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CONSTITUTIONAL ASSEMBLY

***THEME COMMITTEE 6
SPECIALISED STRUCTURES OF GOVERNMENT***

**TUESDAY
14 FEBRUARY, 1995
E249, NATIONAL ASSEMBLY WING**

DOCUMENTATION

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CONSTITUTIONAL ASSEMBLY

NINTH MEETING THEME COMMITTEE 6 SPECIALISED STRUCTURES OF GOVERNMENT

TUESDAY 14 FEBRUARY 1995

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

Date : 14 February 1994
Time : 14h00
Venue : Room M46, Marks Building

AGENDA

1. Opening and Welcome
2. Tabling and adoption of minutes of previous meetings of the Theme Committee and its Subtheme Committees:
 - 2.1 Theme Committee meeting: 7 February 1995 (Pages 4-8);
 - 2.2 Subtheme Committee 6.1 meeting: 7 February 1995 (Pages 9-11);
 - 2.3 Subtheme Committee 6.2 meetings: 7-9 February 1995 (Pages 12-22);
 - 2.4 Subtheme Committee 6.3 meetings: 7-8 February 1995 (pages 23-29);
 - 2.5 Subtheme Committee 6.4 meetings: 7-9 February 1995 (pages 30-48)
3. Core Group Report
 - 3.1 Progress report to the CC (pages 49-60)
4. Subtheme Committee Reports (pages 49-51).
 - 4.1 Subtheme Committee 6.1's first report on public administration (pages 54-59).

Enquiries: Mr N Nyoka and Ms P Fahrenfort, 10th Floor, Regis House, Tel 24-5031 ext 239 or 240.

CONSTITUTIONAL ASSEMBLY

**MINUTES OF 6TH MEETING OF THE CORE GROUP
THEME COMMITTEE 6**

SPECIALISED STRUCTURES OF GOVERNMENT

TUESDAY, 7 FEBRUARY 1995

PRESENT

De Beer, S J (Chairperson)

Chiole, J
Davies, R
Dyani, M M Z
Kgotsitsile, B
Powell, P
Schreiner, J
Vadi, I

Apologies

Jordaan, J A

N Nyoka and S Zardad were in attendance.

1. OPENING AND WELCOME

The chairperson opened the meeting at 10h10 and welcomed the members.

2. MINUTES OF THE PREVIOUS MEETING

The minutes of the Core Group meeting held on Monday, 30 January 1995, were adopted.

3. PREPARATION FOR THE THEME COMMITTEE MEETING ON 7 FEBRUARY 1995 AT 14h00

3.1 Traditional Authorises

The meeting agreed that Mr de Beer would report to the Theme Committee on the meeting of the Chairpersons respecting the decisions to exclude traditional authorities from the scope of work of Theme Committee 6.

3.2 Centralisation of the constitution-making process

A concern was expressed over the over centralisation of the activities of the Constitutional Assembly.

It was explained that at a meeting of the Chairpersons, it was agreed that Theme Committees would have to be pro-active in their approach to their work. This statement, it was agreed, should be construed as giving Theme Committees the space and scope to approach their work in accordance with their needs and circumstances.

3.3 Short Subtheme Committee Reports

The meeting agreed that Chairpersons of the Subtheme Committees would give short inputs at the Theme Committee meeting on the progress of the various Subtheme Committees.

4. ANY OTHER BUSINESS

The Chairpersons will introduce Technical experts at the meeting of the Theme Committee.

5. DATE OF NEXT MEETING

The next meeting will be on Monday, 13 February 1995 at 16:00

6. CLOSURE

The meeting rose at 10h45.

CONSTITUTIONAL ASSEMBLY

**MINUTES OF THE EIGHTH MEETING OF THEME COMMITTEE 6
SPECIALISED STRUCTURES OF GOVERNMENT**

TUESDAY, 7 FEBRUARY 1995

PRESENT

De Beer, S J (Chairperson)

Alant TG	Moatshe P
Booi MS (Alt)	Mokitlane MC
Chiole J (Alt)	Mokoena LM
Davies RH	Mompati RS
Dyani MMZ	Mtintso TE
Ebrahim EI (Alt)	Mti LM
Fankomo FC	Nair B
Fenyane SLE	Ngubane H
Fihla NB (Alt)	Phillips IM (Alt)
George ME	Powell P
Gogotya NJ	Schreiner J
Jacobsz FP	Selfe J
Kgositsile B	Singh N
Khoza TS (Alt)	Sisulu L
Louw L (Alt)	Tshabalala ME (Alt)
Love JY	Turok ME (Alt)
Luthuli Inkosi BN	Vadi I
Makana SS (Alt)	Van Eck J (Alt)
Makgothi HG	Watson A
Malan TJ (Alt)	Woods GG
Mashimbye JN (Alt)	Zitha DA
Mlambo-Ngcuka PG	

Apologies:

Jordaan JA and Malatsi D

Technical Experts

Nyembe L	Erwee R
Van der Merwe P	Cachalia A
Rustomjee	C Seegers A C
Albertyn	

B Levy, K McKenzie, N Nyoka and S Zardad were in attendance.

1. OPENING AND WELCOME

Mr De Beer opened the meeting at 14h10 and welcomed members, especially the technical assistants who were attending their first Theme Committee meeting.

He explained that Mr I. Momoniat, who was also nominated as a technical assistant, had unfortunately declined his appointment.

2. PREVIOUS MEETING

2.1 Confirmation of Minutes of Theme Committee Meetings held on 25 and 30 January 1995.

The minutes were adopted.

2.2 Matters Arising

The meeting noted that the decision to schedule Subtheme Committee meetings at different times to maximise representation of smaller parties at Subtheme Committee meetings still stands.

3. CORE GROUP REPORT

3.1 Core Group Report of the meeting held on Tuesday, 7 February 1995 at 10h00

Mr de Beer reported on behalf of the Core Group as follows:

3.1.1 The decision to exclude the subject of traditional authorities from scope of work of the Theme Committee was confirmed at the meeting of the Chairpersons held on 6 February 1995. The basis for this, it was explained, is that the subject could be dealt with most appropriately by Theme Committee 2, whose area of work is structure of government.

3.1.2 It was explained that at a meeting of the Chairpersons, it was agreed that Theme Committees would have to take a pro-active approach to their work. This statement, the Chairperson explained, should be construed as giving Theme Committees the space and scope to approach their work in accordance with their specific needs and circumstances.

4. SUBTHEME COMMITTEE REPORTS

The chairpersons of the Subtheme Committees presented short progress reports for each Subtheme Committee.

4.1 Subtheme Committee 6.1

This Subtheme Committee, it was reported, started its activities by hosting a workshop on 25-6 January 1995, under the theme of public administration and the constitution.

The Subtheme Committee is in the process of discussing a report - which is a product of the workshop proceedings. This report will be utilised as a framework for inviting submissions from stakeholders, identified by the Subtheme Committee, in the arena of public administration.

The Subtheme Committee, it was stated, has complemented its workplan by a comprehensive programme, which programme was part of the documentation.

4.2 Subtheme Committee 6.2

This Subtheme Committee, it was reported, began its work at the end of last year by hosting a series of information seminars discussing topics like the Auditor General, the Reserve Bank and the Financial and Fiscal Commission. This cycle of seminars was completed on 23 January 1995.

In early December 1994, in the absence of guidelines from the Constitutional Assembly on the process of calling for submissions, the Subtheme Committee sent out more than a hundred letters, calling for submissions, from significant stakeholders. To date there has not been responses from these stakeholders because the invitations for submissions reached them during the Christmas dead-time period. The Subtheme Committee will be sending out reminders to these organisations.

The Subtheme Committee has discussed preliminary submissions by all political parties, except the PAC and ACDP, represented in the assembly. The Subtheme Committee is presently organising hearings with outside organisations based on the written submissions which have been received to date, starting with the Conservative Party on 7 February 1995.

From the preliminary discussions that have taken place in the Subtheme Committee, it would appear that all parties favour a retention of the provisions of the interim constitution on financial institutions, with relatively minor amendments, in the final text of the constitution. This has prompted the Subtheme Committee to call the political parties to concretely spell out the details of the said amendments by 22 February 1995.

Given the poor communication flow between the Constitutional Committee (CC) and the Theme Committee of CC decisions, the Subtheme Committee has not developed a public participation programme.

4.3 Subtheme Committee 6.3

This Subtheme Committee, it was reported, held a number of information seminars addressed by experts. These seminars covered all the Subtheme Committee's scope of work which include the Public Protector, the Commission on Gender Equality, the Commission on Land Restitution and the Human Rights Commission.

The Subtheme Committee is in the process of distilling issues arising out of the aforesaid seminars and will submit a detailed report at the next Theme Committee meeting scheduled for 14 February 1995.

The Subtheme Committee is planning a workshop for April 1995 on the Land Commission in the new Constitution. Outside experts from Africa and Australia will be invited to participate.

4.4 Subtheme Committee 6.4

This Subtheme Committee has had discussions on submissions from two political parties, i.e., the ANC and the IFP. To accommodate the other parties the Subtheme Committee has had to extend the deadline for party submissions thereby delaying the debate on parties' submissions.

A debate has already taken place on the content and form of the constitutional provision on the Security Apparatus and given the history of the security forces in South Africa, the general view seems to be that such a provision need cover only long-standing principles, albeit with a measure of elaboration.

Some debate has also taken place on the right place to locate the provision on the security apparatus in the final constitutional text. Four possibilities have been mooted, i.e., the preamble, the bill of rights, separate chapters dealing with each arm of the Security Apparatus and a chapter dealing with all matters of the Security Apparatus.

The Subtheme Committee has some doubt over its jurisdiction to deliberate on the subject of Correctional Services. There seems to be a feeling in the Subtheme Committee that this is a matter that may well fall within the jurisdiction of Theme Committee 5.

A workshop looking at the accountability and control of the security apparatus was proposed and the Subtheme Committee will hold a meeting with a delegation of defense experts from Canada.

It was also reported that the Subtheme Committee had considered public participation events and has identified provinces as essential partners in the organisation of these events. Groupings to be targeted by the events should include the broader public, non-governmental organisations, public sector unions and academic and research institutions. The CA's Community Liaison Department would have to co-ordinate the public participation events.

All Subtheme Committees have revised their workplan as shown in page 53.

6. CLOSURE

The meeting rose at 14h45 and was followed by the Subtheme Committee meetings.

It was announced that the technical assistants would join their respective Subtheme Committees.

CONSTITUTIONAL ASSEMBLY

MINUTES OF THE SEVENTH MEETING OF SUBTHEME COMMITTEE 6.1

**SPECIALISED STRUCTURES OF GOVERNMENT
PUBLIC ADMINISTRATION**

TUESDAY, 7 FEBRUARY 1995

PRESENT

Vadi, I (Chairperson)

De Beer, S J
Dexter, P D
Fankomo, F C
Khoza, T
Love, J Y
Mlambo-Ngcuka, P
Mokitlane, M C
Singh, N
Watson, A

Technical Assistants

Nyembe, L
Van der Merwe, P J

Apologies:

Jordan JA and Malatsi, D

N Nyoka and S Zardad were in attendance.

1. OPENING AND WELCOME

Mr Vadi opened the meeting at 14h50 and welcomed members especially the technical assistants who were attending their first Subtheme Committee meeting.

2. MINUTES OF THE PREVIOUS MEETING

2.1 Subtheme Committee Meeting held on Tuesday, 31 January 1995

The minutes of the sixth meeting of the Subtheme Committee held on Tuesday, 31 January 1995, were adopted subject to the following amendment to item 2.2:

Item 2.2 Information Seminar on an African country

In order to address the under-representation of African countries at the workshop on Public Administration and the Constitution the meeting agreed to hold an information seminar on African countries' experience on public administration.

2.2 Management Committee (MC) Meeting held on Wednesday, 1 February 1995

The minutes of the first meeting of the Management Committee meeting held on Wednesday, 1 February 1995 were adopted.

2.3 Matters Arising

The meeting accepted the directorate's decision, as reported at the meeting, that Theme Committee 2 should preside over the issue of Traditional Authorities. The meeting's concern at the poor communication of decisions of the Constitutional Committee to Theme Committees was noted.

3. SUBTHEME COMMITTEE WORK PROGRAMME

3.1 The meeting extended its appreciation to the Management Committee for its commitment and hard work as reflected in the Subtheme Committee's draft work programme, which was adopted at the meeting.

3.2 It was agreed that the venues for the meetings as reflected in the work programme would be held in parliament.

3.3 The general category of Non-Governmental Organisations would be included under Block 4 on 13 March 1995, with Academic Institutions.

3.4 Traditional Authorities would be included under Block 5 on 20 March 1995, with interest groups at local government level.

3.5 The meeting agreed that the Management Committee of the Subtheme Committee would prepare a detailed proposal for the public participation events focusing on the SABC TV and Radio.

4. SOUTH AFRICAN ELECTIONS COMMISSION

4.1 The meeting agreed to address the issue by liaising with the cabinet appointed committee of ministers who had a similar mandate.

4.2 It was agreed that the South African Elections Commission would start in Block 6, either on 3 or 10 April 1995. A final date would be informed by the discussions held with the aforementioned ministerial cabinet committee as well as the other Subtheme Committees to maximise smaller party representation at Subtheme Committee meetings.

5. TECHNICAL ASSISTANTS

The Management Committee agreed to meet with the technical assistants to discuss the latter's role vis a vis the Subtheme Committee once the business of the present meeting was concluded.

6. WORKSHOP REPORT

The workshop report was tabled at the meeting. Discussion on the document was deferred until the next day as scheduled in the work programme.

7. DATE OF NEXT MEETING

The date of the next meeting is the public hearing on the Volkstaat Council scheduled for 14 February 1995 at 09h00.

8. CLOSURE

Meeting rose at 15h35.

CONSTITUTIONAL ASSEMBLY

SUB-THEME COMMITTEE 2 OF THEME COMMITTEE 6

SPECIALISED STRUCTURES OF GOVERNMENT

TUESDAY 7 FEBRUARY 1995

PRESENT

Davies R (Chairperson)

Andrew KM
Bekker H
Botha WJ
Chiole J
Jacobsz F
Makgothi H
Marais G
Nair B
Woods G

Apologies:

Welgemoed P

P Fahrenfort, Adv F Jacobs (in attendance)

1. CONFIRMATION OF MINUTES

The minutes of February 7 1995 will be confirmed at the next meeting.

2. MATTERS ARISING

For consideration at the next meeting.

3. SUBMISSION PRESENTATIONS

3.1 Conservative Party

After some discussion that Chairperson ruled that while all eleven languages are equal under the Constitution, citizens appearing before CA committees should have the right to speak in the language of their choice. It was agreed that one of the committee members would assist by giving a summary in English.

It became apparent that there was a misunderstanding. Adv Jacobs wanted to address issues outside of the mandate of the committee and was not able to address those that fell under its purview. The matter will be discussed tomorrow.

3.2 PAC

The Committee noted that the PAC's request for an extension of time to present their submission.

3.3 ACDP

Mr Johan Baard gave a brief oral presentation on the areas of the Reserve Bank, Public Enterprises and the Auditor General. He indicated that a written submission will be forwarded to the Committee.

4. ADDITIONAL SUBMISSIONS

It was agreed that additional submissions will be addressed at the next meeting (Wednesday 8 February at 09h00). It was further agreed that an invitation be extended to Transnet to present their submission on Thursday 9 February 1995 at 14h00.

There being no further business the meeting ended at 15h45.

.....
CHAIRPERSON

.....
DATE

CONSTITUTIONAL ASSEMBLY

SUB-THEME COMMITTEE 2 OF THEME COMMITTEE 6

SPECIALISED STRUCTURES OF GOVERNMENT

WEDNESDAY 8 FEBRUARY 1995

PRESENT

Davies R (Chairperson)

Andrew KM
Botha WJ
Chiole J
Jacobsz F
Makgothi H
Marais G
Nair B
Woods G

Apologies:

Welgemoed P
Hogan B
Marcus G
Erwin A
Bekker H

P Fahrenfort and C Rustomjee (in attendance)

1. CONFIRMATION OF MINUTES

1/2/95 To be confirmed
7/2/95 Confirmed subject to the following correction:

Item 3 : Submission Presentations : Conservative Party

After some discussion the Chairperson ruled that while all eleven languages are equal under the Constitution, citizens appearing before CA committees should have the right to speak in the language of their choice. It was agreed that one of the committee members would assist by giving a summary in English.

2. CP's PRESENTATION : 7 FEBRUARY 1995

It was agreed that another invitation be extended to the CP addressed for Mr DGH Nolte's attention with reference to their submission dated 6 January 1995. It was further agreed that the letter to Mr Nolte will state that the meeting with the CP on 7 February resulted in a misunderstanding.

3. DEADLINES AND SUBMISSIONS

It was noted that the deadline for party submissions is 22 February 1995.

4. HEARINGS AND SUBMISSIONS

The Committee recommended that:

- i) key people be selected to present submissions
- ii) the Secretariat establish whether Transnet is able to present their submission at 14h00 on Thursday 9 February 1995 and inform members accordingly
- iii) an invitation be extended to the PAC and SACP to present their submission at 14h00 on Tuesday 14 February 1995.

5. PANEL DISCUSSION

The committee recommended that an invitation be extended to the following people to participate in a panel discussion scheduled for Monday 27 February 1995:

Professors DG Franzen, L Loots, B Khan and H High; Messrs I Momoniat, C Rustomjee, Ms M Ramos and Dr F le Roux.

6. PUBLIC PARTICIPATION

It was recommended that the committee consider television programmes such as "Face the Facts" and "GMSA" to publicise the work of the Sub-Theme Committee. In addition it was suggested Sub-theme 2 participate in one of the other Theme Committee's events.

There being no further business the meeting ended at 10h13.

.....
CHAIRPERSON

.....
DATE

CONSTITUTIONAL ASSEMBLY

SUB-THEME COMMITTEE 2 OF THEME COMMITTEE 6

SPECIALISED STRUCTURES OF GOVERNMENT

THURSDAY 9 FEBRUARY 1995

PRESENT

Davies R (Chairperson)

Andrew KM
Chiole J
Jordaan DA
Makgothi H
Marais G
Marcus G
Nair B
Welgemoed P
Woods G

Apologies:

Hogan B
Jacobsz F
Erwin A

Absent:

Bekker H
Jordaan JA

P Fahrenfort and C Rustomjee (in attendance)

1. CONFIRMATION OF MINUTES

1/2/95 Confirmed subject to the following corrections:

Item 3 Submissions

b) Democratic Party :

- (i) Mr Andrew's surname spelt incorrectly
- (ii) Public Enterprises to be included in the areas dealt with

d) Inkatha Freedom Party

Auditor General to be removed from the areas dealt with

Notes of Presentation on Submissions

DP The following sentence to be included:

The DP saw no reason for the area of Public Enterprises to be mentioned in the Constitution

Under the heading "Reserve Bank":

The word "Provincial" to be removed

2. SUBMISSION PRESENTATION : TRANSNET

Mr Hercu Bloem, Deputy Treasury Manager of Transnet in his presentation to the Committee briefly highlighted aspects of the financial systems and markets and that his organisation deemed it important for inclusion in the constitution. This included independence of the SARB, guarantees for Provincial and Local Government loans as well as provisions relating to independence for other financial institutions in the new constitution.

During discussion the following issues were highlighted:

- i) the FFC and development banks should still be empowered to underwrite loans to para statal organisations and provincial governments
- ii) the constitution should provide for all financial institutions to be privately owned in order to guarantee their independence of the RB
- iii) some of their concerns could be accommodated in legislation and not necessarily in the constitution
- iv) mechanisms for access to central guarantees by provincial governments should be spelt out in the constitution

3. FURTHER SUBMISSIONS

- 3.1 The Chairperson recommended that the submission by the Ms S Sigcau, Minister of Public Enterprises referred to by Transnet be submitted to the Committee for consideration noting the following:
- 3.2 that the Secretariat will be making the necessary arrangements for the SACP and PAC and possibly the CP to present their submissions on Tuesday 14 February 1995
- 3.2 that SACOB and further submissions are being considered for Monday 20 February 1995.

There being no further business the meeting ended at 15h57.

.....
CHAIRPERSON

.....
DATE

QUESTIONS RELATED TO SUBMISSION BY TRANSNET

- Q In the last few years the RB underwrote many of your foreign loans - profit of Escom - position of Transnet - also make profits underwriting these loans - is it a role the RB has to continue to underwrite parastatals loans
- A No not the role to be performed exclusively to be performed by the RB - RB not underwriting Tansnet's loans
As far as underwriting loans that a function of FFC. Looked at provision in IC on FFC and please with those. Not necessary for the RB to perform this - responsibility of FFC
- Q Govt took the losses
- A Revalued the loans by means of book value so still Transnet's responsibility. 1/4/90 became company reviewed all the loans of Transnet's portfolio - not carried by the govt
- Q how would you go about if you want to finance a big capital project
- A Transnet bottom line drive - cost of funding NB - value possibility quotation from RB - time of getting preference from RB for new funds in the past. RB will give market related prices - forward rates and adding that to cost flow compare that to foreign funds within SA
- Q All that reflected in your budget - looking further reflecting in budget - how would that be covered in present situation
- A EG entered in loan at R2 to dollar - at the moment R trading at R3.50 to repay 1/4/90 we revalued all loans
- Q Comment: that calculation means various implications for various political parties
(i) suggest that independent nature be protected by the constitution - what kind of mechanism what kind of independence just using bank rate - do you want constitution to limit what present or future banks can include
(ii) are you aware of constitutions elsewhere in the world - financial institution that in some way make provision for independent financial institutions
Are you asking for independence in the sense that guarantees for private ownerships or guarantees against govt regulation - what precisely forms of guarantees are you seeking to preserve in the call for independence

- A Not clear on any examples to be quoted. Know that the independence of the NZ RB was decided on - recent eg but not quite clear on that one - one eg. Calling of independence of financial institutions to support independence of RB. If allowed independent RB - nationalise all the banks obviously there's no use to have an independent RB - therefore calling for private ownership but more something in the line of an independent financial system supporting an independent RB thus allowing them to let market forces determine interest rates in country as well as the value of the rand
- Q regulations of banks act - suggestion is isn't appropriate type of approach - trying to understand delineation of motivation (Rustomjee)
- A Some of proposals accommodated in legislatures like the banks act - not calling for constitutional provisions - can allow banks to be controlled while actions can be controlled by centralised bodies like the financial service - addition to existing legislation - proposing one or 2 paras in constitutes that states that financial system in this country is independent by means of private ownership controlled by bodies like the FFB that they are .. raising money in the .. therefore still necessary to set parameters in which they can act but still allow them
- Q for independence a guarantee of private ownership and secondly guarantee against intervention by govt to restrict autonomy
- A Yes exactly the case with the RB
- Q doubts how to write this into constitution - generally constitutions don't refer to other acts. Clarity by letting us have a suggested formulation of what kind of clause wanted in the constitution. You're saying development Bank of SA and .. both be outlawed by the Constitution because state would have to sell off all shares - logical implication
- A Development bank instituted with sole purpose to serve certain sectors of the economy ... basically private bank ABSA etc
- Q Essential difference between housing crisis and building institutions to help low income
- A My reference to guarantees of provincial loans to be done by centralised body like the development bank who's functions are limited - their role can include funding for provincial and local authorities - not calling for existing bodies to .. different market
- Q If the government like france move into commercial proposing it should be prevented by doing so by the constitution
- A Yes

Q thread running through - not sure whether you're wanting to constitutionalise prejudice. Para 2a - implicit you constitutionalise a lot of things outside because this govt is going to be irresponsible. Like an explanation how these matters need to be constitutionalised. Read this as saying if you don't have these things constitutionalised and protected you'll have this rampant govt running away with money

A Not what aimed at - in the economy two types of mechanisms to be used to manage economy (a) monetary policy and (2) fiscal policy. Proposing by allowing RB to institute monetary policy to act as balance to pool fiscal policy but can also be of assistance for competent fiscal policy

Q how if you're insisting not just on the RB - what happens if you constitutionalise all these independence and how does govt handle bad management on their side

A Proposed that the banks still be governed by the banks act - not meaning that can now do whatever they want to - banks to stay private and assist RB in managing

Q PE
do you consider that the constitution should be looking at the accountability and transparency of PE ie Transnet doing what they feel like doing and not accountable in the normal way to shareholders - what kind of accountability and transparency in general and should that be provided for in the constitution

A Not quite qualified quote from a letter

*

12/1/95

Q Provincial and local govt loans - you favour strong control by central govt - FFC - who is controlling - why should central govt have those sort of powers

A Not necessarily managed by FFC - interim constitution purpose of FFC to advise on the direction of expenditure from central government's point of view therefore appropriate

Q Brief for the FFC far more narrow

A question irrelevant

Q Transnet should have a greater control over its capital expenditure independent of government than the provinces and local govt

A Before we issue new bonds in terms once again of act need to go to minister for approval - have to get approval from ministers

Q And the minister of finance say is the last
Clarity between two submissions letter signed by Van Schoor - constitution
should provide anything at all for central govt to the local and provincial
govt. Also coming up with a series of musts - blanket guarantees - should
these be included in the constitution of covered by other legislation - what
of the shoulds should go to the constitution

A Not very clear on first one - no automatic guarantees for provincial and local
govt should be allowed. Necessary for provincial and local governments to
have some way to apply for these guarantees - but should have no
automatic guarantee mechanism

Q Should that be provided for in the constitution

A Yes
Write letter to manager for submission on PE

(Subtheme Committee 3, Theme Committee 6 - 7 February 1995)

CONSTITUTIONAL ASSEMBLY

**SUBTHEME COMMITTEE THREE
TRANSFORMATION, MONITORING AND EVALUATION**

**THEME COMMITTEE 6
SPECIALISED STRUCTURES OF GOVERNMENT**

7 FEBRUARY 1995

PRESENT

Kgositsile B (Chairperson)

Fenyane S L E
Inkosi B Luthuli
Louw L
Malan J
Moatshe P
Mokoena L M
Mompoti R
Netshimbupfe M A
Ngubane H
Tshabalala M E
Turok M (Alt)
Van Wyk A
Zitha D A

B Levy, Prof R Erwee and Dr C Albertyn were in attendance

1. Opening and Welcome

Ms Kgositsile opened the meeting at 14:50 and welcomed the members.

2. Technical Experts

2.1 Role and Function

Ms Kgositsile welcomed the technical experts to the meeting.

Ms Kgositsile reported that the Subtheme Committee had not had sufficient notice of the Technical Experts' availability this week. For this reason the Subtheme Committee has not had a discussion on the role and function of the experts.

Ms Kgositsile suggested that the meeting attempt to isolate areas for the experts with regard to their function. Upon finalisation of the work programme, especially the area on the Gender Commission, further tasks would arise for the experts.

Dr Albertyn reported that she also has experience in the areas of the Public Protector and Human Rights in addition to her work in the area of gender. Dr Albertyn could thus be called on to assist with these other areas of the Subtheme Committee's work.

2.2 Programme for experts

A number of suggestions were made with regards to a programme for the technical experts, these include the following:

2.2.1 Ms Malan suggested that the experts write a paper on the history of the Women's Movement internationally. Ms Malan proposed that special focus be placed on the Scandinavian Countries, France and Germany. In addition she suggested an examination form the experience on the United Nations' decade of women.

2.2.2 Prof Ngubane proposed that there was a need to look at international experience that had a bearing to South Africa's situation. While it is important to examine gender equality generally one needs to take in to account the specific experiences and problems confronting women from disadvantaged communities.

- 2.2.3** Ms Mompoti suggested that there was need to examine what was being done with regards to gender in all fields of government and society such as gender policy and programmes in development, health, education and the economic field. Ms Mompoti proposed that there needed to be an examination of what different Ministries were doing with regards to the area of gender.
- 2.2.4** Prof Erwee argued that there was a need to clarify whether the Commission was a policy making body or an enforcement body. Prof Erwee maintained that the above suggestions fell within the ambit of the Commission as a policy making body.
- 2.2.5** Dr Albertyn proposed that there was a need to firstly examine issues generally with regards to the Gender Commission and the Human Rights Commission.

An examination of the notion of broad human rights issues was required and then one could deal with the institutions needed to give effect to them.

One cannot ignore the gender implications of the other structures such as the Public Protector and the Human Rights Commission. If these implications are ignored there is a danger that all issues dealing with gender will be located in the Gender Commission only.

While there is a need to focus on the Gender Commission this needs to be located in the context of the need for a National Machinery for women.

It was agreed that there was need to look broadly at what structures of government were necessary to give effect to gender equality. There was a need to examine Commission in the context of the need for national machinery for women generally.

In addition it was also agreed that the experts would need to examine the submissions that had been sent to the Subtheme Committee.

3. Work Programme

The Public Protector

It was agreed that all political parties needed to submit their submissions on the Public Protector to the Secretariat as soon as possible.

4. Lists of Experts

Ms Levy reported that no lists had been received from political parties.

5. Parties' final lists of Subtheme Members

Ms Kgositsile reported that these lists needed to be submitted to the Secretariat.

6. Any other business

6.1 Public Participation Programme

It was agreed that members would read the document on the Public Participation Programme and comment on it in the meeting of 8/2/95.

6.2 Media Coverage

Kgosi Mokoena raised a concern that none of the work of the Subtheme Committee had been covered by the media.

Ms Kgositsile reported that she would be meeting with the Media Committee of the Administration and would take up this issue with them.

6.3 Meetings of the Theme Committee

It was agreed that the members would meet after the seminar on the 8/2/95. In addition it was agreed that the Subtheme Committee would meet on Thursday 9/2/95 at 14:30.

7. Closure

The meeting rose at 16:00

CONSTITUTIONAL ASSEMBLY

SUBTHEME COMMITTEE THREE
TRANSFORMATION, MONITORING AND EVALUATION

OF

THEME COMMITTEE SIX
SPECIALISED STRUCTURES OF GOVERNMENT

WEDNESDAY 8 FEBRUARY 1995

PRESENT

Kgositsile B

Fenyane S L E
Jordaan D
Jassat E
Inkosi B Luthuli
Louw L
Malan J
Moatshe P
Mokoena L M
Mompoti R
Myakayaka-Manzini Y L M
Netshimbupfe M A
Ngubane H
Tshabalala M T
Turok M
Zitha D A

Apologies: Jacobsz F

B Levy and Prof R Erwee were in attendance

1. Opening and Welcome

Ms Kgositsile opened the meeting at 16:15 and welcomed members.

2. Confirmation of minutes

The minutes of meetings held on 1 and 2 February 1995, respectively, were confirmed.

3. Public Participation Programme

3.1 Ms Kgositsile reported that as per the agreement of the Subtheme Committee meeting of 7 February 1995, members were requested to read through the document on the Public Participation Programme in order to ascertain whether they needed to seek clarification from the Directorate on any matters with regard to the programme.

There were no clarifications on the programme suggested. It was agreed the Subtheme Committee needed to be pro-active in the development of it's own input to the Public Participation Programme. This input would be forthcoming once the detail of the Work Programme from the report of the seminar programme had been established.

3.2 Prof Erwee suggested that arising from the submissions that had been received on the Gender Commission there seemed to be unclarity on a number of central issues such as the relationship between the Human Rights Commission and the Gender Commission. Prof Erwee suggested that the Theme Committee embark on a series of seminars for women's organisations in order to present to the public the issues and debates that the Theme Committee has been grappling. These seminars would also serve an important purpose of getting feedback from the various stakeholders on how they view these issues and debates.

The meeting agreed with Prof Erwee's proposal and suggested that these seminars should not focus on the necessary structures such as a Gender Commission. Rather as a starting point the discussion should be located within a broader context with regard to the nature of national machinery for women. Once the broad issues have been isolated one can focus on the necessary structures to give effect to this national machinery.

Concern was however noted that the development of the Public Participation Programme needs to be done in a programmatic and systemised way. While all the issues that the Subtheme Committee is examining are linked and cannot be seen in isolation from one another, there is a need to focus on the specific areas as outlined by the Work Programme. Thus priority must be given to looking at a Public Participation Programme for the Public Protector as this is the first report that needs to be submitted to the Constitutional Committee. Furthermore the Public Participation Programme needs to be developed out of the report of the information seminars in terms of the issues and debates that have been isolated. Lastly it must also be realistic in that once Parliament starts sitting members time will be severely constrained.

3.3 The meeting agreed that the Technical Experts should draw up a report on the key issues emerging from the submissions received.

4. Preparation for meeting of the 9\2\95

Ms Kgositsile reported that the Chairperson of the Danish Equality Status Council, Ms Holmsgaard, has been invited to the Subtheme Committee meeting of the 9 February 1995. Ms Holmsgaard has been asked to give an input on the Danish experience of National Machinery for Women.

7. Closure

The meeting rose at 16:30

CONSTITUTIONAL ASSEMBLY

**MINUTES OF THE SEVENTH MEETING OF SUBTHEME COMMITTEE 4,
THEME COMMITTEE 6**

**SPECIALISED STRUCTURES OF GOVERNMENT
SECURITY APPARATUS**

TUESDAY, 7 FEBRUARY 1995

PRESENT

Schreiner, J (Chairperson)

Alant, T G	Booi, N
Dyani, M M Z	Ebrahim, E I
Fihla, N B	Gogotya, N J
Groenewald, P J	Makana, S
Malumise, M	Mashimbye, J N
Mti, L M	Mtintso, T
Phillips, I	Powell, P
Selfe, J	Sisulu, L
Van Eck, J	

K McKenzie was in attendance.

1 OPENING AND WELCOME

Ms Schreiner opened the meeting at 14:50 and welcomed the members.

2 SEMINAR : CORRECTIONAL SERVICES

Prof D van Zyl Smit gave a presentation on "Correctional Service and the Constitution" to the Subtheme Committee. A full report will be distributed under a separate cover.

3 MINUTES OF THE PREVIOUS MEETING

The minutes were adopted.

4 MATTERS ARISING

4.1 Workshop on security apparatus

The Subtheme Committee studied the proposal by the IDP to host a workshop on "The security forces and the Constitution" and agreed to the following:

4.1.1 The workshop should be modified to take place over one day, 15 February 1995, and should take the form of an IDP submission to the Subtheme Committee.

4.1.2 The costs of the workshop should be borne by the IDP.

4.1.3 A longer workshop should be held by the Subtheme Committee in two to three weeks time incorporating a more representative line up of speakers and stakeholders.

4.1.4 A small group consisting of one member of each party and the Chairperson should meet to plan this workshop.

5 SUPREMACY OF THE CONSTITUTION AND ACCOUNTABILITY AND CONTROL OF THE SECURITY FORCES

This item was held over to 8 February 1995.

6 ANY OTHER BUSINESS

6.1 Submissions

It was agreed that the Freedom Front should be formally approached to make a submission and that the Subtheme Committee should do all possible to ensure that the Freedom Front remains informed of developments in the Subtheme Committee.

It was agreed that the Secretariat would send out letters calling for submissions from interested groupings, as listed in the work programme. Parties should submit further names to the Secretariat.

6.2 Public Participation Events

The Secretariat would provide details of a Public Participation Event to be held in Paarl on 11 February 1995.

6.3 Technical experts

The Chairperson welcomed Mr Cachalia and Prof Seegers the technical experts who have been appointed to the Subtheme Committee.

Mr Cachalia spoke to their brief as contained in the Management Committee documentation dated 6 January 1995. (Annexure "A")

7 CLOSURE

The meeting rose at 17:00.

DRAFT

**TERMS OF REFERENCE AND RELATED MATTERS: TECHNICAL COMMITTEES
ATTACHED TO THEME AND SUB-THEME COMMITTEES**

1. Assistance to Theme and Sub-Theme Committees

1.1 A technical committee shall at the request of its Theme or Sub-Theme Committee or the Core Group of such Committee -

(a) advise the Theme or Sub-Theme Committee or Core Group on the technical aspects of any matter dealt with or which is to be dealt with in or by the Theme or Sub-Theme Committee;

(b) comment on the technical aspects of any submission received by the Theme or Sub-Theme Committee or of any statement made in or to the Theme or Sub-Theme Committee or its Core Group;

(c) assist the Theme or Sub-Theme Committee or Core Group in the preparation of any report or submission; and

(d) make studies and do research in connection with the performance of any of the aforesaid functions.

1.2 In stead of engaging the whole technical committee a Theme or Sub-Theme Committee may in its discretion require any specific member or members of its technical committee to perform any of the above functions in relation to any particular matter.

2. Assistance in the drafting of the new constitutional text

A technical committee shall at the request of the Chairperson of the Constitutional Assembly or the Management Committee or Constitutional Committee assist in the drafting of the new constitutional text in accordance with the instructions of the Chairperson, the Management Committee or the Constitutional Committee, as the case may be.

3. Participation in public events, conferences, seminars, workshops, etc.

Participation by a technical committee in any public events, conferences, seminars, workshops, etc, outside the constitution-making process shall require prior clearance with the Executive Director acting in consultation with

the Chairperson of the Constitutional Assembly.

4. Protocol with regard to the media and public statements

A technical committee shall not make any public statements, including statements to the media, with regard to matters dealt with or which are to be dealt with by the committee otherwise than through the Executive Director.

5. Administrative matters

5.1 Administrative support: A technical committee shall direct all requests for secretarial and administrative support services, including accommodation, furniture, stationary and technical and electronic equipment, to the Executive Director.

5.2 Staff: All staff allocated to a technical committee shall perform their duties under the supervision and control of the Executive Director, and any matter pertaining to the staff shall be referred by a technical committee to the Executive Director.

5.3 Research and consultation: Where it is not feasible for a technical committee to undertake any research work required from it by its Theme or Sub-Theme Committee and outside assistance is required, a request for such outside assistance shall be directed to the Executive Director, who shall deal with the request in accordance with the directions of the Management Committee.

6. Chairperson of technical committee

A technical committee may elect a chairperson from amongst its number.

7. Joint meetings

Requests for joint meetings of two or more technical committees must be directed to the Executive Director who shall deal with such requests in accordance with the directions of the Chairperson of the Constitutional Assembly.

CONSTITUTIONAL ASSEMBLY

**MINUTES OF THE EIGHTH MEETING OF SUBTHEME COMMITTEE 4,
THEME COMMITTEE 6**

**SPECIALISED STRUCTURES OF GOVERNMENT
SECURITY APPARATUS**

WEDNESDAY, 8 FEBRUARY 1995

PRESENT

Schreiner, J (Chairperson)

Alant, T G	Bloem, D
Dyani, M M Z	Ebrahim, E I
Fihla, N B	Gogotya, N J
Groenewald, P J	Makana, S
Malumise, M	Mashimbye, J N
Mti, L M	Mtintso, T
Nogumla, R	Phillips, I
Powell, P	Selfe, J
Sisulu, L	Van Eck, J

Apologies: Mukhuba, T T; Neerahoo, H M

K McKenzie was in attendance.

1 OPENING AND WELCOME

Ms Schreiner opened the meeting at 09:15 and welcomed the members.

2 MINUTES OF THE PREVIOUS MEETING

The minutes were adopted subject to item 4.1.4 being amended to read: "A small group consisting of one member of each party, *the technical experts* and the Chairperson should meet to plan this workshop."

3 MATTERS ARISING

3.1 IDP workshop submission

The Chairperson reported that she had discussed the Subtheme Committee's suggested changes to the IDP proposal with Dr Celliers.

The IDP had agreed to make the workshop shorter and to cover all costs.

4 SUPREMACY OF THE CONSTITUTION AND ACCOUNTABILITY AND CONTROL OF THE SECURITY FORCES

4.1 National Party

Dr Alant spoke to the National Party submission (marked "C" in documentation package 4)

In discussion the following was highlighted:

i) **Supremacy of the Constitution**

Clarity was sought on the statement on page 5 which reads: "the Security Forces are part of the executive branch of Government and must therefore be bound by that supremacy. They should not be used, nor should they demand to defend or protect the Constitution".

The National Party position was clarified as follows:

- * The primary role of the SANDF was to defend the territorial integrity of the Republic of South Africa, not to defend the Constitution. Parliament writes the Constitution and parliament should defend it. The Defence Force acts under command of the Executive of the day, but they are accountable to parliament through various mechanisms.
- * There was a distinction between the NP's use of the terms 'defend' and 'protect' and the ANC submission that the Defence Force must 'uphold' the Constitution. 'Uphold' implied loyalty to the Constitution while 'defend' and 'protect' implied that the Defence Force could determine its own actions, not at the behest of Parliament and the Executive
- * The National Party emphasised that the Constitution should not allow for a situation where the Defence Force can unilaterally decide on a course of action in order to defend the Constitution. For example the Defence Force could decide that in order to defend the Constitution it needed to execute a coup.
- * ***There was agreement that :***

1. Loyalty to the Constitution must be binding on the Defence Force.

2. The Defence Force could never act on its own and bypass Parliament and the Executive.

3. The Executive could not use the Defence Force to violate the Constitution.

ii) **Civilian control**

The NP highlighted the need to ensure that the Secretary of Defence and the Deputy Minister of Defence are not part of the chain of command.

The ANC suggested that this was a matter for legislation and should not be prescribed by the Constitution.

The IFP stated that any prescription of the role of the Secretary of Defence should in no way detract from civilian control of the Defence Force.

The DP stated the institution Secretary of Defence needed to be accompanied by other mechanisms which locate political control in civilian hands

It was agreed while there was general acceptance of civilian control, the chain of command and its relationship to civilian control were issues which needed to be fleshed out further by the Committee.

iii) **The Ombudsperson**

The NP submission does not support the establishment of the office of an Ombudsperson for the Defence Force. Members of the Defence Force should rather have access to the Public Protector and Human Rights Commission.

It was noted that if members of the Defence Force do not enjoy the right to strike it was vital that appropriate dispute resolution mechanisms were in place.

The National Party stated that it did not have very strong views on this matter.

iv) **Parliamentary oversight**

In discussion the NP agreed that there was a need for a National Assembly and Senate Committee on Defence as well

as the Joint Standing Committee. The role of the former Committees would pertain to the passing of legislation. The Joint Standing Committee would function as an advisory body, consider policy, play an oversight role and perform special functions when parliament is not sitting.

The NP agreed to strike the last line on page 4 from its submission in keeping with the above.

v) **Conscription**

It was agreed that conscription would be dealt with in future deliberations of the Committee.

vi) **Deployment of the Defence Force within South Africa**

It was agreed that the deployment of the Defence Force inside the country, and the relationship between the Police and Defence Force within this deployment should be further explored further by the technical experts.

It was agreed that the Committee should revisit this issue and study other Constitutions to see how they have addressed it.

vii) **Gender**

It was noted the sentiments of the NP submission on fitness for service and the principle of equality were understood and agreed to regarding the principle of equality (Page 8). However the example used in the submission implied that men were always 'able-bodied' whilst women were not. The NP clarified that they were not in principle against women in combat.

4.2 **Pan Africanist Congress**

Mr Dyani spoke to the PAC submission (See annexure "A").

In discussion the following was highlighted:

i) **Civilian control**

The PAC agreed that a civilian Secretary of Defence should be provided for in the Constitution.

ii) **Eligibility to serve in the Defence Force (item 4)**

The PAC stated that legislation should determine precisely who was eligible to serve in the Defence Force with regard to citizens who have a criminal record.

iii) **The Defence Force and the policies of the government (item 6)**

It was agreed that members of the Defence Force should be educated to be conversant with South African law, the Constitution, Human Rights and international law in order to uphold these. It was agreed that no other political education should take place within the Defence Force.

- iv) **Arms production (item 8)**
The PAC supports a situation where arms production is located in the hands of regular industry and not within the state.
- v) **Parliamentary control**
The PAC stated that it would support a position whereby the President was empowered to take decisions regarding the deployment of the security forces without consulting parliament in a time of crisis. The President would have to report to Parliament within a reasonable time limit.
- v) **Ombudsperson**
The PAC did not have a position on the Ombudsperson and would refer this back to its caucus.

4.3 Democratic Party

Mr Selfe spoke to the Democratic Party submission (marked "B" in documentation package 4)

The IFP stated that it could identify with all of the DP's submission.

- i) **Constitutional limits on the power of the executive to deploy the security forces**
The DP emphasised the need to create a proper regime of Parliamentary control in order to ensure that the Executive did not manipulate the information at the disposal of the legislature. This approach ensures transparent and accountable government. The fundamentals of this are contained in the Interim Constitution, but the mechanisms could be spelt out in more detail.

The Parliamentary committee should include all of the parties represented in parliament.

5 ANY OTHER BUSINESS

5.1 Submissions

5.1.1 Party submissions

It was agreed that the Freedom Front should address the Subtheme Committee with their submission at a time suitable to them.

5.1.2 Other submissions

Each party should go through the other submissions received and highlight issues that have not been addressed or are in contradiction with their viewpoints.

Parties should also work out mechanisms to get clarity on these submissions. Some interest groups could be invited to give oral submissions to the Subtheme Committee.

5.2 Public Participation Event

Mr Booie, Mr van Eck and Ms Malumise agreed to attend the Public Participation Event in Paarl.

5.3 Press reports on the Constitution making process

The ANC stated that statements made in the press by Mr Leon about ANC submissions to the CA were inaccurate as the ANC had been making regular contributions to the Subtheme Committee.

6 CLOSURE

The meeting rose at 17:00.



2 February 1995

**NATIONAL DEFENCE FORCE: SUBMISSION FROM PAC TO THEME
COMMITTEE 6**

1. The supreme law, the constitution, should only contain fundamental principles that structurise and constrain the Defence Force. A Defence force by its nature cannot be entirely regulated by Constitutional provisions. The legislature should make the necessary laws and regulations in the spirit of the constitution and through the power it exercises over the Minister of Defence.
2. The Defence Force should not fall under the Public Service Commission because of its peculiar nature and functions.
3. PAC holds it to be crucial that the Defence Force should be under civilian control through a constitutional provision.
4. Members of the Defence Force should be bound by the constitution, equally. No regard to anything except citizenship should be taken into account in the Defence Force eligibility and the exercise of rights and privileges.
5. All the agencies of the Defence Force shall be viewed by the constitution as constituting a single unit with the SANDF and shall therefore exercise no autonomy of whatever semblance.
6. The Defence Force should be made to be thoroughly conversant with the internal and foreign policies of the government.
7. The Defence Force members shall unconditionally execute the constitutional and legal commands of the Defence Force but shall reserve the right of refusing to execute immoral, amoral and unlawful commands from an officer of the Defence Force.
8. Arms production should fall out of the duties and functions of the Defence Force.
9. Parliamentary Select Committee on Defence should be allowed an important role in defence matters. Nothing should take place without its consent.

CONSTITUTIONAL ASSEMBLY

**MINUTES OF THE NINTH MEETING OF SUBTHEME COMMITTEE 4,
THEME COMMITTEE 6**

**SPECIALISED STRUCTURES OF GOVERNMENT
SECURITY APPARATUS**

THURSDAY, 9 FEBRUARY 1995

PRESENT

Schreiner, J (Chairperson)

Ebrahim, E I	Gogotya, N J
Makana, S	Malan, T J
Mashimbye, J N	Mpahlwa, M B
Mti, L M	Mtintso, T E
Nogumla, R	Powell, P
Selfe, J	Sisulu, L
Van Eck, J	

Seegers, A : Technical expert

Apologies: Alant, T G; Neerahoo, H M

K McKenzie was in attendance.

1 OPENING AND WELCOME

Ms Schreiner opened the meeting at 14:20 and welcomed the members.

2 CORRECTIONAL SERVICES

It was agreed that the Subtheme Committee should meet with the Core Group of Theme Committee 5 (Judiciary and Legal Systems) in order to discuss with them the possibility of moving Correctional Services from the brief of the Subtheme Committee.

3 SUPREMACY OF THE CONSTITUTION AND ACCOUNTABILITY AND CONTROL OF THE SECURITY FORCES: SOUTH AFRICAN POLICE SERVICES

3.1 African National Congress

Mr Mti spoke to the ANC submission (attached as annexure "A").

In discussion the following was highlighted:

i) **Lines of control**

A possible tension existed in the proposed lines of control. The ANC highlighted the fact that there should be one national Police Service. The functions and lines of control of the National Commissioner and the Minister should be spelt out to avoid possible overlap. The Constitution should also set out the powers of the MEC.

It was agreed that this was a matter which required further clarity.

ii) **Community policing: competence**

The ANC was still debating the issue of community policing and had no clear position on whether they are a Provincial or National competence or whether they are funded by national government or the Province. This would be developed in their later submissions during the block dealing with Police.

It was noted that the funding of community policing was a key question as it was determined by the allocation of national and provincial powers.

iii) **Community policing: powers**

The ANC agreed that there should be Constitutional provision for Community Policing Forums. Constitutional details would still need to be developed. The ANC was still discussing the powers of Community Police Forums.

iv) **CIS**

The ANC position on the CIS is contained in the deliberations of the Transitional Executive Committee (TEC). The TEC located oversight of the CIS very firmly under the Intelligence Oversight Committee. At present a structure co-ordinates Military Intelligence, Police Intelligence and National intelligence. Oversight occurs outside Police structures. The CIS should be confined to criminal intelligence and this should be provided for in the Constitution.

- v) **Trade Unions in the SAPS**
This would be explored in forthcoming submissions on the Police.

- v) **Accountability and Control**
Prof Seegers noted that there were various philosophies about accountability and control. One starting point for this debate, which had not been explored by the Committee begins with the legal powers allocated to an individual police officer.

3.2 Inkatha Freedom Party

Mr Powell spoke to the IFP submission (contained in document package 2).

The following issues were highlighted:

- i) **Creation of a paramilitary police force in addition to community policing oriented police service**
The IFP supported the creation of another Force located between the Military and the Police. This would be an institution responsible for supporting the Police when there was a breakdown of civil order, they would be available in times of war to assist the Defence Force and in times of natural disaster.

Under normal circumstances they would fall under the control of a civilian ministry at a provincial level and in times of war of a state of emergency to a national minister.

Standards for entry should be higher than for Police officers working at a community level, and careful training and selection requirements should be imposed.

This force should take over the paramilitary responsibilities that the Police Force presently have. Their role should carefully limited by the Constitution to make sure that their functions do not overlap with those of the Police or Military. The Police would then be a totally civilian police force which used the minimum amount of force.

Final accountability would rest with a Ministry such as the Ministry of the Interior. This force would be resourced and funded from provincial budgets and deployment determined by the National Minister. Their actual use on a day to day basis would be the responsibility of the provincial MEC.

This force would allow for the civilian Police to be totally removed from the political realm, and it would take over some of the duties presently performed by the Internal Stability Division.

A written submission from the IFP will be presented to the Committee in the block on policing.

Prof Seegers suggested that the Committee ask for a submission on paramilitary forces from an authority in this area.

She explained that many more countries have paramilitary forces than is commonly recognised. Paramilitary forces have tended to arise not from the entitlement of provincial government but from the nature of criminality and have thus emerged if there is a criminal need.

Paramilitary forces are usually associated with piracy and criminality in the countryside. More recently they have been associated with border patrols and the international drug trade. Paramilitary forces use force proportional to the nature of the crime.

ii) **Political affiliations of members of the security forces**

Members may hold membership of a political organisation, but they may not hold office. As citizens the rights of members of the security forces to exercise freedom of association should not be barred.

ii) **Devolution of powers**

The IFP stated that it supported a situation in which the bulk of policing was taken down to the lowest level in the form of a municipal or metropolitan police model managed by the community. Funding should emerge from a partnership between the provincial and local level. The jurisdiction of Police would be determined by the nature of the legal system.

3.3 **Democratic Party**

The DP had nothing further to add to their submission presented previously.

3.4 **National Party**

Mr Gogotya spoke to the NP submission (contained in documentation package 4).

4 ANY OTHER BUSINESS

4.1 Role of technical experts

It was agreed that the technical experts should be able to engage with the Committee, either at the request of members of the Committee or in response at the end of a particular item.

The role of the technical experts would evolve as the work of the Committee progressed.

As the Theme Committee is not a negotiating forum or decision making body they would be able to stimulate the Committee's thinking.

4.2 Further meetings of the Subtheme Committee

It was agreed that the Committee would meet again on Tuesday 14 February 1994 at 09:00. A meeting of the Theme Committee was scheduled for 14:00 and this would be followed by the IDP workshop at 15:30. The IDP workshop would continue on Wednesday 15. The Committee would have to meet again on Thursday 16 in order to prepare a report for the Constitutional Committee.

5 CLOSURE

The meeting rose at 17:00.

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SUBJECT MATTER: FURTHER PRELIMINARY SUBMISSION BY THE ANC
MATTER OF POLICE

DATE : 8 FEBRUARY 1995

COMPILED : ANC SUBTHEME 4 OF THEME 6

STUDY GROUP

I INTRODUCTION : In line with the submission we have made thus far we would like to make these brief points in addition to the already made submission. The following points would be confined to accountability and the supremacy of the Constitution. Issues raised in the earlier submission would be more relevant as we take the debate further.

We maintain that the Constitution should only contain the fundamental principles and details be covered in either the regulation and the New Police Act, (except where necessary to avoid ambiguity.

A supremacy of the Constitution and Bill of Rights must remain supreme to the Police Service and must be bound by that supremacy. It is the responsibility of all the citizens to uphold the Constitution.

The Police Service have a vital role to play in this regard.

Only the declaration of state of emergency or war should lead to regulated suspension of human rights.

2. THE PUBLIC SERVICE COMMISSION

It is our considered view that the police service, Intelligence Community and the Defence should not fall under the jurisdiction of the Public Service Commission but rather under a Security Commission

B. ACCOUNTABILITY AND CONTROL

Various mechanisms are proposed for control and accountability. Among these the following could be mentioned.

1. Parliamentary Portfolio committee on Safety and Security which shall be multiparty on a proportional representation basis.

2. Police Ombudsman to deal with complaints, labour related disputed etc.

3. Community - police Forums must be established.
Their role, function, structure and funding must be stated clearly to avoid any confusion.

4. Civilian Control. The introduction of civilian wing within the police service as part of the process of demilitarisation of the force. Again clear lines of command and control will have to be finalised.

5. Appointment of Civilian with the operation arm of the service,
6. A change of the military ranking in the police force as part of demilitarisation process.
7. Clear code of Conduct for those who join the force

C. STRUCTURE

Based on our belief that South Africa shall be one united/unitary state we would submit that there shall be , one police service for the country with powers , function and personnel decentralised to Provinces. The Minister of Safety and Security shall be accountable to both the Cabinet and Parliament for all police-related matters.

The President shall appoint the National Commissioner and the National Commissioner in turn shall appoint a Provincial Commissioner in consultation with Provincial M.E.C. for Safety and Security.

The National Commissioner shall in the first instance be accountable to the Minister of Safety and Security . Powers and function of both the Provincial MEC and Provincial Commissioner must be well spelt out taking into consideration clear lines of command of a united state/country.

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 6 SPECIALISED STRUCTURES OF GOVERNMENT

PROGRESS REPORT

1. INTRODUCTION

This report is a presentation of progress on the work of the Theme Committee 6 ("the Committee"). As the Committee is divided into four Subtheme Committees ("the Subcommittees"), the report will capture the activities of each Subcommittee.

All Subcommittees have revisited their workplans as per ANNEXURE "A".

2. SUBTHEME COMMITTEE 6.1 (PUBLIC ADMINISTRATION)

This Subcommittee started its activities by hosting a workshop on 25-6 January 1995 under the theme of public administration and constitution.

The Subcommittee has produced a report, a copy of which is attached hereto and marked ANNEXURE "B", from the proceedings of the workshop. This report will be utilised as a framework for inviting submissions from stakeholders, identified by the Subcommittee, in the arena of public administration.

The Subcommittee has complemented its workplan by a comprehensive programme, a copy of which is attached hereto and marked ANNEXURE "C".

3. **SUBTHEME COMMITTEE 6.2 (FINANCIAL INSTITUTIONS AND PUBLIC ENTERPRISES)**

This Subcommittee began its work at the end of last year by hosting a series of information seminars discussing topics like the Auditor General (AG), the Reserve Bank (RB) and the Financial and Fiscal Commission (FFC). This cycle of seminars was completed on the 23 January 1994.

The Subcommittee has discussed preliminary submissions by all political parties, save the PAC, represented in the assembly. The Subcommittee is presently organising meetings to listen to oral evidence from outside organisations.

From the preliminary discussions that have taken place in the Subcommittee, it would appear that all parties favour a retention of the provisions of the interim constitution on financial institutions, with relatively minor amendments, in the final text of the constitution. This has prompted the Subcommittee to call the political parties to concretely spell out the details of the said amendments by 22 February 1995.

In early December 1994, in the absence of guidelines from the Constitutional Assembly on the process of calling for submissions, the Subcommittee sent out more than a hundred letters, calling for submissions, from very significant stakeholders. To date there has not been responses from these stakeholders. The complaint from these organisations is that the invitations for submissions reached them during the christmas dead-time period. The Subcommittee will be sending reminders for submissions on the AG, RB and procurement. The net effect of all this is that the period of dedicated CA work could not be utilised productively by this Subcommittee.

4. **SUBTHEME COMMITTEE 6.3 (TRANSFORMATION, MONITORING AND EVALUATION)**

This Subcommittee has had a string of information seminars addressed by eminent experts. This seminars covered all areas of the scope of work of the Subtheme Committee, i.e, the Public Protector, the Commission on Gender Equality, the Commission on Restitution of Land Rights and the Human Rights Commission.

The Subcommittee is in the process of distilling issues arising out of the aforesaid seminars. However, it should be said, the Subcommittee has found the notion of restitution of land rights to be too limiting in so far as it fails to address the question of land redistribution. For this reason the Subcommittee has decided broaden its approach to the question of land.

5. **SUBTHEME COMMITTEE 6.4 (SECURITY APPARATUS)**

This Subcommittee has had discussions on submissions from the ANC,IFP, NP, PAC and DP.

A debate has already taken place on the content and form of the constitutional provision on the Security Apparatus and the general view seem to be that such a provision need only to cover long standing principles, albeit with a measure of elaboration on these principles, given the history of our country.

Some debate has also taken place on the location of the provision on security apparatus in the final constitutional text. Four possibilities have been mooted, i.e, the preamble, the bill of rights, separate chapters dealing with each arm of the Security Apparatus and a chapter dealing with all Security Apparatus. The debate is continuing and finality has not been reached on this matter.

The Subcommittee has held an information seminar on the Security Apparatus on 7 February 1995 addressed by Professor Dirk Van Zyl-Smit. The seminar prompted a discussion as to appropriateness of deliberating on correctional services as a security arm.

The Subcommittee is in the process of organising a workshop on accountability and control of the arms of security. On 9-10 March 1995, the Subtheme Committee will meet the Canadian delegation of defence experts.

6. **CONCLUSION**

The assessment of the Committee on the work of its Subtheme Committees is that it is reasonably satisfactory.

A few areas worrying the Committee need to be raised:

- 6.1 The Committee is concerned about the poor dissemination of the decisions of the CC to Theme Committees;

An example here, although this matter was resolved at the meeting with the Chairpersons on 6 January 1995, is the exclusion of the subject of traditional authorities from the scope of work of the Committee without consultation and without informing the Committee of the change.

6.2 There is concern over the CC's approach of controlling the constitution-making process from the centre.

In this connection the Committee feel that there is a need for Committees to be given more space and powers, without too much prescription from the centre, to approach their work in accordance with their specific needs and conditions.

The pertinent question here is whether Theme Committees that have specific needs such as, for example, participation - on TV's agenda, face the facts, good morning South Africa and phone-in programmes - can have these planned through the CA's media department outside of the CA's centrally planned public participation programme.

ANNEXURE "A"**THEME COMMITTEE 6
SPECIALISED STRUCTURES OF GOVERNMENT***Workplan as at 9 February 1995*

Block	Subtheme Committee 6.1	Subtheme Committee 6.2	Subtheme Committee 6.3	Subtheme Committee 6.4
1	Public Service	Auditor General; Reserve Bank; and Procurement.	Information seminars on all areas of work.	Accountability and control of the security forces.
2	Public Service	Auditor General; Reserve Bank; and Procurement.	Identification and isolation of issues arising out of the seminars and preparation of report.	Accountability and control of the security forces.
3	Public Service	Auditor General; Reserve Bank; and Procurement.	The Public Protector	
4	Public Service	Auditor General; Reserve Bank; and Procurement.	The Public Protector	
5	Public Service	Auditor General; Reserve Bank; and Procurement	The Human Rights Commission.	
6	Election Commission	Finance and Fiscal Commission; and Public Enterprises.	The Human rights Commission.	
7	Election Commission	Finance and Fiscal Commission; and Public Enterprises.	Commission on Gender Equality.	
8	Election Commission	Finance and Fiscal Commission; and Public Enterprises.	Commission on Gender Equality.	
9	Public Service	Finance and Fiscal Commission; and Public Enterprises.	Commission on restitution of land rights.	
10	Public Service	Finance and Fiscal Commission; and Public Enterprises.	Commission on restitution of land rights.	

FIRST REPORT

SUBTHEME COMMITTEE 6.1 PUBLIC ADMINISTRATION

THEME COMMITTEE 6 SPECIALISED STRUCTURES OF GOVERNMENT

1 INTRODUCTION

This report emanates from discussions in Theme Committee 6 on the theme of Public Administration and the Constitution. The discussion in the Theme Committee suggests that a constitutional provision on the Public Service may be desirable. It is the subject of debate, however, what level of detail should be covered in such provision. The weight of opinion is that a constitutional provision on the Public Service should contain as little detail as possible, in order to provide room for adaptation, flexibility and innovation.

The key issues identified for further discussion were:

- (a) the need or otherwise for a constitutional provision on the Public Service/public administration;
- (b) the nature of that provision in terms of brevity and flexibility;
- (c) key themes including:
 - the role of the Public Service;
 - politics and administration;
 - the Public Service Commission structures at national and provincial levels; and
 - the Public Service as an agent of development.

Questions:

- 1.1 Should the Public Service be regulated by way of a constitutional provision? If so, what should the content and form of the constitutional provision be?

2 THE ROLE OF THE PUBLIC SERVICE

The Public Service can be characterised as an institution which should be:

- professional;
- career-oriented;
- non-partisan;
- efficient, effective and responsive in terms of service delivery;
- loyal in its service to the public and the elected government of the day;
- accountable to the public and Parliament.

The role of the Public Service should be considered in the context of transformation to a democratic state and society with a bias towards reconstruction and development. This will require a high quality of human resources, as well as the establishment of frameworks which create a climate for open and interactive involvement in policy making and implementation processes between government and the public.

Questions:

- 2.1 How is the Public Service to be defined and which institutions of government should be incorporated in the definition? For example, should the army, police, health, education, local government and parastatals, as well as administrative personnel in the judiciary, be covered in this definition?
- 2.2 What should be the guiding values and principles for the Public Service?
- 2.3 What would be appropriate, speedy and effective mechanisms for ensuring accountability of public servants for their actions or inactions?
- 2.4 How should the concept of a representative Public Service be defined and what affirmative mechanisms and procedures will assist in achieving such representivity?
- 2.5 Does representivity entail both deracialisation, as well as transformation of state institutions?
- 2.6 Should the public and public employees be entitled to participate in formulating policy on public services and should public service managers be responsible for creating the mechanisms for such participation?

Put differently, should there be a duty on public service managers to consult employees and the public in relation to the provision of public services?
- 2.7 Should there be an obligation on public managers to monitor and evaluate the implementation of public policy and what would be the appropriate mechanisms?

2.8 What forms of review and redress should the public/public employees have in relation to dissatisfaction with service delivery?

3 POLITICS AND ADMINISTRATION

As far as politics and administration is concerned, there are two viewpoints.

The one is that politicians make policy and law, while the Public Service is only involved in the implementation of public policy. The basis for this argument is the view that the involvement of public servants in policy decisions will impact negatively on their ability to act fairly and impartially in the rendition of public services.

The other viewpoint is that public employees cannot be isolated from the policy-making process. This view holds that public employees and senior administrators can play an important and even critical role in the formulation of policies designed to meet the needs of communities. This requires that criteria for appointment of senior administrators must consider their competence to act as policy analysts and advisors in the policy-making process. This is often referred to as a system of limited political appointments.

For example, in the USA, the President or an appointment authority can appoint up to 3 000 civil servants in the top echelons of the Public Service for policy purposes.

In France, each Minister is permitted to appoint 10 persons to a ministerial *Cabinet*, which is responsible for supporting the Minister in relation to policy matters. Members of these *Cabinets* are appointed for their technical and policy expertise and ideological outlook and their term of office is normally linked to that of the Minister. Members of the *Cabinets* include persons seconded from within the Public Service, as well as individuals appointed from outside.

In Holland before a person is appointed as a "mandarin" (the equivalent of our Director-General), the political views of such person are investigated. This is not done with the view of appointing someone who comes from the same ideological hue as the incumbent minister, but rather to ensure that the political composition of Parliament is mirrored in the highest level of public administration. Dutch Ministers are allowed to have two or more political advisors of their own choice, though they have no connection with the ordinary Public Service.

The system of limited political appointments into the Public Service has found favour with some South African public administration academics and managers, who argue that such a system creates space for the injection of innovative ideas from the academic and professional worlds and civil society.

Questions:

- 3.1 Should there be a separation of powers between policy-making and administration?
- 3.2 Should provision be made for limited political appointments in the South African Public Service? If so, what should be the procedure and criteria for such appointments?

4 THE PUBLIC SERVICE COMMISSION

Under South Africa's Interim Constitution, the Public Service Commission is given wide competence to make recommendations and issue directives on public service departmental organisation, conditions of service, personnel practices including appointment and promotion, the promotion of efficiency and effectiveness and the drawing up and monitoring of a Code of Conduct.

Questions have been raised about the powers which reside with the Commission. It has been argued that such wide powers present a real danger of the Commission usurping the functions of government and undermining the role and responsibilities of elected political representatives, especially the Ministry for the Public Service and Administration.

Critics of the role of the Commission, as presently defined in the Interim Constitution, argue that a more appropriate role for the Commission should be:

- To ensure merit, equity and representivity in the appointments and promotions process;
- To act as an agent of change, development and administrative reform.

Questions:

- 4.1 Should an institution such as the Public Protector be embodied in the final text of the constitution? Is there a need for another body, such as the Public Service Commission, that deals exclusively with ombuds aspects relating to the Public Service? If so, what should be its role, particularly in relation to appointments, promotions, human resource development and performance evaluation of departments and employees? How should it be composed? By whom should it be appointed and what are the appropriate mechanisms for public accountability? Should any provisions for the above be made in the Constitution?

- 4.2 What should be the respective roles and responsibilities of the Ministry for the Public Service and the Commission? What, if any, should be the relationship between the Ministry and the Commission?
- 4.3 What role should Parliamentary Select Committees play in relation to the Public Service and the oversight of policy formulation and implementation? Should the Public Service Commission be accountable to a Select Committee on the Public Service?
- 4.4 Should the Public Service Commission act as a body of appeal for public servants or should this role be entrusted to an independent agency?
- 4.5 Who should represent the state as employer in the bargaining process and who mandates these representatives of the state as employer?
- 4.6 Should there be provincial Public Service Commissions? If so, what should their role be? What should be the relationship between the national and provincial Commissions? Should the Constitution contain any provisions on the above?
- 4.7 How should norms and standards of public administration and management be developed and what, if any, should be the instruments of delegation from national to provincial governments?

5 THE PUBLIC SERVICE AS AN AGENT OF DEVELOPMENT

The kernel of the debate is that South Africa's transition provides the opportunity for building a new type/culture of public sector administration which serves to deepen democracy and implement "people-centred" and sustainable development. It has been suggested that the state can play a critical role in development through:

- creating mechanisms for open and interactive policy-making between citizens, communities and government and promoting social partnerships for service delivery;
- forms or forums for effective communication between the administration and the public, user and consumer groups and public employees themselves;

- implementation of RDP programmes and projects which establishes a bias towards redressing the inequalities caused by apartheid.

According to the proponents of the concept of a developmental public service, there is a need to shift the contours of the debate beyond mere restructuring and deracialisation to fundamental transformation of the state administration and a governance approach. This implies a shift from a rule-driven culture towards a strategic planning and strategic management approach, with an emphasis on change management processes. It also requires an approach to human resource development which will ensure the increasing capacity of the state to meet the needs of communities and the challenges of development.

Questions:

- 5.1 Should the Public Service act as an agent for development? If so, how can the Constitution create an enabling framework for such action or should this matter be dealt with elsewhere?

6 CONCLUSION

The purpose of this report is to invite comment from the public and to provide a framework within which comments may be drafted. However, submissions need not be limited to the questions posed, and the Assembly welcomes the broadest range of views and comments on the theme Public Administration and the Constitution.

The brief of Subtheme Committee 6.1 (which is a substructure of Theme Committee 6) is to focus on the Public Service and administration and it will be appreciated if all submissions relevant to this report can address themselves to this issue.

ANNEXURE "C"

SUBTHEME COMMITTEE ON PUBLIC ADMINISTRATION WORKPLAN [7 February - 27 March 1995]			
Block	Date	Event	Time
1	06/02/1995	Submission: 1st draft report on the Public Service workshop by the Secretariat.	
2	07/02/1995	Discussion: 1st draft report on the Public Service by the Subtheme Committee.	14:30-17:00
	08/02/1995	Discussion: 1st draft report on the Public Service by the Subtheme Committee.	09:00-13:00
	09/02/1995	Discussion: 1st draft report on the Public Service by the Subtheme Committee.	14:30-17:00
	14/02/1995	i. 1st draft report on the Public Service tabled for consideration by the Theme Committee; and ii. Public hearing: Volkstaat Council.	08:30-09:00 09:00-13:00
	15/02/1995	i. 1st draft report on the Public Service submitted to the Constitutional Committee; and ii. Workshop: Provincial Legislatures.	10:00-16:00
3	20/02/1995	Public hearing: Ministry of the Public Service and the Public Service Commission.	09:00-12:00
	27/02/1995	Public hearing: Director Generals' Forum	09:00-12:00
4	06/03/1995	Public hearing: Public Service Bargaining Chamber.	09:00-17:00
	13/03/1995	Public hearing: Academic Institutions and the Public Service Institutes.	09:00-12:00
5	20/03/1995	Public hearing: All interest groups at local government level, i.e, Town Clerk's forum, United Municipal Executive, Transitional Local Councils, Transitional Metropolitan Chambers, Civics and Municipal Employee Organisation.	09:00-16:00
	27/03/1995	2nd draft report on Public Administration tabled for consideration by the Theme Committee.	18:00-21:30