

[2/4/3/9/5]

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THEMES COMMITTEE 3
CONSTITUTIONAL ASSEMBLY

30 JANUARY 1995

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TRANSCRIPTION OF THE ADDRESS BY THEME COMMITTEE 3
ON THE ISSUE OF RELATIONSHIP BETWEEN LEVELS OF GOVERNMENT
HELD ON MONDAY 30 JANUARY 1995 IN ROOM E249

Members present:

J T Albertyn
K M Andrew
M Bhabha
A Blaas
Y I Carrim
L D Chuenyane
M P Coetzee
P C Cronje
D C Du Toit
P J Gordhan
P J Groenewald
T J King
G W Koornhof
Z A Kota
N E Lamani
N I Mabude
A F Mahlalela
G Marais
J W Maree
H J Mashamba
H W Mayimele
L J Modisenyane
R Rabinowitz
I Richards
M S Seperepere
E Shandu
M V Sisulu
P F Smith
M A Sulliman
R S Suttner
M Verwoerd
M I Vilakazi

Apologies:

P de Lille
N N Mapisa-Nqakula
P W Saaiman

(Stoncy)

THEME COMMITTEE 3
1 February 1995

Tape 1

NOTES

073
Lady from Administration

092:
Who is gentleman speaking?

240:
how your committee can pro? submissions?

282:
Who is speaker

297:
Who is speaking?

THEME COMMITTEE
1 February 1995

Tape 2

NOTES

060:
press submission, pro submission?

198:
only the car, cow, core?

THEME COMMITTEE3
1 February 1995

Tape 3

NOTES

116:
Who is interjecting? Mr Andrew?

275:
Who is lady speaker? - Dr King?

THEME COMMITTEE
1 FEBRUARY 1995

Tape 4

NOTES

105

Who is speaker

168

inaudible

192-4:

common white? Please check paragraph - not sure

257:

something acutely regional/recognisable ?? part of Natal

432:

inaudible - Chairperson whispering loudly therefore cannot hear.

(Tape 1)

Chairperson:

The Executive Director, Mr Ebrahim has kindly agreed to come to address us this morning to outline some developments and also some issues on which there were apparently a certain amount of uncertainty, and we would welcome him and thank him for coming along. He has a meeting following our meeting this morning and so with your permission we will handle his input first and then turn to the more conventional procedure of Minutes of the previous meeting and so on. So, without further ado I would call on Mr Ebrahim to address the Theme Committee. Thank you. I think you may find you need that one in front of you, no the box in front of you.

Ebrahim:

Chairperson, thank you very much for this opportunity. When I was originally brief with regard to issues relating to, not only the Work Program and Public Participation Program and the relationship between the Theme Committee and the Commission of Provincial Government, but I was made to understand that there was an issue relating to the question of giving of evidence before your Theme Committee.

Chairperson:

Yes, I think we'd be happy if you covered that as well.

Ebrahim:

Chairperson, perhaps I should start off with the easiest which is the question of giving of evidence. The Theme Committee, just like any other standing committee of the National Assembly, has the authority to call on any person to give evidence before this Theme Committee should this Theme Committee deem it necessary and fit, and the necessary arrangements with regard to transcription and secretarial facilities would be provided. The rules make allowance and provisions for that so there should be no difficulty with regard to this Theme Committee requiring any person whatsoever to give evidence before this Theme Committee to help its work progress further. Chairperson, on the second question regarding the relationship between the Theme Committee and the Commission of Provincial Government, it has turned out to be a matter that has given rise to quite a bit of confusion regrettably and I think it's important to clarify that particularly with reference to Theme Committee 3 and Theme Committee 2 which largely deal with matters coinciding with those functions of the Commission. Chairperson, the Commission has its mandate in terms of the Constitution in terms of paragraph 164(2) or 164(1)(a) which merely states that the Commission's responsibility would be to advise the Constitutional Assembly on the development of a

constitutional dispensation with regarding to provincial systems of Government. 164(2) then spells out what that advice entails. Accordingly, the first point that needs to be made is that the relationship of the Commission on Provincial Government and this Theme Committee is one in respect of which the Commission is obliged to do no more than give advice to this Theme Committee. And in return the Constitutional Assembly as a whole is not obliged to accept that advice. So it's not bound by the advice or recommendations made by the Commission on Provincial Government. The major difficulty that seems to arise out of the relationship is one in which the seemingly parallel activities carried out by the Commission on Provincial Government which is entering into various relationships out of legal necessity and practical necessity with the various provinces. The first area of the confusion is that a lot of the provinces have been led to believe that the work of their relationship with the Constitutional Assembly could only take place through the Commission on Provincial Government. That confusion hopefully was cleared in a meeting last week between all the provincial legislatures in which we cleared with all the provinces that they are entitled to entering into a relationship whether it is by way of making submissions or assisting in the function of the constitution making process directly with the CA and does not necessarily need to go through the Commission on Provincial Government prior to reaching to the Constitutional Assembly. The second area of the confusion and possible problem is that in terms of the Work Program of the Commission on Provincial Government, it has scheduled to complete its activities on or about 23rd October which is well after our activities. The Constitutional Assembly and the other houses are scheduled to go into recess somewhere in the middle of September. The matter of fact of the proposal by the Commission on Provincial Government is that their recommendations or advice would be received by the Constitutional Assembly only subsequent to our having finalised a draft for discussion which is scheduled at the present point in time to be somewhere in the vicinity of August. The proposal we made to the Commission in our various discussions with them was threefold. Firstly we propose that instead of duplicating our work in the sense that the Commission would be approaching the same role play in society as we would, we would be prepared to organise our Public Participation Program in a manner in which both the Commission as well as the Theme Committee could derive benefit from. The second recommendation which we put to them was that we should look to synchronising the agenda items and Work Program of either structure. The matter of fact is that we would be working in tandem or rather in the same sequence as they would be working

and therefore make for less confusion than is existing. The third recommendation which was made to the Commission is that even if it were possible for the Commission to submit their final report prior to 23rd October, we would urge them to submit to us regular reports and submissions in a staggered fashion rather than waiting for a composite submission on their entire advice and recommendation. By this I mean that as soon as their first item was cleared and dealt with, then the Commission should consider completing a draft report with regard to the first item which hopefully would be synchronised with ours and therefore be able to submit to the Theme Committee a report on a particular issue. This would be helpful in ensuring that the confusion and disjunction between the Theme Committee and the Commission on Provincial Government would be reduced. Now there are two channels of communication with the Commission on Provincial Government. At the level of the Commission the Chairpersons of the Constitutional Assembly has contact with the Chairperson of the Commission and this contact will be ongoing, and I will be recommending to the Chairperson to establish a further meeting with the Commission on Provincial Government to ensure that we can secure agreements such that it would allow the Theme Committee to process its activities as fast as is possible. The second level of communication is between the Theme Committee and the Commission and it could take place in either the joint forums where role players which are relevant to the work of each structure could be called in to a workshop or seminar program whereby both the Commission and the Theme Committee could independently derive the same benefit of the contributions. This is an item and aspect which I think is of some importance as most of the role players which we would want to liaise with, would otherwise in the course of this year be increasing their activities with regard to preparations for the Local Government elections, and it would really make for a disruptive Work Program for these role players if they were to be called on different occasions only to make the same submissions. Chairperson, I would leave my report on the relationship between the Theme Committee and the Commission on Provincial Government, that save to say the last point is that there is no reason whatsoever that the activities of the Commission on Provincial Government should cause a delay in the work of the Theme Committee. The Theme Committee is not obliged at this point in time to receive a report from the Commission on Provincial Government prior to it submitting its own report to the Constitutional Committee. Chairperson, with regard to the Work Program and the Public Participation Program, this is a matter which has caused some confusion....

Chairperson: Sorry, just hold on a moment. Mr Smith.

Smith: Do we ask questions as you finish each section or

Chairperson: No, I think let's do it at the end and then we'll have questions section by section.

Ebrahim: Chairperson, this is an item which has caused some confusion and I make apology insofar as it may be attributed to the Administration. On 2nd December when the last Constitutional Committee was held, a Work Program was submitted to the Constitutional Committee. The agreement reached at that meeting was that the Work Program was accepted as a broad framework, but not with regard to its detail. However, the only aspect that was agreed to was in respect of the first block. It was further agreed that the legal advisors would have a further look at the Work Program and try to identify matters in a much more clearer form. There was also the criticism that the Work Program was a short hand, that it did not allow for clearer definition of the Agenda items. Chairperson, in conjunction with that, there was also a call for the Work Program or the Public Participation Program of the Constitutional Assembly to be presented to the Theme Committee and the Constitutional Committee for finalisation. I would like to deal with these two programmes in tandem because I believe they impact on each other and they're interrelated. There is a (?) relationship between our Work Program relating to the legal items or agenda items and the Public Participation Program simply because our Public Participation Program may give rise to various agenda items which have otherwise not been considered in our legal program. And the reverse is equally true. Chairperson, we've attempted to synchronise our Public Participation Program together with our Work Program in the hope that it would be complimentary and would assist each other. With regard to the Work Program and I refer to the tables, I'm advised by the staff that the copy which has been made available to the Management Committee has now been circulated. I hope that is true. If that is so, then what we have attempted to do in this Work Program in taking into consideration all the various concerns and criticisms as well as the thorny question with regard to overlapping issues as well as issues of common interest between the various Theme Committees. We've attempted in the table to reorganise these agenda items in what we hope and believe would be the most efficient and expedient form. We've attempted to horizontally as well as vertically relate and create a level of coherence in the number of items, such that when organising our Public Participation Programs we would be allowed and able to have

Public Participation activities which would involve and incorporate almost all of our Theme Committees at any one point in time rather than having an exclusive program for each particular Theme Committee. Chairperson, in addition to the table we have provided a detailed framework or a suggested framework in respect of each agenda item which is no more than a guide to assist a Theme Committee rather than being prescriptive. In respect of each of the agenda items we have identified the relevant Constitutional Principles as well as the relevant sections of the interim Constitution if it may be of any benefit and assistance to Theme Committees. In this respect when and if the Work Program is finally approved and adopted in its amended form if necessary, we would in the documentation packs attempt to ensure that whenever a Theme Committee is dealing with a particular matter, then we have a complete set of all the Constitutional Principles attached to the various documents for the Theme Committee's benefit. Chairperson, the last point I want to make on the Work Program is that the Work Program is not intended to be prescriptive. It is not intended to force onto a Theme Committee a program which may otherwise be deemed not to be appropriate to allow a Theme Committee to complete its activities. So the various agenda items should be placed before Theme Committees for their own consideration, for their own debate and discussion, and for amendment where necessary. The only reason why and the logic why we place them in the order that we have is to allow for the coherence that I've spoken about. Chairperson, I will leave my report on the Work Program at that point and allow for whatever questions there may be at the end. With regard to the Public Participation Program I believe we have what is quite an exciting program and the document is quite detailed. It has attempted to take into consideration all the concerns that we have been met with thus far including the concern of some members who believe that it would be difficult in terms of their religious beliefs to work on Sundays. Chairperson, the Community Liaison or the Public Participation Program, if I may give a brief overview, has several layers to it. We've looked at the Public Participation as a campaign and in our view it's about the most important campaign that this country has ever had and it should be one of the most organised. As a campaign we would like to ensure that the campaign is launched. We intend to launch it by way of what we refer to as "launch briefings" and there are three areas which we have identified in respect of which we will ask the Chairpersons to address various areas and brief them with regard to the Constitution making process and also to solicit them, gain whatever views they can from those meetings. The second type of meeting we have is what we refer to as "hearings". In this

regard we have identified a number of key sectors in our society and I will run through the table. We intend to approach the business community during the month of February and ask for their submissions to be made to the Constitutional Assembly on a whole range of issues. In March we intend to approach women, in April traditional leaders, in May Labour, in June the religious groups and youth. Chairperson we were hoping that we would approach the various sectors in our society directly as sectors, for you may find that especially with religious groups, business, women and possibly even traditional leaders and labour, may wish to make submissions in respect of a large number of matters affecting all six Theme Committees and not necessarily any particular Theme Committee. So, we've attempted to approach various sectors. Then we move on to what we refer to as "Constitutional public meetings" and we have developed a detailed schedule of meetings for the month of February again taking into account the consideration of having a fair spread of rural and urban meetings, and we intend to involve and engage in terms of our proposal the various Theme Committees in respect of various issues, each of these communities and societies in Constitutional public meetings at which we're hoping to attract and invite all the civil society sectors involved in that particular area. In this regard we have provided members with three options in terms of which they could possibly be engaged and we will try and engage them in the most fruitful way. For the month of February we have identified nine different meetings which spread across the provinces to make sure that we are able to effect them and these would recur across each month and hopefully in respect of each of the blocks. Chairperson, we then move into the next item dealing with Constitutional Educational Programs which are essentially programs designed to ensure that prior to a public hearing, we would move into a community and in a sense develop capacity and build capacity by holding workshops with civil society structures by briefing them on the Constitution making process and the various issues which would allow them to effectively make contribution and submissions to a particular Theme Committee. Chairperson, these three types of activities that I have identified do not exclude the possibility of a Theme Committee organising a seminar. We have recently witnessed very very successful seminars organised by Theme Committee 6 involving international experts from no less than six countries as well as experts within the country, and it was a very successful seminar or workshop. Those workshops and seminars could be organised with regard to specific reference to a particular Theme Committee's needs at once. We could organise further briefings or public hearings should a Theme Committee deem it necessary simply because of

the specific nature of its work that could be organised as well but would have to come at the instance of a Theme Committee. Chairperson, the Public Participation Program again is not a prescriptive one, but is a program in which we have attempted to engage as efficiently as possible as many members of the Theme Committee as is possible. As one may appreciate with the tight work program and schedule which we have, we do not intend to mean by our program that each and every member of each and every Theme Committee will be engaged in each and every activity. This would be literally impossible in terms of time and finances given our tight budget as well as the difficult work schedules which members of the CA and Theme Committees are being put through. What will invariably happen is that delegations from various Theme Committees would be put together in each of the public activities provided that is not an activity specific to a particular Theme Committee. Chairperson, I would leave my report at that, and perhaps feel whatever questions there may be.

Chairperson:

Thank you very much. We will now take questions on the matters which Mr Ebrahim has covered and I'd like to do this in the sections in terms of those that he has divided his report. The first one is the issue of evidence to the Theme Committee. Are there any questions on that subject? OK. The next one was the relationship between this Theme Committee and the Commission on Provincial Government. Are there any... Yes, Mr Smith.

Smith:

Mr Chair, when Mr Botha was here last week, he made a comment that the nature of the report to the CA would actually be three reports, probably three reports in layman's language and then one of them would be fleshed out in terms of Constitutional text. The three options in other words and they would themselves as a Commission would evaluate from the opposite side which one they like best. Now, if we're talking here about coordinating our work with that of the Commission and the Commission's time table has the longest of issues, some of which are very similar to our own, is it envisaged that those reports that you're suggesting comes through to us? That they will also be in the same form of three options with an actual recommendation by the Commission. Would it simply be initial exploratory in the discussion papers on the subject matter?

Ebrahim:

Chairperson, I think it would be proper to say that it is not our place to prescribe to the Commission how it intends to relate to us and what type of reports it should submit. Save to say that all we

intend to ask for is a synchronisation of the agenda items. In terms of the Constitution the Commission is obliged in terms of Section 164(2) to include in its advice recommendations in the form of draft constitutional provisions. So the Commission is obliged to submit in its report draft constitutional provisions but that does not exclude the broad text and political arguments of content which the Commission would arrive at. And it is our view that to allow for a greater amount of efficiency, we should ask the Commission on Provincial Government to submit reports as and when they complete the items on the agenda which hopefully would be synchronised with our Work Program and to submit those as and when they develop their reports because as I understand the Commission's activities it is holding a series of workshops and think tank meetings which will develop various positions. Once those positions have been developed it will then be submitted to each of the provinces for each of the provinces to comment on, and it is only after they have developed their views, would there be provisional text in respect of each of those matters. And it therefore would not make much sense for them to draft a piece of text immediately upon each item being agreed upon without it being submitted to each of the provinces to comment on. So, our view would be to allow for greater efficiency. As soon as the Commission has developed its views in respect of any particular matter, those views should be submitted and tabled with this Theme Committee so that the Theme Committee is sensitised to the direction that has been taken by the Theme Committee. But in the final analysis we have no right to prescribe to the Theme Committee how it should work, when it should work and how it should table its reports. All we will attempt to do is to ensure that our work is in tandem, and to allow for efficiency both in respect of their activities as well as our activities. Chairperson, in the final analysis in terms of the Constitution and the legal obligations of either structure, a Theme Committee can very well complete its report not having received a report from the Commission and once the report of the Theme Committee is submitted to the Constitutional Committee, the Constitutional Committee could approach the Commission for its views and develop those views further at that level. But all I need to say is that we will attempt to allow for this level of efficiency to facilitate the work.

Chairperson: Thank you. Under this section of the Provincial Commission, any further questions? Yes Ruth.

Rabinowitz: Mr Chairman, I would be interested to know if there's any chance of influencing the program of the Commission or is this absolutely set now. For example I've seen that Local Government issues are

dealt with in May and the Senate is dealt with in June. Would it be possible to ask them to reverse that?

Ebrahim:

Chairperson, I think that's an important question and I would hope that we would be able to convince them. I know that they're working in very tight time constraints simply because they've developed a schedule of workshops and meetings and also their Commission members, the commissioners are also engaged in various other activities making it very difficult for them to expedite their program. But however, the synchronisation of their activities is a matter in respect of which we hope that we could urge upon them to follow and to allow for that level of synchronisation which is another reason why we would recommend from the Administration that however a Theme Committee seeks to adjust the agenda items on our Work Program that it should do so at the earliest possible opportunity simply because it will provide for greater finality with regard to your Theme Committee's program. It would also allow us to synchronise that program with the Commission on Provincial Government but in addition would allow us also some level of certainty in the development of the Public Participation Program. So just as a rider to that I would also urge the Theme Committee when considering the Work Program to reach finality in its recommendations to be made to the Management Committee as early as is possible so that we can have some certainty in the progress and the work that we have to carry out.

Chairperson:

Thank you. Yes ?.

?

Thank you Mr Chairman. I just want to say something about this tandem idea. But before that could I just give regards to all the other parties, greetings from all their advisors from Germany. They send their greetings to you. Now, Mr Chairman, what I want to say is this. The roles must be identified and this tandem idea is very well, but still this Committee as the sub-committee of the Constitutional Assembly, is receiving the submission of the Commission in the end. We're not doing the sign work, although we can work in tandem. They are advising, we're not advising. We decide on what we're going to submit in the report eventually to the CA. That's a different round. And the position I would like just to ask whether it's possible to keep us informed all the time, whether it could be arranged with the Commission on Provincial Government that these think tank meetings and workshops of theirs, could be selectively attended by members of this Theme Committee. In that way we will be kept up to date on what's happening there because otherwise we can ?.

Ebrahim: Chairperson, very important questions. The first is in respect of submissions. An arrangement has already been entered into with the Commission and all their submissions made to them will be forwarded and copied to us, and all submissions made to us that are relevant to them would be copied to them. So, in respect of the flow of information we'll both be kept abreast. With regard to the question of workshops, we have also entered into an arrangement whereby aside from them being free to attend any of our meetings, we would also be free to attend their workshops and already we've had a precedent of this nature in respect of which Prof du Toit attended the first of the meetings. We would be informed of their other meetings and have no doubt that we would be invited to attend those. So, we would facilitate that.

Chairperson: Thank you. Right, there's nothing further under this heading. The next heading is Work Program in respect of Mr Ebrahim's report. Anything arising from his comments on the Work Program? Questions really, because clearly if the Theme Committee wants to discuss details with this Theme Committee, they can do that, but if there are questions for Mr Ebrahim or clarity. No. Well, the next item covered was the Public Participation Program. Are there any questions at this stage on that. Yes Ruth.

Rabinowitz: The project management team. Who comprises that team and who appointed that team?

Ebrahim: Chairperson, that is part of the Administration. We have a Community Liaison desk which is made up of two parts. On the one hand we have the media section and on the other hand we have the public participation section. Public Participation is made up of a number of people and amongst those our project managers and how they are comprised. We have about six project managers excluding the support staff and assistance that we are getting from South African Communication Services. These people were appointed after adverts were placed in all the national newspapers, were interviewed in respect of their capacity and ability to run various projects of this nature and were appointed in those terms.

Rabinowitz: The other question, Mr Chairperson, through you. The material that is going to be compiled for use by the media and for use by the facilitators, who is going to be responsible for compiling that material?

Ebrahim: Chairperson, that is an important question because it touches on

a very sensitive area to various political parties, as I would have no doubt. Our policy is that we have an editorial board that is being established, that is presently being also under discussion by the Management Committee and under the Management Committee's oversight. But the various documents and media work that is produced will have to be overseen by the Management Committee and would not be an administrative responsibility. Whilst we would prepare the documents, organise the concepts and look at all the Management and Administrative aspects, but the policy direction contained in our various documents would be one that would have to be agreed to in the editorial board however the Management Committee seeks to secure it.

Chairperson: Yes, Peter.

Smith: Thank you Chair. On page 15 there's a list of these venues you mention for each of the provinces for the Liaison Program. But I think although the text doesn't say so, there is a pilot phase. You mention that these would be replicated in each month for each of the blocks if possible. Tell me, the actual venues, do they stay the same or do they change with each block?

Ebrahim: Chairperson, what would remain the same, would be the mixture between urban and rural content and the fact that we would have to effect each of the provinces equally. However, in completing our first project it would be a pilot program in that we would wait for advice from people like yourselves to give us guidance as to what possible other venues we could choose. It would obviously not make very good sense in a country of more than 40 million people if on each occasion we were to hold a public hearing to do so in the same venue. It would make a little bit more sense I would think to hold our Public Participation meetings in different venues so as to affect different civil society structures and communities as well.

Rabinowitz: Mr Chairman, could you help me to understand exactly how the programmes which are intended to get feedback on from the public will take place. Because I can't in my mind actually understand how you will be able to assess the feedback or exactly what the intention is. Because I read here that one of the procedures will be to hold a mass meeting, to have facilitators there, and to attempt to empower people to make submissions. Now, when will that take place? Will that take place after the events, during the events? Who will be asked to make submissions, how much does one know that they understand about the submissions they make, how does one ensure the impartiality of the person taking submissions, how does one bring

those submissions on board unless people vote to give their idea of how many people feel what way about what issues, but how are we going to include that feedback from the public into our Constitutional Process?

Ebrahim:

Thank you Chairperson. The one questions seems to be many many questions and perhaps I'll deal with them in sequence. The first point is that prior to holding a Public Participation event, we need to ensure through our Constitutional Educational Program that we reach out to all the civil society structures and allow them sufficient time and opportunity and briefing through workshops as to what the Constitutional Assembly is about, what are we doing, and to help them in respect of whatever assistance they may require in terms of knowing how best to submit their submissions. Now, as to who should be approached again, this is a matter which we would invariably request party political participation in terms of whom we should invite to these activities so that we take into account all the various sensitivities. So we make the invitations based on the type of guidance that we've received from political parties. We generally as the process states as our resolutions obliges us, it's supposed to be an all inclusive process, so we try and effect all the civil society sectors into those meetings. With regard to how do we know the feedback. It will be entirely up to you in the Theme Committee who is going to go to a particular Theme Committee's public hearing, receiving those submissions, to assess as to how you have rated that public participation activity and to give us guidance as to how we could improve on that. If various civil society structures have not attended for whatever reason, then we must seek to ensure that those are taken on board. Certainly, prior to a public participation activity taking place, Theme Committee members would be entirely in place to seek a list of who has been invited and to make sure that if we have not invited various civil society structures, that those structures should be invited. But it would be good to have some interaction and not leave matters entirely on the Administration.

Rabinowitz:

Mr Chairman, the one part of my question that I still haven't had clarified is that I see that we will participate in assessing, whether it's successful or not and to what extent we've reached the public and to what extent they've been able to come back to us, but how will we bring them on board? In what way will we measure their response. We're not going to have a questionnaire. Is it just in the form of a report or are we just going to get an impression from what they think? How are we actually going to include them in our future Constitution drafting procedure?

Ebrahim:

Chairperson, it's a useful question. Members of the public will be communicating with each of our Theme Committees in various forms. Some of our civil society structures do not have resources to print out on fancy computers fancy submissions and seek advice from lawyers. So submissions will come in all forms and kinds, and indeed you will find oral submissions as well being made. So submissions will come in all forms and kinds, and based on the nature of submissions that have been made, should a Theme Committee or a group of people attending a Public Participation Program believe that they have not had adequate opportunity of delving into the issues sufficiently enough, then perhaps as part of the pilot program and evaluation we need to hear from people that perhaps follow-up meetings need to be called or perhaps if there are particular areas of controversy which need to be followed, then perhaps we need to organise special hearings in respect of particular matters to ensure that various sectors who may have given initial opinions and maybe are in the process of further developing it, to be able to make those submissions at a later stage.

Chairperson:

Thank you. ?

?

Chairman. For this idea of empowering and developing the opinions of people in civil society, television is ofcourse a very powerful media and I would like to suggest that Prof Dennis Davis start again a programme on television that Federalism be perfect for the empowerment of ?. Laughter.

Chairperson:

Thank you for that unhelpful suggestion.

Ebrahim:

On a very lighthearted note that may have been said, but in reality we are at the present moment looking at a series of sixteen forty-five minute programmes which will be run on similar series or nature as future imperfect way would have public participation activities in different parts of the country where different communities would be called into studios

(Tape 2)

..to interact with various modurators in respect of the Constitution making process.

?:

Regarding the proposed briefing that's on page 10, can you just give us a bit more detail. You say that the different people ? will they go together, will they go individually and also then who decided on the target groups for eg the Western Cape being

farmworkers and management and why specifically that target group? And then also two questions - How far are the arrangements with the provinces or how are the arrangements being made?

Ebrahim:

Chairperson, with regard to the three areas, those were chosen really randomly. What we intended to do was to reach out to big constituencies. As you will see in the first instance we intend to reach out to farm workers who are easily accessible, secondly we thought that it would be equally possible to organise also successful activity in a rural community in the Northern Cape, and the third in an urban community Gauteng. Now, it is proposed that both the Chairperson and Deputy Chairperson would attend these meetings in the company of their respective premier would chair each of these meetings. With regard to why only three? The schedules of our Chairpersons are quite tight and as this is a launch we merely could fit in three dates or three areas and if there's a possibility of having more of these, then we would certainly want to ensure. Just on an added note on this. This is to be in a two-part series in the sense that we need to launch the campaign the Public Participation Program, but after the first draft has been produced hopefully in August we would have another round of equally big meetings where our Chairpersons would go to big Constituencies and place before those Constituencies and popularise the fact that a draft has been produced, it is now ready for communities to comment on and further develop and enrich.

Chairperson:

Thank you. We'll have Mr Maree and then you. Thank you.

Maree:

I would like to refer to Page 9, point 4. Programmes. The launch of briefings and special events. My question is who would lead the briefings, would there be documents submitted, would there be documents available to the public at large, who would be the authors of those documents? Would it be politically one-sided or would it be neutral? Whose going to write them, whose going to attend to them, whose going to submit them? At these workshops would each and every political party be expected to propose its own proposal and to discuss them or would there be one document, one person, and furnishing neutral information to the population at large? How do you envisage this?

Chairperson:

Chairperson, this is an important question because the work we're doing is political and we need to make sure that from the Administration's point of view that it is non-party political. We're in the process of developing a kit, a book,

which we would submit to the Management Committee for approval to ensure that it does not contain a particular party political viewpoint but merely a briefing to communities. Our responsibility is to do no more than educate the public with regard to this process itself the importance of the involvement of the public and the importance of the public making submissions with regard to their own aspirations, and also the importance of stimulating members of the public to encourage their own political parties, their own civil society structures, their own organisational structures to participate in this process and to put forward the various views. So the briefing documents are not intended to be a party political document or a document containing a particular party's view, but merely explaining what the Constitution is about, what the Contitution making process is about and to empower people in that sense so that when preparing their submissions they're not referring to mistakenly to housing or the RDP or the health or social services, but referring to matters which are Constitutional matters and matters which will directly assist in developing this process further.

? Who is going to scrutinize those documents to ensure that they're not slanted in a political sense?

Ebrahim: Chairperson, as I stated, perhaps I was speaking too fast. The Management Committee would have oversight responsibilities over all our productions and we are in the process of drafting it as I said, and if members of the Theme Committee wish to see it, it could be quite an expensive exercise, but I'm sure we could make available copies to each of the Management Committee, a limited number of copies, before going into the printing of these documents.

Chairperson: I'm sorry you had to wait so long.

? I just wanted to comment on Public Participation as far as the rural masses are concerned. I don't think we 're going to reach the rural masses because we must bear in mind that the majority of those people are illiterate, they cannot read, they cannot write, they don't understand English and in most cases these things are set in English. I was just listening to Agenda newsline yesterday when they were discussing the Local Government. They were speaking in English and one fellow said - "If you're speaking in English I hope you expect us to understand. Can't you speak in the language that we understand better." But I'm just going to say that

if this thing is going to be done through the TV, can we ensure that they're done in all eleven languages of South Africa. And also that we use radio especially the radio in the former ? states and the self-governing countries because people listen to those radios and it doesn't matter if you are illiterate, you will be able to hear what is being said. Thank you.

Ebrahim: Chairperson, that is an important point. We have carried out a detailed study of media prior to embarking on it and the comments have come in a little bit more serious than the comment that is made now. In fact I've heard a few members already call our program "elitist" simply because they've seen TV1 and have read the National newspapers and have not seen anything else. I wish to correct that, is that the bulk of our media expenditure is in fact in the area of radio, specifically in respect of radio dealing with the eleven official languages to ensure that we reach out to all of those people so its slanted in favour of the rural masses which is the majority of people in that respect, and incidentally the complaint that whilst many rural people may be illiterate and some of them may have radios, we've attempted to effect those, and the argument is that a lot of other people don't even have radios. Now, we've attempted to even try to consider that as well. We've already had very positive input from churches, school principals and even traditional authorities which have argued that in their rural areas, people are illiterate and do not have access to these forms of media. We have looked at various possibilities of affecting them as well by taking on board our church leaders, making sure that they participate in the dissemination of information, in stimulating their various congregations even in the rural areas to partipate and so on. And we have looked at other possibilities of schools as well.

Chairperson: Thank you. Ruth you had something and then ?

Rabinowitz: A brief question Mr Chairman. Who are the non-government organisations who have been asked to participate in these procedures?

Ebrahim: Chairperson, as of now our estimates run into ... there's probably more than a hundred thousand NGO's or CBO's as been stated. At this point in time nobody has been invited until such time as we get approval for the program. Once the program has been approved, we can't be sending out invitations for non-events, so we'll wait approval. The document is going to the Constitutional Committee this afternoon. Once it is approved, we will then develop in respect of each of the public hearings in the various

localities, get a survey of all the civil society formations and try to invite them. So as of now we've been collecting names and addresses but no invitations have been released. The only invitations that we have made is a broad invitation for submissions and the responses you have seen already thus far from the broad public. Incidentally, Chairperson, if I may take this opportunity, two weeks ago we reported that we had only received sixty or seventy submissions. The count now is in excess of 400 submissions and I'm very happy to say that the myth that ordinary people are not interested in the Constitution making process is no more than a myth. That in fact most of the submissions that we've been receiving are not from the elite, the well educated, the very well organised, but are from very ordinary people.

?

I would like to know what is the expected role of the Theme Committee regarding these public events because my understanding is that we are supposed to be playing a monitoring role to ensure that it does go in the direction that we envisage. So what is your thinking in that regard?

Ebrahim:

Chairperson, if you take any community, if you go into the deepest areas of Kwazulu Natal and approach the community there, you cannot approach them as Theme Committee 3 dealing with Block 1 and ask for submissions on Block 1. You going into that area and ask for submissions, people who have any views with regard to the Constitution. The matter of fact is that you can't go into a community and say no, no, that is a Theme Committee 6 matter. I'm not interested in it. Tell us about Theme Committee 3? So, the way in which we had to organise our program was to ensure that when we go and speak to ordinary people, then in all respect to them, we need to make sure that our delegations are made up of all Theme Committees and in organisation that it is the importance of the leadership roles to be played by our Core Groups and particularly our Chairpersons in ensuring that proper delegations from each of the Theme Committees are made up so as to ensure that each of our programs are at least covered by each of our Theme Committees so that if there's an odd matter in the Northern Transvaal or North West relating to Theme Committee 3, that at least Theme Committee 3 should have the direct benefit of that by an adequate representation.

Chairperson:

Thank you. I'm afraid I don't know everybody's names. Yes, please, the lady with the stripe dress.

?

Mr Chair, on page 10, the proposed briefings. My question is especially to the rural community. I think it will be most proper if

we target the rural areas and specifically here in the Western Cape, Kwazulu Natal, in the Free State and not so much on the urban areas because why the majority of the people constituting the rural areas as my colleague said here, that they are the most illiterate people and the other question also which I wanted to know is - When it comes to the rural area people for the proposed briefings, will those people be appointed to go to those briefings or will it be people who really know what they want in the future, their country should look like?

Ebrahim: Chairperson, I must apologise that the documents did not reach you people early enough so that a proper study of it could be carried out. The proposed briefings you refer to are merely.. are no more than a launch. We can't have launches in all the areas and if you look at the three areas then two of the three are rural and its only one that is urban. That by and large with most of our activities there's 60/40 bias in favour of the rural communities, particularly if you look at the proposed areas for the Constitutional public meetings that you will see that most of it are in fact rural areas. With regard to organising meetings in the rural areas, as to who will be invited, obviously we cannot ? in people. We have to make invitations to the represented leaders of the community and the civil society structures in those areas and again in response to the earlier question, we depend by and large on people like yourselves who are in touch with your constituencies to advise us exactly which are those civil society structures.

Cronje: Mr Chair, now that we've heard that radio and especially radio directed at the rural masses will be our main means of communication, will transcripts of what is said in the other nine languages be made available so that the National Party will also understand what is being said to the rural masses.

Chairperson: I think Mr Cronje is volunterring to translate the nine languages into English or Afrikaans for all our benefits. Is it Mrs Lamani?

Lamani: Thank you Chairperson. I need some clarity as to when you say targetting it to business people. Is that small business who have their own concern or big businesses? I need a clarity.

Ebrahim: Chairperson, that's a very important question. Small business or big business is still business and we need to make sure that the small business sector is not swamped by the big business sector and that the distinction being already that the big business sector has already set in motion during their negotiations period the appointment of various senior lawyers to help them process their

submissions in an organised way. The smaller business sector has not had that opportunity or that resources and certainly when organising meetings in respect of the business sector, then the full spectrum needs to be taken into account and accommodated as best as possible. I would imagine that would go also for the women sector, the traditional leaders and generally across the board. I think it's important that we do involve a proper spectrum spread so that the process is inclusive and that we do involve as many people as is possible.

Chairperson: Thank you. Right, if we can move to the final matter raised ie Constitutional Education Program. Are there any questions on that section? If there aren't, are there any matters that were raised that I haven't covered in the headings that we've been through?

Gordhan: I'm not saying that you haven't covered it, I might have missed it. The question of the relationship between the CA process and the provincial legislatures, can I just get some clarity on what that process is? Mr Botha, when he addressed us, spoke of the CA legislatures turning themselves into provincial CA's virtually. Is that in fact the direction that we are going in? Are you aware that that is what the Commission has in mind or has suggested? And lastly those legislatures are in fact multi-party legislatures. And invariably those parties are in fact represented within the CA itself. Why is it necessary for a provincial legislature as a legislature on a multi-party basis to make representations to the CA? Why can't those representations be made by the party itself?

Ebrahim: Chairperson, that's an important question. The provincial led to clear up some of the confusion. The CA is not called for the transformation of provincial legislatures into mini CA's. We met with the provincial legislatures two weeks ago and in that meeting various agreements were reached, and perhaps it is of some importance that I just give a brief overview of those agreements. Firstly, all provincial legislatures felt that it was important to enter into a relationship with the Constitutional Assembly in respect of this constitution making process directly and not through the Commission on Provincial Government. The agreement is that each of the provincial legislatures will form a committee of sorts to look at how best to play a meaningful role in this process. Thirdly, simply because of exactly the points that Mr Gordhan has raised that there are different political parties, most of whom are represented already in the Constitutional Assembly, that provinces should not seek to relate to the Constitutional Assembly as provinces simply because it will not allow smaller parties to be

swamped by the resolutions of the bigger parties in their submissions. The further agreement reached is that provincial leaders would act as provincial leaders because inasmuch as members of the CA have been elected, provincial leaders have also been elected by the same constituencies and they also have responsibilities to those constituencies, and specifically with regard to the rural areas, the agreement is that we should engage our provincial leaders in this constitution making process especially the Public Participation section of that, to reach out to these rural sections and the rural communities. So they will play very much an added role to that which the Theme Committees would be playing and forward their submissions in the public hearings or public meetings to the Constitutional Assembly. We have already in the past written several letters addressed to the Premier, the speaker on behalf of all members of the various legislatures as well as the MEC's inviting them individually to make their submissions and whether it would be in respect of an individual MEC's competence, area of work or various other matters, but particularly we are looking at how to involve our provincial leaders in the constitution making process in the broader term so that they are also taken on board and they are also able to relate to their constituencies to make this process a little bit more richer.

Chairperson:

Thank you. Well I think all that remains is for me to thank Mr Ebrahim for coming here today and for the report that he has given to us and for the very full answers to our questions. I'm sure that it's been useful to members to get clarity on a number of issues. Thank you very much Mr Ebrahim and you may find down the line we will ask you back to clear up the next round of confusion. But in the meanwhile, thanks very much indeed.

If we can now turn to the next item on our Agenda. Are people wilting already. I can see it always starts with a smoker. ...Laughter ... Alright, well there has been a request for a break. Is that generally shared? OK, shall we break just to stretch our legs and so on. Can we try and be back at 10 o' clock. Is that alright?

...information of the Minutes of the previous meeting of the Theme Committee, that is the meeting held on Thursday 26th January and the Minutes start on page 2 of your document pack. I wasn't present at that meeting. Well first of all are there any amendments or additions that anybody wishes to propose in respect of those Minutes?

Maree:

Mr Chairman, I have a problem. We receive these documents when we walk in. We listen to representations in relation to these

documents and most of what has been said this morning was far beyond me, because I haven't got the knowledge, I haven't had the opportunity to read through these documents carefully to see what is being proposed and I'm sorry to say that I'm lost. I must now go through Minutes here. I haven't had the time to read through the Minutes. I think we must or at least with my ability I would like to place on record that unless I have documents timeously, it cannot be expected of me to make a contribution first of all. I won't be able to understand exactly what is being said and thirdly when I've got to give my OK or consent to whatever are on these papers, I won't be able to do so and it is a problem that we will have to resolve.

Chairperson:

Yes, I understand the nature of the problem and I think many people will share it. Hopefully if we get into a more regular routine, it will partially at least overcome that problem. May I suggest that in respect of these Minutes that for today's meeting we note the tabling of the Minutes and at our meeting on Wednesday, we then adopt them or amend them as the case may be. Would that meet with the approval of the Committee? Thank you. Now the matters arising from those Minutes, certainly from the perspective of the Core Group, the Core Group which met on Friday morning considered what it considered the matters arising and there were representatives of all parties present at that meeting, and the Core Group has made recommendations arising from that meeting in respect of the matters arising, so with the Committee's permission I would like to move on to the Core Group report if after dealing with the Core Group report there are further matters that people are aware of at this stage and I accept Mr Maree's point that people haven't had a chance to study these Minutes in any kind of detail or thoroughness, that clearly there may be matters that people would like to bring up at a subsequent meeting arising from those Minutes, but if we could look at what the Core Group is reporting and recommending on those matters, I think it will cover most if not all of them. Is that procedure in order? Thank you. Now the Core Group report is in fact the Minutes of its meeting held on Friday which is on page 31 of your documentation. There in fact are some errors in it even just looking at it quickly, the meeting was not on Tuesday 27th January, it was on Friday, the date's right but it's a Friday not a Tuesday. I'll just run through and attempt to report as best I can and other members who were present can add to what I report and correct me where I've got something wrong. There

have been changes in some of the committee members on that Core Group which are indicated there, and then arising from the Minutes of 9th November, that's going back a long way, the Secretariat simply reported certain issues which were outstanding from that time. So that paragraph 2, matters arising from the Minutes of 9th November was simply in essence a report from the Secretariat of what was happening in respect of certain matters. Matters arising. We then considered the Work Program and the Framework, and the suggestion was as follows - that for Block 1 that submissions by parties be accepted by February 1st, in other words that is this Wednesday giving parties some time to make additional submissions if they wish to do so. Many parties, in fact I think all parties have already made submissions, but when you look at the recommended Framework that the Core Group is suggesting, you will find that there may be some matters or topics that are covered in that Framework, that some parties may have felt was not part of the original block and may want to make comments on that subject. So that's a particular reason, besides the general reason of some parties having felt somewhat rushed. And the suggestion then is that Block 1, the submissions be in by this Wednesday 1st February and that we as a Theme Committee have our report finalised by 9th February, which is I think Thursday week. Secondly, that in respect of Block 2, submissions from parties be in by 9th February and that the current timetable of the report being completed by Thursday 23rd February for Block 2 be adhered to at this stage. And the Core Group wanted to recommend both those dates and in general that as we move towards a block to be dealt with, we as a Theme Committee set the deadlines for the reports and submissions taking into account in some cases we may need more time and in other cases we may feel that the matter can be dealt with quite quickly and we need less time. Because if you look at the program as a whole, you will see that our Theme Committee has in fact only 7 blocks and there are something like 10 blocks in the whole process that are available. Now we don't want to procrastinate for the sake of procrastinating, but it does give us a little bit of breathing space if we need it. But the firm recommendation is in respect of these first 2 blocks and thereafter we will continue the review in respect of blocks that are still coming up. So from the Work Program this was the suggestion which you will see contained at the top of Page 33. In respect of the Framework, and I'm

moving to Page 34 now 3.5, the Framework as set out here is what we are suggesting for both the report from this Committee as well as requesting political parties to by Wednesday this week to make submissions or to rearrange their submissions under these headings. The reason being two-fold. First of all if the parties do it under these headings, it makes it much easier when we have to make a compensate report to be comparing things and being fairly certain we are able to identify common ground as well as points of difference, and secondly it means in respect of a report on a particular block by having identified these headings, parties would know that those matters are going to be covered in the report and therefore if they wish to say something in their submissions or make submissions on that topic, they know that now's the time to do it. You will see that under 5, this is on Page 34, 3.5 and then under the heading Framework to Process Submission Proposal, 5 provides for Miscellaneous, so that parties are not in any way restricted to the 4 previous headings. Anything else they consider relevant to the block, they would be more than entitled to make in their submissions. You will see a point of 6 being International Perspective. When we look at the Framework for Block 2 and once we have our technical experts who may well be able to do some work and make some submissions for us in this area, we may have a specific heading of international perspective somewhere in that Framework. At this stage it was felt that in respect of any one of the 5 previous items that is starting with No 1, South Africa's Specific Conditions through to Miscellaneous No 5, if a party felt there was something from an international perspective that was relevant to that point that they wish to mention, they would obviously be more than welcome to do so. It was also felt and we'll come back to the subject of a workshop, that as and when we have a workshop, an aspect of that workshop could well be international perspectives. So, that is the recommendation for the Framework in respect of the first block. Yes, there is in Roman ii - "It was agreed that political parties make submissions using above Framework by 3 o'clock on Tuesday." Now my colleagues on the Core Group can correct me. I think that was a suggestion but in the end we decided if people can do it, it would be helpful but it wasn't obligatory as long as it was in by the 1st. Would other members on that Core Group just remind me what the correct position is?

Smith: I understood the 31st was certainly the desired date. You will see on top of Page 33 it is of the same date.

Chairperson: OK, so let's aim for 3 o'clock tomorrow afternoon for the supplementary parties' submissions under these headings. So that was the suggested Framework. The suggestion then is that this Committee would not meet tomorrow, but would meet on Wednesday as scheduled at half past eight and we would then have a discussion on the subject of Provincial Government in relation to this block. In other words we would just exchange views and get people to understand... As a preliminary basis so when we move early next week to formulating a report, we've already had quite a bit of background discussions and people are informed as to what the views of the parties are and why they hold those views, and where members of the Committee, of this Theme Committee, have particular questions of clarification and information in respect of submissions made by other political parties, it would be an opportunity to say could you explain what exactly you mean by this paragraph or what you have in mind when you say this in this section of your submission. So, the suggestion was that on Wednesday this week at half past eight as scheduled, the Theme Committee meets and discuss its Provincial Government and we meet on Thursday at 2 o'clock as scheduled and we discuss Local Government at that meeting. And then when we meet at the beginning of next week, by then we would have had the preliminary discussions and in addition everybody would have had an opportunity to study and discuss if they wish to do so within their parties the submissions of their parties and other parties so that we can move to a report writing stage as quickly as possible early next week. Now, I must just say in respect of Frame Work, it's a recurring problem. Dr Tersia King who has had to go to a Parmed Committee Meeting and has apologised and excused herself, she indicated to me in the teabreak, documents that she has received as member of the Constitutional Committee that's meeting this afternoon, that it's now suggesting a different Framework for this Theme Committee. Now I will try to control my sense of frustration, but I really do think that it's a most unsatisfactory I mean the idea of having these deadlines and we've also been producing things and while we are trying to do it in the way that we think it can best be done, someone else is trying to do it the way they think it can best be done. But having looked at that particular

Framework it is far Our suggested Framework is more content-orientated and there's is like one of the headings that they've got of their four headings is "How do you interpret the Constitutional Principle that says that the powers of a province shall not be substantially inferior to those of the interim Constitution" for example. So, it's a kind of particular point and what I would like to suggest because we are not going to be meeting as a Theme Committee until Wednesday and if submissions have to be in by 3 o'clock tomorrow afternoon, I would like to suggest and it will be open for discussion that we ask parties to follow the Framework as shown on Page 34 of the documentation that we have and then in addition that to the extent that the points in the new Framework, if the Constitutional Committee sends out that as a dictate to us, that they add that as an additional set of headings, and I think if you look at them, the amount of overlap will not be enormous. And then when we meet on Wednesday at least we have everything, otherwise I would see that we'll simply be leaving everything over until Wednesday and then we decide on Wednesday what our Framework is going to be. So my suggestion then is that we follow the Framework as proposed on Page 34 and if something further comes from the Constitutional Committee that we then ask parties to add that additional treating it as a supplementary Framework because it covers in many respects slightly different topics. So those are the proposals in respect of the Framework. In respect of the Workshop on Page 33, 3.4, we have asked Dr King, Mr Carrim and Mr Smith to investigate the possibility tape goes blank