

# **CONSTITUTIONAL ASSEMBLY**

**THEME COMMITTEE 3**

**12 JUNE 1995**

**CORE GROUP MEETING:**

**VENUE: ROOM E 249**

CHAIRPERSON:

Good Morning. You must drop these ANC manners. Please lady. 'Jy moet dit reg kry'. Now, Honourable members - you see, you can always trust Technocrats. They are always there on time and available and willing and hearty word of welcome to our full panel of experts. Welcome members.

You have the correctly made Agenda of the Core Group before you. And now I open it. Point 1. Where did you put my minutes in this one? The minutes is in the TC 3 /23 if I have it correct. Let me try again. I have got a lot of pink papers. Give me another one. Oh, its in CG 3 /27. That is your minutes which I now hold before you. Okay, and on the first page of these minutes - it is the one of the 29th May, you'll see all the technical matters. A lot of people were absent and 2nd page.

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Matters arising. 3.1, Documentation relating to income accruing to the State. That thing of Doctor Alant, we have received it - the papers - I have seen it at least, and we can consider that done. 3.2, The relationship between the ad hoc committee and technical advisors. I will just put the minutes

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to you. 3.3, The non-visit by Professor (inaudible)... 3.4, input by Commission for Provincial Government. A lot of long very beautifully phrased decisions there - goes over to page 4. And then on page 5, something about Public Hearings. 4, General. Financial and fiscal relations. 4.2, our constitutional public hearing which Mr Kota would I have attended.

Now firstly the correctness of these minutes. Don't tell the Technical advisors about the place where that decision against them has been taken. Is it correct Mr Andrew? Dr King? Correct?

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UNKNOWN: (inaudible)...

CHAIRPERSON: No, ask for a copy, they are floating around the whole place here. It is the decision we took against your behaviour.

UNKNOWN: It is raving.

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CHAIRPERSON: Do you accept it, Okay. You think it is okay. I also seem to recollect ... Can we move on? Accepted. It is an order.

UNKNOWN: (inaudible)...

CHAIRPERSON: He was reflecting on the quality of the debate. Okay, now we come to point 3 on our Agenda. Matters arising. Would you want to put anything.

MR ANDREW: There is one matter.

CHAIRPERSON: Yes, Sir.

MR ANDREW: I would just like it documented that the - I think this question of income accruing to the State. The document we got. I think it is probably an insult to this committee. I think it is totally inadequate and I don't believe that there is a great more detail available to the Department of State Expenditure and to the Department of Finance in general, than that was provided to us.

And I think it just means that when we have to do - what we have to - this week, do our submission of financial and fiscal matters, we are actually - I mean I have a lot of other incidental information. I mean just the budget that you get.

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I mean the annual budget that we all get the documents has got more information in many respects, than that document.

And I think it was an insulting submission that we got Mr Kruger. I actually think it was just a kind of - ag, you people are wasting our time.

CHAIRPERSON: Nice to put in the minutes, Mr Andrew, please.

MR ANDREW: Well, I think that we should record the information that was supplied to us by - I am not sure whether it was the Department of Finance or Department of State Expenditure. But anyway, it was totally inadequate for the purposes of the Theme Committee.

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UNKNOWN: Can I just ask a question? I don't know about my Colleagues. I have not seen that information that Mr Andrew is referring to. I am not at all suggesting you are wrong, in the nature of interpretation of that.

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MR ANDREW: It is a sheet of about 9 - it is one little thing, that long - with about 9 figures.

UNKNOWN:

Because the reason I ask is. What is really annoying me and it annoyed me at the workshop last Monday. I was hoping that the financial and fiscal commission was going to give us information. I think it is absolutely vital for parties to have adequate information on these matters if you are going to fulfil these obligations regarding the framework for FFC type - submissions.

If I could just add to that, Mr Chairperson. I am absolute convinced in my own mind that - about a year ago, slightly more than a year ago, I attended a presentation by the Department of Finance and the Department of State Expenditure.

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CHAIRPERSON:

I was at that one myself. In the Development Bank?

PROF DAVIS:

That was one, but there was another one given to a group of us advising the TEC and I remember - I am desperately trying to search in my handwritten notes, because I remember taking down the slides which they have put up which indicated exactly how much was collected in each province and you had a real indication.

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At least for the 4 Provinces, but I think they extrapolated from that. I would have thought that that information was very very important. In relation to the critical debates that we have been having even relating to matters such as what power Provinces have to have because you cannot make decisions as to what powers Provinces should have unless you have got some fiscal knowledge.

Now, if it is only 9 - little thing - column that Mr Andrew is referring to, that's disgraceful.

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CHAIRPERSON:

It is a disgrace. I attended - apparently the other - one also with the slides and it was actually presented by the Department of Public Expenditure. Am I correct?

PROF DAVIS:

Could I then ask? I don't know how this is done. I mean I have no influence. You ladies and gentlemen might well have. How on earth do we get that sort of documentation for members here.

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CHAIRPERSON:

(inaudible)... Let's be practical here, I think we have put it down and I completely agree with you.

MR ANDREW:

Yes, to be practical from my point of view it's now it is too late. I have to do that thing tonight or tomorrow, if I am going to have it, because I am going to circulate it to my party and it all has to be in on Thursday or the weekend.

So, it is actually now too late. So what I am going to do is just do a whole lot of thumb suck. I don't know how much we collect in VAT and so on and I don't know how much it is in each Province and so on. The kinds of things I was wanting out of that was, for example. What is the relationship between - I mean one of the things one could have as a local authority tax is property - you know transfer duty.

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Now you can actually pick that up from the - one of the documents we get at the budget, it actually shows that. Now what I want to know is what is the relationship between that and the total amount collected by local authorities in rates?

Is it a significant amount? Is it going to make some kind of difference. And say, is this will really help to make Local authorities more viable, etcetera.

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So from my point of view at this stage. I think later on and - Professor Davis makes a very valid point that the finances you provide obviously bear relation to the functions you allocate. You know if there is an element of a backward forward relationship. You first have to agree which functions are going to be the responsibility of a particular level of Government having done that - you say, right if they are going to have that responsibility, they need to have that amount of income.

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And, therefore, those taxes will be appropriate or else they should be entitled to one-third or two thirds or three quarters or all of that, or whatever, however his arithmetic works out.

CHAIRPERSON:

I think the only thing we can do at this stage and I think that is how we should view these submissions in general is that we make what one could highly provisional submissions.

MR ANDREW:

Ja, I don't think we have any alternative.

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CHAIRPERSON:

We, can also run into trouble. I can just as well tell it to you. The Political - decisions that is sometimes difficult these chaps who are trying to run the Government to get those decisions. We could not get a final decision on Inter Governmental Affairs. 'Moenie lag nie. Dis 'n ernstige saak hierdie. Dis baie moeilik'. It is very difficult this thing and I have talked it over with some of our chaps and we decided that we can only make provisional- when it comes up on the Constitutional Court, we must feel free to completely retract a submission and put another one or change our position.

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MR ANDREW:

I think that is the essence of negotiations. I mean some things are principles and goes to the heart of what you believe in. Other things are saying what is going to work best. I have no compulsion on certain issues - I say look I've heard something more and I've changed my mind. I think that is a better idea than the one we had.

CHAIRPERSON:

You can just go and knock on the next door and ask Tony Leon and three other chaps and you will get an Agreement. We have to go to beyond four hundred people to get something agreed. I am just going around to...

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MR ANDREW: Ja, except, I think you will find that some their IQ's in the DP probably (inaudible)...

CHAIRPERSON: That is a racist observation. I am strongly objected to it and will get you thrown out here. Could I say ...

MR ANDREW: I've got nothing against Afrikaners.

CHAIRPERSON: Oh, I'm sorry. We can take it. Listen, Andrew this is what you wanted, now sit down and stay silent.

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MR ANDREW: Just the one sentence. I don't think there is any point in making a meal of it, but I do think we should record that if a matter arises from here. That what in fact was supplied was in fact totally inadequate or wholly inadequate for what we require.

CHAIRPERSON: I think that has been noted down in a decent way. You've got it Sandra.

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HAYDON: Could I just clarify. Do we want it also noted that the submission would be a provisional submission with the right to withdraw and resubmit.

MR ANDREW: I think it applies to all our submissions. People should also put it as a footnote in their submissions. I don't think ...

UNKNOWN: Chairman, I have a bit of a problem with that.

CHAIRPERSON: You have a problem?

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UNKNOWN: Yes, I understand fully that we are in a negotiating process and, therefore, when get to the table where we finally negotiate. Obviously, we are going to have different points of view and we have to meet one another and one will listen to other people's submissions and obviously be influenced in it or by it and perhaps change your position regarding a specific thing.

But if we are just talk and put in submission and withdraw and put in submission then it is all a bloody waste of time. What are we doing now. It is a complete waste of time to

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simply say, you can simply withdraw a submission and put in another one. If that is what is going to record, I have a serious problem with all the time I have wasted.

CHAIRPERSON: We note your serious problem. But I think you must also know this. We cannot write anything. We are writing a Constitution. If you want to say that now we are taking our final positions.

UNKNOWN: No one is talking about final positions.

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CHAIRPERSON: Now, what is your problem.

UNKNOWN: I am saying, you said - this is a submission 'dit is n' voorloopige submissie hierdie ons kan dit onttrek en ander in gooi'.

CHAIRPERSON: Dit gaan oor die ontwikkeling van n' koers my mens.

UNKNOWN: We are starting with something and from here obviously you are going to change positions from it, but you are not going to withdraw and put in a new submission -.

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CHAIRPERSON: Okay, we will change our position, we will not withdraw.

UNKNOWN: It shouldn't be a general principle because then we will be wasting a hell of a lot of time.

CHAIRPERSON: No, we are not wasting a hell of a lot of time. I think we are growing. Way forward please! Mr Andrew shall we stick this understanding we have at the moment.

MR ANDREW: I don't think you have to minute it. I don't think the Core Group needs to determine what people's submissions are.

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Parties put in what parties want to put in. If they wish to attach a particular status to say they are putting in then they can say they wish to do so.

CHAIRPERSON: I am sure parties are the masters of their own papers. 'Ons is baas van ons eie papiere'.

UNKNOWN: 'Ons moet nie 'n algemene '...

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CHAIRPERSON: 'Nee, sal baie versigtig wees. Ons sal'...



MR ANDREW: Progress or whatever ...

CHAIRPERSON: Okay, I think that point has now been settled. Any other matters arising from the minutes. That's the one on financial and fiscal relations. But the only thing which bothers me at this stage is - Okay. We will put in the financial and fiscal things, but we still need that information and to get it. Now, who should we request through the Administration to deliver something like that for us?

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MR ANDREW: My view is that I think, Dr Calitz - the Director General of Finance should be mandated and certainly should be requested. I don't know how you make mandates to request him. But I certainly think that they have information available. There is no question and he should be asked for that information. They have made presentations before and the Department of State Expenditure - I forgotten the man's name there.

UNKNOWN: Hannes Smith

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MR ANDREW: Hannes Smith - that's the chap. I definitely have it, because a year ago they made the Development Bank - they replicated that so I would say that it is through those two Gentlemen.

CHAIRPERSON: We will make a request for a quick input in this regard.

MR ANDREW: Ja, ja, absolutely.

CHAIRPERSON: Even if they do it by publication. We don't intend to make a big workshop. You do'nt intend that ... 10

MR ANDREW: I didn't intend a workshop at all. I thought they would give us the documentation, but they cannot do that because they do not have any published and they could bring somebody here for half an hour and put the stuff on the board for us.

CHAIRPERSON: Right.

UNKNOWN: To help the administration clarify the following: The detail, how much detail will do one from them and two - if we invite them. Could we have tentative dates set? 20



MR ANDREW: I think, Mr Chairman, if I may ...

CHAIRPERSON: Shouldn't we put this in writing ...

MR ANDREW: I don't want it in writing. All we want is for them to give us a breakdown, in fact we have recorded it in previous minutes. We want all elements of income of all levels of Government broken down into Provinces wherever possible, so we want to know - VAT brings in R 42 billion a year and their estimate is that X amount comes from Natal - x amount from North West, etcetera, etcetera. And so you go through certainly all the major taxes - I mean I ...

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CHAIRPERSON: Yes, thank you. I think we know what you want. Shouldn't we put Professor Davis in charge of those aspects. Request him friendly to do that and Mr Mxenge will do the ...

MR ANDREW: Well, I will get Mr Mxenge to do the necessary. I always generally deal with him what - give him a letter or have him simply set out what we want. He will do the necessary. I do think it is DG finance and State expenditure and they

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have got that information. We don't want a Workshop, we want the proper details.

CHAIRPERSON: Impossible, they can fax something at 4.00 this afternoon.

MR ANDREW: Another thing that would be helpful. That is the Revenue side. There is one thing we don't have the easiest access to and that is the combined, not bi-local authority or even bi-province or even but the combined expenditure of local authorities. In other words - you see the total budget, but that includes electricity provision for which they have user charges to cover their costs, etcetera. What the rates actually cover ...

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CHAIRPERSON: Deliver.

MR ANDREW: Ja, ja I am sure that they must have it. I mean ...

CHAIRPERSON: Thank you. Okay it is settled. Thank you very much. Lets move on. The next point on our Agenda. Are all the matters arising finished? Nothing more? Thank you. Oh,

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there is something. First of all from Mr Mxenge and then the Professor.

MR MXENGE: One matter. The letter to be written to Doctor Lezard. The letter was not drafted, so we don't have a letter sent to him - you know, stating the - the disappointment with the -

MR ANDREW: With the South African National Republican Institute. I think we should ask the Chair just to do the administration. Just a short 2 paragraph letter expressing our disappointment. 10

CHAIRPERSON: We should continue with it. We will decide about that.

MR ANDREW: I don't mind. I think you felt very strongly -.

CHAIRPERSON: I felt very strongly. Mr Mxenge - could we finish that off. It will be very diplomatic, hopefully. Mr Mxenge, I need a draft and I will do the editing. Any other matters arising from. Professor Basson. 20

PROF BASSON: Thank you Chair. I don't know whether this falls under matters arising, but is in connection with my - liaison with Mr Andrew Borraigne. I just want to report back that Mr Borraigne said that he also felt the same way as the Core Group felt.

That as far as the submissions of local government are concerned, the Ad Hoc Committee will deal with those and make summaries and that the Technical Advisors will then take it further and put it into block form.

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CHAIRPERSON: And it will work. Thank you. Anything else?

MR MXENGE: In the last Core Group, the Core group referred to the matter of Public Hearing and Local Government and it was resolved that this meeting will decide as to the date or the practicality of having a Public Hearing on Local Government. From the administration - the administration is through with the Public Hearings that it was engaged with, and so it might be in a position to entertain a Hearing, but not at a light scale. Because we have furniture constraints that we need to consider.

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But we can entertain a Public Hearing. What I think we need to look into is whether we are having it and the dates we may have the Public Hearing. Thank you Chairperson.

CHAIRPERSON:

Thank you. Any discussion?

MR ANDREW:

I would suggest that in this regard, that our Local Government submissions are supposed to be in already and we have received quite a lot of written things from the Transvaal, Free State, certain things on Local Government.

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I think it would be pointless at this stage to rush into a general workshop, as I understand that the intention is, in the not to distant future, to probably in August, that some kind of first draft of the Constitution, even with alternatives and blanks in it, is going to be attempted to be produced and it would seem to be more appropriate at that stage, once one has actually got something and it is sent out for comment and discussion to possibly having some kind of hearing, workshop, whatever, with local government people in say having got this far because we have had quite a lot of their

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opinions. Right, do you actually want to comment on what is now being suggested.

CHAIRPERSON: Thank you, Mr Andrew. I think there will be general agreement on that direction. We are just awaiting direction from Constitutional Committee. Mr Carrim.

MR CARRIM: Comrade Chair, I would agree that the situation being what it is that might be the best option. But in the meanwhile can we write to the TMA - to request a meeting that look this will occur in August and anyone else who is requested to, you know, to come personally here to make representations on Local Government - to inform them that it will happen, but in August.

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CHAIRPERSON: Agreed? I don't like those people very much, but I will listen to them. I thank you Comrade. Anything else? Dr King.

DR KING: Mr Chairman, I thought that we have already sent them a letter. I hope we have, in which we replied in receipt of their document. Did we do that. Thank you.

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MR CARRIM: No, we did send them a letter acknowledging the receipt of the invitations.

CHAIRPERSON: Now, this is a follow up we are talking about. It will be in the minutes. Thank you. It is done.

UNKNOWN: Just a note there. Any submissions which come in no matter what must be formally acknowledged.

CHAIRPERSON: All submissions that are being receipt of the CA Administration is in any event acknowledged, but I think Mr Carrim intends something else here and we must just get that down. Could I just ask that, in the drafting of the letter. Will you clear it with Mr Carrim, please? 10

UNKNOWN: Just tell them that the hearings is pending, and that they will be invited. It is not just a formal acknowledgement of receipt.

MR MXENGE: Still on the Local Government. There was a letter circulated from the Department of Provincial Affairs and Constitutional Development. The Minister was suggesting the date of 20

Monday the 19th June as the date he will be available to address the Theme Committee, but unfortunately, but I am not sure of the correctness of this.

It seems as if the 19th June, to me, is a Parliamentary day. Instead of a CA day, so I think, do we advise the Minister accordingly that we could meet with him, but unfortunately, this clash. I believe the whole of next week there is going to be a Parliamentary Session. We are not going to have our sessions as a Theme Committee. I still need to confirm this, but ...

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CHAIRPERSON: Could we have opinions on this please?

MR ANDREW: I think the same applies here. It is pointless. If we all have to have our submissions in this week, what's the point of coming and hearing them on Monday. It is a waste of their time and it is a waste of our time.

Lets wait until we are further down the process and we are kind of trying to hone things better. But to hear now something which we may discuss in August or September.

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There is no particular point.

CHAIRPERSON: So we will take note of the valuable information, unsettling information of Mr Mxenge. Thank you very much. Can we get to the next point on our Agenda?

It is point 4. My copy of the - and we must from here thank the CBG for getting these documents out. I think under a lot of pressure. We are just this morning received your submission on inter-governmental relations or arrangements, I should put it. None of us here could have studied it in the meantime.

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UNKNOWN: (inaudible)... 1st of June.

CHAIRPERSON: 1st June. No, no this has been received this morning in the post. You are talking the same thing as me.

UNKNOWN: Volume 16.

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CHAIRPERSON: Volume 16 stands from the outside. It has only been this morning in our pigeon holes. Now the point is that this is

one of the main tasks which the CPG had to fulfil in terms of the Constitution. Now they have done it. I think we must, in our parties give careful attention to this. It is very detailed.

That's it. That is the Report. We have to study it now. The only thing which I would say. Our - what do you call it - our submission on inter-governmental relations needs political -'goedkeuring' - 'goedkeuring' - approval to legitimacy and that type of thing. It is difficult because it is different places. We would also like to take this into account.

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Have the other parties - do they also want to take this into account before they finally submit this week ...

UNKNOWN:

We were all told to submit last Friday, in fact last Wednesday.

CHAIRPERSON:

Okay. The Reports are on the table of the CPG. Any further discussion? None? Thank you. Point 5 of the Agenda is draft text. I am not sure that this is about. Does

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it mean the draft text the CA is to prepare - or the draft text from our Technical Advisors.

MR MXENGE:

The draft text we are talking about here is a discussion document which was prepared by Professor Davis - not a document which - ja.

MR ANDREW:

Let me just clarify this, Mr Chairperson. There was a desire I think from the CA position, that in fact the cause with regard to the last Reports, was there were agreed on principal, there were obviously vast diversions of detail regarding our National Provincial Legislative competencies.

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And that bearing in one, time was running out and that two, the other Theme Committees people are already beginning to at least put their various drafts. That a stab should be had at least at a draft text so that we can get some basis of discussion. We may be at the end of it - at least two texts could be up or alternatives for the CA purpose. IN fact correct me if I'm wrong, but you have submitted a draft text as well?

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UNKNOWN: It is in the report. Chairman in the Report on Constitutional Principles in March or April.

MR ANDREW: There was a draft text as well. So obviously if one. This text was in a sense prepared by me - not by me but it was in consultation with me by the Law Advisor, Mr GrovG. I did make changes. I recorded more substantial, without the deliberations. Quite frankly Mr Chairperson I am in your hands now. I have just been asked to do this. I don't know whether we are ...

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CHAIRPERSON: No, that has not been circulated. We have not to it at this stage.

UNKNOWN: In fact, I only completed it on Friday. Thanks to Ms Haydon who deserves tremendous credit for making out my dreadful handwriting. So, I am not sure whether it has been circulated. That you would have to ask ...

CHAIRPERSON: That is good news to me. I think we must put the question. Should it now be typed and presented to the Theme Committee? Oh, here it is.

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PROF DAVIS: Must have been circulated to the Theme Committee.

CHAIRPERSON: Okay, what decision do we need on this? Take it on board needs study time or do we need to decide - to refer it to CC?

PROF DAVIS: I don't know - I would have thought - I am in your hands. I think that the idea was that the parties should look. Professor Venter has made the point that he has a text and perhaps we should have a look at this as well. We can perhaps come back, because my understanding was that - Mr Blaas, you must correct me if I am wrong.

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But there is a desire, if you look, for example, if you take Theme Committee 4. They are already going through and have got text and have alternative arrangements. We have got nothing like that.

CHAIRPERSON: The C.C. has decided like that you're on the complete right track.

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PROF DAVIS: There is a sense in which they are saying to us - you know come on - you have got to be able to move this a little bit into tighter perimeters. Now obviously, this is only just one stab at it.

I would certainly have thought that we have got to have parties must have a chart to study and we need to perhaps then as the Technical Advisors here. Bearing in mind that the responsibility is ours - to perhaps have another stab at drafting a text plus an alternative text. I think ...

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CHAIRPERSON: Professor Davis. Before I give Professor Basson. Isn't what we need is that at 11 o'clock meeting of the Theme Committee as such, you present and explain this document. Is there enough copies for everyone? I hope.

PROF DAVIS: Obviously, people need time to consider this.

CHAIRPERSON: But, I think you must just address the text. Professor Basson.

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PROF BASSON: I just wanted to ask what the position is with regard to our report number 2. Must the report be accompanied by the text before we can submit to the Constitutional Committee or can we submit the report in block form with the addendums.

CHAIRPERSON: I would believe that - we could have now a discussion quickly on it. I would believe that it is necessary to put the two together, because it can then be read against each. Please let me have input.

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PROF DAVIS: Mr Chairperson, there is a great pity that we are in fact not going to meet again until two weeks time, because in fact, you could hardly decide this at 11.00 o'clock nor give us proper instructions to draft another text or alternative texts, between now and then.

CHAIRPERSON: Okay. Although the Theme Committee is not meeting, I think the Core Group will be able to meet and the study groups of the parties will be able to make a plan to meet next week.

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UNKNOWN: Next Thursday.

CHAIRPERSON: Next Thursday. This coming Thursday there is a meeting. I think we - this week, ja, the 15th in the afternoon Theme Committee and Core Groups.

UNKNOWN: (inaudible)...

MR MXENGE: Time has been set aside considering that on Monday next week. The day on which there is supposed to be a CA day has been taken up by Parliamentary session. It was requested that, of course, at that - you know this coming Thursday, the Committees, so as to make sure that we do not lose ...

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PROF DAVIS: Are we specifically informed? - ja, sorry, I think you are right. Wednesday, this week. Wednesday is CC only, Thursday includes, yes, - I beg your pardon. Thank you.

CHAIRPERSON: Professor Venter.

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PROF VENTER:

Can I come back to the text problem. The difficulty here is quite obvious to everybody and that is to be able to draft a single text, I think one would have to have to have consensus on crucial matters in Theme Committee which would probably require negotiations.

You remember that when I presented my text at the time, I presented as a discussion document to demonstrate the possible ways in which one could put into the text some of the Constitutional principles. It was not discussed at the time, specifically, but it was mentioned a that it would be useful if we had different texts to compare.

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I understand that Professor Davis' submission is also to be a discussion draft and as far as I understand it, neither his nor mine is supposed - or is intended really to reflect some consensus position. It - it is a demonstration of what is possible. I think that needs to be taken into account when this thing is discussed.

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CHAIRPERSON:

I would ...

PROF VENTER: The point I would actually like to make, Mr Chairman, is that I really doubt if it would be possible for the Theme Committee to come up with an agreed text. If one compares what our report - our table ...

CHAIRPERSON: Professor Venter. Sorry to interrupt you. You were away a long time and lot of things developed in that stage. Also decisions in Constitutional Committee and a kind of approach method was developed. No one is saying that we must get an agreed text from here. That is not the thing. 10

We must get example text from here. We have got one on the table and the quick way I have looked at it, it seems to cover most of the aspects which is possible to be put into draft form at this stage. We know very well of the submission and proposals you might - it was quit a long time ago, Constitutional Principles - and there was a lot of discussion on those and a very good discussion on those submissions you had at that stage.

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But the point is now we have a draft text and we would like to have this before the Theme Committee in view of the



time situation today and then there will be discussion time available on Thursday on this text. I really cannot understand what you want - do you want to write another text.

PROF VENTER:

No, Chairman. Firstly, I would just like to beg to differ slightly on how the text that I drafted was dealt with. The report was discussed in full - actually over two sessions, but the text as such was never discussed and I would actually like to have an opportunity to present that text also, if text is to be produced even in the alternative. It is not as though the text that I have produced - as if I am married to or anything.

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But I try to demonstrate every possible aspect of the constitutional principles that need to to be ...

CHAIRPERSON:

We have studied the text at that time already. The point is in the meantime. This block report has been prepared in your absence enumerating contentious matters, non-contentious matter and whatnot. This draft has been drafted on that - what do you call that synthetic report - made from all the submissions.

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Your draft text was done before the parties even submitted and it was taken into account by the parties when we submitted. So, it seems to me that it is a bit old now that text and a lot of things have happened in the meantime and we had this composite block report now, hopefully.

PROF DAVIS:

I would certainly think that Parties - when they look at this because I have no illusions about the fact that we are going to have to - if I could just go back for the general record.

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My understanding and I really would like members to correct me if I am wrong. My understanding is that when the Reports are going up on other Theme Committees to the CC or the CC or CI, I can never know how many bodies you have got here - but the fact is that there are - for example, lets say, I was reading the Bill of Rights one.

There is a thing about rights of information and there is a text and then they put alternative text because some parties have had different view points. I have no illusions that this is not going to be the only text that it going to go out, but at the end of the day I think that a terrible desire and the right

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desire of the Authorities, as it were, is that at least start getting something on the table which looks like a text or texts.

What I am saying is that this is a stab at - that is, you were right to say that certainly attempt to - this is a text which is nobody's text. In other words what I mean by this is that if you compare this to the National Party submitted, I think that a draft text in the submission is that you put forward. The Democratic Party had certain draft texts in relation - certainly the IFP did.

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UNKNOWN: (inaudible)...

PROF DAVIS: Yes, yes. Obviously, this is not an attempt to sort of say. Well, we tried to get into a compromise position, bearing in mind what is agreed and what is agreed. Professor Venter's would be a very good text to test this by because in a way I would certainly encourage members to have a deliberated look at Professor Venter's text which might well be - notwithstanding what has happened Mr Chairperson.

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A view point which is an alternative text. At the end of the day, what I am say is, of everybody agrees then the amended version of text is what they agree to, then that is wonderful, but if they don't we are going to submit alternatives.

CHAIRPERSON:

Professor Davis, quite agreed. Now, how I think we should look at this which we have before us. We have got Technical Advisors.

After the development of this process over a long time, gone through the submissions of the parties in the meantime on legislative powers and competencies in which this is - the Technical Expertise of this Committee has now produced this thing.

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Now, we have the situation and Professor Venter wants to deliver a paper which was in before this whole process got off. I am sure that he can input into the Technical Group and it could be looked, how to change this thing or put in a few alternatives into this thing and then then Technical Group could present that. But, to my mind this is not the Political Parties submission which you have.

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This is a Technical paper which has looked at all the submission and contentious and non-contentious and you are suggesting this is (inaudible)... I don't see something. When I look at the Technical Advisors and see only one group of Technical Advisors and if we - they must sort it out within themselves. I think.

And not that we bring opposing reports to our Theme Committee here. Professor Venter.

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PROF VENTER:

Nee, Chairman. I fully agree with you. The Technical input should be considered to be technical input and we constantly intend or approach our task in that way and none of our submissions have any political connotations.

But it is necessary to also note that we have'nt had an opportunity to discuss the text before. I got a copy of this. I got a copy, I think on Friday evening for the first time and we haven't had an opportunity to discuss it.

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My only request is not to have a - you know a competing kind of a formulation before you. I would like to assist your

process of giving you the opportunity to look at the whole thing. I would like to ask whether it is possible for the Administration to produce copies of that text for their 11 o'clock meeting.

If you don't want me to present it - that is fine, but I would like to refer to it from time to time.

DR KING:

Professor, this documentation did go out to everybody. Obviously, we couldn't make spare copies, but when we send out a memo of the Notice of the Meeting, then we say please bring this document.

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CHAIRPERSON:

You see, it is costs we are involved in. We must look at that also always - to keep it low. Is there any discussion. I took too much here. Could we just have -

DR KING:

I would just like to say that I cannot see that any harm can be done to again look at Professor Venter's documents. It is a long time ago and so many things have come in between that we also get obviously. Well, I do, confused with

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everything and I think that that would also be a good input again.

To have a look at it and so we do not have to duplicate it again. I just think that it is very short notice now to get people to bring it at 11. I don't know whether anybody goes back to their - it might not be possible. I cannot see why we can't go back to that document. I cannot see why the argument.

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CHAIRPERSON:

Thank you very much Dr King. I think that is solid, but the only thing is for the - not for creating confusion here is in the Committee meeting.

I would suggest that the best would be if Professor Venter could look through this until 11 o'clock. In actual fact he received it on Friday and then from the point of view, of his questions of clarity, the last document on the 27th March document. If he then, gets an opportunity in the Theme Committee to say where somethings could be done differently if looked from the prospective of his documents.

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I think that would be the easiest way. Professor Basson. Ja.

PROF BASSON: (inaudible).

CHAIRPERSON: I think we can do it if we do it after this meeting if we go now quickly. Just after 10.

PROF BASSON: (inaudible).

PROF DAVIS: Lets not waste time, Mr Chairperson. We will do the necessary. I will walk down with Professor Venter. 10

CHAIRPERSON: 'Hoeveel bladsye is dit omtrent. Twee bladsye. Sjoe! Dis Ses Rand'. I think we should finish this off as quickly as possible. I am sure that between Francois and (inaudible)... we are going to get it. You have got it. Got it. Just a question of duplication. Question closed at this stage Okay.

We go further in Theme Committee. Now let me get the right place. Next point. Proposed hearing. Proposed hearing on Local Government. What is this about please? 20



We have done it already. Okay, next point - general. Any points under general?

UNKNOWN:

I would just like to make one point for the record. As you recall. This document from the 5th June. Areas Agreement contention - National and Provincial Legislation of Executive Competence. I just want to record that the DP has a number of problems with this document, so I know it was passed at the Theme Committee and so on and - for various reasons, I didn't get a notice. But I just -

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CHAIRPERSON:

Just get the wording right - (inaudible)...

UNKNOWN:

Well, this document, it actually doesn't have a reference number to this particular one. Theme Committee 3 Summary areas agreement contention 5th June.

This is the most recent that I have had on this subject. I don't know if it has already gone to the C.C.

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UNKNOWN:

No.

UNKNOWN: It hasn't! Well, may I ask for some amendments affecting the DP in this regard?

CHAIRPERSON: Do you think it best to do it now? Or do it in the Theme Committee when we discuss this draft. We where those contentious documents will come up again.

UNKNOWN: I think is often quicker to do it ...

CHAIRPERSON: Do it now.

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UNKNOWN: If we may. If you don't mind.

CHAIRPERSON: Lets do it now. I have'nt got the document ...

PROF DAVIS: Can I just ask a question? I take it what you are arguing about here is that there are aspects (inaudible) ... what the DP has said.

UNKNOWN: Ja.

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PROF DAVIS: Well, that's fine. We can do it in three minutes. You can give it to us. I mean we are quite happy to - I don't think it will affect any parties. If we have misrepresented something that the DP said. I cannot see why that should affect ...

CHAIRPERSON: (inaudible) ...of a political party together.

PROF DAVIS: Correct, and that applies to a few instances and obviously I accept them - misrepresentation is almost an accusative word. I am not suggesting that at all.

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The second thing is just, if this is aiming to try and have points of agreement. If in fact there was something we were silent on and we agree with and if there is any objection we put it in. It sometimes says that party X - so or so was - and say that we are happy to also hold that view. Is there no problem in putting it in? It helps the process I would think.

CHAIRPERSON: I see these matters as editorial matters almost at this stage.

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UNKNOWN: Okay, fine. (Inaudible)... There were matters where we were silent in our submission, but having seen other parties things one might as well say that we are happy with that and remove it out of clarity and into agreement.

PROF DAVIS: That helps us enormously. One of our difficulties was to try and extrapolate things from silences.

CHAIRPERSON: It is also not criticism. It is just the way things go. I would advise that you talk to each other directly. Thank you. That was a point under general. Another point under general. Yes.

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UNKNOWN: I would just like to know. I did ask last time in connection with the schedule 6 and also (inaudible) and we also in our submission cannot or mentioned a second list.

CHAIRPERSON: A second list, ja.

UNKNOWN: We also in our submission came up with - or mentioned a second list, but that is totally dependent on information which we were hoping to get. Remember we asked whether we

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should get some advice from 'die Kommissie op Administrasie en - Staatkundige Ontwikkeling'. Has anything been done about it.

CHAIRPERSON: No. I did not know about about it. We can ask the Administration if they did anything about it. I think the onus rests on the party.

UNKNOWN: I am sorry. At the previous meeting it was specifically discussed. We said that either the Technical Committee or otherwise from the Administration we should request that. It comes from the Theme Committee.

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CHAIRPERSON: Okay.

UNKNOWN: It was part of that, it was our - we thought that it was necessary and it was taken up into the - it was taken up into the report into this report here and it is not and that was the decision at the previous meeting.

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CHAIRPERSON: It was dependent on further information. Your statement in the document.

UNKNOWN:

We, in fact asked there that - we said that we suggest that before finalising the previous schedule 6 - with that shopping list there - and decided if there was going to be a second list and what should be removed from the second list or what should be added on.

That we actually go to those Departments to give us an idea of where they stand and what have they learnt in the past year in which they already have had to - in practice do a lot of handing down those powers to the provinces - and that we wanted that feedback. (inaudible) ... the Technical Committee together with the Administration would approach those Departments for information.

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CHAIRPERSON:

I remember it very well and we all agreed on that thing. The Technical Committee has been drafting so many texts in the past week. I don't know whether they had any time to do anything on that. Would it be the task of the Technical Committee.

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I know we sent out letters to the Premiers. Didn't we? I think that is the basic thing has, has been done about it.



But, I think that you are talking about more and I know exactly what you are talking about. It is not a thing that can be done quickly.

Could we ask the Technical Experts. Do you remember this matter and - do you think - Now we ask the Secretary of the CA, Mr Mxenge. Have you done anything about it.

MR MXENGE: We haven't followed the matter up.

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CHAIRPERSON: Now, we will ask the Chairman of the Committee whether they have done anything about it now. Now we will ask other members of the House whether they have done anything about it. Mr Andrew.

MR ANDREW: I delegated it to you on an Agency basis. I delegated to you on an Agency basis on the assumption that things that aren't allocated committee are residual powers and reside in the hands of the Chair.

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CHAIRPERSON: I am sorry that I must take the blame for this. Should we start positively and state that this thing must be done. Shall

we work through the administration to get it back to the Core Group. People who are here next week. This week we cannot do anything on this. Perhaps talk to our Technical Experts when we get together the next time. Is that in order?

It is a question of getting experience of what type of functions in terms of Schedule 6 and perhaps a second list. We - the provinces wants to say that they need that type of function or they don't need that type of function.

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PROF DAVIS: Chairperson is this a question? Let's get this clear as to almost a imperial matter as what Provinces themselves suggest.

CHAIRPERSON: Yes.

PROF DAVIS: Is that what is being asked.

CHAIRPERSON: Ja.

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PROF DAVIS: By Dr King. I mean this is not a theoretical issue as to what we would advisers as technically, but would rather be what has been happening in fact on the ground up till now.

CHAIRPERSON: Could I just before she answers - if you look at the submissions of the CPG, who are really the people who have the close contact with the Provincial Governments and the setting up and development of them. In actual fact I wish we could request the CPG to do this job because they have got the contact. They have got the contact for this type of expertise. And in their papers a lot of this is dealt with.

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MR ANDREW: I happen to know, and I would refer you to last weeks workshop, where Mr Phosa mentioned their reluctance. The Provincial Government's reluctance to make separate submissions to the CPG or to whomsoever. Preferring to do it through parties - National Parties Political structures. I think that there is a difficulty to obtain this kind of information.

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The CPG, I have the impression are not being successful in doing so, so I don't know who can be successful.

PROF DAVIS: I have, of course, received a certain amount of input from the Constitutional Committee of the Northern Cape, and we also received a submission on behalf of the Government I think it was. I think it was the Director General of the Western Cape.

CHAIRPERSON: Ja.

PROF DAVIS: Those are the only two that come to mind, that I recall seeing.

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CHAIRPERSON: Ladies and Gentlemen. Could I suggest something which would be practical in this regard. This quarter is running out now. Everybody is rushing to get his last things done in these submissions. This Theme Committee has not done one thing which I think is very important. And that is to have sessions in the Provinces of this Country seeing that we work with Provincial relations, a way we can have hearing with Premiers or who ever they have Constitution Committees.

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All the Provinces do not have Constitutional Commissions. If we are to draft text. Isn't that the type of thing we must



take down to the Provinces and in August or about there. I don't know how timings will work, this Commission, ag, not the Commission, the Theme Committee, the Theme Committee goes to Provinces for a week or two - and I think you could even do two Provinces in one day - well some of them. Should we go that route and get submissions and make dates and what not.

Or is this the wrong direction?

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DR KING:

Mr Chairman, I just want to go back to what I originally said and not to follow on what you have just said. It says here on page 7. The NP suggests that more information is to be obtained before such list is finalised. And that is referring to Schedule 6 and then again on page 11. There are - for a schedule containing a second list of the functional areas for framework legislation. (reading very quickly)...

Again the NP suggests that all information is obtained before such list is finalised. And we specifically discussed it at our previous meeting. I suggested that the Department of Provincial and Constitutional Affairs should be approached

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to ask them what in - wat nou in die praktyk duidelik blyk, nuwe behoeftes mag wees om voor voorsiening te maak.

I think Mr Phosa specifically mentioned one which would be for his Province. Something which would not be for perhaps the Orange Free State, but that was to a certain extent to be able on a foreign relation situation right next to Mozambique. At least for certain functions.

And obviously, together with national - which we have not thought of before and I don't know where that would fit in. Those are the practical things which one would probably get if you speak to the people from the Constitutional Development Department.

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But I think it was you, yourself who again mentioned that the Commission of Administration was the other Department one could possible approach and that they would also be able get the idea of, what up to now has proved to be from the existing list on the existing schedule 6 are the practical things - what are extra needs that have come forward and

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what are the ones that - don't have to. And that is what is referred to here.

CHAIRPERSON:

Dr King, we completely agree with you on the problem. But the point is that this Theme Committee is not equipped to do empirical research. Even our Technical Experts are not equipped in empirical research. The other way, if we don't go and have these expensive visits in the Provinces and Hearings.

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The other way to do it is to get a - what do you call it - when you give our research. Contract researcher. Just to draft a questionnaire for us which fills in - all the type of information which we need. Get it down to the Premiers and instruct Madiba to order them to give it back in three days.

That is the quickest solution if we can have a questionnaire on this thing. I don't know if the results will be very good, but I think that is a possibility.

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DR KING: Mr Chairman, now what about the 2 departments that we have mentioned. Why do we ignore them. They are working with the Provinces all the time. Why do we have to instruct the President who has his commitments, as well, now - to get them, to do it in three weeks or three days. We can directly just approach those departments. The Director General of ...

CHAIRPERSON: Mr Carrim.

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MR CARRIM: Comrade Chair, can't we just contact the two Departments concerned. Ask them to give us what information they have. Contact CPG, ask them if they can give us what information they have and also not exclude the possibility at a more appropriate time with due consideration of cost, that a small sub-committee of the Theme Committee if not more people, should actually visit the Provinces.

I think that I shouldn't be excluded altogether - not mutually exclusive ideas. We can have both and we can give consideration to your proposals Comrade Chair later.

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CHAIRPERSON: Thank you Mr Carrim. Is that the general feeling agreed with. Hello Patricia.

MS DE LILLE: I have just arrived from the Eastern Cape. My apology for being late.

CHAIRPERSON: You must never go their again. It is ANC area. You must stay away.

MS DE LILLE: You will be surprised.

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PROF DAVIS: I think one of the great surprises of the election, Mr Chairman was the that the DP actually got more votes than the PAC in the Eastern Cape Province.

CHAIRPERSON: There you've got it Patricia, you will have to go again next week. You see they got about 40 votes. Its easy to get more than that. Just go on trying. Now have we got Mr Carrim's down here. Can I just ask Sandra.

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MR CARRIM: It is not as if we are going to get a lot out of that process. I don't know what Dr King expects, but frankly I suspect that

the information that we get from this Department will be very scattered and sporadic. I don't think we are going to get a great amount of information that is going to be very insistent, but anyway, I think we should pursue it.

CHAIRPERSON: We will pursue it then. Thank you very much you will get what you want - Dr King.

DR KING: Mr Chairman, we made that decision at our previous meeting and it hasn't been pursued. Who is going to take the responsibility to do so.

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CHAIRPERSON: We must give the Execution and the Administration that job. Just write to the Commission for Administration and you must write an angry letter - you must write... Okay. Then we come to the last point. It is closure. Professor Venter.

PROF VENTER: Mr Chairman, I am afraid that I might be creating the impression that I am pedalling my wares this morning. It is not really the case. The Technical Committee had instructions to do something on Framework Legislation. Which I did, I discussed it also with Professor Basson. It is

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on the table. Will I be expected to present it this morning.

The reason I am raising it is that the report that has got to go to the Constitutional Committee refers to Framework Legislation quite frequently and I had the impression that this report had to be done with a view to the attached - to the report of the CC.

CHAIRPERSON:

Is - ja. Has all the Technical people gone through this thing, but could we have an input in the Theme Committee this morning on this. Yes? Agreed? Thank you. Thank you for executing this Professor Venter - Professor Basson.

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PROF BASSON:

Thank you Chair. I just want to inform the Core Group that I will be away from the 22nd June until the 15th July. I hope to have your leave to - I am going to the United States on a research visit and I want to know whether I have the leave of the Core Group to do that please.

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CHAIRPERSON: No, we don't like it that you go to the United States. It is China always you know - or Albania. Agreed? Thank you we must note it in the minutes please.

UNKNOWN: While we are doing this. I must say that I will be away from the 18th June until the end of the month.

CHAIRPERSON: Thank you very much.

UNKNOWN: It is my gift to you.

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MR MXENGE: Can I advise for administration purposes. It also helps if members are going to leave. They give us all the information we might need for the period up to the end of the month, because what might happen is that from the 22nd June, you know, we shall be working throughout actually from the 26th June, we shall have Theme Committees Meetings throughout to try and meet the June deadline.

If members could help us in that if they are going to leave.

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One other thing, you know, for administration purposes, editing transcripts, you know, at most times we are at loss to



how much we should edit the transcripts that are produced in the Theme Committee Meetings or at briefing session. We need to ask - for direction in this regard. To what extent can we try to edit our transcriptions.

CHAIRPERSON:

Thank you. Ja, you must try and give us the full plan of your hotels. There is not many Communists left in the United Stated. You will not be able to consult very good.

Oh, ja, ja. Go talk to him. Are we finished with all general meeting. This meeting is closed. Thank you for your attendance. 'Wat het ek nou vergeet. Wag net 'n bietjie'. (inaudible). Editing of the transcript. What must I comment on that. Let me just hear what Ms - (inaudible)...

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MS HAYDON:

(inaudible)... Very often I plainly see that people are just repeating themselves, I have taken the liberty of pulling some things out that relate or don't relate, but I also realise that it can be dangerous grounds.

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I don't want to be seen every to be favouring a Committee or whatever.

CHAIRPERSON: The point is that ??? must have some discretion when she typed these hundreds of pages because it is not. You see something that has been left out, we can go then back to the tapes and retype.

UNKNOWN: The important thing is the transcripts is what the experts say or the people giving evidence what the Theme Committee say is really of no...

CHAIRPERSON: The sensible things must go in. When Professor Andrew talks put in everything. 10

PROF DAVIS: When I am talking put in nothing. Just put in what the people giving evidence say. That is what they are here for.

CHAIRPERSON: Thank you. Another point from ...

MXENGE: May we add that the Administration also be given direction at the following - submissions, we still have outstanding submissions especially on Local Government and even some on Inter Governmental Organisations. 20



Could we get an indication as to when we can get those. Because what we are trying to do is we are trying to produce the reports on the Theme Committee and Local Government is ready to start tackling the submissions from political parties and could we get an indication.

CHAIRPERSON: We will communicate with you. Ms de Lille.

MS DE LILLE: Chairperson.

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CHAIRPERSON: Order among the Technical Experts especially some people who are in the imperfect future. Yes.

MS DE LILLE: I would submit mine on Local Government today.

CHAIRPERSON: Thank you very much. Say again.

UNKNOWN: The National Party will in tomorrow and our Fiscal Relations will be in on Thursday.

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UNKNOWN: Ours will be in either tomorrow or Wednesday on Local Government and Fiscal Relations on Thursday.

CHAIRPERSON: Thank you.

UNKNOWN: What is the ANC position?

CHAIRPERSON: We are in the hands of some other people. It is finished. Financial Fiscal Relations will be done it's. The papers are finished that is no problem. It must be this week.

UNKNOWN: Just bear in mind in terms of the process. I hope it is being minuted because we know who the ones are who claim who want to push the process fast.

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CHAIRPERSON: Ja.

UNKNOWN: Mr Chairperson. I am sorry at the end now. I have just seen the minutes. I did not have them with me. In the minutes there is no reference to this matter which we have discussed at length now which was definitely raised when I was in the previous meeting and it is not in the minutes here.

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CHAIRPERSON: You are talking on that thing on getting the information promised.



UNKNOWN: Yes.

CHAIRPERSON: We have handled it now extensively and I think we caught up of there is any points missing there.

UNKNOWN: Yes, I just thought that we must mention that we must be careful that we do not miss out on these things because it was definitely clearly discussed in the meeting.

CHAIRPERSON: Ms Haydon, please be careful. Thank you, good morning. 10  
See you in a little while.

[ END ]

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**THE CONSTITUTIONAL ASSEMBLY**

**THEME COMMITTEE 3**

**12 JUNE 1995**

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