

REPORT OF WORKING GROUP 3 TO CODESA 2

ASSIGNMENT

1. The assignment given to the Working Group was to consider the issue of interim government/transitional arrangements/transitional authority.

TERMS OF REFERENCE

2. To investigate, canvass all possibilities and their application and report upon all proposals and make recommendations with regard to the manner in which the country may be governed and managed until the introduction of a new constitution.
3. To identify the key issues, processes and problems that need to be addressed.
4. To identify areas of commonality and aspects where agreement already exists between participating delegations.

MODUS OPERANDI OF WORKING GROUP

5. The Working Group conducted its work according to the following agenda:
 - 5.1 Method of bringing into being of Interim Arrangements
 - 5.2 Purposes, Objectives and Time Frames of Interim Arrangements with respect to the period leading up to an election
 - 5.3 The Executive with respect to the period leading up to an election
 - 5.3.1 Structure
 - 5.3.2 Functions
 - 5.4 The Legislature with respect to the period leading up to an election
 - 5.4.1 Structure
 - 5.4.2 Functions
 - 5.5 Position of present RSA constitution with respect to the period leading up to an election
 - 5.6 Position of the TBVC and self-governing states with respect to the period leading up to an election
 - 5.7 Role of the International Community with respect to the period leading up to an election
6. The Working Group invited all participating organisations to submit proposals regarding the Working Group's brief. All such proposals were duly considered by the Working Group during its deliberations.

7. Submissions received from outside parties relating to the Terms of Reference of the Working Group were also duly considered.
8. To take forward its exploratory discussion the Working Group appointed a Technical Committee, charged with addressing both details of consensus areas emerging and other areas needing discussion. The reports of the Technical Committee formed the basis of the agreements ultimately reached in the Working Group.

INTRODUCTION TO AGREEMENTS REACHED

9. As will appear from the agreements set out below, the Working Group was of the opinion that the transition to democracy involves two preliminary stages. The first stage is one during which preparations will be made for the holding of free and fair elections for an elected parliament under an interim constitution with the power to draft in terms of agreed procedures a new constitution and to act as an interim legislature. This stage 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.

10. During the first stage there is a need for a multiparty transitional executive structure to function in conjunction with existing legislative and executive structures, subject to the possible consolidation of the tricameral parliament and the general/own affairs departments. The purpose of the transitional executive structure will be to prepare for and to facilitate the transition to a democratic constitution to which Codesa is committed, and in particular, the achievement of a level playing field and a climate favourable to free political participation and the holding of free and fair elections.
11. Legislation, including an amended or transitional constitution, is necessary to make provision for appropriate structures of government which will meet the needs of both stages.
12. The following agreements were reached in regard to the first stage of the transition. These agreements and their implementation are dependent upon agreement being reached by Codesa in respect of the second stage of the transition, including an interim constitution, and general constitutional principles.

BASIC POINTS OF DEPARTURE

13. There is a need for a level playing field and a climate favourable to free and fair elections and free political participation. From this flows the requirement for statutory structures to prepare for the institution of the elected parliament under an interim constitution, and for these structures to focus on meeting these needs. In this regard particular areas of concern should be identified and there should be councils for the identified areas. Thereafter the tasks of each council should be described as well as the executive powers that it would require in regard to such tasks. It would also be possible for the councils to propose legislation. Since the councils must always act within the law, enabling legislation will be required.
14. It is possible that action may take place or legislation be considered outside the councils' defined areas of concern, which may have a negative impact on such areas. Councils should be able to identify these and within their powers require that such actions should not take place or legislation not be proceeded with.
15. There should be an overarching council. One of its tasks will be to familiarise itself with events and developments on the broader political scene in government and elsewhere. It will be able to intervene within its terms of reference

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if something is happening elsewhere that may negatively affect the levelling of the political playing field or the ensuring of a climate favourable to free political participation.

16. The terms of reference of the overarching body should be the facilitation of the transition to democracy including the levelling of the playing field and the ensuring of a climate for free political participation and for the conducting of free and fair elections, while the individual councils should have the same terms of reference but in specific fields. The powers, duties and functions vested in the transitional executive structure must be exercised in a manner that does not prejudge constitutional options.

THE TRANSITIONAL EXECUTIVE STRUCTURE

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

- of all participating governments/administrations that may impact on the levelling of the political playing field and on free political participation.
25. The TEC will 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.
26. If, when considering a proposed bill, proclamation, regulation or action, the TEC has reason to believe that it will have an adverse impact upon the maintenance of a climate for free political participation and in which free and fair elections can be conducted, or will disturb 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.
27. If the government, administration or party concerned is of the opinion that the necessity of the bill, proclamation, regulation or action in its area of application outweighs its adverse impact referred to in paragraph 26, the matter may be referred to the independent election commission.

28. In the defined areas of responsibility of sub-councils of the TEC, ministerial powers and discretions in so far as they affect the levelling of the playing fields, the creation of a climate conducive to free and fair elections or free political participation will be exercised in consultation with the TEC, or a sub-council to which this function is delegated by the TEC. Any disagreement arising out of the provisions of this paragraph may be referred by any participant in the TEC to the Independent Election Commission.

29. The decisions of the TEC made within its terms of reference and its powers as set out above will be binding on and will be implemented by all participants including governments/administrations.

INDEPENDENT COMMISSIONS

30. Independent Election Commission

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

- 30.2 The composition, powers (which shall include the power to resolve disputes as contemplated in paragraphs 27, 28 and 33 hereof) and functions of the Commission shall be enacted in legislation to be agreed to by Codesa.
31. 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

32. 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.

32.1 Regional and Local Government

This sub-council will acquaint itself with developments in regional and local government; it will identify and take action in respect of aspects of regional and local government that may impact on the levelling of the

political playing fields and on a climate conducive to free political participation; and it will facilitate the process towards a democratic dispensation at regional and local levels.

32.2 Finance

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

32.3 Law and Order, Stability and Security

This sub-council will acquaint itself with developments in law and order, stability and security at all levels of government (central, regional or local) and concerning all other 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.

32.4 Defence

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

the transition to democracy. The functions of this sub-council will also depend upon decisions taken in Working Group 1.

32.5 Foreign Affairs

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

32.6 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.

33. 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

34. The legislation agreed to by Codesa will make provision for the sub-councils to be given all powers necessary to enable them to carry out their tasks effectively within their terms of reference.
35. Such legislation will include a provision empowering sub-councils to have access to all information (including records of governments/administrations and other participants in the TEC) which they may require for the purpose of carrying out their tasks within their terms of reference.

COMPOSITION OF THE TEC AND SUB-COUNCILS

36. The TEC will be appointed by the State President on the recommendation of Codesa. It will consist of at least one member from each of the 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.

37. A sub-council will have a multi-party character and will ordinarily consist of up to six members who will be formally appointed by the State President on the recommendation of the TEC. There may be special circumstances in which more than six members will be necessary for the proper functioning of a sub-council and the enabling legislation will make provision for this. 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.

38. Members of the TEC and its sub-councils will be full-time executives, will be provided with the infrastructure necessary to enable them to carry out their duties, and their conditions of service will be prescribed in the legislation under which they are constituted.

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39. 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.
40. The size of the Transitional Executive Structure will be kept as small as is reasonably possible.

MEETINGS OF THE TEC AND ITS SUB-COUNCILS

41. All members of sub-councils, and Ministers of governments/administrations participating in the TEC whose departments may be affected by the functioning of the TEC and its sub-councils, may attend meetings of the TEC by invitation 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.
42. 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

43. The TEC and the sub-councils will endeavour to take their decisions by consensus. Where consensus cannot be achieved a majority of at least eighty per cent will be sufficient for a decision of the TEC, provided that if any government, administration or party is of the opinion that the necessity of the minority opinion prevailing outweighs the adverse impact referred to Paragraph 26, the matter may be referred for adjudication as contemplated in Paragraphs 27, 28 and 33.

STATES OF EMERGENCY

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

IMPLEMENTATION AND TIME FRAMES

45. Subject to Paragraph 12 and agreement by Codesa to the provisions 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 the agreements of this report.

OUTSTANDING MATTERS

46. Matters requiring further discussion are as follows:

46.1 Composition of the TEC

46.2 Composition of the sub-councils

46.2 Composition, powers and functions of the Independent
Election Commission

46.4 Sub-council on foreign affairs

47. Legislation is required to give effect to the agreements
contained herein.

CONCLUSION

In view of the fact that this report covered the first stage of
the transition, further discussion is required concerning the
details of stage two (as envisaged in paragraph 12).