

2/4/02/1/9

**CG3/14**

**CONSTITUTIONAL ASSEMBLY**

**CORE GROUP 3**

**RELATIONSHIP BETWEEN  
LEVELS OF GOVERNMENT**

**Thursday 9 March 1995**

**Room G26**

**(14H00)**

**DOCUMENTATION**

**(Minutes of the meeting held on 6/3/95)**

## TABLE OF CONTENTS

1	Notice and Agenda	Page 1
2	Minutes	Pages 2 - 5
3	Minutes of the 2nd meeting of 6/3/95	Pages 6 - 7
3	Advertisement Heading 2	Page 8
4	Public Participation Events - Schedule	Page 9
5	Memorandum - Theme Committee Report Formats	Page 10 - 10a
6	Proposed Rationalisation of the Work of Theme Committee 1	Pages 11 - 13
7	Relationship between TC and TA's	Page 14
8	Minutes of Convenors meeting 27/2/95	Pages 15 - 17
9	Conference & Workshop - Local Government Beyond 2000	Pages 18 - 21
10	Framework 1/3/95	Pages 22 - 26
11	Suggested Sub-headings	Page 27

## CONSTITUTIONAL ASSEMBLY

### MEETING OF CORE GROUP THEME COMMITTEE 3

#### RELATIONSHIP BETWEEN LEVELS OF GOVERNMENT

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

**Date :** 9 March 1995

**Time :** 14h00

**Venue :** G26

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#### AGENDA

1. Opening
  2. Minutes of the previous meeting
  3. Matters arising
  4. Framework Heading 2
  5. Advertising Heading 2
  6. CPM's Saturday/Sunday 11/12 March 1995
  7. Workshop 13 March 1995
  8. Feedback from Technical Advisers
  9. 'Important Role Players' Listing
  10. Joint meetings with TC's 1 & 2
  11. Agenda for Theme Committee meeting 13 March 1995
  12. Closure
- 

**H Ebrahim**  
Executive Director  
Constitutional Assembly

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Enquiries: Mbasa Mxenge, Regis House Room 9-09 (tel 403 2108)  
Sandra Haydon, Regis House Room 9-09 (tel 403 2275)

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**CONSTITUTIONAL ASSEMBLY**  
**MINUTES OF THE MEETING OF**  
**CORE GROUP 3**  
**RELATIONSHIP BETWEEN LEVELS OF GOVERNMENT**  
**MONDAY 6 MARCH 1995 (AT 10H30)**

**PRESENT**  
**KM ANDREW (CHAIRPERSON)**

de Lille P  
Gordhan PJ (Alt)

Koornhof GW (Alt)  
Smith PF

**Technical Advisors**  
None

**Apologies**  
TJ King

**Absent**  
DC Du Toit, PJ Groenewald and NN Mapisa-Nqakula

**Attendance**  
Sandra Haydon and Mbaso Mxenge

**1. OPENING**

The meeting was opened by KM Andrew and the Agenda was adopted.

**2. MINUTES OF THE PREVIOUS MEETING**

The minutes of the meeting held on 27 February 1995 were adopted with the following amendments:

- i. Numbering of Agenda items; and
- ii. Page 6 para 6.3.iii the words "Heading 2" were added.

**3. MATTERS ARISING**

None

**4. REPORT FROM THE SECRETARIAT**

**4.1 Work Programme**

4.1.1 The members discussed the '*Framework for Submissions*' as submitted by the Technical Committee on 1 March 1995 and made the following amendments for submission to the Theme Committee:

**SUGGESTED SUBHEADINGS FOR HEADING 2  
COVERING INTER ALIA**

**Phase 1**

*Allocation of Powers*

*Questions 1, 2 & 3*

*Relationship between National &  
Provincial Governments in Relation  
to their Powers*

*Questions 4, 5, 5a and 6*

*Local Government*

*Question 9*

**Phase 2**

*Intergovernmental Relationships*

*Question 7*

*Hold on Questions 8 & 10*

**Note:** *Question 5a to read:*

*What are the mechanisms which should be provided for in the Constitution to regulate the relationship between National and Provincial Government?*

**Note:** *Where questions ask for an answer of 'Yes' or 'No', the following should be added*

***"If so, how/ which?"***

4.1.2 The meeting agreed that report dates should be set in such a way as to incorporate submissions from civil society.

4.1.3 The meeting proposed the following closing dates for submissions on Heading two for confirmation by the Theme Committee today:

- i. Political Parties and civil society - 24 March 1995; and
- ii. Provinces and Premiers - end of month.  
Note: The meeting agreed to revisit this issue as to the best approach and the need to take minority parties into account.

4.1.4 The issue of the implications of the Constitution in respect of the provinces after 1993 and the implications of the next Constitution, were referred to the Technical Advisors for analysis.

4.1.5 The meeting agreed the Technical Committee would be asked to submit a written report on submissions from civil society relating to Block 1 noting the following:

- a) List of names
- b) Submissions received which did not relate to issues dealt with in Block 1
- c) Submissions which do not relate to the Constitution
- d) The range of issues covered was so wide as being impossible to summarise
- e) Confirm that all submissions received were distributed to members of the Theme Committee

#### 4.2 FFC

The Secretariat has not yet received documentation from the Financial and Fiscal Commission as promised.

#### 4.3 Convenors Meeting

KM Andrew spoke to the Minutes of the Convenors Meeting held on 27 February 1995, which was circulated to the members.

#### 4.4 CPM's

4.4.1 The members asked that they be provided with detailed travel and accommodation particulars prior to the briefing. This would motivate members to attend CPM's.

4.4.2 Concern was expressed as to the lack of education within the community so as to maximise audience participation relating to the Constitutional issues.

### 5. IMPORTANT ROLE PLAYERS

5.1 The meeting agreed that members of the Theme Committee be asked to supply names of Organisations or persons whom they felt should be invited to make submissions on Heading 2.

- 5.2 The Secretariat was requested to submit a list of all Organisations, Municipalities, Provinces, Commissions etal who made submissions in Block 1, to the Theme Committee to be held at 18h00 on 6 March 1995.

**6. REGULARISE CORE GROUP MEETINGS**

The meeting agreed that the Core Group meet for 15 minutes following each Theme Committee meeting in order to plan for the week and schedule the next meeting of the Core Group. This would assist in co-ordinating the work of the Technical Committee.

**7. GENERAL**

The possibility of Prof Venter having to recuse himself from Technical Committee work, was held over pending further discussions.

**8. AGENDA FOR THEME COMMITTEE MEETING 6 MARCH 1995**

The Agenda was agreed to.

**9. CLOSURE**

The meeting closed at 12h30.

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**CONSTITUTIONAL ASSEMBLY**  
**MINUTES OF THE MEETING OF**  
**CORE GROUP 3**  
**RELATIONSHIP BETWEEN LEVELS OF GOVERNMENT**  
**MONDAY 6 MARCH 1995 (AT 19H30)**

**PRESENT**  
**KM ANDREW (CHAIRPERSON)**

de Lille P  
Du Toit  
King TC

Koornhof GW (Alt)\*  
Rabinowtiz R (Alt)\*

**Technical Advisors**

Prof D Basson, Prof D Davis and Prof F Venter

**Apologies**

**Absent**

**Attendance**

Sandra Haydon and Mbaso Mxenge

The members of the Theme Committee met briefly to finalise the following issues:

1. **CORE GROUP MEETING** - The Core Group will meet at 14h00 on Thursday 9 March 1995.
2. **QUESTIONS RE CPM's 11/12 MARCH 1995** - To be finalised at the Core Group meeting 9 March 1995.
3. **WORKSHOP** - The Technical Committee was requested to organise two workshops, the first to be held at 09h00 on Monday 13 March 1995, the topic being "Concurrency".
4. **SUB-HEADINGS FOR HEADING 2** - The Technical Committee was asked to look at the Sub-headings for the remainder of Heading 2.
5. **REPORTS** - The meeting agreed that the format required for the Report on Heading 2 be put in writing so that the Technical Committee is quite clear as to Theme Committee requirements.



6. **CONTENTIOUS ISSUES BLOCK 1** - It was agreed that the Technical Committee will assist the Core Group with those contentious issues which the Constitutional Assembly referred back to the Theme Committee for further discussion.
7. **CLOSURE** - The meeting closed at 20h15.

DRAFT

**You** have got  
the *power* to play  
a **central** role.  
**So write.**

It's time for all South Africans to write the New Constitution. The following topics are presently under discussion at the Constitutional Assembly. The 490 elected members of the Constitutional Assembly would like to hear from you.

**Theme Committee 3**

Relationship between levels of government  
*There will be 3 levels. 1) Nat*

**NATIONAL AND PROVINCIAL LEGISLATURE  
AND EXECUTIVE COMPETENCIES (POWERS)**

*send your*

**PLEASE SEND YOUR VIEWS ON  
Submission on:**

1. The division of competencies (powers) between National and Provincial levels of government, as regards:
  - 1) Legislative (Parliament) powers and
  - 2) Executive (Cabinet) powers
  - with reference to the need for exclusive powers and powers shared (concurrent).
2. What mechanisms should be provided for in the constitution to regulate the relationship between National and Provincial government.

These are very important issues that will affect your life now - and for the future. To air your views, contact any member of the Constitutional Assembly, your organisation, or write direct to The Executive Director, Constitutional Assembly, P.O. Box 15, Cape Town 8000. Remember, the closing date for submissions is 24 March 1995. Do the write thing, and make your mark in the pages of history.

You've made your mark.

## MEMORANDUM

**To: Lucille  
Thandi**

**From: Community Liaison**

### **RE: PUBLIC PARTICIPATION EVENTS: 11 and 12 MARCH 1995**

1. The following events will take place on 11 and 12 March 1995:

DATE	PROVINCE	TOWN	VENUE	REMARKS
11/3	GAUTENG	Ivory Park	Community Hall	Starting time: 14:00
11/3	WESTERN CAPE	Vredenburg/ Saldanah	Louwville Community Hall	Starting time to be confirmed
11/3	NORTHERN CAPE	Kuboes o	Community Hall	Starting time: 14:30
12/3	NORTHERN TVL	Phalaborwa	Impala Park Sport Stadium	Proposed starting time: 10:00 - as indicated by TC2

2. It is kindly requested that all name lists of Theme Committee members who would like to attend the above-mentioned meetings be in by Tuesday, 7 March at 10:00 am in order to finalise travel arrangements.

3. A briefing will be held for all Theme Committee members attending the above-mentioned events:

**Date: Wednesday - 8 March 1995**

**Venue: V227**

**Time: 14:00 - 16:00**

Thank you.

# CONSTITUTIONAL ASSEMBLY

TELEPHONE: (021) 403 2252  
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FAX: (27) 21 461 4339

PO Box 15  
CAPE TOWN 8000  
REPUBLIC OF SOUTH AFRICA

REF No:

## MEMORANDUM

**To :** Theme Committees  
**From :** Chairperson  
**Date :** 7 March 1995

**Re :** Theme Committee Report Formats

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As you will be aware, the Constitutional Committee has begun the process of discussing the first reports issued by Theme Committees. In the course of these discussions, it has become clear that we need to arrange Theme Committee reports in such a manner that it facilitates quick and easy decision-making in the Constitutional Committee in view of the limited time at the disposal of the Constitutional Committee.

Theme Committee 6.4 has adopted a particularly useful approach in that it has attached to its report a table which lists the various category of issues dealt with. This provides a quick visual guide which assisted the Constitutional Committee a great deal in discussing this report.

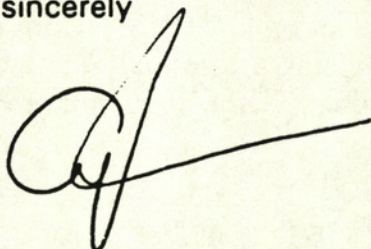
Theme Committees are therefore requested to follow this approach in attaching such a table to all future reports for the Constitutional Committee. This table should be laid out in " landscape " page format and should contain the following five columns :

Issues	Constitutional Principle	Consensus/ Non-contention	Contention	Outstanding Issues/Further Clarity

It is hoped that this table will allow for better decision-making in the Constitutional Committee. We emphasise that reports should continue to be drafted in the same manner as previously agreed. What is being requested here, is that this additional table be provided with all reports for discussion in the Constitutional Committee.

We are all on a learning curve and your assistance in this regard will be greatly appreciated.

Yours sincerely

A handwritten signature in black ink, appearing to be 'M. Ramaphosa', with a long horizontal stroke extending to the right.

**MC RAMAPHOSA**  
**CHAIRPERSON**

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**RATIONALISATION OF THE WORK PROGRAMME  
OF THEME COMMITTEE 1**

**I) INTRODUCTION**

At the Core Group meeting of 22 February 1995, after input from Mr. H Ebrahim and discussion on the manner of drafting reports and on the difficulties caused by the overlapping jurisdiction of Theme Committees (which particularly affects Theme Committee One in the early stages of its work), the Core Group mandated the convener of the technical advisers, Prof. H Coder as follows:

- a) to review the Blocks and Agenda Items as they appear in the Revised Work Programme, with a view to identifying those areas of the work of the Theme Committee shared with other Theme Committees, to some degree;
- b) to confer with the technical advisers of the other Theme Committees, where appropriate, in order to devise a manner of dealing with this common ground; and
- c) to submit a proposal to the Theme Committee as to how it might most usefully and rationally proceed with its work, guided by the terms of reference of the Theme Committee and the Technical Committee, as well as observations of the process thus far.

The above steps have been carried out, in consultation with Dr. J Heunis and Mr. Z Husain. At the meeting with the conveners of Technical Committees it was agreed that the areas of overlap should remain with the respective Theme Committees but that Theme Committees should plan their work programmes well in advance and that all Theme Committee's should be informed of each Theme Committee's work through the Secretariat so that joint meetings could be planned if necessary (i.e. members of other Theme Committees could attend to hear "evidence" given by the outside experts).

At the Core Group meeting of the 28 February 1995, the meeting agreed that a joint meeting with the other core groups should be set-up by the Secretariat to discuss the issue further.

A suggested catalogue of shared issues follows, for the consideration of the Theme Committee.

## II) SHARED ISSUES

Areas which are shared to some extent with other Theme Committees:

	BLOCK	AGENDA ITEM	THEME COMMITTEE
a) Democracy and Character of State	1	1	2,3,4 and 5
b) Equality	2	2	4
c) One sovereign state	2	3	2 and 3
d) Supremacy of the Constitution	3	4	5 (to limited extent)
e) Accountable Government	4	5	4 and 6
f) The Economy	5	6	4
g) Representative Government	6	7	2 and 3

Some of the issues, in our view, fall chiefly within the jurisdiction of Theme Committee One i.e. (d) and (f). As regards the other issues, it seems that Theme Committee One is being expected to provide agreement on broad issues of principle, while the other Theme Committees are being expected to flesh out the details.

The Theme Committee should consider how it wishes to deal with such issues. It is reminded that provision exists for joint meetings of Theme Committees, as well as joint meetings of Technical Committees. It may well be that broad issues of principle could be outlined in such joint meetings, allowing Theme Committee One thereafter to proceed with its next item, and the other Theme Committees concerned to meet separately to attend to matters of detail.

necessary. The objective would be to provide a basic framework of the most important ideas which fall to be decided by the Theme Committee under that item, to assist its members in the ensuing debate, and to facilitate the eventual drafting of those constitutional provisions which must emanate from the work of Theme Committee One.

## V) CONCLUSION

The Technical Committee hopes that these proposals will form the basis for progress in the Theme Committee. It wishes to emphasise the fact that the drafting of this proposal was requested by the Core Group and that it is in no way prescriptive.

Hugh Corder (Convener)  
Jan Heunis  
Zunaid Husein



# CONSTITUTIONAL ASSEMBLY

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PO Box 15  
CAPE TOWN 8000  
REPUBLIC OF SOUTH AFRICA

REF NO: B.1.1

8 March 1995

To the Chairpersons of all Theme Committees

## RE: RELATIONSHIP BETWEEN THEME COMMITTEES AND TECHNICAL EXPERTS

All experts have been appointed on a part time basis and will therefore be paid an hourly rate for services rendered. This excludes transport and ancillary costs.

To assist the Constitutional Assembly in utilising its resources as efficiently as possible, we would like to make the following recommendations with regard to the engagement of Technical Experts:

1. The finance and administration Department is presently drafting an accounting form which would clearly indicate the billable time spent by each of the experts. Copies of these will be made available in due course.
2. Experience has shown that it has not been necessary for all technical experts to be present at each of the Theme Committee meetings, public meetings or workshops. It is therefore recommended that technical experts be specifically invited to attend meetings as and when is deemed necessary by the core group of each Theme Committee.
3. We have previously requested that each Theme Committee presents a work programme in respect of the engagement of technical experts. Regrettably, Theme Committees responses have not been very positive. The purpose of these work programmes is to assist the administration in making the necessary logistical and travel arrangements. This is also necessary to assist the administration in ensuring greater financial planning.
5. A large number of the technical experts do not live in Cape Town. Accordingly, they are obliged to travel from different parts of the country. It is therefore necessary for the work programmes to be carefully planned to ensure that experts are not required to travel to Cape Town unnecessarily and are effectively and efficiently engaged during their time spent in Cape Town.

Yours faithfully

  
H EBRAHIM  
EXECUTIVE DIRECTOR

# CONSTITUTIONAL ASSEMBLY

## MINUTES OF MEETING OF CONVENERNERS OF TECHNICAL COMMITTEES

MONDAY 27 FEBRUARY 1995 14H00 BOARDROOM

Present

Corder H (Theme Committee 1)(Chairperson)

Dugard, J (Theme Committee 4)  
Husain, Z (Theme Committee 1) - joined the meeting late  
Steytler, N (Theme Committee 2)  
Venter, F (Theme Committee 3)  
Powell, D (CA Research)

In attendance:

Mbasa Mxenge, Susan Rabinowitz and Vanessa Calvert

### AGENDA

1. Opening
2. Rationalisation and joint meetings
3. Research capability of Constitutional Assembly for Technical Committees.
4. Logistics
5. Remuneration
6. Involvement in public participation programme
7. Personal submissions to other Theme Committees.
8. General

#### 1. OPENING

With regard to the process of the meetings of the conveners of Technical Committees, it was agreed that they convene as an information distribution network and that they meet every Monday at 12h45 in the Boardroom. It was agreed that all Conveners should attend and that all members of Technical Committees be invited to attend if they are available. It was requested that Theme Committee 1 take responsibility for coordinating the meetings and that the Secretariat be asked if lunch could be arranged.

#### 2. RATIONALISATION AND JOINT MEETINGS

Corder distributed a document "Proposed Rationalisation of the Work of Theme Committee 1". The issue of overlap between Theme Committees was discussed and it was agreed that the areas of overlap should remain with the respective Theme Committees but that Theme

Committees should plan their work programmes well in advance and that all Theme Committees should be informed of each Theme Committee's work through the Secretaries so that joint meetings could be planned if necessary (i.e. members of other Theme Committees could attend to hear "evidence" given by outside experts.)

Corder advised that Theme Committee 1 had agreed to hold orientation workshops at the beginning of each agenda item and that the Technical Advisors of the Theme Committee would share this task amongst themselves, with the use of outside input if necessary.

### **3. RESEARCH CAPABILITY OF CA FOR TECHNICAL COMMITTEES**

Derek Powell, Assistant Director, Research explained the work and capacity of the CA Research Department and said that the department could be most effective in responding to specific requests from the Technical Committees. He said that clarity would be needed from the Executive Director on the issue of farming out research if a project was larger than the department could deal with. He also suggested using the Parliamentary library as much as possible as most materials required by the Theme Committees and Technical Experts could be obtained through the library.

The meeting agreed that Powell should attend future meetings of the Conveners.

### **4. LOGISTICS**

The Technical Advisors raised various concerns regarding flight and transport arrangements which had been inadequate.

Mbasa Mxenge explained that it was now the duty of the Administrative Secretaries assigned to the different Theme Committees to deal with these arrangements.

The meeting requested whether the Secretariat would consider as a matter of policy the hiring of cars by Technical Advisors.

### **5. REMUNERATION**

Corder said that he was asked to express his colleagues' dismay at the delay in finalising remuneration. The meeting raised the question of whether claim forms should be filled in and further noted that no contracts have been signed by them.

Mxenge explained that the question of remuneration was being attended to by the administration. He further said that all vouchers

should be retained for claims and audit purposes.

- 6. INVOLVEMENT IN PUBLIC PARTICIPATION PROGRAMME
- 7. PERSONAL SUBMISSIONS TO OTHER THEME COMMITTEES

The above two items were dealt with simultaneously.

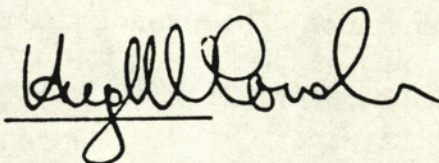
It was confirmed that Technical Advisors could not make presentations to outside groups under the banner of the CA but that Technical Advisors from one Theme Committee could make submissions and presentations to other Theme Committees in their personal capacity.

## 8. GENERAL

- 8.1 The meeting discussed the relationship between the Technical Committees and the Panel of Experts and it was agreed that if there is a disagreement amongst the Technical Committees or Theme Committees on interpretation of the constitutional principles or amongst members of the Theme Committees, then the panel of experts might be requested to give their interpretation as a form of mediation.
- 8.2 Concern was expressed about the name "Technical Experts" and it was suggested that they preferred to be known as Technical Advisors or members of the Technical Committees.
- 8.3 With regard to submissions being received from institutions or organisations addressing issues already dealt with by the Theme Committees, this was not a problem as submissions could be incorporated retrospectively if necessary.
- 8.4 It was agreed that the minutes of this meeting be distributed to all Technical Advisors, to the Chairpersons of the CA, to the Directorate, the Secretariat and to all the Chairpersons of the Theme Committees.

The meeting rose at 15h30.

CHAIRPERSON





Mokgatlo wa bo-Masepala  
wa Mreisitatu

WE SERVE  
AND  
REPRESENT  
LOCAL  
GOVERNMENT

Our ref: 150/5

7 March 1995

The Chairperson  
Theme Committee 3  
Constitutional Assembly  
P O Box 15  
CAPE TOWN  
8000

FAX: 021-241160/1

CONFERENCE AND WORKSHOP : LOCAL GOVERNMENT BEYOND 2000

ONS DIEN  
EN  
VERTEENWOORDIG  
PLAASLIKE  
REGERING

Our Association is acknowledged as the only legitimate and representative Association for local government in South Africa and as such has been playing a leading role recognised by all relevant government departments, on numerous instances affecting local government in the transitional and final constitutional phases. We have, inter alia, embarked some months ago on a process of researching and authoring discussion papers on critical issues relating to the position of local government in the next constitution.

We believe that it is of utmost importance that local government in South Africa adopt a "one voice"-approach to making input into the process, so as to ensure that local government has suitable and adequate status, powers and functions in terms of the next constitution. We are hosting, in co-operation with the Department of Provincial Affairs and Constitutional Development, a national conference and workshop for this purpose in BLOEMFONTEIN ON 3, 4 AND 5 APRIL 1995. We believe that your committee should be represented at the intended conference and workshop.

RE SEBELE TSA  
LE HO  
EMELA  
MMUSO  
WA LEBATOWA

We regret the urgency of this notice which was caused by the timeframes set by the Constitutional Assembly for inputs into the process. We intend to workshop the papers produced by us and other issues in an effort to make available, when delegates leave, a consolidated position paper for local government by local government. We will be employing professional facilitators and appropriate technology to achieve our objectives.

Your committee is hereby cordially invited to delegate **FOUR** of its members to attend the conference and workshop. Your reply has to be received by us not later than 12:00 on 13 March 1995, in order for us to invite someone else should you be unable to attend. Registration and attendance fee amounts to R1 250 (exclusive of VAT) payable in advance accompanied by the attached registration form.

Please note that the actual cost of the conference is heavily sponsored by other institutions so as to make attendance more affordable.

A list of hotel accommodation is attached for your convenience. Please note that you must make your own arrangements in this regard.

Upon receipt of your reply the conference agenda and programme will be forwarded to you.

Yours sincerely

  
**CHRISTO NORTON**  
**DIRECTOR**

## BOTELS

PLEASE NOTE: IT IS YOUR RESPONSIBILITY TO MAKE YOUR OWN RESERVATIONS AT THESE HOTELS

LET WEL: DIT IS U NIE VERANTWOORDELIKHEID OM U PERSOONLIKE VERBLYFBELINGE BY NIERDIE HOTELLE TE TREF

**HOTEL BLOEMFONTEIN \*\*\*\***  
(Middestad)  
Tel: (051) 301911  
Fax: (051) 477102

**CITY LODGE**  
Tel: (051) 479888  
Fax: (051) 475669

**GARDEN COURT HOLIDAY INN**  
Tel: (051) 479310  
Fax: (051) 305678

(Previously the Landdrost Hotel/Voorheen die Landdrost Hotel)

**UNITAS HERBERG**  
Tel: (051) 226874  
Fax: (051) 226874

(Next to Universitas Hospital/Lange Universitas Hospitaal)

**STANVILLE INN**  
Tel: (051) 477471

**DIE HERBERG**  
Tel: (051) 307500  
Fax: (051) 304494

**HYDRO GASTHUIS**  
Tel: (051) 480823\26  
Fax: (051) 475743

**HOTEL CECIL**  
Tel: (051) 481185  
Fax: (051) 308323

**HOLIDAY INN GARDEN COURT NAVAL HILL**  
Tel: (051) 381111  
Fax: (051) 384141

**LALADINE GUEST HOUSE**  
Tel: (051) 489205  
Fax: (051) 489204

**HOTEL CHRISTOPHER'S**  
Tel: (051) 484791

**BLOEMFONTEIN INN \*\***  
Tel: (051) 226284  
Fax: (051) 226223

**HOTEL ROBERTA \*\***  
Tel: (051) 483601  
Fax: (051) 308525

**NALEVY HOUSE**  
Tel: (051) 480271  
Fax: (051) 308749

**CLOUDE NINE (± 13 KM OUT OF TOWN)**  
Tel: (05214 - 2157)

**REYNCKE PARK CHALETS (± 2 KM OFF N1  
± 9KMS FROM TOWN CENTRE) - Tel: (051) - 23606.**

**REGISTRATION FORM**

The Conference Organiser  
P O Box 14  
BLOEMFONTEIN 9300  
FAX: 051-308250

**LOCAL GOVERNMENT BEYOND 2000 : CONFERENCE AND WORKSHOP**

Please register the following delegates for the aforementioned conference and workshop:

**MR/MS**.....

**MR/MS**.....

**ORGANISATION**.....

**ADDRESS**.....

.....

**PHONE** ..... **FAX** .....

Attendance fee of R1 250.00 + VAT = R1 425.00 per delegate, payable to the FREE STATE MUNICIPAL ASSOCIATION, follows by ordinary post. Should we cancel our registration on or before 24 March 1995, R600 will be refunded. Any later cancellation or absence of any or all of our delegates will not be refunded.

.....  
**RESPONSIBLE OFFICER**

.....  
**DESIGNATION**

workshop\invfile Jet





# Potchefstroomse Universiteit

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## vir Christelike Hoër Onderwys

Departement Publiekreg en  
Regsfilosofie  
Privatsak X6001 Potchefstroom 2520  
Tel (0148) 299-1954  
E-pos: prfv@puknet.puk.ac.za

### FAKSIMILEE-DEKBLAD/FACSIMILE COVER SHEET

DATUM/DATE:	1 March 1995
TELEFAKSNO./TELEFAX NO.:	021 4614339
AAN/TO:	Vanessa Calvert
ADRES/ADDRESS:	Secretary, ThemeCommittee 3
BOODSKAP/MESSAGE:	Attached is the final version of our framework document. I have discussed the matter with Prof Davis on the telephone to obtain his views.
	Kind regards,
VAN/FROM:	Francois Venter
AANTAL BLADSYE VERSEND (DEKBLAD INGESLUIT):	
NUMBER OF PAGES SENT (INCLUDING COVER SHEET):	5
SKAKEL ASSEBLIEF ONMIDDELLIK INDIEN BLADSYE ONTBREEK/ONDUIDELIK IS BY:	
PLEASE NOTIFY IMMEDIATELY IF PAGES ARE ILLEGIBLE/NOT RECEIVED AT:	
FAKS NO: (0148) 299-1923	TELEFOON: (0148) 299-1954

**THEME COMMITTEE 3  
FRAMEWORK FOR SUBMISSIONS**

**on national and provincial legislative and executive competencies**

The purpose of this framework is to provide a basis for the framing of submissions to Theme Committee 3 on important aspects of the constitutional distribution of governmental competencies.

In order to provide a comparative basis for discussion, a number of specific questions need to be addressed in submissions and the relevant Constitutional Principles and constitutional provisions must be taken into account.

**Q1. Should the Constitution list only the competencies of government at national level?**

*Implication:* All powers not listed thus will then vest in the provinces.

**Q2. Should the Constitution list only the competencies of government at provincial level?**

*Implication:* All powers not listed thus will then vest in the national government.

**Q3. Should the Constitution list both national and provincial competencies?**

*Implication:* Such an approach may produce greater clarity regarding the exact seat of the listed competencies, but since it would be impossible to list all competencies exhaustively, the seat of the (unlisted) "residuary" powers will inevitably become an issue.

**Q4. Should *exclusive* and *concurrent* powers be listed expressly for each level of government?**

**Q5. Should the Constitution expressly provide for *overriding* powers for the national level of government in certain prescribed instances?**

*Applicable Constitutional Principle:* The requirement of Principle XIX that the powers and functions of the national and provincial governments must include both *exclusive* and *concurrent* powers, implies that the competencies of at least one of the levels of government must be identified in the Constitution, either leaving the competencies of the other level open-ended, or listing such competencies also.

Q6. Should the competencies of the provinces be fixed by the Constitution, or should the Constitution allow for an evolutionary process?

*Considerations:* The present Constitution (inter alia section 126 and Schedule 6) provides for the gradual, evolutionary expansion, in accordance with actual provincial capacity and preference, of the listed functions that provincial governments actually take up. This approach is particularly appropriate for a newly established provincial system, but may be vague at the "edges", potentially leading to frequent intergovernmental constitutional litigation in the event of poor or unsuccessful joint planning or political incompatibility. Except where competencies are allocated exclusively to any specific level of government, regulation of the effects of overlap or concurrency is unavoidable. In order to minimise conflict, the constitutional management of overlap/concurrency should be formulated as tightly as possible. Whether provisions such as section 126(3) and (4) satisfy this requirement, needs to be considered carefully.

Q7. Should the Constitution provide for additional inter-governmental mechanisms to enhance co-ordination and to prevent or mediate possible conflicts regarding the exercise of competencies?

*Comment:* The implications of Constitutional Principle XXIII may have to be considered in this connection.

Q8. Should the fields of (potential) activity of provincial authorities be amended?

*Applicable Principle:* Constitutional Principle XVIII 2 prohibits the provinces' future competencies to be "substantially less than or substantially inferior to" those presently provided for. This does not mean that the various provisions of the present Constitution or Schedule 6 must be retained unamended. As long as the end result is quantitatively and qualitatively similar or superior to the present dispensation. Schedule 6 however does not refer to specific powers and functions, but defines the "functional areas" within which the provinces may operate. The question is whether this list needs refinement and/or extension. This is a consideration which could be particularly important in the light of the answers to questions 2 and 3.

*Comment:* The Theme Committee should solicit evidence regarding this Question from the Commission on Provincial Government, the various provinces (including minority parties in the provincial legislatures) and other interested parties such as the relevant government departments at national level.

**Q9.** How, in broad terms, should the Constitution deal with local government as a consideration in the distribution of competencies between the national and provincial levels of government?

*Note:* The matter of local government should not as such be addressed here, but rather the constitutional mechanisms by means of which the requirements of Constitutional Principle XXIV should be realised.

**Q10.** What should the nature and extent of the provinces' national involvement in matters concerning provincial government be?

*Applicable Principle:* Constitutional Principle XVIII 4 expects the Constitution to provide for the approval, either by provincial legislatures or by a provincially representative second chamber of Parliament, of future constitutional

amendments changing "powers, boundaries, functions or institutions of provinces". Two subquestions therefore emerge:

**Q10(a)** Should there be a second parliamentary chamber representing the provinces, and if so, how should it be composed?

**Q10(b)** What should the voting mechanisms be for deciding questions of this nature, both where a second parliamentary chamber is instituted and alternatively in the event of a unicameral Parliament being established?

**Note:** For the purposes of the present framework, *legislative* competencies should be considered to include *executive* competencies.

*Replies to the above questions will certainly not exhaust the field. It is however suggested that submissions should not at this stage cover ground beyond the narrow scope of these questions, e.g. financial and fiscal matters or the details of local government: rather should as much detail as possible on the matters touched upon by the questions, be provided in order to thrash out specific points of convergence and dispute.*

*The present heading "national and provincial legislative and executive competencies" lies at the heart of the matter and progress in this area will predetermine progress under all the other headings. It is however such a wide theme, that it can best be dealt with accumulatively.*

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**SUGGESTED SUBHEADINGS FOR HEADING 2  
COVERING INTER ALIA**

**Phase 1**

*Allocation of Powers*

*Questions 1,2 & 3*

*Relationship between National &  
Provincial Governments in Relation  
to their Powers*

*Questions 4, 5, 5a and 6*

*Local Government*

*Question 9*

**Phase 2**

*Intergovernmental Relationships*

*Question 7*

*Hold on Questions 8 & 10*

**Note:** *Question 5a to read:*

*What are the mechanisms which should be provided for in the  
Constitution to regulate the relationship between National and  
Provincial Government?*

**Note:** *Where questions ask for an answer of 'Yes' or 'No', the  
following should be added*

**"If so, how/ which?"**