

MINUTES OF THE TENTH MEETING OF WORKING GROUP 2 (CONSTITUTIONAL PRINCIPLES) HELD AT THE WORLD TRADE CENTRE ON TUESDAY 7 APRIL 1992

(Adopted at the Working Group 2 Meeting Held on 21 April 1992)

PRESENT:

Delegates and advisors (See Addendum A)
CW Eglin (Chair)
M Phillips (Secretary)
R Hartley (Minutes)

DOCUMENTS DISTRIBUTED:

1. Draft agenda
2. Ratified minutes of the eighth meeting of Working Group 2 held on 23.3.92 and 24.3.92
3. Draft minutes of the ninth meeting of Working Group 2 held on 30.3.92 and 31.3.92
4. 7.4.92 Working Group 2: Suggested discussion on constitution making body prepared by Working Group 2 Steering Committee
5. Labour Party of SA: The constitution making body
6. 6.4.92 Codesa Working Group 3: SA Government: Submission on transitional arrangements
7. Working Group 3: ANC proposals for the first stage of interim government
8. Inkatha Freedom Party: Working Group 2: Proposals of the Inkatha Freedom Party on the body and procedures for drafting a new constitution
9. Inkatha Freedom Party: Why the Inkatha Freedom Party objects to the idea of the new constitution being written by a popularly elected assembly
10. Codesa Working Group 2: Government of the Republic of Bophuthatswana: Constitution making and the constitution making process

1. Apologies 30.3.92

C Ramaphosa	African National Congress (Alternate: A Sachs)
J Rabie	National Party (Alternate: S Camerer)
Z Yacoob	NIC/TIC (Alternate: T Pillay)
PZ Ndamase	Transkei Government (Alternate: M Nonkonyana, Prof Koyana)
B Ndzimande	SA Communist Party (Alternate: E Daniels)
DS Rajah	Solidarity Party
I Omar	(Alternate: N Singh, K Moodley, R Arenstein)
M Richards	Labour Party (Prof Devenish)
A Leon	Democratic Party
D Worrall	(Alternate: D Welsh)
CW Eglin (in the chair)	
R Cronje	Bophuthatswana Government
SG Mothibe	
I Findlay	
VR Zietsman	Ciskei Government
Adv Malatji	United People's Front
BS Ngubane	Inkatha Freedom Party
B Singh	National People's Party (Alternate: J Bachu)
MM Makhalemele	Dikwankwetla Party (Alternate: Prof Wessels)
S Cloete	Ximoko Progressive Party (Alternate: EPP Mhinga)
SG Mgidi	Intando Yesizwe Party

2. Ratification of Agenda

2.1 The agenda was ratified with the following changes:

- 2.1.1 Item 5.6 which reads as follows was added: "The role of standing committees in the formulation of legislation."
- 2.1.2 Item 6.2 was amended to read: "Item 4.4 of the Minutes of the Meeting of 2 March 1992: Further discussion of the common principle regarding the balance between central, regional and local government".

3. Ratification of Minutes

3.1 The minutes of the meeting of 9.3.92 were ratified with the following changes:

- 3.1.1 D Worrall was added to the list of apologies for 31.3.92 and A Leon was listed as his alternate.

- 3.1.2 Item 3.1.3 was amended to read: "Mr Mabuza pointed out that he and Mr Lephoko had attended the meeting of 23.3.92."

4. Discussion on Assignment 2: Constitution Making Body and Process

- 4.1 Delegates continued questioning the ANC on their submission of 31.3.92.
- 4.2 The following parties made submissions on the issue:
- 4.2.1 Bophuthatswana Government
- 4.2.2 Inkatha Freedom Party
- 4.2.3 The meeting ended before questions to the Inkatha Freedom Party could be completed. It was agreed that questions would be continued at the next meeting.
- 4.3 The chair posed the following questions as a useful means to take the discussion forward:
- 4.3.1 "Based on the following assumptions regarding a Constitution Making Body:
- 4.3.1.1 It is not a "sovereign" body, but a body established through legislation by the South African parliament;
- 4.3.1.2 It is bound by the parameters of principles agreed to in Codesa including inter alia regionalism entrenched in the constitution and a Bill of Rights;
- 4.3.1.3 It is bound to take decisions in terms of procedures agreed to in Codesa;
- 4.3.1.4 Its decisions are subject to scrutiny by a panel of judges or neutral, independent persons to determine that these have been in accordance with the above;
- 4.3.1.5 It would not necessarily be involved in legislative functions or procedures;
- 4.3.1.6 The constitution it drafted would be subject to endorsement by popular referendum.

In these circumstances, in order to raise the level of legitimacy of a Constitution Making Body, would it be appropriate for the electoral principle to be applied in practice on the basis of regions? In view of the fact that regionality is a constitutional principle already agreed on, could a case be made for this regionality to be reflected in the composition of the constitution making body?"

5. Next Meeting

- 5.1 The next meeting will take place on 21.4.92 from 10h00 to 16h00 at the World Trade Centre.
- 5.2 It was agreed that Working Group 2 would also meet on 27.4.92 from 10h00 to 16h00 and on 28.4.92 from 9h00 to 15h00.

ADDENDUM A

The following delegates and advisors signed the Attendance Register of Working Group 2 meeting held on 7 April 1992:

Organisation	Delegate/Advisor
African National Congress	MV Moosa F Ginwala A Sachs
Bophutatswana Government	TE Scheepers
Ciskei Government	MC Kashe IJ Smuts J Laubuschagne
Democratic Party	CW Eglin D Welsh
Dikwankwetla Party	SOM Moji S Mopeli M Mopeli Prof Wessels
Inkatha Freedom Party	N Brits SH Gumede M Alachouzoz
Intando Yesizwe Party	AP Laka MP Mahlangu IT Mahlangu
Inyandza National Movement	EN Ginindza I Lephoko BE Mabuza C Albertyn
Labour Party	D Lockey G Devenish C Nasson
Natal/Transvaal Indian Congresses	T Pillay IC Meer F Haysom F Cachalia
National Party	F van Heerden S Camerer I Rautenbach

National People's Party	M Mohanlall S Ismail J Bachu H Neerahoo
Solidarity Party	K Moodley N Singh R Arenstein
SA Communist Party	J Slovo N Hoosain E Daniels
SA Government	G Viljoen JT Delport F Venter JHE Basson
Transkei Government	SP Holomisa R Nogumla DS Koyana M Nonkonyana
United People's Front	MC Ramusi RJ Dombo
Venda Government	GM Ligege MP Nthabalala A Budeli Adv Mushasha
Ximoko Progressive Party	EE Ngobeni KR Myakayaka EPP Mhinga J Ackron