

2/21/18/17

CONSTITUTIONAL ASSEMBLY

**CONSTITUTIONAL COMMITTEE
SUB-COMMITTEE**

**DRAFT REPORT OF DISCUSSIONS
31 JANUARY 1996**

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DRAFT REPORT

CONSTITUTIONAL COMMITTEE SUB-COMMITTEE MEETING WEDNESDAY 31 JANUARY 1996

1. OPENING

1.1 The meeting was opened by Mr Ramaphosa at 11h45

1.2 The following documentation was tabled:

Documentation of 31 January 1996
Memo from Executive Director: PAC Submission on the Right to Property
Invitation from Black Sash to Administrative Justice Seminar

1.3 It was noted that a bi-lateral meetings on the National Assembly had taken place, but that multi-lateral discussions involving the DP were still to take place.

1.4 It was noted that after discussion of the National Assembly, the meeting would adjourn and reconvene at 17h00 to receive a report back on further discussions of the Bill of Rights.

2. DISCUSSION: NATIONAL ASSEMBLY

2.1 Section 41: Composition and election of the National Assembly

2.1.1 It was agreed that further discussions take place between the parties on the basis that agreement first be sought on the general nature of the electoral system. Section 41 would for the time being simply state the size of the National Assembly.

2.1.2 Depending on the outcome of the discussions between parties, a separate provision may be included describing the essential elements, or broad outline, of the electoral system itself.

2.2 Section 45 (3): Seat of National Assembly

2.2.1 It was agreed the clause would be deleted. A note in the sidebar

would however indicate that the issue may need to be revisited, that the DP supported such a provision in the Constitution, and that it proposed Cape Town as the seat of the National Assembly.

- 2.2.2 It was noted that the DP preferred that the clause be placed in brackets, or that the following options be listed:
- i. no provision on the seat
 - ii. the provision contain the position that the seat be Cape Town, as preferred by the DP
 - iii. the provision in (b) including a provision regarding the procedure required for its amendment

- 2.2.3 The ACDP clarified its position, stating that whilst it proposed Cape Town as the seat of the National Assembly, it was against constitutionalising the issue.

2.3 Section 50: Internal Autonomy

- 2.3.1 It was noted that the Independent Panel of Experts had prepared suggested formulations as requested, and that they had been included in the documentation pack.

2.3.2 Minority Party Participation in the Committee System

The meeting agreed to an amended Section as follows:

" 50(1) *The National Assembly may determine and control its internal arrangements and may make rules and orders concerning its business and proceedings, including rules and orders regulating the establishment, composition, powers and functions, procedures and duration of its committees.*

(2) *The rules and orders must provide for the participation of minority parties in the legislative process in a manner consistent with democracy*

(3) *A committee of the National Assembly may summon anyone to appear before it to give evidence on oath or affirmation or to produce documents.*"

2.3.3 Initiation of Legislation by Select Committees

- i. It was agreed that further reference to this be deleted.
- ii. It was noted, however, that the NP wished to revisit the issue of

minority parties regarding a number of processes, not only this one.

2.4 Section 54: Referral of Bills to the Constitutional Court

- 2.4.1 It agreed that discussion on this issue be deferred after consultation with Judges on 1 February 1996. Further discussions between parties would take place and a report would be made to the Sub-committee on 12 February 1996.

3. BILL OF RIGHTS

- 3.1 It was noted that meetings had taken place between the parties on the Bill of Rights during the course of the day.
- 3.2 The following additional documentation was tabled:

NP document: "Further submissions on the Bill of Rights and Requests for clarification from the Panel - 31 January 1996"

Memorandum from the Panel of Experts: "Privacy of communications (Section 13(3))"

Memorandum from the Panel of Experts: "The Constitutional protection of Freedom of Expression and "Hate Speech" (Section 15)"

Memorandum from the Panel of Experts: "Equitable" and "Equal" in Section 25(3)"

4. DISCUSSION: BILL OF RIGHTS

4.1 Section 8: Equality

- 4.1.1 Regarding Section 8(2) Option 1, it was reported that after discussion between the parties, there was a proposal supported by the ANC and NP that the section be amended to read as follows:

"Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures that have as their objective the protection and advancement of persons or categories of persons disadvantaged by unfair discrimination may be used."

- 4.1.2 The meeting noted that the DP did not support the proposal and tabled a further proposal which it had extracted from a submission by the Association of Law Societies and which it felt addressed their concerns about affirmative action. The DP proposed that the section be amended to read:

"Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures protecting and advancing persons or categories of persons disadvantaged by unfair discrimination may be used."

- 4.1.3 It was agreed that Option 2 be deleted and the new draft proposed by the ANC and NP be inserted in the draft with a side-bar note along the lines that "*consideration should be given to the proposal tabled by the DP.*"
- 4.1.4 Regarding Section 8(3), the meeting agreed to await the opinion which had been requested from the Panel of Experts and which would be available on Friday 2 February 1996 before discussing the matter further.
- 4.1.5 The NP stated that, while it awaited the opinion from the Panel, it had indicated that it would be prepared to look at a completely different wording of the section if the Panel was unable to resolve any of the differences between the parties.
- 4.2 **Section 10: Life**
- 4.2.1 It was reported that there was no further progress on this matter.
- 4.3 **Section 13: Privacy**
- 4.3.1 The Panel of Experts presented a memorandum, "*Privacy of communications (Section 13(3)).*"
- 4.3.2 The DP expressed the view that the verb "*violated*" in Section 13(3)(d) appeared to be all-embracing whereas the verbs "*searched*" and "*seized*" in Sections 13(3)(a),(b) and (c) were definitive verbs which may have the effect of restricting the right to privacy. The DP stated that it wished to take the matter under advisement.
- 4.3.3 The ANC stated it remained convinced that the use of the word "*violated*" is appropriate in the subsection.
- 4.3.4 It was agreed that the section be retained as it is for the present but that a side-bar note be added that the DP is taking the matter under advisement and is seeking further legal opinion.
- 4.4 **Section 15: Freedom of expression**
- 4.4.1 The Panel of Experts tabled a memorandum "*The Constitutional protection of Freedom of Expression and "Hate Speech" (Section*

15)".

4.4.2 It was agreed that the parties be given time to consider the memorandum and the matter be revisited at a later stage.

4.5 Section 25(3): Housing and Land

4.5.1 The Panel of Experts presented a memorandum "*Equitable*" and "*Equal*" in Section 25(3)".

4.5.2 The meeting accepted the memorandum and noted that the question of the grouping of socio-economic rights would be revisited.

5. CLOSURE

5.1 It was agreed that progress had been made and that discussions would continue between the political parties who would report on Wednesday 7 February on the outstanding issues in the Bill of Rights.

5.2 The meeting rose at 17h43.

