

SUBMISSION ON TRANSITIONAL ARRANGEMENTS

1. On 23 March 1992 Proposals for Transitional Arrangements were submitted. It was indicated that proposals for a transitional constitution would be made available in the form of draft legislation towards the end of April. Furthermore proposals for arrangements for the preparatory phase were tabled for negotiation and it was said that a draft bill thereon would be presented for discussion of the details.
2. Such draft is now attached in a document under the heading "*Framework for Legislation on the Establishment of Preparatory Councils*". The Councils have been renamed so as better to describe their functions. In the preparation of the document, the discussions of the proposals on 23 and 24 March 1992 were taken into account. It is a framework because the result of the negotiations will have to be redrafted into a technically correct form.
3. The bill has a preamble and 6 clauses:

Preamble: A general description of the aims of the bill and of the functions of the proposed Councils.

Clause 1:

It is proposed that five Preparatory Councils be established initially. In addition to the four originally mentioned, a Preparatory Council for Housing and Urbanisation is proposed. Many other factors obstructing the reform process and relationships can be traced back to problems in the area of housing and urbanisation. Provision is made for the establishment of further councils by way of proclamation.

Every Council has seven members of whom six are nominated by CODESA and one appointed by the Government securing continuous linkage with the Cabinet.

The total membership of all Councils is limited to 30. Thus the Joint Preparatory Council referred to in sub-clause (9) will have thirty members.

Provision is made for the remuneration of members of Preparatory Councils. It is proposed that CODESA should make recommendations in this regard.

The permanent or temporary substitution of members is provided for.

A Preparatory Council can adopt resolutions and can itself decide on matters of procedure and chairmanship.

Clauses 2 to 5:

The functions of the five proposed Councils are described in broad terms. Detail was avoided as in the enumeration of items vital aspects are often inadvertently omitted.

3. Progress in the negotiation of transitional arrangements is of necessity dependent on progress made towards the creation of a climate for free political participation being the assignment of Working Group 1. These terms of reference for Working Group 1 were to address issues such as political intimidation, the termination of use of military and/or violent means, or the threat thereof for promoting the objectives or views of a political party or organisation and the successful implementation of the National Peace Accord. The National Peace Accord in particular forbids private armies. What transitional structures should look like, who should participate in these and what their functions should be, are

some of the issues directly related to the level of political violence and intimidation and the state of the climate for free political participation.

4. Dates have been decided upon for CODESA to meet in plenary session for a second time. CODESA 2 is scheduled for 15 and 16 May 1992. In the meantime very little if any progress has been made towards attaining the goals of Working Group 1 in regard to the level of political violence and a climate for free political participation, whereas progress towards a solution of problems relating to bilateral agreements, *inter alia* those in the Pretoria Minute and the D F Malan Accord has been most disappointing. The matters are not raised for discussion in Working Group 3, but the Government delegation wishes to state that meaningful discussions on transitional arrangements are becoming difficult because of the lack of satisfactory progress being made regarding the issues concerned.
5. Preparatory Councils for Law and Order and for Defence were also mentioned in our original proposals. These are vital areas to be dealt with but the institution of such councils can also only be negotiated in tandem with progress made in Working Group 1 and bilaterally. It is very difficult to foresee the successful negotiation of such councils while participating parties are still committed to armed action.
6. We are all anxious to proceed as fast as possible on the road towards a new democratic constitution. It is sincerely hoped that solutions will be found in Working Group 1 and bilaterally to ensure that progress is not retarded.

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FRAMEWORK FOR LEGISLATION ON THE ESTABLISHMENT OF PREPARATORY COUNCILS

To provide for the establishment and functions of Preparatory Councils to do planning and preparation for the implementation of a transitional constitution.

ESTABLISHMENT AND COMPOSITION OF PREPARATORY COUNCILS

1. (1) The following Preparatory Councils composed of seven members each, six of whom are designated by the Management Committee of CODESA and appointed by the State President, and one member appointed by the State President as representative of the Government of the Republic of South Africa, are hereby established:
 - (a) The Preparatory Council for Elections
 - (b) The Preparatory Council for Regional Government
 - (c) The Preparatory Council for Local Government
 - (d) The Preparatory Council for Government Finances
 - (e) The Preparatory Council for Housing and Urbanization
- (2) The State President may establish further Preparatory Councils and determine their functions by proclamation in the *Government Gazette* at the request of the Management Committee of CODESA or of a Joint Preparatory Council referred to in sub-section (9) of this section.
- (3) A person may be appointed as a member of more than one Preparatory Council and at no time may the number of persons who are members of Preparatory Councils, exceed thirty.

- (4) A person who is a Minister or Deputy Minister in the South African Government or the Government of a Selfgoverning Territory or a member of the Executive Council of a Province, may also be appointed as a member of a Preparatory Council.
- (5) On the recommendation of the Management Committee of CODESA or of the Preparatory Council involved, the State President may terminate the appointment of any member of any Preparatory Council and appoint someone else in his place. The State President may appoint a member of another Preparatory Council in the same manner to act for a member of a Preparatory Council who is temporarily indisposed or who is for any other reason not able to attend meetings of that Preparatory Council.
- (6) A Preparatory Council may adopt resolutions by consensus among all its members concerning any matter relating to its activities, and decide itself on matters such as chairmanship and procedure.
- (7) A Preparatory Council must initiate and co-ordinate such negotiations as may in its judgment be necessary for the purposes of its activities.
- (8) Two or more of all the Preparatory Councils may meet together to discuss matters of common interest or of interest to any specific Preparatory Council or in general concerning the transitional process towards a new democratic constitution.
- (9) When all Preparatory Councils meet together, that body is known as the Joint Preparatory Council.
- (10) Members of Preparatory Councils receive the remuneration and benefits that the State President, acting on the advice of the Management Committee of CODESA, may determine by regulation.
- (11) A person who is a member of more than one Preparatory Council, is for the purposes of sub-section (10) of this section considered to be a member of only one and a person who holds an office referred to in sub-section (4) of this section, is not entitled to receive remuneration or benefits in respect of such an office and of his membership of a Preparatory Council.

PREPARATORY COUNCIL FOR ELECTIONS

2. The Preparatory Council for Elections must plan and make preparations for elections to take place in terms of a transitional constitution and to ensure that such elections will be free and fair.

PREPARATORY COUNCIL FOR REGIONAL GOVERNMENT

3. (1) The Preparatory Council for Regional Government must, having regard to existing provincial boundaries as well as political, geographic, demographic and economic determinants and after consulting existing authorities as well as informed persons and institutions, formulate resolutions on the delimitation of the territory of the Republic in as many provinces or federal component states as may be politically and economically justifiable.
- (2) Furthermore the Council must, having regard to the proposed boundaries of provinces or component states as intended in sub-section (1), the boundaries of local government areas as well as geographic, demographic and economic determinants and after consulting existing authorities as well as informed persons and institutions, formulate resolutions on the delimitation of every proposed province or component state into constituencies for the purposes of the composition of national structures of government in such a manner that no constituency will fall in more than one province or component state.
- (3) The consent of existing government institutions is a prerequisite for the implementation of resolutions that may be applicable to them.

PREPARATORY COUNCIL FOR LOCAL GOVERNMENT

4. The Preparatory Council for Local Government must, taking provincial and constituent state boundaries that may be proposed by the Preparatory Council for Regional Government and of the boundaries of existing local government areas as well as the geographic, demographic and economic determinants into account and after consulting existing government institutions as well as informed persons and institutions, formulate resolutions on the delimitation of local government

areas in such a manner that no local government area falls in more than one province or constituent state.

PREPARATORY COUNCIL FOR GOVERNMENT FINANCES

5. The Preparatory Council for Government Finances must undertake planning and preparation concerning the conduct of government finances in a transitional dispensation and must initiate and co-ordinate such negotiations as may in its judgment be necessary for its activities, and specifically concerning inter-governmental financing.

TRANSITIONAL COUNCIL FOR HOUSING AND URBANIZATION

6. The Transitional Council for Housing and Urbanization must undertake planning and preparation regarding a housing and urbanisation policy in a transitional dispensation.

VOORLEGGING RAKENDE OORGANGSMAATREËLS

1. Op 23 Maart 1992 is Voorstelle vir Oorgangsmaatreëls voorgelê. Daarin is aangedui dat voorstelle vir 'n oorgangsgrondwet teen die einde van April beskikbaar gestel sal word in die vorm van konsep-wetgewing. Daarbenewens is voorstelle oor maatreëls vir die voorbereidende fase vir onderhandeling ter tafel gelê en is gesê dat 'n konsep-wetsontwerp daarvoor vir die bespreking van die besonderhede aangebied sou word.
2. So 'n konsep is nou aangeheg in 'n dokument met die opskrif "*Raamwerk vir Wetgewing op die Instelling van Voorbereidende Rade*". Die Rade is 'n nuwe naam gegee ten einde hulle funksies beter te beskryf. Die bespreking van die voorstelle op 23 en 24 Maart 1992 is in aanmerking geneem by die opstel van die dokument. Dit is 'n raamwerk omdat die produk van die onderhandelings in 'n tegniese korrekte teks beskryf moet word.
3. Die wetsontwerp het 'n inleiding en 6 klousules.

Inleiding: 'n Oorhoofse beskrywing van die doelstellings van die wetsontwerp en van die funksies van die voorgestelde Rade.

Klousule 1: Daar word voorgestel dat vyf Voorbereidende Rade aanvanklik ingestel word. Benewens die vier wat voorheen genoem is, word 'n Voorbereidende Raad vir Behuising en Verstedeliking voorgestel. Baie ander faktore wat die hervormingsproses en verhoudings belemmer kan teruggevoer word na die gebied van

behuising en verstedeliking. Voorsiening word ook gemaak vir die instelling van verdere rade by proklamasie.

Elke Raad het sewe lede van wie ses deur KODESA benoem word en een deur die Regering aangestel word om deurlopende skakeling met die Kabinet te verseker.

Die totale lidmaatskap van al die Rade word beperk tot dertig. Die Gesamentlike Voorbereidende Raad waarna in sub-klousule (9) verwys word, sal dus dertig lede hê.

Voorsiening word gemaak vir die vergoeding van lede van die Voorbereidende Rade. Daar word voorgestel dat KODESA aanbevelings in dié verband maak.

Voorsiening word gemaak vir die permanente en tydelike vervanging van lede.

'n Voorbereidende Raad kan resolusies aanvaar en kan self oor prosedurele aangeleenthede en oor^o voorsitterskap besluit.

Klousule 2 tot 5: Die funksies van die vyf voorgestelde Rade word breedweg beskryf. Besonderhede is vermy omdat belangrike aspekte dikwels uit die oog verloor en weggelaat word wanneer funksies gespesifiseer word.

3. Vordering in die onderhandeling van oorgangsmatreëls is noodsaaklikerwys afhanklik van vordering wat gemaak word met die skep van 'n klimaat bevorderlik vir vrye politieke deelname, synde die opdrag van Werkgroep 1. Die opdrag van Werkgroep 1 was om aangeleenthede aan te spreek soos politieke intimidasie, die beëindiging van die gebruik van militêre en/of gewelddadige middels, of dreigemente daarmee, vir die bevordering van die doelstellings of sienswyses van 'n politieke party of organisasie en die suksesvolle toepassing van die Nasionale Vredesakkoord. Die Nasionale

Vredesakkoord verbied private leërs spesifiek. Hoe oorgangstrukture daar moet uitsien, wie aan hulle moet deelneem en wat hulle funksies moet wees, is sommige van die aangeleenthede wat in direkte verband staan met die vlak van politieke geweld en intimidasie en die stand van die klimaat vir vrye politieke deelname.

4. Daar is besluit op datums waarop KODESA vir die tweede keer in volle sitting sal vergader. KODESA 2 is geskeduleer vir 15 en 16 Mei 1992. Intussen is baie min, indien enige, vordering gemaak ten opsigte van die doelwitte van Werkgroep 1 rakende die vlak van politieke geweld en 'n klimaat vir vrye politieke deelname, terwyl vordering na 'n oplossing van die probleme rakende bilaterale ooreenkomste, onder andere dié in die Pretoria-minuut en die D F Malan-akkoord, uiters teleurstellend was. Hierdie aangeleenthede word nie geopper vir bespreking in Werkgroep 3 nie, maar die Regeringsafvaardiging wil dit stel dat betekenisvolle besprekings oor oorgangsmaatreëls baie moeilik word weens die gebrek aan bevredigende vordering ten opsigte van die betrokke aangeleenthede.
5. Voorbereidende Rade vir Wet en Orde en vir Verdediging is ook in ons oorspronklike voorstelle genoem. Dit is belangrike areas wat hanteer moet word, maar die instel van sulke rade kan ook slegs onderhandel word in tandem met die vordering wat in Werkgroep 1 en bilateraal gemaak word. Die suksesvolle onderhandeling van sulke rade is moeilik te voorsien terwyl deelnemende partye steeds tot gewapende optrede verbind is.
6. Ons is almal gretig om so vinnig as moontlik te vorder op die pad na 'n nuwe demokratiese grondwet. Daar word opreg gehoop dat oplossings in Werkgroep 1 en bilateraal gevind sal word om te verseker dat vordering nie vertraag word nie.

RAAMWERK VIR WETGEWING OP DIE INSTELLING VAN VOORBEREIDENDE RADE

Om voorsiening te maak vir die instelling en funksies van Voorbereidende Rade wat beplanning en voorbereiding vir die implementering van 'n oorgangsgrondwet kan doen.

INSTELLING EN SAMESTELLING VAN VOORBEREIDENDE RADE

1. (1) Die volgende Voorbereidende Rade bestaande uit sewe lede elk, ses van wie aangewys word deur die Bestuurskomitee van KODESA en aangestel word deur die Staatspresident, en een lid aangewys deur die Staatspresident as verteenwoordiger van die Regering van die Republiek van Suid-Afrika, word hiermee ingestel:
 - (a) Die Voorbereidende Raad vir Verkiesings
 - (b) Die Voorbereidende Raad vir Streekregering
 - (c) Die Voorbereidende Raad vir Plaaslike Regering
 - (d) Die Voorbereidende Raad vir Owerheidsfinansies
 - (e) Die Voorbereidende Raad vir Behuising en Verstedeliking
- (2) Die Staatspresident kan verdere Voorbereidende Rade op versoek van die Bestuurskomitee van KODESA of van 'n Gesamentlike Voorbereidende Raad bedoel in subartikel (9) van hierdie artikel by proklamasie in die *Staatskoerant* instel en hulle werksaamhede bepaal.
- (3) 'n Persoon mag aangestel word as 'n lid van meer as een Voorbereidende Raad en op geen tydstip mag die getal persone wat lede van Voorbereidende Rade is, dertig oorskry nie.

- (4) 'n Persoon wat 'n Minister of Adjunkminister in die Suid-Afrikaanse Regering of die Regering van 'n Selfregerende Gebied of 'n lid van 'n Uitvoerende Komitee van 'n Provinsie is, kan ook as 'n lid van 'n Voorbereidende Raad aangestel word.
- (5) Op aanbeveling van die Bestuurskomitee van KODESA of van die betrokke Voorbereidende Raad, kan die Staatspresident die aanstelling van enige lid van enige Voorbereidende Raad beëindig en iemand anders in sy plek aanstel. Die Staatspresident kan op dieselfde wyse 'n lid van 'n ander Voorbereidende Raad aanstel om waar te neem in die plek van 'n lid van 'n Voorbereidende Raad wat tydelik ongestel is of vir enige ander rede nie by magte is om vergaderings van daardie Voorbereidende Raad by te woon nie.
- (6) 'n Voorbereidende Raad kan resolusies met betrekking tot enige aangeleentheid wat met sy werksaamhede verband hou deur konsensus tussen al die lede daarvan aanneem en besluit self oor aangeleenthede soos voorsitterskap en prosedure.
- (7) 'n Voorbereidende Raad moet sodanige onderhandelinge as wat na sy oordeel vir die doel van sy werksaamhede nodig mag wees, inisieer en koördineer.
- (8) Twee of meer of al die Voorbereidende Rade kan gesamentlik vergader om sake van gemeenskaplike belang, of van belang vir enige spesifieke Voorbereidende Raad, of in die algemeen rakende die oorgangsproses na 'n nuwe demokratiese grondwet, te bespreek.
- (9) Wanneer al die Voorbereidende Rade gesamentlik vergader, staan die liggaam bekend as 'n Gesamentlike Voorbereidende Raad.
- (10) Lede van Voorbereidende Rade ontvang die besoldiging en voordele wat die Staatspresident, handelende op advies van die Bestuurskomitee van KODESA, by regulasie voorskryf.
- (11) 'n Persoon wat 'n lid van meer as een Voorbereidende Raad is, word vir doeleindes van sub-artikel (10) van hierdie artikel geag 'n lid van slegs een te wees en 'n persoon wat 'n amp beklee soos bedoel in sub-artikel

(4) van hierdie artikel, is nie geregtig op besoldiging of voordele uit hoofde van sy lidmaatskap van 'n Voorbereidende Raad nie.

VOORBEREIDENDE RAAD VIR VERKIESINGS

2. Die Voorbereidende Raad vir Verkiesings moet beplanning en voorbereiding doen met die oog daarop om verkiesings ingevolge 'n oorgangsgrondwet te laat plaasvind en om te verseker dat dit vry en regverdig sal wees.

VOORBEREIDENDE RAAD VIR STREEKREGERING

3. (1) Die Voorbereidende Raad vir Streekregering moet met inagneming van bestaande provinsiale grense asook politieke, geografiese, demografiese en ekonomiese determinante en na raadpleging van bestaande owerheidsinstellings asook kundige persone en instansies, resolusies formuleer oor die indeling van die grondgebied van die Republiek in soveel provinsies of federale deelstate as wat polities en ekonomies geregverdig is.

Die Raad moet voorts, met inagneming van die voorgestelde provinsiale of deelstaatsgrense bedoel in subartikel (1), grense van plaaslike owerheidsgebiede asook geografiese, demografiese en ekonomiese determinante en na raadpleging van bestaande owerheidsinstellings asook kundige persone en instansies, resolusies formuleer oor die indeling van elke aanbevole provinsie of deelstaat in kiesafdelings vir doeleindes van die samestelling van nasionale regeringstrukture op so 'n wyse dat geen kiesafdeling in meer as een provinsie of deelstaat sal wees nie.

- (3) Die instemming van bestaande owerheidsinstellings is 'n voorvereiste vir die implementering van resolusies wat op hulle betrekking mag hê.

VOORBEREIDENDE RAAD VIR PLAASLIKE REGERING

4. Die Voorbereidende Raad vir Plaaslike Regering moet, met inagneming van provinsiale of deelstaatsgrense wat deur die Voorbereidende Raad vir Streekregering voorgestel mag word, en van grense van bestaande plaaslike owerheidsgebiede asook van geografiese, demografiese en ekonomiese determinante en na raadpleging van bestaande owerheidsinstellings asook kundige persone en instansies, resolusies formuleer oor die afbakening van

plaaslike owerheidsgebiede op so 'n wyse dat geen plaaslike owerheidsgebied in meer as een provinsie of deelstaat sal wees nie.

VOORBEREIDENDE RAAD VIR OWERHEIDSFINANSIES

5. Die Voorbereidende Raad vir Owerheidsfinansies moet beplanning en voorbereiding doen in verband met die hantering van owerheidsfinansies in 'n oorgangsbedeling en moet sodanige onderhandelinge as wat na sy oordeel vir die doel van sy werksaamhede, en meer spesifiek rakende interowerheidsfinansiering, inisieer en koördineer.

VOORBEREIDENDE RAAD VIR BEHUISING EN VERSTEDELIKING

6. Die Voorbereidende Raad vir Behuising en Verstedeliking moet beplanning en voorbereiding doen in verband met 'n behuisings- en verstedelikingsbeleid in 'n oorgangsbedeling.