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CONSTITUTIONAL ASSEMBLY

CORE GROUP 3

**RELATIONSHIP BETWEEN
LEVELS OF GOVERNMENT**

Thursday 2 March 1995

Room G26

(Immediately following the National Assembly)

DOCUMENTATION

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

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CONSTITUTIONAL ASSEMBLY

MEETING OF CORE GROUP THEME COMMITTEE 3

RELATIONSHIP BETWEEN LEVELS OF GOVERNMENT

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

Date : Thursday 2 March 1995

Time : Immediately following the National Assembly

Venue : G26

AGENDA

1. Opening
 2. Minutes of the previous meeting
 3. Matters arising
 4. Report from the Secretariat
 - 4.1 Work Programme
 - 4.2 FFC
 - 4.3 Convenor's Meeting
 - 4.4 CPM's
 5. Important Role-players
 6. Regularise Core Group Meetings
 6. General
 7. Agenda for Theme Committee meeting 6 March 1995
 8. Closure
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CONSTITUTIONAL ASSEMBLY
MINUTES OF THE MEETING OF
CORE GROUP 3
RELATIONSHIP BETWEEN LEVELS OF GOVERNMENT
MONDAY 27 FEBRUARY 1995 (AT 09H30)

PRESENT
DC DU TOIT (Chairperson)

Andrew KM
Carrim Y (Alt)
de Lille P

Gordhan PJ (Alt)
Groenewald PJ
King TJ

Technical Experts

Professors Basson, Davis, Majola and Venter

Apologies

None

Absent

NN Mapisa-Nqakula and PF Smith

Attendance

Sandra Haydon, Mbasa Mxenge and Vanessa Calvert

1. OPENING

The meeting was opened by Prof Du Toit at 09h40 and the Agenda was adopted.

2. MINUTES OF THE PREVIOUS MEETING

The minutes of the meeting held on Monday 20 February 1995 were adopted with the following amendment:

Mr Y Carrim attended the second session (which included the Technical Advisors) of the meeting.

3. MATTERS ARISING

The meeting agreed to recommend to the Theme Committee that in view of the fact the IFP has withdrawn from the Constitutional Assembly, the Theme Committee should, subject to a decision by the Constitutional Committee:

- i. Carry on with the work;
- ii. With the help of the Secretariat, keep the IFP informed of what is being done;
- iii. If the parties are requested to make a submission or an input, invite the IFP to do so as well so that they are given every chance to make an input in the process: and
- iv. If the Theme Committee has a report prepared and the IFP is again part of the proceedings, they will have an opportunity to comment on, and indicate their differences with that report.

4. FRAMEWORK / TIME TABLE FOR HEADING 2

Agenda items 4 & 5 were dealt with together.

4.1 The members discussed the "*Proposed Framework for Submissions*" as submitted by the Technical Advisers.

4.2 The members agreed:

- i. To raise questions;
- ii. To allow time for the Technical Advisers to revisit the document before the Theme Committee convenes; and
- iii. The Technical Advisers report back to the Theme Committee.

4.3 The following questions were raised:

- 4.3.1 i. **Q1**-The query as to the similarities as stated in Q1, para 2 "A possible approach would be to use a similar recipe as that employed in the present section 126, which also appears to be consistent with Principle XXI". Prof Davis urged parties that when they make recommendations and when the Constitution is drafted, that the meaning of the wording is clearly understood.

- ii. What are the mechanisms available to deal with the question of competencies and the relationship between National and the provinces?;
 - iii. What are the strictures or opportunities that the Constitutional Principles (CP) provide for ie interpretations?;
 - iv. The implications of listing competencies as applicable to National or Provincial or both?
 - v. Should the first part of CP XIX only refer to legislative powers or would it be Constitutionally in order if only administrative exclusive powers be given and not administrative legislative powers given that CP XIX does not distinguish between legislative and administrative exclusive and concurrent powers?
 - vi. What is the implication of reading CP XIX subject to CP XXI?
- 4.3.2
- i. **Q2-What are the various options?**
 - ii. What is elastic?
 - iii. What is evolutionary?
 - iv. What are the strictures of CP's in this regard?
 - v. With reference to para 2, line 5 "... frequent intergovernmental constitutional litigation...." How can this be mediated to ensure that litigation is not the first instance of interaction between the two levels of government? What role do intergovernmental forums play in resolving conflict? Whether this can be constitutionalised or not?
 - vi. With reference to para 2 line 9 "In order to minimise conflict, the constitutional management of overlap/concurrency should be formulated as tightly as possible." What are the options available? What is the effect of CP XXIII? Would this be not be regulated by the Constitutional Court section 98?

- 4.3.3 i. **Q3**-It was suggested that **Q3(a)** could be rephrased to read "What should be the nature and extent of the province's involvement in National Executive and Legislative structures?" What are the mechanisms for providing for a provincial presence at a national level?
- 4.3.4 i. **Q4**-The view was expressed that this an area which requires reflection on experiences in relation to the implementation of the Interim Constitution. Lessons should be drawn from the last nine months in terms of Schedule 6. What has it meant in practice? What has the actual experience been with policing and other functions? How is that experience drawn in in relation to Q2?

It was suggested it be advertised that the following are invited to make written submissions and oral evidence:

- a) Key Government departments ie Constitutional Development
 - b) The Provinces themselves
 - c) The Commission on Provincial Government (CPG)
- 4.4 The meeting agreed that Q3(a) and Q3(b) should follow Q4 and be discussed after the other questions have been addressed.
- 4.5 The meeting agreed that the relationship between Local and National Government, and Local and Provincial Government needs to be addressed as follows:
- i. Should Local Government be constitutionalised?;
 - ii. What are the models available in this regard?; and
 - iii. What are the different models available in terms of modulating the relationship between National and Local Government directly or in the National/Local relationship, mediated by the provinces?
- 4.6 The meeting agreed the Technical Advisers be asked to produce two documents:
- i. The Framework; and
 - ii. An information document relating to all of the above questions.

5. REPORT ON SUBMISSIONS FROM CIVIL SOCIETY

Not dealt with.

6. GENERAL

6.1 The meeting agreed that Ms P de Lille will present the Report on Block 1 to the Constitutional Committee later today.

6.2 The lack of speedy communication between the Constitutional Committee and the Theme Committee has not been resolved ie the changes in time and venue of the Constitutional Assembly cause problems particularly relating to meetings between the Core Group and the Technical Advisers.

6.3 The meeting agreed that the way forward is as follows:

- i. Decide on the Framework;
- ii. Decide on the work schedule; and
- iii. Advertise. *Heading 2*

7. CLOSURE

The meeting closed at 10h35.