

2/21/17/20

CONSTITUTIONAL ASSEMBLY

CONSTITUTIONAL SUB-COMMITTEE

SUBMISSIONS

**RECEIVED AS AT
6 FEBRUARY 1996**

VOLUME 11

**PART 1
GOVERNMENT INSTITUTIONS
& ORGANISATIONS**

CONSTITUTIONAL COMMITTEE

SUMMARY OF SUBMISSIONS RECEIVED AS AT 6 FEBRUARY 1996

VOL NO	GOVERNMENT INSTITUTIONS	SUBJECT	SUMMARY
11.1	Public Protector		<p>The Interim Constitution constitutes the framework and parameters within which the National Public Protector and Provincial Public Protectors operates or should be operating. Unfortunately, the appointment of Provincial Public Protectors has not been without problems. On 28 November 1995, a bill seeking to ensure the appointment of a Provincial Public Protector in Gauteng was withdrawn by the MEC for Finance, Mr Jabu Moleketi. Mr Moleketi stated, as his reason for withdrawing the bill, the fact that the recently published working draft of the Constitution contains no provision on the establishment of Provincial Public Protectors. The fear of the Honourable MEC is that should the final Constitution be passed without a provision on Public Protectors, any appointment of a Provincial Protector in terms of the Interim Constitution would be unconstitutional under the final constitution and the termination of contracts of Provincial Protectors, so appointed, would be financially devastating.</p>

11.1	Public Protector <i>(cont)</i>		<p>There is merit in the Honourable MEC's argument, albeit, not without problems. The prevailing law relating to the appointment of the National Public Protector and Provincial Public Protectors is the Interim Constitution and the Public Protector Act. For this reason it is improper to resist the establishment of any office in terms of the Interim Constitution purely because such establishment might be eclipsed under the final constitution. Furthermore, even if consensus about all clauses of the new Constitution is reached by May 1996, it does not mean that the final constitution will come into operation then. The President would have to promulgate the date on which the Constitution will take effect. Such date will have to be fixed after auditing all Structures of Government as established under the Interim Constitution.</p> <p>Provincial Public Protectors, as envisaged in the Interim Constitution, were not established as an academic exercise, but as a consequence of a need for Public Protector services to be brought closer to the people. The vastness of the country, geographically speaking, makes it impossible for the National Public Protector to function, without regional</p>
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11.1	Public Protector (cont)		<p>offices, effectively in the provinces. If it is envisaged that the Public Protector will, in future, be supported by regional offices - the final constitution must contain a provision in this regard, alternatively, the matter must be dealt with in transitional arrangements.</p> <p>The CA is enjoined to consider the future role of Provincial Public Protectors or alternatively similar mechanisms , such as the Public Protector's Regional Offices.</p>
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VOL NO	ORGANISATION	SUBJECT	SUMMARY
11.2	Mabopane Community	Land & Housing	Re-introduce the Pass laws, Homeland Service Contract to stop people from the Homelands flooding into the towns. This will stop further mushrooming of squatter camps in our townships.
11.3	Rand Afrikaans University	Language	<p>Option 1 S3 - of the interim Constitution sets out the language policy of RSA. Clause 4 should be amended to include the words "... as well as the language provisions of the interim Constitution (S3).</p> <p>Option 3 - two problems with this option - (i) it suppresses principle of non-diminishing of the rights; & (ii) makes no mention of status that languages before the Constitution have enjoyed.</p>

CONSTITUTIONAL COMMITTEE

REGISTER OF SUBMISSIONS RECEIVED AS AT 30 JANUARY 1996

VOL NO	GOVERNMENT INSTITUTIONS	SUBJECT	PAGE NO
11.1	Public Protector	Provincial Public Protectors	1 - 11

NO	ORGANISATION	SUBJECT	PAGE NO
11.2	Mabopane Community	Land & Housing	12 - 21
11.3	Rand Afrikaans University	Language	22 - 27

TO THE CONSTITUTIONAL ASSEMBLY (ADV P NCHOLO)

ADDITIONAL MEMORANDUM


RE: PROVINCIAL PUBLIC PROTECTORS

In the Memorandum from the Gauteng Provincial commission (Paragraph 5) a solution is proposed. There is an erroneous reference to section 25 of the Public Protector Act. (The Act only has 15 sections).

This was probably meant to refer to section 3 of the Public Protector Act 23 of 1994. In my view section 3 does not provide a solution. The Deputy Public Protector referred to in that section is one to be appointed at National level. This becomes clear upon reading Section 3(2)(b) which refers at sub-paragraph (i) thereof to the National Assembly and the Senate.

In my view a generous interpretation of Section 3 would conflict with the provisions of section 114 of the Constitution.

Accordingly, I re-iterate that in my view this matter can only be solved via the new constitution or through transitional arrangements.



**ADV S A M BAQWA
PUBLIC PROTECTOR**

24 JANUARY 1996



REPUBLIC OF SOUTH AFRICA

PUBLIC PROTECTOR
MOSIRELETSI WA BATHO • MOŠIRELETŠI WA BATHO
MUSIRHELELI WA VANHU • MUTSIRELEDZI WA VHATHU
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Faxed by: Ms D.C. Symon Datum: _____ Reference: _____
Gestuur deur: _____ Date: 96.01.23. Verwysing: _____
For attention: _____ Tyd: _____ Room No: _____
Vir aandag: Ms C. Ramaphosa Time _____ Kamer Nr: _____
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REPUBLIC OF SOUTH AFRICA

PUBLIC PROTECTOR
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228 Visagie Street Pretoria

Enquiries:

Reference: 1/2/3/3

1996-01-23

Mr C Ramaphosa (Chairperson
Constitutional Assembly: Cape Town

Fax No: (021) 461 3679

Your ref: Adv P Ncholo

Dear Mr Ramaphosa

RE: PROVINCIAL PUBLIC PROTECTORS

— Please find herein enclosed two memoranda from myself and from the Provincial Service Commission, Gauteng, which speak for themselves.

Kindly consider the matter and let me know the views of the Constitutional Assembly as a matter of urgency.

Yours faithfully

ADV S A M BAQWA
PUBLIC PROTECTOR

acs/a/1/ramap

Copy to: Gauteng Provincial Service Commission - Barbara Adair

P.2/10

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Office of Gauteng
Provincial Service
Commission

MEMORANDUM

TO : TOKYO SEXWALE
JABU MOLEKETI
MARK PHILLIPS
MOHAMMED DANGOR
cc. Adv. SELBY BAQWA

FROM : THE PROVINCIAL SERVICE COMMISSION

REF : B. ADAIR
P. FITZGERALD

DATE : 9 JANUARY 1996

SUBJECT : APPOINTMENT OF PROVINCIAL PUBLIC PROTECTOR

- 1) S114 of the Interim Constitution makes provision for the establishment of a provincial public protector.
- 2) The provincial public protector must be appointed in terms of provincial legislation.
- 3) A draft bill setting out the above was scheduled to be tabled in the provincial legislature on 28 November 1995, however, prior to it being tabled it was withdrawn by the MEC for Finance, Mr Jabu Moleketi, as the recently released Draft Constitution makes no provision for the establishment of a provincial public protector.

- 4) We understand from Advocate Selby Baqwa that there is a need for the establishment of the provincial public protector as the national public protector, is unable to deal properly with problems that emanate from the provinces.

Our concern is that, should this position be established and someone appointed into the post, in May 1996 the office will become unconstitutional and the province shall be compelled to pay out the newly appointed public protector for the contract period, this being seven (7) years.

- 5) A solution, which we believe would be acceptable to all parties, would be for the national public protector to appoint deputy public protectors, in terms of S25 of the Public Protector Act, No 23 of 1994. The deputy public protectors could be situated in the provinces; effectively they would function as provincial public protectors, but established in terms of the national legislation.

In this way the national public protector would have the assistance that is required, this being public protectors situated in the provinces, and the province would have a public protector with specific knowledge of the province appointed by the national office whose position would not become unconstitutional in May 1996.

- 6) We hope that this suggestion is acceptable to all parties. If it is Advocate Baqwa approves, we shall facilitate the appointment of the deputy public protector, in the same way that we would have facilitated the appointment of the provincial public protector, on behalf of the national public protector.

We look forward to hearing what your views are regarding this suggestion.

MEMORANDUM

RE: PROVINCIAL PUBLIC PROTECTORS

TO: THE CHAIRMAN, THE CONSTITUTIONAL ASSEMBLY, CAPE TOWN

AND TO: THE PREMIER, GAUTENG PROVINCE

AND TO: THE PROVINCIAL SERVICE COMMISSION, GAUTENG

The Office of the National Public Protector was established by Chapter 8 of the Constitution of South Africa Act No 200 of 1993. In tandem with its establishment Section 114 of the Constitution, also seeks to establish the offices of Provincial Public Protectors in all the nine Provinces. For completeness sake Section 114 of the Constitution is quoted herein:

"114. Provincial Public Protectors.-

- (1) A provincial legislature may, subject to sub-sections (2) and (3), by law provide for the establishment, appointment, powers and functions of a provincial public protector and for matters in connection therewith.**
- (2) A provincial law referred to in sub-section (1) shall not in any way derogate from the powers and functions of the Public Protector.**
- (3) A provincial public protector shall be appointed by the Premier of a province in consultation with the Public Protector, provided that the appointment shall be confirmed by resolution of a majority of at least two-thirds of all the members of the provincial legislature.**
- (4) A provincial public protector shall exercise and perform his or her powers and functions in consultation with the Public Protector, who shall have concurrent jurisdiction in the provinces."**

In pursuance of the provisions of Chapter 8 of the Constitution, national legislation in the form of the Public Protector Act No 23 of 1994 was promulgated. Section 12 of that Act

enjoins the Public Protector to formulate guide lines for Provincial Public Protectors. The Section is quoted hereunder:

"12(1) The Public Protector shall as soon as possible after a provincial public protector has been appointed under a law contemplated in section 114 (1) of the Constitution, and after consultation with the provincial public protectors, publish in the Gazette notice setting out general guidelines in accordance with which a provincial public protector shall exercise and perform his or her powers and functions as contemplated in section 114 (4) of the Constitution: Provided that this subsection shall not be construed as prohibiting a provincial public protector from departing from such guidelines in a particular case in consultation with the Public Protector.

(2) Unless provided otherwise in a law of a provincial legislature contemplated in section 114(1) of the Constitution, the provisions of section 5 up to and including section 11 shall mutatis mutandis apply to a provincial public protector in respect of an investigation into a matter by him or her: Provided that a reference to "Public Protector" shall be construed as a reference to a provincial public protector, a reference to "Parliament" shall be construed as a reference to a provincial legislature and a reference to "Minister of Finance" shall be construed as a reference to the member of the Executive Council responsible for finance."

~~_____~~
~~_____~~
~~_____~~ Generally speaking it does not seem as if there is a problem in understanding both pieces of legislation in the country. In proof thereof, seven of the provinces have promulgated provincial legislation with a view to establishing the office of Provincial Public Protectors. They are currently engaged in preparations to facilitate the appointment of Provincial Public Protectors.

~~_____~~
~~_____~~
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~~_____~~
~~_____~~
~~_____~~
~~_____~~

~~the office would become UNCONSTITUTIONAL and the provisions~~
~~of the Act appointing Public Protector~~
~~for seven years.~~

~~Public Protector~~
~~and~~

~~Public Protector Act. Policies have been established in the Office and~~
~~Structures have been established in the Office in order to ensure that~~
~~the establishment of the Office of the Public Protector is not~~
~~established in terms of the present interim Constitution.~~
~~adoption of the new Constitution of the present interim Constitution, there will~~
~~also be established in terms of the present interim Constitution, and~~
~~of the present interim Constitution, and will not~~
~~be affected by the provisions of the new Constitution.~~
~~the provisions of the new Constitution will have to be made in terms of the provisions~~

that have been established in terms of the interim Constitution. Provision will have to be made to ensure that contractual arrangements which may have come into being in terms of the interim Constitution are not disrupted by provisions of the new Constitution. Accordingly it is inconceivable that a province would be put into a position where it would have to pay out a newly appointed public protector for a contract period of seven years, purely because of the coming into operation of the new Constitution.

It is correct that the recently released draft Constitution makes no provision for the establishment of a Public Protector at provincial level. The office of the Public Protector is dealt with in section 107 of chapter 7 of the working draft of the new constitution. It reads as follows:

- "107.(1) The Public Protector has the following powers, as regulated by national legislation:**
- (a) to investigate any conduct in state affairs or the public administration at any level of government that is alleged or suspected to be improper or to result in any impropriety or prejudice;**
 - (b) to report on that conduct; and**

- (c) to take appropriate remedial action.
- (2) The Public Protector has the additional powers and functions prescribed by national legislation.
- (3) The Public Protector may not investigate court decisions.
- (4) The Public Protector must be accessible to all persons and communities.
- (5) Any report issued by the Public Protector must be open to the public, unless exceptional circumstances to be prescribed by national legislation require that a report be kept confidential."

~~At present there is no institution of Provincial Public Protectors. The fact of the matter is that the Public Protector is an independent office established as an independent office. There is a cry for a Public Protector for the people in their vastness of the country, geographically speaking, is such that the National Public Protector cannot operate in all the provinces without regional offices in the provinces. The establishment and completion of the National Public Protector office is presently more than that office can handle.~~

~~The Public Protector is an independent office established as an independent office. There is a cry for a Public Protector for the people in their vastness of the country, geographically speaking, is such that the National Public Protector cannot operate in all the provinces without regional offices in the provinces. The establishment and completion of the National Public Protector office is presently more than that office can handle.~~

If this supposition about provincial offices resorting under the National Public Protector is correct, the scenario as I foresee it would be as follows: The Provincial Public Protectors and whatever infrastructure they might have established at the time of the coming into operation of the new Constitution would remain in place. The contractual obligations would also remain in place. There would probably be a name change but the status would remain the same in respect of the office known as the Office of the Provincial Public Protector. There could be no downgrading of the status of the office because this is necessary for the effectiveness thereof. With regard to funding, the transitional arrangements would ensure that for the current financial year the provinces would provide for the provincial offices and provision could be made for a change over for financing at national level in the subsequent financial year if this is what is intended.

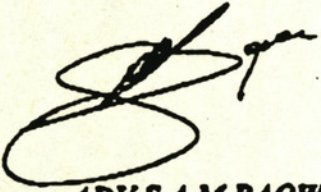
~~The following draft of the new Constitution is submitted to the Assembly and the purpose of this memorandum is to make the Assembly aware of the Constitutional Assembly to have clearly known this matter of Provincial Public Protection Act with its effect. A copy of a memorandum received from the Provincial Service Commission, Gauteng in which they raise their concerns is annexed hereto for easy reference marked "A".~~

**ADV S A M BAQWA
PUBLIC PROTECTOR**

DATE:

a/l/memo/acs

The working draft of the new Constitution is silent on these matters and the purpose of this memorandum is to make an urgent request to the Constitutional Assembly to state clearly how this matter of Provincial Public Protectors is to be dealt with in future. A copy of a memorandum received from the Provincial Service Commission, Gauteng in which they raise their concerns is annexed hereto for easy reference marked "A".



**ADV S A M BAQWA
PUBLIC PROTECTOR**

23 January 1996

a:/memo/scs

02 January 1996

Dear Sir

We would like, with this letter, to convey a few messages.

- I We would like that Section 10 (the Pass Laws), the Night Special, the Residential Permit and the Homeland Service Contract should apply once more to those who come to work in Pretoria, because these are the only means of setting right this country.
- II The *Land Wet* should also be tough because everybody is taking the law into their own hands. People do as the please. People from the homelands are flocking into towns. They are the cause of the Squatter Camps. We would like to see a law that determines homeland citizenship so that each person's place of birth and residence may be known. Each person should have a pass that indicates his/her place of birth or origin. That is the only way in which law and order will be maintained.
- III People who come from the rural areas have left their lands lying fallow. There is nobody there. They have all run to the urban areas. Who lives there now? They have filled the areas of Johannesburg and Pretoria with Squatter Camps. The people who have been living in the urban areas, who have proof such as Title Deeds to verify their residence, have nowhere to live. The people from the homelands have left their lands with the aim of seeking employment in the urban areas. The urban areas are full of them. Our children will have nowhere to stay when they grow up. All races are flocking to the towns, leaving their areas behind. You must look into this matter because burial grounds are getting full. The children of the people who have been born and bred here have nowhere to stay.
- IV What are they doing here, since there is no employment in the urban areas? All that they have come to do is to cause disorder and to steal; to break into houses and banks. Thefts are bound to escalate.

I suggest that overseas investors should establish industries (factories) in this country and that they should start in the homelands so that those who come from there may go back. That way the country will come right. Each individual should obtain a permit from his/her local magistrate or commissioner. A person who has no South African ID and who cannot prove his/her origins should not be afforded the rights of local citizens because the burial areas are full. They have come to this country without proper permits.
- V Illegal aliens should be stopped. They are overpopulating our country. They have no permits. They are filling our burial grounds. Our citizens have nowhere to stay. We may not go to their countries without proper permits, because their immigration laws are tough. They, on the other hand, come into our country without even reporting to the

magistrates or commissioners. When we go to their countries, for political reasons, we do so legally. We report to the magistrates and commissioners. We do not sneak into their countries. This is what our children have been doing since 1976. They entered their countries legally. They, however, jump our fences and bring disorder, theft and killings.

- VI We would like you to abolish the erection of shacks and structures that have no plans in the backyards of stand owners. These are the things that are causing disorder. These foreigners, who live in these backrooms, stay five to a room and each one has to pay R30. This means that, if there are five of them, they pay R150. Stand owners are making money, this way, while causing disorder in the community. Pretoria and Johannesburg are full of Zimbabweans and Mozambicans who are living like sardines in these backrooms.

You must look into this matter. Stand owners who rent unplanned structures on their stands should be prosecuted. The law must stop the erection of unplanned structures. They are the cause of rapes and thefts. Each stand owner must demolish these structures. The Government gives old men and women pensions, so, what more do these stand owners want?

- VII People who live in municipality houses no longer pay rent. They are staying free of charge. We would like the erection of shacks to be abolished.

We would also like you to look into the problem of 14 to 18 year old children, who have parents, who refuse to go school and wander about in town the whole day, some of them selling newspapers. You should find an old building and gather them there so that they may be taught manual work because they are not being prepared for life. Theirs is to steal, kill and rape. These boys and girls should be taught how to use their hands. They are creating disorder. Such an old building should be their institution where they will be trained in certain skills.

- VIII We propose that only members of the family, and people who can fill one bus, should attend each funeral, in order to reduce burial expenses, because that person is dead, after all, and will not come back to life. The Whites bury their dead all the time in the middle of the week, and only a handful of people attend the funeral. Death causes poverty among the children of the deceased. They are left with no money to pay for their education, including university education. We are losing a lot through funerals. This was not the case in the past. Nowadays, funerals are like parties. Please devise a new system so that only about 50 people should attend a funeral.

Death has become a roaring business. The Whites are ripping us off because we are not aware of the fact they do not go into such huge expenses when they bury their dead. The custom of cooking food of a high standard is very bad. Even people who cannot afford it feel compelled to do so.

.IX I propose that you should enforce that only about 50 people should attend a funeral and that people should start burying their dead midweek and to stop cooking food of a high standard. Children are left without money to pay for their education, including tertiary education, because of funerals. The police should check that this law is applied, and they should limit the number of mourners who attend a funeral. While Mr Mangope was still president of Bophuthatswana, he used to ensure that only a handful of people attended funerals and that no food of a high standard was cooked. He used to send the police to monitor the number of mourners.

You must write a law that prohibits the use of caskets because, there is no money. Africans who live in suburbs should set the example by following the style of burial that is used by Whites. Those who live in the townships will follow suit.

Please, please, please, we would like you to see to it that only members of the family and only about 50 people attend funerals, because a lot of money is wasted, otherwise. Children lack school fees because of funerals. You really must look into this matter because money is so scarce. Children need money in order to further their education and to go to universities. Where will they get it, when funerals are so expensive? Rich and poor alike spend up to R5000 per funeral. This is simply too much. Buses and coffins are also too expensive. When we get up in the mornings, to go to work, it is in order to earn money for food and funerals only. There is no money left for the education of our children. This is my chief complaint.

X We would also like the mission schools to be re-established. They are the ones that teach children Christianity and a good way of life. The Government of National Unity has created disorder in the country by abolishing mission schools.

From

Mabopane Community.

Dear Sir

Re be re Haguwa Malacisa pa boofing
bona. Malacisa ya malacisa ke ena.

I Re be kona gore section 10 ya dipasa
le night special, le Residential
Committee, Home Land Service Contract
ge ba llo gosebetea pa Trebona le yobonobona
e boya gape. Ka gore ke yona e ka
lokutany ketease.

II Land act le yona e swanetse go
ba boona. Ka gore mang le mang
o tsena malacisa ka ba Malagony
a ga gae. Bala ba tsena le boitshetse
Batho ba tswana ba tsamang kwa le
Home Land Committee ka malacisa ke
bona le Malagony pa chi dipasitlampe.
Ke be kona gore go be le tsamang
ya le Home Land gore malacisa mang
le o mangwe a tsabege gore. O
bolegelhe kwa e dula kwa. O
swanetse a be le tsamang sa go
supetse gore le gae le o tsamang
o bolegelhe kwa ke pa le lla boona
dulo gore le tsamang ke mananeo.

III Batho ba tsamang Malagae ba llo gese
malacisa e boona a gae ga gosara
malacisa boona le tsabetea setgweny

Go dula mmang ka gore ba tlhase
 mafase a tšhona, Johnsoneng ka
 gore tlhase fa di tšhona tšhona
 Bana bogolese fa di re tšhona
 Area banyeng le bogolese le di tšhona
 Decets ba gore ke ba agi ba fa ba
 hloka bo dula, ge ntlha tšhona
 le mmang, Banna ba di tšhona
 ba bogolese mafase a bona bare.
 Banna nyana tšhona, Moga tšhona
 e tšhona ka bona, Banna boroma
 baya go dula ku ga go ba gota
 tšhona ku ga dula tšhona tšhona
 tšhona tšhona mafase a bona tšhona
 le swamane go a bona. ka gore
 tšhona a tšhona tšhona tšhona
 ba e tšhona tšhona ba dula ba bona ba
 bona di tšhona bo dula.

II

ka gore fa ditšhona ga gore tšhona
 tšhona ba di go dula eng, Ba tšhona
 go tšhona le go tšhona, tšhona tšhona
 le di tšhona tšhona. Bogolese boka se
 pele.

ke be ke bona di Investors tšhona
 mafase a kwa tšhona ba tšhona go dula
 di tšhona, Industries, factories ba
 tšhona pele kwa di tšhona gore
 ba tšhona kwa tšhona ba bogolese kwa
 ba tšhona tšhona ke fa le tšhona
 tšhona, tšhona e mmang le mmang

ke yu kura Magistrate Commission ya
gabara a lokise di mpanjuri. Mloti
yu klotung gisona ya mull afusa a se
bontsi gona a tswa kae a ya ku ga
tswanela yona ba mma lokiselele ditwanelo
Ge mloti a klotofetse a klotofetse ba
maki bura a klaya kae a para gona
a bontsi kwa tswalele a se luy gu
a tswanela ya bontsi ba klotung kae
ka gona mabilla a tswala bura ba
tswala ba klotung kae klotung ya tswala
yu klotung kae.

V Ke kopu balle ba tswala mabilla
balle ke bura ba klotung klotung
ga bura klotung kae klotung kae
mabilla ke balle ba tswala kae
sana klotung kae kae klotung kae
yu klotung kae klotung kae klotung kae
a bura ke klotung kae klotung kae
se bontsi gona ke tswa kae, bura ba
tswala ba se reporta ya Magistrate
Commission kae ge se klotung kae
klotung kae kae ya go bura se klotung kae
ka klotung kae se bura ka mabilla
se reporta ya Magistrate Commission
gona bura kae ge klotung kae klotung kae
ka 1476. Bura ba tswala ba mabilla
Bura klotung kae klotung kae klotung kae
klotung kae ge klotung kae klotung kae

6
VI Ke be re kopu gore la fetohuse laba
ya mekhukhu la di ntle tse a gwang
ka la dipareng ba be musotene
tse di se fa planeng ka liona tse,
sinyung letase, Batho ba lowa tse
ba aga ka la dipareng ba dula
ba la hlani ka la kamoreng e tse
mongwe le mongwe a jabela R30
hloko ya mabha go bu le hlama ka
la kamoreng e tse ka R150 o
Bo Mamelone ba clere khwela ba
leaya ga ba aga, kwa khona le
mabha a tse go tseba gona wa
mabha a tse go tseba ka dipareng
la jabela e la ba tseba laba tse
le dula tse go tseba, ka mabha
a tseba tse ba tseba tseba wa
go tseba go tseba dikamora tse
go tseba jang tseba tse go tseba
tseba clere tseba ba tseba le
le go tseba, ka tseba go tseba
di ntle tse clere mo planeng fa
Mamelone e mangwe le mongwe
Mmase go fa bakgalbe bakgalbe
tseba ya Mamelone jang batho ba
nkehang eng.

V Batho ba dula ka di ntle tse
masepala ga ba sa jabela mnta
go tseba ba dula tseba. Ke be
re kopu mekhukhu e tseba.

Ke be kopu khata ka phetoho ke business
Makgowa la dira business ka noma
batho busetsi ka gore gare le moyo
Makgowa ga be boloka batho naba
bona (bany apeswe) ke sula kela
gore le swanthe gore le felose diti
sua phetoho. Go tseba ope ka Maemo
o bona le batho ba hichany ba boloka
ba hamegole gore le bona ba boloka
ka maemo a godimo.

9 Ke kopu gore la dire gore batho ga
bolokwa go ye palo ya 50 ya batho, Ba
thomo go boloka ke ka gare a beche
go swanthe go apeswa dipo la Maemo.
Bona ba khata habelo la goya
chhotony la se monekwa ka la kela
kese. Mapotlana ba hamegole go lebelele
gore goya batho ba la tseba diti habelo
go lebelele apeswa maemo la. Mir. S.
Mamure. Tsebi a tseba ba phetohane
o noma dira byalo gore ba tseba beche
ba ja diti habelo keseng go se ka goya
apea dipo la Maemo, a noma Mapotlana
gore ba lebelele. Moleo vna tseba ke e
sebedise gore ba se hwa ba boloka ka
Mapotlana a di tseba, phetole ga e
teng, ka go tseba ba diti habelo
me bona le bona ba dire system ya
Makgowa nya phetoho ga ba ka tseba
system ya phetoho ya Makgowa, le
Batho ba ja la tseba batho
go dira byalo.

CONSTITUTIONAL
ASSEMBLY
JAN 1996

Re le re kopu le bana ba tlamo
 tse ke go go fihla 18 yrs ba nang le
 batwadi ba su myake go tsena dikela
 ba tsamaya le litiroo baramele
 ditereone. Mose yare ke go fela bu rekha
 bu ngwe le rekha dituranta le
 tsamaya gore le dize tinguwe ke
 bona bu myake ebat building le
 vuti ditlamel work ke gore ga le
 shame saba tse bo-phela, se bona ke
 utlwa, le go botlwa, le go nape.

Bismuane le baranyana ba go
 ba swanetse go vula go tshela kama
 tlogo, baseya le fase, ebat building
 e swanetse go ba Institutio ya bona
 go gore ba vula mefuta ya Matsya.

8 Re le re kopu motlo go a khotofetse
 go ya family le batho ba Malwa ba ke
 tlatsang bese e le fela (To avoid
 financial expensive). Ke gore motlo e bu
 le ka tswa e tloga, Makgowa o botoko
 meso nako le nako fu gare ga beke ga
 ba tsamaya e. ba tsamaya go tsamaya
 batho ba Malwa ba fetogela meso, leso
 le dize gore bana ba hloke Mashileng
 a go vula bana ba rona, le go isa
 concersely. Re a senyegela ka lesi
 kyale go be go se tswa lesa ke party
 ke le dize system e ntshe gore
 batho ba tsamaya ba se 50 go fetogela
 meso.

10. Ke ba re kera bivee 'bivee' ka phoko
gore go ye fanuly le phoko e ba 50
leso le senya tshelile. Bana babok
thuto ba keng sa lesa, le bwanche
le bone thaba ana tshelile e bhele
bana ba bantshu banyaka a nwanche
balle e bone ganyo lesa la tusa.
ga. Makhomela re tshelile. 1950, we
ya phoko phoko le tshelile tshelile
ya nwanche tshelile le tshelile tshelile.
E re tshelile re ya tshelile re tshelile
moya le tshelile phoko, Bana tshelile
balle tshelile thuto. ke yona tshelile
ke tshelile ke yona.

11. Ke ba re kera le di Mission Schools
di tshelile gore, ke tshelile di tshelile
ngwanche tshelile le gore e phoko
ganyo tshelile via National Unity
a tshelile tshelile ke tshelile tshelile
Schools.

Mabopane Community.

Sub no.13167

Rand Afrikaans University
P O Box 524
Auckland Park
2006
Phone: (011) 489 2911
Fax: (011) 489 2191
Department of Afrikaans
15 January 1996

Deputy Minister Leon Wessels
Vice-chairman: Constitutional Assembly
P O Box 1192
Cape Town
8000

Dear Mr Wessels

I have sent the attached comments on the Provisional Concept Constitution to the Managing Director of the Constitutional Assembly, today, in response to the invitation in Constitution Talk.

I value it very highly to bring this under your personal attention. Maybe it could contribute to a more satisfactory solution than has been reached to date, for the language policy question, a question that experimentally is one of the most delicate with which the writers of the Constitutional Assembly in a multi-lingual country has come up against.

With esteem

Prof. F F J van Rensburg

Fax Message

To: The Executive Director, Constitutional Assembly,
P O Box 1192, Cape Town, 8000

Fax number: 021-461-4339/461-4487

From: Prof F I J van Rensburg, 17 Kingston Avenue,
Auckland Park, 2092

Fax number: 011-726-7437

Date: 15 January 1996

Message:

On 4 December 1995 I sent you a fax in which I delivered concise comment on the concept proposals in Constitutional Talk for a future language policy for the Republic. I now want to motivate it closer to the three options given in Chapter 1: Clause 6: Languages of the working draft.

OPTION 1

Clauses 1,2 and 3 of this option I find acceptable.

Clause 4 should, however, be amended, with the addition of the underlined phrase below:

"National and provincial government may use particular official languages for the purposes of government, taking into account usage, practicality and expense, as well asl the language provisions of the Interim Constitution (Section 3)".

Section 3 which is being referred to, is the section in the Transitional Constitution in which the principles of the language policy of the Republic is set out, not only for the transitional period, but also for the period after the coming into force of the final constitution. That is what the negotiating parties in Codesa II bound themselves to.

In the case where this phrase is not added, then clause 4 of the working draft can be interpreted and applied by the decision-making body (national, provincial or local) in such a way that one of the two official languages before 1993 (Afrikaans and English) can be declared as the only administrative language. This will enter perpendicularly against article 3 of the transitional constitution, that lays down the principle of non-diminishing of the rights and status that languages before the coming into force

of the Transitional Constitution enjoyed. One of the two languages rights and status will indeed diminish with such a decision, seeing that they were equal administrative languages before. Because, as has been said, article 3 formulates a principle, it must, as agreed upon, also be respected in the final constitution.

OPTION 2

This option is in favour of the retention of the language limitations and principles of the Transitional Constitution. In comparison with the two other options, this is the one that satisfies me most.

Clause 10, 11 and 12 of Section 3 will, however have to be re-written. In there it is indeed mentioned of a Pan-South -African Language Council that still has to be born. Since then, it has happened. (Act no.59 of 1995).

As a solution to the problem with the said clauses they could be replaced with option 1's clauses 2 and 3, in which the whole matter is formulated logically.

OPTION 3

This option is, in my opinion, the least acceptable of the three. It contains namely two important short-comings.

In the first place clause 2 suppresses the principle of non-diminishing of the rights and status that languages before the coming into force of the Transitional Constitution enjoyed.

In the second place, this option makes no mention of the functions of the Pan-South-African Language Council. That is a serious short-coming. It is indeed a known fact throughout history that the language policy of a multi-lingual country that does not also provide clear guidelines or directives for the implementation thereof, can lead to future language unrest, because language is one of the most sensitive values in a country with a multi-lingual set-up. The Pan-South African Language Council is thus, the necessary compliment of the language clauses of the constitution.

CONCLUSION

If options 1 and 2 can be replenished as I have indicated, it appears to me that they are equal alternatives in between which the Constitutional Assembly can choose. Option 3 requires too much repairing.

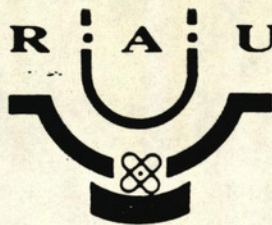
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Departement Afrikaans

15 Januarie 1996

Adjunk-minister Leon Wessels
Onder-voorsitter: Grondwetgewende
Vergadering
Posbus 1192
KAAPSTAD
8000

Geagte min Wessels

Ek het die aangehegte kommentaar op die voorlopige konsepgrondwet vandag aan die Besturende Direkteur van die Grondwetgewende Vergadering gestuur na aanleiding van die uitnodiging in Constitutional Talk. Ek stel prys daarop om dit onder u persoonlike aandag te bring. Miskien kan dit bydra om 'n bevredigender oplossing as tot op datum te vind vir die taalbeleidsvraagstuk, 'n vraagstuk wat proefondervindelik een van die delikaatste is waarmee 'n grondwetskrywende vergadering in 'n veeltalige land te doen kan hê.

Met agting.

A handwritten signature in cursive script, appearing to read 'F. I. J. van Rensburg'.

Prof F I J van Rensburg

Faksboodskap

Aan: Die Uitvoerende Direkteur, Grondwetgewende Vergadering,
Posbus 1192, Kaapstad, 8000.

Faksnommer: 021-461-4339/461-4487.

Van: Prof. F.I.J. van Rensburg, Kingstonlaan 17, Aucklandpark,
2092.

Faksnommer: 011-726-7437.

Datum: 15 Januarie 1996.

Aantal bladsye:

Boodskap:

Op 4 Desember 1995 het ek vir u 'n faks gestuur waarin ek beknopt kommentaar gelewer het op die konsepvoorstelle in Constitutional Talk vir 'n toekomstige taalbeleid vir die Republiek.

Ek wil dit tans nader motiveer aan die hand van die drie opsies wat in Hoofstuk 1: Klousule 6: Tale van die Werksdokument aangegee word.

OPSIE 1

Klousules 1, 2 en 3 van dié opsie vind ek aanvaarbaar.

Klousule 4 behoort egter geamendeer te word, en wel deur toevoeging van die onderstaande onderstreepte sinsdeel:

"National and provincial government may use particular official languages for the purposes of government, taking into account usage, practicality and expense, as well as the language provisions of the Interim Constitution (Section 3)".

Seksie 3 waarna verwys word, is die afdeling in die Oorgangsgrondwet waarin die beginsels van die taalbeleid van die Republiek uiteengesit word, nie net vir die oorgangsperiode nie, maar ook vir die periode na die inwerkingtreding van die finale grondwet. Dit is waartoe die onderhandelende partye in Kodesa II hulle verbind het.

Indien dié sinsdeel nie toegevoeg word nie, kan klousule 4 van die Werksdokument so deur 'n besluitnemende liggaam (nasionaal, provinsiaal of plaaslik) geïnterpreteer en toegepas word dat een van die twee amptelike tale van voor 1993 (Afrikaans en Engels) tot enigste administratiewe taal (bv. verslagtaal of "language of record") verklaar kan word. Dit sal lynreg teen artikel 3 van die Oorgangsgrondwet ingaan, wat die beginsel neerlê van nie-vermindering van die regte en status wat tale voor die inwerkingtreding van die Oorgangsgrondwet geniet het. Een van die twee tale se regte en status sal immers met so 'n besluit verminder word, aangesien hulle voorheen gelyke administratiewe tale was. Omdat, soos gesê, artikel 3 'n beginsel formuleer, moet dit, soos ooreengekom, ook in die finale grondwet eerbiedig word.

OPSIE 2

Hierdie opsie is ten gunste van die behoud van die taalbepalings en -beginsels van die Oorgangsgrondwet. In vergelyking met die twee ander opsies is dit die een wat my die meeste bevredig.

Klousule 10, 11 en 12 van Seksie 3 sal egter herskryf moet word. Daarin word immers gepraat van 'n Pan-Suid-Afrikaanse Taalraad wat nog in die lewe geroep moet word. Sedertdien het dit gebeur (Wet no. 59 van 1995).

As oplossing vir die probleem met genoemde klousules sou hulle vervang kon word deur OPSIE 1 se klousules 2 en 3, waarin die hele aangeleentheid samehangend geformuleer is.

OPSIE 3

Die opsie is myns insiens die mins aanvaarbare van die drie. Dit bevat naamlik twee belangrike tekortkomings.

In die eerste plek verswyg klousule 2 daarvan die beginsel van nie-vermindering van die regte en status wat tale voor die inwerkingtreding van die Oorgangsgrondwet geniet het.

In die tweede plek bevat die opsie geen vermelding van die funksie van die Pan-Suid-Afrikaanse Taalraad nie. Dis 'n ernstige tekortkoming. Dis immers 'n bekende feit dwarsdeur die geskiedenis dat die taalbeleid van 'n veeltalige land wat nie ook duidelike riglyne bevat of aandui vir die implimentering daarvan nie, tot voortdurende taalonrus aanleiding gee, omdat taal een van die sensitiefste waardes in 'n land met 'n veeltalige opset is. Die Pan-Suid-Afrikaanse Taalraad is dus die noodsaaklike komplement van die taalklousules van die grondwet.

SLOTSOM

As opsies 1 en 2 so aangevul kan word soos wat ek aangedui het, wil dit my voorkom of hulle gelykwaardige alternatiewe is waartussen die Grondwetgewende Vergadering kan kies. Opsie 3 vra te veel reparasie.

