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# INTERNAL MEMORANDUM

**To: Members of the Management Committee**

**From: Hassen Ebrahim  
Executive Director**

**Date: 12 March, 1996**

**RE: PROPOSALS ON PROCESS**

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**1. SCHEDULE**

1.1 There is general agreement that it is both possible and desirable to adopt the Constitution by 8 May 1996. A schedule for the remaining time left to the CA must take account of the following:

- \* the number of outstanding issues to be completed;
- \* the time needed for technical work on the final draft; and
- \* the time required for the adoption process itself.

1.2 The last opportunity to carry out technical and research work is during recess from 5 to 14 April. In order to allow for sufficient opportunity by the Technical Refinement Team to prepare the final text, it is necessary to ensure that the political finalisation of the debates is substantially complete by 4 April.

1.3 We are therefore left with eight working days left to substantially finalise the political issues for debate. This excludes the 25th March for which a session of the Constitutional Assembly has been scheduled but includes March 26 and 27 which are half working days as our programme is to run concurrently with Parliament.

1.4 *A schedule is attached hereto, which takes account of all of the above.*

**2. 4th EDITION**

2.1 The 4th Edition of the Working Draft clearly identifies the outstanding issues that require attention. At the time this memorandum was completed, the 4th Edition was not yet complete. *A list of outstanding issues will therefore be provided under separate cover.*



2.2 The 4th Edition also serves to bring to the attention of the Constitutional Committee, the public's submissions on the Working Draft published in November last year. 20 February 1996 was the closing date for public submissions on the Working Draft. To date, 249 942 submissions were received. The vast majority of these, approximately 248 504, were received in the form of petitions. 1 438 substantive submissions were received. Of these, 238 were received from organisations and the remainder from individuals.



2.3 A statistical report on submissions is attached hereto. As submissions were received, they were copied, sorted and categorised, and copied with summaries directly to political parties and members of the sub-committee. The bulk of the submissions were processed and summarised in a record time of two weeks, as most submissions were received a week before the 20 February deadline. 30 volumes of submissions (each volume consisting of two parts) were produced and distributed.



2.4 To further facilitate consideration of these submissions, the Administration has attempted to cross-reference submissions to each provision in the 4th Edition of the Working Draft in the form of End-notes. These end-notes are not intended to replace the original submissions, many of which are fairly detailed. They are intended to serve merely as an aide, to facilitate discussions. To further assist, the technical committee on the Bill of Rights has analysed the submissions relevant to this Chapter in some detail and produced memoranda for the Constitutional Committee.



3. **CONSTITUTIONAL COMMITTEE**

The Constitutional Committee meeting scheduled for tomorrow, 15 March 1996, will be largely process oriented. It will receive the report from the Management Committee based on today's evaluation and consider outstanding issues in the 4th Edition and public submissions in the End-notes. Rather than debating the substance of these issues, it is proposed that the Constitutional Committee, look at mechanisms and dates for these to be dealt with at sub-committee level.



4. **CONSTITUTIONAL ASSEMBLY**

It is suggested that the Constitutional Assembly be convened on 25 March 1996 for the following purposes:

4.1 To receive a report from the Constitutional Committee, which will include a report on the evaluation by the Management Committee, a schedule for the remaining period and a list of outstanding issues;



4.2 To consider the 4th Edition of the Working Draft and debate outstanding issues. It is proposed that the Constitutional



Committee be empowered to authorise the Chairpersons to identify some outstanding issues to debate at CA level;

4.3 To deal with some important process issues concerning the adoption process and the amendment of the Constitution - see below.

## 5. AMENDMENT OF THE CONSTITUTION

5.1 Some debate has taken place already at Management Committee level about the need to plan for two possible scenarios - the need to make use of the Independent Panel of Constitutional Experts as a deadlock breaking mechanism in terms of s73(3) of the Constitution, and the need for the CA to reconvene in the event of non-certification of the adopted text.

5.2 In order to ensure <sup>we</sup> that are able to deal with these two possibilities, it is proposed that the Constitutional Assembly on 25 March amends the Constitution, extending the life of the CA beyond 8 May 1996.

## 6. FINAL TEXT

6.1 Since it is the responsibility of the Constitutional Committee to finally negotiate the text, it is recommended that we are left with two options:

- i To hold a Constitutional Committee between 1 - 4 April to politically finalise the text; or
- ii To arrange for a multi-lateral between 1 - 3 April and report to the Constitutional Committee on 4 April 1996.

6.2 Should the political debates be substantially completed by 4 April 1996, it is possible for a final text to be produced for political consideration by 15 April, that is, immediately after the recess period. This will place the Constitutional Committee in a position to finally consider the text with a view of initiating the process required for its adoption.

## 7. PROCESS OF ADOPTION

### 7.1 CONSTITUTIONAL REQUIREMENTS

- i **Sec 73(1)** requires the Constitutional Assembly to pass the final text **within two years** as from the date of the first sitting of the National Assembly. The first sitting took place on **9 May 1994**. Therefore the final date of adoption must be no later than **8 May 1996**.
- ii **Sec 73 (2)** requires a **majority of two-thirds of all members**

of the **Constitutional Assembly** provided that all provisions relating to boundaries, powers and functions of provinces shall also require a **two thirds majority of the Senate**. Procedurally, there should therefore be two sets of votes cast on the draft text.

## 7.2 REQUIREMENTS OF CA RULES

The Rules envisage four stages that a Bill should pass through. These are:-

- i **The First Reading**, at which the bill is introduced, and statements on it are made;
- ii **The Second Reading**, at which the objects and principles of the bill are discussed - this is the main debate on the bill;
- iii **The Third Stage**, at which each clause or other provision of the bill, together with any amendment proposed thereto, may be considered before it is agreed to or negated.
- iv **The Third Reading**, at which the bill or, as the case may be, the bill as amended during the third stage, may be discussed. A two-thirds majority of the Constitutional Assembly, as well as a two-thirds majority of the Senate in respect of certain clauses relating to the provinces, is required.

## 7.3 ADOPTION PROCEDURE

- i On the basis of a conservative estimate, should we follow the process in terms of the strict letter of the Rules, we would need no less than 12 work days in the Constitutional Assembly.
- ii However, the Constitutional Assembly has from the onset attended to all debates in the process in committee. It is suggested therefore that a shortened adoption procedure take place. This would require an amendment of the rules, by resolution of the Constitutional Assembly on 25 March 1996.

## 8. TRANSLATION

- 8.1 The final text of the Constitution would be published in the Government Gazette and distributed to all Constitutional Assembly members together with the final CA Report towards the end of April. The language of the text should be in as many of the official languages as may be possible

8.2 Work has already commenced on translating the provisions of the 3rd Edition into all official languages. It is expected that *we* will have complete drafts in all languages by 1 April.

**9. CONSTITUTION**

*translated*

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