
SUBCOMMITTEE REPORT

-- DRAFT --

The Subcommittee met on 10 August 1995 and wishes to report on the following:

1 AUDITOR GENERAL

The seventh draft text on the Auditor General dated 6 August 1995 was discussed and the following agreed to:

Sections 1(4), 2(3), 5(1) and 5(2) of the text were referred to the Independent Panel of Constitutional Experts for their comments on Monday, 14 August 1995.

1.1 Reports (section 3)

It was agreed that a new formulation should be developed which:

- i) combined the clause contained in footnote 5 with section 3(2) of the draft; and
- ii) provided for the tabling of reports by various authorities as the Auditor General is an agent of Parliament and the provincial legislature.

1.2 Appointments, qualifications, tenure and dismissal (section 4)

Sections 4(1), 4(3), 4(4), 4(5) and 4(6) were deferred pending the tabling of a comparative analysis with similar provisions in other drafts.

It was agreed that section 4(2) would be replaced with:

- i) section 191 (3) of the interim constitution; and
- ii) a sentence which says that the Auditor General shall not hold office in any political party.

2 PUBLIC PROTECTOR

The seventh draft text on the Public Protector dated 6 August 1995 was discussed and the following agreed to:

2.1 Establishment (section 1)

It was agreed that this section would stand over pending the tabling of the comparative analysis.

2.2 Powers and Functions (section 2)

2.2.1 Section 2(1) was agreed to, subject to the following amendments:

" The Public Protector shall have the power, as regulated, by law to investigate and report on any conduct in the affairs of the State or the public administration at any level of government which is alleged or suspected to be improper, prejudicial, or to result in any impropriety, and to take such remedial action as is appropriate in the circumstances. In addition, the Public Protector shall have such other powers and functions as maybe prescribed by law. "

2.2.2 Section 2(2) was deferred pending the discussion on the draft formulations on the Administration of Justice.

2.2.3 The CA law advisors were instructed to amend section 2(3) taking into account:

- i) that there might be circumstances where the principle of openness would impact negatively on the work of the Public Protector
- ii) The NP's objection to the usage of the expression "***in principle***".

2.3 Appointment, qualifications, tenure and dismissal (section 3)

It was agreed that this section would stand over pending the tabling of the comparative analysis.

2.4 Provincial public protectors/deputy public protectors (section 4)

It was agreed that this would stand over pending discussion on provincial powers.

3 NATIONAL AND PROVINCIAL LEGISLATIVE AND EXECUTIVE COMPETENCIES

Three draft options, prepared by the technical advisors attached to Theme Committee 3, were tabled for discussion.

It was agreed that this item would be revisited on Monday, 21 August 1995 when:

3.1 the technical advisors and the CA law advisors would table one draft option, being an amalgamation of the three drafts;

- 3.2 this would be accompanied by an explanatory document on the Constitutional Principles to be prepared by the technical advisors.

4 HUMAN RIGHTS COMMISSION

The fourth draft text on the Human Rights Commission dated 6 August 1995 was discussed and the following agreed to:

4.1 **Establishment and governing principles (section 1)**

It was agreed that this section would stand over pending the tabling of the comparative analysis.

4.2 **Powers and functions (section 2)**

The CA law advisors were instructed to reformulate the option in the footnotes taking into account:

- i) that the role of the Commission would include both the investigation and litigation of complaints;
- ii) the educative role of the Commission; and
- iii) the research role of the Commission

The following suggestion was made with regard to reformulation:

" The Human Rights Commission shall promote the development, protection and fulfilment of human rights and the development and respect for a culture of human rights in South Africa. It shall for this purpose have the necessary powers accorded to it by law, including such powers as are necessary to monitor, investigate, research and report on the observance of human rights and to take steps to secure appropriate redress where human rights have been breached. "