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TC2/24(3)

**CONSTITUTIONAL ASSEMBLY**  
**THEME COMMITTEE 2**  
**STRUCTURE OF GOVERNMENT**  
**THEME COMMITTEE MEETING**

**Wednesday**  
**2 August 1995**  
**9h00-17h00**  
**M46**

**DOCUMENTATION**

**INCLUDING:**

**Outstanding Portions of Minutes of Previous Meetings**

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**CONSTITUTIONAL ASSEMBLY**  
**THEME COMMITTEE 2**  
**STRUCTURE OF GOVERNMENT**

**NATIONAL ASSEMBLY, PRESIDENCY,  
CABINET  
(BLOCK 2)**

**Minutes of Debates:  
29 May 1995**

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# CONSTITUTIONAL ASSEMBLY

## THEME COMMITTEE 2

### MINUTES OF MEETING

29 MAY 1995  
9H00-16H00

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**NOTE:** THE MAIN PORTION OF THE MINUTES OF THIS MEETING, INCLUDING THE ATTENDANCE REGISTER, IS INCLUDED IN THE PACK OF MINUTES ON PROVINCIAL GOVERNMENT. A FURTHER PORTION OF THE MINUTES IS INCLUDED IN THE PACK OF MINUTES ON THE SENATE.

**3. REPORT ON THE NATIONAL ASSEMBLY, PRESIDENCY, AND CABINET: DRAFTING**

3.1. The meeting revisited certain aspects of the **Third Draft** of the report, as minuted below:

**A. NATIONAL ASSEMBLY**

**5. SIZE OF THE NATIONAL ASSEMBLY**

3.2. The meeting agreed that for the purposes of consistency, Comment 2 regarding Contralesa's submission should be referred to as an organisational submission and not by name.

**20. POWERS OF THE NATIONAL ASSEMBLY**

3.3. The meeting agreed in respect of agreement 1, that "producer" should read "procedure".

**28. ROLE OF MINORITY PARTIES IN THE LEGISLATURE**

3.4. The NP raised a concern that comment 1a, "Minorities is not necessarily a matter for the Constitution", may give a wrong impression that there is agreement that provisions regarding minorities were not necessarily a matters for the Constitution. They stated that they do however agree with point b, that "the NP would like to revisit depending on the acceptance of its view on power-sharing in the Executive."

- 3.5. The DP noted that Constitutional Principle XIV states: "Provision shall be made for the participation of minority parties in the legislative process, in a manner consistent with democracy." They stated that as they understood the matter, there was consensus that one of the ways that you deal with it was through proportional representation, because that would allow political parties regardless of size a direct participation in the process. They stated that the only point which could be taken further was that there was a strong case for saying that that particular proportionality should also be reflected in the committees of Parliament. They stated that they had understood the meaning of proportionality beyond that to be simply a way of accommodating minorities. They stated that therefore they thought that there had been agreement on the concept of proportionality as a mechanism for allowing everybody to have a say in the legislative process, and that the matter was not contentious.
- 3.6. The ANC stated that the DP was correct, up to a point. They stated that the question arose about the Chairpersonships of committees, as to what degree of proportionality would apply. Furthermore, the ANC stated that the question of proportionality with regard to committees was not a matter for the Constitution, but really a matter for Parliament to deal with. They stated that if the report was going to be rewritten on this point as requested, then the ANC's view should also be reflected, in order that there be no confusion at the Constitutional Committee about whether the ANC's view was clearly stated.
- 3.7. The ANC reaffirmed that the matter was contentious, and it could be made clear that the ANC had expressed the view that it was not a matter for the Constitution. They stated further that if the report would say something about proportionality, then the ANC position was that the question of proportionality applying to the Chairpersonships of select or portfolio committees was a matter of contention.
- 3.8. The ANC furthermore reiterated that they were not in favour of power-sharing in the Executive, but that they had no problem with the NP revisiting that issue.

- 3.9. A speaker stated that there had been a previous debate about the NP's idea of a fall-back position, which was seen by the rest of the Committee to be unsatisfactory. He stated that there had been a view expressed at the previous meeting that if the NP was unhappy about an issue, it had to state that it was unhappy, and that that matter would then become contentious. The speaker then stated that there was no doubt that the NP would like to see the portfolio committees being shared out on the basis of proportionality. He stated further that it was a point of contention as far as the ANC was concerned whether one should make provision for that in the Constitution, and that that was how it could be reflected in the report.
- 3.10. The DP thereupon stated that the ANC equally would have to meet the requirement of stating their position. They stated that the issue was not merely a frivolous one. They stated that there was a Constitutional Principle which read that the Constitution should make provision for participation of minority parties in the legislative process. They stated that the issue was not how one got into Parliament by being elected into it, but how one would handle that matter. They stated that the Constitutional Principle stated that provision must be made for minority parties in the legislative process. They noted that this was a matter in respect of which they did not require detailed discussions at the present meeting.
- 3.11. The DP continued, however, by saying that it may be relevant to state at this point, as it may have bearing on what could be called the power sharing problem of the NP, which the NP wanted in the Executive as well. They stated that the DP's position was that the more powerful the Parliamentary portfolio Committees were, in making an input into monitoring the Executive and expressing opinions on policy, the more it actually allows minority parties via the Parliamentary system to make an input into executive decisions. They stated that they were raising this issue as they believed that a powerful Parliamentary Committee system would go some way towards accommodating what they called an input by minority parties into the executive process of thinking. They stated that this would also not impinge upon the majority decision of the Executive itself. They suggested that this was an area which could well be explored to try and bridge the gap, between those who say one wanted power sharing in the Executive, and the others, as well as the constitutional requirement that there actually had to be minority opportunity through the legislative process.

## **B. PRESIDENCY**

### **1. TERMINOLOGY**

3.12. The meeting agreed that the term "State President" should be used consistently throughout the report.

### **4. PRESIDENT MEMBER OF LEGISLATURE?**

3.13. The meeting agreed that contention 1, namely "the DP favours a directly elected President", was incorrectly repeated and would be removed.

### **5. TENURE OF OFFICE AND NUMBER OF TERMS**

3.14. A speaker stated in respect of contention 2, namely "maximum of two terms", that he believed the meeting had previously agreed it should be at least, rather than a maximum of, two years. The speaker said that it should not be stated that it should two years or one year.

3.15. The Chairperson stated that the terms were mentioned there, but further in the report the term was connected with the tenure of Parliament. He stated that therefore if it was stated that the tenure was five years, then that would refer to one term; whereas when another five years was included, it would refer to a second term.

3.16. The speaker who had raised the issue responded by saying that there was no agreement as far as terms were concerned.

3.17. Another speaker pointed out that Prime Minister Vorster had been elected to four terms of office. The speaker also stated that a difficulty could arise in the calculation of terms when elections are called early, which could then mean that there would not be only two terms during a period of 10 years.

3.18. The ANC stated that although the ANC submission had referred to two years, in the course of the discussion they had said that the ANC, having had its conference, had not yet made up its mind with regard to the question of whether or not the term of a President should be limited to two terms. They stated that they had therefore requested that the matter be left open.

3.19. The meeting agreed that the matter would be revisited. The Chairperson pointed out that, except for the IFP and the ANC, everyone was agreed that it should be two terms.

## **7. POWERS AND FUNCTIONS**

- 3.20. The Chairperson raised a question regarding the meaning of the contention "NP not in favour of the President acting in his or her sole discretion but in accordance with the provisions of the Constitution."
- 3.21. The NP responded by saying that the idea had been that as far as the constitution of Cabinet, in particular the appointment of the ministers, this had to be done in accordance with the provisions of the Constitution. They stated that therefore if multi-party participation was prescribed, then there was no agreement on the part of the NP that the President may choose and pick and get rid of ministers as he or she liked.
- 3.22. Another speaker stated that it should be put in another way, because it could not be seen that there were other parties who opposed the question of the President having to act in accordance with the Constitution. He stated that the report read that it was only the NP that was in favour of the President acting in accordance with the Constitution. The speaker stated that what was actually in contention - was the question of the right of the President to select his or her Cabinet. He stated that the contention related specifically to the question as to what had to appear in the final Constitution regarding this contentious issue.
- 3.23. With regard to comment 1, the DP questioned the meaning of the term "the President has to consult...". They stated that in that sentence there were two concepts. The first, was that he had to consult with the Executive Deputy Presidents in the exercise of certain powers. They stated that a further issue, was whether he had to act in consultation with the Cabinet. They stated that they were not aware, however, of anyone having proposed Executive Deputy Presidents plural, and that they were not aware then to what powers that could pertain.
- 2.24. The chairperson stated that as he understood the matter, the question related only to a stipulation in terms of section 82(2) and (3), which would be revisited. He stated that the sentence therefore does not stipulate the Theme Committee's stand in that regard.

## **P 34, SUMMARY OF WRITTEN SUBMISSIONS**

- 2.25. The DP stated in respect of item 4.6.12, "Declare war, martial law", the DP had stated at an earlier meeting that this was subject to ratification by Parliament within a certain period. They stated that it was therefore not merely an exclusive right of the President to declare war.



## **C. CABINET**

### **3. TERMINOLOGY; 4. COMPOSITION**

- 2.26. The DP stated that there was an inconsistency in that the State President was mentioned under composition, but not under terminology. It was agreed to include the State President under the latter.

## **MOTIONS OF NO CONFIDENCE AND IMPEACHMENT**

- 2.27. Mr Beyers of the NP tabled document entitled *Motions of No-confidence and Impeachment* at the meeting (see attached to minutes). The NP noted that it was being submitted after discussions on the topic had taken place. They stated that they felt, however, that it was important to distinguish between these two concepts.
- 2.28. The Chairperson stated that this matter had been discussed by the Committee, as well as the Technical Advisers, and that it had been felt that it was necessary to revisit the issue. He stated that it appeared that before the tabled document, it appeared that impeachment was being excluded from the Constitution.
- 2.29. The Chairperson asked whether the Committee would be happy if the issue of impeachment were to be added as a Constitutional issue.
- 2.30. The DP stated that they differentiated between the two issues. They stated that on the one hand if the President were for example to be impeached, he or she could not really stand for office again at the next election. They stated that he would then be disqualified from standing. They stated that on the other hand, if there were a motion of no confidence, it was only a political decision.
- 2.31. The DP stated that they believed that there had to be that possibility that, irrespective of political performance, he or she could be impeached if guilty of a misdemeanour.
- 2.32. The DP stated that they had dealt with the issue; and it was a provision in the present Constitution. They stated that the SA system has nothing to do with the American one in this regard. One had a motion of no confidence in a President as Chief Executive Officer, and a normal political vote of no confidence. They stated that they too believed that they were different concepts, impeachment applying in cases of "serious miscarriage."
- 2.33. They stated that it was not merely an American concept; in support of this contention, Mr Emlin referred to the Cape Verde Constitution, the German Constitution, and the Namibian Constitution. They stated their position that the distinction should be maintained.

- 2.34. The ANC stated that in terms of their proposals the President was not directly elected by the people, but indirectly by the members of the National Assembly. They stated that therefore, whatever he did, any transgression, whether of Constitutional nature or "picking the purses of government" - the ANC believed it could be dealt with by a question of a motion of no confidence.
- 2.35. They stated that even if one looked at impeachment itself within the American system, only one or two MP's have been impeached. They stated that they wanted more clarity on the NP proposal.
- 2.36. The ANC reiterated that they were not hard and fast on this issue. They stated, however, that more convincing argument were required to obtain agreement on impeachment in the Constitution. They stated that it appeared that the present arguments were based merely on the fact that impeachment was contained in certain other Constitutions. They questioned whether, with a motion of no confidence, you actually required a simple majority, whereas with impeachment, you needed a two thirds majority. They stated that it was not sufficient to say that on was a political and the other a quasi-judicial action. The ANC, however, made it clear that they could possibly be convinced that they needed to include both measures, but they required more clarity.
- 2.37. They stated furthermore, that the DP's proposals of impeachment should naturally flow from the DP's own position concerning the manner in which the President should be directly elected.
- 2.38. The NP stated that the matter of required majorities could be readdressed, and that the NP itself would also look into this aspect. They reiterated their view that there should be the above two measures of parliamentary control. They stated that it would be difficult in practice for the majority party to support a motion of no confidence for political reasons. They stated that if the majority party were to support impeachment, however, they would loose less political ground.
- 2.39. The meeting agreed that this matter would be included in the report, not as a matter of contention, but as an issue to revisit.

## MOTIONS OF NO-CONFIDENCE AND IMPEACHMENT

It is important to distinguish between motions of no-confidence by Parliament in the Government (President and/or Cabinet) and the impeachment of the President. The former is a **political sanction** against the Government and the latter is a **quasi-judicial action** aimed at the head of state *inter alia* for certain transgressions. This distinction is discussed below with reference to the provisions of the transitional constitution in this regard.

### A IMPEACHMENT

In terms of section 87 of the transitional constitution -

- (i) the President (or a Deputy President) shall cease to hold office,
- (ii) on a resolution adopted at a joint sitting of both Houses by a two-thirds majority of all the members impeaching the President (or Deputy President),
- (iii) on the ground of a serious violation of the Constitution or any other law, or of misconduct or inability rendering him or her unfit to exercise his or her powers and functions in accordance with the constitution.

From this provision it is clear that (i) the removal from office is automatic and that no other action such as a formal resignation is necessary; (ii) it is regarded as a very serious matter, hence the special majority needed; and (iii) it is utilised for specific transgressions or the incumbent's physical or mental condition only and not for political reasons. For this reason, the procedures for impeachment were set out in much more

detail in previous constitutions, providing *inter alia* for a prior investigation by a parliamentary committee. It must be emphasised that the impeachment mechanism is a quasi-judicial action aimed at the **individual office-holder** and not the **Government** - it is not designed to punish the Government for political reasons.

**In any system that provides for an executive head of government, impeachment is an important mechanism to prevent the abuse of power and to act effectively against a leader who either transgresses in this regard, or has become physically or mentally unable to perform his or her functions.**

## **B MOTIONS OF NO-CONFIDENCE**

A motion of no-confidence, in contrast, is the age-old political mechanism used in parliamentary systems (*ie* systems in which the executive is composed by Parliament and is dependent on the continued support of that Parliament) to express dissatisfaction with the political performance of the Government and thus to exercise control over the Government on behalf of the voters.

Section 93 of the transitional Constitution gives expression to this idea and, furthermore, can be regarded as an attempt to put into words the convention that applies in the Westminster system in this regard and which has applied in South Africa in terms of previous constitutions. The Westminster convention is that when Parliament (actually, the House of Commons) adopts a motion of no-confidence in the Government, the Prime Minister has the **option** either to resign (in which case the head of state will request the leader of the new majority in Parliament to form a Government), or to request the head of state to dissolve Parliament and call a general election so that the voters can have the last say. Normally, the latter course is followed by a Prime Minister and only in exceptional circumstances (such as a war) will the Queen refuse the request for an election.

Section 93 provides that -

- (i) if Parliament adopts a motion of no-confidence in the Cabinet, *including the President*, the President has the option either to resign, or to dissolve Parliament for an election;
- (ii) if Parliament adopts a motion of no-confidence in the *President only*, the President has no option and must resign forthwith;
- (iii) if Parliament adopts a motion of no-confidence in the Cabinet, *excluding the President*, the President has the option either to resign, or to reconstitute the Cabinet, or to dissolve Parliament for an election.

Again, this is obviously an attempt to put into words the Westminster convention, with the addition of the option to reconstitute the Cabinet. The idea behind this seems to be that in its motion, Parliament may separate the President and the Cabinet from each other. This has probably been done because the Cabinet consists of ministers from other parties as well. However, in practice it will not make any difference, because if the President chooses to reconstitute the Cabinet, he or she will not be entitled to do so in a way inconsistent with the provisions of the Constitution in regard to the composition of the Cabinet. It seems, therefore, that in all probability it has been unnecessary to provide all these various options.

The point is, nonetheless, that section 93 is the most important traditional control mechanism that Parliament has over the Government. In a parliamentary system such as ours, it is an essential element in the relationship between the different branches of government.

## C CONCLUSION

From the above explanation it is clear that impeachment and motions of no-confidence are different kettles of fish. The former cannot be used for political purposes: it would not be possible to impose political sanctions against the Government under the guise of impeachment. In view of the higher majority needed, it would, in any case, be a more difficult course of action. On the other hand, impeachment proceedings should not be instituted as a motion of no-confidence. The reasons for impeachment are much too serious to play politics with this mechanism. In this regard, it could even be considered to include in the Constitution detail provisions on the procedures to be followed in an impeachment case.

As a last remark it should be emphasised that the principle of open and accountable government presupposes enough effective control mechanisms over the exercise of government power. We should not engage in any attempt to diminish the control powers of Parliament; rather we should act as one to retain and strengthen them.

**CONSTITUTIONAL ASSEMBLY**  
**THEME COMMITTEE 2**  
**STRUCTURE OF GOVERNMENT**

**PROVINCIAL GOVERNMENT**  
**(BLOCK 3)**

**Minutes of Debates:**  
**26 June 1995**

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**CONSTITUTIONAL ASSEMBLY**

**THEME COMMITTEE 2**

**MINUTES OF COMMITTEE MEETING**

**Monday 26 June 1995**  
**9h00-10h00; 16h30-17h00**  
**Good Hope Chambers**

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**PRESENT**

**Rabie JA (chairperson)**

**Ackerman C**  
**Badenhorst MJ**  
**Daile N**  
**Doidge GQ**  
**Ebrahim AG**  
**Foster JA**  
**Groenewald PH**  
**Holomisa SP**  
**Hendrickse PAC (Alt)**  
**Ligege MG**  
**Mabudafhasi RT**  
**Mahlangu JL (Alt)**  
**Mahlangu MJ**

**Moloto CP (Alt)**  
**Msomi M**  
**Mushwana GM**  
**Mwedamutsu MJ**  
**Nxumalo SDW**  
**Olifant DAA**  
**Pahad EGH**  
**Phakathi NE (Alt)**  
**Ramusi MC**  
**Ranchod BG**  
**Sethema BEE**  
**Shabangu S**  
**Taunyane DP**  
**Tolo LJ**



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## **APOLOGIES**

Doidge GQ  
Louw SK

## **IN ATTENDANCE**

Nene J, Smit T, Van Wyk DH

### **1. OPENING AND WELCOME**

- 1.1. The meeting was opened and chaired by Mr Rabie. He noted that the meeting would discuss the report on Provincial Government until 10h00, when the workshop on self-determination would commence. The discussion of the Provincial Government report resumed after the workshop from 16h30-17h00.

(Note: there is a separate report on the workshop on "Self-determination")

### **2. SECOND DRAFT OF PROVINCIAL GOVERNMENT REPORT**

- 2.1. Prof Nico Steytler presented the Second Draft Report on Provincial Government as at 12 June 1995. He noted that the report was very much the same as the previous one that was discussed, with a few exceptions: The question of terminology on page 1, as well as item 4 on page 2, "Framework for provincially drafted Constitutions", which had to be revisited.
- 2.2. He stated that a draft text had already been prepared and would go to the law advisers that day. He stated that as he drafted the text a number of issues arose which the Committee should look at. He stated that only by looking at the actual wording did one realise that there were a number of issues that the Committee had not discussed.

### **4. FRAMEWORK FOR PROVINCIALY-DRAFTED CONSTITUTIONS**

- 2.3. In respect of item 4 he stated that he thought that the only agreement was the adoption of a two-thirds majority vote. He stated that all the other matters, for example the Constitutional Principles which should be included and the number of issues which should be addressed in such a framework, had not been dealt with in detail. He stated that it was therefore a matter not really of contention, but a matter of comment.

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- 2.4. A question was raised as to the meaning of the words "final constitution" in the sentence "Provincial Constitutions may not be inconsistent with the final Constitution."
- 2.5. Prof Steytler responded by stating that that was a kind of formulation that was used in the present Constitution. He stated that that matter was really one which should be discussed when the Committee had in front of them the draft text.
- 2.6. The NP stated that this matter may give rise to difficulties, because Kwazulu-Natal was moving full steam ahead in drafting its Constitution and had set a deadline at the end of the year. They stated that, assuming that the Constitutional Court then approved of that Constitution, then one would have problems. They stated that the question would then arise whether that Constitution could be adopted before adoption of the final Constitution. The NP suggested that their comment be placed in the "comment" column.
- 2.7. The ANC stated that the NP had now raised a separate problem. They stated, however, that the Constitution would be the supreme law of the land, of the entire country, no matter where. They stated that this would mean that no piece of legislation, no other Constitution, could be inconsistent with the supreme law of the land. They stated that it would then be within the power of the Constitutional Court to decide whether or not a particular element of a particular province's Constitution was inconsistent with the fundamental principles and objectives of the new Constitution. They stated that therefore agreement 2 correctly reflects the position. They stated that there should be a clear understanding that it could not be a political party's understanding of whether or not a particular province's Constitution was in conflict with the Constitution of the country as a whole. They stated that if a political party thought there was such a conflict, then they would have to go to the Constitutional Court.
- 2.8. The NP responded by stating that even if the Constitution is the supreme law of the land, with the Constitutional Court certain principles may count for more. They stated that the terminology should be a bit more descriptive.

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- 2.9. The ANC countered by stating that they did not understand the NP's problem in this regard. They stated that one cannot say one wants a Constitutional State, and then say but there are one or more aspect of the Constitutional State that one does not want. They stated that the Constitution was the Supreme Court of the land and others cannot be inconsistent. They stated that interpretation was another matter. They stated that political arrangements, such as power sharing arrangements at Provincial level was also another matter.
- 2.10. The NP objected that the ANC was twisting its words around, and that the NP merely wanted it to be noted in the comment collum that a "final constitution" could be interpreted in different ways. They also stated that as Prof Steytler had said, the NP also felt that the issue of Constitutional Principles should be looked at.
- 2.11. The NP suggested that the word "final" in agreement 2 be removed.
- 2.12. Prof Steytler responded by stating that there are two issues: The first one was that any province at the moment had received the power to draft a Constitution not inconsistent with the present Constitution. He stated that that meant that Kwazulu-Natal could do it, and the Western Cape could do it. The second issues was if the final Constitution would give the same power in terms of the new and final Constitution to the provinces again. He stated that that was a separate power that they had as opposed to the one that they had presently. He stated that therefore it did not really matter what was the position presently. He stated that what they really had to concentrate on was the powers given to provinces in the final constitution. He stated that as a consequence the question would arise whether such a provincial Constitution would be inconsistent with the final Constitution. As an example he stated that hypothesis that the Western Cape would draft a Constitution which were consistent with the present Constitution, but inconsistent with the final one, and noted that that was an issue which had to be resolved.
- 2.13. The NP stated that the CA had a deadline, namely May of 1996, to complete the Constitution, but that one knew from experience that delays were possible. They stated that therefore they could deal with the situation by simply dropping the word "final". They stated that there shall be a Constitution, and it could simply be left to the Constitutional Court to deal with the matter if the final Constitution is markedly different from the Interim one. They stated that they would, however, have difficulty with the report stating that there was agreement about something which does not exist in the present time.
- 2.14. The Committee agreed that the word "final" be scrapped.

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## **5. PROVINCIAL LEGISLATURES - STANDARD CONSTITUTION**

- 2.15.** Prof Steytler stated that there was nothing new on page 3, except that the issues relating to the size of the legislature needed to be revisited, and whether a provincial standard Constitution should be in the Constitution itself or simply in a schedule. He stated that these matters should be revisited. He stated that unless there was agreement it should go into the body of the Constitution or simply as a schedule to it, which in a draft Constitution would then simply read "until a Provincial Legislature adopts a Constitution, the Constitution contained in schedule X will be applicable."
- 2.16.** The NP stated in respect of the question of the size of the legislature, that as the demographic situation in Kwazulu-Natal that in the year 2000 there would be more voters there than in Gauteng, the question arose whether it would be acceptable to ask for 100 members for the Legislative Assembly.
- 2.17.** Prof Steytler responded that was an important issue, and he stated that another matter which had not been addressed was who determined the numbers. He raised the question whether the numbers would be determined by a body. He stated that another question which would then arise was what effect a change in demographics would have.
- 2.18.** The ANC stated that they thought the issues raised in 2.16. and 2.17. should impact in that way on the drafting of the Constitution. They stated that no Constitution would lay down the exact demarcation of boundaries and demographics, and that those were matters for more detailed legislation. They stated that obviously if the demographic changes were to the extent that it no longer represents what was the actual composition of the population, the law would have to be changed to take that into account, because the system of representation was designed to be such that it represented the number of people there. They stated that therefore the Northern Cape could not have the same levels of representation as Gauteng or Kwazulu-Natal.

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2.19. The FF stated that if that was a matter which would be determined by law, then that should be noted in the report. They stated that then the Constitution should indicate how the size be determined, by the Cabinet, or Electoral Commission, whatever the case may be. They also stated that the size of the provincial legislatures would be determined by the functions of the provinces. They suggested that the size of the provincial legislature needed to be revisited "in the light of demographics and functions".

2.20. The meeting agreed to the FF's formulation.

2.21. Prof Steytler stated that other matters which had to be revisited were polling dates and their harmonisation, as well as whether "ordinarily resident" was a requirement.

#### **5.9. QUALIFICATIONS OF MEMBERSHIP OF PROVINCIAL LEGISLATURES**

2.22. The ANC stated that although they do not have as specifically worked out position in this regard, one may find that there could be a difference between these qualifications as between provincial and national levels. They stated that they would therefore like these matters to be debated more clearly. They stated that it was not merely a matter of "no agreement" with regard to the matter of "ordinarily resident", but that there may be the possibility of two separate requirements, one for the provincial legislatures and another for the National Assembly.

2.23. The FF suggested that the terminology "in the provinces where they are registered" be used, as in the case of the Senate report.

2.24. The ANC stated that they would have a problem with a requirement that would prevent the ANC from placing someone who is registered as a voter in Gauteng on a list elsewhere. They stated that a further element to the problem was that the question arose as to what constituted the requirements for registration as a voter, which could for example include domicile. They stated that this matter should be left open, because it could not be decided before further clarity was obtained on the Electoral System.

#### **5.15. REQUIRED MAJORITIES**

2.25. A question was raised as to whether the agreement should read just "majority" rather than "majority of half of..."

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- 2.26. Prof Steytler responded by stating that the question really refers to the issue of a quorum; that for a decision to be taken it should be a quorum of half of the actual members, and therefore one half of the members makes a decision valid.
- 2.27. The ANC stated that the question of quorums in terms of sittings and in terms of passing certain legislation was a matter that still had to be examined. They stated that there was therefore no specific agreement on it. They stated that this matter would have to be revisited, and that it appears possible that the provincial legislatures, depending on their size, may decide what their quorums should be, and that it was therefore not a matter for the Constitution to decide.
- 2.28. The NP stated that they differed on this point. They stated that when dealing with legislation or the amendment of the Constitution, it was the business of the Constitution to regulate the matter, and that it should not be left merely to the rules. They stated that there could be difficulties with the situation where you have a quarter of the members present in the House, and bills which has major financial implications, or which affected social issues, and these bills were passed by a small minority of members. They stated that that was why these matters should be regulated by the Constitution.
- 2.28. A Member stated that the issue regarding a quorum was already stated elsewhere. The Member stated that what was at issue was that in terms of making decisions for ordinary legislation, you need a simple majority, namely 50% plus one of those voting.
- 2.28. Another member stated that there were two issues; the quorum required for the House to proceed with business, and the quorum required to deal with the passing of legislation, including amendments to the Constitution.
- 2.29. The meeting agreed it would not be further debated at that sitting and that it be noted in the report that that matter had to be revisited.
- 2.30. After the **Workshop on Self-determination**, the Committee resumed discussion on the matter of quorums, and Prof Steytler suggested that the concerns in respect of 5.15. may be met by the deletion of the "of half", and revisiting of point 5.14. in respect of "quorums."

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## **REST OF THE REPORT**

**2.31.** The Committee approved the rest of the report, but noted that the DP Gauteng's submission should be reflected like any public submission consistently, as decided upon at an earlier meeting.

### **3. ANY OTHER BUSINESS**

**3.1.** The meeting noted the letter from the Executive Director indicating the decision of the Management Committee regarding the Senate report, and other similar matters of a widely contentious nature - namely that the Theme Committee should not prepare Draft Formulations, but send through to the Constitutional Committee the political reports without delay.

**3.2.** The Executive Director reported the above decision of the Management Committee. He also explained that a new permanent Sub-committee of the Constitutional Committee act as a consensus seeking body. He explained further that political parties would be able to appoint advisers to their members on the Sub-committee, which advisers could include members of the Theme Committees.

**3.3.** The meeting agreed that the report on the Senate, as well as further matters which are widely contentious, should on the above understanding be referred to the Constitutional Committee without draft formulations.