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CONSTITUTIONAL ASSEMBLY

MANAGEMENT COMMITTEE

**THURSDAY
10 AUGUST 1995
(08H00)
V16**

DOCUMENTATION

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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 10 August 1995

Time : 08h00

Venue : V16

AGENDA

1. Opening
 2. Minutes: Pages 2 - 4
 3. Matters Arising: See Agenda Items Below
 4. Future of the Commission on Provincial Government: Pages 5 - 7
 5. Agenda for Constitutional Committee Meeting of 11 August 1995: Page 8
 6. Constitutional Assembly Meeting of 18 August 1995: No Documentation
 8. AOB
 9. Closure
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**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 3 AUGUST 1995 (AT 08H00)

PRESENT
RAMAPHOSA M C (CHAIRPERSON)

Chabane OC
Eglin CW
Meshoe KR
Meyer RP
Moosa MV

Myakayaka-Manzini YL
Sizani RK
Van Breda A
Viljoen CL
Wessels L (Deputy Chair)

Apologies: None.

Absent : PF Smith.

In attendance: H Ebrahim, P Lilienfeld, M Sparg, L Zondo, G Grové, M Keegan and C Murray.

1. OPENING

1.1. The Chairperson opened the meeting at 08h08.

1.2 The Agenda was adopted with one addition:

11.1 *Future of Commission on Provincial Government*

2. MINUTES

The meeting adopted the Minutes of the Management Committee on Thursday 22 June 1995.

3. MATTERS REFERRED FROM THE CONSTITUTIONAL COMMITTEE

3.1 THE ACDP AND THE ISSUE OF SECULAR STATE

3.1.1 Mr. Wessels spoke to paragraph 1 of "*Matters Referred from Constitutional Committee*", entitled "*1. ACDP and Issue of Secular State.*" This document was contained in the documentation

3.1.2 The meeting agreed not to embark upon an investigation but rather to seek other ways of resolving the issue. If further discussions were needed, these could take place at an informal level.

3.1.3 The Chairpersons reminded the meeting that it was the responsibility of all political parties to be tolerant of one another, and that justice was not done to the process by distorting the facts.

3.1.4 Mr. Meshoe of the ACDP corrected his statement in the Constitutional Committee of 23 June 1995: he intended to refer to

document A.15, not A.25.

3.2. SUB-THEME COMMITTEE 6.2 AND ISSUE OF RESERVE BANK

3.2.1 Mr. Ebrahim spoke to paragraph 2 *"Matters Referred From Constitutional Committee,"* entitled, *"2. Sub-Theme Committee 6.2 and Issue of Reserve Bank."* This document was contained in the documentation. Mr. Ebrahim reported that the Theme Committee 6.2 had appeared to have settled the matter on its own.

3.2.2 The meeting agreed to defer the matter to allow the Theme Committee to resolve it, but to consider it again should the Theme Committee not succeed.

4. INDEPENDENT-PANEL CONFERENCE PROPOSAL

4.1 Mr. Wessels spoke to the document entitled, *"Independent Panel of Experts: Proposed Conference in the U.K,"* contained in the documentation.

4.2 The meeting agreed that the Independent Panel could proceed as follows:

4.2.1 Regarding venue it was agreed the seminar would be held in South Africa if at all possible. However, it was noted that cost considerations could mean that the seminar would be held in the United Kingdom.

4.2.2 Regarding the status and participation of the Panelists, it was agreed the event was a seminar rather than a conference and was intended to enrich the knowledge of individual members of the Panel. The Panel was requested to ensure that their participation did not compromise their position and responsibilities to the Constitutional Assembly. Their participation should not seek either to impact upon the work of the Constitutional Assembly.

4.2.3 Regarding logistics and organisation, it was agreed the Constitutional Assembly would not be responsible for any costs for the seminar.

5. CA SCHEDULE

The meeting noted the document entitled, *"Constitutional Assembly Draft Schedule of Meetings,"* included in the documentation.

6. PROCEDURE FOR 18 AUGUST 1995

The meeting agreed to consider the objectives and agenda for the 18 August 1995 meeting of the Constitutional Assembly and to discuss the matter at the next meeting of the Management Committee.

7. AGENDA FOR CONSTITUTIONAL COMMITTEE MEETING OF 4 AUGUST 1995

The meeting approved the document entitled, *"Agenda, Meeting of the Constitutional Committee, 4 August 1995,"* included in the documentation.

8. REPORT ON EXPENDITURE

- 8.1 The meeting noted the document entitled, "*Constitutional Assembly Budget Report*," included in the documentation. It was noted that the Administration would shortly be approaching the Management Committee with a request for a Budget update for certain items.

9. CONSTITUTIONAL PUBLIC MEETINGS IN KWAZULU-NATAL

The meeting noted the document entitled, "*Additional Constitutional Public Meetings in KwaZulu-Natal*," included in the documentation.

10. COMMUNICATION FROM THE OFFICE OF THE PREMIER, FREE STATE PROVINCE

- 10.1 Mr. Ramaphosa introduced the document entitled "*Seat of National Government*," included in the documentation.
- 10.2 The meeting agreed to forward the document to Theme Committee 1 which would advise the Management Committee on how to consider the matter.

11. ANY OTHER BUSINESS

11.1 FUTURE OF THE COMMISSION ON PROVINCIAL GOVERNMENT

- 11.1.1 Mr. Meyer reported that the Inter-Governmental Forum was considering when to disband the Commission on Provincial Government: as soon as all of its reports were submitted to the Constitutional Assembly or when the new constitutional was finally adopted. The Forum had instructed him and Mr. Moosa to obtain the Constitutional Assembly's advice on this matter and report back to the Inter-Governmental Forum on 21 August 1995.
- 11.1.2 Mr. Eglin of the DP clarified that the Commission on Provincial Government had two functions: to advise the Constitutional Assembly and to advise government on restructuring provincial and local government. He expressed concern that the Constitutional Assembly's advice would be limited to its relationship with the Commission.
- 11.1.3 Gen. Viljoen of the FF expressed concern that the Constitutional Assembly had not paid enough attention to matters of provincial and local government and this would have to be taken into account in discussing the future of the Commission..
- 11.1.4 The Chairperson ruled that the Management Committee would discuss the matter at its next meeting, but said that the Constitutional Assembly would only be in a position to advise on the future of the Commission on Provincial Government insofar as it impacted on the work of the Constitutional Assembly.

12. CLOSURE

The meeting closed at 8h58.

COMMISSION ON PROVINCIAL GOVERNMENT

Established in terms of section 163 of Act 200, 1993

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1995-08-03

The Executive Director
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Dear Mr Ebrahim

MANAGEMENT COMMITTEE MEETING: 10 AUGUST 1995

I refer to the Management Committee's decision of 3 August to consider its position regarding the future role of the Commission on Provincial Government in the constitution-making process during its next meeting to be held on 10 August.

The Commission would appreciate it if the attached memorandum could be included in the agenda for that meeting.

Yours sincerely


CHAIRPERSON

COMMISSION ON PROVINCIAL GOVERNMENT

Memorandum to the Constitutional Assembly Management Committee for the meeting on 10 August 1995

The Commission on Provincial Government would appreciate it if the Management committee could bear the following points in mind in considering the future role of the Commission on Provincial Government in the constitution-making process:

1. The Commission on Provincial Government has not yet completed its task - it has thus far made only preliminary recommendations because of the time limits imposed by the Constitutional Assembly process, having done so at the specific request of the Constitutional Assembly Management. It has further been agreed with the Constitutional Assembly Management that the Commission on Provincial Government would be available to assist Theme Committees with their tasks upon their request, and that it would not submit constitutional text during this phase of the process because of time constraints and also because provincial governments have not completed their own consideration of proposals for the new Constitution. The Commission on Provincial Government consequently has not yet been able to consider all such proposals. It was agreed with the Constitutional Assembly Management that the Commission on Provincial Government would study the draft constitutional text prepared by the Constitutional Assembly and submit its own draft text in the event of it wishing to make an alternative suggestion to the Constitutional Assembly in regard to a specific matter. The Commission on Provincial Government will only be in a position to submit its final recommendations once the draft constitutional text has been published and after due consultation with the provinces' constitutional committees.
2. The Constitutional Assembly has spent considerable time and money to promote the openness of the constitutional process. The Commission on Provincial Government is a constitutionally created institution which further promotes the openness of the process, being a non-political independent body mandated to advise the Constitutional Assembly on provincial systems of government. To its mind, it would reflect negatively on the process if the Commission on Provincial Government were at this stage to be prevented from completing its task. What reasons would be given for preventing it from completing its task at this stage? What would the public reaction be? The Commission on Provincial Government has become well-known both within South Africa and abroad through its workshops and other communications. How would the curtailment of its activities reflect on the openness of the constitutional process in the views of interested parties both inside and outside the country?

3. The Commission on Provincial Government does not promote any political party's views but considers the views and needs of provincial governments, as well as the views of other interested parties and experts. The Commission on Provincial Government is the only independent institution outside the Constitutional Assembly provided for in the Constitution to consider such views and needs and to balance these with the national interest; to consider the practical implications of the various possible systems of provincial government in the light of its experience with transitional matters; and to put forward possible alternatives for dealing with issues for consideration by the Constitutional Assembly.
4. It is significant that some parties and Theme Committees have indeed requested the Commission on Provincial Government to consider further issues which have perhaps not been dealt with fully enough in its preliminary reports, eg in paragraph 3.9.4 of Theme Committee 2 minutes of 5 May 1995, the ANC requested the Commission to further develop the possibilities regarding means of representation of provinces in the Senate. Other verbal requests have been made in regard to further proposals in respect of issues such as provincial constitutions, traditional leaders, division of functions between national and provincial governments, etc, which the Commission on Provincial Government will deal with in its further deliberations.
5. Finally, the Commission on Provincial Government would not wish to impose itself on the Constitutional Assembly and its structures if there are grounds for believing that it cannot make a useful contribution. The Commission is only carrying out its duty in terms of the Interim Constitution. If it is decided that the Constitution should be amended to abolish the Commission's task in the constitutional process, the Commission on Provincial Government will abide by such a decision, notwithstanding the Commission on Provincial Government's own expressed view that it should not be disestablished before the new Constitution becomes operative.

However, the Commission on Provincial Government must draw attention to the fact that parties such as the DP, NP and PAC have already expressed their positions, that the activities of the Commission on Provincial Government in intergovernmental relations should be continued indefinitely or for a period of 10 years after adoption of the new Constitution - see Theme Committee 3 draft report, 31 July 1995. The Commission's own preliminary recommendations do not include a role under the new Constitution for itself as presently constituted.

CONSTITUTIONAL ASSEMBLY

MEETING OF THE CONSTITUTIONAL COMMITTEE

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

Date : Friday 11 August 1995

Time : 09h00

Venue : Old Assembly Chamber

DRAFT AGENDA

1. Opening
 2. Minutes: Pages 2 - 16
 3. Matters Arising : see agenda items below
 4. Constitutional Committee Sub-committee Report
 - 4.1 Public Administration
 - 4.2 Academic Freedom
 - 4.3 Auditor General
 - 4.4 Public Protector
 - 4.5 Human Rights Commission
 - 4.6 National and Provincial Legislative and Executive Competencies
 5. Tabling and Discussion: Theme Committee 2 Report on National Assembly and National Executive and Electoral System
 6. Tabling and Discussion: Theme Committee 6.1 Report on Elections Commission
 7. Tabling and Discussion: Theme Committee 6.2 Report on Reserve Bank
 8. Tabling and Discussion: Theme Committee 6.4 Report on Security Chapter
 9. Report : Ad Hoc Sub-committee on Courts and System of Justice
 11. AOB
 12. Closure
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