

2/2/1/3/19

**CONSTITUTIONAL ASSEMBLY**

**SUB-COMMITTEE ONE**

**MONDAY  
7TH OCTOBER 1996**

**Room V16**

**10H00**

**DOCUMENTATION**

# CONSTITUTIONAL ASSEMBLY

## SUB-COMMITTEE ONE

### NOTICE OF MEETING

Please note that a meeting of Sub-Committee One will take place as indicated below:

**Date:** Monday, 7th October 1996

**Time:** 10h00

**Venue:** Room V16

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#### Agenda

- 1 Opening and welcome
- 2 Minutes (pages 1 - 7)
- 3 Public Service Commission - \* Refined Draft
4. Labour Relations - \*Refined Draft
5. Truth & Reconciliation - \*Refind Draft
- 6 Auditor General & Public Protector - \*Refined Draft
- 7 Any other business
- 8 Closure

*\* New draft formulations are contained in the documentation for the Constitutional Committee meeting of 7 October 1996 distributed separately.*

# CONSTITUTIONAL ASSEMBLY SUB-COMMITTEE ONE

MINUTES OF MEETING HELD ON 3RD OCTOBER, 1996  
AT 10H00 IN ROOM V16

Chairperson: Myakayaka-Manzini, M

## PRESENT:

Camerer, S  
De Beer, S  
Dexter, P  
Ebrahim, AG  
Eglin, CW  
Graaff, D  
Green, L  
Groenewald, PH  
Hofmeyr, W  
Love, J  
Pandor, N  
Radue, R

## Panel of Experts

Kruger, Prof J  
Van der Westhuizen, J  
Yacoob, Adv Z

## 1. OPENING

- 1.1 The meeting was opened by the Chairperson, Ms Myakayaka-Manzini at 10h15.
- 1.2 The Chairperson announced the decision taken by the Management Committee to allow parties to use the morning to consult on outstanding issues and to resume again at 14h00.

## 2. ADJOURN

The meeting adjourned at 10h30.

### **3. RECONVENE**

The meeting reconvened at 14h12.

Mr. Skosana asked to be excused from Sub-committee One in order to allow him to assist Sub-committee Two.

### **4. PUBLIC SERVICE COMMISSION**

4.1 Ms Love announced that, as a result of a bi-lateral meeting, a final draft could be presented to the committee. Agreement by all parties was reached after a few minor changes.

4.2 **S 196 and S 197 (4)** now read as follows:

- (1) There is a single Public Service Commission for the Republic.
- (2) The Commission is independent, must be impartial and regulated by national legislation and must exercise its powers and perform its functions without fear, favour or prejudice in the interests of the maintenance of effective and efficient public administration and a high standard of professional ethics in the public service.
- (3) Other organs of state through legislative and other measures must assist and protect the Commission to ensure the independence, impartiality, dignity and effectiveness of the Commission. No person or organ of state may interfere with the functioning of the Commission.
- (4) The powers and functions of the Commission are to -
  - (a) promote the values and principles set out in s195 throughout the public service;
  - (b) investigate, monitor and evaluate the organisation, administration and personnel procedures of the public service;
  - (c) propose measures to ensure effective and efficient performance within the public service;
  - (d) give directions aimed at ensuring that personnel procedures including recruitment, transfers, promotions and dismissals comply with the values and principles contained in s195;

- (e) report in respect of its activities and functions -including its findings, directions and advice, and provide an evaluation of the extent to which the values and principles in s195 have been complied with;
  - (f) either of its own accord or on receipt of any complaint -
    - (i) investigate and evaluate the application of personnel and public administration practices and procedures and report to the relevant executive authority and appropriate legislature;
    - (ii) investigate grievances of public service employees concerning official acts or omissions and recommend the appropriate remedy;
    - (iii) monitor and investigate adherence to applicable procedures in the public service;
    - (iv) advise national and provincial organs of state regarding personnel practices in the public service, including recruitment, appointment, transfers, discharge and other career incidents of employees in the public service;
- (5) The Commission is accountable to the National Assembly.
- (6) The Commission must report at least once a year in terms of 4(e) -
- (i) to the National Assembly; and
  - (ii) to each of the provincial legislatures in respect of its activities in that province
- (7) (a) The President must appoint five commissioners with approval of the majority of members of the National Assembly on the recommendation of a committee of the Assembly proportionately composed of all parties represented in the Assembly. The President must designate one of these commissioners as Chairperson of the Commission.
- (b) The President must appoint a commissioner for each province nominated by the Premier of that province. The Premier must nominate a person approved by the

majority of members of the respective provincial legislature on the recommendation of a committee of that legislature proportionately composed of all parties represented in that legislature.

- (c) An Act of Parliament must regulate the procedure for the appointment of all Commissioners.
  - (d) Commissioners must be appointed for a term of five years, which is renewable for one additional term.
  - (e) A person is qualified to be appointed to the Commission if he or she,
    - (i) is a South African citizen
    - (ii) is a fit and proper person who has knowledge or experience of rendering public services, administration or management.
- (8) A member of the Commission may be removed from office only -
- (a) on the grounds of misconduct, incapacity or incompetence; and
  - (b) after a finding to that effect -
    - (i) in the case of a commissioner appointed in terms of subsection (7)(a)(i), by the majority of members of the National Assembly on the recommendation of a committee of the Assembly proportionately composed of all parties represented in the Assembly.
    - (ii) in the case of a commissioner appointed in terms of subsection (7)(a)(ii), by the majority of members of the respective provincial legislature on the recommendation of a committee of that legislature proportionately composed of all parties represented in that legislature.
  - (c) The President must remove a Commissioner from office upon adoption by the Assembly or Provincial Legislature of a resolution calling for that removal in terms of (8)(b).
- (9) Members of the Commission referred to in (7)(b) may exercise the powers and perform the functions of the Commission in their provinces as prescribed by national legislation.

197(4) Subject to the procedures agreed to in the collective bargaining agreement of the public service, provincial governments are responsible for the appointment, promotion, transfer and dismissal of members of the public service in their administrations.

4.3 The Chairperson thanked the members for speeding up the work of the Sub-Committee in finalising this draft.

## **5. TRUTH & RECONCILIATION**

5.1 The ACDP reported that they were in favour of Option 3 reflected in the memorandum prepared by the Panel.

5.2 The other parties could not find agreement and agreed to hold bi-lateral meetings in order to finalise the issue.

## **6. AUDITOR GENERAL & PUBLIC PROTECTOR**

6.1 This issue was being considered in bi-lateral meetings and it was hopeful that progress would be reported when the Sub-committee reconvened at 21h00.

## **7. LABOUR RELATIONS**

7.1 This issue was also being considered in bi-lateral meetings.

## **8. ADJOURN**

The meeting adjourned at 15h10 and the sub-committee agreed to reconvene at 21h00.

## **9. RECONVENE**

The Sub-committee reconvened at 23h00. An apology from the ACDP and Freedom Front was noted. Outstanding issues were dealt with as follows:

## **10. LABOUR RELATIONS S 23**

10.1 Mr Hofmeyr was happy to report that a breakthrough had been reached with regard to the issue of collective bargaining. All parties who took part in the bi-lateral meeting had agreed to the new formulation while the views of the ACDP and PAC, who were not present, had been successfully canvassed.

The following draft formulation was put before the sub-committee for their approval -

23. (4) (c) delete

insert:-

(5) "Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate this right to collective bargaining.

(5) existing (5) becomes (6)

10.1 The National Party, while accepting the compromised formulation, expressed the view that they would have preferred the second sentence of the formulation to fall away.

10.2 While the DP had no objection to the new formulation, Mr Eglin said that his party would want to study it from a legalistic point of view to ascertain whether the regulation would restrict or give effect to this right.

## 11. TRUTH & RECONCILIATION

11.1 Mr Hofmeyr reported that parties had agreed in principle to allow the Technical Experts of the various parties to consider either Option 1 or 3 as a possible new formulation with the necessary refinement. This new formulation would be made available to the parties before Monday for ratification by their principles, and would be considered by the sub-committee on Monday before the Constitutional Committee met.

## 12. AUDITOR GENERAL AND PUBLIC PROTECTOR

12.1 Mr. Hofmeyr reported that, although the court had not called for it, the ANC had now agreed with the National Party that both the removal *and* the appointment mechanisms of these officers should be considered together.

An agreement was reached that the appointment of these two officers would be subject to a 60% majority while the removal would be subject to a two-thirds majority.



12.2 The National Party expressed the view once again that they would have preferred the appointment to also be subject to a two-thirds majority, while the DP felt that 75% would have would have been the ideal majority.

12.3 The ANC commented that, as a simple majority was the benchmark used throughout the world, they felt that their compromise had been substantial. The NP thanked the ANC for their significant shift in this regard.

### **13. THANKS**

31.1 Mr De Beer, on behalf of his colleagues, thanked the Chairperson Mavivi Mayakayaka for the manner in which she had conducted the meetings. Her accommodating style and the atmosphere which she had created had contributed significantly to the success of the work of the sub-committee.

Mr. De Beer also expressed his appreciation to the Technical Experts, Prof Van der Westhuizen and his team, for their hard work and the excellent way in which they had assisted the sub-committee.

Thanks was also expressed to the CA staff, Mr Hassen Ebrahim and Eunice van Eck for the exceptional and efficient way in which they had assisted the committee in its work, and for the friendly and relaxed atmosphere which had been created.

All the above sentiments were endorsed by Ms Naledi Pandor and echoed by Colin Eglin.

The Chairperson made special reference to the persons who had helped record the meetings and thanked them for the long hours they had laboured.

Finally, the Chairperson thanked all the members of the sub-committee for their hard work, co-operation and dedication which had assisted her in the efficient running of the meetings.

### **14 CLOSURE**

The meeting closed at 23h30. The sub-committee would meet again on Monday, 7th October at 10h00.

