[Monday, 31st October, 1994 No4 - 1994]

REPUBLIC OF SOUTH AFRICA

CONSTITUTIONAL ASSEMBLY

RESOLUTIONS

MONDAY, 31st OCTOBER, 1994

Chamber of National Assembly: 14:15

1. (Chairperson of the Constitutional Assembly): That the Constitutional Committee be authorised-

   (a) to establish technical committees;
   (b) to appoint their members; and
   (c) subject to Standing Rule 44, to determine the functions and terms of reference of such committees.

2. (Chairperson of the Constitutional Assembly): That the report of the Constitutional Committee tabled on Friday, 28 October 1994, be adopted.

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PART 1 - STRUCTURES OF THE CONSTITUTIONAL ASSEMBLY

1 CONSTITUTIONAL COMMITTEE

1.1 Subsequent to the last sitting of the Constitutional Assembly, the Constitutional Committee has met on three occasions: 12 September, 17 October and 24 October, 1994.

1.2 The Constitutional Committee, in implementing the Resolution[1] of the last sitting of the Constitutional Assembly, supervised the establishment of the six Theme Committees. Each Theme Committee was guided by a briefing document and assisted with the development of a work plan.

1.3 The Constitutional Committee, in consultation with the presiding officers of the National Assembly and Senate, developed a work programme.

2 MANAGEMENT COMMITTEE

2.1 Subsequent to the last sitting of the Constitutional Assembly, the Management Committee has met on Mondays and Thursdays during session.

2.2 The Management Committee has at its various sittings met to consider and review matters relating to process.

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[1] CA Resolution of 5 September, 1994.

3 THEME COMMITTEES

3.1 Introduction

3.1.1 Since the last meeting of the Constitutional Assembly, all six Theme Committees were successfully convened on 19 September 1994 and met for the second time on 24 October 1994.

3.1.2 The Theme Committees are made up of 30 members each and have from amongst their members appointed Core Groups, consisting of up to eight members of the Committee in question, to manage and co-ordinate their work programmes.

3.1.3 Three Chairpersons have in turn been appointed from each Core Group to chair meetings of Theme Committees on a rotational basis. It has been agreed that these positions shall not be remunerable.

3.2 Briefing Document

3.2.1 The Constitutional Committee has adopted a ***Briefing Document for Theme Committees***. This document is intended to guide Theme Committees in their work by outlining the scope of their responsibility and their relationship with other structures of the Constitutional Assembly.

3.2.2 In terms of the document, the Constitutional Assembly confirms its right to debate in detail, oversee and direct the drafting of, and adopt the new constitutional text.

3.3 Role of Theme Committees

3.3.1 Further to the Constitutional Assembly Resolution[2] of 5 September 1994 which provides for the role, functions and structure of reports of Theme Committees, it has been agreed that:-

(a) Drafting should be directed by the Constitutional Assembly.

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[2] See Constitutional Assembly Resolutions, pages 7 and 9

(b) The Constitutional Committee should be responsible for the co-ordination of all Constitutional Assembly work, including drafting.

(c) Theme Committees are not negotiating fora. Their primary task should be to receive submissions and process them into reports for consideration by the Constitutional Committee.

(d) By resolution of the Constitutional Assembly, these reports should therefore include details of non-contentious issues, contentious issues and suggested approaches.

3.3.2 Flexibility should be an important feature of the work programmes of Theme Committees. In view of possible overlaps, Theme Committees are not barred from dealing with an issue that another Theme Committee may be considering.

3.3.3 Theme Committee work programmes should be guided by the integrated nature of the constitution-making process as well as the time constraints.

3.4 Relationship with other structures of the Constitutional Assembly

3.4.1 Constitutional Committee

(a) Theme Committees will compile reports for consideration and approval by the Constitutional Committee.

(b) The Constitutional Committee may, after deliberating on a Theme Committee report, refer the report to the Constitutional Assembly.

3.4.2 Management Committee

The Management Committee is responsible for the following functions;

(a) dealing with process matters;

(b) implementing tasks of the Constitutional Committee;

(c) overseeing administration; and

(d) monitoring the media and public participation programme.

3.4.3 Administration

The Administration will be responsible for the following:

(a) Provision of secretariat services to the Theme Committees, including the facilitation of technical assistance.

(b) Provision of general daily co-ordination.

(c) Provision of research, legal services and information.

(d) Facilitation and management of media and community liaison programmes.

3.4.4 Technical Committees

(a) Theme Committees shall nominate experts for appointment by the Constitutional Committee.

(b) The functions of Technical Committees as set out in Rule 44 include the supervision of the drafting process; however, the Constitutional Committee is reviewing this Rule.

3.5 Work Programme

3.5.1 The Constitutional Committee has adopted a work programme for the Constitutional Assembly (see Part 3) in terms of which Theme Committees are expected to complete the major part of their work by 30 June 1995.

3.5.2 The date of 30 June 1995 represents a target date for submission of final reports from Theme Committees to the Constitutional Committee and should not detract from the ongoing and creative interaction between Theme Committees and the Constitutional Committee. In the period from January to 30 June 1995, Theme Committees will be submitting reports to the Constitutional Committee on an ongoing basis for its consideration and evaluation. The Constitutional Committee, in turn, will be reporting to the Assembly on a regular basis and issuing instructions for drafting of sections of the new constitutional text after discussion and decision by the Assembly.

3.5.3 The target date of 30 June 1995 will be evaluated on an ongoing basis with reference to the progress of Theme Committees.

3.5.4 This process of evaluation will also assist in determining the role of Theme Committees after 30 June 1995.

3.6 **Way Forward**

3.6.1 Theme Committees are currently preparing work plans for submission to the Administration by 15 November 1994. These will be finalised by the Management Committee before the end of 1994 to allow Theme Committees to commence discussion on substantive issues from January 1995.

3.6.2 These work plans will require constant evaluation. The nature of the discussion on substantive issues will in itself necessitate adaptation of the work plans from time to time.

3.6.3 The need for flexibility will have to be carefully balanced against the severe time constraints imposed by the Constitution for the completion of the process as a whole. Chairpersons and Core Groups of Theme Committees have an important role to play in ensuring that a proper balance is struck between these two considerations and that the work of Theme Committees is effectively managed.

4 INDEPENDENT PANEL OF EXPERTS

4.1 Introduction

4.1.1 The initial closing date for the submission of nominations for the Independent Panel of Constitutional Experts (hereinafter called "the Panel"), expired on 31 August 1994. The extension of that closing date was held in abeyance, pending the appointment of judges to the Constitutional Court.

4.1.2 The Constitutional Committee meeting of 24 October 1994 agreed to the appointment of a subcommittee to develop a short list of candidates for appointment to the panel.

4.1.3 The subcommittee shall be made up of ten members of the Constitutional Assembly, nominated by political parties and represented as follows: three ANC members, two NP members and one member from each of the other parties represented in the Constitutional Assembly.

4.1.4 The Constitutional Committee also agreed on the terms of reference of the subcommittee.

4.2 Terms of Reference of Subcommittee

Report of the subcommittee

The subcommittee shall be directed to;

(a) draw up a short list of nominees,

(b) make recommendations to the Constitutional Committee, relating to a process to be followed, with regard to the need for transparency and ensuring broad acceptability to political parties and the public of the short-listed nominees; and

(c) submit its report, for consideration by the Constitutional Committee, by 5 November 1994.

4.3 Criteria for the selection of the Panel

(a) The requirements contained in Section 72(2) of the Constitution must be included in the terms of reference. The section provides that the Panel shall be made up of five persons complying with the following requirements:

(i) South African citizens;

(ii) Recognised constitutional experts;

(iii) Not members of Parliament or any other legislature; and

(iv) Not holding office in any political party.

(b) The subcommittee should also consider the representativeness of the Panel.

4.4 Appointment

(a) The subcommittee should also consider the terms of reference of the Panel, in particular precedence of Constitutional Assembly work over any other responsibilities of members of the Panel.

(b) In terms of Section 72(3) of the Constitution, a majority of at least two-thirds of the members of the Constitutional Assembly shall be required for the appointment of the panel.

(c) In the event of the two-thirds majority not being achieved, each party holding at least 40 seats in the Constitutional Assembly shall be entitled to nominate an expert who complies with the requirements in Section 72(2). A panel made up of such nominees shall then be appointed in terms of the Constitution.

5 TECHNICAL COMMITTEES

The Management Committee meeting of 24 October 1994 recommended that Theme Committees should nominate technical experts for appointment by the Constitutional Committee to Technical Committees. It further recommended the provision of guidelines to Theme Committees. These recommendations were approved by the Constitutional Committee. The following guidelines were approved.

5.1 Appointment

5.1.1 Technical Committees should consist of up to three members.

5.1.2 Each Theme Committee should consider the nature of the technical expertise it requires and accordingly nominate such experts by 15 November 1994.

5.1.3 Based on a proposal to be put to the Constitutional Committee by the Management Committee, the Constitutional Committee should, from among the nominated experts, appoint up to three Technical Committee members for each Theme Committee.

5.1.4 Each Theme Committee may recommend the full-time or part-time appointment of its nominees for specified periods. Such recommendation to be based on its work programme and the nature of each nominee's expertise.

5.2 Remuneration

The Management Committee should make recommendations for the remuneration of Technical Committee members.

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Phase VI - Once adopted, certification by the Constitutional Court should then be sought.

9 PROJECTION OF TIME FRAMES

Phase	Task	Deadline
1	Theme Committee analysis and evaluation	15 Nov '94
	Theme Committee completion of reports. These reports considered and evaluated by the Constitutional Committee and Constitutional Assembly on an ongoing basis.	30 June '95
2	Completion of approval of reports by the Constitutional Committee and Assembly and text drafted.	14 July '95
3	Referral to the Constitutional Court.	Ongoing
4	Full text placed before public for scrutiny.	31 Oct '95
5	Full text debated and adopted by the Constitutional Assembly.	May '96
6	Certification is sought from the Constitutional Court.	

PART 4 - PUBLIC PARTICIPATION

10 INTRODUCTION

10.1 The Constitutional Committee, on 24 October 1994, adopted a document entitled **"Public Participation - A Strategic Overview"** which set out the broad framework within which the media and community facilitation programmes will take place.

PART 2 - PROCESS

6 Submissions

6.1 On 11 September, 1994 the Management Committee issued a public invitation to all interested parties and individuals to make submissions with regard to the process of constitution-making. This invitation was also extended to the parties represented in the Constitutional Assembly.

6.2 In response to the advertisement, nine political parties, nine organisations and five individuals made submissions. Parties in the Constitutional Assembly filed submissions[3].

6.3 On the basis of the submissions received and the discussions in all structures of the Constitutional Assembly, a report was developed detailing a work programme and a strategic overview of public participation. This programme was approved by the Constitutional Committee. (***See below.***)

PART 3 - WORK PROGRAMME

7 INTRODUCTION

The development of the work programme has had to be preceded by a broad agreement of the various phases that the process of finally arriving at a new constitutional text will go through.

8 PHASES

The process of drafting may be defined in six phases. These are:-

Phase I -
- **(a)** evaluating and analysing the full extent of each Theme Committee's tasks;
- **(b)** receiving and processing submissions;
- **(c)** producing reports for consideration and evaluation by the Constitutional Committee.

Phase II - The Technical Committees shall, at the direction of the Constitutional Assembly and the Constitutional Committee, translate these political positions into draft legal texts for the constitution.

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3 A separate index of submissions will be compiled and tabled.

Phase III - The draft is then referred to the Constitutional Court to provide an opinion, in terms of Sec 71(4) of the Constitution, that it is in compliance with the Constitutional Principles listed in Schedule 4 of the Constitution.

Phase IV - The text approved by the Constitutional Committee should then be placed before the public for further discussion and debate.

Phase V - The constitutional text is now ready for debate in the plenary session of the Constitutional Assembly.

Phase VI - Once adopted, certification by the Constitutional Court should then be sought.

9 PROJECTION OF TIME FRAMES

Phase	Task	Deadline
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	Theme Committee completion of reports. These reports considered and evaluated by the Constitutional Committee and Constitutional Assembly on an ongoing basis.	**30 June '95**
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PART 4 - PUBLIC PARTICIPATION

10 INTRODUCTION

10.1 The Constitutional Committee, on 24 October 1994, adopted a document entitled **"Public Participation - A Strategic Overview"** which set out the broad framework within which the media and community facilitation programmes will take place.

10.2 The process of public participation involves the development of media and community liaison strategies. Such strategies should be based on the resolutions of the Constitutional Assembly.

11 OBJECTIVES

11.1 The ultimate objective is to draft and adopt a credible and enduring constitution which will enjoy the support and allegiance of all South Africans.

11.2 The new constitution should represent the aspirations of all our people.

11.3 This process should serve to unite the country's people and produce a constitution which will become the cornerstone of the future South Africa. It should be people-driven and transparent.

11.4 The new constitution must be the product of an integration of ideas of all role players. In this regard, there should be maximum public participation.

11.5 There should be an effective strategy for media and community liaison.

11.6 The media and public participation strategies should aim at facilitating the required "dialogue" and channels of communication between the broader public and their elected representatives.

11.7 The programmes of the Constitutional Assembly should be "non-party political". Strict monitoring should ensure that the programmes promote the Constitutional Assembly and the interests of the country as a whole.

12 PROCESS

12.1 The media and public participation strategies must be placed within the context of the overall process of drafting the new constitution.

12.2 Whilst these processes may at one level appear distinct and separate, in practice they are interlinked and will overlap with one another.

12.3 This is especially true of community liaison and media involvement. On one level it makes sense to think of these as two distinct processes as this will focus our attention on what is required to be effective in these

two fields. At another level, however, it must be kept in mind that both public participation and media involvement will be a constant thread running throughout the process as a whole.

13 CONTEXT

13.1 The process of constitution-making takes place in the context of the first democratically elected government in the country,

13.2 It is therefore understandable that the attention of the public is focussed on their immediate needs. The programmes of the Government and the Reconstruction and Development Programme in particular, are uppermost in the minds of most South Africans.

13.3 The approach of the Management Committee should be to avoid detracting from the important issues of government that the public and media are presently seized with. However, we should seek to ensure that the programmes of government and those of the Constitutional Assembly complement, rather than contradict, one another.

13.4 The attention of the public is also caught up with the coming local government elections in 1995. The exact date of these elections will obviously impact on the programme of the Constitutional Assembly.

13.5 The implications of the time-frames stipulated in the Constitution for the finalisation of the new constitutional text by May 1996 are another factor we need to take into account in our strategic planning.

13.6 One of the implications of all the above is that the process has to be carefully and effectively managed.

13.7 Historical and geographical factors also make it necessary that effective and creative mechanisms be sought to reach rural communities in particular.

14 MEDIA

14.1 Objectives

The major objectives of a media strategy for the Constitutional Assembly should be to:

- Inform;

- Educate;
- Stimulate public interest; and
- Create a forum for public participation.

14.2 Key Message and Process of Message Determination

14.2.1 The process of message determination is central to any media strategy.

14.2.2 The most important message of our media campaign would be to let people know that an important process is unfolding which affects their lives and those of future generations; that every South African has a unique opportunity to take part in the drafting of a new constitution.

14.3 Mechanisms

There are two important considerations which should guide our approach to finding the most suitable mechanisms to implement a media strategy:

a) The need to make optimum use of existing channels of mass communication and hence the need for effective media liaison;

b) The need to supplement this with the production of our own media in the form of a brochure, regular bulletins, posters, leaflets, cassettes and videos; and

c) The need to reach disadvantaged rural communities in particular.

14.3.1 Media Liaison

(a) The transparency of the process is already a step in the right direction. The presence of media in all meetings of the Constitutional Assembly and its structures creates a dynamic link with the broader public.

(b) The coverage provided by the mass media must form the basis of our approach.

(c) For this to be effective, however, our media liaison approach must ensure that the debates and issues that emanate from Theme Committees and other structures of the Constitutional Assembly are contextualised.

(d) This will include:

- regular press conferences, interviews and briefings; and
- ongoing media liaison, ensuring prompt and comprehensive responses to media queries.

e) As envisaged in the Constitutional Assembly resolution itself, however, ways will be sought to involve the media more directly in the process by means of:

- ensuring live television and radio coverage of debates in the Constitutional Assembly;
- organising radio talk-shows and television debates with public participation;
- producing newspaper supplements and leader articles and discussing means whereby newspapers and magazines can function as forums for discussion on constitutional issues.

14.3.2 **Media Production**

The Administration would not be able to rely entirely upon existing channels of communication. These would need to be supplemented by production of our own media in the form of :

- an introductory brochure for the Constitional Assembly;
- a regular bulletin;
- occasional posters, leaflets, cassettes and videos;

- an advertising campaign in both the print and electronic media and utilisation of outdoor advertising on billboards;

- use of other medium such as electronic bulletin boards, thereby gaining immediate access to both the national and international community.

14.4 Resources

14.4.1 An amount of approximately R20 million should be catered for in the Constitutional Assembly budget for 1995/96.

14.4.2 We would also seek to utilise the resources of the South African Communication Services and other government agencies and departments, where applicable.

14.4.3 Maximum use of existing channels of mass communication would represent a further cost-saving.

14.4.4 The services of a professional advertising and public relations agency would need to be contracted in view of time constraints and the human resources required to implement an effective media campaign.

14.5 Time Frames

14.5.1 It is not possible to give detailed time-frames for the process as a whole. This will follow when the campaign plan itself is drawn up.

14.5.2 However it is envisaged that the campaign would need to be launched early in 1995. This means tenders for advertising and public relations agencies would need to go out immediately and be finalised before the end of November 1994.

14.5.3 The first phase of the campaign would, in broad terms, seek to introduce the Constitutional Assembly and its work to the public and sensitize them to the importance of the process as a whole.

14.6 Evaluation

Evaluation would need to take place on a regular basis to ensure that the strategy is responsive and adaptable.

14.7 Management

(a) The process would be managed on a daily basis by the Directorate and the Media Section of the Administration in particular. Regular reports to the Management Committee would enable this Committee to play its own managing role in the process. Particular aspects of the programme, as outlined above - for example the production of the brochure and advertising campaign - would be contracted out to professional agencies. The work of these agencies would be managed by the Directorate, in conjunction with the Management Committee.

(b) Some parties have indicated an interest in the Management Committee establishing a special subcommittee to monitor the media and community liaison programme on an ongoing basis to ensure that all parties are involved in the process of message determination, thus preventing any party bias in the programme as a whole.

15 COMMUNITY LIAISON

15.1 Objectives

The objective of the community liaison strategy is to facilitate an interface or dialogue between the South African people and their elected representatives by consulting the population at various levels and at various stages of the process of constitution-making.

15.2 Mechanisms

15.2.1 Forums

(a) Theme Committees would be the primary forum for interfacing with the public and it would be important for Theme Committees to establish stable channels of communication between themselves and the

affected interest groups, noting of course that there will be a great deal of overlap between Theme Committees in this regard.

(b) It would be useful to divide the public into two categories, namely "affected interests" and "general public". Hence the proposal for two kinds of forums as outlined below.

15.2.2 Sector Forums

(a) Forums for all major sectors will be arranged, in conjunction with sector representatives. Members of the Constitutional Assembly will be requested to participate in the various forums. The forums will be extensively publicised and groundwork will be done in the sectors beforehand to ensure optimum results.

(b) Special programmes will be established to ensure the participation of disadvantaged sections of the population and rural communities in particular.

15.2.3 Area Forums

These forums will be addressed by members of the Constitutional Assembly and be open to the broader public in specific locations. They will be held throughout the country and will also be extensively publicised. These forums will be used for a short period of time when a first draft of the new constitutional text is available to "take to the people" before the final debate takes place in the Constitutional Assembly itself.

15.2.4 Political Party Programmes

Political parties both in and outside the Constitutional Assembly have a vital role to play in the process of ensuring maximum public participation in the process of constitution-making. Parties will be urged to ensure that their programmes are used to engage the public and their supporters on constitutional issues. The Administration will liaise with parties to obtain information on such programmes and to facilitate where required.

15.2.5 Government Programmes

(a) Mention has already been made of the important programmes of the Government of National Unity. Urgent consultation will have to take place at national and provincial level to ensure, amongst other things, that government programmes and those of the Constitutional Assembly complement one another. This is particularly so in the case of the local government elections due to take place late in 1995.

(b) The President, Deputy Presidents and Provincial Premiers and Ministers will be urged to ensure that all their speeches contain a "slot" about the importance of the constitution-making process.

15.2.6 Public Information Facility

(a) A public information facility should be established to provide a readily accessible information service to the public. The languages used should ensure accessibility of information.

15.2.7 Provincial Information Offices

Information offices should be established in all provinces in conjunction with Parliament, the South African Communications Service and Provincial Governments to provide the public with street-level access to information about the constitution-making process and to assist in co-ordination of the public forums programme.

15.3 Resources

15.3.1 The resources of SACS will be used.

15.3.2 Some non-governmental organisations at national and international level have funds allocated for constitutional programmes and these could be pooled into the Constitutional Assembly programme.

15.3.3 The resources of the Department of Justice for facilitating programmes on the constitution should also be utilised.

15.3.4 Resources from the private sector will include video conferencing facilities, negotiated concessions from the media, and private sector funding for various aspects of the community liaison programme.

15.3.5 In addition to the above-mentioned resources an amount of approximately R24 million should be catered for in the Constitutional Assembly budget for 1995/96.

15.4 Evaluation

Mechanisms for regular evaluation should be built into all the programmes for community liaison to ensure responsiveness and adaptability.

15.5 Management

The process would be managed on a daily basis by the Directorate and by the Community Liaison section of the Administration in particular. Some aspects of the programme would be contracted out to professional agencies, for example the toll-free line. The work of these agencies would be managed by the Administration in conjunction with the Management Committee. Regular reports to the Management Committee by the Directorate on all aspects of work would enable this Committee to fulfill its own managing role in the process.

PART 5 - RULES

16 It has been recognised that with the establishment of Theme Committees and the planning for the appointment of experts it would also be necessary to amend various Rules. The Constitutional Committee has made various recommendations which will be discussed in a meeting of the Rules Committee shortly. These amendments would be reported to the next meeting of the Constitutional Assembly.

PART 6 - ADMINISTRATION

17 PREMISES

The Administration is currently housed in premises at 4 Church Square. These offices are inadequate for the needs of the Administration and the Independent Panel of Constitutional Experts. New premises are being investigated in close proximity to the parliamentary complex and it is expected that the Administration will operate from these from January 1995.

18 STAFFING

Since the last meeting of the Constitutional Assembly, the Directorate has proceeded to appoint staff to the various departments of the Administration. To date a total of 30 staff members have been appointed. It is expected that this number will increase once the public participation programmes are under way in 1995. An organogram of the structure of the Administration is attached at the end of the report.

19 SALARY STRUCTURE

The Chairpersons are finalising an equitable salary structure for the Administration in conjunction with the Directorate on the instructions of the Management Committee. A report will be submitted to the next meeting of the Assembly.

20 FINANCES

20.1 Accounting Officer

In terms of discussions between the Speaker of the National Assembly and the Minister of Finance, it has been agreed that monies will be provided to the Constitutional Assembly by way of a separate programme for the Constitutional Assembly within the parliamentary budget allocation. It has been agreed that the Secretary to Parliament, as Accounting Officer for Parliament, will also be Accounting Officer for the Constitutional Assembly.

20.2 1994/95 Budget

The Constitutional Committee has agreed to request the sum of R25 million for the Constitutional Assembly for the remainder of the current financial year. A detailed breakdown of this amount is being prepared for consideration by the Management Committee and Constitutional Committee.

20.3 1995/96 Budget

The Constitutional Committee has agreed to request the sum of R69 million for the next financial year. The budget breakdown is currently being worked on by the Administration and the Finance Section of Parliament and will be rediscussed by both the Management Committee and the Constitutional Committee.

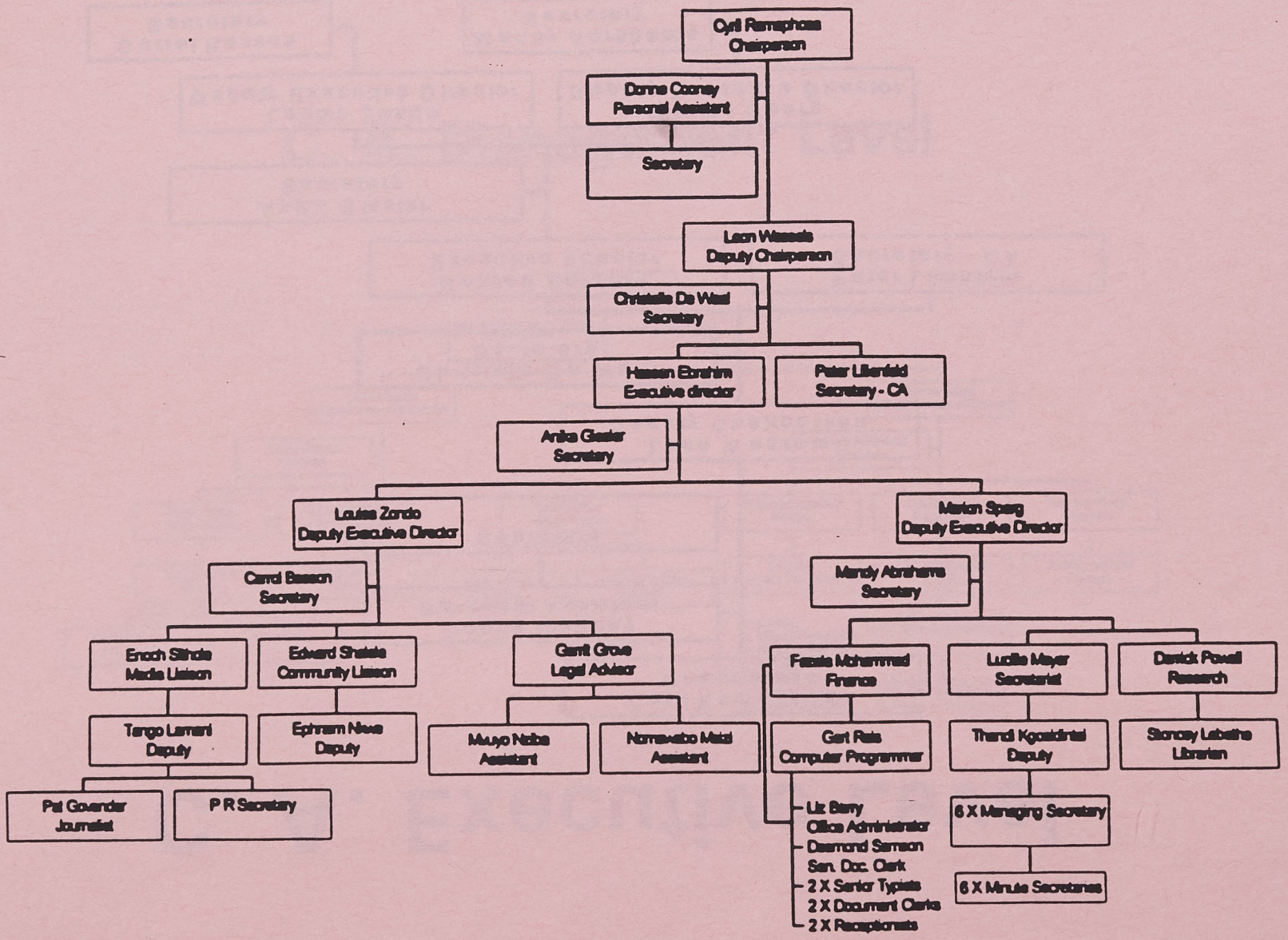
20.4 Expenditure to date

The expenditure to date is in the sum of R774 034 as at 25 October 1994.

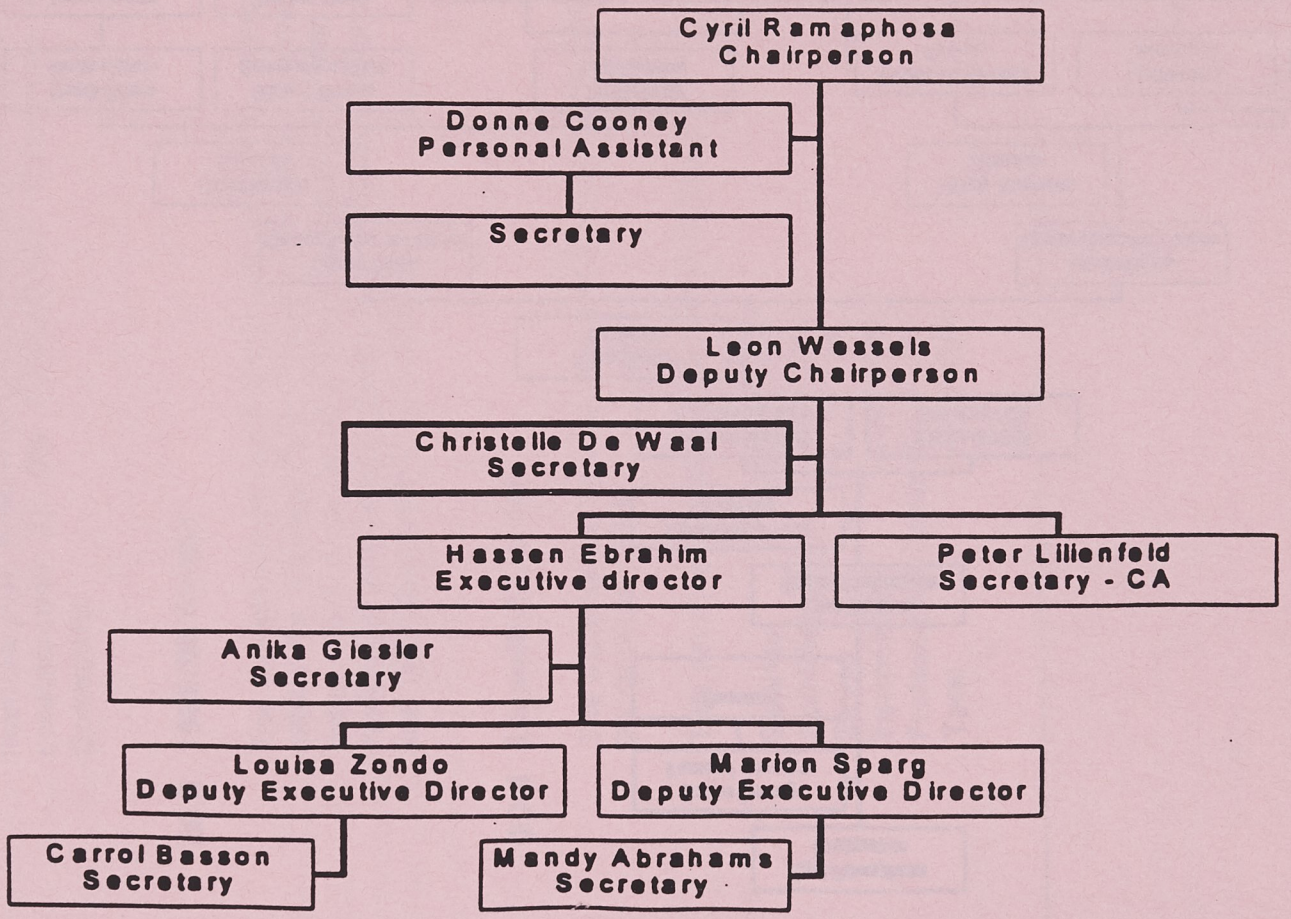
This comprises expenditure on the following:

Salaries	R239 059
Administration	R139 294
Stores	R 13 748
Equipment	R369 244
Professional Costs	R369 244
Total	**R774 034**

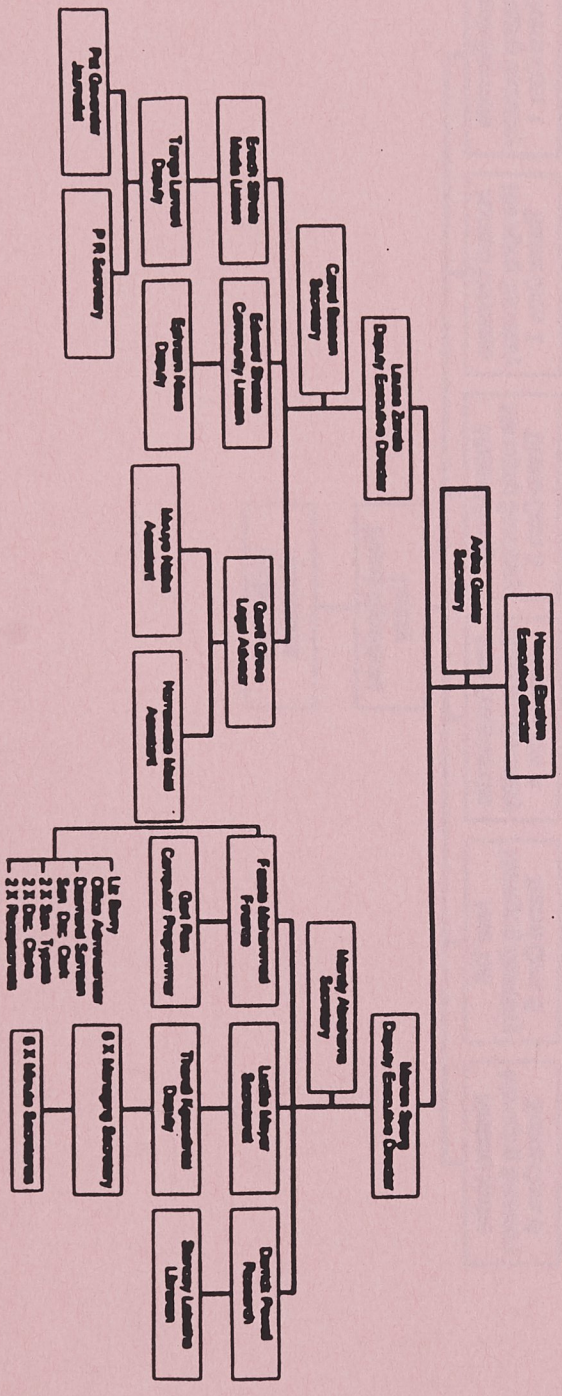
C.A. ADMINISTRATION



C. A. Executive Level



C. A. Management Level



C. A. Secretariat