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THEME COMMITTEE	2
DATE OF MEETING	2/2/95
NUMBER OF TAPES	2
CONTENT OF ENVELOPE	
1) PRINT-OUT	✓
2) NOTES	
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THEME COMMITTEE	2
DATE OF MEETING	7/2/95
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CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 2
STRUCTURE OF GOVERNMENT

2 FEBRUARY 1995

RM 46

Tape 2 - Side A

Theme Committee 2 - 2 February 1995

Chairperson

~~X~~ ?
As you were aware Mr Nglowo was suppose to Chair today, but unfortunately has other business to attend to and he as requested me to Chair. So, I am in his chair on his behalf today. There are documents on the table. Each member should pick up a document and the document that you should have in your hands now are (1) the documentation pack for today is dated Thursday 2nd February 1995 that one. Which contains the agenda and the second document you should have is a draft report of the Core Group, which is that one. It is also attached in your document pack for today, but apparently the print is not good. So, there is a loose one which is being done for you. The other document you should have is the PAC submission, some of you didn't get that copy, some of us has got it, this one. It was what Mr Ebrahim promised that a he will circulate amongst the members and the last copy that you should have is the submissions from all the political parties, civil society and individual members. This document has been basically distributed to you on Monday, but we are doing it again.

Chairperson

Yes. We do it again, if the members don't have, so that they can have copies of those documents. Well, ladies and gentlemen, you are all welcome to this meeting this afternoon Theme Committee 2. You will remember that last time when we adjourned, we postponed our Tuesday meeting to allow

the Core Group to meet so that they can look at all the submissions from the political parties individual people, civil society, etc. and any other major stake holder who have made some submissions and regard to the separations of powers. So, we did agree that we will meet today, basically to look at the report, that the Core Group shall submit to you, discuss that amend if there is a possibility that we should amend, if you want to add on something, then you should do so. So, that is basically what we are going to do today. Another thing which I see is attached on our agenda is Community liaison program, of which I am not in a position that will really be in a position to finalize today. We have not had a look at that very seriously as a Core group, that portion of the agenda of the item, item of the agenda for today. But we'll see how we'll approach it when we come to it. So, there are those two major items that we need to discuss this afternoon. But now before we do that, we'll have to look at the minutes before you

UNKNOWN

I think we should also inform the Theme Committee that the Core group has decided to meet with the Chairman of the CA and executive Director, especially to look at the programme with regard to community liaison.

CHAIRPERSON

Can I do that at an appropriate time?

Chairperson

Thank you. Let us look now at the minutes of the 31st of January 1995, they are attached to your pack for today. Are there any corrections arising from the minutes?

Mr P....

I don't know if I should speak for the PAC, but since is very

silent, a ... on page 5 number 3, I did not think the PAC said the Government of National Unity may be supported in principle, because it walked out of voluntary negotiations. I thought what the PAC said was that you could have a coalition Government that arose out of a voluntary agreement. So, as it stands, its there I mean, I don't think it is correct.

Chairperson

Roman 3 page 5

Page 5

Chairperson

Page 5. So I don't think ... Ebrahim. Roman figure 3. You are talking about page 5(III)

I was just saying, I mean, unless Mr Ebrahim disagrees, I thought that the PAC position was not that, because you support it in principle, because it evolved out of voluntary negotiations, was that the PAC said that you can have a coalition but it should come out of a voluntary agreement amongst parties. It wasn't a matter of principle involved.

Chairperson

Mr Ebrahim, are the minutes reflecting the true record, what you said?

Mr Ebrahim

No Mr Chairman, there are two issues that I wanted to raise here, because first what we were there is that a ... PAC is a ... not opposed to the principle of National Government of National Unity that's what we said. But that it must evolve out of a voluntary exercise and should not be inforced.

Chairperson

What Mr Ebrahim says is exactly what is stated in point 3 and I think that this is correct what he said yesterday. Well, the man who said it says it is not correct.

No, he says it is correct

Chairperson

Do you say it is correct Mr Ebrahim?

Mr Ebrahim

No, what I am saying here is that you see is correct to say inforced coalition is opposed by the PAC particularly its enshrinement and the point here, that we want to make, is the principle of Government Unity. The question of having a Government of National Unity, we are not opposed to that. Not because it evolved out of voluntary negotiations.

Yes, what we are saying is that we are not apposing to it in principle there, but what we are saying, that if there is to be a Government of National Unity, it must come out of voluntary negotiations.

Chairperson

Say again

Mr Eglin

He has got a practical problem about this whole issue. I am not aware there were summaries made by the staff of what each of the people said.

No it was.

Mr Eglin

Were you presented the day before? And I believe that the minutes should only contain the documents that were

presented and it is extremely dangerous for anybody to start giving a of what any other party said. Now I am not aware that in the minutes of the other meetings, what - each of us said in respect of our policies, was recorded in this way.

Chairperson

It was

Mr Eglin

A summary of what we said

Yes

Mr Eglin

Or a summery of the document?

A summary of what

Chairperson

I think it was done on a synopsis that the administration form but not join the minutes.

Unknown

If we look at Tuesday, Mr Chairman, if we look at Tuesday 31 January 1995, where you will find submissions and it goes on 3.7 National Party submissions, in the same manner which it is here and the Democratic Party

Mr Eglin

Mr Chairman, I want to say there is a difference between a summary of a submission which is a document that's attached, but I understand that this part was not part of a document. This was a discussion which took place.

Chairperson

No, this was not a presentation

Mr Hendricks

Mr this is the document that we received today of the PAC. It was handed to the secretary as part of Mr Ebrahims submission although we did not receive it on that particular day.

Unknown

OK, Mr Chairman, can I also raise this particular issue with regard to the role of the Senate.

Chairperson

Yes

Unknown

If you look what we said today, was that what was that?

Mr Ebrahim

Yes, we are saying here, since the role of the Senate should be largely confined. We are not saying that is what it should be. We are saying at the moment

Chairperson

What number is that Mr Ebrahim?

Mr Ebrahim

It is number IV

Chairperson

OK

Mr Ebrahim

It says here the role of the Senate should be largely confined, looking after the interest of the Provinces. That's not what we said to it, that it should be the case. We said at the moment, this is what it is doing and we even went further to explain there that the if the role of the if the issues of the Provinces are in fact was defined, there may not be a need to have a Senate.

Chairperson

Okay. I don't think that will be corrected by the administration.
Danny?

Danny

Ja, Mr Chairman, I just want to get clarity on this question of the Roman III again. Page 5, because I am not clear that ...Assuf was saying that the way this wording is outlined here, doesn't give the correct thing, because I mean to support in principle or the principle of a Government of National Unity. My understanding is different to what the reading says here. Because it says the Government of National Unity may be supported in principle. My understanding of Mr Ebrahim is that they are not opposed to the principle of a Government of National Unity. I just want to get that wording right, because Beyers says is the right thing. I don't think its the right thing what he is saying. We just clarify that.

Chairperson

Mr Ebrahim, would you like to come in again?

Mr Ebrahim

Yes, I thought I have just stated how we would like to put it there. We are saying here that.... the PAC is not apposed in principle to the concept of a Government of National Unity, but that such a thing must evolve out of voluntary negotiations.

Chairperson

Is that clear Danny?

Danny

Satisfied Mr Chairman

Chairperson

Satisfied Mr Ali.... Are there any other corrections? Can we then adopt the minutes?

Unknown

No, no, Mr Chairman. This is not a correction. Let's go back. I think we are debating something unnecessary. What did the PAC say exactly.... now, I am going to quote from the document, in comparison to what is stipulated there. Let me just get through the The PAC from the outset that is now from their document, apposed enforced coalition, in particular it, enshrining it in the constitution. Then comes the question that we are debating. In principle we support the concept of Government of National Unity. But such a Government must evolve out of voluntary negotiations. And this is what is standing in 3.

Yes, that is exactly

So, what are we correcting now?

Chairperson

Yes Peter?

Mr Hendricks

I don't want to pursue this. The easiest way of correcting paragraph 3 will be for it to read "Enforced coalition is apposed particularly its enshrinement in the constitution. And that a Government of National Unity may be supported in principle if it evolves out of voluntary negotiations. By changing those two words would then make it correct.

Its not stipulated like that in the document.

Unknown

Sorry, Mr Chairman. Can't we solve the problem by just asking that, what the PAC said in their document. Should then be reflected in this minutes. So we don't have any further

discussions.

Chairperson

Would you be happy with that Mr Ebrahim?

Agreed.

Chairperson

Fine. Can we then adopt the minutes? Minutes adopted. No matters arising from the minutes. Now, the second thing that comes on the agenda is a question of the submission, the report from the Core Group. Now we have circulated the report from the Core Group as you mandated us to go and look at the submissions and then report back to you today. Now, the members did not get the documents timeously. We thought that administration would circulate the documents very early today, so that members could go through the documents. What I am going to do now, is to go through the document together with you, that will allow you time to look at what is contained in the document so that when we come to discussion, everybody knows what we are talking about. Now, basically we thought that we should have an introductory part of the report. I am not going to go through anything here, all that we need is to stipulate how many submissions we've got from different political parties and how many we've got from organizations and how many we've got from individuals. And then what we thought was very important in the introductory part of that report, was to mention the principles that guides us in regard to the separation of the powers and that principle is principle 6 which reads as follows - "there shall be separation of powers between the legislature, executive, and judiciary, with appropriate Check and balances to ensure accountability,

responsiveness and openness. That principle is in the constitution. So, that is just to remind the members that we have actually agreed about that there is no political party that say that there shouldn't be a separation of power. We all agree that there should be a separation of power. There is no individual according to all the submissions that we have gone through which say there shouldn't be a separation of the power. All of them agrees to the principle. And there is no organization that says we shouldn't have a separation of power. All of them agrees that separation of powers should be there. And then just to add to that, we also said in 1.3 that it was understandable that many submissions on separation of powers also focus on aspects of structure of Government which is the next subject, that we need to tackle in details information gathering and report by the ... Committee 2. The Committee 2 will not report on this, on this latter aspect of the submission and will not report on it at this stage, but will confine its report to the issue of the separation of power. Now, that might be a little bit complex statement, but just to simplify that. What we are trying to say here is that the question of separation of powers deal with some other things which we did not want to deal with here. We are on block one merely dealing with a pure question of separation of powers. We did not want to include the structure of Government, how those structure function, we did not even want to involve ourselves into many checks and balances into that regard. We wanted to simplify and confine ourselves strictly to the question of separation of powers. Therefore, many other issues when we discussed block 2 and block 3, which involves now the structure of Government and the functioning of Government,

we shall then deal with a lot of issues around that issues. So, we are not going to report about that at the moment. We purely going to report about the separation of powers. Now the areas of agreement, as we have been discussing as a Core Group, in a meeting we agreed as follows:

That there was general agreement in the submissions that the new constitution must contain specific provisions in which the separation, the separate legislative, executive and judicial powers are vested. There was an agreement in that. Full concensus on all those who have been there. Now we thought that we should break this into three, in the form of legislature, executive, judiciary and then end up with a sentence that will deal with checks and balances. Now, under legislature, we have agreed as a Core Group that there should be a Parliamentary form of Government. That is necessary that we should have. We're not debating the issue which type or form of Government we should have. We merely all understand that as a separation of power, we need to have a form of Government. What type or form of Government that will come later and is even debated amongst other committees. Secondly, we said the legislative authority should vest in Parliament. In other words, Parliament in this case, is the only body who has the authority to make laws. So the legislative authority will then rest in that Parliament. And thirdly we have been saying the legislative authority of the republic, shall subject to the constitution vest in Parliament, which shall have the supreme power to make law for the Republic. So that is the only body that will be responsible for making laws. That is all what we want in report about under the legislature. I will give you time to ask questions. I'm just presenting the paper

to you. Now as a report-back from the Core Group.

Chairperson

Yes Mr Beyers?

Mr Beyers

Can I just ask what the necessity is for actual repeating 2.2.2 in 2.2.3?

Chairperson

Can we come to that later? Fine. I would like the Core Group members just to look at that in the meantime while I am presenting this.

On the executive, we are saying that the executive authority should vest in a President who shall also be head of state, and the President will then be assisted by a cabinet, or by a Prime Minister, or by a deputy president and a cabinet in which case the President will only be the head of state. Now all what we are trying to say there is that the question of a ... whether we shall have a head of Government who might be a Prime Minister that is not yet deliberated, but we may have that case that will have head of Government, and if we do have the head of Government, the this executive powers will be vested in him. If we do not have a Head of Government, the executive powers will then vest in the President assisted by the deputy President. But that issue has not yet been deliberated. It will actually come when we deal with the structures of Government and the functioning of those structures. Now point 2, we are saying that the executive shall be accountable also to Parliament. We're building in that checks and balances that the executive should be accountable to Parliament. And three, we are saying cabinet ministers shall be accountable

individually and jointly to the head of Government in Parliament. And then the third issue, that we dealt about was the question of judiciary. There shall be an independent, impartial judiciary subject to the constitution. And two of that says there shall be an independent constitutional court with the powers to nullify any Act of Parliament if such Act of Parliament conflict, is in conflict with the constitution. Now briefly that is what we say that judiciary should be. We are not engaging ourselves in details most because theme 5 - I think actually deals with judiciary we're merely stipulating the separation of powers of judiciary there. And that last question, which we dealt about, was the question of checks and balances. All what we're saying here, is that there shall be checks and balances that will restrain each branch of Government. That is checks and balances to be read is under block 2 and 3. Now the reason for that is being that we have a whole lot of catalogue of checks and balances that we need to look at. And they will actually be very clear when we deal with the structure of Government and their functioning - who shall be accountable to who. What should happen at this stage and all that. So, we're quite having a number of those checks and balances that we need to all of us re-advised and that will deal with those checks and balances in detail when we deal with block 2 and block 3. Now, just before I allow you to ask questions of clarity, this document that you see in front of you, does not represent a political party point of view. It's a document that has been drafted by a Core group jointly. And we have agreed as a Core Group that we think its a good report that could be tabled to this Theme Committee meeting today. What happened, is that each political party had gone

through all submissions of political parties and individuals and civil society, they made their own synopses, they compared the submissions as we requested that they should do, and they came with their summary at a meeting of the Core Group. And what we did, we looked at all the summaries from different political parties and then we said this is the best way to deal with this report. This is why I say the document in front of you this morning does not actually reflect a certain political party standpoint of view, but its a document that we have considered jointly as a Core Group in presenting it to you as a Theme Committee. I think it has just taken me 10 minutes to introduce that document. The questions which will be arising, the members of the Corel Group will be responsible to assist in answering those questions. I now give this time to the Theme Committee members to ask questions, just questions of clarification, then thereafter also allow time for comments and discussion to the document.

The first question has been already posed by Mr De Beer.

Unknown speaker

Mr Beyers and I think Mr Hendricks wanted to pose the same question and I'll allow the answer first there then I'll come to you.

Mr Chairman, before you I think the second one follows on the same, because it has the implication as such and I just want to say it is afternoon already and not morning, but I mean it is a matter of duplication in this particular legislation in executives. Maybe they could answer that. I don't know who is suppose to answer.

Chairperson

What is your question clearly?

Unknown

Mr Beyers has asked the whole question of double 2, triple 2 and double 2.3 - there is a duplication there.

If you look at the executives..... it says basically the same thing, it says "President shall be the head of state" in stead of the last end of the sentence it said "in which case the President will only be the head of state" I mean ... what does it actually mean?

General Viljoen

Mr Chairman, that's true, we made a mistake there, but we also left out something. So, I would like to suggest that we scratch 2.2.3 as it is at the moment and replace it with the following sentence which reads "Parliament shall be the expression of the will of the people" that's the part which we left out in the third one. In other words, scratch the part which read "The legislative authority of the Republic shall subject to the constitution vest in Parliament which shall be the supreme power to make laws for the republic". Because we said that in 2.2.2 but the part that we left out we should fill in and that reads "Parliament shall be the expression of the will of the people."

Mustn't that be 2.2.2 and 2.2.3 remains as it is?

Yes, we can do it that way too. 2.2.2 Yes.

Chairperson

Any member of the Core Group want to respond?

Unknown

Mr Chairman, I think 2.2.2 and 2.2.3 are duplicating each other and I would suggest it would read better if we suggest the generals proposal. Mr Groenewald, this is, there should be a Parliamentary form of Government - the next one is that Parliament should be the expression of the will of the people and then the legislative of authority should we keep 2.2.3 So, I would suggest that our new statement should go 2.2.2

(Mike went off)

Unknown

..... understand it correctly. We are saying that one should stand as it is, namely that there should be a Parliamentary form of Government, and that two should be deleted and be replaced by what the General has said, namely that Parliament shall be the expression of the will of the people

Chairperson

That's right.

No problem with that. And then we leave 3 as it is.

(Mike went off)

Unknown

Mr Chairperson, with regard to the executive, 2.3.1, it says that the executive authority should vest in a President who shall be assisted by a cabinet, or by a Prime Minister / deputy minister and a cabinet. Those are two options. We can have the President assisted by the cabinet or we can have the President assisted by a Deputy President or a Prime Minister and a cabinet. I think the whole question of the head of state and head of Government should be a separate entering in

there. I don't believe if we, for example, decide we say that the executive authority should vest in a president and a deputy president and a cabinet, does that automatically mean then that the President can not be the head state - because that is what this sentence is saying. It is saying that if we bring in a deputy president or a prime minister, then the president will only be head of state and not head of Government. But I'm saying that if we decide on a President and a deputy president with a cabinet the president can still be head of Government. Yes, that is right. It is not excluding the possibility of him being head of Government. So, we need to rectify that.

You're right.

Chairperson

Do you immediately have the way in which we can?

No, ... rather English experts to assist in that.

Chairperson

To assist us later on that. Unless somebody wants to argue with that. All right.

Unknown

It might help Mr Chairperson if we ended that sentence after cabinet and delete the words "in which case the President would only be the head of state."

Chairperson

All right. I think Mr. Eglin's hand was first up. Mr Eglin, then comes Mr Msomi, then comes Mr

Mr Eglin

Mr Chairperson, I agree that it's in a sense untidy, but I think this is essential saying the executive authority is either vested

in a President and he can be assisted by a cabinet even with or without a Prime Minister or a deputy President. Or else, he is the head of state in which case the other alternative is the executive power is vested in the Prime Minister or the deputy President. Those are the two alternatives. I just think it is a question of tidying it up - one is what I call a traditional parliamentary system, and the other one involves a executive presidency assisted by people, but I think as I understand the submissions, the question of whether he should be the head of state, should also be the executive head, was a matter of dispute. Some people said you can combine the two and you did say you do combine as I would combine. He can still be assisted by a cabinet and a Prime Minister and all the rest of it. But the other concept was the head of state should be separate from the head of the executive. This is an attempt to express that it might be a bit untidy. Or you can just say it was, you can actually just said it should either rest in the President or in the Prime Ministers and Deputy - those are the two alternatives. But the issue of the people who wanted it, the parties have said it should be vested in a prime minister in what I call a Parliamentary sense, also added that in those circumstances the President should merely be the head of state - that's why we put it in. It is untidy.

Unknown

Would it matter if we made two separate entries for that? So we could either have a President who is head of state, assisted by a deputy or a Prime Minister, or the other option then is to have a President who is head of what? Head of state and a deputy / prime minister who is head of Government. There is two options. We only decided here on

which option we want. The traditional parliamentary option or the executive option. So it should be two separate entities that we are submitting to the CC.

Chairperson

Okay Peter. Just draft it the way you want to draft it for us. Let me in the meantime hear the views of other people. Mr Msomi and then Mr Diale.

Mr Msomi

Mr Chairman, to a large extent I think the two responses have covered 75% of what I was going to say, but just to allow two important points, is that the Call Group did not decide on the areas of disagreement and we did point out that this is a subject for further discussion. But maybe your leadership will help us whether by even doing that, we are not inviting a discussion of the issue as such. But I will be content with splitting this two points in order to give clarity so that there should be no ambiguity. If it rest there, without really going into the substance of the discussion. I am Okay.

Mr Diale

I think it was generally agreed that this agreement will deal within block 2. Because that is actually the area where it belongs, in stead of the separation of powers.

Chairperson

Okay. There are two things that we can do now. It is either a split as Peter has suggested for clarity purposes, or we leave it untidy as it is. I'm in your hands. But lets allow Peter, maybe to read what he's got and see whether do we really want to change this.

Mr Eglin

Chairperson, because the issue of how you under structure the

executive, is really a block 2 matter shouldn't it just say that the constitution shall make provision for an executive authority? That's all you're saying what it is. How the executive authority is going to be structured, is what we are going to be debating later on. And then, the second paragraph this, the executive authority shall be accountable to Parliament. Deletes this complication and just say that

Chairperson Peter, are you happy about that?

Yes

And the other members?

Chairperson Okay, then we take Mr Eglin's suggestion. Just read it again Mr Eglin.

Mr Eglin The constitution shall make provision for an executive authority

Chairperson For the sake of administration, can you repeat slowly again

Mr Eglin The constitution must make specific provision for an executive authority.

Mr I saw your hand is up

(Mike went off)

Chairperson That maybe we leave the question of who will be the executive at the moment, whether the President or the Prime Minister or what ever the case may be, because that is actually the structure that we will deal with when we come to block 2 and

block 2.

Yes, we support that sir.

Chairperson that's right. All what we say is that the constitution will provide for a specific executive authority.

Chairperson Thank you very much. Any other questions with regard to the report?

Mr Eglin Mr Chairperson,.... raise the issue on the judiciary.

Chairperson Yes

Mr Eglin 2.4.1 says there shall be an independent impartial judiciary subject to the constitution. 2.4.2 says there shall be an independent constitutional court. I from my view are saying independence in the same sense it should be independent from the legislature and executive. The question as to how independent the constitutions court should be within the framework of the judiciary, is a matter which is debated in block 5. So, I'm assuming when we're talking here independents, we mean it is a constitutional court that is in total separation of powers, is independent from the legislator and the executives. But how it relates within the system, quite happy

Mr Msomi Mr Chairman, the further discussion on that issue, had taken the matter slightly further when we look into judiciary though we cannot really debate it here. We should take into account

the components of the judiciary as we perceive it, by not necessarily putting too much emphasis on the Western form but the cultural form of judiciary system as well. Just to highlight that too and not moving to a straight forward Western form of judiciary. Just to mention that, just to be in our minds.

Chairperson

Point noted. Well ladies and gentlemen, if there is no more questions of clarity, what am I going to do now, is to allow political parties to express themselves briefly, I would recommend 3 minutes will be enough, just to express yourself on the report from the Core Group. Are you happy about it?

The ANC are you happy? Okay. The National party, are you happy about it? Inkatha? You happy FF happy. PAC? The DP?

Mr Eglin

I am happy with it at this stage, but I say if I was the person who had to draft the constitution clauses, based on this, I think it is a fairly flimsy recommendation. But nevertheless I think it provides the basis of thinking on these matters

Chairperson

Thank you Mr Eglin. So the Theme Committee endorsed the report from the Core Group and with your approval then the administration would prepare, we go through the rectify as you have recommended and then make a full report to the constitutional committee. I think we should be in a position to submit our report by Monday, next week to the constitutional committee.

Unknown

You carry on Mr Chairman, a question or a suggestion

Chairperson

Yes

Unknown

It is stipulated that minutes should be signed by the chairman within 48 hours of the meeting, having taken place. Can't we go to the old rule where the minutes are presented in the meeting, approved and then signed by the chairman. It makes it difficult for the administration. Thomas had to come to me last night to go through the minute for today's meeting.

Chairperson

Now what are you proposing?

Unknown

I am proposing that the minutes be presented at the meeting, approved by the meeting and then signed by the chairman.

Chairperson

Any problem with that?

No problem with that

Unknown

Mr Chairman, just before you... Mr Chairman, I suppose a .. We would get corrected copies of this document/ report. The amended report

Chairperson

Can I then request the administration that after you have corrected this, to give copies to all Theme Committee members. If you can throw that into their pigeon holes, because they would like to see whether what we have submitted to administration is exactly what they want.

Well ladies and gentlemen, then that concludes our discussion on the report from the Core Group. Now, our last subject that

we have to discuss, is a question of the Community liaison programme.

Unknown

Mr Chairperson, just before you go off, I have a proposal to make. We have received submissions from organizations not in Parliament as well as from individuals. I like to propose it as a form of courtesy and also feed-back that we give copies of the reports that we submit, that we send copies of those report to that organizations and individuals that have submitted submissions to us. So that they know what we have decided upon.

Chairperson

Well ladies and gentlemen, there is a proposal. Anybody who is against that? Proposal carried on. We will request administration to work on that.

Unknown

I think we must be careful about that

Chairperson

Right, lets hear that.

Unknown

When the CA has adopted the report, then they will publish it for public comment. I don't think its on our avenue to submit our decisions to the public now. That must be left to the CC and the CA

Chairperson

OK. But the principle that they should be sent, nobody is against that? Its a practical way in which we should deal with.

Unknown

But then we must clear it out with management

Chairperson

But it shouldn't be sent by us, it should be sent by CC

That's right.

Chairperson

But the principle that we should do it, is acceptable. The procedure, the administration can sort that out. Thank you.

That brings us to the question of the community liaison programme. The Core Group at their meeting received a letter from administration which says we need to finalize our public participation events, but I would like to report to this meeting that the Core Group did not have time to actually look at the way in which - how they are going to structure the public participation events. Merely because we were task with the. We were back down with the question of completing the report so that it could be tabled to the Theme Committee members today.

Besides that, another problem which arose was there, there are a lot of issues the way we need clarity on, also as a Core Group as to how to go about its public participation as you are aware that it is centralized, there is only one body that a..... work out the programme for public participation, that is administration, the directorate and his administration. Now we need to clarify a lot of issues left, for example, the question of overlaps, how do we go to hold public hearings in carrying other people on board of the other Theme Committees, where issues are overlapping etc. It becomes difficult for Theme Committee 2, for example, just to hold its own public hearings at certain provinces. People will just not concentrate on what

Theme Committees dealing about, but will concentrate on other Theme Committees as well. They would like to ask questions about the state, they would like to ask questions about human rights or maybe ask about the public service or whatever the question may be. So, these are some of the questions which still needs clarity, that we need to discuss. But the Core group then propose that maybe the best way to deal with this, is to allow the secretariat, the chairpersons of the constitutional Assembly to meet with the Core Group members. To discuss the issue clarify the issue that wants to be clarified and then thereafter, we as the Theme Committee will be in a position to work out our public participation events. But maybe just to note the previous meeting which we had agreed on our work programme, which is very important. We said, we now approve of this - we said that administration should notify the CC in that regard and then thirdly we'll take it there as to how we will organize our public participation, seeing that we now have approved our work programme as a whole. I have just received a note, I don't know whether Mr. Rabie has received this and Mr Ndlovu maybe will get his via Mr Msomi. The chairpersons of the CA are now calling for a meeting of the chairpersons of Theme committees on Monday. That meeting will start at 10.30 till 1 o'clock and the things be discussed there are the Theme committee reports, the constitutional and the management committee decisions, the work programme of the whole CA, the community liaison programme, technical committees and other things that may arise there. In view of that fact, I would suggest to you that maybe we wait for the meeting that will take place on Monday of the chairpersons with the chairpersons of the CA. Once we

have dealt with this issues, there in a smaller group, then the three co-chairpersons will immediately try to organize a meeting with the Call Group of this Theme Committee, report to them, see how do we take the matter on from there, and then maybe, prepare a brief report to this Theme Committee, to say we propose that we can handle this question of public participation this way and then the next sitting of the Theme Committees. Then maybe we could be ready to produce that first report for discussion, by the Theme Committee and I hope it could be possible to meet on Monday afternoon if we are all in, but I'll not discuss that with other Core Group members. We might need to meet just for two minutes after this and see whether it is possible to meet on Monday afternoon to start strategizing on how are we going to approach the community liaison programme issue. That is my proposal. Can I hear your comments and your views on that?

Chairperson

Well, we're meeting on Tuesday. We are not meeting on Monday. We are meeting on Tuesday at 8. 9 o'clock in the morning, so what I am saying is that if the Call Group would then have time to meet on Monday afternoon, it can be in a position to present its first discussion document to the Theme Committee on Tuesday.

I've got no problem with the proposal. But can we just find out from the administration side, have they informed the executive to place their advertisements with regard to block 2 and 3.

Actually we have submitted our report as a Theme Committee, secretariat to the administration that will be discussed

tomorrow morning

End of this side.

Tape 2 - Side 1

Theme Committee 2 - RM.M46 - 2/2/95

.... certificate to block 2 and 3.

Actually we have submitted our report as a Theme Committee. Secretariat to the admin. that will be discussed tomorrow morning. So, we have noted your point about the advertisements, so they will take it further.

Maybe we could also raise that question on Monday when we meet Mr Chairperson. I think we are really going to like this issue. We need to do something about it.

MR EGLIN

When the Core Group Committee met yesterday, I then suggested that there should be a meeting between the Chairperson of the CA and the Core Groups. I notice they have said it should be the Chairpersons. I don't mind in terms of the numbers, but it does mean this, that on Monday the three Chairpersons will have to sit there and they in the afternoon again will have to transmit the detail of the discussion that took place to the Core Group Members. I would still prefer it to be with the Members of the Core Groups. If the numbers are too great to manage, I would ask the Secretariat to see that we could have a room where other Core Group members can sit as observers so that there isn't a necessity to repeat the whole thing again to all the Core Group Members on Monday afternoon. I just raise that as a matter of seeing that there is a continuity in this

process.

Chairperson

The Core Group will still have to sit to prepare a report to the Theme Committee.

I think what Mr Eglin is, they will be there, listening to the discussions and then we don't have to report to them when we meet in the afternoon. It is a question of getting into the job and see how we prepare for the Public participation events to take place. I think that is what he is trying to say. Now this invitation comes from the two Chairpersons. I think what we need to do for now is to try to see whether we can get them in hand and ask them whether they can extend this invitation to all Core Group Members. I will write from now. I will take it up with them. Then, if they do invite the Core Group Members, I think there should be something in your pigeon hole this afternoon. Unless there is somebody that is against it, but I think that is a good idea. Any other thing under public communication programme? Are you all happy about it?

Mr Pahad

It seems to me, that the Administration and that have done a marvelous job in preparing this document and obviously had a difficult job in bringing together the different request from different Theme Committees. But we as a Theme Committee need to do certain things. For example, on page 16 of this documentation we got today, 15 and 16, it says - all Theme Committees are free to indicate to see which hearings they would like to attend. We have to take it in decision today. We got to say "Yes" we agree that we would

like to attend to all of those presumably, but I am saying that is a decision this Theme Committee has to take. It then says, under Seminars, this propose the whole seminars in order to brief Theme Committees on constitutional issues following the work programme. Now, I think we need to say yes we would be interested in the seminars, but presumably the main input should come from us as to what are the areas we would like that seminars to be held. Not some law advisor or some Technician. They can facilitate the process of holding the seminar, but the concrete topics and subjects should be given by us and therefore it should also require the Theme Committee to have its own discussion. The third point is that on page 18, three options are given. Again this Theme Committee has to say something to the Administration. As to which particular option this Theme Committee thinks is the most feasible for them. Then the Theme Committee has to work out quite clearly who from the Theme Committees would attend which of the Public hearings. I have some other matters, but these requires - it seems to me some kind of decision by the Theme Committee which can then be given to the Administration, otherwise it seems to me that the Administration will remain in the dark with regard to what our views are in terms of the recommendations they have made to us.

Chairperson

Thank you Mr Pahad. Apparently you have done a good job. You have gone through the whole document. Can I just ask, maybe that we quickly go through the document if possible. We might spend 15 to 20 minutes on this. Say which things which we need to take decision on today. So

that they shouldn't hamper the work of the administration. Then those things we cannot take decisions on today, we leave for the Core Group Meeting to decide on because something for discussion on Monday when they meet. Now, page 1 of the document basically gives the introduction. There is nothing that you can approve there. Maybe what we can look at is page 12. Page 12, the time phrase there. They say it is that CLP, that is Community Liaison Programme will be running in two phases. First phase, develop draft constitution. Then second phrase popularise rise the draft constitution. I think the CA has already taken the decision on that. We don't need to take a decision on that one. Then we go to page 13, where it says the process. Under 6(a)(4) Proposed briefing. I don't know whether you would like to take a decision on that, but that is already set out. It is a programme which is already in motion right now.

Mr Ramusi

You now said that we are meeting on Monday to particularly discuss the community liaison programme and then the Core Group meets to prepare a report for the Theme Committee. Now, is it necessary for us to take decisions now about that if we are going to be briefed on Monday as to exactly what is going to take place. We confused the issue I believe.

What I was thinking, maybe as Mr Essep was drawing out, there might be urgent issues where we would like to take decisions today, but us say Mr Groenewald, general.

Mr Groenewald

Chairman, I also think we can't make decisions today, but can I just add to what Mr ... said and just point out some

critical issues. The first one is, as far as the hearing is concerned, in paragraph 7(a)(1) The need for this hearings is subject to input from the Theme Committees. So in other words, we will have to give an indication of what hearings must be held from our side. This is something that I think Theme Committee Members must think about and to brief their Call Group members and then of course added to that, to indicate what hearings we would like to attend. The second point, is the one about the seminars and once again, the seminar programme will respond to the needs of the Theme Committees. As in the case of the hearings, we will have to seriously think about what seminars we would like to attend and the next point which is also important, is the one on page 18 and that is the Theme Committee commitments where they give the three options. From my side I would like to say that I think this decisions is already been taken by management. That they will not insist that these meetings should be held on Sundays. Those are the critical issues.

Mr Msomi

I support that approach Mr Chairman and perhaps to add that if you will be discussing this on Monday, it will be advisable to revisit the venues for such public participation programmes. It is a very very critical issue.

Mr Eglin

We started to develop a few, as what we might require. Now, we have got from the management side, what they are thinking in terms of say Community Liaison Programmes and I think we want to hear more about what they have in mind. I look at under the Theme Committee request on page 15 item 7. Theme Committee request hearings, there

it says 7(a)(3) process, the CA proposes single hearings where there is overlap between different Theme Committees and then there is a schedule of hearings February, March, April, May, June - dealing with religious groups, labour, women business. I don't know quite how that fits in to what we have in mind. We would clearly like an input on specific subject. I don't know how we can wait until June to find out what religious groups may be thinking. I don't quite know what they have in mind, but I am sure the discussion with them on Monday will clarify what they are thinking and how we can fit into what they are thinking and how they can fit into what we are thinking. I don't think we can do it in the absence of that discussion with them.

Chairperson

Then my ruling will be, the question on the community liaison stands until we discussed it with the Chairperson on Monday and it will be ready for the Theme Committee Members on Tuesday. Agreed? Fine. The next item is the other business. Any other business? Have you all signed the register?

We haven't seen it yet

If you have not signed it, you are absent here today. Any other business? If no other business, this meeting stands adjourned until Tuesday 9 o'clock. Thank you.

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 2
STRUCTURE OF GOVERNMENT

7 FEBRUARY 1995

RM 46

TAPE 1 - RM M46

7/2/95

Theme Committee 2

Firstly I would start by requesting you to look at your minutes. First of all let me just request to ask this question. Where to eliminate the problem that we have here, some other people don't get their documents until they come to the meeting some other do by their sure luck get documents beforehand. I am requesting to move those people who've got their documents yesterday just to raise your hands so that you, won't bother because they, there is a lot of people who have signed but they have not got their documents yesterday. Those who have got yesterday. Thank you very much.

There are some of them that did not go to their offices or pigeonholes maybe

I did not here Sir

Some did not go to their pigeonholes

OK OK OK Let me just not open the let me just try to close it

Chairperson

Those who have not receive their documents until today we are very sorry because what have happened now. According to the information from the secretary next to me and the manager there is some have come to the IFP offices at 4 o'clock those people who haven't receive their documents but they find it all locked and I say this is sure poppy talk, because I was there till 9 o'clock in the evening.

The matter was to take to not deliver, but why I say I am sorry, (interrupt - laughter) because I want to close it because, because, I want to request all members really, to make sure that if they don't get their document in time when they come to the next meeting they just say that so that you'll know what's going on so, because we come to our not getting the document in time because of this moment in time I have to give you time now for those people who haven't got their documents yesterday to read through the minutes, so if you go through the minutes and to go through the as they are

Unknown

Mr Chairperson can't we find another mechanism to solve this problem. If people haven't got their documents at least say at 4 o'clock if we have a meeting the other day can they just phone for us and ask, Thomas whether the documents are distributed or not and if not what plan can be made so that they receive their documents. I think they have been very cooperative up so far. Maybe that is another thing. All our partners also do something to assist administration.

Chairperson

There is a suggestion. Yes

Unknown

Can just quickly speak to that. No that is of because the secretariat yesterday afternoon was busy. I desperately did try to phone. It does not work. The phone does not get answered because I think they were at a Core Group of Chairman's meeting.

Chairperson

Yes, you want to say something or you didn't. She did compromise by saying that those who haven't got documents and they see the time running were they try to

contact the office and find out what is going on. If they do not get the satisfaction out of it they raise the matter here in the Theme Committee so that we'll take it up directly with the management. Thank you.

....

2281 Mr Chairman

Chairperson

It is in your minutes at the bottom of the first page.

Unknown

All say that telephone systems have change it may, there maybe difficulties because they just install new telephones.

Chairperson

If that the problem of being true you may find that maybe numbers have being changed as a matter of that but first try. Should we then confirm them, Oh sorry

Unknown

Mr Chairman it must also be noted that somebody signed on our behalf that we received documents. That must be investigated, because I left my office at 6 o'clock last night and nether last night nor this morning were there any documents, but somebody has signed on my behalf

Yes somebody signed on my ... (sound dead)

.. secretary Laughter

Chairperson

What the secretary deciding is that he will circulate the signatures, the list of people who signed yesterday and next to it list, to say that I did not sign, this is not my signature, so that it bring forward immediately.

May I, may I call the meeting ... and then to deal with the matters at hand.

Thank you

Chairperson

Thank you, thank you generous. Should we now do the minutes, oh before we do the minutes, can I just introduce two gentlemen on my left. Two gentlemen on my left. These are our technical experts. Two of them are here is Professor W..... and Advocate M.....

Asking you to repeat the names

Chairperson

Well Professor Van Wyk and Advocate M..... (Spell) Motimele.

Professor Steytler

Chairperson

and Professor Steytler who is one of our Technical Committees. In other words three of them are here and Professor M (Spell) Steytler. We welcome you to our Theme Committee. We request you to take note of our debate of our although we go to meet at the Core Group after this meeting or maybe they will schedule a meeting for you for proper introduction under Core Group then we will leave the matter for that. Thank you very much.

.....

Chairperson

Again we welcome. Again we welcome our technical member untraditionally as Professor C G... who have just join us now. Welcome Sir. Those who are sitting with you is Professor L.... on your left hand side and on your right

hand side is Advocate M... Motimele and Professor M Steytler. Thank you very much.

Ladies and Gentlemen may I have the confirmation of the minutes. The minutes of the 21st,

21st?

Chairperson

It should be the second. The meeting of the 2nd.

Unknown

Mr Chairman just a correction, I fail to apologise on behalf of Mr Bester that can just be noted and I then I would propose that we Oh

Laughter

....

Yes, there were also a few apologies stand out on behalf of some of the members but they have been marked absent, S... , M.... J, M... GM, L..... MG. They were attending a conference on Agriculture last weekend and their apologies were attended.

Chairperson

Yes

Unknown

Mr Chairman I see I have been marked as absent, I was here, so I would like my name to be change to being present at the meeting.

Chairperson

OK

Unknown

I left another too Sethema BB and Sh..... S and N... SJ and D..... and M..... Yes they were on the Agricultural Seminar

from Thursday last week.

Mr Chairperson

...page 3 under apologies ..

Put your mike on

page 3 under apologies I know that Mrs Maduna and Gl...
are very important but is it necessary for their names to be
in capital letters

(Laughter)

It is typical of you Mr....

But Mr Chairman but that is the point I wanted to raise my
name is in ordinarily letters and I submit respectfully that is
taking affirmative action to far.

(Laughter)

Mr Chairperson I had your permission to be absent so may
please ask apologies to be recorded

Chairperson

Are there any other correction of the minutes

Unknown

.... in this minutes if you see a question when we talk about
a, is this the same minutes, yes, if we talk about line
1,2,3,4,5, is page 4, line 1,2,3,4,5 Government Nationality
that is the page I don't think there it's a error there you've
change a M to a N

No accepted apologies (Laugh)

Chairperson

Ok, now may I have the adoption of the minutes. ... Thank you very much. Now we have come to the report

Unknown

Before that,

Chairperson

Yes

Sorry I wish to convey the apology of Mr he has been called to the garage where he bought a car he will join us later.

Thank you (Laughter)

Chairperson

Apologies accepted. Is there any other apologies? Because I don't want us to divide matters now. Ok we come to the report. The meeting requested the Core Group to look at the recall after the finalisation on the 2nd, and the Core Group note yesterday to look at the report as it stand in your shadow. The word preliminary was changed or was taken out, which is, course, it is there until the Constitutional Assembly 2 Committee 2 separation of powers block one and it read before premolary report, now is suppose to read; the report as at 2nd of February 1995. That was the first amendment, is was done to that report by the Core Group yesterday. (Stop) We welcome you Is there anything else maybe the members wanted to raise in this because the Core Group have just change that on there, as your requested that they must go back and say, they just change that only, and then the recall was adopted by the Core Group as a stand. Is there anything else that the members want to say before adopted reports.

Sorry (mike off)

Chairperson

May I take it as in continued agreed report as stands after amendment? Proposal. Proposal agreed, agreed. We are at a meeting, when I ask a question you must respond to it.
Agreed

Agreed

Chairperson

Thank you. We come now to the Core Group report of a work plan that is item number 3. No, the work plan in your item, item number 3 the work plan which was dealt by the Core Group. Yesterday. No we have no documentation yet.

Unknown

Number 4

Unknown

Course it is number 4

Unknown

On the agenda it is number 3

What are you looking at

Unknown

You see I am looking for another document

Unknown

What program

Chairperson

Yesterday the Core Group dealt with the program of the Theme Committee as it stand and again we adopted the original plan of the Core Group where it says that; we are going to stick to our blocks as they are, and we went further by saying that the Core Group should meet with other Core

Group Chairpersons to discuss the overlaps so that we be able to chart our way forward. We as Core Group agreed that we stick to the original plan of having 2 and 3 together and we substituted 3 by bringing forward traditional authority and then the will be the Volkstaat. And we said that if there is a problem with the management, if there is a problem with the management about these, we will reconvene a meeting to present out as soon as possible, so that we can begin to discuss our themes with the Core Group and our technical experts. We went on and talked about the advertisements and the submission. We said block 2 which is the structure of Government on National and Provincially where we request that the parties should adhere to the 22nd of February as the date for submission of that block. And we foresee that it will be a good time for the public to have the same date and to extend that date up to the 10th of March for the public to submit for that block.

That is block 2 which is the structural of Government Nationally and Provincially. But when it specifically eliminating as a Core Group, we said that it would arise if the Core Group of Theme Committee 2 meet with the management and meet with the people who would be dealing with advertisements, because we offers something to do at advertisements which will combine the National and Provincial, but at this moment in time we want to see the executive and the structure of the executive to be approved of first. Therefore advertisements should be done in appropriate to that it does not confuse the public. What we want first and what we want second. And that of the meeting, that idea of meeting the management with thefor if you as members of the Theme Committee approve, what were suggested yesterday. The was that, we request the members from ... Theme Committee for

advertisement of block 2 in two parts. That is on executive and National legislature and then on a Provincial legislature or Provincial Government. There is another idea that we do it differently, there is another idea that we do it both, but we separate the date for submission, not from Political Parties but from the public that the public know which one we need first as a Theme Committee and which one we need second. We said because maybe it cost too much maybe it will be confusing to other people outside parliament. When what I said has been done we'll call a press conference where the members of the Theme Committees will explain, that is all apart that is a team, because we will not put everything in an advertisement. So that the members outside, the community outside, the people outside will be able to know and follow what we want from them for their submission. Again I request that the D date, we requested that the D date for submission for political parties for the 22nd and for the public should be for the 10th of March. May I summarise what I've just said so that now you deliberate and give us the Firstly I said that our program, our plan, well program, which stand as it is as we have said that we want it as it is. If there is a problem of certain blocks, if management has a problem of trying to compare blocks, and then we suggest that there should be a meeting with all the Core Groups where there is overlaps, so that we deal with the matter and a way forward. That is the first thing I request you to uphold as members of the Core Group. Secondly in our program, block 2 is combined with block 3. In other words we have block 2, then 3 is Traditional leaders, 4 is Volkstaat and 5 is System. We are requesting you now to mandate us as a Core Group or tell us what to do, because we have this in mind. Firstly, we send out an advertisement for

block 2 so that we explain our Theme Committees what to run from the public, and the public will be giving them a change to submit their thinking to their position on that block as Theme Committee 2. We want you to give us the mandate to speak to the management and the people who will be dealing with comm..... so that we'll formulate our advertisement when we'll we rent it. And secondly, so that when we has it we'll call a press conference so that we'll explain it to the press and to the media so that the people outside are able to follow what the Theme Committee Number 2 wants from them. We assume that we can do in one advertisement, that is the Executive and the National Assembly and Legislative who can do it both, with the Province and the working out Province or we can separate it, by doing it in separate press conferences. Let say the first press conference will be in the Executive where we request the public to follow or to submit on this following items. The working of the Executives and the Assemble and the Legislative as such, an then on the following press conferences we deal with the Province and the Working of the Province. The last point, the day for February 22 as the submission for all political parties in parliament, and the date 10th of March for submission of the public on this block. May I have your comments please.

Unknown

Mr Chairman can I ask just a question. First of all I support that the day of 22nd of February I have no problem with that for submissions from the parties. All I want to know is what we are going to do, what this Theme Committee is going to do from now until the 22 of February, because without any submissions there is no reasons for any meetings Mr Chairman.

Thank you Mr

Chairperson

That sort of go aside with what Mr Beyer said, we also agreed that we must have a workshop next to it with regard to the senate and the Electoral System. Mr

Unknown

Thank you Mr Chairman. Mr Chairman I thought what was agreed yesterday was the fact that the block 2 and 3. What we need to identify here are 2 issues. That is the question of the National and the Provincial and we felt there that we should separate the National and the Provincial because they are two different aspects. particularly with regard to the issue of sending out advertisements that people should be clear that they are to make submission on the National structures and on the Provincial structures. So this is one particular aspect that I thought we had emphasized on yesterday with regard to separating the two. Then of course there is the other question of how do we go about it. We felt here that there were 3 issues that needed to be looked at and perhaps we could workshop on those issues. The first one of course was the role of the senate, because in our submission you find that there been different interpretations as to what the role of the senate should be or whether we should have a senate or shouldn't have a senate and therefore we thought that it justifies a workshop on looking on all the aspects of the senate in that context and therefore it was important that we should. The other question was whether we should, the position of the executive whether is should be a ceremonial executive or whether is should be a head of state. Then of course the other one, but doesn't fall right now it falls in block 5 when we come to the question of the Electoral System because that is a very important element also and we felt that there

should be a workshop on that one. Thank you Mr Chairman.

Unknown

Thank you Sir. First of all I would like to know the reasoning behind requiring political parties to submit there are presentations before hearing the public. Should then be starting by getting the submissions from the public so that the parties when they make their submission they at least somewhat informed of what the public has to say about this issues. Now secondly you've mentioned that the block on Traditional leaders should come before the block on the Volkstaat. Well presently the Volkstaat or the Volksraad is in place and run much as that it is not a position to make submissions on time but the house of Traditional leaders, Houses of Traditional leaders is Provincial level and the National Council is Provincial level are still not all in place. One you might mention that this Theme Committee would want benefit of listening to those houses before it deals with this question of there Traditional leaders, Traditional authorities. I want to suggest that the Volkstaat's issue be dealt with before the question of Traditional leadership because hopefully by that time these houses will be in place so that they can make their contribution and lastly Mr Chairman can I ask that, whenever possible your reports of your Core Group Meetings the forms for that it is easy for us to follow clearly, what you have to say so that you don't have to pretend with having to explain to us exactly what happened in the meeting. Thank you.

Unknown

Thank you Chairperson. The first question raised by Inkosi.... why parties submit before public do. The Core Group realise that the parties represented in the CA are

easy to reach, because we are all here and that it might be easy for all political parties in the CA to give their submission before, for the reason that in the meantime we could then be deliberating the submission coming from the political parties represented on the CA and that to invite submission from the public is a process that really does take time. We haven't yet place adverts for that. Administration needs still to finalise that and maybe by the time when the adverts comes out which would be probably next week Monday or Tuesday and that would give us another two to three weeks. Let me say three to three and a half weeks to receive submissions from the public and those political parties and organizations where outside the CA. And then if you take that that would mean that the Theme Committee work will only depend on the public participation or liaison, community liaison program that we shall be finalise by then and we thought that to save time when those submissions are in by the 22nd of the political parties on the CA we could start debating them immediately because those are submissions that come directly from the parties. They actually don't have anything to do with the public but individual political parties submits to the Theme so, we thought that could work the best way, but it is for the Theme Committee so discuss if the Core Group, if the you find that the Core Group maybe could change that and put it away, you feel it could to save the work of the Theme Committee. I think we will welcome that, but that's what we thought when we decided that those submission should come earlier than those of the public. And secondly the question of the Traditional Leaders. It is a question that overlaps also with other Theme Committees. That's a problem that we have right now. In our last meeting of the Theme Committee we suggested that the chairpersons of

different Theme Committees should rather come together and look at the questions of the overlaps and see how they want to approach those issues. We may not. We may even find that, we may combine 2 Theme committees to deal with that instead of 3 or 4 Theme committees dealing with that. Or we may exactly know what other will be dealing with that particular matter and what is their own of dealing with that particular matter we may like to leave it like that to carry on as it is but it is very important that we need to meet specially when we deal with a question of the community liaison program. We need to know what other people are talking or discussing about the Traditional leaders and their Themes so that we do not deeply encroach in their field of work. So it is a question which I think at the moment maybe we need to be flexible about, until such time we are in a position to meet as chairpersons of all other Theme Committees to come out with a clear guide line. If the chiefs request that we revert with a type of an item, deal with it before we deal with the Volkstaat I think it is a question of flexibility there, we could see how out taxed do we get from there and how do we deal about that so what I am trying to point out is that is maybe I..... is quite correct because this is a issue which overlaps with other Theme committee which we still needs to sort out. And I think the last comment he made it's taken, it's a point taken, it's quite correct that the reports should be in writing, I think in the future we will compromise so that people can be in a position to refer to our reports. Thank you very much Mr Chairperson I just want to comment on those.

...

Unknown

No other comment Specially on submissions because so

it will go step by step. Specially on submissions and advertisement so that it will go step by step then it will come to it.

Unknown

In regard to question of submissions and adverts Mr Ebrahim is quite correct I think maybe the feeling which was emphasize by the Core Group that it is very vital that we separate the structure of government at National level and those at Provincial level. The reason being that it would be simple for the public to deal with that, they will understand exactly what we want. For an example, when you deal with structures at National level, you are talking about the head of the state being the president. Though at Provincial level you not talk about this. You are talking for example about the question of the senate up at National level where you won't talk about the senate at Provincial level. You talk, there are other people also involved in the questions of a of structure at Provincial level like your CPG will then have to be drawn in here. So the Core Group find that it is better to separate the two matters. You deal with the structure of government at National level as a separate item, and you make your sub item of the structure of government at Provincial level. It makes the things very simple for the public to understand so that when they give in their submission they know exactly that in this sub block we're dealing with structures at National level, this sub blocks deals with the structures of government at Provincial level. They will be in a position to spell out exactly what they think their view is about all those issues. I think that was the emphasis. Thank you very much Chairperson.

Unknown

I think in general the idea to make parties to make

submissions by the 22nd is not a bad one, but it seems to me that we need to weigh that up with what seems to be other purposes that came from the Core Group. If as Mr Rabie said and then Mr Ebrahim confirmed, that the Core Group was of the opinion that you might want to have a seminar or two leaving aside the Electoral System which we come to in a much later block. You might then want to give it consideration to say first of all. When do we have these seminars and then following the seminars what is the time gap between the end of those seminars and the time when parties are asked to make their initial submissions. Because presumably we're having a seminar in order to inform people, inform parties about different possibilities, different options and if you say then say that very soon after the seminar you want a submission, you might not be given parties the records, the amount of time to think through, different issues and different options that may possibly be presented at the seminar. So since those specific dates have been mentioned here with regard to the seminar. A person need to look at what were the proposed dates for the seminar. That is the first question. So I am saying that we might just be a bit more flexible with regard to some of the dates depending on the seminars. The second one is to do the seminar itself. I am not sure that it would be correct to say, we're going to have a seminar on the Senate. The Senate is a name given to a second chamber I know what were talking about, our questions about a unicameral legislature or a bicameral legislature and that is what we want a seminar on. Because then otherwise we going,, with that a Senate now we want to look at powers composition everything else Were look at that, but I think the question proposing is regards a question about a unicameral legislature a bicameral

legislature advantages, disadvantages, all of those kind of issues which is an open end of question in terms of the seminar. So I would like that we alter the Theme or the title of that particular seminar, that we're going to have. And then I am not sure whether who then going to have, which not clear from what Mr Rabie said and what Mr Ebrahim said, whether we're then going to have also separate seminar on the question of the executive and the form of the executive with regard to the question of head of state, head of Government and so and so forths. I wasn't clear in my own mind whether that was proposed because the unicameral the bicameral legislature may or may not deal in the question, so I think we need again to be clear about what the seminar is that we're going to have with regard to that particular question. Then there is a question of both Legislature and the issues of checks and balances as we have said in our own report which we've now adopted on block 1. That the issue of checks and balances is something that's going to be an important part of the work that we're going to undertake in blocks 2 and 3. So I am asking whether the Core Group had thought about the question of the Legislature with respect to whether or not you think you need some kind of seminar workshop in terms of the relationship that would need to exist between the legislature and their executive. That would then involve all kinds of issues including our present rules in parliament and the way standard committees operating parliament at this moment in time. So what I really asking is that I am not, some say fine yes the dates is not a problem but we might want to reconsider given when we're going to have the seminar, and 2 we might gone too just give a little bit more thought to what are the seminars going to deal with, what specific themes are going to be deal with and then

there can be clarity about our own work program over the next few weeks. Thanks

Chairperson

Thank you sir

Unknown

Mr Chairman on the question of the executives we received an invitation for a conference presented by various universities and academics on the 14th of February, and the Theme is; A new executive of South Africa, and we sort of will request all members to try and attend this seminar. It will be in Pretoria on the 14th of February. So that's why we did not deal with the executive as such at the Core Group meeting yesterday. But just while I have the floor a question. One of my colleagues argued the other day that in another Theme Committee somebody said; Mr Holomisa is a traditional leader then somebody said, no he is not, but I hear Mr addressing him as; Inkosi. Can he clarify the thing so that I can tell my colleague what is the true position. (Laughter) Is he a traditional leader.

OK, OK, OK,

Unknown

Congratulations

OK, OK, OK,

Unknown

Please can we request Mr, just say yes.

All right. I will request them to do so.

Unknown

That can be done during tea break Mr Chairman.

Chairperson

I will request them to do so.

Unknown

Chairperson I want to support in substance what Mr P... said. He is just take it a bit further, I think the question of the Senate wasn't seen as a Senate on it's own, but a Senate in the context of whether you should have a Bi-cameral or a Unicameral I think it that's, could be expanded to involved the merits of the two and if you are going to have a Senate what is it specific function. I would be quite comfortable with that concept. The other one is the question of the executive. Yes, there is a conference, it's only organised by RAU university by the way and I mean, there are some academics but largely they are asking politicians to come along and express there views. I think we should have an in-house seminar on the question of what kind of executive do we, what are the alternatives that we have. I mean we must ask academics and other people, even international people to give their experience. Then the 3rd one's, sorry, oh yes the question of checks and balances. We haven't really touched. They all have got views on this based on our own experience but what we haven't have views on is based on other peoples experience. So the question of checks and balances I think is also a subject. And I think those are three appropriate subjects for us to say how do we get the information before we come to a decision and it could be a combination of seminars and it can be our technical advisors together with whatever sources they have producing either documents for us, but I think those are the 3 subjects which have to be merged. And I think during, of having seminars or workshops initiated by ourselves. I think is a good one. The other one is on the question of the dates and the nature of the input by parties. I think for most parties will verify some kind of input on the National one by the 22nd. At the Provincial one becomes more

complicated because there is a lot of people to get involved in discussion with this one, but I would hope that the parties are not going to be requested to come with, why I am say, a final and definite view of each of the parties, in fact we will even put forward alternatives. We will actually say, this is a kind of thing that we should also consider an alternative, and I think if that is the spirit in which we go to have the party say, this is what we feel, but we recognise that there are still areas to be explored and I think it is worthwhile. But if each of us come here on the 22nd two weeks before the public input comes and two months before we make a decision we're go to find

Tape 2 - Side A

Theme Committee 2 - 7 February 1995

Mr Eglin

...in which we are going to get at the party, say this is what we feel, but we recognize that there are still areas to be explored and I think it is worthwhile. But if each of us come here on the 22nd, two weeks before the public input comes and two months before we make a decision. We are going to find it even more difficult to make a decision. So, we should say the first input should be a preliminary input to facilitate discussions and investigations, not a final decisions by the attitude of the parties.

Chairperson

.... correction, I didn't read out the names, Mr Eglin says RAU is presenting this conference. Its not true, it is presented by the Institute for strategic strategists of the University of Pretoria, the Department of political science of RAU, the department of Political science University of South Africa and Academics for South Africa, they are presenting the conference, not RAU alone.

Unknown

Ladies and Gentlemen, may I try and direct the dispute now. We are looking at the submissions and advertisements. We are saying before we get that submissions we must have something in between. That something in between can be the seminar, it can be the workshop and the ideas that come out here is that we change the name of even the workshop or seminar for the Senators, why don't we say by and the question arises about the than the latest and the

question arises of checks and balances. Our request to to tell us how long does it take to arrange an in-house workshop, that means few academics to be with us. So that when we deliberate again coming to the decision of this matter, we will know how long it will take us to do it. Thank you.

Tape were not taping

Unknown

The question now will arise, I wanted to derive your thinking and your contribution here. Do you want the parties to submit on the 22nd or do you want the seminars first, before the submission of the parties? This is the first question. The second question - possible dates if possible. Thank you.

Unknown

Mr Chairperson, I thought what I was saying was that you can leave the 22nd as long as you have the built in flexibility depending on when you have the seminars. I don't think it is necessary for us to go and find other dates. What I want to suggest is that we don't try to debate the issue here, because this whole question here that we are now agreed on is that it should be a seminar. We still have to discuss who are the experts, if there are any that would like to invite to such a seminar and I want to propose that the Core group should get together now that our Technical experts are with us and we have welcomed them, to sit down with the Technical experts and look at this question of the organizing of the seminar together with them, because they may well have a great deal of ideas of their own and they may well know a number of people that we are not aware of, who could make a meaningful contribution at such a seminar. So, my concrete proposal now

is that we don't delve into the details either of the date to leave it as it is but with this built in flexibility and secondly that we then ask the Core group to get together with our Technical experts to work out more concrete details with regard to the seminar itself and with which particularly experts could possibly be invited to such an in-house seminar in Cape Town. That is the first concrete proposal I want to make. The second one is to say whether it is RAU or five other organizations that are organizing this conference on the executive it do not affect our work. We were not invited here as the Theme Committee to be a party to that. I mean they might or might not, other people might or might not go, all we can do at this meeting is hope that we can get some papers from them which might help us in our own deliberations and understanding but we can't be influenced by a seminar that is held outside of our own work programmes with regard to the work we are doing.

Chairperson

This is a concrete proposal, may I request the members, are you accepting the concrete first proposal? Agreed? Let the Core Group see to it that our Technical Inspector locate the matter and then come up with a possible date for the seminar. Thank you very much. Should we advertise for the block 2 and what are you saying about the possible date of the 10th of March?

(Tape went dead)

Chairperson

It is my apology. I thought that maybe you had all the documentation in place. What has happened to block 1? We have just adopted a report to be submitted to the Management

committee and the CC May I do this thing? I don't want to be seen as a very rough Chairperson, sometimes I am very rough when I am rough. May I request our Technical Committee to bare with us in this moment of time. The Core Group will meet with them and then update them where we are so that we are in the same power. We are very sorry that you are appointed very late now. Some of us have been running like cat and mouse to see doing the job and they appointed you very late. We will update you as soon as the Core Group meets after this meeting.

We agreed with two things now, we agreed that the Core Group will look at this matter, we agreed that the advertisement should go out as soon as possible. Thank you very much.

Chairperson

We come now to Community liaison programme. Again, we appeal to those members who wants to attend this seminar that Mr R... was talking about to attend it. It is not forced, the invitation is not directly to us as a Theme Committee, but we appeal, if possible, members can attend that. But now I am putting another request on top of that. I want you members to approve that we request the Secretariat to write to the organizers of this seminar so that they will give us a documentation of what took place in that seminar, the compiled documentation what will happen in that seminar. I wonder if that request of mine will be appreciated by your members as such? Because not all of us can be able to go to the seminar but if you can get the documentation there after, that could be OK. Agreed? Thank you. We take it forward to

the community Liaison programme. Again we are coming back to the seminar issues, because we have dealt with it when we are dealing with the advertisement and the work programme. We would like to hear from you, but we are thinking again as a Core Group that the community liaison programme should look at how the works with the legislator and then thereafter when we are having an in-house workshop after the seminars, that we are going to have. A workshop that will be open to the community to put their thinking or to put their submission or to say what they wanted to say on that open discussion and to look at how we are going to deal with it when we got it from the community as such after receiving it from the parties and individual people from the public. But again, to me it seems as if we have covered this point by dealing with the first point of the seminars. If I am wrong, the members of the Core group will bare with me here and try to explain the issue, because it seems that if the seminars, although they are in-house, there will be people coming from the out side who will deliver some paper or who will be asking questions there and then. Now, I don't know which way are we taking forward to fulfil the programme that we should have for the community. May I request the Core Group members to participate in this topic? First of all, so that the members will be cleared.

Mr Rabie

Mr Chairperson, as I understood it yesterday, is that we are awaiting the Management Committee which will finalize in more specific terms the community participation programme on Friday for them to report back before we carry on with taking decisions on that.

Unknown

Yes, besides that we are saying actually what we came out with now, it is a sort of an interim or a short term, let me put it that way, a short term plan of our community liaison programme. In other words we still have to come out with a long term community liaison programme, it goes up until the end of June, I think the members are quite aware of that. According to the proposal from the administration, is actually that February could have been used for your public hearings and we actually recommended that in our work programme, if members all remembers, we said February and January would be used for public hearings where we will be consulting different stake holders, your business people, your civil society at large, your religious groups and all those people. But then as a Core Group, we said it is now too late to do that, that is why we came in with this short term plan of our community liaison programme. So, what we are left to do now when we meet as a Core Group, next time, is now to look at the long term community liaison programme what we intend to do, what we intend featuring in here. And there is this question also of the Theme Committee commitments which has been proposed by the administration in regard to the working days who attend those seminars and all that the Core Group to look at, then come out with a firm proposal to the Theme Committee for discussion. I just wanted the members to know that. Because we couldn't finalise a long term community liaison programme - we thought we should rather look at the short term one. Then we still have to look on the long term one.

Mr Eglin

I am just throwing it out as an idea of community liaison and that is if these workshops are really going to be good

workshops and we are going to get top quality people. I think its not good enough just for the Theme Committee members to hear what they got to say because at the end the CA who is gonna make the decisions and the parties. Also, it may well be that there may be members of the public who may be interested in that particular subject and I think that we should see that they organize in such a way through the administration that in fact they become a organized by the Theme Committee. But with a wider content of who will be attending it. So, at least it should be open to the members of the CA to come along and also, I think, to interest members of the public. And I think if the papers are really good, it will be good that we see that the press and the media is well represented, because some of the ideas which we would present there, through the media, will then filter through to the General public. So, all I am saying is while it would be nice if it is just the 40 or 30 of us, I think it should be seen in terms of a public education and liaison programme and not just an in-house programme.

Chairperson

Do we leave it at that for this moment in time? Do we agree with the ideas of Mr Mahlangu, the way he put it? That we have a short programme? At the moment we are waiting for the management and then we will deliberate with the long term programme on community participation.

Unknown lady

I think I would go along with the suggestion which has been made by Mr Mahlangu, but just to speak slightly on the points raised by Mr Eglin, I thought the thinking behind of just letting a few people get together which are experts and then, not

open to the whole public, was a fact which was raised by the administration. For members of the public should be called to that kind of a meeting, it would have to, maybe, would require some 3 weeks or even longer perhaps. If that would be a problem I would also go along with the suggestion. If its a problem like administration have raised it, than to get also members of the public to be part of that meeting or that seminar. I think we should rather refrain to the suggestion made by Mr Mahlangu. Thank you.

Chairperson

Thank you my sister. We will do what is possible. If the seminar can be properly advertised, if it is an in-house seminar, when it is properly advertised, and then most of our members have to see a then we won't close the door if members of the public do attend to. Therefore, we will be incapable, we will see what is possible for us.

Chairperson

The next item which I want to raise, what are we doing tomorrow when the Core Group meets first? Then what are we as the committee doing tomorrow, which is Wednesday and the next day, which is Thursday, before we meet on Monday or Tuesday? I am posing a very straight open question as the chairperson.

Mr Beyers

Mr Chairman, it seems to me that this committee has not got anything to do on tomorrow and Thursday, there is nothing to be discussed and I would urge you Sir, not to keep me in this fairest Cape for peanuts, I have work to do in my Province. It seems to me that we have nothing to do for the next two days, this committee and I think the core committees should decide

when the next meeting is needed. Sir, and it seems to me that the ... programme as this far, we can ignore it as far as the scheduled meetings are concerned before the core group decide on what our work programme should be.

Chairperson

I am open for ideas, Mr Beyers has put this

Unknown

Mr Chairperson, what we do is day offs. It is all we can do. Thank you.

Chairperson

The motion has been proposed that 2 days the Theme Committee does not meet.

Unknown

Mr Chairperson, we are worried about the experts sitting there, who will be actually only meeting the Core Group, because we have got the question of traditional authorities, we all got the small sub-committee which must also deal with that and when one of their, only to be informed second hand, of what they will have to advise. I think it leaves much to be fulfilled or desired there.

Chairperson

Thank you very much for your opinion Sir. At this moment in time Sir, we, the Core Group will meet with our technical experts, update them to where we are and then after that we check the way forward. There is a possibility for the Core Group coming together with other members of the Core Group because there is a overlap of the traditional authorities where the Core Group will come back and report to you that we are having a meeting with another chairperson of the other Theme committees dealing with this matter. When we come to the

dealing with all the ... the matter will be approved by the Theme Committee. It won't be approved by the Core Group. The Core Group is a sub-committee of the Theme Committee, they have no powers to take decisions, only you as members or the Theme Committee that take decisions. Therefore, they are here to advise us and to advise you, they will be here until we finish our job and then we take our pension thereafter. Therefore there would be nothing done separately.

Unknown

I want to agree with Mr Beyers and Chief L...., that we should postpone not the day off, because some of us have to work, we should postpone the meeting of the Technical Committee because indeed we don't have any substantial work to do but with the the Core Group should then within 24 hours be able to convene a meeting of this Theme Committee and if Mr Beyers is in Lichtenburg, he will have to drive or fly down to Cape Town because the Core Group may well have a report to make with regard to the seminar and it cannot be the Core Group that can take such a decision, it has to be the Theme Committee that has to take a decision about the seminar, the composition, the dates, all of the issues regarding the seminar, the Core Group can only make recommendations and so I am saying that the should be that would then be able to call the Theme Committee on 24 hour notice in order for us to be able to listen to the recommendations of the Core Group. I think that's the way we should work.

Mr Steenkamp

Mr Chairperson, our way out of this because the implication of that we would all have to be on standby on 24 hour notice now and in the future. Wouldn't we in a position,

simply to enable the Core Group to take that decision regarding the seminars and then inform us instead of having us on 24 hour standby just to decide on such an issue. I am talking about the practicalities of it.

Chairperson

You cannot do that Mr Steenkamp, you are now giving powers to the Core Group that were never given to the Core Group, the Core Group's power are only designed for it to help facilitate the work of the Theme Committee. I think we must stick to the Theme Committee being that the group that makes decisions with regard to our work. It is a very dangerous trend towards giving decision making powers to a smaller group.

Unknown lady

Could we perhaps from the Core Group how long they think they need to come back to us with recommendations?

Mr Eglin

I must correct in that the Theme Committee has got to take the final decision but equally, I think it is silly for us to say everybody must hang around, waiting for the Core Group, we got a deal with the management, we got a deal with our Technical experts, we got universities in here, lets say, lets set a date for next Tuesday or next Wednesday or whatever it may be. But parties are also involved in submissions, it is not so we are going to do nothing, but I would think, yes, it is correct that the Theme Committee should be meeting, just to make a decision, but I think they will not get a substantive report before next Monday and its going to have to be a written report as well, who is available. The management is gonna have to agree to venues and all the rest of it. So, I would think that it is not going to be likely that a report will be available before

the beginning of next week, Monday, and therefore that the Theme Committee can be told they must be on standby for Tuesday or Wednesday or next week.

Unknown

I am not proposing but I am sending my idea now to you. Will it be better if we adjourn our meeting now and meet on Wednesday on 9 am? Next Wednesday, 15th on 9 am. Give us the time as Core Group to look at this as Mr Eglin was saying with our technical inspector, with everybody, and then when we come back, to you, we come back with substantial things to deliberate. That is my idea. I am just selling it to you.

Unknown

Can I come with a counter proposal ... to say we are not meeting anyway on Monday the 13th, as a Theme Committee, there is no meeting scheduled for us, there is only the Management Committee, Constitutional Assembly is meeting on Monday and the Management Committee is meeting on Monday the 13th, so the Theme Group is not meeting on Monday anyway. We are scheduled to meet on Tuesday the 14th as a Theme group, why can't we meet on Tuesday, and then carry on with our work as said forward, for Sir, we as a Core Group, we shall. this calling, say by Monday. Why waste another day and not meet on Tuesday?

unknown

Not agreed yet, because there is this seminar in Pretoria which is taking place on the 14th. Why don't we, those who are going to attend, meet on Wednesday, so that we don't come here and find a whole list of apologies.

unknown

Mr Chairperson, the seminar in Pretoria....., can I just put my point, I raised it, I raised the count ammotion. I don't want people to motivate it, I am the only one to motivate it.

You said, I was going to say your suggesting put forward. There is somebody who have second ... your suggestion. There is another viewpoint, because I won't say it is a suggestion that I have put forward, but some people have moaned about saying they are supporting it. Now, I wanted to know from the House before you motivate your point, that, where are we now? Are we taking Mr Mahlangu's point of view or are you taking point of view?

Chairperson

Sir, in terms of what the gentleman said that those of us, I wanted to attend that conference in Pretoria. I want to support the suggestion of Mr that we meet on

Let me give to Mr Mahlangu, you wanted to motivate

Mr Mahlangu

Mr Chairperson, I am inclined to agree with Colin that we meet on Wednesday next week. People have being told me about this conference that is going to take place in Pretoria on the 14th, some people here might like to attend that conference. And my colleague next door to me says 'we don't want to come here next week on Tuesday and get a whole host of apologies and so on and so forth.' So, it does appear to me that in order to give everybody a chance, even those who want to go to Pretoria to I think we should meet on Wednesday. I want to appeal to my comrade dear MJ not to on remoting on Tuesday. Thank you.

Chairperson Now ladies and gentlemen, you all need seats. You will just listen.

MJ Chairperson, can we first establish who is going to Pretoria?

Unknown Mr Chairperson we decided who is going and who is not going. We've got this invitation here to go and decided whom, not here. Don't divide the house like that.

Chairperson May I request, may I make a compromise please, a compromise for all of you. I request that this meeting of the Theme Committees meets on Wednesday on 9 am here. That is very good compromise, because those who want to attend the seminar in Pretoria can do so and feel free, and we are not meeting officially on Monday, because it can be the CA - it can be anything else, but to meet here so that we would be able to deliberate with That is a very good compromise. Is that agreed? Thank you very much. May I therefore request the members of the Core Group to leave behind when the meeting is closed. Thank you very much for attending the meeting.

Mr Beyers Mr Chairperson, there is still an important outstanding question of the real identity of Mr Mahlangu or rather Mr Holomisa which you have said you will address.

Chairperson No, that is not a problem at all

Mr Beyers But you said you would ask him

Chairperson Yes, I did say

Mr Beyers

Well do that.

Chairperson

Let me ask him. May I ask you sir, to identify yourself?

Mr Holomisa

Well, I am a traditional leader by birth and I am an advocate by profession and a Member of Parliament by election. I think that should be enough.

Chairperson

No, give him a chance, he is not finished yet.

Mr Holomisa

I am finished Mr Chairperson

Mr Beyers

Thank you sir.

Mr Beyers

Thank you, he is a man of all seasons.

Chairperson

This meeting is adjourned till Wednesday 9 am.