

**CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 1
CHARACTER OF THE DEMOCRATIC STATE**

**MINUTES OF THE MEETING OF THEME COMMITTEE 1
MONDAY 8 MAY 1995 14H00 ROOM M515**

**Present
Mahlangu NJ (Chairperson)**

**Booi MS
Chiba L
Chikane LLL
Fani LM
Gumede DM
Hangana NE
Janse Van Rensburg P
Kekana NN
Lekgoro MK
Mabuza MC
Majola-Pikoli NT
Marais A
Marais PG
Meshoe KR**

**Momberg JH
Moorcroft EK
Mulder PWA
Ncube BS
Nobunga BJ
Ripinga SS
Schoeman EA
Shope G
Shope NR
Sisulu AN
Streicher DM
Van Deventer FJ
Vilakazi BH
Williams AJ**

APOLOGIES:

Goosen AD
Mukhuba TT
Niehaus CG
Nzimande BE
Routledge NC

Technical Experts present:

Corder H
Heunis JC
Husain Z

Leola Rammble and Susan Rabinowitz were in attendance.

1. OPENING

1.1 The meeting was opened by the Chairperson at 14h05.

2. ADOPTION OF PREVIOUS MINUTES

- 2.1 The Minutes of the Theme Committee meeting of 20 April 1995 contained in Document A22 (Pages 3-6) were adopted.

3. MATTERS ARISING

- 3.1 None

4. CORE GROUP REPORT

- 4.1 The Chairperson tabled the Minutes of the Core Group Meeting held on 3 May 1995 contained in Document A22 (Pages 7-9). He reported that the Core Group had approved the format for the advertisements on language, seats of government and name. He further reported that although several parties had expressed reservations about the advertisement on the issue of the flag, it had been agreed that to avoid delaying the process further, the first advertisement presented at this Core Group meeting was acceptable in terms of the Theme Committee decision. He reported that the advertisements would appear on Wednesday 10 May 1995 in the media.

5. TABLING AND DISCUSSION OF PARTY SUBMISSIONS ON BLOCK 3: SUPREMACY OF THE CONSTITUTION

- 5.1 ACDP

The ACDP tabled and talked to its submission contained in Document A21 (Pages 8-11).

Questions of clarification were asked on the issue of the conflict between constitutional principles and Biblical principles, on what was meant by the "majority", the party's position on the death penalty, what was meant by a "non-elected" body and the role of the Constitutional Court.

The ACDP expressed the view that the majority of South African do not know what the Constitutional Principles are and that these should be revisited to gain agreement as to whether or not all parties accept them. They further explained that the Constitutional Principles should be acceptable to the majority of South Africans and, if that was the position, then they would have no problem with the Constitutional Court interpreting such principles.

The Technical Experts pointed out to the Theme Committee that as a matter of law the Constitutional Principles could not be revisited.

- 5.2 ANC

The ANC tabled its submission contained in Document A22 (Pages 10-13) and talked to its submission.

Questions of clarification were asked on the issue of "moderated constitutionalism" and a qualified constitution, on the role of Parliament, the relationship between democracy and constitutionalism, and what majority would be required to amend the constitution.

The ANC reported that it had not yet discussed the issue of what majority would be required but would do so at a later stage. Its position was that the Constitution should not bind Parliament to such a degree that Parliament would be unable address the legacies of the past.

On a point of clarification from the Technical Experts, the ANC agreed that the word "unacceptable" in Point 8.3 on Page 13 of its submission should be replaced with the word "acceptable".

5.3 DP

The DP tabled its submission contained in Document A21 (Pages 12-13). The DP talked to its submission and requested clarification from the Technical Experts on the separation of powers.

The Technical Experts clarified that the principle of separation of powers meant that no body should enjoy more than one type of power, but that the corollary of this is that checking and balancing mechanisms have arisen between powers so that there is an interaction and a necessary inter-dependency between the powers but that they have degrees of independence from each other.

The use of the word "doctrine" was queried and the DP agreed that this should be substituted by the word "philosophy".

5.4 FF

The FF tabled and talked to its submission contained in Document A21 (Page 14).

Clarification was asked for on the use of the expression "tyranny of the majority" and on what majority the FF envisioned with regard to amendments to the Constitution.

The FF expressed the view that the decisions taken at Kempton Park negotiations should be examined as a guideline to solving the issue of what majority was required.

5.5 NP

The NP tabled and talked to its submission contained in Document A21

(Pages 15-17).

Clarification was sought on the amendments to the Constitution and the issue of special majorities.

The NP expressed the view that it should not be possible to amend the Constitution with an ordinary majority and referred to Constitutional Principle XV where reference is made to special majorities although the party had not yet discussed what the special majority should be.

5.6 PAC

The PAC submission on Block 3 contained in Document A21 (Pages 18-19) was tabled and the Chairperson reported that their submission had been talked to together with their submission on Block 2.

There were no points of clarification or comments.

- 5.7 It was agreed that the Drafting Sub-Committee would meet this week together with the Technical Experts to begin drafting the report on Block 3. The Secretariat would make the arrangements for the meeting.

6. PUBLIC PARTICIPATION PROGRAMME

- 6.1 It was agreed that the names of the Theme Committee members who would be attending the Constitutional Public Meeting in Standerton (13 May) and the Public Hearings on Children Rights (13 May) and Traditional Authorities (12/13 May) would be submitted to the Secretariat by Tuesday 9 May 1995 at 09h00.

7. GENERAL

- 7.1 The Chairperson tabled a memorandum from the Executive Director regarding a meeting with Constitutional Expert, Daniel Elazar. It was agreed that the Theme Committee would meet with him and that the Secretariat would make the necessary arrangements.

8. CLOSURE

- 8.1 The meeting rose at 16h05.

CHAIRPERSON