

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 3

5 JUNE 1995

[VOLUME II, page 62 - 127]

2/4(3/9)/25

MR PHOSA:

I thought Mr Rudman had gone into great length in giving resolutions which were taken at all meetings which took place during the past 13 months. If you look at that. I think it is the thick document here. You will see it is a normal forum where you discussed matters in which you represent your Province and sometimes it is very normal. People would be moved by their party positions. They are highly political.

Sometimes they become very boring and turn into 10
administrative issues and we shift them to Mr Rudman
and other guys.

CHAIRPERSON:

There you have it. The politics talk politics and they give the work to the Administrators. Ms de Lille.

MS DE LILLE:

Chairperson. The first question is. I see clarity in the relationship between this Constitutional and non-constitutional structures and then the decisions of arrived at in their non-constitutional structures. Are they binding 20
on various Provinces and then secondly how are they

communicated to the Constitutional structures. That is my first question.

Then, Premier Phosa also mentioned that we need clear legal guidelines to guide one. To guide a relationship, is it between Constitutional and non-constitutional forums. And then the last one, Chairperson, is he mentioned also that we possibly need a Minister for intergovernmental relations and not separating it from the Constitutional Department. It is a suggestion for a future Constitution or 10 is he looking at what is existing now because we have got the Constitutional Department here and we have got the Premiers forum, so I just see clarity. Thank you Mr Chairperson.

CHAIRPERSON:

Thank you. Could I just from this side of the Chair add something to the last question which Ms de Lille has asked. The same question, just differently phrased perhaps. The problem for us is this.

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If we developed a system of intergovernmental relations. Shouldn't it be done by the Senate in the new conceived

**THEME COMMITTEE 3
5 JUNE 1995**

form also in the way Mr Phosa talked about it and which is contained in the ANC proposals also in Theme Committee 2. It is exactly that. So what is the problem otherwise. You have got to look at Germany for example. You will see they don't have a central department of education. A real one to speak of. So in Germany an intensive and extensive forum on intergovernmental educational matters has arisen. It is now so big that it consists of, I think, if I remember correctly 96 sub-committees.

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It has got a - an '89 budget which I saw that intergovernmental committee was over 16 million Deutsche Mark, just for the secretariat. How should we really organise the administration of intergovernmental affairs, that is the question which Ms de Lille actually asked also.

Should it be done by a department? Then we always go perhaps the way of having as an executive or should the link-up with the legislatures also be created in your

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system of intergovernmental affairs. I think that is just furthering. Any of the - gentlemen. Mr Phosa?

MR PHOSA:

I think Mr Rudman should answer the first question which was asked by Ms de Lille about finding about the constitutional structures. If he cannot cope with some aspect who will comment. The second question of the Ministry proposing. We are looking ahead we are not looking at what now exists. We are proposing for the new constitution. We are informed by the experience which we 10 have arising from our own conditions.

The Constitutional Assembly is a forum where you need to write some submissions - I am say submissions relating, we are looking at that. We submit that while you have so many non-constitutional structures and proposals coming this way and that way because (inaudible) ... in the interim Constitution which has been exposed by practise and experience and anyone who refuses to learn from practises and experiences is a fool. 20

CHAIRPERSON: Mr Phosa, perhaps while that answer could you perhaps say it - this system developed naturally. Shouldn't one leave it to develop naturally.

MR PHOSA: Ja, I think it developed naturally because there were certain imparities or prizes on the Provincial Government. They manifested themselves in different ways. You know, first because the National Government and Provincial Government were born on the same day.

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The one was not prepared to deal with the other and then you spend six months Schedule 6 functions involved with the problem and then the Provincial Premier sitting and toy-toying saying who wanted to say, but I don't have the powers. You know. Those type of things. And then it would involve around loans for development. Around economic questions. We realised that we needed to talk amongst ourselves. And we began to talk. This is how the IGF came with this type of structures. And we realised that we have to talk to the National Ministers through life functions.

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**THEME COMMITTEE 3
5 JUNE 1995**

A meeting which require MEC to go and talk - an educated talk to Professor Bhengu. Then it all came together. Lets not have one to one. Lets have nine to one. So it moved from one department to the other. Now, I think all these things are clumsy. We need to correct them in the new Constitution.

CHAIRPERSON:

Thank you. Ms de Lille. I think you asked three difficult questions. Are you satisfied with this or is there something. Mr Rudman.

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MR RUDMAN:

Can I assist you, Mr Chairperson to answer some of the questions that Ms de Lille asked. Firstly, as far as the decisions of the intergovernmental forum is concerned. At this stage, I indicated, Mr Chairperson, that they stood as guidelines and should be considered by Governments in their decision making process.

And I also indicated that perhaps this matter should receive further attention. The idea was mentioned that if the decision of the intergovernmental forum is accepted by Cabinet and also accepted by the Provincial Cabinets

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CONSTITUTIONAL ASSEMBLY

**THEME COMMITTEE 3
5 JUNE 1995**

and there is unanimity regarding that decision, that it then should be binding on all the parties involved in that process, but that is still something that needs to be worked out and considered. I also indicated what the Minister said and would like to re-iterate this. The whole process of intergovernmental relations is something that is done and has been developed on a voluntary basis and is something that develops step by step.

One must be very careful not to infringe upon the rights 10
of other structures in regard to intergovernmental relations. So its a - its a careful process and it takes time to develop the process. As far as the relationship between the intergovernmental forum and other Constitutional structures are concerned, some of these, some of the members of the other Constitutional Structures do serve on - on the structures for intergovernmental relations.

For instance, at a very early stage we found that it was 20
necessary for the Chairpersons of the Portfolio Committees of the parliament to attend our MINMEC

CONSTITUTIONAL ASSEMBLY

meetings. They have been doing so for the last couple of meetings. I am not quite sure how many. The other question that was raised was the fact that there should be perhaps a separate department for intergovernmental relations. We have also been talking about this in our department. It appears to us that possibly the name of the Department should at one or other stage change to the Department for intergovernmental affairs or intergovernmental relations.

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We see the roll of the Department in intergovernmental relations very important in the future. That is the way that the Department is developing in - in our view.

CHAIRPERSON: Thank you. Mr Phosa.

MR PHOSA: There is another question which Patricia asked by what did I mean by clear legal guidelines. You see. I have limited this to three or four issues. VAT, income tax, National levy on fuel and transfer duties. It is sad that you need to give indications - fixed indications to a Province

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as to what they will be entitled to in terms of the assessed minimum, so there is certainty on the matter.

Then made a concession that we must proceed on uneven economic strength for Provinces. Therefore, the responsibility of the richer one or stronger ones to carry the weaker ones.

CHAIRPERSON:

Thank you. Is that in order for you Ms de Lille.

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MS DE LILLE:

Chairperson. I think I am convinced that if - if we have Provinces and local government and administrative centres of National government. You will be able to avoid some of the formation of this non-constitutional forums.

You know in our previous submissions, we said that look this is - and then it comes in of course the powers - concurrent powers, exclusive powers, but really for future constitution we have to consider this.

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I am also just interested, Chairperson, in the explanation given by Premier Phosa of his view on the Senate. It sounds quite interesting. I wonder if he would like to repeat that. I think that would also provide the solution to having constitutional and non-constitutional structures.

CHAIRPERSON:

Mr Phosa. Just a moment before we give you a chance again. Let me just. Is that question also react to that, Comrade.

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UNKNOWN:

Ja, thank you Chairperson. My question is directed to Mr Phosa. In his input he mentioned that - the fellow said that the Provincial Premiers should be members of the Senate. How practically possible is it - the Provincial Premier can be a member of the Senate - given the facts that Provincial Premiers have got their own busy schedule looking after a Provincial matters. Would they be consistent in their attendance in the Senate?

That is the question. Thank you.

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CHAIRPERSON:

Thank you very much. We are going to just group these questions together now. I think Professor Venter also wants to come into this - come into the heart of our discussion. I must say that the ANC has submitted their Senate Proposals which are greatly in accordance of the conference with what Mr Phosa has said. They, apparently, have time for the intergovernmental forum - the Premiers - and the Senate Mr Phosa is talking about is actually in some ways something like that intergovernmental forum.

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Sitting once every three weeks or months and having an ongoing administration. The real question is this which is coming out of this. That Administration of intergovernment affairs. If we have - get a new type of Senate, a Senate which is the embodiment of intergovernmental affairs - the Senate which expresses in itself, the whole idea of intergovernmental affairs. The Senate not being owned by National Level, but the Senate being owned by the Provinces. Would it under those circumstances be correct, to give the Secretariat of intergovernmental relations to a National Department while

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the Senate which is not a National Department in that sense. Shouldn't the Senate be the Secretariat co-ordinator? Wasn't that what was behind the idea of separate departments, actually.

We are talking about different type of Management of the Senate, not something like a Parliamentary or staff organisation, but to whole intergovernmental relations concept. Professor Venter, perhaps you would care to come in at that stage and then our speakers can 10
comment.

PROF VENTER:

Mr Chairman. I wanted to ask this question following the previous two questions. I to make it very clear that it is not a political question, it is not my roll here, but what I am interested in is the remarks made by Mr Phosa regarding the representivity or representation really of Provincial interests in various places such as the Senate and the Financial and Fiscal Commission and all the other - on the one hand.

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**THEME COMMITTEE 3
5 JUNE 1995**

And then on the other hand, saying that in the Constitutional process which the Constitutional Assembly is involved in right now. The views expressed by the Parties are also the views immediately at National Level of what is going - on Provincial level. I say again, it is not a political question, but I cannot understand why there should be a solidarity of views on Constitutional Structures and Constitutional processes and so on between those involved at National level and those at Provincial level, where the actually experience is being made at this stage. 10
I would, in other words, like Mr Phosa just to explain these remarks a bit more please.

CHAIRPERSON: I think we should stop the questions, didn't we ask too many questions now? But you can answer at your ease now, Premier Phosa. Your reaction.

MR PHOSA: I missed the first part of what he said. He made it clear at the last point. Could he please say the question again, I missed it. 20

CHAIRPERSON: Professor Venter, please just ...

PROF VENTER:

If I could very briefly just restate it. I would like Mr Phosa to explain why it is impossible for the people involved in Provincial level to have different view from those involved at National level on Constitutional matters. They are not necessary of a political nature because he said that inputs to the Commission on Provincial Government are requested from the Provincial Governments, but that is not the right procedure.

MR PHOSA:

I think the matter is common sense that there will be slight 10
differences of opinion on matters which are not political. I have differed with Praveen on a number of those matters. The fundamental constitutional matters which are the matters which with the CA sits, with respect I would not be able to make a submission to the CA, what is different from the one Mr Ramaphosa would make, and I think you will find that the same view from the IFP, in fact, we have agreed that that is the position.

That parties positions must be respected from top to 20
bottom. I am not going to describe as a Premier the view of the ANC because we are a majority party that therefore

it is the view of the PAC and the IFP and everybody else. It is wrong. I don't have that right to describe. PAC people, ANC people, National Party people in the Province. I cannot maintain this information as a National leadership, but if they so choose to differ, but that too would not be peculiar to the experience in my organisation in terms of how you take decisions.

CHAIRPERSON:

Thank you Mr Phosa. I am sorry could we just add this also after Professor Venter's question. The theory that 10 has been done on intergovernmental relations, all acknowledge that in the psychology - intergovernmental psychology of intergovernmental relations, you must take into account the input of the intergovernment relations of the Political Parties and their structure.

But the point is that when you are busy with the input in certain intergovernment structure that is only one of the interests that are being played off in that forum, because there are a lot of other interests based input that is being 20 made arising from the geographical area or the Provincial area, or other type of interest levels. For example the

**THEME COMMITTEE 3
5 JUNE 1995**

effect of high component of business people in the certain province who will make a different interest based, but the Political Party interest is something else and it is usually suggested that when you develop a system of intergovernmental lines that your Political parties develop their own intergovernmental relationship for this purpose.
Mr Phosa.

MR PHOSA:

At the centre of what we are discussing, is that we want to achieve effective Government, from top to bottom in all 10 the three tiers. And that will take place outside the framework to include proper consultation, proper communication, proper co-operation down the line. Now, those should be the guiding principles which we write the new Constitution. We take them into account a greater necessary mechanisms procedure to be followed to ensure that there is proper consultation, communication and co-operation from top to bottom, with the sole objective of achieving effective government and good 20 delivering of goods and services at grass roots level.

**THEME COMMITTEE 3
5 JUNE 1995**

This is governmental business. The question placed by Mtunsi is very simple to answer because we can do a wide comparative study with Constitutional Models. You will find that I am not making a - and I won't even claim that it is a new idea for having a Provincial Governor or Senator and there we can have time - there are many advantages for doing that and I am not talking Matthews Phosa or Mdlalose or Hernis Kriel - I am talking about the need for Executive Government and that is all. That is why we saying we don't need a bulky National Assembly 10 or a bulky Senate it must be trim and lean, and trim off the fat which is there already and have a National Government running properly otherwise we have this big bodies taxing the tax payers every year.

CHAIRPERSON:

You have heard that you must remove the lean and the fat against streamlined. Please note that the Premier has talked. Could we stop at this moment and give Mr Rudman and his staff an opportunity to react on this discussion. 20

MR RUDMAN:

Mr Chairman, thank you very much. I would ask Mr Miller to add to what I have to say. Firstly, may I just say that the roll of the Senate as I see it that of a legislative structure. It is focus of the legislative society as far as intergovernmental relations are concerned. Co-ordinates and it consults.

Intergovernment relations, on the other hand, covers the whole sphere of the Political governmental process. It takes place on daily basis and needs attention on a daily basis. So, I find it difficult to see how this roll can be taken over by a legislative structure who is responsible to a large extent for legislation and consultation and co-ordination in regard to that. 10

CHAIRPERSON:

That is the problem - how you conceive the Senate. We are not talking about a normal Second House any more in this sense, but I think the question you ask is extremely valid and a detail of that should be discussed at length. I think other opportunities should arise for the parties to talk on a more one to one basis in smaller groups with the officials from the Departments. Could, I at this stage, I 20

think Dr King's hand was up. Did I see it correctly. Dr King.

DR KING:

Premier Phosa I would just like to add that from your own experience thus far. Are you satisfied with the powers which you have received through Schedule 6 and especially as one of the powers that is not listed in there is financial powers and you have to a certain extent already referred to the fact that it is necessary for you to have more knowledge on that and have more security to be able to plan which is quite true. 10

One does not start with the budget the day that you receive the money from the Central Government you have to start way before that and one obviously needs to have that before the time. And the fact that it is not one of the powers which is in Schedule 6 included in there. Do you think it could make any difference if some fiscal power was made available as one of the items on the list of schedule 6? And then the other thing I would like to ask you is - the fact that it is not there. Does it have any impact? In other words where you are totally dependent 20

really on income which is given to you from the Central level.

Does it have any impact on your ability to govern efficiently? It sounds like a lot of questions, but they are really tie up together very much and that is can you identify any other powers which should also be listed which have not been included in Schedule 6, but which, through experience of the last 13 months which you actually come across in which you find that there is a 10 need for that. Yes, that for the moment that is all. Thank you.

MR PHOSA:

The questions sound very familiar. I am sure, to you and me being at CODESA, through the multi - party process. I think that the substantial Schedule 6 will go a long way towards addressing Provincial powers. What was the problem. I don't want any one to distort with what said earlier on that National - Central - Provincial Government was born on the same day and because of that Central 20 Government did not do preparations in terms of outside powers. Schedule 6 of the Provinces and we became

THEME COMMITTEE 3
5 JUNE 1995

under pressure. Where some people chose to ignore and call off this thing. That is not the problem that the Central Government sit with Provincial powers which means you don't have to. We needed them for schedule 6. The other problem, and I am trying to answer your question direct today is the processes can provide for satisfaction and certainty. That answers your question.

We don't need to take that function to the Provinces. You need to set out proper vital process. You remember that 10
after Chris Liebenberg the Minister came out with the budget we shot it down, not because it was a bad budget, but because the process that was followed, we questioned that and we since have discussed this matter in the IGF and we have all agreed that the Provinces should be part and parcel so that, 'ons moet koek some bak nè and ook teenwoordig wees om daai koek te sny'.

So we discussed the things very transparent, there is 20
consultations and communication, there is co-operation and we agree. Look at how they handled the Police

budget last week. The MEC's with their national ministry. It was beautiful. It is a good example of what do you call democracy. With respect to the Laws at the highest levels at well. The input and other decisions together. What you need is just proper ways of handling that matter. You don't need to (inaudible) ... the all those things.

What I will say what you need is to bring certain ties - what share will be a proper share and that is one thing I am supposed to say to fiscal powers in the Provinces. It 10 is completely another thing. That is the answer. If you would ask me to identify certain powers like you are doing which you think should go to the Provinces. I would say - I will go back to what I am saying - the three C's, consultation, communication and co-operation. You have a whole range of Non Schedule 6 functions which are - you know there. But if the level of implementation you are going to go to the Provinces. Take water, forestry. Foreign affairs which makes certain people's hair stand up. You need to need to create structures of co-operation 20 in the Provinces to be able to effectively interact in the area of water, for example or Foreign Affairs.

**THEME COMMITTEE 3
5 JUNE 1995**

Take Provinces such as ourselves, neighbouring with Mozambique and Swaziland, you can make very important contribution ensuring that (inaudible) ... at close lengths there. Fortunately Foreign Affairs is considered there. Water affairs is formed Provincial water committees to try and answer that question, because otherwise you are going to end up with Provinces having all those functions (inaudible) ... and indeed some of the Provinces have already said. They are sitting with money. They are not able to use that money. You should take this whole 10 Constitutional evolution in South Africa step by step. They don't want to make mistakes. You do not want to create a new Bantustan today they didn't work. The rushing of powers of provinces will result in new Bantustans which will not work.

CHAIRPERSON: Follow up, Dr King. Mr Gordhan after her.

DR KING: I hear what you are say, Mr Phosa. I was just interested because what you are saying about the, for instance, 20 Foreign Affairs, I can see that that is for your Province specifically that that would be something which would not,

THEME COMMITTEE 3
5 JUNE 1995

for instance, affect North West or perhaps it would with Namibia close by, the Eastern Province, etcetera.

So that was the type of information that I was looking for because we are actually reviewing at the moment. Schedule 6 for instance. Looking at the others that should be included or some of those that were included originally and as you said happening in Kempton Park, there. It is really very much an operation on paper. Not having yet the experiences which you have had to gain 10 the difficult way. You were really thrown in on the deep side of the swimming pool at the same time the Central Government also start swimming on the deep side.

All I - why I was asking about the Fiscal situation, is that the - we are actually having a workshop this afternoon on that, and what we are interested to know is whether at the Provincial level - what would you, through your experience at this stage say? We all accept that the majority of income is going to come from Central levels. I don't think 20 - well, I think that there is personally - were it is not possible, really to do it otherwise. But would you - you

CONSTITUTIONAL ASSEMBLY

did refer to the fact that you wondered for instance how much would you get from that, etcetera.

In other words, you do foresee an income which is generated almost within your own Province which comes back to you. That was actually what I wanted to know. Or whether you saw it as everything coming from Central level, so you do agree that you would also see that every Province would have a certain - demand, 'ekskuus ek is maar Afrikaans sprekend. Dit is moeilik te sê in Engels'. 10
'n Aanspraak. 'n Aanspraak is anders soos 'n' demand.

UNKNOWN: Declare, demand.

DR KING: A certain claim to the funds that are actually generated in the Province. You do see that there is a need for that. I am not trying to make politics out of this. I am merely saying what is the right way to go.

MR PHOSA: You are succeeding to make politics, but you are 20
welcome. But the fact of the matter is that you - you are very ideal to have a situation where you could say what

**THEME COMMITTEE 3
5 JUNE 1995**

you want to say. You are not using an normal situation in South Africa. Take the, I think more than half of the Provinces are economically on their knees, so they don't have the luxury to approach the matter that way. If you move from that, as your first premises, but most of the Provinces are economically on their knees and, therefore, highly depended on others. How do you level the economic playing field in terms of things. You know, you have got to be very sensitive and have a good sense of history, as a South African.

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And realise what other responsibilities which history imposes on you at the time like today. (inaudible). We are saying in our address to ask questions and its objectives. You need to have Central Government do what it is doing, and how you do the distribution although specific allocation. We need to discuss those things. Because the Provinces would not know other priorities (inaudible) ... grassroots position. But when you begin to see what I said this morning. You need a clear indication as to what are the minimums entitled only specified areas. Like VAT and those type of things. You need to

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CONSTITUTIONAL ASSEMBLY

(inaudible) ... That is something else away from of your question is whether or not fiscal powers should welcome Schedule 6, that is, and the answer is No. That is not my problem.

CHAIRPERSON: Madame Chair, just quickly the question.

DR KING: No, I wasn't thinking in terms of total fiscal powers at all. I was just thinking in terms of, for instance, money coming from casinos, money coming from other ways of gambling such as horse racing or - in other words, a Province has the ability to create some extra income. Those who are able to. 10

MR PHOSA: That is simple to answer, because the Wiehan report has made specific recomodations and broken down into smaller percentages. And then we are waiting for national Cabinet to accept or reject or accept the amendments of that report. From our positions as Premier, almost accepted as a report with the new amendment brought in by Minister Fismer on the inspectorate that they should be national type of body. We have accepted that. But the 20

National Cabinet must say what they want to do. As to what happens and whose money is spelled out. It is not something which we need to debate. That is if you accept the Wiehan report, but if you don't accept the report, then we change the division of funds there.

CHAIRPERSON:

Thank you Mr Phosa. I think we must now give Mr Gordhan a chance for his question and then I see Mr Manie's hand now. After him.

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MR GORDHAN:

I have two questions. First is the experience in relation to the present system. That whilst the intergovernment structures operate on an executive level, they even at times, assume legislative functions. In a sense that an intergovernmental forum or structure can say how an Act should be amended for a particular purpose.

Whilst the Executive has a right to make recommendations of that sort, ideally that function is the legislative's function and where the legislative has acquired to consider the matter. It is required to actually take account of or do that which the governmental

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executive forum has actually decided. In other words, we don't have a dynamic interaction between the legislative process of national government and the intergovernmental process at an executive level between the Provinces and National level.

The question of which decision is "superior" to which is unclear and you can actually have a tennis match going on sometimes between the executive process and the legislative process. And clearly the kind of ideas Mr Phosa and others putting forward to the Senate must attempt to bridge that difficulty between the Executive process on the one hand and the legislative process on the other hand. 10

The second set of issues arises from, and I think we need to address this very frankly, what kind of conception do we have of the Provincial system. Is it a conflictual conception or is it a co-operative conception. I would like Mr Phosa and Mr Rudman and his team to address this question from their practical experiences. Where we have a conflictual conception of the Provinces, then the 20

**THEME COMMITTEE 3
5 JUNE 1995**

tendency is to look for rigid walls which demarcate the function between the National and the Province. To look for clear separations which must be handled through confrontation rather than through co-operation.

A co-operative model, I think begins to establish institutions, conventions and procedures in a statutory sense, which helps to overcome day to day difficulties that will definitely arise in this relationship. Only in recent weeks we have had a number of experiences particularly 10 on a local government terrain which starkly brings out this question - co-operation or conflict, confrontation or consultation, negotiation versus standoffs and I think there are comments on this will be very useful.

CHAIRPERSON: Thank you very much. People at the Bar also from the Department are welcome to answer as well.

MR PHOSA: Can I kick off. In the Constitutional arrangement of the one we had - it is a bit of a hybrid and even in others 20 which are Federal or even the others are purely (inaudible) ... You still have tiers of Government. You still

**THEME COMMITTEE 3
5 JUNE 1995**

have tiers of Government in one form or another. What you label it is something else. Then even in all those wide range of models which exist in the world. Government at all levels want to co-operate with one another. For common good of the nation. You don't trade local government because tomorrow local government does then come and stand up and want to bring down the Provincial government. It is out. You know you don't do that. It doesn't make sense. You know.

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And that is the other Agendas which can be red from it. The relationship should be essential, as I said before. Co-operative, consultative, communicative. The three C's. A Key to the relationship to all three tiers of Government. There are certain natural tensions in those type of things which you cannot avoid but they are constructive tensions between the National and the Province. There will always be those tensions. Those are very necessary creative dynamic, you know. Those are the nature of all issues arising are taken.

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THEME COMMITTEE 3
5 JUNE 1995

Those tensions - they are inevitable in that arrangement. There will be certain tensions between Provincial Government and Local Government structures. And Provinces that are prepared for those tensions. They will come because of the nature of division of functions and responsibilities in competition there. Those are necessary tensions. Those are tensions which are - what do you call it - Federal situation, they will always be there, between all tiers of Government, but the (inaudible) ... are not the type of relationship which are conducive towards good 10 Government.

They are disruptive, they are destabilising and they can tear apart the Nation. At all costs they should avoid it and the path of resolving conflict through negotiations has always been successful. They should be resorted to. There will have been many many problems in the United States today if there is no co-operation between those many States and the Federal State. We will be having many many problems. Germany in France, in Australia, 20 like we had problems in Nigeria where one of the States

decided to go on a stand-off. I am talking about states and what happened was a National disaster.

You could have it if the situation is confrontational and conflictual in the different version in South Africa, but then you need to resist and oppose and insist on a more co-operative situation and that is conflictual situation and accept the natural tensions in the system of that nature.

CHAIRPERSON:

Thank you very much Mr Phosa. I just want to confirm that I think in the National Assembly at one stage, Mr 10
Roelf Meyer and me actually clashed on who owns the terms "co-operative governor", so I think - I think it is a good sign of some direction developing. Before I give Mr Manie the chance.

Could I just ask to perhaps to clear one thing up which you went over quite quickly in your speech. You mentioned the roll of the Commission for Provincial Government and the possibility of a National Commission for Provincial Government. I think those are the words 20
you used. Perhaps the gentlemen at the Bar could inform us of their views of the future of the CPG, because at

present I think it is almost three months that we have not got a Chairman full time there any more. The Deputy Chairman is also perhaps considering to go out, and there is some worry - what is the future of the CPG. What are your views of this and then I will give Mr Manie a chance?

MR PHOSA:

I think one should start from what is stated in the Constitution, and say whether or not that is correct and I have already indicated with respect it, and went into great depth to explain that, but if you have that Commission you 10
redefine its functions. It is what you need to do. It does something which we can discuss at length, but I don't know exactly. I am not sure about what should be the new functions.

But to the extent to which it sticks. It sticks to elicit provincial views on Constitutional matters. Good luck to it because the only success you can achieve is to repeat what is in the CA. I mean by in large, because like I said it is incorrect to say the National Party in the Transvaal 20
must accept the view of the ANC in the Eastern Transvaal as majority view. In a discussion where we vote and we

say these are the Provincial positions. That is what will happen. Who will basically impose our views. And I am saying that it is wrong.

The National Party in the Eastern Transvaal is entitled to say how views (inaudible) ... Mr de Klerk as the CA and there is nothing wrong with that. But the way which important issues there were operated on the assumption that it would have provisional Constitutional views. I am saying it is an illusion which can chance, but we will never 10
achieve it.

CHAIRPERSON: Mr Rudman.

MR RUDMAN: If I can just come back to the questions that which were proposed by Mr Gordhan. As far as the action between the intergovernmental structures and the legislature is concerned. I mentioned that in our MINMEC meeting, very soon became clear to us that there should be that inter-action. Because legislation was discussed there and 20
we need also the inputs from the legislature.

THEME COMMITTEE 3
5 JUNE 1995

That is why it was approved and implemented that the Chairpersons of the Portfolio Committees, that is from the National Assembly as well as from the Senate attend these meetings, so I think that is very important. And also, at the request, I must say, of the Chairpersons of the Portfolio Committee's provide the members of the Portfolio Committees, that is the Portfolio Committees of Constitutional Development with copies of the Minutes or summaries of the Minutes of the intergovernmental forum as well as our MINMEC and I think that also illustrates the 10 forums that there should be this co-operation between the legislature on the one side and these informal intergovernmental structures.

As far as discussions are concerned regarding legislation, for instance. In the intergovernmental forum or the MINMEC's - Mr Gordhan raised the question what would the situation be if a matter is referred from the intergovernmental forum to the legislature for implementation and it is perhaps not accepted of the 20 decision that was taken. My feeling is that at that stage it

can in all probability be referred back to that particular structure for further consideration.

We have found that there is a co-operative spirit in these meetings and consultation takes place on a regular basis. Of course, and I think Premier Phosa has referred to that, that there is also the tensions in these meetings. Well, I specifically, refer to the whole question of the Assignment of toxins from central government to the Provinces. A lot of discussions flowed from this item on the Agenda of the intergovernmental forum and we are still in the process of dealing with these matters, but I think we have come along way through co-operation between Central Government Structures as well as Provincial Government Structures. 10

Forming of Committees, consultation process and on-going consultation process to deal with these matters and I think as Premier Phosa has also pointed out. Consensus are to a very large extent breached in these structures. Either through the Committees which they established themselves, through the intergovernmental 20

technical committee, small committees that are formed to investigate certain matters and to deal with certain matters and their report back is then given to intergovernmental forum.

CHAIRPERSON: Thank you very much Mr Rudman. Now Mr Manie, please.

MR MANIE: Chairperson, I wonder if I could just make a very brief comment on something that Dr King raised with regards to financial and fiscal powers of the Provinces. Just a brief point. I ... 10

CHAIRPERSON: Don't attack her. ...

MR MANIE: No, no. What I find very strange is that this point has been raised before where motivation is put for the Provinces to have the ability to raise certain provincial taxes. I think that is an accepted thing amongst all parties. The ANC as well. That even at local government level, people must have the ability to raise certain finances through whatever mechanisms. It is just that the types of 20

taxes that is raised through the different levels. There might be a difference around that.

My second point is around the - Commission for Provincial Government. Now, I hear that people when they talk about this particular area, that when they do talk about commission. They talk more with respect to the commission of how the powers are devolved and how they will be implemented, but very little is spoken about how that particular commission assists with respect to 10 building the ability of the various Provinces in order so that it can deliver.

In other words, it has a supportive roll beyond just looking at clinically what are the legislative competencies that must go down or not go down or whatever, but to - in short that because of the differences - the regional and provincial differences that we have in this Country. To ensure that people when they are given the powers, what other mechanisms needs to be considered that to with 20 that in order that now that they have the competencies that they are actually able to deliver. Because in my view,

**THEME COMMITTEE 3
5 JUNE 1995**

just to give the powers down and not making sure that people have the ability both financially and with respect to infrastructure and so on.

Then it is just removing the responsibility from National Government and give to people, who can in any case, not do very much with it. So I would like to see that that particular function if it is to continue in the future, must go beyond this clinical thing of determining whether they should have the power or not, but to have a much more 10 supportive roll, but whether that could be dealt with in some other way or not. I am not sure. It is not just enough to deal with the competencies in the way that it is being dealt with now.

CHAIRPERSON:

Thank you very much Mr Manie. I don't know whether the other parties have attended to this. They should. Ms de Lille please. Mr Manie you have requested - comment we will give you a change after Ms de Lille on that question of Mr Manie. Ms de Lille.

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MS DE LILLE: Mr Chairman. I am just interested as to where do we get the funding to fund the Non-Constitutional forum. Is it funded by the Constitutional Development Department and if so, what amount of money has been set aside for these non-constitutional forums for the 1995/1996 budget.

CHAIRPERSON: There you are. You see these parliamentarians. They always want to control how the funds are spent. Perhaps you could react to the technical way in which you fund these forums. Mr Phosa.

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MR PHOSA: If am going to answer question I would say that they just send the account to Mr Roelf Meyer.

CHAIRPERSON: You just send the account to Mr Roelf Meyer. And then he pays it.

MR PHOSA: On a serious note. I think Constitutional affairs and Provincial affairs should carry the expenses, but at the moment we are carrying them together for Provinces and Constitutional Affairs. When we go through the trouble

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and book hotels and eat and have a Coca-Cola as well.

I am just saying ...

CHAIRPERSON: Ja, I am very glad to hear that the Premiers are drinking Coca-Cola.

MR PHOSA: It is not organised Patricia. It is very (inaudible) ... it is (inaudible) ... as the character of the structure. So when you have to travel you know you have to buy a ticket and buy and you have to book if the meetings are very far 10 from where you are. Maybe you have to sleep over the day before or after that if it finishes very late. So that is not organise. In terms of accountability, it is going to be a bit of a messy thing.

CHAIRPERSON: In other words. You can add to that Mr Rudman - if I understand it. There is no - although we have quite few structures. We cannot talk of a system of intergovernmental affairs at this stage or I am wrong. Mr Rudman you can add also to that. 20

MR RUDMAN:

Chairperson, yes at this stage Premier Phosa is correct. There is not a specific demand budget for on our budget as such. For intergovernmental relations expenditure. It is spread through our whole budget in a sense that I am to travel and subsistence and allowance and so forth. So, at this stage, Provinces pay for their own transport fees and accommodation.

We arrange the meetings, make sure that there are venues available. That there is something to eat and so 10
forth. So it is spread through the whole budget and it would be difficult to specifically say what it is costing.

CHAIRPERSON:

Thank you. Mr Phosa.

MR PHOSA:

There has been another question which has been asked - what should be the roll of the - which was asked to me as well. But what my colleagues say that there we should not forecast the commission should not forecast on their powers. They should try to create capacity in the 20
Provinces. I would agree with that. But that depends on whether or not you still have that commission in the new

Constitution. Or in our structure which deals with that particular thing. With capacity it is a big problem with Provinces.

CHAIRPERSON: Mr Rudman, ...

MR RUDMAN: Can I perhaps expand on that Mr Chairperson. That the intergovernmental forum in fact decided that before a particular function is devolved to the Province, that Province should have the administrative capacity to deal 10 with that function.

In fact together with the Premiers or ... or their representatives. The Public Service Commission defined the term "administrative capacity". Of course, it is not always easy to decide whether a province complies with that definition or not. But in a sense, the intergovernmental forum also gave attention to this matter and decided that their should be administrative capacity and also defined the terms "administrative capacity". 20

CHAIRPERSON:

Ms Coetzee's hand is up. Could I just - before she comes. The problem is, of course, that the Constitution said that the CPG must develop Provincial Government. And they did do a lot of contract work. That develop can be understood as development in the new constitution. Making submission on that and devising on that. Also in the present system. The actual system now could develop that and I think what Mr Manie meant when he was putting this on empowering. Mr Manie would you add and then Ms Coetzee.

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MR MANIE:

Ja, Chairperson that would is precisely the problem with the way Mr Rudman responded now. That the way this issue was dealt with was to see whether in fact people need that criteria and it is quite clear that I mean somewhere along the line a decision has to be made. Having established that people lack capacity in whatever way that expresses itself. What is the responsibility of the CPG then to ensure that practical things are done to assist those provinces where you have identified that there is a lack because it seems as if it is just done at the theoretical level and maybe I am repeating myself, but the

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point is that it is for the Department also to ensure that it is not just dealt with by looking at do these people meet the criteria.

You don't need the criteria, therefore, this programme or plan will then be action. And it will be done with the support and the expertise of the CPG and that is what I find lacking in all of this.

CHAIRPERSON:

Mr Rudman.

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MR RUDMAN:

Mr Chairperson. That is correct and I think in terms of the Constitution one of the tasks of the Commission of Provincial Government is in fact to assist provinces and to facilitate the whole concept of capacity building within provinces. As far as I understand it, perhaps you should ask this of the Commission, itself, but as far as I understand it, the commission has as far as it sees its roll in this regard completed this task. I think it would come to a stage where they have indicated that they have facilitated as far as they could possibly facilitate.

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**THEME COMMITTEE 3
5 JUNE 1995**

That is how I understand it, but I think perhaps it is something that should be dealt with by the Commission, itself. I may just mention, sir that the whole concept of capacity building in Provinces is receiving urgent attention at the moment by a committee that was established by Cabinet. If I may just for interest sake mention it.

CHAIRPERSON: Excellent. Thank you Mr Rudman. Now Ms Patricia Coetzee.

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MS COETZEE: My question is actually about this intergovernmental forum. What is - what will the functions be or the purpose of this - the purpose of this intergovernmental forum if the Premier of Kwa-Zulu Natal - Mr Mdlalose has resigned or withdrawn now. Is it because - and the other question I want to - I see the Premier said that they are paying for all the travelling and costs and so on together with the Department. Isn't it maybe because of that he has withdrawn from

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CHAIRPERSON: Couldn't you have given him a bit of money that is what is actually what she is actually asking from you Minister Phosa.

CONSTITUTIONAL ASSEMBLY

MR PHOSA:

No, I think the Premier of the Kwa-Zulu Natal issued the four page press statement and explained why he has resigned and he has not mentioned that as one of the reasons, so I think we should discount that, but the essence of the issue we have taken it up with him at the last Premier's forum meeting was that in Ulundi. That he is not the President Inkatha Freedom Party. He is the Premier of the Kwa-Zulu Natal Province.

Therefore, the Premier of all the people of Natal and 10
therefore not entitled to take a party position in that
capacity as Premier. I think is irresponsible. If I was to
take a party position, where I am expected to act as
Premier. In that particular matter. I am prejudging the
interest of the entire spectrum of the population in there.
The fact of the matter is what has happened was we tried
to discuss a matter in the Premier's caucus forum on
which we had already taken a decision in the IGF and the
argument as to going in the Premier's forum we nearly
contradicted a decision taken in the IGF and we said Oh! 20
you cannot do that because he was not there.

**THEME COMMITTEE 3
5 JUNE 1995**

So you lose on the co-ordination and interaction and integration of common positions if one of us is not attending those meetings and we ask the Honourable Premier to try and review his position and he said to the Central Committee to discuss the matter, but we were very open about it.

CHAIRPERSON: Thank you for the explanation. We hope he returns. Mr Rudman.

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MR RUDMAN: Perhaps I could just mention, Chairperson, that this matter is also receiving the attention of the National Government. The Minister of Provincial Affairs and Constitutional Development being the Chairperson of the intergovernmental forum has also taken some initiatives.

CHAIRPERSON: Excellent. Thank you.

MS COETZEE: Thank you Chairperson. Chairperson, the Premier in his input lastly mentioned about the traditional leaders and their roll in the in the provincial and local government, but that is very little. What I would like is for the Premier to

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comment on is the question of the progress in preparation of these houses in the various levels and we are getting some problems especially in the Eastern Cape that this Chiefs are demanding a certain number. What actually is the number. How big should these houses in these various Provinces - in these various areas. Thank you.

CHAIRPERSON: Premier Phosa.

MR PHOSA: Well, there is uneven development in the different 10 provinces on this question. Maybe I should start at home. We found it after the 6 months the consultations and discussions with the traditional leaders in the end we reached a decision to set up the house with ease.

Indeed, it has been set up and the problem we faced now is to try and sort out the pavement of those traditional leaders. It is an issue which is being handled at National level at the moment. We are trying to create some support staff for them so that they have secretariat which 20 deals with their administrative matters we are working on.

We did not have problems setting it up, but I am aware of problems of different natures in different Provinces.

The Northern Transvaal problem is that the tribal divisions, you know, they are saying that they are entitled to more representation than Tsonga's and the Vendas and the Venda's state there is no superior culture, you know, they should have equal representation. That is being handled at a different level. That is causing a delay. In Natal, I think the problem's are well known and well documented. 10

Where you even have the Minister of Home Affairs being the Chairman of the House which is an issue which I think discuss in intergovernmental relations because we think that there is something wrong with that - the way of handling the matter and not to consulting enough. Then we have got the smooth running thing in North West.

The Western Cape is pretending it does not have traditional leaders. I don't know. They may be somewhere. 20

UNKNOWN: I am one.

MR PHOSA:

You see, at first state you have got it right I think. It is Okay and then the Eastern Cape has got a lot of problems, but then you need to find compromises in that Eastern Cape situation and Northern Transvaal. A lot of consultation will have to go into that at discussions. It will be unfortunate if we were to increase expenses by the creation by the House of Traditional Leaders. We should be as modest as possible.

We keep them again not too bit. But the temptation is to - 10
from their side is to get as many of them as possible to be represented. But that will cost the tax payer a lot of money and we need to be very careful. From small ones, but we make sure that their different shades of interest are represented and find compromises along those ways. There are problems. We now see it in those Provinces which I have mentioned - Northern Transvaal, Eastern Cape and Natal has got problems to.

CHAIRPERSON:

Senator Bhabha.

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MR BHABHA:

I would like to follow up on what Patricia Coetzee had to say. I - the intergovernmental forums to a large extent are voluntary associations. And it brings the question of the status of decisions in these forums. We have - Patricia discussed or touched on the issue of one of the Premiers not being present. But what happens if decisions are made whether in the presence of everybody or in the absence of one or two people.

Where agreement is reached by all the participants of all 10
the Provinces in an intergovernmental forum meeting and
then we have got to question the status of that and what
do you do if after agreement one of the participants
reneges on the Agreement. It appears as if there are, I
hate to use the word, punitive measures, but what is there
to address such an eventuality.

CHAIRPERSON:

Mr Phosa, would you like to reply to that please.

MR RUDMAN:

Chairperson, I have indicated that the decisions of the 20
forum only serve as guidelines and should be considered
by Governments in their decision making process. So at

this stage it is not binding on anybody. I also indicated that the possibility has been raised that these decisions should at a stage when they are ratified by cabinet - National Cabinet as well as the cabinets of the Provinces and perhaps one could then consider to have these decisions declared binding decisions on those who have taken them, but at this stage that is not possible.

We are still looking at this matter. I cannot add anything further to that.

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MR PHOSA:

If, I may just add to what Mr Rudman has said. I think it is undesirable to have loose structures which affect Government. It is - it is a bad practise. Should you have structures which are legal statutory or otherwise and then all of us know exactly when we meet, what happens to the decisions what discipline in terms being bound or not being bound.

But I think we should move in that direction. That is one of the reasons why I very clearly distinguished between

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Constitutional and Non-Constitutional and provoked questions of accountability amongst other things.

CHAIRPERSON: Thank you, Senator Bhabha are you happy or do you want to add to that.

MR BHABHA: To me it is quite clear how this can be resolved. That is that legislations needs be passed where the status of decisions taken at those forums are sorted out. And in fact, it has been highlighted as an area of concern in the 10 past by several people that the - its a glorified talk show. Obviously, there is a possibility of getting people to agree on certain issues, but at the end of the day, whether now or way down in the future if people just want to go back on decisions they are free to do it because nothing binds them.

In my view, I think a process of legislating on these issues should be commenced with and not for us to wait until we have a new Constitution to try and tie it up there. I think we would have the opportunity to do it now. And I think 20 we should seriously consider that in my view.

CHAIRPERSON:

Mr Manie want to add, perhaps Mr Phosa would like to react to that as well. Isn't the idea really that and I think you have mentioned it previously in the relationship between local government and Provincial government that it should be something - that you are not going to do something which will make - the province will not do something that will make local government unhappy because if they do not operate then obviously it is also going to be a problem for the Provincial Government.

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Wouldn't that very much be the kind of situation which would also occur here. We have nine Provinces and they cannot possible themselves from one another completely. They are inter-dependent and, therefore, their decisions, would very much be influenced in the same way. If one of them went contrary to a decision, eventually it will - boomerang on them as well.

Wouldn't that actually be a better one than having strict lines of decisions which you cannot go back on because in any respect everyone of those Provinces have a totally different set up so each of them may take back same -

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principle, but in practise would implement them according to the needs and realities of that specific Province.

MR PHOSA:

No, I think there is a lot of experience. We are trying to reinvent the wheel. Take the Australian situation, where they are intergovernment structures or even in the American situation. Those meetings have got status - (inaudible) ... meetings of Premiers or Governments or meetings of Premiers and Governors meetings, financial and fiscal Commission.

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They have got status and decisions upon status and the Nation organises the status of those decisions and they are binding in our (inaudible) ... going to implement those decisions in terms of how they have been - and have stood by the nation in those forums which represents the Nations -through status or Provinces or whatever we are talking about. I think it would be very dangerous and I think we have seen it resemble in Western Cape.

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The thing which is now banding here is a clear example of what can happen if we take decisions together at

certain levels and I go home and I do as I please contrary to the decisions. Those things should be discouraged. It is not good Government it is bad. And then on the other thing which you referred to the first part of your question. We need to begin to think ahead about what would be the sort of problems which Provinces would experience with local government. The creative tensions are talked about. There would be non-creative tensions as well from Province to Province. What are we doing to prepare as Provinces to address the whole question of 10
how do we deal with local Government as Provinces.

The same finger which Provinces used to point at national. The Local Government is going to point at Provinces as well. It is going to happen.

CHAIRPERSON:

Dr du Toit has actually asked to ask a question.

DR DU TOIT:

Ja, thank you, Mr Chairman. I have actually got two questions, but let me first put the easy one - the snazzy 20
one. In Canada for example you have got these occurrences also in Germany. Isn't there a need because

it is not only a question of Provincial Province which must be solved in the co-operative way?

But Provinces must also be informed of National matters because of the leadership position for example Premiers. Isn't there a need for once a year, perhaps a media event, of a Presidential intergovernment conference with a basic purpose where the President informs, for example, the Premiers in such a one a year event of international problems, National problems, where and create that type of intercourse. 10

It seems to be very successful such a high profile event in a Country like Canada for example. How do you react from this type of presidential, where you get the Premiers, perhaps the MEC's perhaps a King or two? And that type of - of - of leaders of the nation together. Its the first question.

MR PHOSA: It sounds very nice. It would be nice to have a meeting 20 where the President convenes, but the question is - you

know in the IGF, I think Mr Rudman later refers to this 'né
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The President was there at the first meeting and the two Deputy's were there. And in addition to a number of national Ministers present, now question is what do you want to achieve with that. You know, do you want to brief the Premiers at the beginning of the year about your legislative programmes and international situations, international agreements which were entered into during the previous years, will need to be implemented, practical 10 things, but certain practical things not bit theoretical stuff.

Now, you will have to define the objective of that meeting very clearly. I don't want to sound like I am criticising the first meeting we had. We are just feeling our way through, you know, we are just trying to say how we relate to one another. But maybe as we form new structures and new ventures develop that - what does the President do with regard to Provinces at the beginning of the year. You know those type of things could be looked at. I think the 20 objectives, the purposes of that meeting must be very very clear and the nation must understand why the President

should go to those lands to convene Premiers, National Ministers, MEC'S into that type of forum.

I think once the objectives are agreed, the meetings become something seconded, if we agree of the objectives. I think I mentioned earlier in my input somewhere that - what did I say - less on structures more on strategy. That was my formulation.

CHAIRPERSON:

Can I just mention that it is 5 to 12 and we are supposed 10
to round of at 12.00. Mr Rudman has also asked to make
an input and we still have Ms De Lille.

MR RUDMAN:

Thank you Chairperson. I will be very brief. Just to
confirm what Premier Phosa has said Chairperson. I refer
to the resolution of the intergovernmental forum which
was accepted on the 12th August and in this Resolution
it was resolved that the intergovernmental forum
comprising of the Premiers of the nine Provinces and
Representatives of the National Government which would 20
meet on a monthly basis and which are to be attended
twice annually by the President of South Africa and the

THEME COMMITTEE 3
5 JUNE 1995

Deputy Presidents, so we have that resolution and as the Premier has indicated, the President has attended one of our meetings.

We are trying to arrange for the next meeting with the President, but due to practical reasons, it has not been possible at this stage. If I could also just briefly, Chairperson, refer to the whole question of legislation to deal with intergovernmental relations. The intergovernmental forum has requested the technical 10 Governmental Committee to look at two matters. Firstly, the terms of reference and framework for the functioning of intergovernmental - of the intergovernmental forum and the Technical Intergovernmental Committees and then secondly, provision for intergovernmental relations. We have prepared two documents. The Department has prepared two documents which have been approved by the technical intergovernmental committee.

These documents deals - deal with these matters that I 20 have referred to. It has been discussed at the intergovernmental forum and the intergovernmental forum,

CONSTITUTIONAL ASSEMBLY

**THEME COMMITTEE 3
5 JUNE 1995**

as the Premier has indicated in his address, has requested further consultation to take place with a view to reporting back to the intergovernmental forum at his next meeting which I think on the 12th of this month.

DR DU TOIT: Madame Chair, could we get copies of those documents.

CHAIRPERSON: Mr Rudman, would it be possible to make copies available to this Theme Committee.

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MR RUDMAN: I have just consulted with one of the permanent members, Chairperson, and we can make that available.

CHAIRPERSON: Thank you very much. Ms de Lille.

MS DE LILLE: Chairperson, I just want to separate the two issues. I think we need to look at the current Constitution and the current situation within our Country. I don't think that there is any need for legislation to formalise or legalise the non-constitutional forums. I think what we need to do is
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look at -we have got regional representation in the National Assembly representing Provinces.

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 3
5 JUNE 1995

We also have Senators coming in on a Province ticket. Now, you need to say then, how do you make those structures accountable to the Provinces, which at the moment there is no mechanism to regulate that. We have got how many members in the National Assembly and the Senate.

I think that is a separate issue, which we need to look at first before we can say now to compliment the mechanism and the function we then need the intergovernmental forum, forum for Ministers, Technical Committees and so on because I see a lot of duplication here. Just looking at - without taking into consideration the actual roll and function - Constitutional roll and function of the regional representative in the National Assembly and the Senate. 10

And then the second issue, Chairperson, is that when we look at the final Constitution, we need to evaluate the roll, the function the powers, the composition of these Constitutional structures and see now that we have got the experience of the interim constitution whether we need 20

CONSTITUTIONAL ASSEMBLY

**THEME COMMITTEE 3
5 JUNE 1995**

to change them for the future Constitution or whether we need legislation now that if the Province is excluded from the financial fiscal commission, they must be included there to accommodate the point raised by Premier Phosa here - the process of consultation and I think those two issues are really separate, but I really personally feel no legislation to formalise and legalise any non-constitutional forums at stage. Thank you.

CHAIRPERSON:

Thank you. Can we accept then that we will close our meeting at this stage. May I please remind all members that we convene here again at 2.00 this afternoon for the workshop on financial and fiscal arrangements, please. Mr Phosa, thank you very much for your time. We have certainly appreciated your being prepared to make your precious time available to us and the same to Mr Rudman and the two gentlemen who accompanied him. Thank you.

[END]

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CONSTITUTIONAL ASSEMBLY

**THEME COMMITTEE 3
5 JUNE 1995**

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CONSTITUTIONAL ASSEMBLY

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