

2/4/2/1/10/25

THEME COMMITTEE	2
DATE OF MEETING	11/09/95
NUMBER OF TAPES	2
CONTENT OF ENVELOPE	
1) PRINT-OUT	✓
2) NOTES	✓
3) TAPES	✓
4) COMPUTER DISK	✓

**INAUDIBLE COMMENTS ON THEME COMMITTEE 2 DISCUSSION DATED
11 SEPTEMBER 1995**

COUNTER NO.

(Tape 1)

028	Inaudible comment.
044	? party.
068	James ? and I
141 - 143	? part of 2(1)
192	? sit down
229	ANC's document?..... (not audible)
278	should be atthe ? body
304	Chairman calls Ackerman, but Eglin replies
305	? the agreement is that
364	and that day ? obviously
494	? corectly states
695	They?..... the necessary
702	what's ? over the

(Tape 2)

034	? date or just
115	Are (inaudible comment)
116	Inaudible comments
126	the other parties ? in the
133	otherwise ? In the Constitution
152	under agreement ?

168 should just ? with

182 In anybody's ?

188 Inaudible comment from floor

219 - 225 Tape goes blank

237 because ? under contention

292 So ? when the vacancy

295 Maar anyway ek dink ons almal praat van dieselfde ding op die einde van die dag.

319 Meneer Rabie, praat bietjie sagter man, asseblief.

323 between ? and ? for the

408 I think the DP ?

418 Nothing over ?

426 Inaudible comment from floor

435 It's a bit late, ?

444 absence of ?

460 And the ? Committee

461 and the ? Committee

483 but I ? that we

TRANSCRIPTION OF THE ADDRESS BY THEME COMMITTEE 2

HELD ON 11 SEPTEMBER 1995

(Tape 1)

Chairperson: Everybody's here, well and happy, so you're all most welcome. We have one agenda item today and that's the question of the Senate. You'll remember we've been postponing this from some time now. We've waiting for the National Party to give its further submission. They've done so at last. We congratulate them. And the ANC, at least. So both of them have now submitted further submissions on the Senate and the technical advisors have now come up with a new systematic report which we have all received this morning and the reason why we're staring at eleven o'clock is basically because we wanted to give the political parties a chance to go through the report this morning and enable them to take this matter forward. I was just chatting with my friend, Jack Rabie here, that we need not take four hours deliberating on this issue. They will be accepting our proposal. There will be no problem. OK, I'm just joking. Can we then straight away propose that ... I don't think there's any need to be saying parties should come out with their positions. I think we've done so in the past. I think what we need to do is just to go through the report which has been drafted by the technical advisors and let them take us through that, and we could then allow questions of clarity, a bit of discussion on this issue and then propose a way forward. Would we all agreed on that one or you would like to approach it differently? Are we agreed? OK, it seems we are agreed. Who is leading us. Professor van Wyk, you're leading us? Thank you very much. The stage is yours. Oh, I'm sorry we did not go through the Minutes. They are not on the agenda. Are they here? Alright. Can we quickly go through the Minutes before I give over Professor van Wyk. Your Minutes are on a loose sheet like that. I'm not at page 2, I'm still at page 1. Any problem with page 1? Agreed. Page 2. Mr Hendrickse.

Hendrickse: Inaudible comment.

Chairperson: Can you correct that. Page 3. Mr Hendrickse. You're happy with that. Page 4 and page 5... and page 6, page 7. Somebody to move. Seconded. Fine, the Minutes are adopted as a true reflection of the records. Professor van Wyk. Mr Eglin.

Eglin: Professor van Wyk launches into the detail. Can I just make a comment and maybe there'll be an overall explanation if I look at this final document before us especially the underlining, I would say it's an ANC document. In that it just is ANC and it's all underlined. Nobody else is underlined. Once the National Party is underlined and the only reference to ? party like the Democratic Party is it says that one's structure is to liaise with... Standing Committees to liaise. But if I look at it with the underlining as it is, it is basically ... Pardon. This one here. If we just look at it page after page the ANC says this, the ANC is this, the ANC says this. Once the National Party says and nowhere are the other parties referred to. I just you know.. Perhaps because they've added

things because of latest ANC representations, it's been underlined. But what is this? Is this giving an even weight to all the representations or is this basically to try to fill us in on what the ANC thinks. That's my reaction to it so far.

Chairperson: Professor van Wyk.

Van Wyk: Mr Chairman, let me start off with an apology. If you compare the document that served before this Committee last Monday the 4th September and the document that serves before you today, you will discover certain discrepancies. The explanation for that is that when I updated this report and I'm responsible for the underlines and I shall give an explanation now. When I updated the report I discovered during the night when I was doing this, that for some reason I couldn't access the computer file I had with this latest version of the report. So I had to work from a report which was a penultimate draft. In other words I couldn't guarantee for myself or to this Committee that the un-underlined parts of the report were exactly the same as this document of the 4th, last Monday. But it was urgent. The document had to come out. So I nevertheless finished and this morning James ? and I sat and we compared the documents, and I shall as I go through the document draw your attention to a few places where there should be insertions in this, or at least changes to the document that serves before you today. But I accept responsibility for the awkward state of events and I apologise to the Committee that it's not a neat comprehensive document. I shall try to explain as clearly as possible what needs to be done to this document to make it a composite document, composite in the sense that the new submissions to which you have referred, one by the ANC and one by the National Party, had to be taken into account. And the way I understood the instruction it was to update the report using those submissions. I was not aware of any new party submissions. That's the one point. The other point the underlines are purely to indicate insertions. In other words what is new in the report. In the final report obviously the underlining must disappear. I do not think that if a member of the Committee has the impression that it's an ANC document, the fact that one removes the underlining will remove the impression that it's an ANC document. But all I've done was to insert what appeared to me in terms of the old frame work were new aspects or changed aspects introduced by the ANC and the National Party's latest submissions. That's just be way of introduction. I don't know whether anybody would like to comment at this stage?

Chairperson: Could we just see, is there any party which has given a further submission maybe that the CA is not aware of, except the National Party and the ANC? Not. OK, fine. I just wanted to make sure that we're all carried on board. Mr Rabie.

Rabie: Can I just rectify something. This submission that we've made was done on request of the CC with regard to provincial and other

competencies. But it's also good that it landed here. We didn't submit it particular for the Theme Committee. It's very much the same as our first submission.

Chairperson: OK, carry on Prof.

Van Wyk: Thank you Mr Chairman. I'll use the documents serving before you today as the basis. You'll see that in line with the way in which the reports go to the CC these days, there's not a summary of party submissions in the second part of the report, but the actual party submissions themselves for persons to consult and there's no draft as you will also see. Coming to the table then, Terminology. Underlined there the point of contention is the name at this stage. It would appear to me previously there was agreement that it would be a Senate. The ANC now proposes that it should be called a Council of Provinces or some other name, not necessarily the Senate. So that's as far as Terminology is concerned. Is that in order Mr Chairman? Second block, Nature and Purpose of the Senate, and it's been then inserted by a slash or the COP as a catch phrase for another name or any other name and this approach has been followed more or less consistently I hope through the whole document Senate slash COP. The Primary Function that remains the same as it was in previous reports. Second point remains essentially the same except for the bit in brackets there subject to a delay alternative proposed by the ANC and this is that parliamentary laws affecting provincial interests can only be passed with the concurrence of the Senate. And there's a reference "to powers in respect of legislation" the number 7 there is wrong, it should be number 6 below not number 7 below. And then there should also be under agreement a third point which comes over from the latest version of the report, the one that served before you last week, and that is that in respect of other parliamentary legislation, the Senate will have a power of review. But the question is whether in the light of the ANC's position where they refer to the Senate or the COP should comment on other legislation whether that includes the word "review". In other words whether there's still agreement on in respect of other parliamentary legislation the Senate will have a power of review. So if you can just get clarity on that. It's not on the document but it's on the old document. There's this point on the power of review.

Eglin: ..?.. part of 2(I) whether the Senate/COP should be a fully fledged Second Chamber of the Legislature. The last deals with the ANC's position and says most other parties see the Senate as a full Second Chamber. I don't think ... that's in a sense only partly accurate. I mean the DP is very clear that that in fact is primary a house to represent the interest of the provinces. It's secondary function is to merely review legislation. But merely just to say we consider it as an ordinary Second Chamber, I don't think accurately affects the position. And our submission is quite clear, we see it there as special responsibility in representing the

interest of the provinces in Parliament. So I just do think that instead of lumping all the parties, most other parties. There should be a definition of what the attitude of the parties is.

Van Wyk:

May I ask through you Mr Chairman, Mr Eglin whether the Democratic Party sees the Senate as a Second Chamber of Parliament. So I think that's the issue here. Whether it's a Second Chamber of Parliament. That's the way I understand the ANC's proposal, it's no longer a Second Chamber of Parliament, it's an organ at the national level which represents interest of the province but it's not a Second Chamber of Parliament. If that most other parties see the Senate as a full Second Chamber of Parliament, it's misleading in that sense then I think we would have to rework it. But the question is does the DP see the Senate as a Second Chamber of Parliament?

Eglin:

You use the words "the full Second Chamber", all I think is you should state what the parties attitudes are. I don't think it does justice even to the other parties on the right of me merely to say they all see it as a full Second Chamber. They actually see it with a very special function. But I think that's... You know one of the reasons is that while I don't want to be sucked into the ANC orbit, it does create an area of common ground that in fact we actually see it as primary interest representing the interest of provinces. And from then you can then debate as to how you let it evolve.

Chairperson:

Pahad.

Pahad:

I'm not sure what Mr Eglin is asking for, but there should be no problem if he thinks that their party's position is not fully clear, obviously it should be clarified. But I thought if you go back to (I) under Agreement, it says the primary function of the Senate/COP is to represent provinces and provincial interest and with regard to representation of interest, that's already clear. I thought therefore the other one had just to do with the question about whether or not the Senate/COP is a Second Chamber of Parliament as the Democratic Party and the National Party are proposing. The PAC's have a slightly different position with regard to this issue and where the ANC has a completely different position, and if you take out "full" I don't know.... But I mean I think Professor van Wyk's question is quite accurate. Do you or don't you want this Second Chamber to be a Second Chamber of Parliament? And if you do you know, and if it's not sufficiently clear from the point of view of the Democratic Party, then there should be no problem to ask the technical experts to clarify that position.

Chairperson:

Is Mr Eglin happy with that. OK, fine.

?:

But Mr Chairman, couldn't the problem be resolved if we put in under the comment... We've got the ANC, the PAC, the FF, but I don't see anywhere where the DP's.... I wonder if the DP's view

could not be incorporated under comment. And that should help, Mr Eglin?

Eglin: ? sit down and we can just draft a single sentence of what the DP's attitude is? It shouldn't be a problem.

Chairperson: OK. Thank you very much. Professor van Wyk, I've got to thank you. I understand you got this report very late actually to draft it. Somebody was supposed to draft it and was not available for other reasons and you had to take up this job very very late. So, for some of the inaccuracies which may appear, we'll give you an apology on that. You did this work on the latest minute. Thank you very much for cooperating with the CA Administration. Mr Ackerman.

Ackerman: Mr Chairman I just want to get clarity. What we're doing now, we're just reviewing the report and see if everything is in there. We are not discussing now the parties' views. When will that be discussed? At the CC or at the ...

Chairperson: Let me be guided by you. Whether you want to discuss it here or you want to forward it to the CC. I will be guided by you. The Chair cannot take a decision on your behalf. Dr Pahad.

Pahad: Chairperson, I think what should happen is that what we've got to do is what we're doing now is to make sure that the parties' positions are accurately reflected. That's what Mr Eglin was just talking about and then the discussions will then take place at the Constitutional Committee. So this report should go to the Constitutional Committee and we should hopefully try to adopt it today so that it can get to them by tomorrow or Thursday and then the Constitutional Committee can take it a step further. How the Constitutional Committee then wishes to discuss it, remains up to the Constitutional Committee. But we should not discuss, in my view, the substance of the parties' submissions. We should just make sure that the parties' submissions are accurately reflected in this scheme.

?: Mr Chairman, in that view we don't have to take long to do this because we've already read through the document and we're actually wasting time to see if parties agree and doesn't agree.

Chairperson: Well, I pointed out earlier that if with your cooperation really we don't have to take a lot of time, but I think let's allow the Professor just to take us through. Every party would be in a position to check whether they've been reflected correctly unless you want to propose another procedure?

?: No, the procedure is OK. In fact the matter has been discussed by this Theme Committee already. This is just an addition to what has been dealt with there, and if necessary then we can comment on what the ANC's document proposes.

- Chairperson: Mr Beyers.
- Beyers: I just want to correct my colleague that the ANC's document?.....
- Chairperson: It has been discussed. You free to raise questions and discussion Mr Beyers. If the previous had nothing. OK, Mr Emlin.
- Emlin: I point of clarification. I think the ANC might be able to help with this actively reflects because I'm trying to understand the concept of not being a fully fledged Upper House which is the input. The ANC does not see the Senate as an Upper House in the traditional sense, maybe in a different sense. At national level its function will mainly resolve around the legislation affecting provinces. Is the ANC saying it is a House which is involved in legislation for the provinces together with the Nationalist Assembly, but it is not involved in other legislation. In other words it doesn't involve any other legislation or any other financial legislation. So to what extent is it not an Upper House? I just want to know because it says that it's not considered to be an Upper House. I just want to know to what extent is it not an Upper House.
- Chairperson: Anybody from the ANC to react on that? OK let's reserve that for later. Can you answer that?
- Pahad: I think it's quite clear if you go through the totality of the document, Colin, you will find also in the scheme where the ANC's position with regard to the question you're posing is put. So I think it would be clear for you as you go on with the document. If it's not clear for you at the very end, we might want to return to it. But I think as you go on, you will find that it answers your particular query.
- Emlin: All the inputs are also annexures, so one can cross-reference the detail. I'm just worried about a document going to the next stage in which even somebody like myself sitting here listening to the ANC would like some more clarity as to whether exactly what that means. What I think Dr Pahad is saying that's a summary of what might appear in the detailed submission of the ANC and you should look there.
- Pahad: If you have read this document, I take it you have, then the answer to your question is in this scheme. Now it seems to me that you can't keep on discussing issues which come later and I'm suggesting that if you wait you'll find that the answer is there. If it isn't there then let's come back to it at the end.
- Chairperson: Fine, let's carry on. Prof.
- Van Wyk: Mr Chairman, under block 2 the contentious points there were three new areas of contention, the way we saw it. That is the one that has just been discussed, whether the Senate is a fully fledged Second Chamber in other words whether it is part of Parliament.

Second, the powers of the Senate in respect of National Legislation, that is not matters dealing with the provinces, ordinary Bills, financial Bills for instance. Third one we have the Senate should be at the ? body or a cessionary one like the National Assembly meaning it does not follow the pattern of the National Assembly. It starts its life on a given day and it just goes, determine its own.. when it wants to sit, where it wants to sit, in other words not the typical part of parliamentary pattern. That would appear to me from the latest submission of the ANC to have become contentious points. The fourth one on page 3 was the one that was in the original report.

Chairperson: Item Block 2, anything? Fine, carry on Prof.

Van Wyk: I just had to say in the comment column there will have to be a re-numbering. The numbering of the comments went a bit funny but we'll re-number. The point 3, Composition and Size. There was an insertion in that first part under Composition and Size which was not underlined and that is the 4 to 8 members per province, that comes from the ANC submission. There used to be until now agreement that there should be an equal number of senators per province but as a result of the fact as you see in comment 1, the ANC now submits or proposes that there may be limited additional representation to larger provinces that obviously equal representation for provinces cannot be an area of agreement and the number of senators per province is then an area of contention.

Chairperson: Any questions. Mr Ackerman.

Eglin: ? the agreement is that the view of the other parties isn't here now. In their submission the ANC proposes. The CPG says something and that's that. The DP proposed seven. I think the Nats proposed something. So I mean I can't I just say the fact that once agreement has not been reached, then I think you've got to identify the disagreements.

Ackerman: I want to agree with Mr Eglin that only the ANC's situation or stand is viewed here and I think under comment the other parties' views should also be stated. That makes it easier for the CC to know what's going on, but I want to ask a question to the ANC. Why do they, what is the reason behind the fact that they want for bigger provinces more senators or more CPO's or whatever you call it?

Chairperson: There will be a reply soon. Professor van Wyk, is there any problem if you incorporate other parties' comments there?

Van Wyk: Mr Chairman, not at all. Once again an apology for what seems to be an injustice to other parties at the moment. As you've said this thing was done in a rush in order to accommodate the latest things. It has to be tied up in the final version especially as it has been pointed out now when new areas and disagreement has arisen, the other parties' viewpoints will be listed under their

names. I apologise for that.

Chairperson: Thank you Prof.

?: Mr Chairman, I just wonder. The CC is on Friday and it's now Monday. If we can get this in the week just to go through it again, I don't think we'll need to reconvene a meeting to do it, but if we can just check on it before the CC take place, we'll be thankful.

Chairperson: I was just consulting with the Administration. They will do that. They don't have any problem with that. Will you be able to do it by tomorrow morning Prof. I understand that they're detaining you here the whole day.

Van Wyk: Well, they've locked me up in Regis House once, but it will be ready.

Chairperson: ANC, there was a question asked by Senator Ackerman.

Pahad: Let me just make a general point first of all so that we don't keep on returning to it, please. Both for Mr Eglin as well as the National Party, I think we have agreed that Professor van Wyk and them will redo this document to take into account what the other parties' positions are. So not on every time when we come to a particular block, we are going to say our parties' positions are not present. So that it's clear. It's clear also that the parties should then be able to see the document before it goes to the CC with regard to just looking as to whether or not their particular submissions have been accurately represented here, not to discuss the substance, not to deal with the substance. So if we can agree on that, then I think we'll move faster. So that not on every block, we raise the same issue. Let me just say insofar as the ANC is concerned the question about equality of representation in the Senate arose as a consequence of what happened in Kempton Park when we were negotiating certain things when we were all not that very clear in the sense about what the Second House or the Upper Chamber the task that it is to perform and that day? obviously that the best way forward is to have an equality of representation. At this present moment the ANC's position is that we need to look at this thing again because quite clearly some of the larger provinces if you take a province like Gauteng, the budget of Gauteng is much larger than other provinces. It represents far greater numbers of people if you compare for example to the Northern Cape, and therefore the kind of responsibilities that would devolve on some of those Provincial Legislatures is greater in that sense, and therefore we thought that what we should discuss as a negotiating position is to say should we not look at this question and see whether or not you want weighted representation in the Senate. That's the way we want to approach it. We're not saying that you should definitely have that, but we need to discuss it at the level of the Constitutional Committee and wherever as negotiations are going to take place as to whether the original position of equality

of representation in the Senate is the one that we should follow. Lastly let me say, I don't think we should follow positions merely because we had agreed to certain things in Kempton Park in terms of composition. Similarly it will apply when you come to the National Assembly. Already parties are suggesting that the National Assembly number should be reduced and that's the reason. So we think there should be a weighted representation because different provinces will have... the weight of their responsibilities will be far greater depending on the size of the population, depending on departure, depending on other issues.

Chairperson: Anything under 3. If nothing, 4.

Van Wyk: Everything that is said, at least from this desk from now on is subject to the undertaking that all the other parties' submissions will be fine-combed and anything will be worked into the final drafting into the comment column. Point 4 then, Appointment Election in the New Report. It should be "Appointment Nomination" but the ANC also now uses a new word that is "delegation" that the members of this new body should be delegated by Provincial Legislatures. Whether it's appointed or election is not clear. That's why delegation should also go in under 4, and then you find under contention the two points remain the same just with a slight change of wording and in the comment column an explanation why the word "delegated" is also inserted now.

Chairperson: Mr Ackerman.

Ackerman: Mr Chairman, may I just ask Dr Pahad. I want Dr Pahad to work a little bit today. Does their proposal mean that this should be the Executive of the Provincial Legislature, that delegation doesn't ..OK. And then the other question I want to ask is that you've a full time basis serving there and half is not full time, but they consult with the Provincial Legislatures too to see if this was practical seeing the fact that the Provincial Legislatures has also got Standing Committees that do have meetings between meetings of the Provincial Legislatures as well. And will this be practical to be implemented?

Chairperson: Dr Pahad.

Pahad: Put your question to the ANC please. Obviously the ANC is in power in seven provinces and let me just make a general comment on it. These proposals arose at our policy conference at which all of our provinces were represented. The latest document that was submitted to you was submitted to you after discussion in our National Executive Committee at which all our provinces are represented including all our premiers. So quite clearly what is before you is one that we've discussed with our provincial people, so there's no question that the issue was discussed. The question about the practicalities of all proposals put forward here including

the proposals by the National Party and the Democratic Party will have to be tested and discussed in negotiations to see how do they work out in the end and in practice. So I mean I think that if we start putting a practical test to the thing, we won't get very far today, but when you're actually carrying on with the negotiations, obviously we would have to look at each of the proposals that are before us and see how do they work out in practice, and of course in the end whatever agreement is made between the parties concerned. And let me add here that there would have to be agreement between the parties concerned with regard to this issue. It cannot be that one party's point of view will prevail. And so in terms of the discussions that's one of the issues that we would have to discuss but I'm saying that that practical test would have to be applied to every party's proposal on this question.

Chairperson: Any other question on the issue? None. No 5.

Van Wyk: No 5 deals with Recall, Mr Chairman, and you will see that there's just an insertion that the ANC reconfirmed their position as regards Recall by Provincial Legislations, but the whole matter is to be revisited.

Chairperson: Peter.

Peter: Just a question to the National Party. Why are they against the principle of Recall?

Chairperson: Ackerman.

Ackerman: Besides 43(b) in practical, the fact that we say that the senators should be indirectly elected from by the Provincial Legislators, so we don't think they should be recalled.

?: It must have an influence on the democratic process on the independence of a senator etc and it has to do with the whole question of 43(b). We say that 43(b) should be removed from the Final Constitution for different democratic principles like I for instance debated in the Constitutional Assembly, and for the very same reason we say that also applies to the principle of Recall. If you have Recall you will have no independent legislatures.

?: So what you're saying is once the senator or in terms of the existing situation, once you've appointed the senator that's it, he's there for the full term. You can't recall him as the person you've nominated?

Chairperson: Mr Eglin.

Eglin: ? correctly states in the discuss we said we were not hostile to the concept, but equally we're not saying we calling for recall until we see somebody coming forward with a practical way of dealing with it. Especially if you've got proportional representation and party

x and party y has got representatives. Whose going to do the recall. So it's one thing to say let's have a recall. I think it's a nice kind of phrase, it's not so easy to see it in practice, so we reserve our position until we see in fact what is the constitutional provision for recall.

Chairperson: If no further question, No 6.

Van Wyk: Mr Chairman, in respect of 6 we need the guidance of the Committee. What we've done was to separate the functions and powers of the Senate/COP into two. Powers and functions in respect of legislation and then a new No 7, Powers or other powers and functions. In the old report there were all lumped together. Looking at all the submissions it would appear that there is a clear distinction in many of them between the so-called legislative powers and other powers which makes it perhaps easier to deal with it. If the Committee is satisfied that we go that route and other words draw distinction, then I'll proceed to explain what has been here. If the Committee feels that they should remain as they used to be, all under one then we'll also have to re-work it. But if we can just get some indication from the Committee whether they are satisfied with this division between legislative powers and other powers and functions.

Chairperson: I think what we need to do is go through them first Prof, and then after they've heard you they will indicate whether they are happy or not. Let's go through them first. Yes, Mr Rabie.

Rabie: I can't recall for our submission 135, there's a particular portion that has not been catered for properly. The main purpose of a Second Chamber is to represent particular interest in society, not adequately presented in the popular elected House. That must be included in the report.

Van Wyk: That is page?

Rabie: 135.

Chairperson: Carry on Professor.

Van Wyk: Thank you Mr Chairperson. This may need a little time because unfortunately this is the one section and this is also the key of the whole report which I did not have with me when I updated the report. So if one reads this new version carefully, there are overlaps. So if we follow this route of making a 6 and a new 7, we'll have to reshuffle some of the things and I'll give you an indication what needs to be done. In respect of legislative functions there would appear to be agreement on one that the Senate or the COP will participate in the legislative process. Second that the Senate will have specific powers in respect of legislation affecting provinces and there one should add including allocation of resources because that's been a point of agreement

according to the previous report. Including allocation of resources by (a) being able to initiate such legislation. This comes out in both the latest National Party and ANC's submissions also. (b) Veto or block such legislation. Then in brackets what has been said earlier the ANC also refers to an alternative delaying mechanism and there's also ... That would in respect of legislation appear to be the points of agreement. Then the point of contention is the nature and extent of participation in respect of legislation affecting national competencies, in other words not the provinces, and financial matters. Now this is a general statement Mr Chairman. If one goes back to the earlier report which I did not have unfortunately when I did this, there are four points of contention all covered by this general point. But my question is if the Committee prefers the itemised points and not the general one, we can change it by saying the nature and extent as it stands in the new version and then with specific reference to powers in respect of ordinary Bills, that was a point of contention in the previous report, powers in respect of financial Bills, that was a contentious point, procedure in the event of disputes between the National Assembly and the Senate and then also whether all Bills dealt with by the National Assembly have to be considered by the Senate as well. Those were four specific points of contention in the earlier reports which can, if the Committee wishes, can be inserted here under contention in this column. So that would be my first question.

?: Mr Chairman, I would appreciate it if Professor van Wyk could add that in the report as well for us.

Chairperson: Nobody was against that, so you can include that Professor.

Van Wyk: And then in the comment column essentially it was.. It's a reference to the latest position of the ANC and also from the submission by the National Party, but what will then have to move up from the old report is the position of the IFP and the DP on that the Senate and the National Assembly should have equal powers. A reference to the fact that only the National Party expressly referred to dispute resolution between the National Assembly and the Senate. Also a reference to the fact that in terms of an earlier proposal of the ANC, the Senate may not be required to deal with all Bills dealt with by the National Assembly and also some reference to a specific role for the Senate in frame work legislation, this is also a comment from the earlier report. So some of the things that I've just mentioned will have to be taken from the old report so to speak, and just added here under this new section.

Chairperson: Any questions? OK, no question. Mr Eglin.

Eglin: Just in setting out these pages by the way, the very first column which got hardly anything in it. If you make that fairly narrow and make this last column wide otherwise you go page after page in

comment going on. You know, just re-arrange it.

Van Wyk: That's for the fundi Mr Chairman. The computer boffins.

Chairperson: Thank you, then we move to 7.

Van Wyk: Then it's proposed that there's a new point 7 which is other powers and functions taken over from the old report, it would be to maintain close relationship with provinces. That's an area of agreement that is in the old report. That would be other powers and functions. Then political parties made interesting proposals about Other Powers and Functions. They are in the old report in the comment column such as the Freedom Front - the Senate has to interact with corporate groups. I can imagine that what Mr Rabie mentioned represent special interest which are not adequately represented. A whole number of other confirmation role in the appointment of ambassadors, judges etc. They are all listed in the old one and they will just be listed like this again under the new Other Powers and Functions.

Chairperson: The question which was posed by the Professor was should he incorporate 7 into 6 describing Powers and Functions in one block or does it become more simpler as he has separated them. Do you agree with the pattern used by the Professor or you want them to fit them under one item. 6 and 7. Is it more simple that way? Anybody whose against that?

Eglin: Chairperson, I'm in favour but nearly all of these seem to be legislative functions in the end. They?..... the necessary and desirability of National Legislation which would override. Well that's... You sit in the Senate or COP and you agree or you disagree and so and so. To my mind it's a legislative function. What's ? over the constitutionality of Bills? I'm not arguing that you shouldn't try to separate but when I look at them, which one of them are not legislative functions?

Van Wyk: It probably depends on the definition of legislative functions, but if I look here at what the DP propose for instance, participate through joint parliamentary committees in a ratification of treaties, I don't think ratification of treaties is a typical legislative function.

Eglin: That's not hear, but I mean it will be there in the next....

Van Wyk: Yes, it will be there. These things, treaties, appointment of ambassadors/high commissioners, appointment of key personnel in the civil security services. Those will be under the Other Powers and Functions.

Eglin: Chairperson, I've been misled. I'm looking at sorry what is here on page 9 which is basically the ANC.....

(Tape 2)

?:a separate Chamber but there they operated on the majoritarian system whereas if the Senate as such would have passed the legislation, then it would have been blocked by the members representing the Western Cape. According to 61 if it was ordinary legislation it wouldn't have been passed by a Senate Committee. That's what I'm trying to indicate. It would have been passed by the Senate and the Western Cape objecting to that legislation, then it wouldn't have been passed in terms of 61.

Chairperson: Alright fine. He says let it pass. Any other question on 8?

Ackerman: Yes, Mr Chairman, I just want to

Chairperson: No, where were we now. We're still on 7. Alright we're now moving to 8. Are you still on 7 Mr Ackerman. On 8. OK, let's hear Professor van Wyk on 8 first and then you come out with your question.

Van Wyk: Thank you Mr Chairman. 8 is the same except for the addition of the COP and then the ANC's position which was he confirmed that's necessary. Obviously other parties there will be identified by name if they have a specific proposal.

Chairperson: Senator Ackerman.

Ackerman: Didn't we have a specific proposal because that's why I want to ask you, you just say other parties propose accountability to Parliament. The National Party says there should be accountability. So I wonder if you can state the party's position instead of just saying other parties.

Chairperson: OK, the National Party will be stated in there. Any other thing on 8? If nothing, 9.

Van Wyk: There's emerging which is another core element, which is relationship towards provinces. The nature and form used to be a point of contention. There's an insertion about the ANC and then some other parties are listed and there's an insertion 5 on the National Party. Perhaps Mr Rabie should just inform us here whether they are satisfied with this reference to the In the National Party's submission of the 5th September or whether it ... in other words to identify the submission by date or whether they....

Rabie: ? date or just indicate what we submitted.

Van Wyk: So that's the relationship towards provinces Mr Chairman.

Chairperson: Any question on that. Senator Ackerman.

Ackerman: Mr Chairman, if Professor van Wyk will look on page 8 of our submission. The small 2 on the top and 8 on the bottom, the sort of (a) round about the last five sentences there's more of an idea of what we have in mind.

Chairperson: 8. Which numbers Senator?

Ackerman: (a) and then the last five sentences. If Professor van Wyk can just look at that and include it. Thank you very much.

Van Wyk: That's the 5th September submission? Yes, OK.

Chairperson: Another thing on 9.

Pahad: Just as a general question. I'll come back to the thing which I've raised many times before. We keep on seeing DP Gauteng. Now I've said before that my approach to the thing is that the Democratic Party that we deal with here is the Democratic Party as we see, not constituent elements of the Democratic Party. The same would have applied to the ANC. If in the event there had been some representation from some other structure of the ANC, we would expect other parties to take into account what the ANC says at the national level. And I have a problem. Every now and then I see a DP Gauteng. Now you're going to have a DP saying something. Now you're going to have a DP Gauteng saying something. And we need to resolve that problem. Let me just finish. Because there is a weight that has to be attached to party submissions and it seems to me that you cannot attach the same weight as I would attach to a submission by the Democratic Party here or similarly if something similar had happened with regard to the ANC because a national position... That is decided by the national leadership. These are now political party submissions. They are not individual submissions. And I've been getting concerned as you know for some time here that all of a sudden we are all in agreement that the DP's positions must be clearly stated here when we re-draft the document, but then we've got to find a way in which you're going to put some additional submissions, then you've got to separate the two out so that when you actually begin the negotiations on this issues in the Constitutional Committee, we would know what we're actually negotiating. So, I'm just asking... I'm not asking for a discussion, but I'm just asking for you to consider how we can do this in a way which would give due weight and credibility to political parties' submissions as opposed to submissions coming from outside of the political parties that are presented.

Chairperson: Dr Pahad, I'm advised by the Administration here that the way this was resolved was that the DP Gauteng is classified under individual submissions and that then it should be catered for under comments. I don't have the previous Minutes here. I don't know whether it reflects the true position which we have taken. But that's how they're advising me. I saw Professor van Wyk with his

hand up. OK, Mr...

?: Yes Mr Chairman, I think in this instance we must advise the DP of Gauteng just to follow the example of the Communist Party that is to influence from within.

Chairperson: Professor van Wyk.

Van Wyk: A technical question, Mr Chairman. We were requested at some stage to insert the individual submissions also in the comments column. Is that the way the report goes to the Constitutional Committee as well because if it's not, then all these individual submissions which are in italics at the moment will be removed and will be added as a third part of the report and they will not appear in the comment column where they appear at the moment. Otherwise they will be listed under the summary of individual submissions and not in the columns themselves so it won't create the impression that the DP of Gauteng or any other sub political party or region sits in the report itself.

Chairperson: Thank you. Dr Pahad.

Pahad: I don't think we should spend time discussing it. All I think we should ask is let our technical experts just look at the reports/submissions from the other Theme Committees and let's just be consistent. Let's have a consistency in what goes forward to the Constitutional Committee, so that we don't have to waste our time discussing the issue. If it's consistent in the one we use and if it's consistent in the other we use...

Eglin: Chairperson, as far as I'm concerned, I assumed that DP Gauteng was dealt with as an ordinary individual institution and not one of the seven parties represented in Parliament. But I must say when I look at it, they seem to be an extra special institution in that they seem to be mentioned more than the other people around. So, I think maybe putting them as a footnote to the general report would be a tidier way than dealing with them under each of the headings. There must be other people who have also commented on these specific issues. Not? Well then we leave it.

Chairperson: OK, Dr Pahad has already indicated that we shouldn't waste a lot of time on this, so I think Professor van Wyk will look at that and they will be able to deal with that. 10.

Van Wyk: 10 stands as it was Mr Chairman.

Chairperson: Any questions. 11.

Van Wyk: 11 stands as it was except here's a question to the ANC in view of their latest submission. Whether the ANC agrees with a President and a Deputy President of the Senate? In other words whether the current provision of the Interim Constitution is still the area of

agreement. That's under point 11.

?: (Inaudible comment)

Van Wyk: Yes.

Rabie: They didn't give due consideration to that.

?: Well we did.

?: (Inaudible comments)

Hendrickse: Mr Chairperson, I have a democratic right to do so. I'm not sure where it is but I have seen one of our submissions where we refer to a rotating chairperson of the COP/Senate.

Van Wyk: Mr Chairman, if we can't find it in the documentation, can we take what Mr Hendrickse has just said "as the ANC position". In other words it becomes an area of contention and they propose a rotating chairperson.

Chairperson: Yes, if you don't find it, take it as... Any problem? Take it as it is.

Eglin: Chairperson, I'm going to assume that the ANC has got now a rotating position? That all the other parties ? in the status quo. Do we just say the Freedom Front proposes. I mean we also should The ANC proposes a rotating chairman, all the other parties propose a President elected by the Senate.

Van Wyk: Mr Chairman, the reason why it stands at the moment is that only the Freedom Front specifically refer to this. The National Party, I think one can assume in terms of their stated position that unless they said otherwise ? in the Constitution. So, if the parties now confirm that their position is that it should be, that's except for the ANC, that there should be an elected President, we will state it like that.

Chairperson: Fine. OK. 12.

Van Wyk: 12 Mr Chairman is Qualifications for Membership. Agreement remains blank. Contention - something fell away at the end of No 2 whether they should be registered voters in their Province there should be a slash "have ordinary residence there" that comes over from the last draft and then there's an underlined insertion from the ANC and the rest stands as it is.

Chairperson: Any questions? Can we move to 13?

Van Wyk: Vacation of Seat and Filling of Vacancy stands as it is, Mr Chairman.

Chairperson: 13. Vacation of Seats as it appears on the old report. Mr Eglin.

- Eglin: Mr Chairman, there's nothing under agreement ? right of recall but recall isn't the same as a vacancy. That's how you create a vacancy. This is how you fill a vacancy. I mean I would presume it if a National Party Senator from out of space dies, that the National Party would replace him. I will say if it was a DP Senator, the same thing. So I don't quite see how that is not reflected in here. But the issue of recall is the thing. I'm presuming that the party that nominates the person will be able to continue to nominate him in the event of a vacancy. That's what I understood was the general agreement.
- Van Wyk: So that's added under agreement. The party whose Senator vacates a seat will
- Chairperson: So the right to recall is removed there as a contention. It goes to the other block. I think we're dealing with the recall issue somewhere in the other block. Under 5, we're dealing with Recall. Maybe that should be left under 5. It is a contentious matter anyway, under 5. It's listed as a contentious matter. Maybe we should just ? with the vacancies under 13 and leave the Recall under 5.
- ?: There is contention in the sense that the ANC makes provision for a delegation from the Provincial Legislature. So then the vacancy of filling that post would be the responsibility then of the Provincial Legislature. While we propose a Second Chamber, so then the responsibility will be here.
- Chairperson: No you shouldn't interpret it that way. ANC interpretation is not creating any vacancy in the Provincial Legislature.
- ?: No, actually it doesn't make provision for that.
- Chairperson: Mr Hendrickse.
- Hendrickse: Should we not just say there so that any vacancy that might occur must be filled in the way it was originally filled. That if a vacancy occurs in anybody's ? do we determine whatever we have .. would say how people get elected, appointed, delegated to that body. So if a vacancy occurs, that person's replacement will be appointed in the same way as the original person was appointed. So if it was a person representing the DP and he was appointed by the DP who would be appointed the same way.
- ?: The problem Mr Chairman is with the ANC proposals there cannot be a vacancy.
- ?: (Inaudible comment)
- ?: No, no, but you take it from the Provincial Legislature.
- Pahad: That makes sense. If it doesn't, well let's proceed in a different

direction. All I thought he was saying was depending on the nature of the appointment, you would fill the vacancy accordingly. If at the end the New Constitution takes the position of the National Party then obviously the vacancy would have to be filled in accordance with that approach. If it's a position taken by the ANC, then the vacancy would have to be filled in accordance with how those people are normally... I thought you were just saying in the end that whoever will fill the vacancy will be dependent on how the senators or COP people are elected. May I just say in passing that is it the position of the National Party that if you cross the floor, the seat becomes vacant.

?: No.

Chairperson: OK.

?: Mr Chairman I just wanted to say that we cannot say that we follow the same method because then you can get another answer. The point is that what Mr Eglin raise, we support, and that is if a person has been elected by nominated by the National Party and he vacates the seat, the National Party must replace him. If you follow the same route then there can be another election actually and then something else can happen.

Chairperson: OK, is the right of recall now taken out of contention. It's going to 5. Do we remove it completely there.

Van Wyk: And what do we say under agreement Mr Chairman?

Chairperson: In the agreements, what do you say then? Mr Hendrickse, you're trying to propose something there. (Tape goes blank)

Pahad:because in terms of the ANC proposal and Mr Ackerman is quite right there, then it will be filled by the Provincial Legislature. If that proposal is the one that becomes the acceptable proposal. So the way the vacancy would be filled would be in the way the original people were sent to the Senate. I'm not finished.

Eglin: If you have proportional representation, you choosing 8 senators, you'll get one result. If there's only a vacancy for one person and you go proportional representation you get a completely different result. It only goes to the majority. We had the same problem in the President's Council and in the end it was if there's a vacancy it's filled by the same party to which that person originally got into the Senate.

Pahad: What I'm saying Colin is that what you need to do is to put it under contention because ? under contention given what the ANC's proposals are with regard to this Chamber, whatever you're going to call it. And therefore it's a matter for contention but we are agreed all of us that in terms of vacancies, that the way the vacancy would be filled would obviously have to be that if the

political party loses a seat that political party is the one that would fill the vacancy and not some other party. I'm saying in terms of there could be a vacancy, but if you take the ANC's position, then the way you fill it is different. If you take yours and the DP's position, the way you fill it would be different. We are just agreeing with you that we should put that under contention and make it quite clear that that's how the things would have to be filled depending on which particular approach you take to the Second House. I mean it's a matter of contention and let's put it in.

Chairperson: Mr Olifant, do you still wish to talk.

Olifant: I don't know whether... Is the principle not the same at the end of the day whether Peter says this, Mr Ackerman and Dr Pahad. At the end of the day no matter what agreement you've reached it's the party's responsibility at the end of the day to nominate that particular person. Is that what we're saying.

Chairperson: Mr Rabie.

Rabie: That's why I say I don't know why it's a contention. A vacancy is filled in the same way that that vacancy was filled in whatever dispensation. If he was elected through the Provincial Administration then he gets election on the same basis as that. If he was proportionally elected by the Provincial Legislature and there's a vacancy, then it's filled in that manner. Because if it's a National Party fellow that's seat becomes vacant, his elected by the same Legislature on the same basis. I don't know what we're arguing about?

Chairperson: Mr Beyers.

Beyers: Mr Chair, just to assist my colleague. If you for instance hold an election, we had not elections we came to agreement as far as the Senate is concerned, but in actual fact you can hold an election in the Provincial structures, not party structures, but the Provincial Councils, then an election should be held and proportionally to that the delegations or the representatives should have been elected. Then you have a result. You will get the result that there will be proportional representation. But if there is a vacancy and they again go back and they only fill that one vacancy then proportionally if a minority party lost a person, that vacancy will then be filled by the majority party. That's a problem. So it cannot be said that we will take the same route. I agree with Mr Eglin.

Chairperson: Yes Mr Hendrickse.

Hendrickse: Mr Chairperson, at the end of the day I think we are all saying the same thing. We ask the technicians to come up with the correct wording. All we're saying was the original nature, the original nature in terms of your example was that it was divided

proportionally between the parties. That is the original nature. So ? when the vacancy occurs that vacancy will be filled in the same way it was filled the first time.295.....

- Chairperson: Professor, are you clear which direction the parties are taking?
- Van Wyk: For the areas of agreement. The only question Dr Pahad said there was also contention. Contention seemed to me turned around the way in which the replacement should ... the procedure for the replacement.
- Chairperson: So that will be put under contention as well. OK, fine. Agreed on that? Lovely. 14. Professor van Wyk and then Mr Emlin.
- Van Wyk: Sittings of Senate - the point of contention there is whether the Senate should be a perpetual body as proposed by the ANC and then there's an insertion that the ANC's position is confirmed in its submission of the 5th September. And for the rest we didn't see any change.
- Chairperson: Mr Emlin.
- Emlin: I must advise Dr Pahad if he is looking for a name for the ANC's Senate, I suggest a galaxy of stars because it's a perpetual body with a rotating president.
- Chairperson: I thought the stars sit in the National Assembly. Any question with regard to Seating of the Senate? None.319..... OK. 15.
- Van Wyk: Mr Chairman in terms of Mr Emlin's proposals it becomes a hobsis choice between ? and ? for the in terms of acronyms for the Second Chamber. No 15, Quorum - there was nothing else but the question to the ANC is whether the same shouldn't apply here as in the case of the National Assembly or maybe some other parties as well that whole question about whether a quorum for the Senate should be put in the Constitution.
- Emlin: I think we agreed on something different and that is for ordinary decisions it should be one-third of the people, but for formal decisions it should be one-half, and the reason is very specific. The Senate has got a specific now, even in terms of the ANC proposal, a specific locking role as far as provincial legislation is concerned and that's why it was in the National Assembly and I think it should be here.
- Chairperson: Just to refer what we agreed upon in the National Assembly was that the CC agreed that quorums must be prescribed in the rules of the National Assembly. No provision required. And then the question of the quorum was raised in the CC sub-committee. It was agreed that Section 13 be amended to provide for the presence of prescribed number of members for the purpose of decision-making. I think Mr Emlin is right, in regard to the National

Assembly. I think that's what we want to happen in the Senate as well. I don't know if there are any other views in this regard.

Pahad: Mr Chairperson, what you're reading is a position of the Constitutional Committee. It cannot affect what we are going to put here because that's what the Constitutional Committee has decided and it will become when the Constitutional Assembly finally agrees to it. So I think at the moment we should just stick to more or less what we've saying before with regard to the quorum and then the Constitutional Committee at the end will have to bring all of the things together so that they're consistent with each other. But I think it would be wrong for us here in the Theme Committee to put something in which the Constitutional Committee has agreed to with some other question. You can put under comment if you want. I mean - See decision of Constitutional Committee. But that's there decision. From here I thought we would then say something similar that ... whatever we were saying we can put that in and let the Constitutional Committee then work it out.

Chairperson: Thank you. I think that's clear. 16.

Beyers: Mr Chairman, just on a point of information. What is going to happen, will we get information from the Constitutional Committee again what has happened to proposals or how is the democracy working in this instance? Because I was not aware that the Constitutional Committee reached agreement on the quorums and I want to do something about that. But how do I know?

Chairperson: I thought Mr Beyers you're a member of the CC, isn't it? You're not. Mr Rabie is one, Mr Fourie is one. I think they should keep you informed about that.

Rabie: It was agreed that Section 13 be amended to provide for the presence of a prescribed number of members for the purpose of decision-making which Mr Eglin was referring to.

Chairperson: I have just read that Mr Rabie. Were you not here?

Rabie: No, I'm just explaining to my colleagues that we have taken a decision.

Chairperson: OK. Alright.

Pahad: I propose that in the interest of democracy that the National Party representatives on the Constitutional Committee actually inform their other representatives of decisions.

Chairperson: OK, let's move gentlemen and ladies. We don't have ladies here today. OK, 16.

Van Wyk: Powers, Privileges, Immunities and Benefits. Nothing added.

Chairperson: Questions on 16. None. 17.

Van Wyk: Nothing added Mr Chairman.

Chairperson: Any questions on 17. None. 18.

Van Wyk: 18, Mr Chairman, there was previously nothing under agreement or contention but in view of the ANC's position it would appear that there's now contention over joint sittings.

Chairperson: Mr Ackerman.

Ackerman: Is it possible for Professor van Wyk just to put the other parties views as well there under comment. I think the DP ?.

Chairperson: You will do that. We have already agreed from the beginning. 19.

Van Wyk: 19. What's added there under contention Mr Chairman is the question of joint committees which is an inference. If you read the comment you will see that in view of the ANC's submission the question of joint committees in the traditional sense may be contentious. It didn't say that clearly in their submission, but the question is whether the inference is correct.

Chairperson: Any question there. None. 20.

Van Wyk: 20. Nothing over ?.

Chairperson: Thank you. 21.

Van Wyk: 21 contains the list that used to be in report. We went through them and it would appear that all the issues remain relevant. It can only really be dealt with once there's as it says in the comment column after the powers and functions have been finalised.

Chairperson: Thank you. Any question. None. 22.

?: Inaudible comment.

Chairperson: OK. Thank you very much. Do we then agree to authorise the technical advisors to send this report to the CC with no draft formulation. OK. Thank you. Order, just for one minute please.

?: Shouldn't we ask these chairpersons of our Theme Committee. It's our last meeting. Shouldn't we have organised, although it's a bit late, ?

Chairperson: I'm finished. Members are already out. Mr Eglin, just for one minute. Can we take our seats please. Thank you. Well, gentlemen and a lady, I think this is our last Theme Committee meeting unless the Constitutional Committee reconvenes us some

time to come if there are issues that have got to be referred back to this Theme Committee. But may I from the Chairpersons' side in the absence of ? whose been of great assistance from the beginning, Mr Rabie and myself to thank you for your cooperation especially to us as Chairpersons. It hasn't been an easy job for us to get this process on. You could see how patient we were with everyone of one. It was not just an easy job, almost like a speaker and a deputy speaker. We wish to thank you very much for all your inputs. Your participation has made or taken this process to where it is today. The CPG members, I also thank you very much. All other structures which were attached to this Theme Committee, the technical advisors, the Volkstad Raad and the CA staff members. Who else, Jack? But all the structures which were attached to this Theme Committee, we wish to thank you very much. And the ? Committee on Traditional Leaders, we also wish to thank them and the ? Committee on the Volkstad on Self-Determination, and lastly may I thank Thandi also. Thandi, you're seeing for the last time here today. Thandi has got a new appointment in the Free State I think. She's now getting a higher position than what she's doing now here with us. Thandi what's your position there? Director of Human Resources in the Free State Province. (Applause) So, Thandi is leaving the end of the month. The end of this week. Let me tell you what she's been saying. Last Monday when we had a meeting, Come on, come on Mr Mahlangu, you're wasting our time. I said Thandi, what's bloody wrong with you and you were scared that we should finish up our work very quickly before she leaves and we're actually thanking her for motivating us also. And enjoy your work where you're going Thandi. It has been a pleasure to be with us here. I don't know whether we'll have time to buy a little bit of a cake for you to say goodbye, but I cannot decide on behalf of the members, but I ? that we buy you a nice cake. You will cut it where you go. And lastly James is just asking me that everybody must complete this information sheet and then return it back to the CA Administration and I think lastly in the CC, meetings will be carrying on during recess. Just understand that. You might be called here for the CC meetings. Those who are CC members and if the sub committee of the CC is sitting and they are dealing with Theme Committee 2 issues, some of us will have to come back and sit and give evidence in the CC meeting. So the work of the CA will be continuing during recess and may I thank you all of you. Thank you very much.