



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

**DRAFT MINUTES OF WORKING GROUP 1 HELD AT THE WORLD TRADE CENTRE ON 4-5 MAY.**

- PRESENT:** (see ADDENDUM A)
- Chair:** Mr Webb
- Secretary:** A Feinstein
- Minutes:** K Morgan

**1. Chairpersons Opening**

Mr Webb, in his opening, made the following comments:

- 1.1 That the WGSC1 had met on May 1 and had decided to meet with SG2's request that they be allowed one more meeting and that it was agreed that such a meeting should take place on Monday 4 May between 8h30 -12.30pm
- 1.2 That regarding this information, all delegations were faxed over the weekend as was agreed at the previous WG1 sitting
- 1.3 That delegations should note that the Venda delegation would be resubmitting an updated version of their submission on the role of the international Community
- 1.4 That the SA government has requested that the Item on the role of the International Community be discussed at 2pm so that they may be allowed to bring in a substitute delegate on this issue
- 1.5 It was agreed that the Item on the role of the International Community would be discussed at 2pm.

**2. Attendance and apologies**

The following apologies were registered:

- 2.1 P Langa ANC
- 2.2 RJ Lorimer DP
- 2.3 D Smuts DP
- 2.4 P Soal DP
- 2.5 R Garrib NPP
- 2.6 K Sehumu Bop Govt.
- 2.7 SP Kakudi Transkei Government
- 2.8 J Engelbrecht Bop Govt.
- 2.9 F Balani SACP

3. **Adoption of Agenda**

3.1 The agenda was adopted without any amendment

4 **Ratification of minutes**

4.1 Minister Coetsee registered his concern that item 10.22 might have been incorrectly recorded. However, since he was not sure, he indicated he that would check his notes and report back to the meeting.

The minutes were ratified without any amendments

5. **Matters Arising**

Mr Webb called on delegates to raise any particular matters arising, which were not covered by the Subgroup reports.

There were none

6. **Tabling of amended reports from convenors and rapporteurs of SubGroups 1, 2 and 3**

6.1.1 Mr Webb reminded delegations that the rapporteurs had submitted draft reports to the plenary session the previous week and that since there seemed to have been no differences of opinion on the reports submitted by Mr Shaik on behalf of SG2, and Mr Myburgh, on behalf of SG3, he had taken it upon himself to direct that the reports be tabled. Mr Webb further notified delegates that with regard to Mr Bester's report on SG1, certain proposals had been made thereto, and that Mr Bester has since redrafted his report.

6.1.2 Mr Webb requested the permission of the meeting to table Mr Bester's redrawn report.

6.1.3 It was agreed that Mr Bester should table his report to WG1

7. **The role of the International Community**

7.1 Minister Schutte was deputised by Minister Botha, who was requested by the SA Government to present an input on their behalf on the Role of the International Community

7.2 Mr Webb thanked Prof Asmal for preparing a neutral consolidated paper, as requested by WG1, on the role of the International Community

7.3 Prof Asmal, in presenting a summary of his paper gave an assessment of the role of the international Community for consideration by the WG:  
(see ADDENDUM B)

7.4 The following points were raised for discussion : (See Addendum C)

7.5 Mr Bester: Summarised the decision as follows: The Working Group had recorded consensus that a body of international observers/monitors should be invited by CODESA to satisfy themselves that fair elections were taking place. With regard to the invitation of the international community on the issue of violence, it was agreed that the matter be referred to the WGSC1 who had the power to advance consensus as there was no consensus as to whether the international community should have investigative powers or should be a fact finding mission. That the WG1 favours the appointment of a task force which will be concerned with the establishment of a body of international observers/monitors, to observe/monitor representative elections. This task group will report to WG1 on the terms of reference, powers, duration, funding etc of such a body.

7.6 It was agreed:

That once government has consulted with its principals the issue should be referred to the WGSC1 meeting to be held on 8 May with a view to reaching consensus

7.6.1 That the Minister should give possible advance written notification of its decisions to the WGSC1

8. **Matters still to be resolved:**

8.1 The creation of a climate for free political activity: WGSC1 recommendations:

Mr Bester reported on the WGSC1 recommendations: (see Addendum D)

8.1.1 WG1 agreed to accept the recommendations made by the WGSC1

8.2 **Retrospectivity of the State of Emergency**

8.2.1 Mr Webb reminded delegations that the existing legislation provides for a four day retrospectivity and that there have been views as to whether legislation could be introduced which would not allow the legislation to take effect four days prior to the declaration of the state of emergency.

8.2.2 The government reported that it would allow the retrospectivity aspect to lapse provided all amendments were introduced as a package. The following points concerning this issue were raised in discussion: (see Addendum E)

8.2.3 There was no consensus as to when the retrospectivity of the emergency would be implemented

8.2.4 It was agreed:

8.2.5 That once government had had the opportunity to consult with their principals on the issue of the timing of the implementations of the agreed amendments of the Public

Safety Act and that their decision should be referred to the WGSC1 with a view to making a final decision  
with a view to reaching consensus

**It should be noted that points 8.3 and 8.4 on the agenda were moved for discussion to a later time in the day**

9. **SG2 NPA**

Mr Shaik reported that based on the decision by the WGSC1 which allowed the SG to meet that day, SG2 was able to reach consensus on the monitoring commissions (9.1.1), budget and infrastructure (9.1.2) and the role of the security forces (9.1.3)

On Items 9.1 -9.3 Mr Shaik reported as follows: (see Addendum F)

9.1.1 It was agreed that:

9.1.2 In response to the item on the Goldstone Commission, Minister Coetsee's suggestion, that the statement be amended to read: that should there be any findings against any individual or organisation, the NPA should take cognisance of that, and that the NPA should request such a person to respond to the Commission

9.1.3 That WG1 accept the consensus positions reached by SG2

At this point Minister Kriel informed the meeting of a submission to be distributed to the meeting expressing the Government's concern about the lack of commitment by Parties to the creation of a climate for free political participation

He further suggested that the document be discussed the following day. Mr Pahad appealed to the government to not bring a controversial document to the meeting which could shift the focus of the agenda and prevent the meeting from reaching consensus on the intended issues.

The meeting adjourned

**The meeting reconvened on Tuesday 5 May.**

Mr Webb reconvened the meeting by reporting that the Management Committee had not as yet formulated guidelines for the rapporteur reports but requested the rapporteurs to begin finalising their reports based on the premise that they should deal with the terms of reference of WG1 and that which has been achieved and that which is still to be done.

The ANC requested a short adjournment to discuss an approach to the document circulated by the government the evening before since the document had important implications for the work of WG1.

It was agreed that the Working Group would first deal with matters referred to principals and then to break.

Decisions were subsequently reached on the issues of the role of the international community and the

retrospectivity of the state of emergency.

The meeting adjourned for 15 minutes to enable delegations to discuss Minister Kriel's position paper outside of the meeting.

Following the adjournment, the ANC reported that they would prefer the WG to continue with the remaining items on the agenda and suggested that Minister Kriels document be tabled under General.

After much discussion the ANC's recommendation, together with Minister Kriel's request that the meeting review the said document at 4pm, the only time that he could avail himself, was accepted.

## 10. Security Legislation

10.1 Mr Webb reported that Mr Bester had circulated a list of items regarding security legislation that had to be referred to principles.

10.2 Mr Bester further reported that opinion on the retention of the Internal Security Act in the interim period on the one hand, and its amendment on the other, had differed to such an extent that it was decided to request Parties to refer the issue to their principals for consideration. He suggested that Parties who had consolidated positions state those positions and that an evaluation should be made thereafter.

10.3 The following positions were put forward by delegations (see Addendum G)

### 10.4 It was resolved:

10.4.1 That the government position paper, together with other position papers be referred to the task group with a view to looking at substitution of existing relevant legislation as well as the Internal Security Act.

10.4.1.2 That such a task force should work along the principles of CODESA even after CODESA II.

10.4.1.3 That the WGSC1 would deal with the recomposition of the task force.

10.4.1.4 That if possible the task force should meet on 11 May in an attempt to reach agreement so that they may have a more substantial report for CODESA II

## 11. Mechanisms for dealing with discriminatory legislation: WGSC1 recommendations

Delegations were reminded that even though much discriminatory legislation had been identified in the 12 weeks that the WG had had, it couldn't fine comb the whole legislative apparatus. That it was not the duty of WG1 to look at all the laws. That the Terms of Reference of WG1 was to look at whether and how discriminatory legislation should be addressed. To identify changes in the law in order to establish free political activity now.

11.1 Mr Bester reported on the proposals of the WGSC1 for a modus operandi for dealing with matters of discriminatory legislation:

11.1.2 That the WG had identified certain categories of discriminatory legislation

and in respect of each of those, had made certain proposals on how these should be dealt with within the negotiations process and the legislative process.

- 11.1.2.1 That the categories are as follows:
- 11.1.2.2 Category 1 : Identification of legislation without the elimination of which free political activity cannot take place
- 11.1.2.3 Category 2: Discriminatory legislation that needs to be removed in the interest of society:
  - 11.1.2.3.1 That the WGSC1 had identified within this category three broad sub categories:
  - 11.1.2.3.2 Discriminatory legislation which deals with the nature of the tricameral constitution and which should therefore be dealt with at the time and the manner decided upon by the negotiations on the own affairs dispensation and the Tricameral constitution
  - 11.1.2.3.2.3 Discriminatory legislation which needs to be amended to support and enhance the process of democratisation - which will enhance the atmosphere of positive society building for example, legislation dealing with social security It was suggested that these be dealt with by amending legislation
  - 11.1.2.3.2.4 Legislation that in its effect, may be discriminatory which we should deal with at the time we get there.
  - 11.1.2.3.3 Category 3 : Remnants of discriminatory legislation must be dealt with through procedures that stand to be created in terms of a new justiciable Bill of Rights.
- 11.2 That all delegations should be invited to make submissions on specific discriminatory legislation that might impede the progress of transitional arrangements
- 11.3 The following discussions were recorded: (See Addendum H)
- 11.4 The WG1 accepted the proposals of the WGSC1
- 11.5 It was further agreed:
  - 11.5.1 That the key issue that should be arrived at for the purposes of CODESA II, should be an identification of the few individual pieces of legislation which have to be dealt with immediately.
  - 11.5.2 That Govt would assist the rapporteurs by enrolling its departments to look at the legal working of those pieces of legislation that have been mentioned in order to make a suggestion to the WGSC1 on Friday
  - 11.5.3 That after the WGSC1 attempts to come to consensus on the legislation mentioned, the legislation could be dealt with by the appointed task force  
That a copy of the research , be handed to the WGSC1 for assessment before the WGSC1 meets.

11.5.4 That the rapporteurs and WGSC1 have the right to inquire beyond the report from the legal advisers.

12. **SABC SG3**

12.1 It was reported that the WGSC1 had been charged with two matters relating to the issue of the reconstitution of the SABC and the monitoring thereof.

12.2 Mr Webb reported on the recommendations of the WGSC1: (See Addendum I)

12.3 **Resolved:**

12.3.1 To accept the recommendations of the WGSC1

12.3.2 That any other powers of the Independent Body that may be deemed to be expedient should be later added to the list of powers agreed upon

12.3.3 That the suggested names of the independent Board be either the South African Independent Telecommunications Authority or the South African Independent Telecommunications Commission

12.3.4 That the word "punish" under item 7 of Mr Myburgh's report be replaced with a more appropriate word.

13. **Fair access to public facilities and venues (Item K)**

13.1 It was reported that the issue to be debated was whether all public facilities should be made available to all Parties without discrimination and under reasonable conditions

13.2 The following responses to this issue were recorded (See Addendum J)

13.3 It was agreed that: this WG has sufficient consensus and that all parties should have fair access to public facilities and venues without discrimination. Bophuthatswana advised that it had specific legislation which would have to be observed. All delegations accepted that "public facilities" would be subject to regional interpretation.

14. **Advisability of fair and reasonable access for political Parties to all potential voters (Item P)**

14.1 Prof Asmal introduced this item by proposing that there should be no intimidation and violence in arranging access to voters.

14.2 The following points were raised for discussion (see Addendum K)

14.3 Resolves:

14.3.1 That the WG1 agrees to support the right of all political parties and organisations to have reasonable freedom of access to their members, supporters and other persons in rural and urban areas, whether they are housed on public or private property.

15. **Drafting of Final reports**

15.1 Mr Samuels reported on Management Committee recommendations on the drafting of reports (See Addendum L)

15.2 It was agreed that the WGSC1 should follow the MC guidelines

16. **Presentation of WG1 Report to CODESA II**

16.1 Resolved:

16.1.1 That this issue be taken back to principals for consideration while noting:

16.1.1.2 That Codesa is not an institution by itself in which different Parties are bound to each other by contract

16.1.1.3 That Codesa probably would continue but that the format would change

16.1.1.4 That there would have to be implementation of decisions taken in all WG's

16.1.1.5 That in WG1 there is substantial unfinished business

16.1.1.6 That there should be a mechanism to resolve the incomplete items which cannot be done in a Codesa plenary session

17. **General:**

17.1 Mr Kriels' document: Serious concern by the SA Government regarding the commitment by parties to create a climate for peaceful political participation was tabled for discussion:(Addendum M)

17.2 All Parties with the exception of the Ciskei and Boputhatswana governments expressed reservations about the appropriateness of the document. The ANC and Intando ye Sizwe expressed their dissatisfaction with the document via written submissions (see Addenda M and O)



## ADDENDUM A 4/5/92

The following people signed the registration forms:

### Party/Organisation/ Administration

ANC	K. Asmal	J Zuma
ANC	P.M. Maduna	
Bophuthatswana Govt.	J Esterhuizen	
Bophuthatswana Govt.		
Ciskei Govt.	M.B. Webb	MM Maki
Ciskei Govt.	L.W. Maqoma	MG Ndzondo
Democratic Party	H Bester	
Democratic Party		
Dikwankwetla Party	J.S.S. Phatang	MM Maekane
Dikwankwetla Party	T.J. Mohapi	M.H Cunukelo
Intando Yesizwe Party	CN Mahlangu	ES Masango
Intando Yesizwe Party	D.P. Mahlangu	SL Mthinmunye
SA Government	H.J. Kriel	D.C.D. Swanepoel
SA Government	H.J. Coetzee	L.D. Barnard
	AJ Engelbrecht	
IFP	E. Bernard	A. M. Mncwango
IFP	D. Madide	Mrs Mars
Inyandza Party	MJ Thwala	MS Gininda
Inyandza Party	MJ Mahlalela	PR Mahlalela
Labour Party	A Delpport	E Samuels
Labour Party		
TIC/NIC	M Moola	E.I. Ebrahim
TIC/NIC	R.M. Shaik	D Patel
National Party	G.B. Myburgh	L.H. Fick
National Party	B.L. Geldenhuys	A.G. Oosthuizen
NPP	A.K. Beesham	D. Chetty
NPP		S.M. Govender
Solidarity Party	P.I. Devan	C.F. Thandroyan
Solidarity Party	P. Naidoo	C.A. Naguran
SACP	R. Kasrils	
SACP	E. Pahad	M.I. Scott
Transkei Govt.	L.V. Ntsubane	
Transkei Govt.	M.A. Ntshinga	M. Mphalwa
Venda Govt.	R.C. Nevhutalu	N.E. Malaudzi
Venda Govt.	P.J. Nembambula	Rev Ramulondi
United People's Front	M.I. Moroamoche	S. Maja
United People's Front	MP Tladi	L.L. Mpya
XPP	Chief SDW Nxumalo	E. Mathe
XPP	Z.M. Tshule	N.M. Mtsetwene

ADDENDUM A

5/5/92

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Administration

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Bophuthatswana Govt.		
Ciskei Govt.	M.B. Webb	MM Maki
Ciskei Govt.	L.W. Maqoma	
Democratic Party		H Bester
Democratic Party	P. Soal	
Dikwankwetla Party		
Dikwankwetla Party	T.J. Mohapi	M.H Cunukelo
Intando Yesizwe Party	CN Mahlangu	ES Masango
Intando Yesizwe Party	D.P. Mahlangu	SL Mthimunye
SA Government	H.J. Kriel	D.C.D. Swanepoel
SA Government	H.J. Coetzee	L.D. Barnard
	AJ Engelbrecht	
IFP		A. M. Mncwango
IFP	D. Madide	Mrs Mars
Inyandza Party	M.G.Gama	MS Gininda
Inyandza Party		H.A Motaung
Labour Party	A Delpont	E Samuels
Labour Party		
TIC/NIC	B. Nair	E.I. Ebrahim
TIC/NIC	R.M. Shaik	D Patel
National Party	G.B. Myburgh	L.H. Fick
National Party	B.L. Geldenhuys	A.G. Oosthuizen
NPP	A.K. Beesham	D. Chetty
NPP	R.B. Garrib	S.M. Govender
Solidarity Party	P.I. Devan	C.F. Thandroyan
Solidarity Party	P. Naidoo	
SACP	R. Kasrils	
SACP	E. Pahad	
Transkei Govt.	L.V.Ntsubane	
Transkei Govt.	M.A. Ntshinga	M. Mphalwa
Venda Govt.	R.C Nevhotalu	N.E Malaudzi
Venda Govt.	P.J. Nembambula	Rev Ramulondi
United People's Front	M.I Moroamoche	S. Maja
United People's Front	MP Tladi	L.L.Mpya
XPP	Chief SDW Nxumalo	E. Mathe
XPP	Z.M. Tlahule	

Prof Asmal reported as follows:

"That this has been one of the most difficult tasks I have had to face because the assignment gives rise to two problems: Firstly that this is the first occasion at CODESA, where there is a full blown discussion on this issue. I understand from my inquiries around CODESA, that in WG3 there has been some reference only to the possibility or need of international participation in the electoral commission or electoral council, so the first difficulty is that one had to look at this afresh, the second difficulty, is of course, is that this is a difficult and sensitive issue and it is difficult for a wolf to become a vegetarian as it were. It is an exercise that one has to carry out as best as one can. Secondly this is simply a position paper, it is not a document of the ANC, and the ANC may have a different view on this.

I was asked by WG1 to prepare a guidance paper on assignment 2 and to take into account the submissions made by delegations. So I remind our WG of the Terms of Reference in 1.4 paragraph 1, to consider a report on all proposals and make recommendations regarding to the role of the International Community which could be asked to play a role in the formal or informal processes involved in the period leading up to the introduction of a new South Africa, and here follows the normal form of identifying key issues and commonality and so I draw attention to the fact that this is the first attempt to discuss the role of the international community by any of the WG's in CODESA. I draw attention to submissions received by the secretariat from delegations and organisations in paragraph 2.2. I should draw attention to the fact that two submissions received from the IFP and Dikwankwetla referred to the fact that since South Africa was a sovereign independent state, that apart from observers, any other participation amounts to interference of domestic affairs. Then I refer in some more detail to the other submissions that were made after February, this year, the major one being that of the Transkei, which dealt with in some detail, the topics of security, elections, broadcasting and especially the need for monitoring the election process. In paragraph 3 I have tried dispassionately, to put a certain proposition to the WG, both the Harare declaration of 1989 and the Consensus UN Declaration of 1989, anticipate an International role which must emerge out of the process of negotiations and agreement. That no international role can be imposed on our country unless it has something to do with Chapter 7 of the Charter where the UN takes mandatory action in the face of a breach to peace and the threat of aggression. This would be far fetched and artificial in the context of what we are talking about.

The second point is that the South African situation from 1946, particularly from 1952, has been internationalised in a remarkable way particularly on the apartheid issue and the struggle for democracy and freedom in South Africa, in a way that no other issue in the history of the UN has been dealt with. With over 350 resolutions passed by the General Assembly and assigned bodies, particularly the imposition of sanctions in one form or another from 1963 onwards, under the auspices of the General Assembly, and of course, for the first time binding mandatory action was taken in 1977, where the arms embargo was imposed through Resolution 418. The importance of this is that Resolution 418 can only be withdrawn by the Security Council itself and the arms embargo was the first time that mandatory action had been taken against a member state. This is historically very important in that the involvement of the UN, the Commonwealth, the European Community, the OAU has been around the struggle for freedom and liberation in South Africa and it is for this reason, that remarkably in 1984, the Security Council, by consensus resolution, declared the election for the Tricameral Parliament null and void. So the issue of intervention, is an issue that has been very well established at the level of international law and international practice. We know of course, the position of the SA Govt. from 1946 onwards was very clearly stated. However since 1990, our government on reflecting its commitment to change, has cooperated with the UN. I draw attention to a Human mission which visited South Africa to investigate the question of whether, under the Declaration of 1989, irreversible and fundamental changes had taken place in South Africa. The government cooperated with the mission and therefore accepted the principle of international evaluation of the political situation in South Africa. As a result subsequent missions have taken place. In the same way in 1990/1 the negotiations with the UN High Commissioner for Refugees, resulted in an agreement between our government and a major UN organisation and allowed for the High Commissioner for Refugees' participation in the repatriation of refugees. On 21 March 1991, Minister Pik Botha agreed with such cooperation, I quote "the cooperation of neutral experts would solve possible problems that arises in

relation to the repatriation of refugees".

Finally, I draw attention to the fact that observers from various organisations were invited to be present at CODESA, so the internationalisation of the South African situation is not in doubt.

The two following points are important to bear in mind: That the assumptions of Parties, when the federal situation in 1990 arose, was that all our problems and issues would be debated, discussed and negotiated and settled by South African Parties and that the advantage of negotiated solutions are capable of being carried out by the Parties which can rally sufficient enforcements, depending on the distribution of power which is worked out by the parties. This reflects the autonomy of the parties and the respective strength of the parties negotiating. The question then that arises is why CODESA 1 put assignment 2 into the Terms of Reference of WG1.

Secondly we must recognise that although South Africa has been an independent state since 1910, and certainly since 1918, the intervention of the UN has not been limited to colonial or independence issues or decolonisation issues, originally the intervention of the UN was largely concerned, from 1960 onwards, in particular with decolonisation issues. That is no longer so. In the past 6-7 years the UN and other agencies have been involved in conflicts issues and issues where the core issue is the attempt by any international community to assist in change in the internal political and legal order. Most people think that UN intervention or the intervention in the middle East by the US in 1985/7 is involved with peacekeeping forces to separate warring parties as in Yugoslavia. The idea of a full blown peacekeeping force in South Africa is both incongruous, unnecessary and dangerous because we do not have two warring parties in South Africa.

So I come to recent UN programmes of assistance, they have gone from establishing electoral procedure, identifying voters, monitoring elections, supervising cease fire procedures, removal of troops to barracks, monitoring human rights violations, drawing up election arrangements and guaranteeing that elections are free and fair and guaranteeing the implementation of results.

The UN has been flexible and shown the ability to take up complex issues differing from country to country. They have also been concerned interim/transitional arrangements where there is an unstable situation where de facto governments whose legitimacy has been questioned, particularly in the interim periods where other parties question its legitimacy to be the sole instrument for bringing about the transformation from a non democratic to a participatory democratic form of government. We can look at the experiences of other countries where the UN has set up a programme of advisor services, and technical assistance in the field of human rights to provide technical and legal assistance for conducting a democratic election.

The most important part of the position paper -as many of the submissions made -- were made in the context of a particular time frame. In this context WG1 needs to consider how long the transitional period will last, what will be its modus operandi during the transition period, what will be structures etc.

The second aspect has been the fact that there has been a greater consciousness of the effect of violence on our communities and this has had an effect on the negotiations process itself and a reduction in confidence.

Thirdly the question is what extent can the structures that are in place at present deal with the extent of the violence without creating a greater degree of mistrust between the parties.

On Challenges that face the WG:

We cannot continue to ignore the possible role of the international community, relying on our own resources and capacity to work out structures that will retain confidence among the parties. International observers ;end a greater feeling of integrity to the process because they do two things. Write reports, by looking at the procedures and the situation on the ground and to check whether agreements are being implemented. They do not interfere. NGO's for example, like the Carter commission went to Zambia to ensure a fair a free election. This initiative is not paid for by international organisations.

So as a minimal factor we are bringing observers to CODESA II because we want the international community to recognise that procedures are going to be open, free and fair, Secondly monitors are very different. Monitors who will work with the security forces and courts might create a greater confidence in the maintenance of order. As part of the interim arrangements we might consider the role of these monitors to verify procedures we have agreed upon. These monitors and verifiers might even play a role in the command structures of the

security forces.

It is also very important that there be a guarantee of equal participation of all sectors of society. International monitoring and verification might assist in ensuring this. They might verify that there is no intimidation or violence and assist internal structures. They might verify a matter of great importance, that is equal access to state media and broadcasting which is important in building consensus and confidence among the parties concerned.

We must acknowledge that we do not have the resources, because of the way power is distributed. There isn't confidence that we can have detached impartial watchdogs.

Certain matters cannot be taken by consensus on particularly operational day to day decisions. I draw attention to the social situation in paragraph 4.6 that we are on the verge of internal change and paragraph 4.7, the unequal distribution of power must be taken into account.

The timely investigation of allegations of violence and intimidation and taking of executive actions is vital for confidence building, but we cannot afford, in this short period of transition major complaints being investigated by a time consuming judicial apparatus. The only way to break this time warp is by bringing people in whom we have confidence, to investigate trouble spots and who can give judgements which are acceptable to all parties.

In paragraph 4.1.2 I make reference of the election process. To build confidence, allay fears, the guaranteeing and implementation of an election process, the guarantee external to South Africa might be an important development because of the special nature of the South African situation .

In conclusion the role of the international community, limited as it may be, might assist us in the process of moving towards a democratic order.

## ADDENDUM C

7.4 The following discussions were presented:

7.4.1 Minister Botha reported as follows:

I have listened with great interest to Prof Asmals' address which testifies to a very thorough study of the background. I certainly do not agree all the statements made and the legal implications of some of the actions which the government took in the past. We have never agreed to international intervention. We have often agreed to international observation and fact finding missions which many countries of the world who are also sovereign agree to in order to assist them to make sure that the international community and the media have the correct picture of the situation.

There is no reason for us to call an international force/monitoring force/peace keeping force or foreign force to teach South Africa how they should write their constitution and how they should conduct their election. There is no threat to peace in this country. There will be international organisations of reputation coming to South Africa voluntarily or by invitation. There might be observers partial to the ANC or the National party or to Inkatha or even the PAC or AWB.

The success of the negotiations towards a new constitutional dispensation provides clear evidence that the people of South Africa are responsible for and fully capable of dealing by themselves the nature of their future government. Their right to do so has been attested by the international community, eg the successful resolution of the UN general Assembly. As a matter of fact a special session of the UN on apartheid provides for the people of South Africa to themselves choose their constitution. It further suggests as a guideline that negotiating parties could agree on the role to be played by the international community in ensuring a successful transition to a democratic order. This leaves it open to the parties to decide on a role to be played by the international community including of course the EC and other international communities. South Africa has not been bound by instruction or request in participating in the negotiations. Any involvement of the international community is a result of an internally perceived need. That means the choice is ours and we are not obligated to seek a precedent in any international document whether it was adopted by consensus or not to which we were not a party. From this analogy there is nothing to inhibit us from restructuring the role of the international community to observing the plenary meetings of CODESA and the election process. South Africa is nevertheless aware, of the interest of the international community in the success of the current negotiations and its willingness to promote the process without interfering in our domestic jurisdiction. We must not forget tomorrow there will be a different government, but the country by and large will be the same with the same people with new aspirations. We have to take a conscious decision that our negotiations will be transparent. It follows that negotiations would be observed not only the country's inhabitants, but also by acceptable representatives of the international community without the right to speak or vote because it is not them who must live under the constitution. It can be accordingly submitted that from an internal viewpoint there is no further practical role for the international community to play in the process then to continue to observe the plenary sessions of CODESA should it choose, on the same terms as it observed the first plenary, to encourage all South African parties to take part in negotiations. With regard to elections, the government wishes to suggest the appointment of a task force to submit proposals on the desirability of inviting neutral international observers to satisfy themselves of the thoroughness of the process. Details of the observer role can be worked out, once this principle is accepted. The advantage of such observer presence is the opportunity for independent observation of the electoral process thus eliminating any doubts in the minds of the international community. There is thus some agreement between us and Prof Asmal. We recognise the interests of the international community in what is happening here.

It is an ardent wish that we make progress as soon as possible.

I am worried by the day to day events that are taking place internationally and which are by passing us. I come across attitudes worldwide that believe Africa should be marginalised. These are the fears of many African leaders. This is why Africa wants us to succeed, so that we can join in one voice so that we can begin to talk about the price of our raw material and programmes to uplift our people irrespective of the past. We must create a new future and play a role in assisting our African brothers to get a better deal from Europeans, from Americans, from the other industrialised nations. My fear is that we should not look towards the international community to assist us much here, with our constitutional problems. The international community has to look carefully not only at our needs but that of the whole of Africa. We must however not give the impression that we capable of finding a lasting agreement between blacks and whites, Coloureds and Asians. If cant do this then there is nothing that the international community can do to save this country.

- 7.4.1.1 Mr Webb: There seems to be agreement between the last two speakers that there is a role for the international community.
- 7.4.1.2 Rev Mohapi: There is no necessity to be rescued by the international community. They should come to South Africa only as observers
- 7.4.1.3 Venda: Minister Both's paper does not look at the potential role that the international community can play in the issue of violence, while allegations continue to be made commissions and the media of government institution's involvement in the violence. There is also an unequal distribution of power in South Africa - we cannot draw parallels between us and Namibia. Cuba had its forces present as did the South Africans when they were negotiating. At the same time it was recognised that there was a role for the international community. The role of the international community needs to be much more than that of observers.
- 7.4.1.4 Mr Webb: We should now debate what the actual role of the international community should be. There is strong support for the notion of them being observers, there is also strong support for a monitoring, advisory role as well as support for an arbitrary role.
- 7.4.1.5 Transkei: We believe that the 4 months of experience in the negotiations process has convinced us of the importance of international intervention. We have specific recommendations to make: Monitoring: we recommend that the OAU, UN, frontline states send officials to South Africa to specifically monitor the whole question of violence and security forces. They should be given investigative powers, because of the urgency of the matter. That this monitoring should begin immediately after CODESA II. They must be accountable to CODESA, but reserve the right to inform their organisations. On observer status: we suggest the UN should have fulltime active observers who must participate in negotiations, ensure that agreements reached are implemented and serve as mediator, where there are deadlocks. Supervision: We recommend that the UN and OAU should send officials during the interim government period to supervise the operations of the transitional arrangements. These bodies should also provide a peace keeping force as a matter of urgency to supervise transitional security mechanisms. monitors should be present to advise whether the elections were free and fair.
- 7.4.1.6 Prof Asmal: There is no doubt that there is a state in South Africa and there is a sovereign state in the sense that we exclude anybody else. But the issue that goes to heart of the international debate is the legitimacy of the order that is established internally in South Africa and that has been the whole issue since 1952 and that is why South Africa's participation in the General Assembly was suspended since 1974. The credentials were withdrawn. We know that this state exists, with the force it used in Angola, Mozambique, Botswana and elsewhere. When the elections took place on March 17, they were an internal reorganisation of the order established under apartheid and it still the apartheid order as long as my brothers and sisters who are African do not have a common voters roll and elections. The order lacks legitimacy and that why we have no inhibition in saying that more developed international participation

is not an interference in the domestic affairs of South Africa, because this has been an internationalised issue since 1952. The minister referred to the consensus declaration which he says does not bind his government, but it certainly binds us because this is a moral basis because without a consensus declaration there would not have been a moral basis and I remind the foreign minister that the resolution of 1989 says that the international community believes "that acceptance of these fundamental principles, of the democratic order could constitute the basis for an internationally acceptable solutions, that will enable South Africa to take its rightful place as an equal partner among the world's community of nations". So the resolution provides for this very important basis for the CODESA II process in that an internationally accepted solution must be based on these principles. We have no problem for example if the international community intervenes if there is a violation of human rights by an ANC government. Because this is the ultimate guarantee for human rights.

We do not believe that what happens inside South Africa is a matter of domestic jurisdiction. Its part of international concern for 40 years.

We believe also that the structures and laws we have are incapable, for various reasons, of dealing with this enormous bloodletting. An international monitoring force would be more closely involved with the whole operational aspects of security in our country. There is belief by a number of Parties at CODESA that we can longer simply on our own resources, because of the inequality in power in South Africa and because the government does not speak for the organised community in South Africa.

7.4.1.7 Rev Madide: We need the investments from the international community and there is a need scientific and cultural exchanges. We should first reach agreement on how we are going to move forward and then approach the international community for assistance.

7.4.1.8 Mr Bester: The position of the DP is as follows: That there are two possible approaches to the involvement of the international community. The first one is an activist interventionist role which would detract from the sovereignty of the state which we reject because South Africa is a sovereign state and there is no room for activist interventionist approaches to the process of democratisation. the second approach is that it should play a supervisory or monitoring role. If what the Foreign minister is saying, there are two possible forms of observation the one is the Senator Kennedy version which constitutes some quick tour around the country with appropriate pictures and interviews the other one would be what could correctly be described as a monitoring role, ie where certain structures are put in place for an impartial monitoring of certain situations. We would plea for the monitoring of free and fair elections as well as the monitoring of the violence situation, which the government does not address in their paper. You bring in an impartial observer when there is a breakdown in trust between parties. We agree with the government that South Africans want transparent negotiations. But if there is one dominant impression of the WG in the past 12 weeks it is that there is breakdown in trust of how to handle the process of dealing with violence. We spent time on the NA but there is no trust that they will actually implement those agreements. The international community thus is not being asked to tell us how we should achieve peace but rather to monitor the agreements reached between Parties.

7.4.1.9 Mr Pahad: It is necessary to state our different interpretations of what happened in Angola and in the rest of world to that of the government. There is country that can be independent island on its own. We welcome the governments position of appointment of a task force to submit proposals on the desirability of inviting neutral international observers in relation to the elections. However if we can have then for the elections why we cant have something similar to deal with the question violence. We do need an internationally acceptable force to monitor and verify of the elections and security forces. There are sections of the people who lack confidence in our own capacity to monitor and verify the violence. Once we agree that there should be international involvement, it would include MK.

We are not asking for a peace keeping force. If we can get agreement on monitoring and verification on elections and violence and security forces which is connected to the levelling of the playing field, we can decide whether it should through the present government, or through CODESA. There is big difference in individuals coming to SA and us arriving at a consensus decision on who we should invite to come South Africa.



- 7.4.1.10 Mr Geldenhuys: Want to respond to Prof Asmal: Prof Asmal said there was consensus on the fact that the present parties believe we cannot cope with the violence. We don't think there is consensus on this issue because the present parties can cope with the violence. The violence in fact can be stopped tomorrow, but that would be the end of CODESA and we want to deal with violence along democratic lines. Secondly Prof Asmal said that the South African situation has been internationalised for 30 years but there is a reason for that and that was due to apartheid which gave the UN the right to intervene. But apartheid fell away and therefore there is no grounds for international intervention.
- 7.4.1.11 Mr Geninda: If we are talking about intervention., But since we are concentrating on the monitoring aspect, we need the international community to monitor what is happening in South Africa. Since South Africa has to be accepted internationally it is imperative that the international community be allowed to play a monitoring role in the unfolding events.
- 7.4.1.12 Mr Zuma: There seems to be agreement on the need for some involvement of the international community. We think there should be monitoring of certain situations in the country. Glad that SA Govt believe there elections should be monitored to that it can verified by those outside that elections were free and fair. This goes for violence as well. We have come to realise that parties agreed that violence must stop. they proposed solutions yet violence, accusations and counter accusations continue. It is important that there is an international monitoring which can say that it is indeed the ANC which is responsible for the violence, this would go along way to assist us. Also unlike inviting the international community to observe CODESA I they should be permanently here because violence continues every day and accusations continue, if they were on the spot they would be able to verify on the spot. All who say they are not involved in the violence should welcome this because it would enable us to deal with the matter more openly in the eyes of the world .
- 7.4.1.13 IFP: There are structures on the ground dealing with the violence particularly the Goldstone Commission which must be given teeth, finance and expanded and more power. is this not enough. Should not members of the international community be invited to participate in these structures to see that they do their work partially.
- 7.4.1.14 Mr Zuma: Don't think the Goldstone Commission is sufficient. The international community could be part of the structures on the ground.
- 7.4.1.15 Mr Webb: no one has voiced opinion that here should be observer status related more particularly to monitoring elections.
- 7.4.1.16 Minister Botha: Depends what considers to be what one considers to be a monitoring task or observing task. Question of what will be their status. Observers do have investigative authority. Who gives them that authority. This would require legal authority.
- 7.4.1.17 Mr Samuels: The labour Party is supportive if an interventionist role of the international community. It is archaic for a country which had the most odious system of government in this century where changes are now being made to say that they do wish to have an interventionist role.
- 7.4.1.18 Prof Asmal: Can there be consensus that CODESA agrees to invite a neutral international team of observers - a task force would be set up t work out its functions, its duration, its immunities and its general relationship to all the parties.
- 7.4.1.19 Mr Geninda: Could Minister respond to his statement of what means that violence could be stopped tomorrow

- 7.4.1.20 Minister Geldenhys: We can tomorrow again impose the state of emergency to stop the violence and to impose a security management system can be imposed again. We want to stop the violence along democratic lines.
- 7.4.1.21 Minister Botha: Could we leave it to task force to work out observer role of international community.
- 7.4.1.22 Mr Webb: Does this suggestion refer to elections and violence.
- 7.4.1.23 Minister Botha: As far as violence is concerned as long as there is no foreign control over the security forces in South Africa, the government is not opposed to Bona fide missions visiting the country to inform themselves of the facts.
- 7.4.1.24 Mr Webb: seems that Minister has helped us reach consensus on the fact that a task force should be established to work on the practical aspects of observers to satisfy themselves as to the fairness of elections and the continuing violence in the country. Requested Mr Bester to summarise consensus decision.
- 7.4.1.25 Mr Bester: Summarises consensus decision as follows: The Working group favours the appointment of a task force which will be concerned with the establishment of a body international observers/monitors, to observe/monitor, firstly mechanisms to reduce the violence and secondly, representative elections. This task group will report to WG1 on the terms of reference, powers, duration, funding etc of such a body.
- 7.4.1.26 Mr Webb: On the question of mechanisms to reduce violence was it not just a monitoring function of violence that was agreed on?
- Minister Coetsee: Understood his colleague to be firm on the issue of an observer group to be established to satisfy themselves on the fairness of the electoral process, however on the issue of violence, it was equally clear that Govt. had no objections to bona fide missions to inform themselves of the facts of violence. These are two separate things. Govt. is opposed to any form of foreign control over the security forces. Mr Bester should embody tie issue of violence in a this point.
- 7.4.1.27 Mr Webb: Could the rapporteur deal with the issue as two separate items and report back later
- 7.4.1.28 Mr Kasrils: SACP seeks clarity from Govt. Are they talking about separate groups to observe violence. Is Mr Coetsee agreeing with Mr Botha that parties could simply invite anyone they pleased to observe the violence. There is a big difference between this and the WG's request that there should be a formal consensus request for an international body to observe and monitor the violence. Want to be sure that the group which comes out to monitor the violence is equally accepted by CODESA
- 7.4.1.29 Minister Coetsee: We do not accept this to the case in principle but the feasibility/advisability/practicability of such a step on the part of CODESA could be investigated by the task force.
- 7.4.1.30 Dr Madide: Since different parties have unequal access to resources it is more feasible for the Group to be invited by Codesa. If the international body is going to monitor the lection then the question of violence is important in determining whether the climate is right for elections.
- 7.4.1.31 SACP: the problem of advisability is that it can embroil the task force in endless discussion of whether or not it is advisable. Govt. should consider dropping the notion of advisability and keeping the notion of practicability

- 7.4.1.32 Dr Madide: The task force should discuss whether the international body should work through CODESA, the Goldstone Commission, the NA
- 7.4.1.33 Dr Bernard: Perhaps international observers should be incorporated into LDRC's
- 7.4.1.34 Minister Coetsee: His response was based on Bester's draft which could have implications for the infringement of our sovereignty, we could progress if we separate the two. Would the monitoring group, in relation to violence, be invited to establish their presence tomorrow and start dealing with violence would they be here preceding and during the election. Could progress therefore if accept the term advisability.
- 7.4.1.35 Mr Shaik: The question of advisability does not fall under the ambit of the task group - it is in reference to principles and this matter must be separated from practicabilities.
- 7.4.1.36 Mr Bester: There is an important background to this debate which is not being mentioned here and that is this morning when we discussed the NA there were definite requests from several parties that the compliance of parties to the NA must be discussed and a mechanism to deal with non compliance must be discussed and that this item was referred for further discussion to WG1 plenary by Minister Kriel. Thus when the word mechanism was mentioned in the context of violence it was in the context of the NA and that the basis of a potential monitoring international group would be to monitor the adherence of Parties to the NA. It is not for them to create mechanisms and impinge on the right of local delegations to decide on how the issue should be handled.
- 7.4.1.37 Prof Asmal: Should not terminate discussion. To assist the WG: there is a proper verification role which is different to monitoring and observing to verify, whether parties are adequately represented in the electoral commission, whether there is complete freedom in organising and mobilising by political parties without violence and intimidation and whether they can verify whether parties have equal access to radio and TV, whether we need technical expertise on certain aspects, and should we not seek an international guarantee, to allay fears, that the process has met with the satisfaction of internal and external expectations.
- 7.4.1.38 Minister Coetsee: Issues raised by Prof Asmal could be dealt with by task force.
- 7.4.1.39 Mr Webb: there is consensus on the first part of Mr Besters draft on the question of violence no consensus. Suggestion to go back to principles and report back tomorrow.

Government reported on 5 May that they did not have sufficient time to consult their principles and that which there was sufficient consensus on the question the international community monitoring and observing the elections there was no consensus on the international community monitoring and observing the violence. It was decided should consult with their principles and refer their decision to the WGSC1 meeting to be held on friday 8 May with a view to arriving at consensus on the issue, and that Minister Coetsee should give advance written notice on Government's decision to the WGSC1.

Addendum D

6. **Drafting of a definition of free political activity**

- 6.1.1 That there was a need to provide an insight into the notion of Free Political Activity
- 6.1.2 That the obstacles hampering free political activity should be identified
- 6.1.3 That such obstacles should be examined in the context of the current violence, intimidation, existing discriminatory laws, the holding of meetings, laws and broadcasting etc.
  
- 6.2 **It was agreed:**
  - 6.2.1 That the task of drafting a comprehensive report on the "creation of a climate for free political activity" should be handed over to the rapporteurs, who in turn should assist in directing the WG1 plenary on 4 May, on this issue
  - 6.2.2 **That the Terms of Reference for such a report should be:**
    - 6.2.2.1 The formulating of guidelines for the creation of a climate for free political participation with a view to determining outstanding tasks which can be undertaken by Parties within the context of CODESA
    - 6.2.2.2 Pointing out the responsibility of individuals and political organisations and Parties in the creation of such a climate
    - 6.2.2.3 Ascertaining, more precisely, what has been done to create such a climate
    - 6.2.2.4 Ascertaining, what still needs to be done to create such a climate
    - 6.2.2.5 To determine if the climate is such that CODESA can move forward to the next stage of democratisation
  - 6.2.3 **That such a report consider:**
    - 6.2.3.1 The content of submissions made by delegations on this issue, particularly the ANC and government's submissions circulated on 23/4 and 27/4 respectively
    - 6.2.3.2 The principles and code of conduct of the NPA as a framework and motivation for binding delegations to a particular code

## Addendum E

The following comments were made on retrospectivity of the state of emergency:

Minister Coetsee reported that the amendments to the internal Safety Act relate to other issues as well. These amendments have been debated and only one question was to be referred back to principles and this was the question of the retrospectivity of the state of emergency and that it had been suggested that the amended legislation should take effect once an Interim body/authority is in place. Mr Coetsee suggested that provided that it is clear that the amendment regarding retrospectivity is a part of the other amendments that the government was prepared to allow the possibility of retrospectivity to lapse. And that furthermore it should not be seen as an amendment that should be pushed through now.

Mr Bester: It seems to be that the Minister is introducing a linkage that was never there before. It was never part of the total package that the total package would only be introduced once the Interim executive was established. The only agreement that we did have which was introduced on the insistence of the government (see 4.1.6.1.1 of the draft report - SG1) where we deal with the declaration of the state of emergency on the advice of a multiparty interim executive cabinet and the second sentence introduced on their insistence, ie that this would only take effect once such a body was instituted. It is thus quite clear that the qualification related to that particular power only and not to the other. If the Minister is now saying that they are prepared to lapse retrospectively if the whole package of reform dealing with the Public safety Act only comes into operation once there is an interim executive then he is introducing a new conditionality to the consensus which was not there initially there. Is that in fact what the Minister is doing?

Minister Coetsee: Where is stipulated there is no such link. Is it suggested that the amendments to the Public Safety Act is brought about here and now?

Prof Asmal: Not clear as to whether the amendment to the Public Safety Act would be brought about as part of the package concerning the Interim period. Not clear as to whether the retrospectivity would be dropped from the amended legislation or would it only be brought into force when the trigger mechanism is invoked.

Minister Coetsee: Is of the opinion that all along we have been talking about a package and of amendments not here and now. What we did do was to indicate in the case of security legislation some amendment on the shorter term could be indicated. And that other provisions could be seen as improvements. If we have a justiciable bill of Rights it stands to reason that we have to look at all our laws that may become justiciable.

Prof Asmal: ANC asked for the repeal of the Public Safety Act. It was the view of the ANC that the one obstacle we faced was the question of retrospectivity and that once this obstacle had been overcome it would be referred to WG5 for implementation and that the Parties are bound by what they had consented. There is now a different complexion being put on this issue. The type of linkage the minister refers to never existed in the debate and the ANC would never have started the debate if such a linkage had been made. There has to be clarity in what is represented in 4.1.6.3.

Minister Schutter: On the point of indivisibility - as set out in 4.6.1.1 at the SG the last sentence was added at Minister Schutter's insistence. Before this there was no difference between 6.11 and 6.12 and its sub paragraphs and that this can only be instituted once interim cabinet has been instituted. At that stage there was an indivisibility.

Mr Bester: The argument of indivisibility cannot stand from a legal point of view and

government is shifting the goal posts because all along there was understanding that the approach was that the Public Safety Act must go. Government then said that the measures were needed. The agreement was that in the interim period until there is a bill of rights we find this acceptable provided certain amendments are made to the legislation. The understanding was that the justiciability provided for in 4.1.6.2 does not depend upon the existence of a bill of rights it is normal justiciable review. There is nothing preventing legislation which provides that certain sections only become operative after a certain date and that's exactly what could be done in the case of 4.1.6.1.1

The proposal would be that the consensus that had been reached stands as a package to be implemented after CODESA II but with the express proviso that 4.1.6.1, as well as the lapsing of retrospectivity only kicks in once the trigger mechanism is operative.

SACP: If the amendments as proposed are going to be acceptable at the point at which we have an interim authority we might as well say from the beginning that we wanted the Public Safety Act repealed. If it's not to be made justiciable now what's the point of saying we want amendments then we might as well leave it to interim authority to look at it. Reluctant to agree to the amendments to the Public Safety Act only on the grounds that they will become operative once there is an interim authority. In this case the SACP would go back to the original position of calling for the immediate repeal of the Public Safety Act.

Prof Asmal: can't accept a watering down of this issue. The government is not acting in good faith. Therefore we withdraw our support for the proposals and see no point in discussing the issue and will go back to principals about it.

Mr Webb: there remains a difference of opinion as to the timing of these proposed amendments to the Public Safety Act, is there any purpose in continuing the debate.

Venda: that is the difficulty of South African government implementing amendments now.

Bester: accepts the Minister's argument that the lapse of retrospectivity could be logically linked to the provision made in 4.1.6.1.1

Mr Bester: Could accept the Minister's argument that the lapse of retrospectivity could very logically be linked to the provision that is made in 4.1.6.1.1.

Mr Webb: The rare benefit of 4.1.6.1.2 would be lost if were to be delayed to the date of the institution of an interim authority.

Minister Coetsee: That to a certain extent these proposals emanated from the government and that's why it is so clear that the question of justiciability to the Bill of Rights.

Prof Asmal: should make clear the proposals in relation to the Bill came from the task force not from the government. It was the ANC that proposed the trigger mechanism. The ANC would not have taken part in the discussion if the amendment to the laws would have been postponed to the interim government. It is possible that the interim authority would change the proposed amendments, which the ANC in the first place was not happy with.

The Bill of rights could take an inordinate amount of time and the ANC wanted the protection now. The ANC has made detailed provisions about the protection of detainees which we have not had consensus on. Not sure that an adjournment on this issue would be helpful.

Minister Coetsee: Agrees with Prof Asmal that detention without trial is a matter for consideration agree that the desirability should be investigated of including these items in the Public Safety Act. This also emphasises the fact that we cannot consider Paragraphs 1.4.1.6.1 up to 4.1.6.2 as finalised for purposes of amending the legislation. If we have to do it piecemeal it's not going to promote good legislation. Could have provisions coming into operation at different times but still have to deal with the legislation in a comprehensive package and will have to finalise 4.6.3 which is clearly related to 4.1.6.1.1 so the indivisibility is glaringly there.

SACP: Wont accept that the retrospectivity section of the Public safety act is going to be left to the Interim authority. Looking at the period now, the Public Safety Act was not conducive to levelling the playing field. Minister must together with principals look at 4.1.6.3 as part of the package.

Mr Webb: Parties should adjourn and discuss the issue with principals

Rapporteur's report of WG1 SG2 4/5/1992

Regarding the Joint Monitoring Commissions there was consensus on the following:

- 5.1.1 that regional monitoring commissions be created in each RDRC region.
- 5.1.2 that 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.
- 5.1.3 that 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.
- 5.1.4 that the assistance of professional dispute resolution agencies be used in the training and development of such local/regional monitoring commissions.
- 5.1.5 that the functions of these regional monitoring commissions be :
  - 5.1.5.1 to monitor the compliance by NPA signatories to the codes of conduct as provided for in the Accord.
  - 5.1.5.2 to monitor the behaviour of parties and organisations at grass roots in relation to violence.
  - 5.1.5.3 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.
- 5.1.6 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 such matters are under review or investigation by the commission.

**5.3 Budget and infrastructure problems**

There was consensus on the following:

- 5.3.1 That CODESA calls on the international community to provide financial and other assistance to facilitate successful implementation of the NPA.



5.3.2 That we recommend 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.

5.3.3 That we further recommend 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 could include the holding of musical concerts, sports events, and other such activities with a peace theme as well as approaching the business sector in this regard.

### **Role and composition of the Security Forces (I) and (E)**

Consensus was reached that for the purpose of WG1, this subgroup is satisfied that all the Security Forces would be placed under the control of interim/transitional governmental structures.

This SG takes notice of the proposals tabled in SG3 to set up preparatory councils amongst others one or more such councils specifically intended to deal with the Security Forces.

The SG supports the aforementioned principles and agrees that the details of such councils be worked out by WG3.

### **Outstanding matters of the NPA.**

1. In so far as the promotion of peace is concerned, we urge the leadership of all organisations to urgently 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.

2. The Sub-Group is of the view that the successful implementation of the NPA is fundamental to the creation of a climate of free political activity, peace and stability in our country. In this regard we strongly recommend 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. We further recommend, that were possible, such persons be relieved of all other organisational/parties obligations in order to facilitate the above.

### **3. Goldstone Commission.**

In regard to the Goldstone Commission, we recommend to the NPS and NPC to:

3.1 take active steps to implement and monitor the implementation of, the recommendations of the

Goldstone Commission.

- 3.2 to distribute timely the relevant recommendations of the Goldstone 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.

4. **Legal Enforceability.**

1. We recommend to the NPC to take active and urgent steps to ensure the legal enforceability of the Code of Conduct for the Political Parties as provided for in clause 9.6 of the NPA.
  2. We further recommend that the special courts as provided for in the NPA be constituted as soon as possible and enacted within the current session of parliament.
5. In so far as transgressions of the NPA by political parties are concerned, it was agreed that:
- 5.1 On presentation of the Goldstone Commission's findings to the relevant political party/parties;
    - 5.1.1 Such parties should respond in writing to the Commission,
    - 5.1.2 That the findings be made public in order to bring such parties to account for such transgressions.

#### Addendum G

The following points were made with regard to security legislation

ANC: Its difficult to have consensus about measures dealing with special situations unless we know what these measures are. The point of departure must be the repeal of the Internal Security Act then only can we look what measures may be necessary. We work on the basis of public peace and the maintenance of public peace that may require legislation to deal with such public peace - up to now the assumption has been the security of the state which we reject, which for some time was a licence for the most horrendous things. Faced with this philosophy, we divert and say public peace may require legislation to deal with the situation. Webb call them special measures. One of them is meeting, presently controlled by the Internal Security Act, in support of the security of the state approach. We believe meetings should be regulated in support of public peace instead.

Minister Coetsee: At the task force level we are in a position to consider amending the Internal security Act to emphasise public peace and safety . It is suffice to say that with the exception of Sec 54 the provisions of the internal Security Act are aimed at prevention rather than cure . To begin with would it be possible to provide for legislation where an organisation can be declared prohibited, by a court of law instead of ministerial decree as the section stands at the moment. The courts will have to decide objectively whether an organisation is a threat to peace.

Furthermore Section 29 - Detention without trail has been adopted to provide for 10 days detention which could be extended upon application to a court of law. it would be possible to invoke this provision only if so activated by a decision of parliament, which empowerment would lapse after a certain period of time. When we come to Sec 30,31 in terms of which the Attorney general may refuse at his own discretion, bail, is a provision one may divorce completely from the Internal Security Act, removing it to the Criminal Procedures Act. We cannot fight violence, the intimidation of witnesses, if we do not invoke these two sections, but their profile could be changed if we moved it to the Criminal Procedures Act. In terms of Sec 46 the Minister of Justice has the power to ban all open air meetings for a period of i year. It is possible to prevent a situation from getting out of hand by enabling other measures to become operative. To curtail ministerial power to say 14 days to allow the RDRC's and LDRC's to start their work. Then there is Sec 50 whereby people could be detained for 14 days to counter unrest, it is possible to amend this section in a way that its is activated if parliament so decides. When it comes to the issue of human rights it is a reality that many of these provisions would be contrary to a Bill of Rights. It is possible then that this Act could be suspended in tandem with the introduction of a Bill of Rights and that it only be activated by parliament. It is also possible to transfer Sec 54 to the new bill which we envisage to deal with violence and intimidation. It is possible to retailor the question of sabotage and terrorism and possible to consider the repeal of subversion as a separate offence since it has been argued by delegates that the encompassing offense of high treason , would also cover subversion.

Sec 58-61 may be available for repeal. These are our preliminary thoughts.

Mr Pahad: the principle objection is the Act itself. It would difficult to justify a tinkering of the Act to the people. if the Act is repealed the vacuum could be filled by another negotiated Act. secondly this parliament is illegitimate yet it can pass through any legislation it wants because of the majority it holds in parliament. So say that you are going to soften the blow by taking powers away from the Minister and giving it to parliament isnt a great concession. Also cannot understand why there is a need for detention without trial. It would be wrong for us to lay the basis for detention without trial for a future government .

Mr Shaik: when we categorised the different terms of reference for WG1 we talked about the past and "completing the reconciliation process. The NIC/TIC would like to record their disappointment at the lack of progress in SG1 when we talked about the past as "completing the reconciliation process" We want to record the lack of progress in SG1. We have listened with great interest to the Minister's reference to transferring of sec 29 of the Internal Security Act to some other law which will deal with detention without trail. As a detainee who spent 9 mths under this horrendous Sec I wonder if would not make progress by getting ex detainees to negotiate this issue. i have had family members detained for 12 months under S 31 of the same Act which provides for solitary confinement without reading material. I further argue whether any of those arguing for the transference of this Act have been in solitary confinement or subject to interrogation of police officers which Sec 29 allows.

The NIC/TIC records that they will accept nothing less then the repeal of this ACT

Prof Asmal: The ANC considers that it is a historic and immediate necessity to repeal the Internal Security Act. Secondly there are three sticking points in the present Act - Sec 31, 29 and 50 which allows the executive for detention without trial. It is unacceptable that there should be detention without trial. As far as Sec 29 is concerned we would like more efficient law enforcement, greater technological assistance for police, police to become more effective to combat crimes against order and peace. The common law position of 48 hours is enough. There is a fundamental objection concerning detention without trial. Cannot understand the Ministers insistence in detaining witnesses which is by its nature intimidatory. Sec 31 or a variation thereof is unacceptable. It should be noted that Sec 50 is only unused against African people. This is objectionable and discriminatory. Cannot accept that the Minister has the power to ban meetings even for 14 days. Judges are noted for being anti active. this will not change in the future. On the question of crimes committed the crimes of terrorism and subversion are so widely distributed these should be open for negotiation. We reject the emerging notion of Facts on the Ground which may militate against the withdrawal of an Act such as the violence. This Act has not been relevant to deal with the violence. The Act has not been used in the last 6 months to deal for example with the violence on the trains . We will ask the minister to take into account the three sticking points if he cant amend these would he not consider that the repeal of the Act and its substitution by agreed arrangements.

Mr Bester: Wants clarification on: said in his tender that Sec 29 and 50 could be considered to be suspended only to be activated by an Act of parliament. If they wish to activate out of parliament they must recall parliament?

Minister Coetsee: Parliament may empower such a body to activate this but it boils down to parliament activating it. That once we have a Bill of Rights in place the entire Act could be made subject to a clause activating the entire statute.

Mr Bester: There is a great difference in saying that a specific section can only be activated after a open public debate in parliament and saying that a particular section can only be activated by an administrative body subject to the approval of parliament. The Public Safety Act eg, provides that a state of emergency can be declared, regulations issued in terms thereof to be laid on the table of parliament within 14 days if parliament is not in session within 14 days from the opening of parliament which means that regulations made in July can be in force for seven months and then the option of parliament declaring those regulations unacceptable can only come after seven months.

Minister Coetsee: This problem can be dealt with by empowering a body eg an extended committee of parliament

Mr Bester: So then the tender then is for immediate suspension with a parliamentary body to activate it if parliament is not in session. There is objection to detention without trial yet nothing is said about Regulation 31 in the government gazette of March 11 which deals with unrest areas: " a member of a security force may in an unrest area, without a warrant of arrest, arrest or cause to be arrested any person whom which in the opinion of that member of the security force is necessary to combat violence, riots and is a threat to public order, may under a written order signed by any member of the security force detain any such person in custody or prison . No person shall be detained exceeding a period of 30 days unless the Minister, without seeing anyone, through written notification to a prison warden further detain that person.

These are extensive powers which is in the book. The Minister's tender that Sec 29 and 50 be suspended only to be invoked after a parliamentary debate should be taken seriously. Don't agree with the Minister seeing Sec 54 in isolation from the rest of the ACT. A person in terms of Sec 29 can be detained on suspicion that he has committed an offence under Sec 54. If we are going to make Public peace, the leit motif of Sec 54 should be brought in line with that. Agree with Prof Asmal, measures like these are not necessary to deal with the violence Prof Matthew's book indicates that the very existence of such measures could ferment violence. Violence should be dealt with politically.

Intando: Most people here have been victim of the Internal Security Act for years. No Black person will be convinced that the Act must remain. It must be repealed, not suspended.

Minister Coetsee: The discussion and responses to the first contribution can be set served by a proposal along the following lines: Taking cognisance of the fact that there is consensus on the issue of social measures that are necessary to deal with threats to public peace which may be necessary during the period of transition. In view of this the Internal Security Act has been scrutinised to be brought in line with the said criteria, that the

government position paper together with other position papers be referred to a task group with a view to substitution of existing relevant legislation as well as the Internal Security Act.

Prof Asmal: Clarification: With a view to substitution of the existing legislation, apart from the Internal Security Act there are other relevant legislations. The ANC's position is to accept this position as consensus if it includes the Internal Security Act.

Minister Coetsee: We are talking mainly of the Internal Security Act.

Bester: Welcome the fact of substitution which means that after the taskgroup undertakes its activities there will no longer be an Internal Security Act. What is the time frame that the Minister is looking at? Should the task force complete its work before CODESA II?

Coetsee: Substitution does not mean complete substitution. Could relate to a section of the Act or the entire Act. Cadre: propose that the modis operandi be referred to task group with a view to substitution of existing relevant legislation including the Internal Security Act. In WG 2 Substitutions defined as : without prejudice the repeal and or comprehensive amendment to existing legislation. On this basis there is sufficient basis for a report to CODESA, on the basis that the task force will work with urgency.

Intando: Agrees with Prof Asmal

Minister Coetsee: Timing depends on what happens after CODESA II. It also depends on the task force. Task force could take two weeks to complete its report after CODESA II

ANC: report to CODESA II that there is consensus on this basis that the task force undertake with the work and that such a task force should along the principles of CODESA even after CODESA II. Perhaps there is a case now to expand the task force effectively the task group has been the SA Government, ANC and the DP now that we're getting into matters of detail. It was agreed that the WGSC1 would deal with the composition of the Task force

SACP: Welcome the position taken by government. If is possible for task force to meet on Monday or Tuesday and find that if they can arrive at agreement they can report more to CODESA 11.

Webb: Agrees , leave it open ended. But the principle is availability, urgency and commitment.

The delegates agreed to refer the matter of composition of the task force to the WGSC1 .

## Addendum H

The following points were made on Discriminatory Legislation report

Mr Bester: In Feb in march submissions that were made were very broad. The intent of the WGSC1 was to narrow the ambit and that parties should come afresh with representations on legislation that they believe this WG should deal with and Parties should now make recommendations

Prof Asmal: We must go to CODESA II with some kind of package.

There are Acts that come under Category 1 , there are some laws which ought to be repealed and which we should refer to WG5. Suggest that we look at categories and look at minimum laws: See Addendum F)

The question is how do we deal with these issues. A method must be found. In two areas we cannot have proper election with those laws still in force.

Mr Webb: Could we look at the principle. There are clearly laws which need to be changed for the levelling of the playing field.

Minister Coetsee:

Pro Asmal's list must be evaluated against the background of paragraphs 7.2-7.3 What legislation he has in mind really militates against free political activity. if in his list there is any such provision then it must get priority.

We have now determined the yardstick to go through his list and see what measure really militate against free political activity. it is only then that the remainder of the list of legislation mentioned would be considered as in the interest of society or not if it is not in the interest of society it may get attention as soon as possible but it is possible to conduct free political without removing these. can argue the legitimacy of some of these laws towards maintaining law and order. Sec 205 for example, it is wrong to say that this section is aimed at journalists. It is not. Journalists do not become a target of this section. There will be remnant of laws. prefer the word remnants change, what is being proposed as a valid mechanism viz a Bill of rights, will in the final analysis deal with the remnants of discriminatory legislation. Suggests that we have reached consensus on the categories. Should ask Rapporteur to tackle 2 and three. The WGSC1 look at Asmal's list to see whether any legislation militates against free political activity. That the WGSC provide a sieve and the remainder of all contributions be studied by the rapporteur to see what category they fall into.

Bester: Request : That they will look at legislation and categorise it but need to identify legislation for CODESA II which in its impact militates against free political activity.

This necessitates into the legal working of many pieces of these legislation . World request the government to come with a legal response in terms of the impact of matters like citizenship and the electoral act which would help the rapporteur to reach conclusions.

Addendum I

8. **The reconstitution of the SABC and monitoring of its performance**

8.1 The WGSC1 recognising:

8.1.1 The urgency of the situation

8.2 **Resolved:**

8.2.1 That, since WG1 has reached consensus that an Independent Body to regulate the telecommunications sector be created at the earliest opportunity, it was agreed:

8.2.1.1 That the WGSC1 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 and;

8.2.1.2 That the first meeting for such discussions will take place before CODESA II.

8.2.1.3 That the mechanism for monitoring the performance of the SABC be referred to at the same meeting as 8.2.1

Addendum J

The following comments were made with regard to fair access to public facilities and venues

Kader: many schools are used during white elections. In many parts of the county schools are the only buildings available for meetings We should consider this.

There was support for and gainst the use of schools for meetings especially meetings for election purposes by political parties.

Ciskei Government reported that the use of schools for political meetings would not be considered under any circumstances.

The Bohuthatswana government reserved the right to comment of the issue.

It was brought to the notice that all Parties present signatories to the NPA undertook to do what ever is possible to enable political parties to use public facilities and venues



## Addendum K

The following points were raised with regard to Item P

Prof Asmal The NPA refers to the fact that there should be access to voters whether they are in private or public property. Understand public property to mean compounds and farms. There are no absolute rights of property. In traditional law there are rights which run with the land so that the landowner or tenant does not have the right to total exclusion. Particularly important is the big vineyards and farms where they may be only one meeting place privately owned.

Minister Coetsee: No political party has ever had an unfettered right of entering public property and interviewing people without permission. This must be done through negotiations

Mr Geldenhys: Most of the parties are signatories to the NPA. We have already reached consensus on this issue and the wording of the peace accord should be the wording that WG1 should reach consensus on : The WG agrees to support the right of all political parties and organisations to have reasonable freedom of access to their members, supporters and other persons in rural and urban areas, whether they housed on public or private property.

6.1 Administration:

6.1.1 A brief report was given by the Secretariat on discussions held within DMC and MC meetings on the question of Codesa 2 in respect of the agenda and the format, including the Working Group reports. The following was noted:

6.1.2 The DMC is to advise the MC on a basic structure for Codesa 2 and the following is suggested:

- \* No introductory speeches by participants and leaders of delegations.
- \* Agreements, across the board, would be dealt with first.
- \* Following would be the work outstanding, across the board, in respect of the Terms of Reference.
- \* This format would enable Plenary to then address the way forward.

6.1.3 The suggested format of Working Group reports is:

- \* The Terms of Reference.
- \* Manner in which the Working Group attended to their work.
- \* Agreements reached.
- \* Matters outstanding in respect of the Terms of Reference.

6.1.4 It is recommended that a composite report of agreements reached and matters outstanding be presented to the Plenary. The mechanism on how this is presented is still to be agreed upon by Management.

6.2 Format of Report Backs:

6.2.1 The principle of a composite report was agreed upon.

6.2.2 It was noted that a process should be considered whereby all WGSC's and the GAC SC could give input to the composite report put together by the DMC/MC.

6.2.3 To ensure that questions and requests for clarity, in respect of the composite report, are adequately catered for, it was suggested that a panel consisting of 2 representatives from each WGSC be available on the platform at the Plenary.

The DMC requested that all WGSC's and the GAC SC put forward the names and suggest mechanisms for the panel to reflect a broad political spectrum. Co-ordination would be needed amongst the WGSC's, the GAC SC and the DMC in this regard.

6.2.4 It was noted that the GAC's input to Codesa 2 still has to be worked out by the MC, in consultation with the GAC.

6.3 Deadline:

It was noted that the deadline for Working Group Reports is 7 May 1992 with a fall back date of no later than Monday 11 May 1992.

6.4 The way forward:

In this regard the DMC requested the WG's and the GAC to submit recommendations and guidelines on the following:

- \* Unfinished business in respect of the Terms of Reference
- \* The question of implementation of agreements
- \* The structures of Codesa and the process forward

SUBMISSION TO WORKING GROUP I

SERIOUS CONCERN BY THE SA GOVERNMENT REGARDING THE COMMITMENT BY PARTIES TO CREATE A CLIMATE FOR PEACEFUL AND FREE POLITICAL PARTICIPATION.

1.

The original assignment of WGI was to create a climate for peaceful and free political participation.

2.

Subsections (a) to (q) of Assignment 1 of WGI clearly relates to two aspects, namely:

- (a) The possible removal and/or amendment of legislation in order to level the political playing field; and
- (b) the creation of a climate on the ground which is conducive to a free and fair election without violence and intimidation.

3.

With regard to the aspects referred to para. 2(a) reasonable progress can be registered. That is clear from the fact that paragraphs 1.1(c) and 1.2(f), (j), (k) and (l) have been substantially addressed in discussions of WGI.

4.

With regard to the physical climate conducive to peace and free political participation on the ground, serious disappointment must be registered. Incontrovertible evidence has now become available which cannot but lead to the conclusion that there is a lack of commitment to peace and free political participation on the part of certain political leaders of parties; or alternatively, that the said political leaders do not have any control over their members in this regard.

5.

The situation remains extremely volatile and the slightest spark, such as inflammatory statements by the leaders of political organisations and parties, do turn emotion into a vicious spiral of violence and bloodshed.

6.

During the past four months more than 3 000 unrest-related incidents occurred in South Africa. A total of 711 people have been killed in such incidents over the period 1 January 1992 to 26 April 1992. An analysis of the causes of death indicates that the majority of victims died as a result of gunshot wounds (457) as well as hack and stab wounds (144), while 110 persons were killed by means of the necklace method, stonethrowing etc. Regarding the geographical distribution of unrest-related murders, Natal and the Witwatersrand were affected most.

7.

The Government regards existing bilateral (Groote Schuur Minute, Pretoria Minute, D F Malan Accord) and multilateral agreements (National Peace Accord, Declaration of Intent) as important instruments in curbing the violence, and finding permanent solutions to the problems facing South Africa and its people.

8.

The Government wholeheartedly supports the contents of these agreements. The Government wants to state categorically that it is committed to ensure that these undertakings are honoured.

9.

What is important is that existing agreements, whether it be bilateral or multilateral should be honoured and the terms thereof be complied with. If we do not honour such agreements how can any future agreements be regarded as binding. If we cannot trust each other to fulfil our commitments under present agreements, then trust can not form the basis of future agreements.

10.

Paragraph 2.4 of the National Peace Accord states the following:

"It was agreed that all political parties and organisations shall respect and give effect to the obligation to refrain from incitement to violence or hatred. In pursuit hereof no language calculated or likely to incite violence or hatred, including that directed against any political party or personality, nor any wilfully false allegation, shall be used at any political meeting, nor shall pamphlets, posters or other written material containing such language be prepared or circulated, either in the name of any party, or anonymously."

In contrast to this agreement several inflammatory statements by various leaders in the past days have shown a remarkable aggression in laying the blame for the current violence at the door of the Security Forces, the Government as such and even the State President in person, without any proof or substance, or without excepting that members of their organisations are major contributors to the violence.

11.

According to newspaper reports, Mr Nelson Mandela said the following during the OAU summit last week:

Mr Nelson Mandela blamed elements of the Security Forces for the violence, a situation he put on an equal footing to that of Nazi Germany. Mr Mandela stated that a nation-wide network exists within the Security Forces to de-stabilize South Africa. He stated that the eventual aim of the Security Forces were to intimidate the oppressed so that they will reject their organisation, the ANC. (Die Burger, 29 April 1992). This is in the Governments view a clear contravention of the National Peace Accord and the spirit of Codesa.

12.

On 29 April 1992, major-general H B Holomisa issued a press release stating the following:

"It has always been a matter of great concern to us that the present government be charged with the maintenance of law and order in a conflict situation where its own interests and those of the Black majority who are its adversaries are at variance.

It is not conceivable that in such a situation the government can be trusted to arbitrate between its own agencies and the victims of the scourge which is easily traceable to its doorstep."

"It is common knowledge that President De Klerk and other senior Ministers were members of the now defunct State Security Council which authored the Gestapo-type agencies such as the C.B.B. whose bloody record has been well documented. It is therefore not surprising that the orchestrated Black-on-Black violence has been exacerbated under the present South African regime. ~~There~~ There is too much at stake in the South African political crisis to leave its resolution in the hands of President De Klerk whose hands are not clean in this blood-letting."

"The orchestration of violence by Security forces and the murder of Black political activists, indicate that the strategy has been switched to luring the liberation forces into South Africa, to trap and annihilate them inside. It has been unravelled by the exposure of the slush funding of

their puppets and lackeys as evidenced in courts and other judicial enquiries, that the current wave of violence is not inspired by Black-on-Black violence but by a white sinister hand."

13.

Although Transkei is not a signatory to the National Peace Accord, a situation which in itself is inexplicable and unacceptable, Transkei forms an active participant to Codesa. Inflammatory and unsubstantiated statements, such as those being advocated by major-general Holomisa, place nearly insurmountable stumbling blocks in the way of creating a climate of political tolerance and of solving the violence in our communities.

14.

It is often alleged (and presented as a fact by some people) that the South African Police, or some of its members are the root cause of violence in our country. The recent findings of the court in the so called Trust Feed case, cannot serve as a criterium to judge the SAP or its members. As far as the Trust Feed case is concerned, the SAP is extremely disappointed in the behaviour of certain of its members. For this reason in depth investigations were launched by the SAP which, despite alleged attempts to cover up police involvement nevertheless resulted in the conviction of the SAP members concerned. Investigations into the alleged cover up are continuing.

What is important, however is that the SAP will not hesitate to investigate alleged criminal activities by its own members. What is also important is that the incident at Trust Feed took place in 1988. That was long before the important step taken by the Government on February 2, 1990. In 1988 the then banned organisations were responsible for 281 acts of terror, the highest in the history of South Africa. In most of these cases, indemnity had been granted to persons who had been sentenced on charges in this regard. We do not judge these organisations in terms of what they had done prior to February 2, 1990. Why should they then embark on a course to judge the SA Police on what some policemen did during on 1988.

Long before the judgement in the Trust Feed case attempts were already made to create a perception that the SA Police serves as the cause of violence.

For example:

On 4 September 1990, in the vicinity of Block e, Sebokeng hostels, a number of people were killed in fighting between supporters of Inkatha and the ANC.

Certain of the affidavits dealt with in the subsequent

inquest proceedings before Justice Stafford referred to a sinister white "third force." Press reports mentioned these "white vigilante" forces and suggested that they had supported one of the sides in this confrontation.

On page 2905 of his judgement, Justice Stafford refers to this suggestion as follows: "The evidence in this inquest established that this allegation or suggestion was devoid of any substance and the only witness who seriously attempted to state that a white man, part of a vigilante force, shot his brother, retracted it and committed perjury." (our emphasis)

On 27 February 1992 an attorney acting for the ANC informed the Goldstone Commission that an informer had identified a farm in the Heidelberg area, where he and other men were allegedly trained as members of a "hit squad", and that the farm was guarded by armed men. He also alleged that he, as well as other trainees, were involved in the train murders in the Witwatersrand area.

The attorney told the Commission that neither he nor the ANC had reason to doubt the accuracy of the information, but that they had no means of verifying it.

Advocate J J du Toit and Lt-Col HESLINGA of the Commission were authorised and requested by the Commission to obtain the assistance of the SA Police and to make the necessary arrangements to raid the particular farm.

No information regarding the location of the farm or alleged activities was given to the SAP.

At 04:00 on 29 February 1992 a number of policemen (52) under the command of maj-genl DE SWART, supported by 9 police helicopters, a para-medical helicopter, a doctor and para-medics mobilized to raid the farm.

Accompanying the police was Advocate DU TOIT who briefed the police on the nature of the operation, in the presence of two attorneys acting for the ANC as well as two ANC officials.

The farm was located but the information proved to be false. The "informer" led the team to two other farms in the same area, but the information again proved to be false. The operation was then called off.

The Commission concluded as follows:

"It is hoped that the prompt action by the Commission and the support given to it by the SA Police will publicly demonstrate the Commission's resolve and ability to use its powers to enquire into current public violence and intimidation and that people with accurate information in that regard will come forward and furnish it to the

Commission.

These events again demonstrate the danger of relying upon unchecked reports concerning public violence and intimidation and it is hoped that the public and the media will take due notice of this danger." (our emphasis)

15.

The unacceptable violence and intimidation is due to:

- (a) The non-fulfilment of the Peace Accord; and
- (b) The inability or lack of commitment on the part of political leaders to discipline and control their members with regard to arms, ammunition and criminal activities.

16.

It is submitted that the following is incontrovertible evidence of a lack of commitment to create a peaceful climate promoting free political participation:

- (a) The admission by Mr Harry Gwala of the ANC that the ANC is fighting a war and that the ANC is killing IFP warlords and their associates (Natal Witness, 29th April 1992).
- (b) On 26 April 1992 an ANC Western Transvaal leader, Mr George Mathusa vowed that Bophuthatswana would be made ungovernable through necklace killings and bombs. Addressing people at a funeral service Mr Mathusa said: "In South Africa we did it through our necklaces and bombs, we can easily repeat it here". (Cape Times, 27 April 1992).

17.

The following incidents can also be recorded in this regard:

- (a) On 24 April 1992 during the course of normal police investigations the Vice Chairman of the ANC branch in Evaton, as well as the regional organiser of the Civic Association of Southern Transvaal (who is also a card carrying member of the ANC) were arrested in Sebokeng (Vereeniging) for the illegal possession of a firearm (Stechkin pistol) and ammunition (9 mm rounds and a F1 hand-grenade). The former was dressed in a green municipal police jacket and the latter in a blue police jacket. Both were detained and since then charged for murder, attempted murder and the illegal



possession of an unlicensed firearm and ammunition.

- (b) On December 30, 1991 a group of men attacked and robbed the Price Club, Vanderbijlpark. In a subsequent skirmish with the South African Police, one robber and one member of the South African Police were killed. Four men were later arrested in connection with the abovementioned robbery and the following items were recovered:
- 1 x AK automatic rifle and 4 rounds of ammunition
  - 1 x ,45 pistol and 3 rounds of ammunition
  - 1 x Bolto 410 shotgun
  - 1 x 9 mm Beretta pistol and 8 rounds of ammunition.

One of the arrested robbers admitted that he is a trained MK member as well as a member of the ANC. He was previously convicted in 1989 on charges of robbery, attempted murder, possession of an AK47 automatic rifle, Makarov pistol, hand-grenade and ammunition and sentenced to 18 years imprisonment. During 1991 he was released as a result of indemnity granted to him.

- (c) During April 1992 members of a Self Defence Unit in Phola Park were arrested by the South African Police. On-going investigations indicate that they were involved in several attacks on IFP-members and policemen, i.e. the gruesome murder of a Bethlehem policeman on April 2, 1992.
- (d) On 13 May 1991 an ANC member was detained by the SA Police on charges of inter alia dealing in AK47 rifles. This arrest was the result of an incident during which an ANC member attempted to sell 4 x AK47 rifles and 1 x G3 rifle for R5 000.

The accused was found guilty on the following charges and received the following sentences:

- Count 1: unlawful possession of AK47 rifles and a G3 rifle: 4 years imprisonment suspended for 5 years;
- Count 2: unlawful sale of the abovementioned rifles: 4 years imprisonment suspended for 5 years.
- Count 3: unlawful possession/provision of AK47 and G3 magazines: 5 years imprisonment of which 3 years are suspended for 5 years;
- Count 4: unlawful possession of ammunition: 12 months imprisonment of which 6 months has been suspended for 5 years.

- (e) An ANC member and MK leader, David Mtelheleli Dlali was arrested on the 7th April 1992 in Gugulethu (Western Cape) for being in possession of 1 AK47 rifle, 2 Mines, 4 Grenades, 1 Makarov pistol and 1 Beretta pistol. A spokesperson for the ANC in the Western Cape thereafter publicly condoned Dlali's possession of the arms.

- (f) On the 1st May 1992 33 ANC members were apprehended in Swaziland whilst they were enroute to Tanzania to undergo military training.
- (g) The ANC and some of its allies have apparently decided to try and prevent the NP and the IFP from election campaigns in certain areas in South Africa and plan to use "mass action" and intimidation in this regard. Examples in this regard are the ANC threats of not allowing IFP members into Ndaleni near Richmond, Natal and their threats of not "allowing" the meeting of the State President in Mitchells Plain during April 1992.

18.

- (a) The Government finds it difficult to explain why the Security Forces would instigate violence as is alleged by, inter alia the ANC, while the Security Forces themselves are one of the prime targets of the current violence.
- (b) In the period January 1, 1992 to April 25, 1992, 63 members of the South African Police have already been killed in 50 separate attacks.
- (c) A total of 248 shooting incidents, 298 stone throwing incidents and 14 hand-grenade attacks have already occurred against the Security Forces during the said period. Armed action against members, and armoured vehicles (e.g. Casspirs and Nyalas) of the South African Police, are much more aggressive and often occur in conjunction with ambushes and surprise attacks. These occur more and more in the built-up areas in especially the PWV and Natal regions. Methods include combined attacks with AK47 assault rifles and hand-grenades. The escalation of violent attacks on policemen is a cause for extreme concern which cannot be allowed to continue.

19.

The ANC has accused the Government on various occasions of conducting a propaganda campaign in relation to the portrayal of the violence as a black-on-black phenomenon. It is however time to acknowledge the facts in this regard.

Recent judicial enquiries, such as the Goldstone Commission, inter alia provided evidence in this regard.

For example:

On 3 and 4 December 1991 violence and unrest erupted in BRUNTVILLE, Mooi River, which resulted in the death of 19 people and left many residents injured.

The Goldstone Commission, under the chairmanship of Mr Justice Goldstone himself, heard evidence on the matter from 14 to 17 January 1992.

Evidence was brought before the judge by various parties such as the ANC, INKATHA, the SA Police, major local employers and community organisations. Witnesses were subjected to cross-examination. Mr Justice GOLDSTONE found that the Security Forces were in no way to be blamed for the unrest in Bruntville.

He found that groupings of both the ANC and Inkatha, who took part in the attacks and counter-attacks, irrespective of which party they belong to, were solely to be blamed for the violence.

The judge also expressed the view that, unless members of the various parties involved in the conflict in the Mooi River area accepted that tolerance and democracy were not only popular political slogans, but that they should accept that every person has the right to his own view and expression of such, peace will never be achieved in Bruntville.

20.

It is now time to deal with the question of "private armies" in a honest and objective manner.

The mere existence of MK now motivates other parties to consider the establishment of their own military or para-military structures as was witnessed in recent news reports. This is not conducive to the creation of a climate for free political participation. The ANC will have to show that levelling the political playing-field on the way to true democracy should mean that parties will have to dispose of "private armies", and not that such structures should be created in order to establish the correct "balance of forces".

21.

In contrast to accusations that the Government and the Security Forces are not interested in ending the violence, no stone is being left unturned to stop the senseless slaying of our people. The following serve as examples:

(a) Employment of manpower and logistics

- plus minus 30% of the SA Police's strength is, at any given time involved in the control and combatting of unrest and violence.
- Thousands of SADF-members are deployed in support of the SA Police.
- Periodically, additional measures are instituted

to further increase the numerical strength of the SA Police in areas of unrest and violence. The following are but a few examples of how this is done:

- During a 5 month period in 1991, 500 members stationed at Police Headquarters, Logistics and the Criminal Record Centre were, on a daily basis, deployed in the PWV area to prevent and combat crime; and
- Since the end of June 1991, plus minus 2 000 members from the Police's training colleges were deployed in the PWV area for a period of 8 weeks, so that SAP members stationed in these areas could be exclusively utilized for the control of violence.
- During 1991, SAP members involved in the control and combatting of unrest and violence worked more than 50 000 man days overtime.
- Other measures employed to increase available manpower, included the following:
  - \* greater utilization of the Police Reserve;
  - \* extensive use of Police Reservists, Neighbourhood Watches, etc; and
  - \* withdrawal of the SA Police from the RSA borders and the replacement of these members with SADF personnel.
- The SA Police's logistic capability has also been considerably improved to ensure effective unrest and violence prevention and control. This includes, inter alia, the development and introduction of the Nyala unrest control vehicle during 1991. The SA Police also makes use of extensive air support in the prevention and control of unrest and violence.
- Weaponry utilized in the control of unrest and violence, is continually submitted to intensive evaluation programmes, in order to ensure that it complies with the requirement of minimum force.

b) Seizure of weapons

An analysis of violence-victim particulars indicated that the majority of victims in 1991 and also during the first four months of 1992 were killed by means of firearms.

This led to the implementation of special measures to

trace unlicensed firearms.

From 1 January 1992 to 26 April 1992, the following numbers of unlicensed firearms were confiscated:

- Rifles : 837 (including more than 250 AK47's)
- Revolvers : 327
- Pistols : 760

A total of 7 landmines, 7 limpet mines and 68 hand-grenades were also confiscated.

(c) Specific and ongoing policing actions

The following examples serve to indicate what measures are taken by the SA Police, both on a routine basis and with regard to specific situations, to prevent and counter unrest and violence.

- static and mobile roadblocks;
- patrolling of residential areas;
- cordoning off of railway stations;
- placing of members at railway stations;
- searching of persons for weapons;
- placing of Dannard wire around hostels to control entry and exit;
- placing of policemen on trains; and
- prompt reaction to warnings received in order to prevent violence;

(d) Liaison actions

A number of liaison forums, on which the SA Police serve in some or other capacity, came into being as a result of inter alia the Groote Schuur Minute and the National Peace Accord.

This representation is in all instances aimed at defusing volatile or potentially explosive situations and attempting to reach an amicable solution through negotiation.

The Police realised however that the available liaison forums would have to be increased to further increase efficiency. At present 232 SA Police members (some members serving on more than one forum) are involved at 257 different centres, where and when the need arises.

This has the effect that liaison has not been restricted to the Police and the ANC. There is fruitful discussion across the whole political spectrum.

There have been numerous successes which can be directly attributed to the fact that liaison forums were in place and were functional. The following effects have been observed:

- Warring parties have met each other and discussed their differences.
- Numerous agreements at local level have been negotiated and signed as a direct result of Police intervention.
- Misunderstandings have been cleared up or at least minimised.

The following serve as examples in this regard:

- On 22 September 1991, celebrations to commemorate Chaka day took place at Gamalakhe, Port Shepstone. The celebrations were attended by the king of the Zulus, the Chief Minister of KwaZulu and thousands of supporters.

Since local ANC representatives were of the opinion that the commemoration would lead to increased unrest in the area, discussions were held between the Police, the ANC and Inkatha in an attempt to defuse the situation. Various agreements were reached during these discussions, to ensure the safety of VIP's and others attending.

At the scene of the commemorations an operational tent was manned by the Police, the ANC and Inkatha. Co-operation between all involved was so good that there were no incidents of violence before, during or after the celebrations.

- On 28 June 1991 the Police at Empangeni received a letter from the ANC Northern Natal Regional Office in which appreciation was expressed for the role of the Police during a visit on 27 June 1991 to Empangeni and Richards Bay by Mr Nelson Mandela.

Discussions between the Police, the ANC and Inkatha resulted in this visit being uneventful despite the fact that disruptions had been expected.

- On September 10, 1991 Mr Joe Nhlanhla indicated that Mr Mandela's home was to be attacked. The SA Police patrolled the area intensively and no incidents occurred.

22.

Since history tells us that political and constitutional agreements are absolutely useless without a stable political and socio-economic base, the Government cannot allow itself to turn a blind eye and to ignore its responsibility towards the majority of South Africans who do not want to see this country become another Lebanon.

It is a matter of common knowledge that the Government has all along been of the opinion that substantive agreements within WGI are a pre-requisite for finalising the tasks of the other Working Groups at Codesa.

23.

The Government thus wishes to propose that WGI should rationalize its own goals in order to support rather than prevent the progress being made in WGII and III. The Government's proposals are the following:

- Existing channels, structures and powers to end or investigate political violence, eg in terms of the Peace Accord and Goldstone Commission, should be used fully and strengthened as recommended by Sub-Group 2 of Working Group 1. 'Reports by these structures concerning parties' willingness to use existing channels should be made public on a regular basis.
- Political leaders should discuss ways, eg regular meetings and joint press statements, to counter the perception at grassroots level of inherent antagonism towards one another, since this fuels violence.
- Criteria based on existing bilateral agreements (eg the DF Malan Accord) and multilateral agreements (eg the National Peace Accord) should be formulated in terms of which objective recommendations can be made about whether free and fair elections would be possible.

24.

In conclusion: Working Group I can only plan and facilitate mechanisms, ~~procedures and criteria~~ for creating a climate free from intimidation and violence. WGI cannot in itself create such a climate. Although one risks sounding cynical, the realities of South Africa are that of a deeply divided society with too few cross-cutting loyalties. The reasons for political violence and intolerance are complex and in certain cases nearly institutionalized, in other words, there is very little hope of a society free of political violence within the next few years in South Africa. This, however, does not

absolve any party at Codesa or WGI collectively, of its responsibility to seek ways and to draw up strategies to limit violence and intimidation. Neither will it lessen the Government's resolve to use its Security Forces, regardless of the internal or external popularity of these actions. No individual or organisation can be allowed to use violence, intimidation and criminality to reach its goals, even if this is done in the name of a political mission.



# INTANDO YESIZWE PARTY

ADDENDUM

OFFICE OF THE IYP PRESIDENCY:

To: S. E. Masango

GUIDELINES RELATING TO THE RESPONSE ON THE SUBJECT MENTIONED BELOW:

INTANDO YESIZWE PARTY VIEW REGARDING THE RSA GOVERNMENT CONCERN REGARDING POLITICAL VIOLENCE AND COMMITMENT BY ALL CONCERNED

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1. My Party appreciates the government's concern on the endemic problem of violence in our country, in fact any peace-loving and caring government should embark on effective means and practical measures of ending such an evil in any community - It is surprising that the RSA government with all the capacity and means at its disposal is not seen to be taking a decisive step in this regard.
2. Regarding the picture that the government is painting on the alleged activities of or by the ANC and its allies in fuelling political violence; We, in the IYP feel that all aspects regarding such allegations and a total picture of the involvement of all guilty of such allegations need to put in its full perspective so that sober and impartial judgement of the facts can be taken stock of in order to effect appropriate corrective measures.
3. The question of neutrality of the RSA government when one study their concern on violence is an issue that needs to be taken care of. We in the IYP, still insist that it is not possible that the government play the role of the referee and player at the same time, neutral and effective means of monitoring violence must be effected so as check the government's neutrality and involvement in this matter.
4. We in the IYP also believe that the game of mud slinging and pointing fingers on some people spoils the very process of restoring peace. It aggravates the situation and breeds mistrust and lack of co-operation. We therefore submit that this matter be viewed and be considered seriously, lest a situation is created where parties file accusations at each other as well as counter-accusations and exarcabate the already volatile violent situation.

Good ground work in creating a climate to negotiations and bringing about understanding and mutual trust in South Africa cannot be destroyed by giving in to the evil forces raging in our country and allowing the god of violence to reign supreme in our land.

5. In conclusion, we in the IYP say, violence is a menace and a serious threat to the negotiations and peace-effort in South Africa. We condemn in all contempt it deserves those perpetrators and agencies of violence. We, however believe that its demise is not an automatic process and cannot just stop - it has to be stopped.

We appeal to the RSA government and all the political organisations in the country, both inside and outside Codesa focus and concentrate their energy and power to ending violence.

Indeed, the innocent people can no longer afford this blood-letting. <sup>2</sup> We appeal to all peace-loving leaders to refrain from using violence as an instrument for scoring political points and making political gains. Let's put breaks on this violence in order that progress is made at Codesa and that peace in our country is restored.

ADDENDUM 0

5 May, 1992

ANC Statement to WG1 on SA Government's document "Regarding the commitment by parties to create a climate for peaceful and free political participation"

The delegation of the ANC to Working Group 1 records its concern with the manner in which the delegation of the government is approaching the work of WG1.

The document tabled contains serious allegations against the ANC. In this regard we propose that the matter be referred to our principals for their consideration.

At the same time note should be taken that this is not the first occasion in Working Group 1 that the government delegation led by Mr. H. Kriel, Minister of Law and Order, has chosen to level allegations in this forum against the ANC. It is a matter of record that the last time he made such allegations, in particular against our Deputy President (Walter Sisulu) and Chris Hani, he was compelled to withdraw them in the face of incontrovertible evidence that his allegations were without substance.

With regard to the current allegations there are numerous and substantial avenues through which the government could have chosen to pursue its charges. Nonetheless it has chosen to ignore these channels and rely solely on bringing the matter before Working Group 1.

WG1 has already devoted considerable time to finding ways and means to strengthen the National Peace Accord. Yesterday Working Group 1 made substantial progress in devising the framework to effect control over, and ensure accountability of, the security forces from the first phase of interim arrangements.

We have consistently approached our mandate in the Working Group by avoiding reducing it to a forum for allegations and counter-allegations. We have sought to find consensus in devising the appropriate mechanisms which would move our country from its current position of white minority rule to a fully democratic order. We are determined to ensure that the work of CODESA is not stalled or hampered by any tactics that are inimical to the process of democratising our society.