

2/4/2/1/10/15

Stoncy

This is one of the tapes that was sent back because of poor transcription. It is still bad. eg. provisional and provinsional instead of provincial, electro instead of electoral. I am not happy with the quality at all. It has not been properly checked for spelling and grammar. Please return.

Marion

Tapes missing

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THEME COMMITTEE 2

5 JUNE 1995

1 TO 5

(TAPE 1)

Chairperson: OK, Ladies and Gentlemen, let us start our meeting if somebody can close the door for us. You all welcome on this meeting on a Monday on the 5th of June 1995 we have two matters to deal with today that to go through the report again and thereafter go to the Provisional Government those are the two matters that we will deal with today mainly and there are any other administrative matters then we will have to look at that as well. Is there any apologies? Mr Eglin will be coming at ten o'clock, Mrs Sethema and then there are also Dr Pahad is all? OK.

Groenewald: (can't hear)

Chairperson: That is where I am coming to now, I am going to make the minute apology now, the two managing secretary who is the other one? That is Thomas Smit and James who are not here today. We have a new range of people today but they are old faces I think you know them. (?) has been with us some time in Theme Committee 2 , Thandi you know Thandi(?) she has always been with us here and Charmaine is always with us here and we have a recording man there and that is Mr Potts. That's right, so these are the people who will be assisting us today. I understand Thomas's wife is sick, so he is sitting besides the bed of his wife things are not going well there. James also had a mishap over the weekend. I'm told he is at the hospital something like that. So things are not just going on well so we also want to tender ~~there apologize's~~ as well, General?
their apologies

Groenewald: Could we perhaps also note the sympathy of the committee and let them know that we sympathize and that we wish them speedy recovery both for Thomas's wife and I believe James has been assaulted? Thank you.

Chairperson: Yes. Thank you I think from the Theme Committee side we will do so, we will ask our managing secretary for today to issue a note to them both.

Well, Ladies and Gentlemen could we instead of starting with the Senate Report could we start with the Provincial Government structures and then we will end up with the Senate Report is there anybody who has a difficulty with that? Just carry on as we did with the Provincial Structures as we did last week and just finished that. Everybody happy? OK.

Mr: ? : Mr Chairman just before we start can I just say that two other technical experts are also in Cape Town I expect them soon, Dr ? and Mr. ? who is the fourth member in the place of Prof. Dlora they should be here shortly.

Chairperson: OK, Thank you very much. The Structure of Government that is now your Provincial Government starts on page 20 on your documentation pack. We have gone I think up to we have done the Provincial Legislature was suppose to start with the Provisional executive do you want us to review the whole thing start from the beginning I can just go threw it or start with the Executive? To start with the executive and carry on forth, OK. Prof Steytler?

Steytler: I think my notes says we stopped at point 5 1.17 page 34 on the new annexure and we would probably commence on page 35 on the top of page 35 Public Access to Provisional Legislature.

Chairperson: Page 35, Alright, you were leading the discussion am I right, and we are going section by section? We would then allow you Prof Steytler to carry on.

Steytler: Mr Chairmen, the next section that we are dealing with is Public Access to the Provincial Legislature section 142 in the present interim constitution and those submissions that we have received all support the retention of the present one which simply states that the public should have excess to the Legislates subject to the control of the Legislative themselves.

Chairmen: Could we then deal with that 5.18. Do we all agree with that? Anybody with a different point there or a different view? All agree? Thank you Mr Steytler, you can carry on.

Mr: Stadler: The next point is Legislative Committee of Oversight is we have received a submission from the CPG which suggest that there should be affective committees of the Legislative to ensure proper accountability openness and responsiveness on part of the executive. That clearly language here of the CPG submission also suggest that is also part of the separation of powers and it doesn't at the moment appear that there is direct reference to committee system in the *Provincial* Provisional Legislatures and it may well be that one want to say that the Legislatures may or must have some committee's reviewing the various portfolios.

Chairperson: Point 5.19 Recommendation from the CPG in regard to the Committee"s , Mr Beyers?

Mr. Beyers: Mr Chairman you will recall when this was discussed from our side we requested the CPG to a later stage give us more information on this specific proposal because we are sympathetic towards that.

Chairperson: What are you saying now Mr Beyers? Are you saying do you still need that information or we all agree that this committee's can be established in the Provisional system? Still require more information from the CPG in this regard?

Mr: Beyers: This is another type of committee Mr Chairman. What we are talking here is not the normal legislative committee, it is a committee to ensure proper accountability , openness and responsiveness. It is something different from the normal committee's and we requested the CPG to come back with further detail and we at that stage we from our side want to investigate that and discuss that.

Chairperson: Thanks for drawing my attention to that. I do see that people from the CPG I don't know would they like to have their voice heard on this matter? If they are not ready we could ask them maybe to prepare them. You are not ready know?
.....OK, They will be prepare to do so.....Yes, Yes correct. Mr. Ebrahim?

Ebrahim: Thank you Mr Chairman, I think there are two

aspects of that thing that has to be considered. First is the question of accountability, openness and responsiveness which is a constitutional requirement. I think what we are asking the CPG to give us here is the moralities of how this is going to be set up at the provincial level.

Chairperson: I think they have listened carefully now note taker , General?

Viljoen: Could we decide, I think there should be consensus that the Constitution should make provision for either a provincial law or whatever the case is but there should be in the constitution provision should be made for accountability, openness and responsiveness and I think if the Technical Staff can note this point of consensus it may be a good starting point.

Chairperson: We do actually have a principle in the constitution that rightly deals with that, OK any way note that from the General, anybody who would like to contribute on this? Fine, lets then move to 5 (A) ~~Provisional~~ Monarch. *provincial*

Prof: Chairman, the present position is that section 6 160 (B), states that a Province may the choice of the Province to establish a Provincial or a traditional Monarch in the case of KwaZulu the present one says there must be a Provincial Monarch. The only submission that we have received on this one is on CPG which says that there should be a general enabling provision to say that a Province may establish its own Monarch but then further made the recommendation that there should be no specific reference to a particular Monarch in the final constitution. I read it that there should'nt be a specific reference to KwaZulu Natal they must have a constitutional Monarch.

Chairperson: I came to you, Prof just now, may I welcome the other two Technical Advisors, Adv (?) we've been missing you for sometime thank you to be with us today and Dr (?) if I am not mistaken in our

presence you know that Dr(?) is replacing Prof (?) who has requested to be replaced by somebody, he is now more with us so Dr (?) will stand in his place, you are most welcome gentlemen your services more required, thank you very much. Prof\Dr(?)

Steytler: Thank you becoming like a German, you must have been there recently. Thank you Mr Chairman, I just want to raise a question here that is more that academic and unfortunately we have no representatives of the IFP present, but their proposal for the Provisional Constitution of KwaZulu Natal is that they want to talk of the Kingdom of KwaZulu Natal. Now the questions arises is whether one can have a monarchy within a Republican State if the object is that South Africa is a united state this is something that I would like our Technical advisors would look at whether you can in fact have monarqucal units within a Republican State it is rather a novel idea.

Chairperson: Prof Steytler. I think you and other Technical advisors would note that or do you want to react on that now? Let us hear?

Steytler: Technically speaking Dr (?) is correct that in the Republican Constitution that there is no monarchy and that the two are contradictory but technically speaking it may be possible that you have the contradictions within a Constitution, and I wonder if my colleagues would like

?: Mr Chairmen will investigate the position

Chairperson: That is the easiest way to put it aside.

?: Mr. Chairmen...

Chairperson: Can I follow the list of speakers and I have got you. Mr Lebona your hand was up.

Mr. Lebona: Thank you Mr Chairmen, on top of the investigation that is going to be done let also the slaughtered of Traditional Leaders give us guidance. ?

Chairperson: Mr Ebrahim and then Mr Mlangeni.

Ebrahim:

Thank you Mr Chairmen, I think there are two aspects of it here that we must take into consideration. There is a provision within the Constitution that Provinces can draw up their own Constitution and I think that it is something that we recognise here it is a question of the monarchy people system that would prevail in the province itself. Now that they want to do some investigation I think perhaps the situation in Uganda could be looked at where there has been the restoration of the monarchy within a Democratic political system in the country. Because they have now been brought in within the constitutional framework where the monarchy stands in that in for instance you have the Kingdom of Boganda, you have the Kingdom of Toro in Uganda but in the overall structure it is a democratic Republican system. So maybe these are some of the experiences that could be looked at as well.

? :

The point is making is not the question of whether we are going to recognise the monarchy of KwaZulu Natal or any other monarchy. The proposal as I understand it is that the monarchy should have a not only constitutional but also executive powers of the entire Province of KwaZulu Natal, so it is not just the traditional areas of the traditional authorities we are talking about. Well I have move away from Durban but I would be one of the King's subjects if I lived in Durban.

Chairperson:

OK, maybe our technical advisors when making research in this or try and investigate this issue we may like to work hand in hand with the adhoc technical advisors and traditional leaders, maybe lets draw them in as well, lets get their input in that regard. Thank you, now what do we do with this? Do we declare it as a contentious issue because ? is not here or what do we do you put it as to or what cause they raised this issue. OK, thank you very much so that will be revisited. Now that concludes then discussion on our Provincial Legislature. We now move into Provincial Executive that is point 6 , Prof Steytler, will lead us through, we will take it point by point as we did the previous one.

Steytler: Chairman the first issue is whether again a framework for Provincial Executives should be established also in the case of a provinces who do wish to draft their own constitution and one can see here from the DP Guateng submission that the ten year of office responsibilities powers and functions of premiers and executive council should be regulated by Provincial Constitutions. And the similar submission by the Provincial Administration of the Western Cape. But I think this issue can be dealt with once one started draft the framework for Provincial Government as a whole. One need not have a separate section on Provincial Executives. If one then moves on to the next issue its the Premier's the present section 145 one of the interim constitution says that the Premier shall be elected by the legislature and from the submissions there the only difference that we see is from the DP where it suggest that the Premier should be elected by the Electorate following a similar proposal for the election of the President and the other individual submissions of ambivalent one suggest Legislature the other popularly elected or by the Legislature and says that it should be by the Provincial council and the central government. So that is the first issue here is then who shall appoint the premier?

Chairperson: Let us get the contributions on that. Who shall appoint the Premier?

Mr Rabie: The Legislature Mr Chairman.

General: Could we just ask Mr Chairman there is a proposal from the DP in Guateng but is there any indication of how the DP here on national level feels about this point.

Chairperson: Mr Eglin is not here. He actually said he will be here at 10 o'clock. He is not here at the moment.

Mr Ebrahim: Thank you Mr Chairman, Mr Chairman, on the first question of the framework, ^{we} also agree there that the question of ten year of office responsibility of powers and functions should also be regulated by the Provincial Constitution but I think the issue of the ten year of office should also go into the national overall Constitution because you ~~can not~~ ^{cannot}

leave that ten years on When and How they can help the elections in the provinces.

Chairperson: More contributions on this issue? Prof, sorry Dr ?

Dr ? : With your permission, if I could just go back to terminology again. Have we taken a firm position on the fact that the Provincial Legislature will not be referred to as Parliament, that their Executive will be know as the Executive Council and not the Cabinet? The reason why I have raised this is that there is a possibility that the Provincial authorities could come along with Constitutional Provisions were they refer to their MEC as Cabinet Ministers and to the Legislator of the Parliament and I know that we have dealt with this one of the first issues on page 29 that was dealt with but did we reached finality on that?

Chairperson: Ja, I think there were two point of views, ^{the} National Party was actually saying we should call those people Cabinet Provincial Cabinet Ministers and Provincial Parliament that is what the National party has been saying but there was also different view from other political parties who said lets leave them as counsellors, and lets leave it as the Provisional Legislature. I think I am not to sure I think we declared a contention there if I am correct we didn't reach agreement in that regard if my memory serves me well.

Mr ? : I was just involve^d in the drawing up of a Provincial Constitution and this was really a very sore point when I mentioned that there was very strong feelings that the present terminology be retained and there was a very strong reaction because they would like to refer to their Legislature as Parliament and their MSC as Cabinet Ministers.

Chairperson: Prof Steytler?
.....
.....
Anybody who disagrees with that? We will give Mr Eglin a chance when he comes at 10 o'clock on that issue where they want to declare that point as a contentious one or not but we all agree at the

moment that the Premiers will be elected by the Provincial Legislature. Thank you. Lets move to the other point. We are moving to 6.1.2

Mr ? : Chairmen, the issue here again is whether the Premier should remain a member of the Legislature if he is elected from the Legislature. The CPG's here suggest that ...
in principle of separation of powers, a Legislature Premier should vacate his seat on election. At the moment the position is that the Premier retains his or her position as a member of the Provincial Legislature.

Adv. M ? : Chairmen I have a problem here, I see things weDP Gauteng, maybe one need to ask a question. If the Theme Committee of the CC calls for Party Submissions even on a matter of provinces. Is it expected that a party would and then agree on a policy and make that submission or a party to various provinces can submit nine positions and then the Theme Committee's expected to reconcile those positions?

Chairmen: Mr Beyers?

Mr. Beyers: We have discussed this previous meeting and the position is that noting stands in the way of other organisations including the general public to submit their views but as far as the committee is concerned the official standpoint of any party is the submissions they brought here so those submissions are being regarded by the committee as inputs from individuals and other organisations like the CPG or like any other body or institution that wants to make submissions.

Mr?: Mr. Chairman I understand that but my question is much more fundamental than that. If you say DP Gauteng everybody agrees but for DP Gauteng. The inclusion of the one thing is the exclusion of the other. Are you saying the other Provinces or the other DP arms agree with the position or not? You don't say that therefore it can't be cleared. It is more than what Mr Beyers is saying?

Chairmen: Mr Rabie?

Mr Rabie: That is exactly why we said we will wait for Mr Eglin to put the official view of the DP in this regard.

Chairmen: Adv do you mind if we put this question again to Mr Eglin?

Adv?: Yes Mr Chairmen, I am dealing with a much more fundamental question than what Mr Eglin is going to say, I am dealing with a principle. Should submissions be made on that basis? Mr Eglin would come and say we at National level feel like this but does that establish the principle what Mr Eglin feel? It might establish the feeling of DP on other issues. Should party submission be on Provincial Level or will we expect parties so submit a party position?

Chairperson: Well, if I can give my own personal view it is a Party submission, but that is my own personal view I think that is all what all of us is doing at the present moment, I think that should be the principle. Well, I don't know how other political parties are working but one would expect that you consult with your structures throughout the country, whether it be a Provincial structure or a local structure but whatever. But when you give a submission to the CA it is a consolidated submission throughout all your structures but I don't know how other political parties work but I would take that as a principal.

Gen ? : I think the view that was adopted at the last meeting was that you have a party submission and DP Gauteng is a submission from the public. We have invited the public to make representations and we don't give it any greater weight and the technical advisors were asked to please not give it any more weight than say submission by an institute by or by an university professor or whatever it is a submission from the public and we only have the official view of the party presented here. So it is a bit confusing but that was my understanding from what was decided.

Chairperson: Gen Groenewald?

Gen. Groenewald: I think mr Chairmen, we have another example once again from the DP where senate itself submitted a proposal in its own name. And that is how we should view it. You have a party position and then you have the position by individuals. And as a principle that is how I think we should accept it.

Chairperson: OK, It may not be satisfactory the way we try to answer the question ADV ? but could I asked you that we leave it at that and carry on with this? Thanks Advocate?

Mr. Lebona: Thank you, 6.1.2 Premier. I want to set my mind at ease. Maybe the Technical people what do they understand by this Parliamentary elected Premiers should vacate their seats on the election. I am a little bit confuse because somewhere we say Provincial Legislature now we say Parliamentary.....

Steytler : Mr Chairmen I was just simply using the language here of the CPG but it should be the Legislature elected Premiers and it is just the confusion or using the type of ~~pointment~~ *appointment* where the Legislature elects amongst it members a leader called a Premier in this case but clearly the more consistent the language should be legislature elected Premiers.

Chairperson: Mr Lebona?

Mr Lebona: Yes, Can you go further and explain what does this say the implications.

Steytler: Mr Chairmen, perhaps is to illustrate in terms of the National Assembly is where its being accepted by this committee that the National Assembly elects the President and on election the President vacates his or her seat in Parliament and therefore is no longer member of the Legislature and the idea is that this gives us a better separation of powers between the executive. Particular the executive president and the legislature. The effect of it is that the President has no voting power in the

Legislature but is given specific powers to address the legislature. The great consequence would be no voting powers but then specifically powers to address and attend meetings of the National Assembly but that must be given quite specifically.

Chairperson: The question we need to address all of us here is should a Premier be the member of the Legislature after he has been appointed or should he vacate his seat? That is the question we are dealing with as in the case of the President at National level. General Groenewald, I nearly said Constand Viljoen.

Groenewald: I just wanted to add it also means that Parliament would have to make separate provision for his pay, if he is not a member of Parliament separate provision would have to be made, but Mr Chairman could I just ask a question as far as the Premier being a member of the Legislature. If we have accepted the principle of the separation of powers then shouldn't this principle also be applied at provincial level and shouldn't the suggestion of the commit and provisional government therefore be accepted as put down there?

Chairperson: Mr Ebrahim?

Ebrahim: Thank you Mr Chairmen, it will be recalled there that when the PAC made its submission on the question on whether the President should retain or not retain its seat we felt very strongly that on the issue on accountability the president should be a member of the National Assembly. That was the last submission and would like to maintain that position at Provisional level as well.

Chairperson: Other comments?

Mr. ? : I think that we should leave it at that Mr Chairman I think the position of the ANC at the time we were discussing this was that president would vacate his seat once elected by the Electoral College it is the Parliament itself and that position I think should also apply to the Premiers. There should be that consistency in that continuity. What applies in the National Assembly should also apply in the

Provisional Executive on Provisional level.

Chairperson: Listening to this discussion at the present moment apparently parties have not made up their mind on this issue. Could I then request that we revisit this, let parties apply their mind properly on this issue. Whether we follow the CPG proposal or we leave it as it ease I would like to revisit this issue. Unless there are some people who want to make an input in this regard? Mr Beyers and Mr Rabie would you like to make an input or can I pass this issue to be revisited? OK, fine.
Lets then move to 6.1.3. Mr. Steytler?

Mr ? : Chairmen, this issue deals then with the tenaille removal from office of premiers and is presently govern by 146 of the Interim Constitution. Now the term of office is terminated on this illusion of the legislature and the legislature is dissolved firstly on the expiry of its normal terms five years at present. Then on emotion of no confidence in executive council in premier and then the premier may dissolved the legislature and on motion of no confidence in the executive council excluding the premier and then the premier may dissolved the legislature as well. Now the submissions that were received was the ANC suggested that the Premier is elected for five years on motion of no confidence in the executive council and the premier the premier shall dissolve the legislative and call for elections. The Freedom Front suggested attention of the President section 146 and the CPG also suggest the same retrain section 146 and 154 which is the motion of no confidence. So the moval of the Premier is then first by submitting a adopting a motion of no confidence in the executive council and premier which forces the desolation of the legislature and that also the end of the Premier and there was no specific provision which suggest the no there is a further suggestion by the motion of no confident in the premier alone. You look at section 164 and point 6.1.3.2 there the premier may be dismissed by the motion of no..... itself. So two possibilities the one is dissolving the legislature which is even an option for the premier and secondly removing the premier by direct vote of

no confidence in themselves. Third possibility is the inbreachment and section 146 sub-section 2 which again raises the issues that we have been discussing pertaining to the National Assembly.

Chairperson: Dr ?:

Dr ? : May I raise a question. If the ~~the~~ province prepares its own constitution which is then accepted uncertified by the constitutional ~~courters~~ ^{court} being a order what happens to the provincial legislature in such a situation? Because my understanding is whilst we are bound at the national level to government of national unity until 1999 this will not apply in the case of the provinces, so would this be another factor which would cause a premier to have to stand down after a constitution has been adopted a provincial constitution and that elections would have to be held?

Chairperson: Prof Steytler?

Steytler : As I understand what is the position ^{once} wants the new constitution is being adopted and what happens to them the whole legislature who adopts the ^{transitional} ~~traditional~~ clause which says all deemed to be elected until the new constitution may well be that it could be a new election being called I can't give you more direct answer per.....

Chairperson : Adv ?:

Adv: ? Mr Chairmen, thesection 162 of the constitution election of a new provincial government?

Chairperson: Any other input, Dr ? is still looking at that he will tell me if he want to make a further follow up on that issue. Any other input?

Dr ? : To the 162 certainly creates the possibility that your premier would have to step down before the five year term is up. I think a critical point here is that says the ~~provisional~~ ^{provincial} government may at any time after the commandment of a provisional

constitution partition the constitutional assembly to dissolve the legislature so it is a choice given after adoption of a election so it means that constitution may actually have different provisions which simply means that the legislature may continue as appose to a compulsory one once there is a new constitution then there must be a new election it seems to be that the scope for legislature then to do two things one, ask for its disillusion and for new elections and two, continuation of the same legislature in terms of the new constitution.

Chairperson: Satisfied Dr ?, thank you.

Adv?: Mr Chairmen, from the notes I see a point we dealt with the National Assembly and I think the question was asked by General Groenewald and Mr Hendrickse and we debated that and now we are repeating itself. Why need an impeachment procedure. If you can do what you can do with an impeachment procedure with no confidence
I see 154 and 146.....motion of no confidence.

Chairperson: Ja, this issue has been raised also when we dealt with the national Assembly and I think we declared that as a contagious. Because the National Party wanted the impeachment also to take place where else the other view held by the ANC was that the vote of no confidence will surface, we don't need an impeachment when we have a vote of no confidence. But we felt that other political parties are holding a different view we either should be clear that point is a contagious one for a further debate in the constitutional committee. I think this is also following the same trend in the structures of government at provincial level. But you are quite right we have been discussed this structures of government at national level. I think the National Party felt very strongly on that one. Right, Tender of office accept the DP I think DP says it prefers four years and all other political parties agree that the term of office of the Executive should be five years unless of course there is the dissolution of some sort. If there is

a motion of no confidence than in both the Premier and the Cabinet or the councillors than the legislature will be dissolved and call for elections something like that. Do we all agree with that? I think DP would like to registrar that should be four years. So the contention there would only be that one of the DP four years but we are all in agreement with that. Lets go to that 6133 the National Party still holds that view am I correct? Now when we come the National Party holds the view of impeachment will also put that on our contention otherwise some of us agree with a motion of no confidence being surface.

Section 6.1.4 Prof. Steytler?:

(TAPE 2)

Chairperson: Could be considered, OK. Adv Mutimela(?)?

Adv ? : Mr Chairman this submission by the National Party from the Technical Expert makes Mr Chairman, yes. OK, makes a lot of sense. Its it consistent with the National Party's position Mr Chairman, if the honourable members would read it because the National Party submits that the proper model is that of government of national unity. Of a constitutional coalition and in the constitutional coalition you will be forced to consult with the leaders of the other parties so it is consistence if you adopt that position of constitutional coalition then you have to consult if you don't you don't have to.

Chairperson: Thank you Adv Mutimela(?). Then as I asked the question then the ANC would like to find it very difficult in that regard as you are aware that we have made our point very clear that we don't want an enforced coalition on the political parties, coalition must be that one that is voluntarily. We will therefore differ with the National Party in this regard. There is no agreement in that regard. Would like to declare it a contagious...?

Any other further comment on this issue? Not, Ok, is it well summoned Prof Steytler, you understand correctly? OK, then we came move to 615 Acting Premiers.

Mr ? : Mr Chairman, that is simply creating the possibility of appointment of Acting Premiers.

Chairperson: Anybody who has difficulty with that? Agreed? Fine.

6.2 Executive Councillors.

Prof Steytler, can you lead us through?

Welcome Mr Eglin.

Steytler: Again the first question about Executive Council is the framework which one wants to deal with that issue together with that legislature and the executive as a whole. We start of then with the issues to be dealt with

on the Executive Council is the first one is the size of the Executive Council. Present the section 149 says that there should be a Premier and not more than ten members. Now the question is I think two issues to be resolved the one is in a framework should the final constitution stipulate the number of the Executive members which a Province may have and then secondly what should be the formula used to determine the number. It looks as its submissions the National Party suggested perhaps a reduction in number of Executive members in smaller Provinces. The Freedom Front suggested that the attention of the present section 149 the Democratic Party suggest an introduction of a formula, at 20%, a formula of the number that the Executive Council should be not more than 20% of the legislature, and the CPG suggested that there is no need to increase the number of appointed member of Executive but and further that the size of the Executive should have some bearing with the size of the Legislature.

Chairperson:
Dr ?:

The size of the Provincial Legislature , Dr ?
Mr Chairperson, I see only the CPG has made a reference to the appointment of deputy's I would like some discussion on that. There is the view they came across that they feel that the MSC's are overloaded and need deputy's, and I see none of the party's comment on that aspect. The only input here is from the CPG.

Chairperson:
Dr ?:

You are opening that for a debate, isn't it?
Well, I don't like to give my own views, I would like to hear the views of others first but there is a feeling in the provinces that they ought to replicate what we have at a National level. As I said earlier they don't like the term Executive Councils they see them as Cabinets and they should be Ministers and Deputy Ministers and this is something which we should debate whether one should have a fairly large Executive in each of the Provinces.

Chairperson:

The pointed issue now is the size of the Councillors themselves and Mr Lebona(?) Dr r(?) would like to know whether should there

Mr. Lebona (?):

be Deputy's at Provincial level or not?
Thank you Chairman I think if we draw from what is happening now we still are in a abnormal situation were we don't have legitimate Local Government. So I think immediately after the local Governments the loads on the shoulders of the MEC's will be eased. I think it is to early now to decide on that. I think it will be good for Party's to go and think about this and waited beyond Local Government Elections to see what it is that we would like to out of local government elections. The load that the local governments will take off the shoulders of the Provincial Executive Councils.

Chairperson:

General ?:

General?

Mr. Chairman, just a matter of procedure. If there isn't any form of suggestion by anyone that we should have deputy's then I don't think that we should discuss it.

Chairperson:

Provincial

General:

Anybody against that? Alright, then we don't have to discuss that. Let us discuss the size of the ~~Provisional~~ Legislature. General?

Mr. Chairman I have one problem and that is mainly we don't get known what the functions the full functions and responsibilities of the Provisional Governments are or of the Legislature's are? Should we for example devolve much more power to them and greater functions then naturally you might want to have more than say ten ministers. But under the present circumstances as reflected in the present constitution a maximum of ten members I think should be excepted. The point I would like to make is should at some stage there be a decision that further power should be devolved at provinces then we would have to revisit this particular section. Mr Luana (??)?

Mr L ?:

Thank you Mr Chairman, I think we need also to have a stage were we compare the three tears. Within this Theme Committee alone I find it a little bit difficult to come with a problem well thought solution.

Chairperson:

Well, from the chair from the ANC point of view we would like to maintain consistency. You would remember that we declare the size of

electoral

National level as a contentious issue that is still to be debated and we based our argument on the fact that we not yet finalized the or decided what the ~~Electro~~ System in this country would be. Once we finalized we will be in a position to terrain the size of the National Legislature. You will realize that we did not even made a comment about the size of the Executive and the Provincial Legislation. So we would like also to leave that as it ease until such time we really finalize the issues like the Electro System. We can then look at how big the size of the legislation would be in the final constitution, thank you very much. Any other comment? Prof Steytler?

Steytler:

I understand that the issue should be revisited again.

Chairperson:

Yes, unless there is a objection to that.

Mr ?:

Mr Chairman, just a question. We keep on saying to be revisited, revisited, when are we going to revisit? When you are going to revisit?

Mr ?:

Mr Chairman, Mr Malangeni?

Mr Mlangeni:

I want to say to Mr Rabie that when we says that some of these issues should be revisited. For example, the very issue of the size of the provinces we are saying we would like to discuss the matter again at a later stage because among other things we have not finalize the opposition with the ANC and that depends also on the electro system that we want to adopt. In other words we are saying we would revisit this issue after we have decided on the electoral system to answer this very specific question.

Chairperson:

Will others agree that some of the things can not be finalized now? Later to come we need to revisit those issues and discuss them. That is a problem that all of us are having. Could I go back to Mr Eglin or should we carry on? I was thinking that maybe we go back to Mr Eglin so that we can take him on board as to what we have been doing, we have got your apology Mr Eglin that you will arrive at ten o'clock but I think there was an issue of the ten year of office at Provincial level. We said that DP

would like to maintain consistence of four years I don't know whether I quoted you correct but that is what you have been saying all along. And which was the other issue regarding the DP . O, the DP Guateng issue has risen again in you absence. I don't know if whether maybe we would like just to quickly put you position against that, but I think you did last time maybe it wasn't very clear other people are not here but we said we will wait again let us hear your view on this issue.

Mr. Eglin:

Chairperson as far as any recording or reporting is concerned I think DP Gauteng should be considered like any other person other than the main political parties. In other words it is an input but it is not an input from the political party per say I mean that if Western Cape regional government made an input and if that was going to be recorded then it should be recorded but I think in the main what we have done here is we have recorded the input of the political parties per say and therefore I think that should be the part that is recorded. I am not all that fuzzed about whether some formation of a party or make inputs they should be treated as ordinary non political inputs.

Chairperson:

So the principle is that the submissions that we consider as a Theme Committee are the submissions from the Political Party itself.

Mr Eglin:

I presume we considering everybody's submission. But I think at the end ours that's going to be reported. There I think you should only report the report of the political parties unless there are particular items that came in from other people that you think is worth while but I would not as a matter of ~~cause~~^{cause} report the DP in Gauteng I would only if there was an exceptionally circumstance.

Chairperson:

Adv. M (?) reply that he has taken(?)

Adv ?:

Mr Chairperson, it does not solve my problem, if you say the DP Gauteng says A,B,C, whatever status you want to give them I still don't know what the DP National says? That is my point.

Mr Eglin:

This is not the recorders problem if we have not got any thing on record we have not got any thing on record. I we have got something on record it is on record.

Adv. ?:

Chairman, it is the problem of those who are going to read those reports and if those who write it and if you say the DP Gauteng submits this I am saying a person who reads the report says this is the DP Gauteng's position so the national DP might have a point which differs with that or they don't have a position on that. Remember what Prof. Steytler was asked to record that everybody else agreed accept DP Gauteng. Now I say that this might mislead those who are reading the other branches of the DP agrees with everybody accept the Gauteng branch. Maybe we should say the DP has not made any submission on this point but their DP Gauteng branch has. Then maybe it clarifies the position but not the way we recorded it.

Mr. Eglin:

I can not understand what we are saying. The DP has made a submission. In fact we said we take the existing set as our submission with amendments. And therefore we have not move amendments we support the existing status quo. If you read our memorandum it is very clear we say we take this as a starting point but we suggest the following amendments and that is the DP's point of view. I can't see any confusion on that and on anybody else point of view. But if somebody wants and I am not arguing that the DP Gauteng should be refer to at all but if they make a unique point just as the Western Cape ANC makes an unique point it may be worth recording but not as a matter of rule.

Chairperson:

Alright, could you leave the matter there and if there is a problem recording that the court group will sort that out with the Technical Advisors. OK, is there any other thing we left that we wanted Mr Eglin to consider? OK, Mr Eglin we are now on page 38 of the new document pack for today.

We now move into 622 COMPOSITION : GOVERNMENT

~~OF PROVINSIONAL~~ ^{Provincial} UNITY. Prof Steytler, could you lead us through?

Prof. Steytler:

Mr. Chairman the position of the parties are fairly clear the National Party favouring the attention of the present section 149.2 which creates the government of Provincial Unity and the decision making as a masses of consensus. The other parties does not support that position the Freedom Front and the DP I think the ANC as well. The issue about Government of National Unity. That may came in is the length of the Government of National Unity as the law now stands the duty on national level these at national level to create a government of national unity but not at provinsional level and this is why the CPG makes the suggestion that while the government of provinsional unity is not obligotry until 1999 it should be included in the final constitution to create that requirement that there should be a provinsional government of national unity until 1999.

Chairperson:

Comments on that one, Mr Rabie?

Mr Rabie:

It is a contentious issue, we have put our stand provincial government of provinsional unity the other parties don't agree, so that is what we must report.

Chairperson:

Shabangu (?)?

Shabangu(?):

I think from the ANC position. We right from the National level we said it was a contentious issue and we would like to maintain the same position at provinsional level because we don't believe in forced coalition.

Chairperson:

A n y o t h e r c o m m e n t ?
Yes.....

Mr ?:

Chairperson, it means that what Adv M(?) is being saying is true. That there is no difference. That the DP National and the DP G is another party.

Chairperson:

Yes, it is true like that.

Mr ?:

It is taking like that as another party?

Chairperson:

It is a submission from DP Gauteng. As mr Eglin said they have got a right to submit. Mr Eglin?

Mr Eglin:

Let us take this as an illustration of how I

think it should be formulated because right at the end you have got in small type Provincial administration you've got Fine Revery maybe and you've got means. I don't believe that the DP in Gauteng have any presidents over these other people. To the extend that the DP in Gauteng has got no very significant point of view it is exactly the same as the parties I would not even record it but if the DP in Gauteng had a significantly had a different point of view I think it should just be recorded the same as Mr M (?) has been recorded. I would not give it the status of being that an input by a National Political Party. So I would not have DP Gauteng at all in this particular 6.2.2 because it is not contributing anything unique.

Chairperson:

Mr Olifant:

OK, Olifant

We don't have to report to Gauteng that Mr Eglin is dropping them.

But I just want to say just as a matter of principle I believe I think Gautengers have the right to make an input but I think as a matter of principle it should come through their party structure's or otherwise and individual should make an input because it is quite confusing I must say.

Mr Mlangeni:

It is a bit confusing. But perhaps to make it easy for the technical committee, it could be said that the technical committee should compare the for example Gauteng's submission and then compare it with the submission from the DP National as a whole. If there are any differences it is only then that they should report about this difference between the National and the Province, but otherwise I will agree with Olifant here, that as a rule your Guateng branch or party or whatever is should discuss this matters with the party at a national level so that when submissions are made is one thing. Alternatively then we have to leave it to the technical committee to decide if they see any differences is then that they should report those differences. If there are no differences do not be necessarily for them as you correctly said to refer to the

DP Gauteng.

Chairperson: Are you saying Mr Mlangeni that the DP in the Gauteng must discuss with the National Party:

Mr Mlangeni: NO,NO, No,

Chairperson: Mr Ackerman

Mr Ackerman: Mr Chairperson, we are wasting time now and I don't think it is this committee's work to tell the DP what they should do. We can only note that it is confusions so.

Chairperson: Are you making the same point Mr Rabie?

Mr Rabie: More or less, but I think we are confusing the issue unnecessarily. Why don't we stick to what Mr Eglin said? We regard the DP Gauteng as an individual submission and deal with it as we dealt with the submissions we have received from the public and not refer to it as a political party submission.

Prof r? : Mr Chairman, this is a contentious issue whether one should continue with a government of provinsional unity. I just like when the ANC reflects on this to look at the situation in Natal which is extremely volatile at the present time and there may well be a case in Natal for multi-party government, I would just like to register that.

Chairperson: Thank you Dr R?, Ok the question of the DP Gauteng the technical advisors will deal with the recording I don't think that should be a problem. Ok, The question of the government of national unity there is a contention point, Prof Stadler?

Prof Stadler: Mr Chairman there is a second issue which is raised by the CPG which may needs consideration is whether the principal they don't suggest the retention of the principle pass 1999 but, that any provinsional or the final constitution if it is adopted before 1999 should in fact retain the principle that government of Provinsional Unity should be retain in principle until 1999, perhaps comments on that.

Chairperson: What are the political parties views on that? Look, at national level the constitution says the government of national unity will continue until 1999, but the constitution is quite at the provinsional level about that. Now the

question is if we can adopt the new constitution before that and what do we do at provinsional level. Do they also make a provision in the constitution which says they should also continue with the government of national unity until 1999 or we say once we are adopted the constitution it is finish and klaar we follow the new constitution, can we hear the parties contribution in this regard?

Mr Rabie: I think the CPG is making a good suggestion lets make provision in the final constitution at least then until 1999.

Chairperson: Other political parties what do you say? Mr Lebon(?)

Mr Lebon(?): I think that is how we understood the interim constitution to see. Even if they draw their Provinsional constitutions but the understanding is that what they are going to draw when then be above the provisions that brought them about. Especially this one in regard government of national unity. They should said they are constitution within those parameters within and they should not rattle the big ship that is how I understood it so the CPG here has captured the whole thing.

Chairperson: Are we all in agreement with the CPG proposal? Seems to meI did not catch that Mr Beyers?

Mr. Beyers: Not the first sentence the second sentences.

Chairperson: You don't want the first sentence just the second sentence , alright Mr D(?)

Mr D (?): Mr Chairman, what I want to understand is if the constitution should make the provision for the provincial legislature to continue, the government of provinsional unity government. What about because it is said that the provinces will draw their own constitution after drawing their own constitution than they can be said whether they dissolve and call for elections. I don't understand how it is going to work. If this side we make provision that Provincial Unity should continue and in the meantime they have drawn their constitution and they noted here Provinsional constitution and then they go for elections.

Mr Rabie: If the Provinces draw up their own

constitution then it must not be inconsistent with the constitution itself, so if the constitution is going to make provision for government for provinsional unity until 1999, then accordingly the provinsional constitution should provide similarly.

Prof van Wyk:

It depends on whether the new constitution makes provision for government of national Unity at provinsional level as well. Constitutional principal 33 or 32 I think also states at the national level, only at the national level so the situation one has it as long as the interim constitution stands a province may not make a constitution which is in conflict with the provinsional unity notion. If the final constitution text does not continue provision on provinsional unity a province should be in a position to make its constitution without that requirement.

Mr Eglin:

Chairperson, this question of government of national unity having to continue to 1999, is actually containing one of the constitutional principles right towards the end it says "irrespectable of us passing a new constitution the particular provision relating to the government of national unity has to carry on until 1999" I think the only way if we if we want to extend that to the provinces whether it is under this new constitution or under a new provinsional constitution it may came about one would have to have another clause at the end of the principles saying that irrespectable whether you meant there is a new provinsional constitution either at this level or coming through a province the concept of a government of national unity is contained in section 149 should continue until April of 1999. I think you are going to have it as a overriding provision, you can't include it in each of the clauses but you are going to have an overriding provision that you can't ammend that.

Adv Mutlimela?:

The constitutional principle we referred to is 32. The difficulty with that is it limits the government of national unity at national

executive and that is the point Prof van Wyk is making. You see that is the difficulty Mr Chairmen you national executive can not enforce at provinsional level what he does not desire at national level. National Executive is compelled with this provision but the provinces were not compelled so is the suggestion now that you make an ambling provision for the provinces or the parentical vision and say while we bind by and this is the only reason while we continue while we bind by the 1993 constitution which does not bind you as provinces but because we bind we say you are going to continue the same way as we continue until 1999 and put it into the new constitution and limited it as that is the problem. Because national level does not need to legislate it is already bound by this constitutional principle. By then you are going to make a clause solely for the province for the limited period for the final constitution.

Chairperson:

OK, that is another view, how do we sum up this? No political party has made a submission in this regard. I am trying to find a way for you to put it in the report, we are not just agreeing for the sake of agree. That the CPG has made this suggestion and Mr Beyers has actually indicated that he only takes the second sentence and not the first one, he doesn't agree with the first one. Who can we draft this in a report for CC, do we say we agree with that or we say the CPG's recommendation is this. Lets look at it further all of us. George?

George:

Thank you , I think I would like to submit that the situation as it stands now where you find it now there is at least unity I mean at a provinsional level, we should retain it as it is, because once we change at any time it may have serious implications for the provinces at the present time. At the present time the situation is as such that there is a unity founded now where you find that all parties is in the legislature according to the number of votes that they have obtained. Now

Mr Mlangeni:

it will have problems you can change it now. I think Mr Chairman you see that you have just said that no parties has made any submission on this it is good that the CPG has observed and seen that there is something lacking from the submissions of the political parties. They deliberately brought this up, provoke discussion on some of the things we have not observed ourselves which is very good in my opinion like the very first issue there of where they say there is no need to increase the number of appointed deputies. This is some of the things that has escaped our minds but they have seen this and they are saying let us mention this provoke discussion on this, that it been the position Mr Chairmen I think i want to agree with the speaker or speakers who say although there are no submissions from any political parties or whatever we should nevertheless make provision in the follow constitution and say that something to the defect that although the provinces would have drawn up their constitution and so on and so forth which we call for elections from two three years from today we could include a clause two three words wherein we say for the purpose of the investigation we nevertheless think that the present provincial councils is elected should continue until 1999, something to that effect.

Mr Beyers:

Mr Chairman it is quite clear in the second sentence and I think that is what we should agree upon and leave the details to the technical experts and they must write the text and we agree with the standpoint that while the government of provinsional unity is not obligatory until 1999 it should be included in the final constitution until 1999, that is where we found each other upon.

Chairperson:

But once it is included in the constitution it now becomes obligatory isn't it? Until 1999. Ok, do parties agree with that? Dr R(?)?

Dr R(?):

It is just the question of then arises when a province does prepare it's own constitution. Whether it will be bound and has to include this in its constitution. Not at the present

though. But the point is Mr Chairmen it goes back to KwaZulu Natal there is some urgency now for KwaZulu Natal to have its own constitution and within six months it completes the constitution which makes no provision for this, so it then goes to the constitutional court I am just playing devils advocate now. The constitutional court could certified that constitution it does comply with the requirements of the interim constitution. You see, this constitution will only be accepted at the earliest at the middle of next year, the final constitution. What is the situation at the interim? Perhaps I could just reflect on that.

Chairperson:

Dr (?) is asking a valid question. What happens now if other provinces draft their constitution and they finalize them six months from now and it is adopted, what then who has an answer to that?

Mr Rabie:

I think that we must amend the interim constitution to this effect.

Mr (?):

I think we have agreed on other issues which were not as heavy as this one we have agreed to revisit them. Why can't we now ask our technical aspects to go and really apply their minds fully on this matter I am afraid that even they also agree to the last sentence but when I tried to recollect my mind look into the interim constitution there are openings and we need to consult as thoroughly as possible before we can say we have a consensus.

Mr Olifant:

Just a small input, I think one really looks and listens to what Dr R(?) has said, it does make sense with the kind of problems that we could have if we do not make provision for it now although we agree about this provision coming from the CPG I think it is important that one has to look at amending the interim constitution maybe this structures should liaise with the constitutional affairs portfolio committee or that particular department, because I think that could solve a lot of problems in the interim for us. Should something like that come when someone wants to

draw up its own constitution.

Mr Eglin: I am quite happy with that suggestion and I think it should also got to be looked at because there is another clause where it deals with the fact term of office of the provinsional councils and parliament and likewise for there is a clause 33 which it says "that irrespect if anything is contained in the next constitution parliament as a constituted now will continue until 1999", is the intention to say that of the provinsional legislatures as well? Because if it is so then we should say so. Because it stands at the moment that the Provinces could draw up a new constitution and call an election for a new legislature I think we should have a good look at it together with perhaps the law advisors attached to committee which is the committee dealing with the present constitution.

Chairperson: Thank you Mr Eglin. So we are saying we agree with the proposal from the CPG but that we need to take up this with the select committee on constitutional affairs. Alright, who does that? The court group will look into that and will report back to the Theme Committee the progress they make.

Prof Steytler: Mr Chairman, should we just then record that the principle of government of Provincial Unity should be retained until 1999. As a point of agreement.

Mr Rabie: Prof Steytler, must just repeat what is going to be record.

Prof Steytler: I record the principle of government of provincial unity should be retained until 1999.

Mr Rabie: I think we must record what the CPG has suggested there, exactly as it stands there, then there is nothing unclear about we mean.

Chairperson: The last sentence Prof Steytler, while the government of provincial unity is not obligatory until 1999 it should be included in the following constitution until 1999.

Mr (?): Mr Chairman, maybe the agreement is quite clear, how to record that. Maybe the suggestion because we have difficulty to put

it into the new constitution and limit it. Maybe the suggestion made that the interim constitution be amended and all what you need to do is to go to the constitutional principle number 32 and expand it to the province instead of limit it to National. You just add a province and then we have no problem with the new constitution. The old constitution takes care of what is sought. Then it doesn't come in the new constitution.

Mr (?):

Mr Chairman, the parties agree that the principle of national unity at national level be extended to provincial executive until 1999, and the legislature

Chairperson:

OK, all agree to that? Fine.

Mr Mlangeni:

Mr Chairman, Sorry I want to take you back to this last point you we just being discussing. I think this amendment to the constitution is very urgent. It is urgent in the view of in the light of what Dr R has been saying. Perhaps within the next six months or so and because of the problems that are existing in Natal of which we are aware they may drop the constitution very quickly and five months time they may say we draw up our constitution we want new elections now. And that constitution will not be out until next year so that what I am saying maybe is the amendment to the constitution is a urgent matter if the court group must take this matter up, please do so urgently.

Chairperson:

We will do so very urgently, I will guarantee you that. Thank you.

Mr Mlangeni:

Mr Chairman, if I may worn, I did not want to enter into a Legal argument but those are difficulty which maybe the Theme Committee must know. I am not sure that the constitutional principals can be amended, you see and you are thought by them and that is what 32 says i am not sure that you can amend that but it is for the Lawyers to with that, it is the difficulty that you have.

Mr Eglin:

Chairperson, all I want to cautioned, this matter has cropped up in the Theme Committee, our function is to receive reports on the next constitution and submit them to the CEA,CC. I

don't think that we as a body have got the status to say that we are taking a foremore decision as a matter of urgency to approach another committee of parliament. I think that if we feel strongly about this or that outside of them we must report to the CC on it and they must then take a decision as to whether they are going to act or not. I am sympathetic to an urgency, but it is quite wrong for a Theme Committee to take on itself that particular function to raise it with another committee of parliament.

Mr Olifant:

Mr Chairman, I think we must move forward, I think we all have consensus because we have got the right to raise it in our respective parties, so somewhere we agree that there should be an amendment and that is it so we can put forward.

Chairperson:

I think we understand what Mr Eglin is saying we will record it that way Prof Steytler.

Prof Steytler:

As I understand Mr Eglin, we don't actually record any question of amendment of the present constitution and that the what we record is that there is a agreement that the principle of government of national unity be extended to the provinces until 1999. That is agreement what we can do.

Chairperson:

And then the Constitutional Committee will then have to debate this.
Thank you we agree then.

We move to 623 Appointment from the
Legislature Section 149 (B).

Prof Steytler:

Mr Chairman, the issue there is whether all members of the Executive Council should come out of the Legislature or should a Province or say the Premier

(TAPE 3)

Prof Steytler:

And the CPG the only suggestion there is they should be possible to appoint persons outside the legislature as MEC but such a person would not have the right to speak would have the right to speak but not to vote in the legislature and then make a further

MEC's
a

suggestion that ones a persons been a been appointed from the legislature such person should vacate their membership of the legislature in order to satisfied the concept of separation of powers. The issues are then one, ability or the power to appoint persons outside from outside the legislature and two, where persons are appointed from the legislature should they advocate their seats in the legislature.

Dr: r(?):

I think with regard to the second point made by the CPG that is inconsistent in what happens at the national level all cabinet ministers retain their seats in parliament.

General:

Mr Chairman, we feel that they should retain their seats in Parliament. You can imagine how many additional members of Parliament will have to be appointed if all members of the Provincial Executive's had to vacate their seats, it is just enormously expensive, point number one and secondly that the present provision that members of the Executive should be appointed from elected members of the Provincial councils should still apply.

Mr Eglin:

Chairperson, I don't think other parties has raised this because i think we stand for the status quo. But I think this is not just a casual departure, this suggestion is a fundamental change of our Executive system but at the moment the executive grows out of parliament and it consist of people who are in parliament and in order to get to parliament they have got to go threw the party structures in order to be elected to Parliament to get there. And so the whole concept at the moment is not an American type system if I can put it that way where people are just brought from

outside political parties and outside of parliament and I don't think we should deviate from the present situation unless we are going to have a serious look at the whole question of how parliament relates to the executive and I would therefore argue very strongly that they should come from the legislation and they should retain their seats while they are on the executive.

Chairperson:

Mr. Rabie:

Any other point of view do we agree with that? I have no difficulty with that except that we say in certain instances like exceptional circumstances like we've got Chris Liebenberg now a person can be appointed from outside the legislature.

Mr Eglin:

Chris Liebenberg is involve in the change of the constitution. It is not a casual appointment of a stranger it actually required a specific constitution amendment because of specific circumstances and therefore if new circumstances arise I think somebody has then got to move a change in the constitution.

Chairperson:

Mr (?):

Satisfied Mr Rabie?

Just on the issue, is the ANC, we believe that the first we are going to retain the current situation, the Liebenberg route, but the second one as the ANC we have got a problem, I think we need to be consistent at national level we said members of the cabinet are going to form part of the parliament so we believe that at provincial level that particular trend should follow in stead of removing them but also to say we are talking about trying to limit the size of the cabinet of the parliament and legislatures but now if we say ten people we remove because they are part of the provincial legislature and add more people are we not in another way trying to increase the size of the legislature so we say we should be consistent with the National Parliament.

Chairperson:

Thank you, any other input? How do you record that Prof Steytler?

Prof Steytler:

The MEC should be appointed from the legislature and they should retain their seats.

Chairperson: Agreed!
624 OATH.
Is there any problem with OATH? Taking an oath. I don't think there is any party with a problem with that. Except Mr L(?) has got a problem.

Mr. L(?): I was hearing someone saying except it has to be eleven languages.
625 Section 150 Is there a problem with that?
PROCEDURES

Mr (?): I may just caution if you look at 152 Mr Chairmen in particular 152 (2) it involves the same issue we have been discussing which you have to refer therefore you came now. 152 says "The Executive Council shall function in a manner which gives consideration to the consensus who is sick in spirit" underlining the concept of a government of national unity as well as the need of effective government. You see it takes us to the earlier issuedo you follow 150 subsection 2...
Up to 1999 but you can just see, there is going to be a contradiction.

Chairperson: I agree, the ANC feels strongly about that. The National Party also wants it after 1999. Declaring a contagion there. Ok

Chairperson: We are being dealing with 152
Six point two point five. Don't be confused we now dealing with page 38 section 152

Prof Steytler: Can we just came back to section 625. What is the contention?

Chairperson: The contention is that your interim c o n s t i t u t i o n s e c t i o n 152.....
Mr Olifant it is Section 150 Sub 2 , you've got it now, that is contentious.
Prof Steytler, are you with us now?
Right 626 TEMPORARY ASSIGNMENT OF POWERS

Prof Steytler: There is no chairman

Chairperson: Mr (?): Still at 625, I can not understand how does section 150 subsection 2 comes in here because we are dealing with Executive Council Procedure, Meeting resided over by the Premier. Who does the subsection 2 of 150 comes in here?

Chairperson: Well it comes that in a sense that in any

matter of procedure according to that section the Premier have to consult. In other words the Government of National Unity should carry on, The problem now here is we are saying that as ANC NO, once the new Constitution is adopted no person must be forced to But the National party says NO, the government of national Unity must continue beyond. Do you understand that Mr (?). Fine.

Chairperson:

626 TEMPORARY ASSIGNMENT OF POWERS

Prof Steytler:

That is a fairly technical provision just in terms of assignment of powers within the Executive Council.

Chairperson:

Any problem with that? OK 627. What are you agreeing on? Do we agree with section 152 - The premier of province may assign the administration of the law which is entrusted to any particular member of the Executive Council which entrust to any particular member of council, any other function, No Problem with that?, OK

Chairperson:

628 - ACCOUNTABILITY OF MEMBERS

153 - I think we all want accountability.

629: Do we all agree? Prof Steytler, you've got to lead us threw page 41 isn't it What is that? Nothing.

OK, Ladies and Gentlemen we have no completed the discussion on the Provincial Structures, can I request to break for 15 minutes, ok, so let us carry on the tea is coming at quarter past eleven. We will break at 11h15 is that alright?

Mr Rabie:

Just before you do that Mr Chairmen, now last week we have decided that in terms of advice from the CA, the technical experts should now draft their reports in the language of the constitution with the assistance of the Law advisors of the CA. Now can they give us an indication when that will be ready?

Prof van Wyk:

Mr Chairman, Prof Steytler and I had a discussion with Mr Grove the head of the section, last week after the meeting. We had the impression Mr Grove was happy with the

idea that we produced a first draft and we also had the impression that he would prefer it that draft goes through his office before it comes to the committee who make it easier for the committee because what the committee then has is what we can call a sifted draft in other words we don't pick about how words but if we wanted to differ on expressions it has already been through his office. Unfortunately Mr Grove is out of town this whole week and he said it would be very difficult for him to go through our work before the end of the week but we have a tentative agreement that we will submit in the course of this week and that we might have something by next Monday. That would be on the national assembly and on the executive.

Chairman I think also what needs to be done is that the technical advisors will have to discuss and will see how we will proceed with the drafting, that hasn't been done, so we cannot give you a definite answer how soon we still have to consult with each other on how we are going to proceed.

Chairperson:

Does that include the one that we are dealing with right now? Will it take it take it alsoOK.

Mr Eglin:

In the submission made by the Democratic Party national as opposed to the DP Guateng, what has happened is that we have followed and the committee has followed all the existing sections and commented on them. We actually proposed a new section and while I know there may be some difficulty in how it is phrased but the new section its provision should be made in the constitution for the provinces to be empowered to establish inter-governmental consultative councils to assist in achieving the necessary co-operation and agreement between the provinces in matters of mutual interest. It was pointed out that it may be difficult to frame this, that may be but I believe it is a submission it should go in with the contentious or not, and it should then be considered by the CEC whether they would take it further.

Chairperson: Do you have any problem with that , Prof Steytler?

Prof Steytler: Mr Chairman, it is clearly creating a power of a Province to create inter-governmental relationship with other provinces, would it actually fit properly in this Theme Committee or rather in Theme Committee dealing with the Powers of the Provinces? It is no difficulty to add it in if the committee feels that it should be properly dealt with but it would stand out as a particular power of a province.

Chairperson: Mr Emlin would you prefer it in this or maybe in Theme Committee...

Mr Emlin: Everything that is created the Legislature is the power of a Province to have a Legislature, this is a structure. I just think if I look at the future the question of inter governmental consulted of councils is going to be a very important feature and all I think is we should anticipate that you are going to have to create them and either under this section which is Structures of Government or Powers of Provinces we will put them under both and let the CC decide where they fall.

Adv (?): Mr Chairman, the only thing that goes to my mind, as Mr Emlin is talking its whether that's a constitutional issue? Those in Provisional Council or can it be done by legislation. Because you see if you do that, that piece also form of state as if those ideas and arguments have been settled that the province would have the power between themselves to form this organisation, it is much more deeper and fundamental.

Chairperson: OK< Can't we maybe record that and then maybe once we record that it raise a question maybe whether it is a constitutional issue then it would be debated in the CC. Is it OK? OK, fine.

Mr Rabie, can I came and ask you to come and chair?

Chairperson: Can technical advisors just assist me where did we stopped the last time. Are we dealing with it right from page one?

Prof Steytler: Mr Chairman, page 5 Six thousand functions.

Chairperson: You would recall that at the last meeting Mr Ackerman asked that we postponed the discussion on the Senate especially with regard with to the Powers and Functions, until today. So I will give him the opportunity to put his case before the Theme Committee.

Mr Ackerman: Mr Chairman, I want to suggest that we start on page two. Right from Terminology down to the Powers and Functions until the end of it.

Chairperson: We are dealing with this document, the Fifth the Senate the very one that you were dealing with this morning. The heading of the document is the one we are dealing with is THE SENATE , do you got that? Right Senator Ackerman..

Ackerman: Mr Chairman, point one there , there should be a second chamber of the Legislature to the Senate and then you will see the PEC's position is put on the comment I would like the national Party also our comment on this we want to specifically state that we want a fully fledged second chamber of parliament. And I would like the Technical Advisor just to put that on the comment as well. Then the other comment that I want to make on page two is the point of the primary function of the second chamber is to represent the province and the provincial interest. The national Party also feels that the second chamber is basically there to represent the Province and Provincial interest but it is not the only function of this Senate as we see it so it primarily means it gets a more emphasis than I would just have said the second chamber is to represent the Province and provincial interest and then point number four the second function comes in and that is to review. Mr Chairmen if primary function means primary to all extent then I think more emphasis should also be given to the review function of the Senate. If I can just get an explanation on that by the Technical Advisors.

Chairperson: Who deals with that, Prof van Wyk?

Prof van Wyk: Mr Chairman, I am not quite sure what I am expected to explain. This is as it was decided last week what I recollect is that all parties agreed that the first function of the Senate

would be to represent the Provinces and Provincial interest but that the Senate would also have other functions such as reviewing all parliamentary legislation I think there was a debate last week on whether the Senate would also have a controlling function, I think that the word control would go out. I don't know whether his is an explanation?

Ackerman:

Would it not make a difference if you take out the Primary function if you just said that the function of the second chamber you don't put primarily because then the review function is also important.

Prof van Wyk:

Mr Chairperson, I can't speak for the ANC but the way I read the ANC submission the emphasise were on primary to represent provisional interest and I even think that the Freedom Front and some of the other parties used the word primary.

Mr Eglin :

Chairperson, the DP's admission was quite clear that we would see it primary function is to be represent the provinces and the secondary function is to be review and the reason it is put that way is that your primary function also determines the composition, because if it wasn't primary to represent the provinces but to have primary house in review, you would have a different approach to how you would structure the Senate. So ours is very clear that it is primary to represent the provinces and secondary to be a house of review.

Groenewald:

Mr Chairman, under agreement we shouldn't read to without reading three and four. In two we say the primary function of the second chamber is province and provincial interest but then we continue by saying parliamentary laws affecting provincial interest can only be part with the concurrence of the Senate. And then we say in respect to other Parliamentary legislation in other words those that do not particularly affect provincial interest, the Senate will have a power of review. I think it is covered quite well.

Ackerman:

Mr Chairman, I will go along with that but I have a problem with four. As you know the

National Party feels that all Legislation should be covered by Senate and as it is stated there in respect of other parliamentary legislation we feel that all other parliamentary legislations so if this is not a separate bill to the other parties then we want just in the comment be put in there that the National party feels that all other parliamentary laws or legislations the Senate will have a power of review. Including Financial Bill, that was in our presentation as you would know.

Mr Hahlangu:

Mr Chairperson, our view stands correctly as it is stated under two that the primary function of the second chamber is to represent the provinces and provincial interest and we also agree with four as well, that the Senate as a second Chamber could then have the power to review other legislations considered by the National Executive. We stand by that unless Mr Ackerman can further explain the difficulty by using the word primary functions.

Ackerman:

Mr Chairman, this is a contentious issue so if we can just put on the comment that the national Party's position that we feel that all other legislations includingshould be reviewed by the Senate.

Prof van wyk:

Mr Chairman, Item six in this report deals with powers and functions and I think what the Senate is raising there will have to be discussed on six as well so we can either under two here which is marly the statement in principle of the position that is nature and purpose of the Senate either deal with the detail here or deal with it under six or deal with it under six and then look at two again to see whether two accurately reflects what was decided under six powers and functions.

Ackerman:

Can we just put on the comment that we feel that all are the parliamentaries I don't think it would make a difference.

Mr Chairperson:

In other words you don't declare a contention, you only want to report it under comment.

Mr Ackerman:

In a sense Mr Chairman, it is contents because

we feel that all Parliament, but that we can put then on a, at the power and functions as contentious. Otherwise, we must state here as well that it is contentious.

Mr Groenewald: Mr Chairman, can we just define this, what is really in contention is the money bills. Am I right in saying that, shouldn't we then say that the Nationalist Party feels that money bills should also be reviewed by the Senate.

Mr Ackerman: Mr Chairman, it's not only the money bills, in respect as it stated there, it say in respect of other Parliamentary legislation. There could be not all Parliamentary legislation, excluding moneybills. So what we want is all Parliamentary legislation. As it as the situation is now in the Senate. Including financial.

Mr Chairperson: Agreed that that's the contention? Thank you.

Mr Groenewald: Mr Chairman we as the National Party just want to under comment that we also feel that a ten/ten should be retained.

Mr Chairperson: That the ten members per Province for the Senate be retained. Is there any objection to that?

Mr Ackerman: Then you must strength on the first sentence, first constitution issues says five, seven, eight, ten. If somebody wants ten once their name is especially mentioned, then we want, what are the others which also want their names especially mentioned. We would like to say that we want seven, I don't know whether that's relevant.

Mr [?]: Another thing Chairperson. We have declared this as contentious issue, I think we still going to debate that anyway in the CC, and whether the National Party feels there should be ten or twenty. Other members feels, they've got a different way of thinking as well. It's declared as a contentious issue, we are going to

talk about it in that way.

Mr [?]: But can't we scratch under comments two, the DP, Gauteng region also proposes equal representation. I think we can scratch that.

Mr Chairperson: Agreed upon that this morning, we can mention it under the individual submissions.

Mr Ackerman: Mr Chairperson can I just ask, in the original document, the word appointed or elected, seems to be a inter-changeable word. I havn't seen a submission which says there should be appointments. I understood it as a question of they should all, they should come, they should be elected by the either general vote, but the main one was that they should be elected by the legislator. The question is who the legislator should have to elect is another matter. I've not heard of any submission which says the members of the Senate should be appointed. They're all elected by the legislator or the majority party in the legislator according to the proportionality.

Mr Chairperson: Can you assist Prof van Wyk?

Prof van Wyk: We'll go through the submissions again, and if there is no reference to appointment, we take it out.

Mr Chairperson: Everybody satisfied? If there is no reference to appointment, then it will be deleted from the report. Page 4.

Prof van Wyk: Mr Chairman we've specifically stated that we were against the principle of recall and nothing is mentioned about that while the position of the other party...

Mr Chairperson: That is the reason why it's contentious, or do you want it specifically mentioned?

Prof van Wyk: But it is confusing sir, as it stands here.

Mr Chairperson: Okay, can the technical experts just mention

the position of the National Party in this regard.

Mr Eglin: Mr Chairperson, we listen that we are not unsympathetic to the principle. I must warn that how you apply that principle, is going to be extraordinary complicated. So until one sees the legislation, under what circumstances, under what presentages and all the rest of it, you require to have a recall. One thing is to except the principle, the other one is to draft legislations that will give affect to it. So we have our reservation, we not unhappy with the principle, but equally we reserve our position until we see how that principle is intended to be applied.

Mr Chairperson: Any thing else on page three?

Mr [?]: Mr Chairperson I think we also made it clear there that we are in favour of that principle but that we still need to work out all the procedures, as how it should be done. That's why we have under commence that we revisit.

Mr Chairperson: We have agreed to agern at quarter past eleven. It's quarter past eleven.

Mr Ackerman: Mr Chairman, just before we agern, if we come back to page three, there is only one thing that we should keep in mind there and I just want to put it in, I don't want to debate but I just want to state it that principle number e i g h t , there should be directed elected members and in this, in a sense, we are deviating from principle number 8 and we should take that, should take note of that as well.

Mr Chairperson: Is it a constitutional principle you're referring to?

Mr [?]: Well, they are directly elected Mr Chairperson. I mean if you hold an election and those people are say reflected in your'e Provincial legislator, and you take them from their election. We are not debating.

Mr Chairperson: Can the technical experts assist Mr Ackerman?

Mr [?]: Mr Chairman, it is a question of interpretations. Said, constitutional principle eight says, there shall be representative Government embracing multi party democracy, regular elections, universal adults such which a common voters role and in general proportionably presentation. It depends on the interpretation and application of this principle whether it first of all applies to general election, in other words election of members of legislative bodies. Then the next line of, the VXXVKXd,KD will be whether the regular elections, universal adults such as, the common voters role, also apply for instance on the election of members of, as in this case Senators by Provincial legislators and then the application of in general proportionably presentation wether that applies to this principle, I can't give you the answer on this.

Mr Chairperson: Does Mr Ackerman raised the issue of directly elected. Now it appears there's no mention of directly elected in that principle.

Mr Ackerman: Mr Chairman, I don't' want to stimulated the boat, I was just want to put it in so that we can take note of it.

Mr Chairperson: Okay, we agern until, it's now twenty past, until twenty five to.

Mr [?]: Ladies and Gentleman, shall we start then. I think we had already agreed on the question of what has been stated here, the issue of recall that it should be revisited. Is that excepted then? Then we can move on to page 5, powers and functions. Are there any issues of agreement there because we don't see any here?

Mr [?]: Mr Chairman I don't' know how you going to handle this, but we've got definatly problems as it's put out here on page 5, so if you want, take it one by one, but I think most of these things are contentious, but I don't know how you want to handle it. And the same will be on page 6, there

is most of the things that the ANC were'nt agreed with our viewpoints, so it is very difficult, maybe we should just take that the whole powers and functions is contentious, but I don't know whether that will help the technical advisors.

Mr Chairperson: Agreed? Are there any other views?

Mr[?]: Yes well Chairperson, last week Mr Ackerman will remember, that he actually requested that the National Party would like to look at this. And I, think specially was referring to the powers and functions. I think that's where they wanted to have time to look at what we are proposing. If they want to declare everything as a conational regards to powers, one doesn't have a problem. Unless you wants to go point by point and exactly says what is contentious. But if you want to say everything is contagious and broke, well we then not have any problems in that.

Mr Ackerman: It is difficult Mr Chairman, because if you take for instance 6(1)D. Less influence over National legislation, then it is in contradiction with our philosophy, so you can understand why I say the whole thing is contentious just from a policy point of view.

Mr [?]: Mr Ackerman, if I can just get a view from you, would you like to discuss this issue point by point or do you feel that the whole issue is contentious. Because if that is that the case then we can regard it as being contentious and move on.

Mr Ackerman: I think so Mr Chairman, because all the points are very inter[?] and I don't think we going to get consent here, maybe point number A, (1)A. They have a close and on going arising for the Province. So I agree with that, but it is very vague. It doesn't say anything.

Mr [?]: In your proposal, is that, the whole issue is contentious. Is there any other view about that?

Mr Ackerman: Mr Chairman if we except that and I think we should, then at least to asset the Constitutional

committee. The, our technical staff should then indicate summed-up very shortly what the different positions of the parties is. And at least indicates what parties agree on some and what disagree on other points. I think that should be brought out. Or else, it will be impossible for the Constitutional committee to use this as a basis of further discussion.

Mr [?]:

Mr Chairperson just trying to get a framework for which we should think off and perhaps at the end have to produce a report. I just want to suggest three headings. One is, and this only deals with legislation, what should the power of the Province be, sorry, of the Senate be in respect of legislation. And I put the first one, I call ordinary legislation, which is not financial and which has not got to do with the powers, functions of the Provinces. In other words it's ordinary excluding those two. The next one is legislation which does depend on the powers, etc. of the Provinces. In other words it's legislation at National level which has got to vary on the Provinces. And the third heading is financial, ordinary moneybills and moneybills which may impact on the allocation of resources to the Provinces. In other words, I am putting ordinary legislation, which is called a neutral as far as the Provinces. Secondly legislation which does have bearing on the powers, functions and the Provinces. And finally, money or financial legislation, ordinary and affecting the Provinces. Because I think each one of the parties, has expressed an attitude in part to these, but there is no structure within which we try to consider. That may be helpful to look at them, or the parties to look at them under those headings and come back with their views to how we would deal with it.

Mr [?]:

That might be helpful, but Mr Chairman if the ANC's states less influence over National legislation, it's a completely different philosophy as that we have, what we want to invest for the Senate. So, I don't know if it's going to help much.

Mr [?]:

Even the ANC doesn't say less influence when it

comes to allocation of resources to Provinces. As I see it, they say that there is under 1(2)C, Senate's consent to be obtained in respect of allocation of resources to Provinces. So, yes, they do say less, but equally they tend to defined it under headings. And I think each party should look at it under those headings and see if there is more agreement than we think there is.

Mr Ackerman: Yes, but the same argument applies here. Now I can say what does consent meant? 'In Afrikaans sal dit toestemming wees"

Mr Chairperson: May I just come in here to make this. I think the whole issue is contentious. I think that is an agreement. Can we leave it to our technical team to try and work on the, and see where there are agreements and where there are serious issues of contention. Because, what you have done, and I think it is correct in a sense, but you have simply stated the different positions of political parties. But I think there is some agreements that you can sift out of this process and then lets see where is the serious contentions. Can we leave it at that then and then come back to this. So shall we say that this issue contentious, but should it also revisited, or should we just pass it on as contentious?

Mrs [?]: I would like to have clarity. Does it means that he says that everything which the ANC proposed is contentious?

Mr Chairperson: Well, the problem here is that we have not, we don't, we are unable at this moment to sift what is and what is'nt contentious there. This is what we are now going to give an opportunity to the technical team, and bring the matter back so that we can then revisit the issue. Is that correct? Is that exceptable, yes?

Mr [?]: Well Chairperson, it is exceptable, however, I think what Mr Eglin is raising is also very important. May the technical advisors, whilst they are looking at that, to look at really where does

the contentious part of it is under ordinary legislation, under legislation they having bearing on Provinces and moneybills, etc., etc. So that when we revisit this issue, we could really get to grip with a contentious issue that you are having relating to those bills that Mr Eglin has referring. But I think that is where the main problem is.

Mr Chairperson: I think there be no harm in the technical team, you know, looking at the suggestion made by Mr Eglin, if it will help to clarify the whole process. It mean then that this matter will be looked at by our technical advisors and then it will be revisited. Is that agreed?

(Tape 4)

Well, I think what the National Party says is that all the sections dealing with powers and functions, is contentious, they do not disagree, I'm sorry, they do not agree with this. Although they do not spell out as Mr Eglin was trying to say that, that actually can't relate to those things. For an example lets see under ordinary bills. What of the things which are contentious, and which are the things we agree with. Under your money bills, which are the things which are contentious, which are the things that you agree with. Under your legislation, which has got a bearing to Provinces, what are things which are contentious and what are things which we agree with. Now, the issue was that the technical advisors should try and look at it and then try to put it on paper, come back next week and try to debate it. That was an issue. But having explain that Chairperson, if you look at 7 and 8 on page 7, those have got bearings on the powers and functions that we are saying are contentious and therefore, there's nothing that we can really discuss on that one. It will be discussed in conjunction with [?] of the powers and functions.

Mr [?]: There was a ruling about the powers and functions, and if I listen to what you are saying now, then I think it's [?] on the parties to stipulate where do we agree with the powers and functions because that's why we asked this meeting to be postponed to this morning. If we take it back to the technical committee, that's now my opinion, my personal opinion, then we are going to start all over again.

Mr [?]: Mr Chairman, I think Mr [?] is right, because we have decided that, to handle the power and functions with this method and I think we should do the rest of the Senate the same. First get the report from the technical committee to say what are the points of agreement and contention and then discuss that. It is just a matter of how we are going to handle with the situation where nearly everything is contentious and I think the entire Senate is contentious as far as that is concern. So it will be helpful on all aspects of the Senate the technical committee first of all stipulate where they think is agreement and where not and then we discuss that document.

Mr Chairman: But now when we go to the next it is also contentious and so if I may summarise then that the whole report of the Senate is contentious.

Mr [?]: Well, Chairperson I don't think that should stop us dealing with Section 49 onwards so that what remains is Section 50 only that deals with powers why is it Section 50, not to sure, but what should remain is that the powers and functions should be the key issue that we need to review seriously when we come back. But that should continue with Section 49 and

onwards. I mean those are nearly procedures and issues, I don't think we will have any problem there.

Mr Chairperson: Everybody agreed? Right. Any comments on Section 49 perhaps it doesn't [?].

Mr [?]: Except Mr Chairman, under 9, party discipline. There would appear to be agreement between the ANC and the National Party that there should not be voting along party lines in the Senate. There reasons may be different, but the principle would appear to be agreed on.

Mr Chairperson: So we regard that is not contentious, that's agreed upon. Right. Any comments on the President and the Deputy President? Do we agree that it's not contentious?

Mr [?]: Hang on, you to fast. Mr Chairman 9, party discipline and you said can we agree and it said agreed. How can you exhibit things which are not similar?

Mr Chairperson: What is actually entailed here is that both the ANC and the National Party has stipulated here, are in agreement that Senators need not necessarily vote according party lines.

Mr [?]: It doesn't say that, but the principle, Advocate, was agreed on. We don't agree with the fact that the executive should not be accountable, that we don't agree, but that we already stated. But we only agree to the principle that..

Mr [?]: Under what accord where it was said agreed?

Mr [?]: Precisely what Prof van Wyk said. That is that the principle, that a Senator should not vote along party line in principle is agreed.

Mr [?]: Mr Chairman you can not inforce that constitutionally and I don't think that should even be the part of the Constitution. Because, whatever the Constitution says you are still going to have decisions of important party lines. So the only time when you can apply that is when people are also allowed to cross the floor.

Mr [?]: Mr Chairman can the Constitution take away the right of individual how to vote. Suppose they decide to vote on the party line? You can't take that away, see that's my problem.

Mr [?]: Mr Chairperson, you can not deal with that in isolation. You need to deal with that with the rest of powers and functions obviously.

- Mr Chairperson: So leave that in the meantime. Let party thinks properly about that and we'll review that together with that. That's why I said lets continue with Section 49.
- Mr Eglin: Mr Chairperson I'm less concerned with what I call mother love, because whatever you write in the Constitution, political parties are going to behave in a certain way on issues. That, what I am concerned is like the ANC explanation, because they say in order to avoid voting on party lines, leave out that, the executive should not be accountable to the Senate. Earlier on they said the executive should not be accountable to the Senate. Can I just have a brief explanation of what that means in practice. What does it mean on the floor of the House. Because under Parliament we've said you can pass a vote of no confidence in the Cabinet and that includes the Senate, but what does it mean that the executive is not accountable to the Senate. Can we have an explanation on what it means?
- Mr [?]: Mr Chairperson that is why I say it depends what we agree upon when it comes to that. Because earlier on, you will remember that the ANC has been actually saying your Senators, the feeling is that they should be drawn from the Provincial legislation and that most of their work will be done there. They will attend a Provincial legislation debates, they will reason there, they will from time to time, then all Senators throughout the country will come to Cape Town. They will decide according to our sitting dates and all the time, but does they not, they shouldn't be based in Cape Town. So what we are actually saying here is that for an example at National level, your executive is accountable to them, to Parliament. That is both your Senators and your National Assembly. But in this case we are saying that if that be the case, if we agree with that, then your executive can not be accountable to a Senate in this case, but it will be accountable only to the National Assembly. So this is actually what we are trying to express, but you need to deal with a lot of other things to see whether we agree with that or to [?] first.
- Mr Eglin: Candidates my idea is that's not yet been formulated. We will just wait for all the....I've the ideal to germinate all to collapsed ought to be formulated.
- Mr Chairperson: 49. Technical Committee assumes that there is no contention. Do we agree with that? 49. Section 49 of the Constitution. Any comment on that?
- Mr [?]: Well I think the technical advisors are correct. No party raise there, but I don't think there is anything problematic in the case of the President and the Deputy President of the Senate.

- Mr Chairperson: Agreed. Section 50.
- Mr [?]: There is definitely contention there Sir, because we differ from the main party in the sense that they want the Senate to be a member of a Provincial legislator or the executive, whatever it may be, and we don't say that.
- Mr Chairperson: What do you say?
- Mr [?]: Completely the opposite Sir. We say that the Provincial legislator can elect a Senate, to the Senate, but it is not necessary that, that person who's elected should be a Provincial counsellor. It's the same situation if you got now with the Senate.
- Mr Chairperson: Any other comment? So the contention is that a Senator need not be a member of the Provincial legislation? Am I correct if I say that? The ANC believes they must. So that is the contention. Senator Groenewald.
- Mr Groenewald: Could I just ask the technical staff to also recall the Freedom Front is also in favour of the fact that the Senator must be resident in the Province.
- Mr Chairperson: Technical committee got that? Section 51 must be resident in the..
- Mr [?]: It's to a very much of a technical point. Going back to 49 that the President and Deputy President on the ANC's proposal will be persons who are sitting members of Provincial legislators or members of executive councils and we must just make sure that the Provincial Constitutions don't prohibit membership of the Provincial legislator if you hold an office else where. You know that is a disqualification so we just have to bear that in mind that the technical advisors can make notes of that. Do you understand the point I am making?
- Mr Chairperson: Section 51. Vocation of seat and filling of vacancies. Prof van Wyk anything you want to say about that?
- Prof van Wyk: Yes, Chairperson except that once we've then finalise the question of the recall we will lead to visit that, depending the question of recall which is still, I think it is a contentious issue at the moment.
- Mr Eglin: It is contentious because the ANC beliefs in recall whilst other parties don't.
- Mr [?]: Mr Chairman, if I may just share my difficulty with the Theme Committee members we might help the requirements of residents. If you then agree

that the Senators will be pulled from the members of the legislating [?]. If I live in the Northwest, I decide, and resident as a term of art, has been define, it's were one ordinarily goes every day after work. It is a legal term and I come to Cape Town, I am a Senator and that's where I work, and everyday after work I sleep in Cape Town. Where do I resident? Have I been disqualified by being transplanted from, once I become a Senator?

Mr Chairperson: No, I don't think that is what he meant...

Mr Eglin: Mr Chairperson this cropped up and also earlier on as to whether if you stood for office or the ordinary legislator of the Province, should you be linked to the Provinces some way or another. And I think the wording there was not orderly resident, but a registered voter in the Province concern. In other words, nobody has got to then make a value judgement. You either on the voters role or you not on the voters role. So I would say that our view is that you should be a registered voter in the Province which you are going to represent in the Senate.

Mr Chairperson: Senator Groenewald, will that meet with your satisfaction? Is that now clear to the technical committee? Well, lets go back to 51. We had that that's contention, because of the question of recall. Sittings of the Senate, Section 53.

Mr [?]: That's also contentious Sir, because the whole philosophy of the two parties differ, so it will have an effect on the sittings as well as the Senate.

Mr Chairperson: Then there is no agreement, it's contentious? Section 54. Agreed? No?

Mr [?]: There is great contention there Mr Chairperson.

Mr Chairperson: Now lets hear it, lets hear.

Mr [?]: Well you don't even have to hear I mean the footnotes that states it very clear that this matter might be contentious depending on the powers, that are given to the Senate. The IFP more or less follow it, that means that the corium as maintaining in A should then be maintain in the Senator as well, so it already tells you it is a contentious issue.

Mr Chairperson: We won't take not of that remark. When it comes to the Section 55. Everybody agreed?

Mr Eglin: Mr Chairperson just the clause 55 that we are looking at, implies equally to the National Assembly which we already have approved. So it's merely

a question to this whether the Senator should operate under the same immunities.

Mr [?]: Mr Chairperson I just have a little problem. At the moment if we can just go the Section 54. That footnote state this is a contentious issue. What would happen within the structure amongst those power present here, at some point in the future, agrees to whatever we want on that procedure and we still have the IFP outside. How are we going to deal with these kind of issues? Does that mean when the IFP ever comes back, that we have to revisit the whole question of this, writing of this constitution?

Mr Chairperson: I basically doubt that, because we are taking conclusions of the views of the IFP in our reports. So it is a question of them debating the issue in the CC and then thereafter in the Constitutional Assembly. Section 56 sitting when disqualified. I think we've agreed on a previous occasion.

Mr [?]: Mr Chairperson, before we get to 56. On Section 55 powers, privileges, immunities and benefits. Section 55(4) provides that to a member of the National Assembly and the Senate is also paid a salary. My question, the question is, and I think this is directly to the ANC, whether if in terms of their proposal Senator should still qualify for the same kind of salary benefit, as is in the current 55(4) or whether there is a different disposition there for Senators.

Mr Mahlangu: Yes, if we agree that we draw them from the Provincial legislation, for sure there will be a difference, because they will be paid that salary, or maybe for an example, allowances whatever the case may be, but the salary will be based on the salary of a Provincial legislator. Depending what other allowances you want to give them according to their powers and functions that they are having.

Mr [?]: Mr Chairman, but why does they are drawn and they become Senators, do they sisted to be members of the Provincial legislator, but they are Senators.

Mr Chairperson: Dual membership. Section 56.

Mr Eglin: I think there is very important principals involved here. If a person from the Provincial council is elected to the Senate. It means that he certainly fulfils a more important job, and he should be paid accordingly. Now it may happen the difference is so small between the two, that after he receive the allowances, the Senator might receive more than the member of the National Assembly and I certainly think that you should look at this in detail. He cannot just receive a salary of a member of the Provincial council.

- Mr Chairperson: Well, that is now a matter that we are going to revisited as agreed earlier on. So we'll sort that out when we have sorted out the rest of the contentious issues as far as they say.
- Mr [?]: It is not unknown that if you take the Dutch Senate for example Mr Chairman, that the Senators there get a daily allowances in the House of Laws as well, we know that they have a Royal [?] they sit as here, to make a continues effort to get to the House of Laws. You get paid on a daily basis, and that wont' be a new principle at all.
- Mr [?]: In any case Mr Chairman, when we think of this clause here, then the whole imitation was to safe. In other words, Senators should not get * double pay, the Provinces must pay them, finish and 'klaar'. But again these issues will be revisited Mr Chairman. Is there really been not finality on this matters? But I was thinking at the moment, is that we can safe a great deal of the tax payers money, by just having them being paid by the Provinces. That's' all, and not by the....
- Mr [?]: Mr Chairperson, why cant' we say who will get how much? That shouldn't be a Constitutional matter, that can be dealt by an act of Parliament.
- Mr Chairperson: Well, there is a Commission looking at the re-humanration of public officers.
- Mr [?]: That's right exactly. That Commission can take it over and recommend to Parliament.
- Mr Chairperson: Besides the saving aspect thereof, I would like to know at of some stage of the other from the ANC, how will this be practically possible for a Provincial legislator to come and sit here and legislate to and go back and legislate that side. I just see that it's going to be humanly impossible to operate that way. But Mr Mahlangu must explain when we revisit that. Section 57. Joint sittings, I think this is also something that we have agreed upon when we had finalised the functions and powers of the Senate whether there should be joint sittings or not. So it's not a point of contention, it's just something that needs to be revisit. Now, Section 58. Do we agree that it's the current Provisions? It appear so.
- Mr [?]: Except that I think in 58(1)D, the designation of preceding officers that joint sittings, that may, that's linked to the previous Section which we have agreed to revisit. Your issue is getting back to basics. The ANC's proposal for a Senate is not to retain the States [?]. That there not going to be Houses of equal stature and if I may take one step further, and please correct me if I am wrong, but that there will be a speaker of

Parliament, and we won't have actuation of the present situation where you have a speaker and the President of the Senate jointly running Parliament. Your intention is to change the present situation, or not? Or am I imagining, dreaming?

Mr [?]: We properly we will lead to that, namely that you will only have the President of the Senate or whatever. In other words, if the Senators are going to meet, they properly have to find a Chairman amongst themselves, to decide over that day, that deliberations of that day, for example. But I am not giving a different view here of the ANC. All I am saying that it may ultimately lead to that positions which you have just enquired now, namely of not having a permanent President, as we have Presidents here of the Senate.

Mr Chairperson: But earlier on you just agreed that there will be a President and a Deputy President. Now I don't understand my colleague now, if he says it, they lead to that. We've agreed on that already.

Mr [?]: I think we have agreed on the President and the Deputy in terms of a person who will be presiding over their meetings. Whether it be going to have the same state as the President of the Senate and the speaker of the House through controlling Parliament is another issue.

Mr Chairperson: That's another issue, but I means as far as a President and a Deputy President, just a few minutes ago, we agreed that there be a President and a Deputy President.

Mr [?]: Just to clarify them. Could I just, I have some problems here Mr Chairman, and that is, I don't exactly know what the ANC wants and of course I wasn't here last time, perhaps I missed something. But continually I find that there is this agreement amongst members about what the proposal really is. And could I just ask Mr Mahlangu, have you finalised this proposal, or are you still in a process of finalising the proposal? No I am not joking, it's a very serious question.

Mr Mahlangu: It is finalised except one or two things, where we say this or. For an example if you look at there, we saying drawn from the Provincial legislator or executive, we can decide on one of those things. You don't have to take or apply for both of those things. But I think what Dr [?] was raising, he was raising a very different thing, I think which we need to apply our minds on, that's all what it's for. I think he is raising a good point there.

Mr Chairperson: That's why I am coming back to the technical Committee. He say we must take note of that, that presently Parliament is being run by the

President and the speaker of the National Assembly. And this is something that we need to address. What do we want in the final Constitution. Anybody's got any ideas as to how we, how do we deal with that? The joint administration of Parliament and Senate by the President and the speaker, raised by Dr [?]. I think the technical Committee must just take note of that.

Mr [?]: Mr Chairman what does that mean? We just take note of that. It's for the parties to decide...

Mr Chairperson: To advise us as to how to we deal with it.

Mr [?]: No, it's for the parties to decide what they want. They must go and debate it and come with a party precession. That can't be passed to the technical committee.

Mr Chairperson: Are you dochy? When the Committee ask you to do something? Number 20, Senator, 'ek meen' Professor van Wyk, just lead us on this one. Other issues not addressed by parties. What do you want us to do about that?

Prof van Wyk: Mr Chairman, if you go to the list you will see that it was mostly drawn from the report on the National Assembly and this was done before the ANC's submission, second submission. You will see there is a thing on the summoning of the Senate, sessions of the Senate. The ANC know in terms of their later submission, see the Senate as a perpetual body, so I don't know whether the Senate will have sessions in terms of the ANC proposal, so that may be contentious. Determined the solution, if it is a perpetual body, it won't really, they always, its term may be contentious. Continuation of membership after the solution, there is a provision at the moment that a Senate, a member of the Senate and the National Assembly, continues to be such until the next election and the next Senate is convened, right of non-members entitled to be in the Senate, that's the question of a Minister for instance, sitting as [?] or the President even voting out of the preceding officer that may touch on what Dr [?] has just said. Committees that's the question whether there should be Committees, but also a point that was raised earlier about the inter-Provincial, inter-Governmental Committees which was now I think referred to, or stand to be revisited, the point made by Mr [?] earlier. Majorities for decision, there is a reference to this under the powers and functions and assent to bills there's also, by assent to bills is the question of the President. Assenting to bills past by the National Assembly and by the Senate, public access to the Senate has the same as public access to the National Assembly, that's the question. And the role of majority parties, which was also discussed under the National Assembly, there's

references to this under composition, appointment, elections, powers and functions.

Mr Chairperson: Can we just focuses that you've solved it please?

Prof van Wyk: So the point is, some of these issues, some of these issues may be contentious. They was merely listed because they haven't been addressed directly under the previous points, but they were dealt with under the National Assembly and, before, especially before the ANC's latest submission, many of these points where almost dealt with under the National Assembly, analogue to the National Assembly points.

Mr Chairperson: Now how do you want us to deal with it now? Summoning of Senate. Is there anybody that want's to comment on that.

Mr Eglin: Mr Chairman, can I just once again make our position clear, and that is, that where ever in our submissions, we do not refer to new submissions. We propose the present situation in the present Constitution. So actually it is not correct where it says that other issues not addressed by parties, we have addressed that and we proposed that the present situation in the present Constitution be the position of the party.

Mr [?]: I don't think Mr [?] understands what Prof van Wyk is saying. He says, this issues which you say you have addressed as the Nationalist Party have been addressed in as far is the National Assembly's concern. But as far as the Senate is concerned there's been no specifically address to these issues. I think that's what he is saying.

Mr [?]: Mr Chairman I did not react to Prof van Wyk. I just made it clear that where ever, we do not specifically propose something. We in general, and did he stipulated on all our reports. We, our poll of departure is the present Constitution. So as far as all these matters are concern, we propose that the present Constitution and the stipulations in present Constitution should be repeated in the final Constitution.

Prof van Wyk: Mr Chairperson, if I may make a proposal, Mr [?] and I have quickly looked at this list. Many of these issues are related to the dispute about, or the contention about the powers, functions and nature of the Senate, perhaps one should leave this. Look at, sort fundamentals out, come back to this list and see whether they are still relevant, or maybe they've been resolved in the process.

Mr [?]: I almost repeated the question of the Chairman earlier. Are we tired? Agreed.

- Mr Chairperson: Page 11. Any specific things that you want to look at or is it just a question of a, as being part of the report in general.
- Prof van Wyk: This is just the same format that we've followed with other... this is just a summery of all the submissions received.
- Mr Chairperson: You've heard Gentleman, this is just a summery basically of what was submitted to us by parties and by individuals. So will it be in order if I just go through page by page and then parties indicate whether they satisfied with their position as stipulated. Page 11? No comment, then we agree on that on page. 12? Agreed. 13, 14?
- Mr [?]: Mr Chairman, there we will look at the terminology of appointed elections again. That's 4.4.
- Mr Chairperson: Appoint and election. Remember, we've dealt with that earlier on. We must just make sure whether there was any submissions for appointments. And then delete that if that is not the case. 15? Agreed to. 16? 17? Agreed. 18? 19? Agreed to. No I am coming to that, but that's the letter on..... The last item on the agenda. Perhaps the Chairman must come back. Is notification of matters referred. What is exactly the status of this document? Can somebody explain? Is it matters that's going to come to us for our consideration or what is the situation? I'm very sure that everybody understands. You know that group in the corner. Mr Mahlangu, Mr Mahlangu, they are caucusing so loud now, they don't even understand what we are doing here. Can't you assist me.
- Mr Mahlangu: I apologise Chairman. You mean me or you mean them. Okay.
- Mrs [?]: Chairperson and members. These are matters that have been raised in reports by other Theme Committees to the Constitutional Committee. Members of the CC has been concerned that there's no normal referral process taking place. This is the first attempt by the administration to actually refer matters that get extra [?] from the other report from other Theme Committees. So that they are put on the agenda of the Theme Committees in this particular case in Committee 2. So for instance, when we are doing our reports, we should take [?] of this report here, and what, how we are going to see them in our reports for all reports. Maybe it should be necessary for us to actually submit reports that has been report, we know from which this things are extracted. I don't know, I send advice by members.
- Senator Groenewald: I think this is nearly administrative nature. Could we ask that they should refer to the core Committee.

- Mr Chairperson: A suggestion that it should be referred to the core group. Is that agreed? Just don't come next time round and say that the core group has dis-empowerd you. Another memorandum from the administration. CPM's this coming Saturday at Newcastle. How many members will they need.
- Mrs [?]: We need at least two members, but there more Mr Chairperson.
- Mr Chairperson: At least two members from our Theme Committee. Then there is [...] in the Eastern Cape also this coming Saturday. Mafikeng, also this coming Saturday. Newcastle I've stipulated already. Then the 17th of June, [Carnavon?], that is in the Northern Cape, Ellisras, that is in the Northern Transvaal on the 17th of June and [Umphluzi?], Eastern Transvaal, [Umphluzi?] is in Middleburg also the 17th of June. The Western Cape, George, the 24th of June, Free State [Mahukeng?] 24th of June and Kwazulu Natal the 24th of June. I belief the forms have been circulated to you, if you can just complete them who is available to attend. If it is a Rugby Cup Final. Okay Gentleman. Ladies and Gentleman this brings us to the end of this Meeting. Just to re[?] the technical Committee will now finish us at least by Monday with some of the clauses to be included in the new Constitution with the assistance of the other people, and then we go through them quickly again. And as you've indicated will go via Grove, so that if he is technically correct, so to speak. 'Die regsadviseer sal dan daarna gekyk het.' Thank you very much. I think we had a very good....
- Mr [?]: Mr Chair...just before we close. This is a problem with the CPM meetings. Not all the parties that goes to these meetings, and I think we need to have a position. I don't know whether this thing is voluntary or whether it is compulsive that people should go. And also amongst within the structure, it's just a certain number of people that always goes to these CPM's. And I think we need to adopt, some kind of a resolution that, number one, all parties must be involve in this whole process. And then we need to rotate it further, so that everybody participate in this process, please. I think it is important.
- Mr Chairperson: I attend to agree, because I always from this Theme Committee and then I don't see other parties being present at all and I think we must ask the administration to advice political parties as to how to deal with this matter instead of us discussing it individually here as a Theme Committee. Did you take note.
- Mr [?]: Mr Chairperson can I just take one minute of the members time? During the time when you left the core group met quickly with the CA medium. They wanted to come and have some shots, television shots, so that they can actually show the people how you are dealing with the matters in the Theme Committee. We had promise them that they should come at 2

o'clock. We thought that the meeting would carry on until 4 o'clock, but I think the members must know that we are now agreeing and I don't think we'll meet at 2 o'clock. I don't know what am I going to say to them.

Mr Chairperson:

No I think Mr Mahlangu, we must agree, it will only be for about five minutes. We must agree to come back here at 2 o'clock. What they basically want to do is that the public out there are wondering what happens to their submissions. Now we've been dealing with their submissions. Now they want to place a TV advert, where we deal with, say now, a specific topic, we read out that Mr Ndlovu have submitted this, and this is how it was treated by the Theme Committee.

Mrs [?]:

Just on the issue. I've got a problem for us coming back for five minutes and be artificial. You know, I think it would be appropriate for us to say if, I mean we finished early and look at the possibility of next week. Where we seriously engaged in our work, then we say they should come. You know it become to artificially, its not really speak. And I don't know is that the picture we try to present to the public. Is it of dealing with our work, then they should be here, whilst we preceding on the real issue and in a serious manner. That's my own feeling.

Mr [?]:

Mr Chairman, are they not available at present, because today's attendance is very, very good. It would really be good if they could come her this day in particular. Wait, wait, wait. How far are they, is it not possible to bring them in within the next fifteen minutes or so? It's only going to do one like me sitting here until 2 o'clock. Is it possible to bring them in here Mr Mahlangu?

Mr Chairperson:

[?] there's a question. Can we bring in the Media people now, or can't we?

Mrs [?]:

No but, Mr Chairman. It's artificial. It's really artificial. There's now work to be done now. There's really no work.

Mr Eglin:

I think I've liked to help the Media people, but equally I think they should go and discuss this management Committee. The issue is not that we are not aware. The survey shows that the public has got a suspicion or feeling that the public inputs, made at the various public participation forums, are not being considered seriously. Now I don't think you can do it by just suddenly we saying we taking a sit. You've actually got to find some issues that were raised there and they have to be taken seriously. In other words, I think there should be debate somewhere on some of the issues that have been raised, and the I think we can do a proper show. So and I would say, go to management, find a situation where we can

debate an issue which was raised, and then show that we are taking it seriously.

Mr Chairperson:

O, no, no. So it appears that the message you must ...

(Tape 5)

You actually got to find some issues that were raised there, and they have to be taken seriously. In other words I think there should be a debate somewhere on some of the issues that have been raised and then I think we can do a proper show. So I would say, say to the, go to management, find a situation where we can debate an issue which was raised, and then show that we were taking it seriously.

Mr Chairperson:

So is that clear that the message you must send to the media people, the Theme Committee are not ready. We are not ready today to meet with them to do their advert. They want the management committee to work out a proper approach toward the whole issue. So that we don't sit here, dealing with it artificially that we are posturing it, says the gentleman on my right. Is that quite, is that expectable to the [?] group? Okay. Thank you very much and thank you for the special attendance today.