

Tape 1, Side A

Theme Committee 2 - 19 April 1995

Chairperson

A warm welcome to everybody after the Easter recess, I hope we'll have a fruitful week this week in what we are going to deliberate about. Just a few announcements before we go, there is a workshop on traditional leaders taking place on Thursday and Friday the 20th and the 21st and the Theme Committee had thought it advisable to inform you for your approval that the following people should attend on behalf of Theme Committee 2. Mainly Mr Richard Sizani from the PAC both Thursday and Friday, Mr MJ Mahlangu from the ANC only on Friday and Mr BC Coetzee - I mean Bester from the National Party on both Thursday and Friday. Does that meet with your approval? Anybody against - thank you. The secretariat can inform the office immediately. Then another announcement a communication from the administration from the executive director, if you will just diarist these dates. We've got this week the 18th to the 21st the Theme Committee Meeting. The 24th to the 28th no CA activities, local Government registration drive as decided upon by the speaker, leader of the House and the Chief Whips. In other words there will be no session next week at all. Then the 5th of May from 8:30 to 18:00 Constitutional Committee, Theme Committees, and core groups should continue to meet on this date. The 8th of May, Theme Committee meetings, and the 12th of May Constitutional Assembly from 09:00 to 14:00. Then on the 18th to the 19th of May, an invitation again to Theme Committees to attend workshop on Institutionalisation of inter Governmental relations and Theme Committee 2 must send three members. So we will have to take a decision on that at some stage too. Then there is a memorandum from our secretariat, you have got this page, asking you to indicate which submissions you have received. If you can just write your name on the top above memorandum and then indicate from 1 - 10 which of those submissions you have received, they'll appreciate that. If you need some on my right hand side there are some of the documents, but if there are not enough, then you indicate which ones do you still need. Let's take the minutes of the last meeting of the 3rd of April, page 2 to page 88 any alternations to the minutes from nobody, approved, thank you. Then on page 6 of that minute nr 3, plan of action that's what we going to do today, we are going to deal with the National Assembly in essence and the Senate and we'll start off by having a presentation from one of the technical advisors, who has drafted

a report from the submissions that we have already received. And with regard to the National Assembly, it will be Prof Dawid van Wyk, who will lead us as far as that is concerned. Prof Van Wyk I give over to you immediately.

Prof Van Wyk

Thank you Mr Chairman. Mr Chairman I want to preface this document by three general remarks, the first one is that this is just a draft report. It obviously will be - will have to be reworked and more obviously is open to challenge. I was responsible for the drafting of it, I've worked through all the submissions at my disposal, but if any party feels that it has been an injustice then obviously I stand to be corrected. Second I have to apologise for a number of typographical errors, and also for the fact that I got my tenses mixed up here and there. But I imagine that a more experienced person will eventually edit the whole thing. And then finally just an apology for the poor quality of the reproduction, I see that the fax machine from Pretoria didn't always work that well. Having said that, I'll with your permission quickly take you through the report. The first part is introduction, in which it is said that it deals with the National Assembly under twelve headings, terminology, size, election of members, presiding officers, committees, race, communities of members, powers, procedures, towards the executive, towards the second chamber, minority parties and dissolution. I think more important is the next paragraph which says that this list is not exhaustive, that the National Assembly cannot be viewed in isolation and in certain respects the sub-divisions overlap and some of the issues obviously also apply to Parliament as a whole. And then I've told a little fib, I said a number of other technical and substantive aspects relating to the National Assembly will be dealt with at the end of the report. And when I went through the report I saw that I haven't done that. But I've added those matters and I'll list them at the end of this presentation. Chairperson the second part is submissions, submissions we received from those three categories, Parliamentary Political Parties, other organisations including non-parliamentary parties, notably the Conservative Party, and then individuals. I have drawn on all these submissions, also those from the individuals and you will see that in your report. In bold it is suppose to be, there is a note of the Theme Committee, I hope it is not too confusing, but I just thought that for the purposes of checking me essentially. I should refer to the place or places in these submissions where I found certain statements and I gave their an exposition of how the reference

technique or what reference technique was followed. Third party Constitutional principals, tried to identify a number of principles with a direct bearing on the issue. This is a difficult matter of course, because depending on one's interpretation, more or fewer principles can be interpreted to reply. One that I've left out for instance is nr 4 which says constitutional principle nr 4 which says that the constitutional is the supreme law of the land binding on all organs of Government at all levels obviously that applies to the National Assembly as well, but the principles that were identified with the direct bearings were 6 of powers, 8 representative Government and proportionally presentation in general, 10 formal letters of the procedures, 14 participation of minority political parties and 17 democratic representation at each level of Government. Then the bulk of the report is a discussion of the twelve topics identified. The first one I call it which is terminology, it's a technical point but not without importance in my view. Having looked at all the parties submissions, the conclusion would appear to be the present terminology is acceptable, use of National Assembly, Parliament, speaker and as I said there by other Parliamentary terminology as well. In other words I get the impression that, that is an uncontentious or non-contentious aspect. The size of Parliament, political parties differed there is an analysis of their viewpoints. Interesting that the majority of individuals who addresses the size, the issue of size was in favour of a smaller National Assembly and there is a list of the individuals who support the - to express them on the size of the National Assembly. I think there was only one who was happy with the present 400. Perhaps just as a suggestion in it's report to the Constitutional Assembly, and in view of the importance attached to public participation, the committee may consider to recognise the submissions by individuals and also the point made by individuals that many of them feel that the Nations Assembly that it is too large and then either deal with it in some way in other words say that there are persuasive reasons why it should be 400 members and why there shouldn't. But as a matter or principle, recognise individual submissions as well. The next point is that the conclusion here is that there is disagreement as to the size of the National Assembly. Election of members, qualifications, term of office and termination of membership. It would appear that amongst political parties, the only identifiable difference under this heading relates to the term of office, the DP proposes a 4-year term and the other parties 5. Individuals once against express themselves of these issues, somewhat at a tangent. There is a

reference here to constituencies. Political parties also left room for constituencies in their submissions, it wasn't addressed here, it should, however, be addressed at some stage. I imagine together with the electoral system. Two other issues which came which come out in the conclusion are that individuals especially are in favour of a so-called free mandate in other words that a member of Parliament should be allowed or entitled to cross the floor without losing a seat. And the other one is the right of re-call. No details were given, but I assume that it is the situation where either the public or through some other mechanism, member or Parliament not functioning properly could be recalled. But a contentious issue or the contentious issue amongst political parties would not appear to be substantial. Presiding officers, three parties expressed their view under this heading they are listed there. I may add here that in many of these cases, the National Party did not mention by name, I assume that in view of a statement which is found in the volume on party political submissions stated by the National Party that it is in principal in favour of existing or current structures, can be read as a indication that they support what is in the present interim Constitution. In other words that when it comes to presiding officers for instance that they - that the National Party is happy with the situation of a speaker a deputy speaker and the way in which the offices function. The matter, that's the conclusion of presiding officers, would not appear to be contentious. Committees, four political parties offered a view and once again a fifth view by the National Party I assume that they are in - that they are happy with the present systems. Two individuals submitted on this point and the conclusion appeared to be that the principle of committees, is not contentious and if any thing, the role of committees, should be further enhanced in the system, but no particulars for either parties or individuals were received. The next point rights and immunities, two political parties, this is the fairly technical thing, ANC and the IFP, made expressed submissions. It is assumed that the NP goes along with what is the current system. Two individuals referred to the issue, a certain MS comedian would like to give the tax payer a members, the word out there, word is salaries, while Mr Conroy suggested that members of Parliament should receive no salary increase during their term of office, in other words that they know what they are in for, once they are elected. But the conclusion - the conclusion is that there is no dissatisfaction with the current and time proven rules governing their rights and communities of Parliament. The question for

debate is probably whether their rights and immunities should be contained in the Constitution or in an ordinary act of Parliament subject to a broad constitutional provision. That is more or less the way it is at the moment. As regards to powers, there is a cross-reference to 4.9 and 4.10 below. General observation the question of powers of the national assembly can only be fully dealt with in conjunction with the relationship between the two houses of Parliament and between the national and the provincial level of Government. From the submissions, a number of specific powers could be gleaned in respect of control of the national budget. The - whether the national assembly should be the place where all legislation should be produced. IFP would like the powers of the national Government to be listed in the Constitution. There were also a number of individual submissions, but it seemed to me that no definite conclusion could be drawn for the above and the question of powers in the National Assembly as a whole is likely to be contentious. It is proposed that the question of the powers of the National Assembly be held over until the question of the powers of Parliament in the constitutional structure are discussed and I think one can add the relationship between the national and the provincial level. Procedures, once again a rather technical thing, in most constitutions, no submission received on the detail of legislative for decision making procedures. The IFP came closest in it's suggestion and they are listed there. Once again the assumption that the National Party is satisfied with the current arrangement. There was - there were references to the quorum, and majorities for decision making. This will also have to be addressed once the Constitution amendments which is part of the brief of this Theme Committee are addressed. The ANC - and if my memory serves me right, to what they propose is an agreement with the current Constitution and that the quorum is one third, for legislation 50% without the vote of the presiding officer and to the best of my knowledge, the ANC was the only one who expressed a view on the vote of the presiding officer. The ANC also made an observation about the - where the sittings of the National Assembly should be in public subject to certain restrictions. Other parties didn't express them on this aspect. There is also a reference to what the DP proposed, the simple majority except for amendments and the Freedom Front supports the existing quorum arrangement. Conclusion that too few submissions under this heading were received to ascertain whether there is anything really contentious. A more subtractive aspect is the relationship towards the executive which should be seen in the broader context

of the legislator as a whole. This is of course typically part of and and overlaps with what we'll hear about the presidency and the Cabinet. Aspects raised in submissions were executive accountability, with a whole list of reviews of political parties. Kontralesa also proposed that the executive comes from the legislator in applying accountability. A vote of no confidence in the executive list of parties, were expressed the view there. General agreement it would appear, election and dismissal or of the President. You will see there that most parties expressed a view on that. One individual recommended that the National Assembly elect the head of state while another proposed that the President should be removed from office by the National Assembly for being found guilty of breaking the law. Powers of the President in respect of the National Assembly of Parliament this will also be dealt with in the submission on the Presidency. The ANC proposed that the President may summons the National Assembly for a an extraordinary sitting or for urgent business while the IFP would allowed the President of legislation on a line by line basis, which is a somewhat foreign expression in our Made the assumption that the National Party at least with the present arrangement and for the rest, the parties themselves And then a number of other aspects, die DP proposal about the ratification of and endorsement of typical executive actions, the same by the IFP which suggested that the National Assembly should clarify Cabinet appointments. The National Party proposed without further details that the relationship between the legislator and the executive should be defied in the Constitution. The PAC had a number of recommendations under this heading, touching on the relationship between the legislator and the executive. The ACDP proposed that the executive should not be able to dissolve the legislator. The conclusions here and there are two of them, would be that it is overwhelmingly clear that political parties support a form of Parliamentary Government with executive accountability. In other words from the submissions received there was no serious argument for and out and out executive President as in the United States. And although a large degree of detail can already be gleamed from submissions made, it is proposed that the relationship between the legislator and the executive be dealt with separately after recommendations have been made as regards the formate composition of the legislator and the formate composition of the executive, it is fairly obvious. The relationship towards the other chamber if any, if any is drawn from the Constitution principles in which there is a cautious

wording that if there is another as a second chamber - a number of parties expressed themselves on this either implying or expressed in proposing a two chamber Parliament and quite frankly chairperson I think it can be said that most parties are in favour of a two chamber of Parliament. In one submission the PAC questioned the existence of a two chamber system on it's present basis. But I am not sure that it was a serious challenge into the system of a two chamber system. And then the possible relationship between the two chambers was also analysed by most parties and the conclusion would appear that from submissions received the relationship between the National Assembly and the second chamber is contentious. But with substantial agreement on the question of special powers to the second chamber in respect of provincial matters that came out very clearly in the submissions that the second chamber if it is there, it should be a representative of provincial interest. This question can only be conclusively dealt with in conjunction with the discussion of the relationship between the national and provincial levels of Government. The role of minority party, a ultimate point, two political parties refer to minority parties in their submission so far and once again one should say that the National Party's attitude here is once again been based on the current system. The ANC proposed an undefined role for them - committees of the National Assembly, while the IFP foresaw that they could introduce laws and be protected by Parliamentary rules and orders. A further submission was by the IFP. Individual submissions also referred to minority parties, one simply stated that power sharing should be strengthened and another actually three of them - another suggested intense presentation for minorities, minorities, not necessarily minority parties. And another individual submission felt that minority take place through the Bill of Rights. Conclusion, information of the issue of minority parties in submissions, so far is to scarce to come to any definite conclusion. But it can be assumed that the matter will be contentious. Disillusion of the National Assembly, the IFP and there is a cross-reference to 4.9 and 4.9 and 5 where submissions were referred to IFP proposed that the President should have the power to dissolve a National Assembly. It would appear that the question of the solution by the executive is contentious if one looks at all that and all the submissions. And then a brief paragraph on the way forward. Recognition of the submissions from the Free Africa Foundation in Washington, the People's Cultural Organisation, The House of Royal and the Conservative Party and also a private and

personal submission by one RD Matheus all of which proposed something significant and different from the current system. But it would appear that the provisions of the interim Constitution in respect of Parliament in general and the National Assembly in particular could be used as a basis for the drafting of the final provisions on the National Assembly. The requirements of plain language will have to be taken into account, the clarity on the following issues will be required and eight of them are listed. To make good my promise that other aspects will also be listed which were not directly or sufficiently addressed in submissions, and I have a list here. The one is the summoning of Parliament, whether it should be Parliament at its own initiative or the executive, the ANC I remember has made the suggestion here that Mr President will have a limited summoning power of Parliament. The question of constituencies, it has been addressed but it will have to be addressed more substantially under the electoral system. Technical point, the voting right of the speaker, in other words whether the speaker has a deliberative and a casting vote. Details about the disqualification of members of Parliament, qualifications and disqualifications and which - and can be found in the interim Constitution but parties didn't really address themselves to that. Vacation sought?? by a member of Parliament, the circumstances, resignation, becoming disqualified also current provision of the Constitution that when a member ceases to be a member of a party, he or she can be replaced. Filling of vacancies, this could also be contentious. Oath of office, a more technical thing. Sessions of Parliament, that is completely up to Parliament to determine its own sessions. Sitting as a member, or sitting in the National Assembly while disqualified and punishment for that. Joint sittings of the two houses, the two houses. Types of legislation, at the moment in the interim Constitution at least four types of legislation are identified. Nothing was said in submissions about this, and I think it's an important matter. The ascent to bills, whether as is current at the moment, the President or someone else should ascend to bills, to whether it should be a discretionary thing or as it is at present. It's actually a more mechanical act. Signature and enrolment or registration of bills. Public access to Parliament or the sitting of the National Assembly, the ANC referred to this. And then the question whether - the question of sitting, speaking and voting in the National Assembly by persons who are not members of the National Assembly for instance the President, the President is not a member of the National Assembly. As a member from the

second chamber if there is such a member and possibly also foreign etcetera. Those are the other, many of whom are most - are more technical outstanding matters chairperson, thank you.

Chairperson Thank you professor, any questions for clarification from any member? Any comments at this stage from what professor presented to us, Mr Mahlangu.

Mr Mahlangu Chairperson we - we need to thank professor Van Wyk and the technical advisors for the wonderful job they've done. I think the synopsis of the report they have drawn for us, really it was a guideline as to what other political parties intend saying in their submissions, as well as the society and I think in this regard they really need to be complimented. I think they really done a good job, it is not a simple job, to and I wish to thank them on behalf of the ANC, thank you very much.

Chairperson Thank you, I think you've done that on behalf of everybody present, Mr Beyers.

Mr Beyers Yes Mr Chairman I will second that notion. I just want to make it clear that the professor referred to certain National Party assumptions that he made and I want to confirm that he is quite right. It is the point of departure from the - of the National Party that where we do not specifically propose something, we fall back on the present Constitution and so, in future he can work on that. So it's not only an assumption, it's a fact.

Chairperson Anybody else - Dr Ranchod?

Dr Ranchod I am not presenting a party political line here, but I do believe that when it comes to the question of the qualification of members, or election to Parliament, for the purposes of the final Constitution, this should be reviewed. I think it is standard practise in most Constitutions of the world that there are certain disqualifications which for practical purposes in the interim Constitution were not spelled out in any detail. But it is an issue which ought to be debated. I don't know whether it is the responsibility of this committee to do so, but I do believe that as we move into a phase of consolidation that this aspect should be looked at.

Chairperson Nobody else, thank you. Now we came to the parties presentation of their points of disagreement as stipulated in the minutes and I

am just wondering are we going to do it alphabetically as this submissions have been received, or is there any other suggestion? Dr Pahad.

Dr Pahad

I wonder if we could just spent a bit, a few minutes thinking about how we want to proceed with this discussion today. It would seem to me that the parties have agreed now and they have congratulated professor Van Wyk and that and that perhaps you could - the parties could make some general submission including where they think they have some serious disagreement. But then we should go back to the - to page 1 and then the last page where professor Van Wyk now his outline, the whole lot of other areas, and take them one by one so that we don't repeat our discussions. And where we agree, we agree, where there is contention then - then the technical experts can note that their are points of contention. So I'd like to propose that we consider discussing today in that way. So we don't you know repeat now that we disagree with something and then want to come back to the point with the - again repeat that we disagree. It just seems to me that I want to propose something that hopefully will be more smooth and coherent in terms of our discussion today.

Chairperson

Your suggestion is the points raised on page 1 and the last page.

Dr Pahad

And then of course professor Van Wyk added a whole lot of new ones and I see that the deputy speaker has also raised an additional one which was not raised by professor Van Wyk in terms of qualification of people who could be elected to the National Assembly. So that is a lot that we need to cover and which might not take us time, but I think we need to cover each one of those first to make sure that we have covered at least the entire area.

Chairperson

Anybody in disagreement with that suggestion? Nobody appears to be, I just want to mention to Dr Pahad the deputy speaker is not here, Dr Ranchod is here.

Dr Pahad

The deputy speaker professor Ranchod.

Chairperson

Shall we do it in alphabetical order, starting off with the ANC.

Mr Ebrahim

Mr Chairman may I suggest that the last points that were made by professor Van Wyk, whether we could get those again or a copy

of that because this is something that we were trying to make notes, but we couldn't get all of them. If it is possible that we could get that, then it can also assist us.

- Unknown We can do that now.
- Chairperson I agree with Mr Ebrahim professor Van Wyk mentioned some that are not listed in our documents. If he can just prepare that for us so that the secretariat can have it circulated for us.
- Unknown Mr Chairman do you understand Mr Ebrahim correct, I don't know whether Mr Ebrahim is aware of this document.
- Unknown He is.
- Unknown And if he is referring to something else.
- Chairperson If we look at that document, that is now the draft committee on the National Assembly, on the last page 10 there are a number of issues listed, but professor added a number whilst he was delivering his paper. Shall we kick off with the ANC?
- Mr Mahlangu Chairperson thank you very much, I would then rather would like to kick off by just making a broad general remarks in regard to our submission concerning the National Assembly and the Senate only for today. I will not touch the executive the Cabinet and all those things, because we still going to discuss that in the days to come. I only restrict my hope - my discussions today on the National Assembly and the Senate. When you look at the report from the technical experts, the technical advisors as they like to be called, the first item professor Van Wyk is speaking about here it's a question of I don't think we really have a problem with that. The present names which are used referring to the speaker of Parliament etcetera, ANC has got no difficulty with those names being used even in the future Constitution, we don't have a - really a problem in that regard. Now the second issue that the professor raises it is the question of the size. Now this - it is really a contentious issue and we feel really that it should be debated very broadly. We are aware that other political parties have already made the suggestions that it should be 300 some say it's 350 - 400 etcetera. The ANC as you realise we brought - made a suggestion of the size of the National Assembly at the stage because precisely we feel a contentious issue and we need to feel

deeply about this one. And we felt for an example that it's going to be difficult to determine the size of the National Assembly without looking at the electoral system that we want. There is a possibility at the end of the day for an example that the parties may agree that the electoral system that we should use is that of representation and constituencies. Now one need to work out those nitty gritty, we need to determine - the demarcate for instance, to look at how we demarcate the constituencies in the country and how many constituencies we'll come out with and from that one can really then start to think really of what is the size of the National Assembly would be. And we - we really need to look that a little bit deeper, but we have no problem that the political parties have already indicated what the size of the National Assembly should be. But in our case we feel we need to look at a little bit deeper the question of the electoral system and then we are prepared again to come back on this issue. Therefor it is a contentious issue as far as we are concerned. The other matter that the professor raises is a question of the elections of members, we - we agree that there shall be elections at no longer than five years intervals on a common voters role based on the of other at all levels of Government. And that the electoral system at the various levels shall reassure their accountability of representation. Therefor we believe that members of the National Assembly should be elected. And the qualification that the professor speaks of, we feel that at the present moment, the qualification described in the interim Constitution should serve the purpose, although we say once we finalise the question of the Senate we might read clause 42(d) of the internal Constitution. And the term of the office I've already said that we proposing the term of office should be five years, in other words members will be in office for five years and then go back again for elections, elections will be declared by the State President dissolve the house if they go for the elections again. We realise that this is also quite a contentious issue, as other parties are already raising the question of four years, but we are saying it's five years and we will debate this as we come to the real subject when we come to the - item by item. Now the termination of members also this one, we - once we have decided on the question of the electoral system that we want to use, and once we have decided also with other nitty gritty regarding the Senate we would like to re-visit this issue. We really have no problem with the questions of the presiding officers, that we don't think it is a contentious issue. It's a non-contentious issue as far as we are concerned as it is raised in our

submission, we don't have any problem with that. Now the question of committees is also an uncontentious issue, we feel the committees should be there. They are already playing a very vital role at the moment and they are also as we state in our submission, really assisting the other smaller parties to present their views even the debate issues before they can actually present it to the National Assembly. The rights and the immunities, we only say all those things will be terminated by the of but we don't see them to be really contentious at the moment unless other political party raise that as a contentious matter, we are also prepared to debate that. We want to agree with the professor Van Wyk that the question of the powers would maybe be contentious as we go deeper and look into this, because we still into Other questions as he appointed at the end of his report, the relationship for an example between the centre and the provinces, all those issues need to be looked at. We might likely come out with some of the contentious issues there, but we believe we will confront the issues as we really come to them and we are saying that the ANC proposed that the National Assembly mainly will then control the national budget and that it will take primarily responsibility for the the main laws of the country. But other parties may raise other different issues, which we might like to come back to later on. And when it comes to the question of the procedures, I am not going to deal with what professor is saying on paragraph 1, I'll only deal with what we are raising as the ANC where we say the quorum in the legislative assembly will be one third and when we vote for the amendments of the Constitution two thirds etcetera. That is what we are proposing at the moment, but I am not going to deal with paragraph 1, as the professor has raised And the other issue which we would like to talk about just briefly is the question of the Senate. It is indicated in our submissions as you have already might have gone through our submissions, we have proposed it there, but we feel the question of the Senate is one of a contentious one and we also believe that we need time to really get into a very broader debate regarding the Senate and we are feeling that it's going to be very difficult to finalise the issue of the Senate unless we know exactly what other powers in the provinces at the moment which are being mainly dealt with in Theme Committee 3 if I am not mistaken as Theme Committee 3. We need to know exactly what we are saying about the powers of the provinces before we can finalise the question of the Senate. So that is going to be a contentious issue. And another thing is

that we are not the only Theme Committee that deals with the question of the Senate. The CPG deals with the question of the Senate, they offered - they are going to list their proposals. We need to look into that, we need to study that very careful and listen at what they've got to say, what are their proposal to us. Another thing is the other structure that deals with the Senate, the provinces themselves. We are saying that the provinces, I am sorry the Senate will be dealing with the matters affecting the provinces. Therefor the provinces have got a say in regard to the question of the Senate. You actually having three structures that are dealing with the question of the Senate here. So we feel that unless we iron out all those things, it's going to be very difficult for us to finalise the question of the Senate right now. But we are prepared to look at all the options and we'll come back later to the question of the Senate. Their functions, their role that they've got to play you know to see how they really have to participate to the matters regarding the provinces. Those were just a general comments chairperson, we will then put our debate when we come to item by item. I don't know whether Dr Pahad would like to add something at this stage. Thank you very much.

Chairperson

He indicates no - anybody else. Mr Beyers.

Mr Beyers

Mr Chairman we would prefer that we discuss every issue separately...

Tape 2, Side A

Theme Committee 2 - 19 April 1995

Chairperson He indicates no - anybody else. Mr Beyers.

Mr Beyers Mr Chairman we would prefer that we discuss every issue separately and it we will take part in the debate when we come to that. We don't have general remarks at this point.

Chairperson You say separately the ... (intervention)

Mr Beyers I thought that was the proposal that we discuss 1 to - up to nr 12 separate. First the nature, then the size, then the election of members etcetera.

Chairperson Seeing that Mr Mahlangu has now dealt with all of the simultaneously, can't we just carry on like that for the moment and then when we come to page 10, then we do it differently.

Unknown We can do that sir, but Mr Mahlangu also said that he would come back if we discuss the different issues in the region, so I think ... (intervention)

Chairperson If I understood him correctly he particularly refereed to the Senate where we've got to deal with it in relation to what's happening in Theme Committee 3 and with the Commission for Provincial Government is proposing. Then we can sort of finalise the matter, did I understand you correctly Mr Mahlangu?

Mr Mahlangu Yes.

Chairperson Senator

Unknown Chairperson yes I, I'd actually like to support Mr Beyers proposal in this regard. Because I don't think it actually takes us a great deal further, if we just run through it, a generalised presentation by each party. Because you know if we can deal with these things then we can either confirm or challenge bodies contained bodies in this report that we have considered. If political parties run through the whole and introduce other elements as well, then it becomes extremely difficult to know whether the areas of happening correctly, identify it. So I think it would make a lot of sense if we just dealt with these things point by point and then them away.

Chairperson	And then close off the debate after we've dealt with each one of them, so that the advisors know exactly where we stand. Anybody disagreement with that. Who will kick off?
Unknown	On point 1.
Chairperson	Point 1. Dr Ranchod
Dr Ranchod	Yes point 1 is I would just like to ascertain from the ANC if there is complete acceptance of the reference to the speaker as the speaker of the National Assembly, or are you contemplating the speaker of Parliament.
Mr Mahlangu	Chairperson that's an issue that we - we all leave debate that should come into the final Constitution. At the moment you know we have a speaker on the National Assembly, not actually the speaker of Parliament. And I think we need to all of us look at that whether, what is it that we want in the final constitution. Do we want to have a speaker in the position being the speaker of the National Assembly or being the speaker of Parliament. I think we need to apply our minds on that, but we - we have no difficulty whether we have a speaker of Parliament or the National Assembly.
Chairperson	Dr Ranchod.
Dr Ranchod	Okay the next question deals with committees, we have a tremendous of committees in our present Parliament and their obvious disadvantages, especially for the minority parties to participate fully in the deliberations of committees and whether we should not consider limiting the number of committees, whether one should do so constitutionally is something we could debate. But I think there are very few Parliaments in the world that have as many standing committees and portfolio committees that we have at present time ... (intervention)
Unknown	Mr Chairman on a point of order, that is point nr 5, could we perhaps leave that until we get to point nr 5 and then discuss that.
Chairperson	Thank you, Mr Beyers.
Mr Beyers	Mr Chairman we have no problem as far as the report of professor

Van Wyk is concerned. Perhaps we should just consider the possibility to formally call both the Parliament and the National Assembly both the National Assembly and the Senate, the Parliament. I think we temporarily use the term Parliament to describe the - both the Senate and the National Assembly and I think we would support the idea that this institution the legislator as such should formally also be called Parliament. And I don't find it in the present Constitution that it is called Parliament. It is just - we are just talking about Parliament and we call ourselves members of Parliament. And I think we should as far as Herman Procher is concerned, consider to call - officially call both institutions together the Parliament.

Chairperson Anybody else Dr Pahad.

Dr Pahad I just want to come back to the question that was raised by Prof Ranchod it seems to me one of the things that at some point we would have to come back to and it may well apply to other things is, is what does go into a Constitution. I mean do we want to define powers of speakers and other things in the Constitution or do we just want to say, it will be a speaker. That is the first thing. The second one is you cannot discuss the question of these people of Parliament as separate from the speaker of the National Assembly as we would now, until we have clearly defined what kind of Senate we going to have. Because it would depend on the kind of Senate you have, which then has an impact upon - upon this kind of institutions and that would have. So I would rather suggest that - that insofar as this question is concerned we then might want to come back to it at the very end when we have greater clarity as to the kind of institutions that we want.

Chairperson Anybody else on this issue - nobody. Nr 2, size of the National Assembly of - we've heard Mr Mahlangu on this.

Unknown Chairperson ja this one is slightly refereed in passing to the parties who had proposed to reduction. We are one of those parties that has proposed to reduction to 300 members in case of the National Assembly and 240 such members being elected in terms of the constituencies and 60 members being elected on the basis of a national list to ensure that parties are correctly and proportionately Represented. We think that this in the sense gets the best of both worlds against the constituencies link with an individual member who is responsible for his or her constituency at the same time as

insuring that Parliament is correctly reflects the wishers of the voters. I think that in this respect it would be useful at some point and perhaps not in this Theme Committee but it would be useful to look at other systems, in other situations. And we will be submitting more detail on how we see this thing developing and when we submit our proposals on the electoral system. But I think that there is a feeling out there the very strongly from our constituency that Government in this country, the business of Government actually costs this country too much. And I think it is something that we all need to reflect upon.

Chairperson General Groenewald.

Mr Groenewald Mr Chairman I agree with the ANC that we should declare the size of the National Assembly a point of contention. There are several factors which determines the size of the National Assembly. The Freedom Front feels that until we have first of all determined the functions of a central Government, and relate it to the provinces, we cannot determine the size. Secondly I think the role of selected committees once again, there should be carefully reviewed, they are extremely important. And you know the problems we have at this stage of finding forums for select committees and even at times finding forums for Parliament. So you cannot decrease the number of representatives to such a stage that you simply can't function effectively. There is a minimum size which must be taken into consideration. I also agree with the ANC that the electoral system will also play a part in determining the size of the National Assembly. I think at the present stage if we look at the number or voters, represented by - by the present National Assembly, and the members are elected to the National Assembly - yes I think there could be a slight reduction, but not all that In other words I agree that there could be a reduction, but let's not make it too small. So I would suggest that what we should do is - is spent a bit more time after we have decided on a few - a few matters which are important and this is mainly the task of Theme Committee 3, determining the powers of functions of both the central Government and the provinces. Determining that the powers and the functions are both Senate and the National Assembly. Once we have determined those, then I think we can sit down and I'd like to - I think this is extremely important and I'd like emphasize this that if much more powers are devolved to the provinces for example then naturally you would not require such an enormous large National Assembly

as we have at the moment. Then it might be necessary to increase the size of the provincial councils. So there are a few I think important criteria which we have to first determine before we can determine the final size.

Chairperson

Anybody else on this,

Unknown

Mr Chairman the - the National Party's view is set out in page 3, we are at present happy with the size of Parliament but we agree with the other parties as well that this is a bone of contention. And will have to be looked at thoroughly. It also depends on the electoral system that would be used and - but it must be kept in mind that if you - if Parliament become smaller then the representation of the people in Parliament would be affected and at the moment if you divide us, as general Groenewald has said, if you divide the members of the Parliament and the electoral people that is able to vote in - then you end up with a huge constituency that is parliamentarian as got to - to represent. So this is a difficult question and we also feel that this should be looked in more thoroughly and more deeply. But at present we happy with the that - as it stands.

Chairperson

Anybody else, point nr 3, election of members, term of office and termination of membership.

Mr Mahlangu

Sorry - sorry chairperson ... (intervention)

Chairperson

Mr Mahlangu.

Mr Mahlangu

Still on the same point, I just want to ask from the DP maybe it could be of help to us, the other parties as well. How did you come to - which criteria have you used to come to the numbers which you have suggested, maybe people could start thinking about that, it might be of help. How did you come to 240 does it imply - you have already presumed that you might have 240 constituencies throughout the country and how did you come to that?

Unknown

Chair as I - as I mentioned more detail will be provided when we make a final submission on the electoral system. But amongst other things what we looked at, was the average size of constituencies in other parts of the world and to try to determine there from a ideal or average number of constituency per public

representative. Now clearly those differ very widely in different political systems, but that was one of the criteria's that we looked at. We also looking at the whole question of multi member constituencies and an electoral system within those multi members constituencies that will also allow people of different political persuasions within an area to signify their different political persuasions within the area. So as I said the detail will be fleshed out, but the figure of 300 was large derived, the average number of public representatives per constituency or other way around in other parts of the world.

Chairperson

Dr Pahad.

Dr Pahad

I am wondering in terms of - for the purposes of the report that should be made to the Constitutional committee. You see I am not convinced that the size is a matter of - a board of contention. I think what we are all saying including what the Democratic Party is now saying, is that we cannot arrive at - in conclusion of this matter until we've done a lot of studies and investigations about other matters which impact on this. Including what the Democratic Party - in spite of them giving a number of 300 I hear them saying that never the less there are other issues that may influence them in terms of the figure that they are finally arrive at. And I think that they way to make the report is not to make it as if there is a contention in this room. What I think there is a general agreement on, is that we need to do one a lot more work, two that in the course of our own work that will influence the thing and three that we would like to come back to this once we have a clearer idea about the powers of the Senate and the electoral system itself. And also that we would look at financial implications and therefor that what we would be reporting is that they not applying contention, but that what we are agreed upon, that a lot more work needs to be done before we come to a conclusion about the size of this. I just want to ask to report in a way which us forward rather than engage ourselves in another debate in the Constitution committee and assembly. That is my understanding of it.

Chairperson

Senator

Unknown

Thank you chair, I am perfectly prepared to go along with that suggestion and provided it's within the context of the methodology that is used in one of the other Theme Committees that I sit on, which is that we specify areas of agreement, areas of

disagreement and areas for further clarity. And I - I would be perfectly happy that, that, that the size of the National Assembly be put into a slot of areas for further clarity, or further discussion or further investigation. But - but I think while it is clear that the amount not be contention about, it's also clear that there is not agreement about it.

Chairperson

Anybody, Mr Beyers.

Mr Beyers

Mr Chairman we would agree with that notion that we further look into the matter. I just want to point out the fact that the smaller the National Assembly becomes, the more happens to the decrement of small parties for instance a party with 7 representatives if the next National Assembly will consist only of 200 - will have only 3 members and they should be represented in all committees. So I - also for the sake of minority representation Mr Chairman, I think that we must be very - we must consider it very thoroughly before we decide on a smaller National Assembly and Senate.

Chairperson

Anybody else on this - can I then say that what we've agreed upon that the size was not agreed upon but that the fact, that matter should be revisited that is agreed upon. Is that correct Dr Pahad.

Dr Pahad

Ja I'd rather put it in a more positive way - I thought Mr is putting it that way to say that we will return onto this issues after having investigated all of the other things that we are looking at and we try the electoral system then take into account just now what Andries has also said that in the end, these are all of the issues that we need to take into account before we come. So I'll say - not to save agreement or disagreement, but to put it in the slot that Mr talked about for further investigation and we can outline for the Constitutional Committee including now what Andries has said. That requires further investigation before you come to a decisions about this size and I agree we need to take into account whether it by reducing the numbers you might not be disadvantaging smaller parties in terms of representation in Parliament. So I am saying if we put it that way in that slot and then outline some of the areas we've been saying now, which needs further discussion.

Chairperson

Senator Groenewald.

Mr Groenewald

Could I possibly ask Mr Chairman if our technical advisors has

from the discussion so far determined exactly what these factors are that we have to bring into the argument. And if they perhaps could assist us in this regard.

Chairperson

Can anybody assist in this regard, advocate.

Unknown

Thank you Mr Chairman, Mr Chairman it's very difficult but what you hear when people speak, try to decipher the issues I hear the following. One, that there are certain things that need to be done first before the numbers can be determined. Two, that even those things after having been done, there are other considerations including the smaller parties, what will be the effect of the smaller number, the expenses as to - to the nation on the larger number. So I would say my understanding and depending on what my colleagues would say on the issue is the question of the size of the National Assembly will be determined by the nature of the electoral system. Number of the constituencies to be limited, the more otherwise as to the expenses and finally whether the smaller parties would be ineffective can function or not. And therefor this Theme Committee agrees that further investigation on the issues tabulated be taken into account and the issue be reopened.

Chairperson
Prof Van Wyk

Prof Van Wyk.

Chairperson there will be a workshop on the electoral system on the 8th of May, I think - I don't know whether that program is too full to incorporate the contribution on this aspect. If it is too full maybe we should have a - either a further workshop or a specific request for a report on the basis on which the number of representatives in other systems is calculated.

Chairperson

(inaudible)

Unknown

Mr Chairman in terms of the speaker at the seminar they all come with proposals about size and all their models have the numbers there. So I think it is going to be dealt with at that size - at the workshop but not looking specifically at the criteria and it may well be that we want to ask someone to specifically look at the criteria how to calculate this and what are the cost benefit. Because the argument as I see it is, the only argument against 400 MP's is that it's expensive. And then and then one would of argued what are the advantages of such a large size which out way the expense argument. And then it seems to be a servant to the

constituencies, the larger the constituency, the more difficult it is to service such an constituency. Secondly then smaller parties. Thirdly the working of Parliament itself, that the committees can't work if there is too few people. And so I think one would take those fact into account, but also then try to calculate what in fact is the size of a constituency, particularly if you talk about list and so your actually elected people from constituencies would be 260 or what - or even less. So I think one should look at those things as a whole.

Chairperson Satisfied senator Groenewald?

Mr Groenewald Thank you Mr Chairman.

Chairperson There is a

Unknown I wanted to well perhaps senator Groenewald should have said that he is not necessarily satisfied. Because in addition to what advocate said and prof I thought what was said, was the question that would - it would also be in terms of the relations with provinces, that's what Mr Groenewald said. And it would also be dependent on what kind of Senate you going to have. I am just adding as additional issues that, that we would want to look at, we not debating them now. But when we outlining them that would be additional to what has been said by our technical experts.

Chairperson Can we move on to nr 3 on the list, election and so forth? Senator Selfe.

Mr Selfe Thank you chair can I just also speak very briefly to the advantages of 4 years, we likewise take the view that there should be a regular electoral period. And that likewise we have taken across - a cross country comparative view looking at for example united states where the members of the House of Representatives have 2 year terms, that members of the Senate have 6 year terms. Looking at the benefits of various terms of office of public representatives. We came to the conclusion that 4 years would be appropriate term of office. It's short enough in our view to keep a public representative responsive to the needs of his or her constituencies, while also allowing somebody a reasonable degree of time to get into a job and to get on top of the job. There are advantages also in having a 4 year term in terms of separating out

the elections for provincial Parliaments, these are the National Parliaments. In other words if you using an even number of years, then it's much easier to have mid term elections for example of provincial Parliament. I'd just like to make one thing quite clear which I don't think came clear - that came out clearly in the report of the technical experts and it's not only applies here, but it also applies in various other places. And that is that in terms of our proposal the members would be elected for fixed terms of 4 years and that the only reason that, that could be reduced is that there was a vote of no confidence in the - in the Cabinet from the President. In other words we are not providing any power of the executive to dissolve Parliament prior to those 4 years. Unless Parliament itself passes a confidence in the executive I just want to make that very clear.

Chairperson

Anybody else?

Unknown

Mr Chairman I think although the National Party has not already decided as far as the fixed period is concerned. I think we should consider the possibility, I think the National Assembly should consider the possibility of the Constitutional Assembly, to decide on a fixed period. Because it is conducive to true democracy, a fixed period. But I think that a 5 year term Mr Chairman will be less extensive and for that reason we think that a 5 year term is reasonable. But I think we all should consider the possibility of a fixed, unless a motion of non confidence is taken, of non confidence is taken in Parliament.

Chairperson

Mr Olifant.

Mr Olifant

Mr Chairperson thank you, I don't know whether the National Party in fact are proposing a fixed term of 5 years. Because I - if that would be the case, I think the ANC would support the National Party. I - one believes that a term of office is an ever changing thing, meaning that there - new persons coming in, at an on going basis. And it's quite difficult and not mentioning us that they - were brand new that came in the first time into office. But I would strongly believe that in general when a new member comes into office, it takes him quite a while to actually settle down, to get use to what's happening in this - which is quite a complicated institution by it's own self. I believe to be effective in delivering to your constituency I think a period of 5 years would - would be justified in this regard. Thank you.

Chairperson Anybody else? Senator Groenewald.

Mr Groenewald Mr Chairman to the Freedom Front this is not really a contentious issue, whether it's 4 years or 5 years, both could work. I must be getting old, however, because elections, I think every one of us sitting here is sick and tired of elections. And the old electioneering process and here I think we should look at the system in the States where you get a very artificial situation in the country. Every 2 years you end up with a massive election campaign that cost billions and the cost of the elections are going up and up. And in this process the bigger parties, normally have much more funds at their disposal and - and quite often the fact that you have election every 2 years. Does not necessarily mean that you get a more effective Government. So what I am saying is I think experience had taught us that you need an election every 5 years. But you could also have it every 4 years. And I would - I would really ask that we should try and rather go for the 5 year period because of a number of factors and fit in what other elections, local elections and provincial elections within this - this kind of And the reason for this purely is let's get down to governing and not electioneering. I think this is extremely important and that the Freedom Front would not object should it decide on a 4 year term. So to us it is - we prefer a 5 year term, but we would also be happy with a 4 year term.

Unknown Just this, because

Chairperson Anybody else on nr 3?

Unknown I just want to ask a question, we keep on hearing about smaller parties, I would like to know do the smaller parties work from the that they will always be small?

Chairperson I believe that one doesn't need a reply because that's a political question.

Unknown Mr Chairman I would love to reply to that one, but I am not going to.
I just want to also to the fact that in every - every democracy, the Government also need a period to take if necessary unpopular decisions. And I think a 5 year period Mr Chairman is for that reason more conducive to that - to that situation where a rule must be - should be given to a majority party to if necessary and in the

interest of the country, take unpopular decisions in the first two or three years of his

Chairperson I think we've exhausted that one. Nr 4, the presiding officer.

Unknown Sir, you know I agree with you that we must be in a hurry, but ... (intervention)

Chairperson No I didn't say we must be in a hurry, I am looking around and nobody put up their hand and so on ... (intervention)

Unknown No - no it's just a question of trying to find a way in which at the end we are also going to make a report you see that three elements that were outlined in this report. The one was qualifications, the other one was term of office and then the third one is term of members, I think that's how it is put here. Now it seems to me that what we've discussed at the moment is the term of office and - and where we are at the moment as it seems to me is that the contention, really by one party, the Democratic Party which says 4 years. The rest of the parties that are present here are saying 5 years and I think that, that side should then be reported. It is a matter for contention, the Democratic Party asked for 4 years, all the other parties said 5 years. So that the report to the constitutional committees should clearly reflect it I think that's the first thing that we should agree that, that is what the position is at the moment. The second one is then whether you want to look at the question now, of qualifications as well as the determination of membership. It's only because that's how it's put in this document. We might not want to discuss it, but I am saying that if we using this document as a guide and we should proceed in that manner Mr Chairperson.

Chairperson This list that have been circulated that was added to page 10 includes qualifications and disqualifications of members.

Unknown Ja.

Chairperson So we'll discuss it when we come to that, that bit.

Unknown Yes but Mr Chairperson a part of the election of members and qualification is the question, the whole question of the free mandate and the right of recall and shouldn't we discuss this as well under this heading before we go over to the presiding

officers?

Chairperson Quite happy to do that and then we must combine with nr 4 on the second list. Then it will make a lot of more sense.

Prof Van Wyk Chairperson just by way of explanation. Why qualifications was inserted here was that a number of individuals expressed an opinion you'll see that a Mr Dacie suggested minimum educational qualifications for MP's and there is another one of the individuals also suggested minimum qualifications. The political parties themselves didn't really address this question - the individuals did.

Chairman So that is something completely different with regard to the ordinary qualifications of a voter being 18 years old and so forth. The question of free mandate it deals with on page 10 - 52 anybody further on this point point nr 3.

Unknown So we deal with the questions then when we come to

Unknown No why not now.

Chairperson Mr Olifant.

Mr Olifant Ja Mr Chairperson I just thought, I just want to appeal to the Democratic Party. We have this I think when we started off we came under the impression that there wouldn't be - this wouldn't be a bowl of contention, now it seems it is. Which we believe isn't there some possibility when - when senator goes back to his party, that they will be able in a position to review their position. I think that one would - would like to move on the basis and consensus in a manner all the way as we go along and in that way we would also hope to speed up our process. So if at such, we didn't hear that whether the senator or the party was going to speak to their position or whether there any chance of them reviewed.

Mr Groenewald Well Chairperson I can certainly take it back to my party that the position as we have it is my party's current position. But you know I'd really like to emphasize that again the 4 year period was not something that was just arrived at, as it were out of the blue. That it has to do with the fundamental question in arguing of separating out provincial election for national elections. Of having mid term elections for provincial assembly's that are totally different and

concern themselves with different issues from the elections for the National Assembly. We also think incidently that a year period in fact goes some way towards meeting the criticism of people who wish to recall mechanisms in the Constitution. Because you know the longer the period of term - the longer the term of office of public representatives the more people who are dissatisfied with the performance of individual public representatives want to have recall mechanisms built in. Whereas obviously if the period is shorter then one can - one can in a certain sense meet that criticism by saying look the period of office isn't so long, if you dissatisfied with that person, wait for the next election and you get rid of him.

Chairperson Satisfied, then we move on to nr 4.

Unknown No Mr Chair.

Chairperson Not yet.

Unknown You see, it seems to me to say that you come back to page 10, it is not correct procedure. What - what we are doing is moving in terms as I understood it from page 1. And then the additional things that Prof Van Wyk spoke about. So it seems to me that what you want to do now is to spent a few minutes on this question that - the free or imperative mandate, however, you want the quality of the right of recall. So that we finish with that particular area as far as this particular discussion is concerned. So I - I am just trying to suggest to proceed in that way, and when you come to page 10, you don't go back to something that we should have discussed earlier. And with your permission then I'd like to say something on this question of free or imperative mandate.

Chairperson But you mustn't say a point of order because that is exactly what you proposed, we first deal with page 10 and then - page 1 and then with page 10. Now if you want to change that, I've got no problem with it because they are inter linked, they additional items listed by the professor, even with the question of termination of membership. Which again include the free mandate.

Unknown Mr Chairman I am not changing anything, I am sticking to the originals and I am now asking whether we should not look at the question of termination of membership now. And try to finish it now and not wait until we get to the end of it, that's all I am

proposing and if you agree I would like to start the discussion with it.

Chairperson

Okay.

Unknown

First of all I think we need to try to understand whether this matter should form part of the Constitution. And it's an arguable thing, but my own view would be that it's better if the Constitution is silent but accept - makes provisions for the fact that Parliament could pass a legislation with respect to this issue. Because once you put it in the Constitution, then you have all kinds of other problems that arise from it, that's the first element. The second element is that the Democratic Party is Colin Eglin has got a private members with regard to the present Constitution on precisely this issue of the right to recall. And obviously political parties are going to say something about it, I suppose that bill will make it, at least to Parliament for discussion and I am not sure that it go through but a least it is going to be discussed by Parliament. So in that case we are going to come back to this issue at least with the regard to the 1993 Constitution. So I am not sure that for that right now, any discussion is going to take us any further from since we going to discuss it in Parliament. Then the third question would be that when you have a clearer idea of your electoral system, we'll come back to it, but it is general agreement that it should have both a proportion - I mean both a constituency as well as proportion and I am not talking about the figures now, but I am talking about the principle. Then the question of the right of recall also gets determined by the kind of electoral system that you going to have. What I thought we should do for now, is - is leave the issue open, that's what I am saying we should and say that we have to come back to this, at least in our report to the Constitutional Committee depending on what happens in the debate in the National Assembly on Colin Eglin's private bill. Secondly on the - the question of the kind of electoral system we have. But thirdly in my view more importantly, whether this kind of issue should indeed appear in the Constitution you know I am quite prepared to argue the case that it shouldn't. Except that the Constitution should not prevent Parliament from passing legislation with regard to this particular issue. Because this things might change depending on a number of factors. So but that's how I felt - I would like to open this discussion.

Chairperson

Just to be clear in my own mind, did I hear you correctly by saying

it may go to the National Assembly but it may not be passed.

Unknown That was a side comment because it would depend I suppose on what the ANC itself decides on the issue. And it has - does have a majority in the ... (intervention)

Chairperson No I am asking that because if you say that, then it will never get to the National Assembly because the desirability of the bill must be agreed upon by - in the committee before it needs to - that's before the National Assembly.

Unknown No just ignore that as side comment of mine, just stick to the substantial part.

Chairperson Okay, Mr Beyers.

Mr Beyers Mr Chairman as far as the National Party is concerned I think first of all we must, we are talking about two issues, one issue is the possible amendment on the present Constitution to accommodate the mandate system and the second one is how it should be written into the Constitution, into the new Constitution. As far as the new constitution is concerned our leader has already made our stand point very clear that the National Party is in favour of the free mandate system. Whether we have a system of proportionally presentation or a mixed situation where you also have constituency representatives. The National Party is in favour of the free mandate system, however, there are some area that some issues that still have to be considered. The one for instance is if a person crosses the floor and afterwards dies, which party will have the right to nominate somebody in his or her place. So there - although there are some issues that still should be considered, the National Party as far as the final Constitution is concerned, is in favour of the free mandate system and I think as far as the present Constitution is concerned, it must also be considered

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- Mr Beyers So although there are some issues that still should be considered, the National Party as far as the final Constitution is concerned is in favour of the free mandate system. And I think as far as the present Constitution is concerned it must also be considered after those issues, related issues also have been considered and cleared out.
- Chairperson Yes ... (intervention)
- Mr Beyers Mr Chairman can I just make another point. I am happy that for a change I can differ with Dr Pahad and that is that I don't think that this can be only be written into a act of Parliament. It is so fundamental Mr Chairman that I think it must be written into the Constitution itself, I don't think that we can only arrange that by an act of Parliament.
- Chairperson Just before - are you covered - can you assist - we are now dealing with free mandate and can we look at the other list, the written list. The vacation of seats and the filling of vacancies, can't that - will be dealt at the same time now, then we through with that. Anybody that want's to comment on that?
- Unknown You know Mr Chairman I am sorry ... (intervention)
- Chairperson Vacation of seats nr 5 on the other list and filling of vacancies. And then we have the other one - the role - free manage system and termination of membership.
- Unknown Mr Chairman I have no problem I think you see, you should separate the two, the one is substantial issue. This question of party's right to recall that the MP's and so and so forth. The other question of filing of vacancy and so, it's a technical issue in the sense and I don't really think we should - we should put the two together even in our reporting of the matter. Because really this one is substantial and we would need to come back to it again and again before some final decisions is made. So I would rather that we just separate the two now and not the conflict that ... (intervention)
- Chairperson Anybody else on the matter nr 3. So I take it now we've dealt with 53 on page 10 in conjunction with nr 3 on page 1, which we'll

revisit of course when we come to that issue.

Unknown

Mr Chairman.

Unknown

Mr Chairman if I may - I may suggest I am having difficulty in making notes for the purposes of the recall, is it not easier if the chair were to settle the items for discussion first under and then we know as we listen to the debate what you discussing, it's much more easier than discussing item nr 3 and then the chair identifies maybe 3 and 5 that might be relevant and members discuss that Should we then fix the agenda.

Chairperson

Now we've agreed upon that I was just thinking that it may coincide with what we were just discussing nr 3, we are busy with nr 3 now. But this co-insides with nr .53 on the - on page 10.

Unknown

For an example Mr Chairman, 3 says election of members, term of office, and termination of membership.

Chairperson

That's right.

Unknown

..... into three things, what did we say about election of members, what must I record?

Chairperson

No that has not been touched on.

Unknown

You see that's exactly my point.

Unknown

Mr Chairman are we going to handle the electoral system at a later stage or should we exhaust that debate at this point in time.

Chairperson

No we have a block on electoral system which is completely separate. It does exist for general comment, the question of election of members.

Unknown

I think advocate is right, but I think what they should then report as the technical experts is that election of members is going to be determined following our discussions on the electoral system. So - so that there is a report, but it's going then be dependant on what - what kind of electoral system we will be devised, that's the first thing and secondly what kind of Senate we will also have. That also becomes important once you decide on the kind of Senate you want, how that Senate will be you know

- elected or otherwise.
- Chairperson Any further points on that? Dr Ranchod.
- Dr Ranchod Now just on the question of the filling of vacancies the present Constitution is silent as to the period, there is no period set so if a political party ... (intervention)
- Unknown Pardon we said we'll come back to that, that's a technical matter - excuse me, please go on to the next one.
- Chairperson Nr 4, the presiding officers, comment was already made by Mr Mahlangu anybody else on that still?
- Unknown Yes there is no difficulty with what is in the Constitution that I'd just like to record something which is not in the Constitution which is a tradition followed from past and that is that we have additional presiding officers known as the chairperson of committees and deputy chairperson of committees, now this would have to be revisited at some point because the manner in which we deal with legislation today is very different to the earlier system where the House went into committee. So although this is not something that needs to be addressed in the Constitution itself, I think that some attention should be given to how we going to appoint additional presiding officers other than the speaker and deputy speaker.
- Chairperson Anybody else on that, Mr Mahlangu.
- Mr Mahlangu Chairperson I wonder what Dr Ranchod just now indicating to whether should we really make the constitutional matter. Is it not really that maybe a question that we can resolve you know, who is the procedure of Parliament when we look at the chairpersons, chairpersons and all of that. I think we should leave it there, and other to make it a constitutional issue.
- Unknown I agree.
- Chairperson So we are all in agreement as far as the presiding officers of Parliament is concerned, thank you. 5 ... (intervention)
- Unknown Mr Chairman again on the new list - the voting right of the speaker, would that be appropriate to discuss it under this heading?

Chairperson If you listen to what advocates have said that we deal with topics so that proper notes can be made. Now if you talk about the voting rights of the speaker, that is a procedural matter, technical matter as far as I am concerned. I think you don't need to deal with that in the Constitution as such. But that it just be indicated that what is the view on that So let's leave this separate as we've indicated earlier.

Unknown But Mr Chairman the question itself whether it should be treated or described in the Constitution or not is a issue that we should consider. So it's a valid point.

Chairperson But I mean let's discuss it when we come to it, instead of under the presiding officers, to confuse the issue even further. Dr Pahad?

Dr Pahad You know I - so what is it that we going to come back to, you see if you look at the 1993 Constitution which is Section 41, it makes quite clear that the speaker, the deputy speaker or any other member presiding shall not have a deliberate approach but exercise a casting vote in the case of a to a post. That in the case of Mr Beyers said earlier, I take it then that the National Party agrees with the provision as it sits here now. Because he pointed out that they - where they don't have a thing that now it's already in the present Constitution we might go on to say well we don't need it in the Constitution. At the moment from the ANC's side, we - as far as I know we don't have a fixed position with regard to, to this person, in either whether it should appear in the Constitution or it shouldn't. Or whether or not the speaker should have a casting vote. Now I think the way we should put it, is to make clear to the constitutional committee two things. One that the present Constitution does say something about it and say what the present Constitution says. And then at the constitutional committee, they can decide whether or not they want to keep it or not. But we don't waste this time of this committee to - to return to it, because it's there already and as far as I can see, there may not be a big discussion on it. But we should say to the constitutional committees something from this committee. And my proposal is to say from this committee that the present Constitution the 1993 Constitution says the following and it's up to the constitutional committee to decide whether or not they want to keep this - this as provision.

Chairperson Well the constitutional committee wants us to advise them whether

we are in agreement or in disagreement.

Mr Beyers Mr Chairman just to make it clear that the National Party supports the present situation, is in the present Constitution.

Chairperson Did I see you hand Mr

Unknown Yes indeed it is my hand, and it was in respect what Dr Ranchod had said of course the committee agreed that it is a matter for the rules. But I think the point that he was making I understood him to making was that why the Constitution - why the Constitution might say presiding officers are going to be restricted restricted and so on. Now if the rules were to - to make provision for other people to preside doing the same work that the the will be doing as provided for by the Constitution that could be regarded as being unconstitutional. So what need to be said then as you said there need to be a indication to the affect that - besides of the fact that we shall have a speaker or a deputy speaker. You might - might have second situations where you will need another - another person other than these two officers to preside over the proceedings over the National Assembly.

Mr Beyers Mr Chairman the present Constitution doesn't say that the speaker may not vote, the speak Dr may not vote. Only the presiding officers cannot vote, the presiding officer at that point in time, is that true.

Unknown Yes.

Mr Beyers I think that is the situation that only the presiding officer on that day, may not cast a vote, not the speaker in her capacity as speaker, but in her capacity as presiding officer.

Chairperson Can the legal experts assist in an interpretation in that regard?

Unknown No Andries is correct.

Chairperson No they - can they assist. Because the presiding officer may be the speaker at that point in time. But the deputy speaker cannot be in the chair when the speaker is in the chair. Gentleman can we carry on to committees then. I take now this is the portfolio committees and the select committees, I don't know what to call them any more.

Unknown Mr Chairman but what is the decision now on the voting rights of the presiding officers. We should take a stand on this, to help the technical experts, because we can't refer this now to the Constitution Assembly without any view ... (intervention)

Chairperson We ask the question are we in disagreement that the present Constitution stipulates that they can only vote under certain circumstances and that we recommend accordingly or are we in disagreement?

Unknown Repeat that Mr Chairman.

Chairperson Dr Pahad said we stipulate to the constitutional committee with regard to the voting rights of the presiding officers that this is what the present Constitution stipulates and that they decide whether they want to have it in the new Constitution or not. And I asked the question but we must advise the constitution committee with regard to what the situation is.

Dr Pahad? Mr Chairman the reason is party because it's not that we have a fixed position on this question within the ANC but that at the moment our thinking is that all the Constitution needs to say is that there will be a speaker elected by Parliament. So the Constitution is the same, Parliament then should determine the rules of procedure and other things about the speakers, deputy speakers, who - whatever else - other parliamentary officers there may be. Because you may change it, it's not a - it's not a fixed thing. You may want to change how the speakers also conduct themselves, I don't know - so at the moment from the point of view of the ANC our position is that that's all the Constitution needs to state. It doesn't have to specify anything else, whether or not they have a casting vote or a deliberative vote or - or whatever, all it needs to say is that Parliament will elect the speaker and then Parliament can devise it's own set of rules and regulations, governing the of this post, that is our position at the moment. But - but we are quite prepared either now or even later to listen to other points of view and be convinced that the Constitution meaning to spell out some of this therefor I say that - well let me put it the other way around, that we can now say to the constitutional committee that there is some mild potential if you like, not necessary the powerful contention about whether or not these elements should be in the Constitution. But that's - so from our point of view let me repeat at the moment our position is that all the Constitution needs to state

is that a speaker shall be elected, and the role, power, functions, everything else of the speaker and other parliamentary officials should then be defined in a act of Parliament and not be defined in the Constitution itself. That's our position as we stand.

Unknown

Mr Beyers.

Mr Beyers

Mr Chairman our position is that it should be stipulated in the Constitution as in the present Constitution that the presiding officer will not have a vote, that is our point. I think the issue is not as contentious not to be dissolved in future also by this committee but at this point in time I think there is a bone of contention as far as that is concerned from the position of the National Party and that from the ANC it says that it should not be constitutionally mandated but be arranged by a an act of Parliament or by the rules and regulations by Parliament. We think that it should be stipulated in the Constitution as at present.

Chairperson

Mr Ranchod.

Dr Ranchod

Mr Chairman I think Dr Pahad or Dr Pahad spoke probably include the election of the speaker and the deputy speaker is provided in the '93 Constitution. And not only the election of the speaker should be dealt with.

Dr Pahad

Sure - sure.

Dr Ranchod

And then on the - of whether the presiding officer has a deliberative vote or not, there is a convention and one could argue it both ways, but there is a convention that if there is any quality votes the presiding officer would not vote necessarily along party political line, but would vote for the maintenance of the status quo. I am just mentioning that, that's the convention. So one could argue that it's not essential to have a clause to this effect in the Constitution but I think this a matter which could be debated further.

Chairperson

Anybody else?

Unknown

Mr Chairman ... (intervention)

Chairperson

So we are sitting now ... (intervention)

Unknown

Mr Chairman this is actually really a serious question that, that

should be written into the Constitution because if we look at the history of politics in South Africa there is a lot of cases where things happen where presiding officers was changed to get parties views through or a act of Parliament. And we haven't got it in the Constitution how you going to provide in the rules, then you going to have a stand up fight between parties in that standing committee. It might even happen in the future that you get after the election you end up with a 50/50 division in Parliament. So it should be an important point to write in the the Constitution you just can't avoid it and pass the buck on, the party has got to take a stand and what is the position of the presiding officer.

Chairperson Mr Mahlangu?

Mr Mahlangu Mr Chairman it's quite clear that there are two different point of views here and as Dr Pahad has said that - would actually like this to be determined by the rules and procedure. But can we leave this issue and record it that there are two views which had been pointed out by the - one by the National Party and the other one by the ANC and that we review this issue later on. That would be my proposal if the chair has listened. If the chair has listened.

Chairperson Sorry - sorry just repeat it, you must bring something to my attention here.

Mr Mahlangu Mr Chairman what I am saying is - it is clear that there are two different views here, the National Party feels very strongly that it should be endorsed in the - included in the Constitution and we feel that can be dealt with in the rules of procedure. Now what I am saying is - now my proposal is that we leave this issue with a that we later on in terms of clarification

Chairperson So now in other words you suggest that we don't report on it now.

Mr Mahlangu We reporting - but we report that there are two different views.

Chairperson Is that clear to the technical committee.

Mr Mahlangu And that the issue - that the issue would be revised.

Chairperson Okay, it's

Unknown Mr Chairman I don't want to prolong the discussion, it's not that

theoretical because we have one of our provincial legislators where the majority party has the speaker and the total opposition and an equal number of members or equal number of votes to the governing party and the majority party. And it is a problem in that province, if all the opposition parties vote together and the speaker is in the chair.

Chairperson Mr Holomisa?

Mr Holomisa Mr Chairman I go along with Mr Mahlangu suggestion that this matter be allowed to be reviewed later but I've also like to remind the members who they mind that this speaker also or the presiding officer is an elected member of Parliament and his or her constituency expects him or her to participate fully in the making of laws. And if now we are going to have a Constitution or even rules that deprive him or her of his or her right to participate in the making of laws, then we are the member of his or her constituency, so that too has to be taken into account.

Chairperson No I think Mr Mahlangu is correct we report then that the situation is that the National Party feels that it should be in the Constitution and the ANC regard this as not being important to be in the Constitution. And then we can revisit it at some later stage. The right and immunities of members. I see some parties say inside and outside of Parliament.

Unknown Mr Chairman I think the committee ... (intervention)

Unknown But what about

Unknown Nr 5?

Chairperson Sorry I was interrupted I'd marked it off here, the composition of committees in Parliament. Anybody on that, senator

Unknown Mr Chairman thank you, I just want to make one slight to the report of the technical experts because I don't think it quite reflects what - what we said. What's stated in the report the technical experts is that the DP proposes the portfolio committees to hold the executive accountable. That's actually I think overstating what we - what we actually want. That we the executive is accountable to Parliament one of the ways in which the Parliament can

exercise a control over the executive it can inform itself and so on and so forth is by the institution of portfolio and I would like the impression to be created that the committees are there as control the executives Parliament can control the executives via the institution of the portfolio committee amongst other things.

Chairperson

Anybody else on committees? Mr Ebrahim?

Mr Ebrahim

Thank you Mr Chairman, chairman as it can be seen from the PAC submission we are of the opinion that the committees be and their powers be as well. We feel there that it should not really be a debating forum but an advising forum and also possibilities of changing certain things when it comes to legislations that are going to the National Assembly.

Chairperson

Anybody else, Mr Holomisa.

Mr Holomisa

Chairperson we don't have to repeat what he said there ja, I think - I'd made my point clear.

Chairperson

Mr Beyers.

Mr Beyers

Mr Beyers we are satisfied with the present situation. I think that we regarding as somewhat of a problem and a duplication to have for instance a committee for the environment in the National Assembly and the same committee in the Senate. And I think we should look at them as far as the position of the committees is concerned. I think there is point - a duplication at this point in time. I also think that we have to many committees. But on a point of a strengthening of the powers of the committees, I think we would go along with what the PAC said and that is that it is in the interest of a true and transparent democracy to have strong committees that can function effectively.

Chairperson

Any further comments on this?

Unknown

Mr Chairman?

Chairperson

Is it a general agreement.

Unknown

May I just ask a question, the present Constitution talk that there may be committees ... (intervention)

Unknown	What page is that?
Unknown	Clause 58.
Unknown	Whether it should in fact be the consideration be given whether it should shelf the committees so that it is actually written in that there shall be committees as opposed to the discretion of Parliament itself whether there should be - whether it's a option or not.
Unknown	What sorry where in the Constitution - what sections?
Unknown	58.
Chairperson	Dr Ranchod.
Dr Ranchod	No I just want to repeat a point I made earlier and that is there is provision for the establishment of committees provided for in terms of Section 58 of the Constitution. The rules committee of the National Assembly and the Senate are all involved here. But we have - I think which we must register is a proliferation of committees on the question if we are looking at having more effective committees, having looking at the cost involved of running committees, whether this matter should not be registered at some point in terms of our final Constitution that we should have a handle on a number of committees that are established. That is - I personally think that there - that one could quite effectively combine a number of committees instead of having separate portfolio committees for each state department. It also makes it very difficult to stretch the talents of members to the point where they cannot work effectively. The way our committee system is operating at the present time I think does not enable members to really make the best possible contribution that they can, the very long hours that they have to sit and they've got to run from one meeting to the next. Problems relating to quorums and the real difficulties that we have had in terms of providing research backup and even committee backup having people to keep proper minutes of the deliberations of committees. That is a very practical question for the speakers office the experiences being and I think the chairpersons of committees have equally found it very frustrating to operate under these conditions.
Chairperson	Dr Pahad.

] Dr Pahad

Ja it is Section 58 in the present Constitution that deals with this question under rules and orders. Well we could come back to work but as said that you may want to change may to shall so it's a separate problem. But as it stands now, in 58(a) it says the establishment Constitution powers and functions, procedures and duration of committees of Parliament. So in point of view of the Constitution I - it makes sense to leave it as it is, to may change may to shall that's a separate matter. So all of the things that Prof Ranchod is raising and which are very important issues, would be such that Parliament would need to look at and not - not a matter for this Constitution to say how many committees there are and what the forum of this committees must be and how they function or they don't function. And it would seem to me that if we look at Section 58, the principle is correct you may - you may want to change the wording depending on the kind of Senate you going to have because at the moment it talks about National Assembly or the Senate may make join rules or shall make joined rules or whatever it is. But that is a matter that can be determined by what kind of Senate you having. But at the moment I would like to propose that if we look at Section 58 of the 1993 Constitution it seems to me that it's sufficient there to - to let us proceed. It doesn't need any additions. You may change as I've said the word from may to shall depending on what we come to later. So I'd like to propose that parties look at Section 58 and see whether or not it is sufficient for them as it stands at the moment. Except two things, one you may change the thing with regard to the Senate depending on the kind of Senate you have, because that would depend on what would then happen with the select committees. It may be that the kind of Senate you have may not need this kind of committees and secondly whether you want to take on board what Prof Steytler said, where it says and the National Assembly and the Senate may make joint rules. He is saying shall make joint rules, well I'd like to discuss this because I always think may is better because it means Parliament will decide in the end whether or not it wants to do certain things and not be forced to do certain things.

Chairperson

So we then record that there is no contention with the regard to the establishment of committees.

Mr Beyers

Mr Chairman yes I am satisfied with that, but on the condition that, that is another issue that will be discussed at a later stage and that

is the National Party's proposals of proportional representation in all structures of Government. That is in an executive legislative structure and also in the committees. As far as the composition of the committees is concerned, as far as the chairmanship of the committees is concerned, we propose that proportional representation should go through and as far as that is concerned, and we holding that position Mr Chairman I agree with the notion of - with the idea and the present Constitution but I just want to say that we are a supporter of an all inclusive system with proportional representation of all political parties, in all structures of Government also in the committees and the composition of committees and the allocation of chairman etcetera of the committees.

Dr Pahad? Mr Chairman is Mr Beyers saying that what he has just now said should be included in the Constitution?

Mr Beyers No - no.

Dr Pahad? I mean I am sorry ... (intervention)

Mr Beyers No necessarily - not necessarily.

Dr Pahad Ja because then it raises other issues if we are - if we are saying not in the Constitution that's fine, there is a matter for subsequent discussion. If you say it must be in the Constitution then we must declare the matter of the most serious contention that is from the side of the ANC. So it depends on how you want to put it, but I think we need clarity here about how it's going to be reported back to the constitutional committee. We don't mind that there should be an open discussion with regard to that issue. But with regard to the Constitution is what we discussing now.

Unknown Mr Chairman my only - my only point is that there is ... (intervention)

Chairperson Can you just repeat what you said instead of me repeating.

Unknown I beg your pardon?

Chairperson I say can you just repeat for his information what you said. Because I understood you to have said we are in agreement with what stands in the Constitution provided that the National Party

would come back to it, because they want to seek proportion and representation at all levels of Government.

Dr Pahad

Well I was asking and I am asking again do you want it in the Constitution or don't you want it in the Constitution? Never mind that you will come back to it later, I agreed that was so - if you want it in the Constitution I am saying now that the ANC would declare that as a serious matter of potential. That - that's what I am saying, so I don't want to discuss it, I am just asking what you want. I mean if you think it is a matter for Parliament that's a separate problem.

Mr Beyers

It can be deducted from our proposals Mr Chairman that we are in support of the principle of the party representation in all structures of Government that is in our proposals. And we say that as far as the committees is concerned it should also be taken into consideration that it is our stand point. As far as the committees are concerned we don't think that it should be written in the Constitution as far as the committees is concerned. As far as the other issues is concerned representation in other structures, yes we saying it must be stipulated in the Constitution and I agree that there - that, that will be a matter of contention that - there is no question about that. But the National Party feels that very strongly about multi party representation in all structures of Government. And I say that as far as committees is concerned, although we do not need as to deem it necessarily to be written into the Constitution we say that, that is our stand point as far as multi party representation or structures is concerned.

Unknown

Mr Chairman what do we record now well on this issue of committees and proportional representation, there is a recommendation of this technical committee.

Chairperson

The ANC have suggested that we stand with Section 58 as it stands in the Constitution. Mr Beyers say he is quite satisfied to have it like that, but then due consideration must be taken of the fact that the National Party wants proportional representation at all structures of Government.

Unknown

Mr Chairman meaning - Mr Chairman can I finish, complete my difficulty. You see when speakers speak one must take due cognisance of what they are saying. Now if I were to reduce the exchange between Dr Pahad and Mr Beyers, what do we say that

the NP feels that it must be recommended that the proportional representation must be around the board in all structures should that be made a constitutional provision. But his - Mr Beyers says no and something which you also understanding him to say, he is not arguing that, that been set in the Constitution. So we ignore that comment totally and if we do reduce it, under what heading, what do we say about it, just that we add a view, do you follow my difficulty Mr Chairman.

- Chairperson I hear what you are saying.
- Unknown Yes.
- Unknown Mr Chairman could I perhaps suggest that I don't think we have a contention here.
- Unknown We do.
- Unknown Under 11 the role of minority parties, I think you probably will - so I think I would ask Mr Beyers if perhaps the comment could be reserved for nr 11.
- Mr Beyers That's exactly what I wanted to propose.
- Chairperson Thank you for that Any further matter on this recommendations on the committees, Mr Holomisa.
- Mr Holomisa It is really a question Mr Chairman there are some submissions that have been made by individual persons and organisations who are not represented in Parliament. Are we in this proceedings paying attention to what they are saying.
- Chairperson I think we can just report that at the last meeting it was suggested that we receive the submissions - we go through it and at some stage the Theme Committees decides whether they want to hear that, verbally.
- Unknown Mr Chairman at what stage is that decision taken?
- Chairperson No I said the core group has ... (intervention)
- Unknown No I mean the decision as to whether or not we invite ... (intervention)

Chairperson No - no we haven't taken a decision yet, because we've just received all the submissions now. We must look at them to decide whether we will invite them to give evidence before us.

Unknown But that is a matter that is still to be looked upon.

Chairperson Right.

Unknown It's because as we go through this items, we have been paying attention only to what have happened here and we are not paying attention at all. Does that mean we will (intervention)

Chairperson If you look at the minutes, the next item will be looking at what the public have said.

Unknown Next item.

Chairperson Ja number - nr 4, page 6 3b nr 4. Discussion of public submissions, the minutes of the 19th of April.

Unknown But I think we should add that the way the technical experts have done the report is that they have gone through all the individual submissions and parties not represented in Parliament and it is reflected in the report. And when we then come back to then want to see what to do with this. So it's not that our discussions here are also informed by what has been submitted by parties not represented public that's how I am understanding this - this report. So it is the - the cognisance have been taken of what non-parliamentary organisations say and that then, because I advocate Holomisa it is very important for us and to indicate that we paid serious attention to what non-parliamentary organisations said. But I thought it's included in the report.

Chairperson Can I suggest that we break for lunch at half past and come back at two o'clock. Right now we come to the rights and immunities of honourable members in Parliament. I was looking at - I was looking at the suggestions that immunities outside Parliament as well as inside so, let's hear the views on that. Yes rights and immunities of members of Parliament. Are you satisfied with what is reported here?

Unknown Yes chairperson we - our position is very clear and I am not going to except that we say those things should be dealt with at I

think I am not going to what I said. We don't think there should be any contentious issues there.

Chairperson Everybody agreed it's non-contentious, thank you.

Unknown Sorry chairperson it would appear to me that within the report there certainly as far as the IFP is concerned.

Chairperson Yes there is a contention as far as IFP is concerned because they said even outside Parliament.

Unknown Well they are not here Mr Chairman.

Chairperson To - to defend them.

Unknown What is their point of view, if they were here they could explain it ... (intervention)

Chairperson I am talking about what's recorded in their report. They reported in the report, Now the powers of the National Assembly, or shall we leave that until we come back from lunch.

Unknown Mr Chairman is that our task or is that Theme Committee 3's task to the powers, because I was under the impression and we certainly did not deal with it in our report that, that is a matter to be recommended by Theme Committee 3.

Unknown What about the National Assembly no - it is the powers of the National Assembly - Theme Committee 3 deals with provincial powers how can they determine the powers of the National Assembly. No I would of thought that it should be discussed here maybe there is nothing to discuss, but it is a matter for this Theme Committee.

Chairperson Shall we discuss it now or adjourn for lunch and discuss it after lunch.

Unknown Adjourn.

Unknown Discuss it after lunch.

Chairperson Thank you then, we adjourn for lunch.

Meeting adjourns for lunch

Tape 4 - Side A

Theme Committee 2 - 19 April 1995

Chairperson Went all for lunch we were busy with powers of the National Assembly and I think we kick off from there. Yes Mr Ackerman?

Mr Ackerman? Mr Chairman with the first paragraph I agree there what the technical advisors said, but in the second paragraph I just want to know from the ANC what do they mean the ANC proposes that the National Assembly control the national budget and that it takes primarily responsibility for the preparation of main laws. Could they just fill me in on that.

Unknown Ja where are you - where are you (inaudible)

Mr Ackerman Page 6, 4.7 the second paragraph.

Unknown 4.7.

Mr Ackerman Ja.

Unknown Powers.

Mr Ackerman Ja.

Mr Mahlangu? Merely all what we are saying that is part of the functions of Parliament - that's all what we are saying, we are not listing the whole range of issues that Parliament will have to be engaged in, but we have just referred to the most important thing. When we say the ANC proposes that the National Assembly would control the national budget, all what we say is all the National Party to this country the Republic of South Africa will be controlled by the National Assembly we have to look into that - we have to pass the appropriation in the where - it's like in general we need to take interest into the whole budget of the country, that's all what we are saying and that, if you take primarily the responsibility of the preparation and adoption of the main laws in the country. Right at the present that's what is happening now, all the laws that needs to be passed by National Parliament will have to prepare those laws, go through the National Assembly pass them into - into laws. But that's - that's merely all what we are saying.

Mr Ackerman No because preparation is a very strong word and control of the national budget as well because I just want to know what is the

function of the Minister of Finance in this instance and also the preparation, isn't it the State department that their function should prepare the bills and then it comes to the committees and you hear evidence. But in essence what you are saying is that the whole National Assembly is doing the preparation of that bill and I just want to have clarity on that as I understand you, it's not precisely that what you mean. You mean that you've to input them and hear evidence on bills, but you not preparing the bills as National Assembly is that correct.

Mr Mahlangu?

That's right.

Mr Ackerman

And the control of the national budget, would you just explain.

Mr Mahlangu?

Can you repeat that.

Mr Ackerman

Can you just, under control of the national budget could you just be more sort of informative about that, what is the role of the Minister of Finance then?

Unknown

No it's normal.

Mr Mahlangu?

Like as it is happening right now, as you are precisely saying, the Minister of Finance would look into all those things, but he cannot he has to produce the appropriate of Parliament for example it goes to the select committee on finance they going to look at that, they've got to agree as a select committee that's got to be brought forward in the National Assembly and then us, we agree on it, take a decision on it, on that appropriation. But mainly what I am trying to say is the National Assembly should have the whole knowledge of what is happening about the budget of the country. Although it is basically prepared by the Minister of Finance, guiding the National Assembly but we should know what is happening in the National Assembly as well and we should have the great and contradiction in the

Mr Ackerman

Ja.

Chairperson

Mr Ebrahim?

Mr Ebrahim

Ja Mr Chairman I would suggest here that instead of saying control we would have overall supervision of the budget, I think that will be a much more acceptable term. I think that's what the

ANC has in mind anyway.

Mr Ackerman

Yes Mr Chairman through you that's what I am actually trying to tell my colleagues there that it's very strong words they use here and it could be interpreted in quite a - a wrong sense of the word, control and prepare which is not - which is a function of the National Assembly but it's not - it's something different and you mean - and that's why I asked you what was the - what is the real meaning of the word.

Mr Mahlangu?

I think we have now made it clear, that's not - we mean what you understand Mr Ackerman.

Chairperson

No what about a suggestion of Mr Ebrahim saying overall supervision.

Mr Ebrahim?

Ja that's what we mean.

Unknown

Can I come in here, I think another thing that we need to look at the question of the - the overall provision of - I mean the overall supervision of the budget and whatever act that comes into place. We - we must ensure some sort of uniformity. I wouldn't like to see a situation where you find this - that particular province legislate something that is totally of what had been by the National Government, that's why we would like to see some sort of committee throughout the whole region. Thought the regions would have the powers to their to their what you call it, their budgets etcetera, etcetera. But it is the duty of the National Assembly to the entire country.

Dr Pahad

Ja Mr Chairman.

Chairperson

Dr Pahad.

Dr Pahad

Ja I - I take the points made by Mr Ackerman and also by Mr Ebrahim and we need to look at it in - I don't know what supervise would need to be there. As I understand it presently too as we are sitting here now, Parliament does exercise some control over the budget so it - it isn't that Parliament only has a supervisory function. But it does have some control in the sense that ultimately Parliament has a right to reject the budget and that is a form of control that Parliament exercises. What we don't have the present moment in time is to change the budget to allocations as

given. Now that is a separate matter that's a matter for the Constitution - that is a matter that we would need to return to. As I understood from who chairs the Public Finance Committee that they themselves are considering different ways and means in which they prepare more important role in terms, but that is entirely done by the Constitution so I am saying that I accept that we need to look at the things but there is already control of Parliament in one sense and if there is as Mr Ackerman is saying never the less we need to be clearer about what we mean yes I think we should be clearer about what we mean. So in the final analysis when we do have the draft Constitution because the all our - all of our parties proposals are made they not made in terms of an actual draft of what should or how it should appear in the Constitution. We then come back to it and make sure that it will say exactly what we want it to say, so that there isn't a misunderstanding. So I am saying two things, one their is supervision, two there is some form of control with regard to Parliament's control. But the third thing is of course as it stands now, the Senate doesn't have any say on money But that might change depending on what powers we may or may not decide in the final analysis to the Senate. So I think what we should do is take into account the views expressed by - by Mr Ackerman and Mr Ebrahim and when we come to the final thing about how we draft it, there should be a tighter drafting of the thing, so there isn't about - about what we need.

Chairperson

Any further comments?

Unknown

Mr Chairman can I just ask Prof Van Wyk what he meant by the last paragraph of 4.7 and that is no definite conclusion can be drawn from the above the question of the powers of the National Assembly, Parliament as a whole is likely to be contentious, thought it is proposed that the question of the powers of the National Assembly be held over until the question of the powers of Parliament in the constitutional structure are discussed. Is that with reference to working - the work program of this Theme Committee or when will this be discussed?

Prof Van Wyk

Mr Chairman I think the Theme Committee 3 is also seized of powers of Parliament I've seen a submission or a report dealing much more substantively with the powers of Parliament, the provinces, also submissions for various political parties. Now the reference here to Parliament is that Parliament has distinct from

the National Assembly. I think Mr Beyers made a point earlier Parliament can include the Senate if there is a Senate this proposal here is maybe a bit formulated but one cannot really deal with powers of Parliament in a without knowing what will go to the provinces etcetera.

Mr Beyers?

Mr Chairman then I want to react to that and say I thought it was a situation. I think that the first paragraph is the core of the present situation, is that the question of powers of the National Assembly can only be fully dealt with in conjunction with the relationship between the two houses of Parliament and between the national and the provincial level of Government and we don't know what we can further discuss on that. I just want to add another point as well and that is which will also have - play a role in the questions of powers of the legislative assembly or the national legislator and that is our point 15 in our proposals and that is where we say that, however, given the diversity of in particular language and cultural mechanisms should be devised traditional promotion to those interests through the means of formalised strategy bodies which will receive financial assistance from the State. Such a State would be in accordance with a letter of the Constitution in principle 11 and also argued in comply with that with any other recognised way envisaged in the constitutional principle 34. I want to stress Mr Chairman also the relationship between the National Assembly and other possible strategy institutions that maybe decided upon will play a role in the final consideration on the powers of the national legislation as far as our opinion is concerned.

Chairperson

We'll come to that in just a minute, any further comments?

Unknown

Thank you Mr Chairman on what Dr Pahad has said that the money bills are the primarily responsibility of the National Assembly and that the Senate doesn't concern itself with - with the of money bills. That is correct in the there is something that bothers me in which the committee might benefit from discussing that. If you look at the interim Constitution Article 60(4) reads the National Assembly shall not pass a bill referred to in sub-section, that's the money bill unless it has been conceded and reported on by a joined committee of both houses. Isn't that giving the - a committee of the Senate the power.

Mr Ackerman?

Mr Chairman I think to a degree it does, but that's the finance

committee, made up of the two houses, numbers in the Senate is such that it cannot really influence the decision taken by the National Assembly. I think that's the criteria. So it's a controlled measure, but it's influenced exercise only in the committee and not in National Assembly itself.

Chairperson (inaudible) Mr Mahlangu.

Mr Mahlangu Are you quoting Section 64 the interim Constitution.

Mr Ackerman? Yes.

Mr Mahlangu Which one, any - I mean (1) or (2) sub-section (1) or sub-section (2)?

Unknown 64 has only one sub-section - 60.

Mr Mahlangu Oh! 60(4) okay I am sorry.

Mr Ebrahim? Mr Chairman 60(6) is very clear that the Senate may not amend any bill insofar as it appropriates revenue or monies or imposes taxation, it says very clear.

Dr Pahad? As it stands now. Can I - can we come back to - unless advocate has - he is satisfied with what he addresses. I want to go back to what Mr Beyers addressed. I wasn't sure what Mr Beyers was saying whether he was just bringing to our attention the specific proposal of the National Party or whether he was saying that he - he thought it needed to be discussed, because if that's the case, I think the National Party or in this case Mr Beyers would certainly have to amplify and explain that particular statement in terms of language and culture and what are mechanisms and what would you mean by strategy bodies and how does this affect the Constitution. Because I want to repeat over and over again we actually here sitting helping to draft the Constitution not writing acts of Parliament which may or not be the case. So I'd like to know how is this to be reflected within the Constitution with regard to the question of the powers of the National Assembly because that - that's what we discussing now, the powers of National Assembly. So I'd like some explanation on that Mr Chairman.

Mr Beyers Mr Chairman what I referred to is that we say in the first paragraph according to Prof Van Wyk's report that the question of powers of

a National Assembly and I agree with this, can only be fully dealt with in conjunction with the relationship between the two houses of Parliament and between the national and the provincial levels of Government. And what I am saying Mr Chairman that it is possible that a settlement can be drawn upon which certain other structures as well may arise, such as language, councils etcetera. The particulars of which the National Assembly National Party will provide in the forthcoming discussions and the National Party will bring its proposals also to this committee under the - under the block. I think it will be under the - the block where self determination etcetera and minority rights will be discussed. But - so under that block Mr Chairman we may come with certain proposals as far as that is concerned. What I am saying now is that this question of powers like in this report can only be fully dealt with after we know what the relationship between the National Assembly and the Senate will be and after we know what the situation - the relationship between the National Assembly and - or the national legislator and the different provincial levels of Government will be and after we know what the role will be of possible strategically bodies, like for instance the possible proposed language councils, and also the - not the passable but the existence of traditional authorities. So what I am saying sir is that all these factors will also to be taken into consideration before we can finally decide on what the powers of the national legislator would be. That is what I said.

Unknown

Mr Chairman.

Chairperson

Now for clarity sake, you don't want - what you have said in the report that flows from the powers of the National Assembly.

Mr Beyers

No - no I just commented on the fact what should be taken into consideration and what should be taken into consideration Mr Chairman is the relationship between the two houses on the national level, the relationship between the Parliament and the provincial Parliament and the possible relationship between Parliament and other strategy councils that may be decided upon.

Chairperson

Mr Groenewald.

Mr Groenewald

Mr Chairman I was under the impression that Theme Committee 3 will basically deal with powers and functions and our task is mainly structures. Now as I believe the general opinion is that we

will also deal with the powers and the functions of the National Assembly here. I will have to submit a supplementary report and in that particular case, I think that the summary made by our technical advisors is - is accurate and that we should - we should note it as such. In other words the powers of the National Assembly as a whole is likely to be contentious and mainly because of the factor mentioned in the first paragraph and as emphasized by Mr Beyers. In other words the question of powers of a National Assembly can only be fully dealt with in conjunction with the relationship between the two houses of Parliament and between the national provincial levels of Government. So although I don't necessary disagree with the functions and so on and powers of the National Assembly I think we should look at this in greater detail because we can finally eliminate powers and functions between the Senate , the National Assembly and secondly the provinces and the Parliament.

Chairperson

Dr Pahad.

Dr Pahad

You see there are a number of elements here, and there is no problem to say that in the end when we have an overall agreement or understanding or consensus about what are powers of provinces, what will be the exact nature of the Senate composition powers of the Senate that they will then impact on the powers of the National Assembly. But I think it is correct to say that we necessarily have to wait for all of these things. The National Assembly must have some powers, and what we have a Parliament I mean a National Assembly and certainly one of it's powers is to pass legislation. Whether or not that legislation affects provincial things and local Government things and if it is to the Constitution there is a constitutional court that will - that will deal with it. So I don't think we shall proceed from here as if we don't know what we talking about with regard to some of the powers of the National Assembly we do. But take into account that we can add or subtract depending on what happens in other areas. There certain things not totally convinced that the relationship between the provincial and the would affect necessarily the powers they may affect necessarily the powers in the sense of saying that where National Assembly passes legislation which directly impacts on the powers of the province, then something has to happen. I mean that's a limitation, but not necessarily a withdrawal of the powers of the National Assembly. The third thing is I want to come back to this thing, you see we

should be very careful that if we say in the Constitution that and which we agreed to when we were in block 1, that Parliament is the supreme law maker of this country subject only to the Constitution. Then the kind of questions that I thought Mr Beyers was raising are precisely the kind of questions that Parliament itself or National Assembly itself have to address. Whether or not there is a language, council or not, we've got the whole question of how we deal with different cultures all of these things and we still have to come back with - with other issues and it seems to me that we shouldn't move in the direction although I have no problem if we come back to it. If we think the Constitution should spell out all of the matters. Because obviously these are matters that Parliament would or National Assembly would certainly have to look at in passing legislation where that legislation was necessary. And therefor in terms of the Constitution what we might want to then consider, is ensuring that the Constitution does not prevent Parliament from doing the kind of things that Mr Beyers is talking about if that is what Parliament wants to do in the end. So I am asking that we don't keep on saying we'll come back to something, because at some point we need to focus on the actual drafting of the Constitution itself, as to what the Constitution should contain. And if people think that it should contain this type of things, then I think we need to state that very clearly at some point and then discuss this and say whether it is a contentious or not non-contentious, that's the first point. The second point I wanted to make was that if you look at the 1993 Constitution although it seems to me to assemble a number of things together. It does talk about powers, privileges and immunities of Parliament and benefits of members. That's how it's put here, not necessarily how it's put in the - in the way different political parties make that submission. But perhaps all of our parties need to look at that and see whether there is anything that we disagree with and we may want to add. But if there is anything that we disagree with, that is already here, in this thing. Because if not, then we already have solved most of the problems in terms of what a new Constitution should say. So we actually don't the wheel that's what I am afraid of now it says here in 55(1) for those who have a copy of the Constitution. Parliament shall have full power to control, regulate and dispose of it's internal affairs and shall have all such other powers, privileges and immunities as may subject to this Constitution be described by an act of Parliament. So what I am saying is that the way it's put here, it does give Parliament if you like a great deal of power to do a number of things and so I'd only

ask that it's not for now, that at least for subsequent discussions we go back to this Constitution have a look and see whether what is put there is acceptable to us and what is not acceptable we can then discuss. But it seems to me that some of these areas well that is catered for in the 1993 Constitution.

Chairperson I think the last block that we going to deal with amendments, constitutional amendments is the right place to deal with that type of matter that Dr Pahad is referring to.

Unknown Mr Chairman I think Mr Chairman that here we really come to the crux of the new Constitution. And that is the question of exclusive powers. If provinces are going to have exclusive powers it must the Constitution it can then not be decided by an act of Parliament that the first question. The second question is if the Senate is going to have some exclusive powers relative to that of National Assembly that must also be written into the Constitution and it certainly guided by constitutional principles which we have to look at. So I do not disagree that Parliament should have the right to govern, that is not where the point of contention is. The point of contention is are provinces going to have some exclusive powers and if that is the case, then that limits the power of a central of the National Assembly. And it might also limit the power of the Senate and then it must be written into the Constitution and that is why I say that we should look at that and once we have decided at that, then we can determine whether there is any limitations on the powers of the National Assembly. Be that as far as finances is concerned or be it as far as other legislative powers are concerned.

Unknown Ja okay.

Chairperson Any further comment? Now the question is what must be contained in our report with regard to the powers. I listened to senator Groenewald where he lastly said that depending on what powers are allocated to the Senate and to the provinces insofar the National Assembly have authority as far as legislation is concerned and so will the Senate and the provinces have, insofar as powers are allocated. Did I interpret correct.

Mr Groenewald Thank you.

Chairperson Then we can move on to procedures. Sorry Dr Pahad can we move on to procedures now. Anybody that wants to say

something am I right, Groenewald and then Dr Ranchod and then Mr Beyers.

Mr Groenewald Mr Chairman I really feel that matters of procedures should not be taken up in the Constitution and that it should be left as far as possible to Parliament to make it's own laws in this regard and it should - there are enough other stipulations in the Constitution which gives guidelines for the drawing up of procedures.

Mr Beyers Mr Chairman ... (intervention)

Chairperson Just hold, Dr Ranchod.

Dr Ranchod If he is going to be responding ... (intervention)

Chairperson Do you want to respond.

Mr Beyers Yes Mr Chairman it all depends on what you regard as procedures, but for instance a principle like what the IFP is proposing namely that any member should be entitled to introduce a bill, is a basic principle. That should be accommodated, constitutionally actually and not by an act of Parliament and by procedures. That is a basic right and I think that, that should be endorsed the right of a member of the National Assembly and the Senate to introduce to initiate certain laws. I think that is a basic right and I don't think we will be happy without such a right into the Constitution.

Chairperson Dr Ranchod?

Dr Ranchod Yes I think it is very important to refer to the kinds of majorities required to pass legislation. I believe that, that is not a matter which should be excluded from the Constitution. What does concern me is the likelihood of our using the extended public committee system to dispose a business of Parliament and whether that is a development which we should debate here. Because when you look at the interim Constitution talks of the National Assembly that what is likely to happen in the current session of Parliament a great deal of business is going to be disposed of not by the house sitting in session but rather in a form of extended public committees and whether the desired majority is that we require to pass legislation will always be achieved if we see this as a new way of dealing with the business

of Parliament. Because one could take the argument one step further and it may sound extremely absurd at present but one could argue that a committed, a portfolio committee of Parliament should be empowered to pass legislation. I'd just like to have members views on the questions that I made.

Chairperson Senator Groenewald and then Mr Hendrikse.

Mr Groenewald Could I just say Mr Chairman if we look at the additional list we also have types of legislation, private, public and so on and so forth. So when it comes to that question of private bills and if that is a principle it could be dealt with under that particular subject. When it comes to majority I think we should carefully look at cheques and balances which comes in a later block and I believe that the different cheques and balances which you must have in the National Assembly should be discussed in that particular block. So I see basically the question of majorities as one of the cheques and balances and not of a - of matter pertaining to block 2 and 3.

Chairperson But this is exactly the situation cheques and balances is part of block 2 and 3 and I would have asked that question at the end of dealing with this document. Because it must be inter woven into this as reflected in our minutes as well. Any further comment on procedures.

Mr Hendrikse Yes.

Chairperson Oh! 'ja' Mr Hendrikse.

Mr Hendrikse Yes Mr Chairperson just with regard to the question of a private members bills. At the moment private members - members at the moment are entitled to introduce private members Is that catered for in the interim Constitution or is it just in terms of the rules. If that is the case, do we need to assign it in the new Constitution.

Unknown Mr Chairman just to respond to Mr Hendrikse I just went now through the Constitution there is no mention of any private bills in the Constitution. There is also no mention of a member that can introduce a bill, it just says a bill can be introduced in both houses, but it doesn't explain who introduced the bill. It doesn't even say that the Ministers introduced the bill, it just says that the bill is

introduced. So this is something new what that there the is coming up here in the first paragraph and the question is must it be written into the Constitution or not.

Chairperson

Dr Pahad.

Dr Pahad

As - as it stands now, the ANC would be opposed to regarding this as a matter of principle which should find its way into the Constitution. Because it affects everything and you can't take this thing out of isolation from what follows afterwards, can't say I accept one part of the sentence and not the other part. Because it affects the whole question of the powers of the National Assembly I mean and if - if individuals are going to have the constitutional right and peace as the assembly itself, I think it raises serious problems about how you going to initiate legislation in the National Assembly itself. So we can't just say that as a matter of principle and then - and then I agree on this are going to be more explanatory, that's the first thing. I thought what Mr Hendrikse was saying was that the present Parliamentary and the act itself has provisions for private members Of course up to now we haven't yet sat down and worked it properly but I think we've got three ... (intervention)

Unknown

Ja there is a parliamentary committee.

Dr Pahad

And I think about three that we would have to consider in that - in that particular committee in terms of the private members So I would like to just point a few that we would regard this as a matter for Parliament and not a matter for Constitution that Parliament should enable private members to - to be brought to Parliament. And if people insist that they want that, then let's not discuss the matter now, let's put it down as a matter of contention and certainly the ANC would very seriously content a position which says that any member should be entitled to introduce a that's fine, that's not problem, but in the Constitution and secondly that if - that any member shall have the same kind of rights as - as the assembly itself. Let me end by saying so when we discuss the matter, that the majority and it doesn't matter how you going to devise your electoral system in the end. When the majority of people is not a 100% of the people are going to come through political parties, well you have a proportion plus constituency bases systems here and we can't sit here and keep on discussing as if political parties don't exist. And as if political

parties are not central to the democratic system that we having. So when we just say private members, we got to take into account that they also represent political parties. And then so what I am really arguing here is that if that's the way we want to put it and that's what Mr Groenewald wants, that if he agrees in principle with that, let us leave it that this is a matter for contention and we will have to debate this much more seriously.

Chairperson

Mr Beyers.

Mr Beyers

I just want to react in saying if that is the stand point of the ANC it can also be deducted from that, that they will be against a proposal that a political party as such can bring legislation to the National Assembly and initiate the and that is the point sir, it's a point of - of principle. If it's a fundamental right of a member of Parliament to propose legislation and sir if the majority party at this point in time, the ANC wants the Constitution to be read that it is not possible, that they don't want it to be enshrined into the Constitution I ask myself what is the reason for they for such a stand point. And then I want to say sir that, that gives enough reason why we should actually see to it that in the interest of transparency and in the interest of true democracy, a member of Parliament should be entitled to bring legislation under certain conditions and within the parameters of rules and regulations etcetera. But the principle sir and I think that the National Party feels very seriously about this, that the principles that a member can bring legislation to the house I think that must be enshrined into the Constitution.

Chairperson

Dr Pahad.

Dr Pahad

Well I don't know to what extend you want to take this question. But let me just make the ANC's position clear. We are not saying that parliamentary rules and regulations should not make it possible for other political parties that are not empowered to have the possibility through private members to introduce legislation. We didn't say that, all those arguing was whether you want to have that enshrined into the Constitution and now said from the ANC's point of view we would regard that as a matter for contention because we cannot agree with it at the moment. Because what Mr Beyers is not doing, and I hope he will do it or that the National Party will do it, is that you then have to say we have to then see this in relation to the power of the Cabinet where

would legislation in essence be initiated from. Now all of this questions then have to be discussed, you then have to discuss the relationship between the power of the legislator and the power of the Cabinet in terms of the actual initiation of bills. We not yet talking about how the bills will be discussed, that will initiation Through the third problem of a possible conflict of interest and between a private member introducing something and Cabinet introducing something, it may have to do with a trade regulations for example. So what I would therefor say wasn't the question that the ANC's - against the ANC is not, the ANC is in favour of Parliament and abling?? private members to come before. But I am saying that before you start saying you want this enshrined into the Constitution it does require at least I think from the side of the people who are asking for this to be enshrined the Constitution at least greater clarity and understanding of how it relates to all of the other questions you talking about including the power of the Cabinet and how this would affect the power of the Cabinet. Now unless we do this, it's not going to take us much further. So I therefor suggesting that we for this moment in time we put that down as a matter for contention and give Mr Beyers also time to collect his thoughts so that we he next intervention he could try to explain all of the issues that trouble you in terms of how these relationships are to function, that's all I was saying.

Mr Beyers

Mr Chairman I am more satisfied with the second stand point of Dr Pahad. I can agree with that basically but I do not agree with his first stand point on the same issue.

Unknown

Ja I was just going to say it seems as if we are now discussing debating whether we want the parliamentary rules enshrined in the Constitution - is that what we should in actual fact be discussing? Because presently the parliamentary rules makes provision for the introduction of in Parliament and sets it all out, it's not enshrined in the Constitution. So do we want that now to be enshrined in the Constitution when it says that how it should be done, and I mean then we may as well just put all the parliamentary rules in the Constitution - so make a mockery of it.

Chairperson

Mr Ackerman.

Mr Ackerman

Mr Chairman this is a interesting subject to discuss, but it is enshrining the Constitution - if you read Article 59 and you read Article 60 - it is in the Constitution but it's not enshrined in the

Constitution that - that a member can bring a bill, it says a bill can be introduced nowhere in those two Articles if stated by a Minister or by a department. The only article that really states where someone must introduce the bill is when it comes to money bills, the Minister of Finance must then introduce the bill, he is the only person in Parliament that can introduce a bill. So what 59 says if anyone who is a member of Parliament can introduce the bill, it doesn't exclude him not to introduce a bill and that's why the Constitution don't talk about private bills, it talks about ordinary bills and it distinguish between ordinary bills and money bills.

Unknown

But that's exactly what we saying.

Mr Ackerman

That's right.

Dr Pahad

So you don't need a special provision for private members bills.

Chairperson

I think we can take that as having been properly discussed and move to the next one.

Tape 5 - Side A

Theme Committee 2 - 19 April 1995

Unknown ...provision for private members bills.

Chairperson I think we can take as having being properly discussed and move on to the next one.

Unknown Mr Chairman can we then record that the last position that the present position in the interim Constitution actually has some agreement that no specific view is expressed that private bill is written in but that any person may in fact be introduced as it presently stands.

Chairperson Well it is stated it's all inclusive anybody that's a member of Parliament can do that.

Unknown No Mr Chairman that's not what the Section says. I'll read Section 59(1) says an ordinary maybe introduced and it refers to the place where it may be introduced. In either the National Assembly or the Senate and shall for it's passing by Parliament bla-bla-bla, it doesn't say a member of Parliament may - we can't record that, that's not what the Constitution says.

Mr Ackerman Ja but surely Mr Chairman Parliament is consisting out of members of Parliament and that senators and members of the National Assembly so that is what precisely what it means - but that's how you should read it, but who is Parliament then otherwise, it's just not sort of a body that's hanging in the air, it's much - it's got to consist out of people who was elected there.

Chairperson I don't think that disagreement, it's just that Mr Ackerman abbreviated the relevant Section or Article of the Constitution which was now fully quoted by advocate Now it comes to the relationship between the - towards the executive. Now I just want to ask a question, we are dealing with the executive on Friday, with ... (intervention)

Unknown Tomorrow.

Chairperson No tomorrow is the President, tomorrow is the President. Do we need to deal with that now, or do we deal with that, when we deal with the executive.

Prof Van Wyk Chairperson I think it can be done together in other words the presidency, the Cabinet and the relationship to National Assembly to be discussed under one heading.

Chairperson That's what I mean, instead of doing it now separately.

Prof Van Wyk I say it can be done.

Chairperson Is there any objection to my interpretation.

Unknown No - no.

Chairperson Then we can move over to the relationship towards the second chamber or to the other chamber. And this to in my mind means not having dealt with the Senate as such, it will be a sort of a fruitless discussion to deal with the relationship with regard to the other chambers. I think we must also leave that out until we have discussed the Senate problem. It's on the agenda for today, I am not ruling the decision of the Senate out, I am just saying to discuss it separately like this will make no sense to me. I'll ask the advisors to tell me whether that is the wrong interpretation. What's then left is the role of minority parties on page 10 and 9. The role of minority parties.

Unknown Ja.

Chairperson Anybody on that?

Unknown Mr Chairman?

Chairperson Mr Beyers.

Mr Beyers I think that the first paragraph of paragraph 4.11 is not correct where it says that the two political parties referred to minority parties. In their submissions so far the ANC proposed an undefined role for them in committees of the National Assembly while the IFP foresaw that they could introduce laws etcetera. The National Party also referred to minority parties, in .15 our first submission. However, I must say Mr Chairman that the National Party's vision of the role of minority parties and there are two kinds actually of minorities. First kind as we see it as a political minority, that it minority political party and also other types of minorities like cultural minorities etcetera. But as far as minority parties is

concerned, we foresee a situation Mr Chairman where there must be and that is the core of the National Party's point on minority representation. And that is that there must be a system of multi party representation in all structures and at all three levels of Government. That is our points and I believe that, that is a point of contention. We say that, that is the only method in these circumstances for South Africa in a diverse community like South Africa to have a good and sound Government. And the question of minority presentation forms a very inter grill part of our proposals as far as that is concerned. We must also say Mr Chairman that we note that the majority party that is the ANC, is not in favour of minority party representation constitutionally mandated, that a minority party representation or structures of Government. And if that is true and if that is what is going to happen and if that is non-negotiable, and as soon as the National Party finds out that, that is not negotiable Mr Chairman then we will have to fall back on certain core - fall back situations. We will then have to bring other proposals as far as the role of minority parties is concerned. So we say that under the present Constitution under the present situation, we are fairly satisfied that there is scope for minority political parties to have enough say in Government because of the fact that they have representation at all levels of Government and in all structures. If that is being - if that - if the ANC is going to remove that, and we are not already sure that they will remove that, but if they do so sir, if they do so, then we will have to come back at a later stage and say well we accept the situation now, now we must come with other measures for the protection of the role minority bias. I think and I want Mr Chairman that our technical advisors note that - that as far as the National Party is concerned, this is a contentious issue, we do not say exactly what proposals we will come with because we first to want to negotiate the situation where multi party representation in all structures can form part of the Constitution and if that is not possible at all, we will and then we can come back to this committee and bring our proposals as far as other measures is concerned.

Chairperson

Dr Pahad.

Dr Pahad

First of all let me say that from the side of the ANC we are of the view and very keen that what I call minority parties should be dealt with and treated in a way in which the process itself is inclusive, and the minority parties, however, smaller then they maybe don't

feel excluded by what we are going to do. And our view was and remains that one of the best ways in which you could do that was through and empowerment of the committee systems in which you operate in a way in which minority parties play and are enable to play a very important role in terms of helping to fashion and determine legislation that would be passed at Parliament. So from the side of the ANC we don't want to be seen to be a political party that wants to take a position which says the only people that matter is the majority party, whoever the majority party may be in Parliament in 1999 and then 5 years after that. But I want to make it clear that, that is the basics that in point for the ANC. Incidentally I should add that's actually why we were in favour of a proportion of presentation election system as apposed to the first part, the it was quite clearly to us already at that time, that if we had gone for a system the ANC could have conceivably won a great deal more votes, given the fact of the wasted votes that takes place in the first part of the system. But because we wanted a system and that's what we want. But it's a separate matter to then discuss whether arrangements that may facilitate good governance or sound governance and that may change, according to what's happening inside the country, what's happening outside the country, that, that should be constitutionally enshrined. So I want to now emphasize so that we don't return again to what the ANC's position is. And this was clarified at our last conference that we have policy conference on the Constitution first by the deputy president of the ANC Thabo Mbeki who when he opened the conference, and subsequently about the decisions we took that the ANC will not be agreeable and I envisage not, be agreeable to any provision in the Constitution which is going to mean an enforced coalition Government, we are not. And that position as you - whether you want to call it non-negotiable or preferred positioned call it what you want, but that is our position and we are not going to move from that position. We are bound to that position by our conference decisions and our previous decisions. That the Constitution should not in any way limit the right of a party if it has won sufficient votes in the elections to form the new Government. Whether or not they entering to a voluntary coalition with any number or parties it's a separate matter, it's not a Constitution matter, that's a political matter which they have to discuss and deal with when the particular issue arises. Now therefor it might be worthwhile for the National Party to then consider what it's fall back decisions is and I hope that when Mr Beyers goes back to his fall back position, he doesn't fall over. In

terms of what other proposals they may want to make, with regard to the question of the meaningful role that minority parties must play in the institutions of our country, in the political institutions of our country. And that's a debate that is important and it's necessary - it may not necessarily be reflected inside the constitution and it might be worthwhile then for us also to give some consideration later to see in terms of if not necessarily for the Constitution by in terms of how we and which it's Parliament functioning. The way select committees or portfolio committees function and the way in which minority parties then can begin to play a more meaningful role in terms of all of the issues that, that have to be dealt with. So let me now what the position of the ANC is. The ANC is absolutely clear in it's own mind that it will not be agreeable to any proposal which says that a - it should be constitutionally enshrine that their will be power sharing at any level of the Government. It's central, provincial or local. That - that's clear, but secondly that we are certainly very willing to - to have entered into discussions and that outside of this Constitution to ensure that all our political institutions act on a inclusive basis and not just on the basis that whoever wins the elections is going to impose it's will or anybody else. So that is our position and that's why I would advise then Mr Beyers in the National Party to - to consider the fall back positions and make other proposals with regard to this thing. But the ANC certainly will not be agreeable to this thing being to the Constitution.

Chairperson

They say tea is ready, let's adjourn for tea and come back. I will just like to ask Dr Pahad he says that what then is negotiations then all about. The two parties have put a stand point with regard to minority rights, senator Groenewald.

Mr Groenewald

Mr Chairman when it comes to the concept of that minority parties I don't think we have complaints, we are not in favour of power sharing the in the Constitution. Now this is the right of the majority party, and we don't believe therefor it should be enshrined in the Constitution. We feel and we have a different perception of minorities, not - we don't place emphasize on minority parties, not rather on specific language and cultural groups. And then there should be, the concept which we favour is not one of power sharing, if I can put it in Afrikaans, "nie een van magsdeling nie, maar magsverdeling", this is not power sharing, but a division of power. And we feel that is the way in which we should look at it. So we don't see that there's any chance whatsoever on the

concept of power sharing enshrined in the Constitution. But we certainly feel that when it comes to political parties, that the minority parties or the smaller parties have a very significant role to play in the whole question of standing committees or portfolio committees and in this respect I think by means of non necessarily enshrining the Constitution but the whole role of select committees or portfolio committees I think will be something unique in the new Constitution and something that we should look at in greater detail. Whether or not this should be taken up in the Constitution that's a different matter and I think that's something which we should also discuss, we have had some discussions in this regard. But this is the real area in which all political parties in Government should play their role. So we will and from our proposals, will be specifically tailored towards the rights of language and cultural groups and not specifically in the field of minority parties.

Chairperson

Anybody else on that - Mr Beyers?

Mr Beyers

Mr Chairman as I've said that on the question of other and minorities, other than political minorities, we will commence later. I had listened to Dr Pahad's explanation of his party's stand point of the winner takes all. That is the well known point of the ANC and I respect that, that is their stand point. As far as the National Party is concerned, we feel and we believe that the only good governance for South Africa can be brought forward by a system of multi party representations in all structures. But I will come back to that tomorrow when we discuss executive. And I just want to say that if the Freedom Front wants to get in bed with the ANC on their policy of the winner takes all, it is their choice to do so. And we cannot - and we will not stand in their way, but that is the situation and I want to be somewhat serious as in saying that, that this very principle of multi party representation in all structures forms the very corner stone on which our reconciliation in South Africa is being built. And I don't think that we should destroy this. And I think the ANC should - should consider it very seriously before they tell the world that there is only one way in which South Africa is to be governed, a specifically the South Africa that we know, with our diverse situation, should be governed by only the majority and that is the difference in point. The ANC says they want to govern alone, the National Party says all parties should form part of the Government according to their strength, proportionally and we think so that, that is the way in which South Africa could be run and should be run in future.

Chairperson Just before senator Groenewald, it's good to spice the debate a little bit by making one or other political party political comment, but I think it will be good for all of us if we steer away from it, so that we rather carry on with the constructive debate in this regard.

Unknown It keeps us awake though.

Chairperson Well it keeps you awake but it came from there and now it came from this end.

Mr Groenewald In that regard Mr Chairman I would like to ask Mr Beyers not to interpret Freedom Front policy for us, we are quite capable of interpreting our own policy and I will listen to Mr Beyers's explanation of the National Party policy and I think that is what this forum is about. Secondly when it comes to the question to the governance of national unity, you make your own bed and you sleep in it, and if you wanted to perpetuate the Government of national unity, you should of enshrined it in the constitutional principle which you did not do. So you have made up your own bed and now you have to sleep in it and now don't blame someone else, or whether it's the Freedom Front or whoever, for the bed which you have made up for yourself. Thank you.

Unknown The blankets are getting very thin.

Chairperson I won't rule on that I just made a request that we steer away from political statements.

Unknown Steer away from the bed.

Chairperson Anybody else on the score of minority senator

Unknown Chairperson yes thank you, I think that the whole aspect - the representation of minority parties needs to been seen in two different context, the one is on the executive level and the other one is on a legislative level. Now we have a situation where we have the Constitution and enforced coalition on executive level which represents the parties that are represented in the Government of national unity. We have always taken the view that, that is a very valuable bridge building operation that it was necessary in order to take us from where we came from to where we need to go to. But our party takes the view that - for a variety

of reasons and I'll expand on their a little later. The power sharing arrangement that give rise to the Government of national unity are just that, they bridge building, they transitional mechanism. When it comes to the legislator I think that one is dealing with a completely different thing because their one is not dealing with the right of people to govern. One is dealing there with a review function which Parliament has to play on amongst other things the activities being set there. I mean that respect I think is absolutely essential that all parties are represented on a proportional basis in all institutions of the legislator in order that Parliament can play it's function in checking and making sure that the executive does what it ought to do. Now I think that there are a number of arguments that can be raised again and enforced coalition as it were in perpetuity. The first is that it is the central tenant democracy, that if a political organisation gets a majority support in the election - it ought to have the right to govern. But what is more important is that all that the Government national unity arrange in perpetuity does, is it locates opposition to majority decisions in a closed environment, ie the Cabinet. It's by it's opposition, it actually means that one does not have a fully honest an open political debate in a particular county because many of the decisions are taken as a result of compromises in secret. I actually think that it is very good for South Africa to have a very vibrant and critical opposition to the executive. I think that function belongs in Parliament and not in the Cabinet and it is for those reasons that we would not support a enforced arrangement in perpetuity on the executive level.

Chairperson

Mr Ebrahim.

Mr Ebrahim

I thank you Mr Chairman - Mr Chairman it will recalled last time when this matter was discussed the Pan African and it's comrades also put forward it's own position. Now I'd just like to that position. The PAC is not opposed to the formation of coalition, we think perhaps it might be experience that may force into coalition, sometimes it may be a political necessity. But we are opposed to the fact that such coalition should be enshrined in the Constitution. It must come about as a result of willingness under different political parties, wanting to get together or having to get together if their is no clear cut majority. So that we think should be the position. We believe that an enforced coalition of this kind goes against some of the very of democracy in some instance. But I believe there on the other hand that in order to bring about

national unity in the country and also to bring about what we consider to be an important element, reconciliation. A political party would willingly go into a coalition to govern the country. I thank you Mr Chairman.

Chairperson Thank you, I think we've heard from all the parties. One it's contentious, no-no wait - it's contentious because there is disagreement, the National Party has it's own view. Secondly there is the question of power sharing or let's say representation and legislate of which I don't think the ANC has completely agreed with a chapter in the committee system. And then the Freedom Front also said that they disagree with the National Party and then that they believe in cultural and language minorities. So I think that is the report we can bring out for the constitution of committee. Okay, now the dissolution of Parliament we've dealt with it.

Unknown Regarding what the DP says, can we really say it introduces any question of contention?

Chairperson No - no.

Unknown Because the about the representation of all parties in Parliament.

Chairperson No - no I don't say that is contentious, the fact that they disagree with a Government of a national unity after the present Constitution that's contentious.

Dr Pahad Sorry Mr Chairman I think the way the report should then be made is going back to what we had agreed earlier, in terms of what the Constitution - technical experts will say, is that it is cleared that of the parties present here, all of them are of one mind, insofar as the executive is concerned that their shall be no power sharing except for one party and therefor it should be quite clearly stated that there is a matter of contention but this parties are agreed on this thing, and the one party has a different view. So it's quite clear where the contention lies. Because that's where we are standing now, it's only the National Party that if they still insist, would still insist that, that Other issues that are raised by and others, obviously that would still form part of an on going debate in discussing. It will not necessarily be for the Constitution but - but as to what should happen in the legislator and everything else and

that - that we must keep. But I am saying as of now, what we stand with in terms of the report to the Constitution committee, is that only one party still stands by it's position that they would like this enshrine in the Constitution. That's where we are in terms of reporting to the Constitutional committee.

- Unknown Mr Chairman.
- Chairperson Ja I don't know what you've summed up what I didn't say. Although not in so many words.
- Dr Pahad Ja I thought you should be clearer because it's the National Party ... (intervention)
- Mr Beyers Mr Beyers ja Mr Chairman ... (intervention)
- Me Pahad No sorry wait Andries, you see I wasn't clear what you were saying and maybe you should use sometimes a lot more words and become a bit more clearer. I wanted it to be clear that the report is going to state very clearly that the contention is on the part of one party, it you like, isn't a matter of contention in which their is division in the house. The contention is on the side of one party, and it should be clear it's the National Party that insist on it. That's what I am saying should be reflected in the report.
- Chairperson No I've no problem with that, I've only got a problem earlier on when I - I wanted to say the IFP, is in contention then they said, delete that, the IFP is not here.
- Unknown No.
- Chairperson But their submissions are here. Their submissions are here so we must take of what they've submitted to us, but I was ruled out of order by saying that are not here. But anyhow we'll record it that way Mr Beyers.
- Mr Beyers Mr Chairman can I also add my version of this consensus that and that is yes that is true that the only party supporting minority and multi party representation in all structures of Government, is the National Party the only party. And all the other parties support the ANC notion of the winner takes all, that is the situation that all the other parties support the winner takes it all and only the National Party support the model of multi party

representation in all structures and so on.

Chairperson You being naughty, you being naughty, Mr Ebrahim.

Mr Ebrahim Mr Chairman I think we should very clear here. I think what we are discussing here what should be enshrined in the Constitution and what should not be enshrined in the Constitution, not what Mr Beyers is saying.

Chairperson Now having said that, something that must be added to is that the parties is not against him coalition. And all being not enforced right. Now the dissolution ... (intervention)

Unknown (inaudible) what is the as far as all the other parties are concerned?

Chairperson Supporting and more or less voluntary coalition that can only come about if a majority party decides that it should be the situation.

Unknown Ja.

Mr Beyers They will have not right whatsoever, all the minority parties will have no right to determine representation in the Governmental structure and therefor I say in principle all the other parties supports the ANC's idea of the winner takes all and only the National Party for the idea of multi party in all structures.

Chairperson Order - order - let's leave it at there. Now when it comes to the dissolution I think we've dealt with that, except for the DP that thought a 4 year period and you must help me so that we need not have a lengthy discussion, that Parliament be dissolved after a 5 year period and not prior to that only when a vote of no confidence takes place, then Parliament is dissolved. Did I sum it up correctly? Anybody that want's to discuss it further, no thank then that's dealt with. Then the list that we received the written list - the written list, now I have liaised with the technical expert or at least of these points and he informs me that included in the present Constitution. My question to the meeting is do we disagree with this list technical aspects that's in the Constitution or do we need to discuss them one by one? Or must I frame the question differently, seeing that they are in the present Constitution are we in agreement that they also be in the new Constitution?

Mr Ebrahim Mr Chairman.

Chairperson Mr Ebrahim and then Mr Beyers.

Mr Ebrahim Mr Chairman point 2 of this constituency in the electoral system, I am not sure whether it already in the Constitution in the Constitution. Yes I think this is a matter that we can come back to because we are going to discuss the electoral system.

Chairperson Ja in the fifth block.

Mr Beyers Yes Mr Chairman I sill support that as far as all these specific issues are concerned I first want to also consult my colleagues with this, on some of the issues and I would like to request that this can stand over for tomorrow or the day after tomorrow.

Chairperson Anything Mr Groenewald?

Mr Groenewald I agree, I agree with Mr Beyers's suggestion but could I just say that in early discussions, I mean we have decided that nr 2 which is electoral system - but the filling of vacancies is something which we should specifically look at because it all depends whether you have proportional representation or not and also the type of legislation, private bills and so forth which we discussed earlier on. Now those - those are the two point which I believe needs specific attention thank you.

Chairperson You say private members bills.

Mr Groenewald Yes.

Dr Pahad Mr Chairman.

Chairperson Yes Dr Pahad?

Dr Pahad You see we would need to come back to some of the issues that were outlined by Prof Van Wyk because some parts of the 1993 Constitution were written with a specific thing in mind, which was to govern the period, the Constitution period and to govern the nation. For example the question of filling of vacancies where it talks about that for a year for example we were - we were bound by the list we had originally submitted to the independent lector of commission and we could not move from that list, automatically

when the vacancy occurred, whoever was next on the list, became a member of Parliament and that. Now we would need to look at all of those issues again and see what part of it we want in the Constitution and indeed whether you want such things in the Constitution or whether in fact they should not form part of an electoral act and I am not saying whether they should or they shouldn't but I am saying that, that should be part of the discussion as to what should be part of the Constitution and what shouldn't be part of it and if it is to be part of the Constitution what do you say. I mean and how much do you cartel in terms of the powers and rights of political parties with regard to their right to fill vacancies. And then to depend on the electoral system you'll have whether somebody gets off the - off the list itself or somebody moves away from a constituency. So what I am really then saying is that therefore there are a number of ones here which we need to go back to the 1993 Constitution to see what is not applicable, at least to all of us who as political parties and then come back to the issues and what is applicable I presume we - it can remain - let it remain as it is. Just on a point of view of the ANC that Prof Van Wyk is quite right that we did not comment on many of these issues and they need to be commented on from the point of view. Lastly even things like sit, speak, vote in National Assembly by non-members - well frankly speaking I other than the President, I don't think, I don't want no foreign dignitary to come and vote in my Parliament just like they not going to allow me to go and vote in their Parliament, and I don't think some of them are issues, except for the right of the President to be able to cast his or her vote in the National Assembly.

Chairperson

Is that all about that matter. I think then we must follow the route that we followed with the discussion this morning. Prof Van Wyk having drawn up these issues and having heard the comment of Dr Pahad just to give us a brief introduction in more detail with the specifics mentioned before we carry on with the next topic tomorrow. Can that be done - no - no not now, I mean tomorrow. That appears to bring us to the end of today's discussion, what is outstanding now or will be outstanding it appears is the Senate. We have requested the CPG Commission for Provincial Government if they are able to come and address us this afternoon. They said it was too shorter notice. Now I notice that we are sitting on the 5th of May according to our brief van administration, can we then ask them to address us on that issue on the 5th of May and similarly that the technical advisor also brief

us on his draft from the submissions he has received from the political parties and then the political parties can discuss their point of view with regard to the Mr Olifant I want to empower you, but you don't want to

Mr Olifant ny powers.

Chairperson Dr Pahad did you hear my suggestion?

Dr Pahad Senator if Mr Ramusi agrees, I agree.

Mr Ramusi No I agree.

Chairperson So that date we ask them to address us on the 5th and so will advocate also do on the 5th. Tomorrow's meeting will be in M46 from 14:00 to 18:00, M46 in the March building, then parties must assist - not I haven't adjourned the meeting yet, please gentleman. There is a request from the CPG for the workshop on the 18th and the 19th and they need three members from us again that they must have the names of before the 5th, so we can give them the names this time because we slipped up with the previous request from them by only submitting it this morning, which they wanted it on the 15th of April.

Unknown On what is it?

Chairperson No I said I announced it this morning ... (intervention)

Unknown When is the workshop yesterday and today.

Chairperson CPG.

Unknown For yesterday and today.

Chairperson No - no for the 18th and the 19th of May the Institutionalisation of Inter Governmental Relations that's a workshop they presenting in Cape Town, but we need to nominate three members to serve on it, so if we can also do it after we've completed our work.

Dr Pahad Well I wonder whether we couldn't do something else which is that if it's in Cape Town, then perhaps we could ask that they should make it possible for every party to send a person. Because if you send three and we're at this parties here, it does create