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| THEME COMMITTEE | 6.2 |
| | |
| DATE OF MEETING | 10/08/95 |
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| NUMBER OF TAPES | 1 |
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| | |
| CONTENT OF ENVELOPE | |
| 1) PRINT-OUT | ✓ |
| 2) NOTES | ✓ |
| 3) TAPES | ✓ |
| 4) COMPUTER DISK | ✓ |
| | |

**Theme Committee6.2 - NRF Discussion
10 August 1995
Tape 1**

NOTES

0131:

Who is lady speaker?

0760:

Who is speaker? Is it Mr Jordaan

0783:

(inaudible) which you are talking about

0923:

Who is speaker. Is it Mr Jordaan? He is virtually inaudible.

0966:

(inaudible)

1417:

(inaudible)

2033:

Who is speaker (again inaudible)

3028:

negotiated ???

3063:

spotted ???

3225:

sit down ???

3245:

Who is lady speaker?

3398:

??? I'll be here ???

Theme Committee 6.2 - NRF Discussion

10 August 1995

Tape 1

Chairperson

...rectifying the final submission. If we look at page, it's just the FFC right? So you've got that document, the white one. If you look at the sort of submissions, pages 16 to 17, which we won't go through. Morning, Willie. You look at pages 16 to 17, block 43 is missing. We did it, but it's just not included.

Ms???

There are no numbers there, but it's block 43.

Chairperson

We have a block 43, so we need to sort that out. Block 43, we need to just put it back in again. We're not going to go through it. We've already gone through... Ja, it's not there. OK? I suggest what we do is the same as we did on Friday. I will read out the clauses here. I'll read out the parallel clause in the FFC. Morning, Barbara. I will also read out what Org Marais has said at the appropriate moment and mainly I think what we are concerned with here is your reaction at this point, Willie. The first clause reads: "Establishment. There shall be a financial and fiscal commission for the Republic. The commission shall be independent and impartial and subject only to this Constitution and the law." It parallels the clause which reads: "There is hereby established a financial and fiscal commission." Any comments? OK. Then I'll read out 2.1 up to the word "impeding". "The commission shall apprise itself of all financial and fiscal information relevant to national, provincial and local government administration and development. It shall render advice and make recommendations to the relevant..." and we inserted last

week 'legislative' "...authorities regarding the financial and fiscal requirements of the national, provincial and local governments in terms of this Constitution, including" and that parallels "the objects and functions of the commission shall be to apprise itself of all financial and fiscal information." We also made a small note to the drafters that 'apprise' is a bit of a sort of, you know, dent word, maybe there is another word, but anyway... "...apprise itself of all financial and fiscal information relevant to national, provincial and local government administration and development and on the basis of such information to render advice and to make recommendations to the relevant legislative authorities in terms of this Constitution, regarding the financial and fiscal requirements of the national, provincial and local governments including..." OK. Any problems with that part?

Mr Jordaan??? Mr Chairman, I just want to ask you. ??? which you are talking about, the ANC... (mike not on properly)

Chairperson Actually that's also... That's a note that they put on. I'm not sure we had 'mediatory' as a word. Did we...? There is the word 'mediatory'? Let's have a look.

Mr Jordaan??? I don't know if I understand the English correctly, it's a dispute.

Chairperson No, that's correct. That's what mediation is.

Mr Jordaan??? (inaudible) ??? Where is the word... "it shall then (inaudible)

Chairperson I am not sure we put 'mediatory' in. Shall we scratch

'mediatory'? OK, we'll scratch that. Thanks for pointing out a problem in our reflection of our submission, Willie. OK, then. Let me read out clauses (a) to (c) together because there is something in (d) that the NP wants us to take on board. (a) reads: "financial and fiscal policies"; (b) reads: equitable financial and fiscal allocations to the national, provincial and local governments from revenue collected at national level" and (c) reads: "any form of taxes, levies, we picked up imposts..." (that should be not 'imports') "...imposts and surcharges that a provincial government intends to levy" and the equivalent is almost exactly the same "financial and fiscal policies, equitable financial and fiscal allocations to national, provincial and local governments from revenue collected at national level, taxes, levies, imposts and surcharges that a provincial government intends to levy." Any problems? (d). We have a note that we have to put into place here that the NP has put in, another point here. (d) is the "raising of loans by a provincial or local government and the financial norms applicable thereto". That is actually exactly the same as the Interim Constitution. The note says we had a consensus. Org Marais wants to say: "FFC has controls over loans of municipalities. This is impractical. NP proposes that loan committee in the Department of Finance look after it." So maybe we should just shove in the end of note 7, if you could just insert this point here, Pat, or tell the drafters to insert this point.

Ms Pat ???

The proposal from the NP?

Chairperson

The NP. OK?

Mr Jordaan (inaudible)

Chairperson That's true. I think that what we should do is... At this point we are not, you know, as it were commenting on each other's points. We just need to make sure that they are all recorded. I mean, I agree with you on that as well. I don't think it is... And in fact they also agreed to it and we went through the table as well.

Mr Jordaan Just get the viewpoints on the table.

Chairperson We'll just shove the viewpoints down on the table because the next one of theirs... When we have finished this, I am going to ask you all if you can see where it goes because I can't see that it is valid, but anyway, let's just finish the clauses. (e) "criteria for the allocation of financial and fiscal resources" and (f) "any other matter assigned to the commission by this Constitution or any other law" and basically, the Interim Constitution is exactly the same. Now, do you have any problems with any of those last two clauses? OK. This is what they say, which I can't see how it's valid. Let's look to see if anybody else does. "Proposal somewhere in the FFC to look at how funds were spent by the provinces. Marais's opinion: trespassing on the Auditor General's domain." I don't see anything in those powers and functions that is actually trespassing on the Auditor General's domain myself, but maybe what we should do is, we should also just attach that note for the drafters. OK. Can we move on? 2. "In performing its functions, the commission shall take into account (a) the national interest, economic disparities between the provinces, as well as the population development needs, administrative

responsibilities and other legitimate needs of each of the provinces; (b) under provisions of this Constitution dealing with the allocation of revenue to the provinces", and this parallels the clause which reads "in performing its functions, the commission shall take into consideration inter alia the provisions of Section 155(iv)(b) and any other provision of the Constitution". We have an amendment to note 10, which came from the DP, which says that it adds on to note 10, "in the DP's opinion this clause cannot be agreed until the relevant section equivalent to Section 155(iv) has been completed". Any further comments there? OK. Let's move on.

Mr Jordaan??? (inaudible)

Chairperson That's what the DP is saying. Do you want to make the same comment?

??? I would like to learn a little bit more about that. (inaudible)

Chairperson All right. Can we just say in the DP and FF's opinion? It's the same? You agree with the DP? Have you got that, Pat?

Ms Pat??? I want to get it fully.

Chairperson All right. Then if we move on to Appointment qualifications – tenure and dismissal of members, here we haven't... We've all put forward different proposals, but we haven't reacted to these and some of these are actually distinct, so everything here is in a footnote. There was a... Sorry, Pat, I have to give that back. There was a change to the footnote here. Basically we refer this again to the law

advisers. The second paragraph, which says "the parties are not in agreement on these issues, it might be advisable to refer the matter to the CC committee looking at the formulation of an omnibus clause that deals with the appointments, procedures" etc. etc. Then it proposes a clause there and what we said was that, that actually wouldn't work for two reasons. One is that the CC subcommittee is actually moving away from the idea of an omnibus clause anyway so that this would not work for that reason. And secondly, even if there is an omnibus clause, it's a point I made in the subcommittee, was that the Constitutional Principle 29, or whatever it is, requires the provinces to have representation and it doesn't require this on the other bodies so that there has to be some distinction between the appointment process for the FFC and that for the other structures. So basically what we are saying is that, that paragraph there doesn't work, we should junk that part of the paragraph. The NP wants us to insert something here as well, which is a new proposal they didn't come up with before, "believed the composition of the board can be limited to not more than four or five people because of the role of the intergovernmental forum where you have the prime ministers and the ministers committees' of the provinces". I didn't realise that the NP was proposing a new name for the premiers, but anyway! Let's leave it at that! "...the prime ministers and the ministers committees' of the provinces involved are of the view that the Senate can play an important role here". I think we just attach that as a note for the drafters as well. That's the new proposal. OK? Willie, you happy there? OK. Then we have Reports. "The commission shall present regular reports to both parliament and provincial legislatures as may be prescribed

by national law."

(mike off for a while)

Yes, OK, that substitutes "The president may replace regulations regarding (a) procedures in connection with performance of any function of the commission and (b) any other matter in connection with the achievements and the objectives of the commission". That is the regular report. Other provision. There has been no agreement or discussion on these. Basically I think the parties made a variety of different proposals regarding whether the appointment procedures should be in the Constitution or in national law and then in terms of the details of the appointment and so on and so forth. Is that agreeable? Ja, I think that's the view of quite a number of us, but in any case, we haven't negotiated ??? OK. Is that basically acceptable? I think then with those notes from the NP and with all the other little points that were spotted, ??? and as far as I am concerned, well let's get some kind of mandate to reconvene on some issues which the committee has now spread down. We've done our work, I think it just remains for me to thank the two or three members that are here and the others that come regularly for their co-operation over these months.

Ms Pat???

I've got this thing now. What shall I do with it?

Chairperson

No, we dealt with that last time, but it should actually basically go out. This note here.

Ms Pat???

OK. We need a photograph next week. The Theme Committee. What day shall I...

Chairperson Oh, really? How long will it take?

Ms Pat??? Five minutes. I mean it's just to sit down ??? Class of 95, where he is sitting! (laughter)

Ms??? I won't be here.

Ms Pat??? You won't be?

Chairperson The whole of next week?

Ms Pat??? We can always have an inset for you.

Chairperson Is it not possible this week?

Ms Pat??? What about this week?

Chairperson What about Friday lunchtime, something like that. Are we not enough...

Ms Pat??? Friday lunchtime?

Chairperson I would suggest, what about quarter to two on Friday. We've got a Finance Committee meeting in B227.

Ms Pat??? Chair, I'll find out and I'll let you know. So Friday at 1,45 p.m.

Chairperson OK.

(off mike talk)

Ms Pat??? You said your wife was coming down!

Mr Jordaan??? She is coming down for the ??? I'll be here ???

Ms Pat??? So what time are you leaving on Friday?

Mr Jordaan??? I'm still negotiating it. On Thursday or Friday.

Chairperson What about 1,45 on Thursday then? OK? Send a substitute if you can't come, Willie. OK.

Ms Pat??? I'll let you know, I'll send the notice out today.

(off mike discussion)