CONSTITUTIONAL ASSEMBLY

20 April 1995

To: **All Structures of Civil Society**

Re: **Report on Theme Committee 5 (Judiciary and Legal Systems)**

On behalf of Theme Committee 5 I hereby extend appreciation and thanks for your participation in their deliberations.

In particular our appreciation for your participation at their Public Hearings Seminar held at University of South Africa as well as your written submissions.

Theme Committee 5 has completed a report on Blocks 1 - 4 of their Work Programme for the Constitutional Assembly.

Further, Theme Committee 5 is urging your organisation to make submissions on the remaining issues of their Work Programme. The deadline for submissions on the remaining issues is end of May 1995. A few questions are attached as mere guidelines.

All enquiries should be directed to -

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The constitution-making process is critical to the transformation process and democratisation of our society.   It is therefore imperative that you continue fulfilling your positive role.

We look forward to your continued co-operation and participation.

Thanking you,

H. Ebrahim
Executive Director

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THEME COMMITTEE 5

GUIDELINES ON BLOCKS 6 - 9

BLOCK 6:

APPOINTMENT OF ATTORNEYS-GENERAL AND OTHER JUDICIAL OFFICIALS

1. How should AG's be appointed?

    Should their method of appointment be similar to the appointment of senior members of the executive or members of the judiciary?

    In the light of the above which bodies (for example, Judicial Service Commission, Public Service Commission) should interview/appoint AG's?

2. What should the function of Attorneys-General be? - In particular, should they perform functions other than the institution and control of prosecutions?

3. Who should have final responsibility for decisions concerning prosecutions (and other functions of A-G's). In particular, should this responsibility rest with an Attorney-General who is a member of the cabinet. If so, what should the functions of a cabinet-level Attorney-General be?

4. What provisions relating to the independence of Attorneys-General should be in the constitution or in legislation?

5. To what extend should any of the issues dealt with the above be in the constitution?

6. Should there be any further provisions in the constitution dealing with the Attorneys-General?

7. Should the appointment of any other officials in the judicial system be dealt within the constitution?

BLOCK 7:

1. **LANGUAGE AND INTERPRETATION**

    Should the constitution deal with:

    -   the language/languages to be used in court proceedings;

    -   the interpretation of court proceedings.

    If so, how should this be done. (see section 107 of Interim Constitution).

2. **PRINCIPLES OF LEGAL INTERPRETATION**

What principles of legal interpretation (if any) should be included in the constitution. (see section 35 and section 232 of the Interim Constitution).

3. **INTERNATIONAL AGREEMENT AND INTERNATIONAL LAW**

What provisions should the constitution contain concerning:

- South Africa's obligations in respect of existing international agreements,

- the negotiation of, ratification of and accession to international agreements,

- the operation of the rules of customary international law in S.A. (see section 231 of the Interim Constitution)?

BLOCK 8:

LEGAL EDUCATION/LEGAL PROFESSION

- Should any aspect of legal education or the regulation of the legal profession be dealt with in the constitution or should it more appropriately be dealt with in legislation?

- If so, should it be dealt with in the constitution, and if so, what aspects should be regulated and how?

- Are there any current provisions concerning legal education and the regulation of the legal profession that are unconstitutional?

BLOCK 9:

TRANSITIONAL ARRANGEMENTS

What transitional arrangements should be included in the constitution?