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CONSTITUTIONAL ASSEMBLY

**THEME COMMITTEE 5
JUDICIARY AND LEGAL
SYSTEMS**

19th September, 1994

Room M515

DOCUMENTATION

CONSTITUTIONAL ASSEMBLY

MEETING OF THEME COMMITTEE 5

JUDICIARY AND LEGAL SYSTEMS

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

Date : Monday, 19 September 1994

Time : 16H15

Venue: Room M515

AGENDA

1. **Opening and Welcome by a member of the Directorate (See: Rule 25)**
2. **Appointment of the Core Group members**
3. **Election of a Chairperson (See: Rule 25(1))**
4. **General discussion on the objectives of the Committee**
5. **General Discussion on programme of work**
 - * **identify aspects of the theme requiring specific attention**
 - * **consider report on submissions received and consideration of the process of involving the broader public**
 - * **time framework**
 - * **rules**
 - * **Technical and Expert assistance that would be required.**
6. **Invite parties to make submissions re: 5 above**
7. **Agenda for next meeting**

INB: *ALL MEMBERS ARE REQUESTED TO BRING TO THE MEETING COPIES OF THE CONSTITUTION AND THE STANDING RULES OF THE CONSTITUTIONAL ASSEMBLY.]*

[Theme Committee 1 - 19 September, 1994]

Documentation:- * **Extracts of Rules 20 - 35**
 * **Broad guidelines and orientation**

**H EBRAHIM
EXECUTIVE DIRECTOR:
CONSTITUTIONAL ASSEMBLY**

**If you have been appointed as an alternative member of the committee, please
discuss your participation in the meeting with your chief whip.**

Enquiries: Ms M M Sparg, Room CS205 (Tel 403-2274)

EXTRACTS FROM STANDING RULES

COMMITTEES AND OTHER APPOINTED BODIES

Public access to meetings of committees, etc

- 17A (1) Members of the public and the media may be present during the proceedings of any committee, commission technical committee or other body appointed by or on the authority of the Constitutional Assembly, subject to such restrictions and requirements as the body in question may consider necessary in the interest of the due performance of its functions, and further subject to its right to conduct its proceedings in private by excluding non-members whenever it considers it necessary to do so.
- (2) A person who attends a meeting by virtue of Subrule (1) shall confine himself or herself to that part of the chamber in question set aside for non-members and shall obey the orders of the chairperson concerned.

Select Committees

Definition

20. Committees, other than the Constitutional Committee, consisting of members of the Constitutional Assembly only are in these Rules referred to as select committees.

Appointment

21. A select committee may be appointed by or under a resolution of the Constitutional Assembly or under a rule approved by it.

Membership of select committee

22. (1) A select committee shall have not more than 50 members, unless the Rules Committee directs otherwise in the case of a particular committee.
- (2) A select committee shall include members of each House of Parliament.

Representation of parties

23. Every political party in the Constitutional Assembly is entitled to be represented in a select committee by a number of members equal to the number obtained by dividing the total number of its members in the Constitutional Assembly by 16 or such other number as may be determined

by the Constitutional Committee in respect of a particular select committee, any fraction obtained being regarded as one.

Appointment of members

24. (1) If the members of the select committee are not appointed by or under a resolution establishing the committee, the Chairperson shall appoint the members whose names are submitted to him or her in writing by a political party not later than five work days after the said resolution is adopted.
- (2) The names of the members of the select committee shall be published in the Minutes of Proceedings.
- (3) A vacancy in the select committee may be filled by the appointment by the chairperson of a member whose name has been submitted to him or to her for that purpose by the political party affected.

Chairperson of select committee

25. (1) A select committee shall elect one of its members as the chairperson of the committee.
- (2) The chairperson shall be elected at the first meeting of the committee and thereafter whenever there is a vacancy in the office of chairperson.
- (3) The Secretary or an officer of Parliament designated by the Secretary shall preside at the election of a chairperson.

[This rule should be amended to provide for the appointment of three rotating chairpersons from members of the core group, in accordance with a Constitutional Committee decision.]

Deputy Chairperson

26. (1) The appointment of a deputy chairperson may be authorised by or under a resolution of the Constitutional Assembly in the case of a particular select committee or of select committees falling within a specified category or in respect of select committees generally.
- (2) A deputy chairperson shall be elected in the same manner as that in which the chairperson of such a committee is elected, except that the chairperson shall preside at the election.

[In view of the Constitutional Committee decision regarding the charring of theme committee meetings, this rule should be deleted.]

Powers of select committee

27. (1) In addition to exercising the powers, if any, conferred by resolution of the Constitutional Assembly, and subject to any such resolution, a select committee may, whenever it is necessary for the proper performance of its functions, summon persons to appear before it to give evidence on oath or affirmation and to produce any document required by the committee.
- (2) A summons under this Rule must be issued on a prescribed form by the Chairperson of the Constitutional Assembly and shall be signed by the chairperson of the committee on behalf of the committee.
- (3) The chairperson of a committee shall not sign a summons unless he or she is satisfied that the person to be summoned will not attend unless summoned, and that the Secretary as accounting officer for the funds of Parliament does not have any reason to object to the expenditure that will or may be incurred.
- (4) A select committee may receive representations from interested persons.
- (5) A select committee may appoint subcommittees from among its members to consider or investigate and report to the select committee on any matter falling within the select committee's functions.
- (6) The Rules of the National Assembly on select committees shall apply, with the necessary adjustments, to a subcommittee so appointed.

First meeting of select committee

28. (1) The day and venue of the first meeting of the select committee shall be determined by the Secretary in consultation with the chairperson of the committee.
- (2) When Parliament is adjourned, a venue beyond the seat of Parliament may be so determined for such first meeting.
- (3) When Parliament is adjourned notification of the first meeting of a select committee shall be forwarded to the members of the committee and the senior whip of each party at least 14 days before the date of the meeting.

Meeting of select committees

29. A select committee may upon its own resolution sit-
- (a) during the sittings of the Constitutional Assembly or any House of Parliament;
 - (b) on days on which the Constitutional Assembly or any House of Parliament is not sitting;
 - (c) at venues it considers to be the most suitable, and which may be a venue beyond the seat of Parliament.

Adjournment, etc

30. A select committee may be adjourned and its proceedings may be interrupted or suspended, by order of the presiding officer.

Quorum

31. (1) Save when a question is decided, the business at a meeting of a select committee may be proceeded with irrespective of the number of members of the committee present.
- (2) A select committee may decide a question only when a quorum of members is present.
- (3) One half of the total number of members of the select committee (excluding the presiding member) shall constitute a quorum of the select committee.
- (4) Whenever the select committee has to decide a question and a quorum is not present, the chairperson may either suspend business until a quorum is present, or adjourn the committee.

Resolutions of select committee

32. (1) A resolution of a select committee shall enjoy the support of the majority of members present and voting.
- (2) In the event of an equality of votes, the presiding member shall exercise a casting vote.

Attendance of select committee

33. If a member of a select committee is absent from three consecutive meetings of the committee without the leave of the chairperson or without good cause, on which the decision of the Chairperson of the Constitutional Assembly shall be final and conclusive, the Rules Committee shall be deemed to have discharged such member from membership of the select committee, and the discharge shall be published in the Minutes of Proceedings.

Charge against member

34. If information charging a member of a House comes before a select committee, the committee shall not proceed upon such information, but the chairperson shall report it to the House in question on its next ensuing sitting day.

Report of select committee

35. A report of a select committee shall be presented to the Constitutional Committee.

SECOND DRAFT

BRIEFING DOCUMENT FOR THEME COMMITTEES

*(as amended by the Constitutional Committee meeting of
12th September, 1994)*

**[PLEASE NOTE THAT THIS DOCUMENT IS STILL UNDER DISCUSSION AND
IS SUBJECT TO FINALISATION BY THE CONSTITUTIONAL COMMITTEE.]**

1. INTRODUCTION

The Constitutional Assembly is committed to adopting an approach to the drafting of the new constitutional text, which integrates the ideas of political parties represented in the Constitutional Assembly and those of the public. In line with the integrated approach and in an effort to involve a broad cross-section of Constitutional Assembly members and experts in various fields, the Constitutional Assembly resolved to establish theme committees to deal with the wide range of issues to be covered in the new constitutional text. However, it has not, thereby, ceded or derogated from its right to debate in detail and oversee and direct the drafting of the new constitutional text.

2. SELECT COMMITTEES

- 2.1 Theme committees are select committees of the Constitutional Assembly.
- 2.2 Rule 20 of the Standing Rules defines a select committee as any committee, other than the Constitutional Committee, which is made up of members of the Constitutional Assembly only.

3. APPOINTMENT OF THEME COMMITTEES

- 3.1 Rule 21 of the Standing Rules provides, that a select committee may be appointed by a resolution of the Constitutional Assembly or under a rule approved by it. On 15 August 1994, the Constitutional Assembly passed a resolution to appoint select committees, called theme committees.
- 3.2 The Constitutional Assembly approved the appointment of six theme committees on the following constitutional themes; character of a democratic state, structure of government, relationship between the levels of government, fundamental rights, judiciary and legal systems and specialised structures of government, by resolution on 5 September 1994.

- 3.3** The composition of theme committees is provided for in rules 22 and 23 and in the Constitutional Assembly resolution of 5 September 1994. In terms of the said resolution theme committees shall be made up of thirty Constitutional Assembly members or such smaller number as the Constitutional Committee may decide upon.

4. MANAGEMENT

- 4.1** Each theme committee shall appoint no more than 7 of its members to form a "core group" that will be responsible for managing the work programme of the theme committee.
- 4.2** The core group will liaise with the managing secretary allocated to the theme committee with regard to the preparation of agendas for theme committee meetings, the circulation of relevant documents to theme committee members and other administrative matters relating theme committee meetings.

5. CHAIRING

- 5.1** Rule 25 provides for the election of a chairperson of the committee from among the committee members. However, in terms of a Constitutional Committee decision of 12 September 1994, this rule should be amended to provide for the appointment of no more than three co-chairpersons from each "core group". The co-chairpersons will chair meetings, on a rotational basis agreed upon.
- 5.2** The positions shall not be remunerable.

6. ROLE OF THEME COMMITTEES

- 6.1** The Constitutional Committee is reviewing the role of theme committees. Constitutional Assembly resolution of the 5th September 1994, provides for the role, functions and structure of reports of theme committees.[see Constitutional Assembly Resolutions, pages 7 and 9.]
- 6.2** Flexibility and integration should be an important feature of theme committee work programmes. In view of possible overlap, theme committee should not be barred from dealing with pertinent issues but should be guided by the integrated nature of constitution-making process and the existence of time constraints.

6.3 Theme committees will have at their service, technical committees. The administration is developing a database of experts in various fields, in an effort to support the provision of a wide range of expertise to the theme committees.

7. RELATIONSHIP WITH OTHER CONSTITUTIONAL ASSEMBLY STRUCTURES

7.1 Constitutional Committee

7.1.1 Theme committees will compile reports and constitutional drafts for consideration by the Constitutional Committee.

7.1.2 The Constitutional Committee may, after deliberating on a theme committee report, refer the report to the Constitutional Assembly. It is envisaged that the Constitutional Assembly may make recommendations, including the referral of issues arising from the report for consideration by a theme committee.

7.2 Management Committee

7.2.1 The Management Committee is responsible for finalising the Constitutional Assembly agenda and will therefore process the reports to be considered at a particular sitting of the Constitutional Assembly.

7.3 Administration

7.3.1 The Administration will provide the necessary support services to theme committees. Each theme committee will be allocated a managing and a minute secretary. Proceedings of theme committee meetings will also be electronically recorded, although with the view of keeping the recordings and not of immediately transcribing them.

7.4 Technical Committees

7.4.1 Technical committees and their members may be appointed by or under a Constitutional Assembly resolution.

7.4.2 The functions of technical committees are set out in rule 44. The Constitutional Committee is reviewing this rule.

7.4.3 Several ways of reporting are set out in the rule, including reporting in accordance with an assignment.