

**CONSTITUTIONAL ASSEMBLY**

**THEME COMMITTEE 3**

**29 MAY 1995**

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CHAIRPERSON: ... and gentleman. I think we can get started, first of all I would like to say that Doctor Boy Geldenhuys has asked to be excused, he has some foreign visitors this morning, so he will not be attending the meeting. I don't know what happened to the rest of my delegation.

UNKNOWN: They're boycotting you.

CHAIRPERSON: It looks like it, I shall certainly have to look at that and see what happens. Not that the ANC has that much to brag about number wise, in comparison to - to the total amount that could be here. In any case, welcome to those of you who are here on this hopefully not blue Monday, and let's get started.

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As far as our agenda for this morning is concerned, we have to go through the summary of areas agreement and contention. The new document which you've received and which is dated the 24th of May 1995.

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Welkom mnr Saaiman vir die tweede keer vanoggend.

First of all before we get to that document, I would just like to bring the following matters to your attention. And the first is that on the 5th of June we shall have a financial and fiscal relations workshop in this venue, is that correct.

MR MXENGE: Yes - yes.

CHAIRPERSON: And it will start at 2:00 in the afternoon.

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First of all just a few notes regarding that. Invitations have been sent to the German Embassy and the following hi commissions that of Nigeria, of Canada and of Australia. Nigeria and Canada will be sending representatives, the Nigerian delegation wishes to meet with the CA Chairperson and the administration is looking into that.

We have not as yet received responses from other countries.

We have invited Professor Dennis Davis and Professor

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Venter to help with the workshop and do we need two?

MR MXENGE: It was (inaudible) ...

CHAIRPERSON: And then the members are advised that Doctor Boy Geldenhuys has attended two hearings on religion and youth which were held in the World Trade Centre.

Mr Albertyn represented TC3 at the Constitution public meeting at Beaufort West and then we have submissions from the Transvaal Municipal Association which the members must familiarise themselves with.

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They are coming, they on their way, so you will receive them before we leave here this morning - yes. Senator Bhabha?

MR BHABHA: Yes I - the invitations have been sent out to Australia, Canada who else?

CHAIRPERSON: Nigeria.

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MR BHABHA: Nigeria.

CHAIRPERSON: And Germany.

MR BHABHA: And Germany, why only these countries, I note that all these countries have a slightly federal flavour about them. Why not any of the other countries, which have different forms, which have different systems, where we could learn from them as well.

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CHAIRPERSON: Well I think it's because of the - I suspect that we are looking at financial and fiscal commissions that kind of thing, which possibly unitary states don't really have. But would you like to make - would you like to make a suggestion which countries we ...

MR BHABHA: No I - with respect - yes with respect Chair on that last remark, there are - I assume that in any State even if there isn't a secondi of Government, money is spent - sent to administrations to do the administering at a more local

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level, so we could learn from that as well.

CHAIRPERSON: I am asking can you perhaps suggest names of countries and we would ...

MR BHABHA: Perhaps - perhaps the United Kingdom as well.

CHAIRPERSON: United Kingdom.

MR BHABHA: Ja.

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CHAIRPERSON: Anyone, anybody else?

UNKNOWN: Sorry I don't know whether you mentioned Australia.

CHAIRPERSON: We did yes.

UNKNOWN: I think that's very fundamental okay.

CHAIRPERSON: We - yes they have been invited. They haven't yet replied

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but they - they have been invited.

And then the fifth point here, the commission on provincial Government is concerned about the fact that their submissions are not included in our report which shall be tabled before the CC. The Core Group will have to look into the matter later today.

I am not quite sure to what extend they - okay they will be invited to address the Core Group on that specific matter.

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Thank you, if we then can continue.

UNKNOWN:

Excuse me can you give me the date of this workshop?

CHAIRPERSON:

The 5th of June, that's next Monday and it's at two o'clock in the afternoon.

You have the 24th of May the document which is no finally being submitted to us by the technical group and we ask

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Professor Deon Basson with his patriotic tie, whether he will perhaps give us some sort of introduction to the document please.

PROF BASSON:

I thank you Chair, thank you Chair. As far as the first part of the document is concerned, it's divided into two - two parts, the first part deals with general principles and the idea was to see on - in principle and also taking into account the Constitutional principles where there is any areas of agreement and contention and areas which need further clarity concerning the five headings.

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The existence of exclusive and concurrent powers, the role of framework legislation, the preference of powers of central Government and should the competencies of the Provinces be fixed by the Constitution or should the Constitution allow for an evolutionary process, the executive competence of Provinces, alternative mechanisms for safeguarding the interest of Provinces, and the manner in which to deal with local Government. Lastly asymmetry.

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I think this document is known to the Theme Committee and last - at our last meeting the Core Group - the only real changes which were affixed to this document appears with the - where the competencies of the Provinces are discussed as a evolutionary process, that's on page 3 of the document.

It says there in the agreement column, where parties have addressed the question directly there is agreement that the powers should be evolutionary. And then the contention column there is nothing there because this needs further clarity.

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What needs further clarity is first the definition of a evolutionary.

For the ANC evolutionary appears to mean that the vertical division of competence should not be rigid and the concept of framework, legislation can be used to extend the legislative activity of the Provinces.

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For the NP the principle of evolution is linked to the principle of asymmetry. Namely that the Provinces will be obliged to assume certain of the powers certified in the Constitution but can take them up upon decision by such Provinces at a later date -stage.

The PAC considers that the list of provincial powers should be fixed in the Constitution, however the question of whether a Province can take up these powers on a evolutionary basis, has not been dealt with.

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And certain parties such as the DP have not addressed the question at all.

This was done in more detail because the concept of evolutionary gave some problem and the idea was just to shortly spell out where the party stands in regard to their view of a evolutionary process for provincial powers.

The second part concerns the detailed analysis of the party

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proposals. And this was broken down into more sub headings to make it more accessible to the parties. The first sub heading is residual legislative powers. This of course deals as the agreement column says, the level where the seat of the residual powers is vested, and it's usually the level which is more powerful.

The ANC, the NP and the PAC agree that the National competencies should be unallocated and the IFP and DP agree that provincial competencies should be unallocated, I am sorry both parties, unallocated. And the contention really is then between these two points of view. Either to have the residual power on the national level or have a residual power under provincial level.

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Then the second sub heading was titled the existence of exclusive and concurrent legislative powers, the listing of the powers. And here there is just one sentence which sorts of put out the general principle. The level where the powers are listed is usually the weaker level of Government.

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And then the ANC, the NP and the PAC agree that only the concurrent legislative powers should be listed.

The ANC and the PAC agree that the said provincial competencies should be listed in a manner provided by the current schedule 6.

The NP wishes to add functional areas to the present schedule 6 and also states that more information must be obtained in this regard.

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The IFP and DP argue that the exclusive national legislative competencies must be listed.

However, the IFP believes that only these powers must be listed.

Whilst the DP also list exclusive provincial legislative powers, as well as functional areas for framework legislation.

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And then in the contention column the ANC believes that concurrent provincial competencies should be listed in a manner provided for by the present schedule 6. Framework legislation then forms a separate category of concurrent legislative competencies.

Furthermore the provinces have exclusive legislative competencies where they legislate on matters specific to the socio economic and cultural need of provincial inhabitants.

Subject to the overrides below.

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The NP places some of this in contention and believes that the concurrent legislative competencies must be listed adding agency, delegated functions, water affairs, forestry, public works, land affairs and publication control to the present schedule 6.

The NP suggest that more information is to be obtained before such list is finalised. It further believes that exclusive provincial competencies is catered for when the provincial

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law prevails in accordance with the overrides. Or when the Provinces pass detail legislation in terms of the framework legislation also discussed below and when provinces make laws that are reasonably necessary for or incidental to the affect of exercise of their functions.

They also propose a second list containing the functional areas of framework legislation.

The IFP believes that the residual legislative competencies are provincial legislatures, provides for the exclusive legislative powers. And furthermore that only the exclusive national legislative competencies must be listed and then the list is spelled out there. Concurrent provincial legislation only exist in the case of framework legislation

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The DP believes that exclusive national legislative competencies must be listed and list the competencies. And also believes that the - the exclusive provincial competencies must be listed and then spells out the areas of the functionality, the functional areas. And lastly also lists the

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functional areas for framework legislation where it's possible for the national Government to pass framework legislation.

The PAC believes that only concurrent provincial legislative competencies must be listed in keeping with the present schedule 6.

And then where there is areas of agreement especially is the role of framework legislation to passed by the central Government. Most parties agree that there is a role for framework legislation, but the ambit of the role is somewhat in contention.

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The ANC and NP agreed that framework legislation forms a separate category of concurrent legislative powers and the NP wishes to add a second list in the schedule containing the functional areas for this legislation.

The IFP and the DP and the PAC are in agreement that they must be such legislation.

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And then when one comes to the detail there is - I would say large areas of agreement here and the detail is more I would say of a formal nature.

The ANC views framework legislation as a separate category of concurrent legislative powers in order to give elasticity to concurrent powers where Provinces have exclusive power to legislate on the detail. It does not list these functional areas apparently because it is part of the residual legislative competencies of the national Government.

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The NP argues for a schedule containing a second list of functional areas for framework legislation and it views the powers as a further category of concurrent legislative competencies. Again it suggest that more information is to be obtained before the list is finalised.

Thirdly the IFP proposes framework legislation for it's limited provision of national concurrent legislative competencies. And it is the exclusive prerogative of the

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Provinces to provide the detail of such legislation.

And in this regard they distinguish between framework legislation, obliging Provinces to legislate against standards established nationally and so-called general principles of legislation obliging the Provinces to legislate the norms and the standards in harmony with the national principles.

The DP is one of the areas where provincial legislation does not prevail as pointed out above. List the functional areas where the national Government is empowered to pass framework legislation and the list is set out in the document.

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The PAC is in favour of the framework legislation - of framework legislation in principle.

The ACDP does not address this topic.

The legislative prevalence of the Provinces, the forth sub heading, the overrides. Here there is also a basis for

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consensus I would say as it is said in the more clarity column.

The ANC, the NP, the DP and the PAC propose national overrides on a largely similar grounds and the ANC places the onus on the Provinces to show that the overrides do not apply, whilst the NP and DP place the onus on the national level to show that the overrides do apply.

The IFP allows for a national override only on the narrowest of grounds.

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And the ACDP believes that biblical standards override all legislation.

And then the contention, the ANC proposes that national overrides may take place upon the following grounds provides that the Senate has consented and provided that the law sets minimum standards or uniform norms of standards across the country. Or provides for equal opportunity or access to Government services.

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Or provided that the law deals with the matter that affects more than one Province, one enables the country to act as a single entity with one voice.

Or provided that the law establishes national framework for delivery of services or the management of instructions or providing a public service or provided that the law deals with the protection of the environment, the economic union or the capital labour market of the country. The implementation of national and economic policies or the maintenance of security or provided that the provincial law prejudices the economic, health and safety of the public or security interest of another Province or the country as a whole.

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The idea is then essentially that the act of Parliament shall prevail over a law passed by the provincial legislature if the said grounds are met.

The NP proposes that there shall be prevalence of provincial

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laws over the acts of Parliament except insofar as matters cannot be regulated provincially or matters required to be regulated or co-ordinated by uniform standards for the management or administration of that matter that apply generally throughout the country.

Or the act of Parliament is necessary to set minimum standards not provided for by provincial legislation for the rendering of services, or the act of Parliament is necessary for the maintenance of economic policies, the protection of the environment across the provincial boundaries, promotion of inter provincial commerce, the protection of the common market in respect of the mobility of goods, services, capital and labour. Or the maintenance on national security or the provincial law materially prejudices the economic health or security interest of another Province or the country.

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The general idea then is that the law passed by provincial Government shall prevail over an act of Parliament unless certain grounds are met. Accordingly the NP believes that

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the present Section 126 should be retained but on narrower grounds and that these overrides should be restricted by the principle of subsidiarity, as well as by Constitutional principle 22.

The IFP essentially rejects the idea of national prevalence or overrides and merely allows for preference of the national Government on very narrow grounds and that is when a Province fails to deliver essential services, so as to jeopardize the health, safety and welfare of the citizens of the Province.

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However, national overrides are valid and effective only for so long as or insofar as the Province concerned has not adopted its own legislative measures.

The DP allows for overrides in terms of the Bill of Rights. It states that the provincial law in the case of exclusive or framework provincial powers shall prevail over an act of Parliament unless the act deals with a matter which is the

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subject of an international treaty or an international law.

Or the provincial law practise materially and unjustifiably, prejudices the economic health environment or security interest of another Province or of the country as a whole.

Or the provincial law practise materially and unjustifiably abstracts free movement of people, goods, money, information or assets between Provinces.

And furthermore provincial law prevails unless Parliament passes framework legislation in the designated areas discussed above. And in the event of a dispute which level of Government should have legislative competence, precedence shall be given to the provincial Government.

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If one turns back to the further clarity column, on page 13 the ANC, the NP, the DP and the PAC are to define the powers of override more clearly. Strong basis for complete consensus exists here.

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The parties with the exception of DP should spell out clearly that the Bill of Rights overrides all forms of legislation, although this is a Constitutional principle and I am certain in my mind that all the parties agree on that principle.

I am sorry I didn't read the next page on page 17 just to say that the PAC is also in favour of national overrides according to Constitutional principle 21 and that the ACDP suggest that there is an override of legislation where law does not comply with biblical principles.

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A fifth sub heading, should the legislative competencies of Provinces be fixed by the Constitution or should the Constitution allow for a evolutionary process.

Most parties agree that the provincial powers should evolved inter alia by making use of framework legislation. The IFP appears to favour a definitive prescription of the powers.

I would read through the contention column, I think this

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matter is addressed also in the first part of the document which brings us to point 6, the executive competence of the Provinces.

The agreement is that all parties agree that the Provinces shall have executive powers where they have legislative competencies.

The ANC, the NP, the IFP and PAC agree that even more executive competencies even in areas where no legislative competencies exists must be given to the Provinces.

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This is also a ground where I think there exist possibilities for complete consensus.

Then in the contention column, the ANC distinguishes between legislative and executive functions on all levels of Government, makes that basic distinction of practical executive functions in the administration must be assigned increasingly to elected and accountable provincial Governments as administrative capacity grows, while the

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weight of the legislative activity at the national level is to be concerned, especially with the setting of norms, standards and framework.

The NP proposes both legislative and executive competencies for Provinces in the areas indicated above. It believes that the Provinces must have executive competence, where they have legislative competence.

The IFP proposes the strengthening of provincial administrative executive powers through the provision of the following national matters, which is of course exclusive national matters to be administered by the Provinces, customs, exercise and tariffs, federal taxation, national statistical services, post and telecommunications.

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The DP believes that the national and provincial Government should have executive competence where they have legislative competence. And that it should include the power to perform functions for the other levels of

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Government on a agency or delegation basis.

Again I think all the parties are in agreement with that principle.

The PAC believes that the granting of exclusive executive powers to the Provinces will satisfy the requirements of Constitutional principle 19 which deals with the requirement that they must be exclusive and concurrent powers at all levels of Government - and of Provinces and the national Government.

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The next heading is the Senate. And here as well there is all the parties, apart from the PAC I think which is not in principle opposed to the Senate, but do not address the issue at this stage, support the idea of a Senate which represents the provincial interests.

The ANC believes in co-operative Governments and see the Senate as a body representing provincial interest in national

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law making which is the preferred method of representing provincial interests. The courts determine only the overrides.

And secondly the National Party strongly favours the introduction of the Senate as a body representing provincial interest.

The Inkata Freedom Parties submissions to TC2 show that it is in favour of a strong Senate to protect provincial interests. But it also states that the relations between levels of Government should not be institutionalised.

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And then lastly the DP states that the Senate shall have special powers to protect interest of the Provinces and promote co-operation and co-ordination between the national Government and the Provinces - and between the Provinces themselves.

Eight brings us to alternative mechanisms to the Senate

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which may also safeguard the Provinces.

The DP and PAC directly addresses this issue and the DP alludes the possibility of alternative mechanisms for safeguarding the Provinces.

The PAC alludes to mechanisms such as the financial and fiscal commission and the commission on provincial Government.

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The ACDP does not address this issue.

Sub heading 9 brings us to the views of how the local Government must be dealt with in the Constitution either as a provincial or a national functional area or as both.

All parties appear to support strong an independent democratically accountable local Government.

The NP states that the national and provincial levels should

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deal with local Government.

Whilst the IFP and DP states that it should be dealt with in provincial Constitutions and legislation.

The ANC does not address this issue.

The NP states that the national and provincial levels must be able to make laws on local Government, however, this should not endanger the fundamental status and character of local Government, because recognition by the supreme Constitution means that local Government cannot be regulated at will by the other rebels of Government.

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The IFP states that local Government should be entirely regulated by provincial Constitutions and legislation and furthermore that each provincial Constitution shall be entitled to make provisions for different categories of local Government. Local Government cannot be dealt with more specifically than in Chapter 10 of the present Constitution.

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The DP believes in the maximum devolution of power, substantial powers and functions should be allocated to local Government and should be dealt with primarily in provincial Constitutions and legislation.

The PAC states that local Government shall be as independent as possible and that provincial powers should merely be supervisory and co-ordinating powers.

Whilst the ACDP believes that the great majority of powers should reside at the local level.

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Which brings us to the principle of asymmetry. It would appear that most of the parties support the idea of at least some asymmetry being allowed for depending of course on your definition of asymmetry. The parties differ with regard to the degree in which and the way in which asymmetry should be allowed.

The ANC does not address this issue directly but it makes

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reference to the fact that some matters can be dealt with or delegated to the executive levels.

The NP proposes that asymmetry be promoted as follows, Provinces should be allowed to adopt their own Constitutions. I think most parties are in agreement with that, in any event. Provinces should be able to take functions according to their different needs and capabilities.

I think that most parties would support that in principle. Powers should be granted to the Provinces not by the executive but by an independent body. This is perhaps a contentious point. And then agencies and delegation should be provided for as well.

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I would say that most parties would agree with that. And framework legislation will aid provincial asymmetry. Most parties are in agreement as far as framework legislation is concerned.

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The IFP does not address the issue of asymmetry directly in their submissions.

And the DP, the PAC and the ACDP do not address this issue at all.

Which brings us to the eleventh sub heading in provincial Constitutions. Most parties agree that the Provinces must be able to draw up their Constitutions. The ANC, the NP, the IFP and the DP proposed provincial Constitutions. The ANC believes that the national Constitution must provide a framework for provincial Constitutions which could allow for variations in defined aspects.

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And the PAC and ACDP do not address this issue.

Lastly the subsidiarily principle, it is uncertain what the parties who support this principle exactly mean when they apply this principle in practise. And the parties who refer to this principle should explain it more clearly which are the

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functions which can be exercised best at the lowest level of Government. Thank you.

CHAIRPERSON:

Thank you Professor Basson, I think those of us who have not yet had an opportunity of getting tea or something else to drink, would welcome an opportunity to just quickly help yourselves to some tea outside. There was a misunderstanding about it earlier. So we'll adjourn this for five to seven minutes please. And then we'll ask Professor Basson to reply to any questions.

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MEETING ADJOURNS

ON RESUMPTION:

CHAIRPERSON:

... heard Professor Basson on the various headings and sub headings. At this stage anybody who would like to ask questions, you are very welcome to do so or make specific comment, yes Doctor Davis.

DR DAVIS:

It's just a very small question of clarity which I think is

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actually a typo, page 13, under the third column, under E. I says, it talks about the protection of the environment, the economic union or the capital labour market, I think it should be the economic union of the capitol labour market.

PROF BASSON: Thanks Doctor, thank you that's correct.

CHAIRPERSON: Anything else?

UNKNOWN: (inaudible) ...

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CHAIRPERSON: Oh! sorry Ms De Lille.

MS DE LILLE: Yes Chairperson I just seek clarity you know if I can remember correctly when we were drawing up the work programme right in the beginning, we also agreed that we going to have a special column called miscellaneous. And that the Senate was one of the issues that we were going to place in that column.

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Now I, I see already parties has addressed the issue of the Senate, we have not addressed it for that reason.

And then secondly Theme Committee 2 they are also dealing with the Senate, the composition, the powers and functions of the Senate and how are we going to link up with Theme Committee 2 since now parties has addressed the issue or are we still going to keep it under miscellaneous. I just seek clarity on that?

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Because we do have a view on the Senate.

CHAIRPERSON:

Yes, I - I hear what you saying in fact we had a similar question when we had to do the our submission for this report. But if you - if you think back you will remember that the framework which we received from the technical advisors, actually forced us to bring in the Senate here.

Although it was actually suppose to be as you say under miscellaneous but we in fact incorporated it or I saw it

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always is that it would be part of the inter Governmental relationship which is something which is coming up soon.

And that is why we ourselves, from the National Party have simply just touched on it simply because of the fact that the framework asked us to do so. But we also feel exactly the same way as you do.

Doctor Du Toit.

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DR DU TOIT:

Ja I could confirm the approach you giving now. What we actually did is when we submitted to Theme Committee 2, I also wrote that submission, so I just took relevant parts of one document and submitted it to Theme Committee 2 and other relevant parts I submitted in the drafts that I wrote for this Theme Committee.

So it was - it was - there was an inner consistency, but that's the whole point about - about the Senate now while you have structural elements in Theme Committee 2, you can't

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see it with other functional elements which we are addressing here.

And then I also want to confirm also for us, the submission on inter Governmental relations, because that's the subject which is at stake with the Senate in general and then also with the executive inter Governmental relations.

The subject is the same, inter Governmental relations. And we'll also address it again there. So I don't think we have to be very - in Afrikaans we call it the word - 'gatvas' - you know, just - just stick to the jackals holes of the functions of the committees.

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You know what I mean of course.

UNKNOWN:

(inaudible) ...

DR DU TOIT:

It's not an ugly word, it's not an ugly word, it is a very decent word it means like a jackals hole, not the other thing

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you thinking of man. You know what I mean, so we are also going to address it again from the wider perspective and the general philosophy. I think we must feel free to input where we will and then it will - the threads must come together in the Constitutional committee I think.

CHAIRPERSON: Professor Du Toit jy moet nou nie goed in ons gedagtes II wat nie daar - wat nie daar was nie hoor. Ms De Lille.

MS DE LILLE: Chairperson and then I will seek then - I mean agreement 10  
from this meeting that the PAC adds to this report just our principle view on the Senate and maybe deal directly with the technical advisors.

CHAIRPERSON: Please - please that would - I think that would solve the problem, do you all agree, thank you.

Any other input please? Nothing, don't tell me we finished our meeting.

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UNKNOWN: Please.

CHAIRPERSON: None of us would - would probably complain about that I am sure. If there are no other questions, no other information then I think that as this stage unless someone under general wants to perhaps raise any other subject? Nothing under general either, I can't believe it, I thought it was too good to be true, Mbasu.

MR MXENGE: (inaudible) ...

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UNKNOWN: I think that, can we accept that the report has been approved except of course for the fact that the PAC would still like to make available some information on the Senate and they will do that directly to Professor Basson or one of the other technical advisors.

But as far as the rest is concerned, can we ask the ANC are you happy with the report as it is?

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UNKNOWN: (inaudible) ...

CHAIRPERSON: The ANC is happy, we don't have the DP here, we've had no reaction from them, I am quite sure that they probably don't have a problem. Ms De Lille from the PAC.

MS DE LILLE: No - no I am happy with the report with our addition.

CHAIRPERSON: Okay, that's fine and as far as the ANC is concerned Mr Blaas do you want to say something.

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UNKNOWN: ANC ...

UNKNOWN: I would of asked a question.

UNKNOWN: The ANC and then you call him.

MR BLAAS: Ms Chair thank you very much, I just want to ask a question with reference to further clarity column, will we take any action or will this be stated in the report and submitted as

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such or will we clarify the issues that as indicated in the report to be more - to be clarified that more.

CHAIRPERSON:

I don't know it's difficult to say. I - I have an idea that because we do not have the ability really to negotiate amongst one another here, I don't think that's very much as we can do between the parties here.

If any of the other parties even at this stage feel that there is something which they - you know would like to give more clarity on, then perhaps we should give them 24 hours to come forward with that. But then it's clarity on their own positions specifically only. And not regarding anything that could affect the report as far as it would affect any other party.

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But I think that is in any case the spirit of the whole report.  
Doctor Du Toit.

DR DU TOIT:

Ja, (inaudible) ... and I haven't got it here but Madam

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Chair, the thing I think which all the parties must address and we've prepared something on that, I just can't lay my hand on it here, I haven't got the paper here.

Is the question of framework legislation. I think we must apply our minds still to - to the character and what we are seeing in that. Now we can also do it and I think the right place to do it, is in terms of our submissions on inter Governmental relations. I think the matter will be cleared there because framework, one of the main ways in which framework legislation has been used especially in Germany, was in the area of inter relatedness of a Government decision making processes.

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And so it has to do very much and it would not be wrong to address and the nature of framework legislation and have a discussion between us there as well when we come up with those reports.

Systematically perhaps it would have been better here, but

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I and we could of done it now, but I just haven't got my paper and it's so difficult I honestly don't understand it myself.

CHAIRPERSON:

Yes, I think that I agree with you, I think I've mentioned before also really that we really need a definition, someone's got to be brave enough to put down what they see as framework legislation. And then it would be for the other parties to say that, that's what they - they agree with that or that they differ from that. And to what extend they differ from it.

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And then either we somehow eradicate those differences in some way or another or we simply have to them name the other definitions differently. But I - because I have my own fear that - that the ANC's framework legislation definition would differ from that of the National Party for instance.

And similarly perhaps that of the PAC or whoever else. And yes I - it's just as well that, that was - that was

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mentioned, because framework legislation probably is the one thing that we I think have had different views on. We all talking about framework legislation, it seems as if we agree on it. But until we know what we talking about, we not going to be able to really find out whether we do agree or not.

And that's probably the very main concept that needs to be clarified. Shall we put a date to that, shall we - because I think really we should now try to get this report of ours into the Constitutional committee.

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DR DU TOIT: (inaudible) ...

CHAIRPERSON: Wil jy dit gou gaan haal?

DR DU TOIT: (inaudible) ...

CHAIRPERSON: Well shall we try in the Core Committee meeting and see whether we can sort it out there if not, then we bring it back

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next Monday to the Theme Committee.

DR DU TOIT: Because we do have (inaudible) ... but I don't want to rush it now.

CHAIRPERSON: I am open for suggestions.

UNKNOWN: Just as a point of clarity. Does this now mean that we have to talk about framework legislation and make some stands for this report to be included in this report still? What time frame do we have, if not, is the suggestion by Mr Du Toit that it can come with the second submission that is part of - of regulation ...

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DR DU TOIT: Well I am suggesting I think that's the right way now to go, sorry Madam Chair. Is that we - the idea of framework legislation is now in this paper. But it's ill defined and it's a bit 'wollerrig' it's a bit woolly at this stage, the whole concept.

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But in the context of inter Governmental relations and our submissions there, we can give it a more precise role and function and talk about that.

CHAIRPERSON:

I am afraid that I disagree, from a National Party point of view I would have a problem with that. Because this report will be done by the CC before the one on framework legislation. It's not going to be done at the same time, and I think the - the crucial things that have to be decided on or negotiated about, are already in this report.

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And if we go in with this report it is accepted that we all use the word framework, thinking of the same thing, and we're not. So I don't think that we can actually leave it until we do the inter Governmental relationships. I think that we would have to clear it in this reports still, that's my feeling. Professor.

PROF BASSON:

Thank you Madam Chair, I would say that because there is some contention with the word framework legislation, I

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think it's also spelled out in the contention column, that rather we leave it as it is and perhaps just make clear in the contention column that there is still contention about the concept of framework legislation and take it to the CC where they can discuss it then and see what they come up with.

Because I think if you deal with it in the second sort of leg, it might be better with the inter Governmental relationships and sort of dealing with it here so that we can move ahead, that's what I am thinking about.

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DR DU TOIT:

Could I - could I just explain the point why I think it is the right way if you may allow me Madam Chair. Framework legislation for example has been used as a mechanism of getting joined decision making in the agricultural field in Germany. Where on account of national problems with the EEC or the EC in Germany with agricultural production and macro economic movements.

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It was not possible to have an exclusive decision making power in the lender of Provinces of Germany. So they decided they will have a joint decision making process involved say on agrarian policy making.

And the method they used for making that joined decision making, by getting it a joined effort input on the data necessary to make decisions, they did it along the mechanism which they used, were framework legislation for example.

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So the need for that, you can't define for -it's very difficult to define framework legislation in abstractive, because it's not only a legal viewpoint which is necessary to define it, but you also need economic administrative and bureaucratic perspectives to decide on what type of nature of framework legislation do you really need.

In short, I think that's why I would support and with a great perception that there is a problem in that we sent in

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something which we are not sure what it is about at this stage. But I think we must first talk about inter Governmental decision making processes and then we can - then we can rather define what we want on it.

We haven't got a real ANC policy position on framework legislation, we want it, we've only decided that, but whether it will be this or that fine refinement of it, we haven't decided on that yet.

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CHAIRPERSON:

Thank you I am afraid you have not convinced me, I don't know, I haven't spoken to my colleagues, but my own personal feeling is that framework legislation to us is coupled to our second list. Which to us as far as Schedule 6 is concerned which - in other words the first list that we talking about first and second list.

Then the Schedule 6 are really concurrent powers to a great extend, but with our second list where we use framework legislation, the idea is that the framework legislation will be

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just such that overall there will - the end result will more or less be the same thing. But that the detail is done all by the Provinces, which actually is to a certain extent more exclusive than Schedule 6, which is totally concurrent.

And to us that's a very important concept and it's very much therefor related to framework legislation or the word framework legislation as we see it, which is something which is really very and in English I am afraid I don't really have the words to describe it, but the idea is that it is really only one piece of legislation which puts down - let's for instance say I am just thinking and trying to find an example.

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Like say in education, it's a question of saying that all children after year 12, to be able to go to university will have to meet the standards set by the central certification board. You know that kind of thing.

But the rest of how the children get to that stage, that will be in our second list and that will be totally the

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responsibility of -of the Province as far as education are those and to a certain extend exclusive powers.

And unless we do the inter Governmental relationship report together with this one and only sent the two at the same time to the Constitutional committee, it's not possible as far as the National Party is concerned to let it go in like this whilst we still do not know what we talking about when we talk about framework legislation.

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And now that the ANC says they don't even know yet what they mean by - by framework legislation, it seems like - it seems like and I am not saying it in a nasty way at all. That we still need to do some thinking on this and perhaps we should just hold back on this so that we get clarity on this between at least these two parties who are talking about the framework legislation.

We don't - the IFP also mentions it, but they - they not here to speak for themselves.

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That's my own feeling. I don't know how - how my own people feel about it.

UNKNOWN: Madam Chair, just to find out, what is our time frame so that we can decide maybe on a procedure. What time do we have to have this report finally submitted.

CHAIRPERSON: It should have been in already.

UNKNOWN: It should have been in already, so do we have ten days or do we have five? 10

CHAIRPERSON: Well I would suggest that you know really finally by next Monday would be the latest that we can (inaudible) ...

UNKNOWN: Ja if that is so, Mr Du Toit can we then - you've got a document already prepared widely I'd rather say, so that we can have that report. I don't know if we need a discussion to get us narrower in our thinking or are we just going to log this under contention. 20



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This is the ANC standpoint, the National Parties standpoint, the PAC standpoint and the DP standpoint. Because the fact is now to have it in by Monday at the latest, I don't think we can have a wide discussion there won't be time for that, just procedural ...

CHAIRPERSON: No I mean here in other words in this meeting on Monday.

UNKNOWN: Ja - ja okay.

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CHAIRPERSON: Would be the last time that we should meet, Mr Manie.

MR MANIE: Chairperson I am not quite sure where we going now. Because it seems as if we've agreed that there is a need for framework legislation. People might have different views as to how that will in fact be implemented. But then there are so many other areas also where we've reached very limited agreement but the details of how it will actually work, is unclear.

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Now that must be processed through the sausage machine if one can put it very crudely to find out who and where and how it will be further clarified.

The fact that we've agreed that there is a need for framework legislation and all parties are agreed to that, is that not sufficient of a basis for us to proceed from instead of us holding this process up and trying to clarify one area whereas there are many other areas in the report that also requires further discussion and explanation. Because some parties have not spoken a lot or made very extensive submissions on some of the areas, but that doesn't mean that they not going to be making very extensive submissions later on.

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So why are we pulling out one particular area, I am a bit unclear why we focusing so hard on this one area. I can see that it's a area that needs to be clarified. But in my own view and I don't want to disagree with my comrade here, or anybody else.

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Maybe we've reached a position where we can actually proceed and allow the process to sort out how this thing will be managed from here on. So in short I am suggesting that we should perhaps consider adopting it is with the point taken of the PAC wanting to make it's additions to the Senate.

CHAIRPERSON:

Yes well can I just say that I - your comparison doesn't really ride for me very well. Because in a case where a party has not given specific details on something, that's a different matter. But where you talking from two parties on using the same word, but not having the same meaning.

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The only thing that is going to happen is that in the CC when we there start differing, we will be told to go back and sort out that problem, because the whole idea is that we get, when we get to the CC, that everything is quite clear as to what the meanings are of - especially the various concepts.

UNKNOWN:

Madam Chair can I suggest, - can I suggest that we go back

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from here. Mr Du Toit we concentrate our submission on clarity, as short as possible, paragraph. We can always later put - add the detail, the different parties that we submit it to our Secretariats so that our technical advisors get that, so that they can put it in here under contention shortly. And then we discuss it on Monday morning and if there is a little addition or something else that we add - that we finalise the report after Monday's meeting.

DR DU TOIT;

Madam Chair if I may, the point is the way I listen to you, I think when you talk about framework legislation and you not talking about framework legislation but just normally enabling legislation. So perhaps it will elucidate you very much if you listen to me when I give this address.

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I just need five minutes to introduce the concepts around this - unfortunately I haven't got my notes with me. It's in my office I hope so, if it's not at my home. But I think it's in my office, I could get it and could present it anytime. But it is technically and I don't think the solution is to give

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other submissions again now.

I think it must just be - just a thing that has to be cleared up and we can do that in the context of inter Governmental relations.

CHAIRPERSON: Yes sir.

UNKNOWN: Chairperson I am not quite sure if I am raising a point of order or I seek clarity from the house.

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CHAIRPERSON: Well let's hear.

UNKNOWN: But I thought we had actually adopted this report and if we had adopted the report, in the absence of (inaudible) ... and the only thing that we have mentioned is the submissions which still has to come from the PAC. And I don't understand why we should be opening up discussions on the issues that we have actually adopted.

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CHAIRPERSON:

Yes I hear what you are saying, in fact what has happened here is that the ANC accepted it, the PAC accepted it, but that was, then we got to the National Party it wasn't - that was when the discussion arose around framework legislation. So we haven't really at this stage adopted the report as yet. And that's where the problem has arisen.

Can we - can we perhaps at this stage Ms De Lille I see you, I am going to give you an opportunity to speak right now. Should we at this stage perhaps ask that between seeing that the two parties who are really here, and Professor Du Toit has now in fact almost admitted that he can see that there is a difference between what the ANC sees in framework legislation and what the National Party sees. He has actually confirmed that.

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Shouldn't between the ANC and ourselves, that's the National Party shouldn't we during this week try to get together, see who - let's put our a small submission together on just what we see as framework legislation and we ask

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that the ANC do the same. And let's see where the differences lie.

DR DU TOIT: (inaudible) ...

CHAIRPERSON: Pardon?

DR DU TOIT: I simply haven't got time for that as well. I can address you on this matter next week Monday (inaudible) ... in fact we have spent now so much time, we could have been finished long ago.

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CHAIRPERSON: I didn't know that you asked for a five minute break now, did you - I thought you said on Wednesday - on Monday. Do you want to do it now.

DR DU TOIT: Madam Chair I am going to propose I think at this stage because we just now carrying on with this thing. And the proposal is this, that the matter of framework legislation, that the matter of framework legislation, the clearing up of

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that, be addressed by the parties in their submissions on inter Governmental relations. That's my proposal.

CHAIRPERSON: Is there anyone who would like to second that, no-one.

UNKNOWN: I am actually seconding that.

CHAIRPERSON: Are you seconding it, sorry I thought you were onto ...

MS DE LILLE: Can I also speak on the point - can I also speak on the point Chairperson. I think you know that if you look at not only at framework legislation there is also words like asymmetry and subsidiarily and all of that, which is also placed in the contentious column. 10

And I agree with the speakers who said that look it will still have to be refined, but it's going to the CC and parties will have another opportunity there to further explain what they mean. But then just my understanding of framework legislation and that's why we are supporting it, is that the 20



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central Government will set the frameworks to ensure that Provinces conform with national standards. And they just fill in the detail.

Now if you look what the National Party is referring to, it's like Professor Du Toit says it looks more like enabling legislation. And - but we all - all parties here accepted the principle of framework legislation and therefor I think we should just let it go like that.

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And when the point gets to the CC parties will have another opportunity to - to restate their positions.

CHAIRPERSON:

Ms De Lille yes, but can you now - can you tell me what are the principles of framework legislation, you said that we ...

DR DU TOIT:

Madam Chair on a point of order, we have a motion, my seconded has talked in favour of the motion, could we proceed.

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CHAIRPERSON: Fine if you insist on that, can I then - we've had a proposal, we've had a seconder, can I just please then have an opportunity to have discuss it with my - with my party if you can give me two minutes.

We adjourn for two minutes.

MEETING ADJOURNS

ON RESUMPTION:

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CHAIRPERSON: Just get everybody be seated. Okay the suggestion is that we accept the report as it is here, but that we actually flag the - this specific area around framework legislation. And that during this week those parties involved will try to give clarity on how they see framework legislation.

But for the rest of it, we accept this document so that it can now be sent on to the - to the CC.

Do we have an unanimous vote on that?

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UNKNOWN: Yes.

CHAIRPERSON: Mr Andrew.

MR ANDREW: Sorry I am not going to delay you, I just like - I've explained to privately, I didn't actually have a notice of the meeting, and -so I went to my office at quarter to nine this morning there is no notice or anything so I assumed there was only the Core Group. So I'd just like to abstain, because (inaudible) ...

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CHAIRPERSON: Okay.

UNKNOWN: Madam Chair that means as Professor Basson said that we going to add only here on the clarities (inaudible) ...

CHAIRPERSON: That's right yes, just under clarity we'll give more or less just the viewpoint of the two parties on what framework legislation is.

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Thank you, can I - under general therefor no other - oh!  
Mbasa is still waiting patiently.

MR MXENGE:

May - may I raise this that when we make the submission to the CC, we say that this is a submission which has been prepared from - this is a report which has been prepared from submissions from (inaudible) ... parties. And submissions from individuals and organisations (inaudible) ... follow.

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UNKNOWN:

Yes.

MR MXENGE:

Could - thank you.

CHAIRPERSON:

Thank you, fine we would say - like to say thank you, enjoy the rest of your morning. We hope this is a glorious a day as it was yesterday outside. And can we just ask that members of the Core Group remain behind for a meeting to follow.

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[ END ]

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**THEME COMMITTEE 3**

**29 MAY 1995**

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