

2/4/21/90/20

THEME COMMITTEE 2

MEETING: 7/8/96

TAPES: 3

CONTENTS

- 1) PRINT-OUT
- 2) COMPUTER DISK
- 3) 3 TAPES

Tape 1. Side A

Theme Committee 2 - 7 August 1995

Chairperson

You're all welcomed again this morning - people from the media and the CPG, everybody. We've actually have one item today, I think, on our agenda - let me just check: that is the Electoral System what we're going to concentrate on today.

Most of the people are not here today. I don't know what has happened; maybe they are still coming. I still don't see the PAC and the Freedom Front. Mr. Rabie has apologized. I may apologize very soon too. I'm not feeling well today - I'm terribly sick. But let's see how far we drive the process. Joyce Mabudafasi also apologized and John Mwedamutsu also apologized. Mrs Sethema apologized Anybody? Has anybody also apologized? Don't just say they have even if they haven't.

OK. We have one set of minutes that I would like us to look at. But there was another document back for the minutes that was distributed to you last time. Can I take it that those minutes are adopted? Or you would like us to revisit those minutes the next meeting. Next meeting? OK. Fine. But can we then finalize this set here - the one that we have for last week - the 2nd of August - that deals with the report of the National Assembly and the Executive. The document is entitled: Wednesday, 2nd 1995. The minutes is TC 2 /24/3. Do you have that one: TC 24/3? All right let's start to go page by page. Page 1: You don't have it, Mr Eglin? Can we also postpone this minutes then?

Interjection

Agreed

Chairperson

Until next week, or next meeting when we meet. And let us then, when we come, either tomorrow when I don't know we'll be meeting, but just bring all the sets, the documentation back for the minutes with you. Let's deal with those minutes once and for all

Interjection Agreed.
What time does the meeting start?

Chairman We have not yet determined that. I think we should better cover that before we deal with any other thing.

Interjection I don't think members are aware of the speakers ...

Chairman OK. There are a few arrangements that we need to make. I don't see all the members of the core group here. It's only Mr Eglin and myself. But the report of this, of the Volkstaat's self-determination is ready. It only has to be distributed to the members. They don't have it by now. We need to decide whether we sit tomorrow to get straight into this report, discuss this report, or what do we do, but I don't see the members of the core group now. Mr Eglin, could you be thinking about that in the meantime? We might finalize it before we break. Pardon?

Mr Eglin Have all the members got the draft report, Sir?

Chairman No, they don't have it.

Mr Eglin Well, then I don't think we can consider it tomorrow if it hasn't been received yet

Chairperson ...when the Volkstaat and self-determination. Everybody can get a copy today and then maybe we could meet after this National Assembly meeting tomorrow.

Mr Hendrickse Mr Chairperson, I think given this unexpected development of tomorrow's sitting and the fact that most of us haven't seen the report and would need some time to discuss it within our study groups, I suggest that we not meet tomorrow to discuss that report and that you, together with the core group, determine a date as soon as possible after tomorrow.

Chairperson

That's another suggestion it's a point of view. All right, that the core group will then meet and see when can we meet.

OK, let's get to the electoral system. There's a report in front of us here. I think I will straight-away ask Prof. Steytler to deal with the report. I don't think you want us really to get into saying each political party put your position. I don't think it's necessary. We have very brief submissions there from all political parties which are very straightforward, but let's talk to the report straight. I don't know what is your feeling in that regard. Are you unhappy about that? OK.

Prof. Steytler ... Take us as usual block by block or page by page. It's up to you. Pardon? Yes, that's the one.

Prof. Steytler

Mr Chairman, if you start on page 2, just the introduction to the report. As you know, a lot of ... received a number of submissions from the public .. well, from the parties. The matter is basically governed by Constitutional Principle number 8, which requires Representative Multi-Party Democracy, Regular Elections, Universal Adult Suffrage, a Common Voters' Roll and, in general, proportional representation. And then the other two principles that were relevant, to wit Constitutional Principle number 17 and number 14.; 17 talking about democratic representation at all levels of government while Constitutional Principle requires the provision that some participation of minority parties in the legislative process, consistent with democracy, should be provided for.

The report is comprised of three parts: the first one deals with, in tabular form, about the various principles and positions taken the political parties; the second deals with the ... it is a very brief reflection on what the public submissions contained and, thirdly, a draft formulation that may be included in the draft constitution.

A lot of material was, in fact, received both in terms of the workshop, other papers that were given here, done by the research department of the Constitutional Assembly and also by the Department of Constitutional Development. So a lot of material was available to parties.

Some of the work that we've been doing here overlaps with the work of Theme Committee 1 and 4. Theme Committee 1 would deal with matters like citizenship. Just spoken to one of their technical advisers. They, in fact, don't deal specifically with the franchise but Theme Committee 4, dealing with the Bill of Rights, would deal with the right to vote. So there clearly there would be some overlaps and so the issue that we have to deal with, is the electoral system, how it should be conducted.

A further point referred to on page 3(9): there was no submissions on the institution such as an Independent Electoral Commission. I'm not sure whether this would have been dealt with in Theme Committee 6, one of them looking at specialized institutions and I think perhaps one of the secretarial staff could assist us whether they have, in fact, done so.

And just a last point, point 10: except for the Democratic Party, no party referred to the type of proportional representation that should be applied to the election of representatives; so there were a number of arguments about the different styles of proportional representation. In the submissions of the political parties, I think it's only the Democratic Party who had a very clear view on that.

In the first part of the propos ...

Chairman

Prof., just before you kick off on your remarks - the question of the franchise. On Friday the CC dealt with this; it was allocated to Theme Committee 1. And they've now taken a decision that Theme Committee is not the relevant Theme Committee to deal with the franchise and that this should be referred to Theme Committee 2. And my understanding is that Theme Committee 2 has got nothing to do with franchise. Could you elaborate on that? What's your view on this issue? Because they keep on pushing a lot of things to this Theme Committee, I don't know. Because we've heard at least .. clearly they would tell us who should vote, and then saying the electoral system, you have the right to vote, or you don't have the right to vote. You say you've spoken to one their technical advisers in Theme Committee 1. Can we hear what's their thinking about this? Mr Eglin must also ... they ... he could elaborate on the matter what they said in the Theme Committee in the CC

Prof. Steytler

Mr Chairman, I think it's incorrect that the franchise really deals with citizenship and with age - who can vote - and it may be some disqualifications which one may add. But that, clearly, is not a structure of government. It's ...either reflects on the right to vote, which is then a Theme Committee 4 provision and ... but I think it's a difficulty. Within the present Constitution it comes actually before the franchise is dealt with, before the Bill of Rights, before Chapter 3 and those general provisions, like with language, etc., was dealt with outside the Bill of Rights; so Theme Committee 4 may think it's not part of their brief. I think it too doesn't belong here because we haven't received, or asked for, any submissions pertaining to age and any other type of qualification for the franchise. So I wouldn't think that this is really the appropriate committee to deal with it.

Mr Eglin

Chairperson, it could've been referred to us or to somebody else, but in fact in the allocation of work originally, it was specifically allocated to Theme Committee 1, in that the concept of citizenship and the franchise seem to be linked. What was allocated to us, was the electoral system and that is saying Theme Committee 1 tells us who can vote, and Theme Committee 2 tells us or say how you can vote. In other words what is the system. So, as I see our mandate, our mandate is to say what should you put in the Constitution about the system under which people vote. And Theme Committee 1 says who can vote. This is how I understand the allocation. But as I say Theme Committee 1 has spent a lot of time on this thing, came with a report and when we said well, now what do you mean exactly, the Chairperson said, no we're just dealing with the philosophy of it, the detail can be handed over to Theme Committee 2. So the philosophy has been dealt with, but not the practice, and I think we should refer it ... ask the Management Committee to refer it back to Theme Committee 1.

Chairperson

Can we all take that decision as a Theme Committee, that the question of the franchise be referred back ... be referred to the Management Committee and Management Committee refer it back to Theme Committee 1? Do you agree on that?

OK. Could you do that directly? OK. Thank you, Professor.

Prof. Steytler

Mr Chairman, if you look at the Part 1 is in tabular form, the various principles and then the agreement or the responses thereto. These constitutional issues are basically Constitutional Principles - Multi-Party Democracy - and therefore no party can actually disagree with these principles. So the first one is Multi-Party Democracy - agreement: all agreed; Regular Elections - all parties agreed, the only difference there is between ... is the Democratic Party suggesting a four-year term whilst all the other parties seems to be satisfied with a five-year term. The ... Mr Chairperson?

Chairperson Can we deal block by block? Is it all right? Block 1: are you happy about that? The Multi-party democracy? All happy OK? Block 2?

Mr Hendrickse Mr Chairperson, just with the question of regular elections: is it enough as we state later on in our report to refer to "regular elections" or should we put in a proviso there to the extent that "at intervals of no more than 5 years"? Because the Parliament could decide to have elections once every 20 years. It would still be regular. I think all parties are talking of not more than five.

Chairperson Mr Eglin?

Mr Eglin Chairperson, I agree. I think it's got to be either a fixed period or "not more than", but I think that doesn't fall under the Electoral System. It really falls under the Composition of the Legislature: it shall consist of so many people who will be elected so often. The Electoral System then deals with how they will be elected. So I thought we have in our earlier report on the structure we've actually said not more than five years. I think it should be there. I'm pretty sure it does say that. There's only one point I want to raise and that is we've got to be careful: the ANC and the FF have proposed elections at least every five. Nobody has ever canvassed whether, in fact, there should be fixed terms. And I don't know whether at some stage there shouldn't be some canvassing or that in fact there should be fixed terms, because I've just got a practical problem and I think Mr Hendrickse came close to raising it the other day. The Legis ... the National Assembly passes a vote of no confidence in the Cabinet. The consequence is that the Legislative Assembly is abolished. I don't know whether that's appropriate. What I just think is the Cabinet should be undone and then a new Cabinet created. But as it is at the moment, it follows very much the British system, and that is that if the legislature has a vote of no confidence in the Cabinet, the Cabinet can decide to disband Parliament and demand that it has a fresh election. And I don't know ... and

also in that circumstance you've got the whole question of by-elections and elections at irregular intervals and I don't know whether this committee or the CC has canvassed sufficiently the idea of having a fixed term of office for Parliament. They say Parliament will last for four years. And within that, you can have a change of Government, but not necessarily a re-election for Parliament. But as it is at the moment, it is just ... I think in our original submission on Structure it does say that it should be not more than five years with us dissenting and say it should not be more than four. So I don't know whether it fits in this report or the report on structure.

Chairperson Yes, Professor Steytler?

Prof. Steytler Mr Chairman, Mr Eglin is correct. If you look at the draft report Subsection ... Section 5(1) the National ... that's now on the National Assembly which may not be in front of you, but the National Assembly are constituted in terms of a general election and shall continue for a term of five years. So that question of time is really dealt with as ... on the tenure or the length of the National Assembly. So it may not be then ... ja, it's last week's report

Chairperson Deal with it here. Mr Hendrickse, are you happy with that?

Mr Hendrickse Yes, I don't know if Mr Eglin's point is covered, because as he said, the ... I don't ... the matter hasn't been debated on the whole question of having a fixed period. So let's say if Parliament is elected in 1984 - in 1994 - it shall continue until 1999, whether there are motions of no confidence, irrespective of that. But now can somebody, Parliament itself, dissolve itself before that time, and would the five year then kick in from the new election, or ...

Mr Eglin Mr Chairperson, we could start a whole discussion on this, but there are two concepts: some countries just have fixed terms of office of Parliament, in other words, it's a four-year period and within that you can have changes of government depending on whether there's a change of majority in the Parliament or not. Others, following the British system, says while it can be up to five years, the Government at any

stage can, in fact, call an election. That's the British one which doesn't even require a vote of no confidence. We've got a kind of compromise one in our policy at the moment and that says that if Parliament moves a motion of no confidence in the Cabinet, the Cabinet can decide whether to resign or whether to call an election for Parliament. And the question is whether a motion of no confidence in the Cabinet by Parliament should automatically mean that Parliament is gonna be dissolved. I would personally would tend to favour a fixed term of office. Parliament is elected for four years and within that you can have changes of cab. But actually there's been no canvassing of the fixed term of office versus what I call the flexible term of office. That may be left for the CC for a legislate.

Chairperson

Thank you, Mr Eglin. Parties can canvass that more and we can debate it in the CC. Anyway, thank you for that point as well. It's a valuable point. Thank you. Prof. Steytler. Block 3?

Prof. Steytler

The Block 3 said Universal Adult Suffrage and linking up from what we discussed earlier, again it may then be inappropriate to define what is Adult. I think that is the question. The meaning of Adult. Is it 18 or is it below 18 or really ...

Mr Eglin

That specific point we said should be referred back to Theme Committee 1. Because they are to decide on citizenship and suffrage.

Mr Hendrickse

But ...

Chairperson

Yes, Mr Hendrickse?

Mr Hendrickse

Does the age need to be determined in the Constitution? Is it not enough to talk about Adult Suffrage and then in your Electoral Act to define an adult for purposes of the election?

Mr Eglin

It could be, but all I'm saying is, I thought we decided that the question of the franchise belongs to Theme Committee 1. The whole issue ... We're just deciding what system you should use. Once they say these are the matters, we say what system you should use. But I would ... I think it's gotta go to one or the other but at the moment it should be with Theme Committee 1. Only I've got a ... I don't want to get involved in whether the age question should be in the Constitution or not. That ... when Theme Committee 1 reports, one can debate it.

Chairperson

Well, I think we've earlier agreed that the question of franchise should be referred to Theme Committee 2 ... I'm sorry, Theme Committee 1, and I think Mr Eglin is quite correct whether it should be in the Constitution or not, that could be debated when we come to it. Could we stick to our agreement that this be referred to Theme Committee 1.? OK. Block 4

Prof. Steytler

The Constitutional Principle states there that there shall be a Common Voters' Roll and all parties agreed to that. I think that that's probably appropriate for the Electoral System because it's the basis on which any election will be held, but it means that there is a roll and it's only 1.

Chairperson

Comments? And questions?

???

What's the difference between the Common Voters' Roll and the Registration of Voters?

Prof. Steytler

Chairman, I think there's two issues there: the one is that there is a roll which means registration so that you're on a roll, and the Common Voters' Roll, I think, refers to past practices where there were separate voters' rolls for separate races. And so the central theme here is that there only be one voters' roll with no distinction made in terms of race or any other group when an election is being held.

Chairperson

Any comment on Block 4? Agreed? Right, Block 5.

Mr Holomisa Block 4. Now this voters' roll. Would it be for use with respect to all three levels of Government or does separate rolls say local government. For instance, now there's registration for local government elections. Would that roll that is coming out of that registration be used for the Regional and National elections for example?

Chairperson Is there anyone who can answer that? The question is the present voters' roll compiled now by the Local Government, can it be used for the Provincial and National elections to come?

Mr Eglin The present one is a hybrid one and if you look at the, I think it's Clause 245 of the Interim Constitution, the principles contained in the Constitution only come into effect after the first election for local government. So the present voters' rolls for Local Government don't have to comply with the Constitutional Principles. In other words, until there is a first Local Government Election, the hybrid system that you've got at the present, the 60, 40, 30 and all the rest of it applies. But that would not apply under a New Constitution, because it doesn't meet the Principles. So it's an ad hoc transitional arrangement until the New Constitution's put in place.

Chairperson Mr Hendrickse?

Mr Hendrickse What was Mr Chief Holomisa referring to: the upcoming Local Government elections or just in general, Local Government and other levels?

Mr Holomisa Well, I was referring to the general elections that will be held after the adoption of the New Constitution but I was make reference to this registration as a ...by way of an example.

Mr Hendrickse Is it that the method of registration can differ depending on the eventual systems that we set up for purposes of registration? When it comes to Local Government, you obviously have to be resident in a particular town, so you would have to be on that town's voters' roll as opposed to

being a resident of South Africa for the National Assembly. So these are in particular to the National Assembly . But the same principles can later be applied with certain differentiation to Local Government at provincial level.

Chairperson Happy, N'kosi?

Mr Holomisa Thank you very much.

Chairperson Right Block 5?

Prof. Steytler Assume the Constitutional Principle that he talks about that there should be Proportional Representation in general and that is as far as the guidance are given to the final Constitution that the Electoral System must, in general, be Proportional Representation. It, however, does not exclude then, that one adds anything further with it. And so the question really is whether Proportional Representation, if one say well, that equates party lists, where a person only simply votes for parties, should be combined with constituencies. The ... as you see in the two columns there - Agreement and Contention - there's Non-Agreement and Non-Contention. I think there is still an amount of fluidity on that question whether should be constituencies coupled with Proportional Representation or let me say, Constituencies linked to election via Party Lists. If one looks in the Comments Column, there is the various positions of the parties: the ACDP refers only Party Lists, the ANC is not yet clear on whether it's Proportional Representation and/or Constituency-based Representation; the DP favours Multi-Member Constituencies and Party Lists; the NP support Proportional Representation based on lists and then after an election geographical allocation of persons to magisterial districts; the Freedom Front has a similar proposal and the PAC favours a Proportional Representation system, a free list system with links between elected members and voters.

So there needs to be some clarity or whether it's agreement or disagreement pertaining to the question of constituencies. The precise nature of that relationship between Party Lists and Constituencies of course need not be spelled out in detail. That one can simply state a General Principle in the Constitution. An Electoral Act would then precisely define what that precise relationship is between the Party Lists and Constituency elections.

Chairperson Comments and discussion? Mr Hendrickse.

Mr Hendrickse Mr Chairperson, the ANC ... I have stated that we want to consider both the Proportional and the Constituency systems, however we have not yet decided, we have not made a final decision as to the system that we would favour. I would like to ask, would it be ... would it be OK just to use the words as it is in the Constitutional Principles, to say: and in general, Proportional Representation. If we were to put that in our report, would that still allow us or the CC or the CA to adopt a combination or some form of Constituency Representation also? Or do we need to make provision for it in our report for a Constituency System?

Chairperson Mr Eglin?

Mr Eglin ... is that we're dealing with here. In terms of our .. the Constitutional Principles which have to apply, the Principles don't only apply at national level. It actually says that at all levels there should be elected representation and then they shall do so ... I just wanna ...

Tape 2. Side A

Theme Committee 2 - 7 August 1995

This particular one uh A to Z key one says there should be a representative Multi-party democracy. I think that is dealt with through the Bill of Rights which guarantees each person could have free political action so Multi-Party Democracy I think comes via the Bill of Rights. Erenzp says that uhm there should be regular elections uhm I take as far as the National Assembly would have said it because in constructing the National Assembly would have stated, but I actually believe its got to be contained as a principal because it also got to apply to provincial governments its got to provide to local governments otherwise provincial and local can ignore the idea of regular elections unless they see there's a principal so I think we've got to state that there got to be elections cos the constitutional principal requires us to do so. The next one universal adult suffrage that has got to be dealt with by theme committee one. I just want to identify where they're going to be, I think we've got to deal with regular elections, common voters role I think we've got to decide if there's going to be a common voters role because its an electoral system. Then you come in general proportional representation, I believe those words or something similar to that have got to be included in our report because the principal is required. So I I think that we have to while we've only got to certain details also got to see that there are principals which apply to all levels of government because the constitutional principals required us to do so. Now when it comes to the actual system on proportion in general proportional representation, I thought that if I looked at uh the input from the parties and the discussion there was a dominant view developing that there should be a combination of constituencies in some way or other and party lists so that when the two were put together you then had proportionality. That's what I understood, in fact all the parties have the only difference is the National

Party say you should achieve that you first have the election then you have the constituency. The other parties say you first have the constituency then the elections. I figured that the pity of some how or other this theme committee didn't uh interpret the views put in by the parties that there should be some form of combination of constituencies and party lists combined with proportionality because that to my mind has been a dominant view which has come through the various sends and to us to say we've got no views on anything I think we will need to say that or uh we don't feel that there's any common area I think the CC won't know where to start. So I will argue no more than we have to say that there's going to be a common non-racial common voters role. We have to say that there are going to be regular elections as its part of our theme and we have to say that uh we have to have proportional representation in general cos the principal requires it but I think that we should say that there's a dominant view. That this should be led combined with ph constituencies representation without saying what form it is going to take. So I would suggest that our report should contain that if it is necessary to put a footnote that party A all disagrees and you can put it in form of a footnote but I would suggest we should include that in that form purely a combination of constituencies and and uh and party lists to provide a form of proportional representation.

Chairperson:

Could we come back to this when we get to our report. Report of draft formulation, okay some more inputs of this issue?

Mr Englin I just want to ask you one or one question just for clarity sake. The DP is very much in favour of the Multi-Party Constituency uh

But we're not arguing

Uh Multi-Member constituency

Put it his way the DP will favour than uhm the National Party will favour that I think a constituency created after the elections, I don't think our report should cover neither one side or the other. Should we just have the concept of Constituencies and a list together in a proportional representation and no more than that. Then we can argue the detail of the system.

Chairperson

All right any other argument on this?

We will come back to this when we come to the draft formulation because it will have to change a little bit as well I think. Er Professor ~~Statler~~ do you want to comment?

Mr Steytler

Steyler
Uhm I think Mr Eglin is correct is that proportional representation looks at the end result and so what we will have to argue is uh how does the end result achieved through party lists and constituencies. Because as said if you only say proportional representation uhm we all agree, you cannot disagree with that. Because there's a constitutional principal question that really needs to be made progress in is how you get to that end result and that would maybe necessary to put in the notion of the party lists and proportional representation and constituencies.

Chairperson

Thank you, Block 6

The question here is the system of electoral the electoral system that be won err applicable to National Assembly but also the provincial and say local level. The question really could be answered that it may on the chapter on the National Assembly that you have say well this is the system when you have the chapter on the Provincial government and that one adds a clause on National on the election there that you can comply with these principals and even on the section on local government that you have a similar provision. If you just be in the way in which you frame and where these provisions come into the constitution which is troubling because the constitution is so divided into these various blocks it could be destructuous and it may be that one may have to repeat these principals at the three levels.

Chairperson

Comments? Discussions?

Mr Eglin

I think you are right, I don't err clearly we can't we're not required to put into the constitution the detail electoral systems either for National or Regional or Provincial or Local. But what were uh, the very least we require of the principals that apply to all three. And therefore whether it goes as in these are the principals for National, these are the principals for Re err Provincial and these are the, I would prefer actually just err somewhere in the electoral system and then a very broad bold outline of the common voters role err regular elections, combination of constituency other than to create proportionality and the rest be regulated by laws. Otherwise the alternative is to put that under each heading but then you may as well put franchise at each heading aswell. So whether it goes three time or once I think those principal which are come directly out of the binding principals have to be restated in that way. The law has asked for us to seen whether there can be a omnibus one or necessary three but I think that it is a technical matter as to whether you need it three times or whether you can have it in an omnibus single clause relating to the electoral system.

Chairperson

Could we look at that Mr Steytler. Any comment? Okay Box 7.

The question there is then are the independent electoral commission that would oversee the running of elections um I I've mentioned earlier that issue may have been dealt with by another theme committee I think its 6 or one of them on specialized government agencies, and we may just be assisted by Mr Neilly or Mr Smit.

You are correct this theme committee to he just doesn't know which sub-committee of that but I am sorry is committee 6.

We're not dealing with that I think we can leave that we don't dealing with the IAC, now the dealingtation with the constituencies.

Mr Chairman, that I think goes hand in hand with the previous one of the independent electoral commission, uh was one of his tasks made be the delimitation of the constituencies and I think it is only the DP that raise this issue and suggest that the body like the IEC should be entrusted with this function and it should be done every ten years. That again could be regulated within a National Regulation.

Chairperson

Any comment? That falls within the scope of the IEC for one or any other element body that would be legislated. None?

Question Sir, the whole question of the IEC in what sense is the committee 6 dealing with it? If we are dealing with electoral system, how do they get to deal with the same issue?

They are dealing with the specialized structures of government, like your Human Rights Commission is also in all those commissions, they're dealing with that, like the public service commission etc. we are dealing nearly with the system.

Yes but then shouldn't we as the ??? committee dealing with electoral systems have in our report that we think it is essential that we have an independent electoral body. That then committee 6 can then determine how this body should look and what its powers and functions should be. How its going to operate. In terms of the system that we envisage because they don't know what we are talking about technically.

Mr Steytler

People I think that somewhere in our report we must just touch on it whether we take it further or not. Its correct to think of committee 6 of dealing with specialized structures, but only the specialized structures that were referred to them, they won't just oh think of specialized structures they were told including the following. I have a suspicion that theme committee 3 oddly enough, which was dealing with

local err actually at a workshop on the question of IEC kind of control, so I would suggest that we should get hold of management and find out what who is dealing with this but our report at least should say that this matter has got to be looked at because it is an interesting one, is it an IEC to hold a watching brief over the department of state that runs their election, or is there a separate independent agency that runs the election. So it is not just a simple .. last time we had a separate department which ran it, another concept is that the government runs it but under the supervision of the department. I think we should mention that and we'll find out where its got to be. But I do think on the question of the delimitation of the constituencies which is part of an electoral process, we must argue that as neutral a body as possible and that could be a IEC type of body should be responsible for putting up the boundaries of constituencies. I think we've seen recently what happens when you put it in the hands of a politician.

I

Chairperson

Okay, I think that comment will be included in our report. Thanks Mr Hendrickse for raising that but I think that its also important to find out which theme committee exactly should deal with the independent elections. Our secretariat staff could do that for us.

Number 9 Mr Steytler

Mr Steytler

Number 9 is the type of proportional representation to apply and there as we know the parties are silent on the matter that are probably not totally correct. The parties were very open for, the National Party says there's normal proportional representation, sorry proportional representation is the way in which the system works and the work with the various formula etc. which probably need not be dealt with here because this is a very technical issue.

I think mainly thetas also a matter of the legislation, if we have the electoral act that could be dealt with in the electoral act and all those procedures could be explained later unless members feels otherwise.

Chairperson

Agreed with that, okay Mr Steytler

Mr Steytler

Umm ???? okay part two is then the submission from the public and it has been usefully summarized from the secretary from the CA and that you'll find in the Addendum B, um what appears from it is quite a number of ??? supporting the idea of lengthening parliamentarians with constituencies.

Chairperson

Any comment on Addendum B, submissions from the civil society. Seeing that we read them so well and we understand

Umm can we just

No comment

Just to say thank you to secretar for the manner in which they has set it all out, they certainly assisted us.

Professor Steytler

In part 3 is a draft provision. The first one I think simply (that's page 7 now) simply reflects the constitutional principal 8 and I think that needs to be redrafted. The other issue that we just err bear in mind is where this provision goes. When we drafted the chapter on the parliament we left open section 4 - National Elections and we may want to think what principals whether they should go in there but then not prejudging whether there should be an omnibus provision dealing with the elections at National Provincial and Local level. So the section there the first part reads the clauses for the republic will be based on the principals of Multi-party democracy, regular elections, universal adult suffrage, a common voters role, proportional representation and constituencies as further provided for by an act of parliament. And already if one reflect on what Mr Eglin has said, one may infact reduce the sentence by eliminating Multi-party democracy because that is provided for in the Bill of Rights. Universal adult suffrage which made provided by dealt with earlier when we deal with

franchises. Common voters role should be included and then proportional representation should be there but phrased differently because it is not proportional representation and constituencies, it is party lists and constituencies resulting in proportional representation as provided by an act of parliament.

Could you just repeat that Mr Steytler

Mr Steytler

That the systems which the sentence which should probably read then the electoral system then based on regular elections, common voter role and party lists and constituencies resulting in proportional representation as further provided by an act of parliament.

Resulting

Mr Steytler

Resulting in proportional representation

Uhm the party lists and constituencies resulting in proportional lists

Mr Steytler

Ya or combined to achieve a ... ja...

Chairperson

For the sake of the secretariat the also asking could you read it very slowly.

Ja they also want to.....Very formulating.....on the roof here

Before we get to the right wording I'll be changing the, if if we change it now to the way you're saying it now prof. party lists and constituencies err resulting in aren't we changing the ...what shall I call....the spirit of the sentence as it reads now. I would then prefer then that we stick to err where common voters role, proportional representation and constituencies...and then we put the constituencies to say the ANC reserves its position.

Can I just ...can I Mr Steytler picked up my point. Isn't proportional representation and constituency the party list and constituency together resulting in proportional representation in other words the , its proportional representation achieved by a combination of the party list and constituency. Well I don't mind as long as it isn't seen as one of the alternative to the other.

I I understand what you are saying but I would just like the opportunity to to think about it some more.

Proportional representation ????????

I think that the way PR has been used in the principal and in debate so far, has been as a substitute for the party lists system, I think we'll be using the word proportional representation inter-changeable with party lists, so now I am just concerned that we change now refer to party list and constituencies resulting in proportional representation. That is where I find I'm unclear.

I also fail to understand how you achieve proportional representation in when you use the constituency system of representation cos my understanding is that that is the party lists that says to... to facilitate the proportional representation. I don't understand how except if someone can educate me, how you achieve proportional representation by using the constituency

Mr Levin, to say I think to say the Chief is right, you can't have proportional representation if you only have constituencies, cos constituencies tend to distort proportionality it actually favours large groups and it squeezes our small groups. But what you can add is a combination of constituencies and lists to achieve proportionality as they would have in Germany and Italy and Spain and all over the show. But you can't have constituencies you can't have proportionality in the genuine sense of the word if you have a winner take all in

constituencies only, so you have to combine it with party lists in order to achieve the proportionality. Anyhow lets, lets presume all parties got gets 20% of the votes, half of them seats go to constituencies they might not get 20% of the constituencies they might only get 15% of the constituencies. So when you get the party lists they will get the percentage they didn't get to the constituencies will be added to the party lists percentage. So the two together will give it proportionality.

Mr Chairman, does the relevant constitutional principal require that the ??? negotiability at all costs or is it not a question of it making it possible for proportional representation to take place aswell but I thought that we might have constituency representation but in addition to that we have provision for proportional representation using the party list system. Now is the interpretation of this constitution principal to effect that the whatever form of system of follow it must amount to full proportional representation.

Mr Chairperson Professor Steytler.

Professor Steytler Sure if I may attempt to answer it. It is very clear that in general that the result must reflect the voters choice, there must be proportions between the votes and the seats eventually allocated so the end result is a constitutional principal and that presupposes he can only achieve that via the ??? system, eventually it must be part of any proportional representation system, there must party lists, however it is possible to introduce constituencies where the lists then serves as a correction factor correction where there distortions takes place and the only real issue here is yes there will be party lists that is inevitable when we have proportional representation the only question is what percentage may be given to constituencies. And that is really mentioning that it must be combined the party lists must be combined with can be combined with the party lists to give the result to make to provide a result which is proportional.

Chairperson

Mr Holomisa, you happy? Okay

Mr Hendrickse and then Dr R?????

Mr Hendrickse

Could I suggest if what to phrase this as the following manner, the electoral system of Republic shall be based on regular elections, a common voters role, and in general proportional representation as further provided for bi-inactive parliament. Then you're not referring to the party lists and the constituencies your active parliament will determine that? As long as at the end of the day in general you have proportional representation?

J?????

Mr Stewart that's ofcause possible left open for an act to decide where the constituencies should be in, the question then really is do people want the theme committee want to make constituencies and constitutional principal. Not in the old act but in the new act and the final constitution that there should always be some reference to constituencies and so that is the issue really that one has to address then.

???

Mr Chairperson, just just the way we referring to constituency, if you look at the different types of submissions, every party is using the word constituency in a different sense. You've got the National Party referring to the allocation of people to magisterial districts, Democratic Party talks of Multi-Member and I think the ANC refers to single member. So umm, even PR as we have it now with your regional list and your national list is a form of Multi-Member constituencies. So do we need to put in constituency in our draft formulation? I'm not putting it in I'm excluding it.

Yes Prof.

Professor Steytler

I don't think you exclude it , it may then go in it may not go in and then and I think the other correctly pointed out its going to be inter... a very vague term to say well there shall be constituencies because then the question would be would the National Parties idea or proposal that you have a PR party lists system, you elect the people in terms of party lists afterwards allocating them to the members to constituencies, would that be regarded as sufficiently constituency based? And say if theres a challenge to the .. in the constitutional court that this doesn't really comply with a constituency element, so its a very vague word if you simply refer to constituencies and so it may be that one either want to spell it out abit more fully or simply them omit it and say well lets see what happens within a electoral act.

Jim, there are a variety of systems ... I think the example given by Mr Eglin is not the only one, we could well have the situation where smaller parties don't win a single constituency and it does not necessarily follow that they will then be allocated the percentage that they got in the elections on the party lists system. There are a number of of models that are available and I think the theme committee will have to make up its mind and not simply leave it in the air. Now the ??? system for example the liberals there don't do well in the constituencies but their system certainly has allowed for the liberals to be represented in parliament and they have succeeded also to form part of the government for many years in spite of their poor showing at the constituency level but that is a module which is parcular to Germany and I think we need to decide what we really want rather than to leave it up in the air.

Chairperson

Mr Hendricks, Mr Eglin

Mr Hendricks

Thank you sir, I would not be in favour of us leaving out reference to constituencies because currently the the principal of constitutional representation in terms of the interim constitution is associated with the party lists system so one should talk of constitutional representation only without making references to consistencies then to the

ordinary person even people who are members of the CA but not in this day in parliamentary discussion. The that represents cutting out constituencies and people are there crying for the availability of NP's that they're not accessible and they associate that with the fact that they have not been able to replace the situation where they can. Votes specifically for a specific individual, so I think they should if they found a way which is going to indicate that constituencies are not being excluded by reference to the assisting of proportional representation. If I can also go to the question of constituencies and proportional representation of parties, my understanding is in that my understanding is in that we'll have constituencies where people voters are going to go vote for specific individuals for each Multi-member system or a single member system. In addition to that with reference to the party lists system, it is not going to than is not going to refer specific color to the vote number number of votes acquired by a party or by a specific constituency, but the combination of the total votes acquired by a party is going to be ... it is going to be the party that decides as to which of its members are going to allocated those .. the votes in terms which they would be able to go and sit in parliament on whatever regulative instruction. So what I'm saying is that I see a differentiation between constituency and proportionality and I associate the proportionality with the party system without tying it to like I say the votes that a party acquires over a specific constituency and the totality of the votes that it acquires in the election.

Chairperson

Mr Eglin?

Mr Eglin

Yes, Mr Chairperson I'm .. I hear what Mr Hendricks says and I would prefer reference to be to the constituency as well but I don't mind if it says proportionality provided there's a very clear footnote which says that all of the parties or the majority of the party advocate a system which includes the introduction of the constituencies as well as party lists in other words it is not for us to introduce the final it is for us to

reflect the final of what has come into this committee so if we just say proportionality which I will accept then I think there is a footnote that must be referenced to the fact that we are not only therefore referring to party lists, that in fact the majority of the parties favour a system which introduces the constituency component as well.

Chairperson

Do you agree to that sir?

Okay so we then agree there will be a footnote as Mr Eglin has proposed, Peter has actually said that also earlier and then it will indicate like that in our report. Are we all agreed about that? Mr Ligege you looking me as if you not agree?

Mr Ligege

Well I .. I am a bit ... I don't know whether I am confused or what because we seem to be discussing now what we originally discussed .. I think Mr Hendrickse, Peter, did say that IEC is suggesting that both systems should be conceded ... the the a ... the proportional representation and constituencies based on representation, I though we had already discussed this but I see we are now re discussing it again. I don't know for what purpose? And in any case I am bit confused about this you know Dr. Rudford says there are several forms of proportional representation and I agree with him. Some people you find with correction seem to be saying that once you agree on the constituency base without mentioning proportional representation, you are excluding proportional representation. But I think one form of proportional representation is that in a constituency based representation you can still say we're going to have a Multi-member constituency system. There are several parties that can participate in the elections one two three four five parties and when I say the cut off line is this percentage any party receiving such a percentage will be in title representation. That's one form without necessarily saying constituency based and representation, we can say in the constitution without mentioning though even the word representation

proportional representation that a party receiving such and such a percentage will be entitled to representation in parliament. That's one form, I believe there are other several forms, but the point that I was trying to make is that Mr Chairman that we have already discussed this question and I don't think we should waste more time on it.

I am surprised that you are opening it again

Mr Ligege

Perhaps the Chief was

Laughs

Chairperson

I am surprised you open it again. Okay the matter is closed Mr Ligege, all Mr Hendricks say we're finding a better draft formulation we discussed it when we discussed the report. We want to indicate it clearly in our draft formulation as to what do we want. But the matter is closed. Well that concludes our discussion.

What's that? Oh the second one I am sorry. Mr Steytler the second one

Mr Steytler

The second one

Mr Hendrickse

Mr Chairperson

Mr Chairperson

Yes, Mr Hendrickse

Mr Hedrickse

I think that its important that we include section two in our report. We're saying in terms of the electoral system that we should have it should be supervised by an independent electoral commission. I think management committee must then decide whether if they aren't busy doing something with the theme committee 6 should be dealing with it or whether it should be referred back to us or another body. I think that the principal must be standard by us that it must be supervised by an independent electoral commission.

Chairperson

So you suggest that we don't put that as a formulation draft but as a footnote

| | |
|----------------|--|
| Mr Hendrickse | No ... no I'm suggesting that we leave it as it is. |
| Chairperson | We leave it as it is, alright. Anybody against Mr Hendrickse suggestion? Mr Steytler? |
| Mr Steytler | Perhaps just attention to the wording there - any legislation of the republic, whether that is now to broad. That include local elections aswell. I think maybe we should make it specific to the National Assembly and then depending on their earlier question which Mr Eglin raised whether we should have one provision for all levels of government or repeated with the necessary differences. But that for this purpose we refer to the National Assembly. |
| Mr Chairperson | But remember we also looking at the provincial structure as a as a structure of this theme committee. How do we fit it in? You can't leave your provincial legislation's, you need to say how they will be elected. |
| ????? | Well they the question raised earlier by Mr Eglin is that if we should have a repeat of this at the beginning every level of government so that when we get to provincial government we repeat it or whether at some other place ... |
| Mr Chairperson | We find a formulation |
| ???? | have a general principal which says it applies to all levels of government |
| Mr Chairperson | Okay |
| ??? | So just the wording, I don't know I think because we are dealing with the provincial government at this stage, we can not in terms of the National Assembly put it in, that we are referring to the National Assembly |
| Mr Chairperson | Its quite clear. We're saying that National Assembly |
| ???? | saying that we should delete any |
| Mr Chairperson | Ja, we leave it at National level for the time being. Right any other question or input? Professor Steytler? |

Professor Steytler Stewart can I just say a further provision that we may just want to look as is the filling of vacancies? In the report on the National Assembly we left that open and said it would be re-visited ... will be dealt with by when we deal with the electoral system and that is section 9 of the present draft formulation draft. It may well be that we just provide for that now by simply stating that vacancies at the National Assembly shall be filled in accordance with the electoral law as provided by an act of parliament so that the electoral law both determines how persons get to parliament and at the same time how vacancies are filled because it will not be possible to provide the detail how vacancies will be filled unless we know precisely the details of the electoral system.

Mr Chairperson That is a suggestion from Professor Steytler. Anybody against that? We happy about it? Okay, you have the authority if you want to do so. Anything. Well that concludes the discussion on report ...

Mr Steytler Stewart, just the last question. I was asked by all of the secretarial this morning, there's a quest from Mr Groeffee from the law advisers whether some of these formulations can actually go into the report pertaining to the National Assembly so that the CC actually get a full comprehensive report say for example the question of filling of vacancies even the electoral system and the broad way that we formulated it now because we've less spaces in the draft on the parliament for example National Elections sub-section 4 section 4 theres simply a space shall be dealt with under the Electoral question ... the Electoral system if we want to add something of what we've done here in there.

???

So that's correctional?

Mr Steytler Yes and then it is basically a comprehensive report to the CC

??

The report will upset if these provisions can be stopped ...

Mr Chairperson Do you have difference difficulty with that? Not. You can include that. Okay, anything Professor Steytler? Do you still have some more? Okay

Mr Eglin Mr Chairperson can I just say that I understand one of our mandates was to look at the electoral system. Now we've looked at the electoral system in so far as its necessary to include matters in the constitution, so we've only gone as far as that. I don't know whether its our functions to take the matter further irrespective of whether it goes in the constitution or not, but there is a practical problem and that is that you can say it should be left to the law or one day when you've got a new constitution and a new parliament constructing this way it can be left to the law but the first election you would not have had the new parliament and it may well be that the political parties say that the electoral system for the first election has got to be part of the negotiated process so you know cos the first election won't involve even these principals as the constitution ...

???? The 1999 election

Mr Eglin The 1999 election, the 2004 election you can have a constitution parliament will draw up the electoral act but whose going to draw up the electoral act for the 1999 constitution for the election? Because those principals don't as yet apply until the new constitution comes into effect. So what I'm saying is that while we can stop our work now it may well be that the Constitution Assembly appoints somebody to say you take this question of the electoral system even further, so that there is general agreement on the electoral system for the first election under the new constitution. But we're not taking it further I'm just raising it so we don't think that automatically all work on the electoral system is over because we're putting in the support. Who's going to draw up the electoral system for the first election?

???

If ... if I can just reply to attempt to reply to Mr Eglin. Look with this constitution be according to the plan be adopted next year 1996, there's still 3 years left for parliament to draw up the electoral act for the 1999 elections. So that that act ... the 1999 elections will be based on the new constitution as approved. Remember the only provision in the interim constitution is that the government of National Unity will continue until the 1999, but the rest of the new constitution will come into effect immediately so that this parliament won't be able to draw up an electoral act for the 1999 elections.

Professor Steytler

We will argue whether that is a good thing. Parliament which we don't think is adequately structured but that's why we actually drawing up a new constitution to draw up an electoral act for the next constitution. In fact I'm just saying its an issue which will have to be discussed.

Chairperson

Okay, can parties think about that, its not a matter for discussion today its a point which ??? must raising we will look into, I think we can ponder about that. Well that brings us to the conclusion of discussion of the board on the electoral system. What is the way forward? Are we saying they can prepare the report with the draft formulation and then give them authority to pass it over to the CC or you want it back in the theme committee? With those amendments?

????

Mr Chairman, Sh.... I think we have sufficient confidence our legal advisers my own feelings that we should allow them to prepare this and pass it on to the CC. They may perhaps send us copies thereafter they will include I have no doubt in my mind everything that you have said here you know.

Chairperson

Mr Steytler, there you are they say they trust you ...

Mr Steytler

???

????

But I want to would still like to see that copy before it goes to the CC, even if I trust you (laugh)

| | |
|-----------------------|--|
| Mr Eglin | The Chairman or the core group to just look at them |
| ??? | Who ever the core group are available they are just to send them a copy and just .. |
| Mr Chairman | Just before you send it to the CC we would like to browse through it quickly and see whether really that report carries our discussions in this theme committee. That doesn't mean I don't trust you its just to make sure, double check. Professor Ranchard???? |
| Professor R???? | Not made a submission and we taking a principal stand where a party does not make a submission that we proceed without them |
| ???? | I sincerely hope? |
| ???? | No they're not around but what is the position because I've just checked on the parties submissions there's nothing from the IFP |
| Mr Liger ^e | Yes |
| Mr Chairperson | Mr Liger ^e |
| Mr Liger ^e | I think the Chairman of the Constitutional Committee has been making very clear in his past statements, the party that moves out is not going to hold parliament to ransom we will got to continue with our work we cannot say because a EC has moved out of parliament and they're saying they not going to participate in whatever therefore parliament must come to a standstill. They've decided not to participate we will continue with our work. |
| Mr Chairperson | Mr Hendrickse |
| Mr Hendrickse | Mr ??? ?????... our practice is that there where a party has made submission and the difference in the report should be noted so that, so the IFP have made submissions that way, we don't need to make any footnote |

Mr Steytler

Stewart I think that we must just go back to the original submissions that they have made. I think that these were only based on the little bundle that we received specifically in the electoral system, they may have said something in their earlier draft and I think that it will be worthwhile to check on that.

Mr Chairperson

Okay, and that you can just say something in your report about that, will that satisfy you Doc.

Dr ?

I was nearly putting the question, I was not suggesting that we hold up the process I ... I'm personally in favour of having a conclusive a process as possible and therefore where they have not made a submission I ... we should note it somewhere in our report

Mr Chairperson

Okay that is noted, Mev. Bardenhorst was your hand up? Okay two things to the search quickly. You have received the notices of the Public Meetings, those who are prepared to attend those public meetings you know we must have at least two to three members from each theme committee can you come to fill up the forms and sent them straight to the secretariat that will pass it over to the organizers of the public participating meetings. We have one the 26th of August in Mpageni and the other one on the 2nd of September in Port Shepston. If we could fill up those forms please. Then the other one its a note from the Constitutional Assembly... I'm just getting it now addressed to the Chairpersons of all Theme Committee ... Re: Parliament Program of Tuesday 8 August 1995 - Parliament has decided to convene on 8 August from 14h15 to 15h00 in order to pass a resolution to mark Woman's Day on August 9, 95 ... Theme Committees are therefore kindly requested to meet after 15h00 for the afternoon session should they wish, Thank your from Ebrahim Hasa. So Mr Eglin and I will have to decide when we meet tomorrow, in the morning or the afternoon.

Mr Eglin

No Mr Chairperson, I want to propose that we don't meet tomorrow

Mr Chairperson Oh, that's what you said

Mr Eglin Because we have not received the report yet, that we could meet on Wednesday, this would give us tomorrow afternoon a steam com.... a study groups to go through those reports. If not on Wednesday then on Thursday but not tomorrow afternoon

Mr Chairperson Okay Wednesday is a holiday, then we meet on Thursday. The report on the self determination is quite a long one, can we then meet on Thursday morning at 9 o'clock, oh by the way there's a caucus on Thursday. Well we have one

?? ?

Mr Chairperson Oh, okay all right watch the notices from the pigeon holes from tomorrow ... the time will be fixed accordingly then just watch your documentation. Okay that concludes the business of the day, thank you very much