

# CONSTITUTIONAL ASSEMBLY

## MINUTES OF THE TWENTY EIGHTH MEETING OF THE CONSTITUTIONAL COMMITTEE

FRIDAY 8 SEPTEMBER 1995

### Present

**Ramaphosa MC (Chairperson)**  
**Wessels L (Deputy Chairperson)**

Ackermann, C  
Alant, T G (Alt)  
Asmal, K  
Beyer, A S  
Chauke, P  
Davies, R H  
De Beer, S J (Alt)  
De Lange, J H  
Du Toit, D C  
Ebrahim, A. G. (Alt)  
Eglin, C W  
Gogotya, N J  
Green, L M (Alt)  
Hofmeyr, W A (Alt)  
Jacobz, F  
King, T J  
Ligege, M G  
Lockey, D  
Mahlangu, M J (Alt)

Mahlangu, N J  
Majola-Pikoli, N T (Alt)  
Marais, P G  
Mbetse-Kgositsile, B  
Meshoe, KR  
Moosa, M V  
Mulder, C P  
Myakayaka-Manzini, Y L M  
Nzimande, B E  
Pahad, E G  
Rabie, J A  
Ripinga, S S  
Sifora, T V  
Sizani, R K  
Skweyiya, Z (Alt)  
Van Breda, A  
Van Deventer, F J  
Van Heerden, F J (Alt)  
Viljoen, C L

**Alternates for this meeting:** **NP:** F van Deventer, T Alant, S de Beer, F van Heerden;  
**PAC:** A Ebrahim

**Apologies:** **ANC:** G Fraser-Moleketi, F Ginwala, Z Kota, B Mabandla, E S Mchunu, M W Moosa, and B Ngcuka; **DP:** K Andrews **NP:** S Camerer, A Fourie, D Makhanya, R Meyer and D Schutte; **PAC:** P de Lille

**Absent:** O C Chabane, S P Holomisa, J L B Kgoali, L P H M Mtshali, S Mzimela, and P F Smith.

### In attendance:

**Staff:** H Ebrahim, M Sparg, L Zondo, A Meyer, N Msizi, and M Keegan.

**Panel:** M Sedibe-Ncholo, J van der Westhuizen and Z Yacoob.

**Technical Advisors:** H Corder, A Raath and W Breytenbach (TC2).

## 1. OPENING

The Chairperson opened the meeting at 09h19. The meeting adopted the agenda.

## 2. MINUTES

The meeting adopted the Minutes of the Twenty Seventh Meeting of the Constitutional Committee on 1 September 1995 with the following amendments:

- i. It would be noted that Mr. Sifora had apologised for his absence;
- ii. The word "*formuation*" would be spelled correctly in paragraph 3.1.5(i); and
- iii. The word "*in*" would be inserted in paragraph 6.9(1) to read: "*included in the Constitution.*"

## 3. MATTERS ARISING

There were no matters arising.

## 4. DISCUSSION: PROCESS

### 4.1 DISCUSSION DOCUMENT TABLED AT MANAGEMENT COMMITTEE

4.1.1 Mr. Ramaphosa withdrew the document entitled, "*Discussion Document: Proposal on Process*," included in the documentation. He reported that the document needed to be redrafted to reflect agreements reached in the Management Committee on 7 September 1995.

4.1.2 The meeting agreed that:

- i. The Constitutional Assembly would seek to meet the May 1996 deadline set out in the Interim Constitution;
- ii. In order to achieve this, the Sub-committee and possibly the Constitutional Committee would need to meet during the recess to deal with substantive issues;
- iii. A first "working draft" of the constitution would be published for public comment by the end of the year.
- iv. Following the opening of Parliament in 1996, the Constitutional Assembly should take precedence over all, except the most essential parliamentary work. The Administration should renegotiate the allocation of time for the CA once parliament re-opened to ensure that the CA was provided with set blocks of time for its work, instead of

the present arrangement of Mondays and Fridays. It was stated that it was critical for the CA to have such an arrangement to allow for intensive and concentrated work to meet the May 1996 deadline.

- v. The revised discussion document would incorporate views expressed at the Constitutional Committee and set out stages and a work programme for the period between now and the opening of Parliament in 1996. The revised document would be forwarded to the Management Committee for its consideration.

4.1.3 The ANC expressed concern that the Constitutional Assembly was not taking decisions and asked the Management Committee to consider a mechanism for more effective decision-making in the constitution-making process.

4.1.4 The NP said that the Chairpersons should give public assurances that progress would be evaluated in February 1996, and that should it appear then that the deadline would not be met, there would be an amendment to the constitution.

## **4.2 MANDATES FROM CONSTITUTIONAL ASSEMBLY**

4.2.1 The Chairperson withdrew the document entitled "*Mandates from Constitutional Assembly and Work Programme*," included in the documentation. He reported that it would be redrafted and the revision submitted to the Constitutional Committee for its consideration.

4.2.2 The meeting agreed not to convene the Constitutional Assembly on 15 September 1995:

- i. The Management Committee already had the mandate to work out the Constitutional Committee's programme;
- ii. The meeting noted that subsections 68(2) and 72(1) of the Interim Constitution, read together with the revised rules and orders, allowed the Constitutional Committee to publish a draft of the new constitution as part of the drafting instructions, for the purpose of drafting;
- iii. The meeting agreed that it would be within the powers and the mandate of the the Constitutional Committee to publish a working draft of the new constitution.

4.2.3 The NP queried whether, when convening meetings, the Constitutional Assembly would pay for members' air tickets, transport, and hotel accommodation. The Chairperson ruled that it would, but added that meetings would be held in Cape Town and

that accommodation costs would therefore not be met.

4.2.4 It was agreed that the Constitutional Committee would meet on the morning of 15 September 1995 and the Subcommittee in the afternoon.

### 4.3 WORKING DRAFT OF NEW CONSTITUTION

4.3.1 The meeting noted the preliminary document entitled, "*Working Draft: Constitution of the Republic of South Africa*," tabled at the meeting.

4.3.2 The ANC suggested that the language and technical aspects of the draft formulations be "tidied up" before publication.

4.3.3 The Chairperson ruled that these suggestions would be taken into account when preparing the document for publication. In addition, the format of the document would be improved and additional formulations would be inserted once they had been finalised.

## 5. THEME COMMITTEE 2 ON SELF DETERMINATION

5.1 Mr. Mahlangu introduced the document entitled, "*Self Determination, TC2*," included in the documentation.

5.2 The meeting noted that Prof. Raath's submission would be forwarded to Theme Committee 4 for its consideration. The NP expressed concern that Theme Committee 4 would not be meeting. The Chairperson ruled that the Administration would facilitate the matter.

5.3 Regarding the proposals made by the Ad hoc Committee on Self-determination/Volkstaat in paragraph six:

5.3.1 The meeting forwarded the following **guidelines**: the political process should continue and include discussions and negotiations among parties to arrive at a solution.

5.3.2 It was agreed that the political process would include discussions between parties on the **agreements reached before April 1994, and particularly on the issue of proven support.**

5.3.3 It was agreed that **constitution-makers would adopt an open-ended approach to the issue of self-determination, while further deliberations take place, including the formulation of positions on self-determination that may assist in expediting the draft constitution.**

5.3.4 There was consensus that **negotiations should continue on self-determination: in all its forms.**

5.3.5 It was agreed that **other Theme Committees would take note of the thinking and implications emanating from the Ad Hoc Committee's deliberations so far.**

5.3.6 The meeting noted that the **Ad Hoc Committee proposed** that

i. **The retention of Constitutional Principle XXXIV might serve as an interim measure should the deadline arrive before agreement was reached; and**

ii. *"The most appropriate form of constitutional provision is one that would not preclude the pursuit and/or realisation through negotiations, of the right of self-determination in some form, the outcome of which will be binding on any future government."*

It was agreed, however, that no decisions would be made as to whether or not these proposals would be taken up until consultations between political parties had taken place.

5.3.7 The meeting noted that the NP and FF proposed that the principle of cultural self-determination at least be accepted and provided for in the final constitution, the details of which may be the subject of further negotiations.

5.4 It was agreed that the report would be referred to the Constitutional Committee Sub-committee for its consideration. The Sub-committee would ensure that the necessary discussions between political parties took place.

## **6. REPORT FROM THEME COMMITTEE 6.2 ON FINANCIAL AND FISCAL COMMISSIONS**

6.1 Mr. Davies spoke to the document entitled, *"Theme Committee 6.2 Report and Draft Formulations on the Financial and Fiscal Commission,"* included in the documentation. He made the following corrections to the document:

i. **Regarding subsection 2(1)(d):** the NP did not agree that the Financial and Fiscal Commission should have powers in relation to local government loans, and said that this should be handled by the Loan Committee of the Department of Finance.

ii. **Regarding footnote 10,** the DP and FF said that these clauses needed to be looked at again in the light of the report from Theme Committee 3 on inter-governmental forums and structures.

iii. **Regarding footnote 13,** the ANC's position was that none of these matters should be included in the constitution, but rather dealt with

in legislation.

- iv. The NP had expressed an additional view that the composition of the Board should be limited to 4 or 5 people; and

6.2 The meeting agreed to defer further discussion on this report until Theme Committee 3 had forwarded its report on inter-governmental forums and structures, so that the two reports could be considered together.

## **7. THEME COMMITTEE 6.2 REPORT ON GENERAL FINANCIAL MATTERS**

7.1 Mr. Davies spoke to the document entitled, "*Theme Committee 6.2 Report and Draft Formulations on General Financial Matters*," included in the documentation.

7.2 The meeting accepted subsections 1(1) and 1(2) of the draft formulation.

7.3 Regarding section 2, that reads:

*Annual budget*

2. ...

- i. The meeting accepted the following formulation:

2. *The Minister responsible for national financial affairs shall in respect of every financial year lay an annual budget before Parliament, reflecting the estimates of revenue and expenditure."*

- ii. It is noted, however, that the DP asked that the section be revisited at a later stage.

- iii. The Chairperson ruled that the DP would forward its own formulation on a balanced budget to the Sub-committee of the Constitutional Committee for its consideration.

- iv. The Chairperson also ruled that the section would contain a footnote indicating that, from the DP's viewpoint, the matter of a balanced budget was still outstanding.

7.4 The meeting agreed that section 3, under "*Procurement administration*" could be shortened.

- i. The ANC suggested that the section should simply state that the procurement of goods and services at a government level would not be done arbitrarily and would be dealt with by national law.

- ii. The NP asked that the revised formulation also include four principles: 1) independence and impartiality; 2) fairness; 3) no improper interference; and 4) transparency. The NP expressed

particular concern that the principle of transparency be included.

7.5 The meeting accepted section 4.

7.6 The meeting agreed to delete section 5.

7.7 It was agreed that the matter would be referred to the Constitutional Committee Sub-committee for its consideration.

**8. ANY OTHER BUSINESS**

There was no other business.

**9. CLOSURE**

The meeting closed at 12h45.