

TRANSCRIPTIONS FOR THE TECHNICAL COMMITTEE ON CONSTITUTIONAL ISSUES
28 JULY
Discussion on eighth report

Chairperson P Gordhan: Let me remind me you of one of two decisions and a few recommendations of the Planning Committee to bear in mind. The first aspect raised as a political decision is that we need to take into account in the Eighth report is the question of confederation on page 46 of that report. You will recall that in terms of an earlier resolution taken by this we said that this issue as applies to self-determination is an issue which will be dealt with tomorrow and therefore no decision will be taken today. Secondly on the question of the TBVC states, the Planning Committee was asked, in the context of the discussion yesterday, to look into how this matter can be dealt with. There has been a brief preliminary discussion in the Planning Committee in this regard and a more concrete recommendation will be forthcoming hopefully tomorrow, on how this matter can be dealt with in the sense of a structure being established to deal with specific matters being raised by yourselves. The recommendation from the Planning Committee is that today we go through the eighth report and the draft outline purely for the purposes of preliminary comment and not necessarily for extensive debate at this stage. Comments which will help us identify the different perspectives we might have in this report and give us an appreciation of where the commonalities and differences lie in general terms. It is then proposed that under the guidance of the Planning Committee bilateral and multilateral meetings should take place between those who hold different views with a view to finding common ground before the matter is extensively discussed. We believe that would be a more constructive way of helping us managing the debate on this matter. That is the proposal from the

Planning Committee would you approve that proposal. (Approved) Paragraph 1 of the Eighth Report are preliminary comments which indicate the way in which the Committee has approached the formulation of the 8th report and in particular the draft outline of the constitution. Are there any comments on that?if not, we move onto par 2 which makes reference to confederation. Mr Cronje?

Mr Cronje:

I want to comment on 1.2. On the second page of the report the report argues that although the two phased approach is followed, provision is made for regional government and autonomy and regional powers. But having studied the report and draft constitution I could find no allocation of exclusive or regional powers during the transition phase. The deficiency for such a regional neglect is for the following reasons quite obvious. The sounding in actual reasons for regional governments such as democratization, prevention of conflict and improved communication channels will be needed during the transitional phase. To leave fully fledged regional governments to a later stage would defy the object. Secondly international experience shows that if regional governments are neglected during the initial phase they will barely be accommodated during a later stage. The transition can be successful if regions are accommodated and their positive attributes are fully exploited. They should not be seen as hurdles in the way of transition but rather as building blocks. It cannot be expected that current and newly established regional governments should enter the transition phase without having more clarity and finality regarding the future constitutional position. At least the basic framework with sufficient detail and guarantee should be in place. And if I may preface by saying that we have agreed to certain constitutional principles in this Forum. Those principles have made certain provisions in respect of SPR's and the relationship between SPR's and the central government. Apart from the fact that I believe that is the way that constitutional provisions should be made, I also believe that it would be in the interest of the rationalization programme of the various administrations that there should be finality and clarity as to exactly to what the ultimate objective is in order to in a

sensible way tackle that rationalization process. As provisions are made at the present time, it leads to a situation where all the powers will be dependent on negotiations with the Commission on regions and with the CMB. That in itself after an election, will take considerable time. Secondly the committee itself indicates that the powers that may be negotiated by the region in the transition phase may be different than what it may be after the CMB. I suggest that it is more complex than most believe, of rationalizing the various administrations previously engaged in some form of government in a new SPR. If the allocation of staff, in terms of ultimately having negotiated who is responsible for what which is going to take time is allocated to the central authority and shortly afterwards the //// are changed again and the authority of who controls the staff and who the staff works for and where they go I would suggest is not the most practical way of adopting it. The second difficulty is that in terms of the provisions contained in the constitutional principles which we have agreed to, no provision is made for exclusive powers for the regions no provision is made for original powers. The powers are not contained in the constitution. It is to be negotiated and dependent on the goodwill of the central government. That is not in accordance with what we have negotiated. I understand that the transitional provision is different. But is creating a problem. The statement made that it makes provision for autonomy and original powers, I couldn't find the autonomy part.

Chair:

The technical committee, would like to respond to that?

Proff Wiechers:

We were very much aware of the sentiments and feelings expressed by Mr Cronje. There is a practical problem which should be considered by the Council. If we talk about the regions in a future dispensation these regions would include bits and pieces of present regional structures and governments. They could range from TBVC countries, self-governing states, provinces and so on. The practical question is how do you combine these diverse powers and functions into newly established regions and then say these powers will be the region, they will be the regional powers in the transitional period. So there is a very