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**CONSTITUTIONAL  
ASSEMBLY**

Nonvicos

**MANAGEMENT  
COMMITTEE**

**MONDAY 24 OCTOBER  
1994 (12H00)  
V16**

***DOCUMENTATION***







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**M FERAHIM**  
**EXECUTIVE DIRECTOR**  
**CONSTITUTIONAL ASSEMBLY**

Enquiries: Ms Mimi Ganga, Public Affairs, Tel: 405 5314, Page 405 5315

# CONSTITUTIONAL ASSEMBLY

## MEETING OF THE MANAGEMENT COMMITTEE

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

Date: Monday, 24 October 1994

Time: 12h00 - 13h00

Venue: V16 (Old Assembly Wing)

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### AGENDA

1. Opening
2. Minutes: Page 2 - 5
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4. Proposal on Appointment of Panel: Page 6 - 7
5. Report on Work Programme: Page 8 - 28
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7. AOB : Page 39 - 50
8. Closure

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**H EBRAHIM  
EXECUTIVE DIRECTOR  
CONSTITUTIONAL ASSEMBLY**

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Enquiries: Ms MM Sparg, Room CS205, Tel 403 2274, Page 468 5316



## CONSTITUTIONAL ASSEMBLY

### MINUTES OF MANAGEMENT COMMITTEE MEETING THURSDAY 20 OCTOBER 1994 (AT 09H00)

#### PRESENT

#### RAMAPHOSA MC (CHAIRPERSON)

Moosa MV	Sizani R
Eglin CW	Van Breda A
Mabandla BS	Viljoen C
Meshoe K	Wessels L
Meyer A	
Matyolo L	

**Apologies:** Meyer R, Felgate W, Chabane OC

P Lillienfeld, H Ebrahim, A Meyer, L Zondo, M Sparg, L Matyolo and P Fahrenfort were in attendance.

#### 1. OPENING

The Agenda was adopted.

#### 2. MINUTES

2.1 The Minutes of the meeting held on Monday 17 October 1994 were confirmed subject to the following corrections:

i) **Attendance Register**

Mr MV Moosa to be recorded under the **Apologies**

ii) **Item 4: Process Point 4.3**

The meeting noted that a correction had been made by the Secretariat to indicate that two options discussed in the previous meeting with regard to whether Theme Committees met concurrently or not. The two options were :

a) Six simultaneous meetings in one session; or



- b) Three simultaneous meetings in two consecutive sessions.

2.2 It had been agreed that option b) would be adhered to, subject to later revision.

### 3. MATTERS ARISING

None - included in Agenda items.

### 4. WORK PROGRAMME : REVISED WORK SCHEDULE

4.1 Mr Ebrahim presented a revised schedule.

4.2 The schedule was discussed and four items of concern noted :

- a) evening sessions;
- b) use of recess periods;
- c) date of Local Government elections in 1995; and
- d) no finality in parliament's programmes for 1995.

4.3 The meeting agreed the Directorate should revise the schedule with the following mandate :

- a) Theme Committees should not meet beyond 18 November 1994;
- b) There may be a need for Constitutional Committee and Management Committee to meet in December but this should be finalised at a later point. The purposes of these meetings would be to consider the processed reports from Theme Committees which would be submitted by 15 November 1994;
- c) The Chairpersons should meet with the Speaker of the National Assembly and the President of the Senate and Leader of the House to discuss the joint management of all three houses. A proposal would also be put to this meeting of a permanent management structure between the three Presiding Officers and the Leader of the House;
- d) In principle it was agreed that CA work would commence in January before the parliamentary programme but this would be finalised once the actual starting date of parliament was known; and



- e) An attempt should be made to give both the Constitutional Assembly and Constitutional Committee more working time in the remainder of 1994.

## **5. PUBLIC PARTICIPATION : REVISED STRATEGIC OVERVIEW**

- 5.1 Ms Sparg spoke briefly to a revised document. No decision was required as the document would be discussed by the Constitutional Committee on Monday 24 October 1994.
- 5.2 It was noted that IFP submissions had been received and would be incorporated into the document for the Constitutional Committee discussion.

## **6. PROPOSAL ON APPOINTMENT FOR CONSTITUTIONAL PANEL**

- 6.1 The meeting had before it the document submitted by Ms L Zondo. Concern was expressed about the following :
  - a) The need for a transparent procedure of selection and appointment;
  - b) The need to stick only to the criteria as stipulated in the Constitution;
  - c) The need for appointments to be confirmed by 18 November 1994.
- 6.2 It was agreed the proposal would be reworked and put to the Constitutional Committee for recommendation on Monday 24 October 1994 after first being considered by the Management Committee on the same day.
- 6.3 It was also agreed that the list of nominations would be circulated to all members of the Constitutional Committee.

## **7. PROPOSAL ON APPOINTMENT OF TECHNICAL COMMITTEES**

A proposal was put before the house and was agreed to recommend it to the Constitutional Committee on Monday 24 October 1994.

## **8. SALARY STRUCTURE OF ADMINISTRATION**

It was agreed that this item be finalised by the Chairpersons and Directorate and a report follow to the Management Committee.



## 9. FURTHER BUSINESS

### 9.1 Alternate Members

In response to a proposal by Mr Sizani that the meeting consider the matter of alternate members for the Management Committee, it was agreed this would be placed on the agenda for the next meeting.

## 10. CLOSURE

The meeting rose at 10h02.



**APPOINTMENT OF THE INDEPENDENT PANEL  
OF CONSTITUTIONAL EXPERTS**

**1 INTRODUCTION**

- 1.1 The initial closing date for the submission of nominations for the Independent Panel of Constitutional Experts, the panel, expired on 31 August 1994. The extension of that closing date was held in abeyance, pending the appointment of judges to the Constitutional Court. Constitutional Court judges have now been appointed and the closing date for submission of nominations should be decided upon and publicised. It is suggested that 28 October 1994 be the closing date.
- 1.2 The Management Committee meeting of 17 October 1994 recommended the appointment of a sub-committee to develop a short-list of candidates for appointment to the panel.
- 1.3 It is suggested that the sub-committee be constituted by members of the Constitutional Assembly, nominated by political parties and represented as follows; two ANC members and one member from the other parties represented in the Constitutional Assembly, respectively.
- 1.4 The committee also recommended the development of appropriate terms of reference for the sub-committee. The following process is suggested.

**2 TERMS OF REFERENCE**

**2.1 Transparency**

Sub-committee meetings shall be open to the public and the media.

**2.2 Report of the sub-committee**

The sub-committee shall be directed to;

- a) consider nominations and curricula vitae submitted,
- b) compile a short-list of nominees,
- c) interview candidates for the panel, and
- d) submit its report, for consideration by the Constitutional Committee, by 5 November 1994.



### **2.3 Criteria for the selection of the panel**

- (a) The requirements contained in Section 72(2) of the Constitution should be included in the terms of reference. The section provides that the panel shall be made up of five persons complying with the following requirements:
  - (i) South African citizens;
  - (ii) Recognised constitutional experts;
  - (iii) Not members of Parliament or any other legislature; and
  - (iv) Not holding office in any political party;
- (b) It is suggested that a further requirement be that the composition of the panel should, as far as possible, be broadly representative.

### **2.4 Appointment**

- a) The sub-committee should also consider the terms of reference of the panel, including whether the panel will sit on a full-time or part-time basis.
- b) In terms of Section 72(2) of the Constitution, a majority of at least two-thirds of the members of the Constitutional Assembly shall be required for the appointment of the panel.
- c) In the event of the two-thirds majority not being achieved, each party holding at least 40 seats in the Constitutional Assembly shall be entitled to nominate an expert who complies with the requirements in Section 72(2). A panel made up of such nominees shall then be appointed.



# CONSTITUTIONAL ASSEMBLY

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## MEMORANDUM

REF NO:

To: Members of the Management Committee

From: **HASSEN EBRAHIM**  
Executive Director

Date: 20 October, 1994

Memo Ref: CC/6/20Oct94

Subject: **PROCESS**  
Work Programme for Theme Committees

- 
1. A report, based on the various submissions received, was prepared. The report developed a work programme for Theme Committees.
  2. The report was discussed by both the Management and Constitutional Committee. The Constitutional Committee adopted various aspects of the document but recommended that several recommendations be reconsidered.
  3. The following were the concerns of the Constitutional Committee:-
    - 3.1. That there should be better management of time for the structures of the Constitutional Assembly;
    - 3.2. That the legislative programme for 1995 would not allow for a two-day working programme for the Constitutional Assembly;
    - 3.3. That the work of the Assembly need not depend on the legislative programme in so far as utilisation of recess periods;
    - 3.4. That meetings of Theme Committees should not take place simultaneously as this would prejudice smaller parties. Theme Committees should continue to meet consecutively.
  4. The Executive Director was instructed to consult the Leader of the Houses and the Speaker in considering the time frames for meetings. The Leader of the Assembly is presently abroad. The



Leader of the Senate was not available as at the draft of this memo. The Speaker of the Assembly was also consulted. In this regard, we have been informed that there is no formal date on which the recess period for the present session would start. It appears likely that the parliamentary session would continue, at least with standing committees operating, until the end of November.

5. We have also consulted with one of the co-chairpersons of the Local Government Task Team who has advised that the earliest date for the holding of elections is during the month of October '95. In this regard, there appears to be a considerable amount of pressure to ensure that the elections are not delayed any further.
6. The recommendations contained below are accordingly developed after taking into account the concerns of members and the agreements reached with regard to the following:-
  - 6.1. That the Theme Committees be given an initial deadline of 30 June '95 to complete their tasks. This deadline should be reviewed by the Management Committee on an ongoing basis.
  - 6.2. That each Theme Committee be requested to submit a detailed report, containing its work plan, to the Management Committee, in terms of Par 3.4 of the report, by no later than the 15 November, '94.
  - 6.3. That the period of the recess be used by the Administration to co-ordinate the work programmes of the Theme Committees and to prepare for the facilitation of Theme Committee tasks at the start of the next session.
  - 6.4. That the programme for the year '94 should close on 17 November.
  - 6.5. That sufficient time be allocated for the work of the Constitutional Committee and Assembly.
  - 6.6. That an urgent meeting be arranged with the Leader of the Houses and the three presiding officers to discuss the relationship between the Houses. In this regard, it was agreed that it be proposed at that meeting that a management committee between the various Houses be established so as to ensure efficient co-ordination of the different programmes.



**Recommendations by the Management Committee in respect of which decisions are required:-**

1. That the present session of work in the structures of the Constitutional Assembly continue until 30 November, 1994.
2. That the session for the year 1995 starts on 16 January '95. In this regard, the structures of the Constitutional Assembly should operate daily for the period before the start of the parliamentary programme.
3. That the necessary arrangements be made for structures of the Constitutional Assembly to meet for at least one full week during the Easter recess and the Mid year recess.
4. That the workday for each week, during parliamentary session, be increased.
5. That provision be made for a constant referral of matters and reports, throughout the process, from the Theme Committees to the Constitutional Committee and the Assembly.
6. That the following draft schedule of meetings be adopted:-

<b>Date</b>	<b>Time</b>	<b>Structure</b>	<b>Venue</b>
24 Oct Mon	8h00 - 9h45	Joint Sitting of Theme Committees	Nat Assem
24 Oct Mon	10h00 - 11h30	Theme Committee 1	M515
24 Oct Mon	10h00 - 11h30	Theme Committee 2	M46
24 Oct Mon	10h00 - 11h30	Theme Committee 3	E249
24 Oct Mon	11h30 - 13h00	Theme Committee 4	M46
24 Oct Mon	11h30 - 13h00	Theme Committee 5	M515
24 Oct Mon	11h30 - 13h00	Theme Committee 6	E249
24 Oct Mon	14h15 - 18h30	Constitutional Committee	M46
27 Oct Thur	8h00 - 10h00	Management Committee	V16
31 Oct Mon	8h00 - 10h00	Theme Committee 1	M46
31 Oct Mon	8h00 - 10h00	Theme Committee 2	M515
31 Oct Mon	8h00 - 10h00	Theme Committee 3	E249
31 Oct Mon	10h00 - 12h00	Theme Committee 4	M46
31 Oct Mon	10h00 - 12h00	Theme Committee 5	M515
31 Oct Mon	10h00 - 12h00	Theme Committee 6	E249



31 Oct Mon	12h00 - 13h00	Management Committee	V16
31 Oct Mon	14h15 - 17h00	Constitutional Assembly	Nat Assem
3 Nov Thur	8h00 - 10h00	Management Committee	V16
7 Nov Mon	8h00 - 10h00	Theme Committee 1	M46
7 Nov Mon	8h00 - 10h00	Theme Committee 2	M515
7 Nov Mon	8h00 - 10h00	Theme Committee 3	E249
7 Nov Mon	10h00 - 12h00	Theme Committee 4	M46
7 Nov Mon	10h00 - 12h00	Theme Committee 5	M515
7 Nov Mon	10h00 - 12h00	Theme Committee 6	E249
7 Nov Mon	12h00 - 13h00	Management Committee	V16
7 Nov Mon	14h15 - 18h30	Constitutional Committee	M46
10 Nov Thur	8h00 - 10h00	Management Committee	V16
14 Nov Mon	8h00 - 10h00	Theme Committee 1	M46
14 Nov Mon	8h00 - 10h00	Theme Committee 2	M515
14 Nov Mon	8h00 - 10h00	Theme Committee 3	E249
14 Nov Mon	10h00 - 12h00	Theme Committee 4	M46
14 Nov Mon	10h00 - 12h00	Theme Committee 5	M515
14 Nov Mon	10h00 - 12h00	Theme Committee 6	E249
14 Nov Mon	12h00 - 13h00	Management Committee	V16
14 Nov Mon	14h15 - 17h00	Constitutional Assembly	Nat Assem
17 Nov Thur	8h00 - 10h00	Management Committee	V16

**RECESS PERIOD 18 November '94 - 13 January '95**

16 Jan	8h00 - 12h00	<b>PARTY CAUCUS</b>	
16 Jan	12h00 - 13h00	Management Committee	V16
16 Jan	14h15 - 17h30	Constitutional Committee	M46
17 Jan	8h00 - 12h00	Theme Committee 1	M46
17 Jan	8h00 - 12h00	Theme Committee 2	M515
17 Jan	8h00 - 12h00	Theme Committee 3	E249
17 Jan	14h00 - 16h00	Theme Committee 4	M46
17 Jan	14h00 - 16h00	Theme Committee 5	M515
17 Jan	14h00 - 16h00	Theme Committee 6	E249



18 Jan	8h00 - 12h00	Theme Committee 1	M46
18 Jan	8h00 - 12h00	Theme Committee 2	M515
18 Jan	8h00 - 12h00	Theme Committee 3	E249
18 Jan	14h00 - 16h00	Theme Committee 4	M46
18 Jan	14h00 - 16h00	Theme Committee 5	M515
18 Jan	14h00 - 16h00	Theme Committee 6	E249
23 Jan	8h00 - 12h00	Theme Committee 1	M46
23 Jan	8h00 - 12h00	Theme Committee 2	M515
23 Jan	8h00 - 12h00	Theme Committee 3	E249
23 Jan	14h00 - 16h00	Theme Committee 4	M46
23 Jan	14h00 - 16h00	Theme Committee 5	M515
23 Jan	14h00 - 16h00	Theme Committee 6	E249
24 Jan	9h00 - 12h00	Management Committee	V16
25 Jan	9h00 - 13h00	Constitutional Committee	M46
26 Jan	8h00 - 12h00	Theme Committee 1	M46
26 Jan	8h00 - 12h00	Theme Committee 2	M515
26 Jan	8h00 - 12h00	Theme Committee 3	E249
26 Jan	14h00 - 16h00	Theme Committee 4	M46
26 Jan	14h00 - 16h00	Theme Committee 5	M515
26 Jan	14h00 - 16h00	Theme Committee 6	E249
27 Jan	9h00 - 13h00	<b>Party Caucus</b>	
30 Jan	9h00 - 10h00	Management Committee	V16
30 Jan	10h15 - 13h00	Constitutional Assembly	Nat Assem
30 Jan	14h15 - 17h00	Constitutional Assembly	Nat Assem
31 Jan	8h00 - 12h00	Theme Committee 1	M46
31 Jan	8h00 - 12h00	Theme Committee 2	M515
31 Jan	8h00 - 12h00	Theme Committee 3	E249
31 Jan	14h00 - 16h00	Theme Committee 4	M46
31 Jan	14h00 - 16h00	Theme Committee 5	M515
31 Jan	14h00 - 16h00	Theme Committee 6	E249
1 Feb	8h00 - 12h00	Theme Committee 1	M46



1 Feb	8h00 - 12h00	Theme Committee 2	M515
1 Feb	8h00 - 12h00	Theme Committee 3	E249
1 Feb	14h00 - 16h00	Theme Committee 4	M46
1 Feb	14h00 - 16h00	Theme Committee 5	M515
1 Feb	14h00 - 16h00	Theme Committee 6	E249
2 Feb	9h00 - 13h00	<b>Party Caucus</b>	
6 Feb	12h00 - 13h00	Management Committee	V16
6 Feb	2h15 - 17h00	Constitutional Committee	M46
7 Feb	8h00 - 12h00	Theme Committee 1	M46
7 Feb	8h00 - 12h00	Theme Committee 2	M515
7 Feb	8h00 - 12h00	Theme Committee 3	E249
7 Feb	14h00 - 16h00	Theme Committee 4	M46
7 Feb	14h00 - 16h00	Theme Committee 5	M515
7 Feb	14h00 - 16h00	Theme Committee 6	E249
8 Feb	8h00 - 12h00	Theme Committee 1	M46
8 Feb	8h00 - 12h00	Theme Committee 2	M515
8 Feb	8h00 - 12h00	Theme Committee 3	E249
8 Feb	14h00 - 16h00	Theme Committee 4	M46
8 Feb	14h00 - 16h00	Theme Committee 5	M515
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9 Feb	14h00 - 18h00	<b>PARTY CAUCUS</b>	
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27 Feb	8h00 - 13h00	Theme Committee 2	M515
27 Feb	8h00 - 13h00	Theme Committee 3	E249
27 Feb	14h00 - 19h00	Theme Committee 4	M46
27 Feb	14h00 - 19h00	Theme Committee 5	M515
27 Feb	14h00 - 19h00	Theme Committee 6	E249
6 Mar	8h00 - 12h00	Theme Committee 1	M46
6 Mar	8h00 - 12h00	Theme Committee 2	M515
6 Mar	8h00 - 12h00	Theme Committee 3	E249
6 Mar	12h00 - 13h00	Management Committee	V16
6 Mar	14h00 - 17h00	Constitutional Committee	M16
6 Mar	18h30 - 22h30	Theme Committee 4	M46
6 Mar	18h30 - 22h30	Theme Committee 5	M515
6 Mar	18h30 - 22h30	Theme Committee 6	E249
9 Mar	9h00 - 10h00	Management Committee	V16
13 Mar	8h00 - 12h00	Theme Committee 1	M46
13 Mar	8h00 - 12h00	Theme Committee 2	M515
13 Mar	8h00 - 12h00	Theme Committee 3	E249
13 Mar	12h00 - 13h00	Management Committee	V16
13 Mar	14h00 - 17h00	Constitutional Assembly	Nat Assem
13 Mar	18h30 - 22h30	Theme Committee 4	M46
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13 Mar	18h30 - 22h30	Theme Committee 6	E249



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REF NO:

## MEMORANDUM

**TO :** MANAGEMENT COMMITTEE

**FROM :** HASSEN EBRAHIM  
EXECUTIVE DIRECTOR

**DATE :** 24 OCTOBER 1994

**SUBJECT :** PUBLIC PARTICIPATION - A STRATEGIC OVERVIEW

### Background :

As was reported in the Management Committee of 20 October 1994, please find attached revised document on a strategy for public participation which has taken note of IFP submissions on the subject.

The concerns raised by IFP include :

1. The need to avoid party bias in the programme - see sections 2.7 and 5.7 b) of revised document.
2. The need for full involvement of Theme Committees - see section 6.2.1 of revised document.

### Decision Required :

No decision required at this stage. The document will be discussed in Constitutional Committee.



# CONSTITUTIONAL ASSEMBLY

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REF NO: **MEMORANDUM**

**TO: CONSTITUTIONAL COMMITTEE**

**FROM : HASSEN EBRAHIM  
EXECUTIVE DIRECTOR**

**DATE : 24 OCTOBER 1994**

**SUBJECT : PUBLIC PARTICIPATION - A STRATEGIC OVERVIEW**

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## **Background :**

1. As stated in an earlier memorandum to the Constitutional Committee, the attached document was tabled in earlier form before the Management Committee on 17 October 1994.
2. The document was endorsed and recommended to the Constitutional Committee for the same.
3. The document was tabled before the Constitutional Committee on the same day for its consideration. Due to constraints of time, the item was not fully discussed and was referred for later discussion.
4. The document is accordingly placed before the Committee for its consideration.
5. Please note that in discussion in both the Management and Constitutional Committee, various concerns were expressed.
6. In addition, a submission from the IFP has been received and is attached hereto as *Annexure One*.
7. The document has been revised to take note of all of the above, as outlined below :
  - 5.1 The need to reach rural communities - see sections 4.7, 5.3 a) and 6.2.2 b)
  - 5.2 The need for sound management of the process - see sections 5.7 and 6.5



5.3 The need to avoid party bias - see sections 2.7 and 5.7 b)

5.4 The need for full involvement of Theme Committees - see section 6.2.1

**Decision Required :**

Constitutional Committee endorses and adopts the document.



# CONSTITUTIONAL ASSEMBLY

## PUBLIC PARTICIPATION - A STRATEGIC OVERVIEW

### *DRAFT*

#### 1. Introduction

- 1.1 The process of public participation involves the development of media and community liaison strategies. Such strategies should be based on the resolution<sup>1</sup> of the Constitutional Assembly which outlines the broad process envisaged in drafting a new constitutional text.
- 1.2 In terms of this resolution the process of constitution-making in South Africa is seen as one which is transparent and integrates the ideas of political parties represented in the Assembly with those of civil society and the broader public.
- 1.3 This resolution also states that there should be a programme for public participation and that the media should be directly involved in this process.
- 1.4 This document is the result of various submissions and consultations and the debate and resolutions of the Constitutional Assembly and Constitutional Committee.

#### 2. Objectives

- 2.1 The ultimate objective of the process as whole is to draft and adopt a credible and enduring constitution which will enjoy the support and allegiance of all South Africans.
- 2.2 The new constitution should represent the aspirations of all our

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<sup>1</sup> See CA Resolution of 5 September 1994 on "The Process and Framework for the Drafting of the New Constitutional Text".



people. The process of constitution-making should serve to unite and produce a constitution which would become the corner-stone of the future South Africa. The process should not only be transparent, but should also be a people-driven process

- 2.3 The major criticism of the process which produced the present Constitution is its lack of transparency and the non-involvement of the broader public.
- 2.4 The elections have ensured that we now have elected representatives directly involved in the process. However, this on its own will not necessarily result in a constitution which enjoys the support of all South Africans and is seen as truly belonging to the people of this country.
- 2.5 There can be no integration of the ideas between the major role-players more maximisation of public participation, as called for by the resolution of the Constitutional Assembly, without an effective strategy for media and community liaison.
- 2.6 The media and public participation strategies of the Constitutional Assembly should aim at facilitating the required "dialogue" and channel of communication between the broader public and their elected representatives.
- 2.7 It should be stressed that whilst political parties obviously have a major role to play in the process as a whole as the elected representatives, the programmes outlined below are "non-party political" and strict monitoring would need to take place to ensure that the programmes promote the Constitutional Assembly and the interests of the country as a whole.

### **3. PROCESS**

- 3.1 The media and public participation strategies must be placed within the context of the process of drafting the new constitution as a whole.
- 3.2 Whilst these processes may at one level appear distinct and separate, in actual practice, they are interlinked and will overlap with one



another.

- 3.3 This is especially the case with the processes of community liaison and media involvement. At 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.

#### **4. ENVIRONMENT**

- 4.1 The process of constitution-making takes place in the context of the first democratically elected government in the country,
- 4.2 It is understandable therefore 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 is uppermost in the minds of most South Africans.
- 4.3 The approach of the Management Committee should not be to detract 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.
- 4.4 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.
- 4.5 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.
- 4.6 One of the implications of all the above environmental factors is that the process has to be carefully and effectively managed.
- 4.7 Historical and geographical factors also necessitate that effective and creative mechanisms be sought to reach rural communities in particular .



## **5. MEDIA**

### **5.1 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.

### **5.2 Key Message and Process of Message Determination**

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

5.2.2 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 that every South African has a unique opportunity to take part in the drawing up of a new constitution.

### **5.3 Mechanisms**

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

- a) The need to make optimum use of existing channels of mass communication and hence the need for an effective media-liaison strategy;
- 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.

### 5.3.1 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) In order for this to be effective however, our media liaison approach must ensure that the debates and issues that arise 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 CA 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, television debates with public



participation

- \* producing newspaper supplements, leader articles and discussing means whereby newspapers and magazines can function as forums for discussion on constitutional issues.

### **5.3.2 Media Production**

We 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 also utilising outdoor advertising on billboards.
- \* use of other forms of media such as electronic bulletin boards thereby gaining immediate access to both the national and international community.

## **5.4 Resources**

- 5.4.1 An amount of approximately R20 million should be catered for in the Constitutional Assembly budget for 1995/96.
- 5.4.2 We would also seek to utilise the resources of the South African Communication Services and other government agencies and departments where applicable.
- 5.4.3 Maximum use of existing channels of mass



communication would represent a further cost-saving.

- 5.4.4 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.

## **5.5 Time Frames**

- 5.5.1 It is not possible to give detailed time-frames for the process as a whole. This would follow when the campaign plan itself is drawn up.

- 5.5.2 However it is envisaged that the campaign would need to be launched early in 1995 which would mean tenders for advertising and public relations agencies would need to go out immediately and be finalised before the end of November 1994.

- 5.5.3 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.

## **5.6 Evaluation**

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

## **5.7 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 sub-committee 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 and prevent any party bias in the programme as a whole.

## **6. COMMUNITY LIAISON**

### **6.1 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.

### **6.2 Mechanisms**

#### **6.2 1 Forums**

- i) Theme Committees would be primary forum of interface with the public in these forums and it would be important for Theme Committees to establish stable channels of communication between themselves and the affected interest groups, noting ofcourse that there will be a great deal of overlap between Theme Committees in this regard.
- ii) 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.

#### **6.2.2 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) A special effort will be made to ensure the participation of disadvantaged sections of the population and rural communities in particular, utilising traditional leadership structures where appropriate.

#### **6.2.2 Area Forums**

These forums will be addressed by senior leadership and 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.

#### **6.2.3 Political Party Programmes**

Political parties both in and those outside the 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.

#### **6.2.4 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 apparently due in late 1995.



- b) Senior leadership, particularly the President , Deputy President and Provincial Premiers will be urged to ensure that all their speeches contain a "slot" about the importance of the constitution-making process.

**6.2.5 Toll-Free Information Line**

- a) A toll-free information line should be installed to provide a readily accessible information service to the public. The languages used will ensure accessibility of information. Transcripts of contacts will be used for processing enquiries and submissions. The administration of this line would be contracted out.
- b) Further consideration would need to be given to the kind of information given out on this line.

**6.2.6 Provincial Information Offices**

Information offices should be established in all provinces in conjunction with Parliament, the South African Communication Services and Provincial Government 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.



### **6.3 Resources**

- 6.3.1 The resources of SACS will be used.
- 6.3.2 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.
- 6.3.3 The resources of the Department of Justice for facilitating programmes on the constitution should also be utilised.
- 6.3.4 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.
- 6.3.5 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.

### **6.4 Evaluation**

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

### **6.5 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.

*ms18oct94stratov.rep2*



# CONSTITUTIONAL ASSEMBLY

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REPUBLIC OF SOUTH AFRICA

## MEMORANDUM

REF NO:

**To:** Members of the Management Committee

**From:** HASSEN EBRAHIM  
Executive Director

**Date:** 20 October, 1994

**Memo Ref:** CC/7/24Oct94

**Subject:** **GENERAL MATTERS**

1. Volkstaat Raad Bill
2. Constitutional Court
3. Alternates to Management Committee Members
4. Constitutional Development Services

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### 1. Volkstaat Raad Bill

- 1.1. It has come to the attention of the Directorate that a draft Bill on the above matter is presently before the relevant Standing Committee for consideration. A copy of the Bill is attached for members easy reference.
- 1.2. It is understood that the Bill has been tabled by the Minister for Provincial Affairs.
- 1.3. The matter has not been formally been brought to the attention of the Constitutional Assembly.
- 1.4. Members attention is drawn to Sec 6(2) which obliges the Constitutional Assembly to designate three members to sit in a committee with members of the Raad for purpose of liaison and co-ordination.
- 1.5. Members attention is further drawn to the opinion of the State Law Advisors office (which is attached) which calls into question the constitutionality of the provision.



1.6. Members are requested to consider the above matters.

**2. Constitutional Court**

2.1. At the meeting of the last Constitutional Committee (17 October), members requested that the Constitutional Court be approached with regard to the drafting of the relevant rules relating to certification of constitutional text and references made to the Constitutional Court by the Chairperson in terms of the Constitution.

2.2. The Executive Director has been in contact with the President of the Constitutional Court who has welcomed comment by the Constitutional Assembly.

2.3. A proposal is presently being drafted and will be placed for discussion by the Management and Constitutional Committee at its next meeting.

**3. Alternates to Members of the Management Committee**

3.1. This matter has been placed on the agenda of the Management Committee for consideration. There is presently no rule which allows for this.

3.2. Members are requested to consider this and make the necessary recommendations so that the Rules may be amended if it is decided necessary.

**4. Constitutional Development Services**

Please find attached correspondence received from the Department of Constitutional Development regarding possible assistance to the Constitutional Assembly. This item is tabled for noting only at present and will receive further processing.



DIE HOOFSTAATSREGSADVISEUR



THE CHIEF STATE LAW ADVISER

ep/clause

REPUBLIEK VAN SUID-AFRIKA · REPUBLIC OF SOUTH AFRICA

The Executive Director  
Constitutional Assembly  
CAPE TOWN

Prealdjagebou/Presidia Buildings  
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☎ Justice/Justisie 28-6531/2  
☎ (012) 315-1111 Adv G H Grové  
Verwysing/Reference

.....  
1994-10-18

Dear Sir,

VOLKSTAAT COUNCIL BILL, 1994

In response to your request I see the legal position pertaining to clause 6(2) of the Volkstaat Council Bill as follows:

Clause 6(2) provides for a committee, consisting of three members designated by the Volkstaat Council and three members designated by the Constitutional Assembly, to ensure the effective co-ordination and co-operation between the two bodies.

To the extent that the provision purports to oblige the Constitutional Assembly to participate in the setting up of the committee I have a serious problem with the constitutionality of the provision. The two Houses of Parliament cannot by way of ordinary Acts of Parliament prescribe to the Constitutional Assembly as to how it should conduct its business and proceedings. In terms of section 70(1) of the Constitution only the Constitutional Assembly itself can make rules and orders in connection with the conduct of its business and proceedings. In my view clause 6(2) is constitutionally inappropriate and should be negated by the parliamentary committee presently considering the Bill.

It would appear though that the committee envisaged in clause 6(2) can be established by the Constitutional Assembly in terms of section 72(1) of the Constitution.

Yours faithfully

DEPUTY CHIEF STATE LAW ADVISER



# BILL

To establish the Volkstaat Council contemplated in section 184A of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993); and to provide for matters connected therewith.

WHEREAS the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), provides for the establishment of a Volkstaat Council;

AND WHEREAS Parliament is empowered to prescribe additional functions for the Volkstaat Council and the procedures to be followed by the Volkstaat Council in the performance of its functions;

AND WHEREAS provision is to be made for matters incidental to the establishment and functioning of the Volkstaat Council;

---

**N**OW THEREFORE BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

## **Establishment of Volkstaat Council**

1. The Volkstaat Council contemplated in section 184A of the Constitution  
5 (and hereinafter referred to as the Council), is hereby established.

## **Vacation of office and filling of vacancies in Council**

2. (1) A member of the Council shall vacate his or her office if he or she—  
    (a) resigns;  
    (b) loses the confidence of the members of Parliament who elected him or  
10 her; or  
    (c) in the opinion of the Council is unable to perform his or her duties satisfactorily.

(2) If a member of the Council vacates his or her office in terms of subsection  
15 (1) or dies, the vacancy thus arising shall be filled by a person elected in the manner contemplated in section 184A(2) of the Constitution.

## **Co-option of persons to Council**

3. The Council may, in connection with a particular matter, co-opt any person to serve on it or to attend a particular meeting of the Council.

## **Remuneration and allowances of members of Council and co-opted persons**

20 4. (1) There shall be paid from monies appropriated by Parliament for this purpose to members of the Council and persons referred to in section 3 who are not in the employment of the State, such remuneration and allowances as the Minister of Finance may determine: Provided that a full-time member's remuneration shall not be less than that of a member of Parliament or that of a  
25 member of a provincial legislature, whichever is the lesser.

(2) The President shall, after consultation with the Council, determine which members shall be full-time members.

## **Persons and bodies to assist Council**

30 5. (1) (a) The Council may, subject to the terms and conditions determined in consultation with the Public Service Commission, appoint a secretary and such other staff as may be necessary for the efficient performance of its functions.

[W/B 21—94]



(b) Persons appointed under paragraph (a) shall be remunerated from and as a charge against the National Revenue Fund.

- 5 (2) The Council may with the approval of the Director-General of the Department of Constitutional Development in consultation with the Minister of Finance, on a temporary basis or for a particular matter employ any person with special knowledge, or obtain the co-operation of any body, and fix the remuneration, including reimbursement for travelling, subsistence and other expenses, of such person or body.

#### Procedures and additional functions of Council

- 10 6. (1) The Council shall, in the performance of its functions referred to in section 184B(1)(a) and (b) of the Constitution and before making any submission as contemplated in section 184B(1)(c) of the Constitution, as far as possible consult with all interested persons, parties, bodies or institutions, including the panel of constitutional experts referred to in section 72(2) of the Constitution,  
15 and shall, in its submissions as contemplated in the said section 184B(1)(c) of the Constitution, mention any objections raised or advices given during the said process of consultation, and set out the Council's comments thereon.

- 20 (2) A committee consisting of three members designated by the Council and three members designated by the Constitutional Assembly shall be established to ensure the effective co-ordination and co-operation between the two bodies.

#### Duration of Act

7. (1) This Act shall lapse on a date fixed by the President, after consultation with the Council, by proclamation in the *Gazette*.

(2) The Council shall be dissolved on the date referred to in subsection (1).

#### 25 Short title and commencement

8. This Act shall be called the Volkstaat Council Act, 1994, and shall be deemed to have come into operation on 26 May 1994.



## MEMORANDUM ON THE OBJECTS OF THE VOLKSTAAT COUNCIL BILL, 1994

1. In terms of section 184A of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) (hereinafter referred to as the Constitution), the establishment of a Volkstaat Council is authorised. In terms of section 184A(3) of the Constitution the Council "shall conduct its affairs according to rules made by the Council". In terms of section 184B(1) the Council "shall serve as a constitutional mechanism to enable proponents of the idea of a Volkstaat to constitutionally pursue the establishment of such a Volkstaat".

2. In terms of the said section 184B(1) of the Constitution Parliament may, in addition to the functions set out therein, prescribe other functions which may be performed by the Council, while in terms of section 184B(2) of the Constitution the procedures to be followed by the Council in the performance of its functions shall also be prescribed by an Act of Parliament.

3. The Bill proposes to give effect to the abovementioned provisions and to provide for other matters incidental to the establishment and functioning of the Council, such as—

- the vacation of office by members of the Council;
- the filling of vacancies;
- the co-opting of persons on to the Council;
- remuneration and other privileges of members;
- appointment of staff; and
- the lapsing of the Act and dissolution of the Council.

4. It is proposed to enact the Bill with retrospective effect to 26 May 1994, the date on which the members of the Council were elected.

5. The members of the Volkstaat Council, the Department of Finance and the State Law Advisers were consulted regarding the Bill.



**DEPARTEMENT VAN STAATKUNDIGE ONTWIKKELING  
DEPARTMENT OF CONSTITUTIONAL DEVELOPMENT  
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**Mr H Ebrahim  
Executive Director  
Constitutional Assembly**

**Copy for your attention**

*J. J. J. J.* 18.10.74



**DEPARTEMENT VAN STAATKUNDIGE ONTWIKKELING  
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Reference: 11/1/3

18 October 1994

Mr MC Ramaphosa  
Chairperson: Constitutional Assembly  
PO Box 15  
CAPE TOWN  
8000

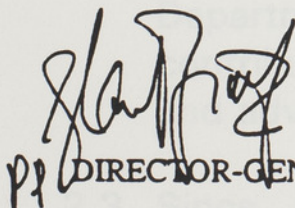
Dear Mr Ramaphosa

**POSSIBLE ASSISTANCE TO THE CONSTITUTIONAL ASSEMBLY BY  
THE DEPARTMENT OF CONSTITUTIONAL DEVELOPMENT**

In addition to assistance relating to administrative and other matters, as were discussed and finalised between the Executive Director of the Constitutional Assembly and myself, attached please find a document providing a framework of possible further assistance to the Constitutional Assembly.

The document is self explanatory, but if there is any matters that need to be clarified, officials of the Department will be glad to discuss it with you.

Yours faithfully



DIRECTOR-GENERAL: CONSTITUTIONAL DEVELOPMENT

caasst3.doc  
(fdp/18-10-94)



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# POSSIBLE ASSISTANCE TO THE CONSTITUTIONAL ASSEMBLY BY THE DEPARTMENT OF CONSTITUTIONAL DEVELOPMENT

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## 1 Introduction

- 1.1 The aim of the document is to provide a framework of possible assistance to the Constitutional Assembly by the Department of Constitutional Development.
- 1.2 The possible assistance referred to in the previous paragraph, is over and above the assistance relating to administrative and other matters, as were discussed and finalized between the Director-General of the Department and the Executive Director of the Constitutional Assembly.

## 2 Background

- 2.1 It is a function of the Department of Constitutional Development to provide support for the Cabinet, through the Minister of Constitutional Development, in the process of constitutional development in South Africa.
- 2.2 In addition to the logistical, financial and procurement services rendered over the past few years by the Department during the negotiating process, the expert contributions of the Department included research and advice on constitutional issues.
- 2.3 Since it is now the task of the Constitutional Assembly to draft and adopt a new constitution, the reservoir of expertise available in the Department of



Constitutional Development could be channelled to the Constitutional Assembly and its substructures for their use as required.

### **3 Discussion**

3.1 The Department of Constitutional Development has developed an extensive research and technical capability for comparative and original research on constitutional and related matters.

3.2 This capability could be used by the Constitutional Assembly (CA) and its substructures in the following ways:

- (i) assistance to the various theme committees of the CA in the form of research on technical issues;
- (ii) assistance to the various political parties represented in the CA by research on technical issues;
- (iii) assistance to the Constitutional Committee and the Management Committee of the CA by research on technical issues;
- (iv) assistance to the specialist advisers (i.e. the technical committees and/or the Panel of Constitutional Experts) by way of research;
- (v) possible assistance to the Administration of the CA in the drafting of constitutional, legal and related documents; and
- (vi) making available any other relevant documentation and research generated on the



initiative of the Department to all the parties indicated above.

- 3.3 The Department has also obtained extensive experience in relation to mass communication in state affairs, and the CA could make use of this expertise as well.
- 3.4 Obviously, the Department's ability to meet the needs of the CA will be dependent on the availability of personnel.

#### **4 Possible working procedure**

- 4.1 Any of the bodies or political parties referred to above may request the Department to undertake research or assist with any matters of a constitutional nature.
- 4.2 As a matter of principle, all research by the Department, including research done for political parties at their request, will be made available to all CA bodies and participants.
- 4.3 In order to ensure that requests are handled expeditiously, a direct channel with the Department can be set up. The contact persons in this regard are the following:

***Dr Gustav von Bratt***

*Private Bag X 804*

***PRETORIA***

*0001*

*Tel: (012) 341-2400*

*Fax: (012) 44-2200*

*or*

***Mr Francois Beukman***

*12th Floor*

*120 Plein Street*

***CAPE TOWN***

*Tel: (021) 461-0330*

*Fax: (021) 461-0340*

\*\*\*\*\*





# INKATHA

Inkatha Freedom Party

Iqembu leNkatha yeNkululeko

## PRELIMINARY SUBMISSION TO THE MANAGEMENT COMMITTEE AND TO THE THEME COMMITTEES

### Preliminary

On October 17, 1994 the Constitutional Committee has approved a document titled *Briefing Document for Theme Committees*. Within the parameter of the guidelines set out in such Document, each Theme Committee will need to define its scope of work and develop its own working agenda. During the aforesaid meeting the Constitutional Committee made the fundamental decision that Theme Committees should not be negotiation fora.

### 1. Guidelines for Theme Committee Work

Each Theme Committee should define its scope of work taking into account guidelines given to it by the Constitutional Committee. Since Theme Committees will be in closer contact with problems and issues, they will need to have discretion to organize their work as they best see fit. Moreover, it is not appropriate to give uniform guidelines to all six Theme Committees. Their scope of work varies and they should be given guidelines relevant to their interests.

The strict definition of the scope of work of Theme Committees is not necessary as it would limit fluidity and continuity in constitutional matters. Some overlapping of work between Theme Committees is unavoidable and is perhaps advisable to avoid defining the scope of Theme Committee work. Therefore, each Theme Committee must identify for itself the constitutional issues related and applicable to its scope of activity.

It is important that each Theme Committee understands what type of issues could be covered by its terms of reference and by its scope of work as it identifies it. Therefore, each Theme Committee should develop an agenda including

- (a) a working list of issues and
- (b) a set of guidelines to process information related to each issue.

Each party should make submissions to each of the Theme Committees with respect to a preliminary list of issues which they understand would fall under the scope of work of each Theme Committee. For instance the second Theme Committee will *inter alia* list the following issues: head of state and/or head of government, executive or parliamentary form of government, bi-cameralism or mono-cameralism, proportional or constituency representation, role of the



Senate, parliamentary law, legislative initiative, protection of minorities in parliament, and so on and so forth.

Once each Theme Committee has developed a preliminary identification of its scope of work, it shall conduct an analysis of possible alternatives which fall under its scope of work with respect to each item in the working list of issues. Theme Committees should promote the acquisition of technical information, expertise and testimony necessary for their respective work. They should examine each of the available historical and theoretical models in which the issues and alternatives they raise can be implemented. For instance, once the "issue" of application of the bill of rights is identified by the fourth Theme Committee as part of its scope of work, the "alternatives" are either horizontal or vertical application. A concurrent alternative is: either full and exclusive application by the national government or limited application by the national government with concurrent application by the provincial governments. The Theme Committees should be informed on the possible models relating to how far the horizontal application can be extended and about the relation between horizontal application and the need for constitutional adjudication to be conducted by a Constitutional Court rather than by an ordinary judiciary. These models will need to be cross referenced by the Theme Committees with the models related to the sharing of powers between different levels of government related to the implementation of the bill of rights.

Once each Theme Committee has identified and organized its scope of work, it will need to develop a system to organize and classify data on the basis of the issues and alternatives it has identified and has received in the various proposals submitted by political parties, organizations and the public. In this respect, while the *Overview of Submissions* prepared by the Directorate is appreciated, the concern must be expressed that this type of exercise might get ahead of the work of the Theme Committees.

## 2. Constitution Drafting Process

Theme Committees should be entitled not only to prepare reports, but also to clarify their thinking by means draft constitutional text to be processed in the next stage of constitution writing whenever they feel that there is a need to move discussion from matters of principle to draft constitutional text. Reports should not be intended as excluding actual constitutional verbiage when the issues at hand may be clarified by detailing proposals and concepts into actual norms and provisions.

The IFP fears that if we do not resort to the use of constitutional text when necessary, we could fall into a World Trade Centre-type of constitution making based on bottle-neck techniques which had the effect of silencing minority views, and may be used in such a way that opportunities to manipulate the process may arise. The WTC process was based on (a) consensus on constitutional principles, (b) consensus on reports written expressing principles, and finally (c) consensus on actual constitutional text based on the reports. We must avoid situations in which those who dislike sections of constitutional text, are prevented from raising their objections to the text by their having previously agreed to the principles and/or the reports.



the second Theme Committee will necessarily reflect the chosen form of state, and the work of the fifth Theme Committee will be shaped by a decision on whether there should be a single or more than one judiciaries so as to complement the assignment of residual powers to the Provinces. The following simple issues are to be answered:

- (a) will Provinces have residual powers, which are those powers of Parliament which are not immediately and necessarily reflected in a governmental line function?
- (b) as a matter of principle, will all the powers and functions of government be assigned to the Provinces and only those powers which cannot be adequately and/or properly exercised at provincial level be devolved to the national level of government on the basis of the principle of subsidiarity/residuality?
- (c) will the Provinces be provided with an area of entrenched constitutional autonomy which the central government may not destroy or change at its own will? [Indestructible Provinces in an indestructible Union]
- (d) will Provinces have final decision-making power in the area of their constitutionally recognized autonomy, or will the central government have the power to overrule them or otherwise subjugate the provincial policy making?
- (e) subject to the need for equalization grants, will Provinces have sufficient financial and fiscal autonomy to support their functions and powers without depending on the discretion and control of the central government?
- (f) will Provinces have the power to participate as Provinces in the legislative decision-making process and possibly with respect to some executive functions of the central government?
- (g) will the constitutional system allow for asymmetry to enable each Province to use at its own option less powers and functions than the total amount of provincial autonomy allowed under the Constitution?

Once there is a negative or positive answer in principle to the foregoing question, each of the Theme Committees would have sufficient guidelines to develop their respective work.

## 11. **Format of the Constitution**

The Constitutional Committee should decide at the outset on the format of the constitution to be drafted with respect to its legalese language. The 1993 Interim Constitution is a unprecedented example of a constitution which has not been written in constitutional law language but was written with the same drafting technique used for regular legislation. Consequentially, the Interim Constitution does not have constitutional semantic solidity, is filled with loopholes and uncertainty and is extremely difficult to read and understand. A constitution should be written in a form which can be understood by the people and taught to our children as a part of their education. There is no reason justifying the departure from the established drafting techniques which shaped the great European constitutions of the last fifty years.

## 12. **9. Public Participation**

The IFP endorses the report titled *Public Participation - A Strategic Overview*, with the following reservations and qualifications.



**a. Community liaison**

Theme Committees should be the primary forum of interface with the public.

The public should be divided into "general public" and "affected interests". Affected interests are segments of the public which have a special standing to discuss certain subject matters, such as the case of the churches with respect to freedom of religion, or trade unions with respect to the labor provisions, or traditional authorities with respect to the preservation of traditional communities. A stable channel of communication between the Theme Committee concerned and the affected interests should be established and maintained.

Theme Committees should solicit the participation of the general public by means of adverts. The public should be consulted in a structured matter. In this respect it might be advisable to propose that Theme Committees identify a set of questions on which they will solicit and receive the inputs of the public at different stages of their work. By way of example the type of solicitation which the theme committee could promote from the public could be on the basis "should we have this or should we have that?", e.g.: should we have a proportional representation or a constituency system?

All activities that the Directorate undertakes to promote community liaison, including Sector Fora and Area Fora should be organized in consultation with all parties concerned on the basis of a consensus rule. This shall include agreement of the date, venue and format of any given event, or invitations.

The IFP has some reservations on the use of the Toll-Free Information Line. The use of this line should be limited to receiving orders for Political Party Programs and other written information available for distribution to the public, or to verify dates and venues of Area Fora, or of meetings of Theme and Constitutional Committees. This line should not be used to give out any other information. otherwise it will become an uncontrollable tool of mass communication. This also apply to the information being distributed by the Provincial Information Offices.

**b. Media**

There is a real risk that the media effort to be organized by the Directorate of the Constitutional Assembly could be used to support political position or propaganda needs of any given political organization. This effort will include press conferences, media liaison, divulgative newspaper articles, regular bulletins with domestic and international circulation, posters, cassette, videos and brochures, and necessarily selective live television and radio coverage of constitutional debates. The former Department of Constitutional Development, the South African Communication Services and sections of the Department of Foreign Affairs provided similar services during the Codesa talks and the Multiparty Negotiation Process and their services failed to fairly and equally represent the positions of the various parties.

Two rules should be established:

1. At any given time each party shall be responsible to identify, phrase and package



the message and the contents of any mass communication which reflect or interpret its positions and aspirations in the constitution making process.

2. The entire media and public relation effort shall be controlled by a Monitoring Committee in which the minority parties are over-represented. The Monitoring Committee will not direct but will have the power to rectify any aspect of the media effort which could damage any of the parties concerned as determined in the opinion of the party concerned. A qualified minority in the Monitoring Committee shall be authorized to request the Directorate to rectify any relevant action

The public relation and media effort organized by the Directorate and by the constitution making process of the Constitutional Assembly will need to interface with a broader discussion taking place in South African society. Clearly the Constitutional Assembly may not be responsible for the organization of such discussion, but will need to adjust its structure and procedures to interface and liaise with it. The IFP will submit another position paper which addresses some of the issues related to this process of interfacing with the debate in the rest of society.

### 13. Miscellaneous

In future, submissions from political organizations which are not represented in Parliament should be listed among the *Organization Submission* rather than the *Party Submission*.

All submissions must be readily available and at least one copy of each submission should be provided to all political parties. It is not acceptable that a political party receive only the summary of a submission.



# IFP PROPOSALS ON PUBLIC PARTICIPATION IN THE CONSTITUTION DRAFTING PROCESS,

## 1. PERSPECTIVE against which public participation is sought

1.1. The public was left behind at Kempton Park largely because most people have no understanding of basic constitutional issues. South Africans are new to the entire constitutional debate.

1.2. The public will therefore require educating before it can be canvassed if informed opinions are sought

1.3. Several books have been written and courses offered by universities, organizations and private individuals relating to the constitution

1.4. We will have access to a team of 5 Constitutional experts and an arbitrary number of technical advisers

1.5. Suggested time frames, if they are to be adhered to, are inhibitive of a genuinely inclusive programme with the general public.

1.6 The public should be divided into "General public", "specialized groups" and "affected interest groups." Affected interest groups are segments of the public which have a special standing with regard to particular subject matter, e.g churches with respect to freedom of religion, trade unions with respect to labour provisions, or traditional authorities with respect to preservation of traditional communities.

## 2. PUBLIC PARTICIPATION- LIMITATIONS AND OBJECTIVES

2.1 If we are genuine about public participation, the public will need to be educated before being canvassed.

2.2 In view of the time constraints our ability to have genuine participation of the grass roots and affected interest groups is ambitious, possibly even unrealistic.

2.3 Attempts will be made to educate and inform the public, liaise with the public and canvass the public

## 3. EDUCATION with regard to the essential concepts of the constitution:

### 3.1 Background Education

- unitary state
- pluralism
- democracy
- federalism
- self determination
- free market versus socialist economies
- efficient societies
- perspective in terms of rest of world



- population composition and cultural differences
- traditional customs and governmental systems
- regional influences on the constitution of South Africa
- political aims of the various parties
- reasons for the deadlock at Kempton Park

3.2 Major issues relating to each of the 6 major themes  
 - yet to be identified

3.3 All issues should be presented in the form of a debate , including a range of possible approaches with concomitant advantages and disadvantages.

3.4 Certain fora should be addressed to the general public, others to academics and special interest groups and representative organizations e.g. business, professionals, labourers, white collar workers, sporting groups, NGO's, religious organizations. The more advanced groups should also be open to the general public. The important principle is to address meetings at 2 different levels.

3.5 It would not be unreasonable to hold the elementary workshop on the same weekend, or a day before the advanced one so that people may progress from one to the other.

#### 4. IMPLEMENTATION

##### 4.1 FORA

4.1.1 Various universities and research bodies have made books and courses concerning the constitution available to the public.

4.1.2 Once Theme Committees have identified issues for debate, these contributors should be invited to submit papers on these issues , highlighting advantages and disadvantages of alternative proposals

4.1.3 These papers and persons would form an initial and immediately accessible pool of "educators". Our own Constitutional Experts and Constitutional Advisers are included in these teams.

4.1.4. Adverts should be placed inviting interested or qualified persons to make themselves available for the task of leading public debate on various issues

4.1.5 Each Theme Committee should compile possible teams of educators, comprising individuals with a range of opinions.

4.1.6 They should request submissions by these teams both on a high level and in the conceptual manner which will be presented to the general public. The teams should then hold at least one double workshop in each province and where indicated by demand or demographics , more than one.

4.1.7 Where specifically indicated additional workshops or fora or debates should be held for special interest groups.



4.1.8 All public fora should be presented with at least 3 or 4 points of view each of which is discussed in terms of advantages and disadvantages, by individuals holding different views and who are agreed to by the Theme Committees.

4.1.9 Adequate time should be made available for questions and discussion after the presentation.

4.1.10. Only in the final stages of the negotiations, when the final text is placed before the public for scrutiny, should similar proceedings be followed by referenda concerning contentious issues.

#### 4.2 PRINT MEDIA.

4.2.1. Use can be made at all stages of a regular parliamentary newsletter detailing the various stages of the procedure described above, informing the public of the programme and the subjects on which submissions are sought. This would prepare the public and enable those who do not participate in the fora and yet have expertise to participate in the process.

4.2.2 Newspaper supplements which provide background education as discussed in 2.1.1 could be published

4.2.3 Fact sheets could be distributed with rates and electricity accounts.

#### 4.3 RADIO AND TELEVISION

4.3.1 For those people who do not have access to print media, radio debates and discussions should be organized.

4.3.2 Television should be utilised as recommended in the document. Participants should be put forward by their respective parties and not invited as individuals by the SABC.

4.3.3 Programmes such as Future Imperfect should be produced on a regular basis. However, an attempt should be made to render them educational as well as entertaining.

#### 5.. LIAISING WITH THE PUBLIC

5.1 The Secretariat should attempt, through adverts and bulletins to request invitations to all meetings, debates or fora which are organized by other organizations or NGO's.

Representatives of all parties should be invited to attend these functions, from which papers and reports should be requested.

5.2. Each forum and conference whether organized by the Secretariat or outside bodies, should be followed by questionnaires being submitted to participants. These should be answered and returned to the Secretariat at the end of the sessions for evaluation by the Secretariat and the Theme Committees. The questionnaires should be drawn up by the Theme Committees in conjunction with their teams of educators.

5.3 Questionnaires should be made available to people by



### **3. Constitutional Principles**

In developing their work Theme Committees could be required to table their interpretation of the constitutional principles relevant to their work. This interpretation should be fluid and not preemptory. Since their work does not consist of actual negotiation, the Theme Committees should adopt no binding interpretation of the applicable constitutional principles. Theme Committees should merely limit their activity to correlating proposals to any applicable constitutional principle, without determining the compatibility of the proposal with the principle concerned.

### **4. Consensus in the Theme Committee**

From the fundamental decision that the Theme Committees are not negotiation fora, the corollary necessarily follows that they shall not be engaged in decision-making. Therefore the need to determine what type of consensus is necessary to adopt a report does not arise. Each Theme Committee will limit its activity to determining whether some issues are non-contentious, whiz.: that they receive general consensus from all the members of the Committees, or whether they are contentious, whiz.: some members do not agree with others with respect to the issue concerned. Therefore, an issue is contentious when there is no general agreement on it, in which case the Theme Committee shall limit its activity to describing the respective positions in full detail without any need to determine which type of numeric majority or minority in the Theme Committee supports any of the conflicting views.

### **5. Contentious Views and Proposals**

All reports and proposals originating from any given Theme Committee should contain a detailed overview of the all aspects of a contentious issue, and should report whatever constitutional text or concept is proposed by each of the parties or groups holding any of the conflict views. In doing so it must be ensured that each party or group concerned agrees on the form and contents of the portion of the report purporting to represent its views or proposals.

### **6. Role of the Secretariat and Directorate**

The role of the administrative structures of the Constitutional Assembly should not become such that they lead the process. Reports should not be written by the secretariat or the Directorate, even if they are approved and modified by the Theme Committees. The work of the Theme Committees and the autonomy of the members of the Constitutional Assembly would suffer if the process is driven by documentation prepared outside of the Theme Committees.

### **7. Status of the Interim Constitution**

Unless any of the political parties wish to make the 1993 Interim Constitution (Act 200/1993) as is, or as amended by it, its own proposal, the Interim constitution should have no status whatsoever, with the exception of the Constitutional Principles set out in Schedule 4 of the Constitution. The work of the Theme Committees should only be guided by the Schedule 4 and should not be influenced by the contents, format or provisions of the Interim Constitution. If, at any time, any party wishes to make its own some language of the Interim Constitution it may do so. If no party does so, it means that the relevant provisions of the Interim Constitution have no



standing and should not form a basis for discussion. Should any provisions of the Interim Constitution be used as the basis for discussion at the request of, and with the consensus of the parties in the Theme Committees, this shall be done on a case-by-case basis.

The IFP warns against the use of the index of the Interim Constitution as a set of references, because it would not be conducive to identifying all relevant issues and alternatives. For instance it would set aside the study on the possibility of separating the functions of head of state from those of head of government or of establishing a true federal system. It could also bind the constitution making process to the present deplorable format of the constitution text.

#### **Handling of Proposals and Issues**

Theme Committees should be proactive, by originating new issues over and above those which they received from the parties or the public. Accordingly, Theme Committees should not limit their activity to the mere processing of proposals and issues received from the Constitutional Committee or outside sources, but should identify their own issues during the course of their work.

#### **Technical Experts**

Different types of experts will be needed in addition to lawyers. There should, *inter alia*, be experts available to Theme Committees in the fields of economics, finance, tax, land affairs, environment, police, defense and other subjects which might be relevant to constitution writing.

Since the Theme Committees are not, and should not become negotiation fora, the technical experts should not be instructed by a majority or by any given party, but should be available to each party in the Theme Committee to assist it in developing its own proposals and inputs.

The role of the technical experts is not to lead the Theme Committees by the nose but to assist them. At no time should technical experts get ahead of the Theme Committees. The IFP rejects the idea, which can be read into the proposal of the National Party, to structure the work of the Theme Committees around the discussion of and/or amendment to draft constitutional proposals prepared by technical experts, which committees would arguably also be composing together the various submissions received from the parties and the public.

#### **10. Preliminary Determination of the Form of State**

The IFP requests that each Theme Committee applies its mind to complying with the constitutional provision regulating the constitution making process and demanding that "the development of a system of provincial government shall receive the priority attention of the Constitutional Assembly" [section 161 (1)]. This means that the work of the Theme Committees must precede from a preliminary determination of the form of state, whiz. whether South Africa shall be organized as a unitary, or regional/provincial, or federal or confederal state. In fact, no Theme Committee may proceed with its work until and unless this preliminary issue is solved. In other words, to perform their respective work both the first and the fourth Theme Committees would need to know whether Provinces have residual powers, while the form of government and the role of the Senate laboring



providing contact numbers and addresses on the parliamentary newsletter.

## 6. ORGANIZATIONS RESPONSIBLE FOR COMMUNICATIONS.

6.1. The SABC and SACC should not be the main mouthpieces for educating the public. Private bodies should also be employed, in consultation with all parties. There should be an attempt to reach consensus on the bodies which are contracted, the contracts only signed on a job by job, or month by month basis.

6.2 The above measures represent an attempt to avoid propaganda style journalism and to make a genuine effort to inform the public concerning the full spectrum of issues under debate, or being negotiated.

6.3 If needs be a special private channel should be given temporary licensing by the IBA and serve as a full time liaison between parliament and the public.

6.4 Funding for this organization could be sought from overseas donors who are willing to assist in educating the public about local government elections and the RDP. These same overseas donors could provide assistance with the constructing of programmes for the special channel.

## 7 MONITORING OF THE PROCESS

7.1. A media subcommittee should be established comprising at least one member of each political party, to liaise with the various theme committees the CC the CA and the media.

7.2 All material submitted to the public should be verified by the various Theme Committees and initiated at their request or after discussion with all the members.

7.3 All activities which the Directorate undertakes, to promote community instruction, liaison or canvassing, should be done in consultation with all Theme Committee members affected, on the basis of consensus. This includes agreement on the subject matter date, venue and format of any given event or invitations.

7.4 It is recommended in one of the documents submitted for discussion that weekly press interviews be held with chairpersons of committees and the media. This would mean the exclusion of certain political parties in certain theme committees. Therefore a preferable suggestions would be that each party appoints a representative to be involved in the weekly interviews.











