

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 ON MONDAY, 4th OCTOBER 1993 AT 14h30 AT THE WORLD TRADE CENTRE, KEMPTON PARK

PRESENT: Chief Gwadiso (Acting Convenor)
Prof H Cheadle
Mr A Leon
Mr P Maduna

Mr H J Coetsee - Minister of Justice
Mr J C van Rensburg - Department of Justice

MINUTES: Miriam Cleary (Administration)

APOLOGIES: Mrs S Camerer
Mr S G Mothibe

1. Agenda:

It was agreed that no formal agenda would be followed as the business of this meeting was in order to discuss the Property Clause in regard to restoration of land.

2. Discussion on the Property Clause:

2.1 Minister Coetsee stated that he preferred the word "restitution" in place of "restoration". He handed out a submission for discussion on subclause (4) of the Property Clause (Annexure A).

2.2 Minister Coetsee stated that this submission had been made in an effort to come to some agreement but it did not resolve his misgivings as it was a risky approach to real rights which could be claimed and which could not be recognised in terms of this Bill of Rights, for example, squatters.

2.3 **It was agreed that** the restitution/restoration clause be subject to the Property

Clause as a whole. That meant that if there was to be any expropriation of private holders, that expropriation had to be in terms of subclause (2).

2.4 On discussion that the class of claimants envisaged by the clause were those who were dispossessed of land as a consequence of racially discriminatory policies, there were three possible options put forward for identifying these claimants as follows:

2.4.1 A schedule of specified Statutes suggested by the Government:

- * Group Areas Act of 1950 and 1966
- * The Resettlement Act of 1954
- * The Community Development Act of 1984

2.4.2 Fixed time limit, say 1948.

2.4.3 A date to be fixed by Parliament.

2.5 Regarding the proposal by Minister Coetsee that "restitution" was the more appropriate term, it was understood that this included the concept of restoration (getting the land back from which the claimant was dispossessed), as well as alternative remedies such as the allocation of other equitably suitable land and compensation.

2.6 Regarding State-owned land, it was discussed and set out that any restitution had to be:

2.6.1 according to law;

2.6.2 feasible;

2.6.3 in respect of compensation, just and equitable.

2.7 The principles regarding non-State-owned land were discussed and the following points isolated:

2.7.1 If land was to be expropriated, it had to be expropriated in terms of the Property Clause.

2.7.2 Alternative and equally suitable land, might be allocated from State land as an alternative remedy.

- 2.7.3 Compensation for dispossession should be just and equitable.
- 2.7.4 The Minister would be given an opportunity to study the implication of applying the principle "according to law".
- 2.7.5 That the clause had to strike a balance or mechanism to take into account the claims of restitution on one hand, and on the other hand, the budgetary and fiscal restraints on the State and the economic interests of the country.

2.8 **It was agreed that** the Ad Hoc Committee would recommend that the Technical Committee consider the Minister's proposal (Annexure A) and the principles stated above.

3. **Matters not yet Resolved:**

3.1 Equality - Subclause 8(3):

Mr Leon stated that he had concluded his consultations on his request that the word "reasonable" be included as there was a huge concern from his constituents regarding affirmative action and the implications if this be left out of the formulation.

3.2 Freedom and Security of the Person - Subclause 11(1):

Mr Leon stated that he accepted this subclause but strongly objected to the "Comment" that went with it. After discussion the **Ad Hoc Committee agreed that** the Technical Committee would be requested to delete the Comment.

3.3 In order to resolve the above matters and to finalise the Tenth Report, **it was agreed that** a combined Ad Hoc and Technical Committee meeting take place the following day.

4. **General:**

4.1 Everyone present requested and was given a draft of the working document

for the Tenth Report.

- 4.2 A rough outline of items 2.3 to 2.8 (inclusive) of these minutes was handed to those present in order that consultations may take place as soon as possible to finalise the formulation of the Property Clause.

5. Date of Next Meeting:

A combined Ad Hoc and Technical Committee meeting would take place on Tuesday, 5th October 1993, at 14h30.

6. Closure:

- 6.1 The meeting closed at 18h15
- 6.2 Copies of these minutes would be faxed/delivered to each person of each Committee, as well as the Minister for Justice.

For Discussions Purposes Only

FOURTH OPTION

4. [RESTORATION OF LAND]

Subject to clauses 1, 2 and 3 above, every person who was dispossessed of rights in land as a consequence of any racially discriminatory policy [within a period to be fixed by Parliament] according to certain specified statutes shall have the right to [the restoration of such rights in land according to law or to compensation or any other remedy according to law where such restoration is not feasible] restitution of such rights in land according to law if such rights are state owned and if feasible. If such land is not state owned, such a person shall be entitled to just and equitable compensation to the extent that such compensation has not been paid.

[Provided that Parliament shall first have enacted the conditions under which and the procedures and mechanisms by which this right may be enforced, and the method by which the amount of compensation is to be determined].