

2/4/20

**A17**

**CONSTITUTIONAL  
ASSEMBLY**

**THEME COMMITTEE 1**

**CHARACTER OF  
DEMOCRATIC STATE**

**20 MARCH 1995**

**ROOM M515**

***DOCUMENTATION***

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# CONSTITUTIONAL ASSEMBLY

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## MEETING OF THEME COMMITTEE 1

### CHARACTER OF THE DEMOCRATIC STATE

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

**Date:** Monday, 20 March 1995

**Time:** 18h00 - 21h30

**Venue:** Room M515

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#### AGENDA

1. Opening
2. Apologies
3. Adoption of Previous Minutes
4. Matters arising
5. Core Group Report
6. Report on media briefings and discussion on advertisement for Block 3  
*[See memo from Enoch Sithole]*
7. Setting up of Commissions  
*[See Amended Draft Proposal by the Executive Director]*
8. Report on joint Core Group Meeting
9. Public Participation Programme
10. Tabling of ACDP and IFP submissions for Block 2
11. Discussion on Party submissions
12. General

13. Closure

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H EBRAHIM  
EXECUTIVE DIRECTOR:  
CONSTITUTIONAL ASSEMBLY

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Enquiries: L. Rammble and S. Rabinowitz (Tel: 24 -5031 Ext 266)

**CONSTITUTIONAL ASSEMBLY**

**THEME COMMITTEE 1  
CHARACTER OF THE DEMOCRATIC STATE**

**MINUTES OF THE TWELTH MEETING OF THEME COMMITTEE 1  
MONDAY 13 MARCH 1995 09h00 ROOM V227**

**Present**

**Mahlangu N J (Chairperson)**

Ally A	Mukhuba T T
Booi M S	Mulder P
Chiba L	Ncube B
Chikane M M	Niehaus C G
Cwele C S	Routledge N C
Dyani M M	Ripinga S S
Fani L M	Seaton S
Ferreira E T	Shope N G
Goosen A D	Sisulu A N
Gumede D M	Streicher D M
Hangana N E	Van Deventer F J
Janse van Rensburg A P	Van Zyl I D
Lekgoro M K	Williams A J
Mabuza C M	
Majola-Pikoli G	
Marais A	
Marais P G	
Meshoe K R	
Mngomezulu P G	
Momberg J H	
Moorcraft E K	
Mtshali L P H M	
Mukhuba T T	

**APOLOGIES:**

**Kekana N N  
Nzimande B E  
Schoeman E A  
Vilakazi B H  
Zondi M**

**Technical Experts present:**

**Corder H  
Heunis J C  
Husain Z**

**Leola Rammable and Susan Rabinowitz were in attendance.**

**1. OPENING**

The meeting was opened by the Chairperson at 09h00.

**2. ADOPTION OF PREVIOUS MINUTES**

The Minutes of the Theme Committee meeting of 6 March 1995 contained in document A16 were adopted with the amendment that Mrs Routledge's apology for the meeting of 6 March was noted.

**3. MATTERS ARISING**

The meeting raised concerns with regard the Weekly Media Briefings on the Constitution Making Process (Item 7.1 of Minutes of 6 March 1995). It was agreed that the Secretariat would arrange for the Media Department to brief the members at the next Theme Committee meeting to clarify the purpose of the briefings and to address the concerns.

The Secretariat agreed to notify members in writing of any cancellation of meetings.

On a point of procedure, it was noted that nominations of members to attend the briefings should be done through the Core Group.

**4. SETTING UP OF COMMISSIONS**

It was agreed that this matter would stand over until the next Theme Committee meeting and that the Core Group would look at the issue before the next Theme Committee meeting.

**5. JOINT CORE GROUP MEETING**

Due to a clash with Parliamentary meetings, it was agreed that the Joint Core Group meeting scheduled for Thursday 16 March 1995 at 14h00 would be cancelled and that the Core Group would meet with the Secretariat to discuss a suitable date and would consult with the Chief Whips on the Parliamentary programme.

**6. PUBLIC PARTICIPATION PROGRAMME**

A report was given by members of the Theme Committee who had taken part in the Public Participation Programme over the weekend of 11/12 March 1995. A number of problems were raised with regard to transport arrangements, poor advertising of the events and inadequate representation by political parties. It was further suggested by members who had attended the CPM's that provincial

governments should be involved in the process and that workshops for the public on the constitution-making process should precede the public meetings. Submissions received from the public at the meetings which related to Theme Committee One's work were the issue of equality, with particular reference to women's rights, unitary state and language rights.

With regard to the processing of the submissions received at the CPM's it was agreed that the Core Group and the CA Administration would work out a way for members to receive a summarised report of the proceedings and that this would be made available before the finalisation of the particular Block.

It was suggested that the oral submissions be processed by the Technical Experts who would then incorporate this into the final report of the Theme Committee.

In response to a question to the IFP that one of their members had reported that the ANC were using the Public Participation Programmes for party political purposes, the IFP agreed to take the matter back to their principals and to report back at the next Theme Committee meeting.

## **7. DISCUSSION ON PARTY SUBMISSIONS FOR BLOCK 2**

- 7.1 The ACDP would table its report at the next Theme Committee meeting.
- 7.2 The ANC tabled its submission on Block 2 included in the documentation A16. Questions of clarification were asked with regard to Paragraph 2.3.2 "The Constitution shall empower National Parliament to ensure that the laws passed in the Provincial Legislatures are not inconsistent with the provisions of the Constitution and the Bill of Rights", and on the 3rd Paragraph of the Introduction on the issues of national uniformity, balkanisation and fragmentation.
- 7.3 The DP tabled its submission on Block 2 included in the documentation A16. With regard to its submission on Equality, clarification was given on the issues of discrimination (Page 11, 2nd paragraph) and categories of differentiation (Page 9-10). On their submission on One Sovereign State, questions of clarification were raised on the issue of Point (a) Provincial Autonomy and Point (c) Community Self Determination.
- 7.4 The FF tabled its submission on Equality contained in a separate document entitled " Equality before the Law: General Principles" and its submission on "One Sovereign State" included in Document A15. Questions of clarification were raised on unfair discrimination and one sovereign state.

7.4 The IFP would table its submission at the next Theme Committee meeting.

7.5 The NP tabled its submission on Block 2 included in Document A15. Clarification was given on the issue of one sovereign state (Page 26, Paragraph 2), on what is meant by "interest groups at all levels of government" (Page 27, Paragraph 3), and proportional representation (Page 27, Paragraph 2).

## 8. DISCUSSION ON REPORT FOR BLOCK 2

A memorandum from the CA Chairperson entitled "Theme Committee Report Formats" included in Document A16 was tabled. It was agreed that the Technical Committee should look at this additional format which would be used for future reports.

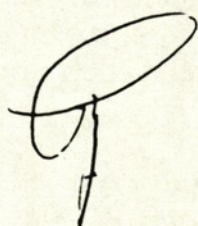
It was further agreed that the Drafting Sub-Committee and the Technical Experts would meet this week to start working on the Report for Block 2. In addition it was agreed that there would be a rotational chairperson for the sub-committee.

## 9. GENERAL

A memorandum from the Executive Director (Document B.1.1.) relating to the work programme for the Technical Experts was tabled and was referred to the Core Group for consideration.

## 10. CLOSURE

The meeting rose at 11h55.



Chairperson

14(03)95



# CONSTITUTIONAL ASSEMBLY

## THEME COMMITTEE 1 CHARACTER OF DEMOCRATIC STATE

### MINUTES OF CORE GROUP MEETING HELD ON THE 14 MARCH 1995 AT 08H30

Present  
NJ Mahlangu (Chairperson)

M M Dyani  
N Majola-Pikoli  
P G Marais  
K R Meshoe  
L P H M Mtshali  
P W A Mulder

Leola Rammble was in attendance.

#### 1. OPENING

The meeting was opened by the Chairperson at 08h30 and he emphasised the importance to have Core Group meetings regularly.

#### 2. PUBLIC PARTICIPATION

After discussion on the process of handling the submissions and reports from the Public Participation events the meeting agreed that the matter be raised at the Management Committee with suggestions made by the members of the Core Group.

The following suggestions were made; namely:

- a) Members of the secretariat should attend the CPMs to take notes of submissions made relevant to the Theme Committees so that they could develop a report together with the Theme Committee members present at the CPMs, which would be tabled at the Theme Committee meetings.
- b) All the submissions which are received at the CPMs and which are relevant to the specific Blocks which Theme Committees are dealing with, should be produced in a report form so that the Theme Committees could deal with the issues immediately.

The meeting further agreed that the transport and logistical arrangements for the Members of the CA are worsening and that urgent attention needs to be given to this problem.

### **3. PRESS BRIEFINGS**

A member from the Media Department addressed the Core Group. It was pointed out to the meeting that the reason for a press briefing was based on a request from the members of the media since they were unable to cover all Theme Committee sittings.

The media department agreed that the press briefings should take place every Thursday afternoon and that Theme Committee's needed to inform the media department by 11h00 on Thursday's if they needed to report on any particular issue relevant to the work of the Theme Committee.

Members raised concern about the press briefings because all the parties will not be represented and that party positions could be misinterpreted.

The meeting agreed that this matter be carried over to the Theme Committee for further discussion and that a member from the media department be present at the meeting.

### **4. JOINT CORE GROUP MEETING**

The Core Group agreed that the meeting should take place on the 16 March 1995, at 14h00 at M46.

It was further agreed that Mr. Mahlangu should chair the meeting and that the discussion would deal with areas of overlap but the meeting should not discuss Block 1 as this report had already been dealt with by the CC.

Mr Marais indicated that he was unable to attend the meeting and the members agreed that an alternate could attend.

### **5. SETTING UP OF COMMISSIONS**

Members went through the proposed document on setting up of commissions by the Executive Director.

The Secretariat explained that point 1 in the draft proposal meant that three separate committees needed to be set up to deal with Language, Name and Symbols and Seats of Government. The meeting agreed that the document needed to be amended accordingly.

The meeting further agreed that the Law Advisors should give a brief explanation to the Theme Committee on the difference between a Commission and a Sub-committee. The issue should also be placed on the agenda of the Theme Committee meeting for further discussion.

#### **6. WORK PROGRAMME OF TECHNICAL COMMITTEE**

The Chairperson spoke through the memorandum which was received from the Executive Director dated the 8 March 1995.

The meeting agreed that a meeting should be held between the Technical Committee and the Core Group to discuss this issue. The Secretariat was requested to inform a member from the Technical Committee that a meeting would take place on the 16 March 1995.

#### **7. DISCUSSION ON DEALING WITH PARTY SUBMISSIONS**

Concern was raised by some members with regard to dealing with Party submissions and the process of fleshing out of issues which the Theme Committee is dealing with.

It was suggested that the first phase should be to allow parties to speak through their submissions. The next phase should allow for clarity and understanding of concepts. Party positions should not be attacked but members should be made to understand the reason for certain Party positions.

The third phase would be to get a draft detailed report outlining party positions from the Technical Advisors, which the Theme Committee would discuss in detail. This approach could also lead to possible suggested approaches by the Theme Committee on contentious issues.

#### **8. GENERAL**

A point of concern was raised by the IFP with regard to the procedure of tabling reports to the CC. It was agreed that all reports should first go through the Theme Committee before it is tabled at any other structure so that the Theme Committee could discuss the report.

The meeting rose at 10h40.

**APPOINTMENT OF SUB-COMMITTEES**  
**AMENDMENT TO DRAFT PROPOSAL**

Theme Committee 1 has indicated that sub-committees need to be set up to deal with Language; Name and Symbols; National Territory and Seats of government.

Following the Management Committee meeting of the 23 February 1995 in which the Theme Committee was asked to deal with proposals on the appointment of sub-committees and the decision taken by the Theme Committee to discuss this issue at the next Theme Committee meeting, the following suggestion is being tabled for the consideration by the Theme Committee:

1. Three sub-committees made up of ten members each; namely, 3 ANC, 2 NP and 1 from each of the other parties, should be formed. Members of the CA who are not members of the Theme Committee should be allowed to serve on the sub-committees.
2. The three sub-committees should each deal with the question of Language, Name and Symbols and Seats of Government simultaneously while Theme Committee work continues. This means that submissions should be received timeously and that Public Hearings should be arranged.
3. The recommendations of the sub-committees should be tabled with the Theme Committee for approval. These recommendations should be in the form of a report as approved by the Management Committee. The approved report would then be submitted to the Constitutional Committee.
4. A Technical sub-committee comprising of five members should be established to deal with the issue of National Territory. This sub-committee should submit their recommendations to the Theme Committee where it will be dealt with politically and then submitted to the Constitutional Committee.
5. Language:

Suggested framework:

- a) Question of official language(s) at national and provincial level.
- b) Protection and promotion of diversity of language.
- c) Use of language(s) in and by government and public institutions.
- d) Language(s) in which statutes must be drafted.

Relevant Constitutional Principles: II, XI

Relevant sections of Interim Constitution: 3, 8, 25(1)(a), (2)(9) and 32 (b) and (c), 65(1) and (2), 107, 141 (1) and (2), (3)(i), 31

6. Name and Symbols:

Suggested framework:

- a) Name
- b) Symbols
- c) Flag
- d) National Anthem

7. Seats of Government:

Suggested framework:

- a) Seat of National Legislature
- b) Seat of National Executive
- c) Seat of Constitutional and Appeal Courts

Relevant sections of Interim Constitution: 46(1), 53(1), 106

8) National Territory:

Suggested framework:

As regards national territory:

- a) Proper definition, also of provincial boundaries
- b) Limits of territorial waters
- c) Prince Edward and other Islands

Relevant Constitutional Principle: 1, XVIII (1) and (3)

Relevant sections of Interim Constitution: 1(2), (2) 124, 248 and Schedule 1

The matter is placed before the Theme Committee for further discussion.

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**H EBRAHIM**  
**EXECUTIVE DIRECTOR**

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**CONSTITUTIONAL ASSEMBLY**

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Ref No:

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Cape Town  
8000 RSA

**MEMORANDUM**

**TO:** Theme Committees  
**FROM:** Enoch Sithole  
**DATE:** 13 March 1995  
**RE:** Advertising Block 3

The media department plans to run advertisement calling for submissions for block 3 on the week of the 27 March 1995, we request Theme Committees to give us the text that they would like to be printed in the advert.

The department expect this text to be furnished to us not later than the 23 March.

# CONSTITUTIONAL ASSEMBLY

TELEPHONE: (021) 403 2252  
FAX: (021) 461 4339  
INTERNATIONAL: (27) 21 403 2252  
FAX: (27) 21 461 4339

PO Box 15  
CAPE TOWN 8000  
REPUBLIC OF SOUTH AFRICA

REF No:

**13 March 1995**

## MEMORANDUM

**To all Theme Committees**

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The period from 18 April to 21 April immediately after the Easter recess has been set aside for CA business only. Theme Committees are requested to please make urgent recommendations as to how these four days can be best utilised for CA work. It would be the recommendation of the Administration that Theme Committees meet as follows :

### **Tuesday 18 April**

TC1,2 and 3	09h00 - 13h00
TC4,5 and 6	14h00 - 18h00

### **Wednesday 19 April**

TC4,5 and 6	09h00 - 13h00
TC1,2 and 3	14h00 - 18h00

### **Thursday 20 April**

Management Committee	08h00 - 10h00
Party Caucuses	10h30 - 13h00
TC 4,5 and 6	14h00 - 18h00

### **Friday 21 April**

TC1, 2 and 3	09h00 - 13h00
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HASSEN EBRAHIM  
EXECUTIVE DIRECTOR

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**ANALYTICAL SURVEY OF REPORT BY TC 1 IN BLOCK ONE**  
**8 MARCH 1995**

No	Constitutional Principle	Issue	Contentious aspects	Non-contentious aspects	Remarks
1.	VI	Supremacy of Constitution		Constitution to be supreme law binding all organs of state at all levels	Decision to draft relevant provisions already taken.
2.	VIII	Political system		(1) Multi-party system (2) Regular elections (3) Universal adult suffrage (4) Common voters' roll	Restatement of CP VIII. Agreement on non-contentious aspects requires further development before drafting can commence. TC 1, 2 and 4 will flesh out the detail in Block Six.
3.	VIII	Electoral system		(1) Basis to be proportional representation (2) Constituency representation to be explored.	Restatement of CP VIII. Agreement lacks specifics. Further clarity needed. TC 2 will provide further clarity on national and provincial electoral systems in Block Six.



No	Constitutional Principle	Issue	Contentious aspects	Non-contentious aspects	Remarks
4.		Fundamental rights		(1) To be protected in an entrenched Bill of Rights (2) Justiciable by independent judiciary.	Restatement of CP II. Detail required on manner of entrenchment (special majorities, etc.) and court system. TC 4 and 5 will provide further clarity.
5.	II, VI, IX	Normative values underlying Constitution		(1) Accountability (2) Democracy (3) Equality (4) Freedom (5) Transparency	The agreed position is that these principles will underlie the whole Constitution and that all provisions of the Constitution should give effect to them. As such no decision to draft specific provisions is required.
6.	VI	Accountability		Executive to be accountable to Parliament	The manner in which the executive will be accountable to Parliament to be developed further by TC 2 in Block Two.

No	Constitutional Principle	Issue	Contentious aspects	Non-contentious aspects	Remarks
7.	I	South African citizenship		Common South African citizenship	Restatement of CP I. Clarity needed on the aspects of citizenship that need to be entrenched in the Constitution. TC 1 will deal with citizenship in greater detail in Block Six. Drafting instruction can stand over.
8.	I	Establishment of one, sovereign state	Whether State should be structured along federal or unitary lines.	South Africa to be sovereign, independent undivided State.	The concept of "one, sovereign state" is an agenda item for TC 1 in Block Two. Drafting instruction can stand over to Block Two.
9.	VI	Horizontal separation of powers		Separation between legislative, executive and judicial powers	Restatement of CP VI.
10	XVI	Levels of government		National Provincial Local	Levels of government need to be further developed. Falls within TC 2's mandate.

No	Constitutional Principle	Issue	Contentious aspects	Non-contentious aspects	Remarks
11	XVIII, XIX, XX, XXI, XXII, XXIII, XXIV	Vertical separation of powers	<u>Nature</u> and <u>extent</u> of powers and functions at various levels of government		This issue falls within TC 3's mandate. Powers and functions of judiciary dealt with by TC 5.
12	XVIII, XIX, XX, XXI, XXII, XXIII	Parliament's supremacy as law-maker	Whether Parliament should in relation to provincial functional areas have <ul style="list-style-type: none"> <li>- zero powers</li> <li>- concurrent powers</li> <li>- framework powers</li> <li>- overriding powers</li> </ul>		Matter closely allied to No. 11 above. Falls within TC 3's mandate. TC 1 will also deal with provincial autonomy in Block Two.
13	XVI	Parliamentary structure	Whether Parliament should be bi- or unicameral		Question of second chamber is to be dealt with by TC 2 in Block Two.

No	Constitutional Principle	Issue	Contentious aspects	Non-contentious aspects	Remarks
14	XII, XXXIV	Collective rights of self-determination	(1) Nature and extent of such rights. (2) Representation of cultural and linguistic minorities. (3) Afrikaner selfdetermination.	Recognition and protection of collective rights of organs of civil society, including linguistic and cultural associations.	TC 1 will develop the question of self-determination within the context of "one, sovereign state" in Block Two. The aspect agreed on needs fleshing out before drafting instruction can be given.
15	XIV	Minority party participation in government	(1) Coalition government "forced" by Constitution. (2) Majority party government.	Participation by minority parties in legislative structures on basis of proportional representation.	Question of minority parties' participation in executive structures will be dealt with by TC 2.
16		Participatory democracy	(1) Meaning, form and effect of "participatory democracy". (2) Entrenchment of this notion in Constitution.		

No	Constitutional Principle	Issue	Contentious aspects	Non-contentious aspects	Remarks
17	II, XII	Secular state	Practical effects of the notion of a secular state, for instance <ul style="list-style-type: none"> <li>- references to deity in constitution</li> <li>- religious observances in State institutions</li> <li>- holding of offices of State by religious office-bearers.</li> </ul>	(1) Freedom of religion. (2) Separation of religion and State.	This issue impacts on TC4's mandate. Decision should stand over until TC 4 submits its report on freedom of religion. This issue also affects the Preamble which will be dealt with by TC 1 in Block Ten.

