

TAPE 1 & 2 DATED 25/1/95.



TEMPORARY SERVICES

The TECHNIHIRE group of Companies (Registration No. 86/03905/06)

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CONSTITUTIONAL ASSEMBLY
THEMES COMMITTEE 3

25 JANUARY 1995

CONTENT OF BAG

1 PRINTOUT
1 COMPUTER DISK
1 QUERY SHEET
2 TAPES

PROBLEMS WITH AUDIBILITY OF TAPE DATED 25 JANUARY 1995

PAGE	SPEAKER	DESCRIPTION	TAPE COUNTER
1	Secretariat	...at a number of (?)	48
3	Secretariat	...role of our general (?)	107
3	Secretariat	...summarise these (?)	115
3	Secretariat	...of giving (?)	116
3	Secretariat	The (?) only reflects	118
3	Chairperson	Mrs (?)	127
3	Rabinowitz	Mike sound off. Not audible	132
4	Secretariat	...and they are (?)	163
5	Secretariat	...universities, (?)	214
6	Rabinowitz	Sound off. Not audible	252
6	Rabinowitz	Not audible	267
6	Rabinowith	(?)..those three	281
6	Gordhan	...that it is (?)	302
8	Rabinowitz	She does it again	374
8	?	This could be Ms King	402
9	?	...this is an (?)	412
10	Botha	Tape goes blank	491
14	Rabinowitz	Not audible	546
14	Botha	...new issues (?)	568
16	Botha	...and will be (?)	636
16	Rabinowitz	Not audible	638
20	Coetzee	...urban and (?)	874

TRANSCRIPTION OF THE ADDRESS BY THEME COMMITTEE 3
ON THE ISSUE OF RELATIONSHIP BETWEEN LEVELS OF GOVERNMENT
HELD ON WEDNESDAY 25 JANUARY 1995 IN ROOM E249

Chairperson: P de Lille

Members present:

J T Albertyn
M S Applegryn
M Bhabha
A Blaas
Y I Carrim
L D Chuenyane
M P Coetzee
P C Cronje
P de Lille
P J Gordhan
P J Groenewald
N B Gxowa
O N Khobe
T J King
G W Koornhof
Z A Kota
N E Lamani
S J Leeuw
H G Loots
N I Mabude
A F Mahlalela
N N Mapisa-Nqakula
J W Maree
L J Modisenyane
S J Mongwaketse
R Rabinowitz
I Richards
P W Saaiman
M S Seperepere
E Shandu
M V Sisulu
P F Smith
R S Suttner
M Verwoerd
M I Vilakazi

Apologies:

K M Andrew
D C Du Toit
A Fourie
H J Mashamba

(Tape One)

Chairperson: I ask political parties that have made changes to their representation in Theme Committee 3 to please submit that in writing to the Secretariat. Those parties that have not done so. And then also from the IFP we would like confirmation of Mr Smith who has replaced Mr Mtshali's position. And also there's an apology by the two co chairpersons, Mr Ken Andrew and Prof Doug Du Toit who is currently overseas and will be joining us next week. If you look at your Agenda for today, you've got the Minutes of the last Theme Committee of 14 November 1994, and I take it that members have read the Minutes. If so, can we then go over to matters arising out of the Minutes of 14 November 1994. No matters arising out of those Minutes, then we can go to the next item which is Item No 3, the Core Group report. The Core Group had a meeting yesterday and we'll ask a member of the Secretariat to go through the report for us.

Secretariat: We have the copies of the Core Group report. Do members have a copy?

? Chairperson, can I take you back a little bit. A correction on the Minutes, Page 3, 3.3, it's not L J Modisenyane, but Mongwaketse that becomes an alternate because under Minutes of the previous meeting

Chairperson: Yes, we've noted that. Thank you very much.

Secretariat: May we now go to the Minutes of the Core Group. Whilst presenting those Minutes, we also include what happened in the co-chairperson's meeting which was held earlier on and also include the report of the workshop which was held in Pretoria which was initiated by the Commission and Provincial Government. I think we should start with the co-chairperson's meeting which was held on Monday. The co-chairperson's meeting looked at a number of ? of the CA, ie the workings of the Secretariat and what the duties of the chairpersons are, what the Core Group will do and the functions of the Theme Committee as well. What came up strongly in the meeting was that the first block of our work schedule should be adhered to and other blocks that follow. There could be some flexibility in regard to that. The Theme Committee could change and re-prioritise. Another important thing which came out of that meeting was that if members won't be able to attend meetings, it is advised that they submit written apologies because the CA or the Secretariat has been advised to take those into their records so that they can be

used in case the party chiefs want to find out what the attendance is in these Theme Committees. Another important thing was that the Core Group should be seen as the "driving vehicle" of the Theme Committee ie the Theme Committee shall act on the advice of the Core Group. So the Core Group will act as an "engine" of this vehicle ie the Theme Committee. The Theme Committee's duties include looking at the submissions, processing them and deciding on issues that are contentious and non-contentious. Yesterday the Core Group met for the first time and as two of our chairpersons are away on official visits and they won't be able to attend Core Group meetings and Theme Committee meetings until 30 January, which is next week Monday, therefore Prof de Lille has been asked to chair all the meetings of the Core Group and Theme Committee this week. The Core Group yesterday looked at the following issues: They looked at Minutes of the previous meeting and raised questions on matters arising from the previous Minutes of the Core Group. There were some issues that needed further clarification ie Developing issues, composition of Commissions, and the appointment of technical experts. We're still awaiting positions as to technical experts because the Committee of Technical Experts are supposed to meet today. The composition of Commissions and Developing issues, those are going to be centrally controlled. The Secretariat is going to look at that centrally ie if Theme Committees for instance wish to have meetings with other Theme Committees, those will have to be central in the Secretariat so that they could be organised centrally. On the workshop on Provincial and Local Government, members may remember that before the end of November month last year, the Core Group was invited to a workshop in Pretoria by the CPG. It was a brainstorming workshop so no resolutions were expected out of the workshop. What came out of that workshop is being drafted by the CPG and will be made available to the members later on. But what is of importance was that a variety of participants were there ie people from Local Government, people from Provincial Government and people from all other sectors that have an interest in the Provincial and Local Government. On point 5 of the Minutes looks like the schedule and planning for the first block of our work plan. The Core Group felt that it was important that this matter be referred to the Theme Committee ie the Theme Committee should look into the planning of preliminary sessions of our work plan ie we need to spend a lot of time in defining how we're going to work from here ie how we're going to re-prioritise the items that are on our work schedule and how we're going to look into it. And what is also important from the Theme Committee what needs to come out today is how are we going to look at adjustment of reports. Who is going to draft reports and how are

they going to be done, how we're going to end the submissions, the role of our general ?, what will that be and do we handle contentious and non-contentious issues. So those are the questions that need to be answered at today's meeting. On submissions, it was felt that it is necessary that the Secretariat looks into coming up with a synopsis. The Secretariat has provided numbers of a synopsis which has only information, I understand, ie it only provides what is contained in the submissions but does not summarise these ? of the submissions. The Secretariat is weary of giving ? because we do not wish to be involved in the politics of submissions. The ? only reflects what is contained but not how the points are presented. So the Theme Committee will have to decide on how submissions are going to be handled ie who is going to handle executive summaries and how are those going to be handled, and how are we generally going to handle submissions. Those are the issues that were dealt with in the Core Group and those are the issues that need to be clarified in this meeting. Thank you.

Chairperson: We now open up the floor for any questions or clarity. Mrs ?.

? I'm so sorry Madam Chairperson. I forgot to extend the apology of Mrs Joyce Mashamba. She's not well.

Chairperson: Mrs Rabinowitz.

Rabinowitz: While we're talking apologies. On behalf of certain members ... (not audible)

Chairperson: Mr ?

?: Just one or two general remarks and then just a question, the one is that our submission from the National Party will be made available at 12 'o clock today. We have finalised the document and it will be made available today. The second issue is just a question with regard to point 5.2 of the Core Group. It says the Secretariat advised the meeting that the following participated events will be organised by the Community Liaison in conjunction with the SACS. I want to know what that means? And then it appears that the technical expert that will have to assist the Committee to draft this report will most probably be appointed today. I don't know whether anybody from the Management Committee could help us in that regard. But I would like to say that it would be very difficult for a Committee to proceed with its work unless there are technical people here to start drafting what we have in mind. Lastly Madam Chair I just want to announce that

Dr Tersia King will take my place on the Core Group and I will walk from this Committee all together and somebody else will be appointed in my place.

Secretariat:

The answer to the first question is South African Communication Service. The Government requires that Government bodies should go first to other Government bodies for assistance ie the SACS is a Government body and for our communication services, we were required to approach them and they are ?, and what is meant by organising, it means they are going to look into transport, venue and other logistics ie things like accommodation, public address systems and things like that. The Theme Committee must still decide what will be entailed in public participation as it was raised in the Core Group yesterday that public participation could mean workshops, conferences or public meetings. So that's what public participation is about. I don't think I'm in a position to answer on the second question ie the question pertinent to technical experts. I think the matter needs to be put before the Theme Committee and then we'll take their recommendations.

Chairperson:

If I can just come back to the remark by Dr Rabinowitz. I don't think that it's appropriate for this Theme Committee to deal with issues that were mentioned yesterday in the CA. Maybe it should be raised at another level, if you want to request that apology.

Secretariat:

There's one point I overlooked. Yesterday in the Core Group a number of questions were raised concerning the submissions by the Commission of Provincial Government and yesterday afternoon we ie I and Thandi from the Secretariat, met with Mr Tomaseli Botha to seek clarity on those questions. And Mr Botha showed interest in coming to the Theme Committee and addressing the Theme Committee on those issues. But then the protocol decrees that if the Theme Committee wishes to have clarity from members of the Public or from other organisations, the invitation should be extended via the Managing Committee and the Management Committee unfortunately will only meet later on. We suggest therefore if the Theme Committee wishes to extend that invitation, it will have to follow that procedure.

Chairperson:

Can we have input from the Theme Committee members on 6.6 on Page 4. "The Theme Committee needs to find a way to deal with submissions, the flow and if any additional information is required." As a Core Group we decided yesterday to bring it here so that we can make recommendations to the Secretariat as to how we see this needs to be done. Can we have input from the members on 6.6 please?

Secretariat:

Ms Chairperson, may I suggest the following to facilitate discussion. We have different types of submissions. We've got submissions from political parties, we've got submissions from organisations. By organisations, we mean universities, ?, ? for Human Rights, HSFC and the like, and we've got submissions from individuals. These submissions vary in their content and the way they're structured. Some of the submissions are quite technical which suggest that they would need to be an executive summary for speedy processing of those submissions. People who have been invited to make submissions have been requested to attach executive summaries to those submissions and those are going to be provided. ie If the members wish to see the original that can be made available to the members, but if the members wish to see only the executive summaries that can be done as well. And another thing was a proposal that the Secretariat looks into coming up with a synopsis of the submissions. We need clarity on that. How do the members see the Secretariat working on this? What do you mean by a synopsis and how should we structure it? Thank you.

Chairperson:

Mr Smith.

Smith:

I'm not quite sure. I think this whole nature of a synopsis is quite confusing. I think politically the Secretariat has expressed the view that it's not too keen on the idea of having to do this synopsis because there could be possible political interpretations attached to the way it's done. So I would imagine in the first instance that all party political submissions should be handed across to us. There is also the notion that submissions that are received from the Civil Society very often don't address the specific issue of the blocks that we're working on and they cover a wide range of issues. And there was therefore the suggestion at the Core Group meeting that the Secretariat highlight the points within those submissions which are germane to that particular block. I think that makes a lot of sense and perhaps in that way it avoids the whole issue of summaries and synopsis and so on. Maybe we can play it by ear. The submissions I have seen so far, there are a very few that are long. The longest one was one on traditional leaders, I think, about 15 pages, but that perhaps could have had a synopsis, but the bulk are short and I should think easily digested by ourselves. I would think that only in an instance where you have a really long highly technical submission, there might be a need for it. And then I thought we had already agreed that people who make such submissions should be requested upfront to provide a synopsis themselves. Thank you.

Chairperson: Dr Rabinowitz, you had your hand up.

Rabinowitz: (not audible)

Secretariat: If I may is that a suggestion? You know we could take that out and then find out how it works. I don't know. Can you put it to the Theme Committee and find out what the house feels is the direction we need to follow.

Rabinowitz: (not audible)

Chairperson: Dr Rabinowitz, but you are dealing now with the actual drafting of the report. We are still looking at how to receive and deal with submissions that come in, and the first input by Mr Smith was that the submissions that we receive that the Secretariat only highlight the relevant issues in a particular submission relevant to a particular block, and what I understand you to say now is that you are making suggestions as to how the Theme Committee must compile a report. Is that correct.

Rabinowitz: (Not audible) those three broadly different sections, and in summarising them or sub-dividing them. Because I imagine the Secretariat is going to collate those reports in some way, not just make a series of single reports that are going to be put into a pile, but collate several different reports into one and put common issues into single reports. What I was suggesting would really be relating to the Secretariat's work, and I don't suggest that they highlight only some issues but they cover the entire report that comes from all those segments of society. But every issue goes into the block as designated by ourselves to look at the Constitution. So nothing is left out from the report, but it's sub-divided in our framework.

Chairperson: Mr Gordhan.

Gordhan: Chair, there are three issues. The first is the information that we have about the availability of Mr Botha from the Commission of Provincial Government. I would like to propose that we formally, the Theme Committee, request the Management Committee to allow us to invite Mr Botha if possible tomorrow to give us an overview of the work of the Commission, to give us an overview of the issues which the Commission is looking at and questions that it is ? into in order that we don't spend too much time doing overlapping and repetitious work. If we have that input at a fairly early stage, we avoid obviously spending resources and duplicating work unnecessarily. The third thing is that if the

Commission could let us have an index of documents that would be available. There might well be reports, articles, and so on which are readily available which we don't need to look into which would be valuable for members of this Theme Committee to use as reading material in order to be better informed of other issues that we have before us. So, can I put that forward as a proposal for this meeting to formally decide upon. The second is how do we organise this submissions. I think it's a question we need to look at. My colleague has a document called "Submissions" here which provide an early index of the submissions that have already been forwarded to this Theme Committee. I don't think all of us have this document. It certainly wasn't in my pack. But the point I want to make is that the one early way of organising ourselves is to have a bi-weekly index, in other words an index prepared for eg on a Monday and a Thursday of each week, certainly for the next couple of weeks, so that all submissions that have come in before those days and not included in the previous index are included in a subsequent index. It then requires that the index is dated, that a numerical order is provided of the submissions in a sequential order so that we can organise the papers in our own offices as well, and make that easily receivable should that actually be required. The categorisation which Dr Rabinowitz speaks of is already here "Individuals' Organisations of Political Parties" and perhaps if there are other categories we could include them as well and the Call Committee can look into that. So, can I suggest that a systematic indexing would be very useful to us because by the time we reach Page 10 of this index and if we have it together, it's a very easy way of accessing the documents that we might need particularly when we get to the stage of processing. As far as the processing of submissions are concerned, Chairperson, once we've heard Mr Botha's input what we might want to consider from the Theme Committee is the formulation of the framework within which we could begin to invite the elements that different submissions have within them. In other words unless we have some system of 20 or 30 items within which we can categorise the submissions or parts of submissions, we'll be going all over the show and won't be able to organise information that we have before us. And perhaps the meeting would like to apply its mind to how we formulate the framework. So, firstly it's inviting Mr Botha, secondly a systematic index, perhaps we can get some help from the library to work out an indexing system, and thirdly a framework for systemizing the submissions we have before us.

Chairperson: Thank you Mr Ghordan. Mr Dingani.

Dingani: May I try to answer the first question, the invitation. The

Management Committee will meet on Friday which means that it's only then that the Theme Committee can send through the invitation, and Mr Botha will unfortunately not be available on Friday. He's available today and won't be available tomorrow because the CP will be meeting in Pretoria, so he has to be in Pretoria at 8 tomorrow.

Chairperson: Mr Smith.

Smith: Madam Chair, is it a fact that should we choose to invite somebody to address us, we have to go through the Management Committee? Is it not possible for eg our Agenda today runs until 1 'o clock. Should we finish timeously, would it not be possible for Mr Botha, since he's available today, is there no way that we can perhaps talk about this in today's meeting. Just a suggestion to ignore the rule about going to the Management Committee?

Dingani: Those are the rules and if the members wish to short-circuit the system, the Secretariat cannot stand in the members' way. I wish the members could take full responsibility of the situation.

Chairperson: Dr Rabinowitz.

Rabinowitz: (Not audible)

Chairperson: Mr Sisulu.

Sisulu: Thank you Madam Chair. I agree with the proposal that let's ask Mr Botha to address us and let's forget about this long bureaucratic procedure. We'll come back to bureaucracy on Friday, but let's ask Mr Botha to address us at this time.

Chairperson: In view of the suggestion I also take it then that you also support the input by Mr Ghordan that we need that input first, and then look at a systematic index and the framework. What is vital to all of this is the input by Mr Tomasile Botha. Can we just consult with the Secretariat on how we're going to define now.

Secretariat: What I was going to suggest is this. If we are to call Mr Botha to address us now, we'll need to make the Minutes of this part of the discussion available to the Management Committee because I think it would be advisable that Management Committee know exactly what the discussion was all about.

? Madam Chairperson, I would like to suggest that we take a stance here, for the moment because this is now a first situation here and

I think it's necessary that we do use the opportunity that for future reference we are now very much aware of it and that we try to somehow stick to the rules in future, but we specifically address this to the Management Committee as being one of those occasions where we haven't been forewarned and that we feel that we would like to have the information and that we also have the time this morning to do so. But we in future just try to stick to the ... in other words this is an ? this morning.

Chairperson: Thank you. We'll definitely do so and put an explanation to the Management Committee. And Mr Tomaseli Botha is here with us in the Chamber and without delay we will ask him to come down. He has followed our discussion so far and address us.

? Madam Chair, before Mr Botha starts, may we just ask whether he's going to deliver a prepared speech. If so, we would like a copy thereof. If not, whether the Secretariat will give us a copy of the notes or whether we should make our own notes.

Chairperson: Mr Botha don't have a prepared speech but we'll ask the Secretariat to take notes.

Botha: Madam Chair. Thank you very much for this opportunity and I wish to thank the members of the Theme Committee for allowing me this short intervention on the work of the Commission. We've been looking forward to this opportunity because we feel that there are a number of overlaps between the work that we do and the work that some Theme Committees do, especially what this Theme Committee is doing. We have been interacting with the Management Committee. We've had some meetings with the two chairs, the chairperson and deputy chair of the Constitutional Assembly to discuss the structure of our work and how we're going to interact with the Constitutional Assembly. First of all, I think it's important to very briefly explain what the Commission is all about and what it does. The work of the Commission is in two parts - the one deals with the transitional arrangements in assisting to set up the administrations of the provinces, in all the nine provinces. It deals with the setting up of structures, division of assets, rationalisation of legislation and personnel and where the need arises it deals with the division of resources, both humane and financial between National and Provincial. So that is one leg of the work of the Commission. On the Constitutional side, it's responsible for the drafting of a Constitutional text on the Provincial dispensations. It is expected that it would submit that text to the Constitutional Assembly after it has been commented upon by the Provincial Governments. It is important to note that

the Provincial Governments are not defined narrowly only to mean the executives of the provinces. It is defined in its broad sense to include the legislatures. We've had a number of discussions with the provinces and with the speakers. We attended a meeting of the speakers late last year, where all the speakers of the provincial legislatures were discussing how they were going to involve themselves in the discussion of the Constitution among other things. It became clear that there was no structured way in which the provinces were going to deal with the Constitution. Some provinces have established the (tape goes blank) for comment to those Committees that do not present the Government in terms of the way in which the Constitution is structured. So we had to ask the provinces to explain to us how they're going to give comments which would carry the mandate of the Constitution namely that these would be regarded as comments coming from the Government of the provinces. And it has become clear that there was no structure and the provinces themselves were not clear. A suggestion that was put forward, although it wasn't put forward formally to all the provinces but to some of the speakers, was that they should follow the methods that is followed by the Constitutional Assembly ie transform themselves or the legislature into a constitution body, a constitution discussion body when they're dealing with constitutional matters. After all they are not big bodies, many of these legislatures, they can divide themselves or form themselves into Committees if they want to divide themselves, but when they want to discuss broadly, they can discuss this in the larger body of AG or less than that in some of the legislatures. That seems to be generally accepted at least from those speakers that I've spoken to, but that is not yet formalised. We were hoping that from the side of the Constitutional Assembly, the same sort of message would be communicated to the provinces so that there is one structure that we all use. When we receive inputs, we know that those inputs would be coming from that body and when we make our submissions, would refer those submissions to that body. Presently we are busy developing a document that we are going to send out. Perhaps I should step back and say that at the beginning we were uncertain about how to set the process in motion. Whether we should start by inviting submissions from the provinces or whether we should draft a document to guide the discussion so that the submissions are going to follow the format of the document that was drafted. We realise that if we just ask for general submissions, we'll end up with a lot of submissions and it will be very difficult to know where to begin or act. We therefore followed the lateral namely that we would draw up a framework document which is going to stick fairly close to the Constitutional

Principles. What we have then done is to look at the issues which started by defining issues as contentious and non-contentious, and then later we decided lets remove contentious and non-contentious and lets just put issues. But we told ourselves in our minds that there are certain issues which are contentious that guided us in selecting the issues. But we decided that we're not going to state what are contentious and non-contentious issues. We just listed a number of issues in this document and then in listing those issues we then state what the Constitutional Principle says around those just in summary form, and then pose a number of questions which would lead us to develop or those who are discussing that document to come up with possible options. For eg in the Senate there are all sorts of issues that are arising about the structure of the Senate, how it relates to the provinces, how it is elected, who does it represent and so forth. So it poses questions such as - Should a Senate represent the executive of the province or the provincial legislature or should it represent the constituencies? And then people would discuss that along those lines, so that they would then give part indication of what they are opting for or what they favour of those. Same thing with the executives. We pose questions such as there are different types of executives - presidential, parliamentary ... Which type of executive in the provinces are we going to be going for? I'm just giving this as illustrations of the way we're going about with the first draft of the document. Then we are hoping that we'll get return inputs from the provinces. That document is also going to be released beyond the provinces. Anybody who wants to comment on it or submit, will submit, including the Theme Committees. And what we have done before that was we invited through the Government Gazette of all the provinces, comments on submissions and we've received some submissions but I must say the response was not overwhelming. And some of the responses had nothing to do with Constitution. They were dealing with transitional issues. So we then have been going through the selection of what is Constitutional and what is administrative. What we are then going to do is once we have received those submissions, we are going to start drafting what we refer to as a "Layperson's draft", again not in the form of a strictly Constitutional text. We'll try to draft a document which will be fairly closely to what we'll end up with again in an unfinished manner. And then release that, especially discuss it with the provinces. We have in between a number of think tanks and workshops. We have a document here which was given, I think a copy to the Secretariat, to circulate amongst the members of the Committee to look at our time frames and how we're going to go about doing our job. We've had a number of workshops and think tanks, our Core

Group which you can call a technical committee which involves political scientists, economists, lawyers and so forth. In that group, we talk about a group of 12 - 15, not more than that. This is a group that were brainstorming some of these inputs and processing the documents as they come. But I must say and emphasise the point that we are not simply receiving the document and just grouping items. We have to submit a text to the Constitutional Assembly as the Constitution requires. The way we prefer to go about it is that we don't want to be descriptive. We'll develop a minimum of three options on each topic. We'll obviously argue for one of those options and state reasons why we favour such an option. So what we prefer to do is as we receive submissions from the different provinces and other players, we are open to exchange that information with this Theme Committee and other Theme Committees that will overlap. So that what happens here is also informing what we are doing in our Commission and vice versa. So our intention is that we should exchange information and as we draft we have rough sketches of the areas if it's a Senate who will submit to you the rough draft of the document that we're busy working on so that you also might want to incorporate it into your own submission, and would like to get some of those documents that you're receiving in terms of information or submissions so that we can take on board some of the options that are emerging from the submissions that are being given to yourselves. So that's the process I would like to follow. The only problem that we're faced with at the moment is that your time frame is much shorter or much tighter than our time frames. Or shall I say the time frames for the Constitutional Assembly in general do not give us sufficient time to absolutely go through the discussion process with the province. If we were to submit with the Theme Committees in June, we would not by that time have had the time to go through the thorough discussions which would enable us to help a Constitutional text for submission to the Constitutional Assembly. So, we have then prepared ourselves to make our first draft submission which is closer to what we submit by August. So it will go beyond the time that you have because we have to actually draft not just collate the information and process the data. So that presents us with a slight problem in the sense that if by August the Constitutional Assembly wants to release a draft, it may help to append to that draft our draft submission as well. You see that's the problem we have not discussed yet, whether they would by that time have had enough time to incorporate it into the main text, whether our submission will go as an appendix to the draft that would have been prepared by them?

(Tape 2)

So that's really in a nutshell the outline of the work and the way we are going about doing things. I think I'm ready to answer questions.

Chairperson: Thank you Mr Botha for the valuable insight, although I think it has created more problems rather than solving our problem. But we'll invite questions for clarity to Mr Botha? Mr Smith.

Smith: I wonder if Mr Botha could explain one thing. He mentioned that the CPG would provide three possible options and then you make a particular recommendation on the one, relying on the other two as options to be perused. Does that refer simply to the draft report or to the actual text itself? In other words will there be three versions of Constitutional text with your recommendation or just three versions in layman's language plus one text?

Botha: In fact the last point you're making is the intention that we would not do a detailed Constitutional text on all three options. The other two would be written in a layperson's language. We would drive only the one that we opt for in a legal sense.

Chairperson: Dr Rabinowitz.

Rabinowitz: Madam Chair, I would like to ask Mr Botha on what basis the 15 members of the Core Group were selected?

Botha: What we did was to look around and ask some organisations to give us names of people. We did it randomly, there was no systematic way of doing it. We just drew in people that we know and ofcourse in so doing, you will note the sensitivity of our work, we're supposed to be not above what is being discussed by parties, but yet much more objective and not be influenced by the trends of the political parties. In selecting people into this, we are also trying to take abstracts of identities and what have you who are also belonging broadly speaking to a variety of schools of thought. I don't want to say they're aligned to political parties or what. But we've taken that on board in drawing people.

Chairperson: Any further questions? Mr Smith.

Smith: I wonder if the issue of preparing a text for submission to the CA after it's been commented on by the provinces... We say after comment by the provinces ... Does this amount to in consultation with or after consultation with or are you entirely autonomous in

terms of whether you choose to accept what the provinces suggest as proposals? Is there any obligation to take on board what the provinces put forward if they do so for eg collectively?

Botha:

The Constitution doesn't use the word "after" or "in consultation with" in respect to this. I'm not sure of the exact formulation. However, it amounts to that whatever submission we make must take on board the submissions of the provinces. But obviously as you know how complex this issue is, it's very difficult if at the end of the day we're going to submit an independent technically objective submission to the Constitutional Assembly, we'll have to take those on board. At the end of the day we've got to present something that we can depend on, so what we will do in taking on board these we will accommodate some of these into the options and will argue why we think that particular option is not workable. So at the end of the day we're going to present a viewpoint that comes from the Commission which will have taken on board, obviously not all of them. If there are five/six/seven different options, we won't take all of them on board.

Chairperson: Dr Rabinowitz.

Rabinowitz: Madam Chair, just coming back to (not audible).....

Botha: The framework in fact, our Administrative staff and the Secretariat here have been looking into that. They are very close to each other. There is no major disparity. The topics and the sequence is fairly close to... There may be differences slightly here and there in terms of the order of things, but the topics and sequence to a large extent is in line with what is being followed by the Constitutional Assembly, so there won't be a major..... And ofcourse our list may not be exhaustive, but what we have said is that if there are new issues ? will be added into that, then we can re-order the document as we draft it later on.

Chairperson: I think what we need to look at now is the proposal by Mr Ghordan as to how we are going to organise ourselves now that we've heard the overview from Mr Botha, and I'm not sure whether we are going to do it in this Theme Committee, because what we have to keep in mind also is the recommendation by the Management Committee that the first block, as recommended by them, that we should follow that first block. And then thereafter we can start changing our program, but for this week until next week, we have to complete what is recommended by them in the first block. Now, how do we deal with processing Mr Ghordan's proposal? Are we going to refer it back to the Core Group to come up with a proposal

and then bring it back to the Theme Committee? Are we going to discuss it now, the detail of how we're going to organise our work? In fact can I just have input on that from the members? Mr Smith.

Smith:

Chair, your questions point to two things really, it's organising our work and then secondly organising our work in terms of the CPG. It seems that there proposal/text will only be submitted in August at the earliest. The only way that I can think that we could liaise in the interim in a constructive fashion would be if we were aware of for eg the initial draft that is going up to the provinces considering the issues. Perhaps if we were a little bit more aware of the process from now until August, it would help us to see to what extent this would overlap that could allow us to structure things to fit it. But it seems that if we have one report and then there are just provinces getting together and having serious meetings month after month until you end up with these options, I don't know how we can get involved in that process or how we structure ourselves to fit it. Maybe it isn't necessary to do so. We might have to accept at the end of the day that these are two parallel processes and we simply feed each other information as opposed to structuring work together.

Chairperson:

Also the Theme Committee, as pointed out by Mr Botha, will receive and collate submissions. The actual debate will take place in the Constitutional Committee and then they are expected to deliver a Constitution of text by August, so as the Theme Committee, we are the group that must link up and work closer with the Commission because we are not going to present the final draft, it must still be debated in the Constitutional Committee.

Dingani:

Madam Chair there is one issue that I need to clarify. Maybe it might help in this regard. The CPG are going to be receiving submissions and we are also receiving submissions. Is there a way that we can have access to the CPG's submissions or how does it work out?

Botha:

In fact the intention of this corporation with the Theme Committee is precisely to exchange information. There may be reports or submissions that we'll receive that you may not receive, even papers as Mr Ghordan referred to other documents. If they be that we interact with other bodies, international experts and so forth, we get documents like that because we are also commissioning people to write papers on specific themes just to give us an international perspective on certain issues. We'll exchange those documents with yourselves and we would expect the same from your side. But also if we are going to go and say hear evidence

from the provinces especially if we're dealing with the government, it may be that we could co-ordinate that instead of the provinces discussing with you and the following day they going to discuss with us. On those models that relate to the work that overlaps between yourselves and ourselves we could make an arrangement that we discuss it. In fact from what I heard yesterday that the first block is the same as ours. So there is no problem there. And secondly, even though we're saying that we would have a fairly complete text by August, in the interim we would start drafting section by section which will follow those blocks and therefore we want to interact with yourselves so that what you collate might also take on board some of the preliminary ideas that are emerging from the document that we're getting from whoever is submitting to ourselves. We will have a section by section layperson's draft, not the final text. It will be a rough draft of some of the ideas that are coming up if you're going to submit by June and will be ? that beyond June and those various options.

Chairperson: Dr Rabinowitz.

Rabinowitz: (not audible)

Chairperson: Can we hear some views on that suggestion, that we come in line with the time frame and the work plan of the Commission. Mr Gordhan.

Gordhan: I think we must be careful here to consultate the Theme Committee with the CA as a whole. The principal relationship of the CPG is with the CA, not with the Theme Committee. The discussions that we are having are not limited to the Theme Committee itself. Pretty soon some of these issues as the first reports appear from the Theme Committees in respect of each of the blocks, that events will take place in a Constitutional Committee and then even in the CA as well. At this stage let's put all these thoughts on the table. I think we're in the very early stage of the work of the Theme Committee. Perhaps some time next week we'll have a better feel for submissions that we have. We should receive the document that Mr Botha speaks about which sets out their time frames. I think we would be more interested in understanding the substantive issues that the CPG is looking at rather than the process issues that we've talked about now. And the sooner that Mr Botha can give us access to for eg one of the topics which are the Commission papers. When are those papers expected? Is there anything at hand? Can we have access to them? Those are the sort of things that by early next week if he can let us have information on, then we'll be on a much better footing to work out

what the relationship is at a Theme Committee level over and above what the relationship should be at an overall CA level. And therefore we should come back to how do we organise our work. And I want to argue Chairperson that we spend this week basically coming to grips with what is before us, come back to the framework issue. Perhaps when we meet on Monday try and get some common understanding of what is the framework we working with then, and then processing the submissions that we have before us. So for tomorrow's meeting for a start the parties might want to apply their minds to what we mean by a framework, what are the elements within that and certainly this phase of our work. We come back tomorrow and re-visit that particular aspect and try and finalise it on Monday. By then we hopefully will have more information from Mr Botha's side as well, and then we can begin to shape our future directions.

Chairperson: Mr Smith.

Smith: Chair, as far as the CPG goes, I would quite endorse those comments. However, in terms of the work program, the position as I understand is which in fact you stated earlier, is that the Management Committee has requested very strongly that we complete Block 1 and submit a report on 1 February, that the report actually be submitted and that the latitude then of rearranging the work program would apply from thereon. So this week I think we do need to address the issues that are raised. We also do need to look at the substance of the first block and draft a report. So we need to make adequate time for that.

Chairperson: Any further views on this? So if there are no further questions to Mr Botha, we will then excuse him and then we will continue with our meeting.
So we are still on the Core Group report and the commission on Provincial Government. We just want to make a suggestion from the Secretariat's side here also that we've heard the overview by Mr Botha and whether the Theme Committee instead of going into the detail of that relationship and interaction with the Commission, the exchange of information with the Commission, that a Core Group meet with the Commission once more to finalise that working relationship and for the time being we continue to concentrate on Block 1, and then we will not enter into any debate now on the "how" part and the relationship of the Theme Committee with the Commission, but we rather then concentrate on how we're going to finalise Block 1 from now onwards. If we can have the view of the members on that? I just see some heads shaking. Can we have your views please? So the Core Group will

then take on this exercise of consulting with the Commission and work out the "how" part of our relationship. The next item on the Agenda is item 4, it's the Workplan and Schedule of Meetings. In the Core Group report you will see that we've agreed that all political party submissions must be in by today so that hopefully by 26th ie on Thursday, the Core Group look at the submissions from the political parties. Yesterday the ANC and PAC committed themselves to put in their submissions yesterday afternoon. We have received the submission from the IFP, the National Party will be putting in their submission today and who else? So we'll be receiving all the outstanding submissions from political parties this afternoon, and we've suggested that tomorrow on Thursday 26th that we actually look and start debating or looking through the submissions received from the political parties. Can we just hear from the other political parties? Can they confirm that we will receive their submissions today, because that will depend whether we are going to discuss political party submissions, and we also need to hear the view of the Theme Committee members on the proposal that we discuss the submissions tomorrow.

King: Madam Chair, the National Party's submission will be in by 12 o'clock today definitely.

Groenewald: Chairperson, I can also confirm for the Freedom Front today.

Chairperson: And then, ANC. At 11 today? So is it still feasible to discuss the submissions tomorrow? This is really what I'm driving at. If we receive them today, will we discuss them tomorrow? And if we don't discuss them tomorrow, what are we going to do tomorrow because we are now on the workplan and the schedule for this week. Dr King.

King: Madam Chairperson, I just think that if we can have them all today and we have time to prepare for tomorrow, then I think we can discuss it tomorrow. But if we only receive them tomorrow morning, that would be very difficult.

Secretariat: The Secretariat unfortunately cannot confirm that they'll be able to circulate them today because we don't know the times that they'll arrive and we don't know how long it's going to take to process them in the Secretariat. So we can only promise to have them first thing in the morning.

King: Madam Chairperson, is it possible then for us to have as much as we can get. Those that are available already today, so that we have sufficient time tomorrow. Because we would also like to

discuss those within our own groups before we actually come to the Theme Committee.

Chairperson: We've received submissions from the IFP and the PAC, and I think those are available on the table.

Smith: The IFP is not available, to the best of my knowledge, Madam Chair.

Secretariat: There's a document called Submissions which were circulated to all the members and we'd hoped that all Theme members received those. But we had extra recommendations of those just in case. That was actually the only submissions we had then, but if maybe members have not received their submissions, the Secretariat will look into processing more of those and making those available today. The PAC's submission, we got that yesterday and we've circulated that amongst members. So if I can get the indication of members who did not receive their submissions, so that we can be in a position to send those to their pigeon holes today, this afternoon.

Chairperson: Since we are meeting tomorrow afternoon, can we then say that we will then discuss political party submissions? Because we need to prepare the Agenda also for tomorrow's Theme Committee meeting. Mr Smith.

Smith: Just a clarification, I'm not quite sure that I understood whether the Secretariat was saying that some had been distributed but not all and some people haven't received. My understanding is that the IFP's submission, none of it has been distributed, or am I wrong in that?

Secretariat: The IFP submission was the only submission from political parties which was distributed in the package called "Submissions".

Rabinowitz: That was an original draft submission that was submitted quite a few weeks ago, but we have a new submission that was handed in on Monday and it hasn't been available to members of the Theme Committee. So that is not the document that people should be studying, it's the new one, no copies of which have been available to us.

Gordhan: Chair, quite clearly tomorrow we are not going to be able to get into the substance of this submissions. Can I reiterate a position that I proposed earlier on which is that we spend part of tomorrow's meeting because we don't want to block ourselves that

we sit here until 6.30 with work. Can I suggest that we apply our minds after some preliminary reading of whatever submissions we received to the question of a framework which will help us to process the submissions. The second proposal is that it is at Monday's meeting that we begin to get into the substance in relation to the framework that we can ideally agree upon. So can I suggest that two-step process, Madam Chair? I think we're bluffing ourselves if we think we can receive things by 9 or 10 in the morning, give parties the opportunity to talk about their submissions and come up with positions in a meaningful way. So this two-step process will actually assist us.

Chairperson: Any support for Mr Gordhan's proposal?

Smith: That's fine if its accepted that three meetings will be adequate to discuss all the parties proposals and draft a report. Or the other option is we could start tomorrow with what is available, do them party by party sequentially instead of on mass, so if the PAC's is available and ours is available we can start tomorrow with those and then on Monday we could go onto the other parties. There's different ways of doing it, but if we believe we can finish the whole lot either Monday, Tuesday or Wednesday. That is fine.

Gordhan: Chair, with respect, if I can respond? We can't do this sequentially because our task is to compile a report which would reflect commonalities, areas of difference etc. You therefore require the full spectrum of views before you. In order to establish what are the categories we're going to use, where there's agreement, where there's disagreement and we need to order them in that way. And therefore we need to be able to apply our minds to the submissions, so in that respect, I understand Mr Smith's enthusiasm, but in practical terms we are not going to be able to get it there.

Chairperson: So tomorrow we will only have the one item on the Agenda, that's the Framework of the Process of Submissions and then from Monday onwards we get into discussing substantive issues. The next item on the Agenda We dealt with submissions. Anything under General? Dr Rabinowitz.

Rabinowitz: Are we going to continue until 1 o'clock or have a tea break?

Chairperson: No I think we can close as soon as we are through with the Agenda because members still have other work to do. Nothing under General?

? Madam Chair, we've heard Mr Botha on the Commission on Provincial Government, is there also a Commission related to Local Authorities?

Secretariat: I've been informed that the CPG looks at that and traditional authorities as well.

Coetzee: I don't know should we separate this Local and Rural or will it be one thing because there's a difference between urban and ?, Local Government and then comes to the Rural Local Government. Will there also be a Commission on the Rural Local Government?

Secretariat: May I suggest that the Theme Committee looks into that. Similarly the CPG does not separate the two. But if the Theme Committee wishes to separate the two, I think that's our prerogative and the Theme Committee could definitely come up with such recommendations.

Chairperson: Well, ladies and gentlemen that brings us to the end of our meeting until tomorrow at 2.00. Thank you very much for coming.