

# TRANSITIONAL EXECUTIVE COUNCIL (TEC)

## INDEX

### **FIRST REPORT - 13 MAY 1993**

1. Introduction
2. The TEC and Sub-Councils

### **Systematic and Itemised Set of Proposals to Facilitate Discussion in the Planning Committee and Negotiating Council of the Multi-Party Negotiating Process:**

1. Establishment and Objectives
2. Composition
3. Powers
4. Sub-Councils: Establishment, Composition, Appointment and Powers
5. Jurisdiction and Disputes
6. Meetings
7. Decisions
8. Finances
9. Amendment

### **Summary of the Most Important Aspects of the First Report**

### **FIRST REPORT OF THE TECHNICAL COMMITTEE ON THE TRANSITIONAL EXECUTIVE COUNCIL / 13 MAY 1993**

## INTRODUCTION

### **1. THE NEED FOR A TRANSITIONAL EXECUTIVE COUNCIL**

The Technical Committee is aware of the fact that the first question that will, and in the final analysis, have to be determined by the Negotiating Council relates to whether or not a Transitional Executive Council (TEC) should be established at all.

If, after having had the opportunity to study all the inputs that might be forthcoming in respect of this particular issue, the committee is requested to, or deems it advisable to make a recommendation as to the desirability or otherwise of establishing a Transitional Executive Council (TEC), it will do so.

For present purposes and to facilitate the debate in the Negotiating Council, the Committee has proceeded on the assumption that such a Transitional Executive Council (TEC) will have to be established and has applied its mind to the technical aspects thereof.

## **2. THE TEC AND SUB-COUNCILS**

Within its terms of reference, and having regard to the decisions of the MPNP, certain submissions made and documents furnished to it, including the report of Working Group 3 of Codesa, **the Committee recommends that the establishment of a Transitional Executive Council (TEC) and Sub-Councils could be achieved as follows:**

- 2.1 By the drafting of legislation to provide for the establishment and functioning of a TEC and sub-councils.
- 2.2 The proposed legislation could adopt the following scheme:
  - 2.2.1 Establishment and Objectives
  - 2.2.2 Composition
  - 2.2.3 Powers
  - 2.2.4 Sub-Councils: Establishment, Composition, Appointments and Powers
  - 2.2.5 Jurisdiction and Disputes
  - 2.2.6 Meetings
  - 2.2.7 Decisions
  - 2.2.8 Finances

**SYSTEMATIC AND ITEMISED SET OF PROPOSALS TO FACILITATE  
DISCUSSION IN THE PLANNING COMMITTEE AND NEGOTIATING  
COUNCIL OF THE MULTI-PARTY NEGOTIATING PROCESS**

**( This report has been submitted in a format resembling draft legislation)**

More specifically, **the Committee recommends** the following on the basis of the above scheme:

**1. ESTABLISHMENT AND OBJECTIVES**

The Transitional Executive Council shall be constituted with executive powers to facilitate, in conjunction with existing legislative and executive structures, the transition to a democratic order in South Africa by:

- (1) creating and promoting a climate for free political participation by seeking
  - (a) to eliminate any impediments to legitimate political activities;
  - (b) to eliminate intimidation;
  - (c) to ensure that political parties and organisations will be free to canvass support from voters, to organise and hold meetings, and to have access to voters for such purposes;
  - (d) to ensure that the power of government will not be used to favour or prejudice any political party or organisation;
- (2) promoting conditions conducive to the holding of free and fair elections pursuant to decisions of the Multi-Party Negotiating Process.

## 2. COMPOSITION

- (1) Each of the governments, administrations and organisations which constitute the Multi-Party Negotiating Process, and which commit themselves to the achievement of the objectives set out in paragraph 1 and which undertake to be bound by and implement the decisions of the Transitional Executive Council, shall be entitled to one representative on the Council: Provided that each representative may be represented by a substitute if he or she is unable to attend a meeting of the Council.

**NOTE:** *The implications of this sub-paragraph are that the size of the TEC will not be greater than the number of parties involved in the MPNP, that representation is confined to one representative per party in view of the large number of parties already involved in the process, and that every party does not have to be represented on the TEC. Substitutes have been provided for in view of the high percentage of concurring votes required for decisions to be reached.*

- (2) Appointments to the Transitional Executive Council, including substitutes referred to in sub-paragraph (1), shall be made by the State President by proclamation in the Government Gazette: provided that in making such appointments, the State President shall act on the recommendations of the government, administration or organisation concerned.
- (3) If a member of the Transitional Executive Council loses the confidence of the government, administration or organisation which recommended his or her appointment, the State President, on being advised thereof by such government, administration or organisation shall, by proclamation in the Government Gazette, remove such person from the Transitional Executive Council.
- (4) If a member of the Transitional Executive Council dies, resigns from office, or is removed from office in terms of sub-paragraph (3), the government, administration or organisation previously represented by such member shall be entitled to a new representative on the Transitional Executive Council, and such appointment shall be made by the State President in accordance with the provisions of subparagraph (2).
- (5) The conditions of service, remuneration, allowances and other benefits of members of the TEC shall be determined by the State President in consultation with the Multi-Party Negotiating Process.

**NOTE:** *The committee has noted that the Report of Working Group 3 to Codesa 2 (par 38) suggests that members of the TEC should be full-time executives. The Committee is not persuaded that this would be necessary, and would prefer not to make a specific recommendation until the full picture of the TEC and its sub-councils has evolved. Factors that influenced the Committee include the following:*

- (i) *the TEC itself may be in a better position to judge on this matter;*
  - (ii) *sub-councils might rather be engaged on a daily basis, and the TEC on a periodic basis;*
  - (iii) *while some members of the TEC will have full-time briefs as members of sub-councils, others may not. **This issue can be revisited later.***
- (6) The Transitional Executive Council shall have the power to recommend that any party not presently in the Multi-Party Negotiating Process but which wishes to participate in the Transitional Executive Council structure, should be allowed to recommend to have a representative appointed to the Transitional Executive Council by the State President.

### 3. POWERS

- (1) The Transitional Executive Council will have the necessary powers relating to its objectives, including the overriding responsibility in respect of the sub-councils.

**NOTE:** *The question of powers is still to be dealt with by the Committee.*

- (2) Included in these powers will be the power -
- (a) to request information relating to its mandate
  - (b) to establish and receive reports from sub-councils
  - (c) to initiate or participate in negotiations in respect of its mandate ;
  - (d) to appoint required staff and to determine their terms of employment and remuneration ;
  - (e) to request seconded staff from the Public Service(s)
  - (f) to make rules governing the convening and conduct of its meetings and those of its sub-councils ;

- (g) to appoint/elect its own office bearers on a permanent or rotational basis ;  
and
- (h) to appoint a person to investigate a matter or matters relating to its  
functions, and to report thereon.

#### **4. SUB-COUNCILS: ESTABLISHMENT, COMPOSITION, APPOINTMENTS AND POWERS**

- (1) The Transitional Executive Council will have the following sub-councils which will report to it in such manner and at such times as it may determine:

- (a) A sub-council on local government;

**NOTE:** *The committee is aware of the fact that Working Group 3 of Codesa has anticipated the establishment of a sub-council on regional and local government, and will in due course advise as to whether it is of the view that, in the light of the possible establishment of a commission on regions, there is a need for this sub-council to also concern itself with regional government.*

- (b) A sub-council on law and order, stability and security;

- (c) A sub-council on defence;

- (d) A sub-council on finance; and

- (e) A sub-council on foreign affairs.

- (2) Save where the terms of the delegation of powers to a sub-council by the Transitional Executive Council otherwise provide, all decisions of sub-councils will be subject to confirmation by the Transitional Executive Council, which if it decides to confirm a decision, may do so unconditionally or subject to amendments required by it.
- (3) Sub-councils will have a multi-party character, and unless the Transitional Executive Council considers that good cause exists therefor, shall consist of not more than six members.

**NOTE:** *The Committee interprets this clause to mean, first, that not more than two persons from the same party would serve on a sub-council, and second, that the inclusion of individuals who are not members of the TEC is not precluded. The very function of a sub-council is to be a small and effective working group, and some subcouncils may not even have to have six members, whereas others may require more.*

- (4) Appointments to sub-councils, the removal and replacement of members of sub-councils, 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 by proclamation in the Government Gazette: provided that such appointment, removal, replacement, or temporary appointment will be made by the State President in accordance with the recommendations of the Transitional Executive Council.
- (5) The conditions of service, remuneration, allowances and other benefits of members of the sub-councils shall be determined by the State President in consultation with the Multi-Party Negotiating Process.

**NOTE:** *Members of sub-councils should serve in a full-time capacity, but the Committee is not convinced that this should be prescribed by statute. It is not anticipated that persons who are in the full-time service of any government or administration will have to be remunerated.*

- (6) The TEC may delegate to sub-councils such of its powers and functions as pertain to their areas of particular concern.

**NOTE:***The TEC will have general powers to establish any sub-council in addition to those mentioned in (1) above, to assist it in performing its functions. In view of the more extensive jurisdiction of the TEC and in view of the general brief of the TEC, the Committee did not deem it necessary to rigidly prescribe a further sub-council on elections, as envisaged in the Codesa report.*

- (7) For the purposes of carrying out their functions, in respect of their areas of particular concern, the sub-councils shall have the same powers, including the right to request and be furnished with information, and to have access to records, as the Transitional Executive Council would have had, if such functions had been carried out by it.

## **5 JURISDICTION AND DISPUTES**

- (1) Notwithstanding the provisions of any other law, the Transitional Executive Council and its sub-councils shall be entitled to exercise the powers and functions, conferred on them by the enabling legislation, in the Republic of South Africa (including the Self-governing Territories), Transkei, Bophuthatswana, Venda and Ciskei.
- (2)
  - (a) All governments and administrations will keep the Transitional Executive Council informed of, and will provide it with copies of all proposed legislation, including proclamations, bills and regulations of governments or administrations that may be relevant to the purposes referred to in paragraph 1.
  - (b) If the Transitional Executive Council has reason to believe that any proposed legislation, including bills, ordinances, proclamations or regulations, will have an adverse impact upon any of the purposes referred to in paragraph 1, it may, after taking into account the necessity for such legislation, require the government or administration concerned not to proceed therewith.
- (3)
  - (a) All governments, administrations and participants will keep the Transitional Executive Council informed and the Transitional Executive Council will be entitled to ask for and to receive from them, information in regard to proposed executive actions by any government or administration, or contemplated actions on the part of any other participant in the Transitional Executive Council, that may have an impact on any of the matters referred to in paragraph 1.
  - (b) If the Transitional Executive Council has reason to believe that the implementation of such executive or other action will have an adverse impact upon the purposes referred to in paragraph 1 it may, after taking into account the necessity for such action as far as such government, administration or participant is concerned, require the government, administration or participant not to proceed therewith.
- (4) All participants in the Transitional Executive Council, and all governments and administrations will be required to comply with requests made to them by the Transitional Executive Council in terms of sub-paragraphs (2)(b) or (3)(b), and all decisions made in terms of the enabling legislation by the Transitional Executive Council, or a sub-council having the authority to do so, will be binding on and will be implemented by such governments, administrations and participants: Provided that if in relation to a requirement of the Transitional Executive Council made in terms of sub-paragraphs (2)(b) or (3)(b), the government, administration or other participant concerned contends that the necessity for the proposed legislation or executive or other action outweighs its adverse impact, it may refer such issue to the Independent Election Commission for a decision thereon, and may



only proceed with such legislation, executive or other action if the Independent Election Commission upholds its contention.

- (5) Any differences as to whether or not in any particular instance a matter falls within the scope of the powers of the Transitional Executive Council, or one of its sub-councils, or whether any proposed action or legislation will have an adverse impact on any of the objectives referred to in paragraph 1, such difference may be referred by any government, administration or participant to the Independent Election Commission for its decision.
- (6) If any issue is referred by any government, administration or participant to the Independent Election Commission for a decision, in accordance with the provisions of the enabling legislation, the Independent Election Commission shall as soon as possible, and after consideration of -
  - (a) the disputed issue;
  - (b) the views expressed thereon by the members of the Transitional Executive Council and by the complainant government, administration or participant ; and
  - (c) any other matter considered by the Independent Election Commission to be relevant to its decision determine the difference and give its decision thereon.
- (7) Any decision of the Independent Election Commission made in respect of any matter referred to it in terms of the enabling legislation shall be final and binding and not subject to appeal or review in any court.

*NOTE: A final recommendation on the adjudicatory function of the Independent Election Commission will only be possible after consideration of the report and recommendations of the Technical Committee on the Independent Election Commission.*

- (8) A request to the Transitional Executive Council or to a sub-council thereof to procure information pursuant to the powers which it has in terms of the enabling legislation, which is supported by at least one-third of the members of the Transitional Executive Council, shall be given effect to by the Transitional Executive Council or the sub-council, as the case may be, and the information gathered in consequence of such request, shall unless otherwise provided for in the enabling legislation, be made available to all members of the Transitional Executive Council.

**NOTE:** *The question of restricted access to certain categories of information has still to be discussed. In this regard the Committee does not want to anticipate the outcome of this discussion.*

## **6 MEETINGS**

- (1) The notice in the Government Gazette announcing the appointment of the first members of the Transitional Executive Council, shall also specify the date and place of its first meeting, which shall in any event not be later than fourteen days after the publication of the abovementioned Gazette.
- (2) The Transitional Executive Council shall thereafter meet as often as it deems necessary.
- (3) A person appointed by the Multi-Party Negotiating Process shall preside at the first meeting of the Transitional Executive Council. At this meeting the Transitional Executive Council shall appoint a secretary, who shall be a full-time official of the Council, and who shall decide upon the procedures to be followed in convening and conducting its meetings until rules governing such procedures have been made in terms of paragraph 3(2)(f).
- (4) The secretary shall-
  - (a) carry out all duties assigned to him or her by the Transitional Executive Council;
  - (b) convene special meetings of the Transitional Executive Council if required to do so in writing by not less than one third of its members;
  - (c) fix a time, date and venue for any meeting called in terms of sub-paragraph (b) which, save in the case of urgency, shall be convened on not less than three days notice to the members of the Transitional Executive Council: provided that an urgent meeting may be called on short notice if the calling of the meeting on short notice is ratified by the Transitional Executive Council at such meeting.
- (5) Fifty percent of the members of the Transitional Executive Council shall constitute a quorum for any meeting: provided that this provision shall not detract from the provisions of paragraph 7.
- (6) Members of sub-councils and ministers of governments and administrations whose departments may be affected by the functioning of the Transitional Executive

Council may attend meetings of the Council by invitation and speak on matters affecting their sub-councils or departments and shall attend when matters relating to their sub-councils or departments are being discussed.

- (7) The Transitional Executive Council may invite any other person to attend its meetings, and at its discretion allow any person present at its meetings to speak.
- (8) Members of governments and administrations 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 shall attend by invitation if a matter affecting the functioning of their departments is being considered.

## **7 DECISIONS**

- (1) Decisions of the Transitional Executive Council shall be taken only by the members thereof, and persons who are present at meetings, but are not members of the Transitional Executive Council, shall have no right to vote on any decision.
- (2) The Transitional Executive Council and its sub-councils will endeavour to take decisions on a consensus basis.
- (3) If, notwithstanding attempts to reach consensus, such consensus has not been achieved, a decision which has the support of at least 80% of the members of the Transitional Executive Council shall be deemed to be a decision of the Council.
- (4) If any government, administration or participant in the Transitional Executive Council wishes to refer a decision made in terms of subparagraph (3) to the Independent Election Commission to be dealt with in accordance with the provisions of the enabling legislation, it shall refer such matter in writing to the Commission not later than three days after such decision has been made.
- (5) If a decision taken in terms of sub-paragraph (3), is not referred to the Independent Election Commission in terms of sub-paragraph (4) , it shall, after the expiry of the period of three days, become final and binding, and shall not be subject to appeal or review in any court.

(6) If any member of the Council or his or her substitute fails to attend two consecutive meetings of the Council, at any subsequent meeting at which such member or substitute fails to attend, he or she shall not be counted as a member for the purposes of sub-paragraph (1), (2) and (3).

(7) The provisions of this paragraph shall apply mutatis mutandis to subcouncils.

## **8 FINANCES**

*NOTE: The method of financing the TEC and sub-councils will require further investigation and the Committee will report in due course on such further investigation.*

## **9 AMENDMENT**

(1) The State President, in consultation with the Transitional Executive Council, shall be entitled by way of proclamation in the Government Gazette, and for the purposes referred to in paragraph 1, to repeal or amend any of the provisions of the enabling legislation.

(2) Such proclamation shall have the force and effect of an Act of Parliament.

# **SUMMARY OF THE MOST IMPORTANT ASPECTS OF THE FIRST REPORT OF THE TECHNICAL COMMITTEE ON THE TRANSITIONAL EXECUTIVE COUNCIL / 13 MAY 1993**

For present purposes and to facilitate the debate in the Negotiating Council, the Committee has proceeded on the assumption that such a Transitional Executive Council (TEC) will have to be established and has applied its mind to the technical aspects thereof.

The Transitional Executive Council shall be constituted with executive powers to facilitate, in conjunction with existing legislative and executive structures, the transition to a democratic order in South Africa.

Each of the governments, administrations and organisations which constitute the Multi-Party Negotiating Process, and which commit themselves to the achievement of the objectives set out in paragraph I and which undertake to be bound by and implement the decisions of the Transitional Executive Council, shall be entitled to one representative on the Council: Provided that each representative may be represented by a substitute if he or she is unable to attend a meeting of the Council.

The implications of sub-paragraph 2 (1) are that the size of the TEC will not be greater than the number of parties involved in the MPNP, that representation is confined to one representative per party in view of the large number of parties already involved in the process, and that every party does not have to be represented on the TEC. Substitutes have been provided for in view of the high percentage of concurring votes required for decisions to be reached.

The Transitional Executive Council will have the necessary powers relating to its objectives, including the overriding responsibility in respect of the sub-councils. The question of powers is still to be dealt with by the, Committee.

The Transitional Executive Council will have the following sub-councils which will report to it in such manner and at such times as it may determine:

- (a) A sub-council on local government;

NOTE: *The committee is aware of the fact that Working Group 3 of Codesa has anticipated the establishment of a sub-council on regional and local government, and will in due course advise as to whether it is of the view that, in the light of the possible establishment of a commission on regions, there is a need for this sub-council to also concern itself with regional government.*

- (b) A sub-council on law and order, stability and security;
- (c) A sub-council on defence;
- (d) A sub-council on finance; and
- (e) A sub-council on foreign affairs.

Sub-councils will have a multi-party character, and unless the Transitional Executive Council considers that good cause exists therefor, shall consist of not more than six *members* who may or may not be members of the TEC.

Notwithstanding the provisions of any other law, the Transitional Executive Council and its sub-councils shall be entitled to exercise the powers and functions, conferred on them by the enabling legislation, in the Republic of South Africa (including the Self-governing Territories), Transkei, Bophuthatswana, Venda and Ciskei. In addition all governments, administrations and organisations represented in the TEC will be required to furnish it with information in respect of legislation, executive actions and other acts which may impact adversely on the TEC's brief and to not proceed with such legislation, executive action or acts if required to do so by the TEC.

The TEC will be able to invite persons to attend its meetings and at its discretion allow any person present to speak. Members of sub-councils and ministers of governments whose departments may be affected by the functioning of the TEC may attend meetings thereof and speak on matters affecting their sub-councils or departments.

Decisions of the Transitional Executive Council's shall be taken only by the members thereof.

The Transitional Executive Council and its sub-councils will endeavour to take decisions on a consensus basis.

If, notwithstanding attempts to reach consensus, such consensus has not been achieved, a decision which has the support of at least 80% of the members of the Transitional Executive Council shall be deemed to be a decision of the Council.

The State President, in consultation with the Transitional Executive Council, will be able to amend the enabling legislation by proclamation.