

CONSTITUTIONAL ASSEMBLY

SUBCOMMITTEE 2

**TUESDAY
1 OCTOBER 1996
09:30**

G26

DOCUMENTATION

CONSTITUTIONAL ASSEMBLY

SUBCOMMITTEE 2

NOTICE OF MEETING

Please note that a meeting of Subcommittee 2 will take place as indicated below:

Date : Tuesday, 1 October 1996

Time : 09:30

Venue : G26

Agenda

- 1 **Opening and welcome**
- 2 **Minutes** (pages 1-3)
- 3 **Constitutional amendments**
 - 3.1 Draft formulations (pages 4-6)
 - 3.2 Introducing/tabling
 - i. National Assembly: old rules (pages 7-8)
 - ii. National Assembly: proposed new rules (pages 9-11)
- 4 **Provincial powers**
 - 4.1 Overrides : 146(2)(b)
 - 4.2 Presumptions : 146(4)
 - 4.3 Other
- 5 **Local government**
 - 5.1 Framework/categories
 - 5.2 Municipal structures

- a) Council
- b) Executive Committee
- c) Subcommittees/standing committees
- d) Administration

5.3 Procedures for by-laws

5.4 Decisions in Council

5.5 Finances

- a) Fiscal powers and functions
- b) Excise tax

6 Any other business

7 Closure

Hassen Ebrahim
Executive Director

CONSTITUTIONAL ASSEMBLY

MINUTES OF THE THIRD MEETING OF SUBCOMMITTEE 2

FRIDAY, 27 SEPTEMBER 1996

PRESENT

Ngcuka B (Chairperson)

Ackermann C
Du Toit DC
Hogan B
Malebo SM
Rabie JA

De Lange J
Groenewald PH
King T
Marais P
Selfe J

Apologies: Gordhan P, Meshoe K

Advisors: Erasmus G, Grove G, Haysom N, Murray C, van der Westhuizen J, Yacoob Z

Minutes: McKenzie K

1 OPENING

The meeting commenced at 10:15.

2 MINUTES

This item was held over.

3 CONSTITUTIONAL AMENDMENTS

It was agreed that the discussion on the draft formulations, tabled by the technical advisors and contained in the documentation, would proceed informally and that parties would not be bound by the discussions.

3.1 The NP proposed that:

- i. Amendments to chapter 2 be passed by a supporting vote of 75 percent in the National Assembly [section 74(2)(a)] and seven provinces in the NCOP [section 74(2)(b)].
- ii. Provision for certification of constitutional amendments by the Constitutional Court be included in the draft.

- 3.2 The DP noted that there were three kinds of Constitutional amendments namely: general amendments, amendments which effect provinces and amendments which effect the bill of rights.

The DP proposed that:

- i. As the NCOP was included in the definition of Parliament, it should be involved in all Constitutional amendments. Thus reference to the NCOP should be included in 74(1).
- ii. Amendments to chapter two should be passed by a supporting vote of 75 percent in the National Assembly and seven provinces in the NCOP.

- 3.3 The ANC proposed that:

- i. The NCOP did not need to be involved in Constitutional amendments to section 1.
- ii. Chapter 2 amendments should be by a two thirds majority.
- iii. Amendments to chapter two should require the support of five provinces in the NCOP.

The ANC reserved its position on sections 4(a) and (8) of the draft.

It was noted that some sections of the new text provided for constitutional amendments to be introduced via a simple majority (for example those sections dealing with the names of provinces and the seat of Parliament). These sections may contradict the process outlined in section (5).

It was agreed that section (5) required further attention

It was noted that there was possible ambiguity regarding the time framework contained in section (6) and when it would come into effect. Adv Grove said the time period would begin when the last step in section (5) had taken place.

It was noted that no provision was made in the instance that the provincial legislatures were not in session in order to comply with (5)(b).

It was noted that the word "introduced" did not imply the same formalities as "tabling". It was agreed that the technical advisors would look at this.

There was no clarity on whether proposed amendments should have the status of a Bill when referred to the public for comment.

It was noted that the constitutional review committee envisaged in section 45(a) of the new text and a joint committee of the National Assembly and the NCOP would have quite different roles, further clarity was required in this regard.

It was agreed that the technical advisors would draft a further set of formulations.

4 PROVINCIAL POWERS

It was agreed that this item be held over.

5 ANY OTHER BUSINESS

5.1 DP submissions

The DP submissions were noted.

5.2 Next meeting

It was agreed that the committee would meet again on Tuesday 1 October 1996 at 09:30.

6 CLOSURE

The meeting closed at 11:50.

CONSTITUTIONAL AMENDMENTS

74. (1) Section 1 and this subsection may be amended by a Bill passed by the National Assembly with a supporting vote of at least 75 per cent of its members.¹
- (2) Chapter 2 may be amended by a Bill passed by -
- (a) the National Assembly with a supporting vote of at least two thirds of its members; and
 - (b) the National Council of Provinces with a supporting vote of at least five/six provinces.²
- (3) Any other provision of the Constitution may be amended by a Bill passed by -
- (a) the National Assembly with a supporting vote of at least two thirds of its members; and
 - (b) the National Council of Provinces with a supporting vote of at least six provinces if the amendment -
 - (i) relates to a matter that affects the Council;
 - (ii) alters provincial boundaries, powers, functions or institutions; or
 - (iii) amends a provision that deals specifically with a provincial matter.
- (4) Any implied amendment of a provision referred to in subsection (1) or (2) that detracts from a principle embodied in that provision must be regarded as an amendment to that provision and be dealt with accordingly.³

¹ The NP suggests that this provision should also apply to amendments of Chapter 2.

² If it is agreed that Chapter 2 amendments would require a supporting vote of at least six provinces in the NCOP this subsection can fall away. These amendments can then be incorporated in subsection (3) by adding in paragraph (b):

"(iv) amends a provision of Chapter 2."

³ Amendments to other provisions of the Constitution may by implication amend section 1, 74 (1) and Chapter 2 and thus circumvent the more stringent protection prescribed in subsection (1) or (2). The new subsection (4) requires these implied amendments to comply with the more stringent requirements of subsections (1) and (2).

- (5) A Bill amending the Constitution may not include provisions other than constitutional amendments and matters connected with these amendments.⁴
- (6) Before a Bill amending the Constitution is introduced the person or committee referred to in section 73 (2) must -
 - (a) publish in the national Government Gazette particulars of the substance of the proposed amendment for public comment; and
 - (b) submit those particulars to the provincial legislatures for their views.
- (7) When a Bill amending the Constitution that is not required to be passed by the National Council of Provinces is introduced, it must be tabled in the Council for a public debate.⁵
- (8) A Bill amending the Constitution may not be put to the vote in the National Assembly within 30/45/60 days of its introduction.
- (9) If a Bill referred to in subsection (3)(b), or any part of the Bill, concerns only a specific province or provinces, the National Council of Provinces may not pass the Bill or the relevant part of it unless it has been approved by the legislature or legislatures of the province or provinces concerned.
- (10) No constitutional amendments may be passed during a declared state of emergency.

⁴ The provisions in the previous draft providing for introduction of constitutional amendments in either the National Assembly or the National Council have been deleted as these may be in conflict with section 73 which deals conclusively with the introduction of all Bills.

⁵ This provision may be unnecessary in view of the requirement that the draft legislation must in any event be referred to the provincial legislatures.

- (11) A Bill amending the Constitution that has been passed by the National Assembly and, where applicable, by the National Council of Provinces, must be referred to the President for assent.⁶

⁶ The NP proposed that no constitutional amendments should come in force until the Constitutional Court has certified its validity. It suggested the following formulation:

"A Bill amending the Constitution passed by the requisite majority in the National Assembly and, if applicable, the National Council of Provinces, and assented to by the President, must be referred to the Constitutional Court for certification in terms of subsection (10).

A Bill amending the Constitution does not become law unless the Constitutional Court has certified that the amendment to the Constitution effected by that Bill has been passed in accordance with this section and does not breach or infringe the values contained in section 1."

This raises the question whether the Constitutional Court should not have, instead of certification powers, exclusive jurisdiction to pronounce on the validity of constitutional amendments.

Adv. G.H. Crovi

24/1/60

APPENDIX 1

The following rules will remain in force up to a date to be announced by the Speaker (see also Rules 13A(5), 44(1), 45(2), 46 en 53(j)):

PUBLIC BILLS OTHER THAN MONEY BILLS

Government Measures

Introduction and distribution

146. (1) A bill which is not a money bill and of which a member other than a private member is in charge may be introduced in this House by submitting it to the Speaker, together with a memorandum setting out its objects.

(2) The Secretary shall supply to each member of this House a copy of each bill introduced under Subrule (1) or received from the Senate, together with the memorandum thereon.

Procedure when House is in session

147. (1) When this House is in session, a bill introduced under Rule 146(1) or received from the Senate, together with the memorandum thereon, shall be laid upon the Table by the Speaker.

(2) Thereupon it shall be deemed—

(a) that the bill has been read a first time in this House; and

(b) that, unless the bill is under Subrule (3) referred to another committee, the subject of the bill has been referred to the portfolio committee under which that subject falls, for enquiry and report, the committee to have leave to bring up an amended bill.

(3) (a) A bill deemed to have been read a first time under Subrule (2) may by resolution be referred to a committee other than that prescribed in that Subrule.

(b) When a bill has been so referred, it shall be deemed that the subject of the bill has been referred to the committee concerned for enquiry and report, the committee to have leave to bring up an amended bill.

(4) If the bill has been referred to an *ad hoc* select committee and unless this House orders otherwise, the committee shall have the powers of a portfolio committee.

Procedure during recess

148. (1) When this House is not in session, a bill introduced under Rule 146(1) or received from the Senate shall be referred by the Speaker to the portfolio committee under which the subject of the bill falls or, at the request of the member in charge of the bill, to another committee.

(2) Thereupon it shall be deemed—

(a) that the bill has been read a first time in this House; and

(b) that the subject of the bill has been referred by this House to the committee for enquiry and report, the committee to have leave to bring up an amended bill.

(3) The bill, together with the memorandum thereon, shall be forwarded to the members of the committee at least 14 days before the date appointed for a meeting of the committee, unless this House is due to meet during that period.

(4) The Secretary shall cause a list of the short titles of the bills introduced during a recess to be published in the *Gazette* as soon as possible.

Report to House

149. The committee to which a bill has been referred shall, together with its report, present to this House a bill that has been agreed to by it, or if it has not agreed to a bill, the bill as referred to it, and the appropriate memorandum on its objects.

Bill placed on Order Paper for Second Reading

150. (1) The bill which has been presented to this House together with the report of a committee shall be placed on the Order Paper for Second Reading.

(2) A bill placed on the Order Paper in terms of this Rule shall be accompanied by the memorandum on its objects that was submitted together therewith or that memorandum as altered or extended by the committee or such a memorandum drafted by the committee, as the circumstances may require.

Debate on Second Reading

151. (1) The debate on the Second Reading of a bill shall be conducted on the objects and principles of the bill.

(2) The debate on the Second Reading of an amending bill shall be confined to the objects and principles of the proposed amendments to the principal Act and other relevant amendments.

(3) No motion shall be moved during the debate.

PUBLIC BILLS

GENERAL

Same bill may not be introduced more than once

140. When a bill has been passed or has been rejected during a session in any year, no bill of the same substance shall be introduced in that year except by leave of this House.

Lapsing and resumption of proceedings on bills

141. (1) An order of the day in respect of any public bill which is in the possession of this House when it rises on the last sitting day in any year, shall lapse, but may be reinstated on the Order Paper during the next ensuing session by resolution of this House.

(2) The approval or rejection of a draft resolution for the resumption of proceedings on a bill does not prohibit the introduction of a bill of the same substance during the same or an ensuing session or during an ensuing recess.

Withdrawal of bill

142. The member in charge of a bill may withdraw the bill at any time before the Second Reading thereof has been disposed of in both Houses or before a joint sitting has taken a final decision on it.

Passing of bill

143. This House passes a bill by agreeing to the Second Reading thereof.

Rejection of bill

144. If this House rejects the First Reading of a money bill or the Second Reading of any bill, it rejects the bill.

Discrepancies in versions of bill

145. (1) If any discrepancy in meaning is found between the versions of any bill in the different official languages after such bill has been passed by this House, but before it is presented to the President of the Republic for his or her assent, the Speaker shall report such discrepancy to the House.

(2) If the House agrees to an amendment, it shall be deemed to have agreed to the Second Reading of the bill as amended.

PUBLIC BILLS OTHER THAN MONEY BILLS, CONSOLIDATION BILLS AND PRIVATE MEMBERS' BILLS

Government Measures

Publication of draft bills

***145A. (1) A bill which is not a money bill or a consolidation bill and of which a member other than a private member is in charge, may not be introduced in this House unless the bill has been published in the *Gazette*: Provided that if the member in charge of the bill in consultation with the Speaker certifies in writing that it is an urgent measure, the bill may be introduced without having been so published.

(2) For the purposes of Subrule (1), a bill shall be published as it is to be introduced in this House, and shall be accompanied by—

- (a) a memorandum setting out its objects and the names of all persons and institutions that were consulted or made representations in connection with the proposed bill (in these Rules referred to as a memorandum on the objects of the bill); and
- (b) a notice inviting interested persons and institutions to submit representations on the bill to the portfolio committee concerned before a date mentioned in the notice, which date shall not be less than three weeks after the date of publication of the *Gazette* concerned.

*** Implementation of Rules 145A to 151 from a date to be announced by the Speaker - transitional arrangements may, if necessary, be introduced in the meantime (see also Appendix I for old Rules 146 - 151, which will remain in force until further notice)

Introduction and distribution of bills

***146. (1) A bill which is not a money bill or a consolidation bill and of which a member other than a private member is in charge may be introduced in this House by submitting to the Speaker—

- (a) if the bill has been published in the *Gazette* as contemplated in Rule 145A, a copy of the *Gazette* concerned;
- (b) if the bill has not so been published, the bill together with a memorandum on its objects and the certificate contemplated in the proviso to Rule 145A(1).

(2) The Secretary shall supply a copy of a bill introduced under Subrule (1) or received from the Senate, together with the memorandum on its objects, to each member of this House at least a day before the date appointed for the First Reading of the bill.

Procedure when House in session

***147. (1) If this House is in session when a bill is introduced under Rule 146(1) or received from the Senate—

- (a) the member in charge of the bill shall—
 - (i) deliver to the Secretary a notice of First Reading of the bill; and
 - (ii) if he or she wishes to give an introductory speech, notify the Secretary accordingly in writing;
- (b) the Speaker shall lay the bill, together with the memorandum on its objects, on the Table.

(2) (a) A bill in respect of which notice has been given as contemplated in Subrule (1)(a)(ii), shall be placed on the Order Paper for First Reading.

(b) No amendment shall be allowed on the First Reading of a bill.

(3) If the member in charge of a bill has notified the Secretary as contemplated in Subrule (1)(a)(ii)—

- (a) he or she may, at the First Reading, in a speech not exceeding 15 minutes, explain the background to the bill and the reasons for and the objects of the provisions of the bill; and
- (b) one member of each party in the House may make a statement on the bill on behalf of his or her party in a speech not exceeding three minutes,

whereafter it shall be deemed that the bill has been read a first time in this House.

(4) Where the Secretary has not been notified as contemplated in Subrule (1)(a)(ii), it shall be deemed that the bill concerned, as laid upon the Table by the Speaker, has been read a first time in this House.

(5) A bill deemed to have been read a first time shall be referred by the Speaker to the portfolio committee under which the subject of the bill falls or, by resolution of this House, to any other committee.

(6) When a bill has been so referred, it shall be deemed that the subject of the bill has been referred to the committee concerned for enquiry and report, the committee to have leave to present an amended bill.

Procedure during recess

***148. (1) When this House is in recess, a bill introduced under Rule 146(1) or received from the Senate shall be referred by the Speaker to the portfolio committee under which the subject of the bill falls or, with the concurrence of the member in charge of the bill, to any other committee.

(2) Thereupon it shall be deemed—

- (a) that the bill has been read a first time in this House; and
- (b) that the subject of the bill has been referred by this House to the committee for enquiry and report, the committee to have leave to present an amended bill.

(3) The bill, together with the memorandum on its objects, shall be forwarded to the members of the committee at least 14 days before the date appointed for a meeting of the committee, unless this House is due to meet during that period.

(4) The Secretary shall cause a list of the short titles of the bills introduced during a recess to be published in the *Gazette* as soon as possible.

(5) For the purposes of this Rule it shall be deemed that this House is in recess when it has been adjourned for a period of 14 days or longer.

*** Implementation of Rules 145A to 151 from 10 late to be announced by the Speaker - transitional arrangements may, if necessary, be introduced in meantime (see also Appendix I for old Rules 146 -

Referral of report and bill to joint sitting

164. Upon presentation of the report to this House, the report and the bill accompanying it shall stand referred to a joint sitting.

Consideration of report

165. (1) If proposed amendments to the bill are specified in the report of the joint committee, the joint sitting shall first consider the report.

(2) If the report is adopted by the joint sitting, every proposed amendment specified in it as being recommended by the joint committee shall be regarded as having been agreed to by the joint sitting, and every proposed amendment specified in it as not being so recommended shall be regarded as having been rejected by the joint sitting.

(3) If the report is rejected by the joint sitting, the joint sitting may consider any proposed amendment specified in the report and moved by any member, and shall approve or reject it without amendment.

Approval of bill

166. The question on the passing of the bill or, if the joint sitting has amended the bill as herein provided, the passing of the bill as so amended shall be decided by the joint sitting without amendment or debate.

Notice of motions not required

167. No notice need be given of any motion required for the proceedings of a joint sitting in respect of a disputed bill.

PRIVATE MEMBERS' PUBLIC BILLS**Private member's bill**

168. (1) A legislative proposal of which a private member is in charge shall, together with a memorandum thereon setting out its objects, be submitted to the Speaker.

(2) The Speaker shall refer the proposal and the memorandum to the Standing Committee on Private Members' Legislative Proposals.

(3) If this House is not in session when the papers are submitted to the Speaker, he or she shall refer them as aforesaid at the commencement of the next ensuing session.

(4) The Committee may recommend either that the proposal be not proceeded with or that it be accepted.

(5) If the Committee recommends that the proposal be accepted and the member in charge thereof has complied with the Speaker's requirements, if any, regarding the form and style of bills and memorandums thereon, the provisions of these Rules shall apply to it as if it were a bill introduced under Rule 146(1) while this House was in session.

MONEY BILLS**Introduction**

169. (1) The Minister in charge of a money bill shall deliver his or her introductory speech in this House.

(2) After the Minister in charge of a money bill has delivered the introductory speech, he or she shall introduce the bill and lay papers, if any, upon the Table.

Bill placed on Order Paper for First Reading

170. (1) After introduction a money bill shall be placed on the Order Paper for First Reading.

(2) The First Reading of a money bill may be considered only after the report of the joint committee to which it was referred for consideration, as provided in section 60(4) of the Constitution and Rule 171, has been presented to this House.

