

Alkei-Sachs
notes

MCMAU-92-6-a

Definitely out of
Cape Town

2 Nov.

4 Nov.

Probably

7-14

Possibly

19-21

26-28

Definitely

29

30

1 Dec. - 6 Dec.

17-19 Dec.

As its name indicates, The primary function of the cmb is to make a constitution. ~~Therefore so~~

~~The way the body is chosen and its manner of work should promote its objectives it does so~~

We want a cmb that is national in character ^{and} that is non-racial, non-sectarian and democratic in composition and ⁱⁿ functioning, and that ~~for~~ respects ~~certain~~ basic principles

The very way it is selected and the manner in which it ~~its mode of operation~~ must serve its objectives -

Whatever its ultimate designation might be, we will refer to the com as the c.a.

GENERAL

If the objective were merely to produce a technically sound constitution within the broad principles agreed to at CODESA, we would favour a relatively ^{com} ~~that was very~~ ^{small} and ^{very} ^{expert}. ^{In that way a coherent and} ~~manageable const. could~~ ^{however,} ~~the purpose,~~ ^{is much wider.} ~~quickly be drawn up.~~

The purpose, however, is much wider. The way in which the com is selected and its mode of operation will have a great influence on its acceptability and on the significance of the new Const. for SA. If the const. is drawn up in a way that is manifestly non-r, non-sec a democ,

it will reinforce the principles of
unity, non-violence that should
lie at its heart. If the Com
is clearly national in character,
repr. of all the diverse groups &
currents in our society, it will
reinforce the idea that the Com
belongs to, protects & must be
defended by the whole nation, &
not just a group.

In other words, what we are envisaging
is not an ANC Comstif. rubber-
stamped by an ANC mech., but a
S Africa consist^{ing of} to which the ANC
as the most popular, experienced org.
and the one which always had a
national & dem. vision, makes the
most signif. contrib.

The result will be a body that is broadly-based rather than small, that is participatory rather than ^{that is open in its functioning} ~~passive~~ ^{rather than being that struck} to achieve its decisions by ~~for~~ consensus rather than by

automatic majorities. At the same time it must be structured and must function in such a way that basic dem. princs. are always observed. It must be created democratically,

so that the people of our country are enabled ^{freely} to choose their representatives & indicate which policies they support. Its represent. comes from 3 elements:

- ① Natl. character diversity
- ② Mandated representatives
- ③ Degree of support.

Does not mean automatic adoption of maj. views, nor does it imply automatic

sets by min. pts of view.
Attempt at consensus of impers.
A large min. ———— deadlock —
can block ————— breaker.
A large maj. will win the day.

Proceeds. must encourage a
sense of shared resp. & a real
commitment to get best result

More concretely,

Elections — PR. No list.
Regul?

Size: 400(?)

Location: Park.

Duration: Time limit. 4 months.
Consult? More

Chair: Steering Committee -
rotating

~~Decision~~

Functioning: Group -

Preamble a character of

Natl-Territory Territ. div
Regns. h-b
Struct Part.

May, min reports.

Exec.
Jud.
B of Rts.
Finance

Expert advisers.

Plenaries. - Consensus $\frac{2}{3}$.

Principles: Report - Open disc.
Discourage proced. wrangles -
not subject to litig. - delays, lawsuits.
flex - powers. - observed: Jud. & com. - embel -
80% deleg

Principles of The Constitution-Making Body

① Elected acc. to principles in
Dec. of Intent,
namely - univ fr.
pop. rep.

② That elections be supervised
by IG, with intl. monitoring

③ C.A. must acc to follow
principles

—
—
—

④ That decisions be by
two thirds
2 parts - CON + SA drafts - legit.
Cons. cont.

⑤ Referendum - role for Tricam.
Total abol.
that authority
CON + SA may. &
Tricam.

Rel with I.G.

Not this group - Princ. -

free, fair. No player a ref.
deceit to be ref. after final contract

First reactions to IEP document.

- ① They want to spin out proceedings, and avoid elections at all costs.
- ② They naturally give much weight to region/states with extensive exclusive powers
- ③ They want CODESA to list parties which will then have equal representation at a Constitution Drafting Convention.
- ④ Their principles are what they call "detailed even if general". They run to 11 pages and are often very argumentative. They include some useful

items that we can store up for
later use, but loads of stuff
like details of a Privatization
Commission which are tentatives
to put it mildly.

Eglin's paper is very close to ours. We welcome its crispness. These are truly general principles that govern the basic character of the Constitution without prescribing in advance how they should be implemented. We agree that something should be said on the question of de-centralization.

This is not a list.

These are principles

8 38 2554.

General principles govern
the basic character of
the constitution without
prescribing in advance how
~~they should be implemented.~~
the means whereby they are
to be implemented.

Basically we are following
the format that functioned
successfully in Namibia.

The objective is to achieve
sufficient confidence over
the essential nature of the
constitution to encourage

all parties to agree to a
constitution-making body that
has the legitimacy to draft
a constitution. We are a

self-appointed body, ~~created for~~

~~the purposes of negotiating a~~

~~way to move~~

~~We can create~~

Our function

is to create sufficient common
ground for the process of
elaborating a constitution to
proceed, not to draft a constitution
ourselves. The institutions and
mechanisms of a constitution
hung together, especially the
checks and balances which we

all require. The constitution-
making body should have the
greatest flexibility in this respect,
and not ~~have~~ have its hands
tied.

Byrd,

We could agree to:

- 1) 3 tiers of govt
- 2) Each shall be based on principles of non-racial, non-sexist democracy and be subject to genl. constitutional principles and the Bill of Rights;
- 3) The Constitution shall ~~set out~~ ^{in general or specific} the duties, powers and functions of the three tiers.
- 4) This will not prevent further delegation of powers and functions.

~~social and~~ ^{and social} economic ~~through the~~ ^{through the} Bill of Rights. ~~enshrine~~ ^{enshrine} those ~~rights~~ ^{rights} and ~~obligations~~ ^{obligations} which are universally respected. Govt. shall be such as ~~as~~ ^{as} human rights.

to promote economic growth and development, ~~the~~ ^{the} advancement

respected as human rights.

of all and accountability in relation to expenditure.

The Bill of Rights shall

① ~~The~~ Economic and social rights universally accepted as human rights shall be ~~respected~~ enshrined in the Bill of Rights

② ~~The aim of~~ government shall have amongst its aims the promotion of growth and development,

There shall be appropriate

③ and the advancement of all appropriate mechanisms for ~~shall~~ ^{shall} publicity and accountability.

An argument that Cyril
might put forward:

The majority in this is

We are not dealing here
with interim arrangements
but the actual constitution.

We could have short-term
sunset clauses or I.G. (group 3)

But not as a constitutional
principle that seals the
present divisions into the
Constitution for all time.