

**CONSTITUTIONAL ASSEMBLY**

**THEME COMMITTEE 5**

**24 OCTOBER 1994**

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**CHAIRPERSON:** (inaudible) ... the minutes of the last meeting. If people agreed that we should proceed then I would like us to look at the agenda and see if we are happy with it. Adopt it, and then proceed in terms of what is on the agenda.

**ADV SCHUTTE:** Agreed.

**CHAIRPERSON:** Thank you Mr Schutte. Maybe we should just get - agendas are outside. Copies of the agenda are outside the office. There are also in our documentation. Thank you for the sake of getting to know one another better and better every day. Can people introduce themselves when they speak and can they also press their microphone when they speak. I am Lindi Ngwane. I forgot to introduce myself.

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I welcome you all. I welcome the press over there. Maybe I should say it is, the CC has finally come up. We have what we think is a clear role of the Theme Committee which I can sum up as follows, which is contained in many documentation that we have. But just as an opening I would like to give a summary of what we expected to be doing as a Theme Committee. It is being agreed that

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Theme Committees are not just going to be negotiating forums.

Their priorities will be to receive submissions, process them into reports for consideration by the Constitutional Committee and these reports should include non-contentious issues, contentious issues as well as suggested approaches that this committee will make to the CC and then we also have at our disposal Technical Experts who are going to help with drafting, but we don't have the right to refer matters directly to the Technical Committee. We do it through the CC. We expected to come out, from now until the 15th of November with a work programme as to how we see this particular Theme Committee functioning and that work programme will assist their administration and management in preparing our programme for next year and we expected to finish our report, final report on the 30th June 1995.

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I think what still needs to be worked out from my own view, is the liaison and between ourselves the Theme Committee and the Constitutional Committee and the CA. That is still not clear in my mind. I think we need also think how do we

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connect with the Constitutional Committee for instance. Then how do they connect with us in terms with what we discuss.

Having said that, I would like to refer people to minutes of the last meeting which is very short minutes, which I will take to have been read by members. If there are any corrections, additions and amendments. May we hear those.

MR DE LANGE:

Just to reflect for those three --- Sorry, may I just apologies for being late Madame Chair, secondly paragraph 3 I don't think reflects correctly what we agreed, as that, the matter will be dealt with by the Core Group and then referred back to the Theme Committee for rectification. I think that should just be reflected correctly as we agreed to Chairperson.

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CHAIRPERSON:

That is actually correct. We agree? Can we adopt this minute and then look at matters arising?

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I have identified 3 issues which arise, which is the election, the part that Johnny was talking about. The election of the chairperson, submission from parties and the press



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statement. I don't know who deals with this? I don't want to be the only person speaking in this house. I think other members from Core Groups can make a report, Chairpersons, how it happened and who the people are. Do the people prefer that I do it?

OK, we met as a Core Group and elected 3 chairpersons, myself, Advocate Danie Schutte, and Mr Van der Merwe - who I don't see here and we did those appointments subject to confirmation and ratification by this meeting. Then on the submissions from parties ...

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UNKNOWN:

Madam Chair, we elected 4 Chairpersons. Mr Gibson was also elected but withdrew at a later stage.

CHAIRPERSON:

That is the right correction. I don't want to add to that. Anything to add to the Chairpersons? Johnny?

MR DE LANGE:

Chair, may we move for the adoption by the Committee of those three as our Chairpersons and to operate on a rotational basis as is being suggested. Thank you Chairperson.

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CHAIRPERSON:

So agreed? Thank you. Can we skip matters arising from submissions because it is on the agenda and we will deal with it when it come to the agenda for today.

The next matter is the instruction that we gave to the administration, our administrators here that we would prepare press statement, but they would facilitate the publication there of.

It transpired that when it went back to the Management Committee, that all Theme Committees that wanted to make press statements and it was felt by the Man Com that they want to deal with their press statements and do a joint statement for all Theme Committees rather than a Theme Committees doing their own statements, and it is also stated in the Management Committee documents that they are going to facilitate any media and press liaison between Theme Committees and the press, so this press statement from this Theme Committee didn't come out as was discussed in this meeting. I don't know if anyone wants to add on that or if there are questions around that issue.

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UNKNOWN:

Madam Chair, I feel that is a bit too rigid. Some sort of



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flexibility, there may be occasions when an issue comes up in a particular Theme Committee which is off public interest and it is topical, and the Theme Committee should be able to issue a statement. Even if we have a general rule that they should be centralized, but I don't think we should be precluded from issue a statement.

**CHAIRPERSON:**

Thank you, do we want to discuss this, maybe on the way forward? Do you want to hear what the administration has to say about this comment? Thank you Mr...

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Well, I was informed that this was just a general statement introducing Theme Committees to the public and inviting submissions. The department has set up a Liaison Committee for each Theme committee through which we are going to make our press statements and relate with the media. It can be discussed on the way forward under our work plan. Can we leave it at that?

**UNKNOWN:**

It is not suggested that the members are not allowed to make press statements and so on, because of course we will make press statements if we think it is necessary to do so.

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**CHAIRPERSON:** Is that our view? Individual members to make their own press statements?

**UNKNOWN:** Madam Chair, the position surely is, no ordinary member can speak on behalf of this committee. But any political person can make a press statement if they so wish. The person who speaks on behalf of this committee, is the person designated by this committee.

**CHAIRPERSON:** Thank you. I think we all agree with that. Any other matters from minutes arising that I didn't pick up myself? None. Can we then proceed with our agenda?

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The next point is submissions. There isn't much yes Advocate Schutte?

**ADV SCHUTTE:** Madam Chair, the way I understand it, basically we had to make submissions on procedure. That is now being decided for us by the Constitutional Committee so I don't see any sense in dealing with it at this stage.

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**CHAIRPERSON:** Any other comments?



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**MR GIBSON:** Chairperson, I didn't understand it that way. I understood that we should make submissions in respect of those items reflected on pages 63 and 64 of the composite report that we had, in other words, Constitutional Issues which needed attending to, priority and so on.

**CHAIRPERSON:** Not at that stage Mr Gibson. At that stage we didn't have that document you are referring to. Submissions relating to what you are saying are to be made today. To this Theme Committee, those were party submissions regarding how they should be process, time frames and all that.

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Advocate Schutte is correct, that process is being taken over by the administration and that was part of the briefing this morning in the Assembly. The only submissions we are going to refer to this morning are those of the Theme Committee are those that are dealing with content. The substantive issues and those are coming now into the administration. Thank you. Any other comment?

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**MR DE LANGE:** Chairperson, I think there is a distinction we need to make and that is this, that clearly the processes of how the different structures relate to each other, how representations



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are being made and so on, clearly that is agreed for uniformity of a certain level. But there is a process that is dealing with content, that we must deal with surely. That is to identify those areas we want comment on.

I mean, we would want comment on for example, the Constitutional Court. And particular aspects of the Constitutional Court. How it relates to other Courts etc. There are various other aspects that we need to identify to get an overall brief for ourselves, that is a process point as to the content of our Theme Committee - that no one else can do for us. I mean, the Constitutional committee is not going to sit and do that for us.

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I think we must make that distinction and I thought that is exactly what we ask the Core Group to start looking at. Is to start identifying, giving us a list that we can discuss those - to say these are the major areas, we as a Theme Committee need to discuss and from that we use the processes that has been created.

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How to relate those identified issues to the public for comment from them? Once those submissions then come



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in on the content of those issues, we then deal with it again. So, I just hope we understand it the same. That process should definitely be dealt with by us. The identification process. Thank you.

**CHAIRPERSON:** You are correct, that is what we are going to do today. William?

**MR HOFMEYR:** Comrade Chair, maybe we should just clarify - I think the points that Mr De Lange and Mr Gibson raised is envisaged to discuss under point 5 on the agenda. That is the work plan for the Committee which I think we deal precisely with those issues.

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I think point 4 relates more to the broader process points that the Chairperson have that outlined earlier. I would suggest that we actually leave point 4 at this stage. Unless there is somebody who has anything to contribute on that point. That we move on to point 5.

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**CHAIRPERSON:** Thank you. Mr Moosa

**MR MOOSA:** Chairperson, I just wanted to ask on that same point, what



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happened to commence that we have received on the 7th October as we asked from the Legal fraternity and from the other political parties. Did we receive anything with regard to this particular process?

CHAIRPERSON:

Yes, we did receive comments regarding process. They were synthesised by administration and presented to the Constitutional Committee and that is what - this is the synthesis, but I think we all must have received this B document where all the inputs about process from parties as well as I think of a few Law Societies are - came. That is the whole documentation. ANC and all the parties. It is in this document and it is about process.

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MR MOOSA:

Chairperson, I think only constitutional committee members received this. I am not sure that all Theme Committee members received it.

CHAIRPERSON:

If we didn't receive it, it is because this broad process is been taken over by the administration. They have sympathised the whole thing and it is the basis of their briefing and the time frames they have put for us. We did receive this. I think if members want the individual input,

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maybe we should ask the administration if those can be made available to members.

Do people feel they want copies of all the submissions? Can you ask the administration to do that for us? Thank you.

Can we pass paragraph 4. Comrade de Lange?

DE LANGE:

Maybe if the administration could just help us - we also receive the Constitutional Committee's documentation for today. There is a particular task that the Theme Committees must do and maybe if they can just give us some time frame by when we have to do it.

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In this document on page 5, under issues that were agreed it says, the meeting agreed on the following brief or Theme Committees and under 5.1.4 it says the Theme Committees would nominate experts for appointment by the Constitutional Committee to technical committees. By when are it expected that we do that so we at least keep it on our agenda either for today or for next time. If that is a process issue, we need to deal with it at some stage. If we can just

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get some clarity on that please.

**CHAIRPERSON:** Can we deal with it when we come to the point on nomination of the Technical Experts. It will come out on the way forward. It forms part of those issues that we are going to make an input about from the Core Group, so that would be dealt with then. Thank you. Anything else?  
Advocate Schutte.

**ADV SCHUTTE:** Chairperson, are we now on 5(a).

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**CHAIRPERSON:** We haven't started, but if you say so, we can start.

**ADV SCHUTTE:** I have, it was decided by the Core Group that each party should provide an input and I have provided, I have compiled an input if I could just, in writing, so perhaps we can just give each person a copy of it. It was decided by the Core Group that we should deal with the points under 3.4 (a) to (e) and I believe that you will then deal with the point (g) to (j). Is that correct?

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**CHAIRPERSON:** That is correct, but I thought I would just to introduce that topic, read these points to members in case they don't have



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it. You can read the things from (a) to (j) for us. Please.

ADV SCHUTTE:

(a) is what constitutional issues in the theme that need to be attended to. Which of those constitutional issues need to be dealt by on a priority basis. What are the areas of overlap with other Theme Committees. Which constitutional issues are necessary to be dealt with in commissions and what are the group of Constitutional issues in respect of which the committee contemplates to submit separate reports.

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Then the matters you will be dealing with, is how many such reports are to be issued, what are the structures and role players that are to be consulted, what community and media liaison assistance would be required. Who and what technical assistance would be required to support the committee.

Madam Chair, I don't think it is necessary to go into detail. I more or less under (a) refer to the Constitution and to the Constitutional principles and from that identify the matters that I have to deal with at least.

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There maybe more. As far as (b) is concerned, I felt that



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the two most important issues that we will be dealing with, will be the appointment constitution and the jurisdiction of the Constitutional Court and the position of traditional authorities and indigenous law. Those aspects I believe are perhaps the most important and I don't necessarily say they should be given priority but because of the importance it might well be the right action to take. To give them priority.

As far as (c) is concerned, the areas of overlap, there is clearly an overlap between the traditional authorities, our mandate on traditional authorities and the mandate also given to Theme Committee 6, also to deal with traditional authorities.

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Then, as far as (d) is concerned, the issues to be dealt with in commissions, I believe those two aspects which I have mentioned could possibly be dealt with in Commissions, and as far as (e) is concerned, I think it is far too early to say at this stage if we need separate reports. If the two matters that I referred to can be dealt with, in a fairly early, then I think we don't need to submit separate reports.

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Then I have made the further comment, Madam Chair, that the issues relating to the public protector, human rights commission, gender commission and the commission on the restitution of land rights - those are issues which are now being dealt with by Theme Committee 6. But they could well form part to our mandate, because they are related to courts and the law. Thank you Madam Chair.

**CHAIRPERSON:**

Thank you adv Schutte. Just to explain to members - each member of the Core is going to give such a presentation, either in writing or orally. They would be over a laps of course, because some of their priorities, we have the same priorities. We see issues sometimes in a similar fashion.

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The purpose of this, the input is made and then we discuss it there after. Seeing that we might be saying the same things, maybe we should hear all the inputs and ask questions for clarification there after and then get into discussion. Is that acceptable procedure? Silence means consent. Thank you.

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I won't call names of Core Group members. They will, as they feel, just do the presentation. Thank you Advocate



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Schutte, Mr Gibson.

MR GIBSON:

Chairperson, I will make a verbal and very brief presentation. My shopping list is very similar to Mr Schutte's and that should be no surprise since these matters are obviously the ones who do require attention.

I think there is an aspect where we will have to address ourselves to at some stage and that is, how much of this should be in the Constitution? The current Constitution of South Africa has far more in it than would presumably or normally necessary in Constitutional Terms. The reason those matters are there, because there was an agreement reached at Kempton Park and everybody wanted to be sure that there was belt and braces and so on. A large number of matters that were dealt with in the Constitution would not normally be there. I am inclined to the view that probably the Constitution that we are writing, should include a meaning of the same matters. It is an aspect that we will have to consider at sometime. If we will slim it down or whether we stick as far as possible in spelling it all out in the Constitution.

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Then, secondly, an aspect which concerns me throughout is the whole aspect of accessibility to the courts. I also don't know if this is a Constitutional issue. But I'd like to measure each one of the courts and each aspect of this whole judicial system against the importance of making it possible for ordinary citizens to have access to the courts.

I would like to suggest, perhaps that is an aspect which could be considered by a commission. I don't want to go into a lot of detail about it now, but the whole question of legal aid for example is very unsatisfactory as it operates in South Africa and there are far too few people who are able to go to court, either to litigate or when they charged. I would think that we should give special attention to that whole question. I haven't got a magic wand that I can wave about it, because it could cost billions of rand to give people representation to which, in my view, they are actually entitled, also in terms of this Constitution, but that is an aspect that needs, in my view a commission to enquire into it.

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Then, I think that the question of sorting out priorities is really quite a difficult one. I certainly agree with Advocate



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Schutte that the constitutional court is a priority, but how can we give it any sort of value judgement at this stage when it haven't even started operating yet. We don't know whether it is going to be successful and successful we don't know what sort of workload it has. I really think it is premature to start considering at this stage whether it is operating successfully or not. Since it isn't operating. I would think therefore, that questions relating to the Constitutional Court, we should rather consider dealing with in a few month's time.

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There is one aspect of the Constitutional Court which could get attention now or soon. That is the jurisdiction question, because anybody who has ever been involved in the courts will tell you that the chances are great that the Constitutional court is going to be totally overloaded and you don't have to be a genius to see that. Perhaps we should give attention to that whole jurisdictional question even now or at a reasonable early date. It might be that some of the Constitutional Jurisdiction should be given to other courts lower down the scale.

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Then, as far as the Supreme Court is concerned, I think it



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is important for us to give attention quite urgently to the question of the seats of the Provincial Divisions.

The Law Society of the Transvaal for example, is having meetings this coming week, which unfortunately I can't attend. They are giving specific attention to the question of what impact it would have on lawyers, what impact would it have on the Administration of Justice if you established new seats for the courts in each one of the Provinces. Presumably we have got to consider doing that. Then, one has to look at the infra structure, you got to look at the question of a Bar and a side Bar if you are still going to have separate ones. You have got to decide whether it is financially a viable proposition. It might well be that on that issue we need a commission to look at the question of the seats of the Supreme Courts in the various provinces.

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Then, what about the question of advocates and attorneys. I am not sure if this is part of the brief of our Constitutional Committee. But, that sort of question might just be dealt with legislatively. I think we must decide whether we are going to have a look at a system where you have people practising at the bar and the side bar and whether they are

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going to be reforms that we want to introduce and so on. I think that for the moment is the issues I want to cover, apart from just the final one.

It was mentioned to me, that a very voluminous memoranda was submitted to Kempton Park on this whole question. I didn't see any of those, because I was dealing with just specific aspects, and very few of the members around this table would have seen that. I wonder whether one shouldn't go on a retrieval exercise now and go and find all those submissions that were made by the Bar Councils and the Law Societies, all sorts of academics and so on, because they impinge on issues very materially that we are going to deal with.

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**CHAIRPERSON:**

Thank you Mr Gibson. Mr Hofmeyer, do you have a question or do you want to input? You want to give a input. Okey.

**MR HOFMEYER:**

I am not going to try to make a comprehensive input, because I think most of the issues have been covered, but I think the question that Mr Gibson raised is an important one and that is at some stage that we will have to decide

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what goes into the Constitution and what doesn't go into the Constitution. I think a number of the points that have been raised, I would argue, probably should not go into the constitution.

But perhaps just a couple of other issues that we felt would deserve investigation at least at this stage. The one touches on the whole question on access of justice as well. I think that in a number of overseas countries there are ways in which alternative dispute resolution or some sort of community based involvement in the Justice System is facilitated and I think given a crisis that there is in our country about the excess to courts, that we need to look seriously at that issue.

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I think also something that is not really spelt out in the Constitution in the present, but we need to look at, would be the question of structures such as the Attorney General and the Magistrates Commission that have been set up and their relationship to the Judicial Structure as a whole. I think particularly with the fact that these bodies are now independent or semi-independent of the state, we need to just examine that issue.

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I think the questions around the Constitutional Courts have been covered, but I think more broadly the whole system of the appointment of Judges is obviously one that we will need to re-look at and re-visit in our discussions. I think the other points I wanted to make are in large covered.

**CHAIRPERSON:** Thank you. Mr Matthews.

**MR MATTHEWS:** I think that the submissions by Advocate Schutte are very comprehensive and maybe one could use this as a kind of working document otherwise if we have numerous submissions on the same thing we won't be able really to produce a coherent document.

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So, I will start by saying, the way we deals with traditional authorities something really relevant to our Committee would be the jurisdiction, the recognition and jurisdiction of customary courts as an item. Not just traditional authorities, but the courts, separate from the authorities as such, traditional system.

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**CHAIRPERSON:** Can I interrupt you.



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MR MATTHEWS: Yes

CHAIRPERSON: Thank you. Members have been asked to prepare a short input and presentation on that thing, seeing that we must have prepared - we should hear them out. We could be repeating maybe, but William has spoken now about the appointment of Judges. One person could take it further and say the accountability of Judges - do you want them to be for life? Do you want them to be re-appointed? It is issues like those that will come from the other inputs. 10

I want to put it to the house - your suggestion before you go on and deal with the issues in that document. As to what people feel, how do they feel, should we rather adopt that suggestion or should we continue with the presentations as they come. I know members won't repeat deliberately what has been said, but if there is something to be added, they will have to add that on. Can I hear members on this?

UNKNOWN: Madam Chair, I don't know if our meeting will be able to compile the report. I would suggest that we should hear everyone out and then we should either ask the Core Group or some other sub-committee to compile a report. After 20



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having heard everybody. I don't think that we, as a group, as we sit here, will be able to finalize a report.

CHAIRPERSON:

That seems to be the view, because basically we do need to hear everyone. Get into discussion. I don't think we can be that specific. Can we, Mr Mathews, I don't know what you intend doing. Do you wish to proceed or through the document or should we give the other people a chance to make inputs - then all members of the Committee will be free to say what like to say about any of the inputs, even taken from that document that you have in front of you. Can we agree on that. Can we have another input?

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UNKNOWN:

Madam chair, I do not want to repeat what Advocate Schutte and Mr Gibson said, but I think the following matters must be dealt with. In the first place I think the independence and the impartiality of the judiciary as set out in principles 6 and 7 are the constitution and then the appointment and removal of office of judges as set out in section 104 and 105 of the Constitution.

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Then in the 3rd place, the equality of all before the law, principle 5 of the Constitution and then the different courts



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and then the jurisdiction of the above mentioned courts and respect of the common law, the statutory law, the Constitution and the indidounous law as set out in principles 13 and 34 of the Constitution. I think these are matters that must be dealt with by this committee. Thank you.

CHAIRPERSON:

Thank you. Any other inputs on those issues?

UNKNOWN:

I was just following up on what Mr Mathews said. I think also the whole question of the Commissioners for Children's Courts needs to be look at, but I think we need to separate the two, because I am not sure in the Constitution, whether we need to have these details, or would if it would go into the different laws like the Traditional Court - there would be a law there for children and there would be a law which would provide for the appointment of those particular officials of court.

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I am just setting clarity, whether we - we did say that we need to look at what we are going to put into the Constitution and what would go into different laws. Thank you.

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CHAIRPERSON:

That is put up for discussion. Any suggestions by members. Mr De Lange? I am still asking for inputs and maybe I should also make an input to complete the picture in terms of my part of the work.

Although I am not supposed to deal with the issues, I have actually also prepared something and the issues that I have dealt with have been covered by Advocate Schutte's paper and by Willie Hofmeyer as well as other members. There are basically bound to be the same here and there, so I won't repeat all those.

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I would then go on to say on the question of how many such reports should be issued and what are the deadlines of submissions of these reports. I looked at these and thought, unless we know what separate reports we will need - it is not possible at this stage to give this kind of information and in terms of (h) the structures and the role players, that are to be consulted, I think members will find a list on their desks of basically who is who in the legal field.

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That list is not exhaustive in terms of, I don't think it deals with structures and people in their previous Ciskei, Transkei,



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Bophuthatswana homelands. Those still have to be identified and brought on board. We have Magistrates in that homelands with their own societies or associations, those have to be added, but basically what I am saying is that, that at least is the kind of people and instruction that we think we will communicate and get into discussions with, but the least is therefore, for members to also add on, on their own. Those structures and the people which they think the role players relating to our Theme Committee.

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In terms of community and media liaison assistance, that would be required to facilitate the Committee's work. I discuss the issue with Mr Noël Taft who is the managing person from the administration, and we have been informed that the CA has set up a liaison department and in that department we have three members who are going to be our media liaison persons. This is the assistance we should require, and I think we would discuss with them how we liaise with the media, although those issues are also spelt out by the CC in terms of people giving interviews, briefings, addressing public forums and other issues.

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When we come to (j), who and what technical assistance



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would be required to support the Committee. I think it touches on the question that Johnny was asking as to the deadlines. I looked at that document that was prepared for the CC and there we need to look at the criteria of the selection of the panel and then having looked at that, then we know who can we invite as Technical Experts.

We can't just out of the blue go beyond South African borders and all that. I think it is best to know the criteria and then to decide who we think should be invited. We need to already nominate people who are going to be in that Technical committee, that will assist us. Management Committee has decided that it would be three people who had three Technical Experts and maybe we should discuss it amongst parties. I don't think we can decide it here. Discuss it amongst parties to come up with nominations for those people.

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I can't give you a criteria of who and who do I think the Technical Experts should be. I think that is also open for discussion in this house and my suggestion is that parties should nominate and come to the Theme Committee next week with their nominations. Then the Theme Committee

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will decide on the final three which will be submitted to the Constitutional Committee. That is how we deal with the Technical Experts. What other kind of technical assistance do we need? I think that can come out of the discussion by members of this House. That is all I want to add onto what was said before me.

I would image that we have met all the inputs that we prepared ourselves on. I opened the whole thing to discussion. Inputs, comments for clarification - if there are any? Mr Moosa.

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MR MOOSA:

Chairperson, there is just one observation that is made from the inputs that have been made so far. That is that we as a Traditional Theme Committee are strictly understood in our role to the question of the structures of the judicial system between the courts and so forth. For a possible new Constitution in South Africa.

I just wondering whether it won't be useful for us as a Theme Committee to consider for a while whether we shouldn't interface with areas of correctional services, of safety and security, and so forth. In determining what the

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role of this Theme Committee would be and ultimately what would emerge from this particular Theme Committee so that and possibly even look at as a Theme Committee what kind of relationship we will have with the Theme Committee on the Bill of Rights. I think that if we are not going to do that, we won't be taking a holistic approach to determine what our appropriate traditional structures for our country. Addressing those needs in terms of these structures.

**CHAIRPERSON:**

Thank you. You are saying those Theme Committees are dealing with those Bill of Rights overlap. You are adding to the areas where it is overlapping with our Theme Committee and those.

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**MR MOOSA:**

No, Chairperson, I am not only talking about an overlap, I am talking about considering areas broader than just judicial structures which seems to be what is emerging from the inputs what has been put in up to now.

**CHAIRPERSON:**

Thank you.

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**UNKNOWN:**

Thank you Madam Chair. Madam Chair, apart from the customary special courts referred to by (inaudible) .... and



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Mr Mathews, was Children's Courts and Customary Courts, I think we also need to include alternate structures. That is Community Courts and Community Meditations in structures. I don't see it in any way being referred to by the inputs given by the Core Committee, but I think this is a special area that needs to be dealt with by this Theme Committee. Thank you.

CHAIRPERSON:

Thank you. Advocate de Lange.

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ADV DE LANGE:

Chairperson I think that broadly I want to just make some suggestions on the way forward for us. It is so that I think a whole list of items have been given to us and the task for us now really as a Theme Committee is to pull those together. To identify what those areas are because ultimately that would be in a flexible way our terms of reference for the way we go forward and I want to endorse the position that was put forward by Advocate Schutte that we ask the Core Group now, that we take these different (inaudible) ...

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Once we have that, then we can start engaging the public on



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particular issues. For example, if we then agree we want comment on X, then we asked for comment on X and so on. Then I also want to say, want to propose, yes we can bring our own proposals here for the Technical Committee, but it would also be of some help if the Core Group could look at least at some criteria, they want to suggest for discussion here when we look at those nominations to the Technical Committees that we want to make.

So, I don't think we should just bring names here. I want to propose that you also look at some criteria that you bring that to the next meeting for some discussion for us. Those are just the processes I want to suggest on the way forward and then also I want to agree with Mr Gibson that we should definitely get all documentation pertaining to this matter. Even if we can't get a copy each, because it may be big.

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At least to have a set of documents here of all inputs that were given to the Multi Party Negotiating Forum on these type of issues that we are dealing with. I think it is vital important that we have that available. Thank you.

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**CHAIRPERSON:** Thank you Mr De Lange. Any other input or somebody support that.

Before we do that, I forgot to mentions something important in the beginning. The administration forgot to remind me. We have a slight problem. I don't know how they have been doing it. The technical assistance - do you still have that problem?

**UNKNOWN:** Yes

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**CHAIRPERSON:** I think we will discuss it and take a position. The people from Hansard aren't prepared to be our technical back-up. Only see it as CA structures, so we have a problem that we don't have a technical person dealing with the mechanical recording of our meetings right now. Mrs Van Eck and Mr Nolte have been asked to see how they do it, but it is a bit awkward for them in any how, in any room anyway - the technical things are quite far away from where they should be sitting as next to the person Chairing. They have mentioned that programme to me.

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I said we should discuss it as a committee and maybe come



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with a resolution to the administration. That the administration should intervene and Hansard should be made use when we have our meetings of the CA. That is just my feeling. I think we do need to discuss that issue. I was just reminded by Mr Taft up and down here.

No one is looking if the tape is going, if it has stopped, the timing and all that. I know that should have come in the beginning, but can we just agree on a resolution of the matter.

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**UNKNOWN:** Comrade Mrs Chair, are you talking about the meetings of the Theme Committees, are that specifically what you are talking about?

**CHAIRPERSON:** That is correct.

**UNKNOWN:** I don't believe we need a verbatim Hansard of the Theme Committees, Madam Chair. I think we need notes of decisions and perhaps if there is any major input, perhaps that should be taken up in the minutes. It is not my belief we need a verbatim of record of all Theme Committees at all.

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CHAIRPERSON: Is that a general feeling?

UNKNOWN: Yes

CHAIRPERSON: Can we look at what ...(inaudible) Advocate Schutte.

ADV SCHUTTE: Chairperson, the one aspect that I think we should consider is the question of traditional authorities. I mean, as it stands, according to my documentation, we are responsible for traditional authorities, quote and Theme Committee 6 is also responsible for quote traditional authorities. I really think that either we should do it or they should do it. But not both.

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I earlier suggested that the other aspects of the public protector and the Human Rights Commission and so forth, could also be dealt with by us, but I am hesitant to make a suggestion that we should deal with the one and not the other, or something like that. I would like to, I would submit that we should consider these matters.

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CHAIRPERSON: Mr Moosa.



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MR MOOSA:

Chairperson, I think that as a Theme Committee, we have quite a large responsibility already. I think, I have not heard, but I suggest we look at things like correctional services, safety, security and so forth and rather leave things like traditional authorities to those who are dealing with Constitutional matters.

My fear is that we are going to start to do things, in fact, might not assist us very much as a Theme Committee in the Judicial Theme Committee and the traditional task theme or this Constituent Assembly and I would suggest that we can pick up on things like public protector human rights commissions and things for this for this Theme Committee and things like traditional authority should squarely belong to the Constitutional Theme Committee and then we (inaudible) ... Theme Committee and then we will have added on to Johnny de Lange's suggestion a further aspect of our structured discussion.

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We should include the other departmental responsibilities or analyses that this Theme Committee must do and this should include correctional services, safety and security and possibly other departments that we might have to look at

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when working on our report.

UNKNOWN:

Madam Chair, I just wanted to respond on the traditional leaders issue. I think that one thing we have to be clear of is already is agreed that we have flexibility and we will have overlap between the different committees, but I do think we will manage that overlap and then I would agree with what Advocate Schutte is saying.

I think we need to realize that there are three areas Constitutionally that deals with traditional. The one is the traditional law as such. The system of law, that is the one area. The second area is the court structures that may exist to implement some of that law and the third area are the structures we presently have on the Constitution which are the I think it is called the House of Tradition Leaders, so there are three broad areas, Constitutionally that may impact on the traditional leaders issue.

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What I want to suggest there again is the Core Group, we give them a mandate to actually meet the Core Group of Theme Committee 6, to start discussing and see what they have in mind, what we have in mind and then see if we can

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come up with some area that they will be dealing with particularly and we will be dealing with. It seems to me that there are definitely areas that they should be dealing with and there are areas that we should be dealing with. If we can get that kind of discussion going with them then it will make sure we are not duplicating what they are doing.

I would give that as a further suggestion that, that is also followed up and a report is brought to us on the discussion that you have had with that Core Group and that committee.

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**CHAIRPERSON:** Thank you, Mr Dali.

**MR DALI:** I am largely covered, thanks, by Mr De Lange. He mentioned the points I wanted to - there is an alternative to the suggestion that we do it via a discussion between the Core Groups. We could ask for a director from the Constitutional Committee. That is an alternative route. I am broadly in agreement with the points that he raised.

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**CHAIRPERSON:** Thank you, can we then take the process forward in terms of Mr De Lange's suggestions. That the Core Group put



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together all the inputs into a document, circulated it to the Theme Committee members before Monday. I think the next meeting is on Monday. Then that would be discussed here on Monday. Taken into account all the suggestions liaising with the other Theme Committees where we have matters overlapping, and I think that is the summary of what was said here.

I don't see my agenda any more. Is there anything else that needs to be added to the work programme or the way forward as we see it under 5. Can I before we postpone the nomination on the experts just get a response to Comrade De Lange's question. When are we expected - by when are we expected to have submitted these names? Mr Taft. For the technical expert - our own nominations for the Technical Expert.

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I think I saw a date of the 15th of November in one of these many documents.

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**CHAIRPERSON:**

I know the work plan is due to be in by the 15th of November.



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UNKNOWN: There is no date.

CHAIRPERSON: OK fine. We can postpone the discussion on the Technical Experts and next week when we come, we will come with a criteria for members to discuss. I am informed that the criteria is laid down already. Then people don't have the criteria by the CC. It is in this document, but then, not everyone has this document.

That is why I was asking if you want to discuss it now. Do 10  
it discuss it on Monday?

UNKNOWN: Chairperson, I just wanted to suggest that we concertize our approach to the question of experts and what I wanted to suggest is that I ask the parties to think about it and at next Monday's meeting the parties come with names and we make nominations and perhaps let the Core Group see if they can find some sort of agreement around those names and that the Theme Committee, as you suggested, should make an appointment at the formal nomination at the 20  
following meeting.

CHAIRPERSON: Does that mean that we discuss criteria now or we just go



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through what the criteria is. It is very short. Just for the advice of the members of parties when they discuss their names. Can I do that quickly? Okay thank you.

We have in this document, criteria for selection of the panel. The requirements contained in section 72.2 of the Constitution should be included in the terms of reference. The section provides that the panel shall be made up of 5 persons complying with the following requirements. That is the panel provided for in the Constitution. But the criteria used there is the same that is going to be used for our Technical Experts.

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One - they must be South African citizens, they must be recognized Constitutional Experts, they must not be members of Parliament or any other legislature and not holding office in any political party. It is suggested that a further requirement be that, the composition of the panel should as far as possible be broadly representative. The sub-committee should also consider the terms of reference in the panel including whether the panel will sit on a full time or part time basis. In term of section 72.2 of the Constitution, the majority of the list with the members of

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the CA shall be required for the appointment of the panel - that is the panel relating to the constitution provided for in the Constitution, so that is basically the general criteria that parties are to look at when they nominate. Advocate de Lange.

ADV DE LANGE:

Chairperson, can I suggest this. I see that this deals with the selection of the panel of Constitutional Experts which is constitutionally agreed - which I think is a highly expert and technically - all the things I have said here, are correct. If you look at page 41, I thought there weren't criteria. Page 41 is the appointment of Technical Committees. Which is what we are dealing with and there, there aren't any criteria spelled out.

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I want to propose from here, that we use these criteria for the selection of the panel, except I would want to amend 2. 2 said recognized Constitutional Experts. I fully agree that it is the panel of experts looking at a broad constitution. You need Constitutional Experts.

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Our Theme Committee for example, is going to look at structures that administer justice, which you don't need to be



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a Constitutional Expert for. I would want to suggest that you use the same criteria, except where we say Constitutional Experts, we say, recognized experts in the area which the Theme Committee deals with. That we use as our criteria then, adapted from what is here.

**CHAIRPERSON:**

Is that agreeable? I think it is reasonable to substitute in our case. Constitutional for Legal Experts. Any other thing before we move on to general? Nothing.

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Does anyone wish to raise anything under General? I raised an issue of liaison between the Theme Committee and the Constitutional Committee. But today at the briefing in the morning, that was also raised by the Speaker with the suggestion that somebody should prepare a paper. Just give me an idea of what we see ourselves? How we see ourselves liaising with the CC? Should we just wait for that to come from the Constitutional Committee? Thank you. Any other issue? Madam Ghandi.

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**MADAM GHANDI:**

I just wanted to know whether one can comment on this list of enmities as now or, can we give you (inaudible) ... I just wanted to suggest, perhaps treat law, it is not included here.



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It is at Natal University and also like social workers who are involved in children's courts. Thank you.

CHAIRPERSON:

As I stated earlier on, this is the list that has been used by the Department of Justice. It does need to be amplified although we would need then to decide if we talk about an advice office, what advice office are we talking about when there is so many in the country. I think the best is for people to just add onto their list the things that they think should be added and bring the list with next week and then we can, as a Core Group sit around and see which are structures and role players.

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We think must be contented and then we will present that to you. That is just to avoid discussion of each individual input on the role players. Is that acceptable?

UNKNOWN:

Maybe with just a slight amendment comrade chair, that we suggested that the submission should maybe come from the parties rather from individual members. I think it would be useful. At least we don't have debates amongst the parties themselves here when we have the names. That the parties should first agree on it.

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**CHAIRPERSON:** Agreed? Thank you. Any other issue. Nothing.

Let us consider the meeting closed. Thank you for attending.

May members of the ANC in this Theme Committee remains for a few minutes. We won't hold you for a long time.

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**[END]**



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**THE CONSTITUTIONAL ASSEMBLY**

**THEME COMMITTEE 5**

**24 OCTOBER 1994**



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**CONSTITUTIONAL ASSEMBLY**

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2/4/5/9/11



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**CHAIRPERSON:** Are you standing in for Mr Matthews? So you have a voice Mr Le Roux, you can speak.

Then I also received an apology from Mr van der Merwe. Koos van der Merwe. I don't know who is going to stand in for him, but I have an apology for him. Any other apologies? Any alternates who are standing in for other people?

**MR MUSHWANA:** Mushwana for Moosa.

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**CHAIRPERSON:** Right point 2, thank you very much. Can I ask - has anybody agreed on the agenda? This is... Mr De Lange.

**MR DE LANGE:** (inaudible)...

**CHAIRPERSON:** Fine. Matters you would like to record now under general? Nothing? Agenda is adopted. Fine.

Then we come to minutes of previous meeting. You have got that before you. It is a fairly comprehensive minute. Would you like to have a look at that? Mr Hofmeyr?

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**MR HOFMEYR:** Chairperson, I am not 100% sure just in the way it was phrased, but under 5.10 on page 4 or after that, we had a discussion around the criteria for the experts for the Theme Committees. Our Theme Committee Experts and I think those criteria were broadly adopted. I think it is necessary that, that should be reflected in the minutes.

**CHAIRPERSON:** Could you just help us - what were the criteria?

**MR HOFMEYR:** I think it was the same as the criteria for the Constitutional panel with an amendment that I think in the Constitutional panel there were a requirement in specialist knowledge around the constitutional law and we amended that to specialist knowledge as a legal expert, that were the words we used.

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I think otherwise we used the criteria in a CC document for the constitutional panel. They were - they should be South African Citizens. Not members of Parliament or any Legislature. Not holding office in any political party. Then, the further requirement that the composition of the panel should as far as possible, should be broadly representative.

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I think Comrade, Advocate De Lange is saying that under 5.8 that is the amendment that I am referring to.

**CHAIRPERSON:** So you are not happy with the wording as set out in 5.8.

**MR HOFMEYR:** I am happy with that, but there were additional criteria as well that are not mentioned at the moment.

**CHAIRPERSON:** Yes, so you would like to add to that - there were also additional criteria adopted and those criteria were the criteria set out also for the constitutional experts. 10

**MR HOFMEYR:** Yes. With that amendment that is listed at 5.8.

**CHAIRPERSON:** Right. Agreed? Thank you

With that, can we adopt the minutes? Somebody move? Mr De Ville? Thank you very much.

Then we move to point 3, ladies and gentlemen, unless you can correct me, I don't think there is any matter arising out of the minutes which is not dealt with under the Core Group 20

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report. I would suggest that we move to 4. Welcome to the IFP. Mr de Lange?

**MR DE LANGE:**

I wonder whether we have got any further evidence or advice, Chairperson, and that was on the issue of retrieving all the documentation from the Multi party formalities - that is part of your report as well. How far are we with that? Everything that pertain to, what our Theme Committee is dealing with.

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**CHAIRPERSON:**

Mr Taft, can we ask you to report on that?

**MR TAFT:**

We have made that report from our Core Group as well to the directorate of the CA and they are going to be dealing with that in terms of retrieving documents for all Theme Committees.

**CHAIRPERSON:**

Would you suggest Mr de Lange, that we retain that on our agenda?

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Fine. Agreed that this be recorded as a matter that we are following up. Fine.



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We move to point 4 ladies and gentlemen, I can report from the Core Group's side that we had a meeting at our initiative with representatives of Core Groups 2 and 5. To discuss specifically the question of traditional authorities and the way and the fact that that overlaps with our mandate. We came to some understandings, or suggestions or proposals with regard to the interpretation to be placed on the various mandates regarding traditional authorities and indigenous law which were given to the three Theme Committees.

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We also suggested a way that, that be dealt with. That is all included in your report. This report was agreed to by the Core Committee. This work programme report - so I believe this is the one aspect very important of our meeting that we have to deal with.

Perhaps we should deal with it starting with (a) The Constitutional issues which need to be attended by Theme Committee 5. You have before you the various headings - 4 headings. Constitutional Court, Criminal and Civil Courts, Traditional and Legal aspects. The fourth heading - Traditional Authorities, Institution status and role of

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Traditional leadership and Indigenous Law.

Ladies and gentlemen, can we discuss that? Is there any discussion on that? Any proposals for amendment?

**UNKNOWN:** Mr Chairman, are you putting the whole report or are you dealing with (a)

**CHAIRPERSON:** No, I am putting basically (a).

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**UNKNOWN:** (a) and then the subdivision Constitutional court?

**CHAIRPERSON:** I am putting (a) subdivision 1, 2, 3 and 4.

**DR VAN HEERDEN:** Mr Chairman, a remark concerning (a) then, subsection 2, Criminal and Civil courts, if I can just draw your attention to point nr 12. Small 12 on page 7 - special courts. It is mentioned there - family and matrimonial courts and then labour courts.

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I don't like the word labour and the correct word and term in this stage is industrial courts. I would like to change that



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to industrial courts, because that is the existing courts at this stage.

Then another question - I am not so sure what is being meant by Administrative courts and then thirdly - Fiscal courts in existing at this point in time is the Income Tax court. Is that what is meant by Fiscal courts or is that a new idea? Just these three things then.

I think labour court should then industrial courts and Administrative courts, I don't know what that actually means and the Fiscal courts, does that also entail Income Tax courts? Anybody that can give me some more information in this regard please?

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**CHAIRPERSON:**

Ladies and Gentlemen, can we deal with it as it was raised? Any objection against changing the word Labour to Industrial?

No, adopted.

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Then, as far as Administrative courts perhaps somebody who

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raised it or asked for it to be included should raise it, but I would imagine that it should refer to some of the Administrative courts for instance in France, which deals with appeals from administrative decisions by Government. Something like that. Is that more or less correct?

UNKNOWN:

I think that is more or less correct Mr Chairman. The broad administrative in France are special courts to deal with disputes arising out of administrative actions or decisions.

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CHAIRPERSON:

Then Fiscal courts, I think that is more or less correct that that is the same as the income tax courts. Any objection in changing the word Fiscal to Income Tax?

MR HOFMEYR:

Chairperson, I think we are looking at matters just a little bit more broadly than just what exists at the moment. I would propose it in our document here. We use rather general terms rather than specific terms.

CHAIRPERSON:

Fine. Any objections? Can we then retain Fiscal courts?

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MR DE LANGE:

Chairperson, mine is a more broad and general point. I



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think as I said last time, the issues as they are raised here, clearly all need to be attended to. However, in the ANC our worry is, that we need to be careful to deal with a matter in an ad hoc fashion.

By just choosing a particular section for example out of a constitution. Saying that that is now what we need to look at, because what that really does - it is going to give us a mish mash kind of constitution as we have now. We know why it is there - it is a lot of compromises we have made and so on and so forth and that is why in this document, if I can refer to draft inputs on work programmes submitted to a Theme Committee on 24th October - on the last page there is a summary of some of the issues we have put forward at the meeting last time from the Theme Committee.

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I may say I do not recall it being gain say in any way that this is the way we would deal with in any matter. You would see that our reproach is a more - one that are looking at broad principles and that is no way to deny the specifics. I think the specifics should also be listed. That we are saying that we think we need to work on the basis of a

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categorization of issues and particularly, I raised 4 last time, and under the one particularly, that pertains to us, made some proposals.

I recall making a bit more than this, but at least at this stage, that gives the idea. I think that from our side, and we haven't had a full chance to discuss it with the ANC, so, there may even be some differences of opinions amongst us, on the issues - I don't want to say that I am talking on behalf of everyone. That one needs to deal with that in that fashion.

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Therefore I think we can use this document as a guide line but I would still suggest that we definitely need to go and look at it in those terms. From our side I would feel, just having spoken to some people, that that is the way the matter must be dealt with. In terms of categorizations and with these individual items, then categorize under their different points. For example, there are many issues here raised on the appointment mechanisms. That should be under one categorization, so when we look at an appointments, to the judiciary, we look at it in a principled

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way.

There may be different ways that we want to appoint constitutional judges from other judges from other magistrates. That will be a final decision, but firstly look at broad principles of appointment. Do we use judicial service commissions. Do we use other mechanisms that exist in the world. The same with the structure of court. It is very problematic if we only going to say - look at the Constitutional court structure. Because court structures have to be realistic. They must fit into each other. The one appeal goes to the next.

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The jurisdictions are also different and that is why we are saying that we think - what is done is that all the issues are listed individually, but we need to do them in terms of broad categorizations, and also, I think from our point of view, also, it will be easier to engage the public on those issues. It will also cut down on the amount of submissions we want.

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Because if we do it in this way, we have got quite a whole shopping list of items. The waiting gadget the public also, is

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going to be very difficult, so just to say then, having consulted some of our people, that were here a bit earlier, that this proposal as it stands now in general terms, still does not fit the kind of way in which we envisaged this matter and also in particular the ANC's broad approach to constitutional making. That we also proposing in the other Theme Committees.

I just want to make that as a broad principle. We may want to get back to it later, to discuss how we are going to deal with it.

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Then as I said chairperson, this does raise another matter, which I would suggest we discuss next time and that is the particular relationship between the Theme Committee and the Core Group. It is my feeling that we need to actually make sure that we don't duplicate time and so on and waste time. That we actually obtain specific mandates from the Theme Committee, that the Core Group acts on.

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Otherwise we are going to have this kind of problem where we going to and fro and that is not going to be to no one's



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benefit and that is what we can discuss next time. It is a broader issue I am making for today Chairperson

**DR VAN HEERDEN:**

Mr Chairman, I listened to what Mr de Lange has said, Just one question to Mr de Lange and then maybe a remark. The question is - I am not so sure that formal, legal education should be incorporated in the constitution. It is just something that I think does not belong in a constitution.

This is just a remark, and I would like to have his response in this regard. Concerning the legal profession, I must say that if I look at the report of the Core Group, I think that the legal profession to a certain extent is really covered by the report. Access to the courts, I go along with that. Structure relating to administration of Justice, Mr Chairman, I think that - just a question to you then, did the Core Group - if I look at the two documents in front of me, I think that the issues raised by Mr de Lange, is to a certain extent indeed incorporated in the report - did the Core Group consider the report and if so, did they incorporate it, because I think, here and there indeed, if it isn't clearly incorporated, some of the issues raised by Mr de Lange, I

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think can be incorporated in the report, but I am not so sure about this whole question of Formal and Legal education. I think what we have got in front of us, concerning the categorization, I think in the report as it is, also make provision for the issues raised by Mr de Lange.

Chairperson, let me spell out our position quite clearly. I think that we as a Core Group and as a Theme Committee cannot make any assumptions. I agree with Mr van Heerden. If you look at the summary here, you will see that I have said exactly the same thing. That in all probability, formal legal education, legal profession are not things that will be dealt with in the constitution, but that is what we are doing there - we are pro-emptying those decisions. I think what one must realize as a Theme Committee - we are the link with the public. We would want inputs from them. It may very well be that in the end of the day, that is exactly what will happen.

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That we all come to the conclusion that we don't need a principle like that. At least we need to give the people that opportunity to raise it if they want to. I know for example

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in the legal profession, there are people who's views I don't share, will actually want to put a certain principle or two - in fact, one of them is not a bad one. Although I don't think it is necessary. People suggest that there should be a clause that they can go and appear in the constitutional court for example. Now, we need to consider those.

The public need to be able to raise those. You and I, I think have the same view of what is saying here. That is the context of what is raised, not necessarily what we are going to come to agree and what we are going to assume. Even if you look at the structure, constitutional court, there is an assumption here - there will be a constitutional court. I personally feel there must be a constitutional court, but others may feel that we just do it in a specific court system as it exist now. I know people have made representations like that.

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They don't want a constitutional court. So that is all I am trying to say. Our task is to lay out the kind of categorizations that are broadly discussed in the legal sector and it is on that basis that we should then engage the public.

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What conclusions we come to later, and what we send out to the CA, that is a different matter. I just don't think we need to make that assumptions up-front. That is really what we are advocating. If we do it this way, what we are already saying in the approach we are adopting, is we are saying, is that the interim constitution, is what is guiding us and that is the basis on which we are going to draft a new constitution. I am saying, the constitutional principles in the interim constitutions is what guides us principles - not the detail. It doesn't matter that we set out the detail to help people interact with us, but to do it in this way, there are an enormous amount of assumptions we make up-front which is not necessarily the case.

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So that is really what we are saying about categorization. All these things will probably be there, but we don't think it must be dealt with in this way, because it puts a certain assumption - as the basic one from which we are going to operate. I hope that answers at least some of the things you have raised.

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UNKNOWN:

Mr Chairman, I am of the view that we are rather premature



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at this stage to discuss whether or not, the raw material that we are trying to put together indicates that we want it in or out of the constitution. There are obviously two kinds of Constitutions, those who are very detailed and becomes very cumbersome because they include everything and those who have got virtually no detail at all. Like the US constitution for example. That is a philosophical question which we will have to decide upon. Do you want our constitution to be detailed? If all manner of things in it or do we want a constitution that just sets out broad principles. I don't think we have reached that stage. One can say historically, countries which have come out of a conflict and where there is a great deal of suspicion, tend to draw up detailed constitutions to cover everything. Because they don't trust each other and therefore they want things to be spelled out and I think within relation to the public. Does a broad categorization give any kind of idea to people in the public as to what is meant? If you just put a category - what guidance, what kind of education are you going to get? Our people are not lawyers. They are not au fait with this kind of thing.

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Therefore, the implications the category and the elements that can be included in such a category are not known to them and the more you spell out, the more you have details and the more you break it down, the more you can discover what people's actual views are on the matter. But it is not a suggestion that you are already taking a decision or that you are cutting out any further discussion or any further views on the matter. We were supposed to be transparent and everything must be open. Things must be thrown at people - even very complicated legal categories which some of us spent years trying to understand. I suppose to be thrown to the public so that they can have a view and express it.

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**CHAIRPERSON:**

Ladies and Gentlemen, I would just like to refer you, as a result to what Mr Matthews said, on page 8 the (inaudible) ... that has been placed on this paragraph, where we say - we emphasize that the issues indicated above are provisional issues. It is understood that there can be further additions to the list and issues can also be removed and so forth. So, I think it is emphasized that this is a provisional list, but the main matter that we must deal with, it appears as a result of

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Mr de Lange's input, is the categorization. I was responsible for the input before and this is more or less based on that input and it was as a result - this was agreed to by the Core Group.

The problem I have with the categorization of Mr de Lange is that I think it will - just looking at it from the outside - if we have as our first categorization, legal education, I think it may look silly. From anybody in the know. In all probability that will not be the constitution. If the second one is legal profession, it may compound the situation, because that is also probably not going to be in the constitution. This basically is, this makes the consumption that there will be a constitutional court. I think if one has a bill of fundamental rights, that is a reasonable assumption to make.

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We can still decide not to have one if we want to. It makes the assumption that there will be criminal and civil courts and it will have to be dealt with in the constitution and there is also other legal aspects that have to be dealt with. Then it deals with the last one, so it more or less suggests that in

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the constitutional court, we will have to deal with, there will have to be a section dealing with the constitutional court, there will have be more or less a section dealing with the criminal and civil courts. There will have to be a section dealing with other matters, but it is open to debate. Ladies and Gentlemen.

MR HOFMEYR:

Chairperson, maybe just to respond on a couple of issues. I think on your point, I don't think there is any reason why the categories proposed by Mr de Lange can not be changed. I think certainly the fourth one in the sense should be the first one, because that is a more important one. I think it is more a question of approach here that we are talking about. I think we share Mr Matthew's concerns in that is precisely why we prefer the approach that has been proposed.

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Because we feel that it is better in one place to deal with the question of the appointment of judges. Not in two or three different places, when you ask people to make submissions, but in general to have your approach to focus on broader issues and then to list the details that may be applicable under that issue - rather than to have just a list of detail as

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there is as the moment and to some extent people have to wade through a very long list of details to try and find the points they may be interested in and if those points happen not to be, those points may well happen not to be covered.

So, I think our approach is to set out something that covers the broad field of the legal of the traditionary. Everything that may affect the traditionary and then have a look at each of those areas and decide which ones may need to be in the constitution and which ones may not need to be in the constitution.

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**CHAIRPERSON:**

Dr van Heerden.

**DR VAN HEERDEN:**

Mr Chairman, I still fail to see any real difference. I think what is mentioned there - I think on page 8 yes, it is an open ended list we have got in front of us and I think some of the issues raised by Mr de Lange, some can be or are being addressed as far as I am concerned. Some may be or are not addressed and I think we can always add as we go on in the process, but I would suggest that we take this, take the report as it is in the document and then as we go along just

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refer back to Mr de Lange's proposal and see whether it is incorporated or not and if not, we can decide - we think this issue we can add to the particular list. I really think we are in a kind of agreement in this regard.

CHAIRPERSON:

Ladies and Gentlemen, I think a fair assumption is that there is no agreement on paragraph (a). If we can perhaps deal with the other paragraphs and then come back and decide on a way to deal with it, take it further. Mr de Lange?

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MR DE LANGE:

Chairperson, I also think that, I think it is an issue of approach. I don't think we are 300 miles apart. I think we are very close to each other on the issues. I think Mr Matthews has really summed up the issues very clearly. There are principle issues, maybe we come to different conclusions on it. But there are principle issues that we have to go on. Are we going to put detail or are we going to put principles? If we approach it on an open ended list basis, then you have already shown a preference for a detailed side of things. All we are saying, all the approaches should be open. In the end of the day we fully agree - all

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these issues need to be looked at one stage or another on the shopping list and even more of that. All we are saying is the way we are going to present it - it is the way we are going to put it forward, it is the way we are now already setting out our terms of reference. We fully agree with Mr Matthews.

When it comes to engaging the public, we are not going to throw the term legal profession to them and say, respond. We will come up with a joint approach here and say, on the legal profession, we want to know the following things. Whatever we can think of amongst ourselves and we will then get an approach to that. It does not mean that you have to set down everything in your broad terms of reference to be able to achieve the type of things that Mr Matthews are saying. So, although you are quite right that we do not have an agreement exactly on the issue, I also don't think we are million miles apart on it.

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I just think it is a question of us, just looking further at the matter. Finding a more appropriate way of setting it down. You see, the problem that we have, when you do it this way,

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you come to the conclusions that there are example in (b). That the priority issues are the constitutional court and the position of traditional authorities. Now, my view would have been, for example - I am just using an example - if you look at priorities, my priorities would be - what should be the structures of the court. Not the constitutional court, the structures of our courts and then the structure of the constitutional courts fits in that.

If you start from the assumption of the constitutional court, then everything else has to be moulded around that and not the other way around. Where we create a holistic structure of courts and the constitutional court will fit somewhere into that. It goes the other way round. From the top down, instead of looking holistically.

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I am just looking at that as an example. There are further examples from the approach you have followed, what if our work is going to be separate reports - issues to be dealt with in commissions, I wouldn't have come to the same conclusions. That is really what I want to say Chairperson. I think you are right. We don't have full agreement on it

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and I also don't think we must create the impression that we are very far from each other and have two completely alien approaches to each other. Thank you.

**CHAIRPERSON:**

Ladies and gentlemen, how do we take it further?

**MR MATTHEWS:**

Only use the formulation. I mean, it is a question of maybe an extra to the caveat that we have got. We have got this caveat but can't the caveat include the, this idea of the categorization and also that we are not being prescriptive in listing things in this manner. That it is not a suggestion that we have already ...

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**CHAIRPERSON:**

I would rather suggest, Mr Matthews, taking some of your suggestions, it should be dealt with in a pre-amble, to say it should deal with the broad structure of justice and so forth and so forth and it must then also possibly deal with the following details which is set out (inaudible) ... and the way it should be put together. Then as an intro and then referring to the details at a later stage, just below it. Senator.

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**SENATOR:** Thank you chairperson. I wonder if it wouldn't help to refer this matter to the Core Group, just to try and formulate something. I don't think that there are major differences between the two positions. So, if we could just ask the Core Group to look into the matter and come up maybe with a better formulation next time.

**CHAIRPERSON:** Agreed? Right.

**UNKNOWN:** (inaudible) ... why waste the time with the Core Group? 10

**CHAIRPERSON:** Mrs Mgwane.

**MRS MGWANE:** Thank you Chairperson, my feeling is that there are two different ideas. It is either we adopt a work plan that is just put broadly without specifics and details as it is here. Or either we decide that we are going to have the details that we have. From the discussions I get the idea that there are two positions. It is either we do it broadly for presentation to the public, that is our work plan, this is what we think we will deal with. Without the details and identification of matters, that the Core Group has come up with, that is one 20



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area.

Then if we do that, we only put principles. These are the principles which we think we charter on the traditionary should deal with. That is one position. The other position is that - there should be this shopping list which we have come with in the Core Group. I think unless we get the understanding of what the preference is. We are going back to the Core Group. The details is going to be put out again like this. I don't know if that is how I understand that.

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**CHAIRPERSON:**

Is it not possible to have a marriage? There appears to be a suggestion that a marriage is possible. Right.

**UNKNOWN:**

Chairperson, I think simply what we are saying, the Core Group needs to establish some kind of a pre-amble with broad principles and to say amongst the detailed issues that will be dealt with are these. Leave it at that with your caveat at the end.

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**CHAIRPERSON:**

Right. There is a suggestion. We refer to the Core Group. Fine. We come to (d). We come to (b) sorry. (b) is on

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page 8. This will also be dependent on the way that (a) is structured, because I agree with Mr de Lange that the way (b) is worded at this stage, is I think, after hearing also some of the evidence, some of the suggestions in the Core Group, I think just only to refer to Constitutional court is very restrictive. That should actually be the structure of justice. Something like that. Would you perhaps agree that we change the word Constitutional court to structure of Justice or would that not be acceptable at this stage? Mrs Mgwane.

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**MRS MGWANE:**

Thank you Chairperson. Having said what you said, my feeling is that the Core Group was just going to identify Themes and Issues. People can't come up with issues which they think should be dealt with on a priority basis. Not necessarily that we are going to adopt it, but can the Theme Committee members also have a say and discuss the issue.

**CHAIRPERSON:**

Further inputs? Discussion on (b) Mr de Lange?

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**MR DE LANGE:**

Chairperson, I think we have got a guide line here, but there are a few problems. As I said, once we have a broader



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approach, we know where we would stand. I would more go with something like the structures that is on first, but you see even the issue of traditional authorities and indigenous law, I would want us to first take a decision on that issue. Once we have had that full discussion with the other Core Groups.

So, we know if we feel maybe there is, if they feel we should deal with this, the other one. Within each of those, there is only one that deals here and that is the possibility of kind of tribal courts and so on. The structures fit in somewhere else and the traditional law - there is an overlap with the bill of rights. So, I think we need to discuss those things first before we know what we will prioritize here from our Theme.

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So again, I think it is good that we have a list of priorities. It is good that we are going to deal with them, but at this stage, I would want us to make that final decision when we get there, particularly after we have had the meeting with those other Core Groups. Once our Core Group has had that meeting and we get a report.

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CHAIRPERSON: We have had that meeting.

MR DE LANGE: And you will give us a report on that?

CHAIRPERSON: It is already incorporated in this report. May I just also mention that we only say under (b) that the two most important issues which may have to be given priority. It is very difficult at this stage to stay categorically and ...

UNKNOWN: Mr Chairman, if we just slightly change it. It is two 10  
important issues which may and leave out "most" I think  
that, if we say most we actually are putting these two issues  
in the great priority and I think let's just leave that open.  
That is too important and leave out the word "most".

MR HOFMEYR: Chairperson, I am not sure that is what we are suppose to be  
doing. I think we are supposed to be drawing up a work  
programme that is going to guide what we do. It is not  
working. I think our , what we actually have to do is find  
out what - I think we have to put down the issues that we 20  
are going to start working on coming the 15th of November.  
The most urgent issues, so I think it is more than just say



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some of these things are important. I think this plan is supposed to guide our work.

I would suggest we still have a couple of weeks before then and I think certainly some of these issues are important and some of the issues Mr de Lange has raised are important and I think we can think about it still.

**CHAIRPERSON:**

It is also dependent upon the wording of (a). We leave this over. Can we refer this also to the Core Group? Agreed.

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(C) areas of overlap with the other Theme Committees. Now here is the report basically of the meeting with the other Core Groups and that is the agreement that is reached with the representatives of the other Core Groups. Any input on this?

**UNKNOWN:**

Chairperson, I think your paragraph there, just before (d) on page 9 actually summarizes the whole issue. It was further agreed to avoid duplication. A commission or joint committee should be set up consisting of members etc. To take evidence. I think that actually summarizes the whole

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issue.

**CHAIRPERSON:**

You see, Ladies and Gentlemen, can I just tell you what the thinking behind this was, it was felt that the three basic issues, the one dealing with the structures of the representation of traditional leaders in structures of Government and the other one dealing with tribal courts and also indigenous law and also the question of the tribal and customary structures. Those are to some extent intertwined.

It would not be effective to deal with them totally separately and for that reason it was felt that they should either be a joint committee or a commission to deal with all of those aspects together. That we should have an input - that various Theme Committees should have an input on that. Mr de Lange.

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**MR DE LANGE:**

I just need some clarity Mr Chairperson. We will deal with the areas in our Theme Committees and then take it to the joint committee and see if we, just make sure that we all have the same approach. Is that the proposal.

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**CHAIRPERSON:**

The matter of fact is that this committee be set up, that



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committee then takes evidence and that that committee then comes back, the representatives of that committee from our group comes back and that we then make the decisions that is on our - that we have a mandate for and that we can also liaise with the other Theme Committees through that other joint committee. The idea was, that the evidence should be - that there should only be one committee taking evidence. That is basically the suggestion on this, because it was felt that tribal authorities and so forth, and people with the interest in tribal matters, would - should have one place where they should give evidence - something like that.

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UNKNOWN:

Mr Chairperson, I am just a little bit concerned that we may have identified tribal authorities, indidounous and customary laws in one area, but there may be other areas in which there may be overlap. I think that the way this particular paragraph has been drafted seems to specifically refer only to travel authorities and customary law. Wouldn't it be better if we had some kind of a general clause in stead that talks about what we would do in the instance where there is an overlap. We can use this as an example to draft that clause, but the idea would be, if there is any other form

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of overlap as well, then we would either go to joint committees or commissions or something along those lines and the reason why I have this concern is because the preamble and the principles that are now to come, might create other areas of overlap. Thanks Chairperson.

**CHAIRPERSON:**

Would you suggest that we add another paragraph to say that if turns out that there are other matters on which there are overlaps, that that should also be dealt with in more or less the same way. By joint committees

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**UNKNOWN:**

Something like that, or otherwise we have one general formulation of overlap and say that this is an example of what may overlap.

**CHAIRPERSON:**

Inputs on that? Mr Matthews?

**MR MATTHEWS:**

I am getting a bit apprehensive on this matter of indigenous law and traditional authorities being centrally dealt with. We are going to get ourselves into a real mess trying to produce a national constitutional approach to this issue, which goes beyond merely protecting the right of people. To

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exercise customary laws and to have traditional authorities.

Because contrary to popular belief, there is a tremendous variety and differences in the manner of organization of traditional authorities and their institutions. They are not the same, and I just think that the more we delve into it, the more we might be trying to produce a national uniform approach to this which doesn't exist on the ground.

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Therefore we will get ourselves into trouble. Unfortunately most of the work done on this has been by Europeans. Who are trying to look at the commonalities and the, to try and say there is such a thing as a single customary law that applies throughout a particular country that they were ruling, but in fact, to try and produce a commonality between the Kingdom of Kwa Zulu and Tswana law, it is just not there really, except in some aspects. Family law there might be a kind of commonality, because everybody has got to get married in one way or another, but I am just wondering, even the idea of people all coming to a particular commission or a particular group to with their inputs on

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these subjects. We are going to find that in the end when we just don't put it in the constitution, those details won't, we won't be able to put them in there.

**CHAIRPERSON:** Mr Hofmeyr?

**MR HOFMEYR:** Chairperson, I think we share the concerns that Mr Matthews raises, but I don't think our task is to devise necessarily a common system of tribal law. What we do have to have commonality on is, what do we say in the constitution on the issue of tribal authorities and I think there it does make sense for us to get together with other committees and to harmonize our approach. Not necessarily to say there is one system, but to what are the clauses and things we need to specify in the constitution. I don't think there is any assumption here at all that we would be imposing or trying even to impose a system of commonality throughout the country.

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**MRS MGWANE:** Thank you Chairperson, just to add on what William just said, I think the mandate that the Core Group was giving, is to go and see how we can divide our work with the other

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two Theme Committees where there is an overlap and having met with them, we find we can't divide it. So, the best is that we all sit together when these people do give evidence. Each Core Group or member takes what is relevant to their Theme Committee, back to their Theme Committee with proposals after hearing evidence. Those commissions or the committee when it meets, on that hearing of evidence is just an in pronto thing. The report-back and everything goes back to individual Theme Committees.

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It is not like it is going to be a separate commission acting independently. Formulating principles generally for the constitution. We are there as individual Theme Committee members just to pick up what is relevant to your Theme Committee. Formulate principles. Take it back to your Theme Committee. Just to save time for the people who come to give evidence. They might not be able to separate for themselves things that belong to Theme Committee 2 or Theme Committee 5 or Theme Committee 6, but we Theme Committee members will be able to pick out from what they say, what belongs to our Theme Committee. That was the

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idea of getting people, giving evidence to all three Theme Committee members. Thank you.

**CHAIRPERSON:** Fine. Is that more or less acceptable.

**MR MATTHEWS:** Once I have given my apprehensive, Mr Chairman, the rest I agreed to. I expressed them.

**CHAIRPERSON:** Thank you. Right, Mr de Lange

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**MR DE LANGE:** Chairperson, just the first two issues. Just a question first and then I would make a proposal. The way I have read this and the way it is drafted and I think our Core Group has done good work here, are on this issue. Do I understand it correctly, there seems to be 4 paragraphs that broadly touch on Traditional law and Traditional structures. That we, this Core Groups that met, has actually said and have divided them into different Theme Committees.

Because under Theme Committee 2 it says paragraph 2.1 being interpreted as "structures" which Theme Committee 2 deals with. 5.2 and 5.4 will be interpreted as referring to

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Indigenous law and Courts - which is what we deal with and 6 will be interpreted as referring to representation and therefore 6 deals with that. Just to first try and get that clarity before we have a way for it and that would be my question first before I make a proposal and someone can just answer that in the way it has been drafted here.

**CHAIRPERSON:**

That is part of the mandate. Paragraph 2.10 is the mandate given to Theme Committee 2. 5.2 and 5.4 is the mandate given to us. And 6 and 7 is the mandate given to 6 - that is already part of the mandate.

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**MR DE LANGE:**

You haven't come to an agreement where that is going to fit in. That is all I am asking.

**CHAIRPERSON:**

No, that is, that was decided for us.

**MR DE LANGE:**

Could I then make a proposal Chairperson. It seems to me that the proposal here makes a lot of sense, but obviously it is a new one and one just needs to think a bit about it and its implications. Whether we can just get back to you next week and just finalize that matter. I think that would be, if

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that is possible for us just to have a chance to discuss it.

CHAIRPERSON:

I think generally the structure of things appears to be that the matter will be referred to the Core Group again. The Core Group will come out with another report and we will discuss it again at the next Theme Committee.

MR DE LANGE:

That is also fine.

CHAIRPERSON:

The suggestion by Mr Moosa that there should be another paragraph added, just generally to say that if there are other matters overlapping, it should be dealt with in a similar way. As suggested as regard to Tribal and Customary law and courts. Agreed? Thank you.

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Then we come to paragraph (d). Question of Traditional authorities and judicial law is one that can very productively be dealt with per commission. We can possibly add structured justice there if you feel that way.

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UNKNOWN:

Last time when we made a proposal, Chairperson, that as far as commissions are concerned, that we don't pre-empt the



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issues. That as they arise we then see whether we want them dealt with in commissions and I think that is the approach we should take. The problem we had that we raised last time is that commissions means more committees, that we have to belong to or some of us have to belong to. Maybe a lot of those things can be fruitfully dealt with here, because we don't know what representations we will get from the public.

So our approach would not be one, at this stage, of identifying which commissions, but saying that if the occasion arises we will refer it to commissions without actually, at this stage identifying which, I just think it is impossible. 10

CHAIRPERSON:

We don't mention any aspect here, but we say as things develop we can possibly identify matters. Agreed? Fine.

Come to (E). Possibly this is also too early. Agreed? (F) Agreed? (G) Agreed? (H) Mr Hofmeyr.

MR HOFMEYR:

Chairperson, just on (g) it may be useful just, I think we will have to be more specific at some stage soon. I think that we

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did get the list of the organizations that would be represented at the legal forum which I think is a useful starting base for us, so perhaps it may be useful just to re-coach the sub-paragraph 1 there, to say - organizations represented in the legal forum plus others to be identified or something like that.

**CHAIRPERSON:** Shall we add that? Mr de Lange.

**MR DE LANGE:** Chairperson, I thought last time that we said that we would accept that list and then if parties would want to add, parties would bring further to that. That is the list we work on at that stage, so maybe we should just keep it like that. 10

**CHAIRPERSON:** Just refer to the list then?

**MR DE LANGE:** We can just say that is the list and if parties want to add, then as parties we will bring more names and so. I think on the legal side, I am a little bit more worried about the Traditional authorities side. Because I think there we need someone to actually speak to who ever one speaks to with the Traditional authorities and just find a bit more clearly, 20



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how we are going to deal with this matter. I think it is not going to work just to send out invites and send out press statements and so on. That is a specific sector that exists, that is there.

Maybe we should just formalize it a bit better -how we are actually going to liaise with as Mr Matthews has pointed out, there is so many different ways of dealing with the matter. I was just wondering whether we shouldn't just at least consult with them before we put in our document, exactly how we are going to deal with them. This may be the ultimate way, but at least there is some, we don't have to do it, if the admin can just make sure for us.

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**CHAIRPERSON:**

Let us take the first one first. G.1 Do you suggest that we refer to that list and add the list? Annex the list?

**MR DE LANGE:**

We can annex it if you want to, but parties will have to bring more names, otherwise we just work with that list. That is to avoid if someone comes along and says - he didn't ask us - we can then all take joint responsibility.

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**CHAIRPERSON:** Do you suggest that we make reference to that list and say that there can be further additions to the list.

**MR DE LANGE:** From the parties

**CHAIRPERSON:** Right. Agreed?

Then, as far as 2 is concerned, should we not use the wording there and then say that we will also consult with the traditional leaders as to who further we can invite. Agreed?

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Right.

Then we come to (H). Agreed? Right? (I). The suggestion here, more or less between the lines is that we should not be restricted to 3 experts on both fields, but that we should be able to get at least 3 with regard to the legal aspects and that this other joint committee should be able to get at least another 3 experts on the indigenous law and customary side and so forth. Mr Moosa.

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**MR MOOSA:** Chairperson, I think we suggested that we shouldn't have a fixed set of experts, because if we did that, we might not be



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able to move experts about. Somebody might be an expert in court structures, but not necessarily an expert on human rights issues and that kind of thing. It might be a better kind of thing if we just discuss briefly that the initial suggestion we had, that we have an allocation of experts, but we don't contract them for a full period, but utilize them as and when we require them in a particular sphere of expertise. If people can just supply their minds to that a little bit and we can decide.

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**CHAIRPERSON:**

The basic suggestion is that we should not, at the outset, restrict ourselves to a few persons. That we should be able to change the list as well. Add to it and so forth. Courses for courses, something like that. Is that Agreed?

**MRS MGWANA:**

I am not apposed to that. I am just thinking, how exclusive will this 5 experts, that will be appointed, is it 3 - I am not talking about our 3. I am talking about the 5 that are in the Constitution. How exclusive are they going to be? Can't they also be used by Theme Committee members if they are also legal experts. If they specialize in a particular field, related to that Theme Committee - is this going to be

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exclusively for the CA? Where will they function those experts?

**CHAIRPERSON:**

They are to function primarily in terms of the constitution. If I am, correct me if I am wrong, but they have certain duties to fulfil in terms of the constitution. They've got to certify that this constitution is in terms of the principles. So, I think it will possibly be difficult to also involve them here and they've got to then certify their own work. Which will be very difficult to dissatisfy. Like the IEC. Mr de Lange.

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**MR DE LANGE:**

I am just trying to work out - look at one stage we will trying to get - say we are identifying issue X and we refer it to the public. Now the public sends 20 representations on issue X. Someone has to now take those representations and put them into some draft for us, unless one of us, and I am sure the Core Group - I know the Core Group, all of them are on it. I can't see them sitting down and summarizing on each issue 20 - it seems to me, we have to work out whether we are going to have a - one of these three experts doing that for us. Or whether the staff of the CA is going to do that. Which I think is going to be problematic, because I

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don't think necessarily on each of the legal issues, that kind of expertise exist within their staff.

That is just the one issue I want clarity on what we are thinking about that. Because that is so, it seems to me that we at least need one person broadly to be able to deal with those type of things and (b) here, to do that. Then I would agree that others, one would use maybe experts as they, on the topic you want to use them. But I am just a bit worried that we are going to put ourselves in a bind and leave all the work for the Core Group then to start summarizing things and work out positions and I have no faith in them, but I don't know if they will be able to do all that work.

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**CHAIRPERSON:** You are suggesting that there should at least be some permanence for that kind of work.

**MR DE LANGE:** Who is going to do it otherwise?

**CHAIRPERSON:** Is that a decision we have to take now? I think it is a consideration that we have got to take into account. Right. Thank you very much.

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We then come to point (I) is accepted? Fine.

Then we come to (b). Technical experts and I would like to ask you for inputs as far as this is concerned. There is some subject to what you say. I think there is this problem that we may have to wait until the constitutional experts are appointed before we could finalize our experts, but I think the sooner we can start with the list, that we can consider, the better. Inputs as far as this is concerned? Doctor van Heerden.

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**DR VAN HEERDEN:** Chairman, can I just add some information. We have got a list here of nominees for the panel of constitutional experts. That was in front here on the table. I presume, and then there was a short list, compiled by the constitution development service. I don't think that, I think this is just for our information. Can we, besides these names, come with other suggestions and can we do that across the floor? In other words, can I mention a few names to you? What is the idea?

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**CHAIRPERSON:** You are not restricted to that at all. As far as our experts



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are concerned.

**DR VAN HEERDEN:** May I mention a few names?

**CHAIRPERSON:** Yes, please

**DR VAN HEERDEN:** I will start off with Judge Pierre Olivier, also Professor Ig Rautenbach from RAU. They are here. Judging from the short list, Mr Gibson, they are not on the short list.

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**CHAIRPERSON:** That short list, I don't think that is significant at all. But be that as it may, we can mention any name here.

This short list is no better status than any of the other nominees.

**UNKNOWN:** I agree with you. Mr Hofmeyr.

**MR HOFMEYR:** Chairperson, I think we are getting bugged down on the wrong issue. The short list pertains to the panel of 5. It has got nothing to do with the Technical experts that we may be looking at for our committee. So, I don't - I really don't

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think that we should be debating the short list or the status there of. I think there are other short lists around. I think let us just leave the short list.

**CHAIRPERSON:** Any further names? Mr de Lange.

**MR DE LANGE:** Chairperson, I want to propose that we get a cut off time during this week, maybe Thursday or Friday. That each party ...

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**CHAIRPERSON:** We have got no problems here. I am sure that we are not going to get that many. Can we ask - we have a Core Group meeting on Thursday. Scheduled for Thursday, is that correct? I think that is a reasonable date for a Core Group meeting. Can we ask for a cut off time on Wednesday? Wednesday 12 o'clock.

**UNKNOWN:** Wednesday afternoon. Late Wednesday.

**CHAIRPERSON:** Not later than Wednesday, please. Before adjourned on Wednesday. Agreed?

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UNKNOWN: (inaudible) ...

UNKNOWN: Chairperson, I think practically speaking that is going to be quite a lot to be sorted out instantly. I would suggest that we have people who are interested being nominated, subject to the conditions, but favourable to them, accepting at some point. Something along those lines, so if she is interested, she gives the names, but if the terms of conditions of such a contract of employment are not accepted at a later stage, well, she doesn't then have to continue.

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CHAIRPERSON: The difficulty is, we don't decide on those things. It is decided for us. I am a bit hesitant that you raise expectations as well. That is the other problem. Mr de Lange.

MR DE LANGE: I would have originally thought that we need to ask the people if they are available but my feeling would be this, I know already is somewhere I read about money being suggested. How much they will be paid and so on. I think the bigger problem that is being raised is the one of permanency or not, because that really has a bearing on

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whether people are going to be here. Also because we ourselves don't get no where.

We only going to sit on Monday's or sit a whole week at a time or sit 3 weeks. We don't know. It is very difficult. I think what we need to do is get a short list of people we are interested in at the Theme Committee next week. From that have a further discussion, see who we really are interested in and then get admin to actually speak to the people to see if they are available and by that time we must also say they should have been agreed already by the committee exactly these type of issues. I know the last discussion we had in the constitutional committee was, that each committee must now come with a proposal to the constitutional committee so that we can adopt an approach there before we take it further.

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I think we do have problems. I think the best we can do is identify the best people we want and then let the administration take it from there and then later on we will find out who exactly is available.

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**CHAIRPERSON:**

At least we should request the Management committee to



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deal with this so that we can get the details as soon as possible.

Right. Agreed on (b)?

Then we come to (c) - Ladies and Gentlemen, the Core Group felt that we have virtually no decision making powers in any respect. At least we should be able to decide when we want to sit. So, for instance on Monday's, I am sure there are a number of people that rather would like to sit on 11 o'clock than at 10 o'clock, to enable us to fly down. So, at night. So, basically the feeling was that we should decide on our own meeting times and I put that to you.

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UNKNOWN:

Mr Chairman, we would welcome it if we could start a little bit later, as you say, to enable us to be back in time, coming from a place called Bloemfontein, there are not many planes flying down from Bloemfontein, but there is one that can bring the Free Staters back in time, but I don't want to impose by requirements on the rest of the committee. I will go for that.

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CHAIRPERSON: Mr de Lange.

MR DE LANGE: Chairperson, I think in principle we should agree. It is like with the Chairperson, in principle the Core Group can work out the times of our sittings and so on. I think there is just one little thing that are worrying me - it is not of our making. In the constitutional committee, the Theme Committee that are meetings at 8 in the morning, on a Monday are now wanting to rotate meetings, so that one Monday we sit at 8 and one Monday they sit at 8. I just want to warn our Core Group about that aspect.

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CHAIRPERSON: That may mean that we sit at 8 o'clock at night certain Mondays.

UNKNOWN: Chairperson, I think as Theme Committee 5, maybe we should just comment on that so that they know our feelings about it. The difficulty with having meeting times shifting around is that it is impossible for anybody to programme themselves. If we are going to meet at 11 o'clock, then we should meet at 11 o'clock every Monday so that we know that we can set up another meeting for 8 o'clock for some of

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us who try and be here on Sunday nights. We can try and do something else for that time and know it is a standard time to do something else and we should actually have that expressed to who ever is wanting to change it.

CHAIRPERSON:

I think the general agreement that the Core Group be given the mandate to decide on the dates as far as possible. On the times. Agreed? Fine.

Then we come to 5. Any matter you would like to raise under general? Going? Going?

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UNKNOWN:

(inaudible) ...

CHAIRPERSON:

Can we ask the Core Group just to remain behind. We will let you know as soon as possible. Then I would like Theme Committee members to sign the register and give contact details to the secretariat. There was a piece of paper distributed where you put - where you could put your contact telephone numbers and things on. Addresses. Mrs Mgwane.

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**MRS MGWANE:** The apology of Ms Jana, I forgot that.

**CHAIRPERSON:** Again asked that the Core Group members stay behind.  
Thank you very much. That concludes the meeting.

**[ END ]**

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**THE CONSTITUTIONAL ASSEMBLY**

**THEME COMMITTEE 5**

**31 SEPTEMBER 1994**

*L Wood*

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**TRANSCRIPTIONIST: L WOOD**

*H Potgieter*

.....  
**EDITOR: H POTGIETER**