

CONSTITUTIONAL ASSEMBLY

**MINUTES OF THE TWELFTH MEETING OF THE
CONSTITUTIONAL COMMITTEE**

MONDAY 13 FEBRUARY 1995

Present

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

Ackermann, C
Bhabha, M
Camerer, S M
Chabane, O C
De Beer, S J (Alt)
De Lange, J H
De Lille, P
Du Toit, D C
Eglin, C W
Fourie, A
Gogotya, N J
Gordhan, P J
Green, L M (Alt)
Hofmeyr, W (Alt)
Holomisa, S P
Kgoali, J L
Kgositsile, B
King, T J
Kota, Z A
Ligege, M G
Lockey, D
Mabandla, B S
Mahlangu, N J
Makhanya, D W

Marais, P G
Mdladlana, M M S (Alt)
Meshoe, K R
Moosa, M V
Mtshali, L P H M
Mulder, P W A (Alt)
Myakayaka-Manzini, Y L
Mzimela, S
Ngcuka, B T
Nzimande, B E
Omar, D
Pandor, G N M (Alt)
Rabinowitz, R
Ripinga, S S
Schutte, D P A
Seaton, S A (Alt)
Selfe, J
Sifora, R K
Sizani, R K
Skweyiya, Z (Alt)
Smith, P F
Van Breda, A
Van Heerden, FJ (Alt)
Viljoen, C L

Apologies were received from:

K. Asmal, R P Meyer, C P Mulder, F J van Heerden

1. OPENING

Mr. Ramaphosa opened the meeting at 14h17 and the Agenda was adopted.

2. MINUTES

Minutes of the Eleventh Meeting of the Constitutional Assembly on Monday 30 January 1995 were adopted with the following amendment: Mr. M. J. Mahlangu would replace Mr. G. Legkoro.

3. MATTERS ARISING

There were no matters arising.

4. THEME COMMITTEE REPORTS

4.1 IFP Concerns

4.1.1 Mr. Smith noted that a written submission had been handed to the Administration for duplication and distribution, but was not yet available. He noted that the IFP rejected the substantive Theme Committee reports and requested that they be returned to the Theme Committees for redrafting to comply with the CA's resolution of 31 October 1994. He summarised the IFP concerns expressed in the submission as follows:

- i. None of the reports took cognisance of submissions from civil society;
- ii. The reports from Theme Committees One and Two did not list details of contentious and non-contentious issues;
- iii. The reports particularly of Theme Committees One and Two subsumed divergent views in narrowly stated principles. This, the IFP believed, constituted negotiation; and
- iv. Clarity was needed on the process and rules of negotiations in the Constitutional Committee.

4.1.2 Regarding the language used in Mr. Smith's report, the Chairperson ruled that members would not use emotive and sensational language which could be seen and regarded as being insulting and demeaning in Constitutional Committee meetings.

4.1.3 Regarding the use of submissions from civil society, the meeting agreed that Theme Committees that had not dealt with or commented on these submissions in their reports would prepare supplementary reports stating what such submissions said.

4.1.4 It was noted, further guidelines were needed for drafting Theme Committee reports. It was agreed that the Management Committee would discuss and finalise the matter.

4.1.5 The meeting agreed to proceed to discuss Theme Committee reports, stating that the IFP should raise its objections when individual reports were under discussion.

4.2 THEME COMMITTEE 1 REPORT

4.2.1 Mr. Mahlangu spoke to the document entitled, "*Report to the Constitutional Committee from Theme Committee 1*," included in the separately bound volume. He also drew the meeting's attention to the document entitled, "*Theme Committee 1 Report of Block 1*," circulated separately.

4.2.2 The meeting noted the two documents with thanks, and agreed that the second document would be discussed later.

4.3 THEME COMMITTEE 2 REPORT

4.3.1 On the instruction of the Chairperson, Mr. Eglin spoke to the document entitled, "*Theme Committee 2 Report*," included in the separately bound volume. Mr. Eglin noted that there was fundamental agreement on principles in the report, but this was subject to the overriding factor that the next block would deal with structures. Contention might arise there. The meeting noted the report with thanks.

4.3.2 Mr. Eglin clarified that in paragraph 2.2.1, "parliamentary form of government" was intended to mean that the legislature should represent the people.

4.3.3 Mr. Eglin further clarified that in paragraph 2.4.2, "independent Constitutional Court" referred to a court which was independent and impartial, but subject to the constitution. It should be equally independent as other judicial arms of government.

4.3.4 Concern was expressed that the next advertisement calling for public submissions should be more detailed, so that the next set of

submissions would be more focused.

4.3.5 Concern was raised regarding the status of political party submissions attached to Theme Committee reports. Mr. Ramaphosa ruled that party submissions attached to reports substantiated areas of agreement. The drafting of constitutional provisions should not be done in isolation, neglecting those submissions forwarded. Rather, the submissions should be looked at and constructions found which took into account what each submission said. The drafting of the interim constitution should be used as a point of reference on drafting text.

4.3.6 The meeting agreed to instruct Theme Committee 2 to proceed on to the next block and come back with a more substantial report, building on the first.

4.4 THEME COMMITTEE 3 REPORT

4.4.1 At the request of the Chairperson, Mr. Smith spoke to the document entitled, *"Theme Committee 3 Progress Report,"* included in the documentation, and noted that a full Theme Committee report was due to be finalised on 16 February 1995. The meeting noted the progress report with thanks.

4.4.2 Concern was expressed regarding the need for communication of Constitutional and Management Committee decisions. Mr. Ramaphosa noted that a meeting of the Constitutional and Theme Committee Chairpersons would be held in the very near future. It would also include Technical Experts. The date and venue would be announced.

4.4.3 Concern was also expressed regarding the need to clarify which Theme Committee would deal with local government. It was agreed that the Chairpersons would hold a joint meeting with Theme Committees 2 and 3 to resolve the problem.

4.4.4 Further concern was expressed that the last sentence in paragraph 3.1 in the Progress Report should be removed. The meeting agreed to ask the Theme Committee to consider this matter when it next meets.

4.5 THEME COMMITTEE 4 REPORT

4.5.1 Mr. Mdladlana spoke to the document entitled, *"Theme Committee 4 Report on Block 1,"* included in the separately bound volume. He

noted that the Theme Committee had attached political party submissions in order to include them in the report.

4.5.2 It was agreed, the matter of "Vertical and horizontal application of rights" would be added as an outstanding issue to paragraph 7.

4.5.3 The meeting noted the report with thanks. The report reflects the initial debated, and it is noted that there are still three issues outstanding: 1) Horizontality and verticality; 2) Juristic/Natural persons and 3) Universally accepted fundamental rights. The Theme Committee was awaiting inputs from political parties and Technical Experts on these issues and would submit a more comprehensive, complete report at the end of Block Two.

4.6 THEME COMMITTEE 5 REPORT

4.6.1 Mr. Schutte spoke to the document entitled, "*Theme Committee 5 Progress Report*," included in the separately bound volume. The meeting noted the report with thanks.

4.6.2 The meeting agreed that progress reports and reports would be dated "as at ..." (the date the report was completed).

4.6.3 The meeting agreed that the word "March" would replace "February" in paragraph (A)(i).

4.6.4 Concern was expressed that the Chairpersons of the workshop were not representative. The meeting agreed to ask the Theme Committee to deal with the matter.

4.7 THEME COMMITTEE SIX REPORT

4.7.1 Mrs. Kgositsile spoke to the document entitled, "*Theme Committee 6 Progress Report*," included in the separately bound volume. She noted that no reports were expected from sub-Theme Committees for Block 1. The meeting noted the progress report with thanks.

4.7.2 Concern was expressed that only two of the four sub-Theme Committees were represented on the Constitutional Committee. It was agreed that there was a need to resolve the matter. It was also agreed that in future, representatives from Theme Committees would be invited to Constitutional Committee meetings to present reports, but not for general discussion or debate.

4.7.3 Theme Committee Six requested clarity on how it would fit into the

Public Participation Programme. It is noted, where Theme Committees require activities or public events, their recommendations should be forwarded to the Administration, who would try to accomodate them.

- 4.7.4 Concern was expressed that the Technical Experts available to Sub Theme Committee Three of Theme Committee Six were competent in issues which would only be dealt with later. The meeting agreed that the matter would be dealt with at the meeting of Chairpersons.

5. CONSTITUTIONAL ASSEMBLY, 20 FEBRUARY 1995

- 5.1 The meeting agreed to re-structure the meeting of the Constitutional Assembly on 20 February 1995 as follows:

- i. It would be a formal meeting of the Constitutional Assembly, of short duration, roughly one and a half hours;
- ii. It would consist of an informal briefing on progress so far, to give members an overview of Theme Committee work;
- iii. The meeting would focus on the content of Theme Committee work;
- iv. Theme Committee Chairpersons, or people mandated by Theme Committees to speak, would report back on the state of progress in the Theme Committees;
- v. The Administration, however, would also report on progress in process matters, such as the Technical Experts, the Public Participation Programme, and Drafting;
- vi. There would be no formal list of speakers, but an Open Time, so that any member could comment or raise questions.
- vii. Reports of Theme Committees would be forwarded to the members for their information, noting that the completed reports of Theme Committees 1 and 3 would be tabled first at the Management Committee on 16 February 1995.
- viii. The Management Committee would finalise the report to the Constitutional Assembly, reviewing the draft "Outline of Constitutional Assembly Report" in light of decisions made; and

- ix. The meeting accepted that documentation for the meeting might only be available on the afternoon of Friday, 17 February.

5.2 Concern was expressed that a far larger number of members needed to be involved in and take responsibility for the constitution-making process. Different proposal for doing so included:

- i. Attaching all members to a Theme Committee, so that each would receive some documentation;
- ii. Requesting that all members attend Theme Committee meetings, at least as observers, when they can;
- iii. Holding Constitutional Committee meetings in the Parliamentary Chambers to let members observe and listen; and
- iv. Allowing members who were not in Theme Committee to participate in the various sub-committees which might be set up by specific Theme Committees to deal with particular aspects of their work.

The meeting agreed that the matter needed further discussion to better involve members in the process.

6. MANAGEMENT COMMITTEE DECISIONS

Mr. Ramaphosa referred the meeting to the Minutes of the Management Committee meetings contained in the documentation.

7. ANY OTHER BUSINESS

No other business arose.

8. CLOSURE

Meeting closed at 17h25.