



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

MINUTES OF THE SEVENTH MEETING OF WORKING GROUP 1 SUBGROUP 1 HELD AT THE WORLD TRADE CENTRE ON 21 APRIL 1992 AT 8H30.

PRESENT : SEE ADDENDUM A

E Samuels (Chair)
A Schoeman (Minute Taker)
T Motumi (Secretary)

1. Convenor's Opening Remarks.

The convenor welcomed the delegates after the short recess. Mr Samuels informed the meeting that Mr Dalling is still in hospital and he would therefore continue as the temporary convenor.

2. Attendance and Apologies.

2.1 No apologies were received.

3. Adoption of the Agenda.

3.1 The Agenda was adopted without any amendments.

4. Ratification of Minutes.

4.1 The following phrase should be included in point 5.3.3.3: "and any regulations or notices in terms of such proclamations". Point 5.3.3.3 should thus read: That the proclamation by the State President or Minister, of a State of Emergency or unrest area respectively, in terms of the procedure laid down, and any regulations or notices in terms of such proclamations, will be objectively justiciable in a court of law."

4.2 Point 5.3.6 should be numbered 5.3.5.1.

4.3 Point 5.3.7 should be numbered 5.3.5.2.

4.4 Point 5.3.7.2 should refer to Section 29 and not 5,29.

4.5 The meeting agreed that changes to the addendum should be raised with the minute takers directly and not in the plenary.

5. Continuation of Discussion.

5.1 Refugee issue.

5.1.1 Discussion on the matter was postponed pending submission by the South African Government.

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

5.2.1 The ANC and the South African Government reported that several meetings have taken place dealing with the issue of political prisoners. The issue is currently being dealt with within the context of related matters and significant progress has been made. When the parties reach substantial agreement on the various issues, a report dealing with the matters falling within the terms of reference of SG 1 will be tabled.

5.2.2 The meeting further agreed that:

With the exception of the reports on the bilateral meetings between the South African Government and the ANC, any further discussions in this SG on the issue of political prisoners will be conditional on submissions being received on the current existence and detention of political prisoners.

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

5.3.1 The task force appointed by the SG to investigate emergency and security legislation submitted a report to the SG, annexed hereto.

5.3.2 Emergency Legislation.

The meeting reached preliminary consensus on the following:

5.3.2.1 A State of Emergency should only be declared on the advice of a multi-party interim executive/cabinet/interim government council.

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

5.3.2.2.1 whether the factual situation existing at the time justify the declaration of a state of emergency or unrest area in terms of criteria laid down in the Public Safety Act, 1953;

5.3.2.2.2 whether the exigencies of the situation justify the powers conferred by regulations made in terms of the proclamation of the state of emergency or unrest area.

5.3.2.3 Support and opposition were expressed as to the desirability of retaining the power conferred in the Public Safety Act to declare a state of emergency retrospectively.

5.3.2.4 The desirability of including in the Public Safety Act:

5.3.2.5 Extended provisions for Parliamentary control of a state of emergency;

5.3.2.6 A provision for certain non-derogable rights;

5.3.2.7 Provisions providing for certain procedural controls i.r.o. detention without trial, was discussed.

5.3.2.8 It was agreed that delegations will refer the matters referred to in paragraphs 3.1, 3.2 and 3.3 above to their principals.

5.3.3 Security Legislation.

After discussion on the matter of security legislation, it was agreed that:

5.3.3.1 The rapporteur be instructed to consult the record and synthesise the various contributions with a view to submitting a report on areas of potential consensus on the reform of security legislation to the task force. The task force will then consider the proposals with a view to amplifying its report of 20 April 1992, suggesting, where necessary, alternative options or courses of action.

6. Report to Management Committee.

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

7. Date of next meeting.

7.1 The meeting agreed on the dates as outlined in the new meeting schedule. The next meeting would thus be on Monday 27 April 1992 at 19h30 to 22h30.

ADDENDUM A

The following delegates signed the register:

AFRICAN NATIONAL CONGRESS

BOPHUTHATSWANA GOVERNMENT

CISKEI GOVERNMENT

DEMOCRATIC PARTY

DIKWANKWETLA PARTY

INKATHA FREEDOM PARTY

INTANDO YESISWE PARTY

INYANDZA NATIONAL MOVEMENT

LABOUR PARTY

NIC/TIC

NATIONAL PARTY

NATIONAL PEOPLE'S PARTY

SOLIDARITY PARTY

SOUTH AFRICAN COMMUNIST PARTY

SOUTH AFRICAN GOVERNMENT

TRANSKEI GOVERNMENT

UNITED PEOPLE'S FRONT

VENDA GOVERNMENT

XIMOKO PROGRESSIVE PARTY

K Asmal
P Maduna
KCAV Sehume

MB Webb
GM Ndzondo
H Bester

JSS Phatang
MH Cunukelo
E Benard
I Mars
SL Mthimunye

MS Gininda
MJ Mahlalela
M Loonat
D Curry
D Patel

AJG Oosthuizen

R Garrib
K Panday
P Naidoo

E Pahad
F Baleni
HJ Coetsee
DCD Swanepoel
MA Ntshinga
SP Kakudi
MI Moroamoche
S Maja
NE Mulaudzi
ME Ramulondi
BM Tlakula
NM Mtsetwene

ADDENDUM B

Submissions were received from:

The Sub-Group Task Force.

ADDENDUM C

Report to the Management Committee.

SG 1 of WG 1 of CODESA reports to the SC on their meeting of 21 April 1992 as follows:

1. REFUGEE ISSUE

Discussion on the matter was postponed pending on submission by the South African Government.

2. POLITICAL PRISONERS

2.1 The ANC and the SA Government reported that several meetings have taken place dealing with the issue of political prisoners. The issue is currently being dealt with within the context of related matters and significant progress have been made. When the parties reach substantial agreement on the various issues, a suitable report dealing with the matters falling within the terms of reference of SG 1 will be made.

2.2 The meeting further agreed that:

Excepting the reports on the bilateral meetings between the SA Government and the ANC, any further discussions in this SG on the issue of political prisoners will be conditional on submissions being received on the current existence and detention of political prisoners.

3. EMERGENCY LEGISLATION

The task force appointed by the SG to investigate emergency and security legislation submitted a report to the SG, annexed hereto.

3.1 The meeting reached preliminary consensus on the following:

3.1.1 A State of Emergency should only be declared on the advice of a multi-party interim executive/cabinet/interim government council.

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

3.1.2.1 whether the factual situation existing at the time justify the declaration of a state of emergency or unrest area in terms of criteria laid down in the Public Safety Act, 1953;

3.1.2.2 whether the exigencies of the situation justify the powers conferred by regulations made in terms of the proclamation of the state of emergency or unrest area.

3.2 Support and opposition were expressed for the desirability of retaining the power conferred in the Public Safety Act to declare a state of emergency retrospectively.

3.3 The desirability of including in the Public Safety Act:

3.3.1 Extended provisions for Parliamentary control of a state of emergency;

3.3.2 A provision for certain non-derogable rights;

3.3.3 Provisions providing for certain procedural controls i.r.o. detention without trial, was discussed.

3.4 It was agreed that delegations will refer the matters referred to in paragraphs 3.1, 3.2 and 3.3 above to their principles.

4. SECURITY LEGISLATION

After discussion on the matter of security legislation, it was agreed that:

The rapporteur be instructed to consult the record and synthesise the various contributions with a view to submitting an agenda of areas of potential consensus on the reform of security legislation to the task force. The task force will then consider the proposals with a view to amplifying its report of 20 April 1992, suggesting, where necessary, alternative options or courses of action.

ADDENDUM D

5. Summary of Discussion.

- 5.1 **Discussion on Item 6.1 of the Agenda (Refugee Issue).**
- 5.2 Venda stated that they do not have any input on the issue, since they are awaiting a response from the SA Government.
- 5.3 The SA Government stated that it could not comment until the minister arrives.
- 5.4 The ANC put the following questions to the SA Government:
- 5.4.1 Are persons who entered the territory of the Republic of South Africa originally as migrant labourers but who have since become long term residents in the Republic, as well as their offspring, ever accorded South African citizenship, or eligible for citizenship by naturalisation or their children by virtue of their birth ?
- 5.4.2 What is the status of alien women who are married to South African citizens and the right of such women (either as migrants or permanent residents) to become S.A. citizens ?
- 5.5 The SA Government delegation stated that they are still investigating the issue. They will report on the issue as soon as possible.
- 5.6 The UPF stated that the meeting agreed to postpone the issue at the last meeting under the impression that the SA Government investigation was completed. They argued that it seems as if the SA Government was reluctant to react.
- 5.7 The SACP reiterated the fact that the meeting was lead to belief that the response from the SA Government was ready and that the issue was not discussed at the last meeting due to time constraints.
- 5.8 The SA Government responded saying that the report is 75% ready. New problems related to the refugee issue is constantly arising. They therefore did not want to submit an incomplete response that does not deal with the new issues.
- 5.9 The meeting agreed that the issue would be discussed at the next meeting of the sub-group.
- 5.10 **Report on release of political prisoners by the SA Government and the ANC and others.**
- 5.11 The SA Government reported that several meetings have taken place dealing with the issue of political prisoners. The issue is currently being dealt with within the context of related matters and significant progress have been made. When the parties reach substantial progress on the various issues, a suitable report dealing with the matters falling within the terms of reference of SG 1 will be made.
- 5.12 The ANC concurred with this report.
- 5.13 The Ciskei stated that the meeting needs to discuss whether this is acceptable or not and then agree on the procedure.
- 5.14 The IFP stated that other parties requested to make submissions, seem to have got lost in the system.
- 5.15 The ANC stated that it was agreed at the last meeting that bilateral discussion would continue, but without prejudicing the right of the SG to discuss the issue.
- 5.16 The INM movement stated that they expected the package to be brought forward to this meeting and it would then be discussed.
- 5.17 The Transkei expressed its regret that the SA Government and the ANC has no concrete progress to report, but stated that the meeting has no choice but to leave the issue to bilateral discussion.
- 5.18 The Ciskei stated that it had no political prisoners.
- 5.19 The SACP stated that it had no political prisoners.
- 5.20 The IFP raised the question of the Returned Exile Committee and their request to make an oral submission.
- 5.21 The ANC stated that the SC discussed all submissions and this submission would be dealt with in due course by the SC.
- 5.22 The IFP stated that it was satisfied, for today, but that the meeting needs to set dates when the issue will be discussed.

- 5.23 The SACP stated that the discussion needs to deal with whether or not parties had political prisoners and delegations have to present evidence if they had any.
- 5.24 The SA Government stated that all items under bilateral discussion does not fall under the terms of reference and that there should not be a spirit of compulsion to report back the package.
- 5.25 The INM states the package referred to the relevant issue and that there was no spirit of compulsion.
- 5.26 The NIC/TIC stated that the bilateral talks must be seen as complimentary to CODESA. Elements of the package that are relevant to the SG should be reported.
- 5.27 The Ciskei asked for clarity from the SACP, what should be discussed?
- 5.28 The chair stated that all political prisoners should be discussed, this would include political prisoners belonging to groups not represented at CODESA.
- 5.29 The IFP stated that this group has been mandated to create a climate. They therefore have to discuss the allegations that people were mal treated.
- 5.30 The ANC stated that the SG needs to stick to the terms of reference. Insinuations are not constructive if delegations have information of political prisoners being held this should be tabled. The ANC stated that they have no political prisoners.
- 5.31 The NPP stated that the discussion should focus on people currently being held and not people held before the start of CODESA.
- 5.32 The meeting agreed that they need to focus on current political prisoners.
- 5.33 The IFP objected stating that it has had contact with some of these people who allege they have been mal treated by the ANC. These people are considering violent action such as assassination attempts.
- 5.34 The DP stated that the terms of reference where explicit and that the discussion of a possible that of violence should be discussed by SG2.
- 5.35 The IFP stated that they believe that an independent judicial commission should be established.
- 5.36 The ANC requested the IFP to listen to what people are saying.
- 5.37 The IFP stated that it did not agree that the issue should be discussed by SG2. It should be discussed under any other business.
- 5.38 The SA Government stated that the ANC has appointed a commission looking into the question, they belief this will report in due course. Other organisations such as the Red Cross are also investigating the question. The USA has also expressed interest in the issue. The ANC should be allowed to deal with thew issue.
- 5.39 **Report of the task force on emergency/security legislation and principles for testing such legislation.**
- 5.40 The task force read its report.
- 5.41 The ANC stated that the meeting need to have substantive discussion on the issue of security legislation.
- 5.42 The chair asked for clarity on the issue of emergency legislation. Should it be accepted as submitted.
- 5.43 The ANC stated that both them and the task force recognised the principles the SA Government put before them. The meeting cannot allow a void to occur in relation to an issue that need urgent response.
- 5.44 The ANC stated that it believed, as in their original statement , the Public Safety Act should be repealed and replaced. The ANC stated that their basic approach was that emergency legislation os needed to deal with emergency situations, but that certain checks are needed in the interim. In the long term believed that the UN covenant on emergency/security legislation should be adopted.
- 5.45 The Ciskei stated that the difficulty is the practical situation on the ground. The people on the ground need some comfort that where they are engaged in security activity they wont be exposed beyond reasonable common law exposure.
- 5.46 The Ciskei asked how far does justiciability of emergency and security legislation go?
- 5.47 The SA Government stated that re. the issue of reterospectivity the courts could test the decision of the State President objectively. This would therefore safeguard against power excesses and mistakes.

- 5.48 The SA Government stated that retrospectivity should be weighed against the new safeguards: justiciability and collective responsibility.
- 5.49 The SA Government stated that the declaration of a state of emergency is not an abstract issue but a fact on the ground. The situation on the ground precedes the declaration of the state of emergency. In this period the security forces and citizens might need special powers to deal with the situation. It might also take to get the cabinet together and in this period special powers might be needed.
- 5.50 The SA Government stated that the statement of the ANC that if the police exceed their powers if such a situation arise the government should pay implies that the police should exceed their powers. It is therefore important to protect the tax payer by having retrospectivity.
- 5.51 The SA Government further argued that SA need not follow the pattern of foreign countries, our constitution needs to be specific to the South African conditions.
- 5.52 The SA Government argued that the ANC argument that parliament should have the right to decide is inconsistent with the powers conferred upon the courts. Parliament should not allowed to usurp the role of the courts.
- 5.53 The Ciskei government stated that considering the other checks and balances parties should reconsider their positions.
- 5.54 The DP stated that both arguments have been exhausted, parties should therefore consult and come to conclusion later.
- 5.55 The SACP stated that they preferred to discussed the issue immediately. The argued that the issue of retrospectivity does not only affect the police and the security forces it also affects the people on the ground. Retrospectivity is a tool that could be used against the people on the ground. It allows for the police to use coercive powers and then being protected by the declaration of a state of emergency.
- 5.56 The Labour Party requested clarity on the powers the common law gives to the security forces and ordinary citizens.
- 5.57 The ANC argued that this is a political assessment and not a technical assessment. States of emergencies are extraordinary situations were there is a fundamental breakdown in the ordinary laws of the country. The Common Law would then be an obstacle for the maintenance of order. In the past states of emergencies have been declared because it was convenient for the government.
- 5.58 The Labour Party repeated their question.
- 5.59 The ANC replied and stated that the common law provides extensive powers.
- 5.60 The UPF stated that they were opposed to retrospectivity it was open to abuse. Police have sufficient powers under the common law.
- 5.61 The SA Government responded to the question posed by the Labour Party by saying that a state of emergency was declared because in the opinion of the State President or his/her advisors existing common law is inadequate to meet the situation. The new safeguards will prevent abuse of the situation. The government stated that it is preferable to pass other statutes rather than declaring a State of Emergency.
- 5.62 The DP outlined its position concerning the issues under discussion:
- 5.62.1 It is opposed to the principle of retrospectivity. It should not be seen in the context of wider checks and balances.
- 5.62.2 Regarding common law proportionality is a universal principle.
- 5.62.3 Unrest areas cannot be declared retrospectively.
- 5.62.4 If in the days before the State of emergency the Security forces act beyond their powers the parliament can pass an Indemnity Act.
- 5.63 The Labour party requested clarity on whether the State President can give the security forces special powers by passing Acts, s/he does not have to rely on a state of emergency.
- 5.64 The meeting answered in the affirmative.
- 5.65 The ANC stated that the best protection against the abuse of the state of emergency would be that parliament is sitting for the whole duration of the state of emergency.
- 5.66 The ANC stated that a state of emergency can take away several rights but there are certain rights that needed to be protected.

- 5.66.1 The regulations cannot discriminate on the grounds of race, gender, religion or ethnicity.
- 5.66.2 The regulations cannot interfere with the right to life.
- 5.66.3 The regulations cannot impose cruel/unusual punishment or torture.
- 5.67 The ANC stated that there is a president in the 1953 Act regarding points 7.66.1 and 7.66.2.
- 5.68 The ANC stated that prospective indemnities for any action should not be given.
- 5.69 The ANC stated that when people are detained under the state of emergency:
- 5.69.1 People should immediately be informed of the reasons for their detention.
- 5.69.2 An adult family member or friend should be informed.
- 5.69.3 The names of detainees and the acts under which they are held should be published in the government gazette as soon as possible.
- 5.69.4 The detainees should have access to legal representatives at all reasonable times.
- 5.70 Detention without trial is invariably a method the get information most often by torture. Therefore:
- 5.70.1 Detention must be reviewed after one month.
- 5.70.2 Detention if more than 3 months must be reviewed by a board presided over by a judge of the supreme court. This board should have the right to order the release, if satisfied that the detention is not necessary any longer.
- 5.71 The SA Government stated that the ANC suggestions could be dealt with in a bill of rights. If justiciability is provided for the Bill of Rights would be the yardstick.
- 5.72 The SA Government stated that the month detainment system would by implication remove the right of a detainee to immediately appeal. Detention should be subject to inherent rights. The issue of the real meaning of justiciability was raised.
- 5.73 The ANC welcomed the tone of the response by the SA Government. They stated that many countries have bills of rights with discreet sections that apply to states of emergency. The added that the right of immediate appeal will not be affected by the procedure outlined.
- 5.74 The SA Government stated that they need to study the ANC submission and the relevant laws.
- 5.75 The DP stated that the rights that cannot be denigrated are more extensive then the rights listed by the ANC. They supported the inclusion of these rights in a Bill of Rights. At this stage there is no bill of rights and this has to be considered.
- 5.76 In response to the question of the government whether this does not usurp the normal right of review the DP replied that this does not for the people who do qualify for judicial review retains those rights this is broadening it to people who do not normally qualify.
- 5.77 The DP stated that the proposals by the ANC could easily be added to Section 3 of the Public Safety Act.
- 5.78 The rapporteur read the his report.
- 5.79 The SA Government stated that the foregoing will have to be considered. The principles suggested by the ANC should be subject to the introduction of a Bill of Rights.
- 5.80 The ANC said that was not part of their proposal and should be recorded as a separate proposal.
- 5.81 The SA Government responded saying that in that light none of the proposals should be included.
- 5.82 The Ciskei highlighted the procedure that only points of agreement be recorded in support of the SA Governments position.
- 5.83 The meeting agreed tom this after discussion.
- 5.84 The SACP stated that the rapporteur report would however be useful and should thus be included as a separate document.
- 5.85 Security legislation.**
- 5.86 The ANC stated that the 3 issue outlined in the last meeting is too narrow. The ANC position is made clear in the Feb document. It is:
- 5.86.1 Opposed to detention without trial
- 5.86.2 Opposed to the detention of witnesses. Other methods should be found to protect witnesses and their detention should not be used to force then to give evidence.
- 5.86.3 Opposed to the banning of organisations. It believes that individuals should rather be prosecuted for the perpetration or advocacy of violent acts.

- 5.86.4 Opposed to the wide definition in chapter 6 of the Act of eg. terrorism, subversion, sabotage, etc.
- 5.87 The ANC therefore believes that the Internal Security Act should be scrapped. They are however prepared to consider its substitution.
- 5.88 The DP stated that SA society is in a state of acute instability and that certain powers above normal powers are needed. These powers should however form part of the democratic process. The following principles should apply:
- 5.88.1 A balance between over and under reaction.
- 5.88.2 Internal Security Legislation should be formulated with clear objectives.
- 5.88.3 Security legislation should adhere to principles of the law.
- Security legislation:
- 5.88.3.1 Needs to be justiciable
- 5.88.3.2 Security forces should not be exempted from normal delict control.
- 5.88.3.3 Security offenses need to be described clearly.
- 5.88.3.4 The number of separate pieces of security legislation should be minimised.
- 5.88.3.4.1 The rule of law implies that only courts could deprive people of their rights.
- 5.88.3.4.2 Effective democratic accountability is needed.
- 5.88.3.5 Measures must be of temporary nature.
- 5.88.3.6 Procedural justice must be adhered to.
- 5.88.3.7 The ability of the executive to impose conditions on marches should be localised.
- 5.88.3.8 Should be acceptable for parties who feel themselves aggrieved in terms of political conduct.
- 5.89 The DP stated that it opposes detention without trial, it is only acceptable under stringent control and only for 48 hour detention. It found the detention of witnesses unacceptable. It is further opposed to the banning of organisations. This would only be acceptable as in the German constitution where parties want to overthrow the democratic process.
- 5.90 The UPF stated that the Internal Security Act should be abolished.
- 5.91 The Ciskei stated that it has only 2 sections that might be found objectionable. These relate to indefinite detention and the need to obtain a permit to hold a gathering. The first is being tested against the Bill of Rights and is thus sub judiciae. The later is the subject of ongoing bilateral meetings between the ANC and the Ciskei government.
- 5.92 The SA Government stated that the paper it submitted on the repeal/amendment/retention of security legislation should be read in conjunction with the summary of the task force. It further stated that security legislation need to be evaluated against the need for a peaceful society. This further relates to the balance of rights and the protection of infringement of the rights of people by the rights of others.
- 5.93 The SA Government stated that principles relate to measures which could be repealed without affecting security legislation.
- 5.94 The SA Government stated that the principles of the Public Safety Act should be considered in tandem with the constitutional arrangements.
- 5.95 The SA Government stated that in terms of Section 4, we could learn from other countries such as Australia where organisations can only banned using a court order.
- 5.96 The SA Government stated that re. gatherings and processions certain amendments could be considered. It further stated that re terrorism, sabotage etc these offenses should be retained. Individual cases could be considered.
- 5.97 The SA government stated that the meeting need to consider the purpose of security legislation.
- 5.98 The SACP stated that there is no such thing as an absolute right. The issue should not be seen in a vacuum. The issue needs to be considered in the context of building trust at the grass roots level.
- 5.99 The SACP stated that it has nowhere been shown that detention without trial has helped the government. Banning of organisations do not solve the problems, the solution to such problems should be found in the political arena.

- 5.100 The chair asked for guidance from the meeting on procedure.
- 5.101 The INM stated that people agree that the Security Legislation needs to be abolished. The internal security act does not bring safety to the people on the ground.
- 5.102 The ANC stated that if the Act is repealed it could be replaced with principles guiding such replacement. It questioned whether the different views can be reconciled.
- 5.103 The meeting agreed that the rapporteur be instructed to consult the record and synthesise the various contributions with a view to submitting an agenda of areas of potential consensus on the reform of security legislation to the task force. The task force will then consider the proposals with a view to amplifying its report of 20 April 1992, suggesting, where necessary, alternative options or courses of action.

ADDENDUM E

The report of the task force.

The Working Group task force to investigate emergency and security legislation reports as follows on their meeting held on 20/04/1992 :

1. Re emergency legislation :

Regarding the three principles outlined in paragraph 5.3.3 of the minutes of 31/03/1992 it is suggested that :

- 1.1 a state of emergency should only be declared on the advice of a multi-party interim executive authority/cabinet/interim government council.
- 1.2 Further consideration be given to the desirability of retaining the power conferred in the Public Safety Act to declare a state of emergency retrospectively;
- 1.3 the justiciability of the proclamation of a state of emergency or unrest area and any regulations issued in terms thereof extends to the following :
 - 1.3.1 whether the factual situation existing at the time justify the declaration of a state of emergency in terms of criteria laid down in the Act;
 - 1.3.2 whether the emergencies of the situation justify the powers conferred by the regulations;
 - 1.3.3 normal powers of judicial review which are not covered by the above.

2. Re Security Legislation

Regarding security legislation the task forces suggests without committing individual delegates that consideration be given to the following :

- 2.1 That during the interim period, security legislation cannot simply be repealed without putting satisfactory measures to deal with civil disorder in its place;
- 2.2 That certain aspects of the Internal Security Act such as :
 - 2.2.1 gatherings and marches
 - 2.2.2 ouster clauses
 - 2.2.3 chapter 7 which deals with matters of procedure
 - 2.2.4 application of administrative law
 - 2.2.5 other aspects be considered with a view to possible amendments. Comparative legal systems will be considered in this process.
- 2.3 That the Internal Security Act be suspended on the formation of an interim government. Thereafter it may be actuated upon the approval of Parliament, such invocation to be reviewed on a regular basis

Draft Terms of Reference of the Working Group on the Role of the International Community

1. The Context: International

Both the Harare and the United Nations Declarations on South Africa anticipate a continuing role for the international community in the transition process towards a non-racial and democratic society in South Africa. The UN Declaration, adopted on 14 December 1989, requests the parties concerned in negotiations to conclude an "agreement on the role to be played by the international community in ensuring a successful transition to a democratic order".

2. The Context: National

The validity and acceptability of the process of transition and its recognition nationally and internationally will depend on the extent to which it is open and fair and provides for the full and effective participation of all sections of our society.

The Working Group will therefore need to analyse the extent to which it is possible to create the conditions for confidence building and consensus by relying solely on structures established by the parties in the All Party Congress.

In particular, the Working Party will need to refer to the process by which decision-making on a whole range of issues will take place, how deadlock will be broken and the extent to which it is possible to identify "watch dogs", relying solely on South Africa resources, who will ensure the compliance by the parties with agreements reached.

As far as mediation is concerned, the Working Party will need to discuss the extent to which there are parties inside our country which have the moral authority and the political power to act as an effective mediator and to ensure that binding decisions are arrived at and to enforce these decisions.

Finally, the Working Group will have to determine the extent to which effective supervision, monitoring or control can be exercised over the sensitive issues of security and law enforcement, the conduct of the whole electoral process, access to the publicly-owned media and decisions taken in relation to controversial matters.

3. Participation by the International Community

The Working Group must identify the most appropriate body or body of persons or organ of an international organisation which is best qualified or most appropriate to assist in the period of transition. The Working Group should recognise that different ad hoc arrangements could be made for different purposes, depending on the specific objective or task to be dealt with.

The Working Group should therefore investigate the possibility of the involvement of the United Nations, the Organisation of African Unity, the Commonwealth and the Non-Aligned Movement and the extent to which any distinction ought to be made in the role of the international community in the period before elections for the constituent assembly and during the election period itself.

4. Modes of Participation by the International Community

The Working Group shall therefore investigate the extent to which the international community can assist in the transition period. The options available are not exclusively limited to the following:

- (i) An investigation of the possibility of an international guarantee concerning the process of transition and, in particular, a guarantee of recognition of a definitive election for the transfer of authority, providing that it is certified as fair and free;
- (ii) The necessity or otherwise of a peace-keeping force in order to provide security, to ensure the maintenance of order and compliance with agreements reached by the parties;
- (iii) The necessity or otherwise of the appointment of a Special Representative in South Africa by the Secretary General of the United Nations or by any other acceptable body who could participate in the capacity of an observer in the talks and in the negotiations and the extent to which such a Special Representative could convene negotiations and submit mediating proposals to overcome deadlocks;
- (iv) Whether a limited international presence could monitor and verify the compliance by the mandated authorities of the tasks and obligations assigned to them under the agreements and use its good offices in the case of disagreement on the interpretation and application of the agreements;

(x) The usefulness of observers from international and regional bodies to ensure that good procedures are followed and who could report back to their own constituencies.

(v) Whether international participation could be used to secure the impartiality of the transitional government either by monitoring the operations of such a government or by being included in the transitional or interim government as a "deadlock breaker";

(vi) If the option of a peace-keeping force is rejected, the extent to which international participation could supervise and secure the impartiality of the transitional security mechanism. In particular, international participation could be utilised to expand national commissions of inquiry or for the deployment of a UN or other international mission of experts for effective investigation and decision-making;

(vii) The extent to which UN or other international participants could, if necessary, supervise and control vital areas of national administration;

(viii) The extent to which the international community could provide machinery for the independent investigation of complaints against the security forces and sensitive areas of administration;

(ix) The extent to which international participation could assist a national electoral body composed of representatives of all political parties - with the implementation of elections. Such a role could involve the monitoring and surveillance of the all aspects of importance for the holding of free and free elections and the securing of a climate free of intimidation and fraud by a limited presence on the ground. Finally, such a body could assist by providing technical assistance and provide a conclusive judgement on the character of the elections.

5. Reporting Back

The Working Group shall report as expeditiously as possible to the plenary. The report shall, if necessary, include majority and minority opinions of the parties.

SCHEDULE OF MEETINGS FOR WORKING GROUP 1

Monday	27/04	Subgroup 3	08h30 - 15h00
		Subgroup 2	15h30 - 19h00
		Subgroup 1	19h30 - 22h30
Tuesday	28/04	Steering Comm	08h30 - 09h30
		Working Grp 1 Plenary	10h00 - 18h00
Friday	01/05	Steering Comm - Cape Town	15H00 -
Monday	04/05	Working Grp 1 Plenary	08h30 - 18h00
Tuesday	05/05	Steering Comm	08h30 - 18h00

*** REPORT OF WG1 TO BE SUBMITTED TO MANAGEMENT COMMITTEE ON
TUESDAY 07/05/92