

2/21/18/26

**CONSTITUTIONAL ASSEMBLY**

**CONSTITUTIONAL COMMITTEE  
SUB-COMMITTEE**

**DRAFT REPORT OF DISCUSSIONS  
8 MARCH 1996**



## CONSTITUTIONAL ASSEMBLY

### DRAFT REPORT

#### CONSTITUTIONAL COMMITTEE SUB-COMMITTEE MEETING FRIDAY 8 MARCH 1996

#### 1. OPENING

- 1.1 Mr. Ramaphosa opened the meeting at 10h15, and in celebration of International Women's Day, paid tribute to the women of the world, and particularly of South Africa.
- 1.2 Discussions were based on the following documentation:

*Documentation Friday 8 March 1996  
Refined Working Draft (Third Edition)  
Request to the Panel of Constitutional Experts  
Environmental Commissioner*

#### 2. INSTITUTIONS SUPPORTING CONSTITUTIONAL DEMOCRACY

- 2.1 Mr. Ramaphosa introduced the document entitled, "*Chapter 7, State Institutions Supporting Constitutional Democracy*," contained in the documentation. Discussion of the chapter was as follows.
- 2.2 **Section 106: Establishment and Governing Principles:**
- 2.2.1 The meeting agreed to section 106 after the following discussion.
- 2.2.2 The NP proposed that an Environmental Commissioner and a Commission on Cultural Affairs be added to this chapter. It referred the meeting to the documents entitled "*NP Proposal, Commission on Cultural Affairs and Cultural Councils*," included in the documentation and "*Environmental Commissioner*," tabled at the meeting.
- 2.2.3 The DP reminded the meeting of its proposal to include the Independent Broadcasting Authority in Chapter 7. The ANC reminded the meeting that the Sub-committee had agreed on 5 March 1996 that this would be done and that the Technical Experts would prepare formulations and propose how to fit these into the constitutional text.



2.2.4 The meeting agreed to defer discussion of the Environmental Commissioner and the Commission on Cultural Affairs to give political parties time to consider them further. The Chairperson ruled that these two matters as well as the Independent Broadcast Authority, would be considered again when the Sub-committee next discussed Chapter 7, on 18 March 1996.

2.2.5 The ANC asked that political parties consider the Volkstaat Council proposal on Cultural Councils together with the NP proposal on a Commission on Cultural Affairs.

2.2.6 The PAC expressed concern that there was also a need for a commission to assess and monitor the government's efforts on affirmative action. The Panel of Experts responded that this was covered in section 109, which dealt with the Human Rights Commission. This section created a broad framework for the Human Rights Commission, and additional legislation would spell out in detail how the Human Rights Commission would operate.

### **2.3 Section 107: Public Protector**

2.3.1 The DP expressed concern that there was no linkage in this formulation between the national and provincial public protectors, nor was there any reference to provincial functions.

2.3.2 The ANC responded that the creation of separate national and provincial public protectors could create a chaotic situation, where offices could duplicate or even interfere with each others work, and huge gaps or omissions could occur. For these reasons, it had already been agreed that there would be a single national structure for the Public Protector, and that work in the provinces would proceed through this structure's provincial offices.

2.3.3 The National Party said that the matter had not been finalised and depended on decisions regarding provincial government and competencies. The NP wanted to raise the question of provincial public protectors, as well.

2.3.4 Mr. Ramaphosa concluded that the matter had been agreed to, pending discussions on the provinces and competencies. He ruled that a footnote would be added to this effect.



## 2.4 Section 109: Functions of Human Rights Commission

2.4.1 Mr. van der Westhuizen from the Panel of Experts introduced the document entitled, *"Memorandum from the Technical Refinement Team on the Human Rights Commission (Section 109),"* included in the documentation.

2.4.2 The meeting adopted the Technical Refinement Team's alternative section 109, and agreed that it would replace the previous text.

2.4.2 Regarding the new sections 109(3) and (4), however:

- i. The NP requested that section 103(3) be reformulated to mirror, in greater detail, the socio-economic rights set out in the Bill of Rights: e.g. "secure the right to housing".
- ii. The ANC disagreed, saying the phrasing should be short and crisp.
- iii. The ANC suggested that the new section 109(4) be deleted: it was covered in the word "monitor" in section 109(1)(c) and its presence here and not elsewhere implied that the other commissions would not evaluate substantial issues when they reported to Parliament.
- iv. The PAC disagreed because section 109(4) put an obligation on the state to assess how far it had gone to meet its obligations.
- v. In addition, the Technical Refinement Team added that the deletion of section 109(4) would leave only section 106(5), which requires commissions to report only on their own activity. He proposed that
  - a. the section be left as it was, or,
  - b. if the meeting wanted it broader, it be added to section 106(5).

2.4.3 The meeting deferred further discussion of sections 109(3) and (4) to give parties more time to discuss them.



**2.5 Section 110: Commission for Gender Equality**

The meeting agreed to section 110.

**2.6 Section 111: Auditor-General**

2.6.1 Mr Davies introduced the document entitled, "*Memorandum from the Panel of Experts on 'The need for or desirability of a specific statement in the Constitution that certain persons should not hold office in any political party,'*" contained in the documentation.

2.6.2 The NP stated its reservations about omitting a provision that prohibited the Auditor-General from holding office in any political party. It agreed, however, to take the matter back to his principals.

**2.7 Section 113: Electoral Commission**

2.7.1 The NP said that footnote 4 was incorrect and could fall away.

2.7.2 The meeting agreed to section 113(1)(a).

2.7.3 Regarding section 113(1)(c):

- i. The ANC said that, rather than specifying an exact number of days, this subsection should set out a principle like "as soon as reasonably possible, as defined in legislation."
- ii. The Chairperson ruled that the Technical Refinement Team would look into this and make a proposal.

**2.8 Section 115: General Provisions**

2.8.1 The meeting agreed to sections 115(1)(2) and (3).

2.8.2 Regarding section 115(4)(a):

- i. The NP expressed reservations about this section, but asked that this matter be deferred to give parties more time to consider it.
- i. The DP suggested that the section be amended so that the majority party could not make up more than 40% of the committee nominating the officers in these state



institutions.

- ii. The ANC objected strongly to this proposal.
- iii. The Chairperson ruled that this matter would be left in abeyance to allow parties to consider it further.

2.8.3 The meeting agreed that "*Auditor*" would replace "*Attorney*" in section 115(5).

### 2.9 Section 116: Removal from Office

The Chairperson ruled that this matter would be deferred to give parties more time to discuss it amongst themselves.

## 3. PUBLIC ADMINISTRATION (CHAPTER 12)

3.1 The Chairperson introduced "**Chapter 12, Public Administration,**" in the *Refined Working Draft (Third Edition)*.

3.2 Mr. de Beer of the NP tabled a document entitled "*Request to the Panel of Constitutional Experts.*" He said that there was a widespread concern that section 171(1) would mean that the financial and managerial structures of a wide range of organisations receiving government funding would fall directly or indirectly under government control.

3.3 The meeting agreed that the Technical Refinement Team would investigate whether s171(1) carried this danger and that the TRT would reformulate the subsection so that its intended meaning was clear.

3.4 The meeting agreed to defer further discussion

- i. To await the report from the Technical Refinement Team; and
- ii. To give political parties additional time to consider submissions on the matter.
- iii. The Chairperson ruled that the Administration would facilitate political party discussions here, and
- iv. Participants in these discussions would report back to the Constitutional Committee Sub-committee on 18 March 1996.
- v. The DP requested that the Administration schedule this meeting



so that it did not clash with discussions on the security services scheduled for 15 March 1996 (see below).

- 3.5 The ANC asked that the Technical Refinement Team consider rephrasing s173 so that legislation could define what the public service is. The ANC argued that this should not be spelled out in the constitution.

#### 4. SECURITY SERVICES (CHAPTER 14)

- 4.1 Mr. Ramaphosa introduced "**Chapter Thirteen, Security Services**" of the *Refined Working Draft (Third Edition)*.
- 4.2 The ANC expressed concern that according to the submission of the National Commissioner of Police, George Fivaz, the current draft formulations granted near autonomy to provincial police commissioners. This was not its intention. The meeting agreed that the Panel of Experts would consider and comment on this submission.
- 4.3 The ANC also expressed concern that the document dealing with transitional arrangements omitted items relating to the security forces. It was agreed that the Technical Refinement Team would rework the document to cover the security forces as well.
- 4.4 In addition, the ANC expressed concern that the plain language process had removed substance from the draft formulations, like provisions on the declaration of war. In view of this, the ANC proposed that discussion of the draft chapter be deferred, to give political parties the opportunity to meet together with technical experts to discuss the chapter.
- 4.5 It was agreed that the Administration would facilitate a meeting between parties and the technical experts on the matter. The meeting would take place on 15 March 1996, and participants would report back to the 18 March 1996 meeting of the Constitutional Committee Sub-committee.
- 4.6 The Chairperson ruled that the chapter would be finalised at the meeting of the Constitutional Committee Sub-committee on 18 March 1996.

#### 5. CLOSURE

Mr. Ramaphosa closed the meeting at 12h55.



