

CONSTITUTIONAL ASSEMBLY

MINUTES OF THE NINETEENTH MEETING OF THE CONSTITUTIONAL COMMITTEE

FRIDAY 12 MAY 1995

Present

Ramaphosa MC (Chairperson)

Bhabha, M	Mabandla, B S
Camerer, S (Alt)	Mahlangu, N J
Chabane, O C	Malatsi, D M (Alt)
De Beer, SJ	Marais, P G
De Lange, JH	Mchunu, E S
De Lille, P (Alt)	Mdladlana, S (Alt)
Du Toit, D C	Meyer, R P
Eglin, C W	Moosa, M V
Gogotya, NJ	Myakayaka-Manzini, YL
Gordhan, P J	Ngcuka, B T
Groenewald, P H (Alt)	Pandor, G N M (Alt)
Hofmeyr, W A (Alt)	Radue, J (Alt)
Jacobsz, F P (Alt)	Sifora, T V
Kgoali, J L	Sizani, R K
Kgositsile, B	Steenkamp, P J
Ligege, M G	Van Breda, A
Lockey, D	Van Heerden, F J
Love, J (Alt)	Wessels, L (Deputy Chairperson)

Alternates for this meeting: the NP gave notice that S Camerer, S J de Beer, D M Malatsi, F P Jacobsz and J F van Heerden would replace C Ackermann, A Fourie, T King, J Rabie and D Schutte; and the FF gave notice that P Groenewald would replace C Viljoen.

Apologies: C Ackermann, A Fourie, L Green, T King, K Meshoe, E Pahad, J Rabie, D Schutte, Z Skweyiya, and C Viljoen.

Absent: K Asmal, G Fraser-Moleketi, F Ginwala, S Holomisa, Z Kota, M Lekgoro, D Makhanya, L Mtshali, C Mulder, S Mzimela, L Ngwane, B Nzimande, R Rabinowitz, P Smith, F van Deventer.

In Attendance:

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

Panel : J Kruger, M G Erasmus, J van der Westhuizen, M Sedibe-Ncholo.

Technical Committee : Prof Van Der Merwe (TC 6.1)

1. OPENING

Mr. Ramaphosa opened the meeting at 08h47. The Agenda was adopted.

2. MINUTES

The meeting adopted the Minutes of the Eighteenth Meeting of the Constitutional Committee of 5 May 1995.

3. MATTERS ARISING

There were no matters arising other than those set out in the Agenda.

4. PANEL OF EXPERTS' GUIDELINES ON DRAFTING

4.1 Members of the Panel of Constitutional Experts, including Mr. Kruger, Mr. Erasmus, Ms. Sedibe-Ncholo and Mr. van der Westhuizen, spoke to the "*Synopsis*" and the "*Discussion Document: Drafting of the Constitution*", included in the documentation.

4.2 The meeting noted that the document was not binding, but was offered as an "aide" which provided the Constitutional Committee a means of determining what should go into draft formulations. The document could be revisited and developed over time.

4.3 The meeting agreed to accept the document, subject to the following suggestions and proposals:

4.3.1 The ANC expressed the following concerns:

- i. Paragraph 1.2 of the "*Synopsis*" spoke of a "constitutional state" but should discuss instead a "democratic constitutional state";
- ii. There was a need for a mechanism which would better facilitate co-ordination between Theme Committees, as recommended in paragraph 1.10 of the "*Synopsis*"; and
- iii. There was a need fairly early in the process for expert advice from linguists as recommended in Section B of the "*Discussion Document*", notably people who had experience in drafting in plain language.

4.3.2 The NP requested the following amendments to the documents:

- i. The term "implicated" should be replaced by "implied" or "indicated" in paragraph 1.8 of the "*Synopsis*", and
- ii. The phrase "forthcoming ideas" should be replaced by "ideas that came forth" in footnote 7 of the "*Discussion*

Document".

4.3.3 The DP noted that paragraph 5.1 of the *"Discussion Document"* needed to address the question of how much detail should be included in the constitution.

4.4 The meeting agreed to ask the Management Committee to consider and where necessary implement the report's recommendations, particularly around the use of language experts.

5. THEME COMMITTEE 5 DRAFT TEXTS

5.1 Mr. Hofmeyr reported that the sub-committee established to redraft texts for Theme Committee 5 needed additional time to finalise its work.

5.2 It was agreed that once a Theme Committee forwarded a report to the Constitutional Committee, it was the function of the Constitutional Committee to decide how to carry the matter forward.

5.3 The meeting agreed that the sub-committee would discuss how best to complete the draft texts and forward a report to the Constitutional Committee.

6. DISCUSSION: THEME COMMITTEE 6.1 DRAFT FORMULATIONS ON PUBLIC ADMINISTRATION

6.1 Mr. de Beer spoke to the document entitled, *"Theme Committee 6.1, Draft Constitutional Formulations on Public Administration"* included in the documentation.

6.2 Mr. de Beer noted that after the report had been finalised, the Technical Committee recommended an amendment to 3.5.2(a) of the report that would read:

"the Commission should consist of a Chairperson, 2 Commissioners at a National Level, and a Commissioner from each province."

He noted that this amendment needed to be considered by the Theme Committee.

6.3 Political parties raised the following concerns during the discussion of the report:

6.3.1 Regarding Ministerial Appointments:

- i. The DP expressed its concern regarding paragraph 3.4 of the *"Final Report"*, noting that as the report stood, ministerial appointments could be made outside of the basic principles laid down for public sector employment. This was reflected in paragraph 3 of the draft formulation on

page 23, which read:

"The above principles shall not preclude a limited number of political appointments in public administration."

- ii. In light of the DP's concerns, the ANC, with the NP in agreement, suggested that a rough reformulation of the paragraph could be:

"A limited number of ministerial appointments in the Public Sector may be made within the framework of the above principles."

- iii. It was agreed that the Law Advisors would take this on board when refining the draft formulations.

6.3.2 Regarding the role of provinces in selecting provincial representatives on the Public Administration Commission:

- i. The ANC expressed a concern that according to paragraph 2 of the draft formulations, entitled:

"Public Administration Commission,"

the provincial premiers and legislatures would play no role in selecting provincial representatives on the Public Administration Commission.

- ii. It was noted, however, that the Constitutional Assembly Law Advisors had produced a rough reformulation of paragraph 2.(1) of the draft texts, which concluded:

"Each of the provinces shall be represented by one commissioner appointed on the advice of that province."

6.3.3 In addition, the ANC raised the following concerns:

- i. Too much detail was included in the draft formulations. For example, the new constitution did not need paragraph 3.(2).
- ii. Paragraph 4 of the draft formulation pre-empted decisions regarding the houses of parliament and their sub-committees.
- iii. Clarity was needed regarding the relationship between the National Public Administration Commission and the provincial public administration commissions. Paragraph 2.1 of the text should make clear that the people represented on the National Commission were the provincial commissioners.

- iv. If paragraphs 2.3 and 2.4 spelled out the Commission's relationship to the Executive and to the Legislature, this needed to be clearly spelled out. And
- v. Clarity was needed on how principles in paragraph 1 would address the need for affirmative action, and
- vi. Paragraph 1.(f) of the draft text reading:

"Public administration shall be oriented towards career development"

needed elaboration.

- 6.4 The meeting agreed to accept the report and thanked the Theme Committee for its work. The Report and draft formulations would be forwarded to the Constitutional Assembly for its consideration on 19 May 1995.
- 6.5 The meeting agreed that prior to submitting the draft formulations to the Constitutional Assembly, the Theme Committee would be allowed to revise it to take on board the issues raised in the Constitutional Committee. The revision might require clarification or reformulation of texts. In addition, the Theme Committee could outline options or raise questions either in footnotes or in a separate document to guide Constitutional Assembly discussions
- 6.6 The meeting agreed that the matter would not close with the Constitutional Assembly debate, but that the Theme Committee could take the report forward considering the inputs made during the Constitutional Assembly debate.
- 6.7 The meeting agreed that the Constitutional Assembly debate should be less formal to facilitate open and interactive debate. The Management Committee should consider the details on the structure of the debate.
- 6.8 It was noted that political parties could forward written proposals, amendments and reformulations to the Administration by Wednesday for distribution before the Constitutional Assembly meeting.

7. DISCUSSION: THEME COMMITTEE 6.2, DRAFT FORMULATIONS ON THE RESERVE BANK

- 7.1 Mr. Davies spoke to the document entitled *"Theme Committee 6.2, Draft Formulations on the Reserve Bank,"* included in the documentation.
- 7.2 He expressed his concern that the Theme Committee had been unable to take two matters further because of legal uncertainty: the first involving an

insertion in section 3(1) proposed by the DP and raised on page 61 of the documentation; and the second an ANC position on consultation between the Reserve Bank and the Minister of Finance dealt with in section 3(2).

- i. The ANC outlined its proposal that the Reserve Bank act "in consultation with" and not "after consultation with" the Department of Finance. However, the ANC noted that this would relate to goal or policy decisions, and that the operational independence of the Reserve Bank would be protected constitutionally.
- ii. The CA Law Advisors clarified that their communication to the Theme Committee Chairperson on the ANC position had been in the form of a note to the Chairperson and was not a formal opinion. In addition it had related only to the operational independence of the Reserve Bank and had not considered the other dimension of goal independence.
- iii. The meeting agreed that the Law Advisors would prepare a formal Legal Opinion on both the ANC and DP matters and submit it to the Theme Committee.
- iv. The DP noted that should they feel satisfied by the Law Advisors' Opinion, their objection would fall away.

7.3 The meeting noted that the day's discussion had sensitized the Theme Committee to a new set of issues. The meeting agreed to refer the report back to the Theme Committee to allow it to re-examine the issues raised in the CC and find ways of incorporating them into the report and, if possible, into the draft formulations with the assistance of the Law Advisors.

7.4 It was further agreed that the Theme Committee could note questions that needed to be addressed, and options that needed to be considered, to help guide CA discussions on the matter.

8. VOLKSTAAT COUNCIL SUBMISSIONS

8.1 The meeting noted the document entitled, "*Volkstaat Council Submissions*" included in the documentation. Mr. Groenewald noted that an updated, interim report would be submitted by the Volkstaat Council to the Constitutional Assembly in the near future.

8.2 The ANC noted that, according to the Constitutional Principles, the Volkstaat Council had to show significant support for the idea of a Volkstaat before the matter had to be considered by the Constitutional Assembly. It urged the Council to undertake that task.

9. CA REPORT

Mr. Ramaphosa reported that an annual review of the Constitutional Assembly

would be tabled at the Constitutional Committee shortly.

10. ANY OTHER BUSINESS

None arose.

11. CLOSURE

The meeting closed at 13h00.