

THIRD MEETING

of the

MANAGEMENT COMMITTEE

8th September, 1994

Room V16

DOCUMENTATION

TABLE OF CONTENTS

No.	Detail	Pg.
1.	Notice of Management Committee meeting and Agenda	1 - 2
2.	Minutes of Previous Meeting	3 - 4
3.	Proposed Schedule of Work for the Constitutional Assembly	5 - 10
4.	Invitation to Parties to submit nominations to Theme Committees, Technical Committees and on Process of Public Participation	11
5.	Draft Agenda for First Meeting of Theme Committees	12
6.	Draft Resolution on Appointment of Special Advisers with remuneration scales	13 - 14
7.	Press Statement	15
8.	Draft Agenda for Constitutional Committee of 12 September 1994	16
9.	Resolutions of Constitutional Assembly of 5 September 1994	17 - 27

CONSTITUTIONAL ASSEMBLY

MEETING OF THE MANAGEMENT COMMITTEE

Please note that a meeting of the above Committee will be held as indicated below:

Date : Thursday, 8 September 1994
Time : 09h00
Venue: Room V16 (Old Assembly Building)

AGENDA

1. Minutes of previous meeting; page 3 - 4
2. Matters arising out of Minutes
 - a) Work Programme; page 5 - 10
3. Theme Committees
 - a) Invitation to parties to submit nominations to Theme Committees by 12 September 1994; page 11
 - b) Approve Draft Agenda for Theme Committees; page 12
 - c) Discussion on appointment of Technical Committees and remuneration; page 13 - 14 ✓
 - d) Invitation to parties to submit nominations for Technical Committees; page 11 ✓
4. Press Statement; page 15 ✓
5. Draft Agenda for the Constitutional Committee of 12 September 1994;
page 16
- IFP amend rules.
6. Tabling : Copy of Resolution of Constitutional Assembly of 5 September 1994; page 17 - 27
7. Invitation to Parties to make submissions on the process of public participation; page 11

8. ~~IFP~~

[Management Committee 1 September, 1994]

H EBRAHIM
EXECUTIVE DIRECTOR:
CONSTITUTIONAL ASSEMBLY

If you have been appointed as an alternative member of the committee, please discuss your participation in the meeting with your chief whip.

Enquiries: Ms M M Sparg, Room CS107 (tel 403-2258)

MINUTES OF THE THIRD MEETING OF THE MANAGEMENT COMMITTEE - CONSTITUTIONAL ASSEMBLY

MONDAY 5 SEPTEMBER 1994 (AT 12H00)

PRESENT

Chairperson (MC Ramaphosa)

Chabane OC

Eglin CW

Mabandla BS

Meyer R

Moosa MV

Sizani R

Viljoen C

Van Breda A

Wessels L (Deputy Chairperson)

P Lillienfeld, H Ebrahim, A Meyer, L Matyolo, L Zondo and M Sparg were in attendance.

1. MINUTES OF PREVIOUS MEETING

- 1.1 The minutes of the previous meeting on 1 September 1994 were adopted with one amendment moved by Mr Van Breda. The amendment would state in 3.2 on page 3 of the minutes that a third option for the chairing of Theme Committees was also proposed to the effect that the core group of each committee could decide on the chairing of the committee.

2. MATTERS ARISING

- 2.1 There were no matters arising.
- 2.2 The meeting noted that the matter of the chairing of Theme Committees had been referred to the Constitutional Committee.

3. WORK PROGRAMME

- 3.1 Mr Ebrahim spoke briefly to the document entitled PROPOSED WORK PROGRAMME OF THE CONSTITUTIONAL ASSEMBLY which set out a tentative programme for the structures of the Constitutional Assembly from September 1994 to the end of November 1994.
- 3.2 The meeting noted the proposal and was in broad agreement with the programme as set out.

4. APPOINTMENT OF INDEPENDENT PANEL OF CONSTITUTIONAL EXPERTS

- 4.1 The meeting noted a statement by Mr Moosa that the ANC would make its own submissions in this regard to the Chairperson of the Assembly by Tuesday 6 September 1994.
- 4.2 The meeting further confirmed it would not be closing the list at any particular date for submissions from parties and would adopt a flexible approach.

5. STRUCTURE OF DEBATE

- 5.1 The meeting considered the proposal entitled PROPOSAL FOR ENABLING PRIVATE MEMBERS TO RAISE CONCERNS AND QUERIES DURING DEBATE IN CONSTITUTIONAL ASSEMBLY which had been circulated at the previous meeting.
- 5.2 The meeting agreed the proposal should be referred to the Constitutional Committee for its consideration.
- 5.3 It was further agreed that a flexible approach would be adopted towards the structure of debate in the Constitutional Assembly to allow the process to develop and to allow for any necessary changes to this structure when required.

6. ANY OTHER BUSINESS

- 6.1 The meeting noted an apology by Mr Eglin for his absence from 8 September to 12 September for the purposes of overseas travel.
- 6.2 The meeting agreed with regard to the size of Theme Committees, that an amendment to the Report of the Constitutional Assembly on 5 September 1994 in this regard would be moved by Mr Van Breda with the unanimous support of the committee. This amendment would indicate that the Constitutional Committee would determine the size of Theme Committees. The motivation for the amendment was the limited availability of suitable venues and to allow for more frequent meetings of the committees.

The meeting rose at 12h40.

PROPOSED SCHEDULE OF WORK FOR THE CONSTITUTIONAL ASSEMBLY

DATE	TIME	MEETING	VENUE
8 Sept	9h00 - 10h00	Management Committee	V16
12 Sept	12h00 - 13h00	Management Committee	V16
12 Sept	15h30 - 17h00	Constitutional Committee	M46
15 Sept	9h00 - 10h00	Management Committee	V16
19 Sept	8h00 - 10h00	Theme Committee 1	Senate
19 Sept	8h00 - 10h00	Theme Committee 2	
19 Sept	8h00 - 10h00	Theme Committee 3	M46
19 Sept	10h00 - 12h00	Theme Committee 4	
19 Sept	10h00 - 12h00	Theme Committee 5	Senate
19 Sept	10h00 - 12h00	Theme Committee 6	M46
19 Sept	12h00 - 13h00	Management Committee	V16
19 Sept	14h15 - 17h00	Constitutional Assembly	
22 Sep	9h00 - 10h00	Management Committee	V16
RECESS PERIOD - 24 September to 16 October			
17 Oct	8h00 - 10h00	Theme Committee 1	M46
17 Oct	8h00 - 10h00	Theme Committee 2	Senate
17 Oct	8h00 - 10h00	Theme Committee 3	
17 Oct	10h00 - 12h00	Theme Committee 4	M46
17 Oct	10h00 - 12h00	Theme Committee 5	Senate
17 Oct	10h00 - 12h00	Theme Committee 6	
17 Oct	12h00 - 13h00	Management Committee	V16
17 Oct	15h30 - 17h00	Constitutional Committee	M46
20 Oct	9h00 - 10h00	Management Committee	V16
24 Oct	8h00 - 10h00	Theme Committee 1	Senate
24 Oct	8h00 - 10h00	Theme Committee 2	M46
24 Oct	8h00 - 10h00	Theme Committee 3	

24 Oct	10h00 - 12h00	Theme Committee 4	M46
24 Oct	10h00 - 12h00	Theme Committee 5	Senate
24 Oct	10h00 - 12h00	Theme Committee 6	
24 Oct	12h00 - 13h00	Management Committee	V16
24 Oct	14h15 - 17h00	Constitutional Assembly	
27 Oct	9h00 - 10h00	Management Committee	V16
31 Oct	8h00 - 10h00	Theme Committee 1	M46
31 Oct	8h00 - 10h00	Theme Committee 2	Senate
31 Oct	8h00 - 10h00	Theme Committee 3	
31 Oct	10h00 - 12h00	Theme Committee 4	M46
31 Oct	10h00 - 12h00	Theme Committee 5	Senate
31 Oct	10h00 - 12h00	Theme Committee 6	
31 Oct	12h00 - 13h00	Management Committee	V16
31 Oct	15h30 - 17h00	Constitutional Committee	M46
3 Nov	9h00 - 10h00	Management Committee	V16
7 Nov	8h00 - 10h00	Theme Committee 1	M46
7 Nov	8h00 - 10h00	Theme Committee 2	Senate
7 Nov	8h00 - 10h00	Theme Committee 3	
7 Nov	10h00 - 12h00	Theme Committee 4	M46
7 Nov	10h00 - 12h00	Theme Committee 5	Senate
7 Nov	10h00 - 12h00	Theme Committee 6	
7 Nov	12h00 - 13h00	Management Committee	V16
7 Nov	2h15 - 17h00	Constitutional Assembly	
10 Nov	9h00 - 10h00	Management Committee	V16
14 Nov	8h00 - 10h00	Theme Committee 1	M46
14 Nov	8h00 - 10h00	Theme Committee 2	Senate
14 Nov	8h00 - 10h00	Theme Committee 3	
14 Nov	8h00 - 10h00	Theme Committee 4	M46

14 Nov	10h00 - 12h00	Theme Committee 5	Senate
14 Nov	10h00 - 12h00	Theme Committee 6	
14 Nov	12h00 - 13h00	Management Committee	V16
14 Nov	15h30 - 17h00	Constitutional Committee	M46
17 Nov	9h00 - 10h00	Management Committee	V16
21 Nov	8h00 - 10h00	Theme Committee 1	M46
21 Nov	8h00 - 10h00	Theme Committee 2	Senate
21 Nov	8h00 - 10h00	Theme Committee 3	
21 Nov	10h00 - 12h00	Theme Committee 4	M46
21 Nov	10h00 - 12h00	Theme Committee 5	Senate
21 Nov	10h00 - 12h00	Theme Committee 6	
21 Nov	12h00 - 13h00	Management Committee	V16
21 Nov	12h15 - 17h00	Constitutional Assembly	
24 Nov	9h00 - 10h00	Management Committee	V16
28 Nov	8h00 - 10h00	Theme Committee 1	M46
28 Nov	8h00 - 10h00	Theme Committee 2	Senate
28 Nov	8h00 - 10h00	Theme Committee 3	
28 Nov	10h00 - 12h00	Theme Committee 4	M46
28 Nov	10h00 - 12h00	Theme Committee 5	Senate
28 Nov	10h00 - 12h00	Theme Committee 6	

**DRAFT PROGRAMME OF WORK
SOME NOTES FOR DISCUSSION AND CONSIDERATION**

DATE	STRUCTURE	TASKS
8/9	Management Committee.	<ol style="list-style-type: none"> 1. <u>Theme Committees:</u> <ol style="list-style-type: none"> a) Invite parties to submit nominations to Theme Committees by 12/9. b) Approve Draft Agenda of Theme Committees. c) Discussion on Appointment of Technical Committees. d) Invite parties to submit nominations on Technical Experts to assist Theme Committees. 2. Receive draft proposal from Administration re: <ol style="list-style-type: none"> a) Relationship with the Media b) Development of a Strategy on Process 3. Approve draft press statement on public invitation for submissions on process of involving broad public in the drafting of the Constitution by 18 September. 4. Invite parties to submit proposals on process. 5. Receive a report on Administration, staffing and training.
8/9	Press Statement	<ol style="list-style-type: none"> 1. Invitation for submissions on process of involving broad public in drafting the Constitution to be submitted 18 September.
12/9	Management Committee .	<ol style="list-style-type: none"> 1. Receive Report on planning for Theme Committee meetings. 2. Further discussion on Technical Committees.

12/9	Constitutional Committee.	<ol style="list-style-type: none"> 1. <u>Theme Committees</u> <ol style="list-style-type: none"> a) Receive and approve Nominations to Theme Committees; b) Approve Agenda for Theme Committees; c) Discussion on appointment of Technical Committees; d) Discussion on Chairing and management of the Core groups. 4. Consideration of Process 5. Consideration of proposal by Administration on media and strategy. 6. Approve draft Report to the Constitutional Assembly (Re: 1 - 6 above). 7. Discussion on Independent Panel of Experts - closing date and appointments. 8. Discussion on Structure of Debate in the Constitutional Assembly.
15/9	Management Committee	<ol style="list-style-type: none"> 1. Finalise report to the Constitutional Assembly.
19/9	Theme Committees	<ol style="list-style-type: none"> 1. See - Draft Agenda
19/9	Management Committee	<ol style="list-style-type: none"> 1. Receive reports on the formation of the Theme Committees 2. Receive report on submissions made on process. 3. Approve report to the Constitutional Assembly.
19/9	Constitutional Assembly	<ol style="list-style-type: none"> 1. Report on formation of Theme Committees 2. Report on appointment of Technical Committees 3. Report on submissions on process and debate. Require mandate.
22/9	Management Committee	<ol style="list-style-type: none"> 1. Discussion on process and implementation of C A mandate.
Re-cess	Admin.	<ol style="list-style-type: none"> 1. Workshop on Media 2. Workshop on Process 3. Training of Staff

17/10	Management Committee	<ol style="list-style-type: none">1. Receive reports from Administration.2. Receive reports from Theme Committee's.3. Planning and preparation for Theme Committee meetings.
17/10	Theme Committees	<ol style="list-style-type: none">1. Receive submissions by parties on programme.2. Receive report and discuss process.3. Work.

To: (party representative)

Date: 6 September, 1994

Dear

Re: ESTABLISHMENT OF THEME COMMITTEES

We refer to the resolution of the Constitutional Assembly meeting of the 5th September, 1994. A copy of same is attached hereto for your reference.

The Management Committee has agreed to convene the first meeting of the Theme Committees on 19 September. A copy of the draft Work Programme and agenda is annexed hereto.

Kindly submit your party's nominations for:-

1. The members of the 6 Theme Committees.

Note: While the number of members of each Committee is to be decided upon by the next meeting of the Constitutional Committee, the Management Committee recommends that parties submit a total of 26 names, ~~(in the same proportions as provided for in the Rules of the National Assembly), plus alternates.~~

2. ~~The technical experts that should be appointed to each of the Theme Committees.~~

3. Your party's views with regard to the process for drafting of the new Constitution. *& greater clarity*

The above nominations should be submitted to the Management Committee (for the attention of the Executive Director) at 4 Church Square (First Floor - Room 105) by no later than 10h00 on the morning of 12 September. Your parties views with regard to item 3 should be submitted by noon on 19 September, 1994.

Yours Faithfully,

HASSEN EBRAHIM
EXECUTIVE DIRECTOR

**DRAFT AGENDA
FOR THE FIRST MEETING OF
THEME COMMITTEES**

19th September, 1994

1. **Opening and Welcome by a member of the Directorate (See: Rule 25)**
2. **Election of a Chairperson (See: Rule 25(1))**
3. **General discussion on the objectives of the Committee**
4. **Appointment of the Core Group members**
5. **General Discussion on programme of work**
 - * identify aspects of the theme requiring specific attention
 - * consider report on submissions received and consideration of the process of involving the broader public
 - * time framework
 - * rules
 - * Technical and Expert assistance that would be required.
6. **Invite parties to make submissions re: 5 above**
7. **Agenda for next meeting**

Documentation:-

- * Extracts of Rules 20 - 35
- * Extracts from Constitution
- * Report on Submissions received re: process
- * *broad guidelines + orientation*

DRAFT RESOLUTION

BASIS FOR THE APPOINTMENT OF SPECIAL ADVISERS

[Non-members of Parliament appointed in terms of sec 77(1) and (2) of the Constitution 1993]

1. The duties of a special adviser shall be determined by the Management Committee.
2. The employment of a special adviser shall be regulated by a standard contract to be entered into between the special adviser and the Chairperson of the Management Committee.
3. The basis of remuneration of a special adviser shall be determined by the Management Committee to ensure that an acceptable degree of uniformity in this regard is maintained. This basis shall be an all-inclusive package and shall provide for three different remuneration levels in order to accommodate different levels of expertise. In this regard the Management Committee approves—

(a) the following three all-inclusive levels of remuneration:

Remuneration level	Part-time special advisers who devote 50% or less of special advisers their time to their duties	Full-time as special adviser
I	R120 per hour	R19 200 per month
II	R150 per hour	R24 000 per month
III	R180 per hour	R28 800 per month

The remuneration of a full-time special adviser is based on a standard 40 hour working week.

(b) that, besides the above-mentioned remuneration, leave be granted to a full-time special adviser as follows:

2½ days leave per month
3⅓ days sick leave per month

Such leave accumulates but lapses upon the termination of the contract.

4. The portion of available working time which a person will set aside for his or her role as special adviser shall be determined in consultation with the Chairperson of the Management Committee. Should a part-time special adviser who will devote more than 50% of his or her time to his or her duties as special adviser be appointed, his or her all-inclusive remuneration shall not be calculated on an hourly basis, but according to the following formula:

$$\begin{array}{rcccl} \text{Monthly remuneration} & & \text{Percentage [\%] of time} & & \text{M o n t h l y} \\ \text{of full-time special} & & \text{devoted on duties as special} & & \text{percentage all-} \\ \text{adviser on appropriate} & \times & \text{adviser} & = & \text{i n c l u s i v e} \\ \text{remuneration level} & & & & \text{remuneration} \end{array}$$

5. In the case of a part-time special adviser who devotes 50% or less of his or her time to his or her duties as a special adviser, the actual hours worked should be recorded and claims submitted accordingly.
6. The Chairperson of the Management Committee may, in consultation with the special adviser concerned, determine which of the three remuneration levels referred to in paragraph 3 above will be applicable in respect of that special adviser. For purposes of determining which of the relevant three remuneration levels shall apply in the case of a particular special adviser, cognisance should be taken of his or her level of expertise and stature in the particular field. The following broad guidelines in this regard should be applied:
- 6.1 Remuneration level I [R120 per hour: R19 200 per month in the case of a full-time special adviser]:
- (a) Enjoy noticeable national recognition as a competent expert.
 - (b) Complexity of advice to be rendered comparable to that given by a Director in the Public Service.
- 6.2 Remuneration level II [R150 per hour: R24 000 per month in the case of a full-time special adviser]:
- (a) Enjoy recognition as a competent expert at national level.
 - (b) Complexity of advice to be rendered at one level higher than that contemplated in 6.1(b).
- 6.3 Remuneration level III [R180 per hour: R28 800 per month in the case of a full-time special adviser]:
- (a) Enjoy recognition as a competent expert at national and even international level.
 - (b) Complexity of advice to be rendered at two levels higher than that contemplated in 6.1(b).
- 6.4 The present level of remuneration of a candidate should also be an important determinant.
7. The guidelines as referred to in paragraphs 6.1 to 6.3 above shall also be applied as criteria for purposes of appointment as special adviser.

PRESS STATEMENT

The process of drafting a new constitution is set to begin.

The Constitutional Assembly has resolved to establish 6 committees to deliberate on the new constitutional text. These committees will deal with the following themes; character of democratic state, structure of government, relationship between levels of government, fundamental rights, judiciary and legal systems and specialised structures of government.

It is also proposed to convene the first meeting of the above Theme Committees on 19 September, 1994.

By unanimous agreement of the Constitutional Assembly it has also been agreed that the new constitution should be the result of a process which integrates the ideas of political parties represented in the Constitutional Assembly, civil society and the broader public.

The Constitutional Assembly is therefore committed to a programme for ensuring maximum public participation in the constitution-making process. Mechanisms for promoting public participation, including public fora, distribution of information bulletins and appropriate media strategies would have to be found and employed.

Bearing in mind that we are obliged to complete the process of drafting the constitution by May 1996, it is therefore necessary to clearly define the process by which the views of the broader public is taken into account.

It is in this regard that the Management Committee hereby invites all interested parties and bodies to make their submissions with regard to how best the broader public could participate in this important process.

These submissions should be made by no later than 16 September addressed to the Constitutional Assembly, Executive Director, Hassen Ebrahim, P O Box 15, Cape Town, 8001 (or Fax no. 021-461 4339)

M. C. RAMAPHOSA
CHAIRPERSON - CONSTITUTIONAL ASSEMBLY

CONSTITUTIONAL ASSEMBLY

MEETING OF THE CONSTITUTIONAL COMMITTEE

Please note that a meeting of the above Committee will be held as indicated below:

Date : Monday, 12 September 1994

Time : 15h30

Venue: Room M46 (Marks Building)

DRAFT AGENDA

1. Minutes of previous meeting
2. Matters arising out of Minutes
3. Theme Committees
 - a) Receive and approve Nominations to Theme Committees
 - b) Approve Agenda for Theme Committees
 - c) Discussion on appointment of Technical Committees
 - d) Discussion on Chairing and management of the Core groups
4. Consideration of Process
 - a) IFP proposals.
5. Discussion on Independent Panel of Experts, closing date and appointments
6. Work Programme.
6. Directorate Report on Staffing + equipment.

H EBRAHIM
EXECUTIVE DIRECTOR:
CONSTITUTIONAL ASSEMBLY

If you have been appointed as an alternative member of the committee, please discuss your participation in the meeting with your chief whip.

Enquiries: Ms M M Sparg, Room CS107 (tel 403-2258)

REPUBLIC OF SOUTH AFRICA

CONSTITUTIONAL ASSEMBLY

RESOLUTIONS

FRIDAY, 2ND SEPTEMBER 1994

THE ESTABLISHMENT OF THEME COMMITTEES

1. CHARACTER OF DEMOCRATIC STATE

- 1.1 Preamble of the Constitution
- 1.2 Matters dealing with the establishment of a single sovereign state, common citizenship, democracy and equality (Constitutional Principle I)
- 1.3 The supremacy of the Constitution, binding on all organs of State (Constitutional Principle IV)
- 1.4 Matters dealing with representative government, regular elections, suffrage and proportional representation. (Constitutional Principle VIII)
- 1.5 Matters dealing with freedom of information and accountable administration. (Constitutional Principle IX)
- 1.6 Name and description of State and symbols
- 1.7 Citizenship and franchise
- 1.8 Matter dealing with the separation of powers etc (Constitutional Principle VI)

2. STRUCTURE OF GOVERNMENT

- 2.1 Matter dealing with the separation of powers etc (Constitutional Principle VI)
- 2.2 The adherence to formal legislative procedures by legislative organs (Constitutional Principle X)
- 2.3 Participation of minority political parties in legislative process in manner consistent with democracy (Constitutional Principle XIV)
- 2.4 Amendments to Constitution require special procedures involving special majorities (Constitutional Principle XV)
- 2.5 Structure of Government at national, provincial and local levels (Constitutional Principle XVI)
- 2.6 Democratic representation at every level of government - without derogating from the role of chieftainship (Constitutional Principle XVII)
- 2.7 National Assembly, the Senate and Parliament in general
- 2.8 The Electoral System
- 2.9 Matters dealing with the constitution, status and role of traditional leadership (Constitutional Principles XIII)
- 2.10 Traditional Leaders
- 2.11 The Executive

3. RELATIONSHIP BETWEEN LEVELS OF GOVERNMENT

- 3.1 The details and nature of the relationship (Constitutional Principle XVI and XVII)
- 3.2 Local Government in context of Constitutional Principle XXIV
- 3.3 Establishment of Provincial government
- 3.4 Establishment, status and powers of local government
- 3.5 Legislative competence of Provinces and concurrency

4 FUNDAMENTAL RIGHTS

- 4.1 The enjoyment of fundamental rights by all - entrenchment in Constitution etc (Constitutional Principle II)
- 4.2 The prohibition of racial, gender etc discrimination and the promotion of equality and national unity (Constitutional Principle III)
- 4.3 The diversity of language and culture to be recognised - promotion and encouragement (Constitutional Principle XI)
- 4.4 The collective rights of self-determination, civil society and free association (Constitutional Principle XII)
- 4.5 The right to form trade union and collective bargaining (Constitutional Principle XVIII)
- 4.6 Community self-determination based on cultural and language heritage (Constitutional Principle XXXIV)
- 4.7 Protection and enforcement of fundamental rights
- 4.8 First, second and third, generation of Rights
- 4.9 Relationship of various Charters of Rights to the Bill of Rights

5. JUDICIARY AND LEGAL SYSTEMS

- 5.1 Matter dealing with qualities of judiciary and enforcement of Constitution (Constitutional Principle VII)
- 5.2 The institution, status and role of traditional leadership and indigenous law (Constitutional Principle XIII)
- 5.3 Judicial functions, appointment of judges, Judicial Services Commission and Constitutional Court
- 5.4 Traditional authorities

6. SPECIALISED STRUCTURES OF GOVERNMENT

- 6.1 The independence and impartiality of the Public Service Commission, Reserve Bank and the Public Protector (Constitutional Principle XXIX)

- 6.2 The status and role of public service (Constitutional Principle XXX)
- 6.3 The performance of functions of police, military and intelligence to be in the national interest (Constitutional Principle XXXI)
- 6.4 Auditor-General, Reserve Bank and the Financial and Fiscal Commission
- 6.5 Establishment, powers and function of the Public Service Commission and Public Service
- 6.6 Powers and function of the Public Protector, Human Rights Commission, Gender Commission and the Commission on Restitution of Land Rights
- 6.7 Traditional authorities
- 6.8 South African Elections Commission (formerly IEC)

NOTE : There are other issues such as transitional provisions and the reception of international law into our domestic law which do not lend themselves very easily to allocation to a Theme Committee, and will have to be dealt by the Constitutional Committee of the Assembly. Not all of the structures under the Interim Constitution will be relevant under a permanent Constitution. Finally, international and comparative experiences can be discussed under any of the themes identified above.

The above categories are to be treated as a guideline and not adhered to mechanically. Theme Committees may establish Commissions on special topics. It is further proposed that certain principles and topics (for example; Constitutional Principle XXXIV dealing with community self-determination) may be discussed in more than one theme committee.

It is also proposed that Theme Committee 1 (Character of the Democratic State) be dealt with as a matter of priority.

THE PROCESS AND FRAMEWORK FOR THE DRAFTING OF THE NEW CONSTITUTIONAL TEXT

1. INTRODUCTION

Set out below are proposals for a broad framework for the constitution-making process. While no firm timescales have yet been recommended, principles for guiding the process are dealt with.

2. GENERAL GUIDELINES

2.1 Open debate in the Constitutional Assembly

2.3.1 All elected representatives in the Constitutional Assembly should be directly involved in the constitution-making process. Open debate will afford members the opportunity to follow the process and participate in it.

2.3.2 A measure of informality during proceedings in the Constitutional Assembly would encourage members to participate in debates. Further recommendations with regard to the structure of debate will be made at the next meeting of the Constitutional Assembly.

2.2 Integrated process

The new constitution should be the result of a process which integrates the ideas of political parties represented in the Constitutional Assembly, civil society and the broader public.

2.3 Transparent Process

Meetings of the Constitutional Assembly and its structures will, subject to the provisions of Rule 17A of the Standing Rules, be open to the public and the media.

3. PROCESS

3.1 Public Participation

- 3.1.1 There should be a programme for ensuring maximum public participation in the constitution-making process. Mechanisms for promoting public participation, including public fora, distribution of information bulletins and appropriate media strategies, should be employed.
- 3.1.2 Public fora should be held in all Provinces, specific attention being given to the population in rural and underdeveloped areas.
- 3.1.3 Some fora would be targeted at specific sectors of the community while others could be broad-based and reach out to all members of the public. Appropriate mechanisms for collecting views at such broad based fora should be employed.
- 3.1.4 There should be co-ordination in all provinces for the success of the community liaison programme. The Constitutional Assembly will have to work with a network of people, organisations and institutions across the country and facilitate the process of the effective organisation of public fora. Assistance and co-operation will be sought from the structures of provincial and local government.
- 3.1.5 Members of the Constitutional Assembly will be invited to participate in public fora dealing with various themes and constitutional issues. Schedules for such public fora will be compiled by the Administration after consultation with the Management Committee.
- 3.1.6 The Administration will need to compile regular information bulletins for the purpose of informing the public of the constitution-making process and stimulating their interest and participation.
- 3.1.7 In addition to the canvassing of public views by means of public fora, the Administration is in the process of establishing a liaison desk.

3.2 Media

- 3.2.1 There appears to be general consensus that the new constitution should be a living document that can and must be owned by the people of the country. The media would play a vital role in the process of drafting this constitution. There is therefore a need for a clear media strategy.
- 3.2.2 The underlying principles that should inform the media strategy have already been identified in the debates of the Constitutional Assembly. They are; transparency, democratic accountability and public involvement and participation in the process of drafting a new constitution.
- 3.2.3 In terms of the principle of transparency and democratic accountability, the media is allowed to witness and report on the proceedings of the Constitutional Assembly, the Constitutional Committee, theme committees, commissions and public hearings. In this regard, the media should as far as possible be accommodated at each of these meetings and provided with the necessary documentation.
- 3.2.4 In addition to reporting on proceedings, the media can and should play a more direct role in the process. This stems from the fact that the media, both electronic and print, enjoy a direct relationship with the public. It may therefore be beneficial to the process to enter into a relationship with the media which would allow it to become an organised forum for the expression of views on the constitution. This would ensure that there is public debate and participation.

3.3 Role of theme committees

- 3.3.1 Theme committees should be responsible for the in-depth examination of constitutional matters which fall within the scope of the Constitutional Assembly mandate. Theme committees should submit regular reports to the Management Committee for processing and discussion by the Constitutional Committee.
- 3.3.2 It is suggested that the structure of the theme committee reports will include:

- (a) issues in respect of which there was agreement,
- (b) issues in respect of which there was no agreement, and
- (c) recommendations of the committee.

3.4 Debate in the Constitutional Assembly

The Constitutional Assembly is responsible for finally deciding on the new constitutional text. Its structures exist for the purpose of facilitating the decision-making process of the Constitutional Assembly.

3.5 Processing by the Constitutional Committee

The Constitutional Committee will receive and consider reports of the theme committees to be tabled in the Constitutional Assembly. This will facilitate the decision-making process in the Constitutional Assembly.

4. STRUCTURES

4.1 Constitutional Committee

The Constitutional Committee has been established and has met on three occasions. This Committee has also appointed a Management Committee from amongst its members.

4.2 Management Committee

4.2.1 A Management Committee consisting of 12 members has been established. The composition is as follows; 3 ANC, 2 NP, 1 PAC, 1 ACDP, 1 DP, 1 FF, 1 IFP, the Chairperson and Deputy Chairperson of the Constitutional Assembly.

4.2.2 It is suggested that the Management Committee should attend to process and not substantive issues. Its tasks should also include the following:-

- (a) preparing agendas for Constitutional Committee meetings;
- (b) preparing reports to be considered by the Constitutional Committee;

- (c) co-ordinating the activities of the theme committees;
- (d) co-ordinating the activities of all structures of Constitutional Assembly;
- (e) attending, between meetings of the Constitutional Committee, to the day-to-day management and overseeing of developments in the structures.

4.3 Theme Committees

4.3.1 Theme committees will be made up of thirty Constitutional Assembly members, or such smaller number as decided by the Constitutional Committee, in accordance with the provisions of Rule 23 of the Standing Rules. The chairperson of a theme committee shall be elected from amongst its members.

4.3.2 Each theme committee should have a core group of no more than 6 or 7 members who will be responsible for managing and co-ordinating the work programme of the theme committee.

4.3.3 Functions of the theme committees will include the following:

- (a) Receiving and collating views from the broader community on the Constitution;
- (b) Receiving submissions from the political parties;
- (c) Developing and processing these concepts and views;
- (d) Referring processed views for technical drafting;
- (e) Submitting the processed concepts in the form of reports to the Constitutional Committee for debate in the Constitutional Assembly.

4.3.4 A manager and managing secretary will be appointed and allocated to each theme committee and will be responsible for providing it with the necessary support services.

4.3.5 During deliberations, theme committees will have the services of technical experts.

4.4 Technical committees

4.4.1 It is suggested that technical committees should consist of up to three members. Each theme committee should be assisted by a technical committee. However because of the range of issues each theme committee may be required to address, membership of these technical committees may vary from time

to time depending on the issue at hand.

4.4.2 The Administration is in the process of compiling a database of legal experts to be used to provide more specialised assistance when required.

4.4.3 The functions of technical committees will be to give technical advice to the theme committees at their meetings and to provide drafting facilities.

4.4.4 Members of technical committees need not be employed on a full time basis.

4.5 Independent Panel of Constitutional Experts

An Independent Panel of Constitutional Experts will be established in terms of the Provisions of section 72 of the Constitution (Act No 200 of 1993).

4.6 Commissions

4.6.1 Commissions may be appointed by resolution of the Constitutional Assembly, to investigate any specific matter or issue.

4.6.2 The terms of reference of such commission shall be determined by the Constitutional Assembly.

4.6.3 The Administration shall be responsible for providing administrative support services to these commissions.

5. TIME FRAMES

5.1 Having regard to constraints of time, it is recommended that the theme committees be appointed as soon as possible and start functioning at the earliest opportunity thereafter.

5.2 The Constitutional Assembly will, on a continuous basis, consider and review the mandates of theme committees.

6. PROGRAMME OF WORK

- 6.1 The Constitutional Assembly shall determine its own programme with due regard to the programme of Parliament.
- 6.2 The Constitutional Assembly and the Constitutional Committee shall meet on alternate Mondays. The Management Committee is presently considering the work programme of the Constitutional Assembly and will report on that at the next sitting.

7. EVALUATION/ASSESSMENT

It is recommended that the constitution-making process be continuously evaluated. This evaluation system will ensure that the process is effective and will allow for appropriate adjustments.