

THESE ARE DRAFT MINUTES, AS APPROVED BY THE CHAIRPERSON. THEY ARE CONFIDENTIAL AND RESTRICTED TO THE MEMBERS OF THE WORKING GROUP, THE DAILY MANAGEMENT COMMITTEE AND THE MANAGEMENT COMMITTEE. THEY ARE STILL SUBJECT TO RATIFICATION BY THE WORKING GROUP SUB-GROUP AT ITS NEXT MEETING.

**MINUTES OF THE SIXTH MEETING OF WORKING GROUP 1 SUB-GROUP 1 HELD AT THE WORLD TRADE CENTRE ON 31 MARCH 1992 AT 13H30.**

**PRESENT : SEE ADDENDUM A**

E Samuels (Chairperson)  
A Schoeman (Minute taker)  
T Motumi (Secretary)

**1. Convenor's Opening Remarks.**

- 1.1 The convenor welcomed the delegates. He informed the meeting that he was requested by the Steering Committee to replace D Dalling during his absence. He complimented D Dalling on the excellent leadership provided to this Sub-Group. He further thanked MB Webb, who stood in for D Dalling last week.

**2. Apologies.**

- 2.1 A written apology was received from MJ Mahlalela (Inyandza National Movement)

**3. Adoption of Agenda.**

- 3.1 The agenda was adopted with the addition of point 9.1 Removal of major obstacles.

**4. Ratification of Minutes.**

- 4.1 The minutes were adopted with the following amendments:
- 4.1.1 Points 6.2.2 and point 6.2.3 should be reversed.
  - 4.1.2 Points 8 and 8.1 should refer to refugees and not political refugees or prisoners.
  - 4.1.3 A corrected ADDENDUM A would be made available to the meeting.

**5. Continuation of discussion:**

- 5.1 Report on the release of political prisoners by the South African Government and ANC
- 5.1.1 The ANC and the South African Government reported that discussions are continuing, but that no agreement has yet been reached.
  - 5.1.2 The Sub-Group requested the ANC and the Government to submit a progress report to the Sub-Group at the next meeting. This report should outline areas of commonality and disagreement.
  - 5.1.3 The Sub-Group will discuss at its next meeting whether the parties have made progress or not.

- 5.1.4 The Sub-Group stated that it regards the resolution of problems surrounding the release of political prisoners to be urgent. The meeting urged the ANC and the South African Government to pursue their deliberations in this spirit.
- 5.2 Suspension of executions in the transitional period.
  - 5.2.1 The South African Government and the Labour Party submitted documents on the suspension of executions. In the light of the suspension of executions by the South African Government the meeting agreed not to pursue the issue.
- 5.3 Report of task force on the emergency/security legislation and principles for testing such legislation.
  - 5.3.1 The task force reported that it has not met since the last meeting.
  - 5.3.2 The meeting requested the task force to continue and to fulfil its mandate.
  - 5.3.3 The Sub-Group reached preliminary consensus on the following principles regarding the possible amendment of security legislation specifically the Public Safety Act 3 of 1953:
    - 5.3.3.1 That the State President may only declare a State of Emergency on the advice of the interim executive authority/ cabinet/ government council.
    - 5.3.3.2 That regulations issued in terms of the declaration of a State of Emergency or unrest area cannot be made retrospectively, and must take effect from the time of its actual declaration.
    - 5.3.3.3 That the proclamation by the State President or minister, of a State of Emergency or unrest area respectively, in terms of the procedure laid down, will be objectively justiciable in a court of law.
  - 5.3.4 Delegations reserved their right to consult with their principals, before the meeting reaches final consensus.
  - 5.3.5 Discriminatory legislation or legislation that may inhibit free political activity.
  - 5.3.6 The meeting agreed that discussion on this issue would continue at the next meeting.
  - 5.3.7 Delegations were requested to consult, with their principals, on their approaches to the powers conferred on administrative authorities in terms of the Internal Security Act in respect of:
    - 5.3.7.1 The banning of organisations;
    - 5.3.7.2 Detention without trial [in terms of 5,29 for 10 days];
    - 5.3.7.3 The detention of witnesses.
- 5.4. Gender issue
  - 5.4.1 The Sub-Group was informed that the CODESA Management Committee



has established a Gender Advisory Committee. This committee will examine and make recommendations on the matter. Delegations are invited to make submissions to this committee.

**6. The question of refugees.**

6.1 This issue was omitted from the agenda but will be discussed at the next meeting.

**7. Report to the Management Committee.**

7.1 The meeting agreed on the report to the Management Committee. (See ADDENDUM C)

**8. Further meetings.**

8.1 The meeting agreed on the dates listed in the Schedule for CODESA Working Group 1 Meetings.

**9. Removal of major obstacles.**

9.1 The IFP presented a paper on the position of the Zulu king.

9.2 The meeting agreed to read the submission. The matter would however be referred to the Steering Committee who would seek clarity on the issue from the Management Committee.

**ADDENDUM A**

**The following people signed the register:**

AFRICAN NATIONAL CONGRESS

CISKEI GOVERNMENT

DEMOCRATIC PARTY

DIKWANKWETLA PARTY

INKATHA FREEDOM PARTY

INTANDO YESIZWE PARTY

INYANDZA NATIONAL MOVEMENT

LABOUR PARTY

NIC/TIC

NATIONAL PARTY

NATIONAL PEOPLE'S PARTY

SOLIDARITY PARTY

SOUTH AFRICAN COMMUNIST PARTY

SOUTH AFRICAN GOVERNMENT

TRANSKEI GOVERNMENT

UNITED PEOPLE'S PARTY

VENDA GOVERNMENT

XIMOKO PROGRESSIVE PARTY

K Asmal

P Maduna

MB Webb

GM Ndzondo

H Bester

J van Eck

JSS Phatang

MH Cunukelo

DRB Madide

A Mncwango

SL Mthimunya

DP Mahlangu

MS Gininda

D Curry

M Loonat

D Patel

M Moolla

GB Myburgh

LH Fick

R Garrib

SM Govender

P Naidoo

E Pahad

F Baleni

HJ Coetsee

DCD Swanepoel

MA Ntshinga

SP Kakudi

MI Moroamoche

S Maja

NE Mulaudzi

ME Ramulondi

BM Tlakula

NM Mtsetwene

E Mathe

## **ADDENDUM B**

**Submission were from the following delegations:**

Democratic Party  
IFP  
Labour Party  
National People's Party  
South African Government



## ADDENDUM C

### Report to the Management Committee.

REPORT TO THE MANAGEMENT OF THE MEETING WORKING GROUP 1 SUB-GROUP 1, ON TUESDAY 31 MARCH 1992.

SG1 of WG1 reports as follows on their meeting held on Tuesday 31 March 1992:

1. Report on the bilateral talks between the South African Government and the ANC in respect of the release of political prisoners.

The parties reported that discussions are continuing. The Sub-Group requested the ANC and the Government to make a progress report to the SG on the 24/4/1992 on their bilateral talks on the resolution of outstanding disputes regarding the release of political prisoners. It is recorded that the SG regards the resolution of problems surrounding the release of political prisoners to be urgent and urged the 2 parties to pursue their deliberations in this spirit.

2. The issue of the suspension of executions was noted.
3. Regarding the possible amendment of security legislation specifically the Public Safety Act 3 of 1953, the SG reached preliminary consensus on the following principles, delegations reserving their right to consult with their principals before final agreement is noted.

That

- a) The State President may declare a state of emergency on the advice of the interim executive authority/ cabinet/ government council.
  - b) That regulations issued in terms of the declaration of emergency or unrest area cannot be made retrospectively, and must take effect from the time of its actual declaration.
  - c) That the proclamation by the State President or minister of the state of emergency or unrest area respectively in terms of the procedure laid down, will be objectively justiciable in a court of law.
4. Regarding the legislative measures which may inhibit free political activity or be discriminatory, it was agreed that the discussion would continue next week.

Delegations were further requested to consult with their principals on their approaches to the powers conferred on administrative authorities in terms of the Internal Security Act in respect of:

- a) the banning of organisations;
- b) detention without trial in terms of 5,29 for 10 days;
- c) the detention of witnesses.

During the discussion, the following possible approaches were, inter alia, mentioned:

- a) The powers stay as they are;
- b) The powers should be repealed;
- c) The powers can only be invoked following the proclamation of a state of emergency
- d) The powers can only be exercised following the consent of the interim government executive.

It was noted that various other options may be available.

5. Concerning the issue of gender, the SG was advised that the CODESA management committee has set up a gender advisory committee which will handle the matter.
6. The question of refugees, was omitted from today's agenda and will be discussed at our next meeting.



## ADDENDUM D

### 10. Summary of Discussion.

- 10.1. Discussion on Item 6.1 of the Agenda.
- 10.2 The ANC stated that bilateral discussions are continuing. They will report when finality is reached.
- 10.3 The SA Government confirmed this position.
- 10.4 The DP asked how much longer the process will take.
- 10.5 The SA Government stated that much progress have been made. Proposals have been exchanged dealing with the issues. The only issues remaining are disputed issues and issues that need intensive study.
- 10.6 The Transkei Government delegation raised the issue agreed on at the last meeting and argued that progress needs to be made.
- 10.7 The SACP stated that they agreed to the bilateral talks believing that this would ensure progress. Progress have however not been made in the bilateral meetings and this is now retarding the progress of the Sub-Group.
- 10.8 The SACP reiterated their position that one political prisoner is one too many and that progress has to be made urgently on this issue.
- 10.9 The UPF raised its concern about the apparent dragging of feet on the issue. They argued that if the two parties cannot resolve the issue, they have to bring it to the meeting where it would be discussed.
- 10.10 The SA Government objected to the statement by the UPF. The Government did not want to submit an incomplete report for this would result in the differences that cannot be resolved by the meeting coming into the open.
- 10.11 The SA Government did however recognise the serious nature of the issue.
- 10.12 The SA Government further stated that the ANC has set up its own commission to examine the issue. The issue is being regarded in a serious light by both parties in the bilateral talks and they should not be accused of hiding something.
- 10.13 The chair drew the attention of the meeting to Point 6.1 of the previous meeting's minutes.
- 10.14 The NIC/TIC stated that the meeting needs to treat the issue in the context of the expectations of its constituency. The meeting have to signal that CODESA is the vehicle to democracy. The issue therefore had to be resolved with a sense of urgency.
- 10.15 The Ciskei stated that it believed that the parties in question are doing their best. The meeting however need a full disclosure from other parties. This will ensure that when the issue is discussed that the whole question can be resolved.
- 10.16 The ANC stated that its commission of enquiry is only investigating the treatment of ex-detainees and what happened to their property.
- 10.17 The ANC stated that it does not have any political prisoners.
- 10.18 The ANC does not object to the discussion of the issue in question before the finalisation of the bilateral talks.
- 10.19 INM stated that the members wanted to know whether progress has been made or not. It has been stated that progress is slow, the INM however felt that the SG have made substantial progress on the Terms of Reference. They did however want the process to be democratised and not centred in bilateral talks.
- 10.20 The NPP stated the bilateral talks should continue and come to agreement. They believed this would facilitate progress but this does not seem to be the case.
- 10.21 The DP stated that the ANC and SA Government should seize the meeting with the problems experienced. It is a matter of utmost urgency that the issue is finalised and resolved.
- 10.22 The UPF stated that it is concerned with the fact that no progress has been made.
- 10.23 Venda stated that a report from the bilateral parties is needed at the next SG meeting.
- 10.24 The Solidarity Party stated that if the bilateral parties feel that a solution is in sight the should be given the opportunity to resolve the issue.



- 10.25 The IYP stated that if the procedure is a problem the meeting needs to address the process.
- 10.26 The Ciskei stated that if there are any other parties, apart from the government and the ANC, who "are possessed with" political prisoners they should disclose the facts pertaining to this.
- 10.27 The IFP asked whether the meeting felt it could not continue without this report.
- 10.28 The SACP replied that the meeting had to continue. They argued that the meeting should however not pursue the issue under discussion further at this stage. The meeting should wait for the bilateral report at the next meeting. That meeting should go ahead whether the bilateral parties made progress or not.
- 10.29 The SA Government stressed that it did not say it will report at the next meeting but that it might report.
- 10.30 The chair suggested that the bilateral process should continue and that the meeting discuss other issues on the agenda.
- 10.31 The UPF supported the SACP suggestion. They stated that the meeting needs a concrete report by the next meeting.
- 10.32 The meeting agreed that the report should list areas of commonality and difference if the parties cannot come to full agreement.
- 10.33 The rapporteur read the report to the Management Committee.
- 10.34 The meeting made certain suggestion re. the phrasing of this report and the rapporteur noted these.
- 10.35 Discussion on Item 6.2 of the Agenda.**
- 10.36 The meeting noted the suspension of executions.
- 10.37 Discussion on Item 6.3 of the Agenda.**
- 10.38 The SA Government reported that the task force has not completed its task due to the work load of CODESA and time constraints.
- 10.39 The ANC agreed with this report but argued that the meeting should proceed and discuss the 'De Bruyn document'.
- 10.40 The ANC stated that it is willing to amend its position on this issue for the sake of progress.
- 10.41 The ANC position is the following:
- 10.41.1 It recommends an amendment to the 1953 Act and not its repeal.
- 10.41.2 This amendment should include the following:
- 10.41.2.1 The declaration of a State of Emergency cannot not be retrospective.
- 10.41.2.2 The Emergency legislation should not discriminate on the grounds of race, gender, ethnicity etc.
- 10.41.2.3 The State of Emergency cannot be declared without the agreement of the Interim Authority.
- 10.41.3 This amendments would by implication affect the TBVC states.
- 10.42 The IFP stated that it appreciates the ANC statement. It however believed that the issues need to be looked at from both sides. Could the ANC compromise not create the impression on the ground that it have hidden motives for retaining Emergency legislation.
- 10.43 The ANC responded by saying that it believed that the legislation in question should be repealed but its compromise was made in the interest of progress. If the SG did not agree on the amendments then the ANC will produce a full amended Act at the next meeting.
- 10.44 The Ciskei stated that the meeting should look at the long term. They raised the question of which methods would be applicable in the short term. The short term solution should be made justiciable and therefore it would be a long term solution as well.
- 10.45 The ANC accepted this proposal and referred to its remark in previous meeting that the State of Emergency is not judge proof.
- 10.46 The DP stated that at present the State of Emergency may be predated but that it is not retrospective in terms of criminal acts. Secondly the DP stated that, The Act currently provide for the declaration of a State of Emergency if in the opinion of the Governor General it should be declared.
- 10.47 The SA Government stated that it is important to note that no crime can be made punishable



- retrospectively.
- 10.48 The SA Government state that the facts on the ground needs to be taken into account in the declaration of a State of Emergency. The emergency on the ground predates the declaration of the State of Emergency. During this period the security forces might be compelled to use extraordinary methods. If the State of Emergency is not made retrospective they be prosecuted for these acts.
- 10.49 The ANC stated that the meeting has not looked at the retrospective increase of penalties.
- 10.50 The ANC further stated that the test for acts by the security forces need to be that of proportionality.
- 10.51 The SA Government cautioned against a rash condemnation of the retrospective clause.
- 10.52 The SACP made a distinction between consultation by the State President and agreement.
- 10.53 The SACP objected to the first saying that no individual should have the right to make such far reaching decisions.
- 10.54 The SACP stated that no government should return to the power the 1953 Act gave the government.
- 10.55 The SACP spelled out the implications for abuse of the retrospective clause.
- 10.56 The SA Government requested clarity from the SACP on the body they believe should have the power to declare a state of emergency.
- 10.57 The SACP replied stating that only an Interim Authority or future cabinet should have such a right.
- 10.58 The UPF restated the SACP point on the difference between consultation and agreement. They also argued that no individual should have the power to declare a State of Emergency.
- 10.59 The meeting agreed on the clause of the report to the MC pertaining to the above discussion.
- 10.60 The ANC stated that the task force could provide 'the flesh' if the meeting agreed on the main principles.
- 10.61 The SA Government stated it was gratified by the ANC's willingness to discuss amendments to the 1953 Act. They felt that the task force will be able to discuss the retrospectivity issue.
- 10.62 The ANC stated that there are three areas of retrospectivity that needs to be examined, creation of a new State of Emergency, retrospective punishment and the four day retrospectivity.
- 10.63 The IFP reiterated the SACP position on the declaration of a State of Emergency by the State President.
- 10.64 **Discussion on Item 6.4 of the Agenda.**
- 10.65 The NPP stated that the meeting have to look at other laws preventing free political activity.
- 10.66 The SA Government argued that some of the issues, such as media, have been assigned to other sub-groups.
- 10.67 The NP stated that free political activity need to be defined before the actual legislation is discussed. The NP asked whether the task group could not look at this issue.
- 10.68 The ANC stated that this seems attractive but the meeting has to guard against off loading too many issues onto the task force.
- 10.69 The IFP wanted to know the most effective way of declaring a State of Emergency.
- 10.70 The SA Government stated that it is not a pleasant task to ban meetings and organisations. The powers to ban can be divided into the powers the minister exercise and powers that may be exercised by functionaries.
- 10.71 The SA Government stated the most effective process is using the power of a responsible person on the ground.
- 10.72 The NP stated that the relationship between individual rights and political freedom needs to be examined.
- 10.73 The IFP stated that there is a fine line between societal rights and the rights of an individual. SA needs to find the balance.
- 10.74 The SA Government recognised the importance of agreement on the general principles.
- 10.75 The SACP requested clarity on procedure.
- 10.76 The chair stated that he believes the participants are in agreement.



- 10.77 The ANC stated that the delegations should consult their principles on their approach to security legislation.
- 10.78 The SA Government stated that the following has emerged:  
10.78.1 The powers must be evaluated against the prospective developments.  
10.78.2 Once the meeting decided the certain emergency powers are necessary, it has to clarify the circumstances in which it could be used and who will have such powers.
- 10.79 The SA Government reserved the right to make documents available on the issue.
- 10.80 The ANC clarified its request. IT stated that it only requested organisations to consult their principles on the possible approaches to the discussion.
- 10.81 The IFP wanted to know whether it was naive to believe that some organisations believed in the retention of security legislation.
- 10.82 The ANC and the SACP answered in the affirmative.
- 10.83 The SACP requested clarity on what they should consult on.
- 10.84 The ANC clarified the issue by reiterating the parties should consult their principals on their approach to the various options listed.
- 10.85 The IFP stated that while it agreed with the ANC on the right of organisations to consult. The IFP have always opposed the issue and will therefore not consult.
- 10.86 The ANC asked the meeting whether it will consult and go away on the basis of the 'Bester document' in the context of the points raised by the NP and the SA Government.
- 10.87 The NP stated that we need to discuss how this relates to the task group.
- 10.88 The chair stated that the task group would continue, but that the meeting should not 'off load' issues onto the task group.
- 10.89 The ANC stated that the meeting should have the prerogative to discuss the issues if the task group does not meet.
- 10.90 **The Venda submission on refugees.**
- 10.91 The meeting agreed that this will be the first issue on the next agenda.
- 10.92 **Gender issue.**
- 10.93 The IFP stated that the meeting should not discuss Item 6.5 for it is a women's issue and women should discuss it. The delegations should therefore invite women to come and address the issue.
- 10.94 10.94.1 The ANC responded saying that the issue of gender affects both male and female. The struggle should not only be fought by women, but by men and women, just as the struggle against racism should be the concern of all people.
- 10.95 The ANC stated that the MC has set up a Gender Advisory Committee to deal with this matter. The delegations are invited to make submission to this structure.
- 10.96 The IFP submitted an oral report on the question of the Zulu king.
- 10.97 The chair asked for direction from the meeting.
- 10.98 The SACP stated that the meeting should minute that the IFP raised the issue. It should not be discussed.
- 10.99 The INM stated that the meeting should not discuss the issue.
- 10.100 The SA Government argued that it is a sensitive issue. The IFP should motivate why the meeting should discuss the issue. The meeting should however get feedback from other sub-groups on the issue and therefore discuss the issue from an informed position.
- 10.101 The chair stated that he will get clarity from the MC on the issue.