20 AND 21 DECEMBER 1991

AGENDA

Day One

1. OPENING: CHIEF JUSTICE CORBETT
2. PRAYERS
3. CHIEF JUSTICE HANDS OVER TO CO-CHAIRPERSONS: JUSTICE SCHABORT AND JUSTICE MAHOMED
4. OPENING REMARKS BY LEADERS OF DELEGATIONS [15 MIN EACH]
5. ADOPTION AND SIGNING OF A DECLARATION OF INTENT

Day Two

6. CONSIDERATION OF STANDING RULES
7. FORMATION AND TERMS OF REFERENCE OF WORKING GROUPS
8. THE WAY FORWARD: INCLUDING
   - Administration
   - Starting date for working groups
   - Next plenary meeting of CODESA
   - Further participants at CODESA

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PROGRAMME

Friday 20 December

09:30
Participants seated
Photo-session in hall

12:30 - 14:00
Lunch

15:45 - 16:15
Tea

18:30
Cocktail

Saturday 21 December

09:00
Meeting starts

10:30 - 11:00
Tea

13:00
Conclusion
and lunch

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DECLARATION OF INTENT

We, the duly authorised representatives of political parties, political organisations, administrations and the South African Government, coming together at this first meeting of the Convention for a Democratic South Africa, mindful of the awesome responsibility that rests on us at this moment in the history of our country,

declare our solemn commitment:

1. to bring about an undivided South Africa with one nation sharing a common citizenship, patriotism and loyalty, pursuing amidst our diversity, freedom, equality and security for all irrespective of race, colour, sex or creed; a country free from apartheid or any other form of discrimination or domination;

2. to work to heal the divisions of the past, to secure the advancement of all, and to establish a free and open society based on democratic values where the dignity, worth and rights of every South African are protected by law;

3. to strive to improve the quality of life of our people through policies that will promote economic growth and human development and ensure equal opportunities and social justice for all South Africans;

4. to create a climate conducive to peaceful constitutional change by eliminating violence, intimidation and destabilisation and by promoting free political participation, discussion and debate;

5. to set in motion the process of drawing up and establishing a constitution that will ensure, inter alia:

   a. that South Africa will be a united, democratic, non-racial and non-sexist state in which sovereign authority is exercised over the whole of its territory;

   b. that the Constitution will be the supreme law and that it will be guarded over by an independent, non-racial and impartial judiciary;

   c. that there will be a multi-party democracy with the right to form and join political parties and with regular elections on the basis of universal adult suffrage on a common voters roll; in general the basic electoral system shall be that of proportional representation;

   d. that there shall be a separation of powers between the legislature, executive and judiciary with appropriate checks and balances;

   e. that the diversity of languages, cultures and religions of the people of South Africa shall be acknowledged;

   f. that all shall enjoy universally accepted human rights, freedoms and civil liberties including freedom of religion, speech and assembly protected by an entrenched and justiciable Bill of Rights and a legal system that guarantees equality of all before the law.

We agree:

1. that the present and future participants shall be entitled to put forward freely to the Convention any proposal consistent with democracy.

2. 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.
We, the representatives of political parties, political organisations and administrations, further solemnly commit ourselves to be bound by the agreements of CODESA and in good faith to take all such steps as are within our power and authority to realise their implementation.

SIGNATURE(S)

African National Congress
Bophuthatswana Government
Ciskei Government
Democratic Party
Dikwankwelela Party
Inkatha Freedom Party
Inyandza National Movement
Intando Yesizwe Party
Labour Party of South Africa
Natal/Transvaal Indian Congress
National Party
National People's Party
Solidarity
South African Communist Party
Transkei Government
United People's Front
Venda Government
Ximoko Progressive Party

We, the South African Government, declare ourselves to be bound by agreements we reach together with other participants in CODESA in accordance with the standing rules and hereby commit ourselves to the implementation thereof within our capacity, powers and authority.

SIGNATURE

South African Government

Nkosi sikelel' iAfrika. Ons vir jou Suid Afrika.
Morena boloka sechaba sa heso. May the Lord bless our country.
Mudzimu Fhatutshedza Afrika. Hosi katekisa Afrika.
CONVENTION FOR A DEMOCRATIC SOUTH AFRICA

Standing Rules of Procedure for Plenary Sessions

Participants

1. (1) Participants in the Convention shall be the political parties and organizations, the South African Government, and those administrations listed in the Annexure hereto.

   (2) The Convention may resolve to admit additional participants.

   (3) The Convention may admit observers to its meetings, and such observers may be granted the opportunity by the Convention to address its meetings.

Delegates

2. (1) Each participant shall be entitled to be represented by 12 (twelve) delegates who shall constitute its delegation. In addition, each delegation shall be entitled to name up to 5 (five) advisers.

   (2) A participant shall be entitled to substitute a member of its delegation with an alternate member.

   (3) Each participant shall submit and register the names of its delegates, alternates and advisers with the Secretariat at least 48 (forty-eight) hours before a plenary session of the Convention and shall likewise register the name of the leader of its delegation.

   (4) An alternate may not be substituted for a delegate without prior notification to the Secretariat.

   (5) Only duly accredited delegates may participate in the work of the Convention.

   (6) In the event of a dispute concerning the credentials of a delegate, the Management Committee shall rule on the matter.
Agreement

3. (1) Every delegation shall, when called by the Chair to express its position on a proposal or matter before the meeting, have such position stated by the leader of the delegation or a spokesperson appointed by the leader of the delegation.

(2) Agreement will be arrived at by general consensus or, failing that, by sufficient consensus.

(3) Agreement by sufficient consensus will have been reached when consensus is of such a nature that the work of the Convention can move forward effectively.

(4) Disagreeing participants shall have the right to record their objections or dissent.

(5) When disagreement exists, the Chair will allow parties adequate time to consult amongst each other and with their principals before recording any position.

Quorum

4. The Chair may declare a meeting open and permit the debate to proceed when delegates of at least two-thirds of the participants are present.

Speeches and Interventions

5. (1) Every delegate shall be entitled to speak in the debate.

(2) At the opening of a session, the Chair shall call the speakers in the order previously arranged by the Management Committee.

(3) In general, the Chair shall call up speakers in the order in which they signify their desire to speak. The Chair, however, shall ensure that each delegation is afforded a reasonable opportunity to speak.

(4) The Chair shall apply the standard rules applicable to meetings, except as otherwise stipulated herein or in terms of any resolution adopted under rule 9.

The Chair

6. (1) Meetings shall be convened by the Management Committee, but otherwise controlled, adjourned and prorogued by the Chair, who shall be appointed by the Management Committee. The Management Committee shall provide assistance to the Chair in the performance of the Chair’s functions as and when necessary.
(2) If a duly appointed Chairperson finds it necessary to be absent from a meeting or any part thereof, the Management Committee may appoint a temporary replacement for the duration of such absence.

Minutes and Documentation

7. (1) The proceedings of plenary sessions of the Convention shall be recorded and transcribed as expeditiously as possible and the Secretariat shall make the transcript available to all delegates.

(2) All other official meetings of the Convention, including meetings of Working Groups and the Management Committee shall be recorded in full, but only the decisions, recommendations and conclusions shall be minuted and sufficient copies made available to all participants by the Secretariat.

(3) The Management Committee may, in its discretion, make available the full or partial text of any proceedings of the Convention.

(4) A participant may request the Secretariat to circulate relevant documents to other participants.

Access of Media

8. (1) All plenary sessions of the Convention shall be open to the media.

(2) The Management Committee shall determine the extent to which the media shall have access to other meetings of the Convention.

Additional Rules of Procedure

9. The Convention shall adopt whatever additional rules of procedure or make such arrangements as are necessary for the better performance of its business or the conduct of its meetings.

Miscellaneous

10. (1) The Convention may set up committees, working groups or any such subsidiary organs as are necessary for the conduct of its business.

(2) The Management Committee shall supervise the work of the Secretariat and
provide for the technical services of and assistance to the Convention, including the arrangements concerning the venue, security and expenses of the delegates.

(3) The Management Committee shall ensure that reasonable notice is given for the convening of all meetings of the Convention and the provision of the appropriate documentation.
AGREED TERMS OF REFERENCE FOR WORKING GROUPS FOR CODESA

WORKING GROUP 1

1. FIRST ASSIGNMENT

Creation of a climate for free political participation.

1.1 Terms of Reference

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

AND WHEREAS it has been nationally and internationally recognised that a climate for free political participation is an essential element of the transitional phase towards and in a democratic South Africa

AND WHEREAS democracy requires that all the participants in the political process should be free to participate in that process without fear and on an equal footing and on a basis of equality with the other participants

IT IS RECORDED that the terms of reference of the Working Group on the Creation of a Climate for Free Political Participation shall be as follows:

1.1.1 To investigate and report upon all proposals and make recommendations with regard to the actions needed to be taken to foster and establish in South Africa a climate in which all individuals and organisations can participate freely, without interference or intimidation, in all political activity and, in particular, in the processes leading up to the introduction of a new constitution

1.1.2 To identify the key issues and problems that need to be addressed.

1.1.3 To identify of areas of commonality and aspects where agreement already exists between participating delegations.
1.1.4 Specifically, but without vitiating the generality of the above, to consider whether and how the following issues should be addressed:

(a) the finalisation of matters relating to the release of political prisoners and political trials;
(b) the return of exiles and their families;
(c) the amendment and/or repeal of any remaining laws militating against free political activity, including the elimination of all discriminatory legislation;
(d) political intimidation;
(e) the termination of the use of military and/or violent means or the threat thereof of promoting the objectives/views of a political party or organisation;
(f) political neutrality of, and fair access to, State-controlled/statutorily instituted media (particularly the SABC and SATV), including those of the TBVC states;
(g) the successful implementation of the National Peace Accord;
(h) the prevention of violence-related crime and matters giving rise thereto;
(i) the composition and role of the security forces in South Africa and the TBVC states;
(j) the funding of political parties;
(k) the fair access to public facilities and meeting venues;
(l) the advisability of statutory provisions guaranteeing equal opportunity for all parties to establish and maintain their own means of mass communication;
(m) the need for an improvement in socio-economic conditions;
(n) the fostering of a spirit of tolerance amongst political parties;
(o) the role of intensive and continuous educative and informative campaigns in respect of political tolerance, the working of democracy and the processes of Codesa;
(p) the advisability of fair and reasonable access for political parties to all potential voters, wherever they may reside;
(q) any other matters which the working group may consider relevant to its brief.
2. SECOND ASSIGNMENT
Role of international community.

2.1 Terms of Reference
WHEREAS the parties at Codesa have committed themselves to the terms and objectives set out in the Declaration of Intent

AND WHEREAS the validity and acceptability of the process of transition and the outcome thereof internally and internationally, will depend on an open and fair process providing for full and effective participation of all South Africans

IT IS RECORDED that the Working Group on the Role of the International Community shall have the following terms of reference:

2.1.1 To investigate, consider and report upon all proposals and make recommendations with regard to the role that the international community and/or organisations could be asked to play in the formal or informal processes involved in the period leading up to the introduction of a new constitution for South Africa.

2.1.2 To identify the key issues and problems that need to be addressed.

2.1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.
WORKING GROUP 2

1. FIRST ASSIGNMENT
General Constitutional Principles.

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

IT IS RECORDED that the Working Group on General Constitutional Principles shall have the following terms of reference:

1.1.1 To investigate and report upon all proposals and make recommendations with regard to general constitutional principles which should be enshrined in and not contradicted by any other provisions of a new constitution, provided that the present and future participants of CODESA shall be entitled to put forward freely to this Working Group any proposal or matter consistent with democracy for discussion, consideration and recommendation.

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.

2. SECOND ASSIGNMENT
Constitution-making body/process

2.1 Terms of Reference
WHEREAS the parties at Codesa have committed themselves to the terms and objectives set out in the Declaration of Intent as amended from time to time to the establishment of a democratic South Africa, enjoying internal legitimacy and international acceptance

AND WHEREAS it has been agreed that a Working Group on the constitution-making body/process shall be appointed by Codesa in order to formulate proposals and make recommendations on the appropriate body/process to draft a new constitution for South Africa

IT IS RECORDED that the Working Group on a constitution-making body/process shall have the following terms of reference:
2.1.1 To investigate and report upon all proposals and make recommendations with regard to an appropriate constitution-making body/process.

In respect of both the constitution-making process and body:

2.1.2 To identify the key issues and problems that need to be addressed.

2.1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.

2.1.4 In respect of a constitution-making process:

Specifically, but without vitiating the generality of the objective, to consider:

(a) to make recommendations to Codesa regarding the process through which a new constitution may be formulated;
(b) how far the process can be taken by Codesa itself;
(c) at what stage a special constitution-making body, if any, should be constituted;
(d) the role of referenda, if any, in the constitution-making process;
(e) legislative and administrative steps that may be required to reinforce the constitution-making process;
(f) the method of transferring constitutional authority to the new constitution and its structures at national, regional and local level;
(g) any other matters which the working group may consider relevant to its brief.

2.1.5 In respect of a constitution-making body:

In the event of it being recommended that there be a special constitution-making body, then specifically, but without vitiating the generality of paragraph 2.1.1, is to be considered:

(a) its composition
(b) its legal status
(c) its authority including limitations eg principles, procedures, etc that may have been agreed previously
(d) its method of functioning
(e) the status of its decisions
(f) should it be an elected body, the appropriate electoral process
(g) any other matter which the working group may consider relevant to its brief.
ASSIGNMENT

Transitional arrangements/interim government/transitional authority.

1. Terms of Reference

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 has been agreed that a Working Group of Codesa should be appointed to consider the issue of interim government/transitional arrangements/transitional authority

IT IS RECORDED that the Working Group on transitional arrangements/interim government/transitional authority shall have the following terms of reference:

1.1 To investigate, canvass all possibilities and their application and report upon all proposals and make recommendations with regard to the manner in which the country may be governed and managed until the introduction of a new constitution.

1.2 To identify the key issues, processes and problems that need to be addressed.

1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.
ASSIGNMENT
Future of TBVC states.

1. 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 the parties recognise the need to provide for the meaningful and democratic participation, of all the people living in the TBVC states in the process of drawing up and adopting a new constitution for South Africa as well as in all possible transitional arrangements

AND WHEREAS the reality of the current existence of a number of separate but parallel institutions such as different administrations, civil services, armed forces, police forces and judiciaries as well as differing laws in certain instances which presently exist in South Africa, and the TBVC states; calls for a re-evaluation of this situation

AND WHEREAS in the event of re-incorporation the need to ensure that the lives and livelihood of people in the affected territories shall not be subjected to any unnecessary disruption

IT IS RECORDED that the terms of reference of the Working Group on the future Re-incorporation of the TBVC states are as follows:

1.1.1 To investigate and report upon all proposals and make recommendations with regard to the relationships between South Africa, the TBVC states and the people of those states under a new South African constitution.

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 to consider whether and how:
(a) to make recommendations to Codesa regarding the manner in which the constitutional status of the TBVC states may be affected by the outcome of negotiations within the framework of Codesa;
(b) the desirability or otherwise of the re-incorporation of such states;
(c) testing the will of the people concerned regarding re-incorporation or otherwise, of the TBVC states, by acceptable democratic means;
(d) strategies to keep the people of the TBVC states fully informed, especially to avoid unfortunate misunderstandings;
(e) the retention of business confidence, particularly in relation to existing investments in the TBVC states;
(f) land transfers by South Africa to these states;
(g) citizenship;
(h) any other matters which the working group may consider relevant to its brief.

1.1.5 If re-incorporation is decided upon in respect of any TBVC state, matters that will need to be addressed include:
(a) proposals for the re-incorporation into South Africa of a TBVC state;
(b) consider the question of transitional arrangements in those states which want to be incorporated;
(c) the time frames for such a re-incorporation and related processes;
(d) disposal/transfer of assets of TBVC governments;
(e) optimal use of existing infrastructure;
(f) review of development project priorities;
(g) good administration during transition;
(h) the formulation of appropriate measures and steps to be taken to ensure that in the process of re-incorporation of a TBVC state, interruption or disruption in administration and the rendering of services and in the daily lives of people in the affected areas are reduced to an absolute minimum;
(i) consider future of civil service in such states;
(j) the exact form of authority in the TBVC territories;
(k) harmonisation of legislation and taxation;
(l) orderly termination of bilateral and multilateral agreements and treaties;
(m) servicing and repayment of TBVC state debts;
(n) ensuring public accountability of actions taken for the purposes of re-incorporation;
(o) the identification of specific constitutional, legal and political measures and steps which will have to be taken to effect re-incorporation.
ASSIGNMENT
Time frames and implementation of Codesa's agreements.

1. 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;
(g) to assist in formulating the terms of the legislation or amendments;
(h) realistically attainable time frames;
(i) practical effect of implementation of agreements;
(j) the legality of the process in relation to time frames to be negotiated within the context of constitutional continuity;
(k) any other matters which the working group may consider relevant to its brief.