

26/3/2/7



CONSTITUTIONAL ASSEMBLY

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MEMORANDUM

TO: THEME COMMITTEE 3

FROM: EXECUTIVE DIRECTOR

DATE: 30 May 1995

RE: NOTIFICATION OF MATTERS REFERRED

Please note that the following matters hve been referred to Theme Committee 3 for its consideration:

1. The Law Advisors's *Law Advisors' Analytical Survey of Report by TC1 on Block One, 8 March 1995* referred the following matters to Theme Committee 3 for its consideration:

i. **Vertical separation of powers:** The matter was raised as a contentious issue in the survey. The report read:

No. 11 CP XVII, XIX, XX, XXI, XXII, XXIII, XXIV: Separation of Powers: Contentious aspects: Nature and extent of powers and functions at various levels of government. Remarks: This issue falls within TC3's mandate. Powers and functions of judiciary dealt with by TC5.

ii. **Parliament's supremacy as a law-maker:** The matter was raised as a contentious issue. The report read:

No. 12 CP XVIII, XIX, XX, XXI, XXII, XXIII: Parliament's supremacy as law-maker. Contentious aspects: Whether Parliament should in relation to provincial functional areas have

- zero powers
- concurrent powers
- framework powers
- overriding powers

Remarks: Matter closely alied to No. 11 above. Falls within TC3's mandate. TC1 will also deal wtih provincial autonomy in Block Two.

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2. **Executive Control [of the Security apparatus]: Provincial MECs and Provincial Commissioners of Police and Heads of Defense.** on 13 March 1995 the Constitutional Committee discussed the report of Theme Committee 6.4 on Blocks 1 and 2. The *Summary* of the report said (please note the phrases in bold print):

Constitutional Issue: Executive control: Agreement:

1. *The Constitution should provide that the security apparatus are accountable to an appropriate member of the Executive.*
2. *The Constitutional should provide that each arm of the security apparatus is accountable to a member of the Executive at the appropriate level of competence.*
3. *The Constitution should provide that the State President appoint the Chief of the SANDF, the Directors General of the National Intelligence Agency and SA Secret Service and the National Commissioner of the SAPS.*

Contention: National and provincial competencies.

[Needing] Further clarity:

1. **Constitutional provisions relating to powers of Provincial MECs and Provincial Commissioners of Police and Heads of Defence;**
2. *The extent to which the Executive and Parliament interact in confirming the appointments of the Chief of the Defense Force, the Director General of the National Intelligence Agency, SA Secret Service and the National Commissioner of the Police.*

Theme Committee 6.4's report on blocks 1 and 2 was discussed at the 13 March 1995 meeting of the Constitutional Committee and this issue was discussed. The minute of that discussion reads:

"4.5 Regarding point 8 on page 40 on which contention is reported and which reads:

"Executive control."

"It was noted that the point under contention, "national and provincial competencies", would be fleshed out as the work of Theme Committee 3 progresses. It was agreed that Theme Committee 6.4 should synchronise its work in this regard with the work of Theme Committee 3 when it deals with competencies of provinces in their totality. It was also noted that further clarity would emerge from Theme Committee 6.4 when the specific agencies were dealt with."

3. Theme Committee 1 in its report on Block 2 referred the various matters to other Theme Committees, including Theme Committee 3. The *Analytical Survey of Report by Theme Committee 1 in Block 2, 3rd April 1995* reports the following matters:
 - i. **Extent of provincial legislative and executive competence and of national concurrent powers.**

- ii. **Minority participation as a constitutional requirement; and**
- iii. **Traditional Monarchies, the extent of their recognition and protection.**

The *Survey* reads:

No. 2: Constitutional Principles: I, XI, XII, XIV, XVI, XVIII, XIX, XX, XXII, XXXIV. Issue: One sovereign state. Contentious aspects:

1. Extent of provincial legislative and executive competence and of national concurrent powers. Remarks: Wide ranging views of parties. Details to be worked out by Theme Committee Two and Three.

2. Minority Participation as a constitutional requirement. Remarks: CPXIV. Again an issue for Theme Committees Two and Three.

4. Traditional Monarchs, the extent of their recognition and protection. Remarks: An issue which interlinks TCs 1, 2, 3, 4 and 5.