

## THE POST DRAFTING STAGE OF THE PROCESS

### 1 Introduction

1.1 The substantive process of drafting the new constitution has begun. An increasing number of formulations are being processed for consideration by the Constitutional Committee. It has been agreed that these formulations, once approved by the CA, are to be published for public comment.

1.2 CA policy and general agreement requires the following processes to take place:-

1.2.1 That draft formulations be published for public comment as soon as they are agreed upon by the CA;

1.2.2 that the separate draft formulations be integrated into a composite text to ensure - language consistency, legal consistency, simplicity in language, compliance with criteria as set out by the Panel and agreed to by the Constitutional Committee, confirmation of the constitutionality of the draft formulations and confirmation of compliance with the Constitutional Principles.

1.2.3 that the composite draft of the constitution be also published for comment;

1.2.4 that there be maximum public comment on



*(Discussion Document - Draft 3 - 8 June 1995)*

- 2.4 Since we are committed to publication of the composite draft text for public comment, it would necessarily mean that this could then only be done in 1996. We would therefore not be able to continue work on the text until after all the submissions and comments have been received. This means that the May '96 deadline would not be met.
- 2.5 Which ever scenario prevails, we would have to plan our activities so as to best facilitate the constitution making process.

**3 Processing drafts in the Constitutional Committee**

- 3.1 Theme Committees report to the Constitutional Committee. Once the Constitutional Committee discusses a report it should remain seized with it until it is referred to the Assembly.
- 3.2 However the Constitutional Committee cannot in plenary negotiate all drafts. It is simply too big a structure to do this. The practice thus far has been to form sub committees to deal with these negotiations. Indications are that we could not establish a different sub committee for every draft that is produced. This is not feasible from the point of view of human resources - both political and administrative. There is also a concern developing among members of Theme Committees which have diligently worked for many months to produce various reports only to find that these are dealt with without considering the effort that has gone into it. In this regard, it is important to note that merely referring matters to sub committees would give rise to the concern about the lack of transparency.



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Theme Committee's into negotiating fora. It has also been the cause of substantial delays in the process. It is necessary that while the reconciliation committee should attempt to reconcile the different positions, those areas where agreement could not be found should be referred to the Constitutional Committee.

3.3.4 A matter which would have to be dealt with is the difficulty of allowing the reconciliation committee opening every aspect of a draft for discussion. It is the responsibility of the Constitutional Committee when it first discusses the draft to identify the areas of agreement and contention. It should only be those areas of contention that should be referred to the committee. In this regard, matters referred to the committee should be done with specific instructions with regard to time within which it should be then referred back to the Constitutional Committee.

3.3.5 The committee will inevitably need technical, drafting and secretarial assistance which will be provided for by the Administration.

3.3.6 Since this committee would be small in its membership, it may well be possible for it to meet, if necessary, during recess.

3.4 Since both the Constitutional Committee and its sub committee would continue with its functions even after the publication of the first draft, its work is not affected by the different scenarios.

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would only lead to the CA becoming a rubber stamp for decisions reached elsewhere.



is to agree to a period of two months for comments.

## **5 Post Draft Public Participation**

- 5.1 The nature of the public participation activity should be to report on the drafts produced and to encourage public debate and comment. Central to this is the Sector component.
- 5.2 It is recommended that the draft be "handed over" to sectors in a ceremony with an invitation to comment. It is suggested that we consider some form of ceremonial handing over of the drafts such as a major conference of representatives of all major sectors including the Executive, the Provinces and civil society.
- 5.3 Following the publication of the draft we should consider holding at least one major rally or other event in each province to report on the production of the first draft of the constitution. People should be encouraged to obtain copies of the draft (available in all languages) and to comment both directly and through their organisations and representatives.
- 5.4 In addition, we should also hold another round of meetings with all major sectors to hear their views on the drafts.
- 5.5 It is believed that whilst the nature of the participation programme not be affected by the different scenarios presented, it would mean that the programme would only commence once the composite draft has been completed.

## **6 Post Draft Media Activity**

- 6.1 Central to the process is ensuring that the draft constitution is



## **8 Process of Final Debate and Adoption**

- 8.1 It is recommended that as and when matters are negotiated and processed by the Constitutional Committee it be referred to the Assembly for final debate and adoption.
- 8.2 It will be the responsibility of the Constitutional Committee to ensure that it considers a clear programme of referral of matters to be discussed in the Constitutional Assembly.
- 8.3 An ancillary matter which should be raised is that of time frames. It is necessary to reach agreement with the Presiding officers of the Assembly and Senate as to when the next Parliamentary Session should begin. In this regard, provision for clear days for the work of the Assembly considering its work programme should be made.

## **9 The Panel**

- 9.1 As agreed by the Management Committee, it is necessary that the drafts negotiated and agreed to by the Constitutional Committee be referred to the Panel with a clear mandate to consider;
  - 9.1.1 its compliance with the criteria developed by them and approved by the Constitutional Committee; and
  - 9.1.2 the constitutionality of the drafts; and
  - 9.1.3 the compliance of the drafts with the relevant constitutional principles.