

2/4/1/2/16

A13

**CONSTITUTIONAL
ASSEMBLY**

THEME COMMITTEE 1

**CHARACTER OF
DEMOCRATIC STATE**

20 FEBRUARY 1995

ROOM M515

DOCUMENTATION

CONSTITUTIONAL ASSEMBLY

MEETING OF THEME COMMITTEE 1

CHARACTER OF THE DEMOCRATIC STATE

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

Date: Monday, 20 February 1995

Time: 18h00

Venue: Room M515 (Marks Building)

AGENDA

1. Opening
2. Adoption of Previous Minutes
3. Matters arising
4. Report from Chairpersons Meeting
5. Discussion on guidelines for theme committee reports
6. Report from technical experts on supplementary report of Public Submissions
7. Deadline of Party submissions for Block 2
8. General
9. Closure

H EBRAHIM
EXECUTIVE DIRECTOR:
CONSTITUTIONAL ASSEMBLY

Enquiries: L. Rammble and K. Radu (Tel: 24 - 5031 Ext 266)

CONSTITUTIONAL ASSEMBLY

**THEME COMMITTEE 1
CHARACTER OF THE DEMOCRATIC STATE**

**MINUTES OF THE EIGHTH MEETING OF THEME COMMITTEE 1
TUESDAY 14 FEBRUARY 1995 14H00**

**Mtshali L P H M (Chairperson)
Present**

Ally
Chiba L
Fani L M
Gumede D M
Kekana N N
Macozoma S J
Marais P G
Mohale M
Moorcroft E K
Mulder P W A
Nobunga B J
Ripinga S S
Shope G
Streicher D M
Van Zyl I D
Zondi M K

Cassim M F
Chiwayo L L L
Ferreira E T
Janse van Rensburg A P
Mabuza M C
Mahlangu N J
Meshoe R K
Momberg J H
Mtshali L P H M
Ncube B S
Nzimande B E
Seaton S
Sisulu N A
Van Deventer
Williams A J

APOLOGIES:

Booi M S
Chikane M M
Cwele S C
Dyani M M
Majola-Pikoli N T
Marais A
Routledge N C
Schoeman E A
Vilakazi B H

1. OPENING

The meeting was opened by the Chairperson at 14h10.

2. PREVIOUS MINUTES

The meeting adopted the minutes of 7 and 8 February in document A11. The meeting adopted the minutes of the 9 February in document A12, subject to item 4.1.B. being amended to read: " There was consensus on the item".

3. MATTERS ARISING REPORT OF BLOCK 1

3.1 Mr Mahlangu gave a brief report on the Core-Group meeting which of the 10th February 1995.

3.2 The meeting agreed that the fourth line of the Report under item K) should read: ..."Constitutional provision for a notion of the right to self-determination \ and not nation.

3.3 Mr Mahlangu spoke to the preliminary report which was discussed at the Constitutional Committee meeting on Friday, 10 February 1995.

3.4 It was agreed to put an asterisk at the end of the sentence on Item G) of the non-contentious issues. The sentence should be read in conjunction with the last paragraph in page 2 of the report.

3.5 The meeting agreed to read the last paragraph on page 2 of the Report as follows: It was resolved at the Core Group meeting held on the 10 February 1995, that principle G) under non-contentious issues shall not anticipate that the State will be structured along Federal or Unitary lines nor shall it preclude any party from arguing in favour of Federalism or Unitarianism.

3.6 The meeting further agreed to replace the last two paragraphs of the Report by inserting paragraph (4.2) and sub-section (4.2.1) of the minutes of the 9 February 1995, contained in document A12.

3.6.2 Item (F) under non-contentious issues will henceforth read as follows: Elections shall proceed, in general, on the basis of proportional representation. The possibility of constituency representation shall be explored.

3.7 The meeting endorsed the view that the Report should also incorporate submissions from the public.

3.7 The meeting agreed to adopt the Report and the Secretariat was mandated to effect the suggested amendments forthwith.

4. PUBLIC PARTICIPATION PROGRAMME

4.1 The meeting received a brief report of the Constitutional Committee meeting that took place on 13 February 1995.

4.2 The Secretariat briefed the gathering on the outlined Public Participation Programme that was adopted at the Core Group meeting of 10 February 1995. It was announced that Prof. James from IDASA would be addressing T/C 1 on 15 February. The 25th of February and the 25th of March have been earmarked as dates for Public Fora.

5. **GENERAL**

The Secretariat together with the core group were mandated to arrange dates for further hearings. Secondly, the members were requested to arrive timeously for the presentation which was scheduled for 09h30.

The meeting rose at 16h00.

CONSTITUTIONAL ASSEMBLY

AMMENDED REPORT FROM THEME COMMITTEE 1 15 FEBRUARY 1995

I) INTRODUCTION:

A preliminary report was completed by the sub-committee together with the technical experts. The latter were given the task to extract contentious and non-contentious points from party submissions pertaining to Block 1.

After debate and modification at the Theme Committee meetings of the 8th and 9th February 1995, we are pleased to report that the Theme Committee was able to find consensus on the following eleven points as embodying the character and nature of a democratic state.

II) NON-CONTENTIOUS POINTS:

- A) The Constitution shall be the supreme law of the land. It shall be binding on all organs of state at all levels of government.
- B) There shall be a multi-party political system, premised on regular elections, universal adult suffrage and a common voters' roll.
- C) Fundamental rights of the person shall be protected in an entrenched Bill of Rights, justiciable by an independent judiciary.
- D) The normative values underlying the Constitution shall be accountability, democracy, equality, freedom and transparency.
- E) There shall be a common South African citizenship.
- F) Elections shall proceed, in general, on the basis of proportional representation. The possibility of constituency representation shall be explored.
- G) * South Africa shall be a sovereign, independent and undivided state.
- H) There shall be three levels of government i.e. National, Provincial and Local.
- I) There shall be separation of legislative, executive and judicial powers in the State.
- J) The Executive shall be accountable to Parliament.

- K) The recognition and protection of collective rights of self-determination in forming, joining and maintaining organs of civil society, including linguistic, cultural and religious associations, on the basis of non-discrimination and free association, and possible constitutional provision for a notion of the right to self-determination by any community sharing a common cultural and language heritage, whether in a territorial entity within the state or in any other recognized way.

The following points were identified as contentious points:

III) **CONTENTIOUS POINTS:**

- A) The nature (legislative, executive, administrative and judicial) and extent of the powers of the various levels of government.
- B) Whether Parliament shall be bi- or unicameral in structure.
- C) Parliament's supremacy as a law-maker.
- D) The nature and extent of representation and rights of cultural and linguistic minorities, including group self-determination.
- E) The constitutional entrenchment of minority party participation in government.
- F) Government shall be by majority rule.
- G) The content and constitutional entrenchment of participatory democracy.
- H) South Africa shall be a secular state.

The IFP announced that it rejected the form and content of the preliminary framework document. The IFP also announced that it viewed the entire preliminary report as being contentious and tabled a document in this regard. Noting that the thrust of the said party's document constituted a frontal assault on the entire constitution making process, the meeting resolved to proceed with the process of identifying contentious and non-contentious issues. The meeting further agreed that the report to the Constitutional Committee should be accompanied by the document dated the 9 february 1995, from the IFP.

* It was resolved at the Core Group meeting, held on the 10 February 1995, that Principle G under non-contentious points, shall not anticipate that the State will be structured along Federal or unitary lines nor shall it preclude any party from arguing in favour of Federalism or unitarianism.

GUIDELINES: THEME COMMITTEE REPORTS

1. In reporting to the Constitutional Committee, Theme Committees must distinguish between progress and final reports.
2. Each Theme Committee must submit either a progress or a final report in respect of each ordinary session of the CC.
3. Reports must be submitted on the Tuesday before the scheduled CC meeting.
4. Progress reports are required to keep the CC on a continuous basis informed of developments and progress in Theme Committees in relation to their respective work programmes and time frames.
5. A final report must be produced by a Theme Committee as soon as any agenda item on a Theme Committee's work programme has been completed.
6. The contents of a report should be finalised in the Theme Committee and not in meetings of the CC.

7. Structure and contents of reports

7.1 The cover page must contain the following particulars:

- a reference to the Theme Committee submitting the report;
- whether its a progress or final report;
- date of report; and
- if final report, the block number and agenda item on the work programme to which the report relates.

7.2 Final reports should be structured in such a way to facilitate discussions and negotiations in the CC. It is recommended that final reports consist of three parts.

7.3 The first part should give particulars of material processed by the Theme Committee in relation to the relevant agenda item. These particulars should include:

- a list of submissions received and processed by the Theme Committee, distinguishing between submissions received from political parties, organisations of civil society and individuals;
- a reference to any report submitted by a technical committee/experts on the specific agenda item;
- perspectives which emerged from public meetings held under the public participation programme;
- perspectives which emerged from workshops, seminars, etc., organised by the Theme Committee;
- the constitutional principle(s) to which the agenda item relates.

7.4 All technical committee reports listed in the Theme Committee's report must be attached as an annexure to the report.

7.5 The second part of the report should give an overview of the above material as processed by the Theme Committee. This part should include -

- (a) a general discussion of the material taken as a whole, indicating any specific or identifiable trends;
- (b) a list of non-contentious issues in relation to
 - the above material generally;
 - party positions;
- (c) a list of contentious issues indicating briefly
 - the gist of the contentiousness in each case;
 - the positions of the parties in relation to each issue;
 - the positions of organisations of civil society;
 - general trends emerging from submissions received from the public and at public meetings;
 - possible approaches, i.e. suggestions from the Theme Committee on possible models, alternatives and generally how the CC can proceed to deal with conflicting positions.

7.6 The third part of the report should deal with miscellaneous or related issues, such as

- notification to the CC of the agenda item the Thémé Committee is about to deal with;
- suggested advertisement for this agenda item.

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:

MEMORANDUM

TO: MEMBERS OF THEME COMMITTEE 1

FROM: LEOLA RAMMBLE
MANAGING SECRETARY

SUBJECT: DEADLINE FOR PARTY SUBMISSIONS

At the Core Group meeting held on the 10 February 1995, it was decided by the members that the deadline for party submissions for Block 2 would be the 16 February 1995. It was further agreed that the theme committee should allow for flexibility.

To date the secretariat has received a submission from the Democratic Party. We urge the members to discuss this issue as a matter of urgency and decide on a suitable date.

ACDP SUBMISSION TO THEME COMMITTEE ONE PUBLIC PARTICIPATION

1. The five guiding principles of transparency, credibility, legitimacy, consultation and inclusivity should always be kept in mind in these programmes.
2. The 34 Constitutional Principles must be translated to the people in the language they will understand.
3. The public must be told that their inputs and submissions must be within the parameters set by the Constitutional Principles.
4. Themes that are chosen in these programmes must have a direct bearing on the constitution.
5. The teams should be composed of members of the six theme committees to answer questions and clarify issues concerning the work done in their committees.
6. Wherever practically possible, all political parties in the Constitutional Assembly must be represented in the programmes.

14th February 1995

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:

MEMORANDUM

TO: MEMBERS OF THEME COMMITTEE 1

FROM: LEOLA RAMMBLE
MANAGING SECRETARY

SUBJECT: CONTACT DETAILS

Kindly note that the following is an update of the secretariat's contact details:

Address: 9TH Floor
Regis House
Adderly Street

Tel: 24 - 5031 Ext 266
468 - 5050 Code 4713

Please do not hesitate to contact or visit me if you require any clarification or documentation for Theme Committee 1.

