

2/21/1/6/5

**BRIEFING MEMORANDUM FOR CC SUB-COMMITTEE
7 SEPTEMBER 1995**

OUTSTANDING ISSUES IN THE NATIONAL ASSEMBLY REPORT

CONSTITUTIONAL ASSEMBLY

MEMORANDUM

TO: CONSTITUTIONAL COMMITTEE SUB-COMMITTEE
FROM: HASSEN EBRAHIM
DATE: 7 SEPTEMBER 1995
RE: OUTSTANDING ISSUES IN THE NATIONAL ASSEMBLY REPORT.

A. Composition of the National Assembly

Section 3: The size of the National Assembly was left over for consideration after the Constitutional Assembly debate.

At the Constitutional Assembly debate the following views emerged:

- 1.) The size of the National Assembly could only be determined after decisions on the electoral system and a holistic examination of all structures to be created by the Constitution had been made [ANC, DP, PAC, NP].
- 2.) The following principles were regarded as key guides to determining the size of the National Assembly:
 - 2.1 Efficiency [ANC, FF, DP]
 - 2.2 Cost effectiveness [ANC, DP, NP, PAC]
 - 2.3 Powers and functions of the levels of government [ACDP, FF]
 - 2.4 Burden on smaller parties [NP, ACDP, FF, ANC]
 - 2.5 Representivity [DP, NP, ACDP]
- 3.) Parties that supported the reduction of the National Assembly are the FF (350), the ACDP (300 - 350), and the DP (300).

B. National Elections

Section 4: The Electoral System was left over to be debated at the

Constitutional Assembly. The matter was not debated.

C. Duration of the National Assembly

Section 5(1): The Term of the National Assembly was left over to be debated at the Constitutional Assembly.

At the Constitutional Assembly debate all the parties, save the DP, supported a term of five years. The DP supports a term of four years.

The idea of a fixed term was supported by the DP, PAC, and ACDP. The ANC opposed a fixed term.

At the Constitutional Committee of 1 September, it was agreed that the DP would forward a proposal on a fixed term.

Section 5(2) is held in abeyance until section 20 of the Chapter on the National Executive is finalised.

D. Speaker and Deputy Speaker

Section 6(2): The issue of whether the Chief Justice or the President of the Constitutional Court should preside over the election of the Speaker was left to be settled in private discussions between parties.

E. Qualifications of Members of the National Assembly

Section 7(1): Discussion of this clause stands over pending discussion of Theme Committee 1's report on the franchise.

Section 7(2)(e): Discussion stands over pending decisions on the Senate.

Section 7(2)(f): The issue of whether traditional leaders receiving remuneration from the State are disqualified in terms of this clause is to be discussed after the presentation of a report from the Ad Hoc Committee on Traditional Authorities

F. Vacation of Seats

The inclusion of the requirements of Section 43(b) of the Interim Constitution in the new constitution was left for debate at the Constitutional Assembly.

At the Constitutional Assembly debate opposition to the inclusion of a clause similar to section 43(b) of the Interim Constitution was based on the following grounds:

- 1) It implied that members act in the interest of those who elected them and not in the national interest [NP].
- 2) It is in conflict with Constitutional Principle VIII and the democratic principle of representation [NP].
- 3) It is in conflict with the principle of freedom of association and prevents members from voting in accordance with conscience and against party policies [ACDP, DP].
- 4) It does not give effect to principles of openness and transparency, freedom of expression and the right to stand for office [DP].
- 5) The electoral system and constraints of party politics present sufficient checks against abuse [DP].
- 6) It interferes with the national process of constitutional and political development [DP, FF] and is not necessary after the adoption of the new constitution [FF].

The ANC and PAC hold the view that the matter should be considered in the light of the electoral system. Both parties favour the inclusion of qualifications to ensure that a member who leaves his or her party remains a member of the National Assembly only if he or she has the support of the electorate.

At the Constitutional Committee of 1 September 1995, it was agreed to defer the discussion on this matter until the electoral system was finalised.

G. Sittings and recess periods

Section 11(2): The calling of extraordinary sittings of the National Assembly, for the conduct of urgent business is to be shelved until discussions are finalised on the declaration of states of emergencies.

H. Assent to Bills

Section 21(2): In order to accommodate the views expressed at the Constitutional Committee meeting of 24 August 1995, the Constitutional Committee Sub-committee considered a new formulation of the clause. The Constitutional Committee Sub-committee agreed that the formulation below captured the principle agreed to but required refinement:

If the State President has reservations/concerns [NOTE: THE ONE OR THE OTHER] about the constitutionality of a Bill, or whether it has duly been passed by Parliament in accordance with the Constitution, the State President may refer the Bill back to Parliament with a clear indication of any defects. If the Bill is passed again, giving effect to the State President's reservations/concerns, the State President shall sign the Bill. If Parliament does not agree with the State President's

reservations/concerns, the Speaker shall refer the Bill to the Constitutional Court for a ruling on the constitutionality of the Bill, or whether it has been duly passed in accordance with the Constitution. If the Constitutional Court finds the Bill to be consistent with the Constitution, the State President shall sign the Bill. If the Constitutional Court finds the Bill to be inconsistent with the Constitution, it shall be referred back to Parliament for further consideration, failing which, it shall lapse.

The matter was to be considered further after the Constitutional Assembly debate.

At the Constitutional Assembly debate, the ANC said it would be prepared to consider the possibility of the President being afforded the power to refer a Bill to the Constitutional Court.

The right of the President to refer a Bill to the Constitutional Court before assenting to it was supported by the FF and DP.

The NP held the view that the issue whether the President could refer a Bill to the Constitutional Court was simply a matter of detail and the primary issue was giving effect to the supremacy of the constitution.

The PAC was opposed to the President having the power to refer a Bill to the Constitutional Court before assenting to it.

Following the CA debate, the Constitutional Committee of 1 September 1995 agreed that the corrected formulation would be forwarded to the CC Sub-Committee for its consideration. It was also agreed that the Sub-Committee would consider the provision that had been deleted from Section 3 (1) (b) of the Chapter dealing with the Courts.

I. Additions

At the Constitutional Committee of 1 September 1995, the Chairperson ruled that, in addition, the CC Sub-Committee would examine:-

- i) What aspects of the powers and functions of parliamentary committees should be included in the Constitution, and
- ii) The proposal that members of the National Assembly should be able to call sittings of the National Assembly during recess.

**HASSEN EBRAHIM
EXECUTIVE DIRECTOR**