2. 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.
3. 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.

4. The following recommendations are made in regard to the first stage of the transition. These recommendations 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**

5. There is a need for a level playing field and a climate favourable to free and fair elections and free political participation. From this flows the 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.
6. 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.
7. There should be an overarching council. One of its tasks will be to familiarise itself with events and developments on the broader political scene in government and elsewhere. It will be able to intervene 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.

8. The terms of reference of the overarching body should be the levelling of the playing field and the ensuring of a climate for free political participation and 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 prejudge constitutional options.

### **THE TRANSITIONAL EXECUTIVE STRUCTURE**

9. 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).
10. 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**

11. The TEC will be vested by legislation agreed to by Codesa with powers necessary to enable it to carry out its functions.
12. The TECs 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 powers and duties.
13. The sub-councils will report to the TEC and their decisions will be subject to confirmation/amendment by the TEC.

14. The TEC will be able to delegate powers to the sub-councils to enable them to act on their own.
15. 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.
16. 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 including 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.
17. The TEC will be 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 organisations that may impact on the levelling of the political playing field and on free political participation.
18. 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 attempts 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.

19. 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 18, the matter may be referred to the independent election commission.
  
20. 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.
  
21. The decisions of the TEC made within its terms of reference and its powers as set out above will be binding on and will be implemented by all participants including governments/administrations.

## INDEPENDENT COMMISSIONS

### 22. Independent Election Commission

22.1 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.

22.2 The composition, powers (which shall include the power to resolve disputes as

contemplated in paragraphs 19, 20 and 25 hereof) and functions of the Commission shall be enacted in legislation to be agreed to by Codesa.

23. Independent Media Commission: There will also be a Commission/Authority concerned with the media which will be instituted in accordance with recommendations made by Working Group 1. The composition, powers and functions of the Commission will be enacted in legislation to be agreed to by Codesa.

#### **SUB-COUNCILS AND THEIR AREAS OF RESPONSIBILITY**

24. Provision will be made in the empowering legislation to be approved by Codesa for the appointment of the following sub-councils. In this section 'regional governments' will be considered to include provincial administrations, self-governing and TBVC states which have elected to cooperate and work within the transitional executive structure.

##### 24.1 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 towards a democratic dispensation at regional and local levels.

##### 24.2 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.

#### 24.3 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 participants in the TEC; it will take steps to identify and to 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 depend upon decisions taken in Working Group 1.

#### 24.4 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 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.

#### 24.5 Foreign Affairs

Due to the unique character of this sub-council there is a need for broader discussion concerning its defined areas of responsibility than was possible in the technical committee.

#### 25.6 Elections

There may be a need for an election sub-council to provide services and information to the Independent Election Commission. The TEC will decide whether or not there is a need for such a sub-council. The appointment of such a sub-council will not interfere in any way with the independence or powers of the Independent Election Commission.

25. In the event of any dispute arising as to whether any specific matter or sphere of action falls within the ambit of any of the above objectives, definitions and/or concepts, such dispute may be referred by any participant in the TEC or sub-council, as the case may be, to the Independent Election Commission.

### **POWERS OF SUB-COUNCILS**

26. The legislation to be approved by Codesa will make provision for the sub-councils to be given all powers necessary to enable them to carry out their tasks effectively within their terms of reference.
  
27. 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 purpose of carrying out their tasks within their terms of reference.

### **COMPOSITION OF THE TEC AND SUB-COUNCILS**

28. 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 governments/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 decisions 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.

29. 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. The 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.
30. 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.
31. Members of the TEC may serve on one or more of the sub-councils, or may be given special responsibility by the TEC for matters outside the defined areas of responsibility of the sub-councils, within its terms of reference.
32. The size of the Transitional Executive Structure will be kept as small as is reasonably possible.

#### **MEETINGS OF THE TEC AND ITS SUB-COUNCILS**

33. 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 and speak on matters affecting their sub-councils or departments, and should attend when matters relating to their sub-councils or departments are being discussed.

34. All Ministers of governments/administrations participating in the TEC whose departments may be affected by the functioning of a sub-council, and who are not members of the sub-council concerned, may attend meetings of the sub-council and speak on matters affecting the functioning of their departments, and should attend if a matter affecting the functioning of their departments is being considered.

#### **HOW DECISIONS WILL BE MADE**

35. 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. When consensus cannot be achieved in a sub-council, any dispute will be referred to the TEC for decision.

#### **STATES OF EMERGENCY**

36. This issue will depend on decisions taken in Working Group 1.

## FINAL REPORT OF WORKING GROUP 3

### INTRODUCTION

1. 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 covers 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.
2. 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.
3. 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.

4. The following recommendations are made in regard to the first stage of the transition. These recommendations 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**

5. There is a need for a level playing field and a climate favourable to free and fair elections and free political participation. From this flows the 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.
6. 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.
7. There should be an overarching council. One of its tasks will be to familiarise itself with events and developments on the broader political scene in government and elsewhere. It will be able to intervene 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.

8. 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**

9. 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).
10. 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**

11. The TEC will be vested by legislation agreed to by Codesa with powers necessary to enable it to carry out its functions.
12. 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.



13. The sub-councils will report to the TEC and their decisions will be subject to confirmation/amendment by the TEC.
14. The TEC will be able to delegate powers to the sub-councils.
15. 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.
16. 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 including 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.
17. The TEC will be 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.
18. 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 attempts 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.

19. 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 18, the matter may be referred to the independent election commission.
  
20. 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.
  
21. The decisions of the TEC made within its terms of reference and its powers as set out above will be binding on and will be implemented by all participants including governments/administrations.

## INDEPENDENT COMMISSIONS

### 22. Independent Election Commission

- 22.1 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.

- 22.2 The composition, powers (which shall include the power to resolve disputes as contemplated in paragraphs 19, 20 and 25 hereof) and functions of the Commission shall be enacted in legislation to be agreed to by Codesa.
23. Independent Media Commission: There will also be a Commission/Authority concerned with the media which will be instituted in accordance with recommendations made by Working Group 1. The composition, powers and functions of the Commission will be enacted in legislation to be agreed to by Codesa.

#### **SUB-COUNCILS AND THEIR AREAS OF RESPONSIBILITY**

24. Provision will be made in the empowering legislation to be approved by Codesa for the appointment of the following sub-councils. In this section 'regional governments' will be considered to include provincial administrations, self-governing and TBVC states which have elected to cooperate and work within the transitional executive structure.

##### **24.1 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 towards a democratic dispensation at regional and local levels.

#### 24.2 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.

#### 24.3 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 participants in the TEC; it will take steps to identify and to 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 depend upon decisions taken in Working Group 1.

#### 24.4 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.

#### 24.5 Foreign Affairs

Due to the unique character of this sub-council there is a need for broader discussion concerning it.

#### 24.6 Elections

There may be a need for an election sub-council to provide services and information to the Independent Election Commission. The TEC will decide whether or not there is a need for such a sub-council. The appointment of such a sub-council will not interfere in any way with the independence or powers of the Independent Election Commission.

25. In the event of any dispute arising as to whether any specific matter or sphere of action falls within the ambit of any of the above objectives, definitions and/or concepts, such dispute may be referred by any participant in the TEC or sub-council, as the case may be, to the Independent Election Commission.

#### **POWERS OF SUB-COUNCILS**

26. 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 tasks effectively within their terms of reference.
27. 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 purpose of carrying out their tasks within their terms of reference.

#### **COMPOSITION OF THE TEC AND SUB-COUNCILS**

28. 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 governments/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 decisions 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.

29. 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. The 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.
30. 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.
31. Members of the TEC may serve on one or more of the sub-councils, or may be given special responsibility by the TEC for matters outside the defined areas of responsibility of the sub-councils, within its terms of reference.
32. The size of the Transitional Executive Structure will be kept as small as is reasonably possible.

### MEETINGS OF THE TEC AND ITS SUB-COUNCILS

33. 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 and speak on matters affecting their sub-councils or departments, and should attend when matters relating to their sub-councils or departments are being discussed.
34. All Ministers of governments/administrations participating in the TEC whose departments may be affected by the functioning of a sub-council, and who are not members of the sub-council concerned, may attend meetings of the sub-council 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.

### HOW DECISIONS WILL BE MADE

35. 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 of the minority opinion prevailing outweighs the adverse impact referred to Paragraph 18, the matter may be referred for adjudication as contemplated in Clauses ~~19, 20~~ and 25.

19, 20



**STATES OF EMERGENCY**

36. This issue will depend on decisions taken in Working Group 1.

**PROPOSED IMPLEMENTATION AND TIME FRAMES CLAUSE**

37. Subject to Paragraph 4 and agreement by CODESA to the provision of this report, CODESA should ask its Management Committee (MC) to ensure that all outstanding matters required for implementation are resolved within agreed time frames. Once this is completed to its satisfaction, the MC is delegated the authority to activate and implement its clauses.