

2/4/6/1/1/8

CONSTITUTIONAL ASSEMBLY

Theme Committee Six SPECIALISED STRUCTURES OF GOVERNMENT

7 February, 1995

Room 249, National Assembly Wing

DOCUMENTATION

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CONSTITUTIONAL ASSEMBLY

EIGHTH MEETING THEME COMMITTEE 6 SPECIALISED STRUCTURES OF GOVERNMENT

TUESDAY 7 FEBRUARY 1995

Please note that a meeting of the above Committee will be held as indicated below:

Date : 7 February 1994

Time : 14h00

Venue : Room E249, National Assembly Wing

AGENDA

1. Opening and Welcome
2. Previous Meeting
 - 2.1 Tabling and adoption of Minutes of Theme Committee meetings of 25 and 30 January 1995.
3. Core Group Report
4. Subtheme Committee Reports.
 - 4.1 Subtheme Committee 6.1
 - 4.1.1 Draft work programme for the Subtheme Committee;
 - 4.1.2 Proposed public hearings; and
 - 4.1.3 Exclusion of Traditional Authorities from Theme committee 6's programme.
 - 4.2 Subtheme Committees 6.2, 6.3 and 6.45
 - 4.2.1 Work Programme; and
 - 4.2.4 Progress Report.

5. General

6. Closure

Enquiries: Mr N Nyoka and Ms K Mckenzie, Tel 403-2174/89.

CONSTITUTIONAL ASSEMBLY

**MINUTES OF THE 4TH MEETING OF THE CORE GROUP
THEME COMMITTEE 6**

SPECIALISED STRUCTURES OF GOVERNMENT

TUESDAY, 24 JANUARY 1995

PRESENT

De Beer, S (Chairperson)

Chiole, J
Jordaan, J A
Kgositsile, B
Powell, P
Vadi, I

B Levy, K McKenzie and N Nyoka were in attendance.

1. OPENING AND WELCOME

Mr De Beer opened the meeting at 08:30 and welcomed the members.

2. BRIEFING FROM CHAIRPERSONS

It was noted that a briefing for Theme Committee chairpersons had been held on 23 January 1995. It was attended by the three Chairpersons Mr De Beer, Ms Kgositsile and Mr Powell.

The main aspects of the briefing were contained in the "Briefing document for Joint Meeting of Chairpersons of Theme Committees", on page 57 of the Theme Committee document package.

3. WORKPLAN

3.1 Schedule of meetings and planning

3.1.1 Extension of deadline - block one

It was agreed to recommend to the Theme Committee that the deadline for submissions for block one, as

indicated in the "Constitutional Assembly Schedule" be extended to 14 February 1995.

It was agreed that parties should do all possible to secure submissions from key stakeholders by this date.

3.1.2 Core Group meeting

It was agreed that the Core Group meeting of 27 January 1995 should be moved to 30 January 1995 at 10:30.

The secretariat would send out a notice with details. It was agreed that the chairpersons of Subtheme Committees should attend Core Group meetings as observers.

3.1.3 Times of meetings

It was noted that 08:30 was an inconvenient time for meetings as:

- i) Members travelling from Acacia Park and Pelican Park are caught in the rush hour traffic.
- ii) The parliamentary creche facilities open at 09:00.

3.2 Workshop: Public Administration and the Constitution

It was agreed that all members of the Theme Committee should attend this workshop on 25 and 26 January and that parties should transmit this to caucus members.

The Secretariat would inform all members of the Select Committee on Public Service and Administration of the workshop.

The Secretariat would send out an additional reminder to members to attend this meeting.

It was agreed that Mr Vadi, Mr Powell and Mr de Beer would act as facilitators on the first day of the workshop and that Ms Kgositsile, Mr Jordaan, Mr De Beer and Mr Vadi would act as facilitators on the second day.

The curriculum vitae of the speakers at the workshop would be distributed to members of the core Group.

3.3 Information seminars: Subtheme Committee 3 - Transformation Monitoring and evaluation.

The Secretariat had arranged that the following information seminars

take place from 30 January to 8 February 1995:

- 3.3.1 Seminar on the Commission on Gender Equality
- 3.3.2 Seminar on the Public Protector
- 3.3.3 Seminar on the Commission on the Restitution of Land Rights
- 3.3.4 Two seminars on the Human Rights Commission

All Theme Committee members were expected to attend the seminars and information notices would be sent out by the Secretariat advertising each seminar.

4 TECHNICAL COMMITTEES

Parties could submit names of additional technical experts by 12:00 on 24 January 1995.

Suggestions regarding the appointment of technical experts should be made to Mr De Beer who is a member of the Committee to appoint technical experts.

5 COMMUNITY LIAISON PROGRAMME

It was agreed that the "Public Participation Events" referred to in the Constitutional Assembly Schedule had not been defined and specific proposals in this regard should be formulated.

It was agreed that the Theme Committee needed to look at this in more detail and develop concrete proposals.

6 PREPARATION FOR THE THEME COMMITTEE MEETING OF 25 FEBRUARY 1995

Ms Kgositsile would chair this meeting.

Mr De Beer would report on progress with Technical Committees.

7 ANY OTHER BUSINESS

7.1 Media Release

It was agreed that a press release on the workshop on Public Administration and the Constitution should be released.

7.2 Additional members of the Secretariat

Mr Nyoka reported that three more Minute Secretaries had been

employed for Theme Committee 6.

Minute Secretaries had been assigned to the Subtheme Committees as follows:

- Subtheme Committee 1 (Public Administration): Saaleigah Zardad
- Subtheme Committee 2 (Financial Institutions and Public Enterprises): Patricia Fahrenfort
- Subtheme Committee 3 (Transformation, Monitoring and Evaluation): Bronwen Levy
- Subtheme Committee 4: (Security Apparatus): Katharine McKenzie

8 CLOSURE

The meeting rose at 11:00.

CONSTITUTIONAL ASSEMBLY

**MINUTES OF THE SIXTH MEETING OF THEME COMMITTEE 6
SPECIALISED STRUCTURES OF GOVERNMENT**

WEDNESDAY, 25 JANUARY 1995

PRESENT

Kgositsile, B (Chairperson)

Alant, T G	Moatshe, P
Balie, A (Alt)	Mokitlane, M C
Bekker, H	Mokoena, L M
Chiole, J	Mompati, R
Davies, R H	Mtintso, T
De Beer, S J	Nair, B
Dyani, M M Z	Netshimbupfe, M A
Fankomo, F C	Ngubane, H
Gogotya, N J	Powell, P
Hlengwa, M (Alt)	Schreiner, J
Jordaan, J A	Sisulu, L
Khoza, T (Alt)	Turok, M E
Love, J Y	Vadi, I
Makgothi, H	Watson, A (Alt)
Malan, T J (Alt)	Welgemoed, P J
	Woods, G G

K McKenzie and N Nyoka were in attendance.

1. OPENING AND WELCOME

Ms Kgositsile opened the meeting at 08:45 and welcomed members.

2. TABLING OF MINUTES OF THE PREVIOUS MEETING

The minutes of the fifth meeting held on 14 November 1994 were adopted without changes.

3. MATTERS ARISING

Matters arising were listed as agenda items.

4. CORE GROUP REPORT

The minutes of the fourth meeting of the Core Group were noted.

It was agreed that the Chairpersons of the Subtheme Committees should attend meetings of the Core Group.

5 WORK PLAN AND SCHEDULE OF MEETINGS

5.1 Deadlines for submissions

It was agreed that the Core Group would look into the extension of deadlines for submissions. This matter would stand over to the next meeting of the Theme Committee.

5.2 Meetings of the Theme Committee

It was noted that the scheduled times for meetings were inconvenient as traffic was bad and child care facilities were not available at all hours.

5.3 Public Participation Events

It was noted that the Public Participation Events scheduled on the work programme had not been defined.

It was agreed that Subtheme Committees should discuss these and draw up proposals.

6 TECHNICAL COMMITTEES

Mr De Beer reported that the appointment of technical experts was in the process of being finalised and that the Management Committee had taken into account the special needs of Theme Committee 6.

Members highlighted the concern that the diverse nature of Theme Committee 6's work meant that the appointment of fulltime technical experts would not be appropriate. Experts should rather be appointed on a temporary basis to deal with different aspects of the Theme Committee's work.

7 SUBMISSIONS

It was agreed that all members should encourage groupings and individuals to make submissions.

8 WORKSHOP: PUBLIC ADMINISTRATION AND THE CONSTITUTION

The Chairperson welcomed Prof Zimmerman, Mr Behrens, Mr Plowden and Prof Ferrari-Bravo who were present for the workshop, having travelled from countries abroad.

9 ANY OTHER BUSINESS

There was no further business.

10 CLOSURE

The meeting rose at 09:20 and was followed by the workshop on Public Administration and the Constitution.

Minutes signed by the Chairperson _____ .

CONSTITUTIONAL ASSEMBLY

**MINUTES OF THE 5TH MEETING OF THE CORE GROUP
THEME COMMITTEE 6**

SPECIALISED STRUCTURES OF GOVERNMENT

MONDAY, 30 JANUARY 1995

PRESENT

Powell, P (Chairperson)

Davies, R
De Beer, S
Jordaan, J A
Kgositsile, B
Schreiner, J
Vadi, I

P Fahrenfort, K McKenzie, N Nyoka and S Zardad were in attendance.

1. OPENING AND WELCOME

Mr Powell opened the meeting at 10:30 and welcomed the members.

2. WORKSHOP: PUBLIC ADMINISTRATION AND THE CONSTITUTION

2.1 Workshop report

It was agreed that the Secretariat would prepare a report from the workshop. It would be distributed by 7 February 1995.

2.2 It was agreed that the workshop should be followed up with further presentations and submissions, particularly from major stakeholders. The Public Service Commission, trade unions and employers associations were highlighted in this regard.

3. PREPARATION FOR THEME COMMITTEE MEETING ON 30 JANUARY 1995

See item 5.1 below.

4 PREPARATION FOR INFORMATION SEMINARS

See item 5.1 below.

5 WORK PROGRAMME

The Core Group studied the work schedule and made the following recommendations to the programme of Theme Committee 6 and its Subtheme Committees:

5.1 Theme Committee meetings

It was agreed that full Theme Committee meetings would happen once a week, preferably on a Monday. Theme Committee meetings would oversee the progress of the Subtheme Committees, where the majority of the work would be carried out.

The next meetings of the Theme Committee would take place on: Monday 30 January at 16:30 and Tuesday 7 February at 14:00.

It was agreed that all members of the Theme Committee would attend the Seminar on the Gender Equality Commission. The other information seminars being hosted by Subtheme Committee 3 would only be attended by members of the Subtheme Committee.

5.2 Subtheme Committee meetings

Subtheme Committee meetings would take place when Theme Committee meetings are scheduled on the work programme.

The Secretariat would supply the venues for these meetings.

Subtheme Committee meetings should flesh out details of the Work Programme and Public Participation Programme.

5.3 Core Group meetings

The Core Group would meet on a weekly basis prior to the Theme Committee meeting to co-ordinate the work of the Theme Committee and Subtheme Committees.

The next meeting of the Core Group will be on Tuesday 7 February at 10:00. Core Group meetings would not be held on Fridays as indicated in the Constitutional Assembly schedule.

6 ANY OTHER BUSINESS

6.1 Membership of Subtheme Committees

It was agreed that all parties should finalise their membership of Subtheme Committees through the offices of their Chief Whips.

6.2 Hours of Constitutional Assembly business

It was agreed that members would raise problems with working hours with their Whips and on the Constitutional Committee.

It was noted that the Parliamentary child care facilities were only operational from 09:00 - 16:00.

7 CLOSURE

The meeting rose at 11:45.

CONSTITUTIONAL ASSEMBLY

**MINUTES OF THE SEVENTH MEETING OF THEME COMMITTEE 6
SPECIALISED STRUCTURES OF GOVERNMENT**

MONDAY, 30 JANUARY 1995

PRESENT

Powell, P (Chairperson)

Alant, T G	Moatshe, P
Bekker, H	Mokitlane, M C
Chiole, J	Mokoena, L M
Davies, R H	Mtintso, T E
De Beer, S J	Nair, B
Dyani, M M Z	Netshimbupfe, M A
Fihla, N B	Ngubane, H
Gogotya, N J	Phillips, I
Jacobsz, F P	Powell, P
Jordaan, J A	Schreiner, J
Kgositsile, B	Selfe, J
Love, J Y	Turok, M E
Malan, T J (Alt)	van Eck, J
Malumise, M	Watson, A (Alt)
	Welgemoed, P J

K McKenzie and N Nyoka were in attendance.

1. OPENING AND WELCOME

Mr Powell opened the meeting at 17:00 and welcomed members.

2. MINUTES OF THE PREVIOUS MEETING

The minutes of the sixth meeting held on 25 January 1995 were tabled.

3 WORK PROGRAMME

3.1 Discussion of the work programme by Subtheme Committees

3.1.1 Subtheme Committee 1

Mr Vadi reported that a workshop report was being synthesised by the Secretariat.

Stakeholders were being invited to submit written or oral evidence on the Public Service and Administration

3.1.2 Subtheme Committee 2

Dr Davies reported that the Subtheme Committee had held several information seminars. It was starting to consider submissions.

3.1.3 Subtheme Committee 3

Ms Kgositsile reported that a number of information seminars were to be held and that the work programme was in the process of being reorganised

3.1.4 Subtheme Committee 4

Ms Schreiner reported that the Subcommittee had planned a conference on accountability and control of the security forces. Work was proceeding in accordance with the work programme.

3.2 Difficulties and problems presented by the Constitutional Committees schedule of meetings

3.2.1 The Freedom Front reminded Chairpersons that they should try to schedule not more than two Subtheme Committee meetings simultaneously.

3.2.2 It was noted that night sessions made it extremely difficult for members who relied on the Parliamentary childcare facilities.

3.2.3 It was agreed that were possible meetings should not be scheduled before 09:00 to avoid traffic congestion.

4 REPORT - WORKSHOP: PUBLIC ADMINISTRATION AND THE CONSTITUTION

The Secretariat would circulate the workshop report by 7 February 1995.

5 ANY OTHER BUSINESS

5.1 Membership of Subtheme Committees

All parties were requested to formalise changes in membership to the Subtheme Committees through their Chief Whips.

6 **CLOSURE**

The meeting rose at 17:00 and was followed a seminar on the Gender Equality Commission.

CONSTITUTIONAL ASSEMBLY

**MINUTES OF THE SIXTH MEETING OF SUBTHEME COMMITTEE 6.1
SPECIALISED STRUCTURES OF GOVERNMENT**

TUESDAY, 31 JANUARY 1995

PRESENT

Vadi, I (Chairperson)

Booi, M S
Chiole, J
De Beer, S J
Jordaan, J A
Love, J Y
Mkwayi, W
Mlambo-Ngcuka, P
Mokitlane, D
Watson, A

Apologies:

Malatsi, D

N Nyoka and S Zardad were in attendance.

1. OPENING AND WELCOME

Mr Vadi opened the meeting at 09h20 and welcomed members.

**2. ASSESSMENT - WORKSHOP: PUBLIC ADMINISTRATION & THE
CONSTITUTION**

The Subtheme Committee reiterated its appreciation to the secretariat for the successful planning and organisation of the workshop.

A concern was raised at Members of Parliament's poor attendance of the workshop.

(Theme Committee 6.1 - 31 January 1995)

During the discussion on the assessment of the workshop, the following decisions were taken:

- 2.1 Letters of thanks must be written to all speakers who participated in the workshop.

The speakers must be requested to comment on the workshop and requested to submit written submissions on the following:

2.1.1 The need or otherwise for regulating the public service by way of a constitutional provision; and

2.1.2 If there is such need, the form and content of the said public service constitutional provision.

- 2.2 An information seminar on an African country's experience on public administration be organised within two weeks. Namibia was identified as such a country, and it was agreed, that the following persons be requested to present papers at the proposed seminar:

2.2.1 Professor Gerrit Erasmus (a key player in the drafting of the Namibian constitution); and

2.2.2 Two Namibians. Preference should be given to persons who participated in Namibia's constitution making process.

Should it not be possible to secure the participation of Namibians because of short notice, a separate seminar would have to be organised for them.

- 2.3 A one day workshop must be organised with the Provinces and the Volkstaat Council. This workshop would focus on proposals for the restructuring of the relationship between National and Provincial Public Service Commissions.

3. PUBLIC HEARINGS/WORKSHOP: STAKEHOLDERS

The meeting agreed to utilise the workshop report, which the secretariat undertook to submit on Monday, 6 February 1995, as a framework for inviting submissions from stakeholders.

(Theme Committee 6.1 - 31 January 1995)

The following range of stakeholders were identified:

- i. Ministry of the Public Service and Administration;
- ii. The Public Service Commission;
- iii. Employee organisations, as represented in the Public Service Bargaining Chamber;
- iv. The Director Generals' forum.
- v. All interest groups at local government level, i.e, The Town Clerks' forum, The Municipal Executive, Transitional Local Councils or Metropolitan Chambers, Civics and Employee Organisations;
- vi. Public Service Institute;
- vii. Academic Institutions;
- viii. Parastatals; and
- ix. Police/Military

On Parastatals and the Police/Military, it was agreed, that there ought to be, through the Chairpersons, liaison with Subtheme Committees 6.2 and 6.4, respectively.

The secretariat, in consultation with members of the Subtheme Committee, would compile a comprehensive list of all stakeholders.

4. WORK PROGRAMME

4.1 Discussion and Planning of the work programme

4.1.1 The revised work programme of the Subtheme Committee is as follows:

<i>Block</i>	<i>Event</i>
1	Public Service
2	Public Service
3	Public Service

(Theme Committee 6.1 - 31 January 1995)

4	Public Service
5	Public Service
6	Election Commission
7	Election Commission
8	Election Commission
9	Public Service
10	

4.1.2 A serious concern on the exclusion of the subject of Traditional Authorities from Theme Committee 6's work programme was raised.

It was agreed that the matter be taken up with the Core Group and the Constitutional Assembly Directorate.

4.1.3 The revised programme is subject to the following:

- i. The outcome of Theme Committee 2's deliberation on the notion of separation of powers; and
- ii. Clarification on the exclusion of the subject of Traditional Authorities from Theme Committee 6's scope of work.

4.2 Public Participation Events

The meeting agreed that SABC TV and Radio would have to be approached with a view to eliciting, through this medium, the views of the public on issues deliberated by the Subtheme Committee.

5. TECHNICAL ASSISTANCE

5.1 Mr De Beer reported that the Constitutional Committee had approved Ms L Nyembe and Professor P van der Merwe as technical assistants for the Subtheme Committee.

(Theme Committee 6.1 - 31 January 1995)

- 5.2 It was clarified that these experts would not be attached to the Subtheme Committee on a permanent basis, and that the appointment of experts by the Subtheme Committee would depend on the nature of the expertise required from time to time.
- 5.3 Mr de Beer also took the opportunity to inform the meeting of the Constitutional Committee decision to appoint a Technical Committee on Traditional Authorities. This committee is composed of the following experts:
- i. Professor C Dlamini;
 - ii. Professor T Nhlapo
 - iii. Ms T Madonsela.
- 5.4 The secretariat was requested to contact the technical assistants and advise them of their appointment as well as make arrangements for their involvement in the activities of the Subtheme Committee.

6. SOUTH AFRICAN ELECTION'S COMMISSION

On the need or otherwise for the establishment of an Election Commission, the meeting agreed, that the following structures would have to be approached:

- i. The Independent Election Commission (IEC), i.e, Commissioners, Administration and Monitoring Divisions as well as Regional Monitors.
- ii. Department of Justice;
- iii. Department of Home Affairs;
- iv. The Carter Institute; and
- v. Comparative studies - from a perspective of both the developed and developing world - on elections (International studies could be accessed through the diplomatic missions of the Department of Foreign Affairs).

7. ANY OTHER BUSINESS

- 7.1 It was agreed that the next meeting of Subtheme Committee will take place on Tuesday, 7 February 1995.
- 7.2 Messrs Sam de Beer and Ismail Vadi and Ms Janet Love ("the Management Committee - Subtheme Committee 6.1") would liaise with the Secretariat on a daily basis.
- 7.3 Other members of the Subtheme Committee would be available to assist when called on to do so.

8. CLOSURE

The meeting rose at 10h45.

CONSTITUTIONAL ASSEMBLY

**MINUTES OF THE FIRST MEETING OF THE MANAGEMENT COMMITTEE
OF SUBTHEME COMMITTEE 6.1**

**SPECIALISED STRUCTURES OF GOVERNMENT
PUBLIC ADMINISTRATION**

E249, WEDNESDAY, 01 FEBRUARY 1995

PRESENT

Vadi, I (Chairperson)

De Beer, S J
Love, J Y

N Nyoka and S Zardad were in attendance.

1. OPENING AND WELCOME

The chairperson opened the meeting at 14h15 and welcomed everyone.

**2. TABLING OF MINUTES OF THE SUBTHEME COMMITTEE MEETING HELD
ON 31 FEBRUARY 1995**

The minutes were adopted.

3. SUBTHEME COMMITTEE WORK PROGRAMME

As per the mandate of the meeting held on 31 January 1995, the work programme, annexed hereto and marked **ANNEXURE A**, was prepared. This proposed programme will be tabled at the next Subtheme Committee meeting.

The meeting agreed that the seminar on an African country experience on Public Administration be postponed indefinitely (refer to page 3, paragraph 2.2).

4. TECHNICAL ASSISTANCE

The secretariat undertook to contact the two technical assistants attached to the Subtheme Committee to ensure their immediate participation in the work programme.

5. PUBLIC HEARINGS AND PUBLIC PARTICIPATION

The meeting agreed that the workshop report would inform the content and shape of the hearings, proposed to be held as per the above work programme, and that copies of the report would be circulated to all the stakeholders.

It was also agreed that the stakeholders should make available written submissions before the proposed hearings.

The meeting agreed that the SABC TV and Radio be approached for information on the following:

- 5.1 Data on the number of radio stations obtaining in our country;
- 5.2 Languages of transmission as well as the geographical areas covered by these stations; and
- 5.3 The possibility of Theme Committee members participating on TV's agenda and phone-in programmes.

6. TRADITIONAL AUTHORITIES

A concern was expressed over the exclusion of the subject of traditional authorities from the scope of work of Theme Committee 6.

It was decided that the matter should, through the Theme Committee, be raised with the Constitutional Committee. The Constitutional Committee must specifically be requested to clarify the following:

- 6.1 Which Theme Committees should be deliberating on the subject of Traditional Authorities?
- 6.2 If two or more Theme Committees are debating this subject, how should these committees co-ordinate their work?

6. GENERAL

A concern was expressed over the Constitutional Committee's approach of controlling the constitution-making process from the centre.

A point was made that there is a need for Theme Committees to be given more space and powers, without too much prescription from the centre, to approach their work in accordance with their specific needs and conditions.

It was agreed that this matter should, through the Theme Committee, be raised with Constitutional Committee.

7. DATE OF NEXT MEETING

The next Management Committee (MC) meeting of the Subtheme Committee is scheduled for Tuesday, 7 February 1995, 17h30 - 18h00.

8. CLOSURE

The meeting rose at 15h20.

CHAIRPERSON: _____ **DATE:** _____

ANNEXURE "A"

SUBTHEME COMMITTEE ON PUBLIC ADMINISTRATION WORKPLAN [7 February - 27 March 1995]			
Block	Date	Event	Time
1	06/02/1995	Submission: 1st draft report on the Public Service workshop by the Secretariat.	
2	07/02/1995	Discussion: 1st draft report on the Public Service by the Subtheme Committee.	14:30-17:00
	08/02/1995	Discussion: 1st draft report on the Public Service by the Subtheme Committee.	09:00-13:00
	09/02/1995	Discussion: 1st draft report on the Public Service by the Subtheme Committee.	14:30-17:00
	14/02/1995	i. 1st draft report on the Public Service tabled for consideration by the Theme Committee; and	08:30-09:00
		ii. Public hearing: Volkstaat Council.	09:00-13:00
15/02/1995	i. 1st draft report on the Public Service submitted to the Constitutional Committee; and ii. Workshop: Provincial Legislatures.	10:00-16:00	
3	20/02/1995	Public hearing: Ministry of the Public Service and the Public Service Commission.	09:00-12:00
	27/02/1995	Public hearing: Director Generals' Forum	09:00-12:00
4	06/03/1995	Public hearing: Public Service Bargaining Chamber.	09:00-17:00
	13/03/1995	Public hearing: Academic Institutions and the Public Service Institutes.	09:00-12:00
5	20/03/1995	Public hearing: All interest groups at local government level, i.e, Town Clerk's forum, United Municipal Executive, Transitional Local Councils, Transitional Metropolitan Chambers, Civics and Municipal Employee Organisation.	09:00-16:00
	27/03/1995	2nd draft report on Public Administration tabled for consideration by the Theme Committee.	18:00-21:30

CONSTITUTIONAL ASSEMBLY
SUB-THEME COMMITTEE 2 OF THEME COMMITTEE 6
SPECIALISED STRUCTURES OF GOVERNMENT
TUESDAY 24 JANUARY 1995

PRESENT

Davies R (Chairperson)

Hogan B
Jordaan D
Marais G
Marcus G
Nair B
Welgemoed P
Woods G

P Fahrenfort and S Nyoka were in attendance

1. FINANCIAL INSTITUTIONS AND PUBLIC ENTERPRISES

1.1 Submissions

The Committee felt that due to time constraints it would impractical to present a report on submissions at this stage. A proposal was put forward that the Chairperson recommend to the next Constitutional Committee that the Sub-theme committee be given time until February 14 to consider submissions on the Financial and Fiscal Commission.

1.2 Nominations

It was recommended that the following people be nominated to serve as advisers:

- i) Professor DG Franzen
- ii) Dr F le Roux
- iii) Mr I Momoniat
- iv) Mr C Rustomjee
- v) Prof L Loots
- vi) Professor B Kahn
- vii) Ms M Ramos
- viii) H High

It was further recommended that Mr A Shah, representative of the World Bank be invited to address the Sub-theme committee on fiscal matters.

There being no further business the meeting ended at 12h20.

.....
CHAIRPERSON

.....
DATE

CONSTITUTIONAL ASSEMBLY

SUB-THEME COMMITTEE 2 OF THEME COMMITTEE 6

SPECIALISED STRUCTURES OF GOVERNMENT

TUESDAY 31 JANUARY 1995

PRESENT

Davies R (Chairperson)

Andrew KM (Alt)
Bekker H
Hogan B
Makgoti H
Marais G
Nair B
Welgemoed P
Woods G

Apology

Chiole J

Fahrenfort P (in attendance)

Minutes of the Sub-Theme Committee 2 meeting held on Tuesday 31 January at 09h00 in Room V226.

1. SUBMISSIONS

The Committee proposed that

- 1.1 the following items be placed on the agenda for tomorrow's Sub-theme Committee meeting:
 - a) each political party represented on the sub-committee be granted 10 minutes to present their submissions
 - b) the Chair obtain clarity from the Core Group with regard to sub-committee members' involvement in public participation

- c) the Secretariat do a follow-up on organisations about their submissions and that the Chair and the Secretariat work on a proposed time-table, the revised deadline being Monday 6 February 1995
 - d) the Committee discuss extending an invitation to organisations other than the CP to address the members
- 1.2 an invitation be extended to the Conservative Party to address the Committee on Thursday 2 February 1995
- 1.3 the Secretariat liaise with committee members to establish whether there is any overlapping of meetings

There being no further business the meeting ended at 09h40.

.....
CHAIRPERSON

.....
DATE

CONSTITUTIONAL ASSEMBLY

SUB-THEME COMMITTEE 2 OF THEME COMMITTEE 6

SPECIALISED STRUCTURES OF GOVERNMENT

WEDNESDAY 1 FEBRUARY 1995

PRESENT

Davies R (Chairperson)

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

P Fahrenfort (in attendance)

1. CONFIRMATION OF MINUTES AND REPORT

The minutes of January 24 and 31 1995 were confirmed and the Seminar report was noted.

2. MATTERS

As per the Agenda

3. SUBMISSIONS

3.1 The following parties each gave brief presentations on their submissions

a) **African National Congress (Dr RH Davies)**

Dr Davies responded to the revised time table and addressed the areas of the Fiscal and Financial Commission and Public Enterprises. He indicated that the areas of the Reserve Bank and the Auditor General will be addressed at the appropriate time.

b) **Democratic Party (Mr KM Andrew)**

Mr Andrews gave an oral submission addressing the following areas: Auditor General, Reserve Bank, and Fiscal and Financial Commission

c) **National Party (Dr PJ Welgemoed)**

In their oral submission the NP addressed the areas of Public enterprises and Fiscal, Financial Commission and the Auditor General

d) **Inkatha Freedom Party (Dr G Woods)**

Dr Woods addressed the areas of the Fiscal and Financial Commissions and the Auditor General. Further input would be informed by the kind of economic constitution South Africa adopts and the inter-governmental relationships as discussed in Theme Committee 3.

e) **Freedom Front (Mr WJ Botha)**

Mr Botha in his oral submission addressed the areas of Public Enterprises, Auditor General and the Fiscal and Financial Commission

The committee noted that the parties presenting oral submissions will be followed by written ones on or before 22 February 1995.

It was recommended that the Secretariat follow up on submissions from the PAC and the ACDP.

3.2 The Committee noted that the issue of Public Participation is presently under review and that the Chairperson will give a report back following Monday's Core Group meeting.

3.3 It was recommended that the Secretariat contact organisations who promised to make submissions in the form of faxed letters.

- 3.4 The committee noted the change in the work schedule of the CA and recommended that the Secretariat arrange for the CP speaker to address the committee at 15h00 on Tuesday 7 February 1995

There being no further business the meeting ended at 15h40.

.....
CHAIRPERSON

.....
DATE

NOTES OF PRESENTATIONS ON SUBMISSIONS

ANC Input based on written submission

Question to the ANC:

What was their approach to the Reserve Bank - will deal with it in Block 5

DP Oral submission

Auditor General: generally happy with what is in the interim constitution but believes that in the normal course of events provinces should appoint own AGs. For various reasons that is not possible and the DP therefore accepts that for some time there will be one national AG office, which could have joint responsibility with provinces in arranging provincial audits and should be accountable to provincial legislatures for provincial audits.

Reserve Bank

Provincial Interim Constitution broadly acceptable - adhere to correct balance between independence of the governor of the RB and the government of the day. Some wording may need to be modified but basic thrust of existing clauses okay.

FFC

Primary objective should be equitable allocation of revenue collected centrally. Provinces and local authorities must have access to adequate funds without interference from central government.

- The DP has some concern about the composition of the commission - is it a body of technical experts or are nominees from the provinces supposed to be lobbyists? - The DP would prefer this body to be technocratic

NP Oral submission - will submit written one by 22 February.
Constitutional principles on AG and the SA Reserve Bank are fine as are provisions in the Interim Constitution where only a few things need to be tidied up.

PE - Don't think there should be provision PEs in the constitution but will submit later on. There is an issue, in that some provision (legislation if not in the Constitution) should prevent PEs competing with private enterprise in spheres that are properly the preserve of the latter

FFC - NP still has to discuss this in more detail, and will make a written submission when the time arises.

There is an emerging debate as to whether or not something should be said in the constitution to limit the percentage of government expenditure that can be financed by loans. More input from actors outside is needed.

- Agree with ANC on the need to be clearer on the accountability of the FFC.

- The role of the Senate in the new constitution needs examining: perhaps the FFC should relate to the Senate.
- **AG**
Points raised in submissions by of the AG need to be taken into account. There is a need to guarantee independence of AG.
- IFP** Based on written submission (to be circulated)
- FF** Oral submission
- PE**
The question of constitutional clauses on PEs still has to be discussed within the party.
- AG**
Must be independent
- FFC**
Related to question of fiscal federalism - the basic question to be sorted out.
- FF and FFCs role linked to growing Fiscal Federalism but Fiscal Federalism at this stage may not easily be economically viable given massive contrast of wealth
- Geographic reality

CONSTITUTIONAL ASSEMBLY

**SUBTHEME COMMITTEE 3 OF THEME COMMITTEE 6
SPECIALISED STRUCTURES OF GOVERNMENT**

TUESDAY 31 JANUARY 1995

PRESENT

Kgositsile B (Chairperson)

Fenyane S L E
George M
Louw L
Malan J
Mdutyana S N
Moatshe P
Mokoena L M
Mompoti R
Netshimbupfe M A
Ngubane H
Turok M (Alt)
Zitha D A

Apologies: Balie A, Camerer S (Alt), Jacobz F (Alt)

B Levy and S Nyoka were in attendance

1. Opening and Welcome

Ms Kgositsile opened the meeting at 11h15 and welcomed members

2. Submissions

It was agreed that the administration should provide further submissions to the Subtheme Committee.

A synopsis identifying issues and areas of commonality arising out of these submissions should be prepared.

3. Reports: The Public Protector, The Human Rights Commission and The Commission on Gender Equality

3.1 The Public Protector

Mr J Selfe submitted a written report in this regard (see annexure "A").

3.2 The Human Rights Commission

A report by Ms S Camerer was delivered at the Secretariat's offices on 31 January 1995 (see annexure "B")

3.3 The Commission on Gender Equality

Ms M Turok reported that she has handed the contact details, compiled by Ms Malan and herself, of organisations that needed to be approached for submissions to the administration.

It was agreed that the administration together with Ms Turok and Ms Malan would need to follow up on organisations invited to make submissions on the Commission on Gender Equality.

3.4 The Commission on the Restitution of Land Rights

Mr Mokoena submitted a written report in this regard (see annexure "C").

4. Work Programme

4.1 Ms Kgositsile proposed that members would need to examine how to proceed with the work of the Subtheme Committee. The Committee would need to develop a process of isolating the issues for debate arising out of the information seminars and submissions.

It was agreed that members would need to take responsibility for this process. The members allocated responsibility for the particular areas are the following;

4.1.1 Commission on Gender Equality: Ms M Turok, Ms J Malan and Prof H Ngubane;

4.1.2 The Public Protector: Ms J Malan;

4.1.3 The Human Rights Commission: Ms S Camerer ; and

4.1.4 Commission on the Restitution of Land Rights: Mr Mokoena and Prof Ngubane.

It was further agreed that the administration would need to play a co-ordinating role in this process and that the Secretariat would draw up a report from the seminars that would isolate the central issues for debate for purposes of facilitating the process.

4.2 Ms Kgositsile also suggested that the Committee would have to tailor all issues which need to be examined in accordance with the Constitutional Assembly's recommended work programme.

A concern was raised on the order of the issues. It was felt that certain issues would be easier to resolve first and that more time would be required for other issues.

It was agreed by the members to change the order as well as the time frames in which the different issues would be discussed and reported on, in the following way:

Block	Event
1	Information seminars: 1.1 The Public Protector; 1.2 Commission on Gender Equality; 1.3 Commission on Restitution of Land Rights; and 1.4 The Human Rights Commission.
2	2.1 Preparation of report on the information seminars. 2.2 Identification and isolation of issues arising out of the seminars.
3	The Public Protector
4	The Public Protector
5	The Human Rights Commission
6	The Human Rights Commission

7	The Commission on Gender Equality
8	The Commission on Gender Equality
9	The Commission on Restitution of Land Rights
10	The Commission on Restitution of Land Rights

5. Technical Experts

5.1 Ms Kgositsile reported on the appointment of Technical Experts by speaking to a document entitled: " Report of the Subcommittee to recommend experts to be appointed to Technical Committees" (see annexure "D1").

5.2 Concern was raised by the members around the fact that the two Technical Experts identified were experts only in the area of gender.

It was however clarified that as per the agreement of the Sub-Committee meeting on Technical Experts that other experts could be called upon and that there would be a flexible approach applied with regard to Theme Committee six.

It was agreed that the members would identify the additional experts as a matter of urgency.

6. Traditional Authorities

Serious concern was raised with regard to the fact that the issue of Traditional Authorities was not reflected in the Work Programme of Theme Committee six.

It was agreed that this was a grave problem and it would need to be clarified with the Directorate of the CA and would be tabled at the next Core Group meeting.

7. Public Participation Programme

Ms Kgositsile pointed out that the Committee needs to examine how it will slot into the public participation programme with regard to the issues that would be taken to the public and the role that members would be required to play.

The Secretariat was requested to assist with the development of the programme that within the overall public participation programme of the CA.

It was agreed that clarity would need to be sought from the administration on the public participation programme that has been developed by the Community Liaison Department for the next meeting.

8. Parties' final lists of Subtheme Committee members

Ms Kgositsile reported that Parties need to finalise their lists of Subtheme Committee members.

It was agreed that this would be done by the next meeting.

9. Any other business

9.1 Ms Malan raised concern that there is no proper procedure for receiving guests who give seminars to the Subtheme Committee. She reported that there was no person to receive Justice Van der Walt.

It was agreed that the Secretariat needs to perform this role. It was also agreed that the members would also play a role in this process.

9.2 Mrs Malan also raised concern that Justice Van der Walt's paper for was not made available to the members prior to the Seminar.

It was agreed that all papers that are received in advance need to be distributed to the members prior to the Seminar.

10. Closure

The meeting rose 12:45

ChairpersonDate.....

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

TEL: (021) 403-2911

Ref No.



A
SENATE
PO BOX 15
CAPE TOWN
8000

28th January 1995

The Chairperson
Sub-Theme Committee 3
Theme Committee 6
Constitutional Assembly
CAPE TOWN

Dear Chairperson,

I refer to the Constitutional Assembly Work Programme for 1995 dated 2 December 1994, at page 106, in which I was asked to compile a report on representations and debates on the Public Protector Bill, as well as any other relevant issues for consideration by the Sub-Theme Committee.

I submit the report, as requested, herewith. Although I have not specifically highlighted issues relevant to the office, these emerge fairly clearly from the representations and debates.

Yours sincerely,

James Selfe

JAMES SELFE

THE PUBLIC PROTECTOR BILL

1. INTRODUCTION

1.1 The Public Protector Bill was introduced to Parliament by the Minister of Justice on 4 July 1994 as B16 -94. It was referred to the Select Committee of Justice of the National Assembly, which reported the Bill with amendments on 13 September. The amended Bill (B16A - 94) was debated in, and passed by, the National Assembly on 15 September, and referred to the Senate on the same day. The Senate Select Committee on Justice effected additional amendments to the Bill. The Bill thus amended (B16D - 94) was debated in, and passed by, the Senate on 2 November.

1.2 The institution of the Public Protector(s) is provided for in sections 110 to 114 of the Constitution, and as such, the Public Protector Bill was merely enabling legislation giving effect to these provisions of the Constitution. This notwithstanding, the introduction of the Bill provoked a number of representations from the public, and to a lively debate within the Select Committees and in the two Houses of Parliament.

1.3 Because this is essentially a background paper, both the constitutional position of the Public Protectors, and the provisions of the Bill, will be analysed.

2. THE CONSTITUTIONAL POSITION

2.1 Section 110 of the Constitution provides that there shall be a Public Protector for the Republic, and section 114 empowers the provincial legislatures to establish provincial public protectors by legislation.

2.2 Appointment. The Public Protector is appointed by the President. Such a person would be nominated by a joint committee of the Houses of Parliament composed of one member of each party represented in Parliament and willing to serve of the committee, and approved by a 75% majority in a joint session of the National Assembly and Senate. (sec 110 (2))

2.3 Qualifications. The Public Protector has to be a South African citizen, who is either a judge, or is an admitted advocate who has practised as an attorney or advocate or who has lectured law at a university for a cumulative period of at least ten years, or has specialised knowledge or experience over a period of at least ten years in the administration of justice, public administration or public finance. (s. 110 (4))

2.4 Term of Office. Unless the new constitutional text provides otherwise, the Public Protector serves for a period of seven years (sec 110 (5)), and may only be removed from office by the President, on the grounds of misbehaviour, incapacity or incompetence, determined by a joint committee constituted as in 2.2 above, and upon receipt of a request from both the National Assembly and the Senate. (sec 110 (8)) The Public Protector may be suspended by the President pending the outcome of an investigation by the joint committee. (sec 110 (9))

2.5 Independence and Impartiality. Section 111 provides that the Public Protector will

act independently and impartially, that he or she will enjoy immunities and privileges to enable him or her to be independent and impartial, that no institution or person shall interfere with his or her investigations, and that the public service should provide him or her with the assistance required to carry out investigations.

2.6 Powers and Functions. The Public Protector's tasks are investigative and in the area of dispute resolution. He or she is competent to investigate, either on his or her own initiative or on receipt of a complaint, maladministration, corruption, dishonesty or abuse of power by or in the public service, at any level of government. (sec 112 (1)(a)) At any stage, he or she can refer matters for prosecutions, and can make recommendations to avoid recurrence or to obtain redress for wrongs. (sec 112 (1)(c)) In addition, he or she can endeavour to resolve disputes by mediation, negotiation, conciliation or by advising complainants about other remedies. (sec 112 (1)(b)).

The Public Protector is not competent to investigate judicial functions as performed by a court of law (sec 112 (2)), nor may he or she oust the jurisdiction of any court to hear any matter. (sec 112(5))

In performing these functions, the Public Protector may subpoena witnesses, call for documents, and enter premises for the purpose of seizing documents or other evidence. (sec 112 (3))

The Public Protector is required by section 112(6) to report to Parliament at least once every year.

2.7 Staff and Expenditure. Section 113 provides that the Public Protector can be provided with staff, to whom he or she can delegate powers, and that the costs of running his office are to be defrayed from money voted by Parliament.

3. THE PUBLIC PROTECTOR ACT, (ACT 23 of 1994)

3.1 The Joint Committee of Parliament. Sec 2 provides that Parliament shall, following the procedures laid down in the Constitution, appoint the committee referred to in sec 110(2) of the Constitution. This committee will determine the remuneration of the Public Protector, which shall not be less than that of a supreme court judge, and his/her other terms and conditions of appointment. Sec 2(5) provides that the Public Protector may approach this committee "with regard to any matter in respect of which Parliament has functions pertaining to the office of the Public Protector".

3.2 Deputy Public Protectors and Staff. Sec 3(2) permits the President to appoint one or more persons to be deputy Public Protector(s), following the same procedure as with the appointment of the Public Protector. Such person or persons will, in terms of sec 3(1) assist the Public Protector "subject to his or her directions and control", and the Public Protector may delegate powers to the deputy/deputies (sec 3(3)), while the most senior deputy may act for the Public Protector in the event that he or she is unable to perform his/her duties (sec 3(4)). The procedure for removing, suspending, or filling a vacancy of a Deputy Public Protector are *mutatis mutandis* the same as that applying to the Public Protector (secs 3(5), 3(6) and 3(7)). The remuneration and conditions of service of deputy Public Protectors are determined, as is the case with

the Public Protector, by Parliament on the advice of the joint committee (sec 3(8)).

The Public Protector may appoint a Chief Administrative Officer, to perform all financial, administrative and clerical functions connected with the office of the Public Protector, and such other staff as may be needed to assist him/her to fulfill his/her duties. The remuneration and allowances of such officials are determined by the Public Protector, after consulting the Minister of Finance and the Public Service Commission, and a document setting out these conditions of service shall be tabled in Parliament which may disapprove them (secs 3(1)(a) and (b), 3(9), 3(10), 3(11) and 3(12)). Sec 4 provides that the Chief Executive Officer will be the accounting officer of the office of the Public Protector, and that the accounts of the office will be audited by the Auditor-General.

3.3 Liability of the Public Protector. Sec 5(3) absolves the Public Protector from liability in respect of anything reflected in any report or finding, provided this was done in good faith.

3.4 Reporting of matters to the Public Protector. Any person may report any matter to the Public Protector by means of a sworn or affirmed statement, setting out the nature of the complaint and the grounds on which he/she feels that an investigation is necessary, and the Public Protector must render any assistance, free of charge, to enable people to make such a report (secs 6(1) and (2)). The Public Protector may refuse to investigate a matter if the person ostensibly prejudiced is an official of the state or an employee of a public entity who has not yet exhausted the remedies provided by the relevant legislation governing the public service or the public entity (sec 6(3)). Sec 6(4) confers on the Public Protector powers, additional to those in the Constitution, to investigate maladministration, abuse of power or unlawful enrichment in respect of public entities. The Public Protector may also on his/her own initiative investigate any matter referred to in the Act or the Constitution.

3.5 Investigation by the Public Protector. The way in which the Public Protector conducts an investigation is left to his/her discretion (sec 7(1)), but he/she is vested with wide powers to assist in such an investigation. The Public Protector can subpoena witnesses and call for documents (sec 7(4) and (5)) and may require witnesses to give evidence under oath (sec 7(6) and (7)). Any person appearing before the Public Protector has the right to be assisted by a legal practitioner, and any person under investigation has the right to be heard and to cross-examine witnesses (secs 7(8) and (9)). The Public Protector may also, on an ad hoc basis, request public servants to assist him/her in any investigation (sec 7(3)). Sec 9 provides criminal sanction for people who insult the Public Protector, or who act in a way which would constitute contempt of court, while sec 11 (3) provides penalties for persons who fail to comply with a subpoena, or who refuse to answer questions put to them.

3.6 Publication of Findings. Whenever the Public Protector deems it necessary, he/she may make known any finding or recommendation in any way he/she thinks fit, including to the complainant and any person implicated thereby. In addition, the Public Protector must submit half-yearly reports to Parliament concerning investigations of a serious nature he/she has conducted during the period covered by the report, and must, in addition table reports in Parliament if requested to do so by the Speaker of

the National Assembly or the President of the Senate. He/she may, in addition, report to Parliament if he/she deems it necessary, or if it is in the public interest, or if the investigation requires intervention by Parliament.

3.7 Guidelines for Provincial Public Protectors. Sec 12 provides that the Public Protector shall, after consultation with the provincial public protectors, draw up and publish in the Gazette, guidelines in accordance with which provincial public protectors shall exercise their powers. Provincial public protectors are entitled to depart from these guidelines after consulting the Public Protector.

4. REPRESENTATIONS MADE TO THE SELECT COMMITTEES

4.1 The representations made to the select committees were, in many cases, incorporated into the final version of the Bill. However, for the sake of completeness, the representations are summarized in their original form.

4.2 Lawyers for Human Rights. The LHR argued that –

- (a) the relationship and accountability between the Provincial Public Protectors and the national Public Protector ought to be defined;
- (b) the President ought to be able to appoint the deputy Public Protectors, following a procedure similar to the appointment of the Public Protector;
- (c) the Minister of Justice ought to be consulted about the appointment of deputy Public Protectors and administrative staff;
- (d) the Bill should make provision for the appointment of investigative staff;
- (e) sec 4 should be amended so as not to indemnify the Public Protector and members of his/her staff from liability for "anything done in good faith under the provisions of the Act";
- (f) the Act should set out verbatim the powers and competence of the Public Protector in the Constitution;
- (g) sec 6(2) should make provision for the adequate protection of witnesses;
- (h) sec 8(5) ought to give legal representatives of prejudiced persons access to all relevant documentation, as this is guaranteed in sec 23 of the Constitution;
- (i) sec 8(7) ought to be amended so as not to make refusing to testify a criminal offence;
- (j) sec 9 contradicts sec 13 of the Constitution which guarantees the right of privacy, which includes protection from arbitrary searches, seizures and interference with private communications. A solution would be to empower the Public Protector and/or his/her deputy to issue a warrant;
- (k) sec 10 – providing for costs to be awarded to witnesses – is too vague. Criteria need to be established as to what will be paid by the state; and
- (l) sec 11 ought to be deleted entirely.

4.3 The Ombudsman. In his submission to the National Assembly Select Committee, the Ombudsman pointed out that sec 243 of the Constitution provides that the Ombudsman shall continue to hold office and to exercise and perform the powers and functions of the Ombudsman in accordance with the Ombudsman Act, 1979, until the Public Protector has been appointed under sec 110 of the Constitution, and has assumed office.

In further representations to the Senate Select Committee, the Ombudsman recommended that –

- (a) the Preamble ought to establish the function of the Public Protector as investigatory;
- (b) an amendment to the Constitution to change the designation "Public Protector" to "Ombudsman". "The only proper and correct and internationally acceptable description of the office is that of Ombudsman, either National Ombudsman or Provincial Ombudsman, which is in fact non-sexist and applies to female and male incumbents alike.";
- (c) provision should be made for the continuity in the office of the Public Protector;
- (d) the Bill should be made applicable to public entities, and not only to the public service;
- (e) the State Liability Act, 1957, should be made applicable to the office of the Public Protector;
- (f) sec 8 should be amended to allow the Public Protector to submit a report to Parliament at any time he/she deems it in the public interest or which requires the urgent attention of, or an intervention by, Parliament; and
- (g) sec 12 should be amended to provide for the holding of regular consultative meetings between the Public Protector and his/her provincial counterparts.

4.4 The Association of Law Societies of South Africa drew attention to the wording of sec 5(1), which refers to "an incident". This implies a single act, event or occurrence, and may conceivably limit the Public Protector in his/her investigation of alleged maladministration. It would be better to broaden the basis of possible complaint by the addition of the words "act of omission or state of affairs" after "incident". Moreover, the Societies suggested that sec 6(2) should be amended to allow the Public Protector discretion to withhold information from public scrutiny. The Public Protector ought also to be given discretion to publish any report at any time.

4.5 The Cape Bar Council recommended that provision be made in sec 6(2) to protect the identity of a person who furnishes information to the Public Protector, should the circumstances so require.

4.6 The Legislature of the Eastern Transvaal suggested that a ceiling be placed on the remuneration of provincial public protectors and that remuneration for provincial public protectors should be uniform. The remuneration suggested was that of a judge of the Supreme Court of a provincial division. The Eastern Transvaal also suggested that the salary of a provincial public protector should be less than the national Public Protector.

4.7 The Legislature of the Northern Transvaal recommended replacing the R40 000 fine provided for in sec 11(5) with a fine of unspecified amount, and not placing any ceiling on the remuneration of provincial public protectors.

4.8 The Legislature of the Eastern Cape opposed any ceiling on the remuneration of provincial public protectors.

4.9 The Select Committee on the Provincial Constitution of the Legislature of the Northern Cape suggested that the roles of the Public Protector and his/her provincial

counterparts needed to be more exactly defined, that no ceiling be placed on remuneration, but that a starting salary be specified, and that the period of tenure of the Public Protector and Deputy Public Protector never be concurrent with that of the serving government.

4.10 The Legislature of the Western Cape and the Legislature of KwaZulu-Natal submitted substantially the same representations, arguing that the provincial public protectors were the servants of the provincial legislatures and had no responsibilities or duties towards the national Public Protector. Both objected strongly to sec 12(1) and (2). In addition the Western Cape argued that there should be no ceiling on the remuneration of the provincial public protector.

5. THE DEBATES IN PARLIAMENT

5.1 The National Assembly. The Bill was supported by all parties, but both the National Party and the Inkatha Freedom Party objected to sec 12. The NP argued that sec 12(2) was unnecessary, prescriptive and insulting, while the IFP suggested that sec 12(1) rendered the provincial public protectors as no more than agents of the national Public Protector. While the Freedom Front also supported the Bill, it pointed out that it was unclear to what extent a relevant Minister would accept responsibility should any maladministration or corruption be uncovered in his or her department. The ACDP expressed concern that illiterate people may feel intimidated to approach the Public Protector, while the Democratic Party criticised the slackness of the Government of National Unity in setting in motion the process of appointing the Public Protector.

In his reply, the Minister responded to criticisms of sec 12, citing that unity amongst the 10 public protectors was a key component of the effectiveness of the legislation.

5.2 The Senate. The Senate also passed the Bill unanimously, but reservations were expressed by the IFP, FF and DP to aspects of the Bill. The IFP argued that both the Public Protector and his/her deputy had the same terms of office, and that, accordingly, there might be no continuity between the two most senior persons in the office. The IFP also expressed reservations about sec 12, citing the opposition from KwaZulu-Natal and the Western Cape, and asked that the section be deleted. The FF also opposed the implications of sec 12(2), while the DP described sec 12(1) as "at best tautological and at worst possibly unconstitutional". The DP argued that consultative mechanisms were already provided by sec 114(4) read with sec 233(3) of the Constitution.

Responding to criticisms of sec 12, the ANC argued that it was best that the national Public Protector bore the "responsibility of ensuring that in the concurrent jurisdiction he holds with the provincial public protectors, he does not exercise his jurisdiction differently from the provincial public protectors".

JAMES SELFE
January 1995

(A)

SUB THEME GROUP 3 OF THEME COMMITTEE 6

**REPORT ON REPRESENTATIONS AND DEBATES ON THE
HUMAN RIGHTS COMMISSION BILL**

- 1 A Human Rights Commission ("HRC") is established in terms of S115 of the Constitution and S116 sets out the powers and functions of the HRC.
- 2 The Bill was passed by Parliament in November and promulgated in December 1994.
- 3 The legislation considerably expands and develops the powers of the HRC as set out in S116 the Constitution but substantially within the framework set by the Constitution.
- 4 The main debate in the Justice Select Committee around the HRC Bill as submitted by the Minister of Justice and the many submissions on it to the committee basically centred on two issues, namely:
 - 4.1 Whether an entity established to protect Human Rights should be given powers, the exercise of which on behalf of certain people could amount to the violation of the Human Rights of others, (the notorious clause 3). The most serious flaw was identified by inter alia, the Association of Law Societies, the Black Sash and the UCT Department of Public Law as the provision which compelled a witness to give evidence notwithstanding the fact that this might incriminate him or her, and the exclusion of the common and statutory law protections against this. It was a long and difficult debate.
 - 4.2 Whether a body, which can act as a quasi judicial body with powers to hold investigations, conduct searches, seize documents, compel witnesses, should in addition be able to take cases to court. Parties ultimately agreed to let the provision in the Bill stand.
- 5 The original draft of the Bill was truly draconian but most of the fiercer provisions of the Bill have been substantially softened, for instance:
 - 5.1 The power to search a private dwelling without a warrant has been removed
 - 5.2 The power to search without a warrant has been curtailed and placed within acceptable limits
 - 5.3 The power to search people has been removed

- 5.4 The usual protections against self incrimination have been restored
 - 5.5 The right to have a legal representative present at any hearing and any search of premises has been introduced.
 - 5.6 Entry and searching of premises without a warrant is allowed only in narrowly circumscribed cases
 - 5.7 Privilege attaching to document is protected.
- 6 Among other contentious issues were the following:
- 6.1 The length of service of commissioners who are appointed for an initial period of 7 years. The Bill was amended so that they can be appointed for only 1 further term — to prevent atrophication.
 - 6.2 The proper authorisation of administrative staff and committees of the HRC to act — this to be done by a member of the commission in writing.
 - 6.3 Whether or not all commissioners should act in a full time capacity, this was resolved by appointing 5 of the commissioners in a full time capacity.
 - 6.4 Penalties in the event of non-compliance with directives of the HRC.
 - 6.5 Public hearings of the HRC.
 - 6.6 Notices to produce documentation at hearings to include the reasons for this.
 - 6.7 The introduction of the HRC's power to mediate in cases of disputes.

1995 01 31/mg

TRANSFORMATIONS AND MONITORING

1. Commission on Restitution of Land Rights

a) In this sub-theme committee the following deserve attention

- 1) Right to Land
- 2) Appointment of Land Commission
- 3) Land Restitution
- 4) Land Redistribution
- 5) The creation of specialised land claims court
- 6) Compensation
- 7) Land Administration
- 8) Public

1. Right to land

People must have the right to land. All people despite their gender, racial or colour differences should have access to land in accordance with equity and justice.

2. Appointment of Land Commission

There is need of land commission which will investigate and report all land claims and its findings, the commission should be an independent commission, which will have the right to hear evidence from members or groups from the SA public.

3. Land Restitution

All land which was disposed by racially based laws and apartheid laws need to be restored to their rightful owners.

4. Land Redistribution

Unused or unutilised land need to be made available to the landless people for residential or farming purposes

5. Creation of specialised land claims court

There is need for an establishment of a specialised land claims court, which will specifically entertain cases concerning land and land claims in particular.

6. Land Administration

There exist a need for a clear and clean Land Administration machinery within the government administration structure.

7. Compensation

Where it is established that there is a clear right to a land, but nevertheless the right to a particular land cannot be restored to rightful owners, because of valid economic reasons there should be adequate compensation by the state.

D

**REPORT OF THE SUB-COMMITTEE TO RECOMMEND EXPERTS TO BE
APPOINTED TO TECHNICAL COMMITTEES**

30 January 1995

Members present:

De Beer, SJ (Chairperson)
De Lange, JH
Hofmeyer, W
Mabandla, BS

Marais, PG
Selfe, J
Sizani, RK (arrived late)
Viljoen, CL

In attendance: L Zondo

The Subcommittee held its fourth meeting on Monday, 30 January 1995 at 08:20.

It was reported that, the Management Committee meeting of 27 January 1995 had taken a decision, based on the subcommittee's report, to recommend the following to the Constitutional Committee:

- (a) The increase of the number of experts appointed to the Technical Committees of Theme Committees One to Five from three to four and the ratification of the Constitutional Committee's decision by the Constitutional Assembly, at its next meeting.
- (b) The appointment of ten experts for the Sub-Theme Committees of Theme Committee Six.

After discussion, it was agreed that only eight experts should be appointed for Theme Committees Six, two for each Sub-Theme Committee.

RECOMMENDATIONS

1. Technical Committees

The subcommittee agreed on a final short-list. The appointment of the following experts is recommended:

Theme Committee One:

Prof H.M. Corder
Dr J.C. Heunis
Mr Z. Husain
Prof E.A.M. Thomashausen

Theme Committee Two:

Adv A.M.M. Motimele

2. Sub-Theme Committees

With regard to the Sub-Theme Committees of Theme Committee Six, it is recommended that, experts be replaced as and when required by the issues under discussion in the respective Sub-Theme Committees.

It is was agreed that the following principles should be adhered to in the replacement of the experts;

- a) two experts be appointed to each Sub-Theme Committee,
- b) the ANC be entitled to identify one of the experts, and
- c) a proper race and gender balance be achieved.

3. Ad Hoc Technical Committees

It is also recommended that ad hoc Technical Committees to deal with the issues of Traditional Leaders, Self-determination and Local Government, respectively, should be appointed. The following principles for appointing the ad hoc Technical Committees were agreed upon;

- a) each committee will consist of three members,
- b) the ANC would be entitled to identify two experts, respectively, for the Technical Committees on Traditional Leaders and Local Government and one expert for the Technical Committee on Self-determination, and
- c) a proper race and gender balance should be achieved.

The Subcommittee recommends the appointment of the following experts for the ad hoc Technical Committee on Traditional Leaders:

Prof C. Dlamini
Ms T. Madonsela
Prof T. Nhlapo

CONSTITUTIONAL ASSEMBLY

SUBTHEME COMMITTEE 6.3 OF THEME COMMITTEE 6 SPECIALISED STRUCTURES OF GOVERNMENT

WEDNESDAY 1 FEBRUARY 1995

PRESENT

Kgositsile B (Chairperson)

Fenyane S L E
Louw L
Malan J
Moatshe P
Mokoena L M
Mompoti R
Netshimbupfe M A
Ngubane H
Turok M (Alt)
Zitha D A

Apologies: Balie A, Camerer S (Alt), Jacobz F (Alt)

B Levy and S Nyoka were in attendance

1. **Opening and Welcome**

Ms Kgositsile opened the meeting at 16:00 and welcomed members.

2. **Report on Submissions**

Ms Kgositsile reported that the Secretariat had prepared a preliminary document pack of submissions received relating to the issues relevant to Subtheme Committee 3. The document pack was distributed to members at the meeting.

The Secretariat is preparing a document pack of all the submissions received for Theme Committee 6. This will be distributed to members as soon as it's available.

3. Work Programme

3.1 Report from the Directorate on Traditional Authorities

3.1.1 By way of introduction Mr Ebrahim stated that the Work Programme is a discussion document. The programme developed is not meant to be prescriptive rather it needs to be seen as a guiding framework for the work of the different Theme Committees.

The Work Programme drawn up attempts to deal with the work of Theme Committees in the most efficient and cohesive way.

3.1.2 The matter of Traditional Authorities is not reflected in the Work Programme of Theme Committee 6 for the following reasons:

- i. The need to prevent a duplication of issues for discussion by Theme Committees.
- ii. The fact that Traditional Authorities are not in a real sense a specialised structure of government, but rather an essential structure of governance.

For these reasons it was felt that the proper place for deliberating on the Traditional Authorities is Theme Committee 2.

3.1.3 Mr Ebrahim also explained that the subject of Traditional Authorities was also being considered by Theme Committees 3, 4 and 5.

3.1.4 Kgosi Mokoena and Mr Netshimbupfe expressed their concerns over the exclusion of traditional authorities from Theme Committee 6.

3.1.5 Mr Ebrahim explained if the Theme Committee 6 felt strong about the exclusion of traditional authorities from its scope of work, the matter could be tabled before the Constitutional Committee for a political decision.

4. Report from the Directorate on the Public Participation Programme

Mr Ebrahim reported on the Public Participation Programme by speaking to a document entitled "Draft Public Participation Programme" (see annexure "A").

As many of the members did not have the document, it was agreed that Mr Ebrahim would limit his input to a brief overview of the process.

It was decided that discussion on the Public Participation Programme would take place at such time when members would have received and familiarised themselves with the issues contained in the document.

5. Seminar on the Human Rights Commission

Ms Kgositsile reported that Party Caucuses had been scheduled at the same time as the seminar on the Human Rights Commission to be addressed by Mr Justice PJJ Olivier on 2 February 1995. Members were asked to excuse themselves from Party Caucuses so that they would be able to attend.

6. List of Experts

It was agreed that members would forward the names of experts to the Secretariat.

7. Parties final lists of Subtheme Committee Members

It was agreed that Parties would submit the final names of the members of the Subtheme Committee to the Secretariat.

8. Any other business

The Subtheme Committee expressed its gratitude to the Secretariat for organising seminar in a efficient way.

9. Closure

The meeting rose at 17:00

DRAFT PUBLIC PARTICIPATION PROGRAMME

COMMUNITY LIAISON

MISSION STATEMENT :

“To facilitate an interface or dialogue between the South African people and their elected representatives by consulting the population at various levels and at various stages of the process of constitution making.”

(CA Resolution of 31 October 1994)

INTRODUCTION

On 31 October 1994 the Constitutional Assembly adopted a document entitled “Public Participation - A Strategic Overview” which set out the broad framework within which the community liaison programme will take place.

1. GUIDING PRINCIPLES

- Transparency
- Credibility
- Legitimacy
- Consultation
- Inclusivity

2. OBJECTIVES OF PUBLIC PARTICIPATION PROGRAMME (PPP) :

(Extracted from Constitutional Assembly Resolutions, 5 September 1994)

- ensure that the draft constitution enjoys the support and allegiance of all South Africans
- new constitution should represent the aspirations of all our people
- process should serve to unite the country's people and produce a constitution which will become the cornerstone of the future South Africa. It should be people driven and transparent
- new constitution must be the product of an integration of ideas of all role players. In this regard, there should be maximum public participation
- there should be an effective strategy for media and community liaison
- media and public participation strategies should aim at facilitating the required “dialogue” and channels of communication between the broader public and their elected representatives
- programmes of the Constitutional Assembly should be “non-party political”. Strict monitoring should ensure that the programmes promote the Constitutional Assembly and the interests of the country as a whole

3. *COMMUNICATION OBJECTIVES*

- Develop, raise and popularise the CA profile
- Solicit views and submissions
- Brief public - on the constitution making process
 - procedure for submissions to CA
- Consult all sectors and role players
- Increase public interest and awareness through constitutional education
- General involvement and engagement of public at large

4. *PROGRAMMES*

- Special Events
 - Launch Briefings
 - Other Special Events
- Theme Committee Requests
 - Hearings
 - Seminars
- Constitutional Public Meetings (CPMs)
- Constitutional Education Programme (CEP)

5. *TIME FRAMES*

It is envisaged that the CLP will be run in two phases;

- First Phase : Develop draft constitution - February 1995 to end of July 1995
- Second Phase : Popularising the draft constitution - August 1995 to May 1996

This document deals with detailed planning for February 1995.

LIST OF ABBREVIATIONS

PPP : Public Participation Programme	PMT : Project Management Team
CL : Community Liaison	SACS : South African Communication Service
CLP : Community Liaison Programme	TC : Theme Committee
CPM : Constitutional Public Meetings	NGO : Non Governmental Organisation
CEP : Constitutional Education Programme	CBO : Community Based Organisation

COMMUNITY LIAISON PROGRAMME : FEBRUARY 1995

6. SPECIAL EVENTS

6.A. LAUNCH BRIEFINGS

6.A.1. Introduction

It is proposed that the CA Chairpersons - Messrs Cyril Ramaphosa and Leon Wessels - should visit three provinces - namely the Western Cape, Northern Cape and Gauteng, in order to launch the CLP. Briefings in the other provinces are envisaged in the months to come. Briefings will also be used in the second phase of the constitution making process.

6.A.2. Objective

To develop, raise and popularise the CA profile.

6.A.3. Process

Three briefings are envisaged to launch the Community Liaison Programme (CLP). The briefings used to nationally launch the CLP should be of high profile to attract maximum media coverage.

6.A.4. Proposed Briefings

First briefing

Date	:	First week in February
Area	:	Western Cape (Boland)
Target group	:	Farmworkers and management

Second briefing

Date	:	Second week in February
Area	:	Northern Cape (Kuboes)
Target group	:	Rural community

Third briefing

Date	:	Third week in February
Area	:	Gauteng
Target group	:	Urban community

Structure

CA participants	:	Mr Cyril Ramaphosa (Chairperson CA) Mr Leon Wessels (Deputy Chairperson CA) Representatives from all political parties in the CA
Chair	:	It is proposed that the Provincial Premier or a Provincial MEC should chair the meeting.
Content of meeting	:	Duration: 1 hour: Brief: 30 minutes Questions: 30 minutes

Programme:

The programme will consist of a briefing on the Constitutional Process by the CA Chairs. It is expected, through these briefings, that:

- public participation will be encouraged;
- public awareness will be increased;
- the role of the CA in directing public participation is highlighted.

It is inevitable that questions from the audience will arise. Opportunity - though limited - should be given for questions to be posed to the Chairs.

Media:

Since these briefings serve as the launch of the CLP, time should be allowed for media interviews, if requested. Close co-operation with the Media Department is of utmost importance.

6.A.5. Resources

Given the time constraints, resources such as exhibitions, pamphlets, T-shirts cannot be fully utilised for the first three proposed briefings. The Media Department is requested to arrange posters and pamphlets.

6.A.6. Evaluation / monitoring

To determine the success of the first three briefings, and to set guidelines for future briefings, evaluation is important and will be dealt with as follows:

- Tape recording of the briefing;
- Monitoring the media response;
- Report back from the Chairs;
- Members of the CL team will attend the briefings to evaluate and monitor evaluation thereof.

6.B OTHER SPECIAL EVENTS

Further special events proposed include:

- A simulated Constitutional Assembly process for high school pupils;
- Human rights debates for high school pupils;
- Mock Constitutional Court cases for high school pupils and university law students.

7. *THEME COMMITTEE REQUESTS*

7.A *HEARINGS*

7.A.1. Introduction

Theme Committees will require specialist submissions on issues from target groups. Thus target groups will be invited to hearings to give views on required issues. The need for these hearings is subject to input from the TCs.

7.A.2. Objective

To solicit views and submissions.

7.A.3. Process

Community Liaison (CL) proposes single hearings where there is an overlap between different Theme Committees (TCs).

Schedule of Hearings

Date	Target Groups
February	Business
March	Women
April	Traditional Leaders
May	Labour
June	Religious Groups

All Theme Committees are free to indicate to CL which hearings they would like to attend.

Theme Committee requests

CL will draft a standard request form to be used by Theme Committees.

CL requires reasonable notice from TCs, taking into account:

- capacity of CL;
- availability of sectors who will need time to consult with their constituencies.

7.A.4. Resources

Background information packages eg press cuttings.

7.A.5. Evaluation/Monitoring

Managing Secretaries will evaluate the hearings and submit a report to CL.

7.B SEMINARS

It is proposed to hold seminars in order to brief Theme Committees on constitutional issues following the work programme. It is proposed that universities, technikons and other institutions be approached to convene specialist seminars on issues discussed by the TCs. The seminar programme will respond to the needs of the TCs and will be guided by the Law Advisers. Because of the ad hoc nature of this section of the programme all TC requests would need to be properly co-ordinated in conjunction with the Management Committee.

8. CONSTITUTIONAL PUBLIC MEETINGS (CPMs)

8.1. Introduction

To involve and engage the public at large, Constitutional Public Meetings (CPMs) will be held throughout the country. The public will have direct access to their elected representatives and will be invited to give individual submissions.

8.2. Objective

To involve and engage the public at large.

8.3. Process

February will be used as the pilot phase of the Community Liaison Programme. It is proposed that teams from the same TC will attend particular CPMs, and that a team should comprise up to ten people, with at least one person from each party.

*Proposed CPMs**Free State*

Target date	:	February 18
Venue	:	Mangaung

Eastern Cape

Target date	:	February 18
Venue	:	Grahamstown

Eastern Transvaal

Target date	:	February 18
Venue	:	Drum Rock

Western Cape

Target date	:	February 18
Venue	:	Worcester

Northern Cape

Target date	:	February 25
Venue	:	Kimberley

KwaZulu - Natal

Target date	:	February 25
Venue	:	Kwa-Mashu

North West

Target date	:	February 25
Venue	:	Klerksdorp

Gauteng

Target date	:	February 25
Venue	:	Duduza

Northern Transvaal

Target date	:	February 25
Venue	:	Namakgale

Note: The issues to be addressed in particular CPMs will be determined on the basis of the work programme and will be guided by the Law Advisers.

8.4. Theme Committee Commitments

Three options as to how TC members will attend future CPMs are proposed (for logistical reasons, operational from March 1995). TC members are requested to decide on the most feasible option available, taking into account the objectives of the PPP as outlined by the Resolutions of the CA..

Option 1

Working days	:	Saturdays & Sundays
Who	:	The 6 TCs divided into 2 groups = 12 groups
		Group 1: Saturday & Sunday mornings : 2 meetings per group per weekend
		Group 2: Saturday & Sunday afternoons : 2 meetings per group per weekend
CPMs	:	24
Total CPMs	:	24 x 18 (available weekends till 30 June 1995) = 432

Option 2

Working days	:	Saturdays only : mornings & afternoons
Who	:	The 6 TCs
CPMs	:	12 : 6 TC groups x 2 meetings per day
Total CPMs	:	12 x 18 (weekends available till end of June 1995) = 216

Option 3

Working days	:	Every second Saturday
Who	:	The 6 TCs, alternating
CPMs	:	6 (6 meetings per weekend)
Total CPMs	:	6 x 18 weekends = 108 CPMs during PPP

8.5. Proposed structure of the CPMs

Duration	:	3 hours	
Welcome	:	Host	10min
Introduction	:	Facilitator	10min
Input	:		45min
-		Constitution Making Process	
-		Specific TC issues	
-		Issues discussed by other TCs	
Questions and Discussion	:		105min
Closure	:		10min

TC members will be provided with a brief, compiled by CL and Law Advisers, before each CPM, giving details of current issues in each TC. These issues will be drawn from the Work Programme.

Please note: Due to translation and other factors, time allocated could be extended.

Appointment of Chairperson

It is proposed that :

- criteria for the selection of the chairperson be established by CL.
- chairperson should be neutral and identified from the community.
- the national Community Liaison Team should have veto power on the appointment of the chairperson.

Facilitator:

It is proposed that the facilitator should introduce the constitution making process and facilitate the making of submissions.

8.6 Proposed role of the Secretariat

It is proposed that the Managing/Minute Secretaries be involved in two levels of the Constitutional Public Meeting :

- during the CPM
 - take minutes of meeting and receive written submission
 - record meetings
 - collect evaluation forms from facilitator to return to CL
- after the CPM
 - take evaluation forms to Deputy Assistant Director : Community Liaison

8.7 Evaluation of CPMs

The following people are suggested to be evaluators: CA members, facilitators, provincial coordinators (CEP), national community liaison officers, random audiences and community leaders. Areas of evaluation will include process, content and promotional material.

9. CONSTITUTIONAL EDUCATION PROGRAMME (CEP)

9.1. Introduction

The Constitutional Assembly Work Programme for 1995 articulated the objectives of the Constitutional Education Programme as follows:

"The Constitutional Assembly, in association with a wide variety of NGOs, CBOs and other sectors of South African society, will conduct a wide ranging programme of constitutional education that will be accessible to South Africans at all levels. The programme will include South Africans in the constitution-making process by providing training on the key issues of constitutionality and briefing them on developments within the Constitutional Assembly. The assistance of NGOs and CBOs will allow this programme to reach disadvantaged communities, inaccessible or 'invisible' sectors and rural communities."

On 2 December 1994 the Constitutional Committee approved the programme and requested further information. Such information is detailed below.

9.2. Objectives

The Constitutional Education Programme has the following objectives:

- * helping to ensure maximum community participation in the constitution-making process, primarily through community workshops;
- * ensuring that the Constitutional Education Programme is in step with the different phases of the constitution-making process. In the first phase this will require a Constitutional Education Programme grounded in the workplan of the Theme Committees.

9.3. Process

The primary mechanism of delivery for this programme is the use of community workshop, so as to educate communities on the constitution-making process and to empower them to make submissions. Community workshops will be run, where possible, prior to Constitutional Public Meetings as well as independently of these meetings. This programme would continue into the second phase of the constitution-making process (the consideration of the draft constitution) and will lay the foundation for a wide-reaching public education programme which could be utilised in the development of a human rights culture.

Short-term implementation:

A short-term programme has been developed for February:

- Convening a national consultative meeting to be held in Cape Town, provisionally scheduled for 9/10 February, to provide NGOs and CBOs with a briefing and to assess existing resources;
- Running two pilot workshops in conjunction with NGOs, on Sunday 19 February and Sunday 26 February, at venues still to be finalised.

9.4. Training and Resource Development**Training:**

This will encompass the training and briefing of co-ordinators and workshop facilitators from the CA, SACS and NGOs.

Resources:

A wide range of resources are envisaged, in order to ensure that the constitution-making process is accessible to as many sectors and constituencies as possible. The use of simple language, translation, drama and visual materials will be essential components of these resources. A workshop kit will be developed in conjunction with the NGO sector, including resources such as:

- * an educational booklet on how to participate in the constitutional process;
- * a looseleaf constitutional education manual (allowing for updates);
- * outlines for community workshops;
- * educational/information posters, including CA promotional material for use in local community venues such as advice offices and municipal offices.

9.5. Evaluation and Reporting Mechanisms

Mechanisms will be developed to assess the overall implementation and impact of the programme, including feedback from workshops and the effectiveness of resources.

Regular reports will be made to the Management Committee and close liaison maintained with the Theme Committees.

10. CONCLUSION

It is proposed that detailed project planning be submitted to the Directorate: CA Administration and the Management Committee on a monthly basis. Planning should reach the Management Committee not later than the second meeting of the preceding month.

CONSTITUTIONAL ASSEMBLY

SUBTHEME COMMITTEE 3 OF THEME COMMITTEE 6 SPECIALISED STRUCTURES OF GOVERNMENT

WEDNESDAY 2 FEBRUARY 1995

PRESENT

KGOSITSILE B (Chairperson)

Camerer S
Fenyane S L E
George M
Louw L
Malan J
Moatshe P
Mokoena L M
Netshimbupfe M A
Ngubane H
Turok M (Alt)
Zitha D A

Apologies: Balie A, Jacobz F (Alt)

B Levy and S Nyoka were in attendance

1. **Opening and Welcome**

Ms Kgositile opened the meeting at 12:00 and welcomed members

2. **Work Programme**

2.1 **Commission on the Restitution of Land Rights**

Ms Kgositile stated that one of the central issues arising out of the information seminar on the Commission for the Restitution of Land Rights presented by Ms A Claasens on the 1 February 1995, was that the notion of restitution of land was limited. Restitution did not address the matter of the redistribution of land.

Ms Kgositsile maintained that the Subtheme Committee needed to look at mechanisms that are broader in scope and the address the larger matter of 'land hunger'.

Prof Ngubane agreed with the above contention with the proviso that the Committee define and interrogate what is meant by land redistribution and how this process is going to occur.

The meeting agreed that this issue was a complex one and proposed a workshop on the issue. It was agreed that workshop would need to draw on the relevant experiences of neighbouring countries and Australia.

Prof Ngubane would draw up a proposal together with the secretariat for the workshop.

4. Lists of Experts for Subtheme Committee 3

All members agreed to consult political parties with regards to the list of experts for Subtheme Committee 3.

Ms Malan reported that she would submit the list from the National Party to the Secretariat by the end of the day.

5. Parties final lists of Subtheme Committee Members

It was agreed that parties would submit the final list of names of Subtheme Committee members to the Secretariat.

7. Closure

The meeting rose at 12:30

CONSTITUTIONAL ASSEMBLY

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

**SPECIALISED STRUCTURES OF GOVERNMENT
SECURITY APPARATUS**

TUESDAY, 31 JANUARY 1995

PRESENT

Schreiner, J (Chairperson)

Dyani, M M Z
Gogotya, N J
Mti, L M
Phillips, I
Selfe, J

Fihla, B N
Malumise, M
Mtintso, T
Powell, P
Sisulu, L

K McKenzie was in attendance.

1 OPENING AND WELCOME

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

2 ADOPTION OF AGENDA

The agenda was adopted.

3 SUBTHEME COMMITTEE WORK PROGRAMME

3.1 Meeting schedule

It was agreed that the content of meetings would follow that outlined in the recommended work programme, moving from the general to the specific.

The work of the Subtheme Committee should commence with discussion outlining a framework of what a Constitution should contain with regard to security apparatus.

It was agreed that a Constitutional expert, such as Prof D van Zyl Smit should be approached to brief the Committee on this.

3.2 Programme for the week ending 3 February 1995

It was agreed that the Subtheme Committee would meet at 14:00 on Wednesday 1 February 1995 and at 14:00 Thursday 2 February 1995.

3.3 Planning for the workshop

Ms Schreiner tabled a proposal from the Institute for Defence Policy (IDP) and the Centre for Policy Studies (CPS) to host a workshop on security apparatus.

It was agreed that the workshop should take place as soon as possible, preferably over two days. The workshop should be open to all interested parties. The panel of consultants identified by the Subtheme Committee in 1994 should be invited to the workshop.

4 IDP PROPOSAL ON ONGOING WORK ON DEFENCE LEGISLATION

A proposal by the IDP to carry out research for the Subtheme Committee (contained on page 45 of the documentation of 25 January 1995) was tabled.

Discussion of this proposal was held over for a future meeting.

5 PUBLIC PARTICIPATION EVENTS

Several suggestions were tabled regarding the Public Participation Programme namely:

- 5.1 One day workshops be held in the provinces
- 5.2 Sectoral workshops be held targeting interested groupings, including the SAPS, SANDF, Correctional and Intelligence Services
- 5.3 Academic institutions and foundations be approached to make submissions
- 5.4 Appropriate translation services should be provided
- 5.5 The Administration should provide budgetary guidelines as regards the Public Participation Programme

6 ANY OTHER BUSINESS

6.1 Visit by members of the Canadian parliamentary Defence and Foreign Policy Committees

A delegation of senior Canadian parliamentarians were to address the standing committee on Defence.

It was agreed that they should be approached to address the Subtheme Committee.

6.2 Technical experts

Mr A Cachalia and Prof A Seegers have been appointed as technical experts for Subtheme Committee 4.

7 CLOSURE

The meeting rose at 10:30.

CONSTITUTIONAL ASSEMBLY

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

**SPECIALISED STRUCTURES OF GOVERNMENT
SECURITY APPARATUS**

WEDNESDAY, 1 FEBRUARY 1995

PRESENT

Schreiner, J (Chairperson)

Alant, T G	Dyani, Z D
Ebrahim, E I	Fihla, B N
Gogotya, N J	Khoza, T
Malumise, M	Mti, L M
Mtintso, T	Phillips, I
Powell, P	Selfe, J
Sisulu, L	Van Eck, J
Yengeni, T S	

K McKenzie was in attendance.

1 OPENING AND WELCOME

Ms Schreiner opened the meeting and welcomed members.

2 ADOPTION OF AGENDA

The agenda was adopted.

3 MINUTES OF THE PREVIOUS MEETING

The minutes were adopted subject to the following changes:

- 3.1 J van Eck's name be added to the list of members present
- 3.2 The following items be added to item 5 - Public Participation Events:

5.6 The Constitutional Assembly should link up with Provincial legislatures as well as structures and organisations in provinces in carrying out Public Participation Events.

5.7 The Communication Department of the CA Administration should assist in popularising the Public Participation Programme.

4 MATTERS ARISING

4.1 Meeting schedule

The Chairperson reported that Prof D van Zyl Smit would address the Subtheme Committee on Tuesday 7 February at 14:30.

4.2 Workshop on security apparatus

The Chairperson reported that the Institute for Defence Policy had agreed to move the dates of the workshop forward and it would be held as soon as possible.

5 DISCUSSION : WHAT SHOULD A CONSTITUTION COVER WITH REGARD TO SECURITY APPARATUS

5.1 ANC

The ANC outlined its preliminary position as follows:
The Constitution should cover principles, however it may be necessary to flesh out these principles because South Africa is a new democracy. These basic principles should not be too general but should contain sufficient detail.

5.2 IFP

The IFP explained that it holds a similar perspective. Principles should be spelt out in slightly more detail when it comes to the security apparatus because of South Africa's history. The legacy of control over the security apparatus makes it advisable for the Constitution to be fairly specific.

5.3 NP

The NP agreed with the sentiments expressed.

5.4 PAC

The PAC agreed with the sentiments expressed.

6 DISCUSSION : WHERE SHOULD SECURITY APPARATUS BE LOCATED WITHIN THE CONSTITUTION

6.1 It was agreed that there are four possible places in the

Constitution where security apparatus could be dealt with: the Preamble, the Bill of Rights, separate chapters dealing with each of the Security Services or one Chapter dealing with all of the Security Services.

- 6.2 It was agreed that there was no finality in this matter and that the architecture of the Constitution would be reflected upon as the debate proceeded in the Subtheme Committee.

7 **DISCUSSION : PRINCIPLES OF ACCOUNTABILITY AND CONTROL OF THE DEFENCE FORCE**

7.1 **ANC**

The ANC spoke to its preliminary submission ("A" in Documentation package 2)

The following items were highlighted for clarification:

7.1.1 **Parliamentary oversight**

The ANC stated that the Constitution should make provision for Parliamentary control through a standing committee. Details of this should be contained in legislation. The issue of whether control should be exercised before, during or after military actions needs to be clarified.

The IFP highlighted the fact that its submission made detailed recommendations to be contained in the Constitution regarding Parliamentary oversight. ("B" in documentation package 2)

The ANC highlighted the need for a defence review in order to ensure that Parliament received sufficient information to make informed choices and avoid merely rubber-stamping decisions. This had implications beyond the work of Theme Committee 6.

The ANC amended their submission by replacing section 4 'Ombudsperson' with section 4 'Oversight': Parliament shall ensure oversight of the Defence Force including Parliamentary oversight, an independent military ombudsperson to investigate complaints against the SANDF by soldiers and members of the public, and an Inspector General for the military.

7.1.2

Civilian control

It was noted that the definition of civilian control was not clear, for example a Secretary of Defence or Minister of Defence could be General who had stepped out of uniform for the purpose of assuming a civilian post.

The concept of civilian control needs further definition.

7.1.3

Arms industry

It was noted that there was no clarity on how the Special Defence account would be seen in the future.

It was noted that one of the tasks of the Cameron Commission, presently sitting, is to develop proposals regarding the arms industry. It was agreed that once this Commission had completed its brief its findings should be studied by the Subtheme Committee.

It was agreed that the work programme of the Subtheme Committee should include provision for discussion on the arms industry and arms procurement in March or April once the Commission tabled its findings.

7.1.4

No contentious points were raised. Greater clarity on some issues was still needed and further debate would still take place in subsequent meetings of the Subtheme Committee.

7.2 **IFP**

The IFP spoke to its submission ("B" in document package 2)

In discussion the following was highlighted for clarification:

7.2.1

Parliamentary oversight

Parliamentary oversight committees should be able to subpoena witnesses.

There was no firm position within the IFP regarding the extent of parliamentary oversight but the prevailing opinion is that parliament should have oversight before the state takes action. Parliamentary oversight is thus proposed as a joint Intelligence/ Defence Committee which would enjoy a relationship of trust with the Executive.

The IFP would support a clause in the Constitution which limited the power of the Defence Force to non-aggressive actions.

7.2.2 **State of emergency**

The IFP outlined its position : Provinces cannot deploy the Defence Force in a state of emergency but policing is a provincial area of competence. At all times the Defence Force is subsidiary to the South African Police Services.

Provinces should have the competency to declare a state of emergency in their own province. This would not interfere with the competence of the President to declare a national state of emergency.

When the President declares a state of emergency in a particular province there should be some mechanism of review in that province against a unilateral declaration of a state of emergency.

7.2.3 **Monopoly of force - citizens right bear arms**

The IFP maintains that the Constitution should contain a right to self defence. By implication the Constitution should not suppress the right of citizens to bear arms.

7.2.4 **Monopoly of Force - Provinces**

The IFP clarified items 2 and 3 stating that defence is the competence of the national level of government and that the armed forces are not under the authority of the provinces. However, as is the case at present, the regimental structure should be maintained whereby regiments are drawn from communities and can be mobilised in a time of war.

7.2.5 Points of contention were: Joint Defence/Intelligence Parliamentary Oversight; Deployment of police in provincially declared states of emergency due to lack of agreement on national/provincial competence regarding the police. While there is agreement on the right to self defence, there is disagreement on enshrining the right to bear arms in the Constitution.

7.3 It was agreed that further discussion would take place when all parties had made their submissions.

8 ANY OTHER BUSINESS

8.1 Principles of accountability and control of correctional services

This discussion was held over to the next meeting of the Subtheme Committee.

8.2 Outstanding Submissions

It was agreed that outstanding party submissions should be available by midday on Monday 6 February to allow for distribution and reading by the meeting of 7 February 1995. It was agreed that the Subtheme would proceed with debate on the basis of submissions by the majority of parties due to the deadlines for block reports.

8.3 Executive Summaries of submissions

It was agreed that the Secretariat would summarise submissions for the time being. Should the Subtheme Committee be flooded with submissions this decision would be revisited.

As far as possible parties and organisations making submissions would be encouraged to attach an executive summary.

The Chairperson would take up with the Core Group the need for administrative support and a researcher, as motivated for in the work programme drawn up in 1994.

9 CLOSURE

The meeting rose at 16:20.