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CONSTITUTIONAL ASSEMBLY
THEMES COMMITTEE 3

7 NOVEMBER 1994

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Tape 1

Dr Fourie

Madame Chair, sorry. Can I just address you on that? I expect that it's going to have political content so one can't really expect of the Administration to do that, but I want to make two remarks. The first one is that the Administration at least can correlate the reports before us and just try and see where there is agreement and where there is not agreement so that only the issues are identified so that when the Core Group does meet, we know which are the issues that we perhaps don't agree on. That's point number 1. Point number 2: It becomes more and more important, and I am talking on behalf of myself, everybody here can talk on behalf of themselves, but there is no way that members of parliament can continue to work in the way that we are expected to work at the moment. That is why it is necessary that we get that technical support group that is supposed to be appointed that we get that to do this type of work for us so that we can get a document before us which we can consider. I'm not a constitutional expert, I can't write things. I need somebody to do it for me and then I will politically evaluate it and there's no ways - I don't know what other members' position is, sir - but there's no way that we as members of parliament can do this work. To just say that the Core Group decided there must be... I got a note this morning, sir, that there's a meeting tomorrow at 2 o'clock. Now tomorrow afternoon there's legislation, some of us are involved, I am involved. Then there's a meeting, you say, from 2 o'clock on Wednesday to 5 o'clock. There's questions, there's interpolations. Some of us are involved. There's no way the Core Group can do it.

Chairperson

Professor du Toit?

Prof. du Toit

Ms Chair, thank you. From our side I think that's a very reasonable approach and what we will do is this, to help your Administration also, you can consult with the members of the Core Groups and the parties, they feel this point and this point and this point so on, but it's a very valid point which Mr Fourie makes in this regard. Some of our people who perhaps have a bit more time can help you more. Thank you.

Mr Mtshali

Thank you, Chairperson. I would like to emphasise the point that in the Core Group we have representatives of political parties and at the end of the day it is the responsibility of the

political parties to be involved in the compilation of the report and we cannot, at any stage, be seen to be shirking our responsibilities because of other pressures. Secondly, this point was made very clear also at the Constitutional Committee that technical experts are not there to replace party representatives. They can only assist and not replace. Thank you.

Ms de Lille

May I suggest to the members that we do the tabling of the reports and then thereafter look at the process and the way forward because we are dealing with both now. Dr Rabinowitz?

Dr Rabinowitz

Madame Chair, I would like to suggest that we not let the process get ahead of our decisions. We have brought up this matter for discussion before and we haven't really resolved exactly what part the Theme Committees will play in the drafting of reports and I think that's an issue that we should decide now before we start to actually draft the reports. Following on what Mr Mtshali said, I wondered if we couldn't suggest that those members of the Core Group and the Theme Committee who would like to participate in the drafting of the reports and feel that they have time to do so should be allowed to do so.

Chairperson

Thank you. Mr Andrew?

Mr Andrew

Madame Chair, you know, I don't think we can get anywhere if we discuss everything three occasions. We discussed this at the Core Group, as requested by the Theme Committee, on the minutes of Friday 28th, and it was decided to recommend that the Core Group will meet and discuss the submissions and report to the Theme Committee on 14th November. So that was agreed at our meeting on 28th October, at which Mr Fourie was present. In fact, you were the only person who sent apologies for that meeting. We then brought that to this Theme Committee on Monday and it was agreed that, that was the way to go ahead. Now we're going into a third discussion. Now we don't want to agree to do it the way we agreed to do it in two previous meetings. I mean I don't see... it's a matter of principle and we're either going to every time... every decision we make, we have a long discussion, we make a decision and then we come back and we rediscuss the whole thing. I think we should just go ahead on the basis - in terms of this report, it was an open-ended matter in respect of any future report... In respect of this particular report, I suggest we set up the mechanisms and the timetable to do it and, I believe, we should go ahead and do it; because otherwise we're just

going to be in a complete morass of going round and round in circles. Thank you.

Dr Fourie Madame Chair, I don't know why Mr Andrew gets so excited about this.

Mr Andrew Because I happen to be busy and want to do my job properly, that's why.

Dr Fourie Is this the way we are going to operate in this place, to shout at each other, Madame Chair?

Chairperson I'll make a ruling on that just now. You can continue.

Dr Fourie I'm just asking because I just put a practical problem before you. I don't say that we mustn't do our job. Nobody said that. But what is the purpose of appointing technical experts to assist us? Technical experts are there to take documentation, to correlate it, and to put forward a document which, as Mr Mtshali says, we as a Core Group and as a Theme Committee, can consider and we will make the political decision. Nobody said that the technical group must do the decisions for us, but I'm saying we need assistance to take all these documents that are before us today, to correlate it for us, to try and consolidate it, and put a document before us, then we can consider it as politicians in the committee. So I'm not trying to duck my responsibility or trying to propose that we do something else that we decided in the past. Why are we going to appoint the technical people then? We can just forget about them and get Mr Andrew to do the job.

Chairperson Dr Fourie, I think the issue here is that not one of the other Theme Committees do have technical experts at this point in time. The process of appointing technical experts will be done towards the end of the session so all of us are affected by not having technical experts, but the fact of the matter is that we have to continue with the process. And that is why I've said if, after we've tabled the reports, then we can listen to the report of the Core Group and decide on the process, because we are really mixing the two issues now. Dr Rabinowitz.

Dr Rabinowitz I'd like to make a proposal that will help us with the logistics of the exercise. If the members of the Core Group cannot, of themselves, cope with the drafting of the reports, can we recommend not re-opening the issue, but just now that the Core Group's report is being discussed by our committee, can we recommend that other members of the Theme Committees can also participate to assist the Core Group members to draft

the reports. That is a proposal I would like to make.

Chairperson Thank you, Dr Rabinowitz. Professor du Toit? Is there any agreement that other members will also assist those available members, to assist the Core Group to draft the report?

Dr Fourie May I just ask, what is the schedule of meeting, because we've got before us the note that I got from the Core Group from Dr Koornhof who sat in for me. There are two dates given. Now both those dates clash with other responsibilities in parliament. There's a request that we do not have meetings when parliament is in session.

Chairperson Dr Fourie, we are dealing with the compilation of the report now, then we are coming to the dates. Doctor, I was in the meeting on Friday morning myself and Dr Koornhof, I accepted then, on behalf of the National Party, agreed to those dates, but even then so we have to come here to have the dates approved by the full Theme Committee.

?? I think we're really now splitting hairs here. I think Mr Fourie's problem's who sits finally behind the typewriter and types this thing, which will finally then be evaluated by the Core Committee, come here, evaluated by this committee, then go forward. And I think it's simply that process of actually producing the hard copy in the end. We can't have more members, I mean there are only so many keys on a typewriter. So I think we must agree that yes, of course, the Core Group may meet at that time, but when they do, either from within their own ranks they would have to give that job of actually sitting there and producing the type to some of their own members or to the committee or to somebody else.

Chairperson Professor du Toit?

Prof. du Toit Comrade Chair, I'm sure, with the Administration and the Core Group and that typing machine of mine, we can do it - the job. If agreement of the Core Group that Mr Koornhof - I don't know if that can go through, we thought that we'd just make the first preparation. And then we only made one fault in the Core Group. If you look at 3.1.2 of the Core Group's memorandum we didn't mention Mr Mtshali there, but he should also be... I think then all the parties are covered, the whole Core Group. If they could meet at 14h00 on Wednesday. The point which I want to make is this, although we accept the point that the Administration will do the operational work, not the political work, we must drive this thing to get it out by Monday next week. No, no, it's not such

a difficult job. If you're computerised it's not such a difficult job like this. I can type these documents into a computer and we can load different paragraphs from the different documents easily. It is not such a difficult job to have it finished by the end of this week, with the Administration's help.

Chairperson

Thank you. Mr Smith? I want us to conclude on this item now. I'll take Mr Koornhof after this, then we conclude it.

Mr Smith

The only reason I raised this issue in the first instance was the question - because we have here before the 11th. And my understanding was that if this exercise were done on the Friday and on Monday we're meeting in the morning in order to hand in a report for the afternoon session, that it might leave - if there's a problem - not enough time. I take Professor's point, but if it were possible, for example, for that report to be finalised by the Friday and distributed to the parties beforehand so that over the weekend... When we meet on Monday morning, we come in prepared with any problems that we have and they can be resolved then and there on the spot so we don't then have a bottleneck problem. That would be acceptable.

Chairperson

Thank you. Mr Koornhof?

Mr Koornhof

Madame Chair, I think the two issues have been identified and it's a pity it's already half past eight now and we've been arguing an issue that's really not that serious an issue. The one is a practicality of the report that one of the previous members has already mentioned and, I think, we must give serious attention how we're going to solve it. The second problem is what we decided on Friday was on 3.1. What Mr Fourie has mentioned has in fact happened: the meeting before myself and Professor du Toit this afternoon. Friday afternoon I've been asked to attend a Select Committee Meeting, so that has already infringed on our arrangement that we have and secondly, on 3.1.2, I think it is the task at the end of the day of the Core Group to have a say in the compiling of this document and not the few members - the whole of the Core Group must be there.

Chairperson

You know, I don't see much difference in the points we are arguing around. I'm still maintaining that we've agreed previously that the Core Group will compile the report. The only slight suggestion was that any other available members who do have some time can also assist, that is the one point. The second one is that the process of the report before Monday the 15th and Mr Smith is suggesting there that he's

got no problem, we can compile the report, but it must be available by Friday so that members can study it over the weekend. Then on Monday we will all meet again and discuss the report. Is that in order? Thank you. Any other issues arising out of the minutes? None. We'll then go to the next item on the agenda, which is the Core Group Report on joint meetings with Theme Committee 1 and Theme Committee 2. It was supposed to be on Friday.

Mr Mtshali

On Friday Theme Committee 2 had invited members of the Core Group of Theme Committee 3 and Theme Committee 1 to a joint meeting. It was felt by members that the meeting was a bit premature and that the Core Group from Theme Committee 3 should meet on its own to discuss how the work plan is going to be arranged and how we are going to meet the deadline. And I think the report that we shall have and will put forward is going to be based on the minutes of the Core Group which met on Friday 4th November. Thank you.

Dr Fourie

May I just ask a question, Madame Chair? Does that mean when all the Core Groups have put their work programme before us, before the Constitutional Committee, and they have identified the issues that somewhere along the line somebody will look at the overlap of work so that we don't all do the same thing? When will that happen? You said it was premature, which I accept. I think one must first have documents before you and then see what is overlapping. Will we then have again meetings or will the Constitutional Committee resolve that, I don't know how that is going to work.

Chairperson

Professor du Toit?

Prof. du Toit

Ms Chair, solid problem addressed there, but I think what's going to happen practically is now we have these reports. All these reports of the different parties, perhaps having different areas of overlap, now we can get all the overlapping areas as mentioned by the parties and then we can go to group 1 and 2 and so on. I would have preferred - but I think we're going to get problems - I would have preferred that it happens this week, but I think it's going to be difficult. I must say that from the side of the Constitutional Committee my impression is at this stage that we shouldn't be very dogmatic of "this is my jurisdiction and this is that group's jurisdiction". It will sort itself out and intergroup kind of consultations will get this matter done. At this moment we just have to get a programme out before the end of this session.

Chairperson Mr Mtshali?

Mr Mtshali Chairperson, I want to make the point here that we should not worry ourselves about overlaps because each Theme Committee has its own assignment. Now if, for instance, there is a topic there shall we say which deals with traditional authorities, now that particular Theme Committee will deal with that particular topic in relation to its broad framework. And then at the end of it all, the Theme Committees will make submissions and then there'll be co-ordination of work. So it's not an issue really which can concern us at this stage with other priorities to consider. Thank you.

Ms de Lille I was also going to ask. Will we have the time still during this session to meet jointly? That's the other problem. Mr Smith.

Mr Smith Madame Chair, apart from time, it seems to me that we agreed initially on 6 Theme Committees. Now, the minute we start saying that we'll hive off this from that Theme Committee, this from that one, combine them together, you're effectively creating new Theme Committees, so you end up having seven or eight or nine Theme Committees because they're dealing with one particular area which defeats the whole object of the exercise, and I think I support my colleagues suggestion here if we stick to the six, each Theme Committee will bring its own perspective to bear on that issue and it's for the subsequent process, the CC, to start melding these things together. We don't need separate Theme Committees effectively to be doing it prior to going to the CC.

Ms Kota Thank you, Madame Chair. I don't think at this stage you should worry much about the question of overlaps because at the end of the day, whatever Theme Committees are discussing will go to the Constitutional Assembly and members will have a chance there to input on those issues coming from other Theme Committees that they are concerned about. Thanks.

Chairperson Thank you, Zoah. So, we then don't have... What is the feeling now that we will leave the overlapping and the discussions of the overlapping for next year? Is it that important that we must meet this year, because in any case as the process evolve and unfold you'll find this happening all the time. So you can't have a one-off meeting and say "look, this will overlap with that" it will happen all the time. So we then agree that we will leave the joint meetings for next year?

Prof. du Toit Ms Chair, ja, I don't think we need to leave it... decide that we

leave it for next year. This week something may crop up. We must have some elasticity about this and we're being a bit pragmatic about it. If meetings urgently come up this week, we will handle them, I think. We shouldn't take a decision: no meetings, or: any meetings. Just stay silent about it. We take note of the... I would suggest we take note of the need for meetings full stop. Just take note of the meeting and we will react as the need may arise for that.

Chairperson

So we conclude the issue that we will be flexible; if they do arise we will attend to them, if possible. Thank you. The next item on the agenda is the tabling of work programme by parties. Which way shall we go? Alphabetically, which party want to do it first? ANC? Professor?

Prof. du Toit

Thank you, Madame Chair, Ms Chair. If I'm allowed then under alphabetical order, the report has been made available. Could I just as an introduction say this, the ANC feel that it would not be wise when we work on the work plan to put our, and all the parties', substantive policy positions into the work plan to build it as such into the work plan. What is needed when we define the issues, just to be practical about getting this thing rolling, is to kind of put a shell of issues and not build into the issues our own party political issues in a sense of pre-deciding the direction of our discussion in that regard, in a party political sense. For example, the ANC shouldn't put down as an issue the principle of provincial autonomy which, of course, is not a principle of the ANC, they shouldn't put that down because that's a loaded issue. We could put down the issue "powers of provinces", that's a shell, within which the parties can operate and put their cases forward. That's why the ANC put down these eight issues which are all formulated in the form of a shell in a neutral kind of way, not indicating by the defining of the issue a definite party political position, which was easy for us to do as well. So, if you look at the document, point 1 there - I'm just going to hold out the issues for you - the difference between 1.1 and 1.2... Both of them is about the division of powers between national and provincial levels. The first one is the general aspects of the problem, that is if you want to make the correlation, what is presently done in say section 125, 126 of the Constitution. That means, you could also have called it the "nature of the division between the powers" division of powers between provincial and national. While 2 is more the naming of the specific powers as is done, for example, in schedule 6 at the moment, that tourism goes to the provinces or not, that it's a concurrent power or an exclusive power, and we thought that it is two different exercises and it could be done in one, but we named it

separately. The third one is simply then the structure and functioning of the provincial legislative authorities. Fourthly, the executive authorities on provincial level and I would say that within such a shell as that, is included of course now always the relationship between, say, provincial executives and national executives in the governmental affairs, which is understood there. 5, the financial and fiscal affairs on provincial levels and the relationship, of course, again with national. 6 is the Senate's role in provincial affairs, which is of course a clearly overlapping area. 7 is the demarcation problem, the Constitution uses presently the term "definitions" and 8 is a very large problem which is here only put down under one heading as it's used, "the present metropolitan, urban and rural local government". The priorities which we think should be addressed in the order is put under 2, I am not going to read again through it, it's the same ones classified in a different order. 3 is the overlapping areas, we mentioned a few here. On page 2, 3.1, the Senate, the Theme Committee 2, Principle 1 the unity of state, with Theme Committee 1, the character of state. 3.3 is the financial aspects of local government and provincial government. 4 is the powers of the Constitutional Court. We look at it in a way that the most important arbiter between the powers of national and provincial level is the Constitutional Court, so we do think it's a concern of this Theme Committee as well. 5 is then perhaps the question of separation of powers, for example the separation between provincial legislators and provincial executives etc. 4 is some suggestions on issues to be dealt in sub-committees. Of course, we must have one on local government. The general division again and the specific exclusive and concurrent powers and fourthly, the structure and functioning of provincial, legislative and executive authorities. We threw the two together because just not to make too many sub-committees wouldn't be too advisable. I don't think that will be such a big problem. The fifth is some commissions on which experts can then also serve, one the fiscal matters, provincial and local; secondly, the real legal problem, the powers of the Constitutional Court; thirdly, the Senate's role; fourthly, definitions of powers, demarcation problem, especially the areas where there are problems still. Now the separate reports which we suggest are 6, Interim Reports and a final report. Perhaps we could just at this stage... We saw it that the main problem of work plan at this stage is the categorisation of issues and then secondly, an operational management plan. We present it in the form of a ?? chart which we could perhaps look at, at this stage. It's on the last two pages of the document. We distinguish three phases, the classic phases in preparing this type of document: gathering information;

secondly, the processing of the information and thirdly the preparation of reports. The first phase: we are already in the preparatory stage at this stage. We suggest that hearings on the six interim... or the six main subjects be held during the end of January until the end of February. You will also see that there is in May an idea that we should have hearings then again. We have put down the word "hidden" there it is actually the class "hidden agenda" if you want. Perhaps that's not a good word here. The idea is simply that we don't announce the May hearings because then everyone won't come in February. In May, we will be overflowed. The hearings in May is, could be held in reserve for an overflow or new matters which come in after the interim reports have been made public. So actually the word should be "closed", a "closed announcement" at this stage. The analysis mainly on these subjects in March of the year, again a new analysis after the final hearings in May. The writing of the interim reports mainly during April; it must run concurrently, we feel, with the review after and during the hearings. And then the final report already being prepared from the beginning of May after the interim reports are out and a full month in June then to complete the matter towards the end of June. That's reflected, if you go back to the main document, in 6.6 of the document. Structures and role-players - we've enumerated a couple of structures be built there, which speaks of itself. Community and media - we would especially stress, like to stress, point 3 and 4 under 8, the people's forums, which is a two-way dialogue in the sense that we go back to the people and the people also tell us how they feel. And then fourthly, there are parties outside parliament which should also be reached in some way. The technical assistance, we've put down a few names there. We feel at least if we could share the public financial expert with Theme Committee 6 and perhaps on a part-time basis, perhaps we could have two constitutional lawyers, but we definitely need experts on local government, perhaps someone for a part-time job on local demarcation. The thinking at the moment is that the experts shouldn't be here all the time. We would perhaps have 3 experts permanently available, but then if you need a different kind of expert, he can come in for a week and go back on a certain issues. That is the suggestion. I think you very much for the opportunity.

Chairperson

Thank you, Professor du Toit. We will be allocating eight minutes to each party, and then thereafter allow questions and clarity and comments. We will not debate the reports today, but merely listen to the presentation. So, do we have any questions or clarity on the ANC's submission? No? Then we'll go to the next party, which is the Democratic Party.

Mr Andrew

Thank you, Madame Chair. I think our starting point, first of all, is that the work of this Theme Committee and the Constitutional Assembly is prescribed by the constitutional principles. They indicate in many respects what both has to be done, and what cannot be done. And particularly in the relationship between different levels of government, there is a great deal in the constitutional principals and it's important that we constantly refer to them to make sure that we are not spending time on something which the constitutional principles indicate that you are not entitled to spend time or, on the contrary, that there's something that we're not spending time on that the constitutional principles demand that we do. So when we look at the constitutional issues requiring attention, we've attempted, and it will come up when I talk about overlapping areas as well, to get as much focus as possible and we see the tasks of this Theme Committee as being determining the exclusive and concurrent powers and functions of the national government and provincial government; secondly, the financial and fiscal powers in particular an inter-governmental financial relations between national, provincial and local governments; and thirdly, the powers and functions of local government. And in each case we've made reference to the constitutional principles which bear on those matters. Now the priority issues we approach in a slightly different way from the ANC in the sense of thinking what should be done in the next week, as opposed to in what order should the constitutional issues be tackled; so it's not necessarily a different... When we get down to looking at the things, we may not differ from the list that they have suggested. But we would see the two most urgent things are first of all, soliciting public comment so that when we get back here in January and February we will start having things in front of us to get on with our work, because presumably if we are going to take public comment and contributions seriously - which I hope we are - we are going to get them in before we start trying to thrash out the issues. So the sooner we've set that ball rolling, the more time the public - and that is individuals and organisations - will have to prepare whatever they wish to submit. Secondly, we think that to the extent that there's a need for any commissions that we should be looking at whether they should be set up and I'll get to that later. Now the third issue is an important one, it's the question of overlapping areas. It is our view that if you take a sort of broad view of one's mandate, and if each of the Theme Committees do that, they will find that probably half or two-thirds of the work they're doing, somebody else is also doing and that, in our view, is not what was intended. And we make this fundamental distinction, we see that this Theme

Committee is to consider the powers, functions and relations between different levels of government, so when we're looking at provincial, central, we're looking at the powers and the functions and the relationships between those levels of government. Once that is completed, we then see it as the responsibility of various other committees to consider the structures, the institutions and mechanisms required to give effect to the proposed powers, functions and relationships. So, for example, we would see that we should decide that in this area the division of power between the different levels and functions is going to be like that. It is then for one of the other committees to decide how a Constitutional Court is going to set itself up to make sure that, that happens. Or what the relationship is in structural terms, like for example, the composition of the Senate, what that should be. We see that as somebody else's responsibility, Theme Committee's responsibility, because clearly it does bear a relationship when the new Constitution comes into being and is functioning, but looking at the division of work - and the work has been divided in that way - we see that as the essential division. The question of sub-committees we believe should be postponed until we get the first round of submissions in and we get into report-writing mode and then we would see that one could look at four sub-committees, one relating to national provincial relationships, one on functional matters, one on fiscal matters, and then two others dealing with national, provincial and local relationships. In other words, how local impacts with provincial and national, again with a functional and fiscal one. In respect of commissions of experts, our view is that we should set about setting up a commission immediately on one particular subject and that it is our view that by far the most complex matter that is going to have to be dealt with by the Theme Committee is the financial and fiscal relationships and powers of taxation and distribution of revenue and all of those things, which are very, very complex. I mean, they are far more complex than deciding - even though it may be difficult to decide - once you decide at which level school education should be run, you decide the issue and it's fairly clear in itself, once you've agreed. But the fiscal things have so many ramifications and so many alternatives and we believe therefore that we should set up a commission in the near future to look at that and make a report based on submissions received as well as international experience and that a range of alternatives should be presented. In other words, what do a variety of other countries that have province and central government divisions... how do they divide up the finances, because I believe it's complex. And that is a massive and long job and I don't believe it's appropriate to look at only appointing a

commission like that sort of in April or something when we're trying to write a report and we start finding that we're running into difficulties. The timetable we suggested I think is very similar, in broad concept anyway at least, with the one that I see that the ANC has put before us. It's self explanatory. Participation also as widely as is practically possible. I think we've got to realise that there are certain limitations and while there is general interest and where people do want to express a view, we should give them the opportunity. At the same time I think we must be a little bit careful of not fooling ourselves that every person in the street actually has strongly held constitutional views on a variety of subjects. It's achieving a balance and we've set out some of the ways we believe we should set about it. I think for efficiency and cost reasons, some of the types of activities may need to be co-ordinated between the... by the Constitutional Committee so that each Theme Committee isn't running around the country doing its own thing when, in fact, one say meeting to give people in a particular community or area an opportunity to come and express views could perhaps cover the range of topics and not just one Theme Committee topic because as we've seen with some of our discussions on overlap, to say to a member of the public "no, no, no you're now moving out of our area, that Theme Committee's coming in three weeks time, you must come and talk to them" I think there will need to be careful bit of co-ordination there. Finally, we make the point of what we believe is a fundamental flaw and it's the difficulty in the time constraints that we have and that is that it will impact very strongly on us. We are having to make suggestions for a new Constitution on relationships between national, provincial and local governments at a time when - and we're going to be doing most of our work in fact before June next year - the provincial structures will hardly have got functioning and the local governments won't even exist in a new democratic form. So we will have no experience to draw on in a South African context to say "well, look, the current Constitution provides for this and that, but in practice we've found that doesn't work so well, but that works very well and therefore looking at a new Constitution we think this is the best way". We think that's really problematic and that we're missing out on an opportunity to learn from our own South African experience so we just make that point. We are, as a result of Constitutional Assembly and Constitutional Committee decisions, we are bound to do certain things by certain times and in that we don't have, unless we want to go on strike, we don't have any alternative in that regard. But we do make the point, we think there is a fundamental flaw in the way we are... the speed at which we're having to do things, given the fact that in 18 months

time we could have a great deal of experience to learn from and probably find it much easier to reach consensus because by having seen what works and doesn't work, we would actually say "okay, it doesn't matter, it's not all theory, it's now what happens on the ground". Thank you.

Chairperson

Thank you, Mr Andrew. Any questions or clarity?

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I'd just like to make a comment and then a question as well. I've seen the submission made by the ANC and I'm comparing the two reports. I don't think there's too much of a difference here. We say... I see that the report submitted by the ANC doesn't define the fiscal aspect too clearly as the DP does, but just have a question here as well, Madame Chair. If we are going to solicit public comment before February as Mr Andrew suggests, I'd like to know what kind of process. First of all, we'd have to look at the merit of the argument, but what kind of process are we looking at before February? It's a problem we're going into recess. And, sorry, let me just finish here. And even if we are going to look at the fiscal relationship and the fiscal aspects of the relationships, would it not be better to define the relationships first before we look at the fiscal aspects. Are we not putting it the other way around? And then, finally, I agree with the experience that we could have drawn from had we gone later in the process, but right now we're sitting with the situation. What alternatives do we have? I can understand the flaw, but we have to look at the possible alternatives.

Chairperson

Mr Andrew?

Mr Andrew

Thank you. I think those are all very relevant questions. Well, just starting with the last one, the alternative is to change that two years to four years in the Constitution so that you don't have to rush. And in any event, it's written into the constitutional principles that you can't have another election at national level for five years anyway, so critical aspects of a new Constitution are not going to come into being for five years anyway. The second question in terms of soliciting public comment, I would see that what we should be looking at doing is by way of publicity at this stage, advertisements, whatever, trying to get people who wish to make written submissions, to submit those by say the middle of January or the end of January which would then sort of come in. The Administration will be functioning, I mean the Administration is not going to go into recess, so they would be able to get those in and if necessary, if we decide we want them distributed during the recess, distribute it. Then when we get

back in the second half of January, we would actually sit down; we'd already have a lot of the written submissions. We could then set up a schedule of public hearings or obviously deciding on exactly what we decide to do, and I would see that sort of face-to-face interaction, whether it be forum for public hearings or conferences, taking place largely during February and maybe even the second half of February so that February, sort of March period - let's just look at the exact, ja, sorry... The submissions we would get in by early February. We would then set up a timetable for hearings and forums and conferences which would take us through to the end of March and I would certainly like to see us visit at least one - sorry, each of the nine province once - so that we are physically present in each of the nine provinces to give people an opportunity. And then in April, having gathered both the written stuff that's come in as well as what we've heard. So, that's the kind of process I would have. On the question of fiscal, financial I think you're absolutely right; obviously you have to decide what responsibilities, like in health, you know, who's going to be responsible for primary health care clinics, is it going to be local authorities or provincial government, before you decide on the division of the spoils, so to speak. So that's absolutely correct, but I do think that there is so much general work in this field and international evidence that needs to be gathered to see how other different countries - whether they be federal systems or other systems, that divide the revenue in their country in various ways - how they do it. I think that would be plenty of work for the commission to get involved in because presumably the commission doesn't necessary have to be working full-time, the whole time, but I think it needs to get that under way, so that when we come to the... by the end of March, when we want to start writing our first draft report, they are then up to speed on that. So, I would agree, but I think there is work to be done in advance. Thank you.

Chairperson

Thank you, Mr Andrew. Yes?

Thank you, Madame Chairperson. My one is a

(end of tape 1)

THEME COMMITTEE3

7 November 1994

Tape 2

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...I just wanted to find out whether the DP when they said that we must nominate two persons from each province, are they thinking of getting from the provincial legislature or just ordinary people and are these people expected now to come and stay in Cape Town because it seems they are going to be full members of Theme Committee 3 Thank you.

Mr Andrew

Well, on the first comment, I endorse it entirely and that's why we specifically said across the full spectrum of the media, so it's certainly not only English and Afrikaans media. It would be all the available media that one has access to and will include many languages and all the area of the country. On 7.2, I would see that the provincial legislatures who are the only people who have democratic mandates in their areas, would nominate people. I don't think - I didn't want to go into too much detail - from my point of view they wouldn't necessarily have to delegate people who were members of their legislature, although I think it may well be valuable if they were, but I think that could be their discretion, but it's something I don't feel strongly about. Now as I understand it, the Theme Committees are going to meet on Mondays, and the Constitutional Assembly as well, and so I would see, yes, for that period they would have to come down to Cape Town each Monday, as we went to Kempton Park week after week, I might say, for nearly two years of my life... No, I just feel that that kind of continuity and direct input, and they would then be in a position to report back to their legislatures and maybe their legislatures would, if they wanted to, create sub-committees or their own kind of select committee to act as liaison. I think it's vital because then the chances of breakdowns in communication in this critical area would be greatly reduced. So, yes, I would see them having to come to Cape Town with great frequency, but as it is only one day a week that we meet, they would not be stuck here for the whole week. Thank you.

Chairperson

Thank you, Mr Andrew. Any further questions?

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Madame Chair, if you are providing specifically for the provinces what about local government?

Mr Andrew

Yes, I think further down the track we might need to look at something. My problem was twofold: firstly, democratic local

government structures don't exist at present so that it's much more difficult to know who do you take. You know, after the elections in October next year or whenever they are and if they form national associations of some sort, you'll be able to say "well, those people can designate". I certainly would see that once we have a... Well, we would invite submissions from everybody that wish to make them and I would certainly see in our hearings in March, we should make a specific attempt to ensure that we had a cross-section of people from local government giving us oral evidence and reaction to submissions that we had received. So the one problem is knowing who represents local government as such, with an authentic mandate; secondly, because there are only nine provinces, we within the Constitutional Assembly are going to... I see one of the key points we're going to have to decide is how much the National Constitution makes reference to local government or do you simply say local government is a provincial responsibility, and the provinces all decide how local government is going to be run. Now there are certain requirements in the constitutional principles, so we'll have to put in something, but that is undetermined. The other point is that there are so many local authorities, I mean even the undemocratic ones, or the transition ones, and the PLAs and all these things, ?? whose initials I don't even know, that again to know which of those you would directly consult and so on, is very different from dealing with nine constitutionally provided for bodies so that's the reason why I didn't put them in, in any more formal way in this document.

Chairperson

Ms Coetzee?

Ms Coetzee

I don't disagree, but the problem lies now with financial assistance for these people from the provinces.

Chairperson

Mr Andrew?

Mr Andrew

Well, I presume once the Theme Committee came to a view next Monday as to what is appropriate and what isn't, if it was felt that this was a sensible idea, then I think either out of the Constitutional Assembly budget... Because you're talking of a total of 18 people, well the Western Cape ones are here already, so you're talking of a total of 16 people and clearly it would have to be paid either by the provinces themselves or the Constitutional Assembly budget, but I shouldn't think it will be crippling in terms of that number of airfares per week, if you compare it with the number of members of parliament and senators that fly around each week.

Chairperson

Professor du Toit?

Prof. du Toit

Thank you, Ms Chair. Ja, we must just not make a fault here. I don't think this needs to be discussed at too far length, because it will be sorted out by the Constitutional Committee. The point is just this, the difference here is that contrary to Kempton Park, this constitution-making body is representative already by virtue of election. Now we shouldn't mix that idea of representivity with the idea to get interest groups or people who have a different stake in matters, leader groups etc. into the Constitutional Assembly and full membership of a Theme Committee like this, which is a committee of the Constitutional Assembly. I think we may just have a constitutional problem there, technically speaking. The idea of making an input from the provinces is very valid and I think it should be - and also local government as input by National Party - that should be used to the full in the hearings, in the submissions which you received from the provinces. But to integrate it structurally with the Theme Committee may... we must just be wary about that. I would suggest that we refer this matter to the Constitutional Committee as it will be from our combined report. Thank you.

Chairperson

Can we move to the next party now. We're running a bit out of time. Professor du Toit is suggesting that we take this to the Constitutional Committee, but I think we'll have an opportunity after we have discussed in the Core Group and compiled the report to take that suggestion there. Can we have the Freedom Front please?

Mr Gouws

Madame Chair, I have in front of me a written report here, in hand. It will be finalised and handed in by 11 o'clock or 12 o'clock apparently this morning according to Mr Groenewald, he left me a little note here. May I just say that the constitutional issues raised by us here would overlap very much of what the ANC and the DP proposed already here. We too turned down the nature and details of the relationship between the different levels and then we look at the principles involved. We look at the establishment of powers and functions of local government, the principles involved and so the whole list of them down here and I look at the different submissions here. For instance, the exclusive and concurrent powers, we deal with them too, as the DP did here; the financial and fiscal powers and functions, we deal with them here specifically too and the powers and functions of local government, I think on those issues we touch here, metropolitan, urban and rural local governments. So, I think as far as that is concerned, there's very much, I would say, agreement between our party, the way

we look at the constitutional issues to be dealt with. Then the priority issues, we really didn't pay attention to any specific ones at this stage, but we look at the overlapping areas and we listed a whole lot here. Constitutional issues, for instance, 1.1, or 1.2, 1.3, 1.4 with Theme Committee 1 and Theme Committee no. 2, then we'll see we have overlap with constitutional issues 1.5, 1.7 with Theme Committee no. 5, and then constitutional issues 1.8 with Theme Committee no. 6. In other words, as has been pointed out here earlier this morning, we are going to have overlap on quite a number of issues and we also have seen it that it should be dealt on an on-going basis; that it cannot be a once off type of system. Then going over to sub-committees, specified here, interesting enough, is the way the Freedom Front is looking at it, there's the metropolitan, urban and rural local government areas, a sub-committee should look into this and may I at this stage point out that the whole story of rural participation - I'm talking about outside your local government structures - that is not clarified and we'll have to get something very clear and basic regarding that, practical, that we can work on. We have also here in the sub-committee states, or under the commission states that financial, fiscal relationship, perhaps it should come under the commissions where we can bring in experts and at the same time, there also deal with the electoral system of local government, how's it going to be done, the sub-divisions etc. The whole system should be dealt with. We needn't deal specifically with a time frame. We listed the number of structures and role-players that we think should be consulted and brought into the process at one or other stage by hearing evidence etc. and we listed the whole number of them here. May I just say that listening to what the democratic party said here regarding provincial governments, we have included the provincial governments here, we have included the municipal societies here because those two entities, we think, should be heard loud and clearly in this Theme Committee. Thank you, Madame Chair.

Chairperson

Thank you, Mr Gouws. Any questions, or clarity, comments? Then we move on to the Inkatha Freedom Party.

Mr Smith

Thank you, Chair. I think if we just run through the things sequentially. The actual constitutional issues that we've identified I think bear a close resemblance to those raised by the other parties. The fundamental issues, the allocation of powers, the relationship between these powers, fiscal autonomy, many of these are common. We do use language which others might find particularly loaded, such as entrenchment of provincial autonomy, but I think you'd find

from our point of view, it's a valid concern, the role of the Constitutional Court, subsidiarity, local government. It's interesting this whole debate we're having here on local government, if one looks at many constitutions, local government sometimes is barely mentioned at all and other times it's detailed. You know, it's a moot point whether it needs to be provided for at all, frankly, and whether it's left to the provinces; but be that as it may, it's an issue that we as a committee here need to decide upon. Provincial constitutions, very important for us, of course, is the sole principle of asymmetry and how this is provided for, the role of the second house, and its role in legislative and executive decisionmaking. I think these issues are in many ways common to the other parties' submissions. However, if we move on to (b), I think we have a bit of a problem here. We are requested by the Constitution to prioritise the establishment of a system of provincial government and the CA resolution itself says of Theme Committee 1 that its task should be prioritised. As a Theme Committee vis-à-vis its relationship with the other five Theme Committees, we are of the view that what this really entails is that one requires up front some form of prior determination of the fundamental form of state in order that all the other Theme Committees can do their work expeditiously. I think the debate we just had now for example on a commission for example to investigate fiscal relations, at what stage does that become a worthwhile exercise? And it's a view that if you start it up front and then five months, six months down the road you have to start undoing it because it doesn't fit in with what is later agreed to in terms of relationships, that's going to be problematic. This is a very fundamental issue for all of us because the question is, and for all the other Theme Committees, how far down the road does a Theme Committee go in trying to achieve consensus on a point or to identify non-contentious issues and contentious issues when in fact whatever agreement is reached, can be utterly meaningless given that down the road the CA ends up taking one particular position which undermines all the work that has gone into achieving consensus on an issue. So we believe quite strongly that one needs to have some sort of prior determination of a framework within which one is making and the constitutional principles as they stand do constitute a framework, but they're too broad and so we argue here that we need to narrow that down a bit. If we don't do so, we are going to end up with a position, I think, where virtually every issue we put on the table as an issue becomes a contentious issue. There won't be anything which is non-contentious because we're going to be arguing from party positions preconceived ideas of what we want as a party and this Theme

Committee will never end up with anything where there's consensus on an issue; so we need to narrow it down. And I think on top of that, we have a problem with the workload. We're of the view, all of us, that we need to get this exercise completed by the 30th June and if we really imagine that - thinking less selfishly of ourselves alone, but all the Theme Committees - that they are going to engage in an exercise of producing some form of definitive report, in other words, they've gone into an issue, they've looked at all the options and alternatives and they're producing a definitive position, which is an exhausting process. If we're going to complete the exercise by the 30th June on the assumption of a huge range of possibilities, it's going to be a futile exercise. We really need to think of a more narrowly focused group of issues to work on in order that we complete the exercise in time. If we have five years or four years to do the task, it's an open-ended question as to how necessary it is, but since we have to finish our exercise here by 30th June, we really believe that we need to have a far more narrow framework and that exercise is essentially to work with Theme Committee 1 and if they don't do it, we need to do it. Moving on to (c), these are the issues of overlap, I should think they're much the same as what other parties have identified. There could well be more, we just gave some examples. (d), the issue of sub-committees and commissions. Here is a difficult question because of the number of elements to it. The first thing is though we're actually essentially dealing with political decisions here, political issues. They're not technical issues, they're political issues, and so we are of the view that we would rather not at this stage farm anything out to a committee, a sub-committee or commission or whatever. We deal with it in plenary form, all of us, each issue. If we identify a need for some form of specialised input, then that can be by way of either a commission or our technical committees or we invite experts to come and address us, but essentially we should be dealing with the subjects ourselves as a committee. There's a logistical problem too and that is as soon as you start creating numerous sub-committees, there are smaller parties which will not be able to participate in all those sub-committees which would also be problematic. If you take the view, I think as the ANC has, that everything should be done concurrently, then I can see the logic in it. We're actually arguing here, the next point, that we should do things in sequence, in which case this position I think is even more valid. However, be that as it may, I don't think we have to decide on commissions now, if we need to decide on them at a future stage, well and good, but prior to doing so we do emphasise that we need to be quite sure that we have consensus here on the terms of reference

and precisely how these commissions report to us and how they're structured and how they operate because there's a natural tendency - I'm sure most people agree - that once you appoint a commission which comes back to you with a finding, it's very difficult to take issue with it. You know, you farm it out to experts and the experts come and it's awkward. So one wants to be sure that the process is an inclusive one that is not coming along with the final word on something. So the terms of reference have to be very clearly agreed to up front. The issue of separate reports, issue (e)... We've identified 11 issues, I'm sure you can narrow it down to eight or nine, we add a few more from other parties, we're going to end up with quite a lot of issues. We don't believe you should have a separate report for each issue, you can actually cluster them together. We're suggesting that there are four fundamental clusters here, that makes sense given our terms of reference; the first being the allocation of powers and functions, the second being the relationship between these powers and this includes things that we mentioned, exclusivity, concurrence, overrides, framework legislation, and all the constitutional principles of course pertaining to these issues. The whole issue of the protection of provincial autonomy, which includes a whole range of issues there. Of course, one could talk about the protection of provincial powers as they exist, it amounts to the same issue from Professor du Toit's point of view, I'm sure; and then finally, the whole issue of fiscal relations. I think those four clusters adequately cover the terms of reference that this Theme Committee has to deal with. How many reports and the deadlines? Well, if one takes those clusters as they stand, we would suggest then that one could deal with all those issues sequentially and then we would be submitting a report on each of them on the following dates: 6 March, 3rd April, 8th May, 30th June or thereabouts. I'm not quite sure whether it's envisaged necessarily that we have one composite report or whether individual sub-reports of this kind are adequate. But, be that as it may, the idea essentially is that we've got roughly five or six week intervals to conclude and that would be the initial hearings, the analysis, and the conclusions on reports. You've got something like five to six weeks per cluster of issues. Structures and role-players. Well, we've just listed them. They're pretty much what the other parties would agree with. I think we've probably thrown in a couple more, but I think all of these would constitute role-players of one kind or another. And the issue of community media liaison, I think this question in the work plan is quite a confusing one in some ways. I don't know if the other parties battled with it, but essentially we've taken the view that the Constitutional Committee has already covered much of this, but

what we've decided in the CC amounts very much to a marketing exercise from the CC down to the people. Perhaps we need to review this a little bit more to look at the reverse process from the people back to ourselves. Now, although we haven't made any particular suggestions in this regard, it's an exercise that perhaps the entire... It applies to all the Theme Committees, so perhaps it's something that the CC itself should look at, to perhaps review that report and see whether it adequately encompasses a method of feedback from the grassroots up to us. I think we've got a bit of tendency to go into a marketing approach from the top down. But be that as it may. And finally, technical assistance, basically we're looking at the three technical experts at any one time. I think, one of the ideas... If our work plan deals with issues sequentially, then we select the experts to deal with that particular issue, and when we've finalised that issue, we can replace those experts with other experts pertaining to the next issue and so we have a revolving set of experts. Other experts from academia government, from South Africa of course, any foreign experts whose contribution would be useful - particularly from a comparative international experience point of view. I think it's very important this Theme Committee... We believe this Theme Committee should have access to a full database of literature. There is, of course, the HSRC, Potch, the whole literature, in fact the library here, the parliamentary library, is able to assist in this regard, I believe. And finally, and this is something mooted by other parties as well, the issue of research facilities and personnel for the Theme Committee in addition to the constitutional experts. Thank you.

Chairperson

Thank you, Mr Smith. Any questions, clarity?

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Madame Chair, I would like... Mr Smith referred to it here. It seems to me at present we have very much a top-down-to-the-bottom approach in making the Constitution especially with reference to local government at provincial level and then down to local government. Listening to him here, through his proposals, how are we going to accommodate a process that we have a more from the bottom-up-to-the-top process, especially involving local government. Where should we bring it in? How should they play a more dominant role in the whole process? I would like to know from him because he touched on it, but he didn't really explain in detail.

Mr Smith

I'm not sure whether the question pertains to the local government specifically or just the bottom-up approach.

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The bottom-up approach.

Mr Smith

Generally? Well, I mean, that's the point. We're actually saying here... We're not putting forward proposals, we're just putting forward the view that we believe it appears to be structured more of a top-down approach and that not necessarily the Theme Committee alone, but all the Theme Committees which effectively amounts to the CC, I suppose, should just revisit the issue of the report we've done already and see whether - I mean, we might be proven wrong; it's just the language perhaps even; it may not be a structural issue at all - but just to see whether we've adequately catered for the bottom-up communication to ourselves. If we have done it adequately and the views have been expressed by various individuals that it hasn't been done adequately, if it has been done adequately, then we can leave it as it is, but if it hasn't, then we need to relook at it. We don't have specific proposals on hand here.

Chairperson

Yes, Mr Gouws?

Mr Gouws

My follow-up question would relate to the suggestion made by the Democratic Party of bringing in experts from local government at the provincial level in an advisory capacity onto the Theme Committee. What would the viewpoint of the IFP be on that?

Chairperson

Dr Rabinowitz?

Dr Rabinowitz

Ms Chairman, I would like to answer that as a senator. The Senate, and my fellow senators will support me in this, I think, has already identified a problem insofar as we don't have very good liaison and communication with the provinces and we would appreciate this process very much. I hear Professor du Toit saying that it may be an expensive exercise and we must be wary, but I think it is a very important one and if we can't cope with two members from each legislature, then certainly we should consider at least one at every meeting. That would be the beginning of a liaison. We might think of other ways as well. Not only the provincial representatives but also somebody appointed by the provinces to represent local government issues. Thanks.

Chairperson

Mr Andrew, do you have your hand up?

Mr Andrew

Yes, I just wanted to refer, because I think it's a key issue, not to comment or debate on it, is on page 4 under (e), the third point, the protection of provincial economy, talking of separate

reports, because I think in that cluster and as Mr Smith said, it could read the protection of provincial powers, those institutions such as the Constitutional Court and so on, we have expressed a view that, that is in the fact the work of other Theme Committees. I think it's clear we are going to as a Theme Committee have to decide on Monday whether want those things within our terms of reference because I believe it actually will create an explosion of our work because if we are then having to look at composition, and role of Constitutional Court, I mean, that in itself is a kind of full-time job and one understands that there is a critical inter-relationship between many things, but it is, I believe, an important decision we are going to have to make next Monday because it's going to determine both the nature and the volume of our work quite considerably. Thank you.

Chairperson

Thank you. Mr Manie?

Mr Manie

Chairperson, my first point that I'd like to raise. Mr Smith says that we must up front determine the form of state before we do anything, if I understood him correctly. Now I'm asking myself the question: what is it that he expects us to do and to what kind of detail? Because, if we are talking about that, other than broadly looking at the different tiers and perhaps the only area that I could think of would be whether there needs to be a fourth tier written into the Constitution with regard to what is broadly referred to as third tier government, the area regarding metropolitan, other than that particular area, I mean how much further do we have to go because the other things become detailed points that needs to be fleshed out further. When he makes reference to a cluster of issues, I think it's a very useful way of proceeding because then one could develop those points, but I can certainly not see why we need to add in as a sub-heading so to speak the whole question of protection of provincial autonomy as a heading. That would be rather one of the points that needs to arise out of discussion when we deal with some of these issues, but how do you see that as one of the cluster points if one can call it... Can I make the last and final point? I think the ANC's position is the way I understood it as Mr du Toit mentioned it, was the question of the cost wasn't the only consideration - I am referring to Ms Rabinowitz' point - I understood it to be that what we are saying, we must understand whose responsibility it is in the first instance to draw up the new Constitution. Sure we must consult, we must ensure that stakeholders and interest groups' views are considered, but we must know whose ultimate responsibility that is. Thanks.

Chairperson

Mr Smith and then we'll have Professor du Toit after that.

Mr Smith

Thank you, Chair. I think one has to read perhaps more carefully that I expressed in the summary version. We're not saying that you have to determine the form of state effectively before this committee does any work. Please, read it carefully. We're saying that before the committee produces its reports, written reports, to the CC, it makes sense to have done that exercise first, failing which, one's going to end up with a report which comprises nothing but contention and which is effectively trying to complete a definitive exercise on positions across a huge spectrum as opposed to a focus spectrum. It's not saying that we cannot commence the process of receiving inputs, having our hearings, advertising for participation. The whole exercise, of course, must continue immediately. We welcome it. We're simply saying let's not end up with the position, for example take any Theme Committee, Theme Committee 5, it cannot produce the reports suggesting that there's consensus on single judicial system versus a parallel judicial system. You can't do so, or shouldn't so, it seems silly to do so, if the prior agreement on whether justice is purely a central function. If it's an open-ended question then you end up with open-ended options which all have to come through as reports. If, for example, let me give you another example, if the Theme Committee 1 state that each tier of government, or the first two tiers shall only have republican form of government - which is a fairly common clause in regional federal constitutions - then you're denying constitutional monarch in the province. So we need to know up front whether that option is permissible in terms of Theme Committee 1 before, on the issue of provincial constitutions, it's permissible to structure a constitutional monarchy in a province. I mean that's just examples, one could go on forever. I don't want to get into detail about it. In terms of the clusters, and the issue of provincial autonomy, I think it's probably accepted by everybody whether one likes a federal system or not, but whether it's accepted generally, there is a process of centralisation as a common feature of virtually every federal system and ignoring the word "federal", the mere fact of allocating powers to regions - even if one adopts a regional position as does the ANC - even doing that there's a natural tendency to erode that over a period of time and it's a universal phenomenon, virtually universal, there are one or two exceptions which constitutional crises. So it's a valid point, we think, to talk about what mechanism does use to secure those powers and that they're not eroded by the centre. I mean, one can debate how far you want to go down this road, but it does seem to us a valid exercise. I can't remember if

Ken could just give me the one word of what he said so I can reply to his question.

Mr Andrew

It's just whether your third cluster is our work or not.

Mr Smith

This takes us back to the whole issue of overlaps and this is precisely the reason why we believe it's important that we don't deal with overlaps by farming them off to others. Each Theme Committee has its role to play in dealing with issues specific to it and if you take, for example, an issue such as composition of Constitutional Court... Now if we leave this to Theme 25 alone, then it's actually... we are abrogating part of our responsibility because the relationship between the levels of government, this is an important issue. If you get a system where, for example, the provinces and the centre nominate the members of the Constitutional Court on a 50:50 basis, that's an important issue in terms of the relationship between the two levels and there are different models for this. So it's something we need to take a view on. We can't simply say "well, Theme 25 are dealing with the whole issue of Constitutional Court or the justice system, legal systems" and not say anything on it. You know, the overlaps are natural overlaps and we need to bring them into our work. Thanks, Chair.

Chairperson

We'll take the last question from Professor du Toit because our time is limited, before we move onto the National Party presentation.

Prof. du Toit

Ms Speaker, it's more in the nature... Ag, Ms Speaker, Ms Chair, it's more in the nature of a small comment. We must just bear in mind, if I may ask my good friend over there, that what is the task of this committee? If we go the road as I hear and listen carefully to him, that we have to decide certain issues in the Theme Committee, we're going the wrong way out. The problem with the approach suggested now there that under all the sequential type of cluster approach, if we go that road it presupposes that the Theme Committees must decide certain issues, must become negotiation centres, which is not the idea. And that's why Mr Ken Andrew was so right that the consultation process is the priority. We must get the data synthesised and get all the arguments and contentious areas, must present that, and we can do... And that is why overlapping areas are not such a big problem for the Theme Committees, we just get it in, but this consultation is the heart of the matter. It's a two-way process, it is people who come here to the Theme Committee and make inputs, say a local government association, they come and give us a beautiful document, and the other one is we go in there and that is our

main, main task of this Theme Committee, going out to the provinces and the idea of the People's Forums which the ANC put down, the idea of consulting with civil society and with local government structures. That will take time. We just go down to the provinces, sit for a few days in a place, and hear the people and we consult them and they consult us and that dialogue is the heart of our work and then it's a question of giving the evidence in a rational form through, not deciding issues. That will be done in the Constitutional Committee. The moment you look at it from that side, a lot of our problems disappear to some extent. Thank you.

Chairperson

Thank you, Professor du Toit. Can we have National Party, please?

Dr Fourie

Thank you, Madame Chair. I will not deal in detail with our document. I think a lot has been said already which we also cover except to say right in the beginning again, Madame Chair, that we are still firmly of the opinion that the four years of intensive negotiations which have taken place pre the election should form the basis of the whole process. That will be our approach throughout. We do not believe the wheel has to be found out again for a number of reasons. Firstly, because it is our honest opinion that the transitional constitution as it stands is a clear reflection of the agreed to constitutional principles. I have sympathy with the IFP and to a certain extent with the Freedom Front and perhaps other parties outside who have not been part of the final decision at the constitution making process. Secondly, because we are convinced that the two year time limits post election '94 will not be sufficient. If we discard the four years of hard negotiations, we are honestly worried that parties will again put forward all the old principles where we had a long four year give-and-take situation and I sincerely hope that, that will not be the position because that will clutter our programme. Thirdly, because we are concerned about the dual burden placed on members of parliament, being legislature on the one hand and being constitutional writers on the other hand, whilst I believe that our voters outside might be neglected. Lastly, because we do not believe that the country can afford the luxury of duplicating work already done with such a vast infra structure as in being set up at the moment where all the work has been done, really I think we should tap what is on the table before we start appointing commissions and all sorts of things to re-define what we want to do. Obviously we work within two very strict guidelines on the Theme Committee in the first place, section 16 which says the government shall be structured at national, provincial and local government and

secondly, that in regard to the local government which I have got a sympathy with this morning in regard to remarks made by the DP as to where that function should really be. Whether we should take so much time or whether that is a matter for the provincial legislators to deal with. That is a debatable point which we've got sympathy with. The issues, Madame Chair, that we have identified, just broadly speaking, section 1(26) which deals with the legislative competence of the provincial governments listed in schedule 6. It's a pity that the provinces haven't had sufficient opportunity to put forward their experience in this regard, but I'm sure if we get the premiers and members of those governments to come and give evidence, we will learn a lot from them. Secondly, we want to introduce a new issue here, which deals with the whole question of so-called corporate federalism because we are still of the opinion that in the end the Constitution should be as all-inclusive as possible and we believe that the concept of corporate federalism could be a matter that we could discuss very profitably, perhaps to accommodate the Volkstaat idea if we could just move slightly away from geographic content as the only criteria. Then thirdly, we deal with a number of issues, the relationship between provinces and local government, which we've listed in this regard. Provincial government jurisdiction over local government, the autonomy of local government, the functions and powers assigned to local government exclusively. Secondly, local government financial resources, which is a very old problem in South Africa, and for that perhaps there might be a need to appoint a commission and whether this commission should be appointed at central level or provincial level, that's a matter that we can debate. Accountability and reporting practices. And then an issue which is being dealt with at the moment, which I think we should also give our attention to is the demarcation of functional boundaries for metropolitan and rural local government institutions. Then in regard to provincial issues, we've listed just four issues and I'm sure that some others will be forthcoming in time to come. Section 1(43)(43) in regard to the uniform standards regarding the appointment of staff and service conditions, which deals with the whole rationalisation process of the civil service. Section 1(60) on provincial constitutions per se and then 1(40) and (50) re representation of minority parties on executive councils, and then section 1(26) on the commission of provincial government, its use in regulating and assisting in intergovernmental relations. In conclusion, Madame Chair, I just want to make this remark, that we have not put forward a detailed time schedule. We accept that we have to finish by June next year. I've listened very carefully this morning to

both the ANC and the DP. Their proposals are not foreign to us. I think they are very fair, but to our mind what we have to put on the table first are the issues that we have to deal with and then we can decide how we're going to deal with the issues and I think a time frame will then fall in place and we can always fall back on these proposals. The second last remark I would like to make is that we should now complete the discussion on process in order to get to substance and I'm sure we will have to adapt our process as we go along. Lastly then, we will be lodging a complete evaluation and analysis document with proposals in regard to substance early 1995, the document is not ready yet, we are working on it and it will not be ready before January. Then lastly, we are not ready yet to submit our names for the technical support that we need. We will be doing that shortly.

Chairperson

Thank you, Mr Fourie. Any question, clarity, comments?
Mr Manie?

Mr Manie

Could I just ask Mr Fourie under point 4 the reason why the... 4(a) 143(2) that he made reference to, what's the motivation of actually including that in the Constitution. Is that the place where it needs to be dealt with?

Dr Fourie

Ms Chairman, you know we talked about overlap and I'm sure we will find that some of the issues that we've identified could be dealt with more effectively in another Theme Committee, but we are concerned at this stage in regard to the whole process of rationalisation of the civil service, the people that are going to support either the central government or the provinces or the local government. In some areas it's just not coming off the ground and I think in the process of discussion we could perhaps put more light on that.

Chairperson

Mr Smith?

Mr Smith

Thank you, Chair. In fact I was going to make a similar point as regards 3(d). It's all very well to discuss local government in the national Constitution, it's an issue to what extent one does it in any event, but then to actually include within that the demarcation of functional boundaries for metropolitan and rural government institutions, I mean, I would have thought this either a political issue being dealt with now or to the extent this is a constitutional issue at all falls within the ambit of the provincial Constitution when it's written. It's not an issue for the national Constitution to deal with rural government boundaries I would have thought. Thank you.

Chairperson

Thank you. Any further questions, clarity? None. Brief report from the PAC. Most of the issues have been covered so I won't go over them again, except that we are of the opinion that the interpretation and understanding of the constitutional principles for this particular Theme Committee that right up front we should have at least two or three Theme Committee meetings where we discuss and look at the understanding of these constitutional principles. There are various interpretations right now of constitutional principles as you can see by the submissions received already here today. So we want to propose that the first three meetings, our first three meetings next year, deals with the understanding and interpretation of the constitutional principles. We also feel that, you know, that we will then be able to prioritise when we understand these constitutional principles, and then become... we are also very flexible on the time frame. And then the public involvement, you know, looking at the proposals from the Constitutional Committee, we feel that what is missing in the whole Constitutional Committee proposal is that there's not a mechanism built into the public participation where you can actually make sure that the views submitted and the submissions received from the public is used and it's compared against the political parties represented in the constitution making process as present vis-à-vis their views and we would like to see some debate on that because we will be spending about R20m on public participation and we don't want to see us going through an exercise and at the end of the day the views of the public is not taken into consideration. We also see public participation must be complementing the role of political parties in taking the responsibility of reporting and consulting with their own constituencies. Otherwise the framework as proposed by the ANC and also this morning by the Democratic Party, we will support that. A full report will be submitted later on, a written report from the PAC. Thank you. Any questions on the PAC report? Mr Andrew?

(end of tape 2)

THEME COMMITTEE3

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Tape 3

Mr Andrew

...or whatever the form might be. It's essential that there's enough time for the political parties to digest it and in fact if necessary to go back to their mandating authority because if one attempts to do it too fast, what happens is you may hear or read something that you think seems like a good idea that differs from your party's previous position but unless you've got time to go back to your mandating body and say "look, don't you think we should look at this idea, it maybe is better than the one we previously had" you can't change your own party's point of view on that. I am just endorsing a point that you made strongly this morning. I think it is very important in our timetables that one provides that if you are going to do the public participation which is necessary, that you provide time for the parties to consider that and contemplate and possibly change, get the mandates to change their own perspectives. Thank you.

Chairperson

Thank you, Mr Andrew. Mr Mtshali?

Mr Mtshali

Thank you, Chairperson. I would like to refer to a previous decision, namely that the ACDP, which is not represented here, will be informed regularly of decisions taken and also be furnished with copies of submissions and, in turn, asked to expedite the submission of their framework, of their work plan, so that when the Core Group meets on Wednesday it shall have the documentation in front of it. Thank you.

Chairperson

Thank you, Mr Mtshali. We've received a note from the Reverend ?? of the ACDP that they shall not be able to submit their submission for consideration by Theme Committee no. 3 and I was just going to announce this after... Comrade Zoah?

Ms Kota

Also as a matter of procedure we would like a situation whereby ACDP also submits its submission to this Theme Committee meeting so that we discuss it before it go to the Theme Committee. Thanks.

Chairperson

In this particular instance, for Theme Committee 3, they say they will not be able to make any submission. Thank you. Any further questions, clarity? We shall then go on to the next item. Public participation as part of the work programme. That has been covered by the submissions by all parties so we will

not be dealing with that one and then item number...

Mr Gouws

Excuse me, Madame Chair, can we just get back to this one for a moment if you will allow it. Madame, we, you know we look at public participation on a broad basis. I'm thinking in the work programme that we have been talking about here and in the next number of months. Now, one of the ways to do it is obviously to go out to the people and ask them to attend meetings and to give us some information and put their points across, but you know a lot of these groupings, they have the ability, they have the back-up to provide us with written statements ahead of time, and I discussed it here with Mr Andrew just a minute ago, I think it will be much, much better if we can follow a work programme where most of the things... where parties are in a position to provide us with written submissions that, that is done that way. That we really only listen to people who are not in a position or who don't have the back-up to provide us with that or make exceptions finally once we have read through the documents and then say we would like to have clarification on certain points and listen then to oral evidence from the different groups, else we're going to sit for the next I don't know how long, but it is possible when we listen to all the local authorities town by town by town it may take us months to go through all of this. Thank you.

Chairperson

Thank you, Mr Gouws. Professor du Toit?

Prof. du Toit

Just a quick one. I think the Core Group will take up that point and just refine the programme a bit. Thank you.

Chairperson

Thank you. Item no. 8, other urgent business. Any other items that you want to discuss today? None? There's only one point we want to remember of and that is the invitation to attend the workshop from 28th to the 30th November in Pretoria. Whether all of you received the invitation? Oh, I'm advised it is only the Core Group that were invited.

??

Madame Chair, can one ask if the invitation be extended to persons who are interested, why only the Core Group is invited?

Chairperson

We can raise this with the Provincial Government Commission because they've extended the invitation to the Core Groups and then come back to the parties. Thank you. The only thing that remains is to thank you for coming and to we will inform you about the next meeting.

Dr Fourie

Sorry, Madame Chair, what about the meeting of the Core

Group. I've got two notes here, one for tomorrow afternoon and one for Wednesday afternoon. What are the dates now?

Chairperson Who has got the dates? Professor? The Core Group agreed on Friday that Professor du Toit and Dr Koornhof will meet in his office Tuesday 14h00 8 November to prethink the submissions received and then again Mr Andrew, Professor du Toit, Ms de Lille and Dr Koornhof will meet - no, no we've changed it to the whole Core Group - will meet Wednesday at 2 o'clock to write up the report on the submission for distribution to members of the Theme Committees by late Thursday 10th November. Those are the two dates, Mr Fourie.

Mr Andrew Madame Chair, can I?

Chairperson Mr Andrew?

Mr Andrew As I understand it, the idea was the Core Group would meet on Wednesday, the whole Core Group, at 2 o'clock to write the report, but it was felt in practice it's always easier if you're working off some kind of draft and amongst the members present on Friday, it was asked who was available to assist in getting a preliminary draft in time for that meeting and Professor du Toit and Dr Koornhof, Senator Koornhof, were the only two who were available and therefore volunteered and they set that date between them of Tuesday 2 o'clock to do that preliminary work so that was the structure about... so the Core Group, the meeting is in fact Wednesday 2 o'clock and then the other was an open-ended thing based on who was available to help with that preliminary job.

Chairperson Mr Smith?

Mr Smith Chair, I'm not sure whether I'm revisiting something we finalised, but the discussion earlier this morning was it that the Secretariat would do the job of synthesising agreement and then the Core Group would deal with non-agreed issues or was the Secretariat... got nothing to do with it whatsoever and the Core Group's writing it from scratch? It's this question.

Chairperson No, no, not at all, Mr Smith. The Secretariat will still be there to assist, they will give their administrative back-up. We are only requesting the two members just to prepare a draft for the Core Group, the full Core Group will discuss it on Wednesday. Thank you very much for coming. The meeting is closed.

(end of tape 3)