

2/4/6/3/1/10

CONSTITUTIONAL ASSEMBLY

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

TUESDAY, 1 AUGUST 1995 - E 249

10h00

DOCUMENTATION

**Embargoed until 10h00
1 August 1995**

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CONSTITUTIONAL ASSEMBLY

**TWENTY FOURTH MEETING OF THEME COMMITTEE 6.1
SPECIALISED STRUCTURES OF GOVERNMENT**

ELECTORAL COMMISSION

TUESDAY, 1 AUGUST 1995

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

DATE : Tuesday, 1 August 1995
TIME : 10h00 - 13h00
VENUE : E 249 (New Assembly Wing, Parliament, Cape Town)

AGENDA

1. Opening and Welcome
 2. Adoption of minutes held on 19 June 1995 (pp. 2-6)
 3. Discussion: Electoral Commission Second Draft Text (pp. 8-12 and 13-14)
 4. National Sector Public Hearings
 5. Any Other Business
 6. Date of Next Meeting
 7. Closure
-

HASSEN EBRAHIM
EXECUTIVE DIRECTOR

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

**Embargoed until 10h00
1 August 1995**

CONSTITUTIONAL ASSEMBLY

MINUTES OF THE TWENTY SECOND MEETING OF SUBTHEME COMMITTEE 6.1

**THEME COMMITTEE 6
SPECIALISED STRUCTURES OF GOVERNMENT: ELECTION COMMISSION**

MONDAY, 19 JUNE 1995

PRESENT

Vadi, I (Chairperson)

Chirole J
De Beer SJ
Fankomo FC
Mokitlane MC
Smuts M
Watson A

Observers:

Pretorius IJ

Apologies:

Harris P
Skweyiya ZST

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

1. OPENING AND WELCOME

Mr Vadi opened the meeting at 13h10 and welcomed members.

2. ADOPTION OF MINUTES HELD ON 05 June 1995

The minutes of the meeting held on 5 June 1995, were adopted.

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3. DISCUSSION: ELECTION COMMISSION FIRST DRAFT REPORT

Ms Dhaya Pillay spoke to the technical committee's report entitled: " **FIRST REPORT OF THE TECHNICAL COMMITTEE TO SUBTHEME COMMITTEE 6.1 OF THE CONSTITUTIONAL ASSEMBLY CONCERNING THE ELECTION COMMISSION,**" included in the documentation.

3.1 Constitutional Detail

3.1.1 The ANC, supported by the NP, submitted that the Constitution should provide a minimalist, flexible framework of broad principles for the Electoral Commission and that it be regulated by way of an Electoral Act rather than the Constitution.

3.1.2 The DP, supported by the FF, submitted that some detail should be reflected in the Constitution and argued that the technical advisors report encapsulated the essential provisions that should be included in a Constitution.

3.1.3 Draft Text

The meeting agreed to use the technical committee's document entitled: "**Draft Constitutional Text: Election Commission**", tabled at the meeting as the basis for further discussion. Parties agreed that final party mandates were needed before finalisation of the draft text.

The following points emerged from the ensuing discussion:

3.1.3.1 The NP expressed the view that an Elections Directorate referred to in the draft report under item 2 entitled "**Structure**", should be reflected in the draft text.

3.1.3.2 Regarding section 1 of the draft formulation, which reads:

There shall be an Electoral Commission which shall be independent, impartial and efficient.

Following a concern expressed by the DP the word "efficiency" was clarified as cost efficiency and effectiveness and that it was reflected in the text of the Auditor General as well as in the Public Administration text.

The ANC and NP concurred that transparency should be included as a principle governing the Electoral Commission.

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The ANC further expressed the view that the notion of a professionally conducted election was an important principle to have entrenched in the Constitution. The technical committee agreed to refine Mr Peter Harris' formulation in this regard.

In response to a request from the NP, the secretariat agreed to make available to members Judge Kriegler's recommendations on the principle of establishing an Independent Electoral Commission.

3.1.3.2 Regarding section 2 of the draft formulation, which reads:

The Electoral Commission shall be composed of X persons who shall:

Model One: each be nominated by a Premier and appointed by the State President.

Model Two: be elected by the National Assembly.

Model Three: be selected by the Judicial Services Commission / the Parliamentary Joint Committee on Elections and appointed by the State President.

Parties agreed that they needed more time in order to consider these options. The following issues were recorded:

The DP argued that nominations should come from civil society and the general public.

The ANC and NP agree in principle that the National Assembly should appoint the Electoral Commission by a 75% majority.

The DP and NP agree that the provinces should at least have the power to make nominations for the appointment of Commissioners.

The ANC further proposed that the Election Commission could consist of six (6) Commissioners, although this provision could be dealt with in legislation.

The ANC emphasised that the Electoral Commission is a National Commission and recorded its objection to the principle of provincial representation.

3.1.3.3 Regarding Section 3, which refers to the Electoral Commission's powers and functions:

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The technical committee, in response to a concern raised by the NP that the formulation did not distinguish between referee and player as reflected in the words "control and conduct", explained that the phrase was merely trying to determine that final responsibility for elections reside with the Electoral Commission; notwithstanding the fact that a different structure such as local government could be responsible for the actual implementation.

The ANC and NP supported a general formulation whereby the Electoral Commission be responsible for elections at all levels of government and that its powers and functions be prescribed by National Law.

3.1.3.4 This section establishes the principle of parliamentary accountability.

All parties supported the clause; however refinement of the clause was recommended.

3.1.3.5 Regarding section 5, which reads:

The appointment, term of office and discharge of members shall be prescribed by law.

The ANC and the NP supported this section.

The DP submitted that the appointment, term of office and removal procedure should be specified in the constitution. Referring to their submission the DP submitted that Commissioners should be afforded various privileges and immunities (as in the case of the Public Protector). Furthermore that the status of Commissioners could be equivalent to that of judges. In order to ensure their independence, they should only be removed from office for gross dereliction of duty and for financial improprieties. Procedures for their removal from office should be specified. Commissioners should not be eligible for appointment to public office for a specified period after completing service.

3.1.3.6 Regarding section 5, which reads:

No person who has held political office for three years immediately preceding his/her nomination/election shall be appointed to the Electoral Commission.

The ANC expressed the view that this issue be dealt with in the Electoral Act.

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3.1.3.7 General

i) The technical committee agreed to prepare a second draft formulation on the basis of consensus reached for sections 1,4 and 5. Sections 2 and 3 would be rediscussed at the next meeting.

4. ANY OTHER BUSINESS

4.1 Constitutional Public Meetings (CPM)

Mr Watson and Mr Mokitlane reported that they had represented the Subtheme Committee in Lusikisiki and Mhluzi respectively.

5. DATE OF NEXT MEETING

The date of the next meeting is as follows:

DATE: 26 June 1995
TIME: 10h00 - 13h00
VENUE: G 26 (New Assembly Wing, Parliament, Cape Town)

6. CLOSURE

The meeting rose at 14h20.

minutes tc6119065.min

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Tuesday, 1 August 1995**

SECOND REPORT OF THE TECHNICAL COMMITTEE TO SUB CLAIM COMMITTEE 6.1 OF THE CONSTITUTIONAL ASSEMBLY CONCERNING THE ELECTION COMMISSION

INTRODUCTION

The substantial degree of consensus as recorded in the First Report was confirmed by the members at the Theme Committee meeting of the 19 May 1995.

In anticipation of such consensus it was possible to float a draft constitutional text for discussion at that meeting. A copy of this text is annexed hereto marked "A".

A summary of the members' contributions to the draft text and, where appropriate, the reformulated constitutional text, is captured in annexure "B" being the Draft Constitutional Text Incorporating Explanatory Notes.

ANNEXURE B

**SECOND DRAFT CONSTITUTIONAL TEXT INCORPORATING
EXPLANATORY NOTES : SUB-THEME COMMITTEE 6.1 OF
CONSTITUTIONAL ASSEMBLY : THE ELECTORAL COMMISSION**

- I. There shall be an Electoral Commission which shall be independent and impartial.

EXPLANATORY NOTES:

- A. Members agreed with the principles that:
1. the Electoral Commission be established in the Constitution; and
 2. it be manifestly independent, impartial, transparent, professional, autonomous and effective
- B. Whether the qualities referred to in A2 should all be written into the Constitution is at issue. As the principle has been agreed, it is therefore purely a question of drafting.
- C. However, if there are strong views that these qualities should be written into the Constitution, then it would be more appropriate to prescribe the qualifications of the Commissioners.
- D. Provision should be made in the general law for the Electoral Commission to be serviced by an Elections Directorate

- II. ¹The Electoral Commission shall be composed of X persons who shall :

MODEL 1 :

each be nominated by a Premier and appointed by the State President.

¹ Members will discuss this item in their caucuses

MODEL 2 :

be elected by the National Assembly.

MODEL 3 :

be selected by the Judicial Services Commission / the Parliamentary Joint Committee on Elections and appointed by the State President.

MODEL 4 ²:

be elected by the National Assembly from a list of candidates compiled by the Parliamentary Joint Committee on Elections.

EXPLANATORY NOTE :

- A The members agreed that a participatory process be adopted for establishing the Electoral Commission so that it is credible and legitimate to the electorate.
- B Some members suggested that the participation by the Provinces and structures of civil society should be prescribed
- C The general law should prescribe that the Parliamentary Joint Committee on Elections be composed of representatives of each of the political parties
- D As these were prima facie views expressed at the meeting, a considered position will be presented after the party caucuses

III.

³

MODEL 1

The Electoral Commission shall have the general responsibility for policy making, the superintendence,

² Model 4 is an option which was developed from the discussion at the Theme Committee meeting of 19 May 1995.

³ Members will discuss this item in their caucuses

direction, control and conduct of all elections to the National Assembly, to the Legislature of each Province and to Local Government, including the preparation and maintenance of electoral rolls, the management of its funds, the making of regulations, and the education of the electorate.

MODEL 2

The Electoral Commission shall be responsible for the conduct of free and fair elections to National, Provincial and Local levels of government.

EXPLANATORY NOTES:

- A. The general laws should include as the functions of the Electoral Commission
1. the preparation and maintenance of electoral rolls,
 2. the management of its funds,
 3. the making of regulations
 4. and the education of the electorate.
- B. Based on the principles of natural justice, the Electoral Commission should not have monitoring and adjudication functions
- C. The general laws should prescribe :
1. that the function of election adjudication be vested in the ordinary courts
 2. expedited procedures for election disputes
- D. Section 13 of the Independent Electoral Commission Act, 1993 should be appropriately amended
- E. The Electoral Commission should be accorded all the immunities and privileges to enable its members to execute their functions in general laws.

- IV. In the exercise of its powers and performance of its functions, the Electoral Commission shall be accountable to Parliament to whom it shall report annually.**

EXPLANATORY NOTE :

- A. The general law shall prescribe
1. the reporting procedure
 2. that the Elections Commission should be allocated its own budget for which it shall account to Parliament
 3. that the financial reports shall first be approved by the Auditor General before submission to Parliament

- V. The appointment, qualifications, term of office and discharge of members of the Electoral Commission shall be prescribed by law.**

EXPLANATORY NOTE:

- A. The general laws shall provide
1. that a judge be appointed to chair the Electoral Commission
 2. that the composition of the Electoral Commission be representative of the population in terms of race and gender
 3. that members of the Electoral Commission
 - (1) be competent in and knowledgeable about the electoral process
 - (2) be reputed for their independence, impartiality and integrity
 4. that members of the Electoral Commission be appointed for terms of X years and be eligible for re-appointment thereafter

5. that X ⁴ members of the Electoral Commission and a core of administrators be appointed on a full time/permanent basis, whilst others are engaged as required;⁵
6. that members of the Elections Commission 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 fulfill their functions as a result of misconduct incapacity or incompetence;⁶
7. the procedure for the discharge of members of the Elections Commission which shall comply with the principles of administrative law.

VI. No person who has held political office⁷ for three years immediately preceding or subsequent to his or her nomination / election shall be appointed to the Electoral Commission.

⁴ Judge Kriegler suggested three.

⁵ It is envisaged that a trained corps of election staff should be maintained by drawing on e.g. public employees (especially at local government level), institutions of civil society, etc.

⁶ See S 11 of IEC Act, 1993.

⁷ TWO VIEWS: 1. The bar should relate to "public" not "political office. 2. Leave out this clause as it is too detailed for the Constitution. RESEARCH shows that those jurisdictions which cater for elections in their constitutions have a clause similar to the draft text, except that not all place the restraint after the term of office has expired

ANNEXURE C

SECOND ALTERNATIVE DRAFT CONSTITUTIONAL: SUB-THEME
COMMITTEE 6.1 OF CONSTITUTIONAL ASSEMBLY : THE
ELECTORAL COMMISSION

- I. There shall be an Electoral Commission which shall be independent and impartial.

- II. ¹The Electoral Commission shall be composed of X persons who shall :.....

- III. ².....
The Electoral Commission shall be responsible for the conduct of free and fair elections to National, Provincial and Local levels of government.

¹ Members will discuss this item in their caucuses.

² Members will discuss this item in their caucuses.

²
SECOND ALTERNATIVE DRAFT CONSTITUTIONAL TEXT

- IV. In the exercise of its powers and the performance of its functions, the Electoral Commission shall be accountable to Parliament to whom it shall report annually.
- V. The appointment, qualifications, term of office and discharge of members of the Electoral Commission shall be prescribed by law.
- VI. No person who has held political office³ for three years immediately preceding or subsequent to his or her nomination / election shall be appointed to the Electoral Commission.

¹ TWO VIEWS 1 The bar should relate to "public" not "political" office 2 Leave out this clause as it is too detailed for the Constitution RESEARCH shows that those jurisdictions which cater for elections in their constitutions have a clause similar to the draft text, except that not all place the restraint after the term of office has expired

Regarding item 3.1.3.2 of the Minutes held on 19 June 1995:

Judge Kriegler

The principle of establishing an Independent Electoral Commission to be responsible for elections on all levels should be contained in the Constitution.

One simple section is all that is needed:

"There shall be an Independent Electoral Commission which shall be responsible for the conducting of elections on all levels of Government, and which shall be autonomous and accountable."

Such an Independent Electoral Commission shall not be responsible for the monitoring of elections or the adjudication of electoral disputes.

A F TREDoux
DATE : 1995-06-21



CONSTITUTIONAL ASSEMBLY

CONSTITUTIONAL ASSEMBLY

MEMORANDUM

TO: Theme Committee Members
FROM: Hassen Ebrahim
DATE: 21 July 1995
SUBJECT: National Sector Public Hearings and Workshop

We would hereby like to inform you about the following National Sector Public Hearings as well as a workshop that will take place in August.

<u>TOPIC</u>	<u>VENUE</u>	<u>DATE</u>
Socio-Economic Rights	National Assembly Chamber	1 August 1995
Land Workshop (TC6 3)	Old Assembly Chamber	1&2 August 1995
Local Government	Old Assembly Chamber	14 August 1995

If you would like to attend please indicate this to your Managing Secretary or to Community Liaison. The people you can speak to in Community Liaison are Josh Nathanson, Nicci van Noordwyk or Permenthr Pillay.

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THE NEW CONSTITUTION

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 4 - FUNDAMENTAL RIGHTS

PUBLIC HEARING: SOCIO-ECONOMIC RIGHTS IN THE BILL OF RIGHTS

1 August 1995

National Assembly, Parliament, Cape Town

DRAFT PROGRAMME

- 08:30 - 09:30** Registration and Tea
- 09:30 - 10:00** Opening and Welcome:
Leon Wessels (Deputy Chairperson of the Constitutional Assembly)
- 10:00 - 10:45** **Session 1: Socio-economic Rights in the Bill of Rights**
Chairperson: T/C 4
- What rights should be included in the Bill of Rights? What should be the scope of these rights? What about the experience of other countries? The implementation of rights etc.
- Speakers (10 min):
- | | |
|-----------------|--|
| Bruce Porter | (Centre for Equality Rights & Accommodation) |
| Julia Hausemann | (Rights and Humanity) |
| Jacqui Boulle | (Development Action Group) |
| Geoff Budlender | (Legal Resources Centre) |
- 10:45 - 12:30** **Open discussion:**
Questions of clarity
Other inputs from attendants
Discussion and Comment
- 12:30 - 13:30** Lunch
- 13:30 - 14:00** **Session 2: Education and Health Rights**
Chairperson T/C4
- Speakers (15 min)
- | | |
|----------------|-----------------------|
| Duncan Hindle | (SADTU) |
| Jerry Coovadia | (University of Natal) |
- 14:00 - 15:00** **Open Discussion**
Other inputs from attendants
Questions of clarity
Discussion and Comment
- 15:00 - 15:30** **Tea/ coffee**
- 15:30 - 16:00** **Session 3: Property and Land Rights**
Chairperson: T/C 4
- Speakers:
- | | |
|-----------------|---------------------------|
| Mduduzi Shabane | (National Land Committee) |
| Brian Kirchmann | (SAPOA) |

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 6
SPECIALISED STRUCTURES OF GOVERNMENT

LAND RIGHTS AND THE CONSTITUTION

WORKSHOP: 1-2 AUGUST 1995
VENUE: 5249, PARLIAMENT, CAPE TOWN

DRAFT PROGRAMME

TUESDAY, 1 AUGUST 1995

09:30 Registration and Tea

10:00 Opening and Welcome

Speaker : *Mr Cyril Ramaphosa*, Chairperson, Constitutional Assembly.

10:15 Land poverty In South Africa: An historical account.

Facilitator : *Ms Patricia de Lille*, MP

Speakers : *Prof NJJ Olivier*, Retired Professor of Law, Department of Comparative African Law and Government, University of Stellenbosch, Stellenbosch.
Dr Funiwe Njobe, Senior Research Manager, Land and Agriculture Policy Centre and Theme Committee 6.3 Technical Committee member.

Open Discussion

11:30 Traditional Authorities' and Women's Perspectives to the Land Question

Facilitator : *Kgosi Mokoena*, MP and Theme Committee 6.3 member.

Speakers : *Kgosi Netshimondofe*, MP and Theme Committee 6.3 member.
Ms Mabel Choeu, Northern Province Community Development Foundation

Open Discussion

12:45 Lunch

14:00 Land Invasions and Instability: Suggested Solutions.

Facilitator : *Mr Leon Louw*, MP and Theme Committee 6.3 member

Speakers : *Mr William Mullins*, South African Agricultural Union and President, Natal Agricultural Union
Mr Rudolph Rossouw, Human Resource Manager, Hunt Leuchars and Hedburn Timber Products
Mauduzi Shabane, Association for Rural Advancement.

Open discussion

15:30 The Government of National Unity's approach in undoing the damage of forced removals and dispossession of land rights: Strengths and Weaknesses.

Facilitator : *Ms Lenny Maian*, MP and Theme Committee 6.3 member.

Speakers : *Mr Derek Hanekom*, Minister of Land Affairs
Mr Brandon Pearce, National Land Committee

Open discussion

17:00 End of Day one

WEDNESDAY, 2 AUGUST 1995

09:00 Land rights and the Property clause.

- Facilitator : *Ms Baleka Mbete-kgositsile*, MP and Chairperson, Theme Committee 6.3.
- Speakers : President, South African Property Owners Association
Mr Justice Apple Steenkamp, Chairperson, South African Agricultural Union Land Committee and the Ad hoc Committee on Constitutional Affairs.
Dr Antonie Geldenhuys, Chairperson, National Peace Secretariat, Senior Partner, Hoffmeyer Van der Merwe Inc and Theme Committee 6.3 Technical Committee member.
Ms Aninka Classens, Senior Researcher, Centre for Applied Legal Studies and Theme Committee 6.3 Technical Committee member.
Mr Geoff Budlender, Legal Resources Centre.

Open discussion

10.30 Tea break

10:45 LAND RIGHTS: INTERNATIONAL PERSPECTIVES

The African, Canadian, Chilean, Indian and New Zealand experiences

- Facilitator : *Ms Dene Smuts*, MP and Theme Committee 6.3 member.
- Speakers : *Prof Shadrack Gutto*, Deputy Director Centre for Applied Legal Studies and Professor of Law, University of the Witwatersrand, Johannesburg.
Prof Donna Greshner, Professor of Law, University of Alberta, Edmonton, Canada.
Mr Justice Eddie Durie Chief Judge of the Maori Land Court, Wellington, New Zealand.
Mr Joe Tome, University of Wisconsin, Madison.

Open discussion

13:00 Lunch

14:00 Group Discussion

The workshop will break into three small groups to consider a number of questions which will be raised by the Committee and the Theme Committee's technical advisors will facilitate the proceedings of the groups.

16:00 Reports by Groups

Facilitator: *Ms Baleka Mbete-Kgositsile*, MP and Chairperson Theme Committee 6.3.

17:00 Vote of thanks

Speaker : *Mr Leon Wessels* Deputy Chairperson, Constitutional Assembly

NOTE: The Theme Committee wants the workshop to take the form of interactive process of discussion. For this reason all speakers will be afforded a maximum period of 20 minutes within which to make their presentations to allow for sufficient discussion time.

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 3 RELATIONSHIP BETWEEN LEVELS OF GOVERNMENT

NATIONAL SECTOR PUBLIC HEARING LOCAL GOVERNMENT

Venue: Old Assembly Chamber
Date: 14 August 1995
Time: 10h00 - 17h30

DRAFT AGENDA

09h30 - 10h00: Registration and Tea

10h00 - 10h15: Opening and Introductory Remarks - Dr TJ King (TC3 Co-chairperson)

10h15 - 10h30: Welcome - Mr Cyril Ramaphosa (Constitutional Assembly Chairperson)

SESSION ONE: Role, Powers, Functions & Structure of Local Government & its Relationship with other Levels of Government
Facilitator: Dr TJ King

10h30 - 11h45: Input from Stakeholders

11h45 - 12h30: Questions of clarity by CA members and responses from the Stakeholders

12h30 - 13h00: Summary of the Session
Mr Andrew Boraine (Former Convenor *ad hoc* Committee on Local Government)

13h00 - 14h00: LUNCH

SESSION TWO: Finance and Delivery of Services
Facilitator: Mr Rob Davies (Chairperson Theme Committee 6 2)

14h00 - 15h00 Input from Stakeholders

15h00 - 15h45 Questions of Clarity by CA members and responses from the Stakeholders

15h30 - 15h45 Summary of the Session
Mr Andre Cornelissen (*ad hoc* Committee on Local Government)

15h45 - 16h00: TEA

SESSION THREE: Rural Local Government
Facilitator: Ms P de Lille (Co-chairperson Theme Committee 3)

16h00 - 16h45: Input from Stakeholders

16h45 - 17h00 Questions of Clarity by CA members and responses from the Stakeholders

17h00 - 17h15 Summary of the Session
Mr Blake Mosley (*ad hoc* Committee, on Local Government)

17h15 - 17h30: Closure
Prof DC du Toit (Co-chairperson Theme Committee 3)