

**CONSTITUTIONAL ASSEMBLY**

**INTERNAL MEMORANDUM**

**DATE : 4 SEPTEMBER 1995**

**TO : HASSEN EBRAHIM**

**FROM : EDWARD SHALALA**

**SUBJECT : RESPONSE TO ARTICLE OF STEVEN FRIEDMAN IN BUSINESS DAY 4 SEPTEMBER 1995**

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**RESEARCH IS NOT ALWAYS WHAT IT SEEMS**

The Constitution-making process of the Constitutional Assembly is without doubt, the most transparent process that any official structure in South Africa has ever undertaken. It may well be one of the most transparent processes that have been undertaken anywhere in the world. All of the information relating to the work of the Constitutional Assembly both with regard to the policy informing it's processes and with regard to the substance produced by the Constitutional Assembly members themselves, is a matter of public record. Consequently, all information relating to the Public Participation Programme of the Constitutional Assembly is widely disseminated and available to all South Africans. In fact, the very programme of Public Participation was based on the ideas received by the Constitutional Assembly in response to it's advertisements in September 1994 calling for submissions on the creation of a public participation process - public participation was formulated through public participation. It is consequently surprising that Mr Steven Friedman was unable to obtain correct and sufficient information before embarking on his article. If he indeed had any difficulty in obtaining the above-mentioned information, he had merely to contact the Constitutional Assembly whereupon he would have been furnished with a full record of all the information relating to public participation.

The Constitutional Assembly has developed and implemented a number of public participation mechanisms. These mechanisms are continually under review and evolve and develop in conjunction with the process itself. Public participation processes that have been implemented to date are the following:

- A media campaign calling for public submissions;
- A programme of National Sector Public Hearings which are designed to get input from civil society structures;
- A Constitutional Public Meeting Programme - a programme of Constitutional Public Hearings that is conducted in the rural areas of all provinces and oriented particularly towards rural and disadvantaged communities;
- A Constitutional Education Programme - a programme designed to equip particularly disadvantaged and rural communities with the constitutional tools to participate in the process of constitution-making.

All of the above processes are enhanced by a series of Constitutional Assembly publications like **"Constitutional Talk"** and **"You and Building the New Constitution"** which are designed to provide the person in the street with an accessible guide to the key issues and processes of constitution-making.

If Steven Friedman had bothered to obtain the necessary research materials or to make the appropriate enquiries he would not have made the following mistakes;

- He misunderstands the purpose and process of National Sector Public Hearings. These events are not intended to be fora for debate on constitutional issues. They are designed to provide civil society structures with an opportunity to make input. They are hearings and not debates.
- He concludes that the Constitutional Assembly only provides an opportunity to make submissions to those who can write. The Constitutional Public Meetings, mentioned above, are specifically designed to provide people who cannot or would prefer not to write with an opportunity to make an oral input. These inputs are recorded, transcribed and treated in the same fashion as any other submission.
- He asserts that the National Public Sector Hearings do not purport to be about consulting "the people". These events are indeed designed to consult "the people".

Given the short life of the Constitutional Assembly, it is very difficult, if not impossible to contact 43 million people directly. Therefore, a process of reaching civil society structures, the people who reach the people, was formulated and implemented. However, the public participation programme does not exclude the input of people who wish to make submissions as individuals either in writing, or orally at one of the rural public hearings mentioned above.

The submissions gathered from across the broad spectrum of South African society have been invaluable in the process of shaping the view points of Theme Committee Members. A number of parties have in fact changed their own positions based on the inputs received through the submissions.

Although it is obviously impossible to know who all the writers represent or how many people they represent, in the case of submissions received from civil society sectors, MP's are able to ascertain who the writers represent.

Apart from, or perhaps because of the above research shortcomings, which are in and of themselves unacceptable in a Director of a Policy Studies Centre, Mr Friedman ends up contradicting himself. On the one hand he questions the need for public participation and accuses Members of Parliament of shirking their responsibility for engaging in it. On the other hand he argues that "good public representatives" should engage in a process of ascertaining the view of members of society. He goes on to describe what public representatives should do. He says that they should be accessible to citizens, ascertain what they think, decide on their own judgement of what those who placed them in office want and forge compromises between the views of the various groups. He goes on to argue that after listening seriously to contending views, the politicians should take the responsibility for making the final decision. In these matters he has described the work of the Constitutional Assembly very accurately.

The Constitutional Assembly has never held the view that the final responsibility for making decisions does not rest with the politicians. However, participatory democracy is a two-way process and the Constitutional Assembly has consequently created a system that facilitates public input upon which decisions can then be taken. This is a way of ensuring that citizens have an opportunity, in addition to the ballot box, "to get in on the policy loop". The process of the Constitutional Assembly has contributed to the development of a participatory democracy and the development of a constitutional consciousness amongst the South African public at large. He is correct to say that ensuring that citizens have a say is a difficult task. He is incorrect when he says that this task has hardly begun. The Constitutional Assembly's Public Participation Programme has changed the face of South African policy making. It is very unlikely that major policy will ever be made again without reference to the views of South African citizenry at large.

Above all, this process is a fledgeling process. It is a process that has never been undertaken on such a scale and with such depth anywhere in the world. We cannot deny that this is a learning process for both the Constitutional Assembly and the public at large and we are open to any suggestions that may help us make the process more effective. If Mr Friedman wishes to contribute to improving our consultation process, we would not only be very willing to hear from him, but would urge that as a Director of a Centre for Policy Studies, it is his duty to make <sup>a</sup> input.

*Needs to be  
further ensuring that  
his ineptitude is highlighted*

*considered*