



TERMS OF REFERENCE FOR WORKING GROUPS FOR CODESA

WORKING GROUP 2

1. FIRST ASSIGNMENT

General Constitutional Principles.

1.1 Terms of Reference

WHEREAS the parties at Codesa have committed themselves to the terms and objectives set out in the Declaration of Intent as amended from time to time

IT IS RECORDED that the Working Group on General Constitutional Principles shall have the following terms of reference:

- 1.1.1 To investigate and report upon all proposals and and make recommendations with regard to general constitutional principles which should be enshrined in and not contradicted by any other provisions of a new constitution, provided that the present and future participants of CODESA shall be entitled to put forward freely to this Working Group proposal or matter consistent with democracy for discussion, consideration and recommendation.
- 1.1.2 To identify the key issues and problems that need to be addressed.
- 1.1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.

2. SECOND ASSIGNMENT

Constitution-making body/process

2.1 Terms of Reference

WHEREAS the parties at Codesa have committed themselves to the terms and objectives set out in the Declaration of Intent to the establishment of a democratic South Africa, enjoying internal legitimacy and international acceptance

AND WHEREAS it has been agreed that a Working Group on the constitution-making body/process shall be appointed by Codesa in order to formulate proposals and make recommendations on the appropriate body/process to draft a new constitution for South Africa

IT IS RECORDED that the Working Group on a constitution-making body/process shall have the following terms of reference:

- 2.1.1 To investigate and report upon all proposals and make recommendations with regard to an appropriate constitution-making body/process
- In respect of both the constitution/making process and body:
- 2.1.2 To identify the key issues and problems that need to be addressed.
 - 2.1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.
 - 2.1.4 In respect of a constitution-making process:

Specifically, but without vitiating the generality of the objective, to consider:

- (a) to make recommendations to Codesa regarding the process through which a new constitution may be formulated;
- (b) how far the process can be taken by Codesa itself;
- (c) at what stage a special constitution-making body, if any, should be constituted;
- (d) the role of referenda, if any, in the constitution-making process;
- (e) legislative and administrative steps that may be required to reinforce the constitution-making process;
- (f) the method of transferring constitutional authority to the new constitution and its structures at national, regional and local level;
- (g) any other matters which the working group may consider relevant to its brief.

2.1.5. In respect of a constitution-making body:

In the event of it being recommended that there be a special constitution-making body, then specifically, but without vitiating the generality of paragraph 2.1.1, is to be considered:

- (a) its composition
- (b) its legal status
- (c) its authority including limitations eg principles, procedures, etc that may have been agreed previously
- (d) its method of functioning
- (e) the status of its decisions
- (f) should it be an elected body, the appropriate electoral process
- (g) any other matter which the working group may consider relevant to its brief.

Swet. to
public.
Custo
1.1.1.
Closing
date

Start. commonality
As in decl. of intent
Not intended to be exhaustive.

(1) Territorial division - 10 regions
~~Take public to comment and advise any other principles~~
Dem. part
at all levels Powers - Prov. Gov. etc.

(2) Power-sharing -
Namibia voluntary

(3) Economy: Difficult
Property

(4) Affirmation
Balanced structuring

Checks & balance
to prevent abuse of
power or oppression
of any groups.

Enable govts to form coalitions.

CA - agree in principle.

Conception & functions.

National character - representative
Legitimacy
Representativity

Should have a participatory
representative and
participatory
character that
Product of all
binding on all
understood by all.

encourages Reflect character of nation.
good solutions
acceptability
a national
unity.

A sensitive and responsive
electoral ~~manifestly~~ democratic in character,
system, should
in a natural & organic way
secure representation of diverse
groups

Strip for
Internal cohesion. $\frac{2}{3}$ - Present
Appoint panel - $\frac{2}{3}$
Discourage
consensus. $\frac{2}{3}$ - Present
Publicity Steering com. Management
[caucusing] Rotating chair

Plenary -
Commissioners?

Legal advisers?
Dupark

Building!

AN C Draft

R of Res

- Law Com.

Women

Prayer

languages

* Process of encouragement
sense of shared
mutual respect
and respect for
diversity &
openness

Orgs of civil society?

Accountability - during?

after

Same body - Part?

Payment?

The Constitution Making Body (Issues as in Terms of Reference)

- 1) How does one set it up
- 2) How chaired/Speaker.?
- 3) How resolve interpretations of Principles
- 4) How decision making.
- 5) How big
- 6) How function etc

The objective is to help clarify and isolate issues that will need political decisions

Others being done

- 1) Registration of Political Parties
- 2) Voter Registration
- 4) Voter Identification
- 5) Proportional Representation and lists
- 6) Electoral Commission.