

WORKING GROUP 2
7 APRIL 1992

SUGGESTED DISCUSSION ON CONSTITUTION MAKING BODY PREPARED BY WORKING GROUP 2 STEERING COMMITTEE

1. Should the Constitution Making Body (hereafter CMB) be elected?

If yes, should restraints on decision making by simple majoritarianism be applied:

1.1 By a specially constructed second chamber, or

1.2 By special majorities or other mechanisms built into the CMB itself?

2. How far should Codesa go in "fleshing out" the constitutional principles?

3. Should TBVC voters participate in the election of a CMB?

4. Should the CMB also act as the interim legislature?

5. Is there a role for a referendum? If yes, at what point in the constitution-making process?

6. Shld CMB draft regional cons

7. Shld there be a Const. Panel

Ramose: All want elections. Wrong to create a Blocking House. Higher mag. for lang, relig, cult. etc. Power to delay review. Far enough in our principles. We want to be free to be JA, to vote. It is urgent for us. TBVC want to participate

Welsh: Agreed - elected. Decisions - how great a majority. Conceivable - 1 party will get 66%. Some formula - major parties have signif. say. Some issues: even higher requirement. (Lang etc). Unwise to combine - CM with legislation. A beam. CMB not a good idea. Compound problems by 2 chambers. Min. prot x Regd repr. single body. If open-ended election: stakes are v. high.

Yumeh: No consensus re body to MC. We haven't
dealt enough with principles. How will
principles be binding?

NPP

BoP: Comments from his govt. grt import. for all.

Formulate princis, more clearly - basis of new Const
'Well-defined & clear principled guidelines').

People of BoP - represented by BoP Govt.

No need to serve on IG at this stage. No

need to (confuse IG & CMB. No admin / elec.

vacuum. Present inst - undesirable to elect IG.

Low threshold - 1/3 $\frac{2}{3}$ maj. Draft body - 4

months too little. Elected CMB will deal

with drafts - present S. Ct. to supervise.

Modus op - by COOESA. Powers & borders of

regions - vital to us. We would join a

specific region - econ. hist, ethnic,

geogr, econ. If confederation not possible

11/2/92

WORKING GROUP 2

KEY ISSUES TO BE ADDRESSED

1. The balance between central, regional and local government.
2. The meaningful participation of political minorities.
3. Economic freedom, governmental intervention and economic systems.
4. Accommodation of the diversity of languages, cultures and religions.
5. Affirmative action and the bill/charter of fundamental rights.
6. Self-determination.
7. Role of traditional leaders.

**GENERAL CONSTITUTIONAL PRINCIPLES
AREAS OF COMMONALITY - PREPARED BY WORKING GROUP 2
STEERING COMMITTEE 12.5.92**

1. South Africa will be a united, sovereign state in which all will enjoy a common South African citizenship.
2. South Africa will be democratic, non-racial and non-sexist.
3. The constitution shall be the supreme law.
4. There will separation of powers between the legislature, the executive and the judiciary with appropriate checks and balances.
5. The judiciary will be independent, non-racial and impartial.
6. There will be a legal system that guarantees the equality of all before the law.
7. There will be representative and accountable government embracing multi-party democracy, regular elections, universal adult suffrage, a common voters role and, in general, proportional representation.
8. The diversity of languages, cultures and religions will be acknowledged.
9. All will enjoy universally accepted human rights, freedoms and civil liberties including freedom of religion, speech and assembly which will be guaranteed by an entrenched and justiciable Bill/Charter of Fundamental Rights.
10. Government shall be structured at national, regional and local levels.
 - 10.1 At each level there shall be democratic representation.
 - 10.2 Each level of government shall have appropriate and adequate legislative and executive powers, duties and functions that will enable each level to function effectively; such powers, duties and functions to be entrenched in the constitution.

- 10.3 In addition to the powers, duties and functions entrenched in the constitution, each level of government may delegate powers, duties and functions to other levels of government.
 - 10.4 The general principles of the constitution including the terms of the Bill/Charter of Fundamental Rights shall apply to each level of government.
11. The new constitution shall provide for effective participation of minority political parties consistent with democracy.

3. Draft principles prepared by the Steering Committee on 23.3.92 and not yet discussed by the Working Group.

3.1 Draft principle on economic freedom, governmental intervention and economic systems:

"The constitution should provide for the promotion of the improvement in the quality of life of all South Africans by enabling economic growth, human development, social justice and equal opportunities for all."

3.2 Draft principle on the Bill/Charter of Fundamental Rights:

"There shall be a justiciable bill/charter of fundamental rights which shall ensure inter alia :

- universally accepted human rights and freedoms;
- civil liberties including freedom of religion, speech and assembly;
- the equality of all before the law;
- property rights, provided that legislation may in the public interest authorise expropriation against payment of reasonable compensation which shall in the event of a dispute be determined by a court of law.

The constitution shall enable the implementation of measures to help address the racial and gender inequities caused by past discrimination."

3.3 Draft principle on the accommodation of the diversity of languages, cultures and religions:

"The constitution at all levels of government shall accommodate and protect the right of citizens to practice their religion, enjoy their culture and use their own language both as individuals and in association with others. This shall include the right of citizens where practicable to have their children educated in their mother tongue and the right of citizens to establish educational institutions reflecting their language, culture and religion,

provided that racial discrimination may not be practised."

3.4 Draft principle on the role of traditional leaders:

"The constitution should define a suitable role for traditional leaders consistent with the objective of a united, non-racial, non-sexist, democratic South Africa."



WG2/PRESS.

WORKING GROUP 2 PRESS STATEMENT 28 APRIL

DAILY MANAGEMENT COMMITTEE STATEMENT ON THE CONSTITUTION MAKING BODY PROPOSAL BEFORE WORKING GROUP 2

The Steering Committee of Working Group 2 met yesterday and drew up a draft proposal on a Constitution Making Body. This proposal has been put to the Working Group for discussion today. The proposal is not final for the following reasons :

1. A number of issues require further clarification.
2. The Steering Committee is comprised of individual members of the Working Group. They do not represent their particular parties on the Steering Committee and the proposals have therefore not been mandated by the parties they belong to.
3. The document has not yet been submitted to principals or discussed within party caucuses. There is therefore no question of agreement on the proposal at this stage.

Once the proposal has been extensively discussed in the Working Group and amended where necessary, it will be submitted to the principals for the comments.

The proposal will then be further discussed at the meeting of Working Group 2 next week. Participants in Working Group 2 have agreed not to comment to the press on the merits of the proposals at this stage.

CONVENTION FOR A DEMOCRATIC SOUTH AFRICA

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① The white pop is deeply divided.

Moore suggests - AWR or HNP or KP
in govt - share presidency, elects.

② Self-serving. Obey. Win. Maj.

③ Will. exists:
Achieve by consist.: Lebanon
Greece
NAZrel.
Yugoslavia.