

REPORT OF WORKING GROUP 5 TO CODESA 2

1. Introduction

The Terms of Reference given to WG5 by CODESA 1 (Addendum) involved inter alia:

- 1.1. The monitoring of progress made in Working Groups 1-4
- 1.2. The establishment of time frames within which Codesa process should operate and
- 1.3. The identification of legislation emanating from the Codesa process and the drafting thereof.

In order to conduct its work more effectively, it was necessary to clarify how certain issues emanating from the other Working Groups should be dealt with, and after consultation with the DMC it was agreed that issues pertaining to the administrative process and procedure should be addressed by the DMC, and issues pertaining to political process and content should remain the responsibility of WG5.

2. Progress Made:

2.1. Structure of WG5

It was decided at an early stage that WG5 should be divided into two Sub-groups; Sub-group 1 dealing with time frames, and Sub-group 2 dealing with legislation. Each Sub-group divided into 4 Task Groups, viz 1-4, which dealt with progress being made in Working Groups 1-4 respectively.

2.2. Identification of key issues

After studying the minutes of the other Working Groups, WG5 identified and recorded those key issues which it felt should be addressed by Codesa.

2.3. Modus Operandi of Working Group

In order to effectively carry out its duties, WG5 established the following:

- 2.3.1. A process of studying the minutes of the other WGs so as to identify tasks for WG5 such as establishing time frames and the need for legislation.
- 2.3.2. A mechanism for dealing with decisions which require draft legislation so that the final documents correctly fulfil the requirements arrived at by the Codesa process.
- 2.3.3. A proposal for a committee of suitably qualified experts to assist with the drafting of legislation.

2.4. Proactive identification of required legislation

In the absence of firm proposals for new legislation, WG5 decided to be proactive and identified the following:

2.4.1. Discriminatory legislation

Using a Law Commission draft report, a list of 68 acts was examined to determine which contain racial and gender discriminatory provisions which may require attention.

2.4.2. Electoral Bill

Deciding that if truly democratic elections are to be held in the near future, a suitable electoral act will be required. WG5 began an examination of existing electoral acts in preparation for the drafting of a new act for South Africa.

3. Monitoring Role of Working Group 5

Problems were experienced by WG5 in endeavouring to monitor the Codesa process. This resulted in WG5 Steering Committee meeting with the DMC to discuss the problem which led to the following decision being taken:

"Copies of the minutes of all other Working Group plenary sessions, together with summaries of recommendations and agreements emerging from these plenaries, should be made available to WG5 at the earliest possible opportunity."

The lack of real progress in achieving the goals inherent in WG5's Terms of Reference is largely due to the lack of progress in the other Working Groups with regard to clear recommendations concerning time frames and the need for draft legislation.

4. Matters outstanding

4.1. Terms of Reference

Unfortunately, little progress has been made by WG5, the main reason being that by the very nature of its Terms of Reference its work is reactive rather than proactive. This has led to a certain degree of frustration on the part of the delegates serving on WG5.

4.2. Drafting of Legislation

While a mechanism for dealing with decisions that require draft legislation has been arrived at, the following are outstanding matters (see 2.3.2. and 2.3.3.):

4.2.1. The need and/or constitution of a Drafting Committee.

4.2.2. The constituting of a panel of experts

4.2.3. The interaction of a Drafting Committee with existing Codesa structures and

respective governments/administrations regarding draft legislation.

5. Recommendation

The dearth of work for WG5 emanating from other Working Groups has led to much frustration within WG5 and its members.

It is recommended, therefore, that WG5 should only be brought into session when clear agreements and decisions concerning its Terms of Reference are forthcoming from Working Groups 1-4.



TERMS OF REFERENCE FOR WORKING GROUPS FOR CODESA
WORKING GROUP 5

ASSIGNMENT

Time frames and implementation of Codesa's decisions.

Terms of Reference

1.1 **WHEREAS** the parties at Codesa have committed themselves in the terms set out in the Declaration of Intent as amended from time to time

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:

- 1.1.1 To investigate and report upon all proposals 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.
- 1.1.2 To identify the key issues and problems that need to be addressed.
- 1.1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.
- 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:

- e) to assist in formulating the terms of the legislation or amendments;
- f) realistically attainable time frames;
- g) practical effect of implementation of agreements;
- h) the legality of the process in relation to time frames to be negotiated within the context of constitutional continuity;
- i) any other matters which the working group may consider relevant to its brief.