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CONSTITUTIONAL ASSEMBLY

Theme Committee Six

**SPECIALISED STRUCTURES OF
GOVERNMENT**

27 February, 1995

Room E 249, National Assembly Wing

DOCUMENTATION

CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 6
SPECIALISED STRUCTURES OF
GOVERNMENT
MONDAY, 27 FEBRUARY 1995

Please note that a meeting of the above Committee will be held as indicated below. This meeting will be followed by meetings of the Subtheme Committees at 19:00.

Date : 27 February 1995
Time : 18:00 - 19h00
Venue : Room E 249, National Assembly wing

AGENDA

1. Opening and welcome
2. Tabling of minutes
 - 2.1 Minutes of the Theme Committee
 - 2.2 Minutes of the Subtheme Committee
3. Matters arising
4. Reports from the Subtheme Committees
5. Core Group report
6. Any other business
7. Closure

Enquiries: Katharine Mckenzie, (Tel 24 5031 or 403-2174)

CONSTITUTIONAL ASSEMBLY

MINUTES OF THE 9TH MEETING OF THEME COMMITTEE 6 SPECIALISED STRUCTURES OF GOVERNMENT

TUESDAY 14 FEBRUARY 1995

PRESENT

De Beer SJ (Chairperson)

Alant TG	Molekane RS (Alt)
Bekker HJ	Mompati RS
Chiole J (Alt)	Mphahlwa MB (Alt)
Davies RH	Mtintso TE
Dyani MMZ	Mti LM
Ebrahim EI (Alt)	Nair B
Fankomo FC	Neerahoo HM
Fihla NB (Alt)	Ngubane H
George ME	Nhlanhla JM
Gogotya NJ	Powell P
Kgositsile B	Schreiner J
Khoza TS (Alt)	Selfe J
Love JY	Singh N
Luthuli Inkosi BN	Sisulu L
Makana SS (Alt)	Tshabalala ME (Alt)
Makgothi HG	Turok ME (Alt)
Malan TJ (Alt)	Vadi I
Marais G	Welgemoed PG
Moatshe P	Woods GG
Mokitlane MC	Yengeni T (Alt)
Mokoena ML	Zitha DA

Apoogies

Dexter P
Mlambo-Ngcuka PG

Technical Experts

B Levy, P Fahrenfort, N Nyoka were in attendance

1. OPENING AND WELCOME

Mr de Beer opened the meeting at 14h10 and welcomed members including technical experts, Dr Cathy Albertyn and Mr Azhar Cachalia.

Mr de Beer also nominated the appointment of Mr N Morrison, as a technical expert for Subtheme Committee 6.2, in the place of Mr I Momoniat.

2. TABLING AND ADOPTION OF MINUTES OF THEME COMMITTEE MEETING OF 7 FEBRUARY 1995.

The minutes were adopted.

3. TABLING AND NOTING OF MINUTES OF SUBTHEME COMMITTEE MEETINGS OF 7-9 FEBRUARY 1995.

The minutes were noted.

3. CORE GROUP REPORT

3.1 Progress report to CC

The Chairperson reported on the CC meeting of 13 February 1995 as follows:

A meeting of the CA will be held on Monday, 20 February 1995 and each Chairperson/Representative of each Subtheme Committee will be expected to present a report/progress report on the activities of each Subtheme Committee to the CA.

The meeting agreed that reports will be presented by the Chairpersons or mandated representatives of each Subtheme Committee.

4. SUBTHEME COMMITTEE REPORTS

4.1 Subtheme Committee 6.1

Mr Vadi reported that the Subtheme Committee had prepared a report, contained in pages 54-59 of the document pack, which would be used as a framework for discussion with stakeholders.

Mr Vadi also explained that the process of consultation would continue as laid down in the programme set out in page 60 of the document.

4.2 Subtheme Committee 6.2

Dr Davis reported that the process of receiving submissions from stakeholders had improved and that the Subtheme Committee had taken evidence from a number of stakeholders.

4.4 Subtheme Committee 6.3

Ms Kgositsile reported that the Subtheme Committee had just completed the process of holding seminars and out of this will emerge a concrete programme of action for the workshop.

Ms Kgositsile also reported on the need to broaden the scope of discussion of both the Gender and Land Commissions. In this she stated that the Subtheme Committee had agreed that gender issues be examined under the subject of National Machinery for Women, whilst land issues need to be addressed under the subject of Land Restitution.

4.4 Subtheme Committee 6.4

Ms Schreiner reported that a draft report on accountability and control had been completed and this would be ready for submission at the end of the second block.

Ms Schreiner also announced that the Subtheme Committee was hosting a seminar on accountability and control at the end of the Theme Committee meeting.

6. CLOSURE

The meeting closed at 15h40.

CONSTITUTIONAL ASSEMBLY

MINUTES OF 7TH MEETING OF THE CORE GROUP THEME COMMITTEE 6

SPECIALISED STRUCTURES OF GOVERNMENT

TUESDAY 14 FEBRUARY 1995

PRESENT

De Beer SJ (Chairperson)

Chiole J
Kgotsitsile B
Schreiner J
Vadi I

Apologies

Davies R
Powell P
Dyani MMZ

1. OPENING AND WELCOME

The Chairperson welcomed those present and extended apologies to members who made a special effort to attend the Core Group meeting scheduled for 13 February 1995 but was postponed due to a lengthy Constitutional Committee meeting.

2. CONSIDERATION OF MINUTES OF THE PREVIOUS THEME COMMITTEE MEETING

The minutes of Theme Committee meeting held on 7 February were adopted as a true reflection of what had taken place.

3. TECHNICAL EXPERTS

The Committee noted that Mr N Morrison had been appointed as a replacement for Mr I Momoniat.

4. SUB-THEME COMMITTEE REPORTS

The meeting agreed that Chairpersons of Subtheme Committees would present short inputs on the activities of their respective Subtheme Committees at the Theme Committee meeting.

4. VOLKSTAAT COUNCIL

A letter by the Volksaat Council complaining of late notice on Subtheme Committee 6.1 public hearing of 14 January 1995 was noted.

It was agreed that Dr Chiole liaise with the Volkstaat Council by extending an invitation for a later date.

5. CORRESPONDENCE FROM R BEHRENS AND P PLOWDEN

The committee noted the correspondence from Messrs Behrens and Plowden recommending that the latter be referred to Sub-theme Committee 1 for consideration.

6. GENERAL

6.1 It was recommended that the Secretariat:

6.1.1 ensures that the different sub-theme committee are not scheduled for the same time

6.1.2 liaise with Parliament to update the weekly time table of meetings

7. CLOSURE

The meeting closed at 12h55

.....
CHAIRPERSON

.....
DATE

CONSTITUTIONAL ASSEMBLY

MINUTES OF THE EIGHTH MEETING OF SUBTHEME COMMITTEE 6.1

**THEME COMMITTEE 6
SPECIALISED STRUCTURES OF GOVERNMENT**

WEDNESDAY, 14 FEBRUARY 1995

PRESENT

Vadi, I (Chairperson)

De Beer, S J
Dexter, P D
Fankomo, F C
Khoza, T
Love, J Y
Mlambo-Ngcuka, P G
Singh, N

Observers

Mokoena, L M
Moatshe, P

Apologies:

Mokitlane, M C
Watson, A
Jordaan, J A

N Nyoka and S Zardad were in attendance.

1. OPENING AND WELCOME

Mr Vadi opened the meeting at 09h10 and welcomed members.

3. PUBLIC HEARING: VOLKSTAAT COUNCIL/PROVINCES

The Volkstaat Council's letter dated 10 February 1995, expressing their objection to the inadequate notification of the hearing and requesting that it be rescheduled, was tabled at the meeting.

It was further reported that the provinces had also not responded to the invitation to present evidence on 15 February 1995.

It was noted that the Subtheme Committee's work programme was unrealistic and recognised that stakeholders could not meet the deadlines as indicated.

In this context, the meeting agreed:

- 3.1** *to reschedule the two aforementioned hearings and to ensure that stakeholders are given at least three weeks notice;*
- 3.2** *that the secretariat would proceed with the logistical arrangements for the next two public hearings identified on the work programme as a matter of urgency;*
- 3.3** *that the secretariat, in consultation with the Management Committee, reorganise the work programme to ensure that the Subtheme Committee meet its Block 5 deadline date; and*
- 3.4** *that the secretariat organise with parliament a system, preferably a notice board, whereby members are informed of venue and other changes to the work programme.*

4. ATTENDANCE AND NOTIFICATION OF MEETINGS

The chairperson informed the meeting that members had reported that they were not receiving their documentation and as a result were not informed of the Subtheme Committee's activities and work programme timeously.

Following a discussion the meeting agreed that the secretariat would send a circular to all members detailing:

- 4.1** *the revised work programme including the venues, dates and topics under discussion;*

4.2 *a form whereby members indicate their continued interest or otherwise in the Subtheme Committee to ensure administrative efficiency.*

6. SUBMISSIONS: PROGRESS REPORT ON PROCESSING OF SUBMISSIONS

The following points ensued from the discussion:

6.1 *The meeting agreed that Friday, 17 February 1995, would be the deadline date for the technical assistants to submit a report of the submissions.*

6.2 *The report would focus on the contents of the submissions received to date by the Subtheme Committee and would comment on their relevance or otherwise to the agenda of the Subtheme Committee;*

7. DATE OF NEXT MEETING

Details of the next public hearing where evidence will be led by the Public Service Commission and the Ministry of Public Service and administration are as follows:

DATE: 20 FEBRUARY 1995
TIME: 09h30 - 11h00
VENUE: E 249 (New Assembly Wing, Parliament, Cape Town)

8. CLOSURE

The meeting rose at 10h10.

CONSTITUTIONAL ASSEMBLY
SUB-THEME COMMITTEE 2 OF THEME COMMITTEE 6
SPECIALISED STRUCTURES OF GOVERNMENT
THURSDAY 14 FEBRUARY 1995

PRESENT

Davies R (Chairperson)

Andrew KM
Bekker H
Botha WJ
Jacobsz F
Makgothi H
Marais G
Nair B
Welgemoed P
Woods G

Apologies:

Chiole J
Erwin A
Hogan B
Jordaan JA
Marcus G

P Fahrenfort and A Van Wyk (NP) (in attendance)

1. CONFIRMATION OF MINUTES

9/2/95 Confirmed and signed.

The Committee accepted the recommendation that it was not necessary for the Secretariat to minute summaries of submission presentations.

2. SUBMISSION PRESENTATION

2.1 SACP

Jeremy Cronin presented the SACP's submission followed by a discussion. The submission is attached at **Annexure A**.

2.2 PAC

The Committee noted the absence of the PAC. It was recommended that the Secretariat contact the PAC to present their submission on Thursday 16 February 1995

3. CLOSURE

The meeting closed at 10h20.

.....
CHAIRPERSON

.....
DATE

CONSTITUTIONAL ASSEMBLY

SUBTHEME COMMITTEE THREE
TRANSFORMATION, MONITORING AND EVALUATION

OF

THEME COMMITTEE SIX
SPECIALISED STRUCTURES OF GOVERNMENT

14 FEBRUARY 1995

PRESENT

Kgositsile B (Chairperson)

Inkosi B Luthuli
Louw L
Malan T J
Moatshe P
Mokoena L M
Mompoti R
Ngubane H
Tshabalala M E
Turok M
Zitha D A

B Levy and C Albertyn were in attendance

1. Opening and Welcome

Ms Kgositsile opened the meeting at 15:00 and welcomed members.

2. Confirmation of minutes

2.1 Minutes 7 February 1995

The minutes were confirmed.

2.2 Minutes 8 February 1995

The minutes were confirmed with the following changes;

2.1 The M T Tshabalala in the attendance register be replaced by M E Tshabalala.

2.2 Pg 28, 3.2, unclarity should be read as no clarity.

3. Draft report from the seminar programme

3.1 Tabling of draft report

The report of the seminar programme was tabled. Ms Kgositsile asked members to read through the report for the meeting on Tuesday 21 February 1995 (see annexure A).

3.2 Report from the Secretariat

Ms Levy reported that the Secretariat was in the process of compiling a draft Work and Public Participation Programme based on the issues raised in the seminars. This programme will be completed by Monday and distributed to members for discussion at the meeting on Tuesday 21 February.

Ms Malan thanked the Secretariat for drawing up the report.

3.2.1 Submissions

The meeting agreed that party political submissions on the Public Protector needed to be submitted to the Secretariat by Friday 17 February 1995. In addition it was agreed that the Technical Experts would need draw out the areas of agreement and differences in order to facilitate discussion.

3.2.2 Public Participation Programme

The meeting agreed that the way to proceed with the Public Participation Programme was firstly to hold public hearings from

stakeholders such as the legal profession and the public service. Secondly as these issues were quite complex and technical it would be important to take these debates to the broader community in the form of seminars.

4. Input by Dr C Albertyn on the Public Protector

4.1 Dr Albertyn presented an input on an alternative model of the Public Protector (see annexure B).

Dr Albertyn argued that there were essentially two models of the Public Protector:

4.1.1 The complaints driven model

4.1.2 A model that takes into account the complexity of modern governments through ensuring that individual concerns are dealt with in a fair manner as well as pro-actively identifying and resolving the underlying systemic causes of recurring unfairness.

The assumptions underlying the above model include the following:

- i. Administrative unfairness is complex and can also occur as a result of the management and administrative systems within and between government departments.**
- ii. The Public Protector needs to play both a reactive and proactive role with regard to investigations of systemic problems.**
- iii. The Public Protector's role needs to be viewed as part of a broader range of structures and programmes that resolve problems of unfairness.**
- iv. Provincial and National Public Protectors need to work together to combat unfairness. Provincial Protectors may need to be more complaints driven, while the National Protector may need to play more of a research role with regard to the patterns of complaints, as well as make proposals in terms of resolving the underlying problems.**
- v. The relationship of the Public Protector with government in this model would be co-operative in terms of dealing with the need to address systemic problems, however at points it would also**

be adversarial.

- vi. As opposed complaints driven model, this alternative model can as part of a broader machinery potentially facilitate the development of a government that is fair open and accountable.

4.2 The Public Protector and the Courts

There is a need to examine the Public Protectors role with regards to the courts. Two approaches have been adopted in this regard:

4.2.1 In certain systems the Public Protector supervises the courts.

4.2.2 In other systems this has been rejected as it is perceived as interference with judicial independence. However certain commentators have argued that the Public Protector would not intervene with regard to the decisions of the courts, rather his/her role would be dealing with any maladministration within the system of justice.

4.3 Issues arising from the discussion

4.3.1 The relationship between the Public Protector and Traditional Authorities: There is a need to examine the relationship between Amakhosi and the Public Protector. In many instances Amakhosi have played the role of the Public Protector, thus there is a need to examine their relationship. In other contexts the community may need to be protected from the maladministration of the Traditional Authority.

4.3.2 The Public Protector and the culture of unfairness: The Public Protector can't deal with the culture of unfairness in South African society. This office needs to be seen as part of a broad range of strategies and institutions.

4.3.3 The Public Protector and Private Institutions: While the Public Protector traditionally deals with maladministration in government there is a debate as where the state ends and the private sector begins. Universities are an example of an institution where the lines between public and private are blurred. The present Public Protector Act does not allow this office to examine these types of institutions.

4.4 The meeting agreed that the area of the role of the Public Protector extends beyond the scope of Subtheme Committee Three. It was proposed that the Secretariat set up meetings with other Theme Committee's in order to place the issue of the Public Protector on the agenda for discussion. This is important so that no duplication occurs. Meetings were suggested with the following Theme Committee's: Theme Committee five - Judiciary, Theme Committee two - Relations between levels of government, Subtheme Committee one - Public Service and Subtheme Committee four - Security Apparatus.

5. Date of the next meeting

The next meeting will be held on Tuesday 21 January 1995 at 9:00. Ms Holmsgaard from the Danish Gender Equality Commission will be addressing the Committee on Denmark's experience of a National Machinery for Women. The meeting will also discuss the Work Programme.

6. Any other business

6.1 Prof Ngubane reported that she had submitted a report on the Land Commission to the Secretariat. This report needed to be read in conjunction with Kgosi Mokoena's report.

7. Closure

The meeting rose at 16:30

CONSTITUTIONAL ASSEMBLY

**MINUTES OF THE TENTH MEETING OF SUBTHEME COMMITTEE 4,
THEME COMMITTEE 6**

**SPECIALISED STRUCTURES OF GOVERNMENT
SECURITY APPARATUS**

TUESDAY, 14 FEBRUARY 1995

PRESENT

Schreiner, J (Chairperson)

Alant, T G	Booi, N
Dyani, M M Z	Ebrahim, E I
Fihla, N B	Makana, S
Malan, T J	Mashimbye, J N
Mpahlwa, M B	Mti, L M
Mtintso, T E	Neerahoo, H M
Powell, P	Selke, J
Sosibo, J	

Seegers, A : Technical expert

Apologies: van Eck, J

K McKenzie was in attendance.

1 OPENING AND WELCOME

Ms Schreiner opened the meeting at 09:20 and welcomed the members.

2 MINUTES OF THE PREVIOUS MEETINGS

2.1 Minutes of the eighth meeting, 8 February 1995

The minutes were adopted subject to the following changes:

2.1.1 Item 4.1 (i), first flag was amended to read "Parliament writes the Constitution and Parliament and the judiciary should defend it."

2.1.2 Item 4.2 (iii) was amended to read, " It was agreed that members of the Defence Force should be educated to be

conversant with South African law, the Constitution, Human Rights and international law in order to abide by these."

2.2 Minutes of the ninth meeting, 9 February 1995

The minutes were adopted subject to the addition of Ms J Sosibo's name to the list of those present.

3 MATTERS ARISING

3.1 Proposal for oral evidence around submissions

It was agreed that the Ministry of Defence and the Military Research Group and Mr McMoran should be invited to make oral submissions to the Committee.

3.2 IFP submission on para-military policing

It was agreed that this discussion should be held over until the block on policing, when the IFP would present a written submission.

4 SUPREMACY OF THE CONSTITUTION AND ACCOUNTABILITY AND CONTROL OF THE SECURITY FORCES: SOUTH AFRICAN POLICE SERVICES

4.1 Democratic Party

Mr Selfe spoke to the DP submission (contained in document package 5).

The DP submission deals with the SAPS in total and was also submitted for the block on policing.

In discussion the following was highlighted:

4.1.1 Provisions to "federalize" all police officers (item 3.3)

The DP submission used the term "federalize" following its usage in the USA to denote the ability of the President to bring all members of the police under his or her command in a declared state of war, national disaster or emergency.

5 SUPREMACY OF THE CONSTITUTION AND ACCOUNTABILITY AND CONTROL OF THE SECURITY FORCES: INTELLIGENCE SERVICES

5.1 National Party

Dr Alant spoke to the NP submission (contained in document package 4).

In discussion the following was highlighted:

5.1.1 Jurisdiction of the Intelligence Services

It was agreed that section 23 of the present Constitution should be retained. In order to ensure that fundamental rights, as set out in this section, were not violated a judicial review procedure was needed and sanction from a court of law was required for any intelligence surveillance.

5.2 Inkatha Freedom Party

Mr Powell spoke to the IFP submission (contained in document package 2).

In discussion the following was highlighted:

5.2.1 Parliamentary oversight

The IFP believed there should be Senate and National Assembly Standing Committees to process legislation and a Joint Committee with oversight and 'foresight' powers. This Committee would be restricted in the information it could make public and would have representation from all parties in Parliament. It would have power to make recommendations to Parliament on the budget.

The powers of the Joint Standing Committee to initiate legislation would be explored in the block dealing with Intelligence.

5.3 Democratic Party

The Democratic Party had nothing further to add to their general submission on accountability and control of the security forces (contained in document package 4).

5.4 African National Congress

Ms Sisulu spoke to the restructured ANC submission on Intelligence (contained in documentation package 6).

5.4.1 Parliamentary oversight

The ANC stated that the Parliamentary oversight committee should be small. The ANC was in favour of multi-party representation on the Committee.

5.4.2 Individual and collective rights

Prof Seegers pointed out that there was a possible inconsistency between individual and collective rights. The Preamble to the submission spoke of the collective while item 3.4 spoke of the privacy of the individual as inviolable.

The IFP stated that it identified very strongly with 3.4.

5.4.3 The National character of the Intelligence Services

The IFP noted that the existing legislation pertaining to Intelligence provided for adequate national oversight structures but did not adequately cater for Provincial oversight. There were several examples internationally in which regional interests clashed with national ones.

The ANC stated that it was very committed to a national structure for the Intelligence Services and was not open to a federal Intelligence Service.

6 PREPARATION OF REPORT

Ms Schreiner reported that she had drawn up a draft report which would be circulated to members.

Parties should scrutinise the report to ensure that their positions were accurately represented.

An executive summary, which would be secondary to the report would also be compiled.

A grouping comprising representatives of all parties should meet to finalise the report.

7 ANY OTHER BUSINESS

7.1 Workshop on the Police

It was agreed that a workshop on the Police would be held on 6 March 1995. Parties should submit suggestions regarding topics and speakers.

8 CLOSURE

The meeting rose at 12:00. It was followed by a workshop hosted by the Institute for Defence Policy on 14 and 15 February 1995.

CONSTITUTIONAL ASSEMBLY

**MINUTES OF THE ELEVENTH MEETING OF SUBTHEME COMMITTEE 4,
THEME COMMITTEE 6**

**SPECIALISED STRUCTURES OF GOVERNMENT
SECURITY APPARATUS**

THURSDAY, 16 FEBRUARY 1995

PRESENT

Schreiner, J (Chairperson)

Alant, T G	Bloem, D
Dyani, M M Z	Ebrahim, E I
Fihla, N B	Groenewald, P J
Makana, S	Mashimbye, J N
Mpahlwa, M B	Mtintso, T E
Neerahoo, H M	Powell, P
Selfe, J	Sisulu, L
Sosibo, J	

Seegers, A : Technical expert

Apologies: Malan, T J

K McKenzie was in attendance.

1 OPENING AND WELCOME

Ms Schreiner opened the meeting at 09:15 and welcomed the members.

2 LOCATION OF CORRECTIONAL SERVICES

The ANC submitted that Correctional Services be moved to Theme Committee 5 (see annexure "A").

The NP and PAC supported the ANC submission.

The IFP stated that it felt that aspects of Correctional Services should remain in Subtheme Committee 4 and other aspects belonged in Theme Committee 5 and Subtheme Committee 6.1 (Public Administration). A submission to this effect would be tabled by the IFP at the next meeting.

It was agreed that this matter would be finalised in the next meeting of the Committee.

3 SUPREMACY OF THE CONSTITUTION AND ACCOUNTABILITY AND CONTROL OF THE SECURITY FORCES

3.1 Freedom Front

Mr Groenewald spoke to the Freedom Front submission (see document package 6).

In discussion the following was highlighted:

3.1.1 Part time Forces and the Provincial Legislature

The FF stated that it would submit a full submission on this matter in the appropriate block.

The FF believed that the Provinces would have to receive some budgetary support in order that certain control of the part time-forces could be allocated to the Provinces.

The part time forces would be deployed by the Province in the event of a provincial threat and by national government in the event of a national threat.

The ANC stated that it disagreed with the proposal that Provincial Legislatures should have any control over the part-time forces and that there should be any budgetary regionalism of the Defence Force.

The NP stated that it could not support a system in which the control of the Defence Force is not clear.

The ANC suggested that the Defence Force make a submission on this matter to the Committee.

The IFP stated that it had a very similar proposal to make as that put forward by the Freedom Front and it was agreed that further discussion take place in the block on the Defence Force.

It was noted that there was a point of difference on the accountability and control of the Defence Force at a Provincial level.

4 SUPREMACY OF THE CONSTITUTION AND ACCOUNTABILITY AND CONTROL OF THE SECURITY FORCES: INTELLIGENCE SERVICES

4.1 Pan Africanist Congress

Mr Dyani spoke to the PAC submission (see document package 6)

In discussion the following was highlighted:

4.1.1 Primary function of the security structures (item 6)

It was agreed that the posture of the security structures should be a defensive one. It was agreed that the major role of the Defence Force was to defend South Africa's territorial integrity.

4.1.2 Membership of political parties by individual members of the security structures

It was noted that the Intelligence Services at present do not allow their members to have open political allegiances.

Prof Seegers noted that there were two polar views of this matter, on the one extreme members of security structures waived their right to vote. The other view maintained that this served only to drive political activity underground.

It was noted that in the case of the Defence Force, a new light was cast on this debate if there were to be a system of conscription as conscripts did not choose to be members of the Defence Force.

5 ANY OTHER BUSINESS

5.1 Next meeting of the Committee

It was agreed that the next meeting of the Committee would be held on Monday 20 February before the joint sitting of Parliament.

6 CLOSURE

The meeting rose at 16:30.

ANC SUBMISSION OF THE LOCATION OF CORRECTIONAL SERVICES WITHIN THE CONSTITUTION

At the moment, the Correctional Services runs along militarised lines, with a strong emphasis on punishment, tight security and secrecy. We accept that the modern approach to correctional services should move away from militarised institutions. Correctional services should become welfare and rehabilitation oriented institutions, with a strong emphasis on human rights of prisoners. The relationship of correctional services to the three arms of the state is fundamental to transform the correctional service system away from security structure to a rehabilitation structure. An incorrect statement of correctional services relationship to the executive, legislature and judiciary will retard this. The correctional service should not exert direct power over the individual. The role of the correctional service is to carry out the decisions of the judiciary.

The location of correctional services in the constitution must reflect the position of the correctional service as an extension of the judiciary and legal system. We propose that debate around correctional services and the constitution fall under the ambit of Theme Committee 5 dealing with the Judiciary and Legal System. This would be correct in terms of constitutional law and criminal procedure law.

The discussion so far in Theme 6 Sub Theme 4 has identified the following areas. These will be put to the Sub Theme Committee and then transferred to Theme 5:

1. Correctional Service is a national service, with provincial sub structures.
2. There is a need for a Prison Ombudsperson to take complaints and

redress grievances of prisoners, correctional service staff and the public.

3. International and local monitoring of the correctional institutions should be constitutionally entrenched for all categories of prisoners, no matter under which law or regulation they are held.

4. There is a need for a Correctional Service Commission to address the specific working conditions, promotions, pay scales, etc. of correctional service personnel.

5. There should be minimal executive intervention in the carrying out of judicially determined punishment. There should be a process of judicial and community involvement in the release processes of sentenced prisoners. The serving of all sentences should fall under the administration of justice.

6. The President as head of the executive should retain some discretion in power to pardon, to grant amnesty and indemnify under particular circumstances.

7. The legislature should have a strong oversight and control function.

CONSTITUTIONAL ASSEMBLY

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PO Box 15
CAPE TOWN 8000
REPUBLIC OF SOUTH AFRICA

REF NO:

16 February 1995

MEMORANDUM

To All Theme Committees

Re : Various Matters

1. TECHNICAL COMMITTEES

This serves as a reminder that the Administration requires feedback from Theme Committees on the programme for technical experts for the next month or so. In an earlier memorandum we had asked Theme Committees to provide us with this information, so that we could make the necessary arrangements and planning with regard to travel, accommodation and budgeting. We have thus far only had a response from one Theme Committee and even then, not a very clear one. Please ensure that we are given an indication by early next week, so that the relevant arrangements can be made.

2. PUBLIC PARTICIPATION PROGRAMME

2.1 Constitutional Public Meetings

There appears to be some confusion about what role Theme Committee are expected to play in the public participation programme. The programme which was forwarded to Theme Committees a while ago was adopted by the Management Committee on 10 February 1995, with some amendments. These amendments, or provisos, relate in the main to the need to ensure that the programme does reach rural and disadvantaged communities and that the Management Committee is able to co-ordinate the programme as a whole. They do not however change the immediate preparations for the first round of public meetings.

These meetings will take place on 25 ^{FEBRUARY} ~~March~~ 1995 in six provinces ie Free State, Eastern Cape, Eastern Transvaal, Northern Transvaal, North West and Western Cape. The exact venues will be communicated to you next week.

Each Theme Committee is required to send two delegates to each of these meetings. We would appreciate it if these names could be with the Administration by Wednesday 22 March 1995 so that practical arrangements can be made.

Note that as per Management Committee decision, these events are not party political. The people who attend will represent Theme Committees and receive submissions and not put forward party positions.

Each Theme Committee should also clearly identify what pertinent issue/s should be discussed at each of these meetings. Note here that the structure of the meetings will allow for the facilitator to introduce all 6 Theme Committees and thus also allow for submissions to all Theme Committees. We would also need to receive these issues from Theme Committees by Wednesday next weeks so that facilitators can prepare themselves.

We apologise sincerely for this short notice but it has been unavoidable in view of the difficulty in getting the programme finalised. It would not be opportune to delay implementation any longer which is why the first meetings will commence on 25 March 1995.

2.2 Theme Committee Programmes

These public meetings are only one aspect of the programme. You will notice that the original document also mentions hearings and Theme Committee requests for workshops etc This programme is already underway, responding to Theme Committee requests. The earlier communication we addressed to Theme Committees was an attempt to ask Theme Committees to consider a more structured programme in this regard, rather than relying solely on the present ad hoc nature of requests. It is also important that the Administration receives adequate notice for these requests. For major events, at least 14 days notice is required, and 7 days for smaller events.

There is no intention of imposing a "centrally planned " programme on Theme Committees. Public meetings as outlined in 2.1 above, are not the major form of consultation with the public. It is evident that Theme Committee consultation in the form of workshops, hearings and consideration of written submissions , forms the major part of the public participation programme. This is why it is important that it is properly organised and considered and why Theme Committees should try and present structured programmes in this regard.

3. Drafting Procedures

The Management Committee has finalised Drafting Procedures which are attached hereto for your information. The Management Committee noted the objection of the IFP to these procedures.

4. Report Formats

As communicated earlier, the Management Committee has considered and agreed to formats for Theme Committee reports to the Constitutional Committee. The only addition to the document which is attached hereto, is that reports should also have attached to them the party submissions which are there, not as part of the report, but to allow for reference in discussion in the Constitutional Committee.

You are also reminded of the Management Committee decision that those committees which have completed reports, should please forward supplementary reports on public submissions.

5. Communication

This Administration is committed to ensuring there is regular and effective communication to Theme Committees from the Management Committee and Constitutional Committee. If you have suggestions in this regard please forward your views to us, so that they can be put to good use. Also do not hesitate to contact myself or the *Deputy Executive Directors, Louisa Zondo and Marion Sparg at Tel No 021245 031* or visit us on the *11th Floor of Regis House* if you require clarification on anything contained in this memo or indeed to discuss any other matter.

**HASSEN EBRAHIM
EXECUTIVE DIRECTOR**

PROPOSAL ON THE DRAFTING OF THE NEW CONSTITUTION

1. Introduction

1.1 The Constitutional Assembly has in its decision of 31 October 1994 laid down the following broad guidelines on the drafting process:

- "(a) Drafting should be directed by the Constitutional Assembly.
- (b) The Constitutional Committee should be responsible for the co-ordination of all Constitutional Assembly work, including drafting.
- (c) Theme Committees are not negotiating fora. Their primary task should be to receive submissions and process them into reports for consideration by the Constitutional Committee."

1.2 The process has now reached the stage where a decision will have to be taken on the question of technical assistance in the drafting process. Drafting is a sensitive exercise because political disputes and deadlocks that may occur will in the ordinary course of events be based on positions as drafted in the text.

2. Background

In setting up a drafting mechanism two important factors must be taken into account, firstly, the provisions of the Interim Constitution relating to the adoption of a new constitutional text and, secondly, the lessons learned from the Kempton park experience.

2.1 In terms of the objects of the Interim Constitution, as set out in the Preamble, the Constitutional Assembly is the only competent body to draw up the new constitution. For this reason a drafting mechanism cannot operate independently from the Constitutional Assembly and must be part and parcel of the Constitutional Assembly's substructures, operating on the instructions and under the direct supervision and control of the Management and Constitutional Committees.

2.2 During debates in the Constitutional Assembly and committee meetings criticism was levelled at the Kempton Park process where independent committees of technical experts were or were believed

to be the driving force in the process. The present process was consequently structured to avoid a Kempton Park type of situation and to allow for maximum participation by the public and the elected representatives of the people in the constitution-making process. This philosophical distinction between the present and Kempton Park processes impacts also on the way a drafting mechanism should be structured.

3. Principles of drafting

3.1 In view of the above the drafting process should be governed by the following principles:

- (a) The drafting process should be a purely technical exercise and unlike the Kempton Park process be a politically neutral exercise.
- (b) The drafting process should be confined to providing the statutory formulations which reflect actual decisions on content and substance.
- (c) Constitutional Assembly decisions should form the sole basis for drafting except to add non-contentious and legally and technically necessary detail.
- (d) The drafting process should reflect the Constitutional Assembly's agreed political process.
- (e) The drafting process should involve all the technical role players engaged in the constitution-making process.
- (f) For purposes of maintaining the time frames agreed to politically the drafting should commence with the first political agreements.
- (g) The drafting process should be under the direct supervision and control of the Management and Constitutional Committees.

3.2 For purposes of securing a technically, linguistically and legally consistent and accessible constitution, there is a need that the various drafted provisions are attended to at a central point.

4. Proposal

The process should be as follows:

4.1 Initial drafting (translating political decisions into legal language)

Because of the intimate knowledge technical committees would gain with regard to their respective themes, these committees would be in the best technical position to provide "first drafts". Drafting should commence whenever a decision has been taken in the Constitutional Assembly on any particular issue submitted by a Theme Committee. The technical committee of that Theme Committee (or a single member of the technical committee) should be tasked to provide initial draft provisions covering the particular decision of the Constitutional Assembly. In preparing an initial draft the technical committee or drafting member should be directly accountable to the Management Committee and not to the Theme Committee.

4.2 Technical refinement of drafted provisions

Once an initial draft on any particular issue is available it should be submitted to the Administration's law advisers for technical refinement, improvement and adjustment to ensure that a general consistency of method and style is maintained.

4.3 Qualitative evaluation

The panel of experts' role will be that of evaluating objectively and impartially the technical and qualitative aspects of drafted provisions as refined by the law advisers. If the panel has reservations the provisions may then be further refined by the law advisers in accordance with any suggestions the panel may make.

4.4 Political approval

The next step would be to refer a set of drafted provisions processed through the first three phases, to the Management Committee for submission to the Constitutional Committee for approval. It is suggested that the law advisers be tasked with any adjustments the Management or Constitutional Committees may require.

4.5 Publication and public responses

Publication for general information and comment of draft chapters or sets of drafted provisions pertaining to specific issues, can be considered as a method of enhancing the public participation

programme.

5. **Conclusion**

In conclusion it must be pointed out that technical refinement and adjustment will be an on-going process as drafting progresses and the different sets of provisions approved in accordance with paragraph 4.4 are moulded together. The law advisers are at an appropriately positioned central point to attend to final refinement, but political participation, supervision and control should of course also take place here.

GUIDELINES: THEME COMMITTEE REPORTS

1. In reporting to the Constitutional Committee, Theme Committees must distinguish between progress and final reports.
2. Each Theme Committee must submit either a progress or a final report in respect of each ordinary session of the CC.
3. Reports must be submitted on the Tuesday before the scheduled CC meeting.
4. Progress reports are required to keep the CC on a continuous basis informed of developments and progress in Theme Committees in relation to their respective work programmes and time frames.
5. A final report must be produced by a Theme Committee as soon as any agenda item on a Theme Committee's work programme has been completed.
6. The contents of a report should be finalised in the Theme Committee and not in meetings of the CC.
7. **Structure and contents of reports**
 - 7.1 The cover page must contain the following particulars:
 - a reference to the Theme Committee submitting the report;
 - whether its a progress or final report;
 - date of report; and
 - if final report, the block number and agenda item on the work programme to which the report relates.
 - 7.2 Final reports should be structured in such a way to facilitate discussions and negotiations in the CC. It is recommended that final reports consist of three parts.
 - 7.3 The first part should give particulars of material processed by the Theme Committee in relation to the relevant agenda item. These particulars should include:

- a list of submissions received and processed by the Theme Committee, distinguishing between submissions received from political parties, organisations of civil society and individuals;
- a reference to any report submitted by a technical committee/experts on the specific agenda item;
- perspectives which emerged from public meetings held under the public participation programme;
- perspectives which emerged from workshops, seminars, etc., organised by the Theme Committee;
- the constitutional principle(s) to which the agenda item relates.

7.4 All technical committee reports listed in the Theme Committee's report must be attached as an annexure to the report.

7.5 The second part of the report should give an overview of the above material as processed by the Theme Committee. This part should include -

- (a) a general discussion of the material taken as a whole, indicating any specific or identifiable trends;
- (b) a list of non-contentious issues in relation to
 - the above material generally;
 - party positions;
- (c) a list of contentious issues indicating briefly
 - the gist of the contentiousness in each case;
 - the positions of the parties in relation to each issue;
 - the positions of organisations of civil society;
 - general trends emerging from submissions received from the public and at public meetings;
 - possible approaches, i.e. suggestions from the Theme Committee on possible models, alternatives and generally how the CC can proceed to deal with conflicting positions.

7.6 The third part of the report should deal with miscellaneous or related issues, such as

- notification to the CC of the agenda item the Theme Committee is about to deal with;
- suggested advertisement for this agenda item.

CONSTITUTIONAL ASSEMBLY

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CAPE TOWN 8000
REPUBLIC OF SOUTH AFRICA

REF No:

17 FEBRUARY 1995

To: All Chairpersons and Technical Experts

RE: ISSUES OF OVERLAP AND OTHER ISSUES REQUIRING JOINT MEETINGS OF THEME COMMITTEES

1. Joint Theme Committee meeting on Traditional authorities

This memorandum follows the joint Chairpersons' meeting on Thursday, 16 February 1995 where the aspect of overlap between Theme Committees was raised. A recommendation was made that a joint meeting of the relevant Theme Committees be set up immediately to discuss the aspect of Traditional Authorities.

The draft agenda is as follows:-

1. Traditional Authorities: Overlap between Theme Committees. Are they structures of Government or specialised structures?
2. Distribution of work between the respective Theme Committees
3. The Ad-hoc Technical Committee on Traditional leaders - What is their role?
4. Time-frames
5. Any other business of relevance to the aspect of Traditional Authorities.

Venue: **E249**

Date and Time: **Monday 6 March 1995, 09h00 - 10h00**

All Chairpersons and Technical Experts within the affected Theme Committees are requested to discuss this matter and asked to attend.

2. Other aspects requiring joint Theme Committee meetings

At the last Chairpersons' meeting, many members present had requested

further joint meetings on a range of other issues. In order for the Administration to facilitate this request, we require all Theme Committees and technical experts to forward proposals on the types of Joint Theme Committee meetings they would like to see, issues to be discussed and possible dates. Please forward all proposals to the Administration through the managing Secretary by not later than **28 February 1995**.

3. Convenors for Technical Committees

This aspect has been raised in the terms of reference and in subsequent meetings. It would be appreciated if all technical committees could address this issue and forward further details to the Executive Director. Having a convenor for each Technical team would greatly facilitate communication.

Furthermore, could Technical Committees inform us what Joint meetings of Technical Experts they would like to see and how the Administration could possibly facilitate this request. Proposals should reach the Executive Director not later than **28 February 1995**.

4. Tabling of progress/final reports at CC meetings

All Theme Committees tabling a report at the Constitutional Committee should appoint a representative to table and present the report. This will ensure effective representation of the views of the relevant Theme Committee.

Thanking you

H Ebrahim
Executive Director
Constitutional Assembly

CONSTITUTIONAL ASSEMBLY

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REPUBLIC OF SOUTH AFRICA

REF NO: B.1.1

21 February 1995

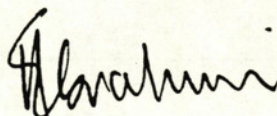
To: Chairpersons of Theme Committees II, III & VI

**RE: PROPOSED WORKSHOP ON INSTITUTIONALISATION OF
INTERGOVERNMENTAL RELATIONS**

I attach under cover hereof copies of correspondences between the Commission on Provincial Government and our office for your consideration and further advice.

I look forward to hearing from you with regard to your Theme Committee's direction and advice on this matter.

Yours faithfully



**H EBRAHIM
EXECUTIVE DIRECTOR**

COMMISSION ON PROVINCIAL GOVERNMENT

Established in terms of section 163 of Act 200, 1993

260 Walker Street Sunnyside Private Bag X887 Pretoria 0001
Telephone (012) 44-2297 Fax (012) 341-8452

1995-02-20

Mr Hassen Ebrahim
Executive Director
Constitutional Assembly Secretariat
CAPE TOWN

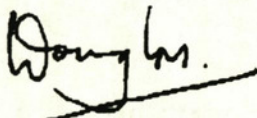
Dear Hassen

WORKSHOP: INSTITUTIONALISATION OF INTERGOVERNMENTAL RELATIONS

Please convey the accompanying fax to Mr Ramaphosa. Could it be discussed at the next Management Committee meeting? We would appreciate a speedy reply - as requested, by the end of February if possible.

I trust that all is well with you - your situation seems to me very like that of a person shooting an extended series of rapids on a turbulent river.

Best wishes.



PROF D M IRVINE
TECHNICAL CONSULTANT

md423

COMMISSION ON PROVINCIAL GOVERNMENT

Established in terms of section 163 of Act 200, 1993

260 Walker Street Sunnyside Private Bag X887 Pretoria 0001
Telephone (012) 44-2297 Fax (012) 341-8452

1995-02-20

Mr Cyril Ramaphosa
The Chairperson
Constitutional Assembly
P O Box 15
CAPE TOWN
8000

Dear Mr Ramaphosa

WORKSHOP: INSTITUTIONALISATION OF INTERGOVERNMENTAL RELATIONS

The Commission would value your guidance on the most suitable dates for holding a major workshop on possible options for the institutionalisation of intergovernmental relations, to take place early in June.

As you are aware, the Commission's work programme includes a number of workshops around issues on which it is developing recommendations to be made to the Constitutional Assembly. We are making every effort to accommodate our activities to the Constitutional Assembly's programme; but the earliest date for this particular workshop would be the first week of June. Research we have commissioned on practices in other countries will not be available until then; and the timing also depends on the movements of certain experts from abroad whose participation would add a valuable dimension to the discussions.

We have asked Dr Bertus de Villiers of the HSRC's Centre for Constitutional Analysis to undertake the organisation of this workshop, as we thought it preferable that the Commission itself should not be too directly involved.

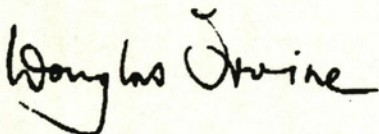
The object of the workshop would be not only to generate material for the Commission's deliberations, but also to stimulate debate among various structures of government and other bodies and persons with a direct interest in this issue, including key members of the Constitutional Assembly. We hope to secure the participation of at least a substantial number of persons from the Constitutional Committee and the relevant Theme Committees.

The workshop would run over two days. The crucial date seems to be Friday 2 June. The Constitutional Assembly's work programme appears to have nothing scheduled for that day. On the previous day, 1 June, party caucuses are scheduled to end at 13:00 - so our workshop could possibly begin that afternoon. Alternatively, it could run through Saturday 3 June, although "Public Participation" events are due to take place which would presumably involve some Constitutional Assembly members.

The most convenient venue for our workshop would no doubt be the Cape, from the Constitutional Assembly's point of view. We would try to arrange for this, though the World Cup rugby may present us with accommodation problems. Would it cause insurmountable problems for members of the Constitutional Assembly if the venue were to be Pretoria, for instance, for a workshop on the Friday and Saturday? Clearly, if the workshop is to start on the Thursday, it would have to be held in or near Cape Town.

We would appreciate it if you could let us have your views on these matters by the end of February, as arrangements with foreign participants in the workshop have to be finalised.

Yours sincerely



PROF D M IRVINE
TECHNICAL CONSULTANT

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REF NO:

B.1.1

24 February 1995

TO CHAIRPERSONS OF THEME COMMITTEES II, III & VI

RE: PROPOSED WORKSHOP ON INSTITUTIONALISATION OF INTERGOVERNMENTAL RELATIONS

My letter dated 21 February 1995 with regard to the above, refers.

I attach under cover hereof further correspondence received from Prof D M Irvine from the Commission on Provincial Government for your consideration and advice, please.

I look forward to hearing from you.

Yours faithfully

H Ebrahim
H EBRAHIM
EXECUTIVE DIRECTOR

COMMISSION ON PROVINCIAL GOVERNMENT

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1995-02-24

Mr Hassen Ebrahim
Executive Director
Constitutional Assembly
P O Box 15
CAPE TOWN
8000

Fax: 021 4614339

Dear Mr Ebrahim

WORKSHOP: INSTITUTIONALISATION OF INTERGOVERNMENTAL RELATIONS

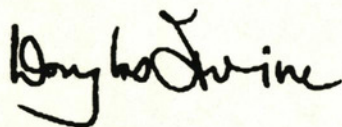
Thank you for your fax of 21 February.

In response to your observation that it would be much more helpful to the Theme Committees if this Workshop could be scheduled for a date earlier than the first week in June, I am pleased to say that the HSRC's Centre for Constitutional Analysis (which is organising the Workshop on our behalf) has agreed to bring the Workshop forward to take place on 18 and 19 May. This is the earliest possible date, because, as I indicated previously, experts from abroad will be participating in the Workshop, and we have also commissioned research which will feed into the proceedings.

Please inform the Chairperson of the Constitutional Assembly of this development.

We envisage that the programme for this Workshop will be devised in consultation with the Constitutional Assembly. I would be grateful if you could advise me how best to proceed with such consultation. Dr Bertus de Villiers, the Director of the Centre for Constitutional Analysis, will be in Germany until May. As we will be jointly responsible for developing the programme, I suggest that communications from the Constitutional Assembly should be directed to me.

Yours sincerely



PROF D M IRVINE
TECHNICAL CONSULTANT

md436

CONSTITUTIONAL ASSEMBLY

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REF NO: B.1.1

24 February 1995

Prof D M Irvine
Technical Consultant
Commission on Provincial Government
Private Bag X887
PRETORIA
0001

Dear Prof Irvine

WORKSHOP: INSTITUTIONALISATION OF INTERGOVERNMENTAL RELATIONS

I acknowledge receipt of your fax dated 24 February 1995.

The Chairpersons and relevant Theme Committees will be informed accordingly for their consideration.

Yours faithfully

H Ebrahim
ff. **H EBRAHIM**
EXECUTIVE DIRECTOR

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REPUBLIC OF SOUTH AFRICA

REF No:

MEMORANDUM

TO: CHAIRPERSON
THEME COMMITTEE IV
THEME COMMITTEE VI

FROM: HASSEN EBRAHIM
EXECUTIVE DIRECTOR

DATE: 24 FEBRUARY 1995

Attach under over hereof, find a copy of a letter from the Ministry of Correctional Services for your information and consideration, please.

CONSTITUTIONAL ASSEMBLY

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REPUBLIC OF SOUTH AFRICA

REF No: B.1.1

24 February 1995

Dr S E Mzimela, MP
Minister of Correctional Services
Private Bag X9131
CAPE TOWN
8000

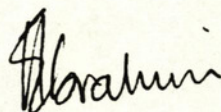
Dear Dr Mzimela

Thank you for your letter dated 17 February 1995.

We thank you for your offer to brief Theme Committees IV and VI on Correctional Services. I am accordingly referring your offer to the relevant Theme Committees.

We will however, recommend that a submission, briefing document or discussion paper be prepared for the benefit of the members of Theme Committees. This will serve to assist in sensitizing the Theme Committees to the approach of the Ministry of Correctional Services.

Yours faithfully



H EBRAHIM
EXECUTIVE DIRECTOR



CONSTITUTIONAL
ASSEMBLY

22 FEB 1996

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Fax: 45-4375
Verwysing • Reference 3/A22-7/2
17 February 1995

Mr H Ebrahim
Executive Director
Constitutional Assembly
P O Box 15
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Dear Mr Ebrahim

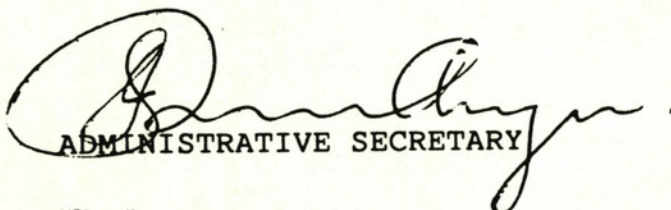
INVITATION TO MAKE SUBMISSIONS

Pursuant to my letter dated 27 December 1994 and by direction of Dr S E Mzimela MP, Minister of Correctional Services I wish to inform you that the Department of Correctional Services will on request of the Constitutional Assembly or Theme Committees be available to brief them on Correctional Services matters.

The Department would however like to brief Theme Committee 4 and Theme Committee 6 before their discussion on Correctional Services during March 1995.

Be assured of the Department of Correctional Services' support for the important task of the Constitutional Assembly. You are welcome to contact this office for assistance on Correctional Services matters at any time.

Yours faithfully


ADMINISTRATIVE SECRETARY