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**CONSTITUTIONAL ASSEMBLY**

***SUBTHEME COMMITTEE 6.1  
SPECIALISED STRUCTURES OF GOVERNMENT  
PUBLIC ADMINISTRATION***

***MONDAY, 8 MAY 1995 - GOOD HOPE CHAMBER***

***16h00 - 18h00***

***DOCUMENTATION***

**Embargoed until 16h00  
8 May 1995**

**CONSTITUTIONAL ASSEMBLY**

**SIXTEENTH MEETING OF THEME COMMITTEE 6.1  
SPECIALISED STRUCTURES OF GOVERNMENT**

**MONDAY, 8 MAY 1995**

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

**DATE** : Monday, 8 May 1993  
**TIME** : 16h00 - 18h00  
**VENUE** : Good Hope Chamber (Good Hope Building, Parliament, Cape Town)

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**AGENDA**

1. Opening and Welcome.
2. Adoption of minutes of meeting held on 2 May 1995 (pages 1-4) .
3. Consideration of second draft constitutional formulations on Public Administration (pages 5-11)
4. Election Commission
  - 4.1 Technical Advisors; and
5. Constitutional Public Meetings (page 12)
6. Any Other Business
7. Closure

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**HASSEN EBRAHIM  
EXECUTIVE DIRECTOR**

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

**CONSTITUTIONAL ASSEMBLY**

**MINUTES OF THE FIFTEENTH MEETING OF SUBTHEME COMMITTEE 6.1**

**THEME COMMITTEE 6  
SPECIALISED STRUCTURES OF GOVERNMENT: PUBLIC ADMINISTRATION**

**TUESDAY, 02 MAY 1995**

**PRESENT**

Vadi, I (Chairperson)

Booi MS (Alt)  
Chiole J  
De Beer SJ  
Jordaan JA  
Love J  
Mokitlane MC  
Watson A

**Observers:**

Pretorius IJ  
Sikakane MR

**Apologies:**

Skweyiya ZST  
Nyembe L

Nyoka N, Van der Merwe P and Zardad S were in attendance.

**1. OPENING AND WELCOME**

Mr Vadi opened the meeting at 18h15 and welcomed members.

**2. ADOPTION OF MINUTES OF MEETING HELD ON 20 APRIL 1995**

The minutes of the Subtheme Committee ("the Committee") meeting held on 20 April 1995, were adopted subject to the following amendments:

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8 May 1995**

- (i) Page 2, attendance, Mokitlane D should be read as Mokitlane MC;
- (ii) Page 3, item 3.2.1 (c), "... with the DP holding the view that limited political appointments be dealt with in legislation," should be added to the item; and
- (iii) Page 4, item 3.2.2 (b) second paragraph, the NP should be inserted in the first line to be read as :The DP and NP further ...".

### **3. CONSIDERATION OF DRAFT CONSTITUTIONAL FORMULATION ON PUBLIC ADMINISTRATION**

The technical advisor took the meeting through the document entitled: "**FIRST DRAFT - 25 APRIL 1995: PUBLIC ADMINISTRATION**", which was circulated to members and prepared by the technical and law advisors.

The meeting noted that the DP, FF and NP did not have mandates to adopt the report in its entirety as representatives of these parties in the Committee submitted that they needed to be afforded an opportunity to refer the areas of disagreement (and the technical committees' proposed integration of the areas of disagreement) back to the respective parties.

The Committee decided to take preliminary comments from the parties on the draft constitutional formulation on public administration. Further discussion on this draft will take place at the next meeting.

### **4. ELECTION COMMISSION**

#### **4.1 Parties' submission**

The deadline date for parties' submissions on Blocks 6 - 9 on the Election Commission was finalised as 29 May 1995.

#### **4.2 Technical Advisor**

The meeting agreed that parties would submit nominations for technical advisors for the Election Commission at the next meeting.

#### **4.3 Progress Report by the Secretariat - Election Commission**

Following a report on the Election Commission workshop by the secretariat the meeting agreed on the following:

**Embargoed until 16h00  
8 May 1995**

**4.3.1** *that two workshops on the Election Commission be held. The first of these - to focus on South Africa's experience - to be held on 15 May 1995. And the second whose focus shall be international experience to be held on 22 May 1995;*

**4.3.2** *that the South African workshop involve the following participants:*

- *Peter Harris, Ex-Chief Director IEC Monitoring Division*
- *Local Government Elections Task Group*
- *Home Affairs Department*
- *Justice Department; and*

**4.3.3** *that the international workshop involve the following participants:*

- *Mr Justice ZR Chesoni, Chairperson of the Kenyan Electoral Commission*
- *Dr Amare Teckle, Chairperson of the Eritrean Electoral Commission*
- *Mr Keith Klein, International Foundation for Electoral Systems*
- *Mr Horaceo Boneo, Director of the United Nations Electoral Assistance Division*
- *Zambian Minister of Justice*
- *Alpheus Mangezi, Mozambique*
- *AWEPA.*

## **5. ANY OTHER BUSINESS**

### **5.1 Constitutional Public Meetings**

Members agreed to attend the Constitutional Public Meetings as follows:

Peddie	MC Mokitlane
Ingwavuma	MS Boo
Standerton	A Watson

Attendance at the outstanding Constitutional Public Meetings will be finalised at the next meeting.

**Embargoed until 16h00  
8 May 1995**

**6. DATE OF NEXT MEETING**

**DATE:** 8 May 1995

**TIME:** 16h00 - 18h00

**VENUE:** Good Hope Chamber ( Good Hope Building, Parliament, Cape Town)

**7. CLOSURE**

The meeting rose at 20h30.

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**Embargoed until 16h00  
8 May 1995**

## **SECOND DRAFT - 3 MAY 1995**

**Status:-** Prepared by CA Law Advisers and TC 6.1 Technical Advisers after the Sub-theme Committee's discussion of the first draft on 2 May 1995.

### **PUBLIC ADMINISTRATION**

#### **Basic values and principles governing public administration**

1. (1) Public administration at all levels of government, including all government funded institutions, shall be governed by the democratic values and principles enshrined in this Constitution. In particular the following principles shall be applicable:<sup>1</sup>

- (a) Public administration shall be economic, efficient and effective.<sup>2</sup> It shall be accountable to both government and the public.<sup>3</sup>
- (b) Public administration shall be transparent.<sup>4</sup> The public shall have access to services and information.<sup>5</sup>
- (c) Public administration shall be developmental orientated.<sup>6</sup> It shall be responsive to the needs of the people.<sup>7</sup> The provision of services shall be conducted on the basis of impartiality and equity to all.<sup>8</sup>
- (d) Public administration shall be orientated towards public participation in policy-making.<sup>9</sup>

**2.**

- (e) Public administration shall be broadly representative of the South African people.<sup>10</sup> Employment and personnel management practices in public administration shall be based on competency, objectivity and fairness.<sup>11</sup>
- (f) Public administration shall be orientated towards career development.<sup>12</sup>
- (g) Public administration shall loyally execute the lawful policies of the government of the day.<sup>13</sup> A high standard of professional ethics shall be promoted and maintained.<sup>14</sup>
- (2) The terms and conditions of service of employees in public administration shall be regulated by law.<sup>15</sup> Employees shall be entitled to a fair pension in terms of a pension scheme regulated by law.<sup>16</sup>
- (3) The above principles shall not preclude a limited number of political appointments in public administration.<sup>17</sup>
- (4) Laws regulating public administration may differentiate between different sectors, administrations or institutions in public administration.<sup>18</sup>

**Public Administration Commission**

- 2. (1) There shall be a Public Administration Commission for the Republic consisting of a chairperson and .... members.<sup>19</sup>
- (2) The Public Administration Commission shall be independent, impartial and subject only to this Constitution and the law.<sup>20</sup>



**3.**

(3) The Public Administration Commission shall perform an advisory, monitoring and inspection function with regard to public administration.<sup>21</sup>

(4) The Public Administration Commission shall be accountable to Parliament for its activities, and shall report to Parliament and the provincial legislatures on its activities at least once per year.<sup>22</sup>

(5) The chairperson and members of the Public Administration Commission shall be appointed in accordance with a procedure prescribed by law by the President subject to approval by Parliament.<sup>23</sup>

**Public Service**

3. There shall be a public service for the Republic structured and functioning in terms of a law.<sup>24</sup>

**Provincial commissioners**

4. A provincial commissioner in the Public Administration Commission shall be competent to exercise and perform the powers and functions of the Commission with regard to his or her province.<sup>25</sup>

4.

[Foot notes

1. See par. 2.2 of the Report.
2. As per par. 2.2.2. Effective administration is also a requirement of CP XXIX.
3. As per par. 2.2.12.
4. As per par. 2.2.7.
5. As per par. 2.2.5.
6. As per par. 2.2.9.
7. As per par. 2.2.6.
8. As per par. 2.2.1.
9. As per par. 2.2.10.
10. As per par. 2.2.4.
11. As per par. 2.2.8.
12. As per par. 2.2.13.
13. As per par. 2.2.14
14. As per par. 2.2.3. See also CP XXIX which requires a "high" standard of professional ethics to be maintained.
15. CP XXX(1) requires the insertion in the final Constitution of a provision which provides for the conditions of service of employees to be regulated by law.
16. This provision is required by CP XXX(2).
17. As per par. 2.4 of the Report.
18. As per paragraphs (a) and (b) of par. 2.3 of the Report.
19. As per par. 2.5.1 of the Report. The number of members needs to be considered in the light of the views referred to in par. 3.1.2 and 3.1.3 of the Report. The name "Public Administration Commission" or "Commission for Public

5.

**Administration" is proposed in view of its role as an advisory body with regard to the whole of the public administration and not only the public service.**

**20. This provision has been inserted in compliance with CP XXIX. It is suggested that the phrase "subject only to this Constitution and the law" be retained for the following reasons:**

- **The phrase is also used with reference to comparable institutions such as the Public Protector, the Auditor-General, the S.A. Reserve Bank, the courts and all other constitutionally "independent" bodies.**
- **The phrase stresses the point that the Commission only operates in terms of the Constitution and the law and that it is not merely an instrument of the government of the day.**
- **A further function of the phrase is that it implies a statutory enactment to regulate the functioning of the Commission. (An Act on the Public Administration Commission).**

**21. As per par. 2.5.3 of the Report.**

**22. As per par. 2.5.1 of the Report. It is not considered appropriate that reporting to a Parliamentary Select Committee should be a constitutional requirement. Parliamentary procedures fall within the domain of Parliament's internal autonomy. We may add that there is presently no constitutional provision requiring the Auditor-General for instance to submit reports to a select committee of Parliament.**

**23. As per par. 2.5.2 of the Report. If the first alternative referred to in par. 3.1.1 of the Report is preferred provision can be made in the law referred to in section 2(5) for the appointment of the provincial representatives in the Commission upon their nomination by the provincial legislatures.)**

**24. In accordance with CP XXX which requires a provision in the Constitution stating that the structuring and functioning of the public service shall be as prescribed by law. In terms of this formulation the definition of the public service is left for ordinary legislation.**

6.

25. In par. 3.1.4 of the Report we were requested to draft a constitutional provision which would reconcile the various views on provincial service commissions. Section 4 is an attempt at such reconciliation and provides for the respective provincial representatives in the Public Administration Commission to exercise the powers of the Commission in their respective provinces. Additional provision will also have to be made for the appointment of these commissioners by the President upon their nomination by the provincial legislatures or executives.

Provision could be made for provincial commissioners to be assisted by not more than two persons along the following lines:

The Premier of a Province may, subject to approval by he legislature of that province, appoint not more than two persons to assist the Provincial Commissioner.]

# MANAGEMENT COMMITTEE REPORT

20 APRIL 1995

## 1. INTRODUCTION

In the Management Committee meeting held on Thursday 23 March 1995, it was agreed that 18 Constitutional Public Meetings be held around the country. This report aims at providing an outline on the said meetings.

## 2. DATES AND VENUES

The Management Committee of 27 March approved the following venues for CPMs. It is proposed that CPMs be held at these venues on the following dates:

PROVINCE	VENUE	DATE
Eastern Cape	Peddie	6 May
North West	Taung	6 May
Kwazulu-Natal	Ingwavuma	13 May
Eastern Transvaal	Standerton	13 May
Northern Cape	Upington	20 May
Free State	Harrismith	20 May
Western Cape	Beaufort West	27 May
Kwazulu-Natal	Newcastle	27 May
Northern Cape	Kimberley	3 June
Northern Transvaal	Thohoyandou	3 June
Eastern Cape	Lusikisiki	10 June
North West	Mafikeng	10 June
Northern Cape	Camarvon	17 June
Northern Transvaal	Ellisras	17 June
Eastern Transvaal	Mhluzi	17 June
Western Cape	George	24 June
Free State	Maokeng	24 June
Kwazulu-Natal	Hammersdale	24 June

The Gauteng province has already hosted five public participation events. Thus given the limited period of 27th April to 30th June, the PPP has concentrated on those provinces which have not hosted as many events.

## 3. COMMUNITY INVOLVEMENT

It is necessary that at each of the Constitutional Public Meetings representatives of the various organisations of civil society and other formations be properly represented and be invited to make submissions. To ensure achievement of this objective regional and national initiatives have been put into place.