

CONSTITUTIONAL ASSEMBLY

**MINUTES OF CONSTITUTIONAL COMMITTEE MEETING
OF TUESDAY 7 MAY 1996**

PRESENT

MC Ramaphosa (Chairperson)
L Wessels (Deputy Chairpersons)

Ackermann, C	Andrew, KM (alt)
Asmal, K	Bhabha, M
Camerer, S (Alt)	Chabane, OC
Dalling, D (alt)	De Beer, SJ (alt)
De Lange, JH	De Lille, P (alt)
Du Toit, DC	Eglin, C
Fourie, A	Fraser-Moleketi, GJ
Ginwala, FN	Gogotya, NJ
Gordhan, PJ	Green, LM (alt)
Groenewald, PJ (alt)	Hofmeyr, WA
Holomisa, SP	Kgoali, JL
Kgositsile, B	King, TJ
Landers, L (alt)	Ligege, MG
Lockey, D	Love, J
Mabandla, BS	Maduna, PC (alt)
Maharaj, M(alt)	Mahlangu, MJ
Mahlangu, NJ	Makhanya, DW
Malatsi, DM (alt)	Mapisa-Nqakula, NN (alt)
Marais, PG	Maree, JW (alt)
Mdladlana, S (alt)	Meshoe, KR
Meyer, RP	Moosa, MV
Moosa, MW(alt)	Mti, LM(alt)
Mulder, CP	Mulder, PWA (alt)
Myakayaka-Manzini, YL	Ngcuka, BT
Nzimande, BE	Omar, D (alt)
Pahad, EG	Pandor, GNM
Rabie, JA	Ripinga, SS
Routledge-Madladlala, NN (alt)	Schoeman, S(alt)
Schreiner, J(alt)	Schutte, DPA
Seaton, SA (alt)	Serote, WM (alt)
Sisulu, L(alt)	Sifora, TV
Sizani, RK	Skweyiya, Z(alt)
Steenkamp, PJ (alt)	Surty, ME(alt)
Suttner, RS	Swanepoel, LJ (alt)
Vadi, I(alt)	Van Breda, A
Van Deventer, FJ	Van Heerden, FJ(alt)
Viljoen, CL	

Absent: LPHM Mtshali, S Mzimela, R Rabinowitz, P Smith

In attendance : H Ebrahim, L Zondo, M Sparg, S Rabinowitz and L Meter

1. OPENING

- 1.1 The Chairperson opened the meeting at 22h45.
- 1.2 He reported that a resolution on further amendments to the Constitution of the Republic of South Africa, Bill, 1996 as amended by the Constitutional Committee, was before the committee. This included an errata attached as Annexure A. Annexure B to the Resolution dealt with substantive amendments
- 1.3 The substantive outstanding issues in the Constitution were:
- * education clause
 - * labour relations; and
 - * property.
- 1.4 He said that parties would report that settlement had been reached on all three of these issues and amendments would be put to the committee for recommendation to the Constitutional Assembly on 8 May 1996.

2. SECTION 29, EDUCATION

- 2.1 Dr Nzimande of the ANC said it was appropriate that as South Africa drew closer to the 20th anniversary of the June 16 uprisings, he was able to present a clause which would “once and for all close the chapter on apartheid education in this country.”
- 2.2 He reported that parties had reached an understanding on the education clause as follows:
- 2.2.1 Section 29(1) remained as is.
- 2.2.2 Section 29(3) remained as is.
- 2.2.3 Section 29 (2) is amended by replacing the existing subsection (2) with the following amended subsection (2) as contained on page 1 of Annexure B, item 2:
- (2) *Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account*

(a) equity;

(b) *practicability; and*

(c) *the need to redress the results of past racially discriminatory law and practice.*

- 2.3 In conclusion, Dr Nzimande said this amendment accommodated most of the concerns raised by posing single-medium institutions as one of the alternatives that would be considered by the state in securing the right to be taught in mother tongue instruction or the language of one's choice.
- 2.4 Mr Meyer of the NP said he was happy to say that parties were able to report progress on this matter. Further constructive discussion had taken place since it was reported to the Constitutional Committee last Friday on 3 May that there were difficulties with the second sentence in section 29(2). The sensitivities and aspirations of different constituencies had had to be further addressed.
- 2.5 He said the amendment before the committee gave effect to a compromise which addressed the concerns of different communities. If one analysed the second sentence, particular criteria had to be considered and taken into account in regard to an issue that the NP felt had to be addressed, namely the provision of education through the language of one's preference and also through the medium of single-medium institutions. The way in which the clause was now formulated, was sufficient for it to be included in the draft and forwarded to the CA. Lastly, he said whatever difficulties some people from both sides in the negotiation may still have with the clause, it did represent a compromise and an intention to find common ground on the way education should be dealt with in the future.
- 2.6 Gen. Viljoen of the FF said his party could not accept the amendment. It was not clear on the issue of single-medium educational institutions and gave the state too much power in deciding which model was applicable.
- 2.7 He said he would have to report back to the executive committee of the FF and that the FF therefore reserved its position on this matter.
- 2.8 Mr Sizani of the PAC said he recalled that Dr Nzimande had previously described single-medium educational institutions as a "Verwoerdian" concept, but was now reading out a clause which posed single-medium institutions as an alternative and a step forward in the educational struggle.
- 2.9 He said the PAC drew a "fine line between compromise and surrender", and this amendment appeared to accommodate the "Verwoerdian" concept which it sought to destroy. He was unable to quantify how the criteria mentioned shifted the balance.
- 2.10 The meeting noted the position of the PAC that it still needed to consider

the matter further and obtain legal advice.

2.11 Ms Smuts of the DP said a greater distinction is drawn in subsection (3) between public and independent schools than the DP would have liked to see. The ideal for the DP, she said, is the degree of independence currently enjoyed by the independent schools and they would have liked to include the kind of formulation found in the Indian constitution in terms of which the state may not discriminate in giving a basic grant or funding to any school founded on any basic principle or idea.

2.12 Ms Smuts further moved the amendment of section 29 by proposing the addition of the following a sentence as subsection (4):

(4) *This provision does not preclude state subsidies for independent educational institutions.*

2.13 She said the government wished and intended to pay subsidies to schools which were a great asset to education. Many people in the future may wish to establish independent schools as a matter of preference and ought not to be in the position where all the money for those schools comes from their own pockets, after they have paid taxes. The provision, she said was framed in the negative. It did not impose positive obligations but made it clear that subsection (3) did not block the paying of subsidies to independent schools.

2.14 In response to the PAC, Dr Nzimande said the clause did not mean that single-medium institutions were entrenched in the Constitution. These institutions were but one option which the state may consider and the state was at liberty to say that single-medium educational institutions were not appropriate in particular circumstances.

2.15 In response to the DP, Dr Nzimande said the ANC was not opposed to their further amendment of Section 29 since it did not oblige the state to provide subsidies, but merely stated that they were not precluded. In reality, he said, the state was already subsidising private educational institutions, including mission schools who were providing a service to “the poorest of the poor” and which the state must continue to subsidise.

2.16 The Chairperson ruled that the DP’s amendment to section 29(4) was agreed.

2.17 Mr Schoeman of the NP said they welcomed the proposal and were glad the ANC had improved their position on the matter.

2.18 Mr Green of the ACDP said :

i with reference to subsection 29(2), the ACDP wanted the role of parents strengthened vis-à-vis the state; and

ii With reference to subsection 29(3), they wanted the words “at their own expense” removed. The DP amendment to subsection (4)

appeared to achieve this, and the ACDP therefore endorsed the amendment.

- 2.19 Mr Sizani said the PAC believed that private schools should be funded at their own expense.
- 2.20 The meeting agreed to the amendment proposed by the ANC to section 29(2) and noted the positions of the PAC, ACDP and FF as outlined above.

3. **SECTION 241. LABOUR RELATIONS**

- 3.1 Mr Hofmeyr of the ANC moved the amendment appearing on page 5 of Annexure B under item 21, which inserts the following new section as section 241:

Labour Relations Act, 1995

- 241 (1) *A provision of the Labour Relations Act, 1995 (Act No. 66 of 1995) remains valid, notwithstanding the provisions of the Constitution, until the provision is amended or repealed.*
- (2) *A Bill to amend or repeal a provision of the Labour Relations Act may be introduced in Parliament only after consultation with national federations of trade unions, and employer organisations.*
- (3) *The consultation referred to in subsection (2), including the identification of the federations to be consulted, must be in accordance with an Act of Parliament.*

- 3.2 He said the amendment came in two parts. The first part involved the insertion of the above section into the Chapter on General Provisions. The second part of the amendment involved the deletion of Section 39(4), as indicated on page 2 of Annexure B, item 2.
- 3.3 Mr Hofmeyr said there was still no full agreement on the matter. Other parties had indicated that they did not agree with the formulation but that it did meet their needs to an extent great enough that they would not vote against the Constitution. There was also still unhappiness amongst the business and labour sectors with the formulation. Labour would have preferred "quite strongly" that there was no provision in the Constitution dealing with this matter. Business on the other hand would have liked a provision that gave a right to lock-out. The formulation proposed in the amendment was an attempt to meet business and labour half-way by saying to labour that there will not a right to lock-out but that the Constitution will deal with the lock-out issue. To business, negotiators

have had to say that there will not a right to lock-out in the Constitution but that safeguards would be built in to ensure, firstly that the rights to lock-out that are contained in the Labour Relations Act (LRA) would be preserved from being found unconstitutional, and secondly, that provision would be made in the Constitution to ensure that the provisions of the LRA would not be changed without a proper process of consultation. The amendment was essentially an attempt to strengthen the process of consultation.

3.4 In conclusion, Mr Hofmeyr said he did not expect anybody to be “very happy” with the amendment. From the side of the ANC, they were not very happy either. However, a solution had to be found in the interests of the country and he hoped that those parties both in the CA and outside who have been in disagreement would now be able to say that they could accept the proposed amendment.

- 3.5 Mr Radue of the NP said the NP had consistently held the view that there must be an equitable balance between the rights of employers and workers, especially in the Bill of Rights, and had warned against the summary removal of the right to lock-out from the Constitution.
- 3.6 Constitutional Principle XXVIII, he said, required that the rights of employers and workers to collective bargaining shall be recognised and protected in the new Constitution. The right to lock-out had been removed from section 23 in the Bill of Rights on the ANC’s insistence and undoubtedly due to pressure from the Congress of South African Trade Unions (COSATU). A new clause had been accommodated in Section 241 under General Provisions in Chapter 14 in terms of which the LRA is constitutionally recognised and an Act of Parliament is proposed to regulate the consultative process for any amendment to the existing legislation.
- 3.7 Mr Radue said that although there is agreement between the ANC and the NP for the inclusion of Section 241, the NP is not satisfied that the provision meets the needs and concerns of employers or that it operates as an equitable balance between the rights of employers and workers. Whilst it was not the best solution, the rights recorded in the LRA were the result of intensive negotiations and were acceptable to business, labour and the government. Those labour relations may now only be changed through a consultative process regulated by an Act of Parliament. However, he said the existing legislation will be the subject of amendment by a simple majority of parliament.
- 3.8 Finally, he said, whether the clause will meet the test of Constitutional Principle XXVIII is a matter which the Constitutional Court will have to decide very shortly. The NP therefore recorded its strongest protest at the diminution of the employer’s right to collective bargaining required by Constitutional Principle XVIII and included in the interim Constitution. That however, he said, would not prevent the NP from supporting the Constitution.

- 3.9 Mr Leon of the DP said the clause represented an outright victory for COSATU and a total capitulation on previous undertakings. Whatever attitude and response his party took on the Constitution on 8 May, he would like to record formally, so that there could be no accusations of bad faith after the event, that the DP will formally go to the Constitutional Court on the grounds of Constitutional Principle XVIII which recognises and protects the rights of employers to engage in collective bargaining.
- 3.10 In view of Senior Counsel's opinion received by the DP, effect should be given to the requirements of recognition by including in the Constitution the right of employers to collective bargaining. This however would not satisfy the further requirement that the right to collective bargaining be protected.
- 3.11 Mr Leon said the DP had been advised that the latter requirement could only be satisfied by making provision for the right to engage in action customarily undertaken by employers in furtherance of the right to collective bargaining, which historically has included, amongst other things, the lock-out. Having given fundamentally to trade unions, the right to strike, there was a fundamental imbalance and, in the view of the DP, a constitutional problem with this clause.
- 3.12 In conclusion, he said parties had agreed at Kempton Park to enact a constitution which followed the Constitutional Principles. The DP was of the view that this clause did not do so, and therefore would at the appropriate stage of certification be making representations on the constitutionality, or rather, the unconstitutionality, of the proposed provisions of Section 241.
- 3.13 Mr Sizani said the PAC fully supported the clause as it did not entrench the right to lock-out. It further exploded two myths - firstly, that the rights of workers and employers were equal and therefore of equal strength and needed to be protected equally, and secondly, that the right to lock-out is the opposite of the right to strike.
- 3.14 The Chairperson ruled that the proposed amendment to section 241 was agreed to.

4. SECTION 25, PROPERTY CLAUSE

- 4.1 Mr Omar of the ANC reported that subsections (1), (2), (3), (4), (5), (6) and (7) remained as is.
- 4.2 With regard to subsection (8), and as appears on page 1 of Annexure B under item 1, he said the ANC proposed that the existing subsection 8 be replaced by the following amended subsection (8):

(8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to address the results of past racial discrimination, provided that any departure

from the provisions of this section is in accordance with the provisions of section 36(1).

- 4.3 The issue, he said, which was being addressed is mainly that of land. Land was deemed to be an issue for which thousands of people had made sacrifices. Millions of people throughout the history of Union since 1910, and indeed before 1910 and subsequently, had suffered. Those who were deprived of the right to vote, found that having lost all political protection, that the denial of political rights was used to deprive people and to drive people off the land. And so, he said, one finds that those who were disenfranchised, are also the people who are propertyless and landless.
- 4.4 Mr Omar said that if the issue of land and property was not satisfactorily addressed, there would be no peace. The ANC believed that it could not allow that which was illegitimate, to be legitimised through the process of writing the new Constitution.
- 4.5 The property clause now proposed, he said, addressed the concerns of those who own property. It ensured that there will no arbitrary deprivation of property and dealt with the issue of expropriation in a way that was consistent with standards throughout the democratic world.
- 4.6 In conclusion, Mr Omar said, the ANC had never believed in the arbitrary deprivation of property. They believed that all South Africa's people must have security in every respect, but that that security must be ensured on the basis of having addressed the legacy of the past. This clause, whilst providing protection for all property owners and guarding against arbitrary deprivation and expropriation without compensation, ensured that the necessary reforms may be effected in a way which would address the needs and aspirations of the majority of the people who have been deprived of land and property in the past.
- 4.7 Finally, he said that the provision was subject to the limitations clause and that this was a standard to which the ANC aspired. The ANC did not believe that it should do things which are not in accordance with the values of an open and democratic society. In this spirit, he said, the ANC wished to note that agreement had reached and he thanked all those responsible for ensuring that discussions on this matter had come to an amicable conclusion.
- 4.8 Mr Asmal of the ANC said it had never been the intention of the ANC that subsection (8) should supersede subsections (3) or (2). It was in relation to specific areas arising out of past history where it had been clearly intended that the provisions relating to subsection (3) may not apply in their entirety and that special arrangements would be made by way of legislation. However, anxiety had arisen on all matters relating to land and the idea had been put in the last few days that as presented, it would "trump" the other provisions. However, this had never been the intention and the proposal before the committee, which referred to section 36(1), bears out the original intention that it must be controlled

by the full application of the limitations clause.

- 4.9 The second technical matter which Mr Asmal moved was the deletion of the words “and (7)” from subsection 25(9), since parliament had already passed legislation on this matter. The subsection would now read :

(9) Parliament must now enact legislation referred to in subsection (6).

- 4.10 Mrs Camerer of the NP said they accepted the technical amendment. She also made the point that while Mr Omar had referred to various subsections going through unamended, there were various agreed amendments included in the Annexure in the documentation before the meeting that would qualify that position.

- 4.11 She said that the amendment agreed to earlier in the day that this clause be made subject to the provisions of the limitations clause had changed the picture as far as the NP was concerned. Whilst this may not represent a “first prize”, it should be remembered that the ANC’s initial position had been that there should be no property clause. In this sense, the ANC had definitely improved its position.

- 4.12 In conclusion, Mrs Camerer said a satisfactory compromise had been reached and satisfactory balance achieved between the acknowledgement of the necessity of land reform and the acknowledgement of the necessity for security of the interests and rights of property owners. On this basis, the NP had received the advice that the individual property owner could rest secure in the knowledge that should the state expropriate their land or property, they will have the right to fair and equitable compensation. This was the position under South Africa law at present and the property clause in the Constitution did not undermine that position. On that basis, she recorded the NP’s agreement with the proposed amendment.

- 4.13 Ms. Smuts of the DP said “it would be an unwise and unjust Constitutional Assembly that attempted to freeze the property relations as they stood in South Africa.” This was not the DP’s wish or intention. However, at the same time, the most problematic area of the section had always been subsection (8). This was a “Trojan Horse” and had indeed been intended to be so.

- 4.14 The DP, she said, was happy with the latest improvements but believed that subsection (8) ought not to be there at all. In addition, the DP believed that this was not an appropriate property clause for South Africa and that all a property clause for South Africa should do is enshrine eligibility to all property, the same eligibility that was denied to most South Africans in the past. It ought to also govern the conditions for deprivation and expropriation.

- 4.15 Mr Sizani said while the PAC conceded that this clause was an improvement on the interim Constitution, the promise that subsection

(8) had held out for the PAC was that of overriding subsection (3) in the area of land reform and equitable access to natural resources. The new clause promised water, which the PAC had never believed, was a commodity which was capable of being owned by an individual. At the end of the day, he said, the land barons and the mining magnates would retain the mineral wealth of the country. He asked whether the national question would ever be resolved on a democratic basis. This latest move, of removing equitable access to natural resources had, he said, reaffirmed the PAC position that one could not balance the two. The view of the PAC therefore remained that there should be no property clause in the Constitution.

5. PENSIONS

- 5.1 Mr Van Breda of the NP said that Members of Parliament had been in office for two years. Despite monthly deductions for pension payments, proper pension arrangements were still outstanding. The NP had attempted to secure constitutional guarantees for these pensions with regard to pensions, but without success.. The NP had further wished to retain the provision in the interim Constitution of section 189 which provided for special pensions for persons from the struggle, but also without success.
- 5.2 He said the NP also wished to retain section 246 of the interim Constitution, which could be construed as protection of pensions for former political officer bearers, but again without success. The issue of pensions, he said was an oversight and had not been intended as a "trade-off" as some members of the press were already stating.
- 5.3 Mr Moosa of the ANC said the Constitution was a document which provided a constitutional order for the country as a whole and was not a document which negotiators should use to grant themselves certain privileges as individuals. The Constitution as a whole protected all contractual arrangements and irrevocably entrenched the rule of law.
- 5.4 He said that the matter raised by the NP had no place in the Constitution and would lower the status of the Constitution if parties, as drafters of the Constitution, inserted a provision which was clearly aimed at self-interest and not the interests of the people as a whole.

6. SECTION 51

It was agreed that section 51 is amended by the addition of the following subsection (3):

(3) Sittings of the National Assembly are permitted at places other than the seat of Parliament only on the grounds of public interest, security or convenience, and if provided for in the

rules and orders of the Assembly.

7. SECTION 42(6)

7.1 It was agreed that section 42(6) is amended by replacing paragraph (a) with the following:

(6) (a) The seat of parliament is Cape Town, but an Act of Parliament, enacted in accordance with subsections 76(1) and (5), may determine that the seat of Parliament is elsewhere.

7.2 It was agreed that section 42(6) is further amended by deleting paragraph (b).

8. SECTION 55

It was agreed that section 55 is amended by deleting from subsection (2) (b)(ii) the words “*other than a court.*”

9. SECTION 63

It was agreed that section 63 is amended by the addition of the following subsection (3):

(3) Sittings of the National Council of Provinces are permitted at places other than the seat of Parliament only on the grounds of public interest, security or convenience, and if provided for in the rules and orders of the Council.

10. SECTION 76

10.1 It was agreed that Section 76(4)(a) is replaced by the following:

(4) (a) envisaged in section 44(2) or 220(3); or

10.2 It was agreed that section 76 is further amended by the addition of subsection (5) as follows:

(5) A Bill envisaged in section 42(6) must be dealt with in accordance with the procedure established in subsection (1), except that -

(a) when the National Assembly votes on the Bill, the provisions of section 53(c) do not apply; instead, the Bill may be passed only if a majority of the members of the Assembly are in favour of it; and

- (b) *If the Bill is referred to the Mediation Committee, the following rules apply:*
 - (i) *If the National Assembly considers a Bill as envisaged in subsection (1)(g) or (h), that Bill may be passed only if a majority of the members of the Assembly vote in favour of it.*
 - (ii) *If the National Assembly considers or reconsiders a Bill as envisaged in subsection (1)(e), (i) or (j), that Bill may be passed only if at least two-thirds of the members of the Assembly vote in favour of it.*

11. SECTION 104

It was agreed that section 104 is amended by the deletion of subsection (4) and the renumbering of the remaining subsections.

12. SECTION 114

It was agreed that section 114 is amended by deleting from subsection (2) (b) (ii) the words “including a provincial statutory body”.

13. SECTION 155

It was agreed that section 155 is amended by the replacement of subsection (3) with the following subsection (3):

- (3) *Subject to the provisions of sections 44, 151 and 154 -*
 - (a) *a provincial government has the legislative and executive power to monitor the local government matters listed in Schedules 4 and 5; and*
 - (b) *national and provincial governments have the legislative and executive power to see to the effective performance by municipalities of their functions in respect of those matters, by regulating the exercise of municipalities’ executive authority referred to in section 156(1).*

14. SECTION 156

It was agreed that section 156 is amended by the deletion of subsection (2), and the renumbering of the remaining subsections.

15. SECTION 157

It was agreed to that section 157 is amended by the addition of the following subsection (6):

- (6) *The national legislation referred to in section 157(1)(b) must establish a system of appointment that allows for parties and interests reflected within the Municipal Council and making appointments, to be fairly represented.*

16. SECTION 181

It was agreed that section 181 is amended by replacing subsection (3) with the following :

- (3) *Other organs of state, through legislative and other measures, must assist and protect these institutions to ensure the independence, impartiality, dignity and effectiveness of these institutions.*

17. SECTION 196

It was agreed that section 196 is amended by replacing subsections (3) and (4) with the following:

- (3) *Each of the provinces may nominate a person to be appointed to the commission.*
- (4) *Members of the Commission nominated by provinces may exercise the powers and perform the functions of the Commission in their provinces, as prescribed by national legislation.*

18. SECTION 217

It was agreed that section 217 is amended by replacing subsections (1) and (2) with the following:

- (1) *When an organ of state in the national, provincial or local sphere of government, or any other institution identified by national legislation, contracts for goods and services, it must do so in a accordance with a system that is fair, equitable, transparent, competitive and cost-effective.*

- (2) *Subsection (1) does not prevent the organs of state or institutions referred to in that subsection implementing a procurement policy providing for*
- (a) *categories of preference in the allocation of contracts; and*
 - (b) *the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.*

19. SECTION 239

It was agreed that section 239 is replaced by the following amended section 239:

239 (1) *In the Constitution, unless the context indicates otherwise, "organs of state" means -*

- of
- (a) *any department of state or administration in the national, provincial or local sphere government; and*
 - (b) *any other functionary or institution -*
 - (i) *exercising a power or performing a function in terms of the Constitution or a provincial constitution; or*
 - (ii) *exercising a public power or performing a public function in terms of legislation.*
- (2) *Despite subsection (1), "organ of state" does not include judicial officers or courts.*

20. SECTION 243

It was agreed that the following is inserted as section 243:

Repeal of laws

243 *The laws mentioned in Schedule 7 are repealed, subject to Section 244(4) and Schedule 6.*

21. SECTION 244

It was agreed that the following is inserted as section 244:

Short title and commencement

244 (1) *This Act is called the Constitution of the Republic of South Africa Act, 1996, and comes into effect on a date set by the President by proclamation not later than 1 January 1997.*

different

(2) *Different dates before the date referred to in subsection (1) may be fixed in respect of provisions of the Constitution.*

(3) *Unless the context otherwise indicates, a reference in provision of the Constitution to a time when the Constitution took effect must be construed as a reference to the time when that provision took effect.*

*any
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(4) *If a different date is fixed for any particular provision of the Constitution in terms of subsection (2), corresponding provision of the Constitution of Republic of South Africa, 1993, mentioned in proclamation, is repealed with effect from the date.*

22. SCHEDULE 4

It was agreed that Schedule 4 is amended by the addition of the following items to Part A of the Schedule:

- Vehicle licensing*
- Property transfer fees*

23. SCHEDULE 6

It was agreed that Schedule 6 is amended by the addition of the following words to the end of Item 20(4):

“when the members referred to in section 178(1)(l) of the new Constitution are appointed.”

24. SCHEDULE 7

It was agreed that item 26 relating to Schedule 7, and which appeared on page 6 of Annexure B in the documentation before the Committee

was deleted. The revised Schedule 7 appearing on page 7 is also subsequently deleted.

25. SECTION 35 (1) (E)

25.1 Sen. Moosa of the ANC proposed the deletion of the existing section 35(1) (e) and its replacement with the following amended section 35(1) (e):

35 (1) (e) at the first court appearance after being arrested to be charged or informed of the reason of her or his further detention failing which she or he shall be entitled to be released.

25.2 Sen. Moosa said this amendment had been agreed to with the NP and related to the situation with crime in South Africa. It had become too easy for criminals to find recourse and release at the expense of communities who suffered. The message now needed to go out to criminals that once caught, they would not escape the clutches of the law if indeed they were guilty.

25.3 Mrs Camerer said while the NP supported the position on crime enunciated by Sen. Moosa, they supported the amendment "very reluctantly". She said there was still unhappiness with the clause as it stood and appealed to the ANC to allow the Panel to consider the matter further and said the NP would abide with whatever suggestions they made.

25.4 The Chairperson said this was not possible since the Constitutional Committee had to proceed immediately to the Constitutional Assembly and would convene later in the day for purposes of adoption.

25.5 Mr Gibson of the DP said the DP regarded the formulation in the interim Constitution as less than ideal. The formulation now proposed was an improvement as it came closer to the position that the DP and its predecessors had adopted over decades - charge or release. The ANC had made the point that in practice there is difficulty in charging the accused immediately within 48 hours and that this could make the provisions of bail legislation unconstitutional. The DP would not want this to happen since they had supported the bail legislation which had also received overwhelming public support. The DP, he said was tough on crime and believed that everyone should be tough on crime. At the same time however, one could not depart from human rights. A balance had to be maintained and the DP therefore reluctantly supported the amendment.

25.6 Mr Sizani said the PAC had always insisted that the fight against crime must occur within a human rights context. This was the main difference between the PAC and those who fought in defence of apartheid. The

proposed amendment, he said, brought the country closer to speculative arrest and the PAC did not support the amendment.

- 25.7 The meeting agreed to the amendment to section 35(1)(e) as outlined above and noted the position of the PAC.

26. ANY OTHER BUSINESS

- 26.1 The Chairperson said Dr Ginwala had indicated that she had a matter to raise with the committee.

- 26.2 Dr Ginwala said she regretted raising the matter at the last meeting of the Constitutional Committee when members should be celebrating. However, she wished to bring to the Chairperson's attention comments made in a public place which she wished him to deal with formally from the chair.

- 26.3 Serious allegations had been made against her personal integrity in the constitution-making process. She believed the Member responsible should be asked to retract and apologise for these statements. Last week, she said, Mr Van Breda had objected to her taking part in the inter-party negotiations alleging that she was an interested party and would not negotiate in good faith. All Members, she said were interested parties, including the Senators who had negotiated the establishment of the Council of Provinces. Specific allegations had been directed against her and were an attack on her personal integrity. She requested that Mr Van Breda be asked to substantiate the allegations, failing which he be required to withdraw them and apologise.

- 26.4 Mr Van Breda said he was sorry that he had to discuss such a matter at that particular hour of the morning. The Honourable Member's demand that he apologise to her had never been conveyed to him and he had read of her unhappiness in the newspapers. He said the matter raised was in connection with an amendment by the ANC that a Speaker of Parliament be appointed. This was an issue that had been discussed at various levels. When he was approached by Dr Essop Pahad of the ANC that a further discussion should take place, he thought this could hardly meet with success. When Dr Pahad said that Madam Speaker would attend the discussion, he said he was not interested in whether Madam Speaker would attend because if Madam Speaker attends, she would have a vested interest. That was the statement he had made. He had treated the Honourable Member whilst she was negotiating on behalf of the ANC at Waenshuiskraal as an ordinary member. Further, he held the Chairperson in very high regard and his record spoke of this. He had never addressed the Honourable Member as Madam Speaker in the constitution-making process. On the other hand, he said, when it came to member to member in the negotiating process, it was not inopportune for members to feel not so much inclined to negotiate with other members on certain issues. He could not see that this was a subject for him to apologise for or to debate. He said he was sorry if the

Honourable Member felt offended. He had not meant to offend her to the extent that she apparently was offended and for that he was sorry.

26.5 The Chairperson ruled that Mr Van Breda's words that he was sorry and had not intended to offend Dr Ginwala, constituted an apology.

26.6 Mr Asmal said in conclusion he had been asked to say a few words of appreciation and gratitude on behalf of the ANC to the Chairperson and Deputy Chairperson for their contribution to the success of the Constitutional Committee. The process of constitution-making in South Africa was unique. Those who had studied constitution-making since the Second World War would know that no other country had followed such a process. The success of the process, he said, was largely due to the role the Chairperson had played, and the support the Deputy Chairperson had given to the Chairperson.

26.7 Mr Asmal said he had also been asked to pay a special tribute to the support staff in the Administration who had often had to work through the night and provided the Constitutional Committee with quality documentation. This fact, and the speed with which they had delivered documents, showed that "a new body can not only do things right, but can do them well."

27. CLOSURE

The Chairperson closed the meeting at 12h30.