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CONSTITUTIONAL ASSEMBLY

Theme Committee Six

**SPECIALISED STRUCTURES
GOVERNMENT**

14th November, 1994

Room 249, National Assembly Wing

DOCUMENTATION

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**CONSTITUTIONAL ASSEMBLY
FIFTH MEETING
THEME COMMITTEE 6
SPECIALISED STRUCTURES OF
GOVERNMENT**

MONDAY 14 NOVEMBER 1994

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

Date : 14 November 1994

Time : 09h00

Venue : Room 249, National Assembly Wing

AGENDA

1. Opening and Welcome
2. Previous Meeting
 - 2.1 Tabling of Minutes of the previous meeting
3. Development of Work Programme.
 - 3.1 Tabling of final draft of the Theme Committee's Work Programme.
4. Any other business
5. Closure

Enquiries: Mr N Nyoka and Ms K Mckenzie, Room CS209 (Tel 403-2269)

CONSTITUTIONAL ASSEMBLY

**MINUTES OF THE FOURTH MEETING OF THEME COMMITTEE 6
SPECIALISED STRUCTURES OF GOVERNMENT**

MONDAY 7 NOVEMBER 1994

PRESENT

Kgositsile, B (Chairperson)

Alant, T G	Marais, G
Chiole, J	Mokoena, L M
Davies, R H	Mompati, R
Dyani, Z D	Mti, L M
Fankomo, F C	Nair, B
Fenyane, S L E	Netshimbupfe, M A
Hlengwa, M (Alt)	Ngubane, H
Jacobsz, F P (Alt)	Phohlela, S
Jordaan, J A	Schreiner, J
Khoza, T S (Alt)	Selfe, J
Love, J Y	Sisulu, L
Makgoti, H	Watson, A
Malan, T J	Woods, G G
Malatsi, D M	

Apologies:

De Beer, S
Vadi, I

K McKenzie and N Nyoka were in attendance.

1. OPENING AND WELCOME

Ms Kgositsile opened the meeting and welcomed members.

2. TABLING OF MINUTES OF THE PREVIOUS MEETING

The minutes of the third meeting held on 31 October 1994 were adopted.

3. Matters arising from the previous minutes

3.1 Core Group

TC607114. min

(Theme Committee 6 - 7 November 1994)

3.1.1 Report on the joint meeting of Core Groups 2,5 and 6

The minutes contained in the documentation were adopted.

4. DEVELOPMENT OF A WORK PROGRAMME

An updated work programme was tabled at the meeting. The following was noted:

4.1 That the following changes be made to Subtheme Committee 1's report:

4.1.1 Mr L ^{KLUPER} Cluver (on page 15 of the documentation).

4.1.2 Professor G S Cloete, School of Public Management (on page 15 of the documentation).

4.2 That the following changes be made to Subtheme Committee 4's report:

4.2.1 Institute for Strategic Studies, University of Pretoria (on page 24 of the documentation).

4.2.2 Helmut Heitman (on page 25 of the documentation).

4.3 That the following addition be made to the work programme report:

4.3.1 Transformation and Monitoring - Technical Assistance (page 9)

9.1 Researcher

9.2 Administrator/ Public Relations person

This person is urgently needed as they would need to start looking into the detail and setting up of programmes for community and media liaison. This would result in a much clearer work programme with further proposed times frames/ target dates.

5 ANY OTHER BUSINESS

There was no other business.

6 CLOSURE

The meeting rose at 10:30 and Subtheme Committees met.

Minutes signed by the Chairperson *B. Kloete* on 8 NOV, 1994.

CONSTITUTIONAL ASSEMBLY

SUPPLEMENTARY REPORT

SUBTHEME COMMITTEE 3

MONDAY, 7 NOVEMBER 1994 (AT 10:30)

1. OPENING AND WELCOME

Ms Kgositsile opened the meeting and welcomed the members.

2. ADDITIONS TO THE WORK PROGRAMME

The Subtheme Committee agreed to the following changes and additions to the work programme report:

2.1 Constitutional issues

2.1.1 The name of the Subtheme Committee will be "Transformation, Monitoring and Evaluation".

2.1.2 Commission on Gender Equality

- The Commission on Gender Equality should address gender bias on laws relating to home ownership and *land* ownership.
- The functioning of the Commission at national, provincial and local level should be looked at.

2.2 Areas of overlap

2.2.1 The Human Rights Commission overlaps with Theme Committee 4.

2.2.2 The roles of the Public Protector, Human Rights Commission and Commission on Gender Equality may overlap. The necessity for all of these structures in the long term will have to be examined.

2.3 Consultation - structures and role players

Women for South Africa and international bodies to be consulted on the Commission on Gender Equality.

Parties to submit names and addresses to the Secretariat.

2.4 Technical assistance

It was agreed that the CA should be encouraged to employ personnel to assist in this regard.

3 ANY OTHER BUSINESS

3.1 Concern was raised as to how the work of other Theme Committees were being monitored regarding areas of overlap. It was agreed that this should be addressed at Constitutional Committee level.

3.2 It was noted that the public participation programme would have to be carefully tailored in order to ensure maximum participation. Public hearings often failed and the media was not the best way of involving people as it had limited access. The focus of the public participation programme should be interaction with people.

CONSTITUTIONAL ASSEMBLY

**THEME COMMITTEE 6
SPECIALISED STRUCTURES OF GOVERNMENT**

FINAL WORK PROGRAMME

A	PUBLIC ADMINISTRATION	
1	CONSTITUTIONAL ISSUES	<p>1.1 <u>Public Service</u></p> <p>1.1.1 Power relations between National and Provincial levels of Government, the Executive and Administration.</p> <p>1.1.2 Status and role of Public Service.</p> <p>1.1.3 Representivity of Public Service.</p> <p>1.1.4 Public Service as an agent of development.</p> <p>1.1.5 Management ethos and systems within the Public Service.</p> <p>1.2 <u>Traditional Authorities</u></p> <p>1.2.1 Powers, functions and role of Traditional Leaders in National, Provincial and Local levels of Government.</p> <p>1.2.2 Territorial jurisdiction of Traditional Leaders.</p> <p>1.3 <u>Election Commission</u></p> <p>1.3.1 Constitutional position of an Election Commission.</p> <p>1.3.2 Powers, functions and role of the Election Commission.</p> <p>1.3.3 Specialised Commission.</p>
2	PRIORITIES	<p>2.1 Public Service</p> <p>◆ <i>Workshop on civil service planned for late January or early February, 1995.</i></p>
3	AREAS OF OVERLAP	<p>3.1 Traditional Authorities - also entrusted to Theme Committees 2 and 5</p> <p>3.2 Election Commission - also entrusted to Theme Committees 1 and 3</p>
4	REFERRALS TO COMMISSIONS	<p>4.1 Traditional Authorities.</p>
5	SUBJECTS FOR REPORTING	<p>5.1 Public Service.</p> <p>5.2 Traditional Authorities.</p> <p>5.3 Election Commission.</p>
6	NUMBER OF REPORTS AND TARGET DATES	<p>6.1 <u>Public service</u> 1 report - 28 February 1995.</p> <p>6.2 <u>Traditional Authorities</u> 1 report - 31 March 1995.</p> <p>6.3 <u>Election Commission</u> 1 report - 30 April 1995.</p>

7	CONSULTATION - STRUCTURES AND ROLE PLAYERS	<p>7.1 <u>Public service</u> Government Structures and Departments including the Public Service Commission, Political Parties, Trade Unions, the Volkstaat Council, Academics and other Interest Groups.</p> <p>7.2 <u>Traditional Authorities</u> Amakhosi, Izinduna, Elders, Cultural Organisations, Womens' Organisations, Traditional Organisations, Political Parties, Anthropologists, Ethnologists, Agricultural Organisations, Labour Tenants, Service Providers (eg Water Boards, Eskom and Telkom), Provincial Governments, Central Government and Churches.</p> <p>7.3 <u>Election Commission</u> Department of Home Affairs, Independent Electoral Commission, Embassies(IEC), International and Local Experts and Academics.</p>
8	COMMUNITY AND MEDIA LIAISON	<p>8.1 <u>Public service</u> Media - Print and Electronic.</p> <p>8.2 <u>Traditional Authorities</u> Media - Print and Electronic, Ibandla or Lekgotla and Magistrates Courts.</p> <p>8.3 <u>Elections Commission</u> Media - Print and Electronic.</p>
9	TECHNICAL ASSISTANCE	<p>9.1 <u>Public service</u> Specialists on German, Belgian, French, USA, British, Indian, Zimbabwean, Namibian and other Approaches. ♦ Specialists identified thus far: Cloete GS(School of Public Management, Stellenbosch); Cluver L(Ex-DG, Department of Public Service and Administration); Ndokweni Adv(Department of Justice, KwaZulu-Natal); Ntshangase D(Department of Justice, KwaZulu-Natal); Thornhill C, Prof(Department of Public Administration, Pretoria) and Van der Merwe P, Prof(Professor Emeritus, Pretoria).</p> <p>1.2 <u>Traditional Authorities</u> Traditional Leaders and Questionnaires to local Traditional Leaders.</p> <p>1.3 <u>Election Commission</u> Department of Home Affairs and the IEC.</p>

B**FINANCIAL INSTITUTIONS AND PUBLIC ENTERPRISES**

1

CONSTITUTIONAL ISSUES

- 1.1 **National Revenue Fund, Budget and Procurement(ss185-7)**
1.1.1 New Constitutional provision on Revenue Fund, budgeting and procurement required.
- 1.2 **Provincial and Local Government Loans(s188)**
1.2.1 Stock to be taken of limited experience of the Financial and Fiscal Commission (FFC).
1.2.2 Submissions on the constitutional regulation of the functioning of the FFC and financial relations between the different levels of Government.
1.2.3 Submissions on the need to a provision analogous to s188 in final Constitution.
◆ *This subject will be examined concurrently with 1.6 below.*
◆ *Note: FFC entrenched by Constitutional Principle XXVII in Sched 4*
- 1.3 **Special pensions and tax(ss189-190A)**
1.3.1 Investigation on the inclusion of a constitutional provision on special pensions in final text.
1.3.2 Submissions on tax assessments for elected reps and pensions for Politicians.
- 1.4 **Auditor General(ss191-2)**
1.4.1 Constitutional provision on the Auditor General(AG) required.
1.4.2 Submissions on the provisions of ss 191-2 to be invited and alternatives to be considered.
◆ *Note: AG's independence and impartiality entrenched by Constitutional Principle XXIX in Schedule 4*
- 1.5 **Reserve Bank(ss196-7)**
1.5.1 Constitutional Provision on the Central bank to be included in final text.
1.5.2 Submissions on the provisions of ss 196-7 to be invited and alternatives to be considered.
◆ *Note: Reserve or Central Bank's independence and impartiality entrenched by Constitutional Principle XXIX in Schedule 4*
- 1.6 **Financial and Fiscal Commission**
1.6.1 Stock to be taken of limited experience of the Financial and Fiscal Commission (FFC).
1.6.2 Submissions on the constitutional regulation of the functioning of the FFC and financial relations between the different levels of Government.
1.6.3 Submissions on the need to a provision analogous to s188 in final Constitution.
◆ *This subject will be examined concurrently with 1.2 above.*
◆ *Note: FFC entrenched by Constitutional Principle XXVII in Sched 4*
- 1.7 **Public Enterprises**
1.7.1 Invitations of submissions of the need, if any, to constitutionalise Public Enterprises.
◆ *Public Enterprises, albeit governed by other legislations are not presently provided for in the Interim Constitution.*
- 1.8 **Other Provisions - Financial Institutions**
1.8.1 Call for submissions to be formulated broadly, so as not restrict inputs from the public.

2	PRIORITIES	2.1 Financial and Fiscal Commission 2.2 Financial relations between the different tiers of Government.
3	AREAS OF OVERLAP	3.1 Legislation of Financial Bills <ul style="list-style-type: none"> ◆ <i>Theme Committee (TC) 6's responsibility is the formulation of a Constitutional Provision on the Budget and National Revenue Account while that of TC 2 is the passage of Money Bills.</i> ◆ <i>TC 6 and 2 have to harmonise their work.</i> 3.2 Financial relations between different tiers of government. <ul style="list-style-type: none"> ◆ TC 6's responsibility is FFC, while TC 2's is financial relations between different tiers of Government. ◆ TC's 6&3 must work together on this issue to avoid inconsistencies.
4	REFERRALS TO COMMISSIONS	4.1 Options are still being explored.
5	SUBJECTS FOR REPORTING	5.1 No specific recommendations.
6	NUMBER OF REPORTS AND TARGET DATES	6.1 <u>Auditor-General</u> 1 report - 28 February 1995. 6.2 <u>Reserve Bank, the Budget, Procurement and National Revenue Fund</u> 1 report - 31 March 1995. 6.3 <u>Financial and Fiscal Commission and other Proposals on Financial Institutions and Public Enterprises</u> 1 report - 30 April 1995.
7	CONSULTATION - STRUCTURES & ROLE PLAYERS	7.1 Reserve Bank, Auditor General and FFC. 7.2 Relevant Government Departments - Finance, State Expenditure , Public Enterprises Provincial Governments and Transitional Local Government Authority. 7.3 All Stakeholders in the National Economic Development and Labour Council 7.4 Representatives of Management and other Stakeholders in Public Enterprises. 7.5 Other Interested Parties - To be reached through Newspaper Advertisements.
8	COMMUNITY AND MEDIA LIAISON	8.1 Advise sought from the TC.
9	TECHNICAL ASSISTANCE	9.1 An Acknowledged Expert on Budgetary Policy Matters. <ul style="list-style-type: none"> ◆ <i>It is proposed that this person be contracted on a part time basis.</i> 9.2 Appointment of a full time Research Assistant <ul style="list-style-type: none"> ◆ <i>Appointee also expected to perform Administrative Tasks</i>

C		TRANSFORMATION AND MONITORING	
1	CONSTITUTIONAL ISSUES	<p>1.1 <u>The Public Protector(ss110-4)</u> 1.1.1 Protection of the Public from corrupt Government Agencies. 1.1.2 Protection of persons against one another in communities, families and the workplace. 1.1.3 Connection between the Public Protector's Office and other bodies performing similar ombud functions, e.g, the Public Service Commission, the Human Rights Commission and the Gender Commission.</p> <p>1.2 <u>Human Rights Commission(ss115-8)</u> 1.2.1 Definition of human rights culture. 1.2.2 Promotion of human rights culture. 1.2.3 Targeting disadvantaged communities, primarily, rural communities, the disabled and black women. 1.2.4 Setting up barometer for measuring progress.</p> <p>1.3 <u>Commission on Gender Equality(ss119-20)</u> 1.3.1 Promotion of Gender Equality. 1.3.2 Seek and give advise on laws affecting the Status of Women. 1.3.3 Formulation of policy on initiatives to combat violence against women. 1.3.4 Address gender bias on laws relating to home and land ownership, tenancy, occupation and succession. 1.3.5 Establishment of national norms and guidelines for affirmative action, maternity leave and employment benefits. 1.3.6 Setting up mechanisms for monitoring progress on gender equality in Government Institutions and Society broadly.</p> <p>1.4 <u>Commission on Restitution of Land Rights(ss121-3)</u> 1.4.1 Restoration of land to the dispossessed. 1.4.2 Methods of addressing land needs without formal claims. 1.4.3 Discriminatory traditional practices precluding women from owning land.</p> <p>◆ Note: Above list not exhaustive. Additions and amendments will be appreciated.</p>	
2	PRIORITIES	2.1 Commission on Gender Equality	

3	AREAS OF OVERLAP	<p>3.1 Public Protector. ♦ <i>Overlap with possible ombuds function of the Public Service Commission.</i></p> <p>3.2 Human Rights Commission ♦ <i>Definition of human rights will possibly overlap with work of Theme Committee 4.</i></p> <p>3.3 Public Protector, Human Rights Commission and Commission on Gender Equality. ♦ <i>The above might overlap with the work of Theme Committee 3, on their effect on the different tiers of Government.</i> ♦ <i>Roles of above structures may possibly overlap. Need exist to examine their necessity in the future.</i></p>
4	REFERRALS TO COMMISSIONS	4.1 None at this stage.
5	SUBJECTS FOR REPORTING	<p>5.1 Public Protector.</p> <p>5.2 Human Rights Commissions.</p> <p>5.3 Commission on Gender Equality.</p> <p>5.4 Commission on Restitution of Land Rights.</p>
6	NUMBER OF REPORTS AND TARGET DATES	<p>6.1 <u>Public Protector.</u> 1 Report - 31 Jan 1995 ♦ <i>Selfe, J to compile a report on representations and debates on the Public Protector Bill as well as any other relevant issues for consideration by the Subtheme Committee.</i></p> <p>6.2 <u>Human Rights Commissions</u> 1 Report - 31 Jan 1995 ♦ <i>Camerer, S to compile a report on representations and debates on the Human Rights Commission Bill as well as any other relevant issues for consideration by the Subtheme Committee.</i></p> <p>6.3 <u>Commission on Gender Equality</u> 1 Report - 31 Jan 1995 ♦ <i>Turok, M to work on list of organisations to be consulted, consultation strategies, make initial contact on submissions and proposals on the consultation process and seek input from the TEC's Subcouncil on the Status of Women.</i></p> <p>6.4 <u>Commission on Restitution of Land Rights</u> 1 Report - 31 Jan 1994 ♦ <i>Mokoena, M (Inkosi) to compile a report on representations and debates on Restitution of Land Rights Bill.</i></p>

7	CONSULTATION - STRUCTURES & ROLE PLAYERS	<p>7.1 Commission on Gender Equality The following are examples of bodies to be consulted:</p> <p>7.1.1 Women's National Coalition, Religious Bodies, Sports Bodies, Trade Unions, Agricultural Unions, Centre for Applied Legal Studies, Rural Women's Movement, Cultural Organisations, Teachers Organisations, Civics & Community based Organisations, Women's Bureau, Women for South Africa, Women's Lobby, International Bodies and other Representative Organisations.</p> <p>7.2 Public protector</p> <p>7.2.1 Outgoing Ombudsperson, Residents Associations, Legal Bodies, Civics, Community based Organisations, Women and Youth Organisations, NCRC, Social Welfare Organisations, Rural Communities.</p> <p>7.3 Human Rights Commission</p> <p>7.3.1 National Association of Democratic Lawyers, Black Lawyers Association, Lawyers for Human Rights, Human Rights Commission, Law Societies, Bar Councils, Youth, Women, Religious Organisations, Social Workers Organisations, NCRC and Rural Women's Movement.</p> <p>7.4 Land Restitution Commission</p> <p>7.4.1 National Land Commission, Agricultural Unions, Rural Communities the Rural Women's Movement and International Experts.</p>
8	COMMUNITY AND MEDIA LIAISON	<p>8.1 Media - Print and Electronic.</p> <p>8.2 Public hearings</p> <ul style="list-style-type: none"> ◆ <i>The process of Community and Media liaison should be biased towards ordinary people.</i>
9	TECHNICAL ASSISTANCE	<p>9.1 Administrator/Public Relations Person.</p> <p>9.2 Researcher.</p> <ul style="list-style-type: none"> ◆ <i>The Subcommittee recommends the employment by the CA of the above persons.</i> ◆ <i>These persons are urgently needed as they would need to start looking into details and setting up of programmes for community and media liaison. This would result in a much clearer work programme with further proposed times frames/ target dates.</i>

D		SECURITY APPARATUS	
1	CONSTITUTIONAL ISSUES	<p>1.1 <u>Supremacy of the Constitution</u> 1.1.1 Sovereignty of the Constitution and relation to the four security arms, i.e, Defence, Police, Correctional Services and Intelligence.</p> <p>1.2 <u>Definition of action in national interest</u> 1.2.1 Non-partisan or party political action</p> <p>1.3 <u>Accountability to parliament</u> 1.3.1 State of Emergency. 1.3.2 Oversight through Parliamentary Standing Committees. 1.3.3 Approval of budget. 1.3.4 Regulatory Acts of Parliament. 1.3.5 Termination of deployment of service by the Executive. 1.3.6 Tender regulations.</p> <p>1.4 <u>Individuals rights in relation to the State</u> 1.4.1 The right to strike and the right to disobey 1.4.2 The right to religious freedom and Gender Equality. 1.4.3 Relationship to architecture of state and access of members to state structures outside the security arms.</p> <p>1.5 <u>Employment of Force</u> 1.5.1 Limitations and Powers</p> <p>1.6 <u>International obligations</u> 1.6.1 Status, Conventions and Protocols</p> <p>1.7 <u>Executive Control</u> 1.7.1 President and Cabinet</p> <p>1.8 <u>Civilian Control</u> 1.8.1 Ministry and Secretary</p> <p>1.9 <u>Civil/Military relations and demilitarisation of some security arms</u></p> <p>1.10 <u>Budget</u></p> <p>1.11 <u>Parliamentary Control</u> 1.11.01 Monopoly of Force in State Institutions, Freedom of Information, Special Courts, Ombuds Structures, Sovereignty and relation to Constitution and threats to the Country.</p>	
2	PRIORITIES	2.1 Under Consideration.	

3	AREAS OF OVERLAP	<p>3.1 Fundamental Rights - Entrusted to Theme Committee 4.</p> <ul style="list-style-type: none"> ◆ <i>Powers of Security Officials to execute duties in conflict with basic human rights, e.g. deprivation of freedom by incarceration, invasion of privacy by either the Police or the Intelligence Community.</i> <p>3.2 National and Provincial Powers and Federal and Unitary Balance - Entrusted to Theme Committee 3.</p>
4	REFERRALS TO COMMISSIONS	<p>4.1 Correctional Services.</p> <p>4.2 Intelligence.</p> <ul style="list-style-type: none"> ◆ <i>Proposed Commissions should work closely with the relevant Standing Committees in both houses of Parliament.</i>
5	SUBJECTS FOR REPORTING	<p>5.1 Correctional Services.</p> <p>5.2 Defence</p> <p>5.3 Intelligence.</p> <p>5.4 The Police.</p>
6	NUMBER OF REPORTS AND TARGET DATES	<p>6.1 <u>Correctional Services</u> 1 Report - 31 March 1995</p> <p>6.2 <u>Defence</u> 1 Report - 30 April 1995</p> <p>6.3 <u>Intelligence</u> 1 Report - 31 March 1995</p> <p>6.4 <u>The Police</u> 1 Report - 31 April 1994</p> <ul style="list-style-type: none"> ◆ <i>Overarching report to be written after compilation of the above reports.</i> ◆ <i>Ability to meet deadlines dependent on timeous employment of Researcher and appointment of a Panel of Expert Consultants (see 9.2 below)</i>
	CONSULTATION - STRUCTURES & ROLE PLAYERS	<p>7.1 Security Forces, Popcru, Sapu, Sandfu and Sapohr.</p>
8	COMMUNITY AND MEDIA LIAISON	<p>8.1 Public hearings.</p> <p>8.2 Invitations of submissions through Newspaper advertisements.</p>

9

TECHNICAL ASSISTANCE

9.1 A Senior dedicated Researcher.

9.2 A Panel of expert Consultants

Names of Experts agreed upon: ♦

Prisons: Skelton Anne (University of Pretoria and LHR) and Van Zyl Dirk (Dean: Faculty of Law, UCT). Smit

Defence: Cilliers J(IDP), Hlongwane F(TEC) and Nathan L(Centre for Conflict Resolution).

Intelligence: Africa S(Dept of Political Science, Durban-Westville), Breytenbach Prof (Dept of Political Science, Stellenbosch), Hough M(Institute for Strategic Studies, UPE) and Southall R Prof (Dept of Political Science, Rhodes).

Police: Cawthra G(MRG), Rauch J(Ministry of Safety and Security), Seegers A(Dept of Political Science, UCT) and Simpson G(Institute for the Study of Violence and Reconciliation).

9.3 Advise to be sought from Researchers and Institutions on a comparative audit of all four Security Apparatus:

Institutions: Military Research Group, Institute For Defence Policy, Institute for the Study of Violence, Police and Prisons' Projects, Wits University Policing Project, UWC Community Policing Project, Dept of Criminology, Unisa, Institute of Criminology, UCT, Nadel, Children in Detention Group and Penal Reform Group of the LHR, Black Sash and Nicro.

Researchers Baynham S, Booyce W, Cock J, Giffard C, Heitman H, Lue M, Steenkamp W and Williams R.