

2/12/6

**CONSTITUTIONAL
ASSEMBLY**

**CONSTITUTIONAL
COMMITTEE**

**MONDAY
30 JANUARY 1995
(14H15)
M46**

DOCUMENTATION

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CONSTITUTIONAL ASSEMBLY
MEETING OF THE CONSTITUTIONAL COMMITTEE

Please note that a meeting of the above committee will be held as indicated below :

Date : Monday 30 January 1995

Time : 14h15 - 16h00

Venue : M46

AGENDA

1. Opening
 2. Minutes: Pages 2 - 8
 3. Matters Arising: See Agenda Items Below
 4. Technical Committees: Page 9
 5. Work Programme: Page 10
 - 5.1 Legal Content: Pages 11 - 38
 - 5.2 Work Schedule: No Documentation
 - 5.3 Community Liaison: Pages 39 - 50
 - 5.4 Commission on Provincial Government: Pages 51 - 55
 6. Drafting Process: Proposal: Pages 56 - 60
 7. AOB
 8. Closure
-

H EBRAHIM
EXECUTIVE DIRECTOR
CONSTITUTIONAL ASSEMBLY

Enquiries : Ms MM Sparg, Tel 403 2273, Page 468 5316

CONSTITUTIONAL ASSEMBLY
MINUTES OF THE TENTH MEETING OF THE CONSTITUTIONAL
COMMITTEE

FRIDAY 2 DECEMBER 1994

Present

Ramaphosa, M C (Chairperson)

Bhabha, M	Malatsi, D M (Alt)
Camerer, S (Alt)	Meshoe, K R
Chabane, O C	Meyer, R P
De Beer, S J (Alt)	Moosa, M V
De Lange, J H	Moosa, M W
Du Toit, D C	Mtshali, L P H M
Eglin, C	Mulder, C P
Felgate, W S	Nzimande, B E
Fourie, A	Omar, D
Gogotya, N J	Pahad, E G
Gordhan, P J	Rabie, J A
Hofmeyr, W (Alt)	Rabinowitz, R
Holomisa, S P	Ripinga, S S
Kgoali, J L B	Schutte, D P A
Kgositsile, B	Sifora, R K
King, T J	Sizani, R K
Kota, Z A	Skweyiya, Z (Alt)
Lekgoro, M K	Smith, P F
Ligege, M G	Van Heerden, FJ (Alt)
Lockey, D	Viljoen, C L
Mabandla, B S	Wessels, L
Mahlangu, N J	
Makhanya, D W	

Apologies were received from:

C Ackermann, K Asmal, G J Fraser-Moleketi, F N Ginwala, B Kgositsile, E S Mchunu, B T Ngcuka, L B Ngwane, V J Van Breda, F J Van Deventer.

1. OPENING

The meeting opened at 10h15 and the agenda was adopted.

2. MINUTES

The Minutes of the Ninth Meeting of the Constitutional Committee on Monday 14 November 1994 were adopted.

3. MATTERS ARISING

Matters arising were included in agenda items below.

4. INDEPENDENT PANEL OF CONSTITUTIONAL EXPERTS

4.1 Mr. Ebrahim spoke to the document entitled "*Independent Panel of Experts*," included in the documentation, and Mr. Ramaphosa summarised discussions with Prof. van der Westhuizen at the 28 November 1994 Management Committee meeting.

4.2 It was agreed that the Co-Chairs would undertake discussions with the Panelists on the following issues:

4.2.1 Terms of Employment: the meeting agreed in principle that the Independent Panel would be employed on a full-time basis, but that they would be phased in. Details of how this would occur would be worked out in discussion with the Panelists.

4.2.2 Role: it was agreed that the role of the Independent Panel would be clarified through discussion with the Panelists and interpretation of the Constitution. However, it was agreed that the question of who should draft constitutional texts would be left in abeyance until the Work Programme was underway.

4.2.3 Relations with the Press: the meeting agreed that until the role of the Independent Panel was clarified, they would make no statements to the Press. The question of whether they could address conferences or seminars on constitution drafting would also be raised.

5. WORK PROGRAMME

5.1 REPORT ON THE WORK PROGRAMME

5.1.1 Mr. Ebrahim introduced the separately bound document entitled "*Directorate Report: Work Programme 1995*," distributed with the documentation. He tabled and spoke to a document entitled "*Decisions Required*".

5.1.2 The meeting re-prioritised the Recommended Work Programme on Page 119 of the Directorate Report and agreed that the first block of Theme Committee work would be constituted as follows:

- i. Theme Committee One: i. Democracy; and ii. Character of the State.
- ii. Theme Committee Two: the Separation of Powers.
- iii. Theme Committee Three: the Nature of the Provincial System and Local Government.
- iv. Theme Committee Four: Constitutional Principle II.
- v. Theme Committee Five: i. The Relationship between the Different Levels of the Court and ii. A Single or Split Judiciary.

5.1.3 The meeting then accepted the Work Programme as amended as a framework for work in 1995. However, the meeting stressed the need for flexibility and reassessment as work proceeded. It agreed to the following process:

- i. Work on the first block would proceed and progress would be assessed at the end of its scheduled period.
- ii. The second block would be prioritised upon completion of the first. Omissions in the current document could be added, themes re-organised, and further issues raised then.
- iii. The following issues would be considered while re-prioritising later blocks:

* Outstanding issues;

- * Organisation of Constitutional Issues per Theme Committee;
- * Positions on Commissions and Sub-Committees; and
- * The Establishment of a Commission on the National Territory.

5.1.4 The meeting accepted the Calendar of Activities as a broad framework, but stressed the need for flexibility. Concern was expressed that the deadline for the first set of submissions was too early. However, there was consensus that work would proceed as planned and the deadline would be reviewed at the time.

5.1.5 The meeting endorsed the creation of four sub-committees in Theme Committee Six. It was agreed that their modus operandi would be regularised and that the sub-committees would be permitted to meet and operate simultaneously.

5.1.6 The meeting agreed that minutes of Theme Committee meetings would be available for the Chairperson to sign within 24 hours, but would be circulated to members at the start of the next meeting.

5.1.7 The meeting agreed to the following regarding Theme Committee reports:

- i. Reports would be presented to the Constitutional Committee for debate at the Constitutional Assembly as and when a particular constitutional issue identified within the work plan schedule had been processed by a Theme Committee.
- ii. Reports would include details of non-contentious issues and suggested approaches.
- iii. Theme Committee reports would be drafted by Theme Committee members with the secretariat providing the necessary administrative back-up.
- iv. Political parties which were unhappy with the report format used by a Theme Committee would discuss the issue in the Theme Committee. The issue would only be

brought to the Constitutional Committee if the matter could not be resolved in the Theme Committee.

5.1.8 The meeting agreed that all joint Theme Committees would be centrally co-ordinated by the Secretariat and not by individual Theme Committees.

5.1.9 The meeting agreed to the following decisions regarding submissions:

- i. The Administration would centralise the receipt of submissions;
- ii. As far as possible, all authors of submissions would be asked to provide an executive summary; and
- iii. Ideally, all Theme Committees would receive copies of submissions received for that particular Theme Committee, unless these were too bulk for reproduction. In that case, summaries would be provided at the discretion of Core Groups.

5.1.10 The meeting agreed to the following regarding Community Liaison:

- i. It endorsed the principle of agency, where all South African universities and certain NGOs would be approached to organise a season of constitutional conferences between February and June 1995. These conferences, organised in conjunction with the Constitutional Assembly, would cover the issues raised by the Theme Committees in their work programmes. Delegates to the conferences would include all role players and stake holders whose interests were affected by the issues identified for a particular conference. The resolutions of the conference would be sent to the Theme Committees.
- ii. Provincial governments would be consulted in relation to the following:
 - * Their own interests, which could be set out in submissions presented to Theme Committees;
 - * The contribution they could make to involve the

South African public in the constitution-making process;

- * The most appropriate work areas for Theme Committees to hold hearings in each province; and
 - * The formulation of a constitutional education programme for schools.
- iii. However, Community Liaison would submit detailed proposals on particular public participation programmes to the Constitutional Committee for its consideration and approval.

5.2 .TECHNICAL COMMITTEES

5.2.1 Mr. Ramaphosa introduced the document entitled, *"Management Committee Recommendations on the Appointment of Technical Committee,"* included in the documentation.

5.2.2 The meeting agreed that the list of technical experts would be amended to include all nominations forwarded by the IFP and for nominations forwarded by the NP for Theme Committee Five.

5.2.3 Regarding the selection of technical committees, the meeting agreed to the following:

- i. The sub-committee which dealt with the selection of the Independent Panel of Constitutional Experts would be mandated to consider the list of Experts nominated by Theme Committees and recommend to the Constitutional Committee the experts to be appointed to the Technical Committees.
- ii. The deadline for nominations would be the date of the first meeting of the sub-committee.
- iii. The sub-committee would report-back to the Management Committee at least one week before 23 January 1995.
- iii. Nominees recommended for inclusion in the Technical

Committees would be contacted immediately thereafter to "keep them on hold" until their nomination was confirmed.

- iv. The appointments would be considered and confirmed by the Constitutional Committee.

6. ALL OTHER BUSINESS

- 6.1 The meeting agreed to the following schedule of meetings during the first week of the 1995 session: on Monday, 23 January 1995 there would be a meeting of the Management Committee and of Theme Committee Chairpersons before the Opening of Parliament; and on Tuesday, 24 January 1995, there would be a meeting of the Constitutional Assembly. Each Theme Committee would also hold a workshop during the first week of session on its vision of the work ahead to give direction to its work.
- 6.2 It was agreed that at the commencement, at the first meeting of the Constitutional Assembly on Tuesday, 24 January 1995, political parties would forward their views on the spirit and vision of the constitution through debate and party submissions.

7. CLOSURE

- 7.1 Mr. Wessels extended good wishes to all committee members and the trust that all would travel safely and rest over the holidays.
- 7.2 The meeting closed at 13h45.

CONSTITUTIONAL ASSEMBLY

TELEPHONE: (021) 403 2252
FAX: (021) 461 4339
INTERNATIONAL: (27) 21 403 2252
FAX: (27) 21 461 4339

PO Box 15
CAPE TOWN 8000
REPUBLIC OF SOUTH AFRICA

REF No:

27 January 1994

MEMORANDUM

To: Constitutional Committee
From : Management Committee
Re : Appointment of Technical Committees

Having received and considered the report of the Sub-Committee on the Appointment of Technical Committees, The Management Committee recommends the following :

1. The Constitutional Committee agrees to increase the number of technical experts to be appointed to Theme Committees One to Five, from three to four; and
2. ten (10) technical experts to be appointed to the four(4) Sub-Theme Committees of Theme Committee Six to ensure representation of race and gender;
3. In principle recommends that technical experts be appointed to deal with the issues of Self-determination, Traditional Authorities and Local Government, noting that the Sub-Committee consider the details hereof and report back in due course;
4. Political approval will be sought for extra funding in the Budget for the remuneration of the increased number of technical experts and the support staff required for them; and
5. Finally, that the Sub-Committee meets urgently before 30 January 1994 to reconsider the short-list of technical experts and reports to the Constitutional Committee on 30 January 1994 on the appointment of specific experts so as not to cause any further delay in the process.

CONSTITUTIONAL ASSEMBLY

TELEPHONE: (021) 403 2252
FAX: (021) 461 4339
INTERNATIONAL: (27) 21 403 2252
FAX: (27) 21 461 4339

PO Box 15
CAPE TOWN 8000
REPUBLIC OF SOUTH AFRICA

REF NO:

27 January 1994

MEMORANDUM

To : Constitutional Committee
From : Management Committee
Re : Work Programme

The attached Work Programme is forwarded to the Constitutional Committee with the following recommendations :

1. Part One of the Programme dealing with the legal content thereof and Theme Committee agenda items should be forwarded to Theme Committees for their discussion and input;
2. Bearing in mind the delay in the appointment of Technical Committees, the Work Schedule needs to be re-adjusted, so that each Block is extended by two weeks;
3. Part Two of the Programme dealing with Community Liaison is presented for your consideration with the proviso that the entire programme needs to be viewed in the light of the extension of time referred to in point 2 above; and
4. Finally, the Commission on Provincial Government whose own work programme is also attached hereto as *Annexure A*, should be requested to ensure that their programme is adjusted to fit in with that of the CA which is bound by constitutional time limits and secondly, the CPG should be requested to forward staggered reports to the CA on a continuous basis so as not to delay the entire Work Programme of the CA.

WORK PROGRAMME

PART ONE :

LEGAL CONTENT AND THEME COMMITTEE AGENDAS

REVISION OF RECOMMENDED WORK PROGRAMME
EXPLANATORY NOTE

1. The Administration has now thoroughly revised the recommended work programme for Theme Committees 1 - 5 which was in principle accepted as a broad framework by the Constitutional Committee on the 2 December 1994. We have also prepared an additional document in respect of each Theme Committee to provide additional information which may be of assistance to the Theme Committees in performing their tasks.

2. The revision was done mindful of the concerns raised in discussions when the recommended work programme was tabled in the Management and Constitutional Committees. In revising the work programme the objectives were as follows:
 - 2.1 To achieve better vertical co-ordination in the work programme, i.e. the sequence in which Theme Committees deal with the various issues in their respective themes. The revised work programme attempts to foster a systematic approach and to assist committees to deal with the various issues in a logical way.

 - 2.2 To improve lateral coherency in issues dealt with by different Theme Committees in the same time frames (blocks). Because of the interrelatedness of most of the agenda items in the blocks it would be impossible to devise a perfect programme, but the present proposals do go a long way to achieve better horizontal co-ordination between the tasks of the various Theme Committees.

 - 2.3 To eliminate unnecessary overlaps in the work programmes of the different Theme Committees. Duplication of work in the Theme Committees could have an adverse or even disruptive effect on the process and overlaps should therefore be avoided as far as possible.

 - 2.4 To provide particulars as to what the agenda items in the blocks entail. For this purpose an additional document was prepared in respect of each Theme Committee which contains a "suggested framework" in respect of each agenda item. It is suggested that these frameworks for the different agenda items will come in handy to avoid unnecessary overlaps between the Theme Committees. These documents, however, need further development, especially in the case of Theme Committee 4.

 - 2.5 To relate the different agenda items in the blocks of the work programme to the relevant Constitutional Principles and also to the

corresponding provisions of the Interim Constitution. These particulars are contained in the documents referred to in paragraph 2.4.

3. As was previously explained, the work programme and now also the suggested frameworks for the agenda items on the work programme should not be seen as anything but a recommendation from the side of the Administration to facilitate the process, given the time constraints to write the new constitution and also the need to plan, structure and co-ordinate the media and public participation programmes in line with the process.

FIRST REVISION OF RECOMMENDED WORK PROGRAMME

BLOCK NO	TC 1	TC 2	TC 3	TC 4	TC 5
1	<ol style="list-style-type: none"> 1. Democracy and Character of State 	<ol style="list-style-type: none"> 1. Separation of powers 	<ol style="list-style-type: none"> 1. Nature and status of the provincial system and local government 	<ol style="list-style-type: none"> 1. Constitutional Principle II 	<ol style="list-style-type: none"> 1. Appropriate judicial system
2	<ol style="list-style-type: none"> 2. Equality 3. One, sovereign state 	<ol style="list-style-type: none"> 2. Structures of government 	<ol style="list-style-type: none"> 2. National and provincial legislative competences 	<ol style="list-style-type: none"> 2. Nature of Bill of Rights and application 3. Equality 4. Human dignity 5. Right to life 6. Privacy 	<ol style="list-style-type: none"> 2. Supreme Court
3	<ol style="list-style-type: none"> 4. Supremacy of the Constitution 	<ol style="list-style-type: none"> 3. Functioning of national and provincial structures of government 	<ol style="list-style-type: none"> 3. National and provincial executive competences 	<ol style="list-style-type: none"> 7. Religion, belief and opinion 8. Freedom of expression 9. Freedom of association 10. Language and culture 	<ol style="list-style-type: none"> 3. Constitutional Court 4. Jurisdiction of Supreme Court

4	5. Accountable government	4. Volkstaat and community selfdetermination	4. Structural aspects of local government	11. Administrative justice 12. Access to information 13. Access to courts 14. Freedom and security of the person 15. Detained, arrested and accused persons	5. Other courts
5	6. The Economy	5. Traditional authorities	5. Functional aspects of local government	16. Servitude and forced labour 17. Economic activity 18. Property 19. Labour relations 20. Environment	6. Customary law and customary and tribal courts
6	7. Representative government 8. Citizenship 9. Suffrage	6. Electoral system at national and provincial level	6. Electoral system at local level	21. Citizens' rights 22. Political rights 23. Freedom of movement 24. Freedom of residence 25. Freedom of demonstration and petition	7. Judicial office-bearers
7	10. Language	7. Constitutional amendments	7. Financial and fiscal relations	26. Children's rights 27. Education rights	8. Other judicial institutions

8	11. Foreign relations and international law			28. Other rights and directive principles 29. Customary and indigenous law 30. Linguistic, religious and cultural minorities	9. General matters
9	12. Name, Symbols and National Territory 13. Seats of government			31. Limitation of rights 32. Effect of Bill of Rights on existing law 33. States of emergency and suspension of rights	10. Transitional arrangements
10	14. Preamble and Postamble			34. Interpretation of Bill of Rights 35. Horizontal application of Bill of Rights 36. Class actions	

THEME COMMITTEE 1

Block 1: Agenda item 1: Democracy and Character of State

Suggested framework for agenda item 1

- (a) General principles
- (b) Extent to which the Constitutional Principles already determine a particular system of democracy for South Africa.
- (c) Areas of flexibility within the Principles
- (d) Possible approaches to an appropriate system of democracy for South Africa.

Relevant Constitutional Principles: I, II, VI, VIII, XIV, XVI, XVII, XIX

Relevant sections of Interim Constitution: Preamble, 1(1), 6, 21, 37, 75, 96, 124, 126, 174

Block 2: Agenda item 2: Equality

Suggested framework for agenda item 2

- (a) Formal and substantive equality.
- (b) Equal opportunities and access to equal opportunities.
- (c) Elimination of vertical and horizontal discrimination.
- (d) Promotion of racial and gender equality.

Relevant Constitutional Principles: I, II, III, V, XI, XII, XIII

Relevant sections of Interim Constitution: Preamble, 3, 8, 10, 12, 17, 32, 33(4), 119, 121

Agenda item 3: One, sovereign state

Suggested framework for agenda item 3

The concept of "one, sovereign state", particularly in relation to

- provincial autonomy;

- minority participation;
- community self-determination and the "volkstaat" issue;
- traditional monarchies.

Relevant Constitutional Principles: I, XI, XIII, XIV, XVI, XVIII, XIX, XX, XXII, XXXIV

Relevant sections of Interim Constitution: 1, 40(1), 88, 126, 160, Chapter 11A.

Block 3: Agenda item 4: Supremacy of the Constitution

Suggested framework for agenda item 4

- (a) The concept of constitutionalism and the constitutional state.
- (b) Mechanisms needed to establish, entrench and protect constitutionalism.
- (c) Justiciability of the Constitution in relation to
 - organs of state (verticality); and
 - interpersonal relationships (horizontality).

Relevant Constitutional Principles: II, IV, V, VI, VII

Relevant sections of Interim Constitution: Preamble, 4, 7(1), 33(2) and (4), 34, 96, 110-118

Block 4: Agenda item 5: Accountable Government

Suggested framework for agenda item 5

- (a) Constitutional mechanisms to ensure government accountability.
- (b) Accountability with reference to
 - national legislature
 - provincial legislatures
 - electorate
 - affected individual

- (c) Access to government information.
- (d) Administrative justice and accountability to the judiciary.

Relevant Constitutional Principles: II, VI, IX, XXVII, XXIX
Relevant sections of Interim Constitution: 4, 7, 22, 23, 24, 92, 110, 115, 153, 185, 186, 187, 191, 192, 198, 199, 209(2), 213

Block 5: Agenda item 6: The Economy

Suggested framework for agenda item 6

- (a) Constitutional regulation of economic matters.
- (b) Constitutional mechanisms to achieve substantive equality, economic empowerment and socio-economic advancement.

Relevant Constitutional Principles: II, III, V, XXVIII
Relevant provisions of Interim Constitution: 26, 27, 28

Block 6: Agenda item 7: Representative Government

Suggested framework for agenda item 7

- (a) The extent to which the Constitutional Principles already determine a particular system of representative government.
- (b) Areas of flexibility within the Constitutional Principles.
- (c) Broad outline of an appropriate system of representative government for South Africa.
- (d) Referenda as an instrument of decision-making.

Relevant Constitutional Principles: I, II, VIII, XIV, XVII
Relevant sections of Interim Constitution: 6, 21, 39, 40, 48, 77, 88, 127, 129, 145, 179, Schedule 2

Agenda item 8: Citizenship

Suggested framework for agenda item 8

- (a) Aspects of citizenship appropriately to be dealt with in the Constitution.

- (b) Rights and responsibilities of citizenship.

Relevant Constitutional Principle: I, II

Relevant sections of Interim Constitution: 5, 20

Agenda item 9: Suffrage

Suggested framework for agenda item 9

- (a) The constitutional right to vote
- (b) Minimum age and other qualifications
- (c) The question of voting rights for non-citizens.

Relevant Constitutional Principles: II, VIII

Relevant sections of Interim Constitution: 6, 21

Block 7: Agenda item 10: Language

Suggested framework for agenda item 10

- (a) Question of official language(s) at national and provincial level.
- (b) Protection and promotion of diversity of language.
- (c) Use of language(s) in and by government and public institutions.
- (d) Language(s) in which statutes must be drafted.

Relevant Constitutional Principles: II, XI

Relevant sections of Interim Constitution: 3, 8, 25(1)(a), (2)(9) and 32(b) and (c), 65(1) and (2), 107, 141(1) and (2), (3)(i), 31

Block 8: Agenda item 11: Foreign relations and international law

Suggested framework for agenda item 11

- (a) Head of State's powers and responsibilities.
- (b) Employment of military apparatus for external purposes.
- (c) International law and treaties.

Relevant Constitutional Principles: XXI(3)

Relevant sections of Interim Constitution: 82(1)(f) and (i) and (2)(d), 227(1)(b) and (2)(a) and (e), 228(4) and 231

Block 9: Agenda item 12: Name, Symbols and National Territory

Suggested framework for agenda item 12

As regards national territory:

- (a) Proper definition, also of provincial boundaries
- (b) Limits of territorial waters
- (c) Prince Edward and other Islands

Relevant Constitutional Principles: 1, XVIII (1) and (3)

Relevant sections of Interim Constitution: 1(2), (2) 124, 248 and Schedule 1

Agenda item 13: Seats of government

Suggested framework for agenda item 13

- (a) Seat of national legislature
- (b) Seat of national executive
- (c) Seat of Constitutional and Appeal Courts

Relevant sections of Interim Constitution: 46(1), 53(1), 106

Block 10: Agenda item 14: Preamble and postamble

THEME COMMITTEE 2

Block 1: Agenda item 1: Separation of Powers

Suggested framework for agenda item 1

- (a) Separation of powers between legislature, executive and judiciary.
- (b) Broad outline of constitutional checks and balances to ensure accountability, responsiveness and openness.
- (c) Broad outline of the structures needed for the exercise of legislative and executive power at national, provincial and local level.

Relevant Constitutional Principles: VI, XVI, XXIV

Relevant sections of Interim Constitution: 36, 37, 75, 76, 77(4), 88, 96, 125, 144, 145, 149, 174, 183, 184

Block 2: Agenda item 2: Structures of government

Suggested framework for agenda item 2

- (a) Detailed notes on legislative and executive structures and institutions at national level.
- (b) Question of a second legislative chamber at national level.
- (c) Composition of the said structures and institutions.
- (d) Determination of the extent to which the Constitution should provide for legislative and executive structures at provincial level having regard to Constitutional Principle XVIII(2)
- (e) Detailed notes on legislative and executive structures and institutions at provincial level and the extent to which such structures and institutions should be provided for in the Constitution.
- (f) Composition of these structures and institutions.

Relevant Constitutional Principles: XVI, XVIII(2) read with section 160(3)(a), XXXII

Relevant sections of Interim Constitution: 36, 40, 41, 42, 48, 49, 50, 75, 76, 84, 88, 94, 125, 127, 131, 132, 144(1), 149

Block 3: Agenda item 3: Functioning of structures of government

Suggested framework for agenda item 3

- (a) Detailed notes on the operational and procedural aspects of national legislative and executive structures and institutions.
- (b) Detailed notes on the operational and procedural aspects of provincial legislative and executive structures and institutions and the extent to which such structures and institutions should to be regulated in the Constitution.

Relevant Constitutional Principles: X, XVI, XVIII(2) read with section 160

Relevant sections of Interim Constitution: 38, 43 - 47, 51 - 61, 63 - 67, 77 - 80, 83, 85 - 87, 89 - 95, 128, 130, 133 - 143, 145, 146, 148, 150 - 154

Block 4: Agenda item 4: Volkstaat and community self-determination

Suggested framework for agenda item 4

- (a) The "Volkstaat" issue
- (b) Alternative forms of community self-determination.

Relevant Constitutional Principles: II, XI, XII, XXXIV

relevant sections of Interim Constitution: 3, 14, 17, 31, 32(b) and (c), 33(4), Chapter IIA

Block 5: Agenda item 5: Traditional authorities

Suggested framework for agenda item 5

- (a) Recognition of traditional authorities and traditional monarchs.
- (b) Institution, role, authority and status of traditional authorities and traditional monarchs.
- (c) The role of traditional authorities and traditional monarchies in

- national government
- provincial government
- (d) Consideration of structures such as
 - Provincial Houses of Traditional Authorities
 - National Council of Traditional Authorities.

Relevant Constitutional Principles: XI, XII, XIII, XVII, XXXIV
Relevant sections of Interim Constitution: 33(2) and (3), 35(3), 160(3)(b), Chapter II.

Block 6: Agenda item 6: Electoral Systems at national and provincial levels

Suggested framework for agenda item 6

Electoral systems -

- (a) at national level of government
- (b) at provincial level of government.

Relevant Constitutional Principles: VIII, XVII, XXXIII
Relevant Sections of Interim Constitution: 6, 21, 39, 40, 93, 127, 129, 154, 249, 250, Schedule 2

Block 7: Agenda item 7: Constitutional amendments

Suggested framework for agenda item 7

- (a) Special procedures and special majorities
- (b) Additional requirements where powers, functions, boundaries or institutions of provinces are altered.

Relevant Constitutional Principles: XV, XVIII(4) and (5)
Relevant sections of Interim Constitution: 62

THEME COMMITTEE 3

Block 1: Agenda item 1: Nature and status of the provincial system and local government

Suggested framework for agenda item 1

1. Extent to which the Constitutional Principles already determine a particular system of
 - provincial government, and
 - local government
2. Areas of flexibility within the Principles.
3. The implications of CPXVIII(2) and the expressions "substantially less" and "substantially inferior".
4. General notes on appropriate systems of provincial and local government accommodatable within the Principles.

Relevant Constitutional Principles: I, XVI, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII

Relevant sections of Interim Constitution: 48, 61, 62, 114, Chapter 9, Chapter 10, 185, 198 - 206, 213, 217, 219, 235, 237, 239, 245, Schedule 6

Block 2: Agenda item 2: National and provincial legislative competences

Suggested framework for agenda item 2

1. The nature of legislative competences at the various levels of government particularly with regard to
 - concurrent or exclusive powers;
 - national and provincial overrides;
 - delegated and agency powers.
2. A list of functional areas that may be considered for assignment to the provinces (excluding financial and fiscal matters).

3. Provincial Constitutions and their content and status.

Relevant Constitutional Principles: XVIII, XIX, XX, XXI, XXII, XXIII

Relevant sections of Interim Constitution: 126, 160, Schedule 6

Block 3: Agenda item 3: National and provincial executive competences

Suggested framework for agenda item 3

1. The nature of executive authority at national and provincial level.
2. The content of executive authority at national and provincial level

Relevant Constitutional Principles: XVIII, XIX, XX

Relevant sections of Interim Constitution: 75, 81, 82, 144, 147

Block 4: Agenda item 4: Structural aspects of local government

Suggested framework for agenda item 4

1. Metropolitan, urban and rural structures of local government.
2. Areas of territorial jurisdiction.
3. Composition of local structures.

Relevant Constitutional Principles: XVI, XXIV

Relevant sections of Interim Constitution: 174, 177, 245 and the Local Government Transition Act, 1993

Block 5: Agenda item 5: Functional aspects of local government

Suggested framework for agenda item 5

1. Powers and functions at local level (excluding financial and fiscal relationship with other levels of government)
2. Functioning of local structures and procedural aspects

Relevant Constitutional Principles: IX, X, XX, XXIV

Relevant sections of Interim Constitution: 175, 178, 180, 245 and the Local Government Transition Act, 1993

Block 6: Agenda item 6: Electoral system at local level

Relevant Constitutional Principles: VII, XIV

Relevant sections of interim constitution: 179, 245

Block 7: Agenda item 7: Financial and Fiscal Relations

Suggested framework for agenda item 7

1. Intergovernmental fiscal and financial relations.
2. Financial and fiscal powers at
 - national level
 - provincial level
 - local level
3. Mechanisms to ensure equitable fiscal and financial allocations.

Relevant Constitutional Principles: XXV, XXVI, XXVII

Relevant sections of Interim Constitution: 155, 156, 157, 158, 159, 178, Chapter 12

THEME COMMITTEE 4

Block 1: Agenda item 1: Constitutional Principle II

Suggested framework for agenda item 1

1. General notes on Principle II clarifying phrases such as
 - Everyone shall enjoy ... "(Whether the term "everyone" includes juristic persons, structured and unstructured groups, and organs or civil society, etc)
 - "all universally accepted fundamental rights, freedoms and civil liberties" (which rights etc., qualify as universally accepted fundamental rights)
 - "entrenched and justiciable provisions"
 - "due consideration to *inter alia* the fundamental rights contained in Chapter 3"
2. General discussion of related Constitutional Principles such as I, III, V, IX, XI, XII, XIII(1), XXVIII, XXXIV
3. Suggested approach as to the identification of rights not covered by CP II.

Relevant sections of Interim Constitution: Preamble, Sections 3, 4, Chapter 3, Sections 98(2), 101(3), 115 - 123

Block 2: Agenda item 2: Nature of Bill of Rights and application

Agenda item 3: Right to equality

Suggested framework for agenda item 3

- (a) Content of the right.
- (b) Equality as a human right of the individual and the question of juristic persons.
- (c) Prohibited grounds for discrimination.
- (d) Affirmative action.

- (e) Effects on customary law, including the rules and customs of religious and traditional communities.

Relevant Constitutional Principles: I, II, III, V, XI, XII, XIII(I)

Relevant sections of Interim Constitution: Preamble, Sections 3, 8, 10, 12, 17, 32, 33(4), 119 - 123

Agenda item 4: Right to human dignity

Content of right

See CP II and Sections 10,12, 25(1)(b)

Agenda item 5: Right to life

Suggested framework to agenda item 5

- (a) The right to life as a fundamental right.
(b) Controversial issues such as -

- capital punishment
- abortion
- euthanasia

See CP II and Section 9

Agenda item 6: Right to Privacy

Suggested framework for agenda item 6

- (a) Aspects of personal privacy that need to be protected constitutionally.
- (b) Controversial aspects
- intelligence services and state security
 - access to private information required for the exercise of one's rights
 - searches of the person and property for purposes of combating or preventing crime and statutory offences

See CP II and Sections 13, 23

Block 3: **Agenda item 7: Freedom of religion, belief and opinion**

Suggested framework for agenda item 7

- (a) Content of this right.
- (b) Separation between church and state.
- (c) Religious observances in state and state-aided constitutions such as schools, prisons and the security services.
- (d) Academic freedom.
- (e) The recognition of systems of law of communities professing to a particular religion.

See CP II, XII and Sections 8(2), 14, 32(c)

Agenda item 8: Freedom of expression

Suggested framework for agenda item 8

- (a) Content of the right to freedom of speech and expression.
- (b) Press freedom.
- (c) State controlled media.
- (d) Private radio and television stations.
- (e) Hate propaganda or expression.

See CP II and Section 15

Agenda item 9: Freedom of association

Suggested framework for agenda item 9

- (a) Content of the right
- (b) Specific issues such as private discrimination

See CP II, XII and XVIII and Section 17

Agenda item 10: Freedom of language and culture

Content of these rights

See CP II, XII and XIII and sections 3, 31 and 32(b) and (c)

Block 4: Agenda item 11: Administrative Justice

Suggested framework for agenda item 11

- (a) Content of right
- (b) Horizontal application of right against private institutions

See CP II and Sections 7(2), 24

Agenda item 12: Right of access to information

Suggested framework for agenda item 12

- (a) Content of right
- (b) Horizontal application of right against private institutions

See CP II, IX and Section 23

Agenda item 13: Right of access to courts

Suggested framework for agenda item 13

- (a) Content of right
- (b) Question of "ouster" clauses

See CP II, VII and Sections 7(4), 22, 98, 101

Agenda item 14: Freedom and Security of the person

Suggested framework for agenda item 14

- (a) Content of the right
- (b) Specific related questions such as detention without trial

See CP II

Agenda item 15: Right of detained, arrested and accused persons

See CP II and Section 25

Block 5: Agenda item 16: Servitude and forced labour

See CP II and Section 12

Agenda item 17: Freedom to engage in economic activity

See CP II and Section 26

Agenda item 18: Rights to property

Suggested framework for agenda item 18

- (a) Individual and collective ownership
- (b) The land issue and restoration
- (c) Compensation for expropriation

See CP II and Sections 28, 121 - 123

Agenda item 19: Labour relations

Suggested framework for agenda item 19

- (a) Aspects of labour relations that need be protected as constitutional rights.
- (b) Question of constitutionalising rights contained in labour statutes.

See CP II, XII, XXVIII and Sections 27, 33(5)

Agenda item 20: Environment

See CP II and section 29

Block 6: Agenda item 21: Citizens' rights

Content of these rights

CP I, II and Sections 5, 20

Agenda item 22: Political rights

Suggested framework for agenda item 22

- (a) Content of these rights
- (b) Qualifications on the right to vote
- (c) Political rights of non-citizens

See CP II, VIII and Sections 6, 21

Agenda item 23: Freedom of movement

Content of right

See CP II and Section 18

Agenda item 24: Freedom of residence

Content of right

See CP II and Section 19

Agenda item 25: Freedom of assembly, demonstration and petition

Content of right

See CP II and Section 16

Block 7: Agenda item 26: Children's rights

See CP II and Section 30

Agenda item 27: Educational rights

See CP Section 32

Block 8: Agenda item 28: Other rights and directive principles

Agenda item 29: Customary, indigenous and religious law

See CP II, XIII and Sections 33(2) and (3), 35(3), 181

Agenda item 30: Protection of linguistic, religious and cultural minorities

See CP XII, XXXIV and Sections 3, 8(2), 14, 17, 31

Block 9: **Agenda item 31: Limitation of rights**

See CP II and Sections 5(2) and (3), 6, 7(2), 8(3), 14(2) and (3), 26(2), 28(2) and (3), 33

Agenda item 32: Effect of Bill of Rights

Suggested framework on agenda item 31

Effect on

- existing statutes
- common and customary law
- previous actions

See CP II and XIII(I) and sections 7(2) and 33(2) and (3)

Agenda item 33: States of emergency and suspension of rights

See CP II and Section 34, 82(4)

Block 10 **Agenda item 34: Interpreting Bill of Rights**

See section 35

Agenda item 35: Horizontal application of Bill of Rights or any particular rights

See section 33(4)

Agenda item 36: Class actions

See sections 7

THEME COMMITTEE 5

Block 1: Agenda item 1: Appropriate judicial system

Suggested framework for agenda item 1

- (a) General principles
- (b) Extent to which Constitutional Principles already determine a particular judicial system
- (c) Broad notes on appropriate court system
 - higher courts
 - lower courts
 - specialized courts
- (d) Courts of final instance
 - appeal court/constitutional court
 - single or dual channel
- (e) Relationship between different courts

Relevant Constitutional Principles: II, IV, V, VI, VII

Relevant sections of Interim Constitution: Chapter 7 and sections 241 and 242

Block 2: Agenda item 2: Supreme court

Suggested framework for agenda item 2

- (a) General jurisdiction
 - appeal division
 - provincial and other divisions
- (b) Jurisdictional areas of provincial and other divisions
- (c) Composition

- (d) Relationship between divisions of supreme court and constitutional court
- (e) Access

Relevant constitutional principles: II, VII

Relevant sections of Interim Constitution: 96, 97, 101, 102, 241 and 242

Block 3: **Agenda item 3: Constitutional Court**

Suggested framework for agenda item 3

- (a) Jurisdiction
- (b) Composition
- (c) Engagement
- (d) Access to constitutional court

Relevant Constitutional Principles: II, IV, VII

Relevant sections of Interim Constitution: 96, 97, 98, 99, 100

Agenda item 4: Constitutional jurisdiction of Supreme Court

Suggested framework for agenda item 4

Constitutional jurisdiction of -

- (a) appeal division
- (b) provincial and other divisions

Relevant sections of Interim Constitution: Section 101(3) to (6)

Block 4: **Agenda item 5: Other courts**

Suggested framework for agenda item 5

- (a) Magistrate's courts
- (b) Specialized courts
- (c) Other possible courts

- (d) Jurisdiction and jurisdictional areas
- (e) Constitutional jurisdiction of lower courts
- (f) Composition

See CP VII and section 103

Block 5: **Agenda item 6: Customary law**

Suggested framework for agenda item 6

- (a) Recognition of customary law
 - indigenous African law
 - laws of religious communities
- (b) Tribal/customary courts
- (c) Jurisdiction

See CP XIII(1) and section 103

Block 6: **Agenda item 7: Judicial office-bearers**

Suggested framework for agenda item 7

- (a) Appointment, removal from office and remuneration of judges and other judicial office-bearers
- (b) Independent structures dealing with appointment, conditions of service; etc, of judges and other judicial office-bearers

See CP VII and sections 104, 105 and 109

Block 7: **Agenda item 8: Other judicial institutions**

Suggested framework for agenda item 8

- (a) Attorneys-General and public prosecutors
- (b) Possible introduction of system of public defenders

See section 108

Block 8: **Agenda item 9: General matters**

Suggested framework for agenda item 9

- (a) Court language
- (b) Interpreters
- (c) Interpretation of laws
- (d) International law
- (e) Any other related judicial matter

See sections 35, 107, 231 and 232

Block 9: **Agenda item 10: Transitional arrangements**

See Chapter 15

WORK PROGRAMME

PART TWO :

COMMUNITY LIAISON PROGRAMME

DRAFT PUBLIC PARTICIPATION PROGRAMME

COMMUNITY LIAISON

MISSION STATEMENT :

“To facilitate an interface or dialogue between the South African people and their elected representatives by consulting the population at various levels and at various stages of the process of constitution making.”

(CA Resolution of 31 October 1994)

INTRODUCTION

On 31 October 1994 the Constitutional Assembly adopted a document entitled “**Public Participation - A Strategic Overview**” which set out the broad framework within which the community liaison programme will take place.

1. GUIDING PRINCIPLES

- Transparency
- Credibility
- Legitimacy
- Consultation
- Inclusivity

2. OBJECTIVES OF PUBLIC PARTICIPATION PROGRAMME (PPP) :

(Extracted from Constitutional Assembly Resolutions, 5 September 1994)

- ensure that the draft constitution enjoys the support and allegiance of all South Africans
- new constitution should represent the aspirations of all our people
- process should serve to unite the country’s people and produce a constitution which will become the cornerstone of the future South Africa. It should be people driven and transparent
- new constitution must be the product of an integration of ideas of all role players. In this regard, there should be maximum public participation
- there should be an effective strategy for media and community liaison
- media and public participation strategies should aim at facilitating the required “dialogue” and channels of communication between the broader public and their elected representatives
- programmes of the Constitutional Assembly should be “non-party political”. Strict monitoring should ensure that the programmes promote the Constitutional Assembly and the interests of the country as a whole

3. *COMMUNICATION OBJECTIVES*

- Develop, raise and popularise the CA profile
- Solicit views and submissions
- Brief public - on the constitution making process
- procedure for submissions to CA
- Consult all sectors and role players
- Increase public interest and awareness through constitutional education
- General involvement and engagement of public at large

4. *PROGRAMMES*

- Special Events
 - Launch Briefings
 - Other Special Events
- Theme Committee Requests
 - Hearings
 - Seminars
- Constitutional Public Meetings (CPMs)
- Constitutional Education Programme (CEP)

5. *TIME FRAMES*

It is envisaged that the CLP will be run in two phases;

- First Phase : Develop draft constitution - February 1995 to end of July 1995
- Second Phase : Popularising the draft constitution - August 1995 to May 1996

This document deals with detailed planning for February 1995.

LIST OF ABBREVIATIONS

PPP : Public Participation Programme	PMT : Project Management Team
CL : Community Liaison	SACS : South African Communication Service
CLP : Community Liaison Programme	TC : Theme Committee
CPM : Constitutional Public Meetings	NGO : Non Governmental Organisation
CEP : Constitutional Education Programme	CBO : Community Based Organisation

COMMUNITY LIAISON PROGRAMME : FEBRUARY 1995

6. SPECIAL EVENTS

6.A. LAUNCH BRIEFINGS

6.A.1. Introduction

It is proposed that the CA Chairpersons - Messrs Cyril Ramaphosa and Leon Wessels - should visit three provinces - namely the Western Cape, Northern Cape and Gauteng, in order to launch the CLP. Briefings in the other provinces are envisaged in the months to come. Briefings will also be used in the second phase of the constitution making process.

6.A.2. Objective

To develop, raise and popularise the CA profile.

6.A.3. Process

Three briefings are envisaged to launch the Community Liaison Programme (CLP). The briefings used to nationally launch the CLP should be of high profile to attract maximum media coverage.

6.A.4. Proposed Briefings

First briefing

Date	:	First week in February
Area	:	Western Cape (Boland)
Target group	:	Farmworkers and management

Second briefing

Date	:	Second week in February
Area	:	Northern Cape (Kuboes)
Target group	:	Rural community

Third briefing

Date	:	Third week in February
Area	:	Gauteng
Target group	:	Urban community

Structure

CA participants	:	Mr Cyril Ramaphosa (Chairperson CA) Mr Leon Wessels (Deputy Chairperson CA) Representatives from all political parties in the CA
Chair	:	It is proposed that the Provincial Premier or a Provincial MEC should chair the meeting.
Content of meeting	:	Duration: 1 hour: Brief: 30 minutes Questions: 30 minutes

Programme:

The programme will consist of a briefing on the Constitutional Process by the CA Chairs. It is expected, through these briefings, that:

- public participation will be encouraged;
- public awareness will be increased;
- the role of the CA in directing public participation is highlighted.

It is inevitable that questions from the audience will arise. Opportunity - though limited - should be given for questions to be posed to the Chairs.

Media:

Since these briefings serve as the launch of the CLP, time should be allowed for media interviews, if requested. Close co-operation with the Media Department is of utmost importance.

6.A.5. Resources

Given the time constraints, resources such as exhibitions, pamphlets, T-shirts cannot be fully utilised for the first three proposed briefings. The Media Department is requested to arrange posters and pamphlets.

6.A.6. Evaluation / monitoring

To determine the success of the first three briefings, and to set guidelines for future briefings, evaluation is important and will be dealt with as follows:

- Tape recording of the briefing;
- Monitoring the media response;
- Report back from the Chairs;
- Members of the CL team will attend the briefings to evaluate and monitor evaluation thereof.

6.B OTHER SPECIAL EVENTS

Further special events proposed include:

- A simulated Constitutional Assembly process for high school pupils;
- Human rights debates for high school pupils;
- Mock Constitutional Court cases for high school pupils and university law students.

7. *THEME COMMITTEE REQUESTS*

7.A *HEARINGS*

7.A.1. Introduction

Theme Committees will require specialist submissions on issues from target groups. Thus target groups will be invited to hearings to give views on required issues. The need for these hearings is subject to input from the TCs.

7.A.2. Objective

To solicit views and submissions.

7.A.3. Process

Community Liaison (CL) proposes single hearings where there is an overlap between different Theme Committees (TCs).

Schedule of Hearings

Date	Target Groups
February	Business
March	Women
April	Traditional Leaders
May	Labour
June	Religious Groups

All Theme Committees are free to indicate to CL which hearings they would like to attend.

Theme Committee requests

CL will draft a standard request form to be used by Theme Committees.

CL requires reasonable notice from TCs, taking into account:

- capacity of CL;
- availability of sectors who will need time to consult with their constituencies.

7.A.4. Resources

Background information packages eg press cuttings.

7.A.5. Evaluation/Monitoring

Managing Secretaries will evaluate the hearings and submit a report to CL.

7.B SEMINARS

It is proposed to hold seminars in order to brief Theme Committees on constitutional issues following the work programme. It is proposed that universities, technikons and other institutions be approached to convene specialist seminars on issues discussed by the TCs. The seminar programme will respond to the needs of the TCs and will be guided by the Law Advisers. Because of the ad hoc nature of this section of the programme all TC requests would need to be properly co-ordinated in conjunction with the Management Committee.

8. CONSTITUTIONAL PUBLIC MEETINGS (CPMs)

8.1. Introduction

To involve and engage the public at large, Constitutional Public Meetings (CPMs) will be held throughout the country. The public will have direct access to their elected representatives and will be invited to give individual submissions.

8.2. Objective

To involve and engage the public at large.

8.3. Process

February will be used as the pilot phase of the Community Liaison Programme. It is proposed that teams from the same TC will attend particular CPMs, and that a team should comprise up to ten people, with at least one person from each party.

*Proposed CPMs**Free State*

Target date : February 18
 Venue : Mangaung

Eastern Cape

Target date : February 18
 Venue : Grahamstown

Eastern Transvaal

Target date : February 18
 Venue : Drum Rock

Western Cape

Target date : February 18
 Venue : Worcester

Northern Cape

Target date : February 25
 Venue : Kimberley

KwaZulu - Natal

Target date : February 25
 Venue : Kwa-Mashu

North West

Target date : February 25
 Venue : Klerksdorp

Gauteng

Target date : February 25
 Venue : Duduza

Northern Transvaal

Target date : February 25
 Venue : Namakgale

Note: The issues to be addressed in particular CPMs will be determined on the basis of the work programme and will be guided by the Law Advisers.

8.4. Theme Committee Commitments

Three options as to how TC members will attend future CPMs are proposed (for logistical reasons, operational from March 1995). TC members are requested to decide on the most feasible option available, taking into account the objectives of the PPP as outlined by the Resolutions of the CA..

Option 1

Working days	:	Saturdays & Sundays
Who	:	The 6 TCs divided into 2 groups = 12 groups Group 1: Saturday & Sunday mornings : 2 meetings per group per weekend Group 2: Saturday & Sunday afternoons : 2 meetings per group per weekend
CPMs	:	24
Total CPMs	:	24 x 18 (available weekends till 30 June 1995) = 432

Option 2

Working days	:	Saturdays only : mornings & afternoons
Who	:	The 6 TCs
CPMs	:	12 : 6 TC groups x 2 meetings per day
Total CPMs	:	12 x 18 (weekends available till end of June 1995) = 216

Option 3

Working days	:	Every second Saturday
Who	:	The 6 TCs, alternating
CPMs	:	6 (6 meetings per weekend)
Total CPMs	:	6 x 18 weekends = 108 CPMs during PPP

8.5. Proposed structure of the CPMs

Duration	:	3 hours	
Welcome	:	Host	: 10min
Introduction	:	Facilitator	: 10min
Input	:		: 45min
	-	Constitution Making Process	
	-	Specific TC issues	
	-	Issues discussed by other TCs	
Questions and Discussion	:		: 105min
Closure	:		: 10min

TC members will be provided with a brief, compiled by CL and Law Advisers, before each CPM, giving details of current issues in each TC. These issues will be drawn from the Work Programme.

Please note: Due to translation and other factors, time allocated could be extended.

Appointment of Chairperson

It is proposed that :

- criteria for the selection of the chairperson be established by CL.
- chairperson should be neutral and identified from the community.
- the national Community Liaison Team should have veto power on the appointment of the chairperson.

Facilitator:

It is proposed that the facilitator should introduce the constitution making process and facilitate the making of submissions.

8.6 Proposed role of the Secretariat

It is proposed that the Managing/Minute Secretaries be involved in two levels of the Constitutional Public Meeting :

- during the CPM
 - take minutes of meeting and receive written submission
 - record meetings
 - collect evaluation forms from facilitator to return to CL
- after the CPM
 - take evaluation forms to Deputy Assistant Director : Community Liaison

8.7 Evaluation of CPMs

The following people are suggested to be evaluators: CA members, facilitators, provincial co-ordinators (CEP), national community liaison officers, random audiences and community leaders. Areas of evaluation will include process, content and promotional material.

9. CONSTITUTIONAL EDUCATION PROGRAMME (CEP)

9.1. Introduction

The Constitutional Assembly Work Programme for 1995 articulated the objectives of the Constitutional Education Programme as follows:

"The Constitutional Assembly, in association with a wide variety of NGOs, CBOs and other sectors of South African society, will conduct a wide ranging programme of constitutional education that will be accessible to South Africans at all levels. The programme will include South Africans in the constitution-making process by providing training on the key issues of constitutionality and briefing them on developments within the Constitutional Assembly. The assistance of NGOs and CBOs will allow this programme to reach disadvantaged communities, inaccessible or 'invisible' sectors and rural communities."

On 2 December 1994 the Constitutional Committee approved the programme and requested further information. Such information is detailed below.

9.2. Objectives

The Constitutional Education Programme has the following objectives:

- * helping to ensure maximum community participation in the constitution-making process, primarily through community workshops;
- * ensuring that the Constitutional Education Programme is in step with the different phases of the constitution-making process. In the first phase this will require a Constitutional Education Programme grounded in the workplan of the Theme Committees.

9.3. Process

The primary mechanism of delivery for this programme is the use of community workshop, so as to educate communities on the constitution-making process and to empower them to make submissions. Community workshops will be run, where possible, prior to Constitutional Public Meetings as well as independently of these meetings. This programme would continue into the second phase of the constitution-making process (the consideration of the draft constitution) and will lay the foundation for a wide-reaching public education programme which could be utilised in the development of a human rights culture.

Short-term implementation:

A short-term programme has been developed for February:

- Convening a national consultative meeting to be held in Cape Town, provisionally scheduled for 9/10 February, to provide NGOs and CBOs with a briefing and to assess existing resources;
- Running two pilot workshops in conjunction with NGOs, on Sunday 19 February and Sunday 26 February, at venues still to be finalised.

9.4. Training and Resource Development**Training:**

This will encompass the training and briefing of co-ordinators and workshop facilitators from the CA, SACS and NGOs.

Resources:

A wide range of resources are envisaged, in order to ensure that the constitution-making process is accessible to as many sectors and constituencies as possible. The use of simple language, translation, drama and visual materials will be essential components of these resources. A workshop kit will be developed in conjunction with the NGO sector, including resources such as:

- * an educational booklet on how to participate in the constitutional process;
- * a looseleaf constitutional education manual (allowing for updates);
- * outlines for community workshops;
- * educational/information posters, including CA promotional material for use in local community venues such as advice offices and municipal offices.

9.5. Evaluation and Reporting Mechanisms

Mechanisms will be developed to assess the overall implementation and impact of the programme, including feedback from workshops and the effectiveness of resources.

Regular reports will be made to the Management Committee and close liaison maintained with the Theme Committees.

10. CONCLUSION

It is proposed that detailed project planning be submitted to the Directorate: CA Administration and the Management Committee on a monthly basis. Planning should reach the Management Committee not later than the second meeting of the preceding month.

WORK PROGRAMME

ANNEXURE ONE:

COMMISSION ON PROVINCIAL GOVERNMENT WORK PROGRAMME

COMMISSION ON PROVINCIAL GOVERNMENT

PROGRAMME FOR WORKSHOPS, THINK TANKS AND CONSTITUTIONAL COMMITTEE MEETINGS JANUARY TO OCTOBER 1995

DATE	NATURE	SUBJECT
18 January	THINK TANK	General principles ex workshop
26 January	COMMITTEE	Consideration of general principles
16 February	THINK TANK	1. Provincial legislative competence 2. Provincial constitutions
2 March	COMMITTEE	Consideration of 1 and 2
9 March	THINK TANK	3. Provincial legislature (composition, representation, elections, proceedings, etc)
23 March	THINK TANK	4. Provincial Executive (composition, position of Premiers and MECs, procedures, etc) 5. Provincial staff matters
30 March	COMMITTEE	Consideration of 3 - 5
7 - 8 April (Provisional)	WORKSHOP	Financial and Fiscal matters (Provincial and local government)
13 April	THINK TANK	6. Financial and fiscal matters ex workshop
20 April	COMMITTEE	Consideration of 6
21 April (Provisional)	WORKSHOP	Traditional authorities
4 May	THINK TANK	7. Traditional authorities
11 May	THINK TANK	8. Self determination 9. Number and boundaries of provinces 10. Sub-regions (powers and functions)
18 May	COMMITTEE	Consideration of 7 - 10
19/20 May (Provisional)	WORKSHOP	Local government issues
25 May	THINK TANK	11. Local government issues ex workshop
2 - 3 June (Provisional)	WORKSHOP	Institutionalisation of intergovernmental relations

DATE	NATURE	SUBJECT
8 June	THINK TANK	12. Institutionalisation of intergovernmental relations ex workshop
15 June	COMMITTEE	Consideration of 11 and 12
22 June	THINK TANK	13. The Senate
29 June	COMMITTEE	Consideration of 13 and general discussion
13 July	<i>COMMISSION</i>	Consideration of draft recommendations to constitutional assembly (not legal text)
17 July - 9 August	Drafting Committee	(i) Legal drafting of constitutional text (ii) Determination of phasing in on transitional arrangements
10 August	<i>COMMISSION</i>	Consideration of draft submission to Constitutional Assembly including draft legal text
24 - 25 August	<i>WORKSHOP</i>	Interim comments from provinces
31 August	<i>COMMISSION</i>	Consideration of interim comments ex workshop
4 - 13 September	Drafting Committee	Drafting of final constitutional text
14 September	<i>COMMISSION</i>	Consideration of final text
15 September		Submission of recommendation and text to provinces for comment and to Constitutional Assembly for preliminary discussion/ consideration
12 October	<i>COMMISSION</i>	Consideration of written comments by provinces
19 October	<i>COMMISSION</i>	Consideration of final recommendation and text to Constitutional Assembly
23 October		Submission to Constitutional Assembly

md319

1995-01-11

Reference: 2/7

Mr C Ramaphosa
Chairperson
Constitutional Assembly
P O Box 15
CAPE TOWN
8000

Dear Mr Ramaphosa

CONSTITUTIONAL ASSEMBLY WORK PROGRAMME

The Commission discussed the Constitutional Assembly's work programme for 1995 in the light of its own programme, which has previously been submitted to you, at its meeting on 9 January 1995 and requested me to write to you to clarify its position vis a vis that of the Theme Committees who are committed to making reports to the Constitutional Committee by certain dates as set out in the programme.

In terms of section 161(1) of the interim Constitution, the development of a system of provincial government shall receive the priority attention of the Constitutional Assembly which, in this regard, shall take into consideration recommendations of the Commission and comments thereon by the respective provincial governments. In terms of section 164(2) the Commission is compelled not only to formulate recommendations to the Constitutional Assembly, but also to include draft constitutional provisions regarding all the matters enumerated in that subsection.

In order to carry out its mandate properly, the Commission needs to research all the issues in question, consult as widely as possible to obtain a wide spectrum of opinion in regard to those issues and ultimately to deliberate and come to its own conclusions on each of the issues and to draft its advice and constitutional proposals accordingly. Thereafter the provincial governments must be approached for their comments on the drafts, those comments must be considered and the drafts possibly amended after further deliberation by the Commission, before its proposals can be submitted to the Constitutional Assembly.

From the above it is obvious that the Commission cannot possibly submit its advice and drafts within the time frame stipulated for the Theme Committees in the work programme. The Commission will do its utmost to make its submissions to the Constitutional Assembly as soon as possible and with due regard to the time limit stipulated for the adoption of a new constitution in section 73(1) and the accordence of priority attention to the development of provincial government systems in section 161(1) of the interim Constitution.

The Commission is aware of the urgency of the matter and the need to provide the Constitutional Assembly with its advice timeously to facilitate its task. We trust that the Constitutional Assembly will appreciate the reasons why the Commission is unable to operate within the time frames proposed for Theme Committees who perform a function distinctly different from that of the Commission.

Yours sincerely

THOZAMILE BOTHA
CHAIRPERSON

md316

CONSTITUTIONAL ASSEMBLY

TELEPHONE: (021) 403 2252
FAX: (021) 461 4339
INTERNATIONAL: (27) 21 403 2252
FAX: (27) 21 461 4339

PO Box 15
CAPE TOWN 8000
REPUBLIC OF SOUTH AFRICA

REF NO:

27 January 1994

MEMORANDUM

To: Constitutional Committee
From : Management Committee
Re : Drafting Process

Having received and considered the attached proposal on the drafting process, forwards this proposal to the Constitutional Committee for their consideration.

PROPOSAL ON THE DRAFTING OF THE NEW CONSTITUTION

1. Introduction

1.1 The Constitutional Assembly has in its decision of 31 October 1994 laid down the following broad guidelines on the drafting process:

"(a) Drafting should be directed by the Constitutional Assembly.

(b) The Constitutional Committee should be responsible for the co-ordination of all Constitutional Assembly work, including drafting.

(c) Theme Committees are not negotiating fora. Their primary task should be to receive submissions and process them into reports for consideration by the Constitutional Committee."

1.2 The process has now reached the stage where a decision will have to be taken on the question of technical assistance in the drafting process. Drafting is a sensitive exercise because political disputes and deadlocks that may occur will in the ordinary course of events be based on positions as drafted in the text.

2. Background

In setting up a drafting mechanism two important factors must be taken into account, firstly, the provisions of the Interim Constitution relating to the adoption of a new constitutional text and, secondly, the lessons learned from the Kempton park experience.

2.1 In terms of the objects of the Interim Constitution, as set out in the Preamble, the Constitutional Assembly is the only competent body to draw up the new constitution. For this reason a drafting mechanism cannot operate independently from the Constitutional Assembly and must be part and parcel of the Constitutional Assembly's substructures, operating on the instructions and under the direct supervision and control of the Management and Constitutional Committees.

2.2 During debates in the Constitutional Assembly and committee meetings criticism was levelled at the Kempton Park process where independent committees of technical experts were or were believed

to be the driving force in the process. The present process was consequently structured to avoid a Kempton Park type of situation and to allow for maximum participation by the public and the elected representatives of the people in the constitution-making process. This philosophical distinction between the present and Kempton Park processes impacts also on the way a drafting mechanism should be structured.

3. Principles of drafting

3.1 In view of the above the drafting process should be governed by the following principles:

- (a) The drafting process should be a purely technical exercise and unlike the Kempton Park process be a politically neutral exercise.
- (b) The drafting process should be confined to providing the statutory formulations which reflect actual decisions on content and substance.
- (c) Constitutional Assembly decisions should form the sole basis for drafting except to add non-contentious and legally and technically necessary detail.
- (d) The drafting process should reflect the Constitutional Assembly's agreed political process.
- (e) The drafting process should involve all the technical role players engaged in the constitution-making process.
- (f) For purposes of maintaining the time frames agreed to politically the drafting should commence with the first political agreements.
- (g) The drafting process should be under the direct supervision and control of the Management and Constitutional Committees.

3.2 For purposes of securing a technically, linguistically and legally consistent and accessible constitution, there is a need that the various drafted provisions are attended to at a central point.

4. **Proposal**

The process should be as follows:

4.1 **Initial drafting** (translating political decisions into legal language)

Because of the intimate knowledge technical committees would gain with regard to their respective themes, these committees would be in the best technical position to provide "first drafts". Drafting should commence whenever a decision has been taken in the Constitutional Assembly on any particular issue submitted by a Theme Committee. The technical committee of that Theme Committee (or a single member of the technical committee) should be tasked to provide initial draft provisions covering the particular decision of the Constitutional Assembly. In preparing an initial draft the technical committee or drafting member should be directly accountable to the Management Committee and not to the Theme Committee.

4.2 **Technical refinement of drafted provisions**

Once an initial draft on any particular issue is available it should be submitted to the Administration's law advisers for technical refinement, improvement and adjustment to ensure that a general consistency of method and style is maintained.

4.3 **Qualitative evaluation**

The panel of experts' role will be that of evaluating objectively and impartially the technical and qualitative aspects of drafted provisions as refined by the law advisers. If the panel has reservations the provisions may then be further refined by the law advisers in accordance with any suggestions the panel may make.

4.4 **Political approval**

The next step would be to refer a set of drafted provisions processed through the first three phases, to the Management Committee for submission to the Constitutional Committee for approval. It is suggested that the law advisers be tasked with any adjustments the Management or Constitutional Committees may require.

4.5 **Publication and public responses**

Publication for general information and comment of draft chapters or sets of drafted provisions pertaining to specific issues, can be considered as a method of enhancing the public participation

programme.

5. Conclusion

In conclusion it must be pointed out that technical refinement and adjustment will be an on-going process as drafting progresses and the different sets of provisions approved in accordance with paragraph 4.4 are moulded together. The law advisers are at an appropriately positioned central point to attend to final refinement, but political participation, supervision and control should of course also take place here.

CONSTITUTIONAL ASSEMBLY

MINUTES OF MANAGEMENT COMMITTEE MEETING MONDAY 23 JANUARY 1995 (AT 8H00)

PRESENT

RAMAPHOSA MC (CHAIRPERSON)

Chabane OC
Eglin CW
Mabandla BS
Meshoe KR
Meyer R
Moosa MV

Sizani RK
Smith PF
Van Breda A
Viljoen C
Wessels L (Deputy Chairperson)

In attendance:

Ebrahim H, Lilienfeld P, Matyolo L, Zondo L, Sparg M, Grové G, and Keegan M.

1. OPENING

- 1.1 Mr. Ramaphosa opened the meeting at 08h00 and the Agenda was adopted.
- 1.2 Mr. Ramaphosa welcomed Mr. Smith of the IFP to the Management Committee and asked him to convey the Committee's best wishes to Mr. Felgate.

2. MINUTES

- 2.1 Mr. van Breda asked that the Minutes of the 28 November 1995 meeting be corrected to show that he had not been present, but had offered his apologies.
- 2.2 The meeting adopted the Minutes of the meeting held on Monday 28 November 1994 with the above correction.

3. MATTERS ARISING

None - included in the Agenda Items below.

4. INDEPENDENT PANEL OF EXPERTS

4.1 DRAFT TERMS OF REFERENCE

- 4.1.1 Mr. Ebrahim spoke to the document entitled "*Draft: Panel of Constitutional Experts: Terms of Reference*" included in the documentation.
- 4.1.2 It was agreed that the Law Advisers would provide an opinion on the meaning of the phrase "on matters pertaining to its functions" as contained in section 72(2) of the Constitution.
- 4.1.3 The meeting adopted the Draft Terms of Reference, with the understanding that the document could be revisited should problems arise.

4.2 TERMS AND CONDITIONS OF EMPLOYMENT

- 4.2.1 Mr. Ebrahim reported on discussions with the Panelists regarding their terms and conditions of employment and noted that the matter is now of some urgency. The Directorate forwarded a proposal on their remuneration in the "*Memorandum on 1995/96 Budget for Constitutional Assembly*" included in the documentation for the 14 November 1994 meeting of the Constitutional Assembly.
- 4.2.2 The meeting agreed that the Chairpersons would settle the matter in discussion with the Panelists and report back at the next Management Committee meeting.

5. TECHNICAL COMMITTEES

- 5.1 Mr. Ebrahim reported that the Administration had been unable to convene the Sub-committee to Select Members of Technical Committees until Monday 23 January 1995 and that the matter was now urgent.
- 5.2 It was agreed that the Sub-committee meeting would begin at 16h30 and that political parties would be responsible for notifying their members of the changed time and for ensuring that their members attended.
- 5.3 The meeting agreed that members of the Sub-Committee who were involved in the concurrent parliamentary debate would be allowed to send someone in their place.

6. DIRECTORATE REPORT

6.1 INTRODUCTION

Mr. Ebrahim spoke to the document entitled "*Directorate Report*," included in the documentation.

6.2 SUBMISSIONS

6.2.1 Concern was expressed regarding how Theme Committees would be informed of submissions received. The following points emerged from discussion:

- * A tabling document indexing all submissions would be prepared for the Management Committee and the public;
- * Indexes would be prepared for Theme Committees offering overviews of submissions received. Indexes would include a synopsis and reference number for each submission, to ensure their accessibility to Theme Committee members.
- * Core Groups would have to help decide how submissions would be distributed to Theme Committees.
- * The Chairpersons' Meeting would discuss processing submissions.

6.2.2 It was agreed that Mr. Ebrahim would prepare for the Management Committee a document on computerising Constitutional Assembly documents, including a discussion of costs.

6.3 MEDIA AND PUBLIC RELATIONS

6.3.1 It was agreed that the Management and Constitutional committees would need to retain political control over Constitutional Assembly publications. The meeting agreed that the Chairpersons would in discussion with Mr. Ebrahim deal with the composition of the Editorial Board.

6.3.2 It was agreed that the Chairpersons would examine the question of translating Constitutional Assembly documents into other languages and report back to the Management Committee.

6.3.3 It was agreed that the Directorate would investigate whether the Public Relations Officer could organise guided tours of the Constitutional Assembly, similar to Parliament's.

6.3.4 Mr. Ebrahim informed the meeting that a booklet explaining the Constitutional Assembly and the constitution-making process was being prepared for the public.

6.4 WORK SCHEDULE

6.4.1 Concern was expressed that numerous public participation events appeared to be scheduled on Sundays. The schedule, however, is only a proposal, and input would also be sought from Theme Committee members before the programme was finalised.

6.4.2 Concern was also expressed that the Constitutional Assembly Work Programme would extend into July, after schools had broken up. The Directorate would investigate the possibility of completing the schedule by 30 June 1995 and report back to the Management Committee.

6.4.3 Mr. Moosa and Mr. Meyer would not be able to attend Management Committee meetings on 27 January, 3 February and 10 February. It was agreed that they could send alternates in their place for those meetings.

6.5 OTHER

6.5.1 It was agreed that the Directorate would host a function to introduce new staff to the Management Committee and would report on arrangements at the next Management Committee meeting.

6.5.2 Concern was expressed that so many staff members attended Management Committee meetings. The Chairperson explained that attendance was important to allow for immediate follow up after meetings by various sectors of the Administration. However, the Chairperson would review the situation.

7. REVIEW OF THE CONSTITUTIONAL ASSEMBLY PROCESS

It was agreed that the Constitutional Assembly Process would be a standing item on the Agenda so that members who wanted could raise issues around the Constitutional Assembly process.

8. CLOSURE

The meeting closed at 09h55.

