



SG3M2303.WE (3)
Sub-group1/minutes 23 March

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 HAVE BEEN APPROVED BY THE CHAIRPERSON OF THE WORKING GROUP SUB-GROUP AND TO RATIFICATION BY THE WORKING GROUP SUB-GROUP AT ITS NEXT MEETING.

MINUTES OF THE FIFTH MEETING OF WORKING GROUP 1 SUB-GROUP 1 HELD AT THE WORLD TRADE CENTRE ON MONDAY 23 MARCH 1992 AT 09H00.

PRESENT: SEE ADDENDUM A

MB Webb (Chairperson in the absence of Mr Dalling)
A Schoeman (Minute taker)
T Motumi (Secretary)

1. Convenor's Opening Remarks.
 - 1.1 The meeting agreed that Mr Webb would chair the meeting in the absence of Mr Dalling, who has fallen ill.
 - 1.2 The chair welcomed Mr Coetzee after his unfortunate experience. The chair also congratulated the parties involved in the referendum, with their success.
2. Adoption of the Agenda.
 - 2.1 The agenda was adopted without amendments.
3. Ratification of the minutes.
 - 3.1 The minutes were adopted with the following amendments:
 - 3.1.1 Point 5.2.2 was amended to read as follows: The SA Government and the NP expressed their reservations on the second paragraph, and reserved their point of view until the full resolution was debated by the Sub-Group.
 - 3.1.2 Point 5.2.3 was amended so that the second sentence reads as follows: "On a request of the chair the meeting will start at 08H30, and the meeting will await the arrival of the DP at 09H00."
 - 3.2 The minutes were adopted.
4. The meeting agreed that the issue of the replacement of the chair would be discussed by the Steering Committee.
5. Matters arising from the minutes.
 - 5.1 The chair clarified the rule on the attendance of members of organisations who are not delegates or advisors to sub-group. Any member of Working Group 1 is allowed to attend all the meetings of the sub-groups, provided they do not sit with their delegations.

6. **Report from the ANC and the SA Government on further bilateral meetings and discussions.**
- 6.1 The ANC and the SA government reported back on bilateral talks. No finality was reached and discussions are continuing. The meeting requested the two parties to proceed with their bilateral talks and to report to the next meeting on progress made. The Sub-Group however, reserved the right to discuss the matter at its next meeting, whether the parties has made progress or not.
- 6.2 The ANC raised the issue of the continuation of executions. After extensive discussion the following motion was tabled:
- 6.2.1 "In the light of this weekend's announcement that the State President has reprieved a certain number of prisoners awaiting execution, but has decided not to reprieve 17 other death row prisoners, this Sub-Group 1 of Working Group 1, in order to enhance the climate conducive to negotiations, appeals to the South African Government to suspend all executions in the transition period."
- 6.2.2 Whilst substantial support for the motion was expressed, consensus could however not be reached.
7. **Continuation of the Discussion on the principles applying to the repeal of and amendments to existing laws.**
- 7.1 The task group instructed to investigate principles against which emergency and security legislation could be evaluated, reported that a meeting with all the delegates of the task group was held on Friday 20 March 1992. Broad principles were agreed on and the South African Government submitted a document in this regard. The paper was submitted orally. The task group was requested to complete their task, including the matter of security legislation, by the next meeting and submit a written report agreed upon by all members of the Task Group.
8. **Venda submission - Political Refugees.**
- 8.1 A submission regarding the position of political prisoners was made by the Venda Government, Ximoko Progressive Party, United People's Front and the Inyandza National Movement. Certain questions were put to the South African Government (See Addendum D - points 11.4, 12.5 and 12.7), flowing from the submission. The South African Government was requested to respond at the next meeting.
9. **Any Other Business.**
- 9.1 The issue of gender discrimination was put forward by the ANC, with the request that consideration be given, at a later date, to how this Sub-Group can address this issue.

ADDENDUM A

The following people signed the attendance register:

AFRICAN NATIONAL CONGRESS	K Asmal
BOPHUTHATSWANA GOVERNMENT	P Maduna
CISKEI GOVERNMENT	KCAV Sehume
DEMOCRATIC PARTY	J Esterhuizen
INKATHA FREEDOM PARTY	MB Webb
INTANDO YESISWE PARTY	GM Ndzondo
INYANDZA NATIONAL MOVEMENT	H Bester
LABOUR PARTY	J Bester
NIC/TIC	JSS Phatang
NATIONAL PARTY	MH Cunukelo
NATIONAL PEOPLE'S PARTY	Dr Benard
SOLIDARITY PARTY	I Mars
SOUTH AFRICAN COMMUNIST PARTY	SL Mthimunye
SOUTH AFRICAN GOVERNMENT	DP Mahlangu
TRANSKEI GOVERNMENT	MS Gininda
UNITED PEOPLE'S FRONT	MJ Mahalela
VENDA GOVERNMENT	D Patel
XIMOKO PROGRESSIVE PARTY	P McBride
	GB Myburg
	LH Fick
	R Garrib
	SM Govender
	AK Beesham
	P Naidoo
	CF Thandroyen
	E Pahad
	F Baleni
	HJ Coetsee
	DCD Swanepoel
	MA Ntshinga
	MI Moroamoche
	ME Ramulondi
	BM Tlakula
	NM Mtsetwene

ADDENDUM B

Submissions were made by the following organisations:

The African National Congress
The Venda Government
The South African Government

ADDENDUM C**Report to the Management Committee****SUBGROUP 1 REPORT TO THE MANAGEMENT COMMITTEE ON 23 MARCH 1992**

SG1 of WG1 reports as follows on their meeting held on Monday 23 March 1992 :

1. Report back on bilateral talks between the government and the ANC : No progress was made to date. Discussions are continuing. The meeting requested the two parties to proceed with their bilateral talks and to report to the next meeting on progress made. The subgroup however, reserves the right to discuss the matter at its next meeting, whether the parties make progress or not.
2. The ANC then raised the issue of the continuation of executions, as appeared from this weekend's press. After extensive discussion, a draft motion was tabled. Whereas substantial support for the draft motion was expressed, consensus could not be reached.
3. The task group instructed to investigate principles against which emergency/security legislation could be evaluated, reported that a meeting with all delegates present was held on Friday 20 March 1992. Broad principles were agreed to, and the South African government submitted a document in this regard. The paper was orally submitted and the task group was requested to complete their task, including the matter of security legislation, by the next meeting.
4. A submission regarding the position of political refugees was made by the Venda government, Ximoko Progressive Party, United People's Front and the Inyandza National Movement. Certain questions were put flowing from the submission. These will be attended to at the next meeting.
5. The question of gender discrimination was put forward by the ANC, with the request that consideration be given to how this subgroup can address the issue.

ADDENDUM D

10. General summary of discussion.

- 10.1 The SA Government informed the meeting that no progress have been made to date. A number of meetings have been held but no substantive discussion has been held. Issues such as MK and private armies are high on the Government's agenda.
- 10.2 The ANC responded to the report stating that the question of MK does not fall in the scope of the discussions as outlined by the Sub-Group.
- 10.3 The SA Government contended that there is a linkage between the question of MK and the return of exiles.
- 10.4 The SACP suggested that the Sub-Group reserve the right to discuss the matter at its next meeting whether the ANC and the SA Government make progress or not.
- 10.5 The IFP agreed with proposal made by the SACP.
- 10.6 The Transkei Government agreed with the SACP proposal and suggested that the issue of a General Principle should be discussed.
- 10.7 The chair pointed out that the issue has already been discussed.
- 10.8 The meeting accepted a proposal from the Transkei Government that all the members should take the issue back and 'clean their houses'.
- 10.9 The ANC raised the issue of the SA Government reinstating capital punishment.
- 10.10 The ANC contended that the issue is closely linked to the question of political prisoners since a number of political prisoners are on death row.
- 10.11 The ANC argued that the imposition of the death penalty in the period of transition is unacceptable.
- 10.12 The ANC argued that capital punishment would 'heighten the political temperature' and would be contrary to the reconciliation process.
- 10.13 The NP argued that the meeting should not discuss the issue of capital punishment as the SA Government is simply implementing the amended Act.
- 10.14 The SA Government argued that the issue of capital punishment is a sensitive issue. The new dispensation became applicable in the middle of last year. Since then a number of death sentences have been imposed. The appeal court would however review all the cases.
- 10.15 The SA Government stated that under the new procedure a number of categories of people that would have been sentenced under the old Act could not be sentenced under the new Act. Under the categories of people who could not be sentenced under the new Act is political prisoners.
- 10.16 The SA Government argued that under the new Act a number of people have been reprieved. The names of 19 people reprieved would be announced in the course of the day and the names of about 30 other people reprieved would be announced in due course.
- 10.17 The government argued that none of the 17 people, not reprieved are political prisoners.
- 10.18 The SACP agreed that the issue of capital punishment is sensitive. They argued however that the transitional phase is an acknowledgement that there is something wrong with the present system. No executions could thus take place in the transitional period.
- 10.19 The SACP argued that in the transitional period it would give the people confidence in the process if the government does not proceed with executions.
- 10.20 The ANC argued that the threat of execution would mobilise people in a negative way. This would include the execution of any person from either the right or left whose actions were informed by their political beliefs.
- 10.21 The DP argued that to reprieve some people on death row would not undo the damage done by the announcement.
- 10.22 The DP argued that nothing would damage the climate and the grassroots support more. The government doing this immediately after the referendum and their position on MK are negative signals to the majority of people who thought that the referendum would improve the climate.
- 10.23 The Labour Party argued that there is a link between the retention/ abolishment of the death sentence and the working group brief. They suggested that the meeting look more closely at

- the issue in relation to negotiations.
- 10.24 The SA Government stated that the process would not commence unless activated. They argued that the question of the death penalty should be discussed in general, but not in this meeting. The principle should be discussed when a bill of rights is discussed, or when the laws inhibiting free political activities are discussed.
 - 10.25 The SA Government argued that they must strongly counsel against debate on the issue for they have emphasised the reprieve and not the execution of these people.
 - 10.26 The chair stated that even if there are no political prisoners on death row at the moment, others could still in future be executed.
 - 10.27 The SA Government argued that no person could be on death row for their political beliefs but only for common law crimes.
 - 10.28 The ANC argued that the problem arises not from whether people fall under the definition of political prisoners, but from the effect that executions will have during the process of transition. The ANC called for the suspension of Capital Punishment during the negotiation process.
 - 10.29 The SA Government argued that the process of execution has not been activated, but they understand what the ANC is arguing.
 - 10.30 The meeting agreed that Mr Bester from the DP would draft a motion on the issue. The government would not however be party to that motion since the request is directed towards them.
 - 10.31 The ANC submitted a paper on an interim bill of rights.
 - 10.32 The SA Government argued that an interim bill of rights would be the best position to follow to amend laws that discriminate against free political activity.
 - 10.33 The DP argued that the general principles as put forward by the ANC would normally fall under a bill of rights but is not the bill itself. They could however eventually form part of a bill of rights.
 - 10.34 The Transkei Government supported a bill of rights as put forward by the ANC.
 - 10.35 The NIC/TIC stated that a bill of rights could only be drawn up in the future and therefore supported the ANC's proposal.
 - 10.36 The SACP argued that a general law amendment bill is not a bill of rights.
 - 10.37 The SA Government argued that we should first identify the laws to be amended, and only if there is no time, should an alternative be investigated.
 - 10.38 The DP argued that nothing prevents the subgroup from forming a free political activity act.
 - 10.38.1 The meeting agreed that for the period preceding a new constitution, several laws should be repealed and a mechanism should be found to deal with those laws that were not addressed in the process.
 - 10.39 The meeting agreed that areas of basic right of freedom needs to be defined.
 - 10.40 The SA Government will respond with fixed proposals.
 - 10.41 The DP felt that consensus was 'brewing' on the need for general principles.
 - 10.42 The DP submitted a motion on the suspension of executions in the transition period.
 - 10.43 The majority of delegates found the motion acceptable.
 - 10.44 The NP suggested a counter-motion requesting the Government to remit the sentences of the 17 people.
 - 10.45 Discussion was taken on procedure and on the two motions. The meeting could not however come to an agreement.
 - 10.46 The DP suggested a small group meet and come to some form of agreement on the motions. The meeting accepted the suggestion a small group consisting of the NP, the DP, the ANC and the Bophuthatswana Government left the meeting to consult.
11. Continuation of discussion on principles applying to the repeal of and/or amendments to existing laws.
 - 11.1 The SA Government presented a paper on the above question.
 - 11.2 The Transkei Government requested that all submissions in future be handed in before meetings so that they could be examined before the meeting.
 - 11.3 The SACP agreed, but stated that we cannot postpone the issue. If the task group is not able to complete it's task before the next meeting discussions should continue without the input.

- 11.4 The SACP raised several issues that they wish clarity on from the task group.
- 11.4.1 Point 2.1 of the document implies that the State President will continue to have the right to declare states of emergencies, is this not presumptuous in the interim period?
- 11.4.2 Point 2.4 raises the question of how consensus can be achieved if it is an individual consulting after having made a decision.
- 11.4.3 How does the present position of government in terms of this document relate to the interim, since the meeting has not resolved the issue of parliament.
- 11.5 INM stated that the task given to the Sub-Group has not been fully addressed. They asked when it will be completed.
- 11.6 The meeting agreed that the task group should complete their task by the next meeting. So that the meeting will be able to discuss the issue at its next meeting.

12 Venda submission on Political Refugees

- 12.1 The Venda Government tabled a submission on the question of refugees.
- 12.2 The INM requested that in point 6 the phrase "and before reconstruction services are rendered" be removed and be replaced by the phrase "in Mozambique".
- 12.3 Ximoko and the UPF stressed the urgency of paragraph 2 of the submission.
- 12.4 The chair clarified the issue that although the document deals specifically with Mozambican refugees, the same principles would be applicable to all refugees.
- 12.5 The ANC posed the following questions to the SA Government in their absence:
- 12.5.1 Whether the government is practising racism with respect to the Mozambican refugees who are black?
- 12.5.2 Is the SA Government treating the present refugees in the same way they treated the Portuguese and white Zimbabwean refugees when those countries became independent?
- 12.5.3 Is there a difference between the SA Government's treatment of white and black refugees and immigrants.
- 12.5.4 How does the SA Government relate to the UN system that guides the treatment of refugees?
- 12.6 The meeting agreed that it would request the SA Government to respond to the submission and the questions posed by the ANC.
- 12.7 The DP posed a question to the meeting on numbers of people killed by the electric border fence. This question was refer to the SA government.
- 12.8 The meeting agreed to refer the issue of Sub-Group 4, who is dealing with the question of international involvement, and their possible discussion of the issue to the Steering Committee.
- 12.9 The IFP highlighted the fact that the UN High Commission on Refugees only involve itself in a country on the request of the government of that country. They therefore move that the meeting should request the SA Government to consider this possibility.
- 12.10 The SACP suggested that the Sub-Group should await the response of the SA Government before agreeing on the above proposal.

13 Date of next meeting.

- 13.1 The meeting agreed that the next meeting would be held on Tuesday 31 March at 13:30.

14 ANC proposal on gender.

- 14.1 The ANC posed several questions to the meeting re. the gender question (for full elaboration of these issues see the submission by the ANC Women's League in external submissions to Working Group 1, Vol 2.)
- 14.2 The ANC stated that these are serious issues and have to be dealt with in a systematic way. They suggested that the issues be discussed in tandem with other issues to which they relate, eg. Political prisoners.
- 14.3 The SA Government argued that the issue could be dealt with under a bill of rights.
- 14.4 The ANC argued that the Sub Group cannot pre-empt discussion and that consideration

should only be given to how the Sub Group can address the issue.

- 15 Continuation of discussion on Capital Punishment.
 - 15.1 The Sub Group could not reach full consensus on the motion, and it has been postponed until the next meeting where hopefully full consensus will be reached.
- 16 The meeting agreed on the press release (See addendum C)