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**CONSTITUTIONAL
ASSEMBLY**

**MANAGEMENT
COMMITTEE**

**MONDAY
6 FEBRUARY 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 : Monday 6 February 1995

Time : 08h00 - 10h00

Venue : V16

AGENDA

1. Opening
 2. Minutes: Pages 2 - 5
 3. Matters Arising: See Agenda Items Below
 4. Technical Committees:
 - 4.1 Draft Terms of Reference: Pages 6 - 10
 - 4.2 Report on Orientation Workshop: No Documentation
 5. Work Programme: Reports from Theme Committees: No Documentation
 6. Report on Joint Meeting of Chairpersons of Theme Committees:
Pages 11 - 12
 7. Participation by Provinces in the CA Process: No Documentation
 8. Legal Opinion: Pages 13 - 16
 9. Any Other Business 9.1 Editorial Board
 10. Closure
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H EBRAHIM
EXECUTIVE DIRECTOR
CONSTITUTIONAL ASSEMBLY

Enquiries : Ms MM Sparg, Tel 403 2274, Page 418 4616 code 6970

CONSTITUTIONAL ASSEMBLY

MINUTES OF MANAGEMENT COMMITTEE MEETING FRIDAY 27 JANUARY 1995 (AT 8H00)

PRESENT

RAMAPHOSA MC (CHAIRPERSON)

Chabane OC
Eglin CW
Mabandla BS
Marais, PJ
Meshoe KR

Sizani RK
Smith PF
Van Breda A
Viljoen C
Wessels L (Deputy Chairperson)

Apologies: R. Meyer and MV Moosa

In attendance:

Ebrahim H, Lilienfeld P, Zondo L, Sparg M, Grové G, and Keegan M.

1. OPENING

- 1.1 Mr. Ramaphosa opened the meeting at 08h00 and the Agenda was adopted.
- 1.2 Mr. Ramaphosa welcomed Mr. Marais of the National Party, who was temporarily substituting for Mr. Meyer on the Management Committee.

2. MINUTES

- 2.1 The meeting agreed to amend the Minutes of the 23 January 1995 to note that Mr. Smith of the IFP raised the issue of international mediation, but was ruled out of order.
- 2.2 With this amendment, the meeting adopted the Minutes of the meeting held on Monday 23 January 1995.

3. MATTERS ARISING

- 3.1 Concern was expressed that the scheduled time for party caucuses would be inconvenient for some parties. It was agreed that the Directorate would look again at the schedule and try to set aside

another, more convenient time for party caucuses.

- 3.2 Concern was also expressed that Theme Committee members with children were having difficulties with creche facilities and with attending evening sessions. It was agreed that the Directorate would discuss the matter with the Parliamentary creche.

4. TECHNICAL COMMITTEES

- 4.1 Ms Zondo tabled the document, "*Report of the Subcommittee to Recommend Technical Experts.*" Mr. Marais spoke to the document and reported that the Sub-Committee focused on identifying 23 Technical Experts overall: three each for Theme Committees 1 - 5, and 2 for each of the Sub-Theme Committees of Theme Committee 6. However, the Sub-Committee failed to reach agreement, because it could not find a fair balance of race and gender for the Technical Committees.
- 4.2 The meeting agreed to recommend to the Constitutional Committee that the Sub-Committee's mandate be revised to enable it to consider a total of 30 Technical Experts: four each for Theme Committees 1 - 5, and altogether 10 for the four Sub-Theme Committees of Theme Committee 6. Technical Experts for Theme Committee 6 would be brought in on a shorter, ad hoc basis. The Management Committee would ask the Constitutional Committee to take a decision on this proposal and ask that it be ratified by the Constitutional Assembly.
- 4.3 The meeting agreed in principle to the appointment of specific Technical Committees to deal with the issues of self-determination, traditional authorities and local government. It referred the matter back to the Sub-Committee to report-back to the Constitutional Committee.
- 4.4 The meeting agreed in principle to considering the appointment of a Technical Committee to deal with Finance and Fiscal Equalisation should the need arise.
- 4.5 Concern was expressed regarding the financial implications of appointing additional Technical Experts. The meeting agreed, however, that Mr. Ebrahim would prepare a special application for additional funding.
- 4.6 The meeting agreed that the Sub-Committee would proceed on this new basis, finalise its recommendations, and report to the Constitutional Committee on 30 January 1995.

5. WORK PROGRAMME

5.1 LEGAL CONTENT AND COMMUNITY LIAISON

5.1.1 Mr. Ebrahim spoke to the two documents, "*Revision of Recommended Work Programme*" and "*Draft Public Participation Programme*" included in the documentation.

5.1.2 The meeting agreed that both would be forwarded to the Constitutional Committee for debate. It was also agreed that Theme Committees would be invited to make inputs regarding their Work Programmes to the Management Committee.

5.1.3 It was also agreed that the Work Programme for Block 1 would be extended by two weeks, and that the schedule for other blocks would be reviewed as they came up.

6. PROPOSAL ON THE DRAFTING PROCESS

Mr. Grové spoke to the document entitled "*Proposal on the Drafting of the New Constitution,*" included in the documentation. The meeting agreed to forward the document to the Constitutional Committee for its consideration.

7. DIRECTORATE REPORT

7.1 COMMISSION ON PROVINCIAL GOVERNMENT AND PROVINCIAL GOVERNMENTS

Mr. Ebrahim spoke to the document entitled "*Commission on Provincial Government, Programme for Workshops, Think Tanks and Constitutional Committee Meetings,*" and an explanatory letter from the Chairperson of the Commission on Provincial Government. Both documents were included in the documentation. The meeting agreed that the Commission would be asked to synchronise their work with the Constitutional Assembly's and to forward reports to the Constitutional Assembly on an ongoing basis.

7.2 CONSTITUTIONAL COURT RULES

The document entitled "*Rules of the Constitutional Court,*" was noted.

7.3 PENGUIN FILMS PROPOSAL

The meeting noted the correspondence under the heading of "*Penguin Films,*" included in the documentation.

7.4 INTERNATIONAL MEDIATION

Mr. Smith spoke to the document submitted by the IFP entitled "*Submission to the Constitutional Committee on International Mediation*," included in the documentation. Mr. Smith requested that the implications of international mediation on the Work Programme be added to the Constitutional Committee Agenda. The meeting agreed that the IFP could raise the issue under the agenda item, "Work Programme."

8. CONSTITUTIONAL COMMITTEE DRAFT AGENDA

The meeting approved the "*Constitutional Committee (Draft Agenda)*," included in the documentation.

9. ANY OTHER BUSINESS

- 9.1 Mr. Ramaphosa and Mr. Wessels reported that they had a very worthwhile meeting with Theme Committee chairpersons. They recommended that such meetings should be scheduled regularly and built into the Constitutional Assembly programme.
- 9.2 Mr. Eglin requested that the issue of integrating the Commission on Provincial Government with Theme Committee work be included in the next Management Committee agenda.
- 9.3 Mr. Ebrahim reported that meetings would be held on a regular basis between the Chairpersons of the Constitutional Assembly and the Commission on Provincial Government. They had agreed that all submissions made to one and relevant to the other would be forwarded on.

10. CLOSURE

The meeting closed at 10h00.

DRAFT

**TERMS OF REFERENCE AND RELATED MATTERS: TECHNICAL COMMITTEES
ATTACHED TO THEME AND SUB-THEME COMMITTEES**

1. Assistance to Theme and Sub-Theme Committees

1.1 A technical committee shall at the request of its Theme or Sub-Theme Committee or the Core Group of such Committee -

- (a) advise the Theme or Sub-Theme Committee or Core Group on the technical aspects of any matter dealt with or which is to be dealt with in or by the Theme or Sub-Theme Committee;
- (b) comment on the technical aspects of any submission received by the Theme or Sub-Theme Committee or of any statement made in or to the Theme or Sub-Theme Committee or its Core Group;
- (c) assist the Theme or Sub-Theme Committee or Core Group in the preparation of any report or submission; and
- (d) make studies and do research in connection with the performance of any of the aforesaid functions.

1.2 In stead of engaging the whole technical committee a Theme or Sub-Theme Committee may in its discretion require any specific member or members of its technical committee to perform any of the above functions in relation to any particular matter.

2. Assistance in the drafting of the new constitutional text

A technical committee shall at the request of the Chairperson of the Constitutional Assembly or the Management Committee or Constitutional Committee assist in the drafting of the new constitutional text in accordance with the instructions of the Chairperson, the Management Committee or the Constitutional Committee, as the case may be.

3. Participation in public events, conferences, seminars, workshops, etc.

Participation by a technical committee in any public events, conferences, seminars, workshops, etc, outside the constitution-making process shall require prior clearance with the Executive Director acting in consultation with

the Chairperson of the Constitutional Assembly.

4. **Protocol with regard to the media and public statements**

A technical committee shall not make any public statements, including statements to the media, with regard to matters dealt with or which are to be dealt with by the committee otherwise than through the Executive Director.

5. **Administrative matters**

5.1 **Administrative support:** A technical committee shall direct all requests for secretarial and administrative support services, including accommodation, furniture, stationary and technical and electronic equipment, to the Executive Director.

5.2 **Staff:** All staff allocated to a technical committee shall perform their duties under the supervision and control of the Executive Director, and any matter pertaining to the staff shall be referred by a technical committee to the Executive Director.

5.3 **Research and consultation:** Where it is not feasible for a technical committee to undertake any research work required from it by its Theme or Sub-Theme Committee and outside assistance is required, a request for such outside assistance shall be directed to the Executive Director, who shall deal with the request in accordance with the directions of the Management Committee.

6. **Chairperson of technical committee**

A technical committee may elect a chairperson from amongst its number.

7. **Joint meetings**

Requests for joint meetings of two or more technical committees must be directed to the Executive Director who shall deal with such requests in accordance with the directions of the Chairperson of the Constitutional Assembly.

DRAFT

AGREEMENT: MEMBERS OF TECHNICAL COMMITTEES

The Constitutional Assembly (hereinafter referred to as the CA), herein represented by

in his/her capacity as

and

..... (hereinafter referred to as the TC member) agree as follows:

1.

The CA hereby appoints as a member of the technical committee attached to Theme Committee No The technical committee will perform the functions specified in the terms of reference for technical committees annexed hereto as Schedule A. In addition to his/her functions as a member of the technical committee, the TC member may be required by the CA to perform other technical legal work incidental to his/her functions as a member of the technical committee.

2.

This agreement will commence on 6 February 1995 and will subject to paragraph 11 lapse upon the discontinuation of the technical committee concerned.

3.

The TC member will serve on a part-time basis and will be remunerated on an all inclusive basis at the rate of R per hour he/she spends on work under this agreement.

4.

The CA will not be obliged to contribute to any pension, medical aid or unemployment insurance fund on behalf of the TC member.

5.

The CA will provide the TC member with work facilities to enable the TC member to perform his/her duties effectively and the TC member will be required to keep record of and to sign a register in respect of the hours per day which he/she has spent on work under this agreement.

6.

Payment of the remuneration referred to in paragraph 3 will be effected monthly within 10 days after receipt of a claim in respect of a particular month. All claims must be lodged on the official prescribed form and must contain the particulars required on the form and will only be paid upon the Executive Director, or a staff member designated by him, having certified the claim to be correct and that the services rendered by the TC member were satisfactory in terms of this agreement.

7.

The TC member shall be compensated for subsistence, travel and other related expenses at the rates and subject to the conditions applicable to members of the staff of the Constitutional Assembly. All claims must be lodged on the official prescribed form, contain the particulars required on the form and be supported by accounts, invoices and other documentary proof of expenses actually incurred.

8.

Copyright in all documents, whether compiled in writing or electronically by the TC member in the execution of his or her functions under this agreement, will vest in the CA.

9.

The TC member shall not otherwise than in the normal course of his/her duties under this agreement make any public statements, including statements to the media, with regard to work he/she is engaged in under this agreement.

10.

Participation by the TC member in any public events, conferences, seminars, workshops, etc., outside the constitution-making process in his/her capacity as a member of a technical committee will require prior clearance with the Executive Director of the CA.

11.

Either party to this agreement may terminate the agreement at any time during the currency thereof by giving seven day's notice in writing to the other party. The CA may, however, accept a shorter period of notice in an exceptional case.

12.

No amendment of this agreement or of any of the provisions or terms thereof and no extension of time or waiver or relaxation or suspension of any of the provisions or terms thereof shall be of any force or effect unless reduced to writing and signed

by both parties.

13.

The TC member acts as independent contractor and not as an agent or employee of the CA and has no authority from the CA to bind the CA. The TC member indemnifies the CA against any claims or court actions, including all legal costs, that may be instituted by any person against the CA arising out of any act, omission or default on the part of the TC member.

14.

The TC member chooses as his/her *domicilium citandi et executandi* and for the purpose of serving any notice or any other correspondence arising from this agreement, the following street address:

.....

SIGNED AT on day of 1995.

WITNESSES:

.....
CA

- 1.
- 2.

Signed at on 1995.

WITNESSES:

.....
T.C. MEMBER

- 1.
- 2.

CONSTITUTIONAL ASSEMBLY

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PO Box 15
CAPE TOWN 8000
REPUBLIC OF SOUTH AFRICA

REF NO:

2 February 1995

To all Theme Committee Chairpersons

MEETING OF THEME COMMITTEE CHAIRPERSONS

Please note that a meeting of all Theme Committee Chairpersons will be held as indicated below:

Date: Monday 6 February 1995

Time: 10h30 - 13h00

Venue: M515

AGENDA

1. Opening
2. Theme Committee reports
3. CC and MC decisions
4. Work programme
5. Community liaison programme
6. Technical Committees
7. Any other business
8. Closure

- N.B
- i) All Chairpersons are requested to bring along their copies of the revised work programme and public participation programme.
 - ii) Agenda item (2) - One Co-chairperson from each Theme Committee is requested to give a brief 5 minute process report on the activities of their Theme Committee

H EBRAHIM
EXECUTIVE DIRECTOR
CONSTITUTIONAL ASSEMBLY

Enquiries: L Meyer Tel (4032264) or T Kgosidintsi Tel (4032265), Regis House 9th Floor, Adderley street.

OPINION

CA 1/95

1.

The Management Committee at its meeting of 23 January 1995 requested us to provide an opinion on the meaning of the words "pertaining to" as contained in section 72(2) of the Interim Constitution. The relevant part of this section reads as follows:

"(2) The Constitutional Assembly shall appoint an independent panel of seven South African citizens to advise it on matters pertaining to its functions....

2.

The phrase underlined above has been discussed in the Constitutional Committee recently, and in the context of that discussion we understand our instruction as being to ascertain whether the panel of experts' advisory function in terms of the section is limited to matters incidental to the CA's functions or whether the relevant phrase could be read in a wider sense to include the giving of advice on any matter within the CA's sphere of competence.

3.

On the basis of the ordinary dictionary meaning of the words "pertaining to" we find no grounds for a view that the panel's advisory functions were intended to be limited as suggested solely by reason of the use of these words. According to dictionary definitions it appears to be quite natural to use the expression "pertaining to" where it is the intention to convey the idea of some connection with or relation to something. "Pertaining to" is simply synonymous with expressions such as "concerning", "in relation to", "with regard to", etc. For the sake of convenience we attach hereto various dictionary definitions which we have consulted.

4.

The words in question have also been judicially interpreted. A case in point was R v Kelly, Ex parte State of Victoria (1950) 81 CLR 64 where the words occurred in a phrase similar in essence to the one in section 72(2), viz "all matters pertaining to the relations of employers and employees". The court came to the conclusion that "pertaining to" in that particular phrase means "belonging to" or "within the sphere of" (see p 84).

5.

We have also examined the question in the context of section 72 and also Chapter 5 as a whole, but were unable to find any legally compelling reason why the words "pertaining to" should be understood in a narrower sense than their ordinary grammatical meaning. We are therefore of the view that the panel is competent to advise the CA on any matter within the sphere of the CA's functions. However, the extent of the panel's engagement in the performance of its advisory function in terms of section 72(2), is a matter for the CA, and it is for the CA to decide how, where and when to call for the panel's advice.

**Law Advisers: Constitutional Assembly
2 February 1995**

ANNEXURE

A. THE OXFORD THESAURUS

pertain v. often *pertain to*: 'concern, 'refer to, regard, have 'reference or 'relation (to), 'apply (to), 'relate (to), "include", 'cover, affect, appertain (to), be 'appropriate (to), be 'fitting (for), befit, "bear on, have 'bearing (on): The sign, '*Keep Off the Grass*' does not *pertain to the people who mow the lawn, Morris*.

B. THE SYNONYM FINDER

pertain, v. 1. Relate to, have reference to, bear upon, be pertinent to, enter into, appertain; fit in *or* with, be appropriate to *or* for, be suited to *or* for. 2. belong to or with, go with, go along with, be an adjunct *or* accessory to, be a concomitant of; be a part of, be included in, fall under, come under; be the property of, be owned by, be held by.

C. DICTIONARY OF MODERN LEGAL USAGE

appertain; pertain. Some differentiation is possible. Both take the preposition *to*, but *appertain* usually means "to belong to rightfully" (the privileges appertaining to this degree), whereas *pertain* usually means "to relate to; concern" (the appeal pertains to defendant's Fifth Amendment rights).

Here *appertain* is correctly used: "The general principle seems to be that jurisdiction over an inchoate crime *appertains* to the state that would have had jurisdiction had the crime been consummated." (Eng.) "The ancient remedy of a bill of peace originated in and *appertained* to the jurisdiction of the court of chancery."

In the following sentence, however, it appears to have been used merely as a fancy variant of the more usual *pertain*: "There is a compelling reason why district courts should not be divested of jurisdiction over matters 'incident to or *appertaining* (read *pertaining*) to an estate' regarding pending probate proceedings."

D. WEST'S LEGAL THESAURUS AND DICTIONARY

Pertain, v. To belong or relate to (the evidence pertained to the firing). Bear on, concern, touch, focus on, is pertinent to, is appropriate for, connect, involve, belong, associate, join.

E. **WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY**

pertain:(1) to belong to something as a part or member of accessory or product (2) to belong to something as an attribute or adjunct of attendant feature of function (3) to belong to something as a care or concern or duty (4) to belong to something by inherent character, right, assignment, or established association (5) to be appropriate to something: be right or proper or suitable: be pertinent : to have some connection with or relation to something : have reference, relate.

