

REPUBLIC OF SOUTH AFRICA

CONSTITUTIONAL ASSEMBLY

**ANNOUNCEMENTS, TABLINGS AND COMMITTEE
REPORTS**

FRIDAY 29 MARCH 1996

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1. INTRODUCTION

This penultimate Report by the Constitutional Committee to the Constitutional Assembly deals with an evaluation of progress recently undertaken by the Management Committee. It outlines also the Constitutional Committee's recommendations on the procedure for adoption of the new constitution, which is set to commence in approximately three weeks time.

2. BACKGROUND

- 2.1 The last report by the Constitutional Committee to the Constitutional Assembly on 25 August 1995, consisted largely of draft formulations from Theme Committees.
- 2.2 Theme Committees completed their work and tabled final reports to the Constitutional Committee in September 1995. An important milestone was also reached in September 1995 with the production of the first rough legal draft of the new Constitution in the form of the Working Draft, 1st Edition.
- 2.3 This draft went through further refinement, resulting in the 2nd Edition of the Working Draft in October 1995.
- 2.4 This 2nd Edition consisted of a "plain language" version of the first draft of the new Constitution. It was the product of a legal task team convened by the Administration, who re-organised and redrafted the legal text with the assistance of plain language experts. The aim was to make the document as simplified and as accessible to the broader public as possible.
- 2.5 The Constitutional Committee continued to meet after recess, in October and November 1995 to consider and approve of the publication of the Refined Working Draft for public comment.
- 2.6 A further edition, the 3rd Edition of the Working Draft, was produced in December 1995, which served as the basis of discussion when the CA resumed its business in the new year.

3. EVALUATION

- 3.1 When the Constitutional Assembly resumed work in January 1996, the Management Committee agreed to conduct an evaluation of progress by mid-February, in order to ensure the CA meets the May 1996 deadline.
- 3.2 The Management Committee conducted this evaluation on the 15th and 19th February and concluded that substantial progress had been made in resolving the outstanding issues.
- 3.3 It was agreed that it is both possible and desirable to adopt the new Constitution by 8 May 1996.
- 3.4 It was noted that the Constitutional Assembly had not received any indication yet whether the Inkatha Freedom Party would return to the process. The CA

continued to appeal to the IFP to return to the process.

- 3.5 The Management Committee will continue to appraise the situation both to ensure that the deadline is met and that issues are accorded the necessary "thoroughness" in this final phase of constitution-making. The 4th April has been identified as a date for a further assessment of progress.
- 3.6 The confirmation of 8 May 1996 as the deadline for adoption will go a long way in giving certainty to the South African public on the constitutional order. It would also boost the image of South Africa in the international arena if the country proved it was able to meet its own deadlines for finalising the new Constitution.

4. OUTSTANDING ISSUES

- 4.1 As at 14 March, there were approximately 76 issues that remain outstanding before the new Constitution is completed.
- 4.2 The Management Committee noted however that the number of issues on which parties have fundamental differences, are few in number. The majority of issues concerned questions of formulation, rather than fundamental differences. A schedule of issues requiring attention as at 14 March is attached hereto as *Annexure One*.

5. SCHEDULE

In order to deal with these outstanding issues and complete its work by 9 May 1996, the following broad phases of work are envisaged in this final period:

- * In the first week of April, the Constitutional Committee will conduct the final round of negotiations, either in normal session or in a private lekgothla/bosberaad or multi-lateral;
- * Political debates would need to be substantially completed by 4 April, to allow the Technical Refinement Team to prepare the final draft during the recess period from 5 to 12 April 1996;
- * The final draft will be available by 15 April 1996 for discussion in the Constitutional Committee from 15 to 19 April 1996;
- * The process of adoption by the Constitutional Assembly will commence on 22 April 1996, culminating in the final adoption on 8 May 1996.

6. PROPOSED AMENDMENT OF CONSTITUTION

- 6.1 During its latest evaluation, the Management Committee considered it necessary to plan for two possible scenarios.
- 6.2 The first possible scenario is the need to make allowance for the CA to refer to the Independent Panel of Constitutional Experts as a deadlock-breaking mechanism in terms of s73(3) of the Constitution.
- 6.3 The second scenario for which contingency plans are needed is the possibility of non-certification of the Constitution by the Constitutional Court and the need to reconvene the CA to rectify the defects.
- 6.4 The proposed amendment attached hereto agreed to by the Management Committee, would allow the CA to refer to the Panel in terms of s73(3) after 8 May 1996, should the need arise. See *Annexure Two*.
- 6.5 The proposed amendment also provides that the CA will reconvene to rectify the defects, in case of non-certification by the Constitutional Court.

7. PUBLIC PARTICIPATION

7.1 PUBLICATION OF WORKING DRAFT

- 7.1.1 The final phase of public participation in the constitution-making process kicked off with the publication of the Working Draft of the new Constitution on 22 November 1995.
- 7.1.2 Over 5 million copies (5 024 000) of the Working Draft in all 11 official languages were printed and distributed by various means. In November and December, 2 848 756 were inserted into newspapers throughout the country.
- 7.1.3 A further 100 500 were distributed via the C.A's Constitutional Education Programme offices in each of the nine provinces. Approximately 94 700 were distributed in kiosks in major centres through country. The C.A. offices in Cape Town distributed another 70 000. And, finally 1 822 000 copies were distributed directly to the public in a "knock-and-drop" operation on major routes throughout the country in early January 1996.
- 7.1.4 Other media activities since the publication of the Working Draft, have included the publication of the C.A's official newsletter, Constitutional Talk, which now has approximately 55 000 subscribers. A further 100 000 copies are circulated directly to members of the public.

7.1.5 The C.A's popular weekly television talk-show, also called Constitutional Talk, resumed on 18 February 1996 and will run through until 12 May 1996. The C.A. has also obtained weekly radio programmes on eight radio stations, including Radio Xhosa, Lebowa, Metro, Sesotho Stereo, Tsonga, Venda, Zulu and Setswana Stereo. These started in February and will run through to the end of May 1996.

7.2 SUBMISSIONS

7.2.1 The CA set 20 February 1996 as the deadline for submissions by the public on the Working Draft. From the time of publication of the Working Draft on 22 November 1995, the CA had received 1 438 submissions from the public. A further 245 523 petitions were received.

7.2.2 The overwhelming number of submissions covered issues relating to the Chapter on the Bill of Rights. A detailed breakdown of the distribution of issues raised in submissions, per Chapter of the Working Draft, is contained the 4th Edition of the Working Draft. Many submissions raise more than one issue. Hence, the total number of issues raised in this table is greater than the total number of submissions.

7.2.3 Petitions covered a wide range of subjects, including the death penalty, right to own firearms, equality clause and sexual orientation, christianity and the state, property rights, animal rights, Rastafarian rights and abortion.

7.2.4 Most submissions received emanated from private individuals. Of the 1 438 received, 238 were from organisations and the remainder from individuals.

7.2.5 In general, submissions in this phase have been much more focussed than those received in the first phase. The identification of outstanding issues and various options in the Working Draft, clearly assisted in ensuring that public comments are directed at specific provisions. In many instances, submissions included alternate constitutional formulations.

7.2.6 The 4th Edition of the Working Draft, produced on 20 February 1996, incorporates specific references to public submissions, clause by clause, to ensure proper discussion of these submissions as the finalisation of the new Constitution draws closer.

7.3 CONSTITUTIONAL EDUCATION PROGRAMME

- 7.3.1 In the period from 15 January to 20 February, the Constitutional Assembly's Constitutional Education Programme (CEP) organised a total of 329 workshops throughout the country, attended by about 52 717 people.
- 7.3.2 The CEP embarked on an intensive workshop programme on the Working Draft on 15 January 1996. These workshops, organised in close consultation with organisations of civil society and community-based organisations in specific localities, were conducted by the Constitutional Assembly's 18 provincial coordinators. Their major focus was on constitutional education. However, they also informed and encouraged the public to make submissions to the Constitutional Assembly.
- 7.3.3 One of the primary objectives of the programme, was to return to civil society structures who had been contacted before the publication of the Working Draft. This has been achieved. Additional organisations and structures have also been contacted.
- 7.3.4 Members of the CA were sent programmes giving details of workshops to be held in provinces, as well as information about the workshop programme. This was done to invite CA members to attend workshops in their constituencies. A
- 7.3.5 A simple language summary of the Working Draft was produced in all eleven official languages, and provided together with the tabloid version of the Working Draft, to people attending workshops.

7.4 CONSULTATION

During the period since the CA resumed its work in January 1996, a number of important consultations have taken place with stakeholders and sectors. These consultations have been organised on an ad hoc basis as part of the process of resolving some of the outstanding issues. They have not formed part of a structured programme of face-to-face consultation, as with national sector hearings in earlier phases of the process.

7.4.1 COURTS AND ADMINISTRATION OF JUSTICE

- 7.4.1.1 On 1 February 1996, a consultation took place between an ad hoc subcommittee and representatives of the legal profession on outstanding issues in the Chapter on Courts and the Administration of Justice. The meeting was attended by representatives of the Association of Law Societies, Black Lawyers Association, General Council of the Bar,

Hoexter Commission, Lawyers for Human Rights, Legal Resources Centre, National Association of Democratic Lawyers, University of the Western Cape Community Law Centre, University of Cape Town Law Faculty and the University of Stellenbosch Law Faculty.

- 7.4.1.2 Judges who attended included the President of the Constitutional Court, Judge Arthur Chaskalson; Judge I Mohamed, Deputy President of the Constitutional Court and Judge of the Constitutional Court, L Ackerman, Chief Justice W Corbett and Justice J Friedman of the Western Cape.

7.4.2 GENERAL FINANCIAL MATTERS

Consultation with the Auditor General, Mr H Kluever, and his legal advisers and the Chairperson of the Finance and Fiscal Commission, Mr M Morobe, also took place in February to resolve various outstanding financial matters.

7.4.3 LOCAL GOVERNMENT

On 27 February, a delegation from the Major Urban Areas Association, led by Mr David Dlali, addressed the Sub-Committee on their submission on Local Government.

7.4.4 SELF-DETERMINATION

On the same day a delegation from the Volkstaat Council, led by Prof Johan Wingard, also addressed the Sub-Committee on their submission on self-determination.

7.4.5 INITIATIVES BY CIVIL SOCIETY

- 7.4.5.1 Civil society has also taken the initiative, during this same period, organising conferences and discussions on various constitutional issues. Politicians and representatives of the CA have attended some of these events organised by a range of bodies, including the Human Rights Committee, Black Sash and South African Council of Churches.
- 7.4.5.2 We have also seen intensified lobbying of political parties by civil society structures, as debate intensified on issues such as the property clause, freedom of expression, economic activity and the right to strike and lock-out.

7.4.6 PROVINCIAL GOVERNMENTS

- 7.4.6.1 An important consultation took place with Premiers and members of provincial legislatures and executive committees on Friday 22 March 1996.
- 7.4.6.2 Delegations from eight provinces attended the consultation. The Province of Kwa-Zulu Natal tendered their apologies and did not attend.
- 7.4.6.3 Those who attended included Premiers Tokyo Sexwale of Gauteng Province, Raymond Mhlaba of Eastern Cape Province, Ngoako Ramathlodi of Northern Province, Mathews Phosa of Mpumalanga, Hernus Kriel of Western Cape Province. The delegations from North West Province and Free State Province were led by the premier's adviser, Martin Mabiletse and MEC Papi Kganare, respectively.
- 7.4.6.4 Important issues were raised at this meeting, including matters relating to legislative and executive competencies of provinces, finances and security services.

8. PROCESS OF ADOPTION

8.1 CONSTITUTIONAL REQUIREMENTS

- 8.1.1 Section 73(1) of the Constitution 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.
- 8.1.2 Section 73(2) requires a majority of two-thirds of all members of the Constitutional Assembly to pass the final text, provided that all provisions relating to boundaries, powers and functions of provinces shall also require a two thirds majority of the Senate. Procedurally therefore there should be two sets of votes cast on the final text.

8.2 REQUIREMENTS OF CA RULES

- 8.2.1 The Rules of the Constitutional Assembly lay out an elaborate procedure for adoption consisting of four stages. This includes the stipulation that not more than one stage may be held on any one particular day. It also includes a particularly lengthy third stage during which each clause is separately considered. This stage of legislation, which is called the Committee of the Whole

House in the Westminster system, has been replaced since 1987 in Parliament by the referral of the bill to a committee.

- 8.2.2 Since the process of constitution-making has taken place thus far in committee, and considering the time that would be required for adoption if the strict letter of the Rules were to be followed, a streamlined procedure for adoption has been considered and recommended to the Constitutional Assembly.

8.3 PROPOSED PROCEDURE FOR PASSING OF NEW CONSTITUTIONAL TEXT

8.3.1 QUORUM

A quorum of 164 members is required during debate. A simple majority for all decisions, with the exception of decisions taken during the Third and final Stage, when a majority of at least two-thirds of all the members of the CA is required.

8.3.2 LANGUAGES

The CA will attempt to have the final text available in all 11 official languages by 15 April 1996. However, for practical purposes in terms of the adoption procedure dealt with in this section, it is recommended that the proposed amendments and Order Papers be dealt with in English only. Members speaking during the debate however will have translation available in all 11 languages and will be encouraged to use all languages.

8.3.3 RECOMMENDED PROCEDURE

The procedure for adoption agreed to by the Management Committee is attached hereto. See *Annexure Three*. A time-table for the period from 22 April to 8 May 1996 will be provided under separate cover.

9. PROCESS OF CERTIFICATION

- 9.1 The Constitution states in Section 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.
- 9.2 Discussions have taken place with the President of the Constitutional Court to clarify the procedure for certification. No time is prescribed by the Constitution for certification to take place. The Constitution does however prescribe a two-year period for the adoption of the Constitution.
- 9.3 It follows that as long as the Constitution is passed in accordance with the

provisions of Chapter 5 within the period prescribed by section 73, the consideration by the Court of the provisions of the Constitution can take place later.

- 9.4 The Chairperson of the Constitutional Assembly will need to submit the constitutional text adopted by the Constitutional Assembly to the Constitutional Court, together with a certificate which should include a statement specifying that the provisions of the text were passed by the requisite majority.
- 9.5 He will also need to inform the Constitutional Court whether any of the political parties represented in the Constitutional Assembly wish to present oral argument to the Court, pursuant to the provisions of the Court.
- 9.6 The text submitted to the Court, 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.
- 9.7 The Constitutional Court has indicated in writing to the Constitutional Assembly, that it may be possible to convene a special session of the Court during June to deal with certification. However, this decision can only be taken by the Court when the Constitution is in fact submitted to the Court for certification.
- 9.8 There are a number of logistical issues the Management Committee has still to deal with regarding the certification process. These include the format of documentation to the Constitutional Court and the appointment of Counsel.

10. PROCESS OF PUBLICATION

- 10.1 The work of the Constitutional Assembly would not be complete without the publication of the new Constitution.
- 10.2 The new Constitution will be published in all 11 official languages after certification.
- 10.3 The Administration is considering proposals for its publication in various formats, to ensure it reaches a broad section of the public. This includes the production and distribution of various other resources on the new Constitution.

11. FINANCES

11.1 EXPENDITURE TO DATE

The expenditure to date of the Constitutional Assembly in the current financial year, from 1 April 1995 - 19 March 1996, is as follows:

<i>Personnel</i>	<i>R11 309 331</i>
<i>Administrative Expenses</i>	<i>R20 838 605</i>
<i>Stores</i>	<i>R 2 313 335</i>
<i>Equipment</i>	<i>R 1 016 336</i>
<i>Professional Services</i>	<i>R12 087 445</i>
<i>TOTAL</i>	<i>R47 565 052</i>
<i>BUDGET</i>	<i><u>R59 423 636</u></i>
<i>FUNDS AVAILABLE</i>	<i>R11 858 584</i>

11.2 FINANCIAL REPORT FOR 1995/96 FINANCIAL YEAR

The Financial Report of the Constitutional Assembly for 1995/96 will be submitted with the final Report to the CA in April 1996.

11.3 BUDGET FOR 1996/97 BUDGET YEAR

The Management Committee instructed the Chairpersons and Administration to draft a Budget for the 1996/97 financial year. This Budget, which will cover the work of the CA from April 1996 through to adoption and certification until the final shutdown of the Administration after certification and publication, has been prepared and is being considered by Parliament.

SURVEY OF ISSUES REQUIRING ATTENTION

AS AT 14 MARCH 1996

Section	Section Title	Deadlock	Decision Required	Technical Refinement
1	<i>Preamble</i>		Submissions	
2	<i>Anthem</i>		Anthem	
3	<i>Language</i>		NP formulations	
CHAPTER 2: BILL OF RIGHTS				
4	<i>Equality</i>			Reformulate and provide options
5	<i>Life</i>	Death penalty		
6	<i>Freedom and Security of Person</i>		i. "Bodily/physical integrity" ii. "Decisions concerning their body"	
7	<i>Privacy</i>			Panel memo
8	<i>Freedom of Expression</i>		Harm test	Reformulate 15(3)
9	<i>Assembly, Demonstration and Petition</i>		"[Picket]"	
10	<i>Freedom of Movement and Residence</i>		"Everyone"	

	Section	Section Title	Deadline	Decision Required	Technical Refinement
11	21	<i>Freedom of Occupation</i>		i. "[Trade]" ii. Permanent residents	
12	22	<i>Labour Relations</i>	i. Right to strike ii. Right to lock-out iii. Union administration		
13	23	<i>Environment</i>		NP proposal	
14	24	<i>Property</i>		Various matters	
15	25(3)(4)	<i>Housing</i>		i. "[Arbitrarily]"	Panel memo
16	27	<i>Children</i>		"[parental] care"	
17	28	<i>Education</i>	Whole Section		
18	31	<i>Access to Information</i>			Reformulation
19	32	<i>Just Administrative Action</i>			Reformulation
20	34(4)	<i>Arrested, Detained and Accused Persons</i>		Exclusion of evidence	
21	35(1)(a)	<i>Limitations</i>			Panel memo
22	36	<i>State of Emergency</i>			i. Panel memo ii. Reformulation
23	38	<i>Application</i>		"i. Appropriate/ applicable" ii. Juristic persons	

Section	Section Title	Deadlock	Decision Required	Technical Refinement
CHAPTER 3 - NATIONAL ASSEMBLY				
24	41 <i>Composition and Election</i>		Electoral system	
25	46(4) <i>Elections and Duration of National Assembly</i>			Reformulation
26	52 <i>Bills</i>			Finalise after 2nd House
27	53 <i>Constitutional Amendment</i>		Exempt clauses	
28	54A <i>Application by Members to Constitutional Court</i>		Whole section	
CHAPTER 4 - NATIONAL COUNCIL OF PROVINCES [AGREED TO USE DRAFT 5 MARCH AS BASIS FOR DISCUSSION]				
29	1. <i>Concept</i>		i. Name ii. In definition of Parliament?	Tech Advisors' opinion
30	2. <i>Composition</i>		i. Appointment ii. Referral after mediation iii. Majorities	
31	3. <i>Participation in National Legislative Process</i>		30 day cooling off period	
32	4. <i>Financial Bills</i>		FFC and provincial allocations	
33	7. <i>Voting in the Council</i>		"Mandate"	
34	8. <i>Powers to Summons Ministers</i>		Ministers' rights	

	Section	Section Title	Deadlock	Decision Required	Technical Refinement
35	9.	<i>Appointment</i>		Appointment of Constitutional Court judges etc.	
36	11.	<i>General</i>		Whole section	
CHAPTER 5 - NATIONAL EXECUTIVE					
37	78(1)(j)	<i>Powers and Functions of President</i>		Appointment of ambassadors	
38	85	<i>Multiparty participation in executive</i>		NP Proposals	
39	93	<i>Snap elections</i>		Legislative terms	
40	93(4)	<i>Votes of No Confidence</i>		Appointment of new President	Reformulation
CHAPTER 6 - COURTS AND ADMINISTRATION OF JUSTICE					
41	99A	<i>Inherent Power</i>		Outstanding	
42	100	<i>Appointment of Judges</i>	Options		
43	101(3)	<i>Acting Judges</i>		Appointment	
44	105	<i>Attorney General</i>	Structure		
CHAPTER 7 - STATE INSTITUTIONS SUPPORTING CONSTITUTIONAL DEMOCRACY					
45	109(4)	<i>Human Rights Commission</i>		Deletion of (4)	
46	111	<i>Auditor General</i>		"Holding office in a political party"	
47	113(1)(c)	<i>Electoral Commission</i>			Reformulate 113(1)(c)

	Section	Section Title	Deadline	Decision Required	Technical Refinement
48	115	<i>General Provisions Appointments</i>		Composition of committee	
49	116	<i>Removal from Office</i>		Composition of committee	
50		<i>Independent Broadcasting Authority</i>			Formulations
51		<i>Cultural Commission(s)</i>		Volkstaat and NP proposals	
52		<i>Environmental Commission</i>		NP proposal	
CHAPTER 8 - PROVINCES					
53		[Co-operative governance]		NP proposal	
54	148-53	<i>Provincial Financial and Fiscal Matters</i>			Reformulate
55	154	<i>Provincial Constitutions</i>		Homogeneity	
CHAPTER 9 - PROVINCIAL COMPETENCIES					
56	1	<i>National and Provincial Legislative Authority: Legislative Authority of the Republic</i>			Reformulation
57	2	<i>Legislative Authority of Provinces</i>		Framework legislation	Reformulation
58	3	<i>Conflicts between National and Provincial Legislation</i>		Overrides	Reformulation
59	5	<i>Conflicts That Cannot Be Resolved</i>		Measuring provincial capacities	
60	6	<i>Subsidiarity</i>		Outstanding	

	Section	Section Title	Deadline	Decision Required	Technical Refinement
61	7	<i>Asymmetry</i>		Outstanding	
62	8	<i>Justiciability</i>		Outstanding	
63		<i>National and Legislative Executive Competencies</i>		Outstanding	
CHAPTER 10 - LOCAL GOVERNMENT					
64	163-168	<i>Local Government</i>		Outstanding	
CHAPTER 11 - TRADITIONAL AUTHORITIES					
65	169-173	<i>Traditional Authorities</i>		Outstanding	
CHAPTER 12 - PUBLIC ADMINISTRATION					
66	171(1)	<i>Public Administration</i>			i. Panel memo ii. Reformulation
67	173(3)	<i>Public Service</i>			Reformulation
CHAPTER 13 - SECURITY SERVICE					
68	182	<i>Control of Police Service</i>		Outstanding	
CHAPTER 14 - FINANCE					
69	188(2)(c)	<i>Treasury Control</i>			Finalise after 2nd House
70	192(1)(d)	<i>Remuneration of Persons Holding Public Office</i>			Finalise after Traditional Authorities
71	193(2)(d), and (h), and (3)(h)	<i>Allocations from National Revenue:</i>			Finalise after Local Government

	Section	Section Title	Deadlock	Decision Required	Technical Refinement
72	196	<i>Appointment of Members</i>			Panel memo
CHAPTER 15 - GENERAL PROVISIONS					
73	201-203	International Agreements		Party submissions	
74		Self Determination		Concept of Volkstaat	
75		Schedules		Outstanding	
76		Transitional Arrangements		Consider on ongoing basis	TRT to consider on ongoing basis
		Total	5	54	25

ANNEXURE TWO

THIRD PROPOSED AMENDMENT TO INTERIM CONSTITUTION

[Note: Words in bold brackets denote deletion and words underlined denote insertion. This document must be read together with the document of the same heading submitted to the meeting of the Management Committee of the 26 March 1996.]

Constitutional Principles and certification

71. (1) A new constitutional text shall -
- (a) comply with the Constitutional Principles contained in Schedule 4; and
 - (b) be passed by the Constitutional Assembly in accordance with this Chapter.
- (2) The new constitutional text passed by the Constitutional Assembly, or any provision thereof, shall not be of any force and effect unless the Constitutional Court has certified that all the provisions of such text comply with the Constitutional Principles referred to in subsection 1(a).
- (3) A decision of the Constitutional Court in terms of subsection (2) certifying that the provisions of the new constitutional text comply with the Constitutional Principles, shall be final and binding, and no court of law shall have jurisdiction to enquire into or pronounce upon the validity of such text or any provision thereof.
- (4) During the course of the proceedings of the Constitutional Assembly any proposed draft of the constitutional text before the Constitutional Assembly, or any part or provision of such text, shall be referred to the Constitutional Court by the Chairperson if petitioned to do so by at least one fifth of all the members of the Constitutional Assembly, in order to obtain an opinion from the Court as to whether such proposed text, or part or provision thereof, would, if passed by the Constitutional Assembly, comply with the Constitutional Principles.

Adoption of new constitutional text

73. (1) The Constitutional Assembly shall pass the new constitutional text within two years as from the date of the first sitting of the National Assembly under this Constitution.
- (2) For the passing of the new constitutional text by the Constitutional Assembly, a majority of at least two-thirds of all members of the

Constitutional Assembly shall be required: Provided that provisions of such text relating to the boundaries, powers and functions of provinces shall not be considered passed by the Constitutional Assembly unless approved also by a majority of two-thirds of all the members of the Senate.

- (3) If the Constitutional Assembly fails to pass a proposed draft of the new constitutional text in accordance with **[subsection (2)], subsections (1) and (2)**, but such draft is supported by a majority of all its members, such proposed draft shall be referred by the Chairperson to the Panel of Constitutional Experts referred to in section 72(2) for its advice, to be given within 30 days of such referral, on amendments to the proposed draft, within the framework of the Constitutional Principles, which might secure the support required in terms of subsection (2).
- (4) An amended draft text unanimously recommended by the Panel of Constitutional Experts and submitted to the Constitutional Assembly within the said period of 30 days shall be considered by the Constitutional Assembly and be voted on within 14 days of the date on which it was submitted to the Constitutional Assembly, **and may be passed in terms of subsection (2). [and if passed in accordance with subsection (2), it shall become the Constitution of the Republic of South Africa].**
- (5) Should the Panel of Constitutional Experts fail to submit within the said period of 30 days to the Constitutional Assembly an amended draft text which is unanimously recommended by the Panel, or should such an amended draft text not be passed by the Constitutional Assembly in accordance with subsection (2), any proposed draft text before the Constitutional Assembly may be approved by it by resolution of a majority of its members for the purposes of subsection (6), **within 14 days of the date of submission of the amended Draft Text by the Panel [of Constitutional Experts] or, if no amended draft text is submitted by the Panel [of Constitutional Experts] within 44 days after the date of referral to the Panel [of Constitutional Experts] in terms of subsection (3).**
- (6) A text approved under subsection (5) shall, after it has been certified by the Constitutional Court in terms of section 71(2), be referred by the President, for a decision by the electorate by way of a national referendum, **which shall be called within 14 days after certification by the Constitutional Court, and which shall be held within 90 days of the date on which the National referendum is called.**
- (7) The question put before the electorate in the referendum shall be the

- acceptance or rejection of the text approved under subsection (5).
- (8) The text presented to the electorate in the referendum shall, if approved by a majority of at least 60 per cent of the votes cast in the referendum and subject to subsection (13), become the Constitution of the Republic of South Africa.
- (9) If the text, or any amended text taking into account the reasons of the Constitutional Court, is not supported or approved in terms of subsection (3) or (5), or is not approved in the Referendum, in accordance with subsection (8), [or if a new constitutional text is not passed in terms of this Chapter within the period of two years referred to in subsection (1),] the President shall dissolve Parliament by proclamation in the *Gazette* within 14 days of the date of the referendum, [or the expiry of the said period] or after the date on which the relevant text was not supported or approved in terms of subsection (3) or (5) whereupon an election contemplated in section 39(1)(a) shall be held.
- (10) The Constitutional Assembly as constituted after such an election, shall pass the new constitutional text within a period of one year as from the date of its first sitting after such election.
- (11) For the passing of the new constitutional text referred to in subsection (10) by the Constitutional Assembly, a majority of at least 60 percent of all the members of the Constitutional Assembly shall be required: Provided that provisions of such text relating to the boundaries, powers and functions of provinces shall not be considered passed by the Constitutional Assembly unless approved also by a majority of at least 60 percent of all the members of the Senate.
- (12) The provisions of subsections (3) to (9) of this section and the other sections of this Chapter shall apply *mutatis mutandis* in respect of the Constitutional Assembly referred to in subsection (10) of this section.
- (13) A new constitutional text adopted in terms of this Chapter shall be assented to by the President and shall upon its promulgation be the Constitution of the Republic of South Africa.

Procedure in the event of non-certification

- 73A (1) If the Constitutional Court finds that a draft of the new constitutional text passed by the Constitutional Assembly in terms of section 73(2) or approved by it in accordance with section 73(5), does not comply with the Constitutional Principles, the Constitutional Court shall refer the draft text back to the Constitutional Assembly together with the

reasons for its finding.

- (2) The Constitutional Assembly shall within three months of the date of referral pass an amended text in accordance with section 73(2) or approve an amended text in accordance with section 73(5), as the case may be, taking into account the reasons of the Constitutional Court.
- (3) The amended text shall be referred to the Constitutional Court for certification in terms of section 71, whereupon the provisions of subsections (1) and (2) again apply, except that the period of three months mentioned in 73(2) is reduced to a period of one month.
- (4) If, in the case of a draft text where section 73(2) applies, the Constitutional Assembly fails to amend the draft text in accordance with section 73(2) within the period prescribed in subsection (2) of this section, the provisions of section 73(3) to (9) shall apply *mutatis mutandis*.

ANNEXURE THREE

DRAFT RESOLUTION AMENDING THE STANDING RULES: CONSTITUTIONAL ASSEMBLY FRIDAY 29 MARCH 1996

That the provisions of Standing Rules 78 up to and including 102 be suspended and substituted by the following:

First Reading Stage

Notice of First Reading

78A.(1) The member in charge of the bill shall place the bill on the Order Paper for First Reading.

(2) The First Reading may be set down for the day on which the bill is laid upon the Table, provided members are supplied with copies of the bill before the First Reading is moved.

No amendment allowed

79A.No amendment shall be allowed to the motion for the First Reading of the bill.

Introduction of bill

80A.The member in charge of the bill, after moving that the bill be read a first time, may deliver his or her introductory speech on the bill.

Statements on behalf of parties

81A.(1) After the introductory speech one member of each political party in the Constitutional Assembly may make a statement on the bill on behalf of his or her party.

(2) A period of debate, as determined by the presiding officer, may follow statements on the bill in terms of Subrule (1):

Bill read a first time

82A.When statements on the bill have been made on behalf of all political parties in the Constitutional Assembly who wish to be heard, and after the period of debate referred to in Subrule 81A(2), the presiding officer shall order the bill to be read a first time, without the question being put.

Committee Stage

Referral of bill to Constitutional Committee

83A.After the bill has been read a first time, it stands referred to the Constitutional Committee for consideration of amendments.

Amendments for consideration by Constitutional Committee

84A.(1) Proposed amendments to the clauses or other provisions of the bill may be submitted for consideration by the Constitutional Committee.

(2) An amendment which is out of order for any reason shall not be considered by the Constitutional Committee, and the Chairperson's decision on any question as to whether an amendment is or is not out of order, shall be final.

(3) An amendment must be in writing, signed by the proposer, and must be delivered to the Secretary not later than 12:00 on the day preceding the first day set aside for consideration of the bill by the Constitutional Committee.

(4) An amendment which has not been submitted as provided under Subrule (3) may not be referred to the Constitutional Committee except by or by leave of the Chairperson.

Amendment of bill and preparation of report

85A. The Constitutional Committee shall effect such amendments to the bill as sees fit after due consideration of the proposed amendments submitted and found to be in order in terms of Standing Rule 84A, and shall prepare a report.

Second Reading Stage

Notice of Second Reading

86A. After the conclusion of the Committee Stage of the bill, the member in charge of the bill shall place the bill or, as the circumstances may require, the bill as amended, on the Order Paper for Second Reading, the bill to be accompanied by the report referred to in Standing Rule 85A.

Printing of amended bill

87A. (1) If the bill is amended in terms of Standing Rule 85A, the Secretary shall cause the bill as so amended to be printed and copies to be supplied to members.

(2) The Second Reading of the bill shall not commence before Subrule (1) has been complied with.

No amendment allowed

88A. No amendments shall be allowed to the motion for the Second Reading of the bill.

Recording of number of members in favour of bill

89A. In determining the question on the Second Reading, the number of members in favour of the question shall be recorded, whether a division is called for or not, and the number of senators who vote or are in favour of the question shall in any event be recorded separately.

Bill passed in accordance with section 73(2)

Lodging of bill with Constitutional Court

90A. If the bill is passed in accordance with section 73(2) of the Constitution at the Second Reading, two fair copies thereof shall be certified accordingly by the Secretary and lodged with the Constitutional Court with a view to the certification of the text in terms of section 71(2) of the Constitution.

Tabling of amended text submitted

91A. If the bill was not passed at the Second Reading in accordance with subsection (2) of section 73 of the Constitution and an amended text is submitted by the panel of constitutional experts in accordance with subsection (4) of that section, the Chairperson shall lay such text upon the Table.

Amended text passed in accordance with section 73(2)

92A. If passed in accordance with section 73(2) of the Constitution at the Second Reading, the bill embodying the amended text shall be further dealt with in accordance with Rules 90A and 91A.