

**MINUTES OF A MEETING OF THE STEERING COMMITTEE OF WORKING GROUP 2
(CONSTITUTIONAL PRINCIPLES) HELD AT THE WORLD TRADE CENTRE ON
MONDAY, 11.5.92**

DOCUMENTS

1. Minutes of a meeting of the Steering Committee of Working Group 2 (Constitutional Principles) held at the World Trade Centre on Monday, 4.5.92
2. Areas of agreement and areas on which no agreement yet exists on assignment 1 of Working Group 2 prepared by the Steering Committee 27.4.92
3. Proposal prepared by Working Group 2 for submission to principals 5.5.92
4. Proposal for the constitution-making body (ANC)
5. Amendments proposed by the SA Government to proposal prepared by Working Group 2 for submission to principals 12.5.92
6. Amended proposal on CMB for discussion by Working Group 2 Steering Committee 11.5.92 (C Eglin)
7. Amended proposal on CMB, incorporating bi-cameralism, for discussion by Working Group 2 Steering Committee 11.5.92 (C Eglin)

PRESENT : Delegates (See Addendum A)

M Phillips (Secretary)

R Hartley (Minutes)

1. Discussion of Steering Committee Document on Constitution Making Body

- 1.1 The documents listed above were tabled and discussed.
- 1.2 The Steering Committee agreed to modify the document of 5.4.92 and to table it as a working document at the Working Group meeting of 12.5.92.
- 1.3 After modification, the working document read:
 1. *Codesa shall agree to a transitional/interim constitution that will make provision for a constitution making body operating within the framework of that constitution. The agreed transitional/interim constitution shall be submitted to parliament for legislation.*
 2. *Codesa shall consult governments of the self-governing states and other interested parties in the drafting of the interim/transitional constitution.*
 3. *Codesa shall agree on a set of general constitutional principles.*

4. *The interim/transitional constitution shall make provision for:*
- 4.1 *A democratically elected parliament, the structure of which to be decided on, with the power to:*
- 4.1.1 *In terms of agreed procedures, draft a new constitution which shall enshrine and not be in conflict with the general constitutional principles and which will replace the interim/transitional constitution.*
- 4.1.2 *Act as an interim/transitional legislature in terms of such special majorities and general constitutional principles agreed upon.*
- 4.2 *The interim/transitional parliament will be made up of a National Assembly and a Senate. The new constitution shall be drawn up and adopted by the National Assembly in terms of the procedure set out below. Legislative functions will be exercised by both the National Assembly and the Senate in terms of procedures to be agreed upon.*
- 4.3 *Regional government and/or the phasing in of such government including its boundaries, powers, duties and functions in the interim/transitional phase; which boundaries powers, duties and functions shall be entrenched and shall not be amended without the agreement of all the parties in the NA.*
- 4.4 *The composition, functions and procedures of a multiparty interim executive in accordance with the principle of an interim government of national unity.*
- 4.5 *Justiciable civil and political rights during the transition.*
- 4.6 *The separation of powers between the executive, legislature and judiciary according to the principles underlying a constitutional state.*
- 4.7 *Elections for a National Assembly on the basis of proportional representation and universal adult suffrage, half the seats being allocated through national lists and half being allocated through regional lists in order to ensure proper representation of regions and regionally based parties.*
- 4.8 *Decision making on all matters relating to the constitution to be taken in general by a special majority (66,7%, 70% or 75%) of the NA.*
- 4.9 *Decisions on matters relating to regional structures and the distribution of power between central, regional and local levels of government to require a special majority of the regional representatives in the NA in addition to a special majority of all the delegates in the NA.*
- 4.10 *Transitional provisions to ensure that there is no legal, administrative or constitutional hiatus during the interim/transitional*

phase which may include provisions regarding the phasing in of the new constitution.

4.11 *The establishment of an independent mechanism which will be the only body to determine that the general constitutional principles (as referred to in paragraph 3 above) have been enshrined and not contradicted in the final constitution which determination may only be initiated by a party to the NA.*

5. *Codesa shall agree upon special mechanisms to ensure that the NA completes the work of drafting and adopting the new constitution within a specified period of time. The transitional/interim constitution shall remain in force until replaced by the new constitution.*

1.4 The Steering Committee noted Dr Ngubane's point that the document should not be seen as an agreement of the Steering Committee. The Steering Committee also noted Dr Ngubane's proposal that item 3. of the document should include the following sentence: "These shall include the powers, duties and functions of regional government."

The following persons attended the WGSC 2 meeting of 27 January :

Delegate

I Richards (chair)

M J Mahlangu

M V Moosa

J T Delpport

C Eglin

B S Ngubane

P Holomisa

J Slovo