

**CONSTITUTIONAL
ASSEMBLY**

**MANAGEMENT
COMMITTEE**

**THURSDAY
20 APRIL 1995
(08H00)
V16**

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MANAGEMENT COMMITTEE REPORT

20 APRIL 1995

1. INTRODUCTION

In the Management Committee meeting held on Thursday 23 March 1995, it was agreed that 18 Constitutional Public Meetings be held around the country. This report aims at providing an outline on the said meetings.

2. DATES AND VENUES

The Management Committee of 27 March approved the following venues for CPMs. It is proposed that CPMs be held at these venues on the following dates:

PROVINCE	VENUE	DATE
Eastern Cape	Peddie	6 May
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Northern Cape	Upington	20 May
Free State	Harrismith	20 May
Western Cape	Beaufort West	27 May
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Northern Transvaal	Thohoyandou	3 June
North West	Taung	3 June
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North West	Mafikeng	10 June
Northern Cape	Camarvon	17 June
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The Gauteng province has already hosted five public participation events. Thus given the limited period of 27th April to 30th June, the PPP has concentrated on those provinces which have not hosted as many events.

3. COMMUNITY INVOLVEMENT

It is necessary that at each of the Constitutional Public Meetings representatives of the various organisations of civil society and other formations be properly represented and be invited to make submissions. To ensure achievement of this objective regional and national initiatives have been put into place.

3.1 REGIONAL INITIATIVE

A Regional steering committee has been put in place. This steering committee will include representatives of the Premiers' Office and SACS.

This structure will ensure:

- a) That the consultative meeting prior to each CPM is attended by all relevant organisations of Civil Society.
- b) The success of the arrangements required for the implementation of the CPM in their province.

3.2. NATIONAL INITIATIVE

The process will be undertaken in two phases namely:

PHASE 1- ADVANCE TEAMS - CONSULTATIVE MEETINGS

An advance team consisting of the Project Manager - Provincial Liaison and Project Manager - Operations Team, will visit the provinces at least 3 weeks before an event. They will brief a consultative meeting of community leaders. This consultative meeting will determine the exact venue, the nature of invitations and give advice on the promotion of the event.

PHASE 2 - ADVANCE TEAMS - FINAL ARRANGEMENTS

Members of the CA national team will ensure the smooth implementation of the CPMs by assisting with "on the ground work" 2-3 days before the actual event. Their major function will be to deal with any contingencies or emergencies that may arise.

4. EVALUATION

Evaluation will be done on a Monday after every CPM to ensure that successes and shortcomings are taken into account timeously.

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CONSTITUTIONAL ASSEMBLY

MEETING OF THE MANAGEMENT COMMITTEE

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

Date : Thursday 20 April 1995

Time : 08h00 - 10h00

Venue : V16

AGENDA

- 1. Opening**
- 2. Minutes: Pages 2 - 6**
- 3. Matters Arising**
- 4. Directorate Report: Pages 7 - 8**
 - 4.1 CA Programme: Page 7**
 - 4.2 Meeting with Business Community: Page 9**
 - 4.3 Free Market Association: Pages 10 - 11**
 - 4.4 Inkatha Freedom Party: Pages 12 - 13**
 - 4.5 3 April 1995 Tablings Document: Page 14**
 - 4.6 Community Liaison: Schedule of CPMs: Pages 15 - 17**
- 5. AOB**
- 6. Closure**

**H EBRAHIM
EXECUTIVE DIRECTOR
CONSTITUTIONAL ASSEMBLY**

Enquiries : Ms MM Sparg, Tel 245-031, Page 418 4616 code 6970

CONSTITUTIONAL ASSEMBLY

MINUTES OF MANAGEMENT COMMITTEE MEETING THURSDAY 6 APRIL 1995 (AT 08H00)

PRESENT

WESSELS L (DEPUTY CHAIRPERSON)

Chabane OC
Eglin CW
Meyer RP
Moosa MV

Smith PF
Van Breda A
Viljoen CL

Apologies: MC Ramaphosa.

Absent : KR Meshoe, RK Sizani, and B Mabandla.

In attendance:

Ebrahim H, Lilienfeld P, Sparg M, Msizi M, Ndziba M and Keegan M.

1. OPENING

1.1 Mr. Wessels opened the meeting at 08h07.

1.2 The agenda was adopted with three additions:

- 10.1 3 April 1995 Constitutional Committee Decisions:
- 10.2 3 April 1995 Tabling Document; and
- 10.3 "Freedom Day Celebrations".

2. MINUTES

The meeting adopted the minutes of the meeting of the Management Committee of Thursday 30 March 1995.

3. MATTERS ARISING

3.1 EXTRA TIME FOR THE CONSTITUTIONAL ASSEMBLY

- 3.1.1 Mr. Wessels reported that even at this late hour, there was confusion about what time would be available for Constitutional Assembly work in the second session of parliament.
- 3.1.2 The meeting temporarily excused Mr. Meyer and Mr. Moosa so that they could represent CA concerns to a meeting of Whips under way at that moment, and that they report back on discussions on their return.
- 3.1.3 It is noted that the departure of Mr. Meyer and Mr. Moosa left the meeting non-quorate. All decisions taken tentatively in their absence were endorsed by both members on their return, and so are recorded as here as formal decisions of the Management

Committee.

3.1.4 Upon his return, Mr. Meyer reported that the recommendation from the meeting of Whips was that during the second session:

- i. Mondays would be given over for Theme Committee work;
- ii. Fridays, with the exception of two, would be given over to plenary work, whether for meetings of the Constitutional Committee or of the Constitutional Assembly. In addition,
- iii. The week of 18 - 21 April had been set aside for the CA after the Easter break, and
- iv. One full week in June before the winter recess.

Mr. Meyer added that Fridays would have to be used solely for plenary work, as the Whips were planning additional air tickets accordingly.

3.1.5 Ms. Sparg expressed concern that this proposal in fact gave the CA a week less than the original proposal, which offered the CA two full weeks in June and in terms of which the CA was free to convene either the CA or CC on Mondays. This was particularly difficult given the increasing pressure which would be put on the Constitutional Committee and the Constitutional Assembly to process reports.

3.1.6 The meeting agreed that, on the basis of this report:

- i. The Constitutional Assembly would next sit on 21 April 1994; and
- ii. The Administration would draft a work schedule for the second session.

3.1.7 It is noted that the Whips requested that the Management Committee be represented in their Thursday morning meetings. This will be discussed at the next meeting of the Management Committee.

4. THEME COMMITTEE 6.4 DRAFTS

4.1 Mr. Ebrahim reported that Theme Committee 6.4 had requested that the their drafts be presented to the Theme Committee for adoption before being forwarded to the Constitutional Committee for discussion.

4.2 It was noted that the case of the Theme Committee 6.4 drafts was unusual, because its report had been completed and discussed by the Constitutional Committee prior to the later decision of Management Committee that Theme Committee reports be accompanied with draft text to the Constitutional Committee. In terms of the new decision on drafting, Theme Committees would ordinarily have sight of draft text before it was considered by the Constitutional Committee.

4.3 The meeting agreed that, because the Theme Committee 6.4 drafts had already been circulated, the Constitutional Committee's would proceed to discuss them. However, if any members of Theme Committee 6.4 had reservations on the drafts, these could be represented at the

Constitutional Committee meeting.

5. THEME COMMITTEE 1 ADVERT

- 5.1 Mr. Wessels noted the document entitled, "*Media Statement*," included in the documentation.
- 5.2 Mr. Ebrahim reported that the press had published information in Theme Committee 1's draft advertisement before the advert had been approved or officially released. At the onset, it seemed that there had might have been a breach of faith, but investigations traced it back to discussions of the matter during a meeting of Theme Committee 1, which was attended by the press. Mr. Ebrahim formally apologised to the current chair of Theme Committee 1, Mr. P. G. Marais and to members of the Theme Committee should any one believe that there had been a breach of faith or of responsibility, for this had not occurred.
- 5.2 The meeting expressed two concerns with the document:
 - i. The issues listed in the draft advert were potentially highly emotive and their publicity required careful thought; and
 - ii. The Management Committee had not yet determined what structures would process submissions received: whether this might be sub-committees, commissions, or alternative structures.
- 5.3 The meeting agreed that a sub-committee would be formed to examine these issues composed of the Chairpersons, Mr. Ebrahim, Mr. Sithole, and all the chairpersons or a mandated chairperson from Theme Committee 1. This sub-committee would report back to the Management Committee.
- 5.4 It is noted, the ANC believes that the Management Committee needed to assert its own role more vigorously to avoid a situation in which individual Theme Committees directly instructed the Administration on various matters.
- 5.5 The meeting also noted that Mr. van Breda, for the NP, recommended that the advertisement requesting submissions on the national flag limit itself to whether people wanted to retain the current design or wanted another one.

6. TABLING: THEME COMMITTEE 6.3 REPORT ON BLOCKS 3 - 4

- 6.1 The meeting noted the document entitled, "*Theme Committee 6.3 Report on the Public Protector, Blocks 3 - 4*," included in the documentation.
- 6.2 Mr. Ebrahim reported that the report had been referred for drafting and was tabled for information. It would be considered only once draft text was available.
- 6.3 Mr. Ebrahim also noted that reports on the Auditor General and the Reserve Bank had been completed and had been forwarded for drafting.

7. TABLING: PRELIMINARY SUBMISSIONS FROM THE CPG

- 7.1 Mr. Wessels reported that the document entitled, "*Preliminary Submissions on Provincial Government Systems*," and included in the documentation, was for noting. Mr. Ebrahim added that the document been submitted by the CPG in terms of Section 164 of the Constitution and due attention would be given to it by the appropriate Theme Committees.
- 7.2 The meeting agreed to enquire of the CPG, when it said that the provinces had been consulted, who had been consulted. The query did not refer to individuals per se, but at what level consultation occurred.

8. MEETING OF THE CONSTITUTIONAL ASSEMBLY

- 8.1 The meeting agreed that a draft agenda for the next Constitutional Assembly would be tabled at the Constitutional Committee meeting.

9. AOB

9.1 DECISIONS AT THE 3 APRIL 1995 MEETING OF THE CONSTITUTIONAL COMMITTEE

- 9.1.1 Mr. Smith expressed the IFP's displeasure at Mr. Ramaphosa's chairing of the 3 April 1995 meeting of the Constitutional Committee, particularly regarding Item 1 of the Theme Committee report on "*One, single national legal system*." He stated that Mr Ramaphosa's ruling that only draft text be prepared was "illegitimate" in that it contravened rules decided upon by Management Committee in terms of which two drafts were to be prepared on contentious matters.
- 9.1.2 Noting Mr. Ramaphosa's absence from this meeting, the meeting agreed that the matter would stand over until the next meeting of the Management Committee in order to allow for a proper debate.

9.2 3 APRIL 1995 TABLING DOCUMENT

The meeting agreed that the Tabling Document on Submission s would be placed on the Management Committee agenda on a later date.

9.3 FREEDOM DAY CELEBRATIONS

Mr. Ebrahim informed the meeting that Constitutional Assembly involvement on Freedom Day:

- i. The CA had cancelled its CPMs, so as not to compete with Freedom Day meetings; however,
- ii. The CA would participate in Freedom Day meetings by holding a stall to collect submissions;
- iii. Similarly, the CA would produce leaflets and a special edition of "*Constitutional Talk*."

9.4 MISCELLANEOUS

9.4.1 Mr. Eglin requested that the meeting congratulate Mrs. Mabandla on her return on her appointment to Deputy Minister.

9.4.2 Mr. Eglin also noted that he would be in Italy between 18 and 21 April, and extended his apologies for meetings he would miss during that time.

10. CLOSURE

The meeting closed at 10h42.

MEMORANDUM

TO: Members of the Management Committee
FROM: The Directorate
DATE: 18 April 1995

RE: DIRECTORATE REPORT: VARIOUS MATTERS

1. CONSTITUTIONAL ASSEMBLY PROGRAMME

After consultations with the Whips and the Chairpersons, it was considered necessary to inform members of the Constitutional Assembly of the programme for the Constitutional Assembly over the coming weeks.

- (a) 18-21 April '95: Only Theme Committees and their Core Groups are scheduled to meet during this period.
- (b) 24-28 April '95: Constitutional Assembly activities for Monday, 24 April have been cancelled as has been all activities for Friday, 18 April to allow all members to participate in local government registration activities.
- (c) 4 May '95 (Thursday): Management Committee meeting: 08:00-10:00
- (d) 5 May '95 (Friday): Constitutional Committee Meeting: 08:30-18:00.
- (e) 8 May '95 (Monday): 11:00 to 13:00: Meeting with Business Community. All other Theme Committee activities are due to continue as per normal schedule.
- (f) 11 May '95 (Thursday): Management Committee Meeting: 08:00-10:00.
- (g) 12 May '95 (Friday): Constitutional Assembly Meeting: 09:00-14:00.

2. BUSINESS COMMUNITY

As stated above, a sectoral meeting between our Theme Committees and the Business Community will take place on Monday, 8 May between 11:00 and 13:00. All members of the Management Committee are invited to attend this meeting which has been provisionally scheduled to take place in the Old Assembly Chamber. At 13:00 there would be a Press Conference

followed by a light lunch.

3. **FREE MARKET FOUNDATION**

We attach under cover hereof a copy of a letter received from the Free Market Foundation of Southern Africa. As you will note, a view with regard to the independence and impartiality of the Reserve Bank is being presented. Since the Theme Committee has already finalised its report in this regard, it is proposed that this letter be represented to the next meeting of the Constitutional Committee for discussion in the context of the report on the Reserve Bank.

4. **IFP REQUEST**

We attach under cover hereof a copy of a letter from Peter Smith dated 7 April 1995.

5. **TABLINGS DOCUMENT:**

The last sitting of the Management Committee discussed various errors contained in various tablings documents, itemising the submissions made to the various Theme Committees. An explanation was sought from the Administration on this matter. A copy of the explanation is attached hereto.

6. **COMMUNITY LIAISON: SCHEDULE OF CPM's**

A report on the proposed Constitutional Public Meetings, dates and venues are attached in an annexed document for approval by the Management Committee.



FAX MESSAGE

13 April 1995

Mr Hassen Ebrahim
Executive Director
Constitutional Assembly

Fax No. (021) 24 1160/1/2/3

Dear Mr Ebrahim

Thank you for the standing invitation for a hearing where the business sector and the Constitutional Assembly can discuss constitutional matters, especially those pertaining to the relationship between the constitution and the economy.

We propose that the hearing be held at a venue of your choosing between 11.00 and 13.00 on Monday, May 8th 1995, followed by a press conference and a light lunch. We further propose that the business delegation number between fifteen and twenty persons, consisting of presidents of business associations and a number of other senior business leaders. We would be delighted if you could invite the Management Committee of the Constitutional Assembly and any further invitations you consider appropriate. We look forward to jointly devising an agenda with you.

The business presentation will be a joint effort of all BSA affiliates, as well as Nafcoc, who have indicated that they will be playing a full role in planning and participating in the event.

We note with interest that two projects - the extension of dissemination via computer and the distribution of a simplified version of the draft constitution - are in their planning stage, and ask to be kept abreast of developments in this regard

Thank you for the combination of personal interest and organisational expertise extended by yourself and the Secretariat on this project.


Yours sincerely

Friede Dowie
Secretary-General

10/34/cc/95

Business South Africa

Suite 507, Carlton Tower, 150 Commissioner Street, Johannesburg, PO Box 1059, Johannesburg 2000, South Africa
Telephone 27 11 331 3412/3/4/7, Fax 27 11 331 5140/5140



The Free Market Foundation of Southern Africa

an organisation to promote economic freedom
'progress through freedom'

Die Vryemarkstigting van Suidelike Afrika

'n organisasie om ekonomiese vryheid te bevorder
'vooruitgang deur vryheid'

31 March 1995

R Davies
The Chairperson
Theme Committee 6(2)
Constitutional Assembly
Cape Town
8000

Dear Sir or Madam

THEME COMMITTEE SIX SPECIALISED STRUCTURES OF GOVERNMENT

Financial Institutions and Public Enterprises - Reserve Bank independence and impartiality:

We understand that it is accepted that the independence of the central bank is a prerequisite for sound monetary policy. We welcome this important step.

Press reports have created the impression that no major changes are to be made to the clauses dealing with the Reserve Bank as they stand in the Interim Constitution. It is apparently believed that the existing interim constitution clause secures the independence of the Reserve Bank from control by the government of the day.

This view is mistaken. The interim constitution's clause places the Reserve Bank under the control of whatever laws Parliament may choose to pass from time to time.

The interim constitution states that the Reserve Bank, established and "regulated by an Act of Parliament", shall be the central bank (section 195). The Reserve Bank shall exercise its powers independently, "subject only to an Act of Parliament" (section 196(2)). The powers of the Reserve Bank shall be those customarily exercised by central banks and "shall be determined by an Act of Parliament" and be exercised "subject to such conditions as may be prescribed by or under such Act".

Although the interim constitution suggests that the Reserve Bank shall function "independently", it is clear that the Bank is subject to control by Parliament, and

2nd Floor, Export House, cr West & Maude Sts, Sandown
PO Box 785121, 2146 SANDTON, South Africa Tel (011) 884-0270 Fax (011) 884-5672

hence by the government of the day.

In contrast, the interim constitution guarantees the independence of the Public Protector and Auditor-General from parliamentary control. The constitution entrenches unambiguously the independence and impartiality of the Public Protector and Auditor-General (in sections 111 and 192). These provisions do not state that the Public Protector and Auditor-General shall be subject to Acts of Parliament. On the contrary, they state that no organ of state shall interfere with the Public Protector and Auditor-General in the exercise of their powers.

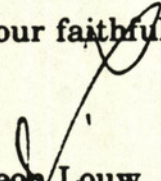
To establish the independence of the Bank, the Reserve Bank clauses of the interim constitution must be altered to bring them into line with the clauses dealing with the Public Protector and Auditor-General, as follows:

(1) The Reserve Bank shall be independent and shall exercise and perform its powers and functions subject only to this Constitution.

(2) No organ of state shall interfere with the Reserve Bank in the exercise of its powers.

We would like to give evidence to your Theme Committee in this regard.

Your faithfully


Leon Louw
Executive Director



INKATHA

Inkatha Freedom Party

IQembu leNkatha Yenkululeko

7 April 1995

Mr Cyril Ramaphosa
Chairperson, Management Committee
Constitutional Assembly

Dear Sir

DECISION OF CONSTITUTIONAL COMMITTEE MEETING OF 3 APRIL 1995 RE THEME COMMITTEE 5 REPORT

Would you please be so kind as to permit the Management Committee to deliberate on the following request.

On Monday, 3 April, after lengthy debate and opposition from the IFP, the Chairperson of the Constitutional Committee ruled that two issues identified by the Theme Committee itself as contentious, and which the IFP maintained in the Constitutional Committee remained contentious, were not to be treated in accordance with rules previously agreed to by both the Management and Constitutional Committees:- namely that constitutional text would be drafted for each submission for debate in the Constitutional Assembly. Instead, only the position enjoying majority support was sent for drafting, while the IFP was urged merely to debate in the CA in favour of its position without the benefit of accompanying constitutional text.

The IFP strongly opposes this, and requests the Management Committee to reverse the Constitutional Committee's decision of 3 April so that both contentious positions are processed by the Constitutional Assembly on the basis of equality. The following points are pertinent:

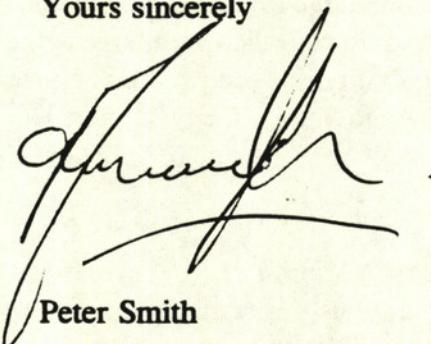
- 1 The Management Committee is responsible for process matters. It agreed to certain procedures, subsequently endorsed by the Constitutional Committee, one of which is that draft constitutional text would be provided for both non-contentious and contentious issues.
- 2 When the Chairperson of the Constitutional Committee was pressed to explain his position in the light of existing rules, he admitted that the decision was being made then and there. I submit to the Management Committee that rules are not made merely by virtue of breaking existing rules.

3. The Chairperson accepted ...

- 3 The Chairperson accepted a false premise to justify his action, namely that if both contentious points were sent for drafting, then "we would end up with two chapters ..." This statement is false, since a simple clause reflecting the IFP's position would itself subsume many of the other consequential contentious points within it, thereby not necessitating a separate chapter at all.
- 4 I maintain that the consequences of the decision have not been carefully thought out. For instance, since we have operated to date on the basis of non-contention being synonymous with full agreement, how precisely has this been changed? It is surely not a subjective decision of the Chairperson or of any relevant committee? Is there therefore a required percentage? Or a minimum level of party support? Moreover, are Theme Committees to follow this new rule?

Please note that the IFP is not objecting to the fact that in terms of its rules, the Constitutional Committee can decide in favour of any particular constitutional position. The objection is rather that the Committee and its Chairperson flagrantly disregarded existing rules of procedure in devising what is tantamount to "sufficient consensus".

Yours sincerely

A handwritten signature in dark ink, appearing to be 'Peter Smith', with a stylized, flowing script.

Peter Smith



CONSTITUTIONAL ASSEMBLY

12 April 1995.

TO : THE MANAGEMENT COMMITTEE
FROM : THE DIRECTORATE

Each document that is received as a submission goes through a cycle of processing and goes through different departments for relevant attention. The final stages of these processes involves cataloging and classification. This involves reading the document so as to give it a class number and subject. Thereafter the documents are sorted alphabetically and a table is drawn. It is a tedious manual process which is slow and prone to mistakes. As a result of the increase in the flow of submissions a meeting was held to improve this part of the process by mechanising it. We have also appointed two people in the department this should help. The next issue will be tabled straight from the Data Capturers database. We hope to cut the process short and table more submissions per time. We think that this will eliminate a lot of mistakes and delay.

The Submissions Tabling Document serves as a tool through which we inform the public of the submissions that we have received. It also affords them opportunity to request those submissions they are interested in. This document is going to be a valuable tool for scholars and researchers in future, particularly those who do not have access to electronic devices. Indirectly this document also serves as an inventory tool to the research department. We therefore recommend that we continue to table this document.

Stoncy Lebetho

Assistant Deputy Director

Assistant Deputy Director

P. O. Box 15, Cape Town, 8000
Republic Of South Africa

Tel: (021) 245 031, 403 2252 Fax: (021) 241 160/1/2/3, 461 4487, E-mail: conassem@iaccess.za



You've made your mark



Now have your say

COMMUNITY LIAISON REPORT

FOR

MANAGEMENT COMMITTEE

ON

20 APRIL 1995

MANAGEMENT COMMITTEE REPORT

20 APRIL 1995

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