

[Monday, 5th September, 1994 No3 - 1994]

REPUBLIC OF SOUTH AFRICA

CONSTITUTIONAL ASSEMBLY

RESOLUTIONS

MONDAY, 5TH SEPTEMBER 1994

THE ESTABLISHMENT OF THEME COMMITTEES

1. CHARACTER OF DEMOCRATIC STATE

- 1.1 Preamble of the Constitution
- 1.2 Matters dealing with the establishment of a single sovereign state, common citizenship, democracy and equality (Constitutional Principle I)
- 1.3 The supremacy of the Constitution, binding on all organs of State (Constitutional Principle IV)
- 1.4 Matters dealing with representative government, regular elections, suffrage and proportional representation. (Constitutional Principle VIII)
- 1.5 Matters dealing with freedom of information and accountable administration. (Constitutional Principle IX)
- 1.6 Name and description of State and symbols
- 1.7 Citizenship and franchise
- 1.8 Matter dealing with the separation of powers etc (Constitutional Principle VI)

2. STRUCTURE OF GOVERNMENT

- 2.1 Matter dealing with the separation of powers etc (Constitutional Principle VI)
- 2.2 The adherence to formal legislative procedures by legislative organs (Constitutional Principle X)
- 2.3 Participation of minority political parties in legislative process in manner consistent with democracy (Constitutional Principle XIV)
- 2.4 Amendments to Constitution require special procedures involving special majorities (Constitutional Principle XV)
- 2.5 Structure of Government at national, provincial and local levels (Constitutional Principle XVI)
- 2.6 Democratic representation at every level of government - without derogating from the role of chieftainship (Constitutional Principle XVII)
- 2.7 National Assembly, the Senate and Parliament in general
- 2.8 The Electoral System
- 2.9 Matters dealing with the constitution, status and role of traditional leadership (Constitutional Principles XIII)
- 2.10 Traditional Leaders
- 2.11 The Executive

3. RELATIONSHIP BETWEEN LEVELS OF GOVERNMENT

- 3.1 The details and nature of the relationship (Constitutional Principle XVI and XVII)
- 3.2 Local Government in context of Constitutional Principle XXIV
- 3.3 Establishment of Provincial government
- 3.4 Establishment, status and powers of local government
- 3.5 Legislative competence of Provinces and concurrency

4 FUNDAMENTAL RIGHTS

- 4.1 The enjoyment of fundamental rights by all - entrenchment in Constitution etc (Constitutional Principle II)
- 4.2 The prohibition of racial, gender etc discrimination and the promotion of equality and national unity (Constitutional Principle III)
- 4.3 The diversity of language and culture to be recognised - promotion and encouragement (Constitutional Principle XI)
- 4.4 The collective rights of self-determination, civil society and free association (Constitutional Principle XII)
- 4.5 The right to form trade union and collective bargaining (Constitutional Principle XVIII)
- 4.6 Community self-determination based on cultural and language heritage (Constitutional Principle XXXIV)
- 4.7 Protection and enforcement of fundamental rights
- 4.8 First, second and third, generation of Rights
- 4.9 Relationship of various Charters of Rights to the Bill of Rights

5. JUDICIARY AND LEGAL SYSTEMS

- 5.1 Matter dealing with qualities of judiciary and enforcement of Constitution (Constitutional Principle VII)
- 5.2 The institution, status and role of traditional leadership and indigenous law (Constitutional Principle XIII)
- 5.3 Judicial functions, appointment of judges, Judicial Services Commission and Constitutional Court
- 5.4 Traditional authorities

6. SPECIALISED STRUCTURES OF GOVERNMENT

- 6.1 The independence and impartiality of the Public Service Commission, Reserve Bank and the Public Protector (Constitutional Principle XXIX)

- 6.2 The status and role of public service (Constitutional Principle XXX)
- 6.3 The performance of functions of police, military and intelligence to be in the national interest (Constitutional Principle XXXI)
- 6.4 Auditor-General, Reserve Bank and the Financial and Fiscal Commission
- 6.5 Establishment, powers and function of the Public Service Commission and Public Service
- 6.6 Powers and function of the Public Protector, Human Rights Commission, Gender Commission and the Commission on Restitution of Land Rights
- 6.7 Traditional authorities
- 6.8 South African Elections Commission (formerly IEC)

NOTE : There are other issues such as transitional provisions and the reception of international law into our domestic law which do not lend themselves very easily to allocation to a Theme Committee, and will have to be dealt by the Constitutional Committee of the Assembly. Not all of the structures under the Interim Constitution will be relevant under a permanent Constitution. Finally, international and comparative experiences can be discussed under any of the themes identified above.

The above categories are to be treated as a guideline and not adhered to mechanically. Theme Committees may establish Commissions on special topics. It is further proposed that certain principles and topics (for example; Constitutional Principle XXXIV dealing with community self-determination) may be discussed in more than one theme committee.

It is also proposed that Theme Committee 1 (Character of the Democratic State) be dealt with as a matter of priority.

THE PROCESS AND FRAMEWORK FOR THE DRAFTING OF THE NEW CONSTITUTIONAL TEXT

1. INTRODUCTION

Set out below are proposals for a broad framework for the constitution-making process. While no firm timescales have yet been recommended, principles for guiding the process are dealt with.

2. GENERAL GUIDELINES

2.1 Open debate in the Constitutional Assembly

2.3.1 All elected representatives in the Constitutional Assembly should be directly involved in the constitution-making process. Open debate will afford members the opportunity to follow the process and participate in it.

2.3.2 A measure of informality during proceedings in the Constitutional Assembly would encourage members to participate in debates. Further recommendations with regard to the structure of debate will be made at the next meeting of the Constitutional Assembly.

2.2 Integrated process

The new constitution should be the result of a process which integrates the ideas of political parties represented in the Constitutional Assembly, civil society and the broader public.

2.3 Transparent Process

Meetings of the Constitutional Assembly and its structures will, subject to the provisions of Rule 17A of the Standing Rules, be open to the public and the media.

3. PROCESS

3.1 Public Participation

- 3.1.1 There should be a programme for ensuring maximum public participation in the constitution-making process. Mechanisms for promoting public participation, including public fora, distribution of information bulletins and appropriate media strategies, should be employed.
- 3.1.2 Public fora should be held in all Provinces, specific attention being given to the population in rural and underdeveloped areas.
- 3.1.3 Some fora would be targeted at specific sectors of the community while others could be broad-based and reach out to all members of the public. Appropriate mechanisms for collecting views at such broad based fora should be employed.
- 3.1.4 There should be co-ordination in all provinces for the success of the community liaison programme. The Constitutional Assembly will have to work with a network of people, organisations and institutions across the country and facilitate the process of the effective organisation of public fora. Assistance and co-operation will be sought from the structures of provincial and local government.
- 3.1.5 Members of the Constitutional Assembly will be invited to participate in public fora dealing with various themes and constitutional issues. Schedules for such public fora will be compiled by the Administration after consultation with the Management Committee.
- 3.1.6 The Administration will need to compile regular information bulletins for the purpose of informing the public of the constitution-making process and stimulating their interest and participation.
- 3.1.7 In addition to the canvassing of public views by means of public fora, the Administration is in the process of establishing a liaison desk.

3.2 Media

- 3.2.1 There appears to be general consensus that the new constitution should be a living document that can and must be owned by the people of the country. The media would play a vital role in the process of drafting this constitution. There is therefore a need for a clear media strategy.
- 3.2.2 The underlying principles that should inform the media strategy have already been identified in the debates of the Constitutional Assembly. They are; transparency, democratic accountability and public involvement and participation in the process of drafting a new constitution.
- 3.2.3 In terms of the principle of transparency and democratic accountability, the media is allowed to witness and report on the proceedings of the Constitutional Assembly, the Constitutional Committee, theme committees, commissions and public hearings. In this regard, the media should as far as possible be accommodated at each of these meetings and provided with the necessary documentation.
- 3.2.4 In addition to reporting on proceedings, the media can and should play a more direct role in the process. This stems from the fact that the media, both electronic and print, enjoy a direct relationship with the public. It may therefore be beneficial to the process to enter into a relationship with the media which would allow it to become an organised forum for the expression of views on the constitution. This would ensure that there is public debate and participation.

3.3 Role of theme committees

- 3.3.1 Theme committees should be responsible for the in-depth examination of constitutional matters which fall within the scope of the Constitutional Assembly mandate. Theme committees should submit regular reports to the Management Committee for processing and discussion by the Constitutional Committee.
- 3.3.2 It is suggested that the structure of the theme committee reports will include:
 - (a) issues in respect of which there was agreement,

- (b) issues in respect of which there was no agreement, and
- (c) recommendations of the committee.

3.4 Debate in the Constitutional Assembly

The Constitutional Assembly is responsible for finally deciding on the new constitutional text. Its structures exist for the purpose of facilitating the decision-making process of the Constitutional Assembly.

3.5 Processing by the Constitutional Committee

The Constitutional Committee will receive and consider reports of the theme committees to be tabled in the Constitutional Assembly. This will facilitate the decision-making process in the Constitutional Assembly.

4. STRUCTURES

4.1 Constitutional Committee

The Constitutional Committee has been established and has met on three occasions. This Committee has also appointed a Management Committee from amongst its members.

4.2 Management Committee

4.2.1 A Management Committee consisting of 12 members has been established. The composition is as follows; 3 ANC, 2 NP, 1 PAC, 1 ACDP, 1 DP, 1 FF, 1 IFP, the Chairperson and Deputy Chairperson of the Constitutional Assembly.

4.2.2 It is suggested that the Management Committee should attend to process and not substantive issues. Its tasks should also include the following:-

- (a) preparing agendas for Constitutional Committee meetings;
- (b) preparing reports to be considered by the Constitutional Committee;
- (c) co-ordinating the activities of the theme committees;
- (d) co-ordinating the activities of all structures of

- Constitutional Assembly;
- (e) attending, between meetings of the Constitutional Committee, to the day-to-day management and overseeing of developments in the structures.

4.3 Theme Committees

- 4.3.1 Theme committees will be made up of thirty Constitutional Assembly members, or such smaller number as decided by the Constitutional Committee, in accordance with the provisions of Rule 23 of the Standing Rules. The chairperson of a theme committee shall be elected from amongst its members.
- 4.3.2 Each theme committee should have a core group of no more than 6 or 7 members who will be responsible for managing and co-ordinating the work programme of the theme committee.
- 4.3.3 Functions of the theme committees will include the following:
 - (a) Receiving and collating views from the broader community on the Constitution;
 - (b) Receiving submissions from the political parties;
 - (c) Developing and processing these concepts and views;
 - (d) Referring processed views for technical drafting;
 - (e) Submitting the processed concepts in the form of reports to the Constitutional Committee for debate in the Constitutional Assembly.
- 4.3.4 A manager and managing secretary will be appointed and allocated to each theme committee and will be responsible for providing it with the necessary support services.
- 4.3.5 During deliberations, theme committees will have the services of technical experts.

4.4 Technical committees

- 4.4.1 It is suggested that technical committees should consist of up to three members. Each theme committee should be assisted by a technical committee. However because of the range of issues each theme committee may be required to address, membership of these technical committees may vary from time to time depending on the issue at hand.

4.4.2 The Administration is in the process of compiling a database of legal experts to be used to provide more specialised assistance when required.

4.4.3 The functions of technical committees will be to give technical advice to the theme committees at their meetings and to provide drafting facilities.

4.4.4 Members of technical committees need not be employed on a full time basis.

4.5 Independent Panel of Constitutional Experts

An Independent Panel of Constitutional Experts will be established in terms of the Provisions of section 72 of the Constitution (Act No 200 of 1993).

4.6 Commissions

4.6.1 Commissions may be appointed by resolution of the Constitutional Assembly, to investigate any specific matter or issue.

4.6.2 The terms of reference of such commission shall be determined by the Constitutional Assembly.

4.6.3 The Administration shall be responsible for providing administrative support services to these commissions.

5. TIME FRAMES

5.1 Having regard to constraints of time, it is recommended that the theme committees be appointed as soon as possible and start functioning at the earliest opportunity thereafter.

5.2 The Constitutional Assembly will, on a continuous basis, consider and review the mandates of theme committees.

6. PROGRAMME OF WORK

- 6.1 The Constitutional Assembly shall determine its own programme with due regard to the programme of Parliament.
- 6.2 The Constitutional Assembly and the Constitutional Committee shall meet on alternate Mondays. The Management Committee is presently considering the work programme of the Constitutional Assembly and will report on that at the next sitting.

7. EVALUATION/ASSESSMENT

It is recommended that the constitution-making process be continuously evaluated. This evaluation system will ensure that the process is effective and will allow for appropriate adjustments.