

2/6/2/1/90/16



THEME COMMITTEE 2

MEETING: 12/6/95

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TRANSCRIPTION OF THE ADDRESS BY THEME COMMITTEE 2

HELD ON MONDAY 12 JUNE 1995

(Tape 1)

Chairperson:

..... Sorry 1995. The other one is TC2/22 and the other one is TC22(2). Do you have that? Now the other which doesn't have a (2) should be dated 12th June not the 12th May. Am I correct? Now there are two of those documents there. The other one is dated 12th June, the other one the 12th May should also be 12th June. You've got that? And then there's a draft on Block 3 Provincial Government. That is tabled for you. It's not going to be discussed today. We'll discuss that on Thursday this week. Now on our Agenda today we have two items to deal with. We've got the report from the technical advisors, re-drafted one on the Senate, that is what we're going to look at. Then we look at the Work Program. Now let me deal with the second item quickly, which is the third item, which is the Work Program. We are not going to deal with the Work Program today. I think we leave it until Thursday when we meet because there might be changes of seating of Parliament, I understand, and those of the CA. They're still discussing that. So we are leaving it until we get a proper report from the speaker. We can then discuss the Work Program on Thursday. That means we'll be left with only one issue to discuss today, it's a report from the technical advisors of the Senate. Now you must tell how are we going to deal with this. Last time we had done everything up until the end with all those contentious issues declared in regard to Powers and Functions. Do you want us to start from the beginning again or start with the Powers until the end? Can somebody propose which way you would like us to deal with this? From the beginning or deal with half of what the technical advisors were supposed to look at, especially the Powers and Functions of the Senate. What would you propose? (Inaudible comment from the floor.) I was saying are we starting with Powers and Functions as we requested the technical advisors to go and re-draft, sort of look at what are the contentious issues, which are the points in which we're finding one another or are we starting from the beginning again, taking the whole report right through the end. Can you press your button Mr Beyers? They want to hear what you're saying.

Beyers:

I say I propose that we go on from where we finished last time Mr Chairman.

Chairperson:

Mr Beyers proposes that we start where we stopped last time and proceed. Do you agree with that? Alright let me start from the beginning to put everybody on board. I can see there's a confusion. Now your document TC22/2 is the one which contains the Senate report. It starts on page 30. Now page 30(1) the Terminology there. We said Senator. I don't think there was any contention there. We agreed on that. Mr Eglin.

Eglin: Can we just know from the Committee, have there be any amendments to it or is this exactly as it was before?

Chairperson: Professor van Wyk.

Van Wyk: Mr Chairman, for the most of the report there weren't any substantial amendments. At the meeting last time there were one or two insertions that had to be made in the text, but the main thing was item 6 on the Powers and Functions of the Senate, and following on that it might be necessary to revisit one or two other items here because it says there only to be finalised after agreement on the Powers and Functions of the Senate. But there's nothing in principle which changed in the document itself.

Chairperson: That's exactly what I was saying that last time we actually stopped when we were dealing about the Powers and Functions. Alright page 13, the Terminology. No problem there. No 2 Nature and Purpose of the Senate. We've actually dealt with this in the previous discussions. I'm just going through it so that people should know where we're going to. Page 31 No 3 the Composition and the Size.

? Mr Chairperson, just help me out here. Are we just confirming that what is written in front of us is correct, not that we agree?

Chairperson: Not that we agree. We're just confirming that the report is a true reflection. Page 32 and page 33, that was the crux of the matter. We actually requested the technical advisors to go and look at where the points of agreement are and where the contentious matters are. So they have done that.

Ranschod: I see under 4 page 32 that there's agreement that senators are either to be elected or appointed by Provincial Legislature. Now those are two rather different ways of .... It's the same. I'm not sure if in fact one can say there's agreement on that. Or is "elected" and "appointed" used interchangeably here?

Chairperson: Professor van Wyk.

Van Wyk: Mr Chairman, that's correct. There should have been .... There was a suggestion that there's a reference in the column furthest to the left under CP/Section to Constitutional Principle 8. But we've looked at Constitutional Principle 8 again. It doesn't deal directly with appointment/election. It refers to proportionality in general I think. What we were supposed to do, I must admit, I have not done. I didn't have the documentation with me, was to see whether in any of the submissions there was actually a suggestion that senators are appointed and not elected. So that must be

confirmed. The suggestion last week was that I think there was an intimation that none of the parties said that senators should be appointed, only that they should be elected. So we must still check whether any parties also suggest that the senators should be appointed.

Chairperson: So what do we do? Do we leave it as it is at the moment?

Van Wyk: We'll just confirm and check.

Chairperson: OK.

Eglin: Wasn't there one party, I think it was the Freedom Front, who suggested they should be elected by popular vote or was there no recommendation on that?

Van Wyk: I can't say that off the cuff. We'll check, Mr Chairman.

Beyers: In our first report we said that and the second report we changed our position on that.

Chairperson: OK, fine. Page 33. Dr Pahad.

Pahad: On 32 you find the same sentence under agreement and under contention. Now obviously that can't be so. Either there's agreement or there's contention. That's the first point I wanted to make. The second point I wanted to make is that we need to be careful how we're going to put it because the ANC one is rather general. It doesn't spell out some specifics with regard to that because we would have to depend on what kind of Senate you'll actually end up with eventually. So whether the Executive appoints or the Executive elects, we'll need to come back to that. But really the main thing is perhaps take out the thing where it says agreement. Leave it under contention because we don't have agreement with regard to this particular issue. The only agreement we have is that I think all the parties are agreed is that the senators will come from the Provincial Legislatures and not the Provincial Executive. That's the general agreement but there is no agreement on the rest of it.

Eglin: I understand that the only agreement is that it should be either elected or nominated by the Provincial Legislature, but not they necessarily come from the Provincial Legislature. That's a matter of dispute.

Steytler: Mr Chairman wouldn't it just be better to express it that senators will be determined by the Provincial Legislatures. We can leave it open whether how they are going to determine it. If that is the ?.

Chairperson: Is that the proposal, Professor. Are you in agreement with what the Professor proposes?

Beyers: The answer is yes if we also retain 2 and that is the contention whether in the appointment the principle of proportionality should apply because we say by the legislatures. But then on a proportional basis, not by the majority in the legislature.

Chairperson: Do you agree with the proposal by Professor Steytler, that it will be determined by .. How it will be determined, that can be worked out later.

?: Inaudible (Counter 185 - 188).

? You see the other problem is if you say ? what then does the Constitution, what happens if the Constitution ? out the composition, then you might run into a problem. On the one end you're saying it's determined by the Provincial Legislature but on the other hand your composition... We don't know what the Constitution ?, so I agree with Mr Hendrickse that I think we should put that as part of a contention in terms of the composition. On our side we said it would come from Provincial Legislature Executive. Mr Eglin says no, it may be that it could come from outside those institutions. Freedom Front was asking for different interest groups to find representation in the Senate who would not be in the Provincial Legislature. So I think we should just put it in under contention. It's an issue that would have to then be negotiated.

Chairperson: Professor van Wyk.

Van Wyk: For the sake of the report Mr Chairman, so there's no area of agreement here and under contention comes No 2 remains as it is Proportionality and then under No 1. So both those points become contentious points. OK.

Chairperson: OK. Thanks. Page 33. Professor Van Wyk.

Van Wyk: It may be helpful Mr Chairman to explain to the Committee what we've done here. We were instructed last week to see whether we could from all the parties standpoints come up with suggested areas of agreement and suggested areas of contention. Now if you look at page 33 and 34 as they stand at the moment, you will find that under the heading Powers and Functions, there still follows a lot of text. That's a mistake. It should be ... This next was taken from the earlier drafts that must come out because these were the points as they've been put by the parties and it's also incomplete because the computer has swallowed the National

Party and another party's and the CPG's submission. But we managed to get it out again. But so you can actually ignore the text under Powers and Functions. What we should do now is to look at areas of agreement, areas of contention and in the comment column we've summarised as far as possible what we thought were the supporting viewpoints of the parties in their submissions for finding agreement and for finding disagreement, and with your permission I'll take you through it with a request that parties take a very close look at what we're saying especially if in one or two cases we interpret their viewpoints whether it's correct interpretation. So the first area of agreement is that the Senate is to maintain a close relationship with the provinces and we said there expressed in different words by the respective parties. See comment 1 and under comment 1 you will find the ANC's position. They say to have a close and ongoing relationship with the provinces and articulate provincial interest at national level. Freedom Front, the Senate empowered to interact with provinces. National Party, the Chamber where Bills affecting provinces should be introduced and represented in the CPG and financial and fiscal commission ... This is an interpretation and National Party didn't say in so many words in their submissions .. that it should be a close and ongoing relationship. We inferred from this that that's their viewpoint. The DP also by implication supports this and we inferred that from the proposed powers in respect of legislation affecting the provinces and the allocation of resources to the provinces in respect of which, as we understand it, the DP gives the Senate special powers. So that's why we identified that point to maintain a close relationship with the provinces as an area of agreement. I don't know whether you want to deal with them one by one or whether we should go through them all. Another point of agreement is that the Senate is the place where legislation relating to the provinces should be initiated or introduced. Only two parties expressed a view on this. The ANC which said that legislation relating to the provincial interest should be initiated by the Senate and the National Party the Chamber where Bills affecting provinces should be introduced. The other parties didn't express themselves on this. (Tape goes blank from 257 to 262.) So can we then infer from what the DP is saying, Mr Chairman, that that becomes a point of contention.

Eglin:

I just want to know whether it's correct that the ANC for instance says that's the only place where you can introduce legislation which might affect the provinces. I don't think they said that, but it is a place where the provinces will have special powers in relation to that legislation.

Van Wyk:

Guidance from the Committee, Mr Chairman. We also didn't say it's the only place in what we thought was area of agreement, but

if that's the word around which agreement centres, in other words that the Senate must be the only place, then obviously.... So can we take out 2?

Chairperson: How do you feel? Should 2 be taken out? I take it that is covered under 3. Professor Steytler.

Steytler: Is it simply just to say that it may be initiated there. It seems not important whether it shall be there in all cases but clearly it just allows the possibility that it may be introduced in the Second Chamber.

Chairperson: Mr Mlangeni.

Mlangeni: Mr Chairman, I think we should leave it as it is, except that we should probably say that the Senate shall also have power to initiate Bills. In other words in addition to the National Assembly it should not be the Senate alone to initiate legislation. The National Assembly together with the Senate should be empowered to initiate legislation.

Chairperson: That's why Professor Steytler is suggesting whether could we say "may". Would we go along with that? Mr Eglin are you alright. Fine. OK.

Van Wyk: Then it remains under agreement. "May". Third point the Senate to have an effective say in Bills relating to provinces including allocation of resources and in the third comment on page 34 we say the ANC says to have a real say over National Assembly Bills dealing with provinces. DP equal powers of the National Assembly, special powers in respect of legislation dealing with provinces. Freedom Front revise veto legislation relating to provinces and the National Party special powers in respect of legislation affecting provincial boundaries and finance. So that's on the basis of that we thought there's agreement on effective say in Bills relating to provinces including allocation of resources.

Eglin: There's agreement on the concept. Whether there's actually agreement or not, the clauses in the Constitution that would give effect to this is another matter.

Chairperson: Hendrickse.

Hendrickse: Mr Chairman, under that, are we saying that the Senate has to approve of the National Budget? When we refer there to resources, allocation of resources.

Van Wyk: Mr Chairman, I seem to remember that one party did suggest that



but that's not as far as we saw it here under 3. An area of agreement that an effective say in Bills relating to provinces including allocation of resources would also be an effective say to block the National Budget.

Chairperson: Any other comment on No 3? Professor Steytler.

Steytler: Mr Chairman, then just in terms of following up with what Mr Eglin said, one should then add a further point of contention here the precise effective say... the definition of "effective say" is clearly an area of contention and that should be noted there of what that is going to mean in practice.

Chairperson: So that's an additional point under contention? Agreed? OK. Fine.

Van Wyk: No 4 that all Bills to be considered by the Senate, we made a note that the ANC was not explicit in this respect but there's a strong implication when one reads the document and the comment there under 4 simply says the ANC ... No, there's no reference to a comment there, except for the ANC which was not explicit in its recommendation. All the other parties suggested that all Bills considered by the National Assembly should also be considered by the Senate.

Chairperson: Comments? Mr Eglin.

Eglin: I'm just talking from the DP's point of view. The ANC might have a variance. I don't know what is meant by "all Bills considered by the Senate". We have never believed that the Senate can block Money Bills. In other words there's a difference between considering and whether you can block them. We believe they should have blocking power in respect of anything dealing with provinces, but I don't think we ever agreed that you can actually have the power to block the National Budget. In fact ours is quite specific we say all Bills excluding Money Bills, but not excluding Bills allocated to provinces. So I thought there was agreement that the Senate would not have veto power over Bills relating to the National Budget and Money Bills in general, but only in respect of Bills which affect the resources of the provinces.

Van Wyk: Mr Chairman, this point is perhaps simpler than what we all anticipate. All this point says is that whatever Bill is introduced in the National Assembly should also go to the Senate to be discussed and decided upon by the Senate whatever the influence of the Senate on that legislation. The point was put in perhaps in view of the special proposals about the Senate by the ANC which could raise the question whether the ANC would see the Senate

dealing with all legislation, in other words each and every piece of legislation as is the position at present. And maybe if we get clarification on that it's not even necessary to say it.

Chairperson: Dr Pahad.

Pahad: Yes, that's precisely the point. It's very difficult unless you take the ANC submission in its totality because it depends on its composition and if it goes in the direction that we wish it go, we may well be in the situation which the Senate should not then be in a position in which it considers all Bills. I mean in terms of the conceptual approach that we have here, as you will see we are trying to move away from the Senate as presently constituted in which the Senate in some respect is a clone of the National Assembly. I mean to consider all the Bills having to have the same kind of numbers of select committees and everything. That's asking 90 people to do what 400 people are finding it difficult to do in the National Assembly. So I'm saying precisely because of that, I don't think we should put it that way and in cases where the ANC only implies things, then obviously it's because that's an implication and not an explicit statement. I would rather that we don't put it under agreement. You may want to put it under comment or under contention to say that we would need to come back to the question and partly also for the reason Mr Eglin is saying because I mean obviously you may consider the Financial Bills but powers of Senate relating to Financial Bills may be very different from what it may be in relation to Ordinary Bills. So rather that we don't put it under agreement as it stands here.

Van Wyk: Mr Chairman, would the ANC prefer it to be a comment or a point of contention?

Pahad: Well, if we move from what Mr Eglin said, I can't remember now what the National Party said, it would nevertheless be a point of contention in the sense that it's something that we would need to resolve between the parties with respect to what kind of Senate you're going to have. So I don't think you say that's agreement. I would rather that you put it under contention so that we can bring it to the attention of the Constitutional Committee. Mr Chairman, can I just add here is that one of the things I think we're doing here, when we're saying there are contentious issues, is that therefore the report to the Constitutional Committee will clarify for the Constitutional Committee those areas that actually need to be negotiated by the parties. It's not so much as to say that we are quarrelling with each other, it's so much to say that these are the issues that the Constitutional Committee would have to address when they come to Theme Committee 2. And therefore in that sense I think it would be preferable to put that under contention.

Chairperson: General.

Groenewald: Mr Chairman, we support that point of view. We in the Freedom Front believe that the Senate should review all legislation only to determine what affect it would have on the provinces, and not necessarily as far as Money Bills is concerned to have any say.

Chairperson: Dr Ranschod.

Ranschod: In my view there's such a fundamental difference in approach to the future of the Senate, that I wonder whether this Theme Committee is adequately represented on the Constitutional Committee, if it has to be sorted out there. I'm sorry that I must plead ignorance as to whether we are adequately represented there, but there's a big divide at the present time between what the ANC would like to have in my view and what some of the other parties would like on this issue of the Senate.

Chairperson: General Groenewald.

Groenewald: Mr Chairman, I think this new sub committee which the Constitutional Committee wants to appoint will probably solve this problem. On this particular sub committee members of the Theme Committee can be appointed.

Chairperson: Can I just ask Thomas to explain exactly about that sub committee that General Groenewald is talking about.

Thomas: Thanks Chairperson. On Thursday at the Management Committee a proposal was adopted that there will be a permanent sub committee of the Constitutional Committee that will be serving as a negotiating body. The make up of this committee will be such that additional, well not additional members, but members to assist those permanent members of the sub committee could be drawn by political parties from the Theme Committee. So I think partly the purpose of this permanent sub committee now is because there had been various ad hoc drafting committees but also one point that was discussed is the fact that this conception would allow reports to come through from the Theme Committee to go to the Constitutional Committee and the Constitutional Committee can then refer to this permanent sub committee those issues that have to be negotiated or finalised, and the idea is that Theme Committees ... it could help also to speed up the process where Theme Committees could release reports to the Constitutional Committee and doesn't have to have it referred back to the Theme Committee for finalisation of some small issues because that could be done then at the permanent sub committee.

Chairperson: Dr Ranschod, does this solve your problem? OK. Fine. We have now dealt with those four issues there and I think we have just said that No 4 must be a contentious issue. Am I right? And then 1, 2 and 3 stands.

Eglin: Can I just say, I just thought that this whole question of the Senate arises because the ANC hasn't yet made up its mind. It was under the heading of to be revisited. It wasn't contentious that there were hard line differences. It's contentious in the sense that this issue is still to be revisited. I think somewhere under the comment one should say that this matter should be revisited.

Steytler: According to the way I understand it, it wasn't a question of the ANC not making up its mind, I think it has made up its mind. And what it wants, I'm not speaking on behalf of the ANC, is not a retention of the status quo.

Chairperson: OK. Professor van Wyk.

Van Wyk: Mr Chairman, those were the areas of agreement which we could distill from the submissions made by the parties. It would appear that there are more areas of contention. Mr Eglin suggested last week that a framework could be found in powers in respect of legislation and this emerged perhaps in a somewhat different form from the areas of contention. The first one is Powers of the Senate in respect of Ordinary Bills, that means Bills excluding those affecting the provinces and Bills excluding money. The question is whether the Senate and the National Assembly will have concurrent or equal powers or whether there will be less influence for the Senate. In comment 4 very briefly there's a summary on virtually all the political parties' viewpoints. The ANC in respect of Ordinary Bills comment 4 on page 34 proposes less influence in respect of Ordinary Bills and the power of review. The DP, IFP and the National Party equal powers and the Freedom Front as far as we could determine wasn't too explicit on this score. So that was the first area of contention. Second area of contention, Powers in respect of Financial Bills excluding Bills dealing with resources through the provinces. This would then cover for instance the National Budget. Once again whether equal or concurrent powers or less influence for the Senate. In comment 5 ANC and the DP, National Assembly should have the final say. A question is whether that's also supported by the Freedom Front. And the National Party and the IFP, equal powers for the National Assembly on such Financial Bills. And then the third area of contention, Procedure in the event of disputes between the National Assembly and the Senate, in comment 6 only the National Party expressly refer to dispute resolution between the National Assembly and the Senate. From that we

infer that it is a contentious point. And then the fourth one that was just added that whether this basic question whether all legislation should be considered by the Senate as at present. I may just add that under comment 7 for the sake of completeness, we've listed other matters raised by the parties, mostly a matter raised by one party and not addressed at all by any of the other parties. The ANC's for instance, five or six of them, and the Freedom Front also a number of them, and the National Party also two or three. Comment 8, a general comment made by the ANC, it would like to see the judicial determination of the pre-eminence of National Legislation be replaced by the provinces themselves, that's through the Senate, determining the desirability of the National Legislation and then under point 9, the viewpoints of the CPG on the Powers and Functions of the Senate, and then in italics lower down the viewpoints of individuals.

Chairperson: No 1. Any comment? No 2, No 3 and No 4. So we all agree all those are contentious. No 4 is a newly added one. OK. Page 35 we've dealt with. Mr Eglin.

Eglin: Under this question of comment where Professor van Wyk has indicated under 7 what other parties have said, in other words extraneous items. It looks as if the DP is also similar, not similar to the National Party but parallel, suggested that the Senate should have a special role in connection with top appointments in the foreign service and the diplomatic service and in the state service. So we would see a special role for the Senate in that particular field.

Van Wyk: We'll add that Mr Chairman.

Chairperson: Thank you. That covers us up until...

Pahad: Can I just ask, I mean it's Monday afternoon, it's never easy on Monday afternoons... All of this comments that appear right through, most of them seem to be contentious rather than just a comment and I'm not sure in which direction we're moving now. I mean are we moving in the direction where we're now going to say we take the following from comment and put into contentious because from the ANC's side obviously it would seem to ask that ... We would be very happy if the other parties said they agreed with us but it seems to us that the other parties don't agree with us and therefore it becomes a matter of contention rather than a matter for comment. Because I really don't know if this comment is going to help us in this Theme Committee now. So, you don't agree with us. So it's contentious. We're not going to solve our problems now and it must be negotiated in the Constitutional Committee.

Van Wyk: Mr Chairman, I'm not quite sure that I'm with Dr Pahad. Is he referring to all the comments or only from comment 7 onwards. The idea with if he's referring to all the comments .....

Pahad: In some we've got agreement in general terms but if you take on Page 34(3) the ANC seems to have real say over National Assembly Bills. We don't explain it, I agree. Others talk about equal powers, but that's contentious. We are not in favour of equal powers between the Senate and ... (4) ANC less influence and power of review. DP, IFP, NP, equal powers. It's a matter of contention. It's not a matter of comment. Then therefore automatically (5) as you've got it, the same thing applies that where the ANC ? the DP, it says the National Assembly has the final say, others are saying that they have equal powers. We've now dealt earlier with the whole question about whether or not how you would resolve disputes between the National Assembly and the Senate. So I'm saying it seems most of it is still in the area of contention rather than in the area of comment.

Van Wyk: Mr Chairman, I think it would be possible to reword the comments and to take the two examples mentioned by Dr Pahad. Comment No 3 was used to substantiate an area of agreement which says the Senate to have an effective say, in other words the emphasis there was on "effective say". It didn't purport to go into the kind of effective say, in other words whether equal powers or whether something else, but just an effective say. Comment 5 on the other hand was used where equal powers came up again, and the ANC and the DP said the National Assembly should have a final say. That was to substantiate specific differences in powers relating to finances. If it's confusing we would have to rework the way in which these comments were used to substantiate areas of agreement and disagreement.

Chairperson: Thank you. Dr Pahad are you satisfied?

Eglin: If it's possible, shouldn't the numbering of the comments relate to the numbering of either the agreement or the contention. In other words you might have to changes the numbers of where there's an agreement concerned. When you look at 5 under comment that refers to 5 under one of those other columns. So we don't know which one you're referring to.

Van Wyk: We'll find a better way of cross-referencing.

Chairperson: OK, thank you. Let's now move to page 36. Those were just the individual submissions. Comments on the left side. I don't think there's anything we can do about it now. Page 37, No 7.

Van Wyk: Just as a side, members will notice that that notorious body, called the DP Gauteng, no that contentious body last week, DP Gauteng, became italics under Individual and Organisational Submissions as requested by the Committee.

Chairperson: Page 37. No 7. There's only one contention there. We agreed with it. Agreed? No 8. Also a contention there. Page 38. No agreement, a contention. Section 49, the question of the President and Deputy President. There's an agreement that the concurrent provision be taken on board. Are we all in agreement with that? OK. No 11 Qualification of Members, two contentious matters there. Whether senators should be members of the Provincial Legislature and Executive or whether they should be registered voters either in their provinces or have an ordinary resident there. It's a contentious matter. Mr Ackerman. Let's all hear. Mr Beyers, what are you saying? You agree with it. Mr ? and Mr Eglin.

?: Sorry Chair, I might have missed out but I will have to go back to Section 49. Are we saying here that the current position must prevail? We are presently having two Deputy Presidents. Do we want to.....

Eglin: The second contention point under Section 50, whether they should be registered voters in their province, then the stroke. I don't know of anybody who said that they should have ordinary residence. I thought everybody who said they should be residents said they should be voters in their province. You see there's a difference and I think it was pointed out if you start arguing where there's ordinary residence, there's a whole range of arguments. (Tape 2) Whereas if you are registered on the voters' role or you're not registered, I have not thought that there were people arguing residence. I thought people were arguing in their province or not in their province.

Chairperson: Mr Ackerman.

Ackerman: Mr Mahlanga, I thought that was an agreement, precisely what Mr Eglin said. We then agreed that they should at least be registered voters in their respective provinces and I think the ANC has agreed with us on that.

Mahlanga: Of course we don't. I made it clear last time and we're not reopening the discussion.

Eglin: I think it is contentious as between the ANC and other people. All I'm saying is that the last phrase stroke have ordinary residence there should be deleted. The issue is I think all the other parties

say that they should be registered in their province, but some parties say they shouldn't be registered, but the question of having ordinary residence is a different concept.

Chairperson: So we can delete the last portion. "Have ordinary residence" that can be deleted. OK. Page 39, 12. One contention the right to recall and 13 whether the Senate should be a perpetual body as proposed by the ANC is contentious. Quorum. No contention. Powers, Privileges and Immunities. Agreement and no contention. Seating when Disqualified concurrent provisions will apply. Joint Seating. No agreement, no contention, to be revisited. Rules and Orders will be revisited although there's an agreement that the current position will apply except for the joint committees. ? of Information, current provisions will apply. And all those matters will be revisited after Powers and Functions have been dealt with or finalised. Peter and then Eglin.

Peter: Mr Chairperson, No 20, all those issues. Are they matters that need to be revisited by us or is it in terms of where it comes into the Constitution or is it something that you will deal with somewhere else through an act of Parliament?

Chairperson: Van Wyk.

Van Wyk: Mr Chairman, if one takes the first one there, the summoning of the Senate. That's the way I understand it. If the Senate is the kind of body that the ANC would like it to be it would not necessarily be convened in exactly the same way as the National Assembly because it's a so-called perpetual body. If one takes the second one there, Sessions, for instance once again if it's the kind of body that I understand the ANC would like it to be, it would not necessarily follow the same session and sitting pattern as the National Assembly. The same may apply to Term and Dissolution, depending on the kind of election. So it could be matters for this Committee to revisit or some of them could fall into place once further negotiation has taken place and there's clarity. Some of them might even fall away.

Chairperson: Does that answer your question Peter? OK. Mr Eglin.

Eglin: I'm just concerned that Section 51 which says Vacation of Seats and Filling the Vacancy. All it's got in either agreement or contention is the right of recall. Now right of recall is a very small part of it, that's a very special procedure that you might have in order to create a vacancy. But there's lots of others. What happens if a person dies? What happens if a person becomes disqualified? What happens if the ANC thinks they have crossed the floor? Now I mean there's no mention of those things. Are



they either in agreement or disagreement. What it also doesn't deal with is how do you replace people, I mean especially if you don't have constituencies. Are there going to be bi-elections? Are there going to be nominations? I mean I just think that whole area is extremely flimsy and one should put that this matter hasn't been considered yet because I don't think it has been considered.

Van Wyk:

Mr Chairman, the problem there is two-fold. The one is that the parties haven't addressed it in their submissions. That's not an excuse. I think the other more fundamental one is it will depend also on eventually the nature of the Senate, depending on how the Senate is elected or members of the Senate is appointed. But Mr Eglin has a point. There will have to be something in the Constitution about what happens when there's a vacancy and under what circumstances the vacancy may arise.

Chairperson:

So how do we incorporate that into the report? Mr Eglin, do you have an idea? (Tape goes blank from 615 to 618)

Eglin:

If you take (c) under comment, I would have thought that the one area of agreement would have been that if a Provincial Legislature is dissolved automatically the Senators which come from that particular Legislature also lose their seats and it has to be re-constituted. And that doesn't deal with casual vacancies. That deals with the dissolution of Provincial Legislature and the Senate which flows from it. I would have thought that there's also agreement that casual vacancies should be filled by nominations through which that person was originally elected.

Chairperson:

How do political parties feel that we can entertain the question posed by Mr Eglin now?

?:

Mr Chairman, if we look at the present 51 in the Constitution, then there are at least three or four points that most should agree on and there's one point that I think will be a point of contention, but I think the fact that most parties did not address meant that they agreed with the present Section 51 in the Constitution. From our discussions it's quite clear what most of the parties agree with and do not agree with and I'm quite sure our technical advisors could summarise that.

Chairperson:

Professor Steytler.

Steytler:

Mr Chairman, isn't it common to say that on the final determination on what the Senate would look like, then the following issues should be addressed - death or casual vacancies or general vacancies etc because really one cannot address these without coming to some finality on the structure and the nature.

Chairperson: Would that suffice Mr Eglin? Then your proposal is accepted Professor Steytler. Page 41 up to page 49 is the summary of what the political parties have been saying. I don't think there's any need to go through that now. What is the way forward now? Do we allow the technical advisors to start drafting and then bring back the draft again to us. We'll have a look at it. Professor van Wyk.

Van Wyk: Mr Chairman, if you will allow me. I think it will be very difficult to make a meaningful mostly single draft on this one until the nature of the Senate has been sorted out. We're going to submit you two drafts, one based on what the ANC wants and one on what is mostly the current position. Honestly I don't think it really makes sense to start drafting before the fundamental question about the nature of the Senate has been sorted out.

Chairperson: So what is the way forward? What do we do? We leave it as it is until that issue is sorted out? Professor Steytler.

Steytler: Mr Chairman, I just wanted to say there is nothing that can be drafted and the thing that one can draft would be really irrelevant or periphery that the reporters should go ahead with the note that the central issue should be resolved and then it should be referred back to us, I don't know. To deal now with the consequences of the nature of the Senate, once that's established we can deal with the consequences.

Chairperson: I am advised that you can carry on drafting and that you can put up different options, and refer it to the sub committee which Thomas has just been explaining to us and that the matter could be dealt with there. I don't know what's your brief on that one. I don't have a brief on it. I was just advised on it. I don't know whether I'm making my point clear or whether Thomas should make it clear. Thomas can you just highlight that.

Thomas: Thank you Chairperson. I don't want to obviously make a decision for the Committee, but as we understand it at this stage, the idea is that the reports together with draft formulations and those draft formulations to include the various alternatives to go to the CC and the CC will what they cannot resolve there refer to that sub committee for further negotiation. The matters would not come back to the Theme Committee unless there were a major mistake in the report, but the understanding is that the matters would be finalised as far as possible in the Theme Committee on an understanding that the Theme Committee may perhaps experience difficulties in finalising all the details, but then that it be further finalised through that sub committee of the CC. So Chairperson, I mean I understand if the technical advisors in the

committee is saying that it is impossible to do justice to the different viewpoints, obviously then we would have to debate the report further in the Theme Committee. But if it is possible to present the different draft alternates, then I think we could proceed with drafting of the draft formulations.

Chairperson: Professor van Wyk.

Van Wyk: Mr Chairman, I hear what Mr Smith is saying but if I look at this report where, except for a few technical things, the really important things on all in that column are areas of contention. I'm not sure that the Constitutional Assembly is wasting money by putting forward at least two separate drafts which won't take the matter any further, which once there has been a negotiated agreement on what the Senate is, will have to be redrafted in any event in important respects to give effect to whatever compromise or whatever solution is found. If you instruct us to draft, we will do it that way, but if I look at this thing and what we've been doing so far especially with the so called alternative formulations, this is quite a mammoth task especially where the way I, and I can't speak for my colleagues here, sense it that the fundamental questions have not been resolved.

Chairperson: Mr Hendrickse and then Mr Eglin.

Hendrickse: I think I just want to concur with the professor there. We've got a fundamental difference. Basically what the Committee would then have to do is to take the ANC submission and submit it because there would be no agreement between us and the other parties on the fundamental principle on how we see the Senate should look. So I don't think it's worth the time of the technical experts to go up and draw two or three different reports to refer to to the Constitutional Committee.

Eglin: I think in practice nearly all the reports of the Theme Committees that have come through have actually been agreement conceptually but disagreement on matters of detail, some important matters of detail. But here we have two different concepts in a sense. In other words they're not necessarily fundamental disagreement but they're conceptually different. But I think it would be quite a good idea for us to ask one of the Chairpersons to meet the Management Committee on Thursday and just explain to them the practical dilemma that we have. If they say in spite of that dilemma, you must get on with it. Well, then we'll get on with it, but I think it would be quite a good idea to say to management this is the situation that has arisen, that we now seek your advice as to how we should handle it in the circumstances. On Thursday morning they meet at 8 o'clock and

we can resolve it in an hour.

Chairperson:

Which suggestion do you take now? Mr Eglin's suggestion? We're agreed on that? OK. Well, whichever way, I think we'll find a solution on how to deal with it but it seems that we've not agreed that we can instruct the technical advisors to draft. We'll see how to tackle this later. OK. Thank you. That brings us to the end of our meeting for today and on Thursday we're meeting, don't forget. There'll be a documentation sent to you but we are mainly going to discuss the report on provincial structures. We're meeting from two o'clock until half past six. All ANC members are requested to remain a little bit and the meeting is adjourned. Thank you very much.