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THEME COMMITTEE	2
DATE OF MEETING	29/5/95
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CONTENT OF ENVELOPE	
1) PRINT OUT	✓
2) NOTES	✓
3) TAPES	NO
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CORRECTIONS MADE AS REQUESTED, 12/8/96

(Tape 1)

Chairperson: I think we can start. We are late already. I just want to draw your attention to this memorandum that comes from the Administration that is being circulated now, unless you've received it already. Just have a look at that so that we can deal with it a bit later. And then this morning this document was circulated, the Minutes of the debates of the 5th and 22nd May with regard to the Senate. You say Senate, Block 2, 5th May and the 22nd May. It's entitled the Constitutional Assembly Theme Committee 2 Structure of Government among that 29th May 1995 and then Minutes of debates of the 5th and 22nd. Now we deal with it a little bit later, but I'll just allow Thomas to explain quickly so that it's not an edited version. So if we look at it later we must just look whether there is some grammatical or other errors. I won't be able to do that because I'm not a grammar teacher. Somebody in the meeting will have to assist us. Thomas, please explain.

Smit: Thank you Mr Chairperson. The Minutes on the Senate have just been made available to the Committee in case they want to refer to it with discussions to date to see what has been before the Committee in terms of the Senate. There is in the Minutes there's reference to a third draft of the Senate Report which in the documentation pack TC220 is referred to as the second draft. The reason why in the Minutes it was third draft because there had been an earlier draft prepared by Advocate ? on the Senate but when the Minutes are finalised the terminology will be clear.

Chairperson: Do we find that acceptable that we deal with that a little bit later? Then the second item is the report on the National Assembly, Presidency and Cabinet. This is now basically the final document, so parties must now indicate where they think alterations should be made. It was done in the previous meeting and this is the one that must now go to the CC. There appears to be some misunderstanding. The technical advisors must assist us. The draft goes from here to the CC, then from the CC it goes to the technical people appointed by the CA to do the drafting of the Constitution. Is my interpretation correct? In other words our technical committee doesn't draft the constitutional text, they draft the report and then it goes to the CC and from there it goes to the technical advisors of the CC to draft the constitutional text for the CA. Steytler.

Steytler: Mr Chairman, I think there is as I understand it and it's not very clear was that the technical advisors could also play a role with the drafting and that I think Thomas at one time explained to ? as well that there was some instructions but the sense was that first obviously the draft report should first be approved before one

really can go into the details of the actual drafting, but that is something which comes after the CC meeting. I'm not clear but that is what I understood by our Secretariat.

Chairperson: It clouds my understanding of the issue a bit because if I remember the last draft of the CC was directly referred to the technical advisors of the CA to draft, especially Theme Committee 6 reports because from that format we got we were instructed how to draft ours. Mr Eglin.

Eglin: Chairperson, I understand the report that we submit with the assistance of our technical advisors shouldn't actually be a draft of the Constitution, but it should address issues so that somebody else can draft the Constitution from those points. The CC can then decide. In certain cases they have said to their law advisors you do it on your own and in other cases they've referred it back to the technical advisors of that Committee to assist. So the CC is free to decide either the law advisors at the Centre can do it or else they can refer it back to the technical committee here. So it's up to the CC to decide. It may well be that our technicians become involved in the process, but that's for the CC to decide, not for us.

Chairperson: Now can we then deal with this final report starting on page 1 TC220 Structure of Government which has got the Agenda in front.

Eglin: Our present Agenda doesn't show that. Well doesn't it say Report on NA, Presidency and Cabinet is the next item on the Agenda.

Chairperson: But this is what I'm dealing with now. The reports now follow that page of the Agenda. We've dealt with this before but there were certain amendments during the discussions which the technical committee had to see to. Am I right? And now we're dealing with it finally whether something has still been left out or not.

Ranchod: I just want to restate my concern expressed last week. There are a number of points that we said we are going to revisit but if your explanation is correct, we are not going to revisit, we are going to leave it to the negotiating body to sort out. And there was a statement by Mr Ramaphosa that the first draft of the Constitution will be ready in a matter of weeks. So wherever we see reference to revisiting a particular point, I don't think we're going to revisit, we're going to simply inform the Constitutional Committee that agreement was not reached and that these are points of contention, and the negotiating body will then have to sort out those areas of contention. Am I correct?

Chairperson: Mr Eglin must also assist his part of the management committee

but at the last CC meeting there was a difference. A contentious issue between the IFP and the rest of the people, and then it was debated in the CC and the CC decided that the majority opinion be forwarded for drafting and that further discussions be held with the IFP. Mr Eglin.

Eglin: Chairperson, once we've reported, it's in the hands of the Constitutional Committee. On occasions where the reports have said this is a matter for contention because the Theme Committee is not a negotiating body, it's not referred back to them. But in other cases where it says to be revisited it's because a Theme Committee hasn't had an opportunity of finally discussing and debating it. So it will depend entirely on what the CC says. In certain cases it has gone back to the Theme Committees. In other cases it has gone back to a sub-committee of the Theme Committees. So I think it's open to whatever happens depending on what the CC decides.

Chairperson: Thank you. We will now deal with the report finally. Page 1. From my part, just a question. Paragraph 3, the second line. As reflected in the second part of each section may differ from that ascribed to the party in the table. Now I don't really understand? Page 1 paragraph 3. In other words in the report it may differ from that ascribed to the party in the table. Now why that statement?

Van Wyk: Mr Chairman, I would have to look for examples. But what we found in drafting this is that the initial submissions made by parties which were made perhaps three months ago in some minor respects sometimes changed during the course of the discussion here. In other words if a party said the life of Parliament should be four years but they indicated here that they will also be happy to live with five years, and that party's name was put after five years is the difference.

Chairperson: Page 1. Any corrections? Thank you. Then we finalise that. Page 2. No amendments.

Eglin: May I just ask on the very first column. Two organisations propose differently. Do we know who they are? I mean it's difficult to attach value to it depending on who that people are.

Van Wyk: Mr Chairman, all that kind of information is in the second section where the submissions are summarised. I thought that if one read the introduction where the sections should be read together, I think that should be clear. But if it isn't clear, we will have to find a way of making it clear.

Chairperson: Thank you. Page 2. Approved. Dr Pahad.

- Pahad: It's just that one should be able to distinguish from the political parties that are present here, so there would be organisations who submit the thing separately.
- Chairperson: Page 2, approved. Page 3. Approved. 4. Approved. 5. Am I going too fast. I take it we've read it so that you can indicate where we must all comment. OK, I'll stop at 4.
- Eglin: Chairperson, in terms of drafting I've generally got one individual, one individual, two organisations, but suddenly we've got ? mentioned as an organisation? I don't mind if you don't, but then everybody who is referred to must be referred to as an organisation by name and not occasionally use a name and not otherwise.
- Van Wyk: If the Committee indicate which method it prefers, Mr Chairman. We'll do it that way.
- Pahad: I think we should be consistent and I think Colin is quite right that if you mention one organisation, then you'll have to mention the others, and if you don't mention them, then don't mention them and people can find them as you say in the annexure at the end.
- Eglin: Those of you who sit on the CC will know that basically people follow this and it's not easy to suddenly cross-reference what is later on, so the main working document is this summary and I would suggest that if it's sufficiently important to mention a reservation, one should actually identify the person concerned or the organisation.
- Van Wyk: We'll do it that way.
- Chairperson: Generally accepted. But just a question, having said that, it will then not be necessary for the technical committee to bring this report back to us. They must prepare it for submission to the CA during the course of this week still. Thank you. Can I move on from page 4 now. No amendments. Approved. Page 5. No amendments, then approved. Page 6. Dr Pahad.
- Pahad: The National Assembly has power to control its own producer. I don't know what that means? I know in Marxism what a producer means, but not in this constitutional terms.
- Van Wyk: It's "procedure". That's the printer's gremlin or... We will do a proper spell check on the whole thing Mr Chairman.
- Chairperson: Have we all put that amendment in place. "Procedure" instead of "producer". Page 6 then approved. Page 7. Any amendments

there. None. Approved. Page 8.

Eglin: Chairperson, can I just say on page 7, section 47(63) - I think the DP has also got views that whether there are amendments or laws involving the rights, the powers, the finances relating to the provinces, the Senate should have a special role and it might require a special majority of the Senate.

Chairperson: I think that is covered under the report on the Senate as such. No amendments. Approved. Page 9. Now here's one of the revisiting situation that Dr Ranchod refers to. Approved. Page 10.

Ranchod: Mr Chairman, I just wonder here whether this isn't a point of contention after our discussion last week. It should not be put in the comment column. There's a very clear difference of opinion between the National Party and the other parties on this point.

Eglin: Mr Chairman, do we know what that clear difference is in respect of the Legislature.

Ranchod: My understanding of the debate last week was that the National Party would like to see representation of minority parties in the committee system, the chairpersons of committees etc being regulated. That was the trend of the argument. Initially I think it was said that one would first sort out the situation at the executive level and if that was satisfactory, then it's not a point of contention but perhaps Mr Beyers could help me out.

Chairperson: Dr Pahad also agrees with that. Mr Beyers.

Beyers: Mr Chairman, actually it was agreed that it should be handled under another heading. My problem is that point A, it seems to me that point A may give the impression that there is actually agreement that on the statement that minorities are not necessarily a matter for the Constitution and standing here alone it may be the position of some of the parties. It think it's an ANC standpoint. But standing here alone gives the impression that all parties agree with that statement and we definitely do not agree with that statement. So I don't know how we should handle it. I'm satisfied with point B that the National Party would like to revisit it depending on the acceptance of its view on power sharing in the executive. That's actually what we decided to ask the advisors to put in the report, but point A - as long as we are more or less disassociated with that statement, I will be satisfied, but standing there alone it may look as if the National Party also support the point that minorities are not necessarily a matter for the Constitution and we sharply differ on that point.

Chairperson: Do you agree that we classify it as contentious with the explanation as put forward by Dr Ranchod. If you would just reword it again Dr Ranchod, or perhaps write it down and submit it to them.

Eglin: Can we just look at this. I don't know how contentious it is. One is whether you specifically say that party or group or ? should have representation but Constitutional Principle 14 says provisions shall be made for the participation of minority parties in the legislative process in a manner consistent with democracy. Now as I understand it there is a consensus that one of the ways that you can deal with this is by proportional representation because that will in fact allow political parties, whatever is big or small, direct participation in the process. At any point I think it could be taken further and that's for getting into Parliament. There is a strong case for saying that particular proportionality should also be reflected in the Committees of Parliament. And if after all it's part of the legislative process then Standing Committees are also part of the legislative process. But other than that, I understood that we all accepted the idea of proportionality was a way of accommodating minorities rather than saying Party A or Party B. I don't know whether there is contention? I thought there's agreement on the concept of proportionality as a mechanism for allowing everybody to have a say in the legislative process.

Chairperson: Dr Pahad.

Pahad: Yes, I think Mr Eglin is correct. But up to a point. The question arose about the ? arose now in this Parliament indeed about the chairperson ships of committees and so the question is to what degree would proportionality apply with respect to.. That's the first question. The second one is.. I mean I have no problem with what Mr Beyers is saying that he wants to put it another way, but I thought we argued very strongly that the question of this kind of matter about select committees, portfolio committees, proportionality is really not a matter for the Constitution. It's really a matter for Parliament to deal with it as part of our view. Because I think what we need to bear in mind all the time is that we are sitting here in order to draft a Constitution so we should also bear in mind what we think should appear in the Constitution and what shouldn't appear in the Constitution. So those are the two points. Obviously the question of power sharing in the executive and our own position is quite clear that the ANC is certainly not in favour of it and the ANC has made its position absolutely clear with regard to that. So I have not problem that you might want to revisit it afterwards. So, what I'm really arguing is that if we're going to re-write this thing we should re-write it in the way that also reflects the view of the ANC so that some of us don't have the problem

with the CC if the CC is starting to be defensive because our own position was not clearly stated in the report to the CC. So I'd like to say that (1) I would agree that it's contentious and that we should say so, and you can make clear that the ANC had made it clear in their view this is not a matter for the Constitution. And if we are going to say something about proportionality, then the ANC's position is that the question of proportionality applying to chairperson ships of select committees or portfolio committees is a matter for contention.

Chairperson: Are we agreed. Thank you. Page 11.

?: Sorry, we agree to contention, but how do we phrase it now. Which comes under that? What is it that is contentious, really?

Chairperson: The question of the role of minorities in the legislature... (voice disappears)... Dr Pahad.

Pahad: Mr ? was right up to a point. Not with regard to proportionality in terms of representation in the Select Committee. I think the real bone of contention has to do with whether the principle of proportionality should apply to the Chairperson ships of the Select Committees and that remains a bone of contention. That's the first one. The second one is whether indeed such an item should appear in the Constitution or whether it could not be left to the rules of Parliament to decide upon. Those are two issues that we would have to come back to.

Chairperson: Satisfied, Dr Ranchod.

Ranchod: Not that I'm satisfied, I'm merely recalling that there was a very long debate I think the last time we met where the idea of a fall back position was seen as unsatisfactory and if the National Party was unhappy, it had to state that it was unhappy and this does become a point of contention. There's no doubt that the National Party would like to see the Portfolio Committees being shared out on the basis of proportionality and it's a point of contention as far as the ANC is concerned whether one should make provision for that in the Constitution. Let's just state it that way.

Chairperson: Mr Eglin.

Eglin: I hear what Dr Pahad says but equally in the end he and his colleagues would also have to meet this requirement. It's not just a frivolous one. There is a formal Constitutional Principle which says that the Constitution must make provision for participation of minority parties in the legislative process. All I'm saying is therefore we can't just say well you can be elected to Parliament,

that is not the legislative process. That is the way you get into Parliament. But the process is how you handle it. So I'm not going to argue that you have a detailed discussion on it now, but I think this principle goes beyond just how you're elected to Parliament. It says that provision must be made for minority parties in the legislative process. So I raise it because I think we'll have a discussion on it in due course. May I just say because I think it's relevant, it might even deal with the power sharing problem of the National Party which they wanted in the Executive as well. It is my party's view that the more powerful the Parliamentary Portfolio Committees are in making an input into monitoring the Executive and expressing opinions on policy, the more it actually allows minority parties via the parliamentary system to make an input into Executive decisions. So I'm just raising this. I think a powerful parliamentary committee goes some way towards accommodating what I call an input by minority parties into the Executive process of thinking while not impinging on the majority decision of the Executive itself. And I would suggest that it's an area which could well be explored or try and bridge the gap between those who say you want power sharing in the Executive and the one is the constitutional requirement that there actually has to be minority opportunity through the legislative process. I'm putting because I think it is a matter which is going to be a matter of debate and revisiting. And either in that area there is a germ of some kind of agreement or possible agreement as to how you can marry these two concepts.

Chairperson: Then in the report we must refer to that Constitutional Principle in column 1.

?: Sorry Mr Chairman. At least on our side and I think on the other parties' side that before this final submission goes to the CC not to come back to this group but at least the Chairperson on our side should be given the opportunity to look at that submission before it finally goes to the Constitutional Committee. And I should imagine the same thing should apply to the other parties. Although we don't have to call back the Theme Committee for that. On our side Mr Mahlangu can deal with that.

Chairperson: Page 11. No amendments. Agreed to. Page 12. No comment. Agreed to. Page 13. Agreed to. Page 14. Approved. Page 16. Agreed to. Page 17. Agreed to. Page 19. Agreed to. Page 20. Approved. Page 21. Dr Ranchod.

Ranchod: Just on terminology, I see on page 20 there's agreement to the title of State President which marks a change from the President, but in the rest of the document we seem to talk about the President.

Van Wyk: The computer will with certain replace/attest that problem.

Chairperson: Page 21. Agreed to. Page 22. Agreed to. Dr Pahad.

Pahad: On 21, personal member of legislature, I take it that means that the other parties agreed that the President should not remain a member of the legislature. I mean sometimes the way it's put it's as if you know there's only one view on the thing. Now if we say that the DP favours a directly elected President in which we said before the PAC prefers the President to be a member of the legislature, quite clearly you've got to say that others prefer him/she not to be a member of the legislature.

Eglin: Chairperson, also on that. Where you've got the DP in favour. It's got nothing to do with that. That's under the previous paragraph. I think there should be agreement save for the PAC, that it's agreed that they should not be members of the legislature.

Van Wyk: This must a technical hitch. It doesn't make sense the way it stands there.

Chairperson: You will rectify that. Thank you. Page 22.

?: On the agreement of the term of the President, we have said it should be at least not a maximum of two we've indicated the period should not be determined. We shouldn't state that it should be two years or one year or two years.

?: They mention terms and later on we connect the term with the tenure of Parliament. If it's five years, then it's one term. If it's another five years, then it's a second term.

?: But we didn't agree in as far as two terms. In this case it would mean that now once a President has taken the whole two terms, then the next term he cannot go which means he cannot go for the...

Chairperson: Dr Ranchod.

Ranchod: I was reading a book over the weekend about the information, débâcle or scandal and in ten years Mr Vorster was elected to four terms of office and I don't think that was the intention or the spirit of our discussion here. Well, he was Prime Minister, but the system is the same. I mean you could have a situation where you need not have a ... you could have early elections. We do make provision for that. So when you talk about two terms, you're not necessarily talking about ten years, it could be less than ten years.

Chairperson: Dr Pahad.

Pahad: I think it would be correct to say that in ... from my memory if it serves me right, that in the ANC submission it said two terms. But in the course of the discussion I said that the ANC having had its conference, had not yet made up its mind with regard to the question of whether or not the term of the President should be limited to two terms and we therefore left it open. So the Committee is quite right to say that, putting it this way, would not give a correct impression of what the ANC then did say. The ANC's position is that it's still open for discussion so we can revisit this area of the terms.

Chairperson: Do you want us to classify this as contentious.

Pahad: It doesn't matter how you put it as long as we are able to come back to discussing the matter, either at the CC or back here.

Chairperson: We stipulate then that the ANC would like to revisit this issue within themselves, not necessarily here.

Pahad: Well if we do it with ourselves, we'll do it here too. So you put it any way you want to.

Chairperson: Thank you.

?: The heading here is Tenure of Office and Number of Terms, and I think the Constitutional Committee would expect us to express an opinion on the number of terms.

Chairperson: Except now for the IFP and the ANC, all are agreed that it be two terms. That is what is basically.... Mr Beyers.

Beyers: We have submitted a further submission to the Committee where we argue that it is important to distinguish between motions of no confidence by Parliament in the Government and the impeachment of the President. And Sir, I don't know how we're going to handle this because this submission has been handed in after our previous meeting. As long as it can be noted in the summary and be also another... not an amendment, but also an addendum to the report.

Chairperson: May I just ask the technical experts advice before we carry on. If I remember correctly, you must assist me, the question ... the advocate particularly raised the issue of no confidence and impeachment. Initially we felt that it be retained as stipulated in the Constitution but then it was argued is it necessary to have both impeachment and no confidence, and we had to come back to it.

But now it appears that impeachment is completely left out of this situation because it means two different things altogether. If the technical committee can just assist us before I hear Mr Eglin.

Van Wyk: Mr Chairman there's a comment point 2 which refers to this question about impeachment. In Section 92(2) after a successful vote of no confidence it's accepted that the question arises whether impeachment by a two-thirds majority serves any purpose. I think what Mr Beyers is saying that the National Party has taken a position on this now.

Chairperson: The other questions that they want clarified. We've got constitutional issues then we have vote of no confidence but we don't have impeachment there.

Van Wyk: Would the Committee be satisfied if we add under constitutional issue "and impeachment".

Eglin: Mr Chairperson, I see a difference between the two. For instance I think if the President be impeached he can't really stand for office again at the next election. That he's being impeached and he's now disqualified. The other one is if there's a motion of no confidence, it's a political decision. You don't like the way he is conducting the politics. The other one he's put his fingers in the till or he's done something like that. And I think it should read where you've got motion of no confidence you should also have /impeachment because I would imagine that there's a general agreement in respect of the State President's political performance. If in fact he is guilty of some misdemeanour, he can be impeached. The other question is whether there should be a motion of no confidence in him as a political leader. There I've got a problem about how you define the DP's position because ours is not that he should be got rid of but it's got to be a motion of no confidence on him and the Cabinet. In other words if there's a motion of no confidence in the Cabinet, it is affected by the dissolution of Parliament. So I see a fundamental difference between impeachment which now disqualifies him as a candidate for the Presidency and no confidence which is merely a disapproval of his political performance and he can stand again if need be or he can be re-elected by another Parliament or by the same Parliament in due course. And I think we should distinguish or have an item of motion of impeachment (b) motion of no confidence because they're two difference concepts.

Chairperson: Dr Pahad.

Pahad: I haven't seen the other NP proposal. I don't know whether other members of the ANC have seen it with regard to the impeachment.

But of course if Mr Eglin is now defining impeachment to mean that it disqualifies somebody forever against standing for the Presidency, it's a different matter. Because the motion of impeachment comes from the United States system precisely because of the way the United States had developed in relation to the way the President is elected and the President's relationship to Congress itself. Now, if you then want to put impeachment then you would have to let the Constitution define what you mean by impeachment. I don't think you can take it for granted that impeachment means you can no longer stand later. I mean, you know, I think one would have to come back to that, but I don't think it's correct to just say impeachment means you can't stand again. I'm not sure that it does unless you define it in the Constitution. So then we can come back to the question of impeachment. The way we raised it last time was that as it presently stands in the Interim Constitution some of us did point out that it wasn't clear in the Interim Constitution itself that it seemed to be using motion of no confidence and impeachment interchangeably. That was part of the problem we were raising and therefore we are saying that the main issue is the question of the motion of no confidence. So there's no problem in the Democratic Party's position being put, but I think we need to note that we shouldn't take certain things for granted. The second point is that quite clearly if you want you can note the Democratic Party's position that in their view if there is a motion of no confidence in the President, then the entire Cabinet resigns. I thought our position was that you can distinguish between both of them. That you could have a motion of no confidence in the President but not necessarily in the Cabinet and vice versa. So I think if we're doing that, then those views need to be reflected.

Chairperson: It is stipulated in Article 93 that Dr Pahad just mentioned. So we include now no confidence and impeachment and the comments as they stand in column 5.

Ranchod: Could we have clarity? Are all the parties in favour of impeachment because my understanding is that a motion of impeachment is one which is related to the American system where the President is directly elected by the people. Do we need impeachment provisions in our Constitution?

Pahad: Well, precisely Chair, that is the problem that we are having as ANC, that is actually why we saying I think we need to look at that. If the National Party is making a submission in that regard, one need to look and study that and know exactly in which way do they want to go about that. Because we are actually saying if the motion of no confidence is well defined in the Constitution, then there is no need actually for impeachment, but if other people feel

very strongly about that, then one would have to study that very carefully and see.

Beyers: In fact that has been done in the first submissions of the party. The second document is just an explanation as far as I see.

Pahad: Is it quite long.

Beyers. No, it's not that long.

Chairperson: you conclude on the constitutional issue impeachment and no confidence and the comments as stipulated at the end of the 5th column.

? Mr Chair, let me suggest that Mr Beyers gets copies for us and then you leave this for the time being and then we'll come back to it and then we deal with other things at the moment.

Chairperson: Page 24 then. No amendments.

?: I just want to be sure on the contention part. "The NP not in favour of the President acting in his/her sole discretion but in accordance with the provisions of the Constitution." What does that mean? I mean how can the President act outside the provisions of the Constitution?

Beyers: Mr Chairman, the idea was that as far as the Constitution of the Cabinet, the appointment of Ministers is concerned, the National Party says that that must be in accordance with the provisions of the Constitution. So if there was for instance prescribed multi-party participation then there was no agreement on the part of the National Party that the President may choose and pick and get rid of Ministers as he like, and we said it must be in accordance with the provisions of the Constitution.

Pahad: I think it should be put in another way, with respect. You see because it can't be seen that there are other parties who are opposed to the question of the President having been compelled to act in accordance with the provisions of the Constitution. The President would have to act in accordance with the provisions of the Constitution. That's just a fact of life depending on what the provision of the Constitution is. So I'm saying can we re-write that so it doesn't look like other parties may be in favour of the President acting outside the provisions of the Constitution. The way it's put here it's as if only the NP is in favour... We are also in favour of the fact that the President must act in accordance with the provision of the Constitution. What is in contention is the question about the right of the President to select his or her

Cabinet. That really is the matter in contention not.....

(Tape 2) the question of the provisions of the Constitution. I mean that contention is what will appear in the Final Constitution with regard to this particular question. So I'm just asking that you re-word that in a way that takes into account what Mr Beyers says the position of the National Party is and not what was put here.

Chairperson:?.... but in accordance of the provisions of the present Interim Constitution, then it's clear. OK.

Eglin: Just in the last column under comment. We're introducing the President has to consult with Executive Deputy Presidents in the exercise of certain powers. Is this representing the National Party's point of view or is this the Committee's point of view. If you look at No 1 in terms of ? the President has to then "consult with the Executive Deputy Presidents in the exercise of certain powers. I don't know whether there's going to be Executive Deputy Presidents?

Chairperson: But it says in terms of Section 82(ii) and (iii) of the Present Constitution.

Eglin: But what does this mean?

Chairperson: Then it must be revisited.

Van Wyk: Mr Chairman, if my memory serves me right, the question here was whether the technical meaning of the expression "consult" and "in consultation with". No, but even so what the word "consult" there means. I'm trying to think of a way of putting this because there is a proposal that there should be (a) at least one or other parties propose more than one and the term use is Executive or at least a Deputy President. I don't know whether this is Mr Eglin's problem. The existence of this office of Executive Deputy President or something similar. Do I understand you correctly Mr Eglin?

Eglin: On this sentence there are two concepts. The first is that he has to consult with Executive Deputy Presidents in the exercise of certain powers. I think put that as a separate issue. Then the next one is that he has to act in consultation with the Cabinet. I'm not aware that anybody has proposed Executive Deputy Presidents (plural) and I'm not aware of what are those certain powers with which he has to consult.

Chairperson: But as I understand it, this is only a stipulation in terms of Section 82(ii) and (iii) which needs to be revisited. It doesn't stipulate the

Theme Committee's stand in this regard. It's because there is a controversy with regard to that section of the Constitution to be contained in the future Constitution. That's my understanding and the technical committee must assist me.

Van Wyk:

My understanding was that the issue here is the meaning of this consultation between the President and whoever. Sometimes the Interim Constitution refers to the relationship between the President and the Executive Deputy President(s) that he should consult them. In the case of the Cabinet he must act in consultation with and these expressions have required a certain technical meaning. And I remember that from the ANC side, if I'm not forgetting, there was a question whether we should stick to the technical meaning of the words "in consultation" or whether the President should perhaps have a wider power.

Chairperson:

Page 25. No amendments. Agreed to. Page 26. Page 27. Agreed to. 28. Approved. 29. Agreed to. Page 30. Agreed to. Page 31.

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On Page 30 can we just note what I said earlier on the question of maximum of ten years.

Chairperson:

Can the technical committee take note of that. Agreed to. Page 32.

Beyers:

On page 30, I don't think it's right there to say after the adoption of motion of no confidence the President resigns or calls an election. We are in favour of a fixed term and we've agreed on that.

Chairperson:

Agreed to. Page 34.

?:

On page 31, not to repeat what I said earlier about impeachment but if that could be taken into account when you're redoing it.

Steytler:

Mr Chairman, I think the difficulty of revisiting the report, the narrative report was based on the initial submissions and that's why there was a footnote in the beginning which says the actual tabulated report may differ from the eventual position that party may hold and one would just think do we then want to re-go through this initial report which was based on the written submissions to correctly reflect now what the parties views are as opposed to the one that emerged in discussion here. Because clearly that was the stated position of the ANC in their first written submissions and during discussion everyone thought more about the matter and it changed now. One may just perhaps want to put in the beginning of this report, this was the initial review put forward by parties.

Chairperson: Do you sometimes listen to the tapes of recordings of our meetings when you draw up the report?

Steytler: Mr Chairman, this report was drawn up before any discussions and it was precisely as a discussion as a summary of the written submissions and to lead on, and from this written submissions clearly debate followed and positions changed and more thought were given to particular issues. And this report was not then updated to keep track of how the positions would be altered. So that's why when we drafted the tabulated one, that gives the final position of parties when there's agreement on a particular one which may differ from what they said in their written submissions.

Chairperson: Just a further question. I wasn't at that meeting when this was dealt with, I was ill. Wasn't this whole report dealt with and then just to be revisited to make corrections with regard to further discussions when it was finally discussed? Dr Pahad.

Pahad: It's quite true.

Chairperson: That's what I'm saying we are now sort of changing it again and we will carry on doing that. I just want to get clarity with regard to that. That's why I rush through it. Page 2, page 3, page 5. Dr Pahad.

Pahad: Mr Chairman, Professor Steytler is correct in the sense that they worked on the original written submissions. He's also correct that perhaps we didn't give also further instructions. The problem however I have is this, that the beginning also states that if you want to know what parties and individuals think, then you go to this submission. So you then have a problem that where you tabulate the positions, one would tabulate the ANC said something else on impeachment and then people who are not part of this Theme Committee read this document and want to know what's wrong with the ANC. On the one hand they send this and on the other hand they send this without a proper explanation. Now what I was therefore asking is it impossible before we submit this to the Constitutional Committee if it's impossible to say that this was the original written submission and because of discussion the ANC has slightly ... whatever, find a word.... see such and such a page so that if you want to say what the original position was and what might of been a shift in the position should also be reflected. Because I think it's important to show that in the course of Theme Committee discussions, certain shifts can take place. But I was just concerned that as it stands here and somebody reading it like this role, would then have a wrong impression of what the ANC's position was at the end of our discussion as opposed to what our position was at the time when we gave a written submission. I'm

just saying if we can find a way, it will be a good thing. If not, then we'll have to look for other ways and means.

Van Wyk: We will consult with the Secretariat. They should have Minutes and tapes and see to what extent we can actually reflect also in the written report the latest state of positions.

Steytler: Mr Chairman, just on that, I think it could easily be done to change because in the first, say page 27, we say submissions on the Presidency were received from the political parties which clearly indicate one can then just put a paragraph in saying "These submissions may not in fact reflect the end position of political parties and where it changes it would have been indicated in the text". But I think then one would appreciate if parties like here a clear case where we can on page 31 make an amendment and say, well in the course of the debates the ANC's position on impeachment changed in the following way. That political parties may actually have a... or can assist us and say this doesn't really reflect our position. And there won't be that many instances and it can easily be inserted.

Chairman: Agreed. Page 34.

Ranchod: it is finally decided that there shall be a Deputy or a Vice President or Presidents, but when it comes to receiving of Ambassadors and Heads of Foreign Delegations, my own experience has been that in a number of countries this is not something which is left to the President only and that if there is a Vice President, the Vice President could also handle this. The experience thus far is that it's extremely onerous on our President to handle this. It also means that there's a long waiting time that Ambassadors arrive in a country and until they are actually fully accredited when they hand over their papers they can't really operate. And perhaps this is something we should just bear in mind if there is a decision on whether we have Vice Presidents, that this power also be given to Vice Presidents to receive Ambassadors.

Chairperson: We'll take note of that. Page 35. The Cabinet.

Eglin: On 34, I see only the ANC and IFP are referred to in specific terms but the next one "Declare war martial law", yes, but I think the DP has said that this is subject to ratification by Parliament within a certain period. It isn't just an exclusive right of the President to declare war full stop. So that is one. The other one "Execute policies of National Government". I must assume that all parties are saying that there should be a Cabinet with co-responsibility involves that there is an agreement that he should execute the policies of the National Government. So I see one has just

identified two parties in specific but I think in general there's agreement on that the President has to execute the policies of the National Government.

Steytler: Mr Chairman, I think that it's just those parties that said it specifically in so many words and therefore one could record it rather than attribute implicit substance of parties and therefore it was not recorded if a party did not explicitly say so.

Chairperson: The Cabinet. Just a question from my part. Did all parties agree what is in the last column in the block Agreement that there be not an Executive President. That sentence in that block. That's what I ascertain, not Executive Deputy President, you say Deputy State President not Executive Deputy State President. (Somebody in the background is replying to these questions but answers are not audible).

?: I think that is just to be consistent Mr Chair. Look we have said that we're not talking about President anymore, we're talking about State President. Therefore to be consistent now you are talking about the Deputy State President instead of Executive Deputy President.

Chairperson: Thank you. I just wanted to be sure of that. Agreed to. Page 36. Agreed to. Page 37.

?: Page 36. President up there and Deputy President. To be consistent, I will not use

Chairperson: We have decided that earlier on that they will do that throughout. 37.

Eglin: On the bottom of 35 you've got Terminology and you then refer to Cabinet Deputy State President etc. And then on the next you've got Composition. You refer to President and Deputy President and Ministers. Why isn't the President included under Terminology.

Van Wyk: Mr Chairman this was simply a technical thing. There's a separate block on the President because they decided that he or she will be called the State President. But if it will make it clearer we

Eglin: No, my question is on when you've got Composition on the next page, you mention President, Deputy President (call it State President) and Ministers. But the previous block where you've got Terminology, you say Cabinet, Deputy State President. Why isn't the State President not mentioned under that column.

Van Wyk: We can repeat it if it will make it clearer.

Chairperson: Page 37. No amendments. Agreed to. Page 38. No amendments. Agreed to.

Beyers: Mr Chairman, it gives the impression that the National Party says that we don't want Ministers drawn from the Legislature. That is not the situation. Well, at the point of contention, it is put clear. I just don't hope that these agreements will be shown at some place without the explanation because we cannot afford that there must be no Ministers appointed from the Legislature.

Chairperson: Can we refine the wording of that, except for the NP, because it appears that....

?: But I think the Ministers should be brought from the Legislature full stop. Don't say except for the NP. In the contention you may then say however the National Party is in favour of limited appointment from outside the Legislature because the NP is not opposed to Ministers being drawn from the Legislature. What it's proposing is an additional thing which is to give powers to the President that he or she could appoint if they so wish people from outside the Legislature. So I'm saying Mr Beyers is quite right if you say except for the NP, it means that the NP is opposed to what is in agreement, that we have disagreement and we must find another way of saying that the NP has raised an additional issue which needs to be discussed.

Chairperson: So we delete "except for the NP".

Van Wyk: Mr Chairman, what one can say is that Ministers should be drawn from the Legislature only, except the NP. The contention is the NP is in favour of limited appointment from outside the Legislature as well.

Chairperson: OK. Agreed to. Page 39. Agreed to. Page 40. Agreed to. Page 41. Agreed to. Page 42. Approved. Page 43. Agreed to. Page 44. Approved. Page 45. Nobody. Agreed to. Page 46. Professor Steytler.

Steytler: Page 45, Impeachment is again a problem. Can we put a note there subject to the question of impeachment. On page 45, 4.3 Removal. We can just read in what was said for the President. We can include impeachment there as well, but you don't have to add that.

Chairperson: I don't really understand what you're saying. OK. Page 49. Agreed to. Page 50 is just the abbreviations. Agreed to. Now the

following one is the Senate. Now I'll need your assistance again here Thomas because there's now two documents on the Senate which we only received this morning. This is what we've agreed to last week. (Chairperson is consulting with somebody but replies are not audible) Let's look at the document we received this morning, the 5th May and the 22nd May, so that we don't get confused with the many documents we have in front of us. Those that came late please see to it that you get a copy of the 5th and the 22nd May. The top says TC2/20(3). Everybody's got that. There's a few copies short. Can we carry on if those sitting next to each other share with each other and then we fetch some more copies. There's another one. We go to page 33. (Tape goes blank from 341 to 351) According to the Secretariat we went up to page 36 last week Monday. Is that correct?

- Van Wyk: Yes Mr Chairman, I can see it in the size of the columns.
- Chairperson: Have we all got it, gentlemen and ladies up to page 36. That's what we dealt with last week. In other words that what's we agreed and what is contention. Page 37. Up to No 5. Let's just then go through that again to make it final. Page 34. Mr Ebrahim.
- Ebrahim: Thank you Mr Chairman. On Page 34(i) that there should be a Second Chamber of the Legislature and the Senate except the PAC. I think the position is reflected in the comment there. We are not saying it shouldn't be there but it would be depending on what we define in the rule for that. That is what we came up with.
- Chairperson: Any other comment?
- Van Wyk: Mr Chairman, would it suit the PAC if we just delete that "except the PAC".
- Chairperson: Thank you. Approved. Page 35. Agreed to. Page 36. Agreed to. Page 37.
- Beyers: Mr Chairman, on Page 37 the Recall is contentious as far as I'm aware.
- Chairperson: The National Party say that Recall is contentious. The National Party feels that that is a contentious issue. Page 38. Now we are back to the Technical Committee to guide us with regard to the report.
- Van Wyk: Mr Chairman, the next heading is Powers and Functions of the Senate and you'll find with an unexplained gap between the heading and the rest that the ANC's position is a four filled function for the Senate. It's once again based on the submission that we

received, the second submission. The first function is to have a close on-going relationship with the provinces. The second we have real say over National Assembly Bills relating to provinces and articulate provincial interests at national level. Third, initiate legislation relating to provincial interests and to be co-responsible for the country as a whole. And the fourth, it would have less influence over National Legislation dealing with exclusive national competencies. And then the ANC specifically propose the following in respect of legislative competence where there are disputes between the national and provincial levels on concurrent legislative powers. That's the expression used by the ANC, "concurrent legislative powers". Firstly, if the legislation is approved by the Senate the Bill would be deemed necessary for and desirable for the purposes of the national interests, norms and standards. Second, if a dispute cannot be resolved by judicial interpretation of the Constitution, precedence will be given to national legislation. The ANC also proposes a specific role for the Senate in the approval of framework legislation in respect of exclusive executive functions for provinces. Proposes that the Senate's consent be obtained in respect of allocation of resource for the provinces. And thirdly, that the Senate should have a say over the content of national subordinate legislation affecting the provinces. "National" here is meant I assume at national level. Fourth place, the Senate should also be the channel through which the provinces participate in fiscal matters in particular the Budget. Fifth, the Senate would have no power to block financial legislation. Sixth, the Senate would have the power to block or delay Bills dealing with provincial matters and review other legislation. This would be provincial delaying National Assembly or National Bills dealing with provincial matters. DP's position. In favour of equal powers for the National Assembly except in respect of Money Bills excluding Money Bills allocating funds to provinces and legislation affecting provinces' functions and boundaries of provinces. Mr Emlin has drawn my attention to the fact that this should be re-worded because in terms of their proposal they make specific proposals as to how the power of the Senate should operate in respect of these two exceptions. The Freedom Front proposes that the Senate be empowered to interact with provinces and/or corporate groups and review, revise and veto legislation relating to the provinces. Also to initiate judicial review of legislation, seek consensus and dialogue, protect the Constitution, protect minorities and minority rights. IFP's position. The Senate must have concurrent legislative power with the National Assembly. The National Party will see the Senate, in the first instance, consider all Bills. In the case ordinary Bills after disagreement with the National Assembly and consideration by a joint committee to consider the Bill separately again. To retain its current powers in terms of Section 61 in respect of provincial

boundaries. Have the same powers in respect of Money Bills as in the case of ordinary Bills. Retain its current powers in respect of Bills relating to provincial finance and constitutional amendments, and to be the Chamber where Bills affecting the provinces should be introduced also for the provinces on Bills referred to in (e) and that is, provincial finance and constitutional amendments. It should also have an extended role in certain appointments, be represented on the commission for Provincial Government and Financial & Fiscal Commission and be a watchdog over the constitutionality of Bills. And then the position of the CPG is also listed. It supports the present Section 59(l) on Separate Adoption of Bills. In the case of disagreement it proposes that this could be introduced in both Houses after six months and only then, failing agreement, be submitted to the Houses sitting together. CPG is in favour of the current arrangement on Money Bills, but proposes that administrative processes be strengthened to provide for dispute resolution before introduction of Bills. It also proposes that Bills in respect of the functional areas of provinces be introduced in the Senate first and only be passed with the concurrence of the majority of provinces if Senators if the matter relates to a specific province. Also supports the current provisions on constitutional amendment and it proposes the incorporation of a number of Constitutional Principles into the Final Constitution. I may add Mr Chairman that a number of individual submissions have also been received and they have been worked into an annexed version of the document. Unfortunately it was too late for this one.

Chairperson: If you say annexed version, does that mean we are going to come back to the Senate again?

Van Wyk: Mr Chairman, if it's dealt with in the same way as previous individual submissions in terms of what we've decided this morning there will be indication of the organisation or the individual and what the submission was, the contents of the submission, and I think it's for the notice of the Committee.

Chairperson: Now the previous document stipulated the constitutional issue and basically in the comments you've taken up the stances of the various parties. Now in this instance, under the constitutional issue, we've got the point of view of the parties. If we go along, that's what I'm trying to ask, would you relate to what the issues are with regard to that particular topic and then the parties' view so that we can come to the question of agreement and contention much easier?

Van Wyk: Mr Chairman, the Committee discussed the report on the Senate in this format last week and that's why you will see if you turn back

to the first three or four pages that the issues have been singled out and areas of agreement, contention and comments. In other words what's in this constitutional issue column at the moment will after today's discussion some of it will go into agreement, some of it will go into contention and some of it will remain as comments on parties' positions. If this is just to facilitate the discussion, a fairly extensive summary of the party positions.

Chairperson: Gentlemen, any comments? Senator Ackerman, can I have a list of them as we go down. Mahlangu.

Ackerman: On page 41(g) and (h). If the technical advisors could just expand on our view on this because we put it more thoroughly in our submission and it's just mentioned here. (h) as well, we had more in mind. I haven't got the submission now with me, but if you would look at our submission, it was not only the ? of the National Commission and the CPG, there were other things as well that we said. So I would just draw your attention to that and ask you if you could just look at our submission again and be more thorough on that.

Chairperson: Mr Mahlangu.

Mahlangu: Mr Chairperson, Mr Ackerman has already cleared what I wanted to ask. My question basically would be they are saying that (g) having an extended role in certain appointments, I just wanted to know which certain appointments are they referring to. But it's already clear, I don't know whether we'll be in a position to do it now. I've been always confused most of the time and I just want to clear up one thing here. Is the CPG intended to exist forever or after this Interim Constitution will it stop existing. Should it stop? Now that's another question because they say they want to be represented in the CPG and the like. I was of the impression that the CPG will not exist after this Interim Constitution and the New Constitution may have other different structures. But basically that is a question I wanted to clear out. And one question goes to Mr Eglin, could Mr Eglin just expand more on the DP's submission. Page 42 where it says DP is in favour of equal powers with the National Assembly. Does it mean in all for example legislations approved by the National Assembly like in the American style that they should have equal powers in everything except that one which says excluding Money Bills only. Could he just expand a little bit on that one.

Eglin: It's got nothing to do with the American system. In most Parliaments where you have two Houses they actually have concurrent powers. I mean you want to get the approval of both. So we would say yes, but then we exclude Money Bills, so they

would not have the same status in respect of the Budget as the Lower House would have. But they would certainly have status on matters affecting the powers and functions of the provincial boundaries. So they would be essentially there, they would have the same status but you would exclude Money Bills, except those Bills that deal with allocation of money to the provinces because there the provinces have got a specific interest. But for the rest they would have the same status in the sense that you would need the concurrence of the two. Once again one would have delaying power and the other would have finalising power. So it would be very much on the present basis except I think the Senate at the moment is too involved in the ordinary Budget. The ordinary Budget I think actually belongs to the House of Representatives except insofar as it involves allocations of fiscal allocations to the provinces. There they would have full status. But in respect of ordinary Money Bills, it will be the Lower House or the House of Assembly whatever you want to call it which would have the predominant status.

Chairperson: Any further questions.

Eglin: Mr Chairman can I just say the ANC's I have no objection. It's a very fulsome explanation. It's really almost a philosophical ? of specific powers. The Democratic Party is left out in that sense. We've specifically said it's primary there to represent the provinces. I think that is an important concept. Secondly we've also said that it's got additional powers. For instance the ratification of treaties, the question of endorsing top level appointments, both in the foreign service and in the public service, are functions which we think should be allocated to the Senate. So, all I'm asking is that one sees that if we're going to report extensively on the various parties as we have, that there's the same light and shade given to the parties in the presentation. I'm concerned that in all the other reports what we've got in column 1 would normally appear on column 4. It's really under Comment. Here one has actually put the total tabulation of all the parties point of view under the first heading without trying to seek any areas of agreement. I would have thought that there was already substantial agreement between the parties here that the Senate should be primary the body representing the provinces. I think the IFP say that in addition to that they should represent other minority interest, but there are areas I think of convergence which we've not sought to define. All we've done is that we've listed each parties' policies separately. So we haven't given much guidance to the CC. They would merely get a tabulation of party's policies without any attempt to synthesize it.

Chairperson: No, I don't think your interpretation now is correct because I raised

that issue initially. It was said by the technical experts after our discussion, they will tabulate it like that so that we can get agreement and contention and then the comment. But because of the parties' submissions, they've just tabulated what each party felt about the issue. So we'll sort it out now during the course of this morning and this afternoon. Dr Pahad.

Pahad: I would just like to see guidance from you I mean as to how you think we should now discuss

Chairperson: I just want all questions for clarifications to be dealt with first, then we come to that one.

?: Mr Chairman, on Mr Mahlangu's question about the CPG. If I remember correctly the CPG when they visited us they said that there was not a real sort of answer yet if they would go on or not, but they also stated that they think they should go on. If I remember correctly, so it depends on the Government if they would go on with the CPG, but I don't think there's a decision yet taken on it.

Chairperson: Look, they said that they're working with the understanding that once the Final Constitution has been written after two years, then they disappear. That's what they said to us. Am I right? So we define now the areas from what we've listed here of agreement and where we have disagreement, if there is any, with regard to the powers and functions of the Senate. That can flow from what we've agreed upon basically already up to page

(Tape 3) 37. Now each party now indicates where he disagrees with a viewpoint as stipulated by the other party. I think that would be the best way to go about it now seeing as it has been tabulated as the technical experts deem fit.

Van Wyk: Mr Chairman I do wish you luck, but last week my analysis of the ANC's approach is it's philosophically very different from the other political parties. And that's why I thank you for giving us the opportunity of discussing what the ANC's view is. What they certainly do not want, and this is my interpretation, is a continuation of the present style Senate. But we can deal with it as you propose and see how far we get with it. In my estimation they want a completely different animal to the one that we have now and the other parties seem to support the continuation of many elements of the present Senate.

Chairperson: Mr Mahlangu.

Mahlangu: Well, I was of the opinion that we also agree with the National

Party. Mr Eglin is actually just pointing it out here that the crux of the matter is that our present Senate does not seem to be representing provinces the way we want. And that the problem that we have with the present Senate is that their roles and function is not spelt out in the present Interim Constitution the way one would like to see it in the New Constitution. And I was of the opinion that all the political parties actually agree that our Senate should be the type of a Senate that will seem to be representing the provinces and really having the interests as far as provinces are concerned, except the PAC which further said they will not just like to end it there but they would like to go beyond that. I think that should then be taken as a point of departure. If we all want to see that, that our Senate that we are looking for should be the Senate that has got a role to play as far as provinces are concerned, then I think we've got a good point of departure. We can differ as to what functions then from there do we allocate to that particular Senate, but I think the crux of the matter we all agree that that Senate should be the Senate that reflects the interest of the provinces. I was of the opinion that on that score we agree. Maybe we could differ when it comes to the allocation of their functions and powers.

Chairperson: Having listened to the technical experts, it appears that that is the first point of agreement that the Senate should represent the interest of the provinces. Or am I wrong if I make that assumption?

Van Wyk: That's one of them Mr Chairman, but that's not the only one.

Chairperson: I'm just identifying because ...

Van Wyk: Mr Chairman, I wonder can't we just break for ten minutes that we can just go through these things. It's a bit of a technical nature, then we can go on or would it be not possible.

Chairperson: We are adjourning for tea at eleven o'clock. It's five to eleven, but then we must stipulate what time do we get back here and when do we adjourn for lunch.

?: Why don't we adjourn for tea now instead of waiting for eleven o'clock.

Chairperson: Yes, that's what I'm trying to indicate and we adjourn until half past eleven. But people want to look at this document? Do we get back here at quarter past eleven and then we adjourn for lunch at half past twelve, and then we continue thereafter. OK, then we stand adjourn and I hope the parties will assist when they come back so that we can more easily identify the points of agreement

and contention. And then we will also in the break deal with the no confidence issue and the impeachment. The documents are here. (Tape goes blank from 57 to 64)
Are we ready to deal with the Minutes of the 5th and the 22nd.

?: Why do we have to jump to the Minutes.

Chairperson: Well, I said we must deal with it later. It's not a question of jumping to that

?: Let's finish the Senate first and then come to the Minutes.

Chairperson: Let's get back to the Senate, Powers and Functions of the Senate.

Van Wyk: Mr Chairman, I would like to make a proposal especially on the Powers and Functions of the Senate. There's a lot of technical things that we want to discuss with our principals. If we can't go on with the Powers and Functions, I think the whole report on the Senate comes into dispute. So I would propose that we give each other time until next Monday when we meet again just to have a look at this whole thing of the Senate before we take a view on it.

Chairperson: Is there any objection to that proposal? No objection. Then the Senate stands over until next week Monday. There has been a request that after we adjourn today that the Call Group just meet quickly for two or three minutes to discuss something else. Can we then go to what we left out earlier on with regard to No Confidence and Impeachment so that we can finish up with that document. Mr Mahlangu.

Mahlangu: Well Chairperson, I would just like to go through this document quickly. I haven't done justice to it. I can see that the National Party is first and foremost the complainers that that has been excluded from the present draft of the technical advisors. Which is true, it's not there. They only concentrated on the motion of No Confidence though most of the political parties did raise the question of Impeachment. And as ANC we later said when we were discussing, maybe it's not even necessary to raise the question of Impeachment because we think the vote of No Confidence with suffice. But now the National Party is coming back to say there is great difference between the motion of No Confidence and the Impeachment itself and I think that's what they are trying to explain in their document at the present moment. I don't think the ANC will have any problem if they want that to be included in the draft of the technical advisors, but at the moment as we've said, as ANC we want to reserve our position in that regard. We would not really push for the Impeachment to get into the draft as we have the other idea that the vote of No Confidence

actually do suffice. Maybe one could ask a few questions that they could expand on. Maybe the Democratic Party. In our case, for an example, the President is not directly elected by the people though I know the DP wants that the President should be directly elected by the people, but what we are saying we're not advocating that it directly should be elected by the people. He will be elected by the Members of the National Assembly, that is what we are proposing. Therefore it doesn't matter whatever he does, any gross transgression that it makes whether it be constitutional or he gets into picking something in the purse of the government as somebody has referred to, we think that can be dealt with by a question of motion of No Confidence. And when one looks at the question of Impeachment itself in the American System, I think a few Presidents have been impeached, one or two, something like that. I remember I did even ask the question during our workshop that we had. If that impeachment really had any affect to those particular President, though it was heard it was conducted, did that President actually... was he out of office or was he not out of office. It really did contain anything. Now one tries to look into those things as well. But we're not stopping the National Party at the present moment to have impeachment on this current draft if they wish to, but maybe one could clear the verbal explanation a little bit more in about two/three minutes maybe. We would also be interested to hear that. Thank you Mr Chair.

Chairperson: Mr Eglin and then Mr Beyers.

Eglin: I don't want to ? because we have dealt with it. It is a provision in our present Constitution. It has nothing to do with the American Constitution. You have a Motion of No Confidence on the President is as a Chief Executive Officer and you would have it as a normal political vote of No Confidence. But this says in fact serious misconduct etc. etc. In other words it's a different concept. It's not a political vote of No Confidence. It's actually saying that that individual has not complied with his constitutional functions. And I think it should be there. It's not an American... I just went up to my office now to get three Constitutions. Cape Verde, they've got this provision. The basic law of Germany, they've got this provision. Granted it's got to be a certain number of members of the ? who have then got to appeal to the Constitutional Court that makes the decision. And our neighbours in Namibia have got this provision. They've got a provision that you can have a motion of No Confidence which is a political motion of No Confidence in the President as the man who runs the government. But there's also provision for an Impeachment which acts as a direct violation of the law in terms of his responsibilities. And we would just like to see that separation. The concept of this man is not fit because of his behaviour to hold that office and this man as the Head of the

Government of the Executive has not been performing politically correctly and therefore he and his government should fall. And we think there is a distinction and it should be maintained.

Beyers:

Mr Chairman, I agree with what Mr Emlin said. The point is that it's important to distinguish between motions of No Confidence by Parliament in a government and the impeachment of the President. The former is a political action and the impeachment is a quasi-judicial action. And I think Sir, it is necessary to keep that clause in the present Constitution, and because of the fact as Mr Mahlangu said it doesn't appear in the report and the National Party wants it to be included.

Chairperson:

Dr Pahad.

Pahad:

We're not hard and fast on this. But you see I think statements are just made so it's OK if it's a Namibian Constitution, then we might as well just take other Constitutions and put them in our Constitution. I don't think it's sufficient reason. We raise this question that in a motion of No Confidence you can actually remove a President with a simple majority, OK. But in a motion of Impeachment you need two-thirds. Now, this is a bit ridiculous, to be frankly honest here. They can actually remove a President on the basis for what you're calling political reasons, on the basis of a simple majority but for some fundamental transgressions you need a two-thirds. There's contradiction here. That we said it needed to be resolved, we can't run away from that. I don't think it's sufficient to say one is political, one is kwaza judicial. What the hell that means, I don't know. I know these are English words but what they really mean, what the content is, I'm not sure. Because you can't say that a motion of No Confidence somehow you put in some compartment called political and something else you put in a compartment called kwaza judicial. I'm saying I don't understand this distinction because a motion of No Confidence may well have some judicial reasons behind it. You could well have a Motion of No Confidence if you think the President has violated the Constitution. It's possible. So, I'm not saying we must argue the point here but I wanted to make our point also clear. There's not a question that we are saying put it in or put it out, but unless we have more stronger grounds for including both Impeachment and Motion of No Confidence and unless we can have an explanation as to why it is easier to remove the President and we can under the Motion of No Confidence actually remove the President with a simple majority, that you should then want to remove the President with a two-thirds majority for an even greater transgression, and it's that that needs to be explained. So I'm not satisfied, frankly speaking, with the explanations offered either by the National Party's document here or by Mr Emlin's proposal

about why he thinks you need to include Impeachment. If in the end we are convinced that you need to do both, the ANC doesn't have a problem of including both. All we are saying is that it seems to us that the Interim Constitution was not very clear on this thing precisely even on the question as I'm saying on the voting majorities required to remove a President who is exercising power at the current moment in time. Now of course the Democratic Party's proposal of Impeachment should naturally flow even if they don't, should naturally flow from their own understanding of how the President is to be elected. Now the Democratic Party wants the President to be directly elected. We don't. But that's a bone of contention between us and therefore if we're having a Democratic President directly elected then naturally you may well want to include proposals of Impeachment. Now I'm saying that unless we have this totality of the explanations and related to the question of why you need a smaller majority for a Motion of No Confidence, then I think we're going to run into the same problem that we run into in terms of the Interim Constitution. But the ANC doesn't have a hard and fast position in this thing. If you convince us that it's necessary to have both, we won't have a problem with that. We are just raising an issue in terms of how it is reflected in the present Interim Constitution. So I would like to emphasise, we wouldn't have a hard and fast position on this question but we do require at least a little bit more explanation before we can say yes or no. At least we're not saying yes or no, this is not a negotiating forum, but at least to say what will happen at the level of the Constitutional Committee.

Chairperson: I don't want to be naughty but on Page 31 the ANC holds exactly that position. Although you've said it must be corrected a little bit.

Pahad: I pointed out that that was in our original written submission. When the discussions ensued here, we look at the thing, looked at the Interim Constitution, at least those of us from this group, when it goes to the Constitutional Committee it's a different matter, we then realised at least to us something wasn't jelling and that's when we raised the issue to say that look it needs certainly further discussions. And in our view it requires further discussions. The ANC has not made a final decision. It was a written submission in our verbal oral submissions here we raise certain other problems. I'm raising problems now here in relation to the submission of the National Party and in relation to what Mr Eglin is saying. But I'm saying that this matter is now still open for discussion and the ANC is still open to be convinced that you would require a provision for Impeachment. We are not saying we don't require it. We just saying that we need to be convinced that we need it.

Chairperson: Dr Ranchod and then Mr Beyers and then Mr Eglin.

Ranchod:

Mr Chairman, I think it's perhaps in the effect where someone is impeached, he is more or less declared unfit to hold office. Where a Motion of No Confidence is passed, well there's nothing to stop the leader of that party who is the President to run for election again. It's not clear that where you have a Motion of No Confidence passed in the President personally, we don't have any convention that he will be prevented from running for office again. So I think with Impeachment it's fairly well established that a President who is impeached is out on his ear. There's no way that he can run for the office of President again. The question arises whether a Motion of No Confidence in the House in the President only would have the same effect, but I'm not sure.

Beyers:

Mr Chairman, there is surely a difference between You can distinguish between a Motion of Confidence as a political action and Impeachment as a kwazi judicial action. It is one thing for a President or a party like the ANC to steal the limelight in the say for instance the Worldcup Rugby event, and a total different thing if they steal cycads. You know, it's two different things. Laughter! All that we say Mr Chairman, I think there's some sense in the arguing of Dr Pahad as far as the two-thirds majority is concerned and I think we will have to address that ourselves as well again. But I think the impeachment is an additional method Mr Chairman to give Parliament control. Because in a certain sense, and I think this is an important ground, it is in practice very difficult for a majority party to support for instance a Motion of No Confidence for political reasons. While it may be possible for a majority party to support a Motion of Impeachment because in that case they will not necessarily lose political ground but as far as Motion of No Confidence is concerned, it's a total different story. So Sir, all that we want is that it be included then in the report that on the question of Impeachment it must be revisited again or as far as we are concerned if the ANC sticks to this, it's a point of contention. But on the matter of the two-thirds majority we will take it back to our party and ask whether we can also decide to make it a simple majority.

Eglin:

Chairperson, I didn't say we should include it because of the Namibian Constitution. But so far everybody on the other side has said that this is an American concept and I've tried to indicate that there are a number of other ... (A comment from the floor) No, it isn't. The German one is actually where he is elected by Parliament and there's still a provision for Impeachment. So, all I'm saying is there's a whole range of ... All I'm trying to say is that there's specific provision. But understand our first attitude is entirely logical and I think you've got fairly close to that, if I may say, and that is it flows from the fact that we think he should be directly elected. And therefore you can't have Parliament just

passing a vote of No Confidence in a person who is elected by the people. What you can do is pass a vote of No Confidence in the President and his Cabinet and he would fall with his Cabinet. But what you should have, and I'll use the words in our present Constitution, he's guilty of a serious violation of this Constitution and other laws of the Republic or misconduct or inability or unfit to exercise his duties. So there should still be in our terms and our provision even if Parliament cannot pass a vote of No Confidence in him, because they didn't elect him, they should have a right of Impeach again if he's in fact guilty of a serious violation of the Constitution and the laws. So ours is quite consistent with our elected concepts. There's no problem about that. I actually think even if he's not elected there is still a case for that because I think Mr Beyers got fairly close to it, if he is elected by Parliament he tends to be the nominee of the majority party in Parliament. He would tend to be. Part of the political process and where he's not leading therefore with no confidence in him and his party, in terms of the political process there's a serious dereliction of his responsibility in terms of the Constitution. The allegation he's violated the Constitution or the laws and someone is trying to separate him as a person in the conduct of his behaviour as him as the leader of the majority party or the Head of the Cabinet. Now I'm not going to argue that extensively because ... If you ask, why shouldn't there be a simpler one. Yes, I think it should be fairly easy to get rid of any politician because you've lost confidence in him. I think it's a very serious thing when you say to an individual we actually suggest that you have violated the laws of the Constitution and you've violated the Constitution. It isn't something which should just be taken on the basis of a simple majority. It's a serious indictment, not of a political nature, but of a legal and constitutional nature. But I don't want to argue this extensively. It flows from our view that he should be an elected President and that's the consistency. The National Party and others must argue the consistency from their point of view. I think there's a case to be made but I'm not going to argue it on their behalf.

Chairperson: Mr Mahlangu.

Mahlangu: Chairperson, I'm not taking this point further as we indicated that we won't have a problem in fact if it's raised in the draft of the technical advisors. But the question I want to pose is I've heard Dr Ranchod and Mr Eglin saying that once the President is impeached, then he cannot stand for elections again. He's out forever. I've been trying to look at even the Interim Constitution. It doesn't say anything about that.

Ranchod: Somebody like Richard Nixon, sorry through the Chair, once he

was impeached, that was it. There was no possibility of a come back politically.

Mahlangu:

But the point is if he wished even after he was impeached and if he could get enough backing and support of the Republican Party, he could stand for re-election. There was nothing in the US Constitution as far as I can tell which would have prevented Nixon from standing once more, if he so wished. The thing was that politically and that he was not going to be able to master enough support, I was just making the point, and their can't be a convention. I think in the US there are only two cases of impeachment, from what I can recall from memory. The point we are making is that all of these issues we'll have to revisit them and people will have to come and explain about how you can have a Motion of No Confidence and our ANC proposal say you can a Motion of No Confidence in the President alone which means the President resigns but not necessarily the Cabinet. In that case the National Assembly in terms of our approach would elect the New President. And we were just asking once you have those provisions, do you need additional provisions. So we are asking for an explanation about additional provisions, but I do not believe there's any convention in the United States that I can think of which said that Nixon could not have stood for re-election. Politically and morally I think he would not have been able to master enough support for that, but it's not a constitutional provision, it's a political provision. Let me add here, that people have to understand that for a Motion of No Confidence whether it's two-thirds or simple majority, it would certainly require the consent of the party that has the biggest voting majority in Parliament. That's quite clear. You couldn't do that without that at least in our system which is very much more party-political system than the United States one is where ideologies and loyalties cross party priorities. So in any case in the end the political party would have to come to a decision, the one that has the highest number of seats in Parliament, that they would want that President to have a Vote of No Confidence or to be impeached, however we're going to put it in the New Constitution. I think we should never forget that, that the minority party even a combination of minority parties on their own cannot succeed in either a Motion of No Confidence or Impeachment. I think this is a very important for us to bear in mind when we're looking at the New Constitution.

Chairperson:

Mr Lebona, can your colleague just switch off his mike there. Dr Pahad.

Pahad:

Yes, I'm only trying to get history straight. I hear former President Nixon being mentioned as having been impeached. As far as I know he resigned before the impeachment. So, if we base on

precedent, let's have our facts straight.

Chairperson: I think we've covered the field. It's to be included in the report with the specific position of the ANC made clear that they are not basically against it but they must revisit it.

Van Wyk: Does it become a point of contention?

Chairperson: Yes, it becomes a point of contention.

Beyers: Mr Chairman, can I just add. I think the gentleman there made a very important point, but it is because of the fact that there was a system of Impeachment that actually for that reason because of the fact that Mr Nixon knew that he would be impeached, that is the reason that even before it was necessary to apply the method, he resigned. So that is just to note that the existence of that impeachment clause was necessary.

Mahlangu: Unless the National Party wants to raise this as a contention, we don't think it's a contentious point. All what we've said we need those clarifications and then we may just revisit the issue. I don't think really it's an issue of contention unless you're raising it as a contention.

Eglin: I've tried to indicate that because the DP says that the President should be elected by popular vote, it means Parliament cannot get him to resign. There's no way you can move a Motion of No Confidence. But there should be an opportunity to get him out of office if he misbehaves. Now that's what happened in America. The Congress cannot get rid of the President because he's elected directly, but if he's guilty of a serious offence, then there should still be a mechanism by which you can get rid of him. That's the rationale behind us. What I haven't heard from Mr Beyers is a response to the ANC. If in fact he's not elected as the American President is by popular vote, but he's elected by Parliament, why is it necessary to have both an Impeachment procedure and a No Confidence procedure? That's just a question I would like.... (Tape goes blank from 427 to 430).

Beyers: I've already said Sir that another reason for that is that in practise it will be more likely to it will be possible even for a majority party to pass an Act of Impeachment and an Act of No Confidence for political reasons.

Chairperson: Now we move to the draft report on Provincial Government Structures. Have you got that? The parties have made their submissions. We are now going to discuss it and as we did before we going to give each party an opportunity just to present their

submissions very briefly. Have we ever started with the Democratic Party? I'm referring to this document. That was circulated last week. There are copies of the parties' submissions.

Eglin:

The Democratic Party has really taken the existing Constitution's Provisions as a starting point. On the understanding that quite clearly individual provinces are entitled to draw up their own Constitutions within the framework of the Constitutional Principles. But to the extent that you might need in our National Constitution a Provincial Constitutional for those provinces that haven't got their own Constitutions, we follow fairly closely the clauses in the present Constitutional setup. So we start from that point of view. And our submission, if one looks at this particular document, we followed very closely. We don't argue but just say that the number of seats should be the same as the number in the National Assembly. I think at the moment the seats would run to twice the number in the National Assembly from each particular party from the provincial list. And we just say, well it's twice the original number, and we stand for 240 seats in a National Assembly. We believe that those 240 seats should be distributed in amongst the various provinces in the same proportions and you'll get slightly smaller provincial legislatures that you have at the moment, and for that reason we say the minimum number instead of being 30 in the present Constitution the minimum number should be 25. And we take this because once you go into constituency elections at national level, whether they're multi-member constituencies or single-member constituencies you start to have problems in relation to the provinces because it's going to be extraordinary difficult if you have completely different constituencies for the provinces than you do for the National Assembly. So all we say is you take the number of seats in the provinces and those constituencies also form the basis of the constituency representation for the provinces. So we would link those two in that particular way. And we therefore say the number should be limited to 25 not to the minimum number of 30 at the moment. And your problem is whatever system you apply if you take problems like the Northern Cape you would end up with three or four MP's and therefore you've got to have a minimum number to make it workable if you're going to have an Executive and people coming from the provinces to the national election. The only other point is we stick to the view that the Legislature should be 4 year terms as was for Parliament and not 5 year terms and we say that in fact a candidate for election to the Legislature of a province must be a registered voter in that province just as you have to be a registered voter in South African to be a South African. So if you going to have constituency representation coming from provinces, a candidate for election to a Provincial Legislature must be registered as a voter in one of the constituencies in that province.

So those are the essential elements when it comes to the Executive authority. We would say that the same basic pattern that is set in the present Constitution other than we don't believe in a Government of National Unity type of operation applying, we will believe in voluntary coalitions rather than enforced coalitions and we would also instead of the Executive Council consisting of 10 persons which it does at the moment and there may I say if you take the Northern Cape Province, they've got 4 members of Parliament in Parliament, they've got 30 Members of Parliament at the Legislature in the provincial level and they've got 10 Members of Exco. And we just believe that the number of Exco members should be between 5 and 10 and they shouldn't exceed one-fifth of the number of members of the Legislature. In other words on one end 5 members of the Legislature could form an Executive but it shouldn't exceed that number. When one says well isn't that too few, may I say under the old provincial system which operated under four provinces and right up until the 1960's there were only 5 members of the Executive at each of those provinces and we would say between 5 and 10 depending on the size and the number of voters in a particular province. For the rest Chairperson, on Provincial Constitutions we would agree that the provinces should be able to draw up their own Constitutions and they should only be limited by their Constitutional Principles. Provided they comply with the Constitutional Principles, they should in fact be able to draw up their own Constitutions. And finally, Chairperson, at the end of our document you will see that we believe that a number of the Constitutional Principles which will fall away unless they're re-introduced into the next Constitution should be incorporated in the next Constitution so that is at some future stage provinces do draw up their own Constitutions, they are in fact still required to comply with these basic Constitutional Principles. So we would follow very closely the present system reducing the number of Legislatures, reducing the number of members of the Executive, but seeing that the Constitutional Principles which are relevant to all levels of government are re-introduced into the Final Constitution.

Chairperson: Thank you Mr Eglin for being very brief. Mr Mahlangu.

Mahlangu: Chairperson, very briefly I will not take ten minutes of your time. We, just as the Democratic Party also, more or less followed what is contained in the Interim Constitution. But may I make it also to the members of the Committee that we are still in consultation with Premiers out in the provinces seeing that they do not all of them give their input to the CPG. That's is the problem that we're having and would definitely like to hear what have they got to say about the structures that have got to be established in their own provinces. That's very important. We thought we need to consult

with them and that consultation has started. We may revisit some of the issues later on but that shouldn't stop this process to carry on. I thought I should just make that explanation very clear to the members of the Committee. But what we are actually proposing as ANC is that the Final Constitution should provide for a Legislature for each province which may make laws for the province in accordance with the Constitution and only be applicable to that relevant province. And when it comes to the size of those Legislatures, we are only saying as you can see on Point No 2 there that the members will be elected on a proportional basis as well as on a constituency basis, and we are not saying how big those Legislatures are going to be because we still have a problem in that regard as you would be aware that even at national level we have a problem. We're saying unless we determine, we finalise the electoral system and really consider how many constituencies, work out all those nitty gritty in the country, it becomes very difficult to say how many members of the Legislature we would have but for sure we wouldn't like to see a very big size of the Provincial Legislature. And we are also saying that as the National Assembly would have a duration of five years and we're proposing that the Provincial Legislatures should also have a tenure of about 5 years. And Chair, when it comes to the privileges, benefits and immunities of the members, you will notice that the present Constitution actually says that they could determine their privileges, immunities and benefits according to their own laws in the provinces, but we are saying here that provisions in the New Constitution should be suitable provisions should be made for their privileges, benefits and immunities, but we're not actually saying they should do that. We might consider that that should be done through an Act of Parliament. And furthermore we're saying Provincial Legislatures, if it is dissolved, the Premier shall then have to call elections within ninety days from the date of dissolution and that elections will be held in accordance with an electoral act. And each province of the Legislature will determine its days and hours of sittings and the qualifications provided for the members of the National Assembly at the present moment will also apply to those members of the Provincial Legislature. And we furthermore say they will also make their own rules, how they will run their provinces, rules of procedures and the quorum which is maintained in the present Interim Constitution will also apply in the Provincial Legislatures. When it comes to Executive Authority we also say the Final Constitution should provide for an Executive Authority of each province and the Executive powers will rest in the Premier of that particular province. The Premier shall be elected from the members of the Provincial Legislature and shall hold office for five years which is consistent with the tenure of the Legislature Authority itself. And the Premier will have amongst other powers

those of assenting, signing and promulgating Bills passed by the Provincial Assembly and the Executive Councils will be accountable to the Premier for the day to day administration and collectively for the administration of the entire province. And we say if there's a Motion of No Confidence to the Premier, then the Premier will have to resign and the province will have the right to elect another Premier say within thirty days from there. Just as a last remark what we are saying is that provinces, yes, should be allowed according to the Constitution to draw their own Provincial Constitutions but we're also saying that those provinces who do not want to have separate Constitutions or who do not want to draw their own Constitutions must also be allowed that right to do so. Thank you Chair.

Chairperson: Thank you Mr Mahlangu. Mr Beyers and then lastly Mr Ebrahim.

Beyers: Mr Chairman, in our submission the National Party didn't try to say what the powers of the provinces must be because that is a matter for Theme Committee 3. So as far as the question of a Constitution for every province is concerned it will be dealt with by our submission in Theme Committee 3. We take the transitional Constitution as a point of departure in the first instance. Secondly, we say that we accept the present boundaries of the provinces. I think an important aspect of our proposal is the composition of the Provincial Legislature. We say that in principle the electoral system of proportional representation should be retained for the election of members of Provincial Legislatures. Elsewhere we proposed an adaptation to that system for the purposes of the election of the National Assembly in terms of which (1) Elections should be held on the basis of voters lists and (2) Elected members should be designated after the election by their respective parties to formally

(Tape 4) represent particular magisterial districts and we now propose that it should apply to the Provincial Legislatures as well. As far as members are concerned we say that the present Section 127 which provides for a minimum and maximum number of members for Provincial Legislatures should also be reconsidered. As far as the term is concerned we support the present ruling as far as the functioning is concerned. As far as the Executive is concerned there seems to be no compelling reason why the provisions dealing with the election and term of office of the Premier and Acting Premier should be amended. We say that as far as the Executive Council is concerned Sir, that very principle of the present system of governments of provincial unity should be kept. We propose that the same principle be adhered to at provincial level and that the Provincial Executive Councils also remain composed proportionally to those parties that qualify. We are not against a reduction in the number of members of the Executive

Councils. It could be considered especially for smaller provinces. We are in favour of a decision making process on a consensus basis and that's all the comments I want to make at this point.

Chairperson: Thank you Mr Beyers. Mr Ebrahim.

Ebrahim: Thank you Mr Chairman. Mr Chairman, as you know we have not formally submitted our recommendation for the Provincial Body yet. That is because we have worked out a document and we're now getting the views of our people in the various provinces. We had hoped that by last Friday we would get them back but there has been smaller meetings that have been taking place and we hoped that yesterday they would have finalised it and I didn't have an opportunity today to look at whether we have received it. But we will certainly do that within the next day or two as soon as we get these back. However, I can say that we have largely followed the constitutional provisions that are there. We do accept the fact that there are nine provinces, that there has to be elections in these nine provinces. But we haven't finally decided on the question of the size. We agree on the issue that the elections there should coincide with the national elections, should be on the basis for five years. And we have been discussing the question of the powers that should be given to the Premier, for instance if there are elections called in the provinces, who should call them. On the question of their own Constitution, we've asked our people to give out their views on that whether we should have people drawing up their own Constitutions or whether we should be allowed to.... of if they do not wish to, what should be the position. We do agree also that the Premier there should have the powers of signing Bills that the Legislative Assembly passes in order to ... So these are some of the broad principles that we have put but there are certain specific things that we have asked for and we hope that we'll be able to do that.

Chairperson: Thank you Mr Ebrahim. Now over to the technical committee to start introducing the draft and for parties now to debate and discuss, and ask clarification so that we can formulate our submissions to the CC. Who deals with that? Professor Steytler.

Steytler: Thank you Mr Chairman. The first question is then the Constitutional Principles and the most important Constitutional Principle if you look at page 7 of the report. Perhaps just on how I should proceed I would look through the narrative report rather than the tabulated report and as we discuss, we can start filling in various points of agreement between the various parties. So I will just take you through the narrative report starting on page 7. At the bottom there the first

Chairperson: Have everybody got the same document? It's Draft Report on Provincial Government as at 29th May 1995. Everybody's got that? Thank you. (Tape goes blank from 67 to 71).

Steytler: Now the first issue is Constitutional Principles and the most important Constitutional Principle is No 18(ii) The Powers and Functions of provinces defined in the Constitution including the competence of Provincial Legislatures to adopt a Constitution for its province shall not be substantially less than or substantially inferior than those provided for this Constitution. So every province at present is entitled to pass a Constitution for its province by resolution of a majority of two-thirds of its members, but important now the Constitution may be different from the Interim Constitution, but it should not be inconsistent with the Interim Constitution including the Constitutional Principles and one would have to pack out the difference between being different but not inconsistent. Furthermore there's provision that the Provincial Constitution may provide for institutional traditional monarch in the case of Kwazulu Natal that is compulsory. Now from this four issues that need to be addressed. The first is would the competencies of the provinces be substantially reduced if the entitlement to draft their own Constitution is taken away. Second one is can or should all provinces be compelled to draft their own Constitutions. Thirdly, how different may the Provincial Constitutions be without being inconsistent with the Interim Constitution and the Constitutional Principles. The issue here is should there be a broad framework which provides for or in terms of which a province may draft its own Constitution. And finally if the province is not compelled to draft its own Constitution, then for those provinces who do not wish to do so, what should be the content of a default Constitution. And one may add here, where should this default Constitution be contained. First issue then, for substance, is the question of Terminology. Interestingly, only one submission here from the DP Gauteng region is Premier, no dispute whether the leader of a province should be called anything else than a Premier. But then Executive Council's suggestion here is that they should be called a Cabinet and that members of the Executive Council should be called Ministers. I think one may have to take into account what really appears in the Press sometimes that MEC's actually call themselves Ministers or Cabinets so there could be some dispute about what they should be called. Second question, should provinces attain their competencies. I think most parties here are in agreement that they should. The CPG gives a very useful analysis of the provisions. Their submissions I think should be carefully looked at and it deals very comprehensively and well with the various issues. They suggest to draft their own Constitution should retained substantially undiminished in its present form. But this

competency is limited in compliance with the Constitutional Principle No 4 which provided that the Final Constitution will be supreme law of the land. The present competence of the provinces cannot be increased to draft a Constitution which will be concrete to the Final Constitution or the Constitutional Principles. So on this score one may probably note an amount of agreement. The other issue that may be contentious is the obligation or a competence to draft a Final Constitution. The IFP suggest that when the Final Constitution comes into operation, there would be Provincial Constitutions in operation and that nothing further need to be done to provide for a Constitution. That no further details on the Provincial Constitution should be contained in the Constitution. The DP's suggestions as Mr Eglin said it should be a choice while DP Gauteng submitted by Mr Peter Leon said ? a Constitution should compel each province to enact its own Constitution. The only other submission here is from the Provincial Administration Western Cape suggest also that each province should require to write its own Constitution in terms of which it deals with elections and vacancies etc. So the issue of obligational competence is to draft a Provincial Constitution. Where depending irrespective how one decides that if a province has the power or the competency to draft its own Constitution, should a broad framework be provided in terms of which it should be done, clearly the Constitution says at the moment that the Constitution may be different but not inconsistent and the question is how different without becoming inconsistent. It should be done in terms of the Constitutional Principles, one on Separation of Powers, Multi-Party Democracy, Proportional Representation, Open Government, Formal Legislative Procedures, Dissipation of Minority Parties in the Legislature and Democratic Representation at each level of Government. Now the question is should one go further and provide a more clear framework. None of the submissions have identified a very clear framework. The CPG has suggested that indirectly for example that the size of the Legislature, size of the Executive Council, may be contained in such a framework. The question is what more should be included. Also if one looks at the Constitutional Principles they are not precise, question would be whether they should be spelt out in any great detail. And DP's position here is that Constitutional Principles should form the framework for future Provincial Constitutions and they should specifically be included in the Final Constitution. One may want to look more carefully at such a framework for Provincial Constitutions and one may want to ask for further submissions on that perhaps from the CPG. If it comes to the default Constitution for Provincial Governments on Provincial Legislature firstly, the first issue that should be addressed is where should it be contained. Should it form part of the Constitution itself or be attached as a schedule. It's not a point that I've included here but

it has been mentioned informally to an extent. The first issue on the Provincial Legislature, there shall be a Legislature for each province says Section 125(i). One could probably have agreement on that issue, that the legislative powers of a province should be confined to the province and I think probably we would have to deal with what is the province particularly I think to the seas, to the sea shore, where does the province's powers end. Then the composition of the Legislature, present Section 127(1) says size not less than 30 not more than 100. There's a number of views here the MP has heard....

Pahad: I'm just wondering how we're going to discuss this matter. Is Professor Steytler going to go through the whole report or do we want to take it section by section. I mean, in other words we are going to have to come back to them, so I'm really asking how you think we should discuss this matter because there's one section on the Obligation of Competence to draft provincial content, then there's the matter of the Provincial Legislatures. And either we can have an overall report or take them section by section, and I frankly would prefer to take it section by section. Because there are some questions which we need pose which are broader. So I'm asking for guidance.

Chairperson: We can deal with it in whatever way the members would like to, but I think the easiest one would be to deal section by section whilst the member's memory is still fresh. I think that would be the best, if you agree with me? Mr Pahad.

Pahad: I'm not going to discuss the substance but I think we need to discuss partly the way this report is drafted. I'm frankly concerned and I mean Colin will speak, but that there should be a DP and there should be a DP Gauteng, as if they carry the same weight. As far as I'm concerned DP Gauteng doesn't carry the same weight as the National DP and certainly it should apply. Otherwise we'll run into serious problems in terms of what weight do we give to submissions. And in looking at submissions we have to decide what weight to give to them and nothing's wrong really. So what happens is that and then the DP ? to us and maybe even in contradiction with each other and so forth. So I think it needs some kind of examination as to how we are going to report to the Constitutional Committee here. I don't mind if at the end of it you say that other organisations said something, because they did say something, but I don't like it the way it's now frankly speaking. Certainly I don't know what the Provincial Administration of the Western Cape is. Is this an all-party institution? Is it some administration? What is this thing called Provincial Administration Western Cape? I mean you know so the National Party controls the Western Cape. Now is it... You know it's not clear to me at

least and I haven't read all the documents, I'll accept that, but I think that I would certainly need some kind of clarity on these two things before we can discuss substance because I want to discuss substance with the political parties that are present here, and then we take into account what individual's say and what other structures say, and therefore the discussion itself would be determined by the kind of weight which takes place on submissions that are made to us. So I'd like the two explanations, why the DPG should all of a sudden receive the same weight and status as the DP and secondly, as the DP National which has made its own submissions to us here and who is the Provincial Administration Western Cape and who would they actually represent, I mean as a Constituency, what would this people represent.

Chairperson: Now Mr Beyers and then Dr Ranchod. I saw your hands up. I don't know whether you're answering that question or you're raising other questions, I'm not too sure?

Beyers: I'm trying to answer that question Sir. First of all you must be very fair because there is a Leon DP and an Eglin DP, but that's ... (tape goes blank from 236 to 239). They have offered their submissions because of the invitation by the Constitutional Assembly, because of the advertisements. It was not part of the National Party's instruction. I think that question can be referred to them on whose behalf they did this whether it was a decision of the Western Cape Cabinet or not, I don't know. I think that can be asked. Surely they are talking on behalf of the majority of the electorate of the Western Cape. There's no doubt about that.

Ranchod: I'm just wondering instead of default Constitution, whether you should refer to model Constitution. Default sounds very negative and I think what the technical advisors probably have in mind is a model Provincial Constitution which should come into operation if a province does not agree on having its own Constitution.

Chairperson: Before they react on that, can I ask Mr Eglin to...

Eglin: Mr Chairperson, there're two issues. One is whether provincial formations of political parties are entitled to make submissions, the other one is how it should be presented. There's that second one, I don't think provincial formations should have anymore status than other important bodies. They're not there for the party, but equally I think if they've got a material point of view as anybody else would have, it's got to be evaluated against that background. As far as the provinces are concerned I must say I'm just disappointed that we've not had more input from provinces. And unfortunately the ANC tends to funnel all its provincial input through its national

organisation which means it's filtered before it gets here. It would have been useful to find out what the various views are so that one can get a feeling of what provinces are thinking. So we've in fact encouraged our provinces to make inputs. I'm not saying they carry the same weight but to the extent that they do represent an entity in the body politic, they're making the input, and I would take note of it and evaluate it against the background of where they're come from. But my disappointment in this whole process is that other than through the CPG which we've put them under such pressure, I think Mr Lategan explained they really can't cope with this thing. There's no way that they can get input from provinces. The nature of dealing even with provinces is a highly centralised process and I don't think we're allowing the provincial formations generally enough time to make an input which would be meaningful. So we don't apologise for Gauteng doing this, but we do concede that there's no reason why Gauteng's representation should be elevated to the status of a national representation as far as the report is concerned.

Chairperson: Mr Steytler. There was this question from Professor Ranchod.

Steytler: I think I agree with Dr Ranchod. Default sounds bad, but it is the more correct word because "model" means the model on which they would build a Constitution a different one. If a province does not adopt a Constitution, this Constitution becomes the Constitution. So it's not a model on which you base it, it becomes the default. I'm trying to get a better word like standard Constitution. Perhaps that would be better sounding than the default one.

Chairperson: OK, could we go back to page 8 of the report we've dealing about. Where it says Constitutional Issues, (I) Terminology. Can we discuss that quickly. Terminology of the Provincial Legislature, Premier, Executive Council. Yes Mr Beyers.

Beyers: Mr Chairman I will propose that we in future talk about Provincial Parliaments instead of Provincial Legislatures. I think it's more suitable, it's more easier, it's a better explanation of what we mean them to be.

Chairperson: OK, that's what Mr Beyers is proposing there. Mr Lebona.

Lebona: I have this on page 8, Executive Council and then the Cabinet, and also members of the Executive and then Ministers. I think if we really adopt the three tier level, there should be a difference there in that the Cabinet will then be within the National and then Ministers should be National and therefore because we have the Executive Councils from the second tier, we need not have a

Cabinet there and we have members of the Executive Council.

Chairperson: Professor Steytler I'm doing this purposely. In other words we're already on your report, item (1), Terminology. We're already discussing that at the same time whilst we're going through the report. Any other issue to be raised? Mr Lebona is raising the concern about Ministers and Councils and all that. Yes.

Beyers: Can I say on our part we would support the DP Gauteng to call it the Provincial Cabinet and Provincial Ministers. It's difficult say in a debate in the Provincial Legislature to every time repeat the member of the Executive Council for Agriculture. It's easier to say the Provincial Minister of Agriculture. So I think Mr Chairman we should talk about the Provincial Parliaments, the Premier, the Executive Council, but we can call it a Provincial Cabinet and their members of the Executive Council to be called the Provincial Ministers.

Chairperson: Mr Lebona.

Lebona: Chairperson, I think we are talking about writing a Constitution and now to bring the difficulty in saying member of the Executive, when we want to really see how far we go with the strength of a position within a three tier level of a country and also take into consideration that competence is another say and we take that into consideration, and therefore there should also be that difference in even giving the names, if there are names. That's why I'm of the strong feeling that if you say Cabinet at National and then Executive Council on the second tier level, then you give different strengths on this particular institution and therefore people will have the different respect for that particular thing unless we are somehow pushing in the confederate's ideas already from the onset. Why can't we go then to say on the local level, Ministers on different portfolios on the local government. Why can't we say that if we're so tongue-tied as to say members of Executive Council's on the provincial level.

Chairperson: Ms Sethema.

Sethema: I just wanted to mention the norm. We must acknowledge that there are meetings right now taking place between the MEC's and Ministers. Now one would assume that it might a bit difficult to actually even address the group whether you would say it's a meeting of Ministers of Agriculture or something like that, I think we must actually, whilst I acknowledge that meaning is not constitutionally so, meetings that are laid down within the Constitution but we must acknowledge that we do have such instances and therefore we need to be careful to actually even

make it easier for people to communicate and to differentiate.

Chairperson: We will adjourn until two o'clock. I'm requesting members to be here at five to two exactly. Last word, Professor Steytler.

Steytler: Just on this topic, one may want to consider whether Terminology should actually become part of the framework for Provincial Constitutions, that is to say that there should be consistency in terms of all Provincial Constitutions in terms of Terminology. So we can bring that in again as the terms of framework.

Chairperson: Thank you Professor Steytler. Five to two all of us back here.

Can we start. Just before we carry on with the report, earlier on this morning we had a little discussion and a query about the question of drafting the report. Now this has been circulated and according to the explanation given after we've adopted this report, then our technical committee, and you must read that also to see whether you also understand it like that, must then (2(iii) in the second one). I've been informed that they must in consultation with the CA law advisors actually draft the actual clauses of the Constitution for the CC and this was the difference of opinion this morning, and I ask Mr Eglin of the Management Committee to assist. The Secretariat brought this formulation back and it appears Professor Steytler agrees with them. They must actually draft the clauses of the Constitution with regard to those agreements that we've reached because they can't draft on the contentious issues. The last paragraph of 2(iii) of the Minutes of the 19th reads "In addition and in keeping with the earlier drafting procedures it was recommended that technical committees act in close consultation with the Constitutional Assembly law advisors in the production of those formulations and memoranda".

Mahlangu: Well, Mr Chairperson, I don't know. Maybe they will be in a position to assist. But I understand this to be saying - Here is a report. We've completed the report. The technical advisors have done their job. Now the way I understand it is just to send it like this to the CC, you have actually not done anything. 2(iii) at the beginning they say the technical committee can then start draft formulations, but in doing that they've got to do that in close consultation with the law advisors, so that when it goes to the CA for an example in matters where we've agreed they can go there with formulations, where there are points of contention they easily say alternative drafts would then be reproduced. I think they want something like that according to my understanding. I don't know whether do I understand it like other people understand it, but I stand to be corrected. I think the decision we took earlier was not correct. Maybe we need to take the right decision.

Chairperson: Not a decision, we tried to clarify.

Mahlangu: Then it was not a proper clarification. I think the right one is this.

Chairperson: Can we hear from the technical advisors please?

Steytler: Mr Chairman, as I understand it, it is that on the basis of the reports that we've submitted and in particular in areas of agreement that instead of the CC receiving and the CA receiving just a general statement, there's agreement on this principle, they would also like to see how that principle is reflected in the actual formulation, and so that accompanying this report is then a draft formulation of the particular ones. And the idea would be that we would then draft such one plus with the assistance of the legal advisors or the legal drafters so that one gets the language more or less consistent. And I would then suspect that we come back here first. And say well this is how we formulate it. The principles that this Committee has in fact agreed upon or disagreed upon and here we've given some flesh to these agreements, and from there it would go then as a composite report to the CA or the CC.

Chairperson: It's not indicated here that you must come back. They just say that in close consultation with the CA law advisors, the drafts, the formulation and the memorandum must be prepared. As far as I interpret it now, from here it's your duty and your advisors' duty to make the right necessary preparation for submission to the CC.

Rabie: I think what Professor Steytler is trying to say is that now that the draft formulation shall have been made together with this report compiled to forward it to the CC, maybe the Theme Committee would like to see that draft formulation before they send it over. Unless you say don't bring it back.

Chairperson: When will we complete our Blocks if we keep on bringing the things back here? We've agreed on the draft. When the CC distributes its documents for discussion at the CC meeting, then we as Theme Committee members all look at it, and it's debated in the CC, I don't know.

Rabie: Well the Committee should just say OK after that let it go. We'll see it when we come there. That's finish or bring it back we want to see it.

?: Just as a point of clarification to members. That is correct technically speaking what Mr Rabie is saying, but our experience is that Theme Committee members who are supposed to take us through because in the end you still have to take the CC through the report as such and members said well this report doesn't

exactly say what we thought we explained. We haven't seen this report. More than one member has said to the CC. We, as a Theme Committee hasn't seen this draft recommendations, so (tape goes blank from 493 to 497)

Chairperson: OK, then I think we bring it back here so that we see the draft formulation and we make a unanimous report to the CC to facilitate the debate. Any comment on that?

Eglin: (?) the areas a contention and the areas to be revisited? I don't know how you're going to deal with the revisiting parts because when we actually say when it's revisited we actually don't have a point of view on it. So I presume if it says revisit, we say this matter still have to be revisited. Contentious you can put alternatives and there might be four alternatives depending on what the parties have put in. But I think the lady is quite correct I mean some of these things will come back to the CC. The technical advisors plus the law advisors have come with drafts and when they've been presented the members of the Theme Committee says it doesn't reflect our point of view because in the process some of the subtleties have been lost in favour of the legal points of view. So I think it should come back.

Chairperson: On page 8. And I believe Professor Steytler made cross-references to the notes and the actual drafting of the report. We kick off from there. Professor Steytler.

Steytler: I think we ended off last with the Terminology and there seems to be, if we want to report on that, we will.. If we can just start formulating something whether there is a contention in terms of one, that there should be a uniform terminology for all Constitutions and secondly, what that should be.

Chairperson: ? done in conjunction with page 1 of the report as such. Any comment on that or do we agree. We are on page 8, the Terminology and page 1 of the draft report.

Beyers: Mr Chairman just to inform you the position we took is that we thought that the Provincial Legislature should be called a Provincial Parliament and Executive Council, the Provincial Cabinet and the members of the Executive Council, Provincial Ministers.

Chairperson: Was that statement of Mr Beyers in contention? Mr Lebona.

Lebona: We are on record as having questioned agreement of kwazi provincial parliament but not in line with Cabinet, but Executive Council and members of Executive Council then Ministers, was to

differentiate the three tier levels.

Chairperson: Mr Eglin.

Eglin: Chairperson, in general the DP believes there should be distinctive names for the Provincial and the National so there's no confusion as to what the status is. We would just say Provincial Legislative Assemblies. You don't call them Legislatures as such, so the people would remember MPLA, Member of the Provincial Legislature and likewise I think the Executive Council, Provincial Executive Council and the Provincial MEC's have become a customary phrase. So we would favour a differentiation between the titles used at national level and the titles used at provincial level. But we suggest instead of calling it Legislatures which is a generic phrase, it should be called the Legislative Assembly.

Chairperson: Mr Ebrahim.

Ebrahim: Thank you Mr Chairman. We also support the idea of making a clear distinction between the central and the provincial one. We would suggest that we call it the Provincial Assembly rather than having Provincial Parliament or Provincial Legislature as it is stated there. Then of course we call it the Executive Council and these are members of the Executive Council. In other words they should be called the MEC's.

Chairperson: Any further comment. Will the ANC go along with that wording and will the National Party go along with that wording. Provincial Assembly and Mr Eglin must also then adjust something and then Executive Councils and members of the Executive Council.

Eglin: If you're going to put provincial in front of them all, I would still prefer Legislative Assembly because it describes what it is. It's a Legislative Assembly. Just as you say Executive Council, you don't call it Provincial Council. You call it Provincial Executive Council, Provincial Legislative Assembly. But we can differ on that.

Chairperson: Mr Beyers.

Beyers: I think we can differ that, Mr Chairman. It's not very much important. I think just Provincial Parliament will be our proposal, but we can also consider to as far as the drafting of the Constitution is concerned consider the right to be given to the different provinces to in their different Constitutions use whatever term they prefer.

Chairperson: Dr Pahad.

Pahad: ? agreed that the PAC, the Democratic Party and the ANC are in agreement that we need to distinguish between the national institutions and the provincial ones. And we'll call it a Provincial Assembly or a Legislative Assembly. I don't think that's such an important bone of contention. And the National Party wants to use terms that are very similar to the terms used to describe the national institution. There's a point of difference between us and I think we should proceed on that.

Chairperson: Do we formulate it as contentious? OK, then we formulate it as contentious. The other gentlemen preferring to call it Councils and the National Party prefer to call it Parliament, and what goes with it.

Pahad: And some of our women members also agree that it should be distinguished, not only the gentlemen.

Beyers: Mr Chairman, I think if Dr Pahad discuss this with his Provincial Parliament in his province of the North West he will find that there is some support for the National Party's standpoint.

Pahad: Yes, of course I can always invite Mr Beyers to come and talk to my constituency, I don't have a problem with that.

?: Mr Chairman, can we just again visit the question of uniformity. Would it be open right to be different that you can call your Prime Minister a governor?

Chairperson: Nobody used the terminology "governor".

?: Should it be a requirement that all provinces keep to a set terminology?

Chairperson: I can't say from the Chair, but I would think so otherwise we'll create confusion. But anyhow let's hear the comments from the ladies and gentlemen.

Eglin: There are two things. One is what are we going to call the Constitution that appears in our Constitution now. I think we discussing that terminology. The question later on we've got to decide if provinces draw up their own Constitution, what are the parameters. But that's a different issue. Where I will argue that they shouldn't have the names that will confuse with this, but they might have different names. But I think we are now looking at what's going to appear in this Constitution and we going to decide on ?.

Chairperson: OK, we've agreed on that differences. Further to page 8, the

drafting of an Own Constitution.

Beyers: We also support the right for the provinces to draft their own Constitution.

Chairperson: If they feel like it.

Beyers: Yes.

Chairperson: Is that agreed that provinces can draft their own Constitutions. Dr Pahad.

Pahad: Let me first in general state our position and then I'll come to what the Interim Constitution says. In general the ANC is not in favour of another time of the Kempton Park negotiations too, that provinces should draft their own Constitutions. But as a consequence of the negotiations as we know the Interim Constitution then gave provinces the right if they so wish to draft their own Constitution, and by the time I suppose this Constitution comes into effect, it may be possible that one or two provinces would have already drafted their own Constitutions. So you'll be faced with *au fait accompli*, so I mean therefore you saw that the ANC didn't make any specific submission with regard to this question.....

(Tape 5) We would like to come back to it. In any case at the moment the Interim Constitution does allow provinces to draft their own Constitution. If they were not happy with the provision we went along with it. I'll come back to the question of obligations and competence when we come to that. I'm taking that we're not discussing that at the moment. Whether we're discussing that at not, they should retain the competency. But there's a second part which deals with whether or not it should be compulsory. Are you dealing with that too?

Chairperson: No, I'm just dealing with No 2. I'm coming to No 3 on page 9. So there is no contention about the drafting of Constitution.

?: In this connection Mr Chairman, I think it's written in the Present Constitution that provinces have the right as Dr Pahad said, it was part of a late agreement. And the National Party as well as the ANC actually based a lot of their arguments regarding the whole question of international mediation upon the fact that the IFP dominate a province of Kwazulu Natal has not so far drawn up their own Constitution and that delays the whole question of the outstanding matters regarding the King of the Zulus etc. So I think one can't have one's cake and eat it here and I would actually submit that the right of provinces to draft their own Constitution is

a well established and recognised one, and that's the way it stays.

Chairperson: Professors Steytler take us further to page 9.

Steytler: I've raised the issue about the obligation of competence to draft a Constitution. The issue here is whether the Constitution should not compel provinces to draft a Constitution by for example not having a model or stand Constitution that the prime Constitution doesn't contain a standard Constitution. I hear particularly the DP in Gauteng said the Constitution should compel each province to enact its own Constitution and again the Provincial Administration Western Cape suggest again that province be acquired that means compulsory writing of a Constitution, but these are the only two dissenting voices on this topic.

Chairperson: Any comment from anybody about that? Must it be obligatory or must they have a choice in drafting the Constitution? Mr Mahlangu and then Mr ?.

Mahlangu: Well Chairperson from the ANC point of view, we say we respect what is in the Constitution now that provinces should draft their Constitution, but we don't want to compel provinces to draft Constitutions. Those who feel they should not draft any Constitution, we say it's fine. Those who want to draft their Constitution, is also fine. But we don't feel they should be compelled. We therefore differ from DP Gauteng and the Provincial Administration of the Western Cape.

Chairperson: But in general the DP says they must have a choice to draft it there. It's only Gauteng.

Mahlangu: I said DP Gauteng.

Eglin: Chairperson, there's a practical difficulty with anybody who said it's compulsory because if you don't do it, what do you do? You can send the Premier to jail or you just say if you don't have a New Constitution, you rely on this one. And as I understand it, you say it's compulsory to have your own Constitution and you don't get round to doing it, you would still fall back on the Constitution which is in the National Constitution. So while I think I would go all out of my way to encourage the seven ANC provinces to draw up their own Constitutions, I doubt whether there's anything practical you can do if they don't because they still have to be governed in terms of some Constitution.

Chairperson: The agreement is we allow provinces a choice of drafting their own Constitution. Thank you. No 4 Professor.

Steytler: Once a choice is allowed, the question then comes about those provinces who want to exercise the choice whether a framework should be provided in terms of which the provincially drafted Constitution should fit into and one is that the framework should include some of the Constitutional Principles now already applicable. There may be additional requirements for example Terminology, for example Size of the Assembly or the Provincial Legislature, Size of the Executive Council. So the question here is the extensiveness of the framework of which a province should be able to draft its own Constitution.

Chairperson: But the lead from the Interim Constitution stipulating the Principles which is very broadly a framework in which they must do that. Is there any difference of opinion about that? Mr Eglin and then Mr Beyers.

Eglin: Mr Chairperson, in terms of the Constitutional Principle we can't take away their right to draw up the Constitution as I understand it because it says it shall not be significantly more or less in their power. So we've given them that right. The clause says but it should not be inconsistent with the present provision of the Interim Constitution. One could say it should not inconsistent with the New Constitution. But that doesn't mean to say it's a framework. All it says it can't be inconsistent. But I think I am concerned because the Present Constitution says it can't be inconsistent with the Present Constitution and it can't be inconsistent with the Constitutional Principles. I've raised it before if those Constitutional Principles all fall away, then you've got no principles guiding them and that's why in our submission we suggest that these series of Constitutional Principles should be included in the New Constitution. I'll mention them. The Separation of Power between the Legislature, Executive and Judiciary shouldn't only apply at national level, it's got to apply at provincial level. There should be representative government embracing multi-party democracy etc which should also apply at provincial level. Formal legislative procedure shall be adhered to by all legislative organs at all levels of government. That is a principle now and that should be complied with. So I would suggest that we look at the Constitutional Principles which have to apply at national, provincial and local government level and if there are any that have to apply at those three levels, they should be incorporated in the next Constitution as a framework for any new Constitutions that are drawn up.

Chairperson: Any differences of opinion with regard to... Oh yes, Mr Beyers.

Beyers: I agree with Mr Eglin.

?: Mr Chairman, I think another point, and I'm in total agreement with Mr Beyers and Mr Eglin, which should also receive some attention would be the sizes of the various Legislatures in the provinces because after all the

Chairperson: We have dealt with that already. Mr Pahad.

Pahad: ? the ANC, who would need to give consideration to this because Colin knows that at present our position is that we didn't want any Constitutional Principles to form part of the New Constitution. In general terms we've said that the Constitutional Principles fall away once a New Constitution is adopted. He's now raising a slightly separate issue to say that you might want to ? look at Constitutional Principles which should act as a framework for those provinces that may choose to draft a Constitution. We would have to revisit that because we need to discuss it with our own Principal in terms of the way it has been raised here.

Eglin: I wonder if it's not possible to get some technical or legal advice as to whether it would be necessary in order to secure future subsidiary Constitutions both at provincial and at local government level. So I think one should ask somebody on the legal... maybe the seven wise persons to look at the whole set up as it is and in respect of as yet unframed provincial and local government Constitutions, which of them require some framework in terms of their original principles. Well when it comes to local government at the moment it says at all levels you should have representative government. This is what one of the principles is. Are we now going to say that needn't be? It's a principle. I would just suggest that one should look at it from a legal constitutional point of way how many of these principles appear to be necessary to be recast in the form of a framework. That's all.

Chairperson: We're raising it as a matter for further investigation, but as far as the framework within which provinces must draft their Constitution, there's no contention about that. OK. Thank you.

?: ? about the sizes and I see it's being addressed in point 4 which I thought is the point which we are discussing now. And that is an extra point that I wanted to raise. But it does appear here another suggestion that permissible sizes of the Legislatures and the Executive Council should be determined in the Final Constitution and we would strongly argue in favour of that because there are already indications that (A comment from the floor). Well I'm completely confused because I thought I'm dealing with No 4 on page 9 and 10 and it is addressed there and it is on the top of page 10, the last sentence of the first paragraph, and I'm connecting up to that. So am I wrong or am I right Sir because

everybody seems to want to rule me out.

- Mahlangu: We just want to know which document you are dealing with.
- ?: Page 9 and 10 of this document as at 29th May which I believe is the right document. The draft report on Provincial Government Structures. No 4, the framework for provincially drafted Constitutions. Starting on page 9 and finalising it on page 10. And there this question is raised and that is a question that should receive our attention.
- ?: Mr Chairman, supplementary to that there is no other heading no other paragraph for the size to be discussed. Is there one? (Tape goes blank from 158 to 165)
- Chairperson: So we're in agreement with that. We go over to No 10.
- Eglin: Mr Chairman, just before you get on to Provincial Legislatures, we haven't dealt with one of the provisions in the existing Constitution that in order to draw up a New Constitution the Legislative Assembly of a province has to do it by a two-thirds majority. And I think one has agreed that for drawing up a New Constitution there has to be a two-thirds majority, but we haven't specifically addressed that. It is in the Present Constitution and I think it should be in the next one as well.
- Chairperson: Do we all agree? Yes, we all agree. Two-thirds majority to draw up a Provincial Constitution.
- ?: Mr Chairman, I think now we start developing all these frameworks because this is another framework rule about how it should be adopted..... (An inaudible comment from the floor)... Yes, but it's also again if you want... that's the size, this is the ...
- Chairperson: Page No 5 Professor. There shall be a Legislature for each province. 5(i). Any disagreement on that? I doesn't appear so, so that's all agreed.
- Eglin: Who is the person named under TH something something something. That comes under 5(i).
- Chairperson: There's no disagreement. We move onto 5(ii). Professor.
- ?: (Inaudible, not speaking into microphone).
- Chairperson: Any objection to that. We will come to the Volkstad. It's not under discussion yet. 5(iii). Mr Steenkamp.

Steenkamp: (Inaudible, not speaking into microphone)..... inclinations in certain provinces which are a cause for concern and I think it would just responsible to interview a certain limitation as to the size of these provincial gravy trains.

Chairperson: Mr Mahlangu.

Mahlangu: Well, Mr Chairperson, I accept under 5(iii) I indicated earlier that we do not want to stipulate the numbers at the moment.

Chairperson: But, we are all in agreement that the size can be smaller?

Mahlangu: Yes, we agree with that, but we don't want to stick to numbers.

Chairperson: 5(iv) then. The Electoral System.

Steytler: Can I just request, is there agreement that the size shall be smaller than at present. Is that the agreement?

?: the Democratic Party proposes, deals only with the minimum, not the maximum.

Eglin: Well the maximum is fixed on the number of seats there are in Parliament. So that's an automatic maximum because it says it shall be the same as a number of parliamentary constituencies. And that will set the maximum as well.

?: I don't know what the figures are, but a province like Gauteng with such a large population would its numbers be I don't know if you've done the arithmetic, I'm just asking about the arithmetic of it.

Eglin: I don't mind putting a maximum, if you want to cut it. But the real thing is that we're trying to reduce the number, we can make it 75, but that's arbitrary. Mr Chairman, I just see a practical problem and that is the question of constituencies and having different constituencies and different delimitations for provinces and for national government. And wherever possible we should have the same constituencies, that's all.

Chairperson: 5(iv). Don't you think that will be best dealt with under the Electoral System?

Steytler: Yes, except for the fact that there seems to be quite unanimity on the fact that there should be PR plus constituencies amongst all the parties. So there seems to be some progress there, but I think you're correct that it could wait for the Electoral System.

Chairperson: Because if we read through all the submissions that we haven't received from everybody yet, then we can form a clear picture instead of just mentioning it in passing by. 5(v).

Eglin: ... the status of the person concerned. If you look at 5(iv) the last input.

Chairperson: PR and constituencies as in German....

Eglin: Where does it come from?

?: An individual.

Eglin: Is it an individual?

Mahlangu: That's why I've raised it before that when they re-do the report, they are going to have to ensure that these things are separate. Let me just say that Professor Steytler is quite right in the initial submissions I think there was general agreement that we should have a PR plus constituencies, but in the case of the ANC we are still open to these things and therefore we said that the whole question on the Electoral System needs to be further discussed because there are all kinds of mathematical calculations and other things which needs to be taken into account about the distribution of seats and everything else. So we are still open with regard to this thing. We haven't had the final position and we'll come back to that. But I wanted to ask the NP just for my own clarification, it says members to be elected by a party list system on the basis of a voter's rule. After election elected members should be designated to specific magisterial districts. So the second sentence is fine, that's not a problem. So the first sentence, does it mean the National Party is saying that you want to go back to the system we had for the April 1994 elections which is a pure proportional representation with the party list system and not a system which has constituencies or you want constituencies and then... I mean, how does it work? I'm just not clear in my own mind what the National Party is saying here. So I just want some explanation.

Beyers: Our proposal is Mr Chairman that elections will take place like it has taken place in the previous election, but then we also propose that after the election parties will appoint their elected members of the Provincial Parliament to certain magisterial districts to become the effective representative of that party in the Provincial Legislature for a specific magisterial district. So every magisterial district will actually have an ANC representation, a National Party one and all the other parties that also designate certain magisterial districts to them. To have an official binding between elected

representatives and districts, but Mr Chairman, we will when the Electoral System is discussed, we will give more clarity on that.

Chairperson: Mr Mahlangu.

Mahlangu: Just a follow up to that Chair. Maybe I'm a bit confused or slow to understand, I don't know. Your constituencies are there Mr Beyers, delimited in whatever magisterial district. You might have four constituencies or five constituencies, they will differ with a population of that particular magisterial district. Now you have people representing those constituencies, now what is the need of delegating other members separately to represent those constituencies? Unless I don't understand you clearly. They're all already elected there. The constituencies are there and you'll have on your list the number of members of your party on the list as well elected on provincial system.

Beyers: As I understand it, it's proportional representation and not constitutional. We say proportional representation and then after the election each party for every district nominate formally one of their elected members for each and every magisterial district as well to have a formal binding between members and a specific magisterial district. So there will be no elections taking place in constituencies, there will be an election in say for instance North West Province like now and then after the election members will be designated to certain magisterial districts.

?: I was just going to say a Party that wins only nine seats, will they then represent each province as opposed to magisterial districts.

Beyers: It will not be obligatory for any party if for instance the Freedom Front in our province of North West have one representative, they either can choose to designate into every magisterial district or only to one or whatever. And the National Party that has three can divide the different magisterial districts say there strength is divided by three and so there will be for every National Party representative eight magisterial districts and the stronger parties may have fewer magisterial districts per elected provincial councillor.

Chairperson: Seeing that we coming back to us under the Electoral System, I don't think we must enter into further debate about this because we are going to debate it again. Page 11. The Duration and Dissolution of Provincial Legislature. It's quite straight forward there. I'm asking the DP do we declare it as contentious.

Eglin: (inaudible)..... the DP has got the support of the DP in Gauteng. Laughter...

Chairperson: Then Mr Ebrahim. What is the stand of the PAC?

Ebrahim: 5 years.

Chairperson: So we regard it as contentious indicating that the DP stipulates four years. Or can we convince the DP to say OK we can go for five years.

Eglin: Chairperson, in my view we've said it should apply at all levels. I don't think one can just isolate this. We will actually argue every second year you should have a parliamentary election and the following two years you should have provincial elections. So that is one of the reasons we're suggesting a four year term because it is a special cadence to it. But if you want to five years you're then going to have difficulty in fitting in provincial elections between the parliamentary ones. So we want four years for Parliament for Provincial Councils.

Chairperson: OK, then it's regarded as contentious. That now indicates according to the drafting procedure, the formulation, that there will be two sets of constitutional formulations. One saying four years and the other saying five years. So the CC can debate that.

Steytler: In a case such as this, I presume there will be a footnote saying that the DP prefers a four year term but the wording can remain the same.

Eglin: That's the easiest alternative. I can promise you some of the other alternatives are much more complicated.

?: What we're discussing here is that the other three parties are all in agreement with the five year term. The DP wants a four year term so the drafting is the same but it's just the year that is different. So you can put either at the bottom 5 years or 4 years. The CC has to decide, but I think it should be quite clear that it's only the Democratic Party that seeks a four year term.

Chairperson: Thank you. Page 12. Date of Polling.

Eglin: Chairperson, may I just say on this one. Whatever one would like to have happen. While Parliament is a fixed term at national level provided Parliament is not dissolved on a Motion of No Confidence, it can have a term which only last two years or one and a half years or two years seven months, you cannot there say all the Provincial Legislatures must also resign on the same time and have elections. So while you can start off having a series of elections on the same date, the practical affect of allowing the Provincial and the Parliamentary Legislatures to be dissolved on

the basis of a Motion of No Confidence, it becomes impossible to say that you must all have your elections on the same day. It doesn't work.

Chairperson: Mr Beyers and then Mr Mahlangu.

Beyers: Mr Chairman, we say that Provincial Constitutions must determine this wherever there is a Provincial Constitution drawn up by the provinces themselves and then for the rest we haven't made up our minds. I think our position will be that that can take place together with the national election every five years.

Mahlangu: Chairperson, we're holding the same view except that maybe we can include a clause taken from what Mr Eglin is saying, maybe we could look for a very short clause which would say "unless there's a dissolution of Parliament" say for example there's a Motion of No Confidence in the Executive at national level and elections are called in a year's time or two years' time after the normal elections had taken place, but to say that in general principles we agree that elections should take place the same as that at national level after five years. Unless there's a Motion of No Confidence.

(Tape goes blank from 423 to 435)

?: must be according to the Provincial Constitutions.

Pahad: Mr Chairman I get a little bit confused in that we have said the National Constitution is the master constitution and now when we come to terms or tenure, we have different dates and we now refer to Provincial Constitution to decide. I see a conflict in the whole thing. Though a Constitution is a guiding thing or throughout, but I see a creation of a vacuum somewhere if we allow it to run that loosely. Unless we work it out clearly where we would like to have the difference of four and then five for the central government and also work it out why we say five years for all so as not to allow a vacuum somewhere and a conflict therefore.

Chairperson: Professor Steytler.

Steytler: This has struck me on the question of the length of the Provincial Legislature whether that also should not become part of the framework of a Constitution, whether a province actually got a power to control its own length which then again ties up with the synchronisation of the polling dates. (Tape goes blank from 463 to 479).

Chairperson: Dr Pahad and then Dr Steenkamp.

Pahad: Well that's right what Mr Eglin is doing. He's raising a problem for us to consider. What I thought Mr Mahlangu was doing was because they are connected in that sense of 5(vi)(I), 5(vi)(ii) that our preference was that they should be on the same day as the national elections are held, but I think Mr Eglin is now raising a question which the CPG is also raising that given the powers of dissolution that exist, you might run into problems if you decide in the Constitution and we would certainly have to give it further thought now. But our own preference was as Mr Mahlangu said, that it should be held on the same day as the parliamentary elections. It could actually save a lot of money as we found last time in terms of the election thing and also you know otherwise you run into serious problems if every province have elections on different days. You just run into series of problems of just working for elections. So minority parties would also have to consider whether they have the capacity to continuously be fighting elections in one province after another. But that was our thinking but as I'm saying what Mr Eglin has raised now, we would need to consider. And what Mr Mahlangu was asking our technical experts to do was to see whether or not it's possible in the Constitution to have some qualification clause which could cover that in case there's a dissolution. I mean that's also so that we can get more information before we come to some kind of general agreement or otherwise.

Beyers: Obviously another question that arises is if Parliament is dissolved through a vote of No Confidence, what happens to the province.

Chairperson: So it will be a question of revisiting this after we've got some advice from the technical experts on this. Is that what we are suggesting?

Steenkamp: Mr Chairman, if I'm not mistaken, quite apart from Dissolution of Parliament or whatever, it is so at the moment that provinces can write their own Constitutions and once they have done so in terms of that they can immediately before the expiry of this present term in other words before 1999 they can already have elections of their own. So as things stand at the moment it would seem that in April last year and it has often been ? about as a fact that April last year was presumably last time when central parliament and the provinces would have election on the same day. The present Constitution provides for provinces to have an election during the course of this year or next year depending on the progress of their own Constitutions. So one would have to revisit this whole thing and even revisit our ? and bring provinces more into a straight jacket if that is what we want to do because presently we provide for them to have elections at their own will. Thank you.

Chairperson: Mr Lebona.

Lebona: I think Mr Chairman we don't need to confine this to Theme Committee 2 only. This problem that is coming up. It might meet with what Theme Committee 3 is dealing with. I think we need to stretch it further than Theme Committee 2 only. I don't think we'll all have answers within the parameters set for Theme Committee 2.

Eglin: Especially the ANC, because one of the things we've not discussed and that is even under elections, how you replace a member who dies. Now traditionally if you have constituencies, you would tend to have bi-elections and that would be a replacement system. All I want to say is that I think we would have to look at this because it is the question of how many elections take place and there's a view that you should be in a constant state of bi-election which you would if you've got nine Provincial Legislatures in the Central Parliament or else you can have a system where in fact the party through which that person was elected can automatically designate somebody to be member of Parliament until the next election. In other words you will replace via the party list or via the party until the next election but it does raise the whole issue is the country going to be in a state of permanent election or not, and the bi-election factor especially when you've got nine Provincial Legislations and one central, unless one deal with how you replace vacancies or fill vacancies you can run the risk of a country being in a constant state of election. So I think that issue will have to be considered also in the light of when elections take place.

Chairperson: Well last week we decided that that particular issue will be dealt with under the Electoral System when we come to that block so that we can spell it out in some detail as to what should happen with regard to that. Mr Mahlangu.

Mahlangu: Thank you Chair. I'm not opening this for debate but I just really want to check whether what Dr Steenkamp is saying is correct. Whether if the Provincial Government is finished drafting his Constitution tomorrow, it then goes for elections. I just want to check that because I'm sure about the National Parliament that there's a Principle, I think 32 or 33, that binds us that we'll go up to 1999. I just want to check with the provinces.

Steenkamp: Not with the provinces.

Mahlangu: But which one applies to the provinces? That's what I want to check.

Steenkamp: It's not one.

Mahlangu: It's not one. So they can just do whatever they want?

Steenkamp: The provinces can write their own Constitutions which provide for them. They can therefore change the size of their legislatures for instance and even the procedures for electing those and they can have in terms of their New Constitution an immediate election. This year or next year. Whereas Central Parliament, National Assembly and Senate that is safeguarded until 1999 in terms of this Constitution.

Mahlangu: But what I was asking was where is the specific exception which actually gives those powers to you so that we can actually read it for ourselves.

Chairperson: Mr Steenkamp said that once the provinces have written their Constitutions they can determine that in their Constitutions. Did I understand you correctly?

Steenkamp: Yes, there's a stipulation binding us to what we have for the moment for the next four years, finish and klaar. So we cannot change that but there is no such stipulation confining the provinces to stick with what they have in spite of the New Constitution which they may write in terms of the present Constitution, there is nothing binding them to stick with the present composition or their Legislatures as we are bound to that. Provinces are not bound. So by implication, they can do their own thing.

Mahlangu: Well I'll prefer it if we got some proper legal advice on this question because I mean in the absence of a specific stipulation in which you can read it then becomes a matter of interpreting something that is not in the Constitution explicitly and then perhaps you should ask our technical experts to seek legal advice on this question and not just take it that that is given.

Chairperson: Take a note of that Professor Steytler. We need some legal advice or expert advice with regard to whether provinces when they've got their own Constitutions can arrange an election any time between now and 1999. Can we carry on. Sitting of Provincial Legislatures.

?: Mr Chair, on that particular point, this one particular clause 163 a Provincial Constitution shall not be inconsistent with the provisions of this Constitution including the Constitutional Principles as set out in schedule 4. So it cannot have an election because the Principles says here that no elections shall be held until 1999. That will be inconsistent with that.

- Steenkamp: Is it for a National Assembly or for everything?
- Chairperson: Let the legal experts give us the correct thing on this because we'll debate it to infinity. 5(vii) on page 12. The Sitting of the Provincial Legislatures.
- ?: Sorry, I want to then look at 162 here Sir. A provincial government at any time of a Provincial Constitution contemplated in Section 160 of the Constitution dispensation contemplated in Section 161 partition the Constitutional Assembly to dissolve its Provincial Legislature and to call an election for the establishment of a new Provincial Legislature and Executive Authority in that province. So they don't have in terms of Section 162 the right on their own to dissolve. They would have to petition the Constitutional Assembly to do so.
- Chairperson: Anyhow, the Sitting of the Provincial Legislatures. Do they determine their own sessions, as stipulated here? (Tape goes blank from 695 to 699). Are we in agreement that it's stipulated there? That they determine their own sessions. Any comment? Agreed then. Professor Steytler you must assist me. I'm going to and fro here.
- Steytler: Just one issue we've missed, the 5(vi)(iii) election to be held within ninety days of dissolution of the Legislature. I think there seems to be agreement on that.
- Chairperson: But didn't we say we must revisit the whole thing and come up with a suggestion as to how on the same day for provinces.
- Steytler: That is just once the election is being held irrespective of the date. It's just once it's been dissolved, when you call an election. That's the limitation of ninety days.
- Chairperson: It's connected to whether it's on the same day or not because you'll have to visit that whole aspect with regard to that section. Now page 13.
- (Tape 6) Speaker and Deputy Speaker. I think we're in agreement because we agreed upon the terminology in the National Assembly. Any objections to that.
- Steytler: Mr Chairman, can I just ask if you want to use the word "Speaker" there, if there's a clear distinction between all other officers that you want to call it something different from the Parliamentary speaker.
- Chairperson: They say it's alright. Not to bother. Qualifications for Members of

the Provincial Legislature. I think we've agreed upon that already in our debates as we went along. That it must be the same for the Provincial Legislature as for the National Assembly.

?: Chairperson, I think this time we shall go down to fourteen years because they must be privileged also.

Chairperson: (Laughter) We've agreed it's eighteen years so you mustn't introduce something now that's not even contention. And then 5(ix).

Eglin: This is a question of where you should be registered. Now at the time of drawing up the last Constitution, may I say there was a whole lot of arguing/bargaining. There was a general view that you should be resident in the province concerned but because it was a national election and many people were working at the ANC's head office in Gauteng, but they were ordinary residents in East London, it became extraordinary difficult to decide where people really lived. So there was this compromise, should be where they live but 10% can live anywhere etc. We believe it's appropriate for Provincial Legislatures that you should be a registered voter in that province. Because that is why you belong and that's where you are on the voters' role, and I think it's extraordinary difficult to stand as a candidate in the province, when in fact you aren't even entitled to vote in that province, and so believe for the Provincial Legislature you should be a registered voter in the province concerned.

Chairperson: Dr Pahad.

Pahad: Yes, I think that's a matter for discussion. There is of course an old traditional way of looking at things which I think Mr Eglin is now doing which is to say well, I mean, if you're going to be a candidate for a particular province you must be ordinarily resident there however you define ordinary resident and the last time I pointed out that the definition of ordinary resident is so vague that it actually comes to mean nothing in the long term it's something to the effect about where you wake up in the morning, some foolish thing like that. The problem here isn't that and therefore I think it needs further discussion because given that you have a proportional representation system, whether or not you going to have constituencies elected, is that it then becomes the responsibility in my view of the political party to decide who is or who isn't their candidate whatever democratic processes they use internal to themselves as to who their candidate should be. And I think it's wrong to have a constitutional prescription which denies the political party the possibilities of doing so. Morally that might be the right thing to do but we're talking about what should go into

a Constitution and I think it's wrong to make a constitution stipulation with regard to such a question. If a political party is foolish enough to take somebody from the Karoo and put them in a ward in the centre of Johannesburg....

Chairperson: Just on a point Dr Pahad. Mr Eglin said ... you are reasoning about something else.. he must be a registered voter in that province. You are talking about ordinary resident.

Pahad: No, I'm talking about both and I'm now coming to the registered voter. I might be a registered voter in Johannesburg but the ANC might well want me to, if they so desire, to say no, but we think we need some people in the Northern Cape because we need to strengthen our list in the Northern Cape and we are going to put you in the Northern Cape and your chances of getting elected in the Northern Cape are about 70% less than it would be in North West, now that's the ANC's business and I'm saying that therefore you can't have a Constitution prescription which there says the candidate for a particular election must be a registered in that thing. It may be morally correct to do so. It may even be politically suicidal for a political party to bring somebody from outside, but that's the responsibility of the political party. What we're discussing here is not political responsibilities. What we're discussing here is the Constitution and my view is that we need to discuss this further whether or not you would want to have such a prescription in the Constitution itself and frankly my own personal view at the moment, I don't know what the ANC's view will be at the end of the thing after we discussed it further, is that it's wrong. Is that it's wrong to constitutionally deny a political party the right to have a candidate of their own choice. It will be politically disastrous but that's a political party's responsibility. That's the first thing. The second thing which the Democratic Party may want to consider which I think applies less to the ANC than any other party in this country at this moment in time and that is that basically the ANC as I can see it, is the one national party in this country which has some elements of strength in almost every province of this country and indeed in almost every magisterial district. But there may well be parties who don't necessarily have this all-round strength in all nine provinces and they might want to have the right to be able to take somebody from one province and ask them to stand for elections in another one because there might be a popular national suitor that they think can still win votes in another province. And therefore I'm saying it's not a matter for as if I'm arguing for something specifically for the ANC, I think it raises some general questions about what you want should go into this Constitution and my own feeling at this moment in time is that you don't want such a prescription to go into the Constitution.

Beyers:

Mr Chairman, I think we can debate this further if you take that argument of Dr Pahad a distance further then we can as far as the election of the National Assembly is concerned also keep it open to political parties to use a foreigner to come and stand for the National Parliament Sir. I think Mr Chairman the National Party actually strongly supports the position that a candidate must be on the voters' role of the specific province.

Eglin:

Dr Pahad raised one or two arguments. Now I don't want to get involved in a two-way discussion on it, but within each province of course the party must have a right to make put whatever candidate he wishes. You're arguing that you should have a central ANC or a central DP must be able to send people to various provinces. We would argue that the parties within that province must have unfettered right to put candidates in that province. So it would just be a difference of a point of view as whether the decision is made centrally or whether the decision is made within the province. But it goes far further than this because if that argument is correct we better change the Local Government Act as well because by that sort of thing you can say well ex can send somebody from Johannesburg to stand in the Cape Town Municipal elections. It isn't so, you've got to be a registered voter in the Cape. No, but the point is this and the concept is really this, you should actually be bound to that province. It isn't just a question of representing a party. You are a taxed payer, you are living under a different set of laws in that province. For all the provincial ordinances in those 26 items under schedule 6, people who live in that province will live under different laws for those purposes from the one's in the other provinces. They will also start paying differential taxes because provinces are going to have certain powers to tax. So in fact the concept is that if you're going to go and represent a constituency or people in a province, there should be a positive identification between that particular representative and the province which he represents. It isn't just a question of convenience for parties. It is a concept, should you actually be part of the people who you're representing or should you be in a different province living under different circumstances or should you be registered as a voter in that province.

Pahad:

I want to find out about this being part of the province and being in the registration books of a particular province, that how many times is a person allowed to register. You will register only once. I'm a victim of influx control. Immediately people start talking about that. That we have no freedom of movement because of that. Now are we subjecting people to non-free movement when a Constitution and even the Principles say freedom of movement, and also this I think we need to have different approaches when you talk about national elections, provincial elections and

local elections. I don't see anything wrong when you talk about local elections and say you should be a resident at that particular ? and even the present local elections, other people, like you can't say Mr Oppenheimer has only residence in Johannesburg, he is all over South Africa here and if he can afford to have a jet to fly him around and the privilege to be number one he can vote at five and more places. But I want to say here that really I don't think it will be a good Constitution where we bind people to provinces when it comes to provincial government and that at the same time it's in conflict with what we are saying when we say proportional and constituency when it comes to the Electoral System. We need to look into this.

?:

I don't want to get involved in a long esoteric discussion, but I mean I've serious problems with the way Mr Eglin argues his case. It just begs a million questions about responsibilities and feelings and everything else. And some of it is just untestable, frankly speaking. About that you might feel more for a province if you happen to be a registered voter. But we're talking here about the Constitution, that's what I want to come back to. And what I said and I want to repeat now what I said was that the ANC doesn't have necessarily a firm position on this thing, so we would like to then come back to it, just posing questions about whether or not political parties should constitutionally be prevented from doing some things. We're discussing the moral and political argument of the case and in the end that's what we are going to have to discuss whether in your Constitution where you will require a two-thirds majority to change it afterwards, you want to have such a prescription that you might find in two or three years time that the conditions have changed, context have changed. Yes, I'm talking about the Provincial Legislature here. And therefore whether you want to say in a Constitution define it so tightly as to who can be candidates. That's what I'm raising as a matter for concern and I think we should note it that there is a disagreement with us on this question and we have to resolve this problem. But the fundamental problem we have to resolve is not the esoteric discussions about who feels more responsible for what but whether or not this particular element should be in the Constitution itself. In the end that's the issue we're going to have to resolve. So let's put it as contentious. But I repeat from the point of view of the ANC it's an issue that remains open for us and we'll come back to it and we're prepared to listen to all arguments regarding this particular issue and hopefully other parties will listen to ours and not make up their minds from beforehand that they feel more closer to somebody because they happen to be a registered voter in that province.

Chairperson:

I think we can carry that debate further in the CC. It's contentious

and I hope I'm going to word it correctly. The ANC has not made up its mind about this yet and needs to revisit it where the other parties are in agreement that that should be the situation.

?: But with the proviso, sorry Mr Chairman, that should this be in the Constitution. That's what the ANC is raising. That's an issue that must be discussed by the Constitutional Committee. Whether in the end you want such a provision in your Constitution.

Chairperson: Mr Ebrahim.

Ebrahim: Yes, thank you Mr Chairman. I just thought you were saying the other parties agreed. I just want to make the position clear that we believe there that a political party should have a right to nominate people to wherever they want in the country. But having nominated that person and that person is required to register, if it is to be registering say in the provincial election or in the local election, we do not believe that it is correct to say that a person can go and vote in all nine provinces because he has a jet to take him around because you are really saying instead of "bussing" you are having "jetting". So, I don't think that is a correct position. You would have to register somewhere where you'll be able to exercise your vote. But I think the question of the right. He doesn't have to be a resident there or a longstanding resident. The political party must have the right to put the person in a particular place, but having done that he must register there and vote there, not jet there.

Chairperson: Thank you Mr Ebrahim. Vacation of Seats and Filling of Vacancies, that is also part of the Electoral System. The free mandate that we will deal with under the Electoral System so we'll come back to that. The technical committee must just take note of it then, when it comes to the Electoral System we separate the National Assembly from the Province in the submissions when we deal with that. The Filling of Vacancies, that's the same. It also belongs to the Electoral System. Oath of Affirmation. I think we've had a general agreement as far as the National Assembly is concerned. Can we stick to that for the provinces as well. Any comment on that or disagreement? That's agreed to. Powers, Privileges and Immunities. Similar to that of the National Assembly?

Mahlangu: Mr Chairperson, you are moving too fast now. Don't drag us into agreements this late in the day. We need to check on this very carefully. Section 135 says a different thing which I think the ANC differs slightly with that. Let's just check Section 135 quickly. It says a different thing. Section 135 says a Provincial Legislature shall have full power, control, regular dispose of internal affairs

and shall have such powers, privileges and immunities as may subject to this Constitution be prescribed by a law of Legislature. I'm not too clear there. Is that Section saying that Provincial Legislatures will actually determine what their privileges, immunities and benefits will be? If that is the meaning of it, we're saying it's a different thing. That should rather be controlled nationally to maintain standards in the country. Otherwise you'll have one province paying itself or inflating their salaries so high that the other province which is poor cannot pay those salaries and improve their immunities. I think we need to regulate that.

Steytler: If you look at Section 135, what Mr Mahlanga is pointing out there, contains a number of things like payment of salaries and also then pensions and golden handshakes, pension benefits etc, that that may be something one would want to put in the framework or exclude totally. This is not something which is determined by the province itself. For example that it can have higher salaries than the National Assembly. One would have to look at who determines that or is it determined in conjunction with the Fiscal Commission and the Minister of Finance. There are different ways of preventing a Provincial Parliament of determining their own salaries at inflated levels.

Chairperson: A Commissioner has been appointed to look into the salaries and privileges of public office bearers.

Steytler: someone from the CPG to say well there is a provision that say that the CPG Commission would deal with it.

Beyers: Doesn't that safeguard us Mr Mahlangu.

Mahlangu: But then why should for example the National Party say retain Section 135. I mean you don't retain it for sure because then it deals with a different thing altogether.

Chairperson: But then there must a portion that must be retained, and a portion that must be deleted.

Mahlangu: Maybe if you do that.

Chairperson: Can you assist. I haven't got the wording. (Tape goes blank from 318 to 320).

?: but we will seek party advice on this.

Eglin: says right at the end there shall be subject to Section 207(ii) so even that payment there is subject to another section in this Act. It's not a freebie from the point of view of the provinces.

- Chairperson: What does 207 stipulate.
- Eglin: There shall be established by an Act of Parliament a commission of remuneration of representatives. And this commission shall make recommendations to Parliament and Provincial Legislature the extent and conditions of remuneration etc etc. So even what is in the present Constitution is limited by the establishment of a commission which is now being set in motion.
- Pahad: I mean I think we are going to have to come back to that because you see if you look at 207, it's that the commission shall make recommendations and terminations are therefore not necessarily binding on either the Central Parliament or the Provincial Parliament. So I thought that what Mr Mahlangu raised and I haven't seen that before either, is 135(iv) which seems on the surface unless we get another legal interpretation to give provinces the right from the provincial revenue fund to set such salary and allowances as may be prescribed by their own law, and if that's the case and the thought that Mr Mahlangu is therefore raising is that we would therefore have to come back to that because it would have an impact upon the kind of commission remuneration that we setting up and what its powers are. And all he was asking the National Party to do, is to look at 135 again and to see whether or not the National Party is still in favour of retaining 135(iv) in the circumstances. I don't think we should...
- Chairperson: No, we've agreed upon that. That's why Mr Beyers said we'll revisit it but as for the rest we are in agreement.
- Beyers: What in 135 do you not agree with? That's another question. Only on (iv).
- ?: Even 201(vii) Mr Eglin is raising, it only says that the Commission shall make recommendations to Parliament, Provincial and Local Government etc. Then from those recommendations we will then decide. Now all what I'm saying is that we should go against that. We need a standard formula of doing that.
- Chairperson: Of remuneration? The rest we've got no problem with, that's what I'm asking.
- Beyers: Mr Chairman, we will clear it out, but I think we can assume that if we take out (iv) and remain the rest of 135 in that light, the National Party will also support to retain the principles of 207 and the rest of 135.
- Chairperson: OK. It's only the remuneration that needs to be clarified by the National Party because Mr Beyers has given an indication that we

may decide not to go after that. Thank you.

Steytler: Sorry Mr Chairman, would the Committee want to say anything about that in line of what Mr Beyers is saying for example recommending that Section 207 something like that a commission on the remuneration of public officials be instituted because that will again impact on an issue particularly like salaries.

Chairperson: I think that was a generally accepted thing, but let's hear the members. That the commission instead of parliamentarians deciding for themselves what they should be But Mr Beyers says let's retain it, now Professor Steytler is asking do we want it retained.

Steytler: Mr Chairman, it may well be that this is an issue that has been looked at another Committee. Specialised institutions, 6, 4 or someone of those are looking at it, it may well be that (tape goes blank from 391 to 393)

Chairperson: 5(xii). A Penalty for Sitting of Voting when Disqualified. We have dealt with that under the National Assembly. Page 14. Have we got problems with that, anybody? Then I take it generally agreed. Now Professor Steytler, help us, I can't remember exactly Rules and Orders. Provincial Legislatures are empowered to make Rules and Orders. I think we have accepted the same for the National Assembly. Any objection to the same applying in the provinces? A Quorum. I think that is something that was being revisited in the National Assembly.

Steytler: Yes, that wasn't clarified at all.

Chairperson: We stipulated our point of view and then there was further.. So we have the same situation here with regard to quorum in the Provincial Legislature. That there's disagreement and we use the same formulation as within the National Assembly. Is that agreed upon.

?: Yes, except I think you are saying we are still going to discuss that, isn't it.

Chairperson: Yes, in the National Assembly we say we must discuss that.

Beyers: Mr Chairman, must we discuss it again. It seems to me that nearly all the parties say that we must retain 138.

Mahlangu: But because of what we said in the National Assembly, I think we need to discuss that as well to maintain that consistency. Mr Beyers will remember you said do we need one-third to seek ?

during the ordinary debates or maybe you want to look at ? or whatever the case may be. I think we left it there at the National level. It is on that score that I say maybe we can finalise this one too when we finalise that.

?: We also need to find out where the Rules Committee people are on this because I thought and it may be that it's now off the Agenda but the Rules Committee of Parliament was also going to look at this question because we were running into problems in the present session of Parliament in terms of quorums, and I remember that in the last session. So perhaps we should ask the Rules Committee if they're looking at it, perhaps they could make some input to us, so that we don't discuss always in parallel lines with them.

Chairperson: The last time when Mr Beyers wasn't here, then Mr Olifant said I mustn't participate in the debate. I just put the National Party point of view. We are not married. We can just have members in the chamber for debating purposes but when it comes to decision taking, half of the members must be present. That's what we decided on that level. Yes, we'll revisit that. Required majorities until otherwise required by the Constitution shall be determined by a majority of votes. I think that's generally accepted or is that disagreement. Mr Eglin.

Eglin: Mr Chairperson, that assumes a quorum situation. Otherwise should be a majority of votes provided 50% of members are present. If the quorum says 50%. But if we want to scrap the quorum and that's the only time in which the minimum number is relevant. The rest Parliament can do what it likes about quorums.

Chairperson: I understand 5(xv) to say exactly that.

Eglin: But it doesn't say that at least 50% of the members have to be present to cast their votes.

Chairperson: Do you want that added?

Eglin: Well then you don't need the quorum part of it.

Chairperson: OK. Assent to Bills by Premier. Mr Lebona.

Lebona: Chairperson, Assent to Bills. What we were trying to draw here is a province whereby the National Constitution overruns all others. But when we say Assent to Bills and there is no where when we say retain 140 and 140 refers also to 147 and there is no way that there is mention of refer maybe to the President of the country or to the Constitutional Court. I think we are running into deep

waters. We are being inconsistent somehow.

Chairperson: The National Assembly says the President signs unless he refers it to the Constitutional Court or refers it back to the National Assembly or the Legislature.

Lebona: But here we are missing the Constitutional Court, we get only the Provincial Executive.

Chairperson: That's why I'm just stipulating do you want that to be applied to this section as well.

Lebona: Not really, I want that to apply so as to look into it that it doesn't run contrary to the

Chairperson: This one of course makes a difference, the Premier says the ANC must sign. Can I hear the other parties views on that.

Beyers: Mr Chairman we feel strongly about the retainment of this clause and it's no fear for the National Constitution because it says that a bill duly passed by a Provincial Legislature in accordance with this Constitution shall be assented to by the Premier of a province subject to Section 147. But just with the addition of what we decided in the National Assembly, what is the proposal of Mr Lebona?

Chairperson: Any objections to that? Thank you. Agreed. Signature and Enrolment of Provincial Laws at Appellate Division. Can we hear the other parties on that. There is a suggestion from the CPG and others that the present provision be retained. Professor Steytler.

Steytler: I think when we dealt with the National Assembly, we referred the question that it should be referred to the Constitutional Court as opposed to the Appellate Court. That was a question that had to be revisited. And there was a question Mr Chairman whether in future under a New Constitution, the signed copy of a Bill should be kept in Bloemfontein with the Appellate Division or in Johannesburg with the Constitutional Court, and I think there was a certain sentiment that under the New Constitution that the assigned text of the Bill belongs more properly in the safe of the Constitutional Court and no longer in the Appellate Division which use to be the highest Court.

Chairperson: And we decided that?

Steytler: It wasn't decided. It was raised as a question. But it isn't in the report. It has to be decided.

Chairperson: So we haven't decided that yet. What do we do in this instance? Then our proposal from Mr Mahlangu is that it be kept in the Constitutional Court. The Constitutional Court is not a legal expert higher court than the Appellate Division.

Steytler: That's correct Mr Chairman. The problem may be resolved depending what's happening in Theme Committee 5 that there's going to be one Court or not. If there's one Court obviously there's no problem. But if there's two as it may seem to be at the moment, then it's a question that we have to address.

Chairperson: So we can't finalise that now.

Eglin: Don't you think it should be looked at by Theme Committee 5. I think Professor Steytler is correct that in respect of constitutional matters the Constitutional Court is the highest court of Appeal, but in every other matter the Appellate Division is. Now the laws that are going to be recorded there aren't necessary constitutional matters. They are the whole gamut of laws and those laws are going to be applied by Magistrate Courts, by Regional Courts, by Supreme Courts etc. Only should they go up on appeal on a constitutional matter will they be referred to the Constitutional Court and I think it's a matter of functionality which is the most convenient place for the record to be. I don't think we should decide that. I think the matter should be decided or recommended by Theme Committee 5. In practise where the run of the mill, the hundreds of laws that are passed every year, where should the record be kept. It would depend on where it's most convenient to be kept. So I think it should be referred to 5 and we should follow suit on that.

Chairperson: Is there any differences of opinion there that this question of the Courts rather be dealt with by Theme Committee 5. I saw the Professor's hand and then Mr Lebona and Dr Steenkamp.

Steytler: Mr Chairman, it's really a matter of old procedure because just responding to what Mr Eglin was saying here is each of these provincial laws would have constitutional elements on it whether it exceeded the bounds of the constitutional powers etc etc. But that's not really the issue, it's really a old tradition of keeping it with the Constitutional Court and no one is ever going to check the precise document and see whether this is a signed copy, it's much more sort of tradition that we dealing with here and it may well be that's it dealt with under the functions of Theme Committee dealing with the Structure of the Judiciary.

Lebona: Mr Chairman I want to say that I think when we write a Constitution I think we need to look into it that we don't subject the country into

undue litigation. We are trying to make things to run easier and therefore to safeguard undue litigation really I think we need to have our Checks and Balances well placed. That's why I'm appealing that this assent by the Premiers shouldn't just be left without being checked. That's what I'm appealing for. I hear that other things might be something that are not so much matters of the Constitution but they have the constitution elements in them so as it deals to be the case in the former RSC whereby homelands could just not pass things without passing it through the commissioners in order to check whether they're in line with the Constitution. Why can't this be the case here when it comes to provinces unless we harbour some thoughts of some sort of extraordinary independence somewhere.

Chairperson:

Now this is not what we are discussing? What we are discussing is where must the signed copy of the legislation be kept. That is what we are discussing. And so we are now saying let Theme Committee 5 deal with that. Thank you. Ladies and Gentlemen I think it would be appropriate for us to adjourn at this stage and the Call Group meet immediately hereafter. And then we OK the drafters, the technical committee now with regard to the Senate, and the Assembly, and the Cabinet and the Presidency in consultation with the law advisors of the CA to now draft our formulation of the Constitution for our next meeting. So that we can deal with it and then submit it to the CC. I hope the Secretariat is quite correct in advising us that that's the route we should take, then we will enhance and facilitate deliberations in this regard. Lastly, I must remind the technical committee that at the last meeting of the National Assembly and the Cabinet and the Presidency we said we'll come back to the submissions on the Checks and Balances. It appears that it has not been done yet. So please pay attention to that submissions. They have been made because not all the Checks and Balances are contained in our drafts so that you make sure. Just to read it, the meeting agreed that the draft reports to the CC in respect of the National Assembly, the President, the Cabinet and the Senate will be used to provide a checklist of checks and balances in order that the outstanding checks and balances can be identified and discussed. And we've done that already but there is a submission particularly with regards to Checks and Balances so that we can have that at the next meeting as well please. Thank you very much. The lady over there.

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Mr Chairperson, just before we adjourn. We would like to raise an issue and this is related to the public participation. If one looks at the submissions from parties and individuals, we often find that the submissions which appear as compiled by the technical experts, only covers the parties' submissions and those which are written

submissions, but individuals they don't cover any groundwork on the public submissions that is arising from the public participations, and in our view there are tapes. In these meetings, we have these meetings recorded. We therefore would like to suggest that those submissions also be compiled and be recorded onto these reports, so that we can also look at them.

Chairperson: I've got no problem with what you are saying Madam. We discussed this in Beaufort West the other day. The problem is we don't have the submissions from the CA because they are responsible for compiling the public participation reports and be submitted to the various Theme Committees. That's why they ask each Theme Committee to send a representative to be at the meeting so we would request the Secretariat to enquire from the CA Administration where are the reports on the public participation programmes. I must also say that some of the public participation programmes has got absolutely nothing to do with constitution writing. It's pensions and housing and roads and water and lights and so forth. Here and there you'll pick up something that concerns the Constitution. But please find that out. I do agree with the lady that we not only look at the written submissions, but also the public submissions. Thank you very much.

?: It was said that we shall go for the Minutes after completing the debate.

Chairperson: Let's do it on Monday. We won't be losing a lot of working ground so to speak if we don't approve the Minutes today. Let's leave that for Monday. Is that in order. Thank you.