



DRAFT AGENDA FOR THE TWELFTH MEETING OF WORKING GROUP 2 (CONSTITUTIONAL PRINCIPLES) ON 28 APRIL 1992 AT THE WORLD TRADE CENTRE

1. Apologies
2. Ratification of Agenda
3. Ratification of Minutes
4. Discussion on Assignment 2
 - 4.1 Presentation of Steering Committee Proposal on Constitution Making Body
 - 4.2 Discussion of Steering Committee Proposal on Constitution Making Body
5. Key Issues to be Addressed:
 - 5.1 Economic freedom, governmental intervention and economic systems
 - 5.2 Accommodation of the diversity of languages, cultures and religions
 - 5.3 Role of Traditional Leaders
 - 5.4 The Bill/Charter of Fundamental Rights including:
 - 5.4.1 Its nature and scope
 - 5.4.2 Affirmative action
 - 5.4.3 Second generation rights
 - 5.5 Self-determination
 - 5.6 Inclusion of new items, namely :
 - 5.6.1 The role of standing committees in the formulation of legislation
 - 5.6.2 Government will be open, accessible and accountable
 - 5.6.3 Power Sharing
6. AOB
 - 6.1 Codesa 2: Expectations and Progress Report
 - 6.2 Progress with Public Submissions and Oral Evidence
 - 6.3 Item 4.4 of the Minutes of the Meeting of 2 March 1992:
Further discussion of the common principle regarding the balance between central, regional and local government
7. Next Meeting

MINUTES OF THE TWELFTH MEETING OF WORKING GROUP 2 (CONSTITUTIONAL PRINCIPLES) HELD AT THE WORLD TRADE CENTRE ON TUESDAY 28 APRIL 1992

(Adopted at the Working Group 2 Meeting Held on 4/5 May 1992)

PRESENT:

Delegates and advisors (See Addendum A)
M Richards (Chair)
M Phillips (Secretary)
W Antoine (Minutes)

DOCUMENTS DISTRIBUTED:

1. Draft agenda
2. Ratified minutes of the tenth meeting of Working Group 2 held on 07.04.92
3. Draft minutes of the eleventh meeting of Working Group 2 held on 21.04.92
4. 21.04.92 Submissions to Working Group 2 from non-CODESA organisations and individuals.
5. Summary of public submissions to Working Group 2 prepared by Working Group 2 Steering Committee.
6. Working Group 2 Steering Committee proposal on CMB 27.4.92
7. Working Group 3. Report by the Technical Committee to the Steering Committee. WG3 - 27 April 1992.
8. Areas of agreement and areas on which no agreement yet exists on assignment 1 of Working Group 2 prepared by the Steering Committee 27.4.92.

1. Apologies

C Ramaphosa	African National Congress
SG Mothibe	Bophutatswana Government
R Cronje	Bophuthatswana Government
I Findlay	Bophuthatswana Government
CW Eglin	Democratic Party
I Rautenbach	National Party
H Neerahoo (subs. by N Rajaram)	National People's Party
SP Holomisa (subs. by M Nonkonyana)	Transkei Government
PZ Ndamase (subs. by CXN Mayisela)	Transkei Government

2. Ratification of Agenda

The agenda was ratified without amendments.

3. Ratification of Minutes

The minutes of the meeting of 21.04.92 were ratified subject to the following amendments that were agreed upon:

3.1 Regarding apologies

3.1.1 N Rajaram substituted for B Singh of the National People's Party.

3.1.2 PZ Ndamase of the Transkei Government was added to the list of apologies

3.2 Further to paragraph 5, it was agreed following a joint meeting of the Steering Committees of Working Groups 2 and 3 that regular joint meetings of the Steering Committees for Working Groups 2 and 3 should take place, and that the possibility of a joint meeting of Working Groups 2 and 3 should be kept open.

4. Discussion on Assignment 2

4.1 The Steering Committee tabled the following proposal on a Constitution-Making Body:

1. *Codesa shall agree to legislative instruments that would make provision for a constitution making body operating within the framework of an interim constitution.*

2. *Codesa shall consult governments of the self-governing states and other interested parties in the drafting of the legislative instrument / interim constitution.*

3. *Codesa shall agree on a set of general constitutional principles.*

4. *The interim constitution shall make provision for:*

4.1 *An elected parliament with the power to:*

4.1.1 *In terms of agreed procedures, draft a new constitution which shall not be in conflict with the general constitutional principles*

- 4.1.2 *Act as an interim legislature in terms of such special majorities and general constitutional principles which may be agreed to.*
- 4.2 *The composition and procedures of an interim executive.*
- 4.3 *Justiciable civil and political rights during the transition.*
- 4.4 *The balance between the executive, legislature and judiciary according to the principles underlying a constitutional state.*
- 4.5 *Regional boundaries for the purposes of elections.*
- 4.6 *Elections for the national assembly on the basis of proportional representation, half the seats being allocated through national lists and half being allocated through regional lists.*
- 4.7 *Decision making on all matters relating to the constitution to be taken in general by a special majority.*
- 4.8 *Decisions on matters relating to regional structures and the distribution of power between central, regional and local levels of government to require a special majority of the regional representatives in the NA in addition to a special majority of all the delegates in the NA.*
5. *Codesa shall agree upon special mechanisms to ensure that the NA completes the work of drafting and adopting the new constitution within a specified period of time. presented and delegates questioned the Steering Committee on points of clarification.*
- 4.2 Delegates questioned the Steering Committee on points of clarification.
- 4.3 The following amendments to the Steering Committee proposal were suggested by members of the Working Group:
- 4.3.1 It should be made clear that regional structures such as the independent and self-governing states and provincial administrations will remain intact until the NA reaches agreement on new regional bodies.
- 4.3.2 Paragraph 1. should read:
Codesa shall agree to legislation to provide for a constitution-making body which will operate within the framework of an interim constitution.
- 4.3.3 In paragraph 2, the word *legislation* should replace "legislative instrument".
- 4.3.4 Item 4.1 should read:
An elected parliament ("the National Assembly (NA)") with the power to...
- 4.3.5 Item 4.1.1 should read:
In terms of agreed procedures, draft a new constitution which shall implement, and not be in conflict with, the general constitutional principles.

- 4.3.6 Item 4.6 should read:
Elections for the national assembly on the basis of proportional representation by all South Africans within the original borders of South Africa, half the seats being allocated through national lists and half being allocated through regional lists.
- 4.3.7 There should be a new item 4.9:
The establishment of a constitutional panel which will be the only judicial body to interpret the general constitutional principles, which interpretation may be initiated only by a party to the NA.
- 4.3.8 CODESA could take an informal decision regarding the composition of this panel, but final approval should be determined by a high percentage vote of the NA.
- 4.3.9 Regarding items 4.7 and 4.8, it should be noted that *special majority* has yet to be defined.
- 4.3.10 Item 4.2 should read:
The composition, procedures and *functions* of an interim executive.
- 4.3.11 There could be a role for a referendum at some stage in the proposal.
- 4.3.12 It should be made explicit that the present constitution, executive and legislature would lapse once the interim constitution comes into force.
- 4.4 It was agreed to place on the agenda for future consideration the matter of conflict resolution mechanisms, in particular the question of how consensus is to be reached on the proposed legislation and interim constitution.
- 4.5 A press statement was agreed upon and was submitted to the Daily Management Committee (see Addendum B).
- 4.6 It was agreed that written comments on the Steering Committee proposal could be circulated to the Secretary and to all delegates before the next meeting.
- 4.7 It was agreed that the Steering Committee will meet on Monday 4 May to synthesise the proposals made during discussion and any written comments which may be received. It was agreed that the Steering Committee would then present an amended proposal to the next meeting of the Working Group.

5. Next Meeting

- 5.1 The next meeting will take place on 4.05.92 from 14h00 to 17h00 and on Tuesday 5 May from 09h00 to 16h00.
- 5.2 The Steering Committee will meet on 4.05.92 at 09h30 to 13h00.

ADDENDUM A

The following delegates and advisors signed the Attendance Register of Working Group 2 meeting held on 28 April 1992:

Organisation	Delegate/Advisor
African National Congress	MV Moosa F Ginwala A Sachs
Bophutatswana Government	TE Scheepers
Ciskei Government	MC Kashe IJ Smuts J Labuschagne VR Zietsman
Democratic Party	D Worrall A Leon D Welsh
Dikwankwetla Party	DP Wessels SOM Moji S Mopeli M Mopeli
Inkatha Freedom Party	N Brits SH Gumede BS Ngubane
Intando Yesizwe Party	AP Laka SJ Mgidi MP Mahlangu IT Mahlangu
Inyandza National Movement	EN Ginindza BE Mabuza C Albertyn I Lephoko
Labour Party	D Lockey G Devenish C Nasson IM Richards

Natal/Transvaal Indian Congresses	IC Meer ZM Yacoob F Cachalia F Haysom
National Party	F van Heerden J Rabie S Camerer
National People's Party	M Mohanlall S Ismail B Singh N Rajaram
Solidarity Party	K Moodley DS Rajah R Arenstein
SA Communist Party	J Slovo B Nzimande E Daniels N Hoosain
SA Government	G Viljoen JT Delpport JHE Basson F Venter
Transkei Government	R Nogumla XN Mayisela M Nonkonyana DS Koyana
United People's Front	RJ Dombo MJ Mahlangu Adv Malatji
Venda Government	GM Ligege MP Nthabalala A Budeli Adv Mushasha
Ximoko Progressive Party	EE Ngobeni KR Myakayaka EPP Mhinga J Ackron