

01/21/20

CONSTITUTIONAL ASSEMBLY

MANAGEMENT COMMITTEE

**FRIDAY
27 JANUARY 1995
(08h00)
V16**

DOCUMENTATION

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CONSTITUTIONAL ASSEMBLY

MEETING OF THE MANAGEMENT COMMITTEE

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

Date : Friday 27 January 1995

Time : 08h00 - 10h00

Venue : V16

AGENDA

1. Opening
 2. Minutes: Pages 2 - 6
 3. Matters Arising: See Agenda Items Below
 4. Technical Committees: Report of Sub-Committee: No Documentation
 5. Work Programme:
 - 5.1 Legal Content: Pages 7 - 33
 - 5.2 Community Liaison: Pages 34 - 44
 6. Drafting Process: Proposal: Pages 45 - 48
 7. Directorate Report: Pages 49 - 51
 - 7.1 Commission for Provincial Government: Pages 52 - 53
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 - 7.3 Constitutional Court Rules: Pages 56 - 80
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 8. Constitutional Committee Draft Agenda for 30 January 1995: Page 92
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-

**H EBRAHIM
EXECUTIVE DIRECTOR
CONSTITUTIONAL ASSEMBLY**

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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.

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.

ep/program

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 an culture 	<ol style="list-style-type: none"> 3. Constitutional Court 4. Constitutional 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 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

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 coordinators (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.

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.

**DIRECTORATE REPORT TO MANAGEMENT COMMITTEE
27 JANUARY 1995**

The Directorate wishes to report on the following matters:

1. MEETING WITH PROVINCIAL LEADERS

1.1 A forum of all the Legislatures took place over 18 & 19 January 1995. The Executive Director was invited to attend on behalf of the Constitutional Assembly to give a report on the process on 18 January 1995. A Commission dealing with Constitutional Assembly matters as it affects provinces was also held on the next day.

1.2 Discussions were extremely constructive and it was an important opportunity to build on the relationship between the Constitutional Assembly and the Provincial Legislatures. Various tentative agreements were reached. These are as follows:

- (a) There was broad agreement that the provinces had a role to play in the process and work of the Constitutional Assembly. It was, however, argued very strongly that the provinces should be involved in the process of the Constitutional Assembly in their capacity as provincial leaders and not as Provincial Legislatures.
- (b) Confusion with regard to the provinces' relationship with the Commission on Provincial Government and the issue relating to provincial constitutions were cleared. It was agreed that the work of the Constitutional Assembly did not involve or affect the provinces right as presently contained in the interim constitution to draft provincial constitutions.
- (c) It was further agreed that provinces should establish committees for purposes of participating in the constitution-making process of the Constitutional Assembly.
- (d) Correspondence is presently being addressed to each of the provinces with a view to further considering practical measures in the involvement of provincial leaders in our Public Participation Programme. A further report on this matter will be made available in due course.

2. COMMISSION ON PROVINCIAL GOVERNMENT

- 2.1 The Executive Director has had occasion to exchange various views with members of the Commission on Provincial Government. We were also provided with a copy of the Programme of Work for the Commission. A copy of it is attached to this report.
- 2.2 As you will note from the Work Programme, the Commission on Provincial Government will only be in place to provide the Constitutional Assembly with its submission in October this year. There is evidently therefore some disparity between the Work Programmes of the Constitutional Assembly and the Commission. This is confirmed in a letter which is also attached.
- 2.3 A proposal made by the Executive Director to members of the Commission has been that the Commission should consider staggering its submissions and reports to the Constitutional Assembly based on the work completed. These submissions and reports should be on an ongoing basis.
- 2.4 The difficulty that we are likely to experience is that the Commission is only scheduled to make its final submission subsequent to the Constitutional Assembly going into recess. This matter would therefore have to be considered carefully by the Management Committee, and possibly, the Constitutional Committee.

3. CONSTITUTIONAL COURT

The Constitutional Court has now provided us with a copy of its set of rules. These are attached to this report.

4. TELEVISION PROGRAMMES

We attach under cover hereof correspondences between NN-TV, Penguin Films and the Constitutional Assembly which reflect an initial agreement by NN-TV to run sixteen television talk show programmes of 45 minutes each commencing on 12 March 1995. These programmes are scheduled to be run at 19:15 every Sunday.

5. PANEL OF CONSTITUTIONAL EXPERTS

In terms of an agreement reached at the last Management Committee meeting, an undertaking was given to meet with the Panellists to finalise

their terms of appointment. The Administration has made various attempts to locate members of the Panel and has thus far been unsuccessful in securing a meeting of all Panellists at one time with the Chairpersons. We hope that the scheduled meeting would take place in the near future and a report will accordingly be tabled with the Management Committee.

6. INTERNATIONAL MEDIATION

We attach under cover hereof a copy of a Memorandum issued by the IFP relating to International Mediation.

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

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OF
SOUTH AFRICA



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GOVERNMENT NOTICE

GOEWERMENSKENNISGEWING

DEPARTMENT OF JUSTICE

DEPARTEMENT VAN JUSTISIE

No. R. 5

6 January 1995

No. R. 5

6 Januarie 1995

RULES OF THE CONSTITUTIONAL COURT

REËLS VAN DIE KONSTITUSIONELE HOF

The President of the Constitutional Court in consultation with the Chief Justice has, under section 100 read with section 102(11) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), prescribed the rules contained in the Annexure hereto regulating matters relating to the proceedings of and before the Constitutional Court with effect from 6 January 1995.

Die President van die Konstitusionele Hof, in ooreenstemming met die Hoofregter, het kragtens artikel 100 gelees met artikel 102(11) van die Grondwet van die Republiek van Suid-Afrika, 1993 (Wet No. 200 van 1993), die reëls vervat in die Bylae hiervan met betrekking tot die reëling van die verrigtinge van en voor die Konstitusionele Hof, met ingang van 6 Januarie 1995 voorgeskryf.

ANNEXURE

DIVISION OF RULES

These rules are divided as follows:

Definitions (rule 1)

- PART I:** Sessions of the Court (rule 2)
- PART II:** Registrar (rules 3 and 4)
- PART III:** Service of process (rules 5 and 6)
- PART IV:** Representation (rules 7 and 8)
- PART V:** *Amicus curiae* submissions (rule 9)
- PART VI:** Applications (rules 10 and 11)
- PART VII:** Direct access to the Court (rules 12 to 17)
- PART VIII:** Appeals and transferred matters from other courts (rules 18 to 24)
- PART IX:** Fees and costs (rules 25 and 26)
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- SCHEDULE 1:** Forms
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Definitions

1. (1) In these rules any word or expression to which a meaning has been assigned in the Constitution shall bear that meaning and, unless the context otherwise indicates—

“**affidavit**” includes an affirmation or a declaration contemplated in section 7 of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963);

“**Appellate Division Rules**” means the rules regulating the conduct of the proceedings of the Appellate Division of the Supreme Court of South Africa published under Government Notice No. R. 1207 of 15 December 1961, as amended;

“**apply**” means apply on notice of motion, and “**application**” has a corresponding meaning;

“**Court**” means the Constitutional Court established by section 98(1) of the Constitution;

- "court day"** means any day other than a Saturday, Sunday or public holiday, and only court days shall be included in the computation of any time expressed in days prescribed by these rules or fixed by any order of the court;
- "directions"** means directions given with regard to the procedures to be followed in the conduct and disposition of cases;
- "judge"** means a judge or acting judge of the Court appointed under section 99 of the Constitution, sitting otherwise than in open court;
- "law clinic"** means a centre for the practical legal education of students in the faculty of law at a university in the Republic, and includes a law centre controlled by a non-profit organisation which provides the public with legal services free of charge and certified as contemplated in section 3(1)(f) of the Attorneys Act, 1979 (Act No. 53 of 1979);
- "legal representative"** means an advocate admitted in terms of section 3 of the Admission of Advocates Act, 1964 (Act No. 74 of 1964), or an attorney admitted in terms of section 15 of the Attorneys Act, 1979 (Act No. 53 of 1979);
- "party"** or any other reference to a litigant in terms includes a legal representative appearing on behalf of a party, as the context may require;
- "President"** means the President of the Court appointed under section 97(2)(a) of the Constitution;
- "registrar"** means the registrar of the Court, and includes any acting or assistant-registrar of the Court;
- "sheriff"** means a person appointed in terms of section 2 of the Sheriffs Act, 1986 (Act No. 90 of 1986), and includes a person appointed in terms of section 5 or section 6 of that Act as an acting sheriff or a deputy sheriff, respectively, and a sheriff, an acting or a deputy sheriff appointed in terms of any law not yet repealed by a competent authority and, immediately before the commencement of the Constitution, in force in any area which forms part of the national territory;
- "the Constitution"** means the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993); and
- "Uniform Rules"** means the rules regulating the conduct of the proceedings of the several provincial and local divisions of the Supreme Court of South Africa published under Government Notice No. R. 48 of 12 January 1965, as amended.
- (2) Any powers or authority vesting in the President in terms of these rules may be exercised by a judge or judges designated by the President for that purpose.
- (3) Any reference in these rules to a party having to sign documents shall be construed as including a reference to a legal representative representing such party, and a reference to lodging documents with the registrar as including prior service of such documents on other parties and the lodging of 25 copies of all relevant documents with the registrar.
- (4) The President may condone non-compliance with, or extend any time limit prescribed in, these rules.

PART I

SESSIONS OF THE COURT

Court terms

2. (1) There shall be four terms in each year as follows:

15 February to 31 March, inclusive; 1 May to 31 May, inclusive; 15 August to 30 September, inclusive; 1 November to 30 November, inclusive.

(2) A case may be heard out of term if the President so directs.

(3) If the day fixed for the commencement of a term is not a court day, the term shall commence on the next succeeding court day and, if the day fixed for the end of a term is not a court day, the term shall end on the court day preceding.

PART II

REGISTRAR

Registrar's office hours

3. (1) The office of the registrar shall be open from 08:30 to 13:00 and from 14:00 to 15:30 on court days.

(2) The registrar may in exceptional circumstances accept documents at any time, and shall do so when directed by a judge.

General duties of the registrar

4. (1) A notice of appeal, an order of court referring any matter to the Court by another court, or another document by which proceedings are initiated in the Court in terms of these rules shall be numbered by the registrar with a consecutive number for the year during which it is filed.

(2) Every document afterwards lodged in such a case or in any subsequent case in continuation thereof shall be marked with that number by the party lodging it and shall not be received by the registrar until so marked.

(3) All documents delivered to the registrar to be filed in a case shall be filed by the registrar in a case file under the number of such case.

(4) A document referred to in subrule (1) is subject to the payment of R75,00 court fees in the form of a revenue stamp: Provided that if an indigent party is assisted or represented by an office or officer of the Human Rights Commission, the Legal Aid Board, a law clinic or *pro Deo* counsel, or satisfies the registrar in terms of subrule (5) that he or she is indigent, the payment of court fees shall be waived by the registrar.

(5) A party who desires to initiate or oppose proceedings in the Court and who is of the opinion that he or she is indigent, or anybody on behalf of such party, shall satisfy the registrar that, except for household goods, wearing apparel and tools of trade, such party is not possessed of property to the amount of R20 000 and will not be able within a reasonable time to provide such sum from his or her earnings.

(6) Copies of a record may be made by any person in the presence of the registrar: Provided that the registrar shall at the request of a party make a copy of a recorded order, settlement, judgment or order relating to costs on payment of court fees with revenue stamps of R1,00 for every 100 typed words or part thereof, or on payment with revenue stamps of R0,50 for every photocopy of an A4-size page or part thereof and shall certify that copy or photocopy to be a true copy of the original: Provided further that if an indigent party is assisted or represented by an office or officer of the Human Rights Commission, the Legal Aid Board, a law clinic or *pro Deo* counsel, or satisfies the registrar that he or she is indigent in terms of subrule (5), the payment of court fees may be waived by the registrar.

(7) The registrar shall sign (manually or by machining a facsimile of his or her signature), date and issue all process as sued out by a party.

(8) In any matter where there is a dispute over the constitutionality of any executive or administrative act or conduct or threatened executive or administrative act or conduct, or in any inquiry into the constitutionality of any law, including any Act of Parliament, and the executive authority responsible for the executive or administrative act or conduct or the threatening thereof or for the administration of any such law is not a party to the case, the party challenging the constitutionality of such act or conduct or law shall, within five days of lodging with the registrar a document in which such contention is raised for the first time in the proceedings before the Court, inform the executive authority concerned in writing of the matter and of the contentions that have been raised.

(9) If the Court declares any law or provision thereof inconsistent with the Constitution under section 98(5) of the Constitution or require that Parliament or any competent authority correct a defect in any law or provision within a specified period, the registrar shall, if such authority is not a party, within five days of such declaration or requirement notify the relevant authority in writing of the Court's order and of any order relating to costs.

(10) If the Court declares an executive or administrative act or conduct or threatened executive or administrative act or conduct of any organ of state to be unconstitutional under section 98(7) of the Constitution, and orders the organ of state concerned to refrain from or to correct such act or conduct, the registrar shall, if such organ of state is not a party to the proceedings, within five days of such declaration notify the organ of state concerned in writing of the Court's order and of any order relating to costs.

(11) Declarations in terms of subrules (9) and (10) shall be published by the appropriate organ of state in the *Gazette* or the Provincial Gazette concerned, if the Court so orders.

(12) (a) The registrar shall maintain the Court's records and shall not permit any of them to be removed from the court building, except as authorised by him or her.

(b) Any document lodged with the registrar and made part of the Court's records shall not thereafter be withdrawn permanently from the official court files.

(c) After the conclusion of the proceedings in the Court, any original records and papers transmitted to the Court by any other court shall be returned to the court from which they were received.

(13) (a) If it appears to the registrar that a party is unrepresented, he or she shall refer such party to the nearest office or officer of the Human Rights Commission, the Legal Aid Board or any law clinic that may be willing to assist such party.

(b) If no assistance is rendered by such Commission, Board or law clinic, the registrar shall assist such unrepresented party in preparing the papers required by these rules or, if directed to do so by the President, request an advocate or attorney to assist such party.

(c) The State or the registrar shall not be liable for any damage or loss resulting from assistance given in good faith by that registrar to such party in proceedings before the Court or in the enforcement of an order in terms of these rules in the form of legal advice or in the compilation or preparation of any process or document.

PART III

SERVICE OF PROCESS

Sheriff

5. (1) Unless the Court directs otherwise, all process of the Court, at the request of any party, shall be served or executed through a sheriff of the Supreme Court: Provided that a sheriff shall be under an obligation to effect service only if a party who desires the service has remunerated him or her beforehand for the said service according to the tariff for sheriffs prescribed in rule 68 of the Uniform Rules.

(2) Service or execution of judicial process shall, after payment of the remuneration, be effected by the sheriff concerned without delay, and the sheriff may, where resistance to the due service or execution of judicial process is experienced or is reasonably expected, call upon any member of the South African Police Service established in terms of section 214 of the Constitution for assistance.

(3) A sheriff who is entrusted with the service or execution of judicial process shall—

(a) in writing notify the registrar and the party concerned who sued out the process that service or execution has been duly effected, stating the date and manner of service or the result of execution, and return that process to the registrar; or

(b) in writing notify the party who sued out the judicial process concerned if he or she has been unable to effect service or execution, and of the reason for such inability, and return that process to the party concerned, and keep a record of any process so returned.

(4) A sheriff shall after service or attempted service of any judicial process specify the total amount of his or her charges on the original of that document and each copy thereof, and the amount of each of his or her charges separately on the return of service.

Service of process

6. The provisions of rule 4 of the Uniform Rules shall apply *mutatis mutandis* to the service of any process of the Court.

PART IV

REPRESENTATION

Representation of parties

7. (1) Except where the Court or the President directs otherwise, no person shall be entitled to appear on behalf of any party at any proceedings of the Court unless he or she is entitled to appear in the Supreme Court of South Africa.

(2) If a party dies or becomes incompetent to continue any proceedings, the proceedings shall thereby be stayed until such time as an executor, curator, trustee, guardian or other competent person has been appointed in his or her place, or until such incompetence ceases to exist.

(3) Where an executor, curator, trustee, guardian or other competent person has been so appointed, the Court may, on application, order that he or she be substituted for the party who has so died or become incompetent.

Power of attorney or authorisation to act

8. (1) The registrar shall not, at the instance of a legal representative, accept any document in the initiation or opposition of any proceedings in the Court unless such legal representative has filed, together with such document, with the registrar a power of attorney or authorisation to act authorising him or her to do so.

(2) Every power of attorney or authorisation to act lodged shall be signed by or on behalf of the party giving it, and shall otherwise be duly executed according to law: Provided that where a power of attorney or authorisation to act is signed on behalf of the party giving it, proof of authority to sign on behalf of such party shall be produced to the registrar who shall note that fact on the said power of attorney or authorisation.

(3) No power of attorney or authorisation to act shall be required to be lodged by an attorney-general, a *pro Deo* counsel appointed by the State or the State Attorney, any deputy state attorney or any professional assistant to the State Attorney or any attorney instructed, in writing or by telegram or by fax, by or on behalf of the State Attorney or a deputy state attorney in any matter in which the State Attorney or a deputy state attorney is acting as such by virtue of any provision of the State Attorney Act, 1957 (Act No. 56 of 1957), or by virtue of any provision of any law not yet repealed by a competent authority and, immediately before the commencement of the Constitution, in force in any area which forms part of the national territory.

PART V

AMICUS CURIAE SUBMISSIONS

Submission by an *amicus curiae*

9. (1) Subject to the provisions of section 102(10) of the Constitution and the provisions of these rules, any person interested in an appeal or a reference or any other matter before the Court may, with the written consent of all the parties in the matter before

the Court, given not later than the time specified in subrule (5), be admitted therein as an *amicus curiae* upon such terms and conditions and with such rights and privileges as may be agreed upon in writing with all the parties before the Court or as may be ordered by the Court in terms of subrule (3).

(2) The written consent referred to in subrule (1) shall, within five days of it having been obtained, be lodged with the registrar and shall, in addition to any other provision, embody the times agreed upon for the lodging of written argument.

(3) The terms and conditions and rights and privileges agreed upon as referred to in subrule (1) may be amended in accordance with the directions given by the President.

(4) If the written consent referred to in subrule (1) has not been secured, any person who has an interest in an appeal, reference or any other matter before the Court may apply to the President to be admitted therein as an *amicus curiae*, and the President may grant such application upon such terms and conditions and with such rights and privileges as he or she may determine.

(5) An application pursuant to the provisions of subrule (4) shall be made—

(a) in the case of an appeal or reference, not later than 10 days after the applicant's or appellant's written argument in answer to the respondent's argument has been lodged with the registrar or the time for lodging such argument has expired;

(b) in the case of an application for leave to appeal to the Court, within 10 days after such application has been lodged with the registrar;

(c) in any case where the right of direct access to the Court has been invoked, within 10 days of the date upon which the Court became seized of the matter.

(6) An application to be admitted as an *amicus curiae* shall—

(a) briefly describe the interest of the *amicus curiae* in the proceedings;

(b) briefly identify the position to be adopted by the *amicus curiae* in the proceedings;

(c) clearly, succinctly and without unnecessary elaboration set out the submissions to be advanced by the *amicus curiae*, their relevance to the proceedings and his or her reasons for believing that the submissions will be useful to the Court and different from those of the other parties.

(7) An *amicus curiae* has the right to lodge written argument, provided that such written argument—

(a) is clear, succinct and without unnecessary elaboration;

(b) does not repeat any matter set forth in the argument of the other parties; and

(c) raises new contentions which may be useful to the Court.

(8) In the event of new matters or arguments being raised by the *amicus curiae*, any other party shall have the right to file written argument within 10 days from the date upon which the argument of the *amicus curiae* was served on such parties which written argument shall comply with rule 19(3).

(9) Unless otherwise ordered by the Court, an *amicus curiae* shall be limited to the record on appeal or reference and the facts found proved in other proceedings and may not add thereto and shall not present oral argument.

PART VII

DIRECT ACCESS TO THE COURT

Opinion on proposed constitutional text

- **12.** (1) A reference in terms of section 71(4) of the Constitution by the Chairperson of the Constitutional Assembly shall specify precisely which provision or provisions of the proposed constitutional text is or are to be tested against the Constitutional Principles, and shall identify the Constitutional Principle or Principles against which such provision or provisions is or are to be so tested.
- (2) The Chairperson shall also certify that at least one fifth of all the members of the Constitutional Assembly have petitioned such a reference to the Court.
- (3) The Chairperson shall, if so required by the President, forward to the registrar the relevant extracts of the debate in the Constitutional Assembly pertaining to the said reference.
- (4) Upon receipt of the reference from the Chairperson the matter shall be disposed of in accordance with directions given by the President.
- (5) Such directions may include—
- (a) a further reference to the Chairperson for such additional information as is considered by the President to be necessary or expedient to deal with the matter;
 - (b) an order directing all interested parties in the Constitutional Assembly who wish to do so to make such written submissions as are relevant to the determination of the issue within a period to be specified, which order shall be brought to the attention of interested parties in the Constitutional Assembly through such means as the Court considers suitable;
 - (c) an order directing that, in addition to the written submissions, oral argument will also be allowed;
 - (d) an order directing that any written submission made in terms of paragraph (b) be brought to the attention of other interested parties in the Constitutional Assembly through such means as the Court considers suitable.
- (6) The order of the Court may include an order for costs to be paid by the State or by a particular party.

Dispute over constitutionality of any Bill

- 13.** (1) A request in terms of section 98(2)(d) and 98(9) of the Constitution by the Speaker of the National Assembly, the President of the Senate, or the Speaker of a provincial legislature, as the case may be, shall specify in writing precisely which provision or provisions of the relevant Bill is or are disputed, and shall certify that the requirements of section 98(9) of the Constitution have been complied with.
- (2) A request contemplated in subrule (1) shall also specify the grounds upon which any such provision is disputed.

(3) The Speaker of the National Assembly, the President of the Senate or the Speaker of a provincial legislature, as the case may be, shall, if so required by the President, forward to the registrar the relevant extracts of the debate in the relevant legislature pertaining to the request.

(4) Upon receipt of the request from the Speaker or President referred to in subrule (1), the matter shall be disposed of in accordance with directions given by the President, which directions may *mutatis mutandis* include the matters referred to in rule 12(5).

(5) Rule 12(6) shall apply *mutatis mutandis*.

Constitutional disputes between parties in Parliament or between organs of state

14. (1) A reference by the President of the Republic of South Africa to the Court in terms of section 82(1)(d) shall include the following written information:

- (a) The identity of the parties between whom the dispute concerned has arisen; and
- (b) the exact nature of the dispute and such information, if any, as the President of the Republic of South Africa may consider necessary or desirable to bring to the attention of the Court.

(2) Upon receipt of such reference the matter shall be disposed of in accordance with directions given by the President, which directions may *mutatis mutandis* include the matters referred to in rule 12(5).

(3) Rule 12(6) shall apply *mutatis mutandis*.

Certification of constitutional text

15. (1) The Chairperson of the Constitutional Assembly which has passed a new constitutional text in terms of section 71(1) of the Constitution and which wishes such constitutional text to be certified by the Court shall 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.

(2) The certificate contemplated in subrule (1) shall include a statement specifying that the provisions of the text were passed by the requisite majority.

(3) Upon the receipt of the request referred to in subrule (1), the matter shall be disposed of in accordance with directions given by the President.

(4) The directions referred to in subrule (3) may *mutatis mutandis* include the matters referred to in rule 12(5): Provided that a political party represented in the Constitutional Assembly that wishes to present oral argument to the Court shall be entitled to do so as of right, but such political party may be required to submit written submissions to the Court in advance of the oral argument.

(5) Rule 12(6) shall apply *mutatis mutandis*.

(6) An order of the Court pursuant to section 71(2) may specify the provisions of the constitutional text, if any, which comply and which do not comply with the Constitutional Principles.

Certification of a provincial constitution

16. (1) The Speaker of a provincial legislature which has passed a constitution in terms of section 160(1) of the Constitution and which wishes such constitution to be certified by the Court shall certify in writing the content of the constitution passed by the provincial legislature and submit such constitution to the registrar with a formal request to the Court to perform its functions in terms of section 160(4) of the Constitution.

(2) The certificate contemplated in subrule (1) shall include a statement specifying that the constitution was passed by the requisite majority.

(3) Upon the receipt of the request referred to in subrule (1), the matter shall be disposed of in accordance with directions given by the President.

(4) The directions referred to in subrule (3) may *mutatis mutandis* include the matters referred to in rule 12(5): Provided that a political party represented in the provincial legislature that wishes to present oral argument to the Court shall be entitled to do so as of right, but such political party may be required to submit written submissions to the Court in advance of the oral argument.

(5) Rule 12(6) shall apply *mutatis mutandis*.

(6) An order of the Court pursuant to section 160(4) of the Constitution may specify the provisions of the constitution, if any, which comply and which do not comply with the Constitutional Principles.

Direct access in the interest of justice

17. (1) The Court shall allow direct access in terms of section 100(2) of the Constitution in exceptional circumstances only, which will ordinarily exist only where the matter is of such urgency, or otherwise of such public importance, that the delay necessitated by the use of the ordinary procedures would prejudice the public interest or prejudice the ends of justice and good government.

(2) The special procedure referred to in subrule (1) may be sanctioned by the Court on application made to it in terms of these rules.

(3) An application in terms of subrule (2) shall set out—

- (a) the grounds on which it is contended that such special circumstances exist;
- (b) the nature of the relief sought and the grounds upon which such relief is based;
- (c) whether the matter can be dealt with by the Court without the hearing of oral evidence.

(4) The application referred to in subrule (3) shall be lodged with the registrar and served on all parties with a direct or substantial interest in the relief claimed.

(5) Upon receipt of the application, the matter shall be disposed of in accordance with directions given by the President.

- (6) The directions referred to in subrule (5) may include—
- (a) a direction that the matter concerned is not a proper one for the exercise of the special power of the Court in terms of section 100(2); of the Constitution
 - (b) directions *mutatis mutandis* of the kind referred to in rule 12(5).
- (7) Rule 12(6) shall apply *mutatis mutandis*.

PART VIII

APPEALS AND TRANSFERRED MATTERS FROM OTHER COURTS

Procedure for an application for leave to appeal

18. In any proceedings other than those referred to in rules 20 and 21 where a constitutional issue is the only issue in the case or the only issue on which an appeal will be brought, the following procedure shall be followed:

- (a) The appellant shall within 15 days of the judgment given by the provincial or local division of the Supreme Court which heard the case and after giving notice to the other party or parties concerned, apply to the judge or judges of that provincial or local division who gave the judgment or, if such judge or judges are not available, to another judge or judges of that provincial or local division to certify that the only issue (or issues) remaining in the case is (or are) of a constitutional nature and that there is reason to believe that the Court may give leave to the appellant to note an appeal against the decision on such issue given by the provincial or local division concerned.
- (b) The application referred to in paragraph (a) shall be in writing, signed by the appellant, and shall set out briefly and succinctly and without any unnecessary elaboration the constitutional issue raised in the case, the decision given by the provincial or local division of the Supreme Court thereon, and the grounds on which the decision of such division thereon is disputed.
- (c) The respondent or respondents may, within 10 days from the date upon which such application is served upon him or her or them, respond thereto in writing.
- (d) The response shall be brief and succinct and without any unnecessary elaboration and shall be signed by the respondent or respondents.
- (e) If it appears to the judge or judges of the division of the Supreme Court concerned, hearing the application made in terms of paragraph (a), that—
 - (i) the constitutional issue is one of substance on which a ruling by the Court is desirable; and
 - (ii) the evidence in the proceedings is sufficient to enable the Court to deal with and dispose of the matter without having to refer the case back to the division concerned for further evidence; and
 - (iii) there is a reasonable prospect that the Court will reverse or materially alter the decision given by the division concerned if permission to bring the appeal is given,

such judge or judges of the division concerned shall certify on the application that in his or her or their opinion, the requirements of subparagraphs (i), (ii) and (iii) have been satisfied or, failing which, the judge or judges shall certify which of such requirements have been satisfied, and which have not been satisfied.

- (f) Within 10 days from the date on which a positive or negative certificate is given in terms of paragraph (e) by the judge or judges of the division of the Supreme Court concerned, an appellant wishing to appeal to the Court against the decision of the division concerned on the constitutional issue shall lodge with the registrar an application for leave to appeal.
- (g) The application referred to in paragraph (f) shall be signed by the appellant, and shall contain—
 - (i) those portions of the judgment of the provincial or local division of the Supreme Court concerned that deal with the constitutional issue;
 - (ii) the application for the judge's certificate brought in terms of sub-rule (1);
 - (iii) the judge's certificate; and
 - (iv) such supplementary information or argument that the appellant considers necessary to bring to the attention of the Court, which information or argument shall be brief and succinct and without any unnecessary elaboration.
- (h) (i) Within 10 days from the date upon which the application referred to in paragraph (f) was lodged, the respondent or respondents may respond thereto in writing, indicating whether or not the parties concerned consent to leave to appeal being given and, if the application is opposed, the grounds for such opposition.
 - (ii) The response shall be brief and succinct and without any unnecessary elaboration and shall be signed by the respondent or respondents.
- (i) (i) The President, after consulting the judges, shall decide whether or not to grant the appellant leave to appeal.
 - (ii) Applications for leave to appeal may be dealt with summarily, without hearing oral or written argument other than that contained in the application itself.

Appeal under section 102(12), (16) and (17) of the Constitution

19. (1) If leave to appeal is given in terms of rule 18, the appellant shall note and prosecute the appeal as follows:

- (a) The appellant shall prepare and lodge the appeal record with the registrar within four months of the date on which leave to appeal has been given.
- (b) The appeal record shall consist of—
 - (i) those portions of the judgment of the court *a quo*, and all relevant documentation lodged by the parties in the court *a quo* pertaining to the issues that are to be determined; and
 - (ii) only such evidence and exhibits or affidavits and annexures as may be relevant for the purpose of the appeal.
- (c) (i) The parties shall endeavour to reach agreement on what should be included in the record and, in the absence of such agreement, the appellant shall apply to the President for directions to be given in regard to the compilation of the record.

(3) (a) Where an issue has been referred *mero motu* by a judge or judges of a provincial or local division of the Supreme Court, the judge or judges shall direct the registrar of the provincial or local division concerned to compile and forward to the registrar such portions of the record as he or she or they consider to be necessary for the determination of such issue.

(b) The matter shall thereafter be dealt with in accordance with directions given by the President.

(4) In any other case, the matter shall thereafter be dealt with in accordance with the provisions of rule 19 as if the party who requested the reference were the appellant and the other party or parties the respondent or respondents.

Referral of issues by the Appellate Division

23. (1) Where an issue is referred to the Court by the Appellate Division in terms of section 102(6) of the Constitution, the party who raised the issue to be referred to the Court shall within 15 days of such order lodge with the registrar a copy of the order of referral by the Appellate Division.

(2) The matter shall thereafter be dealt with in accordance with the provisions of rule 19 as if the party who raised the issue to be referred were the appellant and the other party or parties the respondent or respondents: Provided that if the Appellate Division so decides, the issue may be referred to the Court either as a stated case, or as a question of law for decision by the Court, in which event the record to be lodged with the registrar shall consist only of the order made by the said Division, and such parts of the judgment of the court *a quo* as may be relevant to the issue referred by the said Division.

(3) If the Chief Justice, in consultation with the President, is of the opinion that it is in the interest of justice that a constitutional issue raised in an appeal be determined before the appeal is dealt with by the Appellate Division, he or she shall make an order directing the appellant to proceed first with the appeal on the constitutional issue and to prosecute the appeal to the said Division only if it is necessary to do so after the constitutional issue has been decided and, if such an order is made, the appellant shall proceed in accordance with the provisions of rule 19.

(4) If an issue is referred to the Court by the Appellate Division *mero motu*, rule 22 (2) shall apply *mutatis mutandis*.

Referral of issues in terms of section 102(8) of the Constitution

24. (1) If an issue is referred to the Court by a provincial or local division of the Supreme Court in terms of section 102(8) of the Constitution, the division referring such issue shall do so either in the form of a stated case or formulate a question of law for decision by the Court and shall instruct its registrar to forward the stated case or the question of law to the registrar.

(2) On receipt of the stated case or the question of law, the registrar shall establish whether or not the parties to the matter which was disposed of by the division concerned wish to make representations to the Court in regard to the matter that has been referred to it.

(3) When this has been established, the President shall give directions as to how the matter should be dealt with.

PART IX

FEES AND COSTS

Taxation of costs and attorneys' fees

25. (1) Rules 9 and 10 of the Appellate Division. Rules regarding taxation and attorneys' fees shall apply *mutatis mutandis*.

(2) In the event of oral and written argument, a fee for written argument may in appropriate circumstances be allowed as a separate item.

Fees of the Court

26. (1) In addition to the Court fees already prescribed in these rules the fees in Schedule 2 shall be the fees of the court payable with revenue stamps.

(2) The proviso to rule 4(4) and the provisions of rule 4(5) shall apply *mutatis mutandis*.

PART X

MISCELLANEOUS PROVISIONS

Library

27. (1) The Court's library is available for use by the judges, the staff of the Court and other persons who have permission from a judge for the purposes of a particular case or research.

(2) The library shall be open during such times as the reasonable needs of the Court may require and its operation shall be governed by the rules made by the librarian in consultation with the President.

Translations

28. Where any record or other document lodged with the registrar contains material written in an official language which is not understood by all the judges, the registrar shall have the portions of such record or document concerned translated by a sworn translator of the Supreme Court into a language or languages which will be understood by such judges, and shall supply the parties with a copy of such translations.

Models, diagrams and exhibits

29. (1) Models, diagrams and exhibits of material forming part of the evidence taken in a case and brought to the Court for its inspection shall be placed in the custody of the registrar at least 10 days before the case is to be heard or submitted.

(2) All models, diagrams and exhibits of material placed in the custody of the registrar shall be removed by the parties within 40 days after the case is decided.

(3) When this is not done, the registrar shall notify the party concerned to remove the articles forthwith and if they are not removed within six months thereafter, the registrar shall destroy them or otherwise appropriately dispose of them.

Withdrawal of cases

30. Whenever all parties, at any stage of the proceedings, lodge with the registrar an agreement in writing that a case be withdrawn, specifying the terms relating to the payment of costs and payment to the registrar of any fees that may be due, the registrar shall without further reference to the Court enter such withdrawal.

Format of documents

31. (1) Every document which exceeds five pages shall, regardless of the method of duplication, contain a table of contents and a table of authorities with correct references to the pages in the document on which they are cited.

(2) The body of every document at its close shall bear the name of the party or his or her attorney, if applicable, and the original document shall be signed by the party or his or her attorney.

(3) (a) The registrar shall not accept for lodging any document presented in a form not in compliance with this rule, but shall return it to the defaulting party indicating the instance in which there has been a failure to comply.

(b) Provided that if new and proper copies of the documents referred to in paragraph (a) are resubmitted within five days of receiving written notification, such lodging shall not be deemed untimely.

(c) If the Court finds that the provisions of this rule have not been complied with, it may impose, in its discretion, appropriate sanctions, including but not limited to dismissal of the action or imposition of costs.

Application of certain rules of the Uniform Rules

32. The following rules of the Uniform Rules shall *mutatis mutandis* apply to the proceedings in the Court:

<i>Rule No.</i>	<i>Subject</i>
6(7) to 6(15)	Joinder of parties on application and related matters
28.....	Amendments to pleadings and documents
35(13)	Discovery, inspection and production of documents
38(3) to 38(8)	Procuring evidence for trial
42.....	Variation and rescission of orders
59.....	Sworn translators
61.....	Interpretation of evidence
62.....	Filing, preparation and inspection of documents
63.....	Authentication of documents executed outside the Republic for use within the Republic
64.....	Destruction of documents
65.....	Commissioners of the Court

Application of certain sections of the Supreme Court Act, 1959 (Act No. 59 of 1959)

33. The following sections of the Supreme Court Act, 1959 (Act No. 59 of 1959), shall apply *mutatis mutandis* to proceedings of and before the Court:

<i>Section</i>	<i>Subject</i>
19bis.....	Reference of particular matters for investigation by referee
22.....	Powers of Court on hearing of appeals
32.....	Examination by interrogatories of persons whose evidence is required in civil cases
33.....	Manner of dealing with commissions rogatoire, letters of request and documents for service originating from foreign countries

Documents lodged to canvass factual material

34. (1) Any party to any proceedings before the Court, and an *amicus curiae* properly admitted by the Court in any proceedings shall be entitled, in documents lodged with the registrar in terms of these rules, to canvass factual material which is relevant to the determination of the issues before the Court and which do not specifically appear on the record: Provided that such facts—

- (a) are common cause or otherwise incontrovertible; or
- (b) are of an official, scientific, technical or statistical nature, capable of easy verification.

(2) All other parties shall be entitled, within the time allowed by these rules for responding to such document, to admit, deny, controvert or elaborate upon such facts to the extent necessary and appropriate for a proper decision by the Court.

General

35. The Court may, on sufficient cause shown, excuse the parties from compliance with any of the foregoing rules and may give such directions in matters of practice and procedure as it may consider just and expedient.

Execution

36. Costs orders of the Court shall be executed in the magistrate's court as follows:

- (a) The costs order shall have the effect of a civil judgment of the magistrate's court and the party in whose favour a costs order was made shall be deemed the judgment creditor and the party against whom such order was made shall be deemed the judgment debtor.
- (b) The party in whose favour a costs order was made shall, where a costs order has not been complied with file with the registrar an affidavit setting out the details of the costs order and stating that the costs order has not been complied with or has not been complied with in full, as the case may be, and the amount outstanding, and shall request the registrar to furnish him or her with a certified copy of such costs order.

- (c) The registrar shall, after having inspected the particular Court file to verify the contents of the affidavit, furnish the party referred to in paragraph (b) with a certified copy of the costs order concerned and shall record such furnishing on the Court file.
- (d) The party referred to in paragraph (b) shall file the said copy with the clerk of the civil court of the district in which he or she resides, carries on business or is employed.
- (e) Such order shall be executed according to the provisions of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and the Magistrates Courts Rules published under Government Notice No. R. 1108 of 21 June 1968, as amended, regarding warrants of execution against movable and immovable property and the issuing of emolument attachment orders and garnishee orders only: Provided that no magistrate's court shall be entitled to grant an order for the committal of a judgment debtor.

Transitional provisions

37. When a time is prescribed for any purpose in terms of these rules, and such time would otherwise have commenced to run prior to the commencement of these rules, such time shall begin to run only on the date on which these rules come into operation.

Repeal of rules

38. The Rules of the Constitutional Court published under Government Notice No. R. 1584 of 16 September 1994 shall be repealed on the date on which these rules come into operation: Provided that any directions in writing in terms of rule 3 of such rules pertaining to the procedures to be followed in the determination of a dispute or an issue in cases already instituted shall remain in force, unless repealed in writing by the President.

Short title

39. These rules shall be called the **Constitutional Court Rules, 1995**.

SCHEDULE 1 — FORMS

Form No.

- 1. Notice of motion (to registrar)
- 2. Notice of motion (to registrar and respondent)
- 3. Notice of referral of issues in terms of rule 22

FORM 1

NOTICE OF MOTION

(to Registrar)

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Case No.

In the matter of:

..... (Applicant)

Take notice that the above-named applicant applies to the Court for an order in the following terms:

- (a)
- (b)
- (c)

and that the affidavit of, annexed hereto, will be used in support thereof.

Kindly place the matter before the President to be dealt with in terms of rule 10(4).

Dated at, this day of 19.....

.....
Applicant or attorney

To the Registrar of the above-named Court.

FORM 2

NOTICE OF MOTION

(to Registrar and Respondent)

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Case No.

In the matter between:

..... (Applicant)

and

..... (Respondent)

Take notice that..... (hereinafter called the applicant) intends to make application to this Court for an order (a) (b) (c) (here set forth the form of order prayed) and that the accompanying affidavit of will be used in support thereof.

Take notice further that the applicant has appointed (here set forth an address) as the address at which he or she will accept notice and service of all process in these proceedings.

Take notice further that if you intend opposing this application you are required (a) to notify applicant's attorney in writing on or before (date) and (b) within 15 days after you have so given notice of your intention to oppose the application, to file your answering affidavits, if any; and further that you are required to appoint in such notification an address at which you will accept notice and service of all documents in these proceedings.

If no such notice of intention to oppose is given, the applicant will request the registrar to place the matter before the President to be dealt with in terms of rule 10(4).

Dated at, this day of 19.....

.....
Applicant or attorney

To:

(1)
(Respondent)

.....
.....
.....
(Address)

(2) The registrar of the above Court
.....

FORM 3

NOTICE OF REFERRAL OF ISSUES
IN TERMS OF RULE 22
IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Case No.

In the matter between:

..... (Plaintiff/Applicant)

and

.....(Defendant/Respondent)

To the registrar of the Constitutional Court:

1. Take notice that the..... *Provincial/Local Division of the Supreme Court of South Africa has referred the following issue/dispute in terms of—

*section 102(1)/

*section 102(14)/

*section 103(4)

of the Constitution to the Constitutional Court:

(set out briefly the issue/dispute).....

.....

.....

2. The order of the court directing the referral of the issue/dispute is attached.

3. If referred by the court *a quo mero motu*, the following are attached:

(a) The written formulations in terms of rule 22(2).

(b) Copies of the relevant portions of the record considered to be necessary in terms of rule 22(3)(a).

Dated at, on this.....day of.....19.....

*A.
Applicant or attorney

Address of applicant or attorney

*B.

*Registrar of the.....
Provincial / Local Division of the
Supreme Court of South Africa

* Delete what is not applicable.

Names and addresses of all the parties or legal representatives involved in the case to whom directions should be given:

.....
.....
.....
.....
.....
.....

SCHEDULE 2 — FEES

	R
Lodging of any petition (other than the first document)	10,00
Lodging of an answering affidavit (each)	10,00
Lodging of a notice of appeal or cross-appeal (each).....	15,00
Order of the court granting leave to appeal	15,00
For the registrar's certificate on certified copies of documents (each)	1,00
Taxing fee in any matter	25,00

DATE: 24 January 1995

TO: Roberta Durrant
Penguin Films

FROM: F. L. RAUBENHEIMER
Acting General Manager

TOTAL AMOUNT OF FEES FOLLOWING THIS ORDER IS R 100,00

Dear Ms Durrant

With this fax I would like to confirm the telephone undertaking given to you yesterday.

I spoke with Christa Joubert, our Manager for Scheduling and we decided that we can accommodate the 15 x 45 minute episodes of "The Constitution Lives" at 19:15 every Sunday starting the 12 March 1995.

Yours sincerely

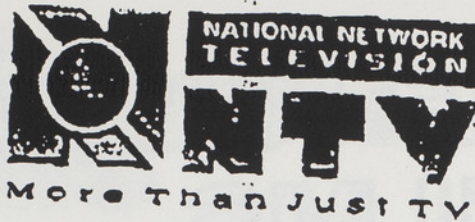
F. L. RAUBENHEIMER
ACTING GENERAL MANAGER

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R. 5 Constitution of the Republic of South Africa (200/1993): Rules of the Constitu- tional Court	1	16204	R. 5 Grondwet van die Republiek van Suid- Afrika (200/1993): Reëls van die Konsti- tusionele Hof	1	16204

TV News Block
Artillery Road
Johannesburg
South Africa



Private Bag X1:
Auckland Park 2006
Tel: (011) 714-2178
Fax: (011) 714-6253

Fax Sheet

DATE : 24 January 1995

TO : **Roberta Durrant**
Penguin Films

FAX NUMBER : 483-2037

FROM : P L Raubenheimer
Acting General Manager: NNTV

TOTAL NUMBER OF PAGES INCLUDING THIS ONE : 1 (One)

Dear Ms Durrant

With this fax I would like to confirm the telephonic undertaking given to you yesterday.

I spoke with Christa Joubert, our Manager for Scheduling and we decided that we can accommodate the 16 x 45 minute episodes of "The Constitution Lives" at 19:15 every Sunday starting the 12 March 1995.

Yours sincerely

P L RAUBENHEIMER
ACTING GENERAL MANAGER: NNTV



PENGUIN FILMS

111 Central Ave
Houghton 2198
Johannesburg
South Africa
P O Box 93380
Yeoville 2143
Tel.: 011 483-2006
483-2315
483-2316
Fax: 011 483-2037

Mr. E. Sithole & Ms. L. Zondo
Constitutional Assembly

Fax no. : (021) ~~461-4339~~ 461 4487

23 January 1995

Dear Enoch/Louisa,

CONSTITUTION PROGRAMME FOR N.N.T.V.

Please find enclosed a suggestion of how we could spread the themes over 16 programmes.

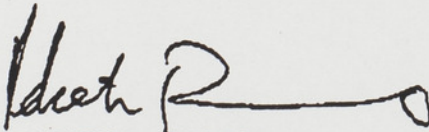
We feel it is important that each programme handles one topic for discussion, rather than bits and pieces from all the theme committees.

I have also added names to the list of possible moderators. Urmilla Bhoda is seemingly not in the country during this period.

I have had confirmation from N.N.T.V. of the broadcast dates and times, starting 12th of March every Sunday evening at 19.15 for 16 weeks.

Please come back with any comments. A suggested order of broadcast from you will help with our planning.

Kind regards


ROBERTA DURRANT



PENGUIN FILMS

111 Central Ave
Houghton 2198
Johannesburg
South Africa
P O Box 93380
Yeoville 2143
Tel.: 011 483-2006
483-2315
483-2316
Fax: 011 483-2037

NEW CONSTITUTION

Recommended topics for 16 programmes. As yet they are not in any broadcast order or preference.

PROGRAMME ONE

The Character of State.
Single Sovereign States.
Supremacy of The Constitution.
Representative Government.
The Nature of the Provincial System and Local Government.
Provincial Executive Authorities.

PROGRAMME TWO

Separation of powers - Legislature from the Executive.
Accountability of Government.
Freedom of information.

PROGRAMME THREE

Volkstaat
Traditional Authorities.

PROGRAMME FOUR & FIVE

The Entrenched Bill of Rights.
This would include:
Equality.
Human Dignity.
Privacy.
Freedom and Security of the Person.
Freedom of Expression.
Freedom of Association.
Freedom of Movement.
Assembly, Demonstration and Petition.
Citizen's Rights.
Political Rights,
The Right to Life.

PROGRAMME SIX

Language and Culture.
Customary and Traditional Law.
Group and Minority Rights.

PROGRAMME SEVEN

The Appointment of the Judiciary (Judicial Services Commission and Magistrates Commissions).
The Role of Judiciary.
Public hearings.

PROGRAMME EIGHT

Other Court Structures.
Legal Education
Legal Profession.

PROGRAMME NINE

Prosecuting Services.
The Role of the Public Prosecutor.
The Public Protector.

PROGRAMME TEN

Religion, Belief and Opinion.

PROGRAMME ELEVEN

The Election Commission.
The Electoral System.

PROGRAMME TWELVE

Financial accountability and independence of the Government, including the role of the Auditor General, The Reserve Bank, The Budget Procurement, and National Revenue Fund.

ALPHA

PROGRAMME THIRTEEN

Gender Equality.

PROGRAMME FOURTEEN

Property and Land.

PROGRAMME FIFTEEN

Accountability of Defence, Intelligence and Security Forces.

PROGRAMME SIXTEEN

Police and Correctional Services.

MODERATORS

In addition to the names provided by Louisa Zondo, we would like to put forward the following ones:

Professor Dennis Davies

Dr. David Molapo
(I enclose information on him)

Professor Martin Brassey
Law Professor
University of the Witwatersrand
(Professor Brassey has had T.V. experience as he has been a guest moderator on Future Imperfect, and has done exceedingly well).

Professor Halton Cheadle
(He has also had a certain degree of television experience)

Mrs. Leah Gcabashe
Lecturere - Public Law
University of Natal, Durban

Professor Mandla Nchunu
Director of the Centre for Legal Studies
Natal University

Advocate Gilbert Marcus
Johannesburg Bar - Johannesburg

Professor Thandabantu Nhlapo
Public Law - University of Cape Town

Mrs. Pansy Tlakula
Acting Director - Black Lawyers Association
Johannesburg

Our intention is to make an approach to the relevant moderators and ask them which of the topics they would like to handle, have an audition to see how they cope and thereafter make a final decision together with yourselves.
We should keep the number down to a maximum of four or five moderators



INKATHA

Inkatha Freedom Party

IQembu leNkatha Yenkululeko

SUBMISSION TO THE CONSTITUTIONAL COMMITTEE ON INTERNATIONAL MEDIATION

1. On November 9, 1994 the IFP tabled with the Management Committee first and afterwards with the Constitutional Committee its request that the work program of the Constitutional Assembly reflects the need to hold international mediation. In this respect the IFP argued that the Constitutional Assembly and its sub-divisions are under the obligation to abide by the terms of the April 19, 1994 Agreement for Peace and Reconciliation.
2. On or about November 10, 1994, over the objection of the IFP, the Constitutional Committee decided to defer this matter to the State legal advisers.
3. On November 18, 1994, the State legal advisers returned a legal opinion supporting the view that the Constitutional Assembly and its structures are not under a legal obligation to provide for international mediation.
4. On December 2, 1994, the IFP submitted to the Constitutional Committee a rejoinder showing that the opinion of the State legal advisers was flawed in many legal and factual respects.
5. On or about December 1, 1994, the Minister of Provincial Affairs and Constitutional Development, Mr R M Meyer, and Deputy Minister, Mr Valli Moosa, meeting a delegation of the amaKhosi of the Kingdom of KwaZulu in Ulundi emphatically stated that they favor that international mediation be held in terms of the Agreement for Peace and Reconciliation. They indicated that they were talking in their official capacity.
6. On December 1, 1994 the Chairman of the Constitutional Assembly, Mr Cyril Ramaphosa wrote to IFP President Dr MG Buthelezi, asking for his advice on how the Constitutional Committee should relate to the issue of international mediation.
7. On December 2, 1994 the Constitutional Committee decided to defer the matter of international mediation to the three leaders who were signatories to the Agreement for Peace and Reconciliation for their advice and instruction.
8. On December 7, 1994 President Mandela indicated his intention to fulfil the terms of the Agreement for Peace and Reconciliation with respect to international mediation.

9. On December 9, 1994, IFP President Dr MG Buthelezi replied to the letter from Mr Ramaphosa indicating that the Constitutional Committee should develop a work program which allows for international mediation to be held and that any further postponement of international mediation would make it an exercise in futility. He also stressed that in terms of the Agreement for Peace and Reconciliation, the purpose of international mediation was to provide inputs into the constitution-making process after the April 27, 1994 elections. Copy of this letter is herewith attached.

The foregoing list of events supports the following statements:

- (a) There is agreement amongst the ANC, the NP and the IFP that international mediation is to be held.
- (b) International mediation must be held at this juncture, otherwise it will become futile. In fact the purpose of international mediation is to ensure that the discussion of some fundamental issues listed in the terms of reference for international mediation benefits from the objective and impartial input of international mediators.
- (c) The work program presently approved by the Constitutional Committee does not allow for the holding of international mediation at a useful stage of the constitution making process.
- (d) It is the responsibility of the representatives of the ANC, NP and IFP in the Constitutional Committee to recommend a revision of the work program of the Constitutional Assembly to ensure the holding of international mediation.
- (e) Irrespective of whether the Constitutional Assembly is under the legal obligation to abide by the terms of the Agreement for Peace and Reconciliation, the Constitutional Committee has the inherent discretion to decide that the work program is to make provision for the holding of international mediation and the South African Government has the discretion to organize and join international mediation.
- (f) International mediation would substantially expedite the constitution-making process. In fact, international mediation is meant to foster consensus on fundamental issues which left open and unresolved are likely to generate lengthy discussions and the need for numerous re-drafting of the relevant reports and constitutional text.
- (g) Since the leaders of the IFP, the ANC and NP have indicated that international mediation is to take place, the responsibility to locate it in the constitution-making process now lies with the Constitutional Assembly, and specifically with the Management and the Constitutional Committees. In fact, the Constitutional Committee, and not leaders, is responsible for the task of shaping and directing the constitution making process
- (k) At this juncture the Constitutional Committee should make a final decision that international mediation comprise part of the constitution-making process and it is to take place as soon as possible. The Constitutional Committee will be in a better position to

determine when and how international mediation is to take place once it has the benefit of the recommendation of the committee consisting of Ministers Mzimela, Moosa and Meyer which has been appointed to iron out the details of international mediation. However, this committee can only function against a decision of the Constitutional Committee which fully endorses the decision of the leaders of the IFP, ANC, and NP that international mediation shall take place

Therefore, the discussion in the Management Committee under agenda item No. 8, Review of the Process, should take into account the fact that any and all deadlines for finalization of reports and related processes will need to be reexamined once the time and procedures for international mediation have been finalized.

7452

January 23, 1995

concerned about the fact that the Constitutional Committee has approved deadlines for the first block of reports of the Theme Committees, which will be addressing essential constitutional issues which were contained in the terms of reference for international mediation and which are referred to in the Agreement as "outstanding issues".

In this respect, it would be of little avail if the leaders of the parties which were signatories to the Agreement meet to arrange the resumption of mediation if the Constitutional Assembly and the Constitutional Committee move ahead to develop a process of constitution-writing in such a way that mediation and its outcome cannot be incorporated in that process.

Obviously, I will not refuse to meet with President Mandela and Mr de Klerk on the issue but the only purpose that that meeting could have would be to determine the international mediation agenda which, *inter alia*, would include the involvement of the South African Government. It is not a matter which three parties can settle on their own.

My request is that the Constitutional Committee meets in a special session to discuss when international mediation should resume and how the work of the Constitutional Assembly should be readjusted to allow international mediation to take place and to benefit from its results. Once we have a clear understanding of how the constitution making process will accommodate international mediation, the three leaders who were signatories to the Agreement will be in a better position to meet and discuss the various aspects of this matter having the benefit of knowing the position of the South African Government and the procedure adopted by the Constitutional Assembly.

Be assured that international mediation is of great importance to KwaZulu-Natal exercising its rights under the Interim Constitution to adopt a constitution which secures the Monarchy and its institutions and which secures traditional law and custom.

When I met with President Mandela and Deputy President de Klerk during a Cabinet break on the 7th of December, we all agreed that the ball must be set rolling.

Please let me know if I can be of further assistance to you in this regard.

Sincerely yours,

MANGOSUTHU BUTHELEZI
PRESIDENT - INKATHA FREEDOM PARTY

CONSTITUTIONAL ASSEMBLY
CONSTITUTIONAL COMMITTEE
MONDAY, 30 JANUARY 1995 (AT 14H15)

(DRAFT AGENDA)

1. Opening
2. Minutes
3. Matters Arising
4. Work Programme
 - 4.1 Legal Content
 - 4.2 Community Liaison
5. Technical Committees
6. Drafting Process: Proposal
7. AOB
8. Closure

