

2/21/1/8/22

CONSTITUTIONAL ASSEMBLY

**CONSTITUTIONAL COMMITTEE
SUB-COMMITTEE**

**DRAFT REPORT OF DISCUSSIONS
27 FEBRUARY 1996**

CONSTITUTIONAL ASSEMBLY

DRAFT REPORT

**CONSTITUTIONAL COMMITTEE SUB-COMMITTEE MEETING
TUESDAY 27 FEBRUARY 1996**

1. OPENING

- 1.1 Mr. Ramaphosa opened the meeting at 10h35.
- 1.2 The following documentation was tabled:

Documentation Tuesday 27 February 1996

Volkstaat Council Discussion Document on Self-Determination and the Working Draft of the New Constitution - 27 February 1996

Volkstaat Council - Technical Comments on the Refined Working Draft (Third Edition) - January 1996

Presentation document : Major Urban Areas Association

- 1.3 The meeting agreed that the Administration should look into further synchronisation of the programme of the CA with that of Parliament to avoid any conflict.

2. LOCAL GOVERNMENT

- 2.1 Mr Ramaphosa welcomed the delegation from the Major Urban Areas Association led by Mr David Dlali.
- 2.2 The Association spoke to their document contained in the documentation entitled "*Major Urban Areas Association Interim Executive Inputs on Local Government dated 28 September 1995*" and tabled a further document "*Presentation document*".
- 2.3 In introducing their presentation, the Association stated that they had been motivated by the Constitutional Principles and had concerns about the local government provisions in the present working draft. They expressed the view that the framework for local government should be constitutionalised so that local government would be seen as a sphere of government and not a function of government.
- 2.4 The meeting addressed questions to and sought clarification from the Association on a number of issues which included the following:

- 2.4.1 With regard to the terminology used in its document, the Association clarified that "functionally autonomous" did not only mean "independence" but meant "corporate governance" The intention was that the area of authority of local government and its recognition as a sphere of government be clearly spelt out in the Constitution.
- 2.4.2 Regarding the role of local government in the Senate, the Association stated that it was intended that local government should have "equitable" representation. On the question of how it is visualised the role of local councillors with regard to their representation on the Senate, the Association stated that the role could not avoid being politicised.
- 2.4.3 Mr Du Toit of the ANC pointed out that there were two other possible functions of local government relative to the Senate:
- i At provincial level there could be a Council of Local Government which operated on a similar basis to a small Council of Provinces.
 - ii In the Senate itself local government could be in a situation of participating and having speaking rights in this house but not voting rights.
- 2.4.4 In terms of the two options regarding the Second House contained in the Working Draft, the Association did not express a preference for either option.
- 2.4.5 Regarding the role of traditional leaders in the system of local government, the Association envisaged "wall-to-wall" local government in which each person in the country has elected representation at a local level in order to ensure delivery of services to them. A member of the delegation expressed the view that traditional leaders were not accountable in the modern sense of accountability in that they are not elected. However, he added that the authority of traditional leaders should not be impaired by a structure that would bring development and services to an area but that this would enhance their role.
- 2.4.6 Mr Sizani of the PAC questioned whether the Association had consulted in the rural areas, particularly where traditional leaders in their areas of jurisdiction exercised local government functions and were in fact recognised by their people. The Association responded that it recognised that traditional leaders

had a role to play but that local government should have a formally structured system through the Constitution in order to avoid any possible conflict of roles.

- 2.4.7 Regarding the question of the mechanism that would be used to assess and distribute the equitable share of national revenue, the Association explained that local government as another tier of government would enjoy an equitable share of national revenue from the common national pool. However, because only national and provincial government were represented on the Financial and Fiscal Commission, it proposed that it was through the route of the Senate that local government could be represented on the Financial and Fiscal Commission. It stated that the present procedure whereby local government received distribution of grants via the provinces was not effective and they proposed this should be done directly.
- 2.4.8 Regarding the practicality of one body such as the Financial and Fiscal Commission having the capacity or capability of examining each and every tax request, the Commission stated that it was not the intention that the FFC should consider every case but that it should set the standards and criteria.
- 2.4.9 On the question of the concepts of asymmetry and subsidiarity the Association stated that these issues had not been addressed by them.
- 2.4.10 Regarding the question of how local government would interact with provincial government at the provincial level given that provincial government could pass legislation relative to local government, the Association stated that any legislation passed by the province should not discriminate against local government.
- 2.4.11 Regarding the powers and functions of local government, the Association was asked whether there should be a schedule of basic powers which would be rendered to local government such as the old Schedule 5 (new Schedule 6), as the parties had expressed different views on this matter. The Association responded that it was still trying to spell out in more detail how it envisaged the powers and functions of local government. It did not believe that local government would have concurrent competences with the provincial and national legislatures.
- 2.4.12 The Association further explained that the experience of local government and the problems during this interim phase had led

it to emphasise that local government should not be subject to the provinces. At the moment local government was playing a supportive role to provincial and national government and not a functional role and was unable to deliver services and to effectively carry out RDP projects.

- 2.4.13 On the question of how local government would manage in this transitional phase given the fact that not all local governments would immediately be able to handle its competences, the Association responded that the ability of local government was not directly proportional to its size and that functional autonomy would also provide for the developmental nature of local government.
- 2.5 Mr Ramaphosa thanked the Major Urban Areas Association for their input and explained that their views as well as those of other local government associations, members of the public and political parties would be taken into account in order to assist in advancing the discussions in the chapter on local government.

3. SELF-DETERMINATION

- 3.1 Mr Ramaphosa welcomed the delegation from the Volkstaat Council led by Mr Johan Wingard.
- 3.2 The Volkstaat Council clarified that their role was not to negotiate with the government or the political parties but to provide political parties with a broad framework which complied with international law and practice and which would assist the parties in their negotiations.
- 3.3 The Volkstaat Council spoke to their document *"Volkstaat Council - Discussion document on Self-determination and the Working Draft of the New Constitution, 22 November 1995 with the Constitutional Committee Sub-Committee - 27 February 1996"*
- 3.4 Questions of clarification focused on a number of issues including the following:
- 3.4.1 With regard to exactly where the Volkstaat would be located, it was clarified that one area had been identified within which a province could be demarcated and three other areas which are designated areas which could also be considered areas for such a province.
- 3.4.2 Mr Beyers of the NP stated that the his party was obliged to endorse the viewpoint that corresponded with its approach to

cultural self-determination but asked whether there was not a contradiction between their recommendations in Paragraph 4 which stated that immediate empowerment was impractical and constitutional proposals in Paragraph 5 of their document.

- 3.4.3 The Volkstaat Council responded that there was no contradiction, but that its proposal was that the same type of process in which the new provinces were introduced in the Interim Constitution be applied. A provision should therefore be written into the Constitution that there should be an extra province, although the Council was aware that it was not immediately possible to create a new province.
- 3.4.4 Mr Ramaphosa queried whether the Council had taken into account Constitutional Principle XVIII which refers to the fact that the boundaries of the provinces shall be the same as those established in terms of the present Constitution. The Volkstaat Council said the matter had been discussed but that their view was that the Constitutional Principles should be read together with Section 184 and Constitutional Principle XXXIV which should make it possible to change the borders to provide for self-determination. The Council referred specifically to Section 184B(3) of the Interim Constitution and was of the view that this provision was the clear authority to allow changes to be made to the existing borders.
- 3.4.5 On the question of whether existing provincial authorities had been consulted, the Volkstaat Council reported that it had discussed its recommendations with the Commission for Provincial Government. In addition, they had consulted with 8 of the provincial premiers with whom they had discussed the concept of territorial self-determination but not the question of borders as this was a sensitive political issue.
- 3.4.6 Regarding the fact that there were differing views within the Afrikaans speaking people, it was accepted by the Volkstaat Council that there are differences and that Afrikaners are not of one mind but that it was not the Council's mission to bring them together as that was the role of the political role players. However if all Afrikaners agreed to the concept of a Volkstaat, although they may not wish to live in it, this would facilitate the process.
- 3.4.7 Regarding the question of whether the Volkstaat proposal had "proven support", the Volkstaat Council responded that in the 1994 elections 640 000 people had voted in favour of those

parties who supported this philosophy of Afrikaner self-determination and that this must have been regarded as proven support.

- 3.4.8 Mr Du Toit of the ANC queried whether the results of their research were not one-sided in that they provided for one option only, that is, a Volkstaat and that this specific option could give rise to problems with regard to Constitutional Principle XX which referred to "national unity". He questioned how reconciliation and national unity could be promoted by this proposal.
- 3.4.9 With regard to the fact that there was only one option, the Volkstaat Council stated that they had spelt out a number of options but that their main task was to consider how a Volkstaat could be achieved within the parameters of the Interim Constitution either as a constituent state or as a province. They stated that they had made recommendations as far as development areas are concerned regarding territorial self-determination.
- 3.4.10 Regarding other options, there were proposals for cultural community councils, a view which was shared with the NP and the FF.
- 3.4.11 The meeting agreed that these proposals be made available to the members of CC Sub-Committee for further consideration.
- 3.4.12 The Volkstaat Council stated that, based on the results of the opinion poll which had not yet been publicised and which had tried to be scientific, it was evident that reconciliation was occurring at the highest level in the country but at the lowest level people were being driven apart. The Council expressed the view that self-determination would enhance nation building and would be a positive, stabilising influence on the country as a whole. The idea of human rights is important but it was necessary to have protection as a community and this should be provided for in the Constitution. If a community felt secure within a broader national framework it would play a constructive role in the nation building process. Therefore self-determination was not seen to be in conflict with national unity and nation building but would contribute to national unity and prosperity.
- 3.4.13 Dr Mulder of the FF expressed the view that within the formulation of the Constitutional Principles it was possible to

accommodate the concept of a Volkstaat and that discussions amongst the parties should continue on this issue.

- 3.4.14 Regarding Paragraph 2.10(d) of their submission, Dr Mulder noted that there were two options and he asked the Volkstaat Council whether it could indicate what difference there could be between the constitutional provisions that would be needed to deal with these two separate entities. The Volkstaat Council said it would have to give this matter further consideration but that the intention was not to take away the rights of others but if there was a majority in a particular area in a province then they could be empowered immediately. If there was no majority, then it would have to be looked at differently. The process would require recognition of the Constitutional Principle of self-determination and the implementation would be dealt with in accordance with that principle through subsequent legislation.
- 3.4.15 Mr Eglin of the DP pointed out that the Constitution provided for the recognition of cultural diversity and suggested that perhaps the Volkstaat Council had gone too far in using cultural diversity as a basis for the creation of a Volkstaat where the only area where there is agreement is on the protection of cultural and linguistic affinity.
- 3.4.16 The Volkstaat Council responded that its task was to research self-determination and the concept of a Volkstaat rather than cultural cooperation but that it was accommodating the aspirations of a cultural community. It expressed the view that a community who wished to maintain its identity would do what it could to protect its identity, perhaps by a form of self-determination which might first be cultural and then territorial and that this might even lead to secession.
- 3.4.17 On the relationship between the proposed 10th province and the national government given the particular nature of that province, the Volkstaat Council stated their proposal was based on the general relationship between provinces and national government, that of a constituent state in a normal federation.
- 3.4.18 Regarding the relationship between the cultural councils and the central government, these were viewed by the Volkstaat Council as cultural bodies which were broader than the concept of a Volkstaat.

- 3.4.19 Regarding citizenship and the rights of non-citizens of the Volkstaat, the Council said that it was necessary to define the type of citizenship in order to measure "proven support" but that this was not intended to take away from the rights of general citizenship.
- 3.4.20 As far as the question of security was concerned and taking into account that all state security organs are a national competence, the Volkstaat Council stated that it proposed to adhere to the normal demarcation of powers between the provinces and national government. Thus, for example, its view of a provincial police force was in line with the new image of the South African Police Service with the emphasis on community policing and decentralisation.
- 3.4.21 Mr Pahad of the ANC questioned whether there was not a contradiction in the relationship between the Council's research which it said was objective and the one-sided recommendations for a Volkstaat and whether research had extended beyond white Afrikaans speaking people. The Council responded that it had not used criteria of race but only Afrikaans in its poll and, although they had concentrated on areas where their supporters were situated, this was based on language.
- 3.5 In conclusion, the Volkstaat Council proposed the following:
- i Discussions between the parties should continue within this broad framework which had been provided.
 - ii A provision for the concept of territorial self-determination should be placed in the Constitution.
- 3.6 Mr Ramaphosa thanked the delegation for its input and agreed that the proposals which had been made would continue to be discussed by the parties and would be further considered at a CC Subcommittee meeting, possibly on 15 March 1996.
- 3.7 The meeting agreed to the proposal from the Chairperson that the Volkstaat Council and the political parties give further consideration to the questions which had been posed and, in particular, to the question raised by Dr Mulder.
- 4. CLOSURE**
- 4.1 The meeting closed at 13h45.

