

2/4/95/3/1/8

**CONSTITUTIONAL ASSEMBLY**

***SUBTHEME COMMITTEE 6.1  
SPECIALISED STRUCTURES OF GOVERNMENT***

***ELECTION COMMISSION***

***MONDAY, 19 JUNE 1995 - E 249***

***13h00***

***DOCUMENTATION***

**Embargoed until 13h00  
19 June 1995**

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19 June 1995

*(Subtheme Committee 6.1 - 19 June 1995)*

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**CONSTITUTIONAL ASSEMBLY**

**TWENTY-SECOND MEETING OF THEME COMMITTEE 6.1  
SPECIALISED STRUCTURES OF GOVERNMENT**

**ELECTION COMMISSION**

**MONDAY, 19 JUNE 1995**

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

**DATE** : Monday, 19 June 1995  
**TIME** : 13h00 - 17h00  
**VENUE** : E 249 (New Assembly Wing, Parliament, Cape Town)

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**AGENDA**

1. **Opening and Welcome**
  2. **Adoption of minutes held on 05 June 1995 (pp. 2-5)**
  3. **Discussion: Election Commission First Draft Report - Technical Advisors (pp. 6-11)**
  4. **Any Other Business**
  5. **Date of Next Meeting**
  6. **Closure**
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**HASSEN EBRAHIM  
EXECUTIVE DIRECTOR**

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Enquiries: Nkateko Nyoka or Saalięah Zardad (Tel: 245031 X 2241 or 403 2267)

**Embargoed until 13h00  
19 June 1995**

**CONSTITUTIONAL ASSEMBLY**

**MINUTES OF THE TWENTY FIRST MEETING OF SUBTHEME COMMITTEE 6.1**

**THEME COMMITTEE 6.1  
SPECIALISED STRUCTURES OF GOVERNMENT: ELECTION COMMISSION**

**MONDAY, 05 JUNE 1995**

**PRESENT**

Vadi, I (Chairperson)

De Beer SJ  
Dexter P  
Mlambo-Ngcuka P  
Mokitlane MC  
Watson A

**Observers:**

Pretorius IJ  
Sikakane MR

**Guest:**

Johann Kriegler

**Apologies:**

Harris P  
Jordaan JA  
Love JY  
Skweyiya ZST

Nyoka N, Pillay D, Tredoux A and Zardad S were in attendance.

**1. OPENING AND WELCOME**

Mr Vadi opened the meeting at 11h10 and welcomed members, especially Judge Johann Kriegler who agreed to present evidence on behalf of the Independent Election Commission on the issue of Constitutionalising the Election Commission.

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## 2. PUBLIC HEARING: ELECTION COMMISSION - JUDGE KRIEGLER

- 2.1 Judge Kriegler presented evidence on the issue of an Electoral Authority. Judge Kriegler explained that his presentation is based on the document entitled: "**REPORT OF THE INDEPENDENT ELECTORAL COMMISSION: The South African Elections of April 1994**" which was circulated to members prior to the hearing. The following main points ensued from his presentation:

That an electoral authority - whether located within or outside of government - must have the following attributes:

- 2.1.1 It must be perceived to be manifestly independent to ensure credibility;
- 2.1.2 It must be accountable;
- 2.1.3 It must be manifestly apolitical, yet it must be responsive to the political process;
- 2.1.4 It must be financially and administratively efficient; and at the same time it must be sufficiently flexible and adaptable to be able to cater for vastly differing voting communities;
- 2.1.5 It must be tightly organised as a small, professional organisation with highly skilled staff keeping abreast of developments relating to electoral administration;
- 2.1.6 It must be able to expand rapidly and be able to deliver elections throughout the country; and
- 2.1.7 It must have continuous capacity, but it must be cost efficient. Ideally, Judge Kriegler argued, all elections should be centrally controlled whilst being staffed and implemented at local government level. This will ensure that the Elections Commission whilst being small can draw upon the vast resources of the government upon request. This will obviate the need to retain a huge, expensive permanent staff.

He continued by referring members to the recommendations of the report as set out on pages 84 -88.

- 2.2 On the need or otherwise for constitutionalising the Election Commission, Judge Kriegler submitted that the Electoral Commission should be provided for in the final text of the Constitution. He recommended a minimalist, single constitutional section whereby the administration of the elections of the country at all levels of government would be located within an independent, impartial,

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accountable body financed by central government but independent of executive control.

- 2.3 Following questions of clarity the chairperson thanked Judge Kriegler for his instructive and informative contribution.

The meeting agreed that the technical advisors would incorporate the IEC and AWEPA submissions in the first report on the Election Commission.

**3. ADOPTION OF MINUTES HELD ON 22 MAY 1995**

The minutes of the meeting held on 22 May 1995, were adopted.

**4. ELECTION COMMISSION REPORT - TECHNICAL ADVISORS**

Ms Dhaya Pillay spoke to the technical advisors synthesis workshop report entitled: "Discussion document arising from workshop on Constitutionalising the Election Commission". The contents of the document were noted and referred to parties for further consideration.

**5. PARTIES' SUBMISSIONS**

- 5.1 The ANC and the NP submissions on the Elections Commission were noted. The meeting agreed:

5.1.1 to extend the deadline date for outstanding parties' submissions on the Election Commission to Wednesday, 7 June 1995;

5.1.2 that the technical advisors First Report on the Election Commission would incorporate parties' submissions and identify areas of agreement and disagreement. The report would be used as a basis for discussion by the parties;

5.1.3 that the technical advisors would submit the report for circulation to members on 12 June 1995; and

5.1.4 that parties would formally submit their views on the report at the next meeting scheduled for 19 June 1995.

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**6. WORK PROGRAMME**

The draft work programme was tabled at the meeting. Following a discussion a revised work programme was adopted as follows:

- 6.1 12 June 1995: Submission for circulation to members of the technical advisors First Report on the Election Commission;
- 6.2 19 June 1995: Parties' Discussion - Election Commission Report; and
- 6.3 21 June 1995: First draft constitutional text formulation by the law and technical advisors.

**7. CONSTITUTIONAL PUBLIC MEETINGS**

- 7.1 Members agreed to represent the Subtheme Committee at the following Constitutional Public Meetings:

Lusikisiki	:	A Watson
George	:	Pumzile Mlambo-Ngcuka
Hammersdale	:	Phillip Dexter
Mhluzi	:	MC Mokitlane

- 7.2 Mr Watson reported that he had represented the Subtheme Committee at the Labour Sector Meeting held on 3 June 1995. The chairperson thanked Mr Watson for representing the Subtheme Committee.

**8. ANY OTHER BUSINESS**

- 8.1 The invitation extended to the Subtheme Committee by Theme Committee 1 was noted.

**9. DATE OF NEXT MEETING**

The date of the next meeting is as follows:

**DATE:** 19 June 1995  
**TIME:** 13h00 - 17h00  
**VENUE:** E 249 (New Assembly Wing, Parliament, Cape Town)

**Embargoed until 13h00  
Monday, 19 June 1995**

**10. CLOSURE**

The meeting rose at 12h40.

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FIRST REPORT OF TECHNICAL COMMITTEE**FIRST REPORT OF THE TECHNICAL COMMITTEE TO SUB  
THEME COMMITTEE 6.1 OF THE CONSTITUTIONAL  
ASSEMBLY CONCERNING THE ELECTION COMMISSION****1. INTRODUCTION :**

1.1. This report synthesizes the presentations, discussions and recommendations of South African and international elections experts, and the submissions of four political parties (ACDP, ANC, DP and NP) to the Committee.

1.2. Whilst there is substantial consensus amongst the experts and the political parties, differing views have emerged on two related areas: the number of persons to be appointed to an Elections Commission and the process of their appointment.

**2. THE STRUCTURE :**

The structure responsible for national elections shall be an Elections Commission which will be serviced by an Elections Directorate.

FIRST REPORT OF TECHNICAL COMMITTEE

**3. ESTABLISHMENT :**

The Elections Commission should be established in the Constitution of the Republic of South Africa Act.

**4. CHARACTERISTICS :**

The Elections Commission should be independent, impartial, efficient, autonomous, politically skilled yet free of political influence.

**5. COMPOSITION :**

5.1. Persons who are reputed for their independence and integrity and who can embody the qualities referred to above within the Elections Commission should be appointed.

5.2. The composition should also be representative of the population in terms of race and gender.

5.3. The inclination is to appoint a judge to head the Elections Commission.

FIRST REPORT OF TECHNICAL COMMITTEE

5.4. There is broad consensus that the Elections Commission should be composed of a few members. The numbers suggested thus far are 3, 6 and 9.

## 6. APPOINTMENT, TERM OF OFFICE AND DISCHARGE

6.1. Some members of the Elections Commission and its administrative staff must be appointed on a full time/permanent basis, whilst others are engaged as required. A core of about three policy makers and a "couple of dozen" administrative staff should be permanently appointed.

6.2. No person may be a member of the Elections Commission if such person has held political office for three years immediately preceding the appointment.

6.3. Members of the Elections Commission should be appointed for terms of X years and shall be eligible for re-appointment thereafter.

6.4. Members of the Elections Commission may be discharged when their terms of office ends, when they reach retirement age, on resignation or when they cease to be fit and proper persons to fulfil their functions.

FIRST REPORT OF TECHNICAL COMMITTEE**7. THE APPOINTMENT PROCESS**

7.1. There is consensus that the process of appointing members to the Elections Commission must be participatory so that the outcome is acceptable, not merely to the political parties but to the electorate. Three models have emerged:

**7.1.1. Model One**

The Provinces should nominate and the President should appoint.

**7.1.2. Model Two**

The National Assembly should elect by a majority of 75%.

**7.1.3. Model Three**

A special committee which would function along the lines of the Judicial Services Commission should select the members who would then be appointed by the State President.

Whatever process is adopted, it must, as must the outcome, be acceptable to the electorate.

FIRST REPORT OF TECHNICAL COMMITTEE**8. POWERS AND FUNCTIONS**

8.1. The Elections Commission should in general terms take charge of the operational, educational, legislative, policy making and supervisory functions.

8.2. Based on the principles of natural justice, the Elections Commission should not be responsible for monitoring or adjudication. These functions should be undertaken by the political parties and the ordinary courts respectively.

8.3. Of paramount importance is the compiling and maintenance of electoral rolls.

8.4. The Elections Commission should be allocated its own budget for which it shall account to Parliament.

8.5. In the exercise of its powers and performance of its functions the Elections Commission shall remain accountable to Parliament to whom it shall report at least annually.

FIRST REPORT OF TECHNICAL COMMITTEE**9. THE CONSTITUTIONAL TEXT**

It is agreed that the Constitution should contain the broad principles governing the Elections Commission. Matters of detail should be left to the general laws.

**10. CONCLUSION**

This report aims to capture the principles which must, once consensus is reached in Theme Committee 6.1, form the basis of the draft Constitutional text. Issues for inclusion in the general laws may be recorded separately in an explanatory memorandum accompanying the Constitutional text.