

2/4/2/1/1/13

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 2

STRUCTURE OF GOVERNMENT

TUESDAY
07 FEBRUARY 1995
08H30 - 13H00
M46

DOCUMENTATION

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CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 2 STRUCTURE OF GOVERNMENT

THEME COMMITTEE MEETING

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

Date : Tuesday 7 February 1995
Time : 8h30 - 13h00
Venue : M46

AGENDA

1. Opening and Welcome
 2. Theme Committee Minutes (2 February 1995)
 3. Report from Core Group
 4. Work Programme
 5. Community Liaison Programme
 6. Closure
-

**HASSEN EBRAHIM
EXECUTIVE DIRECTOR
CONSTITUTIONAL ASSEMBLY**

Enquiries: James Nene & Thomas Smit 403 2281)

CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 2
MINUTES OF COMMITTEE MEETING

Thursday 2 February 1995
14H00
M46

PRESENT

Mahlangu MJ (chairperson)

Badenhorst MJ (Alt)
Beyers AS
Diale N (Alt)
Doidge GQ
Ebrahim AG
Eglin CW
Groenewald PH
Hendrickse PAC (Alt)
Louw SK
Mlangeni A
Mohlamonyane GM (Alt)
Mothoagae PK (Alt)

Moloto CP (Alt)
Msomi M
Mutsila I
Nxumalo SDW
Olifant DAA
Pahad EGH
Phakathi NE (Alt)
Rabie JA
Taunyane DP (Alt)

APOLOGIES

Steenkamp PJ
Maduna P
Ndlovu VB

ABSENT

Ackerman C
Bester B
Foster JA
Holomisa SP
Jana DPS
Ligege MG
Mabudafasi J
Mars I
Marshoff FB
Mushwana GM
Mwedamutsu MJ
Ramusi MC
Shabangu S
Sethema BEE
Tyobeka V

Nene J and Smit T, were in attendance.

1. OPENING AND WELCOME

- 1.1. The meeting was opened by Mahlangu MJ.

2. THEME COMMITTEE MINUTES

- 2.1. The minutes of the previous meeting were approved, subject to the following corrections:

- (i) Doidge GQ was present

- (ii) P 5, no (iii), is replaced with the pertinent passage from the PAC submission presented: " The PAC, from the outset, opposed enforced coalition, and in particular enshrining it in the Constitution. In principle (they) support the concept of government of national unity, but such a government must evolve out of voluntary negotiations and not forced upon. If it is possible for any component of a Government of National Unity to leave the coalition unilaterally, it is only correct that they should go into it voluntarily"; and,
- (iii) P 5, no (iv) is replaced with the pertinent passage from the PAC submission presented: "If that (the role of the Senate is confined largely to looking after the interests of the Provinces) remains their sole task, in the new Constitution, then we do not need 10 from each province to say the same thing ...moreover ... they should be directly elected so that they are accountable to the electorate" Add further: There should be some link between the Senate and provincial assemblies.

3. SEPARATION OF POWERS REPORT (BLOCK 1)

- 3.1. The Chairperson reported on the Core Group meeting and presented the draft report on areas of agreement which the Core Group had drafted. The meeting noted that this document does not represent any "party view".
- 3.2. The meeting noted further that the Core Group had drafted the document as follows: Each party had gone through all the submissions (party, individual, and other). Parties had then compiled their own summaries, which were compared with one another. From these summaries, the Core Group compiled one overarching summary of areas of agreement, which is attached as annexure "A".
- 3.3. The meeting agreed that it will in addition have to look at the whole catalogue of checks and balances, which should become clear when addressing structure of government in the next block.
- 3.4. The meeting then discussed the document and agreed upon the amendments contained in annexure "A". It was noted in particular that the following issues are contentious, but will be dealt with in detail in block 2:
 - (i) The issue whether there shall be a "parliamentary

- form" of or an "executive form" of president, and;
- (ii) The issues whether there should be a President and/or Vice President and/or Prime Minister, as well as the roles of these offices.

- 3.5. It was further noted in respect of 2.4.2. in annexure "A", that "independant" in this context bears the meaning independant vis-a-vis the executive and the legislature.
- 3.6. All parties present (ANC, DP, FF, IFP, NP, and PAC) individually expressed their satisfaction with the report as amended, and the meeting adopted the amended report.
- 3.7. The meeting agreed that as a form of courtesy and feedback, copies of the document may be made available to those individuals, organisations, and parties who made submissions, but that Management shall have to decide what is appropriate.

4. COMMUNITY LIAISON PROGRAMME

- 4.1. The meeting agreed that clarity will be sought in respect of the above (as well as the Work Programme) at the meeting of Chairpersons (and Core Groups) of the Theme Committees with the Chairperson of the Constitutional Assembly, on Monday 6 February 1995.
- 4.2. General discussion was entertained regarding the Community Liaison Programme, but it was agreed that it will be more fruitful to postpone the discussion until after the abovementioned meeting.

5. ANY OTHER BUSINESS

- 5.1. The meeting noted the letter from the Executive Director confirming the appointments of the Technical Committees, and that an orientation workshop will be held for them on Monday 6 February 1995.
- 5.2. It was also noted that advertisements calling for submissions on block two are required urgently.
- 5.3. Lastly, it was noted that communication within the Constitutional Assembly would be improved from the perspective of the Theme Committees (especially with respect to the Work Programme), if the proposed meeting of Chairpersons of the Theme Committees with the Chairpersons

of the Constitutional Assembly were to include the Core Groups.

6. CLOSURE

6.1. The meeting rose at 15h05.

Signed by Chairperson _____

**CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 2**

**SEPARATION OF POWERS
(BLOCK 1)**

PRELIMINARY REPORT

1. INTRODUCTION

1.1 The Theme Committee 2 by 30 January 1995 had received submissions from the following parties, organisations and individuals.

PARTY SUBMISSIONS

ACDP
ANC
DP
FF
IFP
NP
PAC

ORGANISATION SUBMISSIONS:

ANCC
EFSA
ODISA

INDIVIDUAL SUBMISSIONS:

Bothma, O
Brijraj, R
Carser, A
Dimba, MS
Gottschalk, K
Stratten P & N

1.2. The constitutional Principle to which the Constitutional Assembly is required to give effect to in the new Constitutional Text is the following:

VI

"There shall be separation of powers between the legislature, executive and judiciary, with appropriate checks and balances to ensure accountability, responsiveness and openness."

- 1.3. It was understandable that many submissions on the "Separation of Powers" also focused on aspects of the "Structure of Government," which is the next subject for detailed information-gathering and report by Theme Committee 2. The Theme Committee will not report on this latter aspect of the submissions at this stage but will confine its report to the issue of "Separation of Powers".

2. AREAS OF AGREEMENT

2.1. SEPARATION OF POWERS

- 2.1.1. There was general agreement in the submissions that the new Constitution must contain specific provisions in which the separate legislative, executive and judicial powers are vested.

2.2. LEGISLATURE

- 2.2.1. There should be a parliamentary form of government.
- 2.2.2. Parliament shall be the expression of the will of the people.
- 2.2.3. The Legislative authority of the Republic shall, subject to the Constitution, vest in Parliament, which shall have the Supreme power to make laws for the Republic.

2.3. EXECUTIVE

- 2.3.1. The Constitution shall make specific provision for an executive authority.
- 2.3.2. The executive shall be accountable to Parliament.

2.4. JUDICIARY

- 2.4.1. There shall be an independent, impartial judiciary, subject to the Constitution.
- 2.4.2. There shall be an independent Constitutional Court with the powers to nullify any Act of Parliament if such Act is in conflict with the Constitution.

2.5. CHECKS AND BALANCES

2.5.1. There shall be checks and balances that will restrain each branch of government. (Checks and balances to be revisited and tabulated under block 2 and 3)

Signed by Chairperson _____