

Group 2 - Drafting

Minutes - Monday 9th December 1991

- Chairman : Walter Felgate
- Present : One member from each organisation plus one back up (refer delegate list)
- Opening Procedure : Delegates introduced themselves and their parties. Attendance list circulated. Request for more tables. Format of Agenda acceptable to all.

Agenda:

1. Declaration of Intent:

- 1.1 Four declarations were submitted from Democratic Party, African National Congress, National Party and Ciskei Government. Refer to Appendix One.
- 1.2 Each party discussed content of their declaration.
- 1.2.1 African National Congress Summary : Mr Skweyiya. The declaration has stated goals that the ANC feel all parties will agree to. Have stated principles they think should be contained in declaration. Have looked at what Codesa should achieve.
- 1.2.2 Chair Summary : The government, National Party and ANC feel the declaration should be broad based and as inclusive as possible so as to address all grievances.
- 1.2.3 Ciskei Government Summary : Mr Kayser. Consider the declaration as a mission statement from which all objectives will stem. Must clearly indicate considerations but must not be restrictive. Codesa will be judged against its mission statement therefore each word in the declaration must be looked at carefully.
- 1.2.4 General Floor Suggestions : All parties to submit declarations to be looked at and key elements within each one identified and used as a point of departure to establish final declaration of intent, as seen by Task Group 2. National Party suggested that those organisations who have prepared a

declaration should sit together and mutually establish a document to be presented to the Task Group for consideration.

Before consensus on a document can be reached further discussion on "commitment of parties and the government" needs to take place. Without this the document lacks credibility as there is substantial overlap.

All delegates should, however, be involved in the decisions pertaining to the declaration.

- 1.2.5 Democratic Party Summary : Mr Eglin. The primary issue is to establish a commitment to "the kind of South Africa" we are looking for and whether Codesa will create it. It is then possible to take the declaration further under more general headings. All parties must bind themselves to seek consensus on all issues.
- 1.2.6 South African Government Summary : Dr Viljoen. There is the need for broad ranging discussions. The principles of all parties do differ but there is common ground amongst them. We need to identify the latter and avoid anticipation of Codesa's discussion on areas where we differ. It is encouraging for the country to know that there is common ground but it is negative to highlight the differences - this is the purpose of the conference. Avoid taking final decisions today as parties may need to refer back to their principles to discuss issues brought about by today's meetings. There is the need to have an admission of commitment from all participants.
- 1.2.7 Bophuthatswana Government : Mr Cronje. Agree with Mr Viljoen. Identify both the common ground and the differences but leave the differences for Codesa to discuss. Some issues will have to be referred back to principles.
- 1.2.8 IFP : Mrs Gasa. Suggest having a connection with Task Groups 1 and 3 in order to establish feed back and cross referencing with decisions being made by other two groups.
- 1.2.9 ANC : Mr Sachs. The real issue is whether or not the decisions of the conference will be binding. Documents can be agreed but the

legal status and how binding these documents are is vital to establish.

- 1.2.10 Ciskei Government : Mr Kayser. Comments were from a back-up and not a delegate. Are back-ups permitted to participate?
- 1.2.11 Chairman Summary : The decisions of the steering committee on this issue will be checked. Flexibility is permitted and the comments are accepted.
- 1.2.12 Democratic Party Summary : Mr Eglin. The document identifies the parties commitment to Codesa. It does not refer in detail to the nature of the constitution. It spells out important principles of society. It is felt to be more important to establish an idea of the kind of South Africa rather than going into the details of the principles. The document can however be expanded to include these details.
- 1.2.13 African National Congress Summary : Mr Skweyiya. Read through written proposal. Refer to Appendix One.
- 1.2.14 National Party Summary : Mr de Villiers. The document is an open-ended one and is non prescriptive to Codesa. It declares the intention to have a non-racial, non-party specific document and to begin the process of agreeing on a constitution. Refer to Appendix Two.
- 1.2.15 Intando Yesizwe Party : Mr Mahlangu. Declaration should be short and should not be limiting. The new government of South Africa must be able to make legislation to ensure that the country is governable and the courts must be beneath it. "The rule of law" therefore has limitations as the government must maintain sovereignty.
- 1.2.16 Democratic Party : Mr Eglin. The government can not have total sovereignty. Working outside the law must be done in conjunction with the constitution.
- 1.2.17 The National Party : Mr de Villiers. The government does need special powers but sovereignty resides with the constitution and this must be protected by law.
- 1.2.18 Floor Discussion : Point of Order to return to original discussion. Need to identify

our goals, our principles and our commitment to Codesa. The draft of the declaration must include these three points.

Chairman instructed working group to draft declaration. Members : National Party - Mr Delport; Democratic Party - Mr Eglin; African National Congress - Mr Sachs; Inyandza National Movement - Mr Ripinga; TIC - Mr Cachalia. Meeting to reconvene at 12.05pm with report back from working group.

1.2.19 Democratic Party : Mr Eglin acted as working group spokesman. Identified three areas of content for declaration. "The kind of South Africa" i.e. the vision; the process and the commitment. On their way to finalising vision but cannot commit to paper as did not see validity in forcing consensus. Request permission to reconvene later.

1.2.20 Chairman : Identifies three areas for discussion:

- a. Draft of the Declaration with regard to broad principles.
- b. Commitment of parties and government.
- c. Decision making and standing rules.

Suggest that all are to be debated and working groups established for each. Debate on commitment of parties and government open to floor.

2. Commitment of Parties/Government

2.1 South African Government : Dr Viljoen. The existing constitution and legal systems to remain until a substitute can be put in place. The government cannot commit itself unqualified to whatever Codesa decides, but it is appreciated that Codesa needs to know the government's commitment before it can make its decisions. The assumption is that there will be a decision by sufficient consensus. The government accepts that it must commit but cannot do so blindfolded. When a decision is taken by Codesa and our opinion is asked, if it is acceptable to us, we can give commitment and will then be bound by it. We do however need clarification on how sufficient consensus is being reached. We must have a definition.

- 2.2 Bophuthatswana Government : Mr Cronje. The constitution must be subject to parliamentary decision. The Bop government does not know the values on which the new South Africa will be involved and what the future holds. We would like to contribute to the process but general consensus should not make decisions that are binding for all, i.e. the TBV States cannot be told to be reincorporated, unless they were party to the discussion, and agreed the decision.
- 2.3 IYP: Mr Mahlangu. There is a problem with the status of Codesa. The aim of the parties coming together is in a realisation of wrong doing in the past but if the self governing territories and the government say they cannot be bound but Codesa's decisions, who is going to be bound? There should be something more binding and delegates should have a full mandate from their principles to be bound by Codesa's decisions.
- 2.4 Labour Party : Mr Hendrickse. Codesa's decisions must be binding. Parliament should approve the decisions made by Codesa as they would have also been a party to the decisions. All delegates should consult parties for a mandate and consider themselves bound.
- 2.5 United People's Front : Mr Moromoache. Dr Viljoen should be able to commit to Codesa. It makes the Task Group futile if all are not going to be bound. It would be better to disband.
- 2.6 Democratic Party : Mr Eglin. The constitutional law cannot be changed by edict. We cannot instruct the government to break their constitution. They must follow the constitutional path in implementing Codesa's decisions. The difference between the government and a political party must be acknowledged. The government is more than a political party. While everybody should be bound the way in which consensus is achieved is the real issue.
- 2.7 African National Congress : Mr Skweyiya. Codesa should be as inclusive as possible. All parties should commit to upholding the decisions of Codesa. All parties should commit to changing South Africa and establishing a new constitution. The South African government must be committed to decisions taken by Codesa. Codesa is not a talk shop. It is to provide a future for South Africa and to set guidelines for South Africa's operation as a member of a democratic society. Codesa must ensure a draft that is acceptable to all parties.
- 2.8 South African Government : Dr Viljoen. In response to the question "who remains bound", the real issue is how the government is to be bound. It does not refuse

to be bound but needs to know how. The status of Codesa is being changed in these discussions, i.e. that it will have the power of the legislative body, and while this is acceptable it should be as a result of negotiation. In conclusion, we are not refusing to be bound but must know the procedure and if there is consensus on issues we will consider ourselves bound. One of the first items on Codesa's agenda must be its function, position and status.

- 2.9 IYP : Mr Mahlangu. Suggest to break and discuss "decision making" as this may alleviate the commitment discussion. We need clarification of the government position, i.e. does it have the right to veto the decisions of Codesa.
- 2.10 Divided house discussion on whether or not to jump to the decision making discussion.

3. Decision Making

- 3.1 South African Government : Dr Viljoen. What is it that the parties must be committed to? What is a decision and how does it come into being? If it is a general consensus, government will be a part of it, but if it is sufficient consensus, how is this to be determined?
- 3.2 National Party : Mr de Villiers. National Party has full commitment to fundamental changes in South Africa but we are also committed to Codesa as a process. We are following a process and a process needs time to establish itself. It should not be given a status it was never intended to have. The process can continue on the basis of consensus but we must be practical. It could be derailed by one delegation so instead of consensus, we could have sufficient consensus. Disagreements should not be allowed to stop the process from continuing. When disagreements endanger the continuation of the process, this should be avoided by looking at a mechanism to deal with these issues.
- 3.3 IYP : Mr Mahlangu. Disagree - what sufficient consensus may consider insignificant, could be very important to the party disagreeing so there will be no consensus. Would like to ask of the government under what circumstances it would be bound if there is sufficient consensus and there is disagreement.
- 3.4 South African Government : Dr Viljoen. We will be bound if we are part of the consensus.
- 3.5 IYP : Mr Mahlangu. This is a problem because each

party could do so and will feel they are not bound by what they did not agree to. This is the right to veto.

- 3.6 IFP : Mrs Gasa. Is a definite need for delegates to commit themselves to the process.
- 3.7 TIC : Mr Cachalia. Bearing in mind the governments position, the National Party is not likely to accept Codesa's decisions if the government does not. Given the realities of negotiations some parties are seen as more important than others and does this mean that only the government has the right to veto.
- 3.8 Floor consensus on the need to establish a mediating mechanism to cope with lack of consensus. Suggest a Task Group to be established to formulate ideas for this mechanism.
- 3.9 Chairman : Proposes all parties consider the issues overnight, commit their ideas to paper for discussion at Tuesday's meeting. Agreed by all delegates. "Standing Rules" and "Purposes and Goals" still to be discussed.
- 3.10 Floor Discussion : "Purposes and Goals" will be dealt with in the "declaration of intent" discussion and does not need to be discussed by the full group. "Standing Rules" cannot be drafted quickly and suggestion made to establish working group. Agreed by all delegates. Comment - that most standing rules will be dealt with in "decision making" and the remaining issues are few. Participants in "Standing Rules" working group are : Mr Mahlangu - IYP; Mr Eglin - Democratic Party; Dr Venter - National Party; African National Congress - Name to be submitted; Mrs Gasa - IFP. Mr Mahlangu elected as convenor. Mr Eglin reserved right to replace himself.
- 3.11 Chairmans Summary : Draft group for "Declaration of Intent" to meet at 10.00am on Tuesday the 10th of December 1991. The "Standing Rules" draft group to meet on Monday afternoon and to continue on Tuesday morning prior to general meeting. The Task Group 2 has no more to discuss until report back from the two working groups. Group 2 will reconvene on Tuesday the 10th at 11.00am.

DRAFTING - GROUP 2MINUTES FROM MEETING - TUESDAY 10TH DECEMBER

Meeting opened by chairman - Walter Felgate.

Requested the working groups to give their report back on their decisions taken.

Decided by Chairman that the minutes of Mondays meeting would not be distributed to members, but would be put together with the minutes of today's.

1. Declaration of Intent Group:

- 1.1 Circulated copies of all parties Declarations of Intent
- 1.2 National Party: Dr de Villiers. Indicated they are moving closer to a consensus, but need more time. Would like to reconvene next Tuesday to make their final submissions.
- 1.3 Floor consensus that the group should not be pressurised into completing the task without the correct considerations and time being allocated

2. Commitment Group:

- 2.1 South African Government : Dr Viljoen. Consensus should be the point of departure. All delegates to be treated equally and fully involved. The Government and National Party would like more time to consider the full implications of commitment to the content of the declaration. The way they commit to decisions will have far reaching implications, and needs to be very carefully considered. The working committee should give attention to the role of 'facilitation and mediation mechanisms/structures/processes' in the context of decision making. All participants are equally important and consensus should be our goal. Commitment from all is vital and more time is needed for themselves to consult with other delegations. Suggest that the group reconvenes on Tuesday to report back.
- 2.2 Boph Government: Mr Cronje. Task team 3 have been allocated the issue of mediation as one of their topics for consideration.
- 2.3 South African Government: Dr Viljoen. It is a vital part of consensus and Group 3 has not addressed it in any detail.
- 2.4 Ciskei Government: Mr Kayser. Strongly support Dr Viljoen's suggestion. Decision making and commitment are very closely related and need to be considered in conjunction. Also has the need to go back to his constituency for discussion.
- 2.5 Transkei Government: Mr Holomisa. Supports the idea that all parties need to come to conclusive decisions. But all were requested to go back to their principles and report back with their opinions on the commitment issue. Request that those that have prepared be given

the opportunity to deliver their ideas.

2.6 IFP: Mrs Gasa. Has not yet had sufficient time to fully prepare for the "standing rules committee" meeting due to the delay in the Steering committee meeting.

2.7 ANC: Mr Siaveyiya. Support idea that those who have prepared something on communication should be allowed to present it, and support the suggestion to meet next Tuesday to discuss the issues more fully, after the sub committees have had a chance to meet.

3. Decision making

3.0 General floor discussion on the issue of 'decision making'.

3.1 Chairman suggested he sensed the need to set up a further sub-committee to handle 'decision making'. general Consensus on this issue from the floor.

3.2 Boph Government: Mr Cronje. Suggest the sub committees meet before going home today to get the feedback from other delegations, and then meet again early on Tuesday morning before the general meeting.

3.4 Chairman requested nominations for members of the "Decision making and mediation facilitation" committee. Mr Cochalia was nominated and accepted as convener. Members nominated were : Dr Devilliers - National Party; Mr Holomisa - Transkei Government; a representative from the Ciskei Government: Mr Siaveyiya - ANC; and Mr Hendrickse - labour Party of SA.

3.5 IFP : Mrs Gasa. Requested that the members of these sub committees are kept to a minimum, as she felt as long as your delegation has submitted a written suggestion of their ideas to the committee, the members should be trusted to pay heed to everyones ideas.

3.6 Floor consensus on this idea, and suggested that the 'decision making' committee should have only 3 members. Suggestion that the convener of each sub committee should be responsible fro receiving suggestions from all delegations fro his own committee, was accepted.

3.7 Floor requested recap of the members of each sub-committee. They were finalised as follows:

Declaration of intent group:

Convener: Mr Eglin - Democratic Party

Members : Mr Delport - National Party

Prof Ripinga - Inyandza National
Movement

Mr Kayser - Ciskei Government

Mr Sachs - ANC

Standing Rules Group:

Convener: Mr Mahlangu - IYP

Members : Mrs Gasa - IFP

Dr Venter - National Party

Ken Andrew - Democratic Party

Prof Asmal - ANC

Decision Making and Mediation Facilitation Group
Convenor: Mr Cachalia - TIC
Members : Dr de Villiers - National Party
Mr Holomisa - Transkei Government

3.8 The following fax numbers were given for delegations to use in order to get their suggestions to the convenors:

Mr Eglin - (021) 25-2278

Mr Cochalia - (011) 403-2341 - CALS

Mr Mahlangu's group was asked to fax Codesa, as he was not present at the meeting - (011) 397-2211

3.9 Chairman summed up that Task Group 2 would reconvene on Tuesday 17th Dec at 11:00am; all suggestions were to be with convenors by lunch of Friday 13th Dec; all 3 sub committees are to meet on Tuesday 17th Dec at 9:00am. Meeting was closed.