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CONSTITUTIONAL ASSEMBLY

SUBCOMMITTEE 2

**FRIDAY
27 SEPTEMBER 1996**

G26

DOCUMENTATION

CONSTITUTIONAL ASSEMBLY

MINUTES OF THE SECOND MEETING OF SUBCOMMITTEE 2

THURSDAY, 26 SEPTEMBER 1996

PRESENT

Gordhan, PJ (Chairperson)

Ackermann C	Alant TG
Bhabha M	De Lange J
Du Toit DC	Groenewald PJ
Groenewald PH	Hogan B
King T	Malebo SM
Marais P	Maree J
Meshoe K	Moosa V
Ngcuka B	Rabie JA
Selke J	Watson W

Advisors: Erasmus G, Grove G, Haysom N, Murray C

Minutes: McKenzie K

1 OPENING

The meeting commenced at 10:20. A draft agenda setting out the issues which required the committees attention was adopted.

2 CONSTITUTIONAL AMENDMENTS

2.1 Overall procedure

The NP spoke to section 74 of the draft contained in the documentation of 25 September 1996 and proposed the following preliminary amendments:

- i. The notice period contained in subsection (4) should be 30 days.
- ii. Subsection (7) prohibiting constitutional amendments during a state of emergency should be retained.
- iii. A new subsection should be added providing for constitutional amendments to be referred to the constitutional court for certification in terms of section 1 of the new text.

The ANC stated that they wanted to reserve their position on sections 74(4)(d) and 74(7) of the draft. They were in favour of the involvement of the NCOP in effecting constitutional amendments as contemplated in section 74(6)(b) supported by a vote of five provinces.

The FF proposed that the notice period in 74(4)(e) be extended to 60 days. They reserved their position on 74(4)(d).

The ACDP proposed that the notice period in 74(4)(a) be extended to 21 days. They expressed concern regarding the role of the committee in 74(4)(d).

The Chairperson noted that there was consensus between parties with respect to the involvement of provinces in constitutional amendments, the role of the NCOP and the need to ensure that the public was adequately informed of constitutional amendments.

Prof Haysom noted that the interim Constitution had required a significant number of largely technical amendments to be made to it. Amendment procedures contemplated should possibly differentiate between technical amendments which may be necessary soon after the constitution is promulgated and other amendments which may require a more rigid amendment procedure.

Adv Grove noted that there were conceptual problems with the present draft regarding its definitions of a Bill.

It was agreed that the technical advisors would produce another draft section 74.

2.2 Entrenching the bill of rights

The NP stated that a 75% majority should be required in order to amend the bill of rights. The ANC opposed this.

3 PROVINCIAL POWERS

It was agreed that this item be held over pending bilateral discussions between parties.

4 LOCAL GOVERNMENT

It was agreed that further discussion on local government would take place in the week of 30 September 1996. Preliminary discussion was held on the following:

4.1 Framework/categories

The ANC and the NP stated that they would be submitting documents defining key terms.

It was agreed that further discussion on the categories of local government was necessary. At this stage two categories were emerging namely:

- i. local municipalities and
- ii. overarching district/regional municipalities or metropolitan municipalities, not directly elected.

4.2 Municipal structures

The Chairperson outlined the municipal structures as:

Council - the political body

Executive committee - an arm of the council, which a council might have depending on its size. Its executive functions would not be akin to those at the national and provincial tiers of government.

Administration - the administrative body of the council

4.3 Procedures for by-laws

The NP proposed that special majorities be required for by-laws dealing with money and town planning.

4.4 Finances

It was agreed that the technical advisers would liaise with representatives of the department of finance in order to prepare further draft formulations for consideration.

It was noted that the Department of Finance had tabled a submission with parties and that a number of technical considerations arising from this needed attention.

5 CLOSURE

The meeting closed at 12:00. It was agreed that parties would continue to meet in a multi-lateral forum.

**Status: redraft by technical advisors
26 September 1996**

CONSTITUTIONAL AMENDMENTS

74. (1) Section 1 and this subsection may be amended by a Bill passed by the National Assembly with a supporting vote of at least 75 per cent of its members.¹
- (2) Chapter 2 may be amended by a Bill passed by -
- (a) the National Assembly with a supporting vote of at least two thirds of its members; and
 - (b) the National Council of Provinces with a supporting vote of at least five/six provinces.²
- (3) Any other provision of the Constitution may be amended by a Bill passed by -
- (a) the National Assembly with a supporting vote of at least two thirds of its members; and
 - (b) the National Council of Provinces with a supporting vote of at least six provinces if the amendment -
 - (i) relates to a matter that affects the Council;
 - (ii) alters provincial boundaries, powers, functions or institutions; or
 - (iii) amends a provision that deals specifically with a provincial matter.
- (4) A Bill amending the Constitution -
- (a) may be introduced in either the National Assembly or the National Council of Provinces if it is a Bill that is required by subsection (2)(b) or (3)(b) to be passed by the Council;
 - (b) may be introduced only in the Assembly if it is not such a Bill; and
 - (c) may not include provisions other than constitutional amendments.

¹ The NP suggests that this provision should also apply to amendments of Chapter 2.

² If it is agreed that Chapter 2 amendments would require a supporting vote of at least six provinces in the NCOP this subsection can fall away. These amendments can then be incorporated in subsection (3) by adding in paragraph (b):

"(iv) amends a provision of Chapter 2."

Secondly, the ambit of subsection (2) could be confined to amendments that detract from the rights in the Bill of Rights. Other amendments of Chapter 2 (eg the addition of rights) can be dealt with in terms of subsection (3)(a).

- (5) When a Bill amending the Constitution is introduced it must be -
 - (a) published in the national Government Gazette for public comment;
 - (b) referred to the provincial legislatures for their views;
 - (c) tabled in the National Council of Provinces for a public debate if it is not a Bill that is required by subsection (2)(b) or (3)(b) to be passed by the Council; and
 - (d) referred to the constitutional review committee envisaged in section 45(c)/a joint committee of the National Assembly and the National Council for a report and recommendations.
- (6) A Bill amending the Constitution may not be put to the vote in either the National Assembly or the National Council unless 14/30/60 days have lapsed since subsection (5) has been complied with.
- (7) If a Bill referred to in subsection (3)(b), or any part of the Bill, concerns only a specific province or provinces, the National Council of Provinces may not pass the Bill or the relevant parts of it unless it has been approved by the legislature or legislatures of the province or provinces concerned.
- (8) No constitutional amendments may be passed during a declared state of emergency.
- (9) A Bill amending the Constitution that has been passed by the National Assembly and, where applicable, by the National Council of Provinces, must be referred to the President for assent.³

³ The NP proposed that no constitutional amendments should come in force until the Constitutional Court has certified its validity.

DP PROPOSED AMENDMENTS

PROVINCIAL POWERS

1 NT146 (2)

Delete and substitute

146 (2) Provincial legislation prevails over national legislation except where national legislation is necessary:

- a) to deal with a matter that cannot be regulated effectively by legislation enacted by the respective provinces individually;
- b) for the establishment of essential national or minimum standards required for a service to be rendered;
- c) for the maintenance of economic unity or national security; or
- d) for the prevention of unreasonable action by a province which materially prejudices the economic, health, security or environmental interests of another province or the country as a whole.

146 (3)

- a) The national legislation referred to in subsections 146 (2) (a), (b) and (c) must apply uniformly with regard to the country as a whole.
- b) The national legislation referred to in subsection 146 (2) must only establish -
 - i) norms and standards;
 - ii) frameworks; or
 - iii) national policies

2 NT146 (3), (4), (5), (6), (7)

Delete these subsections in their entirety.

3 Schedules 4 and 5

- a) Move Property transfer fees, Provincial public enterprises and Public Works to Schedule 5 Part A.
- b) Move Municipal public works and Trading regulations to Schedule 5 Part B.

DEMOCRATIC PARTY SUBMISSION

PROPOSED AMENDMENTS

NT 74 : AMENDMENT OF CONSTITUTION

(1) Subject to the provisions of subsection (2) and (3) the Constitution, may be amended by a Bill passed by the National Assembly and the National Council of Provinces, sitting separately, supported by

(a) a vote of at least two-thirds of the members of the National Assembly; and

(b) a vote of at least six provinces in the National Council of Provinces:

provided that no such Bill purporting to amend the Constitution may be introduced into either House of Parliament unless six months notice has been given of the intention to table such a Bill and that the public have been invited to comment on any such proposed Bill and that hearings by the relevant Parliament committee has been convened and concluded and that a report of such committee has been tabled before both Houses of Parliament.

(2) If a Bill referred to in subsection (1)

(a) alters provincial boundaries, powers, functions or institutions;
or

(b) amends a provision that deals specifically with a provincial matter,

the National Council of Provinces may not pass it unless the Bill has been approved by a two-thirds majority of the affected provincial legislature or legislatures.

- (3) S.1 and this subsection, and Chapter 2 may be amended in accordance with subsection (1) but the Bill must be supported
- (a) by a vote of at least 75 per cent of the members of the National Assembly; and
 - (b) by a vote of at least seven provinces in the National Council of Provinces

voting separately: provided that no amendment shall be permitted which diminishes or detracts from the rights entrenched in s.1 and Chapter 2.

- (4) Any Bill purporting to amend the Constitution shall be introduced as a separate item of legislation and may not be introduced as part of other draft legislation.
- (5) A Bill amending the Constitution which has been passed by the National Assembly, and by the National Council of Provinces, must be referred to the President for assent.

CONSTITUTIONAL ASSEMBLY

SUBCOMMITTEE 2

NOTICE OF MEETING

Please note that a meeting of Subcommittee 2 will take place as indicated below:

Date : Friday, 27 September 1996

Time : 10:00

Venue : G26

Agenda

- 1 **Opening and welcome**
- 2 **Minutes** (pages 1-3)
- 3 **Constitutional amendments**
 - 3.1 draft formulations (pages 4-5)
- 4 **Provincial powers**
 - 4.1 Overrides : 146(2)(b)
 - 4.2 Presumptions : 146(4)
 - 4.3 Other
- 5 **Any other business**
 - 5.1 DP submissions (pages 6-9)
- 6 **Closure**

Hassen Ebrahim
Executive Director
