

2/2/1994

**CONSTITUTIONAL
ASSEMBLY**

**MANAGEMENT
COMMITTEE**

**THURSDAY
17 NOVEMBER 1994
(08h00)
V16**

DOCUMENTATION

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(Management Committee - 10 November 1994)

CONSTITUTIONAL ASSEMBLY

MEETING OF THE MANAGEMENT COMMITTEE

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

Date : Thursday 17 November 1994

Time : 08h00 - 10h00

Venue : V16

AGENDA

1. Opening
 2. Minutes: Pages 2 - 6
 3. Matters Arising: See Agenda Items Below
 4. Independent Panel of Constitutional Experts:
 - 4.1 Discussion on Terms and Conditions of Appointment: Page 7
 - 4.2 Discussion on Place, Role and Function of Panel: Page 7
 5. IFP Proposal on International Mediation: Pages 8 - 13
 6. Theme Committees - Work Programmes: Pages 14 - 81
 7. All Other Business
 8. Closure
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**H EBRAHIM
EXECUTIVE DIRECTOR
CONSTITUTIONAL ASSEMBLY**

Enquiries : Ms MM Sparg, Room CS205, Tel 403 2274, Page 468 5316

CONSTITUTIONAL ASSEMBLY
MINUTES OF MANAGEMENT COMMITTEE MEETING
THURSDAY 10 1994 (AT 08H00)

PRESENT
RAMAPHOSA MC (CHAIRPERSON)

Chabane OC
Eglin CW
Felgate W
Mabandla BS
Moosa MV

Meyer R
Sizani R K
Van Breda A
Viljoen C
Wessels L

Apologies: K. Meshoe

In attendance:

De Beer, S, Ebrahim H, Lilienfeld P, Meyer A, Matyolo L, Zondo L, Meyer L, Mngadi-Kgosidintsi T, Grové G, Powell D and Keegan M.

1. OPENING

Mr. Ramaphosa opened the meeting at 08h09. The Agenda was adopted.

2. MINUTES

The Minutes of the meeting held on Monday 7 November 1994 were adopted.

3. MATTERS ARISING

None - included in the Agenda Items below.

4. REPORT OF THE SUBCOMMITTEE TO SELECT A PANEL OF EXPERTS

4.1 Mr. Felgate spoke to the report entitled "*Report of the Subcommittee to Select the Independent Panel of Constitutional Experts,*" included in the documentation.

4.2 Mr. Ramaphosa congratulated the Subcommittee for submitting an unanimous report. The meeting agreed that the Report would be presented to the Constitutional Committee on Monday, 14 November 1994 for its consideration, and if endorsed, forwarded to the

Constitutional Assembly on the same day.

- 4.3 The meeting agreed that the Directorate would prepare a synopsis of the nominees' qualifications and a dossier indicating the Subcommittee's support for the nominees. These would be made available to the Chairperson in preparation for discussions in the Constitutional Assembly.
- 4.4 The meeting agreed that the selected nominees would be immediately contacted and informed that the Management Committee had approved their nomination, but still ahead were approval by the Constitutional Committee and Constitutional Assembly.

5. CONSTITUTIONAL ASSEMBLY PREPARATIONS:

5.1 DRAFT AGENDA

- 5.1.1 Mr. Lilienfeld tabled a new document, entitled "*Constitutional Assembly: Agenda of Proceedings: Monday, 14 November 1994*" to replace the document of the same name included in the documentation.
- 5.1.2 The meeting agreed that Resolution 1 would be amended to read, "The Constitutional Assembly authorises the Constitutional Committee to exercise the powers of the Constitutional Assembly on behalf of the Constitutional Assembly, subject to the ratification by the Constitutional Assembly." Ratification of Constitutional Committee decisions would occur at the next meeting of the Constitutional Assembly in January 1995.

5.2 DRAFT REPORT

- 5.2.1 Mr. Ramaphosa excused himself from the Chair, and Mr. Wessels replaced him as Chairperson.
- 5.2.2 The meeting accepted the report entitled "*Constitutional Assembly: Announcements, Tablings and Committee Reports, Friday 11 November 1994,*" included in the documentation.

6. CONSTITUTIONAL ASSEMBLY PROCESS

The matter is noted and will be dealt with when documentation is available.

7. INTERNATIONAL MEDIATION

The meeting agreed that the IFP would circulate a document on international mediation to all Management Committee members. The issue would be

placed on the agenda of the 17 November 1994 Management Committee meeting.

8. DIRECTORATE REPORT

8.1 WORK PROGRAMME

8.1.1 Mr. Wessels introduced the document, "*Directorate Report*," included in the documentation.

8.1.2 The meeting suggested that the Management Committee meet on 28 November 1994 and the Constitutional Committee on 2 December 1994. These dates would be proposed to the Constitutional Committee for confirmation.

8.1.3 Mr. Ebrahim noted that six additional tickets had been secured for Constitutional Assembly members. Members can apply for warrants for tickets in order to attend the additional meetings.

8.1.4 Mr. Ebrahim reported that Theme Committee 6 has created 4 Subcommittees, some of whose members are not members of the Theme Committee. It is noted that the following concerns were expressed around this matter:

- i. Mr. Felgate is concerned about representivity on the Subcommittees, reporting procedures and financial implications, and
- ii. Mr. Sizani asked for a reconsideration of how ordinary members can better participate in the process.

The meeting agreed that these matters would be discussed when considering the Work Programmes.

8.2 FINANCES

8.2.1 Mr. Ebrahim introduced Section 3 of the Report, including "*3.1 Salary Structure*" and "*3.2 Budget*." No decision was required of the meeting.

8.2.2 Mrs. Mabandla expressed concern that Commissions were not provided for in the Budget. Mr. Ebrahim explained that a further request for funds for the Commissions could be made in December 1994.

8.3 TECHNICAL ASSISTANCE

8.3.1 Mr. Ebrahim introduced the section of the report entitled "*Technical Assistance.*"

8.3.2 The meeting agreed that:

- i. All requests from any structure of the Constitutional Assembly for legal or research assistance be directed to the Administration. Should a structure be aware of a particular expert or structure that may be a specialist in a matter, such recommendation should be included in the request.
- ii. The Administration will develop its database of experts and institutions that may be of assistance on an ongoing basis. Such information, placed in a directory, would be made available to all structures of the Constitutional Assembly.
- iii. Upon receipt of a request for research or legal assistance, the Administration will, in taking into consideration the recommendations made by a structure, seek to secure the best possible assistance; and
- iv. Requests for legal or research assistance should only be made by a Theme Committee. Parties or members requiring assistance should therefore table such matters through Theme Committees to the Administration.

8.3.2 Mr. Felgate noted that paragraph 4.4 should be amended to indicate that requests for assistance would be directed to the Administration.

8.4 LEGAL OPINION ON ALTERNATES FOR THE MANAGEMENT COMMITTEE

8.4.1 Mr. Ebrahim spoke to section 5 of the "*Directorate Report,*" entitled "*Alternates.*"

8.4.2 The meeting agreed that proposed addition to subrule (6) of Rule 19(a) would be amended to read:

"(e) Whenever a member of the Management Committee is absent or for any reason unable to perform his or her functions as a member of the committee for a period of at least one week, the political party to which that

member belongs may designate another member of that party who is either a full member or an alternate member of the Constitutional Committee as an acting member of the Management Committee for the period of absence or inability of the said member."

8.4.3 The meeting also agreed that the law advisors would word the proposed addition such a way that it reflected the concern that there be consistent representation in the Management Committee to ensure its proper functioning.

8.4.4 The meeting accepted the addition, Sub-Rule 19(a)(6)(e), as amended and agreed that it would be forwarded to the Constitutional Committee for its consideration.

9. AOB

Mr. Eglin reported that Theme Committee 2 has agreed to meet a half hour later at 8:30. The meeting agreed that if it didn't create administrative problems, that Theme Committees meetings would begin at 8:30. This would be finalised in Work Programmes.

10. CLOSURE

The meeting closed at 10:01.

CONSTITUTIONAL ASSEMBLY

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PO Box 15
CAPE TOWN 8000
REPUBLIC OF SOUTH AFRICA

REF No:

MEMORANDUM

TO: Management Committee
FROM: Hassen Ebrahim
DATE: 15 November 1994
RE: Independent Panel of Experts

DECISION REQUIRED:

Consideration of the terms and conditions of appointment of the Panel and the terms of engagement of the Panel with structures of the CA.

BACKGROUND:

The Constitutional Assembly of 14 November 1994 appointed seven members to the Independent Panel of Constitutional Experts. The Management Committee now needs to apply its mind to two issues:

- * the terms and conditions of appointment of the Panel; and
- * the place, role and function of the Panel in relation to the process of constitution-making and in particular the terms of engagement with CA structures.

No documentation has been prepared in this regard.

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REF No:

MEMORANDUM

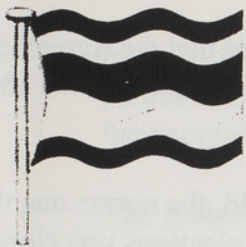
TO: Management Committee
FROM: Hassen Ebrahim
DATE: 15 November 1994
RE: International Mediation

DECISION REQUIRED:

Consideration of the IFP proposal.

BACKGROUND:

The IFP had requested the Management Committee discuss their proposals with regard to the issue of international mediation. The matter is accordingly placed before the Committee for its consideration. The IFP proposal is contained on pages 9 - 13.



INKATHA

Inkatha Freedom Party

Iqembu leNkatha Yenkululeko

MANAGEMENT COMMITTEE POSITION PAPER ON INTERNATIONAL MEDIATION

During its discussion of November 7, 1994 on the issue of international mediation, the Management Committee requested the IFP to make a submission on the relation between international mediation and the constitution-making process.

On April 19, 1994 the Inkatha Freedom Party, the African National Congress, the South African Government and the National Party entered into a solemn agreement known as *Memorandum of Agreement for Reconciliation and Peace* which is herewith attached, and is hereinafter referred to as "the Agreement".

Clause 4 of the Agreement states that

"Any outstanding issues in respect of the King of the Zulus and the 1993 Constitution as amended will be addressed by way of international mediation which will commence as soon as possible after the said elections."

The issues which remained "outstanding" with respect to the 1993 Constitution were narrowed to a limited number of items which were agreed to by the IFP, the ANC and the NP and became the objects of the international mediation attempt which took place before elections. There was no disagreement amongst the parties on the list of items and on their definition. In fact, disagreement developed on the portion of the terms of reference for international mediation which related to the purpose of international mediation, and to the relation between international mediation and the amendability of the constitution prior to elections and the election date itself.

The Agreement was characterized by all participants as a solemn and legally binding agreement and it was so intended and perceived. In this respect reference can be made to a declaration by the then State President, Mr. F. W. de Klerk and by President Nelson Mandela at the time of the ratification and the presentation of the Agreement to the press.

The Government of South Africa signed the Agreement, as a party to the Agreement, and did so in the person of its State President. It was clear to all parties to the Agreement that the participation

of the South African Government was the most important and the final guarantee that the Agreement in its entirety would be honored with special regard to the obligations which had to be fulfilled after elections.

During the press conference at which the Agreement was presented to the world, the notion that the SAG was guaranteeing the implementation of the Agreement before and after elections was clearly stated both by the then State President Mr. de Klerk and by President Mandela, as well as by Professor V. A. J. Okumo who witnessed the Agreement. Furthermore, during the negotiation of the Agreement this point was specifically addressed and expressly agreed upon by all participants. The IFP is in the possession of the tape recordings of the negotiations which led to the execution of the Agreement, and will gladly transcribe them should the ANC or the NP doubt the intention of the signatories of the Agreement as was expressed during negotiations.

Therefore, the SAG undertook an obligation to fulfill the Agreement in its entirety. At no point did the SAG make any reservation with respect to any clause of the Agreement in general or with respect to clause 4 in particular.

In terms of the Agreement, the SAG was bound to call into session the South African legislature of the time to consider the amendments to the Interim Constitution which the parties had agreed to adopt prior to elections. During the negotiation of the Agreement the State President specifically indicated that he accepted the fact that it was his obligation in terms of the Agreement to convene Parliament to consider the proposed amendment to the constitution, since the Agreement was binding on the SAG in all its branches. Therefore in terms of the Agreement, the Parliament of SA at the time was bound to come into session and to consider the proposed amendments, while the political parties who were signatories to the Agreement, were bound to ensure that their representatives in Parliament would support the adoption of such amendments.

In this respect, a distinction must be drawn between on the one hand Parliament as an organ of the State which was bound by the obligation assumed by the SAG in terms of the Agreement, and on the other hand on the obligation of the Members of Parliament who were bound in terms their party's discipline, because their respective parties signed the Agreement.

The portion of SAG's obligations in terms of the Agreement which relates to the time after elections are binding on the organ of the SAG which has now the constitutional power to fulfill the obligation concerned. In terms of the present Constitution the organ of the SAG charged with constitutional matters is the Constitutional Assembly which, therefore, in terms of the Agreement is under the obligation *inter alia* to consider the outcome of international mediation.

It may argued that the obligation of the Constitutional Assembly does not extend to having to accept without modifications the outcome of international mediation, and that the only obligation incumbent upon the Constitutional Assembly is to proceed so as to allow for international mediation to take place as soon as possible after April 1994, and to consider its outcome and results. From this viewpoint, it will not be the obligation of the Constitutional Assembly to accept the outcome of

international mediation but such obligation would be incumbent upon the three specific political parties who signed the Agreement, the ANC, the IFP and the NP which will be bound to ensure that their respective members honor the Agreement.

The obligation of the SAG to fulfill clause 4 of the Agreement has not been undermined by the coming into force of the 1993 Constitution on April 27 1994. On the contrary, the transitional provisions of the Constitution clearly established the principle continuity between the subjectivity of the SAG before elections and the SAG after elections. Therefore, the SAG today is the same legal entity which it was before elections, and it is today as much legally bound to fulfill the terms of the Agreement as it was on April 19, 1994.

Therefore, the Constitutional Assembly is under the obligation to ensure that "any outstanding issue in respect to the 1993 Constitution ... be addressed by way of international mediation which will commence as soon as possible after elections." This language clearly indicates that the international mediation should proceed rather than follow the work of the Constitutional Assembly and it should have commenced right after the April 27, 1994 elections.

This language creates a specific obligation which the Constitutional Assembly must fulfill with respect to the structuring and scheduling of its work agenda. Simply put, the Constitutional Assembly which is an organ of the State and a part of the Government of South Africa, would be in breach of its obligations in terms of the Agreement if it went ahead with its work without allowing for international mediation to take place so that the outcome of international mediation could be considered by the Constitutional Assembly at the beginning of the constitutional debate.

It is incumbent on the SAG to promote the resumption of international mediation. Clearly this obligation is not limited to the Constitutional Assembly alone, but extends to other organs of the SAG which might be involved in the international mediation process such as the President of the Republic, the Department of Foreign Affairs and the Department of Constitutional Development. However, while it might be difficult for a court of law to give a specific order to the other organs of the Republic to resume international mediation, it would be quite in order for a court of law to enjoin the activities of the SAG which are incompatible with its legal obligation in terms of the Agreement and therefore a continuation of the work of the Constitutional Assembly could be interdicted.

MEMORANDUM OF AGREEMENT FOR RECONCILIATION AND PEACE BETWEEN THE INKATHA FREEDOM PARTY/KWAZULU GOVERNMENT AND THE AFRICAN NATIONAL CONGRESS AND THE SOUTH AFRICAN GOVERNMENT/NATIONAL PARTY.

We, the undersigned, pledge ourselves to Peace and Reconciliation in South Africa and agree to commit ourselves to the following:

1. The Inkatha Freedom Party agrees to participate in the April 26 - 28, 1994 elections for both the National Assembly and Provincial Legislatures.
2. All the undersigned parties reject violence and will therefore do everything in their power to ensure free and fair elections throughout the Republic of South Africa.
3. The undersigned parties agree to recognise and protect the institution, status and role of the constitutional position of the King of the Zulus and the Kingdom of KwaZulu, which institutions shall be provided for in the Provincial Constitution of KwaZulu/Natal immediately after the holding of the said elections. The 1993 Constitution shall for this purpose be amended before 27 April in accordance with Addendum A.
4. Any outstanding issues in respect of the King of the Zulus and the 1993 Constitution as amended will be addressed by way of international mediation which will commence as soon as possible after the said elections.
5. The South African Government undertakes to place the necessary facilities at the disposal of the Independent Electoral Commission (IEC) as it may require in order to facilitate the full participation of the IFP in the April 26-28, 1994 election.
6. the undersigned parties will facilitate proper provision for:
 - i) Registration of the IFP
 - ii) The IFP Candidates lists
 - iii) Marking by voters of ballot papers.

The undersigned parties hereby undertake to abide by the technical arrangements to be made by the Independent Electoral Commission to implement the matters referred to in subparagraphs (i), (ii) and (iii) above in accordance with the details set out in Addendum B.

This agreement shall be implemented with immediate effect.

SIGNED BY:

.....
MANGOSUTHU G BUTHELEZI
President: Inkatha Freedom Party and
Chief Minister of the KwaZulu Government

.....
STATE PRESIDENT F W DE KLERK
South African Government/National Party

.....
PRESIDENT N MANDELA
African National Congress

.....
WITNESSED BY:
PROF W A J OKUMU

19 April 1994

CONSTITUTIONAL ASSEMBLY

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PO Box 15
CAPE TOWN 8000
REPUBLIC OF SOUTH AFRICA

REF No:

MEMORANDUM

TO: Management Committee
FROM: Hassen Ebrahim
DATE: 15 November 1994
RE: Theme Committee Work Programmes

DECISION REQUIRED:

None.

BACKGROUND:

Theme Committees are finalising work programmes for submission to the Constitutional Committee on 2 September 1994. The work programmes of the six Theme Committees as at Tuesday 15 November are attached hereto for the information of the Management Committee. No decision is required at this point. The programmes will be presented to both the Management and Constitutional Committee in the form of a comprehensive report as per the decision of both these committees.

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 1 WORK PROGRAMME REPORT

TO: The Constitutional Committee

FROM: Theme Committee 1

The document to be submitted as Theme Committee 1 Report should consist of:-

- 1) Section A to E of the 3rd Report (indicating amendment A)
with the 4th Report as an appendix / addendum

Amendment A:

A paragraph be added indicating that, "This report is a working document and guidelines whose contents may be added to or amended by the Theme Committee at any time."

All parties will have the right to submit any amendments to their positions as set out in the 4th report by 08h00, 15 November 1994. These will be accepted by all other parties.

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 1 REPORT ON WORK PROGRAMME (3RD DRAFT)

The following report notes the various non-contentious issues which were agreed upon by members of the Theme Committee. Where there has been no discussion or agreement, the submissions made by the various parties have been outlined in detail.

(A) ISSUES TO BE DEALT WITH ON A PRIORITY BASIS

- I) Democracy
- II) Equality
- III) Supremacy of the constitution
- IV) Representative Government
- V) Accountability

(B) ISSUES TO BE DEALT WITH IN COMMISSIONS

- I) Name of State and symbols
- II) Division of Powers

(C) TECHNICAL ASSISTANCE REQUIRED

- I) Proportional representation
- II) The rights of prisoners, expatriates and permanent residents need to be discussed by the theme committee and technical committee.

(D) AREAS OF OVERLAP WITH OTHER THEME COMMITTEES

- I) Representative government and Division of Power should also be dealt with in Theme Committee 2.

(E) STRUCTURES AND PEOPLE TO BE CONSULTED

- I) Provinces
- II) Political Organisations
- III) Mass Organisations
- IV) N.G.O's
- V) Universities and Institutes
- VI) Traditional Leaders
- VII) Commission on Provincial Government
- VIII) Provincial Government
- IX) Council of Traditional Leaders
- X) Volkstaat Council
- XI) Municipal and local structures and organisations, eg. Transvaalse Munisiplae Vereniging, etc.
- XII) Church Organisations

2

(F) SEPARATE REPORTS

The NP

- VI) Preamble
- VII) Single sovereign state
- VIII) Common South African citizen
- IX) Democracy
- X) Supremacy of the constitution
- XI) Regular elections
- XII) Suffrage
- XIII) Representative government
- XIV) Name and definition of the territory of the State
- XV) National Symbols
- XVI) Official languages
- XVII) Separation of power among legislative, executive and judicial authorities
- XVIII) Other matters to be determined from time to time

The FF

- XIX) Preamble of the Constitution
- XX) Single Sovereign State
- XXI) Division of Powers

The ANC

- XXII) Single sovereign state
- XXIII) Supremacy of the constitution

(G) NUMBER OF REPORTS REQUIRED AND DEADLINES

The ANC and FF

- I) It is too early to determine the above

The NP

- II) Reports on all themes should be submitted to the Constitutional Committee and progress and trial reports could be submitted from time to time.

The NP further made the following suggestions regarding the nature of the reports and the proposed time frames.

Nature of the reports

Since the Theme Committees may not negotiate, in other words may not take decisions, it is recommended that all reports should analyse the problems, offer more than one solution or definition and leave the decision to the CC. The theme committee could, where possible, indicate preference.

Proposed time frames

- a) The proposed reports 2 (VII) and 12 (XVII) should take priority, since they are crucial to the continuation of the entire process.
- b) All theme committee members give joint consideration to these matters;
- c) Technical assistance is obtained particularly in respect of those two matters; and

- d) That at the same time as the above, subcommittees attend to reports 1 (VI) and 3 (VIII) to 11 (XVI) with a view to submitting it to the Theme Committee by the end of March.

(H) COMMUNITY AND MEDIA LIAISON ASSISTANCE REQUIRED

The FF

- I) SACS should be consulted

The NP

- II) Party structures should be used for communication
- III) People in rural areas must also be consulted
- IV) State and privately owned media should be requested to carry information programmes on process as well as substance

The ANC

- V) A fully fledged Communication Media Liaison Unit of the CA to serve all Theme Committees.
- VI) Communication through whatever media to keep public informed.

(I) PROCESS / GENERAL

The NP

- I) The study material obtained during the Kempton Park phase should be made available to the theme committees.

**REPORT A001
FOURTH DRAFT**

The following report notes the various issues raised by the parties under the sub-headings of the the Themes agreed to.

A) ISSUES TO BE DEALT WITH ON A PRIORITY BASIS

1. DEMOCRACY

NO.	PARTY	PARTY POSITION
1.	IFP	<p>1. SEPARATION BETWEEN CHURCH AND STATE</p> <p>1.1 Church and State should be totally separated.</p> <p>1.2 The limitations on the State to take any action which promotes, supports or hinders any given church or religion in general.</p> <p>1.3 The State should not be involved in any religious matter.</p> <p>1.4 Churches and politics.</p> <p>2. TYPE OF STATE</p> <p>2.1 The ideal of South Africa being a social State but not a socialist state.</p> <p>2.2 Private property and free-market enterprise and the role of government in economic matters should be severely limited.</p> <p>2.3 Recognition in the constitution of all recognized social and economic rights.</p> <p>2.4 Constitutional imperatives which mandate the legislature to remove social injustice, and promote the social growth of all South Africa.</p> <p>3. SEPARATION OF POWERS</p> <p>3.1 The power of the state is to be exercised within the restraints of a democratic system in which the rigidity of the constitution, the accountability of government, the guarantees of human rights are enhanced by the separation of powers.</p> <p>4. SINGLE SOVEREIGN STATE</p> <p>4.1 This heading does not represent a separate "constitutional issue" but it is rather a qualification or guideline which affects all the issues listed under "Democracy".</p>

No.	PARTY	PARTY POSITION
1.	IFP	<p>5. CITIZENSHIP</p> <p>5.1 Entitlement to citizenship.</p> <p>5.2 The purpose of a constitutional definition of citizenship.</p> <p>5.3 Unified notion of citizenship.</p> <p>5.4 Citizenship and the relationship between provincial governments and their subjects.</p> <p>6. WHAT TYPE OF DEMOCRACY?</p> <p>6.1 How far should the principle of democratic representation extended?</p> <p>6.2 How does the democratic principle related to:</p> <ul style="list-style-type: none"> - pluralism - the notion of autonomy of social, cultural and economic formations? <p>6.3 Participatory democracy.</p> <p>6.4 Recognition and entrenchment of an area of protected constitutional economy for social, cultural and economic formations.</p> <p>7. SUFFRAGE</p> <p>7.1 Active and passive voting rights.</p> <p>7.2 Different notions could be employed for active and passive voting rights.</p> <p>7.3 Different notion of suffrage could be employed at national and provincial levels.</p> <p>8. SEPARATION OF POWERS (FORM OF STATE)</p> <p>8.1 How are the powers between national and provincial levels of governments to be separated?</p> <p>8.2 Concurrent powers versus exclusive powers.</p> <p>8.3 Relation between national overrides, or framework legislation, or general principles of legislation and concurrent or exclusive provincial powers.</p> <p>8.3.1 Relations between provincial and national levels of government regulated by checks and balances.</p>

No.	PARTY	PARTY POSITION
1.	IFP	<p>8.3.2 Intended as a predetermined set of mutual interference among the powers of each level of government, based of the extension by relevancy or implication of the powers of one level of government into areas of competence of the other, as in theory is the case in the U.S. (i.e.: interstate commerce).</p> <p>8.4 The separation of powers between any level of government and civil society.</p> <p>8.5 Separation between the powers of any government and civil society: recognition of an area of autonomy for individuals as well as social, cultural and economic formations.</p> <p>8.5.1 Autonomy in terms of the capability of interests to self-regulating and administering in respect of which no government has a compelling reason of public interest to intervene.</p>

2.	FF	<ol style="list-style-type: none"> 1. Democratic rule in South Africa. The nature, excellence and limitations of democracy. Democratic governance at all levels. The origins and scope of democratic thinking. 2. Systems of democracy: <ul style="list-style-type: none"> * Liberal Democracy * Multiparty Democracy * Democracy in traditional African communal societies. * Traditional leaders and democracy. * The Freedom Charter and democracy. 3. Pluralistic Society and democratic rule. Minority rights in a democracy? Group domination and democracy. Self-determination and inclusive democracy. 4. A democratic culture in Society in South Africa. <ul style="list-style-type: none"> * Freedom of information * Press freedom * Tolerance * Direct democracy: referendum, petitions, mass action 5. Democracy and State formation
3.	PAC	<p>Since democracy has throughout history been understood differently for implementation, we felt that it should, in our case, mean a constitutional right to representation in the entire governing process. This constitutional right should vest in all citizens of the country without any regard as to race, class, religion or gender.</p> <p>We also maintain that our democracy shall mean nothing if it will not guarantee equal access of the citizens to economic empowerment. We held as idiomatic that political democracy with no economic democracy is no democracy.</p>

No.	PARTY	PARTY POSITION
4	DP	1.1 Universal Adult Suffrage 1.2 Regular free elections. 1.3 The guarantee of Civil Liberties especially freedom of expression and association. 1.4 The independence of the judiciary. (the above "lock together" as a cluster) 1.5 Built-in, racially / ethnically defined majorities are critical to democracy because democracy presupposes the reasonable alternation of government and / or the shifting bases of coalition.
5	ACDP	What do we understand by democracy? What type of democracy? a) Liberal democracy b) Christian democracy c) Democracy d) Multiparty democracy
6	ANC	1. Representative Government (Principle VI) 2. Participatory democracy and Accountability (Principle IX) 3. Equality, Affirmative action 4. Sovereignty 5. Citizenship and Franchise 6. Separation of Powers 7. Majority Rule
7	NP	Single Sovereign State, including: * Common Citizenship * Democracy * Equality * Minority rights * Regionalism / Federalism

2. EQUALITY

No.	PARTY	PARTY SUBMISSION
1	IFP	<p>1.1 Principle of equality to be entrenched in the Constitution in the context of:</p> <p>1.1.2 Formal equality to be entrenched.</p> <p>1.1.3 Entrench the principles of substantive equality.</p> <p>1.1.4 Promoting equal opportunities.</p> <p>1.1.5 Promoting equal access to opportunity.</p> <p>1.2 Implementing the principle of equality and the areas of national and provincial jurisdiction.</p> <p>1.2.1 The principle of equality to be implemented and enforced exclusively by the National Government.</p> <p>1.2.2 The principle of equality to be implemented exclusively in their areas of competence.</p>
2	FF	<p>Brotherhood, freedom, equality and justice for all citizens.</p> <p>Political and economic democracy.</p> <p>Citizenship.</p> <p>Universal suffrage.</p> <p>Equal responsibilities. Conscription, taxes.</p> <p>Constitutional protection of citizens.</p> <p>Fundamental Rights</p> <p>Civil Rights</p> <p>Religious Freedom</p> <p>Freedom of conscience</p> <p>Cultural protection.</p>
3	PAC	<p>Equality should mean an implementation of the process that will in an evolutionary undermine and eventually and finally do away with class cleavages founded on economic exploitation</p>
4	DP	<p>1.1. Equality before the law.</p> <p>1.2 Equality of worth (dignity, respect).</p> <p>1.3 Equality of opportunity.</p>
5.	ACDP	<p>Every person shall have the right to equality before the law and equal protection of the law. Every person, including unborn children shall have equal right to life.</p>

3. SUPREMACY OF THE CONSTITUTION

NO	PARTY	PARTY POSITION
1	IFP	<p>1.1 The form in which the Constitution shall be the supreme law of the land.</p> <p>1.1.1 Shall the Constitution apply in its entirety to interpersonal relationships?</p> <p>1.1.2 To which extent should the Constitution apply with respect to the area of provincial authority?</p>
2	FF	<p>A Concepts of the Constitution and the role of the Constitution: The Supremacy of the Constitution - A Rechtstat</p> <p>B One Sovereign State: The principles and practice of Statehood. Sovereignty, unity and integrity. Police and defence. Pluralism and State Loyalty. Nation building. The name of the State, symbols of statehood. Official languages. International positions.</p>
3	PAC	The Constitution must be where all state power resides.
4	DP	Clause 4 (Chap1) of the present interim Constitution reflects our position admirably.
5	ACDP	The Constitution shall be the supreme law of the land. It shall be binding on all organs of State at all levels of Government.
6	ANC	Supremacy of the Constitution
7	NP	Supremacy of the Constitution

4. REPRESENTATIVE GOVERNMENT

No.	PARTY	PARTY POSITION
1	IFP	<p>1.1.1 Political representation, participatory democracy, direct democracy and individual and collective autonomy.</p> <p>1.1.2 Systems of representations to reflect the plurality of our society, the degree of literacy and to promote the empowerment of people at all levels.</p> <p>1.1.3 Representative government must be made as autonomous at all levels of government.</p> <p>1.2 The type of provision should the Constitution make for representative government?</p> <p>1.3 The principle of political representation of government and regular elections should be Constitutionally entrenched with respect to national, provincial and "primary" local governments (excluding local government substructures, including traditional communities)</p> <p>1.3.1 The implementation of this principle with respect to provincial and local government should be left to the autonomy of the provinces.</p> <p>1.4 Provision shall be made for referenda to be held at the request of a reasonably small number of dissatisfied citizens at all levels of government.</p> <p>1.5 Principle of electoral representation in the Constitution.</p> <p>1.5.1 Provincial autonomy and principle of electoral representation in provinces.</p>
2	FF	<p>Participation at all levels</p> <p>Representation and systems of representation</p> <p>Elections, voters roll, regularity of elections, the electoral commission.</p>
3	PAC	<p>The Constitution should enshrine the fact that the government and as such no person shall be committing any crime is either disobeying it or seeking to overthrow.</p>

4	DP	Democracy by definition is representative government, but care must be taken to ensure that all sections of society are effectively able to be represented in government if by (government) is understood the executive arm of government.
5	ACDP	We would like to see the principle of party representation in government entrenched in the Constitution. There should also be regular elections at local, provincial and national level.

5. ACCOUNTABILITY

NO	PARTY	PARTY POSITION
1	IFP	<p>Freedom of Information :</p> <p>1.1 Procedures and mechanisms needed to make government as transparent as possible. The limits of discretion which should be set for Ministers of State charged with security matters.</p> <p>1.2 The Constitution and the right to access government information, 1.2.1 The right to access all government information and private data banks information entrenched in the Constitution subject to : 1.2.2 Customary qualifications and exclusions, subject to judicial review.</p> <p>Accountable administration:</p> <p>2.1 Political, legal, and judicial mechanisms to make government accountable.</p> <p>2.2 How should the Constitution deal with the principle of administrative accountability?</p> <p>2.3 The notion of administrative justice and judicial reviewability of all administrative actions shall be Constitutionally entrenched.</p> <p>2.4 Public official shall be personally responsible for gross negligence and malice.</p> <p>2.5 Provisions to be made for the recognition of the right to petition any government structure.</p> <p>2.6 The Constitution should entrench the notion of participation of the affected public interest in the formative process of an administrative action or regulation.</p>

2	FF	<p>Administration and control mechanisms, Transparency Impeachment of representatives Controlling the abuse of power: Separation of power a. Legislative. Consultation on, preparation of, promulgation of bills. Parliamentary process. b. Executive c. Judicial</p> <p>Houses of parliament The role of political parties Fiscal Control</p> <p>Budget and Audit</p>
3	PAC	<p>The government must be seen to be accountable to the electorate. The Constitution should facilitate the easy challenging of the government or the State by any individual citizen.</p>
4	DP	<p>The principle is that the government is in the first place accountable to Parliament and in the second place to the electorate (including for every cent that it spends).</p>
5	ACDP	<p>The government must be accountable to those who put them into power. Administrative and moral accountability must be looked at very carefully.</p>
6	NP	<p>Accountability</p>

6. ISSUES LEFT TO BE CONSIDERED

No.	PARTY	PARTY POSITION
1	IFP	<p>Preamble Name and symbols of country, Language, Economy constitution, Relation of international law and international legal system</p>

B. ISSUES TO BE DEALT WITH IN COMMISSIONS

No.	PARTY	PARTY POSITION
1	ACDP	<p>1) Name of the state and symbols The geographical position of our country suits the name "South Africa" perfectly. Because of this, the ACDP does not see the need of changing the present name. It is the symbols that may have to be changed.</p> <p>2) Division of Power The power allocated to each level of government must be divided into legislative, judicial and executive powers.</p>
2	ANC	<p>1) Name of State and Symbols 2) Division of Powers</p>
3	NP	<p>1) Symbols 2) Separation of Power</p> <p>Each commission should have six members, one to be nominated by each participating party.</p> <p>The Commissions should investigate the matters referred to them with a view to providing the Theme Committee with all relevant information relating thereto.</p>

C. TECHNICAL ASSISTANCE REQUIRED

No.	PARTY	PARTY POSITION
1	DP	Proportional Representation - Prof Hennie Kotze, Dept of Political Science, University of Stellenbosch.
2	ACDP	The rights of prisoners must be looked very carefully by the theme committee and technical committee. Criminals cannot have exactly the same rights as law abiding citizens. They must forfeit some if they are found guilty and receive a prison sentence.
3	NP	The service of three appropriately trained and experienced experts should be made available to the Committee <u>without delay</u> . Appointments should be made from the list published by the Directorate.

D) AREAS OF OVERLAP WITH OTHER THEME COMMITTEES

No.	PARTY	PARTY POSITION
1	NP	<ul style="list-style-type: none"> * Separation of Powers; and * Proportional representation are matters that also fall within the ambit of the work to be done by Theme Committee 2.

E) STRUCTURES AND PEOPLE TO BE CONSULTED

No.	PARTY	PARTY POSITION
1	NP	The consultation process should be in accordance with the Constitutional Assembly resolutions regarding public participation.

F) SEPARATE REPORTS

No.	PARTY	PARTY POSITION
1	NP	<ul style="list-style-type: none"> * Preamble * Single Sovereign State * Supremacy of the Constitution * Separation of Powers
2	FF	<ul style="list-style-type: none"> * Preamble * Single Sovereign State * Division of Powers
3	ANC	<ul style="list-style-type: none"> * Single Sovereign State * Supremacy of the constitution

G) NUMBER OF REPORTS REQUIRED AND DEADLINES

No.	PARTY	PARTY POSITION
1	All Parties	Commission reports should be completed by the end of February and the cut-off date for Theme Committee reports should be the 15 March 1995, which should be submitted to the CC on the 31 March 1995.

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 2 STRUCTURE OF GOVERNMENT

WORK PLAN

1. **Which constitutional issues within the broad theme need to be attended to?**

- Separation of Powers
- Structure of Government
 - i) National including Parliament and the Executive
 - ii) Provincial
 - iii) Local

The meeting noted that Traditional Authorities should be part of the Structure of Government

- Electoral System including participation of minority parties in the legislative process
- Traditional Authorities
- Volkstaat
- Amendments to the Constitution
-

2. **Which of these constitutional issues need to be dealt with as a priority?**

- Separation of Powers
- Structure of Provincial Government (Const. Sec 161)

3. **Which are the areas of overlap with each other in the Theme Committees?**

- Separation of Power
 - Judiciary (5)
 - Character of Democratic State (1)
 - Specialised structure of Government (6)
- Structure of Government
 - Provincial Government (3)
 - Local Government (3)
- Electoral System (1)
- Traditional Authorities (5.6)
- Volkstaat (5.6)

4. **Which constitutional issues need to be dealt with in commissions?**

- Commission
Electoral System
- Committees
Separation of Powers
- Structure of Government
 - i) National
 - ii) Provincial
 - iii) Local
- Traditional Authorities
- Volkstaat

5. **Which groups of constitutional issues do the committees anticipate will require separate reports?**

Each of the above (4)

6. **How many such reports are to be issued and what are the deadlines for the submission of same?**

- i) As and when the reports are completed by the Theme Committee but
 - a) Separation of Powers - end of April 1995
 - b) Final draft at the end of May 1995

7. **What are the structures and who are the role players that are to be consulted?**

7.1 *Traditional Authorities*

- Amakhosi AkwaZulu (All Zulu chiefs)
- Contralesa
- TTLA
- Traditional authorities and House of Traditional Leaders (where established)
- The Council of Traditional Leaders (when established)

7.2 *Afrikaner Institutions*

- Afrikanerbond
- Afrikaner-Volksfront
- AVSTIG
- FAK
- Federale Vroueraad
- Kontak
- Oranjewerkers
- Rapportryers
- Volkstaat Council
- Volkseenheidkomitee
- Volkswag

7.3 *Religious Organisations*

- AGS Kerk
- Baptist Union
- Bible Society of South Africa
- Church Unity Commission
- Church of the Province of South Africa
- Diakonia
- Evangelical Lutheran Church of SA
- Gereformeerde Kerk
- Hervormde Kerk
- Hindu
- IDAMASA
- Institute for Contextual Theology
- Jewish
- Kwa-Shembe
- Methodist Church of SA
- Moslim
- NG Kerk
- Presbyterian Church of SA
- SA Council of Churches
- SA Catholic Bishops' Conference
- SARK
- Theological Education by Extension College
- United Congregational Church of SA
- Zionist Christian Church
- Zululand Council of Churches

7.4 *Trade Unions*

- COSATU
- Landbou Unies
- NACTU
- POPCRU
- Rapportryers
- UTUSA
- UWUSA

7.5 *Political Parties/Organisations Outside Parliament*

- AWB
- AZAPO
- Conservative Party
- HNP
- INP
- IYP
- Minority Front
- SACP
- Unity Movement
- WOSA
- XPP

7.6 *Tertiary Institutions*

- All South African universities

7.7 *Business Sector*

- AHI
- Business SA
- Chamber of Commerce and Industry
- Escom
- FABCOS
- Gencor
- KwaZulu/Natal Inyanda
- NAFCOC
- SACOB
- Small Traders Association

7.8 *Para/Professional Associations*

- Association of Lawyers Society
- Balieraad
- BLA
- MASA
- Mediese Navorsingsraad
- Nadel
- NATU
- NBC (National Bar Council)
- National Inyanda Association of KwaZulu
- Prokureursorde
- Traditional Healers
- Vereniging van Staatsamptenare

7.9 *Women's Organisations*

- Songoba Women's club
- Yinhle Lentfo Women's Club

7.10 *Other/miscellaneous*

- Civic - Sanco
- Cultural Organisations
- Landlike Stigting
- Metacoc
- National Sports Organisations
- RGN
- SASCO
- Taxi Associations
- WNNR

8. *What community and Media liaison assistance will facilitate the committee's work?*

Media: Electronic and print Media
SACS
Proposal for sub-committee to draw up media plan

Community: Provincial legislatures as vehicles for community liaison

9. Who and what technical assistance will be required to support the committees?

9.1 *Amendments to the Constitution*

- Professor T Sono
- Professor D van Wyk
- Professor A Venter
- Ms L Zama

9.2 *Electoral System including participation of minority parties in the Legislative process*

- Professor HM Corder
- Professor BF Ndaki
- Mr R Rosenthal (Legal advisor and draughtsperson)

9.3 *Separation of powers*

- Professor SC Nolutshungu
- Professor I Smuts
- Professor T Sono
- Professor D van Wyk
- Professor A Venter
- Professor D Welsh

9.4 *Structure of Government : National, Provincial and Local Levels including Parliament and the Executive*

- Professor F Cloete
- Mr V Dlova
- Professor M Faure
- Advocate N Goso
- Professor D Kriek
- Advocate E Moosa
- Mr BM Ngoepe
- Professor C Thornhill
- Professor D Welsh

9.5 *Traditional Leaders [authorities]*

- Professor DS Koyana
- Mr BR Mqeke
- Ms P Tlakula

9.6 *Volkstaat*

- Professor A Raath

9.7 General

- Professor D Basson
- Advocate AM Motemele
- Mr R Rosenthal
- Advocate D Unterhalter

10. Time Frames

i) General Comments

A phased approach - three phases

Phase 1 : 30 October - 15 November

Finalisation of work plan for submission to Constitutional Committee

Phase 11: 23 January - mid April 1995

January : Hearings in 3 provinces

February: Hearings in 3 provinces

March : Hearings in 3 provinces

- National Hearing March/April in Cape Town
- Receipt of written submissions by 31 March 1995
- Processing of submissions
- Formulation of Theme items and approval
- Publication of formulation for public opinion
- Production of first draft report end of April

Phase 111 : After Easter to June 1995

- Internal discussion and debate
- Co-ordination and processing of public opinion
- Identification of contentious and non-contentious issues
- Evaluate draft report
- Finalisation of report and submission to Constitutional Committee

REPUBLIC OF SOUTH AFRICA

CONSTITUTIONAL ASSEMBLY

Theme Committee 3

Work Plan

Theme Committee 3 has pleasure in recommending to the Constitutional Committee of the Constitutional Assembly the following work plan for its work in pursuance of the request by the Management Committee of 17 October 1994.

In general the National Party strongly submitted that the Interim Constitution, 1993, should form the basis to reach consensus on the new constitution. No other party mentioned this in their submissions, but the ANC has indicated that it does not share this opinion.

1. Constitutional Issues

The political parties represented in your Committee¹ identified a wide range of constitutional issues which need to be attended to.

The identification of issues depends on the way the mandate of the Theme Committee is understood. This will be addressed again below. Suffice to say that a broad interpretation of the instructions of the Committee includes *functions* as well as *structures*,² while a strict interpretation of the instructions restrict itself to *functions only*.

If the *strict interpretation* is followed, only the following issues could be addressed by the Theme Committee:

- The nature of the relationship between different levels of government
 - General aspects
 - Legislative competencies
 - Allocation of legislative powers
 - Executive relations and functions
- Financial and fiscal relations
- Local government

If the *broad interpretation* is followed, more issues may be included. Parties identified issues in a rather extensive way. The following discussion of possible issues is based on the broad approach to put the matter

1 The ANC, DP, FF, NP, PAC.

2 Reasoning that "structure follows function", one "can not do the one without the other", and thus leading to much overlapping with e.g. Theme Committee 2.

in a comprehensive way before the Constitutional Committee. If the Constitutional Committee rules that a more narrow approach should be followed, the necessary corrections may be made easily.

It is recommended that the following issues are inclusive of the recommendations of the parties:³

1.1 The nature of the relationship between different levels of government

The basis of the relationship between different levels of government is governed in the main by the division of legislative and executive powers. Under this heading a format for the relationship must be developed.

1.1.1 General aspects

The general aspects of the relationship between the different levels of government, national, provincial and local, should be addressed under this heading.⁴ As regards local government only general principles for and the nature of the institution of local government should be addressed here.⁵ The further detail of local government could be covered under 1.7 below. Aspects of the following Constitutional Principles⁶ need to be attended to here:

- Principles 16, 17, 18

The issue on the agenda of the Theme Committee is to find an institutional concept where national unity would not be lost while division of powers between different levels of government are realised.

In so far as it has a bearing on the relationship between different levels of government, the question of *selfdetermination*⁷ or *autonomy*⁸ of provinces or other regionalised entities and local government may receive attention here:⁹

- Principles 11, 12, 13, 34, and sect 3 and 31

The National Party is of the opinion that the question of *corporate selfdetermination (federalism)*, should be reconsidered in the context of the *Volkstaat* issue.

The question of provincial constitutions can be addressed under this heading as well, in the light of possible decisions regarding the nature of the relationship between national and provincial levels of government.¹⁰

- 3 The IFP notes that these issues should comprise a preliminary determination of the issues, which should be reviewed and added to if required at a later stage.
- 4 The NP suggested that sect 126 of the Interim Constitution, 1993, may be a point of departure in this regard.
- 5 The Constitutional Principles lack extensive coverage of the principles of local government. Chapter 10 of the Interim Constitution, 1993, to a certain extent is in the nature of a framework for local government. The IFP asks the question whether this should be provided for in the constitution, and if so, how. It seems that the NP lays stress on the relationship between provincial government and local government, and raises the question whether local government powers and functions should be allocated to provincial and local government levels exclusively.
- 6 Interim Constitution, 1993, Schedule 4.
- 7 The term used by the FF.
- 8 This term seems to be preferred by the IFP: They use for example the phrase: "Entrenchment of provincial autonomy." The NP uses *autonomy* as well, especially in regard to local government.
- 9 Submission by the FF.
- 10 The IFP specifically asks whether this should be provided for in the constitution, and if so, how. The NP includes the matter of provincial constitutions as an issue on provincial level, as for example presently set out in Schedule 6 of the Interim Constitution, 1993.

1.1.2 The legislative competence of provinces and local government in relation to each other and Parliament

It is clear that the policy on division of legislative and executive powers between the different levels which must be enacted in the new constitution is the main issue confronting the Theme Committee. The principles and legislative techniques regarding overriding and residual legislative powers, concurrent and exclusive powers, framework legislation and the regulation of conflict between laws emanating from different levels of government, are of prime importance for the Committee.¹¹ Further the following Constitutional Principles should be considered here:

- Principles 19, 20, 21 22, 23¹²

1.1.3 The allocation of legislative powers to national, provincial and local levels

Under this heading the specific¹³ exclusive and concurrent¹⁴ legislative competencies of provinces should be dealt with.

The IFP submitted that the type of powers to be allocated should receive attention, i.e. what the powers and functions are from which to choose in determining the powers which should be allocated to the national or provincial levels of government. They raised the question whether the constitution should list the national powers, the provincial powers or both.

1.2 Provincial legislative authorities

The parties questioned the inclusion of 1.2 and 1.3 as issues for Theme Committee 3.¹⁵ *The matter is referred to the Constitutional Committee for a ruling.*

1.2.1 The structure and functioning of provincial legislative authorities

The structure and functioning of provincial legislatures under the new constitution should be considered in the light of the decisions regarding the division of powers (the structures must *fit* the functions.) The functioning of provincial legislative authorities must take account of the requirements for formal legislative procedures¹⁶

1.2.2 Provincial electoral law

Consideration should be given whether provincial electoral systems need the attention of this Committee, or whether electoral systems should be treated in an integral way elsewhere. See also under 1.7 *below*.

1.3 Provincial executive authorities

1.3.1 Structure and functions

The structure and functioning of provincial executive authorities should receive attention. The National Party specifically highlights the issues regarding representation of minority parties on

11 The IFP asked what institutional techniques of coordination should be employed to regulate the relation between national and provincial levels of government. This could also be considered under 1.3.2 *below*.

12 Precedence to national level in case of certain disputes.

13 What is intended under "specificity" of the division of powers, is what specific or definite powers are allocated to the provinces and what to the national level.

14 And *other* powers and functions: Freedom Front.

15 See also above.

16 The last sentence submitted by the FF, quoting Principle 10.

the Executive Councils, uniform standards in the appointment of staff and service conditions as matters which should be addressed.

1.3.2 Intergovernmental relations

The institutionalising of sound and effective intergovernmental relations between national and provincial levels seems to be advisable and necessary. The National Party reminds of the Commission on Provincial Government and its use in the regulation or assistance of intergovernmental relationships¹⁷

1.4 Financial and fiscal relations

The political structure and constitutionalism of provincial and local governmental finance must receive specialised attention in the work of Theme Committee 3. The fiscal powers and functions of national and provincial governments should be defined, and provision should be made for appropriate fiscal powers and functions of different categories of local government.¹⁸ Fiscal equity should receive attention at all levels.¹⁹ These could be done under the following headings:

1.4.1 Intergovernmental fiscal relations between national, provincial and local governments

1.4.2 Provincial financial and fiscal powers and functions

1.4.3 Local government financial and fiscal powers and functions

Questions regarding the constitutional regulation of local government financial resources and resources that may be shared between local government and other levels of government may receive attention here.²⁰

1.5 A national second chamber

The parties registered a note of caution on the inclusion of this topic under the mandate of the Theme Committee. *A ruling of the Constitutional Committee is requested.*

It should be established with respect to the relationship between different levels of government whether there is a need for the institution of a national second chamber or senate.²¹ If the answer is positive, recommendations are required on all aspects of the appointment of members, and the structure, powers and functions thereof.

1.6 Definitions of provinces

For this topic the parties registered a note of caution as well. *A ruling of the Constitutional Committee is requested.* The matter is particularly affected by the prescripts of Constitutional Principle XVIII(1) and (3)²²

17 See sect 128. Interim Constitution, 1993.

18 Principle 25 read with Principle 24.

19 Principle 26.

20 The NP further refers to accountability and reporting practices in local government and the demarcation of functional boundaries for metropolitan and rural local government institutions.

21 The IFP asks what the role of the second house would be in national legislative and/or executive decision making.

22 It states that the boundaries of the provinces must be defined in the new constitution, but it shall be the same as established in terms of the Interim Constitution, 1993. The time for border changes has also run out.

If the Constitutional Committee rules that the subject should be addressed by this Committee, the demarcation of provincial areas²³ and the finalisation thereof could receive attention.

1.7 Metropolitan, urban and rural local government

Under this issue the framework for the establishment, powers and functions of local government may receive attention.²⁴ The National Party wishes to have the question of provincial jurisdiction over local government, the autonomy of local government and the possibility of exclusive powers to local government to be addressed. The Freedom Front requested that the system of elections on local government level be considered.

2. Priority issues

2.1 As regards content

Your Theme Committee is of the opinion that the different issues mentioned in 1 *above* should receive concurrent attention of the Committee, where necessary through the work of subcommittees and commissions.²⁵

An important consideration for ascertaining priorities is whether an issue may be referred to the Constitutional Court at an early stage in terms of sect 71(4) of the Interim Constitution. There is a possibility that the general aspects of the division of legislative powers between national and provincial levels²⁶ may be so referred.

As regards contents the Committee accordingly recommends that the *general aspects of the division of legislative powers between national and provincial levels* is the first priority of the Committee.²⁷

2.1 As regards process

As regards the process priorities for the Theme Committee, the Committee recommends that the priorities be formulated as follows:

- Setting up subcommittees and commissions where necessary
- Soliciting public comment: written as well as oral

The PAC opined that the consistent interpretation of the constitutional Principles are important. The PAC accordingly proposed that the first three meetings of the Theme Committee be devoted to this exercise and the priorities of the Principles will then follow as a matter of course.

3. Overlapping areas

The Democratic Party opined that Theme Committee 3 is to consider the powers, functions and relationships between different levels of government. Once this task is completed it is the responsibility of other

23 Presently Schedule 1 of the Interim Constitution, 1993.

24 See Principle 24.

25 The proposal by the IFP to organise the work in clusters, and finishing the work in stages or consecutively, was seriously considered by the Committee.

26 Presently regulated by sect 126 of the Interim Constitution.

27 See 1.1 and 1.1.1 *above*. The IFP opined that the injunction of sect 161(1) that "the development of a system of provincial government shall receive the priority attention of the Constitutional Assembly" entails the anteriority of a group of questions, all of which have a bearing on the general aspects of the division of legislative powers between national and provincial levels. The questions which the IFP raise are substantive issues like: Will the provinces have residual powers, how will residuality be treated, what about entrenched constitutional autonomy for the provinces? There will be ample opportunity to consider these and other questions in the work of the Committee.

Theme Committees, in its view, to consider the structures, institutions and mechanisms to give effect to the proposed powers, functions and relationships.

The Committee noted, however, that there may be uncertainty whether the terms of reference of this Committee includes Chapters 9 and 10 of the Interim Constitution, 1993, which *inter alia*, deals with "structures, institutions and mechanisms". It was also suggested that the Theme Committees should not have hard borders of reference terms. In this line of thought the opinion is that all the issues enumerated *above* in the broad interpretation of the instructions of the Committee, are interrelated. This view²⁸ submits that it is practical to entertain questions of structure in conjunction with functions.

However it may be, serious concern was expressed by parties, like especially the IFP, about the problems of overlapping issues between the Theme Committees. *The Constitutional Committee is requested to address the problem seriously in order to provide clarity.*

The following areas, if they are the co-responsibility of Theme Committee 3, may possibly overlap with other Theme Committees.

- 3.1 Bicameralism and the possible role of the second chamber/Senate (Theme Committee 2)
- 3.2 Principle I: Unity of state (Theme Committee 1)
- 3.3 The form of state (Theme Committee 1)
- 3.4 The separation of powers between provincial legislatures and executives (Theme Committee 2)
- 3.5 Provincial and local government financial and fiscal affairs (Theme Committee 6)
- 3.6 Powers of Constitutional Court with regard to jurisdictional disputes on legislative competency between national and provincial levels of government (Theme Committee 5)
- 3.7 Principles VI, X, XIII, XIV, XV, XVI and XVII (Theme Committee 2)
- 3.8 Separation of powers (Theme Committee 5)
- 3.9 Provincial constitutions (Theme Committees 4 and 5)
- 3.10 Some specialised agencies of state, e.g. the Commission on Provincial Government and the Financial and Fiscal Commission (Theme Committee 6)
- 3.11 Judicial functions (Theme Committee 5)

4. Sub-Committees

The ANC recommended that the following issues may be dealt with in Sub-Committees of Theme Committee 3 where necessary and depending on the ruling of the Constitutional Committee about the range of issues which should be addressed by Theme Committee 5.

28 Which is seriously queried.

<i>Sub-committee</i>	<i>Name</i>	<i>Terms of Reference</i>	<i>number of Members</i>
1	General aspects of the relationship between different levels of government	To investigate and write an interim report on the general aspects of the relationship between different levels of government, national, provincial and local, as well as on the legislative competence of provinces relative to Parliament, which should be enacted in the new constitution, and for this purpose to analyse and process information and evidence.	7
2	Allocation of powers	To investigate and write an interim report on the specific exclusive and concurrent legislative and executive powers of provinces which should be enacted in the new constitution, and for this purpose to analyse and process information and evidence.	7
3	Provincial legislative and executive authorities	To investigate and write an interim report on the structure and functioning of provincial legislative and executive authorities, with attention to the institutionalising of intergovernmental relations between national and provincial levels, which should be enacted in the new constitution, and for this purpose to analyse and process information and evidence.	7
4	Local government	To investigate and write an interim report on a framework for local government which should be enacted in the new constitution, and for this purpose to analyse and process information and evidence.	7

5. Commissions

The ANC recommended that the following issues may be dealt with in Commissions of Theme Committee 3 where necessary and depending on the ruling of the Constitutional Committee about the range of issues which should be addressed by Theme Committee 5.

The Constitutional Committee is further requested to give a ruling on the composition of Commissions. Should they include members of the Theme Committee as well, or only outside experts?

<i>Commission No</i>	<i>Name</i>	<i>Terms of Reference</i>	<i>Number of Commissioners</i>	
			<i>Members</i>	<i>Experts</i>
1	Financial and fiscal relations	To investigate and write an interim report on intergovernmental fiscal relations between national, provincial and local levels which should be enacted in the new constitution, and for this purpose to analyse and process information and evidence.	5	3

2	Role of Second Chamber [subject to the ruling of the CC]	To investigate and write an interim report on the need for a national second chamber or Senate, and if there is a need for such an institution, to recommend on all aspects of the appointment of members and the structure, powers and functions thereof and for this purpose to analyse and process information and evidence.	5	3
3	Definitions of provinces [subject to the ruling of the CC]	To investigate and write an interim report on the demarcation of provinces, with special reference to disputed areas, and to recommend how the definition of provinces should be finalised in the new constitution, and for this purpose to analyse and process information and evidence.	5	3

The Democratic Party recommended that financial relationships should be investigated and reported on by experts based on submissions and international experience in order to present a range of alternatives. The IFP did not regard subcommittees and commissions necessary, but said that proper instructions are important if such subcommittees and commissions are set up. The FF suggested a commission on the electoral system of local government.

6. Separate Reports

Subject to the more precise ruling of the Constitutional committee on the scope of the terms of reference of this Theme Committee, it is recommended that the following separate reports be submitted by Theme Committee 3 with deadlines as indicated (see Gantt Chart attached):

<i>No of Report</i>	<i>Issues</i>	<i>Deadline</i>
<i>Interim 1</i>	The nature of the relationship between different levels of government and legislative competencies	30 04 1995
<i>Interim 2</i>	Provincial legislative structures and executive functions and structures	30 04 1995
<i>Interim 3</i>	Definitions of provinces	30 04 1995
<i>Interim 4</i>	Local government	30 04 1995
<i>Interim 5</i>	Financial and fiscal affairs of provinces and local government	30 04 1995
<i>Interim 6</i>	The role of the Senate	30 04 1995
<i>Final 7</i>	Final & Composite Report	30 06 1995

7. Structures and role players

Your Committee requests that the following structures and role players be consulted for the work of Theme Committee 3.

7.1 Premiers of provinces

7.2 Executive Councils of provinces

7.3 Provincial Legislatures

The Theme Committee noted the observations of the Democratic Party on the representation of provinces on the Theme Committee. It is interpreted in such a way that the inputs of the established nine provincial governments is of the utmost importance for the work of the Committee, and that close relationships with these governments should be established in the execution of the mandate of the Committee.

7.4 The Department of Constitutional Affairs, the Commission on Provincial Government, the Fiscal and Financial Commission, and the Department of Public Service and Administration

7.5 The panel of constitutional experts

7.6 Political parties

7.7 Organs of civil society

This is a quite overflowing concept, which would include organisations like labour (e.g. COSATU), churches, organs of civil society proper (like SANCO), the business sector etc. The Freedom Front mentioned the following especially: the Volkstaatraad, Transvaal Municipal Association, SABRA, Volkseenheidskomitee and AVSTIG. The IFP mentioned provincial Houses of Traditional Leaders, academic and other technical experts.

7.8 Local government level authorities

7.9 Individuals

8. Community and media

Your Theme Committee suggests the following ways of reaching the public for which community and media liaison assistance would be required to facilitate the Committee's work.

<i>No</i>	<i>Method</i>	<i>Purpose</i>
1	Public proceedings	Evidence
2	Hearings in each province	Evidence
3	Television	Hearings & public participation
4	Radio	Interviews/ Evidence
5	Press	Advertisement & publicity
6	People's forums	Dialogue, esp population difficult to reach
7	Interim reports	Publicised/ Distributed for comment
10	Parties outside Parliament	Inputs & dialogue
11	Conferences	In depth papers & discussions

9. Technical assistance

The National Party and the IFP requested extra time to submit more nominations for technical experts. They will be able to provide these in January 1995.

In the meantime the following nominations are submitted:

<i>No</i>	<i>Nomination</i>	<i>Description</i>
1 & 2	Basson D UP Corder H UCT Dlova V UTranskei Erasmus MG US Murray C UCT Raath AWG UOFS Shabala SR UNatal Steytler N UWC Thornhill C UP Van der Westhuizen J UP Welsh DJ UCT	Two constitutional lawyers or political scientists
3	Abedian I UCT Black PA UCT Donaldson AR Dept Finance Loots L UWC Van Ryneveld P UWC	An expert on public finance (could be part-time & share with TC6)
4	Bernstein Ann, Urban Foundation Boraine A Mdakane, Richard	An expert on local government
5	Prof Flip Smit UP	An expert on provincial demarcation

10. Operational schedule

Your Committee encloses a schedule for the suggested operational management of the work of the Committee.

The main features of the schedule are the following:

- 10.1 Public hearings and the acceptance of written submissions should take place during February and be closed on 28 February 1995.

Your Committee especially and urgently requests the Constitutional Committee to inquire from the Commission on Provincial Government whether it a full and complete report in pursuance of their objects, functions and duties in terms of sect 164(1) and (2) of the Interim Constitution can be submitted on or before 28 February 1995 to Theme Committee 3 in order to be taken into account and to avoid duplication.

- 10.2 The processing and analysis of information and evidence should take place in March and be concluded on 31 March 1995.

It was stressed by the Core Group of your Committee that the opportunity for oral representation should be reserved as far as possible for institutions or individuals which may find it difficult to make written submissions. Sophisticated and empowered organisations or individuals should provide written submissions.

- 10.3 Six Interim Reports should be completed on 30 April 1995. At this stage referral to the Constitutional Court may be possible.
- 10.4 A second round of public hearings and acceptance of written submissions should take place during May 1995 to receive reaction to the Interim Reports. This round of hearings and submissions should not be announced at this stage, and in any event not until 31 March 1995.
- 10.5 The final and composite Report of the Theme Committee must be remitted to the Constitutional Committee of the Constitutional Assembly on or before 30 June 1995.

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*Constitutional Assembly
Theme Committee 3
WORK PLAN: SCHEDULE OF REPORTS*

<i>Phases</i>	<i>Reports</i>	<i>Nov 1994</i>	<i>Dec 1994</i>	<i>Jan 1995</i>	<i>Feb 1995</i>	<i>Mar 1995</i>	<i>Apr 1995</i>	<i>May 1995</i>	<i>June 1995</i>
<i>Phase 1: Gathering information and hearing evidence</i>	Interim Report 1: Local government	—	Preparation		Submissions Hearings			Not announced	
	Interim Report 2: Division of powers	—							
	Interim Report 3: Definitions of provinces	—							
	Interim Report 4: Legislative and executive authorities	—							
	Interim Report 5: Financial and fiscal affairs	—							
	Interim Report 6: The Senate	—							
<i>Phase 2: Processing information and evidence</i>	Interim Report 1: Local government					Analysis			—
	Interim Report 2: Division of powers								—
	Interim Report 3: Definitions of provinces								—
	Interim Report 4: Legislative and executive authorities								—
	Interim Report 5: Financial and fiscal affairs								—
	Interim Report 6: The Senate								—

Reports	Nov 1994	Dec 1994	Jan 1995	Feb 1995	Mar 1995	Apr 1995	May 1995	June 1995
Interim Report 1: Local government						Interim	Review	
Interim Report 2: Division of powers								
Interim Report 3: Definitions of provinces								
Interim Report 4: Legislative and executive authorities								
Interim Report 5: Financial and fiscal affairs								
Interim Report 6: The Senate								
Report 7 Final and Composite							Start	Final

**Phase 3:
Preparing
reports**

CA:Pub04/TC:3Rpl/Chp/
Draft 2/DC:6/09 11 1991

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.

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 5 JUDICIARY AND LEGAL SYSTEMS

WORK PROGRAMME REPORT

(a) Constitutional issues which need to be attended to by Theme Committee 5

The work of the Theme Committee will in the first instance be guided by the relevant constitutional principles enshrined in the interim constitution. The Constitutional Principles will form the parameters within which the Constitutional provisions dealing with the judicial system will have to be developed.

The rest of the interim Constitution dealing with the judicial system and with traditional leaders and authorities and customary law will form a useful basis and guideline for the further deliberations of the Theme Committee.

Below is indicated the relevant constitutional principles as well as the other issues to be dealt with. The list is by no means exhaustive and can be amended from time to time.

The applicable Constitutional Principles:

- II 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 3 of this Constitution.
- IV The Constitution shall be the supreme law of the land. It shall be binding on all levels of government.
- V The legal system shall ensure equality for all before the law and an equitable legal process. Equality before law includes laws, programmes or activities that have as their object the amelioration of the conditions of the disadvantaged including those disadvantaged on the grounds of race, colour or gender.
- VI There shall be a separation of powers between the legislature, Executive and judiciary, with appropriate checks and balances to ensure accountability, responsiveness and openness.

- VII The judiciary shall be appropriately qualified, independent and impartial and shall have the power and jurisdiction to safeguard and enforce the Constitution and fundamental rights.

- XIII The institution, status and role of traditional leadership, according to indigenous law, shall be recognised and applied by the courts, subject to the fundamental rights contained in the Constitution and to legislation dealing specifically therewith.

PART I: STRUCTURES RELATING TO THE ADMINISTRATION OF JUSTICE

A. CONSTITUTIONAL COURT

- (1) Levels of courts [Section 98]
- (2) Seats of court [Section 106]
- (3) Jurisdiction of courts [Section 98]
- (4) Criteria for appointment [Section 98, 99]
- (5) Composition of Constitutional Court [Section 99]
- (6) Number of judges [Section 98(1)]
- (7) Procedure for appointment [Section 97(2)(a) (b) & 99]
- (8) Term of office [Section 99, 97.2(b)]
- (9) Review/removal [Section 104(4)]
- (10) Remuneration and conditions of service [Section 104 (2)]
- (11) Court Procedures:
 - (a) Engaging the Court [Section 100]
 - (b) Relationship between Constitutional Court and Supreme Court [Section 102]
 - (c) Appeals: Supreme Court to Constitutional Court [Section 102]

B. OTHER COURT STRUCTURES

1. Structures

- a) Levels of courts

- i) Appellate Division [Section 101]
 - ii) Supreme Court [Section 101]
 - iii) Magistrate Courts [Section 103]
 - iv) Specialized Courts, incl. community courts [Section 103]
 - v) Traditional Courts
- b) **Seats of Court**
 - i) Appellate Division [Section 106]
 - ii) Supreme Court [Section 101]
- c) **Jurisdiction of Courts**
 - i) Supreme Court [Section 101]
 - ii) Magistrates Court
 - iii) Specialised courts, incl community courts
 - iv) Traditional courts

2. Personnel

- a) **Structures dealing with appointments**
 - i) Judicial Service Commission
 - composition [Section 105(1)]
 - functions [Section 105(2)]
 - ii) Magistrates Commission [Section 109]
- b) **Criteria for appointment**
 - i) Supreme Court [Section 104(1)]
- c) **Composition of courts**
 - i) Heads of courts
 - Supreme Court [Section 97]
 - ii) Number of Judges
- d) **Procedure for appointment**
 - i) Supreme Court [Section 104]
 - Head
 - Judges
 - ii) Magistrates Court
 - iii) Other courts

- e) **Term of office**
 - i) Supreme Court [Section 97.2(b)]
- f) **Review / removal**
 - i) Supreme Court [Section 104(4)]
 - ii) Magistrates Court
- g) **Remuneration and conditions of service**
 - i) Supreme Court [Section 104 (2)]

3. Court Procedures

- a) Appeals: Magistrates Court to Supreme Court [Section 103]
- b) Appeals: Supreme Court to Appellate Division

C. OTHER JUDICIAL STRUCTURES

1. Attorneys General

- a) Status
- b) Independence/Accountability
- c) Appointment
- d) Provincially based or national

2. State Attorney

PART II: LEGAL EDUCATION

PART III: LEGAL PROFESSION

PART IV: GENERAL

- A Court languages [Section 107]
- B Interpretation of laws [Section 232, 233]
- C Amnesty [Postamble]

+ Interp of laws

PART V: TRANSITIONAL ARRANGEMENTS:

- A Continuation of existing law [Section 229]
- B Repeal of laws [Section 230]
- C International law and continuation of agreements. [Section 231] X
- D Judiciary [Section 241 (1) - (10)]
- E Rationalisation of courts [Section 242]

PART VI: TRADITIONAL AUTHORITIES, INSTITUTIONS, STATUS AND ROLE OF TRADITIONAL LEADERSHIP AND INDIGENOUS LAW

- i) Recognition of indigenous law [Section 181]
- ii) Traditional Authorities and Indigenous Law. [Section 182]
- iii) Provincial House of Traditional Leaders. [Section 183 (1) and (2)]
- iv) Council of Traditional Leaders. [Section 184 (1) - (5)]
- v) Customary Courts
- vi) Provision for Traditional Monarchy in Provincial Constitutions. [Section 160 (3) (b)]

NB PLEASE NOTE THE INTERPRETATION TO BE PLACED ON THIS SUBJECT MATTER IF THE PROPOSAL IN PARAGRAPH (c) IS IMPLEMENTED

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

- i) Matters relating to the Constitutional Court
- ii) The relationship between the Constitutional Court and other courts
- iii) Issues relating to the appointment of judicial officers
- iv) Position of Traditional Authorities and indigenous law

c) Areas of overlap with other Theme Committees

There is a clear overlap between the mandate of Theme Committees 2, 5 and 6 with regard to the issue of tribal authorities. Representatives of the three relevant core committees met on the 26th October to discuss this matter. At the meeting it was agreed that the Theme Committees would interpret their mandates as follows to avoid duplication:

Theme Committee 2: Paragraph 2.10 will be interpreted as referring to the representation of traditional leaders in structures of government other than traditional structures.

Theme Committee 5: Paragraphs 5.2 and 5.4 will be interpreted as referring to indigenous law and tribal/customary courts.

Theme Committee 6: Paragraph 6.7 will be interpreted as referring to the representation of tribal leadership in tribal/customary structures.

It was further more agreed at the said meeting that, to avoid duplication, a commission or joint committee should be set up consisting of members of all three Theme Committees to take evidence and representations on all three of the above mentioned aspects.

It is suggested that should an area of overlap occur in future with regard to the work of this Theme Committee and other Theme Committees, it should be attempted to reach agreement on a division of the matters to be dealt with. If this is not possible joint committees should be considered to deal with the relevant matter.

(d) Issues to be dealt with in Commissions

It is too early to identify the need for commissions on certain issues

(e) Separate Reports

If the proposal of a joint committee or a commission for tribal authorities and indigenous law is accepted then it is clear that a separate report will be made on this aspect. It is too early to contemplate other reports.

(f) Number of Reports required

Too early to say

(g) Structures and People to be consulted

- (i) The organisations, groups and persons indicated on the attached list will be notified as well as the public at large. There can be further additions to the list.
- (ii) All traditional authorities and traditional leaders, academics in the relevant field, womens' interest groups, relevant monarchs and the public at large. The traditional leaders will also be consulted on the question of any further persons who should be notified.

(h) Community and media liaison assistance required.

Administrative assistance to send invitations to interested persons and organisations and to draft and release press statements. As far as traditional authorities are concerned, at least the services of one or more field workers will be required because reliance on written communication may not be sufficient.

(i) Technical Assistance Required

Experts in the legal field relating to the issues to be dealt with as listed above will be required.

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 5 JUDICIARY AND LEGAL SYSTEMS

THE LIST OF STRUCTURES AND ORGANISATIONS TO BE CONSULTED OR CONTACTED BY THEME COMMITTEE 5

Members are requested to add to this list.

A. GOVERNMENT STRUCTURES

1. Legal Aid Board

Tel: 012-3284577

Fax: 012-3251262

2. Department of Justice

Tel: 012-3151012 / 021-456310

Fax: 012-3260991 / 021-4614426

3. Ministry of Justice

Tel: 012-3238581 / 021-457506

Fax: 012-211708 / 021-452783

4. Minister in the Office of the President

Tel: 021-3191500 / 021-4619102

Fax: 012-3238246 / 021-4619319

5. Ministry of Education

Tel: 012-3260126 / 021-457350

Fax: 012-3235989 / 021-4614788

6. Attorneys-General (Von Lieres)

Tel: 011-3339350 (011-3330402 D)

Fax: 011-3378190

7. Magistrates: Regional (Kotze)

Tel: 011-491262

Fax: 011-8341222

8. Magistrates: District (Loots)

Tel: 011-4915000
Fax: 011-8341222

9. State Attorneys (Genis)

Tel: 012-3228522
Fax: 012-3220177

10. Judicial Service Commission

Tel: 051-474014
Fax: 051-478098

11. Chief Justice

Tel: 051-474014
Fax: 051-478098

12. Judge President (Representative)

Tel:
Fax:

13. Appeal Court Judge (Representative)

Tel:
Fax:

14. State Law Advisers

Tel: 012-3151111
Fax: 012-3260991

15. Select Committee on Justice - National Assembly

Tel: 021-4032728
Fax: 021-4610462

16. Senate

Tel: 021-4032432

17. Family Advocate

Tel: 012-3230760
Fax: 012-3264633

18. S.A. Law Commission

Tel: 012-3226440
Fax: 012-3200936

19. Justice College

Tel: 012-3268805
Fax: 012-219140

20. Magistrates' Association

Tel: 011-4915000
Fax: 011-8341222

21. Public Prosecutors Organization

Tel: 011-8730500 (Barkhuizen)
Fax: 011-8254606

22. Ministry of Correctional Services

Tel: 012-3238198 / 021-4622314
Fax: 012-3234111 / 012-454375

23. Ministry for Safety and Security

Tel: 012-3238880 / 021-457426
Fax: 012-3205065 / 021-4612594

24. Regional Offices: Justice

(a) Umtata (Transkei)

Tel: 0471-249111
Fax: 0471-310337

(b) Mmabatho (Bop)

Tel: 0140-899267
Fax: 0140-26158

(c) Sibasa (Venda)

Tel: 0159-21031
Fax: 0159-23172

(d) Bisho (Ciskei)

Tel: 0401-995538
Fax: 0401-951282

(e) Chuenespoort (Lebowa)

Tel: 015-6335286
Fax: 015-6335181

(f) Louw's Creek (Kangwane)

Tel: 01314-930219
Fax: 01314-930276

(g) Witsieshoek (Qwaqwa)

Tel: 05871-36521
Fax: 05871-31569

(h) Ulundi (KwaZulu)

Tel: 0358-202451
Fax: 0358-203224

(i) Giyani (Gazankulu)

Tel: 0158-21942
Fax: 0158-23405

(j) Kwamhlanga (Kwandebele)

Tel: 01215-472777
Fax: 01215-4172712

25. Interpreters

Tel:
Fax:

B. NON-GOVERNMENTAL STRUCTURES

1. NADEL

Tel: 011-3319726
Fax: 011-3319728

2. BLA

Tel: 011-3371535
Fax: 011-3371539

3. LHR

Tel: 012-212135
Fax: 012-3256318

4. LRC

Tel: 011-8368071
Fax: 011-8331747

5. Centre for Socio-Legal Studies

Tel: 031-2601291
Fax: 031-2601540

6. Centre for Applied Legal Studies

Tel: 011-4036918
Fax: 011-4032341

7. SALDEF

Tel: 021-474052
Fax: 021-474397

8. ADRASA

Tel: 011-4841763
Fax: 011-4843169

9. IMSA

Tel: 011-4822390
Fax: 011-7263940

10. Advice Offices

Tel:
Fax:

11. Paralegal bodies

Tel:
Fax:

C. UNIVERSITIES

1. UWC Community Law Centre

Tel: 021-9592950
Fax: 021-9592411

2. Association of University Legal Aid Institutions

Tel: 0148-2930045
Fax: 0148-2977425

3. University Law Teachers Association

Tel: 011-7165597
Fax: 011-3394733

D. COUNCILS AND SOCIETIES

1. General Council of the Bar

Tel: 011-293976
Fax: 011-3368970

2. Association of Law Societies

Tel: 012-3423330
Fax: 012-3423305/6

3. Society of State Advocates

Tel: 011-3339350
Fax: 011-3378190

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 6 SPECIALISED STRUCTURES OF GOVERNMENT

FINAL WORK PROGRAMME

PUBLIC ADMINISTRATION

A		
1	CONSTITUTIONAL ISSUES	<p>1.1 Public Service</p> <p>1.1.1 Power relations between National and Provincial levels of Government, the Executive and Administration.</p> <p>1.1.2 Status and role of Public Service.</p> <p>1.1.3 Representivity of Public Service.</p> <p>1.1.4 Public Service as an agent of development.</p> <p>1.1.5 Management ethos and systems within the Public Service.</p> <p>1.2 Traditional Authorities</p> <p>1.2.1 Powers, functions and role of Traditional Leaders in National, Provincial and Local levels of Government.</p> <p>1.2.2 Territorial jurisdiction of Traditional Leaders.</p> <p>1.3 Election Commission</p> <p>1.3.1 Constitutional position of an Election Commission.</p> <p>1.3.2 Powers, functions and role of the Election Commission.</p> <p>1.3.3 Specialised Commission.</p>
2	PRIORITIES	<p>2.1 Public Service</p> <p>◆ <i>Workshop on civil service planned for late January or early February, 1995.</i></p>
3	AREAS OF OVERLAP	<p>3.1 Traditional Authorities - also entrusted to Theme Committees 2 and 5</p> <p>3.2 Election Commission - also entrusted to Theme Committees 1 and 3</p>
4	REFERRALS TO COMMISSIONS	4.1 Traditional Authorities.
5	SUBJECTS FOR REPORTING	<p>5.1 Public Service.</p> <p>5.2 Traditional Authorities.</p> <p>5.3 Election Commission.</p>
6	NUMBER OF REPORTS AND TARGET DATES	<p>6.1 Public service</p> <p>1 report - 28 February 1995.</p> <p>6.2 Traditional Authorities</p> <p>1 report - 31 March 1995.</p> <p>6.3 Election Commission</p> <p>1 report - 30 April 1995.</p>

7	CONSULTATION - STRUCTURES AND ROLE PLAYERS	<p>7.1 <u>Public service</u> Government Structures and Departments including the Public Service Commission, Political Parties, Trade Unions, the Volkstaat Council, Academics and other Interest Groups.</p> <p>7.2 <u>Traditional Authorities</u> Amakhosi, Izinduna, Elders, Cultural Organisations, Womens' Organisations, Traditional Organisations, Political Parties, Anthropologists, Ethnologists, Agricultural Organisations, Labour Tenants, Service Providers (eg Water Boards, Eskom and Telkom), Provincial Governments, Central Government and Churches.</p> <p>7.3 <u>Election Commission</u> Department of Home Affairs, Independent Electoral Commission, Embassies(IEC), International and Local Experts and Academics.</p>
8	COMMUNITY AND MEDIA LIAISON	<p>8.1 <u>Public service</u> Media - Print and Electronic.</p> <p>8.2 <u>Traditional Authorities</u> Media - Print and Electronic, Ibandla or Lekgotla and Magistrates Courts.</p> <p>8.3 <u>Elections Commission</u> Media - Print and Electronic.</p>
9	TECHNICAL ASSISTANCE	<p>9.1 <u>Public service</u> Specialists on German, Belgian, French, USA, British, Indian, Zimbabwean, Namibian and other Approaches. ♦ Specialists identified thus far: Cloete GS(School of Public Management, Stellenbosch); Cluver L(Ex-DG, Department of Public Service and Administration); Ndokweni Adv(Department of Justice, KwaZulu-Natal); Ntshangase D(Department of Justice, KwaZulu-Natal); Thornhill C, Prof(Department of Public Administration, Pretoria) and Van der Merwe P, Prof(Professor Emeritus, Pretoria).</p> <p>1.2 <u>Traditional Authorities</u> Traditional Leaders and Questionnaires to local Traditional Leaders.</p> <p>1.3 <u>Election Commission</u> Department of Home Affairs and the IEC.</p>

B	FINANCIAL INSTITUTIONS AND PUBLIC ENTERPRISES
1	<p>CONSTITUTIONAL ISSUES</p> <p>1.1 <u>National Revenue Fund, Budget and Procurement(ss185-7)</u> 1.1.1 New Constitutional provision on Revenue Fund, budgeting and procurement required.</p> <p>1.2 <u>Provincial and Local Government Loans(ss188)</u> 1.2.1 Stock to be taken of limited experience of the Financial and Fiscal Commission (FFC). 1.2.2 Submissions on the constitutional regulation of the functioning of the FFC and financial relations between the different levels of Government. 1.2.3 Submissions on the need to a provision analogous to s188 in final Constitution. ◆ <i>This subject will be examined concurrently with 1.6 below.</i> ◆ <i>Note: FFC entrenched by Constitutional Principle XXVII in Sched 4</i></p> <p>1.3 <u>Special pensions and tax(ss189-190A)</u> 1.3.1 Investigation on the inclusion of a constitutional provision on special pensions in final text. 1.3.2 Submissions on tax assessments for elected reps and pensions for Politicians.</p> <p>1.4 <u>Auditor General(ss191-2)</u> 1.4.1 Constitutional provision on the Auditor General(AG) required. 1.4.2 Submissions on the provisions of ss 191-2 to be invited and alternatives to be considered. ◆ <i>Note: AG's independence and impartiality entrenched by Constitutional Principle XXIX in Schedule 4</i></p> <p>1.5 <u>Reserve Bank(ss196-7)</u> 1.5.1 Constitutional Provision on the Central bank to be included in final text. 1.5.2 Submissions on the provisions of ss 196-7 to be invited and alternatives to be considered. ◆ <i>Note: Reserve or Central Bank's independence and impartiality entrenched by Constitutional Principle XXIX in Schedule 4</i></p> <p>1.6 <u>Financial and Fiscal Commission</u> 1.6.1 Stock to be taken of limited experience of the Financial and Fiscal Commission (FFC). 1.6.2 Submissions on the constitutional regulation of the functioning of the FFC and financial relations between the different levels of Government. 1.6.3 Submissions on the need to a provision analogous to s188 in final Constitution. ◆ <i>This subject will be examined concurrently with 1.2 above.</i> ◆ <i>Note: FFC entrenched by Constitutional Principle XXVII in Sched 4</i></p> <p>1.7 <u>Public Enterprises</u> 1.7.1 Invitations of submissions of the need, if any, to constitutionalise Public Enterprises. ◆ <i>Public Enterprises, albeit governed by other legislations are not presently provided for in the Interim Constitution.</i></p> <p>1.8 <u>Other Provisions - Financial Institutions</u> 1.8.1 Call for submissions to be formulated broadly, so as not restrict inputs from the public.</p>

2	PRIORITIES	2.1 Financial and Fiscal Commission 2.2 Financial relations between the different tiers of Government.
3	AREAS OF OVERLAP	3.1 Legislation of Financial Bills <ul style="list-style-type: none"> ◆ <i>Theme Committee (TC) 6's responsibility is the formulation of a Constitutional Provision on the Budget and National Revenue Account while that of TC 2 is the passage of Money Bills.</i> ◆ <i>TC 6 and 2 have to harmonise their work.</i> 3.2 Financial relations between different tiers of government. <ul style="list-style-type: none"> ◆ <i>TC 6's responsibility is FFC, while TC 2's is financial relations between different tiers of Government.</i> ◆ <i>TC's 6&3 must work together on this issue to avoid inconsistencies.</i>
4	REFERRALS TO COMMISSIONS	4.1 Options are still being explored.
5	SUBJECTS FOR REPORTING	5.1 No specific recommendations.
6	NUMBER OF REPORTS AND TARGET DATES	6.1 <u>Auditor-General</u> 1 report - 28 February 1995. 6.2 <u>Reserve Bank, the Budget, Procurement and National Revenue Fund</u> 1 report - 31 March 1995. 6.3 <u>Financial and Fiscal Commission and other Proposals on Financial Institutions and Public Enterprises</u> 1 report - 30 April 1995.
7	CONSULTATION - STRUCTURES & ROLE PLAYERS	7.1 Reserve Bank, Auditor General and FFC. 7.2 Relevant Government Departments - Finance, State Expenditure, Public Enterprises Provincial Governments and Transitional Local Government Authority. 7.3 All Stakeholders in the National Economic Development and Labour Council 7.4 Representatives of Management and other Stakeholders in Public Enterprises. 7.5 Other Interested Parties - To be reached through Newspaper Advertisements.
8	COMMUNITY AND MEDIA LIAISON	8.1 Advise sought from the TC.
9	TECHNICAL ASSISTANCE	9.1 An Acknowledged Expert on Budgetary Policy Matters. <ul style="list-style-type: none"> ◆ <i>It is proposed that this person be contracted on a part time basis.</i> 9.2 Appointment of a full time Research Assistant <ul style="list-style-type: none"> ◆ <i>Appointee also expected to perform Administrative Tasks</i>

TRANSFORMATION AND MONITORING

C	1	CONSTITUTIONAL ISSUES	<p>1.1 <u>The Public Protector(ss110-4)</u></p> <p>1.1.1 Protection of the Public from corrupt Government Agencies.</p> <p>1.1.2 Protection of persons against one another in communities, families and the workplace.</p> <p>1.1.3 Connection between the Public Protector's Office and other bodies performing similar ombud functions, e.g. the Public Service Commission, the Human Rights Commission and the Gender Commission.</p> <p>1.2 <u>Human Rights Commission(ss115-8)</u></p> <p>1.2.1 Definition of human rights culture.</p> <p>1.2.2 Promotion of human rights culture.</p> <p>1.2.3 Targeting disadvantaged communities, primarily, rural communities, the disabled and black women.</p> <p>1.2.4 Setting up barometer for measuring progress.</p> <p>1.3 <u>Commission on Gender Equality(ss119-20)</u></p> <p>1.3.1 Promotion of Gender Equality.</p> <p>1.3.2 Seek and give advise on laws affecting the Status of Women.</p> <p>1.3.3 Formulation of policy on initiatives to combat violence against women.</p> <p>1.3.4 Address gender bias on laws relating to home and land ownership, tenancy, occupation and succession.</p> <p>1.3.5 Establishment of national norms and guidelines for affirmative action, maternity leave and employment benefits.</p> <p>1.3.6 Setting up mechanisms for monitoring progress on gender equality in Government Institutions and Society broadly.</p> <p>1.4 <u>Commission on Restitution of Land Rights(ss121-3)</u></p> <p>1.4.1 Restoration of land to the dispossessed.</p> <p>1.4.2 Methods of addressing land needs without formal claims.</p> <p>1.4.3 Discriminatory traditional practices precluding women from owning land.</p> <p>◆ Note: Above list not exhaustive. Additions and amendments will be appreciated.</p>
2		PRIORITIES	<p>2.1 Commission on Gender Equality</p>

3	AREAS OF OVERLAP	<p>Public Protector.</p> <ul style="list-style-type: none"> ◆ <i>Overlap with possible ombuds function of the Public Service Commission.</i> <p>Human Rights Commission</p> <ul style="list-style-type: none"> ◆ <i>Definition of human rights will possibly overlap with work of Theme Committee 4.</i> <p>Public Protector, Human Rights Commission and Commission on Gender Equality.</p> <ul style="list-style-type: none"> ◆ <i>The above might overlap with the work of Theme Committee 3, on their effect on the different tiers of Government.</i> ◆ <i>Roles of above structures may possibly overlap. Need exist to examine their necessity in the future.</i>
4	REFERRALS TO COMMISSIONS	<p>4.1 None at this stage.</p>
5	SUBJECTS FOR REPORTING	<p>5.1 Public Protector.</p> <p>5.2 Human Rights Commissions.</p> <p>5.3 Commission on Gender Equality.</p> <p>5.4 Commission on Restitution of Land Rights.</p>
6	NUMBER OF REPORTS AND TARGET DATES	<p>6.1 <u>Public Protector.</u> 1 Report - 31 Jan 1995</p> <ul style="list-style-type: none"> ◆ <i>Selfe, J to compile a report on representations and debates on the Public Protector Bill as well as any other relevant issues for consideration by the Subtheme Committee.</i> <p>6.2 <u>Human Rights Commissions</u> 1 Report - 31 Jan 1995</p> <ul style="list-style-type: none"> ◆ <i>Camerer, S to compile a report on representations and debates on the Human Rights Commission Bill as well as any other relevant issues for consideration by the Subtheme Committee.</i> <p>6.3 <u>Commission on Gender Equality</u> 1 Report - 31 Jan 1995</p> <ul style="list-style-type: none"> ◆ <i>Turok, M to work on list of organisations to be consulted, consultation strategies, make initial contact on submissions and proposals on the consultation process and seek input from the TEC's Subcouncil on the Status of Women.</i> <p>6.4 <u>Commission on Restitution of Land Rights</u> 1 Report - 31 Jan 1994</p> <ul style="list-style-type: none"> ◆ <i>Mokoena, M (Inkosi) to compile a report on representations and debates on Restitution of Land Rights Bill.</i>

7	CONSULTATION - STRUCTURES & ROLE PLAYERS	<p>7.1 <u>Commission on Gender Equality</u> The following are examples of bodies to be consulted:</p> <p>7.1.1 Women's National Coalition, Religious Bodies, Sports Bodies, Trade Unions, Agricultural Unions, Centre for Applied Legal Studies, Rural Women's Movement, Cultural Organisations, Teachers Organisations, Civics & Community based Organisations, Women's Bureau, Women for South Africa, Women's Lobby, International Bodies and other Representative Organisations.</p> <p>7.2 <u>Public protector</u></p> <p>7.2.1 Outgoing Ombudsperson, Residents Associations, Legal Bodies, Civics, Community based Organisations, Women and Youth Organisations, NCRC, Social Welfare Organisations, Rural Communities.</p> <p>7.3 <u>Human Rights Commission</u></p> <p>7.3.1 National Association of Democratic Lawyers, Black Lawyers Association, Lawyers for Human Rights, Human Rights Commission, Law Societies, Bar Councils, Youth, Women, Religious Organisations, Social Workers Organisations, NCRC and Rural Women's Movement.</p> <p>7.4 <u>Land Restitution Commission</u></p> <p>7.4.1 National Land Commission, Agricultural Unions, Rural Communities the Rural Women's Movement and International Experts.</p>
8	COMMUNITY AND MEDIA LIAISON	<p>8.1 Media - Print and Electronic.</p> <p>8.2 Public hearings</p> <p>◆ <i>The process of Community and Media liaison should be biased towards ordinary people.</i></p>
9	TECHNICAL ASSISTANCE	<p>9.1 Administrator/Public Relations Person.</p> <p>9.2 Researcher.</p> <p>◆ <i>The Subcommittee recommends the employment by the CA of the above persons.</i></p> <p>◆ <i>These persons are urgently needed as they would need to start looking into details and setting up of programmes for community and media liaison. This would result in a much clearer work programme with further proposed times frames/ target dates.</i></p>

7

SECURITY APPARATUS

D	1	CONSTITUTIONAL ISSUES	<p>1.1 <u>Supremacy of the Constitution</u> 1.1.1 Sovereignty of the Constitution and relation to the four security arms, i.e., Defence, Police, Correctional Services and Intelligence.</p> <p>1.2 <u>Definition of action in national interest</u> 1.2.1 Non-partisan or party political action</p> <p>1.3 <u>Accountability to parliament</u> 1.3.1 State of Emergency. 1.3.2 Oversight through Parliamentary Standing Committees. 1.3.3 Approval of budget. 1.3.4 Regulatory Acts of Parliament. 1.3.5 Termination of deployment of service by the Executive. 1.3.6 Tender regulations.</p> <p>1.4 <u>Individuals rights in relation to the State</u> 1.4.1 The right to strike and the right to disobey 1.4.2 The right to religious freedom and Gender Equality. 1.4.3 Relationship to architecture of state and access of members to state structures outside the security arms.</p> <p>1.5 <u>Employment of Force</u> 1.5.1 Limitations and Powers</p> <p>1.6 <u>International obligations</u> 1.6.1 Status, Conventions and Protocols</p> <p>1.7 <u>Executive Control</u> 1.7.1 President and Cabinet</p> <p>1.8 <u>Civilian Control</u> 1.8.1 Ministry and Secretary</p> <p>1.9 <u>Civil/Military relations and demilitarisation of some security arms</u></p> <p>1.10 <u>Budget</u></p> <p>1.11 <u>Parliamentary Control</u> 1.11.01 Monopoly of Force in State Institutions, Freedom of Information, Special Courts, Ombuds Structures, Sovereignty and relation to Constitution and threats to the Country.</p>
2	2.1	PRIORITIES	Under Consideration.

3	AREAS OF OVERLAP	<p>3.1 Fundamental Rights - Entrusted to Theme Committee 4. ♦ <i>Powers of Security Officials to execute duties in conflict with basic human rights, e.g. deprivation of freedom by incarceration, invasion of privacy by either the Police or the Intelligence Community.</i></p> <p>3.2 National and Provincial Powers and Federal and Unitary Balance - Entrusted to Theme Committee 3.</p>
4	REFERRALS TO COMMISSIONS	<p>4.1 Correctional Services. 4.2 Intelligence. ♦ <i>Proposed Commissions should work closely with the relevant Standing Committees in both houses of Parliament.</i></p>
5	SUBJECTS FOR REPORTING	<p>5.1 Correctional Services. 5.2 Defence 5.3 Intelligence. 5.4 The Police.</p>
6	NUMBER OF REPORTS AND TARGET DATES	<p>6.1 Correctional Services 1 Report - 31 March 1995</p> <p>6.2 Defence 1 Report - 30 April 1995</p> <p>6.3 Intelligence 1 Report - 31 March 1995</p> <p>6.4 The Police 1 Report - 31 April 1994</p> <p>♦ <i>Overarching report to be written after compilation of the above reports.</i> ♦ <i>Ability to meet deadlines dependent on timeous employment of Researcher and appointment of a Panel of Expert Consultants (see 9.2 below)</i></p>
	CONSULTATION STRUCTURES & ROLE PLAYERS	<p>7.1 Security Forces, Popcru, Sapu, Sandfu and Sapohr.</p>
8	COMMUNITY AND MEDIA LIAISON	<p>8.1 Public hearings. 8.2 Invitations of submissions through Newspaper advertisements.</p>

TECHNICAL ASSISTANCE

9

- 9.1 A Senior dedicated Researcher.
- 9.2 A Panel of expert Consultants
- Names of Experts agreed upon:** ♦
 - Prisons:** Skelton Anne (University of Pretoria and LHR) and Van Zyl Dirk (Dean: Faculty of Law, UCT).
 - Defence:** Cilliers J(IDP), Hlongwane F(ITEC) and Nathan L(Centre for Conflict Resolution).
 - Intelligence:** Africa S(Dept of Political Science, Durban-Westville), Breytenbach Prof (Dept of Political Science, Stellenbosch), Hough M(Institute for Strategic Studies, UPE) and Southall R Prof (Dept of Political Science, Rhodes).
 - Police:** Cawthra G(MRG), Raunch J(Ministry of Safety and Security), Seegers A(Dept of Political Science, UCT) and Simpson G(Institute for the Study of Violence and Reconciliation).
- 9.3 **Advise to be sought from Researchers and Institutions on a comparative audit of all four Security Apparatus:**
 - Institutions:** Military Research Group, Institute For Defence Policy, Institute for the Study of Violence, Police and Prisons' Projects, Wits University Policing Project, UWC Community Policing Project, Dept of Criminology, Unisa, Institute of Criminology, UCT, Nadel, Children in Detention Group and Penal Reform Group of the LHR, Black Sash and Nicro.
 - Researchers** Baynham S, Booyce W, Cock J, Giffard C, Heitman H, Lue M, Steenkamp W and Williams R.

