

THESE ARE DRAFT MINUTES AS 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 WORKING GROUP STEERING COMMITTEE AT ITS NEXT MEETING.

**MINUTES OF THE WGSC1 MEETING (NO 8) HELD AT THE JAN SMUTS HOLIDAY INN ON 20 APRIL.**

**PRESENT** (see ADDENDUM A)

**APOLOGIES:** Mr Myburgh

**CHAIR:** Mr Samuels

**Secretary:** A Feinstein

**Minutes:** K Morgan

**1. Chairperson's Opening**

Mr Samuels was requested to assume the Chair in the absence of Mr Webb who had sent an apology indicating that he would be arriving late.

**2. Ratification of Minutes**

2.1 Minister Coetsee raised concern that Addendum B, which was intended to be an account of the issues he had raised in connection with the DMC's suggestion that WG1 was not making adequate progress, did not sufficiently reflect his point of view.

The meeting agreed:

2.2 That the minutes of SG1 should be made more comprehensive to reflect Minister Coetsee's reservations about the DMC's suggestion.

2.3 Point 7 in the minutes was amended to read "Mr Samuels and Mr Webb" reported...

**3. Matters Arising**

3.1 Minister Coetsee requested that the issue of funding of political Parties be placed on the agenda of the SG3 meeting to be held on 21 April

3.2 Prof Asmal proposed that the matter of a future schedule for WG1 meetings be placed as an Item on the agenda

3.3 It was agreed that the DMC proposals to Working Groups be dealt with under Item 7 on the agenda

3.4 With regard to 8.4.5 of the minutes, Minister Coetsee reported that an official report of the International Commission of Jurists was not as yet available

#### 4. Schedule of meetings for WG1

4.1 The following observations were made:

4.1.1 That the DMC has set a deadline date of 7 May for final reports from Working Groups

4.1.2 That this deadline has implications for the schedule of WG1 meetings

4.2.1 In the light of the above it was resolved:

4.2.2 That the 27/4 be the cut off date for all Subgroup meetings

4.2.3 That the rapporteurs have a draft report prepared by the evening of 27/4 for presentation to the WGSC1 in preparation for the WG1 plenary on 28/4 as a discussion document, and that it be explained to WG1 that the report has been prepared by the rapporteurs

4.2.4 That the WGSC1 should have a more crystallised report prepared for presentation to the WG1 meeting on 4 May

4.2.5 That WG1 be requested to give the WGSC1 the authority to shape the final report which will be drafted on 5 May in accordance with the standing rules of procedure

4.2.6 That the urgency of the situation requires a redrafting of the original schedule of WG1 meetings (see ADDENDUM B)

#### 5. Chairpersonship and procedure of WG1 plenary

Resolved:

5.1 That Mr Webb Chair both WG1 plenary sessions to be held on 28 April and 4 May

5.2 That the WGSC1 give thought to procedural matters for the plenary sessions of WG1

5.3 Dr Madide informed the WGSC1 that he would probably be submitting a minority report as opposed to the consensus report of the WGSC1 to WG1

#### 6. Chairpersonship of SG3

6.1 Rev. Mohapi reported that he is experiencing problems in Chairing SG3 meetings due to time constraints and commitments in other structures and suggested that he be replaced for the sake of progress in SG3

It was agreed:

6.2 That Mr Webb continue to Chair SG3 meetings up to CODESA II

#### 7. Gender Advisory Committee

The following points were made:

7.1.1 That the SubGroups, in the course of their proceedings, should be sensitised to the gender issue

7.1.2 Minister Coetsee felt all discussions in WG1 should pertain to "persons", thus avoiding gender differentiation

7.2 It was agreed:

That the Terms of Reference of the Gender Advisory Committee be circulated to WGSC1 for consideration at a future meeting (see Addendum C)  
That Mr Feinstein will investigate and circulate any positions which the GAC might have arrived at pertaining to the work of WG1

8. **Reports of SubGroups**

8.1.1 **SG1: Mr Samuels (See Addendum D)**

8.1.2 It was agreed:

8.1.3 That the Chair together with the rapporteurs identify outstanding issues to be resolved in SG1  
8.1.4 That the Chair guide the SG1 meeting to be held on 27/4 in an attempt to reach conclusion on the debate of outstanding issues

Minister Coetsee indicated that the government would be making a verbal intervention on the issue of discriminatory legislation as well as putting forward possible guidelines for dealing with security and emergency laws. Minister Coetsee pointed out that much progress could be achieved if the SG restricted itself to the question of mechanisms and procedures with regard to the removal of discriminatory legislation.  
It was further reported that the ANC and government will report on their bilateral talks at the next SG meeting.

8.2.1 **SG2: Mr Ntsubane**

8.2.2 Mr Ntsubane reported:

8.2.3 That SG2 has reached consensus on the definition of "stability"  
8.2.4 That SG2 has identified weaknesses in the NPA and has subsequently made recommendations for the strengthening of the Accord to the NPA  
8.2.5 That the matter of the NPA would be resolved at the next SG2 meeting  
8.2.6 That with regard to the security forces the following principles were accepted:

8.2.6.1 That the security forces should be bound by the principle of constitutional supremacy  
8.2.6.2 That they should be politically non-partisan  
8.2.6.3 That they should be committed to resolving conflict primarily through non-violent means  
8.2.6.4 That they should respect human rights, non racialism and democracy  
8.2.6.5 That they should strive to be representative of South African society as a whole

8.2.7 That the issues of development (m) and co-operation (n) still have to be dealt with in greater detail

Minister Coetsee and Dr Madide raised concerns about time constraints and the level of violence with respect to reporting back to their constituencies. It was suggested that the practical aspects of reducing the violence should be considered in other subgroups as well. It was further suggested that the WGSC1 should consider giving direction to WG1 on these issues.

9. **SG3:**

Resolved:

- 9.1 That the WGSC1 would wait for Mr Myburgh's report to SG3 before making any comments with regard to the direction the SG should be taking

10. **Assignment 2: The role of the international community**

Resolved:

- 10.1 That due to time constraints it was not possible to consider the establishment of a SG4 to deal with this issue
- 10.2 That this item should be placed on the agenda of all SubGroup meetings on 27/4
- 10.3 That this item thereafter be placed on the agenda of the next WG1 plenary to be held on 28/4
- 10.4 That all delegations be invited to make submission on the role of the International community to be discussed by WG1

11. **DMC proposals**

Due to time constraints this and other items on the agenda could not be discussed but will be placed on the agenda of the next WGSC1 meeting

12. **The meeting closed.**

**Addendum A**

**Present:**

**K Asmal  
MB Webb  
E Samuels  
E Pahad  
LV Ntsubane  
HJ Coetsee  
PG Soal  
TJ Mohapi  
Dr Madide**

**M Shaikh  
HJ Bester**

**ANC  
Ciskei Government  
Labour Party  
SACP  
Transkei Government  
SA Government  
Democratic Party  
Dikwankwetla  
Inkatha Freedom Party**

**Rapporteur  
Rapporteur**

## CODESA GENDER ADVISORY COMMITTEE (GAC)

### 1. Composition:

- 1.1 GAC shall be composed preferably of women.
- 1.2 Each participant in CODESA shall nominate one person to serve on GAC.
- 1.3 Substitution shall be allowed.
- 1.4 GAC shall be free to determine mechanisms by which the chairing of its meetings shall be effected.

### 2. Terms of Reference:

- 2.1 CODESA is committed amongst other things towards the creation of a non-sexist democracy.
- 2.2 GAC shall look into the Terms of Reference of each of the Working Groups and advise on the gender implications thereof.
- 2.3 GAC shall look into agreements arrived at in Working Groups and decisions of the Management Committee and advise on their gender implications.

### 3. Status of GAC:

- 3.1 The GAC shall be a Sub-Committee of the Management Committee (MC) whose primary function shall be to advise on the matters specified in items 2.2 and 2.3.

### 4. Functioning of the GAC:

- 4.1 The exact manner in which the GAC shall perform its advisory function shall be worked out by discussion and agreement between the GAC and the DMC. Such modalities shall include consultation between the GAC and the Steering Committees of each of the Working Groups.

### 5. Decision-making mechanism:

- 5.1 The Standing Rules adopted at CODESA 1 shall apply to the deliberation of GAC.
- 5.2 Where no consensus or sufficient consensus is reached, minority reports may be filed.



**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**

## ADDENDUM 2

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

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

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

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

That

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

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

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

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

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

It was noted that various other options may be available.

5. Concerning the issue of gender, the SG was advised that the CODESA management committee has set up a gender advisory committee which will handle the matter.





DMC MEMO/ALL CHAIRS/0804

## MEMORANDUM

**TO :** ALL CHAIRPERSONS OF WORKING GROUPS, WORKING GROUP STEERING COMMITTEES AND WORKING GROUP SUB-GROUPS

**RE :** REPORT BACK TO CODESA 2

**FROM :** DAILY MANAGEMENT COMMITTEE

**DATE :** 8 APRIL 1992

At its meeting of 6 April 1992, the DMC discussed the issue of report backs by Working Groups to Codesa 2 and agreed upon the following:

The DMC/MC would continue to look side by side with the WGs into finding a uniform and co-ordinated way for the WGs to report back to Codesa 2. The emphasis should be to try to structure the agenda of Codesa 2 in such a way as to place under focus:

- \* Agreements reached
- \* Matters still requiring attention
- \* The way forward and the mechanism for handling such outstanding matters

Assistance would be rendered by the DMC to WGs in formulating a set of guidelines for reporting back and drafting reports. Input, in this regard, from the WGs would be appreciated.

In light of this the DMC has decided to set a deadline for final reports from WGs as, Thursday 7 May 1992. This is not only for the purpose of preparing the final documentation for Codesa 2, but especially to give the principals of the various delegations sufficient time to read and reach decisions on the recommendations contained in these reports for Codesa 2.

It should be noted that due to this fact, reports from sub-groups should likewise be in time for WGs to prepare a final report.

Kind regards

*PJ GORDHAN*  
PJ GORDHAN  
CHAIRPERSON

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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

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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.