

CONSTITUTIONAL ASSEMBLY

**MINUTES OF THE FORTY SECOND (42ND) MEETING OF THE
CONSTITUTIONAL COMMITTEE**

WEDNESDAY 1 MAY/ THURSDAY 2 MAY 1996

Present

Ramaphosa, M C (Chairperson)
Wessels, L (Deputy Chairperson)

Ackermann, C	Matthee, P A
Andrew, K (Alt)	Mbete-Kgositsile, B
Beyers, A S (Alt)	Mdladlana, S (Alt)
Bhabha, M	Meshoe K R
Camerer S	Meyer, R P
Chabane, O C	Moosa M V
Davies R H	Moosa M W (Alt)
De Beer, S J (Alt)	Mulder, C P
De Lange, J H	Myakayaka-Manzini, Y L M
De Lille, P (Alt)	Ngcuka, B T
Du Toit, D C	Nzimande, B E
Eglin, C W	Pahad E G
Gibson, D H M	Pandor, G N M
Ginwala F	Phillips, I (Alt)
Gordhan, P J	Radue, R (Alt)
Green, L M (Alt)	Schreiner, J (Alt)
Hofmeyr, W	Schutte, D P A
King, T J	Sizani, R K
Ligege M G	Smuts, D (Alt)
Love, J	Surty, M E (Alt)
Mahlangu, M J	Van Breda A
Mahlangu, N J	Van Heerden F J (Alt)
Marais, P G	Viljoen C L
Maree, J W (Alt)	

Apologies: No apologies.

Absent: NJ Gogotya, BS Mabandla, D W Makhanya, LPHM Mtshali, S Mzimela, R Rabinowitz, P Smith, RS Suttner.

In attendance: Directorate: H Ebrahim, M Sparg, L Zondo **Minutes:** S Rabinowitz.
Law Adviser: G Grové; **Panel of Experts:** G Erasmus, J Kruger, C Murray, P Sedibe-Ncholo, I Semanya, J Van Der Westhuizen, Z Yacoob. **Technical Advisers:**
H Cheadle, S Liebenberg.

1. OPENING

- 1.1 Mr Wessels opened the meeting at 14h00. He said that parties were ready to report on a number of outstanding matters.

2. CHAPTER 1: FOUNDING PROVISIONS

- 2.1 Mr Gordhan tabled a new draft of Section 1(c) which had been agreed as follows:

"Supremacy of the Constitution and the rule of law"

3. CHAPTER 3: COOPERATIVE GOVERNMENT

- 3.1 Mr Gordhan tabled a new draft of *"Chapter 3: Cooperative Government"* and reported that this chapter was agreed but the term *"organs of state"* might be excised from Section 40(4) depending on the final definition of the term *"organs of state."*

4. CHAPTER 4: PARLIAMENT

- 4.1 Mr Gordhan tabled a new draft of *"Chapter 4: Parliament"* and reported as follows:

- i Section 41 remained as it stands in the draft. The meeting noted that an outstanding issue was the proposal from the NP on the question of the "free mandate".
- ii Section 42 was agreed.
- iii Regarding Section 43 the following changes had been agreed:
 - (a) The exclusive legislative provincial competencies had been incorporated in Section 43(1)(a)ii;
 - (b) Section 43(2) has been redrafted; and
 - (c) There would be technical changes in Section 43(3) as a consequence of the amendments in line with the provincial exclusive legislative competencies being incorporated. The meeting noted that in Section 43(3) the word "of" in the second line had been omitted and should be re-inserted during the technical refinement process.
- iv Section 77 should read Section 43A and subsection (f) should be deleted.
- v Section 44(1)(b) should read *"is based on the national common voters roll"*. The meeting noted the report that the outstanding issue in this regard had been resolved.

- vi Sections 45, 46, 47 and 48 had been agreed.
- vii Section 49(3) regarding the seat of Parliament had been resolved as it appeared in this chapter.
- viii Section 50 was agreed except for the outstanding issue of the proposal of the ANC that there should be a speaker of Parliament and it was noted that this matter was still under discussion.
- ix Section 51 to 54 had been previously agreed.
- x In Section 55, the outstanding issues relating to financial and administrative assistance to political parties and their leaders and the recognition of the leader of the largest minority party as the leader of the opposition had been agreed and would be incorporated in Section 55(2).
- xi Sections 56, 57 and 58 had been agreed.
- xii In respect of Section 59 Mr Gordhan tabled a new draft of Sections 59(2) and (3) which included the following:
 - (a) Section 59(2)(a) would include how each party's delegates would be determined;
 - (b) Section 59(2)(b) provided that the permanent delegates would be decided upon in a manner consistent with democracy.
 - (c) Section 59(3) required that the legislature and the premier reach concurrence together with leaders of those parties that have special delegates in designating special delegates as might be required to attend the COP from time to time.
- xiii Section 60, 61, 62, 63 had been agreed to.
- xiv Section 64 would have a new subsection (3) which required that if a member of the COP is appointed as a cabinet member then that member would resign as a member of the COP.
- xv Sections 66, 67, 68, 69, 70 and 71 were all previously agreed.
- xvi Section 72(2) involved the percentage by which a provincial legislature would get involved in a constitutional amendment affecting its boundaries, powers and functions. There was a proposal from the NP that this should not be by a simple majority but by a two thirds majority. The meeting noted that this was still an outstanding issue and that the NP reserved its position on this clause.
- xvii There would be a new Section 72(5) providing for the fact that Section 1 of the "*Founding Provisions*" may only be amended by a 75% majority so

that it secured the basic principles of democracy contained in that section.

- xviii Sections 73, 74, 75, 76, 77, 78 were agreed to.
- xix Section 79(2)(a) which had been an outstanding issue was agreed in that an application could be supported by one third of its members. There was agreement that subsection (4) would read that "*If an application is unsuccessful, the Constitutional Court may order the applicant to pay costs if the application did not have a reasonable prospect of success.*"
- xx There were a number of changes to Section 80 and 81 which were agreed.

5. CHAPTER 5: PRESIDENT AND THE NATIONAL EXECUTIVE

- 5.1 Mr Gordhan tabled a new draft of "*Chapter 5: President and The Executive*" and reported that all the sections had been agreed. The meeting noted, however, that with regard to Section 97 a new draft had been discussed and would be inserted in this section.

6. CHAPTER 6: PROVINCES

- 6.1 Mr Gordhan tabled a new draft and reported that there had been a few consequential amendments as a result of the exclusive powers being incorporated.
- 6.2 He drew attention to the following:
 - i Section 102(6) was now deleted and the brackets around Section 102(7) would be removed.
 - ii All the sections up to Section 113 were agreed. The meeting agreed that in Section 103(2) with regard to determining the number of members of the provincial legislature, the decision was that this should read the same as Section 44(2).
 - iii Section 114(2) had the addition of new sub-paragraphs (c) and (d) in line with the changes in Section 55.
 - iv Section 115, 116, 117, 118 and 119 had all been agreed.
 - v There was agreement that Section 120(2)(a) should read "*must be supported by at least 20% of the members of the legislature*". There would be a similar amendment to subsection (4) as in Section 79.
 - vi Sections 121 and 122 were agreed to with slight editorial changes.
 - vii Section 123 was agreed and it was agreed to reformulate Section 123(a) in line with Section 97 .

- viii With regard to Section 124(2)(f) there would be a new subsection which would indicate that a premier would have the responsibility and power for calling a referendum in terms of national legislation.
- ix It had been agreed to amend Section 139(1) to read as follows:

"A provincial constitution or constitutional amendment must not be inconsistent with this Constitution."
- x Regarding Section 142:
 - (a) Mr Gordhan tabled a separate draft amendment which indicated the changes which had been agreed.
 - (b) The meeting noted that Mr Eglin stated that this formulation of Section 142 was a considerable improvement but the DP was opposed to the inclusion of Section 142(3).

7. CHAPTER 7: LOCAL GOVERNMENT

- 7.1 Mr Gordhan tabled a new draft of *"Chapter 7: Local Government"* and spoke to the document stating that there was full consensus on this chapter. He reported on the amendments which had been made as follows:
 - i Section 146 established the status of municipalities as a separate sphere and entitled them to govern in a completely new kind of way which was an important development.
 - ii In Section 146(3), the brackets should be removed.
 - iii In Section 148, it had been agreed that the words *"cooperating and formulating and implementing"* should be deleted and replaced with *"participate in"*.
 - iv Section 149A set out what national legislation and provincial legislation would provide for and subsection (3) related to Schedules 4 and 5 which both contain local government matters and set out the manner in which provincial government would intervene in those matters.
 - v Section 149a(3)(c) had been deleted.
 - vi Section 150 dealt with the powers and functions of municipalities.
 - vii There would be an new draft of Section 153(1) regarding the issue that a municipality must hold a general election of its municipal councils at intervals of no more than four years (not five) as determined by national legislation. Mr Gordhan stated that there was a need for some technical clarity on the criteria for registering as a voter at a municipal level and

national legislation's involvement in that process.

viii Section 154(2) had been redrafted to read:

"Members of a municipal council must be able to participate in the proceedings of the council and its committees in a manner that is consistent with democracy and allows for the participation of political parties and independent representatives or councillors as regulated by national legislation."

ix It had been agreed that Section 157 would be redrafted to indicate:

- (a) That an Act of Parliament would provide for the recognition of organised structures of local government at a national and provincial level
- (b) That it would determine the process for the nomination of representatives to the National Council of Provinces and the Financial and Fiscal Commission.
- (c) These structures would provide a vehicle through which there could be consultation between national and provincial government on the one hand and local government on other hand.

x The meeting noted that there was no Section 158.

8. SCHEDULES:

8.1 Mr Gordhan tabled a new draft of Schedules 4 and 5 and spoke to the document.

8.2 Regarding *"Schedule 4: Functional Areas of concurrent national and provincial legislative competence"*:

8.2.1 *"Part A"* would contain those matters which are concurrent between national and provincial.

i The meeting noted that there were two issues outstanding:

- (a) *"Education"* excluded tertiary education. There was disagreement whether teacher training colleges should form part of that exclusion, that is, whether it should read *"education at all levels, excluding only universities and technicons"* or alternatively, *"education at all levels, excluding tertiary education"* which included teacher training colleges.
- (b) Regarding *"Motor vehicle licencing"*, a technical checking process needed to be undertaken.

- ii The meeting further noted that under the item "*Public works*", the reference to "*and municipal councils*" should be deleted.

8.2.2 "*Part B*" related to those matters that both these structures in terms of their concurrent legislation would be required to pass on to local government. The meeting noted the following:

- i "*Fencing*" would be deleted and would shift to Schedule 5.
- ii "*Municipal libraries and library services*" would be deleted as it was a duplication.
- iii "*and noise*" would be deleted from "*air and noise pollution*"

8.3 Regarding "*Schedule 5: Functional areas of exclusive provincial legislative competence*":

8.3.1 In "*Part A*" all the matters had been agreed but the meeting noted the following:

- i The matter of "*airports*" needed to be technically confirmed.
- ii The matter of "*property transfer fees*" was still under consideration and might be deleted subject to consultations with the Department of Finance.

8.3.2 In "*Part B*", all items were agreed except for the following two queries:

- i Regarding "*child care facilities*", there was some doubt about whether this could be left in the hands of municipalities or whether it should be shifted to a concurrent area and the Department of Welfare would be consulted in this regard.
- ii Regarding "*Licencing and control of undertakings that sell food or liquor to the public*", it had been agreed that the formulations would read: "*licencing and control of undertakings that sell food*" and "*control of undertakings that sell liquor*". The question of "*licencing of undertakings that sell liquor*" was to be confirmed with the Department of Trade and Industry and the current situation needed to be investigated before that item was properly formulated.
- iii The meeting further noted that the additions to Part B of "*Cleansing*" and "*Noise pollution*" had been agreed.

8.4 The DP stated that it had a concern that not all the items were in the correct categories. In addition, the DP referred to a number of the items listed on "*Schedule 4: Part A*" and said that where there was a reference to another part of the constitution, it was their understanding that the wording would be similar to

that of the Interim Constitution.

- 8.5 Mr Gordhan responded that this matter was still under discussion and that this might take different forms in different places.
- 8.6 Mr Gordhan further reported that the sub-committee dealing had requested the Panel of Experts to provide a memorandum on the use of the terms "*Act of Parliament*" and "*national legislation*". He pointed out a certain amount of "technical cleaning up" needed to happen in terms of both the use of these phrases and their prefixes such as "*by*" or "*in terms of*" an Act of Parliament". Thus a number of the references would have to be reviewed to ensure consistency throughout the drafts.
- 8.7 A similar issue, Mr Gordhan reported, was the use of the words "*assigned*" and "*delegated*". These had been taken as inter-changeable and then it was ascertained that they were not, and, now that had been defined more clearly, those words would require "cleaning up" to ensure consistency.
- 8.8 Mr Maree stated that the NP had moved two formal amendments that were not accepted. The one amendment was in relation to the demarcation of wards where the NP proposed that considerations of demography, cultural diversity, physical and environmental conditions be taken into account. The other recommendation that was not accepted was the question of the vote that should be given not only to persons residing in a municipal area but also to ratepayers even if they did not reside there. The NP wished to place these matters on record but stated that rest of their concerns were catered for.
- 8.9 Mr Meyer raised the matter of recent submissions by a certain party dealing with the issues of competencies, the lists and local government. As these submissions had been received relatively late, the NP had not had the opportunity to fully research these matters. He requested that further consultation be allowed in relation to these specific matters so that if there was a need for further improvements these could be done at a later stage.
- 8.10 Mr Moosa said that he believed that the understanding was that the sub-committee from which Mr Gordhan had reported had intended to finalise all of those matters which were reported to the Constitutional Committee. He stated that when reports were made to the CC, these were recording agreements which had been reached and the ANC would not like to go back for further consultation on the matters that have been reported.
- 8.11 Mr Meyer stated that the new list of proposals which had been submitted required further consideration on the very technical issues especially on the division of the lists in regard to concurrency and exclusive powers and in the process of further consideration certain items might be identified as not well placed.
- 8.12 Mr Gordhan pointed out that although the division between "so-called" concurrent and exclusive areas was recent, a list of issues in such a schedule had been known to all parties. He said that it was true that some of these

changes were recent changes and that some areas required technical clarity and stated that Mr Meyer's concern could be taken on board.

- 8.14 The meeting agreed that if it was necessary the concerns raised by Mr Meyer would be catered for.

9. CHAPTER 11: SECURITY SERVICES

- 9.1 Ms Schreiner reported that Sections 197(2) and 198(2) had been amended with the approval of all the parties present along the following lines:

- i Section 197(2) would make it clear that the deployment responsibility for the defence force would lie with the President.
- ii Section 198(2) would make it clear that the Cabinet Minister would exercise his power under the authority of the President as Commander in Chief.

- 9.2 Ms Schreiner reported that copies of the amended report had been made available to all the parties.

10. CHAPTER 12: TRADITIONAL LEADERS.

- 10.1 Mr Gordhan tabled a new draft which provided in Section 208 for:

- i the involvement of traditional leadership at the local level,
- ii the creation of the possible houses of traditional leaders; and
- iii the creation of a council of traditional leaders.

- 10.2 The meeting noted that subsection (2) should read "*houses of traditional leaders*" and subsection (3) "*a council of traditional leaders*".

11. CHAPTER 14: GENERAL PROVISIONS

- 11.1 Mr De Beer tabled a new draft of "*Chapter 14: General Provisions*" and reported as follows:.

- i Section 227, 228, 229 were agreed.
- ii In Section 230A, at the end of the last sentence, it had been agreed to add the phrase: "*,determined by national legislation*"
- iii Section 230B was agreed.
- iv Section 230 was agreed.

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- v Section 231 still needed to be reformulated and had been referred to the Panel of Experts.
 - vi Sections 231A and 232 had been agreed.
 - vii Section 232A was a new provision regarding funding for political parties and it had been agreed that it would read as follows:

"To enhance multi-party democracy national legislation must provide for the funding of political parties participating in national and provincial legislatures on equitable and proportional basis.
 - viii Section 233 and 234 were agreed.
- 11.2 Mr Gordhan in reporting on the work of his sub-committee, reported that in regard to *"Chapter 14 : General Provisions"*, it had been agreed to insert the following additional section which would become Section 229A:
- "An executive organ of state in any sphere of government may perform functions for any other organ of state on an agency or delegation basis."*

12. TRANSITIONAL ARRANGEMENTS

- 12.1 Mr De Beer tabled a new draft of *"Transitional Arrangements"* and reported as follows:
- i Clauses 1, 2, 3, 4 and 5 had been agreed.
 - ii Clauses 6(3) and 6(4) had been flagged awaiting the decision on Section 43(b).
 - iii Regarding Clause 6(3), Mr Gibson said that the DP believed this was a retrograde step and wished to record their opposition to this clause. The DP believed that the voters of South Africa should be able to hold members of Parliament accountable and that there should be constituencies. The DP did not support the continuation of the present system as it believed that the overwhelming majority of people in the country would like to be represented for their area by a specific member of Parliament.

The meeting noted the DP position.
 - iv Regarding Clause 7:
 - (a) Mr De Beer reported that this clause was agreed and it was agreed that the brackets should be deleted in sub-clause (5).
 - (b) Mr Ngcuka of the ANC had agreed to this section very reluctantly in order to accommodate the DP. He stated that the ANC believed very strongly that it was wrong for people to represent provinces in

which they did not reside. They believed that people must be accountable to the areas in which they reside but accepted that there were parties who did not subscribe to that principle and the ANC had agreed as a form of transition to accommodate that concern.

(c) Mr Ackermann of the NP concurred with the ANC that senators should be residents of a specific province which they represent and said that they were glad that the ANC had opened the door on an issue that there should be provincial lists which should provide for these senators.

- v Clauses 8, 9 and 10 were agreed.
- vi It had been agreed that Clauses 11(1) and (2) would be flagged awaiting the decision on Section 43(b).
- vii Clauses 12, 13, 14, 15, 16, 17(1) and 17(2) were agreed. Regarding Item 17(3), the reference to Sections 184(A) and 184(B)(1)(a)(b) and (d) would be deleted and a new sub-clause (5) would be added which would deal with the position of the Volkstaat Council.
- x Clause 18 was agreed to.
- xi Regarding Clause 19, a new subclause (3) would be added reading as follows:

"Sections 31(2) and 32(3) of the new constitution lapse if the legislation envisaged therein is not enacted within three years of the date the new Constitution takes effect."
- xii Clauses 20 and 21 would deal with certain provisions on the rationalisation of the public service and the security services and it was agreed that additional clauses would still have to be formulated and inserted in these clauses.
- xiii Clause 22 was agreed.
- xiv Regarding Clause 23, the sub-committee was still awaiting information on local government and that item still had to be redrafted.
- xv Clause 24 was agreed.
- xvi Section 247 of the Interim Constitution which deals with certain educational matters in the transitional period could not be agreed upon and that had been referred for further political consultation.
- xvii Annexure A was agreed to, except for Item 12 of Annexure A which was still outstanding and was awaiting the decision on Section 43(b).

- xix Annexure B and C had been agreed to.
- xxi Regarding a transitional provision dealing with the prosecuting authority, it had been agreed that Mr Ngcuka and Mr Schutte would formulate this provision.

13. OUTSTANDING ISSUES

13.1 Section 29: Education

13.1.1 Dr Nzimande reported this was a matter of utmost historical significance and one issue where apartheid had done most damage to our people. He tabled a new draft of Section 29 and stated as follows:

- i He reported that the progress that they were expecting to make had not been made. There had been a series of engagements with a variety of groups and organisations on this issue. The problem was, he said, that the NP in particular wanted to constitutionally entrench single medium schools. For the ANC to do that would be a return to Verwoerdian apartheid. If the right to be taught in one's own language was guaranteed, that right could not solely be realised through single-medium institutions in a country with 11 official languages.
- ii He said that the ANC had moved to try and meet the other parties, particularly the Afrikaner groups by saying that they understood that there was a reality of single-medium institutions in the country. The ANC proposal was that in considering whether education in the language of choice was reasonably practicable, the state must have regard to appropriate alternatives which included redressing the results of past racial discriminatory laws and practices and that such alternatives did not preclude a single medium of instruction in particular schools. The ANC felt that they had met one of the major demands of the people of this country which was to be taught in the language of one's own choice and they did not see why all the parties could not agree to this. He said that the ANC was of the view that this proposal should meet the needs of everybody and was tabling this to the country and asking how this would undermine mother tongue instruction and how it was not allowing every child to have a basic right to education.
- iii Thus he reported that at this point in time the parties were not in agreement. The ANC did not want to see this constitution going through a referendum. If that were to happen and the people of this country were to pronounce on what kind of education they wanted, he said that he had no doubt that this was an education system that catered for everybody. He said that one could not do what apartheid had done and think that the best way to protect a

culture or a language was to retreat to an island.

13.1.2 Ms Smuts of the DP said that because this debate had not been sufficiently discussed and aired through the media, a sense of exclusion has arisen among some educational sectors such as the independent schools who were concerned that the words "*at their own expense*" were being retained in the subsection dealing with private schools. The reason for their concern was that they had received subsidies until the present and the Minister of Education had intended to continue to subsidise them. However, she said, if this section was phrased by referring to the own expense of parents who wish to send their children to private schools, that may be read as precluding the possibility of subsidising these schools which were a great asset to the country. In the DP view, the key to education was that the state ought not to discriminate in basic funding and that there ought to be further tranches of funding especially for disadvantaged schools. The state should fund every child at a basic level and the parents of that child should be free to exercise that funding in whatever school they chose for their children. She said that there was no need to head for deadlock on this clause. If this clause was phrased carefully, the practicality would sort itself out on the ground and the key was in dealing with the financial aspects of this clause.

13.1.3 Gen Viljoen of the FF said that with regard to education clause, the mistakes of the past should not be repeated. He stated that education was not only the knowledge but also the bringing up of children, and, as the Freedom Charter stated, the aim of education is to teach the youth to love their people and their culture, to honour human brotherhood, liberty and peace. Education has an important cultural aspect and should therefore be an important link in cultural groups.

The FF thus believed that a knowledge-oriented education should be supplemented by culturally-oriented education. The wording of the education clause must be carefully selected so that it does not hinder the implementation of collective rights or self-determination in a cultural sense regarding education. Schools could fulfil an important function in nation building by creating the loyalty that is required towards the state. The FF had a mandate from its people to pursue the issue of self-determination which meant the right to determine one's own destiny. The schooling system was the very necessary link in the cultural destiny of its people. The promotion of equality in education was important and the FF was prepared to participate in this. However, he stated the wording of the constitutional clause should be very carefully selected so that it achieved better education for everybody in the country but that it did not cause an unhappy situation in which his people would feel at the receiving end of a wrong attitude in education.

13.2 Section 25: Property

13.2.1 Ms Kgositsile reported that after Arniston there had been a formulation on which all parties had agreed and until very recently there had been political

agreement on this particular clause. However, she reported, the matter was still unresolved and had become one of the issues delaying the constitution-making process. It was interesting, she said, that it was around the issues of education, property, and the lock-out clause that the future of the constitution-making process was going to be decided. The ANC position had been that it was not necessary to have a property clause in the constitution. There were many countries that have done well without a property clause. However, the ANC view was that it had a responsibility to everybody in this country and wanted to cater for everybody in this constitution but despite all the concessions it had made, there was still no agreement on the property clause.

13.3 Section 23(3)(c): Lock-out

13.3.1 Mr Hofmeyr reported that the issue of "lock-out" was an extremely emotional issue. Although the ANC had made every effort to resolve this issue, it was difficult to see a solution. If there were deadlocks developing on a range of issues in the Bill of Rights, the ANC would have to re-examine its position and reconsider what it would like to table as a proposal for inclusion in the Bill. He stated that it was significant that most of these deadlocks had developed in the Bill of Rights in areas where the NP was seeking to depart from what were the internationally accepted forms of expressing these rights. The issues were all to do with the preservation of the privileges accumulated in the past. He stated that the ANC had tried to show flexibility in trying accommodating people's fears. However there was only a certain extent to which the ANC could go as it had to bear in mind the aspirations of South Africans who have suffered under apartheid all these years. It had come to a point where it was difficult for the ANC to move any further than they had done.

13.4 Ms De Lille stated that the PAC supported the ANC proposal on the education clause. On the property clause, the PAC restated its position. With regard to the outstanding issues of education, property and lock-out, the PAC view was parties should stop wasting time, and that the constitution must be completed by the 8 May if necessary minus those clauses which should then be taken to a referendum.

13.5 Mr Meyer stated that with regard to the outstanding matters the NP believed it was possible to resolve these matters in the next day or two and the NP declared its commitment to doing so. He stated that he would not respond on the issues of debate which had been raised because these matters could be taken further in the process of the rest of negotiations and when matters were debated in the Constitutional Assembly. He however wished to make an overall observation, in regard to the process as a whole. He said that due to the openness and transparency in this process of constitution-making there was a general sense of influence by parties, institutions and individuals from outside of the CA on the process of decision making. In regard to the three specific outstanding issues of property, lock out and education, there were

attempts to influence all parties by bodies from the outside. He said that it was therefore not correct only to see the possible delays that had occurred in resolving the outstanding issues as a reflection of the position that parties within the CA held but also as a reflection of the kinds of inputs, submissions and influence exercised by parties and organisations from outside the CA arena.

- 13.6 On the issue of process, Mr Meyer proposed that the CC adjourn for 24 hours and reconvene to receive a report-back on the resolution of the outstanding issues.
- 13.7 Mr Moosa said that from the ANC's side these three outstanding issues constituted the very embodiment of the new freedom and were central to the transformation of the country. The three issues around which parties were deadlocking were issues around which apartheid had revolved. For the ANC, compromising on any of these rights would constitute a betrayal of the victims of apartheid. With regard to access to equal and adequate education, access to land and thereby an end to rural poverty and internationally recognised rights for the working people of South Africa, for the ANC there could be no compromise on these issues.
- 13.8 On the question of process, Mr Moosa proposed that the CC meet again on Friday 3 May to take decisions on these matters. He stated that the ANC would put forward amendments to be tabled at the meeting on Friday and if there was no agreement, the ANC would call on that meeting to take decisions on these matters.
- 13.9 Mr Ramaphosa said that he was sad because he had hoped that this stage would never be reached. He said that he had been brimming with optimism. However, these outstanding matters were becoming unresolvable and were putting the negotiation process in the danger zone. He said that "if we take a wrong turn in the next 24 hours we could do something that we could regret in the months to come." Many things were still fragile in this country and the transition process in this country was not yet fully entrenched. He had hoped the drafting of the constitution could be finalised without resorting to the deadlock breaking mechanisms. However he had started to fear that one might have to opt for those mechanisms. That route had a number of implications for the country, for the economy, for race relations and for reconciliation. This was the time to think about South Africa and its people and to consider that the route that may be embarked on if agreement was not reached might spell disaster for the country.
- 13.10 Mr Ramaphosa said further that he was heartened by what Mr Meyer had said and he remained optimistic. All the achievements would be undone if the wrong route was taken, he cautioned. The heat on many of these issues was going to be heightened around the country and many would want to mobilise around these issues which might make reaching of agreement difficult. He said that the CA had a responsibility to the people to finalise

this constitution. He believed that the members of the CA had done worthwhile work and were about to see the fruit of that work and that they should walk in the direction of reaping the fruit that they had worked so hard for.

13.11 The meeting agreed that it would meet on Friday 3 May at 11h00 and would then take decisions either way on the outstanding issues.

13.12 The meeting further agreed that the Technical Refinement Team would commence refining the document and finalising the Bill.

13.13 The Chairperson requested that parties begin to nominate those of their members to work with the Technical Refinement Team on Saturday 4 May. He concluded by saying that he hoped that on Friday total agreement on the Constitution would be recorded.

14. CLOSURE

14.1 The meeting closed at 05h17 on Thursday 2 May 1996.