

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 3

5 JUNE 1995

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2/4/3/9/24

CHAIRPERSON:

We have got Minister Matthews Phosa on the phone, but apparently, he is on his way from the airport, so Comrade Bhabha is just trying again to know whether he is on his way.

But if you look at the document - TC3 \ 27. Inside it is the Agenda for today. Unfortunately, at the top of it there is a typing error. Saying meeting of the Core Group which is of course wrong. This is the Theme Committee, it 10
selves, Agenda which you have got there. Do you have the document. So, ...

DR KING:

Mr Chairman, can I just draw your attention also that the Notice that went out - the separate sheet. Actually, also says meeting of the Core Group Theme Committee 3.

CHAIRPERSON:

Yes.

DR KING:

Because of that my members are not here this morning. 20
We tried all of Thursday and Friday to contact the Mbasu and I ...

CHAIRPERSON: I will tell you what happened.

DR KING: I am afraid ...

CHAIRPERSON: Sandra Haydon was ill. On Thursday and Friday and this is a typical computer error where you buy the previous heading and just continue and a Core Group was not taken out.

DR KING: Mr Chairman, I realise that, but I am just saying that this 10
is now giving us now a huge problem, because we would
have liked to have our people here obviously, as well.

CHAIRPERSON: Yes, okay.

DR KING: And we are not going to be here because of the fact that
we were trying to establish whether this was correct or
not.

CHAIRPERSON: Yes. I suspect that is also the problem which the other 20
parties have even the ANC which is usually very well

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represented here. This may have been the reason.
Matthews Phosa.

MR BHABHA: He is on his way. From the airport.

CHAIRPERSON: From the airport. So Mr Phosa is on his way from the
airport. He will be here in a short while. Now what I
suggest. Lets quickly go through the formalities before
we start our briefing session and we welcome at that
stage we will further welcome the gentleman from the 10
Department of Constitutional affairs. We will come to
them in a moment.

The Minutes of the Meeting of the month of May is on
pages 2 to 4. Could I just put it to you. Page 2 -
attendance problems. Page 3 - there was a discussion on
the report of the summary. Point 3. General. The
planning of the workshop of Financial and Fiscal Relations
for this afternoon. Noted there. Page 4. Public Hearings.
Beaufort West meeting and the inputs on the Free State 20
Municipal Association and then the note on the
Commission on Provincial Government. Are the Minutes

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in order? Do I have a proposal to adopt these Minutes.
Got it. Seconded. Thank you.

Now arising from the Minutes. Point 3 of our Agenda. I have two points that must be added with that. Firstly, the first one is just a report. Professor Basson has reported that the PAC did in fact submit an addendum on the Senate, and that is to be included in the Report which we accepted last week.

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I don't think there are any problems at all with that. It is just their point of view submitted. Shall we just leave it at that and accept it as part of the Report. Professor Basson. Is that the idea.

PROF BASSON:

That is the idea. If I look at the Minutes of the previous meeting that the only issue outstanding and there was an addendum also added to this Report in block form of the inputs by the CPG, and that addendum must also be completed and it will go in with the report, itself.

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CHAIRPERSON:

In order.

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DR KING: Mr Chairman, actually there was something else also and that was on framework legislation.

CHAIRPERSON: That was my second point. Ja.

DR KING: We were supposed to get together and more or less give an idea of what we see in framework legislation.

CHAIRPERSON: That was the second point I wanted to raise here. And that is the question of framework legislation. Now, I've 10
got my notes with me today. It is actually only one page of notes and if you will allow me. I can quickly go through it. I don't think it will take more than three to four minutes. Is that in order. Then Professor Basson can also (inaudible) ... Professor Basson.

PROF BASSON: Perhaps, I can just refer to the previous Minutes. If the Minutes are correct. On page 3, then the Report will be accepted subject to the fact that the framework legislation would be dealt with under another Report. Wasn't that the 20
decision of the meeting?

CHAIRPERSON: I think that would be in order. That - after this input, I think we will ask your good selves to prepare something and give the parties a submission and make that an addendum report. Actually, I think it is quite possible that framework legislation as a subject can be addressed under the submissions of inter-governmental relations as well. It do have some bearing on it. Not too clear, but it would just be possible to do that.

PROF BASSON: That was my intention to be dealt with under framework 10
legislation. Framework legislation would have been dealt with in the next report under the intergovernmental relations.

CHAIRPERSON: Ja. When I have given it - it will be clear why it will be dealt with. Madam ...

DR KING: I had a problem with that. Because I feel that it really belongs to this Report and the report on intergovernmental relations is going to follow after this and 20
we still when we - actually when this report is eventually put on the table - we are still not going to know what we

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are talking about when we talk about framework legislation which leaves a huge gap. Which means that we have to stop all the - almost negotiations on that and first go to the next one on the Report and then go back again to get clarity on it. So my own feeling is that should become an addendum to this report and not a part of the next report.

PROF BASSON:

Perhaps, if I could just answer that. Could it be dealt with under the clarity column where framework legislation is 10
being discussed in the clarity column this is the view of the NP and this is the view of the ANC. Thank you.

DR KING:

I would think that that would be the most suitable.

CHAIRPERSON:

Accepted generally. Thank you. Comrade Serake. And then I will quickly go through these notes. Could I just say, Ladies and Gentlemen that these notes are not of a party political nature. It is - it is just general academic notes. And it doesn't represent specifically ANC Political 20
point of view. It is just thoughts on the character of

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framework legislation to my mind and perhaps I am also mistaken, but we will be corrected by the Experts.

Okay, then I will just fire away quickly. Now, Ladies and Gentlemen. This concept of framework legislation is actually - I don't think it is so much as a rule category of legislation. As it is a type of concurrent legislation which has certain aims to fulfil which one wants to create a kind of aim in the field of the relationship between the National and Provincial Governments.

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That's what I think it basically is. Now I think first of all, we should make it clear that framework legislation should be subject to the normal type of overrides the national interest - the national standards type of overrides as you have it at present in Section 126(3). By it's nature of being concurrent legislation as a category of legislation. I think there is no doubt about it that these national standards, etc, should also apply to any type of framework legislation we are putting forward. But the big thing about this, of course, is that framework legislation - before I try to define it.

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Framework legislation has the possibility in itself to build a -an evolution into the Provincial competencies which exist in a Constitution. It opens the possibility to create an evolutionary process regarding Provincial competencies. And thus either growth augmentation in any way you see it possible. It is possible to be handled through framework legislation. But then the possibility of framework legislation in such a nature must of course be built into the Constitution that you can do it in that way.

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Now the general view, apparently, that there are basically only two forms of legislation in these intergovernmental situations. That is, of course, exclusive legislation and concurrent legislation. When you start talking - framework is the category of concurrent legislations, seems that is the majority of -at least in Germany. Now there are two concepts possible. Two possible concepts of framework legislation.

The first one is the following. Suppose you have 20 enumerated list of competencies in the Constitution of concurrent - legislative competencies of National and

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Provincial Governments. Then the first possible concept is that the Provinces should retain their concurrent powers in that list. To legislate - legislate their concurrent powers legislate. For so long as National Parliament has not used its framework competence in a certain field that is where you assume that there are a numeration of fields for example hunting wild animals is the problem. The idea of this first possible concept is that the Provinces retain their legislative concurrent powers for so long as Parliament has not used its framework competence in that field. 10

The second one and then it becomes clear what is at stake, is that, if you don't have a case as in the first instance. The provinces will be able to use their concurrent powers in framework fields until the National Parliament has used its competence to make a framework law in the relevant field. That is just two logical possibilities. So you must either list a lot of framework fields and say - then you must use Provincial legislatures can use their powers - until Parliament gives the frames of 20 say something like wild animal hunting, or the other

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possibility is that they cannot use it until a framework law has been made which is more like acting legislation.

Now what framework legislation does is to put margins - margins to the law making competence of Provinces regarding the contents of legislative competencies. Its content margins which is given in framework legislation and these content margins consist thereof that the National Parliament can only give the frames of the legal provisions. I cannot give the legal provisions it selves. 10
The interpretation problem is actually what is to be understood under frames - so called.

Generally, it seems to be that it should not - concept of frames should not mean that Parliament would be restricted to give norms addressed only to the Provincial Governments or Law Givers, but that Parliament should also be able through framework legislation to address the citizens, themselves. In the sense that it applies to Citizens themselves. But Parliament should not - that is 20
the core of framework legislation. Parliament - National

Parliament should not be allowed to give complete normation on a subject.

Like say hunting wild animals. The Germans use the word -Parliament should be prohibited to what they call "deurchnormering". They should not normate or regulate through. They shouldn't give a - 'deurgaande'. What's a good translation of this in English. "Deurchnormering". It should not really regulate up to the point where the act is positive law - where it applies. The idea frame means that 10
the Parliamentary law should not be able to stand up as a law on its own right. It is only a law in a sense that it will become a law when it so called filled up or supplemented or a law being made within those frames in the - on Provincial levels. You have only got a law in the framework legislation if a law is made on that subject is made in the Provinces.

In other words the framework law should be brought to fruition or it should be actualised by the Provincial 20
Legislature. When a framework law has been made by National Parliament. There must always be matters in the

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relevant field which should be regulated by the Provincial Legislation. In other words, what the Provincial legislatures must legislate must be of what we call substantial weight. Now for this substantial weight there must be to qualify it as a framework law. There are usually quoted two requirements. Number 1 - the framework law must be capable to be concretised to or be filled out. It must have the inner capability to be concretised by Provincial legislation firstly

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And then secondly the framework legislation must need further detailing by the Province to be able to function as positive legal norms. If it is not filled out, there are no positive legal norms. In other words, Parliament is not allowed to make a framework law like a multiple choice law. Say, there are five options, and the Province must pick one. That would not be allowed to - then it would not be a framework law legislation in the true sense of the word.

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The weight of the Provincial follow up law must be so substantial that a complete regulation of the matter with

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only a few matters to be left to the Provincial Legislature that is not regarded as framework legislation. The other point lastly which just has to be considered is whether the Provincial legislature should be under a legal duty to go on and accept legislation under a framework law once it has been made by national level or whether they should not be so obliged to do that. Now other than is the case with normal national concurrent legislation. National Parliament cannot fully lay down the law on a subject when it proceeds by way of framework legislation. And 10 this - the weight of opinion seems to be that it appears to be not advisable that the province should be able to dismember the framework law by not making a law to actualise or concretise the framework law.

In other words, it is accepted by most commentators on this matter that the Provinces will be bound to make Provincial follow up laws once the framework law has been made because otherwise if they are not actualising the Law, they are actually annihilating the existence of the 20 framework law.

Okay, that is just a few comments and I give a copy to the Experts and then they can perhaps formulate something on this. I think the real political choice for the parties who are involved in this is the last point which I have mentioned. When a National Parliament has made a framework law - should the Provinces be under an obligation to make a follow up law or not and then secondly, I think the parties must decide on what - how substantial a framework law must be?

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Will we allow this multiple choice type of framework legislation or do what degree does substantiality of the Provincial follow up must be there? More Federal parties will have more substantial and a more formalised sense of the framework law while parties who are not so federalistic will have the weights a bit to the other side. That's all. Are there any discussion or should we leave it at that? First - Patricia de Lille.

MS DE LILLE:

Chairperson, if I can remember correctly. When we discussed this the last time it seemed to be a confusion between what is an enabling legislation and framework

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legislation. And I am afraid your example seems to - your example your option one seemed to be mixing the two and there is not a clear distinction between framework and abling legislation.

Maybe when the Technical Advisors look at your example. They should also clearly define to us, you know, the difference between an abling legislation and framework legislation. Once we know the clear differences there, I think, we will be able to interpret the National Party's 10 submission and your understanding of framework legislation.

CHAIRPERSON:

Thank you very much Ms de Lille. We are going to ask them to give attention to it. Could I at this stage say. Framework legislation is enabling legislation in a sense that it enables and gives competency to - I don't think it gives the competency itself. That competency to fill up framework legislation arises from original Constitutional Rite, which the Provinces has. It doesn't primarily arise from the framework legislation although it cannot exist 20 without a framework.

So I think enabling legislation - the concept which we have used of - the concept of enabling legislation in South African history doesn't fit this concept exactly because as seen from one society it is a kind of enabling legislation, but because there are very clear guidelines for makes framework legislation a framework legislation - the whole idea for example that must be - it doesn't exist as positive law until a Provincial Legislation has done something. That doesn't -if there are - it is a narrower - 'n nader bepaling van' - its a narrower definition of concurrency as well as enabling, etcetera. 10

The concept of concurrency is in it. As well as one moment of enabling legislation. But then there are also these margins which -or characteristics which framework legislation must have. I am sure that the experts will be able to guide us on that. Dr King.

DR KING:

Mr Chairman, as far as the National Party is concerned. Framework legislation is not enabling legislation. Those are totally separate concepts. And the other thing from what you have said there. Our problem is that you don't 20

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really answer the question and the real question as far as we are concerned as far as framework legislation is concerned is the extent of the central governments participation regarding - legislating concerning whatever aspects is that falls under - framework legislation.

We would like to know - because you mentioned that it gives the content margins within which the detail has to be worked out and that we agreed. That we have said all the way. But - the question still remains is where does that margin lie. So the extent of the power of - or where do you draw the line between where the framework legislation and the powers that come from that side from the Central Government. Where does that stop and where does the rest begin. 10

And then there is just one other thing that I would like to point out at this stage as well regarding this last report of ours almost the first of Report - the main report that we have had until now. You will remember that in two places we have actually - in the report -- it has been mentioned that the National Party asked that there should be some 20

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investigation with the department or it could be in this case with Administration - the Department of Administration or otherwise of Constitutional Development. As to where do the powers - those that we already have in Schedule 6 - are they working? As they are now being devolved the ability to use them.

As they are being devolved down to the Provinces - which are working, which seem to be working well, what are the problems. Have they identified that were better than 10 others. Have they identified some that should really be going there and is not contained in schedule 6. And you will remember that we actually asked for a second list and those are the ones that should go under framework and we have also said that we would like to have more idea as to what - what - for instance there could be some of those at the moment under schedule 6 which will go into the second list under framework legislation. Where there is an indication now. As far as we are concerned, it is really this theme Committee which should be asking that 20 question from whatever department needs to give us and

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perhaps we should do so to the gentlemen here today amongst others.

To find out whether they can help us. I would also like to say that is the Technical Committee's job to do it on our behalf.

CHAIRPERSON:

Thank you very much for that contribution Dr King. Now, let me start with the last one because I think that this Theme Committee must investigate this. The instances 10 which are at stake here is number 1 - the Department of Constitutional Affairs and Provincial Affairs. Of course, they. But then the handling of the functions and a devolvement in terms of 235 was handled by the Public Service Commission for example.

Then number 3. I think when Mr Phosa comes in we would also ask his advise. Number 3 the Provincial Governments themselves will have to input on that. And I think that the best way for this Committee would be to 20 set out either a questionnaire or something or ask for a special occasion where the whole evaluation from the -the

departments and functional officials who were involved in this should be able to tell us their experience. I think it is very important.

Could I just get back to the first part of the framework. Of course, I didn't address what must be under framework because that the political question. Could I just say at this stage that - just by way of discussing it, not giving a political view at all at this stage. Yes, you can either list areas of framework legislation. Move somethings from schedule 6 out to a new list of framework legislation, but you must remember that the basic problem with framework legislation is to have the possibility for a evolution of powers open. 10

Now suppose for example - say for argument sake - that National Government decide that the administration of Military basis the logistics, the food supply and what, what, what of a Military basis all over the Country, is a thing which should be handled by the Provinces. But we find it difficult for the Defence force to handle that. Typical central function of - and that they make a framework 20

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legislation on that. Just for argument sake, and the ANC will not easily do a thing like that - just for argument sake.

Now if that thing is not on the list - then we have to change the Constitution again to put it in the schedule of framework possibility subject and the possibilities are as wide as possible. One cannot foresee the future. One never knows what you want to handle in this way by way of framework legislation, so the parties could just be also in mind. But I think after we have got back - from the 10 expert's view here on. In think we must go into a serious substantial discussion about this matter and see how the parties feel about it. Professor Venter.

PROF VENTER:

Chairman, thank you. It might be unfair on my part to make a contribution on this because I could not be involved in the drafting of the Report. But paging through it, I noticed at least three places where reference is made in the Agreement column to framework legislation and it now appears that it is not clear what is meant by 20 framework legislation.

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That everybody or every party does not have the same view of what framework legislation is. I am referring to page 1 paragraph 2. In the agreement column. Page -- now I have lost it, but I think the page 11 there's another place. Also - ja, paragraph 3 - framework legislation is referred and there is one other place. I am just wondering what the implications are of not having agreement on the meaning of framework legislation for this Report.

CHAIRPERSON:

Thank you Professor Venter. There is truth in what you say of course. But I think what the Parties intended when they put it in there is that the principle - by way of saying - of framework legislation where it is in that column of the - that they are intending that that principle will be acceptable. That is why it is also reflected in the query column on the right hand side. That the exact agreement about framework legislation has Political implications in the sense that it has come out now for example for the National Party and that has to be cleared up.

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I think not to delay that report too much. Parties generally agree that there must be framework legislation. But the

detailing of it has implications of how we are going to put framework legislation to the Constitution and I think that must come out.

PROF VENTER:

Can I just follow up. Chairman. The basic idea of legislation at a higher level leaving the filling in of detail at a lower level is actually nothing new in South Africa. We have had - I mean every law which allows for regulations to be made by the Executive for example is in a certain sense a framework law and we have had in previous times 10
Provincial - the Provincial Law Makers making standard by-laws for local governments to accept or to amend and whatever.

I think the basic problem might be that - what the Germans call "Ramen Cazzetze" - framework laws, is really a particularly common concept and I think it would be useful for the Technical Committee to know whether the tendency is in the Theme Committee to adopt specifically the German concept or to evolve the specifically South 20
African concept.

CHAIRPERSON:

Ja, thank you very much. I think the intention with which, at least our party used it, it was to work on the "Ramen Cazzetze" concept. For example, the things you are talking about. For example, I have not got the English words here - 'die gestandardiseerde padverkeer ordinansie' - what's that in English - the public ordinance for how traffic will flow.

That was standardised as well as something like say the standard building regulations and things like that. But 10
now, I don't think that could fit under the concept of "Ramen Cazzetzen"? - framework legislation because that was detailed standardised things which had to be accepted with a lot of those detail and it took years to develop those standardisations. For example, in the old Ordinances. So, I think we are talking of something different. Normal enabling legislation just gives the Minister in the Province power to issue regulations or give the power of legislature to make Provincial Law on X Y Z.

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Because that is regulated by way of the onset of concurrency at the moment. And how we have the power divisions - are going to put it in the new Constitution. So, we are departing from the point of view. It is a type of - it falls under concurrency. But it is not the same as just enabling legislation because there are very definite objects in the sense of giving only frames, not really regulating the thing in detail. The detail is inhibited which national level can put into it.

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And I think that is the technical advise we need. How are you going to describe that in the Constitution and are not. Because if you are just going to say it is enabling legislation finished and 'klaar'. Then we don't need to - to have this category because then - from original powers from Parliament, you can just do it. And you can do it in any event. You can get that power still. But if you want to go the way of framework legislation, which is politically which seems to be the correct thing for some of the parties in regulating this relationship between national and provincial to some extent to some part of it. We must not go too far on this matter. We have the hand of Mr

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Gordhan. Shall we allow him to react and then refer the matter to our Experts which I am sure will have to really give us the information on this. Mr Gordhan.

MR GORDHAN:

Chairman, this discussion has been very useful. What we might want to do is take up your suggestion that the Technical Advisors take note of this discussion the document you have and provide us with a report that teases out this concept. I mean - that German word which both of you have used, which I cannot repeat, is 10 obviously one type of concurrent legislation which can operate from a National Level. There must obviously be some other types which have different depth - different level of in a sense "guidance" in inverted commas given to Provinces can or cannot do.

It might be very useful to find out what are those categories. What implications to they have and then I think we can take the point that we need to produce that which is suited to our own conditions. Once we have a 20 better understanding what other variables what are available.

CHAIRPERSON: I am sure the meeting will accept that. Could I just say, ja, that is exactly the problem. I would really from this chair side prefer it if the parties could agree to a consent of it. And then ow it is going to be applied to the Constitution. They - they can differ of course on that.

But if you can agree on a concept and including it in the concepts and that is actually what we are asking our Technical Experts. For example, what the Germans call the concept of (inaudible) ... that must be a - the 10 capability of the framework legislation to be filled up. That is basic to it, which has got detail in it. If we could have some filling up of our basic ideas which we are just running around. We can then see how it goes. Shall we close on that discussion. Thank you very much for your trouble. And I must just ...

UNKNOWN: Mr Chairman, may I just ask a question?

CHAIRPERSON: Yes, Sir.

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UNKNOWN:

Because of work at other Committees, I haven't been able to be here, but I have gone through the notes and documents that we receive from time to time. Dealing with the relationship between levels of Government that you have kept yourself busy with. I never saw any document referring to the relationship between Central Government and the third tier local government. I also saw no document referring to the relationship between the second tier and local government.

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Those are very important relationships because it will - we will have to deal with it either in the Constitution by mentioning it and - and putting in certain clauses. Protecting the third tier, or we will have to say now that it will exclusively be the domain of the second tier -the Provinces. And it is a nagging problem that we will have to address sooner or later. It is a very important relationship and I would just like to have your guidance. Was topic discussed? If not, when? And how do you foresee the discussion taking place on that specific item.

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CHAIRPERSON:

I cannot thank you - thank you very much for bringing this topic in. It has not been discussed in this Committee. Not addressed. Could I just say what the ANC is doing at the moment, is that in their submission of intergovernmental relations, the concept has been growing in the ANC for quite along time. That a relationship between the different levels should be conceived of as tri-lateral relationship and not as just provincial or national.

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So the relationship between local government and provincial and also national is being addressed by the ANC in its paper on intergovernmental relations. We are just waiting for this work of today of the Expert and number 2 there will also be the chance and I would suggest to the National Party and the other parties to put that aspect in their views in it if they are finished as I know they are - into the Local Government submission because the ANC is also going to follow up that aspect there as well. They are important political differences between the parties on how this thing should be handled. Could I just tell you what - let me tell you what the ANC is thinking.

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The ANC are simply saying a very simple thing. They say the moment local Government is schedule 6 function. It stands at schedule 6. But we say that is a completely wrong way of thinking. Because it is not a function of Provincial Government, it is a tier of Government. Provincial Governments is a level of Government - National Government is a level of Government. Local Government is a level of Government. It is not just a Provincial function, or even a collateral function. You must think of a different relationship in the fundamentals of this. 10

The problem which we received from our conference was that the Local Government representatives told us that they wanted to be protected, so called. That they mean by that must be worked out -against National - 'ag' - against a Provincial Government as well.

So the relationship between the levels must be thought through again. But addressing it either in 20 intergovernmental relations debate or in the Local Government submissions would - then this debate will be

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handled. Perhaps we will get different instructions by that time - say nonsense - say go back to that or what. I was not stating a political position at that stage. But that is what is happening at the moment.

Any continuation of this? Shall we close it? Thank you.

We come now to point four of our Agenda. If I am right. Are there no other matters arising. We have got to asterics - first discussion re input from the Commission of Provincial Government as a briefing from the petitioners of intergovernmental relations. We have a gentlemen here - and a second is the workshop on financial and fiscal relations this afternoon. Could we just leave the first asteric for a moment, that we finish our Agenda and then we start with the workshop or briefing. 10

The workshop on financial and fiscal relations is 2.00 o'clock this afternoon in this room - Mr Mxenge, do you want to input on that? Nothing.

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We will then continue at 2.00 o'clock with that workshop. Are there any general points you want to introduce? Point

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five of the Agenda. General? Okay, I will close at this stage. Now, then I want to start with our input on inter-governmental relations. Let me just make a few quick opening remarks.

The aim of this briefing this morning is - number 1 and I must thank Mr Mxenge for preparing these very excellent notes for me. It is not my remarks. It is Mr Mxenge's remarks. He has organised this. Number 1 to enlighten members of Parliament as to mechanisms employed to harmonise relations with the three tiers of Government. 10

Number 2 - to discuss the rationale for setting up mechanisms for inter-governmental relations.

Thirdly, to identify whether it is necessary to provide for these mechanisms in the Constitution at present there is only the Police is the one that is provided for in the Constitution.

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Fourthly, to identify guidelines for the institutionalisation of inter-governmental relations and fifthly to discuss

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problems in inter-governmental relations. I don't see - Mr Phosa has arrived yet. He is on his way still. I will welcome him as soon as the Premier comes.

But special word of welcome to our Representatives from Ministry of Provincial Affairs and Constitutional Development. We are extremely thankful to you, Gentlemen for accepting and responding to our invitation at very short notice. We have here today, firstly for D Rudman and Mr C Mulder and Mr M Steyn from the 10 Department will act as speakers. I don't know whether all of them will act as Speakers. They can just arrange it as they want to. And then I hope we will leave this room quite enlightened as to the operations of bodies - like the Premier's forum, the inter-governmental forum minus the INKATHA. The Technical inter-governmental Committee and the forums of Ministers and MEC's.

There - he has just now arrived. Here we have Mr Phosa. Please take a seat. You can sit with the panel as well, Mr 20 Phosa. If you -Mr Phosa there is a seat for you still with the panel. Ja. Ladies and Gentlemen, then we are

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extremely honoured to have here Mr Matthews Phosa - the Honourable Premier of the Eastern Transvaal. He will also be one of our discussers this morning. We do thank you for your presence and I am going to give it over to the panel.

Mr Rudman, you will address us how you want to do this.

MR RUDMAN:

Thank you very much Mr Chairman for this opportunity to brief you on inter-governmental

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MECHANICAL DISFUNCTION:

CHAIRPERSON:

That's better.

MR RUDMAN:

I'll try again. Chairperson, thank you very much for the opportunity to address on the structures we have in place at the moment for inter-governmental relations. I would like to apologise firstly for the the Minister, the Deputy Minister and Director General who cannot be here unfortunately, they asked me to make apologies for them.

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In my briefing, Chairperson, I will refer to the letter that I received from the CA and used that as the departure point. The request to the Department to give a briefing on the operation of bodies such as the intergovernmental forum, the Technical Intergovernmental Committee, Minister's and MEC'S forum and then with specific reference to how many meetings and the nature of these Meetings have been held in the past year, when these meetings started, what the issues were that were discussed? The type of decisions that were taken and the status and effect of decisions at these meetings? 10

To kick off, Chairperson, may I just mention that after the election in April 1994, it soon became clear that the establishment of three levels of Government brought about major changes to the Governmental process which confronted the Government with new challengers in as far as good governments, their efficient and effective delivery of services and the employment of resources are concerned. The Ministry for Provincial Affairs and Constitutional development and the department, therefore, took the initiative to arrange for a meeting between the 20

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National Government and the Premier's of the 9 Provinces. This meeting was also attended by the President of South Africa and the Deputy Presidents.

It was held on the 25th May 1994. At this meeting, the President and Deputy Presidents stressed the importance of the meeting, as it had to deal with the first steps in implementing the system of Provincial government as well as the challenges that existed in this regard.

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At the meeting of inter-governmental forum that was held on the 12th August 1994, the need for structures to enhance intergovernmental co-operation between National Government and the Provincial Governments was also accepted. The Meeting, therefore, resolved that the following intergovernmental structure should be established. An intergovernmental forum comprising of the Premiers of the 9 Provinces and Representatives of National Government which would meet on a monthly basis and which are to be attended twice annually by the President and the Deputy Presidents of the Republic of South Africa. Secondly, Ministerial forums between

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responsible line function ministers at National level and their respective counterparts at Provincial Government level which would meet at an ad hoc basis and then thirdly, it was resolved that the above mentioned forums be supported by Technical Committees to provide them with the necessary technical advice and expertise.

This resolution was ratified by Cabinet on the 1st November 1994. From that date, Chairperson, the meeting between the National Government and the 10 Premiers became known as the intergovernmental forum. As far as the roll of the inter-governmental forum and the other structures are concerned, Chairperson. The inter-governmental forum was established to encourage and ensure the development and maintenance of the co-operative relationship between the National and the Provincial levels of Government. The forum provides an opportunity for consultation and joint decision making between National Government Ministers and the Premiers of the Provinces on matters of mutual interest. 20

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The inter-governmental process should, however, not be seen as a substitute for governmental process, but as supportive in that it promotes joint decision making to the extent that those decisions that cannot be made individually or in isolation by any one Government or level of Government. The forum serves as a mechanism for Policy dialogue at the Political level regarding a number of strategic and important issues regarding intergovernmental consultation, co-operation and co-ordination.

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Furthermore, it oversees the process of implementation and strategies and actions which have been identified. The forum acts as a multilateral, inter-governmental, policy planning and implementation body and is as such the most important inter-governmental structure at the moment. Consequently, Chairperson, inter-governmental forum should promote inter-governmental consultation and decision making with regard to the following.

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Important and sensitive political matters. Line function matters which, because of their importance and conflict

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potential, should preferably be dealt with by the forum upon request and after having been considered by a ministerial forum. Matters for which a ministerial forum have not been establish which have important implications for Provincial Governments. In this regard, non-essential six functions have special relevance.

Further, an integrated and co-ordinated intergovernmental Policy and development framework, multi sectorial policy issues, financial, fiscal and other governmental resource matters. Matters pertaining to their efficient and effective functioning of the system of Government and lastly, Chairperson, Constitutional issues. 10

Ministerial forums, on the other hand, deal with line function responsibilities with specific reference to the following. The harmonisation of legislation, the division and employment of financial resources, the harmonisation of programmes on a National basis, consultation and negotiation with regard to national norms and standards applicable to a specific function as well as minimum norms and standards, the harmonisation of Policies and 20

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the drafting of intergovernmental policy which should serve as guideline to the respective governments in their own party formulation process, the transfer of information, the undertaking of joint programmes and projects and finally, Chairperson, the formulation and implementation of strategies.

As already mentioned, all these forums are supported by Technical Committees. These Committees provide the forums with technical advice and expertise. The main task of intergovernmental committee which serves as a technical committee of the inter-governmental forum is to identify key policy and strategic issues and other matters which fall in the terms of reference of the forum and which should be addressed by the intergovernmental forum. The committee furthermore attends to issues referred to it by the forum. 10

Against this background, Chairperson, the terms of reference of the Technical intergovernmental Committee could be seen as follows. To provide support to the intergovernmental forum with regard to technical policy 20

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and strategic matters falling in the terms of reference the forum to mobilise intergovernmental technical policy and strategic expertise, to support the inter-governmental forum, to identify, discuss and consult on matters falling within terms of reference of the forum and to make proposals to the forum on the addressing of these matters, to address matters referred to is by the intergovernmental forum through investigation, consultation and other appropriate means to advise the forum on the further addressing of these matters.

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Finally, to facilitate, guide and monitor the implementation of the decisions taken by the intergovernmental forum and to report back on progress made to the forum. In general, Chairperson, the Technical Committees supporting the Ministerial forums have a similar terms of reference. As far as membership of the structures are concerned, the permanent members of the intergovernmental forum, that is the members who are considered central to the functioning of the forum on a continuous basis are the Provincial Premiers, the Minister of Provincial Affairs and Constitutional Development, the Minister for the Public Service and Administration, the

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Minister of Finance, the Minister without Portfolio in office of the President, the Deputy Minister of Provincial Affairs and Constitutional Development, the Deputy Minister of Finance and the Director General in the Office of the President.

The Ministers and Premiers are assisted by their Directors General at Meetings of the forum or other technical - officials, President and Deputy Executive President of (inaudible) ... members of the forum and attend at least 10 two meetings of the forum on an annual basis. Ministers of the National Government and members of the Provincial Executive Councils, excluding those already mentioned also attend meetings of the intergovernmental forum as members. Their attendance and membership are determined by the need of the forum to consult with them on a regular basis in order to make decisions which fall within the jurisdictions of the respective Ministers.

Further membership of the intergovernmental forum is 20 based on the responsibility of the forum with regard to the integration of the activities of the various

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intergovernmental structures. The need to consult on matters of a multi-sectoral nature and the need to promote intergovernmental communication and co-operation with regard to those functions on which Provincial Governments do not have legislative competence. The meetings are chaired by the Minister for Provincial Affairs and Constitutional Development and he also acts as link between the cabinet and the forum and in the latter regard, he presents decisions of the forum to cabinet and informs the forum of Cabinet decisions on matters of mutual concern and interest. Chairperson, the Technical intergovernmental Committee consists of the Director General of the permanent members of the intergovernmental forum which include the Directors General of the Provinces, permanent members, further include the Director General of the Office of the President as well as the Chairpersons of the Commission of Provincial Government and the financial and fiscal Commission, the Directors General of the Department of Constitutional Development chairs the meeting of the Committee, other members of the Committee include those Directors General and members of Government

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departments and institutions considered to be able to contribute to the efficient and effective functioning of the Committee.

The first meeting, as I have already mentioned, Chairperson, of the intergovernmental forum was held on 25 May 1995 and since then 11 meetings were held which included 2 meetings in the form of a 'bosberaad'. Since its first meeting, the forum has deliberated and accepted resolutions on a number of issues.

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Chairperson, I have distributed a document which deals with these issues in detail. In summary, the following can be mentioned. The assignment of powers and functions of the Provinces, the establishment of Provincial Governments and effective service delivery, financial matters, economic matters, the reconstruction and development programme, the establishment of houses and Council of leaders, Casinos, racing, gambling and wagering, Provincial boundary issues, the local government elections, the Masekhane campaign, the rural development matters, land matters, the development facilitation bill, the drafting of the open Government Act,

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Foreign Development aides, the privileges and remuneration of the Premiers, the position of the performing Arts Council, disaster and emergency management in South Africa and finally intergovernmental relations.

At this stage, Chairperson, the decisions of the forum services as guidelines and should be considered by Government in their decision making process. This matter should possibly receive further consideration. The 10 Department of Constitutional Development provides the secretariat to the intergovernmental forum, the secretariat is responsible for the recording of the proceedings of the forum, the compilation of the Agenda and the provision of process and technical support to the forum.

The secretariat is accountable to all permanent members of the forum. In an effort to promote the integration of the activities of the various intergovernmental structures, members of the secretariat should perhaps also attend 20 meetings of these structures on a regular basis. As far as the institutionalisation of intergovernmental relations is

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concerned, I would like to quote, Chairperson, from the speech by the Minister for Provincial Affairs and Constitutional Development in Parliament.

He said the following, and I quote "in view of this experience and provision of intergovernmental relations for the future, Government Policy on this matter should now be structured through a white paper. Until now the intergovernmental system has developed on a voluntary basis, step by step, by way of a learning process. The 10
knowledge gained, should now be utilised to develop a longer term view for the implementation of a more formal system in which all roll players will participate. They will do so with a clear perspective on the objectives, position and function of intergovernmental structures and further, the institutionalisation of the intergovernmental relations is at present actively debated. It deals with the structures that are needed for intergovernmental purposes and a way in which they should be established either through 20
the Constitution or through an Act of Parliament through agreement between participating Governments.

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In view of the fact that an act of Parliament is easier to amend and thus provide for the changing institutional requirements of the intergovernmental process, it seems to be more practical - it seems to be the more practical route to take". Unquote.

Finally, Chairperson, the Technical intergovernmental Committee has also had 11 meetings, the Committee has generally dealt with all the matters that are considered by the intergovernmental forum. Chairperson, I have 10 indicated that there are also numerous MINMEC forums. I have also prepared a document of all those structures that have come to our attention. It sets out the structure, itself. Also indicating the frequency of the meetings and also a condensed term of reference. This document has been distributed, so I don't think it is necessary for me to go through this document. I may just also mention that there are Premiers forums.

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Premier Phosa will probably give you more information on those forums. Reference was made to the relationship

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between the National Government and local Government. May I also just mention, that as far as that is concerned, Chairperson, that the Ministry for Provincial Affairs and Constitutional Development has taken the initiative as that is concerned. At the MINMEC meeting for local Government, a request was put to the MEC'S responsible for local Government to assist in the process of restructuring organised local Government in their Provinces.

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A deadline for this restructure has been set for the end of June of this year and I may mention that progress has been made in this regard and it appears that in the majority of the Provinces, such structures will be established before the end of June. The idea then being that end of July of this year, there should be a restructuring at the national level of organised local Government. Thank you very much Chairperson.

CHAIRPERSON:

Thank you very much Mr Rudman for that excellent 20
introduction and also thank you very much for the trouble
of having prepared these 3 documents for us. Do I have

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it right that we have two papers in our hands. One with the title "Overview of the proceedings of the intergovernmental forum" and the other one "Intergovernmental structures". That is the only two papers. Right.

MR RUDMAN:

That is correct Chairperson. If you would like a copy of the briefing that I have given you, I will have it prepared and it should be available within a couple of days from the secretariat.

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CHAIRPERSON:

I think we must kindly request you to prepare that for us as well because I think there is a lot of things which have said in your briefing which of course is not included in this and which are substantial. Ladies and Gentlemen, would you like to ask questions to Mr Rudman now or should we go over to ask Mr Phosa to speak at this stage.

How do you feel? For example, I could just say that the type of questions that I think will be addressed here and which Mr Pause could perhaps address when he talks - are the following types of things. This structures of

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intergovernmental relations in South Africa at the moment as it has developed were very much need orientated. It was for example, it is - it is an Executive Organisation. It doesn't seem to have been created in conjunction with these structures, legislative - link up or structure concept. For example, number 2. When the new White paper is being developed as we have had previously. That has the development of the structures at the moment.

A status which is apparently informal at the present time. 10
The legal status, the Constitutional Status, etc should also be addressed with a link up view towards the new Constitution. Because otherwise this Committee is going to draft structures here for the new Constitution which is not kind of growing out of what we have got. So those people responsible for developing the structures should establish a closer interlinking, I think, as we have done today with this Committee who works with these matters for the new Constitution.

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And I think we can do with the empirical knowledge developing and I think we must bear in mind that also in

the development of that white paper. This linkage should not be lost. I am just putting things like for example. The meeting itself. How do you feel? Do you want to put questions to Mr Rudman at this stage or shall we continue? Mr Rudman what is your advice from you and Mr Phosa.

Should we first continue or first the questions? First continue. Mr Phosa, do you wish to continue at this stage. And thank you again for honouring us with your presence. Could I say that there is - that this is a very late stage that we only get this historical moment to have a Premier addressing this meeting. We should have had it a long time ago. 10

Because you chaps are doing the job and we don't know what is actually happening there always. Thank you very much and please continue.

MR PHOSA:

Chairperson, thank you for the opportunity. First let me tender my apology to the Honourable members sitting here without going into the details why I was late. We are, 20

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in the IGF - intergovernmental forum. We are busy discussing the very subject matter which you sit with the moment here.

And indeed, the meeting of last month. It was introduced and there was a draft discussion paper. There was a sharp difference of opinion which led to a decision being taken saying that Provinces which are going to discuss inputs and this months meeting will then be taken further.

Now, one of the points which was raised at the discussion 10
is the very same point which you raised now. That the relationship structure between whatever we are discussing and deciding upon with what is going on in the Constitutional assembly discussions because then you will have a situation where the other interim Constitution which may appear very much difficult to fit into the new Constitution.

We made that point. There must be a relationship with that. But the discussion continue in the intergovernmental 20
forum on this very subject matter. If one was to summarise very briefly the structure as we see them.

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They are the Constitutional structures and the non-constitutional institution which arose since after the elections. To be more specific the Constitutional structures submitted are the following. The Senate, the Constitutional Court, Commission on Provincial Government, - the financial and fiscal commission, the Commission on the numeration of Representatives, Public Services Commission, Police Board of Commissioners, Committees of Ministers and MEC's and National Assembly.

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These are clearly the Constitutional Structures, but they are a category of non-constitutional structures. Mr Rudman has referred to them, and labelling them in that particular way. There are about two, four, five, is a very intergovernmental forum itself. Taking Committee to the intergovernmental forum. The inter-departmental Ministers forums, the inter-departmental Committees and the Premier's forum. That this is the known Constitutional Structures which evolved which has evolved to this hand.

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Now, Mr Rudman explained in detail the functions of most of the non-constitutional structures except the Premiers forum. The Premiers forum is simply a caucus forum by the Premiers to prepare for the intergovernmental forum meetings and to raise whatever issues we need to raise in preparation for intergovernmental forum meetings. That what it is. A caucus forum. There is a proposal on the table of the Commission for Provincial Government, but the National Commission on intergovernmental relations be established to monitor intergovernmental relations to 10 undertake, to support policy formulation and to make accommodations to the Central levels of Government. That proposals is on the tables. Sir. There are certain principles which we want to submit - should guide intergovernmental relationships.

Chairperson, I am going to be brief and very pointed. We are likely to miss one of these principles and you won't understand my input. More focus on strategy and less focus on structure. We want to submit that is very 20 important. Clear legal guidelines to propose to constitutional principles as to the division of taxes

between the three levels of Government. The Provinces do not have own taxes and powers. They should have clearly defined percentages of income from VAT, income tax, fuel and transfer duties. At least, you will have to bring certainty in the Provinces by fixing certain minimums. Otherwise, you will be in a situation where you're planning based on chance.

There is no proper planning. We do not know what to expect with regards to some of these things. The 10 principle of other allocations from sectional budgets should be accepted as all provinces do not have similar income generating potential. There is an even (inaudible) ... block in the Provinces - that needs to be recognised and addressed properly. Laws made by the National Government on intergovernmental relationships should set a clear framework for Provinces and Local Governments to prevent fragmentation of laws on all levels of Government.

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At the moment, as a matter of interest, Mr Chairperson, we are rationalising personnel, we are rationalising laws.

What could happen if we do not speedy up this process is - take the Eastern Cape. You will have a set of Laws applying in the former Ciskei and a set of laws applying for the Transkei. So a nightmare for a Political Practitioner in one Province. So if we do not progress in the one Province going on rationalising the laws. We are saying that it is very important that there is no fragmentation of Laws on lower levels of Government.

Permanent and informal structures for the support and 10
strengthening of intergovernmental relations should be established specific proposals. This is to stimulate a debate. I can see my college, Praveen is getting very anxious. The Senate should both be streamlined and very structured to fit the dynamic relationship between Central Government and the Provinces.

A restructuring of the Senate could result in a mixture of the current system, full time Senators and maybe the German system of part time Senators. These Senators 20
are also members of legislatures. It is crucial that the Premiers should be members of the senate. The senate

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could be streamlined by allowing 6 or 7 members per province, thereby reducing the number of full time Senators to 30 or 40. The Senate could play much more of a binding and lobbying roll vase vis Provincial interests based on the Senate.

If a National Commission on an intergovernmental relationships is established, the rolls of Commission on provincial government and a financial and fiscal commission should be re-evaluated so that they become 10 chambers of the new institution or be absorbed by it. There is a bit of a problem at the moment with the Commission on Provincial Government especially with regard to the consultation they seek to conduct on Constitutional matters. We have informed them about this very sharply. They were moving on the wrong assumption that you could have a Provincial Constitutional perspective as opposed to a party position because it is unrealistic to expect a member of the Freedom Front in the Eastern Transvaal to hold a Constitutional position 20 which is different from his National Leadership.

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Therefore, the assumption which is based on which the Commission and Provincial Government is operating was false at worst mischievous because they have accepted that argument and there is no way, they have only to report party positions and not try to assume that you could have a Kwa-Zulu Natal position. It is not possible. The ANC and INKATHA are polls apart. The NP and INKATHA are not so many polls apart. But you have those differences there.

So, I would just mention that. It is a problem we have run 10
into. And the question to what extent - do we still give them that function. It becomes a very important question. With regard to Constitution making. They are becoming slightly relevant because they are repeating what is happening at the top. The Policy formulating roll of any new Institution we think should be strengthened. Provinces should have interest offices secretariats in the seats of Central Government to support Senators and MPs - members of Provinces, standing Committees, activities as well as lobbying on behalf of the Provinces. You will 20
see at the moment.

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There is very bad co-ordination between Provinces and the Senators. If you can talk about co-ordination. You need support structures which support the MP. We do not have them at the moment. They - I am carrying all the votes of the provinces for Senators and MP's from Eastern Transvaal. I want them to know what is happening in our Parliament. There should have been a link which linked us naturally. It is not there. It is not there. We need to create that dynamic link so that we all make sense at the various fora where we operate.

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This Premiers forum should be strengthened by a permanent capacity in terms of administrative and especially research support. I have explained what it does. It is a very voluntary body which is a caucus by the Premiers. There should be a ministry for intergovernmental affairs separating this function from Constitutional affairs who (inaudible) ..., so there is a focus attention to what is happening, at those particular levels. The Regional services Councils should be 20 restructured possibly with a new focus of the rural reconstruction or provincial decentralisation. I don't know

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about other Provinces, but in the Eastern Transvaal this RECs has been terrible discredited. The various interest groups and sectors at the moment Comrade Bhabha is here, he knows this. We feel the need to be restructured. A similar structure to the Commission of Provincial Government. I am just saying similar in a loose way. You need to have a structure that is going to co-ordinate the local Government Structures. You are going to have them all over. What co-ordinates them?

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You have something called co-ordinating Provinces. What co-ordinates local Government structures. Are they just going to move in all directions. We think that something along those lines need to be thought about - a structure. From Province to Province. A National framework approach should be developed concerning the following issues that have an impact on intergovernmental relations. One. Traditional Leaders and their roll in Provincial and Local Government affairs.

[END OF VOLUME I]

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Two. The development Corporations. As a heritage from the TBVC Countries and such governing territories.

Three. Farming and business interest presentation on the different levels of Government. Chairperson, that would be the point which I thought would be important for me to make to this Committee.

CHAIRPERSON:

Thank you Honourable Premier for that very valuable input. It was like music to some of our ears, so, but I am 10
sure that we must now allow for some question time. I think you could re-address your questions to Mr Rudman or his other staff or Premier Phosa himself. Shall we give the opportunity now? Any questions? Mr Leeuw.

MR LEEUW:

Chairperson, my question is in relation with the nature of discussion in the forums whether it is functional or political.

CHAIRPERSON:

Ja, Mr Phosa, is it just ANC doing politics against 20
themselves or is it inter-party politics or it is no politics in the intergovernmental forum, I think the question is.

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