

2/31/97

**CONSTITUTIONAL  
ASSEMBLY**

**MANAGEMENT  
COMMITTEE**

**THURSDAY  
17 AUGUST 1995  
(08H00)  
V16**

***DOCUMENTATION***

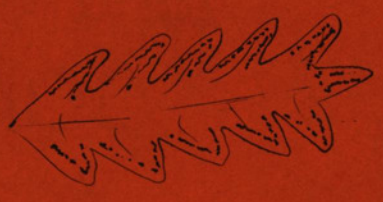


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## CONSTITUTIONAL ASSEMBLY

### MEETING OF THE MANAGEMENT COMMITTEE

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

Date : Thursday 17 August 1995

Time : 08h00 - 10h00

Venue : V16

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#### AGENDA

- ✓ 1. Opening
- ✓ 2. Minutes: Pages 2 - 4
3. Matters Arising: See Agenda Items Below
4. Discussion: Future of CPG: Pages 5 - 7
5. Constitutional Committee Agenda for 18 August 1995: Page 8
6. Constitutional Assembly Agenda for 25 August 1995: To Be Distributed When Available
7. AOB
8. Closure

ICA-25/8/95 (FR1)

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H EBRAHIM  
EXECUTIVE DIRECTOR  
CONSTITUTIONAL ASSEMBLY

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Enquiries : Ms MM Sparg, Tel 245-031, Page 418 4616 code 6970



## CONSTITUTIONAL ASSEMBLY

### MINUTES OF MANAGEMENT COMMITTEE MEETING THURSDAY 10 AUGUST 1995 (AT 08H00)

#### PRESENT

RAMAPHOSA M C (CHAIRPERSON)

Chabane OC  
Eglin CW  
Green LM \*  
Marais PG \*

Mulder CP \*  
Myakayaka-Manzini YL  
Van Breda A  
Wessels L (Deputy Chair)

#### \* Alternates

**Apologies:** K R Meshoe, R P Meyer, M V Moosa, and C L Viljoen.

**Absent :** R K Sizani and P F Smith.

**In attendance:** H Ebrahim, M Sparg, L Zondo, and M Keegan.

#### 1. OPENING

- 1.1. The Chairperson opened the meeting at 08h06.
- 1.2. The Agenda was adopted with two additions under 7. *Any Other Business:*
  - 7.1 *Correspondence from the Forum of Service Commissions, and*
  - 7.2 *Request from Whips to Hold Finance Committee Meeting, Monday, 14 August.*

#### 2. MINUTES

The Minutes of the Management Committee on Thursday 3 August 1995 were adopted with one amendment:

- i. In paragraph 4.2.i, *"it was suggested that"* would replace *"it was agreed."*

#### 3. MATTERS ARISING

None - included in agenda items below.

#### 4. FUTURE OF THE COMMISSION ON PROVINCIAL GOVERNMENT

- 4.1. The meeting noted the document entitled, *"Commission on Provincial Government,"* included in the documentation.
- 4.2. The meeting expressed the following concerns:
  - i. Mr. Eglin of the DP queried whether it was appropriate for the Constitutional Assembly to advise on this matter.



- ii. Mr. Ebrahim said that the Constitutional Assembly had no legal grounds for making a recommendation on the future of the Commission.
  - iii. Mr. Chabane of the ANC reminded the meeting that the document said that the Commission still had to advise the Constitutional Assembly on various matters.
- 4.3 The meeting agreed to let the matter stand over until the next meeting of the Management Committee, so that the relevant ministers, Mr. Meyer and Mr. Moosa, could participate in the discussion.

## 5. AGENDA FOR CONSTITUTIONAL COMMITTEE MEETING OF 11 AUGUST 1995

- 5.1 Mr. Ramaphosa introduced the document entitled, "*Constitutional Committee, Draft Agenda*," included in the documentation.
- 5.2 The meeting adopted the agenda with the following amendments:
- i. The agenda would specify which of the items under "*4. Constitutional Committee Sub-Committee Report*" would only receive progress reports and which would be for discussion; and
  - ii. The meeting noted that agenda item "*8. ... Theme Committee 6.4 Report on Security Chapter*" would be tabled this week, but held over for discussion until the next meeting of the Constitutional Committee.
- 5.3 Mr. Eglin of the DP queried what procedure would be used to obtaining the "bird's eye view" requested at the last Constitutional Committee meeting.
- i. The meeting noted that paragraph 5.9.3 of the *Minutes of the 23rd Meeting of the Constitutional Committee, Friday 4 August 1995*, assigned the task to the Law Advisors.
  - ii. The meeting agreed to ask the Law Advisors to:
    - a. Forward to the Management Committee a proposal on what procedure it would use to obtain the "bird's eye views" requested; and
    - b. Treat the item as an urgent one.
- 5.4 The Chairperson ruled that all future agendas would indicate not only the starting time of meetings, but what time the meeting was scheduled to end.

## 6. CONSTITUTIONAL ASSEMBLY MEETING OF 18 AUGUST 1995

The meeting agreed to postpone the 18 August 1995 meeting of the Constitutional Assembly to allow the Constitutional Committee to process more reports from Theme Committees.



## **7. ANY OTHER BUSINESS**

### **7.1 CORRESPONDENCE: FORUM OF SERVICE COMMISSIONS**

- 7.1.1 Mr. Ebrahim reported that the Forum of Service Commissions previously made a submission to Theme Committee 6.1 on the Public Administration and now requested that it be allowed to forward another submission to the Sub-Theme Committee on the draft formulations on public administration.
- 7.1.2 The Deputy Chairperson expressed concern that the process would be delayed if everyone was allowed to reply to draft formulations before the first draft of the entire constitution was finalised.
- 7.1.3 The meeting agreed that the forum would be informed that there would be an opportunity to forward their submissions on the draft text once the first draft of the constitution is finalised. All stakeholders and the public would be invited to comment on text at this stage.

### **7.2 REQUEST FROM THE WHIPS**

- 7.2.1 The Deputy Chairperson reported that Mr. Ngcuka had requested that the Finance Committee be allowed to meet on Monday, 14 August. The Deputy Chairperson reported that the Finance Committee included Theme Committee members who were scheduled to participate in a CA National Workshop on the same day.
- 7.2.2 Mr. Ebrahim expressed concern that a lot of money and energy had been invested in the workshop and it could not be postponed.
- 7.2.3 Ms. Sparg reported that Tuesday, 15 August 1995 had also been assigned to the Constitutional Assembly.
- 7.2.4 The meeting agreed that the Deputy Chairperson would suggest to the Whips that they schedule the Finance Committee meeting for Tuesday, 15 August 1995.

## **8. CLOSURE**

The meeting closed at 08h00.



# COMMISSION ON PROVINCIAL GOVERNMENT

*Established in terms of section 163 of Act 200, 1993*

260 Walker Street Sunnyside Private Bag X887 Pretoria 0001

Telephone (012) 44-2297 Fax (012) 341 8452

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1995-08-03

The Executive Director  
Constitutional Assembly  
P O Box 15  
CAPE TOWN  
8000

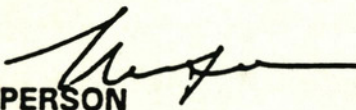
Dear Mr Ebrahim

## MANAGEMENT COMMITTEE MEETING: 10 AUGUST 1995

I refer to the Management Committee's decision of 3 August to consider its position regarding the future role of the Commission on Provincial Government in the constitution-making process during its next meeting to be held on 10 August.

The Commission would appreciate it if the attached memorandum could be included in the agenda for that meeting.

Yours sincerely

*Actg*  
  
CHAIRPERSON

md735



# COMMISSION ON PROVINCIAL GOVERNMENT

*Memorandum to the Constitutional Assembly Management Committee for the meeting on 10 August 1995*

The Commission on Provincial Government would appreciate it if the Management committee could bear the following points in mind in considering the future role of the Commission on Provincial Government in the constitution-making process:

1. The Commission on Provincial Government has not yet completed its task - it has thus far made only preliminary recommendations because of the time limits imposed by the Constitutional Assembly process, having done so at the specific request of the Constitutional Assembly Management. It has further been agreed with the Constitutional Assembly Management that the Commission on Provincial Government would be available to assist Theme Committees with their tasks upon their request, and that it would not submit constitutional text during this phase of the process because of time constraints and also because provincial governments have not completed their own consideration of proposals for the new Constitution. The Commission on Provincial Government consequently has not yet been able to consider all such proposals. It was agreed with the Constitutional Assembly Management that the Commission on Provincial Government would study the draft constitutional text prepared by the Constitutional Assembly and submit its own draft text in the event of it wishing to make an alternative suggestion to the Constitutional Assembly in regard to a specific matter. The Commission on Provincial Government will only be in a position to submit its final recommendations once the draft constitutional text has been published and after due consultation with the provinces' constitutional committees.
2. The Constitutional Assembly has spent considerable time and money to promote the openness of the constitutional process. The Commission on Provincial Government is a constitutionally created institution which further promotes the openness of the process, being a non-political independent body mandated to advise the Constitutional Assembly on provincial systems of government. To its mind, it would reflect negatively on the process if the Commission on Provincial Government were at this stage to be prevented from completing its task. What reasons would be given for preventing it from completing its task at this stage? What would the public reaction be? The Commission on Provincial Government has become well-known both within South Africa and abroad through its workshops and other communications. How would the curtailment of its activities reflect on the openness of the constitutional process in the views of interested parties both inside and outside the country?



3. The Commission on Provincial Government does not promote any political party's views but considers the views and needs of provincial governments, as well as the views of other interested parties and experts. The Commission on Provincial Government is the only independent institution outside the Constitutional Assembly provided for in the Constitution to consider such views and needs and to balance these with the national interest; to consider the practical implications of the various possible systems of provincial government in the light of its experience with transitional matters; and to put forward possible alternatives for dealing with issues for consideration by the Constitutional Assembly.
4. It is significant that some parties and Theme Committees have indeed requested the Commission on Provincial Government to consider further issues which have perhaps not been dealt with fully enough in its preliminary reports, eg in paragraph 3.9.4 of Theme Committee 2 minutes of 5 May 1995, the ANC requested the Commission to further develop the possibilities regarding means of representation of provinces in the Senate. Other verbal requests have been made in regard to further proposals in respect of issues such as provincial constitutions, traditional leaders, division of functions between national and provincial governments, etc, which the Commission on Provincial Government will deal with in its further deliberations.
5. Finally, the Commission on Provincial Government would not wish to impose itself on the Constitutional Assembly and its structures if there are grounds for believing that it cannot make a useful contribution. The Commission is only carrying out its duty in terms of the Interim Constitution. If it is decided that the Constitution should be amended to abolish the Commission's task in the constitutional process, the Commission on Provincial Government will abide by such a decision, notwithstanding the Commission on Provincial Government's own expressed view that it should not be disestablished before the new Constitution becomes operative.

However, the Commission on Provincial Government must draw attention to the fact that parties such as the DP, NP and PAC have already expressed their positions, that the activities of the Commission on Provincial Government in intergovernmental relations should be continued indefinitely or for a period of 10 years after adoption of the new Constitution - see Theme Committee 3 draft report, 31 July 1995. The Commission's own preliminary recommendations do not include a role under the new Constitution for itself as presently constituted.





CONSTITUTIONAL ASSEMBLY

**MEMORANDUM**

**TO: MANAGEMENT COMMITTEE**  
**FROM: EXECUTIVE DIRECTOR**  
**DATE: 17 AUGUST 1995**

**RE: REPORT AND AGENDA FOR CA ON 25 AUGUST 1995**

1. It is proposed that the Constitutional Assembly is convened from 09h00 - 13h00 on Friday 25 August 1995.
2. The main purpose for such a meeting would be to update the CA on the work of the Constitutional Committee by providing all available draft formulations to members in the form of a Report and then providing members with an opportunity to debate these.
3. The Report would consist of all of the latest draft formulations before the Constitutional Committee and Sub-committee. See *Annexure attached hereto for an outline of the Report.*
4. As far as the programme of the CA is concerned, it is proposed that debate is focussed on three broad areas under discussion:

*40 mins  
DEB AND 60M*

4.1 Independent Institutions and Public Administration (*this would incorporate draft formulations on the Auditor General, Reserve Bank, Human Rights Commission, Public Protector, Electoral Commission and Public Administration*)

4.2 Courts and Administration of Justice; and

4.3 Security Services.

4.4 *NAT EXEC & NAT LEGISLATURE. ? nafb*

*30 mins  
DEB*

5. The nature of the Footnotes provided by the CA Law Advisors with these draft formulations, are such that they will provide CA members with the necessary information on areas of agreement, contention, options etc

6. The draft agenda for the meeting would be as follows :

**09h00 - 09h30 ~~Opening Remarks~~**

**09h30 - 10h15 Discussion on Independent Institutions (45minutes)**

**10h15 - 11h00 Discussion on Courts and Administration of**

P. O. Box 15, Cape Town, 8000  
Republic Of South Africa

Tel: (021) 245 031, 403 2252 Fax: (021) 241 160/1/2/3, 461 4487. E-mail: conassem@iaccess.za

*TREAT WHOLE  
AS OPEN TIME -  
FIRM CARRYING*



**Justice (45minutes)**  
**11h00 - 11h45 Discussion on Security Services (45minutes)**  
**11h45 - 12h45 Open Time (60 minutes)**  
**12h45 - 13h00 Closing Remarks**

7. Political parties would be allocated time proportionately for each cycle of 45 minutes and for the *Open Time* period of 60 minutes. For the the first 3 sessions of 45 minutes each, parties will be expected to provide speakers' lists.
8. It is further proposed that the Constitutional Assembly is followed by a Constitutional Committee meeting from 14h00 - 16h30.

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**HASSEN EBRAHIM**  
**EXECUTIVE DIRECTOR**

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## ANNEXURE

### CONSTITUTIONAL ASSEMBLY ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS FRIDAY 25 AUGUST 1995

1. INTRODUCTION
2. REPORT OF MANAGEMENT COMMITTEE
3. REPORT OF CONSTITUTIONAL COMMITTEE
4. **CHARACTER OF DEMOCRATIC STATE**
  - 4.1 DEMOCRACY AND CHARACTER OF STATE
  - 4.2 EQUALITY AND SINGLE SOVEREIGN STATE
  - 4.3 SUPREMACY OF THE CONSTITUTION (Draft)
  - 4.4 ACCOUNTABLE GOVERNMENT
  - 4.5 THE ECONOMY
  - 4.6 REPRESENTATIVE GOVERNMENT, CITIZENSHIP AND SUFFRAGE (Draft)
5. **STRUCTURE OF GOVERNMENT**
  - 5.1 SEPARATION OF POWERS
  - 5.2 NATIONAL ASSEMBLY AND NATIONAL EXECUTIVE (Draft)
  - 5.3 THE ELECTORAL SYSTEM (Draft)
6. **RELATIONSHIP BETWEEN LEVELS OF GOVERNMENT**
  - 6.1 THE NATURE AND STATUS OF THE PROVINCIAL AND LOCAL SYSTEMS OF GOVERNMENT
  - 6.2 NATIONAL AND PROVINCIAL LEGISLATIVE AND EXECUTIVE COMPETENCIES (Draft)
7. **FUNDAMENTAL RIGHTS\***
  - 7.1 CONSTITUTIONAL PRINCIPLE II
  - 7.2 NATURE AND APPLICATION OF BILL OF RIGHTS
  - 7.3 RIGHT TO HUMAN DIGNITY
  - 7.4 RIGHT AGAINST SER VITUDE AND FORCED LABOUR
  - 7.5 FREEDOM OF RELIGION, BELIEF AND OPINION
  - 7.6 FREEDOM OF EXPRESSION
  - 7.7 ACADEMIC FREEDOM
  - 7.8 ACCESS TO INFORMATION
8. **JUDICIARY AND LEGAL SYSTEMS**
  - 8.1 COURTS AND ADMINISTRATION OF JUSTICE (Draft)
9. **INDEPENDENT STRUCTURES OF GOVERNMENT**
  - 9.1 PUBLIC ADMINISTRATION (Draft)
  - 9.2 ELECTORAL COMMISSION (Draft)
  - 9.3 AUDITOR GENERAL (Draft)
  - 9.4 RESERVE BANK (Draft)
  - 9.5 PUBLIC PROTECTOR (Draft)
  - 9.6 HUMAN RIGHTS COMMISSION (Draft)
  - 9.7 SECURITY SERVICES (Draft)

\* Note : *there are separate formulations available for most of these Reports from Theme Committee 4. A decision is required as to whether we should provide all these separate formulations or whether we should simply state that all these Reports were received, with formulations., and that Technical Advisers are presently working on combining all of these into a single formulation, which is expected to be ready in early September 1995.*



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## CONSTITUTIONAL ASSEMBLY

### MEETING OF THE CONSTITUTIONAL COMMITTEE

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

Date : Friday 18 August 1995

Time : 09h00

Venue : Old Assembly Chamber

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#### DRAFT AGENDA

1. Opening
2. Minutes
3. Matters Arising
4. Discussion: Theme Committee 6.1 Report on Electoral Commission: *See Pages 138 - 244 of Volume 2 of Documentation of 11 August 1995*
5. Discussion: Theme Committee 6.4 Report on Security Services: *See Volume 3 of Documentation of 11 August 1995*
6. Sub-committee Report: *To be distributed when available*
  - 6.1 Independent Institutions: Discussion (Incorporates Auditor General, Public Protector, Human Rights Commission and Reserve Bank)
  - 6.2 Courts and System of Justice: Discussion: *See Volume 4 of Documentation of 11 August 1995*
  - 6.3 National and Provincial Legislative and Executive Competencies: Progress Report
  - 6.4 National Assembly and National Executive: Progress Report
7. Management Committee Recommendation on Constitutional Assembly for 25 August 1995: *To be distributed when available.*
8. AOB
9. Closure

*Note: Please bring with you Volumes 2, 3 and 4 of the Documentation distributed for 11 August 1995 as these contain the reports on the Electoral Commission, Security Services and Courts.*

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H EBRAHIM  
EXECUTIVE DIRECTOR  
CONSTITUTIONAL ASSEMBLY

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*Enquiries : Ms MM Sparg, Tel 245-031, Page 418 4616 code 6970*

Embargoed until 08h00  
17 August 1995



