

**BACKGROUND DOCUMENTATION
ON REPEAL OF DISCRIMINATORY LEGISLATION
IMPEDING FREE AND FAIR ELECTIONS**

**VOLUME 2
POST-CODESA:**

**CONSOLIDATED DOCUMENTS
BASED ON CODESA REPORTS**

7 SEPTEMBER 1993

**Consolidated Document
Based on
CODESA REPORTS
April 1993**

Introductory Note

This document is structured according to topics and not according to the working groups from which specific points emerged. It was compiled in terms of a decision taken by the Negotiating Forum on the 1 April 1993. According to the decision this document, together with the Summary of CODESA Agreements and the Document of CODESA Agreements for Multi-Party Planning Conference, will form a trilogy of documents to facilitate the work of the Negotiating Council in their deliberations and to enable all participants to address the issues in full. Cross references in this document refer to the Document of CODESA Agreements.

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VIOLENCE. SECURITY FORCES AND ALL ARMED FORMATIONS

Status: The extracts are from the Reports of Working Groups I & 3. Both Reports were endorsed by their respective Working Groups and tabled at CODESA 2.

1. 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.

2. 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.

(cf Working Group 3 Report, paragraphs 32.3 and 32.4, pages 56 - 58)

3. The Composition and role of the security forces in South Africa and the TBVC states

It was agreed that:

- 3.1 All participants at Codesa commit themselves to the peaceful settlement of political disputes.
- 3.2 National security in South Africa should be sought primarily through efforts to meet the social, political and economic needs of the people.

- 3.3 The security forces in South Africa shall:
- 3.3.1 be bound by the principle of constitutional supremacy;
 - 3.3.2 be politically non-partisan;
 - 3.3.3 be committed to resolving conflict primarily through non-violent means;
 - 3.3.4 respect human rights, non-racialism and democracy;
 - 3.3.5 strive to be representative of South African society as a whole.
- 3.4 For the purpose of addressing our terms of reference, the WG is satisfied that all the Security Forces should be placed under the control of interim/transitional governmental structures. In this regard, this WG takes notice of the proposals tabled in WG3 to set up preparatory councils including one or more specifically intended to deal with the Security Forces. The WG supports the said above-mentioned principle and agrees that the details of such councils be worked out by WG3.
- 3.5 Mechanisms should be implemented to ensure the public accountability of the security forces.
- 3.6 Codes of Conduct for the security forces should be agreed to and implemented.
- 3.7. A programme of orientation, designed with a view to improving security force-community relations, specifically with regard to the respect for human rights, non-racialism and democracy, should be implemented.
- 3.8 The following matters are outstanding:
- 3.8.1 The composition of the security forces
 - 3.8.2 Operations of the Security Forces that may limit free political activity (cf Working Group I Report, paragraph 12, pages 23 - 24)

4. The Successful implementation of the National Peace Accord

In the light of the current levels of violence that is devastating the prospects of peace and stability in our country, all political parties, organisations, government and administrations, participating in CODESA, in order to signify our common purpose to bring an end to political violence, recommit ourselves both in letter and spirit to the NPA.

In doing so, we once again join hands in the pursuit of our common belief and objective's; peace and stability for all in our country.

In rallying behind this common objective we acknowledge that the act of having signed the NPA binds us much more than the content of the NPA itself. From that we can, none of us, escape since we have committed ourselves to the NPA and in this way, we have given it life and meaning.

SG2 received several submissions on the implementation of the NPA. In addition, Dr Antonie Gildenhuys, chairperson of the National Peace Secretariat, and Mr John Hall, chairperson of the NPC, were invited to hold discussions with SG2 on the implementation of the NPA. In order to strengthen the NPA, the following matters were agreed to:

4.1 General

It was agreed that:

- 4.1.1 In so far as the promotion of peace is concerned, the leadership of organisations is urged urgently to come together at peace rallies and meetings and to be seen by all to be jointly and collectively working towards peace and stability in our country. These peace rallies and meetings should be held under the auspices of the NPS and should augment the efforts of religious leaders in this regard.
- 4.1.2 The successful implementation of the NPA is fundamental to the creation of a climate for free political activity, peace and stability in our country. In this regard, it is strongly recommended to the signatories of the NPA to take active steps to ensure that they appoint senior office bearer(s) whose specific responsibility it will be to manage the organisation/party's duties in regard to the NPA. It is further recommended that, where possible, such persons be relieved of all other organisational/party obligations to facilitate the above.

4.2 RDRC's and LDRC's (Clause 7.4 of the NPA) It was agreed that:

- 4.2.1 A full time Chairperson/officer/employee/s be appointed by consensus by each RDRC on the understanding that at least one such functionary will be appointed and that the said functionary will be remunerated for his/her services by the NPA;
- 4.2.2 Delegates to RDRC's and LDRC's who suffer financially as a result of their participation in NPA activities be reimbursed;
- 4.2.3 Organisations participating in the NPA activities be requested not to vary the appointment of delegates to RDRC's and LDRC's as this seriously inhibits the progress of the work of the NPA;
- 4.2.4 Permanent offices with appropriate staff and equipment be established in each area provided for in clause 3.7.5 of the NPA,

- 4.2.5 The NPS should seek to facilitate the participation of delegates on NPA structures, having special regard for the normal work commitments of delegates;
- 4.2.6 The reference to "Business representatives" in clause 7.4.4.3 of the NPA be interpreted to include representatives from professional organisations.
- 4.3 Justices of the Peace (Clause 7.5 of the NPA) It was agreed that:
- 4.3.1 In view of the current preparation of legislation to implement clause 7.5 of the NPA, it be recommended that the legislation be put before parliament during its current session.
- 4.3.2 All signatories to the NPA be urged to ensure that the process of consultation required by clause 7.5.1 of the NPA to precede the appointment of Justices of the Peace, proceed expeditiously in anticipation of legislation being passed to provide for matters pertaining to the appointment, powers, etc of the Justices of the Peace.
- 4.4 Police Reporting Officers (clause 3.2.4 of the NPA) It was agreed that:
- 4.4.1 All police reporting officers already nominated be appointed to their positions forthwith.
- 4.4.2 In the appointment of members of the special investigation unit appointed in terms of clause 3.2.4.1 of the NPA, sensitivity regarding the acceptability and credibility of members of the SAP be taken into account.
- 4.5 The inclusion of representatives of tribal authorities in the RDRC's (clause 7.4.4.4 of the NPA)

It was agreed that:

- 4.5.1 The NPC makes special efforts to include representatives of relevant local and tribal authorities into all RDRC and LDRC structures.
- 4.5.2 Special efforts be made to create an awareness of the NPA amongst tribal and local authorities.
- 4.6 Measures to facilitate socioeconomic reconstruction and development (Clause 5.7 of the NPA)

It was agreed that:

- 4.6.1 It should be recommended to the NPA and the RDRCs that they appoint sub-committees on socioeconomic reconstruction and development as a matter of urgency;

4.6.2 Members of such sub-committees appointed i.t.o. clause 5.7 of the NPA should not only consist of members of the relevant RDRC, but should primarily consist of people with knowledge and expertise in the relevant fields.

4.7 The Police Board (Clause 3.3 of the NPA)

4.7.1 It was agreed that the Police Board, in addition to their other functions and duties:

4.7.1.1 should advise on ways in which the procedures of the special units appointed in terms of 3.2.4. 1 can be given public credibility;

4.7.1.2 should advise on ways in which the credibility of the police in the community could be improved;

4.7.2 It was further agreed that the reports by the special police investigative units appointed i.t.o. clause 3.2.2.6 which are made available to the NPC, be distributed to the relevant RDRC's and LDRC's as a matter of standard procedure.

4.8 Relations between the community and the police

4.8.1 It was agreed that in many areas improvement of the relationship between the community and the police can contribute towards the resolution of conflict and that all factors that create alienation between the police and communities be addressed urgently by means of, inter alia:

4.8.1.1 Facilitating police/community liaison, including workshops between relevant parties;

4.8.1.2 Ensuring strict adherence by all parties to the provisions of the NPA.

4.8.2 It was recommended to the NPC that they take active steps to achieve greater support for the police and co-operation by communities in effective policing.

4.9 Recommendations by RDRC's to the police

In relation to the SAP, the Venda Police Force, the Kangwane Police Force, the Gazankulu Police Force, the Kwandebele Police Force and the Lebowa Police Force, it was agreed that the RDRCs could make recommendations to the relevant police authorities as to:

- 4.9.1 The selection of top police officers for township stations;
 - 4.9.2 The appointment of officers commanding and members of special police investigation units established in terms of clause 3.2.2.6.;
 - 4.9.3 Where circumstances permit, determining the nature of police action in conflict areas, i.e. the nature of security force action, the duration of their action, the SAP and SADF mix in these actions, the timeous negotiations between the security forces and community leaders to defuse hostility, etc.
- 4.10 Self protection units/neighbourhood watch groups (clause 3.7 of the NPA)

It was agreed that:

- 4.10.1 It be recommended to the NPC that RDRC/LDRC's take urgent steps to encourage the formation of nonpartisan community based self protection groups/neighbourhood watch groups, as provided for in clause 3.7 of the NPA, in order to promote peace and the effective combatting of crime. These self protection units/neighbourhood watch groups should work in close cooperation with the relevant police authorities, as provided for in clause 4.7.5. of the NPA.
- 4.10.2 It be recommended to the RDRC's/LDRC's to take steps to monitor the activities of such formations and to encourage cooperation between such formations and the relevant police authorities.
- 4.11 In relation to points 10.7 to 10.9 the meeting encourages all other police forces to adopt a similar approach.
- 4.12 Dangerous weapons and the possession of illegal fire-arms

It was agreed that:

- 4.12.1 Stronger sentences and other measures be imposed for the possession of illegal firearms and the possession, carrying and displaying of dangerous weapons or other firearms in contravention of the regulations issued as provided for in 3.6.4 of the NPA.
- 4.12.2 The police increase their searches for illegal firearms and other dangerous weapons.
- 4.12.3 A record be kept of the political affiliation (if any) of persons arrested for the possession of illegal fire-arms or dangerous weapons.
- 4.12.4 The above be undertaken in the context of impartial policing.

4.13 Monitoring Commissions it was agreed that:

4.13.1 Regional monitoring commissions be created in each RDRC region.

4.13.2 These monitoring commissions be constituted from amongst the parties and organisations represented on these RDRC's and/or drawn from independent, local monitoring agencies or persons.

4.13.3 Persons serving on these monitoring commissions be given the necessary training and certification to enable them to efficiently perform their functions in an impartial and objective manner.

4.13.4 The assistance of professional dispute resolution agencies be used in the training and development of such local/regional monitoring commissions.

4.13.5 The functions of these regional monitoring commissions be:

4.13.5.1 to monitor the compliance by the NPA signatories to the code of conduct as provided for in the Accord;

4.13.5.2 to monitor the behaviour of parties and organisations at grassroots level in relation to violence;

4.13.5.3 to monitor the compliance of parties and organisations to the NPA after it has been brought to their attention that they have been in violation of the Accord.

4.13.6 Political parties and members of RDRC's should refrain from making inflammatory remarks in relation to the causes of violence, and should desist from apportioning blame based on unsubstantiated evidence while matters are under review or investigation by the Commission.

4.14 Budget and infrastructure problems it was agreed that:

4.14.1 Codesa calls on the international community to provide financial and other assistance to facilitate the successful implementation of the NPA.

4.14.2 It be recommended to the National Peace Secretariat that it prepares and submits a budget to government outlining the funding requirements of the peace process, as provided for in clause 6.12.5 of the NPA.

4.14.3 It be further recommended to the National Peace Secretariat to take active steps to solicit assistance from local sources in order to obtain funding for the NPA. These steps include the holding of peace musical concerts, peace sports events, and other such activities; as well as approaches to the business sector in this regard.

4.15 Commission of Enquiry Regarding the Prevention of Public Violence and Intimidation

It was agreed to recommend to the NPS and NPC:

4.15.1 to take active steps to implement and monitor the implementation of the recommendations of the Commission.

4.15.2 to distribute timeously the relevant recommendations of the Commission to the relevant RDRC/LDRC and the political parties in order to ensure that these recommendations are implemented in accordance with the Code of Conduct for political parties as set out in the NPA.

4.16 Legal Enforceability

It was agreed that it be recommended to the NPC to take active and urgent steps to ensure the legal enforceability of the Code of Conduct for Political Parties as provided for in clause 9.6 of the NPA.

4.17 Transgressions of the NPA by political parties

It was agreed that:

4.17.1 The NPC take active steps to ensure that transgressing political parties, on presentation of the Commission's findings to them, respond in writing to the NPC, as provided for in the NPA.

4.17.2 The findings of the Commission be made public in order to bring such parties to account for their transgression of the NPA.

4.18 Outstanding matters for discussion:

It was agreed that the following matters relating to the implementation of the NPA should still be discussed:

4.18.1 Co-ordination between 3 levels of NPA.

4.18.2 Education Programmes/Publicity.

4.18.3 Liaison between NPC and organisations and NPC and Codesa.

5 The prevention of violence-related crime and matters giving rise thereto

5.1 It was agreed that:

5.1.1 Government security forces should bring those responsible for the smuggling of AK47s and other illegal weapons into the country from the neighbouring states to book as a matter of urgency.

5.1.2 Political parties should adhere to the guidelines as set out in the National Peace Accord in so far as mass action is concerned.

5.1.3 Socio-economic conditions should be improved to curb the high crime rate.

5.2 Consensus could not be reached on the following:

5.2.1 The use of the death penalty as a deterrent to criminal activity.

5.2.2 A call by Codesa for the lifting of sanctions as a means of improving socioeconomic conditions.

(cf Working Group I Report, paragraphs 10 & 11], pages 17 - 23)

AMENDMENT AND/OR REPEAL OF REMAINING LAWS MILITATING AGAINST FREE POLITICAL ACTIVITY, INCLUDING THE ELIMINATION OF ALL DISCRIMINATORY LEGISLATION

Status: Extracts from the Report of Working Group 1. The Report was endorsed at Working Group level and was tabled at CODESA 2.

1.1 Laws militating against free political activity

1.1.1 Approach

It was agreed that the approach to the issue of laws militating against free political activity should be the following:

1.1.1.1 Firstly, there needs to be acceptance of the principle of free political activity.

1.1.1.2 Secondly, there needs to be agreement on the definition of general principles underpinning/guidelines for free political activity.

1.1.1.3 Thirdly, attention must be given to specific pieces of legislation,

1.1.2 General principle

Regarding 1.1.1.1 it was agreed that:

- 1.1.2.1 a climate for free political participation is an essential element of the transitional phase towards and in a democratic South Africa; and
- 1.1.2.2 the process of democracy requires that all participants in the political process should be free to participate peacefully in that process without fear and on an equal footing and on the basis of equality with other participants.
- 1.1.2.3 The South African Government and the NP expressed their reservations on paragraph 1.1.2.2 reserving their point of view until a full resolution dealing with principles governing free political activity was debated.

1.1.3 Definition of/general principles underpinning/guidelines for free political activity

- 1.1.3.1 There was agreement on the necessity to formulate a definition of, or the principles underpinning, free political activity.
- 1.1.3.2 Various oral and written submissions on the content of such definition/principles were made and a motion tabled.
- 1.1.3.3 No consensus has yet been reached on a definition of/general principles underpinning free political activity.

1.1.4 Specific measures

Regarding 1.1.1.3 various oral and written submissions were received about legislative measures which may offend against free political activity. The submissions dealt with the following broad categories of legislation:

- 1.1.4.1 Emergency measures;

- 1.1.4.2 Security measures;
- 1.1.4.3 Measures affecting the funding of political Parties and organisations;
- 1.1.4.4 Measures affecting the freedom of assembly and association;
- 1.1.4.5 Measures affecting the free flow of information and access to the media.

1.1.5 Task group

A task group was appointed to inquire into the reform of Emergency and Security legislation. The task group met several times and made appropriate recommendations.

1.1.6 Emergency Legislation

1.1.6.1 It was agreed that:

1.1.6.1.1 A State of Emergency should only be declared on the advice of a multi-party interim executive/cabinet/interim government council. This would only take effect once such a body has been instituted;

1.1.6.1.2 The proclamation of a State of Emergency or an unrest area and any regulations issued in terms thereof should be objectively justiciable in a court of law on, inter alia, the following grounds:

1.1.6.1.2.1 whether the factual situation existing at the time justifies the declaration of the State of Emergency or unrest area in terms of criteria laid down in the Public Safety Act, 1953;

1.1.6.1.2.2 whether the exigencies of the situation justify the powers conferred by regulations made in terms of the proclamation of the State of Emergency or unrest area;

1.1.6.1.3 The provision in the Public Safety Act, 1953, that a State of Emergency can be declared retrospectively, should be repealed.

1.1.6.1.4 It is desirable to include in the Public Safety Act, 1953:

1.1.6.1.4.1 Extended provisions for Parliamentary control of a State of Emergency;

1.1.6.1.4.2 A provision for certain nonderogable rights;

1.1.6.1.4.3 Provisions for certain procedural controls over detention without trial.

1.1.6.2 It is recommended that the timing of the implementation of the various agreed proposals be negotiated as a matter of urgency amongst the parties.

1.1.7 Security Legislation

It was agreed that:

- 1.1.7.1 Special measures are necessary to deal with the threat to the public peace and order during the transitional period;
- 1.1.7.2 In the light of 1.1.7.1, the Internal Security Act 1982, and other relevant legislation be scrutinised with a view to the substitution of the said provisions so as to bring legislation in line with the criteria mentioned in 1. 1.7. I., and to remove the emphasis from national security
- 1.1.7.3 A task group be appointed to undertake the task referred to in 1.1.7.2, taking cognisance of relevant discussions by and submissions to SG1.

1.1.8 Procedure

Regarding the procedure to be followed in the repeal and/or amendment of legislative measures militating against free political activity, it was agreed that the following three options (not necessarily exhaustive or mutually exclusive) should be examined:

- 1.1.8.1 separate pieces of legislation amending/repealing individual statutes and/or the use of a General Law Amendment Act;
- 1.1.8.2 amendment/repeal of offending legislation combined with the enactment of a interim statute dealing with freedom of association, assembly and speech against which any outstanding offending measures may be tested.
- 1.1.8.3 the enactment of an Interim Bill of Rights against which offending legislation can be tested;

1.2 **Discriminatory Legislation**

1.2.1 It was agreed that the following categories of discriminatory legislation can be identified and that individual legislative measures within each category should be dealt with in the manner outlined as being appropriate for that category:

- 1.2.1.1 Discriminatory legislation which impedes the creation of a climate for free political activity. Such legislation must be identified by WGI and amended/repealed as soon as possible.
 - 1.2.1.2 Discriminatory legislation which emanates from the nature of the tricameral constitution. This should be dealt with at the time and in the manner decided on by negotiation on the phasing out of the tricameral constitution and the own affairs dispensation.
 - 1.2.1.3 Discriminatory legislation which need to be amended/repealed to support and enhance the process of democratisation. These should be identified as soon as possible and suitably amended/repealed.
 - 1.2.1.4 Discriminatory legislation which needs to be removed in the interests of society. These should be dealt with at the relevant stage of the democratisation process.
 - 1.2.1.5 Discriminatory legislation which would infringe upon an agreed Bill of Rights. These should be dealt with through the procedures that stand to be created in a new constitution which will include a justiciable Bill of Rights.
- 1.2.2 The WG received proposals on discriminatory legislation which falls in the above categories and which should be amended and/or repealed. The discussions on these proposal are incomplete and it was agreed that the task group constituted in terms of para 1. 1.7.3 above, or any other mechanism set up by Codesa, discuss the proposals regarding discriminatory legislation which falls within categories 1.2.1.1 and 1.2.1.3 above with a view to making appropriate recommendations. Such task group or appointed body should report to Codesa or any other appropriate executive body that may be set up by Codesa.
- 1.2.3 In its report to CODESA 2 the Gender Advisory Committee recommended "the repeal of all legislation in South Africa and the TBVC states which discriminates on the basis of race, creed or gender which circumscribe and impede free political, economic or social activity." This had to be done in accordance with a schedule of acts to be provided by the GAC.

2. Political Intimidation: "Any action or set of actions committed by an individual, organisation, political party, government represented at CODESA, as well as the self-governing territories or any agency of such government or self-governing territory, that is designed by the use or the threat of use of force or violence to disrupt or interfere with the legal rights of an individual, for instance: the Right to freedom of expression or opinion; the Right of freedom of association; the Right of freedom of movement"

It was agreed that:

- 2.1 All political disputes between parties be resolved peacefully.

2.2 Political Intimidation be defined as follows:

Any action or set of actions committed by any individual, organisation, political party, government represented at CODESA, as well as the selfgoverning territories or any agency of such government or self-governing territory, that is designed by the use or the threat of use of force or violence to disrupt or interfere with the legal rights of an individual, inter alia:

2.2.1 the right to freedom of expression or opinion;

2.2.2 the right of freedom of association;

2.2.3 the right of freedom of movement.

2.3 In particular, the following shall be considered forms of political intimidation:

2.3.1 to kill, injure, apply violence to, intimidate or threaten any other person or his/her political beliefs, words, writings or actions;

2.3.2 to remove, disfigure, destroy, plagiarise or otherwise misrepresent any symbol or other material of any other political party or organisation;

2.3.3 to interfere with, obstruct or threaten any other person or group travelling to or from or intending to attend, any gathering for political purposes;

2.3.4 to seek to compel, by force or threat of force, any person to join any party or organisation, attend any meeting, make any contribution, resign from any post or office, boycott any occasion or commercial activity or withhold his or her labour or fail to perform a lawful obligation; or

2.3.5 to obstruct or interfere with an official representative of any other political party or organisation's message to contact or address any group of people;

2.3.6 the possession, carrying or displaying of dangerous weapons or firearms by members of the general public when attending any political gathering or meeting.

(cf Working Group I Report, paragraphs 6 & 7, pages 10 - 14)

**POLITICAL NEUTRALITY OF AND FAIR ACCESS TO STATE-CONTROLLED/
STATUTORILY-INSTITUTED MEDIA. INCLUDING THOSE OF THE TBVC STATES**

Explanatory Note: Two structures have been envisaged: firstly, an independent body to regulate the telecommunications sector, and secondly, an Independent Media Commission.

Status: These extracts are from the Report of Working Group 1. The Report was endorsed at Working Group level and tabled at CODESA 2. The Working Group 3 Report also refers to the need for an Independent Media Commission.

1.1 Independent Body To Regulate Telecommunications Sector

1.1.1 Establishment

It was agreed that an independent, neutral body be established to regulate the telecommunications sector, such body to be created in terms of an Act of Parliament.

1.1.2 Functions

It was agreed that such an Independent Body would have as its principal functions:

1.1.2.1 The regulation of the utilisation of the electromagnetic spectrum, including the allocation of licences and the determination of licence conditions according to an agreed set of standards.

1.1.2.2 The appointment of a suitable structure to monitor the proper exercise of licence conditions.

1.1.3 Powers

1.1.3.1 It was agreed that the powers of the Post Master General in relation to telecommunications shall be transferred to the Independent Body.

1.1.3.2 It was further agreed that the Independent Body would have the following powers:

1.1.3.2.1 To ensure that a wide range of telecommunication services, including regional and community broadcasting program services, is available throughout South Africa.

1.1.3.2.2 To ensure fair and effective competition in the provision of such and related services.

1.1.3.2.3 To ensure fair and equitable opportunity to opinion formers to express their views freely.

- 1.1.3.2.4 To 'ensure optimum affordable research and development with a view to improving the utilisation of the available electromagnetic spectrum and to introduce technologies to improve signal quality.
- 1.1.3.2.5 To ensure impartial control of all broadcasting by laying down norms and standards for more equitable and fair access for all political parties to air time on broadcasting services.
- 1.1.3.2.6 To work out guidelines for the impartiality of news and current affairs programmes on all broadcasting services.
- 1.1.3.2.7 To take punitive measures against broadcasters who violate provisions of the code of conduct, or to suspend or withdraw licences if licence conditions are not complied with.
- 1.1.3.2.8 To deal with complaints by the public and political parties.
- 1.1.3.2.9 Such other powers as may be expedient.

1.1.4 Name of Independent Body

It was agreed that such Independent Body should be called either SAITA (South African Independent Telecommunications Authority) or SAITCOM (South African Independent Telecommunications Commission) but there was no consensus on which of the two names is the most desirable.

1.1.5 Constitution of Independent Body

It was agreed that:

- 1. 1.5.1 Members of the Independent Body shall be South African Citizens of merit who act in the public interest.
- 1.1.5.2 No board member shall be an office bearer of any political organisation or have a vested interest in the film and broadcasting industries, or any other conflicting interest.

1.1.6 Appointment Procedures

It was agreed that organs of civil society shall be invited, inter alia, by advertisement in the press, to nominate names to either CODESA or the interim structure, whichever is appropriate at the time, bearing in mind the urgency of the matter, for purposes of preparing a short list of names from which the board of the Independent Body can be appointed.

1.1.7 Accountability and Finance

- 1.1.7.1 It was agreed that the Independent Body shall be accountable to the executive of the interim constitutional authority, provided that once a representative Parliament comes into being such a body shall be accountable to Parliament or one of its standing committees; further provided that the independence of such a body shall not be impinged upon in any way whatsoever.
- 1.1.7.2 The extent of the Independent Body's accountability shall be dependent upon the method of financing such a body. In this regard various methods are possible and should be considered.

1.1.8 Licensing Procedures conditions and standards

It was agreed that the above matters should devolve upon the Independent Body.

1.1.9 SABC

There was no consensus on a proposal regarding the immediate reconstitution of the Board of the SABC.

It was however agreed that, since WGI had reached consensus that an Independent Body to regulate the telecommunications sector be created at the earliest opportunity:

- 1.1.9.1 The Steering Committee of WGI will initiate discussions with the chairperson of the Board of the SABC, and such representatives as he may determine, on the possible early reconstitution of the Board of the SABC, the appropriate ministry to be included in such discussions;
- 1.1.9.2 The first such meeting to take place before Codesa II;
- 1.1.9.3 The mechanism for monitoring the performance of the SABC be considered to at the same discussions.

1.1.10 Complaints/Disputes and Monitoring

It was agreed that the Independent Body shall, with Parliamentary sanction by way of legislation, set up structures as may be necessary, inter-alia for:

- 1.1.10.1 adjudicating disputes;

1.1.10.2 monitoring the efficiency of the licensee and to ascertain whether licensees comply with their licensee conditions;

1.1.10.3 investigating complaints and for giving effect to remedial actions

1.1.11 Code of Conduct

1.1.11.1 It was agreed that the Independent Body shall lay down the standards to be complied with by licensed broadcasters (such standards could be included in a Code).

1.1.11.2 Individual Broadcasters shall compile a Code of Conduct to which they will have to comply and which could be made a condition of their licenses.

1.1.12 The following issues were raised but discussions have not been completed:

1.1.12.1 affirmative action

1.1.12.2 cross-ownership restrictions

1.2 **Printed Media**

The SA Government agreed to repeal Section 4 (a) and (b) of the Registration of Newspapers Amendment Act of 1982 which relate to Ministerial powers to cancel the registration of a newspaper. The repeal of these sections will be dealt with in a General Law Amendment Bill.

(cf Working Group 1 Report, paragraph 9, pages 14 - 17)

INDEPENDENT ELECTION COMMISSION

Status: The extracts are from the Reports of Working Groups 1, 3 & 4. All three Reports were endorsed by the respective Working Groups and tabled at CODESA 2.

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.

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.
(cf Working Group 3 Report, paragraphs 30.1 - 30.2 pages 54-55)
3. 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.
(cf Working Group 3 Report, paragraph 32.6, page 58)
4. In the defined areas of responsibility of sub-councils of the TEC, ministerial powers and discretion 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.
(cf Working Group 3 Report, paragraph 28, page 28)
5. 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.
(cf Working Group 3 Report, paragraph 33, page 58)
6. The people of the TBVC states shall take part fully in the processes of constitutionmaking and transitional arrangements, including elections, as may be proposed by Working Groups 2 and 3. Their participation will be arranged in such a way that their votes in a national election shall signify support for or rejection of reincorporation. The results of such an election shall constitute a sufficient test of the will of the people. [The Bophuthatswana Government recorded its reservation in this paragraph.]
(cf Working Group 4 Report, paragraph 3.1.3, page 66)

7. Purpose of the elections

The elections would be "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".

(cf Working Group 3 Report, paragraph 9, page 48)

8. Funding of political parties

Provisions of the Prohibition of Foreign Financing of Political Parties Act No 51 of 1968 with regard to the receipt of foreign funds by political parties shall be suspended until a date 6 (six) months from the date of the General Election in terms of the provisions of a negotiated new constitution for South Africa.
(cf Working Group I Report, paragraph 13(i), page 24)

THE TRANSITIONAL EXECUTIVE COUNCIL AND SUB-COUNCILS

Status: The Report from which the following extracts are made was approved of in Working Group 3 and tabled at CODESA 2.

Introduction to agreements reached

- I 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.
2. 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.
3. 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.
4. 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

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 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.
6. 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.
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 within its terms of reference 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.
8. 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

9. 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).
10. 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.

Powers of the TEC

11. The TEC will be vested by legislation agreed to by Codesa with powers necessary to enable it to carry out its functions.
12. The TEC will have access to all information (including records of governments and other participants in the TEC) which may be required by it for the purpose of exercising its functions.
13. The sub-councils will report to the TEC and their decisions will be subject to confirmation/amendment by the TEC.
14. The TEC will be able to delegate powers to the sub-councils.
15. The TEC will be able to initiate or participate in negotiations in relation to issues which arise outside the defined areas of responsibilities of its sub-councils, if it is of the opinion that such issues 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.
16. The TEC will be kept informed of and will be able to ask for and be entitled to receive information in regard to proposed legislation including bills, proclamations and regulations, and of executive actions and contemplated executive actions of all participating governments/administrations that may impact on the levelling of the political playing field and on free political participation.
17. 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.
18. 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.
19. 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 18 hereof, the matter may be referred to the independent election commission.
20. 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.

21. 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

22. Independent Election Commission

- 22.1 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.

- 22.2 The composition, powers (which shall include the power to resolve disputes as contemplated in paragraphs 19, 20 and 25 hereof) and functions of the Commission shall be enacted in legislation to be agreed to by Codesa.

23. 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

24. 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.

24.1 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.

24.2 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.

24.3 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.

24.4 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.

24.5 Foreign Affairs

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

24.6 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.

25. 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

26. 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.
27. 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

28. 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.
29. 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.

30. 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.
31. 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.
32. The size of the Transitional Executive Structure will be kept as small as is reasonably possible.

Meetings of the TEC and its sub-councils

33. 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.
34. 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

35. 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 18 hereof, the matter may be referred for adjudication as contemplated in Paragraphs 19, 20 and 25 hereof.

States of emergency

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

Implementation and time frames

37. Subject to Paragraph 12 [of the original Report] 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

38. Matters requiring further discussion are as follows:
- 38.1 Composition of the TEC
 - 38.2 Composition of the sub-councils
 - 38.3 Composition, powers and functions of the Independent Election Commission
 - 38.4 Sub-council on foreign affairs
39. Legislation is required to give effect to the agreements contained herein.

Conclusion

40. In view of the fact that this report covers the first stage of the transition, further discussion is required concerning the details of stage two (as envisaged in paragraph 4 [of the original Report]).

(cf Working Group 3 Report, paragraphs 9 - 48 [Conclusion], pages 48 - 63. NB: The paragraphs have been renumbered for purposes of reference within the current document

CONSTITUTION-MAKING BODY/PROCESS

General Constitutional Principles

- 1.1 The Declaration of Intent contains six general principles:

"To set in motion the process of drawing up and establishing a constitution that will ensure, inter alia:

- a. that South Africa will be a united, democratic, non-racial and non-sexist state in which sovereign authority is exercised over the whole of its territory;

- b. that the Constitution will be the supreme law and that it will be guarded over by an independent, non-racial and impartial judiciary,.
- c. that there will be a multi-party democracy with the right to form and join political parties and with regular elections on the basis of universal suffrage on a common voters roll,. in general the basic electoral system shall be that of proportional representation;
- d. that there shall be a separation of powers between the legislature, executive and judiciary with appropriate checks and balances..
- e. that the diversity of languages, cultures and religions of the people of South Africa shall be acknowledged,.
- f. that all shall enjoy universally accepted human rights, freedoms and civil liberties, including freedom of religion, speech and assembly protected by an entrenched and justiciable Bill of Rights and a legal system that guarantees equality of all before the law.

(cf Declaration of Intent, pages 2 & 3)

- 1.2 In this regard, an Addendum was subsequently appended to the Declaration as a clarification to the above principles:

"For the avoidance of doubt as to the interpretation of the Declaration of Intent, it is declared by its signatories that irrespective of their individual interpretative views thereof, no provision of the Declaration of Intent, interpreted alone or in conjunction with any other provision thereof shall be construed as -

- 1. favouring or inhibiting or precluding the adoption of any particular constitutional model, whether unitary, federal, confederal, or otherwise, consistent with democracy,.
- 2. preventing any participant from advocating the same or the separation, in terms of any constitutional model, of powers between a central government and the regions; during the proceedings of CODESA or any of its committees or Working Groups;"

(cf Addendum to Declaration of Intent,- page 4)

- 1.3 In addition to the above, the Management Committee issued a further clarification to the effect that the Declaration of Intent must be understood to allow any participant to make submissions on the question of self-determination.
- 1.4 The question of constitutional principles which would be binding on a Constitution-Making Body (CMB) was part of the Terms of Reference of Working Group 2. The following areas

of commonality with regard to general constitutional principles were prepared by the Steering Committee and submitted to the Working Group on 12 May 1992:

1. South Africa will be a united, sovereign state in which all will enjoy a common South African citizenship.
2. South Africa will be democratic, non-racial and non-sexist.
3. The constitution shall be the supreme law.
4. There will separation of powers between the legislature, the executive and the judiciary with appropriate checks and balances.
5. The judiciary will be independent, non-racial and impartial.
6. here will be a legal system that guarantees the equality of all before the law.
7. There will be representative and accountable government embracing multi-party democracy, regular elections, universal adult suffrage, a common voters role and, in general, proportional representation.
8. The diversity of languages, cultures and religions will be acknowledged.
9. All will enjoy universally accepted human rights, freedoms and civil liberties including freedom of religion, speech and assembly which will be guaranteed by an entrenched and justiciable Bill/Charter of Fundamental Rights.
10. Government shall be structured at national, regional and local levels.
 - 10.1 At each level there shall be democratic representation.
 - 10.2 Each level of government shall have appropriate and adequate legislative and executive powers, duties and functions that will enable each level to function effectively; such powers, duties and functions to be entrenched in the constitution.
 - 10.3 In addition to the powers, duties and functions entrenched in the constitution, each level of government may delegate powers, duties and functions to other levels of government.
 - 10.4 The general principles of the constitution including the terms of the Bill/Charter of Fundamental Rights shall apply to each level of government.
11. The new constitution shall provide for effective participation of minority political parties consistent with democracy.

(cf pages 43 - 44)

1.5 The Steering Committee also prepared a report dated 27 April 1992 recording the areas on which no agreement yet existed:

“2. Issues on Which No Agreement Yet Exists

2.1 Economic freedom, government intervention and economic systems.

2.2 Accommodation of the diversity of languages, cultures and religions.

2.3 Role of Traditional Leaders.

2.4 The Bill/Charter of Fundamental Rights including:

2.4.1 Its nature and scope

2.4.2 Affirmative action

2.4.3 Second generation rights

2.5 Self-determination

2.6 New items proposed, namely:

2.6.1 The role of standing committees in the formulation of legislation.

2.6.2 Government will be open, accessible and accountable.

2.6.3 Power sharing.

3. Draft Principles on 2. 1 to 2.4 Above Prepared by the Steering Committee on 23.3.92

3.1 Draft principle on economic freedom, governmental intervention and economic systems:

“The constitution should provide for the promotion of the improvement in the quality of life of all South Africans by enabling economic growth, human development, social justice and equal opportunities for all.”

3.2 Draft principle on the Bill/Charter of Fundamental Rights:

“There shall be a justiciable bill/charter of fundamental rights which shall ensure inter alia :

- universally accepted human rights and freedoms,.
- civil liberties including freedom of religion, speech and assembly;
- the equality of all before the law,.
- property rights, provided that legislation may in the public interest authorise expropriation against payment of reasonable compensation which shall in the event of a dispute be determined by a court of law.

The constitution shall enable the implementation of measures to help address the racial and gender inequities caused by past discrimination.”

3.3 Draft principle on the accommodation of the diversity of languages, cultures and religions:

'The constitution at all levels of government shall accommodate and protect the right of citizens to practice their religion, enjoy their culture and use their own language both as individuals and in association with others. This shall include the right of citizens where practicable to have their children educated in their mother tongue and the right of citizens to establish educational institutions reflecting their language, culture and religion, provided that racial discrimination may not be practised.'

3.4 Draft principle on the role of traditional leaders:

'The constitution should define a suitable role for traditional leaders consistent with the objective of a united, non-racial, non-sexist, democratic South Africa.

(cf pages 41 - 42)

2. Constitution-Making Body

2.1 The Working Group 3 Report to CODESA 2 recorded commonality, on pages **48 & 49**, in the following terms:

"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.

2.2 This Report also recorded the following understanding:

"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. "

2.3 The memorandum prepared by the Chairman and Secretary of Working Group 2, dated 22 June 1992, which appears on **pages 33 - 44**, records the following basis approach:

"1. Basic Approach: Constitution making within the framework of a Transitional Interim Constitution

1.1 CODESA shall agree to and draft a transitional/interim constitution. This constitution shall be submitted to parliament for legislation within two months of this agreement and all parties within Codesa in parliament commit themselves to supporting such legislation.

1.2 The transitional/interim constitution shall make provision for the constitution making process through which, and the constitution making body by whom, a final constitution shall be drafted and adopted.

(cf page 36)

2.4 Working Group 2 was seized with three proposals which appear on pages 34 35, aimed at resolving the deadlock which had arisen. All three proposals were based on the premise that the elected National Assembly would draft and adopt the final constitution.

2.5 From the point of view of constitution making, the National Assembly shall be elected on the basis of proportional representation and universal adult suffrage, half the seats being allocated through national lists and half through regional lists, in order to ensure proper representation of regions.

(cf paragraphs 3.1.2, 3.2.1, page 37)

2.6 On the binding nature of the constitutional principles, the following was recorded:

'3.8. 1 CODESA shall agree on a set of general constitutional principles to be enshrined in the final constitution and which shall not be contradicted by any provision of the final constitution.

3.8.2 The transitional/interim constitution shall contain an entrenched provision prescribing that the final constitution shall give effect to paragraph 3.8.1 and shall establish an independent mechanism which will be the only body to determine that the general constitutional principles have been enshrined and not contradicted in the final constitution; which determination may only be initiated by a party in the NA.

(cf page 39)

2.7 On the question of time frames and deadlock-breaking for the CMB, the following is recorded:

"4. Special Mechanisms

Codesa shall agree on special mechanisms to ensure that the national assembly completes the work of drafting and adopting the final constitution within a specified period of time. The transitional/interim constitution shall remain in force until replaced by the final constitution.

(cf page 39)

TRANSITIONAL INTERIM CONSTITUTION

1. The Working Group 3 Report records the following:

"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.

(cf page 48)

2. The Transitional/Interim Constitution (as distinct from the final constitution) shall be agreed upon in CODESA.

3. The Transitional/Interim Constitution shall make provision for the following:

"3.1 A Legislature

The legislative authority shall vest in a democratically elected interim/transitional parliament consisting of a National Assembly and a Senate functioning in terms of the special majorities and general constitutional principles agreed upon.

3.1.1 The structure and role of the Senate must still be agreed upon.

3.1.2 The National Assembly shall be elected on the basis of proportional representation and universal adult suffrage, half the seats being allocated through national lists and half through regional lists in order to ensure proper representation of regions.”

(cf page 37)

“3.3 An Executive

3.3. 1 Executive authority shall vest in a multiparty executive in accordance with the principle of an interim/transitional government of national unity.

3.4 The separation of powers

There shall be a separation of powers between the executive, legislature and judiciary according to the principles underlying a constitutional state.

3.5 Fundamental Rights

CODESA shall agree on justiciable fundamental rights which shall form part of and shall be entrenched in the transitional/interim constitution.

3.6 Regional Government

3.6.1 CODESA shall agree on the boundaries, powers, duties and functions of regional governments.

3.6.2 Provision shall be made for regional government and/or the phasing in of such government with the boundaries, powers, duties and ,functions as referred to in paragraph 3.6. 1.

3.6.3 The transitional/interim constitution shall entrench regional government and its boundaries, powers, duties and functions in the transitional phase and the transitional/interim constitution shall in this regard not be amended without the agreement of all the parties in the National Assembly until the adoption of a new constitution in terms of the procedures set out in 3.2.

3.7 Provisions regarding amendments to the transitional/interim constitution.

Amendments shall only be of force and effect if:

3.7.1 They do not contradict the set of constitutional principles referred to in paragraph 3.8.1.

3.7.2 They have been adopted according to the procedures set out in paragraph 3.2.”

(cf page 38)

**Proposals to the Planning Committee
on the appointment of
Technical Sub-Committees
and their Terms of Reference on
certain matters arising from
The Consolidated Document**

**Submitted by the Sub-Committee on
22 April 1993**

Report of the Sub-Committee

1. The Sub-Committee has not completed its work. At this stage it is only able to present proposals on certain matters arising from the Consolidated Report.
2. The Proposals relate to the following issues:
 - 2.1 The Independent Election Commission;
 - 2.2 State Controlled/Statutorily Instituted Media;
 - 2.3 On the amendment and/or repeal of legislation militating against free political activity, including the elimination of all discriminatory legislation;
 - 2.4 On the TEC and its Sub-Councils;
 - 2.5 On matters relating to violence, security forces and all armed formations.
3. On each of the above matters the proposals suggests the Terms of Reference and the composition of Technical Sub-Committees.

4. We propose that these Technical Sub-Committees be separately constituted in order to enable that the work proceeds with due speed.
5. On the outstanding Constitutional Matters the Sub-Committee requests that it be allowed to present a further report at the next meeting of the Planning Committee.

Index

1. **Proposal One : The Independent Election Commission**
2. **Proposal Two : State Controlled/Statutorily Instituted Media**
3. **Proposal Three : Amendment and/or repeal of laws militating against free political activity, including the elimination of all discriminatory legislation**
4. **Proposal Four : The TEC and its Sub-Councils**

PROPOSAL ONE: THE INDEPENDENT ELECTION COMMISSION

1. We propose that the Planning Committee discuss the following and approve of the following issues to constitute the Terms of Reference of a Technical Sub-Committee charged with the task of drafting a legislative framework for the Independent Election Commission. Such a framework will constitute the basis for discussion at the Negotiating Council/Forum:

2. Terms of Reference of the Technical Sub-Committee:

2.1 **Aims**

Proposals for the establishment of an Independent Election Commission (IEC), charged with the responsibility of conducting the elections, monitoring the election process and the elections, and to act as adjudicator and arbitrator on matters related thereto. These proposals are for the national elections. Where regional elections are concerned new formulations will have to be considered.

2.2 **The Independent Election Commission**

2.2.1 The IEC shall be appointed by the State President upon the recommendation of the Multi-Party Forum.

- 2.2.2 The IEC shall consist of 7-11 members.
- 2.2.3 The Chairperson and Deputy Chairperson/s of the IEC shall be appointed by the State President on the recommendation of the Multi-Party Forum.
- 2.2.4 In order to enable the IEC to act impartially and in a non-partisan way, the following conditions and criteria shall apply:
- 2.2.4.1 There are three options with regard to membership of the IEC:
- (a) The IEC will consist of respected and suitably qualified persons, drawn from a broad cross section of the population, all of whom shall be eligible voters;
 - (b) A specified number of the IEC will be assigned to persons seconded from international organisations. These shall enjoy equal status with those who are drawn from eligible voters;
 - (c) The IEC shall have a specified number of seats assigned to persons seconded from the international community and that such persons shall function in the IEC in a known voting capacity.
- 2.2.4.2 Members of the IEC shall be appointed in their individual capacities and not as representatives of any political parties, organisations, administrations, governments and/or interest groups.
- 2.2.4.3 Appointees shall divest themselves of any political office while serving on the IEC.
- 2.2.4.4 No member of the IEC shall be an office-bearer or official of any political party/organisation or candidate in the election.
- 2.2.4.5 Members of the IEC shall not hold any other office which may give rise to a conflict of interest while serving on the IEC.
- 2.2.5 Vacancies in the IEC: Vacancies shall be filled by the State President, on the recommendation of the Multi-Party Forum (MPF) or Transitional Executive Council (TEC) whichever is appropriate at the time.

2.3 **Functioning of the IEC**

- 2.3.1 Members of the IEC shall serve on a full-time basis for the duration of the term of the IEC.
- 2.3.2 All decisions of the Commission shall be taken by a means of a vote and a simple majority shall be sufficient to bind the Commission.

2.3.3 In the event of a deadlock, the Chairperson of the Commission shall have a casting vote.

2.4 **Status of the IEC**

2.4.1 The IEC shall be independent of all governmental organisations.

2.4.2 The composition, powers, and functions of the IEC shall be enacted in legislation to be agreed to by the MPF.

2.4.3 The IEC shall be independent of the TEC.

2.4.4 In the event that the TEC decides to establish a Sub-council on Elections, such appointment will not interfere in any way with the independence or powers of the IEC.

2.4.5 The sole obligation of the IEC to any other organ of government shall be to supply written reports to the TEC, on its decision in respect of the organisation and conduct of the elections.

2.5 **Accountability and Finance**

2.5.1 The IEC shall liaise with the TEC and the Independent Media Commission (IMC) on matters pertaining to the work of these bodies.

2.5.2 The IEC shall, from time to time, determine a budget to meet the reasonable costs of carrying out its powers, duties and functions in accordance with the enabling legislation.

2.5.3 The budget shall be presented to the TEC for approval and action.

2.5.4 The South African Government shall provide the funds necessary to cover the budget of the IEC.

2.6 **Powers, duties and functions of the IEC**

2.6.1 The IEC shall have the sole and ultimate responsibility for the organisation, conduct and supervision of the election.

2.6.2 In announcing the results of the election, the IEC shall have the responsibility of certifying whether, and to what extent, the elections have been free and fair.

2.6.3 In particular the IEC shall:

2.6.3.1 Administer the conduct of the elections.

2.6.3.2 Monitor the election process and the elections in order to: (a) ensure that the process and the elections are free and fair, and (b) enable the IEC to eventually certify the results of the elections.

In the execution of this function, the IEC may make use of, and act in conjunction with, local and international observers.

2.6.3.3 Act as an adjudicator and arbitrator on matters related to the election process and the elections referred to it by political parties, organisations, the - public at large and/or the TEC. In the execution of this function, the IEC may involve international participation.

2.7 In order to discharge effectively and impartially the functions outlined in paragraph 6 above, the IEC shall supervise and establish separate and independent structures to execute each of the three tasks contained in paragraphs 6.3.1, 6.3.2 and 6.3.3 above. Each of these structures shall be accountable to, and coordinated by, the IEC. Provision can be made for the UN, EEC, Commonwealth and OAU to second four suitably qualified persons to serve in each of these three structures, depending on the option chosen under 2.4.1 above.

2.8 Provision shall be made for the promulgation of rules and regulations necessary for the discharge of the functions of the IEC.

2.9 **Eligibility of voters**

All South African citizens 18 (eighteen) years and above. This will include citizens of the TBVC states. The MPF/TEC shall look into whether changes are necessary to citizenship laws.

2.10 **Registration of political parties/organisations for purposes of elections**

All parties intending to participate in the elections shall be required to register with the IEC.

NB. There is a need for the MPF to agree upon measures to prevent abuse.

2.11 **Administering the elections**

The IEC shall be empowered, inter alia, to:

2.11.1 Make provisions for the identification of eligible voters.

2.11.2 Formulate a Code of Conduct for potential parties and to ensure that each party commits itself to peaceful electioneering and solemnly and publicly commits itself to such a Code of Conduct. Such a Code of Conduct should include suitable penalties for violations of the Code.

2.11.3 Receive and regulate the registration of parties that wish to participate in the elections.

- 2.11.4 Determine and supervise the campaign funds and election expenditure.
- 2.11.5 Promulgate laws and regulations for political advertising.
- 2.11.6 Educate the public about the electoral process through voter education programs using radio, television and other means.
- 2.11.7 Set up an appropriate machinery throughout the country and appoint appropriate staff for the purposes of fulfilling its functions.
- 2.11.8 Make provision for and ensure that no voter votes more than once, that ballot boxes are properly sealed, that counting of votes is conducted in a manner that ensures accuracy and reliability.
- 2.12 **Monitoring the election process, in order to ensure that the elections are free and fair**

The IEC shall be empowered, inter alia, to:

- 2.12.1 Set up the necessary structures, countrywide, to observe, monitor and verify the entire process of the elections, before, during and after polling.
- 2.12.2 Make suitable provision for the international community organisation to participate in this process.
- 2.12.3 Take steps to prevent any intimidation.
- 2.12.4 The IEC shall be empowered to take steps to prevent corrupt and illegal practices.

2.13 **Adjudication and arbitration**

The IEC shall be empowered to, inter alia, to:

- 2.13.1 Serve as a final arbiter of any claims or disputes submitted by persons, political parties, organisations, administrations, governments and the TEC.
- 2.13.2 Establish appropriate machinery throughout the country for the speedy investigation of complaints concerning electoral irregularities, refusal of access to venues or meetings, and access to voters, intimidation and breaches of a Code of Conduct for political parties.

2.14 **General**

The IEC shall be empowered to make such other arrangements as may be necessary for the proper exercise of its functions.

3. The Technical Sub-Committee should be composed of three to four persons suitably qualified to translate the above mandate into a legislative framework.

PROPOSAL TWO: STATE CONTROLLED/STATUTORILY INSTITUTED MEDIA

1. Paragraph 2 below outlines the Terms of Reference for two institutions, viz the Independent Telecommunications Authority and the Independent Media Commission. Both are inter-related and we propose that a single Technical Sub-Committee be appointed to use the Terms of Reference as a point of departure for drafting the necessary legislative framework.

2. Terms of Reference:

2.1 Two mechanisms are involved in this regard:

2.1.1 Independent Telecommunications Authority

2.1.2 Independent Media Commission

2.2 The Independent Telecommunications Authority (ITA)

2.2.1 Aim

The creation and establishment of an Independent, neutral body to regulate the telecommunications sector, whose principal tasks are:

2.2.1.1 The regulation of the utilization of the electromagnetic spectrum, including the allocation of licenses and the determining of license conditions according to an agreed set of standards.

2.2.1.2 The appointment of a suitable structure to monitor the proper exercise of license conditions.

2.2.2 The report of Working Group I on this matter is sufficiently detailed to enable a technical sub-committee to prepare a draft legislative framework.

2.2.3 From the point of view of structure we propose the following:

2.2.3.1 An executive type of structure made up of respected and suitably qualified persons drawn from the broad cross-section of the population and representatives of the technical committees.

2.2.3.2 Technical committees dealing with:

- * Electronic media
- * Telecommunications

2.2.4 The ITA and IMC as well as boards of broadcasters will operate in accordance with the following guidelines:

2.2.4.1 An Act of Parliament which sets out broad principles.

2.2.4.2 Code(s) of Conduct broadly set out in the Multi-Party Negotiations and finalized by the ITA and the IMC themselves.

2.3 The Independent Media Commission (IMC)

2.3.1 **Aim**

The aim of an IMC is the 'levelling of the media playing fields in the period leading up to the elections, in respect of:

2.3.1.1 The monitoring of the electronic media, to ensure the impartiality, fairness and compliance with licensing conditions and fair access to such media.

2.3.1.2 The monitoring of state controlled/statutorily controlled media, including those in the TBVC 'states, to ensure their neutrality and impartiality.

2.3.2 **Composition**

2.3.2.1 The IMC shall consist of 7 - 11 members, appointed by the State President in consultation with the Multi-Party Forum (MPF)/Transitional Executive Council (TEC), whichever is appropriate at the time.

2.3.2.2 The MPF/TEC shall decide on the mechanisms for the appointment of the IMC, including public nominations, by political parties/organisations and interest groups, as well as a representative and transparent process.

2.3.2.3 Criteria for appointment of the IMC

2.3.2.3.1 Appointees shall be South Africans of merit and high standing.

2.3.2.3.2 They shall perform their duties in the public interest.

2.3.2.3.3 Appointees shall divest themselves of any political office while serving on the IMC.

2.3.2.3.4 Appointees shall not be office-bearers of any political party/organisation or have a vested interest in the media industry.

2.3.2.3.5 The IMC shall collectively reflect the cross-section of the South African population.

2.3.2.3.6 The IMC shall have within its ranks individuals with the necessary legal expertise.

2.3.3 A Member of the MC

2.3.3.1 Shall hold office for such a term as designated for the IMC.

2.3.3.2 May vacate his/her office for reasons pertaining to the criteria mentioned in 3.2 above and/or accepted by the TEC.

2.3.3.3 May, in the case of 3.3.2 above, be replaced, in accordance with the procedure for the nomination of the IMC in the first place.

2.3.4 Chairperson

The Chairperson of the IMC, shall be appointed by the State President in consultation with the MPF/TEC, whichever is appropriate at the time.

2.3.5 Powers, functions and duties

2.3.5.1 In order to attain the objective set out in paragraph 3.1 above, the IMC shall monitor:

2.3.5.1.1 The programme content of the electronic media for breaches of licensing conditions and the provisions of any Code of Conduct. In this regard, it shall act in cooperation with any similar structure set up for the regulation of telecommunication sector.

2.3.5.1.2 Governmental media, to ensure that they do not favour or prejudice any political party/organisation.

2.3.5.2 The IMC shall serve as adjudicator for the hearing of complaints against inaccuracies or partiality, or the denial of fair access on the part of the electronic media, and shall have the power to order the rectification of any offensive conduct.

2.3.5.3 The IMC shall oversee the transformation of broadcasting, including the integration of the TBVC broadcasters into the new dispensation, and resolve any disputes that may arise, for instance: between the ITA and Board/s of broadcasters.

2.3.5.4 The IMC shall execute its functions in a manner which ensures the necessary effectiveness. It may:

2.3.5.4.1 Consult any person for the purposes of obtaining expert advice on any matter; and

2.3.5.4.2 Appoint sub-committees to perform such functions and duties as it may determine, from time to time.

2.3.6 Accountability, Finance and Referral

2.3.6.1 The IMC shall operate as an independent body.

2.3.6.2 It shall liaise with the ITA, the Independent Election Commission (IEC) and the TEC on matters pertaining to the work of these bodies.

2.3.6.3 The IMC may, in its discretion, refer any matter involving transgression by a licensee of licensing conditions to the ITA, for such action as may be deemed necessary.

2.3.6.4 The IMC shall be afforded the necessary finance to carry out its functions, and, in this regard, it shall be accountable to the TEC.

2.3.7 Structure

The IMC shall have a Secretariat and such infrastructure as it may deem necessary to carry out its functions.

2.3.8 Term of Office of the IMC

Subject to review by the Interim Parliament.

2.3.9 Code of Conduct

2.3.9.1 The IMC shall carry out its functions and exercise its powers in accordance with a Code of Conduct for all licensed broadcasters, as well as one specifically applicable to the national service broadcaster (SABC and public broadcasters of the TBVC territories).

2.3.9.2 Such a Code of Conduct would form part of the licensing conditions of the ITA.

2.3.9.3 Matters which could be contained in any Code of Conduct will, inter alia cover the following:

- 2.3.9.3.1 Public media should serve society as a whole and be independent of political parties.
- 2.3.9.3.2 All parties shall be afforded fair and reasonable access to air their views, including such aspects as the right of reply, prime-time access, public withdrawals by offending parties etc.
- 2.3.9.3.3 Broadcasters must be impartial in dealing with news, commentary, interviews and current affairs programs.
- 2.3.9.3.4 Privacy of sources of media workers' information shall be protected.
- 2.3.9.3.5 Programmes shall take into account cultural and language diversity within society.
- 2.3.9.3.6 Broadcasters shall promote peace, justice, democracy and freedom of thought, conscience and religion.

2.3.10 Print Media

The IMC shall liaise with the Media Council on election matters pertaining to the print media.

PROPOSAL THREE: AMENDMENT AND/OR REPEAL OF LAWS MILITATING AGAINST FREE POLITICAL ACTIVITY. INCLUDING THE ELIMINATION OF ALL DISCRIMINATORY LEGISLATION

1. The Terms of Reference should be based on the Report of Working Group I (cf page 10 - 17 of the Consolidated Document and of the Gender Advisory Committee of the various reports of the Gender Advisory Committee).
2. In order to move the issue beyond general discussion, we propose the appointment of a Technical Sub-Committee of three to four persons with the necessary expertise and experience.
3. Their task would be at this stage to produce a report which would include the TBVC States, and would contain two schedules:
 - 3.1 A schedule of laws obtaining each of these areas which should be repealed with brief motivation for each of the laws involved.
 - 3.2 A schedule of legislation which should be amended, the specific clauses requiring amendment, the nature of the amendment and a brief motivation.
4. The Technical Sub-Committee may also set up specialised Sub-Committees each to give attention to the relevant legislation in the Transkei, Bophuthatswana, Ciskei and Venda.

PROPOSAL FOUR: THE TEC AND ITS SUB-COUNCILS

1. The Consolidated Document deals with matters relating to the TEC under the title Transitional/Interim Constitution (cf 22).
2. We suggest that a Technical Sub-Committee be appointed which would take as its Terms of Reference the Report appearing in the Consolidated Document.
3. It would draft the above in the form of a systematic and itemised set of proposals to facilitate discussion in the Planning Committee and the Negotiating Council.
4. Its Terms of Reference would exclude those matters arising from the above report which have been allocated to other Technical Sub-Committees, e.g. The Independent Election Commission and The Independent Media Commission.

Negotiating Forum: Resolution on Violence

Proposals submitted to the Planning Committee: 22 April 1993

- 1 On 1 April 1993 the Negotiating Forum adopted a Resolution on Violence. A copy is attached.

2. In the concluding paragraphs the Forum resolved
 - to identify the issues that cause violence, threaten the negotiating process and undermine the effective implementation the National Peace Accord;

 - to mandate the Negotiating Council to establish what urgent steps and mechanisms are required to resolve those issues as a matter of national priority.

The Negotiating Council has to report on these issues to the next meeting of the Negotiating Forum.

3. Three items are proposed for immediate attention:
 - 3.1 The strengthening of the National Peace Accord and its structures. It is proposed that the Executive Committee of the National Peace Committee be asked to nominate three persons for a technical committee to advise on what can be done in this regard.

 - 3.2 Armed formations:

It is proposed that this issue be referred to the technical committee on the TEC.

 - 3.3 Other measures:

The Planning Committee and the Negotiating Council should keep the item on its agenda and call on parties to suggest other steps and mechanisms to resolve the issues causing violence. The sub-committee proposes that as a first step attention be given to the formation of a peace corps through which especially young people can become involved in peace within the community, reconstruction, training and reconciliation. It is recommended that a technical committee be appointed to further conceptualise the idea and work out ways and means of implementation

THE NEGOTIATING FORUM, MEETING ON 1 AND 2 APRIL 1993 RESOLUTION ON VIOLENCE

We, the participants at the Negotiating Forum meeting at the World Trade Centre on 1 And 2 April 1993:

NOTING With revulsion the unacceptable escalation of violence that is engulfing our country;

OUTRAGED At the killings particularly of women and children;

CONCERNED About the damage violence is inflicting on all aspects of the economy, on relations among people and organisations and the consequent deepening of divisions;

AWARE That violence poses a threat to the negotiating process which if it continues could wreck the process and plunge our country into an era of unprecedented conflict.

DO HEREBY UNEQUIVOCALLY

CONDEMN Without reservation the wanton killing and maiming of the citizens of our country;

EXPRESS Our sympathy and condolences to all those who are suffering in consequence;

COMMIT OURSELVES To effective joint action by all of us leading to the eradication of violence and to the attainment of peace in our country as soon as possible;

To peaceful negotiations as the only way to resolve differences.

AND THEREFORE RESOLVE TO

1. Identify those issues that cause violence and which threaten the negotiating process and the undermining of the effective implementation of the National Peace Accord.
2. Mandate the Negotiating Council to establish what urgent steps and mechanisms are required to resolve the above issues as a matter of national priority. The Negotiating Council shall report to the next meeting of the Negotiating Forum.

RESOLUTION 7

**EXPLANATORY MEMORANDUM ACCEPTED BY ALL PARTICIPANTS
ON 30 APRIL 1993 IN THE MULTI-PARTY PROCESS RELATING TO
PROPOSALS ARISING FROM THE MULTI-PARTY FORUM
RESOLUTION ON THE NEGOTIATION PROCESS.**

1. The Negotiation Process involves reaching agreement on a number of key elements. Discussion around any particular element gives rise to suspicion and fears that agreement on it would lead to that agreement being implemented before agreement has been reached on ALL the key elements that constitute a package around the negotiation process.

2. Such fears were addressed in the CODESA process in Working Group 3 whose report appears in the Consolidated Document on pages 22-29. This Report states that "These agreements (that is, relating to the first stage of the transition, namely the TEC) 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". (cf clause 4 of the Agreement on page 22).

3. Mindful that the above proviso is contained in the CODESA Agreements which are treated in the Multi-Party Forum as points of reference, and not as binding agreements; mindful also that some of the participants in the current Multi-Party Forum have specifically indicated that they consider themselves bound by the agreements reached in CODESA; while there are other participants in the current Multi-Party Forum who have specifically indicated that they do not consider themselves bound by the said agreements; it therefore becomes necessary that participants in the Multi-Party Forum should commit themselves to a similar type of provision so that the proposals based on the Multi-Party Resolution on the Negotiation Process may be addressed in a manner that removes any fears that agreement on any particular proposal necessarily implies agreement on their implementation.

4. The proposals contained in the first report of the Sub-Committee deals with the need for the setting up of technical committees on the following aspects:

- 4.1 The Independent Electoral Commission
- 4.2 The Independent Media Commission and the Independent Telecommunications Authority
- 4.3 The Amendment or repeal of legislation impeding free political activity and discriminatory legislation
- 4.4 On the TEC and its Sub-councils with the proviso that the question of security forces and all armed formations shall be given priority attention.
- 4.5 On strengthening the National Peace Accord
- 4.6 On the Peace Corps

5. The second report of the Sub-Committee on other constitutional matters proposes two more technical committees;

5.1 On fundamental rights in the Transition

5.2 On other constitutional matters namely, Form of State and Constitutional Principles, Constitution Making Body/ Constituent Assembly, Transitional/Interim Constitution, Transitional Regional Government, the Future of the TBVC States and Self Determination.

6. It is expressly understood by all participants that each of the above proposals and the documentation emanating from such technical committees shall be discussed in the Negotiating Council with the view to arriving at an agreement on these matters. Furthermore that as when agreement is reached on each of these matters the Council shall expressly determine when and how the specific agreement shall be implemented. This provision is made so as to ensure participants have a clear understanding of the package of agreements which would constitute the key elements of the transition process.

7. Technical committees are not fora for negotiating substantive issues. They are instruments of the Negotiating Council in order to produce systematic documentation to facilitate discussion and negotiating in the Negotiating Council. Documentation produced by each of these technical committees shall be discussed at the Negotiating Council and on the basis of those discussions sent back to the technical committees for further development. This process would be repeated until agreement is reached in the Negotiating Council on a final document on the issue in question.

7 September 1993