

2/4/2/1/1/11

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 2

STRUCTURE OF GOVERNMENT

TUESDAY
31 JANUARY 1995
(14H00)
M46

DOCUMENTATION

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CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 2

STRUCTURE OF GOVERNMENT

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

Date : Tuesday 31 January 1995
Time : 14h00 - 18h30
Venue : M46

Please find attached the following two packs:

- (i) documentation pack - Agenda and minutes of the last meeting; and,
 - (ii) submissions pack - Submissions relating to block 1.
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AGENDA

1. Opening and Welcome
 2. Theme Committee Minutes (30 January 1995)
 3. First Revision of the Work Programme
 4. Submissions
 5. Any Other Business
 6. Closure
-

HASSEN EBRAHIM
EXECUTIVE DIRECTOR
CONSTITUTIONAL ASSEMBLY

Enquiries: James Nene & Thomas Smit 403 2281)

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 2

MINUTES OF COMMITTEE MEETING

MONDAY 30 JANUARY 1995

8H30-13H00

M46

PRESENT

Mahlangu MJ (chairperson)

Ackerman C
Badenhorst MJ (Alt)
Beyers AS
Bester B
Dexter P
Doidge GQM
Ebrahim AG
Eglin CW
Groenewald PH
Hendrickse PAC (Alt)
Holomisa SP
Ligege MG
Louw SK
Mabudafasi J

Mahlangu JL (Alt)
Mars I
Mlangeni A
Mohlamonyane GM (Alt)
Moloto CP (Alt)
Mothoagae PK (Alt)
Mutsila I
Mwedamutsu MJ
Ndlovu VB
Olifant DAA
Pahad EGH
Phakathi NE (Alt)
Rabie JA
Sethema BEE
Shabangu S
Steenkamp PJ
Tolo LJ

APOLOGIES

Bhengu GB (Alt)
Biyela BP
Foster JA
Lucas E (Alt)
Maduna P
Msomi M
Mushwana GM
Mushwana GM

ABSENT

Marshoff FB
Nxumalo SDW
Tyobeka V

Mngadi-Kgosidintsi T, Ebrahim H, Nene J, and Smit T, were in attendance

1. OPENING AND WELCOME

1.1. The meeting was opened by Mahlangu MJ.

2. THEME COMMITTEE MINUTES

2.1. The minutes of the previous meeting were approved, subject to the following corrections:

- (i) Mwedamutsu MJ was incorrectly omitted from those present;
- (ii) add 6.2.10: that it was not only on national level; and,
- (iii) add 6.2.11: workshop is only one of the potential methods to proceed.

3. SUBMISSIONS

3.1. The meeting agreed that each political party shall have an opportunity to present the submissions they had tabled. This shall take the form of a 15 minute presentation, followed by 15 minutes for questions. A further period of 15 minutes would be allowed at the end of the day for members should the need arise.

3.2. It was further agreed that political parties who have not tabled their submissions, shall do so today, and be allowed in similar vein to present their submissions to the Committee.

3.3. Political parties presented their submissions in the following order: NP, IFP, DP, ANC. Each presentation is set out below in summary form:

3.4. ***SEPARATION OF POWERS BETWEEN LEGISLATURE, EXECUTIVE, AND JUDICIARY***

3.5. There was general agreement amongst all parties regarding the principle of Separation of Powers in general. It was noted that the issue of Separation of Powers pertaining to the exercise of powers by traditional authorities, will be dealt with in the block relating to Traditional Authorities.

3.6. ***BROAD OUTLINE OF CONSTITUTIONAL CHECKS AND BALANCES TO ENSURE ACCOUNTABILITY, RESPONSIVENESS AND OPENNESS***

and

BROAD OUTLINE OF THE STRUCTURES NEEDED FOR THE EXERCISE OF LEGISLATIVE AND EXECUTIVE POWER AT NATIONAL, PROVINCIAL AND LOCAL LEVEL

3.7. **NATIONAL PARTY**

- (i) Improvement is required over the current checks and balances
- (ii) The Legislature at National, Provincial, and Local levels shall consist of representatives directly representing voters
- (iii) Representative government also means that the role of opposition parties must be clearly defined
- (iv) The numbers of the members of National Assembly shall be decreased
- (v) Clarity shall be sought in respect of method of appointment, the functions, and the functioning of the Head of State, the Head of Government and Cabinet (including its composition)
- (vi) Executives shall be responsible to the relevant legislatures
- (vii) The rights of the Executive shall be defined in contradistinction to the rights of the Legislature
- (viii) Executives shall be responsible to the relative legislatures
- (ix) Parliament's control over the administration of laws by the Executive requires definition
- (x) Government at all levels shall be transparent, accountable, and responsive
- (xi) Independence of the Jury as interpretative authority and protector of the Constitution shall be guaranteed
- (xi) Mechanisms and procedures for appointment of judges shall be credible and transparent
- (xii) Exercise of all state powers shall be "controllable" and within set limits.

DEMOCRATIC PARTY

- (i) A number of mechanisms/structures shall be included in the Constitution to ensure "accountability, responsibility and openness"
 - (a) Certain provisions in the bill of rights
 - (b) A Human Rights Commission
 - (c) An Auditor General
 - (d) A Public Protector
 - (e) Regular elections
 - (f) Accountability at Provincial and local level.
- (ii) The most important checks and balances shall be found in the relationship between:
 - (a) the President and his Cabinet; and,
 - (b) the Parliament.
- (iii) There shall be no ambiguity about the Executive's accountability to Parliament, including:
 - (a) Ministers shall be accountable individually to both the President and Parliament for portfolio administration
 - (b) all members of Cabinet shall be collectively accountable for the

- performance of the functions of National Government and its policies
- (c) Votes of No Confidence shall be possible
 - (d) Payment from the National Revenue fund shall only be made in accordance with the constitution
 - (e) An Annual Budget shall be introduced, reflecting estimates of revenue and expenditure and, amongst other matters, the capital and current expenditure of government for that particular year.

INKATHA FREEDOM PARTY

- (i) The Head of State and head of Government shall be separate
- (ii) The Head of State's roles should be specified
- (iii) There shall be a "pure parliamentary system", in which cabinet is collegially responsible to parliament
- (iv) Votes of No Confidence shall be possible
- (v) The Head of Government shall be appointed by the Head of State; the Head of Government shall form the Cabinet and submit it for ratification by means of a vote of confidence of both Houses in joint session
- (vi) The Head of state shall hold tenure for a period of 7 years, in order to provide continuity, as provided for in the French Constitution.
- (vii) There shall be a bicameral system and the Senate shall represent the provinces
- (viii) Differences between the texts adopted by the two Houses should be reconciled by a Joint Standing Committee of the two Houses in which the Senate and the National Assembly have an equal number of representatives
- (ix) The Senate shall not have less legislative authority than the one given to the National Assembly
- (x) The composition and appointment/election of the Senate shall be defined

FREEDOM FRONT

- (i) Parliament consists of the National Assembly and the Senate
- (ii) The National Assembly shall consist of elected representatives
- (iii) The Senate is of particular importance (a workshop on this topic is requested) and shall serve to:
 - (a) Protect provincial interests, and ensure that centralist monopolistic behaviour and bureaucratic red tape do not frustrate the efficient functioning of provincial and local government
 - (b) Ensure nation building and the protection and development of the different languages and cultures
 - (c) The protection of minorities and minority rights within the framework of the Constitution

- (d) Seek dialogue without violating the democratic process
- (e) The protection of the Constitution; review revise, or veto legislation (there shall be a final deadlock breaking mechanism), and initiate judicial review
- (f) To seek consensus through dialogue without violating the democratic process
- (iv) The Head of State and Head of Government shall be separated
- (v) The President shall appoint and supervise the Cabinet, but shall consult the Cabinet on important issues
- (vi) The executive shall be accountable to both the Head of Government and Parliament
- (vii) There shall be an independent, impartial Judiciary, subject to the Constitution
- (viii) There shall be an independent Constitutional Court with the power to nullify an Act of Parliament if the act is in conflict with the Constitution.

AFRICAN NATIONAL CONGRESS

- (i) Parliament shall be subject to the Constitution
- (ii) A Senate is necessary, but the issue of bicameralism requires discussion as a point of departure
- (iii) The composition, powers, and functions of the Houses shall have to be determined and agreed upon
- (iv) The executive shall be accountable to the legislature, but not in a way that will undermine the principle of majority rule
- (iv) Whilst the President shall appoint and supervise the Cabinet, but consult with cabinet when taking important decisions
- (v) There shall be a Deputy President who shall be accountable to President and to Parliament
- (vi) There shall be an independent and impartial judiciary, and Courts shall be accessible.

8. ANY OTHER BUSINESS

- 8.1. The meeting agreed that members of the Committee shall read the submissions in order to determine where consensus can be reached about matter which are not contentious, and that a process be set in motion to address the division into contentious and non-contentious issues.
- 8.2 Submissions from the two outstanding parties and members of civil society would be tabled for discussion the following day. Focus would be centred on Separation of Powers as the first block of

discussion. The Core Group was asked to remain to prepare for the meeting of the following day.

9. CLOSURE

- 9.1. The meeting rose at 12h25.

Signed by Chairperson _____

[Theme Committee 2: 25 January 1995]

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 2 STRUCTURE OF GOVERNMENT

WORK PLAN

1. Which constitutional issues within the broad theme need to be attended to?

- Separation of Powers
- Structure of Government
 - i) National including Parliament and the Executive
 - ii) Provincial
 - iii) Local

The meeting noted that Traditional Authorities should be part of the Structure of Government

- Electoral System including participation of minority parties in the legislative process
- Traditional Authorities
- Volkstaat
- Amendments to the Constitution
-

2. Which of these constitutional issues need to be dealt with as a priority?

- Separation of Powers
- Structure of Provincial Government (Const. Sec 161)

3. Which are the areas of overlap with each other in the Theme Committees?

- Separation of Power
 - Judiciary (5)
 - Character of Democratic State (1)
 - Specialised structure of Government (6)
- Structure of Government
 - Provincial Government (3)
 - Local Government (3)
- Electoral System (1)
- Traditional Authorities (5.6)
- Volkstaat (5.6)

4. **Which constitutional issues need to be dealt with in commissions?**

- **Commission**
Electoral System
- **Committees**
Separation of Powers
- **Structure of Government**
 - i) National
 - ii) Provincial
 - iii) Local
- **Traditional Authorities**
- **Volkstaat**

5. **Which groups of constitutional issues do the committees anticipate will require separate reports?**

Each of the above (4)

6. **How many such reports are to be issued and what are the deadlines for the submission of same?**

- i) As and when the reports are completed by the Theme Committee but
 - a) Separation of Powers - end of April 1995
 - b) Final draft at the end of May 1995

7. **What are the structures and who are the role players that are to be consulted?**

7.1 **Traditional Authorities**

- Amakhosi AkwaZulu (All Zulu chiefs)
- Contralesa
- TTLA
- Traditional authorities and House of Traditional Leaders (where established)
- The Council of Traditional Leaders (when established)

7.2 *Afrikaner Institutions*

- Afrikanerbond
- Afrikaner-Volksfront
- AVSTIG
- FAK
- Federale Vroueraad
- Kontak
- Oranjewerkers
- Rapportryers
- Volkstaat Council
- Volkseenheidkomitee
- Volkswag

7.3 *Religious Organisations*

- AGS Kerk
- Baptist Union
- Bible Society of South Africa
- Church Unity Commission
- Church of the Province of South Africa
- Diakonia
- Evangelical Lutheran Church of SA
- Gereformeerde Kerk
- Hervormde Kerk
- Hindu
- IDAMASA
- Institute for Contextual Theology
- Jewish
- Kwa-Shembe
- Methodist Church of SA
- Moslim
- NG Kerk
- Presbyterian Church of SA
- SA Council of Churches
- SA Catholic Bishops' Conference
- SARK
- Theological Education by Extension College
- United Congregational Church of SA
- Zionist Christian Church
- Zululand Council of Churches

7.4 Trade Unions

- COSATU
- Landbou Unies
- NACTU
- POPCRU
- Rapportryers
- UTUSA
- UWUSA

7.5 Political Parties/Organisations Outside Parliament

- AWB
- AZAPO
- Conservative Party
- HNP
- INP
- IYP
- Minority Front
- SACP
- Unity Movement
- WOSA
- XPP

7.6 Tertiary Institutions

- All South African universities

7.7 Business Sector

- AHI
- Business SA
- Chamber of Commerce and Industry
- Escom
- FABCOS
- Gencor
- KwaZulu/Natal Inyanda
- NAFCOC
- SACOB
- Small Traders Association

7.8 *Para/Professional Associations*

- Association of Lawyers Society
- Balieraad
- BLA
- MASA
- Mediese Navorsingsraad
- Nadel
- NATU
- NBC (National Bar Council)
- National Inyanda Association of KwaZulu
- Prokureursorde
- Traditional Healers
- Vereeniging van Staatsamptenare

7.9 *Women's Organisations*

- Songoba Women's club
- Yinhle Lentfo Women's Club

7.10 *Other/miscellaneous*

- Civic - Sanco
- Cultural Organisations
- Landlike Stigting
- Metacoc
- National Sports Organisations
- RGN
- SASCO
- Taxi Associations
- WNNR

8. *What community and Media liaison assistance will facilitate the committee's work?*

Media: Electronic and print Media
SACS
Proposal for sub-committee to draw up media plan

Community: Provincial legislatures as vehicles for community liaison

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1 3

5

9. Who and what technical assistance will be required to support the committees?

9.1 *Amendments to the Constitution*

- Professor T Sono
- Professor D van Wyk
- Professor A Venter
- Ms L Zama

9.2 *Electoral System including participation of minority parties in the Legislative process*

- Professor HM Corder
- Professor BF Ndaki
- Mr R Rosenthal (Legal advisor and draughtsperson)

9.3 *Separation of powers*

- Professor SC Nolutshungu
- Professor I Smuts
- Professor T Sono
- Professor D van Wyk
- Professor A Venter
- Professor D Welsh

9.4 *Structure of Government : National, Provincial and Local Levels including Parliament and the Executive*

- Professor F Cloete
- Mr V Dlova
- Professor M Faure
- Advocate N Goso
- Professor D Kriek
- Advocate E Moosa
- Mr BM Ngoepe
- Professor C Thornhill
- Professor D Welsh

9.5 *Traditional Leaders [authorities]*

- Professor DS Koyana
- Mr BR Mqeke
- Ms P Tlakula

9.6 *Volkstaat*

- Professor A Raath

9.7 *General*

- Professor D Basson
- Advocate AM Motemele
- Mr R Rosenthal
- Advocate D Unterhalter

10. *Time Frames*

i) General Comments

A phased approach - three phases

Phase 1 : 30 October - 15 November

Finalisation of work plan for submission to Constitutional Committee

Phase 11: 23 January - mid April 1995

January : Hearings in 3 provinces

February: Hearings in 3 provinces

March : Hearings in 3 provinces

- National Hearing March/April in Cape Town
- Receipt of written submissions by 31 March 1995
- Processing of submissions
- Formulation of Theme items and approval
- Publication of formulation for public opinion
- Production of first draft report end of April

Phase 111 : After Easter to June 1995

- Internal discussion and debate
- Co-ordination and processing of public opinion
- Identification of contentious and non-contentious issues
- Evaluate draft report
- Finalisation of report and submission to Constitutional Committee

REVISION OF RECOMMENDED WORK PROGRAMME
EXPLANATORY NOTE

1. The Administration has now thoroughly revised the recommended work programme for Theme Committees 1 - 5 which was in principle accepted as a broad framework by the Constitutional Committee on the 2 December 1994. We have also prepared an additional document in respect of each Theme Committee to provide additional information which may be of assistance to the Theme Committees in performing their tasks.
2. The revision was done mindful of the concerns raised in discussions when the recommended work programme was tabled in the Management and Constitutional Committees. In revising the work programme the objectives were as follows:
 - 2.1 To achieve better vertical co-ordination in the work programme, i.e. the sequence in which Theme Committees deal with the various issues in their respective themes. The revised work programme attempts to foster a systematic approach and to assist committees to deal with the various issues in a logical way.
 - 2.2 To improve lateral coherency in issues dealt with by different Theme Committees in the same time frames (blocks). Because of the interrelatedness of most of the agenda items in the blocks it would be impossible to devise a perfect programme, but the present proposals do go a long way to achieve better horizontal co-ordination between the tasks of the various Theme Committees.
 - 2.3 To eliminate unnecessary overlaps in the work programmes of the different Theme Committees. Duplication of work in the Theme Committees could have an adverse or even disruptive effect on the process and overlaps should therefore be avoided as far as possible.
 - 2.4 To provide particulars as to what the agenda items in the blocks entail. For this purpose an additional document was prepared in respect of each Theme Committee which contains a "suggested framework" in respect of each agenda item. It is suggested that these frameworks for the different agenda items will come in handy to avoid unnecessary overlaps between the Theme Committees. These documents, however, need further development, especially in the case of Theme Committee 4.
 - 2.5 To relate the different agenda items in the blocks of the work programme to the relevant Constitutional Principles and also to the

corresponding provisions of the Interim Constitution. These particulars are contained in the documents referred to in paragraph 2.4.

3. As was previously explained, the work programme and now also the suggested frameworks for the agenda items on the work programme should not be seen as anything but a recommendation from the side of the Administration to facilitate the process, given the time constraints to write the new constitution and also the need to plan, structure and co-ordinate the media and public participation programmes in line with the process.

FIRST REVISION OF RECOMMENDED WORK PROGRAMME

BLOCK NO	TC 1	TC 2	TC 3	TC 4	TC 5
1	1. Democracy and Character of State	1. Separation of powers	1. Nature and status of the provincial system and local government	1. Constitutional Principle II	1. Appropriate judicial system
2	2. Equality 3. One, sovereign state	2. Structures of government	2. National and provincial legislative competences	2. Nature of Bill of Rights and application 3. Equality 4. Human dignity 5. Right to life 6. Privacy	2. Supreme Court
3	4. Supremacy of the Constitution	3. Functioning of national and provincial structures of government	3. National and provincial executive competences	7. Religion, belief and opinion 8. Freedom of expression 9. Freedom of association 10. Language and culture	3. Constitutional Court 4. Constitutional jurisdiction of Supreme Court

4	5. Accountable government	4. Volkstaat and community selfdetermination	4. Structural aspects of local government	11. Administrative justice 12. Access to information 13. Access to courts 14. Freedom and security of the person 15. Detained, arrested and accused persons	5. Other courts
5	6. The Economy	5. Traditional authorities	5. Functional aspects of local government	16. Servitude and forced labour 17. Economic activity 18. Property 19. Labour relations 20. Environment	6. Customary law and customary and tribal courts
6	7. Representative government 8. Citizenship 9. Suffrage	6. Electoral system at national and provincial level	6. Electoral system at local level	21. Citizens' rights 22. Political rights 23. Freedom of movement 24. Freedom of residence 25. Freedom of demonstration and petition	7. Judicial office-bearers
7	10. Language	7. Constitutional amendments	7. Financial and fiscal relations	26. Children's rights 27. Education rights	8. Other judicial institutions

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8	11. Foreign relations and international law			28. Other rights and directive principles 29. Customary and indigenous law 30. Linguistic, religious and cultural minorities	9. General matters
9	12. Name, Symbols and National Territory 13. Seats of government			31. Limitation of rights 32. Effect of Bill of Rights on existing law 33. States of emergency and suspension of rights	10. Transitional arrangements
10	14. Preamble and Postamble			34. Interpretation of Bill of Rights 35. Horizontal application of Bill of Rights 36. Class actions	