



ANC

Negotiations Bulletin

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<p>NO AGREEMENTS AT CODESA II</p>	<p>At CODESA II, held on 15th and 16 May 1992, draft agreements were tabled from the following Working Groups: Working Group One - creation of a climate for free political activity. Working Group Three - Interim government, phase one. Working Group four - Reincorporation of the TBVC States.</p> <p>No report was tabled from Working Group Two on the Constitution-Making body. This was a result of the deadlock in Working Group Two.</p> <p>As a result of the deadlock on the Constitution-Making body, CODESA II did not enter into any agreements whatsoever. It is the view of the ANC that the agreements from each of the five Working Groups form part of a single package. The mandate of the ANC's negotiators was not to enter into piecemeal agreements.</p> <p>The Constitution-Making body and the Constitution-making process is at the heart of the negotiations. All other agreements, like Climate creation, Interim Government and Reincorporation of the TBVC States are meant to facilitate Constitution-Making.</p> <p>The 1992 January 8th Statement makes reference to the relationship between agreement on Interim Government and agreement on a Constituent Assembly as follows: "There cannot be any point in setting up an Interim Government if this principle (the principle of a democratically-elected constitution -making body) has not been adopted" The ANC will continue to be guided by this approach.</p>
<p>WHY WAS THERE NO AGREEMENT ON THE CONSTITUTION-MAKING BODY ?</p>	<p>Many people have been left with the impression that the deadlock was merely over percentages (i.e. should decisions be taken by special majorities of 66,7%, 70%, or 75%) The conflict over the percentages is a symptom of a much deeper problem. So what was the real issue at stake?</p> <ul style="list-style-type: none"> - All parties had agreed that a democratically elected Assembly would write the new constitution. - All parties had agreed that this body would be called a National Assembly and would also act as an Interim Parliament. - All parties had agreed that CODESA will draft an Interim Constitution to give legal effect to the elected Constitution-Making body and Interim Government. <p>The ANC and other Patriotic Front Organisations at CODESA agreed to the idea of an interim constitution drafted by CODESA provided that it would be replaced as a whole by a new Constitution drafted by the National Assembly.</p> <p>The regime, having agreed to an elected Constitution-Making body, set such stringent conditions that the National Assembly would take many years to draft a new Constitution. This would mean that the Interim Constitution would remain in force and may even become the final Constitution. This was the trap set by the National Party. We were therefore forced to deadlock rather than make such an unacceptable compromise.</p> <p>The regime wanted the following:</p> <ul style="list-style-type: none"> • SENATE : The regime wanted the agreement to say that the decisions of the elected National Assembly would be subjected to the veto of an undemocratically constituted senate. • REGIONS : The regime wanted agreement that the Interim Constitution will define the

	<p>boundaries, powers, functions and structures of regions and that the elected National Assembly would not be able to change this</p> <p>DECISION-MAKING: The regime wanted decisions in the National Assembly to be taken by a 70% majority and a 75% majority for decisions relating to the Bill of Rights, regions and the structure of government</p> <p>The ANC's position was that the National Assembly takes its decision by a 66,7% majority in the National Assembly. However, the ANC and other Patriotic Front Organisations offered a last minute compromise position of 70% for all decisions relating to the constitution and 75% for the Bill of Rights if all other conditions were agreed to by the regime.</p> <p>In addition, the ANC proposed that a deadlock - breaking mechanism should be agreed upon before hand as the National Assembly may never be able to take decisions with such high percentages.</p> <p>The ANC therefore proposed that, if within six months the National Assembly is unable to agree on a new constitution, then a constitution which has the support of over 50% of the delegates should be put before the people in the form of a referendum for adoption.</p> <p>When the regime rejected this compromise position, an impasse was reached. The ANC announced in Working Group Two that it was withdrawing the compromise proposal.</p>
<p>THE WAY FORWARD</p>	<p>The ANC would now return to its original demand for a democratically-elected Constituent Assembly whose decisions shall be taken by a two-thirds majority.</p> <p>The ANC would also be engaging in consultation with its regional structures and allied organisations in order to determine a way forward.</p>
<p>THE WAY FORWARD FOR CODESA.</p>	<p>Regarding the future of CODESA, the following resolution was adopted at CODESA II:</p> <p>"1. The Management Committee is extremely conscious of the fact that the participants in Codesa entered the negotiations process in the belief that it can take our country to a stable order. We have a responsibility to approach our task in such a manner that the confidence of the participants, and our people, in the negotiations process is reinforced.</p> <p>2. In order to promote better co-ordination and improve efficiency and effectiveness, Codesa II mandates the Management Committee as follows:-</p> <p>2.1 The Management Committee shall suspend the work of the Working Groups with the mandate to convene any Working Group if necessary.</p> <p>2.2 The Management Committee shall be given responsibility for resolving all outstanding matters of Working Groups.</p> <p>2.3 The Management Committee shall examine all Working Group agreements with a view to establishing what work can be done in order to facilitate implementation.</p> <p>2.4 The Management Committee shall establish such structures (e.g. technical committees, sub-committees, Working Groups) as are necessary to assist the Management Committee in accomplishing the tasks allotted to it.</p> <p>2.5 The Management Committee shall call a Codesa Plenary with a suitable representation as a matter of urgency to adopt all agreements and to receive a report on all matters which have been assigned to it by Codesa II having regard to the scheduled end of the current session of Parliament.</p> <p>2.6 The Management Committee be given the authority to constitute a mechanism which will draft all the legislation required as a result of agreements reached at Codesa.</p> <p>2.7 Subject to 2.5 above, the Management Committee be authorised to exercise such authority, as is necessary, to ensure that the objectives of the Declaration of Intent are attained; including the power to implement any agreement reached by Working Group 1 and also any other agreements falling within its mandate without summoning a plenary session of Codesa and that it also be given the power to increase the representation of individual parties/ administrations/ organisations or governments on the Management Committee."</p>