[6]

C • O • D • E • S • A

TO : **MEMBERS OF WORKING GROUP 1 : SUBGROUP 1**
CO-ORDINATORS OF WORKING GROUP 1

FROM : **CODESA ADMINISTRATION**

QUERIES : **LOVEDALIA / LORRAINE**

ANC	
Negotiations Comm	(011) 333-4509
J Zuma	(011) 333-4509
P Maduna	(011) 333-4509
BOPHUTHATSWANA GOVERNMENT	
D Schoeman	(0140) 84-2943
K V A C Sehume	(0140) 84-2585
J Esterhuizen	(0140) 22072/3
CISKEI GOVERNMENT	
L S Mqalo	(0401) 95-2148
M B Webb	(0401) 92651
M Ndzondo	(0401) 92650
DEMOCRATIC PARTY	
D J Dalling	(021) 461-0092
H Bester	(021) 461-0092
J van Eck	(021) 461-0092
DIKWANKWETLA PARTY	
J S S Phatang	(01438) 30318
M H Cunukelo	(01438) 30318
INKATHA FREEDOM PARTY	
S Felgate	(0358) 20-2167
D R Benard	(011) 886-1394
A M Mncwango	(03545) 2036
INTANDO YESIZWE PARTY	
M J Mahlangu c/o	
J S Mabona	(01215) 2548
S L Mthimunye	(01215) 2541
D P Mahlangu	(01215) 2684
INYANDZA NATIONAL MOVEMENT	
P M H Maduna	(013140) 606
P R Mahlalela	(01314) 72125
M S Gininda	(01314) 72125

CONVENTION FOR A DEMOCRATIC SOUTH AFRICA

PO Box 307, Isando, 1600, South Africa.
Telephone (011) 397-1198/99. Fax (011) 397-2211

LABOUR PARTY	
E Samuels	(021) 952-7645
M Leonat	
NIC/TIC	
P G Gordhan	(031) 309-2278
N Pillay	(012) 374-4792
D Patel	
M Moola	(011) 333-9090
NATIONAL PARTY	
G B Myburgh	(021) 461-5329
L H Fick	(021) 461-7617
NATIONAL PEOPLE'S PARTY	
M Mohanlall	(021) 403-2971
R Garrib	(031) 907-3555
S M Govender	(021) 403-2971
SOLIDARITY PARTY	
P Naidoo	(031) 43-8296
C F Thandroyen	(031) 43-8296
SA COMMUNIST PARTY	
G Fraser-Moleketi	(011) 836-8366 or 838-2816
E Pahad	(011) 836-8366 or 838-2816
F M Baleni	(0171) 96-4809
TRANSKEI GOVERNMENT	
Z Titus	(0471) 23876
M A Ntshinga	(0471) 23876
S P Kakudi	
UNITED PEOPLE'S FRONT	
c/o Chief PR Minister	(0156) 35244
M I Moroamoche	(0156) 35181
S Maja	(0156) 35104
VENDA GOVERNMENT	
C Neluvhalani :	
Chief Gov Liaison Off	(0159) 23172
N E Mulaudzi	(0159) 22097
M E Ramulondi	(0159) 31628
XIMOKO PROGRESSIVE PARTY	
J C Ackron	(01526) 23140
B M Tlakula	See Above
N M Mtsetwene	See Above
WORKING GROUP 1 SECRETARY	
A Feinstein	(011) 491-6542
RAPPORTEURS	
M Shaik	(031) 309-2278
H Bester	(021) 461-0092
G B Myburgh	(021) 461-5329

C • O • D • E • S • A

FAX MESSAGE

TO	:	**WORKING GROUP 1 SUB GROUP 1**
FROM	:	**CODESA ADMIN**
DATE	:	**30 APRIL 1992**
RE	:	**DRAFT MINUTES - 27 APRIL 1992**

Attached please find the following :

1. Draft minutes for the meeting on 27 April 1992.

Should you have any queries, please do not hesitate to contact us.

Regards.

CONVENTION FOR A DEMOCRATIC SOUTH AFRICA

PO Box 307, Isando, 1600, South Africa.
Telephone (011) 397-1198/99. Fax (011) 397-2211

THESE ARE DRAFT MINUTES. 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 APPROVAL OF THE CHAIRPERSON OF THE WORKING GROUP SUB-GROUP AND TO RATIFICATION BY THE WORKING GROUP SUB-GROUP AT ITS NEXT MEETING.

MINUTES OF THE EIGHT MEETING OF WORKING GROUP 1 SUBGROUP 1 HELD AT THE WORLD TRADE CENTRE ON 27 APRIL 1992 AT 19H30.

PRESENT : SEE ADDENDUM A

E Samuels (Chair)
A Schoeman (minute taker)
T Motumi (Secretary)

1. Convenor's Opening remarks.

1.1 The convenor remarked that the meeting was scheduled to end at 22h30. The previous meeting, scheduled this time of night, became less productive after 21h00. The Sub-Group might therefore end early if possible.

2. Attendance and apologies.

Apologies were received from the following delegates:

HJ Coetsee (SA Government)
M Ndzondo (Ciskei Government)
F Baleni (SACP)
KCAV Sehume (Bophuthatswana Government)

3. Adoption of Agenda.

3.1 Point 6.5 should be included on the Agenda. This should read "Legislation militating against free political activity".

3.2 Point 7 "Report to the Management Committee" should be point 8 of the agenda.

3.3 Point 8 "Assignment 2 : Role of the international community" should be point 7 of the agenda.

3.4 "Any other business" should be point 9 of the agenda.

3.5 "Date of next meeting" should be point 10 of the agenda.

4. Ratification of Minutes.

4.1 The minutes were adopted with the following amendments to the numbering of point 5.3 :

4.1.1 The phrase "The meeting reached <u>preliminary consensus</u> on the following:" should be numbered 5.3.2.1.

4.1.2 Point 5.3.2.1 should be 5.3.2.1 (a).

CONVENTION FOR A DEMOCRATIC SOUTH AFRICA

PO Box 307, Isando, 1600, South Africa.
Telephone (011) 397-1198/99. Fax (011) 397-2211

4.1.3 Point 5.3.2.1 should be 5.3.2.1 (b).

4.1.4 Point 5.3.2.2.1 should be 5.3.2.1 (b)(i).

4.1.5 Point 5.3.2.2.2 should be 5.3.2.1 (b)(ii).

4.1.6 Point 5.3.2.3 should be 5.3.2.2.

4.1.7 Point 5.3.2.4 should be 5.3.2.3.

4.1.8 Point 5.3.2.5 should be 5.3.2.3 (a).

4.1.9 Point 5.3.2.6 should be 5.3.2.3 (b).

4.1.10 Point 5.3.2.7 should be 5.3.2.3 (c).

4.1.11 Point 5.3.2.8 should be 5.3.3.

4.1.12 Point 5.3.3 should be 5.3.4.

4.1.13 Point 5.3.3.1 should be 5.3.4.1.

4.2 The meeting requested the Secretariat meeting to look at the question of a uniform numbering system.

5. Refugee issue.

5.1 There was substantial support, within the SG for the following:

5.1.1 That an appeal be made to the South African government to consider:

5.1.1.1 whether the UNHCR could play a constructive role in the resolution of the Mozambican refugee problem;

5.1.1.2 making suitable appeals for international assistance to deal with the refugee problem;

5.1.1.3 whether the registration of refugees would assist to ameliorate the problem in the interim period;

5.1.1.4 investigating allegations regarding the abuse of refugees and arms smuggling by refugees

5.1.2 That an appeal be made to concerned parties and governments, to make direct submissions to the South African government re. problems experienced by them in respect of refugees. The governments and parties are requested to include proposed solutions in these submissions.

5.2 There was sufficient consensus within the SG that a joint task force of the South African government and other involved Parties and governments be formed to address the problem of Mozambican refugees.

6. Report on the release of political prisoners by the South African Government and the ANC and

others.

6.1 The ANC and the SA Government reported that discussions are continuing. They hope to report back to the Working Group before CODESA II.

7. Report of the task force on emergency/security legislation and principles for testing such legislation.

7.1 Emergency legislation.

7.1.1 The SG reached sufficient consensus on paragraph 5.3.2.1. (a) of the minutes of 21/4/92 adding the following sentence thereto : "This would only be effective once such a body has been instituted"

7.1.2 The SG reached sufficient consensus on paragraph 5.3.2.1. (b) of the minutes 21/4/92

7.1.3 The Parties agreed to refer paragraph 5.3.2.2 of the minutes of 21/4/92 to their principals.

7.1.4 The SG reached sufficient consensus on paragraph 5.3.2.3 of the minutes of 21/4/92.

7.2 Security legislation.

7.2.1 The SG discussed a report by the task force on the reform of security legislation. It was agreed to refer the report to principals.

8. Report to the Management Committee.

8.1 The meeting agreed on the report to the Management Committee. (See ADDENDUM D)

ADDENDUM A

The following people signed the register:

AFRICAN NATIONAL CONGRESS	K Asmal P Maduna
BOPHUTHATSWANA GOVERNMENT	J Esterhuizen
CISKEI GOVERNMENT	MB Webb
DEMOCRATIC PARTY	H Bester
DIKWANKWETLA PARTY	JSS Phatang MH Cunukelo
INKATHA FREEDOM PARTY	I Mars
INTANDO YESISWE PARTY	SL Nthimunye DP Mahlangu
INYANDZA NATIONAL MOVEMENT	MS Gininda MJ Mahlalela
LABOUR PARTY	M Loonat D Curry
NIC/TIC	D Patel M Moolla
NATIONAL PARTY	GB Myburgh LH Fick
NATIONAL PEOPLE'S PARTY	R Garrib K Panday
SOLIDARITY PARTY	P Naidoo CF Thandroyen
SOUTH AFRICAN COMMUNIST PARTY	E Pahad
SOUTH AFRICAN GOVERNMENT	DPA Schutte JD du Bruyn
TRANSKEI GOVERNMENT	MA Ntshinga
UNITED PEOPLE'S FRONT	MI Moroamoche S Maja
VENDA GOVERNMENT	NE Mulaudzi ME Ramulondi
XIMOKO PROGRESSIVE PARTY	BM Tlakula NM Mtsetwene

ADDENDUM B

Submissions were received from:

The task force
African National Congress
The South African Government

ADDENDUM C

9. Summary of Discussion.

9.1 Matters arising from minutes.

9.2 The SA Government requested clarity from the meeting to which multi-party interim executive/cabinet/interim government council the minutes refer to.

9.3 After discussion it was clarified that this refers to the body to be established by WG 3 and that the task of that group should not be preempted.

9.4 Refugee issue.

9.5 The UPF stated that they expected the SA Government to give a report at the last meeting, this did not happen. They hoped that the SA Government would respond at today's meeting if not the UPF has another proposal on the issue.

9.6 The SA Government submitted a document on the issue.

9.7 The SACP requested clarity on the meaning of line 3, par. 4, page 4.

9.8 The SA Government responded to the question saying that the issue needs to be read in the context of the socio-economic conditions such as the high unemployment rate the influx of refugees will jeopardise the employment of SA citizens themselves.

9.9 The ANC thanked the SA Government fore their reply. The ANC is in the process of drafting its own document on the question. They argued that SA not signatory to the international agreement but that there are certain principles in International Law such as the definition of refugees and the principle of not returning people likely to be prosecuted if returned.

9.10 The ANC stated that there is a strong tradition in Africa of refugees. They compared this with the figures provided by the SA Government and stated SA has a relatively small problem compared to the rest of Africa.

9.11 The ANC stated that if SA is willing to abide by international regulations the international community would be willing to provide assistance.

9.12 The ANC reiterated that the refugees should not be exploited. The requested the SA government to consider the possibility of registering refugees so that minimal standards could be maintained.

9.13 The UPF reiterated its position that refugees should be registered and that international status of refugees should be applied. They still belief that a committee need to be set up to identify the affected areas, investigate conditions of stay. The UPF believes that the UN High Commission on Refugees would be the appropriate body to intervene and assist in this regard.

9.14 The UPF stated that the refugee problem has resulted in exploitation of these people and violence, primarily for subsistence purposes, in the affected areas. It was perplexed by the SA Government paper statement that KaNgwane and Gazankulu had an agreement with the government on the issue and asked to be clarified on the issue.

9.15 The Ciskei Government wanted to know what the UNHCR would do and was confused since this body visited SA a while back and recommended SA on its handling of the refugee issue.

9.16 The ANC stated that the visit of the UNHCR was not investigating the question of refugees but the question of exile repatriation.

9.17 The ANC appealed to the SA Government to urgently consider the question of refugees and the UNHCR.

9.18 INM stated that it made the decision not to repatriate on humanitarian grounds. It supported the involvement of the UNHCR in the SA refugee problem.

9.19 The INM stated that the UNHCR could play an important role in registering refugees according to international standards. These people would however be returned as soon as the civil war in Mozambique ends.

9.20 The chair asked whether there is agreement on the involvement of the UNHCR.

9.21 The SA government said they did not agree, they felt that there was no clarity on the nature of the problem and what role the UNHCR would play in solving this. The SA government further argued that the question of funding has also not been addressed. The SA Government thus asked for specific details on how to solve the issue.

9.22 The SACP stated that they believed the meeting could make progress if it agreed to request the SA Government to look into involving the UNHCR and then speak to the relevant parties to obtain information.

9.23 The SACP stated that if the UNHCR is involved in the problem SA is more likely to receive international funds or assistance to deal with the question.

9.24 INM stated that it has only issued temporary permits to refugees. They will be repatriated as soon as the civil war is over. INM felt that the important point is the political and economic question refugees have to be controlled.

9.25 The SA Government argued that it could not agree. It now seemed as if permits were issued to control refugees, this has been done what other role is there then left for the UNHCR to play?

9.26 The ANC stated that the SA government should be requested to:

9.26.1 consider the role of the UNHCR.

9.26.2 consider an appeal to the international community for assistance.

9.26.3 consider whether registration will assist in the problem until there is international monitoring.

9.26.4 consider allegations about abuse of refugees and gun-running by refugees.

9.27 The UPF stated that the SA government demanded facts. The facts are that these people live in appalling economic and social conditions. This also affects the economic conditions of the wider area which is already one of the most economically disadvantaged in SA. The UPF believed that if the UNHCR is involved then SA will get international assistance and financial support. This is unless SA government has another solution.

9.28 The SA government stated that if the involvement of the UNHCR can be linked to considerable financial assistance then it was a solution. The SA government did however feel this was not necessarily the case. The meeting had 3 choices it could adopt an appeal to the SA government to examine the involvement of the UNHCR, it could ask the parties, administrations or governments involved for more details or a task force to look into the question.

9.29 The rapporteur tabled a section of his report the meeting agreed on this.

9.30 Report on the release of political prisoners by South Africa and the ANC and others.

9.31 The ANC reported that discussion on the above issues are continuing. They hope to table a report to WG1 during the plenary.

9.32 The SA government concurred with this report.

9.33 The Ciskei delegation stated if this is the case then the meeting could then say that this issue is not an obstacle for free political activity.

9.34 The SACP objected and said the report does not mean anything of that nature. It simply means that the meeting will discuss the issue at a later stage when the ANC and the SA government table their report.

9.35 Emergency Legislation.

9.36 The rapporteur outlined the areas the meeting needs to discuss.

9.37 The meeting reached sufficient consensus on paragraph 5.3.2.1. (a) of the minutes of 21/4/92 /adding the following sentence thereto : "This would only be effective once such a body has been instituted"

9.38 The SG reached sufficient consensus on paragraph 5.3.2.1. (b) of the minutes 21/4/92

9.39 Discussion on paragraph 5.3.2.2.

9.40 The SA Government requested the meeting to post pone the issue so that principles could be consulted.

9.41 The Ciskei expressed their support for reterospectivity.

9.42 The SACP reserved their right if the meeting does not agree with the removal of reterospectivity from legislation it will reserve its right to return to its original position, that of the total repeal of security legislation,

9.43 The Parties agreed to refer paragraph 5.3.2.2 of the minutes of 21/4/92 to their principals.

9.44 The Ciskei felt that a Bill of Rights could cover this area.

9.45 The ANC argued that SA does not have a Bill of Rights and the revised Public Safety Act might last a long time.

9.46 The SA government was satisfied with these paragraphs.

9.47 The SG reached sufficient consensus on paragraph 5.3.2.3 of the minutes of 21/4/92.

9.48 Discussion on Security legislation.

9.49 The task force tabled their report re. security legislation.

9.50 The Ciskei argued that it needed to consult its principles on point 10 of the report.

9.51 The ANC felt that it needed to explain some of the concepts in the report. The discussions took place in the context of if the Public Safety Act cannot be repealed. They therefore had to look at how it can be amended. The trigger mechanism refers to the second phase of interim government that is the phase where a representative parliament would have been elected. The trigger mechanism could not apply to the tri-cameral parliament. In the same way as in discussions around the Public Safety Act there must be an Interim Government Authority.

9.52 The ANC stated that re. point 4.1 the only reason an organisation could be banned is the use of violence or the threat of use of violence.

9.53 The ANC stated that re point 5 the trigger mechanism is important and the above applies again. Detention even during the State of Emergency should be limited it can under no circumstances be longer than days.

9.54 The ANC regards the detention of witnesses as coercion. It requests the government to urgently look into the Criminal Procedures Act.

9.55 The ANC stated that the question of violence has to be looked at seriously.

9.56 The ANC stated that re point 8 of the report the issue is important for free political activity. SA has to move from security to peace and order.

9.57 The SACP stated that it has a problem accepting some sections and even premises of the report. It only suspends the powers when an Interim Government come into existence. The SA government stated that it was willing to repeal the Act but due to time constraints this was not possible. They did not understand the real reason for not repealing the Act. If it is only the question of time then it should be repealed now.

9.58 The SACP stated that it might not have understood the ANC's explanation but it had a number of problems with the explanation and report. They believe that if the Act is not repealed the government has a large amount of powers which could be abused. The tri-cameral parliament is not representative and can thus not pass legitimate legislation.

9.59 The SACP stated that it cannot agree to leave powers in the hands of the government who has abused these in the past in spite of claiming that it will not be abusing it now.

9.60 The SACP stated that re point 4 of the report the government has in the past used the threat of violence, real or imagined, to take punitive actions. What does it mean in this context to have such a phrase and what would the implications thereof be ?

9.61 The SACP stated that re point 8 the ANC's explanation is more acceptable but not completely. Right now the governments are using this to prevent organisations from having meetings and demonstrations. This power will continue. The ANC clarification is acceptable the problem is who applies this. Overall it is therefore not acceptable. Ways have to be found to curtail the rights of this and future governments to prevent the participation in peaceful demonstration.

9.62 The SACP stated that re point 11 the theoretical definition of terrorism etc is not acceptable to the people. These definitions were drawn up in a specific context and should thus be redefined in this new context.

9.63 The SA government recommended the SACP for being 'reformed' since the USSR had the most elaborate security legislation under the Communist Party there. It asked for clarity from the SACP on whether the SACP believed that special measures of some kind are necessary if the Act is repealed.

9.64 The SA government stated that it believes that some measures are necessary. These will take more than 6 weeks to draft and that is too long since parliament is only sitting for the next

6 weeks. They further stated that in Aug. 1990 the ,minister of justice did request suggestions during the reform/review of the security legislation.

9.65 The SA Government stated that the other aspects are all subject to judicial review.

9.66 The SACP responded by saying that if the Act is repealed they would support the drafting of new legislation that could cover this area. The present security legislation was however unacceptable to the people.

9.67 The SACP stated that if a vacuum is created by the repeal of the Act, they would support the filling of that vacuum by drafting new legislation. They further did not respond to the SA government's call for suggestions of amendment for they did at that stage and still belief in the repeal and not the amendment of the Act.

9.68 The SACP further argued that 5 days detention without trial is 5 days too long. They believed that the maximum should be 48 hours.

9.69 The SACP stated that political parties should not be banned. Under the present law people could be prosecuted as individuals for perpetrating violent acts. SA needs a process that makes it difficult if not impossible to ban organisations.

9.70 The ANC argued that the SACP is right. Security legislation should only be used in defense of democracy. Both the UN and Harare declarations call for the repeal of Security legislation. The ANC wants the repeal of security legislation the SA government has however rejected this. The discussions in the task force took place in that context. Codesa WG 5 could deal with proposals to change the law, the proposals for changes are independent of the tri-cameral parliament and their being in session. It saw problems with the government restructuring the Security Legislation taking some of the suggestions and excluding the vast majority of people, this would be completely unacceptable.

9.71 If the SA government is willing to repeal the Security Legislation this would be the way ahead.

9.72 The discussions also do not deal with the extraordinary powers of Section 48, the police can shoot when a meeting is held without permission not as in the UN context were they are only allowed to shoot when it is absolutely necessary.

9.73 The problem is however if the SA Government refuses to repeal the Security Legislation, what do CODESA do. It is in this context that the task force proposals were made. Either SA goes ahead with the ISA as it stands, government amends it or CODESA does.

9.74 The SA government stated that it did not object to the repeal the question was the time this will take. If it wants to repeal they will have to consult all concerned. It beliefs we should act on what we are serious about. They were relieved to hear that the SACP supported filling the vacuum the repeal of the security legislation would leave.

9.75 The DP stated that the declaration of a state of emergency is a serious infringement on individual rights it must therefore be strictly controlled. Section 54 cannot be read in isolation. They called on the SA government to give serious consideration to the repeal of Section 54.

9.76 The chair asked the rapporteur to summarise.

9.77 The rapporteur stated that he did not know what to say. People have expressed their serious reservations about the document.

9.78 The ANC stated that some parties were starting on the basis of the need for the repeal of security legislation and the subsequent change. They do however recognise that the special conditions in SA in advance of the creation of a Bill of Rights creates the need for security legislation.

9.79 The ANC stated that other parties rejected the repeal of security legislation but considered its amendment.

9.80 The Ciskei government stated that it needs to refer these matters back to its principles.

9.81 The ANC stated that the SG should report to the plenary the two positions.

9.82 The Ciskei stated that it cannot be bound until it knows what it is agreeing to.

9.83 The SA government stated that the ANC positions are not clear.

9.84 The rapporteur read his report stating that the meeting could not come to agreement on any amendment to the security legislation. A number of organisations wanted to repeal the Act but

were not opposed to security legislation per s. Other organisations rejected the repeal but supported the amendment.

9.85 The DP stated that the document from last nights meeting was what the Act would look like if it is not repealed but amended. Only general points can be included not specifics.

9.86 The chair asked if there was consensus on the issue.

9.87 The SA government said that they are willing to look at the repeal in the medium term but not in the short term.

9.88 The NIC/TIC delegations stated that the task force only made recommendations to the SG. It is for the SG to decide whether they agree with these recommendations.

9.89 The ANC stated that outstanding issues will be raised at the WG plenary.

9.90 The rapporteur stated that he will circulate a draft report to delegations, could they please examine this and make comments on it.

ADDENDUM D

Rapporteur's Report.

SG1 of WG1 of CODESA reports as follows on its meeting of 27 April 1992:

1. REFUGEES

1.1 There was substantial support , within the SG for the following:

1.1.1 That an appeal be made to the South African government to consider:

1.1.1.1 Whether the UNHCR could play a constructive role in the resolution of the Mozambican refugee problem;

1.1.1.2 Making suitable appeals for international assistance to deal with the refugee problem;

1.1.1.3 Whether the registration of refugees would assist to ameliorate the problem in the interim period;

1.1.1.4 Investigating allegations regarding the abuse of refugees and arms smuggling by refugees

1.1.2 That an appeal be made to concerned Parties and governments to make direct submissions to the South African government regarding problems experienced by them in respect of refugees and that they suggest possible solutions

1.2 There was sufficient consensus within the SG that a joint task force of the South African government and other involved Parties and governments be formed to address the problem of Mozambican refugees.

2 EMERGENCY LEGISLATION

2.1 The SG reached sufficient consensus on paragraph 5.3.2.1. (a) of the minutes of 21/4/92 adding the following sentence thereto : "This would only be effective once such a body has been instituted"

2.2 The SG reached sufficient consensus on paragraph 5.3.2.1. (b) of the minutes 21/4/92

2.3 The Parties agreed to refer paragraph 5.3.2.2 of the minutes of 21/4/92 to their principals.

2.4 The SG reached sufficient consensus on paragraph 5.3.2.3 of the minutes of 21/4/92.

3. SECURITY LEGISLATION

The SG discussed a report by the task force on the reform of security legislation and agreed to refer the said report to principals with a view to facilitating consensus of Working Group 1