

MOOSA, MOHAMED & WAGLAY

ATTORNEYS AND CONVEYANCERS

ESSA MOOSA
EBRAHIM MOHAMED (B.A., LL.B.)
BASHEER WAGLAY (B.Proc.)
Consultant: N. HUMAN (B.Proc.)
Assisted By: K. AMIEN (B.A., LL.B.)

2ND FLOOR
MELDORF CENTRE
KILIFONTAIN ROAD
ATHLONE 7704
CAPE TOWN
SOUTH AFRICA

P.O. BOX 162
ATHLONE 7700
CAPE TOWN
SOUTH AFRICA

TELEPHONE NO. 697-1500
TELEX NO. 642204
FAX NO. 697-1521
DOCDEX NO. DX2, ATHLONE

OUR REF.:
YOUR REF:

DATE: 2/12/1991

FACSIMILE TRANSMISSION

TO: C. D. S. (Mr OMAR)

NO: 9592317

FROM: ESSA MOOSA

MESSAGE:

THIS TRANSMISSION CONSISTS OF10..... PAGES (INCLUDING COVERSHEET).

SHOULD THIS FAX NOT BE CLEAR, PLEASE TELEPHONE OUR OFFICES AT 6971500.
THANK YOU.

MINUTES OF MEETING HELD BETWEEN A N C NEGOTIATION COMMISSION AND
CONSTITUTIONAL COMMITTEE HELD ON 28 NOVEMBER 1991 AT HEADQUARTERS
OF A N C IN JOHANNESBURG

1. PRESENT

1.1 NEGOTIATION COMMISSION: COMRADES: RAMAPHOSA, MODISE, SLOVO,
VALLI-MOOSA, ZUMA, POSA.

1.2 CONSTITUTIONAL COMMITTEE: COMRADES: Z SKWEYIYA, HAYSON,
ASMAL, OMAR, L SKWEYIYA, MOOSA, SACHS, NGCUKA, LANGA,
CHASKALSON.

2. PURPOSE OF MEETING

To establish a working arrangement between the Negotiation Commission and
the Constitutional Committee during the process of negotiations.

3. DOCUMENTS

Discussion documents handed to delegates. They are as follows:

- 3.1 Draft on the process of the APC.
- 3.2 APC Progress Report.
- 3.3 Interim Government - towards a viable option.
- 3.4 Statement of Principles.
- 3.5 Status, Implementation and Legalisation of APC Agreements.
- 3.6 Mechanism for drawing up of the Constitution.
- 3.7 Constitution Principles.
- 3.8 Draft terms of reference of the Working Group on the role of the international
community.
- 3.9 Interim Government: Note for workshop.
- 3.10 How effect could be given to the decisions of the APC - Comrade Arthur
Chaskarson has been requested to prepare a paper.

4. WELCOME AND OPENING REMARKS

Comrade Ramaphosa welcomed the delegates and said that the President of
the ANC had another urgent engagement and was not available for the meeting.
He set out the purpose of the meeting.

5. BRIEFING ON APC PROCESS

Comrade Ramaphosa then briefed the delegates on the APC process thus far
by reading to the paper entitled APC - Progress Report.

6. The following was tentatively agreed upon:
- 6.1 Date of APC : Proposed 20 December 1991.
- 6.2 Venue of APC : Proposed between Johannesburg and Pretoria.
- 6.3 Convenors of APC : Proposed Chief Justice and two religious leaders.
- 6.4 Size of Delegation : Proposed 10 delegates but ANC feels that it should be increased to 12 to accommodate Cosatu.
- 6.5 Chairperson of APC: Proposed Mr I Mahomed, Mr L Schabort and Mr Mabuza.
- 6.6 Decision-making mechanism : Proposed sufficient consensus.
- 6.7 APC Process : Proposed Various Commission.
- 6.8 Administration of APC : Not yet finalised but for preparatory meeting the services of a recording company which is presently contracted to record Court proceedings will be used.
- 6.9 Funding : Propose that State should fund costs including travelling, accommodation, services of experts and loss of income.
- 6.10 Standing Rules : To be drafted - UN Working Group used as a basis but Constitutional Committee to draft such standing rules.
- 6.11 Name of APC : Common name: CONVENTION FOR A DEMOCRATIC SOUTH AFRICA (CONDESA).

7. MATTERS ARISING

- 7.1 Comrade Cyril Ramaphosa and Mr Roelf Meyer will brief Mr I Mahomed and Mr Schabort on their role.
- 7.2 The Government likely to raise other items for the agenda, like economy, etc.
- 7.3 No decision yet on what language will be used in the proceedings.
- 7.4 Guests to be invited possibly delegates from UN, OAU, Non-Alligned Movement, Commonwealth, European Commission and Diplomatic Corp.

8. STATUS OF APC DECISIONS

The Government and the NP should be committed to give legislative effect to the decisions of the APC.

9. STEERING COMMITTEE

The preparatory meeting to consist of 22 parties. One person from each party to serve on steering committee. The Chairpersons to be guided by the Steering Committee.

10. FACILITATORS

The question of facilitators not yet finalised. It is still to be considered.

11. CHAIRPERSONS

It was proposed that a black legal person be appointed with Mr I Mahomed and L Schabort to chair the APC. The Constitutional Committee was requested to propose a name.

12. DISCUSSION ON APC WORKING GROUP

The contents of the paper "Draft of the Process of the APC" presented.

12.1 Statement of Intent

To set out a broad vision of a new South Africa and to avoid discussion on a Constitution. The Statement of Principles adopted in Harare could be used as a basis. The Constitutional Committee requested to draw a draft of Statement of Intent.

12.2 Functions of Working Group: are as follows:

- 12.2.1 Accountable
- 12.2.2 Work quickly
- 12.2.3 Full time
- 12.2.4 Right to call on experts
- 12.2.5 Draw on strength of negotiating team
- 12.2.6 Consultation with ANC and office
- 12.2.7 Regular consultations with ANC representation
- 12.2.8 To discuss progress, strategy, etc.
- 12.2.9 The size of working group between 8 and 9 persons.
- 12.2.10 We must draw distinction between our representatives on working group and the Working Group itself.
- 12.2.11 Alliances to be formed in working group.

- 12.2.12 There should be simultaneous interaction between all working groups.
 12.2.13 We must at all times decide what is in the interest of the ANC.
 2.2.14 Working groups to be represented by not more than 3 persons of the parties.
 12.2.15 We must make Internal rules for representatives of the ANC.
 12.2.16 The back-up team must comprise legal experts, political scientists, political representatives and nominees from the various departments of the ANC.

12.3 Different Working Group

- 12.3.1 Constitutional Principles
 12.3.2 Interim Government
 12.3.3 Constitution Making Body
 12.3.4 Role of International Community
 12.3.5 Re-incorporation of TBVC states
 12.3.6 Creating climate for negotiations e.g. addressing violence, etc.
 12.3.7 Implementation of APC agreements.
 (If Declaration of Intent incorporates constitutional principles, the Working Group on Constitutional Principles will fall away).

12.4 Terms of Reference of Working Groups

12.4.1 CONSTITUTIONAL PRINCIPLES:

Terms of reference to include context, universality, democracy and basic fundamental values that would underpin a new Constitution.
 (The draft to be ready by Tuesday 3 December 1991).

12.4.2 INTERIM GOVERNMENT:

Terms of reference to include context, mode modalities and mechanism and the need for an interim government, clause 8 of the Document on Interim Government. A note for a workshop sets out the guidelines for the terms of reference.

12.4.3 CONSTITUENT ASSEMBLY / CONSTITUTION-MAKING BODY

Terms of reference to include context - size, function, powers, relationship between such body and interim government. To incorporate principles of democracy, representativity, universal acceptability, authority and participation.

12.4.4 RE-INCORPORATION OF TBVC STATES

Terms of reference to include declaration of intent, linkage between reincorporation and interim government, modalities and need to effect progressive reincorporation of administrative and political structures.

12.4.5 CREATION OF CLIMATE FOR NEGOTIATIONS

Terms of reference to include reference to peace -not violence, security, access to media - radio and television, free political activity, free and fair elections, investigate, laws, practices and structures which will impede the creation of the climate including in the homelands, code of conduct of political bodies, control of facilities by local authorities, access to mines and compounds, private armies, removal of obstacles to negotiations e.g. political prisoners, the need for an integrated army and police in the context of free political activity.

12.4.6 IMPLEMENTATION OF APC AGREEMENTS

The terms of reference to include matters contained in paper dealing with "Status, Implementation and Legalisation of APC Agreement".

12.5 Modus Operandi of Working Groups

- 12.5.1 There must be inter-relation and interaction between different working groups.
- 12.5.2 Modus operandi of representative of ANC on working groups to work out strategy.
- 12.5.3 Close relationship between ANC Working Group and Negotiating Commission.
- 12.5.4 Question who facilitates Working Group - the plenary session by demanding a report on a regular basis for e.g. 3 weeks interval.
- 12.5.5 The first meeting must accept the Statement of Intent based on the Constitutional Principles and thereafter proceed with the other business of the APC.
- 12.5.6 Not much progress can be expected from the Interim Government Group and the Reincorporation Group.
- 12.5.7 We must develop negotiating skills. The negotiating team of the ANC must have capacity and skills to secure agreement not only on principles but also on substance. (Called Swan or Swine).

12.6 PERSONNEL OF WORKING GROUPS

12.6.1 The Constitutional Committee to allocate members to Working Groups in commissions.

12.6.2 The ANC also to set up possibly sub-groups and/or Secretariats as a back-up.

12.6.4 Each Working Group should at least have one member from the Constitutional Committee, one member from the political group, and one person from the ANC structures such as the Departments or ANC regional structures.

12.6.5 The Constitutional Committee also to provide someone to draft legal forms and documents.

12.7 Preparation for Working Groups

12.7.1 The Statement of Intent to be ready by 3 December 1991.

12.7.2 The Terms of Reference of various Working Groups to be submitted to the Commission by 5 December 1991.

12.7.3 Standing Rules for Working Groups to be ready before 20 December 1991.

12.7.4 Rules for Internal ANC Teams to be ready before 20 December 1991.

12.7.5 Allocation of members of Constitutional Committee to Working Groups and back-up group to be submitted as soon as possible.

13. STATUS OF APC DECISIONS - ALREADY DEALT WITH IN 8 ABOVE.

14. CONCLUSION

The meeting concluded with a vote of thanks.

DEC 03 '91 10:19 E.MOOSA & ASSOC 021 6396410

6

12.6 PERSONNEL OF WORKING GROUPS

12.6.1 The Constitutional Committee to allocate members to Working Groups in commissions.

12.6.2 The ANC also to set up possibly sub-groups and/or Secretariats as a back-up.

12.6.4 Each Working Group should at least have one member from the Constitutional Committee, one member from the political group, and one person from the ANC structures such as the Departments or ANC regional structures.

12.6.5 The Constitutional Committee also to provide someone to draft legal forms and documents.

12.7 Preparation for Working Groups

12.7.1 The Statement of Intent to be ready by 3 December 1991.

12.7.2 The Terms of Reference of various Working Groups to be submitted to the Commission by 5 December 1991.

12.7.3 Standing Rules for Working Groups to be ready before 20 December 1991.

12.7.4 Rules for Internal ANC Teams to be ready before 20 December 1991.

12.7.5 Allocation of members of Constitutional Committee to Working Groups and back-up group to be submitted as soon as possible.

13. STATUS OF APC DECISIONS - ALREADY DEALT WITH IN 8 ABOVE.

14. CONCLUSION

The meeting concluded with a vote of thanks.

MINUTES OF MEETING OF CONSTITUTIONAL COMMITTEE HELD IN
JOHANNESBURG ON 28 NOVEMBER 1991

1. PURPOSE OF MEETING

This meeting followed the meeting with the Negotiation Commission to discuss matters arising from such meetings, implement decisions and allocate tasks.

2. DECLARATION OF INTENT

2.1 This declaration is to be drafted in accordance with Statement of Principles accepted in Harare but amended by the NEC.

2.2 The amendments were as follows:

2.2.1 Proportional representation, separation of powers, non-sexist term included.

2.2.2 Party advocating racist policies, and to establish democratic system excluded.

2.3 The task of drafting the Statement of Intent was entrusted to Comrade Albie Sachs.

3. ALLOCATION OF PERSONNEL TO WORKING GROUPS

3.1 Constitutional Principles - Comrade Albie Sachs.

3.2 Interim Government - Comrade Archur Chaskalson.

3.3 Roll of International Community - Comrades Kader Asmal and Essa Moosa.

3.4 Reincorporation of Homelands - Comrades Dullah Omar and Louis Skweyiya.

3.5 Climate for Free Political Activity - Comrades Fink Haysom and Pius Langa.

3.6 Constitutional Assembly - Comrade Bulelani Ngcuka.

3.7 Implementation - Comrade George Bizos, Dullah Omar, Arthur Chaskalson.

(NB Comrade Bridget Mbandla still to decide on which working group she would like to serve).

4. TERMS OF REFERENCE

Allocated as follows:

4.1 Constitutional Principles - Comrade Albie Sachs.

4.2 Interim Government - Comrade Arthur Chaskalson.

- 4.3 Role of International Community - Comrade Kader Asmal (to simplify his draft - preferably one page).
- 4.4 Reincorporation of Homelands - Comrade Dullah Omar.
- 4.5 Climate for Free Political Activity - Comrade Fink Haysom.
- 4.6 Implementation - Comrade Arthur Chaskalson.

5. STATUS OF APC DECISIONS

The task of drafting an opinion was allocated to Comrade Louis Skweyiya. (NB: Comrade Arthur Chaskalson was asked previously to furnish such an opinion. Perhaps Louis and Arthur should liaise on this subject).

6. STANDING RULES AND PROCEDURE OF COMMISSIONS

Comrade Kader Asmal was entrusted to draft the standing rules.

7. GENERAL

7.1 Experts and Researchers

- 7.1.1 It was agreed that other experts, researchers be drawn in. Comrade Dullah Omar undertook to speak to the researchers at UWC dealing with Civil Service and Public Administration.
- 7.1.2 It was agreed to draw in Nadel and BLA. They could do workshops on the various Commissions. Comrade Pius Langa undertook to take up the matter with nadel and BLA.
- 7.1.3 Comrade Albie Sachs proposed that a person like Professor Johann Van der Westhuizen who has indicated willingness to assist, to be drawn in.

7.4 Workshop on Reincorporation

- 7.4.1 Workshop on Reincorporation did not come off. The matter to be discussed with the Universities of Bop, Fort Hare, Turfloop, Unitra, Venda, Unipo, Westville, etc.
- 7.4.2 C D S has commissioned a researcher to do research on this topic.
- 7.4.3 A proposed date for the workshop was 19 December 1991.

7.5 Demographic Survey

Mike Sutcliff had to produce a paper on demographic survey but has failed to do so, despite repeated prodding. Comrade Pius Langa undertook to take matter up with Mike Sutcliff.

7.6 Next Meeting

The next meeting of the Constitutional Committee was set for 11 December 1991 which is to be followed by a meeting/workshop on Reincorporation.

7.7 Style of Term of Reference

It was proposed that the Terms of Reference of the Commissions should be cast in the same style.

7.8 Visit to Switzerland

It was proposed to postpone this visit to January, but it was said that it may not be possible. Comrade Louis Skweyiya was available. Comrade Pius Langa undertook to speak to Comrade Arthur Chaskalson to make himself available.

7.9 National Democratic Institute

7.9.1 Their workshops on Elections proved very successful. They are having another training programme for Southern Africa. They are also bringing in other experts. They undertook to invite 4 representatives from the ANC. The setting up of infra-structures was discussed with them. They indicated that they could possibly do so after the Namibian Workshop for Southern Africa. This could be followed by a Conference in Cape Town. A full report will be available soon.

7.9.2 They formed commissions without consulting the ANC. Their rational for it was that they could draw in exiles. We should continue our support for them but we should not ignore other support we received in the past. We should, however, keep our distance.

7.10 Vote of thanks

The meeting was closed with a vote of thanks.