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WORKING GROUP 5\SUB-GROUP 2\MINUTES\2 MARCH

THESE MINUTES, AS APPROVED BY SUB-GROUP 2, ARE CONFIDENTIAL, AND RESTRICTED TO WORKING GROUP 5, ITS STEERING COMMITTEE, THE DAILY MANAGEMENT COMMITTEE AND THE MANAGEMENT COMMITTEE.

MINUTES OF THE MEETING OF SUB-GROUP 2 OF WORKING GROUP 5, HELD AT THE WORLD TRADE CENTRE ON MONDAY 2 MARCH AT 15H00

(Adopted at the meeting of 9 March, without amendment)

PRESENT: (Addendum A)

1. Chairperson's opening remarks

1.1 The meeting was chaired by Mr DT Mokoena.

1.2 In the absence of a formal agenda, it was agreed that the meeting should commence with reports from the task groups.

2. Reports from the task groups

2.1 **Task Group 1** (dealing with the work of Working Group 1)

The report presented by Mr P Gastrow, as detailed in Addendum B, was noted.

2.2 **Task Group 2** (dealing with the work of Working Group 2)

The report presented by Mr C Fisser, as detailed in Addendum C, was noted.

2.3 **Task Group 3** (dealing with the work of Working Group 3)

The report presented by Mr Y Vawda, as detailed in Addendum D, was noted.

2.4 **Task Group 4** (dealing with the work of Working Group 4)

The report presented by Mr L Wessels, as detailed in Addendum E, was noted.

3. Matters arising from the reports of the task groups

3.1 Regarding an appropriate mechanism for dealing with the drafting of electoral legislation, no consensus was reached. It was agreed that the matter should be revisited at the next meeting of the sub-group on Monday 9 March 1992.

3.2 It was noted that discussion on the reports of the task groups had not been completed.

4. Date of the next meeting

The next meeting of Sub-group 2 will take place on Monday 9 March at 10h00.

5. The meeting closed.

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Addendum A

The following people signed the attendance register:

African National Congress	G Bizos Z Skweyiya
Bophuthatswana Government	AM Boikanyo TM Setiloane
Ciskei Government	PP Jacobs
Democratic Party	R Burrows P Gastrow
Dikwankwetla Party	DT Mokoena MS Setai
Inkatha Freedom Party	LPHM Mtshali P Smith
Intando Yesizwe Party	N Mbonani VS Mahlangu
Inyandza National Movement	BD Madonsela GG Zama
Labour Party	D Curry K Lategan
Natal/Transvaal Indian Congress	Y Vawda N Balton
National Party	C Fismer PA Mathee
National People's Party	DK Padiachey VP Rattan
Solidarity Party	M Naranjee I Osman
South African Communist Party	D Mvelase
South African Government	L Wessels GC von Bratt
Transkei Government	GE Zilwa M Mabude

United People's Front

R Ramontja
IKE Moloko

Venda Government

LS Ramavhoya
M Mphaphuli

Ximoko Progressive Party

DZL Mtebule
ML Nkuna

Minutes:

Pam Saxby



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WORKING GROUP 5\SUB-GROUP 2\TASK GROUP 1\REPORT\2 MARCH

REPORT FROM TASK GROUP 1 OF SUB-GROUP 2 OF WORKING GROUP 5, 2 MARCH 1992

(Adopted at the meeting of 9 March 1992, without amendment)

Rapporteur: Mr P Gastrow, Convenor of Task Group 1

Task Group 1 met on Sunday evening, 1 March 1992 and on Monday, 2 March 1992. This report reflects the discussion under the agenda items of these meetings.

1. Chairperson

It was agreed that, for the time being, the Convenor, Mr Peter Gastrow would chair the meetings of Task Group 1.

2. Minutes of Meeting

It was agreed that, at each meeting of the Task Group, a member would be identified to keep a record of agreements reached, of recommendations and of important points raised during the meeting.

3. Terms of Reference

3.1 The Terms of Reference of Sub Group 2 were considered and regarded as adequate for the work of Task Group 1. It was noted that, if need be, the Terms of Reference could always be amended at a future date.

3.2 Because Task Group 1 has to focus on the activities of Working Group 1, its convenor was instructed to communicate and meet with the convenors of the three sub-groups established by Working Group 1.

4. Priorities for Task Group 1

4.1 It was agreed that attention should be given to the numerous outdated provisions in laws which still exist. The convenor was instructed to contact the Law Commission, which has done a lot of research on this matter, in order to obtain the necessary information for the Task Group.

4.2 The need to draw up a draft electoral law was discussed. There was no clarity as to whether a draft electoral law would fall within the Terms of Reference of Task Group 1. It was agreed that the convenor would raise this matter at the meeting of Sub-Group 2 and suggest that, if need be, an ad-hoc task group be established to start working on a draft electoral law.

4.3 A study of the minutes of Working Group 1 shows that insufficient consensus about specific issues exists to enable Task Group 1 to proceed with the task of considering specific legislation.

6. Working Procedures for Task Group 1

It was agreed that the following procedure be proposed to Sub Group 2:

- 3.1 Once Working Group 1 has reached agreement on an issue which requires legislation, the details of such agreement, together with a memorandum instructing the agreement, should be forwarded to the Steering Committee of Working Group 5 and the convenor of Task Group 1.
- 3.2 Whilst Task Group 1 could start doing some preparatory work on the issue agreed upon by Working Group 1, it should only formally deal with the matter once the Steering Committee of Working Group 5 has placed the matter on the agenda of Task Group 1.
- 3.3 Task Group 1 should then draw up a brief for the legal experts who are to do the drafting of the legislation.
- 3.4 Such a brief would only be forwarded to the legal experts once it has been considered and approved of by a plenary session of Working Group 5.
- 3.5 Once the legal draughtspersons have drafted the legislation, such draft legislation would be forwarded to plenary meetings of both Working Group 1 and Working Group 5 for their approval.

No finality could be reached by Task Group 1 as to who the legal experts should be.

7. Resources and expertise required

- 7.1 It was agreed that the drafting of legislation should be a team effort by experts who come from more than one background. The draughtspersons should therefore not all be State legal draughtspersons.
- 7.2 Suggestions made during discussion (but not agreed upon) were:
 - 7.2.1 To establish a small team of experts who are then attached to CODESA to deal with legislation that is required.
 - 7.2.2 That every delegation to CODESA should nominate one legal expert to serve on a committee of experts. Such committee would then deal with legislation.

8. General

Task Group 1 requested the Steering Committee of Working Group 5 to provide absolute clarity as to whether or not delegations are entitled to substitute one of their existing delegates or advisors with a legal expert as and when required.



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WORKING GROUP 5\SUB-GROUP 2\TASK GROUP 2\REPORT\2 MARCH

REPORT FORM TASK GROUP 2 OF WORKING GROUP 5, 2 MARCH 1992

(Adopted at the meeting of 9 March, without amendment)

Rapporteur: Mr C Fisser, Convenor of Task Group 2

1. Agenda

- 1.1 Plan procedure
- 1.2 Involvement of specialists in drafting legislation.
- 1.3 Submissions
- 1.4 Decisions taken by Working Group 2 and required legislation.
- 1.5 Report back mechanism to Sub Group 2 of Working Group 5.
- 1.6 General

2. Plan procedure

- 2.1 Task Group 2 to study terms of reference and minutes of Working Group 2.
- 2.2 Task Group 2 to analyse decisions and check issues which require legislation - amendments or enactments.
- 2.3 Task Group 2 to report to Sub Group 2.
- 2.4 Sub Group 2 to report to Working Group 5 in full plenary.
- 2.5 Working Group 5 to take up the issue of specialists and draft legislation with Working Group 2.
- 2.6 Draft legislation then to be returned to Working Group 5.
- 2.7 Working Group 5 to discuss draft legislation with Working Group 2.
- 2.8 Working Group 5 to present draft legislation to CODESA.

3. Specialists/drafting

- 3.1 The meeting accepted the principle of the involvement of specialists.
- 3.2 A specialist drafting group of 3 - 5 people was suggested.
- 3.3 It was agreed that this should include one person with extensive experience in drafting parliamentary legislation in order to meet the technical requirements of parliament.

4. Submissions

4.1 It was recommended that no specific public invitation should be made, but that the DMC should keep the public informed of issues being discussed at CODESA and progress made. If, as a result of this, submissions are made to Working Group 5 then they should be entertained.

4.2 Draft Bills should not be published.

5. **Dilemma of Task Group 2**

5.1 Immediate investigation into area of draft legislation.

5.2 Working Group 2 has not started dealing with constitutional processes yet. It must be urged to do so.

5.3 Participants in Working Group 5 are requested to identify other areas which they believe need immediate attention - with regard to decisions taken by Working Group 2.

6. **Report back**

It was agreed that the convenor, Mr C Fismer, should present the report.

7. **General**

Sub-group 2 should determine the date of the next meeting of its task groups.



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WORKING GROUP 5\SUB-GROUP 2\TASK GROUP 3\REPORT\2 MARCH 1992

REPORT FROM TASK GROUP 3 OF SUB-GROUP 2 OF WORKING GROUP 5, 2 MARCH 1992

(Adopted at the meeting of 9 March 1992, as amended)

Rapporteur: Mr R M Burrows

1. It was agreed that only decisions agreed upon, and in writing, should be recorded.
2. Regarding Item 2 of the Declaration of Intent:
 - 2.1 It was agreed that clarity be sought by the Steering Committee as to the full meaning of Item 2 of the Declaration of Intent.

"We agree that CODESA will establish a mechanism whose task it will be, in co-operation with administrations and the South African Government, to draft the texts of all legislation required to give effect to the agreements reached in CODESA."
 - 2.2 Further, whether Working Group 5, as constituted, meets the requirements for the "mechanism" envisaged?
 - 2.3 Further, whether it is the intention to devise another means of linking Working Group 5 and "administrations and the South African Government", and whether "co-operation" may be fully concluded within Working Group 5?
 - 2.4 Further, what is the definition of "administration" in this section?
 - 2.5 Further, whether there is any conflict between this section of the Declaration of Intent and the Terms of Reference of Working Group 5?
3. It was agreed to enquire whether CODESA 2 will address the principled decisions taken at a Working Group or whether it will look to completed legislation.
4. It was agreed that initial and final draft forms of legislation stemming from work in a Task Group should be submitted via Working Group 5 to the Working Group originating the principled decision before conclusion.
5. It was agreed that queries regarding legislation being drafted should be sent in writing to the Steering Committee originating the principled decision for clarification, to be supplied in writing.
6. It was agreed that, if no clarification is obtained, then the matter should be raised at a meeting of all Steering Committee representatives and the Secretariat for clarification in writing. The possibility of the convenor of the Task Group being invited to attend was noted.
7. It was agreed that the Terms of Reference of Sub-Group 2 should be amplified by a new section (4) to read (from the wording of Working Group 5 Terms of Reference):

"To prepare, in draft form, the documentation which is required for effect to be given to such agreements."

8. It was agreed to recommend that Working Group 5 refers to its Steering Committee and the DMC that a procedure for the transmission of draft legislation to Parliament, approved by CODESA, be agreed upon.
9. It was agreed that all submissions from outside bodies on legislation being handled by Working Group 5 be referred directly to the Working Group originating the principled decision on that legislation for its comment and handling.
10. It was agreed that the advertising of final draft legislation for public comment, together with time limits (after agreement has been reached with the Working Group originating the principled decision) be undertaken by Working Group 5, operating in conjunction with the Secretariat.
11. It was agreed that:
 - 11.1 When necessary, small groups of legal drafting experts be constituted, each group to handle a specific legislative task.
 - 11.2 Each participating organisation at CODESA should have the right, individually or jointly, to nominate an expert for such a drafting group.
 - 11.3 Each drafting group should gain its Terms of Reference from, and report back to, the appropriate task group.
12. The following points from the minutes of Working Group 3 and its Steering Committee were noted:

Page 314/315 Item 7.3

Page 318 Item 5.4

Page 322 Item 3.7

Page 335 Item 6.4



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REPORT FROM TASK GROUP 4 OF SUB-GROUP 2 OF WORKING GROUP 5

(Adopted at the meeting of 9 March 1992, without amendment)

Rapporteur: Mr L Wessels

1. It was noted that no principled decisions had been taken by Working Group 4, although sub-groups of the Working Group were formed on the 11 February. It was agreed that the convener of Task Group 5 should consult with the chairpersons of the sub-groups of Working Group 4 to learn what progress has been made.
2. It was agreed that the submissions to Working Group 4 should be studied in order to establish what commonality exists.
3. It was agreed that, in order to be pro-active, legislation will be needed to deal with the following:
 - 3.1 Testing the will of the people.
 - 3.2 Citizenship.
 - 3.3 The transfer/disposal of assets of the TBVC states.
 - 3.4 The future of the civil service in the TBVC states.
 - 3.5 The political, legal and constitutional implications of the re-incorporation of the TBVC states into South Africa.
4. It was agreed that the position of experts should be discussed at the meeting of the full sub group.
5. It was agreed that submissions should reach Task Group 4 through the Steering Committee.

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