

2/4/2/1/1/16

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 2 STRUCTURE OF GOVERNMENT

**MONDAY
13 MARCH 1995
09H00-12H00**

M 46

DOCUMENTATION

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CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 2 STRUCTURE OF GOVERNMENT

THEME COMMITTEE MEETING

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

Date : Monday 13 March 1995
Time : 9h00 - 12h00
Venue : M 46

AGENDA

1. Opening and Welcome
2. Minutes of Theme Committee meeting (27/02/95)
(documentation p 3-10)
3. Matters arising from minutes (27/02/95)
 - 3.1. response to request to Management Committee for guidelines regarding direct political party access to technical committee (documentation p 13-16; 11-12)
4. Report from Core Group
5. Technical Committee on Traditional Leaders
 - 3.1. Attachment to TC2
 - 3.2. Proposed Workshop on Traditional Leaders and Indigenous Law (documentation p 17)
6. Technical Committee programme in general

7. Any other business
8. Closure

**HASSEN EBRAHIM
EXECUTIVE DIRECTOR
CONSTITUTIONAL ASSEMBLY**

Enquiries:	James Nene	PAGER:	468 - 5050 CODE 9127
		TEL:	403 - 2109
	Thomas Smit		403 - 2281
	Charmaine Fredericks		245031 EXT 2272

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 2

MINUTES OF COMMITTEE MEETING

Monday 27 February 1995
9H00-12h00
M46

PRESENT

Rabie JA (chairperson)

Ackerman C
Badenhorst MJ
Beyers AS
Dexter P (Alt)
Doidge GQ
Eglin CW
Foster JA
Ligege MG
Louw SK
Mabudhafhasi RT
Marshoff FB
Mahlangu MJ
Mashile NL (Alt)
Mlangeni A

Moloto CP (Alt)
Mohlamonyane GM
Mothoagae PK
Mutsila I
Mwedemutsu MJ
Olifant DAA
Pahad EGH
Phakathi NE
Ramusi MC
Sekgobela PS
Sethema BEE
Shabangu S
Steenkamp
Tolo LJ

APOLOGIES

Bester BC
Hendrickse PAC (Alt)
Maduna P

ABSENT

Some parties have yet to complete their updated list of representatives and alternatives.

IN ATTENDANCE

TECHNICAL EXPERTS

Steytler N

SECRETARIAT

Mngadhi-Kgosidintsi T
Smit T
Fredericks C

1. OPENING AND WELCOME

1.1. The meeting was opened by Rabie JA.

2. THEME COMMITTEE MINUTES (7/02/95)

2.1. The minutes of the previous meeting were approved.

3. CORE GROUP REPORT

3.1. It was reported that the supplementary report requested for block 1 from the technical committee, shall specifically refer to the public submissions.

3.2. In respect of the press conference requested by the Core Group, it was reported that it had been arranged to take place at 11h00, and shall be aimed mainly at elaboration of the advertisement requesting public submissions which have appeared in the press. The meeting

agreed that the theme committee meeting shall end at 11h00, in order that the core group may meet at 11h00 to prepare for the press conference.

4. REPORT ON IN-HOUSE WORKSHOP

- 4.1. The meeting adopted the report of the workshop. It was agreed that the technical committee shall be further directed to do work: with the emphasis on the executive presidency, the relationship between, the executive and parliament, with reference also to the SA Law Commission's report.

5. WORK PROGRAMME FOR TECHNICAL EXPERTS

- 5.1. It was noted that the technical committee shall require clear briefs and time-frames for work requested. The committee then agreed that the technical experts be requested to propose how they see the work programme unfolding.
- 5.2. The committee then proposed that the technical experts proceed to prepare for the second in-house workshop on the question of unicameralism/bicameralism. It was agreed that the programme may include the functions of the upper house, the electoral process in this regard, and its purpose. It was noted
- 5.3. Although it was noted that the technical committee will have little time for preparations and will therefore not be as thorough as it could be, it was agreed that the workshop shall take place on Monday 6 March 1995. It was agreed that it will be held between 9h00 and 13h00, and that the theme committee meeting for that evening will therefore be cancelled. It was further noted that because of the time constraints, the workshop cannot be exhaustive of the topic.
- 5.4. It was further agreed that TC2 secretariat shall invite other TC's, as well as members of the CA who do not sit in any of the TC's, to attend the meeting.

6. SUPPLEMENTARY REPORT IN RESPECT OF BLOCK 1

- 6.1. The meeting noted that a supplementary report in respect of the public submissions pertaining to block 1 was requested by the Constitutional Committee.

- 6.2. The meeting agreed that the Technical Committee shall compile the supplementary report. The report shall note in respect of those public submissions received at the time of the report dated 12 February 1995, that they reflect in broad terms the consensus reached and reflected in the report.

7. SUBMISSIONS IN RESPECT OF BLOCK 2/3

- 7.1. The meeting noted the advert that had appeared in the daily press on a national basis, and called for public advertisements by 10 March 1995. The meeting noted that the advertisement had appeared in English and Afrikaans and shall appear in Xhosa and Zulu.
- 7.2. It was then agreed to discuss whether any improvements were necessary in respect of the advertisement. It was agreed that the advertisement shall appear in newspapers circulating in all eleven official languages. It was also noted that the universal symbol depicting speech at the bottom of the advertisement may be too obscure, and had been mistaken for a cloud or a parachute.

8. ANY OTHER BUSINESS

8.1. CONSTITUTIONAL PUBLIC MEETINGS: 25 FEBRUARY 1995

- 8.1.1. The meeting agreed to present a report on the above to the Constitutional Committee.
- 8.1.2. The meeting noted that the meeting in Phalaborwa had been cancelled, and that the community had requested that the meeting be rescheduled for 12 March 1995.
- 8.1.3. The meeting noted the reports from members of the committee who had attended the CPM's. The reports are presented in tabulated form (below annexure "A")

8.2. ABSENCE OF INKATHA FREEDOM PARTY

- 8.2.1. The meeting noted that it was concerned about the absence of the IFP, but that the committee shall proceed with its work.

9. CLOSURE

- 9.1. The meeting rose at 11h00.

Signed by Chairperson _____

INTRODUCTION

The TC2 arranged for members from TC2 to attend 4 of the 5 scheduled CPM'S on Saturday 25 February 1995. The reports from those members at the TC2 meeting on Monday 27 February form the basis of this report.

REPORTS BY MEMBERS IN ATTENDANCE

COMMUNITY PARTICIPATION MEETINGS: 25 FEBRUARY 1995		
DIFFICULTIES EXPERIENCED	SUCCESSES NOTED	SUGGESTIONS
1. EASTERN CAPE: GRAAFF REINETTE TOWN HALL		
(i) no placards on lampposts (ii) only small advertisement of meeting in paper (iii) attendance: 210 people; areas surrounding Graaff Reinette not informed (iv) 2 people thought they were attending to receive government hand-outs (v) the TC2 members who attended had been briefed that they may only clarify issues, but at the meeting it transpired that they had to give a briefing about the constitution (vi) the TC2 members were also briefed that a mayor will give input, but it transpired that she had not been briefed (vii) the IMSSA expert had no understanding or knowledge of the issues involved; CA admin staff could have been used as they have a better understanding (viii) from all the TC's only two TC members attended (ix) the Deputy Speaker of provincial parliament announced that henceforth they their Province will be drafting its own Public Participation Programme (x) briefing of TC members in attendance inadequate (xi) a military aircraft was used to transport only 6 people (xii) translation services/arrangements not available	(i) broad cross section of people who attended (ii) questions and inputs from public of high quality (iii) generally members of the public who attended had clarity about the nature of the meeting they were attending (iv) the meeting was recorded	(i) member of Admin staff in touch with issues could have been sent instead of IMSSA expert (ii) wherever possible, TC members should attend who are comfortable in the languages that are spoken predominantly at a particular venue (iii) members from all TC's should be in attendance (iv) the role and briefing of the provincial parliamentary members in attendance should be examined

2. NORTH WEST: KLERKSDORP		
<p>(i) the meeting was not well advertised</p> <p>(ii) attendance: 6 buses were used, but only 70-75 people were bused in</p> <p>(iii) the members of the public were not representative; only from one township</p> <p>(iv) parliamentary members were briefed that they should not participate in meeting, but it transpired that at the meeting the public wanted them to participate in proceedings: wanted overview of what has happened in TC's</p> <p>(v) felt the exercise was not worth the money that was spent on it</p> <p>(vi) although the facilitator was a good one, as far as the issues dealt with, she was uninformed, therefore the money for a facilitator was misspent</p>	<p>(i) the level of debate was high</p> <p>(ii) the meeting was recorded</p>	
3. FREE STATE: BLOEMFONTEIN		
<p>(i) inadequate advertising of meeting</p> <p>(ii) there had been no clarity on availability of free transport</p> <p>(iii) attendance: 6/7 buses were used, but only one bus transported only 2/3 members of public: representation from outlying/neighbouring areas was poor</p> <p>(iv) although all TC's were present, those parliamentarians in attendance throughout were only from one party</p> <p>(v) the facilitator for the meeting had not arrive, so the parliamentary members facilitated the meeting</p> <p>(vi) a translator was also not available, therefore one of the parliamentary members translated</p> <p>(vii) there had been no advertising in Sotho/Tswana</p> <p>(viii) press conference scheduled afterwards: local press did not bother to attend</p>	<p>(i) during the course of the meeting more people trickled in; towards the end the attendance was fair</p> <p>(ii) questions and inputs from the public were very constructive, they dealt with constitutional issues</p> <p>(iii) the meeting was recorded</p>	

4. EASTERN TRANSSVAAL: WHITE RIVER	
(i) much resources were used, with poor results	(i) the meeting was recorded
(ii) attendance: 67 people; meetings not well publicised, adverts appeared only in local Afrikaans paper, no mention of transport; some members of the public received pamphlets only informing about the meeting only at the hall	
(iii) the public had been told that only "neutral" people could assist, and this had in effect "neutralised" the meeting	
(iv) it was felt that the organising of the meeting should not have been left to SACS only, and that SACS needs to be monitored on a daily basis by the Administration of the CA	

GENERAL SUMMARY AND RECOMMENDATIONS

The following recommendations were noted in general:

- (i) expenditure on the CPM's should result in dividends, people should not have to be flown in at great cost, only to find a few people in attendance;
- (ii) the briefing of the TC members should be more thorough, and the transportation arrangements more timeous and cost effective;
- (iii) generally at the meetings, an appointed uninformed person from IMSSA arrived and informed those present that he/she is chairing, and TC members who were informed of the issues had been briefed not to participate in the meeting; it may be better for the TC members to present an overview of the work of the TC's, or alternatively, if an independent person presides over the meeting then he/she needs to be well briefed;
- (iv) the CPM's should be organised and the TC's notified of arrangements timeously;
- (v) the role of the provincial parliaments needs to be clarified, and this may require further discussion;
- (vi) the participation of all the parties (and from all the TC's) should be secured, in order to prevent the impression that the CA consists of only one or a few parties;
- (vii) translators who understand the language and constitutional process need to be available;
- (viii) the selection of venues should ensure that not only one sector of society participates, and the attendance of the public at these venues should be more representative;
- (ix) a special attempt should be made to ensure that the local press attends; and,
- (x) mere reliance on media advertisement and structures of the SACS will not be enough to ensure that the public attends; political parties also have a

role to ensure that people are informed, even though they should be careful not to create the impression that the CA and its work consists of any particular party.

CONCLUSION

The TC2 noted that the abovementioned issues should be raised at the CC level. It was also noted that the CA is involved in a learning process, and that the matters noted in this report may assist in addressing some of the teething problems.

MEMORANDUM

TO: MANAGEMENT COMMITTEE

FROM: Secretariat, THEME COMMITTEE 2

DATE: 28 February 1995

MEMO REF: TC2/28 Feb 95/1

SUBJECT: TC2 REQUEST TO MANAGEMENT COMMITTEE FOR GUIDELINES IN RESPECT OF PARTY POLITICAL ACCESS TO TECHNICAL COMMITTEES

In terms of a decision by Theme Committee 2 taken on Monday 27 February 1995, a request is made for the Management Committee to discuss and prepare guidelines in respect of party political access to the Technical Committees.

Issues in respect of which clarity is sought include:

- (i) May political parties directly request the Technical Committee to do work for them?;
- (ii) If so, may political parties request only a specific technical committee member of their choice, or do they have to make the request to the Technical Committee as a collective?;
- (iii) In respect of which issues, or more particularly, to what extent may the Technical experts be used for this purpose, e.g. may they only be asked to assist the preparation of reports/submissions to be drafted by the parties themselves, or may they do the actual drafting of a report/submission for political parties?; and,
- (iv) Will the work of the technical committees (which may relate to a specific party-based request) have to be made available to all parties?

It was noted that the keen interest of some parties to use the Technical Experts, may impact on their availability to the rest of the Theme Committee.

The above request came about as a result of the continuous discussion in TC2 about parties' powers when directly accessing the services of the Technical Committees. It had previously been noted by TC2 that the Management Committee may be approached for clarification if no other clarification was forthcoming. At a later meeting (27 February 1995) of TC2 it was noted that the matter had been raised at Management Committee meetings, but not resolved nor discussed at length. On the basis of this information, TC2 then resolved to send through the Secretariat a request for guidelines on these matters.

We trust that this matter will be dealt with in the appropriate manner.

Yours faithfully

Secretariat TC2

cc Head and Deputy Head of Secretariat
Directorate

CONSTITUTIONAL ASSEMBLY

TELEPHONE: (021) 403 2252
FAX: (021) 461 4339
INTERNATIONAL: (27) 21 403 2252
FAX: (27) 21 461 4339

PO Box 15
CAPE TOWN 8000
REPUBLIC OF SOUTH AFRICA

REF NO:

MEMORANDUM

TO: CHAIRPERSON, THEME COMMITTEE II

FROM: HASSEN EBRAHIM

DATE: 1 MARCH 1995

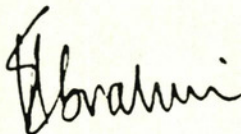
RE: REQUEST TO MANAGEMENT COMMITTEE FOR GUIDELINES IN RESPECT OF PARTY POLITICAL ACCESS TO TECHNICAL COMMITTEES

We refer to your Memorandum dated 28 February 1995. We wish to confirm that this matter was discussed and resolved at the Management Committee meeting of 17 November 1994.

Kindly find under cover hereof excerpts of the Management Committee documentation of 10 November 1994 and a further excerpt from the Management Committee Minutes of 17 November 1994 which clearly reflects the current ruling and decision of the Management Committee.

We hope that this would be of some assistance to your Theme Committee. Should you however, have any further queries, please do not hesitate to call on the writer hereof.

Yours faithfully



HASSEN EBRAHIM
EXECUTIVE DIRECTOR

4. TECHNICAL ASSISTANCE

Decision Required :

1. That 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.
2. 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.
3. Upon receipt of a request for research or legal assistance, the Administration, will, in taking to consideration the recommendations made by a structure, seek to secure the best possible assistance.
4. 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 a Theme Committee.

Background :

The Administration now has the benefit of a fully established research and legal department. Gerrit Grove heads the legal team, and Derrick Powell heads the research desk. We have developed the capacity and put into place various mechanisms to facilitate the work of the Constitutional Assembly.

1. Access to Jutastat, a full text data base on SA Law Reports and statutes, will be provided for. We have established contact with the Law Faculty at the University of

Cape Town, to explore the possibility of accessing the LEXIS and WESTLAW databases (which is a full text data base on North American and European legal systems).

2. The Administration is also in the process of establishing contact with all institutions, structures that have a research capacity. A directory of such institutions is currently being compiled.
3. The Administration is presently in the process of establishing a resource centre. The resource centre will house electronic databases, audio-visual equipment and video tape material, and photocopying equipment. Assistance with retrieving information will be provided.
4. The research and legal departments of the Administration will also utilise its own computer database facilities, books, law journals and periodicals, and network of experts in constitutional law and other fields of expertise relevant to the constitution-making process.

5. ALTERNATES

Decision Required :

In order to regularise that part of the decision dealt with in paragraph 5 below, the following amendment to the Rules may be considered:

Add the following paragraph to subrule (6) of Rule 19A.

"(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 any other member of that party (whether he or she is a member of the Constitutional Committee

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

**PROPOSED WORKSHOP ON
TRADITIONAL LEADERS AND INDIGENOUS LAW**

**MONDAY 03 APRIL 1995
09H00 - 13H00**

- | | | | |
|----|---|---|---------------------|
| 1. | Registration and Welcome | - | TC 2 co-chairperson |
| 2. | Status of Customary Law and Duality
(Theme Committees 1, 5) | - | Prof. T Nhlapo |
| 3. | Traditional Leaders and Judicial Officers
i.e The Courts of Law.
(Theme Committees 2, 5) | - | Prof. T Nhlapo |
| 4. | The Institution of Traditional Leadership
Political and Local Government aspects
(To include Monarchies)
(Theme Committees 1,2, 3) | - | Prof. BR Mqeke |
| 5. | Gender Implications of Traditional Leadership -
(Theme Committees 2, 4, 6) | - | Ms T Madonsela |

Lunch

- | | | | |
|----|---|---|----------------|
| 6. | Traditional Authorities and National Security - | - | Prof. BR Mqeke |
| 7. | Customary Law and the Bill of Rights | - | Prof. BR Mqeke |
| 8. | Work Programme on Traditional Authorities - | - | H. Ebrahim |

Closure

CONSTITUTIONAL ASSEMBLY

Telephone: (021) 403 2257/8
Fax: (021) 241160/1
Ref No:

PO Box 15
Cape Town
8000 RSA

MEMORANDUM

TO: Theme Committees
FROM: Enoch Sithole
DATE: 3 March 1995
RE: Weekly briefings on the constitution-making process

The media department of the CA is launching weekly media briefings where Theme Committee members will have the opportunity to discuss the progress in their Theme Committee with members of the media.

Theme Committees are requested to nominate one or two of its members to represent them at these briefings.
Briefings will be held every Thursdays:

Time: 14H00
Venue: Regis House
10th Floor Boardroom.

We request that Theme Committees supply the media department with an overview of what they would like to discuss during the briefing. This overview as well as the names of Theme Committee members who will be attending should be handed to the media department no later than 11am of the morning of the briefing.

CONSTITUTIONAL ASSEMBLY

TELEPHONE: (021) 403 2252
FAX: (021) 461 4339
INTERNATIONAL: (27) 21 403 2252
FAX: (27) 21 461 4339

PO Box 13
CAPE TOWN 8000
REPUBLIC OF SOUTH AFRICA

REF NO:

MEMORANDUM

To : Theme Committees
From : Chairperson
Date : 7 March 1995

Re : Theme Committee Report Formats

As you will be aware, the Constitutional Committee has begun the process of discussing the first reports issued by Theme Committees. In the course of these discussions, it has become clear that we need to arrange Theme Committee reports in such a manner that it facilitates quick and easy decision-making in the Constitutional Committee in view of the limited time at the disposal of the Constitutional Committee.

Theme Committee 6.4 has adopted a particularly useful approach in that it has attached to its report a table which lists the various category of issues dealt with. This provides a quick visual guide which assisted the Constitutional Committee a great deal in discussing this report.

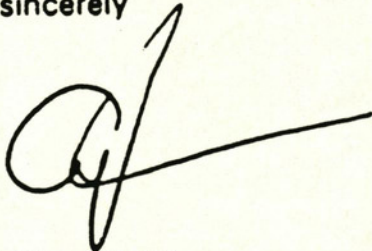
Theme Committees are therefore requested to follow this approach in attaching such a table to all future reports for the Constitutional Committee. This table should be laid out in " landscape " page format and should contain the following five columns :

Issues	Constitutional Principle	Consensus/ Non-contention	Contention	Outstanding Issues/Further Clarity

It is hoped that this table will allow for better decision-making in the Constitutional Committee. We emphasise that reports should continue to be drafted in the same manner as previously agreed. What is being requested here, is that this additional table be provided with all reports for discussion in the Constitutional Committee.

We are all on a learning curve and your assistance in this regard will be greatly appreciated.

Yours sincerely

A handwritten signature in black ink, appearing to be 'M. Ramaphosa', with a long horizontal stroke extending to the right.

MC RAMAPHOSA
CHAIRPERSON