

CONSTITUTIONAL ASSEMBLY

BRIEFING MEMORANDUM

TO: MEMBERS OF THE CONSTITUTIONAL ASSEMBLY
FROM: EXECUTIVE DIRECTOR
DATE: 23 APRIL 1996
RE: PROCEDURES FOR ADOPTION AND CERTIFICATION

1. INTRODUCTION

This memorandum is produced to update all members of the Constitutional Assembly on the procedures for adoption, amendments to the Constitution and procedures for certification.

2. ADOPTION PROCEDURES -CA RULES

2.1 FIRST STAGE

- 2.1.1 The Constitutional Assembly of 29 March 1996 adopted new Rules for Adoption. These rules provide for three stages of adoption.
- 2.1.2 The first stage, also called the First Reading Stage, takes place from 23 to 24 April 1996.
- 2.1.3 During this stage, the member in charge of the Bill, the Chairperson, will place the draft Constitution in the form of a Bill, on the Order Paper for the First Reading.
- 2.1.4 No amendments are allowed to the motion for the First Reading of the Bill.
- 2.1.5 After moving that the Bill be read a first time, the Chairperson will deliver his introductory speech on the Bill on Tuesday 23 April 1996.
- 2.1.6 After the introductory speech, one member of each political party in the CA will be given 15 minutes for a statement on the Bill on behalf of their party.
- 2.1.7 A period of debate will then follow. The time for this debate has been allocated proportionately to parties, with some flexibility with regard to smaller political parties. There is no set subject matter for the debate and parties may address any subject in the draft Constitution. The Whips have been provided with the allocation of time to draw up speakers' lists.
- 2.1.8 After the debate, the presiding officer will order the Bill to be read a first time.

2.2 SECOND STAGE

- 2.2.1 The second stage is also called the Committee Stage.
- 2.2.2 During the Committee Stage, the draft Constitution will be referred to the Constitutional Committee together with any amendments to the Bill.
- 2.2.3 The Constitutional Committee will meet on 25,26 and 29 April 1996. The programme for this meeting is yet to be considered.
- 2.2.4 According to the Rules, all amendments must be submitted in writing and signed by the proposer. The Management Committee has agreed that there should be some flexibility with regard to the deadline for submissions.
- 2.2.5 The Chairperson has the final say on whether any proposed amendment is out of order for any reason and whether it will be considered by the Constitutional Committee.
- 2.2.6 After considering the proposed amendments, the Constitutional Committee will make whatever changes to the draft Constitution it has agreed to and will prepare a report for the Constitutional Assembly.

2.3 THIRD STAGE

- 2.3.1 The Third Stage is also called the Second Reading Stage.
- 2.3.2 This stage begins when the Constitutional Assembly convenes again on 3 May 1996. The amended draft Constitution and report of the Constitutional Committee will be placed before the Constitutional Assembly for the Second Reading.
- 2.3.3 No amendments will be allowed to the motion for the Second Reading of the Bill.
- 2.3.4 A further period of debate will take place in the Constitutional Assembly on the amended draft Constitution from 3 to 7 May 1996. The programme for these four days still has to be considered by the Management Committee.
- 2.3.5 On the last day of this stage, 8 May, voting will take place.
- 2.3.6 The number of members in favour will be recorded, whether a division is called for or not. The number of senators who vote or are in favour will be recorded separately.
- 2.3.7 In terms of section 73(2) of the interim Constitution, a two-thirds majority is required to pass the Constitution. In addition, a two-thirds majority of Senators is required for any provisions relating to the boundaries, powers and functions of provinces.
- 2.3.6 A draft programme for 8 May 1996 is being considered by the Chairpersons

and will be distributed shortly to all members.

3. CERTIFICATION

- 3.1 If the Constitution is passed in terms of section 73(2), the new Rules of the CA state that “two fair copies” must be sent to the Constitutional Court for certification.
- 3.2 Section 71(2) of the interim Constitution states that the new constitutional text will have no force or effect unless it is certified by the Constitutional Court to be in compliance with the 34 Constitutional Principles enshrined in Schedule 4 of the interim Constitution.
- 3.3 Preliminary discussions with the President of the Constitutional Court have taken place and it has been provisionally agreed that a special session of the Court will be convened in June for the process of certification.
- 3.4 The Chairpersons, on the instructions of Management Committee, are proceeding with the appointment of counsel to appear for the CA.
- 3.5 In terms of the Rules of the Constitutional Court, any political party represented in the Constitutional Assembly is entitled to present oral argument to the Court. The Court may require that written submissions are also sent in advance of the oral argument.
- 3.6 The Chairperson of the CA will need to inform the Court whether any of the political parties wish to make use of this opportunity.
- 3.7 Once the Constitution has been certified, it will be sent to the President for him to sign.

4. AMENDMENT OF THE INTERIM CONSTITUTION

- 4.1 The Constitutional Assembly on 29 March 1996 amended the interim Constitution with the Constitution of the Republic of South Africa Third Amendment Bill.
- 4.2 The first objective of these amendments is to ensure that if the draft Constitution, is not passed with a two-thirds majority on 8 May 1996, the Constitutional Assembly is still able to refer it to the Independent Panel of Constitutional Experts in terms of Section 73(2).
- 4.3 If this takes place, the Panel will be required to give its advice within a period of 30 days on amendments to the proposed draft which might secure a two-thirds majority of the Constitutional Assembly. These amendments must still be in compliance with the Constitutional Principles.
- 4.4 Once the amended draft is submitted to the Constitutional Assembly, it must be voted on within 14 days.

- 4.5 If the Panel does not submit an amended draft within 30 days, or if the amended draft fails to get a two-thirds majority, the draft may be passed by a majority of the members and then referred to the Court for certification. After certification this text will be referred by the President to the electorate in a national referendum. The question put to the electorate will be the acceptance or rejection of the text. If the text is supported by at least 60% of the electorate, it becomes the new Constitution.
- 4.6 Another scenario could also take place if the text put to the Constitutional Assembly on 8 May fails to obtain the support of a majority of its members, or if the amended text proposed by the Panel is not supported by a two-thirds majority, or if the amended text is not supported by 60 % of the electorate.
- 4.7 The President will then have to dissolve Parliament by proclamation in the Gazette within 14 days of the date of the referendum or 14 days after the date on which the text failed to obtain a majority, after failing to get a two-thirds majority .
- 4.8 After Parliament is dissolved, an election will be held and the Constitutional Assembly will be reconstituted. The new Constitutional Assembly will have to pass the new text within a period of one year from the date of its first sitting.
- 4.9 The new text put to the reconstituted Constitutional Assembly will have to obtain at least 60% support of its members. Provisions relating to boundaries, powers and functions of provinces will have to obtain 60% support of all members of the Senate.

4.10 NON-CERTIFICATION BY CONSTITUTIONAL COURT

- 4.10.1 A new section 73A was inserted into the interim Constitution on 29 March 1996 to deal with the procedure if the Constitutional Court does not certify the approved text.
- 4.10.2 If the Court finds that the approved text referred to it, does not comply with the Constitutional Principles, it will refer the text back to the Constitutional Assembly together with the reasons for its decision.
- 4.10.3 The Constitutional Assembly now has a period of three months to pass an amended text after having considered the reasons of the Constitutional Court for non-certification.
- 4.10.4 If the Constitutional Assembly fails to pass an amended text with a two-thirds majority, the same kind of scenarios sketched out above are again possible. That is, the text could be referred to the Panel, and if the Panel's text is not passed, or if the Panel fails to provide an amended text, then any text supported by a majority is referred to the electorate in a referendum.
- 4.10.6 A second scenario once again kicks in if the Constitutional Assembly is not able to pass a text with a majority or if the text put to the electorate in a referendum fails to obtain at least 60% support of the electorate. Parliament is

dissolved, elections are held and a newly constituted Constitutional Assembly has one year to pass a new Constitution.

Note: This is a briefing memorandum. The CA Rules and amended section of the Interim Constitution are attached hereto.

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