

2/4/5/1/1

**DRAFT INPUTS**

**ON WORK PROGRAMME**

**SUBMITTED AT**

**THEME COMMITTEE 5 MEETING**

**ON 24TH OCTOBER 1994**



TO :           THEME COMMITTEE 5  
              JUDICIARY AND LEGAL SYSTEMS

FROM :       D P A SCHUTTE MP

**DRAFT INPUT**

(a)    Constitutional issues that must be attended to

The Enforcement of the Constitution, the Courts and the Judiciary  
(5.1 and 5.3)

Taking into account Constitutional Principles IV, VI and VIII the following matters must be dealt with:

1.    The Independent Judicial authority. – Sec 96 (1) (2) and (3)
2.    Appointment of Chief Justice – Sec 97 (1).
3.    Appointment of President of the Constitutional Court and term of office.  
      Sec 97 (2) (a) + (b)
4.    Constitutional Court and its Jurisdiction – Sec 98 (1) - (9)
5.    Composition of Constitutional Court and the appointment of judges of the  
      Constitutional Court. – Sec 99 (1) - (6)
6.    Engaging the Constitutional Court. – Sec 100 (1) x (2)
7.    Supreme Court. – Sec 101 (1) - (b)
8.    Procedural matters. – Sec 102 (1) - (17)
9.    Other Courts. – Sec 103 (1) - (4)
10.   Appointment, removal from office and remuneration of Judges.  
      Sec 104 (1) - (5)
11.   Judicial Service Commission. – Sec 105
12.   Seats of Constitutional Court and Appellate Division. – Sec 106
13.   Court Languages. – Sec 107



14. Attorneys General. - Sec 108
15. Magistrates Commission. - Sec 109
16. Transitional Arrangements : Judiciary. - Sec 241 (1) - (10)
17. Rationalization of Court Structures. - Sec 242 (1) - (3)
18. Amnesty - Postamble

Traditional Authorities, the institution status and role of Traditional Leadership and indigenous Law.

Taking into account Constitutional Principle XIII the following matters must be dealt with:

1. Recognition of Traditional Authorities and Indigenous Law (Sec 181)
2. Traditional Authorities and Local Government - Section 182
3. Provincial House of Traditional Leaders - Section 183 (1) + (2)
4. Council of Traditional Leaders - Section 184 (1) - (5)
5. Provision for Traditional Monarchy in Provincial Constitutions - Section 160 (3)(b)

**(b) Issues to be dealt with on a priority basis**

The two most important issues which must be given priority are the Appointment, Constitution and Jurisdiction of the Constitutional Court and the position of traditional authorities and indigenous law.

**(c) Areas of overlap with other Theme Committees**

There is a clear overlap between this Theme Committees mandate on Traditional Authorities and the mandate of Theme Committee 6 also dealing with traditional authorities with reference to Chapter 11 of the Interim Constitution (6.7)

**(d) Issues to be dealt with in Commissions**

The Appointment, Constitution and Jurisdiction of the Constitutional Court and the position of traditional authorities and indigenous law could possibly be dealt with in commission.

**(e) Separate Reports**

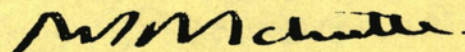


It is too early to contemplate separate reports. If the matters mentioned in (d) can be finalised early, separate reports would not be required.

**Further comment**

It would appear that the issues relating to the Public Protector, Human Rights Commission, Gender Commission and Commission on the Restitution of Land Rights which have been allocated to Theme Committee 6 could more productively have been allocated to this Theme Committee because these issues are closely related to Courts and the Law.

CAPE TOWN  
25 OKTOBER 1994



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D P A SCHUTTE MP



## THEME 5; JUDICIARY AND LEGAL SYSTEMS

- 1 Independence and impartiality of judiciary  
Principles 6 and 7
- 2 Appointment and removal from office of judges  
Principles: None, but sections 104 and 105 of Constitution
- 3 Equality of all before the law  
Equitable legal process  
Principle 5
- 4 The different courts  
Principles: None
- 5 The jurisdiction of the abovementioned courts in respect of  
the common law, statutory law, the Constitution and  
indigenous law  
Principles 13, 34

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aw. ↓ R. & Ville - V.F.



## SUMMARY OF DRAFT PROPOSALS PRESENTED BY J. DE LANGE

1. Mr. de Lange proposed that -
  - \* the Theme Committee identify areas and terms of reference
  - \* the Core Group take inputs and prepare an overall report
2. Categorisation was needed but the broad areas suggested were -
  - 1) formal legal education, probably not in the Constitution
  - 2) legal profession, probably not in the Constitution
  - 3) access to the Courts
  - 4) structure relating to administration of justice
    - a) structures
      - would deal with the Constitutional Court, Special Courts such as Family, Children or Tribal courts.
      - also independent structures such as Attorney General, Magistrates Commission
    - b) personnel
      - would deal with e.g. the appointment of judges; their terms and conditions of employment.
    - c) procedure
      - would deal with e.g. the structure of the Attorney General's office and how other legal systems such as Traditional courts would fit in.

These broad categories must be compiled into a report by the Core Groups and ratified by the Theme Committee for public comment.

Following the ensuing inputs from the public it could then be decided if Commissions needed to be appointed.