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THEME COMMITTEE TC6.2: 2nd Draft Rep. Disc

MEETING: 1-2

TAPES: 27/03/85

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THEME COMMITTEE 6.2

2ND DRAFT REP DISC

27 MARCH 1995

THEME COMMITTEE 6.2

2ND DRAFT REPORT DISCUSSION - 27 MARCH 1995

TAPE 1 - SIDE A

CHAIRPERSON: ... I think maybe we should start without any further ado and I am just saying that there are just two announcements more or less before we start. The first one is that how we proceed from now, we have next Monday ja we have next Monday we have the FFC schedule to be with us, I am not sure whether that's the morning or the afternoon.

UNKNOWN: The morning.

CHAIRPERSON: The morning, what I suggest we do is that we won't I don't think by then have resolved the question of how we working with Theme Committee 3 because I don't want to (inaudible) ... to devote a lot of time today to discussing that. And I'll read out a little memorandum which I got just now. But I think we should invite - we should ask Pat to - to draw that matter to the attention of Theme Committee 3 and say to them that this does not preclude a long term arrangement with Theme Committee 3 but we had already organised this meeting and they can then sent which ever people they want to come to that hearing with the FFC. Is that agreeable.

UNKNOWN: Ja.

CHAIRPERSON: Okay, I got a note from - from the secretariat basically saying the following. I contacted Du Toit, Professor Du Toit and also Ken is

in the chair of 3 and I did put the two options which we discussed, which were basically that the whole of 6.2 now enters into permanent commission with those members of 3 that are dealing with financial matters and we don't meet again as a separate sub committee. Or the alternative was that some members of us and some members of them form a commission and then report back to the two separate committees. And our preference was for the first option.

That I received the following letter which says the members of the Core Group mandated the secretariat to liaise with you on the financial and physical issues which relate to both committees and which they suggest we handled as follows. And then there is a quote that Theme Committee 3 task in this area is to determine the powers and functions of the different levels of Government in respect of physical matters and the role of the FFC in this regard. Thereafter Theme Committee 6 will be responsible for determining in the structure and composition of the FFC. it is therefore recommended at this stage parties bring some of their TC6.2 members onto their TC3 delegation so that they can be intimately involved in the whole process. It is my understanding that Mr KM Andrew will be available to discuss this matter further with you as necessary.

So they going for some fairly narrow definition of what our task is in respect of the FFC. We only suppose to deal with some of the - not the powers as I would understand it from there only the composition of the FFC which I think is a bit of an artificial division. And that only some of us would go into the commission. I think this matter needs further discussion, frankly I haven't had a

change because we've been involved with the finance committee all of last week. But before our next meeting I will undertake to try to meet in a more regular formal basis with the leadership of TC3 and come back with a more firm proposal next week. But next week we will meet the FFC is that acceptable?

The next item which I need to draw to the committees attention is that there ... (intervention)

UNKNOWN: Sorry Rob.

CHAIRPERSON: H'm.

UNKNOWN: Just in terms of next Monday if I could put in apologies now, because I am going to be in Port Elizabeth.

CHAIRPERSON: Okay, okay we can just note that please Pat.

UNKNOWN: Chair myself will - will have problems next (inaudible) ... unfortunately.

UNKNOWN: Pardon.

UNKNOWN: Myself will have problems to be here I'll try my best, but if I am not here, please regard it I've made excuse.

CHAIRPERSON: The next matter is that there is a invitation to attend a workshop on physical and financial provisions which is being arranged by the commission on provincial Government headed by (inaudible) ... Botha. And it's being organised in Pretoria, but the DP SA is also

involved and USA is sponsoring this conference. And it's taking place - it's called physical and financial provisions, key issues for the Constitution. So it is very directly covering our brief. It's been held on the 7th to 8th of April in Pretoria and there is a form here and it's basically I think that from the way it's all written up about flights and about hotels, I don't think it's paid, I think that people would have to pay their own way from the way it's written here, there sort of you know recommended hotels and things like that.

Now Gavin has already indicated to me that he would like to attend, I won't be able to go myself I don't know who else can attend. Maybe what we can do is while we in meeting we can circulate this and perhaps people can just write on there on the first page here if they able to attend.

UNKNOWN: Could we perhaps also ask whether if someone like Gavin is going, is a set of documentation and perhaps a sort of just a summary of the key issues that comes back to us, because I think it's going to certainly I can't go that weekend but I'll be very interested in the issues.

CHAIRPERSON: Okay well let's - let's just circulate it and let's see how many people are going to go and then - and then we can then perhaps discuss it briefly at the end of the meeting, okay.

UNKNOWN: Rob my understanding is that the chances are that it will be paid. The five from the group and five from Theme Committee 3. So my understanding from the Core Group that Theme Committee 3 is have taken it, for those people it will be paid.

CHAIRPERSON: Okay then well let's - let's circulate it in the following way, it actually does say that we entitled to four people plus one from the secretariat which is Pat. And let's put it this way, let's circulate it and people can say you know I'll come as long as it's paid or you know I'll come whether or not it's paid, okay. So let's just circulated it this way.

Okay the main business today I hope that we can almost if not entirely finalise this report which is late. I wrote a letter explaining that we had been delayed because of the finance committee I said that the report was nearly finished and I said that we needed another meeting or so and I suggested in general we would have it in by the end of the month which is the end of the week.

Now it seems to me that the main item that we have to deal with - we have to sort out among ourselves is to identify the issues where there are differences or different emphasise and we have to essentially divide them into contentious issues and other issues. And what I was going to suggest was something like the following that if you just turn first of all to this draft outline report this document here, Constitution report of - to sub committee 2 summary of positions. This draft here if we turn to the section where - which is called overview of material process - there is then - it's 1.2 and then there's then 1.21, 1.2221, 1.2222 etcetera, gist of contentiousness and so and so forth.

It seems to me that what we can do since we got the tables is that we can simplify that exercise quite a bit by saying something like the following that we have a general statement saying the areas of contention were the following and then I think we should identify

them write them down there spell out the briefly the nature of the contention and then say something like apart from that there were different emphasise or different suggestions from the different parties which were not contentious the position of the parties is recorded in the following tables. And that then brings our tables in.

And what it seems to me we need to do is to go through the tables, I would suggest a slightly modified version of the - we would include the - the code which - which Cyrus has produced and by the way sorry I should of mentioned Cyrus sends his apologies, he is going overseas and I think he's done a lot of work for us and I think we should record that in the committee and I don't think - I mean it's unfortunate that he's not here but I think we can manage to finish the document ourselves.

But if you recall on - in his letter to me he described he put the code to - to describe the nature of the clauses - to describe the nature of the - his assessment. Which was A which was agreement with the clauses concerned, AQ is the general agreement although it wasn't spelled out in any submission, NCA is that there is a - the thrust of the discussions and what went on in the committee suggest, general agreement and then he put D that there is some disagreement and I think we should add another one, I would call it DC - disagreement and some contention between the parties and it seems to me that what we need to do is we need to identify which of those issues are in that contentious category, because that's what we need to spell out.

If that is more or less agreeable I would suggest that we go

through the tables.

UNKNOWN: (inaudible) ...

CHAIRPERSON: Well I think we need to identify the contentious issues otherwise we don't need to if they not contentious then we don't need to identify them specially we just draw people's attention to the tables, we draw the constitutional committees attention to the tables, is that - I think that's basically it.

There is a small - a small point which I think we took note of last time and which I think Pat is going to have to fix up the tables. Parties that are not represented in the Constitutional Assembly political parties not represented in the Constitutional Assembly and in our case that means the Conservative Party and the Communist Party. Their representations go in as civil society and not as parties and so the tables have to be adjusted accordingly. So it's parties that are represented in - in the CA okay.

UNKNOWN: I suggest because it's also somewhere in one of these that if one uses that thing Parliamentary parties then it makes it easier, you have Parliamentary parties and civil societies.

CHAIRPERSON: I suggested that we put at the beginning here list of submissions received and processed 111 on the very first page, political parties represented in Constitutional Assembly and then the other side is organisations and civil society, put the Conservative Party and the SACP in that category, I think that is how it should be done.

Okay can we go through the thing, I think if we -perhaps if we fold

our document something like this, we can follow the line across and the line across here okay. If we start I would suggest with the Reserve Bank and if we also have our Constitutions handy that might help as well because the references to the - to the Interim Constitution.

So the first point is a quotation from the Interim Constitution and says basically most of us agreed that we were ... (intervention)

UNKNOWN: (inaudible) ...

CHAIRPERSON: H'm.

UNKNOWN: (inaudible) ... ja I have ja.

CHAIRPERSON: Ja okay.

UNKNOWN: Sorry.

CHAIRPERSON: Okay, the first since we basically all agree that the clauses in the Interim Constitution would broadly be speaking carried over into the final Constitution except the small amendments it then becomes correct for us to follow the clauses in the Interim Constitution.

We start off with Section 195 the South African Reserve Bank the only point there is that the IFP have proposed that the SARB be re-established as the Central Bank of South Africa, they've proposed the change in name. I don't know whether anybody

wants to say that's a point of contention, or it seems to me that it's a suggestion that can go forward. I mean I don't think we all endorse it necessarily but I don't think that it's a point of contention. I would say point of contention is points of principle okay. I would - I would say that, that point is not contentious, is that agreed.

The primary objectors of the SARB shall be to protect the internal and external value of the currency and the interest of balance and sustainable economic growth. Of the parties represented in the CA I don't think anybody had any substantial disagreement with that, that's not recorded on the - is that okay?

196.2 the SARB shall in pursuit of it's primary objectors refer to in sub section 1 exercise it's powers and perform it's functions independently subject only to an act of Parliament referred in Section 197. Again I see no points of contention.

196.2 provided that there shall be regular consultation between the SARB and the Minister responsible for national financial affairs, I don't see any major points of contention, there is a slightly different formulation by the Freedom Front I don't think it's a major point of principles. Decisions affecting each other should be reached only after due consultations between the two authorities.

UNKNOWN: (inaudible) ...

CHAIRPERSON: I think it boils down to the same thing okay. Let met quickly go over the page.

197 the powers and functions of the SARB shall be those customarily exercised and performed by central banks. The IFP has a different formulation, the bank shall have the powers of regulating banking and credit and shall be independent within the parameters of the law and within the scope of the pre determined monetary and general economic policy frameworks. As determined in conjunction with Government to use tools of monetary intervention in the public interest. I think this is the candidate for Willie Hofmeyer's plain language but anyway I leave that.

The bank power to regulate banking and to undertake all other powers and functions customarily exercised by central banks. I don't see that's very different.

UNKNOWN: (inaudible) ... our point is that we felt that, that can go into legislation not into the Constitution as such.

CHAIRPERSON: Ja I mean I think that, that would be our emphasis as well. But I don't know if we call that a point of contention, I don't think that's a point of contention.

With powers and functions - which powers and functions shall be determined by an act of Parliament and shall be exercised or performed subject to the conditions as may be prescribed under such act. I think our's the ANC one here is (inaudible) ... to say the thrust of our (inaudible) ... was to say these clauses should go through as they are. The IFP has in order to increase the independence of the bank it's fundamental powers and functions should be specified in the Constitution rather than left to the discretion of the majority of Parliament.

I don't think we would agree with that on the ANC's side. The banks should enjoy autonomy which is the power to adopt the fundamental rules of its organisation operation. It is debatable whether this scheme leaves any space for the legislative (inaudible) ... legislative competence of Parliament which in any case should be limited to give in the central bank additional or secondary goals with related powers, functions and resources and should not prescribe how such powers or functions are to be organised.

I don't ... (intervention)

UNKNOWN: (inaudible) ...

CHAIRPERSON: I think that's the thrust that most of us would say that, that should be in the bank act, the IFP is proposing that the independence and autonomy should be strengthened with more fundamental powers being spelled out in the Constitution.

UNKNOWN: Mr Chairman (rest inaudible) ...

CHAIRPERSON: Ja, well I don't know, I mean I think - I think we wouldn't agree with spelling out the functions in the Constitution in any more detail than they already are. I don't know whether we would want to on the ANC side call that a point of contention or - I think - I mean we just don't agree on it and the IFP has got a proposal there. I don't know whether we call it a serious matter of contention.

UNKNOWN: (inaudible) ...

CHAIRPERSON: Okay.

UNKNOWN: I wonder whether - I wonder whether it would help the IFP if that Section 197 we said there powers and functions those of the (inaudible) ... should be those (inaudible) ... exercised and performed by it - it being the SARB and other central banks. You know it would be a slightly greater clarity because there was evidence which I haven't had the time to look into but I have no reason to believe it's not accurate. But one of the problems with that phrase is that central banks, powers and functions differ quite considerably in different parts of the world, therefor there isn't just a - that it's a bit loose you know in that sense.

But if one (inaudible) ... exercise and performed by the SARB and other central banks, it would at least give it a slightly firmer base.

CHAIRPERSON: So what would the change be?

UNKNOWN: H'm well just looking in that first column the words would then read and not necessary trying to draft to the (inaudible) ... degree - the powers and functions of the SARB shall be those customary exercised by the SARB - sorry customary exercised and performed by either it or the SARB and other central banks.

So in other words you making clear that your definition of central banks includes the SARB's powers and functions, customary exercise and performed and not simply central banks elsewhere, so it gives it a sort of a fix and a sort of general parameter as well. I just thought that might help the IFP and I think it also is provides some greater clarity because as I say we did have evidence

saying that this was - this was in practice rather vague.

CHAIRPERSON: Well what does the IFP said about that. I mean I think we can put that in as a additional suggestion and leave the whole - leave the matters as non contentious we could add that in as a DP proposal under the column above.

UNKNOWN: All right.

CHAIRPERSON: Okay.

UNKNOWN: (inaudible) ...

CHAIRPERSON: Okay then we'll put the NP supported this.

Can we move now to Section 197.2 I think this is a - this would be an additions clause ... (intervention)

UNKNOWN: Mr Chairperson sorry - I am (inaudible) ... again, you didn't mention the DP proviso that we suggested to 197, again I know we don't have to discuss these things and it's correct you recorded there so I am not trying to do anything other than say you didn't actually mention that.

CHAIRPERSON: Ja I think that, that is not a matter of contention either, okay.

UNKNOWN: No.

CHAIRPERSON: Okay, then there is a proposal for 197.2 which is an additional clause hey and there is two versions of this. That the governor

shall submit a half yearly report to Parliament on the monetary status of the Republic and on the status of the banking system in the country. Parliament shall have the power to review any activity of the bank and to hold hearings to investigate its policies. The bank shall hold regular consultations with the Ministers responsible for national and provincial affairs.

I think our approach would be that this kind of clause is better in the bank act rather than in the Constitution. The DP has also got a proposal the South African Reserve Bank shall submit an annual report to Parliament and authorise senior officers to give evidence before a joint commission of both houses of Parliament on the policies and activities that the South African bank.

UNKNOWN: (inaudible) ...

UNKNOWN: Chairperson may I say that - that we don't feel particularly strongly about this (inaudible) ... to be in here, so you know it's not something that we would feel as fundamental principle or anything but the reason why we put it, we simply felt that - I mean we feel obviously very strongly as to I think everybody about the independence the Reserve Bank within reasonable parameters and we just thought it was presented the other side of the coin the accountability element which we thought even in the constitutional context had some use. But that was the reason and the exact how often you report and the wording is of no importance to us.

I accept entirely that it could simply go into legislation but just looking at the constitutional section that was the reason that we - we just thought to get the balance between the independence and

the accountability was - was what we were trying to achieve.

CHAIRPERSON: Ja I think those are non contentious suggestions which is subject to some further debate and discussion. Okay then we go further on, general comments. I think those come from people outside - there are various other - the views of other forces in civil society and other people we heard evidence for are - are recorded.

I think the next batch of issues we have to deal with is under this heading other issues arising. It comes a few pages later, I don't know if everybody has got it, after general - okay. The bank to be independent from party political independence - from party political interference. I don't think there is a contention there. A new section proposed by the IFP, there should be specified minimum limits on the banks direct financing of Governments. I think that is a matter of contention, I don't think we would agree with that, okay.

UNKNOWN: I don't actually know what it means.

CHAIRPERSON: The (inaudible) ... figures to Reserve Banks in the world do have a similar clause so that was - that was a thinking as it relates to independence why it seemed important to us.

UNKNOWN: Yes but now what does it actually mean precisely.

CHAIRPERSON: Well ja. Sorry may we just for not debating purposes for - there should be specified minimum limits on the banks direct financing and Government. So there is - the bank will be obliged to provide a minimum amount of money to the Government is that - is that

what you ... (intervention)

UNKNOWN: (inaudible) ...

CHAIRPERSON: So it should be maximum.

UNKNOWN: Well that would be maximum then.

UNKNOWN: (inaudible) ...

CHAIRPERSON: All right okay I think - I think we need to say the IFP proposes that
- the ANC doesn't agree with it, the NP doesn't agree with it, the
DP?

UNKNOWN: I don't know - well I didn't understand it so I (inaudible) ...

CHAIRPERSON: So we can record at least that the ANC and the NP don't agree
with it okay. The banks should not be obliged to purchase
Government securities, I don't think we would agree that should go
under Constitution. I think we would - is that - what's the NP.

UNKNOWN: Supporting.

CHAIRPERSON: DP?

UNKNOWN: Ja (inaudible) ...

CHAIRPERSON: Okay, bank structures, since the final guarantee ... (intervention)

UNKNOWN: - (inaudible) ...

CHAIRPERSON: I don't think it - I don't think it is and I don't think we would want to put that in the Constitution.

UNKNOWN: (inaudible) ...

CHAIRPERSON: Okay.

UNKNOWN: Sorry Rob I prepared in the sense on the basis of your original proposal so once I was happy that the DP's position was correctly stated I didn't study the others quite as much as perhaps I should have.

CHAIRPERSON: I don't think it's terribly important that we have a total, we haven't got the Freedom Front, we haven't got the PAC and the ACDP, I just think we record at least some of the parties that are opposed okay.

4, bank structures, since the final guarantees of independence of the bank lie in the bank structures, this should be determined by the Constitution and not by an act of Parliament. I mean we would disagree with that as well I think. Okay DP?

UNKNOWN: Ja I'd prefer to be silent, sorry.

CHAIRPERSON: Silence - no it's alright. The other, we don't have to identify the contentions I mean some of the other issues that the other forces would have proposed would also be possibly matter of contention but I don't think we need to spell those out here.

Can we turn over to the next page, appointment and

representation. The governor of the two deputy governors and three other directors of the central bank shall be appointed by the President in consultation with Parliament of a select committee there or a select committee thereof. A further ten directors of the banks board should be appointed by organised commerce, industry and labour. I think we would think is a matter for legislation.

UNKNOWN: Yes.

CHAIRPERSON: So we wouldn't agree. Is the DP still ... (intervention)

UNKNOWN: No (inaudible) ...

CHAIRPERSON: Okay, all members of the banks board should serve for a term - five year term which can be renewed on one or more occasion, I think we would also not want to see this in the Constitution. DP?

UNKNOWN: (inaudible) ...

CHAIRPERSON: Willie you've missed a few things.

WILLIE: (inaudible) ... I have no (inaudible) ...

CHAIRPERSON: You would agree with that or disagree?

WILLIE: (inaudible) ...

CHAIRPERSON: Okay, can we just go back since you were out there were a couple of other, the governor, the deputy governor and three other

directors shall be appointed by the President in consultation etcetera, etcetera - do you agree with that kind of clause in the Constitution?

WILLIE: (inaudible) ...

CHAIRPERSON: Ja.

WILLIE: Ja (inaudible) ...

CHAIRPERSON: You don't agree - you do agree.

WILLIE: I do agree.

CHAIRPERSON: Okay so it's IFP and Freedom Front agrees. Then there were three more sorry I am going back now, since the final guarantees of the independence of the bank lie in the banks structures this should be determined by the Constitution and not by an act of Parliament. Do you agree?

WILLIE: (inaudible) ... the fact that Parliament (inaudible) ...

CHAIRPERSON: Okay so you disagree with that. The banks should not be obliged to purchase Government securities, do you agree that - do you think that should go on the Constitution or not?

WILLIE: (inaudible) ...

CHAIRPERSON: There should be specified minimum limits on the banks direct financing of Government?

WILLIE: (inaudible) ...

CHAIRPERSON: Okay point 7, again an IFP proposal. The executive should be made up of the governor the two deputy governors and three other directors from those appointed by organised commerce and industry. I think that's the same.

UNKNOWN: (inaudible) ...

CHAIRPERSON: Comments on drafting the ANC's point here, given the broad support these sections enjoy the ANC proposals incorporating them into the final Constitution unchanged. I would say that we the only ones who suggest that, everybody else proposes something else. I don't know whether that is a point of contention or (inaudible) ...

Then the DP while many of these proposals are (inaudible) ... in (inaudible) ... legal terminology they are not intended to convey the final precise wording required in the Constitution I think that's a (inaudible) ...

UNKNOWN: It's a (rest inaudible) ...

CHAIRPERSON: Right and then I think that's it. I think we've done the bank. I think if we manage to keep up this pace, I think we'll do our job today.

UNKNOWN: Well congratulations (inaudible) ...

CHAIRPERSON: Right.

UNKNOWN: (inaudible) ...

CHAIRPERSON: Okay could we move to the AG next, I hope everybody's got their thing on the AG. It starts here it's auditor general and then you sort of fold the page down and you know like this. So it starts on Section 191, establishment and appointment. This time I think we going to have to refer - it doesn't reproduce all the clause you see, we'll have to refer to - to the Constitution I don't know if everybody has got their Constitution here. If you haven't I'll read out the clauses where necessary.

Section 191 is on the establishment and appointment and the IFP says the AG should be regulated by an act of Parliament as is the case at present, I don't think this a point of contention. I think this is a general observation comment.

191.1 simply says - 'daar is 'n ouditeur generaal vir die Republiek' I think you know if I can find my English one, that's all it says.

UNKNOWN: (inaudible) ...

CHAIRPERSON: You understood that, Billy didn't unfortunately. Okay, 191.2 says the President shall whenever it becomes necessary appoint as a auditor general a person (a) nominated by a joint committee of the houses of Parliament composed of one member of each party represented in Parliament and willing to participate in the committee and (b) approved by the national assembly and the Senate by resolution, adopted without debate by a majority of at least two thirds of the members present and voting at a joined meeting, provided that if any nomination is not approved as

required in paragraph (b) the joined committee shall nominate another person.

After having read all that out, it says the IFP says the AG should be appointed by the State President after nomination by the audit committee and approval of that nomination by a two thirds vote in the national assembly and Senate.

The DP says that the President should fill a vacancy within eight months and the Freedom Front says appointments of the AG should be made by the tax payers and not by the Government.

I think that ... (intervention)

UNKNOWN: Mr Chairperson can I just mention that in the discussions with regard to the new Bill before Senate the National Parties approach is that the AG should be appointed by the audit commission after consultation with the President. So that's what we've opposed in our ... (intervention)

CHAIRPERSON: So you want to say President after consultation with the auditor general.

UNKNOWN: No.

CHAIRPERSON: Audit commission sorry.

UNKNOWN: I think (inaudible) ...

UNKNOWN: Audit commission after consultation with the President.

CHAIRPERSON: Okay sorry.

UNKNOWN: (inaudible) ...

CHAIRPERSON: What are the nature of these differences.

UNKNOWN: Well the - I think the Constitution doesn't say that they has - a committee has to be consisting of each representative - each party representative have to make the ... (intervention)

UNKNOWN: (inaudible) ... of one member of each (inaudible) ...
(intervention)

UNKNOWN: That's right - that's right.

UNKNOWN: It's a person nominated (inaudible) ...

UNKNOWN: And then it has to be put before the houses and you have to - without a debate an two thirds majority.

UNKNOWN: Can i just say that there - a problem with the IFP proposal I mean besides merit or otherwise is that in the Constitution if you mention something like a audit commission in the Constitution you then have to defy what a audit commission is because the Constitution is the supreme law, so you then have to have a whole section on saying there shall be an audit commission and this is how it is going to consist and this is going to be powers and so on. Because the Constitution cannot simply refer to another act of Parliament.

UNKNOWN: Yes.

CHAIRPERSON: Okay so - so shall we just - shall we put a note to that affect that the audit commission is not in fact mentioned in the Constitution at this point and that's the sort of technical problem - okay. So it's not a - I don't think those are at the moment points of contention, I mean those are various kinds of proposals alright.

What about the Freedom Front's tax payers and not the Government.

UNKNOWN: Mr Chairman I got some experience on public accounts and my feeling I didn't like to say it - is that the fact that the auditor general is appointed by the Government sometimes influence him. I won't say directly but - but indirectly it has an influence. Now South Africa is a country where so much money of the tax payer has been wasted that we must give a signal to this tax payer that we've come to the end of it. By involving the tax payer in auditing of his money, not the Government's money, the tax payers money, we can give them some sort of assurance that this Government is serious about the way in which we will treat the tax payers money.

Now to completely sideline the tax payer, in this most important function of auditing I think we don't win their confidence. We may marry my suggestion with some of the others, we may say okay let the auditor generals - you must know that I talk about auditor generals.

CHAIRPERSON: Ja we'll come to that later.

UNKNOWN: Ja that they be appointed then in consultation at least in consultation with the private sector. How that can happen can be spelled out in the act on the auditor general.

CHAIRPERSON: Okay I think - I think the points clear, I don't think we would agree with that.

UNKNOWN: No Mr Chairman could I just make a point please.

CHAIRPERSON: Ja.

UNKNOWN: We must make one point clear here that the - that the auditor general is not appointed by the Government. He is appointment by Parliament and that makes it quite different.

UNKNOWN: It's the Government (inaudible) ...

UNKNOWN: No it's not the Government.

UNKNOWN: Okay.

UNKNOWN: The thing and then the point is just that even if you come back to the actual tax payers themselves what sort of mechanisms are you going to - will you have to create for that, that can be of extremely (inaudible) ... or a mechanism (inaudible) ... so we would not go with that at all we would much rather stick to the idea that Parliament does the necessary (inaudible) ...

CHAIRPERSON: Okay, let's just go through then and I think the ANC we would disagree with that. The NP would disagree with that, IFP? IFP

and the DP?

UNKNOWN: (inaudible) ...

CHAIRPERSON: Okay, then I am sorry I'll come back to it later on, we should actually have started with the other page at the bottom I misunderstood that because the point that Billy was making just now about auditors general - auditor generals whatever, that has to be dealt with just now.

191.3 was - it says that the auditor general shall be a South African citizen he is a fit and proper person to hold such office and he shall be appointed with due regard to his or her specialised knowledge or experience in auditing State finances and public administration.

The IFP suggested it should be a person of appropriate character and expertise I don't think that a contentious matter.

UNKNOWN: May I just suggest to that the - that the definition and the meaning of fit and proper is very specific and probably will cover everything that the IFP wants in that as far as character and expertise is concerned.

CHAIRPERSON: Ja we can leave it, it's another formulation not a proposal.

191.4 it's reads at the moment unless the new Constitutional text provides otherwise the auditor general shall be appointed for a period of not less than five years and not more than ten years and not thereafter be eligible for reappointment.

Two ANC and DP have suggested the removing in (inaudible) ... the constitutional text provides otherwise which would have to happen anyway, and the IFP is suggesting the AG should be allowed to serve in that capacity for a maximum of two five year terms. I think that's basically the same thing, it seems to me as I said there. But I mean we can just leave it, there is not contention there.

191.5 let me just find it.

UNKNOWN:

(inaudible) ... it's just we (inaudible) ... the auditor general the DP think it's just a (inaudible) ... from the auditor general submissions, but I wasn't sure whether that was going to be included in our (inaudible) ... because he simply said that terminology is not correct. (inaudible) ...

CHAIRPERSON:

I don't think it's a matter of contention the situation. The remuneration and other conditions of services of the auditor general shall be prescribed by under described by or under an act of Parliament and such remuneration and other conditions and service shall not be altered to his or her (inaudible) ... during his or her term of office. Nobody's got any comments there.

191.7 the auditor general shall not perform (inaudible) ... work outside his or her official duties again no one's got any comments.

We have to go through the general comments now, I don't propose to read them all out I think that mostly they are general points, I don't think there is a point of contention except for one I would say. The Freedom Front says at present the auditor general finds

it difficult to handle all the work because of this each Province should have it's own AG that should be in a better position to determine priorities in his Province and devote his attention where it's needed most.

The Provinces AG should form a body, the national council AG's under the chairmanship of the national AG. I think that's a point of contention, we would not agree with several AG's.

So it's ANC, NP, DP - disagree - IFP - (inaudible) ... okay so will - we won't make any specific reference to the IFP in identifying that contention.

Okay then if we go over the page we find in the same points by groups outside. I think the ACDP's point is just you know (inaudible) ... I don't think that's a point of contention, security of ten years is necessary in the period of approximately seven years without (inaudible) ... for reappointment - I don't think this is a matter of serious contention.

191.8 reads the auditor general shall not hold office in any political party or political organisation. I think there is agreement on that.

191.9 the auditor general may be removed from office by the President but only on the ground in misconduct, incapacity or incompetence determined by joined committee of the houses of Parliament compose this provided for in Section - sub section 2(a) and upon receipt of a request (inaudible) ... such removal made by Parliamentary (inaudible) ... and the resolution to that affect adopted at a joined sitting of the National Assembly and the

Senate.

The DP says removal should be subject to some two thirds majority as with appointment.

UNKNOWN: Yes the DP submission there is a typing error which is repeated here it should be the same two third majority, it was just our point is you very seldom appoint - throw out a person with a lower majority then you appoint them.

CHAIRPERSON: I don't think there is a contention there, I think that can go through as a proposal. Okay we've collected that - corrected that.

An auditor general who is the (inaudible) ... to the investigation by a joined committee in terms of sub section 9 may be suspended by the President pending a decision in such investigation. No one has got anything there.

191.11 the auditor general may at any time resign subject to this or her conditions of service by lodging his or her resignation in writing with the President. Nobody suggested anything there.

Then there is some - the IFP is suggesting a new clause there 12. The AG should have no personal interest in any or the organisations and bodies audited by the AG's office. I don't know if that's a point of contention, I think that is a suggestion.

Section 192 independence and impartiality.

(1) The auditor general shall be independent and impartial and

shall exercise and perform his or her powers and functions subject only to the Constitution and the law. The IFP wants to suggest that the AG must exercise his or her powers of functions in an independent (inaudible) ... manner and in doing so should be subject to the Constitution and the law.

The DP says persons appointed should have the - should be independent and impartial. I don't think those are points of contention.

Let me not read out the points, let me say to save time I'll read out the clause and then people must identify whether the thing is contentious or not, okay.

192.2 the auditor general and the persons appointed under section 194.1 such have such immunities and privileges as may be assigned to them ...

THEME COMMITTEE 6.2

2ND DRAFT REP DISC - 27 MARCH 1995

TAPE 2 - SIDE A

The IFP wants to suggest that the AG must exercise his powers in functions in an independent and partial manner, and in doing so is subject to the constitution and the law, the DP's persons appointed should have, should be independent and impartial. I don't think those points of contention. Let me not read out the points, let me say, I will read out the clause and then people must identify whether the thing is contentious or not. OK? 192.2 The Auditor General and persons appointed under section 194.1 shall have such immunities and privileges as maybe assigned to them, by or under the act of Parliament for the purpose of insuring the independent and impartial exercise and performance of their powers and functions. The DP has proposed an amendment.

UNKNOWN

Yes, people have got it there. First of all, there is a typing error which isn't ours. It should be section 194(1) and not 191(4) and all that is really, its giving indemnity both to the Auditor General and the Auditors from Private sector that he employs to do their work. So, either in their actual report or in their evidence before committees. They can't be sued for liable or any other kinds of things, as long as they are acting in good faith and it is in relation to the work they are being asked to do. Again, obviously I am a bit fussed about the particular wording. I copied that from somewhere else in the

constitution. That is where I got it from. But, it is just a thought that need to be indemnified.

CHAIRPERSON

I don't think this is a matter of content(?) as a proposal. It can be considered. 192(3) No organ of states and no member or employee of an organ of state nor any other person shall interfere with the AG or the person appointed under section 194(1) in the exercising or performance of his or her powers of functions. I think that the IFP's proposal here is a modification of that. I don't think there is a contention there.

4. All organs of State shall accord such assistance as may reasonably, as be reasonably required for the protection of the independence and the partiality dignity and effectiveness in the AG in the exercising and performance of his or her powers of the functions. I think that there is no points there.

192(5) is an addition proposed by the IFP. I think this is a fairly straight forward proposal. I think it is partly covered by some of the other clauses there. Not contention.

Let us go to 193. OK 193(1), there is no difference on that. It says the AG shall audit a report on all the accounts, financial statements of the accounting offices of National and Provincial level of Government other than the office of the Auditor General and all other persons in the National and Provincial Public services entrusted with public assets trust property or other assets. No one has proposed anything there.

2. The Auditor General shall audit a report of all accounts and

financial statements of any Local Government, Board, Fund, Institution, Company, Corporation, what organization is established and constituted by or under any law and of which the accounts and financial statements and required in terms of law to be audited by the Auditor General and the accounts and financial statements of all persons in the employment of such a body who have been intrusted with its assets or any other assets. The ANC say there could be an ambiguity, it could read here that it would be obliged to audit the accounts of persons and we just say "no" it should be given the right to audit them, not necessary obliged. It says "shall audit a report." I don't think that is a point of contention. Nor the DP.

3. The Auditor General shall also request the President of Parliament conduct the.....its audits. Here, we have proposed that those sorts of things should be in legislation of the constitution. We agree with that. The DP says Provincial Local Government should be required. I don't think these are contentious points.

4. Again, I think this is something we think should go in the act. The Auditor General may, whenever he or she considers it to be in the public interest or upon receipt or upon complaint investigate, audit and report on the accounts of financial statements of any statutory body or any other institution in control of public funds. The IFP has got necessary and Public interest. I wouldn't thought these are points of contention.

5. No further duties or functions may be imposed upon or assigned to the AG other than by means of an act of

Parliament again. We think it should be, those sort of clauses should be in the act.

6. Whenever the Auditor General or a person appointed in terms of 194(1) exercise or performs his or hers powers of functions in terms of constitution, he or she will have access to all books, records and other documents and information relating to accounts and financial statements referred to in the section. Again, we think it is something that should be in the act and the IFP has got a proposal here which I think is relevant. It is a typo there, but otherwise I think they are just proposals and not under DP. I don't think it is contention there.

7. Again, our point holds. The IFP has - sorry - the Auditor General shall report on the accounts examined by him or her and submit such reports to the authorities designated by an act of Parliament and to receive it and unless otherwise provided by an act of Parliament, shall report, such reports or a report by the Auditor General on any other matters shall be submitted to Parliament within 7 days after receipt them of such authority. The, our proposal is it should be covered by an act. The IFP is proposing that it should report to the Audit Commission which should have Provincial and Central Government representation. With no Government having greater representation than the other. I think we would disagree with that. NP? DP?

UNKNOWN

Yes, I don't agree with that.

CHAIRPERSON

Freedom Front? Then I think the AG's report should go through the various Parliaments to their public accounts committees. Any concerns by the National Minister of Finance are arising out to prevent specific Provincial level reports, will be dealt with between his ministry and the relevant Provincial ministry of Finance. I don't think that is contentious. The Constitution should stipulate the time allowed between the completion of the Auditor and submission to report to Parliament. I don't we would say it should go on the constitution. I don't think it is a matter of principle. OK. I think the DP's suggestions are suggestions. I don't see those as contentious.

Again 8. The Auditor General shall make public any reports submitted to section, sub-section 7, after the expiring period of 14 days from the date on which such report was submitted to the authorities concerned. Again, our point is that it should be in the act and not in the constitution. That point carries through.

Then, when we come here. The relationship with the AG to the Parliamentary committee on Public account should be specified in the constitution. It is a suggestion from us. I don't know if there is - or basically that there is no line of communication to the committee on Public accounts which is specified in the constitution. I think it could also be in the act of legislation. I think it is a suggestion. I don't think that is not a point of contention. The DP, the AG shall in respect to regulate its audit report on whether the accounts and financial statements represented true and fair reflections to finances -

I think that is a suggestion. Again the DP about reporting on an entity which does not have its accounts ready for audit. The IFP - all audits should include annual regulatory insitants. Audits should include regulatory insitants. I think that is a suggestion.

194 Staff and expenditure. One reads - the Auditor General may appoint in accordance with such persons as may be necessary for the discharge of the work of the office of the Auditor General. The DP proposes such person should include private audit firms if it doesn't already do so.

UNKNOWN

That is just a comment. I am not sure whether that is legally clear as its worded in present.

CHAIRPERSON

I don't think that is a suggestion.

2 reads - The Auditor General may subject to such conditions as maybe prescribed by or under law delegate any of his or her powers to a person refers to in sub-section one or authorize such a person to perform any function of the Auditor General. It seems to me that words cover actually that point, but nobody said anything about it.

3 Expenditure occur during the exercise in performancing of the powers of functions of the AG in terms of the constitution or under any other law, shall be defreight from money appropriate by Parliament for such purposes and from fees raised or money obtained in a manner authorized by an act of Parliament. The IFP suggest that the AG will as far as

possible recover all costs incurred from bodies audited. It is in the act. I don't think it is a point of contention anyway. I don't know what section 244 is there for. It doesn't seem to be anything there. I think the decision arranged (?) No one said anything about that.

UNKNOWN

It will fall away

CHAIRPERSON

I would have thought so. Maybe we can just leave it away in our report. It just says a person who immediately, before the commencement of the constitution was an AG etc, etc. Maybe that just need to just continue. So that the guys who use the AG now is the AG when the final constitution comes in. Maybe we should just leave that. No one has proposed anything else.

I think that is the AG. Now we have got one more. Which is the - I hope people got, because this is the one that was distributed on Friday and this is the National Revenue Fund. We are dealing with section 185 of the Constitution

UNKNOWN

I haven't got that.

CHAIRPERSON

This is his last one. Can you give people that copy? It is the National Revenue Fund. Section 185(1)

UNKNOWN

Chairperson, may I just ask in that regard, my understanding was that in this page you were just doing these two things. Now while some of the organizations commented for example on the National Revenue Fund. As far as I was

concerned, in terms of party submissions, we were only submitting on the Reserve Bank in the Auditor General for this particular block that we were doing. That was my understanding. I thought we decided to do those two.

CHAIRPERSON

I thought, my understanding was that we decided to do everything except the FFC. I mean, not to many people comments on it, but I don't know ...

UNKNOWN

That was partly because we didn't consider it. I didn't consider it.

CHAIRPERSON

I don't know. As I say, my understanding was that we were doing everything except the FFC. So I don't know how we are going to handle this one now, because if we are forming a commission with number 3 to come back and do this as a separate block, I think it is going to be a bit of a problem.

UNKNOWN LADY

Chair, why does the motivation ... was it your understanding as to why it should be postponed to the next block.

KEN

I don't think I even necessary suggested it. I think when we looked at things when we had public enterprises and National Revenue finance, I think we decided, as I thought we had, that lets do the Reserve Bank and Auditor General. Get those out of the way and then look at whatever else needs to be done, such as wether we want to say anything on Public Enterprises. Whether we want to say anything on National Revenue Fund and then we specifically knew for sure we want to say something on Finance and Fiscal Commission. I must say,

that was my understanding. For example, also Public Enterprises, we put nothing in our submission, simply because we didn't think it would be covered. It will be our view in any event that it shouldn't be mentioned in the Constitution. That is why we didn't comment on Public Enterprises either. I thought we were just doing these two at this stage.

CHAIRPERSON

I must say, Ken.....

UNKNOWN LADY

Can I suggest we do this and then the issues that perhaps the DP would want to make suggestions on, can come in in a subsequent way and it can be more informally circulated in a way. As long as its done within a time frame that allows us to submit the report. Should we go through everything that is here and give the same process through and look at the DP even if it is circulated and people can just give individual comment - we don't, we do or we think it is contentions.

CHAIRPERSON

Can we follow that, in other words, could you get something in in the next few days if you have anything you want to do.

KEN

Yes, that is impossible. I am afraid. Look I am not trying to be, but we have got major, the whole powers and functions stuff of Theme Committee 3 has got to be in next week. I mean, that is a really big task. Besides budget debates and such. I don't see it should delay in the sense that the Financial and Fiscal commission element - I can tell you Theme Committee 3 is more than a month away from even starting to look at those in its programme. It hasn't even started with, Theme Committee 3 is only asking for party

submissions by April the 7th on powers and functions of Provinces excluding Fiscal and Financial and only after that is handled, is it then going to start looking at Financial and Fiscal. So, in that sense, Theme Committee 3 isn't about to burst in on Financial and Fiscal powers or commissions or anything.

CHAIRPERSON

What it does mean, it does mean that the proposal as it is now, completely dissolve ourselves into some commission with 3. That that one goes by the board, because it means we actually have to , we have now to deal with a couple of outstanding issues.

KEN

I don't want to kind of create, you see, because I didn't know we were suppose to do it. We haven't really applied our minds to it. It may be that we come back and say we are 100% happy with what is here, but we haven't ourselves had very specific discussions on whether we want to make any proposals on balance budget amendments or limitations of expanding, to saving or anything like that. As I say, in the end we may decide that it is not for the Constitution, so I am not - I don't want to give the impression that I have a whole stack of things I am about to bring along. I haven't actually consulted and we haven't made final decisions on that. I am sorry if I knew it was on a different time frame I would sort of organized things a bit differently.

CHAIRPERSON

Could I suggest the following. That we submit a report which deals with things that we have done today and that next week after the FFC, we had to come back again and we go through

this issue and we then essentially what we are dealing with is the National Revenue Fund plus Public Enterprises or whatever.

KEN

May I suggest Chair, that the week that we come back, starting Tuesday the 18th. That whole week is Constitutional Assembly. That is from the 18th till the Friday, whatever date that Friday is. I think it is the 21st. There are 4 days all set aside for Constitutional Assembly work and I suggest we could meet then and almost certainly wrap up either the Financial and Fiscal, Public Enterprises and National Revenue Fund and what ever.

CHAIRPERSON

Alright then. Lets do that that week then. We will wrap that up. We will send in a report dealing with the other issues. Now I don't know what I shall- I will work on it a bit and Pat can work on it a bit and then I think we should probably do, try to do something like informally pass it around to the different parties, because I think we want to try to get this report in by the end of the week. OK. So, as I say, what will happen there, will be to say, that the following were the points of contention - spill it out a little bit that there was disagreement to this and this proposal by the following parties and agreement with this and this proposal by these parties and then refer the reader to the tables. Essential that. I will draft that together and Pat can do a few things like put the SACP and the CP where they should be on the tables and things of that sort. Try and get this done as soon as possible. OK? Alright, thanks everybody.

Sorry, there are a couple of things. First of all, the thing that I have mentioned earlier on. I don't know what has happened to this Provincial commission work shop. Where that proposal has gone. It seems .. Where is it? Barbara has got it. So, there is this side here. Let us just see, first of all, just could we just make sure we are not in a situation where we got more people wanting to go to Arabia, than we have got places. How many people have indicated that they want to go? Can you just put your hands up? I think that is a good balance. It would be Barbara, it would be Gavin, it would be Ken and it would be Francois. Maybe. Those were all the places that we have got anyway. So, plus Pat. Then the people who go, must give us a report. That was the one thing we agreed on as well.

OK, there is a, apparently I have to sign some minutes saying we didn't have a meeting last week. Otherwise I think we can just here. I should just report that our last meeting, you recall there were members of the press present. That we asked them to leave. We recall that. Apparently the CA, all its deliberations including deliberations for the preparation of the report are open. So that they are entitled to be present. They are not precluded from any further meetings of this nature.

UNKNOWN

Chair, is it really that a committee has no right to go into committee if it wants to?

CHAIRPERSON

I have mentioned a president of the Finance Committee and I said that this is what had happened and I had followed that president and I am told that other Theme Committees, when

they were discussing the preparation of their reports, did not preclude the press and the formal complaint was raised and I have been slapped over the wrist.

UNKNOWN

On this question, I think it is quite important. It is not the question of excluding the press only, there is also the question of rules. Because if your rules say the reporter is tabled to Parliament, how does it go into the papers before it is tabled to Parliament? I think it is something there needs to be some clarity on. It does in a way make a you ... a report to Parliament if it is all over the media before it gets

CHAIRPERSON

I agree. That is what I have said. I said and what Parliament does and what the CA does, apparently are different. The CA has a different set of procedures. That is what I am told. That is the way it has to be from now on.

UNKNOWN

What we have decided, is to put a little note on, saying there is an embargo on to the Theme Committee.

CHAIRPERSON

Thanks every body.