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CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 2
STRUCTURE OF GOVERNMENT

CORE GROUP MEETING

TUESDAY
21 FEBRUARY 1995
09H00 - 13H00

E216

DOCUMENTATION

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CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 2 STRUCTURE OF GOVERNMENT

CORE GROUP MEETING

Please note that a meeting of the Core Group will be held as indicated below:

Date : Tuesday 21 February 1995
Time : 9h00 - 13h00
Venue : E216

AGENDA

1. Opening and Welcome
2. Minutes of Core Group meetings (7/02/95 & 8/02/95)
3. Matters Arising from Core Group Meeting 24/02/95
 - 3.1. Research in respect of Electoral Systems
4. Guidelines for Theme Committee Reports
5. Submissions in respect of Block 2/3
6. Community Liaison Programme
7. Theme Committee Programme for Technical Experts
8. Agenda for next Theme Committee Meeting
9. General

10. Closure

**HASSEN EBRAHIM
EXECUTIVE DIRECTOR
CONSTITUTIONAL ASSEMBLY**

Enquiries: James Nene & Thomas Smit (245031)

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 2

MINUTES OF CORE GROUP MEETING

Tuesday 07 February 1995
10H30
M46

PRESENT

Ndlovu VB (chairperson)

Ebrahim AG
Eglin CW
Groenewald PH
Mahlangu MJ
Pahad EGH
Rabie JA

TC2 Technical Committee members Dlova V, Steytler N, and Motimele AMM, as well as Technical Committee on Traditional Authorities member, Dlamini C, were in attendance.

Ramaphosa C, Nene J and Smit T, were also in attendance.

1. OPENING AND WELCOME

- 1.1.** The meeting was opened by Ndlovu VB, and the Technical Experts in attendance were welcomed. The absence of Prof Van Wyk was noted and the TC2 Secretariat was requested to secure his attendance in due course.

2. PREPARATION FOR CORE GROUP / TECHNICAL COMMITTEE/MANAGEMENT MEETING ON 9 FEBRUARY 1995

- 2.1.** The meeting agreed that the abovementioned information and planning meeting be held.

2.2. WORK PROGRAMME

- 2.2.1.** The meeting agreed that if one or two workshops/seminars take place in the following week, then it is necessary that the details and planning also be discussed at the abovementioned meeting.

2.3. ADVERTISEMENTS

- 2.3.1.** The meeting requested CA Administration representation at the abovementioned meeting, in order to discuss the terms and secure the urgent placement of an advertisement in respect of block 2.

2.4. COMMUNITY LIAISON PROGRAMME

- 2.4.1.** The meeting agreed that a representative from the CA Administration be present if there is further clarification of the programme.

2.5. TECHNICAL EXPERTS

- 2.5.1.** The meeting agreed that the TC2 Secretariat will provide the Technical Experts with the documentation of the Committee.
- 2.5.2.** It was agreed that the Technical Experts' terms of reference will also be made available at the abovementioned meeting.

- 2.5.3. It was agreed that the Technical Experts' availability will be discussed at the abovementioned meeting, once the Core Group had established the need for their services.**

3. CLOSURE

- 3.1. The meeting rose at 12h00.**

Signed by Chairperson _____

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 2

MINUTES OF MEETING OF CORE GROUP, TECHNICAL COMMITTEE & MANAGEMENT

**Wednesday 08 February 1995
14h00
M46**

PRESENT

Ndlovu VB (chairperson)

**Ebrahim AG
Eglin CW
Groenewald PH
Mahlangu MJ
Pahad EGH
Rabie JA**

TC2 Technical Committee members Dlova V, Steytler N, and Motimele AMM, as well as Technical Committee on Traditional Authorities member, Dlamini C, were in attendance.

Ebrahim H, Nene J and Smit T, were in attendance.

1. OPENING AND WELCOME

- 1.1. The meeting was opened by Ndlovu VB, and the Technical Experts in attendance were welcomed. The absence of Prof Van Wyk was again noted and the TC2 Secretariat was requested to secure his attendance in due course.

2. WORK PROGRAMME IN RESPECT OF BLOCK 2

(a) TIME FRAMES

(i) SEMINARS/WORKSHOPS FOR THE NEXT TWO WEEKS

- 2.1. The meeting agreed that an "in-house workshop" shall be held on the form of the executive on Wednesday 15 February 1995.

- 2.2. It was agreed that thereafter a workshop shall be held in respect of a unicameral/bicameral system.

- 2.3. It was agreed that the public was welcome to attend, but that the purpose of the in-house workshops were to inform the members of the Committee, and that at this stage there shall be no specific invitation to the public to attend the first in-house workshops.

(ii) TOPICS TO ADDRESS

- 2.3. The meeting agreed that in respect of the workshop on the executive, the presentations shall have to represent a comprehensive vision, and not the opinions of a particular person or particular persons.

(iii) PERSONS TO GIVE INPUT

2.4. The meeting agreed that the Technical Experts shall plan and make the presentations, and should they be of the opinion that it is necessary to invite further persons to make presentations, then they are mandated to invite such further persons.

2.5. It was emphasised that there were no honorariums payable to persons making presentations to the structures of the CA.

(b) ADVERTISEMENTS

2.6. The meeting agreed that Mr C Eglin be mandated to prepare and place with the assistance of the Technical Experts and Administration an advertisement for block 2/3.

2.7. It was agreed that the advertisement shall be drafted as was generally agreed to by the Technical Committee.

2.8. It was noted that it was only in extraordinary circumstances that separate advertisements shall be placed for a Theme Committee, and consequently it was agreed that the advertisements of the Theme Committees would be placed together in respect of block 2.

(c) COMMUNITY LIAISON PROGRAMME

2.9. The meeting agreed that this matter be deferred until the Management Committee had deliberated upon it.

3. AVAILABILITY OF TECHNICAL EXPERTS

3.1. The meeting agreed that at least one Technical Expert shall be available at all meetings of the Theme Committee.

3.2. It was noted that the Technical Experts shall consider their availability and arrangements, and discuss this with the Administration

3. CLOSURE

3.1. The meeting rose at 15h15.

Signed by Chairperson _____

CONSTITUTIONAL ASSEMBLY

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PO Box 15
CAPE TOWN 8000
REPUBLIC OF SOUTH AFRICA

REF No:

14 February 1995

MEMORANDUM

To All Theme Committees

Re : Public Submissions

Please note that concern was expressed at the Management Committee meeting of 10 February, that Theme Committee reports have to date not included a report on the content of public submissions received.

The decision of the Management Committee in this regard is to ask all Theme Committees to ensure that technical experts conduct a survey or brief examination of public submissions received by the Theme Committee thus far and that the Theme Committee include a brief report on public submissions in their reports to the Constitutional Committee. This should include a list of public submissions received i.e. list of names of individuals and/or organisations from whom submissions have been received.

The report on public submissions should therefore indicate :

- * from whom submissions were received; and
- * how germane or otherwise were these to the subject under discussion in the Theme Committee by briefly reporting on the content of the public submissions.

Those Theme Committees who have already issued reports, should please compile Supplementary Reports on Public Submissions and forward these to the Administration.

Please note also that, arising from discussion in the Constitutional Committee of 13 February 1995, the Management Committee will this week be considering guidelines for the format of Theme Committee reports. These will be issued as soon as they are complete. This should not however deter or delay Theme Committees in their work at present.

HASSEN EBRAHIM
EXECUTIVE DIRECTOR

CONSTITUTIONAL ASSEMBLY

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PO Box 15
CAPE TOWN 8000
REPUBLIC OF SOUTH AFRICA

REF NO:

16 February 1995

MEMORANDUM

To All Theme Committees

Re : Various Matters

1. TECHNICAL COMMITTEES

This serves as a reminder that the Administration requires feedback from Theme Committees on the programme for technical experts for the next month or so. In an earlier memorandum we had asked Theme Committees to provide us with this information, so that we could make the necessary arrangements and planning with regard to travel, accomodation and budgeting. We have thus far only had a response from one Theme Committee and even then, not a very clear one. Please ensure that we are given an indication by early next week, so that the relevant arrangements can be made.

2. PUBLIC PARTICIPATION PROGRAMME

2.1 Constitutional Public Meetings

There appears to be some confusion about what role Theme Committee are expected to play in the public participation programme. The programme which was forward to Theme Committees a while ago was adopted by the Management Committee on 10 February 1995 , with some amendments. These amendments, or provisos, relate in the main to the need to ensure that the programme does reach rural and disadvantaged communities and that the Management Committee is able to co-ordinate the programme as a whole. They do not however change the immediate preparations for the first round of public meetings.

These meetings will take place on 25 ^{Feb} ~~March~~ 1995 in six provinces ie Free State, Eastern Cape, Eastern Transvaal, Northern Transvaal, North West and Western Cape. The exact venues will be communicated to you next week.

Each Theme Committee is required to send two delegates to each of these meetings. We would appreciate it if these names could be with the Administration by Wednesday 22 ~~March~~ 1995 so that practical arrangements can be made.

Feb

Note that as per Management Committee decision, these events are not party political. The people who attend will represent Theme Committees and receive submissions and not put forward party positions.

Each Theme Committee should also clearly identify what pertinent issue/s should be discussed at each of these meetings. Note here that the structure of the meetings will allow for the facilitator to introduce all 6 Theme Committees and thus also allow for submissions to all Theme Committees. We would also need to receive these issues from Theme Committees by Wednesday next weeks so that facilitators can prepare themselves.

We apologise sincerely for this short notice but it has been unavoidable in view of the difficulty in getting the programme finalised. It would not be opportune to delay implementation any longer which is why the first meetings will commence on 25 March 1995.

2.2 Theme Committee Programmes

These public meetings are only one aspect of the programme. You will notice that the original document also mentions hearings and Theme Committee requests for workshops etc This programme is already underway, responding to Theme Committee requests. The earlier communication we addressed to Theme Committees was an attempt to ask Theme Committees to consider a more structured programme in this regard, rather than relying solely on the present ad hoc nature of requests. It is also important that the Administration receives adequate notice for these requests. For major events, at least 14 days notice is required, and 7 days for smaller events.

There is no intention of imposing a "centrally planned " programme on Theme Committees. Public meetings as outlined in 2.1 above, are not the major form of consultation with the public. It is evident that Theme Committee consultation in the form of workshops, hearings and consideration of written submissions , forms the major part of the public participation programme. This is why it is important that it is properly organised and considered and why Theme Committees should try and present structured programmes in this regard.

3. Drafting Procedures

The Management Committee has finalised Drafting Procedures which are attached hereto for your information. The Management Committee noted the objection of the IFP to these procedures.

4. Report Formats

As communicated earlier, the Management Committee has considered and agreed to formats for Theme Committee reports to the Constitutional Committee. The only addition to the document which is attached hereto, is that reports should also have attached to them the party submissions which are there, not as part of the report, but to allow for reference in discussion in the Constitutional Committee.

You are also reminded of the Management Committee decision that those committees which have completed reports, should please forward supplementary reports on public submissions.

5. Communication

This Administration is committed to ensuring there is regular and effective communication to Theme Committees from the Management Committee and Constitutional Committee. If you have suggestions in this regard please forward your views to us, so that they can be put to good use. Also do not hesitate to contact myself or the *Deputy Executive Directors, Louisa Zondo and Marion Sparg at Tel No 021245 031* or visit us on the *11th Floor of Regis House* if you require clarification on anything contained in this memo or indeed to discuss any other matter.

**HASSEN EBRAHIM
EXECUTIVE DIRECTOR**

PROPOSAL ON THE DRAFTING OF THE NEW CONSTITUTION

1. Introduction

1.1 The Constitutional Assembly has in its decision of 31 October 1994 laid down the following broad guidelines on the drafting process:

- "(a) Drafting should be directed by the Constitutional Assembly.
- (b) The Constitutional Committee should be responsible for the co-ordination of all Constitutional Assembly work, including drafting.
- (c) Theme Committees are not negotiating fora. Their primary task should be to receive submissions and process them into reports for consideration by the Constitutional Committee."

1.2 The process has now reached the stage where a decision will have to be taken on the question of technical assistance in the drafting process. Drafting is a sensitive exercise because political disputes and deadlocks that may occur will in the ordinary course of events be based on positions as drafted in the text.

2. Background

In setting up a drafting mechanism two important factors must be taken into account, firstly, the provisions of the Interim Constitution relating to the adoption of a new constitutional text and, secondly, the lessons learned from the Kempton park experience.

2.1 In terms of the objects of the Interim Constitution, as set out in the Preamble, the Constitutional Assembly is the only competent body to draw up the new constitution. For this reason a drafting mechanism cannot operate independently from the Constitutional Assembly and must be part and parcel of the Constitutional Assembly's substructures, operating on the instructions and under the direct supervision and control of the Management and Constitutional Committees.

2.2 During debates in the Constitutional Assembly and committee meetings criticism was levelled at the Kempton Park process where independent committees of technical experts were or were believed

to be the driving force in the process. The present process was consequently structured to avoid a Kempton Park type of situation and to allow for maximum participation by the public and the elected representatives of the people in the constitution-making process. This philosophical distinction between the present and Kempton Park processes impacts also on the way a drafting mechanism should be structured.

3. Principles of drafting

3.1 In view of the above the drafting process should be governed by the following principles:

- (a) The drafting process should be a purely technical exercise and unlike the Kempton Park process be a politically neutral exercise.
- (b) The drafting process should be confined to providing the statutory formulations which reflect actual decisions on content and substance.
- (c) Constitutional Assembly decisions should form the sole basis for drafting except to add non-contentious and legally and technically necessary detail.
- (d) The drafting process should reflect the Constitutional Assembly's agreed political process.
- (e) The drafting process should involve all the technical role players engaged in the constitution-making process.
- (f) For purposes of maintaining the time frames agreed to politically the drafting should commence with the first political agreements.
- (g) The drafting process should be under the direct supervision and control of the Management and Constitutional Committees.

3.2 For purposes of securing a technically, linguistically and legally consistent and accessible constitution, there is a need that the various drafted provisions are attended to at a central point.

4. Proposal

The process should be as follows:

4.1 Initial drafting (translating political decisions into legal language)

Because of the intimate knowledge technical committees would gain with regard to their respective themes, these committees would be in the best technical position to provide "first drafts". Drafting should commence whenever a decision has been taken in the Constitutional Assembly on any particular issue submitted by a Theme Committee. The technical committee of that Theme Committee (or a single member of the technical committee) should be tasked to provide initial draft provisions covering the particular decision of the Constitutional Assembly. In preparing an initial draft the technical committee or drafting member should be directly accountable to the Management Committee and not to the Theme Committee.

4.2 Technical refinement of drafted provisions

Once an initial draft on any particular issue is available it should be submitted to the Administration's law advisers for technical refinement, improvement and adjustment to ensure that a general consistency of method and style is maintained.

4.3 Qualitative evaluation

The panel of experts' role will be that of evaluating objectively and impartially the technical and qualitative aspects of drafted provisions as refined by the law advisers. If the panel has reservations the provisions may then be further refined by the law advisers in accordance with any suggestions the panel may make.

4.4 Political approval

The next step would be to refer a set of drafted provisions processed through the first three phases, to the Management Committee for submission to the Constitutional Committee for approval. It is suggested that the law advisers be tasked with any adjustments the Management or Constitutional Committees may require.

4.5 Publication and public responses

Publication for general information and comment of draft chapters or sets of drafted provisions pertaining to specific issues, can be considered as a method of enhancing the public participation

programme.

5. Conclusion

In conclusion it must be pointed out that technical refinement and adjustment will be an on-going process as drafting progresses and the different sets of provisions approved in accordance with paragraph 4.4 are moulded together. The law advisers are at an appropriately positioned central point to attend to final refinement, but political participation, supervision and control should of course also take place here.

GUIDELINES: THEME COMMITTEE REPORTS

1. In reporting to the Constitutional Committee, Theme Committees must distinguish between progress and final reports.
2. Each Theme Committee must submit either a progress or a final report in respect of each ordinary session of the CC.
3. Reports must be submitted on the Tuesday before the scheduled CC meeting.
4. Progress reports are required to keep the CC on a continuous basis informed of developments and progress in Theme Committees in relation to their respective work programmes and time frames.
5. A final report must be produced by a Theme Committee as soon as any agenda item on a Theme Committee's work programme has been completed.
6. The contents of a report should be finalised in the Theme Committee and not in meetings of the CC.
7. **Structure and contents of reports**
 - 7.1 The cover page must contain the following particulars:
 - a reference to the Theme Committee submitting the report;
 - whether its a progress or final report;
 - date of report; and
 - if final report, the block number and agenda item on the work programme to which the report relates.
 - 7.2 Final reports should be structured in such a way to facilitate discussions and negotiations in the CC. It is recommended that final reports consist of three parts.
 - 7.3 The first part should give particulars of material processed by the Theme Committee in relation to the relevant agenda item. These particulars should include:

- a list of submissions received and processed by the Theme Committee, distinguishing between submissions received from political parties, organisations of civil society and individuals;
- a reference to any report submitted by a technical committee/experts on the specific agenda item;
- perspectives which emerged from public meetings held under the public participation programme;
- perspectives which emerged from workshops, seminars, etc., organised by the Theme Committee;
- the constitutional principle(s) to which the agenda item relates.

7.4 All technical committee reports listed in the Theme Committee's report must be attached as an annexure to the report.

7.5 The second part of the report should give an overview of the above material as processed by the Theme Committee. This part should include -

- (a) a general discussion of the material taken as a whole, indicating any specific or identifiable trends;
- (b) a list of non-contentious issues in relation to
 - the above material generally;
 - party positions;
- (c) a list of contentious issues indicating briefly
 - the gist of the contentiousness in each case;
 - the positions of the parties in relation to each issue;
 - the positions of organisations of civil society;
 - general trends emerging from submissions received from the public and at public meetings;
 - possible approaches, i.e. suggestions from the Theme Committee on possible models, alternatives and generally how the CC can proceed to deal with conflicting positions.

7.6 The third part of the report should deal with miscellaneous or related issues, such as

- notification to the CC of the agenda item the Theme Committee is about to deal with;
- suggested advertisement for this agenda item.