

52/8/11/2/2

**CONSTITUTIONAL ASSEMBLY**

**CONSTITUTIONAL COMMITTEE  
SUB-COMMITTEE**

**DRAFT REPORT OF DISCUSSIONS  
28 FEBRUARY 1996**

## CONSTITUTIONAL ASSEMBLY

### DRAFT REPORT

#### CONSTITUTIONAL COMMITTEE SUB-COMMITTEE MEETING WEDNESDAY 28 FEBRUARY 1996

#### 1. OPENING

1.1 Mr. Ramaphosa opened the meeting at 10h20.

1.2 The following documents were discussed:

*Documentation*, for the 28 February 1996 meeting of the Constitutional Assembly Sub-committee; and

*Additional Documentation*, for the 28 February 1996 meeting of the Constitutional Assembly Sub-committee.

#### 2. GENERAL PROVISIONS

The meeting agreed to postpone its discussion of "*Chapter 15: General Provisions*"

- i. To give parties more time to forward their submissions on international agreements, international law and international customary to the CA Administration, and
- ii. To give the Department of Foreign Affairs more time to come back to the Constitutional Assembly on questions around international law.

#### 3. PREAMBLE

3.1 The meeting agreed to defer its discussion of the Preamble to give parties more time to forward their submissions to the Administration.

3.2 The Chairperson reminded the political parties to do so, for only the ACDP had forwarded a submission on the Preamble to the Administration so far.

#### 4. TRANSITIONAL ARRANGEMENTS

4.1 Mr. Grové introduced the document, entitled "*Bill*," included in the documentation. He made the following points:

4.1.1 The draft was a first and very preliminary attempt to deal with a very complicated issue.

4.1.2 It tried to accommodate Constitutional Principles XXXII and XXXIII, which provided for the continuation of a system similar to the Government of National Unity and which disallowed elections for the National Assembly until April 1999, unless a vote of no confidence was passed.

4.1.3 It rested on three important points:

- i. Regarding implementation: Two options were available for implementing the new constitution. Either it could be implemented on 20 April 1999, or immediately after adoption. This document was based on the second option.
- ii. Regarding the term of the National Assembly: the document assumed that the National Assembly would continue up until April 1999, to accommodate Constitutional Principle 33; and
- iii. It assumed that the Senate would be replaced by a new structure, changed in its nature and functioning centrally to serve provincial interests.

4.1.4 Finally, Mr. Grové said that "*Schedule 2*" should be replaced by "*Schedule 1*" in footnote 23 on page 9 to read:

*"Schedule 1 contains all provisions necessary for the proper functioning of the national executive..."*

4.2 Mr. Green of the ACDP asked what the legal status of provincial constitutions would be. Mr. Grové said that provincial constitutions might need to comply with the new constitution, but political decisions were needed on this matter. Mr. Ebrahim added that the supremacy clause would oblige all laws to be consistent with the new constitution.

4.3 Mr. Green of the ACDP also asked whether negotiations leading to the interim constitution made any decisions regarding what would happen to Parliament once the new constitution was adopted. Mr. Grové said these were embodied in constitutional principles XXXIII and XXXIV, which anticipated that the new constitution would be implemented before 1999.

- 4.4 The NP queried why the Commission for Provincial Government was not catered for, as indicated in footnote 39 on page 15. Mr. Ebrahim responded that no political party had indicated thus far that the Commission for Provincial Government should continue, but that this matter required a political decision.
- 4.5 Mr. Chabane of the ANC expressed concern that Option 2 of Section 7 implied that Senators were appointed, not elected, and did not make provision for filling vacancies. Mr. Grové responded that this very preliminary draft only tried to provide for existing senators. The Deputy Chairperson added that the draft simply sought to point the way to the issues involved.
- 4.6 The meeting agreed that:
- i. The Technical Refinement Team would continue considering this matter on an ongoing basis;
  - ii. Political parties would use this document as a basis for discussion, and as they reached agreements, they would give instructions; but
  - iii. This matter would probably not be finalised until there was agreement on the major institutions in the constitution.
- 4.7 The Chairperson appealed to parties to take great care in how they discussed these matters within their own parties and with the press, for some of the provisions dealt with very sensitive issues which could be terribly misinterpreted.

## 5. SCHEDULES

The meeting noted the documents entitled "*Schedule 1*" and "*Western Cape, Schedule A,*" contained in the additional documentation.

## 6. CLOSURE

The Chairperson closed the meeting at 11h06.