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TC3/8

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 3

**RELATIONSHIP BETWEEN
LEVELS OF GOVERNMENT**

30 January 1995

Room E249

DOCUMENTATION

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CONSTITUTIONAL ASSEMBLY

MEETING OF THE THEME COMMITTEE 3

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

Date : MONDAY 30 JANUARY 1995

Time : 08H30

Venue : E249

AGENDA

1. Opening
 2. Executive Director - input on Work Programme, Public Participation Programme, Relationship between the Theme Committee and Commission on Provincial Government (CPG)
 3. Minutes of the previous meeting
 4. Matters Arising
 - 4.1 Framework to process submissions
 5. Core Group report
 6. General
 7. Closure
-

HASSEN EBRAHIM
EXECUTIVE DIRECTOR
CONSTITUTIONAL ASSEMBLY

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**CONSTITUTIONAL ASSEMBLY
MINUTES OF THE MEETING OF
THEME COMMITTEE 3
RELATIONSHIP BETWEEN LEVELS OF GOVERNMENT
THURSDAY 26 JANUARY 1995 (AT 14H00)**

PRESENT

P de Lille (Chairperson)

Albertyn JT (Alt)
Blaas A (Alt)
Coetzee MP
de Lille P
Gordham PJ
Gxowa NB (Alt)
Khobe ON
Koornhof GW
Loots HG (Alt)
Mabude NI (Alt)
Maree JW
Mongwaketse SJ
Rabinowitz R
Seperepere MS
Sisulu MV (Alt)
Verwoerd M

Bhabha M
Carrim YI
Cronje PC
Dingani ZA
Groenewald PJ
Khasu MJ
King TJ
Leeuw SJ (Alt)
Losabe LK (Alt)
Mahlalela AF
Modisenyane LJ
Peires JB (Alt)
Saaiman PW
Shandu EEN
Suttner RS
Vilakazi MI

Apologies

KM Andrew, DC Du Toit, A Fourie, MS Manie, NN Mapisa-Nqakula, PF Smith

Absent

ZA Kota, HJ Mashamba

In Attendance

Sandra Haydon and Mbaso Mxenge

2. MINUTES OF THE PREVIOUS MEETING

- 2.1 The minutes of the meeting of 25 January 1995 were adopted with the following amendment:

PC Cronje, PJ Groenewald, NN Mapisa-Nqakula and EEN Shandu were present but had omitted to sign the register.

- 2.2 The ANC advised that their party submission would be available for distribution during the meeting.

3. FRAMEWORK TO PROCESS SUBMISSIONS

- 3.1 A view was expressed that for future blocks that the TC works on all inputs from outside sources and individuals should be available to study before handing in the documentation.

- 3.2.1 The National Party proposed the following:

That we in future perhaps handle the process in the following way:

That with a view to assist members of this Committee and to make comparison between submissions submitted to this Committee easier, the Technical Experts be requested to prepare from time to time documents, which documents must set out for easy reference the relevant issues raised in the submissions that have been received (referring to Block 1)

1. *A table which indicates those issues on which there is general agreement*
2. *Those issues on which there is disagreement*
3. *What the points of view of the different parties are in respect of those issues where there are disagreements and how such an issue is provided for or accounted for in the present Constitution*

The Document would then be discussed in the TC and after that the final draft can be prepared for the CC.

- 3.2.2 One view disagreed with point 3 while agreeing with the rest of the National Party proposal.
- 3.2.3 Clarity was requested as to whether the NP is saying that the TC cannot proceed until Technical Experts are appointed. The selection

process is still in committee and it is unlikely that Technical Experts will be attending Monday's TC meeting.

- 3.3.1 The viewpoint of the ANC is that this process should be driven as far as possible by the public submissions received and the role the TC members are required to fulfil. The work of the Technical Experts should be under the firm supervision of the Core Group.
- 3.3.2 The NP clarified their intention that the Technical Committee will simplify all submissions and documentation received so that issues on which there is agreement are not discussed and issues of disagreement are discussed. The party believes that this system would save a lot of time.
- 3.4.1 The ANC submitted the following proposal on what they believe might be a useful framework for the first Block which would serve as a categorisation and could begin immediately on arranging the first set of submissions that are available:

In the first instance we work with two broad categories, Provincial Government and Local Government.

In the second instance we suggest that each of these categories has five sub-categories (where it applies to Provincial the word Provincial would apply and where it applies to Local Government the word Local Government would apply):

1. *South Africa's Specific Conditions - which requires us to take into account 'what is specific to our history and present circumstances that has an impact on both the Provincial and Local Government system?'*
2. *Democratic Principles - (a number of submissions are enunciating certain democratic principles which would underpin the Provincial and Local Government systems).*
3. *Provincial Principles / Local Government Principles - eg Subsidiarity could be put into this category*
4. *Elements of the Provincial System - Executive structures, Legislative structures, fiscal relationships etc all of which would constitute elements of the Provincial system.*
5. *Miscellaneous - to cover elements which overlap into other blocks which may mean holding an issue over until the relevant Block.*

3.5.1 Three other categories were suggested namely:

1. *International Perspective* (add to South Africa's Specific Conditions)
2. *Points of Departure*
3. *The role of the Senate as representative of the various Provinces*

A proposal was made that each Party needs all the Party submissions; time to study them; draft the Party submission on how the framework should be structured; the Core Group to discuss the proposals and to report back to the TC; work with the Technical Experts and see how the Committee correlates with their input.

4. SUBMISSIONS FROM POLITICAL PARTIES

All Political Party submissions have been received.

5. TECHNICAL COMMITTEES

- 5.1 No report available from the Technical Appointment Sub-committee which is meeting again at 15H00 today.
- 5.2 The meeting was reminded of the previous decision that the process must be driven by the Theme Committee and not by the Technical Experts. The Technical Experts are there to assist the Theme Committee.

6. PREPARATION FOR THEME COMMITTEE MEETING OF 30 JANUARY 1995

The meeting agreed that:

- i. No decision can be made today and to wait until Monday when the Parties would have considered all the proposals for the Framework; come to an understanding on the Framework and immediately begin to apply the Framework to the submissions before the Theme Committee;
- ii. The Core Group consider the matter tomorrow Friday 27 January 1995; and
- iii. Submissions be made to the Core Group by all Political Parties as to what the different headings should be until the Technical Experts are

here, and on Monday the suggestion of the Core Group be tabled and either accepted or improved.

7. GENERAL

The Core Group was requested to discuss at its next meeting, the feasibility of organising a workshop in approximately two weeks time.

8. CLOSURE

The meeting closed at 15H15.

RECOMMENDED WORK PROGRAMME

No	TC 1	TC 2	TC3	TC 4	TC 5
1.	1. Democracy 2. Character of State	1. Separation of Powers	1. The Nature of the Provincial System and Local Government	1. Constitutional Principle II	1. The Relationship between different levels of the Court 2. A Single or Split Judiciary
2.	3. Single Sovereign State 4. Supremacy of the Constitution	2. Structure of Government	2. Allocation of Powers 3. Legislative Competence	2. Equality 3. Human dignity 4. Privacy 5. Freedom and Security of the Person 6. Life 7. Religion, Belief and Opinion 8. Freedom of Expression	3. Constitutional Court 4. Other Court Structures
3.	5. Separation between Church and State 6. Economic Constitution 7. International law	3. Traditional Authorities	4. Provincial Legislative Authority (excluding electoral system)	9. Freedom of Association 10. Freedom of Movement 11. Assembly, Demonstration and Petition 12. Citizen's Rights	5. Traditional Authorities and Customary Law
4.	8. Representative Government	4. Volkstaat	5. Provincial Executive Authorities	13. Political Rights 14. Language and Culture 15. Residence 16. Environment	6. Structures dealing with Appointments (Judicial Service Commission & Magistrates Commission)
5.	9. Accountable Government 10. Equality	5. Electoral System	6. Local Government	17. Servitude and Labour 18. Economic Activity 19. Property 20. Labour Relations	7. Other Judicial Institutions (eg AG and State Attorney)
6.	11. Freedom of Information	6. Amendments to Constitution [National Second Chamber]	7. Electoral System of Provincial Government	21. Administrative Justice 22. Access to Information 23. Access to Courts 24. Legal Representation	8. General (Court Language, Interpretation of Laws & Amnesty)
7.	12. Suffrage 13. Citizenship			25. Children 26. Education	9. Transitional Arrangements
8.	14. Language		8. Financial and Fiscal Relations	27. State of Emergency 28. Suspension and Limitation of Rights	10. Legal Education 11. Legal Profession
9.	15. Name and Symbols			29. Customary and Traditional law 30. Group & Minority Rights	
10.	16. Preamble				

THEME COMMITTEE 6 - SUB-THEMES				
No	Public Administration	Financial Institutions & Public Enterprise	Transformation & Monitoring	Security Apparatus
1.	1. Public Service	1. Financial and Fiscal Commission 2. Financial Institutions and Public Enterprise	1. Commission on Gender Equality	1. Supremacy of the Constitution, Accountability and Control of the Security Forces 2. Conduct in the National Interest
2.				
3.			2. Public Protector	2. Police
4.	2. Election Commission	3. Auditor-General, Reserve Bank, the Budget Procurement and National Revenue Fund		
5.			3. Human Rights Commission	3. Correctional Services
6.				
7.			4. Commission on Restitution of Land Rights	4. Defence
8.				
9.				5. Intelligence
10.				

DRAFT PUBLIC PARTICIPATION PROGRAMME

COMMUNITY LIAISON

MISSION STATEMENT :

“To facilitate an interface or dialogue between the South African people and their elected representatives by consulting the population at various levels and at various stages of the process of constitution making.”

(CA Resolution of 31 October 1994)

INTRODUCTION

On 31 October 1994 the Constitutional Assembly adopted a document entitled **“Public Participation - A Strategic Overview”** which set out the broad framework within which the community liaison programme will take place.

1. GUIDING PRINCIPLES

- Transparency
- Credibility
- Legitimacy
- Consultation
- Inclusivity

2. OBJECTIVES OF PUBLIC PARTICIPATION PROGRAMME (PPP) :

(Extracted from Constitutional Assembly Resolutions, 5 September 1994)

- ensure that the draft constitution enjoys the support and allegiance of all South Africans
- new constitution should represent the aspirations of all our people
- process should serve to unite the country's people and produce a constitution which will become the cornerstone of the future South Africa. It should be people driven and transparent
- new constitution must be the product of an integration of ideas of all role players. In this regard, there should be maximum public participation
- there should be an effective strategy for media and community liaison
- media and public participation strategies should aim at facilitating the required “dialogue” and channels of communication between the broader public and their elected representatives
- programmes of the Constitutional Assembly should be “non-party political”. Strict monitoring should ensure that the programmes promote the Constitutional Assembly and the interests of the country as a whole

3. *COMMUNICATION OBJECTIVES*

- Develop, raise and popularise the CA profile
- Solicit views and submissions
- Brief public - on the constitution making process
 - procedure for submissions to CA
- Consult all sectors and role players
- Increase public interest and awareness through constitutional education
- General involvement and engagement of public at large

4. *PROGRAMMES*

- Special Events
 - Launch Briefings
 - Other Special Events
- Theme Committee Requests
 - Hearings
 - Seminars
- Constitutional Public Meetings (CPMs)
- Constitutional Education Programme (CEP)

5. *TIME FRAMES*

It is envisaged that the CLP will be run in two phases;

- First Phase : Develop draft constitution - February 1995 to end of July 1995
- Second Phase : Popularising the draft constitution - August 1995 to May 1996

This document deals with detailed planning for February 1995.

LIST OF ABBREVIATIONS

PPP : Public Participation Programme	PMT : Project Management Team
CL : Community Liaison	SACS : South African Communication Service
CLP : Community Liaison Programme	TC : Theme Committee
CPM : Constitutional Public Meetings	NGO : Non Governmental Organisation
CEP : Constitutional Education Programme	CBO : Community Based Organisation

COMMUNITY LIAISON PROGRAMME : FEBRUARY 1995

6. *SPECIAL EVENTS*

6.A. LAUNCH BRIEFINGS

6.A.1. Introduction

It is proposed that the CA Chairpersons - Messrs Cyril Ramaphosa and Leon Wessels - should visit three provinces - namely the Western Cape, Northern Cape and Gauteng, in order to launch the CLP. Briefings in the other provinces are envisaged in the months to come. Briefings will also be used in the second phase of the constitution making process.

6.A.2. Objective

To develop, raise and popularise the CA profile.

6.A.3. Process

Three briefings are envisaged to launch the Community Liaison Programme (CLP). The briefings used to nationally launch the CLP should be of high profile to attract maximum media coverage.

6.A.4. Proposed Briefings

First briefing

Date : First week in February
Area : Western Cape (Boland)
Target group : Farmworkers and management

Second briefing

Date : Second week in February
Area : Northern Cape (Kuboes)
Target group : Rural community

Third briefing

Date : Third week in February
Area : Gauteng
Target group : Urban community

Structure

- CA participants : Mr Cyril Ramaphosa (Chairperson CA)
Mr Leon Wessels (Deputy Chairperson CA)
: Representatives from all political parties in the CA
- Chair : It is proposed that the Provincial Premier or a Provincial
MEC should chair the meeting.
- Content of meeting : Duration: 1 hour:
Brief: 30 minutes
Questions: 30 minutes

Programme:

The programme will consist of a briefing on the Constitutional Process by the CA Chairs. It is expected, through these briefings, that:

- public participation will be encouraged;
- public awareness will be increased;
- the role of the CA in directing public participation is highlighted.

It is inevitable that questions from the audience will arise. Opportunity - though limited - should be given for questions to be posed to the Chairs.

Media:

Since these briefings serve as the launch of the CLP, time should be allowed for media interviews, if requested. Close co-operation with the Media Department is of utmost importance.

6.A.5. Resources

Given the time constraints, resources such as exhibitions, pamphlets, T- shirts cannot be fully utilised for the first three proposed briefings. The Media Department is requested to arrange posters and pamphlets.

6.A.6. Evaluation / monitoring

To determine the success of the first three briefings, and to set guidelines for future briefings, evaluation is important and will be dealt with as follows:

- Tape recording of the briefing;
- Monitoring the media response;
- Report back from the Chairs;
- Members of the CL team will attend the briefings to evaluate and monitor evaluation thereof.

6.B OTHER SPECIAL EVENTS

Further special events proposed include:

- A simulated Constitutional Assembly process for high school pupils;
- Human rights debates for high school pupils;
- Mock Constitutional Court cases for high school pupils and university law students.

7. *THEME COMMITTEE REQUESTS*

7.A *HEARINGS*

7.A.1. Introduction

Theme Committees will require specialist submissions on issues from target groups. Thus target groups will be invited to hearings to give views on required issues. The need for these hearings is subject to input from the TCs.

7.A.2. Objective

To solicit views and submissions.

7.A.3. Process

Community Liaison (CL) proposes single hearings where there is an overlap between different Theme Committees (TCs).

Schedule of Hearings

Date	Target Groups
February	Business
March	Women
April	Traditional Leaders
May	Labour
June	Religious Groups

All Theme Committees are free to indicate to CL which hearings they would like to attend.

Theme Committee requests

CL will draft a standard request form to be used by Theme Committees.

CL requires reasonable notice from TCs, taking into account:

- capacity of CL;
- availability of sectors who will need time to consult with their constituencies.

7.A.4. Resources

Background information packages eg press cuttings.

7.A.5. Evaluation/Monitoring

Managing Secretaries will evaluate the hearings and submit a report to CL.

7.B SEMINARS

It is proposed to hold seminars in order to brief Theme Committees on constitutional issues following the work programme. It is proposed that universities, technikons and other institutions be approached to convene specialist seminars on issues discussed by the TCs. The seminar programme will respond to the needs of the TCs and will be guided by the Law Advisers. Because of the ad hoc nature of this section of the programme all TC requests would need to be properly co-ordinated in conjunction with the Management Committee.

8. CONSTITUTIONAL PUBLIC MEETINGS (CPMs)

8.1. Introduction

To involve and engage the public at large, Constitutional Public Meetings (CPMs) will be held throughout the country. The public will have direct access to their elected representatives and will be invited to give individual submissions.

8.2. Objective

To involve and engage the public at large.

8.3. Process

February will be used as the pilot phase of the Community Liaison Programme. It is proposed that teams from the same TC will attend particular CPMs, and that a team should comprise up to ten people, with at least one person from each party.

Proposed CPMs

Free State

Target date : February 18
Venue : Mangaung

Eastern Cape

Target date : February 18
Venue : Grahamstown

Eastern Transvaal

Target date : February 18
Venue : Drum Rock

Western Cape

Target date : February 18
Venue : Worcester

Northern Cape

Target date : February 25
Venue : Kimberley

KwaZulu - Natal

Target date : February 25
Venue : Kwa-Mashu

North West

Target date : February 25
Venue : Klerksdorp

Gauteng

Target date : February 25
Venue : Duduza

Northern Transvaal

Target date : February 25
Venue : Namakgale

Note: The issues to be addressed in particular CPMs will be determined on the basis of the work programme and will be guided by the Law Advisers.

8.4. Theme Committee Commitments

Three options as to how TC members will attend future CPMs are proposed (for logistical reasons, operational from March 1995). TC members are requested to decide on the most feasible option available, taking into account the objectives of the PPP as outlined by the Resolutions of the CA..

Option 1

Working days	:	Saturdays & Sundays
Who	:	The 6 TCs divided into 2 groups = 12 groups
		Group 1: Saturday & Sunday mornings : 2
meetings per group per weekend		Group 2: Saturday & Sunday afternoons : 2 meetings per group per weekend
CPMs	:	24
Total CPMs	:	24 x 18 (available weekends till 30 June 1995) = 432

Option 2

Working days	:	Saturdays only : mornings & afternoons
Who	:	The 6 TCs
CPMs	:	12 : 6 TC groups x 2 meetings per day
Total CPMs	:	12 x 18 (weekends available till end of June 1995) = 216

Option 3

Working days	:	Every second Saturday
Who	:	The 6 TCs, alternating
CPMs	:	6 (6 meetings per weekend)
Total CPMs	:	6 x 18 weekends = 108 CPMs during PPP

8.5. Proposed structure of the CPMs

Duration	:	3 hours		
Welcome	:	Host	:	10min
Introduction	:	Facilitator	:	10min
Input	:		:	45min
	-	Constitution Making Process		
	-	Specific TC issues		
	-	Issues discussed by other TCs		
Questions and Discussion	:		:	105min
Closure	:		:	10min

TC members will be provided with a brief, compiled by CL and Law Advisers, before each CPM, giving details of current issues in each TC. These issues will be drawn from the Work Programme.

Please note: Due to translation and other factors, time allocated could be extended.

Appointment of Chairperson

It is proposed that :

- criteria for the selection of the chairperson be established by CL.
- chairperson should be neutral and identified from the community.
- the national Community Liaison Team should have veto power on the appointment of the chairperson.

Facilitator:

It is proposed that the facilitator should introduce the constitution making process and facilitate the making of submissions.

8.6 Proposed role of the Secretariat

It is proposed that the Managing/Minute Secretaries be involved in two levels of the Constitutional Public Meeting :

- during the CPM
 - take minutes of meeting and receive written submission
 - record meetings
 - collect evaluation forms from facilitator to return to CL
- after the CPM
 - take evaluation forms to Deputy Assistant Director : Community Liaison

8.7 Evaluation of CPMs

The following people are suggested to be evaluators: CA members, facilitators, provincial co-ordinators (CEP), national community liaison officers, random audiences and community leaders. Areas of evaluation will include process, content and promotional material.

9. CONSTITUTIONAL EDUCATION PROGRAMME (CEP)

9.1. Introduction

The Constitutional Assembly Work Programme for 1995 articulated the objectives of the Constitutional Education Programme as follows:

"The Constitutional Assembly, in association with a wide variety of NGOs, CBOs and other sectors of South African society, will conduct a wide ranging programme of constitutional education that will be accessible to South Africans at all levels. The programme will include South Africans in the constitution-making process by providing training on the key issues of constitutionality and briefing them on developments within the Constitutional Assembly. The assistance of NGOs and CBOs will allow this programme to reach disadvantaged communities, inaccessible or 'invisible' sectors and rural communities."

On 2 December 1994 the Constitutional Committee approved the programme and requested further information. Such information is detailed below.

9.2. Objectives

The Constitutional Education Programme has the following objectives:

- * helping to ensure maximum community participation in the constitution-making process, primarily through community workshops;
- * ensuring that the Constitutional Education Programme is in step with the different phases of the constitution-making process. In the first phase this will require a Constitutional Education Programme grounded in the workplan of the Theme Committees.

9.3. Process

The primary mechanism of delivery for this programme is the use of community workshop, so as to educate communities on the constitution-making process and to empower them to make submissions. Community workshops will be run, where possible, prior to Constitutional Public Meetings as well as independently of these meetings. This programme would continue into the second phase of the constitution-making process (the consideration of the draft constitution) and will lay the foundation for a wide-reaching public education programme which could be utilised in the development of a human rights culture.

Short-term implementation:

A short-term programme has been developed for February:

- Convening a national consultative meeting to be held in Cape Town, provisionally scheduled for 9/10 February, to provide NGOs and CBOs with a briefing and to assess existing resources;
- Running two pilot workshops in conjunction with NGOs, on Sunday 19 February and Sunday 26 February, at venues still to be finalised.

9.4. Training and Resource Development

Training:

This will encompass the training and briefing of co-ordinators and workshop facilitators from the CA, SACS and NGOs.

Resources:

A wide range of resources are envisaged, in order to ensure that the constitution-making process is accessible to as many sectors and constituencies as possible. The use of simple language, translation, drama and visual materials will be essential components of these resources. A workshop kit will be developed in conjunction with the NGO sector, including resources such as:

- * an educational booklet on how to participate in the constitutional process;
- * a looseleaf constitutional education manual (allowing for updates);
- * outlines for community workshops;
- * educational/information posters, including CA promotional material for use in local community venues such as advice offices and municipal offices.

9.5. Evaluation and Reporting Mechanisms

Mechanisms will be developed to assess the overall implementation and impact of the programme, including feedback from workshops and the effectiveness of resources.

Regular reports will be made to the Management Committee and close liaison maintained with the Theme Committees.

10. CONCLUSION

It is proposed that detailed project planning be submitted to the Directorate: CA Administration and the Management Committee on a monthly basis. Planning should reach the Management Committee not later than the second meeting of the preceding month.

FRAMEWORK TO PROCESS SUBMISSIONS PROPOSAL

1. *It is suggested that we work with two broad categories, Provincial Government and Local Government.*
2. *That each of these categories has five sub-categories (where it applies to Provincial the word Provincial would apply and where it applies to Local Government the word Local Government would apply):*
 1. *South Africa's Specific Conditions (as in context of the Provincial system)*
 2. *Democratic Principles*
 3. *Provincial Principles / Local Government Principles / Points of Departure*
 4. *Elements of the Provincial System - Executive structures, Legislative structures, Senate, fiscal relationships etc all of which would constitute elements of the Provincial system.*
 5. *Miscellaneous*

Note: The above would be looked at in terms of Block 1

3. *6. International Perspective*

Note: This issue would be discussed when deciding the Framework for Block 2

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 3

**RELATIONSHIP BETWEEN
LEVELS OF GOVERNMENT**

**COMMISSION ON PROVINCIAL
GOVERNMENT**

**INPUT BY
THOZAMILE BOTHA**

25 January 1995

COMMISSION ON LOCAL GOVERNMENT

This unedited copy as far as possible reflects Mr Botha's words.

I wish to thank the members of this Theme Committee for allowing me this short intervention on the work of the Commission. We have been looking forward to this opportunity because we feel that there are a number of overlaps between the work we do and the work that the Theme Committees, especially this Theme Committee, is doing.

We have been interacting with the Management Committee. We have had some meetings with the Chairperson and Deputy Chairperson of the Constitutional Assembly to discuss the structure of our work and how we are going to interact with the CA.

First of all I think that is import to briefly explain what the Commission is all about and what is does. The work of the Commission is in two parts.

One deals with the transitional arrangements assisting to set up the Administrations of the nine Provinces. It deals with the setting up of structures, division of assets, rationalisation of legislation and personnel, and where the needs arises it deals with the division of resources both human and financial between National and Provincial.

Perhaps the one level of the work of the Commission on the Constitutional side it is responsible for the drafting of a Constitutional text on the Provincial dispensations. It is expected that it would submit that text to the CA after it has been commented upon by the Provincial Governments. It is important to note that the Provincial Governments are not defined narrowly only to mean the executives of the Provinces. It is defined in its broad sense to include the legislatures.

We have had a number of discussions with the Provinces and with the Speakers. We attended a meeting of the Speakers late last year in Bishu where all the Speakers of the Provincial Legislatures were discussing how they are going to be involved themselves in the discussion of the Constitution among other things. It became clear there is no structured way in which the Provinces are going to deal with the Constitution. Some Provinces have established the Committees within their Legislatures dealing with the Constitution. But not all Provinces have got those committees.

The question that we are faced with is that if we are to make our submissions for comment to those committees that do not represent the Government in terms of the way in which the Constitution is structured. So we have to ask the Provinces to explain to us how they are going to giver comments which would carry the mandate of the Constitution, namely that these would be regarded as comments coming from the Governments of the Provinces.

It became clear that there were no structures and the Provinces themselves were not clear. A suggestion that we put forward, although we have not put it forward formally to all the Provinces, but to some of the Speakers, was that they should follow the methods that are

followed by the CA. That is transform themselves as a Legislature into a Constitution discussion body when they are dealing with Constitutional matters. After all many of the Legislatures are not big bodies. They can form themselves into Committees if they want to divide themselves. But when they want to discuss broadly they can discuss this in the larger body of 80 or less than that in some of the Legislatures. That seems to be generally accepted at least from those Speakers I have spoken to. But that is not yet formalised. We were hoping that from the side of the CA the same sort of message would be communicated to the Provinces so that there is one structure that we would all use. When we receive inputs we would know that those inputs would be coming from that body and when we make our submissions we would refer those submissions to that body.

Presently we are busy developing a document that we are going to send out. At the beginning we were uncertain about how to set the process in motion. Whether we should start by inviting submissions from the Provinces or whether we should draft a document to guide the discussion so that the submissions are following the format of the document that we have drafted. We realise that if we just ask for general submissions we will end up with a lot of submissions and it will be very difficult to know where we begin or act. We therefore followed the latter route namely that we would draw up a framework document which is going to stick fairly closely to the Constitutional Principles.

What we have then done is look at the issues. We started by defining issues as contentious and non-contentious. We later decided to remove contentious and non-contentious and just put issues. But we have told ourselves in our minds that are certain issues which are contentious. That guided us in selecting the issues. We have listed a number of issues in this document and in listing those issues we state what the Constitutional Principal says around those, just in summary form and then pose a number of questions which would lead us to develop, or those who are discussing that document to come up with possible options.

For example, in the Senate there are all sorts of issues that are arising about the structure of the Senate, how it relates to the Provinces, how it is elected, who does it represent and so forth. It posed questions such as 'Should a Senate represent the Executive of the Province or the Provincial Legislature or should it represent the constituencies?' And then people would discuss that along those lines so that they would then give some indication of what they are opting for or what they favour.

Same thing with the Executives. We posed questions such as 'There are different types of Executives - which type of Executive in the Provinces are we going to be going for?'

I am just giving these as illustrations of the way in which we are going about the first draft of the document. Then we are hoping that we would get inputs from the Provinces. That document is also going to be released beyond the Provinces. Anybody who wants to comment on it and submit will submit including the Theme Committees.

What we had done before that, we had invited through the Government Gazettes of all the Provinces, comments and submissions. We have received some submissions but the response was not overwhelming. Some of the responses has nothing to do with the Constitution - they were dealing with the transitional issues. We have been going through

the submissions and selecting what is Constitutional and what is administrative.

Once we have received those submissions we are going to start drafting what we refer to as a 'lay persons draft' - again not in the form of a strictly Constitutional text. We will try to draft a document which will be fairly close to what we will end up with, again in an unfinished manner, and then release that and especially discuss that with the Provinces. We will have in between a number of Think-tanks and workshops. I think we have given a document to the Secretariat to circulate to the members of the Committee so as to look at our timeframes and how we are going to go about doing our job.

We have a Core Group which you can think of as our Technical Committee which involves political scientists, economists, lawyers and so forth. The group consists of 12-15 people, not more than that. This group is brainstorming some of these inputs and processing the documents as they come in. But I must emphasise the point that we are not simply receiving the document and just grouping items - we have to submit a text to the CA as the Constitution requires.

The way we have gone about it is that we don't want to be prescriptive. We will develop a minimum of three options on each topic. We would obviously argue for one of those options and state reasons why we favour such an option. As we receive submissions from the different Provinces and other players we are hoping to exchange that information with this TC and other TC's that overlap. So that what happens here is also informing what we are doing in our Commission and vice versa. Our intention is that we should exchange information. As we draft we would have rough sketchers of the areas - if its a Senate we would submit to you the rough draft of the document that we are busy working on so that you could look at it and you may want to incorporate it into your own submission.

We would like to get some of those documents that your are receiving in terms of information, or submissions so that we can take on board some of the options that are emerging.

That is the approach that we would like to follow. The only problem that we are faced with at the moment is that your time-frames are much tighter than ours. Or should I say the time-frames of the CA do not give us sufficient time to actually go through the discussion process with the Provinces. Therefor if we have to make submission to the TC by June we would not have had the time to go through thorough discussions which would enable us to have a Constitutional text for submission to the CA.

We then prepared ourselves to make our first rough draft submission which is close to what we would submit by August. So we go beyond the time you have, because we have to draft not just collate information and process the data. That presents us with a problem in that in August if the CA wants to release a draft it may have to append to that draft our draft submission as well. We have not yet discussed whether at that time we would have had enough time to incorporate it into the main text, whether our submission would go as an appendix.

That in a nutshell is the way we are going about our work

QUESTIONS

- Mr Smith You mentioned that the CPG would provide three possible options and then you would make a possible recommendation on the one allowing the other two, as options, to be perused. Does that refer simply to the draft report or to the text itself? In other words, will there be three versions of the Constitutional text with your recommendation or just three versions in layman's language plus one text?
- Mr Botha In fact the last point you are making is the intention. We would not do a detailed text on all three options. The other two would be written in a lay-persons language. We would write only the one that we opt for in the legal sense.
- Dr Rabinowitz I would like to know what basis the 15 members of the Core Group were selected?
- Mr Botha What we did was to look around and ask some organisations to give us names of people - we did it randomly, let me put it that way. There was no systematic way of doing it. We drew in people whom we know and of course in so doing although you will know the sensitivity of the work we are supposed to be not above what is above being discussed by parties, but yet be much more objective and not be influenced by the trends of the political parties. In selecting people we also tried to get experts, academics, and what have you who are also belonging broadly speaking to a variety of schools of thought. I don't want to say they are aligned to political parties but we have taken that on board in drawing people.
- Mr Smith The issue of preparing a text for submission to the CA after it has been commented on by the Provinces - when you say after comment by the Provinces, does this amount to *in consultation with* or *after consultation with*, or are you entirely autonomous in terms of whether you choose to accept what the Provinces suggest as proposals? Is there any obligation to take on board what the Provinces put forward if they do so for example collectively?
- Mr Botha The Constitution doesn't use the word 'after' or 'in' consultation with in respect to this. I am not sure of the exact formulation. However it amounts to that whatever submission that we make must take on board the submissions of the Provinces. But obviously as you know how complex this issue is, it is very difficult if at the end

of the day we have got to submit an independent, technically objective submission to the CA, we will have to take those on board at the end of the day we have got to present something that we can defend. So what will do in taking on board these we will accommodate some of these into these options and we will argue why we think a particular option is not workable. So that at the end of the day we are going to present a viewpoint that comes from the Commission which will have taken on board. Obviously if there are 5,6 or 7 different options we won't take all them.

Dr Rabinowitz

Coming back to what Mr Gordan said before Mr Botha started to speak I mentioned that we should use a framework which would be based on the one that we have already used for our submissions in reports. I am suggesting that we should have some consistency between our framework and your framework and the framework the Secretariat uses to stipulate the submissions that come from the public. As Mr Botha says it is going to be a very complex and confusing procedure if we want to integrate all our inputs. As I say I don't know if this is the final one but I am suggesting we use the same framework. I am interest to know what framework would they need for the drafting of their submissions of the issues.

Mr Botha

The framework that our administrative staff and the Secretariat (CA) have been looking at are very close to each other. There is no major disparity. The topics and the sequence are fairly close - there may be slight differences in terms of the order of things. Our list may not be exhaustive. We have said that if there are new issues which come up these will be added and we can reorder the document as we draft it later on.

Ms de Lille

I think we need to look at Mr Gordon's proposal as how are we going to organise ourselves now that we have had the overview from Mr Botha. I am not sure whether we are going to do that in this TC because what we have to keep in mind also is the recommendation by the MC that the first block as recommended by them must be followed. Thereafter we can start changing our programme but this and next week we have to complete what is recommended. How do we deal with Mr Gordons proposal? Are we going to refer that to the CG to come up with a proposal and bring it back to the TC or are we going to discuss it now?

Mr Smith

I am not sure as your question refers to two things - organising our work and secondly organising our work in terms of the CPG. It seems that if their text will only be submitted in August at the earliest, the only way I can think that we could liaise in the interim in a constructive fashion would be if we were aware of for example

of the initial draft that is going out to the Provinces concerning the issues. Perhaps if we were a little more aware of the process from now until August it would help us to see to what extent there is an overlap that could allow us to structure things to fit it. It seems that if we have one report and then the Provinces are getting together and having a series of meetings month after month until we end up with these options I don't know how we get involved in that process or how we structure ourselves to fit it. Maybe there isn't a necessity to do so. We might have to accept at the end of the day that there is two parallel processes and we simply feed each other information out apposed to structuring work together.

Ms de Lille

We will receive and collate submissions. The actual debate will take place in the CC and they are expected to deliver a Constitutional text by August. As the TC we are the group that must link up and work closer with the Commission because we are not going to present the final draft.

Mbasa

The TC and the CPG are both receiving submissions - is there a way that we could have access to the CPG's submissions?

Mr Botha

The intention of the co-operation with the TC is precisely to exchange information. There may be reports or submissions that we will receive that you may not receive, or papers as referred to by Mr Gordan as other documents. It may be that we interact with other bodies, international experts and so forth. We are also commissioning people to write papers on specific themes to give us an international perspective on certain issues. We will exchange those documents with yourselves and we would expect the same from your side. But also if you go and hear evidence from the other Provinces, especially if we are dealing with the Government, we may be able to co-ordinate that. Especially with regard to the first block which appears to follow very closely ours.

Secondly although we are saying we would have a fairly complete text by August, in the interim we will start drafting section by section which follow those blocks. Therefore we would want to interact with yourselves so that what you collate might also take on board some of the preliminary ideas that are emerging from the documents that we are getting. We will have section by section in a lay persons draft, not the final text. We will revisit whatever we have to to agree here to do that. We will be refining the draft beyond June.

Dr Rabinowitz

I suggest that if we think the CPG has an important role to play, and they are at the very heart of the issue we are grappling with, and to

ask them to do work that cannot relate to relate to ourselves because we have a time issue and a process issue and more important a substantive issue - it is defeatist and counter-productive. Therefore I would to say at the outset that we organise parallel time schedule and if necessary move our date from June to August and move forward constructively.

Mr Gordhan

I think that we must be careful conflate the TC with the CA as a whole. The principle relationship with the CPG is with the CA not with the TC. The discussions that we are having are not limited to the TC itself. Very soon some of these issues as the first reports appear from the TC's in respect of the blocks, the debates will take place in the CC and then in the CA as well. By next week we will have received the document that Mr Botha speaks about that sets out their timeframes. I think we would be more interested in understanding the substantive issues that the CPG is looking at rather than the process issues that we have talked about. The sooner we have access to for example one of the topics on which they have commissioned papers. Are any available now? We could then work out what our relationship would be as a TC.

CONSTITUTIONAL ASSEMBLY

CORE GROUP

THEME COMMITTEE 3

**RELATIONSHIP BETWEEN
LEVELS OF GOVERNMENT**

31 January 1995

G26

CONSTITUTIONAL ASSEMBLY

MINUTES OF CORE GROUP THEME COMMITTEE 3 RELATIONSHIP BETWEEN LEVELS OF GOVERNMENT TUESDAY 27 JANUARY 1995 (AT 10H30)

PRESENT

KM ANDREW (CHAIRPERSON)

Andrew KM
Carrim Y (Alt for DC Du Toit)
Gordhan PJ (Alt for NN Mapisa-Nqakula)
Groenewald PJ
King TJ
Smith PF

Apologies

P de Lille, DC Du Toit, NN Mapisa-Nqakula

In attendance

Sandra Haydon & Mbaso Mxenge

1. OPENING

The meeting was chaired by K Andrew

CHANGE OF COMMITTEE MEMBER

Dr TJ King (NP) replaces Mr A Fourie who has resigned from the Theme Committee and the Core Group Committee.

Mr P Smith (IFP) replaces Mr LPHM Mtshali on the Core Group.

Mrs EEN Shandu (IFP) becomes a full member of the Theme Committee.

2. MATTERS ARISING FROM THE MINUTES OF 9 NOVEMBER 1994

2.1 With reference to 2.3 the Core Group was advised by the Constitutional Committee to address points 1-5 in the drawing up of the Theme Committee Work Plan.

2.3 The following issues were referred to the Constitutional Committee for clarification:

- i. A National second chamber (para 1.5);*
- ii. Definitions of provinces (para 1.6);*
- iii. Clarity on overlapping issue (part 3);*
- iv. Clarity as to composition of commissions (para 5); and*
- v. Clarity re deadline/appointment of technical experts (para 9).*

2.2 The Secretariat clarified the following issues:

- iii. To be referred to the Secretariat for central co-ordination of combined meetings.
- iv. To be decided by the Theme Committee
- v. The deadline has been extended until 12H00 24 January 1995. The final short-list should be ready by 25 January 1995.

3. MATTERS ARISING

3.1 Work Programme

- i. The meeting discussed the problem of meeting the deadline for Block 1 and the proposal for an extension of time to be discussed by the CC on Monday 30 January 1995.
- ii. Concern was expressed that the resolutions of the Constitutional Committee are not handed down to the Core Group.
- iii. To allow time for Political Parties to make submissions based on the suggested 'Framework' the following timeframes were proposed;

Block 1 : Party submissions by 31 January 1995
Report by 9 February 1995

Block 2 : Party submission by 9 February 1995

Note: Deadline for the remainder of the Blocks remains the same.

- iv. The meeting agreed in principle to stretching the Work Programme into the last two unallocated Blocks, subject to the decision of the Constitutional Committee.

3.2 Technical Experts

Mr Smith gave a reportback from the Technical Experts Selection Sub-committee meeting made to the MC meeting this morning. The Sub-committee proposed that:

- i. The number of Technical Experts for Theme Committees 1-5 be increased from 3 to 4;
- ii. Theme Committee 6 and its Sub-committees be allocated 10 Technical Experts in total; and
- iii. The addition of 3 Committees namely, Traditional Authorities, Local Government, and Self-determination.

3.3 Public Forums

Noted that the Constitutional Committee is discussing this issue.

3.4 Workshop

A committee consisting of Dr King, Y Carrim and P Smith (Chairperson) was appointed to convene a workshop tentatively set for 7 February 1995 and report back to the CG on 31 the January 1995. The Secretariat was requested to ascertain as to the availability of funding.

3.5 Framework

- i. The meeting agreed that the following proposal '*Framework to Process Submissions*' be referred to the Theme Committee meetings on Monday 30 January 1995;

FRAMEWORK TO PROCESS SUBMISSIONS PROPOSAL

1. *It is suggested that we work with two broad categories, Provincial Government and Local Government.*
2. *That each of these categories has five sub-categories (where it applies to Provincial the word Provincial would apply and where it applies to Local Government the word Local Government would apply):*
 1. *South Africa's Specific Conditions (as in context of the Provincial system)*
 2. *Democratic Principles*
 3. *Provincial Principles / Local Government Principles / Points of Departure*
 4. *Elements of the Provincial System - Executive structures, Legislative structures, Senate, fiscal relationships etc all of which would constitute elements of the Provincial system.*
 5. *Miscellaneous*

Note: The above would be looked at in terms of Block 1
3. *6. International Perspective*

Note: This issue would be discussed when deciding the Framework for Block 2 and the advice of the Technical Experts sought.

- ii. It was agreed that Political Parties make submission using the above *Framework*, by 15H00 Tuesday 31 January 1995 for the Secretariat to process for discussion at the Theme Committee meeting on Wednesday 1 February 1995.
- iii. It was suggested that at the Theme Committee meetings on 1st & 2nd February 1995 each party would make an oral submission on one of the above and the issue would be discussed by the other Parties. Day 1 would deal with issues relating to Provincial Government and

Day 2 to Local Government; and

- iv. There was no consensus that the preliminary framework for Blocks 2 & 3 be decided upon at this stage. It was suggested that the Technical Experts be consulted in this regard.

4. SCHEDULE AND PLANNING FOR FIRST BLOCK

- 4.1 The Secretariat reminded the meeting of the timetable for the 1st Block as agreed by the Constitutional Committee.
- 4.2 The Secretariat advised the meeting that public participation events will be organised by Community Liaison in conjunction with South African Communication Services (SACS), following discussion by the Core Group and the Theme Committee. There will be no public participation events as scheduled for 28-29 January as Community Liaison is in the process of finalising its structures.

5. GENERAL

- 5.1 The meeting invited the Executive Director to address the Theme Committee meeting on Monday 30 January 1995 on the proposed Work Programme and the Public Participation Programme.
- 5.2 The Secretariat was asked to find out if there was an agreed format for the writing of Reports.
- 5.3 The Secretariat advised that no written confirmation has been received from the ACDP of their decision to waive their right to Political Party submission and now requests an extension of time to make a submission. Under the proposed '*Framework*' this would be allowed for.
- 5.4 The meeting agreed to cancel The Theme Committee meeting of Tuesday 31 January 1995. The Core group will meet 14H00-15H00 on 31 January 1995. (Venue to be confirmed)

6. CLOSURE

The meeting closed at 13H00

**CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 3
RELATIONSHIP BETWEEN LEVELS OF GOVERNMENT**

CORE GROUP

**REGISTER
DATE 31 / 1 / 95**

NO	NAME	RM NO	PARTY	SIGNATURE
1	ANDREW KM *	M544	DP	
2	DE LILLE P *	M570	PAC	
3	DU TOIT DC *	E336	ANC	
4	KING TJ	M102	NP	
5	GROENEWALD PJ	M504	FF	
6	MAPISA-NQAKULA NN	V254	ANC	
7	SMITH PF	GH28	IFP	

* Chair

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 3 RELATIONSHIP BETWEEN LEVELS OF GOVERNMENT

ATTENDANCE REGISTER

Date : 30 January 1995

Venue : E249

NAME		PARTY	SIGNATURE
Albertyn JT	Alt	NP	
Andrew KM		DP	
Applegryn MS	Alt	NP	
Bhabha M		ANC	
Blaas A		NP	
		NP	
Carrim YI		ANC	
Chuenyane L D	Alt	NP	
Coetzee MP		ANC	
Cronje PC		ANC	
de Lille P		PAC	
Dingani ZA	Alt	ANC	
Du Toit DC		ANC	
Dyani MMZ	Alt	PAC	
Eglin CW	Alt	DP	
Farisani TS	Alt	ANC	
		NP	
Golding MJ	Alt	ANC	
Goosen AD	Alt	ANC	
Gordhan PJ		ANC	
Gouws PJ	Alt	FF	
Groenewald PJ		FF	
Gxowa NB	Alt	ANC	
Khasu MJ	Alt	ANC	

NAME		PARTY	SIGNATURE
Khobe ON		ANC	
King TJ		NP	
Kondlo N	Alt	ANC	
Koornhof GW		NP	
Kota ZA		ANC	
Lamani NE	Alt	ANC	
Lebona HJP	Alt	ANC	
Leeuw SJ	Alt	ANC	
Loots HG	Alt	ANC	
Losabe LK	Alt	ANC	
Mabude NI	Alt	ANC	
Mahlalela AF		ANC	
Mahlangu SJ	Alt	ANC	
Malebo SM	Alt	ANC	
Manie MS		ANC	
Mapisa-Nqakula NN		ANC	Apologies
Maree JW		NP	
Mashamba HJ		ANC	
Matthews VJ	Alt	IFP	
Mayimele HW	Alt	ANC	
Mchunu ES	Alt	ANC	
Modisenyane LJ		ANC	
Mongwaketse SJ	Alt	ANC	
Moosa MV Dep Min	Alt	ANC	
		IFP	
Mukhuba TT	Alt	ANC	
Peires JB	Alt	ANC	
Peters ED	Alt	ANC	
Rabinowitz R		IFP	
Richards I	Alt	ANC	

NAME	PARTY	SIGNATURE
Saaiman PW	NP	
Seperepere MS	ANC	
Shandu EEN	IFP	
Sisulu MV Alt	ANC	
Smith PF	IFP	
Sulliman MA Alt	ANC	
Suttner RS	ANC	
Verwoerd M	ANC	
Vilakazi MI	ANC	
Vos SC Alt	IFP	

MEMBERSHIP

	FULL MEMBERS	ALTERNATES
ANC	17	25
NP	5	3
IFP	3	2
DP	1	1
FF	1	1
PAC	1	1
TOTAL	28	33