

## **PROPOSALS REGARDING THE DRAFTING PROCESS**

1. The Constitutional Assembly has already taken the following decisions regarding the drafting process:

- "(a) Drafting should be directed by the Constitutional Assembly.
- (b) The Constitutional Committee should be responsible for the co-ordination of all constitutional Assembly work, including drafting.
- (c) Theme Committees are not negotiating fora. Their primary task should be to receive submissions and process them into reports for consideration by the Constitutional Committee."

2. No decision has however, been taken on technical assistance in the actual drafting of the text, although the possible role of the panel of constitutional experts in this regard has been raised and discussed in meetings of the Management Committee and Constitutional Committee.

3. In setting up a technical drafting mechanism the object of the Interim Constitution as set out in the Preamble should be kept in mind i.e. that the elected Constitutional Assembly is the only body competent to draw up the new Constitution. The only function such a draftship mechanism can have is to provide the Constitutional Assembly under the direction and guidance of the

Constitutional Committee with formulations reflecting the actual decisions of the Constitutional Assembly.

4. For this reason the drafting mechanism cannot operate independent from the Constitutional Committee. Its sole function should be to formulise in legal terms whatever the Constitutional Committee may instruct it to do.
5. Drafting should commence and be proceeded with as and when Theme Committee Reports have been discussed by the Constitutional Assembly and firm decisions on the Reports emanate from the Constitutional Assembly.
6. These decisions should form the sole basis for the drafting process. Technical experts involved in the drafting process should not have the liberty to go beyond the actual decisions of the CA, except to add necessary detail.
7. It would appear that given the political sensitivity surrounding the question of drafting; The process can be structured in such a way so as to involve the panel of experts, The technical committees and the Administration's law advisers.
8. Whenever clarity is reached on any particular issue which a Theme Committee has dealt with, the technical committee of that Committee (or preferably a single member of the technical committee) can then be instructed to do the initial drafting and prepare drafting provisions relating to the particular issue.
9. The draft provisions can then be submitted to the Administrations's law advisers

for technical refinement and adjustment to ensure that a general consistency of method and style is maintained. The law advisers will also be responsible for moulding the input from the various technical committees/drafting members into a cohesive and national whole.

10. The panel of experts can evaluate the technical and qualitative aspects of drafted provisions as refined by the law advisers. The provisions must then be further refined by the law advisers in accordance with any suggestions the panel may make.
11. The next step would be to refer the drafted provisions to the Management Committee for submission to the Constitutional Committee for a decision whether the provisions as drafted may be included in the draft constitutional text.