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[Theme Committee 1 - 27 January 1994]

CONSTITUTIONAL ASSEMBLY

MEETING OF THEME COMMITTEE 1 CHARACTER OF DEMOCRATIC STATE

REVISED AGENDA

1. Opening
2. Previous minutes
3. Matters arising
4. Revised Work Programme
5. Submissions and work plan
 - a) Report from Core Group
 - b) Processing of synopsis
(See document: Synopsis as at 12 January 1995)
6. Public Participation Programme
 - a) Report from Core Group
 - b) Report from Directorate
7. General
8. Closure

REVISED
WORK PROGRAMME

ep/program

FIRST REVISION OF RECOMMENDED WORK PROGRAMME

BLOCK NO	TC 1	TC 2	TC 3	TC 4	TC 5
1	1. Democracy and Character of State	1. Separation of powers	1. Nature and status of the provincial system and local government	1. Constitutional Principle II	1. Appropriate judicial system
2	2. Equality 3. One, sovereign state	2. Structures of government	2. National and provincial legislative competences	2. Nature of Bill of Rights and application 3. Equality 4. Human dignity 5. Right to life 6. Privacy	2. Supreme Court
3	4. Supremacy of the Constitution	3. Functioning of national and provincial structures of government	3. National and provincial executive competences	7. Religion, belief and opinion 8. Freedom of expression 9. Freedom of association 10. Language and culture	3. Constitutional Court 4. Constitutional jurisdiction of Supreme Court

4	5. Accountable government	4. Volkstaat and community selfdetermination	4. Structural aspects of local government	11. Administrative justice 12. Access to information 13. Access to courts 14. Freedom and security of the person 15. Detained, arrested and accused persons	5. Other courts
5	6. The Economy	5. Traditional authorities	5. Functional aspects of local government	16. Servitude and forced labour 17. Economic activity 18. Property 19. Labour relations 20. Environment	6. Customary law and customary and tribal courts
6	7. Representative government 8. Citizenship 9. Suffrage	6. Electoral system at national and provincial level	6. Electoral system at local level	21. Citizens' rights 22. Political rights 23. Freedom of movement 24. Freedom of residence 25. Freedom of demonstration and petition	7. Judicial office-bearers
7	10. Language	7. Constitutional amendments	7. Financial and fiscal relations	26. Children's rights 27. Education rights	8. Other judicial institutions

8	11. Foreign relations and international law			28. Other rights and directive principles 29. Customary and indigenous law 30. Linguistic, religious and cultural minorities	9. General matters
9	12. Name, Symbols and National Territory 13. Seats of government			31. Limitation of rights 32. Effect of Bill of Rights on existing law 33. States of emergency and suspension of rights	10. Transitional arrangements
10	14. Preamble and Postamble			34. Interpretation of Bill of Rights 35. Horizontal application of Bill of Rights 36. Class actions	

THEME COMMITTEE 1

Block 1: Agenda item 1: Democracy and Character of State

Suggested framework for agenda item 1

- (a) General principles
- (b) Extent to which the Constitutional Principles already determine a particular system of democracy for South Africa.
- (c) Areas of flexibility within the Principles
- (d) Possible approaches to an appropriate system of democracy for South Africa.

Relevant Constitutional Principles: I, II, VI, VIII, XIV, XVI, XVII, XIX

Relevant sections of Interim Constitution: Preamble, 1(1), 6, 21, 37, 75, 96, 124, 126, 174

Block 2: Agenda item 2: Equality

Suggested framework for agenda item 2

- (a) Formal and substantive equality.
- (b) Equal opportunities and access to equal opportunities.
- (c) Elimination of vertical and horizontal discrimination.
- (d) Promotion of racial and gender equality.

Relevant Constitutional Principles: I, II, III, V, XI, XII, XIII

Relevant sections of Interim Constitution: Preamble, 3, 8, 10, 12, 17, 32, 33(4), 119, 121

Agenda item 3: One, sovereign state

Suggested framework for agenda item 3

The concept of "one, sovereign state", particularly in relation to
- provincial autonomy;

- minority participation;
- community self-determination and the "volkstaat" issue;
- traditional monarchies.

Relevant Constitutional Principles: I, XI, XIII, XIV, XVI, XVIII, XIX, XX, XXII, XXXIV

Relevant sections of Interim Constitution: 1, 40(1), 88, 126, 160, Chapter 11A.

Block 3: **Agenda item 4: Supremacy of the Constitution**

Suggested framework for agenda item 4

- (a) The concept of constitutionalism and the constitutional state.
- (b) Mechanisms needed to establish, entrench and protect constitutionalism.
- (c) Justiciability of the Constitution in relation to
 - organs of state (verticality); and
 - interpersonal relationships (horizontality).

Relevant Constitutional Principles: II, IV, V, VI, VII

Relevant sections of Interim Constitution: Preamble, 4, 7(1), 33(2) and (4), 34, 96, 110-118

Block 4: **Agenda item 5: Accountable Government**

Suggested framework for agenda item 5

- (a) Constitutional mechanisms to ensure government accountability.
- (b) Accountability with reference to
 - national legislature
 - provincial legislatures
 - electorate
 - affected individual

- (c) Access to government information.
- (d) Administrative justice and accountability to the judiciary.

Relevant Constitutional Principles: II, VI, IX, XXVII, XXIX
Relevant sections of Interim Constitution: 4, 7, 22, 23, 24, 92, 110, 115, 153, 185, 186, 187, 191, 192, 198, 199, 209(2), 213

Block 5: Agenda item 6: The Economy

Suggested framework for agenda item 6

- (a) Constitutional regulation of economic matters.
- (b) Constitutional mechanisms to achieve substantive equality, economic empowerment and socio-economic advancement.

Relevant Constitutional Principles: II, III, V, XXVIII
Relevant provisions of Interim Constitution: 26, 27, 28

Block 6: Agenda item 7: Representative Government

Suggested framework for agenda item 7

- (a) The extent to which the Constitutional Principles already determine a particular system of representative government.
- (b) Areas of flexibility within the Constitutional Principles.
- (c) Broad outline of an appropriate system of representative government for South Africa.
- (d) Referenda as an instrument of decision-making.

Relevant Constitutional Principles: I, II, VIII, XIV, XVII
Relevant sections of Interim Constitution: 6, 21, 39, 40, 48, 77, 88, 127, 129, 145, 179, Schedule 2

Agenda item 8: Citizenship

Suggested framework for agenda item 8

- (a) Aspects of citizenship appropriately to be dealt with in the Constitution.

- (b) Rights and responsibilities of citizenship.

Relevant Constitutional Principle: I, II

Relevant sections of Interim Constitution: 5, 20

Agenda item 9: Suffrage

Suggested framework for agenda item 9

- (a) The constitutional right to vote
- (b) Minimum age and other qualifications
- (c) The question of voting rights for non-citizens.

Relevant Constitutional Principles: II, VIII

Relevant sections of Interim Constitution: 6, 21

Block 7: **Agenda item 10: Language**

Suggested framework for agenda item 10

- (a) Question of official language(s) at national and provincial level.
- (b) Protection and promotion of diversity of language.
- (c) Use of language(s) in and by government and public institutions.
- (d) Language(s) in which statutes must be drafted.

Relevant Constitutional Principles: II, XI

Relevant sections of Interim Constitution: 3, 8, 25(1)(a), (2)(9) and 32(b) and (c), 65(1) and (2), 107, 141(1) and (2), (3)(i), 31

Block 8: **Agenda item 11: Foreign relations and international law**

Suggested framework for agenda item 11

- (a) Head of State's powers and responsibilities.
- (b) Employment of military apparatus for external purposes.
- (c) International law and treaties.

Relevant Constitutional Principles: XXI(3)

Relevant sections of Interim Constitution: 82(1)(f) and (i) and (2)(d), 227(1)(b) and (2)(a) and (e), 228(4) and 231

Block 9: **Agenda item 12: Name, Symbols and National Territory**

Suggested framework for agenda item 12

As regards national territory:

- (a) Proper definition, also of provincial boundaries
- (b) Limits of territorial waters
- (c) Prince Edward and other Islands

Relevant Constitutional Principles: 1, XVIII (1) and (3)

Relevant sections of Interim Constitution: 1(2), (2) 124, 248 and Schedule 1

Agenda item 13: Seats of government

Suggested framework for agenda item 13

- (a) Seat of national legislature
- (b) Seat of national executive
- (c) Seat of Constitutional and Appeal Courts

Relevant sections of Interim Constitution: 46(1), 53(1), 106

Block 10: **Agenda item 14: Preamble and postamble**

THEME COMMITTEE 2

Block 1: Agenda item 1: Separation of Powers

Suggested framework for agenda item 1

- (a) Separation of powers between legislature, executive and judiciary.
- (b) Broad outline of constitutional checks and balances to ensure accountability, responsiveness and openness.
- (c) Broad outline of the structures needed for the exercise of legislative and executive power at national, provincial and local level.

Relevant Constitutional Principles: VI, XVI, XXIV

Relevant sections of Interim Constitution: 36, 37, 75, 76, 77(4), 88, 96, 125, 144, 145, 149, 174, 183, 184

Block 2: Agenda item 2: Structures of government

Suggested framework for agenda item 2

- (a) Detailed notes on legislative and executive structures and institutions at national level.
- (b) Question of a second legislative chamber at national level.
- (c) Composition of the said structures and institutions.
- (d) Determination of the extent to which the Constitution should provide for legislative and executive structures at provincial level having regard to Constitutional Principle XVIII(2)
- (e) Detailed notes on legislative and executive structures and institutions at provincial level and the extent to which such structures and institutions should be provided for in the Constitution.
- (f) Composition of these structures and institutions.

Relevant Constitutional Principles: XVI, XVIII(2) read with section 160(3)(a), XXXII

Relevant sections of Interim Constitution: 36, 40, 41, 42, 48, 49, 50, 75, 76, 84, 88, 94, 125, 127, 131, 132, 144(1), 149

Block 3: Agenda item 3: Functioning of structures of government

Suggested framework for agenda item 3

- (a) Detailed notes on the operational and procedural aspects of national legislative and executive structures and institutions.
- (b) Detailed notes on the operational and procedural aspects of provincial legislative and executive structures and institutions and the extent to which such structures and institutions should to be regulated in the Constitution.

Relevant Constitutional Principles: X, XVI, XVIII(2) read with section 160

Relevant sections of Interim Constitution: 38, 43 - 47, 51 - 61, 63 - 67, 77 - 80, 83, 85 - 87, 89 - 95, 128, 130, 133 - 143, 145, 146, 148, 150 - 154

Block 4: Agenda item 4: Volkstaat and community self-determination

Suggested framework for agenda item 4

- (a) The "Volkstaat" issue
- (b) Alternative forms of community self-determination.

Relevant Constitutional Principles: II, XI, XII, XXXIV
relevant sections of Interim Constitution: 3, 14, 17, 31, 32(b) and (c), 33(4), Chapter IIA

Block 5: Agenda item 5: Traditional authorities

Suggested framework for agenda item 5

- (a) Recognition of traditional authorities and traditional monarchs.
- (b) Institution, role, authority and status of traditional authorities and traditional monarchs.
- (c) The role of traditional authorities and traditional monarchies in

- national government
- provincial government
- (d) Consideration of structures such as
 - Provincial Houses of Traditional Authorities
 - National Council of Traditional Authorities.

Relevant Constitutional Principles: XI, XII, XIII, XVII, XXXIV
Relevant sections of Interim Constitution: 33(2) and (3), 35(3), 160(3)(b), Chapter II.

Block 6: **Agenda item 6: Electoral Systems at national and provincial levels**

Suggested framework for agenda item 6

Electoral systems -

- (a) at national level of government
- (b) at provincial level of government.

Relevant Constitutional Principles: VIII, XVII, XXXIII
Relevant Sections of Interim Constitution: 6, 21, 39, 40, 93, 127, 129, 154, 249, 250, Schedule 2

Block 7: **Agenda item 7: Constitutional amendments**

Suggested framework for agenda item 7

- (a) Special procedures and special majorities
- (b) Additional requirements where powers, functions, boundaries or institutions of provinces are altered.

Relevant Constitutional Principles: XV, XVIII(4) and (5)
Relevant sections of Interim Constitution: 62

THEME COMMITTEE 3

Block 1: Agenda item 1: Nature and status of the provincial system and local government

Suggested framework for agenda item 1

1. Extent to which the Constitutional Principles already determine a particular system of
 - provincial government, and
 - local government
2. Areas of flexibility within the Principles.
3. The implications of CPXVIII(2) and the expressions "substantially less" and "substantially inferior".
4. General notes on appropriate systems of provincial and local government accommodatable within the Principles.

Relevant Constitutional Principles: I, XVI, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII

Relevant sections of Interim Constitution: 48, 61, 62, 114, Chapter 9, Chapter 10, 185, 198 - 206, 213, 217, 219, 235, 237, 239, 245, Schedule 6

Block 2: Agenda item 2: National and provincial legislative competences

Suggested framework for agenda item 2

1. The nature of legislative competences at the various levels of government particularly with regard to
 - concurrent or exclusive powers;
 - national and provincial overrides;
 - delegated and agency powers.
2. A list of functional areas that may be considered for assignment to the provinces (excluding financial and fiscal matters).

3. Provincial Constitutions and their content and status.

Relevant Constitutional Principles: XVIII, XIX, XX, XXI, XXII, XXIII

Relevant sections of Interim Constitution: 126, 160, Schedule 6

Block 3: **Agenda item 3: National and provincial executive competences**

Suggested framework for agenda item 3

1. The nature of executive authority at national and provincial level.
2. The content of executive authority at national and provincial level

Relevant Constitutional Principles: XVIII, XIX, XX

Relevant sections of Interim Constitution: 75, 81, 82, 144, 147

Block 4: **Agenda item 4: Structural aspects of local government**

Suggested framework for agenda item 4

1. Metropolitan, urban and rural structures of local government.
2. Areas of territorial jurisdiction.
3. Composition of local structures.

Relevant Constitutional Principles: XVI, XXIV

Relevant sections of Interim Constitution: 174, 177, 245 and the Local Government Transition Act, 1993

Block 5: **Agenda item 5: Functional aspects of local government**

Suggested framework for agenda item 5

1. Powers and functions at local level (excluding financial and fiscal relationship with other levels of government)
2. Functioning of local structures and procedural aspects

Relevant Constitutional Principles: IX, X, XX, XXIV

Relevant sections of Interim Constitution: 175, 178, 180, 245 and the Local Government Transition Act, 1993

Block 6: Agenda item 6: Electoral system at local level

Relevant Constitutional Principles: VII, XIV

Relevant sections of interim constitution: 179, 245

Block 7: Agenda item 7: Financial and Fiscal Relations

Suggested framework for agenda item 7

1. Intergovernmental fiscal and financial relations.
2. Financial and fiscal powers at
 - national level
 - provincial level
 - local level
3. Mechanisms to ensure equitable fiscal and financial allocations.

Relevant Constitutional Principles: XXV, XXVI, XXVII

Relevant sections of Interim Constitution: 155, 156, 157, 158, 159, 178, Chapter 12

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THEME COMMITTEE 4

Block 1: Agenda item 1: Constitutional Principle II

Suggested framework for agenda item 1

1. General notes on Principle II clarifying phrases such as
 - Everyone shall enjoy ... "(Whether the term "everyone" includes juristic persons, structured and unstructured groups, and organs or civil society, etc)
 - "all universally accepted fundamental rights, freedoms and civil liberties" (which rights etc., qualify as universally accepted fundamental rights)
 - "entrenched and justiciable provisions"
 - "due consideration to *inter alia* the fundamental rights contained in Chapter 3"
2. General discussion of related Constitutional Principles such as I, III, V, IX, XI, XII, XIII(1), XXVIII, XXXIV
3. Suggested approach as to the identification of rights not covered by CP II.

Relevant sections of Interim Constitution: Preamble, Sections 3, 4, Chapter 3, Sections 98(2), 101(3), 115 - 123

Block 2: Agenda item 2: Nature of Bill of Rights and application

Agenda item 3: Right to equality

Suggested framework for agenda item 3

- (a) Content of the right.
- (b) Equality as a human right of the individual and the question of juristic persons.
- (c) Prohibited grounds for discrimination.
- (d) Affirmative action.

- (e) Effects on customary law, including the rules and customs of religious and traditional communities.

Relevant Constitutional Principles: I, II, III, V, XI, XII, XIII(I)

Relevant sections of Interim Constitution: Preamble, Sections 3, 8, 10, 12, 17, 32, 33(4), 119 - 123

Agenda item 4: Right to human dignity

Content of right

See CP II and Sections 10, 12, 25(1)(b)

Agenda item 5: Right to life

Suggested framework to agenda item 5

- (a) The right to life as a fundamental right.
- (b) Controversial issues such as -
- capital punishment
 - abortion
 - euthanasia

See CP II and Section 9

Agenda item 6: Right to Privacy

Suggested framework for agenda item 6

- (a) Aspects of personal privacy that need to be protected constitutionally.
- (b) Controversial aspects
- intelligence services and state security
 - access to private information required for the exercise of one's rights
 - searches of the person and property for purposes of combating or preventing crime and statutory offences

See CP II and Sections 13, 23

Block 3:

Agenda item 7: Freedom of religion, belief and opinion

Suggested framework for agenda item 7

- (a) Content of this right.
- (b) Separation between church and state.
- (c) Religious observances in state and state-aided constitutions such as schools, prisons and the security services.
- (d) Academic freedom.
- (e) The recognition of systems of law of communities professing to a particular religion.

See CP II, XII and Sections 8(2), 14, 32(c)

Agenda item 8: Freedom of expression

Suggested framework for agenda item 8

- (a) Content of the right to freedom of speech and expression.
- (b) Press freedom.
- (c) State controlled media.
- (d) Private radio and television stations.
- (e) Hate propaganda or expression.

See CP II and Section 15

Agenda item 9: Freedom of association

Suggested framework for agenda item 9

- (a) Content of the right
- (b) Specific issues such as private discrimination

See CP II, XII and XVIII and Section 17

Agenda item 10: Freedom of language and culture

Content of these rights

See CP II, XII and XIII and sections 3, 31 and 32(b) and (c)

Block 4: Agenda item 11: Administrative Justice

Suggested framework for agenda item 11

- (a) Content of right
- (b) Horizontal application of right against private institutions
See CP II and Sections 7(2), 24

Agenda item 12: Right of access to information

Suggested framework for agenda item 12

- (a) Content of right
- (b) Horizontal application of right against private institutions
See CP II, IX and Section 23

Agenda item 13: Right of access to courts

Suggested framework for agenda item 13

- (a) Content of right
- (b) Question of "ouster" clauses
See CP II, VII and Sections 7(4), 22, 98, 101

Agenda item 14: Freedom and Security of the person

Suggested framework for agenda item 14

- (a) Content of the right
- (b) Specific related questions such as detention without trial
See CP II

Agenda item 15: Right of detained, arrested and accused persons

See CP II and Section 25

Block 5: Agenda item 16: Servitude and forced labour

See CP II and Section 12

Agenda item 17: Freedom to engage in economic activity

See CP II and Section 26

Agenda item 18: Rights to property

Suggested framework for agenda item 18

- (a) Individual and collective ownership
- (b) The land issue and restoration
- (c) Compensation for expropriation

See CP II and Sections 28, 121 - 123

Agenda item 19: Labour relations

Suggested framework for agenda item 19

- (a) Aspects of labour relations that need be protected as constitutional rights.
- (b) Question of constitutionalising rights contained in labour statutes.

See CP II, XII, XXVIII and Sections 27, 33(5)

Agenda item 20: Environment

See CP II and section 29

Block 6: Agenda item 21: Citizens' rights

Content of these rights

CP I, II and Sections 5, 20

Agenda item 22: Political rights

Suggested framework for agenda item 22

- (a) Content of these rights
- (b) Qualifications on the right to vote
- (c) Political rights of non-citizens

See CP II, VIII and Sections 6, 21

Agenda item 23: Freedom of movement

Content of right

See CP II and Section 18

Agenda item 24: Freedom of residence

Content of right

See CP II and Section 19

Agenda item 25: Freedom of assembly, demonstration and petition

Content of right

See CP II and Section 16

Block 7: Agenda item 26: Children's rights

See CP II and Section 30

Agenda item 27: Educational rights

See CP Section 32

Block 8: Agenda item 28: Other rights and directive principles

Agenda item 29: Customary, indigenous and religious law

See CP II, XIII and Sections 33(2) and (3), 35(3), 181

Agenda item 30: Protection of linguistic, religious and cultural minorities

See CP XII, XXXIV and Sections 3, 8(2), 14, 17, 31

Block 9: **Agenda item 31: Limitation of rights**

See CP II and Sections 5(2) and (3), 6, 7(2), 8(3), 14(2) and (3), 26(2), 28(2) and (3), 33

Agenda item 32: Effect of Bill of Rights

Suggested framework on agenda item 31

Effect on

- existing statutes
- common and customary law
- previous actions

See CP II and XIII(I) and sections 7(2) and 33(2) and (3)

Agenda item 33: States of emergency and suspension of rights

See CP II and Section 34, 82(4)

Block 10 **Agenda item 34: Interpreting Bill of Rights**

See section 35

Agenda item 35: Horizontal application of Bill of Rights or any particular rights

See section 33(4)

Agenda item 36: Class actions

See sections 7

THEME COMMITTEE 5

Block 1: Agenda item 1: Appropriate judicial system

Suggested framework for agenda item 1

- (a) General principles
- (b) Extent to which Constitutional Principles already determine a particular judicial system
- (c) Broad notes on appropriate court system
 - higher courts
 - lower courts
 - specialized courts
- (d) Courts of final instance
 - appeal court/constitutional court
 - single or dual channel
- (e) Relationship between different courts

Relevant Constitutional Principles: II, IV, V, VI, VII

Relevant sections of Interim Constitution: Chapter 7 and sections 241 and 242

Block 2: Agenda item 2: Supreme court

Suggested framework for agenda item 2

- (a) General jurisdiction
 - appeal division
 - provincial and other divisions
- (b) Jurisdictional areas of provincial and other divisions
- (c) Composition

- (d) Relationship between divisions of supreme court and constitutional court
- (e) Access

Relevant constitutional principles: II, VII

Relevant sections of Interim Constitution: 96, 97, 101, 102, 241 and 242

Block 3: **Agenda item 3: Constitutional Court**

Suggested framework for agenda item 3

- (a) Jurisdiction
- (b) Composition
- (c) Engagement
- (d) Access to constitutional court

Relevant Constitutional Principles: II, IV, VII

Relevant sections of Interim Constitution: 96, 97, 98, 99, 100

Agenda item 4: Constitutional jurisdiction of Supreme Court

Suggested framework for agenda item 4

Constitutional jurisdiction of -

- (a) appeal division
- (b) provincial and other divisions

Relevant sections of Interim Constitution: Section 101(3) to (6)

Block 4: **Agenda item 5: Other courts**

Suggested framework for agenda item 5

- (a) Magistrate's courts
- (b) Specialized courts
- (c) Other possible courts

- (d) Jurisdiction and jurisdictional areas
- (e) Constitutional jurisdiction of lower courts
- (f) Composition

See CP VII and section 103

Block 5: Agenda item 6: Customary law

Suggested framework for agenda item 6

- (a) Recognition of customary law
 - indigenous African law
 - laws of religious communities
- (b) Tribal/customary courts
- (c) Jurisdiction

See CP XIII(1) and section 103

Block 6: Agenda item 7: Judicial office-bearers

Suggested framework for agenda item 7

- (a) Appointment, removal from office and remuneration of judges and other judicial office-bearers
- (b) Independent structures dealing with appointment, conditions of service; etc, of judges and other judicial office-bearers

See CP VII and sections 104, 105 and 109

Block 7: Agenda item 8: Other judicial institutions

Suggested framework for agenda item 8

- (a) Attorneys-General and public prosecutors
- (b) Possible introduction of system of public defenders

See section 108

Block 8: **Agenda item 9: General matters**

Suggested framework for agenda item 9

- (a) Court language
- (b) Interpreters
- (c) Interpretation of laws
- (d) International law
- (e) Any other related judicial matter

See sections 35, 107, 231 and 232

Block 9: **Agenda item 10: Transitional arrangements**

See Chapter 15

