

2/3/1586

Laetitia

**CONSTITUTIONAL
ASSEMBLY**

**MANAGEMENT
COMMITTEE**

**TUESDAY
26 MARCH 1996
(15h00)**

**OLD ASSEMBLY
CHAMBER**

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 : Tuesday 26 March 1996

Time : 15h00 - 16h00

Venue: Old Assembly Chamber

AGENDA

1. Opening
 2. Proposed Amendment to Interim Constitution: *Pages 2 - 5*
 3. Adoption Procedure and Proposed Amendment to Constitutional Assembly
Rules: *To Be Distributed When Available*
 4. AOB
 5. Closure
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**H EBRAHIM
EXECUTIVE DIRECTOR
CONSTITUTIONAL ASSEMBLY**

Enquiries: Ms M M Sparg, Tel 245-031



CONSTITUTIONAL ASSEMBLY

CONSTITUTIONAL ASSEMBLY

MEMORANDUM

TO: Members of the Management Committee
FROM: Executive Director
DATE: 26 March 1996
RE: Proposed Amendment to Interim Constitution

We enclose for your consideration the document entitled, "*Proposed Amendment to Interim Constitution.*"

**H EBRAHIM
EXECUTIVE DIRECTOR
CONSTITUTIONAL ASSEMBLY**

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You've made your mark



Now have your say

THE NEW CONSTITUTION

PROPOSED AMENDMENT TO INTERIM CONSTITUTION

[Note: Words in bold brackets denote deletion and words underlined denote insertion.]

Constitutional Principles and certification

- 71. (1) A new constitutional text shall -**
- (a) comply with the Constitutional Principles contained in Schedule 4; and**
 - (b) be passed by the Constitutional Assembly in accordance with this Chapter.**
- (2) The new constitutional text passed by the Constitutional Assembly, or any provision thereof, shall not be of any force and effect unless the Constitutional Court has certified that all the provisions of such text comply with the Constitutional Principles referred to in subsection 1(a).**
- (3) A decision of the Constitutional Court in terms of subsection (2) certifying that the provisions of the new constitutional text comply with the Constitutional Principles, shall be final and binding, and no court of law shall have jurisdiction to enquire into or pronounce upon the validity of such text or any provision thereof.**
- (4) During the course of the proceedings of the Constitutional Assembly any proposed draft of the constitutional text before the Constitutional Assembly, or any part or provision of such text, shall be referred to the Constitutional Court by the Chairperson if petitioned to do so by at least one fifth of all the members of the Constitutional Assembly, in order to obtain an opinion from the Court as to whether such proposed text, or part or provision thereof, would, if passed by the Constitutional Assembly, comply with the Constitutional Principles.**

Adoption of new constitutional text

- 73. (1) The Constitutional Assembly shall pass the new constitutional text within two years as from the date of the first sitting of the National Assembly under this Constitution.**
- (2) For the passing of the new constitutional text by the Constitutional Assembly, a majority of at least two-thirds of all the members of the Constitutional Assembly shall be required: Provided that provisions of such text relating to the boundaries, powers and functions of provinces shall not be considered passed by the Constitutional Assembly unless approved also by a majority of two-thirds of all the members of the Senate.**

- (3) If the Constitutional Assembly fails to pass a proposed draft of the new constitutional text in accordance with [subsection (2)], subsections (1) and (2), but such draft is supported by a majority of all its members, such proposed draft shall be referred by the Chairperson to the panel of constitutional experts referred to in section 72(2) for its advice, to be given within 30 days of such referral, on amendments to the proposed draft, within the framework of the Constitutional Principles, which might secure the support required in terms of subsection (2).
- (4) An amended draft text unanimously recommended by the panel of constitutional experts and submitted to the Constitutional Assembly within the said period of 30 days shall be considered by the Constitutional Assembly and be voted on within 14 days of the date on which it was submitted to the National Assembly [and if passed in accordance with subsection (2), it shall become the Constitution of the Republic of South Africa].
- (5) Should the panel of constitutional experts fail to submit within the said period of 30 days to the Constitutional Assembly an amended draft text which is unanimously recommended by the panel, or should such an amended draft text not be passed by the Constitutional Assembly in accordance with subsection (2), any proposed draft text before the Constitutional Assembly may be approved by it by resolution of a majority of its members for the purposes of subsection (6).
- (6) A text approved under subsection (5) shall, after it has been certified by the Constitutional Court in terms of section 71(2), be referred by the President for a decision by the electorate by way of a national referendum.
- (7) The question put before the electorate in the referendum shall be the acceptance or rejection of the text approved under subsection (5).
- (8) The text presented to the electorate in the referendum shall, if approved by a majority of at least 60 per cent of the votes cast in the referendum and subject to subsection (13), become the Constitution of the Republic of South Africa.
- (9) If the relevant text is not approved in the referendum in accordance with subsection (8) [or if a new constitutional text is not passed in terms of this Chapter within the period of two years referred to in subsection (1).] the President shall dissolve Parliament by proclamation in the *Gazette* within 14 days after the referendum or the expiry of the said period, whereupon an election contemplated in section 39(1)(a) shall be held.

- (10) The Constitutional Assembly as constituted after such an election, shall pass the new constitutional text within a period of one year as from the date of its first sitting after such election.
- (11) For the passing of the new constitutional text referred to in subsection (10) by the Constitutional Assembly, a majority of at least 60 per cent of all the members of the Constitutional Assembly shall be required: Provided that provisions of such text relating to the boundaries, powers and functions of provinces shall not be considered passed by the Constitutional Assembly unless approved also by a majority of at least 60 per cent of all the members of the Senate.
- (12) The provisions of subsections (3) to (9) of this section and the other sections of this Chapter shall apply *mutatis mutandis* in respect of the Constitutional Assembly referred to in subsection (10) of this section.
- (13) A new constitutional text adopted in terms of this Chapter shall be assented to by the President and shall upon its promulgation be the Constitution of the Republic of South Africa.

Procedure in the event of non-certification

- 73A.** (1) If the Constitutional Court finds that a draft of the new constitutional text passed by the Constitutional Assembly in terms of section 73(2) does not comply with the Constitutional Principles, the Constitutional Court shall refer the draft text back to the Constitutional Assembly together with the reasons for its finding.
- (2) The Constitutional Assembly shall amend the draft text within three months of the date of referral, taking into account the reasons of the Constitutional Court.
 - (3) The amended draft text shall be referred to the Constitutional Court for certification in terms of section 71, whereupon the provisions of subsections (1) and (2) again apply.
 - (4) If the Constitutional Assembly fails to pass an amended draft text in accordance with section 73(2), the provisions of section 73(3) to (9) shall apply *mutatis mutandis*.
 - (5) If the Constitutional Court finds that a draft of the new constitutional text approved by the Constitutional Assembly in terms of section 73(5) does not comply with the Constitutional Principles, subsections (1), (2) and (3) shall apply *mutatis mutandis*.

