

MEMORANDUM ON DECISION MAKING IN CODESA

TO: Comrade Cyril Ramaphosa

FROM: Albie Sachs / Firoz Cachalia

INTRODUCTION

It has become clear that defining Sufficient Consensus has become crucial to the whole concept and functioning of CODESA. It affects not only how decisions are taken but the very willingness of certain parties to commit themselves in advance to CODESA decisions. At present the majority of participants are anxious that no participant should be able to escape from being bound. There are groups however that are worried about being bound by decisions to which they are opposed.

The former group includes the Transkei. We attach a memorandum (C annexure A) from them indicating their support for the following procedure:

1. Attempts to achieve consensus without a vote;
2. In the absence of consensus, reference to a mediation committee;
3. When mediation fails, reference back to CODESA where a two thirds majority will be sufficient.

The second position is that adopted by the NP (and presumably the South African Government), the IFP and the Bophuthatswana Government. They all propose to allow themselves a veto over decisions to which they are opposed, and which affect their vital interests. We attach copies of these proposals. (See annexures B, C, and D).

THE NP POSITION

Their approach is as follows:

1. To strive for consensus;
2. Where substantial and total disagreement occurs to refer the issue to mediation. The mediating committee, which should include the dissenting party/s should then attempt to achieve consensus. Independent facilitators be brought in to facilitate this. Foreign mediators are not contemplated. It is not clear from our notes whether the mediators would be empowered to make a final determination as to whether Sufficient Consensus exists. Note: The NP insists that all the parties be treated equally. They argue that the process itself will compel dissenting groups to find an accommodation;
3. Participants should have the right to indicate disagreement without destroying consensus. ("We don't like it, but we will live with it").

THE BOPHUTHATSWANA GOVERNMENT

They are unwilling to accept decisions of CODESA unless 'sufficient consensus' is defined in a way which in effect gives them a veto on what they call "issues affecting their very existence". They argue that agreement on common principles should first be established before forcing the issue on questions that might divide CODESA; thus "consideration of the future of the TBVC states need not be an issue until greater clarity on the future dispensation is known".

IFP

Their position is that it is premature now to argue that decisions of CODESA should be binding. They say that the issues of negotiations for a new constitution and interim governing should be separated. Competitive rivalry cannot be eliminated but aggressive politics should be avoided: "Challenges inherent in having to move forward through consensus or at worst through sufficient consensus should not be abandoned by adopting fail-safe and head counting mechanisms when impasses are reached...."

VENDA GOVERNMENT

The Venda Government takes an inbetween position favouring either consensus or Sufficient Consensus depending on the circumstances of each case. They reject majority decision-making (presumably this means "simple majority"). (SEE ANNEXURE E)

COMMENTS

It is clear that there must be equal status and rights for all participants in CODESA. The question is whether the individual parties should have the power to block decisions. Sufficient Consensus implies something less than unanimity. It could accommodate express reservations and even votes against. The key word is "sufficient". The government proposes a procedural solution that leaves the issue open viz: mediation. Clearly the Bophuthatswana Government wishes to retain a veto on the question of reincorporation. The IFP ~~expects~~ ^{accepts} that consensus need not be absolute but rejects any system of voting.

It would seem on the basis of discussions in the Task Group that most participants support Sufficient Consensus as it is already operating. They clearly want the Government and all parties to be bound by decisions of CODESA. We cannot assume however that they are willing to give up, at least at the formal level their equal voting rights and status (that is they might accept that the ANC and Government are the crucial players but that they should ~~not~~ be in a position analogous to the permanent members of the Security Council).

It is difficult to see the ANC being so isolated that we ever have to submit to a

sufficient consensus against us. The issue is important for the Government, Bophuthatswana and the IFP in different ways. Bop is the most vulnerable. In our view Bop should be obliged to commit itself to be bound right from the beginning as a condition of participation in CODESA. They should be promised a dignified burial as a state and a sensibly organised reintegration into South Africa. The Government will be hard-pressed to demand special consideration for Bop, especially if the Transkei and Venda encourage reintegration, and the Ciskei continues to sit on the fence.

The IFP is anxious now not to be seen as 'a spoiler'. We must insist that they not be allowed on their own to destroy sufficient consensus. Similarly, if the Government/NP should not be allowed an automatic veto.