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CONFERENCE AND LANGUAGE SERVICES		

THEME COMMITTEE 1st DRAFT REP. DISC.	6.2
DATE OF MEETING	13/03/95
NUMBER OF TAPES	2
CONTENT OF ENVELOPE	
1) PRINT OUT	✓
2) NOTES	✓
3) TAPES	✓
4) COMPUTER DISK	✓

Transcriber's Notes of Theme Committee 6.2 discussion dated 13 March 1995

These tapes were very bad, noisy and inaudible.

(Tape 1)

Counter No.

- 006 - 008 Members all talking together at once.
- 059 ? into this debate.
- 062 ? so somewhere
- 068 about his ?
- 072 ...?... Theme 2.
- 079 Professor ?
- 080 Professor ?
- 085 that process in ...?...
- 087 Professor ?
- 089 that's in ...?...
- 130 this morning?...
- 134 to the ...?...
- 135 and in fact ...?...
- 138 Inaudible.
- 354 Inaudible.
- 358 this is ...?...
- 487 Inaudible
- 555 Inaudible
- 578 regulating ?
- 661 Inaudible
- 702 whether it's ?

717 we ...?... is stuck

(Tape 2)

437 Inaudible

450 goes far beyond ?

453 ? Constitution

456 getting very ...?...

463 - 467 Inaudible.

472 think that's ...?...

478 - 508 Inaudible

537 as ...?... a mandate

544 this one ...?...

545 as a party ...?...

547 into the main body of ...?...

607 they ...?... in the

613 what is actually ...?...

614 Inaudible.

622 we're going to ...?...

634 Inaudible.

661 ...?... have varying ...?...

663 independence of the ...?...

694 expectations ...?...

705 involvement with ...?...

705 this old ...?...

707 getting a ...?...

710 it's not ...?...

THEME COMMITTEE 6.2

1ST DRAFT REP DISC

13 MARCH 1995

THEME COMMITTEE 6.2
1ST DRAFT REPORT DISCUSSION - 13 MARCH 1995
TAPE 1 - SIDE A

Chairperson: ... that I think we need to say that this is a drafting session. And I think that means that this is not an open meeting, unless there is any objection. This is not a meeting which I think can be open to the Press. We're discussing the first draft of our report. So if we could just ask people who are not members of this committee if they could just leave us be. I'm sorry, my friend over there.

?: Sorry if I am here.

Chairperson: Yes.

?:006 - 008 (inaudible)

Chairperson: Yes, I have to leave at 3:30. I think this particular meeting we're going to have to try to end it before 3:30. I think a number of people have got.... Let's just go quickly through the other. Yes, sorry.

?: (inaudible) ...

Chairperson: Because this is a meeting where we're discussing the draft of a report and we are not going to be having... Are you from the Press?

?: Yes.

Chairperson: Yes, well I mean I think that there have been precedents in other committee meetings and basically when we discuss a draft of a report we, you know, we don't think that it's appropriate for the Press to be reporting that on clause this there was this and this and this agreement and this and this and this disagreement. When we take evidence and when we deliberate the Press is welcome to be here. But when we're in a drafting session, I think this is essentially a working meeting of the committee to discuss a draft report which we'll be submitting to the CA.

?:021..... (inaudible)

?: In addition Mr Chairman the Press would get the, you know, the final copy ultimately.

Chairperson: Yes, that's the idea you'll get the copy finally but this is not a session of either evidence taking or a deliberative session. This is a working session where we're discussing the drafting of a report.

?: Okay, I agree with you.

Chairperson: Okay certainly you can do that if you like. Okay I think that before we start the drafting process there are some minutes and a couple of other items in our agenda which I think we can dispense with quite quickly. First of all the minutes of the 6th of March which are contained here. I don't know if anybody has any corrections that they want to propose.

?:031..... (inaudible)

Chairperson: Okay, oh Pat is - okay so you will record the apology. Any further changes in those minutes? Can we adopt those minutes? I think that the panel discussion the draft report again I think that's just for information it doesn't have the status of the minutes, it's just for information for us. It's been bounced off all the people that presented it, presented to us, and I think that's just for information. The question of the subcommittee which is actually should be a commission, a commission between this committee and part of Theme Committee 3 which is dealing with relations, financial relations between layers of Government. This matter I raised it with Professor Dirk du Toit who is the head of Theme Committee 3 and I put the two options to him which we had mentioned that the whole of this committee and some of their people form a commission and that the rest of our work takes place in a commission or alternatively that some of our people and some of their people form a commission and report back to each of the respective mother structures if you like.

I said that there was a general preference for the first option. He himself was generally supportive of that option as well. They are meeting some time today and they will come back with an answer some time after today. So that's where we're at in terms of that particular matter. Yes.

?: Mr Chairman, speaking now of the Senate, Professor Hayes(?) he is consulting to, I think to the President's offices or something like that. He explained his morals with regard to the Senate and I found it extremely interesting because to some extent this moral is then also, the Senate is to some extent the watch dog but you

have provincial needs or issues, ? into this debate. And from the important aspects there is tax and expenses ..?... so somewhere we also link with the possible proposal on the Senate by I think it's Professor Hayes(?). So if we can maybe invite Professor Hayes(?) to this meeting. Because it's extremely interesting we are three committees then linking somewhere. I don't know I just mention it to but maybe we first have to ask Professor Hayes(?) to come and tell us about his ...?... because I found it extremely interesting.

Chairperson: Well I think that what we actually have to do first of all is just discuss how we going to organise ourselves as members of the CA. Then once we've done so, then I think we can talk about who we'd invite. And I think if we formed a commission we could you know entertain a proposal of having ... (intervention)

?:072....Theme 2.

Chairperson: Theme 2, what do they do?

?: They do the bicameral.

Chairperson: Oh, bicameral. Well okay I mean we can note a possible overlap there but I think our principle question is with 3, I think it is with 3. Okay we'll have to come back to that in our next meeting because we're awaiting a report from Theme Committee 3 on that one. The invitation to the World Bank you can see that some steps have been taken. An invitation. Well basically what happens is that the Professor ?. Is it Professor ? Professor is he - yes he is that. That he has to be invited through the finance ministry and a letter has been sent off asking the finance ministry to facilitate that and that letter is included on page 5. I think what we can just say to Pat is that you know in a few days time maybe she can just follow up and see what the finance ministry are doing about it. So we get that process in ...?... A sort of a date - a sort of a rough possible date is mentioned in the letter 8th of May, it seems to suit Professor ? also, fits in with our timetable roughly speaking. But that's in ...?... There - I don't know if there is any more on that. I think that what we've got to do today is we've got to focus on our main business at hand and that is the preparation of our report and we've had a - I think that Sirius(?) in particular has done sterling work in terms of drafting. But Sirius(?) is of course being tied up with the budget and everything of that sort. So this report was distributed this morning only, the draft report and it's not complete in the sense that I think Cyrus has in a letter to me which you may have read

he's quite correctly said that it's not up to him as a technical expert to identify points of consensus and points of contention. It's up to us. I actually think that I have drafted something myself which I'll put forward in an appropriate moment later on in the meeting. I think that points of contention is to put things to sharply in terms of the material which we've been dealing with, I call them differences of emphasis rather than points of contention. I don't think we've had major points of contention in the sense that other committees have had, maybe we'll have it when we deal with other material but in this particular material I don't think we have had. But I think that probably not too many people have read this stuff with the kind of detail that it needs. And I think that what we need to do is we need to go through this. I don't know whether Sirus(?) wants to lead us through it and try to see where we're at and what we can do. I think we have to bear in mind that we're running against the clock here and that if we don't manage to give... I mean what we can do I think is that this is essentially where this document is at. I think we can give drafters a mandate which with a few more hours work they can complete our report, that's where we at. But we have to be satisfied that we ourselves are able to give the drafter the mandate and perhaps we are not going to be able to do it today or perhaps we are depending on how Sirus(?) does with the presentation now. So maybe I think perhaps we'll start off with Sirus(?) telling us what has been done and then we can come back and identify what else needs to be done in terms of the preparation of this report and see what other steps we need to take including the possibility by then calling a special meeting sometime in the next two days. So Sirus(?) without any further ado, can I just ask you to lead us through what you've done.

Sirus(?):

Thank you. If it's okay I'd like to put up two quick slides which just summarises everything. First of all I must apologise because we only received it this morning?... What I wanted to try and do is first just to explain what you've got in front of you. You should have three things. You should have a set of reports which I am supposed to be giving to the ...?... and in fact ...?... I have explained in the letter to the chair that the role given to technical experts is very clearly defined?....(inaudible). What I've done is I have explained that although the report that is required is in fact a report from the Subtheme Committee to the Constitutional Committee that is in fact a report that ought to be coming from the Subtheme Committee not from Neil Morrison and I. What I've done to try and assist that process is to compile reports to yourselves which illustrate in tabulated form every single one as far as I could of the issues that have been raised in

submissions or discussions in all our proceedings so far on as it stands at the moment to the Reserve Bank and the Auditor-General. The report for national budget should be with you tomorrow morning, a similar tabulated report. It identifies all the views expressed unless I've left something out. It includes a coding. The idea of this coding is simply to facilitate and you can reject it as you will, as you decide. But it's to facilitate discussion in this process to decide whether issues are in fact contentious or whether there are merely points of emphasis which you would want to not submit in the report from the Subtheme Committee further up to the Constitutional Committee. The coding I should just go through very quickly. There are four codes used, one is A and I've tried to explain it in the letter. A says that in the written submission you have, or particular party or particular submission, has agreed with a particular provision in the Interim Constitution and I'll come to that in the second slide in a moment. But there has been an explicit agreement that we agree with this paragraph of the Interim Constitution. AQ which is another coding says agreed but with some qualification it might be a minor amendment or it might be in fact something more than a slightly minor amendment maybe with the specific qualification in the written submission. NCA means no comment but from the general tone of what has transpired I have ventured to suggest and again it's open to rejection forthwith, but ventured to suggest that you may be indicating an agreement with that particular provision. And D says that there is a disagreement. It appears quite, very much so that there is a difference of opinion which may or may not be a contentious one, it's for yourselves to decide. But it seems from the wording in the written submission it's clearly a difference with other submissions or with the provisions of the Interim Constitution. As I mentioned it's for yourselves to determine which views are contentious and which are not. Then you will have therefore two tables which are reports from the technical people to yourselves and one to follow tomorrow and you have a draft outline of the format of the report that's required from the sub theme committee to go forward to the constitutional committee. Basically awaiting your input which can fill in natural substance of that report ie. which issues are contentious and which are not contentious. It also requires in terms of the requirements of the constitutional committee a wording for an advert for the content of the next session. That's the first line, very briefly. I just wanted to make three very quick comments with regard to the reports presented and these are the tabulated reports and also the draft for the CC. I am very sensitive to the fact that I didn't particularly want to focus on the Interim Constitution and I think all parties

have been saying that it's not the Interim Constitution that we were determining, we should be using or not using. But parties' submissions have come forward broadly, not all, with specific reference to clauses in the Interim Constitution. Some say we are broadly in agreement with Section 196(2) or whatever it might be. So I've tried to use that format in the compilation of these tables. The second is that the coding is intended as a facilitating device, you may find a better or more appropriate coding or you may find this completely inappropriate and it's just a suggestion that I've used. I made the final point that coming from a finance background myself I am very sensitive to the fact that the image portrayed about consensus or no consensus on financial issues has major impacts on expectations and on confidence and so forth. My own impression in the letter that I've written to the chair is that there has been a considerable degree of consensus among parties on major substantive areas of principle. That we should as a Committee try to reflect this by submitting reports timeously and I am quite prepared and I am certain my colleague Neil is quite prepared to work flat out to make sure that these reports, if the comments come forward from yourselves, can be incorporated into a final report to the CC on time, ie by Wednesday. That's about it.

Chairperson:

Thanks Sirus(?). I mean I don't know how much people have had a chance to read these through but it seems to me that the... What we've got here is we've got a... Well first of all, I think we should say that I don't know whether people have got this document or even read this document, but some time ago the CC gave a guideline for Theme Committee reports. It was included in a document which was a memorandum circulated on the 16th of February. And what this implies is it implies that there are quite strict requirements in terms of the structuring of a report to the Constitutional Committee. And it seems to me that what Sirus(?) has done is, is he has in this document here which is called Report - Summary of Positions, example of a report to the Constitutional Committee. In this document here he has followed this though quite carefully, this structure and that most of Section up to 1.2 essentially is the kind of thing which could go through as it is. What we really have to deal with is we have to deal with the Section 1.2.1 - 1.2.2.1 etc onwards. Basically and I think fairly briefly to identify the points of contention and the points of consensus and that's required of us.

Now as I've said earlier on it seems to me that we could deal with this fairly quickly and we could then go through the tables which

he's got which I would suggest could serve as an annex or as a document which illustrates the positions. And essentially I think that and I drafted a short clause here which I mean I would just suggest for example on the Reserve Bank. I mean what we could say is something like as the clauses in the... What we have to explain, we have to explain in the document why do these tables that Sirus(?) has prepared, why do they follow the clauses in the Interim Constitution because we're not necessarily supposed to be amending the Interim Constitution, so we're going to have to explain that in the report and I think the reasons for that are something like the following. That as the clauses in the Interim Constitution were the subject of considerable negotiations at Kempton Park and the drafters of the new Constitution are bound by principles, there was a high degree of consensus that clauses similar to those in the Interim Constitution should be carried over into the final Constitution. That's what's being said about the Reserve Bank. And then I just thought you know we can add a sentence or two saying the ANC proposed taking over clauses 195 - 7 unchanged. Other parties proposed relatively small amendments only. The points of consensus and differences of emphasis rather than points of contention can best be identified by referring to the attached table which summarises the views of political parties and other major submissions around the clauses in the Interim Constitution. We could have a thing like that which summarises and then it draws attention to the table. On the Auditor-General there would be something like again a relatively high degree of consensus submerged around major principles. Generally political parties and most other submissions agreed that provisions similar to those in clauses 191 - 4 of the Interim Constitution should be incorporated either into the final Constitution or subordinate legislation. The differences in emphasis rather than points of contention largely centred around what should go into the Constitution and what into legislation. The attached table records the views of political parties and others making submissions. We could have some, you know, sentence or two like that in the report which then indicates why we are presenting it in this tabulated form. Now if there were to be some agreement in principle around that, I think we could then go into the tables. If someone has any objection to that, then I think we into a new ball game all together. So perhaps we should just hear some views on that before we go any further.

?:

May I just start with the question of the Auditor-General because I had the opportunity of going through this on my way over here you know sort of walking and dropping over steps and so forth

until I got here. I think that most of the points that have been mentioned in here are completely acceptable. There are a number of points that were brought up by other political parties, for instance the IFP and also the Freedom Front, which I think would require some discussion here if we were to accept them. But without that I mean these aren't material points which are really going to change the whole nature of the function of the Auditor-General at all.

Chairperson: Can I just say that what we are supposed to be in this Committee and what we're not supposed to be is quite important. We're not supposed to be a negotiating forum. Now this report is not supposed to mean to say that we have looked at the Freedom Front or the IFP's proposal and most of us disagree with it or agree with it. We're not supposed to do that. We're supposed to say that as it says we're all agreed with this and then there was disagreement over this and basically who was putting forward the disagreement, that's what we're supposed to do.

?: Okay but what I'm really saying is ... Well, it's the same thing there, that we have to point out the areas of disagreement here.

?: Just to be clear on that, so therefore the issue isn't for us to try to discuss and see whether we can come to some agreement, we just accept that there are areas of difference.

Chairperson: I think that's right and I mean I think that first of all we have to decide whether we, on this material, whether we put it like I said, you know, that there are differences of emphasis rather than fundamental points of contention. And then I think what we would do is if we agree with that, we would go through Sirius(?) tables and we would see whether, what he said accurately reflects the positions. I mean is this really a point of contention or difference or is this really a point of, you know, is there actually a major consensus that we've actually misunderstood what somebody was saying, something of that sort. That's what I think we would do.

?: So just for clarity on what's happening or what happens next in a sense because we can say it's a point of emphasis and it moves up the ladder and what happens if, at higher up the ladder people who are not familiar with the issue, then say oh it's actually quite a major difference and it can get... I mean who decides at what point it is a major difference or it isn't or if we are saying emphasis or if we're saying a major difference. So in a sense will the outcome reflect what we are putting forward or would it be

substantially different?

Chairperson:

I think it's up to us to say that this was... It's a judgement we make that this was a serious point of contention, this was a very difference of emphasis. I think it's up to us in our report. But anyway I mean I think we, you know, we would need to deal with the details of this and see whether an issue was a point of contention or a difference of emphasis.

?:

But I think the point is this that a lot can be achieved that we could discuss because many points that were raised here, which probably if another perspective was given on this, would change the point of view. There is certain things in regard to the Auditor-General here that the people who made this specific recommendation, didn't understand how the function really operates and I think if a little bit more clarity could be given here, we could probably get the consensus and I think... Well, I agree with Jill. If for instance we had to put matters here in a category which we could not resolve and somebody else who doesn't know the situation at all has to make the decision, you can get the wrong decision all together.

Andrew:

Okay, yes first of all as far as I am aware, to use the terminology, the contentious and non contentious issues are only supposed to be issues in relation to the members of the Theme Committee and the Constitutional Assembly. In other words there's something contentious that the Conservative Party has said or that SACCOB has said, that doesn't fall into that category. One can report on the comment but it's not okay. Secondly I think that we need to discuss various things simply to see if there is common ground that we're not missing, either simply because say a particular party didn't make that comment and in actual fact they're quite happy for it to be there or alternatively people are using different words to say essentially the same thing. Or even different mechanisms to achieve the same objective and after a bit of discussion one may say well yes I am just as happy with that mechanism. So in that sense it's not negotiating in a bargaining sense but in a sense of... If one can find common ground because it's there, you find that you don't simply say well people use different words so we throw it out. Finally I think that by moving away from words like contentious and non contentious and emphasis and so on, I think it would be wrong for us at this stage to try to classify differences of opinion into contentious and non contentious and emphasis/differences. I think we should simply say on that particular item, there were different suggestions or whatever. I agree moving

away from the contentious non contentious thing is a good idea because it sort of heightens it above the level where it should be. I think all along it's an unfortunate terminology that we are using because it kind of suggests an imminent fight. But I think and I think we should ... (intervention)

?: ...354... (Inaudible)

Andrew: Sorry.

?: An inevitable

Andrew: An inevitable fight, so I would agree moving away but I don't think where we don't find common ground we should then say okay having not found common ground, is this just an emphasis difference or is it a contentious difference. I think we should just say this is ?.

Chairperson: Okay just let me say on two points that Ken said, I think first of all according to the document which I got, we are supposed to record the positions of organisations of civil society. So I think that, and it's under the item here which is called a list of contentious issues indicating briefly and then it goes several things including the positions of organisations and civil societies. So we should deal with it in some respects under that. And secondly I think that we are required to say something about the gist of the contentiousness in each case and the position of the parties in relation to each issue. So I think that to use that old phrase now, we are supposed to try to say something about whether this was an antagonistic or non antagonistic contradiction. I don't know whether, I mean I think... So somehow we intended to evaluate it. But I think from what I am hearing from everybody there is an agreement that we should now go through the substance of Sirius(?) tables and we should attempt to see how we evaluate what he said about the degree of contentiousness or not and see what we resolve by discussing it and amend that. I think that we've agreed on that as a methodology and I think that would probably be the most preferable thing to do now.

?: I have a bit of a problem on that methodology. I am quite happy as a kind of preliminary hearing and for Sirius(?) to take us through his thinking and so on and to see it in this form which I haven't been able to look at. It was on my desk when I came back and I went straight into another meeting. I would certainly not be happy from my side to endorse anything at this stage, simply because

you know we now suggesting and because we decided correctly to look at amendments with specific clauses you know we are actually saying that's the word, you know we're happy with that wording full stop. Secondly on a slightly broader effect and you know I did make the comment I never quite know what some of the rushes are that are talked about. I think we should spend an hour or so doing that this afternoon. I actually think it's impossible in the next two days. We've got the budget in two days time and anybody is going to take the budget seriously and that applies to many... I mean many people would take it seriously. So if we were going to take it seriously and are going to be heavily involved which involves many of the people here. Thirdly, I've got a hell of a lot to do between now and Wednesday morning. And I again, certainly maybe other people have got the capacity, but I would quite honestly not in any sense of lack of co-operation but I would just have to say well you know count me out and I can't look at spending a couple of hours going through these things to do the job properly. And then another while whether that's one hour or three hours you know the committee trying to finalize something before Wednesday. From my point of view it's just not practical. I'm sorry, but that's where I am.

Chairperson:

I mean the trouble with that is I mean I can imagine that probably a number of people feel that. I don't know where that leaves us, because I mean when we say about before Wednesday, I think we talking about Wednesday plus seven working days. Which leaves us way beyond the deadline which has been set by the CA and I don't know what they going to say to us when we turn around and say we want to hand our report in two weeks late but we'll maybe face that one if that's what it comes to.

?:

You see we don't have a serious... I mean we haven't got a jam-packed schedule between now and the end of June. So I mean if this block and obviously I mean we're very far advanced. It's not as if our report being two weeks late is holding up anybody else in any other respect or in any way implying we won't finish our work by June. So you know it's not like some other Theme Committees that you know like say the Bill of Rights who has got a thing for every single block from now until the end of June and if they get two weeks behind on certain blocks they run into problems. And you know clearly it's well like all things but I mean it needs to be done properly and well I am not scared of the CA. I mean we are doing our best to work hard, we're working seriously, we all are and let the CA say whatever the CA wants to say and I don't think we performed any worse than any other group in terms of concrete

productivity as oppose to waffled reports.

Chairperson: Well I mean let's not debate any longer about whether our report is going to be late or not, let's just get on and do as much as we can to - let's just get on and do as much as we can today and see if there is, at the end of the next hour we've got anything more to let Sirius(?) get on with the job.

?: Yes, just with one proviso that it doesn't work. I mean I agree with Ken, but I just think what we need to do there is to be sure that what we're doing with Cyrus and Neil is fair, that we're not putting them in a situation where they end up working all night to get something ready for an artificial deadline. You know what I mean, which I think is something we just need to, when we're finalising it, work out their schedule because Sirius(?) certainly will be just as involved in the budget and perhaps Neil as well from his banking area.

Chairperson: Okay what it means is that meeting after the 20th, that day is already... No, sorry, yes the 20th that Monday we've already scrapped as a CA day. The following Monday we will then have to set as I would say finalisation of this report, okay, and then it goes in on the Tuesday or something like that. That's what we're looking at. Okay and I'll write to the CA accordingly.

?: Well, again Chairperson with all due respect and I am sorry... I mean that would be the day in which we must all come fully prepared to spend x many hours finalising you know our discussion. In practice someone probably has to go and put that together and we have to have the final meeting to put our stamp on it. So again there is nothing magic about that Tuesday compared with that Thursday or that Friday and I am just saying I don't in the nature of those things you have discussions and you eventually agree and you say you got that wording fine and then someone goes and put's it together and it comes back and you say all right word for word, we now all happy and I think that's going to you know, you need another two or three days in practice.

?: Just to bear in mind that we're doing our best and it will obviously be clarified tomorrow, but the aim of the joint standing committee is that the 27th was where we will table our final report for approval. Now if we've done a good job that would be fine and it won't take long. But it may in itself require a fair amount of time, so I think just to bear that in mind to finalise two reports on the same day may not be very workable.

Chairperson: Well I mean then we do start getting into some difficulties. I mean you know, whether we're going to say we're ready. We are a committee that is not dealing with a lot of contentious issues, and we got more important issues which is going to be more contentious later on. I mean we are going to have to give them a deadline of some sort.

?: Sorry if I could just make a suggestion because I am reasonably sure our committee will not want to meet on Tuesday the 28th having sat for seven days, and maybe this Committee should look at the 28th and utilize the time that would of been allocated to the finance, because everybody here I think ...487...(inaudible). So just take that as a day that one could switch over.

Chairperson: All right well what I'll say then is I'll say the end of the month. How does that sound? Okay.

?: In practice nobody is going to do anything before the recess either in terms of the next block or in terms of anything else - well not from now to the recess, but I mean in terms of this sort of thing, it's in practice not going to happen.

Chairperson: Okay well let's not spend any more time on the timing. I'll say to them by the end of the month, alright. We'll ask for that extension. Can we now go through these tables and I wonder whether we should start with the Reserve Bank or the Auditor-General. Dr Jacobsz has suggested some... he would go through the Auditor-General. Should we start with the AG?

Jacobsz: Well, I think Chair I am not really in a position to make any?... comments here. I can tell you one or two... some observations that I can give you, but I don't think it's going to serve any purpose because the people who put in these reports aren't here. So we can't get into a discussion with them at all.

Chairperson: Sirius(?).

Sirius(?): Two very quick things. One is that the comments, every single word that's put in by way of comments with the exception of the letters AQ and the letters NCA are all extracted from written submissions. They are all quotes of one kind or another from written submissions. So in one sense it makes the task slightly easier and in a certain sense it's really a checking exercise by every party that submitted that what I've written in here is in fact truth and in fact an accurate depiction of what's being said. The

NCA and the AQ are really mean saying that it seems as if - from the wording of a particular submission that the agreement is being emphasised or has been indicated on a particular section or particular subsection. That was the first thing I wanted to say. The other one was that I just wanted to correct an impression that in fact had been indicated by the Chair. I am not making any comments in these tables at all really barring those two things - AQ and NCA. This is a bland reflection of what's in the big pack of submissions from all sides and of course the comments made in the presentations and so on. So there's no emphasis thing being placed on any of this. In a certain sense the idea of this is to say pick a section as it's the format that's being used. If one, as an example perhaps if one... I can ask if people could look at the Reserve Bank one just as an example. The very first Section 195, if one looks across Section 195 and the quotes from the Interim Constitution is that the SA Reserve Bank established and regulated by an act of Parliament shall be the central bank. And if one goes across the first two pages of that, the ANC has said that it accepts... I forget the exact wording, and it's contained somewhere later in this pack here.

?:

...555...(Inaudible)

Sirus(?):

Yes, so in that regard I've put A under ANC. The National Party has indicated in an oral submission I recall it said that it was broadly in agreement. There may be some minor changes and so I've suggested NCA there. The IFP has made a specific comment in regard to this area which is that the SA Reserve Bank shall be re-established as a central bank of South Africa. The DP haven't made a specific comment in this regard and again either from comments or from the general impression I have to take it, I suggested NCA and so it's gone further. If one continues to page 2 because everything couldn't fit onto one single sheet, it's the same Section 195 and various other parties. CP, PAC, SACP, ACDP and then comments from other submissions where they occurred or been raised on this particular thing. SACCOB for example, they're enabling an act of Parliament established in the regulating ...?... shall not detract from the principles which are mentioned further down, the next section down. Now my suggestion and again it's just a suggestion as a way of proceeding on this. Section 195 barring the one AQ as I have suggested for the IFP isn't something that I would imagine the committee would want to elevate to the status of a contentious issue. It to my mind, it may or may not be - it's not for me to decide. In this particular instance it will be the IFP saying well this is or isn't in the IFP's

view of contentious issues. And we then go down line by line on the particular issues. My own view is that in going through this process three or four issues might end up crystallizing as contentious issues which one would want to specifically reflect in the report going up to the CC.

Chairperson: Okay.

?: Yes I'd just like and I think it's a good example because it may not be a fundamental issue forum. You see the suggestion, I think it's simply a change of name that is suggested. Now it may not be contentious in the sense of life and death, but my understanding the way the Constitutional Committee is working is that when a report goes out all the issues that are non contentious, if they are proximately specific as opposed to just broad generalisations, the Constitutional Committee is then saying, right those issues we are now referring to legal drafters to turn into clauses for a new Constitution. Now while as I say it may not be a life and death issue, if one doesn't put the name of the bank as a contentious issue, I mean structure will then be to the drafters, go and draft and calling it the South African Reserve Bank. So in that sense because in other words we don't like using the word contentious because it's such a loaded word. But in that sense that would be the implication that you will end up with a constitutional draft whether it's called the Reserve Bank and not the central bank, which may not be what the IFP wanted and so that's the problem of not calling it content or you know putting it in that category.

Chairperson: Well I think I mean I think Sirus(?) gave us a way forward. It would then be up to the IFP to say that is a matter of major principle to us and we put it on the contentious list.

?: And the same with going through for instance the Section 196(1), the statements made here by the SACP are very contentious indeed. I am not quite.... What did you say the D meant?

Sirus(?): It just meant disagree.

?: Disagree, okay, but surely this is something that this Committee should express some sort of opinion on? But this is... I mean you're coming down to the very, the really very primary objection to the Reserve Bank when you start talking about this position.

Chairperson: No, we should not negotiate it. What we should do is we should say that I mean evidently that, that then becomes a contentious

issue, that's all we should do. That's what we're supposed to do in this report. We're not supposed to go through and say that although you know the IFP proposed this, most of the rest of us say no and therefore it's not contentious. It then goes out, it's a contentious issue if they held to it.

?: ...661...(Inaudible)

?: Rob I don't have that 16th of February address in front of me. I don't for one moment dispute that your interpretation of it is correct. I am not sure if the Constitutional Committee hasn't sort of moved on a little bit beyond that in terms of the processes and what I'd like to suggest is before we have that meeting on the 28th if that's the date, that you speak to whoever, simply because the number of submission to this committee is relatively small. On other committees on every subject on which any person or out, and I am not talking about a party represented in Parliament, any person or organisation outside of Parliament has expressed an opinion that differs with possibly the unanimous opinion of all the parties in Parliament and you list that as contentious. Then in actual fact nothing is going to be referred to the drafters for drafting because on, you know like Theme Committee 3 issues, I mean somebody in the country even if the parties reach unanimous agreement is going to disagree on every single thing that we are doing. So every single thing will be listed as contentious. And I think one doesn't want the report to by any means ignore outside contributions and where differences have been expressed by them, they should be there. But in this allocation of contentious and non contentious I'd like to suggest that you do have a discussion with whoever it is, whether it's ...?... or Cyril Ramaphosa to see the way forward because I think for the process as a whole it's going to be very problematic if all committees follow the vigorous procedure laid down in that letter on the 16th of February.

Chairperson: Jill.

Jill: My concern is a similar one in the sense what is the waiting given because the question would be are we all then in the situation which we've agreed as political parties. We don't have a problem and then a body of whatever kind, whether it's another organisation or institution it says well we don't - we ...?... is stuck. And to what extent, where does the decision get taken that says, fine we've noted that, but we're not actually going to do more than note it. Because it's something that is not in terms of the issues

you're wanting to address ...

TAPE 2 - SIDE A

So my question would be yes, I think that it does need to go forward as a view but one should have some clarity about does it then sort of stick in the system? Until what point?

?: I don't know if there are other organizations that ... The process as far as I understand it compared to the parties is that we feel strongly about a contentious issue. An issue that has been decided to be contentious. I think we should insist that it goes forward and then we should develop our arguments and give them to our colleagues in the CC to see how they go with those arguments. I don't know what happens in the case of outside organisations ...?...

Chairperson: We seem to be getting a little bit caught up in cross purposes and I don't think we are dealing with points that were made by outside bodies and individuals and somebody like that. I think we are talking essentially, the example I gave was the IFP. I think if all the rest of us say that the SARB shall be the name, and the IFP says it should be something else, I don't think that what we should be doing, is we say well the IFP is outvoted, therefore it is not a contentious issue. It's a party that's represented in the CA. That then becomes a contentious issue, if they say it is. I think that's basically the way and I think that is what we should be doing now if we don't mind. We can go through the list like this and then see where there are things and what the weight of them is. Do we want to start as we started with the Reserve Bank. I mean, maybe the first thing we need to do is to ask Gavin what is the status of the SARB name as versus the Central Bank of South Africa.

Gavin: Personally I think Reserve Bank is a very limiting name and I can understand why at the time it was called the Reserve bank but the functions of the Reserve Bank goes far beyond ...?... Now if you look at the world experience 45 Central banks and possibly three others in the world that are called Reserve Banks, most of them are just called banks of such and such a country or the National bank or Central bank of that country. I just thought Central was far more fitting with modern times. ...?... Constitution picked that up by talking about Central Bank as opposed to the Reserve Bank.

? See Mr Chairman, this is now... We are getting very ...?... because we agree. From our side, the word Central Bank is a

good word. We discussed it when we sat here and then you put your memo forward and you said "yes" we could. We received this so late that the National party couldn't discuss it, but from our side, we have no problem with the word Reserve Bank or with the word Central Bank. Just discussing the last 10 seconds, we think the word Central Bank is a good one. Now, how are we going about dealing with it in a practical sense from here onwards?. That is what we would like to know.

?: ...463 - 467... (Inaudible).

Chairperson: This is probably we are going to lose out on. If everybody now goes away to their own parties. We are going to lose out on the issue of interaction, but we can do it that way. I can see the time is getting short and I can see we are not going to make any progress today on any of these issues. That's all we can do.

?: Mr Chairman, I don't think that's ...?... What we have to be absolutely sure of, the three of us sitting here, have got the same point of view in regard to this. Now we may have differences among each other which we can argue out and then we can come to a point of view. That's all that we want. Are we absolutely sure that we are unanimous in what we're saying and that this is important whatever other points are made by other parties.

?: Chairman, you see in the first place on a particular478 - 508.... (Inaudible)

?: You see, I think, we can do this the hard way or the easy way. I mean I think the easy way would be that these tables as they stand, perhaps with the removal of the ANC ... AQ's could serve quite easily as a sort of an easy guide to the positions of the parties, which is also what we are supposed to report on and we could then, we then exercise now of deciding on the contentious and the non-contentious issues. Hopefully the drafters will look through this and if they see for example there is a proposal, they shall be called the Central Bank of South Africa, they will consider that but whether we shove it in a list that this is a contentious issue or whether this is something which could be considered and weighed up against a whole lot of other things. Maybe we need another category like that. I mean which is not really contentious, but is a proposition which should be considered at some level. I mean maybe that is what we need to do as well. I am a bit concerned if we are going to sort of... somehow or another I think we've got to be empowered to be able to clarify our own parties

positions. I think, people are now going to say they won't take back. I mean the National Party wants to take back to the National Party whether the Reserve Bank should be called the Reserve Bank or the Central Bank of South Africa, we will never finish this report. I think that it's going to be a huge problem.

?:

That's not the point. The point is this, there are three of us sitting around here. All that we want to do is to have the opportunity to consult with each other, to find out exactly what the point of view is... Because I would like to get the benefit of Dr Marais' point of view with regard to the Reserve Bank and certain issues here so I can understand the issues. That's all I'm saying. I think that maybe then we have to say that we have to conclude that nobody is prepared to do the exercise that we wanted to do which is to go through. I mean prepare in the sense of having done the preparation. Having read the documents and having the discussion. Nobody has done that kind of preparation. To go through the kind of exercise which we need to go through, which was to go down the list and then to see what is contentious and what is non-contentious, what the nature of the differences are. But I think that when we do that, if we do that, there can't be any further referring back. I mean, if somebody comes, as ...?... a mandate from my party to take us backwards, we can't keep doing that. If we agree on that, next time we meet then I think we could cut the meeting short today at this point. Mr Chair, just to assist us when it comes to other submissions I think we actually have a problem, where to put it in. I think we as a party are going to discuss our own submissions and we may decide what we like for example, this one ..?... and then we as a party ..?... we support this recommendations to say that means we bring back other submissions into the main body of ..?... Just as a proposal, I think otherwise they may disappear and some of the recommendations may be very positive.

Chairperson:

I think as a committee we can decide on how we present certain issues. I don't think we can have parties now changing their submissions as such. The party submissions will be sent in and are summarized here. But we can have a process of identifying your weight and so on that each party submission is heard. But I mean if you want to take on board a proposal and suggest that we need to recommend it, as a matter, then somehow we can do that.

?:

Chairperson, it just worries me about how one would ever speed up this process and perhaps somehow or another one has to engineer the process so that one engineers debate in this

chamber, because when you have just a parallel, a row of parallel submissions, it doesn't allow one to actually debate the issues. What allows one to debate the issues is if you have a concrete draft document in front of you with differences of opinion built into it. Now I know that I am sort of breaking all the rules that you outlined there, but it does seem to me that one does need to work out how you actually progress in this area here. I would agree for example because I know I'm not meant to disagree or agree, but I think the whole suggestion of a Central Bank is a good one. Whether it is practical or not, I don't know? But somehow or another, in this process one can't really debate it. Whereas if one actually took it down to some sort of draft report, then in a sense you have a way of going through to it. I think Kempton Park would have been going on for another 10 years and we operated with this process. I suggest that given the fact that we have used the Interim Constitution as a bench mark, that we sort of continue along those lines and actually generate a document and you can highlight things and stick things in brackets and what ever and then rule a little bit faster.

?:

I just wanted to ask if you can look at this one which is an example of report of the Constitutional Committee. It's one of the one's in that pack. Dealing with this report it follows exactly word for word with the format required by the Constitutional Committee for their report. If you look at section 1.2 which is an overview of material process. On 2.1, general discussion of the material taken as a whole indicating any specific or identifiable trends and 1.2(21) list of non-contentious issues in relation to the above material generally. Now why I am raising this now, because in the discussion we just had, as an example, there's a general agreement that something that has been suggested by SACCOB or COSAB and there is no difference of opinion, everyone agrees with that. It could be stuck in there as 1.2(21) -1.2(22) would be a list of non-contentious issues in relation to party positions which would be as stated here, in other words without parties wishing to specifically bring into their submissions the view of say SACCOB. That's the reason why I think it is being framed this way because the presentations come externally to the parties and then if there has been time for the parties to assimilate it within their positions, well and good. If there hasn't been time, at least there is space there in 1.2(21) to stick in the agreement generally that these issues have not been contentious. I just want to point out, 1.2.3 - at the very bottom there, items of section 6, possible approaches of models or alternatively and how the CC can proceed with the view of conflicting positions. Now, that is the sort of escape from

all of this, but the trouble with this, is that it comes in as a sub item on the list of contentious issues. So as an example here, with the section 195, IFP is suggesting it should be called the Central Bank. The way they ..?..in the Constitutional Committee, is that this be listed as a contentious issue and then a possible approach on moral suggestions to deal with conflicting positions should be whatever the view of the Committee is. Now my own view is that it's elevating the issue to far beyond what is actually ..?..

?:

...614...

Chairperson:

I think what we probably have to do is what I think Cyrus has done, he has presented us with a very good summary of essentially 1.2(33) 4 possibly 5 that's what he's given us. A good summary, that is what these tables are. What we have to do is, we have to generate 1.21, 1.22 and 1.22(2) and some of the other sections and propose how we're going to ...?..., that's where we are stuck at the moment. And I think that what we need to do is to concentrate our minds on this. Now, I mean, Neil is saying that we should have a draft document. I mean, what we are doing is that we haven't deliberated along these issues very much ourselves and I think it's not possible. What we need, I think we need a deliberative session and then somebody who is there and I think one of the two of our technical experts we will ask them, to then draft something based on what we have discussed. That is what we have to do next. Otherwise we are not going to get any further. I think that is basically what it is. I think if we do that in the next meeting, go down this list and say what is the how and how do we respond to the different proposals, what is the degree of contentiousness around that, we might be able to get some where. I think can we agree on that as a methodology for a way forward?

?:

...?...(Inaudible)

?:

There's 1.2.22. I would have anticipated it says this is a non contentious issue in relation to party positions. I would have imagined that that is meant to mean non contentious issues in relation to Parliamentary party positions. Just in the nature following, but maybe we need some clarity somewhere along the line because it makes a big difference again in this committee and in many others, because

Chairperson:

Maybe I can get some clarity on that next time. I don't think it alters the presentation of the tables. It does, you know, what we have here. I mean, maybe I should just circulate these couple of

clauses that I have drafted as well, because I think that something like that is probably the way we would cover it and then we would list the contentious issues because we need to explain why we are sticking so closely to the Interim Constitution. I think we need to include somewhere in the report, that is the other thing, just for information, other proposals, I think we just say some suggest..., I don't know, you know I think where people made suggestions and they are not necessarily recorded in the AG Reserve Bank or these other procurement proposals, I think we should just put them in. I put things like some suggestions were including constitutional provisions required a balance, budget or a special majorities ..?.. budget or increase expenditure by more than fixed limits emerging some of our discussions but were are not taken up by firm proposals by any party. I think ... there were also some suggestions that other financial institutions, banks and the financial services ...?... have varying ...?... were not taken up by any party. The Johannesburg Stock Exchange explicitly imposed entrenching the independence of the ...?.... There were a few things like that which I think we need to put forward, record those and put these forward, in addition to the main sections which we dealt with, but I think that really to cut this meeting short, I don't think we need to go on any further. I think that we basically need now to all go back and to study these lists of Sirius(?) quite carefully and then we must come back and I think we must go through line by line and we must establish the nature of the different positions and something is the suggestion or something is an issue of contention. I think we should do that for next time.

?: Inaudible comment.

Chairperson: Yes, I will ask Pat to I think that anybody else who has any suggestions for how we might introduce the issue and introduce the question particularly while we are dealing with the Interim Constitution so closely, we'll come to drafting something else as well. We are going to have to ask for an extension until the end of the month. I think we are going to say till the end of the month. OK. Is that good?

?: Inaudible comment.

Chairperson: OK, well, the head of the Constitutional Assembly has seen the draft we have got now just for his purposes. Pat has just informed me of that. Sirius (?).

Sirus(?): I think we're all completely out of order here but I would like to ask

the question, whether there is a general view as to whether there are... I am trying to suggest that it may be prudent to qualify the request for an extension with the qualification that it's... My own impression is that there are not absolutely fundamental differences in this committee and being a committee dealing with Finance which has direct translation into confidence and expectations ..?... economy but some form of qualification be given to that request so that it is indicated that it is not because it is sort of a break down of consensus in this committee which has caused this delay.

Chairperson: I don't know if anybody in the public will even know about it. But alright I'll just say that it is because of technical reasons in drafting our report.

?: Because of the budget coming up and our involvement with ...?... which is the truth, otherwise we can probably do it this week.

Chairperson: OK, we will do that. There is just one final thing which I should just mention very briefly. It is this old ...?... public participation and then as far as I know, nobody from the subcommittee have been on any public party participation and I am constantly getting a ...?... that somebody ought to go. I don't know quite when the next one is going to be, but in two weeks time, if somebody could get their heads around the idea that they want public participation and it's not ..?.., Phalaborwa this time. I don't know where it is going to be. Could you just rescue

?: One in St George's Cathedral Hall or during the lunch hour and then I'll volunteer.

?: Inaudible.

Chairperson: OK, you are right. We started asking the FFC to come on the 27th. I think we will have to ask Pat now if she can undo that request. That we are now talking the first Monday in April if they're still here.