

MINUTES OF TC6.2 8 AUGUST 1995

Explanation 'Crisis'

Chairperson - Rob Davies

SIDE 1:

Chairman's remark: it is said that it is this committee that deals with the most boring issues, but seems to have the most ruptures of any committee. So, according to requests from colleagues, we've asked the CA Management to address the issues on the Auditor General to the CC and the CC's reaction to that.

Mr Ramaphosa, did not know why everyone was summoned as a matter of urgency, and needed some clarity.

Chairperson: There was discussion with the chairperson of the CA and he was briefed about some of the matters that had arisen. The issue is that this sub-committee dealt with the question of the auditor general and presented a report to the CC, which included constitutional text which was referred to the committee for its discussions and deliberations. That report went to the CC unanimously that it represented the agreement that had been reached between all of us at this committee and which reflected the fact that there were no major points of consensus in any of the submissions by any of the parties and therefore the draft's people had drafted a text which reflected that and we were asked to comment on that text.

When it went to the CC, the CC pointed out that they were the negotiating body, which was being made clear in this committee on several occasions and that they had the right to reconsider the text which we had represented and there were a number of points which were made. What was received last night was a draft of the text which includes the main proposed amendments apart from the major one which was, that there was a feeling that there needed to be a thinking about the methods, that of making appointment processes to independent structures with the government system viz., the Public Protector, the Attorney General, the Auditor General, etc. to make them more or less in harmony with each other.

The phrase that came out of the CC was that there was a need for a "bird's eye view" of this process and that the provisions which we had all recommended about the appointment and about the dismissal of the Auditor General ought to be considered in that light. That was the main point and there were a couple of other points along the way. When this matter was dealt with by the CC, it was reported back briefly that this had happened and Ken Andrews tabled a statement to the effect that "careful, painstaking work to arrive at a common position had been shot down in flames by the CC", was the phrase he used. He indicated that he felt it was no longer worth his while to participate in the deliberations at the level of the sub-committee.

The NP did not go as far, but expressed its dissatisfaction with the process and saw this as a problem in the whole constitution-making process. Other members expressed views that while the CC definitely had the right to make such amendments, nonetheless, there was a need to communicate with members of the committee about the reasons for this, given that we have gone through a quite exhaustive effort in order to arrive at the text which was submitted. Since there was one member who refused to participate in deliberations of the committee and another party proposing that business should be suspended yesterday. What was said is that we would have to call on the CA Management to come along and talk to us about this issue, because unless we manage to do that, we won't be able to proceed with the important work which remains for us to deal with in the sub-committee.

**Ken:** pointed out that it was a point of correction or supplementing as he felt that one of the key issues was missed in the problem he had experienced, and that was that at the end of March they had submitted a conventional report in block form showing differences etc., to the CC.

It was then referred back in a rather unusual circumstance, almost as an exception to the rule, to us, with a request that we look at the points of contention to see whether they really were points of

contention and to try to find common ground if it existed. It was not just the normal process. It was then that the extraordinary, lengthy and time-consuming process was followed.

It went back to the CC as a unanimous report and it was in addition to any particular problems the CC had. The people who were there, the manner in which it was then sliced to pieces, and bearing in mind that everyone comes from political organisations and are approximately keeping in touch with what the feelings are, just meant that these scores of hours that was spent on it ended up as a waste of time. That is the key issue.

If parties make reports, they get put into blocks and the CC then has vigorous debates and slices everybody's work to pieces. The key element was the referral back for us to try to find the common ground. Once we found it we sent it back and then it got sliced to pieces and it is that waste of time, that is the major problem.

**Mr Ramaphosa:** welcomed the opportunity to be present in the meeting and said that it was appreciated very much, the work that had been done by the theme committees of the Constitutional Assembly. Not only this theme committee, but all others as well. The work done by theme committees has proved to be invaluable to the process we are involved in because in the end, theme committees are also involved in specialist type of issues which the CA and the CC would not be

able to deal with very easily and with the speed that they (TCs) are able to deal with them and they would also not have the time that they have expended in dealing with these matters. So, the work is appreciated.

It is, however, important to report a little on what actually happened. The report that was tabled by you and Mr Andrew is right in saying that it was first tabled in March and it was referred back to yourselves and at that stage there was also a feeling that a look should be taken at draft formulation. Having said that, we have to look at draft formulation, obviously, in the end one reaches a point where theme committees have to start discussing areas of contention, not only identifying them, but seeing how best areas of contention can be resolved and those that cannot be resolved, have to come to the CC itself, for final resolution. All this, in a way, is processing of matters to put options before the CA.

These committees in the end are not necessarily negotiating structures. They are committees that should identify various options, but we also admit and accept that in the end in the process of doing so, theme committees do arrive at some consensus. And even if they arrive at some consensus we must remember that the rules that we ourselves adopted are, that the CC would be the final arbiter and the CA would be final arbiter and the CC is the negotiating structure, where reports and draft formulations would be

properly analysed and where consensus would be reached for further ratification by the CA. Initially, it was also said that we did not want the CA to be a 'rubber-stamping body' because people wanted proper debates and final agreement at the CA. So, in many ways, a tight line has been walked, by which is meant that whilst it was found that a consensus could be reached, it had to be approved at a higher level.

Even as the CC identifies consensus, it always leaves the door open for further ratification, further agreement at the CA, for fear of turning the CA into a 'rubber-stamping body'. The problem, as it was seen, in this regard is, that there has been weakness in co-ordination. Weakness in co-ordination between the theme committee, in this case and the constitutional committee. There has also been a weakness in co-ordination in parties themselves. When the CC discussed this matter (and remember that the CC receives all reports, from all theme committees), it realised that apart from appointing or dealing with the matter of the Auditor General, it also has to deal with other offices, other structures that have to go into the constitution. The Public Protector was one, the Auditor General was another and a number of others, Human rights Commissioner etc. When it started dealing with the method of appointment of the Public Protector, it realised that some consistency was needed.

We needed to develop a mechanism of appointment for those officials or office bearers. It was at that point that the words "bird's eye view" were then used. That what we needed to do, was to have a "bird's eye view" over all these officers, all these structures that we were setting up. It was then decided that it should be left in abeyance to allow the law advisers to do a comparative study or analysis to see how all these other office bearers are being appointed so that we could then, not necessarily have a uniform method, but that there is certainty in our own minds that what is being decided with regard to the Auditor General would be consistent with the appointment of all other officers.

The theme committee looks at one issue only. Looks at how the Auditor General has to be appointed, does not necessarily look at how the Public Protector has to be appointed. The CC has to make sure that there is consistency throughout the constitution, that there are no contradictions. So, it was at this point that the CC felt that this matter needed to be addressed in a more or less consistent manner with all other officers that were being appointed. The problem of co-ordination arose because at the CC meeting everyone of you was not present as theme committee members.

Present, was Dr Jacobs and Dr Davies who, as the debate unfolded, realised the good reasons that were being put forward by members of the CC with regard to the way this matter was being dealt with. If

all members of the theme committee had been there and had been able to put forward their own views and thoughts, this problem would have been avoided. It was not necessarily the CC just discussing and shredding to pieces the report of the theme committee, which we had asked you to develop, the draft formulations which we had asked you to put forward to us. The CC was coming in from a particular angle while the theme committee was working from another angle and did the best that they could and there has to be some propriety. People often feel that they've done the best they could and it is not fair that their report is just rejected like that. That is understood, but that could have been avoided if theme committee members were there in the debate to also appreciate what the CC was saying. When the CC debated this matter, there was no dissension, all parties were unanimous in as far as saying that there needs to be some form of consistency in the way the office bearers are appointed and hence, we decided on having this "bird's eye view". The problem is, that the people who sit on the CC do not necessarily sit on all theme committees, and particularly this theme committee. So, in the end there were only two people. Had we had all the members of the theme committee in that meeting, the CC would most probably have appreciated the type of issues that are being put forward here, a lot better, because you would not only have spoken in defence of some of the provisions put down on paper, but you would have enlightened us as the CC.



In the end, there is no other agenda. An agenda has not been perceived from any political party in as far as this report is concerned. It was not sensed that people just wanted to throw out the report and reduce your work to ashes. The CC was looking at the problem from a completely different angle, an angle which says that the constitution as a whole should be coherent, there should be consistency and the amendments, as I understood them, revolved around the area of appointment, in main. Because you have become specialists on the question of the Auditor General, you would feel unhappy with some of the amendments where words and phrases were changed, but that would all have been avoided if everyone on the theme committee was at the meeting of the CC.

The co-ordination issue, is the important one. If members of the theme committee can be present at the CC when these reports are debated, it would save us a lot of anguish and it would also save a lot of time.

**Leon Wessels:** A safe passage cannot be guaranteed through the CC or the CA, once a certain level of agreement has been reached in any particular committee, be that the management committee, be that the sub-committee, sub-committee of a theme committee, be it a core committee, we cannot guarantee safe passage. Therefore, the colleagues that claim ownership to that report must be in those

committees to actually defend their reports and engage in the debate. That is what this is all about.

The second point I take strong exception to (I will publicly apologise if I misread something, or remember incorrectly something that was reported), is the fact that some people are meeting behind closed doors and this is just a charade, engaging colleagues and then finally, the deals are cut behind closed doors. Not at a single stage has any meeting, dealing with matters of substance met behind closed doors. Much to my irritation because I believe there will be moments when political parties will have to meet behind closed doors, but at no single stage has any committee ever met behind closed doors and ever excluded anybody who had worked on a particular theme committee not have access to that debates.

The third point, therefore, when this was referred to the sub-committee it was not to the exclusion of anybody sitting on a theme committee. We are developing the precedent that the sub-committee has established, that those who had worked on a particular report are there, are welcome to make their inputs. We've had other precedents on other reports where the participants and the theme committee level or core group level had made their inputs and we have found it valuable. So, it is not the intention to, in any way discard or disregard the extremely important work that theme committees and in particular this theme committee, has done.

Ultimately, we need 490 people to endorse what is being done and we need the 490 members of the CA to enthusiastically go out and persuade the millions of South Africans that this is the correct document. Therefore, we will not in any way be in the privileged position to reach an agreement and then simply not allow people to participate and express their views and necessarily not agree. It is, therefore, a strong invitation for theme committee members, to all the sub-committees, CC meetings to debate their arrangements.

**Mr Ramaphosa:** One other issue. There is the problem of co-ordination in the CA itself, but a more serious problem is amongst the political parties. On reading the reports from SAPA and the other newspapers, I found it a bit of a surprise to hear political party reps coming out with very strong language, criticising the processes etc. and these are people who are not on the CC, but their reps were in the CC. Reps of the DP, and they did not object to the way the report was being dealt with, reps of the ANC were there, reps of the NP and this type of contradiction that was emanating from the reps just goes to show that there is a problem of co-ordination. In the ANC there is that type of problem and I'm able to talk about it here. That is why we find these contradictions and those problems of co-ordination also exist in other parties and this is a major problem that we have got to resolve. It is easy for anyone to go to the newspapers and just criticise the whole process

and say that it is flawed etc., but if you are not faced with the facts and not paying attention to what some of your party reps are saying in other committees, it becomes unfair. This has happened in the ANC.

**Mr Ebrahim:** An exercise was carried out with regard to reflecting the decisions of the CC and the CA and there are six major areas in which even the CCs decisions could possibly be changed. If you look at the various resolutions and agreements, firstly, already in January we had agreed in the CA that the final constitution must be one which was in simple language and a user-friendly , accessible language. So, that will have to be changed effected to whatever drafts are produced.

Secondly, there has to be language consistency, the way in which one refers to either laws or relationships in the constitution, there would have to be legal consistency throughout the constitution.

Thirdly, language and legal consistency in the constitution. The fourth exercise, is one where we have in the last CC agreed that the various institutions established by the constitution should try and develop some level of procedural consistency with regard to the question of appointments, tenor, dismissal, etc. of the various bodies and offices established. Then members will also remember that the CC also agreed to a document produced by the panel of

experts which produced various criteria which the constitution should meet. The constitution should once again also be subjected to these criteria.

Finally, once all of these has been done the constitution will also have to be subjected to a further review and consideration to ensure that it meets with or is in compliance with all the constitutional principles, failing which, we will find ourselves referring the constitution to the CC and it being rejected purely on that ground.

These six major factors that can immediately be seen, has to be considered not now, but only when all the various pieces of text are put together and a review of that will be considered to ensure that this consistency and the various aspects have been complied with. Those are decisions of the CA.

**Chair:** It was evident in the discussion yesterday, that as one who was at the CC meeting on Friday, I did not share the feelings that the people had here about the thing being shot down in flames etc. The involvement of certain of us in that debate did have the effect of giving us a somewhat different perspective.

**SIDE 2:**

**Dr Jacobs:** As one of the guilty parties at the CC I must give you my impressions of what took place there. Rob Davies was quite correct in his exposition to state that we as a committee have

always realised that we are not a committee of lawyers, that when it comes down to the way that the constitution is going to be written in the final instance, there may be certain changes to the way the wording. We understood that point.

What concerns me is that if we have spent many hours in these committees like this, working through all the details and trying to find some sort of common ground, (very often it's not just a question of trying to convince or negotiate), but if you talk about a problem long enough, then people who may not have shared your opinion, after a while understand it in a different light and they agree to it. It's not a question of wanting to negotiate or anything but if we had gone through this rather painful exercise of working through a report of this sort, one wonders what would happen if all of us had pitched up at the meeting again on Friday and we got other views coming from the committee from people who were not as involved in the actual process as we were. You'd probably get the whole debate going off again.

The hours that were spent there you may find that you would be spending quite a lot of the time doing the same sort of thing that we did. I have a problem at the moment with this to see how the practical side will work. I didn't get the impression there that there were going to be any major changes in the text or to the contents of the report. It became quite clear to be that some of

the comments that were made there were made by persons who probably had not been as exposed to the function of the Auditor General as others of us had and one had the opportunity then of discussing that as well.

I also got the impression that there were certain words which troubled some of the legal people there, for instance, this word of "immunity". It became quite clear that it could also mean liability and that if it was actually liability, then the way that you would have to describe this in the constitution is somewhat different to the immunity that we have written down there. There were also some problems about the qualifications that the Auditor General should have. People felt that if we were going to write down things like, they had to have a detailed knowledge of accountancy and also public finance and public administration.

The question was raised there that, wouldn't that exclude a lot of people that had not been exposed to that before? So, there was all those sorts of issues which were matters of principle which could be debated and clarity being given on those. The question of the actual appointment, is where most of it lies and that's where the proposal came out with the "bird's eye view" which makes sense.

The only difficulty that we had at that time in the committee to debate that point any further was that we didn't know what the

relationship between the, Public Protector and parliament was and whether that was similar to the relationship that the Auditor General would have towards parliament.

Other points were also raised, like the question of the governor of the Reserve Bank and also the question of the Chief Justice, were all appointments that were to be looked at. It's clear that if we can get some consistency there in the way this is going to be appointed and the relationship between those appointees and parliament, is somewhat similar, that there would be no problem with that.

I left the meeting with the understanding that a special committee of the CC would be meeting to discuss various issues that were raised during the debates on Friday, to have a look at certain of these once again and I had the impression that that would be an opportunity for us again to go and put our points of view that we had, to see whether we could convince them that the way that we had looked at this thing was a committee would be acceptable to them as well.

**Jill Marcus:** The explanations have been useful but there's an underlying concern that remains. One of the things that personally, one has experienced in this committee is that simple language has turned sense into nonsense sometimes. I really have a difficulty when you're trying to make something simple when in actual fact



there are concepts and underlying principles within what you are doing and nuance that in simplifying you lose. That is something I would hope is born in mind because some of the text that we've seen, what is coming back at us is very different from what we wanted although the intention, you can see what they are trying to do in it, but in actual fact the intention has been lost. That is something that is very important, especially when you are dealing with these questions.

Secondly, my concern arises not just about what occurred there, because it is accepted to some degree the question that where you can find a common approach to appointments that are similar, we should look at that and the question of consistency. There is also no problem with what Mr Wessels outlined as the procedures in terms of where you go with what and that in fact it's ultimately the CA.

The concern is that if one looks at the press report and looks at what is being said, it's almost a question that there is a concern from my side that maybe the very question of why you want these bodies to be independent and to be able to act without fear or favour is not being recognised in the way that it could be and that there is a beginning that looks at that question that says that these people must be absolutely able to know that they are functioning without fear.

The Auditor General's purpose is to keep a check on the executive, it's not a function of policy, it doesn't determine policy. It sees that you spend your money, that if there is a R1 allocated for "A", is used in "A", and that's what the purpose of it is and therefore, those commands have given me some concern and I would want to be sure that in looking at the way you are looking at this commonality, that we are strengthening that independence, that ability to be the oversight with teeth and that these bodies are able to act without fear and favour and that it isn't something that we are looking at to say, we want a simple majority on this or we want that kind of question.

I think some of these do need to be insured that we are able to protect and are able to function in the manner that we have envisaged in the constitution. Putting in some of the qualifications, I would be concerned that somebody would question qualifications, of an Auditor General having a knowledge of accountancy or whatever.

I think it does need to be in the constitution that it does need to preclude people who don't have that experience. If you've got an Auditor General who doesn't understand accounting, administration or anything else then he should not be an Auditor General. It will exclude some people, and it should because it has to have that qualification and experience to be an Auditor General, otherwise how

do we keep chick on ourselves. Those things are actually very fundamental to ensuring that democracy has the checks and balances.

So, in a sense, it's that concern that has come out not just out of the particulars of the committee, but also the press reports that I'd want to express my view on.

Barbara Hogan: Just looking at the problems that have arisen, I would like to suggest that the way ahead to prevent this from happening in the future, is that what I identify as the first problem is that this committee works a lot, comes to consensus, begins to understand the finer details, also because most of the members here work on the finance committee together on the public accounts. We are sort of like in steeped in thinking about this for a long time, but given that we come to these positions. The problem comes when they get presented, firstly, to the CC, there Cyril and others, are correct in saying that there should be an opportunity there to debate the issues and I think in future when reports are presented to the CC the full theme committee needs to sit there.

The qualification criteria, appointments and whatever can be debated out there. That doesn't withhold the right of the CC to make the final decisions, but what it does afford the CC is an insight into why these issues are considered to be important and that could be a very simple matter to achieve. But it shouldn't stop simply there.

As I mistakenly understood it until yesterday, the theme committee work stops at the end of this week.

What I have begun to understand now is that in the process of the CC deliberations on matters on which this theme committee was operative, that theme committee would then still be participating with the CC to come to decisions. This process through our CA administration and whatever needs to be co-ordinated, relying solely on party whips to inform people to be at meetings is as we've all discovered an inadequate process.

Secondly, part of the problem that emerged was because people didn't have a written report on what had taken place. So, from Ken's perspective he saw it as most of the clauses been shot down. What we have here which I saw only yesterday was the actual record of the actual amendments that were proposed from the CC.

In future, that documentation must be available to everybody so that they are not mistaken questions about the debates and agreements that were taking place. There needs to be formed written communications between the two committees as regularly as possible. The point that Cyril raised about internal party co-ordination. I'm not casting reflections on other parties, but I think it was in the ANC itself and this isn't something for discussion here, but we need to look at our people sitting on the CC, our people sitting on theme

committees, so that when people go there we have some understanding of what each other's positions are. That's an internal political matter.

Each party needs to look at that internal co-ordination because it's going to be disastrous if we just go and clash with our own ANC people and as much as there's freedom to speak, it's a silly process. We need to get uniformity.

**Proposal:** In terms of follow-up, that we continue with this process of full theme committee members being present when CC discusses; that written formal reports be available to everybody, including the theme committee people, as soon as possible after the deliberations; and that instead, parties each begin to speak to each other about internal co-ordinations so that we do not have these divisions.

On that basis, we could go ahead. It has been a useful learning experience in hearing the problems that are going to be found in this next process ahead. I welcome Ken's intervention and other people's interventions because it's highlighted the issue. Unless there had been grumbling and mumbling and no-one being formally presenting it, it would have been more destructive.

**Ken Andrews:** Firstly, in respect of the CC meeting, all of my political life I'd been a part of small political parties that have

often not exercised that amount of influence which may be an indication of my stupidity, but at the same time it does mean that I'm not actually oversensitive to not winning all the time. I've suffered many losses and survived and don't generally sulk every time I lose. So, it's not a case of we had a report and now our report's not accepted. There are two things about that CC meeting. One is, the content element.

The second is, the tenor of that meeting. We have from various people here in this room who were present, reports. The reports that I got, both from the DP reps and from other people whom I just casually spoke to was, that the tenor was very different in relation to this report on the Auditor General. It would be very interesting for this TC6.2 to listen to the tape-recording of that section of the meeting to see and hear the tone of voice, the language used and so on and then they can judge for themselves, including me, because I wasn't there. So, I'm having to say this on hearsay.

My impression was that there was quite a strong attack and in certain instances one suspected there may be reasons overt and particularly related to the Auditor General. Be that as it may, there has been the issue raised here of internal co-ordination. On this particular issue, we are all overworked and we are all running around and attending meetings. So, including my party, there are sometimes problems of co-ordination. I gave written briefing to our

person and in fact had a discussion with him prior to that meeting and I said this is a unanimous report.

I did say that I had some fairly strong objections to the role the legal advisors had played both within the committee and in the nature of the report that went through to CC. I did not brief the rep on every clause on what the full motivation for each word in each clause was, partly, because it was a unanimous report. In terms of his reaction at the CC, as I understood it, is that in the CC, once there is dissension it has to be referred somewhere else. So, you can fight great battles but it's going to go somewhere else anyway. So, you may as well save your breath and if you are going to have arguments, have them later.

In the nature of the sub-committee structure, apparently particular people from the party dealing with that are going to be entitled to be there. In terms of the process in general, I have consistently in this theme committee, and people will bear me out, even more in Theme Committee 3, have objected to the fact that the CC makes decisions requesting or instructing theme committees, saying, let's not waste our time doing that because 3 days away the CC decided that we weren't going to be handling this. As a theme committee member, the number of written communications as opposed to incidental, verbal communications that we have ever received is absolutely minimal. It's close to non-existent. We have received a

couple on specifics, e.g. when the CC at its meeting at the end of March/April, when it considered our first Auditor General report, decided to refer it back.

As a theme committee member of this TC, I did not ever receive anything in writing which said these are the terms on which it is being referred back and this is what you are being requested to do. The broader issue, this TC has dealt with a large number of submissions, we hear evidence from a range of people involved and experts in the particular field. We deliberate on those submissions and that evidence at great length. We reached unanimous agreement and we've also succeeded in doing so on the Reserve Bank, which is not worth much now and on the Auditor General, and we sent it to the CC. They have read all those submissions, they certainly haven't heard the evidence and I'd be very surprised if they'd listened to the tapes of the evidence. They, e coming from without all the background and all the hours that we've spent, then come and say, I'm a lawyer and I don't like that or that. To me there's some dislocation and a bad dislocation at that. The problem is having to invite a full TC3 and in any event groups of 30 and more people do not in fact, in practise, either negotiate or draft.

So, in the end it actually has to go to smaller groups. Trying to bring in the expertise of TCs is useful but you have to be realistic.



Finally, as a person from a minority party, I'd just like to make this point, Hassan Ebrahim has outlined some or maybe even all of the criteria in which the draft in the constitution is going to apply. A serious problem I have is that we say it must be simple and user-friendly but my feeling on it, there is also the legal consistency and then there's also one which wasn't mentioned, that is brevity. There is this dichotomy between simple user friendly language and brevity.

When the majority party wants to leave discretion to a majority parliament it will plead brevity and just try and have the principle set out on the ground that we must be brief. When in fact the majority party has a concern that it wants protected it then says we must use simple user friendly language and spell it out. It is in a sense a political point but it is a point in this legal draft that I've had.

Finally, without and particularly in their absence, not making too much of it here, I have mention that I was not happy with the role of the legal advisors. There were a number of occasions where we reached agreement in this committee, requested them to put into a draft and the draft had come back without it and in fact there was consensus which the legal advisors simply left out of the draft completely, originally. That was one of the reasons why it was such

a painful process. When we finally reached agreement the report that went to the CC seemed to me to have more words by the legal advisors saying why the whole thing should be rejected and why they didn't like one clause after another.

Thus, it was actually a report of this committee indicating what it was wanting. I also did not mention the words "behind closed doors" but rather "charade". I have from the beginning been critical of the process as a whole and I remain critical of it. Two simple examples, one is, and unfortunately it's a kind of party politically orientated one, but we know about the loudspeaker that was on which confirmed a suspicion that for many months till the end of March when the ANC was able to have a conference and clear its position on a number of issues we were in fact trading water. Particularly in TC3 in this committee it was not actually so much of an issue. It was self-evident that it was going on.

Secondly, to give you an example of the kinds of things I don't understand, TC3 on Monday, is having a local government kind of hearing. TC3 is not allowed to negotiate. All the parties have already put in their submissions on local government, they were required to be in before the end of June. We are in fact busy and are hoping to finalise our report on local government. I don't know who we are doing it for, if anybody should be attending that local government hearing it's the CC or the CC sub-committee whose going

to resolve differences. To have TC3 sitting there who have actually finished all their reports, that's the kind of thing that bothers me. It is trying to create an illusion that those people coming from there are an integral part of the process when in fact as far as that particular subject matter is, it does not apply to all the previous hearings and all the previous evidence but has applied from time to time in which that process happens. We've also had situations where the closing date for party submissions is before the closing date for public submissions. Again, I don't like being part of a process which tries to pretend that we are doing certain things that we are not.

**Chairperson:** It's important for us to distinguish between what individuals may say at a CC meeting or say to the press afterwards and the decisions or the conclusions at the CC meeting. That's where some of the confusion has arisen and also the lack of written communication is a problem. Those of us who went to speak last night to the '3' people to arrange this meeting happened to have the document which indicates in writing what are the areas that the CC thinks need looking at again, in our draft, in fact it isn't every clause that's been shot down. There are in addition to the point that Francois Jacobs made about the immunities which is a lawyers view, which we didn't have. There's the question about the provision which we included about the right of the Auditor General to delegate the powers of immunities to other people whether the

question that was raised there was whether that need to be specified in the Auditor General's provisions or whether that would be dealt with more generally in the constitution and also the right of access to information. The point was raised in the same way. On the question of the last point apart from the appointment and dismissal was the question which was referred to by Jill Marcus about the whole question of the qualifications that were required here and I think that our own presentation which we took from the interim constitution was intended to allow for an appointment broader than someone who had a CA (Chartered Accountant) qualification. It's to allow a broader appointment and I think what was raised here was whether that was the best kind of phrasing or whether some other phrasing could be used here. I don't see that what came out in terms of the conclusions was shooting the whole thing down. There are some debates that we are going to have to go through, one of them which has already been alluded to is the role of the executive and the legislature, the relationship of the Auditor General to the legislature. That is a debate given some of the comments that were made by people. It's the lack of participation and the fact that people are picking up things through (not directly) but through the newspapers.

Today, on this debate, that Johnny De Lange is not or has ever been a member of the Communist Party, yet, there is a whole report which points at these kinds of terms which is completely inaccurate.

That's just inaccuracy amongst several others which has actually fed into this process. What I'd like to ask our visitors is if they could just be a bit more precise. It's already been more or less alluded that we as members of the committee will have a right to participate in the further deliberations. I think that maybe we can solve the matter and put it to rest. We could agree that when this sub-committee meets to discuss this that members of this committee will be invited, will be informed in advance that this is taking place, will receive the documentation and will be invited to continue the deliberations at another level within the CA, which is where the matter should rest. We have finished our work as a sub-committee but the CA has not finished its deliberations on the Auditor General and that these deliberations raising matters which are of broader concern and bringing other considerations within the constitution making process and we need to be assured the mechanisms will be put in place for us to actually participate in the further deliberations on this matter.

**Barbara Hogan:** Just in summing up, the question of written communication around amendments or anything else or report backs, must be included.

**Leon Wessels:** Mr Ramaphosa will deal with the longer agenda, I just want to deal with the shorter one. It is simply what Barbara Hogan has said, you do have a right to be there but you have to

negotiate the right with your political party. It's as simple as that. You have a responsibility to ensure that you are well represented. If a political party is badly represented at the CC level or at the management committee level, we cannot account for that. In other words we have negotiated that parties will have seats in these sub-committees. The parties had the opportunity to nominate their representatives and we further more, over and above that agreed that political party reps will have the right to ensure that their practitioners will be there.

So, it is political parties responsibility to ensure that they have the right people there e.g. if the public administration commission is being debated, the political party is at fault if its members who serve on that committee does not assist their rep on that committee.

Furthermore, a rep from a political party coming from the theme level has been entitled to speak in those sub-committees and furthermore, at management committee level, political parties are represented there. If a particular individual has a special interest he is entitled to be there and to advise and to brief his reps. The point that was made earlier that party political co-ordination has to be tightened up, should be looked at. From our point of view we can see the frustration at this particular level, but we simply have taken it for granted that political party colleagues are talking with one another and some of the sentiments

expressed which with regard to the debate and the tone of the debate, I think some of the caucus meetings should be more lively and should be more focused and more to the point to ensure the people speak with one voice when they arrive at those meeting.

**Mr Ramaphosa:** Mr Ken Andrews has dealt with a number of issues, some of which I have fundamental difficulties with. I'm rather surprised that he knows about the tenor of the meeting. I did not perceive or sense any negative tenor in which this report was debated and maybe he has heard it from other people and I'm really surprised that a person like him would make such a big issue of the tenor of a meeting as though there were fist cuffs at the meeting or as though the report was thrown out. With regard to the content I hope you do spend some time going through this report, because there's just basically nothing that would in the end make anyone respond in the way that Mr Andrew responded about the way the report was dealt with. In main, nearly all the proposals from the TC were accepted, save for 1 or 2 amendments and the question raised around qualifications, but other than that there were no major problems and I'm rather surprised to hear, publicly that the report was torn to pieces. I don't know what pieces Mr Andrew is talking about, because this was one of the records that was well accepted. The question of appointments is a matter that has just been put in abeyance, it will be discussed again once one has looked at all the mechanisms. One accepts the point with regard to written

communication and that there needs to be written communication and I think that's a straightforward matter that we will deal with. The problem that you have with law advisors doesn't only stem from this theme committee. We know in administration that you have a deep hatred for some of the law advisors that we have. So, obviously, that spills over into a whole lot of other things. It's reflecting itself as we move on, and there's very little we can do about that because we do need to have law advisors.

You and I may be lawyers, but we must accept that in terms of drafting a constitution, we've got to have people who are slightly more qualified than we are as they serve a very good purpose. One should accept that we do need them. With regard to the process, the problems that you say you have with the process, we should, if we have good points to put across, try to convince other people. Persuasion is really what politics is all about. If you have a complaint about the process, it's important to talk about it, to persuade all others, rather than to stand outside and to throw stones which is what I found to be the case most of the time. If the process is flawed, and I certainly have never heard anything, even as chairperson, even from the DP, a party that is part of this process where we could have a discussion and discuss what their problems are with the process. Much as the DP is a small party, one would say that if they had a point to make about how the process is functioning, they would have been listened to and changes that may



have been necessary could have been effected. But, to stand outside and to throw stones at the process and to use the type of language that one has heard from people like yourselves, I don't think serves very much. I think that that is something we need to work on and discuss so that we can improve on that. The DP can play an important role in making sure that this process works a lot better and we are willing to hear the ideas.

Coming to the more specific issues, I would say that the important thing in terms of the way forward is that members of the TC should be on the CC, they should also be in the sub-committee and I would say that when this report is debated on Thursday afternoon, all members of the TC should be there. It is one of the reports that we'll most probably want to start with. So, it should not only be in the CC it should also be in the sub-committee and one hopes that when we debate this matter in the CA, members of this TC who will also rise to speak to motivate why they have put forward certain proposals. With regard to the question of party co-ordination, all parties would be enhancing the process if they tightened up their co-ordination. One accepts what Mr Andrews has said when he said that there certainly has not been a problem in this regard in the DP. We sit on the CC and look at things from a particular platform and we saw that there was a little bit of mis-co-ordination in most of the parties in the CC.

The question of independence of the Auditor General and the qualifications, this matter should be debated at the sub-committee. Having heard what Ms Marcus has said, we are not sitting here qualified to even get into the merits of what was raised at the CC. It's a matter that's been raised and there are concerns and I think those should be addressed. At this sub-committee itself this is a question that will no doubt also arise when the report is submitted again to the CC. It will also arise when it is debated in the CA and what is good about this process is that all these matters are being ventilated publicly and I think we should welcome that, much as we may have concerns about the way things are being raised, they are being ventilated publicly. That is the strength of the process and to a certain degree even when there appears to be differences amongst reps of political parties. That is what democracy is all about. I don't speak as an ANC person. I don't bemoan the fact that there are sometimes contradictions. It is good for public reps to voice their points of view publicly and in the end the process is going to be even more enriched by differences within the ANC, the type of reactions we get from the NP, the DP, it will be a much richer process and we will have a much better constitution. The press tends to mis-report things and sometimes they create quite a lot of sensation. At times they take their cue from what we have to say.

**Chairperson:** After sufficient airing of views and interaction with the leadership of the CA, the matter was brought to rest at this point. The way forward in terms of 2 concrete commitments is as follows. Firstly, that this document will be circulated to everybody, so that everybody could see. It reproduces the text and then it highlights in bold the issues that are subject to some reconsideration following the CC meeting. That's what the document does, it doesn't have any new proposals in it. Secondly, it's not absolutely clear to me, but somehow or other we are going to participate in the meeting on Thursday. I don't know if members of this committee are going to be invited or whether it's a matter that has to be dealt with by the parties, that the parties will send delegations to this committee meeting and that it should include members of this committee. Maybe there could be quick clarification on that and if we got that clarification, I would propose that we end this part of the meeting.

**Leon Wessels:** I believe that responsibility rests with the parties. Political parties have reps of the sub-committee and it will simply be unwise for such a rep to attend the meeting without bringing his colleague who knows more about the subject, presumably than he does, simply because his colleague has been working with this topic to inform his party. So, we believe it's an internal party matter.

**SIDE 3:**

**Hassan Ebrahim:** Undertook to send a memo to each member of every TC advising them that when matters relevant to their theme committee are raised, whether it be the CC of the sub-committee they should please consult their party whips so as to ensure that they are present in the CC and make the necessary arrangements so that issues raised in TC and sub-committees should be carried forward and the spirit of the discussions should flow at the CC and the sub-committee.

**Chairperson:** The matter to be dealt with through the parties with Mr Ebrahim informing the parties that this is what should happen. The visitors were thanked for coming there. It was declared the end of the second crises meeting of this committee and it was hoped that another would not take place before its task is completed.

/...discussion after break

**Chairperson:** Message from Cyrus that he could not make the meeting and that there were a number of aspects to the national revenue fund and public enterprises document that he knows is not right, as he did not have the tapes available and he has asked us not to discuss the document now and that he would send us a revised one. What needed to be discussed is the FFC, starting on p.3.

**Proposal:** That we essentially go through this document, identify whether the party positions are accurately reflected, the issues of consensus, contention, further clarity and then to amend this report accordingly.

**Org Marais:** Before we go into detail there are some aspects which I'm not clear on. Maybe it's not that we differ from anybody else, but I want to put it here to this committee, that maybe when we go into detail this will guide us or assist us. e.g. Can the FFC be seen as a committee, totally in isolation? There is some concern around this as Ken asked that 5 in TC3 must come to this committee, but we have to stay with the members and they don't even know the functions of the FFC and I don't think we really can. Secondly, I must congratulate the ANC on their report in Theme 3 with regard to what body the FFC is going to report to. That was wide open, there was nothing in the constitution with regard to what institution or parliament or whatever the FFC has to pass on their recommendations. I support the ANC's recommendation on the joint committee finance, the senate and also their budget commission. So, we are going to discuss to in isolation what the ANC has recommended. At TC3, the 3rd aspect, when you take that into consideration they tried to bring in all the provinces, reps of each province. But now there are interesting proposals from the ANC with their budget commission, with their proposal for a different senate and what I find extremely interesting and I really support it, it's the final report to the

inter-governmental forum. That is the question of the non-statutory bodies or at this stage, informal bodies. I hope TC3 can come to some more specific recommendations with regard to these non-statutory bodies. But then, if we are going to have all these bodies representing the provinces, we still need a financial commission with all these reps of the different provinces. Couldn't this become a full-time board of 4 or 5 people? It's just questions being thrown in after the ANC report was studied. The next point is with regard to the functions of the FFC, they have to recommend the formula. There are different views on the ANC, their formula, the DP. I can see the DPs point of view. They want it in the constitution. I don't know who's going to discuss it but it affects us. After a formula has been finished and dissolved for 3 or 5 or whatever number of years, when you come to taxes the proposals from the parties are basically nearly the same, income tax, VAT, must be in the constitution. Even VAT, I have a problem with because if you write everything into the constitution there's actually nothing left for the FFC. To some extent, maybe again a question or possibility if you look at the taxes, more from a generic point of view, e.g. all taxes based on mobile tax base can definitely not be taxed at the province level; all taxes based on a multi-governmental level like VAT, you cannot tax at a provincial level; all tax basis that are unevenly spread like customs excise in your economy, you cannot just tax one province, or mineral resources. The last one when a tax is a progressive tax it's also something that maybe does not

belong to a province. After you have the applications from all the different provinces, what's left? Something that is neglected by most parties excluding the DP is the whole question of conditional and unconditional transfer payments because if you look at Australian council, the Ground's Commission that's actually where they spend their time on. That's where I see the FFC is going to play in important role.

**Chairperson:** From what Org has said a lot of the points make sense. Clearly, we've got to inform ourselves by the positions and the debate and the submissions which were made about inter governmental fiscal relations. This was the reason we did not deal with this matter beforehand.

**Org:** I left out something today, when it comes to inter governmental fiscal relations, to most countries, it is the spending power, they use the spending power when it comes to conditional/unconditional .....but they also use regulations as a way to manage it in provinces or in states. They also use procedures to allow provinces to come to agreements to supply certain services. They even develop kinds of structures like on specific teachers' kind of distinct organisation to handle the finance. But nowhere have we in any of our discussions that vague part of inter governmental fiscal relations by regulation. If I give you room, I have 5 pages of regulations to using my spending

power. This is something I just want to add, it's also not mentioned anywhere else.

**Chairperson:** What we need to do is, we need to be clear. We are talking about the powers, functions structures and all that of the FFC. Evidently, Org already mentioned that, how you see the FFC relating in the broader process is going to determine whether you think it should be a rep body or an expert body composed of so many people. What should be in the constitution or not. So, we've got to inform ourselves by that broader debate. But I think we need to also have our focus very clearly on what is our division of labour. We cannot get into a situation where we are producing a report which deals with these issues and 3 does something else. Otherwise we are going to have a multiplication of what we had already. We need to understand our division of labour. That's also why, in 3, we were pushing that section of 3 which dealt with the FFC is out because it's dealt with here. If it is understood in those sorts of terms informing ourselves, maybe we can go through Cyrus's report. I think there are a number of ways in which the report is not quite accurate but that's what I think we should be discussing.

**Ken Andrews:** Agreed. A great deal of what Org said is a lot of food for thought but as I see it, the object of this exercise is to look at these blocks and say where it says consensus, that means that every party is supposed to agree with that, am I happy that



it's a correct reflection. In other words wherever ones own party is implicated by mention or by implication, one must be sure that you are happy that that's correct and as far as I understand it that is our sole purpose. So, at the end of it I say I'm happy it reflect the DP position correctly.

**Chairperson:** Then this document is handed in and we may or may not get a reference back with some constitutional text from the CC. To get this report tabled, that is exactly what we have to do. There may also be other blocks, there's something that you said significant or the blocks are not well constructed. Could we begin by starting on p.3. It starts off with general aspects. There is consensus on the need to establish an independent and impartial FFC. We should add in a little note there that we are required to do this by constitutional principle 27 and that we agreed about the consensus anyway. There's a contention there, that the provisions in section 198206 should be included in the constitution rather than subsidiary legislation. Further clarity may result in consensus. I'm not sure that's a matter of contention as understood by the CA. I think that there's the consensus on the point which was mentioned earlier and I don't think there's a contention of that sort I think that all the parties have got some different views about what should go into the constitution and what should go elsewhere. He followed the interim constitution from a certain point which is one way of

doing it but not the only way. He's followed this and we should go through it.

Section 198 says, "there is hereby established a financial and fiscal commission (FFC)". Consensus on the need to establish the FFC. Agreed.

Section 199.1 - the objects and functions of the commission shall be to apprise itself of all financial fiscal information, relevant to national, provincial and local government administration and development. On the basis of such information to render advice and to make recommendations to the relevant legislative authorities in terms of the constitution regarding the financial and fiscal requirements of the national, provincial and local governments, including financial and fiscal policies. Consensus on 199.1(a)

What we said in ours was that it should be a shortened version of this, but we didn't necessarily agree with that text.

**Org:** The ANC is coming with different proposals. I think it's all in the same but more detail type of proposals with regard to the reporting from the FFC on financial aspects.

**Barbara Hogan:** I imagine that you are then referring to render advice and make recommendations to the relevant legislative authorities of this constitution. I would say that our submission

doesn't actually change that substantially except that in our submission to TC3 we outline a process whereby it finally comes to the legislature. What we are saying is that once we make the recommendations, the initial round of recommendations gets referred back to the legislatures of the province based on that then goes to the inter governmental forum, a new draft then emerges out of that, but then that gets referred to the national legislature. I would say that the end point of all the recommendations is actually the legislature. I don't think that this substantially changes that end point.

**Chairperson:**

**Suggestion:** That we say that the ANC proposal on the determination of the formula and recommendation 15 on reporting to parliament, represents a significant clarification of the ANCs views of the relationship to legislative structures.

**Barbara Hogan:** What implications would that have for a clause of this kind? Would you say then that we are trying to strengthen the role of the legislatures?

**Chairperson:** It's just recommendations to the relevant authorities and so on and so forth. We've gone a lot further than just the relevant authorities, we've actually defined them in certain concrete respects. We should just say that the ANCs proposal on the

process and on the reporting to the legislatures and to parliament and to represent a clarification of its views on this matter.

**Ken Andrews:** In all sincerity, the ANC can say exactly what it likes within limits. If the ANC suddenly wants to put a totally economic policy to the DP saying that if they were taking up 5 pages then we also want to put in our whole economic policy, but within the normal confines of the kind of thing you are talking about. The ANC can say exactly what it likes. The DP can say, they want under contention that they don't like this that or the other. Perhaps the ANC, less than the other parties didn't quite go through sub-paragraph by sub-paragraph in their submission and say agree with this, disagree with this, add that, in some cases they did, but in general they did not. Maybe there's need for discussion within the ANC, but if the ANC says they want to put something under clarity, unless it's outrageous, that's got nothing to do with the rest of the committee, that's the ANCs choice. I hope on each point, if we do need, if the ANC hasn't had the opportunity to clarify what kind of wording it wants to correctly represent its own position. Then it might be more productive for the ANC to next, if that is the case, of if you think really there are going to be very few of these cases, then we can handle them here. What you've just said about the ANC, whether I like it or not, or think it correctly reflects the ANC position or not, is in fact irrelevant, because it's for you to put your position forward.

**Chairperson:** The ANC has gone a significant distance further than that clause. There are not too many of those cases. There are some matters when we get onto 200 I'm not happy about. We have proposed an alternative but I think by and large we can go through it.

Section 199.1(b) - Equitable financial and fiscal allocations to the national, provincial and local government from revenue collected at national level. Consensus. Our submissions says that there is a need to qualify the meaning of that and a proposal is mad which is in our submission.

Section 199.1(c) - Taxes, levies, imports and surcharges that a provincial government intends to levy. Consensus, subject to the clarity needed by the ANC.

Section 199.1(d) - The raising of loans by provincial/local government and the financial norms applicable thereto. Consensus or contention depending on other parties acceptance of the NP proposal with the 3 tiers may not borrow to finance current expenditure. Consensus on the intention of this clause that the FFC should have a role in the borrowing.

Amongst its objects and functions is to appraise itself etc. including the raising of loans by provincial/local government and

the financial norms applicable thereto. It is also about rendering advice and making recommendations and so on.

Section 199.1(e) - Criteria for the allocation of financial and fiscal resources. Consensus on the wording.

**SIDE 4:**

Section 199.1(f) - Any other matters assigned to the commission by this constitution or any other law. Consensus. 2. In performing its functions the commission shall take into consideration, inter-alia, the provisions of section 155 (4b) and any other provision of the constitution. Consensus should refer to relevant clauses on provincial and local government finance.

Section 200.1 - Constitution expertise and impartiality. The commission shall consist of a chairperson and deputy chairperson appointed by the president in consultation with the cabinet. A person designated by each of the various executive councils of the province who shall be appointed by the president, and 7 members appointed by the president on advice from the cabinet. At least one of them shall have expertise in local government finance, further clarity - various suggestions on the membership tenor of office, skills requirements of members of the FFC. Consensus may be able to be achieved after discussion by the TC. Note, the commission for provincial government has proposed the 2-tier FFC which, proposal if accepted, requires significant changes to the current provisions.

Our proposal has not been well understood in this formulation here, particularly since it then goes down. Our proposal is that the constitution should first of all declare that the FFC is an independent statutory body that is composed of persons with knowledge, experience and expertise in their fields defined in (200.3). This is the point that was made by the FFC people that there is some ambiguity in the interim constitution as to whether it's a representative body of wither it's an expert body. We've come in favour of it being an expert body.

Secondly, our proposed method of appointment is a variation. What we don't want to create is a situation where 1 person designated by the executive committees of every province is part of the whole think, which means that the body must be at least 18 people strong. We don't want to create such rigidity in terms of the size of the commission again taking on board the points that were made by the FFC that a smaller body may be more effective. We want there to be some flexibility in terms of the legislation around the size of the body. We have proposed a slight variation that the consultation in terms of the appointment would be with the cabinet and a co-operative council composed of reps of the executive committees. We've added a proviso that if the outcome determining this way, which is a sort of a collection way, is not satisfactory to provinces where the majority party is different from that at the national level, that those provinces can then nominate people in

proportion. We want most of the details included here about the chairperson etc. to be provided for in subordinate legislation and I don't actually think that this is captured in this sort of exercise that he's gone through. There may be a possibility of consensus after further clarity.

**Org:** Considering all the new proposals on structures that was not on the table when we started discussing, we may have to reconsider and look again at the composition of this council, not to have duplication right through to the end. That's what I mentioned right from the beginning e.g. If we accept the ANCs budget commission then the feeling from the FFC to have a smaller body, but a more expertise type of board, like the board of trade. They started with full-time people, then after the Van Horst Commission they brought in about 10 people from outside and now they are back to full-time people, as they discovered it's not functioning. I don't want to leave this point.

**Barbara Hogan:** We have situation here where each party is preparing a different formulation for the membership of the FFC. What I want clarity on now is, given that the different proposals aren't here, when do we have an opportunity to discuss those various proposals or is the CC going to discuss them.



**Chairperson:** The proposals are contained later on. In view of what has happened previously and so on and so forth, unless we get a specific instruction from the CC that must go and explore the possibilities of consensus and so on, we are bound to just report the positions as they are reflected and the areas of consensus, contention and areas requiring further clarity. We may well be asked to debate this further for a possibility of consensus.

Section 200.2 - Probable consensus that, from the DP that the first appointment of members of the constitution shall be effective within 120 days of the date of the commencement of this constitution. Consensus on the DP position that this clause should be deleted.

Section 200.3 - No person shall be qualified to be appointed to the commission unless he/she is a South African citizen, a person by reason of his/her training, experience, expertise and economics, public finance, public administration and taxation, management or accountancy. See comments as per section 200.1, above is a fair reflection.

Section 200.4(a) - Unless the new constitutional text provides otherwise a member of the commission may be removed from office only by the president and only on account of misconduct, incapacity or incompetence. Await TC decision on DP proposal.

**Ken Andrews:** The president should consult with a personnel body who designated a member before removing such a member. Also a message referred to in 200.4(b) should also be sent to the personnel body that designated such a member. If you've got provincial nominees, if the president wants to throw off the North-west nominee, he/she should be obliged to consult with the people who appointed them to explain what the problem is and in simply saying the second thing is, the present thing says that if the president decides to do so he/she is required to notify parliament and the provincial legislature and also be required to notify the person,, as well as the body that designated the person. If it is the province or parliament then it wouldn't be anybody additional. If it is e.g. local authorities, a number of the parties feel that local authorities should have greater input in whatever form.

**Chairperson:** See DP proposal - in this regard other submissions were not specific on this matter.

Section 200.5 - Vacancies in the commission shall be filled in accordance with the relevant provisions of this section under which the former member concerned was appointed. Consensus. Note correct, see comments as per section 200.1, above.

Section 200.6 - The chairperson and deputy chairperson shall be appointed for a period of 5 years and the other members of the

commission appointed for 2 years, but shall be eligible for re-appointment. Await TC decision on DP proposals. Comments as per 200, above.

Section 200.7 - A member of the commission shall perform his/her duties fairly impartially and independently. Consensus. DP proposes retention of similar clause.

Section 200.8 - The chairperson and deputy chairperson shall not perform or commit him/herself to perform remunerative work outside his/her official duty/ies. So DP Proposal.

**Ken Andrews:** Proposal takes on board the provincial government 2-tier thing and were saying that the executive committee which is more than just a chairperson and deputy chairperson, can't take other employment.

Section 200.9 - A member of the commission shall not hold office in any political party or political organisation. It would be covered by the independent statutory body. Consensus.

Section 200.10 - It shall be an to influence or attempt to influence any member of the commission to act otherwise than in accordance with the provisions of sub-sections 7 (impartially, fairly, etc.) whether such a clause is needed in the constitution,

whether it needs to be in this section is all open to a whole lot of questions. Degree of consensus that that kind of sentiment should be there somewhere. Consensus about sentiment , further clarity on whether to be provided here in legislation or constitution.

**Barbara Hogan:** This applies to the others as well, 9, 8, 7 and 5.

Section 200.11 -The chairperson, deputy chairperson shall be the only full-time members of the commission, shall be the chief executive officers and deputy chief executive officer, respectively, of the commission. The ANC proposal is that all of that should be provided for in legislation. ANC and NP agree. DP does not think that they should be the only full-time members, but designating who the chief executive officer and who the deputy chief executive officer is. We are doing position bargaining as opposed to what are the needs and then working backwards from that. DP in favour of similar clause.

Section 201-4 - The first meeting of the commission shall be held within 30 days of its appointment at a time and place to be determined by the chairperson. Subsequently meetings shall be held at a time and place determined by the commission or if authorised thereto by the commission and by the chairperson.

If both the chairperson and deputy are absent from the meeting, the members present shall elect:

1. one from among their members to act as chairperson; and
2. a quorum for the meeting of the commission should not be less than  $\frac{1}{2}$  of its members, a decision of  $\frac{2}{3}$  of the members present shall constitute a decision of the commission or decisions of the commission shall be recorded. Our view is that these matters should be dealt with in legislation. ANC and NP agree. DP agrees with 1 but quorums and decision making majority should go into the constitution.

Proposed new section 201-5 - The Freedom Front has proposed that meetings of the commission be held in public. Await decision on the FF proposal.

Section 202 1-4 - The commission may establish committees from among its members; such committee shall consist of such a number of members as the commission may determine, the commission shall designate one of the members of the committee as chairperson thereof and if any such chairperson is absent from a meeting of the committee, the members present shall elect 1 from among their members to act as chairperson. The commission may subject to such directions as it may issue from time to time delegate any power conferred upon it or under section 199 to such a committee and grant

authority that a function assigned to it by or under section 199 may be performed by such a committee.

The committee shall not be divested of a power so delegated or the performance of a function, so authorised and may amend or set aside any decision of the committee. Consensus. ANC and NP says that all of this to be handled by legislation. See DP submission.

Section 203 - The committee may co-opt any person to serve on such committee or to attend a particular meeting thereof in connection with a particular matter dealt with by the committee. Such person may take part in the proceedings of the committee in connection with a matter or at the meeting in respect of which he/she is being co-opt, but shall not be entitled to vote. Same as above. See DP proposal.

Section 204 - Members of the commission and persons referred to in sections 203 who are not in the employment of the state shall be paid from money appropriated by parliament for the purpose. Such remuneration are allowances the minister responsible for financial affairs may determine. Same as above.

Section 205 1&2 - The commission may appoint staff and accept secondment of staff as it may deem necessary in consultation with the public service commission. Expenditure incidental to

performance of the function of the commission in terms of the constitution or under any other law shall be defrayed from money appropriated by parliament. Same as above. DP whether it ends up in legislation or here, we actually think it should be the famous after consultation with the public service commission. I would hate the PSC to be determining the level of expertise that the FFC has access to.

Section 206 - The president may made regulations regarding (a) procedures in connection with the performance of any functions of the commission (b) any other matters in connection with the achievement of the objectives of the commission. Consensus. Parties views on this matter not yet finalised.

Ask each party whether what's written is a correct extract.

- DP (yes); ANC (yes); NP (yes);

- ANC (yes)

- ANC (yes)

- SACP out

- SACP out

- SACP out

p.21 - SACP out

- SACP out

- SACP out

**Barbara Hogan:** We haven't said yet that we feel that these structures should be constitutional structures, but we felt that we had to put the structures in our report so that people would get an idea what we were talking about. But those structures shouldn't be constitutionalised.

**Ken Andrews:** Typographical - Under DP, staff should be "after consultation" delete the word with and then rather than "in consultation".



**Chairperson:** We've completed this report now and I will give this copy to Pat. He can make the typing changes that are necessary to this report and we will table it to the CC on Friday together with the Reserve Bank. No doubt they will refer it back for us to work on it again, but at least we've made an opening crack. We should all try to be at the CC on Friday to be arranged with our party whips and I will go as chairperson. What we need to try to do is to make sure we all understand very clearly what our mandate is that comes out of the CC on Friday.

**Barbara Hogan:** This report is going to be tabled at the CC. The point that Dr Davies made earlier on about that quite a lot of this is also dependent on the deliberations within TC3. Are we recommending that this discussion be withheld until TC3 report is tabled?

**Ken Andrews:** That might make sense at CC level. But whether they discuss it or not, it would made good sense either in an introductory sentence or 2 or in a footnote, to say that this report has been completed prior to the completion of the work of TC3 on Fiscal Financial relations between levels of government or whatever the correct terminology is. Arising from that amendments and modifications may have to be made to this. It should be indicated that we're aware of that.

**Snakes:** Regarding the point that it might be tabled at the CC on Friday, I don't think with regard to the FFC it would be possible because the document pack for Friday has already been completed and it's going out this afternoon. But, what is coming up for discussion at the CC on Friday is the Reserve Bank.

**Chairperson:** We'll table the report even if it will only be discussed at a later CC meeting. We would need to include that note and if we are given a further mandate to explore the areas of consensus if there is a draft in process that goes on and all of that, then we would, obviously, want that to be very much in parallel with what's going on in 3. I won't want to commit myself to saying that 3 has to finish its report before we can finish ours. We would, however, want to see the discussion in 3 be far advanced in informing us in our work in this regard.

We've got the national revenue fund to do.

Next meeting: Thursday at 8h30.