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CONSTITUTIONAL ASSEMBLY

**THEME COMMITTEE 4
FUNDAMENTAL RIGHTS**

14 November 1994

Room M 46

DOCUMENTATION

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CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 4 MEETING

FUNDAMENTAL RIGHTS

Please note that a meeting of the above Group will be held as indicated below:

Date : Monday, 14 November 1994
Time : 10h00 - 12h00
Venue : Room M 46

AGENDA

1. Opening
2. Minutes - Theme Committee: pages 2 - 5
3. Core Group Report - Minutes: pages 6 - 8
4. Developing a Work Programme: pages 9 - 12
6. Any Other Business - Raoul Wallenberg Institute: pages 18 - 20
7. Closure

** *Members are reminded to bring copies of the Constitution and Standing Rules for the Constitutional Assembly to the meeting.*

H Ebrahim
Executive Director
Constitutional Assembly

Enquiries : John Tsalamandris & Zuleiga Adams
CA 208; Tel : 403 2266

CONSTITUTIONAL ASSEMBLY

**MINUTES OF
MEETING OF**

**THEME COMMITTEE 4
FUNDAMENTAL RIGHTS
MONDAY 7 NOVEMBER 1994 (AT 10h10)**

PRESENT
Myburgh GB (Chairperson)

Bakker D	Mfebe MW (alt)
Camerer SM	Myakayaka-Manzini YL
Chalmers J	Njobe MA
Coleman M	Pandor GNM
Dlamini BO	Phenethi MM
Gamndana T	Radue RJ
Gasa F	Rasmeni S
Green LM	Rhoda RT
Leon AJ	Saloojee E
Lubidla AJ	Selebi JS
Mabandla BS	Skosana A
Mashamba TGG	Tyobeka VM
Mbuyazi L	Van Eck J
Mdladlana MMS	Vos S
Mfayela S (alt)	Xingwana LM

Apologies : Kgoali JL, Mncwango MA, Molekane RS, Sizani RK

John Tsalamandris and Zuleiga Adams were present.

1. OPENING

- 1.1 The meeting was opened by Mr Myburgh.

2. MINUTES

- 2.1 The minutes of the Theme Committee meeting of 31 October were accepted.
- 2.2 The minutes of the Core Group Meetings of 31 October 1994 and 2 November 1994 were adopted with one correction. It was noted that the meeting of 2 November took place on Wednesday and not Monday.

3. MATTERS ARISING

- 3.1 The chairperson spoke to the excerpts from the Constitutional Assembly included in the documentation on:
- i) Structures of the Constitutional Assembly
 - ii) Technical Committees
 - iii) Public Participation\ Media

3.2 Technical Committees

Issues discussed were :

- the role of the Constitutional Committee in the selection process
- the criteria for selection

- 3.3 It was agreed that experts for the Technical Committee should have a strong background in the human rights field.

- 3.4 The Committee agreed to make use of the party submissions as well as the database of constitutional experts prepared by the secretariat to make nominations for experts for the Technical Committee.

- 3.5 It was agreed that parties must complete their nominations for experts by 2pm on Wednesday 9 November 1994.

3.6 Public Participation\ Media

Issues discussed were :

- the role of the public, in terms of being involved in the constitution-making process and not merely being informed about that process.
- the relationship between the Theme Committee and the Constitutional Committee with reference to the implementation of the public participation programme.

4. CORE GROUP REPORT

- 4.1 The Chairperson reported verbally with reference to the minutes of the Core Group meetings included in the documentation.

5. DEVELOPING A WORK PROGRAMME

- 5.1 Mr Myburgh spoke to the document entitled "*Developing a Work Programme: A Discussion Document*" included in the documentation.
- 5.2 The document was evaluated and it was agreed that the separation of rights as categorized in the document should be altered.
- 5.3 It was noted that rights are indivisible and should not be seen in an hierarchical manner.
- 5.4 It was agreed that parties would submit proposals on how the rights could be grouped and dealt with for purposes of reflecting this in the draft report which must be prepared for discussion at the next meeting.
- 5.5 It was agreed that all parties submit the proposals and nominations for experts for the Technical Committee to the Secretariat by 2pm on Wednesday 9 November.
- 5.7 The Core Group would meet at 5pm on Wednesday 9 November to process the submissions and reformulate the Work Programme document.
- 5.8 The Democratic Party noted that their submission dated 25 October 1994, be accepted as their final submission.

6. ANY OTHER BUSINESS

- 6.1 A proposal from the Raoul Wallenberg Institute to conduct a seminar on Human Rights for parliamentarians on 25-27 November 1994 was discussed.
- 6.2 The seminar was agreed to in principle but the Theme Committee requested that attempts be made to shift the date of the seminar to early 1995.
- 6.3 Copies of the invitation must be distributed to all members of the Theme Committee.

- 6.4 A proposed joint Commission of Theme Committees 2, 4, 5, and 6 on traditional leaders was discussed. It was noted that the issue of traditional leaders was a substantive issue and should be discussed in the Constitutional Assembly.

7. CLOSURE

The meeting rose at 11h30.

CONSTITUTIONAL ASSEMBLY

**MINUTES OF
CORE GROUP**

THEME COMMITTEE 4 MEETING

**9 NOVEMBER 1994 (17h00)
VENUE E 216**

Present

Mdladlana MMS (Chairperson)

Green LM
Mncwango MA
Mulder CP
Myburgh GB
Pandor GNM

Apologies: Leon AJ and Sizani RK

J Tsalamandris and Z Adams were in attendance.

1. OPENING

- 1.1 The meeting was opened by Mr Mdladlana.

2. MINUTES

- 2.1 The minutes of the Theme Committee meeting of 7 November 1994 were reviewed.
- 2.1 The secretariat informed the meeting that technical experts may be chosen for different sub-themes as they arose.
- 2.2 The meeting decided that the list submitted by parties will be regarded as provisional and that the Theme Committee reserves the right to submit further names as issues arise.

3. DEVELOPING A WORK PROGRAMME

- 3.1 The Chairperson steered the discussion along the questions posed in the document "*Suggested Outline of Work Programme*".
- 3.1 With reference to the questions posed, the meeting agreed on the following:
- 3.1.1 The work of the committee will be guided by the relevant Constitutional Principles, the foundation of which is Principle II and Chapter 3 of the Interim Constitution.
- 3.1.2 The work of the committee must take cognisance of the terms of reference as identified in the CA Resolutions of Monday 5 September 1994.
- 3.1.3 The proposed Bill of Rights must include economic, social and political rights.
- 3.1.4 Clauses in Chapter 3 should be separated into contentious and non-contentious issues. Non-contentious issues must be processed and submitted to the Constitutional Committee. The Theme Committee must deal with contentious issues and ask for submissions.
- 3.1.5 The meeting agreed to the areas of overlap as outlined in the document.
- 3.1.6 The meeting agreed that contentious issues may need commissions. It was added that non-contentious issues may also need commissions.

3.1.7 It was envisaged that categories of rights may need separate reports

3.1.8 The committee as yet cannot determine the number of reports or the deadlines for these.

3.1.9 The meeting accepted points vii) - x) as it stands.

4. ANY OTHER BUSINESS

4.1 None

5. CLOSURE

5.1 The meeting rose at 18h35

WORK PROGRAMME OF THEME COMMITTEE 4

- *FUNDAMENTAL RIGHTS*

The work programme has followed the suggestions as set out by the CA Directorate memo on Work Programme.

i) WHICH CONSTITUTIONAL ISSUES NEED TO BE ATTENDED TO BY THEME COMMITTEE 4

It must be noted at the outset that the work of the Committee is guided by the relevant Constitutional Principles enshrined in the Interim Constitution of South Africa. These form the guidelines within which the Committee will seek to address Fundamental Rights or a Bill of Rights.

The foundation of these is 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"

Other relevant Principles include:

- Principle I
- Principle III
- Principle V
- Principle IX
- Principle XI
- Principle XII
- Principle XIII
- Principle XXVIII
- Principle XXXIV

This list is however not complete, and the Committee wishes to note that it can reflect on other Principles should the need arise.

In relation to the above, the work is guided by the relevant Chapters in the Constitution, particularly Chapter 3 - "*Fundamental Rights*".

Included in this Chapter are the issues of :

- Equality
- Life
- Human Dignity
- Freedom and Security of the person
- Servitude and Forced Labour
- Privacy
- Religion, belief and opinion
- Freedom of Expression
- Assembly, Demonstration and Petition
- Freedom of Association
- Freedom of Movement
- Residence
- Citizens' Rights
- Political Rights
- Access to Rights
- Access to Information
- Administrative Justice
- Economic Activity
- Labour Relations
- Property
- Environment
- Children
- Language and Culture
- Education

The Committee has also identified the following issues as reflected in the Interim Constitution that need review or are relevant:

- State of Emergency
- Suspension and Limitation of Rights
- Legal Representation
- Customary\ Traditional Law
- Group\ Minority Rights

This framework noted above should however be seen in light of the terms of reference of the Theme Committee as identified in the Constitutional Assembly Resolutions of Monday 5 September 1994 (*Refer Appendix 1*).

The rights contained in a Bill of Rights should cover the aspects of political, social and economic rights.

ii) **WHICH OF THESE ISSUES NEED TO BE DEALT WITH AS A PRIORITY**

Within the above framework, the Committee proposes the following approach:

- a) Separation of the above clauses and issues into contentious and non - contentious.
- b) Process non-contentious and submit to Constitutional Committee.
- c) Deal with contentious issues and ask for submissions.

iii) **WHICH ARE THE AREAS OF OVERLAP WITH OTHER THEME COMMITTEES**

The following areas of overlap drawn from the CA Resolutions of 5 September 1994 (*Refer Appendix 1*)

T\C 1 = Democracy and Equality, Freedom of Information and Administrative justice, franchise.

T\C 2 = Status and role of traditional leaders

T\C 3 = Relationship of citizen and local government

T\C 5 = Enforcement of Constitution, traditional authorities, Constitutional Court.

T\C 6 = Public Protector, Human Rights Commission, Gender Commission, Commission for Restitution of Land Rights, traditional authorities.

iv) **WHICH CONSTITUTIONAL ISSUES NEED TO BE DEALT WITH IN COMMISSIONS**

It is believed that the issues deemed to be contentious may need Commissions. However, even non-contentious issues may need commissions. The Committee feels it is too early to agree on what issues may need commissions.

v) **WHICH CONSTITUTIONAL ISSUES DOES THE COMMITTEE ANTICIPATE WILL REQUIRE SEPARATE REPORTS**

It is envisaged that categories of rights may need reports.

vi) **HOW MANY SUCH REPORTS ARE TO BE ISSUED AND WHAT ARE THE DEADLINES FOR THESE**

The Committee as yet cannot determine the number of reports or the deadline for these.

vii) **WHAT ARE THE STRUCTURES AND ROLE PLAYERS TO BE CONSULTED**

Organised groupings of civil society; institutions; groups affected by above rights; unorganised or unrepresented broader public.

viii) **WHAT COMMUNITY AND MEDIA LIAISON ASSISTANCE WILL BE REQUIRED**

As proposed by CA Administration ATC report 31 October 1994 together with Theme Committee input. Of key concern in this regard that the Committee has a major part in determining its requirements and needs.

The Committee would like to emphasise that public feeling in the Constitution-making process rests with human rights, it is therefore suggested that the community and media liaison programme takes this into account.

ix) **WHO AND WHAT TECHNICAL ASSISTANCE WILL BE REQUIRED TO SUPPORT THE COMMITTEE**

The Committee feels that it is too early to decide on this matter but notes that it already has at its disposal, i) Technical Committees ii) Commissions iii) Working Groups involving T\C members and\ or other MP's.

x) **CONCLUDING REMARKS**

The Committee while reflecting the above, has however expressed a clear wish for flexibility in its approach and method.

APPENDIX 1

REPUBLIC OF SOUTH AFRICA

CONSTITUTIONAL ASSEMBLY

RESOLUTIONS

MONDAY, 5th
FRIDAY, 2ND SEPTEMBER 1994

THE ESTABLISHMENT OF THEME COMMITTEES

1. CHARACTER OF DEMOCRATIC STATE

- 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 The 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 Citizenship and franchise
- 1.8 Matter dealing with the separation of powers etc (Constitutional Principle VI)

1 CRes

2. STRUCTURE OF GOVERNMENT

- 2.1 Matter dealing with the separation of powers etc (Constitutional Principle VI)
- 2.2 The adherence to formal legislative procedures by legislative organs (Constitutional Principle X)
- 2.3 Participation of minority political parties in legislative process in manner consistent with democracy (Constitutional Principle XIV)
- 2.4 Amendments to Constitution require special procedures involving special majorities (Constitutional Principle XV)
- 2.5 Structure of Government at national, provincial and local levels (Constitutional Principle XVI)
- 2.6 Democratic representation at every level of government - without derogating from the role of chieftainship (Constitutional Principle XVII)
- 2.7 National Assembly, the Senate and Parliament in general
- 2.8 The Electoral System
- 2.9 Matters dealing with the constitution, status and role of traditional leadership (Constitutional Principles XIII)
- 2.10 Traditional Leaders
- 2.11 The Executive

3. RELATIONSHIP BETWEEN LEVELS OF GOVERNMENT

- 3.1 The details and nature of the relationship (Constitutional Principle XVI and XVII)
- 3.2 Local Government in context of Constitutional Principle XXIV
- 3.3 Establishment of Provincial government
- 3.4 Establishment, status and powers of local government
- 3.5 Legislative competence of Provinces and concurrency

4 FUNDAMENTAL RIGHTS

- 4.1 The enjoyment of fundamental rights by all - entrenchment in Constitution etc (Constitutional Principle II)
- 4.2 The prohibition of racial, gender etc discrimination and the promotion of equality and national unity (Constitutional Principle III)
- 4.3 The diversity of language and culture to be recognised - promotion and encouragement (Constitutional Principle XI)
- 4.4 The collective rights of self-determination, civil society and free association (Constitutional Principle XII)
- 4.5 The right to form trade union and collective bargaining (Constitutional Principle XVIII)
- 4.6 Community self-determination based on cultural and language heritage (Constitutional Principle XXXIV)
- 4.7 Protection and enforcement of fundamental rights
- 4.8 First, second and third, generation of Rights
- 4.9 Relationship of various Charters of Rights to the Bill of Rights

5. JUDICIARY AND LEGAL SYSTEMS

- 5.1 Matter dealing with qualities of judiciary and enforcement of Constitution (Constitutional Principle VII)
- 5.2 The institution, status and role of traditional leadership and indigenous law (Constitutional Principle XIII)
- 5.3 Judicial functions, appointment of judges, Judicial Services Commission and Constitutional Court
- 5.4 Traditional authorities

6. SPECIALISED STRUCTURES OF GOVERNMENT

- 6.1 The independence and impartiality of the Public Service Commission, Reserve Bank and the Public Protector (Constitutional Principle XXIX)

- 6.2 The status and role of public service (Constitutional Principle XXX)
- 6.3 The performance of functions of police, military and intelligence to be in the national interest (Constitutional Principle XXXI)
- 6.4 Auditor-General, Reserve Bank and the Financial and Fiscal Commission
- 6.5 Establishment, powers and function of the Public Service Commission and Public Service
- 6.6 Powers and function of the Public Protector, Human Rights Commission, Gender Commission and the Commission on Restitution of Land Rights
- 6.7 Traditional authorities
- 6.8 South African Elections Commission (formerly IEC)

NOTE : There are other issues such as transitional provisions and the reception of international law into our domestic law which do not lend themselves very easily to allocation to a Theme Committee, and will have to be dealt by the Constitutional Committee of the Assembly. Not all of the structures under the Interim Constitution will be relevant under a permanent Constitution. Finally, international and comparative experiences can be discussed under any of the themes identified above.

The above categories are to be treated as a guideline and not adhered to mechanically. Theme Committees may establish Commissions on special topics. It is further proposed that certain principles and topics (for example; Constitutional Principle XXXIV dealing with community self-determination) may be discussed in more than one theme committee.

It is also proposed that Theme Committee 1 (Character of the Democratic State) be dealt with as a matter of priority.

APPENDIX 2

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

TEL: (021) 403-2595/6
FAX: (021) 461-9462



SPEAKER
NATIONAL ASSEMBLY
PO BOX 15
CAPE TOWN
8000

TO: INTERNATIONAL RELATIONS COMMITTEE

SUBJECT: TRAINING OFFERED BY THE RAOUL WALLENBERG
INSTITUTE

During my recent visit to Sweden, I was able to take further the proposal that the Wallenburg Institute include Parliamentarians in their training Programme on Human Rights which will be conducted in South Africa over the next twelve months or so.

There is a preliminary or a suggested programme, a copy of which is attached. The proposed date put forward by the Institute is the weekend of the 25th and 27th November.

They also suggest the following additional possibilities which would be December 10th to 11th, the 4th and 5th of February, 4th and 5th of March and the 1st and 2nd of April. All of these dates are linked into the programmes they are conducting for other sections in South Africa. In other words they will add the parliamentary programme to the other seminars that are being conducted.

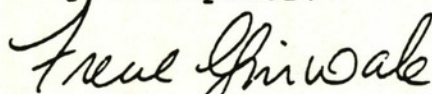
Amongst the other work they are doing is work for the Ministry of Justice, training law officers, and training a new legal forum that is being established. They are also discussing with other sectors of society on providing general human rights training.

The proposal is that on Friday 25th evening there be a public event. This would mean we could possibly have something like the civic centre at which we could open the programme, followed by a detailed programme for the parliamentarians over the Saturday and Sunday.

The practice of the Wallenberg Institute is that in each case, they discuss the programme with those involved, they bring over international experts and expect from us an input of local experts.

ACTION:

1. To consider feasibility of dates or at least the date for the first programme.
2. To establish a group (two or three people) to brainstorm on the details of the programme and identify local participants.


FRENE GINWALA
Speaker

RAOUL WALLENBERG INSTITUTE

Proposed Seminar on Human Rights for South African
Parliamentarians

Friday

18:00 Opening of the Seminar

Saturday

09:00 The Theory of Concepts of Human Rights
Prof V. Dimitrijevic, RWI

10:30 Discussion

13:00 LUNCH

14:30 The Bill of Rights in the South African
Constitution - Panel

15:15 Discussion

16:30 UN and OAU Machinery for the Protection of Human
Rights - UN and OAU Instruments and Institutions
Prof G. Melander, RWI

17:15 Discussion

Sunday

09:00 International Law and Domestic Law
Mr/Mrs....., South Africa

09:45 Discussion

11:00 Implementation of Human Rights
Prof V. Dimitrijevic
Prof G. Melander

11:45 Discussion

13:00 LUNCH

14:30 Panel Debate:
Consequences for South Africa upon Ratification
of International Human Rights Instruments

16:00 Evaluation and Closing of the Seminar