

CONSTITUTIONAL ASSEMBLY

INTERNAL REPORT OF SECRETARIAT PLANING WORKSHOP

30 AUGUST 1995

(Unedited)

CONSTITUTIONAL ASSEMBLY

SECRETARIAT WORKSHOP

DRAFT PROGRAMME

Objectives: * To evaluate the objectives for the first phase of the constitution-making process;
* To look at various options for the second phase of the constitution-making process and how they could possibly materialise or unfold;
* To discuss the role, structure and tasks of the Secretariat within the second phase;

Participants: Members of the Directorate, Secretariat members, Community Liaison and Media.

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| 1. | Opening and Welcome | 09h00 - 09h05 |
| 2. | Expectations:
<i>What for you is the most important aspect that needs to be finalised/discussed to-day?</i>
<i>Clarification of objectives</i> | 09h05 - 09h30 |
| 3. | Evaluation of first phase
<i>Have we met our objectives?</i>
<i>Are there things, issues we could have handled differently? This could be substantive issues, structures we set up, processes etc.</i> | 09h30 - 10h30 |
| | Tea-break | 10h30 - 10h45 |
| 4. | The second phase in the constitution-making process
<i>Input of options - H Ebrahim</i> | 10h45 - 11h15 |
| | Discussion of options - Broad framework
<i>Which option seems most feasible?</i> | 11h15 - 12h15 |
| 5. | Processing of submissions
<i>In what form should comments be submitted?</i>
<i>How would they be processed on receipt?</i>
<i>How and in what form would they be utilised for discussion</i> | 12h15 - 13h00 |
| | Lunch | 13h00 - 14h00 |
| 6. | Continuation of Submissions: | 14h00 - 15h00 |

Who would be responsible for the various tasks and how would co-ordination take place?

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| 7. | Other tasks within the second phase
<i>What are these and who would fulfil these?</i> | 15h00 - 16h00 |
| | Tea-break (In-between) | |
| 8. | Follow up and way forward | 16h00 - 16h30 |
| 9. | Brief evaluation and closure | 16h30 - 17h00 |

2. **EVALUATION OF FIRST PHASE:**

2.1 **Have we met our objectives?**

2.1.1 Clarification of Objectives:

Soliciting and collecting information at Theme Committee level for processing at higher levels such as the CC

Empowering members through workshops

Providing an efficient secretarial service for Theme Committee members

Initially saw our role as mere functionaries but played an increasingly "political" (organisational) role as it became difficult to separate efficiency from providing "political" direction

Ensure that the constitution making process remained open and transparent and that we have meaningful participation of civil society

Achieve projected time-frames

Provide a service for the Technical Advisors and ensure their role does not reduce the constitution-making process to a CODESA scenario.

2.1.2 Meeting of objectives:

Role of Technical Advisors was not clarified and resulted in confusion. Initial brief given was not adhered to because of changing needs of process. Most TA ended up playing a much more substantial role than initially conceived.

Processing of submissions was not really reflected in draft texts which raises concerns about how truly democratic the process really is.

Approach to submissions was a purely technical one. TC's should have used it as a research tool for the preparation of members to inform TC discussions.

Theme Committees in many instances did not really achieve a deepening of substantive issues. In some cases their function was reduced to a mere processing role.

Constant evaluation of structures and mechanisms set up to facilitate the constitution-making process should have taken place.

Time -frames for first phase have been achieved.

2.2 Evaluation of specific structures/issues/processes set up:

2.2.1 Theme Committee Structures

- i) TC structures took time to function effectively
- ii) Poor participation of members
- iii) Party caucuses could have been utilised more effectively.
- iv) Management of some TC's resulted in them being reduced to the function of merely processing submissions
- v) A lack of clarity amongst many TC's regarding their role in relation to the CC. Administration should have intervened more effectively, particularly in the case of the debates around the Public Service Commission and the Electoral Commission.
- vi) Demoralization resulted in many TC's when it became clear that the CC was the final decision-making process.
- vii) Party Caucuses should have clarified the role of members and parties in the TC's.

2.2.2 Technical Advisors

The role of technical advisors differed depending on the circumstances in each TC. In some there cases there was a gradual withering away of their role. In general most TC's benefited from their expertise, although there were instances of poor performance which raised problems with regard to appointment procedures. Many technical advisors were not used for drafting.

2.2.3 Draft Text

Criticisms were levelled at the lack of incorporation of public submissions in the draft text. However, it was recognised that it was unrealistic to expect the reflection of each individual submission in draft texts. At best draft text can reflect broad trends highlighted in submissions.

2.2.4 Information Management

The demand from the public for information from the CA has necessitated the development of a sophisticated information retrieval system. The present structures set up such as the resource centre, internet are inadequate. The focus of the Submissions Department have been geared towards administrative functions rather than information retrieval yet it deals with the bulk of public demand for information. There is a need for uniformity in the approach to information management in the CA. The establishment of a task group consisting of representatives from the Submissions, Computer Network and Research Departments to investigate the development of an effective Information Management strategy to be set up.

3. 2nd Phase - Input by Executive Director, Hassen Ebrahim

- Publication - what form?
What responses - submissions
- public participation

Management of Information

- Legacy Project - need to look at how best to manage the wealth of info available. Only international institution of this stature hence important to ensure transparency/accessibility (e.g. Internet)

2nd phase

- This is the area which had caused a lot of concern e.g. how is the process to be managed? How are submissions to be handled? Job security in the future etc.
- All TC's will have completed their work by 15 Sept '95.
- **2nd week November** "low profile" publication of text
little response expected due to October LG elections, Christmas holiday period (Dec-Jan) and April recess
- Need to allow at least 3 clear month for public response - no serious comment from the public expected until May '96
- Need to send 1st draft to main stakeholders
- **May '96** "high profile" launch of draft text
- Need to carefully consider whom should receive the draft text; number of copies required; who will do the printing; how will the text be distributed
- Establish an up-to-date data-base
- Preparation and planning crucial
- Allow 2-3 months for public debate and response, conferences, community education and reporting to as many people as possible
- Response expected to be quite different to that of the 1st phase
- Questions regarding future submissions and relating to the draft text, to be very pointed - does it, or does it not, reflect your views? Is the construction of the text to your liking? Is the language suitable? et al
- Responses will be specific / specialised
- Administration will be specialised in the processing of those submissions
- Administration to be restructured - questions of how and the expertise required, to be addressed
- Input of submissions will need to be done in a way that the information can be absorbed
- Submissions to be organised administratively and politically
- Need to decide how the submissions will be processed - to CC Sub-Committee or elsewhere
- As part of producing a credible Constitution, the Constitution needs to be popularised. This will be dealt with by the CA which is familiar with the process rather than an outside department

SECOND PHASE**Processing of Submissions**

In what form should comments be submitted?

How will they be processed on receipt?

How and in what form would they be utilised for discussion?

Who the first draft should go to and made the following suggestions:

1. It should be sent to all stakeholders and participants in public hearings.
2. It should be sent to academics who had spoken at workshops.
3. There was a debate as to whether it should be sent to individuals. On the one hand it was felt that sending copies to individuals would be a good public relations exercise and contribute to the the transparency of the process. On the other hand it was felt that this would require large administrative capacity and it would encourage a surge of new submissions.
4. Advertisements could be placed in the newspaper advising people how they could get a copy of the first draft.
5. It was agreed that the decision about who should receive copies of the first draft depending on what the CA hoped to achieve in this phase of the process and needed to be looked at in conjunction with the third phase high profile publication of a more final draft text. It was noted that the main objectives of this second phase would be to report back to the public and keep the Consitution making process and that it was important that the first phase which requested submissions was not repeated.

How the first draft should be sent out?

1. It was agreed that a covering letter should accompany copies of the first draft explaining what the nature of the draft is particulalry in relation to all the outstanding issues of contention.
2. It was agreed that the first draft was a working draft and the best way to elicit submissions would be through specific hearings being organised with stakeholders as there was a need to downscale the notion of written submissions. It was recognised however that there would be written submissions from members of public anyway and that there was a need to assess how these were dealt with. The Community Liaison and Media departments will have a very important role to play in this phase. It was noted that these hearings should be more interactive than the public hearings had been up until now. It was agreed that the secretariat had an important role to play in drawing up these agendas. It was agreed that there was a need to evaluate the way in which reports from the public hearings were drawn up.

Receipt of submissions

It was noted that there was a need to evaluate how submissions would be processed by the members of the CA politically. The following suggestions were made:

- i) Core Groups together with a Technical Adviser could perform this function.
- ii) The Constitutional Committee should play this role
- iii) The Constitutional Committee Subcommittee could play this role
- iv) A technical committee could be set up with technical advisors and possibly members of the administration which could process submissions as they were received.
- v) The Panel could participate in this.

In discussion it was noted that there was a reluctance to reconstitute the Theme Committees or Core Groups in any way as they had performed the task assigned to them and the different parts of the Constitution could no longer be viewed in isolation from one another.

5 OTHER TASKS WITHIN THE SECOND PHASE

The tasks emerging from the discussion include the following:

1. Setting up a data base
2. Compiling, distributing the draft constitution
3. Servicing CC and CC subcommittee: This includes the setting up of a Technical Committee that would service the said committees
4. Information management: A workshop needs to be convened on this matter
5. Reconceptualising the nature of Public Hearings for the second phase
6. Staff training programme
7. An examination of the necessary human resource requirements for the second phase
8. Planning for the third phase

6. FOLLOW UP AND WAY FORWARD

In terms of taking proposals forward from the workshop:

- i) A separate evaluation workshop for submissions needs to take place.
- ii) There is a need to establish a broader strategic planning forum for the next phase.
- iii) The idea of establishing an information management task team to be taken to the HOD meeting.

A Secretariat meeting will be held on Wednesday 6 September in which a report back will be given of the following:

- i) Management Committee meeting of 31 August
- ii) HOD report-back

6.1 Immediate Tasks:

6.1.1 Database

- i) Development of a comprehensive database of stakeholders - Gert
- ii) Cleaning up of submissions database - Fairuz
- iii) Extra staff needed in submissions include typists and datacapturers. Lucille will approach each TC secretariat for allocation of time to submissions.

6.1.2 CC

- i) Index of decisions, referrals and outstanding issues - Margie with the assistance of the law advisors and directorate
- ii) Dealing with "gaps" in the working draft - Margie.

7. BRIEF EVALUATION AND CLOSURE

7.1 Concern was expressed at the absence of managing secretaries from the workshop without any apologies. It was resolved that Lucille will follow this up personally.

7.2 The workshop provided an opportunity for secretariat members to grapple with the broader aspects of the constitution-making process.

- 7.3 The workshop proved to be informative and useful.
- 7.4 The workshop assistant participants to develop a comprehensive picture of the process.
- 7.5 Input from Directorate enabled the secretariat to benefit from advance notice of issues before discussion in Management Committee.

The meeting closed at 15h45.