

To: Members of the Management Committee

From: Hassen Ebrahim
Executive Director

Date: 7 February, 1996

RE: SOME NOTES FOR THE PURPOSE OF EVALUATION

1. Objectives of Evaluation

- 1.1. To identify the outstanding issues that require attention;
- 1.2. To consider the programme and schedule of work;
- 1.3. To identify the tasks that need to be attended to;
- 1.4. to establish as to whether the tasks could be completed within the time frame.

2. Outstanding Issues that require attention

As at 5 February, 1996 there are 67 issues that remain outstanding. See Annexure 1. These include; matters of a non-contentious but technical nature such as the definition of national territory, various proposals that require consideration (e.g. Cultural Councils, self-determination) and politically contentious issues.

3. Process aspects of Passing and Certification

It is necessary that the programme of work takes into consideration the process of adoption and certification.

4. Constitutional and Procedural requirements for Passing.

4.1. Constitutional Provisions

4.1.1. Sec 73(1) requires the Constitutional Assembly to pass the final text **within two years** as from the date of the first sitting of the National Assembly. The first sitting took place on **9 May 1994**. Therefore the final date of adoption must be no later than **8 May 1996**.

4.1.2. Sec 73 (2) requires a **majority of two-thirds** of all members of the Constitutional Assembly provided that all provisions relating to boundaries, powers and functions of provinces shall also require a two thirds majority of the Senate. Procedurally, there should therefore be two sets of votes cast on the draft text.

4.2. Constitutional Assembly Rules

4.2.1. The Rules envisage four stages that a Bill should pass through. See Annexure 2 These are:-

a) **The First Reading**, at which the bill is introduced, and statements on it are made;

b) **The Second Reading**, at which the objects and principles of the bill are discussed - this is the main debate on the bill;

c) **The Third Stage**, at which each clause or other provision of the bill, together with any amendment proposed thereto, may be considered before it is agreed to or negatived.

d) **The Third Reading**, at which the bill or, as the case may be, the bill as amended during the third stage, may be discussed. A two-thirds majority of the Constitutional Assembly, as well as a two-thirds majority of the Senate in respect of certain clauses relating to the provinces, is required.

4.2.2. On the basis of a conservative estimate, should we follow the process in terms of the strict letter of the Rules, we would need no less than 12 work days in the Constitutional Assembly.

4.2.3. On the other hand, the Constitutional Assembly has from the onset attended to all debates in the process in committee and the draft text itself has not been drafted by anybody other than the very political representatives in the Constitutional Assembly.

4.2.4. It is therefore recommended that -

a) we hold a sitting of the Assembly for purposes of both the first and second stages simultaneously on the same day with no debate (**29 April**);

b) the second sitting of the Assembly should last for a period of three days and should consist of a debate on a series of issues as determined and identified by the Constitutional Committee on the recommendation of the Chairperson (**2, 3 & 6 May**);

c) the third sitting of the Assembly be the equivalend on the third reading and should be held only for the purpose of passing the text (**8 May**);

d) the diversion from the Rules be remedied by an appropriate resolution of the Constitutional Assembly.

5. Constitutional And Procedural aspects of Certification

5.1. Constitutional Assembly Rules

5.1.1. While the Interim Constitution states in Sec 71 that the new text will not be of any force or effect unless it is certified by the Constitutional Court to be in compliance with the Constitutional Principles, it is silent as to the procedure for certification.

5.1.2. In terms of Rule 97 (1) two 'fair' copies of the text passed by the Constitutional Assembly must be certified accordingly by the Secretary and lodged with the Constitutional Court with a view to the certification.

5.1.3. Rule 97 (2) states that with due regard to the Rules of the Constitutional Court, the said two copies of the text must be accompanied by a request to the effect that, if the Constitutional Court certifies the text, one of the copies bearing the Court's certificate should be returned to the Secretary for presentation to the President for assent.

5.2. Constitutional Court Rules

5.2.1. In terms of Rule 15, the Chairperson of the Constitutional Assembly is required to "certify in writing the content of the constitutional text passed by the Constitutional Assembly and submit such text to the registrar with a formal request to the Court to perform its functions in terms of section 71 (2) of the Constitution". This certificate should include a statement specifying that the provisions of the text were passed by the requisite majority and whether any of the political parties represented in the Assembly wish to address the Constitutional Court.

5.2.2. The President of the Constitutional Court may direct that;

- a) the Chairperson provide such further information as may be necessary to deal with the matter; and
- b) all interested parties in the Assembly may be allowed to table written submissions and may present oral argument if necessary.

5.3. Recommendations

5.3.1.

6. Schedule of Work

- 6.1. A draft programme setting out a schedule has been prepared. See Annexure 3.
- 6.2. The programme must necessarily be flexible as agenda items for the different meetings could change depending on the process of negotiations and the resolution of the outstanding issues.
- 6.3. The programme seeks to achieve the following:-
 - a) **8 March** - Producing and debating, in the Constitutional Assembly, the fourth edition of the working draft after processing all outstanding issues. The Constitutional Assembly should also carry out an evaluation of the process. It is anticipated that a resolution on process may be necessary at this sitting.
 - b) **29 March** - Completing the process of negotiation on all outstanding issues which should culminate in the production of the 5th Working Draft. This would then allow us to concentrate on the outstanding issues between 1 & 4 April in the Constitutional Committee.
 - c) **22 April** - distribute the final text, final reports to the Constitutional Assembly and the publication of the text in the Government Gazette.
 - d) **29 April** - Official tabling and reading of the final text in the Constitutional Assembly (First & Second Stage readings).
 - e) **2 - 6 May** - Constitutional Assembly Debates on Third Stage of the final text over three days.
 - f) **8 May** - Adoption of the Constitution.