

CONSTITUTIONAL ASSEMBLY

**MINUTES OF THE TENTH MEETING OF THE CONSTITUTIONAL
COMMITTEE**

FRIDAY 2 DECEMBER 1994

UNION BUILDINGS, PRETORIA

Present

Ramaphosa, M C (Chairperson)

Bhabha, M	Malatsi, D M (Alt)
Camerer, S (Alt)	Meshoe, K R
Chabane, O C	Meyer, R P
De Beer, S J (Alt)	Moosa, M V
De Lange, J H	Moosa, M W
Du Toit, D C	Mtshali, L P H M
Eglin, C	Mulder, C P
Felgate, W S	Myakayaka-Manzini, Y L
Fourie, A	Nzimande, B E
Gogotya, N J	Omar, D
Gordhan, P J	Pahad, E G
Hofmeyr, W (Alt)	Rabie, J A
Holomisa, S P	Rabinowitz, R
Kgoali, J L B	Ripinga, S S
King, T J	Schutte, D P A
Kota, Z A	Sifora, R K
Lekgoro, M K	Sizani, R K
Ligege, M G	Skweyiya, Z (Alt)
Lockey, D	Smith, P F
Mabandla, B S	Van Heerden, FJ (Alt)
Mahlangu, N J	Viljoen, C L
Makhanya, D W	Wessels, L

Apologies were received from:

C Ackermann, K Asmal, G J Fraser-Moleketi, F N Ginwala, B Kgositsile, E S Mchunu, B T Ngcuka, L B Ngwane, V J Van Breda, F J Van Deventer.

1. OPENING

The meeting opened at 10h15 and the agenda was adopted.

2. MINUTES

The Minutes of the Ninth Meeting of the Constitutional Committee on Monday 14 November 1994 were adopted.

3. MATTERS ARISING

Matters arising were included in agenda items below.

4. INDEPENDENT PANEL OF CONSTITUTIONAL EXPERTS

4.1 Mr. Ebrahim spoke to the document entitled "*Independent Panel of Experts*," included in the documentation, and Mr. Ramaphosa summarised discussions with Prof. van der Westhuizen at the 28 November 1994 Management Committee meeting.

4.2 It was agreed that the Co-Chairs would undertake discussions with the Panelists on the following issues:

4.2.1 Terms of Employment: the meeting agreed in principle that the Independent Panel would be employed on a full-time basis, but that they would be phased in. Details of how this would occur would be worked out in discussion with the Panelists.

4.2.2 Role: it was agreed that the role of the Independent Panel would be clarified through discussion with the Panelists and interpretation of the Constitution. However, it was agreed that the question of who should draft constitutional texts would be left in abeyance until the Work Programme was underway.

4.2.3 Relations with the Press: the meeting agreed that until the role of the Independent Panel was clarified, they would make no statements to the Press. The question of whether they could address conferences or seminars on constitution drafting would also be raised.

5. WORK PROGRAMME

5.1 REPORT ON THE WORK PROGRAMME

- 5.1.1 Mr. Ebrahim introduced the separately bound document entitled "*Directorate Report: Work Programme 1995*," distributed with the documentation. He tabled and spoke to a document entitled "*Decisions Required*".
- 5.1.2 The meeting re-prioritised the Recommended Work Programme on Page 119 of the Directorate Report and agreed that the first block of Theme Committee work would be constituted as follows:
- i. Theme Committee One: i. Democracy; and ii. Character of the State.
 - ii. Theme Committee Two: the Separation of Powers.
 - iii. Theme Committee Three: the Nature of the Provincial System and Local Government.
 - iv. Theme Committee Four: Constitutional Principle II.
 - v. Theme Committee Five: i. The Relationship between the Different Levels of the Court and ii. A Single or Split Judiciary.
- 5.1.3 The meeting then accepted the Work Programme as amended as a framework for work in 1995. However, the meeting stressed the need for flexibility and reassessment as work proceeded. It agreed to the following process:
- i. Work on the first block would proceed and progress would be assessed at the end of its scheduled period.
 - ii. The second block would be prioritised upon completion of the first. Omissions in the current document could be added, themes re-organised, and further issues raised then.
 - iii. The following issues would be considered while re-prioritising later blocks:
 - * Outstanding issues;
 - * Organisation of Constitutional Issues per Theme Committee;
 - * Positions on Commissions and Sub-Committees; and

- * The Establishment of a Commission on the National Territory.

- 5.1.4 The meeting accepted the Calendar of Activities as a broad framework, but stressed the need for flexibility. Concern was expressed that the deadline for the first set of submissions was too early. However, there was consensus that work would proceed as planned and the deadline would be reviewed at the time.
- 5.1.5 The meeting endorsed the creation of four sub-committees in Theme Committee Six. It was agreed that their modus operandi would be regularised and that the sub-committees would be permitted to meet and operate simultaneously.
- 5.1.6 The meeting agreed that minutes of Theme Committee meetings would be available for the Chairperson to sign within 24 hours, but would be circulated to members at the start of the next meeting.
- 5.1.7 The meeting agreed to the following regarding Theme Committee reports:
 - i. Reports would be presented to the Constitutional Committee for debate at the Constitutional Assembly as and when a particular constitutional issue identified within the work plan schedule had been processed by a Theme Committee.
 - ii. Reports would include details of non-contentious and contentious issues and suggested approaches.
 - iii. Theme Committee reports would be drafted by the Theme Committee with the Secretariat providing the necessary administrative back-up.
 - iv. Political parties which were unhappy with the report format used by a Theme Committee would discuss the issue in the Theme Committee. The issue would only be brought to the Constitutional Committee if the matter could not be resolved in the Theme Committee.
- 5.1.8 The meeting agreed that all joint Theme Committees would be centrally co-ordinated by the Secretariat and not by individual Theme Committees.

5.1.9 The meeting agreed to the following decisions regarding submissions:

- i. The Administration would centralise the receipt of submissions;
- ii. As far as possible, all authors of submissions would be asked to provide an executive summary; and
- iii. Ideally, all Theme Committees would receive copies of submissions received for that particular Theme Committee, unless these were too bulk for reproduction. In that case, summaries would be provided at the discretion of Core Groups.

5.1.10 The meeting agreed to the following regarding Community Liaison:

- i. It endorsed the principle of agency, where all South African universities and certain NGOs would be approached to organise a season of constitutional conferences between February and June 1995. These conferences, organised in conjunction with the Constitutional Assembly, would cover the issues raised by the Theme Committees in their work programmes. Delegates to the conferences would include all role players and stake holders whose interests were affected by the issues identified for a particular conference. The resolutions of the conference would be sent to the Theme Committees.
- ii. Provincial governments would be consulted in relation to the following:
 - * Their own interests, which could be set out in submissions presented to Theme Committees;
 - * The contribution they could make to involve the South African public in the constitution-making process;
 - * The most appropriate work areas for Theme Committees to hold hearings in each province; and
 - * The formulation of a constitutional education programme for schools.

- iii. However, Community Liaison would submit detailed proposals on particular public participation programmes to the Constitutional Committee for its consideration and approval.

5.2 TECHNICAL COMMITTEES

5.2.1 Mr. Ramaphosa introduced the document entitled, "*Management Committee Recommendations on the Appointment of Technical Committee,*" included in the documentation.

5.2.2 The meeting agreed that the list of technical experts would be amended to include all nominations forwarded by the IFP and for nominations forwarded by the NP for Theme Committee Five.

5.2.3 Regarding the selection of technical committees, the meeting agreed to the following:

- i. The sub-committee which dealt with the selection of the Independent Panel of Constitutional Experts would be mandated to consider the list of Experts nominated by Theme Committees and recommend to the Constitutional Committee the experts to be appointed to the Technical Committees.
- ii. The deadline for nominations would be the date of the first meeting of the sub-committee.
- iii. The sub-committee would report-back to the Management Committee at least one week before 23 January 1995.
- iii. Nominees recommended for inclusion in the Technical Committees would be contacted immediately thereafter to "keep them on hold" until their nomination was confirmed.
- iv. The appointments would be considered and confirmed by the Constitutional Committee.

6. ALL OTHER BUSINESS

6.1 The meeting agreed to the following schedule of meetings during the first week of the 1995 session: on Monday, 23 January 1995 there would be a meeting of the Management Committee and of Theme Committee

Chairpersons before the Opening of Parliament; and on Tuesday, 24 January 1995, there would be a meeting of the Constitutional Assembly. Each Theme Committee would also hold a workshop during the first week of session on its vision of the work ahead to give direction to its work.

- 6.2 It was agreed that at the commencement, at the first meeting of the Constitutional Assembly on Tuesday, 24 January 1995, political parties would forward their views on the spirit and vision of the constitution through debate and party submissions.

7. CLOSURE

- 7.1 Mr. Wessels extended good wishes to all committee members and the trust that all would travel safely and rest over the holidays.
- 7.2 The meeting closed at 13h45.