

**CONSTITUTIONAL ASSEMBLY**

**MINUTES OF THE SEVENTEENTH MEETING OF THE  
CONSTITUTIONAL COMMITTEE**

**FRIDAY 7 APRIL 1995**

**Present**

**Wessels, L (Deputy Chairperson)**

Ackermann, C	Mdladlana, M M S(Alt)
Alant, T G	Mtshali, L P H M
Asmal, K	Myakayaka-Manzini, Y L
Bhabha, M	Ngcuka, B T
Chabane, O C	Pandor, G N M (Alt)
De Beer, S J (Alt)	Rabie, J A
Du Toit, D C	Radue, R J
Eglin, C W	Ripinga, S S
Fourie, A	Selfe, J (Alt)
Ginwala, F N	Sifora, R K
Kgositsile, B	Sisulu, L
Ligege, M G	Smith, P F
Lockey, D	Van Breda, A
Mahlangu, N J	Van Heerden, FJ (Alt)
Makhanya, D W	Viljoen, C L
Marais, P G	

**Alternates for this meeting:** the NP gave notice that F J van Heerden would replace T J King, R Radue would replace R P Meyer, and T G Alant would replace D Schutte; and the ANC gave notice that L Sisulu would replace J Schreiner.

**Apologies:** J H de Lange, L Green, W Hofmeyr, S P Holomisa, T J King, B Mabandla, M J Mahlangu, K R Meshoe, R Meyer, M J Mahlangu, M V Moosa, C Mulder, S Mzimela, R Rabinowitz, M C Ramaphosa, J Schreiner, R Sizani, Z Skweyiya and D Schutte.

**Absent:** GJ Fraser-Moleketi, PJ Gordhan, JLB Kgoali, ZA Kota, ES Mchunu, M W Moosa, LB Ngwane, BE Nzimande, and EG Pahad.

**Technical Advisers in Attendance:** A Cachalia and A Seegers.

**1. OPENING**

1.1 Mr. Wessels opened the meeting at 09h07.

1.2 The following agenda matters were raised:

1.2.1 The Agenda for the meeting was adopted with the following additions:

*6.1 Date of the Next CA/CC Meetings; and*

*6.2 Rules Committee*

1.2.2 It is noted that the NP requested that the CC discuss its commitment to applying the 34 principles in drafting the new constitution at a future CC meeting.

1.3 It is noted that Mr. van Breda did not receive his documentation, even though his was signed for on the return of service. It was agreed that the Administration would investigate the matter.

**2. MINUTES**

The minutes of the Sixteenth Meeting of the Constitutional Assembly on Monday 13 March 1995 were adopted.

**3. MATTERS ARISING**

**3.1 DRAFTS OF THEME COMMITTEE 5 REPORT**

Mr. Ebrahim reported that the Technical Advisors had commenced drafting text in terms of the decisions taken on the report of Theme Committee 5 at the 3 April 1995 meeting of the Constitutional Committee.

**3.2 SUB-COMMITTEE ON ISSUES ARISING FROM THEME COMMITTEE 5 REPORT**

3.2.1 Mr. Ebrahim noted that the Administration needed the Constitutional Committee's guidance on the size and composition of the sub-committee mandated by the 3 April 1995 meeting of the Constitutional Committee to further discuss matters arising from Theme Committee 5's report.

3.2.2 The meeting agreed that the sub-committee would be composed of two representatives from the ANC and one from all other political parties. The political parties would select their representatives.

3.2.3 The meeting also agreed that the sub-committee would be independent of Theme Committee 5 and would report to the Constitutional Committee.

#### **4. DISCUSSION OF THEME COMMITTEE 6.4 DRAFTS**

4.1 Mr. Wessels noted the document entitled, "*Theme Committee 6.4 - Draft Provisions for First Report*," included in "*Documentation Part 2*," of the 3 April 1995 Constitutional Committee Meeting.

4.2 Concern was expressed that the draft texts had not been discussed nor endorsed by the Theme Committee. The meeting agreed to refer the drafts back to the Theme Committee 6.4 before discussing them in the Constitutional Committee.

4.2 It was noted that the document was an exception. The report was separate from the draft text because the work was undertaken before the 27 March 1995 decision of the Management Committee. According to that decision,

- i. Drafts would flow automatically from reports;
- ii. They would go to Theme Committees before being forwarded to the Constitutional Committee, and
- iii. Theme Committee would combine reports with relevant drafts when forwarding documents to the Constitutional Committee for discussion.

There was agreement then that the decision to refer the drafts as a whole back to the Theme Committee could not be taken as a precedent when dealing with other Theme Committee drafts.

4.3 It is noted that Mr. Cachalia raised the concern that the decision to refer draft texts back to the Theme Committee might open up a constitutional debate in the Theme Committee.

#### **5. TABLING: THEME COMMITTEE 6.3 REPORT ON BLOCKS 3 - 4**

5.1 The meeting noted the document entitled, "*Theme Committee 6.3, Report on the Public Protector, Blocks 3 - 4*," contained in the documentation, which was tabled for consideration by the Constitutional Committee.

5.2 It was noted that no draft provisions were included with the report. It was agreed that, if possible, these would be included before the next meeting of the Constitutional Committee.

**6. AOB**

**6.1 THE NEXT CA AND CC**

- 6.1.1 Mr. Ebrahim noted that the Constitutional Assembly had been given Mondays and Fridays (except two Fridays) for work during the second session. However, plenaries, whether they be Constitutional Assembly or Constitutional Committee meetings, could only be held on Fridays. The next two dates available for plenaries were 21 April, before the session formally opened, and 5 May.
- 6.1.2 Noting that the Management Committee had decided that the next plenary would be on Friday, 21 April 1995,
- i. The meeting strongly recommended that the next plenary be scheduled instead for Monday, 24 April 1995.
  - ii. There was consensus that should this re-scheduling be possible, the next plenary would be a meeting of the Constitutional Assembly.
  - iii. However, should the plenary have to sit on Friday 21 April 1995, it would best be a Constitutional Committee meeting, which involved fewer people.
- 6.1.3 The meeting agreed that the Chairpersons and the Administration would resolve the matter in the next week and notify members as to the dates of the next meetings.
- 6.1.3 Mr. Ebrahim spoke to the document entitled, "*Memorandum*," tabled at the meeting, which contained a proposed outline for the report to the Constitutional Assembly.
- 6.1.4 The DP expressed its concern that given the proposed structure of the CA report, that the CA would still be discussing too much process and needed now to focus on substantial issues. The DP requested that process issues be dealt with in a written report to the CA.

**6.2 RULES COMMITTEE**

Mr. Ebrahim noted the document entitled, "*Memorandum: Amendment of Constitutional Assembly Standing Rules*," tabled at the meeting. He noted

that a Constitutional Assembly Resolution would be proposed which would empower the Constitutional Committee to be the Rules Committee, to facilitate good management of the constitution-making process.

**6.3 OTHER MATTERS**

6.3.1 It is noted that page 47 of the documentation was not clearly printed. A correct copy of the page would be circulated to members.

**7. CLOSURE**

The meeting closed at 10h15.