

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

**MINUTES OF THE MEETING OF THEME COMMITTEE 1
MONDAY 15 MAY 1995 09H00 ROOM M515**

**Present
Marais PG (Chairperson)**

**Booi MS
Chiba L
Cwele CS
Fani LM
Gumede DM
Hangana NE
Janse Van Rensburg AP
Kekana NN
Lekgoro MK
Mabuza MC
Mahlangu NJ
Majola-Pikoli NT
Meshoe KR
Momberg JH
Moorcroft EK**

**Mulder PWA
Ncube BS
Nobunga BJ
Nzimande BE
Ripinga SS
Shope G
Shope NR
Sisulu AN
Streicher DM
Van Deventer FJ
Van Zyl ID
Vilakazi BH
Williams AJ**

APOLOGIES:

**Chikane MM
Goosen AD
Macozoma SJ
Niehaus CG
Routledge NC
Schoeman EA**

Technical Experts present:

**Corder H
Heunis JC**

Leola Rammble and Susan Rabinowitz were in attendance.

1. OPENING

- 1.1 The meeting was opened by the Chairperson at 09h15.

2. ADOPTION OF PREVIOUS MINUTES

- 2.1 The Minutes of the Theme Committee meeting held on 8 May 1995 contained in Document A23 (Pages 2 -5) were adopted.

3. MATTERS ARISING

- 3.1 None

4. DISCUSSION OF DRAFT REPORT FOR BLOCK 3

- 4.1 The Draft Report for Block 3 dealing with Supremacy of the Constitution contained in Document A23 (Pages 6 -33) was tabled.

- 4.2 Prof Corder talked to the document.

- 4.3 After discussion of the ACDP's emphasis under Point B II) (Page 8), the ACDP stated that this was not a matter of contention, that they were in agreement with Points i-vii under B I) and requested that amendments be made to the first paragraph on Page 8 to reflect this. It was agreed that this paragraph should be amended to read as follows:

ACDP : Argued for the Supremacy of the Constitution which acknowledges the Supremacy of God and for a non-secular republic, based on biblical principles. Expressed concern at the fact that any final Constitution will have to be approved, in terms of the Constitutional Principles, by the Constitutional Court, on the basis that the Principles "were drawn up by a non-elected, non-representative body" and that they are not subject to the "fixed and certain principles expounded in the Bible".

- 4.4 The ANC raised an objection to the use of the word "entrenched" in Point B I) vii) and stated that it preferred the use of the wording in Constitutional Principle XV which states "Amendments to the Constitution shall require special procedures involving special majorities".

- 4.5 Dr Heunis informed the meeting that according to his view the Constitution cannot be the supreme law of the land if it is not entrenched.

- 4.6 It was agreed that Point B I) vii) would be replaced with the wording of Constitutional Principle XV.

- 4.7 Prof Corder drew the meeting's attention to the Analytical Survey on Page 9 and noted that under Non-Contentious Aspects a new Point 6 reading "the provision of the Constitution should not unduly shackle legislative action to redress past wrongs" should be added in accordance with Point B I) vi) of the Report. In the Remarks column, a note should be included that this is within the jurisdiction of TCs 2,3 and 4.

Point 7 in the Analytical Survey should read "The Constitution shall be amended by special procedures involving special majorities" to comply with Point B I) vii) of the Report.

Prof Corder further noted that the first three non-contentious aspects fall within the jurisdiction of Theme Committee 1 alone and would require drafting.

- 4.8 The ANC raised the concern that emphasis on a democratic constitution appeared to be omitted from the Report and expressed the view that the concept of democratic constitutionalism should be included in the Report under Part Two A: General Discussion. It was agreed that this matter would be further discussed at the next Theme Committee meeting.

5. ORIENTATION WORKSHOP FOR BLOCK 5 (THE ECONOMY)

- 5.1 The Briefing Document for Block 5 dealing with The Economy contained in Document A23 (Pages 34 - 40) was tabled. Prof Corder talked to the document.
- 5.2 The Theme Committee requested the Technical Experts to research whether there is any Constitution which has dealt with the issue of unpaid labour and to report back at the next Theme Committee meeting.
- 5.3 The Chairperson reminded the parties that the deadline for Party Submissions for Block 5 was Thursday 25 May 1995.

6. PUBLIC PARTICIPATION

- 6.1 Report on Public Hearings held on 12 and 13 May

Traditional Authorities

A member of the Theme Committee who had attended the Traditional Authorities Public Hearing gave a short report and noted that the matters discussed did not directly concern Theme Committee One.

Children's Rights

A member of the Theme Committee who had attended the Children's Rights Public Hearing gave a short report and noted that most of the matters discussed related to the work of Theme Committee 4.

6.2 CPM'S on 20 May 1995

The Secretary informed the meeting of the CPM's to be held on 20 May in Upington (Northern Cape), Harrismith (Free State) and Taung (North West). It was agreed that the names of members wishing to attend these meetings would be submitted to the Secretary by 10h00 on Tuesday 16 May 1995.

6.3 CPM'S in Kwazulu/Natal

Concern was expressed that the province of Kwazulu/Natal should not be excluded from the Constitutional Public Meetings. It was agreed that this matter would be referred for discussion at the Management Committee meeting on Thursday 17 May.

7. GENERAL

7.1 None

8. CLOSURE

8.1 The meeting rose at 11h25.

CHAIRPERSON