

2/4/5/8/5

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 5

**JUDICIARY AND
LEGAL SYSTEMS**

FINAL INTERNAL REPORT

5TH 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 agreement 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	<ol style="list-style-type: none"> 1. The Structure of the Court System 2. The Relationship between the different levels of Courts 3. The Composition and appointment of Judicial Officers 4. Access to the Courts including lay participation. <p><u>Relevant Constitutional Principles:</u> II, IV, V, VI, VII <u>Relevant sections of Interim Constitution:</u> Chapter 7 and sections 241 and 242</p> <p><u>Relevant constitutional principles:</u> II, VII <u>Relevant sections of Interim Constitution:</u> 96, 97, 101, 102, 241 and 242</p> <p><u>Relevant Constitutional Principles:</u> II, IV, VII <u>Relevant sections of Interim Constitution:</u> 96, 97, 98, 99, 100</p> <p><u>Relevant sections of Interim Constitution:</u> Section 101(3) to (6)</p> <p><u>See</u> CP VII and section 103</p> <p><u>See</u> CP VII and section 104, 105 and 109</p>
BLOCK 5	<ol style="list-style-type: none"> 5. Traditional Authorities & Customary Law <p><u>See</u> CP XIII(1) and section 103</p>
BLOCK 6	<ol style="list-style-type: none"> 6. Attorneys-General and other judicial appointments <p><u>See</u> section 108</p>
BLOCK 7	<ol style="list-style-type: none"> 7. General <p><u>See</u> sections 35, 107, 231 and 232</p>

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

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

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

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

NO.	DATE
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

NO.	DATE	ROLE PLAYERS
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.

CONCLUSION

We completed our Work Programme as agreed. In fact, we went beyond our mandate by producing a truly representative draft that really had all major role players on board. We will, and hope, still to be playing a role in terms of the finalisation of the Judiciary Chapter.

Thank you.

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NOËL TAFT
MANAGING SECRETARY