

2/4/5/5/5

CONSTITUTIONAL ASSEMBLY

STRATEGISING WORKSHOP
DRAFT PROGRAMME

June 1995

* QUESTIONS FOR PLENARY SESSION

These questions could be used to guide discussion in the first plenary session.

1. What would we complete by 15 September?
 - 2.1 Publication: Advisory opinions on process/timing
 - 2.2 Manner, Timing and form of publication
- (Derek to provide brief (5min) input)*
3. Implications of publication for communication strategy?
(Enoch and Edward to provide brief (10min) input)

DISCUSSION DOCUMENTS

To be circulated by Monday 12 June 1995.

CONSTITUTIONAL ASSEMBLY

STRATEGISING WORKSHOP Draft programme

Objectives: Review progress in relation to broad phases;
Identify problem areas
Develop a plan of action

Participants: Directorate, Heads, Deputy Heads, Secretariat members, Co-ordinators.

Programme

- | | | |
|-----|--|----------------------|
| 1. | Opening and Welcome | 09h00 - 09h05 |
| 2. | Presentation of broad phases and update on progress
<i>Hassen & Secretariat</i> | 09h05 - 09h50 |
| | Tea | 09h50 - 10h00 |
| 3.1 | Plenary discussion*
<i>Lucille</i> | 10h00 - 11h00 |
| 3.2 | Small group discussions: Possible scenarios | 11h00 - 13h00 |
| | Lunch | 13h00 - 14h00 |
| 3.3 | Report back to Plenary
<i>Derek</i> | 14h00 - 14h30 |
| | Plenary discussion
<i>Derek</i> | 14h30 - 15h30 |
| | Tea | 15h30 - 16h00 |
| 4. | Way forward
<i>Marion</i> | 16h00 - 18h00 |
| 5. | Monitoring mechanisms
<i>Louisa</i> | 18h00 - 18h30 |
| 6. | Closure | |

Constitutional Assembly
22 June 1995

1. Opening and Welcome

In his opening remarks, the Executive Director, **Hassen Ebrahim**, pointed out that because of the difference between administrative and political planning, the CA Administration could not afford to be mechanical. The limited period of two years had put a lot of pressure on planning for deadlines. The strategic workshop was necessary to review the deadlines and to move the constitution writing process towards completion.

2. Presentation of Broad Phases and update on progress

2.1 PHASES

- | | |
|-----------------|---|
| 30 June 1995 | There was progress being made in Theme Committees although the deadline was becoming unrealistic. |
| 14 July 1995 | Very few drafts if any would have been completed by this date. |
| Ongoing | Referral to the constitutional court was inoperable as there was no substantive text available. |
| 31 October 1995 | Draft text for public scrutiny would only be possible if sections of the constitution were published piecemeal. There should be a lull period of two to three months to allow for public comment. The Media and Community Liaison Departments would be the only active sections of the Administration that would be operational during that time. A suitable committee of the Constitutional Assembly should be set in place to process feedback from the public. |
| May 1996 | Some political parties had called for the extension of the deadline for the final debate and adoption of the constitution. Others preferred to review the deadline towards the end of the process. For the purpose of planning the CA Administration had to work within the existing deadlines. |

Soon after May A possibility of piecemeal certification of the draft constitution would have to be explored.

2.2 UPDATE

The Head of the Secretariat, **Lucille Meyer**, reported that a new deadline of September 15 had been set for Theme Committee work. The move had increased the meetings by 15 for Theme Committees and 7/8 Constitutional Committee. In that period, the Theme Committee Secretariats reported that they would complete work as follows:

- TC1:** The last report would be presented to the Constitutional Committee on August 18, 1995. There could be a problem of non availability of Technical Advisors.

- TC2:** The last report to the Constitutional Committee could be beyond January, 1995. There was a problem with draft formulations and issues of overlap with TC3 and TC6.2.

- TC3:** The last report to the Constitutional Committee would be September 15 1995. This had been made possible by handling some issues concurrently and dispensing with one block.

- TC4:** The last report to the Constitutional Committee would be August 18 1995.

- TC5:** The last report to the Constitutional Committee would be August 18 1995.

- TC6.1** The last report to the Constitutional Committee would presented on August 4 1995.

- TC6.2** The last report would be targeted for August 18 1995 depending on progress made by TC3 on the Financial and Fiscal Relations.

- TC6.3** The last report would be presented to the Constitutional Committee on September 1 1995.

- TC6.4** The last report would be presented to the Constitutional Committee on September 1 1995.

2.3 PROGRESS

Hassen pointed out that the delay in passing reports to higher structures by some Theme Committees would tend to reduce the Constitutional Assembly to an automatic ratification body. It might therefore be advisable to separate the drafting process from the compilation of reports. Because of the limited number of Constitutional Committee meetings left in the year, it was going to be difficult to get approval for publication of all draft text. Inevitably the Constitutional Committee would have to reconvene in January. A suitable committee of the Constitutional Assembly would have to be delegated with powers to approve drafts for publication in order to facilitate the public scrutiny phase of the process.

3.1 PLENARY DISCUSSION

Lucille focused discussion around two broad questions:

How do we complete the reports and text on time?

It was noted that TC progress was uneven. Work could not be re-allocated due to logistical and political inconveniences. Because of the referral back of reports the CC could not complete its deliberations on time hence the strong suggestion of a suitable committee. To ensure continuity the suitable committee would have to include ex-officio TC members on an advisory capacity. It would be difficult to reconvene TC'S after January. Negotiations that had taken place at TC level had sometimes not been on party political lines and that had tended to delay the process of debate at CC level.

Publication?

To ensure continuity and coherence of publication, certain interrelate sections of the constitution would have to be published in a manner that would inform without causing confusion. An example was given of the Bill of Rights being published in conjunction with the Public Protector, the Human Rights Commission and the Judiciary. There was both a political and an administrative reason to publish a selective choice culminating in the publication of the full text. The political reason was that there was a CA Resolution to that effect and the administrative one was that it would be less cumbersome to process an even flow of submissions than it would to shut down during the long recess in order to process feedback in the new year. It was important to keep up the momentum of public interest in the CA process than to create a bottle towards the end. A section of the CA Administration Staff did not favour the piecemeal approach to publication they wanted the publication of a composite draft.

Public Participation Programme?

Edward said that there was a need for an education programme on the draft constitution. Public Hearings would have to be broad based in order to secure proper feedback. An effective method of involving politicians would have to be designed.

Media Strategy?

Enoch felt it would be counter productive to publish piecemeal. It would be confusing, costly and would be delayed by the processing time lag. He proposed that the draft be released early in 1996 for a month or two of feedback time. Debate would then have to take place at the of May. Momentum could be picked up in January and an appropriate approach would reassure the public.

3.2 Small Group Discussions: Possible Scenarios

Derek asked the three groups that were breaking up to focus on the following key areas:

Why publish? What? How do we implement? What time frames? Political issues?

SUBMISSIONS

- **DIRECTORATE**
- **RESEARCH**
- **COMMUNITY LIAISON**
- **MEDIA**

THE POST DRAFTING STAGE OF THE PROCESS

1 Introduction

1.1 The substantive process of drafting the new constitution has begun. An increasing number of formulations are being processed for consideration by the Constitutional Committee. It has been agreed that these formulations, once approved by the CA, are to be published for public comment.

1.2 CA policy and general agreement requires the following processes to take place:-

1.2.1 That draft formulations be published for public comment as soon as they are agreed upon by the CA;

1.2.2 that the separate draft formulations be integrated into a composite text to ensure - language consistency, legal consistency, simplicity in language, compliance with criteria as set out by the Panel and agreed to by the Constitutional Committee, confirmation of the constitutionality of the draft formulations and confirmation of compliance with the Constitutional Principles.

1.2.3 that the composite draft of the constitution be also published for comment;

1.2.4 that there be maximum public comment on

the draft text;

1.2.5 that the views and comments of the public be considered before the final process of debate and adoption of the constitutional text; and

1.2.6 that the text be referred to the Constitutional Court for confirmation of its compliance with the constitutional principles.

2 Time Frames

2.1 In terms of our original estimations, it was envisaged that the first draft of the entire constitution was to be completed by 30 June 1995. It now appears that we will require more time for this. Since Parliament only goes into final recess for 1995 on 15 September, we are provided with a grace period of a further six weeks.

2.2 In this regard, it is necessary to record that it is feasible and probable that several chapters of the draft constitution could well be completed by 15 September. Should this be the case, we may be able to deliver a final draft of the Constitution by May '96.

2.3 However, it would appear that the only Theme Committees which may experience some delay in completing its assignment are Theme Committees 2 and 3. This is where the most contentious issues reside.

It may be desirable to allow for a second publication and secure further public comment prior to adoption

(Discussion Document - Draft 3 - 8 June 1995)

2.4 Since we are committed to publication of the composite draft text for public comment, it would necessarily mean that this could then only be done in 1996. We would therefore not be able to continue work on the text until after all the submissions and comments have been received. This means that the May '96 deadline would not be met.

2.5 Which ever scenario prevails, we would have to plan our activities so as to best facilitate the constitution making process.

3 Processing drafts in the Constitutional Committee

3.1 Theme Committees report to the Constitutional Committee. Once the Constitutional Committee discusses a report it should remain seized with it until it is referred to the Assembly.

3.2 However the Constitutional Committee cannot in plenary negotiate all drafts. It is simply too big a structure to do this. The practice thus far has been to form sub committees to deal with these negotiations. Indications are that we could not establish a different sub committee for every draft that is produced. This is not feasible from the point of view of human resources - both political and administrative. There is also a concern developing among members of Theme Committees which have diligently worked for many months to produce various reports only to find that these are dealt with without considering the effort that has gone into it. In this regard, it is important to note that merely referring matters to sub committees would give rise to the concern about the lack of transparency.

3.3 Reconciliation Committee

3.3.1 Accordingly, it is proposed that the Constitutional Committee establish one sub committee (3 ANC, 2 NP and one for every other party) which should take the responsibility of only reconciling those contentious aspects of all drafts. To ensure continuity, it is suggested the membership of this structure be permanent. Parties should be allowed an equal number of advisors (who may be either technical experts² or members of the CA) to the sub committee. This would ensure that members of Theme Committees could also attend relevant meetings, though without having speaking rights unless they replace delegates.

3.3.2 It is further recommended that this sub committee be chaired by one of the Chairpersons to ensure direction and co-ordination of the committee's work. The sub-committee would have to meet regularly on set times so as to ensure that it is able to effectively deal with matters on it's agenda. Meetings of this committee would also have to be open to the public so as to ensure that the process remains transparent.

3.3.3 A problem which is developing is the natural desire by each structure, be it the Theme Committee, Constitutional Committee or sub-committees to bring it's reports to total finality³. This has transformed our

² These Experts should be paid for by the instructing party.

³ It is necessary that the desire for reaching consensus should be balanced with the need to debate matters more fully. It is not necessary that all matters be resolved at lower levels. This

(Discussion Document - Draft 3 - 8 June 1995)

Theme Committee's into negotiating fora. It has also been the cause of substantial delays in the process. It is necessary that while the reconciliation committee should attempt to reconcile the different positions, those areas where agreement could not be found should be referred to the Constitutional Committee.

3.3.4 A matter which would have to be dealt with is the difficulty of allowing the reconciliation committee opening every aspect of a draft for discussion. It is the responsibility of the Constitutional Committee when it first discusses the draft to identify the areas of agreement and contention. It should only be those areas of contention that should be referred to the committee. In this regard, matters referred to the committee should be done with specific instructions with regard to time within which it should be then referred back to the Constitutional Committee.

3.3.5 The committee will inevitably need technical, drafting and secretarial assistance which will be provided for by the Administration.

3.3.6 Since this committee would be small in its membership, it may well be possible for it to meet, if necessary, during recess.

3.4 Since both the Constitutional Committee and its sub committee would continue with its functions even after the publication of the first draft, its work is not affected by the different scenarios.

would only lead to the CA becoming a rubber stamp for decisions reached else where.

4 Publication of Drafts

- 4.1 It is suggested that draft formulations be published both as they are agreed to separately as well as in a composite form of a completed constitutional text. Such publication would be contained in the normal government gazettes (nationally and provincially); in our newsletter, Constitutional Talk; and, published in various newspaper supplements.
- 4.2 The form of publication is important. In publishing the drafts, we want to ensure that the public pass comment on it. The draft is the product of the integration of ideas of all submissions. It is also a development of the discussion which would clearly identify the debate, if any, and an attempt to improve the draft to ensure inclusivity in the process. Accordingly, the draft must be prefaced with an explanation that it is the product of various submissions and must contain an indication as to what the debates are. In this way we would ensure that the comments are more pointed and constructive.
- 4.3 Since further debate on a text which has been published cannot commence until the public have been given an opportunity to comment, it is recommended that a deadline for comments be given.
- 4.4 In this regard, it is necessary to consider the scenarios posed. Should we be able to complete the first draft, or a substantial portion of it, by 15 September, it is suggested that 15 November be an appropriate deadline for all comments. This would allow for at least two months for comments on the composite draft and sufficient time to administratively process the comments to facilitate further deliberation. The alternative

is to agree to a period of two months for comments.

5 Post Draft Public Participation

- 5.1 The nature of the public participation activity should be to report on the drafts produced and to encourage public debate and comment. Central to this is the Sector component.
- 5.2 It is recommended that the draft be "handed over" to sectors in a ceremony with an invitation to comment. It is suggested that we consider some form of ceremonial handing over of the drafts such as a major conference of representatives of all major sectors including the Executive, the Provinces and civil society.
- 5.3 Following the publication of the draft we should consider holding at least one major rally or other event in each province to report on the production of the first draft of the constitution. People should be encouraged to obtain copies of the draft (available in all languages) and to comment both directly and through their organisations and representatives.
- 5.4 In addition, we should also hold another round of meetings with all major sectors to hear their views on the drafts.
- 5.5 It is believed that whilst the nature of the participation programme not be affected by the different scenarios presented, it would mean that the programme would only commence once the composite draft has been completed.

6 Post Draft Media Activity

- 6.1 Central to the process is ensuring that the draft constitution is

(Discussion Document - Draft 3 - 8 June 1995)

available and accessible to all South Africans. This means that it should be widely distributed and be in as many languages as is possible.

- 6.2 Different forms of media should be considered. These could be supplements in newspapers, Constitutional Talk, the Government Gazette and the production of a special television programme which reports and debates the draft.

7 Processing Submissions and Comments

- 7.1 Upon receipt of the further submissions and comments, it would be necessary to ensure that these are properly processed and organised in relation to the various sections of the draft. As part of the process of sorting the comments, it is also necessary to indicate whether the submissions deal with matters previously debated or not.
- 7.2 The processed submissions should then be referred to the Constitutional Committee for purposes of further debate and negotiation. Once these are processed it should be referred to the Constitutional Assembly for final debate and adoption.
- 7.3 It is suggested that these drafts and submissions be processed and negotiated in the sub committee for consideration by the Constitutional Committee. In this regard, it would be necessary for the Management Committee to clearly develop a programme of work for the Constitutional Committee so as to ensure that these drafts and comments are dealt with systematically.
- 7.4 Technical Committees should be called to assist the committee as and when necessary.

8 Process of Final Debate and Adoption

8.1 It is recommended that as and when matters are negotiated and processed by the Constitutional Committee it be referred to the Assembly for final debate and adoption.

8.2 It will be the responsibility of the Constitutional Committee to ensure that it considers a clear programme of referral of matters to be discussed in the Constitutional Assembly.

8.3 An ancillary matter which should be raised is that of time frames. It is necessary to reach agreement with the Presiding officers of the Assembly and Senate as to when the next Parliamentary Session should begin. In this regard, provision for clear days for the work of the Assembly considering its work programme should be made.

9 The Panel

9.1 As agreed by the Management Committee, it is necessary that the drafts negotiated and agreed to by the Constitutional Committee be referred to the Panel with a clear mandate to consider;

9.1.1 its compliance with the criteria developed by them and approved by the Constitutional Committee; and

9.1.2 the constitutionality of the drafts; and

9.1.3 the compliance of the drafts with the relevant constitutional principles.

10 Certification

10.1 It is suggested that the drafts as adopted and approved by the Constitutional Assembly be referred to the Constitutional Court for their consideration in terms of the interim constitution.

DRAFT PROPOSAL ON THE PUBLICATION OF THE BILL OF RIGHTS

1. Introduction:

It is unlikely that the Constitutional Assembly will adopt and publish for comment a substantially complete draft constitutional text by September this year. The Constitutional Assembly may decide however to publish draft text that has been processed by the Constitutional Committee but not adopted by the Constitutional Assembly. There are thus two options. One is to not publish text of any sort this year. The other is to publish available draft text.

This discussion document presents these two options in the form of four different scenarios confronting the Constitutional Assembly should we fail to publish a substantially complete constitutional text this year.

The scenarios are based on four assumptions:

- A The Theme Committees will complete their work and produce reports as scheduled
- B A substantially complete draft constitution will not be processed by the Constitutional Committee and published for public comment by September 1995
- C There is value for the constitution-making process in publishing portions or chapters of draft text
- D The publication of a Bill of Rights is feasible both in respect of the time available to the CA and the quality of text that can be produced.

2. Four scenarios:

The four scenarios are, publishing -

- 2.1. a draft Bill of Rights only (Scenario 1)
- 2.2. a draft Bill of Rights plus draft text on the judiciary, Public Protector, Human Rights Commission, and any other available text (Scenario 2)
- 2.3. a draft Bill of Rights plus an assortment of other text (Scenario 3)
- 2.4. chapters of the final text, including an incomplete Bill of Rights (Scenario 4)

3. Which is the best scenario?

In my opinion, the CA should plan for scenario 2 while ensuring that at the minimum it achieves scenario 1. Scenario 3 is a, slightly less attractive,

variation of scenario 2. The CA must avoid scenario 4

4. Ensuring that we publish a complete Bill of Rights - why?

If we are going to publish an incomplete constitutional text, it is not good enough to publish any text that is available. Text selection matters. Our strategy should be to publish draft text which offers us the most gains overall and exposes us to the least criticism.

Scenario 2 is the most attractive scenario because these pieces of draft text can be clustered. The judiciary and the other structures are all concerned with the enforcement of fundamental rights.

At the very least we must ensure that we publish a complete Bill of Rights if we publish anything, for the following reasons:

- 4.1. An incomplete Bill of Rights is not a Bill of Rights. A Bill of Rights is an integrated system of values governing the relationship between citizens and state and between citizens. A Bill of Rights is a product of a country's peculiar history and political context. The meaning of any one right depends on the relationship between it and the other rights. In many countries there is even a hierarchy of rights. In Germany for instance the right of human dignity informs the meaning of all other rights. The importance of dealing with the Bill of Rights as a whole is the reason the Constitutional Committee has not debated individual rights.
- 4.2. Although a Constitution is an integrated system for the governance of a country, it can more or less be divided into two segments. One segment deals with the establishment of the state, organs of state and structures of government and the distribution of political power within the state. The other segment is the Bill of Rights. In other words, the Bill of Rights is fairly self contained and can be debated in isolation from the rest of the Constitution.
- 4.3. The publication of a complete draft Bill of Rights this year is an achievable goal.
- 4.4. A Bill of Rights has positive media value. Because of its symbolic force it will be seen as an achievement of the Constitutional Assembly.
- 4.5. A Constitutional Education Programme should be oriented towards education about the substance of the Constitution. The Bill of Rights affects everyones life and will continue to do so long after the structures of political power have been put in place. It is the natural engine house for any CEP.
- 4.6. These coming months provide an excellent opportunity for developing

a human rights culture in this country.

- 4.7. The majority of submissions would seem to be in this area. We could therefore publish a report to the public on the submissions received together with a draft Bill of Rights.

5. Practical consequences for the CA process

- 5.1. A smaller committee of the Constitutional Committee might need to be established in order to thrash out contentious issues.
- 5.2. Priority in the Constitutional Committee will have to be given to the Bill of Rights.
- 5.3. Initial drafts from the technical advisers will have to be produced at a faster pace.

SUMMARY REPORT OF THE LIAISON WORKSHOP

INTRODUCTION

This document stems from a Communications Workshop held on 22 May 1995 by the Media Department, Community Liaisons and representatives from various other CA departments.

The aim of this workshop was to initiate a Communications Strategy for the second phase of the constitution - making process.

AIM

To ensure a legitimate constitution by building a culture of constitutionalism.

B. OBJECTIVES

educate

inform

stimulating qualitative participation

C. TARGET

All South African's, with a bias towards the rural and disadvantaged groups.

RESULTS

Although the workshop concluded that Media & CL were implementing the appropriate communications mechanisms, various changes to the content and implementation were agreed upon. This included a shift in focus from just information dissemination about the process to disseminating greater educational information.

MEDIA PLAN

It was agreed that the percentage of educational information being put out would increase drastically in the new phase.

Implementation of plan

a. Print Media

- Advertising - use of educational graphics similar to those used in

Constitutional Talk and keeping 1 or 2 corporate ads running throughout the process.

- Editorials / News - various methods were suggested to obtain more qualitative coverage of the constitution making process. Some of the methods included are ensuring the availability of the CA drivers, building relationships with editors, personality endorsements, creating news events & regular press briefings.

ADVERTISING

A suggestion was made to redirect all advertising, TV, RADIO & PRINT, from informative to educational.

The effectiveness of the slogan "*You've Made Your Mark, Now Have Your Say*" was questioned and the discussion surrounding this was to be taken up outside of the workshop.

The group felt that, where possible, less conventional forms of advertising should be investigated, i.e cinema's, sport stadiums & face to face promotions. Targeting large gatherings like sporting events had to be looked at creatively.

RADIO

The workshop noted the importance of radio in relation to constitutional education and it was decided to explore ways to utilise the media in this regard.

PR

Events should be created to stimulate media coverage.

COMMUNITY LIAISONS

The workshop called for the continuation of CPM's and Sector Hearings in the second phase, although the form that these should take would only be able to be defined once various political questions, which the workshop was unable to answer, could be defined.

1. The CEP needs to be extended to encompass a range of effective mechanisms:
 - a) Publications office - Pat Govender and Greg Moran were mandated to draw up a list of possible publications for circulation by June 7.

OTHER

It was felt that the co-operation was effective but should be strengthened by regularising the inter-departmental meetings on Thursdays at 16h00. Leonora De Souza agreed to convene these meetings.

The workshop felt that other mechanisms, such as focus groups, should be explored.

Credibility of the CA process

Some felt that additional mechanisms were needed to give feedback on submissions and to over-turn the perception that submissions were not being taken seriously.

UNRESOLVED ISSUES

Various issues which could be stumbling blocks were looked at. These included;

1. The timing of the draft.
2. The form that draft could be published
3. Consensus vs non-consensus.

COMMUNITY LIAISON

OBJECTIVES

1. Popularise draft by:
 - educating
 - informing
 - involving
2. Encourage participation and feedback
3. Cultivate Democracy
4. Involve Civil Society

STRATEGIES

1. Education
2. Participation

CPM

The task of the politicians is to educate. That would mean a stiff or a formidable challenge for the community liaison.

The public must be afforded an opportunity to comment on, and to criticise the draft.

The MP's must carry enough weight in their parties and must be able to articulate issues in the draft.

The CEP can inform the people about the framework within which constitutional debate takes place.

What these amount to is :

To preserve the CC as political force.

The work of the Theme Committees is not lost.

These are the issues basically that need to be thought through.

Information clearing house.

THE POST DRAFTING STAGE OF THE DOCUMENT

1. Introduction

The Media Department considered the above-mentioned document and concluded that a few comments needed to be made, particularly from the point of view of communicating the draft constitution to the public once it is finalised.

The comments are purely aimed at enriching discussions at the June 20 workshop.

While there are preferences shown towards one as against another scenario, no claim of that the less preferred scenario is an impossible one. Preference to a particular scenario, therefore, simply means that this would offer more in terms of delivery, in our opinion.

For the purposes of our comments, we looked at the document from the point of view of two scenarios - scenario 1 being the publication of "draft formulations as they are agreed to separately", (see no. 4.1 of the document) and scenario 2 being the publication of a complete constitutional text.

2. Scenario 1: Publication of separate "draft formulations"

From the communication point of view, our view is that scenario 1 would present several problems, hereunder we deal with some:

- 2.1 From the point of view of the public, it would be confusing to see different chapters of the constitution day after day, especially if account is taken of the fact that some chapters have to be read in conjunction with others.
- 2.2 People might not be able to relate one chapter to another if these are published in different days, weeks and even months.
- 2.3 Media costs would be enormous and even uncontrollable - to some extent.
- 2.4 Number 4.4 of the document suggests that a deadline of November 15 would be given for public comment, followed with the publication of another draft (?) (this part was unclear to us) that will be "handed over" to sectors (see no. 5.2).
If this means that by September 15 we would have published a "composite draft", it would be unrealistic to expect public comment

by November 15, taking into account the fact that we will not be having the political space for a meaningful public participation (CPMs, CEPs, etc).

In terms of media - or the simple publication of the draft - our opinion is that the month of October, at least, will not be viable.

Therefore, November 15 to close the gates for public comment will simply not be enough.

- 2.5 Be as it may, we feel that the publication of separate "draft formulation" would be the most difficult scenario from a communication point of view.

3. Scenario 2: Publication of a complete Draft Constitutional Text

The publication of a complete draft constitutional text would allow for the usage of a number of channels that would help ensure that as many people as possible do see it.

A proper distribution mechanism would be put in place to circulate the document - something that would not be possible in the case of publishing separate "draft formulations", where we only would rely on the conventional mass media as suggested in no. 4.1.

On the other hand, for us to ensure maximum public attention, we need to make the publication of the draft a national event, hence we agree with the recommendation on no. 5.2.

Considering that it might not be possible for the complete draft to be finalised by September 15, thus creating conditions of a public participation vacuum between August and whenever the draft text is completed - possibly early next year - we offer what we would regard as a "blessing in disguise" option.

4. The "blessing in disguise" option

From discussions with Managing Secretaries of Theme Committee 4, we gather that there are strong possibilities that the Bill of Rights might be finalised by mid-August.

If this was to be the case, a Public Participation Programme (PPP) would be put in place to publicise and market this very important part of the constitution.

In our opinion, it would indeed be a "blessing in disguise" to start this part of the PPP by getting the public to discuss aspects of the constitution that concern them as individual citizens as opposed to the rest of the constitution that is more concerned with power relations.

In this regard, a PPP would be put in place between the publication date - mid-August - and the end of September, when it would be relaxed to give space to local government elections euphoria.

It would be resumed with intensity after the polls, depending on whether the CA will have resumed work.

Alternatively, this part of the campaign would be ended and preparations for a PPP in regard to the main draft would start.

Should this become available early in the new year, it would give us approximately two months - or even less - considering the political space that we will be having for the campaign.

5. Conclusion

The option we have advanced would also allow for the CA to divide its discussion of the draft into two parts - the Bill of Rights and the rest of the constitution.

Depending on the amount of time the CA elects to debate the draft, this option still offers the possibility of adopting the new constitution on schedule in May 1996.

MEDIA STRATEGY

If we are going to publish party submission must endorse that the people involved have the mandate, - when public opinion shifts. (Can overcome by not linking submissions to parties).

Look at other forms of keeping momentum and publishing next year - in the meantime concentrate on creating as complete a formulation as possible.

LGE period will be a bad time
politicised
media attention on LGE

People will have to be given sufficient time to comment - not too long

Could make what we have by 15/9 to key stakeholders

AGREED

Should get composite document out as soon as possible - can decide how to deal with LGE and Nov/Dec lull period.

DISCUSSION

- **PLENARY**
- **SMALL GROUPS**

CA PROCESS

ELEMENTS

- PRODUCTION OF TEXT
- CERTIFICATION OF TEXT
- PUBLIC SCRUTINY
- DEBATE AND ADOPTION

PHASE	TASK	DEADLINE
1	Theme Committee analysis and Evaluation	15 Nov. '94
	Theme Committee completion of reports. Reports considered and evaluated by the Constitutional Committee and the Constitutional Assembly on an ongoing basis.	30 June '95
2	Completion of approval of reports by the Constitutional Committee and the Constitutional Assembly and text drafted.	14 July '95
3	Refferal to the Constitutional Court	ongoing
4	Full text plaqced before public for scrutiny	31 Oct. '95
5	Full text debated and adopted by the Constitutional Assembly.	May '96
6	Certification is sort from the Constitutional Court	

TIME LEFT

THEME COMMITTEE	CONSTITUTIONAL COMMITTEE/ CONSTITUTIONAL ASSEMBLY
June 26	June 23
July 28	
August 1 2 3 7 8 9 10 14 15 21 28	August 4 11 18 25
September 4 11	September 1 8 15
TOTAL 15	TOTAL 7/8 [7½ hour each]

1. How do we complete the report and text on time (15 September)?
2. PUBLICATION
 - Why now? Prior to adoption. Manner/Form?
 - What is achievable?
 - What must we do to bring this about?
 - Time Frames

1. COMPLETION OF WORK

- Substantial part done at Theme Committee and Constitutional Committee ;
- Theme Committee 2 and Theme Committee 3: Political Reports

2. PUBLICATION

Publicise

- Accountability
- Engagement/Debate
- WIP

What and When?

- | | |
|------------------------------|---|
| ● Form of draft Constitution | ● By 15 September (most) |
| ● (Whatever is available) | ● ongoing - Proper formatting/Formulation |
| ● Selected text | ● Translations/ CA approval for public printing |

WAY FORWARD

- Departmental "tightening up and planning"

FIRDAY 23/06

- Minutes
- Forum
- Time frames
- Chairs

TO DECIDE ASAP

- HOD
- Directorate
- Chairs
- Politicians

THEME COMMITTEE 1

BLOCKS

DATES

	TC	CC
1. DEMOCRACY AND CHARACTER OF STATE	COMPLETED	
2. EQUALITY AND ONE SOVEREIGN STATE	COMPLETED	
3. SUPREMACY OF THE CONSTITUTION	COMPLETED	
4. ACCOUNTABLE GOVERNMENT	COMPLETED	
5. THE ECONOMY	COMPLETED	23/06
6. REPRESENTATIVE GOVERNMENT	31/07	04/08
7. LANGUAGE	02/08	11/08
8. FOREIGN RELATIONS/INTERNATIONAL LAW	02/08	11/08
9. NAME, SYMBOLS, NATIONAL TERRITORY SEATS OF GOVERNMENT	02/08	11/08
10. PREAMBLE/POSTAMBLE	10/08	18/08

THEME COMMITTEE 2

Report Target Dates

	TC	CC
1. Separation of Powers	Completed	
2. Structure & Function - Government National Level	1st week Aug. (Nat. Assembly & Executive)	11 August (Senate)
3. Structure & Function - Government Provincial Level	1st week Aug. (Provincial Government)	11 Aug
4. Traditional Leaders		
5. Self Determination/Volkstaat		
6. Electoral System		
7. Constitutional Amendments		By 8 & 15 September

THEME COMMITTEE FOUR

BLOCK	ISSUES	THEME COMMITTEE	DRAFTS	CONSTITUTIONAL COMMITTEE
1	1. Constitutional Principle II	Completed		
2	2. Nature and Application of BOR 3. Equality 4. Human Dignity 5. Right to life 6. Privacy	Completed Completed Completed Completed Completed	14 June 18 August 14 June 18 August "	14 June
3.	7. Religion, belief and opinion 8. Freedom of Association 9. Freedom of Expression 10. Language and culture	Completed	14 June 23 June 23 June 18 August	14 June 23 June 23 June
4.	11. Administrative justice 12. Access to information 13. Access to courts 14. Freedom and security of the person 15. Detained, arrested and accused persons	Completed	18 August " " 14 June 18 August	18 August " " 14 June 18 August
5.	16. Servitude and forced labour 17. Economic activity 18. Property 19. Labour relations 20. Environment	Completed	14 June 18 August " " "	14 June 18 August " " "

6.	21. Citizens Rights 22. Political Rights 23. Freedom of movement 24. Freedom of residence 25. Freedom of demonstration	Completed	18 August " " " "	18 August " " " "
7.	26. Children's Rights 27. Education Rights	Completed	18 August "	18 August "
8.	Incorporated in other items		18 August	18 August
9.	31. Limitation of Rights 33. States of Emergency and suspension of rights	26 June	18 August "	18 August "
10.	34. Interpretation of the Bill of Rights	26 June	18 August	18 August

EXPLANATORY NOTES

1. The Technical Committee will work on the outstanding reports and draft formulations during the recess period.
2. The Theme Committee will process the remaining reports during the between 31 July and 15 August.
3. The Theme Committee hopes to table a complete draft Bill of Rights to the CC meeting of 18 August.

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THEME COMMITTEE 5

Block Progress

Blocks 1 - 4	Draft text complete Being finetuned at present for submission to CC tomorrow 20/6/1995.
Block 5	Report complete To be submitted to next TC meeting 26/6/1995
Blocks 6 - 9	Reports to be completed by 26/6/1995

TC 6.1

Issue	Target Date
Public Service Blocks 1 - 6	Report submitted to CC on 12/5/1995 and debated at CA on 19/5/1995.
Election Commission Blocks 7-10	Deliberations on draft formulations have commenced and will probably be finalised by TC on 26/6/95. Report will be transmitted to CC on 4/8/95.

THEME COMMITTEE 6.2

ISSUE

TARGET

RESERVE BANK	REPORT TABLED AT THE CONSTITUTIONAL COMMITTEE ON 12/05/95. REFERRED BACK TO THEME COMMITTEE TO RESOLVE GOAL AND INSTRUMENTAL INDEPENDENCE OF RB.
AUDITOR GENERAL	REPORT AND DRAFT FORMULATIONS ENDORSED BY THEME COMMITTEE ON 14/05/95 AND WILL BE TABLED AT THE CONSTITUTIONAL COMMITTEE ON 23/05/95.
FINANCIAL AND FISCAL COMMISSION	SUBMISSION HAVE BEEN PROCESSED, BUT FINALISATION OF REPORT DEPENDS ON PROGRESS IN TC 3's DISCUSSION ON FINANCIAL AND FISCAL RELATIONS IN DIFFERENT TIERS OF GOVERNMENT.

THEME COMMITTEE 6.3

ISSUE

TARGET DATES

PUBLIC PROTECTOR	REPORT AND DRAFT FORMULATIONS AND SUBMITTED TO CONSTITUTIONAL COMMITTEE ON 26/05/95 DRAFT FORM REFERRED TO A SUBCOMMITTEE.
HUMAN RIGHTS COMMISSION	REPORT FINALISED AND LAW ADVISORS REFINING DRAFT FORMULATIONS PROTECTED DATE FOR SUBMITTING FORMULATIONS TO CONSTITUTIONAL COMMITTEE IS 04/08/95
COMMISSION ON GENDER EQUALITY	REPORT ON GENDER EQUALITY HAS JUST BEEN FINALISED PROTECTED DATE FOR SUBMISSION FOR REPORT AND FORMULATIONS TO THE CONSTITUTIONAL COMMITTEE 18/08/95.
LAND RESTITUTION	REPORT TO BE COMPLETED ON 15/08/95. REPORT WILL BE TABLED BEFORE THE CONSTITUTIONAL COMMITTEE ON 01/09/95.

THEME COMMITTEE 6.4

ISSUE

D.DATE

ACCOUNTABILITY AND CONTROL	REPORT COMPLETED AND WAS 1st TO BE DEBATED BY CONSTITUTIONAL COMMITTEE. REFERRED BACK TO THEME COMMITTEE.
POLICE	REPORT COMPLETED. DRAFT FORMULATIONS ALSO COMPLETED.
INTELLEGEENCE	REPORT TO BE FINALISED ON 26/06/95
THEME COMMITTEE WILL NOT SUBMIT REPORT ON DIFFERNT ARMS OF SECURITY APPARATUS PIECEMEAL. BUT A COMPREHENSIVE REPORT AND DRAFT FORMULATIONS CONSTITUTING A CHAPTER OF CONST. ON SECURITY APARATUS WILL BE SUBMITTED TO THE CONSTITUTIONAL COMMITTEE ON 01/09/95.	

OBJECTIVES

HOW DO WE COMPLETE THE REPORT AND TEXT ON TIME?

TC 2, 3 we can only complete this on time if we aim at producing a draft.

A major constraint was that the Theme Committees must just produce the reports and refer the draft to a higher level. Where a consensus would or could be reached.

Lets streamline the process or to have some limit on how many times each block should be discussed.

GROUP 1

1. Complete draft by 15 September

- *not possible*
- *aim - draft reports*
- explore ways in which CC can speed up process
- *draft reports - will not encourage decision-making process*
- Overlap 2, 3, 6.2 CG - consolidate
- Explanatory notes to CC (refer to drafts).
- *political process not structured*
- recognise this reality

2. Publication

- *aim - full text*
- fall back. "bits and pieces" disadvantages. Explain to public re "cohesion and interlinking etc". local government elections. Text being used for political purposes. cost implications.
- *go for piece-real*
- *pressure*
- Legitimacy issue - work in progress
- Stand alone chap. eg. structures of Government, Courts, Competencies eg.
- *Education - do not need full text for Education to start*

GROUP 2

Q1. *Can we complete / how do we complete by 15/9/1995?*

- Political reports can be completed but not all draft texts
- TC's should not have to reach consensus - this should be done at another level since this is holding the process up.
- Can finish by 15/9 if we are clear on the process
- Law advisors should prepare drafts based on party political submissions in the reports.

Q. *How do we move from reports to drafts which can be taken to the public ie what is the purpose of trying to meet 15/9 deadline?*

Problem in the TC is that TC's believe they need to reach consensus - need direction from the CC that TC's can submit various proposed drafts.

Problem is also that it is not clear about whether TC is to prepare a draft, or whether they have to revise this over and over on request by CC before this is published.

Q. *What is to be published, is it the draft prepared by the TC's or a Draft Constitution?*

Text goes from TC → CC → discussed → CA for debate - once approved by the CA, it will be published

Two concerns - time taken to get draft from CA and, if we have to wait for CA, how will we convince people that their submissions will be taken seriously (done deal)

Suggestion - - no publication whatsoever

By 15/9/1995 can complete TC work → CC → to sub (suitable) committee which will sit more frequently

If we talk re publication we are talking re a draft constitutional text. It is NB for us to do this

Q. *What form will it take ?*

Everything that has been put before CC, including issues which are not resolved (but this will not be ready by 15/9 - but will be brought forward end of year). Problem may give rise to public debate which cannot be dealt with. Publishing piecemeal not acceptable because chapters are inter-related.

HOW?

The relationship between the TC's and the CC must be such that the former refers contentious issues to the latter.

This course of action ie publication will not be done in a mechanical way as we cannot predict the political dynamics that could unfold.

The views and the comments of the public around the draft can then be recorded with the view of taking them on board.

The publication would be done in draft, while at the same time we remain committed and sensitive to the languages within the limitations of our financial position.

In publishing the draft, we ensure that the aspects of the constitution are covered as coherent chunks that hang up together.