

2/4/6/1/1/5

CONSTITUTIONAL ASSEMBLY

Theme Committee Six

**SPECIALISED STRUCTURES OF
GOVERNMENT**

7th November 1994

Room 249, National Assembly Wing

DOCUMENTATION

TABLE OF CONTENTS

1.	Notice of meeting and agenda.	Page 1
2.	Minutes of previous meeting.	Page 2-4
3.	Minutes of joint Core Groups 2, 5 and 6 meeting	Page 5-7
4.	Proposed work programme in tabular form	Page 8-14
5.	Subtheme Committee Reports	
5.1	Subtheme Committee 1	Page 15-16
5.2	Subtheme Committee 2	Page 17-20
5.3	Subtheme Committee 3	Page 21-22
5.4	Subtheme Committee 4	Page 23-26

**CONSTITUTIONAL ASSEMBLY
FOURTH MEETING
THEME COMMITTEE 6
SPECIALISED STRUCTURES OF
GOVERNMENT
MONDAY 7 NOVEMBER 1994**

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

Date : 7th November 1994

Time : 10h00

Venue : Room 249, National Assembly wing

AGENDA

1. Opening and Welcome
2. Tabling of Minutes of the previous meeting
3. Matters arising from previous minutes:
 - 3.1 Core Group
 - 3.1.1 Report on joint meeting of Core Groups 2,5 and 6
 - 3.1.2 Presentation on Work programme
 - 3.2 Finalisation of Work programme
 - 3.1.1 Report by Subtheme Committee 1
 - 3.1.2 Report by Subtheme Committee 2
 - 3.1.3 Report by Subtheme Committee 3
 - 3.1.4 Report by Subtheme Committee 4
6. Any other business
7. Closure

Enquiries: Mr N Nyoka and Ms K Mckenzie, Room CS209 (Tel 403-2269)

CONSTITUTIONAL ASSEMBLY

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

MONDAY 31 OCTOBER 1994

PRESENT

Powell, P (Chairperson)

Alant, T G	Malatsi, D M
Camerer, S	Moatshe, P
Chiole, J	Mokoena, L M
Davies, R H	Mompati, R
De Beer, S J	Nair, B
Fenyane, S L E	Netshimbupfe, M A
Gogotya, N J	Ngubane, H
Jacobsz, F P (Alt)	Schreiner, J
Jordaan, J A	Selke, J
Kgositsile, B	Turok, M E (Alt)
Khoza, T S	Vadi, I
Love, J Y	Welgemoed, P J
Makgoti, H	Woods, G G
Malan, T J	

N Nyoka and K McKenzie were in attendance.

1. OPENING AND WELCOME

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

2. TABLING OF MINUTES OF THE PREVIOUS MEETING

The minutes were adopted subject to the following changes:

- 2.1 That Mr L M Mokoena's name be added to the list of members present.
- 2.2 That under item 3.2.3 Ngubane, B is replaced with Ngubane, H.
- 2.3 That the following is added to item 3.3: "It was agreed that no more than two Subtheme Committees should meet simultaneously in

order to facilitate the participation of the minority parties."

3. CORE GROUP REPORT

- 3.1 Mr Powell reported that the Core Group had met and considered the reports of the Subtheme Committees. The Core Group recommended that the Subtheme Committees finalise their reports and submit them to the Secretariat on Wednesday 2 November by 18:00.

4. DEVELOPMENT OF A WORK PROGRAMME

See attached draft programme report.

- 4.1 **Report by Subtheme Committee 1**
Mr Vadi spoke to the report.

It was agreed that item 1.1 dealing with the Public Service be amended to include the inter-relation between regional and local forms of government.

It was agreed that the Volkstaat Council be approached to submit a report on this matter.

It was agreed that the IEC and Volkstaat Council be added to the list of structures to be consulted.

- 4.2 **Report by Subtheme Committee 2**
Dr Davies spoke to the report.

It was agreed that the Subtheme Committee should receive evidence regarding the inclusion of Public Enterprises as a subject for discussion in subtheme Committee 2.

- 4.3 **Report by Subtheme Committee 3**
Ms Kgositsile spoke to the report.

- 4.4 **Report by Subtheme Committee 4**
Ms Schreiner spoke to the report.

It was agreed that the Subtheme Committee should revisit item 4 dealing with individuals rights in relation to the state, as there were possible additions that could be made such as the right of the state as an employer to lock out.

5 REPORT ON JOINT MEETING OF CORE GROUPS 2, 5 AND 6 TO DISCUSS TRADITIONAL LEADERS

It was agreed that the matter of traditional leaders had been inadequately addressed by the joint meeting of Core Groups of Theme Committees 2, 5 and 6, and that the Core Group of Theme Committee 6 had been inadequately represented in this meeting.

It was agreed that the Core Group look into this matter further.

6 ANY OTHER BUSINESS

6.1 Research

It was agreed that each Subtheme Committee should make recommendations regarding their research needs in their final work programme reports to be submitted on Wednesday 2 November 1994.

6.2 Scheduling of Subtheme Committee meetings

It was agreed that the chairpersons of Subtheme Committees should inform the Secretariat when meetings will take place in order to ensure that no more than two Subtheme Committees meet simultaneously.

6.3 Establishment of Commissions


It was agreed that the Core Group should seek clarity from the Constitutional Committee on the process of setting up Commissions.

6.4 Next meeting

It was agreed that forthcoming meetings of the Theme Committee should be restricted to matters of principle. It was agreed that 30 minutes should be set aside for the deliberations of the Theme Committee with the remaining 90 minutes being allocated to the business of Subtheme Committees.

7 CLOSURE

The meeting rose at 11:30.

Minutes signed by the Chairperson  on 1 / 11, 1994.

Jnt 03114 Min

(Core Group 2,5 & 6 - 2 November 1994)

CONSTITUTIONAL ASSEMBLY

MINUTES OF A JOINT MEETING OF CORE GROUPS OF THEME COMMITTEES 2, 5 AND 6

THURSDAY, 3RD NOVEMBER 1994

PRESENT

Kgositsile, B (Chairperson)

Theme Committee 6:

De Beer, S
Dyani, Z D
Hlengwa, I M W
Jordaan, J A
Powell, P
Vadi, I

Theme committee 2:

Groenewald, J
Pahad, E
Rabie, J

N Cetywayo, K McKenzie, N Nyoka, N Taft and E van Eck were in attendance.

1. OPENING AND WELCOME

1.1 Ms Kgositsile opened the meeting and welcomed the members.

1.2 It was noted that the Core Group of Theme Committee 5 was not present. The Managing Secretary of Theme Committee 5, Mr Taft, conveyed the apologies of the Core Group.

2. Decisions of the joint Core Group meeting of Theme Committees 2, 5 and 6 of 27 October 1994 revisited.

2.1 It was agreed that a number of problems had arisen in the convening of the first meeting and that it had not been representative. It was agreed that everything possible would be done to avoid this in future.

2.2 It was noted that the mandate of the proposed joint commission

dealing with traditional leaders was not clearly defined.

2.3 It was agreed that a joint Commission of Theme Committees 2, 4, 5 and 6, with the assistance of technical experts, be appointed to hear evidence from all interested parties and to report to the relevant Theme Committees. This definition of the Commission should replace that outlined in the previous meeting in item 2.3. (See attached minutes).

2.4 It was agreed that the Commission should be established before the end of the year.

3 **CLOSURE**

The meeting rose at 09:40.

Minutes signed by the Chairperson *Baleka* on 3-11-94

JHC 26104. min

CONSTITUTIONAL ASSEMBLY

MINUTES OF A JOINT MEETING OF CORE GROUPS OF THEME COMMITTEES 5, 6 AND 7 ^{2, 5 and 6} WEDNESDAY 26TH OCTOBER 1994 AT 08H00

PRESENT: (D. Schutte, Chairperson)

Dyani Z.D.
Ebrahim G
Hlengwa I M W
Ngwane L
Rabie J

In attendance: Cetwayo N, Fahrenfort P, Nyoka N, Taft N, Van Eck E.

1. OPENING AND WELCOME

- 1.1 The meeting was opened by Mr. D. Schutte who chaired the meeting.
- 1.2 The purpose of the meeting was to establish areas of overlap between Theme Committees 2, 5 and 6 with regard to Traditional Leaders.

2. CONSULTATION OF TECHNICAL EXPERTS RE TRADITIONAL LEADERS

- 2.2 The committee consulted the Constitutional Assembly document dated 2nd September 1994 containing the resolutions on the establishment of Theme Committees. The following interpretations were agreed to:-

2.2.1 Theme Committee 2 - Structure of Government - Point 2.10 would be interpreted to mean to represent Traditional Leaders in structures of government apart from Traditional structures.

2.2.2 Theme Committee 5 - Judiciary and Legal Systems - Point 5.2 interpreted to mean Indigenous Law and Point 5.4 interpreted to mean Tribal Courts.

2.2.3 Theme Committee 6 - Specialised Structures of Government - Point 6.7 interpreted to mean Traditional Tribal Authorities, i.e. Tribal Structures of Government.

- 2.3 It was agreed that a joint commission consisting of all 3 Theme Committees be appointed to hear evidence from Traditional Leaders and other relevant bodies.

3. CLOSURE

The Meeting rose at 08h25

PROPOSED WORK PROGRAMME - THEME COMMITTEE 6

Subtheme Committee 1	Subtheme Committee 2	Subtheme Committee 3	Subtheme Committee 4
CONSTITUTIONAL ISSUES			
<p><u>1. Public Service</u> 1.1 Power relations between national and provincial levels of government, the executive and administration. 1.2 Status and role of Public Service. 1.3 Representivity of Public Service. 1.4 Public Service as an agent of development. 1.5 Management ethos and systems within the Public Service. <u>2. Traditional Authorities</u> 2.1 Powers, functions and role of traditional leaders in national, provincial and local levels of government. 2.2 Territorial jurisdiction of traditional leaders. <u>3. Election Commission</u> 3.1 Constitutional position of an Election Commission 3.2 Powers, functions and</p>	<p><u>1. National Revenue Fund, Budget and Procurement</u> (sections 185-7) 1.1 New Constitutional provision for Revenue Fund, budgeting and procurement. <u>2. Provincial and local govt loans</u> (sects 188) Stock to be taken of limited experience of the Financial and Fiscal Commission. <u>3. Special pensions and tax</u> (sects 189-190A) Law on special pensions to be included in final Constitution. <u>4. Auditor General</u> Will need to be provided for in the final Constitution. <u>5. Reserve Bank</u> Provision to be included on central bank in final constitution. <u>6. Public Enterprises</u> Investigate possibility of Constitutionalising public enterprises.</p>	<p><u>1. Public Protector</u> 1.1 Protection of Public from corrupt govt agencies. 1.2 Protection of persons against each other in communities, homes and workplace. 1.3 How to interlink with other bodies performing same functions. <u>2. Human Rights Commission</u> 2.1 What human Rights Culture. 2.2 Promotion of human rights culture. 2.3 Targeting disadvantaged communities 2.4 Barometer of progress. <u>3. Commission on Gender Equality.</u> 3.1 Promotion of gender equality. 3.2 Advise on laws affecting the status of women.</p>	<p><u>1. Supremacy of the Constitution</u> Sovereignty and relation to four security arms ie: Defence Police Correctional Services Intelligence <u>2. Definition of action in national interest</u> Non-partisan or party political action <u>3. Accountability to parliament</u> 3.1 State of Emergency 3.2 Oversight through parliamentary standing committees 3.3 Approval of budget 3.4 Regulatory Acts of Parliament. 3.5 Termination of deployment by Executive 3.6 Tender regulations <u>4. Individuals rights in relation to the State</u> 4.1 The right to disobey</p>

<p>role of the Election Commission 3.3 Specialist Commission</p>	<p><u>7. Financial and Fiscal Commission</u> See 2 above.</p>	<p>3.3 Develop policy on violence against women and gender bias in society.</p> <p>3.4 Establishment of national norms and guidelines for affirmative action, maternity leave and benefits.</p> <p>3.5 Mechanisms for monitoring progress on equality.</p> <p><u>4. Land Restitution Commission</u></p> <p>4.1 Restoration of Land to the dispossessed.</p> <p>4.2 How to address land needs without recourse to formalities.</p> <p><i>* Above list not exhaustive</i></p>	<p>4.2 The right to strike</p> <p>4.3 The right to religious freedom</p> <p>4.4 Gender equality</p> <p>4.5 Relationship to architecture of state and access of members to state structures outside the security arms.</p> <p><u>5. Employment of Force</u></p> <p>5.1 Limitations and powers</p> <p><u>6 International obligations</u></p> <p>6.1 Status</p> <p>6.2 Conventions & protocols</p> <p><u>7 Executive Control</u> President and Cabinet</p> <p><u>8 Civilian Control</u> Ministry and Secretary</p> <p><u>9 Civil/Military relations and demilitarisation of some security arms</u></p> <p>9.1 Budget</p> <p>9.2 Parliamentary control</p> <p>9.3 Monopoly of Force in state institutions</p> <p>9.4 Ombud Structures</p> <p>9.5 Freedom of information</p> <p>9.6 Special courts</p> <p>9.7 Sovereignty and relation to Constitution and threats to the country.</p>
--	--	--	--

PRIORITIES			
None	1. Financial and Fiscal Commission 2. Financial relations between different levels of government.	Commission on Gender Equality	None
AREAS OF OVERLAP			
1. Traditional Authorities also discussed by Theme Committees 2 and 5. 2. Election Commission also discussed by Theme Committees 1 and 3.	1. Passage of Money Bills also discussed by Theme Committee 2. 2. Financial relations between different tiers of government also discussed by Theme Committee 3.	Public Protector and the possible Ombuds function of the Public Service Commission, considered by Subtheme Committee 1.	1. Overlap with Theme Committee 4 regarding fundamental rights of individuals vis a vis powers of security officials. 2. Overlap with Theme Committee 1 - regarding national and provincial powers and federal and unitary balance.
ISSUES TO BE REFERRED TO COMMISSIONS			
Traditional Authorities	Options are still being explored.	None at this stage.	Commissions should be set up to deal with Intelligence and Prisons.
ISSUES REQUIRING SEPARATE REPORTS			

<p>1. Public service 2. Traditional Authorities 3. Election Commission</p>	<p>No specific recommendations</p>	<p>1. Public Protector. 2. Human Rights Commissions 3. Commission on Gender Equality 4. Land Restitution Commission</p>	<p>1. Correctional Services 2. Intelligence</p>
<p>NUMBER OF REPORTS AND TARGET DATES</p>			
<p>1. <u>Public service</u> One report - 28 February 1995. 2. <u>Traditional Authorities</u> One report - 31 March 1995. 3. <u>Election Commission</u> One report - 30 April 1995.</p>	<p>1. <u>Auditor-General, Inclusion or Non-Inclusion of Special Pensions, Public Enterprises and Taxation of Elected Reps.</u> One Report - 28 Feb 1994 2. <u>Reserve Bank, Budget, Procurement and National Revenue Fund.</u> One Report - 31 March 1994 3. <u>Financial and Fiscal Commission and other Proposals on Financial Institutions and Public Enterprises.</u> One Report - 30 April 1994</p>	<p>1. <u>Public Protector.</u> One Report - 31 Jan 1994 2. <u>Human Rights Commissions</u> One Report - 31 Jan 1994 3. <u>Commission on Gender Equality</u> One Report - 31 Jan 1994 4. <u>Land Restitution Commission</u> One Report - 31 Jan 1994</p>	

STRUCTURES AND ROLE PLAYERS TO BE CONSULTED			
<p>1. <u>Public service</u> Government structures and departments incl Public Service Commission, political parties, trade</p>	<p>Reserve Bank, Auditor General, relevant government departments, National Economic Development and Labour Council,</p>	<p>1. <u>Commission on Gender Equality</u> The following are examples of bodies to be consulted: Women's National Coalition, religious bodies, sports bodies, trade unions,</p>	<p>Security forces, Popcru, Sapu, Sandfu, Sapohr.</p>

<p>unions, academics, other interest groups</p> <p>2. <u>Traditional Authorities</u> Amakhosi, Izinduna, elders, cultural organisations, women' organisations, traditional organisations, political parties, anthropologists, ethnologists, agricultural organisations, labour tenants, service providers (eg water boards, Eskom and Telkom), Provincial governments, central government, churches.</p> <p>3. <u>Election Commission</u> Dept of Home Affairs, Embassies, international and local experts and academics</p>	<p>representatives of management and other stakeholders in public enterprises.</p>	<p>agricultural unions, Centre for Applied Legal Studies, Rural Women's Movement, cultural organisations, teachers organisations, civics & community based organisations, Women's Bureau, Women's Lobby and other representative Organisations.</p> <p>2. <u>Public protector</u> Outgoing Ombudsman, residents associations, legal bodies, civics, community based organisations, women and youth organisations, NCRC, Social Welfare organisations, rural communities.</p> <p>3. <u>Human Rights Commission</u> Nadel, BLA, LHR, HRC, Law Societies, Bar Councils, youth, women and religious organisations, Social Workers Organisations, NCRC, Rural Women's Movement</p> <p>4. <u>Land Restitution Commission</u></p>	
--	--	---	--

		NLC, agricultural unions, rural communities, Rural Women Movement. * International experts could be consulted.	
COMMUNITY AND MEDIA LIAISON			
1. <u>Public service</u> Media - print, electronic 2. <u>Traditional Authorities</u> Media - print, electronic, Ibandla or Lekgotla, magistrates courts. 3. <u>Elections Commission</u> Media - print and electronic	No proposals	Print and electronic media should be utilised, public hearings should be convened and the process must be biased towards ordinary people.	Public hearings and invitations of submissions through advertisement
TECHNICAL ASSISTANCE REQUIRED			
1. <u>Public service</u> Specialists on German, Belgian, French, USA, British, Indian, Zimbabwean, Namibian and other approaches 2. <u>Traditional Authorities</u> Traditional leaders, questionnaires to local traditional leaders. 3. <u>Election Commission</u> None	Financial and fiscal experts.	A researcher and administrative and public relations person should be employed.	Researchers should be approached from structures like MRG, IDP etc.

16102114. Min

**CONSTITUTIONAL ASSEMBLY
SUPPLEMENTARY REPORT
THIRD MEETING
SUBTHEME COMMITTEE 1
THEME COMMITTEE 6
SPECIALISED STRUCTURES OF GOVERNMENT
WEDNESDAY 2 NOVEMBER 1994 (AT 14H00)**

1. OPENING AND WELCOME

The meeting was opened by Mr Vadi at 14h05, who explained the purpose as being the submission of names of experts on Public Service by Parties.

2. NOMINATION OF EXPERTS

The following persons were nominated :

- 2.1 ANC : List still to be supplied
- 2.2 NP :
 - ◆ Mr L Cluwer (Formerly Director-General of the Department of Public Service and Administration)
 - ◆ Prof P van der Merwe (Professor Emeritus - University of Pretoria)
- 2.3 IFP :
 - ◆ Adv. Ndokweni (Department of Justice - Kwazulu-Natal)
 - ◆ Mr D Ntshangase (Department of Justice - Kwazulu-Natal)
- 2.4 DP :
 - ◆ Mr GS Cloete (Department of Public Management - University of Stellenbosch)
 - ◆ Prof C Thornhill (Department of Public Administration - University of Pretoria).

The above list is not exhaustive, further nominations are expected from parties that have not as yet put forward their lists of experts. These lists must reach the Secretariat by no later than 18h00 on Wednesday, the 2nd November 1994.

3. WORKSHOP ON THE CIVIL SERVICE

- 3.1 It was agreed that the Secretariat should make arrangements for a workshop on civil service to be held, over 2 days, in late January or early February 1995.
- 3.2 The Workshop must be structured in such a way as to accommodate inputs from Specialists and Civil Society, taking into account the cost implications of this exercise.



Constitutional Assembly

Theme Committee 6: Sub-Theme Committee 2 Financial and Public Enterprise Institutions

1. Constitutional issues requiring attention.

(i) All issues covered in Chapter 12 of the interim constitution viz:

- (a) The National Revenue Fund, budget and procurement (Sections 185-187);
- (b) Guarantees for provincial and local government loans (Section 188);
- (c) Special pensions, income tax of elected representatives, pensions of political officers (Sections 189, 190, 190a);
- (d) The Auditor General (Section 191 - 194);
- (e) The Reserve Bank (Sections 195 - 197);
- (f) The Financial and Fiscal Commission (Sections 198 - 208).

With respect to (a), some provision for the establishment of a revenue fund, budgeting and procurement will be needed in the new constitution. The present constitutional text is fairly general and non-controversial, but the Sub-Theme Committee (STC) will need to invite submissions and consider any alternatives that may be proposed.

Item (b) will need to be examined together with (f). The drafters of the new constitution are bound by Constitutional Principle XXVII which specifies that there shall be a Financial and Fiscal Commission (FFC) to recommend equitable financial and fiscal allocations to provincial and local government. The STC will need to take stock of the limited experience of the FFC established under the present constitution and invite submissions on how the new constitution should regulate both the functioning of the FFC and financial relations between the different levels of government. Submissions should also be invited on whether or not a clause similar to 188 in the interim constitution should be included in the new constitution.

The STC will need to investigate the extent to which constitutional provision for a law on special pensions will be needed in the final constitution and invite submissions on tax assessments of elected representatives and pensions for political office bearers (item c).

The establishment of an Auditor General (AG) will need to be provided for, and constitutional principle XXIX binds the drafters of the new constitution to ensure the independence and impartiality of the AG. The present text is general and non-controversial, but the STC will need to invite submissions and consider alternatives (item d).

Item (e) is also covered by Constitutional Principle XXIX. The

present text, particularly Section 196(2), was a compromise between different views on the relationship between the central bank and finance ministry. The STC will need to invite submissions and consider alternatives subject to the provisions of the Constitutional Principle cited above.

(ii) Public Enterprises. There are no provisions in the existing constitution referring specifically to public enterprises, although these are subject to other laws. The STC will need to invite submissions as to what, if anything, in relation to public enterprises should be constitutionalised.

(iii) Other provisions relating to Financial institutions. The STC will need to formulate its call for submissions in such a way that it is clear that it is open to proposals for constitutional provisions on other matters broadly falling into the general area under review.

2. Which issues require priority.

There is a degree of overlap between a number of the issues the STC will need to deal with and several submissions are likely to refer to more than one of the issues outlined above. Some areas are relatively uncontroversial and may be rapidly disposed of e.g. items a and d above. Perhaps the most difficult issue to deal with will be that of the FFC. The present FFC has barely begun functioning and the whole underlying issue of financial relations between different levels of government is fraught with difficulties and controversy. The STC will at an early stage need to work out an approach to dealing with this issue.

3. Which areas overlap with others in the Theme Committee.

The STC would appear to have a fairly distinct area of work and there are not many discernible overlaps with the rest of the Theme Committee.

There is, however, some overlap with two topics being dealt with in Theme Committees 2 and 3.

The overlap with Theme Committee 2 concerns the passage of money bills. Our STC would appear to have responsibility for constitutional provisions on the budget, national revenue account etc (see 1 (a) above). These will have to be consistent with provisions on the passage of money bills being dealt with in Theme committee 2.

The more important overlap is with Theme Committee 3. Our STC has responsibility for the FFC. This, however, cannot be dealt with in isolation from the broader issue of financial relations between the different tiers of government. Three options would appear to be available in working out an appropriate division of labour:

* to make our STC's work on the FFC dependent on the outcome of the work done in Theme Committee 3. This would amount to delaying our work on what is likely to be the most difficult topic we will need to address.

* to make our STC responsible for the whole area of inter-governmental financial relations. This would amount to asking Theme Committee 3 to deal with the relations between levels of government in isolation from one of the most important aspects of those relations - financial relations.

* to establish mechanisms to work together with Theme Committee 3, so that proposals on the FFC are consistent with proposals on intergovernmental financial relations. This is the option preferred by the STC. Guidance on this issue is urgently needed.

4. Which issues should be dealt with in Commissions.

At this early stage of its work, the STC is still exploring its options in this regard.

5. Issues requiring separate reports.

At this stage, we have no specific recommendations to make.

6. How many reports and when: deadlines.

The following timetable is provisionally proposed:

(i) Report on the Auditor General, the need or not to include clauses on special pensions and public enterprises and taxation of elected representatives - February 28 1995.

(ii) Report on the Reserve Bank, the Budget, procurement and the national revenue fund - March 31 1995.

(iii) Report on the Financial and Fiscal Commission and other proposals on Financial Institutions and Public Enterprises - April 30 1995.

It has been agreed that as a first step, the STC will interact with the FFC and officials in the Department of Finance in order to improve its understanding of the issues at stake. Deputy Finance Minister, Alec Erwin (an alternate member of the STC) has agreed to facilitate this.

The STC will then need to deal with submissions from interested parties. It proposes that these are invited at the level of the Theme Group as a whole i.e that the process of placing advertisements and/or other methods of inviting submissions of the public be handled at the level of the Theme Committee as a whole, but that the process of deciding what oral evidence to hear and the process of hearing such evidence be handled at the level of the STC. Only after the level of

public response has become evident and after the issues raised in Section 3 above have been clarified, will the STC be able to develop a detailed work schedule.

7. Structures and Role Players to be Consulted

- i. All existing structures covered by provisions in the present constitution and/or constitutional principles - Reserve Bank, Auditor General, FFC.
- ii. Relevant Government Departments - Finance, State Expenditure, Public Enterprises, Provincial governments, transitional local government authorities.
- iii. All stakeholders in the National Economic Development and Labour Council.
- iv. Representatives of the management and other stakeholders in public enterprises.
- v. Others. Newspaper advertisements could be placed inviting submissions from other interested parties.

8. Community and Media Liaison Assistance

The STC would benefit from advice in this regard.

9. Technical Assistance

The STC proposes that it be assigned one full time research assistant, to be appointed through a normal process of application and interview. This would be a fairly junior appointment and the person concerned would also be expected to carry out administrative tasks.

In addition the STC proposes contracting on a part time basis the services of an acknowledged expert on budgetary policy issues. A name will be submitted at a later stage.

WORK PROGRAMME - THEME COMMITTEE SIX

SUBTHEME COMMITTEE FOUR

1. PUBLIC PROTECTOR

1.1. Protection of the public from corrupt government agencies

1.2. How can this office protect one person from another in the community, home or workplace?

1.3. How can this office interlink with other bodies performing similar ombud functions e.g. the public service commission, gender commission, human rights commission?

2. HUMAN RIGHTS COMMISSION

2.1. What comprises a human rights culture?

2.2. Promoting such a human rights culture

2.3. Targeting disadvantaged sections of communities: rural, black women, disabled

2.4. How can progress be measured?

3. COMMISSION ON GENDER EQUALITY

3.1. Promotion of gender equality: how to prioritize specific programmes

3.2. Advise of laws affecting the status of women

3.3. Develop policy initiatives to combat violence to women and address gender bias in home

ownership/occupation/tenancy and in inheritance customs

3.4. Establishment of national norms and guide-lines for affirmative action, maternity leave and benefits

3.5. Mechanisms to monitor progress to equality in government and society

4. LAND RESTITUTION COMMISSION

4.1. Restoration of land to dispossessed with claims

4.2. How to address land needs of the landless without formal claims?

N.B. It should be noted that issues listed above are only examples and additions or changes can still be made

(Under PRIORITIES, AREAS OF OVERLAP and COMMISSIONS - no changes are proposed)

ISSUES REQUIRING SEPARATE REPORTS - unchanged

NUMBER OF REPORTS AND TARGET DATES

4 reports to be issued by the end of January

Gender Commission: Mary Turok to prepare list of organisations, strategies for consultation, make initial contact to solicit submissions and proposals on the

consultation process (including with the ad hoc committee of the National Assembly when formed).
Reference also to be made to representation to TEC subcommittee on the status of women

Public Protector: J.Selfe to prepare initial report on representations made to Select Committee on Bill and issues raised in debate as well as progress made towards the establishment of the office.

Human Rights Commission: Camerer to do as for Public Protector

Land Restitution: Chief Mokoena to do as for Public Protector

STRUCTURES AND ROLE PLAYERS TO BE CONSULTED

Under Gender Commission start by saying "The following are examples of bodies to be consulted". At the end of list add Women's Bureau and Women's Lobby "and other representative organisations."

REPORT OF THEME COMMITTEE 6 SUBTHEME COMMITTEE 4: SECURITY APPARATUS

WORK PROGRAMME:

Note: The Subtheme Committee decided to include the prison system in its work as it falls within the security apparatus.

1. The following constitutional issues within the broad theme need attention:

Supremacy of the constitution

- sovereignty and relation to four security arms - defence, police, prisons and intelligence.

Definition of action in the National interest

- nonpartisan action or party political action

Accountability to Parliament

- In declaration of State of Emergency
- Oversight through Parliamentary Standing Committees
- Approval of budget
- Regulatory Acts of Parliament
- End of deployment of service by executive (post facto)
- Tender regulations

Individual's rights in relation to the state

- right to disobey
- right to strike
- right to religious freedom
- gender equality
- relationship to architecture of state and access of members to state structures outside the security arms.

Employment of force

- limitations and powers

International obligations

- status
- conventions and protocols

Executive Control

- President
- Cabinet

Civilian control

- Ministry
- Secretary

Civil/Security Force/Service relations and demilitarisation of some security arms

Budget

- Parliamentary control

Ombuds structures

Monopoly of force in state institutions

Freedom of information

Special courts

Sovereignty and relation to constitution and threats to country.

2. There are overlap areas as follows:

- ▶ with Theme Committee dealing with Human rights. The issues are the rights of members of the security arms, and rights of those citizens dealt with by the security arms, eg prisoners, targets of intelligence community and police.
- ▶ with the Theme Committee dealing with the debate on national/provincial powers and federalist/unitary balance debate.

3. Subtheme Committee requires technical assistance, in the form of a senior dedicated researcher and a panel of expert consultants. The Committee has approached Derek Powell, heading Research in the Constituent Assembly in relation to an appropriate person for the researcher. The following list of names has been agreed on for the Consultants Panel, and the Chairperson is in the process of confirming with the individuals.

- Gavin Cawthra - MRG Director: Military and Police Analyst.
- Graeme Simpson - Institute for the Study of Violence, Police analyst
- Annette Seegers - UCT political Science Dept, Police analyst.
- Janine Rauch - Safety and Security Ministers Advisory Team, Police Analyst and Criminologist.
- Prof Roger Southall - Rhodes University Political Science Dept, Intelligence analyst
- Prof Breytenbach - Stellenbosch university, Political Science Dept, Intelligence analyst
- Sandy Afrika - University of Durban Westville, Political Science dept, Intelligence analyst.
- Prof Mike Hough - Institute for Strategic Studies, UPE, Intelligence analyst.
- Laurie Nathan - Centre for Conflict Resolution Director, UCT, defence analyst.
- Jakkie Cilliers - Institute for Defence Policy Director, Defence analyst.
- Fana Hlongwane - TEC researcher, Defence analyst.
- Gen Chris Thirion - Military intelligence analyst
- Prof Dirk Van Zyl Smit - Dean of Law, UCT, Prisons analyst and criminologist
- Anne Skelton - Lawyers for Human Rights/UNP Law School, children

and detention expert.

The exact terms of reference for such a Consultants Panel needs to be clarified - for example, is this consulting done on a remuneration basis, and if so at what rate, or is one approaching experts to volunteer their time and expertise. This matter must be clarified urgently so that the people who have shown interest can be given exact terms of reference.

It was agreed that a constitutional audit of a comparative nature relating to all four apparatuses, highlighting pros and cons should be the starting point. There is a range of researchers and institutions specialising on these areas which should be approached to advise on who could assist with such work. Those listed are:

- Military Research Group,
- Institute for Defence Policy,
- Institute for the Study of Violence Police and Prisons Projects,
- Wits University Policing Project,
- UWC Community Policing Project at Centre for Community Law,
- UNISA Criminology dept.,
- Institute of Criminology at UCT,
- Centre for African Studies. UCT,
- NADEL
- Lawyers for Human rights - Penal Reform Group, Pretoria,
- Lawyers for Human Rights - Children in Detention Group, Pietermaritzburg
- Black Sash
- NICRO
- Melanie Lue
- Chris Giffard
- Simon Baynham
- Jackie Cock
- Wim Booyse
- Helmoet Heitman
- Willem Steenkamp
- Rockey Williams

4. Consultation should take two forms - calling for submissions through advertisement; and go out to hear opinions from communities. These two approaches will best accommodate all sections of the society and help in an educative process around constitutional issues relating to state security arms.

Consultation should include consultation with the services/forces

themselves, and with POPCRU, SAPU, SANDFU, SAPOHR etc.

5. Commissions should be set up urgently to deal with Intelligence and with prisons as the present Constitution does not address these areas at all. The Subtheme Committee and these Commissions should work very closely with the relevant Standing Committees so that the work in the National Assembly and Senate Committees becomes a resource for the Subtheme Committee.

6. There should be a separate report on each of the four arms of the security apparatus, namely intelligence, prisons, defence and police, with an overarching report to contextualise the other reports.

7. The proposed deadlines are prisons and intelligence reports by 31 March 1995; and police and defence reports by 30 April 1995. The overarching report will be written thereafter. The Subtheme committees ability to meet such deadlines is dependent on the employment of a fulltime researcher and the finalising of the Consultants Panel.

8. The next meeting will deal with the constitutional issues in more detail and examine which need to be prioritised and on which there is a fair degree of consensus. It will also deal with the approaching of the institutions and individuals identified under 3