

NEGOTIATING COUNCIL MEETING

20 JULY 1993

CHAIRMAN - MR R CRONJE

MATTERS RELATING TO THE IEC DRAFT BILL

[TAPE 1 - SIDE A]

Chairperson:

Then we will deal with the substantive issues and 4.4.1 is the draft Bill on the Independent Electoral Commission. Can we just ask the Committee ... can someone just ask the Technical Committee to ... you see there are some initial and some introductory remarks on the first two pages, pages that are not really numbered, just giving us a background and then we will start with the second draft of the Bill. Could I ask that in debating the Bill you take note of the many footnotes that appear there because in many respects it may be self-explanatory.

Mr Andrew:

I was simply going to suggest that when we start going through the Bill, the draft Bill, that in many places the Committee has obviously had to use improvised terminology because the final words and things are not, like Transition Council, Transition to Democracy Act and so on, and I would appeal to you Mr Chairman that we possibly agree that we don't argue about any of that terminology, National Parliament, other words like that, because in due course in terms of other agreements that's going to have to be changed to coincide with what we decide upon and it could take a lot of time if we start arguing what would be the better word to use at a particular time.

Chairperson:

But if there's someone with a bright idea about a word of course they can suggest it. But I take the point you are making. I think between the first and the second draft as it has been explained on the explanatory notes and on the footnotes, already some changes brought about by some of the decisions taken late has been brought about. So your point is well taken.

Mr Alexander:

Mr Chairman, I take the point made by Mr Andrew, but it might be better for us to come back to the stroke phenomena, because if we just take one set of terminology, it implies that already an exclusion of other options were just told to be discussed. I think in that way we may enhance the debate and once we have and once we have discussed the other matters fully we can then revisit the matter and stroke out the parts which is not relevant.

Chairperson:

I think the point made by Mr Andrew is that a lot of the terminology used is in terms of structures that have not yet been agreed to by us and will be subject to change where relevant. But I take the point you make. On your behalf hearty welcome to members of the Committee who are here.

Thank you very much for being here. We will immediately proceed with the Act, discussion of the draft Act. And as is usual in these cases, as you are well aware may ask questions, ask for comment, etc. Our ruling is, as you are also aware that we don't enter into debate with you but we just make suggestions, you listen, you respond to questions etc. OK, can we then turn to the long title of the Bill. Is there any comment? That is on the third ... yes Chief Nkonyana. That's on the third page ... it's not page 3 but on the third page of the second draft in front of you.

Chief Nkonyana:

Thank you Chairperson. Our comment is the improvement of the second line where it provides to assume responsibility for the Conduct and we would suggest that they should also consider the organisation and we are saying that that would be in line with provision article 16.1 because it would also be the responsibility of this Commission to organise elections. Thank you Mr Chairperson.

Chairperson:

Any comment from any of the members of the Committee? Noted. Mr Landers.

Mr Landers:

I was going to ask you to allow me to make my comment before the Technical Committee commented to Chief Nkonyana. It's also in relation to the second line and the long title. In sections 5 and 16, section 16 sub-section 1 ...

Chairperson:

Just repeat that. We are dealing with the long title.

Mr Landers:

Sure. It is also in relation to section 5 and section 16. 1 where it speaks of administering. Now that aspect is excluded from the long title, the whole question of the administration in the second line while at the same time further down it speaks of an Election Administration Directorate. And I was also just wondering whether the word administration, responsibility for the administration should also not be included there. It's just consistent.

Chairperson:

Yes. Thank you. Noted by the Committee. Do you wish to respond?

Mr Rosenthal:

Chairperson, no thank you. I think both those words organisation and administration should be looked at.

Chairperson:

Thank you. Any other comment?

Mr Alexander:

Mr Chairman, the words in the third line, National Parliament and/or Constituent Assembly etc. Just to ask the Technical Committee that whenever they talk about the elections in the body of the

document itself that they use it consistently with the long title for example when you come to Chapter 1 Elections means elections for and then Constituent Assembly is left out there whilst it is in the long title. On page 2 1.5 there again member of the National Parliament or members of SPR, Constituent Assembly is left out. So wherever they use the terms throughout the document if they could be consistent with the long title, then we don't have to every time say it when we go through the body of the document itself. Thank you Mr Chairman.

Mr Rosenthal:

I think Mr Chairman, it might be helpful to point out that the definition in 1.10 of National Parliament, refers to both Parliament and Constituent Assembly so that where the term National Parliament is used by definition we are also referring to the other concept.

Chairperson:

Do you go along, because the terminology being used is being defined in this section. So when you see the word National Parliament you must understand it against the way in which it is being defined under definitions.

Mr Alexander:

When we come to definitions we want to raise a problem with that definition itself Mr Chairman.

Chairperson:

The Committee notes the observation made by the PAC. Chapter 1 Interpretation and Application of the Act. Clause 1.1. Any comments on any of the definitions appearing on page 1? Agreed to? Mr Andrew?

Mr Andrew:

Well in substance it comes up later.

Chairperson:

Then we'll deal with it later.

Mr Andrew:

Well ... the Electoral Code of Conduct we believe should actually be part of an Electoral Act and not part of this Act, although this Act will need to refer to it.

Chairperson:

If the Act needs to refer to it then it's in order for it to be defined.

Mr Andrew:

Yes, except it will be defined in a different way.

Chairperson:

Page 2, clauses 1.5 to 1.9. Mr Titus. Sorry, Mr Schutte I forgot you just now, I apologise.

Mr Schutte:

I'm afraid so Mr Chairman. Mr Chairman, as far as the long title is concerned I would suggest that is the very last thing that one should attend to and for that reason we did not participate in discussions on that. I mean that is the result of the whole Bill. So I would suggest that that should be the very last ...

Chairperson:

We can come back to it.

Mr Schutte:

As far as page 1 is concerned, 1.3, we have a problem with the inclusion of Referenda in this. That was not a mandate to the Technical Committee. We are of the view that Referenda is a matter essentially for a Government to get opinions and it should be also done expeditiously. If it is done in terms of this it could cause it to be a very unwieldy and longwinded matter which is not in terms of the real essence of the purpose of such a thing. So we are opposed to Referenda also being included in this Bill.

Chairperson:

Would you like to comment?

Mr Rosenthal:

Mr Chairman, I think the reason that it is being included is that the Technical Committee contemplated the possibility that there could be issues bearing upon constitutional matters which should properly be tested and regulated under the supervision of the Commission. There is of course a Referendum's Act which provides for procedures for conducting referenda of a general nature in terms of the statutes. In this particular context we are talking of a referendum which would be conducted under the supervision of the Independent Electoral Commission and specifically in respect of a matter bearing upon constitutional issues.

Chairperson:

Would there be any value in terms of your explanation now then also to define what is meant by referendum in the definitions just as a thought? Since you do make a distinction between what your intention is here and general referenda in terms of the other Act.

Mr Rosenthal:

I think we should look at that Mr Chairman.

Chairperson:

Thank you. Mr Schutte.

Mr Schutte:

Mr Chairman, the essential point is that why we are opposed to adding referenda here is that we feel that referenda should be an instrument which could be expeditiously employed and that is the reason we feel that if it's incorporated here it could cause that instrument to be very unwieldy.

Chairperson:

Mr Schutte, if we accept that the Committee in view of the points made by you and the explanation given, re-look at this matter and bring it back in the next draft, will that be satisfactory and we can re-discuss it then. Mr Titus.

Mr Titus:

Before I deal with the matter that I wanted to deal with I would just like to react to what Mr Schutte had to say with regard to referenda. I just wanted to point out that this matter has always been in the drafts that have been prepared for us, the first one. But I am going back to 1.9 Chairman. Right at the end there is a reference to 11.2. I've got a problem that I am not sure whether that reference is correct and also ...

Chairperson:

1.9, you're referring to 1.9?

Mr Titus:

Yes 1.9. I am not sure whether that reference is correct. I request that the Technical Committee checks on that. And also if you look at 11..

Chairperson:

You mean the reference to the clause may be erroneous?

Mr Titus:

Yes, it may be erroneous. Also what I want to say about 11.2 is that it is incomplete. There are missing words there. Thank you.

Chairperson:

Noted.

Mr Rosenthal:

Mr Chairperson, I think there is a typographical error. The reference should be to 11.1.

Chairperson:

Right, so in clause 1.9 on page 2 last clause referred to, last line, last word, it should be 11.1 instead of 11.2. Does that make sense to you Mr Titus?

Mr Titus:

Yes. But 11.2 is still incomplete.

Chairperson:

Yes, we'll get to 11.2.

Mr Titus:

Thank you.

Chairperson:

Mr Webb. Sorry, Mr Maduna first.

Mr Maduna:

Mr Chairman, we would rather that in the definition of Referenda we are not guided by existing legislation for obvious reasons. Referenda conducted under existing legislation would exclude the likes of me for instance. I would rather that when we define referenda, we are very cautious about that. It would cause us problems. We do not want to believe that the Government would like to run another referendum which excludes the likes of me when in fact determining my future for instance.

Chairperson:

We have to accept that there is a Technical Committee dealing specifically with all forms of discriminatory legislation and one assumes that if there is any reference or prohibitions that that would be dealt with. But I think the Committee takes note of the point that you make Mr Maduna. Mr Webb.

Mr Webb:

Mr Chairman, I wouldn't like the Technical Committee to go away with a view that the South African Government's objection to including Referenda is the common view of this Council. Because I believe that the Referenda should be included in this legislation, but I think it should be fleshed out to provide for a speedy expeditious method of testing the will of the people. So I wouldn't like only that view to be conveyed and ask the Technical Committee to weigh it up from all sides.

Chairperson:

Mr Schutte.

Mr Schutte:

Mr Chairman, I would very much like to go along with what Mr Webb has said and just correct Mr Maduna to say that the present legislation makes provision for the incorporation and the election of people and by-people as the likes of himself.

Chairperson:

Mr Alexander.

Mr Alexander:

Yes Mr Chairman, I would like to just emphasise what Mr Webb says, that if we are going to talk about referendum in this document, that maybe the Technical Committee would have to give some added attention to how that referendum is going to take place so that we are very clear what we talk about, because it is conceivable that the Constituent Assembly or whatever body may want to call a referendum on the issue if they so wish and we should not say they must, but if they want to let them do so, there is nothing wrong with that. On the 1.9 under definitions, International Members, we see no explanation in the whole document as to what an International Member really is other than that he's from outside the borders. Are we talking about International Bodies or a combination of these bodies or representatives of these bodies as or ... or do we just

leave it to the subjective decision of appointing individuals? I think we must be very clear on this so that, especially when you say there's a role for the State President in this whole thing, these appointments, that we don't start pointing fingers again at each other once these appointments are made, as we had in the case of the SABC Board. So I think that as far as we are concerned we would like to see this definition of International Members being more clarified and we would see it more in terms of representatives of International Bodies, of one or a combination thereof. Thank you.

Chairperson:

Mr Rosenthal, I assume that your footnote 11 here referring to the International Community to a degree answers it, but would you like to clarify what your intention is?

Mr Rosenthal:

Mr Chairperson, yes, briefly. In the first version of the Act, which this Council has already considered, the concept was that certain International Organisations, notably the United Nations, the EEC, the OAU, I think there was a fourth one mentioned, should have a special status, and should by invitation be accorded the right to co-opt or second a particular person of their choosing to serve as a member of this Commission. Now, the Committee took note of a number of representations in regard to this issue and it also studied the transcript of the debate which took place previously in this Council and finally was persuaded that the better view, the view that seemed to enjoy more support was one in which those persons who were drawn from the International Community should in fact be selected and nominated by the Forum and should not serve by reason of secondment. And that was an important change that we have made. So that in this context we are referring to International Members as persons who would be selected by the Forum and nominated to serve as full members but without vote.

Chairperson:

Would we, however, assume that it will be from accepted recognised international bodies. Would you like to speak?

Prof. Davis:

Yes, Mr Chairman, can I just say that I think it needs to be read, 1.9, has to be read firstly with 7.1 that is the ...

Chairperson:

Mr Alexander, are you listening?

Prof. Davis:

... the fact is that the International Community people will be obviously essentially appointed by the State President upon the advice of this forum, so in many ways what we have attempted to do here is to allow the Forum to decide the appropriate international bodies etc. Insofar as Mr Alexander's comment about the SABC is concerned, I would just like to draw his attention, it might be helpful, to 3.2, namely that when we refer to advice of the Forum, the State President shall be obliged to act accordingly. So effectively it will be this forum or the Forum which will decide upon the appropriate international members.

Chairperson:

The point made Mr Alexander that 1.9 should be read together with 7.1 and you are quite correct the Committee's quite correct that the way they have ? done this is on the previous discussion which has taken place in this Council. Mr Maduna.

Mr Maduna:

Mr Chairman, I would like at this stage just to indicate that we are unhappy with the phrase without voting power, but we will deal with this issue when we come to the appropriate clauses dealing with it. Mr Andrew.

Mr Andrew:

1.7. As far as I understand it the Forum is no longer going to exist so there'll need to be some attention given to that.

Chairperson:

But in terms of your own observation at the beginning I think we should leave it to see how things develop. Whatever takes the place of the Forum. All right. Anything else on page 2? Yes Mr Schutte.

Mr Schutte:

Mr Chairman, we will address the question of International Members at a later stage when that arises.

Chairperson:

Can we turn to page 3. Clauses 1.10 to clause 1.14? Mr Schutte.

Mr Schutte:

Clause 1.11, we would like the word Political Party or Organisation to be added to that and then we would suggest that under 1.11 the last three lines are unacceptable. In other words if you're an employee of a political party then that is not regarded as political office. In other words you can then qualify to be on the Commission. I would submit that that's unacceptable. And then Mr Chairman as far as 1.12 is concerned, we have very strong reservations.

Chairperson:

Perhaps we should just deal with that aspect first if you don't mind Mr Schutte. You are saying that it's very difficult to be an employee of a political party without being involved in political activity and your first point was that one should include political parties/political organisations. But I think if we come to elections only registered political parties will participate. What is the response of the Committee to the observations made?

Mr Rosenthal:

Mr Chairperson, in regard to the first point, the question of adding the word organisation, I would suggest is probably not necessary because the term political party is itself defined in the next sub-clause and in the definition of political party there is specific reference to any political

organisation. So I think that the one definition is contained within the other. Insofar as the last three lines are concerned, as the footnote indicates the Technical Committee has made this addition on consideration of the position of persons who might simply be engaged in some sort of administrative work and where so employed by a political party, but that their employment did not reflect political activity as such. So we are trying to distinguish if it's possible between persons who are actually politically active and persons who are simply employees.

Chairperson:

A political party would hardly employ someone who is not sympathetic to its goals and ideologies. Mr Andrew.

Mr Andrew:

Yes, I would like to make two points. In respect of 1.11, I concur with the view of Mr Schutte given the people, the positions one is looking at filling here and in some cases they're very senior positions, one's not talking about very junior people, employees in political parties and it is hard to imagine a senior employee in a political party not having a very strong political affiliation and so we would think it would make sense to delete the words from but onwards. And in 1.12 we would like in the second line at the end where it says and including any political organisation we would like to add or movement and then at the end of that definition such participating political party, organisation or movement. Thank you.

Chairperson:

Mr Landers. Mr Maduna.

Mr Maduna:

Mr Chairman, we have a problem with the phrase political activity in the service of a political party whether or not involved in remuneration. What actually is meant by political activity? Because you have that problem. We would like to believe that we have a lot of people who have actually participated in the liberatory effort Mr Chairman, who therefore participated in political activities of the organisation such as mine, who will be fit and proper in our opinion to participate in the activities of whatever entities that we are talking about. Are we saying that merely because those people participated in political activities, no matter how those are defined, they shall be excluded? If so, we will have a problem with it Mr Chairman. Mr Chairman, may I just continue? Exactly because the other side of the coin is that you would have to think seriously about people who have served in Government at senior levels. Are we suggesting that because they have served in Government they too should be excluded? Then I want to believe that we are reducing drastically the pool of human resources from which we can draw fit and proper people to serve us in this process.

Chairperson:

Understand it as people presently employed or in the service in an official capacity of a political party. But Mr Rosenthal would you like to respond?

Mr Rosenthal:

Mr Chairperson, I think the concerns are self-evident from the clause. The purpose is to disqualify from service as independent Commissioners persons who have themselves held political office in the immediate preceding past. And secondly to make it clear that during their term of office they would not be entitled to accept appointment or nomination to such office. That it would be inconsistent, it would incompatible with the independence which is so important.

Chairperson:

This is in respect of the Commission itself. Mr Mahlangu.

Mr Mahlangu:

Thank you, Mr Chairman. Mr Chairman, I would like to attend to one point 11. In fact, my point had been raised by Mr Maduna, but I would like to supplement it in this manner that the definition as far as we are concerned is too embracing in the sense that who would suggest that it must only restrict office bearers of political parties or whoever, but if you just say any person involved in whatever position whether remunerated or not in political activity, you will find that all the people of this country, most of them if not 95 % have been involved in political activity in one or other way and you are talking of 18 months, the person who has been involved in the last 18 months or perhaps three years in some other instances. Now that's dangerous. The fact that we have been involved in this country in the liberation struggle or whatever activity in one or other way you would be disqualified. So here would appeal that the Technical Committee should look at the formulation that would only restrict the office bearers actually elected into positions or political parties or even governments and not necessarily any person who's just involved in political activity. We are all involved and everybody even at grassroots not even appointed is involved in political activity.

Chairperson:

I think that what we have to accept is that this definition refers to appointment of members of the Commission and it should be read against clause 6.1. The whole intention and objective of this Electoral Commission and its functions what are they. And it states very clearly in 6.1 that they are to be independent from political parties, from governments, because they are the people who have to make a decision on the validity and other aspects of an election that is being held. That is why we even ask that international observers should be part of it so that it is totally independent. So we're not just talking about appointments in vague generalities, but we're talking about the Commissioners who have to conduct, to administer, to evaluate and to assess the fairness and the freeness of an election amongst other things. And I think we must accept that we must try to have people as objective and unbiased to the satisfaction of all. And I think that is where the difficulty arises. Is that correct? Members of the Committee? Mrs Ginwala?

Dr Ginwala:

I think if you look at 17.10.1, the exclusion applies also ...

Chairperson:

Which clause?

Dr Ginwala:

17.10.1, it's on page 23.

Chairperson:

Page 23.

Dr Ginwala:

The exclusion applies also to the appointment and registration of returning officers, polling counting officers and electoral personnel. So it goes beyond the Commission, the Commissioners.

Chairperson:

Any further comment? Mr Alexander.

Mr Alexander:

Mr Chairman I start with 10.1 and before I talk directly about it let me say that the purpose ...

Chairperson:

Can we perhaps just finish this one? Would you mind holding? Thank you very much. Mr Mahlangu.

Mr Mahlangu:

Thank you Mr Chairman. Mr Chairman, I understand your comment, but it doesn't alter the argument. The argument remains we want to appoint a Commission. Now, this Commission must be appointed from the South Africans and almost all South Africans are involved in some political activity. So all you need is that at the time of appointment he must not be an office bearer or perhaps immediately thereafter. I can understand it. But just to say we want neutral people, you won't find them in South Africa, we are all involved in the struggle in a way, whether it be active, or perhaps underground or whatever. So we would still ...

Chairperson:

You'll have to come up first.

Mr Mahlangu:

Ja, even if we come up Mr Chairman at this stage, at this point in time, we are bound to come out then ... don't disqualify us by having laurels, restrictions on our previous activity. I mean, we are involved, it was because what was happening in the country that we were involved in such struggle. So we should only be penalised if we are still active now at the time of appointment and not some eighteen months or so. Because that is the definition so far as it's contained. I repeat it's still loose and it's too embracing. You need to restrict ... I mean the impartiality, the impartiality you need should not go beyond any person who is not an office bearer, but merely just a supporter. I mean a supporter will be involved in political activity, then we'll disqualify him. Who will be the Commission then? Even the people in the governments were involved in one or other way in political activity. Either advising or doing some other objects. I mean you can't have them being clean. Everybody's not clean. We are all sinners when it comes to that. Unless we just make it very clear that we restrict, we only exclude political office bearers at a certain point and not just vague as it is Mr Chairman. Thank you.

Chairperson:
Mr Andrew.

Mr Andrew:
Mr Chairman, this ...

Chairperson:
It's still on 11.1

Mr Andrew:
Yes. This Commission and the conduct of the elections are going to be of vital importance that people consider them to be free and fair and that people making critical judgements to, these people are going to have to make, have to be seen to be unbiased and independent and it really doesn't make any sense to suggest that a month before they are appointed a person in a high profile position in a political party can resign that office and then take appointment here and then expect the public at large to believe that they are going to be independent minded and impartial in their approach. But one does understand the difficulties particularly in the South African context and it may be that using the term public profile that people with a public profile within political activity, office bearers or otherwise may help to provide greater scope and yet still achieve the same objective and not end up with a situation where you look at your Independent Electoral Commission and you say oh well that person is from that organisation, that person is that party, etc. I think it's vital that as close as one has to a judicial situation that you achieve that here and maybe a public profile in respect to political activity could be part of the way of resolving this difficulty.

Chairperson: Mrs Sigcau.

Mrs Sigcau:
[UNCLEAR - MICROPHONE NOT ON]

Chairperson:
Mr Rajbansi? Mr Maduna?

Mr Maduna:
Mr Chairman, while we would agree that there must be a cut-off point somewhere, we would not be prepared to agree with Ken Andrew that a person who has a political profile has to be excluded. Because it still complicates matters. For instance, you have a teacher who is a member of the South African Democratic Teacher's Union who toyi-toyis today. Are you saying that tomorrow that teacher is excluded merely because he has a political profile. That's where the problem lies. Because where do you find a person who does not have a political profile at all. I think we should just ask the Technical Committee to investigate the feasibility of restricting this to office bearers in political organisations, movements and so on and so forth. And then of course maybe then we debate a cut-off point which we all think is reasonable. Rather than say that by merely being associated with political activities of one sort or another you are automatically

excluded. Or by having some political profile. I definitely do believe I don't have a political profile personally. But you can easily find that I am also tainted in many ways politically.

Chairperson:

You mean you are sitting here representing an organisation but you don't have a political profile. Mr Pillay.

Mr Pillay:

Mr Chairman, I agree with Mr Maduna there. I must say that the suggestion made by Mr Andrew can lead to further complications, because all our perceptions of what a public profile is will differ from person to person. And I think it is rather going to exacerbate the situation rather than help it. So I am not in favour of the use of that terminology Mr Chairman.

Chairperson:

Listen to Mr Maduna. It is clear that we must make a distinction. There is no human being or very few human beings who do not have political view and therefore you can't have person who is totally unbiased ...

[END OF TAPE 1 SIDE A]

[TAPE 1 - SIDE B]

Chairperson:

... the position with it. But I think we have had a very broad discussion and I think the Committee has listened to it very attentively and they will take all the comments that have been made into account in giving some consideration to this. Is that in order? Mr Alexander wanted to come back to 1.10.

Mr Alexander:

Thank you Mr Chairman. Mr Chairman here when we discussed the question of the Independent Electoral Commission, the concerns of the parties have been the levelling of the political playing field as you move towards the election. The concern has not been to be prescriptive about the future, but to leave it up to the Constitution Making Body to deal with the question of the future. Now, any reference in this Act that seems to be prescriptive about the future, we will have some problems with, because it will be exceeding of the original intention of bringing this body into existence. Under 10.1 the question of National Parliament we have not even come to that ... 1.10, we have not even come to that question. I would be much more happy Mr Chairman if we use the words maybe Constitution Making Body shall mean and then go on. But to talk about a National Parliament at this stage when we have not even come to that and to try and put a definition in this manner maybe going beyond what our intention was of just levelling the playing field for the election to draft a constitution. Thank you Mr Chairman. And then on 1.12, political party means so registered in terms of the Electoral Act and including any political organisation participating as such in the elections. If there could be a full stop after the word elections, we don't see the need for the rest of that sentence, publicly supporting or opposing the policies, anybody or any structure that oppose is also regarded as political party and the SACC say they oppose the views put forward by the National Party, then they are also a political party because

the opposed somebody's view, that type of thing. We think that we can't understand all the implications of that last part. If after elections you have a fullstop there we would have satisfied the intention.

Chairperson:

Mr Schutte, sorry Mimosi.

Mr Mimosi:

Thank you Mr Chairman. My problem is actually rather closer to what Mr Alexander refers to. I've got a problem Mr Chairman with the words in the second line of 1.12 and including a political organisation participating in the elections. My question is will there be other organisations besides political parties that will be participating in the elections.

Chairperson:

Mr Rosenthal.

Mr Rosenthal:

Mr Chairperson I think that we are intending to remove from doubt any question as to the categorisation of parties or organisations who put up lists of candidates. Whether they style themselves parties or in some other manner for purposes of this Act, they are deemed to be electoral parties.

Chairperson:

Are you saying that it is possible that political parties are confined by the provisions of this Act in some way or the other, but there could be a political organisation in support of that political party which would then not be bound by the provisions of this Act and in a way be able to circumvent it. Is that the thinking behind it?

Mr Rosenthal:

I think Mr Chairperson, yes. This Act has application to political parties in a number of ways. Notably the proposed Code of Conduct which will be binding on all political parties ... our concern is to bring within the ambit of the Electoral Code and the jurisdiction of the Commission and its Directorates also those organisations who although they themselves do not put up lists are nevertheless supportive of the cause or the candidates or the policies of one or other competing party.

Chairperson:

Mr Schutte.

Mr Schutte:

Chairman, I was also going to refer to 1.2 and the words including any political organisation, 1.12, and including any political organisation participating as such in the elections. Now the implication of this is clearly that there are two sets of rules. That you can participate without being registered in terms of the Electoral Act. Now we are very strongly of the view that all parties participating in this election should be subject to exactly the same rules. That you do not

have two sets of rules and two sets of participants. All participants should be subject to the same rules. And as far as this is a departure from that very important principle, it is totally unacceptable to us. Mr Chairman, as far as 1. 10 is concerned, I think Mr Andrew made the point earlier that the terminology should be looked at very closely and I think we need the inputs of legal advisers as far as that is concerned, but this is one of the terminologies that should be looked at. I think the term National Parliament is a new term that is not known to us and I would rather have the term Parliament. I leave it at that Mr Chairman.

Chairperson:

I think if you look at the first footnote there it gives some explanation of why the terminology National was used as to make it distinctive from possible parliaments at SPR level. Mr Titus.

Mr Titus:

I just want to add to what Mr Rosenthal has said with regard to the definition of Political Party. Mr Mimosi, I am talking to you.

Chairperson:

So you are talking to the Chairman.

Mr Titus:

Through you to him. He is not listening. Sorry Chair about that. What I wanted to point out is when defining the term political party, we need to bear in mind one thing and that is that this definition has got a number of purposes, objects or aims. It does not only cover those parties which are going to participate in the next election or whatever, it also goes a little bit further in that it is used also in those clauses which with things like the appointment of the Commissioners and the lot. So that is why it is so wide as to cover those matters not pertaining directly to the elections. Thank you.

Chairperson:

Thank you very much. Can we move on then having listened to everything to clause 1.13? Is there any debate? Outside the meeting. Mr Mentz. No we're on 1.13. Do you still want to say something on 1.12?

Mr Mentz:

[INAUDIBLE - MICROPHONE NOT ON]

Chairperson:

Mr Rosenthal.

Mr Rosenthal:

Mr Chairperson, I think what is intended here is that all political parties/organisations who put up candidates will have to be registered. However, within the context of this Act we are proposing that the term political party should include organisations who have not registered or put up lists, but who nonetheless are active in support or in opposition of other parties.

Chairperson:

Mr Mentz, is there a possibility that you have a registered political party who've put up candidates and participate in the election in order to be elected, but you could have a political organisation who itself do not have candidates, but are participating in the election in support of that registered political party.

Mr Mentz:

[INAUDIBLE - MICROPHONE NOT ON]

Chairperson:

It's political organisations who does not have candidates of its own, but it is participating in the sense that it is in support of a political party which is distinct from it and which has put up candidates.

Mr Mentz:

[INAUDIBLE - MICROPHONE NOT ON]

Chairperson:

Mr Rosenthal.

Mr Rosenthal:

Mr Chairperson, I think the Committee will take note of the concerns expressed and look at this wording and see whether it can be improved.

Chairperson:

Thank you very much. 1.13. Mr Andrew?

Mr Andrew:

Yes Mr Chairman, just on that, surely the Electoral Act is going to define who can participate under what conditions and then arising from that it will affect this definition one way or the other.

Chairperson:

OK. Thank you. 1.13. Mr Rajbansi?

Mr Rajbansi:

We need clarity Mr Chairman in respect of in the service of the State is that restricted to employees only? Because I have a 9 comment to make once I get that clarification Mr Chairman.

Chairperson:

It's this reference to public servants in other words. Only. That's the question. Mr Rosenthal.

Mr Rosenthal:

Mr Chairman, it's a broad phrase and it certainly includes employees. I would suggest it might include others who would not be correctly ? as employees but are nonetheless appointed by the State to particular office.

Mr Rajbansi:

Mr Chairman, then we have to make a distinction between political office bearers and employees. And if we examine the intention of 1.11, then it places political parties that are not in control of statutory structures at the moment, in a disadvantageous position. For example, you have, for example NEC's who are appointed as political office bearers, but who are not members of a political party. I believe Mr Chairman that 1. 13 must be examined in such a way that there must be a clear divide between political office bearers and employees of the State and also I believe that there shall be, there should be no disadvantage or any advantage gained in respect of making a comparison. Those who hold public office in terms of this definition and the holders of political office in terms of 1.11. I believe that if a person for example holds according to the explanation given a political office bearer's position and is not an employer of the State then he must be classified in the same category as we classify the people who are holders of a political office.

Chairperson:

Would this also include or is it the intention that this must also include for instance a parastatal with its own Board and a person who is professionally appointed as an Industrialist to do industrial development, being paid and remunerated by the parastatal, but in fact is not a public servant and really holds no political view.

Mr Rosenthal:

Yes Mr Chairman. I think it would include such a person and the intention behind the provision you will recall is to both ensure that during their service as Commissioners they should not have any other appointments in the public purse, if you like. And furthermore that having served for a period of time they should not be eligible for reward. I think that the underlying theme of the prohibition on appointment to public office after an election is to create some period of time at least, during which people who have served as Commissioners should not be eligible for such appointments.

Chairperson:

Any further comment on 1.13? Mrs Finnemore.

Mrs Finnemore:

Mr Chairperson, could the Technical Committee just clarify that definition in terms of university employees as well as in the judiciary. How would they effect those people being appointed to the Commission?

Mr Rosenthal:

Mr Chairperson, certainly the judiciary would be included within the definition of public office. As far as universities are concerned, I believe that they are probably independent institutions, constituted as such and that the fact that the State provides them with their budget I don't think would cause their employees to be part of this definition.

Chairperson:

Mr Landers. Can someone just come and try and help it seems we've got a problem with some of the ... [INAUDIBLE]

Mr Rosenthal:

... yes Mr Chairperson, I think it does that.

Chairperson:

Can we move to 1.14. Turn the page. 1.15 on page 4 1.16, 1.17, 1.18, 19, 20, 21. Page 5, 22, clause 2 Application of this Act. Mrs Finnemore?

Mrs Finnemore:

Mr Chairperson, I just wondered if we could perhaps talk about an addition to these definitions. In Chapter 6, page 24, they make a differentiation between a Monitor and an Observer, then they have a footnote explaining that difference in definition. Now I just want to know why are those not included here in the definitions. Because it is quite an important differentiation.

Chairperson:

Mr Rosenthal, conceded?

Mr Rosenthal:

Mr Chairperson, I think we agree.

Chairperson:

Will you look at it? Thank you. Mr Webb.

Mr Webb:

Just a technicality Sir, and we are going back to 1.22 ...

Chairperson:

No we're at 2.

Mr Webb:

I know that, but if you could allow me to be retarded yet again this Act includes the regulations published thereunder or prescribed thereunder? Published seems to me to be the more accepted use.

Chairperson:

All right. Thank you. We are still at 2. That was progressive. Mr Webb, it was retardation, but it was progressive.

Mr Webb:

Thank you Sir. Dr de Villiers would have said I caught his pass Sir.

Chairperson:

Mr Schutte.

Mr Schutte:

Mr Chairman, are we now at Section 2?

Chairperson:

We are Clause 2.

Mr Schutte:

Clause 2. I would just like to refer to my previous comments about Referenda and I don't want to repeat it.

Chairperson:

Clause 3.

Mr Schutte:

Mr Chairman, we would argue that this is in actual fact superfluous as any legislation in any case binds the State. And no action ? goes beyond legislation can be valid.

Chairperson:

Mr Mothibe.

Mr Mothibe:

Mr Chairman, I feel the last line of 3.1 should be deleted. In that these words are rather too vague and probably in conflict with the supremacy of the Constitution.

Chairperson:

Any further comments? The Committee notes it. Mr Maduna.

Mr Maduna:

Mr Chairman, from the point of view of my organisation, I think we need to stress that the first Independent Electoral Commission would be appointed by, on the advice of our forum. I think we need to stress that. Then we can leave the future to the future itself.

Chairperson:

This clause actually gives it, virtually the power of the Constitution. Prof. Davis.

Prof. Davis:

Mr Chairman, I wonder if I can just respond to that and to what Mr Schutte said. It's perfectly true that in fact one does have an override of power here and the reason for that is simply this that insofar as the election is concerned the mandate that this Committee had was that the IEC be solely and ultimately responsible for the election. That insofar as the election was concerned, yes it would have sole powers or it would have ultimate powers. It doesn't mean that it's got ultimate powers for everything in relation to the Constitution, only in relation to its mandate otherwise it would clearly be justiciable in anything other than that. We in the Committee did not consider this clause superfluous, simply because we felt that the clause made sure, that insofar as the election

was concerned, if there were constitutional conventions, if there were other regulations or legislation which in fact could conflict this Act, would trumpet accordingly.

Chairperson:

And who is the Commission ultimately responsible to?

Prof. Davis:

Insofar as the election is concerned, it has ultimate responsibility. If it exceeds its powers pursuant to this Act, clearly then it would [TAPE NOT VERY CLEAR] have acted *ultra vires* this statute.

Chairperson:

Thank you. 3.2. Yes Mr Maduna.

Mr Maduna:

Mr Chairman, I have just been instructed to plead with you that we go back to paragraph 2 for a few seconds and maybe reiterate the position that was raised, that was spelt out by Mr Alexander much earlier. Our feeling, Mr Chairman, is that whilst National Parliament is defined in 1.10 quite correctly, the tendency is in our opinion towards putting more emphasis on what we believe is a secondary role, namely the role of an interim legislature. From our point of view, the elections Mr Chairperson, are about electing a Constitution Making Body. That is the primary role and the attention to be paid to whatever legislation that would have to be made in the interim is a secondary role, a person reading it who may not be as sophisticated as some of our lawyers may be, may not refer to 1.10 to find the definition. It may cause some problems when people say what are we electing? Are we electing primarily a Constitution Making Body which would have a secondary role, the role of an interim legislature or are we electing a National Parliament with Constitution Making being a secondary role. It may cause some problems. Maybe the Technical Committee would have to look into how it would actually you know work into this. The necessary balance Mr Chairperson.

Chairperson:

Mr Maduna I am sure you agree that the format of the draft Bill is in accordance with the normally accepted way in which Bills are written and the average person doesn't read Acts because he doesn't understand it. Your point is noted, I think your point is noted. We are dealing with 3.2. Any comments on 3.2? Mr Moji?

Mr Moji:

Mr Chairman, the rules of interpretation provide amongst others that where it should be given the ordinary meanings, now in 3.2 we've got the word advice and accompanying the word "advice" is a statement that the State President shall be obliged to act in accordance with advice. Why should we call it advice if its obligatory on him to act upon, why shall we call it advice?

Chairperson:

Do you want to call it instruction?

Mr Moji:

I want to call it what it is Mr Chairman.

Chairperson:

Perhaps the rules of protocol says you don't instruct the State President, you [INAUDIBLE] ...It's noted. A spade is a spade. Can we turn to page 6? ? that is 3.2 - Mr Alexander?

Mr Alexander:

First of all just to say that we concur with the sentiments expressed by the previous two speakers and just one point Mr Chairman if you will allow me to just go back to the footnotes here about 2.2, it says this redrafted section makes provision not merely for the first transitional elections as originally phrased, but also for all future elections in respect of will be national and the SPR legislatures. We have a problem with that Mr Chairman. Our concern from the beginning is that we want to level the playing fields and that is why we want to establish this Commission and then there must be a Constitution Making Body. That body then will look into further Constitutional Matters to try and bind ... be prescriptive at this point of even the future dispensation and that is I think going beyond our original intention with the establishment of this structures and the rules underlying these structures. Thank you Mr Chairman.

Chairperson:

The position of the PAC is clearly noted. Can we turn over to page 6. Chapter 2 Clause 4 Establishment of Commission. Any comment? Clause 5 The Object of the Commission. Mr Andrew?

Mr Andrew:

Mr Chairman this is the point that impacts on various things in this Act. It is our view that the basic and in fact as many of the rules and regulations should, as possible, should be in the Electoral Act and in this Independent Electoral Commission is primarily ensuring that the Electoral Act is correctly and fairly implemented and certain other functions including the conducting and supervising and so on. But all within the terms of an Electoral Act which we still have to agree upon and discuss and agree upon. We would like therefore somewhere in this Clause 5 to have reference to these various activities as being subject to the provisions of the Electoral Act. It is not a free ranging activity, it's within the confines of an agreed Electoral Act. Thank you.

Chairperson:

Mr Maduna.

Mr Maduna:

Mr Chairperson, we have a problem with the phrase responsibility for the creation of conditions conducive to free and fair elections. We would like to believe that the area of levelling the playing field and creating the necessary climate for free political activity and eventually free and fair elections should better be left in the hands of the TEC. Maybe then we have got to find a way to reconcile the competing areas of jurisdiction of the two, but certainly we don't think it is a primary responsibility of the Independent Electoral Commission to create the climate.

Chairperson:

Would you like to respond to that Mr Rosenthal.

Mr Rosenthal:

Mr Chairperson, I certainly would like to think about that. It may be resolved by reference to the Commission acting in liaison with the TEC, but I think we could find a form of words which would satisfy that.

Chairperson:

It seems to be a good suggestion. Mr Schutte.

Mr Schutte:

Mr Chairman, I would like to express agreement as far as what Mr Maduna and Mr Andrew has said. As far as, the one ... the way we see it, the main object of the Commission is twofold - one to supervise and co-ordinate the various election structures and those are the three the one responsible for the conducting, the one responsible for monitoring and the one responsible for adjudication. But the second very essential purpose is that of certification and that has not been clearly set out here. I would submit Mr Chairman, that these are the three, the two essential purposes of this Commission and that is not clear from the objects. Secondly I would like to argue and that not only refers to this clause, but also further on is that one cannot be the judge in your own case. You cannot have the sole responsibility for conducting elections on the one hand and also have the sole responsibility on the other hand of judging whether you conducted that election in a fair and free way. So there has to be first of all an independence between the three structures of the election, namely the conductors or the administrators, the monitors and the adjudicators on the one hand, but there have also to be some arms length between the Commission and these three structures and I believe that Mr Chairman that that which is essential is not being reflected in this clause and also further on in the Bill.

Chairperson:

Mr Landers.

Mr Landers:

[INAUDIBLE] ... It's absolute sabotage. Anyway taking into onsideration the comments that have already been made by previous speakers and looking at the way in which Section 5 is placed before us - would it not be appropriate to have itemised the objects within Section 5 which would make for easier reference and easier reading rather than to contain them in a large paragraph such as we have before us?

Chairperson:

Mr Rajbansi? Mr Pillay?

Mr Pillay:

Mr Chairman, may I suggest that for the sake of consistency with the opening statement in the Act that the Technical Committee consider the use of the word organise and organisation under the Objects of the Commission as well.

Chairperson:
Noted. Mr Ndlovu?

Mr Ndlovu:
Mr Chairman, as for the concern raised by Mr Schutte with regard to the issue of the independence in [INAUDIBLE] of on the one hand conducting and on the other adjudicating. One has to refer him to Clause 16.4 where its stated that these sub-structures under the Commission shall be independent of each other. Even if they're accountable to the Commission in the ultimate. But the membership [INAUDIBLE] are not necessarily the same as that of the Commission. So there is a degree of independence.

Chairperson:
Mr Titus?

Mr Titus:
In line 9 Chair references [INAUDIBLE] use of the word candidates is made and I would like to find out whether in a system of proportional representation this term is appropriate. Bearing in mind that in Section 17.4 the draft goes a little bit further in that it says candidates eligible to be listed. I think there might be a problem.

Chairperson:
Mr Rosenthal?

Mr Rosenthal:
Mr Chairperson, certainly it is contemplated that in the Electoral Act there will be criteria which determine the eligibility of candidates. Is that clear Mr Titus? That's the normal way.

Mr Titus:
I am talking about the term candidate itself. Is it appropriate in a system of proportional representation.

Chairperson:
Yes very much so.

Mr Titus:
Thank you.

Chairperson:
Can we turn to page 7 clause 6. Independence of the Commission. Chief Nonkonyana.

Chief Nonkonyana:

[INAUDIBLE] Chairperson, we are having a problem in reading and understanding 6.2. Probably our problem there are so many commas there but our problem is compounded when we are reading the last three lines. Start with such bodies, sub-structures and organisations shall be accountable for such of their Act and then we would like to know whether there is no typographical error there. To us it is not clear at all what is intended there.

Chairperson:

It seems to me what it means is that all powers that those mentioned bodies have had will be subject to the powers of this Commission and the powers of the Commission and the powers conferred upon it by this draft Bill will override those that exist in those structures at present-time. Is that correct? Correct. Thank you. It just means that this Act will apply there. And whatever applies there at the moment will be subject to the provisions of this Act. You have a problem with the wording or the interpretation? Chief Nonkonyana?

Chief Nonkonyana:

Sorry, with the wording Chairperson.

Chairperson:

What specifically?

Chief Nonkonyana:

[INAUDIBLE] for such of their Acts.

Chairperson:

Yes. Just repeat Mr Landers.

Mr Landers:

I think what Chief Nonkonyana is... if you'll forgive me again ...

Chairperson:

Which line?

Mr Landers:

It's the third line from the bottom.

Chairperson:

Third from the bottom yes.

Mr Landers:

And organs shall be accountable for. why can't it just read for their acts? Why does it read such of their acts? It's terribly cumbersome.

Chairperson:

Shall be accountable for their acts and decisions? So the suggestion is to delete for such of, instead just to say that they shall be accountable for their acts and decisions. Is there a reason Mr Rosenthal?

Mr Rosenthal:

Mr Chairperson, I think it's necessary to qualify which of their acts and decisions are subject to the Commission. What we intend is that it should be only such acts and decisions as influence or affect the elections. And so whatever form of words we choose here I think our intention is that they are not subject to the Commission in all their acts and decisions, but only as such affect the elections.

Mr Landers:

Perhaps a reformulation would be in order Mr Chairperson.

Chairperson:

You know lawyers always formulate things so that we ordinary people can't understand. But if it's legally correct ... the request is just look at it and make sure it is the right one. Professor Ripinga.

Prof. Ripinga:

Thank you Chairperson. I would like to comment on 6.1. The first sentence there reads the Commission shall function without political or other bias, but if one looks at the last part of the last sentence, save as may be here in specific or otherwise stipulated and that brings the bias, because by whom will that issue, that part, that stipulation be brought about. So I have got a problem with the last part.

Chairperson:

Does that not refer to the difficulties that we had in earlier discussions. I think the Act clearly states as far as political involvement and bias is concerned. What is specifically exempted Mr Rosenthal?

Mr Rosenthal:

Mr Chairperson, the Commission is in respect of many of its acts decisions entirely sovereign. However, in respect of for exam financial matters the budget which it has available to dispose t suggestion is that it is subject to this forum or its successors the TEC for approval of that budget. So that would be an example. I think the phrase at the end save as may be here in specifically otherwise stipulated, is not intended to refer back to bias. I think it's talking more about the powers and the relationship of the Commission as independent.

[Speaker not identified]

I fully agree with what is said, but it might have differ interpretation on the ground by administrators.

Chairperson:

But I think one should always read the Act as a whole.

Mr Rosenthal:

Mr Chairperson, if I may interject there, I have a suggestion which may resolve it and that is the addition of a semi-colon after the word bias.

Chairperson:

After the word?

Mr Rosenthal:

After the word bias in the first line. I think that would make it clear that the saving applied only to the other matters.

Chairperson:

Thank you. 6.3.

[Speaker not identified]:

Sorry Mr Chairman, I would just like to go back to 6.2. I may be wrong, but maybe the Technical Committee can clear this problem up for me. I am wondering whether the word effect is correct - should it not have been affect?

Chairperson:

Effect in which line?

[Speaker not identified]:

In the last line of 6.2.

Chairperson:

Effect you mean it should be an "a"? Affect. It's a gremlin. Thank you for pointing that out. 6.3.
Mr Schutte.

Mr Schutte:

Mr Chairman, if I may just return to 6.2 and indicate that in our opinion the words, the whole wording of that is extremely wide and may also be vague and we would like to have a very good look at that and perhaps come back with some advice on that.

Chairperson:

Mrs Finnemore.

Mrs Finnemore:

Mr Chairperson, I just want to get back to Mr Schutte's previous point he made under 5 about the independence of this Adjudication Directorate. I'm just wondering that if possibly a clause couldn't be inserted under 6 referring to the independence of the directorates within this Commission. If that was one of his concerns?

Chairperson:

Thank you. Could the Committee look at that? One would assume that not only the Commission, but the directorates will all have to be impartial. 7, page 8, clause 7.1, 7. 1. No we're on page 8, but if you have an important point please make it.

Mr Landers:

All right, on 6.3 again it's the Technical Committee must forgive me, but it reads again rather clumsily. It says the Commission shall be obliged to submit ... should it not read the Commission shall submit periodic written reports etc. to the Forum or simultaneously to the Forum which makes it simple reading. I mean that in itself is obligatory.

Chairperson:

The Committee agrees with you. Thank you for that Mr Landers. Professor Ripinga.

Prof. Ripinga:

Mr Chairperson where are we now? 6.3 - it's just the question of consistency. Just at the third line there where we have to the Forum or its successors in terms of that section. That we delete Transitional Council, Parliament where it appears in the other clauses. So that it's consistent.

Chairperson:

That's a suggestion. Thank you. We are now definitely on page 8.

Prof. Ripinga:

Mr Chairman, I am still on 6.3. The word simultaneous - I don't know exactly what it means.

Chairperson:

Spontaneous, simultaneous - it means at the same time.

Prof. Ripinga:

The report will be submitted simultaneously to the various ? I don't know whether they will be tabled at the same time in terms of ... I don't know ... delivery in terms of the real time ... I really don't know what it means.

Chairperson:

It means that once the reports have been completed and it has to be delivered to certain people it will be given to them within reasonable period of time, not to the State President today and to the Forum the next day and to the National Parliament the day thereafter, whatever is there. I think it is difficult to express it any differently.

Prof. Ripinga:

I was to suggest that the Technical Committee relook at that word again.

Chairperson:

We can ask the Technical Committee to look at it. We are now on page 8, 7.1. Gentlemen, we have to move. Yes Mr Moji.

Mr Moji:

Yes Mr Chairman, we are moving, but ...

Chairperson:

Forwards and backwards.

Mr Moji:

In 6.3 Mr Chairman. The Commission is being obliged to submit reports for the Forum. My question relates to the supremacy, sovereignty, and whatever of the Commission. Will the Forum have the right to do anything about this report? Or is it just for their information? Because I understood that this Commission is so big and so supreme and so everything, so if they bring back the report to this forum, is it for any purpose whatsoever?

Chairperson:

I think it is just to report. That's correct is it not? It is a report of what is taking place. A formal report.

Mr Rosenthal:

Yes Mr Chairperson, I think the only power in reality which the Forum retains is the power to control the budget.

Chairperson:

Thank you. Page 8, Clause 7.1. Mr Alexander.

Mr Alexander:

Ja, Mr Chairman, I want to speak on Clause 7.1, but just a comment on what the gentleman said who spoke just before me. Initially when we had in mind a Transitional Authority we thought that all these Commissions would report to them, because the word Commission means that somebody has conditioned you and therefore you must reply, you must be accountable to the one who has commissioned you, but the way that the whole thing is now turning out it seems that we are establishing little authorities rather than commissions. But nonetheless, the composition of the Commission - obviously Mr Chairman all the various Technical Committees we've established around various commissions in the transition will, they meet separately most of the time and they do their work in that way and obviously when they bring their work before us as a Council we look at the first Committee, first Technical Committee report and we express our opinions and when we come to the second ...

[END OF TAPE 1 - SIDE B]

[TAPE 2, SIDE A]

Next Speaker:

We said the heading was "Appointment of the Commission" and we said that each member of the Commission including the Chairperson and the Vice-Chairperson, shall be elected and appointed

by the MPNP/TEC and such appointment shall take effect from the date of publication of a notice in the Gazette and I think maybe we should be consistent in this regard as well Mr Chairman and take the same approach so that with all the Commissions, particularly this one, we can take the same approach as the one we took yesterday. Thank you Mr Chairman.

Next Speaker:

Mr Chairman earlier on I did indicate that I would like to comment on a phrase that was in clause 1.9. Here it is, in line 12 of 7.1, but we would like to [INAUDIBLE] our observations Mr Chairman, through you, to the next phrase which is in line 13, but maybe let's start with the which says they shall have no vote. Mr Chairman it is our believe that the international community which has had a keen interest in our problems and in our efforts to resolve our problems in this country would help us in many ways to lend credibility to whatever we are trying to achieve here and Mr Chairman, we would like to believe that it is accepted that the essence from the international community we are talking about are going to be appointed in their own individual and personal capacity as experts to help us in resolving these problems. Mr Chairman we have a difficulty in saying however that they shall have no vote and in also saying that they shall not constitute part of any required forum, because Mr Chairman, we want to believe that it is critical that the international community is involved through these persons in the resolution of these problems, so that, for instance, when we then turn round, all of us, to say to the international community that the elections have been free and fair and they have been held in appropriate conditions for free political activity and therefore we are asking the international community to lift the sanctions of all dimensions and forms. The international community shall have associated itself in one way or another and through these people in this process. Now, to say that they have no right to participate merely because technically they are not South Africans, Mr Chairman, would create some problems for us. We would like to be able to say to the international community with your assistance we have solved these problem, we would like to be able, also Mr Chairman, to say to the international community that we have nothing to hide and you have given to whatever we have done, the necessary international [INAUDIBLE] to what we have achieved and therefore their participation right up to the point when the elections are certified as having been free and fair or otherwise, is critical Mr Chairman.

Chairman:

I think in all fairness, the Technical Committee has really carried out the instructions and wishes of this Commission, because we started of with the principle and we said that international people should not participate in this debate because it is, in this forum or any of our forums, because it is a matter for South Africans to decide upon, that they should participate, they should have a say that they will be able to speak, they will be able to advice, but in the final analysis it is an issue which South Africans should decide upon. So I am not arguing against what you are saying here, you have the full right to do it, but I want to say what is contained in here was un conformity with the view and the principle which was established by this Forum which, of course, could be changed.

Mr Alexander:

Mr Chairman I just wanted to say that when the question of the international participation was first raised, I think I don't have all the documentation with me right now, but I think we took it up

to the level of the Forum and there we took a decision that the question of debating how issues effecting us is primarily a matter of South Africans themselves that in so far as the international people participate, it will be to assist. Now, the position that we take as a party, Mr Chairman, is that these people of the international community who are part of the Commission should not have any voting rights. We should not ask them to decide between the PAC and the NP views on a issue and side with the PAC and then tomorrow you find the NP does not have confidence in going to them on the same matter, because yesterday they sided with the PAC view and took a clear position. It might also be asking to much for them because they, if they come from the Commonwealth there might be different views in the Commonwealth and you might ask then, which is the disadvantage saying to him that here on a pure technical issue which could be done in different ways, choose between these two and on behalf of his, as a person he might not want to do that. I think if they fully participate in the process, in the debate, in the discussions, that is enough. We would like to see them slightly trying to play a role even between us and trying to assist the process rather than to become wholly immersed in the discussions itself and even where there is serious deadlocks to become part of the problem with a UN guy who are sitting there, siding this way, the OAU person siding with this one, that type of thing. I think the way it is written here, we are quite comfortable with their non-voting capacity of people of the international community. Thank you Mr Chairman.

Mr Rajbansi:

Mr Chairman, I agree with the sentiments expressed by the PAC but the manner in which this clause is worded, I am just to refer to the following sentences: "and who represent a broadest cross section of the population including women on condition that the composition of the Commission may also include as additional members". I think we should clarify in the wording whether they are representatives of the international community shall act in an advisory capacity or not, but of course, even if a person does not have to vote, but if you give them all the rights and privileges, prerogatives of another members of the Council, so in the one sense you say they are additional members, then you try to make a distinction just in respect of voting, but by even participation in a discussion, one can also, shall I say give opinions for and against, for example, the PAC. So I think that concern of Mr Alexander extends beyond whether they have voting rights or not. I think Mr Chairman that there might be a need to rephrase this particular clause in such a way to make such a distinction more clear.

Chairman:

If you just carry on a few lines further, does that not do it? It is the right to receive notice of, to attend, to speak, participate at all meetings but they shall have no vote.

Mr Schutte:

Chairman we are all in favour of international involvement especially by way of observing and I have no doubt that the international community will play a major role in this regard and I think the one aspect that we must take into account is that we are dealing here with a Commission With vast powers. It is almost a super government and almost stronger than any government powers that one can wish for and to involve them very closely in that is totally another matter and for that reason we have reservations about the involvement of the International Community in the Commission itself. We will again have a clear look at that and also the way that it has been

phrased, but I would just like to place on record that there are also other ways in dealing with this matter, for instance, one could look at an advisory committee of international observers who could advise the Election Commission, but at this stage we are not totally happy with the involvement of international representatives even as suggested.

Mrs Quiba:

Thank you Mr Chairman, I am on 7.1, the third line where it say the State President shall appoint these members on the advice of the Forum. My question is whether the word advice is to be interpreted as meaning that the ultimate say lies with the President. The Forum submits names whereby the State President will ultimately make his choice. Is that how it is to be interpreted?

Chairman:

Can anyone from the Committee help?

Committee Member:

MR Chairperson we have tried to eliminate this problem about what the advice of the Forum means by the terms of clause 3.2 which says explicitly that the act is binding upon the State President and that he is obliged to act in accordance with the advice of the Forum, she/he has no further or independent discretion.

Mrs Finnemore:

Mr Chairperson we just like to support Mr Alexander but to add to that is that if one looks at the United Nations' monitors that are here with the Peace Accord, they value their independence, they don't want to sit in our Committees to have a vote, they sit on your Committees just to hear what is going on and perhaps to facilitate but they certainly don't want to get involved in having a vote because then they co-opted into your system. So. I think we are trying to say should they have a vote, they won't want a vote, they will be given in their own independent reports on how they see this election, so I think we are debating over something that they wouldn't want any way.

Mr Motibe:

Mr Chairperson I want associate myself with the view expressed by Mr Alexander. It is important for us to appreciate that the International Community are here to advice or help us to achieve the desired result. They are not here to prescribe for us and it is obviously therefore not necessary for them or rather, they are not required to vote in anything. If they do vote, Mr Chairperson, they shall be prescribing to the people of South Africa, what type of government they should have or what type of a result should come for the people of South Africa, they will be prescribing instead of helping us to achieve what the intention of the people is in this area. The result is that if the International Community have to be here and participate, they should rather act as observers, if not observers, they only participate to the extend of leading us to the conclusion and just before concluding, if an election has to take place it should be the election of the people and by the people of the territory.

Mrs Mangope:

Mr Chairman, I just didn't want that whatever what Mr Maduna said, especially regarding voting, should be left unattended by the Council. It is quite clear that we cannot allow the international

participants to vote and I don't know whether there is any precedence in the world that allows other people from other nations who act in an advisory capacity to settle a vote and I think it should come out very clearly it is not a matter of requesting the Technical Committee to deal with the matter, it is something that has already been decided upon that international participants will not have a vote.

Mr Pillay:

This piece of draft legislation goes to great lengths to ensure that there should be objectivity in the Commission and so on. Now we have a situation we are going to invite international observers, obviously people from organisations which enjoy considerable status, and obviously people of international repute. My feeling is that either we have them there and give them all the powers that other members of the Commission have or don't have them there at all. I don't think that it is correct to really give to the second class status on the Commission and therefore I would like to motivate on the same basis as Mr Maduna that the last bit of 7.1 be deleted, starting from the word "but".

Chairman:

Mr Pillay perhaps you have identified the problem when you said we don't want to treat them as second class citizens, the problem are that they are not even citizens. Mr Mentz.

Mr Mentz:

[INAUDIBLE]

Chairman:

So you are saying that women will be eligible voters, they are members of a broad section of the population and having said all that you still want to mention that. What about the Traditional Leaders. So you are making a plea that it is covered by other wordings, all right.

Mrs Finnemore:

Mr Chairperson, referring to that phrase including women. I would like to propose that this amendments, that that reads "including equitable representation in terms of gender", because the point is here to ...

Chairman:

What is equitable?

Mrs Finnemore:

Well this is the point, the Committee is going to decide. Equitable representation in terms of gender because that is the whole point, is to make sure that there is representation and my motivation for this is that the way this Forum is going we might find that we only have women on the Electoral Commission and we wouldn't like to discriminate against men. So let us now have equitable representation in terms of gender.

Chairman:

Let's have a good Commission. I don't care who they are, OK. Mr Maduna.

Mr Maduna:

Mr Chairman I would like to come back to my point. Firstly a question was asked whether or not there have been instances where the international Community has participated directly in the manner I suggested in an election. Mr Chairman I need not side to the example of Zimbabwe where [inaudible] conducted elections. I need not side the recent case of Angola where the United Nations participated directly in conducting those elections. I need not side the recent case of the liberation of Namibia, Mr Chairman, where once again the International Community participated directly in the conduct of the elections. Mr Chairman let us accept that in South Africa we are not dealing with a normal situation, we are dealing with very peculiar circumstances where, for the first time in the history of elections on [inaudible] where 80 percent of our population are going to be participating. We are actually parting ways as it were with history, Mr Chairman, during which as a deliberate state policy these millions of people have been excluded. We would like to believe that there is logic and it is advisable, Mr Chairman, that we respect that logic that the International Community must participate directly in these elections and certify together with us at the end of the day that indeed we have embarked upon a process of remaking our society. Mr Chairman if this International Community has assisted us so much in remaking this country through the struggle against apartheid, I find no logic in excluding it when eventually the table is laid and we are thirsty. I can't understand it Mr Chairman. If there are precedents where the International Community has directly conducted elections as I have sided some of the examples. What we are asking for here is not that they should conduct the election for us but that they should participate fully like other members of this Commission in the work of the Commission and at the end of the day vote together with us and help us in promoting a New South Africa, internationally and say indeed we are satisfied that these elections were free and fair. It happened in Angola, it's not the International Community that decided to defy the result of the election it was those who were not prepared to accept the results of those elections, who became problematic. We are saying in our instance it is important for them to bring the conflict, participate in bringing the conflict in our country to the end Mr Chairman and it will be a fitting manner to accord them all the rights that we shall accord, especially, Mr Chairman, because they actually shall have been appointed on our advice. I beg to differ with Mr Alexander that they would be seconded to us by the International Community. We shall have to agree here, who are these experts and I would beg to differ with other speakers as well, Mr Chairman, in this regard that in fact they are equivalent to observers. I think they have a highest task as members of the Commission and the question is, are you according them full membership of the constitution and therefore full rights, rather of the Commission and therefore full rights or are you according them [inaudible] rights and at the same time pretending that they are full members of the Commission.

Chairman:

It's clear that there are diversions of opinion on this issue. Mr Titus.

Mr Titus:

Sir I also wanted to contribute to this debate but I want to approach this issue from a different angle. I just want to look at the figures. I want to draw your attention to the figures. It is stated there that the maximum numbers of the members of the Commission will be eleven. The upper ceiling in so far as the people from outside is concerned is five. So which then effectively means

that when it comes to voting, will be entrusting a momentous decisions to six individuals and if you look at the section dealing with the [inaudible] it is also acknowledged that those six may not be there all the time. So which therefore, effectively means that you may end up with only four people voting and taking a decision on such important issues. I would rather prefer that when we look at the question of whether they should be given the voting rights or not, also bear that in mind.

Chairman:

Is it not between 7 and 11 + 5, 7.1, not less than seven and not more than eleven members and then you've got an additional five.

Mr Titus:

The way I interpreted it as that the upper limit is eleven.

Chairman:

Between 7 and 11. Not less than 7 not and more than 11 + 5. All right but the principle you make is an important one, irrespective of the figures. Chief Nonkonyana.

Chief Nonkonyana:

[INAUDIBLE]

Chairman:

Someone has got to decide sometimes. I think we have really canvassed this issue of international participation, to some degree and there are clearly two points of view, so if there are still those who wish to participate let us make it brief. I don't think we will be able to take it much further than we have been able to. Mr Schutte.

Mr Schutte:

Very briefly, Mr Chairman, I believe Mrs Finnemore is correct and that is that the International Community wouldn't want to supervise electoral process in South Africa and I refer you to the decisions of the General Assembly of last November, in which guidelines were set for member states regarding involvement in the electoral processes of other countries and it is clear from those guidelines that their supervision is not to be undertaken in sovereign countries.

Mrs Mangope:

Mr Chairman, you know, increasingly in the Council we have to be careful about reconciling what we do. Only, I think two weeks ago, during the Forum, this very Council, in the state of the Forum, dismissed somebody who as an international person and was not suppose to have been part of the Negotiations. So how do we reconcile that factor to what Mr Maduna is actually suggesting and I think nobody is actually arguing about the participation or the status of the participation of the international participants. We are quite clear that they have a very important role to play. What we are differing about is whether they should have the vote in this Committee or not and I think we cannot allow them to have a vote in this Committee based on what we have already said and already the sentiments that have been expressed.

Mrs Sigcau:
[Inaudible]

Chairman:
I eluded in the beginning, to the principle adopted by this Council that this is the issue for South Africans to be solved for this issue and therefore foreigners should not participate. We actually adopted that, be that as it may, this is a different matter. Mr Slovo.

Mr Slovo:
Mr Chairperson I think we can't take this debate any further. The issue is crisp and simple, we can't even ask the Technical Committee to go back and reformulate it, they have got to be guided by us and we obviously are in a state of indecision. I have not got a mandate on this question. My own personal predilection is not allow foreigners to participate in basing decisions, but it is something that I would discuss with those who entered the debate here and I think perhaps we should come back to it. So I would suggest we move on and let everyone think about the inputs that have been made.

Chairman:
And the consequences and the implications. Mr Landers.

Mr Landers:
[INAUDIBLE]

Chairman:
At the time it was not.

Mr Landers:
[INAUDIBLE]

Chairman:
I think the answer lies that we all go back, we do our homework, we look at the implications. This is a very fundamental decision, it's not just one of those things, it's a fundamental decision and I think we should think about it very carefully and also carefully consider the consequences and implications of whatever stand we take. Is this in order can we move forward. Seven, 7.2.1, 7.2.2.

Mr Schoeman:
Mr Chairman when we debated, yesterday, the Independent Media Commission and the IBA it was stated that it is not necessarily so that all members ought to be full time members. Some members it may be possible that they must be part time members, so therefore I would argue that the full-time would be a problem, as far as that is concerned and if that is the case, then to say to the exclusion of any other employment or occupation makes it then very difficult for any member to serve on a full-time basis, for instance, then not have any other employment a lawyer, a farmer, a businessman or whatever. So, I would like the Technical Committee to just reconsider this issue.

Chairman:

I assume this refers to the period in which they are members of the Commission, whilst election, leading up to the election. Is that correct, but after that surely if he is a lawyer he can return to his practice.

Committee Member:

Oh indeed, he should do so.

Chairman:

If he wishes to.

Committee Member:

Mr Chairperson I think the concern, the reason why this phrase is kept in here, is a concern that has been expressed that these Commissioners who have an enormous job, there are only 11 of them maximum, during the period of their office, should in fact not be distracted by any other commitments.

Chairman:

Perhaps we should just clarify it, make it a little bit clearer in this particular clause, to say; for the duration of their responsibilities on the Commission or something to that effect. Mr Schutte.

Mr Schutte:

Mr Chairman I want to speak in support of Mr Schoeman and say that I think to state there that it should be a full-time capacity, is actually to limit it. One need not put in full-time, it maybe, it may turn out to be full-time, but it may turn out not to be full-time. I think it would be unnecessary limiting to put in "full time"

Chairman:

It is noted, Mr Andrew.

Mr Andrew:

Yes, Mr Chairman, I think that it is something on which this Council should decide, because when this is all past, we then have to, within this Council, or this process, decide who we want to be on this and we then have to approach various people to make themselves available, and unless one has decided the nature of the commitment required, you can either end up excluding a number of people who could otherwise be eligible, because you envisage it is going to be full time, or secondly, one could find that one hampers the effective and efficient functioning of the Commission because a number of people accept on the basis that it is not going to be full-time. I think we should, I think it's different from the media and the broadcasting thing, I think we are looking for, we are looking at a specific period and so on and I think we should be deciding, otherwise its virtually impossible for an individual to know whether he or she is in a position to make themselves available to serve on a body such as this.

Chairman:

I think the question is just whether, surely when you approach a person you know exactly what they are suppose to do and you give them instructions. It seems to me that the only issue is whether it should be written into legislation or not, but surely if you appoint a person to serve on a Commission as we have asked members of the Technical Committee, ourselves, indicated to them what their responsibilities and the time that will be required could be. So clearly when you appoint a Commissioner it is possible to say you must accept and understand that this will require your full time attention. So, it is very clear at the time when you approach the person, so it seems to me the only point here is not the aspect raised by yourself, but should it be in the legislation.

Mr Andrews:

But I think the point, Mr Chairman, that you are missing is that maybe somebody makes themselves available, under the impression that it is not going to be full time and the in fact they constantly having to give apologies when the work of the Commission is underway.

Chairman:

Then I appoint you and say that you must accept that it's full-time, we can't have a false impression, but let it be as it may

Mr Andrews:

But thank God you are appointing everybody Mr Chairman.

Mr Slovo:

Mr Chairperson it seems to me that we should leave the formulation as it stands. it should be full-time with particular emphasis to the exclusion of any other employment or occupation, because once you leave that out you are projecting the possibility of a conflict of interests, whether it's a person whose on the Stock Exchange or a person engaged as a trade union organiser or whatever, and it seems to me that these Commissioners have to be full-time and during the term of their office, which is what the section says, must act to the exclusion of any other employment or occupation.

Chairman:

It seems to me that we perhaps just qualify full-time for the duration of their term of office, that might help. 7.2.3, it is for the consideration and reporting back, I don't think we will be able to resolve it here, 7.2.3, Mr Mentz.

Mr Mentz:

Chairman I want to come back 7.2.2

Chairman:

We have just passed it. Do you want to add anything that hasn't been said.

Mr Mentz:

No, I want to raise just this question when this was last discussed and in the minutes of the Negotiating Council at the time, it said "The Technical Committee should clarify if this item, which is 7.2, apply to judicial officers as well". Now I want to know whether that in fact, does

this refer their public office here, is that also referring to judicial offices, had they looked at that, could we just get an answer.

Committee Member:

Mr Chairperson, yes, the Committee has considered the special position of judges and as the clause is presently formulated and the definition serving judges would not be able to serve as Commissioners during their period of appointment, so it would presuppose that if a sitting judge were to be appointed he would have to relinquish that appointment during the term of his office as Commissioner.

Chairman:

7.2.3, Mr Rajbansi.

Mr Rajbansi:

Me Chairman when we are enquired that the definition of public office, it was explained that public office does not only mean employees, but those who are serving in the political arm as political office bearers, and I believe that if we going to restrict, those who held political office and exclude political office bearers, then we are giving somebody an advantage and somebody a disadvantage and I want to suggest to the Technical Committee to consider what I have expressed.

Mr Andrew:

I didn't quite follow Mr Rajbansi, so I hope I am not repeating it.

Chairman:

He said it must be expanded to include political office bearers.

Mr Andrews:

Well it is political office bearers, it should be expanded to include public office. So, in 7.2.3 we believe that who has held political or public office should be excluded and we are only talking now about the Commission. We are not talking about all the people who may be involved in the election.

Chairman:

So, you wish to include public office.

Mr Andrews:

Yes, in 7.2.3.

Mr Schutte:

Chairman we are all acting under the naive supposition that there are heavenly, non-partisan creatures that are totally non-partisan and impartial and have no ties whatsoever. I would just like to put in a side that the Council should consider that we should perhaps move away from that and get proper persons their whom we know who they are. I am not to certain that such impartial people are really available.

Chairman:

So you are speaking of descendants of Adam and Eve. Post paradise. 7.3.

Next Speaker:

We would like to reiterate our position on 7.2.3 and also maybe link it up with 7.4. 1, because I think they refer to the same thing, also with 17. 10. I because in our view we thin this disqualification on the basis of political office will actually restrictive, especially to the pool of Blacks to choose from, who have participated in the liberation struggle, in view of the definition which was given as to what is meant by political activity, and in view if this we think that the Technical Committee should have a look at this disqualification as we think it will be very difficult to get people whom you say are politically neutral in this country to serve in the Commission, and in our view the exclusion or the disqualification could actually be extended to also those who served under the apartheid government and thus the pool will be smaller and smaller.

Chairman:

Thank you for that, can we move on to ...

Next Speaker:

No, Mr chairman, I want to get back to 7.3. 1 have a difficulty. In 7.2.3 a person who holds public office can hold that office up to the time of his appointment, but if he holds political office it's 18 months. Now my difficulty lies in the following, you know take the case of a judge, you appoint him, he is a Supreme Court judge, you appoint him but after his appointment he is disqualified for a further 18 months, he cannot get back to his original public office. Now, that to me is a contradiction.

Mr Rosenthal:

Mr Chairperson I think the point is well made and I would like to give it some thought.

Chairman:

You mean you will report back at the next occasion. Anyone else on 7.2.3, can we move on please. 7.3, 7.4., 7.4. 1.

Mr Andrew:

Mr Chair we note the comment about the change of the various time periods, but we believe that this one should remain 36 months after serving in this capacity, because again I am thinking in terms of the objectivity and so on and I think the issue of judges needs to be looked at separately, but we would propose that it is 36 and not 18 months in this particular paragraph.

Chairman:

7.4.2, 7.4.3, 7.5. Mrs de Lille.

Mrs de Lille:

Chairman we want to propose that the same criteria apply like, that we used yesterday for the Independent Media commission to 7.5.

Chairman:

Can we just have order please. That is noted. Did the Committee catch that. Would you please repeat that Ms de Lille?

Ms de Lille:

Under 7.5 that reads "The State President acting on the advice of the Forum shall designate two members of the Commission as Chairperson and Vice-Chairperson respectively. What we are saying is that yesterday when we discussed the Independent Media Commission, we have said that..[side B]..and we want to suggest that we use the same criteria for 7.5.

Chairman:

7.6.

Mr Andrews:

Mr Chairperson I crave permission to go backwards, I am very sorry to do this. I am only concerned that following the debate and the diversity of opinion which has been expressed in relation to this matter of public office and political office, as to whether this Technical Committee is going to know what to do with this concept, because we have heard both points of view and I am not quite certain where we go from there.

Mr Schutte:

Mr Chairman I think that is a very relevant point, and I think we will have to debate that after we are finished with the discussion on the clauses, as to how we go further. I am hesitant to suggest, after the experience of this morning, that we could leave the Technical Committee on its own. I believe that if there is a case to be made out for a sub-committee of this Council, possibly to look at this matter', then I think it could possibly be in this case, but I don't think that we could at this stage decide how we should go about.

Chairman:

7.6. Your point is well taken Mr Rosenthal and attention will be given to it. Page 11, 7.7. Clause 8, 8.1, 8.2. Mr Andrew?

Mr Andrew:

8.1, I am not certain whether at the end of the first line one shouldn't have something like "or otherwise" it tends to imply that the only certification they will be giving is that it is free and fair whereas in fact it may need to certify that it isn't free and fair.

Chairman:

So you are saying that it should include the words "or otherwise".

Mr Andrews:

Well its worse [inaudible] ...to an end it can in respect of certain, if it is partly free and fair it can make certain suggestions, but if at the end of the election it decide it has not be free and fair that also means that it has completed its mandate.

Mr Rosenthal:

Mr Chairperson as we drafted this provision, unless the Committee is satisfied that the election has taken place in a manner that is free and fair or that a further ballot has been accepted as free and fair, it is not discharged, it is still in office.

Chairman:

8.2.

Mr Schutte:

The result of that is that if there are powers in the country who doesn't want it to be free and fair they can cause the Electoral Commission to be in power for virtually ever.

Chairman:

Just repeat that Mr Schutte. I assume it was you who was speaking.

Mr Schutte:

I am supporting Mr Andrew's suggestion in this regard that I think there should be more clarity as to the situation when the Commission has fulfilled its task.

Mr Rosenthal:

Mr Chairperson I think the concern of the Committee is as to precisely what is to happen in the event of elections taking place and the Commission not being satisfied. We will come to a later provision where the Commission is given a discretion to order ballot, but clearly one can't have a hiatus in which one has to accept that elections at no stage are capable of delivering a result and so one must surely assume that in some way or other, under the direction of and independent Commission an election must take place and the result must be certified.

Chairman:

The question arises if it finds that it is not free and fair?

Mr Webb:

And it has overriding powers.

Chairman

What is the situation then?

Mr Rosenthal:

Mr Chairperson we have suggested that the Commission should have a broad discretion as to what it does about a situation where the result is not accepted. If it is a substantial defect as affecting the whole result, then presumably it has going to have to address itself to a new election. If it is a problem which relates to a particular area, then it is possible, I suppose, that the Commission might decide to hold further elections in that area only, but we haven't attempted to be prescriptive as to what it is to do in this situation, however, I don't think one can simply ignore it.

Chairman:

It of course place an enormous unbearable onus on the shoulders of such a Commission of between 7 and 11 men to decide to declare an election null and void, because there is no one that they can refer to or appeal to. OK, Ms de Lille.

Ms de Lille:

Thank you Mr Chairman I want to go back to point eight. You didn't see my hand earlier on, in the term on the Commission. It is our view, in the PAC, that the term of the Commission must end after certification and verification of the election results. That is point 8, 8.1, the certification of such election as having being substantially free and fair including similar certification in respect of any such further election. We want that "any such further election" must be deleted, 8.1.

Chairman:

That is noted. 8.2, any further discussion?. Mr Rosenthal may I ask are you satisfied and I not challenging or querying, it is simply a rhetorical question, satisfied that adequate provision has been made in the event of the Commission finding an election not free and fair.

Mr Rosenthal:

Mr Chairperson I think the provision which exists, is that contained in clause 20.4, which is on page 27, and what it states is that in the event of such results or any part of it being not accepted and certified as being free and fair, the Commission shall determine an course to be implemented such steps including the organisation, conduct and supervision of new elections as it may deem appropriate in the circumstances in order to achieve a substantially free and fair election result. I am not sure that we are able to take it further than that.

Chairman:

I'll pray for the Commissioners. Can we turn over to page 12, clause 9, 9.1, 9.1.1, 9.1.2. Mr Maduna.

Mr Maduna:

Mr Chairman we have a problem with the involvement of the courts in matters of this nature. Firstly, Mr Chairman, the members of the Commission are appointees, as it were, deriving whatever authority they have from this process and we want to believe that there isn't a better authority than the TEC that could go into the question of whether or not they should continue serving as members. Otherwise it creates all sorts of problems, I may think that X is not qualified any longer to serve and move the courts as is suggested her and throw us into a real [inaudible]..if we are not careful. Besides, Mr Chairperson, we have the problem of the legitimacy of the courts, coming as we do, from the other end of the apartheid [inaudible]... I don't think it would be correct to say that the AD as currently constituted, a predominantly males only entity, an all white entity should decide. A AD created in circumstances where fit and proper persons who are wearing the wrong colour and who belonged to the wrong races could not participate in the administration of justice. It would create problems of a serious nature, Mr Chairperson, we would rather that when it occurs that one or so many other Commissioners turn out not to be fit, the TEC which would be the logical successor to this processes, hopefully, should go into these

matters and decide and make an appropriate recommendations, without moving the courts, I may move the courts for all sorts of reasons or I may not be even armed with a way we are going to [inaudible] the courts. It is even stranger that in fact its only one political leader who is allowed in fact the authority to move the courts in a particular capacity. We want believe that in fact it raises certain problems beyond this Forum, Mr Chairperson, to say that the State President should be in a position to move the courts to get a Commissioner disqualified. It does raise that problem, so I'll rather that we confine it to the TEC and let the TEC deliberate the issue and come to some conclusion.

Chairman:

It is of course a problem that you want the Commission to be politically unbiased and then a essential political body, as I understand the proposals from the TEC will be representative of 26 parties sitting here to decide on the appropriateness of an unbiased politically Commission or not, but what you are saying, it should not be the supreme court, It could be something like the TEC or some other body.

Mr Alexander:

Mr Chairman I think Mr Maduna is absolutely correct. He spot on the transitional authority as it is self a Multi-Party body, it is not a body with one political party bias and therefore the concern about the traditional authority not being properly neutral or objective, I do not know about that, but certainly Mr Chairperson, I think he is absolutely correct on all the arguments he had stated that why you should no go to the courts.

Mr Schutte:

Mr Chairman I would also agree with Mr Maduna but not for the same reasons and we would strongly urge that the body who appoints also terminates. We believe that that is a sound policy.

Mr Motibe:

Mr Chairman what I intended saying has already being said by Mr Schutte.

Chairman:

I assume that the Committee has noted the views of Mr Maduna and Mr Schutte. Can we move on? Can we turn to page 13, 9.1.2.4?

Mr Andrew:

Well I am not certain if this paragraph will survive if the other changes take place, but I would suggest that a hundred eligible voters is rather low. [inaudible]... not talking about percentages out of 22 million, but nevertheless, for a matter of this seriousness, if a political party, not one of the contesting political parties in its own right wants to take up the matter, then I would think one should be looking at least to something like 1000 eligible voters, because although, in terms of this provision there is a sifting mechanism involving the Chief Justice. I don't think he or she should even be bothered with that unless you had something like a 1000.

Chairman:

9.2. Mr Mentz.

Mr Mentz:
[INAUDIBLE]

Chairman:
So you are saying let's delete the word only. Is that acceptable? 9.2.1, 9.2.2, 9.2.3, 9.2.4. Prof. Ripinga.

Prof. Ripinga:
Sorry to take you back. I had thought that the whole area up to 9.2.4 would be covered by the remarks I made. So that Mr Chairperson, it sort of changes the whole content of this. we are dealing with a situation where the parties [inaudible]... in a Forum would look into these matters and therefore act in accordance with 9.3, but certainly the whole part before 9.3 is affected.

Chairman:
In reference to the courts but not the criteria. Thank you. Prof. Ripinga you are covered. 9.3, Conditional of appointment, clause 10.

Mr Schutte:
Chairman may I suggest that the Minister of Finance be changed to the Minister of State expenditure and I would suggest that it be in consultation with him.

Chairman:
So you want to remove the "advice" and replace it by "in consultation with".

Mr Andrew:
I think that make sense, well first of all, as I understand it, in consultation with means, with the agreement of, so it's not after consultation in which case you can consult and then make up your own mind. In consultation means you consult and you reach agreement and that is how you proceed forward, and I think in terms of control over finance and so on, it is important that there is at least some consultation with the Minister of State Expenditure and it doesn't simply receive a request which he is then obliged without having any serious opportunity to comment upon, obliged to implement. May be one should say include "after consultation with or upon the advice of after consultation with". which I don't mind if in the end a Forum is making the decision, but I think there does need to be consultation before that decision is made.

Next Speaker:
[INAUDIBLE]

Chairman:
It would simply say that before it makes its decision, oh are you talking about the Forum or the Commission, this refers to the remuneration of the Commissioners.

Next Speaker: This clause says that remuneration and other matters will be decide by the Forum. Now we can leave it like that but I think that it should only, they should be obliged to consult

with the Minister of State Expenditure or Finance before they make that decision, although their decision could remain binding.

Next Speaker:
[INAUDIBLE]

Chairman:
it seems to me that you are in agreement with each other. The only thing that Mr Andrew is asking for that it must not just be decision, at least you must consult with. In the final analysis it will be a decision by the Forum advising the responsible minister.

Ms de Lille:
Mr Chairman, a point of information. If Mr Schutte can explain what is the difference between Minister of Finance and Minister of State Expenditure, and if there is any difference - what is the difference?

Mr Schutte
I wish I knew.

Chairman:
It is a difference in terminology.

Mr Schutte:
More or less I think the one is responsible for the expenditure of the money and the other one is responsible for the raising of the money.

Mr Alexander:
We are more concerned with the one who spends the money. He must become part of us.

Chairman:
I think the view of how of how these things, or the procedures to be done in these cases have been well established by this Council. I think it is just about lunchtime. Now the Committee dealing with the issue of sufficient consensus is meeting over lunchtime after which there will be a meeting between them and the Planning Committee, so it is being suggested that we adjourn for lunch until 2:30.

[Part on the stolen document]

Chairman:
We will continue with our discussion on the Independent Electoral Commission. Now I see Mr Webb is not back yet. The Planning Committee has given some consideration on how we can perhaps make constructive progress in respect of those issues which have been identified by the Negotiating Council as fundamental issues which we cannot resolve here very easily, like for instance, the level and degree of participation of the international people in this Commission and it was thought that those issues be identified and that the Planning Committee establish mechanisms,

at political level, which we will bring to your attention for your approval later on to see if it cannot be resolved on that basis and then reference back to the Negotiating council. That is just for information. The further detail will be discussed with you at a later stage. As you can see we have only dealt with 10 clauses in 3 hours and of course this is a Negotiating Council and it doesn't matter how long we take to deal with things, but on the other hand we also do not wish to retard progress unnecessarily. So if you forgive me this afternoon, if someone has addressed a particular issue with which you agree just say I agree with that speaker. Do not repeat what speaker has said, on the other hand I do not wish to curb any discussion and if a person or a delegation feels they need to say something. Right, clause 11, Reconstitution of the Commission, 11.1. Mr Rajbansi.

Mr Rajbansi:

Mr Chairman earlier on there was a comment to whether this Commission should continue after the first election and I believe that if it is the intention of the this Council that this Commission disbands when it has complete its task. Then there may not be the need for clause 11.

Chairman:

You agree with Mr ...

Mr Maduna:

Firstly, Mr Chairman I have a different point to raise with regard to 11.1, it is in twofold. Mr Chairman, we are asking ourselves whether we require the phrase after parliament, in line five, which says, "acting in terms of a motion which shall require to be passed by the same majority etc., etc. Mr Chairman we would not like to be prescriptive with regard to the procedures parliament must follow. We would rather leave that entirely to parliament itself, so that therefore we believe the sentence should end immediately after parliament, the rest with regard to the issue of motion, in our opinion, is unwarranted and could be excluded. The second part of our question, Mr Chairperson, is with regard to the judicial rewards again, in this regard we are asking ourselves, Mr Chairperson, whether firstly, it is the duty of any court whatsoever to appoint Commissioners when we, who are trying quite seriously to get agreement on these matters, have failed to and secondly, Mr Chairperson, I wouldn't wish to reiterate what we said earlier on with regard to the courts and the problems of legitimacy and so on, but I think we said enough of that, but certainly we don't see the courts playing a better role than structures where basic political decisions are to be taken care. We rather that this matter therefore be left in the hands of parliament without us being prescriptive, Mr Chairperson, with regard to the procedures of parliament.

Chairman:

Mr Maduna I understand that, but in normal, this is a draft bill which will have to go through the present parliament and it is normal that a bill or provisions of legislative nature, provision is made as to how it is to be amended by ordinary majority, by different majority. So, whilst he was quite correct, [inaudible] does not affect us indirectly, but the bill itself, in order for it to be dealt with in parliamentary terms, am I correct, and if so will require for provision made for how parliament is to deal with it, but for the rest we absolutely take note. Mr Schutte.

Mr Schutte:

Chairman I would like to agree with, again agree with Mr Maduna. Not for the same reasons that we do not involve the courts as far as this concerned, but I would like to suggest that as far as this is concerned, but I would like to suggest that parliament should be able to reconstitute the commission and on the same lines as suggested yesterday, regarding the IBA with a substantial majority something like 4/5 's.

Mr Andrew:

I would support that view, except that what we have to have in this instance, is some kind of deadlock-breaking mechanism. I disagree fundamentally with the ANC on this point that I think a body like this has to be almost similar to the independence of the judiciary, and therefore you cannot have simply ordinary parliamentary procedures, because all that will happen is, whoever happens to have 51 percent in parliament, will appoint a Commission, that is a 100 percent supportive of itself and that defeats the object of the exercise before you have even started. So, I would be happy with the sort of mechanism that Mr Schutte has mentioned, but then one does have to accept that if you are going to have an election and you can't get a 4/5's majority for a Commission, what are you going to do and I think unless there is a suggestion better than the judiciary, although I accept for this purpose, this kind of purpose, it is not necessary ideal, we have to stick with it.

Mr Alexander:

Thank you very much Mr Chairman. When it comes to regulations and other matters regarding the constitution, the functions and the duties of the Commission, I will have to take you a little bit forward, to bring you back, if we just go forward a little bit to page 32, regulation 20, clause 28 on regulations. It says the Commission shall be empowered to make regulations providing for such matters as are specifically or by necessary [inaudible]... contemplated and generally for achieving the objects and purposes of this act. Such regulations may prescribe penalties for contravening of failure to comply with therewith, the Commission may like what is prescribed form and content of any document or form which may be required for the carrying out of the provision of this act, shall override any contrary stipulation made in terms of the electoral act, and so on and so forth. When you look at that provision, what it says and you relook at what is said here at 11.1, you see a contradiction of some sort. The first problem that we have, Mr Chairman, is that when you look at 11.1, there is no indication as to the circumstances that might give rise to the need to reconstitute the Commission. So you can find that one parliamentary party may decide there let us reconstitute it, maybe they don't like the decision. We will be much more happy, Mr Chairman, if the transitional authority or the Multi-Party Process here, look at the question of the, or whichever is appropriate at the time and existence, at the question of the, if there is a need to reconstitute the Commission, they should be looking at that. Because, here we are talking about the Commission in our understanding, having a very short lifespan after the elections, if those elections are deemed free and fair, but then they come to an end. So, the whole question of reconstitution, if it was a permanent arrangement I could understand all this type of concern and going into a new parliament, a illegitimate parliament, and all this type of things, but knowing what you have in parliament, and the parties, most of us, are not even represented there, for us to agree to such a provision would really be to our disadvantage, when it comes to the

question of reconstitution of the Commission. We would have no input whatsoever. So this totally not acceptable to us. Thank you Mr Chairman.

Mr Maduna:

Mr Chairman I have allays taken it for granted that we are talking here, not about the current parliament reconstituting the Commission. We are talking about a parliament that we shall have all participated in the election of, and maybe then, for purposes of satisfying Mr Alexander, we would have to be specific in that regard. The issue that I wanted to respond to was raised by Ken Andrews. Mr Chairman, in constitutional law there is a distinction between issues of manner and form, like your majorities and issues of parliamentary procedure. So, what we are saying is that how should not even say whether they would deal with it by means of a motion, for instance, yes, definitely you would have to provide for a majority that we would all be comfortable with and the issue of the majority is an issue of manner in forming the constitution, as opposed to an issue of procedure.

Chairman:

Any further debate. Any response from the Committee?

Mr Rosenthal:

Mr Chairperson I think we have taken note of the viewpoints that have been expressed and the concerns. This Committee has been, very much exercised with, how best to provide for a situation in which the parliament/CMB, which is initially elected, how it is to be replaced in the event that a further election is required. Shall we say before a final constitution has been adopted, now in that situation, there is a need, we believe, for an Electoral Commission to be reconstituted, in order to conduct the elections that are called for. The calling for elections, which would normally be the prerogative, I understand, of the head of state, in the present circumstances, we are suggesting it should be a decision of the parliament itself. If that decision can be adopted on the basis of a simple majority, certainly the decision as to who should constitute the Commission, would in our view require a greater than simple majority, because the composition of that Commission given the powers that the Act envisages, is an extremely important matter and it would appear to us as though a simple majority which might represent the majority party alone, would not necessarily be sufficient to nominate and select a new Commission in those circumstances. It is for that reason that we stipulated initially, that a substantial majority would be necessary. We simply linked it to the same majority that would be required to amend the constitution. We don't know what that will be yet, it could be a two-thirds, it could be three-quarters, and secondly, we said what happens if such a majority cannot be achieved. It has been decided that an election needs to be called, that implies that we need an Electoral Commission. Now, how are we going to select it and if we can't achieve that high majority we are suggesting, then we have to have a fall-back position and it is for that reason that we suggested, not without misgivings, but because we didn't have any better suggestion, that the courts would be the best forum.

Chairman:

Thank you. Can we move on to 11.2. No debate!

Mrs Finnemore:

Sorry, it was mentioned earlier that, that is incomplete, that paragraph

Mr Rosenthal:

Mr Chairman, I am sorry there is a typing error there, there are four words missing at the bottom of page 15. If I may just give them to you. They are simply the words "as stipulated in section 11.1".

Chairman:

Thank you. Chapter 4, Procedure and Administration, 12.1. Any debate. 12.2. Mr Andrew.

Mr Andrew:

Two questions, or one suggestion and one question about this. In the second line I would suggest that where one says "All majority of the members", one puts "A majority of the voting members" to make it quite clear that one is making that distinction. Then in the third last line it says "Of which the necessary quorum shall be all members of the Commission at the relevant time". Now that seems to me to be in conflict with the provisions in section 20.3 on page 27, which says, "Unless a majority representing at least 75 percent of the voting members of the Commission shall have concurred in such finding". Now, I may have missed or misread something, but whether there is that contradiction or not, I would suggest that, that 75 percent is better than all members at the relevant time, because all sorts of reasons, I don't think it is entirely practical to demand unanimity in a matter such as this.

Mr Rosenthal:

Mr Chairperson, if I may just respond to that. I think in 12.2, we are stipulating the quorum which denotes the attendance which is required to constitute a meeting of the Commission. So, in considering the issue, was the election free and fair, the necessary attendance at such meeting, in other words the quorum at such meeting, would be all the members of the Commission. However, in terms of 20.3, a valid certification could be based upon a 75 percent vote.

Mr Maduna:

Mr Chairman, in this regard we agree completely with Ken Andrews. The word "all" would make the Commission quite unworkable. We may all wish that all Commissioners should be there when the certification of the elections is being handled, but Mr Chairperson, we live in a [inaudible]... world. What if one Commissioner suddenly, for whatever reason cannot pitch up at that critical moment. Say for instance some party which is not too happy about the way the elections have been conducted is [inaudible]... I know that it is an extreme example, then are we saying that because one Commissioner is not there and because therefore we do not have all of them, certification is going to be left in abeyance. It is going to create those problems. We would rather, Mr Chairperson, go for the 75 percent, and we would like to amend it slightly, maybe this is the right moment for us to do it. We would rather say that "present in voting", 75 percent of those present in voting and then Mr Chairperson we made, much earlier, an observation with regard to international experts and I don't think we need to reiterate that debate. Save to say that the last but one line, that phrase provided that, still presents with a problem in that regard.

Mrs Finnemore:

Mr Chairperson, just to refer to that last line, I wonder if that is actually necessary there, because once you say that it is going to be voting members, then it excludes those international members as we so have it. So, I am not actually sure if we need that last line now after Ken Andrew's amendments. If you talk about a majority of the voting members, in line two, and maybe you can put in the sixth line, 75 percent of all voting members then why mention the international members. I find it just confusing, why refer to them with respect to this last decision that have been taken not to any forum that they could be part of. I just think it confuses the issue rather than to clarify it.

Mr Pillay:

I think that question still needs to be resolved, so I think we should just leave it for the time being until the question is resolved.

Mr Rajbansi:

Mr Chairman, I think the answer to the problem are outlined in clause 20.3, when we come to that. That will give us a very good guide. 75 percent of the majority of voting members.

Chairman:

12.3.

Mr Schutte:

Chairman, this Commission will be a very powerful and important body where decisions can have the far reaching implications and a simple majority is just not good enough. We would urge that 75 percent of the members, of those members that are able to vote. That should be the majority required.

Chairman:

12.4.

Chief Nonkonyana:

It is just a question Sir. I see here that we are giving the sub-committee a power, a delegated power, to appoint subcommittees. All what I would like to know, although it might be by implication, I would like to know whether this sub-committees will be subject to the same disqualification as the actual members of the Commission, and if so, whether the clauses drafted caters for that?

Chairman:

I assume the Committee are noting the observations made by members, for instance the one by Mr Schutte in the last clause. Could you perhaps respond to that question, Mr Rosenthal, whether in fact the members of the committees are subject to the same qualifications as the Commissioners.

Mr Rosenthal:

Mr Chairperson, I don't think we have applied our mind to it yet. I think we should do so.

Mr Rajbansi:

Chairman, just adding to that particular point. I suggest that the Committee looks at 12.... relevant time". Now that seems to me to be in conflict with the provisions in section 20.3 on page 27, which says, "Unless a majority representing at least 75 percent of the voting members of the Commission shall have concurred in such finding". Now, I may have missed or misread something, but whether there is that contradiction or not, I would suggest that, that 75 percent is better than all members at the relevant time, because all sorts of reasons, I don't think it is entirely practical to demand unanimity in a matter such as this.

[END OF TAPE 2]

[TAPE 3]

Next Speaker:

...discussed yesterday, this matter also cropped up yesterday and I would like to have an expert advise on this.

Mr Mentz:

Mr Chairman will allow me to go back to 12.6. I have some difficulty there. Chairman I have difficulty in allowing the Commission, for them to determine, the remuneration whereas in other instances, there are controls. In this instance there is no control whatsoever. It is just a question of you decide what payment they get.

Chairman:

One would assume that in discussing, as we agreed this morning, in discussing the requirement of the budget with the Minister of State Expenditure, the aspects of the salaries of these people will form part of that Budget, one would assume. Can the Committee respond to a valid point made by Mr Mentz?

Next Speaker:

Mr Chairman, Mr Chairperson, I think the implicit constraint is that the Commission can only spend money that has in fact been granted, and therefore, provided it has made the necessary provision in its estimates, it is, as I see it, as proposed, ad liberty to determine how those estimates should be applied.

Mr Mentz:

No, Mr Chairman, the fact of the matter is that they can also ask for additional monies. They are not bound by the original estimate, so it doesn't apply.

Chairman:

Will the Committee have a relook at this matter in view of the comments that have been made. 13.1, 13.2.

Mr Maduna:

Mr Chairman we are just wondering whether it should, rather the Commission should not be empowered to call for the money and account for it, rather than be dependent on decisions as to how much they will get after they have actually assessed the situation carefully and concluded that they would need so much money, Maybe the Committee could advise us about alternatives to this, bearing in mind that it will be ideal that it has a budget that it runs, that it operates and accounts for.

Chairman:

The difficulty is Mr Maduna, that if it is state money, it is tax payers' money, and then whoever is the government, legitimate or illegitimate, has a responsibility to be accountable to the taxpayers. So, there must be some form of a control, whilst it appears to me, that in terms of this Commission, it is responsible to no one and answerable to no one. So therefore I think it will probably difficult in terms of the normal procedures, to do it in a different way.. can the Committee perhaps respond.

Next Speaker:

I don't know whether the issue of control is not covered by section 13.3.4.

Chairman:

But then he only, it's like a person doing dissection of bodies. It is after the event. We are now talking about the actual mechanism of deciding how much is going to be spent. The Auditor General will come in after the money had been spent and then may find that there were irregularities. I think Mr Maduna makes a point and we ask the Committee to look at it.

Mr Landers:

Mr Chairman, the fact that the Auditor General comes in at the end of the day, happens in all departments, so it is the way the system works. It won't just apply to this Commission. It applies at the moment to all departments. So the control and the check is there. If we need to improve that then we do it for all departments.

Chairman:

Thank you. 13.3, 13.4, no sorry 13.3.1, 13.3.2, 13.3.3, 13.3.4, 13.5. Clause 14, Guarantee by State, 15, Administration, 15.1, 15.2, 15.3, 15.4, 15.5. Mr Andrew.

Mr Andrew:

15.5, I would like to suggest that it read "Open and operate bank accounts with the Reserve Bank or, with the approval of the Reserve Bank, other registered financial institution". I think there is a popular misconception that a registered financial institution is automatically a safe place to have your money. I think many people have [inaudible]... their cost in recent months and years that that is not so.

Chairman:

The Committee notes that. Six, Powers duties and Functions, clause 16. Mr Schutte.

Mr Schutte:

Chairman if I can just come back to 15.1. As far as the remuneration is concerned, I would suggest that it should be done in consultation with, either the TEC or the Minister of State Expenditure. That has been all along, more or less the guide as far as that is concerned.

Chairman:

Noted. Sixteen, 16.1. Mr Alexander.

Mr Alexander:

I am talking about what is generally underlying what is 16.1, which is a problem that the Technical Committee will have to help us with. See, Mr Chairman, if we say that the sole responsibility of everything affecting the election, rest with the Commission, that means that the Commission will be in charge of the question of registration, the question of how the conduct takes place, see to all these things. So, if a dispute arises and somebody is solely responsible, that means that a dispute is more likely than not going to arise against that person, since he is solely responsible. Then we say thereafter, we are resting the same person against the dispute is more likely than not to arise, with the power to arbitrate on the very issue, which you are likely to bring against him, and this is just some, this question of sole responsibility for everything, is concerned, some of the problems affecting that. We will talk further about it when it comes to other specific clauses, but I just want to make that general statement about this here, and we talk about it further when you come to the next pages.

Chairman:

Mr Rosenthal is there any comment on that observation.

Mr Rosenthal:

Mr Chairperson, I think it is a concern that the Commission can make decisions and carry out actions which could become the subject of difference and disagreement, but it is in the very nature of the Commission, of the institution that we are contemplating, that it should in certain limited respects be sovereign, and that means that for the sake of an efficient and speedy electoral process, we are not going to accommodate a judicial process of appeal, when it comes to decisions that are being made by the Commission. I think the alternative to allow disputes to go into courts and to be argued and appealed would hold the whole country to ransom over an unknown period. So it seems to us as though this is one of those instances where, unfortunately, one is going to have to say that the Commission's decision, all be it in matters where it is having to pass judgement on itself, to some degree, will have to be final.

Chairman:

If, in a specific area or in a specific region, one of the participating political parties feels aggrieved that things were not conducted according to the way provision is made for, does it appeal to the Commission.

Mr Rosenthal:

Mr Chairperson, yes there is an appeal from the decisions of any of the directorates, including the adjudication directorate, there is an appeal to the Commission, but we are proposing that there should be no appeal beyond the Commission, and the only circumstance in which a court could

intervene, would be in the case of gross irregularity, in other words, review, in which case we have the supreme courts inherent right to review, but that would only apply if there were some very serious procedural irregularity.

Mr Alexander:

Mr Chairman, I think the problem is, we are talking to general about the issue at the moment, because basically what the legislation is so far saying is that, it is possible for the Commission to adjudicate on a matter brought against itself, but when we come further on and we talk about the, some other issues, because they do talk about a tribunal further on, and so on, and other issues. I think then we will deal with it more specifically. Let us just note the concern and let us try and find a way around, bearing in mind what Mr Maduna said about the problems we have with the current courts and all these things. We will have to find a way out, but I think as we proceed through this, we will come to specific issues and we deal with this concern again, because certainly it is not desirable. We will find a way out Mr Chairman.

Mr Schutte:

Chairman I have already argued this matter before, but I think Mr Alexander has a very, very powerful argument. The Commission cannot be the judge in its own case, it cannot conduct the full election on the one side and on the other hand certify that process as being free and fair, but on the other hand it can also not adjudicate and have overriding adjudication powers on the adjudication directorate where it may itself, be involved and where it may itself be accused. So I would suggest that we cannot move away from the suggestion that the adjudication directorate should have the final say, except as far as the question of whether the election was free and fair, is concerned.

Chairman:

16.2. Mr Rajbansi.

Mr Rajbansi:

Mr Chairman we are authorising the Commission to appoint a Chief Executive Officer, and I want to make reference briefly to 16.2.1, where the Chief Executive Officer's role will be reduced to merely being the accounting officer, if he is not going to have a say, as a head of the department, in respect of the [inaudible]... of the directorate. I believe, like the Director General, when you delegate powers, it goes through your senior most official and it is very important that the Chief Executive Officer play a role in each of the directorates.

Chairman:

My understanding, perhaps is different to yours, Mr Rajbansi, the one is the Commission who appoints the Chief Executive Officer and then 16.2.1 refers to the sub-structures, falling under the Commission.

Mr Andrew:

I share Mr Rajbansi's concern and I think it can be handled by, in the third line of 16.4, which I know we haven't got to yet, but it solves the problem, is where one says "Control of the Commission", one says "Control of the Chief Executive Officer and the Commission", so it then

indicates that these Chief Directors, that the Chief Executive Officer of the Commission has a certain amount of control and authority over the Chief Directors.

Chairman:

Ask the Committee to note that. 16.2.1. Mr Alexander.

Mr Alexander:

Thank you very much Mr Chairman. We see the need, very clearly for an election monitoring director and a directorate and an adjudication directorate, but on the question of administration, the administration, whilst it should be independent as it's envisaged in 16.4, but the whole question of accountability and so on, we would like to see it, maybe, a little lower level than the level of directorate. So, that, we want it to be much more directly accountable to the Commission, Mr Chairman, it should have that same independence as the other two, but on a little bit lower level, so, that there can be more direct say by the Commission in the administration matters.

Chairman:

Of course, these are sub-structures of the Commission.

Mr Alexander:

Yes, but we think that if the Administration could be on a little bit lower level than the Directorate, Mr Chairman.

Chairman:

So you believe the Election Administration should not be a directorate, it is noted. Mr Schutte.

Mr Schutte:

Mr Chairman, if I could deal with 16.2.1, 2.1 and 2.3. We believe that as have already indicated that these structures are very very important, that they should be at arms' length with the Commission and we believe that the Administration or the conducting of the election should be under the authority of three persons; a Chief Electoral Officer and two Vice-Deputy Electoral Officers and we also further more belief that they play such an important role that they should be appointed by this body or the TEC. As far as 2.2 is concerned, we believe that the National Peace Secretariat, should be made responsible for the monitoring of the election. We believe that it will be totally uneconomical to have a whole new structure with all the Administration that goes with it. We believe that the National Peace Structures have already had extensive experience as far as monitoring is concerned, also as far as liaising with the international observers are concerned and we believe that they could play a very positive role in this regard. As far as 2.3 is concerned, Mr Chairman, we believe that the Directorate should also be appointed by this body or by the TEC and we believe furthermore that there should be an indication as to the qualifications of those people. They should be legally trained persons, especially as far as the chairman is concerned, we believe that he should at least be a judge or a retired judge.

Mr Maduna:

Mr Chairperson we beg to differ with Mr Schutte, with regard to everything he has said and we wish to place it on record that we are satisfied with the whole clause as it stands, namely "The power of the commission to appoint a Chief Executive Officer and to establish the necessary functional sub-structures and to regulate the powers and so on", right up to 16.4. We regard the three sub-structures as the basic [inaudible]... Mr Chairman, of the Independent Election Commission, without which its work would be much difficult and in the same breath, Mr Chairperson, we wish to differ also with Mr Alexander, in that there is no way we can say that the one dealing with Administration should have a lower or a lesser status. They are actually created to facilitate the work of the Independent Election Commission in the three basic areas that it will be functioning namely, Administration, Monitoring and Adjudication. These are the three clear tasks that the Commission would have in the execution of its broader task of conducting these elections to the satisfaction of all concerned.

Chairman:

So, you are happy that the Adjudication Directorate who will decide eventually on the election should be appointed by the Commission and not by a body such as this.

Mr Maduna:

We would be happy that in fact the Commission establishes all of this.

Chairman:

Also appoint the personnel.

Mr Maduna:

It also appoints the personnel, Mr Chairperson. Right 16.3, 16.4.

Mr Schutte:

Mr Chairman the final words of 16.4 in unacceptable, in the sense that the, as it is stated there, that the Commission shall be able to override, even the decisions of the Adjudication Directorate, which is not acceptable.

Chairman:

Could the Committee perhaps comment, "It appoint sub-structures with specific responsibilities or specialities that the directorate appointed by itself comes out with the finding in the field it was directly involved and the Commission can override the finding". Any comment from the Committee on that issue?

Mr Rosenthal:

Mr Chairperson I think we would like to give the matter further thought.

Chairman:

Seventeen, Chapter Five, Responsibilities of the Election Administration Directorate, 17.1.2.

Mr Landers:

Chairman once again 17.2 fails within the [inaudible]... of the Electoral Act. I think the Committee is obviously aware of this, so there is going to have to be that provision made for it.

Mr Rajbansi:

Mr Chairman, the same point as Mr Landers, but there are also other provisions where reference should be made to the Electoral Act.

Chairman:

17.3.

Mrs Finnemore:

Sorry Mr Chairman you rushed past 17.1. I just wanted to add right at the end, "And varying levels of education", I just think maybe the problem of illiteracy should be a qualification we put in there for people to be looking at.

Chairman:

Could you perhaps speak in the mike.

Mrs Finnemore:

I would like to add, to the end of paragraph one "And varying levels of education of the population".

Mr Andrew:

Mr Chairman, in respect of 17.3 and 17.4, the whole of 17.3 or large part of it, at least I believe, belong in an Electoral Act as has been indicated. For example the determination of whether or not voter lists shall be prepared in respect of particular elections, and I think that is a matter for the Electoral Act, not the IEC. "The supervision of the preparation of such lists", I think that is in order. "The determination of the polling regional and other geographic divisions for the purposes of organising electoral activities, as the Commission may deem necessary", think that is a bit vague, the determination of the location of polling stations, for example, we would not have a problem with, but this could almost be interpreted as creating constituencies. So, I think it is too wide and in respect of 17.4, the last part, 'And the preconditions and formalities applicable to such registration', I believe is a matter for the Electoral Act, not for the IEC to determine.

Next Speaker:

Mr Chairman, can I perhaps come back to 17.1. I am of the opinion that the means of voter education, as stated in paragraph 17.1, are indeed limited. Can't the Committee perhaps elaborate on this. What about workshops, public speaking etc., bearing in mind what Mrs Finnemore also said about the illiterate population and so forth.

Chairman:

17.4, 17.5.

Mr Schutte:

Chairman, 17.1 and 17.4 and still another few matters that will come up under 17, we believe, is of such importance that it should be dealt with by the Commission itself and not by a sub-directorate and that especially is with regard to the registration of political parties.

Chairman:
Six, seven.

Mr Andrew:
On 6, the question of constituting the first schedule to this Act, unless that is an extract, going to be an extract from the Electoral Act, we believe the Electoral Code of Conduct, should in fact be part of the Electoral Act.

Chairman:
Is that accepted, Mr Rosenthal.

Mr Rosenthal:
I Think, Mr Chairperson, we have come to the same conclusion.

Mrs Finnemore:
17.7, I would just like to include monitors and observers in that list of people who are going to be protected from intimidation.

Chairman:
17.8.

Mr Alexander:
Yes, 17.6, Mr Chairman, "The enforcement and imposition of appropriate penalties and sanctions for infringement of the Electoral Code of Conduct", here we are giving them the powers.

Chairman:
Could I just refer back to the fact that Mr Andrew made the point and the Committee accept it, that this clause should actually be in the electoral act.

Mr Alexander:
That is fine Mr Chairman, but even there we would like to have some, little bit of clarification of the type of penalties that we have in mind, because we are just worried that if this left too wide and indefinite, you may find that one or two parties maybe, apart from taking part in the elections itself by this Commission, we must be able to make sure what there type of penalties we have in mind, to give an indication.

Chairman:
Have you given any thought to that?. Mr Rosenthal.

Mr Rosenthal:

Mr Chairperson we have commenced discussion in this regard and I think it would really be premature for us to start to float ideas. We will come back with an answer.

Chairman:

Is that OK, Mr Alexander, 17.7. We have already dealt with that, with the observation made by Mrs Finnemore. 17.8. Mr Andrew.

Mr Andrew:

Thank you Mr Chairman, we are opposed to this clause in its entirety. Clearly one assumes that the objective of this kind of clause is to try to reveal whether there is undue influence, or something or other, but we do not believe that this kind of provision will achieve that, and we believe it serves no useful purpose. First of all, it is unenforceable, you have the issue of donations in kind, which are referred to, but then there comes the question of the valuation of those donations in time. For example, a person's time, if you have people put at your disposal without charge or at low cost, how do you determine what that donation amounts to, and it applies to lots of other donations of various sorts, other than cash donations. Then it says, "the receipt and the source of any contribution", now determining the source is actually impossible, if somebody gives money to a trust or a fund or something else and that trust or fund then passes it on, there is no way of determining what the original source of the money was, and so that people who are determined enough to do so will succeed in concealing the source, and because of that, we believe it encourages dishonesty, because people will be looking at ways of circumventing this kind of provision. It also, I might say, favours foreign contributions, rather than local ones, because it will allays be easier for foreign donors to conceal the true source of the money, than it is for local domestic donors. One wants to, obviously prevent any state funds from any level of government from ending up in the coffers of a political party, but you don't need a provision of this sort to do that, and in any event, if any level of government were acting in that way which would be improper and dishonest, they would not be doing so openly and have the source declared. Then one gets to the issue, "For the purpose of funding election expenses", and the matter arises, what are election expenses, how long before an election are expenses, election expenses. If you have an ongoing full-time staff of 30 people, at a particular place and they continue to be in your full-time employment during the election, are those election expenses or aren't they. If you spent money and buy a building in which to house a local or a national office of your organisation, is that not an election expense if it takes place six months before the election where somebody else who is renting premises during the cause of the election campaign, is that then an election expense. Obviously I could go on with vary many examples, if you print 20 million leaflets, eight months before the election, is that not an election expense if you use them during the election, but if you print them four weeks before the election it becomes an election expensive. I believe that is another whole area in which this starts becoming a meaningless provision, while when one starts out looking into a thing like this it looks reasonable and a good idea. In practice, when you go into it, it starts becoming meaningless and we shouldn't be having it. Then there is the problem of potential intimidation. We know full well in our society. the problems experienced in that regard, particularly at this time, but in general in any event, and the extend to which people who donate money or other donations to a political party, that doesn't meet with the approval of others could then start facing intimidation and other consequences from organisations or individuals, not necessary those actively involved in the election themselves and that is a problem. Last but not

least, in regard to these things is undoubtedly any provision like this favours a major party or a governing party at any point in time. Many major donors who maybe wanting to buy influence will be happy to stick their necks out if they feel they are backing a winner, because when that winner becomes the government, if it does become the government, it can make sure that that major donor is not prejudiced. On the other hand the equivalent potential major donor thinking they will back a party that is unlikely to win is going to be far more [inaudible]... about doing so, because the governing party could then treat it in some disadvantageous way in the future. So, for all those reasons, Mr Chairman, we feel very strongly that there is no place for a clause of this sort in this act and we might say even if there were place in any act for a clause of this sort, it would be the Electoral Act, not this act, but we wouldn't support it there either.

Chairman:

A private institution is of course free to donate whatever they want to, whoever they wish, but of course, this sort of clause or provision is quite common in the Electoral Acts of many countries, where it is clearly done written, many British Colonies, it exists.

Mr Slovo

I think Ken has drawn attention to quite a few pitfalls and problems of application, but as you have said, Mr Chairperson, it is part of virtually every Electoral Act in every western democracy and we know that through this manipulation of funding of political parties in secret, which still goes on, we have seen what's happened in Italy, we know what went on in the United States in the last election and the one before, nevertheless there must be an attempt to prevent political parties from creating secret bases within society, unknown to their members, to the public and we perhaps ought to address some of the pitfalls and examine how we can avoid some of the problems raised, but we on our part support a provision of this sort. Perhaps the amount involved, ten thousand rand, looking at the spiral of inflation, doesn't really count for much. Perhaps the starting point ought to be something much higher, but in principle we support a clause of this sort.

Chairman:

The point is that, I think Mr Andrew has raised a number of valid problems and difficulties.

Mr Landers:

Mr Chairman, yes, we are also basically in favour of a stipulation of this nature for the reasons already put forward by Mr Slovo. One immediately thinks of the National Party's funding of the Namibian election to the tune of one hundred million rand which it hoped would not be discovered, but which was eventually discovered. By then it was too late and there was nothing anyone could do about it. Not that it helped the parties in that election, in any way. So, we are concerned how best to deal with this particular issue and I think we need to apply our minds collectively, all of us around this table, as well as the Technical Committee. Certainly the practical difficulties raised by Mr Andrew are relevant, because if my organisation receives one million rand, it wouldn't be hard for us to hide where it came from. That is the problem that we are faced with, and so I would appeal for us to just apply our minds as to how best we can deal with this. Perhaps we need to look at the American Experience and then just recently Britain too, is faced with a similar problem, where the Conservative Party is demanding a similar provision be

put into their law. On line five of section 17.8, it refers to, "By any political party or other body", now what we would like the Technical Committee to tell us is, when they speak of other body, what are they referring to, perhaps one needs a definition.

Mr Rosenthal:

Mr Chairperson, I think what we have been attempting to do, is to design a net that will not allow too many fish to float through it and the mischief that the other body refers to, is the possibility that the payment be not made directly to the political party itself, but made to some other body in the nature of a trust, for the purpose as it says of funding electoral expenses. So, whoever the recipient is, if it is a payment made for the purpose, then the provision should be applicable.

Mr Mentz:

Chairman I want to support Mr Andrews and just add an additional reason. The ease with which this can be [inaudible]...it makes it a provision which in practice is of no validity. ten thousand rand, I [inaudible]... one hundred thousand rand, I'll make use of others to give them nine thousand at a time, they won't even investigate it. So, I am just giving an example to show that it is a futile type of provision.

Mr Alexander:

Mr Chairman I think here we must be concerned with the purpose of the whole exercise and must remind ourselves time and time again why are we involved in talking about the establishment of an Independent Electoral Commission and all these things, so that we have a sense of purpose in all the causes we are looking at. We are concerned with levelling the political playing field. We are trying to make sure that everybody has an equal access to, and a fair chance of putting their message across and so on and so forth. Therefore our main concern to that end should not be to see how we can circumvent parties, yes we should have a concern about how to do that but we should also look at the question of how to help them. You may find that the PAC gets fifty billion Rand and the Communist Party gets three cents, and we need to maybe help the Communist Party, or everybody else, on equal ground to make sure that they are able to participate and put their message across in a disclosed, open manner and maybe that should be what we are concerned about, is levelling the political playing field. That is why we are talking about everything we are talking about here. Certainly we agree with what is put forward by Mr Slovo and we would certainly hope that the Technical Committee would take this into consideration. The question of disclosure, particularly from state funds, that is very important Mr Chairman, because in this country we have reason to say that state funding, especially in this regard, must either be completely prohibited or if we want to say we want to help people for the purpose of levelling the playing field, then it should be clearly disclosed, and it should be open and it should be there for everybody to know about.

Chairman:

So you are suggesting redistribution of funds to level the playing field?

Mr Alexander:

I do not know what the Communist Party think about that, but I think they are in favour of the redistribution wealth.

Chairman:

I mean if you want to level the playing field, you must redistribute the wealth equally, don't you?

Mr Andrew

Yes, I would just like to make it quite clear that I do not believe in respect of state funds, that there should be any possibility of the "not being disclosed" and they would only be provided in terms of law, and in terms, for example, of the Namibian situation that Mr Landers made reference to, I have no doubt that if there were some kind of law and there may have been for all I know, in Namibia, and the if South African Government wanted to give its one hundred million rands, it would not have given it in the name of the South African Government, but it would have set up some front company in Switzerland or Germany, transferred the money there and it would then have been donated from some [inaudible]... promotion of the deserts of Southern African society in Germany, who then have donated one hundred million rands, to the DTA. So, it just get circumvented and there have been mention of countries and you did as well Mr Chairman, about many countries have this provision, but you speak to those people in those countries and I have yet to find one, who finds that it works, and the United States is a classic example where tens of millions of dollars just flow into coffers of funds despite the fact that there is suppose to be limitations of donations of less than five thousand dollars or one thousand dollar and in that sense it becomes meaningless and all it does is it discriminates against the honest...

Chairman:

I think you will agree that we have had quite an extensive discussion on this particular clause and I think every possible argument for and against, has been raised. I don't think that any further discussion will really progress the matter further. The Committee has taken note of the views that have been expressed and will accommodate that in any further recommendations. 17.9 and 17.10.

Mr Rajbansi:

Mr Chairman, the footnote at the bottom the Technical Committee gives us the reasons for proposing 17.10, I personally believe, Mr Chairman, that we should take great care in passing the provisions of the Electoral Bill that is going to be considered by this Council. Now, if we give this Directorate the power, and I am concerned about the word "*inter alia*", to suspend or to vary any of the following provisions, and "*inter alia*" means that they could suspend all the provisions of the Electoral Act. My problem is this, it has to be replaced with something. Then, also, we must consider the right of political parties, for example, the form and the content of ballot papers, acceptable manners of recording votes, etc. What happens to the rights of political parties. I personally believe the alternative to 17.10, would be that we take great care to deal with the provisions of the proposed Electoral Bill, this is too dangerous to give a sub-directorate the power to suspend provisions of the Electoral Act.

Chairman:

Mr Rosenthal on what grounds would the Commission be able to suspend provisions of the Electoral Act?

Mr Rosenthal:

Mr Chairperson I think what we had in mind here is that this first election is in many respects unique, and that it will take place, for example, before voter lists can have been prepared, and in a situation where voter identification documents may be in a rather unsatisfactory state and so forth, and therefore without spelling out the detail, we felt that it might be wise to give the Commission, and I would agree perhaps, that this power should be exercised by the Commission itself and not by the directorate, if it deemed necessary to suspend requirements that might be applicable in a future election. If it decides at its discretion, that this is impractical.

Mr Andrew:

Mr Chairman we are also very uneasy about this paragraph. Given the somewhat "experimental circumstances" of a first election, a possible solution might be to have 17.10 reading something like reading, "In the first elections, the suspension or application with or without variation in so far as the elections are concerned of the following provisions of the Electoral Act can be made", and then one specifically identifies which elements one may consider. So for example conditions and formalities under which blind and disabled persons shall be committed to vote, that kind of technicality that in practice one may find the Electoral Act is a bit impractical. I think allowing that sort of thing, we would be prepared to contemplate as allowing that kind of variation, but the admissibility or non-admissibility of special and postal votes, I am not sure whether that imply if they could decide whether there are going to be special and postal votes at all, or not, but if they are not provided for in the Electoral Act, we would certainly be totally opposed to the IEC deciding of its own bat that it is going to allow special and postal votes for which there was no provision in the act. So, we would suggest a different introduction, if one is going to have this at all and then a very close look at various items in which that kind of variation and discretion may be required, and that can probably only be done after one has written an Electoral Act and when you go through that, you identify areas

[SIDE B]

Next Speaker:

I would like to concur with Mr Andrew, we are also very uncomfortable with this clause and the provisions of the clause. We feel that the Electoral Act will be drawn up by this Forum, by the parties involved, it will be a document, eventually an Act that will have the stamp of approval of all the political parties, participating in the elections. To now give to a Commission the power to override that Electoral Act, I think would be unwise. If we are looking for a body to perhaps be given the power which could amend or change or override the act, it should rather be seated in the TEC where all the participants will be participating. So, we feel uncomfortable with the powers given to the Commission, according to 7.10 and subsequent paragraphs and I equally would support Mr Andrew that things like special and postal votes are of great concern to political parties and we need to make an input. We cannot make an input if the Electoral Act is drawn up and then to have that input be taken out of our hands again, when the Commission decide otherwise and similarly concerning the secrecy and security of the ballot and other aspects which we laboriously will work out here to have a Commission with a power just to ignore the Electoral Act and to decide otherwise. We feel very uncomfortable with this clause and the implications of it.

Chairman:

I think Mr Maduna referred earlier to a number of elections that have been held in other parts of Southern Africa on the same basis and under basically similar controls where it was done quite satisfactorily and effectively and practically without any need to amend things. There are possibilities of doing in and I think one must just take particular care when you deal with the Electoral Act, to make provision. We are not inventing a wheel, it has been done elsewhere, we don't to [inaudible]... things, and I think the point being made by a number of parties, this is an important thing that has to be considered very carefully. I think a number of inputs have been made on this issue. Concerns that have been raised, drawn to the attention for consideration by the Technical Committee. Can we move on?

Next speaker:

We would rather, in any event, the matters covered here, appropriately belong in the Electoral Act and not this Act, and we would have to decide how we deal with these if it becomes necessary at all.

Chairman:

17.10.1, 7.10.2, 3, 4, 5, 6,7 and 8.

Mr Landers:

If we accept the argument as put forward by Mr Andrew and Mr Maduna, then is there any need for us to discuss the other eight.

Mrs Finnemore:

On a point of order I want to ask something to 17.10.1, thank you.

Chairman:

Can I , before you make your point of order, after the point of order, and points of order should be put in the form of a question, as you did. I suggestion has been made, which to me seem to find favour, that the provisions contained here is more appropriate addressed in an Electoral Act. Can I confirm that there is general agreement on that, so there is no need for that to be discussed here. You wish to add something Mrs Finnemore.

Mrs Finnemore:

No, we will make it in the Electoral Act then.

Next Speaker:

Except for footnote 66 and 67.

Chairman:

Chapter six, Election Monitoring Directorate.

Mr Schutte:

If you will just allow me a final few words on 17.

Chairman:

But we have decided that it comes under the Electoral Act.

Mr Schutte:

Yes, not 17.10, but the whole of 17. Mr Chairman we believe that the sole function of the Election Administration or Administrator should be the conduct of the election in terms of the Electoral Act and nothing more, and the other aspect is, Mr Chairman, as far as the voter education is concerned, a specific proposal in this regard, has already been made at the Planning Committee, and we will promote that idea also with the Technical Committee.

Chairman:

Can we now proceed to Chapter Six, clause 18. Mrs Finnemore.

Mrs Finnemore:

Are we on 18.1?

Chairman:

18.1.

Mrs Finnemore:

Right, I have got two points to make here. The first regards, who is going to train these monitors, it doesn't mention anything about training and I come back to Mr Schutte's point, what is the relationship between the monitors here and the Peace Committee monitors and maybe the Peace Committee could be involved in training these monitors. Then the second point I want to make here, is I want to add an amendment to "After co-ordination of monitors", which I want to read "Which shall include a significant representation of women". So I am formally proposing that that amendment be included, the second point I am making. Would you like me to repeat that? What I am saying is "The appointment an co-ordination of monitors which shall include a significant representation of women to observe and report upon the electoral process". I think you were talking when I was addressing you. Would you like me to repeat what I said.

Chairman:

I heard exactly what you said, but what is more important is that the Committee should have heard you. Committee takes note of the feeling of Mrs Finnemore. Any other comments on 18.1, 18.2, 18.3

Mr Schutte:

Mr Chairman, I have already said that as far as this is concerned, our proposal is that this matter should be dealt with by the National Peace Secretariat as a whole. So, we are opposed to the whole of section 18 as it is at this stage. We say that the question of monitoring should be done by the National Peace Secretariat and they should be responsible for that, but apart from that, I believe that the powers given in 18.3, is that that should be actually given to the Adjudication Commission and not to the Monitoring Directorate.

Chairman:

The Technical committee is seriously noting everything, is there any other comments.

Mr Maduna

Mr Chairman we beg to differ with the last speaker with regard to whether or not this whole function or task goes to the National Peace Accord structures, Mr chairperson, the National Peace Accord structures were set up for a totally different purpose. I would rather that, when we are looking for a relationship between the function of the National Peace Accord structures and these structures, we try and define it, because certainly they maybe overlapping in one sense or another, but then to the extent that there will be early overlapping, we need to define the relationship, but there is no way we can seat the function or task of election monitoring to a structure that was set up for a different purpose and which is dealing with a different problem all together, the problem of violence. We would like to belief that in fact anything that has anything to do with violence appropriately belongs to the levelling of the playing field and the creation of a climate and therefore maybe there is [inaudible]... an even closer relationship between the TEC and its Sub-Structures on the one hand and the National Peace Accord structures on the other, than there is between National Peace Accord structures and election monitoring.

Mr Rajbansi:

I very strongly concur with the views of the ANC.

Mr Alexander:

Mr Chairman, we concur with the views of the ANC on this matter. Mr Chairman, obviously when you are trying to investigate parties involved in this whole process, one must bear in mind that in the previous page, on the footnote, we expressed some sensitivity to the view that the word "poling station" and the word "police station" sound very close and that our people might not want to go if they think it is a police station and if we try to talk about the use of the police bearing in mind that type of concern. We have to have a very clear sensitivity on the question of the use of the police when or comes to the question of the, any functions of the election. I think we have a lot of monitors that we are going to use, I think that we should look more at using the, expanding the function of the monitors so that they are able, because that is the function of the monitors, Mr Chairman, to try and see what is going on, who is doing wrong, who is doing right, not to really police them in the strict sense of policing. Thank you Mr Chairman.

Mr Slovo:

I want to speak in support, very strongly, of Mr Maduna's rejection of Mr Schutte's point, which he has made over and over again, and I think it now has to be dealt with once and for all. That is that the National Peace Secretariat or that structure there, could perform some of these functions. He should by now know the distinction between a statutory body and the Peace Committee, which is a voluntary association and organ of civil society, and the distinction he emerges clearly in this draft before us. For example we are considering section 18, which deals with monitoring. If you read that together with section 24, it gives that organ teeth. It says "Any person who wilfully obstructs the Commission, including any of his directorates (etc, etc) in the execution of their duties or prevents or impedes etc, including the right search", so I think we should just forget about this role which is being offered to the Peace Secretariat, which has a very important

role, but it should not be mixed up with the provisions of statutory organs with teeth and with power that we are talking about in this Bill.

Mr Schutte:

Just in reply to Mr Slovo's comments, I think he should take note that the National Peace Secretariat is also in terms of a statutory provision. so, they are empowered with fairly wide powers. They deal essentially with intimidation and violence. This is what this Monitoring Commission will also deal with, and in the second instance, they are also, and they have been dealing with the international presence in South Africa for quite a long while. So, they are extremely well, they have all the experience that one requires in this particular case.

Mr Maduna:

Mr Chairman I thought Mr Alexander was raising an issue with regard to 18.3. Maybe I should actually join forces with him in this regard, and say Mr Chairperson, yes, we accept that there will be role for the police and maybe to some extent, the Defence Force, but then again, to the extent that there will be a role for these forces, the role must be appropriately defined as I want to believe that one of the Technical Committees is suggesting, or has already suggested that there must be a special task force that is charged with providing security for the whole electoral process. We may still need to define it's place and define maybe its role in relation to the Police and Defence Forces, but I want to believe we should not be quick to heap to many powers, with regard to the elections, on the Police. Particularly because, Mr Chairperson, unfortunately we do not have a Police or a Defence Force that is generally accepted across the length and breath of the country. We would definitely have problems in certain circumstances and therefore we would rather that-t we be a bit more cautious in this regard. Some of the parties have all sorts of complaints with regard to the behaviour of the policing authorities in respect to them, and we wouldn't like, in fact, parties to be saying that we were not treated fairly by a policing authority and so on. Yes, there will definitely be a place and role for the Police and Defence Force, and to that extent maybe the Technical Committee could be asked to clearly define this role, bearing in mind the public concerns as well as the notion that they may have to be a special task force set up to police the whole electoral process.

Mr Mentz:

Mr Chairman may I make a suggestion to try and be of assistance and that is; Why is this matter not discussed by the Technical Committee with the Peace Secretariat to find out whether in fact it is possible to accommodate it in that way. I think that is the way to do it, and it can in fact prevent a duplication, and it can be done that way. I would suggest then, let us leave the matter to the Technical Committee to discuss with the Peace Secretariat, to. see whether there a solution along those lines is possible.

Chairman:

I think the opposing views in this respect have been very clearly stated. I really think we must move on to 18.4. Do you want to add anything or repeat what you have said, Mr Alexander.

Mr Alexander:

I am just saying, Mr Chairman, that we already have a Technical Committee which is dealing with the Peace Secretariat and there inputs, we have it already, so it might not be necessary for this Committee too, to go and duplicate that work.

Mr Rajbansi:

Mr Chairman, just a question. Has any consideration been given into getting personnel who are non-South African citizens?

Chairman:

Repeat please.

Mr Rajbansi:

Any consideration has been given to including non-South Africans?

Chairman:

18.5, 18.6. Yes Mr Maduna.

Mr Maduna:

Chairperson I am just rising to say again, our concerns with regard to the courts apply here as well, and also to say that we would be happier if the clause, rather the phrase starting with "Before" and right up to "As may be established", is deleted so that 18.5 reads as follows, "The investigation and institution of proceedings in order to deal with alleged infringements of the Electoral Code of Conduct or the Electoral Act". We just leave it as neat as that then we will see what mechanisms we agree on to deal with these aspects.

Chairman:

Any further comments? The Committee has noted those observations. 18.6, Chapter Seven, clause 19.1, Responsibilities of the Election Adjudication Directorate, 19.2.

Mr Alexander:

Mr Chairman the question of arbitration, it says here that the Adjudication Directorate will have the final arbiter of claims, 19.3, says again that there will be an electoral tribunal to arbitrate on claims. Maybe they can just explain to us the interrelation between these statements.

Chairman:

Between 19.1 and 19.3 in respect of arbitration. Any member of the Committee wish to attempt.

Mr Rosenthal:

Mr Chairperson the question of special electoral tribunals constitutes a proposal that I think has been made by the Technical Committee on Discriminatory Legislation. We are in discussion with them and I think at this stage all I would like to say is that it represents a possibility that we are presently discussing. That such a special tribunal, with a limited jurisdiction, would facilitate the handling of these kinds of claims.

Mr Alexander:

I hear what the Mr Chairman, but we would be much more happy if we know what are the powers of this tribunal, what is its status in terms of the ranking of tribunals in terms of the legal system, how is this to function, how it relates to everything. We would not like to be unclear on this matter. It is a very serious matter and we would not like to be unclear and just say somebody will decide that. I think that we need to have clear suggestions before us, on this matter, it is a very serious matter.

Prof. Ripinga:

Mr Chairperson I am rising on 19.1, the word final there is creating some problems, where you talk about final arbiter on claims. I would suggest that the word " final" be taken out because in a way it might create an impression that this Adjudication Directorate is actually above the Commission. I know the [inaudible]... of appeal and arbiter, but the word final there, I think would create problems.

Chairman:

May I ask the Committee, this says that "This Committee will be the final arbiter", but then whatever they find is subject to amendment by the Commission itself. So, how final is it?

Mr Rosenthal:

Yes Mr Chairman, we have proposed that there be an appeal from a decision of the Directorate to the Commission", but no further.

Chairman:

But you've heard the comments and the issues raised and you will note that for your next report.

Mr Maduna:

Mr Chairperson, with regard to 19.3.

Chairman:

We are not there yet. 19.2. We are there now Mr Maduna.

Mr Maduna:

Mr Chairperson with regard to 19.3. It occurs to us that in fact firstly, as Mr Alexander says, this is too serious in entity to be established by a body which is exercising delegated powers. Because it is suggested that it should be set up by the Election Adjudication Directorate. We would rather that they investigate the feasibility of this Council doing exactly that, establishing it and therefore maybe identifying and defining its powers and role, so much so that in fact, it is imaginable to ask Mr Chairperson that maybe it could provide us with the necessary formula around the problem we have, with regard to the courts. So, maybe they can investigate the feasibility of this Council looking into setting it up, defining its powers as well as, maybe, defining, how if at all, it would relate to the existing hierarchy of the courts, bearing in mind the problems we have expressed, all the time, with regard to the courts.

Mr Schutte:

Mr Chairman, I agree with Mr Maduna that 19.2 is very vague, but I would like to, again, emphasise that our position is that the Adjudication Directorate or Commission, or whatever one would call it, would have the final say and would only be subject to review by the courts, and also that it should be constituted by legally trained men and that should be clearly set out here.

Mr Andrew:

Thank you. We would support Mr Maduna and Mr Alexander in the desirability of having more detail about electoral tribunals if they are going to be provided for, and the second point I wanted to make was in respect of 19.3, in the fourth line, after the word "access", to add the word 'of political parties', so it would read "Access of political parties to venues [inaudible]... as media meetings". I think it gives greater clarity if I have misunderstood what it is meaning, in other words if that doesn't help with clarity and conflict with what the intended meaning is, then I think it probably needs greater clarity anyway, because I didn't understand it.

Chairman:

Can we turn the page to Chapter Eight, 20, 21, 20.1, that is adjudication, 2.3.

Next Speaker:

[INAUDIBLE]

Chairman:

What is the difficulty Mr Maduna? Just for the sake of the Committee. I think what it says is that the whole election could be a problem or there could be a problem only in a specific area, which does not affect the national election as it were, and I think the Committee has attempted to address that possibility, that because you may have in a particular region, may have had a problem, you don't have to conduct or have a re-election on a national basis if you only have a problem in a specific region. Is that not what 22 says, "It must determine where an election is free and fair and doing so it may accept or reject the result of the poll as a whole, (that means on a national basis I assume), or it may accept such a result in part and reject such a result in part or in respect of a particular area or geographic district or for the purposes of voting", so I presume for the purposes of a re-vote, is that correct Mr Rosenthal, so you don't have to have a re-vote if you only have a problem in a confined area. You may ask that in that particular area there should be a re-vote. How would you like to have it further clarified to assist the Committee?

Mr Maduna:

Well, Mr Chairperson, I am only hoping that that is exactly what it means?

Chairman:

Is that what it means Mr Rosenthal?

Mr Rosenthal:

That is what it is intended to mean, Mr Chairman.

Chairman:

So, if you can clarify it a bit more if it is possible, but I think it is clear. 20.3. Mr Andrew.

Mr Andrew:

Still on 20.2. Until we have got finalisation on other things we will not be certain, but its fairly likely that at least the first election will not involve voters roles, and so we are going to have to bear in mind, if you have a problem in a particular area and you are not working on the basis of voters roles, it is not so easy simply to say, well we will have a re-election in that area in 21 days time, but I don't think we can try and bother about the detail and about the Act until we have further details on the first interim constitution.

Chairman:

That is a very valid point. Mr Mentz.

Mr Mentz:

[INAUDIBLE]

Chairman:

Eligible to vote.

Next Speaker:

Thank you Chair, I just wanted to add on that 22.2, that we are raising this issue as a whole, whether you declare part of the election as valid or the whole election. In view of the fact that the first election will be run actually on proportional representation, and if you declare re-election in one place, what happen to the rest of the election and that's why I say that the Technical Committee should relook at the issue.

Chairman:

I think theoretically the rest of the area, you don't have a re-election, but I think the difficulty, and it's a real difficulty that has been raised, is if you have a problem in a particular region, what stops people from other regions streaming in and voting in the re-election, who really should not be part of it. So, it is a matter that needs to be addressed - right, 24.

Mr Rajbansi:

Mr Chairman this question of delegation can become very controversial. When you delegate, you delegate to your sub-structures, you don't delegate to another body which is not specified in a legislation.

Mr Desai:

This clause deals with the non-acceptance of a certificate. We feel, as we made the general remark, I just reiterate it, that the commission has too much power. Who will govern the country in the meantime. When will these elections take place, will they ever they take place, will the climate ever be satisfactory, it leaves it very wide and open? We are heading here for a possible government from a minority to a Commission, and there are implicit dangers in this.

Chairman:

Mr Rosenthal could you help? What in the event of an election being held and there is a difficulty with it, what happens to the administration in the meantime, the public service or what...?

Mr Rosenthal:

Mr Chairperson, I think that this obviously will depend upon the constitution or legislation, but I would assume that it would provide for the continuance of the existing structures until such time as the election has taken place, which has been certified and which is then effected the appointment of a new body.

Mr Maduna:

Mr Chairperson, earlier on we made the remarks with regard to the International Community and I would just like to say that those remarks still stand in this regard as well, and secondly, Mr Chairperson, we would be happier if the 75 percent quorum, we are talking about, is with regard to those who are present in voting, rather than just to say that 75 percent of them must be there or else.... The other one, Mr Chairman, the last point in this regard is that, we would like certification, whatever it says, whether it says this were free and fair or not, to be final, Mr Chairperson, rather than allowing us to say look, because we query certain aspects therefore of we can't reach finality. Now I can imagine the damage it could do to the country, where people say yes we have voted, but what was it worth because the parties are still seeking to have this reviewed or to appeal against it and so on. We would rather that in fact the certification be final so that then the country is actually governed on the basis of the results of the elections, and so on Mr Chairman.

Chairman:

Any further comment? 20.5. Mr Mothibe.

Mr Mothibe:

Mr Chairman. 9.2, from the words starting with "Or non-compliance" up to "Electoral Code of Conduct", I believe these words should be deleted and that elections have to be conducted in terms of the Act or the Electoral Code of Conduct.

Chairman:

So you are saying that if there is an unlikely occurrence which no one could have foreseen, or there is a mistake, that is OK, but non-compliance with the provisions of the Act or with the Electoral Code of Conduct, is not acceptable - is that what you are saying?

Mr Mothibe:

That is what I am saying Mr Chairman.

Chairman:

So, it is a deliberate non-compliance with the provisions that have been laid down. Anyone else on 20.5. Mr Andrew.

Mr Andrew:

I am afraid we have to disagree, not because any of those things are desirable, but I think the question of the material effect of something. So, I mean if you have one minor official in some unimportant incident to deliberately not comply with the provisions of the Act, you clearly don't want once someone has proved that element of non-compliance that the Commission then has to declare that it is not a free and fair election and so, I think the materially affected the outcome is the critical issue and so we would not concur, unfortunately, with Mr Mathibe on this.

Chairman:

So, you don't want a re-election in Hillbrow.

Mr Andrews:

No, particularly if it then has to disclose as a source of our funds.

Next Speaker:

Mr Chairperson, ja, we would agree with what Ken Andrews has just said and we think that this paragraph should remain as it is, because otherwise it is going to open too many Pandora's boxes for us. So we suggest that it remains as it is.

Chairman:

No, no it is not going for agreed or not agreed, we are discussing it. I just have to point one thing out, we are vesting a small group of people with probably the gravest responsibility of any Commission or any Organ dealing with the outcome of the elections and if we don't make adequate provision for any difficulties that may arise, we must look at what alternatives may arise, and I think we must be very careful, both in the powers, the control of those powers and the requirements and the standards that we lay down for this Commission, because there is no appeal after they have made a determination. For arguments sake, say there is an election and one of the major parties fared very badly and then feel aggrieved because they feel certain things have not been complied with - and if this happened, we are faced with difficulties - and this is why I say we are not just dealing with another Commission, we are dealing, with probably the most sensitive. That is why when I said earlier "I pray for them" I really meant it, because it's going to be a most awesome responsibility, and therefore I welcomed and have allowed more debate than what I normally would have, extended debate, on what is a very important issue. But the matters that are sensitive and that does concern, you have been raised and of course we will have a second bite at the cherry when it comes around. This is a very important piece of legislation.

Mr E Pahad:

With respect to you, I don't pray for myself, I will also pray for the Independent Electoral Commission.

Chairman:

But I said I am praying for them, but I am pleased to hear that you are praying. Chapter Nine, page 29, 21, Jurisdiction.

Next Speaker:

Mr Chairperson if it is not out of order the Technical Committee was also hoping that somebody might pray for them.

Chairman:

We will take your request into consideration. 21 - Jurisdiction, 22, Successors to the Forum.

Mr Maduna:

21, Again, Mr Chairperson, our reservation must be borne in mind when the area is being revisited.

Chairman:

Any reference to the courts, that reservation is taking into account.

Mr Andrew

As that reservation has been made a number of times, and if one remains silent, may imply that other people agree. We do not agree, particularly in this instance, in some of the other instances we think there is room to relook. When we are going to be drafting as a body, a constitution for the transitional period or an interim constitution, whatever we want to call it, and lots of other things we are doing, we are going to have the courts that we have in South Africa, not substantially different for some period of time, and if we are going to function on the basis that we cannot rely on our courts to dispense, and I am talking about the senior courts like the appeal courts or supreme courts to be impartial or dispense justice, I think we are laying very difficult foundations for a whole range of decisions that we are going to have to make, and that is not to dispute the fact that the composition in terms of race and sex and so on of the courts has to be looked at very hard and one has to start amending that as fast as one reasonably can do. Nevertheless I think if we as a Negotiating Council start from a premise that our courts are untrustworthy to dispense justice, I think in many things we are going to deal with, including constitutions, we are going to be in problems and our view is in respect of the [inaudible]... division. We do have confidence in them and we would therefore not have a problem with this clause, for example, and some of the other provisions in this Act. Thank you.

Mr Schutte:

Mr Chairman I agreed with Mr Maduna on most of his other suggestions, as far the courts were concerned, but in this case I must also agree with Mr Andrew that... Clause 21, we agree with it as it stands.

Chairman:

I think there are the two views, can you add anything.

Mr Maduna:

Mr Chairperson you see, we are not going to be debating this. I want to believe that in the Negotiations process we have accepted that there is a role to be played in the process, in this whole constitutional process, to be played by courts and we have accepted Mr Chairperson that at the same time there is a need to create a special type, a constitutional tribunal for instance to deal with the issue of the Charter of Rights as well as the compliance or noncompliance by the

Constitution Making Body, with the agreed set of principles, exactly, because, Mr Chairperson, the matters we are dealing with are very sensitive. We are not saying that courts in absolute terms must have no right to play in these matters, but what we are saying Mr Chairperson, is that to the extent that we can we must create special tribunals that are going to take care of some of the peculiar problems that we are having. I am lawyer by training, but I want to say without flinging that I have never had any confidence in the courts in the courts myself, I make no bones about it. I come from a different tradition in this country where the courts were not our courts and they are not ours, today and there is no way, we can conceive that these courts can actually play a role that is so sensitive. In fact Mr Chairperson, let's be very sensitive to the problem that we are dealing with. If in respect of the principles and in respective charter we will find it quite convenient to create a constitutional tribunal, let us extend that same notion to some of these matters. It will present us with a greater difficulty where courts, as they are currently composed, rule in fact in a manner that may not be objectively acceptable on the ground. That is the problem. We wouldn't like anybody to say there you are, you cede that power to these courts. We would like to have confidence and faith in our courts, but nothing was done to compel us to have to have faith in them - it is as simple as that.

Chairman:

Well I am pleased they were not 'your' courts. I hope they will never be 'your' courts, I hope they will be just courts. I hear what you are saying Mr Maduna. 22.

Mr Pahad:

On the question of the review, where you are not clear, is what is supposed to be reviewed both with respect to judicial and or a political review. It seems to me it was at least, that what should happen, is that if you have some kind of transitional executive authority or whatever you are going to call it, that they should be the people who shall review the thing, not an outside body, a body of lawyers or judges, who have not been involved in any of these discussions and therefore it would be wrong to take this IEC that you have, and get it reviewed by somebody else. If it is a political decision to set it up, and obviously the people who set it up should have the right to review it. I think that is where it should stand, because this is not question of reviewing a judicial decision as such, that is how I am reading it, and therefore you can come to a problem. Your courts are there not to make political decisions, but to make judicial decisions and I think it would be very correct to go in the direction that Mr Maduna was stating, even if we don't like his courts in the future but at least his direction seems to be right.

Chairman:

I said the courts should belong to no one, but should be courts, to expound justice. They shouldn't belong to anyone, but I know what he meant. 22, 23.

Mr Rajbansi:

Mr Chairman in respect of delegations, when you deal with delegation in any legislation you delegate downwards. Here Mr Chairman, it is too dangerous to give the power to delegate, to just any person or other body and even here including the state, so the state could be given certain responsibilities to carry out the functions which the Commission has. Here, Mr Chairman, the deletion should be to the persons, the structures must be identified in the legislation, there should

be the sub-committee, the Chief Executive Officer or the Sub-Directorates with the understanding that the Commission does not delegate their responsibility. This is too far and wide and it can become controversial and dangerous.

Mr Mentz:

Mr Chairman I want to support Mr Rajbansi on this issue, not only is reference made to other bodies, but this commission can in fact delegate powers to a person, an individual. If we have had a look at what powers this Commission had, they can delegate this to an individual, a...

[END OF TAPE 3]

[TAPE 4 - SIDE A]

Chairperson:

Mr Titus?

Mr Titus:

Thank you sir. I was going to say exactly what the other two gentlemen have said. I have got the strongest objections to the reference to the state there, but I would like to go just one step further and to suggest, sir, that in view of the importance of the functions which are entrusted to the Commission itself, that we go one step further and adopt the formulation which we have in respect of the Bill on the Independent Media Commission which goes as far as to mention that the Commission itself shall not be divested of the powers divested in it and that it shall have the power to rescind whatever decision the delegate team may have taken in the matter. That is something which I would like to suggest as an addition, sir.

Chairperson:

Mr Schutte?

Mr Schutte:

Chairman, I am sure that an argument that there should be a limitation to the delegations, but that there should be delegations can't be questioned because, I mean, we are dealing here, Mr Chairman, with an election that will need 135,000 officials alone to deal with it.

Chairperson:

Anyone else? Clause 24 - 25: 1, 2, 3. 26, 1 Mr Andrew?

Mr Andrew:

First of all, Mr Chairman, I think this whole section belongs in the Electoral Act and not this.

Mr Titus:

I concur, Mr Chairman.

Chairperson:

Concur? Mr Titus?

Mr Titus:

You are too fast for me. In 25 the heading instead of security it should be secrecy.

Chairperson:

Repeat please.

Mr Titus:

Infringement of Security - that should be Secrecy.

Chairperson:

Absolutely. The feeling is that this more appropriately forms part of an Electoral Act. 26:2...

Mr Andrew:

Well, this whole section...

Chairperson:

The whole section, yes. Do we have general consensus on that?

Mr Andrew:

I've got comments of changes on...

Chairperson:

Absolutely. So we will do it when we get to the Electoral Act. You make sure it is part of the Electoral Act. Will you check on that please?

Mr Andrew:

I shall.

Chairperson:

Clause 27? 28? Mr Desai?

Mr Desai:

Mr Chair I think this clause gives the Commission the power to amend the Electoral Act. I think this is extremely dangerous. There is too much power in an already powerful Commission.

Chairperson:

Mr Andrew? Is there agreement on that.

Chorus: [Agreed]

Chairperson:

Agreed. The Committee has heard the agreements. 29? Mr Schutte? 29:1

Anon:

Muffled sound.

Chairperson:

Is that what you wanted to say Mr Schutte?

Mr Schutte:

No Mr Chairman, even if it belongs to the Electoral Act I think it must be said that this should not be applicable only to those parties involved in the election because there may be other parties who are intent on disrupting the election although they may not be parties in the election and we don't exactly know what the tenure of this code will be. But I am sure that it will not only refer to the regulations of the Electoral Act and a submission to those recommendations but also in regard to intimidation, violence and a commitment to a peaceful electoral process. And in the sense that I am sure that there will be given some statutory sanction to it, serious consideration should be given that this should be applicable to all political parties and organisations in South Africa whether they participate in the election or not.

Chairperson:

Should this not be understood against the background of the interpretation or definition of political party in 1: 12, where it says exactly what you are saying?

Mr Schutte:

But that is not against 29: 1. It refers there... it says political parties and then political parties in 1:12 is defined as including also political organisations participating as such or publicly supporting or opposing policy ... etc., in other words they do not need to participate in the election. The definition of political parties...

Chairperson:

Mr Rosenthal?

Mr Rosenthal:

I think, Mr Chairperson, that what might be missing is a reference to a political party that was opposing the election itself.

Chairperson:

Yes, yes. So you will give attention to that? Any need for discussion on 29:2, 29:3? Mr Desai?

Mr Desai:

We feel that this particular section cannot be considered until we have seen the code of conduct. We don't know what that code of conduct will contain. We don't know what the penalties will be. The penalties are not spelt out here. Is it death? So I think we must defer consideration of this particular section until we know what the code of conduct is.

Chairperson:

Mr Desai is opposed to the death penalty. No, I think you make a valid point and I am sure that the code of conduct or the electoral code of conduct will be available before any final decisions are taken because the points made are relevant. Clause 30? Clause 31? 30 yes?

Speaker not identified:

Don't see why this Act should contain anything related to a referendum

Chairperson:

Don't see why this Act should make any reference to a referendum. Its a point made earlier. 31? Mr Meyer we have concluded the discussions and when we commenced with the proceedings after lunch I indicated to the Negotiating Council that the Planning Committee has considered and will make certain suggestions as to how perhaps we can deal with some of the issues we could not resolve here and have identified among other Clause 7 referring to international participants, clause 16 referring to powers, duties and functions, clauses 17, 18.3, 21 where further political discussion needs to be undertaken perhaps with the Technical Committee. Could I ask you to elaborate a little further?

Mr Meyer:

Mr Chairman, the Planning Committee did give some attention to how to deal with this Bill further. We haven't had the opportunity during the lunch hour to further consider it. I would like to suggest, if the Council would find it acceptable that the Planning Committee consider it again tomorrow morning and then come back to the Council with a recommendation and to start off business tomorrow on how to deal further with this Bill with the possibility that the Council might involve itself in a special way in taking the matter further. Without elaborating on it further I would like to propose that we adjourn now as far as this matter is concerned until tomorrow morning so that the Planning Committee can first have an opportunity to consider what would be the best way of dealing with it and come back to the Council with a specific recommendation in that regard.

Chairperson:

Shall we then await the Planning Committee to make a specific proposal to the Council tomorrow morning? I thank you all very much. I wish to thank the Technical Committee sincerely for the enormous amount of work that gone into it, for their patience and their responses to the questions that have been asked and to the way they have attended to the debate in general. We wish you good luck and wisdom in accommodating the views that have been expressed here. Item 5 of our agenda. 5.1: Report of the ad hoc Committee on sufficient consensus. Mr Webb on behalf of the Planning Committee.