

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 ~~an~~ 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.