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TANGO

CONSTITUTIONAL ASSEMBLY

MANAGEMENT COMMITTEE

**THURSDAY
14 SEPTEMBER 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 : Thursday 14 September 1995

Time : 08h00 - 10h00

Venue : V16

AGENDA

1. Opening
 2. Minutes: *Pages 2 - 6*
 3. Matters Arising: See Agenda Items Below
 4. Discussion: Proposal on Process: *Pages 7 - 11*
 5. Draft Agenda for the Constitutional Committee Meeting of 15 September 1995: *Page 12*
 6. AOB — *Stignais (by Meyer)*
 7. Closure
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**H EBRAHIM
EXECUTIVE DIRECTOR
CONSTITUTIONAL ASSEMBLY**

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CONSTITUTIONAL ASSEMBLY

MINUTES OF THE MANAGEMENT COMMITTEE MEETING THURSDAY 7 SEPTEMBER 1995

PRESENT

RAMAPHOSA M C (CHAIRPERSON)

Chabane OC
Eglin CW
Meshoe KR
Meyer RP
Moosa MV

Myakayaka-Manzini YLM
Sizani RK
Van Breda A
Viljoen CL
Wessels L (Deputy Chair)

Absent: P F Smith

In Attendance: H Ebrahim, P Lilienfeld, A Meyer, M Sparg, L Zondo, and M Keegan.

1. OPENING

1.1 The Chairperson opened the meeting at 08h06.

1.2 The meeting adopted the agenda with the following additions under
7. Any Other Business:

7.1 Draft framework and working draft of the constitution

7.2 Status of the week's meetings.

2. MINUTES

The meeting adopted the Minutes of the 31 August 1995 meeting of the Management Committee.

3. MATTERS ARISING

None - included in the agenda items below.

4. DISCUSSION: PROCESS

4.1. DISCUSSION DOCUMENT: PROPOSALS ON PROCESS

4.1.1 The Chairperson introduced the document entitled, "*Discussion Document: Proposal on Process,*" included in the documentation.

4.1.2 An extensive discussion occurred, which the Chairperson summarised as follows:

- i. There was consensus that the Constitutional Assembly should work towards a target date of the middle of 1996;
- ii. The Administration would propose an exact deadline in its amended Work Schedule;
- iii. ^{should be made} If an assessment ~~was needed~~, it would occur around ^{beginning} February and would have an eye to re-programming work, rather than extending the deadline;
- iv. To complete its work within this time frame, the Constitutional Assembly would need solid blocks of unbroken time during the first half of 1996, during which intensive work would occur. Parliament would need to prioritise Constitutional Assembly work and set aside adequate time for it to be completed.
- v. Public participation and the process for acquiring public comment on the draft constitution would be reviewed.

Parliament re-open 9/1996

4.1.3 The Chairperson ruled that:

- i. The Administration would rework the proposal, taking into account the above discussion and the concerns raised by the Freedom Front about the need -
 - a. To develop awareness of the constitution amongst the public and experience in the constitution-making at lower levels of government; and
 - b. To examine what role government departments and the Commission on Provincial Government might play here. ^{& local}
- ii. The amended proposal would be forwarded to the Constitutional Committee for its consideration.

- o 4.1.4 The Deputy Chairperson expressed concern that political parties were hesitating to take decisions, and contentious issues were being shifted from one committee to another. There was consensus that political parties should commit themselves to processing and resolving difficult matters.

4.1.5 It is noted that Mr. Moosa of the ANC queried whether some Sub-committee meetings might be held without an audience to speed up work.

4.2 CA MANDATES AND WORK PROGRAMME

4.2.1 Mr. Ebrahim withdrew the document entitled "*Mandates from Constitutional Assembly and Work Programme*," included in the documentation, and replaced it with the document entitled "*Amended CA Schedule*," tabled at the meeting.

4.2.2 The meeting agreed in principle to meet during the recess, with the objective of publishing a draft constitution.

4.2.3 There was consensus, however, that the proposed "*CA Schedule*" was too packed. After discussion, the Chair ruled that:

- i. Meetings would not occur between 15 September and early October.
- ii. The Administration would reduce the number of meetings held in October and schedule intensive work in November and possibly early December, after the local government elections.
- iii. The Administration would send out a roster to let political parties indicate which dates in October were untenable for meeting.
- iv. The Administration would prioritise matters for discussion, with an eye to finalising as many draft texts as possible before publication of the draft constitution.
- v. The Administration would forward an amended proposal to the next meeting of the Management Committee.

4.2.4 The meeting agreed to ask the the Constitutional Committee and Constitutional Assembly for a mandate to convene the Constitutional Committee and the Sub-committee during recess to approve a draft text of the constitution for publication.

5. DISCUSSION: MATTERS REFERRED FROM THE CONSTITUTIONAL COMMITTEE MEETING OF 1 SEPTEMBER 1995

5.1 Mr. Ebrahim spoke to the document entitled "*Coat of Arms*," included in the documentation.

- 5.2 It was agreed that a small committee of experts would be established to investigate a new coat of arms. Its terms of reference might be to identify:
- i. The cost implications of the change;
 - ii. The transitional arrangements for introducing the new coat of arms;
 - iii. A work plan; and
 - iv. Advice on the design of the coat of arms, although political parties might need to instruct this process.
- 5.3 The meeting agreed that an all-party committee would look at the matter from a political perspective. It would:
- i. Propose names for the committee;
 - ii. Look into its terms of reference; and
 - iii. Report back to the Management Committee by early 1996.

6. ANY OTHER BUSINESS

6.1 DRAFT FRAMEWORK AND WORKING DRAFT OF THE CONSTITUTION

- 6.1.1 Mr. Ebrahim introduced two documents that were tabled at the meeting entitled "*Draft Framework and Organisation of the New Constitution*," and "*Working Draft: Constitution of the Republic of South Africa, 1995*."
- 6.1.2 Mr. Eglin of the DP expressed concern that consideration also needed to be given to who would produce the final draft.
- 6.1.3 The meeting agreed to defer the matter until the next meeting of the Management Committee.
- 6.1.4 The Chairperson ruled, however, that copies of the "*Working Draft*" would be distributed at the Constitutional Committee meeting on 8 September 1995.

6.2 STATUS OF THE WEEK'S MEETINGS

The meeting agreed:

- i. To cancel the 7 September 1995 meeting of the Constitutional Committee Sub-committee;
- ii. To proceed with the 8 September 1995 meeting of the Sub-committee;
- iii. To proceed with the 11 September meeting of the Sub-committee, but to adjourn during Chancellor Kohl's speech to the National Assembly;
- iv. To keep the 14 September 1995 meeting of the Sub-committee under review;
- v. To proceed with the Constitutional Assembly and Constitutional Committee meetings on 15 September.

7. CLOSURE

The Chairperson closed the meeting at 09h50.

PROPOSAL ON PROCESS

1. INTRODUCTION

Discussions in the Management Committee of 7 September 1995, and in the Constitutional Committee of 8 September 1995 have provided clear guidelines on the next phase of constitution-making. There is broad agreement that :

- ◆ The Constitutional Assembly should meet the final deadline of May 1996 set out in the Interim Constitution;
- ◆ A Working Draft should be published by 15 November 1995 as a record of work done and to invite further public comment; and
- ◆ There should be an assessment of progress made by February 1996.

2. THE PROCESS

2.1 It has been an essential principle of the constitution-making process from the outset, that the process of drafting and adopting the new constitution, is as important as the final product itself, the new constitution. To this end, the Constitutional Assembly resolved in October 1994 that :

- ◆ The ultimate objective is to draft and adopt a credible and enduring constitution;
- ◆ It should be a people-driven and transparent process; and
- ◆ There should be maximum public participation.¹

2.2 The success of our planning for the next phase of constitution-making, will depend on how best we are able to interweave three parallel processes which are integral to the process. These are:

2.2.1 **The Political Negotiations** - will depend on the preparedness of political parties, the nature of the structures provided to facilitate negotiations and the administrative and secretarial back-up.

ensure an inclusive process as possible

¹See CA Resolution, No 4, Friday 28 October 1994 - Page 43CA

2.2.2 **Public Participation** - is a vital component of the process. Our eagerness to complete by the May 1996 deadline should not compromise our commitment to ensuring maximum public participation within the time-frames set out in this document.

2.2.3 **Technical Support** - will ensure that the final product is not only politically acceptable, but also technically sound and more importantly, that the new constitution is accessible to the broader public. This will involve legal and technical support, and plain-language experts.

3. TIME FRAMES

The following steps or phases can be identified for the remainder of the constitution-making process from now until adoption in May 1996:

assessment period be avoided.

Phase	Task	Dates
1	Production of Working Draft	15 Sept - 15 Nov 1995
2	Completion of First Draft	15 Jan - 29 Feb 1996
3	Final Negotiations and Debate	1 March - 30 April 1996
4	Adoption of Constitution	May 1996

PPP
Publication mid NOV
PPP till

(5) what happens after----- (noted)

4. THE WORKING DRAFT

50 pg

Model
(3) - 1 March - 15 April
adoption mid April

4.1 The main activity of the CA for the remainder of 1995 will be the production and distribution of the Working Draft. This draft will serve as a record of work done and will also invite further public comment.

adoption vs certification
a panel given opinion
on this

4.2 The format of the Working Draft will draw attention to contentious and outstanding areas, and attempt to focus submissions on these areas.

4.3 Most Theme Committees have concluded their assignments and tabled their reports. It would appear that the only outstanding assignment as at 15 September is the Chapter on Fundamental Human Rights. We are however assured that this Chapter will be completed on or about 18 September. Whilst all other reports would have been tabled with the Constitutional Committee, Theme Committee 2's final report on the Senate and the last reports from Theme Committee 3 on Local Government, Inter-governmental Relations and Financial and Fiscal Relations will not be accompanied

by draft formulations.

- 4.4 Considering the limited time available for meetings in September and October to allow parties to prepare for local government elections, it is suggested that two two-day meetings of the sub-committee take place during recess to ensure the production of the Working Draft by 15 November 1995. The first of these meetings will consider the Chapter on Fundamental Rights, whilst the second, some 10 - 14 days later would consider and approve the Working Draft itself.

5. THE FIRST DRAFT

- 5.1 From January 1996, the CA will focus on outstanding areas with a view to completing the First Draft of the new constitution by the end of February 1996. It has been agreed that work should resume on 15 January 1996. This will allow for an intense period of approximately three weeks of negotiations until parliament resumes in early February 1996.
- 5.2 The CA will need to be afforded priority in the parliamentary schedule next year if we are to meet the May deadline. To this end, it has been agreed that the CA should renegotiate allocation of time with parliament to ensure that the CA is given dedicated blocks of time of approximately 7 - 10 days at a time from 9 February 1996 onwards.
- 5.3 From 15 January 1996, the CA would also seek to engage specific sectors in civil society on contentious and outstanding areas of the Working Draft. This would represent a shift from written submissions to more interaction and debate with stakeholders and interested parties.
- 5.4 It has also been agreed that the Management Committee would conduct a comprehensive evaluation of progress in February 1996.

6. ADOPTION AND CERTIFICATION

- 6.1 The final round of negotiations would commence with the publication of the First Draft in March- April 1996 with adoption by May 1996. Certification by the Constitutional Court will follow. The certification of the text by the Constitutional Court is only strictly required after adoption. However, should there be sufficient time available, it would be more desirable to ensure that the Court confirms compliance prior to adoption by way of an opinion.

- 6.2 This process would be assisted if the Independent Panel of Constitutional Experts, were to consider the draft text from a technical point of view prior to adoption with a view to a certificate being produced confirming that all the constitutional principles have been complied with and that the text is technically and legally sound.

7. RECOMMENDATIONS

In order to implement the proposals outlined in this document the following decisions are required and sought from Management Committee :

- 7.1 Endorsement of the broad approach outlined in this document.
- 7.2 ✓ The Directorate be instructed to immediately establish a team of experts, which should include law advisors, plain language experts and the Panel to review draft formulations tabled before the Constitutional Committee with a view to producing the Working Draft for consideration by the Sub-Committee.
- 7.3 The Working Draft will serve as a report on work done and should be published no later than 15 November 1995. Publication should include supplements in various daily newspapers, printing and distribution to all individuals and organisations who made submissions to the Constitutional Assembly. The CA Administration is presently preparing a data-base of all individuals and organisations who either made submissions or attended public hearings. This will serve as a base for distribution.
- 7-3-1. → invite public comment
- 7.4 Educational material and publications, and programmes such as Constitutional Talk television and radio and the Constitutional Education Programme of workshops, will be put in place to ensure that the reporting progress is as wide and effective as possible given the limited resources and time-frames.
- 7.5 All of the above will obviously require resources. The Chairpersons would need to consider an update of the 1995/96 Budget for October 1995. A Budget for 1996/97 will be placed before Management Committee at the earliest possible opportunity in 1996.

- 7.6 With some regard to party programmes, the following schedule is recommended for the sub-committee after 15 September 1995:

THURSDAY 28 SEPTEMBER 1995:

Judiciary

Independent Institutions

National Executive

National Assembly and Electoral Systems

Constitutional Amendments

Traditional Authorities

Symbols

Competencies

9 AND 10 OCTOBER:

Chapter on Rights

19 AND 20 OCTOBER 1995:

Working Draft

C:\DATA\REPORTS\PROCESS.1

Possibility of meetings

early

MDV -

(Sub Comm)

6d 7/2

CONSTITUTIONAL ASSEMBLY

MEETING OF THE CONSTITUTIONAL COMMITTEE

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

Date : Friday 15 September 1995

Time : 09h30 - 18h00

Venue : Old Assembly Chamber

DRAFT AGENDA

1. Opening
 2. Minutes: *Pages 2 - 8*
 3. Matters Arising: *As set out in agenda*
 4. Tabling and Discussion: 4th Draft of Chapter on Security as at 22 August 1995: *Vol. 5*
 5. Tabling and Discussion: Theme Committee 1 Report on Foreign Relations and International Law *Vol. 1, Pages : 9 - 94*
 6. Tabling and Discussion: Theme Committee 6.3 Report on Land: *Vol. 2*
 7. Tabling and Discussion: Theme Committee 6.3 Report on Gender: *Vol. 2*
 8. Tabling and Discussion: Theme Committee 2 Report on Provincial Structures : *Vol. 3*
 9. Tabling and Discussion: Theme Committee 2 Report on Senate: *Vol. 3*
 10. Tabling: Theme Committee 3 Report on Local Government: *Vol. 4*
 11. Tabling: Theme Committee 3 Report on Financial and Fiscal Relations: *Vol. 4*
 12. Tabling: Theme Committee 3 Report on Inter-governmental Relations: *Vol. 4*
 13. Tabling and Discussion: Management Committee Report on Process: *To Be Distributed when available*
 14. AOB
 15. Closure
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Embargoed until 08h00
14 September 1995

