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T3/10 & 11

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 3

**RELATIONSHIP BETWEEN
LEVELS OF GOVERNMENT**

7 February 1995

Room E249

(08H30)

DOCUMENTATION

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CONSTITUTIONAL ASSEMBLY

MEETING OF THEME COMMITTEE 3

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

Date : TUESDAY 7 FEBRUARY 1995

Time : 08H30

Venue : E249

AGENDA

1. Opening
2. Minutes of the meeting held on the 26 January 1995 to be confirmed (Matters arising from these minutes were dealt with at the Theme Committee meeting on the 30 January 1995)
3. Work Programme
4. General
5. Closure

HASSEN EBRAHIM
EXECUTIVE DIRECTOR
CONSTITUTIONAL ASSEMBLY

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**CONSTITUTIONAL ASSEMBLY
MINUTES OF THE MEETING OF
THEME COMMITTEE 3
RELATIONSHIP BETWEEN LEVELS OF GOVERNMENT
WEDNESDAY 1 FEBRUARY 1995 (AT 08H30)**

PRESENT

DC DU TOIT (Chairperson)

Albertyn JT (Alt)	Andrew K
Applegryn MS (Alt)	Bhabha M
Blaas A (Alt)	Carrim YI
Chuenyane LD (Alt)	Coetzee MP
Cronje PC	de Lille P
Du Toit DC	Gordham PJ
Groenewald PJ	Gxowa NB
Khasu MJ (Alt)	King TJ
Koornhof GW	Kota Z
Lamani NE (Alt)	Leeuw SJ (Alt)
Losabe LK (Alt)	Mabude NI (Alt)
Mahlalela AF	Malebo SM (Alt)
Manie MS	Marais G
Maree JW	Mashamba HJ
Mayimele HW (Alt)	Modisenyane LJ
Mongwaketse SJ (Alt)	Peires JB (Alt)
Rabinowitz R	Richards I (Alt)
Seperepere MS	Shandu EEN
Smith PF	Sulliman MA (Alt)
Suttner RS	Verwoerd M
Vilakazi MI	

Apologies

PW Saaiman

Absent

ON Khobe, NN Mapisa-Nqakula

In Attendance

Sandra Haydon and Mbaso Mxenge

1. OPENING

1.1 Point of order - refer Appendix A & B

(Mr Gordhan advised that a list of names of those members who arrived late and their reasons is available for the record)

1.2 The ANC provided a list of those members who had been delayed due to inclement weather conditions compounded by an accident on the N2.

1.3 The meeting was opened at 08H45 and the agenda was adopted.

2. MINUTES OF THE PREVIOUS MEETING

The minutes of the previous meeting were adopted with the following amendments:

- i. The date of the minutes (page 2) to read as Monday 30 January 1995; and
- ii. Para 4.1.ii to be deleted.

3. POLITICAL PARTY ORAL SUBMISSIONS AND DISCUSSION - DAY 1

The ANC, DP, IFP, NP and PAC made oral submissions as per the documents before the Theme Committee.

Questions of clarity:

Q1. Does the ANC believe the entire Constitution is justiciable or just parts of it?

A As part of the checks and balances the Constitution is sovereign but as has been agreed in this Constitution itself it could be changed under particular conditions.

Q2. To IFP - what is meant by autonomy versus an independent state when talking about an autonomous constitution, judiciary, legislative and administrative processes, national government shall have no overrides, encroachment; the Constitutional Court being bound by the Provincial Constitutional Court - does that not amount to an independent state?

A There is a strong distinction between the independence sought and independence. Independence refers to the political unit having a full range of powers and functions that any sovereign state would have which is not being advocated. Central Government should have

exclusive powers on a whole range of issues eg foreign affairs, defence, macro-economic policy etc and powers to determine co-ordinating functions eg post & telecommunications, certain civil issues, criminal issues etc. Autonomy is meant within the context of what the constitution enables the Province to exercise.

Q3. To NP - (1) What is meant by corporate self-determination and (2) provincial loyalty to one sovereign state?

A (1) Corporate self-determination has to do with the ability of minorities in the sense of language, cultural, religious etc (as in Belgium) eg in a city there may be a board representing the cultural rights of for example the Jewish / Afrikaans / Muslim / German speaking people, while at the same time all would be represented in the overall situation where they would make the decisions on parks, services etc. Representation at that level of corporate self-determination would be by choice.

(2) The NP stands for one sovereign state. Decision making abilities should be taken down to the level where it is best done. Eventually there must be a loyalty to every province. as a springboard for the enhancement of the one sovereign state?

Q4. To DP/NP - What is meant by divided society? In South Africa as a whole there are no ethnic majorities while there are in the provinces and where minorities could feel they may be dominated therefore provision should be made for ethnic states rather than provinces.

A DP - Divisions in society are very real and are more than ethnicity - language, race culture, religion, economics, rural, urban etc. In a non-racial, non-sexist, democratic norms people can exercise choice.

NP - It is a question of divisions on all lines and ethnicity would be last one that we would add. The reason for supporting the provincial and local system is that there are so many advantages when decision making is taken down to the lower level of subsidiarity concept. From a political point of view if decisions are taken down to the people there is more accountability. From an administrative point of view it is easier to administer in smaller units. From an economic point of view possibilities created for competition between local governments, between provincial governments which is a very healthy concept. It is easier to control and more accountable.

IFP - If the buck stops with the provincial system and the provincial government is allowed to impose its will on all levels of society then there may be the same problem at provincial as we worry about at national level. We support the principle of subsidiarity all the way down but then there must be the balance of pluralism with efficiency. There would be a degree of devolution, better accountability and also subsidiarity which goes all the way down.

ANC - Religious, cultural and language diversity cannot be addressed through a so-called federal system. Other mechanisms are required,

both within the constitution in the form of rights, and outside of the constitution in the form of social organisations, in order to allow for people to address their specific concerns. The current provincial system is beginning to address the geographic, economic and socio-economic diversity in our society. A dynamic relationship is required between central government, provincial government and local government allowing for sensitisation to the level below while allowing for some levels of uniformity and common national standards in order that there can be uniform development in the country. Local government structures need to be the strongest structures where people can experience democracy and influence it in some way.

IFP - Provinces themselves can become monolithic and a system of internal regionalisation within the provinces based on the principle of subsidiarity. National government would have a set of exclusive powers, as would the internal regions which would include elements of local government and the state legislature itself would be left with the residual powers.

Q5. To IFP - What is basis of the statement of kwaZulu-Natal's distinct political identity?

A The province wishes to maintain a relationship with the rest of SA as an autonomous unit within a federal SA. The expressed reasons is because it links up with the principle of asymmetry, in effect say that we are looking for a solution for allowing a special relationship between that province and a country which is different to the rest.

Q6. To IFP - Is the starting point one of looking at the different levels of government, at the relationship between the various levels, deciding on the powers of functions and the form of state? Does the IFP say that kwaZulu Natal does not need the money in equalisation?

A By allowing a degree of raising taxes within the province it encourages incentive and then there is a redistribution pool, an equalisation pool which is the job of the financial and fiscal commission to take care of.

Q7. To all parties - What is the view on the role of the Senate?

A IFP - Current Senate is without power to check legislation. To do so it would need to be structured differently. Every province should be equally represented from each province in order to act as a check on the majority of the country by the people of each particular province. The Senators should represent the province and not the political parties the senators being elected by the provincial legislature.

DP - Refer to the submission.

NP - Must be directly responsible for managing provincial interest. The functions of the present senate can serve as a basis for the functions of the new second chamber. There must be a direct link

between the membership of the senate and provincial interests. Senators should be directly elected. It should be a co-ordinator and protector of inter-governmental relations.

ANC - Require a second chamber. Need to take into account the fact that there are strong political party systems in a democracy it does constrain the extent to which provincial interests can impact at a national level.

5. GENERAL

- 5.1 The committee appointed to prepare for the workshop reported that the workshop will be held on the 8 February from 10H00 to 1600. there will be two speakers, one representing a broadly regional unitary side and one the more federal side. The ANC has nominated Mr Richard Humphries to present the former. The other speaker representing the other parties is yet to be appointed.

It was agreed that the structure of the workshop would be to deal with very fundamental issues in an educative manner on which we could build with further workshops:

- * Presentation of models (what fundamentally is a unitary system vs a regional system vs a federal system); a half hour input by both speakers followed by a half hour discussion

- * The bulk of the day would be spent on concepts eg subsidiarity, asymmetry, concurrency, exclusivity, residual powers, fiscal relations, autonomy, agency delegation, framework, devolution, derogation, national unity, complexity, cost etc

- * Relate the concepts to the models

- * The secretariat will circulate the list of concepts to all parties

- 5.2 The letter from the Executive Director which has been sent to each of the parties, regarding the Work Programme and the Public Participation programme, was read to the meeting. The Theme Committee should report back to the Directorate by 3 February 1995.
- 5.3 The core Group will meet to decide on the best way to handle submissions from organisations and individuals.

6. CLOSURE

The meeting closed at 12H30.

**CONSTITUTIONAL ASSEMBLY
MINUTES OF THE MEETING OF
THEME COMMITTEE 3
RELATIONSHIP BETWEEN LEVELS OF GOVERNMENT
THURSDAY 2 FEBRUARY 1995 (AT 14H00)**

PRESENT

DC DU TOIT (Chairperson)

Albertyn JT (Alt)
Blaas A (Alt)
Chuenyane LD (Alt)
de Lille P
Gxowa NB
Kota Z
Mahlalela AF
Manie MS
Maree JW
Mayimele HW (Alt)
Rabinowitz R
Shandu EEN
Suttner R

Bhabha M
Carrim YI
Coetzee MP
Du Toit DC
Khasu MJ (Alt)
Lamani NE (Alt)
Malebo SM (Alt)
Mapisa-Nqakula NN
Mashamba HJ
Peters ED (Alt)
Richards I (Alt)
Smith PF

Apologies

MS Applegryn, TJ King, GW Koornhof, LJ Modisenyane, PW Saaiman, M Verwoerd and MI Vilakazi

Absent

Members attending: Agriculture Workshop / Standing Committee on Finance / Truth Commission

In Attendance

Sandra Haydon and Mbasa Mxenge

1. OPENING

- 1.1 Prof Du Toit opened the meeting at 14H10 and the Agenda was adopted.
- 1.2 The members agreed to continue with the meeting though many members were obliged to be elsewhere.
- 1.3 Mr Maree advised that he may be unable to attend some Theme Committee meetings if they clashed with the Truth Commission debate.

3. PRESENTATIONS FROM POLITICAL PARTIES - DAY 2

The Political parties spoke to their submissions. The ANC made further oral submissions in addition to their written submission.

QUESTIONS OF CLARITY

Note: this is not a verbatim record of the discussions.

- Q1. To IFP - What is meant by maximum cultural pluralism which I understood to be different from the key objective of building the SA nation, particularly with regard to local government?
A National unit is an important issue but we look at unit through diversity. The principle is one of non-racism, non-sexism etc in a truly democratic SA, but we are saying that it is left to the local communities to decide for themselves how they want to structure their affairs.
- Q2. To IFP - The reality on the ground is that our communities are deeply divided and if that type of autonomy is allowed will that not allow a perpetuation of the racial division given the way the people live now?
A It is a question of boundaries. ...Everywhere except for small enclaves of 'old white SA', there is a black majority, the provincial governments are democratically elected and people must determine their own boundaries. It must not be decided by the National Government.
- Q3. To IFP - Why does cultural pluralism have to be institutionalised in local government structures? Why can't we have totally non-racial, open local government structures and allow for expression of cultural diversity in non-institutionalised, non-governmental ways?
A The way you have expressed it is the way it would be. It is not institutionalising, rather saying allow people to do what they want.

Nothing in it to say that racialism will be perpetuated.

Q4. To IFP - A3 of submission - because it is in the document it appears to imply that local government structures must give expression to cultural pluralism. Why else is it there?

A Classic example would be urban / rural - there needs to be special provision in rural local government particularly within the traditional communities - that would be an expression of cultural pluralism. We are referring to generalities.

Note Corporate self-determination concept is being used on the local government level by a party(s) and should be debated at a later date.

Q5. To ANC - to elaborate on the reference to power sharing on a local level?

A Refers particularly to those regions where there is (eg WC & Natal in particular), unequal balance in terms of political parties. When it comes to the formulation of the LG structures it is important that there is not a situation of winner takes all. But all political parties are taking part and into cognisance, so that the structures are inclusive and so the power is being shared, so that we ensure stability and legitimacy of the structures on the ground.

Q6. To IFP - Constitutional Principle 24 - does that address the question of constitutional autonomy for local government?

A No necessary link between the principle and autonomy but what the principle does say is the National Constitution should only set out a framework for those powers and functions. Our position is that we would like to provide a high degree of autonomy for LG. We do not believe that it is the function of the national Constitution to prescribe how a LG should be structured.

Q7. To ANC - re power-sharing - does that refer in essence to a kind of government of national unity which we have at a national level now being brought down to LG level on a permanent basis?

A For all intents and purposes it is important to ensure that that kind of situation continues so that at the end of the day we have people participating at all costs in governing their lives.

A Elaboration - It is certainly the position that the spirit in which we have entered the current phase that we are in because what is at national level we are try to ensure that it operates at provincial and with the new situation, also at local level. But in the new constitution the concept of power-sharing at the various levels is something that we have not reached finality on. It is being debated whereas I think it is the which was stated very clearly by the NP that they would see that the position of power-sharing be continued at the various levels in proportional representation being continued in the executives as

well as the legislatures. For LG, for the interim transitional period we would see that power-sharing continues.

Q8. NP to - Clarity requested re submissions heard just now - that was presented by the parties, not by the individual members?

A It was pointed out that it is a member of a party talking. It is very difficult to say that these are our final and ultimate positions, then we are going to have no discussion at all.

A Thabo Mbeki made it very clear in the CA last week that in the long term there is no way we are negotiating for a power-sharing situation.

Q8. To ANC - What is meant by boundaries in the terms of LG?

A Referring to earlier comment regarding cross-subsidisation - there would be areas that would need some resources and we need to ensure that we are sharing the resources of the country. Referring to the boundaries - our country at the moment is balkanised in terms of racial lines from area to area, and if we are saying we want to do away with racism and apartheid structures, the LG (structures) should be ensuring that we are moving away from those boundaries ... that people are free to move to areas of their choice.

A Cross-subsidisation refers the disparities that exist in the country eg the rural areas in relation to the urban areas whereby the rural areas are serviced by urban businesses thus creating jobs for those in the urban areas but leaving rural people in the lurch. Assistance must be given to the people in the rural areas. The RDP will have to look at the mechanics of assisting these people.

Q9. To ANC - Clarification to the comment that (1) chiefs should be ex-officio and they shouldn't have rights to vote? Because that would be taking the power from the people especially from the rural areas; (2) The by-laws being restricted, meaning that the power would be taken from the people, that they shouldn't make the by-laws which they think are going to rule their lives properly?

A (1) Traditional leaders - when we refer to government it is more a struggle for political power for political decisions and traditional leaders are not supposed to be political. They are there to oversee their communities day-to-day living. In a constitution they should become ex-officio to direct and advise the local councillors. There would also be a representative from the political organisation who is supposed to vote for Traditional leaders are there for customary laws - not for politics.

(2) Bylaws - in the past when previous councillors were questioned as to where a law existed as to increasing tax, rates, electricity specifically with the poor people, then they said "No, that is the law". Councillors can make by-laws but in conjunction with the decision of the people and especially the poorest of the poor.

Q10. To IFP - we would like to hear at an appropriate time, how they

reconcile their commitment on the one hand to non-racial, non-sexism and democracy and on the other hand believe that there should not be elections in the rural areas of kwaZulu-Natal in particular.

Some members were of the opinion that there should be a verbatim record of Theme Committee meetings. It was explained that the CA does not have the facilities available to Hansard and transcripts would run into many pages. The matter was referred to the Core Group for discussion.

4. WORKSHOP REPORT-BACK

The draft programme for the workshop was read to the committee for their comments and approval. The members were advised that venue is the Old Assembly. The Secretariat was asked that the committee be notified 2 days before the workshop.

5. GENERAL

Core Group members or alternates were asked to meet briefly after the closure of the Theme Committee meeting.

6. CLOSURE

The meeting closed at 16H15.

APPENDIX A

TRANSCRIPT OF THE DISCUSSION WHICH TOOK PLACE AT THE START OF THE MEETING OF THEME COMMITTEE 3 WHICH BEGAN AT 08H45 ON 1 FEBRUARY 1995 (E249)

1. OPENING

Point of order - Mr Maree NP

I would like to record sir, that the National Party contingent was here since 08H30, we were ready to start, but I don't think the meeting is ready to start because there are very very few people in this venue at this moment. I think there are five ANC's and yourself sir. And a few others. Now I suggest sir that either the time schedule should be changed, alternatively if there are not sufficient people at the beginning of the meeting or when a meeting is scheduled to start, the meeting should be called off. In view of the fact that we are very very few in number at the moment I suggest that we adjourn. Now.

Chairperson

I do take number 1, that you have recorded the view of the National Party that has been recorded, we take note of that. Number 2, I think your point of order also raises two possible proposals, summations - 1 that there is a later time being discussed, I think 09H00 or something else that will perhaps mean and the other one is that is perhaps if the meeting doesn't start on time at 08H30 as scheduled like this. you say that then the meeting adjourn immediately, without sitting. Could we have those are substantial-did I understand you correctly?

Mr Maree

Yes sir, but, and I also after having discussed that suggest we adjourn this meeting now because it doesn't serve a purpose. To have a discussion, to go into the documents for the benefit of people who aren't here. Because it would be of no benefit to us because we understand the document. I thought that these discussions would be, were intended, for those members who are not perhaps not as well informed as others, but I think that they are the people that are not here. So for what reason will we go on if we can't have a beneficial nett effect at the end of the day?

Chairperson

Mr Pravin (Gordhan) and then Mr Louw and then Mr Marnie.

Mr Pravin Gordhan

Chair, I take strong exception to Mr Maree's last comments. He might have a fair point to make about time attendance etc, but late-coming isn't the prerogative or the name of just one party and I think he knows that as well as everybody else. But the latter comments are really offensive. The

purpose of these discussions is not to suit so-called ignorant people on one side. And we take great offence at this allusion that we are the ignoramuses in this chamber. If that's the case lets cancel the meeting for the next two days chair. And when we are ready to have proper substantial respectful dignified discussions we can actually do that. I would now request Mr Maree apologise and withdraws his comments.

Chairperson

Mr Maree before I make a ruling could consider the request?

Mr Maree

Mr Chairman, my point is this that this meeting was called to assist people..

Chairperson

Mr Maree, could I interrupt you please? I just would like to hear you on the request..

Mr Maree

I'm dealing with these requests.

Chairperson

Yes please.

Mr Maree

The point that I made was, that this meeting was called to assist people who perhaps haven't got the background to understand the issues fully. The point that I'd like to make is, that there are so few people here that to address the issues in the absence of the large majority of the

Mr Gordhan

Point of order

The point he made was that those who will benefit from this discussion are not here. The second thing is a factual incorrectness in what Mr Maree says. The purpose of this meeting is not to help those who don't have knowledge and we can be sure that people on the other side of this chamber also lack in knowledge of that sort of thing.

Chairperson

Mr Gordhan. Make a point of order

Mr Gordhan

My point of order chair, is that the purpose of this meeting was to enable us as members of different parties to interact with each other on our respective views and try to reach some kind of understanding of where we stand not necessarily agree with each other. And Mr Maree's comments are beginning to defeat that purpose.

Chairperson

Before I give the other speakers, I must finish this off first. Mr Maree, if I understand correctly you are not retracting on the comments you made - could you just answer me - are you being misunderstood by Mr Gordhan or not?

Mr Maree

Sir, I don't think there is any doubt what I intend to say. I said that the majority of people are not here. To address issues without them being here doesn't serve a purpose. And that is the main thrust of my argument.

Chairperson

I hear your argument but Mr Gordhan understood you that you were reflecting on the ability of the party on my right hand side. Could you answer that?

Mr Maree

No. I was referring to people who are not here, and who won't have the benefit of understanding or following the situation.

Mr Manie

Point of order.

Mr Chairperson, I think its all of us who are in the house or those of us who heard what Mr Maree said, were quite clear on what was said. It's not necessary for him to explain to us again what his intentions were. But he conveyed a completely different impression to us. And that is, that people who are sitting on this side of the room are more in need of the information that's going to be dealt with there and it implies that we are ignorant and that we, in fact are taking strong exception that and without any further ado we want a clear, unambiguous understanding that Mr Maree is either withdrawing or it needs to be recorded as such. But we don't want a lengthy explanation as to what he implied or not implied because it was quite obvious.

Chairperson

Mr Maree, I am unfortunately also of the opinion that you don't answer the question directly. I am now, from the chair I would like to ask you to withdraw that implication which may have..

Mr Maree

Sir, if I was mis-understood to say that people who are not here are ignoramuses, then I withdraw that unconditionally. But the point that I would like to make is, that if the large bulk of people that could benefit out of this discussion is not here then we should adjourn.

Chairperson

Could I ... as that was raised by Mr Gordhan, Mr Gordhan is that retraction acceptable to you?

Mr Gordhan

Accepted. Chair, it wasn't an implication it was a statement firstly, secondly, can I request that we have a transcript if that is available of those comments that Mr Maree made. But for now we accept his withdrawal. Thank you.

Chairperson

Thankyou for that. Could I just follow up - have we got the original comments readily available?

Minute Secretary

I don't have it word for word but it is being recorded and I can get that for you should you so request.

Chairperson

Could we then report at the next meeting? Will that be accepted? I thank you gentlemen for your patience with each other. But could I from the chair, I want to express my extreme dissatisfaction if we go on in this style. We have got in front of us, regarding this provincial system the core of perhaps the most important part to my mind of the future of our country. And then we should argue with respect to each other. It is simply not true that either side can tell the other side that they are ignorarmi.

APPENDIX B

STATEMENT BY DR KING (made later during the meeting)

'Mr Maree's reference at the beginning of this meeting regarding the abilities of fellow members is a personal one and not one coming from the National Party.

The National Party has the highest regard for the talents and abilities of all members of this Theme Committee. We also plead for greater accommodation amongst ourselves and a commitment to getting down to the work before us. Please let's work in a spirit of reconciliation.'