

**DRAFT MINUTES OF THE MEETING OF THE AD HOC COMMITTEE  
ON FUNDAMENTAL RIGHTS HELD IN PRETORIA  
ON THURSDAY 30 SEPTEMBER 1993**

**1.0 ATTENDANCE**

The meeting was attended by the following members of the Ad Hoc Committee:

H. Cheadle  
Minister K. Coetsee  
Chief Gwadiso (Chair)  
T. Loen  
P. Maduna

**2.0 AGENDA**

2.1 There was no fixed agenda, the Chair felt that the meeting with the Minister was necessary in order to finalise the two outstanding clauses, namely, the Property Clause and the application of the Bill.

2.2 The following was noted with regard to the meeting:

2.2.1 The Ad Hoc Committee had met with the Technical Committee and that no substantive changes had been made to the Bill.

2.2.2 The Minister stated that he was not representing the South African Government, but was consulting in terms of a particular portfolio. The Minister indicated that he was not clear as to the status of the meeting.

2.2.3 The Minister stated that he must reserve the South African Government's position in terms of any changes made to the Bill by the Ad Hoc and Technical Committees during the absence of Shiela Camerer. He agreed that although the meeting was informal it was of paramount importance to find solutions to the outstanding issues so that the process could be facilitated.

2.2.4 Penwell Maduna noted that the committee was attempting to arrive at a conclusion in order that the Negotiating Council could discuss the Bill of Rights in its entirety.

**3.0 PROPERTY CLAUSE**

- 3.1 H. Cheadle indicated the word changes in the seventh report and the addition of Section 4, the Restoration Section. It was noted that the crucial phrase of Section 4 is "subject to Sections 1, 2, and 3 above. In terms of the latter restoration cannot occur without expropriation and compensation and that this must be done through a court of law. Reference to "person" in the clause would also mean company in terms of the juristic section of the Bill.
- 3.2 T. Loen indicated that the Democratic Party had firm views in regard to property rights and that should the restoration clause not be included in the Bill of Rights this would invite the entire Bill to be ignored which would be self-defeating.
- 3.3 The Minister asked the committee for clarity in terms of the impact of the Property Clause on a future investor. He noted that "rights in property" provides for more than ownership, eg possession.
- 3.4 P. Maduna indicated that possession would mean lawful possession. He also noted that in rural areas "individual" ownership is unknown and that the clause must use an all encompassing phraseology to overcome the problems of the different property rights and that the present draft of the Property Clause meets the basic and broad concerns.
- 3.5 There was discussion regarding whether not the Bill must provide a fixed list of rights, it was noted by the Minister that a fixed list of rights would limit parliament's right to legislate on future property rights except where these rights had already been defined within the parameters of the Property Clause. Further, "disposal" must be qualified in the clause.
- 3.6 There was lengthy discussion relating to whether or not "relevant factors" should be spelt out in the expropriation section, it was noted, by H. Cheadle, that in previous meetings that there was no political agreement on the relevant factors and that it would be preferable if these factors were left to the determination of the courts.
- 3.7 The Minister indicated that "market value" should be included, however T. Loen agreed with H. Cheadle that relevant factors should not be spelt out in the Bill and that market value was not the only important factor but also the history of the acquisition.
- 3.8 It was noted by the committee that the wording "relevant factors" was acceptable to the Democratic Party.

3.9 In terms of the expropriation section, the Minister felt that the words " shall be deemed to be expropriated in the public interest" should be included as this would provide for public purpose which exists in the current expropriation clause.

3.10 There was lengthy debate on the wording and meaning of section 4 (Restoration), no finality could be reached on this section and the Minister requested that he be given an opportunity to re-word this section for discussion by the Ad Hoc Committee on Monday.

#### 4.0 CLOSURE

4.1 The committee was unable to discuss other outstanding issues in the Bill of Rights.

4.2 The meeting closed at 18H00.

#### 5.0 NEXT MEETING

The next meeting will be on Monday 4 October 1993 at 14H30 at the World Trade Centre.