

WORKING GROUP 1

1. FIRST ASSIGNMENT

Creation of a climate for free political participation

1.1 TERMS OF REFERENCE

1.1.1 Objective

To investigate, report upon and make recommendations with regard to the actions needed to be taken to foster and establish in South Africa a climate in which all individuals and organisations can participate freely, without improper interference or intimidation, in all political activity and, in particular, in the processes leading up to the introduction of a new constitution.

1.1.2 Identification of the key issues and problems that need to be addressed.

1.1.3 Identification of areas of commonality and aspects where agreement already exists between participating delegations.

1.1.4 Specifically, but without vitiating the generality of the objective, to address:

- (a) the finalisation of the release of political prisoners
- (b) the return of exiles and their families
- (c) the amendment and/or repeal of any remaining laws militating against free political activity
- (d) political intimidation at grassroots level
- (e) political partiality of State-controlled media, particularly the SABC and SATV
- (f) the successful implementation of the National Peace Accord
- (g) any other matters which the working group may consider relevant to its brief.

2. SECOND ASSIGNMENT

Role of international community

2.1 TERMS OF REFERENCE

2.1.1 Objective

To investigate, report upon and make recommendations with regard to the role, if any, that the international community and/or organisations should be asked to play in the formal or informal processes involved in the period leading up to the introduction of a new constitution for South Africa, and in the negotiation of that constitution.

2.1.2 Identification of the key issues and problems that need to be addressed.

2.1.3 Identification of areas of commonality and aspects where agreement already exists between participating delegations.

2.1.4 Specifically, but without vitiating the generality of the objective, to address the possible role of the international community/organisations in:

- (a) monitoring the abovementioned processes with a view to increasing the confidence of people inside and outside South Africa in the legitimacy of the processes
- (b) monitoring elections with a view to endorsing any such elections as being essentially "free and fair"
- (c) ensuring international acceptance of any new negotiated constitution
- (d) any other matters which the working group may consider relevant to its brief.

WORKING GROUP 2

1. FIRST ASSIGNMENT

General Constitutional Principles

1.1 TERMS OF REFERENCE

1.1.1 Objective

To investigate, report upon and make recommendations with regard to constitutional principles which should be enshrined in and not contradicted by any other provisions of a new constitution.

1.1.2 Identification of the key issues and problems that need to be addressed.

1.1.3 Identification of areas of commonality and aspects where agreement already exists between participating delegations.

1.1.4 Specifically, but without vitiating the generality of the objective, to address the following topics:

(a) The Superiority of the Constitution over Ordinary Law
This requires that such a principle be established through mechanisms which will render the Constitution less easy to change or amend than ordinary laws and will require constitutional and practical adherence to the principle that the rules of the Constitution be regarded as more binding than other laws. The principle also implies that derogations from the Constitution will only be permitted in extra-ordinary and strictly defined circumstances. Adherence to this first principle leads to the second principle.

(b) The Constitution will be Rigid
This contrasts the new Constitution with so-called "flexible" Constitutions which can be formally amended by the same procedures used to pass ordinary laws. The new Constitution may only be changed through special majorities with ratification of such amendments by way of special procedures, for example, referenda.

(c) Equality before the Law
The Constitution will be founded on the principle of equality before the law, meaning that no legislation or executive or administrative act shall directly or indirectly favour or prejudice any person on the grounds of his or her race, colour, sex, religion, ethnic origin, social class, birth, political conviction and other views or disabilities or other natural characteristics.

- (d) The Ultimate Power of Interpretation of the Constitution will repose in the Judiciary
This principle requires elaboration on the hierarchy of the courts and the provision of a special Constitutional Court, if necessary. However, underlying this principle is acceptance of the proposition that the Supreme Court will have a justiciable testing power over the interpretation of the Constitution and the laws enacted under it.
- (e) Protection of the Separation of Powers - Horizontally
Insofar as it is possible in terms of modern government the Constitution, and State practice, will respect the division of trias politicas i.e. the separation of the State between the legislature, the executive and the judiciary.
- (f) The Principle of the Vertical Division of Competencies: Genuine Devolution of Power
The constitutional principle in issue here is an adherence to the genuine devolution of power between the central government and regional and local government formations. The Constitution will assign specific powers and duties to each level of government, which powers and functions will not be capable of recall save by special measures so elaborated upon in the Constitution. Without derogating from the generality of the foregoing principle, consideration will be given to the question of whether South Africa will be a federal or unitary state but regardless of the ultimate location of sovereignty, the aforesaid principle will apply in either case or in any other dispensation so agreed.
- (g) The Electoral System will be based on the Principle of Equal Franchise for Adults and the Principle of Proportionality
In this regard principles will be established: to guide the formulation of an electoral system to reflect best the principle of according representation in the legislature in proportion to support gained at the polls; and, in respect of the principle of safeguarding the rights of the individual, the right of citizens to enjoy a close or proximate relationship with their public representatives, and to have control over their appointment and removal.
- (h) The Legislature will be Divided Bicamerally and each House of Parliament will be Elected on a Separate Basis with each Enjoying Joint and Several Responsibilities
This principle will also require elaboration on the question of conflict-breaking and decision-making options.

(i) A Justiciable Bill of Fundamental Human Rights will be Enacted

This Bill of Rights will contain guarantees for the rights of the individual against the State which will include all civil and political rights and those social and economic rights which are justiciable. The civil and political rights will at least include the following: equal rights guaranteed by the law and equal protection under the law; personal liberty save by due process of law in the ordinary courts of the land; freedom of speech and expression, of movement, of association, and of worship; the rights of peaceful assembly, to privacy of home and correspondence, to own, acquire, occupy and dispose of property, to compensation in the event of expropriation, and to start and carry on any lawful trade, business, profession or occupation; and the guarantee of regular and free elections. The Bill of Rights will be justiciable before the courts.

(j) The Judiciary will be Independent and Enjoy Security of Tenure

Under this principle, consideration will be given to the nature of judicial appointments and to the question of impeachment procedures for members of the judiciary.

(k) The Principle of Checks and Balances will be Enshrined in the Constitution and will be formulated to ensure that each arm of the State acts as an effective counterbalance of the other, including other sites of Government operating as a restraint on the central site of Government.

(l) The Definition of Citizenship and principles relating to its acquisition and relinquishment.

(m) The Principle of Accountability
This includes techniques for direct democracy (eg referenda and rights of recall) and the establishment of the rights of citizens' complaints through the office of ombudsmen.

(n) Any other matters which the working group may consider relevant to its brief.

2. SECOND ASSIGNMENT

Constitution-making body/process

2.1 TERMS OF REFERENCE

2.1.1 Objectives

To investigate, report upon and make recommendations with regard to an appropriate constitution-making process and body.

In respect of each of the constitution-making process and body:

2.1.2 Identification of the key issues and problems that need to be addressed.

2.1.3 Identification of areas of commonality and aspects where agreement already exists between participating delegations.

2.1.4 In respect of the constitution-making process:

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

- (a) How far the process can be taken by CODESA itself.
- (b) At what stage a constitution-making body should be constituted.
- (c) Whether there should be a national referendum prior to the establishing of a constitution-making body.
- (d) Legislative and administrative steps that should be taken by the Government of the day to reinforce the constitution-making process during the period that the constitution-making body is engaged with its work.
- (e) Whether there should be a nation-wide referendum to obtain a popular mandate for the new constitution prior to it being established.
- (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:

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

- (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.

3. THIRD ASSIGNMENT

Future role of traditional leaders

3.1 TERMS OF REFERENCE

3.1.1 Objectives

To investigate, report on and make recommendations with regard to the status and role of traditional leaders under a new constitution.

3.1.2 Identification of the key issues and problems that need to be addressed.

3.1.3 Identification of areas of commonality and aspects where agreement already exists between participating delegations.

3.1.4 Specifically, but without vitiating the generality of the objective, to address:

- (a) the status of indigenous/customary/African law in a new constitution
- (b) the long-term future of indigenous law
- (c) the relationship between indigenous law and the concepts of cultural rights and group rights
- (d) the role of traditional leaders in future decision-making and judicial structures in respect of, inter alia, their areas of jurisdiction and accountability
- (e) any others matter which the working group may consider relevant to its brief.

WORKING GROUP 3

1. FIRST ASSIGNMENT

Transitional arrangements/interim government/
transitional authority

1.1 TERMS OF REFERENCE

1.1.1 Objective

To investigate, report upon and make recommendations with regard to the manner in which the country is to be governed and managed until the introduction of a new constitution.

1.1.2 Identification of the key issues and problems that need to be addressed.

1.1.3 Identification of areas of commonality and aspects where agreement already exists between participating delegations.

1.1.4 Specifically, but without vitiating the generality of the objective, to address:

- (a) The form and functioning of the governing authority during the process of transition to a new constitution.
- (b) The preservation of constitutional and legal continuity of government.
- (c) The establishment of credibility, legitimacy and acceptability of government decisions and policies, inter alia, by broadening the base of government during the transition.
- (d) The ensuring of even-handed and impartial stewardship of key government functions, including control of government expenditure, of the broadcast media and of the security forces.
- (e) The maintenance of stability and the continued loyalty and commitment of public servants.
- (f) The promotion of shared responsibility and the building of trust and goodwill between participating political groups.
- (g) The relationships between the governing authority and CODESA, and between the governing authority and the Cabinet.
- (h) The racial/ethnic/gender composition of South Africa's public service.
- (i) Interim constitutional adaptations.
- (j) Any other matters which the working group may consider relevant to its brief.

2. SECOND ASSIGNMENT

An Interim Bill of Rights

2.1 TERMS OF REFERENCE

2.1.1 Objective

To investigate, report upon and make recommendations with regard to a limited or Interim Bill of Rights to facilitate the transition to a democratic, non-racial, non-sexist constitution.

2.1.2 Identification of the key issues and problems that need to be addressed.

2.1.3 Identification of areas of commonality and aspects where agreement already exists between participating delegations.

2.1.4 Specifically, but without vitiating the generality of the objective, to address:

- (a) Basic rights such as freedom of speech, of assembly, of movement, of association and of religion.
- (b) The outlawing of race and gender discrimination of any nature.
- (c) Protection against arbitrary arrest and detention
- (d) a Code of Conduct for Political Parties, including an obligation to conduct their activities peacefully, the prohibition of intimidation and the obligation to have financial statements properly audited.
- (e) The repeal or amendment of existing legislation that would be inconsistent with the interim Bill of Rights.
- (f) The enactment of an interim Bill of Rights so that it has the force of law, with provision for Supreme Court jurisdiction over legislation and administrative/executive acts.
- (g) Any other matter which the working group may consider relevant to its brief.

2.1.5 The interim Bill of Rights must promote absolute fairness and equal treatment. It should not permit an unfair advantage to any group, political organisation or future system of government.

3. THIRD ASSIGNMENT:

The formation of an economic forum

3.1 TERMS OF REFERENCE

3.1.1 Objective

To investigate, report upon and make recommendations with regard to an economic forum and the role that CODESA could play in assisting with the formation of such a forum.

3.1.2 Identification of the key issues and problems that need to be addressed.

- 3.1.3 Identification of areas of commonality and aspects where agreement already exists between participating delegations.
- 3.1.4 Specifically, but without vitiating the generality of the objective, to address:
- (a) the desirability of an advisory economic forum that would include CODESA participants, business (big and small), labour and representatives of the unemployed, consumers and women.
 - (b) the structure and functioning of such a forum
 - (c) the process by which it could best be brought about
 - (d) the importance of economic development to take place in tandem with constitutional development
 - (e) the need for widespread participation in medium- to long-term restructuring and policy formation.
 - (f) any other matter which the working group may consider relevant to its brief.

WORKING GROUP 4

1. ASSIGNMENT

Future of TBVC states

1.1 TERMS OF REFERENCE

1.1.1 Objective

To investigate, report upon and make recommendations with regard to the relationships between South Africa, the TBVC states and the people of those states under a new South African constitution.

1.1.2 Identification of the key issues and problems that need to be addressed.

1.1.3 Identification of areas of commonality and aspects where agreement already exists between participating delegations.

1.1.4 Specifically, but without vitiating the generality of the objective, to address:

- (a) Testing the will of the people in the TBVC states regarding re-incorporation or otherwise, by acceptable democratic means.
- (b) Strategies to keep the people of the TBVC states fully informed, especially to avoid unfortunate misunderstandings.
- (c) The retention of business confidence, particularly in relation to existing investments in the TBVC states.
- (d) Land transfers by South Africa to these states
- (e) citizenship.
- (f) Any other matters which the working group may consider relevant to its brief.

1.1.5 If re-incorporation is decided upon in respect of any TBVC state, matters that will need to be addressed include:

- (a) disposal/transfer of assets of TBVC governments
- (b) optimal use of existing infrastructure
- (c) review of development project priorities
- (d) good administration during transition
- (e) harmonisation of legislation and taxation
- (f) orderly termination of bilateral and multilateral agreements and treaties
- (g) servicing and repayment of TBVC state debts
- (h) ensuring public accountability of actions taken for the purposes of re-incorporation
- (i) appropriate timescales.

WORKING GROUP 5

1. FIRST ASSIGNMENT

Time frames

1.1 TERMS OF REFERENCE

1.1.1 Objective

To investigate, report upon and make recommendations with regard to appropriate time frames and target completion dates for all of the processes and assignments being undertaken by CODESA, its working groups and other bodies created as a result of decisions of CODESA.

1.1.2 Identification of the key issues and problems that need to be addressed.

1.1.3 Identification of areas of commonality and aspects where agreement already exists between participating delegations.

1.1.4 Specifically, but without vitiating the generality of the objective, to address:

- (a) The need for a comprehensive list of all the decisions, actions and processes involved.
- (b) The creation of a critical path schedule in respect of the above decisions, actions and processes.
- (c) The co-ordination of the activities of CODESA and its subsidiary bodies to ensure the greatest possible efficiency of the process towards a democratic South Africa.
- (d) The setting of target completion dates for all activities/decisions.
- (e) The monitoring of the process and the adjustment of targets whenever necessary.
- (f) The dissemination of up-to-date information in respect of progress made to all CODESA participants.
- (g) Any other matters which the working group may consider relevant to its brief.

2. SECOND ASSIGNMENT

Implementation of CODESA's decisions

2.1 TERMS OF REFERENCE

2.1.1 Objective

To investigate, report upon and make recommendations with regard to ensuring the effective implementation of CODESA's decisions

2.1.2 Identification of the key issues and problems that need to be addressed.

2.1.3 Identification of areas of commonality and aspects where agreement already exists between participating delegations.

2.1.4 Specifically, but without vitiating the generality of the objective, to address:

- (a) the structure of the body/bodies to oversee the implementation of CODESA's decisions
- (b) the lines of authority within CODESA's structures
- (c) the commitment of participating parties to the implementation of decisions
- (d) the allocation of responsibilities to persons or bodies to implement decisions
- (e) any other matters which the working group may consider relevant to its brief.

3. THIRD ASSIGNMENT

Creation of a women's advisory group

3.1 Motivation

Representativity is one of the key criteria of democracy. CODESA has correctly chosen political organisations as the vehicle for representativity. On a symbolic level, it is visibly a gathering of all colours, creeds, ethnic and language groups.

However, women are strikingly absent or under-represented. This anomaly is not a coincidence: it is the product of outdated economic and cultural patterns of community and domestic organisation.

It would be arrogant and undemocratic for a group consisting entirely, or overwhelmingly, of men to assume that they are capable of adequately representing the interests of women, who make up more than half the population and who have been discriminated against for centuries.

3.2 TERMS OF REFERENCE

3.2.1 Objective

To investigate, report upon and make recommendations with regard to the creation of a women's advisory group to inform CODESA and its various associated bodies of the likely impact on women of their proposals.

3.2.2 Identification of the key issues and problems that need to be addressed.

3.2.3 Identification of areas of commonality and aspects where agreement already exists between participating delegations.

3.2.4 Specifically, but without vitiating the generality of the objective, to address

- (a) the constitution of a representative women's group
- (b) the mechanisms for input into CODESA and its associated bodies
- (c) the desirability of structured and ongoing impact analyses
- (d) the constitutional provision of equality clauses and rights of protection and exception
- (e) any other matters which the working group may consider relevant to its brief.