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CONSTITUTIONAL ASSEMBLY

**CORE GROUP MEETING
THEME COMMITTEE 4**

FUNDAMENTAL RIGHTS

14 November 1994

**DOCUMENTATION
- WORK PROGRAMME**

WORK PROGRAMME OF THEME COMMITTEE 4

- *FUNDAMENTAL RIGHTS*

The work programme has followed the suggestions as set out by the CA Directorate memo on Work Programme.

i) WHICH CONSTITUTIONAL ISSUES NEED TO BE ATTENDED TO BY THEME COMMITTEE 4

It must be noted at the outset that the work of the Committee is guided by the relevant Constitutional Principles enshrined in the Interim Constitution of South Africa. These form the guidelines within which the Committee will seek to address Fundamental Rights or a Bill of Rights.

The foundation of these is Principle II which states :

" Everyone shall enjoy all universally accepted fundamental rights, freedoms and civil liberties, which shall be provided for and protected by entrenched and justiciable provisions in the Constitution, which shall be drafted after having given due consideration to *inter alia* the fundamental rights contained in Chapter Three of this Constitution"

Other relevant Principles include:

- Principle I
- Principle III
- Principle V
- Principle IX
- Principle XI
- Principle XII
- Principle XIII
- Principle XXVIII
- Principle XXXIV

This list is however not complete, and the Committee wishes to note that it can reflect on other Principles should the need arise.

In relation to the above, the work is informed by the relevant Chapters in the Constitution, particularly Chapter 3 - "*Fundamental Rights*".

Included in this Chapter are the issues of :

- Equality
- Life
- Human Dignity
- Freedom and Security of the person
- Servitude and Forced Labour
- Privacy
- Religion, Belief and Opinion
- Freedom of Expression
- Assembly, Demonstration and Petition
- Freedom of Association
- Freedom of Movement
- Residence
- Citizens' Rights
- Political Rights
- Access to Courts, Legal Representation
- Access to Information
- Administrative Justice
- Economic Activity
- Labour Relations
- Property
- Environment
- Children
- Women and Gender
- Language and Culture
- Education

The Committee has also identified the following issues as reflected in the Interim Constitution that need review or are relevant:

- Nature of the Bill of Rights, the application thereof, vertical and horizontal
- 1st, 2nd, 3rd, 4th Generation Rights
- Suspension and Limitation of Rights
- Obligations, Rights and Duties of Citizens
- State of Emergency
- Rights of detained and\ or arrested people
- Legal Application of Social and Economic Rights
- Relationship between the Bill of Rights and Customary\ Traditional\ Common\
Muslim Law
- Group\ Minority\ Collective Rights
- Relationship between Charters of Rights and the Bill of Rights

This framework noted above should however be seen in light of the terms of reference of the Theme Committee as identified in the Constitutional Assembly Resolutions of Monday 5 September 1994 (*Refer Appendix 1*).

ii) **WHICH OF THESE ISSUES NEED TO BE DEALT WITH AS A PRIORITY**

Within the above framework, the Committee proposes an approach that is holistic and systematic. It will be guided by point 3.3, particularly (c) and (d), pages 34 - 35CA of the Constitutional Assembly ATC Report No 4 of Friday 28th October 1994 (*Refer Appendix 2*).

iii) **WHICH ARE THE AREAS OF OVERLAP WITH OTHER THEME COMMITTEES**

The following areas of overlap drawn from the CA Resolutions of 5 September 1994 (*Refer Appendix 1*)

T\C 1 = Democracy and Equality, Freedom of Information and Administrative justice, franchise.

T\C 2 = Status and role of traditional leaders

T\C 3 = Relationship of citizen and local government

T\C 5 = Enforcement of Constitution, traditional authorities, Constitutional Court.

T\C 6 = Public Protector, Human Rights Commission, Gender Commission, Commission for Restitution of Land Rights, traditional authorities.

This list however is not exhaustive and the Committee reserves the right to add issues as the process unfolds.

iv) **WHICH CONSTITUTIONAL ISSUES NEED TO BE DEALT WITH IN COMMISSIONS**

The Committee feels it is too early to agree on what issues may need commissions. The Committee also seeks clarity from the Management Committee on the definition of a Commission and its terms of reference.

v) **WHICH CONSTITUTIONAL ISSUES DOES THE COMMITTEE ANTICIPATE WILL REQUIRE SEPARATE REPORTS**

The Committee feels it is too early to identify the issues that may need separate reports. It is felt that reports will cover major issues that the Committee will deal with which will be determined as the process unfolds.

vi) **HOW MANY SUCH REPORTS ARE TO BE ISSUED AND WHAT ARE THE DEADLINES FOR THESE**

The Committee as yet cannot determine the number of reports or the deadline for these.

vii) **WHAT ARE THE STRUCTURES AND ROLE PLAYERS TO BE CONSULTED**

Organised groupings of civil society; institutions; groups affected by above rights; unorganised or unrepresented broader public.

viii) **WHAT COMMUNITY AND MEDIA LIAISON ASSISTANCE WILL BE REQUIRED**

As proposed by CA Administration ATC Report No 4 of Friday 28th October 1994 (*Refer Appendix 2*) together with Theme Committee input. Of key concern in this regard that the Committee has a major part in determining its requirements and needs.

The Committee would like to emphasise that public feeling in the Constitution-making process rests with human rights, it is therefore suggested that the community and media liaison programme takes this into account.

ix) **WHO AND WHAT TECHNICAL ASSISTANCE WILL BE REQUIRED TO SUPPORT THE COMMITTEE**

The Committee feels that it is too early to decide on this matter but notes that it already has at its disposal, i) Technical Committees ii) Commissions iii) Working Groups involving T\C members and\ or other MP's.

x) **CONCLUDING REMARKS**

The Committee while reflecting the above, has however expressed a clear wish for flexibility in its approach and method. At the same time it is emphasised that the approach should be systematic.

APPENDIX 1

3 THEME COMMITTEES

3.1 Introduction

3.1.1 Since the last meeting of the Constitutional Assembly, all six Theme Committees were successfully convened on 19 September 1994 and met for the second time on 24 October 1994.

3.1.2 The Theme Committees are made up of 30 members each and have from amongst their members appointed Core Groups, consisting of up to eight members of the Committee in question, to manage and co-ordinate their work programmes.

3.1.3 Three Chairpersons have in turn been appointed from each Core Group to chair meetings of Theme Committees on a rotational basis. It has been agreed that these positions shall not be remunerable.

3.2 Briefing Document

3.2.1 The Constitutional Committee has adopted a *Briefing Document for Theme Committees*. This document is intended to guide Theme Committees in their work by outlining the scope of their responsibility and their relationship with other structures of the Constitutional Assembly.

3.2.2 In terms of the document, the Constitutional Assembly confirms its right to debate in detail, oversee and direct the drafting of, and adopt the new constitutional text.

3.3 Role of Theme Committees

3.3.1 Further to the Constitutional Assembly Resolution² of 5 September 1994 which provides for the role, functions and structure of reports of Theme Committees, it has been agreed that:-

² See Constitutional Assembly Resolutions, pages 7 and 9

- (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.
- (d) By resolution of the Constitutional Assembly, these reports should therefore include details of non-contentious issues, contentious issues and suggested approaches.

3.3.2 Flexibility should be an important feature of the work programmes of Theme Committees. In view of possible overlaps, Theme Committees are not barred from dealing with an issue that another Theme Committee may be considering.

3.3.3 Theme Committee work programmes should be guided by the integrated nature of the constitution-making process as well as the time constraints.

3.4 Relationship with other structures of the Constitutional Assembly

3.4.1 Constitutional Committee

- (a) Theme Committees will compile reports for consideration and approval by the Constitutional Committee.
- (b) The Constitutional Committee may, after deliberating on a Theme Committee report, refer the report to the Constitutional Assembly.

APPENDIX 2

PART 4 - PUBLIC PARTICIPATION

10 INTRODUCTION

10.1 The Constitutional Committee, on 24 October 1994, adopted a document entitled "Public Participation - A Strategic Overview" which set out the broad framework within which the media and community facilitation programmes will take place.

10.2 The process of public participation involves the development of media and community liaison strategies. Such strategies should be based on the resolutions of the Constitutional Assembly.

11 OBJECTIVES

11.1 The ultimate objective is to draft and adopt a credible and enduring constitution which will enjoy the support and allegiance of all South Africans.

11.2 The new constitution should represent the aspirations of all our people.

11.3 This 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.

11.4 The new constitution must be the product of an integration of ideas of all role players. In this regard, there should be maximum public participation.

11.5 There should be an effective strategy for media and community liaison.

11.6 The media and public participation strategies should aim at facilitating the required "dialogue" and channels of communication between the broader public and their elected representatives.

11.7 The 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.

12 PROCESS

- 12.1** The media and public participation strategies must be placed within the context of the overall process of drafting the new constitution.
- 12.2** Whilst these processes may at one level appear distinct and separate, in practice they are interlinked and will overlap with one another.
- 12.3** This is especially true of community liaison and media-involvement. On one level it makes sense to think of these as two distinct processes as this will focus our attention on what is required to be effective in these two fields. At another level, however, it must be kept in mind that both public participation and media involvement will be a constant thread running throughout the process as a whole.

13 CONTEXT

- 13.1** The process of constitution-making takes place in the context of the first democratically elected government in the country,
- 13.2** It is therefore understandable that the attention of the public is focussed on their immediate needs. The programmes of the Government and the Reconstruction and Development Programme in particular, are uppermost in the minds of most South Africans.
- 13.3** The approach of the Management Committee should be to avoid detracting from the important issues of government that the public and media are presently seized with. However, we should seek to ensure that the programmes of government and those of the Constitutional Assembly complement, rather than contradict, one another.
- 13.4** The attention of the public is also caught up with the coming local government elections in 1995. The exact date of these elections will obviously impact on the programme of the Constitutional Assembly.
- 13.5** The implications of the time-frames stipulated in the Constitution for the finalisation of the new constitutional text by May 1996 are another factor we need to take into account in our strategic planning.

13.6 One of the implications of all the above is that the process has to be carefully and effectively managed.

13.7 Historical and geographical factors also make it necessary that effective and creative mechanisms be sought to reach rural communities in particular.

14 MEDIA

14.1 Objectives

The major objectives of a media strategy for the Constitutional Assembly should be to:

- ▶ Inform;
- ▶ Educate;
- ▶ Stimulate public interest; and
- ▶ Create a forum for public participation.

14.2 Key Message and Process of Message Determination

14.2.1 The process of message determination is central to any media strategy.

14.2.2 The most important message of our media campaign would be to let people know that an important process is unfolding which affects their lives and those of future generations; that every South African has a unique opportunity to take part in the drafting of a new constitution.

14.3 Mechanisms

There are two important considerations which should guide our approach to finding the most suitable mechanisms to implement a media strategy:

- a) The need to make optimum use of existing channels of mass communication and hence the need for effective media liaison;
- b) The need to supplement this with the production of our own media in the form of a brochure, regular bulletins, posters, leaflets, cassettes and videos; and
- c) The need to reach disadvantaged rural communities in particular.

14.3.1 Media Liaison

- (a) The transparency of the process is already a step in the right direction. The presence of media in all meetings of the Constitutional Assembly and its structures creates a dynamic link with the broader public.
- (b) The coverage provided by the mass media must form the basis of our approach.
- (c) For this to be effective, however, our media liaison approach must ensure that the debates and issues that emanate from Theme Committees and other structures of the Constitutional Assembly are contextualised.
- (d) This will include:
 - ▶ regular press conferences, interviews and briefings; and
 - ▶ ongoing media liaison, ensuring prompt and comprehensive responses to media queries.

- e) As envisaged in the Constitutional Assembly resolution itself, however, ways will be sought to involve the media more directly in the process by means of:
- ▶ ensuring live television and radio coverage of debates in the Constitutional Assembly;
 - ▶ organising radio talk-shows and television debates with public participation;
 - ▶ producing newspaper supplements and leader articles and discussing means whereby newspapers and magazines can function as forums for discussion on constitutional issues.

14.3.2 Media Production

The Administration would not be able to rely entirely upon existing channels of communication. These would need to be supplemented by production of our own media in the form of :

- ▶ an introductory brochure for the Constitutional Assembly;
- ▶ a regular bulletin;
- ▶ occasional posters, leaflets, cassettes and videos;
- ▶ an advertising campaign in both the print and electronic media and utilisation of outdoor advertising on billboards;
- ▶ use of other medium such as electronic bulletin boards, thereby gaining immediate access to both the national and international community.

Total Budgets R20 million

14.4 Resources

- 14.4.1 An amount of approximately R20 million should be catered for in the Constitutional Assembly budget for 1995/96.
- 14.4.2 We would also seek to utilise the resources of the South African Communication Services and other government agencies and departments, where applicable.
- 14.4.3 Maximum use of existing channels of mass communication would represent a further cost-saving.
- 14.4.4 The services of a professional advertising and public relations agency would need to be contracted in view of time constraints and the human resources required to implement an effective media campaign.

14.5 Time Frames

- 14.5.1 It is not possible to give detailed time-frames for the process as a whole. This will follow when the campaign plan itself is drawn up.
- 14.5.2 However it is envisaged that the campaign would need to be launched early in 1995. This means tenders for advertising and public relations agencies would need to go out immediately and be finalised before the end of November 1994.
- 14.5.3 The first phase of the campaign would, in broad terms, seek to introduce the Constitutional Assembly and its work to the public and sensitize them to the importance of the process as a whole.

14.6 Evaluation

Evaluation would need to take place on a regular basis to ensure that the strategy is responsive and adaptable.

14.7 Management

- (a) The process would be managed on a daily basis by the Directorate and the Media Section of the Administration in particular. Regular reports to the Management Committee would enable this Committee to play its own managing role in the process. Particular aspects of the programme, as outlined above - for example the production of the brochure and advertising campaign - would be contracted out to professional agencies. The work of these agencies would be managed by the Directorate, in conjunction with the Management Committee.
- (b) Some parties have indicated an interest in the Management Committee establishing a special subcommittee to monitor the media and community liaison programme on an ongoing basis to ensure that all parties are involved in the process of message determination, thus preventing any party bias in the programme as a whole.

15 COMMUNITY LIAISON

15.1 Objectives

The objective of the community liaison strategy is 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.

15.2 Mechanisms

15.2.1 Forums

- (a) Theme Committees would be the primary forum for interfacing with the public and it would be important for Theme Committees to establish stable channels of communication between themselves and the affected interest groups, noting of course that there

will be a great deal of overlap between Theme Committees in this regard.

- (b) It would be useful to divide the public into two categories, namely "affected interests" and "general public". Hence the proposal for two kinds of forums as outlined below.

15.2.2 Sector Forums

- (a) Forums for all major sectors will be arranged, in conjunction with sector representatives. Members of the Constitutional Assembly will be requested to participate in the various forums. The forums will be extensively publicised and groundwork will be done in the sectors beforehand to ensure optimum results.
- (b) Special programmes will be established to ensure the participation of disadvantaged sections of the population and rural communities in particular.

15.2.3 Area Forums

These forums will be addressed by members of the Constitutional Assembly and be open to the broader public in specific locations. They will be held throughout the country and will also be extensively publicised. These forums will be used for a short period of time when a first draft of the new constitutional text is available to "take to the people" before the final debate takes place in the Constitutional Assembly itself.

15.2.4 Political Party Programmes

Political parties both in and outside the Constitutional Assembly have a vital role to play in the process of ensuring maximum public participation in the process of constitution-making. Parties will be urged to ensure that their programmes are used to engage the public and their supporters on constitutional issues. The Administration will liaise with parties to obtain information on such programmes and to facilitate where required.

15.2.5 Government Programmes

- (a) Mention has already been made of the important programmes of the Government of National Unity. Urgent consultation will have to take place at national and provincial level to ensure, amongst other things, that government programmes and those of the Constitutional Assembly complement one another. This is particularly so in the case of the local government elections due to take place late in 1995.
- (b) The President, Deputy Presidents and Provincial Premiers and Ministers will be urged to ensure that all their speeches contain a "slot" about the importance of the constitution-making process.

15.2.6 Public Information Facility

- (a) A public information facility should be established to provide a readily accessible information service to the public. The languages used should ensure accessibility of information.

15.2.7 Provincial Information Offices

Information offices should be established in all provinces in conjunction with Parliament, the South African Communications Service and Provincial Governments to provide the public with street-level access to information about the constitution-making process and to assist in co-ordination of the public forums programme.

15.3 Resources

15.3.1 The resources of SACS will be used.

15.3.2 Some non-governmental organisations at national and international level have funds allocated for constitutional programmes and these could be pooled into the Constitutional Assembly programme.

15.3.3 The resources of the Department of Justice for facilitating programmes on the constitution should also be utilised.

15.3.4 Resources from the private sector will include video conferencing facilities, negotiated concessions from the media, and private sector funding for various aspects of the community liaison programme.

15.3.5 In addition to the above-mentioned resources an amount of approximately R24 million should be catered for in the Constitutional Assembly budget for 1995/96.

15.4 Evaluation

Mechanisms for regular evaluation should be built into all the programmes for community liaison to ensure responsiveness and adaptability.

15.5 Management

The process would be managed on a daily basis by the Directorate and by the Community Liaison section of the Administration in particular. Some aspects of the programme would be contracted out to professional agencies, for example the toll-free line. The work of these agencies would be managed by the Administration in conjunction with the Management Committee. Regular reports to the Management Committee by the Directorate on all aspects of work would enable this Committee to fulfill its own managing role in the process.

PART 5 - RULES

- 16 It has been recognised that with the establishment of Theme Committees and the planning for the appointment of experts it would also be necessary to amend various Rules. The Constitutional Committee has made various recommendations which will be discussed in a meeting of the Rules Committee shortly. These amendments would be reported to the next meeting of the Constitutional Assembly.

PART 6 - ADMINISTRATION

17 PREMISES

The Administration is currently housed in premises at 4 Church Square. These offices are inadequate for the needs of the Administration and the Independent Panel of Constitutional Experts. New premises are being investigated in close proximity to the parliamentary complex and it is expected that the Administration will operate from these from January 1995.

18 STAFFING

Since the last meeting of the Constitutional Assembly, the Directorate has proceeded to appoint staff to the various departments of the Administration. To date a total of 30 staff members have been appointed. It is expected that this