

CONSTITUTIONAL ASSEMBLY

MINUTES OF THE THIRTY EIGHTH (38TH) MEETING OF THE CONSTITUTIONAL COMMITTEE

THURSDAY 18/ FRIDAY 19 APRIL 1996

Present

Ramaphosa, M C (Chairperson)

Wessels, L (Deputy Chairperson)

Ackermann, C
Andrew, K (Alt)
Beyers, A S (Alt)
Bhabha, M
Camerer S
Chabane, O C
Davies R H
De Beer, S J (Alt)
De Lange, J H
De Lille, P (Alt)
Du Toit, D C
Eglin, C W
Gibson, D H M
Ginwala F
Gordhan, P J
Green, L M (Alt)
Hofmeyr, W
King, T J
Ligege M G
Mahlangu N J
Marais, P G

Maree, J W (Alt)
Matthee, P A
Mbetse-Kgositsile, B
Mdladlana, S (Alt)
Meshoe K R
Meyer, R P
Moosa M V
Moosa M W (Alt)
Mulder, C P
Myakayaka-Manzini, Y L M
Ngcuka, B T
Nzimande, B E
Pahad E G
Radue, R (Alt)
Schutte, D P A
Sizani, R K
Smuts, D (Alt)
Surty, M E (Alt)
Van Breda A
Van Heerden F J (Alt)
Viljoen C L

Apologies: G N M Pandor, J Schreiner,

Absent: G Fraser-Moleketi, NJ Gogotya, S P Holomisa, J L Kgoali, D Lockey, J Love, BS Mabandla, D W Makhanya, LPHM Mtshali, S Mzimela, R Rabinowitz, P Smith, RS Suttner.

In attendance: Directorate: H Ebrahim, M Sparg, **Minutes:** S Rabinowitz, M Keegan
Law Adviser: G Grové; **Panel of Experts:** G Erasmus, J Kruger, C Murray, P Sedibe-Ncholo, I Semanya, J Van Der Westhuizen, Z Yacoob. **Technical Advisers:** S Liebenberg. **Party Adviser:** W Krull

1. OPENING

- 1.1 Mr. Ramaphosa opened the meeting at 20h35.
- 1.2 The meeting agreed that it would proceed by going through the entire Constitution and that it would receive reports throughout the evening from the various committees who were working simultaneously on specific aspects of the Constitution.
- 1.3 The meeting confirmed that Chapter 10, "*Public Administration*" had been completed and agreed to.
- 1.4 The meeting agreed that Chapter 11, "*Security Services*" was agreed to in the main and that the one outstanding issue of police powers was being discussed by the committee dealing with competences and Schedule 4.

2. PREAMBLE

- 2.1 Dr Nzimande tabled a proposed draft of the Preamble. The meeting agreed to the Preamble as tabled.

3. CHAPTER 1: FOUNDING PROVISIONS

- 3.1 Mr Moosa reported that the following had been proposed in respect of Chapter 1:
 - i Section 1 would read as follows:

"The Republic of South Africa is one sovereign democratic state founded on the following values:

 - (a) *a commitment to promote and protect human dignity, to achieve equality and to advance human rights and freedoms;*
 - (b) *a commitment to promote non-racialism and non-sexism;*
 - (c) *supremacy of the constitution; and*
 - (d) *universal adult suffrage, a common voters role, regular elections and a multi-party system of democratic government to ensure accountability, responsiveness and openness."*
 - ii Section 2 would remain as it stands.
 - iii Section 3 would be amended to read:
 - (1) *There is a common South African citizenship.*
 - (2) *All citizens are equally -*

- (a) *entitled to the rights, privileges and benefits of citizenship; and*
 - (b) *subject to the duties and responsibilities of citizenship.*
- (3) *National legislation must provide for the acquisition, loss and restoration of citizenship.*

- iv The insertion in Section 4 of the wording of the Interim Constitution which reads *"The National Anthem of Republic shall be as determined by the President by proclamation in the Gazette."*
- v Section 5 would remain as it stands in the draft.

3.2 The meeting agreed to Sections 1, 2, 3, 4 and 5 as proposed by Mr Moosa.

3.3 With regard to Section 6, *"Languages"* the meeting agreed to include Option 1 for the purposes of publication of the Bill and agreed that discussions would continue on this matter.

4. CHAPTER 2: BILL OF RIGHTS

4.1 Regarding Section 9, *"Rights"*

Mr Hofmeyr reported that parties had agreed that this section would be amended along the following lines:

- i Section 9(1) would read:

"This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom."

- ii Section 9(2) would remain the same.

- iii Section 9(3) would read:

"The rights in the Bill of Rights are subject only to the limitations which are set out in section 37, or contained or referred to elsewhere in it."

4.2 Regarding Section 10, *"Application"*

- i The meeting confirmed that Section 10(1) was agreed to.
- ii The meeting agreed to include the first formulation of Section 10(2) and to delete the wording in brackets.
- iii The meeting agreed to the new Section 10(3) as proposed by the Technical Advisers which reads:

"When a right in the Bill of Rights binds a natural or juristic person, and there is no law of general application that grants a remedy based on that right, a court must develop a common law to grant a remedy based on that right. In granting a remedy, the court may formulate rules that limit the right, provided that the limitation is in accordance with section 37(1)."

- iv The meeting agreed that the present 10(3) would become Section 10(4) and the wording would be remain as it stands in the draft.

4.3 Regarding Section 11, *"Equality"*

- i The meeting agreed to Section 11(1).
- ii With regard to Section 11(2), the meeting agreed to this section with the inclusion of *"unfair"* and the removal of the brackets.
- iii Regarding Section 11(3), the meeting agreed to:
 - (a) inclusion of *"pregnancy"* as a ground and the brackets could therefore be removed;
 - (b) inclusion of *"unfairly"* and the removal of the brackets;
 - (c) deletion of *"[nor any person]"*;
- iv The meeting agreed to the insertion of a new subsection (4) which would essentially be the same as (3) but would start with the words *"No natural or juristic person may unfairly discriminate..."* and would include a new additional sentence which would read *"The state must adopt legislation to prevent of prohibit unfair discrimination."*
- v The meeting agreed to the inclusion of transitional provisions that until legislation has given effect to this right, the new Section 10(3) would apply.
- vi Section 11(5) would be deleted.
- vii The meeting agreed that once the section had been reformulated by the Technical Refinement Team parties would have sight of it before it was included in the Bill.

4.4 The meeting confirmed that Section 12, *"Human dignity"* was agreed to.

4.5 The meeting agreed to Section 13, *"Life"*.

4.6 The meeting confirmed that Section 14, *"Freedom and security of the person"*, Section 15, *"Slavery, servitude and forced labour"* and Section 16, *"Privacy"* were agreed to.

- 4.7 Regarding Section 17, "*Freedom of religion, belief and opinion*", the meeting agreed to this section and noted that the words "*state or state-aided*" institutions still needed to be harmonised with the wording of the education clause once it had been finalised.
- 4.8 The meeting confirmed that Section 18, "*Freedom of Expression*", Section 19, "*Assembly, Demonstration and Petition*", Section 20 "*Freedom of Association*", Section 21: "*Political rights*", Section 22, "*Citizenship*" and Section 23, "*Freedom of movement and residence*" had been agreed to.
- 4.9 The meeting agreed to Section 24, "*Freedom of occupation*" with the following amendments:
- i To replace "*a*" with "*their*" in the first sentence.
 - ii To insert "*a trade or a profession*" in the second sentence.
- 4.10 Regarding Section 25, "*Labour relations*", it was agreed that:
- i the ANC proposal in Footnote 10 would be incorporated in the text in a place to be determined by the Technical Refinement Team.
 - ii the words "to lock-out" in Section 25(3)(c) were still in contention and would be retained in brackets for the purposes of the Bill.
- 4.11 Regarding Section 26, "*Environment*":
- i The meeting agreed that the words in brackets "*and quality of life*" would be deleted and the phrase would read "*health or well-being*".
 - ii The meeting further agreed to the replacement in Section 26(b) of "*their environment*" with "*the environment*".
- 4.12 Regarding Section 27, "*Property*":
- i The meeting agreed to the following amendments:
 - (a) the second sentence of Section 27(1) reading "*This provision does not preclude reasonable measures to regulate property*" would be deleted.
 - (b) Section 27(3)(f) would be deleted as proposed in the side-bar.
 - ii The meeting agreed that with those amendments the draft as it stands would go into the Bill but it was noted that amendments might be moved on a consensus basis next week. There was political agreement on this clause but there were some issues which needed clarification but which

would not change the balance effected in this clause.

- iii The meeting noted the concern of the PAC regarding the extent to which communal land would be protected in Section 27(1). Mr Hofmeyr stated that the ANC would pursue this concern.

4.13 The meeting confirmed that Section 28, *"Housing"*, and Section 29, *"Health care, food, water and social security"* were agreed to.

4.14 The meeting confirmed that Section 30 *"Children"* was agreed to. However, the meeting agreed that the Technical Refinement Team should refine the wording of Section 30(1)(h) to ensure consistency with the wording of Sections 36(2)(c) and 36(3)(g) along the lines of *"assigned by the state at state expense"*.

4.15 Regarding Section 31, *"Education"*:

The meeting agreed that to retain the section as it stands for the purposes of the Bill on the understanding that parties who wished to propose amendments could do so after the Bill was tabled.

4.16 Regarding Section 32, *"Language and culture"*:

The meeting agreed to amend this section to read:

"Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with the provisions in the Bill of Rights."

4.17 Regarding Section 33, *"Access to information"*, :

The meeting agreed to the following :

- i deletion of the brackets in 33(1)(b) and inclusion of the wording.
- ii insertion of a provision by the Technical Refinement Team in section 33(1) along the lines of section 34(4)(d).

4.18 Regarding Section 34, *"Just administrative action"*:

- i The meeting agreed:
 - (a) to delete the words in brackets in section 34(1)
 - (b) to remove the brackets and include the words *"whose rights have been adversely affected by administrative action"* in section 34(2).

- (c) that the Technical Refinement Team should reformulate the transitional provisions.

4.19 The meeting agreed to Section 35, "*Access to courts*" with the amendment proposed by the Technical Refinement Team in Footnote 17.

4.20 Regarding Section 36, "*Arrested, detained and accused persons*":

- i The meeting agreed to this section and noted that it had been agreed that the Technical Refinement Team should harmonise the wording of Sections 36(2)(c), 36(3)(g) and 30(1)(h) along the lines of "*assigned by the state at state expense*".

4.21 Regarding Section 37, "*Limitation of rights*":

- i Mr Hofmeyr reported that parties agreed to inclusion of the formulation proposed by the Technical Committee 4 advisors in their memorandum "*Resolution of differences of opinion on Limitations Clause (Bill of Rights)*" which reads:

- (1) *The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, having regard to all relevant factors including-*

- (a) *the nature of the right;*
- (b) *the importance of the purpose of the limitation;*
- (c) *the nature and extent of the limitation;*
- (d) *the relation between the limitation and its purpose; and*
- (e) *less restrictive means to achieve the purpose.*

- (2) *Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.*

4.22 Regarding Section 38, "*States of emergency*":

- i Regarding Section 38(2)(b), the meeting agreed :
 - (a) with regard to the majority required, the compromise proposed by the FF as reflected in Footnote 20 had been accepted but that it had been agreed that it would not be a two thirds but a sixty percent majority and that this would be coupled with a clause that the decision could be taken only after a public parliamentary debate to ensure that there was transparency.

- (b) the numbers in brackets would be deleted.
 - ii Regarding Section 38(3)

The meeting agreed that the Technical Refinement Team should consider whether the reference to the "*High*" court was correct and ensure that this is consistent with the chapter on the courts.
 - iii Regarding Section 38(5),
 - (a) the meeting agreed to include sections 30(g)(i) and (ii) in the list of non-derogable rights.
- 4.23 The meeting confirmed that Section 39, "*Enforcement of rights*" and Section 40, "*Interpretation of the Bill of Rights*" were agreed to.
- 4.24 The meeting noted that the FF reserved its position on the Bill of Rights as a whole until they had sight of the redraft.

5. CHAPTER 3: CO-OPERATIVE GOVERNMENT

- 5.1 Mr Gordhan tabled a draft and spoke to the document. The meeting agreed to Chapter 3 with the amendments as indicated on the draft and the additional amendment in Section 41(1)(d) with the deletion of *[geographical]*.

6. CHAPTER 4: PARLIAMENT

- 6.1 Mr Gordhan tabled a draft which indicated which sections were agreed, the amendments which had been made and which issues still needed to be resolved.
- 6.2 The meeting agreed to the draft as tabled and noted the following:
- i Section 43A needed to be made consistent with the chapter on Local Government.
 - ii Outstanding issues were Section 45, 350 - 400 and the voting age.
 - iii With regard to the electoral system, the ANC said the next election would be based on the system used in 1994. However it would be necessary to word this section so that it did not conflict with the Constitutional Principles. The DP disagreed with this stating that the concept of constituencies should be implemented now.
 - iv The ANC flagged the issue of crossing the floor. The DP and NP opposed the inclusion of a provision like Section 43(b) of the Interim Constitution.

- v Sections 49(1) and 50(3) were still under discussion.
- vi It was agreed that in Section 55(1)(a) the words "*determine and*" would be inserted and "*proceedings and procedures*" would be deleted.
- vii Sections 56, 57, 58 and 59, 60, 61, 62, 63, 64 and 65 were agreed to as reflected in the new draft.
- viii It was noted that with regard to Section 59(2) the NP were not in favour of national legislation.
- ix It was noted that the seat of Parliament was still under discussion.
- x It was agreed that Sections 66, 67 and 68 would be adjusted in accordance with the relevant sections in the sections dealing with the National Assembly.
- xi It was noted that Section 70(3) was still under discussion.

7. CHAPTER 5: THE PRESIDENT AND THE NATIONAL EXECUTIVE

- 7.1 Mr Gordhan tabled a new draft which indicated sections which were agreed, which were amended and which were under discussion.
- 7.2 The meeting agreed to the draft and noted that with regard to Section 88(2), the ANC asked the Technical Refinement Team to ensure that power is vested in the President.

8. CHAPTER 6: PROVINCES

- 8.1 Mr Gordhan tabled a draft which indicated sections which were agreed and where amendments had been made.
- 8.2 The meeting agreed to the draft and noted the following:
 - i Section 98(2) required transitional arrangements.
 - ii The heading to Section 109 might change.
 - iii The DP had objections to Section 135.
 - iv The NP reservation to Section 135 was still being discussed.

9. CHAPTER 7: LOCAL GOVERNMENT

- 9.1 Mr Gordhan tabled a draft which indicated sections which were agreed to, where amendments had been made and issues that were still under discussion.

9.2 The meeting noted the following:

- i Section 139 and 140 had been agreed, although further refinement was necessary.
- ii The changes to Section 141 were indicated on the draft. There were a number of reservations but they would be clarified next week.
- iii Section 142 had a deletion in subsection (2), but was otherwise agreed.
- iv With regard to Section 143 there would be the addition of a new subsection 2(a), but that would be the basic framework for the legislative authority for municipalities.
- v The DP had reservations on a number of aspects of these clauses, particularly Section 143.
- vi Section 144 was agreed as indicated. However one of the outstanding issues was that in Section 144 the NP stated that it would like proportional representation.
- vii With regard to Section 145 there was a reservation that there should be mention of a 40% proportional representation provision. It was noted that this matter would require further discussion.
- viii Section 146 had been agreed to.
- ix With regard to Section 147:
 - (a) It was agreed that in Section 147(2)(b), the first words "*ordinarily resides in the municipal area*" should be put in the Bill on the understanding that the matter was still open for debate and discussion.
 - (b) The NP had a reservation with regard to Section 147(3) on the demarcation of wards.
- x Section 148, 149 and -150 were agreed to.
- xi The meeting noted the amendment to Section 151 as indicated on the draft, but noted that the word "*consented by the National Council of Provinces*" should be added and the rest of the provisions apply.
- xii Section 152 was agreed to.
- xiii Section 153 would be redrafted to mirror, to the extent that it is applicable, the similar provisions for executive intervention between national and

provincial.

10. SCHEDULE 4:

10.1 Mr Gordhan tabled a draft of Schedule 4 Functional Areas which indicated amendments which had been agreed to.

10.2 The meeting agreed to the Schedule and noted the following:

- i It had been agreed to retain "*Education*" on the understanding that there would be consultation with the Education Department with regard to teacher training colleges.
- ii Clarity was needed on "*provincial public media*" and "*child care facilities/health*".
- iii There were a number of queries regarding the inclusion of "*Police*" but this would be left in the schedule for now.
- iv "*Local Government*" had been removed from the schedule.
- vi "*Civil protection*" would be amended to read "*Disaster management*".
- vii "*Traditional Authorities*" would be amended to read "*Traditional Leadership*".
- viii "*Management of indigenous forests*" would be amended to read "*Administration of indigenous forests*".

11. CHAPTER 8: COURTS AND ADMINISTRATION OF JUSTICE

11.1 Sen Moosa reported as follows:

- i Section 154(5) was agreed to with the following amendments:
 - (a) insertion of the words "*or decision*" after "*order*";
 - (b) deletion of [*and must be complied with by*].
- ii With regard to Section 155(c) it was agreed to replace "*in terms of*" with the word "*by*".
- iii With regard to Section 155(e) it was agreed to replace "*in terms of*" with "*or recognised by*".
- iv Sections 156(1), (2) and (3)(a) were agreed to.

- v With regard to Section 156(3)(b) and (c), the NP and DP wanted to include the word "*directly*" before "*connected*" and the ANC reserved its position on this matter.
- vi Sections 156(4)(a), (b), and (c) were agreed to and it had been agreed to delete subsection 156(4)(d).
- vii Sections 156(5) and (6) were agreed to.
- viii Section 157(1) and (2) were agreed to. It was agreed to amend Section 157(3) to read:

"The Supreme Court of Appeal may decide appeals in any matter. It is the highest court of appeal except in constitutional matters and it may decide only :

 - (a) *appeals;*
 - (b) *issues connected with appeals: and*
 - (c) *any other matter that may be referred to it in circumstances defined by an Act of Parliament."*
- ix Section 158(a) was agreed to and it was agreed in Section 158 (b) to delete "*any other matter not excluded by an Act of Parliament*" and to delete the brackets and to retain the words.
- x It was agreed that Section 159 would be amended to read:

"Magistrate's Courts and all other courts may decide any matter determined by an Act of Parliament; but may not enquire into or rule on the constitutionality of any legislation or any conduct of the President."
- xi It was agreed that Section 160(1) would be amended to read:

"All courts function in terms of national legislation and their rules and procedures must be provided for by way of or under national legislation".

Section 160(2) would be deleted.
- xii With regard to Section 161(1)(a) it was agreed to insert the word "*any*" before "*law*".
- xiii With regard to Section 161(2) it was agreed to delete the brackets and retain the words and to replace the word "*powers*" with "*status*".
- xiv With regard to Section 161(2)(a) it was agreed to amend "*but the order has no force...*" to read "*but an order of validity has no force*" and to delete Section 161(2)(b).

- xv With regard to Section 161(3) it was agreed to delete the word "(a)" and to insert after "party" the phrase "or it may adjourn the proceedings".
- xvi Section 161(4) was agreed to.
- xvii With regard to Section 161(5) it was agreed to replace "a" with "an" so that it reads "or vary an order of constitutional invalidity by a court" and to delete "in terms of subsection (2)".

Parties requested the Technical Refinement Team to consider refining s161(2),(3), (4), (5) into one clause.

- xviii It was agreed to amend Section 162 to read:

"The Constitutional Court, Supreme Court of Appeal and High Courts have the inherent power to protect and regulate their own process in the interests of justice and to ensure that justice prevails in a manner not inconsistent with law".

The meeting noted that the ANC reserved its position to confirm this wording.

- xix It was agreed to delete Section 163.
- xx Section 164(1) and (2) were agreed to. Section 164(3) and (4) would be inserted in the Bill as reflected in the draft but the meeting noted that the NP and DP had reservations on these subsections.
- xxi It was agreed to include Section 164(5) and (6) as they stand in the draft but the meeting noted that the NP proposed 5 members in 164(5) and that the ANC preferred 4 but would consider this proposal.
- xxii It was agreed that Section 164(7) would go into the Bill as it stands but the wording was still under discussion and related to decisions being arrived at on other matters.
- xxiii Section 164(8) would remain as it stands.
- xxiv Section 165 was agreed to.
- xxv With regard to Section 166(1) it was agreed to replace "10/11" with "12" years and to remove the brackets.
- xxvi Sections 166(2) and (3) were agreed to.
- xxvii With regard to Section 167(1)(a) it was agreed to remove the brackets and retain the word "grossly" and to note NP and DP reservations.

- xxviii With regard to Section 167(1)(b) it was agreed to delete all the words in brackets.
- xxix Section 167(2) and (3) were agreed to.
- xxx With regard to Section 168(1)(d) it was agreed to replace the word "*nominee*" with "*alternate*".
- xxxi With regard to Section 168(1)(i) the meeting noted that the NP and DP reserved their positions.
- xxxii With regard to Section 168(1)(j) the meeting noted that the DP reserved its position.
- xxxiii With regard to Section 168(1)(k) it was agreed to insert after "*concerned*" the words "*or that member's alternate*".
- xxxiv It was agreed that Section 168(2) would remain as it stands.
- xxxv With regard to Section 168(3) it was agreed to delete the brackets and retain the wording.
- xxxvi It was agreed that Sections 168(4), (5) and (6) would remain the same.

11.2 Regarding Section 169, :

- i Sen Moosa reported that with regard to Section 169(1)(b), it was agreed to insert in the Bill at the end of the sentence the words "*which must ensure that they perform their functions without fear, favour or prejudice/impartially*". The meeting noted that the NP proposed "*impartially*" and the ANC was considering this.
- ii The NP said there was no agreement as far as the prosecuting authority was concerned and that the Bill should reflect the wording as it stands. Progress had been made and with more time the issues could be resolved.
- iii The ANC said that the agreements reached in Arniston were what was reflected in the draft under discussion.
- iv The meeting agreed that Section 169 as well as Section 164 were still in contention but agreed to a proposal by Mr Meyer that these sections be included as they are but would be placed in brackets for the purposes of the Bill and further discussion would take place next week and parties would table formal amendments if they wished.

11.4 The meeting noted that the DP expressed the following reservations regarding this chapter:

- i The number of judges on the Supreme Court of Appeal should be fixed in the Constitution.
- ii It was unhappy about the provisions for the appointment of judges of the Constitutional Court.
- iii It had concerns regarding the composition of the Judicial Service Commission; and
- iv Regarding the qualifications of the Attorney-General, the DP believed that the Judicial Service Commission should play a role, that the guidelines for prosecution should be published and that the national Attorney-General should be able to intervene where there has been a failure to prosecute.
- v The DP further stated that it wished to place on record that from the discussions at Arniston until this meeting there had been no discussions between the ANC and the DP on this Chapter.

11.4 The meeting agreed to Section 170.

12. CHAPTER 9: STATE INSTITUTIONS SUPPORTING CONSTITUTIONAL DEMOCRACY

- 12.1 With regard to the NP proposal for an Environmental Commissioner, Mrs Camerer reported that it had been agreed to insert a provision in Section 174(3) of the *Human Rights Commission* requiring the Commission to report on the right to an environment that is not harmful to one's health or well-being.
- 12.2 The NP said that the question of provincial public protectors was an outstanding issue.
- 12.3 Regarding Section 181(4), Mr De Beer reported that it had been agreed for the purposes of the Bill to replace the wording with the following:

"Parliament must recommend persons

- (a) nominated by a committee of Parliament proportionately composed of members of all parties represented in Parliament;*
- (b) approved by Parliament by a resolution adopted by at least two thirds of the members; and*

Nothing in paragraphs (a) and (b) precludes the participation of civil society in this process."

- 12.4 The ANC stated that with regard to Section 181(4)(b), its position was that the approval of Parliament should be by a simple majority.

13. CULTURAL COMMISSION

- 13.1 Dr Mulder tabled a document entitled *"Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities"* and reported that political agreement with full consensus had been reached that this Commission would be included in Chapter 9 of the Constitution.
- 13.2 Dr Pahad reported that it had further been agreed that the principle of collective rights of cultural, linguistic and religious communities would be reflected in the Bill of Rights and the Technical Refinement Team would formulate and consider where best to insert these provisions and to see how Constitutional Principle XXXIV which deals with self-determination could be given effect.
- 13.3 The meeting confirmed the agreement which had been reached.
- 13.4 Mr Beyers of the NP thanked the other parties and said that what the NP had proposed with regard to a cultural councils had been achieved. This was an historic occasion and the beginning of a better future for all South Africans.
- 13.5 Gen Viljoen of the FF thanked other parties for their cooperation and for this historic occasion which ensured cultural promotion and self-determination through the recognition of group rights and a cultural commission. He stated that the final wording would still need to be looked at and then the task of implementation would begin.
- 13.6 Mr Moosa stated that the ANC over the past months had held numerous discussions on the national question in South Africa. The Freedom Charter spoke specifically of the dignity of all cultures in South Africa and the ANC had to consider what the national question meant in present day South Africa. He stated that this was a proposal of the ANC which captured in a progressive and democratic manner the aspirations of the people of this country. Apart from the Commission and the aspects of the Bill of Rights which still needed to be attended to, this also addressed two other aspects of the Constitution, that is, the language question and the related issue of education. It was therefore a package of issues.
- 13.7 Prof Asmal stated that this was an enormous breakthrough and was the recognition of the collective expression of individual rights. He said that the insertion in the Bill of Rights recognised that citizens who are part of an acknowledged South African community have rights in communion with others and this would provide many of the answers to issues such as education and language. In addition it gave real content to the freedom of association clause.
- 13.8 Mr Gibson of the DP expressed pride at the historic moment and said that the

people of South Africa would be reassured by this affirmation and that the idea of cultural councils was originated many years ago by Colin Eglin.

- 13.9 Mr Meyer of the NP stated that the success of this agreement was evident because every party was claiming victory. He affirmed that this was a major breakthrough and that concepts like language, culture and religion would get a new dimension and would become liberated in a democratic South Africa.
- 13.10 Mr Ramaphosa said he felt proud and privileged to have been part of the discussions when this agreement was reached. He stated that this recognised our nationhood as South Africans and put us irrevocably on the way to resolving every outstanding issue and to adopting the Constitution on 8 May.

14. CHAPTER 12: TRADITIONAL AUTHORITIES

- 14.1 Mr Moosa reported that the Technical Refinement Team were considering the reformulation of Sections 198 (1) and (2) as noted in the side-bar. He further reported that there had been a consultation that morning between members of the Management Committee and a delegation from Contralesa who had raised a number of problems with the draft of Chapter 12 and who had submitted a document in which a number of issues had been identified for consideration by parties.
- 14.2 The meeting agreed that parties should discuss this matter with members of the Panel of Experts to see whether the chapter could be improved and the concerns addressed so that the chapter could be finalised.

15. CHAPTER 13: FINANCE

- 15.1 Dr Davies tabled a new draft and spoke to the document. He highlighted two issues:
- i The words in brackets in Section 204 needed to be resolved.
 - ii There was the more general issue that there were a number of pieces of national legislation which deal with provincial budgeting matters and which should go through the "Section 72 route". This need not be provided for in this Chapter but must be included in the Constitution.
- 15.2 Regarding Section 204
- The meeting agreed:
- i to include the word "*equitable*" and to remove the brackets, and
 - ii to amend the words "*and promotes social equality*" to read "*and promotes equality and social justice*".

15.3 Regarding Section 208,

- i The ANC proposed the following amendments to this section:
 - (a) The insertion of a new subsection 208(1)(c) which would read:

"Two persons nominated by local government in terms of section 151"
 - (b) The present Section 208(1)(c) would become (d), and "seven" would be amended to read "nine".
- ii Mr Wessels ruled that the section be amended as proposed for insertion in the Bill.

16. TRANSITIONAL ARRANGEMENTS

- 16.1 Mr Ebrahim reported that a document on "*Transitional Arrangements*" had been tabled previously. The meeting noted that there were two views on this matter, either that Transitional Arrangements should be a Bill separate from the Constitution or should that it should be a schedule which would form part of the Constitution.
- 16.2 The meeting agreed that "*Transitional Arrangements*" should be incorporated as a schedule to the Bill.

17. CLOSURE

- 17.1 The meeting rose at 05h47 on Friday 19 April 1996.