

2/4/2/1/1/36

TC2/29(2)

CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 2
STRUCTURE OF GOVERNMENT
THEME COMMITTEE MEETING

Monday
28 August 1995
14h00 - 18h00
M46

DOCUMENTATION
Vol 2: Minutes of Previous Meetings

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CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 2
MINUTES OF COMMITTEE MEETING

Monday
7 August 1995
9h00
M46

PRESENT

Mahlangu MJ (chairperson)

Badenhorst MJ
Daile N
Doidge GQ
Ebrahim AG
Eglin CW
Foster JA
Holomisa SP
Hendrickse PAC (Alt)
Louw SK
Mashile NL (Alt)

Mlangeni A
Mahlamonyane GM
Mothoagae PK
Mutsila I
Nxumalo SDW
Rabie JA
Ranchod BG
Sekgobela PS
Shabangu S
Taunyane DP
Tolo LJ

ABSENT

Mars I
Msomi M
Ndlovu VB

APOLOGIES

Mabudafhasi RT
Mwedamutsu MJ
Lebona HJP
Sethema BEE

IN ATTENDANCE

Nene J, Smit T
members of the CPG and Volkstaat Council were also in attendance

1. OPENING AND WELCOME

1.1. The meeting was opened and chaired by Mahlangu MJ.

2. MINUTES OF PREVIOUS MEETING

2.1. The meeting agreed to adopt minutes before the meeting at the following meeting.

3. REPORT AND PROPOSED DRAFT FORMULATIONS ON ELECTORAL SYSTEM

3.1. Prof Nico Steytler presented the first draft of the report prepared by the Technical Committee.

3.2. In respect of a referral from TC1 which pertains to the electoral system, the meeting agreed that this more appropriately resorts under Theme Committee 1. It was agreed that TC1 was looking at the question "who can vote", which includes matters such as citizenship and franchise. It was agreed that TC2 was concentrating on the question "how can you vote".

3.3. The meeting discussed the report on a point-by-point basis.

BLOCK 1: MULTI-PARTY DEMOCRACY

3.4. The meeting agreed that the report was a correct reflection of the position.

BLOCK 2: REGULAR ELECTIONS

- 3.5. The meeting agreed that the question of a fixed vs a flexible term of office had not been fully canvassed. It was agreed that this matter be further debated by the CC.

BLOCK 3: UNIVERSAL ADULT SUFFRAGE

- 3.6. The meeting agreed that this matter resorts under TC1 (see further under general comments above).

BLOCK 4: A COMMON VOTERS ROLL

- 3.7. Prof Steytler stated that two issues arose in this regard: first, the question whether there should be a roll, and second, in the case of agreement on a roll, whether it should be a common voters roll.
- 3.8. The DP stated that the principles came into effect only after the first election.
- 3.9. Some members expressed the view that different considerations may apply to provincial and local government elections.

BLOCK 5: A COMBINATION OF PARTY LIST(S) AND CONSTITUENCIES AS AN EXPRESSION OF "IN GENERAL PROPORTIONAL REPRESENTATION", AS REQUIRED BE CP VIII

- 3.10. Prof Steytler indicated that there appeared to still be fluidity concerning the precise nature of party lists and constituency links with proportional representation.
- 3.11. The ANC questioned whether there was a need to make provision for constituencies in the report.
- 3.12. The DP stated that one had to look at the Constitutional Principles for an answer. They stated that the Committee needed to look for principles which apply to all levels of government. They stated that they thought that flowing from "in general proportional representation", there was a dominant view in the Committee that there should be a combination of constituencies with party lists. They stated that a footnote could then be added which noted the views of the parties which disagree with the general view.
- 3.13. The ANC responded that this could be further addressed when the Committee viewed the draft formulations.
- 3.14. Prof Steytler stated proportional representation looked at the end result, whereas another question arose, namely how to achieve that end result, and whether it could be done through party lists and constituencies.

BLOCK 6: APPLICATION TO NATIONAL ASSEMBLY ONLY?

- 3.15. The DP indicated that one had to see whether the criteria applied to each of the three levels of government.
- 3.16. The Committee agreed that it was a technical matter as to whether the binding principles needed to be restated, or whether they would be contained in an omnibus clause.

BLOCK 7: INDEPENDENT ELECTORAL COMMISSION?

- 3.17. The Committee agreed that this item resorted under Theme Committee 6.1.

BLOCK 8: DELIMITATION OF CONSTITUENCIES

- 3.18. The DP stated that this matter deserved serious attention, especially because there had been recent and related difficulties arising in practice.
- 3.19. The ANC stated that they supported the position that special structures should be competent to deal with these matters.
- 3.20. The meeting agreed that this was also dealt with by TC6.1., but should be included in the TC2 report.

BLOCK 9: TYPE OF PROPORTIONAL REPRESENTATION TO APPLY

- 3.21. The meeting agreed that an electoral act could explain this procedure.

"DRAFT PROVISIONS FOR INCLUSION IN THE CONSTITUTION"

- 3.22. The meeting agreed in general that these provisions do not prejudice the question whether there should be an omnibus provision.
- 3.23. The draft provision read as follows:
- "(1) The electoral system of the Republic shall be based on the principles of multi party democracy, regular elections, universal adult suffrage, a common voters' roll, proportional representation, and constituencies, as further provided for by Act of Parliament.
- (2) An election for members of any legislature in the Republic shall be conducted under the supervision of an independent electoral commission, to be established in terms of an Act of Parliament."
- 3.24. In respect of (1), it was agreed that it be phrased differently:
"The electoral system of the Republic shall be based on regular elections, a common voters' roll, and proportional representation, as further provided for by Act of Parliament. It

was further agreed that the issue of proportional representation should really be presented as follow: "party lists and constituencies resulting in proportional representation."

- 3.25. The ANC stated, however, that they reserved their position regarding the above inclusion of the word "constituencies"
- 3.26. The DP agreed that the one must not be seen as the alternative of the other.
- 3.27. The ANC stated that they failed to see how proportional representation would be achieved by the Constituency system, and that what was relevant was the issue of party lists.
- 3.28. The DP agreed with the ANC's last statement, noting that constituencies distort proportionality. They stated that one could not have proportionality in general, but would have to combine it with party lists to achieve proportionality.
- 3.29. Prof Steytler summarised the meeting's decision by stating that the result must be reflected as proportional representation. He stated that this could only be achieved by the list system. He stated that one could, however, introduce constituencies which served as correction where distortion took place.
- 3.30. The ANC proposed the following formulation "...and in general proportional representation as further provided for by Act of Parliament."
- 3.31. According to Steytler, the question remained whether to refer to constituencies.
- 3.32. The meeting agreed that a footnote would be included to the effect that the majority of parties preferred the constituency system.
- 3.33. In respect of (2), the meeting agreed that "any" legislation in the Republic was too broad, and that "any" should therefore be deleted.

"VACANCIES" AS ITEM IN THE NATIONAL ASSEMBLY DRAFT FORMULATIONS

- 3.34. Prof Steytler raised a further matter which could be addressed in the report. He suggested to include the formulations in the National Assembly draft, under the item "vacancies, that this should be filled by electoral law as prescribed for by an Act of Parliament.
- 3.35. The meeting agreed that the above suggestion be included separately in the Electoral System report, and also incorporated into the National

Assembly draft formulations.

GENERAL

- 3.36. The DP raised a further matter, namely that there was uncertainty as to what applied in respect of the 1999 elections.
- 3.37. The ANC responded that Parliament could still even after the CA completed its work until 1999 draft the Act.
- 3.38. To this the DP responded that such an Act would be passed by a Parliament that was still not adequately constituted.
- 3.39. The meeting agreed that the report be finalised by the Technical Committee together with the Legal Department, and then submitted to the CC. The meeting further agreed that the Technical Committee should ensure that all the IFP submissions which contain relevant IFP positions should be reflected in all reports.

4. ANY OTHER BUSINESS

- 4.1. The meeting received notices of Constitutional Public Meetings which would take place in Port Shepstone and Empangeni.

5. CLOSURE

- 5.1. The meeting closed at 11h30.

CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 2
MINUTES OF COMMITTEE MEETING

Thursday 10 August 1995
14h00
M46

PRESENT

Ackerman C (chairperson)

Badenhorst MJ
Daile N
Doidge GQ
Hendrickse PAC (Alt)
Ligege MG
Louw SK
Moloto CP (Alt)
Mahlangu MJ

Mohlamonyane GM
Mothoagae PK
Mushwana GM
Mutsila I
Mwedamutsu MJ
Phakathi NE (Alt)
Ranchod BG
Sethema BEE
Shabangu S
Tolo LJ

ABSENT

Mars I
Msomi M
Ndlovu VB

IN ATTENDANCE

Nene J, Smit T, Nhlapo T, Corder MC, Irvine D

1. OPENING AND WELCOME

- 1.1. The meeting was opened by Mahlangu MJ. On his request the Committee agreed that the meeting be chaired by Ackerman C.

2. MINUTES

- 2.1. Minutes of previous meetings were adopted

3. REPORT ON SELF-DETERMINATION

- 3.1. Prof Hugh Corder presented the Ad Hoc Committee on Self-determination's report. He noted that the FF's submission was being tabled at the meeting and had not been incorporated into the report. He suggested that as it was a substantial submission, the FF be given an opportunity to present it to the Committee. He also noted that no recommendations in respect of this matter had been received from the Commission on Provincial Government (CPG).
- 3.2. In respect of the FF's submission, the meeting agreed that the FF present their submission to the meeting and that the submission be incorporated into the report. In respect of the lack of CPG input, the meeting made a formal request that they also make recommendations in this regard which should then be incorporated into the report.
- 3.3. Senator PH Groenewald presented the FF's submission to the Committee.
- 3.4. The meeting agreed that the report would be updated by the Ad Hoc Committee on Self-determination, and would again be presented to the Theme Committee.

4. CLOSURE

- 4.1. The meeting closed at 15h30.

CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 2
MINUTES OF COMMITTEE MEETING

Monday 14 August 1995
14h00
M515

PRESENT

Rabie JA (chairperson)

Ackerman C
Badenhorst MJ
Beyers AS
Daile N
Doidge GQ
Holomisa SP
Hendrickse PAC (Alt)
Ligege MG
Louw SK
Mabudafhasi RT
Mahlangu MJ
Mlangeni A
Mohlamonyane GM
Mothoagae PK

Mushwana GM
Mutsila I
Mwedamutsu MJ
Pahad EGH
Phakathi NE (Alt)
Rabie JA
Ranchod BG
Sekgobela PS (Alt)
Sethema BEE
Shabangu S
Steenkamp PJ (Alt)
Taunyane DP
Malatsi DM

ABSENT

Mars I
Msomi M
Ndlovu VB

IN ATTENDANCE

Nene J, Smit T, Nhlapo T, Steytler N

1. OPENING AND WELCOME

1.1. The meeting was opened and chaired by Rabie JA.

2. REPORT-BACK FROM CC ON NATIONAL ASSEMBLY, NATIONAL EXECUTIVE AND ELECTORAL SYSTEM

2.1. Mahlangu MJ reported that the above reports and draft formulations from TC2 were discussed in the CC and referred to the CC Subcommittee.

3. REPORT ON CONSTITUTIONAL AMENDMENT

3.1. Prof Nico Steytler presented the TC2 Technical Committee's first draft report on Constitutional Amendment. He prefaced his report by stating that there are three distinct ways that the provisions of the Interim Constitution are entrenched.

3.2. He stated that a public submission by Reitz Attorneys included in the report pertained more specifically to a problem regarding the President's power to allocate the powers of one minister to another.

3.3. The ANC stated that the NP submission appeared to be addressing matters beyond amendment and related also to procedures, and that the ANC were placing those matters in contention. The meeting agreed that another column would be added to deal with those matters.

3.4. The meeting agreed that draft formulations be prepared and submitted for approval by the Core Group. It was agreed that only if the Core Group experienced great difficulties with the draft formulations would it be necessary to table it before the Theme Committee.

4. REPORT ON TRADITIONAL LEADERS

- 4.1. Prof Thandabantu Nhlapo presented the Ad Hoc Technical Committee on Traditional Leaders' first draft report on Traditional Leaders. He made the general comment that much of the content of the submissions from the public unfortunately could not find expression in constitutional form.

Discussion of Schematic Summary

- 4.2. **Item 1, comment 3**

The NP raised the possibility of placing this item under agreement, that recognition should be conferred only on "authentic" or "legitimate" traditional leaders. They stated that this recognition could be conferred by a "body of experts" or something similar. They stated that it would only be a small percentage of persons claiming to be traditional leaders who would be in dispute, but that a procedure was needed to deal with this problem in order to avoid tribal wars.

- 4.3. The ANC stated that it should then be added that recognition should take place in accordance with traditional law. They stated that they supported the appointment of a Commission to look at the contestations. They stated that that matter could be addressed in separate legislation.

- 4.4. **item 1, agreement 2**

The ANC questioned the addition of the term "and any other law" in "Indigenous law should be recognised and made subject to the Constitution and any other law."

- 4.5. Prof Nhlapo suggested the phrase in question be replaced with "legislation."

- 4.6. The ANC reiterated that agreement 2 does not reflect Constitutional Principle XIII. They stated that the way it was stated in the report makes it appear that they were stating that Indigenous law should have the same status as Roman Dutch law.

- 4.5. **item 2, contention 1**

Prof Nhlapo indicated that this matter was set out more fully under item 3.2. in the body of the report.

- 4.6. The ANC stated that this was rather a matter for comment, and was not raised by any party.

- 4.7. The NP stated that it seemed that Parliament could decide in 10 years that traditional leaders could only play a role at local level.

- 4.8. The ANC responded in the negative; they stated that they had

thought that there had been general agreement amongst political parties that traditional leaders play a role at national, provincial, and local level - and that this would be written in the Constitution. They stated that it was not necessary to stipulate exactly what the legislation must say, but the legislation would have to be consistent with the constitutional provisions.

4.9. item 4, contention 2

The meeting agreed to delete the word "only" in the sentence "ANC and NP view traditional leaders' participation at National level as advisory "only."

4.10. item 5, agreement 2

The meeting agreed that the Technical Advisers would look at and refine the sentence " Service provision must be limited to elected and accountable officials".

4.11. Prof Nhlapo noted that the rationale for the inclusion of that sentence was the apparent agreement that traditional leaders were not expected to play the role as providers of services without submitting themselves to popular election and working through popularly elected structures.

4.11. item 6, agreement 1

The ANC stated that the meeting needed to give attention to the question of "Traditional Authorities" with regard to the Interim Constitution.

4.12. The NP stated that one could not recognise the institution without authority. They stated that there was, however, a need for common terminology. They suggested the use of indigenous terminology.

4.13. The ANC stated that it could be noted under the "comment" column that the question of "traditional authorities" had to be addressed, as certain matters relate to the structures as they had existed before.

4.14. terminology

A member raised the concern that communities want recognition of the seniority, or hierarchy, within the traditional structures.

4.15. The meeting agreed that it should not be stipulated each time in the Constitution what constitutes the hierarchy which encompasses the term. It was noted that it would cause problems to stipulate the hierarchy each time the hierarchy is intended. It was further agreed that if a definition of the hierarchy was sought, the inclusion in the constitution of such a definition was an entirely different matter.

- 4.16. The ANC stated that the Interim Constitution refers to recognition of the role of Zulu Monarchy in Section 160 (3) (b) in the case of the province of Kwazulu/Natal, but not to Monarchy in general as may be applicable elsewhere. The meeting noted that there had not been any specific written party political submissions on this point.
- 4.17. The meeting agreed that the current position created the impression that only one King was recognised, and that the others were not. It was agreed that this issue was contentious.
- 4.18. The meeting agreed that the draft formulations be prepared and submitted to the Core Group, in the same manner as those relating to Constitutional Amendment.

5. ANY OTHER BUSINESS

- 5.1. The ANC agreed to make their further submission on the Senate available by the following week.

6. CLOSURE

- 6.1. The meeting closed at 15h30.

CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 2
MINUTES OF COMMITTEE MEETING

Monday
21 August 1995
9h00
M46

PRESENT

Rabie JA (chairperson)

Ackerman C

Badenhorst MJ

Beyers AS

Daile N

Doidge GQ

Ebrahim AG

Eglin CW

Foster JA

Groenewald PH

Holomisa SP

Hendrickse PAC (Alt)

Ligege MG

Louw SK

Mabudafhasi RT

Mlangeni A

Moloto CP (Alt)

Mothoagae PK

Mushwana GM

Mutsila I

Nxumalo SDW

Olifant DAA

Pahad EGH

Phakathi NE (Alt)

Ranchod BG

Sethema BEE

Shabangu S

Taunyane DP

Tolo LJ

ABSENT

Mars I
Msomi M
Ndlovu VB

IN ATTENDANCE

Nene J, Smit T, Nhlapo T, Corder MC, Irvine D

1. OPENING AND WELCOME

1.1. The meeting was opened and chaired by Rabie JA.

2. MINUTES OF PREVIOUS MEETING

2.1. The meeting noted that the minutes would be available at the following meeting.

3. REPORT ON SELF-DETERMINATION

3.1. Prof W Breytenbach presented the Second Draft Report on Self-determination. He stated that the FF submission and CPG recommendations had been incorporated as requested.

3.2. He also indicated that an additional page to the above report was being tabled at the meeting. He stated that the additional page would become point 6 g. of the report relating to suggested approaches. He stated that the addition was really a specific response to a request at the previous meeting to refine the matter, was merely a starting point for debate, and was not taken specifically from submissions. He stated that due to the constraints of time not all the Technical Advisers had yet looked at the page.

SUGGESTED APPROACHES

3.3. Discussions arose out of the point 6 g. which read as follows:

"The most appropriate form of constitutional provision may be a commitment to pursue, through negotiations, the issue of internal self-determination in some form, the outcome of which will be binding on any future government until the issue has been resolved to the satisfaction of all those aspiring to self-determination. Depending on the ease with which the final Constitution may be amended, it will probably be necessary to entrench this provision (i.e. self-determination through negotiations) in some way, e.g. making its amendment or repeal subject to a special majority in one (or both)

Houses of Parliament, and/or requiring the concurrence of a certain number of, or even particular provinces, and/or perhaps other structures which may have been set up in order to facilitate the resolution of the issue.

In order to preserve maximum flexibility (i.e. the incremental approach), such a provision ought to be general in formulation and broad in scope, using the type of language to be found in the Constitutional Principles (in Schedule 4 to the 1993 Constitution)."

- 3.4. The ANC stated that they would only support only part of the statement, as it was tautologous, reference to "inernal" self-determination was incorrect, and it was not at this stage possible to describe the process in such detail.
- 3.5. The ANC suggested the following wording as reflecting a suggested approach: "The most appropriate form of constitutional provision may be a commitment to pursue, through negotiations, the issue of self-determination in some form until the issue has been resolved.
- 3.6. The NP stated that they generally agreed with such a formulation, but would insist on inclusion of the phrase which indicates that it is binding on a future government.
- 3.7. The ANC thereupon agreed that the sentence would read: "The most appropriate form of constitutional provision may be a commitment to pursue, through negotiations, the issue of internal self-determination in some form, the outcome of which will be binding on any future government until the issue has been resolved."
- 3.8. Prof Corder indicated that the original wording of point 6 g. was based upon the Constitutional Principle XXXIV.
- 3.9. The Committee then entertained further discussion on the effect of the Constitutional Principle.
- 3.10. The meeting pointed out that the Constitutional Principle does not bind the CA to make provisions in the final Constitution.
- 3.11. The meeting noted that the Constitutional Principle states that the right to self-determination shall not be construed as precluding ... constitutional provision. It was generally agreed that this was not to be interpreted as an injunction to write something into the constitution.

TABULAR SUMMARY

3.12. The Committee also discussed the form and content of the tabular summary. The meeting agreed that instead of having recommendations 9-10, it could be stipulated under the comments column. It was also agreed that there should be an elaboration of the columns on agreement and disagreement. It was also agreed that it should be pointed out how the different parties are affected by the debate, for example the ANC stated that they were open to further discussions. It was further agreed that the specific proposals of the parties such as FF should be detailed in a comment column.

FORMS OF SELF-DETERMINATION

3.13. The meeting agreed that it would aid further discussion if there were comment in the report on the different ways in which self-determination can take place. An interest was specifically expressed as to what extent agreement on cultural self-determination could be used as basis for territorial and/or political self-determination. An opinion was also expressed that there appeared to be unfolding agreement in respect of cultural self-determination, but that that does not mean that there was any agreement on territorial self-determination.

4. CLOSURE

4.1. The meeting closed at 10h30.