

AFRICAN NATIONAL CONGRESS

PROPOSALS FOR TERMS OF REFERENCE FOR  
WORKING GROUPS ESTABLISHED BY CODESA

JOHANNESBURG  
17 December 1991

**DRAFT TERMS OF REFERENCE ON A WORKING GROUP ON  
A CLIMATE FOR FREE POLITICAL PARTICIPATION  
ESTABLISHED BY CODESA**

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WHEREAS the parties at CODESA have committed themselves in the terms set out in the Statement of Intent to the establishment of a democratic South Africa

AND WHEREAS it has been nationally and internationally recognised that a climate for free political participation is an essential element of the transitional phase towards a democratic South Africa

AND WHEREAS democracy requires that all the participants in the political process should be free to participate in that process without fear and on an equal footing and on a basis of equality with the other participants

AND WHEREAS it has been agreed that a Working Group on a Climate for Free Political Participation shall be appointed by CODESA to consider the prerequisites for a free political climate and make proposals in this regard

IT IS RECORDED that the terms of reference of the Working Group on the Creation of a Climate for Free Political Participation shall be as follows

1. To investigate and agree upon the necessary steps to be taken to ensure that all political parties and their members are free to participate fully in the political process, and in particular to investigate whether:
  - (i) all political prisoners including awaiting-trial prisoners and security detainees, have been released;
  - (ii) steps need to be taken to facilitate the return of all exiles;
  - (iii) any statutory provisions exist which limit or proscribe any political activity or the expression of any viewpoint.
2. To examine what measures need to be taken to prevent the perpetration of political violence, and to protect supporters of all political parties from violence while exercising their rights to freedom of expression, assembly and association. In this regard the provisions of the National Peace Accord must be examined and revised where necessary.

3. To consider and make proposals with regard to the control and command structure of the Security Forces in South Africa and the TBVC states
4. To consider and make proposals, in conjunction with other Working Groups dealing with other aspects of the transitional process, on the following
  - (i) the funding of political parties including the use of state resources or public funds by parties which exercise control over central, homeland or local government resources
  - (ii) the fair access to public facilities including venues controlled by the central and homeland governments, and tribal and local authorities
  - (iii) the fair access to and control over the use of government controlled media, including that of the TBVC states
  - (iv) the statutory provisions guaranteeing equal opportunity for all parties to establish and maintain their own means of mass communication
  - (v) the adoption of a code of conduct for political parties which will regulate the conduct of such parties and their members at gatherings
  - (vi) the uniform application of the above rules in urban and rural areas, and in the homelands and TBVC states
  - (vii) the fair access for political parties to residential areas and institutions where persons (especially employees) reside.

The Working Group shall submit a written report containing its recommendations with motivations to the Steering Committee by not later than

Where no consensus or  sufficient consensus is reached, the report shall set out the different positions with motivations.

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DRAFT TERMS OF REFERENCE OF THE WORKING GROUP ON  
THE ROLE OF THE INTERNATIONAL COMMUNITY  
ESTABLISHED BY CODESA

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WHEREAS the parties at CODESA have committed themselves in the terms set out in the Statement of Intent to the establishment of a democratic South Africa

AND WHEREAS the Organisation of African Unity and the United Nations in their 1989 declarations on the transition to a democratic non-racial government in South Africa anticipate a continuing role for the international community in such process

AND WHEREAS the validity and acceptability of the process of transition, internally and internationally, will depend on an open and fair process providing for full and effective participation of all South Africans

AND WHEREAS the involvement of the international community may assist in creating confidence in the transitional process and facilitate decision making during the transition

IT IS RECORDED that the Working Group on the Role of the International Community shall have the following terms of reference

1. To investigate and report on the necessity and feasibility of the following forms of international assistance or involvement
  - (i) providing an international guarantee regarding the process of transition
  - (ii) the provision of a peacekeeping force to ensure the maintenance of order and compliance with agreements
  - (iii) the use of international bodies, agencies or personnel to assist in overcoming deadlocks in forums and/or institutions in which decisions and/or agreements cannot be reached
  - (iv) monitoring the activities of the internal authorities including the interim government/transitional authority and participation in its activities
  - (v) the supervision of the transitional security mechanisms

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- (vi) the provision of experts to investigate complaints against the security forces or the national administration of South Africa and the TBVC states.
  - (vii) monitoring of and assisting in any electoral process
2. To consider in regard to the abovementioned options or forms of international assistance which body or bodies of persons is the most appropriate body or bodies to assist in the period of transition and whether separate adhoc arrangements should be made for different purposes, objectives or tasks.

The Working Group shall submit a written report containing its recommendations with motivations to the Steering Committee by not later than

Where no consensus or  sufficient consensus is reached, the report shall set out the different positions with motivations.

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**TERMS OF REFERENCE OF WORKING GROUP 2  
ON GENERAL CONSTITUTIONAL PRINCIPLES**

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WHEREAS the parties at CODESA have committed themselves in the terms set out in the Statement of Intent to the establishment of a democratic South Africa

AND WHEREAS it has been agreed that a Working Group on General Constitutional Principles shall be appointed to consider the general constitutional principles

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

1. To formulate the General Constitutional Principles which shall underpin a new Democratic Constitution for South Africa which is to include the TBVC States and which shall bind the body entrusted with the task of drawing up and adopting the Constitution.
2. To have regard, in the formulation of such principles, to the common commitment of the parties as set out in the Statement of Intent adopted at the CODESA meeting on 20 - 21 December 1991.

The Working Group shall submit a written report containing its recommendations with motivations to the Steering Committee by not later than

Where no consensus or [REDACTED] sufficient consensus is reached, the report shall set out the different positions with motivations.

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DRAFT TERMS OF REFERENCE OF THE WORKING GROUP ON THE CONTITUTION MAKING BODY ESTABLISHED BY CODESA

WHEREAS the parties at CODESA have committed themselves in the terms set out in the Statement of Intent to the establishment of a democratic South Africa

AND WHEREAS the parties share a commitment to the creation of a united South Africa enjoying internal legitimacy and international acceptance

AND WHEREAS the parties accept that all men and women have the right and duty to participate in the process of making a new constitution

AND WHEREAS it has been agreed that a Working Group on the Constitution Making Body shall be appointed by CODESA in order to formulate proposals and make recommendations on the appropriate body to draft a new consitution for South Africa.

IT IS RECORDED that the Working Group on a Constitution Making Body shall have the following terms of reference

- 1. To formulate proposals on the most appropriate mechanism for drawing up the new Constitution.
2. To formulate proposals on the method whereby the Constitution Making Body will be brought into existence and the terms of the legislation according to which it will be constituted.
3. To formulate proposals in regard to the manner of representation to the Constitution Making Body including the form of any electoral system to be adopted.
4. To consider and make recommendations on the timeframe of the electoral process referred to above, and on the supervision and monitoring of such process, and the role of the international community in such monitoring.
5. To consider and formulate recommendations on the powers of the Constitution Making Body and the method of adoption of the new consitution.
6. To consider and formulate proposals on the procedure to be followed by the Constitution Making Body in its deliberations including who should preside at its meetings and the majorities which are required for decisions to be taken by the Constitution Making Body.

7. To make proposals in regard to the implementation of the decisions of the Constitution Making Body.
8. To consider and make recommendations on the time limit on the work of the Constitution Making Body.

The Working Group shall submit a written report containing its recommendations with motivations to the Steering Committee by not later than

Where no consensus or [REDACTED] sufficient consensus is reached, the report shall set out the different positions with motivations.

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DRAFT TERMS OF REFERENCE  
FOR THE WORKING GROUP ON INTERIM GOVERNMENT/  
TRANSITIONAL ARRANGEMENTS/TRANSITIONAL AUTHORITY  
ESTABLISHED BY CODESA

WHEREAS the parties at CODESA have committed themselves in the terms set out in the Statement of Intent to the establishment of a democratic South Africa

AND WHEREAS it has been agreed that a Working Group of CODESA should be appointed to consider the issue of interim government/transitional arrangements/transitional authority.

IT IS RECORDED that the terms of reference of such Working Group will be

1. to give consideration to and endeavour to reach agreement upon interim government/transitional arrangements/transitional authority and in that context will have regard to
  - (i) The structures of and the manner in which the interim government/transitional arrangements/transitional authority will be composed.
  - (ii) The way in which decisions will be taken by the structure/s established for the purposes of the interim government/transitional arrangements/transitional authority.
  - (iii) The mechanisms which will be established for the purposes of resolving deadlocks within the structures of the interim government/transitional arrangements/transitional authority.
  - (iv) The way in which the interim government/transitional arrangements/transitional authority will function, the impact that this will have upon the day to day control and administration of departments and other organs of government, and the changes (if any) that will be required in the organisation and administration of such departments and organs of government in order to implement the interim government/transitional arrangements/transitional authority.
  - (v) The date on which the interim government/transitional arrangements/transitional authority will commence and the duration thereof.

- (vi) The recording of agreements reached between the parties to CODESA in regard to the abovementioned matters including agreements concerning the amendments to existing legislation which will be necessary in order to give effect to such arrangements.
  
- (vii) The preparation of the legal instruments which will be required for the purposes of implementing decisions taken by the Commission.

The Working Group shall submit a written report containing its recommendations with motivations to the Steering Committee by not later than  
Where no consensus or [REDACTED] sufficient consensus is reached, the report shall set out the different positions with motivations.

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TERMS OF REFERENCE OF WORKING GROUP  
ON REINCORPORATION OF THE HOMELANDS  
INTO A SINGLE UNITED SOUTH AFRICA

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WHEREAS the parties at CODESA have committed themselves in the terms set out in the Statement of Intent to the establishment of a democratic South Africa

AND WHEREAS it is the common desire of all the parties to end the fragmentation of the South African state and to restore the integrity of the country as a single country

AND WHEREAS it is the common commitment of all the parties to create a constitutional framework for South Africa which will ensure that all South Africa's people including the homelands shall enjoy equal and common citizenship in one single united South African state.

AND WHEREAS the parties recognise the need to provide for the meaningful and democratic participation, from the earliest possible moment, of all the people living in the homelands - as part of the people of South Africa - in the process of drawing up and adopting a new constitution for South Africa as well as in all transitional arrangements.

AND WHEREAS the reality of the current existence of a number of separate but parallel institutions such as different administrations, civil services, armed forces, police forces and judiciaries as well as differing laws in certain instances which presently exist in South Africa and the different homelands.

AND WHEREAS the need to ensure that the lives and livelihood of people in the affected territories shall not be subjected to any unnecessary disruption.

IT IS RECORDED that the terms of reference of the Working Group on the Reincorporation of the TBVC states are as follows

1. To formulate proposals for the Reincorporation of the homelands including the TBVC States into the South African State as a single entity and for the dismantling of the homeland system.
2. To identify both in relation to South Africa as a whole and in relation to each of the homelands, the various constitutional and/or legal provisions which presently exist and need to be taken into account.
3. To identify specific constitutional, legal and political measures and steps which will have to be taken to effect reincorporation.

- 4 To propose time frames for the reincorporation of the various homelands as aforesaid.
- 5 To formulate proposals on appropriate measures and steps to be taken to ensure the full participation by the people living in the homelands in the process of constitution making as well as in all transitional arrangements.
- 6 To formulate appropriate measures and steps to be taken to ensure that in the process of reincorporation of the homelands, interruption or disruption in administration and the rendering of services and in the daily lives of people in the affected areas are reduced to an absolute minimum.

The Working Group shall submit a written report containing its recommendations with motivations to the Steering Committee by not later than  
Where no consensus or [REDACTED] sufficient consensus is reached, the report shall set out the different positions with motivations.

**DRAFT TERMS OF REFERENCE FOR THE WORKING GROUP  
ON IMPLEMENTATION ESTABLISHED BY CODESA**

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WHEREAS the parties at CODESA have committed themselves in the terms set out in the Statement of Intent to the establishment of a democratic South Africa

AND WHEREAS it is necessary to record agreements which are reached at CODESA in terms of the Statement of Intent, and to implement such agreements and, accordingly, to prepare in draft form the documentation which is required for effect to be given to such agreements

AND WHEREAS it has been agreed that a Working Group on the Implementation of Agreements/Decisions shall be appointed by CODESA in order to prepare such documentation and identify the steps which need to be taken by the parties to CODESA.

IT IS RECORDED that the Working Group on Implementation shall have the following terms of reference:

1. To consider whether it is necessary to enact legislation or amend the terms of any existing legislation or whether any executive or administrative acts must be carried out in order to give effect to any decisions taken by CODESA, and if so to
  - (i) identify the legislation that needs to be enacted or amended and the executive or administrative acts that need to be carried out
  - (ii) formulate the terms of the legislation or amendments necessary to give effect to such decisions and the executive or administrative acts to be carried out.
  
2. To consider whether it is necessary for the parties to CODESA to enter into any formal agreements in order to give effect to decisions taken by CODESA, and if it is, to
  - (i) identify the agreements that are necessary
  - (ii) formulate the terms of the agreements which are necessary
  
3. To consider and determine the timeframe within which, and the sequence according to which, the various legislative enactments, agreements, and executive or administrative acts will be executed.

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The Working Group shall submit a written report containing its recommendations with motivations to the Steering Committee by not later than

Where no consensus or [REDACTED] sufficient consensus is reached, the report shall set out the different positions with motivations.