

CONSTITUTIONAL ASSEMBLY

CONSTITUTIONAL COMMITTEE SUB-COMMITTEE

**DRAFT REPORT ON DISCUSSIONS
30 JANUARY 1996**

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CONSTITUTIONAL COMMITTEE SUB-COMMITTEE MEETING TUESDAY 30 JANUARY 1996

1. OPENING

- 1.1 Mr Ramaphosa opened the meeting at 15h12 .
- 1.2 It was noted that a number of bi-lateral meetings had taken place in the morning.
- 1.3 The following documentation was tabled:

Documentation of 30 January 1996
Submissions received as at 30 January 1996:
Volume V, parts 1 and 2
Volume VI
Submission on the Application of Languages
Submission on the Relocation of Parliament
Memorandum on "Abstract Review: A Survey of European Constitutions"

- 1.4 Discussion was based on the *Third Edition of the Working Draft*.

2. DISCUSSION

2.1 Section 6: Languages

- 2.1.1 It was reported that a meeting had been held between the ANC and the NP and that progress had been made. The NP stated that it would table a new proposed draft of this section for further consideration by parties.
- 2.1.2 It was agreed that this matter be referred for further discussions by parties and that a report back be given to the CC Sub-Committee on Wednesday 7 February 1996.
- 2.1.3 The meeting agreed to the DP request that any alternative options be circulated to all parties.

2.2. Section 5: National Anthem

- 2.2.1 It was reported that a meeting had been held between the ANC and the NP where progress had been made, but that the matter was still under discussion.
- 2.2.2 It was agreed that this matter be referred for further discussion by parties and that a report-back be given to the CC Sub-Committee on Wednesday 7 February 1996.

2.3 CHAPTER 2: BILL OF RIGHTS

2.3.1 Section 7: State's Duty to Respect and Protect Rights

- 2.3.1.1 It was agreed to note the NP request that this matter be revisited when the question of the horizontal application of the Bill of Rights is addressed.

2.3.2 Section 8: Equality

- 2.3.2.1 Regarding Section 8(2), it was reported that parties appeared to favour Option 1, with some amendments. After various discussions between parties, the following amendments were proposed for further consideration:

- the word "*achieve*" be replaced by the word "*promote*"
- the word "*groups*" be replaced by the word "*persons*"
- the phrase [*and likely to*] be deleted
- the word [*unfair*] be retained with the brackets removed.

The section would therefore read:

"Equality includes the full and equal enjoyment of all rights and freedoms. To promote equality, legislative and other measures that are designed to protect and advance persons or categories of persons disadvantaged by unfair discrimination may be used."

- 2.3.2.3 Regarding Section 8(3):

- i It was agreed that the section be retained as it is for the present but that a side-bar note be added by the Technical Refinement Team along the lines that:

This matter may need to be revisited once the question of horizontal and vertical application is addressed.

- ii The Panel of Experts be requested to provide an opinion on the inclusion of the phrase *[but not limited to]* with reference to:
 - (a) the Canadian "Dolphin" case raised by the NP; and
 - (b) the ANC request that the full context of Section 8(3) including the words *"one or more grounds"* and *"including"* be taken into account.
- iii It was noted that the NP favoured the inclusion of the bracketed words *[but not limited to]* which they felt provided more certainty than *"including"* and that it proposed that *"affiliation"* be added as an additional ground in this section. The NP stated that it would table a document at the CC Subcommittee meeting on Wednesday 31 January which would reflect the composite agreements which had been reported but which would also address these concerns.
- iv The meeting noted the ACDP's strong objection to the inclusion of the words *"sexual orientation"*.

2.3.2.4 The DP expressed the view that a **due process** clause was necessary in the Bill of Rights and that this could be included under Section 8(1).

2.3.2.5 It was agreed that the matter be referred to the Panel of Experts for an opinion on the issues raised and to the parties for further discussion and that a report-back would be given to the CC Subcommittee on Wednesday 31 January.

2.3.3 Section 10: Life

2.3.3.1 It was reported that no progress had been made on this matter.

2.3.3.2 The meeting noted that the parties supported the following options:

- i The FF supported Option 2,
- ii The ACDP supported Option 3, which had been included in a previous draft.
- iii The DP supported Option 1, with the words in brackets deleted.

iv The PAC supported Option 1, with the brackets removed.

v The ANC supported Option 1, with the brackets removed.

2.3.3.3 It was agreed that this matter be referred for further discussion by parties.

2.3.4 Section 11(2)(b): Freedom and Security of the Person

2.3.4.1 It was agreed that the Panel of Experts be requested to prepare an opinion on the implications of the wording of Section 11(2). They were requested to consider the following:

i Whether 11(2)(b) constitutionalised the right to abortion or not;

ii Whether 11(2)(b) covered the issue of prostitution and

iii Whether the words in brackets in 11(2) were redundant in that security of the person already implied in the opinion of some parties, both bodily and psychological integrity.

2.3.5 Section 13: Privacy

2.3.5.1 It was noted that an opinion which had been requested from the Panel of Experts would be available on Wednesday 31 January 1996.

2.3.6 Section 14: Freedom of Religion, Belief and Opinion

2.3.6.1 It was noted that an opinion which had been requested from the Panel of Experts would be available on Wednesday 31 January 1996.

2.3.7 Section 15: Freedom of Expression

2.3.7.1 Regarding Section 15(2)(c), the meeting agreed to await the opinion which had been requested from the Panel of Experts and which would be available on Wednesday 31 January 1996, before discussing the matter further.

2.3.7.2 The ANC reported that it was not only Section 15(2)(c) that was in dispute but that the DP and NP favoured the deletion of the whole of Section 15(2). The ANC requested that the opinion from the Panel address the fact that South Africa is in the process of signing a number of international covenants which would bind the country to outlaw those forms of speech.

2.3.7.3 Regarding Section 15(3), it was agreed that the matter be referred for

further discussion by parties who would report-back to the meeting on Wednesday 7 February 1996.

2.3.8 Section 18: Political rights

2.3.8.1 The NP proposed the following:

i Section 18(2) be amended to read:

Only citizens of 18 years or older may have the right to free, fair and regular elections for any legislative body established in terms of the Constitution, to vote in those elections and to do so in secret.

ii Section 18(3) be amended to read:

Only citizens of 18 years or older may stand for election to public office and, if elected, hold office."

2.3.8.2 The DP supported the NP position but noted that it had been agreed by the Sub-Committee that there are a number of aspects to this right which needed to be addressed, including the right of citizens to have elections held.

2.3.8.3 It was agreed that the Technical Refinement Team be requested to look at "unscrambling" the different aspects of the right and consider the possible reformulation of this section.

2.3.9 Section 20(4): Freedom of Movement and Residence

2.3.9.1 It was agreed that the FF concern about fugitive offenders was adequately dealt with in the limitations clause. This was accepted by the FF.

2.3.10 Section 21: Economic activity

2.3.10.1 It was reported that this matter had been discussed by the parties in various meetings and that there was agreement that Option 1 be deleted and Option 2 and Option 3 remain for further consideration.

2.3.10.2 The meeting noted the parties support for the following options:

i The NP favoured Option 2 but were prepared to consider Option 3 with some amendments.

ii The DP favoured Option 3.

- iii The ANC were prepared to consider Option 3 with some rephrasing.
- 2.3.10.3 It was agreed that this matter be referred for further discussions by parties and that a report-back be given on Wednesday 7 February 1996.
- 2.3.11 Section 22: Labour relations**
- 2.3.11.1 It was reported that the matter had been discussed by the parties and that progress had been made.
- 2.3.11.2 The ANC reported that there had been some agreement to consider the deletion of Sections 22(3)(c) and 22(4). The inclusion of Section 22(2)(c) strongly supported by the ANC was a matter for further consideration by the parties.
- 2.3.11.3 The NP supported that there had been agreement to delete Section 22(4) but questioned the linkage of this with Section 22(3)(c).
- 2.3.11.4 The ANC was of the view that the linkage was clear as this was a package.
- 2.3.11.5 It was agreed that the matter be referred for further discussion by parties.
- 2.3.12 Section 23: Environment**
- 2.3.12.1 The meeting noted the DP proposal that the section be amended to read:
- Everyone has the right*
- (a) *to an environment that is not harmful to their health or well-being;*
- (b) *and to have their environment protected through reasonable legislative and other measures.*
- 2.3.12.2 It was agreed that this matter would be revisited on Wednesday 7 February 1996.
- 2.3.13 Section 24: Property**
- 2.3.13.1 It was reported that a meeting had taken place between the ANC, DP and the NP where progress had been made.

- 2.3.13.2 The ANC reported that, based on the discussions which had taken place, it had distributed a document for consideration by parties.
- 2.3.14.3 The NP stated that it had reservations about this document which did not reflect its views but that it would form the basis for further tri-lateral discussions.
- 2.3.14.4 The DP welcomed the re-opening of discussions on this matter.
- 2.3.14.5 It was noted that the PAC had made a submission along the lines of Option 1.
- 2.3.14.6 It was agreed that the matter be referred for further discussions by parties and a report-back be given to the CC Sub-Committee on Wednesday 7 February 1996.

**2.3.15 Section 25: Housing and Land
Section 26: Health, food, water and social security**

- 2.3.15.1 The NP stated that it had a number of concerns regarding socio-economic rights particularly the implications of their horizontal application, and that these concerns were addressed in the NP document to be tabled at the meeting of the Sub-Committee on Wednesday 31 January.
- 2.3.15.2 The DP shared the concern of the NP and expressed the view that the sections on socio-economic rights should be reformulated in a more streamlined and elegant manner.
- 2.3.15.3 It was agreed that once the NP document had been received, the matter would be revisited, and that the question of the grouping of socio-economic rights raised by the PAC would be addressed.

2.3.16 Section 27: Children

- 2.3.16.1 It was agreed that the word "*degradation*" be included in Section 27(1)(d) so that the section be amended to read:
- "to be protected from maltreatment, neglect, abuse or degradation".*
- 2.3.16.2 It was reported that there was a proposal that the third line of Section 27(1)(f) be amended to read:
- "... may be detained only for the shortest appropriate period of time and has the..."*

The ANC requested an opinion from the Panel of Experts as to whether this rewording would address its concerns regarding the detention of children.

- 2.3.16.3 The PAC raised the question whether the age of 18 years in Section 27(3) referred to this section specifically and was separate from the question of the voting age.
- 2.3.16.4 The ANC stated that it wished to give further consideration to this matter as the question of a specific age may be dealt with in legislation and not in the Constitution.
- 2.3.16.5 The NP stated that it was happy with the retention of this subsection which is inherited from the interim constitution and which coincides with legislation.
- 2.3.16.6 The DP requested the Panel of Experts's opinion regarding its concern about whether Section 27(10)(c) meant children had the full right to, or the right of access to, nutrition, shelter, etc.
- 2.3.16.7 It was agreed that this matter be referred for further consideration by parties and be revisited on Wednesday 7 February 1996.

2.3.17 Section 28: Education

- 2.3.17.1 It was reported that there had been discussions between parties on this issue but that no progress had been made.
- 2.3.17.2 The FF stated that it strongly supported Option 2.
- 2.3.17.3 The NP strongly supported the inclusion of Option 2.
- 2.3.17.4 It was agreed that this matter would stand over for further discussion on Wednesday 7 February 1996.

3. SCHEDULE OF MEETINGS

- 3.1 It was agreed that the meetings of the Sub-Committee be rescheduled as follows:

3.1.1 Wednesday 31 January 1996

The meeting would commence at 11h30 with the discussion of the National Assembly and would then adjourn until 17h00 when it would reconvene to receive a report from political parties on their further discussions on outstanding issues in the Bill of Rights.

3.1.2 Wednesday 7 February 1996

It was agreed that Wednesday 7 February would be the deadline for the completion of outstanding issues in the Bill of Rights.

4. CLOSURE

4.1 The meeting rose at 17h11.

