

1/18/3/3/1

XIMOKO PROGRESSIVE PARTY
WORKING GROUP 3
SOME INITIAL SUGGESTIONS WITH REGARD TO THE PURPOSE
OBJECTIVES, FUNCTIONS AND STRUCTURES OF INTERIM AND TRANSITIONAL
GOVERNMENT.
23/02/92

In order to phase in the new political system in a systematic and orderly way, it is necessary to distinguish in the short and medium terms between two formal series of adaptations to existing governmental structures and processes :

- PHASE I: an INTERIM phase embodying small but necessary changes to formalise the status quo into a de jure situation of two parallel sets of institutions operating simultaneously for a brief period in the immediate short term in order to facilitate orderly constitutional change; and
- PHASE II: a TRANSITIONAL phase where all outdated institutions are abolished and replaced by a new elected TRANSITIONAL ASSEMBLY to supervise, control and eventually ratify the new constitution and attend to urgent routine legislation in the medium term, as well as a new TRANSITIONAL EXECUTIVE running the government until the new system starts to operate in its final form.

1 INTERIM CHANGES

The first phase is the INTERIM phase consisting of relatively small but urgent changes to the composition and functioning of CODESA, PARLIAMENT, CABINET, the PUBLIC SERVICE and PARA - STATAL BODIES in order to recognise the new situation which has developed with the establishment of CODESA and the increasing legitimacy CODESA is being accorded in most circles. This is necessary in order not to lose the momentum already built up in and the progress achieved by CODESA. This phase does not provide for elected bodies. It should consist of the following actions in the short term:

1.1 The transformation of CODESA into a statutory body to recognise its growing stature and to formalise the progress achieved so far (the Declaration of Intent, constitutional and human rights principles, codes of conduct and preliminary agreement already reached). This will accord CODESA the status it deserves as an emerging fledgling legislature. The relationships, trust and procedures and growing consensus which has developed over time in CODESA must be protected and extended in this way. CODESA must be accorded the role of formal negotiating forum and LEGISLATIVE CLEARING HOUSE for Parliament in reaching agreement on the proposed contents of all future constitutional changes before they are tabled in Parliament. CODESA should continue with all due haste to hammer out all the principles on which a new constitution should be based as well

as negotiating the composition of the TRANSITIONAL ASSEMBLY (TA) and electoral system to be used to elect it and TRANSITIONAL CABINET (TC) to run the government in the transitional phase until the final model starts to operate. As soon as these tasks are completed, legislation must be drawn up to provide for an election of the TA and the abolition of CODESA as soon as it is elected.

1.2 PARLIAMENT should continue to legislate on routine and technical bills to improve existing laws and to keep government running by voting budgets when necessary. It could, however, also be adapted in the short term by abolishing the now defunct own affairs functions and Ministers' Councils. This refinement is, however, not really necessary. It seems a waste of time and effort to devote too much attention to a restructuring of Parliament at this stage. Parliament's relationship with CODESA should be formalised as follows in legislation: on routine matters Parliament is still sovereign; on issues of constitutional change, it should only ratify CODESA's decisions. A new MULTI - PARTY EXECUTIVE body at Cabinet level should decide which matters are routine or constitutional.

1.3 CABINET should continue in its present form with routine government functions. A new statutory INTERIM MULTI - PARTY EXECUTIVE should be established at Cabinet level and should exercise statutory control over security issues, the media, the budgetary process and elections, including the control over the government departments concerned. It should also decide which issues should be tabled in Parliament and in CODESA.

1.4 The composition of key controlling and advisory bodies in the public sector should also be adapted to reflect the new situation which is emerging. This includes the Commission for Administration, the Manpower Commission, the SABC board, the State Security Council, the State President's Advisory Committee on Spending Priorities and the Economic Advisory Council, etc. It should also apply to the filling of key vacancies in the public service.

2 TRANSITIONAL STRUCTURES AND PROCESSES

The transitional phase would embody the abolition of the TRICAMERAL PARLIAMENT, the PRESIDENT'S COUNCIL, CODESA and the current CABINET, the election of the TA and either the continuation of the INTERIM MULTI-PARTY EXECUTIVE now as a TRANSITIONAL CABINET or the establishment of a new representative TRANSITIONAL CABINET (TC).

2.1 The TA should, in addition to its controlling role over the process of supervising the drafting of the new constitution, also attend to urgent additional legislative business like providing budgets and necessary amendments to existing legislation in order to keep the government running. This is necessary because of abolition of the Tricameral Parliament. The process of drafting and ratifying the new constitution should not take long because all the principles will probably already have been worked out in

CODESA. The additional legislative role of the TA will therefore not be time consuming. It is conceivable that the TA can continue for a few years as the first new Parliament until the second election is called.

2.2 The new TRANSITIONAL EXECUTIVE also takes over as TC from the Tricameral Cabinet, controlling all government functions, until the new Cabinet takes over.

3 DIVISION OF WORK

Working Group 3 of CODESA could work out the details and synchronisation of the different phases while Working Group 2 could attend to the constitutional principles underlying the new institutions, eg the electoral system, the composition and functions of the different bodies, the relationship between legislature and executive, etc.