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CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 3

**RELATIONSHIP BETWEEN
LEVELS OF GOVERNMENT**

Monday 6 March 1995

Room E249

(18H00)

DOCUMENTATION

(Minutes of the meeting held on 27/2/95)

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CONSTITUTIONAL ASSEMBLY

MEETING OF THEME COMMITTEE 3

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

Date : MONDAY 6 MARCH 1995

Time : 18H00

Venue : E249

AGENDA

1. Opening
2. Minutes of the meeting held on 27 February 1995
3. Matters arising
4. Framework
5. Work Programme for Heading 2
6. Advertising
7. CPM (Constitutional Public Meeting) ✓
8. General
9. Closure

HASSEN EBRAHIM
EXECUTIVE DIRECTOR
CONSTITUTIONAL ASSEMBLY

Enquiries: Mbasa Mxenge Room 9-09 Regis House (Tel 403 2108)
Sandra Haydon Room 9-08 Regis House (Tel 403 2275)

**CONSTITUTIONAL ASSEMBLY
MINUTES OF THE MEETING OF
THEME COMMITTEE 3
RELATIONSHIP BETWEEN LEVELS OF GOVERNMENT
WEDNESDAY 27 FEBRUARY 1995 (AT 11H30)**

modified

PRESENT

DC DU TOIT (Chairperson)

Andrew KM	Koornhof GW
Applegryn MS (Alt)	Lamani NE (Alt)
Bhabha M	Leeuw SJ (Alt)
Blaas A	Mabude NI (Alt)
Carrim YI	Mahlalela AF
Chuenyane LD (Alt)	Manie MS
Coetzee MP	Marais G (Alt)
Cronje PC	Maree JW
de Lille P	Mashamba HJ
Gordham PJ	Peters ED (Alt)
Groenewald PJ	Richards I (Alt)
Gxowa NB	Sulliman MA (Alt)
Khobe ON	Suttner RS
King TJ	Verwoerd M
Kondlo N	Vilakazi MI

Technical Experts

Professors D Basson, B Majola and F Venter

Apologies

Z Kota, LJ Modisenyane and PW Saaiman

Absent

NN Mapisa-Nqakula, R Rabinowitz, MS Seperepere, EEN Shandu and PF Smith

In Attendance

Sandra Haydon, Mbaso Mxenge and Vanessa Calvert

1. OPENING

- 1.1 Prof Du Toit opened the meeting at 11h40 and the Agenda was adopted.

2. MINUTES OF THE MEETING HELD ON 15 FEBRUARY 1995

The minutes of the meeting held on 15 February 1995 were adopted.

3. MINUTES OF THE MEETING HELD ON 16 FEBRUARY 1995

The minutes of the meeting held on 16 February 1995 were adopted.

4. REPORT FROM THE CORE GROUP ON DISCUSSIONS WITH TECHNICAL EXPERTS / TE's REPORT ON SUBMISSIONS / FRAMEWORK AND WORK PROGRAMME FOR HEADING 2

Agenda items 4, 5 and 6 were linked for discussion.

- 4.1 Prof Venter presented the "*Proposed Framework for Submissions*" to the Theme Committee. This draft, which was requested by the Core Group during discussions with the Technical Experts last week, will allow for a consistent and comparable set of submissions from Political Parties and civil society in order for the Theme Committee to prepare reports to the Constitutional Assembly.
- 4.2 Four questions and two sub-questions were formulated with some elucidation of the issues with reference to the Constitutional Principles.
- 4.3 The Core Group and the Technical Experts held discussions this morning 27 February 1995, on the basis of this Framework and a number of additions and enhancements were made.
- 4.4 It was agreed that the Technical Experts redraft the Framework and produce an "*Explanatory Memorandum*" which will discuss some of the alternatives and options and models available regarding the distribution of powers between the different levels of government. This document should be available for distribution and consideration by Monday 6 March 1995.
- 4.5 The meeting suggested the following amendments, additions and change of sequence to the draft document:
 - i. Q1 -Page 1, para 4, delete "A possible approach " to the end of the page;

- ii. **Q1** -The following questions be added;
- a) Should the Constitution list only National competencies?
An implication is that all powers not listed will then reside with the provinces;
 - b) Should the Constitution list only Provincial competencies?
An implication being that all powers not listed will then reside with the National Government;
 - c) Should the Constitution list both National and Provincial competencies?
The implication of which would be that it would produce clarity regarding the distribution and allocation of powers, but it is notoriously, universally know to be impossible to list all competencies of different levels of government exhaustively which inevitably leads to the matter being raised of the seat of what the Canadians call 'Residuary Powers' (residual powers). CP XIX & XXI;
 - d) Should Exclusive and Concurrent powers, as mentioned in CP XIX, be listed expressly in the Constitutional text for each level of government?
This is a matter of fundamental technical concern because if these terms are used in a Constitution, that raises an additional consideration for adjudication because legal meaning needs to be given to the terms "Exclusive" and "Concurrent";
 - e) Should the Constitution expressly provide for overriding powers for the National level of Government in certain prescribed incidences?
CP XXI;
- iii. **Q2** -The question as it stands covers the possible expansion and reduction of competencies as the process evolves;
- iv. The following question be added:
- a) Should the Constitution provide for additional inter-governmental mechanisms to prevent or mediate possible conflicts regarding the exercise of competencies?
CP XXIII;

- v. **Q4 becomes Q3** -The practicality of this question lies in the fact that the Provincial system has been evolving since the elections last year and it is still in the process of evolution. It would be useful to learn from the experience of Provincial Governments as they deal with these matters.

Add the following comment "The Theme Committee should solicit evidence regarding this matter from the Commission on Provincial Governments themselves and any other interested parties"; and

- vi. **Q4 (previously Q3) - CP XVIII para 4**

Add the following comment "For the purpose of all these questions, Legislative Competencies should be seen and read to include Executive Competencies".

- 4.6 The Secretariat was requested to photocopy and distribute the document "Suggested Allocation of Functions to the National and Provincial Government Levels : Working Document of 2 June 1994", produced by the Office of the Public Service Commission.
- 4.7 The meeting agreed that the division of Executive and Legislative competencies should be addressed.
- 4.8 The meeting agreed that the following suggestions should be acted upon and a report-back made at the next Theme Committee meeting (6 February 1995).
- 4.8.1 The meeting agreed to make enquiries as to what is the modus of the relationship between the Constitutional Assembly and the Provincial Governments, and pursuant to that, recommend to the Constitutional Committee that the Theme Committee call on all Provincial Governments to form Constitutional Committees.
- 4.8.2 There should be a formalised group which the Theme Committee can interact with, request submissions and oral evidence from.
- 4.8.3 As previously discussed, the Premiers of all the Provinces be invited to meet with the Theme Committee for discussions. Due consideration must be given to the interests of minority parties in the provinces.

- 4.9 It was agreed that the details of Local Government need to be discussed in a separate block. In the overall Framework it would be useful to have mention, in broad terms, of Local Government visavis its relationship to National and Provincial Government, on the understanding that the details will be discussed later.

5. ADVERTISING FOR HEADING 2

The meeting agreed with the Core Group recommendation that the most logical way to handle this issue in order to inform people under what headings (subject matters dealt with), and what the deadline should be, is as follows:

- i. Agree on the Framework;
- ii. Once having agreed to that, agree on the timetable; and
- ii. Advertise accordingly.

6. PUBLIC PARTICIPATION PROGRAMME FROM 4 MARCH 1995

6.1 Secretariat informed the meeting that:

- i. All CPM's for 4 March 1995 are cancelled;
- ii. On the 11 March 1995, Gauteng and the Western Cape have been agreed upon but the venues have yet to be confirmed;
- iii. The transcript of the CPM's held on 25 February 1995 will be circulated to the members shortly after being received by Community Liaison; and
- iv. It has been suggested that those members who reside in the area where a CPM is to be held, be considered first when deciding on attendance.

6.2 A member who participated in a CPM, recommended that the definitions be simplified so as to ensure that all persons attending fully understand the issues under discussion.

7. GENERAL

7.1 The meeting discussed the workshop proposed by the Commission on Provincial Government on "Institutionalisation of Intergovernmental Relations", and organised by Dr Bertus de Villiers of the HSRC's Centre of Constitutional Analysis.

7.1.1 The CPG was asked to consider an earlier date possibly the week after recess which has been set aside for the Constitutional Assembly.

7.1.2 The ANC asked that their questions as to how the workshop will be structured relating to the involvement of Mr de Villier's given his particular line of thinking in respect of federalism and unitarism, and his convening of many conferences where particular people have been chosen, be clarified and recorded in the minutes.

7.2 Prof Venter raised the issue of his own involvement as Convener of the Constitutional Committee of the Afrikanerbond and the possibility of submissions from this committee being submitted to Theme Committee 3. Prof Venter advised that in this event he would recuse himself from discussions by the Theme Committee and the Technical Experts.

7.2.1 The meeting agreed that the parties should discuss the issue as it would be problematic should the volume of submissions be such that Prof Venter would have to recuse himself often.

8. CLOSURE

The meeting closed at 12h50.

CONSTITUTIONAL ASSEMBLY

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PO Box 15
CAPE TOWN 8000
REPUBLIC OF SOUTH AFRICA

REF No:

B.1.1

24 February 1995

TO CHAIRPERSONS OF THEME COMMITTEES II, III & VI

RE: PROPOSED WORKSHOP ON INSTITUTIONALISATION OF INTERGOVERNMENTAL RELATIONS

My letter dated 21 February 1995 with regard to the above, refers.

I attach under cover hereof further correspondence received from Prof D M Irvine from the Commission on Provincial Government for your consideration and advice, please.

I look forward to hearing from you.

Yours faithfully

pp.
Gjw
H EBRAHIM
EXECUTIVE DIRECTOR

COMMISSION ON PROVINCIAL GOVERNMENT

Established in terms of section 163 of Act 200, 1993

260 Walker Street Sunnyside Private Bag X887 Pretoria 0001
Telephone (012) 44-2297 Fax (012) 341-8452

1995-02-24

Mr Hassen Ebrahim
Executive Director
Constitutional Assembly
P O Box 15
CAPE TOWN
8000

Fax: 021 4614339

Dear Mr Ebrahim

WORKSHOP: INSTITUTIONALISATION OF INTERGOVERNMENTAL RELATIONS

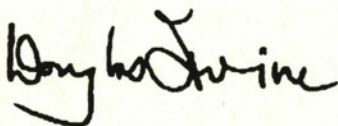
Thank you for your fax of 21 February.

In response to your observation that it would be much more helpful to the Theme Committees if this Workshop could be scheduled for a date earlier than the first week in June, I am pleased to say that the HSRC's Centre for Constitutional Analysis (which is organising the Workshop on our behalf) has agreed to bring the Workshop forward to take place on 18 and 19 May. This is the earliest possible date, because, as I indicated previously, experts from abroad will be participating in the Workshop, and we have also commissioned research which will feed into the proceedings.

Please inform the Chairperson of the Constitutional Assembly of this development.

We envisage that the programme for this Workshop will be devised in consultation with the Constitutional Assembly. I would be grateful if you could advise me how best to proceed with such consultation. Dr Bertus de Villiers, the Director of the Centre for Constitutional Analysis, will be in Germany until May. As we will be jointly responsible for developing the programme, I suggest that communications from the Constitutional Assembly should be directed to me.

Yours sincerely



PROF D M IRVINE
TECHNICAL CONSULTANT

md436

CONSTITUTIONAL ASSEMBLY

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REF No: B.1.1

24 February 1995

Prof D M Irvine
Technical Consultant
Commission on Provincial Government
Private Bag X887
PRETORIA
0001

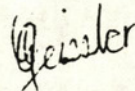
Dear Prof Irvine

WORKSHOP: INSTITUTIONALISATION OF INTERGOVERNMENTAL RELATIONS

I acknowledge receipt of your fax dated 24 February 1995.

The Chairpersons and relevant Theme Committees will be informed accordingly for their consideration.

Yours faithfully


H EBRAHIM
EXECUTIVE DIRECTOR

CONSTITUTIONAL ASSEMBLY

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REF No: B.1.1

21 February 1995

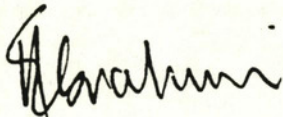
To: Chairpersons of Theme Committees II, III & VI

RE: PROPOSED WORKSHOP ON INSTITUTIONALISATION OF INTERGOVERNMENTAL RELATIONS

I attach under cover hereof copies of correspondences between the Commission on Provincial Government and our office for your consideration and further advice.

I look forward to hearing from you with regard to your Theme Committee's direction and advice on this matter.

Yours faithfully



**H EBRAHIM
EXECUTIVE DIRECTOR**

COMMISSION ON PROVINCIAL GOVERNMENT

Established in terms of section 163 of Act 200, 1993

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TELEFAX COVERING SHEET/DEKBLAD

TO/AAN: MR HASSEN EBRAHIM
EXECUTIVE DIRECTOR
CONSTITUTIONAL ASSEMBLY SECRETARIAT
FAXNUMBER/FAKSNOMMER: 021-4614487
FROM/VAN: PROF. DOUGLAS IRVINE
SUBJECT/ONDERWERP: WORKSHOP - INSTITUTIONALISATION OF INTERGOVERNMENTAL RELATIONS
NUMBER OF PAGES/AANTAL BLADSYE: 1 + 3
If you have not received all the pages please phone: Indien u nie al die bladsye ontvang het nie skakel asseblief: (012) 442297

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1995-02-20

Mr Hassen Ebrahim
Executive Director
Constitutional Assembly Secretariat
CAPE TOWN

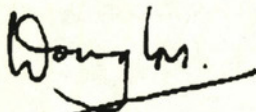
Dear Hassen

WORKSHOP: INSTITUTIONALISATION OF INTERGOVERNMENTAL RELATIONS

Please convey the accompanying fax to Mr Ramaphosa. Could it be discussed at the next Management Committee meeting? We would appreciate a speedy reply - as requested, by the end of February if possible.

I trust that all is well with you - your situation seems to me very like that of a person shooting an extended series of rapids on a turbulent river.

Best wishes.



PROF D M IRVINE
TECHNICAL CONSULTANT

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COMMISSION ON PROVINCIAL GOVERNMENT

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1995-02-20

Mr Cyril Ramaphosa
The Chairperson
Constitutional Assembly
P O Box 15
CAPE TOWN
8000

Dear Mr Ramaphosa

WORKSHOP: INSTITUTIONALISATION OF INTERGOVERNMENTAL RELATIONS

The Commission would value your guidance on the most suitable dates for holding a major workshop on possible options for the institutionalisation of intergovernmental relations, to take place early in June.

As you are aware, the Commission's work programme includes a number of workshops around issues on which it is developing recommendations to be made to the Constitutional Assembly. We are making every effort to accommodate our activities to the Constitutional Assembly's programme; but the earliest date for this particular workshop would be the first week of June. Research we have commissioned on practices in other countries will not be available until then; and the timing also depends on the movements of certain experts from abroad whose participation would add a valuable dimension to the discussions.

We have asked Dr Bertus de Villiers of the HSRC's Centre for Constitutional Analysis to undertake the organisation of this workshop, as we thought it preferable that the Commission itself should not be too directly involved.

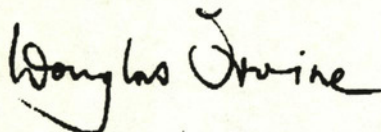
The object of the workshop would be not only to generate material for the Commission's deliberations, but also to stimulate debate among various structures of government and other bodies and persons with a direct interest in this issue, including key members of the Constitutional Assembly. We hope to secure the participation of at least a substantial number of persons from the Constitutional Committee and the relevant Theme Committees.

The workshop would run over two days. The crucial date seems to be Friday 2 June. The Constitutional Assembly's work programme appears to have nothing scheduled for that day. On the previous day, 1 June, party caucuses are scheduled to end at 13:00 - so our workshop could possibly begin that afternoon. Alternatively, it could run through Saturday 3 June, although "Public Participation" events are due to take place which would presumably involve some Constitutional Assembly members.

The most convenient venue for our workshop would no doubt be the Cape, from the Constitutional Assembly's point of view. We would try to arrange for this, though the World Cup rugby may present us with accommodation problems. Would it cause insurmountable problems for members of the Constitutional Assembly if the venue were to be Pretoria, for instance, for a workshop on the Friday and Saturday? Clearly, if the workshop is to start on the Thursday, it would have to be held in or near Cape Town.

We would appreciate it if you could let us have your views on these matters by the end of February, as arrangements with foreign participants in the workshop have to be finalised.

Yours sincerely



PROF D M IRVINE
TECHNICAL CONSULTANT

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