

THESE DRAFT MINUTES ARE CONFIDENTIAL AND RESTRICTED TO MEMBERS OF THE AD HOC COMMITTEE, THE PLANNING COMMITTEE AND THE TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS DURING THE TRANSITION. THE MINUTES ARE STILL TO BE RATIFIED BY THE AD HOC COMMITTEE.

DRAFT MINUTES OF THE MEETING OF THE AD HOC COMMITTEE ON FUNDAMENTAL RIGHTS DURING THE TRANSITION HELD AT 08h45 ON WEDNESDAY, 25 AUGUST, 1993 AT THE WORLD TRADE CENTRE.

PRESENT: Mrs S Camerer (Convenor)
Prof H Cheadle
Chief Gwadiso
Mr A Leon
Mr P Maduna
Mr S G Mothibe

MINUTES: Miriam Cleary (Administration)

1. AGENDA:

It was agreed that Clause 23, Property would be discussed.

2. AMENDMENTS TO PREVIOUS MINUTES:

2.1 Item 4.2 - the last paragraph should be as a separate issue on its own and not included under the discussions regarding Clause 2 - Equality and should have been recorded as:

"10. S. A. Law Commission:

Mr Maharaj took note of the Ad Hoc Committee's request that the S. A. Law Commission also be approached for comments on the Technical Committee's Seventh (or Ninth) Report."

2.2 Item 9.1 - the first word should be "Clause" (in the singular) and not as stated.

3. **CLAUSE 23. PROPERTY**

3.1 **The Ad Hoc Committee agreed that the following principles should form the basis of the clause on property rights:**

First Principle:

All rights to property shall be recognised and guaranteed.

Second Principle:

The State shall have the right to expropriate property in the public interest.

Third Principle:

In the case of expropriation, compensation shall be by agreement or failing agreement, shall be determined by a court of law.

Fourth Principle:

The basis for determining compensation shall be just and equitable taking into account all relevant factors.

Fifth Principle:

There shall be proper payment of compensation.

Sixth Principle:

Expropriation in the public interest may be for the purpose of restoring land to those persons who were forcibly dispossessed pursuant to apartheid policies and practices.

Notes: 1. "all relevant factors" - This phrase is shorthand for all the factors contained in the present 23(2) and raised in various submissions. The motivation for the adoption of this general phrase will be included in the report referred to below.

2. "persons" - The drafting should take into account that in many instances the rights are held communally.

3.2 The Ad Hoc Committee decided that -

3.2.1 Its Second Report will be in writing and its recommendations will include a motivation for the clauses and principles proposed in an endeavour to resolve differences. The issues that will be dealt with in this report will include:

- * Horizontality/verticality
- * Individuals and juristic persons
- * Implication on customary law
- * Equality/liberty
- * Freedom of Association
- * Access to Information
- * Administrative Decisions
- * Eviction
- * Economic Activity
- * Property

3.2.2 The Technical Committee be requested to redraft the Property Clause on the basis of the Principles.

4. LEGAL EXPERTS

It was agreed that Mrs Camerer would request the Planning Committee to contact the five legal experts in order that these experts could prepare themselves to attend a meeting next Tuesday, 31 August 1993.

5. DATE OF NEXT MEETING:

5.1 The Ad Hoc Committee would meet on Tuesday, 31 August 1993, for the

whole day from 08h30 to 18h30.

5.2 The Ad Hoc Committee meeting would take place from 08h30 to 11h00.

5.3 The Technical Committee and legal experts would be requested to join the Ad Hoc Committee from 11h00 to 18h30.

6. CLOSURE:

The minute taker would fax/hand out these minutes to the Committee as soon as possible.

The meeting closed at 11h30.