

CONSTITUTIONAL ASSEMBLY

MINUTES OF THE 24th MEETING OF THE CONSTITUTIONAL COMMITTEE

FRIDAY 11 AUGUST 1995

Present

Ramaphosa MC (Chairperson)
Wessels L (Deputy Chairperson)

Ackermann, C	Mahlangu, M J
Alant, T (Alt)	Mahlangu, N J
Andrew, K M (Alt)	Marais, P G
Bhabha, M	Mbete-Kgositsile, B
Camerer, S (Alt)	Mchunu, E S
Chabane, O C	Moosa, M V
Davies, R	Mulder, C P (Alt)
De Beer, S J (Alt)	Myakayaka-Manzini, YL
De Lille, P (Alt)	Nair, B (Alt)
Du Toit, D C	Ncguka, B T
Dyani, Z (Alt)	Pandor, G N M
Ebrahim G (Alt)	Pretorius, I J (Alt)
Eglin, C W	Rabie, J A
Gogotya, N J	Radue, R J (Alt)
Green, L M (Alt)	Routledge-Madlala, N N (Alt)
Hendrickse, P (Alt)	Schutte, D P A
Hofmeyr, W A (Alt)	Sifora, T V
Holomisa, S P	Sizani, R K
Ligege, M G	Van Breda, A
Lockey, D	Van Deventer, F J (Alt)
Love, J (Alt)	

Alternates for this meeting: ACDP: L Green for K R Meshoe; DP: K Andrew for J Selfe (Alt); FF: C Mulder for CL Viljoen; NP: S Camerer, S de Beer, I Pretorius, R Radue and F van Deventer for A Fouries, T King, D Makhanya, R Meyer and J Rabie.

Apologies: K Asmal, J de Lange, A Fourie, P J Gordhan, T J King, B S Mabandla, D W Makhanya, K R Meshoe, R P Meyer, B E Nzimande, E Pahad, J A Rabie, S S Ripinga, J Selfe, Z Skweyiya, and C L Viljoen.

Absent: G J Fraser-Moleketi, F N Ginwala, L B Kgoali, Z Kota, L Mtshali, S Mzimela, L Ngwane, R Rabinowitz, P Smith, F van Deventer.

In Attendance:

Staff : H Ebrahim, M Sparg, L Zondo, G Grové, N Msizi, M Ndziba, and M Keegan

Independent Panel of Experts: G. Erasmus, C Murray, P Sedibe-Ncholo and Z Yacoob

Technical Advisers : D van Wyk and N Steytler (TC2); P Harris and D Pillay (TC6.1).

1. OPENING

- 1.1 Mr. Ramaphosa opened the meeting at 09h12.
- 1.2 The meeting adopted the agenda with one addition:

11.1 CA Meeting Scheduled for 18 August 1995

2. MINUTES

The Minutes of the 23rd Meeting of the Constitutional Committee on 4 August 1995 were adopted with the following corrections:

- i. The Minutes would be corrected to indicate that Mr. Marais was a full member of the committee, not an alternate.
- ii. The word "*problem*" would be deleted from paragraph 5.2(ii).
- iii. Paragraph 5.8 would be amended to indicate that section 3 of the draft text would be referred to the Law Advisors and refined.
- iv. Paragraph 6.1.3(vi) would be amended to read: "*The ANC expressed concern that members of the Panel were not present and that they should be attending.*"
- v. Paragraph 7.2 would be corrected to indicate that, the Law Advisors would attempt to draft an omnibus clause once a comparative analysis of other independent institutions was completed. The matter would then be discussed from a "bird's eye point of view".
- vi. Paragraph 9.3 would be amended to indicate that this was not a final formulation, but would be deferred for further discussion and negotiation.

3. MATTERS ARISING

These were included in agenda items below.

4. CONSTITUTIONAL COMMITTEE SUB-COMMITTEE REPORT

4.1 ACADEMIC FREEDOM

Mr. Ramaphosa introduced the document entitled, "*Sub-Committee Report to the Constitutional Committee,*" contained in the documentation. He said that the sub-committee had discussed the matter and had instructed the technical advisers to redraft the formulation. The matter would be discussed again when a complete Bill of Rights was tabled, hopefully in early September.

4.2 PUBLIC ADMINISTRATION

4.2.1 Mr. de Beer spoke to:

- i. Part two of the "*Sub-Committee Report*," entitled "*2. Public Administration*"; and
- ii. A memorandum entitled "*Correction to Draft Formulation on Public Administration*," tabled at the meeting.

4.2.2 Regarding section 1(h) of the enclosed draft formulation, which reads:

"(h) Public Administration shall be broadly representative of the South African people. Employment and personnel management practices in the public administration shall be based on competency/ability, objectivity and fairness and the need to redress the imbalances of the past to achieve the required representation.

The meeting agreed to delete the word "*competency*".

4.2.3 Regarding section 2, which reads:

"(2) The appointment in the public administration of a number of persons on policy considerations as regulated by law, shall not be precluded."

The meeting agreed to re-insert the word "*limited*", so that the formulation would read:

"(2) The appointment in the public administration of a limited number of persons on policy considerations as regulated by law, shall not be precluded. "

The Chairperson said that members who disagreed with this insertion could raise the matter at the Constitutional Assembly.

4.2.4 Regarding section 2(1), which reads:

"2. (1) There shall be a single Public Administration Commission for the Republic as prescribed by a national law. Each of the provinces shall be entitled to nominate a representative for appointment in the Commission."

It was agreed that "*to the Commission*" would replace "*in the*

Commission"; so that the formulation will read:

"2. (1) *There shall be a single Public Administration Commission for the Republic as prescribed by a national law. Each of the provinces shall be entitled to nominate a representative for appointment to the Commission.*"

4.2.5 Regarding section 2(3), which reads:

"(3) *The Public Administration Commission shall perform such functions to promote the basic values and principles governing the public administration as prescribed by national law.*"

- i. It was agreed that the section was awkwardly phrased and would be referred to the drafters for further consideration.
- ii. The Chairperson ruled that the section could also be corrected on the floor of the Constitutional Assembly.

4.2.6 Regarding section 2(5), which reads:

2. (5) *Provincial representatives in the Public Administration Commission shall be competent to exercise and perform such powers and functions of the Commission with regard to provinces as prescribed by national law.*

The meeting agreed that this section would be re-instated in the draft formulation.

4.2.7 The meeting accepted all the other sections of the draft formulation.

4.2.8 The meeting endorsed the Management Committee decision that the Forum on Service Commissions would be given the opportunity to comment on the draft formulation on Public Administration once the full draft constitutional text was available. The Chair ruled that this decision would be communicated to the Forum and a copy of the most recent draft on the Public Administration would be forwarded to them in the meantime.

4.3 AUDITOR GENERAL, PUBLIC PROTECTOR, HUMAN RIGHTS COMMISSION AND NATIONAL AND PROVINCIAL LEGISLATIVE AND EXECUTIVE COMPETENCIES

The Chairperson reported that these matters were still under consideration by the sub-committee.

5. THEME COMMITTEE 2 REPORT ON THE NATIONAL ASSEMBLY, NATIONAL EXECUTIVE AND ELECTORAL SYSTEM.

5.1 Mr. Mahlangu spoke to the document entitled, "*Theme Committee 2, Block 2: National Assembly and National Executive,*" contained in the documentation.

5.2 The meeting discussed the draft formulations on the "*National Assembly*".

5.3 Regarding section 1, which reads:

Legislative power

1. *The legislative power at national level shall vest in Parliament.*

- i. The ANC requested a technical explanation on the clause.
- ii. The Chairperson ruled that the matter would be "flagged" for later discussion.

5.4 Regarding paragraph 2, which reads:

Constitution of Parliament

2. *Parliament consists of the National Assembly and...*

The Chairperson reminded the meeting that the draft formulation was provisional and would be dealt with after the Theme Committee had finished its Report on the Senate.

5.5 Regarding section 3, which reads:

The National Assembly

Composition of National Assembly

3. *The National Assembly consists of ... members.*

It was agreed this matter would be left in abeyance for later consideration.

5.6 Regarding section 4, which reads:

National elections

4. *The election of members of the National Assembly shall be conducted in accordance with an electoral system which shall be based on a common voters' role and generally proportional representation*

provided for by a national law.

- i. The DP suggested that the phrase "*resulting in proportional representation*" should replace "*generally proportional representation*", to indicate that the *end* result would be proportional representation.
- ii. The Chairperson said that this was catered for in "*Part 3*" of the draft formulations contained in "*Theme Committee 2, Block 6: the Electoral System, National Level,*" in volume 2 of the documentation.
- iii. The ANC, however, expressed concern that "*resulting in*" was very general and inaccurate and needed reformulation.
- iv. It was agreed to refer the matter to the Technical Advisors for their attention.

5.7 Regarding section 5(1), which reads:

5 (1) The National Assembly as constituted in terms of a general election shall continue for a term of five years as from the date of such election, unless dissolved before the expiry of its term.

- i. The meeting agreed that the term "*serve*" would replace "*continue*".
- ii. The meeting agreed to defer this matter, to allow political parties to consider arguments for either a four or five year term of office.
- iii. The Chairperson suggested that this might also be discussed in the Constitutional Assembly.

5.8 Regarding section 5(2), which reads:

5 (2) The National Assembly may be dissolved before the end of the term for which it was elected if a vote of no-confidence in the Cabinet is passed by the National Assembly.

- i. The ANC expressed concern that this paragraph could discourage the National Assembly from passing a vote of no-confidence in the Executive, if this jeopardised its own existence.
- ii. The ANC also expressed concern that this clause might duplicate similar clauses in the section dealing with the Executive.
- iii. The Chairperson ruled that the Technical Advisors would look into the question of duplication.

- iv. The DP said that the formulation could be abbreviated or tightened up. It suggested that the words "*in terms of this constitution*" be added at the end of paragraph 5(1), and that this would make 5(2) unnecessary.

5.9 Regarding section 5(3), which reads:

5 (3) When the term for which the National Assembly was elected expires or if the National Assembly is dissolved before its term expires, the National Assembly as then constituted shall remain competent to function, and its members shall continue as members, until the day before the polling for the next National Assembly.

- i. The ANC expressed concern that safeguards would have to be included in the constitution if the National Assembly continued to function after an election.
- ii. The meeting agreed that the Technical Advisors would provide an international perspective on how other constitutions dealt with this matter.

5.10 The meeting accepted section 6(1).

5.11 Regarding section 6(2), which reads:

6 (2) *The Chief Justice or a judge designated by him or her shall preside over the election of a Speaker, and the Speaker shall preside over the election of a Deputy Speaker.*

- i. The ANC suggested that the President of the Constitutional Court also be considered, as they were the most senior judges in the judicial system.
- ii. The meeting agreed to defer the debate, to allow political parties to discuss the matter.

5.12 The meeting accepted sections 6(3), 6(4), and 6(5), which read:

6 (3) *The procedure set out in Schedule...shall apply to the election of the Speaker and the Deputy Speaker.*

(4) *The Speaker and the Deputy Speaker have the powers and functions assigned to them by this Constitution and the law, including the rules and orders of the National Assembly.*

(5) *The Speaker or Deputy Speaker ceases to hold office if he or she resigns from office or ceases to be a member of the National Assembly. The Speaker or Deputy Speaker may be removed from office*

by resolution of the National Assembly.

- i. The ANC suggested, however, that in 6(4), the word "have" could be replaced with "shall perform".
- ii. The Chairperson ruled that the Technical Advisors would look into the use of "shall" and "shall not", to ensure consistency in the draft.

5.13 Regarding section 7(1), which reads:

Qualifications of members of National Assembly

7 (1) *Only South African citizens qualified to vote in elections of the National Assembly and who are not otherwise disqualified in terms of this section are eligible to be members of the National Assembly.*

It was agreed that the Constitutional Committee Sub-Committee would deal with the question of the franchise.

5.14 The meeting accepted sections 7(2)(a) and (b).

5.15 Regarding section 7(2)(c), which reads:

(c) *Persons convicted after 27 April 1994 of an offence in the Republic if the conduct constituting the offence would have been an offence in the Republic, and sentenced to more than 12 months' imprisonment without the option of a fine. A person shall not be regarded as convicted until an appeal against the conviction or sentence has been determined, or until the time for an appeal has expired, or if such person has received a pardon.*

- i. The ANC suggested that the disqualification be linked to the gravity of the crime committed and not simply the length of sentence.
- ii. The PAC queried why the 27 April 1994 date had been used.
- iii. The NP said that it would be inappropriate for a person in prison to be nominated to run for or to be elected as a member of the National Assembly while they still were in prison.
- iv. The ACDP suggested the deletion of the phrase "without option of a fine". It said that any one who wanted to pursue a political career should not commit crimes.
- v. It was agreed that the Technical Committee together with the Law Advisors would draft a formulation that would accommodate the

views expressed.

5.16 It was agreed that section 7(2)(d) which reads:

7. (2) (d) *Persons who are members of [the Senate], a provincial legislature or a local government.*

Would be discussed when the Theme Committee completed the report on the Senate.

5.17. Regarding section 7(2)(e), which reads:

7 (2) (e) *Persons holding office of profit under the Republic, excluding*
(i) *the Deputy State President*
(ii) *Ministers and Deputy Ministers*
(iii) *persons receiving a pension from public funds or from a pension fund aided by public funds*
(iv) *justices of the peace and appraisers; and*
(v) *members of statutory bodies performing a public function who receive remuneration as such a member not more than their salaries as members of the National Assembly.*

i. Regarding whether traditional leaders held "offices of profit" and should be included in the list above:

a. The ANC reported that traditional leaders were still organising the body that would forward their views to the Constitutional Assembly. However, it would seem that a traditional leader was similar to a justice of the peace and should have to stand down from office if taking up a seat in parliament.

b. The DP clarified that the draft formulation did not imply that persons holding other offices could not run for the National Assembly, but that they would stand down once they became a member of the National Assembly. This would involve traditional leaders just as it did the members of other statutory bodies like the Senate, provincial legislatures, and local government, as set out in 7(2)(d).

ii. Regarding section 7(2)(e)(v)

a. The ANC queried whether the sum would be that of a salary earned for a single public function or the sum of all salaries earned from all the public functions that a person

undertook.

- b. The DP expressed concern that the clause linked the issue to a parliamentary salary. The concept of an *"office of profit"* was that members of the legislature should not also be active as members of the executive, otherwise they might compromise themselves.
- c. The NP also expressed concern that the clause was linked to the question of a salary, whereas a conflict of interest could occur even where no remuneration was involved.
- d. It was agreed that the Technical Committee and the Law Advisors would reformulate this section to accommodate the concerns raised.

5.18 Regarding section 7(3), which reads:

7 (3) *The disqualification imposed by this section on a person who served a prison sentence of more than 12 months lapse...years after his or her release from prison.*

- i. It was agreed that the word *"shall"* would be inserted to read, *"shall lapse"*.
- ii. It was agreed that *"after the completion of sentence"* would replace *"release from prison"*.
- iii. The meeting tentatively agreed that this disqualification would lapse five years after completion of sentence, pending a report from the Technical Committee on how this was dealt with in other dispensations.

5.19 The meeting accepted section 7(4).

5.20 Regarding section 8, which reads:

Vacation of seats

8 *A member of the National Assembly shall vacate his or her seat upon -*

- (a) *ceasing to be an eligible member;*
 - (b) *resigning as a member; or*
 - (c) *Becoming a member of [the Senate] a provincial legislature or a local government.*
- i. The Chairperson ruled that the term *"the Senate"* could be inserted pending the report from the Theme Committee on the matter.

- ii. The Theme Committee reminded the meeting that Footnote 18 raised the question of whether section 43(b) of the Interim Constitution should be included in this paragraph or not. The meeting agreed to let this matter stand over until there was greater clarity on the electoral system. It was agreed that the matter would be taken further by the Constitutional Committee Sub-Committee.

5.21 The meeting accepted sections 9, 10(1) and 10(2), which read:

Filling of vacancies

9 *Vacancies in the National Assembly shall be filled in accordance with a national law.*

Oaths or affirmation by members

10 (1) *Every member of the National Assembly, before taking his or her seat in the Assembly, shall make and sign an oath or solemn affirmation before the Chief Justice or a judge designated by him or her, in the following form:*

I, A.B., do hereby swear/solemnly affirm to be faithful to the Republic of South Africa and solemnly promise to perform my functions as a member of the National Assembly to the best of my ability.

(In the case of an oath: So help me God.)

(2) *A member nominated to fill a casual vacancy in the Assembly shall make and sign the oath or solemn affirmation before the Speaker.*

- i. It was agreed, however, that in paragraph 9, "a" would be deleted to read, "*in accordance with national law.*"

5.22 Regarding section 11(1), the meeting accepted an amended formulation which reads:

Sittings and recess periods

11 (1) *The National Assembly may determine the time and duration of its sittings and its recess periods. The first sitting of the National Assembly after a [general] election shall take place not more than 10 days after the declaration of the result of the election and on a date determined by the Chief Justice.*

5.23 Regarding section 11(2), which reads:

11 (2) *The State President may at any time summon the National Assembly to an extraordinary sitting for the conduct of urgent business.*

- i. The ANC expressed concern with the use of the term "*State President*". The meeting agreed to defer the matter until it

discussed the draft formulations on the National Executive.

- ii. The NP reminded the meeting of its proposal set out in Footnote 28 that the Speaker should convene a sitting of the National Assembly at the written request of a certain percentage of its members. The meeting agreed to defer this matter until it dealt with the provisions on emergencies.

5.24 The meeting accepted section 11(3), on the understanding that the seat of the National Assembly would be considered when Theme Committee 1 submitted its report on this matter.

5.25 Regarding section 12, which reads:

Quorum
12. ...

The meeting agreed that this matter should be dealt with in the National Assembly rules and orders, and not in the Constitution.

5.26 The meeting accepted sections 13(1) and (2), 14 , and 15(1) and (2).

5.27 Regarding section 16(1), an amended formulation was accepted, which reads:

Parliamentary privilege

16 (1) *Members of the National Assembly shall have freedom of speech and debate in and before the National Assembly and its committees subject to the rules and orders of the National Assembly. This freedom may not be limited by or questioned in the courts.*

- i. The DP however expressed concern that in certain cases some protection might need to be extended to people addressing parliamentary committees.
- ii. It was agreed that the constitution should deal with members of parliament, and if protection was to be extended to members of the public, this could be dealt with in ordinary legislation. This would apply to sections 16(1) and 16(2).

5.28 The meeting accepted sections 16(2) and (3). It was agreed, however, that the word "a" would be deleted from 16(3), to read: *"as prescribed by national law."*

5.29 The meeting agreed that the following matters were outstanding and would be discussed after the Theme Committee had dealt with the question of the Senate:

Ordinary Bills

17 ...

Money Bills

18 ...

Bills affecting provincial matters

19 ...

5.30 Regarding section 20, which reads:

Bills amending Constitution

20 ...

It was agreed that section 20 would be dealt with once the Theme Committee had completed its report on Block 7 of the work programme.

5.31 Regarding Section 21(1), which reads:

Assent to Bills

21 (1) *A Bill duly passed by Parliament in accordance with the Constitution shall be forthwith assented to and signed by the State President.*

- i. In response to a query by the ANC on the meaning of the word "*forthwith*" the Theme Committee said that it meant the Bill should be signed "*without undue delay*".
- ii. It was agreed the Law Advisors would redraft to reflect this intent.

5.32 Regarding section 21(2) that reads:

21 (2) *If the State President is of the opinion that a Bill is inconsistent with the Constitution or that it has not been passed in accordance with the Constitution the State President may withhold assent to the Bill and refer it back to Parliament for reconsideration. If Parliament passes that Bill without correcting the defect the State President may again withhold assent and refer the Bill to the Constitutional Court for a ruling on its constitutionality.*

- i. The DP:
 - a) Asked what obligation this placed on the President: did it mean the President should ensure that procedure had been followed or was he or she required to ensure the content of the Bill was constitutional? and

- b) Asked whether this would preclude Parliament from referring matters to the Constitutional Court?
- ii. The PAC :
- a) Expressed concern at what implications such a requirement in the constitution would have for the system of government in view of the possible stand-offs between the President and the Legislature and asked whether it was necessary for these stand-offs to be written into the constitution? and
 - b) Stated that the State President should not take on the function of interpreting all Bills on their constitutionality. The FF agreed.
- iii. The NP, on the other hand, said that the State President *should* have a screening function regarding the constitutionality of all legislation.
- iv. It was agreed the Technical Committee and Law Advisors would look at how this matter is dealt with in other situations of executive presidents; and would reformulate the section to accommodate the concerns expressed.
- v. The ANC suggested that the formulation be amended to allow the Speaker, also, to refer legislation to the Constitutional Court for an opinion.
- vi. The meeting agreed to defer discussion of Section 21 and asked for a comparative analysis of how this matter is dealt with in other dispensations with an Executive President.

5.33 Regarding section 22(1), which reads:

Safe keeping of and public access to Acts of Parliament

22 (1) *All Bills duly signed by the State President shall immediately after that promulgation as Acts of Parliament be entrusted to the [Constitutional Court] for safekeeping.*

The meeting debated whether such records would continue to be kept with the Registrar of the Appellate Division or whether these would now be housed with the Constitutional Court.

- i. The DP and the NP said that the question of the cost of moving the records needed to be considered and argued that they should

remain with the Registrar in Bloemfontein.

- ii. The ANC said that whilst it accepted this was a sensitive issue, the "logic of the constitution" dictated that the records should be with the Constitutional Court, as this was the only court which had the power to declare legislation unconstitutional.
- iii. The meeting agreed to defer the matter until both courts had been consulted.

5.34 The meeting accepted section 22(2).

5.35 In view of the right to access to information, the meeting agreed that section 22(3) was unnecessary and would be deleted.

5.36 The meeting then considered the draft formulations on "**The National Executive**".

5.37 Regarding section 1, which reads:

Executive power

1 *The executive power [at national level] is vested in the national government consisting of the State President and the Cabinet.*

- i. The meeting agreed to amend the draft formulation to read:

"The executive power of the Republic as provided for in this constitution shall vest in the national government consisting of the State President and the Cabinet.

- ii. The chair ruled, however, that the wording would be refined properly.

5.38 Regarding the question of whether or not the term "*State President*" should be used throughout the constitution, as opposed to "*President*", the meeting agreed to defer the matter until the full draft of the constitution was available. However, should there be strong views, these could be raised in the Constitutional Assembly.

5.39 The meeting accepted section 2 (1) and (2).

5.40 Regarding section 3(1), which reads:

Election of State President

3 (1) *The National Assembly shall at its first meeting after a national election and there after as and when it becomes necessary to fill a vacancy during the term for which it was elected, elect a number of the*

National Assembly as the State President.

- i. The DP outlined its proposal that the State President be directly elected, as set out in its submission included in the Theme Committee report.
- ii. It was agreed that this matter would be deferred to allow the DP to canvas other parties on its submission.

5.41 Regarding sections 3(2)(3) and (4), which read:

3 (2) *The Chief Justice or a judge designated by him or her, shall preside over the election of the State President. The procedure set out in Schedule...shall apply to the election of the State President.*

(3) *A member of the National Assembly shall upon being elected as the State President vacate his or her seat in the National Assembly.*

(4) *A sitting of Parliament to fill a vacancy in the office of State President shall take place within 30 days after the vacancy occurred, at a time and on a date determined by the President of the Constitutional Court.*

The meeting agreed to leave these matters in abeyance until agreement had been reached on section 3(1).

5.42 Regarding section 4, which reads:

Assumption of office

4 *The State President-elect shall assume office within ... days of his or her election and shall, before assuming office, make and sign an oath or solemn affirmation before the Chief Justice or a judge designated by him or her; in the following form..."*

- i. It was agreed that "a" would be inserted to read "an oath or a solemn affirmation".
- ii. The meeting agreed that the oaths of office would be placed in a schedule to the constitution.
- iii. The ANC also asked the Technical Advisers to consider the language used in the oaths, in favour of a more simple and modern style.

5.43 Regarding section 5(1), which reads:

Term and vacation of office and filling of casual vacancies

5 (1) *The State President shall be elected for a term of office*

commencing when he or she assumes office and ending when the person elected as the State President after the next election of the National Assembly assumes office.

This formulation was accepted, subject to finalising the executive's term of office.

5.44 Regarding section 5(2), which reads:

5 (2) *No person may hold office as State President for terms of office exceeding a combined period of ... years.*

- i. The ANC said that the matter was linked to paragraphs 3(1) and 5(1), which had been placed in abeyance.
- ii. The meeting agreed to hold this matter over to allow for further discussion.

5.45 Regarding sections 5(3)(a) and (b) and 5(4), which read:

5 (3) *The State President shall vacate office during his or her term upon-*

- (a) *resigning from office by notice in writing to the Speaker; or*
- (b) *adoption by the National Assembly of a resolution in terms of this Constitution removing him or her from office.*

(4) *A vacancy in the office of State President shall be filled as soon as a meeting of the National Assembly can be convened for the election of a new State President.*

- i. The ANC queried what would happen to the seat vacated by the President. The Technical Advisor responded that that would be considered a vacancy that would automatically be filled according to the National Assembly rules.
- ii. The PAC said they preferred that the State President remain a member of the National Assembly and return to the National Assembly after vacating executive office. It was agreed, however, not to allow the Head of State to remain an ordinary MP, because this would obstruct the separation of powers.
- iii. The meeting agreed to accept these formulations, subject to agreements reached on the method of electing the State President.

5.46 The meeting accepted sections 6(1), (2) and (3)(a).

5.47 Regarding section 6(3)(b), that reads:

6(3) (b) *to dissolve the National Assembly after a motion of no confidence in the Cabinet has been passed by the National Assembly.*

The meeting accepted the formulation, subject to later agreements on the nature of the national executive.

5.48 The meeting accepted section 6(3)(c).

5.49 Regarding section 6(3)(d), which reads:

6(3) (d) *to refer a Bill passed by Parliament back to Parliament for reconsideration or to the Constitutional Court for a ruling on its constitutionality;*

It was agreed that this matter could only be finalised after a decision had been taken on section 21 of the draft formulations on the National Assembly.

5.50 The meeting accepted section 6(3)(e).

5.51 Regarding section 6(3)(f), which reads:

6(3) (f) *to appoint, accredit, receive and recognise diplomatic representatives;*

i. The ANC asked what the difference was between accreditation and recognition. The Technical Experts said they would come back on this matter.

ii. The meeting agreed to "flag" this matter for later discussion.

5.52 Regarding section 6(3)(g), which reads:

6(3) (g) *to negotiate and sign international agreements, and to delegate such power.*

i. The NP requested clarity on what kinds of agreements would have to be ratified by parliament and where it was sufficient for the State President to sign.

ii. The meeting agreed to "flag" this matter for later discussion, pending a report from Theme Committee 5 on this matter.

5.53 Regarding section 6(3)(h), which reads:

6(3) (h) *to reprieve and pardon offenders and to remit fines,*

penalties and forfeitures.

- i. The DP expressed the view that the State President should not be able to do this unilaterally, but in consultation with the National Assembly.
- ii. The ANC asked whether the word "*reprieve*" was necessary, given that there was no death penalty. The Chairperson ruled that the Law Advisors would keep this under review.
- iii. The meeting agreed that the matter would be deferred for later discussion.

5.54 Regarding section 6(3)(i), that reads:

6(3) (i) *to appoint and dismiss Ministers and Deputy Ministers;*

The meeting agreed to defer discussion. Whilst it was accepted that this was a normal function assigned to executive presidents, it could only be finalised when a decision was taken on whether the Government of National Unity would continue or not.

5.55 The meeting accepted section 6(3)(j) and (k).

5.56 Regarding section 7(1), which reads:

Confirmation of executive acts of State President

7 (1) *Decisions of the State President taken in the discharge of his or her powers and functions shall be expressed in writing under his or her signature.*

It was agreed that the word "*expressed*" would be deleted to read: "*shall be in writing.*"

5.57 Regarding section 7(2), which reads:

7 (2) *Decisions of the State President taken in consultation with the other members of the Cabinet shall be countersigned by a Minister.*

- i. The ANC requested that the words "*the responsible*" be inserted to read: "*countersigned by the responsible Minister.*"
- ii. It was agreed to accept section 7(2), under review.

5.58 The meeting accepted sections 7(3) and 8(1).

5.59 Regarding section 8(2), which reads:

8 (2) *The State President may not hold any other public office or perform any other remunerative work*

i. The NP suggested that this paragraph was unnecessary and should be deleted.

ii. The meeting agreed to "flag" this matter for further consideration.

5.60 Regarding section 9, which reads:

Deputy State President/Prime Minister

9 ...

It was agreed this would be "flagged" for later consideration.

5.61 Regarding section 10(1)(a)(b)(c)(d) and (2) which read:

Acting President

10 (1) *If the State President is absent from the Republic or is otherwise unable to fulfil the duties of the office, or if the office of State President is vacant, an office-bearer in the order mentioned below shall act as the State President during the State President's absence or inability or until the vacancy is filled:*

(a) *The Deputy State President*

(b) *If the Deputy State President is not available or if the office of Deputy State President is vacant, a Minister of the Cabinet designated by the State President.*

(c) *If the designation of a Minister by the State President is for any reason not possible, a Minister designated by the other members of the Cabinet.*

(d) *If the designation of a Minister by the other members of the Cabinet is not possible, the [Speaker?].*

(2) *An acting State President has all the responsibilities, powers and functions of the State President.*

i. The ANC expressed concern that the nature of the executive had to be decided before this matter could be finalised.

ii. The ANC also queried who would judge that the President was unable to continue in office. The Technical Advisors responded that this would be a function of Cabinet. The ANC suggested that another option be considered, an that parliament could perform this function.

iii. It was agreed that the Technical Committee would look at:

- a. The German emergency provisions, which set up a small council for this purpose; and
 - b. How far down the "pecking order" other countries went to designate replacements for the president.
- iv. The meeting agreed to "flag" these formulations for later consideration.

5.62 Regarding section 11 that reads:

Removal of State President or Deputy State President

11 *The National Assembly may remove from office the State President or the Deputy State President by resolution adopted by a majority of at least two-thirds of its members, but only on the grounds of a serious violation of the Constitution or the laws of the Republic, or of serious misconduct or inability rendering him or her unfit to exercise and perform his or her powers and functions.*

- i. The meeting considered the question of whether impeachment procedures were needed.
- ii. The meeting agreed to defer the matter until agreements had been reached on the method of electing the State President. Members would study the linkage between this and section 20 of the draft formulation.

5.63 The meeting accepted section 12(1).

5.64 Regarding section 12(2) which reads:

12 (2) *The State President or, in his or her absence, the Deputy State President or, in the absence of the Deputy State President, another member of the Cabinet designated by the President, shall preside at meetings of the Cabinet.*

- i. The NP said that it supported the establishment of two Deputy State Presidents.
- ii. The meeting agreed to "flag" this for later discussion.

5.65 Regarding section 13 which reads:

Appointment and dismissal of Ministers and Deputy Ministers

13 ...

The meeting agreed to "flag" this matter for later discussion.

5.66 Regarding section 14 which reads:

Oath or solemn affirmation

14 A person appointed as a Minister or Deputy Minister shall before assuming office make and sign an oath or solemn affirmation before the Chief Justice or a judge designated by him or her, in the following form:

I, A.B., do hereby swear/solemnly affirm to be faithful to the Republic of South Africa and undertake before those assembled here to hold my office as Minister/Deputy Minister with honour and dignity; to respect and uphold the Constitution and all other Law of the Republic of South Africa; to be a true and faithful counsellor; not to divulge directly or indirectly any matters which are entrusted to me under secrecy; and to perform the duties of my office conscientiously and to the best of my ability.

[In the case of an oath: So help me God]

- i. It was agreed that the Technical Experts would reconsider the language used in favour of a more simple, modern style.
- ii. The meeting agreed to defer discussion on this matter..

5.67 Regarding sections 15(1) and (2) on the *Accountability of Ministers and Cabinet*, the meeting agreed to hold this matter in abeyance, to consider it in tandem with section 13.

5.68 The meeting accepted sections 16, 16(a), (b) and (c) which read:

Conduct of Ministers and Deputy Ministers

16 Ministers and Deputy Ministers shall at all times act in accordance with a code of ethical conduct which shall be prescribed by a national law.

It shall be particularly forbidden for Ministers and Deputy Ministers -

- (a) *to take up any other employment*
- (b) *to engage in activities inconsistent with that of their office or to expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; and*
- (c) *to use their position, or any official information entrusted to them, to enrich themselves or any other person.*

- i. The DP queried the legal implications of "enrich themselves".
- ii. The ANC suggested the phrase be amended to say "improperly enrich themselves". It was agreed that the Technical Committee would see whether this amendment could be used in the formulation.

- iii. The ANC expressed a preference for the language used in this formulation because it was understandable to ordinary people. The Chairperson ruled that the Technical Committee would see if the language used in other clauses could approach this "user - friendly" style.

5.69 The meeting accepted section 17.

5.70 The meeting accepted section 18, but requested the Technical Committee to look at the wording, and consider the deletion of the words "*in the said Minister's stead*".

5.71 The meeting accepted section 19.

5.72 Regarding section 20 which reads:

Votes of no confidence

20 (1) *If the National Assembly passes a vote of no confidence in the Cabinet, the State President shall resign or shall dissolve the National Assembly and call an election of the National Assembly.*

(2) *If the National Assembly passes a vote of no confidence in the State President alone, he or she shall resign.*

(3) *If the National Assembly passes a vote of no confidence in the Cabinet excluding the State President, the State President shall either resign or reconstitute the Cabinet.*

It was agreed this would be "flagged" for later discussion, together with section 11.

5.73 The meeting agreed to refer the full Theme Committee 2 report to the Constitutional Committee Sub-Committee.

6. TABLING AND DISCUSSION: THEME COMMITTEE 6.1 REPORT ON ELECTORAL SYSTEMS

The meeting agreed this report would be discussed at the next meeting of the Constitutional Committee.

7. TABLING AND DISCUSSION: THEME COMMITTEE 6.2 REPORT ON RESERVE BANK

7.1 Mr. Davies spoke to the document entitled, "*Theme Committee 6.2: Report on the South African Reserve Bank*," included in the documentation.

7.2 The DP expressed concern that section 2(2) might not meet the requirement of independence as set out in Constitutional Principle XXIX.

7.2 The meeting agreed to refer the entire report to the Constitutional Committee Sub-Committee.

8. TABLING: THEME COMMITTEE 6.4 REPORT ON SECURITY CHAPTER.

The meeting noted the document entitled, "*Report on the Security Services*," included in the documentation. It was agreed this would be discussed at the next meeting of the Constitutional Committee.

9. REPORT: AD HOC SUB-COMMITTEE ON COURTS AND SYSTEM OF JUSTICE

The meeting agreed to refer this Report to the Sub-Committee of the Constitutional Committee.

10. ANY OTHER BUSINESS

10.1 RECOMMENDATION FROM MANAGEMENT COMMITTEE ON THE CA MEETING SCHEDULED FOR 18 AUGUST 1995

The meeting agreed that the Constitutional Assembly scheduled for 18 August 1995 would be postponed, and instead a meeting of the Constitutional Committee would be held on that day.

11. CLOSURE

The meeting closed at 15h10.