

2/4/6/3/5

CONSTITUTIONAL ASSEMBLY

*SUBTHEME COMMITTEE 6.1
SPECIALISED STRUCTURES OF GOVERNMENT
PUBLIC ADMINISTRATION*

TUESDAY, 2 MAY 1995

DOCUMENTATION

Embargoed until 18h00
2 May 1995

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CONSTITUTIONAL ASSEMBLY
FIFTEENTH MEETING OF THEME COMMITTEE 6.1
SPECIALISED STRUCTURES OF GOVERNMENT

TUESDAY, 2 MAY 1995

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

DATE : 2 May 1993

TIME : 18:00-20:00

VENUE : E249

AGENDA

1. Opening and Welcome.
2. Adoption of minutes of meeting held on 20 April 1995.
3. Consideration of draft constitutional formulation on the Public Service
4. Election Commission
 - 4.1 Parties's submission;
 - 4.2 Technical Advisor; and
 - 4.3 Progress report by secretariat.
5. AOB
6. Closure

HASSEN EBRAHIM
EXECUTIVE DIRECTOR

Enquiries: Nkateko Nyoka or Saaliegah Zardad (Tel: 245031)

Embargoed until 18:00
2 May 1995

CONSTITUTIONAL ASSEMBLY

**MINUTES OF THE FOURTEENTH MEETING OF THEME COMMITTEE 6.1
SPECIALISED STRUCTURES OF GOVERNMENT**

THURSDAY, 20 APRIL 1995

PRESENT

Vadi, I (Chairperson)

Booi, M S
De Beer, S J
Jordaan, J A
Love, J Y
Mlambo-Ngcuka, P
Mokitlane, D MC
Pretorius, I J
Watson, A

Nyembe L, Nyoka N, Van der Merwe P (Prof) and S Zardad were in attendance.

1. OPENING AND WELCOME

The chairperson opened the meeting at 09h30 and welcomed members.

2. ADOPTION OF MINUTES OF MEETING HELD ON 3 APRIL 1995

The minutes of the Subtheme Committee ("the Committee") meeting held on 3 April 1995, were adopted.

3. DISCUSSION: PENULTIMATE PUBLIC REPORT AND PARTIES' INPUT

3.1 Absence of IFP, FF, ACDP and PAC

A concern was raised over the absence of the above parties at this critical meeting whose purpose was to finalise the Public Service report and the following points were noted:

3.1.1 Notice of the meeting was circulated to all parties;

3.1.2 Smaller parties such as the ACDP and PAC are unable to attend all meetings of CA structures; and

3.1.3 The meeting would continue and the views of parties not present at the meeting will be taken on board as and when these become available.

3.2 Discussion of report

The Committee considered the report and the following areas of agreement and disagreement were recorded:

3.2.1 Areas of agreement

The parties agreed on the following issues:

- (a) The need for a constitutional provision on the Public Service which would provide for a minimalist, flexible framework of broad principles for a developmental Public Service;
- (b) The need for a wide definition of the Public Service in the Constitution;
- (c) The need for the Constitution to make provision for limited political appointments in the Public Service; and
- (d) The need for the Constitution to provide for a National Public Service Commission.

3.2.2 Areas of disagreement

The parties disagreed on the need for the continuation or abolition of Provincial Service Commissions. The following different views were expressed by the parties:

- (a) The ANC's submission details a proposal for a single National Public Service Commission, with Commissioners nominated by Provincial Legislatures and the Chairperson appointed by the President ~~by the President~~ in consultation with a Committee of Parliament.

The submission proposes that each Commissioner establishes an office with accountability to the relevant National and/or Provincial legislature.

(b) The NP and the DP expressed the view that Provincial Service Commissions should be appointed as bodies of Provincial legislatures, on the same lines as the National Public Service Commission with similar functions to that of the National Commission at Provincial level.

✓ The DP ^{NP} further proposed that provincial personnel departments/components should be established with responsibility for administrative policy implementation and transversal services to line departments - this matter to be left to legislation.

The DP also expressed the view that the Provincial Service Commissions should have oversight of management practices of local authorities.

The NP and the DP had not had the opportunity to consider the ANC proposal, the parties requested that the Technical Advisors consider a way of integrating these views in the process of drafting the Constitutional text.

4. DATE OF NEXT MEETING

DATE : 2 May 1995
TIME : 18:00 - 20:00
VENUE : E249

5. CLOSURE

The meeting rose at 11:55

FIRST DRAFT - 25 APRIL 1995

Status:- Prepared by the CA Law Advisers and the Technical Advisers to TC 6.1 for consideration and approval by the Theme Committee.

Meeting

PUBLIC ADMINISTRATION

Basic values and principles governing public administration

1. (1) Public administration at all levels of government, including all government funded institutions, shall be governed by the democratic values and principles enshrined in this Constitution. In particular the following principles shall be applicable:¹

(a) Public administration shall be economical, efficient and effective.² It shall be accountable to both government and the public.³

(b) Public administration shall be transparent and open.⁴ The public shall have access to services and information.⁵

Public participation in decision making in public administration shall be fact

(c) Public administration shall be developmental orientated.⁶ It shall be responsive to the needs of the people.⁷ The provision of services shall be conducted on the basis of impartiality and ~~fairness~~ ^{equity} to all.⁸

The law advisors to advise what clause will.

{ (d)

There shall be public participation in ~~decision-~~ ^{policy-} making in public administration.⁹

2.

- to be linked*
- (e) Public administration shall be broadly representative of the South African ^{population} ~~people~~, ~~linked to transformation and effective management practices.~~¹⁰
 - (f) Public administration shall be career-^{orientated} ~~orientated~~.¹¹
 - g) It shall loyally execute the lawful policies of the government of the day.¹² ^{and} A high standard of professional ethics shall be promoted and maintained.¹³
 - ^h (g) Employment and personnel management practices in public administration shall be based on competency, objectivity and fairness.¹⁴

(2) ~~Employment in public administration shall be accessible to all citizens who comply with the requirements for employment.~~¹⁵ The terms and conditions of service of employees in public administration shall be regulated by law.¹⁶ Employees shall be entitled to a fair pension in terms of a pension scheme regulated by law.¹⁷

(3) ^{The above} ~~The principle of a professional career-orientated public administration shall not preclude a limited number of political appointments on contract to strengthen management expertise and capacity.~~¹⁸ ^{in Po}

(4) Laws regulating public administration may ~~within the broad scope of the above values and principles~~ ^{framework} differentiate between different sectors, administrations or institutions in public administration.¹⁹

First draft: 25 April 1995

3.

[Foot notes

1. See par. 2.2 of the Report.
2. As per par. 2.2.2. Effective administration is also a requirement of CP XXIX.
3. As per par. 2.2.12.
4. As per par. 2.2.7.
5. As per par. 2.2.5.
6. As per par. 2.2.9.
7. As per par. 2.2.6.
8. As per par. 2.2.1.
9. As per par. 2.2.10.
10. As per par. 2.2.4.
11. As per par. 2.2.13.
12. As per par. 2.2.14
13. As per par. 2.2.3. See also CP XXIX which requires a "high" standard of professional ethics to be maintained.
14. As per par. 2.2.8.
15. Based on section 212(3) of the Interim Constitution.
16. CP XXX(1) requires the insertion in the final Constitution of a provision which provides for the conditions of service of employees to be regulated by law.
17. This provision is required by CP XXX(2).
18. As per par. 2.4 of the Report.
19. As per paragraphs (a) and (b) of par. 2.3 of the Report.]

4.

Public Administration Commission

2. (1) There shall be a Public Administration Commission for the Republic consisting of a chairperson and ~~nine~~^x members.²⁰

(2) The Public Administration Commission shall be independent, impartial and ~~subject only to this Constitution and the law.~~^{safeguarded by the law.}²¹

^{its functions + activities to be regulated by law.}
~~(3) The Public Administration Commission shall be an advisory and consultative body advising legislative and executive authorities on the regulation of public administration in accordance with the values and principles governing public administration in the Republic.~~^{perform}^{monitoring & inspection function on the performance of laws}²² ~~In addition it shall have such powers and functions of inspection and reporting as may be prescribed by law in the interest of effective public administration.~~²³

^{regularly report}
~~(4) The Public Administration Commission shall be accountable to Parliament for its activities, and shall report to Parliament and the provincial legislatures on its activities annually.~~^{be accountable - to a committee of the legislators}²⁴

⁵ ~~(5) The chairperson and members of the Public Administration Commission shall be appointed by the President subject to approval by Parliament.~~^{on its activities, as prescribed by law.}^{provincial legislatures}²⁵

~~procedures outlined in an act of Parliament.~~^{stipulated by law.}

[Foot notes

20. As per par. 2.5.1 of the Report. The number of members needs to be considered in the light of the views referred to in par. 3.1.2 and 3.1.3 of the Report. The name "Public Administration Commission" or "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.

First draft: 25 April 1995

5.

21. This provision has been inserted in compliance with CP XXIX.
22. As per par. 2.5.3 of the Report. The reference in the report to "advisory body on policy matters" is unclear. We understood this to mean that the Commission is to advise on the regulation of the public administration in accordance with the value system prescribed in section 1.
23. As per par. 2.5.3 of the Report. It is inadvisable to be too specific on additional powers, for instance "inspection of personnel and management practices in departments". Inspection powers in the interest of "effective public administration" would be wider and more in line with the requirements of CP XXIX.
24. As per par. 2.5.1 of the Report.
25. As per par. 2.5.2 of the Report. If the first alternative referred to in par. 3.1.1 of the Report is preferred provision will have to be made for the provincial representatives in the Commission to be appointed/nominated by the provincial legislatures or executives.]

→ to Part.

Public Service

3. There shall be a public service for the Republic. The public service shall be regulated by law²⁶ and ~~shall consist of the government administrations at national and provincial level.~~²⁷

[Foot notes

26. In accordance with CP XXX which requires a provision in the Constitution stating that the structuring and functioning of the public service shall be as prescribed by law. The word "regulation" is wide enough to cover this.

First draft: 25 April 1995

6.

27. This definition of the public service includes the security services but excludes administration at local level and parastatals.]

Provincial commissioners

4. A provincial commissioner in the Public Administration Commission shall be competent to exercise and perform the powers and functions of the Commission at the provincial and local level of public administration in his or her province.²⁸

[Foot note

28. In par. 3.1.4 of the Report we were requested to draft a constitutional provision which would reconcile the various views on provincial service commissions. Section 4 is an attempt at such reconciliation and provides for the respective provincial representatives in the Public Administration Commission to exercise the powers of the Commission in their respective provinces with regard to public administration at provincial and local level.

If this proposal is acceptable section 2(1) will have to be adjusted to refer to "nine provincial commissioners" instead of "nine members". Additional provision will also have to be made for the appointment of these commissioners by the President upon their nomination by the provincial legislatures or executives.]

PART II

MATERIAL PROCESSED BY THE COMMITTEE

1. INTRODUCTION

The salient issues in regard to the Public Service which emerged from the material processed by the Committee are the following :

- 1.1 The need for a constitutional provision on the Public Service;
- 1.2 The nature of the constitutional provision on the Public Service;
- 1.3 The definition of the Public Service;
- 1.4 Limited political appointments in the Public Service; and
- 1.5 National Public Service Commission; and
- 1.6 Provincial Service Commissions.

2. AREAS OF AGREEMENT

2.1 CONSTITUTIONAL PROVISION ON THE PUBLIC SERVICE

Constitutional Principle XXX require the inclusion of a Public Service provision in the final text of the constitution.

All parties and submissions processed favour the inclusion of a clause in the final text on the constitution on the public service as the Public Service is seen as having an important role to play in the attainment of constitutional and other policy goals.

2.2 NATURE OF CONSTITUTIONAL PROVISION ON THE PUBLIC SERVICE

All parties agree that the Constitution should provide a minimalist, flexible framework of broad principles for a developmental public service and that the Public Service be regulated by way of legislation, rather than the Constitution.

The Constitution should provide a governing framework outlining the democratic assumptions on which the Public Service is based and establish a common set of basic values and principles applicable to all public sector institutions.

The following is a list of the key values and principles proposed:

- 2.2.1 impartiality and equity in relation to the provision of services;
- 2.2.2 efficiency and effectiveness in relation to developmental and constitutional objectives;
- 2.2.3 professional and ethical conduct on the part of public sector employees;
- 2.2.4 a broadly representative public sector linked to deracialisation, flatter hierarchies and best management practice;
- 2.2.5 accessibility of services and information to the public;
- 2.2.6 responsiveness to the needs of citizens and communities;
- 2.2.7 transparency and openness in government and administration;
- 2.2.8 objectivity and equity in relation to employment practices;
- 2.2.9 a developmental orientation;
- 2.2.10 democratic, structured public participation in public policy-making and management;
- 2.2.11 non-hierarchical, democratic and transparent in relation to the role of public employees in public management;
- 2.2.12 accountability to the structures of government and to the public;
- 2.2.13 career development orientation; and
- 2.2.14 loyalty in the execution of the lawful policies of the government of the day.

The following noteworthy views were expressed in regard to some of the above principles.

- **Accountability**

It was suggested that existing constitutional mechanisms for accountability are acceptable as far as they go, but that they are largely complaints-based mechanisms which deal with accountability for past actions. There is a strong need for proactive measures (before the fact/act) such as inspections etc.

- **Representivity**

The view appears to be that the concept of a broadly representative Public Service is acceptable and that mechanisms for attaining such representivity should not

be referred to in the Constitution, but left to policy and legislation.

Representivity should be linked to the deracialisation and transformation of state institutions to ensure employment equity and effective service provision.

- **Policy-Making and Management**

It is the general view that structured public participation in public policy-making is highly desirable and that appropriate, workable consultative mechanisms should be designed and established.

The monitoring and evaluation of public policy implementation should be an essential feature of public administration and mechanisms should include internal arrangements in the Public Service, as well as appropriate oversight bodies/arrangements.

2.3

DEFINITION OF THE PUBLIC SERVICE

The notion of one Public Service for the whole of the Republic of South Africa was supported.

There is agreement that the public service definition should be wide enough to cover national, provincial and local tiers of government, parastatals and the security services as all these institutions are bound together by a set of fundamental values and principles applicable to the public service. These values and principles should be binding on all organs of state at all levels.

The above definition was agreed to subject to the following conditions:

- (a) that local authorities and parastatals (i.e. organisations funded partially or wholly by the State) will not be regulated by the same legislation governing personnel and management practices at national and provincial levels of government.
- (b) that the security services (police, prisons, defence, and departments such as education) and others where necessary, be

regulated and administered in terms of separate (i.e. "own") legislation.

2.4 LIMITED POLITICAL APPOINTMENTS IN THE PUBLIC SERVICE

All parties agree in principle on the need for a provision in the constitution allowing for limited political appointments in the public service. These appointment should take the following forms:

- 2.4.1 appointment of ministerial advisors on contract and not in terms of legislation; and
- 2.4.2 appointment on contract by a Cabinet Minister of certain officials in the management echelons of the Public Service (i.e Directors-General and other heads of departments/sections).

This approach was supported on the basis that it allows for lateral entry into the civil service and accordingly strengthen and improve management expertise and capacity in the Public Service, thereby creating space for the injection of fresh and novel ideas from outside the Public Service.

There was unanimity that limited political appointments within the sphere of the professional/career Public Service should not be along party political lines or ideological affiliations.

2.5 A NATIONAL PUBLIC SERVICE COMMISSION

2.5.1 Constitutional provision on the Public Service Commission

All parties agree that the final text of the constitution should contain a clause which provide for the establishment of an independent Public Service Commission ("the Commission"). The Commission must be established along the lines of the office of the Auditor General and should be accountable, and report, to parliament - through a parliamentary select committee.

2.5.2 Appointment of Members of the Commission

The parties agree that members of the

commission should be appointed by the President subject to confirmation by Parliament.

2.5.3 Role and function of the Commission

All the parties agree that the Commission should be an independent advisory body on policy matters. In addition to its advisory function, the Commission should be responsible for the inspection of personnel and management practices in departments as well as the implementation of policy and should report regularly to a relevant Parliamentary select committee and relevant Provincial Legislatures' select committees.

3. AREAS OF DISAGREEMENT

3.1 PROVINCIAL SERVICE COMMISSIONS

There is disagreement amongst the parties on the need for the continuation or abolition of Provincial Service Commissions. Three different views are held by the parties, namely:

- 3.1.1 (a) There should be no Provincial Service Commissions. Parties that support this view argue that the interests of provinces could still be catered for, without the necessity of establishing Provincial Service Commissions, by structuring the National Public Service Commission - through legislation - in a way that would ensure provincial representation. The Public Service Commission, so structured, would be accountable to both Parliament and Provincial legislatures for policy implementations taking place, respectively, at each level of government.
- (b) Parties supporting one national Public Service Commission aver that the final text of the Constitution should allow for national and provincial executive appointments into the Public Service Commission.
- (c) In view of the above, proponents of a single national Public Service Commission are proposing that Commission be structured as follows:

- * the Commission should consist of 10 members;
- * the Chairperson of the Commission should be appointed by the President in consultation with the Executive from nominations by a (joint) Committee of parliament;
- * Provincial Executives must each appoint one person to be a member of the Commission from nominations by Committees from Provincial legislature; and
- * Each Commissioner, should be empowered to establish an office in his area of jurisdiction; and
- * The Commissioners should be accountable to the legislature (at national and provincial level).

3.1.2 The second view supports the establishment by way of a constitution of Provincial Service Commissions. Proponents of this view aver that Provincial Service Commissions should be appointed as bodies of Provincial legislatures, on the same lines as the National Public Service Commission with similar functions to that of the National Public Service Commission.

This implies that Provincial Service Commissions and not the National Public Service Commission inspect Provincial departments and are accountable to Provincial Legislatures. The Provincial Service Commissions, however, should exercise these functions within the broad framework of the constitution and national policy frameworks.

3.1.3 The third view supports the establishment of Provincial Service Commissions as elucidated in paragraph 3.1.2 above subject to the condition that provincial personnel departments be created for purposes of performing the following tasks:

- * policy implementation;
- * management of departments; and
- * inspection of departments at the provincial level of government.

3.1.4 The parties agreed that Technical Advisers should endeavour to reconcile the various views in the draft constitutional text on the Public Service.