

CONSTITUTION COMMITTEE MEETING

DATE: 14 AUGUST 1990

ATTENDANCE : Zola Skweyiya, Adv. Arthur Chaskalson, Adv. L. Skweyiya, Essa Moosa, Fink Haysom, Pius Langa, Bulelani Ngcuka, Albie Sachs, N.M. Masemola, Kader Asmal and Brigitte Mabandla.

APOLOGIES : Mathew Phosa, P. Maduna, N. Jobodwana, Tony O'Dowd, Dullar Omar and George Bizos

AGENDA :

1. Minutes of the last meeting and matters arising
2. Drawing up of Constitutional Principles
3. Drafting of a constitution
4. Plan of Work
 - 4.1 Circulating materials
 - 4.2 Publicity
 - 4.3 Report of Commission on electoral systems
 - 4.4 Secondment of members of the Legal Department

DELIBERATIONS:

1. MINUTES AND MATTERS ARISING

The following corrections were made to the minutes:

- The name "Masemola" to read "N.M. Masemola".
- The name "Charkelson" to read Chaskalson.
- Page two (2) of the minutes under the heading "Response from the Leadership, paragraph five (5) "The constitution committee was also told to identify members of the committee who will participate in negotiations". This statement was identified as incorrect and it was agreed that it be deleted.

PRELIMINARY REMARKS ON DRAFTING

Prior to discussions on the drafting of constitutional principles there was a general debate on drafting. The issue addressed was whether the committee should proceed with drafting or seek guidance prior to drafting.

The reasons advanced for consultation to take place prior to drafting, were that there are infinite variations to constitutional models and that the shape of the constitution will depend on political decisions. Further that there are a variety of options on any one aspect of the constitution. Proponents of this perspective recommended that the committee should consult the leadership so as to be guided, in addition they suggested that the committee should send a memorandum to the leadership asking for guidance.

Proponents for the drafting to proceed, argued that the committee is overtaken by events and stressed the urgency for drafting to proceed prior to consultation.

Rejecting the idea of preparing a memorandum, proponents for the drafting to proceed reminded the meeting that the NEC has not as yet responded to a memorandum sent earlier on by the committee to the leadership.

It was finally resolved that drafting should proceed and that the committee should maintain contact with the leadership, as for example some members of the committee were due to meet with the strategising committee.

Accordingly, it was agreed that the committee should draft constitutional principles, which will be put before the strategising committee.

2. DRAFTING CONSTITUTIONAL PRINCIPLES

The meeting had to consider the principles to be included in the draft, as well as the extent of detail required in the draft. Consequently reference was made to the purpose of drafting the principles.

It was agreed that the objective of drafting the same, was to facilitate exploratory talks between ourselves and the state on the future constitution.

Debate centred around the extent of detail required, that is, whether to include first and third generation human rights.

The following issues were raised in the debate:

- That considering our objective, the draft should be devoid of detail but should reflect broad universally accepted human rights.
- Whether to include the subject of equitable distribution of land.
- Whether to refer to health and education in the draft
- That the draft should reflect gender sensitivity.

To resolve the debate the meeting had to consider the objective of drafting the principles, whilst taking into account, matters of a contentious nature, which are considered basic rights by the majority of our people, as one of the committee members observed, the subject of land determine sovereignty and should be included in the draft.

There was a strong caution against detail, however, the meeting resolved that the subject of land, for reasons given, should be reflected in the draft.

Constitutional Principles to be drafted were identified and reference was made to the following documents: The Freedom Charter, the UN Human Rights Convention and Covenants, the Harare Declaration as well as the Namibian constitution. Fink Haysom was mandated to draft the principles.

The following recommendations were made:

- On the nature of the state, it was suggested that we propose a unitary democratic non-racial and non-sexist state.
- With regards to the judiciary, the meeting agreed to call for an independent judiciary.
- With regards to franchise, it was agreed we propose universal suffrage based on the principle of one man one vote under a common voters roll.
- A multiparty system was recommended provided it was not in the furtherance of racism.
- It was agreed that the non-discriminatory principle should be included in the draft, that such a principle could be embodied in an equal rights clause.

3. THE DRAFTING OF A CONSTITUTION

The meeting agreed that the constitution committee should begin the process of drafting a constitution. It was also said that the Olivier group, have a first draft of the constitution.

One of the committee members asked how the Namibian constitution was drafted. In response, it was said that all groups represented at the Constituent Assembly brought with them draft constitutions, from their political parties. A working committee was then elected from the Constituent Assembly charged with the task of drafting.

The meeting then addressed the practical issues viz, the procedure to be followed. It was agreed that the committee meets for a period of a week and then break to meet at a later date.

The following dates were suggested for the meetings:

30th August 1990 - 2nd September 1990. This meeting is to brainstorm on constitutional issues, viz to identify the constitutional options at our disposal. It is envisaged that the reports of the commissions will form the basis for this meeting.

The committee also agreed to have subsequent meetings and the dates proposed were as follows:

23rd to 25th September 1990 as well as from the 16th to the 17th October 1990.

PLAN OF WORK

4.1 CIRCULATING MATERIAL

Cde. Zola strongly recommended that the committee should observe security and suggested the following practical steps to be taken.

- That the committee should avoid using the fax to transmit sensitive documents.
- That such documents should be transmitted by courier system.
- That documents should be addressed to the Chairperson of the committee Zola, transmitted through the Nadei office in Johannesburg.

It was generally agreed that constitutional material should be circulated amongst members of the committee.

4.2 PUBLICITY

The committee undertook to inform the public about constitutional issues. It was recommended that cde. Zola should be more active in this regard. As chairman of the constitution committee, he should begin to make statements with the broad constitutional principles.

The approach recommended was that the following questions should act as parameters within which statements can be made:

- How are we going to get to the process of constitutional making.
- How is the constitution going to be structured.
- How people will participate in the making of policy at local level viz; the nature of local governments envisaged.
- The meeting was also informed that Nadel has undertaken to introduce constitutional debates to the public.

It was agreed that this process should be strengthened and that the committee should produce a simple booklet explaining what a constitution is, the process of constitution making and general constitutional principles. The principles are to be described in a broad context. Cdes Fink, Brigitte, Kader and Albie were given the mandate to produce the booklet.

4.3 REPORT OF THE COMMISSION ON ELECTORAL SYSTEM

Kader Asmal asked if money was available for a seminar on electoral systems. He also reported that he had prepared a budget for the seminar which he had given to Zola earlier on.

Zola informed the meeting that funding could be obtained for the seminar.

4.4 FUNDING FOR THE CONSTITUTION COMMITTEE AND PLACEMENT OF MEMBERS OF THE DLCA

Albie Sachs reported to the meeting that the following people have been placed at Universities for purposes of constitutional research:

Pius Langa and Linda Zama are to be placed at the University of Natal. Dullar Omar and Bulelani Ngcuka at U.W.C., further that money for research has been deposited with the university.

CALS has been given a grant of 100,000 pounds for constitutional researchers Maduna and Cachalia.

Kader said he prefers to be placed at U.C.T.

Albie wanted to know if Zoia was ready to begin research at U.W.C. Zoia expressed concern that members of DLCA are not catered for. It was agreed that Zola and Albie should discuss the matter further and plan accordingly. Placement of Brigitte was discussed, the meeting learned from Bulelani that Brigitte is to be placed at U.W.C.

She agreed to begin work at the beginning of October 1990.