



**TEMPORARY SERVICES**

The TECHNIHIRE group of Companies (Registration No. 86/03905/06)

[2/4/3/9/6]

With compliments

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THEME COMMITTEE THREE

11/2/95

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**THEME COMMITTEE3  
1 FEBRUARY 1995**

**TAPE 1**

- Chairperson ...meeting of Theme Committee 3. I presume everyone has got a copy of the agenda for this meeting on 1st February.  
No. 1.
- Dr Marais On a point of order...
- Chairperson Yes, sir?
- Dr Marais I would like to record, sir, that the National Party contingent was here since 8,30. We were ready to start, but I don't the meeting was ready to start because there are very, very few people in this venue at this moment. I think there are 5 ANCs and yourself, sir, and a few others. I suggest, sir, that either the time schedule should be changed, alternatively if there are not sufficient people at the beginning of a meeting or when a meeting is scheduled to start, that the meeting should be called off. In view of the fact that we are very, very few in number at the moment, I suggest that we adjourn now.
- Chairperson Thank you. I take, number 1, that you have recorded a view of the National Party. It has been recorded. We take note of that. Number 2, I think your point of order also raises two possible proposals or motions: one, there is a later time being discussed, I think 9 o'clock or something like that, and the other one is that if the meeting doesn't start on time, 8,30 as is scheduled like this, you say that then the meeting will adjourn immediately without sitting. Could we have those two... Do I understand you correctly?
- Dr Marais Yes, sir, and I also, after having discussed that, suggest that we adjourn this meeting now because it doesn't serve a purpose to have a discussion to go into the document for the benefit of people who aren't here because it would be of no benefit to us because we understand the document. I thought that these discussions were intended for those members who are not, perhaps not as well informed as others, but I think they are the people who are not here. So for what reason will we go on if we can't have a beneficial meet affect at the end of the day?
- Chairperson Thank you. Mr Pravin, and then Mr Louw, then Mr Manie. Mr Pravin? Let's just hold it and then we can... Mr Pravin



Gordhan.

- Mr Gordhan            Chair, I take strong exception to Mr Marais' last comment. He might have a fair point to make about time, attendance etc. but late-coming isn't the prerogative or domain of just one party and I think he knows that as well as everybody else, but the latter comments are really offensive. The purpose of these discussions is not just to sort so-called ignorant people on one side and we take great offence at this allusion that we are the ignoramuses in this chamber. If that's the case, let's cancel the meeting for the next two day, Chair, and when we're ready to have proper, substantial, respectful, dignified discussions we can actually do that. I would now request Mr Marais apologise and withdraws these comments.
- Chairperson            Dr Marais, before I make a ruling, could you consider the request.
- Dr Marais                Mr Chairman, my point is this, that this meeting was called to assist people.
- Chairperson            Mr Marais, could I interrupt you, please. I just would like to hear you on the request.
- Dr Marais                I'm dealing with these requests. The point that I've made was that this meeting was called to assist people who perhaps haven't got the background to understand the issues fully. The point I'd like to make is that there are so few people here that to address the issues in the absence of the large majority of people...
- Chairperson            Could I just please...
- Mr Gordhan             On a point of order...
- Chairperson            You've got it.
- Mr Gordhan             The point he made was that those who would benefit from this discussion are not here, firstly. The second thing is a factual incorrectness in what Mr Marais says. The purpose of this meeting is not to help those who don't have knowledge and we can show that people on the other side of this chamber also lack in knowledge...
- Chairperson            On the point of order...
- Mr Gordhan             The point of order, Chair, is that the purpose of this meeting was to enable us as members of different parties to interact



with each other on our respective views and try to reach some kind of understanding of where we stand, not necessarily agree with each other, and Mr Marais' comments are beginning to defeat that purpose.

Chairperson Thank you, Mr Gordhan. Could I just, before I give the other speakers, I must finish this off first. Mr Marais, if I understand you correctly, you are not retracting on the comments you made. Do you think, could you just answer me, are you being misunderstood by Mr Gordhan, or not.

Dr Marais Sir, I don't think there's any doubt about what I intend to say. I said that the majority of people are not here. To address issues without them being here doesn't serve a purpose and that is the main thrust of my argument.

Chairperson I hear your argument, but Mr Gordhan understood it that you were reflecting on the ability of the party on my righthand side. Could you answer that. Do you reflect on it, or not?

Dr Marais Sir, no, I am referring to people who are not here and who won't have the benefit of understanding or following the procedures, following the situations.

Mr Manie Point of order.

Chairperson I've got a point of order from Mr Manie. Mr Manie, you've got the floor.

Mr Manie Mr Chairperson, I think if all of us were in the house, or those of us who heard what Mr Marais said, where quite clear what was said. It is not necessary for him to explain to us again what his intentions were, but he conveyed a completely different impression to us and that is that people who are sitting on this side of the room are more in need of the information that is going to be dealt with there and it implies that we are ignorant and we in fact are taking strong exception to that and without any further ado, we want a clear, unambiguous understanding that Mr Marais is either withdrawing or it needs to be recorded as such, but we don't want a lengthy explanation as to what he implied or not implied because it was quite clear what he said.

Chairperson Thank you, Mr Manie. Thank you very much. Mr Marais, I am unfortunately also of the opinion that you don't answer the question directly. I'm now, from the Chair I would like to ask you to withdraw that implication, which may have...



Dr Marais Sir, if I was understood to say that people who are not here are ignoramuses, then I withdraw that unconditionally, but the point that I would like to make is that if the large bulk of people that could benefit out of this discussion is not here, then we should adjourn.

Chairperson Because it was raised by Mr Gordhan, Mr Gordhan, is that retraction acceptable to you?

Mr Gordhan Chair, it wasn't an implication, it was a statement, firstly. Secondly, can I request that we have a transcript, if that is available, of those comments that Mr Marais made but for now we accept his withdrawal. Thank you.

Chairperson Could I just follow up. Have we got the original comments readily available?

?? I don't have it word for word, but it is being recorded and I can get that for you should you so request.

Chairperson Could we then report at the meeting, would that be accepted? And then we could leave it for the moment. I thank you, gentlemen, for your patience with each other, but could I, from the Chair - my English is departing in this type of situation. I want to express my afkeer<sup>1</sup>, my extreme dissatisfaction, if we go on in this style. We have got in front of us, regarding this provincial system, the core of perhaps the most important part to my mind of the future of our country and then we should argue with respect to each other. It is simply not true that either side can tell the other side that they are ignorami. Please could I ask your forbearance. Now I must continue the conversation because other people's hands were up. The first was Ms de Lille.

Ms de Lille Chairperson, I don't want to prolong this debate, but I think the whole discussion is premature by making a judgement when we don't know the reasons for people being late. It was mentioned earlier on here that people travel by bus. In Cape town on a rainy day like this I mean, if I live here I know I have to leave my home about an hour-and-a-half before the time, so I think before we make any judgement as to why people are late, maybe the Chairperson can just request people to give you a reason when they come in late, why they are late. Then I don't think we need to continue further on. Thank you.

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<sup>1</sup> condemnation



Chairperson

Can I in the meantime welcome the member of the National Party who has just arrived and the member of the honourable Senate, welcome Senator.

Well, thank you, they've got some evidence. Are you really contributing a new point on this.

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Yes. Mr Chairman, there is a proposal here that the meeting be called off. I think that we have to reply to that. I think it is the prerogative of each party to decide whether there are sufficient people to receive, or to - as put by Mr Marais - learn from whatever submissions are going to be made. It is a prerogative. If we feel that we are too few, then so be it, but it is our prerogative. And one further point, Mr Chairman; we inherited a situation where most of the parliamentarians were put into labour camps some 15 kms away from here. It is not our fault that Pelikan Park is something like 25 kms from here. I think those parliamentarians that were here before us don't have that disadvantage.

Chairperson

Thank you ever so much. It does seem that we are a quorum and I don't think it's necessary to continue this question of a parliament be continued. Dr King?

Dr King

Mr Chairman, I would just like at this stage to say that if we sit here - in Afrikaans sê ons en vlieë vang<sup>2</sup> - we're not going to get anywhere. You know, if we pick up on whatever someone says and then we embroider around it, we're going to misunderstand one another all the time and I think that we should be more sensitive than that. I think also, not think, I know, and we've experienced also references from the other side, at the previous also, from two members of which you were yourself one, saying things out at the National Party, and we did not react negatively. And I think therefore that we should stop being over sensitive, we've got to work together, and I really want to call on members let's just please keep it that way. Also that the Chair should try not to also bring in this... you now welcomed our member who came late, but we're full as far as our delegation is concerned, and our alternate members are here most of the time so percentage-wise we're more than 100% here, which is not the case of your own party. So, if we really want to be difficult, we could come up with all sorts of things, but we're not serving the purpose of that which we do here, so I think that all of us, not one only, but every one of us, should now try to stop trying to find fault with the others, because we're not going to achieve

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<sup>2</sup> In Afrikaans we say "and catch flies"



anything. We're here to get this Constitution going.

Chairperson Thank you, Dr King. I took that as a... and I really take the point. I just couldn't resist, with the tongue in the cheek, to make the comment. My excuses, please. I make my excuses immediately. Mr Gordhan?

Mr Gordhan Chair, to round up this part of the discussion. I want to concur with Dr King, you see, that we require a constructive atmosphere here, but I think her views that we are picking out things, embroidering around things, is a bit far fetched. There was, in our view, a racially offensive comment made and we took exception to it, it has not been resolve. We would then fully agree and, of course, we are the primary proponents of creating an atmosphere where we can co-operate with each other, but equally there is a responsibility on all of us that we choose our words carefully and be sensitive to our past, which is still very much with us in the present.

Chairperson Thank you, Mr Gordhan. I take that also as a positive comment and now I am ruling that this discussion does not serve any further purpose. I'm closing it, thank you.

Dr King Mr Chairman, I...

Chairperson Are you raising a point of order?

Dr King I am, yes. In regard to...

Chairperson Could you put the question of order then, Dr King, please.

Dr King Specifically, I am referring to saying there was a racial implication. You see Maud is now again read and we are going back to it again. That's the kind of thing which I asked that we please avoid doing and we have a repetition immediately again because there were no racial implications and the ANC there are of all racial groups. The majority are black people, but there are Coloured and Indians etc. also and white people so I don't think that...

Chairperson Dr King, you're arguing the point, you're not raising a point of order anymore. Please, I would like everyone to request anyone, this is closed now. If you in future in meetings which I chair raise points of order... This time we're going to do it formally. I'm only going to take formal points of order in the classical sense of the word, not argument. Thank you. After this wakening up debate, I hope everyone is alive and well, we will continue now.



I have welcomed you. We have the minutes of the previous meeting. Could I ask for the acceptance of the correctness of that proposals in this regard? There is something brought under my attention, there's a small technical error on the minutes: on the top heading it should read not "Monday 1 February", but "Monday 30 January". Are you with me? Of the minutes Theme Committee 3, 1 February 1995, on the running head in the main head, that is just one day out, two days out. Thank you. Could I then... this is a correct reflection of the minutes. Have I got any comments on these proposals? Is there any incorrectness in it? Did you have the time to read it? Proposals to accept. Mr Smith, you're checking, yes? Do you want a few minutes.

Mr Smith                      Sorry, Chair, there's one point. Page 5, point 4.1, sub 2 says "any additions to the framework as approved by the CC will be applied as of block 2". I am not quite sure what that means or that we agreed to such a thing.

Chairperson                      Do you suggest something different there?

Mr Smith                          Deletions.

Chairperson                      Of the words?

Mr Smith                          Of the entire paragraph.

Chairperson                      Entire sub 2? 4.1(ii) suggested to scrap. Seconder? None. Come on. You second it? General. Anything else? Can I have a proposal for the acceptance of these minutes? Dr Rabinowitz, seconded? None to second it. Come on, please help me. We must have the minutes accepted. Seconded. Inkatha wants to move on to their federation, they're not going to get stuck at this. In order? Points following from this, next part in our agenda. Where's my agenda? Here it is. The matters arising are the agenda items below if I understand it correct. We are then at point 4, the real business of the day. In this area we are now sifting all submissions by the political parties, the subject is Constitutional Principle 2, the nature and status of the provincial system and local government. The nature and status of the provincial system I think we're concentrating more on today. If I could refer you that the discussion today will be structured as agreed by the Core Group yesterday around the framework process submissions which is to be found in the documentation of 30 January of this Theme Committee on page 21. Have you got it? It's the pink document, 30 January 1995, documentation Theme Committee 3. Got the right one? On page 21, point 2 on that



page you've got the 5/6 points under which we're going to structure this discussions. Are you with me? The Core Group suggested yesterday in their like meeting that on each of the points which we're going to put to the meeting every party will get an opportunity to partake and give their oral opinions. I will proceed with that in a moment to give you the word. I personally would like to make a small introduction to this basically debate, which I hope will be in a constructive way. I spent time from 3 o'clock this morning reading the submissions which has been given to us as the Core Group yesterday afternoon. I don't think everyone has got this available yet. It has been circulated? I would like to stress from the Chair that these submissions which we receive like this, there's a helluva lot of pages here, sorry for the word, is the basic work which we as Theme Committee members should do. It is really our public duty to read through every word that is being presented to us and every member, I think, should do that as his public duty. It is quite an interesting group which we have received. Of course there are the political parties' submissions, which are a bit minimalistic I may say at this stage, understandably so, very interesting things in it, for example the Vryheidsfront concentrating on local communities, local government as a main area which they would like to concentrate on; the PAC coming more and more to the fore as the main proponent of centralism, if I'm naught I may even say that they are representing the Jacobean point of view in South Africa now, that you'd understand me, extreme egalitarianism but centralist. Perhaps I understand them wrong, then they must tell me, please. Very interesting, other organisational submissions, for example there's one, sometimes a bit confused, who under the heading of the Commission on Gender Equality quite curtly states that the public funds should be monitored by the Commission on Gender Equality and all the State resources should be thoroughly investigated by this Commission. Now it's very interesting to note that they proposed that the Commission on Gender Equality must control and monitor the public funds. Perhaps it was just a bit of wrong typing. Perhaps I could draw your attention, if you will allow me, to an extremely wise and interesting submission made by the Ministry of Safety and Security of the Northwest Province; interesting in that it comes from the Ministry of Safety and Security. It represents perhaps one of the first documents I've seen that really works in the direction of unitarian provincialism with a strong element of proposing that the provincial system in South Africa, like the German system, should be the administration of the country, while at central level the co-ordination and legislation should take place, while the real weight of administration should be



completely in the hands of the provinces because of the need for immediate delivery by the provinces. Just one or two to whet your appetite on these documents. Some people, and that's why I feel so strong about it, of the individuals who have written are complaining about that in Kempton Park they submitted documents and submissions and it was never... returned to them without being opened, and things like that. I'm referring to one letter of a certain Abrahams, Mr Abrahams, which complains of this type of thing, and that is our duty, to read it. A very interesting comment, for example, by a certain Mr Black from Johannesburg I believe, Parkhurst, Johannesburg, make a very articulated and quite confused contribution if I may say so and then at the end, in a small footnote print, he says the following which people must perhaps take note. He says: "I cannot fathom how your committee can ?? submissions as unstructured as this one" (his own one) "to extract a profile of public wishes and aversions. I'm inclined to believe that someone up high has decided it would be good politics to put up a show of soliciting contributions from the public, some of which may be read, most of them filed, and all but a few, which is in support of the views of the dominant group are being attended to. I would like from the Chair to assure people in the public who are thinking that way that we must see to it and will see to it that their opinions will be looked after. That's all about that. Could I then stress on the committee members please, give close attention to these submissions. It is... these submissions... very disappointing in other respects. Not one academic of some stature has thought it worth his while to submit any comments to this committee as called for in the papers. It is a lot of interesting comments, but there's no real systematic expert input being received at this stage. I think we shall, as a committee, have to take some initiative ourselves to request out some opinions also from out there. That's all about that. Could I then just, if you'll bear with me so long, introduce the subject on the table.

The whole question of provincialism or federalism in South Africa is, to my mind, one of the most central questions which we have to address in this country. As I have it, and I don't want to be partisan, give a partisan opinion for this introduction, but the way I read books and publications on federalism and systems of sub-national organisation these days, it does seem to me that the preponderant opinion at this stage is all the more that ethnic nationalism is probably the strongest force against federalism. Federalism seems to have become a very popular kind of solution for problems of ethnic conflict in public discourse. In fact, and please correct me -



let's start a debate on this, ethnic federations seems to be among the most difficult to sustain. They don't seem to merge very well into ethnic confederations. Am I talking irrelevant?

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You are giving us a lecture.

Chairperson

No, I am not giving you a lecture. I'm trying to introduce the debate. I would like to hear for the debate today what are the opinions on this basic position. How's the provincial system in the light of the positions, doctrinal or otherwise, which the parties take. Nothing more to say than that really. Could we then start with point 1 and hear the parties on that framework on the situation in South Africa as it stands. I think we should go alphabetically and, if I'm not mistaken, it will be first ANC, then DP, could you give it to me? Then Inkatha, and then NP, and then PAC. Am I right? Anyone from the ANC. Oh, and the Freedom Front. Are they here today? The ACDP is not here. ANC?

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Mr Chairman, again, if I may take a point of order, you have now raised... We've put forward philosophical views, I think all the parties did. If we were forewarned that you were going to raise this specific issue for debate, a specific point, in view of your introductory remarks, we would have been forewarned and somebody in our contingent would have been instructed to put our specific views forward in that regard. We are prepared to have discussed our position paper, but when you invite us to address a specific, fundamental issue like that, we from our side would have preferred to have known of this in advance so that we could have instructed somebody to attend to that. We would have come prepared and put our view forward as best we can, and also carefully worded because this is a very, very important issue you are touching, I think it's going to the gist of the problem. First of all, if we have to speak, we've got to rely on our leader here. I don't know whether she has fully applied her mind to that, and it will be very unfair for us to ask her to do that without having had the opportunity of preparing ourselves and I wonder whether we should continue on the lines that you have now suggested. I have no problem with that approach. The point I am raising: we are not prepared for that type of debate without being forewarned.

Chairperson

Could I just react to that before I give Mr Andrew a chance. I must say perhaps I expressed myself wrongly. I grant the point of a chance to prepare. I thought it was about nature and status, nature of the provincial system, that's how block 1 reads, and local government which we do tomorrow. The nature of the provincial system, I thought that would come



around because on the number 3 of our framework we talk about provincial principles, but this opportunity will arise again in future. I didn't feel like really imposing a debate on you, I thought I was just suggesting. I don't want to make a long story of this actually. Could I give Mr Andrew a reaction time?

Mr Andrew

Chairperson, as far as I understand it, this Theme Committee is neither a debating society nor a negotiating forum and our work, as I understand it, is for the parties having made submissions, for us in our report to identify what the common ground is and where the differences lie and how those differences are subsequently resolved is for another time and possibly another place. Therefore I would see that this morning's and tomorrow's exercise are in fact simply to give parties an opportunity to put their points of view so that we get to understand where we are, for questions to be asked, not in the sense of debating but in the sense of helping clarify whether a particular issue is actually a difference or common ground, in other words, if people are saying things which sound different, they may in fact mean the same thing after questioning because they're simply using different words, or on the other hand, of course, they use the same words and mean different things, and I see that as the purpose. So I actually think any debate, however interesting, however stimulating, on various theories on federalism or ethnic nationalism or anything else are in fact not the task of this group and those who want to organise lunch hour debates should be more than welcome to do so.

Chairperson

I take the point.

Mr Andrew

May I also just while I'm speaking make one further suggestion? I suggest that for each of the headings, you start with a different party so that you don't keep the same sequence throughout, you rotate so some parties who speak first, subsequently speak last and so on.

Chairperson

I take the point. Of course, we're not a debating society but you can also describe what's happening as a debate. Right, we start off with South Africa's specific conditions; it reads: "as in context of the provincial system". ANC? Mr Manie.

Mr Manie

Thank you, Chairperson. From our side, one of the key things that we thought needs to be described here, something that's known throughout the country, but that needs to be listed, is the very skew distribution of a number of things and we list some of these things now. Firstly, the way both the nature resources are distributed, both the natural and human resources



in our country. Secondly, the social infrastructure throughout the country is very skewed with regard to the various parts of the country. Basic services are also not equal. The other area that we felt that needs to be listed here with regard to the specific character of the South African society are the major inequalities that exist between rural and urban areas, also the way that economic activity is being concentrated; all the major economic activity in South Africa seems to be concentrated in the three metropolitan areas, namely Johannesburg, Cape Town and Durban. We also have a situation in South Africa where we now have to, and are in the process of moving from 14 completely separate administrations to create new administrations for the central departments and the provincial structures and one other feature which stands out very markedly is the wage gap in South Africa, which is also one of the highest in the world: 1:22, whereas in most other developing and developed countries you would have something that's closer to 1:10 and in a case like Sweden, it would be 1:6. Now, from our side we felt that we need to take these factors into account because when we do talk about the form of State and other issues that we need to be making our comments known about we need to understand what is it that this new parliament, the South African government, needs to do as priority tasks and goals which it needs to achieve because the form of State, how we devolve the various powers and functions to the different levels of government needs to make it possible for us to actually achieve these objectives and these goals which we have set for ourself and we've listed some of these things. We see as one of the priority goals of the new South African government and parliament to ensure that the delivery of basic services to all will be accelerated and achieved in the shortest space of time. Secondly, that we need to ensure that elected democratic structures are established at all the various tiers of government. Three, that we implement a system of participating democracy to allow organs of civil society to participate in the decisionmaking processes in our currently. Fourthly, that we promote and implement non-racialism as one of the key objectives as well as non-sexism to counter previous forms of discrimination and also to counter the ethnic divisions that were so marked in our country before and fifthly, that as one of the priorities we need to understand that we need to build one South African nation and we cannot perpetuate the divisions that existed in the past. Sixthly, to eliminate the inequalities and imbalances through ensuring that the financial system that we do have in our country will allow for some form of cross-subsidisation within the different levels of government and between the different levels of government so that we do not perpetuate that skewed



distribution that we have currently. We'd like to leave that as our initial input from our side.

Chairperson

Thank you, Mr Manie. Who's the second party again? DP. Mr Andrew?

Mr Andrew

Thank you, Mr Chairman. We see in the context of the topic that this Theme Committee is handling two key issues that are specific South African, or are not uniform around the world. The first is that South Africa is a diverse and deeply divided society. It's diverse in a variety of dimensions, almost anyone you choose to take, and if the Constitution is going to work successfully it has to cater for this diversity by devolving executive and legislative powers wherever possible. And the key challenge in formulating such a Constitution is to recognise and cater for the divisions that exist and the diversity that exists without exacerbating them. So one, on the one hand wants to recognise them and cater for them, on the other hand, you don't want to deepen divisions that may exist. So that's the one basic factor I think we have to take into account. The second factor is one which Mr Manie has touched on in some detail and that is that South Africa is also one of the most unequal societies in the world and whether you're looking at urban and rural or from one province to another or from different categories of person to another, we have enormous inequalities and a Constitution that we fashion here has to ensure that we do not condemn either individuals or communities or families or provinces to poverty in the future because of the way the Constitutional system is structured. It is our view that development is accelerated by devolution of authority, both decisionmaking and administrative and executive, and is not retarded because we believe that development takes place both best and quickest under those circumstances. And I believe, Chairperson, that when we are making a Constitution we have to deal with the realities of the situation in our country. We cannot wish that people are what we would like them to be, whether that be individuals or groups or communities of people. We have to deal with them as they are, certainly in a way that encourages what one might describe as improved circumstances, but nevertheless if we ignore the diversity of our country, what will happen simply is that many categories of people, whether they are rural or urban, or different regions, or different races, or ethnic groups, or language groups, or cultural groups, or whatever they might be, whichever one of the numerous categories we have diversity in our society, if we ignore that diversity and don't cater for it, you will have substantial proportions of people in this country who will feel they're living under a system of



domination, even if it's quasi democratic domination because everybody has a vote. That's not the beginning and end of democracy and freedom for people and if they have that sense of domination, they will then resist the main thrust of national endeavours because they will feel they are being threatened and being put upon and they are not actually part of the process in any real sense. There will be entrenched minorities, however they may be defined, on a language basis, or a regional basis or whatever, and, in our view, if you don't cater for that diversity then, you're going to have a feeling of domination and that will destroy any prospect of national unity, it will not in fact enhance it. That is the two key issues we believe then have to be catered for: addressing the diversity issues and the deep divisions, but at the same time recognising the massive inequalities which cannot be allowed to persist. Thank you.

Chairperson

Thank you, Mr Andrew. Next we've got... The Freedom Front's not here today. Inkatha Freedom Party.

Mr Smith

Chairman, we have ten points under this submission. I think I'll be very brief. People can read them themselves at a later stage. Maybe run through them sequentially. Number 1. As with the DP, we believe South Africa is a plural society and whilst there is commonality on a great many issues and we don't deny it at all, we believe it's essential to recognise constitutionally this diversity. Secondly, the people of Kwa-Zulu Natal in particular have a particular political identity which they wish to preserve as an autonomous region within the country. This too needs to be recognised constitutionally. Thirdly, we are of the view that there are a great many views as to the form of state that should come about in this country, but we believe that to the extent that there is a dominant view within a particular province this view should be taken into account in devising the relationship between first and second tier of government, it cannot simply be opposed from the top if the dominant view in any particular province is different to the view held at the top, and this could apply to several provinces, not simply the one I mentioned. Mr Chairman, the history of federalism goes back to 1910, of course, and the reason we didn't get federalism in 1910, certainly within the "White perspective" was simply because the desire of the time was to maintain white domination, but we believe that in the current context federalism offers us the best opportunities to freedom and democracy for all. Simultaneously, sir, the apartheid regime created self-governing territories, the TVBCs and they had significant levels, although variable levels of autonomy and this autonomy hasn't been reflected in the



Interim Constitution and it's an omission

**(end of tape 1)**



**THEME COMMITTEE  
1 FEBRUARY 1995**

**Tape 2**

**Mr Smith**

...and this autonomy hasn't been reflected in the Interim Constitution and it's an omission that also needs to be taken into account in the drafting of the new Constitution. Sixthly, and we take the point of view expressed by the ANC in terms of the needs of the people and we believe that it should be addressed in a number of manners. One of the key ones is the empowerment of provinces as the primary expression of government of people and it's their task to secure the socio economic advancement of the people of the country and to ameliorate the legacy of the past. Seventhly, we believe the implementation of the Interim Constitution has exacerbated political tensions between the centre and the provinces and the IFP has always been of the view that with any form of regionalism or federalism, there's almost an automatic process at work whereby the centre tries to strengthen itself at the hands of the provinces and we see that already in the implementation of the Interim Constitution. We are of the view that provinces believe that the new Constitution needs to more clearly delineate the relationship between themselves and the centre, that is the case in the present Constitution. Eighthly, the vast disparities in per capita income and wealth and, in fact, provincial differences is a key issue, particularly the dominance of Gauteng in our economy and we don't believe, however, that this is a factor which negates the possibility of federalism. We strongly believe in fiscal equalisation, federal transfers and we believe that Constitutional provision should therefore be made for provincial revenue raising capabilities in tandem with the centre. We believe therefore in a parallel system of revenue raising and fiscal transfers to achieve a balance between, a legitimate balance, between provincial and national needs. Ninthly, we do not believe that granting limited exclusive powers to the centre weakens the central government; in fact, it frees government to play a strong co-ordinating role and it improves efficiency by clearly focusing accountability and responsibility for specific functions within the provinces and the centre respectively. There's no contradiction at all therefore between federalism and strength. Federalism does not dismember a country. And finally, Mr Chairman, we believe, and I think it's a view expressed by the previous speaker, for a Constitution to last it has to be acceptable to everyone, to all people, and this can only be the case in this country if provincial differences are recognised and



points to which I have referred are taken on board in the drafting of the Constitution.

- Chairperson Thank you, Mr Smith. Following on them, we have the National Party. Dr King, are you going to talk?
- Dr King Mr Chairman, yes. I'm now not quite sure whether we follow the original scheme; in that situation we would only have a very few points to make and that is that...
- Chairperson Could I interrupt you, please? Could I just say that we are following still the original scheme. It will sometimes not go exactly, but we would, please, like to follow it. Thank you.
- Dr King I am just referring to that because of the, for instance the ANC actually touched on both provincial and local government and we've tried to separate them as originally been indicated. Shall I just put them together. Actually it does make it easier to do, the two together.
- Chairperson Thank you, could we just as a point of order.
- Mr Manie Chairperson, as the person who actually made the input from the ANC side...
- Chairperson Are you explaining or are you making a point of order, Mr Manie?
- Mr Manie I am raising a point of order that the statement is not correct that we made by the National Party that we touched on the other areas. We tried to confine ourselves to the area and we can't see how it should influence the input from the NP.
- Chairperson Thank you, Mr Manie, we note that. Dr King, can you continue with the substance, please?
- Dr King Mr Chairman, as far as specific conditions are concerned, I am going now do both the provincial and the local government. That's my understanding, my understanding may be wrong as far as other people are concerned. It was not a point of criticism levelled at all. I was simply saying it would make it easier for me if I could do it in the same way because they are inter-related.
- Chairperson Could I just ask you something? I would have preferred from the Chair that we restrict ourselves today as far as possible to provincial matters because we'll have a sitting tomorrow, but if it's necessary to be fair for you, if you feel you want to talk



a bit, I'll allow that. If you could just then be short with the local government and concentrate as far as possible on the provincial government. I'll not stop you if you talk local government. Thank you.

Dr King

Mr Chairman, as far as provincial government then is concerned there are two points we would like to make - I shall leave then out the local government part - and that is that South African conditions are such that the reality is we have nine provinces and that is a given, there's no way that we can deviate from that. And, secondly, that we have, as has been pointed out by the previous speakers, a very diverse multicultural community spread through these nine provinces and that we obviously will have to accommodate them within the new Constitution and how we will go about that, we will do under point 4, er point 3, under Points of Departure.

Chairperson

That's your view on the realities of South Africa then. Thank you.

Dr King

That is as far as the provinces go.

Chairperson

Thank you. Thank you for your contribution. Now we have the PAC, Ms de Lille.

Ms de Lille

Thank you, Chairperson. Before I start, I would like to ask you whether it's possible for me to present our submission a summary of our ?? submission. I didn't have time to change my submission to fit the new framework because I've been absent from two meetings, Friday and Monday, and just give a full summary of our points, of all of them, not necessarily in that order. If that will be acceptable to you?

Chairperson

If you could just give me a chance. Ms de Lille, I would gladly give it to you. You understand the manpower, woman power, problems in your party, and I'll allow to make your submission fully now and you'll also get time to react again later on if you want to.

Ms de Lille

Thank you, Chairperson. The PAC has always maintained that interpretation and understanding of the Constitutional principles must precede any debate on the final Constitution and we're also of the opinion that the ideal situation for our country today would be return maybe to the 1909, 1961, 1983 Constitutions which all provided for a full unitary state, since now we, for the first time in the history of this country, have democratically elected representatives. The proponents of the federal state have in the past used the unitary state as a very powerful and



undiluted tool to oppress the majority of our country and it is ironic to us now that the same parties want to take the power away from the people by diluting it into a federal system on the basis of divide and rule. These parties are fully aware of the advantages that the unitary system will have for empowering the majority of our people. What South Africa needs now is a strong central government to provide the necessary programmes to correct the imbalances of the past and to fully empower the people both economically and politically. When considering, Chairperson, the various constitutional principles that will affect the work of this Theme Committee, the PAC introduced the following summarised proposals, taking in consideration the confines of the constitutional principles. Constitutional principle number 1, which we feel also be relevant to the debate at a later stage, refers to a sovereign state. With such a state there can be a devolution of power to various levels of government. We can have a provincial and local government without having independent states, the emphasis here that we can never vulcanise our country again. Constitutional principle 4 states that the Constitution is a supreme law and will bind both national and provincial government. The constitutional principle number 16 stated: "the government shall be structured at the national, provincial and local levels". These principles rules out a pure federal state, it refers to provincial and not federal. Constitutional principle number 18 "the powers and function of national government shall be as defined in the Constitution" of principle 18.2 "the powers of the provincial legislature shall not be less as that stated in the Interim Constitution therefore the existing concurrent powers cannot be removed from provinces, but only more can be added". Currently the Interim Constitution gives no exclusive power to provinces and the PAC supports this. Constitutional principle number 19 "the powers and functions of both national and provincial government shall include concurrent and exclusive powers". Constitutional principle 19 should be read subject to constitutional principle number 21. To maintain a strong central government the PAC's view is that as little as possible exclusive powers must be granted to provinces. Then constitutional principle 21 this principle can provide for either a unitary or a federal state and it's halfway between the two, according to the way we see it. And to achieve effectiveness, constitutional principle 21(1) can be used in both instances for national and provincial government. Constitutional principle 21(2) give the national government the power to intervene in the protection of national interests regardless of exclusive powers it might be given to provincial government. Although constitutional principle number 19 gives concurrent and exclusive power to national and provincial



government, 21(2) states that the national government can overrule exclusive powers of provinces. 21(3) refers to foreign affairs which remain exclusively for national government. 21(4) as past uniformities required national government powers exclusive here. 21(5) refers to the national economic policies also exclusive to national government. 21(6) on provincial planning, can either be exclusive or concurrent. 21(7) mutual co-operation, must be concurrent only. And 21(8) where there's disagreement on exclusive and concurrent national government will prevail. Constitutional principle number 22 states that the national government shall not encroach upon the geographical and functional integrity of provinces, when we look at this, Chairperson, in practice to us it really means nothing because it looks to be similar like constitutional principle number 16. And then 23 refers to any dispute on concurrent powers between national and provincial government and the national government here again get precedence. These are some of the identified confines that we must consider in our debates. As a debate unfolds and we get into details, we will make further submissions on these constitutional principles. I just want to deal briefly, Mr Chairperson, with some of the elements of a provincial system. The Senate - we see that if you have a provincial system as opposed to a federal system, the Senate really becomes obsolete then there is no need for extra representation for provinces at the level of central or national government. The executive structures at provincial level - we see that the executive structures must be responsible to the provincial legislature, in other words, the executive should be elected from amongst the members of the provincial legislature to ensure a representative and democratic executive. The executive should not be an enforced coalition between parties participating but that the majority party should exercise executive power. Under the legislative structure we see that it should be directly elected bodies, according to a mix system of proportional and constituency representation. On fiscal relationship our view is that fiscal and financial powers of provinces should be determined by central government according to the provinces' respective fiscal and financial needs and that provinces must not be granted taxation rights. I'll stop there, Chairperson, and contribute later on. Thank you.

Chairperson

Thank you very much for that contribution, Ms de Lille. Perhaps you could just put down the microphone. Our two microphones seem to interact, or something else is wrong. Any other one on at the moment? Just a moment. You can hear me, I hope. The next round, could you please guide me as a meeting. Would you like general discussion now for a set time or would you like to continue with the different points?



Mr Andrew?

Mr Andrew

I would like to suggest we continue with the points simply because while it may at first sight appear you get a greater focussed discussion if you took it item by item, on the other hand it is clear from the presentations that different parties will have included different aspects of their perspectives under a particular heading and you might find questions arising that were going to be covered anyway under the other headings. So, if I might suggest, I suggest we go through and have each of the parties do their presentations under each of their headings and then coming back to discussion, maybe you then do the discussion also under each of the headings so you then start with the first heading for discussion or question purposes.

Chairperson

Thank you. Is it generally agreed? Okay. Then we go to the second round. This time we start with the DP. Mr Andrew, you also have a lot to do today, you don't even have woman power available.

Mr Andrew

Chairperson, the issue of democratic principles obviously is important for all aspects of the Constitution and when one looks at that topic it really is as long as a ball of string. I mean one could make a 20 second presentation or you could make a 2 day presentation on democratic principles. I shall be very brief. Democracy, let us not forget, literally means people power and in our view an absolutely key element of democracy is freedom that individuals have to make choices and if you are not enabling individuals to make choices in their own lives across as wide a spectrum as possible, you're not achieving what democracy should be attempting to achieve. Specifically we see that the democratic principles of representivity, accountability, responsiveness and openness which are in fact required of us by the constitutional principles are best served by government being as close to the people as possible because the closer the decisionmakers are to the people who are going to be affected, the more accountable they will be and the more responsive they will be to what the needs of those people are and whether those decisions relate to issues such as housing or education or any other of the myriad things that affect people in their daily lives, the closer the decisionmakers are to the people affected, the better the decisions are going to be and that would in fact enhance democracy in our society. Thank you.

Chairperson

Thank you. Following we have the IFP whose going to talk. Am I right now? Ja, IFP, ja. Mr Smith, Dr Rabinowitz?



Mr Shandu

Thank you, Mr Chairperson. Mr Chairperson, my name is Mr Shandu. Since it's been agreed that democratic principle's relevant to the framework of Theme Committee 3, the IFP's first submission of the character of state is what we are talking about now because we think democratic principles have been actually expressed very well. So in there we talk of the supremacy of the Constitution. We think in the IFP the Constitution shall be justiciable, which means individuals have recourse to the constitutional courts for redress or amelioration for wrongs that have been done to them and that the Constitution... Of course, initially the Constitution should be the supreme law of the land and that the Constitution should ensure that equality before the law for all persons is maintained and is equitable. The Constitution shall be implemented by the provinces in their respective areas of constitutionally recognised autonomy such as, for example, you would find that in terms of the principle of subsidiarity. Social and cultural formations and individuals shall implement the Constitution in their relevant constitutionally recognised autonomy as well. Then we talk of the separation of powers. There shall be separation of power between national and provincial governments. In other words, provinces shall be the primary government of the people. Only in the ??? of national government shall be listed and therefore the provinces shall have residual powers. Provinces shall have full judicial powers in all matters of competence and national government shall not have overrides, in other words, provinces shall have exclusive powers, but both shall have exclusive powers in area of their competence, in other words where national government has a particular competence devolved to it, national government will have exclusive powers in that area but, to a large extent, the power shall rest with the provinces. Then we talk of the types of democracy. In looking at democracy, we think that participative democracy is the best, in other words, that legislative assembly members debate their bills, there should be public participation in hearings before legislation is passed, and petitions also should be given an opportunity for people to make. And we also believe in direct democracy, which means if people wish to do so, they may call for referenda or the plebicide as the Constitution allows. And we also talk of representative democracy. In other words, we believe that it is not everybody really who can come and sit in National Assembly, but that people should be exposed to any lateral system which will enable them to elect people who will represent them at national level. National government should set out general principles of national electoral systems even though we believe that provinces should have exclusive powers, but one of the powers that national government shall



have is that of setting out principles and parameters through which electoral system shall be used. Transparency and accountable democracy, right of access to all government information. Of course, this doesn't necessarily mean that you open up even those things which are sensitive. In other words, we are talking of qualified access to government information. Administrative justice and reviewability of all administrative action, public officers shall be responsible for gross negligence and malice and we believe that war should be prohibited. In fact war should not be used as a means of solving international controversies and shall only be allowed in defence of the sovereignty of the State and we believe that South Africa should be regarded as a sovereign country. Whilst we believe that provinces should have power, residual powers, that South Africa should not be separated into separate independent states and I do wish perhaps to point out the difference in which we understand it. When we talk of autonomy of the provinces, we are talking of autonomy of the provinces in the areas of their competence. We are not talking of independent states as one would look at the TBVC states as they were before. Thank you, sir.

At this juncture Ms de Lille took over the chairing of the meeting.

Chairperson            Thank you, IFP. Can we call on the National Party? Thank you.

Dr King                Madame chairperson, I am actually going to go back to the specific conditions I mentioned previously and I'm going to add those on the local level because whatever has to follow is now really going to be distorted unless I bring in that perspective as well. And then I will, under point 4 as I have stated, or was it point 3, I will bring in the rest of our submission. Point 3 - Points of Departure. I have mentioned that under provincial specific conditions we see that we have the reality of nine provinces and a deeply divided multicultural community, but also we see where we look more at a local level that the needs of the various communities differ for instance between rural and urban areas, but even within rural areas when we talk about rural areas of small towns and the deep rural platteland area which is mostly farming area, otherwise also amongst urban conditions, even between the urban conditions of the various larger centres in the country. Secondly, we again on a local level must take note that even within smaller geographical boundaries we have a multicultural community set-up there again, and then the local inequalities in services and infrastructure between neighbouring cities and towns and suburbs which should be addressed by the Constitution.



Thank you.

Chairperson Thank you, Dr King. The next party is the PAC, but I appealed earlier on that I would not be making another submission according to the points.

At this juncture the original Chairman returned to the chair.

Chairperson Thank you for your patience. Are these things now working better? I take it further away? Is it okay? We've finished with the democratic principles. The ANC? What does the ANC know about democratic principles? The ANC will now speak up, we've got a speaker there.

Mr Cronje Mr Chair, I say that these democratic principles and values that we talk about now should be the sort of higher principles and values that should guide the writing of the Constitution so therefore I won't repeat all the details such as division of powers etc. and also this is not necessarily an ANC position power, it should be more in the form of debate that some of these things are introduced. So the first overriding one is the notion of freedom, that there should be certain rights and freedoms which the citizen can enjoy either individually or collectively and which should be above regulation by the government of the day and outside the political process. These rights and freedoms are normally enshrined in the Constitution and protected by an independent judiciary, well described in chapter 4. Second overriding principle and value is that of equality in justice. All persons shall be equal before the law. Administrative justice in the sense that people shall have equal access to services rendered by the State and that there shall be no discrimination in terms of rendering those services. Now, because of past discrimination, the State also has an obligation to provide basic services to the poor at lifeline tariffs while aggressive tariffs can be charged on the basis of the level of service and the ability to pay. The other issue is that an economic framework should be and can only be agreed upon at a national level, in other words, an equal economic framework and that any distortion in the means of production must be agreed at a national level. In other words, you can't have one province giving away free land etc. etc. while they are still dependent on the central for funding, in other words, they can't have all schools and no roads etc. so that the economic framework should be on an equal basis across the country. Representation. All adult citizens shall have the right to vote and stand for election on representative bodies at all levels and all votes should be of an equal value within a particular demarcation. The notion of participation is to allow for the



ongoing participation in policy formulation, decisionmaking and implementation and that the State should be obliged to create structures in which organs of civil society can take part on an ongoing basis. There should also be the ability of individuals and groups to make inputs in those decisionmaking processes. The issue of petition and referenda to decide on the issues of major public importance at all levels. In terms of decisionmaking the major criteria should ultimately be that the will of the majority should prevail; while checks and balances and other mechanisms for consensus seeking should be built in ultimately the will of the majority cannot be frustrated. And then openness and I think that is well described in the Constitution and I won't elaborate on that.

Chairperson

Thank you, Mr Cronje. Now, it must have been strange for the ANC to be last this time. Next time they will be second-last. we now go to the third round. Before I address that, could you for purposes of the point General after our discussion... perhaps we could just have a small discussion. It has been suggested to me to break the big stress in this meeting, this committee must perhaps consider having a social event or gathering somewhere. Do you want a smoke break perhaps or a tea break to be ready, or coffee? I beg your pardon, everyone is talking to me. Order. A braai? Not now, we will discuss it under general whether the Core Group should arrange a social event and we will request our secretary or someone to arrange we make a coffee break as soon as coffee could be available, tea break, if that can be arranged and then we will be informed when we break for that, we'll also give occasion to smokers. Now we continue to point 3. It reads: "provincial principles, local government principles or points of departure". We are now first starting this time with the Inkatha Freedom Party. Will Dr Rabinowitz speak, you have the word.

Dr Rabinowitz

Mr Chairman, before I home in on provincial principles, I would like to give a brief introduction, a general introduction.

Chairperson

We don't hear you very well.

Dr Rabinowitz

Is this the mike that's working? I was saying that before I home in on the specific topic of principles of provincial government, I'd like to give a general introduction in order to place the points that we make about provincial government in perspective. I will oversimplify in talking about two mainly different types of Constitution because those represent the two opposite extremes that we are looking at. The one type of Constitution is the one which vests power mainly in one institution of government and believes that that institution



should be entitled to impose its vision on the majority of people in the country because that institution is best able to cater to the needs of the majority of people. The other type of Constitution is one that recognises that there are failings in individuals and there are failings in institutions of government; individuals are fallible and they also have to be protected from their own foolhardiness and their selfishness towards one another and institutions no matter how powerful they are and how much one believes in their will to do good, can make mistakes and are not necessarily the organs which can most efficiently and effectively govern the country. The mistakes that we have seen made by very powerful institutions are those which the National Party has perpetrated in the country over the last 40/50 years and therefore we believe that it is important to recognise that power can corrupt and that if one wants the Constitution to last for all the people who might be in power no matter which party it is, whether it's the National Party, the IFP or the ANC, one wants a Constitution to last not just for the party that is in power at the time, but to be acceptable to all the people and to all the parties. Now that is the type of Constitution that the IFP is considering in all its submissions. It is a Constitution which wants checks and balances at every level of government and the checks and balances, for example, and I'll just run through them briefly before I home in on the ones that we talk about in the provincial system. Of the people against the government by giving the people regular elections; of the government against itself by separating the executive, the legislature and the judiciary; of one level of government against another, the province are having some powers vested clearly with the province and the centre by having some powers clearly vested with the centre; then the Senate against the legislature, by making the Senate an effective check against the legislature; then having vigorous competition allowed for in civil society so that there are conflicting interests of different groups of people in civil society to be a check on one another so that there are no monopoly interests; and finally, having a Bill of Rights. Now, I will home in on our specific submission which is basically the way in which provincial power and central power should be balanced one against the other. First of all we say that the type... we talk about the type of powers to be allocated, and we say that all powers of a State must be allocated between the national and provincial level of government. In other words, we believe that the Constitution should only provide a framework for local government legislation. We also believe that residual powers, which are all those powers that are not registered in the line function of the government, should be left with the province. And I might say



also a lot of our clauses are written because we recognise that even where there are strong federal systems around the world, there is a tendency for power to creep towards the centre as has been demonstrated in Germany and in America, therefore certain techniques should be introduced so as to prevent that from happening. For example, leading residual powers in the provinces is one of the ways of preventing power from inevitably creeping towards the centre. Those residual powers we see as being powers, for example, including matters of corporate law, family law, criminal law, inheritance law, contract law and administrative law, plus all issues which have not yet been realised to be of importance to legislature, space law, virtual reality law, you name it, it may become important at some time in the future. Then with regard to the principle of subsidiarity, as Mr Shandu has already mentioned, we believe that the provinces shall be the primary government of the people and shall be entitled to those powers and functions which can properly and adequately be exercised at provincial level. In fact, we believe in the principle of subsidiarity right from the individual upwards. Power should be vested with the lowest possible level before being divested to the next level able to cope with that power. If individuals can cope, they are vested with the power; beyond individuals, the family; beyond family, the community; beyond community, the local government; from the local government, the provincial government; and what the provincial government cannot cope with, the national government copes with. The allocation of powers. Only the powers of the central government shall be specifically listed in the Constitution. Now, our reason for that is that we feel that the central government should have sufficient power to adequately and effectively govern the country so we want that power to be limited so that therefore you only write the exclusive powers the central government will have and that all residual powers and all other powers are vested with the provinces. We also believe that the provinces shall have full judicial powers in all matters of their competence in addition to fully autonomous legislative and administrative powers. In the relation between powers we believe that there shall be a separation of powers between national and provincial level of government, a clear separation of powers, and that there should be no overrides that the national government has over the provinces because the provinces, we believe, shall have exclusive powers. But, by giving both the provinces and the central government exclusive powers, we do believe the central government should have complete open ability to intervene in the affairs of the province if they fall within the competence of the central government's exclusive area of jurisdiction. For this reason, as Mr Smith pointed out, the



central government does not become weak, it remains strong because it has at least 17 exclusive powers which include co-ordinating powers over finance and economic affairs. The technique, we believe, is an effective one to prevent the provinces from acting completely autonomously to enable the central government to have a certain degree of check over what the provinces do, and the one that we believe is better than overrides, is national framework legislation. The central government writes a delimiting framework within which the provinces are entitled to do their own legislating. Fiscal autonomy. The IFP believes that provinces shall have an original and residual taxing and revenue raising powers on the basis of a parallel system of taxation. Now the point was made by the ANC that in order to redress the wrongs of the past, and the imbalances between the provinces, it is only the national government that will be able to redress those wrongs, but we believe that it's also very important not to crush incentive, therefore to have a double system of taxation, one in which the provinces in order to create incentive within the provinces, have their own system of taxation and retinue raising, and then another, which would be a pooling of funds from all the provinces, which will be redistributed from the wealthier provinces to those which are poorer. Fiscal equalisation. There will be constitutionally mandated equalisation, in other words, it will be left to the financial and fiscal commission to decide how those pooled finances which come from all the provinces should be equitably distributed to the different provinces. The entrenchment of provincial autonomy. Provincial autonomy, we believe, should be indestructible, and no national legislative or executive action shall be valid if it encroaches on provincial autonomy. The constitutional court should judge any conflict between provinces and national levels of government, and in addition, provinces should have the opportunity of influencing, by means of their own judicial system, how the national constitutional court interprets the constitutional provisions which define their autonomy. And the way in which we believe that that influence should be implemented, is by giving the provinces their own constitutional court, and, when the constitutional court is deciding matters which deal with conflicts between the provinces and the centre, the province should be able to have representatives sitting on that constitutional court. With regard to the principle of asymmetry, here again we believe that if the constitution is to last, and to be acceptable to all the people in the country, and to be a constitution which brings about peace, regional or provincial differences must be taken into account, because if that is not the case there will always be a group of people who feel that they're being imposed upon.



I'd just like to use a very simple metaphor, it's the metaphor of a family. One can have two different types of family, and this fits in with what I'm saying about asymmetry. One can have a family in which the parents of nine children say, "We know what's best for you. You're all very different, but we think that we know how you should run your agriculture in your gardens, or your farms. We know what kind of housing is best for you, we're going to decide who should protect you, we're going to decide how your monies should be distributed between one another, and that is a unitary state, that is in a sense what is being suggested by a unitary state having overall power, whereas the other kind of system is one in which all the members of the family are given a degree of autonomy; the parents have a caring role, an overview, a coordinating role, but each member of the family is entitled to choose for itself: It's own system of education, it's own type of agricultural policy, and its own way of making it's own money. Provincial autonomy and economic unity, the segmentation of government along provincial divides, does not imply, nor require the segmentation of the economic continue, and the establishment of a federal system modelled after the U.S.A. or Germany for example, has no negative effect on the preservation....

**(end of tape 2)**



**THEME COMMITTEE3**  
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**Tape 3**

**Dr Rabinowitz**

... have no negative effect on the preservation of national economic unity. With regard to the Senate, in order that the Senate should be an effective check on the national government, which is not the case in our present Senate, we believe that the Senate should have less legislative authority than what is given to the National Assembly, and the Senate should represent the provinces and its members by being indirectly elected by the provincial legislators. In other words, the senators should not be elected in the same way as the members of the National Assembly because the senators should be elected to represent the provincial legislature in consultation with the provincial cabinets. Each province, we feel, should be equally represented by the Senate, again as an important check, the smallest province and the largest province should have the same number of representatives in the Senate, not representing the same kind of representation as in the National Assembly. And the Senate should have a specific power to monitor executive functions such as defence and foreign affairs in which provinces have no competence. That's it. Thank you.

**Chairperson**

Thank you, Dr Rabinowitz. Although some parties might not like your parties viewpoints, you must be complimented by always having ready papers well prepared, available, for example, if I may be so pertinent, on page 6 of your submission, footnote 3 is perhaps the most honest formulation of subsidiarity I've seen in recent times, which will be most informative. Thank you. The next party then is National Party.

**Dr King**

Mr Chairman, our point of departure and I'm not going to give the principles any further because that is really taken into our points of departure. The following points of departure apply as far as the National Party is concerned. In order to serve the citizens and in order to prevent a concentration of powers and to attain a community-based government, there shall (a) be a vertical separation of powers in a balanced way between national, provincial and local levels. Secondly, the exercise of State power shall be controllable and within set limits and the powers of provincial courts in relation to the constitutional courts must be spelt out. Thirdly, there shall be representative government at all levels, there's national, provincial and local. this principle implies proportional representation in all legislative



and executive structures at all such levels. The vertical separation of power shall be founded on autonomous and original powers for each level of government and each level's position vis-à-vis the other must be constitutionally balanced. At the national level, the Senate shall represent the provinces and its members shall be directly elected and empowered to act authoritatively on behalf of the provinces jointly and severally. The Senate should be able to play the role of co-ordinator and protector in regard to intergovernmental relations; also co-ordinator in regard to inter-provincial commerce, regulatory effects of central government's policies. It should also be the co-ordinator and protector in regard to inter-governmental fiscal relations and of borders. The next point is the nine existing provinces must be retained. Next one, each province must be constitutionally equipped to provide for the special needs and capacities of its inhabitants. Levels of decisionmaking will be determined with regard to the quality and effectiveness of the rendering of services in accordance with the principle of subsidiarity. The powers and functions of government at provincial level shall include exclusive and concurrent powers as well as the power to perform functions for other levels of government, on an agency or a delegation basis. The allocation of powers to provincial and local level should be conducive to firstly, financial viability at each of those levels; secondly, effective public administration; thirdly, national unity; and fourthly, legitimate provincial autonomy; and, finally, should acknowledge the cultural diversity. A further point of departure would be the national government shall not exercise its powers whether exclusive or concurrent, so as to encroach upon the geographical, functional or institutional integrity of the provinces. The fiscal powers and functions of the national and provincial government shall be defined in the Constitution. A framework for local government powers, functions and structures shall be set out in the Constitution and shall furthermore make provision for appropriate fiscal powers and functions for different categories of local government. Each level of government shall have a constitutional right to an equitable share of revenue connected nationally. In addition, we also submit that we would ask for an electoral system based on proportional representation, which may possibly include elements of geographical representation. Also the viability of corporate self-determination as a method for furthering the rights of self-determination of linguistic, cultural and religious minorities to be explored. A provincial legislature shall be entitled to pass a Constitution for its province within the parameters set by the constitutional principles and the new Constitution. For a variety of reasons it could be expected that provinces will develop its own and typical character. Such



development should be encouraged, but then subject to loyalty to the single sovereign state, which loyalty shall be premised on the enhancement of national reconciliation. In that sense provincial loyalty should be encouraged as it could and should serve as a springboard for the enhancement of loyalty to the one sovereign state.

Chairperson

Thank you, Dr King. Is the PAC going to talk in this round? Thank you. ANC? Have you got a speaker available? Mr Gordhan? Too many want to speak and they can't decide who will speak. Mr Suttner? No one is going to speak, relinquishing this round? No speaker in this round? In order. The DP is next in this round.

Mr Andrew

Our point of departure, Chairperson, is our view that constitutions and governs as one of their primary objectives, should be to empower individuals to take control of their own lives. Only then, in our view, can an individual exercise the freedom, the rights, the opportunities and the responsibilities of an open and democratic society. As a result, we believe that people in general should be left to get on with their own lives, make their own choices with the least possible interference from government at any level. Now, that means that our approach is what concurrently, in the current jargon will be called a "people-centred" approach, in which individuals, families and communities will be left to do whatever they are capable of doing and that's your starting point. In other words, you start from our perspective with the individual and the family and the community, you don't start at a national level and say "what should we hand down"; we say "what are those people capable of doing? Leave them to do it and don't interfere". And then one's first recourse on anything that is not practical for an individual or a family to handle, is to give that responsibility to a local government and then in turn what a local government is not capable of doing, you give it as a responsibility to a provincial government and finally, only what neither one of the other levels is able to carry out effectively, becomes a central government or a national government responsibility. And it's for these reasons that we in the democratic party attach very great importance to both provincial and local government because we believe that in that way you can take government closest to the people and I've outlined in previous sections why we believe that it is important and the people with the democratic responsibility can be taken closest to the government. Now, in this sphere of critical importance to us is that the powers and functions of each of the levels of government must be defined in the Constitution in a manner that will allow for co-operation, but



requires - and this is really, together with starting with a people-centred individual and family approach, this is the cardinal point in my view - that exclusive powers and independent sources of finance be provided for in the Constitution. If any level of government does not in practice, other than kind of emergency type of situations, have exclusive powers of a certain sort and does not have access to independent sources of finance that are not subject to a discretion of some other level of government, then the powers that you grant are meaningless. Thank you.

- Chairperson Thank you, Mr Andrew. That finishes that round, if I'm not mistaken. Could I just ask the coffee/tea situation? They will let us know when it's available. So, we continue with elements of provincial system, point 4, executive structures, legislative structures etc. This round is now, I'm getting confused, this will now start with National Party. I've received a note from Dr King. Can I read it? She wants to make a short declaration. Die woord is verklaring.<sup>1</sup>
- Dr King Mr Chairman, I just thought that I would do that just before we adjourned for tea.
- Chairperson Before you adjourn for tea. We'll await for this stage until we adjourn for tea, then you'll make the declaration. What is the word for verklaring (statement)? Not a declaration, a statement. When I start that time of the morning my English departs after about six hours of work.
- ?? You should get to bed earlier and stop this high living, Mr Chairman.
- Chairperson The National Party will now talk on point 4.
- Dr King Mr Chairman, we've completed...
- Chairperson You've completed your very substantial, the previous round was substantial, input. And I think it was governed thus that next party is the PAC. Do you want to talk in this round, Ms de Lille? Thank you very much. Next party. ANC? Almal is uitgepraat<sup>2</sup> Anyone from the ANC on point 4, elements of the provincial system? Again then DP input in this regard.

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<sup>1</sup>The word is "statement".

<sup>2</sup>Nobody has anything further to add.



Mr Andrew

Chairperson, we believe that the structures provided for in the 1993 Constitution are essentially appropriate. Although we believe they need to be reduced in size and that the electoral system needs to be changed to incorporate constituencies and proportional representation. Secondly, we believe that the role of the Senate and its relationship with the provinces needs to be developed and defined better than it is at present. And thirdly, as I mentioned a few moments ago, we consider the fiscal relationship as critical. If provincial and local governments do not have guaranteed access to tax revenues without interference from central government, their powers will be almost meaningless and their democratic accountability to their voters, a charade. Thank you.

Chairperson

Thank you, Mr Andrew. Next? Inkatha Freedom Party.

Mr Smith

Chairman. Perhaps we should say that initially we omitted it, it's so obvious. We accept the provinces as they are, subject to their negotiating boundary disputes. But the key issue for us under the elements of the provincial system is simply one issue and that's the question of provincial constitutions. Now, first of all, we believe provinces should be entitled to adopt their own constitutions autonomously provided that the Constitution does not exceed the area of autonomy recognised to the provinces and that this limitation shall be fully justiciable and reviewable by the constitutional court. As a consequence of this and a consequence for the federal position we hold, we are of the view, if you are looking at elements of the provincial system, that it is provincial constitutions - not the national constitutions - that shall determine any matter related to the organisation and operation of the legislature, executive, judicial and administrative branches of the provincial governments. So whilst we as a party have a range of positions on what we believe these structures should be, we believe they fall within the ambit of the provincial constitution and not the national constitution.

Chairperson

Thank you for that straight point. Now we continue. The coffee doesn't seem to be ready, the water is cooking very slowly in Cape Town. Before we go on to Miscellaneous, could we just have a look for a moment.

Mr Andrew

Why don't you see if you can finish this, Mr Chairman, before tea and then we can get onto discussion after tea.

Chairperson

Yes. The coffee's right? We've got only the Miscellaneous and then we come back for... I think we'll depart now,



verdaag<sup>3</sup>now. Before we go, ladies and gentlemen, members, I would like to give the word to Dr King who wants to make a statement.

- Dr King Mr Chairman, thank you very much. I will be very short and brief. Dit gaan regtig om versoening. Ekskuus, ek sê dit nou ook maar in Afrikaans, partykeer laat my Engels my in die steek.<sup>4</sup> But I will read this in English. Mr Chairman, Mr Marais reference at the beginning of this meeting regarding the abilities of fellow members is a personal one and not one coming from the National Party. The National Party has the highest regard for the talents and abilities of all members of this Theme Committee. We also plead for greater accommodation amongst ourselves and a commitment to getting down to the work before us. Thank you.
- Chairperson Thank you very much. Then we, ons verdaag<sup>5</sup>. Reaction, Mr Gordhan? You have the word.
- Mr Gordhan Chair, we appreciate the reconciliatory statement that the National Party has issued and we welcome it and for the record, I would like to submit a list of names of our colleagues who were late this morning and their own reasons for being late. You will notice from what is written here, Chair, that all of them were late because of the weather and the traffic congestion.
- Chairperson Thank you. We receive it at the table and put on record... Thank you. Then it's coffee time.
- Chairperson I'm not sure what party must begin now. PAC must begin. Ms de Lille, do you want to...?
- Ms de Lille No contribution, Mr Chairperson.
- Chairperson Thank you. Next the ANC contributions.
- Mr Gordhan No, we have nothing to say, sir.

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<sup>3</sup>adjourn

<sup>4</sup>It's about reconciliation. Sorry, I'm saying it in Afrikaans because my English sometimes leaves me in the lurch.

<sup>5</sup>we adjourn



Mr Andrew

Just two points, Chairperson. The first is that we feel that local government is the key to effective development of delivery of services and up until now and I'm talking about over a period of years, not just this Theme Group or anything, we believe it has not received the attention that it deserves until very recently where it is now finally receiving some attention, but hopefully that due attention will be given. Even in our programmes I think we need to look at making sure it doesn't sort of just be added on as a sort of incidental at the end of our work. Secondly, a slightly more general point is that while we believe that structures at provincial and local level should generally - such as provincial constitutions - should be left to those bodies and they should be given the widest possible discretion within certain parameters that in the transition phase it may be necessary in our new Constitution to prescribe some structures and procedures which would fall away after a few years and be replaced at provincial and local government levels by structures and procedures decided upon by democratically elected bodies at those levels. Thank you.

Chairperson

Thank you. Next Inkatha Freedom Party. No contribution? National Party? Finished? And then we're through the list. In actual fact, the international perspective is to be dealt with in block 2, as we agreed. I do have it right. In actual fact then we've finished with this discussion on the inputs. Now we will have general discussion, but before I put that, could I just interrupt the proceedings at this stage to put something which was asked of me in teatime. The National Party as well as the Democratic Party has asked whether it would perhaps be possible, seeing that a lot of inputs have been made on local government, that tomorrow's meeting could be put off. The ANC people I talked to, however, seem to feel that it is a very important docket for them, they do need the preparation time until tomorrow and they would like to state a few positions which is very important to the ANC. It does seem to me that then tomorrow's meeting must continue because that has been scheduled like that. Do you want a discussion on this or shall we stay with it like that? Okay? Right, Mr Manie.

Mr Manie

Chairperson, I think it would be important though before we step off that particular point to get an indication at least of how the meeting of tomorrow will then be structured so that people can prepare in the same kind of way for what will be expected tomorrow. Mr Andrew, then Mr Smith.

Mr Andrew

I might say as I understood it the meeting was going to be structured in exactly the same way as today's meeting is concerned. From the Democratic Party's point of view all the



principles and points of departure and South African specifics that we addressed this morning relating to provincial systems also apply to local government systems from our perspective so we will not be wanting to add anything further.

- Chairperson Do I understand you correctly? You want to follow the same headings as today?
- Mr Andrew Well, that was the decision of the Theme Committee last week that the same headings were used firstly, under provincial system, and then under local government.
- Chairperson Thank you. Ms Coetzee. Did I miss someone in the order now? First Mr Smith, then Ms Coetzee.
- Mr Smith Mr Chair, I think we agreed in the Core Group and in the theme Committee that we would pursue the same format for both meetings. Perhaps if parties simply are going to be in certain instances reiterating the same points raised today under say democratic principles they can simply say that, but we should formally at least follow the same structure so that people who do wish to make submissions in that order can do so.
- Chairperson Thank you, Ms Coetzee?
- Ms Coetzee I would like to fully agree with Comrade Salie ?? seemingly that we only dealt, say like NP and DP, with local government and excluded again rural local government because the difference come in, in rural local government fiscal and financial structure. So we would like to deal with local government tomorrow, to support rural local government.
- Chairperson I think that will be possible. Other discussion? So then the meeting will go on as scheduled. It will be also 8,30 tomorrow morning. Oh, it's true, that's the one of tomorrow afternoon 2 o'clock. Well, that's then that. Now we have the general discussion. I will react to hands. It seems Mr Smith was first and then Ms de Lille.
- Mr Smith Mr Chairman, I'm not sure that we can ask through you to the parties, but if I might do that, Mr Cronje mentioned that the will of the majority, subject to standard checks and balances, should be the kind of system that we had as a democratic principle and we agree with that fully. I presume, of course, there is no particular mention made of it, but I would presume that the Constitution nonetheless is still sovereign. My question would be: does the ANC believe that the entire Constitution is justiciable or just parts of it?



Chairperson Is the question clear? Could we have reaction, Mr Cronje.

Mr Cronje I don't know that I should necessary answer that although I said it. No, I think with parts of the checks and balances obviously being... that the group Constitution is sovereign, yes, that is correct, but also as has been agreed in this Constitution itself, that it could be changed under certain particular conditions, but by the will of the majority one needs an ordinary day-to-day administrative and legislative procedures.

Chairperson By the way, that is the approach I think we should follow in this part - asking questions for clarification and answers. First Ms de Lille now.

Ms de Lille Chairperson, my first question was covered by Mr Smith. I don't know whether I should put all my questions now to the different parties or do it one by one.

Chairperson I think it would be easy one by one. Let's see how it goes.

Ms de Lille My first question, Chairperson, is to Inkatha, the IFP. I just want to find out, I don't have clarity what they mean with "autonomy versus an independent state" because they talk about an "autonomous Constitution, judiciary, legislative and administrative processes, national government shall have no overrides, encroachment" and they also talk about a constitutional court being found by the provincial constitutional court. Now, if you look at all these references to autonomous, does not amount at the end of the day to an independent state, for instance?

Mr Gordhan Thank you, chair. I think the issue here is to recognise that there is a very strong distinction to be made between the kind of autonomy we seek and independence. If you're talking independence, then obviously one's talking about the political unit having a full range of powers and functions that any sovereign state would state and we are certainly not advocating that. We are saying that the central government should have...

?? Could I suggest to you, Mr Chair, Ms de Lille asked the question, but she's...

Chairperson I see she was interrupted. Perhaps you could just quickly make the point again to give her a chance to listen.

Mr Gordhan I was simply saying that there is a big distinction to be made between the kind of autonomy we're referring to of the



provincial system and independence. If you're referring to independence, one is talking about the kind of range of powers that would go with a sovereign state and we're saying not that at all. We're saying that a central government should have exclusive powers on a whole range of issues, including your standard ones: foreign affairs, defence, macro economic policy, and the like; plus it should have the powers to determine on a framework basis all sorts of other co-ordinating functions, for example, posts and telecommunications, civil issues, criminal issues, the whole range of issues, in other words, that the central government has. Now, the autonomy we're talking about... When we use the word "autonomy", we mean autonomy within the context of what the Constitution enables the province to exercise, not in addition to or out of it, so it's a long way, Chair, from independence and it's a long way too, I might add, from confederalism of which we have been accused many a time in the past.

Chairperson Thank you. Ms de Lille. Let's give another time for a question which you want to put in because you said you had a couple of questions. And then Mr Cronje, and then we can come back to your other questions and then Mr Andrew for their questions. Do you want to put another question?

Ms de Lille Chairperson, my next question is to the National Party. I just seek clarity or elaboration on what they mean by "corporate self-determination" and then Dr King also referred to provincial loyalty to one sovereign state. Thank you.

Chairperson Who'll answer in the National Party? Dr King?

Dr King Mr Chairman, the last statement, can I just have the wording again, provincial... ?

Chairperson I think she meant what is called...

(inaudible discussion)

Dr King Mr Chairman, to start off with in a sense that provincial - I read here in that sense "provincial loyalty should be encouraged as it could and should serve as a springboard for the enhancement of loyalty to the one sovereign state" because the National Party stands for one sovereign state. We have no doubt about that. We don't want to vulcanise again as has been referred to in the submission of the PAC. We're simply saying that we want to take the decisionmaking abilities down to the level where it is best done, as far down as possible, but that we... Eventually there must be a loyalty from every province, of



everyone of those nine provinces to one sovereign state and that is the Republic of South Africa.

Chairperson National loyalty from the provincial side, is that what you mean?

Dr King In the same way as we find it in the United States, for instance, also. As far as corporate self-determination is concerned, I can give a full explanation of that now, if you want to, but that is the kind of thing that we were going to address as these different definitions almost of what we mean by the various concepts through our workshop next week. I don't know whether we should rest at that or should I try to explain that?

Chairperson Could you perhaps... The question was asked... a short description of what you mean with that. I think that was the question. What is corporate self-determination.

Dr King Well corporate self-determination has to do with the ability of minorities in the sense of language, cultural, religious etc. and I think the best example that one gets is the one at this stage that I can think of - and I'm not that much of a fundi on world conditions in total - but the one that is usually held as a good example is the one in Belgium where people specifically, according to their culture and their language, is groomed regarding those things which are important to their culture. It could be in the same way again as far as religion is concerned, and that decisionmaking regarding those aspects would be left to them, although there would be other bodies in which decisions would be taken on those things which are of general importance to everybody. So, let's say in a city, for instance, you may have a board representing the cultural rights of, for instance, the Jewish people there, which is also actually a religious group to a great extent there, or the Muslim people, because culture and religion lie very close together, or Afrikaans-speaking people or whatever, German-speaking people etc. But at the same time too they would all again be represented in the overall situation where they would make the decisions on services, on parks, on the normal running of those things which are available to all citizens. In other words, it's not an infringement and a person will belong to such a group represented on that level of corporate self-determination by his own choice. In other words, nobody is forced into it, it's a personal choice. It's actually a lot broader than that, but that's the best that I can do now.

Chairperson Thank you for the answer. Now its Mr Andrew. Is that right?



Was it first Mr Cronje and then Mr Andrew. For questions. Mr Cronje?

Mr Cronje

Mr Chair, I would like to have maybe the DP as well as the National Party respond because they cast it in more or less the same terms, it goes about their talking about a divided society and therefore you come to the conclusion that there should be this in a province that it should be the carrier of the main, where the main, where the politics is happening, a major source of power. Now, I presume that when they talk of divided society that they mean ethnic divisions, but as the provinces are structured now, I mean I know of no such thing as Gautengers or Northwesterners or things like that in the ethnic sense, or in a racial sense. And we also know that in South Africa as a whole there are indeed no ethnic majorities and Mr Andrew also says that the feeling of minorities - and I presume again he talks of ethnic minorities - may feel dominated, but it is exactly in the provinces where there are ethnic majorities and where minorities could indeed feel that they may be dominated. Now the other thing make it sound like you say because people are divided, and divided along ethnic lines, therefore we must give some, you know, we must divide the place where people then feel comfortable as a group. But we know that Afrikaners amongst themselves do not feel politically the same, they are divided. The war in Natal was between Zulu and Zulu. In other words, the idea to think that because you belong to the same ethnic group therefore you have political and other feelings that are in common is apparently not so when you look at the South African condition. So could I have them explain because if you then talk of making provision, it should be ethnic states rather than provinces as we have them.

Chairperson

First Mr Andrew then Dr King.

Mr Andrew

Mr Cronje makes an incorrect, partly depending on how you define "ethnic", but I mean he makes an incorrect assumption in respect of our divided society; ethnic is one of them, language is another, race, culture, religion, the equalities of economics, you have rural, you have urban, I mean you get into climatic kind of differences that... Okay, those impact on economic activity as opposed to the individuals, and it's catering for those differences. Now you are correct that generally, and one is not I might say, one is talking about non-racial, non-sexist democratic provinces, one is not talking more or less or essentially along the lines as they are currently divided so it's not a case of creating ethnic bulwarks; as he correctly says, different people. If one just goes back a little



bit in our history, it will illustrate - although it was under a system of white domination and not democracy - but within the white community all the white people had votes. But the fact of the matter is the attitude of people in the Free State, for example, to what you could do on Sunday and the white people in the Free State was very different from the attitude of the white people in Natal of what you should be doing on Sundays. The attitude to what an appropriate school education system, both in terms of curriculum, in terms of a whole range of factors, between the Transvaal white Education Department and the Cape white Education Department together with the Natal white Education department were worlds apart and you spoke to educators who functioned in those different provinces in those previous provinces in the same nominally system, and it was a different world in terms of the relationships that developed, and I could go into greater detail on that. So, these kinds of divisions are very real and allowing people, starting with individuals and families and communities and towns and suburbs etc., to within proper non-racial, non-sexist, democratic, within those norms, to exercise choice. If you let those people make decisions, that is what is best for those people and unless you devolve both the decisionmaking and the implementation you don't achieve it. You can take, for example, a particular... Let me just give two examples. In a particular community, and it's often easier to talk about a rural community because it's clearly identified normally in boundaries, you may say to one lot of people, "If you've got a million rand, do you want, what is your top priority? Do you want a clinic, or do you want another school or a school as your first priority? Five years later you maybe will get the other one as well." The best people to be making that decision with that money, is people closest to the ground.

Chairperson

Mr Andrew, could you just make it short, please. It's taking a lot of time now.

Mr Andrew

Okay, but it's quite a complex issue. The second thing is, for example, the use of money in school education. It may be that one group of people in a province, one province decides it would rather spend money and have pre-primary education provided by the State within the limited resources and have bigger class sizes at the primary school level. Another province may decide that it actually thinks having smaller class sizes and not providing free State pre-primary classes, so it's allow for that. By allowing that you don't get the resistance of being dominated by a monolith. For example Mr Cronje mentioned the Afrikaners, while politically they are very divided, they will very often feel very strongly about their language and culture



being accorded its correct place in society and that hasn't in my view directly got to do with federalism although you will find, for example, that there is a higher proportion of Afrikaners in the Western Cape, there is a higher proportion, for example, of Indian people within the religion in Natal, and different cultural and language groups will have greater influence in some of the provinces than they will in others. Thank you.

Chairperson Thank you. Dr King?

Dr King Mr Chairman, actually I think that we can actually rest with what Mr Andrew has said, because as far as we're concerned, there's nothing regarding ethnicity here, it's a question of divisions on all lines and not... I think ethnicity is the last of the ones that we would add. My colleague, Dr Marais, would like to add something to that.

Dr Marais Mr Chairman, it's proved that when you used ethnicity for, call it a federal or separate states, there's usually no success. They usually talk about a confederal system, so we are not in a great part for federal system, but the reason we support the provincial and local system is there are so many advantages when you take decision-making beyond the low level of subsidiarity concept. First, if you take it from a political point of view, you take decisions down to the people. You get more accountability. If you take it from an administrative point of view, it's always easier to administrate or manage smaller units. If you take it from an economic point of view, you create the possibility of competition between local governments, between provincial governments, it's always a very healthy concept because it's easy to control, it's more accountable, it's nearer to the people. I think we have to see this whole question of provinces and local government from the advantages from a political point of view, from an economic point of view, and from an administrative point of view. And that's the reason why we submit this whole concept.

Mr Cronje Because I raised the question... You know, I asked specifically how does it address the so-called "deeply dividedness". Now, I mean there are rich and poor in every province, there are various ethnic groups, there are various culture groups in every province that are also a mix, so within those provinces too there are those so what do you then carry on dividing and dividing. Why is nine the magic figure then, for that, in terms of the dividedness, why not 200 cantons then?

Chairperson Could I just say the order I have in the questions at the moment was Mr Andrew, then Senator Bhabha, Mr Gordhan



and then Senator Rabinowitz. Could we regard this question as being handled now and go on to the next question, or do you want to comment?

Mr Smith

Could I just make a suggestion and that is that somehow we draw distinction between somebody who wishes to follow on the current discussion as opposed to posing a question once the discussion is finished. Perhaps we could have something, a very simple symbol - two finger will mean you want to follow on now as opposed to posing a question later on.

Chairperson

That follow-on questions creates chaos. Two fingers, do you want it? Is that the general feeling? The two finger system will work. Victory for the ANC. This one for the other parties. We'll do that process then. I think Senator Rabinowitz was very eagerly two-fingerly showing and then Mr Gordhan has two fingers up. I think I've got the two fingers now right. Senator Rabinowitz.

Dr Rabinowitz

I'd just like to respond from the point of view of the IFP as I see it as I know...

Mr Cronje

As a point of order, Mr Chairman. We're going to have chaos here. The question was posed specifically to the DP and the NP. I don't believe the Inkatha has to answer the question now, they will get the opportunity.

Chairperson

We agreed to a follow-up system with the two fingers, but Senator Rabinowitz then you must restrict yourself to a short follow-up.

Dr Rabinowitz

To say it very briefly, if the buck started the provincial system and you're going to allow the provincial government to impose its will on all levels of society, then you might have the same problems in a provincial level as we're worried about at national level, but we support the principle of subsidiarity all the way down, which you said may point to the canton system, but then one has to balance pluralism

**(end of tape 3)**



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**Tape 4**

Dr Rabinowitz            But then one has to balance pluralism with efficiency, so instead of having the efficiency of the central government, you have a degree of devolution, better accountability, but also subsidiarity which goes all the way down. That's a simple answer.

Chairperson            Thank you. Short follow-up from Mr Gordhan on this?

Mr Gordhan            Chair, it's a comment in the form of a submission to those people that have just responded to Mr Cronje's question and that is that if we talk about this diversity, in reality we are talking about a geographic diversity, there's different parts of the country that look different; we're talking about an economic and socio economic diversity as a reality that we've all agreed upon; and thirdly, we're talking about what we might call social diversity, religion, culture, language etc. Now, the contention that we have before us is that a so-called unitary state, or perhaps even the form of "state" that we have under the Interim Constitution would lead to a monolith and that monolith will be one which actually tramples on all this diversity. What we actually require is a federalism based on the nine provinces in order to enhance and respond to this actual diversity. I think what Mr Cronje was pointing out and the answers haven't addressed this sufficiently, is that in reality religious, culture and language diversity cannot be addressed with a so-called federal system, that we require other mechanisms, built within the Constitution in the form of rights and outside of the Constitution in the form of social organisations, in order to allow for a meaningful interaction between State and people via the organisations to address their specific concerns. And it is the regime of rights that we accord to our people in terms of the Constitution which will allow them to meet their concerns and allow the State to recognise their concerns in regard to the social factors that we are catering for. So, how will residual powers, subsidiarity etc. meet with this particular very complex reality in our society really befuddles me and therefore one is led to a submission that the argument for some of these things is rather ideological driven that reality driven. Now, the next point then is how do we address the geographic, economic and socio economic diversity in our society and quite clearly, we are saying that the current provincial system is beginning to do that. Now we



must still be convinced that we require exclusive powers, exclusive fiscal finance raising capacity at a provincial level in order to be able to address inequalities in this regard; in other words, how do you remove economic and socio economic inequalities by saying that you want things left at a lower level. Are we not actually saying that what we need to recognise in our society is that there are these inequalities, that we require a dynamic relationship between central government, provincial government and local government, allowing for sensitisation of each level of government from the one below, but at the same time allowing for some levels of uniformity and common national standards in order that there can be uniform development in the country. The other point, and last point I want to make, Chairperson, is that although we talk about powers evolving downwards, the tendency amongst so-called federalists is to monopolise power at a state level and that in the name of a people-based democracy. Often the local government structures in this kind of context are the weaker structures where, in fact, they need to be the stronger structures where people can actually experience democracy and influence it in some way. Thank you.

Chairperson

I have a first two-finger from Mr Bhabha. Could I cover the previous round and then from Senator Bhabha. I think this is a very important discussion and I think we can continue with this. Mr Smith beat you just by a few seconds.

Mr Smith

Mr Chair, I think the points raised by Mr Cronje are very important, but perhaps there's a false categorisation of the nature of diversity because if we restrict it to geographical, social - I forget what the third one is - religious, cultural, that's only part of the picture. Those are all valid, but there is a ;third dimension which is, of course, political. Political diversity is an important reflection of diversity as any other and so the point he makes essentially at one level is quite correct; I mean, whether one is a federal system or a unitary system, each is able to deliver the goods. If one takes, say, post-war reconstruction compared to Japan, they equally achieved the kind of reconstruction that was necessary, so the argument that there's a need, an objective need, for either system in order to deliver, is a false one - either system can deliver. But if one links it to the kind of political diversity we are referring to as well, then it's a question of which is politically preferable in terms of people's freedom to choose and that's where the further element comes in. I would also like to respond to the point made about provinces themselves tending to become monolithic themselves as regards their relationships with local government. I think it's a very, very important point



which we accept fully as a danger. Now, in that regard I'd like to state that in our submissions to the World Trade Centre we took explicit note of that and we proposed a system of internal regionalisation within the provinces, based on the principle of subsidiarity. What we're essentially saying was that the national government would have a set of exclusive powers in internal regions which would include elements of local government, but could be slightly larger, depending on the nature of the individual province concerned, would also have a list of long powers and the State legislature itself would be left with the residual powers so in fact, to reinforce what my colleagues said in terms of subsidiarity, we are talking about, within the provincial system, empowerment from the bottom up. I quite agree it would be a very dangerous threat to have an all-powerful provincial government which controls everything below it. We don't believe in that either. That would be wrong.

Chairperson

Thank you. Senator Bhabha? Mr Cronje, because you started this important discussion, in the end I will give you a chance to replicate. Another two-finger here.

Mr Bhabha

Mr Chairman, the submission from Inkatha, particularly I think it's the first page, paragraph 2, (a)2. The argument coming from Inkatha appears to be federal, but here it seems to be quite specific Kwa-Zulu Natal. The assumption, or rather it is said, that Kwa-Zulu has a distinct political identity. My question is on what do we base this identity. What is this identity we're talking of? And I'd like to make a comment here as well that it appears to me that this argument is founded on the basis that Kwa-Zulu Natal is a homogenous province; it isn't, whatever factors we take into account; whether we take the election results, whether the dispute over what is going to be the capital in Kwa-Zulu Natal, those highlight the differences there. And, of course, the economic basin as well, that came in, the difference there. But in any event, from reports we get as well, that there is a distinction between the desires of rural population and urban population as well in KwaZulu Natal. Now, is this statement made on behalf of what is assumed to be a homogenous province, that is the assumption that I gather from here, and what is this political identify that we're speaking of? Is it an ethnic identity or is it a political identity? That's the question.

Chairperson

Senator Bhabha, you've actually now put a question in the course of structure of follow-ups. It's a very real problem. Could I just also make the order so that we give a short answer now and then I continue with the observations further. Is it



possible?

Mr Gordhan

Chair, a very short answer. It is the political identity - nobody says that the population of the province is homogenous and neither do we say that it is politically homogenous. Not at all. Nonetheless, historically and in terms of current and recent politics, over the last few years, it would be an accurate statement to say that there was a group identity which is recognisably different to much of the country. We do so in respect of this policy in particular. One might want to refer to others, but since we're making specific reference to this province, I think it's true to say more so than other regions of the country, at least that the political leadership has constantly maintained this line and to the extent that it's not taken up elsewhere in other regions of the country, one can say it's a fairly unique feature of this particular province that it hadn't been colonised by the British, they had no part to play in the choice of political systems under which they developed. They had no role to play in the 1910 Act of Union, and going through the years until the last three or four years, whether you like it or not, we have for example specific conditions within the national Constitution for the preservation of the monarchy within a Republic. I mean that I would contend is also somewhat unique, not to say that other provinces couldn't do it, but it does represent a distinct political identity which is missing elsewhere and there is a political statement to make. I accept that, but nonetheless we make the position claim that the province wishes to maintain a relationship with the rest of South Africa within one sovereign South Africa as an autonomous unit within a federal South Africa, and the reason express mention is made of this province is because it links up with the principle of asymmetry and we're saying in effect that we're looking for a solution, we could be looking at a solution which allows a special relationship between that province and the country which is different to the rest.

Chairperson

Thank you, Mr Smith. I must continue with the order now because otherwise it is getting out of hand. First hand.

??

I'd just like to draw attention to two euphemisms that are becoming obvious in this debate here from the other side of the house; the one euphemism is "diversity", the other euphemism is "the people must decide" and it is very encouraging to hear people from the other side of our house talking so much about "the people". The point I wanted to...

Chairperson

The PAC are also people.



- ?? make is that diversity is not simply a question of in some places you get mountains, in other places, you don't get mountains. This country is very unequal, some provinces are much poorer than other provinces, not because they chose to be, not because of their natural endowment...
- Mr Andrew The point of order Mr Chairman, I'm sorry, I have met the gentleman concerned, but I'm not sure what time he came to this meeting. I don't think he was here for the presentations earlier on, and I really, the whole question of the inequalities has been covered in great depth earlier on today.
- Chairperson Could I ask that the point... that you please continue, but take into account this observation, thank you.
- ?? Here my point, Mr Andrew, was that, here in the Western Cape, people from the Western Cape have come rich out of exploiting the labour of people who were brought in from my province, which is the Eastern Cape, and that if you talk about the people must decide, then people who don't necessarily choose to live where they are living, people don't choose to live in squatter camps, people are forced to live there, and to say that people who live in rich areas should decide what they like for their own areas at the expense of people who don't choose to live where they are forced to live, its makes a mockery of the whole thing. Thank you.
- Chairperson Thank you. Mr Manie, I think I've got on my list, then are we going to start a new list.
- Mr Manie Chairperson, the point that I'd like to put to the IFP, or the question rather. It seems to me as if they have started at a certain point, and that's to look at the different levels of government, looking at the relationship between the various levels, deciding on the powers and functions and the form of state, as a starting point. My question would be, and I need to whether that is a correct understanding from my side, because, for me the starting point should be, rather, that what is it that this country requires as far as the people of the country as a whole, is concerned. In other words, what are the key priorities, the tasks and the objectives, and then out of that to see what kind of institutions, mechanisms, relationships, would make it possible for us to achieve that in the short space of time. Now, with the immediate period we might find that what we require now, might be different from what the requirements might be afterwards, and therefore, I think, what I would want to know, is the starting point. If you are starting from a political point of, an ideological starting point, then to me,



clearly, that is then not based on the needs of the country and the people. The second point that I would like to put to them then, is also, and I find the contradiction in this, because it calls for fiscal powers to be primarily located at the provincial level, and then they speak about some kind of transfer from the national to the provinces, where there are short falls to ensure that they are able to meet the requirements of the people. Now, surely if you are going to be calling for that kind of powers to be located at the provincial level, then it is a contradiction, as far as I'm concerned. You either say that from a financial point of view, because that to me is at the heart of the whole debate around federalism, where the financial powers are going to be located. If you don't sort that out, are you saying that you want to do what you can do at that level, at the provincial level, and if you can't cover what you need to cover, then you're going to ask the national to assist you to meet the needs of the people in that area. Now, either that applies uniformly, or it doesn't, and to me there seems to be a major contradiction, that you want the powers to do things there, yet you are saying that you want to do it there and it's quite clear that, in the particular example that you incited of KwaZulu Natal, it's clearly not self-sufficient economically, to deal with the needs of the people in that area, and it's going to require the collective responsibility and assistance and support of the rest of the country, to deal with the problems, because it's one of the areas with the biggest populations, with the greatest need. I mean, there's few other provinces where the contradictions are as strong.

Chairman

I think we must, on those direct questions, also put by Senator Bhabha previously, just give a short chance to the IFP to council them. He is actually asking, if I understand right, do the IFP say that Natal does not need the money in equalisation. Thank you. Dr Rabinowitz, or Mr Smith?

Dr Rabinowitz

Mr Chairman, ... back, but I'll incorporate... a small part of my answer will be addressing what you were saying, but I'm still addressing the questions that came from previously. It was with regard to differences, and the fact that KwaZulu is, apparently, catering to an ethnic group, which is obviously not true, because as somebody has pointed out, the quarrel in KwaZulu, even now, is between people of the same ethnic group, or one of the later quarrels. Therefore, what we are looking at is not only a plural society in KwaZulu, but we're looking at what is good for KwaZulu, being good for all the other states. ?? is specifically noticeable in KwaZulu, is that there are political differences from this point of view. The two political parties do show a different kind of recognition of



traditional authority, and traditional custom, and traditional law. And that has become very evident in the local government problem. The ANC, for example, wants the traditional authorities to be subdued within the concept of modern western democracy, whereas the IFP, responding to political majority, is much more sensitive towards the desires and the needs of the traditional people, the traditional Zulu people, and that is an important political difference. Then, from the point of view of the financial and fiscal independence, does the ANC not believe, that if you give all the power to the financial and fiscal commission to create equitable redistribution of funds, you doing much the same as it happened in many colonies countries, you're allowing the big brother status of one body to decide what is in the best interests of everybody, and you're crushing incentive. Whereas, if you allow a degree of raising of taxes within the province, you encourage incentive, and then you have a redistribution pool, an equalisation pool, which is the job of the financial and fiscal commission to take care of. Thank you.

Chairman

Thank you. Now, because have nice participation, Senator Leeuw, and then Mr Malebo, and then I would give a replication chance to Mr Cronje that we can round off this round.

Mr Leeuw

Thank you, Mr Chair. On the question of the departure of Inkatha Freedom Party on the federal states as they refer it, what makes them so much to say federal will be a solution to the problem of especially KwaZulu Natal where even they recognise that they must be co-existent to the federal South Africa if the unitary state at the end of the day is being adopted? What are they going to influence because the separatists government has served the common white people or because of the apartheid as a whole. Thank you.

Chairperson

Thank you. Mr Malebo will have the chance. He's just reading a note. You wanted to speak, Mr Malebo?

Mr Malebo

On the issue of diversity, is it exactly that, that is the problem that again, like in the apartheid era, the tendency tends to be to emphasise the differences in all various spheres of life rather than to particularly seek ways in which we can unite, build a nation and reconcile our people. I find it a bit contradictory that the emphasis in the new Constitution would rather be to look at the differences because if one entrenches or emphasises more on the differences and then you say is for the possibilities of giving people a choice, that could easily give a chance for a loophole for those who would like still to be drawn into the past because of the fear of the future, and of



living with others which is what we are hearing in a number of words. If this emphasis made on the basis of power to the lowest levels of government we have a very difficult and bitter spirit of what that can mean where people were holding power at local level, my impi and chief or whatever would not allow me to move in this area simply because I'm holding a different view. We have seen the past regional governments in the form of homelands where we have seen the monster coming down to the level of the people. I think we need to reconcile this with the objective that we have set ourselves as a nation and as a developing democracy. Thank you.

- Chairperson Thank you, Mr Malebo. Because I lost a hand in the previous round, Ms Coetzee, your input before Mr Cronje. Before I give you the word, could you advise me on when we should stop, that we have something towards. Any suggestions? 12 o'clock? Half past 12? Could I see a hand?
- Mr Smith I suggest we finish, Chair, when there's flagging interest. If we're still maintaining a high level of interest on the subject matter, we continue to the official closing of the meeting.
- Chairperson You mean consensus by exhaustion. Thank you. We see your point. Ms Coetzee?
- Ms Coetzee I've actually got two questions to two different parties. If it's possible, can I do it at the same time? Actually it's a follow-up, sorry, not questions.
- Chairperson Your follow-up.
- Ms Coetzee I first ask Mr Andrew when he talked about the diversity as well and where he said that we must cater for the poverty and not deepen the diversity. In other words, the new Constitution must only cater and not eradicate the poverty of the poor and that is actually what the ANC is looking for - a solution to eradicate the poor and the poverty which is this. And another follow-up on the IFP also where they said that they are actually a different province from the rest of South Africa. In what way are they different except for a kingdom and a king which only belongs to one ethnic people and not the rest of South Africa, but who also acknowledge everybody's needs in South Africa?
- Chairperson It appears that Natal is also different from the rest of South Africa because it can't play and cricket anymore. Could I just enquire at this stage, Mr Cronje... Mr Cronje, before I give you the word, I've got urgent hands from Mr Carrim and Dr Koornhof, would you like to speak now because I promised you



or would you wait for their follow-ups, because everything is now follow-up.

Mr Gordhan

Just a very brief... It relates to the question Salie Manie raised. I mean the thing that perplexes me and the answer to it sort of concerted me. The question basically is how, in the absence of a politically significant central co-ordinating body, will the inequalities between the different regions be redressed? How're you going to get fiscal equalisation. I think that's the question that Salie Manie's asking and I think he adds, which I think is something acutely ?? part of Natal. This isn't KwaZulu Natal province which you present such a persistent case for going to be a victim of the absence of such a co-ordinating body at central level. I don't get an answer to that question. You yourselves, and other parties on your side, acknowledge the extreme inequalities; I mean we'll be overshadowed with Natalians so to speak by the Gauteng province, for example, and how if there's no co-ordinating body at the top are we going to expect them to disperse some of their resources to us and to other disadvantaged provinces? I don't get an answer.

Chairperson

A direct question has been asked, a quick answer, please.

Mr Smith

That should be about five or six questions and if I give one quick answer to that alone it ignores the question from, the question from there, the question from there, the question from there, which all seems to be directed to half of our party. I wouldn't mind if you give me the opportunity to respond...

Chairperson

Perhaps you could keep track of these matters and then later on you will the chance. Could I just enquire, Mr Cronje has the right to speak now. Do you first want to listen to Dr Koornhof?

Dr Koornhof

It's in connection with the question put by Mr Cronje. Maybe it is possible to get a balance between providing for federal diversity and also striving for building a national unity. I think it is possible because unity in a complex society like South Africa can be obtained, I think, by at least recognising the diversity and accommodating it in the real sense. And maybe one should encourage a sense of partnership between the levels of government, national government, provincial government and local government and at the end of the day, I think we're in agreement with the various parties that decisionmaking should be taken to the people. This is why we're re-writing the Constitution, but also on local level it should be taken to the lowest level. On the question of definition of federalism, that is a debate, Mr Chairman, on its



own. Maybe one should look at a sort of centralised federalism that one can deliver and we're looking forward to that.

Chairperson

Mr Cronje?

Mr Cronje

Yes, Chair, I think many of the issues... I asked a very specific question: How does the so-called divisions that people refer to, and in the back of their minds they always come back like Mr Koornhof just now again. That diversity that you're talking about is ethnic diversity. You cannot cover it and say it's poor and all these sort of things because there are poor people in every region. Let's not cloud the issue. That's really what you're referring to when you're talking about the diversity of the people. When you talk the other diversities, they exist within the provinces so in this discussion, the issues are raised of subsidiarity and all of that and I think that we should have a debate about that again because referring to, for instance, one of your answers there, you said that within the province, we need to build from the bottom up. Right, but when you talk of the principle of subsidiarity, you say the province shall be the primary government of the people. Then why not... In terms of your own rule here, you then should say that local government should be the primary form of government, which will lead obviously then to a totally different conception of the IFP because the IFP now talks, and you brought in as another level of diversity, you said political levels, but in Natal then if you were to be honest and true and say political diversity should give rise to regions, then there should be two Natals - a Zululand and a Natal, because this thing that you say here... You talk about "a distinct political identity which speaks about the autonomy of the kingdom" etc. that exists north of the Tugela. South of the Tugela there is no such, it is exactly the opposite. So therefore, if you come here and you plead, want to use political homogeneity, or then saying it does not apply to the province, you should then come here and say "we want to plead for a Zululand north of the Tugela and this side of the Bushmans". That's what you should then in all honesty come here and disclose. I think the position of the ANC in response to your answers obviously should be clear. You know that we simply do not believe that you will address any of the diversities that have been mentioned here, and specifically not the ethnic one, through any form of federalism in South Africa. And I think I stand with that. I think many of the other issues will come up again, such as subsidiarity and so forth, because, I don't know what the difference is between a rule - you say here that the first "rule" of subsidiarity, and then the "principle" of subsidiarity so obviously because of political reasons you arbitrarily choose then the province as the primary



site of political power.

Chairperson Thank you. Now we're taking a new round of hands. Let me just look around. Do you want to cap it now? I have Ms de Lille and Mr Smith also kind of replications I think on the debate so far. First Ms de Lille.

Ms de Lille Can I bring in a new dimension, Chairperson?

Chairperson Yes.

Ms de Lille And I will ask the same question to all the political parties. Chairperson, what's not coming very clear in the submission of the ANC is their view on the Senate. It is a pity that we are writing a final Constitution while we're also implementing at the same time the Interim Constitution so you don't have the opportunity to judge the value of some of the systems that you are implementing. The ANC briefly refers to "the development of our system should be need driven rather than ideological driven" and I would like more clarity from the ANC on their view of their Senate. The DP then again referred to the role of the Senate and its relationship with the provinces need to be developed and defined. May I accept then, Chairperson, that this means that the DP accept the composition of the Senate as it is now? And also if the NP can also elaborate on their view of the role in the future of the Senate. And then coming to Inkatha whose specific on the way they see the Senate, but they refer to indirect elections based on party political representation which then, according to my view, Chairperson, won't even entrench clause 43(b) that we've got in the Interim Constitution now which destroys the principle of a free mandate in South Africa. It introduces a so-called imperative mandate. And also they say that each province shall be equally represented in the Senate. What do they mean by "equally". The reason why I'm asking all these questions, Chairperson, we've got a view on the Senate, but as I say, we are deprived of a very short period to see how it's functioning now and what we'd like to see in the future and it would be interesting to hear the views of other parties on the role of the Senate and if we need we need a Senate for the future. Thank you.

Chairperson I think that's valid for a round among the parties. Could we start with... Do you want to ask a question, or do you want to answer? Now let's start a new one with the ANC, DP alphabetical again.

Mr Smith There've been a lot of questions asked of us and we haven't had a chance to answer them yet. We haven't answered. I



mean, there's a question from there, there's a question from there, there's a question from there.

Chairperson

Order, order. Let's go into this round of Ms de Lille's question, giving every party a chance. I know a lot has not been answered and you've had a lot of opportunities I must say, but we will give you another chance. Let's go around on this question of Ms de Lille. She asked the parties pertinent questions. Perhaps the IFP would like to start answering her question.

Dr Rabinowitz

Mr Chairman, I don't want to just answer Ms de Lille if you don't mind. You're not giving us too much chance to answer all the questions, so I take this opportunity of answering the other one as well. Somebody asked where our starting point is. I believe we all have the same starting point. We're looking at the problems of the country and we're trying to find the best way of reducing them. We just believe that a different system will be able to do that to the one that you believe in. When I did my introduction I followed it by why we believed that our approach to the Constitution would be best than the ANC's because it creates a genuine system of checks and balances which would bring about peace, acceptability of the Constitution to everyone, a lasting Constitution, and not allow for what this gentleman talks about, and what Ms de Lille referred to, is the exploitation of a single institution of government which has too much power vested in it, even if it believes that it is going to in the short term redress the wrongs which the country is suffering from. So that was the one thing. The other thing is one of the most important ways of redressing those wrongs is to have a country which is referred to as a "winning nation", and one of the most important things to achieve that is to have incentive so that people want to work for their benefits. But the type of system that we're proposing, we believe would bring about incentive, economics, it would be far more beneficial than allowing the financial and fiscal commission to do the redistribution type of economics which you are talking about although the financial and fiscal commission does still have an opportunity to redistribute the wealth which comes about as a result of incentive which is catered to in our type of Constitution. The third question about the Senate that Ms de Lille posed comes again to the heart of what we're talking about, checks and balances. We have a Senate now that everybody is beginning to recognise or admit. That Senate is almost a powerless body, it does not really have a check on the national legislature, it is almost like a repetition of the National Assembly because largely the people in the Senate represent the provinces and that Senate doesn't have



any power to check legislation. It refines legislation, but it doesn't actually check it; it has no veto power; and it has no power with regard to financial bills. So it's really like an extension of a national government; it's a prestigious body more than an effective body. And if we really do want a Senate to act as a check on the legislation of the majority, then it should be a differently structured Senate. So one tends to agree if the Senate is going to be there, it must have power. If it has no power, then it is rather pointless paying all the money that one has to, to have a Senate there at all and she also asked what do we mean by the Senate equally representing all the provinces. We believe that each province should be as important as the next one. The largest province is as important as the smallest therefore in representing the interests of the provinces, there should be the same number of senators from every province because this then is an effective check on the majority of the country by the people of each particular province. And the last point she made about the representation from the legislature being a similar type of thing to an imperative mandate... We feel that we want the senators to represent the province and not the political parties and the way in which this would be most effectively done is if the senators are elected by the provincial legislature which is a cross section of all the parties, but clearly they are legislating on behalf of the province. If they're appointed and elected by the legislature with the approval of the ?? they would most definitely be representing the province and not the parties. Thank you.

Chairperson

Thank you. Other reactions from other parties? Mr Andrew?

Mr Andrew

Yes, as we were all asked this question on the Senate... In our submission we said that the role of the Senate, particularly in relation to the provinces, needs to be developed and defined. We believe in small government because we think it's good in general in principle and more particularly we don't need to waste money on anything in this country; therefore we don't believe that you should say: we're going to have a Senate, let's desperately search around to try and find a job for it to do. We should be looking and if there is a job for which you need a Senate that has to be done, then let's do it. And that's why we feel that at present the Senate, it's structure and it's systems are such that it tends to be something of a replica of the National Assembly and if that were to persist the reason for its existence would probably not be justified. Now most countries with strong provincial systems, the Senate plays a particular role in representing provincial interest at the national level, but we don't think that, that has been fully developed or



defined as yet and that's why we made that comment and we don't suggest, certainly at present in our own minds, that we have all the answer to that. I might also say in relation to Ms de Lille's comments, that I agree with her entirely and it's something we said very early on in respect of this whole Constitution-making process: we think it is shortsighted and most unsatisfactory that many of the key decisions we're going to be having to make on the topic, in particular of this Theme Committee, are going to be made before we've seen how the Interim Constitution's structures work or don't work. So we're going to not have the chance to learn the lessons in respect of... The Senate is up and running so at least we will learn some of those lessons, but in respect, for example, of local government, local governments are only really going to start functioning, if we're lucky, early next year, January/February next year, at which stage we will then have 60 days to finalise the Constitution, having not seen whether the kind of system set-up... The same thing with provinces: at present, in terms of budgets and all sorts of things, they're not really functioning in the way they're supposed to because it's a very tricky transition thing combining numerous TVBC countries, self-governing homelands, former provinces, segregated education, and other departments etc. One can understand some of the reasons at least why this will be, but the fact of the matter is that we're going to have very little chance to learn lessons from the existing Constitution before we have to try to agree on a new one and I think that's a great pity, and I think that a 2-year deadline is something that we should all be thinking about, whether it actually makes sense to be proceeding with such haste and whether we shouldn't be looking at altering that deadline. Thank you.

Chairperson

Thank you. I have the names of Koornhof and Gordhan. I must just... Yes, I forgot Mr Smith, he was actually the first one of the old series now. You've talked a lot already, Mr Smith, but before I quickly give you the word, we have a matter of two, three, other general, perhaps some parties would like to have a bit of caucus time before 1. I think we should be rounding up now. Let's make this the last observations. Smith, Koornhof, Gordhan.

Mr Smith

Thank you, Chairperson. May I respond to a few points made by a number of speakers. I think the first is the issue, unfortunately the person who asked has left, Mr Manie. The question of what is our starting point when we devise a Constitution, and he raised the point that the starting point should be the need of the people and the needs of the people will determine the kinds of structures and processes that



should follow in redressing those needs. Now, I don't agree with that at all. I don't think the starting point is not what people need, but what people say they need, which is not the same thing. It is what people want. Whatever people want is the starting point because one makes the assumption that what people say they want is based on their needs and who are we to prejudge what their needs actually are as opposed to what they say they want. So, when we talk about the Constitution, the Constitution can be unitary, can be federal, as we stated earlier, both will achieve the same goal in terms of delivering services, the question here is what do people really want? Now, this leads to that question as to what is this weird political identity of KwaZulu Natal that seems to be under dispute. It is clearly the case that we are mooting the point that we want a special dispensation, or we want a kind of federalism that we seek which might include asymmetry. We're not saying that, that position in terms of the political identity of the province reflects the minority position. Clearly it would be untenable of us as a party to be posing a view which is not supported by the majority of the people in the province. So clearly, in the development of the position we hold, there is parallel to this constitutional process here, constitutional drafting within the provinces, and we're obviously working on the assumption, Mr Chairman, when we talk about a political vision, express the political identity through the province that we're talking about a large enough majority, let's say two-thirds majority, which represents a commonality of the kind of vision that we believe we hold federally. So, we expect a provincial constitution to reflect the kind of views

(end of tape 4)



and then Senator Rabinowitz. Could we regard this question as being handled now and go on to the next question, or do you want to comment?

Mr Smith

Could I just make a suggestion and that is that somehow we draw distinction between somebody who wishes to follow on the current discussion as opposed to posing a question once the discussion is finished. Perhaps we could have something, a very simple symbol - two finger will mean you want to follow on now as opposed to posing a question later on.

Chairperson

That follow-on questions creates chaos. Two fingers, do you want it? Is that the general feeling? The two finger system will work. Victory for the ANC. This one for the other parties. We'll do that process then. I think Senator Rabinowitz was very eagerly two-fingerly showing and then Mr Gordhan has two fingers up. I think I've got the two fingers now right. Senator Rabinowitz.

Dr Rabinowitz

I'd just like to respond from the point of view of the IFP as I see it as I know...

Mr Cronje

As a point of order, Mr Chairman. We're going to have chaos here. The question was posed specifically to the DP and the NP. I don't believe the Inkatha has to answer the question now, they will get the opportunity.

Chairperson

We agreed to a follow-up system with the two fingers, but Senator Rabinowitz then you must restrict yourself to a short follow-up.

Dr Rabinowitz

To say it very briefly, if the buck started the provincial system and you're going to allow the provincial government to impose its will on all levels of society, then you might have the same problems in a provincial level as we're worried about at national level, but we support the principle of subsidiarity all the way down, which you said may point to the ?? system, but then one has to balance

**(end of tape 3)**