

MINUTES OF MEETING OF THE EXTENDED ANC CONSTITUTIONAL COMMITTEE
HELD IN JOHANNESBURG ON 17 AND 18 JULY 1993

1. PRESENT

Mohamed Vallie Moosa (Negotiating Forum), Arthur Chaskalson, Zola Skweyiya, Bulelani Ngcuka, Kader Asmal, Essa Moosa, Louis Skweyiya, Albie Sachs, Bridgitte Mbandla, Chris Dhlamini (Cosatu), Fink Haysom, Pius Langa.

2. APOLOGIES

Dullah Omar (overseas).

3. AGENDA

3.1 Welcome.

3.2 Stage of negotiations and status of Technical Committee reports.

3.3 Constitutional issues.

3.3.1 Constitutional principles

3.3.2 Interim Constitution

3.4 Fundamental Rights - Interim Bill of Rights.

3.5 Transitional Executive Council and Sub-Council.

3.6 Independent Electoral Commission.

3.7 Local Government Negotiation Forum Proposals.

3.8 Regional Demarcation and Regional Issues.

3.9 Independent Media Commission and Broadcasting Authority.

3.10 General

4. PRIORITIES

4.1 Most of the constitutional principles were adopted, except a few. Only those not adopted will be referred to.

4.2 We will only look at certain elements of the Interim Constitution such as the Second Chamber, Interim Regional Government and Constitutional Court Tribunal.

- 4.3 We will also only look at certain elements of the fundamental rights which is either not clear, or which is a matter of concern.
- 4.4 We will also look only at certain elements of the Independent Electoral Commission, such as single ballot, voters' roll, etc.
- 4.5 The Independent Media Commission and Broadcasting Authority to be left in abeyance.
- 4.6 There is an omission from the agenda, namely the TEC on levelling playing fields dealing specifically with repeal of discriminatory legislation.

5. STAGE OF NEGOTIATIONS AND STATUS OF TECHNICAL COMMITTEE REPORTS

- 5.1 Confederalism cannot be accepted as a process of self-determination.
- 5.2 Bop wants associate membership. Venda and Transkei prepared to come in at this stage. Ciskei wants to come in subject to certain conditions.

6. CONSTITUTIONAL PRINCIPLES

All principles except three as contained in the second supplementary report on constitutional principles from the Technical Committee on the Constitutional Issues to the Negotiating Council was adopted. The following clauses were not adopted.

- "2.18 which is subject to further negotiations."
- "2.24.1 which is subject to further negotiations."
- "2.26 which is subject to further negotiations." This clause is not the same that appears as 2.26 in the second report, but is a clause dealing with the independence and impartiality of the Commission for Administration, Reserve Bank, Auditor General and Ombudsperson.

The following clauses were slightly amended:

The following was added to clause 2.1: "and a democratic system of government permitted to advance equality between men and women and people of all races."

Clause 2.9: This clause was criticised as introducing minority protection through the back door and we should not have agreed to it.

Clause 2.12: Amended slightly. The introduction to this clause has been changed slightly as follows: "The institution, status and role of tradition leadership according to indigenous law, shall be recognised and protected in the constitution. Indigenous law like common law shall be recognised and applied by the Courts, etc."

Clause 2.16 has been amended slightly by the inclusion of the following: "This principle shall not derogate from the provisions of clause 2.12."

"An additional principle has been added but not agreed upon and reads as follows:

"Notwithstanding the above constitutional principles, nothing shall prevent a SPR on democratically approving its own constitution which shall not be in conflict with the national constitution."

7. INTERIM CONSTITUTION

The following elements to be discussed:

- 7.1 Government of National Unity.
- 7.2 Senate.
- 7.3 Power, Functions and Duties of Different Levels of Government.
- 7.4 Constitutional Court / Tribunal.

The following comments and concerns were expressed:

- 7.5 The Bill of Rights will only come into effect after the elections. Provisions for rights as applying prior to the elections shall be made in the Electoral Law.
- 7.6 Transitional powers are to be given to central, regional and local governments and provision to be made for existing administrations where they exist and new administrations where they do not exist or to integrate such administrations.
- 7.4 The Interim Constitution will contain principles which will determine integration of the various administrations, but a commission will have to be set up to report to the Government of National Unity on allocation of powers to regions, the Commission to report and make

recommendations to the Constitution-Making Body (CMB). Concern was expressed on what will happen from the time of the elections to the institution of a government of national unity. There would be no legal authority to administer the country. Provision will have to be made for the continuity of legal authority. It could be the TEC or other structure provided for in the Interim Constitution. Secretariat could be set up in each region in whom such legal authority will vest.

- 7.5 The Technical Committee on Interim Constitution will produce its report by Wednesday 21 July 1993 and matters of fundamental importance will have to be addressed.

8. CONSTITUTIONAL COURT / TRIBUNAL

It is agreed that the Constitutional Court should be a separate court, independent of the existing judiciary. It should be the highest court and constitutional issues could go direct to such court for adjudication. The ordinary courts will still handle defences of constitutional nature as violation of rights.

9. SENATE

- 9.1 The question of the powers, composition, size and election of Senate raised.
- 9.2 NEC agreed that the Senate will only have role in passing of legislation, but will have no role in the constitution-making process. It was suggested that 10 persons per region be represented on the Senate. They could either be elected directly or indirectly.
- 9.3 Concern was expressed at the many levels at which regional representation exist. It would exist in the Assembly, the Senate and the regional legislatures.
- 9.4 The NEC agreed that the Senate will have no role in constitution-making process. It will only be involved in ordinary legislation.
- 9.5 We should stick to our original proposal of 200 representatives from the national list and 200 representatives from the Regional list. We are not opposed to the Senate, but not at this stage. The record of understanding reflects this. The Senate should have no role in the constitution-making process.

10. FUNDAMENTAL RIGHTS - INTERIM BILL OF RIGHTS

- 10.1 Application : The Bill of Rights must apply where appropriate, to private and social institutions.
- 10.2 As far as juristic persons are concerned, it was agreed that the Bill shall apply to natural persons and where appropriate, to juristic persons.
- 10.3 Religion to be substituted for belief and sex for gender, and birth to be included in clause 2.
- 10.4 On affirmative action we should include previous discrimination on grounds of sex and race.
- 10.5 On labour relations, we should include sex discrimination.
- 10.6 On right to life, we should delete clause 3.2.
- 10.7 On privacy, we should accept the ANC formulation.
- 10.8 On human dignity we should include a clause "every person shall have the right to the security of his or her person".
- 10.9 On paragraph 8, freedom of religion and belief, there is no justification for clause 8.2 as we do not want prayer as a constitutional principle.
- 10.10 On economic activity, clause 21, it cannot be accepted and the proviso does not go far enough. The matter to be referred to the Negotiations Forum for further discussion. If it is to be retained, every person should be substituted by every citizen.
- 10.11 On detention, the following clause to be substituted: ".. to be brought to Court as soon as reasonably possible, but not later than 48 hours".
- 10.12 On labour relations, COSATU to be consulted on this clause as there is some confusion with regard to whether COSATU has agreed to the lock-out clause.
- 10.13 On property clause, we do not agree to this clause. It should be the right to property and not rights in property.
- 10.14 The compensation clause to include "subject to available sources and to include public interest and in the interest of those affected".
- 10.15 On the rights of children, to include "the best interest of the child shall be paramount.

10.16 On education - clause 27(c) constitutes indirect discrimination. The matter was already raised by the Education Department of the ANC with the Negotiating Forum.

10.16 On further recommendations, we should reject clause 4.2 and 4.3.

10.17 The charter should be headed "Interim Bill of Rights" instead of Charter of Fundamental Rights and Freedoms.

11. GENERAL

11.1 Members raised the concern as to who decides to make submissions or not. The decision should be taken by the NEC or the Negotiating Forum and should not be taken by individuals. The concern was noted.

11.2 Our women should make an input on indigenous law. This was accepted.

11.3 There are tensions between members of the Technical Committee dealing with fundamental rights and one should try and re-establish a good relationship between such members.

11.4 Where concessions have been made by us, we should place the most positive interpretations on such issues.

11.5 We should give our negotiators a range of options to allow them room to come to consensus in the negotiating process.

11.6 An Emancipation Committee has been set up and we should work with that Committee.

12. NEXT MEETING

The Technical Committee on the Interim Constitution will come up with a report on Wednesday 21 July 1993 and we should therefore have an urgent meeting to prepare our response to such report. It was agreed that the meeting be held on Friday 23 July 1993 at 2.00 a.m. and continue to Saturday morning.

13. The agenda could not be completed and will revisit the matters which could not dealt with, later.

14. THE MEETING TERMINATED AT 16H00 ON 18 JULY 1993.