

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 08h30 ON WEDNESDAY, 11 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 the following would form part of the discussions as well as certain specific clauses from the Seventh Report:

- 1.1 Horizontal and vertical application of the Bill of Rights.
- 1.2 Juristic persons and natural persons.
- 1.3 The relationship between the Bill of Rights and Customary Law and how the rights entrenched in the Bill of Rights infringe on Customary Law.

2. Horizontal and Vertical Application of the Bill of Rights:

There were three options put forward:

- 2.1 Every clause with vertical application (as in the United States, German and Canadian Bill of Rights).
- 2.2 Identify one or two clauses where horizontality could be applied.

- 2.3 Ultimately leave the decision to the Courts to apply horizontally if at all (as in the Namibian Bill of Rights).

It was agreed that the general feeling of the Ad Hoc Committee was that the Bill of Rights should have vertical application only. Possible horizontal application of Clauses 2 (Equality) and 11 (Freedom of Association) should be considered and debated. The Ad Hoc Committee would make a recommendation once it had reached a conclusion on the Customary Law issue.

3. Clause 2 - Equality - Subclause (2)

It was agreed that, in order to address the concerns of the Traditional Leaders, experts on Customary Law should be given a copy of the Seventh Report and asked for their comments.

It was agreed that the following **recommendation** would be addressed to the Planning Committee:

RECOMMENDATION

1. This Committee feels that it is difficult to resolve this very complex issue without the input of legal experts' advice. We accordingly recommend that the following three people:

- * Judge Pierre Olivier
- * Professor Charles Dhlamini
- * Professor D S Koyana or Professor Mqeke

be sent the Seventh Report of the Technical Committee and be asked to comment briefly, within a week, on the impact that the Draft Interim Bill has as it stands on Customary Law and specifically on the following aspects:

- (1) Law of succession and inheritance
- (2) Marriage
- (3) Authority of Chiefs -
 - * legal succession
 - * institution of Chieftainship
 - * Allocation of communal land and rights to property and their traditional functions

2. It is also recommended that a meeting should be arranged with the Ad Hoc Committee when it has had the time to read the written recommendations in order to advise it on these issues to enable the Committee to make a recommendation.
3. The experts should feel free to make specific recommendations to make suggestions for amendments to the Bill of Rights to address these concerns.
4. The Committee feels it would be necessary for the Technical Committee to sit in on the meeting with the three experts.

It was felt that a final decision could not be made on horizontal and vertical application until this advice has been received.

4. Clause 1 - Application - Subclause (4)

It was agreed that the following recommendation would be put to the Planning Committee:

RECOMMENDATION

The Ad Hoc Committee expects that not all provisions of the Bill would apply to juristic persons but is against identifying specific provisions in the Bill as applying to juristic persons.

Accordingly the Ad Hoc Committee asks the Technical Committee to put a number of formulations before the Negotiating Council to cater for this being based on Bills of Rights presently in use elsewhere.

5. Clause 11 - Freedom of Association

It was agreed that Subclause (1) was subject to the general considerations which have to be resolved in the discussions with the proposed experts. Subject to the resolution of Clause 2 - Equality, Clause 11(2) could be deleted.

6. Clause 17 - Access to Information

It was agreed that this clause should have vertical application and that the clause be amended to read:

"Every person shall have the right of access to information."

with the suggestion that it be separated into the right as a free-standing right with a subclause limiting this, and that the Technical Committee be asked to draft a Limitations Clause with reference to the Freedom of Information Statute as well as the recent submission from the General Council of the Bar.

7. Clause 18 - Administrative Decisions - Subclause (1)

After discussion **it was decided that the Ad Hoc Committee would revert back to this clause at the next meeting.**

8. Clause 20 - Eviction

After reconsideration and taking into account the reservations taken by some members of the Negotiating Council, the Ad Hoc Committee nevertheless felt that Clause 20 should definitely be deleted. The decision on this Clause would be made at their next meeting.

9. Clause 21 - Economic Activity

It was suggested by some members of the Committee that subclause (2) be deleted entirely and that subclause (1) be moved to Clause 12 - Freedom of Movement. On that basis the whole of Clause 21 would be deleted and Clause 12 would read as follows:

"Freedom of Movement and Livelihood

12. Every person shall have the right to freedom of movement and the freedom to pursue a livelihood anywhere within South Africa."

This suggested deletion and amendment could not be confirmed until the next meeting.

10. Outstanding Items

Clauses 23 and 30 were not discussed due to lack of time.

Other items outstanding are those relating to customary law and as mentioned in these minutes.

11. Date of Next Meeting:

The next meeting would take place on Wednesday, 18 August 1993, at 08h30.

12. Closure:

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

The meeting closed at 12h30.