

Ad Hoc Min
[12] 3519

THESE DRAFT MINUTES ARE CONFIDENTIAL AND RESTRICTED TO MEMBERS OF THE AD HOC COMMITTEE, THE PLANNING COMMITTEE AND THE TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS DURING THE TRANSITION. THE MINUTES ARE STILL TO BE RATIFIED BY THE AD HOC COMMITTEE.

DRAFT MINUTES OF THE MEETING OF THE AD HOC COMMITTEE ON FUNDAMENTAL RIGHTS DURING THE TRANSITION HELD ON TUESDAY, 28th SEPTEMBER 1993 at 08h45 AT THE WORLD TRADE CENTRE, KEMPTON PARK

PRESENT: Chief Gwadiso (Acting Convenor)
Prof. H Cheadle
Mr A Leon
Mr P Maduna
Mr S G Mothibe

MINUTES; Mrs M Cleary (Administration)

APOLOGIES: Mrs S Camerer

1. Notice of Meetings:

- 1.1 The Ad Hoc Committee had been notified of the meetings requested by the Sub-Committee.
- 1.2 The meeting was advised that the Sub-Committee would be attending this meeting for a short period to discuss the finalisation of the outstanding issues.
- 1.3 Mr Leon stated his concern regarding the fact that there was no Government representative present. As the convening of this meeting was made at the behest of the Sub-Committee **it was agreed that** this concern be addressed to them when they joined the meeting.

2. Agenda:

- 2.1 Matters Arising from Minutes of Meeting of 20th September 1993.
- 2.2 Discussion on redraft of Proposed Chapter 3 to ascertain whether the Technical Committee had complied with the Ad Hoc Committee's decisions and requests.

- 2.3 Discussion with the Sub-Committee on how to interface with the Technical Committee.
- 2.4 Outstanding issues.

3. Matters Arising from Minutes of 20th September 1993:

- 3.1 The Minister of Justice's name was spelt incorrectly and should read as "Coetsee" and not as recorded in the minutes.
- 3.2 Equality - Clause 8. Awaiting agreement on horizontal or vertical application.
- 3.3 Restoration of Land clause. It was agreed that the issue of compensation was not dealt with under Property - Clause 28 as had been requested by the Ad Hoc Committee. It was agreed that restoration of land should be a separate subclause but that it had to have a link with the property clause. Mr Leon again expressed his concern that, in Mrs Camerer's absence, there was no Government representative present to discuss the issue regarding compensation.

4. Latest Draft of Proposed Chapter 3:

- 4.1 Mr Maduna stated that the Ad Hoc Committee was formed to make the political decisions and it was up to the Technical Committee to advise what the implications of these political decisions could be, however it seemed that this was not what was happening.
- 4.2 Subclause 7(1)(b): The ANC wanted this to apply horizontally. Prof. Cheadle requested and **it was agreed that** Mr Maduna and himself be given time to discuss this issue further.

Chief Gwadiso stated that, if any other clauses were to be changed from vertical to horizontal application, he would have to be given time to consult on this.

Mr Maduna enquired whether there was a way in which a clause could be formulated to state that certain clauses would have vertical application but in instances where the Constitution was violated, horizontal application would operate.

Professor Cheadle stated that the Ad Hoc Committee should consider the Technical Committee's formulation 7(5):

"(5) In the interpretation of any law and the application and development of the common and of customary law, a court shall have due regard to the spirit, purport and objects of this Chapter."

He went on to state that there would be real confusion if horizontal and vertical application were mixed in the Chapter, and, if horizontality was agreed upon, the whole document would have to be changed.

Professor Cheadle and Mr Maduna would discuss and draft a formulation which, subject to the outcome of Mr Maduna's consultations, be given to the Technical Committee.

5. Meeting with Sub-Committee:

At this point Mr Mac Maharaj and Mr Fanie van der Merwe of the Sub-Committee joined the meeting.

5.1 The Sub-Committee were present to discuss the following:

5.1.1 The outstanding issues concerning the vertical or horizontal application to certain clauses of the Chapter, and the clause on property rights.

5.1.2 The combined meeting with the Technical Committee on Wednesday, 29th September 1993.

5.1.3 The meeting with Minister Kobie Coetsee on Thursday, 30th September 1993 (only the Ad Hoc Committee),

in order that the Technical Committee's Tenth Report could be ready by Friday, 1st October 1993 for presentation to the Negotiating Council the following week.

5.2 Mr van der Merwe stated that the Planning Committee had not agreed to Mrs Camerer's request that Minister Coetsee represent her on the Ad Hoc Committee.

Mr Leon stated his concern was that should the Ad Hoc Committee agree to certain issues there could be the possibility that the Government representatives might not agree with the result that these issues would again

have to be reconsidered.

*** Mr van der Merwe stated that the Sub-Committee did not really think that there was cause for concern as this could be dealt with during the Ad Hoc Committee's meeting with Minister Coetsee.

5.3 Mr Maduna stated that, basically, the Property Clause had been dealt with satisfactorily as far as the Ad Hoc Committee were concerned. He stated that after discussing the two major outstanding issues, the Ad Hoc Committee would like to go through the whole draft Chapter in order to "sanitarise" it.

Mr Maharaj recommended that this be done together with the Technical Committee but warned against "over sanitaring" the Chapter.

5.4 Mr Leon said that, in view of the nature of the interaction between the Ad Hoc and Technical Committees, perhaps a common report should be drawn up for presentation to the Negotiating Council as one report.

Mr Maharaj stated that the Ad Hoc Committee had been formed to look at the political points of differences only and not do the work of the Technical Committee. Once the two outstanding issues had been discussed the Technical Committee could compile their report and have this report presented as coming from the Technical Committee.

5.5 Prof. Cheadle requested that, where there had been a political settlement regarding certain clauses, could the Technical Committee be requested to refrain from making certain comments as this would only pit the Ad Hoc Committee against the Technical Committee. The report to be tabled at the Negotiating Council by the Technical Committee needed the support of the Ad Hoc Committee.

Chief Gwadiso asked whether the Ad Hoc Committee could be given clarity on this point and gave as example the Comment in the Property Clause 28(2) "The Technical Committee has reservations about it." He stated that the Technical Committee would have to accept the Ad Hoc Committee's decisions even if they were not happy about them.

Mr Maharaj stated that the problem was that the Technical Committee had not been invited at the outset to meet with the Ad Hoc Committee. He suggested that in their Comments, such as the one quoted above and where they were unhappy or had reservations, the Technical Committee should merely state that "The formulations were agreed to by the Ad Hoc Committee." and remain neutral before the Negotiating Council.

- 5.6 Mr Maduna enquired whether there was any point of the Ad Hoc Committee meeting with Minister Coetsee as the Ad Hoc Committee did not want to agree between themselves on the outstanding issues, and then have Minister Coetsee disagree. It was felt that this would then undermine the efforts of the Ad Hoc Committee.

Mr van der Merwe replied that the Ad Hoc Committee were not being requested to meet Minister Coetsee in his position as the Minister of Justice but merely to hear the Government's point of view.

- 5.7 Mr Leon enquired whether the Sub-Committee could persuade a Government representative to meet with the Ad Hoc Committee before making decisions on the outstanding issues. Mr Maharaj replied that, should there be major differences, this might push the Ad Hoc Committee into making final decisions.

Professor Cheadle suggested that perhaps a way out of this difficulty would be that a comment be added stating "This was the Ad Hoc Committee's decision without a Government representative being present."

6. Next Meetings:

- 6.1 The combined meeting of the Ad Hoc Committee and Technical Committee would take place on Wednesday, 29th September 1993, at 09h30 in the Fundamental Rights' room.
- 6.2 Tentative arrangements were made for the Ad Hoc Committee to meet with Minister Coetsee for Thursday, 30th September 1993 from 15h00 to 17h00 either in Pretoria or at the World Trade Centre. This would be confirmed as soon as possible.

7. Closure:

- 7.1 As certain members of the Ad Hoc Committee had to be present in the Negotiating Council the meeting closed at 10h50.
- 7.2 The minutes would be distributed to each person of each Committee as soon as possible.