



Chairperson:

Thank you very much. The register will be circulated. You're welcome ladies and gentlemen, even those of you who are slightly late. Just a reminder that we normally start at 8h00, and let it be so in future. Thank you very much for calling. Everybody is welcome. I hope you've had enough rest and that you've come with a lot of energy and wisdom to help us complete the work programme within the period given to us. The CC, which is the senior body has directed that we should be able to submit our work programme by the 15th. I understand we will be closing very soon. The Parliament is going to recess. Now, all we need to do is to have a programme of action, so that the Administration can work out the documentation, give us our support and service as needed.

Without any waste of time, we'll go into the agenda. I hope you have all read Item 2 and the minutes. Any comment or proposal for the adoption of the minutes of the previous meeting? Thank you. Any seconder? So, the minutes are accepted as true record of this Theme Committee. Any matter arising -Item 3? Alright, thank you very much for being so quick. We go to Item 4, the major issue of the day - Development of a work programme. Before we even embark on Item 4, I should just briefly report on the meetings of the core-group. They've had about two meetings since the last meeting of the Theme Committee. In the last meeting we instructed the core-group to go and collate the various submissions of the parties to see whether we cannot come up with a work programme which is workable and is able to be followed. That has been done. A report was compiled. The Administration compiled the first report and distributed it, and thereafter revised it to make the format more understandable, so that the position of the parties are clearly set out in the problem concerned. The core-group has carried out the instructions as requested by the Theme Committee. Now it's for this committee to discuss the work programme.

However, we should not be trapped in the details of what our positions are on the substantive matters. That will be discussed perhaps at a later stage. Here we are only concerned with the work programme. So, we mustn't allow ourselves to go into unnecessary details, unless we have a difference of opinion regarding the programme itself. Generally there are two major things to decide upon:

- matters to be discussed or to be attended - Those are not contentious because we have been given exact instructions on what to do. Those are just straight forward. For example under 'A' (Constitutional Issues) on page 7 of 'The reviewed core-group report', we have constitutional issues which need to be attended by the Theme Committee.
- matters which must be given first priority.

We must try not to give lengthy arguments on these issues. We should try to be a comprehensive Theme Committee which works towards progress. In that we have compromises. Then we can have a work programme. But by arguing on every issue that is layed on the table, and spending the whole year on the work programme, I don't think we are doing justice to the people who are waiting for the constitution. You'll all put your views as strongly as possible, whether your priority issue comes first or not. Having made those remarks, I would like to request the meeting to embark then in this item of looking at the work programme, correct where it needs be, making sure that it is workable and to finalise it if we can and submit it to the Administration as required. The matter is open for discussion. I'll see by the show of hands.

Mr Niehaus:

Chairperson, I think the best way for us to go about looking at this work programme will be to find out where the areas of common interest already exists. And we should try and extract those and work on them. So, I would suggest that we stay away from, at this stage, immediately beginning to concentrate on the obvious areas where there will be some difference or some disagreement. We should first try to find the common ground; and I believe if we do that, we will find that out of that discussion, we will also begin to find solutions or some answers, even for those problems we may be experiencing. Thank you.

Chairperson:

Perhaps, to try and understand what you are saying Mr Niehaus, where do you particularly want to start here on the agenda?

Mr Niehaus:

Well, I think for example we can begin to look at those particular areas where we do agree. We agree that we need to have a democracy. We need a democracy of equality and majority rule, and all of those kind of issues. Let's first concentrate on those where we have some common ground, and then we can proceed from there; rather than, for example, beginning to insist on what the Broader Character of the State would be.

Mr Philgate:

Mr Chairman, what Mr Niehaus has said is obviously correct. I just like to focus more specifically on the meaning of what he is saying. In the documentation before the Theme Committee, there is a set of documents marked 'A1' commencing on page 7. There's a review of core-group report containing the issues that the various parties raised. If Mr Niehaus is saying that these are the issues we should begin with, then I'm with him. We don't know whether all parties agree that all the issues are important and should form the subject matter of this Theme Committee, because it's only when we have the issues that we are dealing with that we can begin compiling a work programme.

And it's only then that we can begin looking at what issues we need, to proceed. So, if the documentation handed in needs the approval of the Theme Committee as reflecting the issues to be dealt with, then the way forward is clear. I just want to add that the question of the Theme Committee report to the Constitutional Committee is fundamentally important. Unless the Constitutional Committee receives from the Theme Committee a report which indicates areas of agreement (contentious and non-contentious issues), the Constitutional Committee in turn won't be able to compile it's report to the CA. That's the fundamental aspect of our work. At this point in time, no parties should be barred from tabling issues which form part of the subject matter of this Theme Committee. So, can we accept that the documentation contained in the 'A1' document received from the secretariat reflects a cross-section of issues which this Theme Committee attends to.

Mr Swanepoel:

Mr Chairman, I think we all agree on what was submitted to us as from page 7 on to page 15. I think we must lift out our priority. We must study all these issues and we must submit reports on all of them. But I think there's one or two i.e. 'One Sovereign State as qualified by minority rights, Provincial Administration and possible Volkstads and the Division of power.' That's according to the list by the ANC, NP and other parties as being the priority. But, nevertheless we must still study the Preamble. So, our suggestion is that we as the Theme Committee must start studying on the One Sovereign State. But then we can have subcommittees working on the Preamble. We needn't a whole committee working on the Preamble. We can get one person from each party to start working on that. But the priority - One Sovereign State- must be the issue of the whole committee. So, we suggest that we have subcommittees on the less contentious matters, and they can table a report for us to send through. But on the main issue we must have the whole committee.

Mr Nkomo:

Mr Chairman, I think we can agree with Mr Thibault that we have to look at all the different party positions. But just to summarise as what I said earlier that obviously there are certain areas where there is substantial agreement, and there are other areas where there will be differences. For the sake of progress, let's first concentrate on those areas where we are likely to have some overlap of agreement. As far as the Preamble is concerned, I think we must be careful to look that we can start working on that, because surely the discussions that we're going to have on substantive issues is going to eventually influence and inform what kind of preamble we're going to write.

Dr Mulder:

Mr Chairman, I think we've got the core-committee; and what's been done there helps us a lot. What must now be done, as I understand it; and I agree with Mr Niehaus on the other hand, is try to then decide on priorities. That's not the core-committee's task as far as this is concerned. And I think maybe he is right that going for the common ground would be easier just to get the committee working and to get it going; rather than immediately tackling issues like One Sovereign State, which are not that simple at this moment as a first priority, because we might get stuck in some difference of opinion. So, I'd like to agree with the argument of Democracy. It's more or less the theme that comes through all the time. This morning we handed out something on that as first priority. Once we understand each other on that issue, surely it would be much easier to apply it to the other, maybe more difficult issues as such. And therefore, I find this as a priority and the way we can get forward.

Mr Niehaus:

Mr Chairperson, I think one can agree with Mr Philgate that we have to look at all the different party positions. But just to re-emphasise on what I said earlier that obviously there are certain areas where there is substantial agreement, and there are other areas where there will be differences. For the sake of progress, let's first concentrate on those areas where we are likely to have some overlap of agreement. As far as the Preamble is concerned, I think we must be careful to think that we can start working on that, because surely the discussions that we're going to have on substantive issues is going to eventually influence and inform what kind of preamble we're going to write.

So, I would be careful to begin to write a preamble which is then going to impact and narrow the kind of discussion that we need to have on the substantial issues.

Mr Momberg:

Mr Chairperson, I would like to first thank the people who did this documentation since we last met because they've done exactly what we wanted them to do. I really think this is a much better document than last week's. I also agree with Mr Niehaus that we shouldn't start with the Preamble. The Preamble, at the end of the day, must be the result of all our discussions. What we've put together will, at the end of the day, lead to what a Preamble is going to be, and it should actually be the final winding up of this committee, not the starting point.

Chairperson:

Thank you very much. So, it seems there is an agreement that we start with common ground. In other words, we must take those matters which are non-contentious and have them done first, and not be bogged down into matters we believe will be contentious. But let the meeting come out a little clearer to me. What is our priority according to the common ground we've identified? It's the principle that we start with a common ground; but here we must be able to tell the Administration or the CC what issues are on our priority list so that they can be able to amend this programme according to our decision. The principle is very clear: we get common ground. Let's go to specifics now. On what issues do we agree? The parties have read the documentation. Now pin-point these so that we can make progress.



Mr Philgate:

Mr Chairman, we have just the following consideration. If we start with common ground, a) We're not yet sure which is common ground; b) the contentious issues. We shouldn't fight away from contentious issues as if they are difficult. The essence of our work is to solve those problems. If we're referring matters to the CC, we can't adopt a procedure in which the difficult questions are relegated to some tail-end procedure. We should begin working systematically on solving the difficulties as we go. I don't think it should be defined by what is contentious and what is non-contentious. We have got issues before us. There's a natural subdivision to these issues which we perhaps should look at. It's already been correctly stated that we can't look at the Preamble because it can only be drawn up after other issues have been decided upon. The Preamble must agree with the text of the constitution and the themes of it. Could we not set ourselves the task of looking at tackling these issues technically rather than any other way. There may be technical reasons to deal with one issue before another because its implications carry through to the other issue. So, we want a technical examination of the issues which are being tabled to define our way forward.

Chairperson:

I'm getting confused from what you are saying, Mr Philgate. I thought you agreed that common ground is the starting point. Now it seems you are contradicting that. I repeat again. What we need to do is to table our matters so that the Administration and the CC could know where we should start. Now, that's all we are dealing with.

Mr Philgate:

Mr Chairman, I have no problem with establishing common ground. That's the easiest thing to do. I'm just pointing out that there is in fact no definition of what is common as yet. We've only got a list of issues. If we start with common ground, it does not mean that at the same time we cannot start working on the other issues. I'm just asking for a broader perspective. It will be easier to make progress in common ground once we've identified what the common ground is. We just have party issues tabled under various headings. So, our first phase is to identify common ground and at the same time define contentious issues. I'm suggesting that, correctly and analytically speaking, one aspect/issue will have implications on another issue underneath some kind of prioritisation. It's a technical issue which demands that the core-group prepare such a document for the Theme Committee as part of the report on progress of work.

Mr Morecraft:

Mr Chairman, we have no option but to concentrate on common ground. We're not in a Negotiating Forum. If we can't identify common ground, then we can identify matters which are contentious. We are not in power to try and negotiate contentious matters in order to achieve common ground. That is not part of our duty. And this is the basic problem which I have with the whole functioning of the thing. We are explicitly instructed by the CA to identify issues which will go forward for negotiation presumably by the Constitutional Committee. Negotiation is the work of the Constitutional Committee.

Prof. Ripinga:

We in the Theme Committee are not supposed to negotiate. I think that is our problem. And to talk of a common ground already implies that you are negotiating. But I think the word that we are supposed to use is 'priorities.' According to the report we have come from the first presentation of the core-group. We have moved now to the second phase which is comprehensive; covering common contentious/noncontentious matters at this stage. But we are not negotiating. I think from here we must move to what we'd call 'priorities.' Under 'priorities', you still have your contentious and noncontentious issues. This will then be sent to the Constitutional Committee which will negotiate those priorities. So, there's no common ground here. We may all agree on Sovereign State as being the common issue, but there are contentious issues there too. So, what I would suggest, Chairperson, is that we prioritise these issues in order of importance, and present them to the Constitutional Committee.

Mr Swanepoel:

I think we must have subcommittees working on certain issues, for example, the Preamble. Then they should come with a report for us to discuss.

Mr Mulder:

The way I try to understand the work of this committee is that it's a Theme Committee. Therefore it seems that we must generate themes. Identifying common ground is common sense, The issue is whether those themes are contentious or not. We know from the Constitutional Principles, that such issues as The Establishment of a Single Sovereign State is a difficult issue to discuss. The ANC, NP and IFP put emphasis on democracy and equality, and that's how I got to Democracy as an appropriate theme.

Chairperson:

May I try to guide the meeting in this manner with your permission. While you are putting your views forward, bear in mind that it has been indicated by the CC that our target date should be the end of June, by when we should have completed the 7 items in this agenda. I'm not saying that it can't be amended, or whether it is rigid or not. When we talk of prioritising, it doesn't mean we're relegating any issues. What we are merely trying to do is to prioritise these issues so as to know what issues to deal with first, secondly, and so on. By June we ought to have covered all the ground. It's a question of indicating to the Administration or the CC our plan of action or our programme. Let me leave it at that. It's not for me to discuss.

Mrs Pikoliwe:

Comrade Chairman, I think we've just started with the process of identifying the priorities. There's the issue of democracy which seems to be on the table. I do want to support that as one of the starting points that we are indicating as priority on our side. It would be much better if we first concentrate on priorities and see how far we can move.

Mr Momberg:

Mr Chairperson, we are speaking very broadly so we are touching on a lot of issues. We've just been told that the final decision and the negotiations will be done by the Constitutional Committee, and not by us. We just have to put down the 'how's' and the 'when's.' The question of symbols, more especially the issue of the anthem, is to me, very important as a discussion point. Unfortunately, I don't think any of us here has musical or poetic abilities -and Sir Willie Serote isn't here. We have to take one of two decisions. One is to go on with the existing anthem and get more sports injuries because the players will get cold waiting for the anthem to finish. Secondly, we have to discuss the possibility of a new anthem. Unfortunately we haven't got the world's time left for that type of thing. So, I think we should either take out certain things from this list and refer them to the committee immediately, or we must first define what our role is.

There are certain things which will take time which we can't sit and wait until June to finalise. It's got to be done quickly. So, time is of the essence.

Chairperson:

Thank you. Do I understand the meeting well? I'm just trying to see if we can make progress from what we've said thus far. We might be going in circles. I want to push what we've agreed on. It seems there has been a common ground regarding democracy as one of the priorities we take forward as proposed by Mr Niehaus. Is there any other point which the meeting feels should be included under 'priorities?' Let's go to the next item of commission.

Mr Philgate:

Mr Chairman, just a comment first on the question of this Theme Committee not being the Negotiating Committee. We all agree on that. That, however, does not imply that we do not need further discussions. Discussion is not negotiation. We need sufficient discussion to clarify or identify common issues and contentious and noncontentious issues. In that process of discussion our contentious issues should narrow down, not because we are negotiating, but because we are understanding each other and were finding common ground. We've not had any hard discussion on any issues. I would suggest that we look at an immediate way forward by charging the core-group with the following:

- to list priorities which are emerging from this discussion based on common ground and based on technical issues. Some issues will have to be dealt with before other issues.
- we also need a list of issues in Theme Committee 1 work which infringe on the work of other Theme Committees. This Theme Committee has been told to do its work as a priority.
- We also need to know which of the issues need immediately to be referred to technical experts to feed into this debate.
- We need a list of research topics.

If the core-group could be charged with that task of producing that proposal, that in itself is the beginning of a sound work programme; and it has in it the possibility of a real discussion or real progress. We, as a group, can't do this work in such a large committee. We need smaller bodies to do that. Two more points Mr Chairman if I may. Bear with me.

- 1) One point Mr Swanepoel made about the need for subcommittees. All subcommittees will have to have members of all parties in it; and that's not really going to be possible to divide the number of subcommittees. We have got a core-group which is the work horse of this committee.

2) The second issue about the core group, Mr Chairman, is that one has spent two weeks now drawing up the format of this report in discussion on the issue in the Management Committee on the question of what the role of the secretariat is.

- Does the secretariat provide a repeater work?
- Does it produce a synthesis role document?

And the feeling was very clearly that the core-group should, in future, actually do the drafting; and the secretariat should provide a secretariat function with repetoir work possibly to some extent to assist. Those are the proposals for actually charging the work-group with these jobs. I think there's nothing contentious in any of those proposals, and will assist the meeting in its way forward.

Mr Morecraft:

I would like to support Mr Philgate in what he has said about charging the core-group with these particular items for further work. I would also like to pick up though on what Mr Momberg has said about issues which should be referred to commission. I should like to add that item to the list that Mr Philgate has mentioned because there are certain issues which I believe should be referred directly to commission; and as such they are out of our hands. We can then clear the agenda further in that way. So, in support of Mr Philgate, that can be referred to commission.

Chairperson:

Thank you very much. I think it is a sensible idea to refer the matter to the core-group, but we must be careful. The core-group has its major functions given by the CC. It's not a mini negotiating group of rapoteers. It's merely to drive the process forward. In other words it must take full instruction from the Theme Committee and carry those instructions. So, if we refer any matters to the core-group, we must have given sufficient instructions as to what is to be done. We've said that our common grounds the issue of daDemocracy. What Mr Philgate has suggested is sensible one which, if the meeting agrees, we will end up following. The core-group is made up of various parties with differing views. So, we must empower them here on what we expect because next week must be the final day of approving the work programme. They must not come with differing views again. They must be able to take what we've decided, put it on print and have it put forward. May I ask again. Is there any other matters which we feel should go in to the priority list?

Speaker:

Chairman, may I raise a point of order. A proposal has been made by Mr Philgate; and if he puts that forward as an official proposal, I should like to second it so that we can make progress. Mr Philgate has proposed that arising out of this report, which is acceptable to the meeting, these issues which he has tabled and itemised be tabled for work by the core-group. And I have suggested one additional one. So, if Mr Philgate is putting forward as a proposal, I would like to second it as a formal proposal from the floor.



Speaker:

I'm hesitant about what's been raised with regards to issues all being forwarded to the core-group, because the core-group is a small committee. And the core-group is meeting beyond its capabilities sometimes. The point that was suggested about some of the work being referred to sub-Theme Committees is distribution of work. The work is not done by a few people, because few people sometimes cannot cope with that amount of work. If we are able to break up at least further into subcommittees, then you have other people working on the issue. My fear is that there is a concentration of work in a very few individuals. I feel that members of this Theme Committee ought to feel as participants in the debate, and sharing in the work load in any way.

Mr Niehaus:

Chairperson, I have no problem with the basic issue which Mr Philgate has identified. I would also agree that one obviously does not deal only in those areas where there is a degree of agreement. We also at some stage have to deal with disagreements. What I would like to caution against is changing the nature of the core-group into the area where all discussions take place. We have to deal with those issues which Mr Philgate referred to in the first instance in the Theme Committee. And I think it will be a good way of using our time if we also had subcommittees working on these issues. But we mustn't change the character of the core-group. The core-group is there to steer this Theme Committee. It is not there to become a substitute as a discussion forum where discussions have to take place in this Theme Committee. If we do that we are going to lead to a situation of disempowerment of people in this Theme Committee, and we are also going to undermine the exact purpose of this committee which is to get a wide and broad discussion. We're in the process of that broad discussion. We must find out the degree of agreement and to what degree there are problems. That is exactly the nature of this committee.

Speaker:

Mr Chairman, I think the point of issue is that we have a report before us; that's point 1. Now, how should we deal with this report? This is our duty. We should talk about the eight different subheadings that we've got here. I have nothing against the idea of the core-group in the end making a synopsis of what we've been discussing. But I think it is only fair that this body, which is the Theme Body, should be able to discuss this report first, even if it takes long. After all we have eight subheadings. Can it take us more than three meetings to discuss that? The core-group has to know whether or not we have consensus on certain issues. Therefore, I would suggest that we first have a discussion on this report before we hand over to the core-group. But at the end it will be essential that the core-group give us a synopsis of the report and of our views.

Mr Morecraft:

Chairperson, Mr Myberg Steiger arrived somewhat late for this meeting. If he had been here at the beginning of the meeting, he would have heard members commenting that this is a good report. I think everybody seems happy with the work that the core-committee had done. As far as I'm concerned, there was no further discussion on this document. So, I don't think it would profit us to revisit the report which is already on the table, and which we have already discussed and approved. I should however like to return to the points raised by Mr Niehaus. I don't think that it is disempowering this committee to instruct the core-committee to identify areas in which we need expert advice or opinion. We can however, if the committee so feels, now sit down the long task of sitting through and trying to identify these. But it's going to tie up 40 or 50 people here in work which could be done much more quickly and, hopefully, as effective and efficiently by 5 or 6 people from different parties. No party is going to be left out, and nobody is going to be disempowered.

Chairperson:

The administration draws to my attention that today is the 7<sup>th</sup> of November. The 15<sup>th</sup> of November is about a week from now, in which we are expected to submit the work programme. I'm also drawing the same attention to the meeting. I think Carl Niehaus has a valid point. This is the third meeting. We have been going in and out of here, and not really coming to any consensus. It's been a problem that we have been referring things to the core-group and reflecting on what the core-group feels about it. As members of Parliament, it's a problem that we wake up in the morning not knowing what your role is going to be in a particular Theme Committee. That's what we mean by disempowering members of Parliament. That is why I agree with Comrade Niehaus. Let us be the ones who draw up the list of priorities and put that on the table. It doesn't mean that the core-group must be the ones who think about issues. We also have a role as a Theme Committee. By the time it goes to the core-group, it should be the final issues that we all agree on. The core-group should be seen as managing the process itself, rather than doing the thinking for members of this committee. The process that Comrade Carl Niehaus has put forward should be the one that should be followed.

Speaker:

Chairperson, I apologise for coming in late. But I am concerned that we've spent most of our time on process, and I'm now a bit worried as to whether we're going to get down to actually discussing what should be our job. You drew attention to the date of the 15<sup>th</sup>. Now, referring issues to the core-group, who then refer back to us for approval is going to delay the process. So, I would like to hear from the people who proposed the phase of referral to tell us how they think we will deliver the report by the 15<sup>th</sup> of November. Secondly, apart from the practical things, I would urge you, Chairperson, to also bear in mind the points I've made because in a sense, it is your responsibility. We cannot spend 45 minutes to an hour discussing process. So, I would urge you to try and move us forward quickly.

Nozizwe:

May I second the point that Comrade Frene has raised, so that we are able to see how far we can go forward. I would like the people who proposed that the matters be referred to the core-committee really explain to us how we can reach the final decision. Having said that, I want also to support the idea that we actually try to decide those issues in the Theme Committee of forming subcommittees.

Speaker:

Thank you, Chairperson. I'm becoming a little concerned because I fell we're going a full circle. I believe that we actually had reached consensus that we were going to refer either to the core-group or sub-groups. I think it has been expressed here this morning that the issue of subcommittees is nearly not necessarily going to be representative of all parties. We have a problem. That is why the core-group is the right way to refer matters that need to be dealt with expediently. There is representation of all parties there. We have a problem in that the minority parties - the very small ones in particular- only have a person sitting on this committee. How can they then sit on all the committees. It does rather seem that the core-group is the right route to go, and as such, I support Mr Morecraft. We are not disempowering this body. This body still makes the final decision as to what to refer to the Constitutional Committee. So, I feel that we're actually going around in circles, and we're right back where we started.

Mr Niehaus:

Chairperson, really in the interest of progress, I think we have a proposal from the speaker. Let us begin to think about the issues that we're going to identify. We can discuss those, and in that process we can then decide on which of these themes we're going to create subcommittees for, and which we're going to refer to the core-group. I've got absolutely no problem if the core-group is also going to look at some of what these issues are. That is part of the steering work of the core-group. I don't understand the concern about some parties being excluded. I think we're talking here about empowering this whole group here; and we're also saying that whatever has been discussed in any of those subcommittees is also going to be referred to the core-group where all the parties are present. So, I think we must be careful not to create problems where they don't really exist. And I really urge us now, in the interest of progress, to proceed with identifying those problems so that we have a programme of work by the 15<sup>th</sup>. If we are going to follow this route of referral, we are not going to have it ready by then.

Chairperson:

It seems we need to make progress. We mustn't be afraid of certain things and keep going in circles. We must face facts head-on. Otherwise we will be going in circles until next year without a simple work programme. The matters are simple. This document has been distributed to parties long before. All parties have read what the views are. I think we should be able to come up with our views as a Theme Committee e.g.

- what do we feel should be our priorities
- what should be referred to commissions

We have already pointed out one issue in our priority. Is there any other matter which should fall under 'priority?'

Dr Ginwala:

I think a very fundamental issue is that of equality, because it links in very much with our concept of what we understand by democracy.

Speaker:

Chairperson:

Any objections to that? Okay there's agreement on that one. Any other items? We have Democracy and Equality.

Speaker:

Mr Chairman, The Supremacy of the Constitution is one of them.

Chairperson:

Any objections to that? No objections. Any other?

Speaker:

The Representative Government - what is meant by that.

Chairperson:

Any objections?

Speaker:

I have no problem with it, but from what I've read in the way we've broken it down, it forms part of democracy.

Chairperson:

Are you satisfied with that?

Speaker:

I'm quite happy with that, but we are talking about things that should receive priority. All the other things that have been mentioned have already been mentioned in the report, but they're being prioritised. So, I'd like to see the issue of The Representative Government prioritised.

Chairperson:

So, if it's included under Democracy then there's no problem with it. It will be dealt with.

Mr Nel:

Chairperson, under these broad themes, we have subheadings. For example, under The Representative Government we have issues like 'multi-party democracy, regular elections, suffrage, common voter's role, etc. I think all of these have to be looked at.

Speaker:

Chairperson, I think we should also add the issue of Accountability.

Chairperson:

Any objections? There seems to be agreement on that.

Speaker:

Comrade Chair, I was interested in Mr Momberg's proposal on the issue of character of state, name and symbol. I'm very interested in those.

Chairperson:

Yes, but does it fall under 'priority?' Do you understand what we are trying to get at? We are itemising these under what we'd call 'priority.' Then other matters that need to be dealt with by technical experts, commissions, etc. will follow.

Speaker:

Chair, just on a point of order. The way I understood Mr Momberg's proposal was that any issues that need to be referred to technical experts should be done so through the core-group.

Chairperson:

Are there any other items to be added under 'priority?'

Speaker:

Majority rule.

Chairperson:

Any problem with that?



Dr Mulder:

I thought Democracy more or less addressed that in a certain sense because the moment he puts that, I'm going to put Self Determination on as well. So, we must just make sure what we mean by that.

Dr Nzimande:

Mr Chairperson, I think that all the issues that we are arising as 'priority' fit in under the theme of Democracy. I think maybe what we need to be saying is that it's the issue of Democracy that we want to build. Its features should really be the main area that we need to concentrate on. As we discuss, we will identify other issues that run across these 7 or 8 areas that relate fundamentally to the issue of Democracy. Let's put our attention on that. Issues will then begin to emerge as we actually progress deeper into the issues. That would be my view.

Chairperson:

Thank you Dr Nzimande. Let's go to the next topic -

"Matters to be dealt with by the Commission". We have indicated that the Administration and the CC would like to have this information so that, while we are in the recess, they can work out the mechanism and try to put up the infrastructure in place. So, it's important that this information is supplied with our work programme as they have requested. So which of the 7 items should be referred to commission?

Speaker:

Symbols

Chairperson:

Any objection?

Mr Nel:

I think we must just be careful that we don't form this distinction that those matters that will be dealt with or referred to commission can't also be discussed here. For example, on the issue of Democracy, which is the main theme that we've identified; I feel that it should be referred to and dealt with in the commission. So, let us not make a false distinction between the commission and discussion here. Perhaps we should indicate which are the themes we don't think are going to benefit our discussion here and refer them straight to commission. Others will be discussed here and later referred to commission.

Chairperson:

Correct. Certain matters will be referred to the commission, but the commission will still report to the Theme Committee, which will also report to the CC. By referring it to the commission simply means that there will be a group working on the matter. So, if we feel that none of the issues discussed above should go to the commission, we should not be afraid to say so.

Speaker:

Chairman, just for clarity's sake. Can you just distinguish between a subcommittee from the Theme Committee and the commission.

Chairperson:

I would not venture giving my opinion on that. I would like the members to answer that question.

Dr Ginwala:

I would say that a subcommittee would be composed of members of the Theme Committee and maybe of less intensive work. The commission we identify on a particular theme. I understand from the previous discussions that we could appoint to it others who are not members of the Theme Committee or of the Constitutional Assembly. So, parties could bring in individuals for the actual discussion there, but they will not necessarily be taking decisions. Their role will be primarily investigative. And that's the kind of distinction I would see.

Chairperson:

Thank you Dr Ginwala. It seems the Administration wants to refer us to our rules. We would do that with pleasure. Could you read it briefly.

Administration:

*Rule 36: The appointment of commissions states that the Constitutional Assembly may, by resolution appoint any person(s) to be a commission. But a person(s) may be / may include persons who are not members of Parliament The Constitutional Assembly may request the President to appoint the person(s) concerned as a commission for the purpose stated in the request; and to apply the Commission's Act with suitable regulations. The names of leaders and chairpersons of the commission shall be published in the minutes proceeding.*

Mr Momberg:

Does this mean that when we take a decision to refer items to a commission, it is then taken by the Core-Committee to management who then puts it in the agenda for the CA, because we can't do it?

Chairperson:

We should understand the working of the CA very clearly. The CA has certain structures under it. One of them is the Theme Committee. At this stage we are merely giving a programme. Having done so, we then send it to the CC. The CC will then look at the rules because they know the rules. If it needs to be appointed by the CA, they'll take it to the CA. If it needs for the CA to be appointed by the President, the CC will do that. In other words, the rules are very clear. Ours is merely to indicate what we feel about this. And it does not necessarily mean that the CC will agree with that. The CC might debate and come up with a different view. But then they want us to have an input on the work programme as it is at this stage.

Dr Ginwala:

I think the rule that was there applies to commissions of the CA. I had understood, when we were discussing the structures of Theme Committees, that the kind of commissions we were talking about were different. I may be wrong. But I would certainly like a legal view taken on that. The kinds of commissions would speed things up because we were not thinking in terms of major national commissions, which the President will appoint. We were considering, in a sense, subgroups of this, which would be of a different nature. If my understanding is correct, we should actually raise that with the Management Committee. And if it is a common one, then we should be allowed to proceed that way and frame a rule. There's nothing rigid about rules. We could put another one which would allow us to appoint that type of commission.

Chairperson:

The Administration undertakes to get legal advice on this matter. So, we don't need to worry much about the nature of the commission. They'll report to us in the next meeting as to what is the actual view.

Mr Morecraft:

Chairperson, my proposal is that we include Separation of Powers as one of the issues to be referred to commission.

Chairperson:

Any objections? No objections.

Prof. Ripinga:

Chairperson, I just want to follow up on the issue of commissions. I also agree that the other category of commissions should also be included. There's a General Commission which actually is meant to address issues that are technical.. A commission of this nature would obviously not deal with issues of symbols and anthems. That category of commission could be appointed by the CA. One can also include another commission which we could simply refer to as a subcommittee - something which is less formal than the real commission that deals with technical issues. So, I do agree that we need to clarify the issue of commissions. I think we should recommend a need for an informal commission that should look at those technical issues which we, as the Theme Committee, cannot deal with.

Chairperson:

Prof. Ripinga, the Administration undertook to get us legal advice on that issue and we had closed that discussion. It will be opened when they come with the report. So, let's leave the nature of the commissions, and go on to matters to be referred to the commission.

Mrs Sidney:

Mr Chairperson, on the point of order there. I know you want a close debate on that, but what we're really looking for is a subcommittee with co-option powers. Surely, that's what we're looking for. Now, if we can just make that suggestion to the Constitutional Committee.

Chairperson:

Okay, we should not confuse matters while we're dealing with this. Now our duty is to try and put these matters in the pigeon-hole. We've been arguing on the process since we started. Now we're going back to that. That's why I ruled Professor out of order. We've been instructed by the CC to make a list of issues for commission. Everybody is represented in the CC. If there are any issues which you don't agree with within your party, those will be raised within the CC. So, we should not bring matters to be decided at a higher level, to us here and allow it to consume most of our time.

Mr Swanepoel:

Mr Chairman, I think it was agreed that we will have legal opinion on whether this Theme Committee can appoint commissions. I don't think we can, in the mean time, appoint tasks for commissions. We must wait for the legal advice on that. But I do suggest that we continue with issues like:

- whether we can have committees studying these issues
- Whether smaller parties can appoint other members outside the Theme Committee

Mr Nel:

Just on a point of order. It's very clear from the rules that have been read out on what a commission is. I think we would be wasting our time giving legal information about it. Quite clearly this Theme Committee is not going to be able to appoint a commission. But if we want to subdivide this Theme Committee into subcommittees, there's nothing that ties our hands not to do so. Let us not confuse it by calling it a commission. It's simply a subcommittee. The commission will be divided by the CC.

Dr Ginwala:

There are two points I'd like to make. One is on the issue of Separation of Power. Theme Committee 2 is considering it. So, if there's going to be a commission, I think we need to look at one between the two committees. What I had put forward originally when I was explaining it, was that we be proactive about it. We should go to the Constitutional Committee and tell them that we believe there should be a substructure appointed by the Theme Committee or the Constitutional Committee, which will consist of members of the Theme Committee, and also include others who are not members. That is the kind of substructure we want in order to move forward. I think that was implicit in our earlier discussions. What they call it and how it is worked out shouldn't concern us.

Dr Bled:

I want to follow on what Comrade Frene has just said. I think that it would be useful if the secretariat could assist us by presenting very clearly here on what a commission is in terms of the rules. And also, I'm not sure what we are discussing now. I don't want to reopen that issue again. My understanding of a commission was that it was an opportunity to allow other members of the CA, who are not in Theme Committees, to participate in the business of the CA. I think it is something we need to be very clear about before we go too far.

Speaker:

We need clarification. After this debate, I think confusion is going to follow. I'm no longer sure whether we want to refer these issues to a little committee consisting of members of this Theme Committee, or to a broader commission outside this Theme Committee.

Speaker:

Chair, I think maybe we should, as directed by Dr Nzimande, go through the rules quickly and get to know exactly what can be referred where. I think that way we can sum up the discussion and close it.

Chairperson:

Let me help on this matter. The CC had some understanding of what it meant by commission, and hence it came up with this list of matters to refer to commission. I don't want to venture to define what a commission is. I'm not an expert in that. But I think although it is important to know what a commission is before one decides on such a matter, our issue is merely to draw up a programme. Some of us here are members of the CA, and we can raise the issue there on the definition of a commission. If we stop this discussion now of drawing the work programme, and wait for the CC to meet this afternoon, we will have to wait till next week for their report, giving us very little time to meet the deadline.



Speaker:

On a point of order Mr Chairman. I put forward a proposal which was very specific. And I'd like you to test if there's a seconder. The proposal was that we convey our intentions that we wish to create a substructure which would include members of the Theme Committee and others; and that the Management Committee or Constitutional Committee work out a way of allowing us to do that if that is the intention of the Theme Committee. So, I was putting that forward as a specific proposal.

Chairperson:

Any seconder? Yes. Any opposing views? It will be noted that Mr Morecraft opposed that. This matter must be indicated in our minutes so that the CC can have a look at it and clarify the issues or perhaps look at this proposal.

Dr Nzimande:

In response to Comrade Frene, I think in order for us to be able to deal with that issue, we must come back to the point that was raised because, unless we are clear about what structure can do what, I don't think we will be in a position to begin to refer matter. Clearly what Comrade Frene is suggesting is one set of issues that can be dealt with by such a substructure. But there are other sets of issues, like the issue of symbols, that need to be broadened. Maybe a commission is the best way to deal with that; even engaging the public on that issue because it's a much wider issue. Then there's certain sets of issues that belong to the technical experts, and some issues that we can flash out on our own here. Ofcourse there will be interaction. It's clear to me that it's very crucial that we perhaps get a further motivation. If we create such a structure we need to identify what issues it is intended to deal with, so that we are able to look at this whole set of issues.

Chairperson:

Can we have this matter raised in the CC meeting rather. Really, I don't feel we should go into this because we don't even have the power to decide on this matter. It will merely just add the views and the CC will have to come up with a decision of this matter or clarify the rules. It's not our duty to make rules on this, but the CC can do that.

Mr Morecraft:

Mr Chairperson, I would like to express a view on this. If I read the instructions that have been given to us, they are perfectly explicit. There is nothing ambiguous about it. We have been told that one of the briefs is to identify issues/items which need to be referred to commissions. And here we are told what a commission is: *A commission may be appointed by resolution of the Constitutional Assembly to investigate any specific matter of issue.* For example, the issue of 'symbols' is a matter of issue. And the terms of reference for such commission such be determined by the Constitutional Assembly. So, all we are being asked to do is to identify and refer to the CA, or the CC who will then refer to the CA. And that is surely what our brief should be. And I fail to see the need now for substructures to further identify these issues. Let us go through the agenda in front of us, and identify issues which we can refer to commissions or, in terms of Article 4.5, an independent panel of constitutional experts. This can be established in order to assist us in our own proceedings. But if we want to get ahead with our work, I think that the more direct a line that we take, the quicker we will go.

Speaker:

Mr Chairman, to some extent I support what Mr Morecraft has just said, but I go along with Dr Ginwala. We have agreed that there's areas that need further investigation, not necessarily by a full commission, but by something more that just a subcommittee of this. I don't believe it is wrong to be proactive and to submit an idea which you would like to be considered; which perhaps has not been considered before. That is how we move forward. Perhaps that proposal should go to our core-group with a consideration of those issues which we feel don't quite fit into the commission issue. Those need to be considered by the core-committee, perhaps going forward to the Constitutional Committee. Personally, I don't think that is wrong Mr Chairman.

Chairperson:

Thank you. Let's go back to the issue on the table. Is there any other matter which you feel should come under 'commission?' If not, then let's go to matters which need separate reports. The Administration has tried to make these matters in such a way that it might be necessary for a certain matter, because of its implications or its unique nature, to get a separate report. Whereas in certain matters we might just need one report for quite a number of issues.

Speaker:

Chairperson, just on a point of order. Surely the next thing we should do before we even talk about separate reports, is to decide which issues we want to refer to technical committees. So, I think we should first look at that.

Dr Nzimande:

On that matter there is an issue that I would like to suggest. I'm not sure whether any other Theme Committee is dealing with this matter. I would like to suggest that it be referred to technical experts. It's the issue of Representation. If I may motivate. This is a debate that should be reopened on the issue of 'proportional representation' in constituency-based systems for that to be investigated by technical experts as a way of looking at improving representivity.

Chairperson:

Chairperson:

Does it fall under our terms of reference, Dr Nzimande?

Speaker:

Dr Nzimande:

It does fall under Representative Government on page 11.

Chairperson:

Any opposing view on that? No

Dr Mulder:

Principle 34 is the whole idea of 'Self Determination.' It's a difficult one to assent to marriage with 'Democracy' or with 'Form of State.' I get the feeling that some of the committees are looking at it. But just to make sure, I'd like to mention it as well because it's a technical issue i.e its definition, how it is understood and how we can manage it. So, I just want to put it in, and maybe the Constitutional Committee will be able to see which committee must handle that.

Chairperson:

So what's your proposal Dr Mulder:

Dr Mulder:

My proposal is that technical experts must look at that issue.

Chairperson:

Any contrary view to that?

Speaker:

Mr Chairperson, maybe that's an issue we need to think through as the Theme Committee because it raises a whole range of issues. For example, where does the Volkstad Council fit in terms of the debate. Do the debates and discussions that are going on inform this Theme Committee. Ofcourse it's not a matter just for the Volkstad Council because the Volkstad Council is like an interest group, if you like. At the same time, I'm not sure immediately in my own mind whether it's technical matter or fundamentally a political matter . That we will have to discuss and debate very thoroughly here. I feel that we need to think this through a little bit more before we commit ourselves to what Dr Mulder is saying.

Chairperson:

Do you want to make any follow up, Dr Mulder

Dr Mulder:

I think he is right on the other hand. The whole question is where does the Volkstad Council fit in. Now, there was a decision at the CC that the whole idea of self-determination be fed into all the committees where it is appropriate. Therefore, maybe we can keep back and wait and see what comes from the debate, and to fit it in there. But just to make sure, I think at the end of the day, some of the committees will have to look technically at how 'self-determination' is defined and how it fits in because Principle 34 says it must be addressed in a certain sense. Therefore we we'll have to address it and not avoid it.

Mr Morecraft:

Chairperson, another item for the Technical Committee, perhaps under Item 7 (Citizenship and Franchise) is the whole question of the rights of prisoners, expatriates and permanent residents. I think this issue must be revisited. We need to know what happens in other countries, and how they handle these issues. That's an issue which needs to be addressed.

Chairperson:

Mr N: Any contrary views to that?

Dr Ginwala:

To take Mr Niehau's point further, I don't think 'Self-determination' is an issue for the Afrikaner people only or that the Volkstad Council are the arbiters. It is fundamental to every South African citizen. And so it ought to be discussed within democracy, not as the views of a particular group. So I would say that it has to be discussed here. Secondly, in terms of technical committees, I just want to point out that we shouldn't reinvent the wheel. A lot of these expert studies were conducted at the time of the multi-party negotiation. And all we'd need to do is to ask some researcher to just go through and collate the information that the technical committee studied, which would give us all the comparative information that's requested. Then we could look at whether we want a new technical committee.

Chairperson:

Thank you. Any other issues to be referred to technical experts?

Dr Mulder:

The issue of the Volkstad Council is an issue that's very broad. Ofcourse I didn't mean to quickly force this issue, because if it was that easy I would have done it that way. I agree with the speaker there that it's not necessarily an Afrikaner issue. It might be a fundamental right so it must be in that committee. It will however have an effect on the whole way of thinking on Democracy, etc. That's just why I thought I must mention it to get it on the agenda because we can't ignore it. I put it on the table to see to it that it also forms part of the whole democracy.

Speaker:

I just wanted to emphasise this so that we are clear about the issue of 'Self-Determination.' I think that it is also crucial to note that the difficulty with making it a technical issues that it already presupposes certain details which is a matter that we haven't discussed in terms of reconciling as Dr Mulder is saying. 'Self-determination' to a 'Sovereign State, and so on. We haven't dealt with those at the moment. Such that it might even lead to that being dealt with in an unsatisfactory manner to all of us. There might be technical aspects that could arise as we discuss the matter fundamentally. So, I would strongly support the last two speakers. Comrade Carl and Comrade Freinny, that it's a matter that should be handled here.

Chairperson:

Dr Mulder, are you agreeable with that?

Dr Mulder:

I don't disagree, because the jump from 'Self-determination' to Volkstad is not necessary. It's much more complicated, as far as I'm concerned. So, I agree that it must first be discussed here.

Mr Chikane:

Chair, let me make my point clear. You see, we can discuss this until the cows come back home. But if any party is going to present their case in this kind of committee, let them present a full case, so that we know where to refer it. If we refer it in half measures, that case will come back to us, because they won't know exactly what you require them to do. We must give full instructions on the central point that needs to be discussed, so that they know exactly how to deal with an issue. So I support what Dr Ginwala and Dr Nzimande said.



Speaker:

Last comment. I won't waste your time. I have a problem. I'm still not sure what the work of the Theme Committee is. If we must negotiate and discuss until we get to some agreement, then that's fine. If we must just generate ideas, which I thought that's our task, I'm not sure how far we may discuss. I'm still struggling as at what our work is. So, I'm just throwing in ideas hoping that it will get to the top somewhere, and someone will resolve them.

Dr Nzimande:

Mr Chairperson, I'm moving on. I suppose this one is settled for now. I think there is a point raised by Comrade Frene which is very crucial and could in fact begin to assist us in quite a big way. She mentioned something about the multi-party negotiations where the technical experts' work was as she explained it. I would like to broaden it. A lot of work was done at the World Trade Centre, such that we need to think about how we can access that so that we don't start from scratch. I don't have an immediate concrete proposal as to how we should do that, but maybe it would be one of the duties of the technical experts. Maybe we need technical experts to plow into a lot of research on the work that was done on various aspects that require technical back-up in the areas in which we are dealing. That is something that could speed the process in our discussions on these issues.

Dr Ginwala:

Yes, I do want to put a specific proposal. I served on some of the technical-committee. So, to some extent, I'm familiar with the process. And I'd like to suggest to the Constitutional Committee that they request the Management Committee, either within the research capacity of the CA or to commission people, to actually just access the material and present brief reports on the different themes of the material that is available. For example, I did the research on the position of prisoners and how it is dealt with right across the world. So it is there somewhere. If they produce information and, where necessary, just collate the data, it would make a lot of our work much easier. It will also mean members of the Theme Committee will be familiar with summarised reports of what the issues are. So, I would put that as a very formal proposal to follow up.

PROPOSAL SECONDED.

Chairperson:

The proposal is carried. The CC is requested, through our report, to follow up on this proposal. I hope we have exhausted all the matters to be referred to the technical commission at this stage. It doesn't mean that this is cast in stone. If we should, at a later stage, think of any matter which we did not include, this shouldn't be a problem. This is merely a work programme. If in the process of working we feel we want to include or exclude something, we'd still be able to review that matter. Can we take one more item before we leave. The Administration requires us to express our view regarding the question of role-players to be consulted. Which people generally do we believe should be consulted regarding the operation or the work of this Theme Committee, so that they can make necessary arrangements or infrastructure for such operation?

Speaker:

We're just a study group, and we must table reports and leave to the CC to consult people and decide where they want to involve people outside.

Chairperson:

I think the understanding should be clear. The CC wants us to suggest the role-players we want to involve. The people in the CC are not machines or computers. They'd like to get ideas from the very people working with the matter, the Theme Committee, as to what do we suggest. What people do you think must be consulted so that they can be of help, if they can.

Mr Chikane:

I think the purpose of the Theme Committee 1 is to be able to have, what we'd call, our own "dark room" where things will be debated very fairly and firmly by everybody else. Where we ultimately reach a deadlock, then we refer to a CC. But we must be able to see it through to the CA. When you report, you must be able to give a full report.

Dr Nzimande:

Chairperson, if I understand correctly, the question you're posing relates to which structures, institutions and organisations we should be interacting with. But according to this document, the various parties had put proposals as to which role-players we should consult with. And also we mentioned a few last time. So, I thought we would just go through those and see if there any others we want to add.

Chairperson:

I have the original submissions fortunately. Parties have mentioned Provinces, Political Organisations, Mass Organisations, NGO's, Universities and Institutes, Traditional Leaders, and so forth. But then it was still a party thing, and not a Theme Committee view. In other words, I'm trying to find the Theme Committee's view on that.

Speaker:

I was under the impression that part of the core-group report should have incorporated this, because we were answering that questionnaire as it were, which had that as an item. So, I thought that somewhere that should have been put together in a document. The quickest way to try and resolve this would be to pull those together. I don't think we should exclude any organisation that has been mentioned by any other party, unless it is really contentious; but I don't anticipate that. And then we'll indicate that other role-players will possibly be identified as we move along, as you said it's not cast in stone.

Chairperson:

If I understand Dr Nzimande, he is saying that regarding the structures to be consulted, the parties have mentioned various organisations. Let's not exclude any from the list.

Speaker:

On the question of structures to involve, is there no information answered, because I don't see it here.

Chairperson:

It has been answered. This is the fourth draft. The first submission was stipulated to all members at the beginning. Then it was referred to the core-committee who had to collate the report. Unfortunately, that portion on people to be consulted was not included in there.

Speaker:

Mr Chairman, seeing that time is against us, I want to propose that this point stand over because in the first place it is very difficult to decide who you want to consult, if you don't know on what issue you want to consult them.

Chairperson:

If it stands over, when will it be discussed because next week we must be able to finalise. If the Theme Committee is not given an indication on this issue, it would be difficult for them to come up with something tangible and acceptable to the committee.

Speaker:

Chairperson, on a point of order. Could we not have a dialogue between you and the members of committee because I really think this is taking an enormous amount of time. I think we should continue with the discussion.

Chairperson:

Thank you. Point of order taken. Any other view on the issue of role-players?

Speaker:

I want to propose that they compile everything that was submitted, because I don't think we will differ with what other parties have submitted. Let's put all of those together.

PROPOSAL SECONDED

Chairperson:

Just to summarise. The Administration must try to put the rest of the matters together, and the core-group should meet immediately and look at the report before it is submitted to the Theme Committee on the next meeting. Will that be agreeable?

Speaker:

Mr Chairperson, may I have a slight addition to that. I agree in principle that what's clearly coming out of here is that in our work programme we have to put in that the Theme Committee will discuss the priorities. At the beginning of the work programme, there needs to be a discussion on what is coming out of it; not simply parties making submissions, so that then what we refer will be much clearer. Otherwise we're only transferring a problem on to subgroups. There's one other point I wish to make which is more general. That is on the question of documentation. We're in serious danger of drowning, because documents are being repeated, but they are not numbered. They appear in different guises. Can the Management Committee please work out proper categorisation system for documents. It will make our work much quicker and easier. It's not a difficult task.

Chairperson:

Thank you very much for having attended the meeting. The meeting now stands adjourned.







