

2/3/157



CONSTITUTIONAL ASSEMBLY

MANAGEMENT COMMITTEE

**THURSDAY
14 MARCH 1996
(07h30)
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 : Thursday 14 March 1996

Time : 07h30 - 10h00

Venue: V16

AGENDA

1. Opening
 2. Minutes: *Pages 2 - 6*
 3. Matters Arising: See Agenda Item Below
 4. Evaluation: *Pages 7 - 19*
 5. AOB
 6. Closure
-

**H EBRAHIM
EXECUTIVE DIRECTOR
CONSTITUTIONAL ASSEMBLY**

Enquiries: Ms M M Sparg, Tel 245-031

CONSTITUTIONAL ASSEMBLY

MINUTES OF THE MANAGEMENT COMMITTEE MEETING THURSDAY 22 FEBRUARY 1996

PRESENT

RAMAPHOSA M C (CHAIRPERSON)

Chabane O C
Eglin C W
Meshoe K R
Meyer R P
Moosa M V

Myakayaka-Manzini M
Sizani R K
Van Breda A
Viljoen C
Wessels L (Deputy Chairperson)

Absent: P F Smith.

In Attendance: H Ebrahim, P Lilienfeld, M Sparg, and M Keegan.

1. OPENING

The Chairperson opened the meeting at 08h07 and the meeting approved the agenda.

2. MINUTES

The meeting adopted the Minutes of the Management Committee Meeting of Thursday 15 February 1996.

3. MATTERS ARISING

None - included in agenda items below.

4. EVALUATION

4.1 Mr. Ramaphosa introduced the document entitled "*Proposals on Process*," included in the Documentation for the 15 February 1996 Meeting of the Management Committee.

4.2 The meeting agreed with the broad outlines of the programme contained in the document, subject to the need for flexibility.

4.3 The following points were raised in discussion:

4.3.1 Mr Meyer of the NP said the CA should continue to work towards completing by 9 May. However, he said it would be

necessary to evaluate progress on an ongoing basis to ensure that we keep to scheduled activities. He proposed 14 March as the date for a further evaluation by the Management Committee, and reminded the meeting of the following concerns raised by Mr Van Breda in the previous meeting:

- i. Annexure 3 of the "*Proposal on Process*" be considered thoroughly, and
- ii. Greater clarity be given on the meaning of "*passed*," as suggested by the Panel of Experts in paragraph 2.3 of Annexure 4 of the "*Proposal*".

He said, finally, further clarity was needed on what the "position" of the constitution, itself, would be, should the Constitutional Court not certify it.

4.3.2 Mr. van Breda of the NP expressed concern that additional time might be needed in case the proposed constitutional text did not acquire the two thirds majority required for passing and needed to be referred to the Panel of Experts, as provided for in section 73(3) of the Interim Constitution.

4.3.3 Mr. Moosa of the ANC agreed with the process outlined in the document and said all indications are that the CA would meet the 9 May deadline. However, he said the ANC would like to suggest amendments to the process from time to time. He raised two concerns:

- i. The CA needed to seriously consider whether it wanted to make use of the Panel to mediate, as provided for in Section 73(3). He said it may be necessary to commence with adoption earlier than provided for in the present schedule, to ensure the CA was able to make use of this facility within the 8 May time frame; and
- ii. The CA needed to consider what would happen if the Constitutional Court did not certify the final constitution. He said this was an open question. Whilst there were no immediate answers, the way the CA dealt with this question may require it to look at the process again.

4.3.4 Ms Myakayaka-Manzini of the ANC said that it appeared the CA would need more days towards the end of April, if the CA were to sit for 12 full days for adoption purposes, as suggested in page 8 of the "*Proposal*". She also asked whether the Panel would need a full 30 days to provide a compromise draft,

should the CA make use of the facility provided for in Section 73(3).

4.3.5 Mr. Viljoen of the FF agreed that the Management Committee evaluate progress again on 14 March. He said that the Law Advisors needed to provide clear advice on this occasion, on how to extend the constitutional deadline, in case the meeting decided that more time was needed.

4.3.6 Mr. Eglin of the DP raised the following issues:

- i. The proposed schedule was fine if the CA continued to progress with its work. However, no provision appeared to have been made for contingencies;
- ii. The programme should provide for more sittings of the CA earlier in April, to consider a penultimate draft of the constitution. Having approved of the document at a conceptual level, the CA could then ask the Constitutional Court to consider this draft to give a preliminary view, before final adoption procedures commenced;
- iii. Further clarity was needed on adoption procedures; and
- iv. The CA needed to conduct its own evaluation, to satisfy itself that it had complied with the Constitutional Principles.

4.3.7 In response to the suggestion that the Constitutional Court be asked to provide a preliminary view on the draft constitution, Mr. Ramaphosa said that the Interim Constitution did make provision for this. However, the Constitutional Court had expressed a clear preference for considering the entire constitution in a formal hearing, after the Constitutional Assembly passed it. The Constitutional Court had provisionally set aside four weeks in June to do this.

4.3.8 Mr Chabane of the ANC, supported by Mr Sizani of the PAC, asked for a legal opinion on whether the CA was bound to maintain the existing nine provinces. However, the Chair said that the Constitution was clear on this matter. He asked political parties to study the relevant provisions and assess at the next meeting, whether legal opinions were necessary.

4.3.9 Mr Chabane of the ANC also drew the meeting's attention to Section 73(2) which provided that text relating to the

boundaries, powers and functions of provinces shall not be considered passed by the CA unless approved also by a majority of two-thirds of all the members of the Senate.

4.3.10 Mr Ebrahim responded that this could be provided for in the proposed adoption programme, by ensuring a separate count of votes by members of the Senate.

4.3.11 The Chairperson concluded as follows:

- i. Good progress was being made on resolving outstanding issues, and the CA needed to ensure that it reached agreement on all issues within the next four weeks;
- ii. The programme contained in the document was accepted in broad outlines, but parties needed to be given further opportunity to look at it again; and
- iii. The Management Committee would meet on 29 February to look at how the schedule would be re-worked and to consider fresh ideas on how the procedures mentioned might fit into the programme.

5. PROVINCIAL BOUNDARIES

The meeting noted the document entitled, "*Provincial Boundaries*," tabled at the meeting, and agreed to forward it to the Constitutional Committee Subcommittee for its consideration.

6. ANY OTHER BUSINESS

6.1 REPORT BACK ON MEETING WITH THE WHIPS

6.1.1 Mr. Wessels reported that the Whips had agreed that, with the exception of a few days, the month of April could be used by the Constitutional Assembly.

6.1.2 The meeting agreed, however, that the Constitutional Assembly might need about six additional days in the second half of March.

6.2 INVITATION FROM THE DUTCH EMBASSY

The meeting noted the correspondence entitled, "*Royal Netherlands Embassy*," tabled at the meeting.

7. CLOSURE

The Chairperson closed the meeting at 08h52.

MEMORANDUM

To: Members of the Management Committee

**From: Hassen Ebrahim
Executive Director**

Date: 13 March, 1996

RE: PROPOSALS ON PROCESS

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 1996. 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 one day in March for which a session of the Constitutional Assembly has been scheduled but includes 26, 27 and 28 March which are half working days as our programme is to run concurrently with Parliament.
- 1.4 *A schedule which takes account of all of the above, is attached hereto.*

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 25 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 issues to be dealt with at sub-committee level.

4. CONSTITUTIONAL ASSEMBLY

It is suggested that the Constitutional Assembly be convened on 29 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 two important process issues concerning the adoption process and the amendment of the Constitution and CA Rules - see paragraphs 5.2 and and 7.3 (ii) 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 allow the CA to use the Independent Panel of Constitutional Experts, if the need arises, 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 that we are able to deal with these two possibilities, it is proposed that the Constitutional Assembly on 29 March 1996 amends the Constitution. This amendment would provide for the possibility of using the Panel as a deadlock-breaking mechanism in the event of non-adoption on 8 May; and to allow the CA to reconvene for a further period to deal with issues in the event of non-certification. *The proposed amendment is attached hereto.*

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 final 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 29 March 1996.
- iii If a shortened process of adoption were agreed to, a sitting of the Constitutional Assembly could be called at the end of April to start the process of adoption.
- iv The final sitting of the Constitutional Assembly would take place on 8 May for purposes of adoption, tabling of the final CA Report and a resolution mandating the Chairpersons to file the final text with the Constitutional Court.

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 translated into all official languages by 1 April.

9. CERTIFICATION

9.1 CONSTITUTIONAL REQUIREMENTS

Whilst the Constitution states in s71 that the new text will not be of any force or effect unless it is certified by the Constitutional Court to be in compliance with the Constitutional Principles, it is silent as to the procedure for certification.

9.2 CA RULES REQUIREMENTS

In terms of Rule 97(1) two "fair" copies of the text passed by the Constitutional Assembly must be certified by the Secretary and lodged with the Constitutional Court with a view to certification. These copies must also be accompanied by a request to the effect that, if the Constitutional Court certifies the text, one of the copies bearing the Court's certificate should be returned to

the copies bearing the Court's certificate should be returned to the Secretary for presentation to the President for assent.

9.3 CONSTITUTIONAL COURT RULES

- i In terms of Rule 15, the Chairperson of the Constitutional Assembly is required to "certify in writing the content of the constitutional text passed by the Constitutional Assembly and submit such text to the registrar with a formal request to the Court to perform its functions in terms of section 71(2) of the Constitution."
- ii This certificate should include a statement specifying that the provisions of the text were passed by the requisite majority and whether any of the political parties represented in the Assembly wish to address the Constitutional Court.
- iii The Chairperson of the Court may direct that the CA Chairperson provide further information as may be necessary and that all interested parties in the Assembly may be allowed to table written submissions and may present oral argument if necessary.

9.4 MANAGEMENT COMMITTEE

The Management Committee would need to consider the details of the process and form of petition for certification of the approved text at a later stage. The Constitutional Court has provisionally indicated that it could sit for the month of June for purposes of certification.

10. PUBLICATION OF CONSTITUTION

The Administration is preparing proposals for the consideration of the Chairpersons on the publication of the Constitution after certification. This will involve producing the Constitution in various formats - including the official A4 version, a pocket-book version and a more elaborate version on parchment with calligraphy for the signing ceremony by the President.

CONSTITUTIONAL ASSEMBLY PROGRAMME - 1996

MARCH

MON	TUES	WED	THURS	FRI	SAT	SUN
				1	2	3
4 Bilaterals between parties	5 Sub-Committee 10 - 18:00 E249 (Bill of Rights)	6 Sub-Committee 14 - 18:00 E249 (Provinces, Competencies & National Council of Provinces)	7	8 Sub-Committee 10 - 18:00 E249 (Institutions of Constitutional Democracy, Public Administration, Security Services)	9	10
11 Bilaterals between parties	12 Sub-Committee 10 - 18:00 E249 (Bill of Rights & Provinces, Competencies, Nat. Council of Provinces)	13 <i>Budget Speech</i>	14 Man Com 8-10 V16 (Evaluation)	15 Sub-Committee 10 - 18:00 OAC (Courts & Admin of Justice, Nat. Executive, Transition Arrangements, & National Assembly)	16	17
18 Sub-Committee 10 - 18:00 E249 (Bill of Rights & Provinces, Competencies, Nat. Council of Provinces)	19	20	21 <i>Public Holiday</i>	22 <i>14h00 Premier</i>	23	24
25 Constitutional Committee 10:00 - 18:00 OAC (4th Edition of Working Draft)	26 <i>5-18:00</i> Sub-Committee 10 - 18:00 OAC (Local Gov, Traditional Authorities & Self Determination, Security Services, & Inst of Const. Democracy)	27 Sub-Committee 14 - 18:00 OAC (Provinces, Competencies & National Council of Provinces)	28 Sub-Committee 14 - 18:00 E249 (General Provisions, Public Admin, Finance & Schedules)	29 Constitutional Assembly (Consider Working Draft & pass resolution)	30	31

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Embargoed until 7h30
14 March 1996

APRIL

MON	TUES	WED	THURS	FRI	SAT	SUN
1 Const. Committee 10:00 - 18:00 OAC (Debate on Outstanding Issues) or Multilateral	2 Const. Committee 10:00 - 18:00 OAC (Debate on Outstanding Issues) or Multilateral	3 Const. Committee 10:00 - 18:00 OAC (Debate on Outstanding Issues) or Multilateral	4 Man. Committee V16 8:00 - 10:00 Const. Committee 10:00 - 18:00 OAC (Debate on Outstanding Issues)	5 <i>Good Friday</i> Technical Preparation of Final Draft	6 Technical Preparation of Final Draft	7 Technical Preparation of Final Draft
8 <i>Family Day</i> Technical Preparation of Final Draft	9 <i>RECESS</i> Technical Preparation of Final Draft	10 <i>RECESS</i> Technical Preparation of Final Draft	11 <i>RECESS</i> Technical Preparation of Final Draft	12 <i>RECESS</i> Technical Preparation of Final Draft	13 Technical Preparation of Final Draft	14 Print Final Text
15 Distribute Final Draft for CC Debate Const. Committee OAC 10:00 - 18:00 (Final Debates - Final Draft) <i>Committee on Votes</i>	16 Const. Committee OAC 10:00 - 18:00 (Final Debates - Final Draft) <i>Committee on Votes</i>	17 Const. Committee OAC 10:00 - 18:00 (Final Debates - Final Draft) <i>Committee on Votes</i>	18 Man. Committee V16 8:00 - 10:00 Const. Committee OAC 14:00 - 18:00 (Final Debates - final Draft) <i>Committee on Votes</i>	19 Const. Committee OAC 10:00 - 18:00 (Final Debates - Final Draft) <i>Committee on Votes</i>	20 Prepare Final Draft for Print & Publication	21 Prepare Final Draft for Print & Publication
22 Const. Assembly 10:00 - 18:00 (First Stage)	23 Man. Committee V16	24 Const. Assembly 10:00 - 18:00 (Second Stage First Day)	25 Man. Committee V16	26 Const. Assembly 10:00 - 18:00 (Second Stage - 2nd Day)	27	28
29 Const. Assembly 10:00 - 18:00 (Third Stage - 1st Day)	30 Const. Assembly 10:00 - 18:00 (Third Stage - 2nd Day)					

MAY

MON	TUES	WED	THURS	FRI	SAT	SUN
		1 <i>Worker's Day</i>	2 Const. Assembly 10:00 - 18:00 (Third Stage - 3rd Day)	3 Const. Assembly 10:00 - 18:00 (Third Stage - 4th Day)	4	5
6 Const. Assembly 10:00 - 18:00 (Third Stage - 4th Day)	7 Man. Committee V16	8 Const. Assembly 14:30 - 18:00 (Third Reading & Adoption)	9	10	11	12

15

Embargoed until 7h30
14 March 1996

SUBMISSIONS

REPORT

27/02/96

From the time of publication of the Draft Constitution upto the closing date for submissions (20 February 1996), the Constitutional Assembly has received 1 438 Submissions. Table 1 highlights the distribution of the issues covered. Because some submissions cover more than one issue, the submissions received (1 438) cover 1 785 issues.

The highest concentration of issues covered relates to the Bill of Rights - 56%. This is followed by the Founding Provisions - 15.2%, and General Legislative Demands - 12%.

238 of the 1 438 (16.5%) were received from organisations.

The Petitions received (248 504) are indicated in Table 2.

Submissions:	1 438
Petitions:	<u>248 504</u>
TOTAL:	<u>249 942</u>

Table 1

DISTRIBUTION OF ISSUES COVERED

RESPONSES TO CHAPTERS IN THE DRAFT CONSTITUTION	No.	% OF TOTAL
Ch. 1 - Founding Provisions (A)	271	15.2
Ch. 2 - Bill of Rights (B)	1 002	56
Ch. 3 - Parliament (C)	36	3
Ch. 4 - Council of Provinces (D)	12	0.7
Ch. 5 - National Executive (E)	16	0.9
Ch. 6 - Courts & Admin of Justice (F)	28	1.6
Ch. 7 - State institutions supporting Constitutional Democracy (G)	17	0.9
Ch. 8 - Provinces (H)	18	1
Ch. 9 - Provincial & Nat. legislative & executive Competencies (I)	12	0.7
Ch. 10 - Local Government (J)	15	0.8
Ch. 11 - Traditional Authorities (K)	42	2.5
Ch. 12 - Public Administration (L)	11	0.6
Ch. 13 - Security Services (M)	25	1.4
Ch. 14 - Finance (N)	14	0.8
Ch. 15 - General Provisions (P)	1	0.1
Schedules (Q)	7	0.4
General Legislative Demands (R)	215	12
Other	43	2.4
TOTAL	1 785	100

Table 2

PETITIONS

No.	SUBJECT	TOTAL
12756	Pro Death Penalty	186 376
12757	Pro Right to Firearms	14 410
12758	Anti Sexual Orientation Clause	546
12406	Christianity and the State	3 075
12760	Property Rights	4 192
14528	Rastafarian Rights	1 040
14198	Animal Rights	17 600
14416	Anti Abortion	9 604
13098	Intellectual Rights	4 419
14316	Pro Sexual Orientation Clause	7 032
13853	Comments on the BoR and Preamble	210
		248 504

First Draft

(Note: Bold type sets out proposed amendments)

PROPOSED AMENDMENT OF THE INTERIM CONSTITUTION

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).

(3A) If the Constitutional Court finds that not all of the provisions of the new constitutional text comply with the Constitutional Principles, the Constitutional Court must -

- (a) set out in its ruling in what respect the constitutional text does not comply with the Constitutional Principles; and**
- (b) order the Constitutional Assembly to rectify constitutional text within a specified period which may not be less than three months of the order.**

? specify
min +
max

3

A decision of the Constitutional Court in terms of subsection (2) *which...* 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.

by returning to...

within set period
failing

- 73 (3) If the Constitutional Assembly fails to pass a proposed draft of the new constitutional text in accordance with **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).

