

2/1/91

**CONSTITUTIONAL
ASSEMBLY**

**CONSTITUTIONAL
COMMITTEE'S**

**PUBLIC
ADMINISTRATION
SUBCOMMITTEE**

**MONDAY
5 JUNE 1995
(14H00)
E305**

DOCUMENTATION

TABLE OF CONTENTS

AGENDA

1	Agenda	Page 1
2	TC 6.1 Draft formulations on Public Administration presented to the Constitutional Assembly on 19 May 1995	Pages 2 - 7
3	Document reflecting the proposed amendments to TC 6.1 draft formulations on Public Administration in accordance with the Constitutional Assembly debate of 19 May 1995	Pages 8 - 12

CONSTITUTIONAL ASSEMBLY

FIRST MEETING CONSTITUTIONAL COMMITTEE'S PUBLIC ADMINISTRATION MONDAY, 5 JUNE 1995

Please note that a meeting of the above Committee will be held as indicated below:

Date: 05 June 1995

Time: 14h00

Venue: E305

AGENDA

1. Opening and welcome
2. Revision and refinement of Public Administration draft formulations in accordance with the Constitutional Assembly's debate of 19 May 1995

H EBRAHIM
EXECUTIVE DIRECTOR

Enquiries: Nkateko Nyoka and Thandi Mngadi-Kgosidintsi (Tel: 245-031)

REPUBLIC OF SOUTH AFRICA

CONSTITUTIONAL ASSEMBLY

DRAFT FORMULATIONS

FRIDAY, 19 MAY 1995

1. PUBLIC ADMINISTRATION¹

Basic values and principles governing public administration

1. (1) Public administration at all levels of government, including institutions which are dependent on government funds or other sources of public money, shall be governed by the democratic values and principles enshrined in this Constitution. In particular the following principles shall be applicable:²
 - (a) A high standard of professional ethics shall be promoted and maintained in the public administration.³
 - (b) Good human resource management and development

¹Prepared on basis of Report from Theme Committee 6.1 as at 9 May 1995.

²See par. 3.2 of the report.

³As per par. 3.2.3 of the report. See also CPXXIX which requires a "high" standard of professional ethics to be maintained.

practises to maximise human potential shall be cultivated in the public administration.⁴

(c) Efficiency and the economic and effective use of resources shall be promoted in the public administration.⁵

(d) Public administration shall be accountable. Transparency through the provision of accessible, accurate and timeous information to the public shall be fostered.⁶

(e) Public administration shall be development oriented and the provision of services shall be conducted on the basis of impartiality and equity to all.⁷

(f) Public administration shall be oriented towards public participation in policy-making.⁸ It shall be responsive to the needs of the people.⁹

(g) Public administration shall be broadly representative of the South African people.¹⁰ Employment and personnel

⁴As per par. 3.2.13 of the report.

⁵As per par. 3.2.2 of the report.

⁶As per par. 3.2.12 and 3.2.7 of the report.

⁷As per par. 3.2.9 and 3.2.1 of the report.

⁸As per par. 3.2.10 of the report.

⁹As per par. 3.2.6 of the report.

¹⁰As per par. 3.2.4 of the report.

management practises in the public administration shall be based on competency, objectivity and fairness.¹¹

- (2) The terms and conditions of service of employees in public administration shall be regulated by law.¹² Employees shall be entitled to a fair pension in terms of a pension scheme regulated by law.¹³
- (3) A limited number of political appointments in public administration may be made within the framework of the above principles and as regulated by law.¹⁴
- (4) Laws regulating public administration may differentiate between different sectors, administrations or institutions in public administration.¹⁵

Public Administration Commission

2. (1) There shall be a Public Administration Commission for the

¹¹As per par. 3.2.8 of the report.

¹²CPXXX(1) requires the insertion in the new Constitution of a provision which provides for the which provides for the conditions of service of employees to be regulated by law.

¹³This provision is required by CPXXX(2).

¹⁴As per par. 3.4 of the report. It would appear that the use of the words "political appointments" is unavoidable. In the CC debate it was suggested that, instead of using these words, "limited appointments by the executive" or "limited ministerial appointments" should be considered. These suggestions, however, do not solve the problem because all appointments in the public service are in fact made by the Minister. The fact that appointments in the public service are made by a Minister, of course, does not mean that they are "political" appointments. The most appropriate way of distinguishing "political" appointments from other appointments is simply to state it in exactly these terms.

¹⁵As per paragraphs (a) and (b) of par. 3.3 of the report.

Republic consisting of a chairperson and eleven commissioners.¹⁶ Each province shall be entitled to nominate one of these commissioners.¹⁷

- (2) The Public Administration Commission shall be independent and impartial.¹⁸
- (3) The Public Administration Commission shall perform such advisory, monitoring and inspection functions with regard to public administration as prescribed by national law.¹⁹
- (4) The Public Administration Commission shall be accountable to Parliament for its activities. All reports of the Commission shall be tabled in Parliament. Reports concerning public administration at provincial level of government shall also be tabled in the legislatures of the provinces concerned.²⁰
- (5) The chairperson and members of the Public Administration Commission shall be appointed by the President subject to approval by Parliament in accordance with a procedure

¹⁶As per paragraphs 3.5.1 and 3.5.2 of the report. The name "Public Administration Commission" of "Commission for Public Administration" is proposed in view of its role as an advisory body with regard to the whole of the public administration and not only the public service.

¹⁷As per agreement in the Constitutional Committee on 12 May 1995.

¹⁸This provision has been inserted in compliance with CPXXIX.

¹⁹As per par. 3.5.2 of the report.

²⁰As per par. 3.5.1 of the report. It is envisaged that reports emanating from the PAC and provincial commissioners will be referred to oversight committees in Parliament and the provincial legislatures as is the case with reports of the Auditor-General.

prescribed by a national law.²¹ Such law shall also provide for the procedure relating to the nomination of commissioners by provinces.

Provincial commissioners

3. (1) A commissioner from a province in the Public Administration Commission shall be competent to exercise and perform the powers and functions of the Commission with regard to his or her province as prescribed by law.²²
- (2) Not more than two persons may be appointed to assist such a commissioner as his or her deputies in the discharge of his or her powers and functions in terms of this section. Such deputies shall be appointed by the Premier of the province concerned subject to the approval of the provincial legislature in accordance with a procedure prescribed by law.²³
- (3) Any reports issued by such a commissioner in the discharge of his or her powers and functions in terms of this section, shall be tabled in Parliament and in the legislature of the province concerned.²⁴

²¹As per par. 3.5.2 of the report.

²²As per par. 3.5.2 of the report.

²³As per par. 3.5.2 of the Report.

²⁴As per par. 3.5.2 of the Report.

Public Service

4. There shall be a public service for the Republic structured and functioning in terms of a law.²⁵ The public service shall loyally execute the lawful policies of the government of the day.²⁶

²⁵In accordance with CPXXX which requires a provision in the Constitution stating that the structuring and functioning of the public service shall be as prescribed by law. In terms of this formulation the definition of the public service is left for ordinary legislation.

²⁶As per par. 3.2.14 of the report.

AMENDED DRAFT FORMULATIONS ON PUBLIC ADMINISTRATION

EXPLANATORY NOTE

The draft on the public administration is re-tabled in the Constitutional Committee in accordance with the decision of the Constitutional Assembly dated 19 May 1995.

The main objection raised against the draft in the Constitutional Assembly was that it contains too much detail and that consideration should be given to the possible deletion of sections 2 and 3.

The possible deletion of section 2 raises in addition to the political considerations also a legal question, i.e. whether the deletion of the whole section would not be a breach of Constitutional Principle XXIX which requires provisions in the new constitutional text to provide for and to safeguard the independence and impartiality of a Public Service Commission. In our view this implies provisions also with regard to the establishment of such a commission.

In order to assist the Constitutional Committee we have reproduced the draft that was tabled in the CA and have indicated thereon in bold type and in brackets the words that need to be reconsidered with a view to their possible deletion. A phrase that can be considered for inclusion in section 2(1) should the bracketed words be deleted, is underlined in that section.

**CA Law Advisers
23 May 1995**

1. PUBLIC ADMINISTRATION¹

Basic values and principles governing public administration²

1. (1) Public administration at all levels of government, including institutions which are dependent on government funds or other sources of public money, shall be governed by the democratic values and principles enshrined in this Constitution. In particular the following principles shall be applicable:
 - (a) A high standard of professional ethics shall be promoted and maintained in the public administration.
 - (b) Good human resource management and development practises to maximise human potential shall be cultivated in the public administration.
 - (c) Efficiency and the economic and effective use of resources shall be promoted in the public administration.
 - (d) Public administration shall be accountable. Transparency through the provision of accessible, accurate and timeous information to the public shall be fostered.
 - (e) Public administration shall be development oriented and the

¹Prepared on basis of Report from Theme Committee 6.1 as at 9 May 1995.

²Section 1 has been agreed to in principle. However, concerns have been raised whether this section complies in all respects with the legal requirements of Constitutional Principle XXX. It is suggested that these concerns be attended to as part of the refinement process once agreement has been reached on the content of the draft.

provision of services shall be conducted on the basis of impartiality and equity to all.

- (f) Public administration shall be oriented towards public participation in policy-making. It shall be responsive to the needs of the people.
 - (g) Public administration shall be broadly representative of the South African people. Employment and personnel management practises in the public administration shall be based on competency, objectivity and fairness.
- (2) The terms and conditions of service of employees in public administration shall be regulated by law. Employees shall be entitled to a fair pension in terms of a pension scheme regulated by law.
 - (3) A limited number of political appointments in public administration may be made within the framework of the above principles and as regulated by law.³
 - (4) Laws regulating public administration may differentiate between different sectors, administrations or institutions in public administration.

Public Administration Commission

- 2. (1) There shall be a Public Administration Commission for the Republic.
[consisting of a chairperson and eleven commissioners. Each province

³The question of political appointments has not been agreed to by all the parties.

shall be entitled to nominate one of these commissioners]⁴. The provinces shall be entitled to representation in the Commission.

- (2) The Public Administration Commission shall be independent and impartial.
- (3) The Public Administration Commission shall perform such advisory, monitoring and inspection functions with regard to public administration as prescribed by national law.
- (4) The Public Administration Commission shall be accountable to Parliament for its activities. All reports of the Commission shall be tabled in Parliament. [Reports concerning public administration at provincial level of government shall also be tabled in the legislatures of the provinces concerned.
- (5) The chairperson and members of the Public Administration Commission shall be appointed by the President subject to approval by Parliament in accordance with a procedure prescribed by a national law. Such law shall also provide for the procedure relating to the nomination of commissioners by provinces.]

[Provincial commissioners

3. (1) **A commissioner from a province in the Public Administration Commission shall be competent to exercise and perform the powers**

⁴All words in bold type and in brackets must be reconsidered with a view to their deletion in accordance with the spirit of the Constitutional Assembly debate of 19 May 1995.

and functions of the Commission with regard to his or her province as prescribed by law.

- (2) Not more than two persons may be appointed to assist such a commissioner as his or her deputies in the discharge of his or her powers and functions in terms of this section. Such deputies shall be appointed by the Premier of the province concerned subject to the approval of the provincial legislature in accordance with a procedure prescribed by law.
- (3) Any reports issued by such a commissioner in the discharge of his or her powers and functions in terms of this section, shall be tabled in Parliament and in the legislature of the province concerned.]

Public Service

4. There shall be a public service for the Republic structured and functioning in terms of a law. The public service shall loyally execute the lawful policies of the government of the day.

