

NATIONAL PEOPLE'S PARTY OF SOUTH AFRICA

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CODESA WORKING GROUP TWO SECOND ASSIGNMENT:
CONSTITUTION-MAKING BODY/PROCESS: POSITION
PAPER OF THE NATIONAL PEOPLES' PARTY

The brief of Working Group 2 of Codesa is to investigate and report upon all proposals and make recommendations with regard to an appropriate constitution making body/process.

In regard to the constitution-making process the following submission is being made.

Procedure should be part of the process.

Participants and the general public could submit memoranda, petitions, position papers, etc. through written and oral submissions. Guidelines must be prepared by the Working Group so that participants know on what aspects their comments are required and how issues may be considered for inclusion in a constitution. In this way debates are thus stimulated.

We consider direct public participation to be of paramount importance. In this way the people at grassroots level would have the opportunity to be involved in the process. In this way we cannot be accused of being prescriptive or the notion of being "big brother" who thinks he knows best.

It is like ordinary workers having a stake in the company by being able to buy shares in it. They acquire a sense of pride. One could easily argue that the procedure will be cumbersome and therefore unworkable (If need be this point could be identified as a key issue and debated). On the other hand if the public does not respond after due notice or decides to leave it in the hands of the political parties then they have spoken.

We are somewhat in this process already. The fact that we are discussing/formulating/negotiating aspects of the First Assignment by virtue of us establishing general constitutional principles by identifying points of commonality and key issues is part of the process of constitution-making.



The present method of parties tabling position papers and thereafter being questioned on it is totally unsatisfactory. No real debate is being conducted lest one is accused of being delving into details.

This should not be the prevailing method. (here another key issue is being identified that needs to be attended to).

The process can be taken by Codesa up to the point where issues are sifted, categorised, fully debated and codified.

The so-called principles should then be legislated into Bill form and forwarded to the constitution-making body for formal accreditation.

The reason I state this because the constitution-making body has to uphold Codesa's and thereafter the present parliament's decisions irrevocably.

This then begs the question at what stage the constitution-making body should be constituted.

As of now it is a bit too early as to when this should happen. We need to come back to this aspect.

The question of the role of referenda, if any, in the constitution-making process is called for. When an issue becomes sensitive or controversial it could be resolved by referenda. Let us take as an example when conflicting readings are received to determine say in determining which language should be made the official language then this issue could be settled by calling for a referendum. Hence referenda can be called on ad hoc basis.

Frequent references are made to the effect that the present parliament lacks legitimacy. Historically it is governed by a constitution which is recognised and thus acceptable. South Africa is a sovereign country. Participants in this forum are offsprings of this constitution. What I am saying is that it cannot be wished away. It has to of necessity give assent to any or all recommendations that is formulated and adopted by Codesa. According to the rules of succession power cannot be transferred from a vacuum.

It is therefore incumbent upon the present parliament as the legal custodian to sanction the transferring of constitutional authority to the new constitution and its structures at national, regional and local level.

We now move onto the second part, namely, the constitution-making body.

The composition of the body should essentially consist of political parties and instances of special circumstances. The question of involving others such as interest groups, pressure groups, economic forums, trade unions, woman's organisations, commerce and industry, religious and cultural movements should be the subject of due consideration. (Another possibility of a key issue for debate).

The body per se should not have legal status but rather possess persuasive authority. Procedure-wise this aspect is covered supra.

For purposes of emphasis I restate that principles, procedures that have been agreed to previously by the Working Group 2 of Codesa should not be varied by the constitution-making body.

Thus the status of its decisions shall be binding provided it is not at variance with the principles of the body a quo. In other words principles must not be debated ab initio. However the issue of settling of disagreements of interpretation of initial principles needs to be addressed during the current process.

On the question as to whether the constitution-making body should be elected or not, the following arguments are expounded.

As a way of introduction it is quite natural that political posturing and brinkmanship being part of political strategic and tactical maneuvering will be the order of the day by negotiators.

On this score some participants are of the view that the constitution-making body should be elected whilst some view it otherwise. Let us analyse this. Assembly means a deliberative body gathered together for a common purpose and constituent means the principal participants acting for and on behalf of its supporters (grassroots). Therefore a Constituent Assembly could even be the Multi-Party conference which has been transformed into Codesa. Therefore a Constituent Assembly does not have to be necessarily elected.

The question we should like to pose is as follows - is formulating constitutional principles more important than writing up the constitution. If this is so then Codesa as presently constituted could continue to write up the constitution.

This would be achieved by each participant at Codesa nominating a constitutional expert/academic who could jointly with the other experts/academics draw up constitution.

After the constitution is drawn up it has to be ratified by 2/3 of the electorate voting in a referendum and thereafter drafted into legislation.

The problem with an elected Constituent Assembly will be that it will not reflect viewpoints of all parties especially the smaller one - unlike when a body like Codesa is involved. The other disadvantage is that should a party receive 67% of the votes then more than likely it will claim to be the sole writer of the constitution and also the possibility of it throwing overboard the principles that already have been determined and thus imposing its will by redrafting new principles de novo.

NPP DELEGATION
CODESA WORKING GROUP 2

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