

INPUTS ON CODESA WORKING GROUPS

TO NEGOTIATIONS CONSULTATIVE FORUM - 21 JANUARY 1991

WORKING GROUP 1 (CREATION OF A CLIMATE FOR FREE POLITICAL PARTICIPATION & THE ROLE OF THE INTERNATIONAL COMMUNITY)

KADER ASMAL

This input was based on a written paper, which is attached. In addition to the matters raised in the paper, the following points were made:

The Working Groups are obliged to consider and report on all the terms of reference. We have to guard against being swamped in a way that delays the crystallisation of issues. We need either to identify major themes within the terms of reference, or groups of terms of reference, in order to structure our work. (Priority groups within the large number of terms of reference for this Working Group are proposed in the paper by Kader Asmal)

For the same reason we need to be careful of the provision for adding to the terms of reference of this or any other group. If there are matters which are felt not to be adequately covered then it should be attempted in the first instance to raise them under existing terms of reference rather than introduce new ones (such as the issue of disappearances and covert operations). If we introduce new terms it could well open the way for a flood of others.

WORKING GROUP 2 (GENERAL CONSTITUTIONAL PRINCIPLES AND THE CONSTITUTION-MAKING PROCESS)

MOHAMMED VALLI MOOSA

This group has two assignments. We had predicted that this would be a crucial group insofar as failure to make progress could block the whole process, and conversely progress on the issues of this group would unlock blockages in other areas.

Our January 8 statement has made agreement on a Constituent Assembly critical. Without it, we have said, we can make no progress on an interim government.

CONSTITUTIONAL PRINCIPLES

Our position, re-affirmed at the Patriotic Front conference and on other occasions, is that the constitutional principles we would put forward are those contained in the Harare Declaration. We worked hard to get as much of this as we could into the Codesa Declaration of Intent in order to facilitate their adoption later in the process. The regime may well say that the Declaration of Intent is not comprehensive, and they and other parties may bring other principles. We suspect that they will have three matters in mind for constitutional entrenchment:

- something like federalism or regionalism;
- minority-protection and 'power-sharing' as they term it;
- economic system and economic 'structures', whatever they might mean by the latter. In any case they clearly want the 'free enterprise system' entrenched.

The far-reaching character of the working group's terms of reference stems from the fact that it is charged with formulating constitutionally-enshrined provisions which shall not be contradicted by any other provisions.

We tried to deal with each of these three areas in the declaration of intent. With regard to the matter of the economic system, there is a commitment to improve the quality of life of our people; an acknowledgement of diversity and rejection of discrimination addresses the concerns of minorities; and a commitment to bring about an undivided South Africa relates to the first point.

One matter which needs to be made clear is that of how specific or general the constitutional principles should be. Different parties may well disagree as to the generality of particular principles. There is also the fact of the connection between generalities and the specifics they relate to and we will have to struggle to limit discussion to generalities.

The work of this group will also be linked to that of Working Group 3, since the government may well argue that an interim government requires an interim constitution.

CONSTITUTION-MAKING BODY

At Codesa I, De Klerk acknowledged the unrepresentative character of parliament and announced that the government would be proposing changes to the constitution which would, he said, 'throw new light' on the demand for an elected constituent assembly. It appears that they will propose that the new, elected, parliament, would also have the function of being an elected constituent assembly.

There has been some thinking within the Constitutional Committee on the kind of constituent assembly we want, but there are some important issues on which we don't yet have a position. These include:

- the question of whether the CA is one which could become the first government;

- how the CA is to be elected: wholly by proportional representation; or partly by proportional representation and partly by allocation of seats to particular social constitutemncies;
- the demarcation of electoral regions;
- decision-making procedures within the CA: simple majority or weighted majority; if weighted should it be 66 per cent or 75 per cent or what? These options have major implications for both the outcome of the CA's deliberations and for the prospects of getting proposals regarding the CA accepted by smaller parties.

WORKING GROUP 3 (INTERIM GOVERNMENT)

PETER MAYIBUYE

This input was based on a paper, which is attached, and was prefaced by the following remarks:

This is a difficult subject to present as discussion is still continuing at various levels of the movement. Without going into detail on the regime's proposals, it has all but conceded to the demand for an interim government, but in a way which leaves it capable of fighting back. Their position was answered in our January 8 statement. If they insist on going ahead they will create the conditions for a poltiical campaign. While we have rejected the proposal for having an Interim Constitution as the government conceives it, we recognise that an interim government of the kind which we want will itself require various amendments to the present constitution. It is also clear that this working group will be required to attend to a great deal of detail.

WORKING GROUP 4 (FUTURE OF THE TBVC STATES)

ALFRED NZO

The Codesa Declaration of Intent includes a commitment to bring about an undivided South Africa with a common citizenship. This coincides with what has always been our policy. The terms of reference of the working group are principally concerned with how this is to be done. In acheiving this objective there are various consequences of the bantustan policy which have to be confronted and dealt with. There are huge bureaucracies in place. The people of the areas under their control have suffered extreme impoverishment.

During the past weekend a seminar convened by the Constitutional Committee began to look at some of the issues before this working group. We are now engaged in discussing aspects of the work with our allies from these areas in order to try to develop a common approach. We are

not yet in a position to make substantive proposals, but there is a need to take the terms of reference back to the regions for discussion and for the formulation of proposals.

In the course of getting together with some of our allies certain ideas have been proposed. For example from the Transkei has come a document 'Consolidated input into Working Group 4 from Transkeians', covering the whole range of issues relating to reincorporation.

Friends from other areas have indicated in the past few days that there is a need to get together to discuss issues, and this will happen.

There are problems which arise from the fact that the Bophuthatswana government has not signed the Declaration of Intent, and we will need to develop good working relations with those of the TBVC states which are close to us.

At the meeting of those involved in the working group it was recognised that there is a substantial need for research to be conducted. Some of the groups suggested to us for this purpose are unsuitable, and it would be very useful if regions could help by suggesting sources of research which could be reliably used.

WORKING GROUP 5 - (TIME FRAMES & IMPLEMENTATION)

ZOLA SKWEYIYA

The context of the work of this group is the commitment, expressed in the Codesa Declaration of Intent, to be bound by the decisions of Codesa. In discussing the group's terms of reference it was found that the main tasks were:

- monitoring developments;
- keeping pressure on groups to keep to time-tables;
- ensuring that working groups report to Codesa.

The group should block attempts by the government to monopolize the process by offering its technical services to the group. The group needs to find the means to carry out its work. It should also avoid being overburdened with detailed technicalities.

It has been suggested that the democratic movement should look for people who could help those groups with technical services which do not have sufficient personnel of their own, something which may be necessary to forestall the government providing technical services for those parties.

The task of the group is a highly political one. As well as investigating the needs for legal changes in order to implement Codesa decisions, it needs to involve all parties in the formulation of legislation. It should also link the work of Codesa to the general development of the democratic movement.