

2/3/1/67

CONSTITUTIONAL ASSEMBLY

MANAGEMENT COMMITTEE

THURSDAY

12 SEPTEMBER 1996

V16

DOCUMENTATION

CONSTITUTIONAL ASSEMBLY

MANAGEMENT COMMITTEE

NOTICE OF MEETING

Please note that a meeting of the Management Committee will take place as indicated below:

Date: Thursday 12 September 1996
Time: 08h00
Venue: V16

Agenda

1. Opening and welcome
 2. Tabling and Discussion :
 - 2.1 Judgment of Constitutional Court: See Separate Document
 - 2.2 CA counsel opinion: See Separate Document
 - 2.3 Memorandum by Halton Cheadle and N. Haysom: See separate Document
 3. Way Forward : see pages 2 - 4
 4. AOB
 5. Closure
-

Hassen Ebrahim
Executive Director



CONSTITUTIONAL ASSEMBLY

MEMORANDUM

MC/11/9Sept96

To: Members of the Management Committee

From: **HASSEN EBRAHIM**
Executive Director

Date: 9 September, 1996

Subject: Proposal on Process

Decisions Required

1. Mandate the Executive Director to reconvene the technical experts previously engaged to consider the judgement and prepare formulations for consideration by the political parties.
2. Reconvene two sub committees to consider the issues against the background of the experts views.
3. Parties should advise the Administration as to their delegates to the two sub committees by 16 September. The sub committees should convene by 18 September to start work.
4. The Constitutional Assembly should be convened by 20 September to take a report and pass a resolution with regard to the process of addressing the issues identified by the Constitutional Court.
5. The sub committees should seek to complete their work and table a progress report with the Constitutional Committee by 7 October. The Constitutional Committee will then table its progress report with the Constitutional Assembly by no later than 11 October.

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You've made your mark



Now have your say

THE NEW CONSTITUTION

- Overview of Issues Requiring attention for Certification -

(To be read with accompanying opinion)

Sub Committee 1

No	Sec	Issues	CP's	Judgement	Proposal
1	23(3)	Collective Bargaining	28	[69] Individual employers rights to collective bargaining to be secured.	Draft option 3 recommended. Political approval is required.
2	37(5)	State of Emergency	2	[95] It is desirable that a distinction be drawn between derogable and non-derogable rights in a more thoughtful and rational way. With particular reference to making section 35(5) non-derogable.	This is a matter which requires technical reformulation and political approval.
3	249 & Sch 6	Immunisation of LRA & TRC		[149/ 150] The constitution should not shield provisions in legislation from constitutional review.	The deletion of section 241 and section 22(1)(b) of schedule 6 is recommended.
4	196	Public Service Commission	20	[170 - 177, 275 - 278, 298, 390] The Court has no complaint with a single Public Service Commission or a single civil service. However, its powers and functions which have not been sufficiently spelt out, must be so spelt out in a way that does not compromise provincial autonomy in the appointment and staffing of its administration - even if subject to national norms and standard. In addition, in elaborating on its powers and functions, the text must also more clearly provide for the protection of its independence and impartiality.	Parties to consider their views on the powers and functions of the PSC and the provincial role in appointing and staffing their administration.
5	194	Public Protector & Auditor General	19	[163 - 165] The Court argues that measures more stringent than an ordinary majority of the National Assembly should be required to remove the two office-bearers for them to be truly independent.	Parties to consider their views on the measures required for removal. In the meantime, a mandate is required to prepare draft formulations for political consideration.

Sub Committee 2

No	Sec	Issues	CP's	Judgement	Proposal
1	74	Amendment of Constitution	15	[153 - 156] Amendments of the constitution should require special procedures in addition to the special majority that they presently require. These could be done by way of: (1) involving both houses in the amendment procedure; (2) giving proper notice periods; (3) allowing extra time for a reflection on the proposed amendment.	Parties to consider their views on (1) what the special procedures should entail; (2) the entrenchment of the Bill of Rights. In the meantime, a mandate is required to prepare draft formulations for political
			2	[158] The Bill of Rights must be entrenched. Amendments to it should either require greater majorities than ordinary amendments, or the involvement of both houses, or	

No	Sec	Issues	CP's	Judgement	Proposal
				some additional mechanism <u>not</u> otherwise required for ordinary constitutional amendments.	consideration.
2	146 206	Provincial powers	18(2) 17	<p><u>Overrides</u> [477 - 481] The ability of the National Assembly to override provincial legislation comes at the expense of Provincial powers. Together with weaker provincial powers viz. Police; (2) local government and (3) Traditional leaders, equals a substantial diminution of provincial powers. In other words, a diminution compounded by increased override powers [146 (4) & (2)(b)] which was not substantial. If the override provisions are not amended, other diminutions identified could be examined or re-examined anyway even if not strictly necessary.</p> <p>[394 - 400 & 477 - 481] "In the case of provincial police powers there has been a loss of operational control. The curtailment in education is in respect of tertiary education. The curtailment with respect to LG lies largely in the consolidation of the autonomy of LG authorities, which results in a limitation of some of the concurrent powers of the national and provincial governments. The curtailment of provincial powers over traditional leadership is in respect of setting of salaries ... Seen in the context of the totality of provincial power, the curtailment of these four aspects of the IC sch 6 powers would not in our view be sufficient in themselves to lead to the conclusion that the powers of the provinces taken as a whole are substantially less than or substantially inferior to the powers vested in them under the IC. ... If the curtailment of powers and the override provisions referred to ... are taken together, their combined weight in the context of the NT as a whole is sufficient to be considered substantial."</p>	Parties to consider their views on the issues raised by the Court. In the meantime, a mandate is required to prepare draft formulations for political consideration.
3	Ch 7 155	Local Government	24, 25 & 10	<p>[301/302/364] CP 24 requires a framework for local government must be set out in the text. This framework must set out a framework of different categories of Local Government that can be established by Provinces and make provision for appropriate fiscal powers and functions for the different categories of local government. The framework must convey an overall structural design within which local government structures are to function and provinces are entitled to exercise their establishment powers. Included in such a framework, it must at the very least be an indication as to (a) how local government executives should be appointed; (b) how it should take its decisions; and (c) what its formal legislative procedures should be (as required by CP 10).</p> <p>[303] Remove power or impose excise taxes in section 229.</p>	Parties to consider their views on: (1) the framework for LG; (2) the different categories of LG that can be established by provinces; (3) the structural design of these LG structures; (4) their fiscal powers and functions; (5) how decisions should be made; (6) its formal legislative procedures; and, (7) the appointment of LG executives. In the meantime, a mandate is required to prepare draft formulations for political consideration.

