

GENERAL CONSTITUTIONAL PRINCIPLES

---THE FEDERALISM/REGIONALISM ISSUE---

The following is a compromise formulation drafted by the steering committee of WG2. It will appear before the WG on 24/02/92.

- " 1. Government shall be structured at national, regional and local levels.
2. At each level there shall be democratic representation and the general principles of the

constitution and terms of the Bill of Rights shall apply.

CODESA

MEDIUM

[The government is insisting on the following additional point:

"The devolution of power to second and third tier government will be in accordance with the principle that maximum separation of power (compatible with good government) should be achieved."]

(18/02/92, MVM)

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- " 1. Government shall be structured at national, regional and local levels.
2. At each level there shall be democratic representation and the general principles of the constitution and terms of the Bill of Rights shall apply.
3. Each level of government shall have legislative and executive powers and functions, which shall be entrenched in the constitution.
4. In addition to the powers, duties and functions enshrined in the constitution, the central government may delegate powers, duties and functions to regional and local governments."

[The government is insisting on the following additional point:

"The devolution of power to second and third tier government will be in accordance with the principle that maximum separation of power (compatible with good government) should be achieved."]

{ 18/02/92, MVM }

DRAFT INTERNAL ANC MEMORANDUM CONCERNING OUR PERSPECTIVES FOR CODESA II

1. Codesa II is scheduled to take place in exactly one month's time. During the past week we have had to take stock of where the process stands and what prospects we can hold out for Codesa II.
2. It is clear that by the time we reach Codesa II, it will not be possible for all the substantive issues to be addressed in the Working Groups. It is therefore necessary that we ask ourselves what sort of expectations we hold for Codesa II.
3. Two possibilities arise:
 - 3.1. Either Codesa II agrees on a package of substantive agreements which unmistakably show that the process of removing white monopoly of political power and replacing it with a democratic order can be realised through those agreements; or
 - 3.2. Codesa II simply records progress reports which isolate very clearly the nature of the blockages and where the responsibility for these blockages lies. On this basis Codesa II will have to address the prospects and future of the negotiation process.
4. With regard to the first option, we need a very clear understanding amongst ourselves as to what sort of package at Codesa II would constitute substantive progress. At this stage, the following elements belong to that package:
 - 4.1. First and foremost, we need an agreement on the constitution making body. Agreement in this case must include:
 - 4.1.1. That it is an elected body based on one person one vote;
 - 4.1.2. That its tasks include drafting and adopting a democratic constitution;
 - 4.1.3. That it will be a single chamber body;
 - 4.1.4. That its decisions will not be subject to any veto or overriding powers by any other structure.

- 4.2. The conditions under which the elections for the above mentioned constitution making body take place are such that no single political player serves as a referee. In particular, this means that interim governing arrangements have to centre around two phases:
 - 4.2.1. The first phase must remove the conduct and the holding of elections from the hands of the present regime. In a manner that satisfies all the parties that the elections shall be free and fair.
 - 4.2.2. There should be substantive agreements creating a climate of free political activity. This must cover:
 - 4.2.2.1. The removal of all legislation circumscribing and impeding free political activity. This can be attended to by a general law asserting certain basic civil and political rights combined with an omnibus law repealing all legislation impeding free political activity in general and by specific reference to particular acts.
 - 4.2.2.2. Agreements confining the activities of the security forces in such a way that they cannot intervene or interfere with the right to free political activity and in the electoral process.
 - 4.2.2.3. Agreements ensuring a moratorium by government on any unilateral restructuring at the socio-economic, political, security force and foreign policy levels.
 - 4.2.2.4. Control over state media to ensure impartial and fair coverage.
- 4.3. Agreement on the second phase of the interim arrangements which would come into place on the basis of the elections for the constitution making body and which would enable the interim government to reflect the power relations that emerge in such an election while at the same time accommodating power sharing arrangements.

4.4. Agreement restoring citizenship to all those who have been deprived of it as a result of the regime's bantustan policies. Such restoration must go together with their right to participate freely and fully in the elections for the constitution making body.

5. Paragraph 4 encapsulates a package catering for all the critical elements. Without all these elements any agreements reached on parts of the package will not hang together. At the same time, we must be realistic as to the form in which and the detail with which each of these elements need to be addressed at Codesa II. It would then be possible for Codesa II to mandate Codesa III to address the outstanding issues within a specified time period. (eg a month to 6 weeks) so that we can move with the agreements reached at Codesa II to Codesa III with a clear understanding that the package itself or any elements of it would only be implemented after Codesa III. With regard to implementation of agreements exceptions would be made in the case of the removal of legislation impeding free political activity and control over state media to ensure impartial and fair coverage. These should be implemented as soon as possible after Codesa II.

6. In terms of the above:

6.1. We need to ensure that Codesa II has clear, in-principle and properly fleshed out agreements covering:

- 6.1.1. The constitution making body
- 6.1.2. The first phase of interim governing arrangements which would ensure the holding of the elections.
- 6.1.3. The repeal of legislation impeding free political activity
- 6.1.4. The restoration of citizenship of those in the TVBC states and their right to full and free participation in the elections.
- 6.1.5. Control over state media

6.2. This would leave a category of agreements which belong to the package but may not have been addressed in sufficient detail at Codesa II. These would require clear and tight in-principle agreements with the understanding at Codesa II that they belong to the package. This would relate to:

6.2.1. Phase 2 of the interim arrangements

6.2.2. The details and mechanisms ensuring that the security forces are held outside of the political processes

6.2.3. The role of the international community (if it has not already been dealt with or with regard to aspects which arise later)

6.2.4. The stages and steps by which these TVBC states are reincorporated.

7. In terms of the above, time frames must be set according to the content of the different phases. In the same way constitutional amendments and interim constitutional arrangements will have to be framed in terms of the phases. The life span of the transitional constitutional arrangements will thereby be defined by the each of the phases leading to the adoption of the new constitution by the constitution making body.

8. What tactics do we adopt if the above perspective is not realised at Codesa II? We are of the view that Codesa II should not be postponed; that it should be used to clearly set out our positions; isolate the regime for its refusal to measure up to its public commitments to help bring about a democratic system and its persistence in wanting to be both player and referee and imposing a white veto. We should do this in such a way as to insist that the negotiation process no longer resides under the control of the regime.

14th April, 1992.