

2/4/8/2/5

**CONSTITUTIONAL ASSEMBLY**

**THEME COMMITTEE 5  
JUDICIARY AND LEGAL  
SYSTEMS**

**14th November, 1994**

**Room M515**

**DOCUMENTATION**



## CONSTITUTIONAL ASSEMBLY

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### THEME COMMITTEE 5 JUDICIARY AND LEGAL SYSTEMS

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

Date : 14th November, 1994

Time : 10h00 - 12h00

Venue : Room M515 (Marks Building)

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### AGENDA

1. Opening and Welcome
2. Minutes of previous meeting
3. Matters arising
4. Work Programme
5. Technical Experts
6. Time Frames for Work Schedule
7. General
8. Closure

Ebrahim H  
Executive Director  
Constitutional Assembly

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**Enquiries:** Noel Taft, Room CS213 (Tel: 403-2278)  
Eunice van Eck, Room CS213 (Tel: 403-2294)

**CONSTITUTIONAL ASSEMBLY**  
**MINUTES OF**  
**THEME COMMITTEE 5**  
**JUDICIARY AND LEGAL SYSTEMS**  
**MONDAY 7TH NOVEMBER 1994 (AT 10H00)**

**PRESENT:** (Chairperson: J.H. van der Merwe)

Dalling DJ	Moeti SE
Ebrahim AG	Moosa MW
Fredericks GA (Alternate)	Mushwana ML (Alternate)
Fisher SD	Mzizi M
Gibson DHM	Nel AC
Groenewald RH	Ngcuka B
Hofmeyr WA	Ngwane L
Jana DP	Saloojee RAM
Jassat EE	Schutte DPA
Matthee PA	Van Heerden F
Matthews VJG	
Mgidi S	

Noel Taft and Eunice van Eck were in attendance.

**APOLOGIES:**

De Lange JH  
De Ville JR

**1. OPENING AND WELCOME**

- 1.1 The meeting was opened by Mr. JH van Der Merwe who chaired the meeting.
- 1.2 The agenda was adopted.

**2. MINUTES**

The minutes of the previous meeting were adopted.

**3. MATTERS ARISING**

- 3.1 The meeting was advised that the documentation from Kempton Park had been retrieved and that this information was being processed by the Administration.
- 3.2 It was agreed that this information should be properly housed and indexed for easy access.

#### **4. CORE GROUP REPORT**

##### **(a) Work Programme**

4.1 It was emphasized that the Work Programme is the product of inputs from all parties. The Work Programme was adopted subject to the following amendments:

i) Page 4, Part II: Access to Justice -

A, B, and C was removed. However, the Managing Secretary was instructed to write a letter to Theme Committee 4 to ensure that this area was covered by their Theme Committee.

ii) Page 7, (g) (i)

The Managing Secretary was instructed to categorise the list and attach it to the final Work Programme Report.

iii) Page 7, (g) (ii) amended to read as follows:

"All traditional authorities and traditional leaders, academics in the relevant field, women interest groups, monarchs and the public at large. The traditional leaders will also be consulted on the question of any further persons who should be notified."

##### **(b) Technical Experts**

4.2 Two views were expressed -

i) that the Technical experts be appointed as per the C.A. resolution dated 2nd September, 1994

ii) Technical experts be allocated to parties instead of Theme Committees.

It was agreed that the second view be referred to and be taken up by parties at Constitutional Committee level.

##### **(c) Time of Theme Committee meetings**

4.3 The meeting was advised that the Secretariat reported the matter to the administration for consideration at Constitutional Committee level.

**6. GENERAL**

Core Group members were requested to remain behind for a meeting.

**7. CLOSURE**

The meeting rose at 11h08

# 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]

**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]
- 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