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CONSTITUTIONAL ASSEMBLY

**THEME COMMITTEE 4
FUNDAMENTAL RIGHTS**

24 October 1994

Room M 46

DOCUMENTATION

TABLE OF CONTENTS

No.	Detail	Pg.
1.	Notice of Meeting and Agenda	1 - 2
2.	Minutes of Theme Committee Meeting 19/9 94	3 - 6
3.	Minutes of Core Group 19/9/94	7
	Minutes of Core Group 23/9/94	8 - 10
4.	Directorate Memo : Work Programme	11 - 12
5.	Briefing Document for Theme Committees	13 - 16
6.	Constitutional Assembly Resolutions	17 - 20

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 4 MEETING

FUNDAMENTAL RIGHTS

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

Date : Monday, 24 October 1994
Time : 11h30 - 13h00
Venue : Room M 46

AGENDA

1. Opening
2. Minutes
3. Matters Arising
4. Core Group Report
5. Developing a Work Programme :
(See Memo on Work Programme & Briefing Document for Theme Committees)
6. Identifying Themes that Committee should look at
(See Constitutional Assembly Resolutions 5 September 1994)
7. Any Other Business
8. Closure

****** *Members are reminded to bring copies of the Constitution and Standing Rules for the Constitutional Assembly to the meeting.*

**H Ebrahim
Executive Director
Constitutional Assembly**

**Enquiries : John Tsalamandris
Managing Secretary
CA 208
Tel : 403 2266**

**CONSTITUTIONAL ASSEMBLY
MINUTES OF
FIRST MEETING OF
THEME COMMITTEE 4
FUNDAMENTAL RIGHTS
MONDAY 19 SEPTEMBER 1994 (AT 16H15)**

PRESENT

Asmal AK
Coleman M
Gamndana T
Green LM
Jooste JA
Leon AJ
Mabandla BS
Mbuyazi LR
Mfayela SB
Mncwango MA
Njobe MA
Radue RJ
Selebi JS
Skosana BM
Surty ME
Van Eck J
Werth CH

Camerer SM
Dlamini BO
Gasa XF
Govender P
Kgoali JL
Lubidla AJ
Mashamba TGG
Mdladlana MMS
Mfebe MW
Myburgh GB
Pandor GNM
Rhoda RT
Sizani K
Smuts M
Tyobeka VM
Vos S
Mulder CP

P Lilienfeld, T Mngadi and J Tsalamandris were in attendance.

1. OPENING AND WELCOME

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

2. APPOINTMENT OF CORE GROUP MEMBERS

The following members were appointed for the core group :

- * Leon AJ (DP)
- * Mdladlana MMS (ANC)
- * Mncwango MA (IFP)
- * Mulder CP (FF)
- * Myburgh GB (NP)
- * Pandor GN (ANC)
- * Sizani RK (PAC)

3. ELECTION OF CHAIRPERSON

3.1 It was agreed to that the Theme Committee would not nominate the three co-chairpersons, but that the core group would meet and nominate three rotating co-chairpersons.

3.2 Ms Vos was appointed interim chairperson.

4, 5. GENERAL DISCUSSION ON THE OBJECTIVES OF THE COMMITTEE AND GENERAL DISCUSSION ON PROGRAMME OF WORK

4.1 Discussion on this matter was of a general nature and was underscored by two key concerns:

- * that the Committee pay particular attention to the ideas and concerns of the public at large, especially the "non-empowered", entailing paying particular attention to submissions; and

- ii) that preparatory work be done by the Core Group in mapping out aspects of the theme requiring attention.
- 4.2 It was suggested that lessons be learned from the past, ie. the processes at the World Trade Centre Talks, and the experience of the Independent Electoral Commission.
- 4.3 It was agreed that all members make an effort to get information\literature and familiarise themselves with the subject matter of the committee.
- 4.4 The Secretariat was requested to provide background literature on the subject matter of the Committee. This should include the UN Declaration on Human Rights, the 2 prominent International Covenants, the Helsinki Accord, the African Charter and the UN Women's and Children's Charter. Other material such as constitutions of other countries would also be useful.
- 4.5 It was further agreed that time frames be set by the committee to allow for sufficient and necessary attention to be paid to all the issues.
- 6. INVITE PARTIES TO MAKE SUBMISSIONS RE: 5 ABOVE**
- 6.1 Following from the previous discussion it was accepted that an attempt be made to involve the broader public in the process.
- 6.2 The Committee noted that organised bodies and interest groups should be asked to make submissions.
- 6.3 It was suggested that advertisements and the media be used to achieve this.
- 6.4 The Secretariat was requested to assess the feasibility and possibility of some form of media campaign by the committee to reach out to the broader public.
- 6.5 The Secretariat was requested to investigate other means of reaching out to the broader public as was done by the Independent Electoral Commission during the election campaign.

7. AGENDA FOR NEXT MEETING

It was decided that the core group meet to:

- * nominate the 3 chairpersons of the Committee;
- * map out the broad themes that the Committee should look at;
- * attempt to get material for the Committee members to read\study before the next meeting.

8. CLOSURE

The meeting rose at 17h40

**CONSTITUTIONAL ASSEMBLY
MINUTES OF
CORE GROUP
THEME COMMITTEE 4 MEETING**

**19 SEPTEMBER 1994 (17h45)
VENUE V 249**

Present

AJ Leon
MM Mdladlana
A Mncwango
CP Mulder
GB Myburgh
GNM Pandor
K Sizani

P Lillienfeld, J Tsalamandris and T Mngadi-Kgosinditsi were in attendance.

1. OPENING

- 1.1 The meeting was opened by Mrs S Vos who chaired as an Interim Theme Committee chairperson.

2. ELECTION OF CHAIRPERSONS

- 2.1 The following were elected AJ Leon, G Myburgh and MM Mdladlana were elected as chairpersons.
- 2.2 Mr G Myburgh was nominated to lead first meeting.

3. LITERATURE TO BE SUPPLIED BY THE SECRETARIAT

- 3.1 The Secretariat was requested to provide background literature on the subject matter of the Committee.

The meeting adjourned at 6.10pm

CONSTITUTIONAL ASSEMBLY

MINUTES OF SECOND MEETING OF

CORE GROUP THEME COMMITTEE 4 FUNDAMENTAL RIGHTS

FRIDAY 23 SEPTEMBER 1994 (AT 9H00)

PRESENT

Leon AJ	(Chairperson)
Mdladlana MMS	(Chairperson)
Mulder CP	
Myburgh GB	(Chairperson)
Pandor GN	
Sizani RK	

J Tsalamandris was in attendance.

1. OPENING

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

2. CHAIRPERSONS

2.1 Discussion on this matter concerned issues of:

- * rotation
- * co-ordination\ operation of chairpersons

2.2 It was agreed that as an initial process each chairperson will chair one meeting on a rotational basis in alphabetical order.

2.3 It was also further agreed that although Mr AJ Leon was to be the next chairperson in terms of 2.2 (above), Mr MMS Mdladlana would be the chairperson for the next Theme Committee meeting.

2.4 The Group agreed that the chairpersons co-ordinate the activities between themselves; and that with the Constitutional Assembly Secretariat, to facilitate the smooth operation of the process.

3. THEMES THAT COMMITTEE SHOULD LOOK AT

3.1 It was agreed that the issue of themes could only be dealt with adequately once the Constitutional Committee and Management Committee had met and once the party submissions had been dealt with.

4. WORK PROGRAMME\ TIME FRAME

4.1 Following the notification from the CA Management Committee regarding the changes in time and date of the next Theme Committee meetings; it was agreed that it would be inappropriate to set time frames and a work programme.

4.2 It was also noted that the matter could only be dealt with adequately once party submissions were made and the Constitutional Committee and Management Committee had met to provide more clarity.

5. OTHER

- 5.1 It was noted that literature asked for by the Theme Committee had been supplied by the Secretariat.
- 5.2 It was further also agreed that literature material be placed in the Library such that it is accessible to members.

The meeting adjourned at 9h25.

CONSTITUTIONAL ASSEMBLY

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PO Box 15
CAPE TOWN 8000
REPUBLIC OF SOUTH AFRICA

REF NO:

TC/1/18.10.94

18 October 1994

MEMORANDUM

To : **Members of Theme Committees**

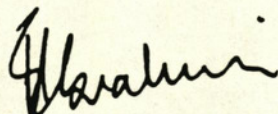
From : **Hassen Ebrahim
Executive Director**

RE : WORK PROGRAMME

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

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

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



HASSEN EBRAHIM

BRIEFING DOCUMENT FOR THEME COMMITTEES

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

1. INTRODUCTION

The Constitutional Assembly has the right to debate in detail, oversee and direct the drafting of and adopt the new constitutional text. In order to perform its functions it has established Theme Committees to deal with the wide range of issues to be covered in the new constitutional text.

2. SELECT COMMITTEES

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

3. APPOINTMENT OF THEME COMMITTEES

- 3.1 Rule 21 of the Standing Rules provides, that a select committee may be appointed by a resolution of the Constitutional Assembly or under a rule approved by it. On 15 August 1994, the Constitutional Assembly passed a resolution to appoint select committees, called Theme Committees.
- 3.2 The Constitutional Assembly approved the appointment of six Theme Committees on the following constitutional themes; character of a democratic state, structure of government, relationship between the levels of government, fundamental rights, judiciary and legal systems and specialised structures of government, by resolution on 5 September 1994.
- 3.3 The composition of Theme Committees is provided for in rules 22 and 23 and in the Constitutional Assembly resolution of 5 September 1994. In terms of the said resolution Theme Committees shall be made up of thirty Constitutional Assembly members or such smaller number as the Constitutional Committee may decide upon.

4. MANAGEMENT

- 4.1 Each Theme Committee shall appoint no more than 8 of its members to form a "core group" that will be responsible for managing the work programme of the Theme Committee. Political party representation in each core group shall be as follows; 2 members from the ANC, and one from the NP, IFP, PAC, FF and DP respectively. In respect of Theme Committees that have an ACDP member, the core group shall include such member.
- 4.2 The core group will liaise with the managing secretary allocated to the Theme Committee with regard to the preparation of agendas for Theme Committee meetings, the circulation of relevant documents to Theme Committee members and other administrative matters relating Theme Committee meetings.

5. CHAIRING

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

6. ROLE OF THEME COMMITTEES

- 6.1 Constitutional Assembly resolution of the 5th September 1994, provides for the role, functions and structure of reports of Theme Committees. [see Constitutional Assembly Resolutions, pages 7 and 9.]
- 6.1(a) Drafting is directed by the Constitutional Assembly.
- 6.1(b) The Constitutional Committee is responsible for the co-ordination of all Constitutional Assembly work, including drafting.
- 6.1(c) The primary task of Theme Committees is to receive submissions and process them into reports for consideration by the Constitutional Committee.

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

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

7. RELATIONSHIP WITH OTHER CONSTITUTIONAL ASSEMBLY STRUCTURES

7.1 Constitutional Committee

7.1.1 Theme Committees will compile reports which include details of non-contentious issues, contentious issues and suggested approaches, for consideration by the Constitutional Committee.

7.1.2 The Constitutional Committee may, after deliberating on a theme committee report, refer the report to the Constitutional Assembly.

7.2 Management Committee

7.2.1 The Management Committee is responsible for the following functions;

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

7.3 Administration

The Administration will be responsible for the following:

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

7.3.2 Provision of general daily co-ordination.

7.3.3 Provision of research, legal services and information.

7.3.4 Facilitation and management of media and community liaison programmes.

7.4 Technical Committees

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

7.4.2 The functions of Technical Committees are set out in rule 44 include the supervision of the drafting process, however, the Constitutional Committee is reviewing this rule.

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

CONSTITUTIONAL ASSEMBLY

RESOLUTIONS

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

THE ESTABLISHMENT OF THEME COMMITTEES

1. CHARACTER OF DEMOCRATIC STATE

- 1.1 Preamble of the Constitution
- 1.2 Matters dealing with the establishment of a single sovereign state, common citizenship, democracy and equality (Constitutional Principle I)
- 1.3 The supremacy of the Constitution, binding on all organs of State (Constitutional Principle IV)
- 1.4 Matters dealing with representative government, regular elections, suffrage and proportional representation. (Constitutional Principle VIII)
- 1.5 Matters dealing with freedom of information and accountable administration. (Constitutional Principle IX)
- 1.6 Name and description of State and symbols
- 1.7 Citizenship and franchise
- 1.8 Matter dealing with the separation of powers etc (Constitutional Principle VI)

2. STRUCTURE OF GOVERNMENT

- 2.1 Matter dealing with the separation of powers etc (Constitutional Principle VI)
- 2.2 The adherence to formal legislative procedures by legislative organs (Constitutional Principle X)
- 2.3 Participation of minority political parties in legislative process in manner consistent with democracy (Constitutional Principle XIV)
- 2.4 Amendments to Constitution require special procedures involving special majorities (Constitutional Principle XV)
- 2.5 Structure of Government at national, provincial and local levels (Constitutional Principle XVI)
- 2.6 Democratic representation at every level of government - without derogating from the role of chieftainship (Constitutional Principle XVII)
- 2.7 National Assembly, the Senate and Parliament in general
- 2.8 The Electoral System
- 2.9 Matters dealing with the constitution, status and role of traditional leadership (Constitutional Principles XIII)
- 2.10 Traditional Leaders
- 2.11 The Executive

3. RELATIONSHIP BETWEEN LEVELS OF GOVERNMENT

- 3.1 The details and nature of the relationship (Constitutional Principle XVI and XVII)
- 3.2 Local Government in context of Constitutional Principle XXIV
- 3.3 Establishment of Provincial government
- 3.4 Establishment, status and powers of local government
- 3.5 Legislative competence of Provinces and concurrency

4 FUNDAMENTAL RIGHTS

- 4.1 The enjoyment of fundamental rights by all - entrenchment in Constitution etc (Constitutional Principle II)
- 4.2 The prohibition of racial, gender etc discrimination and the promotion of equality and national unity (Constitutional Principle III)
- 4.3 The diversity of language and culture to be recognised - promotion and encouragement (Constitutional Principle XI)
- 4.4 The collective rights of self-determination, civil society and free association (Constitutional Principle XII)
- 4.5 The right to form trade union and collective bargaining (Constitutional Principle XVIII)
- 4.6 Community self-determination based on cultural and language heritage (Constitutional Principle XXXIV)
- 4.7 Protection and enforcement of fundamental rights
- 4.8 First, second and third, generation of Rights
- 4.9 Relationship of various Charters of Rights to the Bill of Rights

5. JUDICIARY AND LEGAL SYSTEMS

- 5.1 Matter dealing with qualities of judiciary and enforcement of Constitution (Constitutional Principle VII)
- 5.2 The institution, status and role of traditional leadership and indigenous law (Constitutional Principle XIII)
- 5.3 Judicial functions, appointment of judges, Judicial Services Commission and Constitutional Court
- 5.4 Traditional authorities

6. SPECIALISED STRUCTURES OF GOVERNMENT

- 6.1 The independence and impartiality of the Public Service Commission, Reserve Bank and the Public Protector (Constitutional Principle XXIX)

- 6.2 The status and role of public service (Constitutional Principle XXX)
- 6.3 The performance of functions of police, military and intelligence to be in the national interest (Constitutional Principle XXXI)
- 6.4 Auditor-General, Reserve Bank and the Financial and Fiscal Commission
- 6.5 Establishment, powers and function of the Public Service Commission and Public Service
- 6.6 Powers and function of the Public Protector, Human Rights Commission, Gender Commission and the Commission on Restitution of Land Rights
- 6.7 Traditional authorities
- 6.8 South African Elections Commission (formerly IEC)

NOTE : There are other issues such as transitional provisions and the reception of international law into our domestic law which do not lend themselves very easily to allocation to a Theme Committee, and will have to be dealt by the Constitutional Committee of the Assembly. Not all of the structures under the Interim Constitution will be relevant under a permanent Constitution. Finally, international and comparative experiences can be discussed under any of the themes identified above.

The above categories are to be treated as a guideline and not adhered to mechanically. Theme Committees may establish Commissions on special topics. It is further proposed that certain principles and topics (for example; Constitutional Principle XXXIV dealing with community self-determination) may be discussed in more than one theme committee.

It is also proposed that Theme Committee 1 (Character of the Democratic State) be dealt with as a matter of priority.