



TERMS OF REFERENCE FOR WORKING GROUPS FOR CODESA

WORKING GROUP 1

1. FIRST ASSIGNMENT

Creation of a climate for free political participation.

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

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 and in 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

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:

- 1.1.1 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 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 above, to consider whether and how the following issues should be addressed:

- (a) the finalisation of matters relating to the release of political prisoners and political trials;
- (b) the return of exiles and their families;
- (c) the amendment and/or repeal of any remaining laws militating against free political activity, including the elimination of all discriminatory legislation;
- (d) political intimidation;
- (e) the termination of the use of military and/or violent means or the threat thereof of promoting the objectives/views of a political party or organisation;
- (f) political neutrality of, and fair access to, State-controlled/statutorily instituted media (particularly the SABC and SATV), including those of the TBVC states;
- (g) the successful implementation of the National Peace Accord;
- (h) the prevention of violence-related crime and matters giving rise thereto;
- (i) the role of the security forces in South Africa and the TBVC states;
- (j) the funding of political parties;
- (k) the fair access to public facilities and meeting venues;
- (l) the advisability of statutory provisions guaranteeing equal opportunity for all parties to establish and maintain their own means of mass communication;
- (m) the need for an improvement in socio-economic conditions;
- (n) the fostering of a spirit of tolerance amongst political parties;
- (o) the role of intensive and continuous educative and informative campaigns in respect of political tolerance, the working of democracy and the processes of Codesa;
- (p) the advisability of fair and reasonable access for political parties to all potential voters, wherever they may reside;
- (q) 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

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

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

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

- 2.1.1. To investigate, consider, report upon and make recommendations with regard to the role that the international community and/or organisations could 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.
- 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.

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

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

- 1.1.1 To investigate, report upon 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.
- 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 above, to consider the issues in Appendix A.

APPENDIX A

- "(a) The superiority of the constitution over ordinary law
- (b) The constitution will be rigid
- (c) Equality before the law
- (d) The ultimate power of interpretation of the constitution will repose in the judiciary
- (e) A clear division of the powers and functions of the Executive, Legislature and Judiciary
- (f) The principle of the vertical division of competencies: Genuine devolution of power
- (g) The electoral system will be based on the principle of equal franchise for adults and the principle of proportionality
- (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
- (i) A justiciable bill of fundamental human rights will be enacted
- (j) The judiciary will be independent and enjoy security of tenure
- (k) The principle of checks and balances will be enshrined in the constitution
- (l) The definition of citizenship
- (m) The principle of accountability
- (n) A sovereign, democratic, non-racial and non-sexist state and society
- (o) Unitary state with three tier levels of government
- (p) Common voters' roll
- (q) Non-racial geographical federation or confederation
- (r) A cabinet representative of all the states
- (s) Judges appointed by an independent commission
- (t) A president as head of state
- (u) Official language(s)/predominant official language
- (v) Guaranteed regular elections and the electoral system
- (w) A parliamentary system in which the Executive is responsible to Parliament
- (x) Preservation of the Roman Dutch common law and judicial systems
- (y) Financial control
- (z) State security
- (aa) National symbols
- (bb) Economic principles

- (cc) Diversity of interests
- (dd) Constitutional continuity
- (ee) 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**

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, report upon 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 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 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.

WORKING GROUP 3

3. **ASSIGNMENT**

Transitional arrangements/interim government/transitional authority.

3.1 **Terms of Reference**

WHEREAS the parties at Codesa have committed themselves in the terms set out in the Declaration of Intent

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 Working Group on transitional arrangements/interim government/transitional authority shall have the following terms of reference:

- 3.1.1. To investigate, canvass all possibilities, their application, report upon and make

recommendations with regard to the manner in which the country may be governed and managed until the introduction of a new constitution.

- 3.1.2 Identification of the key issues, processes and problems that need to be addressed.
- 3.1.3 Identification of areas of commonality and aspects where agreement already exists between participating delegations.

WORKING GROUP 4

4. ASSIGNMENT

Future of TBVC states.

4.1 Terms of Reference

- 4.1.1 WHEREAS the parties at Codesa have committed themselves in the terms set out in the Declaration of Intent

AND WHEREAS the parties recognise the need to provide for the meaningful and democratic participation, of all the people living in the TBVC states in the process of drawing up and adopting a new constitution for South Africa as well as in all possible 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 TBVC states; calls for a re-evaluation of this situation

AND WHEREAS in the event of re-incorporation 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 Re-incorporation of the TBVC states are as follows:

- 4.1.1.1 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.

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

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

4.1.1.4 Specifically, but without vitiating the generality of the above to consider whether and how:

- (a) to make recommendations to Codesa regarding the manner in which the constitutional status of the TBVC states may be affected by the outcome of negotiations within the framework of Codesa;
- (b) the desirability or otherwise of the re-incorporation of such states;
- (c) testing the will of the people concerned regarding re-incorporation or otherwise, of the TBVC states, by acceptable democratic means;
- (d) strategies to keep the people of the TBVC states fully informed, especially to avoid unfortunate misunderstandings;
- (e) the retention of business confidence, particularly in relation to existing investments in the TBVC states;
- (f) land transfers by South Africa to these states;
- (g) citizenship;
- (h) any other matters which the working group may consider relevant to its brief.

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

- (a) proposals for the re-incorporation into South Africa of a TBVC state;
- (b) consider the question of transitional arrangements in those states which want to be incorporated;
- (c) the time frames for such a re-incorporation and related processes;
- (d) disposal/transfer of assets of TBVC governments;
- (e) optimal use of existing infrastructure;
- (f) review of development project priorities;
- (g) good administration during transition;
- (h) the formulation of appropriate measures and steps to be taken to ensure that in the process of re-incorporation of a TBVC state, 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;
- (i) consider future of civil service in such states;

- (j) the exact form of authority in the TBVC territories;
- (k) harmonisation of legislation and taxation;
- (l) orderly termination of bilateral and multilateral agreements and treaties;
- (m) servicing and repayment of TBVC state debts;
- (n) ensuring public accountability of actions taken for the purposes of re-incorporation;
- (o) the identification of specific constitutional, legal and political measures and steps which will have to be taken to effect re-incorporation.

WORKING GROUP 5

5. ASSIGNMENT

Time frames and implementation of Codesa's decisions.

5.1 Terms of Reference

5.1.1 WHEREAS the parties at Codesa have committed themselves in the terms set out in the Declaration of Intent

AND WHEREAS it is necessary to record agreements which are reached at Codesa 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 to identify the steps which need to be taken by the parties to Codesa

AND WHEREAS it is desirable to advise on the possible time frames and target dates

IT IS RECORDED that the terms of reference of the Working Group on time frames and the implementation of Codesa's agreements/decisions are as follows:

5.1.1.1 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 agreements/decisions of Codesa.

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

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

5.1.1.4 Specifically, but without vitiating the generality of the above, consider whether and how to address:

- (a) the need for a regularly updated comprehensive list of all the decisions, actions and processes involved;
- (b) 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;
- (c) the practicability of setting of target completion dates for all agreements/activities/decisions;
- (d) the monitoring of the process and the adjustment of targets whenever necessary;
- (e) the dissemination of up-to-date information in respect of progress made to all Codesa participants, interested parties and authorities;
- (f) to address the identification of legislation that needs to be enacted or amended;
- (g) to assist in formulating the terms of the legislation or amendments;
- (h) realistically attainable time frames;
- (i) practical effect of implementation of agreements;
- (j) the legality of the process in relation to time frames to be negotiated within the context of constitutional continuity;
- (k) any other matters which the working group may consider relevant to its brief.