

MEMORANDUM

To: The Management Committee
From: Hassen Ebrahim
Executive Director
Date: 30 August 1995

RE: PROPOSALS ON PROCESS

1. INTRODUCTION

- 1.1 Negotiations on substantive matters have now begun. We appear to be making good progress. It would appear that we could possibly complete a substantial portion of the constitutional text by 15 September.
- 1.2 The Constitutional Assembly has thus far been successful in meeting its stated objectives. We have enjoyed an effective interaction with civil society and a significant profile. The success of our media and public participation activities generated an overwhelming number of submissions reflecting public interest.
- 1.3 There is however some element of scepticism amongst the general public as to the effectiveness of their submissions. Questions have been raised as to whether the views of the public would not be sacrificed at the altar of political compromise. Another concern which has also been raised by members of the Constitutional Assembly has been the value of the work produced by them in the Theme Committees. These are concerns which, while they may not be justified, cannot be ignored and require some consideration and attention.
- 1.4 We are now obliged to plan and prepare for the process ahead. In doing so there are a number of questions which come to the fore. These are as follows:-
 - a) What is the form of the text that should be published?
 - b) When should the draft text be published?
 - c) What form should the publication and launch of the draft

- d) constitutional text take?
- d) What period should we allow for the response by role players to the draft text?
- e) What public participation activities are required subsequent to the publication?
- f) What is our responsibility upon adoption of the constitutional text?

2. THE PROPOSAL

- 2.1 The text should be published in a reader-friendly form that directs the public as to the areas where comment is necessary. The launch of the publication must be a high profiled event accompanied by wide media coverage and a programme of public meetings reporting on the draft. At least three clear months must be given for effective comment. Public hearings must be held with the national and provincial sectors of civil society to entertain their comments on the draft.
- 2.2 The Constitutional Assembly should be given the responsibility of popularising the final constitutional text.
- 2.3 It would be necessary to ensure that the interim constitution be amended as it is anticipated that the process would conclude no earlier than the end of 1996.

3. WHAT FORM SHOULD THE DRAFT TEXT TAKE?

- 3.1 We are committed to publishing the first draft text at the end of October 1995. It is assumed that by this time the draft text will not be finalised in that:-
 - a) there will still be a number of outstanding contentious issues;
 - b) some of the issues would not have been concluded, e.g. seat of government, preamble, competencies, etc;
 - c) a simple language format will not have been effected; and
 - d) the format and construction of the constitution and order of chapters will not have been agreed to.
- 3.2 The draft text that will be published should therefore clearly identify and reflect those areas of contention. The published text in this sense will not be complete or have the appearance of being final.
- 3.3 The form of the text should be reader-friendly and without footnotes. Rather, commentary should be interspersed between text in such a way that it guides the readers as to what the areas of contention are.

4. WHAT FORM OF PUBLICATION SHOULD THE FIRST DRAFT TEXT TAKE?

4.1 A two-stage process of publication is proposed:

- * Limited Publication of a Working Draft in November/December 1995; and
- * Full publication of the completed First Draft in May 1996.

4.2 The first draft text which we publish is in effect a report by the Constitutional Assembly on its organisation of ideas contained in the many submissions made by role players, including political parties, civil society and ordinary individuals.

4.3 However, because of the many incomplete areas of this draft, it is more accurate to call this the first Working Draft of the new Constitution.

4.4 It is suggested that a limited number be published and mailed to all organisations and individuals who made submissions to the Constitutional Assembly.

4.5 In addition, a few advertisements will be placed notifying the public where they can obtain copies of the Working Draft.

4.6 The public will not be immediately invited to make comments or submissions on the Working Draft.

4.7 The Constitutional Assembly will continue its work, possibly in November after the local government elections and again from mid-January 1996.

4.8 It is suggested that we will have completed our work and refined the Working Draft to be able to publish the First Draft of the new Constitution by May 1996.

4.9 The purpose of this publication will be to report back, and to invite public comment on the First Draft before its final consideration and adoption by the Constitutional Assembly.

4.10 The launch of the First Draft in May 1996 will be a high-profile event accompanied by a multi-media advertising campaign, and intensive Public Participation programme.

4.11 Further details on the launch of the First Draft in 1996 will follow in due course.

5 WHAT PERIOD OF TIME SHOULD WE ALLOW FOR PUBLIC COMMENT

- 5.1 Publishing the First Draft in May 1996, will afford the public a full three-month period from May to July 1996.
- 5.2 During this period, it is proposed that structures of the CA will not be meeting, but that members of the CA will be fully involved in a Public Participation programme.
- 5.3 It is proposed that full three-month period be set aside for public comment to ensure the public is able to make a meaningful input. Constitutional Public Meetings will be held throughout the country. If the public are to "own" the new Constitution, then a good starting point would be with the members of the Constitutional Assembly who drafted it. Politically, it would be very useful for members of the Assembly to travel throughout the country during the period from May to July 1996, to report on the First Draft and encourage public comment.
- 5.4 It would be improper for the Constitutional Assembly to start its final round of debate before all role-players are given sufficient time and opportunity to comment. It is proposed therefore that the structures of the CA would begin final discussion of the draft text in August 1996.

6. PROCESSING COMMENTS AND THE FINAL DEBATE

To ensure that comments are processed efficiently, the Administration with its experience already gained would have to cater for the proper categorisation and collation of the comments. Politically, this could also effectively be done through the Constitutional Committee and its Subcommittee. However, it is also necessary that we find the means to ensure that as many members of the Constitutional Assembly are involved in this process.

7. WHAT PUBLIC PARTICIPATION EVENTS ARE NECESSARY?

- 7.1 In the second phase of publication the Constitutional Assembly should hold public hearings in all provinces involving all sectors of civil society. This will ensure that they are given meaningful opportunity and a forum through which their comments could be considered.
- 7.2 These meetings should be well publicised and allow for the widest possible spectrum of interest groupings to attend. Extensive advertising will be necessary to ensure full participation. A relationship with structures of civil society in organising these hearings would be important.

8. POPULARISING THE CONSTITUTION

The process of adopting a final constitutional text which can claim legitimacy and credibility must culminate in a campaign to popularise it. Outside of the Constitutional Assembly there is no administration or infrastructure that is able to undertake this exercise. Accordingly, it is proposed that it be the responsibility of the Constitutional Assembly to popularise the Constitution immediately upon its adoption. This will be a logical extension of the public participation programme which we embarked upon from the onset of the process.

9. TIME FRAMES

9.1 The implication of the above proposals on time frames are that we would not complete our constitutional assignment before May 1996. This would therefore necessitate an amendment of the constitution.

9.2 Should publication of the First Draft text take place in May 1996, and public comment is allowed to continue until the end of July 1996, it is suggested that we would require:-

- a) At least an additional two to three months before adoption could take place. This would include the time necessary to process all comments and negotiate the final text;
- b) At least a further six weeks would be necessary to ensure that the text is technically adjusted and refined;
- c) At least a further month would be required to allow the Constitutional Court to certify that the text complies with the Constitutional Principles.
- d) The popularisation of the new Constitution after adoption would require a further three months.

9.3 However, we are obliged in terms of the Constitution to complete the text by May 1996 and the assignment of the Constitutional Assembly comes to an end immediately upon adoption. An amendment of the interim Constitution would therefore be necessary to allow for adoption by November 1996. Further provision would need to be made for popularisation of the new Constitution after this date.

10. CONCLUSION

The above proposal obviously has cost implications. Extending the life of the CA will mean continued administrative costs. The larger part of the costs however of course relate to publication. In this regard, it is argued that the costs of publication have to be met, either now in 1995 or later in 1996, if the CA is to meet its objective of a Constitution that is truly owned by the people of South Africa.

We believe that a staggered process of publication in two phases as outlined in this document, will go a long way to ensuring that the public gets value for the public funds expended on the process of publication. In addition, efforts are already being made to obtain sponsorship, locally and abroad, for such a programme.