



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

**MINUTES OF THE FOURTH MEETING OF WORKING GROUP 1 SUBGROUP 1 HELD AT THE WORLD TRADE CENTRE MONDAY 9 MARCH 1992 AT 13H30.**

PRESENT : SEE ADDENDUM A

- D Dalling (Chair)
- A Schoeman (minute taker)
- T Motumi (Secretary)

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

1.1 The Ciskei Government submitted a document and motion concerning its objection to the ANC campaign in the Ciskei. These concerns were noted.

**2. Adoption of the Agenda.**

2.1 The agenda was adopted with the amendment that Item 8 would read: Report to the Management Committee and not Media Release.

**3. Ratification of the Minutes.**

3.1 Addendum B was amended to indicate that it was not the Venda Government who withdrew its submission, but the Ximoko Progressive Party.

3.2 The minutes were adopted.

**4. Matters arising from the minutes.**

4.1 The South African Government and the ANC reported that bilateral talks regarding political prisoners and exiles were continuing between them. They will report to the Sub-Group at the next meeting on 23 March 1992.

**5. Discussion on principles applying to repeal and or amendment of remaining apartheid laws.**

5.1 The meeting agreed that a task group be appointed to deal with principles against which emergency/security legislation can be evaluated. One delegate each from the South African Government, ANC, DP, Ximoko and the Bophuthatswana Government were appointed to the task group which will be convened by Min. H.J. Coetsee. Task group to report back next meeting.

5.2 Informal consensus was reached on the 2 paragraphs submitted by the ANC.

5.2.1 The paragraphs submitted by the ANC read as follows:

5.2.1.1 This Subgroup 1 of Working Group 1 recognises that a climate for free political participation is an essential element of the transitional phase towards and in a democratic South Africa and

5.2.1.2 The process of democracy requires that all participants in the political



process should be free to participate peacefully in that process without fear and on an equal footing and on the basis of equality with other participants.

- 5.2.2 The SA Government and the NP expressed their reservations on the second paragraph, and reserved their approval until a full motivation is put before the Sub-Group.

**6. Discussion on Venda submission : Re: Refugees.**

- 6.1 The Venda government has presented a document on refugees to people in organisations not present at CODESA and is awaiting responses from these groupings. The discussion was postponed to a future meeting.

**7. Report to the management committee.**

- 7.1 The South African Government and the ANC reported that bilateral talks regarding political prisoners and exiles were continuing between them and that they will report to the Sub-Group at our next meeting on 23 March 1992.
- 7.2 Two motions dealing with the general principle pertaining to free political activity were tabled by the Democratic Party and the African National Congress respectively (see annexure). The SA Government submitted a document dealing with proposals to establish general principles which could serve as guidelines for deciding whether specific laws should be amended, repealed or left unaltered in order to create a climate for free political participation.
- 7.3 It was agreed that a task group be appointed to deal with principles against which emergency/security legislation can be evaluated. One delegate each from the South African Government, ANC, DP, Ximoko and the Bophuthatswana Government were appointed to the task group which will be convened by Min. H.J. Coetsee. Task group to report back next meeting.
- 7.4 After further discussion informal consensus was reached on the two paragraphs submitted by the ANC. The second paragraph was amended by inserting the word "peacefully" in the second line thereof. The SA Government and the NP expressed their reservations on the second paragraph, and reserved their approval until a full motivation is put before the Sub-Group.

**8. Date of next meeting.**

- 8.1 The meeting agreed that the next meeting would be held on 23 March 1992. On a request of the chair it was agreed that the meeting will start at 9H00. It was further agreed that the 16H00 cut off time would not be rigid.

**ADDENDUM A :**

**People who signed the attendance register:**

AFRICAN NATIONAL CONGRESS	K Asmal
	P Maduna
BOPHUTHATSWANA GOVERNMENT	KCAV Sehume
CISKEI GOVERNMENT	MB Webb
	GM Ndzondo
DEMOCRATIC PARTY	H Bester
	J van Eck
INKATHA FREEDOM PARTY	I Mars
INTANDO YESISWE PARTY	SL Mthimunye
	DP Mahlangu
INYANDZA NATIONAL MOVEMENT	MS Gininda
	MJ Mahalela
LABOUR PARTY	E Samuels
	M Loonat
NIC/TIC	D Patel
NATIONAL PARTY	GB Myburgh
	LH Fick
NATIONAL PEOPLE'S PARTY	R Garrib
	SM Govender
SOLIDARITY PARTY	P Naidoo
	CF Thandroyen
SOUTH AFRICAN COMMUNIST PARTY	E Pahad
	F Baleni
SOUTH AFRICAN GOVERNMENT	HJ Coetsee
	D Swanepoel
TRANSKEI GOVERNMENT	MA Ntsinga
	SP Kakudi
UNITED PEOPLE'S FRONT	MI Moroamoche
	S Maja
VENDA GOVERNMENT	NE Mulaudzi
	ME Ramulondi
XIMOKO PROGRESSIVE PARTY	BM Tlakula
	NM Mtsetwene



**ADDENDUM B**

Submissions were made by the following organisations:

The Ciskei Government  
The African National Congress  
The Democratic Party  
The South African Government



## ADDENDUM C

### 9. General summary of discussion.

- 9.1 H Bester (from the DP) agreed to summarise for the purpose of the press release.
- 9.2 The Ciskei Government tabled a document and motion concerning its objection to the ANC's planned campaign in the Ciskei.
- 9.3 The meeting agreed to allow this on the condition that the procedure of CODESA is not disrupted.
- 9.4 The chair indicated that discussion on Item 6 of the agenda need to focus on the principles.
- 9.5 The ANC the sub-group have had good discussion have been held on this topic. Before going into a detailed analysis, the sub-group have to agree on the general principles for discussion, in this process it will highlight major pieces of legislature that needs to be amended or repealed. It was further argued that the primary aim of discussion should be to assist CODESA 2.
- 9.6 The ANC argued that the first priority should be to ensure that all the recognise the principle of free political activity, essentially democracy in South Africa in which all parties will be free to participate on an equal footing and without fear.
- 9.7 The ANC again emphasised that the discussion need to focus on the principles. Arguing that all laws formulate during the 'total onslaught' need to be repealed.
- 9.8 After tabling its submission the SA Government stated that it will respond to the ANC submission on an Interim Bill of Rights at the next meeting of the Sub-Group.

### 10 Response to the SA Government Submission

- 10.1 The ANC argued that a minimum floor of rights would not lead to anarchy.
- 10.2 The DP welcomed the SA Government submission, stating that it was an important move from the general to the specific.
- 10.3 The DP proceeded to table a motion on the principles for discussion on the legislation under examination.
- 10.4 The chair suggested that the SA Government indicted that the government is willing to comply with international standards.
- 10.5 The SA Government indicated that the UN is investigating the question of Emergency legislation.
- 10.6 The ANC stated that we need not wait for the findings of the UN, there are other international tribunals in existence.
- 10.7 The meeting agreed to look at the general, principle first.
- 10.8 A task group was suggested to examine these, as well as the ANC and DP submissions which deal with this question.
- 10.9 The Bophuthatswana Government suggested that the two motions be reduced to one.
- 10.10 The meeting agreed on a task group consisting of a delegate each from the South African Government, ANC, DP, Ximoko Progressive Party and the Bophuthatswana Government, this grouping will report back at the next meeting of the sub-group.

### 11. Discussion on the ANC and DP submissions.

- 11.1 The ANC submission would be section A and the DP proposal would be section B of a paper on principles for discussion.
- 11.2 The SACP objected to the SA Government submission. They argued that it was designed to argue why certain laws should not be amended, but certain general political statement were made to justify the security legislation and its maintenance.
- 11.3 The SACP rejected page 2 para 3 which states that the internal security act should be maintained. They argued that we need more discussion to prove the need for security legislation. If the meeting was to proceed in an understanding of free political activity while believing that civil disobedience is wrong, this would not be correct understanding of free political activity. They further argued that the state authorities could not be allowed to decide



- which acts of civil disobedience are unacceptable.
- 11.4 In response to page 4 of the SA Government submission the SACP argued that the argument in this page is being used to maintain security laws which have been objected to. Security legislation cannot be used to solve political questions, these have to be solved politically.
  - 11.5 In response to the last sentence on page 6 the SACP argued that the government needs to elucidate the shortcomings noted.
  - 11.6 The SACP argued that p6 paragraph (d) is not relevant to the work of this sub-group.
  - 11.7 The SACP questioned p7 paragraph d, arguing that still allows for the government to decide who are guilty of violent acts and whom are not.
  - 11.8 In response to p8 first paragraph the SACP argued that the existing laws in question militate against free political activity.
  - 11.9 The SACP argued that it was unacceptable for the government to decide on which political gatherings are acceptable and which not, the people will decide for themselves.
  - 11.10 The SA Government responded to the SACP by arguing that p2 paragraph 3 refers to the present violent situation, and that the words should not be taken out of context.
  - 11.11 In response to the comments on p3, the SA Government argued that violence, terrorism and intimidation inhibit free political activity.
  - 11.12 In response to the comment on p7 paragraph d, the government stated that the power to decide whether the government exercised its decision according to the law rests with the Supreme Court.
  - 11.13 In response to the comment on p8, the SA Government argued that they invited submissions to highlight problems to existing laws.
  - 11.14 The SACP responded, arguing that their intervention was designed to look at the repeal of security legislation, end of violence an free political activity.
  - 11.15 The SACP argued that the supreme court's authority is questioned and that they could only respond once an organisation has been banned.
  - 11.16 The SACP argued that banning are not conducive to a free political climate.
  - 11.17 The ANC argued that the above discussion goes back to the issue of principles. The ANC stated that South Africa has the highest number of laws regulating against free political activity.
  - 11.18 The ANC argued that the discussion needs to change its emphasis to focus on freedom, therefor we have to limit the discretion of police, and focus on judicial powers. Secondly we have to question if laws are necessary, arguing that organisations should not be banned, but should be prosecuted for political offenses. Thirdly the ANC argued that laws should not be used in a discriminatory or partisan fashion.
  - 11.19 The ANC further argued that all rights should always be seen in the context of human rights. The South African legal; system as it is has not struck a balance between individual rights and duties.
  - 11.20 The ANC argued that in the interim human rights and juris prudence should determine which laws should be maintained and which not.
  - 11.21 The IFP requested clarity on the relationship between rights and duties.
  - 11.22 The DP argued that the input from the pervious speakers was very superb. The DP pointed out that the country was experiencing violence not because of too much freedom but because there was too little freedom. The era of no freedom led to protest action and if there is a free political action there would be a drastic decline in protest action.
  - 11.23 The NPP suggested that no country can exist without security legislation but that in South Africa we have to ensure that these laws do not militate against free political activity. The meeting should therefore focus on the general principles this would be later supplemented by the specifics.
  - 11.24 The Transkei stated that no member of CODESA should be on the defence this does not lead to fruitful discussion.
  - 11.25 The Inyanza National Movement argued that the meeting need to focus on the practicality of asking thee SA Government to repeal laws while there is still no joint control of the security



- forces.
- 11.26 The DP pointed out that the meeting is looking at a three phased approach.
    - 11.26.1 The meeting needs to accept the principle of free political activity.
    - 11.26.2 The meeting then needs to agree on general principles and guidelines.
    - 11.26.3 The meeting will then work out the specifics.
  - 11.27 This approach was accepted by the meeting.
  - 11.28 The meeting reached informal consensus on paragraphs 1 and 2 of the ANC-DP proposal for principles, as amended to include the word peacefully, in point 2. The government and there NP reserved the right to comment until their specific concerns, about rights infringing on other peoples rights, have been addressed.

**ANNEXURE 1**  
**The ANC submission.**

1. This Subgroup 1 of Working Group 1 recognises that a climate for free political participation is an essential element of the transitional phase towards and in a democratic South Africa and
2. The process of democracy requires that all the participants in the political process should be free to participate in that process without fear and on an equal footing and on the basis of equality with other participants.



ANNEXURE 2

The DP submission.

The first paragraph needs to be deleted when read with the ANC document.

**DRAFT MOTION TABLED BY THE DEMOCRATIC PARTY AT CODESA,  
WORKING GROUP 1, SUB-COMMITTEE 1**

**RE : REMAINING LEGISLATIVE MEASURES MILITATING AGAINST FREE  
POLITICAL ACTIVITY**

We, the duly authorised representatives of political parties, political organisations, administrations and the South African Government ,

RECOGNISING that a multi-party democracy and the process of negotiations leading thereto presuppose the right of political parties and organisations to organise freely without interference or harassment from the state, administrations or other political organisations ;

FURTHER RECOGNISING that certain existing legislative measures militate against such free political activity ;

ACKNOWLEDGING the need for statutory measures, formulated in accordance with internationally acceptable norms, conferring extraordinary powers on the government during times of national emergency ;

FURTHER ACKNOWLEDGING the need to formulate certain principles which we consider fundamental to free political activity and which can be used as guidelines in the evaluation of existing legislative measures militating against free political activity;

HEREBY AGREE that every political party or organisation and its members must enjoy :

1. Freedom of expression and assembly ;
2. The freedom to join, organise and be represented by political parties and organisations of one's choice ;
3. Equitable access to State-controlled/statutorily instituted media and must have access to information generated and controlled by the state, other than information internationally accepted to be of secret nature ;
4. Freedom from harassment and intimidation by the state or their organs, administrations, other political organisations or their members ;

AND ALSO AGREE THAT :

Consequential repeals or amendments to existing legislation should be effected.



**Report by Sub- Group 1 of Working Group 1 of their meeting on Monday 9 March 1992.**

1. The South African Government and the ANC reported that bilateral talks regarding political prisoners and exiles were continuing between them and that they will report to the Sub-Group at our next meeting on 23 March 1992.
2. Two motions dealing with the general principle pertaining to free political activity were tabled by the Democratic Party and the African National Congress respectively (see annexure). The SA Government submitted a document dealing with proposals to establish general principles which could serve as guidelines for deciding whether specific laws should be amended, repealed or left unaltered in order to create a climate for free political participation.
3. It was agreed that a task group be appointed to deal with principles against which emergency/security legislation can be evaluated. One delegate each from the South African Government, ANC, DP, Ximoko and the Bophuthatswana Government were appointed to the task group which will be convened by Min. H.J. Coetsee. Task group to report back next meeting.
4. After further discussion informal consensus was reached on the 2 paragraphs submitted by the ANC. The second paragraph being amended by inserting the word "peacefully" in the second line thereof. The SA Government and the NP expressed their reservations on the second paragraph, and reserve their approval until full motivation is put before the Sub-Group.