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CONSTITUTIONAL PUBLIC MEETINGS

BRIEFING NOTES FOR

THEME COMMITTEE MEMBERS

FREESTATE :

HARRISMITH: 20 MAY 1995

NALEDI HALL, PHOMOLONG

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1. CONSTITUTIONAL PUBLIC MEETING: 20 MAY 1995

VENUE : NALEDI HALL, PHOMOLONG : 13:00

A. PURPOSE OF MEETING

- i) Mr W Morris of CA to brief Community on the Constitution-Making Process
 - a) See item 4 on the Meeting Programme and Agenda.
 - b) For briefing notes on CA process see point 2.
- ii) Theme Committee Members to give input on the issues being dealt with in their Theme Committees.
- iii) Allow the public to make submissions.

B. CONSULTATIVE MEETING

List of organisations that attended the meeting not available at time of printing.

C. COMMUNITY PROFILE

- * **Geographical:** Rural
- * **Area:** *Estimated population* : 43 739
Age : Full spectrum
Sensitivities : Housing, unemployment, education, local government
- * **Target Audience :** *Language* : Zulu, Southern Sotho, English and Afrikaans
Literacy level : 60,88 %

MEETING PROGRAMME AND AGENDA

CONTENT OF PROGRAMME	PERSON RESPONSIBLE	TIME ALLOCATED
1. Pre-meeting briefing	Chairperson (facilitator)	30 minutes
2. Welcome	Mayor	10 minutes
3. Introduction	Premier / MEC	10 minutes
4. Constitution-making process Overview and questions on clarification	Speaker (Chair or Deputy Chair of the CA or Mancom Member) or Chair of Meeting	10 minutes
5. Input from Theme Committee Members	One TC Member from each TC to give input on TC related issues being discussed according to work programme. Issues on which the public's input is specifically sought.	6X10 minutes for each TC: ● 5 min input ● 5 min translation
5. Submissions from Public	To be facilitated by Chairperson of the Meeting	85 minutes (subject to change according to situation)
6. Closure	Mayor	5 min

2. OVERVIEW ON THE CONSTITUTION MAKING PROCESS

In April 1994, you voted for a new government in the first democratic elections in our history.

A constitution is the highest law in a country. It says what rules the government must follow in running the country.

At the moment we have an interim constitution. This will be our constitution until April 1999. After April 1999, there will be a new constitution to guide future governments on how you as the voter want the country to be run.

Like the interim constitution, the new constitution will talk about things such as:

- your right to be treated equally as a person;
- your right to speak freely;
- how many members of Parliament there should be;
- the powers of national, provincial and local governments;
- how the courts and police should work.

2.1. What is the Constitutional Assembly?

The Constitutional Assembly (CA) is the body which has the job of drawing up the new constitution by May 1996.

Your vote in the April 1994 elections helped to decide which parties should sit in the 2 parts of the new Parliament:

- * the National Assembly, with 400 members, and
- * the Senate, with 90 members.

These 490 people, from 7 different political parties, now make up the Constitutional Assembly.

The Constitutional Assembly has created six groups of members each of whom will deal with a different subject when drafting the constitution. These groups are called Theme Committees and they deal with inputs and submissions from the public. Theme Committee 1 deals with the Character of the State, Theme Committee 2 deals with the Structure of Government, Theme Committee 3 deals with the Relationship between the Levels of Government, Theme Committee 4 deals with Fundamental Rights, Theme Committee 5 deals with the Judiciary and Legal System and Theme Committee 6 deals with Specialised Structures of Government.

2.2. What are the Constitutional Principles?

The Constitutional Principles are those principles which the Constitutional Assembly is compelled to include in the final constitution.

2.3. Why are the Constitutional Principles important?

The constitutional principles are important because if the Constitutional Assembly does not take these principles into account, the Constitutional Court can declare the new constitution invalid.

2.4. Examples of the 34 Constitutional Principles

There shall be:

- A recognised right for all people to fair labour practises and of employers and employees to join employer organisations and trade unions and to engage in collective bargaining;
- Security forces that function in the national interest and do not further or prejudice party-political interest;
- Universally accepted fundamental rights;
- Diversity of language and culture
- Equality in law and equitable legal process, including affirmative action.

2.5. Why take part in writing the New Constitution?

It is not just the members of the Constitutional Assembly who will decide what goes into the new constitution.

The Constitutional Assembly (CA) is asking you as a member of the public to say what you would like to see in the new constitution. So you now have a chance to tell the CA how you think the country should be run and what rights you want.

We must all make sure that we speak up now because the constitution affects all of our lives. And also because we will all live under the new constitution for many years to come.

2.6. How you can get involved?

Apart from this meeting, there are lots of different ways that you can get involved in building the new constitution. The Constitutional Assembly calls its programme of public involvement the **Public Participation Programme**.

A. You can:

- talk to your friends and neighbours, your local community or religious organisation, your union or your political party;
- look out for pamphlets and posters advertising community workshops;
- listen to the radio;
- watch TV;
- Attend seminars and or conferences that deal with special topics like womens rights, the public service and land issues.

You can also make direct contact with the Constitutional Assembly by:

- Writing down your ideas and proposals, and then sending them in to the CA [box: Post to Executive Director : Constitutional Assembly, Box 15, Cape Town 8000, or fax to: 021-4614339];
- Phoning the CA if you are not sure about how to send in your ideas [box: Phone the CA at 021-245031 and ask for Extension 2273];
- Arranging a visit to the CA by your organisation or union to talk about your ideas and proposals.

2.7. What happens to your ideas?

The submissions that you make in writing are sent to the relevant Theme Committees.

The submissions that you make verbally here today are recorded.

- 2.7.1. They get typed, translated and copied
- 2.7.2. They get filed, it is decided which part of the constitution they belong to, and they get summarised
- 2.7.3. Your full original proposal and the summary goes to one or more of the 6 Theme Committees (the groups working on the different parts of the constitution)

- 2.7.4. The Theme Committee draws up a report about the proposals received and sends this to the **Constitutional Committee**
- 2.7.5. The Constitutional Committee, made up of the 7 political parties of the Constitutional Assembly (CA), then debates these reports
- 2.7.6. The final debate takes place in the whole CA with all 490 members
- 2.7.7. The CA's decisions are sent back to the Constitutional Committee for **drafting**
- 2.7.8. A draft of the new constitution is then sent out to the public - you get a second chance in workshops and meetings to say what you think
- 2.7.9. The CA makes changes to the draft constitution and then passes the final constitution (**the adoption of the constitution**)
- 2.7.10. This new constitution is sent to the Constitutional Court to be checked (**the certification of the constitution**)

3. AIM OF THE CONSTITUTIONAL PUBLIC MEETINGS (CPM'S)

The aim of the Constitutional Public Meetings is to involve and engage community organisations and the public at large in the constitution-making process. The public will have direct access to their elected representatives and will be invited to give individual submission on constitutional issues.

4. ROLE OF PROGRAMME PARTICIPANTS

4.1. Mayor

The Mayor should:

- Use his/her discretion as to whether the event should be opened with a prayer;
- Welcome the audience and dignitaries to the event;
- Introduce the dignitaries to the audience;
- Close the meeting after submissions have been received.

4.2. Premier / MEC

The Premier should:

- Introduce the member of the C.A
- Inform the audience of the **non-party political nature** of the meeting;
- Emphasise the importance of the Constitutional Assembly;
- Explain the role of the members of the Theme Committees present; (their role is to make input on Theme Committee work and hear submissions from the public)

4.3. Chairperson / Facilitator

The Chairperson should:

- Be responsible for the pre-meeting briefing;
- Take over the welcome or the introduction if the Mayor or the Premier MEC does not arrive;
- Give an overview on the constitution-making process and allow questions of clarification to be directed to Theme Committee members (this is only for those situations when there is no specific speaker from the Constitutional Assembly);
- Work through the order of the proceedings and the time constraints of each phase of the meeting;
- Explain how the submissions will be dealt with;
- All Theme Committee members will make their input as per the programme and submissions will be solicited after all of them have

been completed.

* **Note 1**

Public submissions will be electronically recorded;
Written submissions will be collected after meetings;
Translation to be provided.

* **Note 2**

For briefing the public on the constitution-making process (see annexure A)

- Probe audience to participate;
- Sensitize Theme Committee members and the public to consider the translator when making inputs/submission;
- Reiterate value of submissions;
- Ensure an even spread in receiving oral submissions;
- Ensure that no comment on submissions is encouraged from any member of the Constitutional Assembly;
- Indicate to the audience what will happen to further submissions;
- Every submission will be recorded and will be channelled to the relevant Theme Committee;
- Indicate to the audience that written submissions can be made at the venue and placed in the box;
- Inform the public that written submissions can also be made to the CA in Cape Town at the following address by no later than the 30th June 1995:
The Executive Director
P.O. Box 15
Cape Town
8000
- Keep the running order of the meeting;
- In the event of an unforeseen threat to security, the Chairperson in consultation with the Premier / MEC and the mayor will make the final decision to call for security. The Chairperson will thus have to identify her/himself beforehand to the security staff in order to familiarise them with the line of command.
- Evaluate the process and give feedback to the regional director of IMMSA in the Western Cape, Susan Hayter.
- Remind members of organisations to fill in register.

4.4. Speakers (Chairperson or Deputy Chairperson of CA, Members of Mancom or other members of CA)

The role of the speaker is to:

- Give a brief overview of the constitution-making process and field questions on clarification only.

* **Note**

For briefing document on constitution-making process see POINT 2.

4.5 Members of the CA / Theme Committee Members

The main role for members of the CA / Theme Committee members should be to actively listen to input/submissions from the South African people on what they wish to see in their final constitution.

- A member from each of the Theme Committees will have an opportunity to brief the public on the issues being dealt with on his/her specific Theme Committee; **See Annexure A**
- Theme Committee members should decide before the meeting or by no later than the pre-meeting briefing which member of the specific Theme Committee will make the input. This is in order to give the relevant member an opportunity to prepare;
- To facilitate the process, specific time frames regarding input should be adhered to - this will ensure that the purpose of Public Participation is not limited in the process;
- **Please note the constitution-making process is a non-party political process.**
- **Kindly use clear and simple language when making your input**
- **Please bring your Work Programme with you**

5. ANNEXURE A :

THEME COMMITTEE INPUTS - ISSUES TO BE RAISED BY THEME COMMITTEE MEMBERS

ISSUES CURRENTLY BEING DISCUSSED IN THEME COMMITTEES

THEME COMMITTEE 1

*** GOVERNMENT ACCOUNTABILITY**

- Government accountability, including but not limited to accountability and responsibility in all spheres of government activity, of-
 - Members of Parliament and Provincial Legislatures to the public;
 - Members of Central & Provincial Governments to Parliament;
 - Members of Provincial Governments to Provincial Legislatures;
 - Public officials and state institutions;
- Transparency and openness in the workings of government and the public administration
- Access to elected public representatives and to state officials
- Access to government information

THEME COMMITTEE 2

*** VOLKSTAAT/COMMUNITY SELF-DETERMINATION**

- Should the Constitution provide for self-determination for a community sharing a common cultural heritage?
- If so, should this notion of self-determination take a territorial form, for example a Volkstaat, or are there other recognised ways of expressing such a heritage?
- What types of Community could be said to share such a heritage as to justify a form of self-determination?

- What level of support should be shown within a community as a prerequisite for a self-determination?

* **ELECTORAL SYSTEM**

- How should members of Parliament be elected?
- Should our electoral system be based on a system of pure proportional representation i.e party list only (as in 1994 election) or should it be combined with constituencies?

* **CONSTITUTIONAL AMENDMENTS**

- Once a final Constitution has been adopted, how should it be amended?

THEME COMMITTEE 3

* **INTERGOVERNMENTAL RELATIONS**

- Should intergovernmental institutions be regulated by the Constitution, Legislation or could they be voluntary or by natural development?
- What should be the role of intergovernmental institutions?
- Does Central Government have a role in mediating disputes between provincial governments?

* **LOCAL GOVERNMENT**

- Please furnish us with you views on how the institution of local government can bring the government closer to the people.

- What is your opinion on the following view:

"Local government is about the rendering of services for the local communities", if you agree, how, if not, please explain.

- Should local government enjoy any degree of autonomy, and if so, what should be the nature of such autonomy and what degree of local government autonomy should be provided for in the national constitution?

- In establishing local authorities, especially in rural areas wherein exists the system of traditional leadership, how should the system of traditional leaders be accommodated in local government structures?

* **FINANCIAL AND FISCAL RELATIONS**

- To ensure financial viability, what fiscal powers, provisions or arrangements should be included in the national constitution?
- To what extent should the Constitution restrict the capacity of provinces to levy taxes?
- What should be the borrowing powers of provincial and local authorities, should there be constitutional restrictions imposed on these powers?
- Should there be a constitutionally imposed formula to ensure that each level of government enjoys an equitable share of revenue collected nationally?

THEME COMMITTEE 4

* **SOCIO-ECONOMIC RIGHTS**

- What social and economic rights should be included in the Constitution?
- What kind of environmental rights should there be?
- Should there be a right to strike?
- Should lock outs, closed shops be permitted?

* **FREEDOM OF LANGUAGE AND CULTURE**

- What about language and culture

* **POLITICAL RIGHTS**

- Should parties that propagate violent and racist policies be allowed to participate in political life?
- Who should have the right to vote?

* **CITIZENS' RIGHTS**

- What about citizens' rights?

* **FREEDOM OF MOVEMENT & FREEDOM OF RESIDENCE**

- What about freedom of movement and the right of residence?

* **ADMINISTRATIVE JUSTICE; ACCESS TO COURTS & DETAINED, ARRESTED AND ACCUSED PERSONS**

- Should any accused person be entitled to bail?
- Should any accused person be entitled to legal representation at the state's expense?

* **LIMITATION OF RIGHTS; STATES OF EMERGENCY AND SUSPENSION OF RIGHTS**

- Should all fundamental rights be limited?
- If so, under what conditions?

THEME COMMITTEE 5

* **JUDICIAL POWERS OF TRADITIONAL LEADERS**

- Should the constitution permit traditional leaders to exercise judicial powers?
- If so, how should the constitution deal with the following issues:
 - * What judicial powers should traditional leaders have?
 - * Should they have powers in respect of both criminal and civil cases?
 - * Should there be limits (eg. amounts, types of offence etc) on their powers?
 - * Should their powers be limited to customary law?
 - * Should there be geographical limits on their powers (for example, should they have powers over residents of their area who live elsewhere and persons who live elsewhere who enter their area)?
 - * Should submission to their powers be voluntary or compulsory?
 - * How should the question of the competing jurisdictions of the traditional authorities and the ordinary courts be dealt with?
 - * How would the courts of traditional leaders fit into the hierarchy of courts?

* What provisions should be made for appeals or reviews to the ordinary courts?

* What provision should be made for complaints against the conduct of traditional leaders in their judicial capacity?

- What provision should be made for the revision of customary law and customary courts to bring it in line with the constitution?

- How should the constitution deal with the disparity of treatment between persons subject to traditional leaders and others?

THEME COMMITTEE 6

*** Subtheme Committee 6.1**

- What should the Constitution say about the Public Service?

- Should future elections in SA be organised and supervised by an Election Commission, as opposed to a Government Department? If an election commission is preferred, what should be the structure, powers and functions of this Commission?

*** Subtheme Committee 6.2**

- What should the final text of the constitution say about the financial and fiscal commission?

- Should the constitution contain a provision on public enterprises?

*** Subtheme Committee 6.3**

- Should the Constitution contain a provision on the Human Rights Commission? If so, what should be the structure, powers and functions of this Commission?

- Should the Constitution make provision for a commission on Gender Equality? If so, what should be the structure, functions and powers of this Commission?

*** Subtheme Committee 6.4**

- What should the constitution say about the Security Services, i.e., National Defence Force and the Police Services?

