

DRAFT FRAMEWORK FOR THE NEW CONSTITUTION

EXPLANATORY MEMORANDUM

1. GENERAL

- 1.1 The Research department and the Law Advisers have put together a single draft text from the individual draft texts that have been tabled before the Constitutional Committee and/or its Subcommittee.
- 1.2 The draft text has been organised according to the chapter headings suggested in the list below. These chapter headings are not prescriptive, and broadly conform to those employed by the drafters. In certain cases, we have suggested chapter headings which we explain elsewhere in this memorandum. The ordering of the chapters generally conforms to that used in the interim Constitution and many other modern constitutions.
- 1.3 We have also provided chapter and section headings for those outstanding matters where there is, as yet, no draft text. Furthermore, an outline of all outstanding issues in those Theme Committees that are still in operation is given.
- 1.4 Where a draft formulation is in contention or requires further discussion by the parties the formulation concerned is typed in **bold** and placed inside square brackets. Textual formulations which have been approved by the Constitutional Committee and/or its Subcommittee are typed in normal script.
- 1.5 We have presented this draft text as a working document headed "Draft Framework ...," which will be updated on a continuous basis. It might not therefore contain the most current draft at any one point in time.
- 1.6 We have also compiled a table of contents. The table of contents refers to article headings as well as chapter headings. The question of referring to articles as opposed to section is one that still has to be decided. We have noted that many of the world's constitutions refer to articles presumably to distinguish Constitutions from ordinary legislation, where the terms chapter and section are more commonly used.

2. COMMENTARY ON CHAPTER HEADINGS

Chapter arrangement and headings to chapters are as shown in the table of contents.

2.1 CHAPTER 1

Chapter 1 deals primarily with issues discussed in TC 1, pertaining to the

character of the state and the nation. "Founding Principles of the State and Nation" is only a suggested heading. The interim Constitution uses the heading, "Constituent and formal provisions", which in our opinion is less accessible to the average reader. Many foreign Constitutions seem to favour the heading "General Principles" or a derivative thereof.

2.2 CHAPTER 5

In order not to disturb the grouping of issues as allocated to the Theme Committees, the issues under TC 3 are dealt with under one chapter.

2.3 CHAPTER 6

It is uncertain whether there will be a separate chapter for local government. Local government is an outstanding matter presently under consideration by Theme Committee 3. Should there be a chapter on local government in the new Constitution, we would suggest a Chapter 6 as set out in the framework.

2.4 CHAPTER 10

The grouping together of state monitoring institutions into one chapter in the Constitution is a matter presently under discussion in the Constitutional Committee and its Subcommittee. We have retained the same grouping of institutions as in the draft contained in the CA documentation of the 25 August 1995. However as per the Subcommittee discussion of the 28 August 1995, we have removed the Central Bank, FFC and PAC from this chapter. These are now dealt with in the Public Administration and Finance chapters.

2.5 CHAPTER 13

This chapter would contain all general, temporary and transitional provisions. In light of the Constitutional Assembly's decision that the new Constitution should contain general principles and not detailed provisions, these provisions could conceivably be located in a separate Constitutional instrument, as they would of necessity be of a technical nature.

3. **OUTSTANDING MATTERS**

3.1 Theme Committee 1

3.1.1 Preamble - to be dealt with once the entire Constitution is complete.

3.1.2 Foreign Relations - no report.

3.1.3 Language, name and symbols, seats of government and

national territory - report to be tabled at CC on the 1 September 1995.

3.2 Theme Committee 2

3.2.1 Provincial structures of government - report completed and First Draft expected on 1 September 1995 for tabling in TC meeting of the 3 September 1995.

3.2.2 The Senate - report to be tabled in TC meeting of the 4 September 1995.

3.2.3 Traditional Authorities - matter referred back to the Technical Advisers by CC.

3.2.4 Amendments - matter referred back to the Technical Advisers by CC.

3.3 Theme Committee 3

3.3.1 Local Government - no report.

3.3.2 Intergovernmental relations - no report.

3.3.3 Finance and fiscal relations - no report.

3.4 Theme Committee 4

3.4.1 Fundamental Rights - Technical Committee to submit complete draft Bill of Rights on the 16 September 1995.

3.5 Theme Committee 6.2

3.5.1 Finance and Fiscal Commission - First draft.

3.5.2 National Revenue Fund - First draft under discussion in the TC.

3.6 Theme Committee 6.3

3.6.1 Gender Commission - First draft prepared by CA Law Advisers presently with TC 6.3 Technical Advisers for comment.

3.6.2 Land Rights - No report.