



WORKING GROUP 2\MINUTES\2 MARCH

MINUTES OF THE SIXTH MEETING OF WORKING GROUP 2 (CONSTITUTIONAL PRINCIPLES) HELD AT THE WORLD TRADE CENTRE ON MONDAY 2 MARCH 1992

(Adopted at the Working Group 2 Meeting held on 9 March 1992)

PRESENT:

Delegates and advisors (See Addendum A)
B S Ngubane (Chair)
M Phillips (Secretary)
R Hartley (Minutes Secretary)

DOCUMENTS DISTRIBUTED:

1. Draft agenda
2. Draft minutes of the fifth meeting of Working Group 2 held on 24.2.92 and 25.2.92
3. Ratified minutes of the fourth meeting of Working Group 2 held on 17.2.92
4. 2.3.92 Draft principle on meaningful participation of minorities prepared by the Steering Committee for Working Group 2
5. Labour Party of SA: The relationship or balance between central, regional and local government
6. Codesa Working Group 2 - SA Government - 2.3.92: The balance between central, regional and local government
7. Solidarity: Meaningful participation of political minorities
8. South Africa in the nineties (Solidarity)
9. National People's Party: Position paper of the NPP on key issue: meaningful participation of political minorities
10. ANC: Minorities and Democracy
11. Delegate fact sheet No 2: 2.3.92
12. SA Government: Extracts from different proposals on the relationship between central and regional government
13. SA Government: Proposals on general constitutional principles submitted to Codesa Working Group two
14. Codesa Working Group 2: SA Government comparison of the different proposals submitted on minority protection

1. Apologies

Prof Koyana	Transkei Government
Chief Ndamase	(Alternate: Mr Nogumla)
B Singh	National People's Party (absent for part of the meeting)
	(Alternate: A Rambarran)
ZM Yacoob	Natal and Transvaal Indian Congresses
	(Alternate: Y Mahomed)
Adv Mushasha	Venda Government
MM Makhalemele	Dikwankwetla Party
	(Alternate: M Mopeli)
MJ Mahlangu	United People's Front
Prof Cloete	Ximoko Progressive Party
	(Alternate: EPP Mhinga)
M Alachouzoz	Inkatha Freedom Party

2. Ratification of Agenda

2.1 Item 6.3 was renumbered as item 6.4 and visa versa.

2.2 The agenda was then ratified.

3A Ratification of Minutes of meeting of 24.2.92 and 25.2.92

3A.1 Item 4.2.1.7: "Venda Government" was added.

3A.2 On page 7, under Addendum A, "Intando Yesizwe Party" was changed to "Inyandza National Movement".

3A.3 D Lockey informed the meeting that he had attended the meeting of 24.2.92 and 25.2.92.

3A.4 I Omar informed the meeting that he had attended the meeting of 24.2.92 and 25.2.92.

3A.4 On pages 6 and 8 under Addendum A, EPP Mhinga was replaced by Prof Cloete.

3A.5 It was agreed that all future Working Group minutes will contain the contents of Steering Committee proposals regarding common principles.

3B Amendment to ratified minutes of meeting of 17.2.92

3B.1 The word "judicial" was substituted with the word "executive" under point 6.1.3.1.3 of the minutes of 17.2.92.

4. Draft document prepared by the Steering Committee on the balance between central, regional and local government dated 25.2.92

4.1 The SA Government spoke to its document entitled "The balance between central, regional and local government". The SA Government interpreted the proposal of the steering committee as follows:

"The South African Government considers the question of the autonomy of regional and local governments to be a matter of principle. Therefore, "appropriate and adequate legislative and executive powers, duties and functions" in the proposed paragraph 3 is understood to indicate autonomous powers, duties and functions, originally allocated to regional and local governments by the Constitution.

"The specific functions to be entrusted to the regional and local government levels must be determined according to the principle of subsidiarity, which means that a function must be situated at the level where it may be performed optimally.

"Since a function cannot be performed without the necessary financial capability, fiscal competency must accompany the allocation of powers to the highest practicable degree. Where full fiscal autonomy is not practicable, the financial capability of the regional and local governments must be supplemented by means of constitutionally regulated horizontal and vertical fiscal equalization."

- 4.2 The Working Group noted the ANC's disagreement with the South African Government's interpretation. The Working Group also noted the ANC's statement that the following concepts are neither implied nor rejected by clause three of the Steering Committee document:
- 4.2.1 Concurrent powers
 - 4.2.2 Overriding powers
 - 4.2.3 The creation of metropolitan governments with a special status.
- 4.3 The Working Group agreed on the following formulation with regard to clause 3 of the Steering Committee document:
- 4.3.1 "This meeting agrees that the draft document implies that all levels of government will have fiscal powers defined in the constitution. This agreement is unanimous. This agreement should be considered when the Working Group's report is drawn up for Codesa 2.
- 4.4 The Working Group agreed on the five principles contained in the Steering Committee document. The principles are as follows:
- 4.4.1 Government shall be structured at national, regional and local levels.
 - 4.4.2 At each level there shall be democratic representation.
 - 4.4.3 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.
 - 4.4.4 In addition to the powers, duties and functions entrenched in the constitution, each level of government may delegate powers, duties and functions to the lower level of government.
 - 4.4.5 The general principles of the constitution, including the terms of the Bill/Charter of Fundamental Rights shall apply to each level of government.

5. Meaningful Participation of Political Minorities

5.1 The Steering Committee's draft principle on meaningful participation of minorities was tabled.

5.2 Further submissions were made by the following:

5.2.1 Solidarity Party

5.2.2 National People's Party

5.2.3 Natal and Transvaal Indian Congresses

5.2.4 South African Communist Party

5.2.5 African National Congress

5.3 The following parties undertook to make submissions to the next meeting of the Working Group:

5.3.1 Inkatha Freedom Party

5.3.2 Labour Party

5.3.3 Transkei Government

5.3.4 United People's Front

5.4 The ANC proposed that the words "consistent with democratic principles" be added to the steering committee document.

5.5 The matter was referred to the Steering Committee to formulate a further draft principle to be presented to the next meeting of the Working Group.

6. Next Meeting

It was agreed that Working Group 2 will meet again on Monday, 9.2.92 at the World Trade Centre from 10h00 to 16h30.

ADDENDUM A

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

Organisation	Delegate/Advisor
African National Congress	C Ramaphosa MV Moosa F Grinwala A Sachs
Bophutatswana Government	SG Mothibe R Cronje I Findlay TE Scheepers
Ciskei Government	MC Kashe IJ Smuts J Laubuschagne VR Zietsman
Democratic Party	CW Eglin D Worrall AJ Leon D Welsh
Dikwankwetla Party	SOM Moji S Mopeli M Mopeli
Inkatha Freedom Party	N Brits SH Gumede BS Ngubane
Intando Yesizwe Party	SJ Mgidi AP Laka MP Mahlangu IT Mahlangu
Inyandza National Movement	C Albertyn I Lephoko BE Mabuza EN Ginindza

Labour Party	D Lockey IM Richards G Devenish C Nasson
Natal/Transvaal Indian Congresses	Y Mohamed F Cachalia IC Meer F Haysom
National Party	F van Heerden JA Rabie S Camerer I Rautenbach
National People's Party	M Mohanlall S Ismail B Singh H Neerahoo
Solidarity Party	DS Rajah I Omar K Reddy R Arenstein
SA Communist Party	J Slovo B Nzimande N Hoosain E Daniels
SA Government	G Viljoen JT Delpont F Venter JHE Basson
Transkei Government	S Holomisa R Nogumla
United People's Front	MC Ramusi KR Malatji RJ Dombo
Venda Government	GM Legege MP Nthabalala A Budeli
Ximoko Progressive Party	EE Ngobeni KR Myakayaka EPP Mhinga J Ackron