

01/8/11/12/2

CONSTITUTIONAL ASSEMBLY

**CONSTITUTIONAL COMMITTEE
SUB-COMMITTEE**

**DRAFT REPORT OF DISCUSSIONS
28 SEPTEMBER 1995**

CONSTITUTIONAL ASSEMBLY

DRAFT REPORT OF THE CONSTITUTIONAL COMMITTEE SUBCOMMITTEE

28 SEPTEMBER 1995

1 PLAIN LANGUAGE

Mr P Knight made a presentation regarding the use of plain language in legal drafting.

2 SYMBOLS

2.1 National Territory

It was agreed that this should be referred to a committee of experts who would investigate this matter and report to the Subcommittee.

2.2 National Anthem

The ANC suggested that the National Anthem be contained in a proclamation.

The NP and the FF stated that they felt strongly that the National Anthem should be contained in the Constitution.

It was agreed that this would be taken up in bilateral meetings between parties.

The following options were identified:

- i) Nkosi Sikelele and Die Stem in full
- ii) Parts of Nkosi Sikelele and Die Stem
- iii) Either Nkosi Sikelele or Die Stem
- iv) Omitting the National Anthem from the Constitution

2.3 National flag

The ACDP, ANC, DP, FF and NP agreed that the present national flag would be retained.

2.4 Coat of Arms

It was agreed that a subcommittee with representatives from all the parties would be established to look at the Coat of Arms.

It was agreed that parties would submit names of their representatives on this committee to the Administration as soon as possible, in order that it could begin its work.

2.5 Seat of Government

It was agreed that the Chairpersons would liaise with the Cabinet and the National Assembly in order to ensure co-operation in dealing with this matter. The DP expressed concern that Cabinet should not preempt the CA discussion on the issue.

2.6 Language

It was agreed that the 11 official languages as set out in the interim constitution should be recognised and accepted in the new Constitution.

It was agreed that the parties would proceed with bilateral discussions on the application of the official languages.

It was agreed that sign language would be catered for in a clause like section 3(10)(c) of the interim Constitution.

3 JUDICIARY

It was agreed that the draft text on the judiciary would be deliberated upon at the next meeting of the Subcommittee.

4 INDEPENDENT INSTITUTIONS

The following outstanding issues within the fifth draft chapter on Independent Institutions were considered:

4.1 Division of Chapter

It was noted that the chapter had not been reorganised as suggested in a previous meeting of the Subcommittee.

4.2 Auditor General

Discussion on the Auditor General was held over to the next meeting of the Subcommittee in order that the document tabled by the Panel of Constitutional Experts entitled *Auditor-General* could be studied by the parties.

4.3 Electoral Commission

It was agreed that clause 3(2) which describes the role of the Electoral Commission as that of "management of free and fair elections" should replace the equivalent section in the draft on the National Executive.

It was agreed that clause 4 should be reformulated. The meeting suggested this formulation:

The Electoral Commission shall be composed of a minimum of three persons appointed for a fixed term and eligible for re-appointment.

4.4 Public Protector

The NP withdrew their reservation regarding clause 5(3) as set out in footnote 18.

Discussion on clause 5(4) was held in abeyance until the chapter dealing with the Administration of Justice has been finalised.

The NP expressed dissatisfaction with the phrase "except in exceptional circumstances" contained in clause 5(5). It was agreed that this phrase would be scrutinised in the process of refinement.

4.5 Human Rights Commission

It was noted that clause 8(2) was very detailed. It was agreed that this clause could be rationalised within the refinement process.

4.6 Commission for Gender Equality

It was agreed that this section should be revisited once the Platform of Action report from the Beijing conference had been finalised.

It was agreed that this section would be redrafted.

It was suggested that clauses 10(2)(i) and 10(2)(ii) should be seen as separate options.

It was suggested that clause 10(3) could fall away or be included in a footnote.

4.7 General provisions

Clause 11(4) was agreed to.

It was agreed that parties should enter into bilateral discussions regarding the appointment and dismissal mechanisms for office bearers of independent institutions.

4.8 Financial and Fiscal Commission

It was agreed that a draft on this would be placed before the Subcommittee at its next meeting.

4.9 Central Bank

The NP stated that it supported the establishment clause proposed by the DP contained in footnote 51.

The meeting expressed a preference for clause 15(1) set out in footnote 51 in place of the present clause 15.

The DP withdrew its reservation as set out in footnote 52.

It was agreed that further discussion on the Central Bank would be deferred, as not all party representatives on this matter were present.

4.10 Public Administration Commission

This section was agreed to.

5 NATIONAL EXECUTIVE

The following outstanding issues within the fifth draft chapter on the National Executive were considered:

5.1 Executive power (clause 1)

The ANC proposed that the term "President" be used instead of "State President". This was agreed to.

5.2 Election of President (clause 3)

It was agreed that the President of the Constitutional Court should preside over the election of the President.

5.3 Assumption of office (clause 4)

It was agreed that the President should assume office on the day of his or her election.

5.4 Term and vacation of office and filling of casual vacancies (section 5)
It was agreed that clause 5(2) would be replaced by the formulation contained in footnote 11. The ANC and NP registered their reservations.

5.5 Powers and functions (clause 6)
The memorandum entitled *The Constitutional accommodation of Executive Power* authored by the Panel of Constitutional Experts (contained in the documentation for the meeting) was noted.

It was agreed that the entire draft chapter on the National Executive should be reorganised along the lines suggested in section 4.2.4 of the said memorandum. It was agreed that members of the Panel should be involved in redrafting this chapter.

It was agreed that the question of Presidential prerogatives would be revisited at the next meeting of the Subcommittee.

5.6 Confirmation of executive acts of President (clause 7)
It was agreed that the Technical Advisors would draw up an opinion on the implications of removing the seal.

5.7 Remuneration (clause 8)
The DP stated that they were opposed to the removal of subclause (2), contained in footnote 24.

The ANC reserved their position on this.

5.8 Deputy President(s)/Prime Minister (clause 9)
It was agreed that this would be explored further in bilateral meetings.

5.9 Acting President (clause 10)
It was agreed that clause 10(d) should be replaced with a formulation which provides for the National Assembly to elect an Acting President.

The ANC reserved its position in this regard.

The ANC stated that they did not support the formulation contained in clause 10(2). This clause was referred to the Technical Advisors for amendment.

5.10 Removal of State President or Deputy State President (clause 11)
It was agreed that votes of no confidence and impeachment would be explored in bilateral meetings between the parties.

5.11 Cabinet (clause 12)

It was agreed that the composition of the Cabinet would be explored in bilateral meetings between the parties.

5.12 Appointment and dismissal of Ministers and Deputy Ministers (clause 13)

It was agreed that this would be addressed in bilateral meetings.

5.13 Oath or solemn affirmation (clause 14)

This clause was agreed to.

5.14 Accountability of Ministers and Cabinet (clause 15)

It was agreed that this would be explored further in bilateral meetings.

5.15 Conduct of Cabinet and Deputy Ministers (clause 16)

It was agreed that this should be redrafted to read:

Members of the Cabinet and Deputy Ministers shall act in accordance with a code of ethical conduct which shall be prescribed by a national law. It shall be forbidden for members of the Cabinet and Deputy Ministers -

It was agreed that the word "using" in subclause (c) should be replaced with "misusing" or "using improperly".

5.16 Votes of no confidence (section 20)

It was agreed that this would be explored further in bilateral meetings.

6 ELECTORAL SYSTEMS

The following outstanding issues within the second draft on the Electoral System were considered:

6.1 The NP and the FF stated that the electoral system should not be set out in law, but detailed in a schedule of the Constitution. This was agreed to.

6.2 It was agreed that Schedule 2 of the interim Constitution should be studied as a basis for further discussion.

7 AMENDMENT TO THE CONSTITUTION

The following outstanding issues within the third draft on the Amendment

to the Constitution were considered:

7.1 It was agreed that a clause based on Constitutional Principle XVIII(4) should be drafted.

7.2 It was further agreed that this section would be revisited in the context of the entire draft Constitution.

8 NATIONAL AND PROVINCIAL LEGISLATIVE AND EXECUTIVE COMPETENCIES

It was agreed that discussion on competencies would proceed bilaterally.

9 ANY OTHER BUSINESS

It was agreed that the Sub-Committee would attempt to make up lost time and meet between 11 - 13 October, if the parliamentary programme allowed. The Administration would liaise with parliament and notify members.

