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**CONSTITUTIONAL  
ASSEMBLY**

**MANAGEMENT  
COMMITTEE**

**THURSDAY  
7 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 7 September 1995

Time : 08h00 - 10h00

Venue : V16

#### AGENDA

1. Opening
2. Minutes: *Pages 2 - 3*
3. Matters Arising: See Agenda Items Below
4. Discussion : Process
  - 4.1 Discussion Document: Proposals on Process: *Pages 4 - 9*
  - 4.2 CA Mandates and Work Programme: *Pages 10 - 11* — CA Programme
5. Discussion: Matters Referred from the Constitutional Committee Meeting of 1 September 1995: *Page 12*
6. Discussion: Draft Agenda of the Constitutional Committee Meeting of 8 September 1995: *Page 13*
7. AOB *Draft Framework.*
8. Closure *Sub Com - Afternoon.*

H EBRAHIM  
EXECUTIVE DIRECTOR  
CONSTITUTIONAL ASSEMBLY

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

**CONSTITUTIONAL ASSEMBLY  
MINUTES OF MANAGEMENT COMMITTEE MEETING  
THURSDAY 31 AUGUST 1995 (AT 08H00)**

**PRESENT  
RAMAPHOSA M C (CHAIRPERSON)**

**Chabane OC  
Eglin CW  
King TJ\*  
Meshoe KR  
Meyer RP**

**Moosa MV  
Myakayaka-Manzini YL  
Sizani RK  
ViljoenCL  
Wessels L (Deputy Chair)**

**\* Alternates**

**Apologies:** A van Breda

**Absent :** P F Smith.

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

**1. OPENING**

The Chairperson opened the meeting at 08h03. The agenda was adopted.

**2. MINUTES**

The meeting adopted the Minutes of the meeting of the Management Committee on Thursday 17 August 1995.

**3. MATTERS ARISING**

None - included in agenda items below.

**4. DISCUSSION ON CONSTITUTIONAL ASSEMBLY PROCESS**

4.1. Mr. Ebrahim spoke to the document entitled, "*Proposals on Process*," included in the documentation.

4.2. Although the meeting discussed the proposal, it took no decisions. Rather, it agreed to revisit the matter at the next meeting of the Management Committee and forward it to the Constitutional Committee for its consideration on 9 September 1995.

4.3. In the course of discussion, the following suggestions were made:

i. Mr. Wessels said that popularisation of the new constitution would need to be an institutionalised government function. He suggested that the Constitutional Assembly engage with the relevant government departments (and especially the Department of Constitutional Development and Local Affairs and the South African Communication Services) to plan this work.

ii. Mr. Eglin of the DP suggested that specific sectors and organisations be targeted for comment on particular sections of

the working draft, and especially on contentious issues. He distinguished this from the approach that would be used for the final draft, which would seek widescale public comment.

- 4.4 Mr. Chabane of the ANC expressed concern that more provincial input was required to finalise discussions on national and provincial competencies. It was agreed, the Constitutional Committee Sub-committee would take this matter up.

**5. DISCUSSION ON CONSTITUTIONAL TALK-LINE**

- 5.1 Mr. Ebrahim spoke to the document entitled, "*Briefing on Constitutional Talk-Line*," included in the documentation.
- 5.2 Mr. Moosa of the ANC expressed concern that people outside Gauteng would be charged a long distance rate for using the Talk-Line. It was agreed that the Administration would explore a uniform national charge.
- 5.3 The meeting approved the proposal.

**6. DRAFT AGENDA FOR THE CONSTITUTIONAL COMMITTEE MEETING OF 1 SEPTEMBER 1995**

The meeting adopted the "*Draft Agenda for the Constitutional Committee Meeting of 1 September 1995*," included in the documentation.

**7. ANY OTHER BUSINESS**

**7.1 CANCELLATION OF CPM AT PORT SHEPSTONE**

- 7.1.1 Mr. Moosa of the ANC queried the cancellation of the Constitutional Public Meeting at Port Shepstone and requested that the meeting be rescheduled at the same site as soon as possible.
- 7.1.2 It was agreed that Community Liaison would take a number of factors into consideration, including security, when rescheduling the meeting.

**7.2 WHIPS MEETING**

- 7.2.1 On behalf of Mr. Wessels, Mr. Ramaphosa reported that:
- i. The Whips proposed that Parliament open on 9 February 1996; and
  - ii. Mr. Wessels proposed that the Constitutional Assembly begin its work on Monday 23 January 1996.
- 7.2.2 The meeting agreed to consider this proposal at the next meeting of the Management Committee when it looked at the Constitutional Assembly programme.

**8. CLOSURE**

The meeting closed at 09h18.

## **CONSTITUTIONAL ASSEMBLY**

### **MANAGEMENT COMMITTEE MEETING OF THURSDAY 7 SEPTEMBER 1995 DISCUSSION DOCUMENT : PROPOSAL ON PROCESS**

*Note : This document was tabled before Management Committee on Thursday 31 October 1995. The views expressed at that meeting have been incorporated for further discussion by Management Committee and the Constitutional Committee.*

#### **1. INTRODUCTION**

- 1.1 Negotiations on substantive matters have now begun. We appear to be making good progress. It would appear that we could complete a substantial portion of the constitutional text by 15 September 1995.
- 1.2 The Constitutional Assembly has thus far been successful in meeting stated objectives. We have enjoyed an effective interaction with civil society and a significant profile. The success of our media and public participation activities generated an overwhelming number of submissions reflecting public interest.
- 1.3 There is however some element of scepticism amongst the general public as to the effectiveness of their submission. Questions have been raised as to whether the views of the public would not be sacrificed at the altar of political compromise. Another concern which has also been raised by members of the Constitutional Assembly has been the value of the work produced by them in the Theme Committees. These concerns which, while they may not be justified, cannot be ignored and require some consideration and attention.
- 1.4 We are now obliged to plan for the process ahead. In doing so there are a number of questions which come to the fore. These are as follows:-
  - a) What is the form of the text that should be published ?
  - b) When should the draft text be published ?
  - c) What form should the publication and launch of the draft constitutional text take ?
  - d) What period should we allow for the response by role players to the draft ?
  - e) What public participation activities are required subsequent to the publication.
  - f) What is our responsibility upon adoption of the constitutional text.

## **2. THE PROPOSAL**

- 2.1 The text should be published in a reader-friendly form that directs the public as to the areas where comment is necessary. The launch of the publication must be a high profiled event accompanied by wide media coverage and a programme of public meetings reporting on the draft. At least three clear months must be given for effective comment. Public hearings must be held with the national and provincial sectors of civil society to entertain their comments on the draft.
- 2.2 The Constitutional Assembly should begin to plan the popularisation of the adopted text in conjunction with the relevant government departments.
- 2.3 It would be necessary to ensure that the interim constitution be amended as it is anticipated that the process would conclude no earlier than the end of 1996.

## **3. WHAT FORM SHOULD THE DRAFT TEXT TAKE ?**

- 3.1 We are committed to publishing the first draft text at the end of October 1995. It is assumed that by this time the draft text will not be finalised in that:-
  - a) there will still be a number of outstanding contentious issues:
  - b) some of the issues would be not be have been concluded, eg. seat of government, preamble, competencies, etc;
  - c) a simple language format will not have been affected; and
  - d) the format and construction of the constitution and order of chapters will not have been agreed to.
- 3.2 The draft text that will be published should therefore clearly identify and reflect those areas of contention. The published text in this sense will not be complete nor will it have the appearance of being final.
- 3.3 The form of the text should be reader-friendly and without footnotes. Rather, commentary should be interspersed with text in such a way that it guides the readers as to what the areas of contention are.

**4. WHAT FORM OF PUBLICATION SHOULD THE FIRST DRAFT TEXT TAKE.**

A two-stage process of publication is proposed:

- ◆ Limited Publication of a Working Draft in November/December 1995; and
- ◆ Full participation of the completed First Draft in May 1996.

**4.1 FIRST STAGE**

4.1.1 The first draft text which we publish is in effect a report by the Constitutional Assembly on its organisation of ideas contained in the many submissions made by role players, including political parties, civil society and ordinary individuals.

4.1.2 However, because of the many incomplete areas of this draft, it is more accurate to call this the first *Working Draft* of the new Constitution.

4.1.3 It is suggested that a limited number be published and mailed to all organisations and individuals who made submissions to the Constitutional Assembly.

4.1.4 In addition, advertisements will be placed notifying the public where they can obtain copies of the Working Draft.

4.1.5 Public comment on the Working Draft will not be sought on a wide scale. However, it is suggested that input from specific sectors and organisations be sought to address particular issues in the Working Draft, especially those areas which are in contention and/or incomplete.

**4.2 SECOND STAGE**

4.2.1 It is suggested that we will have completed our work and refined the Working Draft to be able to publish the First Draft of the new Constitution by May 1996.

4.2.2 The purpose of this publication will be to report back, and to invite comment from the broader public on the First Draft before its final consideration and adoption by the Constitutional Assembly.

4.2.3 The launch of the First Draft in May 1996 will be a high-profile event accompanied by a multi-media advertising campaign, and



intensive Public Participation programme.

4.2.4 Further details on the launch of the First Draft in 1996 will follow in due course.

**5. WHAT PERIOD OF TIME SHOULD WE ALLOW FOR PUBLIC COMMENT**

- 5.1 Publishing the First Draft in May 1996, will afford the public a full three-month period from May to July 1996.
- 5.2 During this period, it is proposed that structures of the CA will not be meeting, but that members of the CA will be fully involved in a Public Participation Programme.
- 5.3 It is proposed that full three-month period be set aside for public comment to ensure the public is able to make a meaningful input. Constitutional Public Meetings will be held throughout the country. If the public are to "own" the new constitution, then a good starting point would be with the members of the Constitutional Assembly who drafted it. Politically, it would be very useful for members of the Assembly to travel throughout the country during the period from May to July 1996, to report on the First Draft and encourage public comment.
- 5.4 It would be improper for the Constitutional Assembly to start its final round of debate before all role-players and the general public are given sufficient time and opportunity to comment. It is proposed therefore that the structures of the CA would begin final discussions of the draft text in August 1996.

**6. PROCESSING COMMENTS AND FINAL DEBATE**

To ensure that comments are processed efficiently, the Administration with its experience already gained would have to cater for proper categorisation and collation of the comments. Politically, this could also effectively be done through the Constitutional Committee and its Sub-committee. However, it is also necessary that we find the means to ensure that as many members of the Constitutional Assembly are involved in this process.

**7. WHAT PUBLIC PARTICIPATION EVENTS ARE NECESSARY ?**

- 7.1 In the second phase of publication the Constitutional Assembly should hold public hearings in all provinces involving all sectors of civil society. This will ensure that they are given a meaningful opportunity and a forum through which their comments could be

considered.

- 7.2 These meetings should be well publicised and allow for the widest possible spectrum of interest groupings to attend. Extensive advertising will be necessary to ensure full participation. A relationship with structures of civil society in organising these hearings would be important.

## **8 POPULARISING THE CONSTITUTION**

The process of adopting a final constitutional text which can claim legitimacy and credibility must culminate in a campaign to popularise it. The Constitutional Assembly needs to begin planning this campaign with the relevant government departments. This planning needs to take account of the expertise and infrastructure built by the CA Administration. This campaign will be a logical extension of the public participation programme which the CA embarked upon from the outset of the process.

## **9. TIME FRAMES**

- 9.1 The implication of the above proposals on the Time Frames are that we would not complete our constitutional assignment before May 1996. This would therefore necessitate an amendment of the constitution.
- 9.2 Should publication of the First Draft text take place in May 1996, and public comment is allowed to continue until the end of July 1996, it is suggested that we would require:-
- a) At least an additional two to three months before adoption could take place. This would include the time necessary to process all comments and negotiate the final text.
  - b) At least a further six weeks would be necessary to ensure that the text is technically adjusted and refined;
  - c) At least a month would be required to allow the Constitutional Court to certify that the text complies with the Constitutional Principles.
  - d) The popularisation of the new constitution after adoption would require a further three months.
- 9.3 However, we are obliged in terms of the Constitution to complete the text by May 1996 and the assignment of the Constitutional Assembly comes to an end immediately upon adoption. An amendment of the

interim Constitution would therefore be necessary to allow for adoption by November 1996. Further provision would need to be made for the popularisation of the new Constitution after this date.

## **10. CONCLUSION**

The above proposal obviously has cost implications. Extending the life of the CA will mean continued administrative costs. The larger part of the costs however of course relate to publication and the process of public participation. In this regard, it is argued that these costs have to be met in any case, either now in 1995 or later in 1996, if the CA is to meet its objective of a Constitution that is truly owned by the people of South Africa.

We believe that a staggered process of publication in two phases as outlined in this document will go a long way to ensuring that the public gets value for the public funds expended on the process of publication. In addition, efforts are already being made to obtain sponsorship, locally and abroad, for such a programme.

**CONSTITUTIONAL ASSEMBLY**

**MEMORANDUM**

**TO: MANAGEMENT COMMITTEE**  
**FROM: EXECUTIVE DIRECTOR**  
**DATE: 5 SEPTEMBER 1995**

**RE: MANDATES FROM CONSTITUTIONAL ASSEMBLY AND WORK PROGRAMME**

**1. INTRODUCTION**

Parliamentary recess commences on Friday 15 September 1995. For the purposes of completing the Working Draft of the new Constitution for publication in early November 1995, the following mandates will need to be obtained from the Constitutional Assembly on 15 September 1995.

**2. WORK PROGRAMME**

The Constitutional Assembly will need to mandate the Constitutional Committee and Sub-Committee to continue meeting after parliamentary recess to process matters for purpose of publishing the Working Draft in November.

**2.1 SUB-COMMITTEE**

The sub-committee will need to meet to take some matters forward to ensure we can publish a substantial Working Draft. The dates proposed are as outlined herein:

**Monday 18 September - Traditional Authorities, Competencies**  
**Thursday, Friday 21 and 22 September 1995 - Chapter on Fundamental Rights**

**Monday 25 September - Independent Institutions, Provincial Structures**  
**Thursday, Friday 28 and 29 September 1995 - Chapter on Fundamental Rights**

*Note : this programme is based on the assumption that by 15 September, the sub-committee would have completed its discussions on: National Assembly, National Executive, the Judiciary and Security.*

**2.2 CONSTITUTIONAL COMMITTEE**

The Constitutional Assembly will need to mandate the Constitutional Committee to receive a report from the Sub-Committee, and approve the Working Draft for purposes of publication in November 1995. It is proposed that the Constitutional Committee is convened on **Thursday and Friday, 19 and 20 October 1995** for this purpose.

**2.3 1996 PROGRAMME**

It was communicated to the Management Committee last week that the Whips

*(Management Committee - 7 September 1995)*

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have proposed that Parliament opens on 9 February 1995. It is proposed that the Constitutional Assembly begins its work on **Monday 15 January 1996**.

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**HASSEN EBRAHIM  
EXECUTIVE DIRECTOR  
CONSTITUTIONAL ASSEMBLY**

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**CONSTITUTIONAL ASSEMBLY**

**MEMORANDUM**

**TO: MANAGEMENT COMMITTEE**  
**FROM: EXECUTIVE DIRECTOR**  
**DATE: 5 SEPTEMBER 1995**

**RE: COAT OF ARMS**

The Constitutional Committee meeting of 1 September 1995 referred the matter of the Coat of Arms, arising from the Report of Theme Committee 1 on Blocks 7 - 9, to the Management Committee.

The draft minutes of the Constitutional Committee on this matter read as follows:

"4.7 Regarding the coat of arms, the meeting agreed that:

- i The current coat of arms was not suitable.
- ii The new constitution would contain a clause stating that there would be a coat of arms as described in a proclamation.
- iii The Management Committee would seek expert advice to investigate a new coat of arms and the financial implications of changing the coat of arms. The Management Committee would forward proposals to the Constitutional Committee for its consideration.
- iv The CA should attempt to finalise the coat of arms before the adoption of the new Constitution. "

**HASSEN EBRAHIM**  
**EXECUTIVE DIRECTOR**  
**CONSTITUTIONAL ASSEMBLY**

Panel/ commission to design  
3 people - proposals from parties.

transition phase  
cost implications  
implementation  
practicality

## CONSTITUTIONAL ASSEMBLY

### MEETING OF THE CONSTITUTIONAL COMMITTEE

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

Date : Friday 8 September 1995

Time :09h00 - 13h00

Venue :Old Assembly Chamber

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#### DRAFT AGENDA

1. Opening
  2. Minutes: *Pages 2 - 11*
  3. Matters Arising: Included in agenda items below
  4. Discussion: Process:
    - 4.1 Discussion Document tabled at Management Committee: *Vol. 1, Pages 12 - 17*
    - 4.2 Mandates from Constitutional Assembly: *Pages Vol. 1, Pages 18 - 19*
    - 4.3 Working Draft of New Constitution: *To be distributed when available*
  5. Tabling and Discussion - Report from Theme Committee Two on Self-determination: *Pages Vol 1, Pages 20 - 222*
  6. Tabling and Discussion - Report from Theme Committee 6.2 on Financial and Fiscal Commission: *Pages Vol 2, Pages 1 - 36*
  7. Tabling and Discussion - Report from Theme Committee 6.2 on General Financial Matters: *Vol. 2, Pages 37 - 51*
  8. AOB
  9. Closure
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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**

