

THESE DRAFT MINUTES ARE CONFIDENTIAL AND RESTRICTED TO THE MEMBERS OF THE AD HOC COMMITTEE, THE PLANNING COMMITTEE AND THE TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS DURING TRANSITION. THE MINUTES ARE STILL TO BE RATIFIED BY THE AD HOC COMMITTEE.

**DRAFT MINUTES OF THE MEETING OF THE AD HOC COMMITTEE ON FUNDAMENTAL RIGHTS DURING THE TRANSITION HELD AT 11H30 ON TUESDAY, 14 SEPTEMBER, 1993 AT THE HENDRIK VERWOERD BUILDING IN CAPE TOWN.**

**PRESENT:** Mrs S Camerer (Convenor)  
Chief Gwadiso  
Mr A Leon  
Mr P Maduna  
Mr S G Mothibe

**APOLOGIES:** Prof H Cheadle

**MINUTES:** Ms N Sithebe (Administration)

**1. AGENDA**

- 1.1 Customary Law Clause
- 1.2 Property Clause

**2. Customary Law**

2.1 Chief Gwadiso initially objected to the wording of the of the entire clause. He suggested that the clause should:

- \* acknowledge the authority of the Chiefs
- \* state clearly that those in the particular area who do not recognise the authority of that particular chief can relocate to other areas.

2.2 He further recommended that the Human Rights Commission should have jurisdiction and not only the courts.

2.3 It was agreed by the Committee that the draft should be linked to principles that have been agreed upon by the Ad Hoc Committee.

2.4 In response to in paragraph 2.2 of these minutes, it was pointed out that the Human Rights Commission would also have jurisdiction. The reference to the

courts was in line with the proposal in the constitution.

- 2.5 It was suggested that such a Human Rights Commission should be established to consult and educate on a Bill of Rights.
- 2.6 It was agreed that the relevant provision in the Organization of African Unity's Africa Charter should be studied.
- 2.7 In order to facilitate agreement it was suggested that the clause should be discussed point by point to find out the specific objections raised by the representative of the traditional leaders.

2.7.1 Subclause (1)

- \* After a lengthy debate it was agreed that the paragraph should be amended by deleting all the words after "customary law" in line 2.
- \* Paragraph (1) (b) would be left as it was.

2.7.2 Subclause (2)

It was agreed that this clause should be referred to the Technical Committee in order to address concerns with the wording raised by Chief Gwadiso. (The Technical Committee addressed the matter to the Chief's satisfaction.)

2.7.3 Subclause (3)

It was suggested by the representative of the traditional leaders that the wording should be changed to be "gradually assisting to adapting customary ...".

- 2.8 It was noted by the other members of the committee that the gradual process was already implied in the wording. (However, subsequently the Technical Committee agreed to look at revised wording along the lines of "assisting with the growth of ..."

The Committee agreed that every individual should be subjected to the Bill of Rights, without any exclusions, therefore, Judge Olivier's views in paragraph 24.3 (of his submission) were rejected by the committee.

### 3. OTHER MATTERS

The chairperson informed other members of the committee about the Planning Committee's query regarding a story in the Sunday Times, by Carmel Rickard on the submission by the Chief Justice. She had given the details to the Judiciary and the matter had been settled.

4. **Closure**

The meeting was adjourned at 12h45 for lunch.

The Ad Hoc Committee would meet with the Technical Committee on Fundamental Rights after lunch.

5. **NEXT MEETING**

The Ad Hoc Committee would meet in Cape Town on Monday, 20 September, 1993.