



WORKING DOCUMENTS FOR CODESA 2

**15 & 16 MAY
1992**

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STANDING RULES OF CODESA



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, the South African Government, organizations and 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 Steering 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 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 Steering 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 Steering Committee, but otherwise controlled, adjourned and prorogued by the Chair, who shall be appointed by the Steering Committee. The Steering 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 Steering Committee may appoint a temporary replacement for the duration of such absence.
- (3) All motions ought to be seconded before they are approved of by the Plenary Session as a whole.

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 Steering 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 Steering 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 Steering Committee shall determine the extent to which the media shall have access to other meetings of the Convention.

Additional Rules of Procedure

9. (1) 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.
- (2) All suggestions for the addition or excision of rules should first be submitted to the Steering Committee / Management Committee which will consider them and make recommendations to the Plenary Session.

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 Steering 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 Steering Committee shall ensure that reasonable notice is given for the convening of all meetings of the Convention and the provision of the appropriate documentation.

WORKING GROUP ONE



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 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

CONVENTION FOR A DEMOCRATIC SOUTH AFRICA

- 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 as amended from time to time

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.



REPORT OF WORKING GROUP 1 TO CODESA 2

1 Assignments and Terms of Reference

Working Group 1 was allotted the following assignments and accompanying Terms of Reference:

Assignment 1: The Creation of a Climate for Free Political Activity

- 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 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 for 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.

Assignment 2: The role of the International Community

- 1.2.1 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.
- 1.2.2 To identify the key issues and problems that need to be addressed.
- 1.2.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.

2 Formation of Sub-Groups

At its first meeting on 6 February 1992 the Working Group resolved to establish 3 sub-groups to deal with its Terms of Reference under the following headings:

- 2.1 Sub-Group 1: "Completing the Reconciliation Process"
(a,b,c and q)
- 2.2 Sub-Group 2: "Continuing the Security and Socio-Economic Process"
(d,e,g,h,i,m,n,o and q)
- 2.3 Sub-Group 3: "Creating a Climate and Opportunity for free Political Participation"
(f,j,k,l,n,o and q)

It was further resolved that priority be given to assignment 1, and that assignment 2 be addressed on the basis that participating organisations may raise associated issues under assignment 1.

Thereafter the WG met in the Sub-Groups, until its second plenary meeting held on 28 April 1992. The WG held its last meeting on 5 May 1992.

During this period an elected Steering Committee of 9 members of the WG met on a regular basis to assess and guide the work of the Sub-Groups.

3 Administrative

- 3.1 The various organs of the WG 1 met as follows:

WG 1 Plenary : 3 meetings;

WGSC	:	10	meetings;
Sub-Group 1	:	8	meetings;
Sub-Group 2	:	10	meetings;
Sub-Group 3	:	7	meetings;
Task Group	:	3	meetings;

3.2 The following submissions were received:

3.2.1 Internal: 98
3.2.2 External: 102

Oral submissions:

3.2.3 Dr John Hall, chairperson of the National Peace Committee of the NPA.

3.2.4 Dr Antonie Gildenhuys chairperson of the National Peace Secretariat of the NPA.

3.3 Matters discussed, agreed on and outstanding are dealt with below according to the specific Terms of Reference.

4 (a) The finalisation of matters relating to political prisoners and political trials.

4.1 The matter was extensively discussed by Sub-Group 1 on 11 February 1992.

4.2 It was agreed that the release of political prisoners is a priority in the completion of the reconciliation process.

4.3 It was agreed that, in view of the existing bilateral agreements between the SA Government and the ANC, the said parties should pursue their bilateral talks relating to political prisoners and the return of exiles and report to the SG on progress made.

4.4 At subsequent meetings of the SG the SA Government and the ANC reported that discussions between them as envisaged in paragraph 4.4 were continuing satisfactorily and that a report will in due course be made to WG1. To date no such report has been received by WG1.

4.5 It was further agreed that, with the exception of the reports on the bilateral meetings between the SA Government and the ANC, any further discussions on the issue of political prisoners will be conditional on submissions being received on the current existence and detention of political prisoners.

5 (b) The return of exiles and their families

This matter was briefly discussed in SG1 and referred to bilateral discussions between the SA Government and the ANC [refer paragraph 4.4 above].

6 (c) The amendment and/or repeal of any remaining laws militating against free political activity, including the elimination of all discriminatory legislation.

6.1 Laws militating against free political activity.

6.1.1 Approach

It was agreed that the approach to the issue of laws militating against free political activity should be the following:

6.1.1.1 Firstly, there needs to be acceptance of the principle of free political activity.

6.1.1.2 Secondly, there needs to be agreement on the definition of general principles underpinning/guidelines for free political activity.

6.1.1.3 Thirdly, attention must be given to specific pieces of legislation.

6.1.2 General principle

Regarding 6.1.1.1 it was agreed that:

6.1.2.1 a climate for free political participation is an essential element of the transitional phase towards and in a democratic South Africa; and

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

6.1.2.3 The South African Government and the NP expressed their reservations on paragraph 6.1.2.2 reserving their point of view until a full resolution dealing with principles governing free political activity was debated.

6.1.3 Definition of/general principles underpinning/guidelines for free political activity

6.1.3.1 There was agreement on the necessity to formulate a definition of, or the principles underpinning, free political activity.

6.1.3.2 Various oral and written submissions on the content of such definition/principles were made and a motion tabled.

6.1.3.3 No consensus has yet been reached on a definition of/general principles underpinning free political activity.

6.1.4 Specific measures

Regarding 6.1.1.3 various oral and written submissions were received about legislative measures which may offend against free political activity. The submissions dealt with the following broad categories of legislation:

6.1.4.1 Emergency measures;

6.1.4.2 Security measures;

6.1.4.3 Measures affecting the funding of political Parties and organisations;

6.1.4.4 Measures affecting the freedom of assembly and association;

6.1.4.5 Measures affecting the free flow of information and access to the media.

6.1.5 Task group

A task group was appointed to inquire into the reform of Emergency and Security legislation. The task group met several times and made appropriate recommendations.

6.1.6 Emergency Legislation

6.1.6.1 It was agreed that:

6.1.6.1.1 A State of Emergency should only be declared on the advice of a multi-party interim executive/cabinet/interim government council. This would only take effect once such a body has been instituted;

6.1.6.1.2 The proclamation of a State of Emergency or an unrest area and any regulations issued in terms thereof should be objectively justiciable in a court of law on, inter alia, the following grounds:

6.1.6.1.2.1 whether the factual situation existing at the time justifies the declaration of the State of Emergency or unrest area in terms of criteria laid down in the Public Safety Act, 1953;

6.1.6.1.2.2 whether the exigencies of the situation justify the powers conferred by regulations made in terms of the proclamation of the State of Emergency or unrest area;

6.1.6.1.3 The provision in the Public Safety Act, 1953, that a State of Emergency can be declared retrospectively, should be repealed.

6.1.6.1.4 It is desirable to include in the Public Safety Act, 1953:

6.1.6.1.4.1 Extended provisions for Parliamentary control of a State of Emergency;

6.1.6.1.4.2 A provision for certain non-derogable rights;

6.1.6.1.4.3 Provisions for certain procedural controls over detention without trial.

6.1.6.2 It is recommended that the timing of the implementation of the various agreed proposals be negotiated as a matter of urgency amongst the parties.

6.1.7 Security Legislation

It was agreed that:

- 6.1.7.1 Special measures are necessary to deal with the threat to the public peace and order during the transitional period;
- 6.1.7.2 In the light of 6.1.7.1, the Internal Security Act 1982, and other relevant legislation be scrutinised with a view to the substitution of the said provisions so as to bring legislation in line with the criteria mentioned in 6.1.7.1., and to remove the emphasis from national security
- 6.1.7.3 A task group be appointed to undertake the task referred to in 6.1.7.2, taking cognisance of relevant discussions by and submissions to SG1.

6.1.8 Procedure

Regarding the procedure to be followed in the repeal and/or amendment of legislative measures militating against free political activity, it was agreed that the following three options (not necessarily exhaustive or mutually exclusive) should be examined:

- 6.1.8.1 separate pieces of legislation amending/repealing individual statutes and/or the use of a General Law Amendment Act;
- 6.1.8.2 amendment/repeal of offending legislation combined with the enactment of a interim statute dealing with freedom of association, assembly and speech against which any outstanding offending measures may be tested.
- 6.1.8.3 the enactment of an Interim Bill of Rights against which offending legislation can be tested;

6.2 Discriminatory Legislation

- 6.2.1 It was agreed that the following categories of discriminatory legislation can be identified and that individual legislative measures within each category should be dealt with in the manner outlined as being appropriate for that category:
 - 6.2.1.1 Discriminatory legislation which impedes the creation of a climate for free political activity. Such legislation must be identified by WGI and amended/repealed as soon as possible.
 - 6.2.1.2 Discriminatory legislation which emanates from the nature of the tricameral constitution. This should be dealt with at the time and in the manner decided on by negotiation on the phasing out of the tricameral constitution and the own affairs dispensation.
 - 6.2.1.3 Discriminatory legislation which need to be amended/repealed to support and enhance the process of democratisation. These should be identified as soon as possible and suitably amended/repealed.
 - 6.2.1.4 Discriminatory legislation which needs to be removed in the interests of society. These should be dealt with at the relevant stage of the democratisation process.
 - 6.2.1.5 Discriminatory legislation which would infringe upon an agreed Bill of Rights. These should be dealt with through the procedures that stand to be created in a new constitution which will include a justiciable Bill of Rights.
- 6.2.2 The WG received proposals on discriminatory legislation which falls in the above categories and which should be amended and/or repealed. The discussions on these

proposal are incomplete and it was agreed that the task group constituted in terms of para 6.1.7.3 above, or any other mechanism set up by Codesa, discuss the proposals regarding discriminatory legislation which falls within categories 6.2.1.1 and 6.2.1.3 above with a view to making appropriate recommendations. Such task group or appointed body should report to Codesa or any other appropriate executive body that may be set up by Codesa.

- 7 (d) **Political Intimidation** "Any action or set of actions committed by an individual, organisation, political party, government represented at CODESA, as well as the self governing territories or any agency of such government or self governing territory, that is designed by the use or the threat of use of force or violence to disrupt or interfere with the legal rights of an individual, for instance; the Right to freedom of expression or opinion; the Right of freedom of association; the Right of freedom of movement.

It was agreed that:

7.1 All political disputes between parties be resolved peacefully.

7.2 Political Intimidation be defined as follows:

Any action or set of actions committed by any individual, organisation, political party, government represented at CODESA, as well as the self-governing territories or any agency of such government or self-governing territory, that is designed by the use or the threat of use of force or violence to disrupt or interfere with the legal rights of an individual, inter alia:

- 7.2.1 the right to freedom of expression or opinion;
- 7.2.2 the right of freedom of association;
- 7.2.3 the right of freedom of movement.

7.3 In particular, the following shall be considered forms of political intimidation:

- 7.3.1 to kill, injure, apply violence to, intimidate or threaten any other person or his/her political beliefs, words, writings or actions;
- 7.3.2 to remove, disfigure, destroy, plagiarise or otherwise misrepresent any symbol or other material of any other political party or organisation;
- 7.3.3 to interfere with, obstruct or threaten any other person or group travelling to or from or intending to attend, any gathering for political purposes;
- 7.3.4 to seek to compel, by force or threat of force, any person to join any party or organisation, attend any meeting, make any contribution, resign from any post or office, boycott any occasion or commercial activity or withhold his or her labour or fail to perform a lawful obligation; or
- 7.3.5 to obstruct or interfere with an official representative of any other political party or organisation's message to contact or address any group of people;
- 7.3.6 the possession, carrying or displaying of dangerous weapons or firearms by members of the general public when attending any political gathering or meeting.

- 8 (e) **The termination of the use of military and/or violent means or the threat thereof to promote the objectives/views of a political party or organisation.**

This matter was not discussed separately, but dealt with within the broader context of the subject matter discussed in SG2.

9 (f) Political neutrality of, and fair access to the State-controlled/statutorily instituted media (particularly the SABC and SATV) including those of the TBVC states

9.1 **Independent Body To Regulate Telecommunications Sector:**

9.1.1 **Establishment**

It was agreed that an independent, neutral body be established to regulate the telecommunications sector, such body to be created in terms of an Act of Parliament.

9.1.2 **Functions**

It was agreed that such an Independent Body would have as its principal functions:

9.1.2.1 The regulation of the utilisation of the electromagnetic spectrum, including the allocation of licences and the determination of licence conditions according to an agreed set of standards.

9.1.2.2 The appointment of a suitable structure to monitor the proper exercise of licence conditions.

9.1.3 **Powers**

9.1.3.1 It was agreed that the powers of the Post Master General in relation to telecommunications shall be transferred to the Independent Body.

9.1.3.2 It was further agreed that the Independent Body would have the following powers:

9.1.3.2.1 To ensure that a wide range of telecommunication services, including regional and community broadcasting program services, is available throughout South Africa.

9.1.3.2.2 To ensure fair and effective competition in the provision of such and related services.

9.1.3.2.3 To ensure fair and equitable opportunity to opinion formers to express their views freely.

9.1.3.2.4 To ensure optimum affordable research and development with a view to improving the utilisation of the available electromagnetic spectrum and to introduce technologies to improve signal quality.

9.1.3.2.5 To ensure impartial control of all broadcasting by laying down norms and standards for more equitable and fair access for all political parties to air time on broadcasting services.

9.1.3.2.6 To work out guidelines for the impartiality of news and current affairs programmes on all broadcasting services.

9.1.3.2.7 To take punitive measures against broadcasters who violate

provisions of the code of conduct, or to suspend or withdraw licences if licence conditions are not complied with.

9.1.3.2.8 To deal with complaints by the public and political parties.

9.1.3.2.9 Such other powers as may be expedient.

9.1.4 Name of Independent Body

It was agreed that such Independent Body should be called either SAITA (South African Independent Telecommunications Authority) or SAITCOM (South African Independent Telecommunications Commission) but there was no consensus on which of the two names is the most desirable.

9.1.5 Constitution of Independent Body

It was agreed that:

9.1.5.1 Members of the Independent Body shall be South African Citizens of merit who act in the public interest.

9.1.5.2 No board member shall be an office bearer of any political organisation or have a vested interest in the film and broadcasting industries, or any other conflicting interest.

9.1.6 Appointment Procedures

It was agreed that organs of civil society shall be invited, inter alia, by advertisement in the press, to nominate names to either CODESA or the interim structure, whichever is appropriate at the time, bearing in mind the urgency of the matter, for purposes of preparing a short list of names from which the board of the Independent Body can be appointed.

9.1.7 Accountability and Finance

9.1.7.1 It was agreed that the Independent Body shall be accountable to the executive of the interim constitutional authority, provided that once a representative Parliament comes into being such a body shall be accountable to Parliament or one of its standing committees; further provided that the independence of such a body shall not be impinged upon in any way whatsoever.

9.1.7.2 The extent of the Independent Body's accountability shall be dependent upon the method of financing such a body. In this regard various methods are possible and should be considered.

9.1.8 Licensing procedures, conditions and standards

It was agreed that the above matters should devolve upon the Independent Body.

9.1.9 SABC

There was no consensus on a proposal regarding the immediate reconstitution of the Board of the SABC.

It was however agreed that, since WG1 had reached consensus that an Independent Body to regulate the telecommunications sector be created at the earliest opportunity:

9.1.9.1 The Steering Committee of WG1 will initiate discussions with the chairperson of the Board of the SABC, and such representatives as he may determine, on the possible early reconstitution of the Board of the SABC, the appropriate ministry to be included in such discussions;

9.1.9.2 The first such meeting to take place before Codesa II;

9.1.9.3 The mechanism for monitoring the performance of the SABC be considered to at the same discussions.

9.1.10 Complaints/Disputes and Monitoring

It was agreed that the Independent Body shall, with Parliamentary sanction by way of legislation, set up structures as may be necessary, inter-alia for:

9.1.10.1 adjudicating disputes;

9.1.10.2 monitoring the efficiency of the licensee and to ascertain whether licensees comply with their licensee conditions;

9.1.10.3 investigating complaints and for giving effect to remedial actions

9.1.11 Code of Conduct

9.1.11.1 It was agreed that the Independent Body shall lay down the standards to be complied with by licensed broadcasters (such standards could be included in a Code).

9.1.11.2 Individual Broadcasters shall compile a Code of Conduct to which they will have to comply and which could be made a condition of their licenses.

9.1.12 The following issues were raised but discussions have not been completed:

9.1.12.1 affirmative action

9.1.12.2 cross-ownership restrictions

9.2 Printed Media

The SA Government agreed to repeal Section 4 (a) and (b) of the Registration of Newspapers Amendment Act of 1982 which relate to Ministerial powers to cancel the registration of a newspaper. The repeal of these sections will be dealt with in a General Law Amendment Bill.

10 (g) **The Successful implementation of the National Peace Accord**

In the light of the current levels of violence that is devastating the prospects of peace and stability in our country, all political parties, organisations, government and administrations, participating in CODESA, in order to signify our common purpose to bring an end to political violence, recommit ourselves both in letter and spirit to the NPA.

Signed: 14 September 1991.

In doing so, we once again join hands in the pursuit of our common belief and objectives; peace and stability for all in our country.

In rallying behind this common objective we acknowledge that the act of having signed the NPA binds us much more than the content of the NPA itself. From that we can, none of us, escape since we have committed ourselves to the NPA and in this way, we have given it life and meaning.

SG2 received several submissions on the implementation of the NPA. In addition, Dr Antonie Gildenhuys, chairperson of the National Peace Secretariat, and Mr John Hall, chairperson of the NPC, were invited to hold discussions with SG2 on the implementation of the NPA. In order to strengthen the NPA, the following matters were agreed to:

10.1 General

It was agreed that:

- 10.1.1 In so far as the promotion of peace is concerned, the leadership of organisations is urged urgently to come together at peace rallies and meetings and to be seen by all to be jointly and collectively working towards peace and stability in our country. These peace rallies and meetings should be held under the auspices of the NPS and should augment the efforts of religious leaders in this regard.
- 10.1.2 The successful implementation of the NPA is fundamental to the creation of a climate for free political activity, peace and stability in our country. In this regard, it is strongly recommended to the signatories of the NPA to take active steps to ensure that they appoint senior office bearer(s) whose specific responsibility it will be to manage the organisation/party's duties in regard to the NPA. It is further recommended that, where possible, such persons be relieved of all other organisational/party obligations to facilitate the above.

10.2 RDRC's and LDRC's (Clause 7.4 of the NPA)

It was agreed that:

- 10.2.1 A full time Chairperson/officer/employee/s be appointed by consensus by each RDRC on the understanding that at least one such functionary will be appointed and that the said functionary will be remunerated for his/her services by the NPA;
- 10.2.2 Delegates to RDRC's and LDRC's who suffer financially as a result of their participation in NPA activities be reimbursed;
- 10.2.3 Organisations participating in the NPA activities be requested not to vary the appointment of delegates to RDRC's and LDRC's as this seriously inhibits the progress of the work of the NPA;
- 10.2.4 Permanent offices with appropriate staff and equipment be established in each area provided for in clause 3.7.5 of the NPA;
- 10.2.5 The NPS should seek to facilitate the participation of delegates on NPA structures, having special regard for the normal work commitments of delegates;

- 10.2.6 The reference to "Business representatives" in clause 7.4.4.3 of the NPA be interpreted to include representatives from professional organisations.

10.3 Justices of the Peace (Clause 7.5 of the NPA)

It was agreed that:

- 10.3.1 In view of the current preparation of legislation to implement clause 7.5 of the NPA, it be recommended that the legislation be put before parliament during its current session.
- 10.3.2 All signatories to the NPA be urged to ensure that the process of consultation required by clause 7.5.1 of the NPA to precede the appointment of Justices of the Peace, proceed expeditiously in anticipation of legislation being passed to provide for matters pertaining to the appointment, powers, etc of the Justices of the Peace.

10.4 Police Reporting Officers (clause 3.2.4 of the NPA)

It was agreed that:

- 10.4.1 All police reporting officers already nominated be appointed to their positions forthwith.
- 10.4.2 In the appointment of members of the special investigation unit appointed in terms of clause 3.2.4.1 of the NPA, sensitivity regarding the acceptability and credibility of members of the SAP be taken into account.

10.5 The inclusion of representatives of tribal authorities in the RDRC's (clause 7.4.4.4 of the NPA)

It was agreed that:

- 10.5.1 The NPC makes special efforts to include representatives of relevant local and tribal authorities into all RDRC and LDRC structures.
- 10.5.2 Special efforts be made to create an awareness of the NPA amongst tribal and local authorities.

10.6 Measures to facilitate socio-economic reconstruction and development (Clause 5.7 of the NPA)

It was agreed that:

- 10.6.1 It should be recommended to the NPA and the RDRCs that they appoint sub-committees on socio-economic reconstruction and development as a matter of urgency;
- 10.6.2 Members of such sub-committees appointed i.t.o. clause 5.7 of the NPA should not only consist of members of the relevant RDRC, but should primarily consist of people with knowledge and expertise in the relevant fields.

10.7 The Police Board (Clause 3.3 of the NPA)

- 10.7.1 It was agreed that the Police Board, in addition to their other functions and duties:

- 10.7.1.1 should advise on ways in which the procedures of the special units

appointed in terms of 3.2.4.1 can be given public credibility;

10.7.1.2 should advise on ways in which the credibility of the police in the community could be improved;

10.7.2 It was further agreed that the reports by the special police investigative units appointed i.t.o. clause 3.2.2.6 which are made available to the NPC, be distributed to the relevant RDRC's and LDRC's as a matter of standard procedure.

10.8 Relations between the community and the police

10.8.1 It was agreed that in many areas improvement of the relationship between the community and the police can contribute towards the resolution of conflict and that all factors that create alienation between the police and communities be addressed urgently by means of, inter alia:

10.8.1.1 Facilitating police/community liaison, including workshops between relevant parties;

10.8.1.2 Ensuring strict adherence by all parties to the provisions of the NPA.

10.8.2 It was recommended to the NPC that they take active steps to achieve greater support for the police and co-operation by communities in effective policing.

10.9 Recommendations by RDRC's to the police

In relation to the SAP, the Venda Police Force, the Kangwane Police Force, the Gazankulu Police Force, the Kwandebele Police Force and the Lebowa Police Force, it was agreed that the RDRCs could make recommendations to the relevant police authorities as to:

10.9.1 The selection of top police officers for township stations;

10.9.2 The appointment of officers commanding and members of special police investigation units established in terms of clause 3.2.2.6.;

10.9.3 Where circumstances permit, determining the nature of police action in conflict areas, i.e. the nature of security force action, the duration of their action, the SAP and SADF mix in these actions, the timeous negotiations between the security forces and community leaders to defuse hostility, etc.

10.10 Self protection units/neighbourhood watch groups (clause 3.7 of the NPA)

It was agreed that:

10.10.1 It be recommended to the NPC that RDRC/LDRC's take urgent steps to encourage the formation of nonpartisan community based self protection groups/neighbourhood watch groups, as provided for in clause 3.7 of the NPA, in order to promote peace and the effective combatting of crime. These self protection units/neighbourhood watch groups should work in close cooperation with the relevant police authorities, as provided for in clause 3.7.5. of the NPA.

10.10.2 It be recommended to the RDRC's/LDRC's to take steps to monitor the activities of such

formations and to encourage cooperation between such formations and the relevant police authorities.

- 10.11 In relation to points 10.7 to 10.9 the meeting encourages all other police forces to adopt a similar approach.

10.12 Dangerous weapons and the possession of illegal fire-arms

It was agreed that:

- 10.12.1 Stronger sentences and other measures be imposed for the possession of illegal firearms and the possession, carrying and displaying of dangerous weapons or other firearms in contravention of the regulations issued as provided for in 3.6.4 of the NPA.

- 10.12.2 The police increase their searches for illegal firearms and other dangerous weapons.

- 10.12.3 A record be kept of the political affiliation (if any) of persons arrested for the possession of illegal fire-arms or dangerous weapons.

- 10.12.4 The above be undertaken in the context of impartial policing.

10.13 Monitoring Commissions

It was agreed that:

- 10.13.1 Regional monitoring commissions be created in each RDRC region.

- 10.13.2 These monitoring commissions be constituted from amongst the parties and organisations represented on these RDRC's and/or drawn from independent, local monitoring agencies or persons.

- 10.13.3 Persons serving on these monitoring commissions be given the necessary training and certification to enable them to efficiently perform their functions in an impartial and objective manner.

- 10.13.4 The assistance of professional dispute resolution agencies be used in the training and development of such local/regional monitoring commissions.

- 10.13.5 The functions of these regional monitoring commissions be:

- 10.13.5.1 to monitor the compliance by the NPA signatories to the code of conduct as provided for in the Accord;

- 10.13.5.2 to monitor the behaviour of parties and organisations at grassroots level in relation to violence;

- 10.13.5.3 to monitor the compliance of parties and organisations to the NPA after it has been brought to their attention that they have been in violation of the Accord.

- 10.13.6 Political parties and members of RDRC's should refrain from making inflammatory remarks in relation to the causes of violence, and should desist from apportioning blame based on unsubstantiated evidence while matters are under review or investigation by the Commission.

10.14 Budget and infrastructure problems

It was agreed that:

- 10.14.1 Codesa calls on the international community to provide financial and other assistance to facilitate the successful implementation of the NPA.
- 10.14.2 It be recommended to the National Peace Secretariat that it prepares and submits a budget to government outlining the funding requirements of the peace process, as provided for in clause 6.12.5 of the NPA.
- 10.14.3 It be further recommended to the National Peace Secretariat to take active steps to solicit assistance from local sources in order to obtain funding for the NPA. These steps include the holding of peace musical concerts, peace sports events, and other such activities; as well as approaches to the business sector in this regard.

10.15 Commission of Enquiry Regarding the Prevention of Public Violence and Intimidation

It was agreed to recommend to the NPS and NPC:

- 10.15.1 to take active steps to implement and monitor the implementation of the recommendations of the Commission.
- 10.15.2 to distribute timeously the relevant recommendations of the Commission to the relevant RDRC/LDRC and the political parties in order to ensure that these recommendations are implemented in accordance with the Code of Conduct for political parties as set out in the NPA.

10.16 Legal Enforceability

It was agreed that it be recommended to the NPC to take active and urgent steps to ensure the legal enforceability of the Code of Conduct for Political Parties as provided for in clause 9.6 of the NPA.

10.17 Transgressions of the NPA by political parties

It was agreed that:

- 10.17.1 The NPC take active steps to ensure that transgressing political parties, on presentation of the Commission's findings to them, respond in writing to the NPC, as provided for in the NPA.
- 10.17.2 The findings of the Commission be made public in order to bring such parties to account for their transgression of the NPA.

10.18 Outstanding matters for discussion:

It was agreed that the following matters relating to the implementation of the NPA should still be discussed:

- 10.18.1 Co-ordination between 3 levels of NPA.
- 10.18.2 Education Programmes/Publicity.
- 10.18.3 Liaison between NPC and organisations and NPC and Codesa.

11 **(h) The prevention of violence-related crime and matters giving rise thereto:**

11.1 It was agreed that:

- 11.1.1 Government security forces should bring those responsible for the smuggling of AK47s and other illegal weapons into the country from the neighbouring states to book as a matter of urgency.
- 11.1.2 Political parties should adhere to the guidelines as set out in the National Peace Accord in so far as mass action is concerned.
- 11.1.3 Socio-economic conditions should be improved to curb the high crime rate.

11.2 Consensus could not be reached on the following:

- 11.2.1 The use of the death penalty as a deterrent to criminal activity.
- 11.2.2 A call by Codesa for the lifting of sanctions as a means of improving socio-economic conditions.

12 **(i) The Composition and role of the security forces in South Africa and the TBVC states**

It was agreed that:

- 12.1 All participants at Codesa commit themselves to the peaceful settlement of political disputes.
- 12.2 National security in South Africa should be sought primarily through efforts to meet the social, political and economic needs of the people.
- 12.3 The security forces in South Africa shall:
 - 12.3.1 be bound by the principle of constitutional supremacy;
 - 12.3.2 be politically non-partisan;
 - 12.3.3 be committed to resolving conflict primarily through non-violent means;
 - 12.3.4 respect human rights, non-racialism and democracy;
 - 12.3.5 strive to be representative of South African society as a whole.
- 12.4 For the purpose of addressing our terms of reference, the WG is satisfied that all the Security Forces should be placed under the control of interim/transitional governmental structures. In this regard, this WG takes notice of the proposals tabled in WG3 to set up preparatory councils including one or more specifically intended to deal with the Security Forces. The WG supports the said abovementioned principle and agrees that the details of such councils be worked out by WG3.
- 12.5 Mechanisms should be implemented to ensure the public accountability of the security forces.
- 12.6 Codes of Conduct for the security forces should be agreed to and implemented.
- 12.7 A programme of orientation, designed with a view to improving security force-community relations, specifically with regard to the respect for human rights, non-racialism and democracy,

should be implemented.

12.8 The following matters are outstanding:

12.8.1 The composition of the security forces

12.8.2 Operations of the Security Forces that may limit free political activity

13 **(i) Funding of Political Parties**

It was agreed that the provisions of the Prohibition of Foreign Funding of Political Parties Act, 51 of 1968, with regard to the receipt of foreign funds by political parties be suspended until a date 6 (six) months from the date of the general election in terms of the provisions of a negotiated new constitution for South Africa.

14 **(k) The fair access to public facilities and meeting venues**

It was agreed that political parties and organisations should have fair access to public facilities and venues without discrimination.

15 **(l) The advisability of statutory provisions guaranteeing equal opportunity for all parties to establish and maintain their own means of mass communication**

The SG received various submissions on this matter, but was unable to discuss it due to a lack of time.

16 **(m) The need for an improvement in socio-economic conditions**

There was agreement on the need for an improvement in socio-economic conditions as an essential part of the reconstruction of societies. However, due to a lack of time, the matter was not further discussed.

17 **(n) The fostering of a spirit of tolerance among political parties**

The SG received various submissions on this issue. It was agreed that a spirit of tolerance needs to be fostered amongst political parties. However, there was no consensus on any further recommendations.

18 **(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**

Various submissions dealing with the above matter were received, however, due to a lack of time, the SG was unable to discuss the matter.

19 **(p) The advisability of fair and reasonable access for political parties to all potential voters wherever they may reside.**

It was agreed that all political parties and organisations should have the right to have reasonable freedom of access to their members, supporters and other persons in rural and urban areas, wherever they may be housed, on public or private property.

20 **(q) Other Matters which the WG may consider relevant to its brief**

The WG agreed to discuss the issue of Mozambican refugees in the South Africa. It was agreed that a joint task force of the SA government, and other involved parties and governments be formed to address the problem of Mozambican refugees, internal refugees and other displaced persons

21 **Assignment II: The Role of the International Community**

21.1 It was agreed that a task group be set up in relation to the process of elections to invite a neutral independent international body. That a task group shall determine:

21.1.1 the terms of invitation;

21.1.2 the scope of responsibility;

21.1.3 all other matters concerning such an undertaking.

21.2 The WG welcomed the initiative of the international community concerning the developments in South Africa. In this regard they considered it helpful that members of the international community acquaint themselves with the circumstance surrounding the violence in our country through fact finding missions with a view to making independent, objective assessments of the facts and realities surrounding the violence.

21.3 The WG recommended that in addition to any other such missions referred to in 21.2, Codesa shall invite an independent international mission.

21.4 Several other proposals were made concerning the possible role of the international community, but lack of time precluded any further discussion on them.

22 **The way forward**

The WG had insufficient time to discuss and agree on the future handling of matters falling within the ambit of its assignments and terms of reference. However, the following proposals are put forward for consideration by Codesa:

22.1 Various agreements reached require implementation by legislation. It is proposed that, in view of the past involvement of the participants with the relevant matters, and the existing expertise, the SC of WG1 be mandated to receive and approve draft legislation from any source. progress made.

22.2 It is proposed that a task group, referred to in 6.1.7.3 above, be set up to discuss and make recommendations on:

22.2.1 The implemenation of agreed amendments to the Public Safety Act, 1953 (6.1.6.2 above);

22.2.2 The substitution of current security legislation (6.1.7.2 above);

22.2.3 Proposals regarding the amendment/repeal of dicriminatory legislation (6.2.2 above).

22.3 It is proposed that CODESA decides on appropriate mechanisms to implement the agreements reached in 21 above (the role of the international community).

22.4 It is proposed that a task group with membership as set out in 6.1.7.3 be set up to discuss and make recommendations on:

- 22.4.1 The implementation of agreed amendments to the Public Safety Act 1953, (paragraph 6.1.6.2);
- 22.4.2 The substitution of current security legislation as referred to in 6.1.7.2 above;
- 22.4.3 Proposals regarding the amendment/reappeal of discriminatory legislation as set out in 6.2.2 above.
- 22.5 This task should report to the SC of WG1.
- 22.6 It is proposed that Codesa decides on appropriate mechanisms to implement the agreements recorded in 21 above (the role of the international community).
- 22.7 It is proposed that a suitable mechanism, which could be WG1, its SC, or a mechanism which stands to be created, be mandated to deal with outstanding matters referred to in paragraphs 6.1.3.3, 6.1.4, 9.1.12, 10.18, 11.2, 12.8 15, 16, 17 and 18 above.
- 22.8 Recommendations by the SC of WG1 should be approved by WG1 in plenary or any other body set up by Codesa. Such a body would finally report to CODESA.

Addendum A

To be read in conjunction with the above report

1. RECOMMENDATIONS AND ADVICE ON THE GENDER IMPLICATIONS OF ISSUES RAISED IN WORKING GROUP 01

1.1 The Free Political Participation of Women

Noting the Terms of Reference of Working Group 01, Items 1.1.4 (k), (p) and (o), the GAC recommends the following:

- 1.1.1 The rights of access of women to public facilities and meeting venues should be ensured, as should their right to meet with political organisations. This recommendation is necessary so that women can participate without fear and on an equal footing in the political process.
- 1.1.2 The right of access of political organisations to public facilities, and their right to meet with potential voters, is meaningless unless women may participate in the democratic process on an equal footing without fear of public or private harassment and intimidation.
- 1.1.3 That the roles mentioned here (Item 1.1.4 (o) of the Terms of Reference of Working Group 1) concerning educative and informative campaigns should be broadened to include specific educational campaigns informing women of, inter alia, their right to vote, particularly in areas where women are unlikely to be reached by usual media.

1.2 Agreements on Political Intimidation and Women

With regard to the agreement reached by sub group 2 of Working Group 1 on the Definition of Political Intimidation, the GAC recommends that the following additions be made to the activities which would, as per the aforesaid agreement, be considered, in particular, as forms of political intimidation (refer to Item 4.2 of the Minutes of the meeting of Sub-Group 2 of Working Group 1, 2 March):

- 1.2.1 To compel women, both within and outside the home, by virtue of the "power" vested in men with whom they may associate, to adopt a particular political position; or to similarly prevent women from engaging in free political activity.
- 1.2.2 To use political patronage in any form that threatens or denies an individuals political, social and economic rights, especially noting that women are frequently the victims of such practices.

- 1.2.3 To sexually harass any individual and thereby prevent him/her from the freedom of the right of expression/opinion, association and movement.

With regards to item 1.3.3 above the GAC defines sexual harassment, in general terms, as sexual advances without express consent, including innuendos or language of a defamatory or offensive nature, in all spheres, including political, social and economic life and in the media.

1.3 Agreements of the Interpretation of the National Peace Accord

With regards to agreements reached by Sub-Group 2 of Working Group 1 re the implementation and interpretation of the National Peace Accord, the GAC recommends that the following additions be made (refer to Item 6.1.6 and Item 6.4.1, respectively, of the minutes of Sub-Group 2 of Working Group 1, on 7 April):

- 1.3.1 That the reference to "Business representatives" in clause 7.4.4.3 of the NPA be interpreted to include representatives from professional and women's organisations.
- 1.3.2 The NPA make special efforts to include representatives of relevant local and tribal authorities as well as local women's structures into all RDRC and LDRC structures.
- 1.3.3 With regards to item 1.4.2 above (and with specific reference to items 6.1.6, 6.3.2, 6.4.2, 6.5.2, 6.6.2, 6.6.3 and 6.8 of the minutes of the meeting of WG1 SG2, 7 April) the GAC recommends that as part of its input on the interpretation and implementation of the NPA Working Group 1 recommend that women be included in all structures created by the NPA, RDRC's and LDRC's to ensure that gender implications of all decisions and functions of these structures, are considered.

1.4 On the Security Forces, Free Political Activity and Women

Noting that the many acts of violence committed against women allegedly by the security forces are a source of grave concern, the GAC recommends that:

- 1.4.1 any such crime be immediately investigated;
- 1.4.2 violent crime against women be treated with stricter and more stringent disciplinary action;
- 1.4.3 when searches of homes are conducted, women police must accompany male police;
- 1.4.4 the position of high ranking officers who are unable or unwilling to maintain adequate control over their forces be urgently reviewed;
- 1.4.5 any peace keeping force should include women within their structures at all levels;
- 1.4.6 the gender sensitivity of these forces (refer to item 1.5.5) be monitored;
- 1.4.7 all individuals be informed of their rights with regard to the role and functions of these forces (refer to item 1.5.5);
- 1.4.8 these forces (refer to item 1.5.5) be trained to be gender sensitive and to ensure that they do not violate the rights of women.

Noting the lack of agreement in Working Group 1 over the definition of political prisoners, no recommendations with regards to the gender implications of this issue could be agreed upon.