

2/4/12/2

**CONSTITUTIONAL ASSEMBLY**

**THEME COMMITTEE 1  
CHARACTER OF DEMOCRATIC  
STATE**

**24 October, 1994**

**Room M515**

**DOCUMENTATION**







# CONSTITUTIONAL ASSEMBLY

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## MEETING OF THEME COMMITTEE 1 CHARACTER OF THE DEMOCRATIC STATE

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

**Date:** Monday, 24 October 1994  
**Time:** 10h00  
**Venue:** Room M515 (Marks Building)

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### AGENDA

1. Opening
2. Previous minutes
3. Matters arising
4. Core Group Report
5. Development of work plan  
(See: Work Programme for Theme Committee and Directorate memo)
6. A.O.B
7. Closure

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

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H EBRAHIM  
EXECUTIVE DIRECTOR:  
CONSTITUTIONAL ASSEMBLY

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Enquiries: L. Rammble and K. Radu, Room CA210 (Tel: 403 - 2268)



**CONSTITUTIONAL ASSEMBLY  
MINUTES OF  
FIRST MEETING OF  
THEME COMMITTEE 1  
CHARACTER OF DEMOCRATIC STATE  
MONDAY 19 SEPTEMBER 1994 (AT 14h00)**

**PRESENT**

Booi MS  
Chiba L (Alternate)  
Chiwayo LLL (Alternate)  
Cwele SC  
Dyani ZD  
Fani LM (Alternate)  
Felgate WS  
Green LM (Alternate)  
Kekana NN  
Lamani NE (Alternate)  
Lekgoro MK  
Macozoma SJ  
Mahlangu NJ  
Marais A  
Marais PG  
Meshoe KR  
Momberg JH

Moorcroft EK  
Mukhuba TT (Alternate)  
Mulder PWA  
Nair B (Alternate)  
Niehaus CG  
Nobunga BJ (Alternate)  
Nzimande BE  
Pikoli G (Alternate)  
Ripinga SS  
Schoeman EA  
Seaton SA  
Selfe J (Alternate)  
Shope NR  
Swanepoel L (Alternate)  
Van Deventer FJ  
Vilakazi BH  
Viljoen CL (Alternate)  
Williams AJ

H Ebrahim, L Meyer and L Rammable were in attendance.

**1. OPENING AND WELCOME**

The meeting was opened by Mr Ebrahim who chaired the meeting in terms of Rule 25 of the Standing Rules.



## **2. APPOINTMENT OF CORE GROUP MEMBERS**

2.1 The following members were appointed to the Core Group :

- \* Dyani ZD (PAC)
- \* Felgate WS (IFP)
- \* Marais PG (NP)
- \* Mahlangu NJ (ANC)
- \* Meshoe KR (ACDP)
- \* Moorcroft EK (DP)
- \* Mulder PWA (FF)
- \* Ripinga SS (ANC)

2.2 It was agreed that the matter of the nomination of Mr Meshoe to the Core Group be referred to the Constitutional Committee for a decision.

## **3. ELECTION OF A CHAIRPERSON**

3.1 The Chairperson referred to Rule 25(1) which deals with the committee electing one of its members as the chairperson of the committee. He pointed out that in terms of the decision of the Constitutional Committee of 12 September 1994, this rule would need to be amended to provide for the appointment of no more than three chairpersons from each core group who would chair meetings on a rotational basis.

3.2 The theme committee however should proceed to appoint acting chairpersons until a resolution had been passed by the Constitutional Assembly and the Rules Committee.

3.3 It was agreed that one acting chairperson be appointed and that members of the core group should meet to discuss the nominations of the chairpersons and report back at the next Theme Committee meeting.

3.4 Mr Mahlangu was appointed as the acting chairperson for the present meeting.

## **4. GENERAL DISCUSSION ON THE OBJECTIVES OF THE COMMITTEE**

It was agreed that the proceedings of the Theme Committee must be driven by the resolutions of the Constitutional Assembly.



**5. GENERAL DISCUSSION OF PROGRAMME OF WORK**

5.1 A query was raised with regard to whether the Committee could call for evidence by interested parties and in response to this Mr. Ebrahim highlighted Rule (27) which stipulates that a committee may summon persons to appear before it to give evidence on oath or affirmation and to produce any document required by the committee.

5.2 The meeting was also reminded of the document attached for circulation, Page 9, point 6.1, Second Draft - Theme Committee Briefing which indicates that the Constitutional Committee is reviewing the role of theme committees and therefore the committee should be flexible.

**6. INVITE PARTIES TO MAKE SUBMISSIONS RE: 5 ABOVE**

It was agreed that submissions should be made in writing and that the core group should look at logistics and a time frame. However, parties should feel free to submit submissions before 7 October.

**7. AGENDA FOR NEXT MEETING**

It was agreed that the core group would deal with this matter.

**8. CLOSURE**

The meeting rose at 14h50.



**CONSTITUTIONAL ASSEMBLY**  
**THEME COMMITTEE ONE**  
**MINUTES OF CORE GROUP MEETING**  
**MONDAY 17 OCTOBER 1994 (AT 8:20 A.M.)**

**PRESENT**

N J Mahlangu (Chairperson)  
E K Moorcroft  
G Pikoli  
P G Marais  
W S Felgate

**APOLOGIES:**

No apologies were received from Mr. C P Mulder and Mr. M M Dyani.

L. Rammble and K. Radu were in attendance.

**1. OPENING AND WELCOME**

The Chairperson opened the meeting and raised his concern about the absence of other members of the core group. The proposed agenda was adopted.

**2. General discussion on the programme of work**

A view expressing that the discussion on the programme of work should be discussed after the Constitutional Committee meeting which would be held on the 17/10/1994 was acknowledged by the house.

It was also emphasised that it would be important for core group members to understand the role and function of the core group in relation to the Theme Committee and the other structures of the CA.

It would be important to discuss and examine resolutions adopted on the 5/9/1994.

**It was agreed that all members from each party should submit views on**



**Wednesday 19/10/1994 by 1:00 p.m. on the agenda for the Theme Committee meeting on Monday 24/10/1994 to the administration. The task of the administration would then be to itemize and circulate the agenda to the members of the T.C. and core group by Thursday.**

### **3. ELECTIONS OF CO-CHAIRPERSONS**

The following co-chairpersons were elected:

W S Felgate  
N J Mahlangu  
P G Marais

**It was agreed that Mr. Mahlangu would chair the meeting and that immediately thereafter the chairpersons would rotate on an alphabetical basis.**

### **3. GENERAL**

**The meeting resolved that, for purposes of evaluation and planning core-group meetings should follow immediately after theme committee meetings.**

The chairperson also reminded the members about the dire need for effective communication. This includes, inter alia, the need for timeous reporting if for instance, the chairperson for the day is ill-disposed, a timeous report will enable the core-group to make a timely substitution.

Lastly, the core-group needs to clearly identify its role with regards to its modus operandi, how often it needs to report to the Constitutional Committee and also how such reports need to be effected.

The meeting rose at 09.21 am.



# CONSTITUTIONAL ASSEMBLY

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REPUBLIC OF SOUTH AFRICA

REF No:

TC/1/18.10.94

18 October 1994

## MEMORANDUM

To : **Members of Theme Committees**

From : **Hassen Ebrahim  
Executive Director**

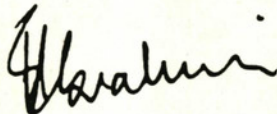
### RE : WORK PROGRAMME

1. The Management Committee and Constitutional Committee met on 17 October 1994. One of the items discussed in these meetings was a draft work programme for Theme Committees. A comprehensive work programme is still under consideration and will be finalised shortly.
2. However, it has been agreed that Theme Committees should work towards 30 June 1995 as the target date for completing their work. In terms of this agreement, all Theme Committees are required to submit a detailed report to the Management Committee detailing their work plan. This report should be submitted to the Executive Director by no later than 15 November 1994.
3. It is recommended that these reports be structured in the following way :
  - a) Which constitutional issues within the broad Theme need to be attended to;
  - b) Which of these constitutional issues need to be dealt with as a priority;
  - c) Which are the areas of overlap with each other in the Theme Committee;



- (d) Which constitutional issues need to be dealt with in Commissions;
  - (e) Which groups of constitutional issues do the committee anticipate will require the submission of separate reports;
  - (f) How many such reports are to be issued and what are the deadlines for the submission of same;
  - (g) What are the structures and who are the role players that are to be consulted;
  - (h) What community and media liaison assistance will be required to facilitate the committee's work;
  - (i) Who and what technical assistance will be required to support the committee.
4. Kindly note that your reports should contain sufficient detail so as to assist and guide the Administration in making the necessary preparations for the public participation programme relevant to your Theme Committee.

Should you have any queries with regard to the above, please do not hesitate to call on the writer hereof.



HASSEN EBRAHIM



## **BRIEFING DOCUMENT FOR THEME COMMITTEES**

*(as Enacted by the Constitutional Committee meeting  
of 17 October 1994)*

### **1. INTRODUCTION**

The Constitutional Assembly has the right to debate in detail, oversee and direct the drafting of and adopt the new constitutional text. In order to perform its functions it has established Theme Committees to deal with the wide range of issues to be covered in 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 8 of its members to form a "core group" that will be responsible for managing the work programme of the Theme Committee. Political party representation in each core group shall be as follows; 2 members from the ANC, and one from the NP, IFP, PAC, FF and DP respectively. In respect of Theme Committees that have an ACDP member, the core group shall include such member.
- 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 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.]
- 6.1(a) Drafting is directed by the Constitutional Assembly.
- 6.1(b) The Constitutional Committee is responsible for the co-ordination of all Constitutional Assembly work, including drafting.
- 6.1(c) The primary task of Theme Committees is to receive submissions and process them into reports for consideration by the Constitutional Committee.



**6.1(d)** By resolution of the Constitutional Assembly, the reports should therefore include details of non-contentious issues, contentious issues and suggested approaches.

**6.2** Flexibility should be an important feature of the work programmes of Theme Committees. In view of possible overlaps, Theme Committees are not barred from dealing with an issue that another Theme Committee may be considering. Their work programmes should be guided by the integrated nature of constitution-making process and the existence of time constraints.

## **7. RELATIONSHIP WITH OTHER CONSTITUTIONAL ASSEMBLY STRUCTURES**

### **7.1 Constitutional Committee**

**7.1.1** Theme Committees will compile reports which include details of non-contentious issues, contentious issues and suggested approaches, 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.

### **7.2 Management Committee**

**7.2.1** The Management Committee is responsible for the following functions;

- (a) dealing with process matters,
- (b) implementing tasks of the Constitutional Committee, and
- (c) overseeing administration,

### **7.3 Administration**

The Administration will be responsible for the following:

**7.3.1** Provision of secretariat services to the Theme Committees, including the facilitation of technical assistance.

**7.3.2** Provision of general daily co-ordination.

**7.3.3** Provision of research, legal services and information.



**7.3.4 Facilitation and management of media and community liaison programmes.**

**7.4 Technical Committees**

**7.4.1 *Technical Committees shall nominate experts for appointment by the Constitutional Committee.***

**7.4.2 The functions of Technical Committees are set out in rule 44 include the supervision of the drafting process, however, 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.**



REPUBLIC OF SOUTH AFRICA

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**CONSTITUTIONAL ASSEMBLY**

**RESOLUTIONS**

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MONDAY, 5TH SEPTEMBER 1994  
~~FRIDAY, 2ND SEPTEMBER 1994~~

**THE ESTABLISHMENT OF THESE 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)



## **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.