

1/18/10

**CONSTITUTIONAL ASSEMBLY**

**SECRETARIAT DEPARTMENT**

**FINAL INTERNAL THEME  
COMMITTEE REPORT**

**NOVEMBER 1995**



## INDEX

No	Item	Page
1.	<b>Introduction</b>	1
2	<b>Final Internal Theme Committee Reports</b>	2 - 109
	Theme Committee One - Character of Democratic State	2 - 15
	Theme Committee Two - Structure of Government	16 - 33
	Theme Committee Three - Relationship between Levels of Government	34 - 45
	Theme Committee Four - Fundamental Rights	46 - 54
	Theme Committee Five - Judiciary and Legal systems	55 - 66
	Specialised Structures of Government	67 - 109
	Theme Committee 6.1 - Public Administration and Electoral Commission	67 - 86
	Theme Committee 6.2 - Auditor-General, Reserve Bank, Financial and Fiscal Commission and general financial matters	87 - 92
	Theme Committee 6.3 - Public Protector, Human Rights Commission, Commissions for Gender Equality and Land Rights	93 - 100
	Theme Committee 6.4 - Security Apparatus	101 - 109
3.	<b>Submissions</b>	110 - 112
4.	Functioning of the Secretariat	113



## **A. Introduction**

The report deals with the activities of the six Theme Committees as per the first phase of the constitution-making process as well as the Secretariat's submissions section.

Each Theme Committee Secretariat compiled its own report and the Submissions report is compiled by Fairuz Mullagee with contributions from the submissions team and the Network Manager.

## **B. Structure of report**

The report has the following sub-divisions

1. Final Internal report - Theme Committee One
2. Final Internal report - Theme Committee Two
3. Final Internal report - Theme Committee Three
4. Final Internal report - Theme Committee Four
5. Final Internal report - Theme Committee Five
6. Final Internal report - Theme Committee 6.1
7. Final Internal report - Theme Committee 6.2
8. Final Internal report - Theme Committee 6.3
9. Final Internal report - Theme Committee 6.4
10. Final report - Submissions Section
11. Functioning of the Secretariat

Each Theme Committee report deals with the following areas.

1. Issues which the Theme Committee had to deal with as per Constitutional Assembly resolution of 4 September 1994.
2. The Theme Committee Work Programme
3. Staff deployed to Theme Committee
4. Names of the Theme Committee Technical Advisors
5. Names of Full and Alternate Theme Committee members
6. Schedule of Theme Committee meetings
7. Number of submissions received and processed
8. Internal or Orientation workshops held
9. Public Hearings held
10. Brief assessment

In some instances, the lay-out of sections differ from report to report and in one or two instances, additional information is included depending on the nature of the Theme Committee's work. Although most Theme Committees operated in a similar fashion, some variations can be seen in the reports pointing to the diversity of views and styles of the different Chairpersons and Core Group members.

The report concludes with a brief section on the functioning of the Secretariat.



# **THEME COMMITTEE ONE**

## **CHARACTER OF DEMOCRATIC STATE**

### **FINAL INTERNAL REPORT**

**SEPTEMBER 1995**



## 1. INTRODUCTION

The Theme Committee was mandated to deal with the following issues:

- 1.1 Preamble of the Constitution
- 1.2 Matters dealing with the establishment of a single sovereign state, common citizenship, democracy and equality (Constitutional Principle I)
- 1.3 Supremacy of the Constitution, binding on all organs of State (Constitutional Principle IV)
- 1.4 Matters dealing with representative government, regular elections, suffrage and proportional representation (Constitutional Principle VIII)
- 1.5 Matters dealing with freedom of information and accountable administration (Constitutional Principle IX)
- 1.6 Name and description of State and symbols
- 1.7 Matters dealing with the separation of powers etc (Constitutional Principle VI)



**THEME COMMITTEE ONE**

**WORK PROGRAMME**

<b>BLOCK</b>	<b>AGENDA ITEMS</b>
1	Democracy and Character of State
2	Equality One, sovereign state
3	Supremacy of the Constitution
4	Accountable government
5	The Economy
6	Representative government Citizenship Suffrage
7	Language
8	Foreign relations and international law
9	Name, Symbols and National Territory Seats of government
10	Preamble and Postamble

TECHNICAL COMMITTEE

1. INTRODUCTION

WORK PROGRAM

The Technical Committee will be responsible for the following tasks:

AGENDA ITEMS	BLOCK
1. Democracy and Character of Government	1
2.1	2.1
2.2	2.2
<b><u>STAFF</u></b>	
1. Managing Secretary - Leola Rammble	3
2. Minute Secretary - Susan Rabinowitz	4
3. Administration Secretary - Aziza Parker	5
<b><u>TECHNICAL COMMITTEE</u></b>	
1. Prof. H M Corder	6
2. Dr. J C Heunis	7
3. Mr. Z Husain	8
4. Prof. C Dlamini	9
	10



# CONSTITUTIONAL ASSEMBLY

## THEME COMMITTEE 1 CHARACTER OF THE DEMOCRATIC STATE

### FULL AND ALTERNATE MEMBERS

NO.	NAME
1.	Ally A (Alternate)
2.	Booi M S
3.	Cassim M F (Alternate)
4.	Chiba L (Alternate)
5.	Chikane M M
6.	Chiwayo L L L (Alternate)
7.	Cwele C S (Alternate)
8.	De Lille P (Alternate)
9.	Dyani M M
10.	Fani L M (Alternate)
11.	Ferreira E T (Alternate)
12.	Ginwala F
13.	Goosen A D (Alternate)
14.	Green L M (Alternate)
15.	Gumede D M
16.	Hangana N E
17.	Janse Van Rensburg A P
18.	Kekana N N
19.	Kuzwayo N E K (Alternate)
20.	Lamani N E
21.	Lekgoro M K
22.	Mabuza M C (Alternate)
23.	Macozoma S J
24.	Mahlangu N J
25.	Majola-Pikoli N T



26.	Marais A
27.	Marais P G
28.	Meshoe K R
29.	Mngomezulu P G
30.	Mokaba P
31.	Momberg J H
32.	Moorcroft E K
33.	Msane T (alternate)
34.	Msomi M
35.	Mtshali L P H M
36.	Mukhuba T T (alternate)
37.	Mulder P W A
38.	Ncube B S
39.	Niehaus C G
40.	Nobunga B J (alternate)
41.	Nzimande B E
42.	Ripinga S S
43.	Routledge N C
44.	Schoeman E A
45.	Seaton S
46.	Selfe J
47.	Serote M W (alternate)
48.	Shope G (alternate)
49.	Shope N R
50.	Sisulu A N
51.	Smith P
52.	Streicher D M
53.	Swanepoel L
54.	Tshivase T J





### SCHEDULE OF MEETINGS HELD

NO.	DATE	TC / CG
1.	19/09/94	TC
2.	17/10/94	CG
3.	24/10/94	TC
4.	24/10/94	CG
5.	28/10/94	TC
6.	31/10/94	TC
7.	31/10/94	CG
8.	02/11/94	CG
9.	07/11/94	TC
10.	09/11/94	CG
11.	10/11/94	CG
12.	11/11/94	CG
13.	14/11/94	TC
14.	24/01/95	CG
15.	25/01/95	TC
16.	26/01/95	CG
17.	30/01/95	TC
18.	31/01/95	TC
19.	01/02/95	TC
20.	01/02/95	CG
21.	07/02/95	TC
22.	07/02/95	SUB-COMM
23.	08/02/95	TC
24.	09/02/95	TC
25.	10/02/95	CG
26.	14/02/95	TC



27.	20/02/95	TC
28.	22/02/95	CG
29.	27/02/95	TC
30.	28/02/95	CG
31.	06/03/95	TC
32.	13/03/95	TC
33.	14/03/95	CG
34.	16/03/95	JOINT CORE GROUP
35.	20/03/95	CG
36.	20/03/95	TC
37.	27/03/95	TC
38.	28/03/95	SUB-COMM
39.	29/03/95	CG
40.	30/03/95	SUB-COMM
41.	03/04/95	TC
42.	19/04/95	TC
43.	19/04/95	CG
44.	20/04/95	TC
45.	03/05/95	CG
46.	08/05/95	TC
47.	11/05/95	SUB-COMM
48.	15/05/95	TC
49.	22/05/95	TC
50.	29/05/95	TC
51.	05/06/95	TC
52.	12/06/95	TC
53.	26/06/95	TC
54.	31/07/95	TC
55.	01/08/95	TC

56.	07/08/95	TC
57.	14/08/95	TC
58.	15/08/95	TC
59.	28/08/95	TC
60.	11/09/95	TC



## SUBMISSIONS

We have received and processed 3 000 submissions to date.

Individuals	2 749
Organisations	197
Parties	49
Government Inst.	5

## ORIENTATION WORKSHOPS

The Technical Committee conducted orientation workshops to facilitate the submissions of parties on the subject matter dealing with the relevant blocks. The following is a breakdown of workshops held:

- 1) Block 3 - Supremacy of the Constitution (27/03/95)
- 2) Block 4 - Accountable Government (19/05/95)
- 3) Block 5 - The Economy (15/05/95)
- 4) Block 6 - Representative government  
Citizenship  
Suffrage (22/05/95)
- 5) Block 8 - Foreign Relations and  
International Law (29/05/95)
- 6) Block 9 - National Territory (26/06/95)

Briefing documents were prepared for each of the agenda items above.

## PUBLIC HEARINGS HELD

The following hearings were held:

- 1) Seats of Government, Language and Name and Symbols - 10 June 1995  
*A copy of the programme is attached*
- 2) Secular state - the WCPC and UCA addressed the TC on the

01/08/95 and 14/08/95 respectively

- 3) Equality and Affirmative Action - Dr. M Ramphela and Prof D Meyerson addressed the TC on 06/03/95
- 4) Character of state - Prof D Welsh and IDASA addressed the TC on the 06/03/95 and the 20/02/95 respectively.
- 5) Seats of Government - Bloemfontein City Bid and IDASA addressed the TC on the 14/08/95 and 20/02/95 respectively

### **ASSESSMENT**

Basically the work of the TC has been covered to a large extent with the exception of the Postamble/Preamble and Seats of Court.

I think that it would have helped to co-ordinate all TC's work if the secretariat (Managing Secretaires) met on a more regular basis to discuss issues which were being dealt with by TCs and not the logistical arrangements of TC meetings. The areas of overlap could have been co-ordinated much better and we would not have had a situation where certain issues have been left hanging in the air.

Since this has been a political process, I think that it would have helped if Parties had caucused before TC meetings. This would have also assisted in speeding up the process. Parties should have also been briefed about the issues which they were dealing with so that they understood the issues and the Party position on most of the issues and they would have not contradicted each other in the TC. I suppose that if they had researchers to assist them it would have helped.

It was however, an interesting and challenging process.



**THEME COMMITTEE ONE**  
**PUBLIC HEARING**

***SEATS OF GOVERNMENT, LANGUAGE AND  
NAME AND SYMBOLS***

**OLD ASSEMBLY CHAMBER, PARLIAMENT**

**SATURDAY, 10 JUNE 1995**

09h30 - 09h40                      Opening and Welcome                      TC 1 Chairperson

**Session One : Seats of Government**

09h40 - 10h15                      Pretoria Capital Initiative  
Midrand Metropolitan Sub-structure  
Citizens Alliance for Parliament

10h15 - 11h00                      Open discussion

11h00 - 11h15                      Tea / Coffee

**Session Two : Language**

11h15 - 11h30                      ATKV (Dr. Kok)  
11h30 - 11h45                      Dept of Indian Languages (Dr. R Sitaram)  
11h45 - 12h00                      Afrophone (Khetiwe Marais)  
12h00 - 12h15                      State Language Services

12h15 - 13h00                      Open Discussion

13h00 - 14h00                      Lunch

**Session Three : Name and Symbols**

14h00 - 14h15                      Prof. J S M Khumalo

14h15 - 14h30                      Mike Boon, Group Africa

14h30 - 14h45

Fred Brownell (Bureau of Heraldry)  
Department of National Education

14h45 - 15h00

Summary of proceedings and closure



# **THEME COMMITTEE TWO**

## **STRUCTURE OF GOVERNMENT**

### **FINAL INTERNAL REPORT**

**OCTOBER 1995**

## INTRODUCTION

Theme Committee Two was mandated to deal with the following themes of the new constitutional text:

- 1.1 Matters dealing with the separation of powers,(Constitutional Principle VI)
- 1.2 Adherence to formal legislative procedures by legislative organs (Checks and balances).(Constitutional Principle X)
- 1.3 Participation of minority political parties in legislative process in a manner that is consistent with democracy.(Constitutional Principle ZOUAVE)
- 1.4 Amendment to the Constitution require special procedures involving special majority (Constitutional Principle X)
- 1.5 Structure of Government at national,Provincial and local levels (Constitutional Principle XVI)
- 1.6 Democratic representation at every level of government -without derogating from the role of chieftaincy.(Constitutional Principle CXVI)
- 1.7 National Assembly, Senate and Parliament in general.
- 1.8 Electoral System
- 1.9 Matters dealing with the Constitution,status and role of traditional leaders.
- 1.10 Traditional Leaders
- 1.11 The Executive



**THEME COMMITTEE TWO**

**WORK PROGRAMME**

BLOCK	AGENDA ITEMS
1.	Separation of powers
2.	Structure and functioning of Government: National level.
3.	Structure and functioning of Government: Provincial Level.
4.	Traditional Authorities
5.	Volkstaat/Self-Determination
6.	Electoral system
7.	Constitutional Amendments

## STAFF

- |    |                          |                      |
|----|--------------------------|----------------------|
| 1. | Managing Secretary       | James Nene           |
| 2. | Minute Secretary         | Thomas Smit          |
| 3. | Administrative Secretary | Charmaine Fredericks |

## TECHNICAL COMMITTEES

### I) TECHNICAL COMMITTEE

1. Prof D van Wyk
2. Dr W Seriti
3. Adv AMM Motimele
4. Prof. N Steytler

### II) AD-HOC COMMITTEE ON TRADITIONAL AUTHORITIES

1. Prof. T Nhlapo
2. Ms T Madonsela
3. Prof. RB Mqeke

### III) AD-HOC COMMITTEE ON SELF-DETERMINATION

1. Prof H M Corder
2. Prof AWG Raath
3. Prof W Breytenbach



**THEME COMMITTEE TWO  
STRUCTURE OF GOVERNMENT**

**FULL AND ALTERNATE MEMBERS**

<b>NO</b>	<b>NAME</b>	<b>PARTY</b>
1.	Ackerman C	NP
2.	Andrew KM (Alternate)	DP
3.	Badenhorst MJ	NP
4.	Bhengu G (Alternate)	IFP
5.	Beyers AS	NP
6.	Bester BC (Alternate)	NP
7.	Biyela BP (Alternate)	IFP
8.	Dexter P (Alternate)	ANC
9.	Diale N	ANC
10.	Doidge GQ	ANC
11.	Ebrahim AG	PAC
12.	Eglin CW	DP
13.	Forster JA	ANC
14.	Groenewald PH	FF
15.	Holomisa SP	ANC
16.	Hendrikse PAC	ANC
17.	Jana DPS (Alternate)	ANC
18.	Lebona HJP (Alternate)	ANC
19.	Ligege MG	ANC
20.	Louw SK	ANC
21.	Lucas E (Alternate)	IFP
22.	Mabudafhatsi RT	ANC
23.	Maduna P	ANC
24.	Mahlangu JL (Alternate)	ANC
25.	Mahlangu MJ (Co-chairperson)	ANC
26.	Mars I	IFP
27.	Marshoff FB	ANC



28.	Mashile NL (Alternate)	ANC
29.	Mlangeni A	ANC
30.	Moloto CP (Alternate)	ANC
31.	Mohlamonyane GM	ANC
32.	Mothoagae PK	ANC
33.	Msomi M	IFP
34.	Mti LM (Alternate)	ANC
35.	Mulder C	FF
36.	Mushwana GM	ANC
27.	Mutsila I	ANC
28.	Mwedamutsu MJ	ANC
29.	Ndlovu VB (Co-chairperson)	IFP
30.	Nxumalo SD	ANC
31.	Odendaal WA (Alternate)	
32.	Olifant DAA	ANC
33.	Pahad EGH	ANC
34.	Phakathi NE	ANC
35.	Rabie JA (Co-chairperson)	NP
36.	Ramusi MC	ANC
37.	Ranchod B	NP
38.	Sekgobela PS	ANC
39.	Selfe J (Alternate)	DP
40.	Setheema BEE	ANC
41.	Shabangu S	ANC
42.	Sizani RK (Alternate)	PAC
43.	Steenkamp PJ	NP
44.	Taunyane DP	ANC
45.	Tolo LJ	ANC
46.	Tyobeka V	ANC
47.	Wyngaard	



### SCHEDULE OF MEETINGS HELD

NO	DATE	TC\CG
1.	19/09/94	TC
2.	19/09/94	CG
3.	20/10/94	CG
4.	24/10/94	TC
5.	24/10/94	CG
6.	27/10/94	CG
7.	31/10/94	TC
8.	02/11/94	CG
9.	07/11/94	TC
10.	16/11/94	TC
11.	24/01/95	CG
12.	25/01/95	TC
13.	27/01/95	CG
14.	30/01/95	TC
15.	31/01/95	CG
16.	31/01/95	TC
17.	01/02/95	CG
18.	02/02/95	TC
19.	06/02/95	CG
20.	07/02/95	CG
21.	07/02/95	TC
22.	08/02/95	CG/TA/CA Adm.
23.	15/02/95	TC
24.	21/02/95	CG
25.	27/02/95	CG
26.	27/02/95	TC
27.	01/03/95	CG
28.	08/03/95	CG
29.	13/03/95	CG/TA



30.	13/03/95	TC
31.	16/03/95	Joint Core Group
32.	20/03/95	CG
34.	29/03/95	CG
35.	03/04/95	CG/TA/SECR.
36.	03/04/95	TC
37.	18/04/95	CG
38.	19/04/95	CG
39.	19/04/95	TC
40.	20/04/95	TC
41.	21/04/95	CG
42.	21/04/95	TC
43.	04/05/95	CG
44.	05/05/95	TC
45.	08/05/95	CG
46.	08/05/95	TC
47.	15/05/95	TC
48.	22/05/95	CG
49.	22/05/95	TC
50.	29/05/95	CG
51.	29/05/95	TC
52.	05/06/95	TC
53.	12/06/95	CG
54.	12/06/95	TC
55.	26/06/95	TC
56.	31/07/95	CG
57.	02/08/95	TC
58.	07/08/95	TC
59.	10/08/95	TC
60.	14/08/95	TC
61.	21/08/95	CG



62.	21/08/95	TC
63.	28/08/95	TC
64.	04/09/95	TC
65.	11/09/95	TC

### SUBMISSIONS

The Theme Committee received and processed 1295 submissions to date.

INDIVIDUALS : 1190

ORGANISATIONS : 58

POL.PARTIES : 47  
(In the CA)

## ORIENTATION WORKSHOPS

(See attached programmes)

TOPIC	DATE
1. National Executive	15/02/95
2. Unicameralism/Bicameralism	06/03/95
3. Checks and Balances between organs of government, in particular the Executive and Legislature (National Level)	27/03/95
4. Traditional Authorities	03/04/95
5. Electoral system	08/05/95
6. Self-Determination/Volkstaat	26/06/95

## PUBLIC HEARING

(See attached programmes)

TOPIC	DATE
1. Traditional Leadership/Customary Law	12-13 May 1995



# CONSTITUTIONAL ASSEMBLY

## THEME COMMITTEE 2

### STRUCTURE OF GOVERNMENT

#### INHOUSE WORKSHOP

TOPIC: EXECUTIVE : NATIONAL LEVEL.

OLD ASSEMBLY BUILDING, PARLIAMENT, CAPE TOWN

WEDNESDAY 15 FEBRUARY 1995

10h00- 16h00

## PROGRAMME

### TOPIC: EXECUTIVE : NATIONAL LEVEL

10h00 Registration and Coffee

10h30 Opening and Welcome  
Theme Committee Co-chairperson

#### FIRST SESSION

10h45 **PRESIDENCY** (General remarks)

Chairperson : Adv. M Motimele

Speaker : Prof. N Steytler

11h15 **PRESIDENCY** (Developments in Africa)

Chairperson : Adv Motimele

Speaker : Dr Tiya Maluwa

11h45 **Open Discussion**

12h45 **Lunch**

#### SECOND SESSION

14h00 **CABINET** (Cabinet and the Concept of Forced Coalitions)

Chairperson: Adv. M Motimele.

Speaker : Prof V.Dlova



14h30

CABINET

(Report on the ISSUP/RAU/UNISA/ACSA  
Conference on the subject "A NEW EXECUTIVE  
FOR SOUTH AFRICA)

Chairperson : Adv. M Motimele

Speaker : Prof. D Van Wyk

15h00

Open Discussion

**CLOSING SESSION**

16h00

Summary of the day's events

Theme Committee Co-chairperson

**CLOSURE**

**THEME COMMITTEE 2****INHOUSE WORKSHOP ON UNI- OR BICAMERALISM**

DATE : MONDAY, 06 MARCH 1995

VENUE : OLD ASSEMBLY CHAMBER

**PROGRAMME**

TIME	ITEM	PRESENTER
09H00 - 09H20	1. The Senate in South Africa - Past, Present and Future experiences and the Constitutional Principles	Prof. D. Davis
09H20 - 09H40	2. The Constitutional Principles and Bicameralism	Prof. V. Dlova
09H40 - 10H00	3. Continental Second Chambers	Prof. D. van Wyk
10H00 - 10H20	4. US Senate	Prof. N. Steytler
10H20 - 10H45	5. Possible roles for a Second Chamber	Prof. F. Haysom
10H45 - 11H00	Tea	
11H00 - 13H00	Discussion	

**OPENING AND WELCOME**

The Workshop was opened and chaired by Mr A.G. Ebrahim.

**AMENDMENTS TO PROGRAMME**

1. Prof. Davis to give input and then 20 - 30 minutes for questions.  
*Motivation:* Prof. Davis requested to leave early.
2. After second input on Constitutional Principles and Bicameralism, questions to be posed.
3. Items 3;4 & 5 to be presented as a package and then discussion.

Embargoed until 18h00  
Monday 3 April 1995

TC2 : Inhouse Workshop Report - Uni-Bicameralism 6 March 1995



# CONSTITUTIONAL ASSEMBLY

## THEME COMMITTEE 2

### INHOUSE WORKSHOP :

### **CHECKS AND BALANCES BETWEEN ORGANS OF GOVERNMENT, IN PARTICULAR THE EXECUTIVE AND LEGISLATURE (NATIONAL LEVEL)**

DATE : 27 March 1995  
TIME : 09H00 - 13H00  
VENUE : M46

### PROGRAMME

CHAIRPERSON : The meeting was chaired by a Chairperson from Theme Committee 2 :- Mr M J Mahlangu

1. Introduction to a system of checks and balances  
*Prof. D. Van Wyk*
2. The Judiciary as an important institution in a system of checks and balances  
*Adv. A. Motimele*
3. Legislature as a check on the executive and the judiciary  
*Prof. N. Steyler*
4. The checks and balances by the executive  
*Prof. V. Dlova (Prof. D. van Wyk)*
5. General Discussion



# CONSTITUTIONAL ASSEMBLY

## WORKSHOP ON:

# TRADITIONAL LEADERS AND INDIGENOUS LAW

MONDAY 03 APRIL 1995  
09H00 - 13H00  
OLD ASSEMBLY CHAMBER

*Enquiries: TCE Secretariat: Tel.: 245031 x 226019*



**IN-HOUSE WORKSHOP ON ELECTORAL SYSTEMS**

**08 MAY 1995**

TIME	TOPIC	PRESENTER
10H00 - 10H30	Electoral Systems : A global overview and options for South Africa	Mr Michael Krennerich (University of Heidelberg, Germany)
10H30 - 10H50	Electoral Systems and representative government in South Africa: The role of members of Parliament	Mr Pierre de Vos (University of the Western Cape)
10H50 - 11H20	Discussion	
11H20 - 12H00	Adapting proportional representation - proposals	Prof Murray Faure (University of South Africa)  Prof Albert Venter (Rand Afrikaanse Universiteit)
12H00 - 13H00	Discussion	
13H00 - 14H00	Lunch	
14H00 - 14H50	Adapting proportional representation - proposals	Dr Jaques de Ville (University of Western Cape)  Prof Hennie Kotze (University of Stellenbosch)
14H50 - 15H30	Discussion	
15H30 - 16H00	Comment on proposals and further discussion	Mr Michael Krennerich
16H00	Closure	

*Tea will be served at 09H45*



# CONSTITUTIONAL ASSEMBLY

## PUBLIC HEARING

### *TRADITIONAL AUTHORITIES AND CUSTOMARY LAW AND PRACTICES*

NEW ASSEMBLY CHAMBER, PARLIAMENT, CAPE TOWN

FRIDAY & SATURDAY, 12 & 13 MAY 1995

#### FRIDAY, 12 MAY 1995

14H15 - 15H00	Arrival and Registration Tea / Coffee	
15H00 - 15H15	Welcome	<i>Prof Bonganjalo Goba MPD National Director</i>
15H15 - 15H30	Opening Address	<i>Hon Mr Cyril Ramaphosa Chairperson of the Constitutional Assembly</i>

#### SESSION ONE

Chair : Mr Bulelani Ngcuka : Theme Committee 5

Constitutional Issue : Traditional Courts & Customary Law/Practices

15H30 - 15H45	Traditional Courts	<i>Mr Rajesh Chowdree</i>
15H45 - 16H00	Customary Law/Practices	<i>Prof Digby S Koyana</i>
16H00 - 16H45	Plenary Discussion	
16H45 - 17H00	Tea/Coffee	

#### SESSION TWO

Chair : Mr Sheppard Mdladlana: Theme Committee 4

Constitutional Issue : Customary Law and the Bill of Rights

17H00 - 17H15	Customary Law & Human Rights	<i>Prof B Fikile Ndaki</i>
17H15 - 18H00	Plenary Discussion	
18H00 - 18H15	Technical Adviser's Summary (Session 1 & 2)	<i>Prof Thandabantu Nhlapo</i>
18H15 - 18H30	Announcement of Arrangements for Accommodation	
18H30 - 20H00	Dinner at Parliament	
20H15	Transport from Parliament to hotels	



# **THEME COMMITTEE THREE**

## **RELATIONSHIP BETWEEN LEVELS OF GOVERNMENT**

### **FINAL INTERNAL REPORT**

**OCTOBER 1995**

## 1. INTRODUCTION

The Theme Committee was mandated to deal with the following issues:

- 1.1 Nature and status of the provincial system and local government
- 1.2 National and provincial executive and legislative competencies
- 1.3 Intergovernmental relations
- 1.4 Local government
- 1.5 Financial and fiscal relations



## 2. WORK PROGRAMME

BLOCK	AGENDA ITEMS
1.	i) nature and extent of powers of various levels of government ii) structure of parliament iii) Parliament's supremacy iv) self determination v) extent to which the Constitutional Principles determine a particular system of provincial and local government
2.	i) nature of legislative competencies at the various levels of government particularly with regard to concurrent or exclusive powers, national and provincial overrides, delegated and agency powers. ii) functional areas that may be considered for assignment to the provinces iii) provincial constitutions and their content and status iv) role of framework legislation v) mechanisms for safeguarding interests of provinces vi) the senate
3.	i) the importance of intergovernmental mechanisms in a three tier system ii) principles and objectives of intergovernmental mechanisms iii) should intergovernmental mechanisms be constitutionalised iv) what intergovernmental mechanisms should be internalised v) the role of the senate as a mechanism for intergovernmental relations
4.	i) role of traditional leaders in local government ii) role, structure and status of local government iii) how local governments should be elected
5.	i) constitutional restrictions on capacity of provinces to levy taxes ii) nature of restrictions iii) constitutional restrictions on loans raising by provinces iv) equitable revenue sharing v) expenditure by provinces

### 3. STAFF

- |      |                          |   |   |
|------|--------------------------|---|---|
| i)   | Managing Secretary       | : | Mbasa Mxenge                            |
| ii)  | Minute Secretary         | : | Sandra Haydon                           |
| iii) | Administrative Secretary | : | Vanessa Calvert and<br>Beverline Thomas |

### 4. TECHNICAL ADVISORS

- i) Prof Deon Basson
- ii) Prof Dennis Davis
- iii) Prof Bongani Majola
- iv) Prof Francuos Venter

### 5. AD HOC TECHNICAL COMMITTEE ON LOCAL GOVERNMENT

- i) Mr Andrew Boraine
- ii) Mr Andre Cornelissen
- iii) Mr Blake Mosley

### 6. NUMBER OF SUBMISSIONS RECEIVED AND PROCESSED

The Theme Committee received and processed 471 submissions from political parties in parliament, government ministries and departments, organisations and individuals.



**THEME COMMITTEE MEMBERS**

<b>NAME</b>		<b>ROOM NO</b>
Abraham M	Alt	GH96
Albertyn JT	Alt	M235
Andrew KM		M544
Applegryn MS	Alt	M99
Bhabha M <i>Senator</i>		V353
Blaas A		M126A
Carrim YI		V274
Chuenyane LD	Alt	M100
Coetzee MP		V229
Cronje PC		V71
de Lille P		M570
Dingani ZA	Alt	E508
Du Toit DC		E336
Dyani MMZ	Alt	M567
Eglin CW	Alt	M547
Farisani TS	Alt	E583
Geldenhuis BL		M310
Golding MJ	Alt	V171
Goosen AD	Alt	E581
Gordhan PJ		E402
Gous PJ <i>Senator</i>	Alt	M533
Groenewald PJ		M504
Gxowa NB	Alt	E429
Khasu MJ	Alt	V181



NAME	ROOM NO
Khobe ON <i>Senator</i>	V307
King TJ	M135
Kondlo N	Alt E463
Koornhof GW	M225
Kota ZA	V271
Lamani NE <i>Senator</i>	Alt V373
Leeuw SJ	Alt E582
Loots HG	Alt E458
Losabe LK <i>Senator</i>	Alt V324
Mabude NI	Alt E480
Mahlalela AF	E485
Mahlangu SJ	Alt E461
Maine MS	Alt E360
Malebo SM	Alt V152
Manie MS	E457
Mapisa-Nqakula NN	V254
Marais G <i>Senator</i>	Alt M207
Maree JW	M105
Mashamba HJ	V156
Matthews VJ	Alt 120 Plein
Mayimele HW	Alt E476
Mchunu ES <i>Senator</i>	Alt V104
Modisenyane LJ	V259
Mongwaketse SJ	Alt V359
Montsitsi SD	E544
Moosa MV Dep Min	Alt P1105
Mukhuba TT <i>Senator</i>	Alt V383
Nzimande BM	Alt GH118
Peires JB,	Alt E573
Peters ED	Alt E328



NAME		EOOM NO
Rabinowitz R <i>Senator</i>		GH79
Rajoo K	Alt	GH25
Richards I	Alt	V217
Saaiman PW	Alt	M361
Seperepere MS		E554
Shandu EEN		GH94
Sisulu MV	Alt	V278
Smith PF		GH28
Sulliman MA <i>Senator</i>	Alt	V356
Tsenoli SL	Alt	V410
Verwoerd M		E403
Vilakazi MI		E327

### SCHEDULE OF MEETINGS

No	Date	Theme Committee	Core Group
1.	19 Sept 94	*	*
2.	22 Sept 94		*
3.	24 Oct 94	*	
4.	28 Oct 94		*
5.	31 Oct 94	*	
6.	7 Nov 94	*	
7.	9 Nov 94		*
8.	24 Jan 95		*
9.	25 Jan 95	*	
10.	26 Jan 95	*	
11.	27 Jan 95		*
12.	30 Jan 95	*	
13.	31 Jan 95		*
14.	1 Feb 95	*	
15.	6 Feb 95		*
16.	7 Feb 95	*	*
17.	8 Feb 95		*
18.	14 Feb 95		*
19.	16 Feb 95	*	
20.	20 Feb 95		*
21.	27 Feb 95	*	*
22.	6 March 95	*	*
23.	9 March 95		*
24.	13 March 95	*	
25.	14 March 95		*
26.	20 March 95		*
27.	23 March 95		*
28.	27 March 95	*	
29.	30 March 95		*



30.	3 April 95	*	*
31.	18 April 95		*
32.	19 April 95	*	
33.	20 April 95	*	*
34.	4 May 95		*
35.	8 May 95	*	
36.	11 May 95		*
37.	15 May 95	*	*
38.	22 May 95		*
39.	29 May 95	*	*
40.	5 June 95	*	
41.	12 June 95	*	*
42.	16 June 95		
43.	26 June 95	*	*
44.	31 July 95		*
45.	1 Aug 95	*	*
46.	7 Aug 95	*	
47.	8 Aug 95	*	
48.	15 Aug 95	*	
49.	21 Aug 95	*	
50.	28 Aug 95	*	

\* Refers to the days the Theme Committee or Core Group met.

The Theme Committee met on 30 occasions whilst the Core Group met 31 times.



### INTERNAL OR ORIENTATION WORKSHOPS HELD

The Theme Committee held internal workshops and seminars as tabulated below:

<b>Dates</b>	<b>Issues</b>	<b>Speakers</b>
25 Jan 1995	Input on the constitution making process and the role of the CPG	Mr Thozamile Botha
24 Feb 95	Democracy: The Canadian experience	Hon Joe Clark
15 May 1995	Local Government	1. Andrew Boraine 2. Andre Cornelissen 3. Blake Mosley
22 May 1995	Intergovernmental Relations	1. Dr AW Johnson 2. Prof A Johnson 3. Prof D Davis
22 May 1995	Seminar on Intergovernmental relations	1. Mr Matthew Phosa
15 August 95	Seminar on Intergovernmental relations	1. Minister R Meyer 2. Deputy Min VM Moosa
05 June 1995	Financial and Fiscal Relations	1. Dr AW Johnson 2. Hon G Meyer-Vorfelder 3. Mr MU Offor 4. Prof L Liebloots 5. Mr M van Blerk

### PUBLIC HEARINGS HELD

<b>Date</b>	<b>Issue</b>	<b>Stakeholders</b>
14 Aug 95	1. Role, structure and function of Local Government and it's relationship with other levels of government.  2. Delivery of services: Financial implications.  3. Rural Local Government.	* See attached annexure



1	Association of Regional Local Government of South Africa
2	Centre for Rural Legal Studies
3	City of Cape Town
4	City of Kimberley
5	City of Port Elizabeth
6	CONTRALESA
7	Department of Constitutional Development
8	Federation of Employers' Organisations
9	KwaZulu-Natal King's Council
10	KwaZulu-Natal - MEC for Local Government
11	Land and Agriculture Policy Centre
12	Lawyers for Human Rights
13	National Land Committee
14	Non-Aligned Group (NAG)
15	Regional Consultative Forum on Rural Development (RCF)
16	National Rural Development Forum
17	South African Municipal Workers Union (SAMWU)
18	University of Fort Hare
19	University of Fort Hare
20	University of Potchefstroomse
21	University of Pretoria
22	University of the North
23	University of Transkei
24	Urban Sector Network
25	Volkstaat Council

## BRIEF ASSESSMENT

Three Chairpersons often meant that there was a lack in consistency in the direction given to the Theme Committee.

The fact that the nature of the issues that fell within the ambit of the Theme Committee were highly contested meant that Political Parties were unwilling to commit themselves on many of the matters. This had an adverse effect on the extent to which the Committee was able to complete its mandate.

The matter of Intergovernmental Relations is highly technical in nature, hence public submissions on the said matter were not forthcoming. Thus Party positions were to a large extent not informed by public opinion.

Issues informing the Block on Financial and Fiscal Relations were technical and therefore inaccessible to the majority of members.

Given the political sensitivity of the issues that the Theme Committee had to deliberate on, it is a miracle that so much was achieved.



# **THEME COMMITTEE FOUR**

## **FUNDAMENTAL RIGHTS**

### **FINAL INTERNAL REPORT**

**OCTOBER 1995**

## 1. INTRODUCTION

Theme Committee Four was one of the six Theme Committees created as per resolution of the Constitutional Assembly. Its function or objective was to draft a Bill of Rights.

The mandate and work of the Committee was guided by Constitutional Principle II which states:

" Everyone shall enjoy all universally accepted fundamental rights, freedoms and civil liberties, which shall be provided for and protected by entrenched and justiciable provisions in the Constitution, which shall be drafted after having given due consideration to *inter alia* the fundamental rights contained in Chapter Three of this Constitution"

Based on the above Principle, and its reference to Chapter 3 of the Interim Constitution, a work programme was drafted which was the basis from which the Committee worked.

## 2. WORK PROGRAMME

The Committee drafted a work programme which identified the following agenda items as a basis for discussion.

1. Constitutional Principle II
2. Nature of Bill of Rights and application
3. Human Dignity
4. Privacy
5. Servitude and Forced Labour
6. Freedom and Security of the person
7. Freedom of Expression
8. Access to Information
9. Freedom of Religion, belief and opinion
10. Freedom of Association
11. Life
12. Equality
13. Socio-Economic Rights
  14. Property
  15. Education
  16. Environment
  17. Economic Activity
  18. Labour Relations
  19. Freedom of Language and Culture
  20. Other socio-economic rights
21. Reproductive Rights



22. Political Rights
23. Citizens' rights
24. Freedom of movement
25. Freedom of residence
26. Freedom of demonstration and petition
27. Children's rights
28. Administrative justice
29. Access to Courts
30. Detained, arrested and accused persons
31. Limitation of rights
32. States of emergency and suspension of rights
33. Interpretation of Bill of Rights

Parties were then asked to table submissions on these, and these were tabled and discussed at meetings of the Committee.

The public and civil society were at the same time also asked to submit on these issues, and their submissions were also considered by the Committee which received full copies of all the public submissions received.

The Theme Committee did not find it helpful to consider such questions as the horizontal application of the Bill of Rights, who the bearers of the rights should be and whether the rights should be subject to limitation in isolation.

It was therefore decided to proceed with a detailed examination of these questions and their consequences in relation to each of the rights in the work programme. In this way many of the issues were clarified, and the number of contentious issues reduced.

Certain of the matters that were initially identified as contentious are in fact matters which in the end were accommodated in other ways or elsewhere in the Bill of Rights, and were thus identified as outstanding.

It remained for the parties in the Constitutional Committee to consider their positions on these matters in the light of the solutions suggested by the Technical Committee in their Explanatory Memoranda.

## 2.2 PARTY SUBMISSIONS

The Parties made submissions on the following aspects of the various rights:

1. *The content and scope of the right;*
2. *The nature of the duty imposed on the State;*
3. *The application of the right to common law and customary*



*law;*

4. *The bearers of the right: natural persons/juristic persons, citizens/illegal aliens.*
5. *Limitations on the right.*

### 2.3 THEME COMMITTEE REPORT

The Theme Committee reported on each right, after the parties had made their submissions and had these discussed in the Theme Committee.

In the Theme Committee Report contentious, non-contentious and outstanding issues were identified in relation to the aspects above (see 2.2). The submissions from the public were used both to inform the party submissions, and to assist the Technical Committee in preparing their explanatory memorandum and draft text.

### 2.4. EXPLANATORY MEMORANDA

The Technical Committee prepared the explanatory memoranda based on the Theme Committee Report.

This memoranda covered the following areas in relation to the particular rights:

1. *Compliance with Constitutional Principle II*
2. *An overview of relevant public international law*
3. *An overview of comparative law*
4. *Relevant South African law*
5. *The Theme Committee Report, including suggested resolutions of contentious and outstanding issues;*
6. *A provisional draft formulation of the right.*

Explanatory memoranda on the rights to health and social assistance were not prepared as the relevant party submissions were received too late. However, suggested draft formulations of these rights were drafted by the Technical Committee.

### 2.5 STYLE AND LANGUAGE

The draft formulations prepared by the Technical Committee were based on the party submissions to Theme Committee 4 and on the discussions in the Constitutional Committee relating to those rights. The principles of plain language were applied in drafting the various clauses to ensure the clarity and accessibility of the Bill of Rights.



The Technical Committee were assisted by Phil Knight in identifying the principles of plain language to assist in their drafting.

The Technical Committee aimed at achieving logical consistency and flow in presenting the various sections of the Bill of Rights.

### 3. STAFF DEPLOYED

John Tsalamandris	-	Managing Secretary
Zuleiga Adams	-	Minute Secretary
Pamela Crowley	-	Administrative Secretary

### 4. TECHNICAL COMMITTEE

Prof H Cheadle  
 Prof J Dugard  
 Ms S Liebenberg  
 Prof I Rautenbach

## 5. THEME COMMITTEE MEMBERS

The 3 rotating chairpersons of the Committee were:

- AJ Leon (DP)
- MMS Mdladlana (ANC)
- GB Myburgh (NP) later replaced by RJ Radue

Members :

Asmal K	Mohamed IJ (Alternate)
Bakker D	Molekane RS
Cachalia IM	Mulder CP
Camerer S	Myakayaka-Manzini YL
Chalmers J	Njobe MAA (Alternate)
Coleman M	Ntuli MIB
Dlamini BO	Pandor GNM
Ebrahim G (Alternate)	Phenethi MM (Alternate)
Fenyane SLE	Piliso MM
Gamndana T	Radue RJ
Gasa XF (Alternate)	Rasmeni SM
Govender D	Ranchod B
Govender P (Alternate)	Rhoda RT
Green LM	Saloojee E
Hajaij F	Sizani RK
Jooste JA (Alternate)	Skosana BM
Kgoali JL	Smuts D (Alternate)
Leon AJ	Solomon G
Lubidla EN (Alternate)	Sosibo JE
Mabandla BS	Surty ME
Mashamba TGG	Thabethe E
Masher MG (Alternate)	Thompson B
Mathebe P	Tshivhase TJ
Mbuyazi LR (Alternate)	Tyobeka VM
Mdladlana MMS	Viljoen V
Meshoe KR (Alternate)	Vos SC
Mfayela SB (Alternate)	Werth CH (Alternate)
Mfebe MW (Alternate)	Xingwana LM (Alternate)
Mncwango MA	



## 6. SCHEDULE OF MEETINGS

## SEPTEMBER 1994 - AUGUST 1995

No	Theme Committee
1.	19/09/94
2.	24/10/94
3.	31/10/94
4.	07/11/94
5.	14/11/94
6.	25/01/95
7.	26/01/95
8.	31/01/95
9.	01/02/95
10.	03/02/95
11.	07/02/95
12.	14/02/95
13.	27/02/95
14.	06/03/95
15.	13/03/95
16.	20/03/95
17.	27/03/95
18.	03/04/95
19.	19/04/95
20.	20/04/95
21.	08/05/95 (08h00)
22.	08/05/95 (14h00)
23.	15/05/95
24.	22/05/95
25.	29/05/95
26.	05/06/95
27.	12/06/95
28.	15/06/95
29.	26/06/95
30.	07/08/95
31.	08/08/95
32.	14/08/95
33.	03/02/95

## Other non T\C meetings involving T\C members

4/03/95  
5/03/95

### Core Group meetings

NO.	DATE
1.	23/09/94
2.	24/10/94
3.	2/11/94
4.	9/11/94
5.	14/11/94
6.	26/01/95
7.	8/02/95
8.	9/02/95
10.	20/02/95
11.	9/03/95
12.	22/03/95
13.	27/03/95
14.	3/04/95
15.	18/04/95
16.	20/04/95
17.	15/05/95
18.	5/06/95
19.	12/06/95
20.	8/08/95

### 7. SUBMISSIONS

Five thousand six hundred and thirty-four (5634) submissions were processed and catalogued by the Theme Committee by 30 June 1995. Subsequently, after the Committee had completed its work another one thousand three hundred and sixty (1360) submissions were received.

Over 12 000 petitions were received by the Committee.

### 8. WORKSHOPS

A workshop on Human Rights and International Law was held in April 1995. This was organised by ourselves, the Speaker's Office and the Raoul Wallenberg Institute from Sweden. Speakers included both foreign and local.

Members also attended workshops on Gender, Pornography, Abortion, Expression. These were organised by various private organisations such as the Univ. of Western Cape Community Law Centre, the MPD, the Freedom of Expression Institute.



## 9. PUBLIC HEARINGS

A number of CA public sector hearings were also attended by members and members of the Technical Committee. The sectors called were -

- Children's Rights
- Labour
- Women
- Religion
- Traditional Authorities
- Youth
- Business
- Land
- Socio-Economic Rights

## 10. CONCLUSION

There is no format or method for drafting a Bill of Rights. The Theme Committee, Technical Committee and Secretaries from the outset accepted this and attempted to deal with the matter in a way that avoided conflict between parties, while allowing for a consideration of the issues in a systematic manner. By dealing with the rights in the Bill of Rights in an individual manner, ie. right by right, it was felt that the implications and consequences of these rights would be properly considered and thorough investigation of the issues could take place.

We feel we succeeded in doing this, and managed by the end of the process to present 33 reports and explanatory memoranda, and a Draft Bill of Rights which was tabled at the Sub-Committee of the Constitutional Committee on 9 and 10 October 1995.

# **THEME COMMITTEE FIVE**

## **JUDICIARY AND LEGAL SYSTEMS**

### **FINAL INTERNAL REPORT**

**OCTOBER 1995**



## **INTRODUCTION**

Theme Committee 5 dealt with the Courts and Administration of Justice.

The Committee divided their Work Programme into Two Blocks. Two separate reports were presented to the Constitutional Committee.

### **BLOCK ONE**

- a) The Structure of the Court System
- b) The Relationship between the different levels of Courts
- c) The Composition and Appointment of Judicial Officers
- d) Access to Courts including lay Participation

### **BLOCK TWO**

- a) Traditional Courts and Customary Law
- b) Legal Education and Profession
- c) Transitional Arrangements
- d) Correctional Services
- e) International law and Interpretation
- f) Attorney's-General

The issues in Block One were discussed and debated by the Committee and All Major Role Players through Workshops and Public Hearings. The Technical Advisors then produced a Report based on these deliberations and the Public Submissions.

The Committee, with the assistance of the Technical Advisors, then produced a draft which was forwarded to the Constitutional Committee. The Constitutional

Committee instructed its' Sub-Committee to reach agreement on the outstanding issues in the draft.

This draft was then reformulated (+ 30 times) until final consensus was reached. This draft is now at the state of Technical Refinement and is part of the Constitutional Committee's deliberations.

There has been unanimous greement on all issues in Block Two except the matter relating to the Attorney's-General. This issue has been forwarded to the Constitutional Committee for discussion and agreement and its Sub-Committee is presently dealing with the matter.



## AGENDA ITEMS

BLOCK 1 TO 4	<p>1. The Structure of the Court System</p> <p>2. The Relationship between the different levels of Courts</p> <p>3. The Composition and appointment of Judicial Officers</p> <p>4. Access to the Courts including lay participation.</p> <p><u>Relevant Constitutional Principles: II, IV, V, VI, VII</u>  <u>Relevant sections of Interim Constitution: Chapter 7 and sections 241 and 242</u></p> <p><u>Relevant constitutional principles: II, VII</u>  <u>Relevant sections of Interim Constitution: 96, 97, 101, 102, 241 and 242</u></p> <p><u>Relevant Constitutional Principles: II, IV, VII</u>  <u>Relevant sections of Interim Constitution: 96, 97, 98, 99, 100</u></p> <p><u>Relevant sections of Interim Constitution: Section 101(3) to (6)</u></p> <p><u>See CP VII and section 103</u></p> <p><u>See CP VII and section 104, 105 and 109</u></p>
BLOCK 5	<p>5. Traditional Authorities &amp; Customary Law</p> <p><u>See CP XIII(1) and section 103</u></p>
BLOCK 6	<p>6. Attorneys-General and other judicial appointments</p> <p><u>See section 108</u></p>
BLOCK 7	<p>7. General</p> <p><u>See sections 35, 107, 231 and 232</u></p>

BLOCK 8	8. Legal Education and Legal Profession
BLOCK 9	9. Transitional Arrangements
	<b>See Chapter 15</b>

Please find attached the relevant Constitutional Principles relevant to Theme Committee 5.

PS BLOCK 10 - Correctional Services - added later in the process to the Work Programme.



**2. STAFF**

Noël Taft	Managing Secretary
Eunice van Eck	Minute Secretary
Beverline Thomas	Administrative Secretary

**3. TECHNICAL COMMITTEE**

Paul Benjamin  
Judge PJJ Olivier  
Leah Gcabashe  
Adv J Gauntlett

#### 4. THEME COMMITTEE MEMBERS

NUMBER	NAME
1.	Bruwer A (Alternate)
2.	Dalling DJ
3.	De Lange J
4.	De Ville R
5.	Ebrahim AG
6.	Fredericks GA
7.	Fisher SD
8.	Gandhi E
9.	Gibson DHM
10.	Groenewald RH
11.	Grove SP
12.	Hofmeyr WA
13.	Jana DP
14.	Jiyane ZB (Alternate)
15.	Jassat EE
16.	Khasu MJ
17.	Leon AJ (Alternate)
18.	Le Roux JW (Alternate)
19.	Mahlangu GL
20.	Matthee PA
21.	Matthews VJG
22.	Mdutyana SNN
23.	Mgidi JS
24.	Mkhatshwa S
25.	Moeti SE
26.	Mogale MPE (Alternate)
27.	Moosa MW



28.	Mushwana ML (Alternate)
29.	Mzizi M
30.	Naidoo AGV (Alternate)
31.	Nel AC
32.	Ngcuka B
33.	Ngwane L
34.	Ntsizi TC (Alternate)
35.	Omar D (Alternate)S
36.	Saloojee RAM
37.	Schutte DPA
38.	Singh L (Alternate)
39.	Singh N (Alternate)
40.	Sonjica BP
41.	Van der Merwe J
42.	Van Heerden F

**CORE GROUP MEMBERS**

NUMBER	NAME
1.	De Ville J
2.	Ebrahim AG
3.	Gibson DHM
4.	Hofmeyr W
5.	Ngcuka B
6.	Schutte D
7.	Van der Merwe J

## **CHAIRPERSONS**

1. Hofmeyr WA
2. Schutte D
3. Van der Merwe J

## **SCHEDULE OF MEETINGS**

### **A THEME COMMITTEE MEETINGS**

<b>NUMBER</b>	<b>DATE</b>	<b>MEETING</b>
1.	19th September 1994	Theme Committee Meeting
2.	24th October 1994	Theme Committee Meeting
	26th October 1994	Joint Core Group TC2, 5 & 6
3.	31st October 1994	Theme Committee Meeting
4.	7th November 1994	Theme Committee Meeting
5.	14th November 1994	Theme Committee Meeting
6.	25th January 1995	Theme Committee Meeting
7.	30th January 1995	Theme Committee Meeting
8.	1st February 1995	Theme Committee Meeting
9.	7th February 1995	Theme Committee Meeting
10.	6th March 1995	Theme Committee Meeting
11.	13th March 1995	Theme Committee Meeting
12.	20th March 1995	Theme Committee Meeting
13.	27th March 1995	Theme Committee Meeting
14.	19th April 1995	Theme Committee Meeting
15.	8th May 1995	Draft Sub-Committee
16.	10th May 1995	Draft Sub-Committee
17.	15th May 1995	Draft Sub-Committee
18.	24th May 1995	Draft Sub-Committee
19.		



20.	29th May 1995	Theme Committee Meeting
21.	31st May 1995	Draft Sub-Committee
22.	5th June 1995	Theme Committee Meeting
23.	13th June 1995	Draft Sub-Committee
24.	15th June 1995	Draft Sub-Committee
25.	19th June 1995	Draft Sub-Committee
26.	26th June 1995	Theme Committee Meeting
27.	31st July 1995	Draft Sub-Committee
28.	3rd August 1995	Theme Committee Meeting
29.	7th August 1995	Theme Committee Meeting
30.	8th August 1995	Theme Committee Meeting
31.	11th August 1995	Draft Sub-Committee
32.	14th August 1995	Draft Sub-Committee
33.	14th August 1995	Final Theme Committee

Many Theme Committees were utilised as Public Hearing

Committee meetings were utilised as public hearings

## **B      CORE GROUP MEETINGS**

<b>NO.</b>	<b>DATE</b>
1.	7th November 1994
2.	30th January 1994
3.	7th February 1995
4.	8th February 1995
5.	14th February 1995
6.	15th February 1995
7.	20th February 1995
8.	22nd February 1995
9.	6th March 1995



10.	13th March 1995
11.	4th April 1995
12.	7th April 1995
13.	20th April 1995
14.	3rd May 1995
15.	15th May 1995
16.	24th May 1995
17.	29th May 1995
18.	22nd May 1995
19.	2nd June 1995
20.	26th June 1995
21.	29th June 1995
22.	1st July 1995
23.	31st July 1995
24.	1st August 1995
25.	2nd August 1995

The Core Group met on many more occasions but on an informal, ad hoc basis.

### **C PUBLIC HEARINGS**

<b>NO.</b>	<b>DATE</b>	<b>ROLE PLAYERS</b>
1.	1st February 1995	Judge President Friedman, Supreme Court Cape Town Prof N Steytler, UWC (Blocks 1 - 4)
2.	7th February 1995	Judges Farlam & Selikowitz Prof N Steytler, UEC (Blocks 1 - 4)
3.	8th February 1995	NADEL & Lawyers for Human Rights (Blocks 1 - 4)
4.	9th February 1995	Prof D Nina, Dept Criminology, UCT SANCO : Eastern Cape & Alexandra Township
5.	15th February 1995	General Council of the Bar : Adv Wallace (Blocks 1 - 4)



6.	16th February 1995	Association of Law Societies : M Steyn, AG Brooks & D Oliveira
7.	20th February 1995	Magistrates Commission : Judge K van Dijkhorst
8.	27th February 1995	Unisa Workshop on Blocks 1 - 4 of the Work Programme which included all the major role players in Pretoria.
9.	28th February 1995	Open Public Hearing on Blocks 1 - 4 Holiday Inn, Johannesburg
10.	28th February 1995	Public Hearing on Blocks 1 - 4 Wits University, Law Faculty, Jhb.
11.	8th May 1995	Adv RGB Choudree : Durban Westville on Traditional Authority & Customary Law
12.	22nd May 1995	Genl De Bruyn, Prof Van Zyl Smit, Adv C Human and Adv WF Jurgens on Correctional Services (which was added to our Work Programme at a later stage of the process
13.	29th May 1995	Association of Law Societies NADEL Adv AP de Vries SC Adv JSM Henning SC Adv ZH de Beer Adv PP Stander - on the issue of the Attorneys-General
14.	26th July 1995	Consultation Forum in Sandton to deal with the matter of the Attorney's - General All major role players attended

In addition to the above was a Workshop on Traditional Authorities which included TC5 and all other relevant Theme Committees dealing with this issue.

#### D. SUBMISSIONS

We have received and processed 477 submissions to date. The submissions were mainly from the organised civil society.

# **THEME COMMITTEE 6.1**

## **SPECIALISED STRUCTURES OF GOVERNMENT PUBLIC ADMINISTRATION AND ELECTORAL COMMISSION**

### **FINAL INTERNAL REPORT**

**OCTOBER 1995**



## 1 INTRODUCTION

Theme Committee 6.1 was established under the aegis of Theme Committee 6 to deal with "Specialised Structures of Government" focusing specifically on **PUBLIC ADMINISTRATION** and the **ELECTORAL COMMISSION**.

## 2 STAFF DEPLOYED

The following staff made up the secretariat of Theme Committee 6.1:

- \* **Mr Nkateko "Snakes" Nyoka : Managing Secretary**
- \* **Ms Saaliegah Zardad : Minute Secretary**
- \* **Ms Penny Carelse : Administrative Secretary**

## 3. TECHNICAL COMMITTEE

The Technical Committee comprised of:

- a) **Public Administration**  
Professor Piet van der Merwe  
Ms Luci Nyembe
- b) **Electoral Commission**  
Ms Dhaya Pillay  
Mr Attie Tredoux  
Mr Peter Harris

## 4. THEME COMMITTEE MEMBERS

The Chairperson of the Theme Committee was Mr Ismail Vadi.

The Theme Committee comprised of the following members:

Name & Initials	Party	Room
1. Alant, T G	NP	M137
2. Booi, M S (Alt)	ANC	E483
3. Chirole, J	FF	M506
4. De Beer, S J	NP	M107
5. Dexter, P D	ANC	V218

6. Fankomo, F C	ANC	E578
7. George, M (Alt)	ANC	E534
8. Gogotya, N J	NP	M328
9. Hlengwa, M W	IFP	G123
10. Jordaan, J A	DP	M540
11. Khoza, T S (Alt)	IFP	G122
12. Love, J Y	ANC	E307
13. Malatsi, D M	NP	M365
14. Mkwaiyi, Z W	ANC	V102
15. Mlambo-Ngcuka, P G	ANC	E459
16. Mokitlane, M C	ANC	E509
17. Neerahoo, H M	IFP	G54A
18. Ngubane, B S	IFP	P1008
19. Singh, N (Sen)	IFP	G15
20. Skweyiya, Z S T (Alt)	ANC	P337
21. Smuts, D	DP	
22. Tshabalala, M E (Alt)	ANC	E465
23. Vadi, I (Chair)	ANC	E481
24. Watson, A	NP	M307
25. Ebrahim E I	ANC *	E435
26. Pretorius I J	NP	M302
27. Sikakane M R	ANC *	E557

\* These members attended the proceedings of the Subtheme Committee unofficially since the Administration was not formally notified of their participation.



## 5. WORK PROGRAMME

<b>THEME COMMITTEE 6.1            WORK PROGRAMME            PUBLIC ADMINISTRATION            [24 October 1994 - 1 August 1995]</b>		
Block	Date	Event
1	02/11/94	Meeting
	14/11/94	Meeting
	25-6/1/95	Workshop: Public Administration - International Perspectives
	31/01/95	Meeting
	01/02/95	Meeting: Mancom of STC 6.1
	06/02/1995	Submission: 1st draft report on the Public Service workshop by the Secretariat.
2	07/02/1995	Meeting - Discussion: 1st draft report on the Public Admin. by the Subtheme Committee.
	14/02/1995	Meeting: 1st draft report on the Public Service tabled for consideration by the Theme Committee
3	27/02/1995	Public Hearing: Director Generals
4	06/03/1995	Public hearing: Public Service Central Bargaining Chamber, Trade Unions, D.G.: Department of Education, Education Labour Relations Council and NAPTOSA
	06/03/1995	Subtheme Committee meeting with Media Department
	13/03/1995	Public hearing: Academic Institutions and Non-Governmental Organisations.
	14/03/95	1) Ministry for the Public Service 2) Public Service Commission
5 - 6	16/03/95	Public Hearing: Provincial Public Service Commission



20/03/1995	Public hearing: All interest groups at local government level, i.e, Town Clerk's forum, United Municipal Executive, Transitional Local Councils, Transitional Metropolitan Chambers, Civics and Municipal Employee Organisation and Traditional Authorities.
27/03/95	Public Hearing: Central Bargaining Chamber & Provincial Legislatures
29/03/95	Meeting
03/04/95	Meeting
19/04/95	Workshop: Public Admin: African and Asian Experience.
20/04/95	2nd draft report on Public Administration tabled for consideration by the Theme Committee.

**THEME COMMITTEE 6.1  
WORK PROGRAMME  
ELECTORAL COMMISSION  
[2 May 1995 - 1 August 1995]**

Block	Date	Event
7-9	02/05/95	Meeting: Electoral Commission
	08/05/95	<b>TC6.1 Meeting:</b> Technical Advisors workshop report on the Election Commission <b>Parties' Submissions</b>
	15/05/95	<b>Workshop: Electoral Commission - Domestic Perspective</b>
	22/05/95	<b>TC6.1 Meeting</b> Technical Advisors submit first report on the Election Commission <b>Workshop: Electoral Commission - International Perspective</b>
	29/05/95	Parties' submissions: Deadline
	05/06/95	<b>TC6.1 Meeting</b> Technical Advisors table first report on the Electoral Commission Debate: Electoral Commission Report
	10	19/06/95
26/06/95		<b>TC6.1 Draft Text:</b> Submission: Draft text - Electoral Commission



01/08/95	<b>TC6.1 Draft Text:</b> Discussion by Subtheme Committee
14/08/95	<b>Management Committee Meeting:</b> Electoral Commission report and draft text submitted to MC.
18/08/95	<b>Constitutional Committee Meeting:</b> Electoral Commission report and draft text submitted to CC.

## 6. SCHEDULE OF MEETINGS

The Committee held 24 meetings, excluding Core Group meetings and including workshops and public hearings. Three meetings were not minuted since they dealt with issues of process only.

The first four meetings of the Committee were held in 1994. At that stage Theme Committee 6.1 had not yet been formalised as a substructure of Theme Committee 6.

The following meetings of the Committee were held:

1st	24 October 1994	Theme Committee
2nd	31 October 1994	Theme Committee
3rd	2 November 1994	Subtheme Committee
4th	14 November 1994	Subtheme Committee
6th	31 January 1995	Subtheme Committee
1st	1 February 1995	Mancom of Subtheme Committee
7th	7 February 1995	Subtheme Committee
8th	14 February 1995	Subtheme Committee
11th	29 March 1995	Subtheme Committee
12th	3 April 1995	Subtheme Committee
14th	20 April 1995	Subtheme Committee
15th	2 May 1995	Subtheme Committee
16th	8 May 1995	Subtheme Committee
19th	22 May 1995	Subtheme Committee
21st	5 June 1995	Subtheme Committee
22nd	19 June 1995	Subtheme Committee



24th	1 August 1995	Subtheme Committee
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## 7. SUBMISSIONS

159 submissions were received and processed by the Subtheme Committee.

## 8. WORKSHOPS AND PUBLIC HEARINGS HELD

The Committee held the following workshops and public hearings:

Date	Topic	Speakers/Participants
25-6/01/95	Workshop: Public Administration: International Perspectives	See Annexure "A"
27 February 1995	Public Hearing: Public Administration.	See Annexure "B"
6 March 1995	Public Hearing: Public Administration.	See Annexure "C"
13 March 1995	Public Administration: Public Administration:	See Annexure "D"
14 March 1995	Public Hearing: Public Administration.	See Annexure "E"
16 March 1995	Public Hearing: Public Administration.	See Annexure "F"
20 March 1995	Public Hearing: Public Administration.	See Annexure "G"
27 March 1995	Public Hearing: Public Administration: Provincial Legislatures	See Annexure "H"



27 March 1995	Public Hearing: Public Administration.	See Annexure "H"
19 April 1995	Workshop: Public Administration: Afro-Asian Experience	See Annexure "I"
15 May 1995	Workshop: Electoral Commission: SA's Experience.	See Annexure "J"
22 May 1995	Workshop: Electoral Commission - International Perspectives.	See Annexure "J"
1 June 1995	Public Hearing: Electoral Commission	See Annexure "J"

## 9. ASSESSMENT OF THE WORK OF THE THEME COMMITTEE

The Subtheme Committee functioned efficiently and effectively under the guidance of its able Chairperson, Mr Ismail Vadi. The Subtheme Committee was the first committee to present to the CA draft formulations for debate and discussion. The Subtheme Committee finished its workprogramme timeously, on 1 August 1995.

The following are some of the strengths of the work of the Subtheme Committee:

- i) The Committee made a concerted effort to engage with civil society and other stakeholders. Views emanating from civil society were key in guiding and changing political parties' positions.
- ii) The open mindedness with which the Theme Committee members approached its intricate work ensured speedy resolutions of even the trickiest of problems. In this connection it is fair to mention that Theme Committee members such as Janet Love, Phumzile Ngcuka, Pasca Mokitlane, Sam de Beer, Kobus Jordaan and Joseph Chirole played a strikingly interesting facilitative role.

- iii) The recognition by the Theme Committee that South Africa is a developing democracy and that solutions to its problems lies not only in the experiences of the First World, but also the Third World.
- iv) The Theme Committee's technical experts were men and women with extensive expertise and experience in their respective fields.

The following are some of the weaknesses of the work of the Committee:

- i) Attendance at meetings was sometimes very poor and erratic. This often delayed the taking of decisions on crucial matters.
- iii) The failure by Theme Committee members to realise that Theme Committee recommendations were neither binding on the CA nor CC. In this regard it was unfortunate, when the Theme Committee responded negatively when the CC rejected some of the Theme Committee's proposals on the draft formulations on Public Administration.



**ANNEXURE "A"**

**WORKSHOP  
PUBLIC ADMINISTRATION AND THE CONSTITUTION  
International Experience  
25 January 1995**

<b>NAME</b>	<b>INSTITUTIONS</b>
Peter Zimmerman	Associate Dean for Teaching Programmes, JF Kennedy School of Government, Harvard University, United States of America.
Robert Behrens	Director, Southern Africa Development Unit, Civil Service College, United Kingdom.
Francis Plowden	Public Sector Management Consultant, Coopers and Lybrand, United Kingdom
Francois Dreyfus	Advisor to the Director for legal, political, economical and managerial studies, Ministry of Education, France.
Dr Bernard Beus	
Thijmen Koopmans	Advocate General of the Supreme Court, The Hague, Netherlands.
Luigi Ferrari- Bravo	
PJ van der Merwe	Professor of Public Administration, Department of Public Administration, University of Pretoria.
Fanie Cloete	Professor of Public Administration, Department of Public Administration, University of Stellenbosch.
Robinson Ramaite	Advisor to MEC for Education, Gauteng.
Ms Luci Nyembe	Senior Researcher, Centre for Applied Legal Studies, University of the Witwatersrand.
Chris Thornhill	Professor of Public Administration, Department of Public Administration, University of Pretoria.
Mark Swilling	Director, Public Policy and Development Management, University of the Witwatersrand.
Job Makgoro	Director General, North West Province

ANNEXURE "B"

**PUBLIC HEARING  
PUBLIC ADMINISTRATION AND THE CONSTITUTION  
Heads of Government's Departments  
27 FEBRUARY 1995**

<b>NAME</b>	<b>DEPARTMENT</b>
W Cobbet	Director General, Department of Housing.
T Rakgoale	Director General's Office, Northern Cape Province.
HL Rust	Public Service Commission, Orange Free State.
LN Wessels	Orange Free State Provincial Government.
CJ Schnetler	Western Cape Provincial Administration.
A Grobler	Kwazulu-Natal Provincial Administration.
HDJ Rossouw	Chief Director, Department of Finance.
FM Mbatha	Director General, Eastern Transvaal Province.
JJ Fouche	Acting Director General, Northern Transvaal Province.
JTJ Wolmaton	Chief Director, Department of Welfare.
NR Haysom	Office of the President
T Geldenhuys	South African Police Service
LH Evans	Director General, Department of Foreign Affairs
B van der Spuy	Department of Sport and Recreation.
M Tyamzashe	Director General, Department of Sport and Recreation



**ANNEXURE "C"**

**PUBLIC HEARING  
PUBLIC ADMINISTRATION AND THE CONSTITUTION  
Central Bargaining Chamber  
6 MARCH 1995**

<b>NAME</b>	<b>DEPARTMENT</b>
R Stumpt	Education Labour Relations Council
RJ du Preez	Deputy Director General, Department of Education
T Mseleku	Chief Director: Service and Labour Relations, Department of Education
T Sapula	Cisa, Department of Health
A Vergotine	National Professional Teachers Organisation of South Africa.
LM Maree	National Professional Teachers Organisation of South Africa.
C van Rensburg	Public Servants Association
A Moultrie	Hospital Personnel Staff Association
H Amra	United Democratic Union of South Africa
I Ngqame	National Education, Health and Allied Workers Union
S Samuel	National Education, Health and Allied Workers Union
L Sotaka	National Education, Health and Allied Workers Union
N Phobosime	National Education, Health and Allied Workers Union
N Thobejane	National Education, Health and Allied Workers Union
P Brewer	Masa
DF Morrell	Masa
V Carelse	South African Democratic Teachers Union

**ANNEXURE "D"**

**PUBLIC HEARING  
PUBLIC ADMINISTRATION AND THE CONSTITUTION  
Academic Institutions and Non-Governmental Organisations  
13 MARCH 1995**

<b>NAME</b>	<b>ORGANISATIONS/INSTITUTIONS</b>
R Penny	Environmental Justice Networking Forum
M Swilling	Graduate School of Public and Development Management, University of the Witwatersrand.
R Cameron	Department of Political Studies, University of Cape Town
L Hattenbach	Education Alive
O Hohls	School of Government, University of the Western Cape
GF Lungu	School of Government, University of the Western Cape
M Turpin	SA Advanced Education Project
F Cloete	Department of Public Administration, University of Stellenbosch.
A van Rooyen	Department of Public Administration, University of Stellenbosch.
I Meyer	Department of Public Administration, University of Stellenbosch.
P Benjamin	Centre for Applied Legal Studies, University of the Witwatersrand.



**PUBLIC HEARING  
PUBLIC ADMINISTRATION AND THE CONSTITUTION  
Public Service Commission & Ministry for the Public Service and Administration  
14 MARCH 1995**

<b>NAME</b>	<b>DEPARTMENT</b>
L Stoop	Public Service Commission.
S Sangweni	Public Service Commission.
Y Muthien	Public Service Commission.
S Nkomo	Public Service Commission
I Robson	Public Service Commission.
RH Venter	Public Service Commission.
Z Skweyiya	Minister for the Public Service and Administration.
P Ncholo	Ministry for the Public Service and Administration.

**PUBLIC HEARING  
PUBLIC ADMINISTRATION AND THE CONSTITUTION  
Provincial Public Service Commissions  
16 MARCH 1995**

NAME	DEPARTMENT
TMM Pooe	Public Service Commission, Orange Free State.
HL Rust	Public Service Commission, Orange Free State.
FK Morule	Public Service Commission, Orange Free State.
M Makina	Public Service Commission, Eastern Cape.
I Weir	Public Service Commission, Eastern Cape.
M Mkoki	Public Service Commission, Eastern Cape.
T Makhubo	Public Service Commission, Eastern Transvaal.
WM Korff	Public Service Commission, Eastern Transvaal
BQF Wentzel	Public Service Commission, Western Cape.
A Burg	Public Service Commission, Western Cape.
DW Auret	Public Service Commission, Western Cape.
NE Howes	Public Service Commission, kwaZulu-Natal
AM Ndlovu	Public Service Commission, kwaZulu-Natal
O Valley	Public Service Commission, Northern Cape.
EG Bain	Public Service Commission, North West
NM Masemola	Public Service Commission, Northern Transvaal.
J Botes	Public Service Commission, Northern Transvaal.
W Mbethe	Public Service Commission, Gauteng.



PUBLIC HEARING PUBLIC ADMINISTRATION AND THE CONSTITUTION Local Government Structures 20 MARCH 1995	
NAME	DEPARTMENT
EJ Woodbridge	Pawc local govt
CM Harris	KwaZulu-Natal Municipal Association.
J Krog	KwaZulu-Natal Municipal Association.
BB Biyela	KwaZulu-Natal Municipal Association.
JLW de Clercq	United Municipal Executive.
EJM Smith	Free State Municipal Association.
DC Modungwa	Transitional Local Government, Mmabatho.
A Swart	Claeo
SM Pillay	Federation of Municipal Employers' Association.
LS Mofokeng	Federation of Municipal Employers' Association
AJ van Schalkwyk	Municipal Employers' Association.
J Venter	Federation of Municipal Employers Association.
P Dyonase	Ministry of Local Government, North West.
GDN Morgan	Minister of Housing and Local Government, Eastern Transvaal.
MW Madonsela	Ministry of Housing and Local Government, Eastern Transvaal.
TP Makhoba	Human Resources Practitioner, Eastern Transvaal
T Theron	Chief Executive Officer, Northern Transvaal Services Council.
J de Lang	Town Clerks Working Group, Northern Transvaal
JL Muller	United Municipal Executive.
J Mavhungu	East Rand Municipal Workers Union.
E Maimela	East Rand Municipal Workers Union.
P Nzimande	Ministry of Local Government and Housing, Gauteng.
M Mokoena	Ministry of Local Government and Housing, Gauteng
JT Crouse	Federation of Municipal Employers' Association
NH Gola	Transitional Local Government
M Mamase	Member of the Executive Council for Local Government, Eastern Cape.
P Dyonase	{provincial constitutional making l/gh}
L Nazo	East London, Transitional Local Council.
JG Richards	Port Elizabeth, Transitional Local Council.



PUBLIC HEARING PUBLIC ADMINISTRATION AND THE CONSTITUTION Central Bargaining Chamber (cont.): 27 MARCH 1995	
NAME	DEPARTMENT
JAV Bhali	Public Service Institute
MH Mashiya	Cisa
T Sapula	Cisa
NC Shosha	Cisa
T Nkila	Cisa
NA Sixishe	NPSWU
J Seal	Public Service League

  

PUBLIC HEARING PUBLIC ADMINISTRATION AND THE CONSTITUTION Provincial Legislatures 27 MARCH 1995	
NAME	PROVINCE
P Louw	Northern Cape
KA Sinclair	Northern Cape
TI Rakgoale	Northern Cape
J Magagula	Eastern Transvaal
GG Zama	Eastern Transvaal
TR Jordaan	Eastern Transvaal
LN Wessels	Northern Transvaal
S Cachalia	Northern Transvaal
BP Mothele	Northern Transvaal
B Barrett	Kwazulu-Natal
C Mbuyazi	Kwazulu-Natal



**WORKSHOP  
PUBLIC ADMINISTRATION: THE AFRO-ASIAN EXPERIENCE  
19 APRIL 1995**

NAME	DEPARTMENT
LR Kluver	Public Service Commission
F Cloete	Department of Public Administration, University of Stellenbosch
M Halfani (Speaker)	University of Dares' Salem, Tanzania.
TI Rakgoale	Northern Cape Provincial Legislature
B Cupido (Speaker)	Public Service Commission, Namibia.
JO Monteiro (Speaker)	University of Eduardo Mondlane, Mozambique.
KA Sinclair	Northern Cape Provincial Legislature
VV Moharir (Speaker)	Institute for Social Studies, The Hague, Netherlands.
G Lungu (Speaker)	School of Government, University of the Western Cape.
P Fitzgerald (Speaker)	Public Service Commission, Gauteng.
B Breytenbach (Speaker)	Department of Political Science, University of Stellenbosch.

<b>WORKSHOP ELECTORAL COMMISSION 15 MAY 1995</b>	
Mr PJ Copelyn	Director General, Department of Home Affairs.
Mr HAJ Swart	Senior Magistrate, Cape Town.
Mr Kehla Shubane	Co-Chairperson, Local Government Elections Task Team.
Peter Harris	Chief Director, Monitoring Division, Independent Electoral Commission.
<b>WORKSHOP ELECTORAL COMMISSION 22 MAY 1995</b>	
Keith Klein	
Patricia Keefer	
Amare Teckle	
Walter Kamba	
Justice ZR Chesoni	Chairperson, Electoral Commission, Kenya.
Justice Bobby Bwalya	
Danny MacDonald	
Michael Stoddard	
<b>PUBLIC HEARING ELECTORAL COMMISSION 1 JUNE 1995</b>	
Mr Justice Kriegler	Chairperson, Independent Electoral Commission.



**ANNEXURE "J"**

**THEME COMMITTEE 6.2**

<b>WORKSHOP ELECTORAL COMMISSION 15 MAY 1995</b>	
Mr PJ Copelyn	Director General, Department of Home Affairs.
Mr HAJ Swart	Senior Magistrate, Cape Town.
Mr Kehla Shubane	Co-Chairperson, Local Government Elections Task Team.
Peter Harris	Chief Director, Monitoring Division, Independent Electoral Commission.
<b>WORKSHOP ELECTORAL COMMISSION 22 MAY 1995</b>	
Keith Klein	
Patricia Keefer	
Amare Teckle	
Walter Kamba	
Justice ZR Chesoni	Chairperson, Electoral Commission, Kenya.
Justice Bobby Bwalya	
Danny MacDonald	
Michael Stoddard	
<b>PUBLIC HEARING ELECTORAL COMMISSION 1 JUNE 1995</b>	
Mr Justice Kriegler	Chairperson, Independent Electoral Commission.

**OCTOBER 1995**

# **THEME COMMITTEE 6.2**

## **SPECIALISED STRUCTURES OF GOVERNMENT AUDITOR GENERAL, RESERVE BANK, FINANCIAL AND FISCAL COMMISSION AND GENERAL FINANCIAL MATTERS**

### **FINAL INTERNAL REPORT**

**OCTOBER 1995**



## 1 INTRODUCTION

Theme Committee 6.2 was established under the aegis of Theme Committee 6 to deal with the following Specialised Structures of Government:

- 1.1 Auditor General;
- 1.2 Reserve Bank;
- 1.3 Financial and Fiscal Commission; and
- 1.4 General Financial Matters.

## 2 STAFF DEPLOYED

The following staff made up the secretariat of Theme Committee 6.1:

- \* **Mr Nkateko "Snakes" Nyoka : Managing Secretary**
- \* **Ms Patricia Fahrenfort: Minute Secretary**
- \* **Ms Agness Mrubata : Administrative Secretary**

## 3. TECHNICAL COMMITTEE

The Technical Committee comprised of:

- 3.1 Mr Neil Morrisson; and
- 3.2 Mr Cyrus Rustomjee.

## 4. THEME COMMITTEE MEMBERS

The Chairperson of the Theme Committee was Mr Rob Davies.

The Theme Committee comprised of the following members:

NAME	PARTY	ROOM
Andrew KM	DP	M544
Bekker H	IFP	G100
Botha WJ	FF	M515
Chiole J	FF	M506
Davies RH (Chairperson)	ANC	E410
Erwin A	ANC	120 PLEIN ST
Hogan B	ANC	E537



Jacobsz F	NP	M248
Jordaan JA	DP	M540
Makgothi H (Sen)	ANC	V101
Marais G (Sen)	NP	M207
Marcus G	ANC	V154
Nair B	ANC	E501
Sisulu M	ANC	V278
Welgemoed P	NP	M24
Woods G	IFP	G99

## 5. SCHEDULE OF MEETINGS

In the course of its work the Theme Committee has held 22 meetings.

1.	24/1/95	<b>TC Meeting:</b> Nominations for Technical Advisors to serve on the TC.
2.	31/1/95	<b>TC Meeting:</b> Consideration of Parties' Submissions.
3.	08/2/95	<b>TC Meeting:</b> Invitations for submissions extended to stakeholders.
4.	13/3/95	<b>TC Meeting</b>
5.	03/4/95	<b>TC Meeting:</b> TC6.2 members to attend TC3 meetings and TC6.2 would reconvene on 8 May 1995.
6.	08/5/95	<b>TC Meeting:</b> Consideration of Reserve Bank report and draft formulations.
7.	11/5/95	<b>TC Meeting:</b> No quorum, but members present held an informal discussion.
8.	16/5/95	<b>TC Meeting:</b> Consideration of Auditor General report and draft formulations.
9.	22/5/95	<b>TC Meeting:</b> (1) Consideration of AG draft formulations; and (2) Further deliberations on the Reserve Bank.
10	29/5/95	<b>TC Meeting:</b> Consideration of the draft formulations on the AG.



11.	05/6/95	<b>TC Meeting:</b> Presentation on the goal and operational independence of central banks by C Rustomjee (Technical Advisor to TC6.2).
12.	12/6/95	<b>TC Meeting:</b> Presentation on the practical aspect of the goal and operational independence of the South African Reserve Bank by Dr CJ de Swart (Deputy Governor, South African Reserve Bank) and Adv. M van Rensburg.
13.	14/6/95	<b>TC Meeting:</b> Further deliberations on the SARB.
14.	23/6/95	<b>TC Meeting:</b> Resolution tabled by the ANC component of the TC following what the ANC called an attack on the integrity of Mr Rob Davies (TC Chair) by Dr Francois Jacobsz in the Finance budget debate.
15.	01/8/95	<b>TC Meeting:</b> Discussion of work plans on the Financial and Fiscal Commission and General Financial Matters.
16.	02/8/95	<b>TC Meeting:</b> Discussion on General Financial Matters.
17.	03/8/95	<b>TC Meeting:</b> Further discussion on the draft formulations on SARB.
18.	07/8/95	<b>TC Meeting:</b> DP table a resolution expressing its dissatisfaction over the manner in which the draft formulations on the AG were handled by the CC. Mr Ken Andrew (DP MP) walk out of the TC meeting.
19.	08/8/95	<b>TC Meeting:</b> CA Chairs and Directorate address the TC on the CC debate on the AG as well as the DP's walk out from the TC.
20.	10/8/95	<b>TC Meeting:</b> Discussion on General Financial Matters
21.	01/9/95	<b>TC Meeting:</b> Consideration of reports and draft formulations on General Financial Matters and Financial and Fiscal Commission.
22.	05/9/95	<b>TC Meeting:</b> Last TC meeting. Finalisation of draft formulations on the FFC.

## 6. SUBMISSIONS

96 submissions were received and processed by the Committee.

## 7. SEMINARS AND PUBLIC HEARINGS HELD



The Theme Committee held the following public hearings and seminars:

<b>Date</b>	<b>Topic</b>	<b>Participant(s)</b>
14/11/95	Seminar: Auditor General	Mr H Kluever, Auditor General, Republic of South Africa.
23/1/95	Seminar: Central Bank	Dr C Stalls, Governor, South African Reserve Bank.
09/02/95	Public hearing: Financial Institutions	Transnet
14/02/95	Public hearing: Financial Institutions.	South African Communist Party.
20/02/95	Public hearing: Financial Institutions.	South African Chamber of Business.
27/2/95	Public Hearing: Financial Institutions.	Johannesburg Stock Exchange.
27/2/95	Seminar: Financial Institutions.	L Loots, H High, B Kahn, N Morrison, C Rustoomjee and TC members.
06/03/95	Public hearing: Financial Institutions.	COSAB
03/04/95	Public hearing: Financial and Fiscal Commission.	M Morobi and L Loots, Financial and Fiscal Commission.

## **8. ASSESSMENT OF WORK OF THE THEME COMMITTEE**

8.1 The Theme Committee under the very able leadership of its Chairperson, Dr Robert Davies functioned very effectively. Dr Davies was one of those few Chairpersons who fully understood the different roles of Theme Committees, the Constitutional Committee and Constitutional Assembly.



8.2 The following are some of the strengths of the Theme Committee:

8.2.1 All members of the Theme Committee are skilled finance economist;

8.2.2 As almost all members of the TC belonged to the Public Accounts and Finance Portfolio Committees, members correlated constitutional and legislative matters with relative ease; and

8.2.3 The Theme Committee engaged civil society in a concerted way and virtually all stakeholders' views on financial matters were canvassed.

8.3 The following are some of the weaknesses of the work of the Theme Committee:

8.3.1 The fact that the Theme Committee's work on the FFC overlapped with Theme Committee 3's work on financial and fiscal relations hampered progress;

8.3.2 Members because of their skills in financial matters sometimes wrongly questioned CC decisions, as it happened with the Auditor General.

8.3.3 The economic centrality of the Financial Institutions considered by the Theme Committee occasionally polarised the debates in the Theme Committee resulting in time wastage, and this caused tensions in the Committee, walk outs and even referral of disputes to the CC for arbitration and mediation.

# **THEME COMMITTEE 6.3**

## **SPECIALISED STRUCTURES OF GOVERNMENT PUBLIC PROTECTOR, HUMAN RIGHTS COMMISSION, COMMISSION FOR GENDER EQUALITY AND LAND RIGHTS**

### **FINAL INTERNAL REPORT**

**OCTOBER 1995**



## **INTRODUCTION**

Theme Committee 6.3 was established under the ambit of Theme Committee 6 to deal with "Specialised Structures of Government" that give effect to the "Transformation, Monitoring and Evaluation" process.

The brief of Theme Committee 6.3 was to deal with the following matters:

- \* **PUBLIC PROTECTOR**
- \* **HUMAN RIGHTS COMMISSION**
- \* **COMMISSION FOR GENDER EQUALITY**
- \* **LAND RIGHTS (COMMISSION FOR THE RESTITUTION OF LAND RIGHTS)**

In the course of its work the Committee agreed to the following:

- \* The Commission for Gender Equality needed to be examined within the context of National Machinery for the Advancement of Women
- \* The Commission for Land Restitution needed to be considered within the broader debate on land rights

## **STAFF DEPLOYED**

The following staff made up the secretariat of Theme Committee 6.3:

- \* **Mr Nkateko "Snakes" Nyoka : Managing Secretary**
- \* **Ms Bronwen Levy : Minute Secretary**
- \* **Ms Penny Carelse : Administrative Secretary**

## **TECHNICAL COMMITTEE**

The Technical Committee comprised of:

- \* **Dr Cathi Albertyn - Public Protector, Human Rights Commission and Commission for Gender Equality**
- \* **Prof Ronel Erwee - Public Protector, Human Rights Commission and Commission for Gender Equality**
- \* **Dr Antonie Gildenhys - Land Rights**

\* Ms Anninka Claassens - Land Rights

\* Dr Funiwe Njobe - Land Rights

### THEME COMMITTEE MEMBERS<sup>1</sup>

The Chairperson of the Committee was Ms Baleka Mbete-Kgositsile.

The Theme Committee comprised of the following members:

*Balie A	(NP)
Botha WJ	(FF)
*Camerer S	(NP)
*Fenyane SLE	(ANC)
Gasa XF	(IFP)
*George M	(ANC)
Jacobz F	(NP)
*Louw L	(FF)
*Luthuli BN	(IFP)
*Malan TJ	(NP)
Mdutyana SN	(ANC)
*Moatshe P	(ANC)
*Mokoena LM	(ANC)
Moorcroft EK	(DP)
*Mompoti R	(DP)
*Netshimbupfe MA	(ANC)
*Ngubane H	(IFP)
Ngubane BN	(IFP)
*Nkadimeng JK	(ANC)
*Nqwemesha KW	(NP)
Selke J	(DP)
Smuts D	(DP)
*Tshabalala ME	(ANC)
*Turok M	(ANC)
*Van Wyk A	(NP)
*Van Zyl ID	(NP)
Vos SC	(IFP)
*Zitha DA	(ANC)

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<sup>1</sup>The membership of the Subtheme varied according to the specialised structure under discussion. The participation of minority parties was especially limited to particular issues due to the fact that it was one of four Subtheme Committee's. However the \* indicates members who were consistent in the activities of the Subtheme.



## SCHEDULE OF MEETINGS

The Committee held 28 meetings.

The first four meetings of the Committee were held in 1994. At that stage Theme Committee 6.3 had not yet been formalised as a substructure of Theme Committee 6, as such the first meetings were held informally and there are no minutes for meetings 1 - 3.

The following meetings of the Committee were held:

1st	24 October 1994	Theme Committee
2nd	31 October 1994	Theme Committee
3rd	7 November 1994	Theme Committee
4th	14 November 1994	Theme Committee
5th	31 January 1995	Theme Committee
6th	1 February 1995	Theme Committee
7th	2 February 1995	Theme Committee
8th	7 February 1995	Theme Committee
9th	8 February 1995	Theme Committee
10th	21 February 1995	Theme Committee
11th	27 February 1995	Theme Committee
12th	6 March 1995	Theme Committee
13th	13 March 1995	Theme Committee
14th	20 March 1995	Theme Committee
15th	27 March 1995	Theme Committee
16th	5 April 1995	Theme Committee
17th	18 April 1995	Theme Committee
18th	8 May 1995	Theme Committee
19th	15 May 1995	Theme Committee
20th	22 May 1995	Theme Committee
21st	29 May 1995	Theme Committee
22nd	12 June 1995	Theme Committee
23rd	19 June 1995	Theme Committee



24th	26 June 1995	Theme Committee
25th	3 August 1995	Theme Committee
26th	21 August 1995	Theme Committee
27th	4 September 1995	Theme Committee
28th	11 September 1995	Theme Committee

## **SUBMISSIONS**

200 submissions were received and processed by the Committee.

## **WORKSHOPS, SEMINARS AND PUBLIC HEARINGS HELD <sup>2</sup>**

The Committee held the following workshops, seminars and public hearings:

<b>Date</b>	<b>Topic</b>	<b>Speakers</b>
<b>30 January 1995</b>	<b>Seminar: Commission for Gender Equality</b>	<b>Prof. Ronel Erwee - Pretoria Graduate School of Management Dr Cathi Albertyn - Centre for Applied Legal Studies</b>
<b>31 January 1995</b>	<b>Seminar: Public Protector</b>	<b>Judge Van der Walt - Outgoing Ombudsman</b>
<b>1 February 1995</b>	<b>Seminar: Human Rights Commission</b>	<b>Judge Olivier</b>
<b>2 February 1995</b>	<b>Seminar: Human Rights Commission</b>	<b>Mr Brian Currin - Past Director Lawyers for Human Rights</b>
<b>8 February 1995</b>	<b>Seminar: Commission for Land Restitution</b>	<b>Ms Anninka Claasens - Centre for Applied Legal Studies</b>

<sup>2</sup>The workshops held on National Machinery for the Advancement of Women and Land Rights and the Constitution were also in effect Public Hearings. They were platforms for organised sectors of civil society to effectively influence the political reports of the Subtheme Committee. Representatives from over 150 organisations attended both workshops.



21 February 1995	Seminar: Commission for Gender Equality: The Danish Experience	Ms Anna Grete Holmsgaard - Chair of the Danish Equal Status Council
13-15 March 1995	Public Hearings: Public Protector	General Council of the Bar, Association of Law Societies, Lawyers for Human Rights, Community Law Centre, Legal Resources Centre, Human Rights Committee and National Land Committee
20-21 April 1995	Public Hearings: Human Rights Commission	Association of Law Societies, Black Lawyers Association, Black Sash, Centre for Human Rights, Human Rights Committee, Lawyers for Human Rights, Legal Resources, NADEL and National Land Committee
2&3 June 1995	Workshop: National Machinery for the Advancement of Women	<u>Speakers:</u> Dr Prinsloo (Unisa Dept of History), Ms Rhoda Kadalie (Gender Equity Unit UWC), Mavivi Myakayaka- Manzini (MP), Dr Cathi Albertyn, Ms Sheila Camerer (MP), Advocate Janet Kentridge, Ms Mmatshilo Motsei (Gender Co-ordinator RDP), Ms Maria Kapere (Under Secretary for Women's Affairs, Namibia), Ms Susan Tongue (Australian Law Reform Commission) and Ms Sarah Longwe (Consultant, Zambia)



<p><b>1&amp;2 August 1995</b></p>	<p><b>Workshop: Land Rights and the Constitution</b></p>	<p><b><u>Speakers:</u> Prof NJJ Olivier (Retired Prof of Law, University of Stellenbosch), Funiwe Njobe (LAPC), Kgosi Netshimbupfe (MP), Ms Mabel Choebu (Northern Province Community Development Foundation), Mr William Mullins (South African Agricultural Union), Mr Rudolph Rossouw (Human Resource Manager, Hunt Leuchars and Hepburn Timber Products, Ms Pam Yako (Border Rural Committee), Minister Derek Hanekom (Minister of Land Affairs), Mr Brendan Pearce (Director National Land Committee), Mr Gordon Hibbert (President, South African Property Owners Association), Justice Appie Steenkamp (South African Agricultural Union), Dr Antonie Gildenhys (Senior Director, Hofmeyer Van der Merwe Inc), Ms Anninka Claassens (Centre for Applied Legal Studies), Prof Shadrack Gutto (Centre for Applied Legal Studies), Prof Donna Greschner (University of Saskatchewan, Canada) and Justice Eddie Durie (Chief Judge of the Maori Land Court, New Zealand).</b></p>
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## **ASSESSMENT OF THE WORK OF THE THEME COMMITTEE**

The Theme Committee on the whole operated well, the Chairperson played a central role in ensuring that committee was able operate effectively. The Theme Committee was able to cover its work timeously and produced reports of quality.

The following are some of the strengths of the work of the Committee:

- i) The Committee made a concerted effort to engage with civil society in terms of informing the members of the central issues germane to the particular specialised structures of government. Views emanating from civil society were key in guiding and changing political party positions on various issues eg the workshop on land rights. Civil society views were clearly reflected in the political reports of the Theme Committee.
- ii) The Committee recognised the importance of not viewing mechanisms to effect the transformation, monitoring and evaluation process in isolation from the issues informing the role of these institutions eg the matter of socio economic rights was examined within the context of the role of the Human



Rights Commission. In addition the Committee also examined the relationship between the said structures and their relationship with other mechanisms which facilitate transformation, monitoring and evaluation eg the Commission for Gender Equality was looked at in the context of National Machinery for the Advancement of Women.

iii) Members endeavoured to approach their discussions by grappling with the practical problems confronting the ordinary citizen rather than viewing the said problems from an academic or legalistic perspective.

The following are some of the weaknesses of the work of the Committee:

i) The areas covered by the Committee were of a similar nature to the discussions of Theme Committee 4. Thus the process of discussion may have been more effective if the Committee had been a substructure of Theme Committee 4. This is because structures cannot not be viewed in isolation from the broader debates on fundamental rights eg this became evident in the discussion on the Commission for Land Restitution which needed to be examined within the context of the land rights debate.

ii) Due to the emotive nature of many of the issues discussed the work of the Committee was at points hampered by Parties attempting to delegitimise the deliberations. This emerged in the discussions on Gender and Land Rights. However the Chairperson was able to deal with the political problems in an effective way.

iii) Due to the process in which Technical Advisors were appointed ie on a Party Political basis and the fact that the structures discussed by the Committee were diverse, in certain instances the requisite expertise was not forthcoming. Furthermore in particular instances the role of Advisors was unclear.

# **THEME COMMITTEE 6.4**

## **SPECIALISED STRUCTURES OF GOVERNMENT SECURITY APPARATUS**

### **FINAL INTERNAL REPORT**

**OCTOBER 1995**



## **INTRODUCTION**

Theme Committee 6.4 was established under the ambit of Theme Committee 6 to deal with the Security Apparatus.

Theme Committee 6.4 was thus a Subtheme Committee of Theme Committee 6 which was dealing with "Specialised Structures of Government".

Theme Committee 6.4 started its work dealing with the following areas:

- **Police**
- **Defence**
- **Intelligence**
- **Correctional Services**

In the course of its work the Committee agreed that the area of Correctional Services did not fit easily with the other Security Apparatus and that it would be better dealt with by Theme Committee 5, which was dealing with the Judiciary. This was agreed to in a joint meeting held between Theme Committee 6.4 and Theme Committee 5, on 6 March 1995.

## **STAFF DEPLOYED**

The following staff made up the secretariat of Theme Committee 6.4:

- **Mr Nkateko "Snakes" Nyoka : Managing Secretary**
- **Ms Katharine McKenzie : Minute Secretary**
- **Ms Agness Mrubata : Administrative Secretary**

## **TECHNICAL COMMITTEE**

The Technical Committee comprised:

- **Mr Azhar Cachalia, an attorney at Cheadle, Thompson and Haysom**
- **Prof Annette Seegers, Head of the Department of Political Studies at the University of Cape Town**

## THEME COMMITTEE MEMBERS

The Chairperson of the Committee was Ms Jennifer Schreiner, a member of the National Assembly.

The Theme Committee comprised of the following full and alternate members:

Alant TG	(NP)
Appelgryn, M S	(NP)
Bloem D (Alt)	(ANC)
Booi N (Alt)	(ANC)
Breytenbach, W N	(NP)
Chabane OC (Alt)	(ANC)
Chiole J (Alt)	(FF)
Dyani M M Z	(PAC)
Ebrahim El (Alt)	(ANC)
Ellis M	(DP)
Fihla NB (Alt)	(ANC)
Gibson, D (Alt)	(ANC)
Gogotya NJ	(NP)
Groenewald PJ	(FF)
Hani L (Alt)	(ANC)
Jordaan JA	(DP)
Kgauwe QJ (Alt)	(ANC)
Louw L (Alt)	(FF)
Mabudafhasi J(Alt)	(ANC)
Makana S (Alt)	(ANC)
Malan TJ (Alt)	(NP)
Malumise M (Alt)	(ANC)
Marais, J A	(NP)
Mashimbye JN(Alt)	(ANC)
Molekane RS (Alt)	(ANC)
Motshabi C (Alt)	(ANC)
Mpahlwa MB (Alt)	(ANC)
Mtintso TE	(ANC)
Mti LM	(ANC)
Neerahoo, H M	(IFP)
Nhlanhla JM	(ANC)
Nogumla R (Alt)	(ANC)
Phillips IM (Alt)	(ANC)
Powell P	(IFP)
Schreiner J	(ANC)
Scott MI (Alt)	(ANC)
Selfe J	(DP)
Sisulu L	(ANC)
Sosibo J (Alt)	(ANC)
Van Eck J (Alt)	(ANC)
Waugh, J C N	(NP)



**SCHEDULE OF MEETINGS**

The Committee held 29 meetings.

The first four meetings of the Committee were held in 1994. At that stage Theme Committee 6.4 had not yet been formalised as a substructure of Theme Committee 6, as such the first meetings were held informally and there are no minutes for meetings 1 - 3.

The following meetings of the Committee were held:

1st	24 October 1994	Theme Committee
2nd	31 October 1994	Theme Committee
3rd	7 November 1994	Theme Committee
4th	14 November 1994	Theme Committee
5th	31 January 1995	Theme Committee
6th	1 February 1995	Theme Committee
7th	7 February 1995	Theme Committee
8th	8 February 1995	Theme Committee
9th	9 February 1995	Theme Committee
10th	14 February 1995	Theme Committee
11th	16 February 1995	Theme Committee
12th	20 February 1995	Theme Committee
13th	27 February 1995	Theme Committee
14th	6 March 1995	Theme Committee
	6 March 1995	Joint meeting with Theme Committee 5
15th	8 March 1995	Theme Committee
16th	14 March 1995	Theme Committee
17th	27 March 1995	Theme Committee
18th	3 April 1995	Theme Committee
19th	19 April 1995	Theme Committee



20th	15 May 1995	Theme Committee
21st	22 May 1995	Theme Committee
22nd	29 May 1995	Theme Committee
23rd	5 June 1995	Theme Committee
24th	12 June 1995	Theme Committee
25th	15 June 1995	Theme Committee
26th	26 June 1995	Theme Committee
27th	31 July 1995	Theme Committee
28th	1 August 1995	Theme Committee
29th	8 August 1995	Theme Committee

## SUBMISSIONS

191 submissions were received and processed by the Committee.

## WORKSHOPS HELD

The Committee held five workshops as follows:

Date	Topic	Speakers
7 February 1995	Correctional Services	Prof Dirk van Zyl Smit



<p><b>14 and 15 February 1995</b></p>	<p><b>The Security Forces and the Constitution</b></p> <p>(Hosted by the Institute for Defence Policy)</p>	<p><b>Prof Willie Breytenbach (University of Stellenbosch)</b></p> <p><b>Mr F Hlongwane (Ministry of Defence)</b></p> <p><b>Dr Jakkie Cilliers (Institute for Defence Policy)</b></p> <p><b>Mr Christo Botha (Unisa)</b></p> <p><b>Brig Jack Grundlingh (SANDF)</b></p> <p><b>Mr Mark Shaw (Centre for Policy Studies)</b></p> <p><b>Prof Tertius Geldenhuys (Unisa)</b></p> <p><b>Mr Moe Shaik (NICOC)</b></p> <p><b>Adv Gert Joubert (SAPS)</b></p> <p><b>Mr E Marais (Wits)</b></p> <p><b>Ms Melanie Lue (Policing Research Project)</b></p>
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<p><b>20 March 1995</b></p>	<p><b>The SAPS and the Constitution</b></p>	<p><b>Commissioner J G Fivas (SAPS)</b></p> <p><b>Prof Geldenhuys (Unisa)</b></p> <p><b>Prof Ben Smit (Unisa)</b></p> <p><b>Mr Graeme Simpson (Project for the Study of Violence and Reconciliation)</b></p> <p><b>Brig Gert Joubert (SAPS Legal Services)</b></p> <p><b>Mr Gavin Cawthra (Military Research Group)</b></p> <p><b>Lt Gen H Du Toit (RAU)</b></p> <p><b>Mr Ettiene Marais (Ministry of Safety and Security)</b></p> <p><b>Ms Janine Rauch (Ministry of Safety and Security)</b></p> <p><b>Lt Gen Andre Pruys (Ministry of Safety and Security)</b></p> <p><b>Ms Mbali Mncadi (Community Peace Foundation UWC)</b></p> <p><b>Mr Fikile Kobese (SANCO)</b></p> <p><b>Brig Linda Pienaar (SAPS)</b></p> <p><b>Mr Khalik Mayet (Ministry of Safety and Security)</b></p> <p><b>Capt G Govender (Popcru)</b></p> <p><b>Mr H Pienaar (SA Police Union)</b></p> <p><b>Mr M Maritz (Public Servants' Association)</b></p>
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<p><b>8 May 1995</b></p>	<p><b>Defence and the Constitution</b></p>	<p><b>Prof Deon Fourie (Unisa)</b></p> <p><b>Mr Fana Hlongwane (Ministry of Defence)</b></p> <p><i>Cathra?</i> <b>Mr Gavin Cathra (Military Research Group)</b></p> <p><b>Brig Joan van der Poel (SANDF)</b></p> <p><b>Mr S J Macintosh (Editor of African Armed Forces)</b></p> <p><b>Mr Richard Steele (Conscientious Objector Support Group)</b></p> <p><b>Mr Laurie Nathan (Centre for Conflict Resolution)</b></p> <p><b>Brig Jack Grundlingh (SANDF)</b></p> <p><b>Col Johan Lizamore (SANDF)</b></p> <p><b>Ms Catherine Moat (Idasa)</b></p> <p><b>Mr Paul Bolke-Mertz (independent consultant)</b></p> <p><b>Mr Krish Naidoo (Armscor)</b></p> <p><b>Mr Peter Batchelor (Centre for Conflict Resolution)</b></p>
<p><b>5 June 1995</b></p>	<p><b>Intelligence and the Constitution</b></p>	<p><b>Mr Mark Shaw (Institute for Defence Policy)</b></p> <p><b>Mr Moe Shaik (National Intelligence Coordinating Committee)</b></p> <p><b>Prof Fink Haysom (Legal Advisor to the President)</b></p>

**PUBLIC HEARINGS HELD**

There were no public hearings held by the Committee. Members of the Committee did however attend Constitutional Public Meetings and Sector Hearings hosted by



the Community Liaison Department. The workshops held were a form of public sector hearing public sector hearings.

## **ASSESSMENT OF THE WORK OF THE THEME COMMITTEE**

The Theme Committee functioned very efficiently.

One of the reasons for this was that it had only one Chairperson which meant that there was continuity from meeting to meeting. Ms Schreiner is also a very skilled Chairperson which assisted the smooth progress of the meetings.

On the whole parties made their submissions timeously, although the PAC and Freedom Front did not participate consistently in meetings. The Freedom Front was largely absent from the Committee and only made one submission.

The Committee went through a thorough process of deliberations, in that it held workshops on all of its areas of work. In the course of these workshops all the major stakeholders within the defence, intelligence and police communities were able to participate. There was a sense of real engagement with these stakeholders and that their views and insights played a meaningful role in the drawing up of reports on the security services.

The participation of this wide range of stakeholders was one of the mechanisms which assisted in the achievement of broad consensus on many issues in the Committee. Even though the role of the Theme Committee was not one of negotiation parties did adjust their positions as the process ran its course. This occurred as a result of debate and discussion held between parties and the intervention of stakeholders.

Representatives of parties also operated on the basis of clear mandates from their principals. This meant that on the whole the reports and draft tabled by the Committee went relatively smoothly through the Constitutional Committee and there has been no necessity to table drafts in the Subcommittee of the Constitutional Committee.



# CONSTITUTIONAL ASSEMBLY

## SUBMISSIONS TO THE NEW CONSTITUTION

### REPORT ON PHASE 1

15/11/95

To date the Constitutional Assembly has received **1 752 774** submissions. This figure comprises **1 741 830** petitions and **10 945** written submissions. All these submissions were processed and forwarded to the politicians in the relevant Theme Committees.

#### PROCESSING OF SUBMISSIONS COMPRISED THE FOLLOWING:

1. A **COVER PAGE WAS ATTACHED** to every submission, on receipt. The cover page provides a broad summary description of the author as well as the content.
2. Each submission was assigned a **UNIQUE NUMBER**, and this together with the contents of the cover page was **RECORDED ON THE SUBMISSIONS DATABASE**. For administrative purposes we differentiated between:

Individuals:	9 561
Organisations:	1 034
Political Parties:	218
Political Parties outside Parliament:	27
Public Hearings:	29
Petitions: (see attached list)	1 741 830

#### **POLITICAL PARTIES:**

ACDP:	20
ANC:	38
DP:	47
FF:	19
IFP:	24
NP:	44
PAC:	26

3. A mailing list was generated from the database which enabled us to **ACKNOWLEDGE RECEIPT** of every submission (where addresses were provided). 681 were faxed to us and 87 came in via e-mail, and not all of these had full address details.

4. All handwritten (6 120) submissions were **TYPED**, and those in languages other than English, i.e.

Afrikaans:	1 210
Zulu:	187
N.Sotho:	27
S.Sotho:	32
Tswana:	97
Tsonga:	3
Xhosa:	242
Venda:	5
<b>TOTAL:</b>	<b><u>1 803</u></b>

were **TRANSLATED** and attached to the original before distribution.

5. Submissions were **PHOTOCOPIED** for members of Theme Committees and the Submissions Master File. The original documents were sent to U.C.T. where the entire contents were scanned onto Internet.

**DISTRIBUTION TO THEME COMMITTEES:**

TC 1:	3 163
TC 2:	1 134
TC 3:	595
TC 4:	7 360
TC 5:	691
TC 6.1:	254
TC 6.2:	286
TC 6.3:	378
TC 6.4:	421

**NB!** These figures include the submissions received after the closing date of 30 June 1995 and will therefore differ from the figures given by the TC's in their reports.

ACDP:	20
ANC:	38
DP:	41
FF:	19
IFP:	24
NP:	44
PAC:	28



## PETITIONS

AFRIKAANS	1 001 246
ANIMAL RIGHTS	178
ANTI SECULAR STATE/ SECULAR HUMANISM	38 994
ANTI SEXUAL ORIENTATION CLAUSE	16 363
ANTI-GAMBLING	501
ENVIRONMENT	220
FAMILY LIFE (INCL. CHILDREN'S RIGHTS)	320
GUN OWNERSHIP RIGHTS	65
HEALTH (RIGHT TO HEALTH CHOICE)	724
PORNOGRAPHY	3 769
PRO-ABORTION	409
RIGHT TO LIFE (ABORTION, EUTHANASIA, DEATH PENALTY)	10 250
SEAT OF PARLIAMENT - CAPE TOWN	650 000
TRIUNE GOD	7 617
TRIUNE GOD/ FUNDAMENTAL RIGHTS/ RELIGIOUS LEADERS	9 623
TRIUNE GOD/ RELIG. GATHERINGS/ SEXUAL ORIENTATION/ ABORTION	1 551

## **11. Functioning of the Secretariat**

### **Size**

The Secretariat's size has fluctuated depending on the nature and quantity of work during the constitution-making process. Initially when Theme Committees were set up, the Secretariat comprised 15 staff members, two per Theme Committee, one for the MC and CC and a Head and Deputy Head.

With the restructuring of Theme Committee Six, the influx of submissions and the appointment of the Technical Advisors, the Secretariat grew to approximately 30 people. Since September 1995, it is now down to approximately 15 staff members, although additional appointments will be made as from January 1996 to assist in the submissions section.

### **Co-ordination and Meetings**

Weekly Secretariat meetings were held where report backs from HOD meetings were given, assessments made of how Theme Committee meetings went and planning was done. Generally these proved to be very valuable.

Daily meetings of the Head, Deputy Head and Secretary to the Secretariat were held to plan daily activities and generally to monitor the activities of the Secretariat.

### **Education and Training**

Training of its members was regarded as a priority for the department. Courses included the following - Orientation courses, Minute-taking and report writing skills, computer training, Time-Management and Planning and Stress Management. Various departmental planning sessions were held throughout the process and Secretariat members also participated in inter-departmental strategic planning workshops.

### **Brief assessment**

On the whole, the Secretariat functioned fairly well and performed its duties very effectively. The past phase of the constitution-making process served as a valuable learning and transformative experience for all members of the team. Problems which were encountered in the course of our work were ultimately resolved or minimised so as to ensure the continued functioning of the department.

Compiled by Lucille Meyer









