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CONSTITUTIONAL ASSEMBLY

SUBCOMMITTEE - CONSTITUTIONAL COMMITTEE

***SPECIALISED STRUCTURES OF GOVERNMENT
PUBLIC ADMINISTRATION***

TUESDAY, 13 JUNE 1995 - V 454

13h00

DOCUMENTATION

**Embargoed until 13h00
Tuesday, 13 June 1995**

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Tuesday, 13 June 1995

CONSTITUTIONAL ASSEMBLY

SECOND MEETING

**SUBCOMMITTEE OF THE CONSTITUTIONAL COMMITTEE
PUBLIC ADMINISTRATION**

TUESDAY, 13 JUNE 1995

Please note that as per the mandate of the Constitutional Committee meeting held on Friday, 26 May 1995 a meeting of the above Committee will be reconvened as indicated below:

DATE : Tuesday, 13 June 1995
TIME : 13h00
VENUE : V 454 (Old Assembly Wing, Parliament, Cape Town)

AGENDA

1. **OPENING AND WELCOME**
2. **MINUTES OF MEETING HELD ON MONDAY, 5 JUNE 1995**
3. **REVISION AND REFINEMENT OF PUBLIC ADMINISTRATION DRAFT FORMULATIONS IN ACCORDANCE WITH THE CONSTITUTIONAL ASSEMBLY'S DEBATE OF 19 MAY 1995**
4. **ANY OTHER BUSINESS**
5. **CLOSURE**

**HASSEN EBRAHIM
EXECUTIVE DIRECTOR**

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

**CONSTITUTIONAL ASSEMBLY
MINUTES OF THE FIRST MEETING
SUBCOMMITTEE - CONSTITUTIONAL COMMITTEE**

PUBLIC ADMINISTRATION

MONDAY, 05 JUNE 1995

PRESENT

Vadi, I (Chairperson)

De Beer SJ
Dexter P
Jordaan JA
Watson A

Apologies:

Love JY

Cetywayo N, Mtubatam N, Nyoka N, and Zardad S were in attendance.

1. OPENING AND WELCOME

- 1.1 Mr Nyoka opened the meeting at 14h15 and welcomed everyone. He explained that the subcommittee was constituted as per the mandate of the Constitutional Committee (CC) meeting of 26 May 1995.

The CC's brief for the subcommittee is to finalise the draft formulations on public administration, taking into account the concerns raised in the Constitutional Assembly (CA) debate of 19 May 1995.

The subcommittee would be a sub-structure of, and would report back to, the CC. The composition of the subcommittee was finalised as follows:

ANC PD Dexter
JY Love
I Vadi
Chabane OC (Alt)

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NP S De Beer
A Watson
IJ Pretorius (Alt)

FF J Chiole

DP JA Jordaan

PAC MMZ Dyani

ACDP LM Green

IFP No representative

1.2 Election of Chairperson

Mr Vadi was unanimously elected as chairperson of the subcommittee.

2. REVISION AND REFINEMENT OF PUBLIC ADMINISTRATION DRAFT FORMULATIONS IN ACCORDANCE WITH THE CONSTITUTIONAL ASSEMBLY'S DEBATE OF 19 MAY 1995

2.1 The following points ensued from the discussion:

2.1.1 The absence of the FF, PAC and the ACDP was noted with concern. The meeting concurred that sufficient notice was given to parties;

2.1.2 The National Party (NP) questioned the mandate of the CA law advisors to present an amended draft formulation.

The NP argued that the introductory explanatory note as well as the proposed amendment to the Theme Committee's base draft formulations document were not an accurate reflection of the CA debate. The meeting noted this.

2.1.2 The NP also questioned the correctness of the draft minutes of the CC meeting of 26 May 1995 which seeks to set out the terms of reference of the Subcommittee.

2.2 It was agreed not to proceed with the meeting until clarity was obtained from the CC on the following issues:

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- 2.2.1 The terms of reference of the subcommittee;
- 2.2.2 The status of advisors, both technical and legal, on the subcommittee. The National Party requested that, in addition to the law advisors, the technical advisors participate in the proceedings of the subcommittee.
- 2.3 Following the concerns raised by the NP the meeting agreed that the discussion of the next meeting would be based on the draft formulations on public administration submitted to the CA on 19 May 1995, and not the amended draft of the CA law advisors dated 23 May 1995.
- 2.4 The meeting agreed to revisit the issue of the subcommittee chairperson at the next meeting following a concern raised by the ANC that their participation would be compromised if Mr Vadi had to officiate as chairperson. The meeting noted the ANC's request that the chairperson be mandated from the CC.

3. DATE OF NEXT MEETING

The next meeting was finalised as follows:

DATE: 13 June 1995
TIME: 13h00 - 14h30
VENUE: V 454 (Old Assembly Wing, Parliament, Cape Town)

4. CLOSURE

The meeting rose at 16h00.

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DRAFT

CONSTITUTIONAL ASSEMBLY

MINUTES OF THE TWENTIETH MEETING OF THE CONSTITUTIONAL COMMITTEE

FRIDAY 26 MAY 1995

Present

Ramaphosa MC (Chairperson)
Wessels L (Deputy Chairperson)

Bhabha, M	Majoli-Pikoli, N T (Alt)
Chabane, O C	Malan, J T
De Beer, SJ	Marais, P G
De Lange, JH	Mchunu, E S
De Lille, P (Alt)	Meshoe, K R
Du Toit, D C	Meyer, R P
Eglin, C W	Moosa, M W
Fourie, A	Myakayaka-Manzini, YL
Ginwala, FN	Ngcuka, B T
Gogotya, NJ	Pandor, G N M (Alt)
Gordhan, P J	Rabie, J A
Groenewald, P H (Alt)	Radue, J (Alt)
Hofmeyr, W A (Alt)	Sizani, R K
Kgositsile, B	Van Breda, A
Lockey, D	Van Heerden, F J
Love, J (Alt)	Viljoen, C L

Alternates for this meeting: the FF gave notice that P H Groenewald would replace C Mulder; the NP gave notice that S J de Beer, J T Malan, R Radue and F J van Heerden would stand in for its full members who had extended apologies.

Apologies: C Ackermann, K Asmal, O Chabane, L Green, B Mabandla, N Mahlangu, D Makhanya, M V Moosa, C Mulder, Z Nzimande, D Schutte and Z Skweyiya.

Absent: G Fraser-Moleketi, S Holomisa, J Kgoali, T King, Z Kota, M Lekgoro, M Ligege, L Mtshali, S Mzimela, L Ngwane, E Pahad, R Rabinowitz, S Ripinga, T Sifora, P Smith, F van Deventer.

In Attendance:

Staff : H Ebrahim, M Sparg, L Zondo, G Grové, N Msizi, M Ndziba, M Keegan.

Panel: Z. Yacoob.

Technical Committee : H Corder (TC 1) and P van der Merwe (TC 6.1)

1. OPENING

1.1 Mr. Ramaphosa opened the meeting at 08h44.

1.2 The agenda was adopted with one addition:

3.A *The Misunderstanding Regarding the Religious Issue*

2. MINUTES

The Minutes of the Nineteenth Meeting of the Constitutional Committee of 12 May 1995 were adopted with the following amendments:

i. The following would be added to paragraph 8:

The meeting noted, the ANC pointed out that according to Constitutional Principle XXXIV(2), the Volkstaat Council had to show "substantial proven support" for a Volkstaat and this precondition had to be met before the Constitutional Assembly seriously considered the matter. The ANC requested that the Volkstaat Council take the question of support up.

ii. In paragraph 6.2, "2 Commissioners" would replace "2 Commissions".

iii. It was noted, the ANC requested that the term "taken on board" no longer be used in the Minutes.

3. MATTERS ARISING

3.A THE MISUNDERSTANDING REGARDING THE RELIGIOUS ISSUE

3.A.1 Mr. Ramaphosa introduced the pamphlet entitled "*Constitutional Awareness Campaign Co-ordinators, Warning*", tabled at the meeting.

3.A.2 The ANC stated that the pamphlet "smeared" the Constitutional Assembly and the constitution-making process and, by misrepresenting the issue of the "secular state", had whipped up the feelings of a large section of the Christian community quite wrongfully. The ANC accused the ACDP of being party to this and of playing a "party political game", "smearing" the ANC. The ANC asked that the ACDP not resort to "emotive campaigns" to gain strength or discredit parties, but to engage in fair play through open debate in the Constitutional Assembly. Finally, the ANC requested that

i. The CC take measures to clarify the CA's position in this regard;

ii. The ACDP account for its role in this matter; and

- iii. The ACDP apologise to the ANC for its regrettable effort to discredit it.

3.A.3 The meeting requested clarity on how the matter had developed in Theme Committee 1:

- i. Mr. Corder explained that the ACDP initially raised the question of "the separation of church and state" in the Theme Committee, and the matter was initially non-contentious. The situation changed, however, when the Technical Advisors changed the wording from "separation of church and state" to "the separation of religion and state", to accommodate a particular public submission. The Technical Advisors intended no change of meaning. The ACDP disagreed, however, and the matter became contentious.
- ii. The DP noted that additional confusion may have resulted from Theme Committee 1's report, entitled "*Supplementary Report to Amended Report, 28 February 1995.*" On page 40, the "*Supplementary Report*" included and itemised issues under "secular state" that had never been discussed by the Theme Committee. Mr. Corder explained that at the time, Technical Advisors were instructed to expand upon contentious points in Theme Committee reports. Mr. Corder added that the ACDP expressed concern regarding this passage, and the Theme Committee explained the matter to it to set its fears to rest. Mr. Corder reported that at no point had the Theme Committee adopted the contentious points raised in the amended report.

3.A.4 The ACDP responded as follows:

- i. The ANC had verbally supported the notion of a "secular state" in both Theme Committee and Constitutional Committee discussions;
- ii. The ANC should withdraw its support for a "secular state" or clarify what it meant by a "constitutional democracy";
- ii. The pamphlet under discussion was not an official ACDP leaflet; however, the pamphlet said that a "proposal" not a "decision" had been made regarding the "secular state", and it was legitimately urging people to forward their views on the matter to the Constitutional Assembly.

3.A.5 The NP said that there appeared to be a serious misunderstanding about what was meant by a "secular state". The ANC added, however, that only the ACDP subscribed to the definition of the "secular state" as found in the pamphlet under discussion.

3.A.6 The Chair requested that the ACDP publicly dissociate itself from the

contents of the leaflet under discussion. He said that the question of religion, like race, was a highly emotive issue in South Africa, and it was incorrect for any political party to agitate around it, particularly if the information sent out to the public was incorrect.

3.A.7 The Chairperson ruled that:

- i. The Constitutional Assembly would issue a public statement stating that it had made no decisions nor passed any resolutions on the "secular state"; the Constitutional Assembly was aware that this was a sensitive issue and would not ride rough shod over what South Africans had to say on the matter. And,
- ii. The Management Committee would consider whether to establish an enquiry into the matter, and if so, determine what mechanisms would be used.

3.1 AMENDED DRAFT FORMULATION ON PUBLIC ADMINISTRATION

3.1.1 Mr. Ramaphosa introduced the document entitled "*Amended Draft Formulation on Public Administration*", included in the documentation.

3.1.2 The meeting noted sub-Theme Committee 6.2's complaint that certain members treated the sub-Theme Committee in a demeaning manner during the Constitutional Assembly's discussion of the draft texts on the public administration. This had demotivated the sub-Theme Committee. The sub-Theme Committee requested that such members be taken to task by their respective organisations.

3.1.3 The meeting agreed that following the discussion of the draft formulations, the formulations would be referred to a subcommittee for finalisation.

- i. The sub-committee would be a sub-structure of and would report back to the Constitutional Committee;
- ii. It would consist of 3 representatives from the ANC, 2 from the NP and one from each of the other parties;
- iii. Political parties would forward the names of their representatives on the sub-committee to the Administration. The meeting requested that political parties nominate people who were on the Theme Committee;
- iii. The Law Advisors would serve on the sub-committee in a technical capacity;
- iii. The Administration would assist in convening the sub-committee;

and

- iv. The task of the sub-committee would be to finalise the draft formulations on public administration, taking into account the concerns raised in the Constitutional Assembly and the Constitutional Committee.

3.1.3 The following concerns were raised during the discussion of the amended formulations on public administration:

- i. Regarding section 1 of the draft formulation, which reads:

Basic values and principles governing public administration.

The ANC recalled that, at the last Constitutional Committee meeting, it requested that the principles also address the need for affirmative action.

- ii. Regarding paragraph 1(3) of the draft formulation, which reads:

1(3) A limited number of political appointments in public administration may be made within the framework of the above principles and as regulated by law.

The DP requested that the CA Law Advisors advise whether this paragraph needed to be retained, in light of the criteria set out by the Panel of Experts. If so, the DP requested that it be reformulated, for as it stood it was ambiguous and could mean either "appointment of politicians" or "appointment by politicians."

- iii. Regarding paragraph 2(1) of the draft formulation, which read:

2(1) There shall be a Public Administration Commission for the Republic [consisting of a chairperson and eleven commissioners. Each province shall be entitled to nominate one of these commissioners]. The provinces shall be entitled to representation in the Commission.

The meeting agreed that "Each of the provinces" would replace "The provinces" in the last sentence.

- iv. Regarding paragraph 2(3) of the draft formulation, which reads:

2(3) The Public Administration Commission shall perform such advisory, monitoring and inspection functions with regard to public administration as prescribed by national law.

The ANC reminded the meeting of the recommendation made

during the Constitutional Assembly debate that the phrase "advisory, monitoring and inspection functions" be replaced by a more general formulation, to avoid problems with other such bodies.

- v. The ANC asked the sub-committee to consider whether the matter of a Code of Ethics should be included in the new constitution.

4. **THEME COMMITTEE 5 DRAFT FORMULATIONS**

The meeting noted that the sub-committee set up to draft formulations for Theme Committee 5 was continuing its work and would report to the next meeting of the Constitutional Committee.

5. **THEME COMMITTEE 1 DRAFT FORMULATIONS**

5.1 Mr. Marais spoke to the document entitled, *"Theme Committee 1, Report for Block 1,"* included in the documentation.

5.2 Concern was expressed regarding paragraph 4 of *"Part Two. B. No-Contentious Issues"* which reads:

iv) the Constitution shall be justiciable by an independent and impartial judiciary, based on the doctrine of the separation of powers"

i. The ANC flagged the issue of "enforceability" and noted that it would need to be discussed more fully once the matter of economic rights was considered. And

ii. The ANC requested clarification of what "based on the doctrine of the separation of powers" would mean.

5.3 Regarding paragraph (2) of the draft formulation, which reads:

"(2) Any law, act or conduct inconsistent with this Constitution shall be invalid to the extent of the inconsistency."

The ANC requested that this be reformulated in plainer language.

5.4 Regarding point 3 of the non-contentious issues listed in the *"Analytical Survey,"* which reads:

"3) Constitution shall bind all organs of state at all levels of government"

The ANC noted that this related to the vertical and not the horizontal application of the Bill of Rights. It was agreed that the matter would be referred to Theme Committee 4 for its consideration.

- 5.5 Regarding point 6 of the non-contentious issues listed in the *"Analytical Survey,"* which reads:

"6) The Constitution shall not unduly shackle legislative action to redress past wrongs"

The ANC requested that the word "past" replace "pass".

- 5.6 The meeting repeated the need for a formal process of referring matters from one Theme Committee to another.
- 5.7 It was agreed that the draft formulation, as well as the points raised in discussion, would be noted; the draft would not be referred back to the Theme Committee, but be left in abeyance until a clearer general picture had emerged.

6. THEME COMMITTEE 4 DRAFT FORMULATIONS

- 6.1 Mrs. Pandor referred the meeting to the documents entitled, *"Theme Committee 4, Report on Nature and Application of Bill of Rights"* and *"Theme Committee 4, Report and Draft Formulation - Right to Human Dignity,"* included in the additional documentation. The meeting noted that the documents had been tabled and would be discussed at the next meeting of the Constitutional Committee.
- 6.2 It was agreed that the Theme Committee would try to present more holistic, consolidated reports on groups of related rights.

7. THEME COMMITTEE 6.3 DRAFT FORMULATIONS ON THE PUBLIC PROTECTOR

- 7.1 Mrs. Kgositsile introduced the document entitled *"Theme Committee 6.3 Report on the Public Protector,"* included in the documentation, and the document entitled *"Report: Public Protector, Errata,"* bound separately.
- 7.2 The meeting agreed that the Constitutional Committee would establish a sub-committee to finalise this draft formulation.
- i. The sub-committee would be a sub-structure of the Constitutional Committee and report to it.
 - ii. It would consist of 3 representatives from the ANC, 2 from the NP, and 1 from all other parties.
 - iii. Political parties would forward the names of their representatives on the sub-committee to the Administration. The meeting requested, however, that political parties nominate people who had participated in the Theme Committee.
 - iii. The CA Law Advisors would participate in the sub-committee in a

technical capacity.

- iv. The Administration would assist in convening the sub-committee.
- v. The task of the sub-committee would be to finalise the draft formulation, taking into consideration the concerns raised during the Constitutional Committee's discussion of the draft formulation.

7.3 Regarding paragraph 1(1) of the draft formulations, which reads:

"1.(1) There shall be a Public Protector for the Republic."

- i. The NP queried whether this office should be named "ombudsman" or "public protector". The NP and FF supported the use of "ombudsman", while the ANC and PAC supported the use of the "public protector". The meeting agreed to refer the matter to the sub-committee for finalisation.
- ii. The ANC proposed that a brief description of what the Public Protector should be added to paragraph 1(1), once agreement was reached on the matter.

7.4 Regarding paragraph 1(2) of the draft formulations, which reads:

"1(2) The Public Protector shall be independent, impartial and subject only to the Constitution and the law. The Public Protector shall perform his or her functions without fear, favour or prejudice."

- i. The DP queried whether the phrase "subject only to the Constitution and the law" was needed here, given that there would be an overarching phrase establishing the sovereignty of the constitution elsewhere in the constitution.
- ii. The DP also proposed that the paragraph might be shortened to read: "The Public Protector shall be independent and shall perform his or her functions in an impartial manner." The ANC noted that it might agree to move "impartial", but would want to deliberate on whether or not to remove "without fear, favour or prejudice."
- iii. It was noted that Mr. Grové proposed that the matter be given further consideration when the draft was refined in consultation with the Panel of Experts.

7.5 Regarding paragraph 1(3) of the draft formulation which reads:

"1(3) Organs of state shall give the Public Protector the necessary assistance to protect and ensure his or her independence, dignity and effectiveness."

- i. The NP proposed that the following sentence be added to protect the office: "In particular the Public Protector shall be accorded by law all such immunities and privileges as are necessary for the purpose."
- ii. The ANC argued that "immunities and privileges" did not need to be referred to specifically, but rather a broader clause be added indicating that legislative protection would occur.
- iii. The NP accepted this compromise, and the matter was referred to the sub-committee for finalisation.

7.6 Regarding paragraph 1(4) of the draft formulation which reads:

"1(4) Interface with the Public Protector in the discharge of his or her powers and functions is prohibited."

- i. The DP noted, with the ANC and NP in agreement, that if paragraph 1(3) said that one was dealing not only with organs of state but the law, this would supercede paragraph 4, which could then be deleted.
- ii. The meeting agreed to refer the matter to the sub-committee for finalisation.

7.7 Regarding paragraph 1(5) of the draft formulation which read:

"1(5) The Public Protector shall be accessible to all persons and communities."

- i. The ANC noted that the paragraph could in the end be deleted, given that other sections of the constitution, like the Bill of Rights, might repeat the principle of accessibility; however the principle might be so important here that it might be necessary to keep it in.
- ii. The meeting agreed to forward the matter to the sub-committee for finalisation.

8 Regarding paragraph 2.(1) of the draft formulations which reads:

"2.(1)..."

7.8.1 The meeting noted that consensus was emerging around Option 2, but that additions would be needed to make the option acceptable to all.

7.8.2 The following additions or amendments were proposed during the discussion of Option 2:

- i. The PAC proposed, with the ANC agreeing, that the phrase "improper conduct" be amplified by concepts such as "maladministration."

- ii. The DP proposed the phrase "improper conduct and maladministration".
- iii. The ANC expressed concern with the phrase "performing a public function" and suggested it be replaced with "performing a governmental public function".
- iii. The ANC also proposed that the provisions be extended to cover all structures which are publicly funded, including privatised government structures.
- iv. The DP proposed that the "powers" be increased to include redressing disputes or addressing omissions.

7.8.3 The meeting agreed to forward the matter on to the sub-committee for finalisation.

7.9 Regarding paragraph 2(2) of the draft formulation, which reads:

"2(2) The Public Protector shall not have the power to investigate the performance of judicial functions by the courts of the Republic.

- i. The ANC expressed concern that the phrase "the courts" was wide, particularly in regards to the lower court system, which had not yet been fully defined by Theme Committee 5.
- ii. The Theme Committee responded as follows:
 - a. The provision should not extend to "conventional courts" like the magistrates courts. In these instances complaints of corruption would be investigated by structures within the judicial system.
 - b. However, the Public Protector should have the power to investigate complaints against traditional or community courts, whose role may be more mediational than judicial.
 - c. It was noted that the draft provision would refer to the judicial functions of courts and not their administrative aspects.
 - d. The Theme Committee proposed that a footnote be added here to indicate that the paragraph was intended to relate to conventional courts, from the level of magistrate upwards. However, the matter should be flagged as one which needed further attention one decisions regarding the structure of lower courts had been made.
- iii. The PAC objected, noting that the Public Protector should not be empowered to review the judicial functions of traditional or community

courts, although it could be allowed to review their administrative or executive functions. The Theme Committee responded that it did not intend for the Public Protector to interfere with decisions taken in courts, but it would look into the administrative side of the functioning of that court. The PAC proposed that administration of magistrate courts be included, too, given the delays there.

- iv. The meeting agreed to refer the matter to the sub-committee on the understanding that the matter would be flagged for further consideration once concrete decisions had been made on the structure of the lower courts.

7.10 Regarding paragraph 2(3) of the draft formulation, which reads:

2(3) Reports issued by the Public Protector in connection with the discharge of his or her powers and functions shall in principle be open to the public.

- i. The following queries were made:
 - * The Deputy Chairperson queried what the draft formulation meant by "open" and proposed that the matter be formally referred to Theme Committees 4 and 5 for their consideration; and
 - * The ANC queried how this paragraph would relate to the issue of the right to privacy and
- ii. The PAC, however, said that, given a broad statement regarding the accessibility of government would be included elsewhere in the constitution, this paragraph might be redundant. The ANC agreed that if such a provision were made elsewhere, this paragraph could be removed or incorporated in paragraph 2(4).

7.11 Regarding paragraph 2(4) of the draft formulation, which reads"

2(4) The Public Protector shall be accountable to Parliament for his or her activities, and shall report to Parliament on such activities at least once a year.

- i. The ANC queried what type of report was meant: e.g. annual reports or findings. The meeting noted that the current legislation requires that the Public Protector regularly submit his or her findings to Parliament.
- ii. The FF queried whether all findings should be reported to Parliament: forwarding all reports, and particularly those which did not require a response from parliament, would be burdensome.
- iii. The ANC argued that forwarding some reports to Parliament could be needlessly damaging. These would include reports on ongoing investigations or reports on investigations which found that allegations

of misconduct were untrue. The ANC proposed that the Public Protector only forward to Parliament reports on "pretty final determinations". The Theme Committee responded that it had tried to cover such situations by using the phrase "in principle" in paragraph 2(3); these words should be retained, for where allegations were found to be malicious complaints, there should not be a compulsion to publish them.

- iii. The meeting agreed to forward the matter to the sub-committee which would try to reconcile the various views that had been expressed, also taking into account the relevant sections of the Interim Constitution.

7.12 The meeting agreed to accept paragraph 3(1) of the draft formulation, which reads:

3(1) The President shall appoint a person recommended by Parliament as Public Protector.

7.13 Regarding paragraph 3(2) of the draft formulation, which reads:

3(2) Parliament shall only recommend a person for appointment as the Public Protector -

(a) who has been nominated by a committee of Parliament ...

(b) whose nomination has been approved by Parliament by a resolution adopted by a majority of at least ... per cent of the members present and voting at a meeting.

The meeting agreed to refer the questions of composition and percentages to the sub-committee.

7.14 Regarding paragraph 3(3) of the draft formulation which reads:

3(3) The Public Protector shall be a South African citizen who is a fit and proper person to hold such office and who complies with any other requirements prescribed by law.

- i. The ANC expressed its concern regarding the use of the words "fit and proper" and requested that it be flagged for later discussion.
- ii. It is noted that the NP proposes that the sub-committee look closely at existing section 11O(4)(A)(B) and (C) to see if they should apply.
- iii. It was agreed that the matter would be finalised in the sub-committee.

7.15 Regarding paragraph 3(4) of the draft formulation which reads:

3(4) The Public Protector shall be appointed for a period of seven years.

The meeting noted footnote 17, which stated that the Theme Committee could

not agree on whether the appointment could be renewable. The matter would be forwarded to the sub-committee.

7.16 Regarding paragraph 3(5) of the draft formulation which reads:

"The President may remove the Public Protector from office only on the grounds of misbehaviour, incapacity or incompetence upon a finding to that effect by a committee of Parliament and the adoption by Parliament of a resolution calling for his or her removal from office.

The meeting noted footnote 18, which stated that clarity was needed on the grounds for dismissal. The meeting agreed to forward the matter to the sub-committee.

7.17 The meeting accepted paragraph 3(6) of the draft formulation, which reads:

3(6) Where the Public Protector is the subject of such an investigation he or she may be suspended from office by the President.

7.18 Regarding the final sentence of the draft formulation, which reads

Provincial public protectors

The meeting agreed, at the Theme Committee's request, that this matter be deferred until a clearer picture had emerged of what powers the provinces would have.

8. ANNUAL REPORT

The meeting noted that the Administration was preparing a Constitutional Assembly annual report that would be distributed once available.

9. FINANCIAL REPORT

The meeting noted the document entitled, *"Budget Report for the 1994/95 Financial Year,"* included in the documentation,

10. COMMISSION ON PROVINCIAL GOVERNMENT SUBMISSIONS

The meeting noted the document entitled, *"Commission on Provincial Government Submissions,"* included in the documentation.

11. ANY OTHER BUSINESS

The meeting agreed that the Constitutional Committee would meet on:

Friday 2 June 1995 from 08h00 to 10h00
Friday 9 June 1995 from 08h00 to 10h00, and

Thursday 14 June at 14h00.

12. **CLOSURE**

Mr. Ramaphosa closed the meeting at 12h43.

REPUBLIC OF SOUTH AFRICA

CONSTITUTIONAL ASSEMBLY

DRAFT FORMULATIONS

FRIDAY, 19 MAY 1995

1. PUBLIC ADMINISTRATION¹

Basic values and principles governing public administration

1. (1) Public administration at all levels of government, including institutions which are dependent on government funds or other sources of public money, shall be governed by the democratic values and principles enshrined in this Constitution. In particular the following principles shall be applicable:²
 - (a) A high standard of professional ethics shall be promoted and maintained in the public administration.³
 - (b) Good human resource management and development

¹Prepared on basis of Report from Theme Committee 6.1 as at 9 May 1995.

²See par. 3.2 of the report.

³As per par. 3.2.3 of the report. See also CPXXIX which requires a "high" standard of professional ethics to be maintained.

practises to maximise human potential shall be cultivated in the public administration.⁴

(c) Efficiency and the economic and effective use of resources shall be promoted in the public administration.⁵

(d) Public administration shall be accountable. Transparency through the provision of accessible, accurate and timeous information to the public shall be fostered.⁶

(e) Public administration shall be development oriented and the provision of services shall be conducted on the basis of impartiality and equity to all.⁷

(f) Public administration shall be oriented towards public participation in policy-making.⁸ It shall be responsive to the needs of the people.⁹

(g) Public administration shall be broadly representative of the South African people.¹⁰ Employment and personnel

⁴As per par. 3.2.13 of the report.

⁵As per par. 3.2.2 of the report.

⁶As per par. 3.2.12 and 3.2.7 of the report.

⁷As per par. 3.2.9 and 3.2.1 of the report.

⁸As per par. 3.2.10 of the report.

⁹As per par. 3.2.6 of the report.

¹⁰As per par. 3.2.4 of the report.

management practises in the public administration shall be based on competency, objectivity and fairness.¹¹

- (2) The terms and conditions of service of employees in public administration shall be regulated by law.¹² Employees shall be entitled to a fair pension in terms of a pension scheme regulated by law.¹³
- (3) A limited number of political appointments in public administration may be made within the framework of the above principles and as regulated by law.¹⁴
- (4) Laws regulating public administration may differentiate between different sectors, administrations or institutions in public administration.¹⁵

Public Administration Commission

2. (1) There shall be a Public Administration Commission for the

¹¹As per par. 3.2.8 of the report.

¹²CPXXX(1) requires the insertion in the new Constitution of a provision which provides for the which provides for the conditions of service of employees to be regulated by law.

¹³This provision is required by CPXXX(2).

¹⁴As per par. 3.4 of the report. It would appear that the use of the words "political appointments" is unavoidable. In the CC debate it was suggested that, instead of using these words, "limited appointments by the executive" or "limited ministerial appointments" should be considered. These suggestions, however, do not solve the problem because all appointments in the public service are in fact made by the Minister. The fact that appointments in the public service are made by a Minister, of course, does not mean that they are "political" appointments. The most appropriate way of distinguishing "political" appointments from other appointments is simply to state it in exactly these terms.

¹⁵As per paragraphs (a) and (b) of par. 3.3 of the report.

Republic consisting of a chairperson and eleven commissioners.¹⁶ Each province shall be entitled to nominate one of these commissioners.¹⁷

- (2) The Public Administration Commission shall be independent and impartial.¹⁸
- (3) The Public Administration Commission shall perform such advisory, monitoring and inspection functions with regard to public administration as prescribed by national law.¹⁹
- (4) The Public Administration Commission shall be accountable to Parliament for its activities. All reports of the Commission shall be tabled in Parliament. Reports concerning public administration at provincial level of government shall also be tabled in the legislatures of the provinces concerned.²⁰
- (5) The chairperson and members of the Public Administration Commission shall be appointed by the President subject to approval by Parliament in accordance with a procedure

¹⁶As per paragraphs 3.5.1 and 3.5.2 of the report. The name "Public Administration Commission" of "Commission for Public 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.

¹⁷As per agreement in the Constitutional Committee on 12 May 1995.

¹⁸This provision has been inserted in compliance with CPXXIX.

¹⁹As per par. 3.5.2 of the report.

²⁰As per par. 3.5.1 of the report. It is envisaged that reports emanating from the PAC and provincial commissioners will be referred to oversight committees in Parliament and the provincial legislatures as is the case with reports of the Auditor-General.

prescribed by a national law.²¹ Such law shall also provide for the procedure relating to the nomination of commissioners by provinces.

Provincial commissioners

3. (1) A commissioner from a province 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 as prescribed by law.²²
- (2) Not more than two persons may be appointed to assist such a commissioner as his or her deputies in the discharge of his or her powers and functions in terms of this section. Such deputies shall be appointed by the Premier of the province concerned subject to the approval of the provincial legislature in accordance with a procedure prescribed by law.²³
- (3) Any reports issued by such a commissioner in the discharge of his or her powers and functions in terms of this section, shall be tabled in Parliament and in the legislature of the province concerned.²⁴

²¹As per par. 3.5.2 of the report.

²²As per par. 3.5.2 of the report.

²³As per par. 3.5.2 of the Report.

²⁴As per par. 3.5.2 of the Report.

Public Service

4. There shall be a public service for the Republic structured and functioning in terms of a law.²⁵ The public service shall loyally execute the lawful policies of the government of the day.²⁶

²⁵In accordance with CPXXX 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.

²⁶As per par. 3.2.14 of the report.

