

24/2/2/1/10

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 2

STRUCTURE OF GOVERNMENT

CORE GROUP MEETING

**Thursday
4 May 1995
16h00
E305**

DOCUMENTATION

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CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 2 STRUCTURE OF GOVERNMENT

CORE GROUP MEETING

Please note that the above meeting has been scheduled as follows:

Date : Thursday 04 May 1995
Time : 16h00 - 17h00
Venue : E305

AGENDA

1. OPENING AND WELCOME
2. MINUTES OF CORE GROUP MEETINGS
(18, 19, 21 April 1995)
3. MATTERS ARISING:

18 April 1995

- 3.1 Presentation of a Second Chamber - CPG
- 3.2 Report on Traditional Authorities Workshop - CPG

19 April 1995

- 3.3 Claims by Technical Advisers

21 April 1995

- 3.4 Electoral System workshop:- Report from Technical Advisers
- 3.5 Editing of documents by Technical Advisers

4. ITEMS FOR DISCUSSION AND APPROVAL

- 4.1 Revised work programme
- 4.2 Block 1 : Supplementary report
- Block 2 & 3 : Progress report
- The Senate or Second Chamber
 - Draft report by Technical Advisers
 - Preliminary recommendations by CPG
- 4.3 Block 4: Traditional Authorities
- 4.4 Block 5: Volkstaatsraad submission
- Ad hoc committee on self determination
- 4.5 Blocks 5 - 7 : Draft advertisement

5. REPRESENTATION OF TC

- 5.1 Sector hearings :
 - Children's rights: 13 May 1995 - Pretoria :- 1 person
 - Traditional Authorities : 12 & 13 May 1995 - Cape Town :- 4 persons
- 5.2 CPG workshop :
 - Intergovernmental Relations : 18 & 19 May - Cape Town :- 3 persons
- 5.3 Constitutional Public Hearings:

Eastern Cape	06 May 1995	Peddie	2 persons
Eastern Transvaal	13 May 1995	Standerton	2 persons
Northern Cape	20 May 1995	Upington	2 persons
Free State	20 May 1995	Harrismith	2 persons
North West	20 May 1995	Taung	2 persons
Western Cape	27 May 1995	Beaufort West	2 persons

6. CLOSURE

HASSEN EBRAHIM
EXECUTIVE DIRECTOR
CONSTITUTIONAL ASSEMBLY

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CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 2
MINUTES OF CORE GROUP MEETING

Tuesday 18 April 1995
14h00
E216

PRESENT

Rabie JA (chairperson)

Ebrahim AG
Groenewald PH
Mahlangu MJ
Pahad EGH
Selfe J

APOLOGIES

Eglin CW

IN ATTENDANCE

Secretariat:
Technical Committee:

Nene J, Smit T
Steytler NC (Apologies: Motimele
AMM; Absent Dlova V)

1. OPENING AND WELCOME

- 1.1. The meeting was opened and chaired by Rabie JA.
2. **MINUTES OF CORE GROUP MEETING (20 MARCH 1995) AND SPECIAL MEETING OF CORE GROUP, TECHNICAL ADVISERS, AND SECRETARIAT TC2 (3 APRIL 1995)**
 - 2.1. The minutes of the above meetings were adopted
 - 2.2. Matters arising from the minutes:
 - 2.2.1. The meeting agreed that an explanation was required for the continued absence of the member of the TC2 Technical Committee, Prof V Dlova. It was agreed that this matter be deferred until Adv Motimele reports back on the discussion he, in his capacity of convenor of the Technical Committee, was mandated by the Core Group to have with Prof Dlova.
3. **PREPARATION FOR THEME COMMITTEE MEETINGS**
 - 3.1. The Technical Committee's *Proposal for Work Programme on Block 2 and 3* was tabled:

1. Theme Committee 2 has received the political party submissions on blocks 2 and 3. In addition numerous submissions from the public have been received. It has become necessary to analyze, debate and assess the submissions with the view of drafting a report to the Constitutional Committee.
2. Blocks 2 and 3 can be divided into the following topics:
 - (a) National Assembly
 - Size
 - Election/removal
 - Presiding officers
 - Committees
 - Rights and immunities of members
 - Powers and functions vis a vis the executive
 - (b) Senate
 - Purpose and functions
 - Powers
 - Election
 - (c) President
 - Election
 - Powers (ceremonial/executive)
 - Removal
 - Term of office
 - (d) Cabinet
 - Appointment and dismissal
 - Responsibility, individual and collective
3. Plan of action
 - (a) Drafting of reports by Technical advisors (each drafting a report on one topic), analysing:
 - (i) Political party positions: agreement, disagreement
 - (ii) Public submissions: additional proposals, support for particular proposals

- (b) **TC2 meetings: (scheduled for week 18-21 April set aside for CA work)**
 - (i) **Presentation of Technical Advisor's report on topic**
 - (ii) **Presentation by political parties on points of disagreement**
 - (iii) **Debate on points of disagreement, agreement**
 - (iv) **Discussion of public submissions**
- (c) **Drafting of reports by TC2 on four topics**

4. Time table

- (a) **Drafting of reports by Technical Advisors:**
 - (i) **National Assembly: 10 April (distributed to TC2 before Easter weekend)**
 - (ii) **Senate: 10 April (distributed to TC2 before Easter Weekend)**
 - (iii) **President: 18 April (distributed to TC2 on 18 April)**
 - (iv) **Cabinet: 18 April (distributed to TC2 on 18 April)**
- (b) **TC2 meetings:**
 - (i) **National Assembly: 18 April**
 - (ii) **Senate: 19 April**
 - (iii) **President: 20 April**
 - (iv) **Cabinet: 21 April**

3.2. The meeting approved of the Technical Committee's document as the framework for the procedure to follow for the drafting of the report on block 2 to the CC. It was noted that this proposal will now have to be tabled before the Theme Committee for adoption.

3.3. The meeting noted the following remarks which expanded upon the document:

3.3.1. In respect of item 3(b)(ii) and (iii), it was agreed that the Technical Committee shall lead the Theme Committee in the discussion, by pointing out in the presentation of their reports what are the areas of contention;

3.3.2. It was noted that the Constitutional Committee had

specifically requested in respect of contentious issues that "suggested approaches" should also be addressed; and,

- 3.3.3. In consideration of the CPG document, *Document 4: Preliminary Recommendations on a Second Chamber*, which had been made available to TC2, it was noted that if they are able to present the document on short notice when the discussion on the Senate is scheduled, the programme in respect of the Senate shall stand. In the alternative, if the CPG is not yet available, this matter will be reassessed. It was also noted that there may have to be consultations with TC3.

4. ANY OTHER BUSINESS

- 4.1. The meeting noted invitation in respect of the CPG workshop on Traditional Authorities scheduled to take place on 20-21 April. It was agreed to abide by the allocation of three members from TC2 as recommended in the covering letter by the Executive Director of the CA. It was agreed that the two Co-chairpersons present, as well as Mr Ebrahim AG, shall liaise with each other in order to recommend three names to the Theme Committee meeting for adoption on the following day, 19 April 1995.

5. CLOSURE

- 5.1. The meeting closed at 15h20.

Signed by Chairperson _____

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 2

MINUTES OF CORE GROUP MEETING

Wednesday 19 April 1995

18h00

V454

PRESENT

Rabie JA (chairperson)

Ebrahim AG
Groenewald PH
Mahlangu MJ
Pahad EGH

APOLOGIES

Eglin CW

IN ATTENDANCE

Secretariat:
Technical Committee:

Nene J, Smit T
Motimele AMM, Steytler NC, Van
Wyk DH

1. OPENING AND WELCOME

- 1.1. The chairperson welcomed everyone and explained that the meeting had been occasioned by the apparent delay in remuneration for the Technical Committee.

2. CLAIMS SUBMITTED BY TECHNICAL ADVISERS

- 2.1. The meeting noted concerns that Prof Steytler and Prof Van Wyk had not been remunerated for claims they had already submitted for work done. A concern was also noted that Adv Motimele had not yet been reimbursed for a flight he had personally paid for.
- 2.2. The Managing Secretary indicated that Prof Van Wyk's claim had been approved, and that they were awaiting receipt of his cheque from the offices of Parliament, via the CA's Finance Department. In respect of Prof Steytler's claim, the Managing Secretary indicated that further detail had been requested by the Managing Secretary as the Co-chairperson perusing the claim and the Managing Secretary required more detail regarding the work done during claim periods before the claim could be approved. In respect of the flight reimbursement claimed by Adv Motimele, the Managing Secretary undertook to do everything possible to expedite the cheque as a matter of urgency.
- 2.3. The Managing Secretary indicated that neither Prof Dlova, nor Adv motimele had yet submitted a claim for services rendered.

3. CLOSURE

- 3.1. The meeting closed at 18h10.

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 2

MINUTES OF CORE GROUP MEETING

Friday 21 April 1995

12h30

V475

PRESENT

Rabie JA (chairperson)

Ebrahim AG
Groenewald PH
Mahlangu MJ
Pahad EGH

APOLOGIES

Eglin CW

IN ATTENDANCE

Secretariat:
Technical Committee:

Fredericks C, Smit T
Motimele AMM, Steytler NC, Van
Wyk DH

1. OPENING AND WELCOME

1.1. The meeting was opened and chaired by Rabie JA.

2. ELECTORAL SYSTEM WORKSHOP SCHEDULED TO TAKE PLACE ON 8 MAY 1995

2.1. Professor Steytler indicated that Prof T Maluwa, who had been scheduled to make a presentation at the workshop, will be abroad and had to be replaced. The meeting agreed with the suggestions of speakers by Prof Steytler. Prof Steytler was then given a mandate to establish who is available, and to finalise the programme incorporating the amendments. The programme shall be made available to the Secretariat as soon as possible.

2.2. The meeting also agreed that papers which will be presented by speakers will be made available to the Secretariat by Wednesday, 3 May, in order that they can be distributed on Friday, 5 May, when TC2 is scheduled to meet.

2.3. It was also agreed that the programme shall be attached to the invitation, which shall be directed to TC2, and other affected TC's. It was further agreed that the workshop shall be scheduled to take place from 10h00-16h00.

3. REMUNERATION OF TECHNICAL ADVISERS

3.1. The meeting noted that Adv Motimele had been reimbursed for his flight, but that the R60 payment for transport from the airport was not included. The TC2 Secretariat undertook to follow up the outstanding amount.

3.2. The meeting noted that Prof Steytler had been handed forms for the provision of the further details requested. It was agreed that the completed forms will be presented to the chaiperson after the meeting. Upon approval, it shall be submitted to the TC2 Secretariat.

3.3. The meeting noted that Prof Van Wyk had still not been remunerated in full for his approved claim.

3.4. The member of TC2 Secretariat present indicated that the concerns noted are considered in a serious light and that the matter will be given due consideration. The processing of claims once they have been approved has indeed been delayed unduly, and when the Secretariat receive the cheques from the offices of Parliament, by way

of the CA's financial department, the cheques are in sealed envelopes without slips indicating appropriate details.

4. DOCUMENTATION

4.1. The meeting agreed that if the Secretariat is experiencing difficulty in obtaining edited documentation from any of the members of the Technical Committee who had specifically undertaken to edit a document or portion of a document themselves, then the matter should be taken up with one of the Co-chairpersons, rather than making available documentation that is unedited.

4.2. If, however, it is unavoidable to make available an unedited document, then the document should indicate that it is unedited or a portion of it is unedited.

5. ANY OTHER BUSINESS

5.1. The meeting noted that Prof V Dlova had resigned as a member of the TC2 Technical Committee.

6. CLOSURE

6.1. The meeting closed at 12h50.



CONSTITUTIONAL ASSEMBLY

INVITATION

TO: COMMISSION ON PROVINCIAL GOVERNMENT

FROM: Secretariat, Theme Committee 2

DATE: 21 April 1995

MEMO REF: TC2/21 April 95/2

SUBJECT: INVITATION TO PRESENT PRELIMINARY CPG SUBMISSION ON A SECOND CHAMBER (DOCUMENT 4) TO TC2

Herewith please be notified that Theme Committee 2 on 19 April has resolved to extend a formal invitation to the CPG to present the above document to the Theme Committee.

The document has been made available to all Theme Committee 2 members, but it was agreed that the CPG may present its submission before the Theme Committee debates the topic for purposes of drafting a report to the Constitutional Committee.

TC2 is presently discussing the structure and functioning of government at national level; the TC2 meeting on the Senate is scheduled to take place on Friday 5 May 1995. However, no Theme Committee meetings are scheduled earlier next week, as Parliament will be engaged in preparations for local government elections. Therefore the CPG is requested to present their submission on 5 May 1995, as the first agenda item of the TC2 meeting. This will enable the Theme Committee to give due consideration to the CPG submission in terms of section 164(1)(a) of the interim constitution.

The Secretariat of TC2 kindly requests the CPG to forward its responses at its earliest convenience. Should the CPG wish to present its submission as requested, kindly also indicate how much time is required and recommendation how best to utilise that time.

P. O. Box 15, Cape Town, 8000
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Now have your say
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THE NEW CONSTITUTION

The meeting is expected to commence at 9h00 on Friday 5 May, at a venue in parliament.

Yours faithfully

TC2 Secretariat



CONSTITUTIONAL ASSEMBLY

MEMORANDUM

DATE: 26/04/95
TO: CO-Chairpersons of Theme Committees
FROM: Hassen Ebrahim
SUBJECT: Attendance at CPG Workshop

WORKSHOP ON TRADITIONAL AUTHORITIES : APRIL 20-21, 1995

Members will recall the above workshop that took place on the above dates. Arrangements had been made for 15 participants to travel to Pretoria and back to Cape Town. Unfortunately only two members managed to travel although 10 names had been submitted to our offices.

The expense involved as a result of these abrupt cancellations is enormous and unwarranted. I would therefore request that in future members take the above into consideration before cancelling official travel at such short notice.

**HASSEN EBRAHIM
EXECUTIVE DIRECTOR**

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THE NEW CONSTITUTION

**THEME COMMITTEE 2
PROPOSED WORK PROGRAMME (05 MAY - 28 JUNE 1995)**

DATE	TOPIC	DEADLINE: POL. PARTIES' SUBMISSIONS	FINAL REPORT TO CC
MAY 05	<p>STRUCTURE OF GOVERNMENT: NATIONAL LEVEL (Block 2/3)</p> <p>-Technical Advisors' draft report on the Senate to be discussed</p> <p>-CPG presentation on the Second Chamber</p> <p>*To focus on questions / issues that should be addressed by the TC</p>		<p>NB:Report on Block One still outstanding</p>
08	<p>-ELECTORAL SYSTEM (Block 6): WORKSHOP</p> <p>*Questions to be developed in a manner that will determine the parameters of debate and final report of this Block</p>	<p>Extended Deadline for submissions on Block 2/3 (Provincial Level)</p> <p>*Deadline was 10 March 1995</p>	
15	<p>-STRUCTURE OF GOVERNMENT: PROVINCIAL LEVEL (Block 2/3)</p> <p>*Theme Committee 2 & 3 Technical Advisors to develop a joint approach to this issue</p>		

THEME COMMITTEE TWO

IN-HOUSE WORKSHOP ON ELECTORAL SYSTEMS

08 MAY 1995

TIME	TOPIC	PRESENTER
10H00 - 10H30	Electoral Systems : A global overview and options for South Africa	Mr Michael Krennerich (University of Heidelberg, Germany)
10H30 - 10H50	Electoral Systems and representative government in South Africa: The role of members of Parliament	Mr Pierre de Vos (University of the Western Cape)
10H50 - 11H20	Discussion	
11H20 - 12H00	Adapting proportional representation - proposals	Prof Murray Faure (University of South Africa) Prof Albert Venter (Rand Afrikaanse Universiteit)
12H00 - 13H00	Discussion	
13H00 - 14H00	Lunch	
14H00 - 14H50	Adapting proportional representation - proposals	Dr Jaques de Ville (University of Western Cape) Prof Hennie Kotze (University of Stellenbosch)
14H50 - 15H30	Discussion	
15H30 - 16H00	Comment on proposals and further discussion	Mr Michael Krennerich
16H00	Closure	

17		Deadline for submissions on Block 4 (Traditional Authorities)	Deadline: Report on Block 2/3
22	<p>TRADITIONAL AUTHORITIES (Block 4)</p> <p>-Discussions on the Technical Advisors' draft report on this Block to commence</p> <p>*Report to take cognisance of the Public/Pol parties submissions</p>		
29	<p>VOLKSTAAT/COMMUNITY SELF DETERMINATION (Block 5)</p> <p>Workshop to take place</p> <p>*Technical Advisors to set a clear approach with regard to the parameters of the debate & the report</p>		
JUNE 01		Deadline: Submissions on Block 5 (Volkstaat/Community Self-Determination)	
05	<p>BLOCK 4</p> <p>-Discussion of Technical Advisors' draft report on Traditional Authorities continues</p>		Deadline: Report on Block 4 (Traditional Authorities)

12	BLOCK 5 -Discussion of Technical Advisors draft report on Volkstaat/Self Determination commences		
15		Deadline: Submissions on Block 6 (Electoral System)	
19	BLOCK 5 -Discussion of Technical Advisors draft report on Volkstaat/Self Determination continues		
20	BLOCK 5 -Discussion of Technical Advisors draft report on Volkstaat/Self Determination continues	Deadline: Submissions on Block 7 (Constitutional Amendments)	
21	BLOCK 6 -Discussion of Technical Advisors draft report on Electoral System commences		
22	BLOCK 6 -Discussion of Technical Advisors draft report on Electoral System continues		
23			Deadline: Report on Block 5 (Volkstaat)

26	BLOCK 7 -Discussion of Technical Advisors draft report on Constitutional Amendments commences		
27	BLOCK 7 -Discussion of Technical Advisors draft report on Constitutional Amendments continues		
28			Deadline: Report on Block 6 (Electoral System)

COMMISSION ON PROVINCIAL GOVERNMENT

PRELIMINARY RECOMMENDATIONS ON A SECOND CHAMBER RECOMMENDATIONS - DOCUMENT 4

1. INTRODUCTION

- 1.1 See introductory notes under recommendations on provincial legislative powers (Recommendation 2).
- 1.2 The Constitutional Principles do not provide for the continued existence of the Senate in the new Constitution. The only reference to a possible second chamber of Parliament is contained in CP XVIII.4 dealing with an alternative in respect of majorities required for amendments to the Constitution which alter the powers, boundaries, functions or institutions of provinces. The relevant wording is: "... if there is such a chamber, a two-thirds majority of a chamber of Parliament composed of provincial representatives ...". It is significant that while there is no certainty in regard to the continuation of the Senate as such, there is reference to the possibility of a second chamber being composed of provincial representatives.
- 1.3 From the documentation relating to a second chamber of Parliament before the Commission, it appears that there is considerable support for the continued existence of a second chamber. However, there are divergent views on its role, powers and composition, as well as other aspects.

2. INTERIM CONSTITUTIONAL PROVISIONS

Sections 48 to 54 of the interim Constitution deal specifically with the Senate, and sections 55 to 67 relate to matters affecting both the National Assembly and the Senate. The text of these sections is appended for easy reference.

3. DISCUSSION

3.1 Purpose of a second chamber

- 3.1.1 It is necessary to clarify the purposes a second chamber might fulfil in order to justify its institution and continued existence. Agreement in regard to such purposes is necessary for the formulation of other provisions required to give effect to these, such as the composition, powers and role of the second chamber. The specification of purposes also provides a measure for determining whether a second chamber is in fact functioning effectively.

3.1.2 It is generally accepted that in a national legislature a second chamber can serve either one or both of two main purposes, in both unitary and federal states, namely

- (a) to provide internal control over governmental actions, especially in the legislative process, and
- (b) to broaden the system of representation, for example to provide specifically for the representation of subnational units (regions, provinces, or states), or to include other significant interests in the society.

In regard to (a) it is argued that a second chamber helps to prevent flawed legislation from being passed by a single chamber. Nor does the first chamber have unchecked power that could threaten the freedom of individuals or minorities. The second chamber in fact provides a second opinion on matters dealt with by the first chamber. Even by exercising a delaying power, it could compel a government or a first chamber to reconsider a matter or to amend its proposals. Such a delay would also focus the attention of the public on the matter and encourage public debate which could influence the final outcome. It therefore enhances the quality of democracy.

In regard to (b) it is argued that second chambers can represent interests and views that might otherwise be ignored or subordinated (for example, rural versus urban interests; or less populous regions versus those with large populations) and which should be given the opportunity to make their voices heard in the process of government; or where distinctive and significant interests (such as those of regions, provinces or states) cannot be adequately accommodated in the system of representation employed in the other chamber.

In the case of South Africa, where the national legislature has the power to override provincial legislation in certain circumstances in respect of all Schedule 6 functional areas, the checks and balances that a second chamber could provide, might seem to be particularly appropriate.

3.1.3 The Commission is of the view that the provision of a second chamber in the South African Parliament would be justified if it is composed and empowered in such a way that it could effectively fulfil the purposes discussed in paragraph 3.1.2.

The Commission is of the opinion that the representation of provincial interests is of particular importance in view of the discussion in paragraph 3.1.2, and that this should be the overriding consideration in determining the need for a second chamber. It

therefore recommends that a second chamber of Parliament be retained, but that it be structured as discussed below.

To accommodate the obligation on the Commission to consider the provisions of the interim Constitution, and to facilitate the drafting of provisions for the new Constitution, the discussion will be based on the present constitutional text relating to the Senate.

3.2 Composition of the second chamber

3.2.1 Section 48(1) provides that the Senate shall be composed of 10 Senators for each province, nominated by the parties represented in a provincial legislature. Section 48(2) stipulates that the nominations shall be in accordance with the principle of proportional representation as determined by the formula described in the section.

3.2.2 The provision of an equal number of members for each province is in accordance with general international practice for the representation of states/provinces in a second chamber and is also regarded as suitable for South African circumstances. No cogent reasons have been brought to the Commission's attention why this allocation should change in the new Constitution.

The possibility of reducing the number of members in the second chamber has been raised, but the Commission must caution that this could result in there being insufficient members to participate effectively in the various structures of Parliament, especially if the role of the second chamber itself is to be enhanced.

3.2.3 The Commission does not regard it as being within its jurisdiction to express a view in regard to the representation of other interest groups in the second chamber, but draws this to the attention of the Constitutional Assembly, which may wish to pursue the matter. It should be borne in mind, however, that the determination of interest groups qualifying for representation could be a controversial matter. In addition, such representation could pose serious problems in satisfying criteria for democratic accountability.

3.2.4 In terms of the interim Constitution, members of the Senate have to be nominated by political parties. This could have the effect that senators regard themselves as party representatives, and are also regarded in this light by the public. In a Parliament where the representation of political parties in the first chamber is largely replicated by the representation of parties in the Senate, a situation could be created in which senators are obliged to follow the directions given by their party caucuses. The Senate therefore becomes no more than a rubber stamp for the first chamber. In such circumstances the Senate would obviously not be fulfilling any distinctive purpose and would become superfluous.

The Commission is consequently of the opinion that the new Constitution should contain provisions that clearly provide for provincial representation in the second chamber (CP XVIII.4) and for its members to have sufficient independence so as to enable them to represent their provinces effectively. This is discussed below.

3.2.5 More independent and effective representation of the provinces could possible be provided by -

- (i) direct election in each province of members of the second chamber. This would probably be the most democratic way to ensure representation of the provinces in the second chamber. The feasibility of such a procedure requires further investigation; or
- (ii) representation of the provinces by elected members of the provincial legislatures nominated by the legislatures on a proportional basis. This method would create a much closer relationship between members of the second chamber and their province's legislature, and could also allow for the interchangeability of members of the second chamber in Parliament and members of the provincial legislature; or
- (iii) requiring parties to submit lists of candidates for nomination to the second chamber together with their lists of candidates for election to the provincial legislatures. This would at least identify the candidates for the second chamber beforehand, but would not directly influence their appointment as this would still be by proportional representation according to the number of votes registered for each political party; or
- (iv) nomination of members of the second chamber by the provincial legislature on the basis of proportional representation instead of by the parties. This method would not differ materially from the present method provided in section 48, but may serve to strengthen their identity as the selected representatives of the province and its legislature and less as representatives of political parties; or
- (v) representation of the province in the second chamber by the requisite number of members drawn from the province's Executive Council. The feasibility of this method would require careful investigation, however, in the light of demands likely to be made on members of provincial Executive Councils simultaneously attending to parliamentary duties.

3.2.6 The Commission is of the view that, at this point in our constitutional history, the method described in paragraph 3.2.5 (ii) above could provide an effective form of representation for the provinces in the second chamber. In effect this system combines elements of the other methods described.

The Commission therefore recommends that this method be considered by the Constitutional Assembly.

3.2.7 Whatever the system adopted for appointment to the second chamber, the members' relationship with the provincial legislatures would be strengthened if they were required to report to the provincial legislature from time to time in regard to their activities and efforts to promote the interests of their provinces at national level. This would make their role as provincial representatives much more meaningful and accountable. Accountability could be strengthened further by making provision for the recall of members by their provinces if deemed to be performing unsatisfactorily. The Commission recommends that provisions to this effect be incorporated into the new Constitution.

3.3 President and Deputy President of the second chamber

Section 49 of the interim Constitution provides for the election of the President and Deputy President of the Senate and deals with other non-contentious matters relating to these offices. Similar provisions will have to be incorporated into the new Constitution if a second chamber is retained.

3.4 Qualification for membership of the second chamber

Section 50 specifies that no person shall be qualified to become or remain a senator unless he or she is or remains qualified to become a member of the National Assembly. These qualifications are prescribed in section 42 which should be retained. However, the section does not provide for residential qualifications. Nor does section 48 require that a senator should be ordinarily resident in the province that he or she represents. The CPG considers it essential that a member of the second chamber should be ordinarily resident in the province that he she represents. A similar opinion has been expressed by the Commission in respect of members of the provincial legislatures (paragraph 3.10.3 of Recommendation 3). The Commission recommends that provisions similar to those contained in section 50 should be incorporated into the new Constitution. However, if the recommendation in paragraph 3.2.6 above is adopted, the section may be omitted. If not, it should be amended to provide for residential requirements for members of the second chamber similar to those provided for members of provincial legislatures.

3.5 Vacation of seats by members and filling of vacancies

3.5.1 Section 51(1) stipulates that a senator shall vacate his or her seat if he or she ceases to qualify, resigns or is absent without leave for 15 consecutive days. This provision should be retained.

3.5.2 The Section [paragraph (b)] also provides for the vacation of a seat if a senator ceases to be a member of the party which nominated him or her as a senator. The issue is similar to that relating to members of the provincial legislatures dealt with in paragraph 3.11.2 of Recommendation 3. The Commission is of the opinion that democratic principles would be better served by the deletion of the provision which terminates membership of the second chamber if the member ceases to be a member of the party which nominated him or her. This recommendation will fall away if members of the second chamber are nominated by provincial legislatures instead of by parties, as recommended in paragraph 3.2.6.

3.5.3 Section 51(2) provides for the filling of vacancies in the Senate by nomination by the party which nominated the vacating senator. The provision will have to be amended if the recommendation in paragraph 3.2.6 above is adopted.

3.5.4 Section 51(3) provides that if a provincial legislature is dissolved, the senators from the province in question shall vacate their seats and that the vacancies shall be filled in terms of section 48(1)(a). The Commission is of the view that, in the event of a provincial legislature being dissolved, the province's members in the second chamber should vacate their seats. The vacancies should then be filled on the basis recommended in 3.2.6.

3.5.5 In the event of any other vacancies occurring in the second chamber before the expiry of the normal term of office, persons nominated to fill such vacancies should be appointed only for the balance of the unexpired period.

3.6 Oath and affirmation by members of the second chamber Sittings of the second chamber Quorum

These matters of a procedural nature are provided for in sections 52 to 54. The new Constitution should provide for similar provisions.

4. DISCUSSION - THE NATIONAL ASSEMBLY AND THE SECOND CHAMBER

- 4.1 Powers, privileges and immunities of Parliament and benefits of members
 Parliament and benefits of members
 Penalty for sitting or voting when disqualified by law
 Joint sitting of Houses
 Rules and orders

These are procedural matters dealt with in sections 55 to 58 of the interim Constitution. The new Constitution should contain similar provisions.

4.2 Ordinary Bills

4.2.1 Section 59(1) provides for the introduction of ordinary Bills in either the National Assembly or the Senate and for their adoption in each House in order to be passed by Parliament. Similar provisions should be incorporated into the new Constitution.

4.2.2 Section 59(2) provides that an ordinary Bill passed by one House and rejected by the other shall be referred to a joint committee consisting of members of both Houses and of all the parties represented in Parliament and willing to participate in the joint committee. After consideration and report on any proposed amendments to the Bill, it shall be referred to a joint sitting of both Houses, at which it may be passed with or without amendments by a majority of the total number of members of both Houses.

This procedure is fair up to the majority requirement at the joint sitting. The Senate is at a disadvantage in joint sittings requiring a simple majority to pass a Bill because of the relative smallness of its membership, namely 90 out of a total of 490 members. It could be argued that as half of the 400 members of the National Assembly have been elected from provincial lists of the political parties, this accommodates the interests of provinces. However, they are members of the National Assembly and their election from provincial lists instead of from national lists is of no practical significance. Moreover, political parties may not be obliged to present provincial lists in future elections.

On the other hand, deadlock-breaking mechanisms should be available in order not to bring government to a complete halt. Investigations of the deadlock-breaking procedures employed in other countries indicate that no absolute procedure has as yet been devised, except for referral of the matter to a constitutional court for judgement. The most effective political mechanism available is to provide for a cooling-off period which may persuade the government to reconsider or amend the Bill.

The Commission is consequently of the opinion that a Bill which has been referred to a joint committee as contemplated in section 59(2) should be reported on to both Houses and if still rejected by one House, should be reconsidered by both Houses after a period of six months. If the Bill is again passed by one House and rejected by the other, it should be referred to a joint sitting of both Houses, at which it may be passed with or without amendments by a majority of the total number of members of both Houses.

4.3 Money Bills

4.3.1 Section 60(1) provides that Bills appropriating revenue or moneys or imposing taxation shall be introduced in the National Assembly only. However, section 60(4) provides that the National Assembly shall not pass such a Bill unless it has been considered and reported on by a joint committee of both Houses. The Senate may not amend any Bill in so far as it appropriates revenue or moneys or imposes taxation [60(6)]. Section 60(7) stipulates that if the National Assembly passes a Bill imposing taxation or dealing with the appropriation of revenue or moneys and the Senate rejects it or proposes amendments to it, or fails to pass it within 30 days after it has been passed by the National Assembly, the Bill shall be referred back to the National Assembly for reconsideration. It may then pass the Bill with or without amendment, and if so passed it shall be deemed to have been passed by Parliament.

4.3.2 While the provisions of this section illustrate the dominance of the National Assembly in respect of money Bills, there are important reasons why such Bills should not be delayed unreasonably. As matters are, the Senate can delay such a Bill for 30 days if it wishes to do so. Further unreasonable delay may be harmful to good government if it should impair the ability to collect revenues or expend moneys.

A problematical situation arises in regard to the ability of the Senate to influence discretionary appropriation of revenues or moneys for provincial activities, and even the determination by law of the share of national revenues to be allocated to the provinces and local governments. In theory the second chamber should protect the interests of the provinces in these matters by using all mechanisms at its disposal. As indicated under paragraph 4.2.2 the interests of good governance dictate that it can at most use delaying mechanisms to achieve reconsideration of a relevant Bill. However, such delays could also be harmful to the activities of the provinces.

4.3.3 It is evident that the distribution of national revenues between the three levels of government will remain an issue for the foreseeable future. The Financial and Fiscal Commission may play an important role in resolving many of the disputes which could arise over money matters. As far as the parliamentary process for money Bills and the role of the second chamber in that process are concerned, no further solutions for breaking deadlocks have presented themselves to the Commission. It is a known fact that the need for money for government activities at all levels is almost infinite, while the sources of revenue are finite. All that could be achieved by any mechanism is to ensure a fair distribution of the available revenue. To this end, the administrative processes preceding the introduction of money Bills should be developed to the extent that as far as possible disputes are resolved before the parliamentary processes commence. Once such a Bill has been introduced, in the National Assembly, the views of the National Government can only be influenced to a certain extent during the procedures prescribed in Section 60. It does not appear to the Commission that the second chamber could be given more powers in respect of such Bills without increasing the possibility that the process may adversely affect efficient and effective governance.

4.4 Bills affecting certain provincial matters

4.4.1 Section 61 stipulates that Bills affecting the boundaries or the exercise or performance of the powers and functions of provinces shall be deemed not to be passed by Parliament unless passed separately by both Houses. Such Bills can be passed by a simple majority in each House. The section further stipulates that a Bill, other than a Bill amending the Constitution, which affects the boundaries or the exercise or performance of the powers or functions of a particular province or provinces only, must also be approved by a majority of the senators of the province or provinces in question.

4.4.2 The provisions in Section 61 are not very clear. However, what is relevant is that Bills dealing with the exercise of concurrent powers in respect of Schedule 6 functional areas should enjoy the special attention of the second chamber. In effect, in terms of the interim Constitution Parliament can pass Bills in respect of such matters with ordinary majorities in both Houses. Additional protection of provincial interests could be provided by requiring a special majority for such Bills in the second chamber. However, this may be too onerous and in effect elevate every such matter to the level of constitutional changes for which such special majorities are required. The power of the second chamber in regard to provincial matters could be enhanced by requiring Bills of this nature to be introduced in the second chamber only, as the equivalent of the case with money Bills in the National Assembly. The Commission is consequently of the opinion that provision should be made for Bills

dealing with Schedule 6 functional areas to be first introduced in the second chamber. In addition, any such Bills relating to a particular province should also require the approval of the majority of that province's representatives in the second chamber. These requirements would open the way for discussions between the national government and the provinces to address issues and resolve differences before such Bills are considered in the first chamber.

4.5 Bills amending the Constitution

4.5.1 Constitutional Principle XVIII.4 provides as follows:

Amendments to the Constitution which alter the powers, boundaries, functions or institutions of provinces shall in addition to any other procedures specified in the Constitution for constitutional amendments, require the approval of a special majority of the legislatures of the provinces, alternatively, if there is such a chamber, a two-thirds majority of a chamber of Parliament composed of provincial representatives, and if the amendment concerns specific provinces only, the approval of the legislatures of such provinces will also be needed.

4.5.2 Section 62(1) provides generally that a Bill amending the Constitution shall require a two-thirds majority at a joint sitting of the National Assembly and the Senate. Section 62(2) further provides that amendments of section 126 (legislative competence of provinces) and section 144 (executive authority of provinces) shall require a two-thirds majority of each House sitting separately. It further provides that the boundaries and legislative and executive competences of a province shall not be amended without the consent of a relevant provincial legislature.

4.5.3 The provisions of section 62 therefore appear to be in accordance with the stipulations of CP XVIII.4 and similar provisions could be incorporated into the new Constitution.

4.5.4 The Commission is of the opinion that certain constitutional principles should be incorporated into the new Constitution to further entrench the constitutional position of the provinces. The following principles are relevant:

CP XVI, CP XX, CP XXI, CP XXII, CP XXIII, CP XXVI

- 4.6 Requisite majorities**
Assent to Bills
Signature and enrolment of Acts
Rights and duties of President, etc, in Houses
Public access to Parliament

The above matters are procedural in nature and similar provisions need to be incorporated into the new Constitution.

md467

TRADITIONAL AUTHORITIES

IMPACT ON THEME COMMITTEES' WORK PROGRAMME

SPECIFIC RECOMMENDATIONS

THEME COMMITTEE 1

- South Africa is a Single and Sovereign Union of Kingdoms, where the constitution allows a province to crown a king as constitutional leader.
The name and symbols of the country should reflect this fact.

THEME COMMITTEE 2

- For strong national government and fully representative provincial government the individual must be able to influence decisions at all levels. To this end the concept of Imbizo must be strengthened.
- In relation to Traditional Leaders, strict separation of powers cannot be honestly implemented
- Executive appointments must be made from elected legislature (including Traditional Leaders)
- Traditional Leaders should have reserved seats in a unicameral parliament, or occupy the second chamber in a bicameral one
- Traditional Leaders should be elected as Traditional Leaders, not as members of a political party. Where they sit on a party ticket, they must relinquish their traditional status
- An Independent Commission of Enquiry must be set up to investigate the issue of 'illegitimate' chiefs, soon after the establishment of Provincial Houses of Traditional Leaders.

THEME COMMITTEE 3

- Existing Tribal Authorities should be converted to fully democratic rural local councils/authorities
- All Traditional Leaders of the status of headman and above should be ex officio members of such council / authority

- The community should be free to elect political representatives, who should outnumber the Traditional Leaders on the council / authority
- There must be a House of Traditional Leaders in each Province. (Again, Traditional Leaders should not stand on party ticket)
- Kings should sit in such a House automatically, without the need for election
- Where possible, Kings should be constitutional heads of the Province; where there is more than one king, the job should be rotational for a limited period
- Nationally, a King should be Head of State, without executive powers
- Local council boundaries should coincide with those of the Traditional Leaders' area of jurisdiction, and should not be incorporated within municipal boundaries
- For provision of services District / Regional Councils should be set up on which senior Traditional Leaders (or their representatives) should sit, together with ordinary elected members. Where this falls within an area headed by a king, he should be the chairperson.

THEME COMMITTEE 4

- There should be a Commission on Customary Law and Human Rights
- South Africa's new 'human rights culture' should accommodate the African world view
- Succession and Property Rights should not be carelessly changed by reference only to one value system.

THEME COMMITTEE 5

- Except in the case of Traditional Leaders, the judiciary should be free from the influence of the legislature and the executive
- Traditional Courts should be upgraded in terms of :
 - infrastructure
 - recognition of their proceedings
 - recognition of their judgements
- Traditional Courts should have their jurisdiction specified

- Personnel must undergo training
- There must be support for the enforcement of the courts' judgements.

Prof. R.T. Nhlapo
University of Cape Town
15 March 1995



CONSTITUTIONAL ASSEMBLY

MEMORANDUM

TO: Theme Committee I, II, III & IV
FROM: Hassen Ebrahim
Executive Director
DATE: 3 May 1995

RE: VOLKSTAATRAAD SUBMISSIONS

I refer to the above and attach under cover hereof a copy of the relevant submission made by the Volkstaatraad. I would appreciate it if your Theme Committee considered this submission in terms of section 184B(c) of the interim constitution. I would appreciate it if you would accordingly record your consideration of this submission in your report and accord the submission the status and authority as granted in terms of the relevant constitutional provision.

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THE NEW CONSTITUTION

VOLKSTAAT COUNCIL

SUBMISSION TO THEME COMMITTEE 2

THE PRINCIPLES UNDERLYING A VOLKSTAAT

(Hierdie dokument is ook in Afrikaans beskikbaar)

1. The current Interim Constitution entrenches the principle of a volkstaat for the Afrikaner constitutionally.
2.
 - (1) In terms of section 184B (1) the Volkstaat Council serves as a constitutional mechanism to enable proponents of the concept of a volkstaat to pursue its establishment by constitutional means. To understand what is being sought, clarity must be obtained on the meaning of the term "volkstaat". A volkstaat can only mean a state for a certain people. The normal juridical requirements for the existence of a state are territory, a government, a population and the capacity to establish relations with other governments. The requirement of monetary sovereignty may be added to these requirements.
 - (2) The characteristics of a state are a national population, state territory and state authority. For present purposes, the distinction between a "state" and other government bodies and entities is particularly important. A municipality also has an area of jurisdiction, government authority and a population - as does a province. Yet it is clear that neither a municipality nor a province qualifies as a state. The Constitution establishes the Volkstaat Council with the express aim of its striving for the establishment of a volkstaat. In terms of the normal rules of statutory interpretation, this does not mean pursuance of the establishment of a municipality or a province. Had the Constitution sought to empower the Volkstaat Council to strive for the establishment of a municipality or a province for the Afrikaner, the obvious course would have been to use these terms. This was not done and one can only conclude that a "volkstaat" is something other than a municipality or a province.
 - (3) ~~A state may be distinguished from a province or a municipality first, in that~~ it is the bearer of international legal personality. In other words, as a subject of public international law, a state may participate in international intercourse. This capacity generally goes hand-in-hand with independence; it is the capacity to conduct relations with other states referred to in 2.1 above. This is the "normal" meaning of the term "state". It is also the most generally accepted meaning. It is only logical that the term "volkstaat" as appearing in the Constitution, should bear this meaning.

- (4) However, not all states are independent. One also encounters dependent states; that is states which do not have the capacity to conduct their own external or internal affairs. There are also constituent states which form part of a federation - as in the case of the United States of America and the former Federal Republic of Germany. Although these constituent states have been subsumed within a greater state, they are still regarded as states. This may be ascribed to the fact that an entity retains its statehood even once it has been included within another state provided that it retains certain characteristics. The entity should still enjoy its own, original - albeit limited - government authority. Furthermore, some measure of equality must exist with the federation. In other words, the constitution must provide for a division of powers without a relationship of subordination, and rules of public international law must, by analogy, be capable of application to the relationship between the state and the federation. Further, the entity must retain a measure of its "high state powers" such as the capacity to conclude treaties, the power to levy taxes, a police force of its own, an education system of its own and its own judicial processes. Such an entity should also have the capacity - albeit limited - to determine its own legal system, for example, the capacity to adopt and amend its own constitution. These characteristics should not, however, be regarded as absolute. It may be accepted that the "volkstaat" to which the Constitution refers, could include such a constituent or dependent state. This is clear not only from Constitutional Principle XXXIV discussed above, but also from the provisions of section 184B (1)(a). This section indicates clearly that the volkstaat is something other than a province. It is also clear that what the provision envisages, is a territorial entity.
- (5) From what has been said above, it is clear that the "volkstaat" which the Volkstaat Council is seeking to establish, is not some abstraction akin to corporative self-determination. There is no way in which corporative self-determination may be equated with a volkstaat. The term "volkstaat" does not, either in legal or in political idiom, bear the limited meaning ascribed to a concept such as corporative self-determination. To equate the search for corporative self-determination with the institution of a volkstaat is simply to interpret the Constitution in a purely political idiom. It amounts to a negation of the precise meaning of the words used to define the functions of the Volkstaat Council, and furthermore, violates the history of the provision instituting the Volkstaat Council. Before the insertion of the provisions governing the Volkstaat Council, the Constitution already provided for corporative self-determination, provinces and subordinate territorial authority structures. If we now accept that the provisions governing the Volkstaat Council added nothing, the institution of the Council and the provisions governing the volkstaat are rendered meaningless. The juridical presumption that the legislature does not intend to enact futile or nugatory provisions comes into play.

- (6) Paragraph 1 of Schedule 4 embodies the constitutional principle that the South African Constitution shall provide for the establishment of a single sovereign state:

First, it must be accepted that were this principle to clash with Constitutional Principle XXXIV, the latter would take precedence as a principle added by a subsequent (more recent) amendment to the Constitution.

Second, this provision does not necessarily conflict with the view that the Interim Constitution allows for the institution of an independent volkstaat. The principle relates to that for which the Constitution of South Africa must provide. Were an independent volkstaat to be established, it would no longer form part of South Africa and would, in any event, not fall under the South African Constitution. The Constitution, therefore, would still be able to provide for a single sovereign state. In practical terms, all that would happen is that there would be a change to the definition of the territorial boundaries of South Africa. South Africa would continue to exist but in a smaller form and differently defined. Constitutional Principle XVIII of Schedule 4, establishes special procedures for the alteration of the boundaries of national government and the provinces and is therefore based on the assumption that boundaries may be altered - even the boundaries of the national government. How can the boundaries of the national government be altered but by the exclusion of a territory from South Africa? This principle relates to procedures to be prescribed in a future Constitution. There is no principle entrenching the definition of the current South Africa, that is South Africa as defined in the Interim Constitution.

- (7) Section 5 and Part 1 of Schedule 1 define the Republic as a single sovereign state. This section may be replaced but such an amendment will in all likelihood be subject to the majority-requirements as provided in section 73(2) or (11) of the Interim Constitution as such an alteration to the boundaries of the Republic would necessarily also alter the boundaries of a province.

3. The Volkstaat Council's pursuance of an independent volkstaat is compatible with the Interim Constitution.

4. (1) As a constituent state within a federated South Africa, the volkstaat is likewise reconcilable with the Interim Constitution provided that the constituent state satisfies the requirements for statehood.

(2) The Constitution may not infringe upon such statehood. The Constitution should indeed provide that such a state may exercise its full right to independence in accordance with the principle of the right of peoples to self-determination.

5. (1) A precondition for statehood is the identification of a territory. The Volkstaat Council proposes the territory as defined in Annexure A hereto as the territory

of the volkstaat. This territory represents an area over which the Afrikaner has historical claims to the right to self-determination and in which the Afrikaner constitutes a majority of the population. Because the Afrikaner is in the majority in this territory, it is axiomatic that he enjoys the right to realise his right to self-determination within such territory.

- (2) The distribution of the Afrikaner makes it impossible for all Afrikaners to be accommodated within the proposed volkstaat. Provision is consequently made for autonomous units within other parts of the Republic of South Africa within which the Afrikaner may live as "concentrated minorities". In this latter case, the internationally accepted principle of minority autonomy is engaged. Of course, any minority within the proposed volkstaat will also be subject to this principle. Where minorities are, or will be, too small to exercise their autonomy territorially, provision is made for minority self-realisation on local government level through citizens' councils which exercise their capacities in the cultural sphere.
6. (1) Statehood also demands as a precondition that the state have a population. It flows logically from the Interim Constitution that if a volkstaat is to be established for the Afrikaner, such a state must also have a citizenship defining the inhabitants of the volkstaat and providing who shall enjoy rights and duties within the state. If the volkstaat takes the form of a constituent state within a federated South Africa, it stands to reason the volkstaat citizenship will have to be established alongside South African citizenship.
 7. A state must also have a government to exercise state authority. To establish such a government for the volkstaat, the volkstaat is granted powers as a constituent state within the Republic of South Africa, but retains the right to realise its full self-determination should this be the wish of the inhabitants of the volkstaat. Provision is also allowed for the volkstaat, as well as any other constituent state or current province, to draft their own constitutions in accordance with their right to self-determination, and to organise their system of government in accordance with their natures. The process by which a volkstaat may be established in an orderly and constitutional manner is through federating the Republic of South Africa in constituent states.
 8. It is accepted that the peaceful creation of a volkstaat must take place through constitutional means in accordance with both the Interim and the New Constitutions of South Africa.

CAVOORL.23E

VOLKSTAAT COUNCIL

SUBMISSION TO THEME COMMITTEE 2

STRUCTURES OF GOVERNMENT

(This document is also available in Afrikaans)

A. HEAD OF GOVERNMENT

Election

1. There shall be a distinction between the head of state and the head of government.
2. The head of state shall operate on a basis of rotation to accord recognition to the federated nature and cooperative ideal of the Republic of South Africa.
3. On a rotational basis each constituent state shall elect a head of state who will serve for a period of six months.
4. The out-going head of state serves as acting head of state for the six month period following the six month period during which he served as head of state.
5. To qualify for election as head of state, an individual must qualify for election as a members of the national parliament.
6. The head of state shall vacate his office should he no longer meet the stated requirements.

Functions

7. The head of state shall be competent to exercise and perform the following functions:
 - (a) to assent to, sign and promulgate Bills duly passed by parliament;
 - (b) ~~in the event of a procedural shortcoming in the legislative process, to refer a Bill passed by parliament back for further consideration by parliament;~~
 - (c) to refer disputes of a constitutional nature between parties represented in parliament, or between organs of state at any level of government, to the Constitutional Court or other appropriate institution, commission or body for resolution;
 - (d) to confer honours;
 - (e) to appoint, accredit, receive and recognise ambassadors, plenipotentiaries, diplomatic representatives and other diplomatic officers, consuls and consular officers;

- (f) to appoint commissions of enquiry;
 - (g) to make such appointments as may be necessary under powers conferred upon him or her by this Constitution or any other Law;
 - (h) to negotiate and sign international agreements;
 - (i) to proclaim referenda or plebiscites in terms of this Constitution or an Act of parliament;
 - (j) to pardon or reprieve offenders, either unconditionally or subject to such conditions as he or she may deem fit, and to remit any fines, penalties or forfeitures.
8. The head of state is obliged to sign all laws duly adopted, but may, where the validity of a law is in question, refer such law to the Constitutional Court for a decision on its validity before signature.
9. The head of state opens and prorogues parliament and adjourns and dissolves parliament.
10. The head of state may also call an election if a motion of no confidence in the government is introduced in and accepted by parliament, or if he is of the opinion that the government has lost the support of the majority in parliament, or if he is requested to do so by the head of government.
11. The head of state exercises his executive functions on the advice of the government provided that such advice is constitutional and subject to the proviso that he may have the legitimacy of such advice in the light of the Constitution, determined by the Constitutional Court.

Head of Government

12. The head of government is elected by majority vote of parliament.
13. The head of government is removed from office by majority vote of parliament or if the head of state dissolves parliament and calls an election.
14. The head of government appoints the cabinet.
15. The head of government and the cabinet are responsible to parliament for the performance of their duties.
16. The head of government and the cabinet advise the head of state on the performance of his duties.
17. Under normal circumstances, the cabinet advises the head of state on the convening, prorogation and dissolution of parliament.

B. THE LEGISLATIVE AUTHORITY

Composition

1. Parliament shall consist of two chambers and shall be the highest national legislative authority.
2. Parliament shall consist of two chambers, namely the Legislative Assembly and the Senate.
3. The Legislative Assembly shall consist of 400 members and the Senate of 100 members.
4. The Legislative Assembly is elected as currently provided in the Interim Constitution but with due regard to the fact that the representation of the volkstaat as a participating member state shall be calculated in terms of the appropriate formula based on the volkstaat electorate entitled to vote.
5. The Senate shall comprise 10 representatives from each of the constituent states and from the volkstaat.

Functions

6. Parliament shall have legislative powers in respect of all matters entrusted to it in terms of this Constitution.
7. All laws adopted by parliament, must be approved by majority vote in both the Legislative Assembly and the Senate, except where expressly otherwise provided.
8. **The Senate, or a Senate sub-committee on which the constituent states are represented** in a ratio proportionate to their representation in the Senate, shall confirm the appointment of all judges to the National Supreme Court, National Appeal Court or the Constitutional Court; of all ambassadors of the Republic of South Africa to posts **outside of the Republic; of the Public Protector; of the Human Rights Commission; of the Commission for the Restitution of Land Rights; and of the Commission on Gender Equality.**
9. Bills affecting the boundaries or the powers of a constituent state, may only be adopted if the majority of the Senators representing that constituent state, consent to the Bill.
10. (1) Parliament is accorded exclusive legislative competence over the following matters:
 - (i) Foreign affairs and the conclusion of treaties which fall within the legislative powers of parliament.
 - (ii) The external protection and safety of the Republic, the declaration of war and ancillary measures including provisions

- governing an air force and a navy.
- (iii) National citizenship.
 - (iv) Visas and passports.
 - (v) Immigration and emigration.
 - (vi) Extradition.
 - (vii) Monetary matters including the legal tender (monetary unit) and the determination of weights and measures.
 - (viii) Issues relating to customs and excise, toll unions and commercial treaties with foreign states, in so far as the Republic is affected directly by such issues.
 - (ix) National railways, national air, sea and road traffic and national harbours and airports.
 - (x) National elections.
 - (xi) National post and telecommunication services.
 - (xii) The national Public Service and national courts, including the Constitutional Court, and persons competent to appear in such courts.
 - (xiii) The national police force.
 - (xiv) Joint national electricity and water networks.
 - (xv) The national recognition of patents, trade marks, copyright and similar rights to immaterial property.
 - (xvi) National statistical services.
 - (xvii) The levying of uniform national taxes.
 - (xviii) Borrowing powers.
 - (xix) The Republic's claims to the sea and related maritime matters.
 - (xx) Arrangements governing national legislative and executive seats.
 - (xxi) National research, national tertiary education and national health matters, but without detracting from the rights enjoyed by constituent states over health, research and tertiary education services.
 - (xxii) **The establishment of a national television and radio service.**
 - (xxiii) Criminal and civil procedural powers necessary for the exercise of all powers conferred.
 - (xxiv) The creation and unification of constituent states.
- (2) The legislative, executive and judicial powers over all other matters vest in the various constituent states.
 - (3) Where a constituent state so requests by special decision of its legislature, **parliament may grant such constituent state the capacity to exercise legislative, executive and judicial powers** in respect of any of the matters listed in par 10(1) above.
11. (1) The constituent states have full and original legislative, executive and judicial powers except in respect of those matters over which they have transferred powers to the national parliament as listed in par 10(1).
- (2) Without derogating from the general provision in par 11(1), legislative, executive and judicial powers in particular in respect of the following matters

are expressly and exclusively reserved for the volkstaat:

- (i) Own education and training on pre-primary, primary, secondary and tertiary levels and own research institutions.
 - (ii) Health services, hospitals, clinics, old-age homes and special care institutions, together with social services and housing.
 - (iii) Agriculture and land issues, animal control and agricultural marketing.
 - (iv) Local governments.
 - (v) Own police force, citizens' defence units and domestic defence units.
 - (vi) Own public media, including television, radio and films.
 - (vii) Public transport within the constituent state but with the exclusion of national road, sea, rail and air transportation.
 - (viii) Own road and transportation infrastructure.
 - (ix) Tourism.
 - (x) The capacity, after consultation with the national government, to conclude treaties with other constituent states and with foreign states dealing with matters falling within the legislative capacity of the constituent state.
 - (xi) The levying and collection of taxes to enable it to perform its legislative, executive and judicial functions.
 - (xii) Courts for the constituent state concerned and the qualifications of persons who may appear before such courts.
 - (xiii) The definition and institution of volkstaat citizenship.
- (3) A constituent state may by legislation authorise parliament to perform on its behalf, any legislative, executive or judicial function relating to any matter over which the constituent state enjoys such capacity.
- (4) Constituent states exercise their legislative functions in respect of local government, subject to and in accordance with the proposals submitted in respect of local government.
- (5) In the event of the suppression or negation of the Afrikaner's right to self-determination, which shall include his right to culture and his own language, the volkstaat shall, after a majority of its citizens have made their will known through a referendum, have the power to declare itself independent from the Republic of South Africa.
12. (1) Parliament and the legislatures of the constituent states shall enjoy concurrent jurisdiction in respect of the following matters:
- (i) The adoption of emergency financial measures in the event of extraordinary inflation or monetary instability.
 - (ii) The legal system governing civil and criminal matters and the execution of sentences.
 - (iii) Registration of births, marriages, deaths and domicile.
 - (iv) Bill of fundamental rights.

- (v) Residence rights and the settlement of non-citizens.
- (vi) Pensions.
- (vii) Economic matters and trade including industries, mining, factories, stock exchanges, professions, occupations, banking, insurance and nuclear energy.
- (viii) Labour law including social security.
- (ix) Bursaries and awards for study.
- (x) Expropriation in so far as it may prove necessary for the performance of specific legislative powers.
- (xi) Fisheries matters and the exploitation of the sea.
- (xii) Waste management.
- (xiii) Autonomous units.

- (2) In the event of the exercise of concurrent legislative powers, the legislation of a constituent state and that of parliament shall be reconciled. Only where the two cannot be reconciled, and then to the extent of such irreconcilability only, shall the parliamentary legislation enjoy precedence, and then only if the law in question is essential for the uniform application of the specific legislative power over the entire Republic.

CAVOORL.22E

DRAFT ADVERTISEMENTS

VOLKSTAAT/COMMUNITY SELF-DETERMINATION (BLOCK 5)

- 1. Should the Constitution provide for self-determination for a community sharing a common cultural heritage?**
- 2. If so, should this notion of self-determination take a territorial form, for example a Volkstaat, or are there other recognised ways of expressing such a heritage?**
- 3. What types of Community could be said to share such a heritage as to justify a form of self-determination?**
- 4. What level of support should be shown within a community as a prerequisite for a self- determination?**

ELECTORAL SYSTEM (BLOCK 6)

- 1. How should your members of Parliament be elected?**
- 2. Should our electoral system be based on constituencies, party list system or a combination of both?**
- 3. What should happen when a member of a particular political party crosses the floor?**

CONSTITUTIONAL AMENDMENTS (BLOCK 7)

- 1. Should the Constitution be changed at all?**
- 2. If so, how should it be changed?**

CA NATIONAL CHILDREN'S RIGHTS PUBLIC HEARING

PROGRAMME : SAT 13 MAY 1995

- 08:00 - 09:00 Registration
Tea/Coffee
- Video on Children's Rights
- 09:00 - 09:15 WELCOME : Need to find speaker (TC4)
- 09:15 - 09:30 KEY NOTE : Ms Shirley Mabusela NCRC
- 09:30 - 09:45 The Right to be heard: Mr Johnnie Dhlabu
- How these rights to survival, protection and development should apply to children with particular reference to children in difficult circumstances: children affected by violence, disability, special educational needs, early childhood development, children exploited for their labour etc. (15 min)
- 09:45 - 10:00 PROGRAMME ARRANGEMENTS Chairperson (TC4)
- 10:00 - 10:15 Tea/Coffee
- 10:15 - 10:45 PANEL 1 : THE RIGHT TO SURVIVAL Chairperson (TC4)
- The right to health and the right to a healthy environment (15 min) : Prof H.M. Coovadia
 - The right to social security and the right to family life (15 min) : Ms Jackie Loffell (Child Welfare) (JHB)
- 10:45 - 11:15 OPEN DISCUSSION
- 11:15 - 11:45 PANEL 2 : THE RIGHT TO PROTECTION Chairperson (TC4)
- Equality and minority (10 min) : Ms Pansy Tlakula (JHB) (Black Lawyers Assoc)
 - Freedom and security (10 min) : Ms Ann Skelton (Lawyers for Human Rights) (Pietermaritzburg)
 - Freedom from abuse and neglect (10 min) : Ms Rose September (CT) (Child Guidance UWC)

11:45 - 12:15	OPEN DISCUSSION	
12:15 - 13:15	Lunch	
13:15 - 14:00	<u>PANEL 3 : RIGHT TO DEVELOPMENT</u>	Mr Jabu Sindane (Chairperson HSRC) (PTA)
	- The right to language, : culture and recreation (15 min)	Dr Temba Sono (Centre for Development Analysis) (PTA)
	- The right to education : (15 min)	Ms Shireen Motala (Durban)
	- The right to freedom : of religion, belief and opinion (15 min)	Bishop Peter Storey
14:00 - 14:30	OPEN DISCUSSION	
14:30 - 14:45	Tea/Coffee	
14:45 - 15:15	SUMMARY OF PROCEEDINGS	Chairperson (TC4)
15:15 - 15:30	Thanks and closure	(Theme Committee Person)

CONSTITUTIONAL ASSEMBLY

PUBLIC HEARING

TRADITIONAL AUTHORITIES AND CUSTOMARY LAW AND PRACTICES

OLD ASSEMBLY CHAMBER, PARLIAMENT, CAPE TOWN

FRIDAY & SATURDAY, 12 & 13 MAY 1995

FRIDAY, 12 MAY 1995

14H15 - 15H00	Arrival and Registration Tea / Coffee	
15H00 - 15H15	Welcome	<i>Prof Bonganjalo Goba MPD National Director</i>
15H15 - 15H30	Opening Address	<i>Hon Mr Cyril Ramaphosa Chairperson of the Constitutional Assembly</i>

SESSION ONE

Chair : Senator Bulelani Ngcuka

Constitutional Issue : Traditional Courts & Customary Law/Practices

15H30 - 15H45	Traditional Courts	<i>Mr Rajesh Chowdree</i>
15H45 - 16H00	Customary Law/Practices	<i>Prof Digby S Koyana</i>
16H00 - 16H45	Plenary Discussion	
16H45 - 17H00	Tea/Coffee	

SESSION TWO

Chair : Mr Sheppard Mdladlana, MP

Constitutional Issue : Customary Law and the Bill of Rights

17H00 - 17H15	Customary Law & Human Rights	<i>Prof B Fikile Ndaki</i>
17H15 - 18H00	Plenary Discussion	
18H00 - 18H15	Technical Adviser's Summary (Session 1 & 2)	<i>Ms Thuli Madonsela</i>
18H15 - 18H30	Announcement of Arrangements for Accommodation	
18H30 - 20H00	Dinner at Parliament	
20H15	Transport from Parliament to hotels	

SATURDAY, 13 MAY 1995

07H00 - 08H15	Breakfast at hotels
08H30	Transport from hotels to Parliament
09H00 - 09H15	Arrangements for the day and Announcements

SESSION THREE

Chair : Mr M Johannes Mahlangu

Constitutional Issue : Role of Traditional Leadership - Executive and Legislative Functions of the State

09H15 - 09H30	Congress of Traditional Leaders of South Africa	<i>Adv S P Holomisa</i>
09H30 - 09H45	S.A. National Civics Organisation	<i>To be identified</i>
09H45 - 10H30	Plenary Discussion	
10H30 - 10H45	Technical Adviser's Summary	<i>Prof Thandabantu Nhlapo</i>
10H45 - 11H00	Tea/Coffee	

SESSION FOUR

Chair : Mrs Patricia De Lille, MP

Constitutional Issue : Role of Traditional Leadership in various Levels of Government

11H00 - 11H15	The role of Traditional Leadership in Local Government	<i>Ms Pelonomi Venson</i>
11H15 - 12H00	Plenary Discussion	
12H00 - 12H15	Technical Adviser's Summary	<i>Prof B R Mqoke</i>
12H15 - 12H30	Closing Address	<i>Hon Mr Leon Wessels Deputy Chairperson of the Constitutional Assembly</i>
12H30 - 12H45	Vote of Thanks	
13H00 - 14H30	Lunch at Parliament	
14H30	Departure	

THEME COMMITTEES TWO, FOUR AND FIVE TO INCLUDE TRADITIONAL AUTHORITIES IN THEIR BRIEFS



CONSTITUTIONAL ASSEMBLY

17 April 1995

To Chairpersons - Theme Committees 11, 111, 6.1, 6.2.

Re: Invitation to attend workshop on Institutionalization of Intergovernmental Relations 18 - 19 May 1995.

Please find attached an invitation from the Commission on Provincial Government to attend a workshop on the 18 - 19 May in Cape Town.

I propose the following delegation, subject to your confirmation.

Theme Committee 11:	3 TC members;
Theme Committee 111:	3 TC members
Theme Committee 6.1:	2 TC members
Theme Committee 6.2:	2 TC members
Secretariat staff member:	1

I would appreciate the names of your delegates by not later than 5 May 1995 in order for us to facilitate the necessary practical arrangements.

Thanking you.

Hassen Ebrahim
Executive Director

Enquiries: L Meyer (4032264)
Room 903, Regis House or
T Kgosidintsi (245031)
Room 904, Regis House.

P. O. Box 15, Cape Town, 8000
Republic Of South Africa

Tel: (021) 245 031, 403 2252 Fax: (021) 241 160/1/2/3, 461 4487. E-mail: conassem@iaccess.za



You've made your mark



Now have your say

THE NEW CONSTITUTION

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

31 March 1995

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

Fax: 021-241162

Dear Mr Ramaphosa

INSTITUTIONALIZATION OF INTERGOVERNMENTAL RELATIONS WORKSHOP 18-19 MAY 1995, CAPE TOWN

The Commission on Provincial Government - in association with the Centre for Constitutional Analysis at the HSRC and the Development Bank of Southern Africa - is arranging a workshop on matters pertaining to intergovernmental relations in the new constitution. This workshop will take place at the Cape Rendezvous in Brackenfell, Cape Town, 13:00 on Thursday 18 May until 16:00 on Friday 19 May 1995.

The Commission was established by the interim constitution to facilitate the establishment of provincial government, and is tasked *inter alia* with making recommendations to the Constitutional Assembly on the development of a constitutional dispensation with regard to provincial systems of government (including local government). This includes matters such as the allocation of powers, fiscal and financial and intergovernmental relations.

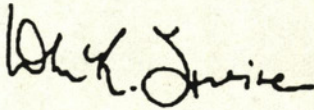
The aims of the workshop are as follows:

- to discuss the rationale for intergovernmental relations and ways and means of conducting these
- to identify and discuss positive development and problem areas in intergovernmental relations among the national, provincial and local governments under the interim constitution
- to identify guidelines for the institutionalization of intergovernmental relations for consideration by the Commission on Provincial Government and the Constitutional Assembly.

It gives me great pleasure to invite you to nominate 10 members from the Constitutional Assembly to participate in the workshop and to share their knowledge on this important matter with us. The workshop's organizers will pay all costs relating to the workshop. I presume that these representatives will not require transport and accommodation given the fact that they are already in Cape Town. I would also appreciate it if you would bring this workshop to the attention of the specific Theme Committees and invite them to nominate at least one person to attend the workshop as well. The Centre for Constitutional Analysis is taking care of all administrative arrangements related to the workshop. If you have any further questions, please do not hesitate to call Mrs Rina du Toit (012-202-2428) or Dr Bertus de Villiers (012-202-2552) from the Centre for Constitutional Analysis in this regard.

I will appreciate it if your representatives could return the enclosed registration form before 1 May 1995. A tentative programme and roadmap will be sent to them on receipt of this form.

Yours sincerely


T.P.

THOZAMILE BOTHA
CHAIRPERSON: COMMISSION ON PROVINCIAL GOVERNMENT

MD540

MEMORANDUM

TO: THEME COMMITTEE MEMBERS

FROM: HASSEN EBRAHIM

RE: CONSTITUTIONAL PUBLIC MEETINGS

1. Since we were unable to receive a satisfactory response and the co-operation of the Premier's Office in KwaZulu-Natal, the CA has not been able to finalise preparations for CPMs in the province. It was therefore necessary to cancel the CPM proposed for Ingwavuma. The CA has to yet investigate other options e.g briefings.
2. **Confirmation Forms** will be distributed to Theme Committee members by the Theme Committee's Managing Secretary at Theme Committee meetings. Confirmation forms for CPMs from **10 MAY 1995 until the end of MAY 1995** will be distributed - a specific CPM is indicated as point 1 on each Confirmation Form. The cut-off date for confirmation will be the end of work on the Monday prior to a CPM.

PLEASE NOTE

Confirmation Forms should be

- * delivered by a service officer to the Operations Room, Floor 12, Regis House, Adderley Street **OR**
- * faxed to Una Fourie or Mandy Busuttil at (021) 238-132.

3. BRIEFINGS

For Theme Committee members who will be travelling to a CPM, briefings will be held each Wednesday before the CPM. A briefing document and an itinerary of travel arrangements will be distributed at the briefing.

The briefing for the CPM to take place at Peddie on 6 May 1995 will be held in the Large Lounge (V2) on 3 MAY 1995 at 15:00.

All briefings for remaining CPMS will be held in M201 (Marks Building) at 12:00 on the following dates:

MAY 1995

- Briefing: 10 May 1995 (CPMs - 13 May 1995).
- Briefing: 17 May 1995 (CPMs - 20 May 1995).
- Briefing: 24 May 1995 (CPMs - 27 May 1995).

JUNE 1995

- Briefing: 31 May 1995 (CPMs - 3 June 1995).
- Briefing: 7 June 1995 (CPMs - 10 June 1995).
- Briefing: 14 June 1995 (CPMs - 17 June 1995).
- Briefing: 21 June 1995 (CPMs - 24 June 1995).

**Constitutional Public Meetings
Confirmation Forms**

CONSTITUTIONAL PUBLIC MEETING CONFIRMATION FORM

1. CPM

DATE	PROVINCE	TOWN
13 May	Eastern Cape	Stanger

2. NAME OF THEME COMMITTEE MEMBER

.....

3. THEME COMMITTEE

Please tick where applicable

Theme Committee		Theme Committee		Theme Committee	
1		4		6.2	
2		5		6.3	
3		6.1		6.4	

4. TRAVEL ARRANGEMENTS

Please tick where applicable

BEFORE CPM

AFTER CPM

Arrangements	CA	OWN	Arrangements	CA	OWN
Transport TO airport from Old National Assembly entrance			Air travel to CAPE TOWN		
Air travel to VENUE			Transport FROM airport TO:		
ACCOMMODATION ARRANGEMENTS	CA	OWN	National Assembly		
			Pelican Park		
PLEASE NOTE CA: To be arranged by the Constitutional Assembly Administration. OWN: To be arranged privately for own account.			Acasia Park		
			Laboria Park		

5. Office contact number:..... After hours:.....

6. RSVP BEFORE 9 MAY 1995.

CONSTITUTIONAL PUBLIC MEETING CONFIRMATION FORM

1. CPM

DATE	PROVINCE	TOWN
20 May	Northern Cape	Uptington

2. NAME OF THEME COMMITTEE MEMBER

.....

3. THEME COMMITTEE

Please tick where applicable

Theme Committee		Theme Committee		Theme Committee	
1		4		6.2	
2		5		6.3	
3		6.1		6.4	

4. TRAVEL ARRANGEMENTS

Please tick where applicable

BEFORE CPM

AFTER CPM

Arrangements	CA	OWN	Arrangements	CA	OWN
Transport TO airport from Old National Assembly entrance			Air travel to CAPE TOWN		
Air travel to VENUE			Transport FROM airport TO:		
ACCOMMODATION ARRANGEMENTS	CA	OWN	National Assembly		
			Pelican Park		
PLEASE NOTE CA: To be arranged by the Constitutional Assembly Administration. OWN: To be arranged privately for own account.			Acasia Park		
			Laboria Park		

5. Office contact number:..... After hours:.....

6. RSVP BEFORE 15 May 1995.

CONSTITUTIONAL PUBLIC MEETING CONFIRMATION FORM

1. CPM

DATE	PROVINCE	TOWN
20 May	Free State	Hardemuth

2. NAME OF THEME COMMITTEE MEMBER

.....

3. THEME COMMITTEE

Please tick where applicable

Theme Committee	Theme Committee	Theme Committee	Theme Committee
1	4	6.2	
2	5	6.3	
3	6.1	6.4	

4. TRAVEL ARRANGEMENTS

Please tick where applicable

BEFORE CPM

AFTER CPM

Arrangements	CA	OWN	Arrangements	CA	OWN
Transport TO airport from Old National Assembly entrance			Air travel to CAPE TOWN		
Air travel to VENUE			Transport FROM airport TO:		
ACCOMMODATION ARRANGEMENTS	CA	OWN	National Assembly		
			Pelican Park		
PLEASE NOTE CA: To be arranged by the Constitutional Assembly Administration. OWN: To be arranged privately for own account.			Acasia Park		
			Laboria Park		

5. Office contact number:..... After hours:.....

6. RSVP BEFORE 15 May 1995.

CONSTITUTIONAL PUBLIC MEETING CONFIRMATION FORM

1. CPM

DATE	PROVINCE	TOWN
20 May	North West	Taung

2. NAME OF THEME COMMITTEE MEMBER

.....

3. THEME COMMITTEE

Please tick where applicable

Theme Committee		Theme Committee		Theme Committee	
1		4		6.2	
2		5		6.3	
3		6.1		6.4	

4. TRAVEL ARRANGEMENTS

Please tick where applicable

BEFORE CPM

AFTER CPM

Arrangements	CA	OWN	Arrangements	CA	OWN
Transport TO airport from Old National Assembly entrance			Air travel to CAPE TOWN		
Air travel to VENUE			Transport FROM airport TO:		
ACCOMMODATION ARRANGEMENTS	CA	OWN	National Assembly		
			Pelican Park		
PLEASE NOTE CA: To be arranged by the Constitutional Assembly Administration. OWN: To be arranged privately for own account.			Acasia Park		
			Laboria Park		

5. Office contact number:..... After hours:.....

6. RSVP BEFORE 15 May 1995.

CONSTITUTIONAL PUBLIC MEETING CONFIRMATION FORM

1. CPM

DATE	PROVINCE	TOWN
27 May	Western Cape	Beaufort West

2. NAME OF THEME COMMITTEE MEMBER

.....

3. THEME COMMITTEE

Please tick where applicable

Theme Committee		Theme Committee		Theme Committee	
1		4		6.2	
2		5		6.3	
3		6.1		6.4	

4. TRAVEL ARRANGEMENTS

Please tick where applicable

BEFORE CPM

AFTER CPM

Arrangements	CA	OWN	Arrangements	CA	OWN
Transport TO airport from Old National Assembly entrance			Air travel to CAPE TOWN		
Air travel to VENUE			Transport FROM airport TO:		
ACCOMMODATION ARRANGEMENTS	CA	OWN	National Assembly		
			Pelican Park		
PLEASE NOTE CA: To be arranged by the Constitutional Assembly Administration. OWN: To be arranged privately for own account.			Acasia Park		
			Laboria Park		

5. Office contact number:..... After hours:.....

6. RSVP BEFORE 20 May 1995.