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CONSTITUTIONAL ASSEMBLY

**CONSTITUTIONAL COMMITTEE
SUB-COMMITTEE**

**DRAFT REPORT OF DISCUSSIONS
22 JANUARY 1996**

CONSTITUTIONAL ASSEMBLY

**DRAFT REPORT OF CONSTITUTIONAL COMMITTEE SUBCOMMITTEE
MEETING
MONDAY 22 JANUARY 1996**

1. OPENING

- 1.1 Mr Wessels opened the meeting at 10h15 and welcomed everybody and wished them well for 1996.
- 1.2 Mr Wessels tabled the document "*Overview of submissions received as at 15 January 1996*" and informed the meeting that these submissions were available to anybody who wished to have sight of them. He further noted that the closing date for submissions is 20 February 1996 and that the Management Committee would thoroughly discuss the matter to ensure that cognisance is taken of all submissions received and that these are integrated into the process. He emphasised that this is an ongoing process of discussion and that the issues on the agenda are matters which have been listed as outstanding.
- 1.3 He encouraged parties to use the time set aside in the draft schedule of meetings for research and consultations in order to move the process forward.

2. DISCUSSION: REFINED WORKING DRAFT (THIRD EDITION)

The meeting adopted the agenda and the documents "*Refined Working Draft (Third Edition)*" and "*Additional Documentation, 22 January 1996*" were tabled for discussion.

3. SECTION 1(1): REPUBLIC OF SOUTH AFRICA

- 3.1 The DP proposed the deletion of the verbs in this Section to read:

"The Republic of South Africa is one sovereign democratic state founded on a commitment to equality, human dignity, fundamental human rights and freedoms."

- 3.2 This matter was noted for further discussion.

4. SECTION 1(2): NATIONAL TERRITORY

Mr Ebrahim reported that it had been agreed by the CC Sub-Committee that a team of experts, including the Surveyor-General and representatives from the Department of Foreign Affairs, would be consulted on an accurate definition of the National Territory. This matter was being pursued and a report would be tabled in due course.

5. SECTION 5: NATIONAL SYMBOLS

5.1 National Flag

- i The NP proposed that the description of the colours of the flag in Section 5 be consistent with the colours in Schedule 2.
- ii The ANC proposed that the description of the flag in Schedule 2 be in plain language.
- iii It was agreed that the Refinement Team would look at a possible reformulation of Schedule 2.

5.2 Coat of Arms

It was agreed that:

- (a) parties would submit names of their representatives for the Coat of Arms subcommittee to the Administration as soon as possible;
- (b) the Coat of Arms would be as described in national legislation;
- (c) the Administration would gather the necessary information, including the submission from the State Herald, and make this available to the appropriate forum who would deal with the issue.

5.3 National Anthem

It was agreed that this matter be referred for further discussion by the parties.

6. SECTION 6: LANGUAGES

- 6.1 It was agreed that this matter be referred for further discussion by parties.
- 6.2 Regarding Option 1 Section 6(3), the meeting noted the omission of the

words "the Khoi and San Languages," and that the section should read:

" The Pan South African Language Board is also responsible for promoting respect for and the development of languages including the Khoi and San Languages, German, Greek, Gujarati, Hindi, Portuguese, Tamil, Telegu, Urdu, sign language and other languages commonly used by communities in South Africa, as well as Arabic, Hebrew, Sanskrit and other languages used for religious purposes."

7. SECTION 7: STATE'S DUTY TO RESPECT AND PROTECT RIGHTS

- 7.1 The NP expressed concern that the question of horizontality and verticality needed to be addressed.
- 7.2 The DP stated that it was in favour of a degree of horizontality but raised the question of the issue of the private sphere of personal autonomy which should be preserved.
- 7.3 It was agreed that this matter was referred for further discussion by the parties.

8. SECTION 8: EQUALITY

- 8.1 It was agreed that this matter be referred for further discussion by the parties.
- 8.2 The meeting noted a correction to the document titled "*Errata*", that the question of horizontality referred to Section 8(2) and not Section 8(1).

9. SECTION 10: LIFE

It was agreed that this matter be referred for further discussion by the parties.

10. SECTION 11(2): FREEDOM AND SECURITY OF THE PERSON

- 10.1 The NP, supported by the DP said they were in favour of the deletion of the words in brackets.
- 10.2 The ANC strongly favoured the inclusion of the bracketed words and Section 11(2)(b).
- 10.3 It was agreed that the matter be referred for further discussion by parties.
- 10.4 It was agreed the Panel would prepare an opinion on the implications of the wording of Section 11(2). They were requested to consider the following:

- i Whether 11(2)(b) constitutionalised the right to abortion or not; and
- ii Whether the words in brackets in 11(2) were redundant in that security of the person already implied, in the opinion of some parties, both bodily and psychological integrity.

11. SECTION 13: PRIVACY

- 11.1 The meeting considered the DP proposal that the word "*intercepted*" be inserted in addition to "*violated*":
- 11.2 The ANC expressed the view that the insertion of "*intercepted*" would restrict the understanding of "*violated*" which conveyed a broader concept. However, they said they were not opposed to using another term, if another stronger word could be found to incorporate the notion of violation of communication and which met the DP's concerns.
- 11.3 The NP supported the DP proposal, or, alternatively proposed that the wording be "*violated in any way*".
- 11.4 It was agreed that the matter be referred to the parties for further consideration and to the Panel of Experts for a further opinion taking into account the issues raised. Parties were requested to ensure that when matters were referred to the Panel for further opinion, they stated their concerns in writing directly to the Panel.

12. SECTION 14(3): FREEDOM OF RELIGION, BELIEF AND OPINION

It was agreed that this matter be referred to the Panel of Experts who should consider:

- (a) Consistent use throughout the section of the qualification "*that the system is consistent with the Bill of Rights*".
- (b) Recognition of religious law be addressed in the formulation of this section.

13. SECTION 15: FREEDOM OF EXPRESSION

13.1 Section 15(2)(c)

- i The DP proposed the deletion of this subsection on the grounds that it was redundant, in that discrimination was already outlawed by the constitution. Mr Eglin also queried whether the use of the word "*hatred*" in fact limited breach of the constitution.

- ii The NP supported the DP proposal, stating that this matter was adequately covered by Section 1, the limitations section and by proposed legislation.
- iii The ANC argued strongly in favour of the retention of this subsection, stating that South Africa's history required this matter to be addressed in the constitution. Their concern was that freedom of expression could be abused and used as protection by a person who incited hatred.
- iv It was agreed that this matter be referred to the Panel of Experts for an opinion and to the parties for further discussion.

13.2 Section 15(3)

- i The DP requested that its proposal expressed on Page 50 of *"Additional Documentation"* be included as an option for discussion by parties. The NP supported the DP proposal.
- ii The ANC supported Option 2 which included Option 1 but which went further in that *"represent broadly the views of society"* included not only the spectrum of views but also the weight of those views.
- iii It was agreed that the matter be referred for further discussion by parties and for possible reformulation by the Panel of Experts.

14. SECTION 18(2): POLITICAL RIGHTS

14.1 The NP proposed the following:

- i Section 18(2) be amended to read:

Every citizen of 18 years or older has the right to free, fair and regular elections for any legislative body established in terms of the Constitution, to vote in those elections and to do so in secret.

- ii Section 18(3) be amended to read:

"Every citizen of 18 years or older and who qualifies in terms of Section 42 of the Constitution, has the right to stand for election to public office and, if elected, to hold office."

14.2 The ANC raised the question of where to locate the different elements of this section.

14.3 It was agreed that there are a number of aspects to the section on political rights including that:

- (a) legislatures shall be elected by free, fair and regular elections
- (b) a citizen of a certain age is entitled to vote
- (c) a citizen of a certain age is eligible to stand for election
- (d) the right of the citizen to demand that the state hold elections.

14.4 It was agreed that the parties should submit their proposals in writing to the Panel of Experts to facilitate redrafting.

15. SECTION 20(4): FREEDOM OF MOVEMENT AND RESIDENCE

It was agreed that the FF concern about fugitive offenders was adequately dealt with in the applications clause, as suggested in the Technical Committee's note on page 50(a) "*Additional Documentation*".

16. SECTION 21: ECONOMIC ACTIVITY

16.1 It was agreed that this matter be referred for further discussion by parties.

16.2 The meeting noted that the NP favoured Option 2 and the DP proposed Option 3 which is contained on Page 52 of "*Additional Documentation*".

17. SECTION 22: LABOUR RELATIONS

17..1 It was agreed that this matter be referred for further discussion by parties.

17..2 The meeting noted the proposed DP amendment on Page 102 of "*Additional Documentation*".

18. SECTION 24: PROPERTY

It was agreed that this matter be referred for further discussion by parties.

19. SECTION 25: HOUSING AND LAND

19.1 The NP expressed its dissatisfaction with the way in which socio-economic rights had been dealt with and with the drafting of Section 25(2) where the NP wished the term "*after considering the relevant circumstances*" to be

bracketed. The NP also stated that it wished to reassess Section 25(1).

- 19.2 The ANC stated that each of the socio-economic rights should stand on its own and did not support the grouping of these rights. The ANC proposed that wording be found from an international covenant to provide for the progressive aspect of Section 25(3).
- 19.3 The DP requested an opinion from the Panel of Experts on the distinction between "*equitable*" and "*equal*" access to land and whether the use of the word "*progressive*" conveyed the correct meaning in Section 25(3).
- 19.4 It was agreed that the matter be referred for further consideration by parties and for further clarity from the Panel of Experts on the questions raised.

20. SECTION 27: CHILDREN

- 20.1 The NP proposed the inclusion of the term "*degradation*" after "*abuse*" in Section 27(1)(d) and the removal of the brackets around "*parental care*" in Section 27(1)(b). The NP supported Section 27(1)(c) as it stands.
- 20.2 The ANC stated that Section 27(1)(f) expressed its position.
- 20.3 The DP asked what the duties of parents were under Section 27(1)(b) and expressed its concerns about whether Section 27(1)(c) meant children had the absolute right to, or access to nutrition, shelter etc
- 20.4 It was agreed that the matter be referred for further discussion by parties.

21. SECTION 28: EDUCATION

It was agreed that this matter be referred for further discussion by parties and for clarity from the Panel of Experts that "*further education*" refers to senior secondary education or whether it could be interpreted as implying tertiary education.

22. SECTION 29: ACADEMIC FREEDOM

- 22.1 The NP and the DP expressed the view that this section should be a separate section.
- 22.2 It was agreed that this matter be referred for further discussion by parties.

23. SECTION 30: LANGUAGE AND CULTURE

- 23.1 It was agreed that this matter be referred for further discussion by parties, taking into account the NP proposal of an additional right on Collective Self-

Determination contained on Page 104 of "Additional Documentation".

23.2 The meeting noted the DP query regarding the need for the phrase "*but no one exercising these rights may violate the rights of anyone else*".

24. SECTION 31(1): ACCESS TO INFORMATION

24.1 The NP proposed that Section 31(1)(b) be bracketed in addition to Section 31(2).

24.2 The DP expressed concern about the potential invasion of privacy.

24.3 It was agreed that this matter be referred for further discussion by parties.

24.4 It was further agreed that the Panel should consider whether, if Section 31(2) was not included, individuals would have the right to access to, for example, intelligence reports.

25. SECTION 32: JUST ADMINISTRATIVE ACTION

It was agreed that this matter be referred for further discussion by parties.

26. SECTION 34(1)(e): ARRESTED, DETAINED AND ACCUSED PERSONS

26.1 The ACDP, DP and NP supported Option 1.

26.2 It was agreed that the Panel should consider the ANC view that this section should be in line with current bail legislation.

26.3 It was agreed that this matter be referred for further discussion by parties.

27. SECTION 35: LIMITATION OF RIGHTS

It was agreed that this matter be referred for further discussion by parties.

28. SECTION 36(1): STATES OF EMERGENCY

It was agreed that this matter be referred for further consultation and discussion by parties.

29. SECTION 38: APPLICATION

It was agreed that the DP would provide a draft formulation regarding the sphere of privacy and this matter be referred for further discussion by parties.

30. SECTION 108: PUBLIC PROTECTOR

- 31. The NP stated that it supported a period of seven years and that this should not be renewable.
- 32. It was agreed that this matter be referred for further discussion by parties.

31. SECTION 109: HUMAN RIGHTS COMMISSION

- 31.1 The NP referred to the memorandum prepared by the Refinement Team on Socio-Economic Rights and stated that it was not convinced by the argument contained therein as it appeared to propose an enforcement function of the Human Rights Commission.
- 31.2 The ANC and the DP requested more time to consider the memorandum.
- 31.3 It was agreed that this matter be referred for further discussion by parties.

32. SECTION 110: COMMISSION FOR GENDER EQUALITY

- 32.1 The DP proposed that provision be made in the constitution for the Commission for Gender Equality at a later stage to become part of the Human Rights Commission.
- 32.2 The ANC emphasised the importance of the role of the Commission for Gender Equality and stated that mechanisms could be built into the legislative process for constitutional review.
- 32.3 The NP reiterated its proposal that the Commission be called the Commission for Gender Equality and Development.
- 32.4 It was agreed that the matter be referred for further discussion by parties.

33. SECTION 111(2): AUDITOR-GENERAL

It was agreed that there are no ideological differences between parties on this matter but that a multi-party meeting would be convened to address all the sections of the Constitution dealing with financial matters. The Administration would make the necessary logistical arrangements and political parties would submit the names of their representatives to this meeting.

34. SECTION 113(1): ELECTORAL COMMISSION

- 34.1 The NP proposed the following amended formulation:

"The Electoral Commission is responsible for and must control, manage and monitor elections of national, provincial and local legislative bodies and ensure that they are free and fair".

43.2 It was agreed that there was no disagreement among political parties. It was intended that the Commission should manage, but not actually run, elections at all levels. It was agreed that the reformulation by the Refinement Team had not met the concerns raised in this regard in earlier meetings.

43.3 It was agreed that the Panel would consider the NP formulation and that this matter be referred for further discussion by parties.

44. SECTION 115(4): GENERAL PROVISIONS

Appointments

It was agreed that there was an outstanding issue of how the committee referred to in Section 115(4) would be constituted and that the NP had tabled a proposal in this regard. This matter was referred for further discussion by parties.

45. ANY OTHER BUSINESS

It was agreed that the meeting of the Constitutional Committee Sub-Committee scheduled for Tuesday 23 January 1996 be cancelled to allow for further discussion by parties. The next meeting of the CC Sub-Committee would be held on Wednesday 24 January 1996 at 14h00.

46. CLOSURE

The meeting rose at 14h40.

