

MINUTES OF THE CONSTITUTIONAL COMMITTEE

DATE : 5TH APRIL, 1991

PRESENT : Essa Moosa, Zola Skweyiya, Fink Haysom, Albie Sachs,  
Louis Skweyiya, Brigitte Mabandla, Dullar OMar,  
Bulelani Ngcuka, Pius Langa, Kader Asmal, Arthur  
Chaskalson, George Bizos and Mathews Phosa.

APOLOGIES: P. MADUNA, JOBODWANA, MASEMOLA, T. PEKANE AND T.  
O'DOWD.

- AGENDA : 1) Minutes  
2) Review of working document  
3) Review of Constitutional Principles  
4) Reports:  
(i) Bill of Rights Conference  
(ii) Local Government - Delport Report  
5) A.O.B

DELIBERATIONS:

MINUTES:

The reading and adoption of minutes was shelved to provide for  
enough time to address the most urgent issues.

REVIEW OF THE WORKING DOCUMENT

The meeting identified chapters of the working document

previously discussed. The following chapters were identified as having been previously discussed viz; the preamble and chapters 1-8, chapters 9-12 were identified as chapters not yet discussed. chapters 7 and 8 were identified as having been read once, whilst the chapters 1-6 had been read at least twice.

Correction and amendments to working document:

Preamble:

The third last paragraph to the preamble was amended to read " enabling democratic South Africa, mindful of its international obligations...."

Chapter 1

Article 1-6 were amended in parts.

Brigitte was mandated to find a translation of the title of the national Anthem in Shangaan and in Venda. Most of the amendments recommended relate to style of writing.

Chapter 2

It was agreed that this chapter should be reviewed at a later stage because the committee has already released the draft Bill of Rights. It was further agreed that commentary and recommendations from branches of the ANC, democratic organisations as well as reports of workshops and seminar on

the " Bill of Rights" should be documented for consideration at a later stage when the committee reschedules the draft for review.

### Chapter 3

The nature of the presidency and the election of the president were subject of much discussion. It was agreed that a special note should be written to the NEC explaining the implications of the debates surrounding the nature of the presidency.

It was recommended that article 21(1) should be amended by members of the national assembly with the speaker presiding over the elections. article 21(3) was to be rephrased, whilst Article 21(5) was to be restructured thereby enabling the ' speaker' to make the necessary regulations. It was recommended that Article 253(b) should be qualified to read "by a two thirds majority ..."

Under Article 27(1) the problem of patronage was raised , it was proposed that the president should not have so much power as to limit cabinet. It was agreed that the NEC should be written a note to explain the dangers of patronage in the long term.

Debate surrounded the discussion of Article 27(1) (f) viz; whether the president should receive foreign honours or not. Example were drawn from other countries e.g. that in the U.S.A. the president cannot. There seemed to be no opposition in

principle for a South African President to receive such honours. Article 28 and 29 were read for the second time since the draft document was produced.

The question raised in the discussion of Article 29(2) was whether peace terms can be debated. Cde Louis Skweyiya was given the task of working on both Articles, as they were seen to have implications for the negotiations process.

Article 30 was reviewed and it was recommended that Arthur elaborates on it. Specific recommendations were made e.g. that when a state of emergency is declared by the president, it should be ratified by the National Assembly.

Article 31 on derogation was reviewed. Arthur was asked to reformulate the article to conform with Article 14 and 18 of the Bill of Rights.

It was recommended that reference to Articles 6(6) and 13 should be deleted. article 31(2) was to be formulated in a manner that does not allow for the subversion of the constitution.

With regard to Article 32(1), it was recommended that the police and the security forces should be obliged to notify the families, next of kin and associates of the detained person. It was also recommended that in addition, the detainee should have a right to contact relations and friends.

It was agreed that Article 32(2) should be reformulated to state that the judge of the supreme court should preside. Article 32(3) should read to include the right to counsel.

**REVIEW OF CONSTITUTIONAL PRINCIPLES:**

The meeting agreed that the constitutional principles should be released as a working document for discussion by ANC members and the general public. This should be done within two weeks of the meeting of the 5th of April, 1991. Dullar and Bulelani were given the task of preparing commentary to accompany the text of the Principles.

The committee agreed that the text should be regarded as the ANC's guidelines in the negotiations of constitutional principles. Amendments to the text were made e.g. the inclusion of reproductive rights under the sub-heading "non-sexist" state.

**REPORTS**

**Bill of Rights Conference:**

It was confirmed that the conference would be held from the 10th -12th of May, 1991 at Tongaat next to Durban. It was agreed that there should be more of ANC people participating and that most invitees should come from Africa than from Europe.

**Local government - Delpport Report:**

It was reported that there is no common approach on local government issues amongst the democratic forces. The meeting was informed that Mike Sutcliff was co-ordinating a meeting on the

18th of April, to discuss a common approach. Members of the constitution Committee were urged to follow debates and attend meetings on Local and Regional Government. The Delpport report was seen as pre-emptying national negotiations.

A.O.B.

- There is a need to organise regional ANC conferences on interim mechanisms.
- There is a need to follow up the recommendation of NDI to organise electoral systems seminars in the regions.
- It was agreed that we organise a conference on affirmative action.
- The following study tours are scheduled, to West Germany to Study the local government system in May.
- To Britain to study the parliamentary system. No date is set yet.
- The Constitution Committee should prepare a memorandum on obstacles to negotiations and that it should also set itself goals and have targets dates in its work.
- Cde Kader was reminded to produce the articles relating to international treaties.