

2/2/11/18/15

CONSTITUTIONAL ASSEMBLY

DRAFT REPORT

**CONSTITUTIONAL COMMITTEE SUB-COMMITTEE MEETING
MONDAY 29 JANUARY 1996**

1. OPENING

- 1.1 Mr Ramaphosa opened the meeting at 14h40 .
- 1.2 It was noted that a number of bi-lateral meetings on the National Assembly had taken place in the morning.
- 1.3 The following documentation was tabled:

*Documentation of 29 January 1996
Submissions received as at 29 January 1996:
Volume III, parts 1 and 2
Volume IV, parts 1 and 2*

- 1.4 Discussion was based on the *Third Edition of the Working Draft*.

2. DISCUSSION: NATIONAL ASSEMBLY

2.1 Section 40: Legislative authority of Republic

- 2.1.1 It was agreed that this be revisited after competencies were finalised and a decision on the Senate/Council of Provinces is taken.

2.2 Section 41: Composition and election of National Assembly

- 2.2.1 It was agreed the National Assembly should consist of not less than 300 and not more than 400 members, with the exact number to be determined by national legislation. The Technical Refinement Team, would consider a new formulation for the clause.
- 2.2.2 It was noted that the DP said they would continue to pursue their position of 300 members, when this was dealt with in legislation.
- 2.2.3 It was agreed the phrase stating the electoral system "*...is based on a common voters roll and [results], in general, [in] proportional representation*" be redrafted by the Panel to accomodate discussion in the meeting. It was further agreed the formulation be prepared for further multi-lateral discussions on 30 January 1996. It was agreed

that this issue be deferred for decision of the Sub-committee on Wednesday 31 January 1996.

2.2.4 The Independent Panel of Experts, said that there was a difference between "*results in*" proportional representation and "*based on*" proportional representation. They said the last mentioned may not necessarily *result* in proportional representation. They suggested that the words of the formulation in the *Third Edition of the Working Draft* placed too much emphasis on the result of the elections, instead of on the electoral system itself. The Panel suggested alternate wording along the lines of "*.. and designed to achieve, in general, proportional representation.*"

2.2.5 The DP noted that they had initially suggested the wording "*results in*" in the Theme Committee, but that they now also agreed on "*designed to achieve*". It was noted that the DP cautioned that too much flexibility could allow the system to be manipulated, and they suggested that it may be easier to have agreement on the electoral system before trying to finalise this provision.

2.2.6 It was noted the ANC had reservations that the redraft should not merely be an attempt to replace the term "*results in*" with a synonym, and that the Constitutional Principle states that the system of proportional representation be incorporated. They said that syntactically the words "*in general proportional representation*" must qualify the electoral "*system*".

2.3 Section 42: Membership

2.3.1 This was agreed to, and it was noted that Section 43 fell away as it was now incorporated in Section 42. The sidebar notes would also be deleted.

2.4 Section 45: Sittings and recess periods

2.4.1 Regarding the seat of the National Assembly, it was agreed to defer this for further multi-lateral discussions and for political decision of the Sub-committee on Wednesday 31 January 1996.

2.4.2 The FF said that due to the forthcoming Local Government elections scheduled in the Cape Town area, this may not be a good time to decide on the seat of parliament.

2.4.3 The NP said that they had not decided where the seat should be, nor had they decided whether the issue be constitutionalised or not.

2.4.4 The ANC said that the seat need not be constitutionalised and

become a matter which may hamper the finalisation of the Constitution. They suggested this may be dealt with in legislation, although they had not yet decided finally that the seat not be in the Constitution. They said this was not an issue which concerned what Parliament did nor did it enhance the ethos of Parliament. They said the distance or nearness of Parliament to a place did not appear to have any relation to whether a country was more democratic or more undemocratic. They also said that it was not a normative constitutional issue and cited the example of Germany where the seat of the national legislature was dealt with only in legislation.

- 2.4.5 It was noted that the DP had proposed Cape Town as the seat of the National Assembly. The DP said they preferred the seat be constitutionalised as it would provide stability in this regard over the next few years.
- 2.4.6 The ACDP said that they supported the ANC, that the seat should not be constitutionalised, and that section 45(3) should be deleted.
- 2.4.7 It was noted that the question of the seat of the National Assembly may be related to the issue of the seats of the Constitutional Court and of the Appellate Division. It was noted, for example, that the seats of the Constitutional Court and the Appellate Division were determined in the Interim Constitution but not in the *Working Draft of the New Constitution*.
- 2.4.8 The Independent Panel of Experts suggested that a possible resolution could be found if parties also looked at a mechanism which would serve against manipulation of the seat of Parliament. A suggestion was made that any amendment on the seat of the National Assembly could be made subject to a special two thirds majority decision.

2.5 Section 46: Elections and Duration of National Assembly

- 2.5.1 It was agreed that Subsection 46(1) would be amended to read:

"The National Assembly is elected for a term of five years unless it is dissolved prior to this date in terms of the constitution."

- 2.5.2 It was agreed that Subsection (2) would consequently fall away.
- 2.5.3 It was agreed the broad suggestions made in the bar-note to Section 45(4) be executed, namely that "A clause dealing the National Assembly in the case where election results cannot be declared, or a court invalidates an election, needs to be inserted." It was noted that the Technical Refinement team would present a formulation on this

matter early in February.

2.6 Section 50: Internal Autonomy

2.6.1 It was agreed that the Technical Refinement Team draft new draft formulations on the following issues:

- a. Minority participation in the committee system, based on Constitutional Principle XIV which reads that "Provision shall be made for participation of minority political parties in the legislative process in a manner consistent with democracy."
- b. Select Committees to initiate legislation "in/after consultation with the relevant ministry."

It was agreed the formulation be drafted for discussions in multi-laterals on 30 January 1996 and for decision at the Sub-committee on 31 January 1996.

2.6.2 The NP suggested further that the Committees may legislate without consulting the Minister.

2.6.3 In respect of minority participation in the committee system, the ANC expressed reservation as to whether matters relating to minority chairpersonship of select committees were consistent with the ordinary legal interpretation of Constitutional Principle XIV. They noted that they would await the draft formulations before making further comment.

2.6.4 In response to the NP's further suggestion and in respect of Select Committees initiating legislation "in/after consultation with the relevant ministry", the ANC indicated that the idea with introduction of consultation was to create a spirit of co-operation between the legislative and executive. They requested this be kept in mind when the formulations were drafted. They also said that in terms of the rules of Parliament the possibility of a Private Member's Bill still remained.

2.6.4 The DP said that the phraseology regarding the manner of consultation may have been left too imprecise. They noted their concern that "in consultation" means "in agreement" which would create an undue restriction. They said they were concerned if this phraseology was used it may cause problems with the separation of powers and was reminiscent of South Africa's past experiences.

They further said that there was clearly a difference between the

Standing Committees and the National Executive, but that at the moment private members could initiate Bills, whereas Standing Committees could not do so. They said that in the last mentioned case the possibility remained for that interaction to take place with the National Executive, but said that this interaction should largely rely on political processes.

2.7 Section 52: Bills

2.7.1 It was agreed this be finalised only when the matter of the Houses of Parliament was settled.

2.8 Section 53: Constitutional Amendments

2.8.1 It was agreed that this also be finalised only when the matter of Houses of Parliament was settled. It was noted that Constitutional Principle XV applied.

2.9 Section 54: Assent to Bills

2.9.1 It was agreed that parties would consider the memorandum *Abstract Review* presented by the Independent Panel of Experts as well as a memorandum from the Constitutional Court which had previously been tabled at the Constitutional Committee. It was agreed that further discussion on this be deferred for multi-lateral meetings on 30 January, and that decision be deferred for the Sub-committee on Wednesday 31 January 1996.

2.9.2 The DP reminded the meeting that a number of alternative formulations had been presented in Theme Committee 5. They said they were in favour of abstract review, to take place after a Bill was passed, but before it was promulgated.

2.9.3 The NP agreed with the DP. They added that they believed one third of Parliament should be able to refer a Bill to the Constitutional Court, and that the Court could then decide whether it was a frivolous referral or not.

2.9.4 The ANC cautioned that this was not merely a question whether Parliament should be given abstract review. They stated that the NP was proposing that a minority of one third could override a majority, and said that this raised the question of the interests of other sectors if some sectors are given privileges in parliament. They said that they required more information from the Independent Panel of Experts; particularly, item 4 of the memorandum which suggests leaving the

decision to the Constitutional Court whether implementation be delayed. They said this raised certain assumptions about the work of the Constitutional Court and the empowerment of the Constitutional Court which required further scrutiny. They noted that the Constitutional Court was intended to decide on constitutionality and not substance.

2.9.5 The Panel responded to the request from the ANC by saying that one of the disadvantages of such a process was the politicisation of the Constitutional Court. They said that in order to prevent the process being abused by a minority to delay matters, it could be ensured that this referral may not occur when debates were still going on, and that delays in implementation be avoided.

3. CLOSURE

3.1 The meeting closed at 17h08.