



TEMPORARY SERVICES

The TECHNIHIRE group of Companies (Registration No. 86/03905/06)

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With compliments

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THEME COMMITTEE THREE

14/11/94

CONTENT OF BAG

3 TAPES

1 PRINT OUT

1 COMPUTER DISK

1 PRINT OUT OF NOTES WITH REGARD TO TAPE

THEME COMMITTEE 3
14 November 1994

Tape 1:

NOTES

008:
inaudible

057:
Dr Rabinowitz inaudible

081:
Dr Rabinowitz - inaudible at beginning

126:
Who is speaker?

208:
Who is speaker?

241:
(inaudible)

245:
Who is speaker?

488:
Who is speaker

501:
Who is speaker

520:
Who is speaker? somebody in Admin.

523:
Who is speaker?

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NOTES 2

009:
Mayors ??

025:
Who is speaker?

028:
Who is ANC lady speaker? ms Kota?

051:
..... ones ??? (old/huh)

202:
Who is speaker?

455:
institutes??

THEME COMMITTEE 3 - 14 November 1994

Tape 3

NOTES

005:
interim pool, pooh??

Very last line - is it E216?

THEME COMMITTEE
3 - 14 November 1994

The main points of the meeting, the list of people present. I see Mr Modisenyane is mentioned as an alternate. Miss Coetzee?

Ms Coetzee Mr Modisenyane was not an alternate in the beginning, he was a full member, but now in the last meeting he was minuted as an alternate. Can you just rectify that please?

Chairperson We take note of that and it will be rectified. We will check the lists again. His name has been lost.
It is noted that Mr Cronje was present, Miss Seperepere.
Apology noted for the previous meeting from Mr Gordhan, Miss Seperepere.

(Inaudible)

You're changing places, you request, with Mr Mongwaketse? Miss Seperepere could you just give a note through to the administration on that point please.

The Opening. Page 2: Apologies. 3: Minutes of previous meeting. I'm on page 3 of our documentation for Matters Arising. There is the question of alternate members, who writes reports etc. Point 5: ...

Dr Koornhof Mr Chairman can I just, as a matter of clarity, point 4.2.3... In essence the Core Group is going to write the report. It just makes provision for political parties to have volunteers joining the Core Group to write the report.

Chairperson That's the way I understand it as well, Dr Koornhof. Are there any objections to that? In practice I do believe that we will rely heavily on our technical experts to prepare drafts of reports eventually, but the volunteers will join them. Thank you. Okay?

Point 5: the Core Group on joint meeting. These joint meetings will, of course, now become imperative in the light of our work plans.

6: Tightening of work programmes. Record there, 6.3, a note: Objection was raised by Inkatha that me and Dr Koornhof should undertake this meeting because it may have created the impression that the ANC and the National Party are cooking things up. It was regarded as a valid objection and that

did not take place. Could we record that?

7: Public participation. Referred to the Constitutional Committee.

8: Other urgent business. Advised that members of the Core Group have been invited to that workshop.

8.2 Secretariat was requested to approach them.

Mr Smith 6.1.2 Did the ACDP actually waive their rights subsequently, or at the meeting itself didn't we say would they be asked if they wished to make this submission?

Chairperson Mr Mahlangu?

Mr Mahlangu The SADP is supposed to give us written confirmation to the effect that they waive their rights. Actually they did that verbally, but now we need something in writing.

Chairperson Perhaps they have trouble in arranging something in writing. Should we accept the minutes on that point?
I put the minutes as a reflection of the record. Do I have a proposal to adopt it? Mr Smith. Second it? No secondant? Mr Cronje. Thank you very much for seconding the motion, Mr Cronje, otherwise we would have had problems.

We come to point 4 of our agenda, Matters Arising.

Mr Andrew On a point of order. Can a member second the adoption of minutes of a meeting he wasn't at? Oh, was that rectified?

Chairman It was rectified.

Mr Andrew I beg the honourable member's pardon.

Chairperson I'm sure he will accept it with grace, Mr Andrew
Thank you very much for being so strict on us.

Mr Cronje ... get warmed up first...

Chairperson Order, Mr Cronje.

Could I at this stage, as a question of order, just remind all members to sign the register which is circulating. Is it circulating at the moment? Please make sure that you sign your name on the register.

Then we come to point 4, Matters Arising. It doesn't seem to me that there are any particular matters arising. Could we hear Dr Rabinowitz.

Dr Rabinowitz

(inaudible)

Chairperson

We ask a report from the Administration. Mr Mahlangu?

Mr Mahlangu

The issue was raised with the Directorate and what came out of it was that a limited number of people have been, you know, given the invitations and what the Directorate required was, if, take for instance, a member of a political party declines the invitation, then the Core Group should discuss the issue as to whether they need another person from, you know, another political party to be sent to the workshop in Pretoria. So the Core Group still needs to decide on the issue whether they want to, you know, to replace another member who won't be able to make it to the workshop.

Chairperson

Dr Rabinowitz, shall we leave it in the hands of the Core Group. Thank you ever so much. Will that explanation just be noted in the minutes please.

Other matters arising? Thank you. Then we can proceed to point 5 of our agenda: the Work Programme. A note of explanation: this work plan - has everyone got it in front of them? - this work plan was - welcome, Doctor - this work plan was drafted after submissions last Monday. It was submitted then to the Core Group, the first draft of it. The Core Group discussed it at length during the whole afternoon and part of the evening. Substantial matters were raised by the Core Group. We believe that except for editorial mishaps and typing errors, most of the Core Group's ideas were incorporated in this draft before this meeting. Could I be led by this meeting, whether you want me to put the whole work plan point by point or how do you want me to do it? Dr Rabinowitz.

Dr Rabinowitz

..... first of all perhaps have a discussion about the way in which it is presented (inaudible) ... enumerate contentious as compared to consensus issues and we wondered if it wouldn't be a good idea if one actually split the page into two and on the one side have consensus issues and then, instead of putting contentious issues into little footnotes, clearly represent the contentious issues alongside the consensus ones, so that at a brief glance one could see parallel to the consensus issues what the contentious issues are.

Chairperson

Dr Rabinowitz is raising the question of the technique of writing

Chairperson

Dr Rabinowitz is raising the question of the technique of writing this report. It is a difficult one. Could we take a discussion on the technique of writing this report, whether contentious and consensus issues should be divided also in a visual way. Open for discussion. Thank you.

Could I just comment it is a difficult exercise Dr Rabinowitz is talking about because the reading of the report will be very difficult if you have two columns as it were with different things. At the moment most of the technique was to catch up a lot of the contentious issues by way of footnotes and other type styles. Mr Smith have the chair.

Mr Smith

I would imagine, that by virtue of definition, if an issue is contentious for a party or two parties, then the issue is contentious in terms of its status within a report and it seems that - look it's not a major criticism, but it does seem to me that the report presents a view as if there's a main thrust to which other parties' ideas are juxtaposed in footnotes or whatever. Whereas I think, in terms of the Constitutional Committee's instructions to us where the report is clearly to delineate contentious and non-contentious, it does make sense for each of the categories, (a) - (g), whatever it is, 1 to 9, to say: "right, these are all the areas of consensus". I would think, list them very simply, with explanation necessary, these are all the areas where there is no consensus. It makes it very easy for the Secretariat I would imagine because I know Work Group 1, you know they're having major problems, for example, trying to get a report together and the Secretariat appeared to be wanting something they can actually work with - meat, substance. I find this report fairly difficult in that regard.

Chairperson

Further discussion? Mr Carrim?

Mr Carrim

I just want to seek some clarity on what Mr Smith says. Would it mean that any report, any issue, on which one party defers would constitute a contentious issue? In which case I would imagine that probably the majority of the issues would presumably be contentious because even if one party is unhappy and there is not entire agreement across all parties, that issue then becomes a contentious issue. Personally, what I found useful about the way this was done, I am not necessarily disagreeing with the proposal of the IFP, was that it actually in the footnote sets out which party - sometimes all but one party agrees on an issue so you get a sense that it's really one party, not that that necessarily makes it any less contentious according to your definition. But that was useful, so if one is going to change the format, it will also be

really two parties, that are deferring. It's useful to know in what sense an issue is contentious is what I'm saying.

Chairperson Thank you, Mr Carrim.

?? In line with the discussion we had earlier on whether to reflect minority report, I think in that sense if we column the contentious issues we, to a certain extent, reflect that discussion point that we have contentious issues on the one side, which party's got the contentious issue and the consensus issues in a column on the other side. According to that discussion, I think, in reflecting minority report, if we work that principle through, it will work better if we arrange it like that.

Chairperson Mr Cronje?

Mr Cronje It would have been interesting if one could have written two reports: one write it that way and the other one the other way, as it is written. The way that it is written, it seems to me that at least you can see the structure, the document flows, and this document is not supposed to, I think, reflect to the Constitutional Committee the discussion that has taken place. It is there to report, not to report the full discussion, but to report on the consensus issues and the way it is written here wherever there was no consensus, it says: "this is now referred for decision by the Constitutional Committee" and also it would be quite clear from this report who was not in agreement and for what reasons.

Chairperson Before I allow Dr Rabinowitz... Thank you I have noted you. Could I just remind you that I'm sure that when this report goes up tomorrow, because tomorrow is our deadline to submit, the other committees' reports will also come in and I'm sure that the Constitutional Committee will give us some leadership on the format. Could we refer this problem and the question of, let's call it the format or the style of the document, with the point mentioned by the IFP up to the Constitutional Committee where we, I am sure, will get some leadership.

First Dr Rabinowitz, then Mr Suttner.

Dr Rabinowitz If you're going to refer, Mr Chairman, I'm covered.

Chairperson Just a suggestion at this stage?

Dr Rabinowitz Yes, my suggestion was that the work of this Theme Committee is to not negotiate, but to work out contentious vs

consensus issues therefore I would say that is our primary function. If we are submitting a report, that should - well not our primary function, one of our primary functions - be clearly represented in our report and I believe that the way that the footnotes have been written is fine, but just for clarification it is much easier to run through it and to clearly in one's mind see which parties have contention against other issues under a particular heading that is consensus.

Chairperson

Thank you. Mr Suttner?

Mr Suttner

I think, Mr Chairperson, even if this is being referred to the Constitutional Committee we should ourselves express our view on it and it seems to me that there are two views as to what is a clear report emerging here. One is that you have clearly delineated the differences between parties, the other view, which I should say is the most conducive to progress, is that you register what progress there has been in terms of achieving agreement or consensus between organisations and then as a footnote you indicate that the following did not agree for the following reasons or whatever it happens to be. It seems to me that the documents we are issuing are already very complex and inaccessible to many of the members of this committee. If we pursue this path of also recording in the body of the text who disagrees, I think we are going to make them less accessible and, frankly, I think we are going to hold up the work of this committee. The question is: were all parties accurately reflected? No one has contested that and I think the present mode of writing it is most conducive to accessibility which already at the moment is not as high as you would like to make it so I would propose that even if we do refer it, we refer it with a recommendation that it continues in the form that is subject to being made more accessible.

Chairperson

Mr Suttner, do I have a proposal as your last sentence...?

Mr Suttner

It's my proposal.

Chairperson

Mr Smith and then we want to close it, your replication?

Mr Smith

That's all very well if it's actually done that way, the trouble is it's not actually done that way. You get quite a few issues in the main body of the report as the substantive text of the report which actually states the substantial dissension on the issue so it's not as if one's saying that a contentious issue automatically is relegated and the consensus only is in the main body. That's in fact not what's happened across the board so if there were a common line at least it would make sense. At

the end of the day we all realise that we have got to get this thing by tomorrow so it's a question of what one can realistically do. I think we're just registering a point that, you know, one...; maybe I shouldn't say so, but we go back to the way the report starts in the beginning, that it didn't originate with members of the Core Group drafting it, it originated with a draft to the Core Group which then was already, became terms of reference which one then worked on. I think the principle should be that one comes fresh to the issue and starts from the beginning, all parties making equal input rather than working to somebody else's text and this perhaps flows from that in part.

Chairperson

Thank you, Mr Smith. I would like to close this matter now. I have a motion on the table. Do I have a secondant for it? The one I'm talking of, the motion of Mr Raymond Suttner. No secondant for that? Mr Carrim? Do you want to make an amendment, Mr Smith, or do you want just to register a position to the motion? I think we should be reasonable. I don't even think we should go this formally, but a few points have been made which we'll certainly bear in mind. Mr Gordhan?

Mr Gordhan

Chair, I think we go with Mr Suttner's proposal. An additional point, if it is practical, that we might want to take on board is to, for example, delete a paragraph like paragraph 2. Paragraph 2 is a substantive political matter, on the first page. I'm talking about the second introductory paragraph, sorry, where the National Party's view on what should be the basis of drafting the new Constitution is articulated. With respect, I think that's best discussed not here, but in the Constitutional Committee because that's an important point of departure that needs to be decided upon there. So, with great respect, I would suggest that that paragraph be deleted. Similarly there are...

Chairperson

Mr Gordhan, could I just stop you for a moment. I think that's a submission which we can take. Now, could I just handle the previous point, finish it off, because now we're entering into the report and we're going to do that next.

The motion of Mr Suttner, should I put it to the meeting? I put it.

??

Mr Chair, could it be repeated. I'm just confused as to precisely what is being suggested.

Chairperson

Mr Suttner?

- Mr Suttner I'm suggesting that the format adopted here, subject to Mr Smith's point that in some cases in this report there have not been adequate references to dissension, but subject to there being a proper record we proceed with reporting as is in this report, that we try and reflect the general thrust of arguments with allusions in the footnotes to dissent where there is dissent and that the reports be as accessible as possible.
- Chairperson Could I just Administration, have you got the main thrust of that? You have? Of course, as Mr Suttner - can I just inform the meeting - as Mr Suttner has formulated it, it definitely has a very positive criticism of this document in it and that's the way Mr Gordhan wants to go next, but now we start doing it in a proper way. Then I'll rule that I put the motion now because our time is running out. I put the motion. Those in favour, could you raise your hands? Those against? The ayes have it.
- Mr Smith Mr Chair, could that issue not be referred to the Management Committee? I think in all the Theme Committees we need to adopt a common position on reporting and Mr Suttner's comment is "reports" plural, so I presume this refers to our reporting to the Constitutional Committee from now on and I think we really need to understand precisely how these things are to be structured and it's not a decision of this committee.
- Chairperson Thank you, Mr Smith. All our decisions are taken up, are in the nature of recommendations to the Constitutional Committee and the Management Committee will automatically follow them up. I think we could add a note in our minutes that this matter is specially referred. Mr Suttner?
- Mr Suttner Mr Chairperson, can we ask representatives of this meeting that if they have procedural suggestions that they make them before a vote is put because the IFP participated in this vote without objection as to a vote. Immediately afterwards, they raise the procedural question about the status of that vote. I think that's improper and I want to suggest that we don't proceed that way.
- Chairperson I take your point as a point of order. I rule that the point is closed now. Thank you, Mr Smith.
- The following procedure which we are going to adopt, is now I'm going to put the work plan... We've already practically started with it. I've put the introductory paragraph on page 1. Mr Gordhan has made a proposal that the second new paragraph in the introduction be scrapped. Is there a decision

on this? Everyone agreed?

Mr Gordhan :.....qualification change I might add that this matter be referred to the CC for debate.

Chairperson Should it remain in the report and as such taken out of the report and that paragraph be referred. Do I understand you right, Mr Gordhan? The first paragraph be taken out?

?? No, no, no, we are, no... Mr Chairman, please...

Chairperson You've got the floor.

?? Yes, no. We disagree with taking just out paragraphs like that because then you have to go through this whole report where there's certain things stated from a PAC point, from an ANC point of view, then you'll have to extract all these things then we are back at square one procedurally. It would then be better to procedurally column the whole programme and column the contentious issues like these where the National Party, the ANC and the PAC says this under contention, and under consensus the whole Theme Committee says that. Otherwise it won't work.

Chairperson Mr Cronje?

Mr Cronje Mr Chair, I suggest that this is simply a very small, minute little report in the bigger scheme of things. It is the work plan of a Theme Committee to some other committee and, I think, the Constitution of 1993, the Interim Constitution, actually says nothing about Work Plans of Theme Committees etc. etc. I think it's quite correctly, as Mr Gordhan says, it is a major point of departure at a political level and it has no place in a little report about the Work Plan.

Chairperson Dr Rabinowitz, then I'm going to close the discussion and take a motion. Dr Rabinowitz and then Mr Gordhan.

Dr Rabinowitz Mr Chairman, I think that this is going to happen regularly as we go along through this report and that's why we suggested, and obviously the National Party seems to agree, that the issue is coped with if we have two columns of consensus issues and contentious issues. You will say that that has been closed and you've said that we didn't complain about the vote before it was put, but we had already established the fact that this would be referred to the Constitutional Committee, so one assumes that that is still going to be done, but this issue of how the report will be written, will be taken to the

Constitutional Committee. Also, you say that this is a minor issue, this is just a report, but we're setting the tone here for what's going to be done all the way along. The implication is that anything that comes from minority parties, unfortunately, just gets put into a little footnote and doesn't become part of the substance of the full report. This is not what we had intended and this is not what the entire thrust of the Theme Committee was suggested to be, that we should have minority party views put into small footnotes at the bottom, therefore I don't think that we're going in the right direction. It may be a small issue, but it is a principle that's going to be carried all the way through.

Chairperson

Mr Gordhan? Then the National Party.

Mr Gordhan

With respect, Chair, you're revisiting the first issue via the second one. I think let's draw a distinction between two things. The first is whether certain subjects addressed in this report should be addressed here or not. That's different from the second aspect which is how do we record the different views of the different parties? Now, this particular paragraph falls within the first category, in other words, it is not within the brief of this committee to look into what should be the point of departure in the Constitution drafting process. I'm sure there is agreement amongst us that that's a major political issue which needs to be resolved not least by the Constitutional Assembly itself and therefore - the party could be XYZ Party, it does not matter to me, it's the issue that matters. And unless we can have an argument before us, Chairperson, which says that this subject is within the brief of this Committee, with great respect I want to suggest that this paragraph therefore in respect of its subject is inappropriate in this report and should be deleted.

That then brings me to the second part. The second part is how do we make reference to different parties' views? And perhaps that's going to be an ongoing debate over the next few reports. It's not something that we're going to resolve now, but for now we have Mr Suttner's proposal as a formula with which we work. All I want to urge is that the Core Group be requested to go through this report again in accordance with the proposal that we have adopted to ensure that this report is consistent with that proposal. Thank you.

Chairperson

We actually now have a motion again from Mr Gordhan that the Core Group should go through this report in view of Mr Suttner's motion, that the proposal should be accepted. National Party...

Sorry, sir, I'm not very sure of your name.

Mr Saaiman P.W. Saaiman.

Chairperson Mr Saaiman?

Mr Saaiman P.W., yes.

Sir, before you take this motion officially. I think, let us discuss a minute or two. I want to go back in my mind when we started as a Theme Committee and I want to show on that again. We discussed in depth the fact that we think minority report must be reflected and we agreed it must be done and a way must be found to do that. Now we're actually at the bone of that contention that we are standing at this moment on, that's why I feel, and the party feels, that those kind of things - because it's not only one important point that the National Party stated here, there's some other party stated some very crucial points in this report as well - it can't just vanish. We want it to be reflected. We want it to be stated. And if it can't be done otherwise we feel we must go procedurally to change this kind of report and put contentious issues one side and consensus issues one side and then refer it to the Core Group and to the Constitutional Committee and then at least that feeling or that approach is reflected.

Chairperson Mr Saaiman, thank you very much for that contribution. Could you answer the point which Mr Gordhan has made, if I may request you, that this is a matter which is the present paragraph, is not a matter in that category you're talking about, but that it is a question which is not within the instructions of this Theme Committee to solve and that was the line of reasoning of Mr Gordhan. Could you just give a quick reaction on that?

Mr Saaiman That I disagree. If the Theme Committee's brief of what it must really keep himself busy with, this kind of comment is falling precisely into that brief according to us.

Chairperson I'm not sure of the hands which I've seen previously. Mr Andrew's hand was up some time ago, then Mr Smith. Mr Andrew, please.

Mr Andrew Yes, two points. First one, just a procedural one and I do think for the record on that previous motion clearly, and it may be a rule in the Constitutional Committee, the Theme Committee is functioning on the basis of simple majorities for decisions. Is that in fact the procedure?

Chairperson That is my understanding.

Mr Andrew Okay. In terms of this specific paragraph, first of all in general I think that if a political party feels strongly about a point, unless it is clearly completely out of court or totally irrelevant to a particular report, one should lean on the side of allowing a view to be included rather than the other way around. I do think that this point whether one agrees with it or not is relevant to this work plan in a sense and bear in mind what one has here is an enormous sort of précis of a fairly big paragraph in the National Party submission and that is in essence saying that the process of our work should be to take the existing Constitution in respect, for example, of relations between government, such as Section 1.26 and use that as a basis on which you discuss what amendments or additions or deletions should be made. So in that sense I do actually think that this from a particular party's point of view, is relevant to a process that is being recommended that we follow and for that reason I think it does appropriately fit within this kind of document. Thank you.

Chairperson Mr Smith? And then a chance for replication by Mr Gordhan and we want to close it then.

Mr Smith Mr Chair, may I suggest as well that we err on the side of leniency, but furthermore that since this is an opportunity for all parties to add to what the corporate did, that should we go ahead with this paragraph, I would like our party's view to be mentioned here. I make reference to it should we decide that we go ahead with it.

Chairperson The discussion in the Core Group was that other party's did not mention it. That's the only way I want to contribute. Mr Gordhan, could we move forward, could you...

Mr Gordhan Chair, there is still one of two ways. I still think that the original point made is a valid one that this really doesn't belong here. We're not dismissing it or, as Mr Saaiman seems to suggest, we're not willing this to oblivion. I did as part of my original proposal say that this is an important matter, it is a matter of debate between different parties and the way we deal with it is that we notify the Constitutional Committee by letter from the Core Committee to say "please resolve this matter because we seek guidance on it". That's one way of dealing with it, Chair. In view of the fact that there's this festive season coming up, there's another way of dealing with it. And that is to have as a separate paragraph - and that begins to meet Mr Smith's point, which is a fair one. In other

words, we can't have one party's view on this matter. If there is an issue to be discussed here as Mr Andrew seems to suggest, the issue is an approach to drafting the new Constitution and there the different parties' views can be recorded once we have that. The question is: do we have those views to record? And if we have only the views of one or two parties, are we being partial to them in recording their particular views? And that's the difficulty I have, Chairperson. So I'm saying two things: One, ideally, if Mr Saaiman can agree that we're not willing this issue away. We actually want to deal with it as well, very seriously. And the way we deal with it is to place this on the agenda of the Constitutional Committee. If, on the other hand, we believe that we all want to articulate a view on this matter, that's fine, we're going to delay this report a little bit because what we then want is a separate heading entitled something like "Approach for drafting the new Constitution" under which the views of each party are clearly expressed. Then, I think, it is fitting to incorporate it in the report, but not in this way.

Chairperson

Thank you, Mr Gordhan. Ladies and gentlemen, I'll give Dr Koornhof a chance, but could I just put this to you: On the one hand we have a deadline of tomorrow, on the one hand we must be practical, on the other hand, the consideration as also stressed by Mr Gordhan just now is we must reflect the parties. He suggested that we take it out here, put it in our minutes, refer it to the Constitutional Committee. It seems to be quite reasonable, as is the request for reflection of other parties' views.

I'll give Dr Koornhof a chance and then Miss de Lille.

Dr Koornhof

Mr Chairman, I hope that this committee can move into a direction where we can build on consensus because if we're going to debate these issues item by item, point for point, on the procedural side, we will not get to the issues and I would really hope that we will have more of a consensus sort of approach in this committee, because if we are going to fight each other according to party political lines all the time, we're not going to get to the issues.

Secondly, the point that you mentioned. We are working under severe deadlines. The Core Group has put this report together under your capable handling.

Thirdly, I mean, the word is transparency. In our original report we didn't put that particular sentence, but we did put one or two paragraphs that we felt very strongly and at this stage if

the feeling is that no matter what party it is, but to leave out a paragraph, I can go through this report and I can at least identify with all the other parties on this side of the floor similar issues that the Freedom Front can be left out, that the IFP can be left out, and also the DP can be left out on certain paragraphs, so I would urge that we don't fall into a trap here just to argue about a certain issue, but that we continue, that we get the report to the Management Committee and that we continue on the basis that we all agree on.

Chairperson Thank you, Dr Koornhof. Ms de Lille, the last speaker, and then I'm just asking for a definite motion from Mr Gordhan at the end of Ms de Lille. Thank you, Ms de Lille.

Ms de Lille Thank you, Chairperson. I really don't know what the debate is all about because you know there is nowhere in the Interim Constitution that we are obliged to review the Interim Constitution. I think we are obliged to follow what is stated in the Interim Constitution and that is to write the final Constitution. If the National Party is of the view that we need to review the Interim Constitution, that is their view, but that will mean an amendment to the Constitution so that the whole debate seems to me superficial in a way that I don't really know what they are saying. It is their opinion that they want to review and stated this on several occasions, not only in this committee, but it will really mean an amendment to the Interim Constitution.

Chairperson Thank you for your contribution. The last speaker, perhaps just to formulate his motion again for us, Mr Gordhan.

Mr Gordhan I am tempted to respond to Dr Koornhof. I think he must also begin to understand, with great respect, Chair, what it means to seek consensus. In an effort to seek consensus I put forward two very practical, realistic, time-bound propositions and in his long address to us, whilst lecturing to us about how to obtain consensus, he didn't address either. And I think this was a gesture on our side to say: "here are two alternatives, choose one of them". Now, quite clearly, they would not like to have a mere letter or minuting of this process, that's fine then, Chair, let's agree: We'll have a separate paragraph from this report. That paragraph will indicate that the subject of debate is the approach to drafting the Constitution. And that paragraph should indicate the views of all parties on this question and also indicate that the matter is referred to the Constitutional Committee. That's consensus seeking as far as I can see it, Chair.

Chairperson I have a motion on the table. Is it seconded? Have I got a secondant for Mr Gordhan's last proposal? I have it. Mr Mkhize. Any amendments to that proposal?

Mr Saaiman I want to put an amendment, Mr Chairman, that the report is taken as written and referred to the Constitutional Committee in the normal procedure and that the Constitutional Committee decides if this is a point of debate.

Chairperson If I understand Mr Saaiman correctly, the report is referred just like that to the Constitutional Committee and finish and "klaar". The original problem arose from the Inkatha. A quick comment on ... or shall I go on with the amendment? Have we got a secondant for this... What do you say in English? a seconder for the - thank you, Mr Andrew, I knew you would help me - a seconder for the amendment put by the National Party. No hands? Dr Koornhof seconds that. Do I remember right from my procedure that I first put the amendment... Is that right, hey? I put the amendment to the House. Those in favour of Mr Saaiman's amendment that the whole report be referred like this to the Constitutional Committee...

?? Can I just get clarity? I mean, I hear what you've just said. I wasn't sure when I listened to Mr Saaiman whether he meant the whole report or this paragraph.

Chairperson Mr Saaiman, could you explain yourself.

Mr Saaiman Let me just clarify that this part in the report is referred to unchanged. Yes.

Chairperson Perhaps just a mispronunciation or something. That just this paragraph referred to, but that's exactly the same which Mr Gordhan said, if I have it right. It is now amendment I rule. I put Mr Gordhan's proposal that this paragraph be referred just a misunderstanding, I think. Oh, not? Could you lead me?

?? Dr Koornhof should also explain why he was so slow in seconding, maybe there's doubts...

?? And then, I think, seconded the wrong thing.

Chairperson Order! Mr Gordhan.

Mr Gordhan Let me repeat my proposal, Chair. The proposal is that this paragraph be amended to reflect the following:
1. It should be entitled Subsection 1 or 2, or whatever you

decide as a Core Committee.

2. The heading should reflect approach to Constitution-making.

3. That that section of the report reflects the subject matter which this paragraph reflects, but it also reflects the views of each party on that question.

4. That finally that paragraph should end by saying that "we refer this matter to the Constitutional Committee for guidance".

Chairperson I think we're all clear now on that motion. Have Administration got the last formulation available? Let's hear. What do you want clarified? Talk here, please.

?? Mr Gordhan could I just have clarification. You said the title should be?

Mr Gordhan (inaudible)

Chairperson Approach to drafting of new Constitution.

?? Chair, what does that mean? Isn't it everything we're doing?

Chairperson It means the methodology regarding the point of departure, if I may formulate that. Mr Saaiman?

Mr Saaiman I think that on that sense I withdraw my amendment and support the others.

Chairperson Mr Saaiman withdraws the motion. Shall I preview vote, are we all agreed? Agreed. Just from a point of procedure, I think that the Core Group must meet immediately after this meeting and the parties must just look to whether they've got something which they want to include on this paragraph, not too long please; very short, one sentence. Thank you. Now I put point 1 of the Work Plan: an alternative or an option is already included in this strict approach towards the broad approach that has been lengthily discussed by the Core Group. It seems very reasonable, is that accepted up to point 1.2, up to page 1.1?
Mr Smith?

Mr Smith Mr Chair. I've got a few points. I don't know how we're going to proceed, but let's start. First of all, in footnote 1 we don't seem to exist. I think that's just a typographical mistake. That's okay, no problem.

Up to 1.2, you said?

Chairperson 1.1.

Mr Smith Okay. I'll continue. Your footnote 3 which says "it's recommended the following issues are inclusive of the recommendations of the parties" I presume the "following issues" there refers to all the sub categories, 1.1, 1.2, 1.3. Would that be right?

Chairperson Yes.

Mr Smith In that case I reckon... and the footnote 3 which says "these issues comprise a preliminary determination of issues which will be reviewed and added to at a later stage" we...

Chairperson Could I interrupt you, with great respect, please? Mr Mtshali was in the Core Group meeting and this structure was really agreed to by the Core Group. If you want to change the structure now and put in other

(end of tape 1)

**Theme Committee
3 - 14 November 1994**

TAPE 2

- Chairperson Mr Smith, that's a point of order. Shall I put that to the meeting now? If parties agreed in the Core Group, should we be able now to change the substance and the idea of it. Is that your idea, Mr Smith?
- Mr Smith It was very, very clearly discussed on Monday. We said, and as a matter of fact it was agreed to, that the Core Group report would be referred to the parties for caucusing and that the purpose of today's meeting was to review the issue and one could put party views on issues. That clearly suggests that one can change the report. Now, if there's a ruling now that one cannot change anything because of what was said at a Core Group meeting, we've got major problems. I presume this is an open attempt for all of us to try and reach agreement on the report.
- Chairperson I will quickly allow someone from each party to react to this. Shall we start with National Party? Mr Saaiman, your view on this? Mr Fourie, mayors agree to a lot of things in the Core Group. Do you want to stick to that or change it?
- Mr Fourie I think we are happy with the structure as it is. It was agreed by the Core Group.
- Chairperson Thank you, noted. DP please?
- Mr Andrew Chairperson, I think it's important that parties send people to the Core Group who have mandates, as far as humanly possible, to reach agreement so what comes here really is a consensus position or as close to it as one can achieve because otherwise, really, you get into a situation where you have a group of 30 people trying to draft a report, which in practice is impossible unless one's going to spend weeks and weeks on a report. On the other hand, in terms of the structures and the rules as I understand them, the Core Group can't actually make decisions on behalf of the Theme Committee and therefore the Theme Committee does always retain the right, in the same way in the end the Constitutional Assembly retains the right to make things, so on a technical kind of legal procedural point of view, I think Mr Smith is right that the Theme Committee is not bound in any way to something produced by the Core Group, but looking now and into the future I think it is going to be extremely difficult for us to make progress over time if Core

Group members do not adequately represent the points of view or the mandates of their organisations. We may as well have stood with your first draft here this morning and 30 people try and do it, which in the time frame, would have been impossible.

- Chairperson Thank you, Mr Andrew. Freedom Front?
- ?? Chairperson, I think Mr Andrew said it very well.
- Chairperson Thank you. PAC, Ms de Lille?
- Ms de Lille Mr Andrew said it very well, I agree.
- Chairperson ANC? Who will give an opinion on this?
- ?? Comrade, my impression is that as much as is possible, at the Core Group level we should strive to reach consensus and that we have to ensure that our Core Group members have a mandate from all political parties so that there isn't too much difference in your party positions.
- Chairperson Thank you, Ms Mapisa. Replication, Mr Smith? Are you finished or do you want a chance now?
- Mr Smith I think maybe we're all talking at cross purposes. There may not even be a problem, in fact. I'm quite happy to proceed.
- Chairperson Thank you for the objection. He rests with the objection. Mr Andrew, a closing word?
- Mr Andrew Well, it's on this sentence, but not on this topic, I'm moving on now. I just suggest that the words "it is recommended that..." be deleted because the nature of the wording, the style of the report throughout, I mean, every single thing is "it is recommended..." so I think it's unnecessary and it should just say "The following issues are inclusive of the recommendations of the parties" which is clearly... The whole report is a recommendation of the Core Group.
- Chairperson I put 1.1, the main... Gentlemen and ladies, we have to move quicker, please. We have until 10. I don't know whether the other group comes in then. We have now to move quickly. 1.1, the main, Mr Smith?
- Mr Smith I'll be very quick, Chair. On 1.1.1, the phraseology referring to local government, "only general principles for the institution of local government", the words "the nature of" I don't think

really is our problem. We believe very strongly that the issue of local government, in terms of structure and its functions, is Theme Committee 2, so we talk about the "nature of the" institution of local government, I would like to move that we delete that. We then talk about the general principles for it. I would also like add to that list...

Chairperson Could we just handle one point at a time? It doesn't seem to me problematic to scrap, "and the nature of the". Everyone agreed? Or how do you feel? Then it reads: "only general principles for the institution of local government". I'm talking on 1.1.1. Agreed? Objections? Mr Cronje.

Mr Cronje Mr Chairman, I don't about point of order, but can't we suggest that if it's really little amendments like that, that parties should just make editing notes and send it to the Core Committee to look at. In other words, it's not substantive things that we're discussing.

Chairperson Thank you, Mr Cronje. Actually this is also a thing which ran through the Core Group, it's scientific to have someone else who similarly sees a lot of other problems. The IFP must please have their things different, this went through already through the Core Group. Editorial notes will be received until 12 o'clock this morning by the Core Group. Is that ruling acceptable to everyone? Thank you, agreed.
I put the whole of 1.1.1. Mr Smith?

Mr Smith I would like to add another point: under those general aspects we'd like to include asymmetry, please, asymmetry as a concept, since it seems we're talking here about general aspects.

Chairperson Asymmetry is a concept which is a substantive matter. It is referred to in footnotes like - I don't know, can't we put it in footnote 27?

Mr Smith With respect, Chair. It's a substantive issue, not a footnote issue. It could well be that in our deliberations as a Theme Committee way down the road we end up throwing it out, but it is an important political concept and I don't think it is a footnote issue, really,

Chairperson Quick discussion on matters like asymmetry, autonomy, self-determination, it's mentioned at different places in this document. Should it be included now here under 1.1? In what wording, Mr Smith? Perhaps that will help us.

Mr Smith Mr Chair, the third paragraph under 1.1.1, you've got self-determination, or autonomy, you could say, or asymmetry.

Chairperson I don't think that will be problematic. I just want to write it here so that I don't forget it or something.
Next point, can we put 1.1.1 in toto, Mr Andrew?

Mr Andrew Sorry, you see I'm not quite sure what you're going to consider editorial, but I think the words "the National Party is of the opinion that..." should come out. In fact, I thought we agreed that we were going to try in general to remove... This is simply items that people are requesting to be on the agenda. There is no suggesting that it's a good or a bad idea, but simply that it's legitimate that they be on the agenda.

Chairperson Thank you. I think that's my recollection of the Core Group meeting as well. Dr Koornhof, I know the National Party put that in their document. It's substantive. Shall we remove that paragraph on corporate self-determination or how do you feel. On page 2, the second last paragraph on that page.

Mr Andrew I'm not suggesting that, that paragraph be removed. I'm only suggesting that the words "the National Party is of the opinion that..." be removed so that, that should simply be a question saying "the question of corporate self-determination should be reconsidered in the context of Volkstaat issue". We're just putting a series of agenda issues and these are items that a party or one or more party has requested be on the agenda.

Chairperson I do understand you now, Mr Andrew, that the words "the National Party is of the opinion that..." be scrapped and it only reads "the question of corporate self-determination" etcetera. Mr Cronje?

Mr Cronje My understanding of corporate self-determination is not simply federalism, by that meaning regions as in territorial. I think it also has to do with the concept of group, in other words like race federation, if I can be corrected by the National Party.

Chairperson Help us with these very difficult concepts.

Mr Fourie We had in the original proposal "corporate federalism" and not the word "determination".

Chairperson The wording was requested specifically by Mr Fourie. This must be put as is in the italics at the moment, there is a specific change request by Mr Fourie. I don't know. It's very difficult for me to understand these things.

Mr Fourie Then I agree with the proposal that the first few words of that sentence be scrapped.

Dr King Mr Chairman, can I perhaps...

Chairperson I'm sorry. Doctor?

Dr King The word "federalism" should actually be "corporate self-determination" or "corporate federalism". "Federalism" does not stand for the totality of the two other words. It should be also then "corporate self-determination" or in brackets "corporate federalism" which is a totally different thing from just ordinary federalism.

Chairperson Thank you. Mr Andrew, now we understand the National Party better. Mr Andrew?

Mr Andrew Yes, I think that's the correct way, except I suggest the easy way is to just incorporate "self-determination/federalism" and then it has the same effect. You then talk about "corporate self-determination" or "corporate federalism", depending on what terminology you want to use. I mean, as I understand Mr Fourie and Dr King, that's the intention.

Chairperson I think Dr King has corrected us from a point ... Dr King, do you...

Dr King I suggested to just put in "corporate federalism" in brackets and there's no chance of anybody misunderstanding it.

Chairperson Yes, then it reads "corporate self-determination (corporation federalism)". I'm sure the ANC understands every word now they know exactly what direction this country is going. Are you satisfied, Comrades? It's changed now. Thank you. I put 1.1.2, 1.1.3. Mr Smith?

Mr Smith Mr Chair, I'm sure it's just a slight slip. The first sentence under it, under the heading "the specific, exclusive and concurrent legislative competencies of provinces" should be dealt with. Well, that does seem to presuppose the solution to the problem. I'd suggest we change that to the "legislative competencies of the national and/or provincial levels". I don't think we should pre-judge the solution in the phraseology we put in our report.

Chairperson This is in accordance with principles of the Constitution, to mention "exclusive and concurrent". I think in what respect you are right is that the legislative competence of provinces,

national and local, that is what the heading says, which Mr Andrew insisted on already in the Core Group. Should that be changed editorially? Is that what you mean; to bring it in line with the heading?

Mr Smith

Mr Chair, this is a separate issue, the heading. It is just - whatever the heading - the point is we can't in the first sentence presume that our task is to allocate competencies to the provinces only as opposed to the ... because it applies...

Chairperson

I've already agreed to your point in that respect. Everyone agreed?

1.2. These are already recorded as a matter which is problematic. The parties questioned the inclusion of 1.2 and 1.3. The matter is referred to the Constitutional Committee for ruling. This regards especially the question of whether this committee should look at structure at all.

I move on. 1.4 on the next page - Financial and Fiscal Relations. It's of course... Mr Andrew submitted in the Core Group that it's not a very important matter, but I'm sure that we must take it aboard. 1.4 is put. Mr Smith?

Mr Smith

Mr Chair, I've got a problem with local government finance in general. If we're talking simply about the framework, that's what the Constitution talks about - Framework 4. You know that's one thing. But if we get into the detail of local government finance, I mean, whether they raise their revenue from rates or from consumption taxes or something. Is that the kind of detail we're talking about? Because I don't think it's anything to do with us, it's a provincial matter.

Chairperson

Mr Smith, thank you. If the Constitution says "framework", it is only in the sense of framework that this matter is addressed here, but it must be, it can't be taken out here. I think you'll agree.

1.5. Also problematic. Dr King?

Dr King

Mr Chairman I would like to go back to 1.3.2 at the top of page 4 and I would like to ask whether we couldn't reconsider just retaining that part of 1.2 and 1.3 because the intergovernmental relations, I think was really something which certainly should fall under that work which has been allocated to this...

Chairperson

Thank you, Dr King, for pointing it out to us. I think we are in agreement, but the rest will just fall out automatically if the Constitutional Committee rules like that. That is why that one is indeed important as you say there. But I think at this stage,

until the Constitutional Committee has ruled on this, let's just keep to our ?? ones and this intergovernmental relations, of course the big one, which will remain if they cut out the rest.

- Dr King But are we at this stage taking the stand that it should also be taken out because that's what we're doing now because it's still included under 1.3? Shouldn't we just... in other words, when we question this, we say that 1.2 and 1.3.1 are those that we think perhaps may not be part of our...
- Chairperson Dr King, thank you. The matter is actually ruled by the observation on the top of page 2 that "should a narrow approach be followed, the necessary corrections may be made easily". It's a question of mutatis mutandis changing of it if the Constitutional Committee rules like that. Thank you very much for the contribution.
- Mr Smith Mr Chair, sorry. Do we agree - this is just a quick thing then I won't waste time - that after this meeting of the Core Group if parties want to put their positions on things to be included, that's just a simple process of addition?
- Chairperson Could you please...
- Mr Smith There are quite a few issues here where I'd like to record the IFP's position on an issue. If it's simply a matter of inclusion of a position, that will be attended to through the Core Group afterwards, but if it needs to be discussed, then I need to know can I raise it now on this issue?
- Chairperson Mr Smith, I think if there are new issues to be included, you are really giving us problems with finishing the report.
- Mr Smith Chair, just under 1.3.2, you know, there's a party view there and I'd like to know if I can add my party's view to it?
- Chairperson Perhaps I missed it in your report. What specifically do you want to include under that? You can bring it before 12 o'clock for us. Thank you.
I'm now at point 1.5, if I'm not mistaken. We move on. It's clearly stated there.
- Ms Mapisa Correction. I really think I have a problem. We met for four hours trying to draft this programme and the IFP was represented. I just think that you either give your submissions and they're properly encompassed in a report or you change the member of your Core Group if he or she does not necessarily present the position of the party because what I'm

seeing now.... I mean we... Mr Mtshali was there for four hours when we were drafting this report and some of the things which are coming up here he never raised at the meeting of the Core Group. I just think that it means that up until we close on Wednesday we'll be drafting a work programme and we shall never be able to finish and will not be able to start discussion on substantive issues. I think, for me, it creates a major problem. I don't think when we meet after this, as a Core Group, we should be taking more inputs from parties.

- Chairperson Thank you. It's actually a point of order you are raising. Mr Cronje, do you want to talk about that.
- Mr Cronje Maybe if one can, I think in line with the earlier suggestion that Mr Andrew made, simply remove "the National Party"; in other words "it was accepted that..." Yes, we must be reminded of this commission on provincial government. It needn't be, otherwise again as we said, otherwise every single view must be said "oh, that party introduced it" although everybody agreed with it, and I do not think that we can now say that opens up coming later on to the drafting committee with views of parties on every single topic again.
- Chairperson You are motioning that, that line be removed and that will solve the problem. Have I got a seconder for that? No one in the ANC wants to second it? Mr Andrew seconds it and the PAC seconds it. Mr Smith, I'm going to put it now, the motion that that line be removed. I'm talking about the line in 1.3.2 - the matter started here by Dr King. The second sentence: "the National Party reminds of" it's actually a matter of fact. It is in the Constitution in any event.
- ?? Mr Chairman, I thought that the proposal was that only the party being taken out, but that knowledge has been taken of the fact.
- Mr Cronje That is correct, that is what I...
- Chairperson I had it wrong. Then only the words "the Nationalists say". Thank you. My apologies. That is taken out. It's a clear matter, thank you.
Now I put 1.5. Now we must move on.
- Mr Smith Mr Chair?
- Chairperson Dr Rabinowitz is first, let's give her a chance again.
- Dr Rabinowitz No, Mr Chair, I think Mr Smith wants to talk about 1.3.2. I

want to talk about 1.5, so we have to decide.

Chairperson 1.3.2 is finished, if I am correct.

Mr Smith Well, Chair, you finished it, but my hand is still up. It's just that, may I ask a question, just as a question. "Institutionalisation" if it refers to simply informal intergovernmental relations I've got no problem, if it refers to constitutional provisions for it, then we wish to oppose it, so I need to know what that means.

Chairperson Mr Andrew?

Mr Andrew I don't think it makes any difference if you take the "institutionalisation of", which in any event is bad English, and just start saying "Sound and effective intergovernment relations between national and provincial level teams advised were unnecessary" then whether that in due course involves institutionalisation or not is an open-ended question.

Chairperson I think it's a very valid editing point made. Shall we accept that? Agreed? Thank you.

Dr Rabinowitz Now shall I go on with 1.5?

Chairperson 1.5 please, shortly, very quick.

Dr Rabinowitz The statement says that "parties registered a note of caution". that's not true. The IFP certainly didn't register a note of caution, we're 100% behind the principle of the Senate.

Chairperson It's not the principle of the Senate which is at stake, but the inclusion of that topic under the work of the Theme Committee. Thank you. Shall we pass?

Dr Rabinowitz Yes, but we support it, therefore we don't want it said "the parties...", "certain parties" if you want to say it, "some parties". Don't say "the parties" but "some parties".

Chairperson Shall we say "some parties"? "most parties"? Could I have the wording again? Is it agreed, Mr Gordhan?

Mr Gordhan In retrospect, since you invite me to speak, I'm just wondering whether small issues like this can be dealt with in another way. We are going to spend hours here at this rate on this report. I think you reached an earlier agreement that where there are textual difficulties, and that's a classic example of one, we deal with it as a result of submissions to the Core Committee.

Chairperson I'm ruling that way. Finish? I put 1.6. Mr Smith?

Mr Smith Yes, sorry, Chair, substance rather than text. National second chamber is an issue of structure which is problematic but also, I think, the Constitutional Court will be exactly the same thing. The issue is not the operation of the court, but, for example, the rights of protesters to appoint members to the Constitutional Court as we have in Germany, say. Now that would be... affect intergovernmental relations, relations between levels. I would like to suggest that we add that as well with the same proviso as the Senate, say.

Chairperson In actual fact the Core Group agreed that the whole matter of the Constitutional Court and judicial questions be removed from this report. It was in the report. The Core Group agreed on that substantive issue.

Mr Smith Yes, Mr Chair, and I'm saying now, having caucus in the issue, I wish to state that I would like it there. You can register the IFP's opposition if you wish, but we're saying we would like it to be addressed.

Chairperson Could you mention by way of writing then, before 12 o'clock, how your inclusion of the Constitutional Court as an issue should be put in. Mr Bhabha.

Mr Bhabha Comrade Chair, I just want a point of clarity here. When the Core Group met, what was the IFP's position there? It's just as a matter of clarity because this is going to set a pattern which is going to hamper our progress. The purpose of the Core Group is to elicit all those remarks. Now it appears to me that there are new matters coming in. I would like to know, just as a matter of interest, we have an example now in front of us. Did the IFP submit something in this regard? Was this advertently forgotten, or is this something new now?

Chairperson The IFP did not submit anything in this regard. The ANC did submit something in this regard, the Constitutional Court. The National Party I believe, and the DP, set and convinced the ANC that it shouldn't be taken out. The IFP accepted that position in the Core Group. Thank you.

Mr Bhabha Can I just respond to this, Mr Chairman. What standard are we going to set here and what are the rules? Are we going to say that in the Core Group you have to submit, make your submissions. If we're going to give latitude on every occasion, when are we going to finish with our work?

Chairperson We won't be able to finish with our work because this is obstructing the work and the progress of the Committee to a large extent. Mr Smith, I will hear you before I give a ruling as a matter of order.

Mr Smith I simply propose that 1.5 is a National Second Chamber and Constitutional Court. Now, whether a ruling is made, I would really urge that if we wish to be relegated to a footnote even on the issue, I'm quite happy, but I would like to say that IFP has got a position on this. I don't mind. If there's consensus and we're the only party who doesn't like it, at least we have the right to be mentioned in parenthesis, or anything, but please don't just say "well, it's going to be a simple ruling that you may not mention it at all". I resist that. And I refer also to the issue we discussed earlier this morning and that there was agreement on Monday, very clearly that the issue of the report would be caucused by the parties and today was an opportunity to revisit issues as well in the light of that, so it's not a question of whether we said something at Thursday's meeting.

Chairperson Thank you, Mr Smith. I'll give Dr King a chance.

Dr King Mr Chairman, I would like to just, not directly as far as Mr Smith.. what he's saying now, but I personally feel that the whole idea was that every party brought forward their ideas and all this had to be put together into one report. And to be able to make it possible for us to move a little more quickly, the idea was that representatives of the parties in the Core Group would sit down and compile a report which would then come back to the Theme Committee and where we will discuss. And I think that we should allow our parties once again to revisit these. It is true that it is time consuming but at the same time too it is one person alone, especially in the smaller parties, there's only one person there at the Core Group, and it's not always possible for that person to immediately come up with a final decision which will meet the expectations of the party. If we cannot go through this here in this meeting, then there is really no sense to meet at all. The whole idea is just that the Core Group gets together to put down something on paper so that we can then all discuss it. So I do think that one should have the opportunity to be able to study, which we did over the weekend, and come back and say "well, you know, perhaps this wasn't quite the correct stance" and I think we should have patience with that, please.

Chairperson Mr Gordhan?

Mr Gordhan

Chairperson, first the procedure, and secondly the substance. As far as the procedure is concerned, I think that where a serious substantive omission has taken place as a result of an oversight on the part of the party or the Core Group, I think we will have no difficulty in entertaining that. But at the same time, that must be differentiated from textual changes and other kinds of changes where we've had an opportunity to make submissions in the first instance. So, whilst we want to accommodate everyone and all of us do - we ourselves might on occasions require this kind of laxity - at the same time, I think, the element of time and so on needs to be taken on board on well. The substantive issue is: Does the Constitutional Court fall under our purview? Where - and I think Mr Smith needs to guide us now - where in the brief of this Theme Committee does the Constitutional Court appear? And secondly, ours is the question of relationship within levels of government. Is the Constitutional Court an institution which falls within that particular ambit? And before he responds, with great respect, I want to say it doesn't; that this is a matter to be raised in Theme Committee 5 or wherever else he wants to raise it, or his party wants to raise it, it doesn't really fit in here. I think he's already introducing a substantive matter by saying that the provinces should participate in the appointment of the Constitutional Court and again, that's not for us to discuss here at this point in time.

Chairperson

Thank you, Mr Gordhan. Could I just... I think it was left out editorial, take the attention of the meeting to page 6.3.6 which was somehow left there. That is the only possible formulation how a Constitutional Court can be brought into this Theme Committee's report. That should also be left out or put in, it just stayed in the programme. Mr Gordhan made a very valid point. I want to close this matter off. Mr Smith you will have a last chance, you've really had a lot of chances now.

Mr Smith

Mr Chair, thank you. I think the issue of how many chances one has is not actually material to the issues because we have a report to reach consensus on. I mean, we really have to go through things with a fair degree...

Chairperson

Mr Smith, just on a point of order, could you just, when you use the words "we must reach consensus on" give us the background to that opinion.

Mr Smith

Well, Mr Chair, then shall we say it's desirable to reach consensus on the report. Okay? If one applies Mr Gordhan's argument to what I'm saying on the Constitutional Court, then we should therefore delete 1.2, we shouldn't even refer it to

the CC for approval because a thing like the provincial ...

Chairperson

Order, Mr Gordhan!

Mr Smith

I'm speaking, Mr Chair, is that a point of order?

Chairperson

Point of order raised.

Mr Gordhan

Chair, I think if you want to facilitate discussion, I must suggest to Mr Smith that he must address the question rather than threaten something else. What is the question? The question is does the Constitutional Court fall within the brief of the Theme Committee? And I think it will help all of us, including the consensus making procedure he talks of, if he addresses it more specifically.

Chairperson

Could you stay relevant in that respect, Mr Smith?

Mr Smith

I thought I was being relevant, Chair, by saying I thought the same thing applied to 1.2, the same argument. Having said that, we're taking the position, very simply, that the internal procedures, the number of members and so on is irrelevant, so Theme Committee 2 has a lot of work to do in structures. The very beginning of this document talks about strictly functional approach or the extent to which structures can apply to the work of the committee. Now there isn't a decision on that yet. We've referred to the CC for a decision. I'm simply saying, in terms of the Constitutional Court, the issue of for example of whether the provinces have the right to appoint people to the Constitutional Court, that then constitutes an issue of relationship between levels of government because it affects kinds of interpretation of the Constitution, for example. Now, the CC can throw it out, quite happily. If the CC don't accept it, that's not the issue. All I'm saying is I would like it added to there with the Senate because it's the same kind of issue.

Chairperson

Mr Smith, will you be satisfied if the request, or the opinion of the IFP that this should be included should just be mentioned here? Should it be mentioned? The ANC is against that. I have in effect a motion from Mr Smith, which I would like to seek a seconder for and that is that 1.5 should read "a National Second Chamber and Constitutional Court" and treated in the same manner further as the Senate just editorially. Do I have a seconder for that? Dr Rabinowitz? Dr King?

Dr King

Mr Chairman, perhaps this could just help the problem. Coming back to 1.3.2, intergovernmental relations, my personal feeling is that the Constitutional Court could be one of the organs ...

Chairperson The arbiters.

Dr King ... that could be discussed under this specific heading because certain relationships, for instance between two provinces etc., would eventually have to be settled if there was a dispute or whatever, so I think that the Constitutional Court, if 1.3.2 was retained that in that the Constitutional Court will inevitably crop up again as such an organisation which will open new discussion then.

Mr Smith It's a wise opinion. Will you be satisfied with that approach? That if it needs to be addressed, for example a very solid memorandum from Inkatha on this Constitutional Court question, if it is received under 1.3.2 in the future, what is the position of the ANC on this? I would like to hear it.

Mr Gordhan I think the formulation that you have in 3.6 can be included under 1.3.2.

Chairperson 3.6. Could you just help me, let me get the point. 3.6. Do you suggest that it be included under?

Mr Gordhan 3.6, slightly reformulated, can be accommodated as Dr King suggests under 1.3.2.

Chairperson Refer to 1.3.2?

Mr Gordhan In other words "the role of the Constitutional Court in" etc. etc.

Chairperson Thank you, we'll do that. Mr Smith, I think that will satisfy you now. I put 1.6. Could I just remind the Theme Committee on 1.6 that in section 160 one of the functions given to the Commission on Provincial Government is the finalisation of provincial borders or demarcation, if I remember the wording right, I'm talking from my memory. So it does seem that the Constitution foresees some work on this still in the future. I hope the Constitutional Committee will lead us on this eventually. Thank you.
1.7 is one of the big tasks of this committee. Point 2 - Priorities. Dr Rabinowitz?

Dr Rabinowitz Mr Chairman this does not, I think you said the Theme Committee's of the opinion that different issues mentioned should be done concurrently. The IFP definitely didn't support that principle and I don't think we've actually thought through adequately how we're going to cope with all the work concurrently and whether it wouldn't be preferable to have priorities which we should deal with first and then go on to

other issues. That is not an issue that I think has been clarified.

Chairperson Dr Rabinowitz, the IFP has been recorded in footnote 25 and it was seriously considered by the Core Group. It is a kind of consensus approach which was reached in the Core Group which is presented under 2.1 first paragraph. It's not bad, really. Please accept it. Mr Smith?

Mr Smith Mr Chair, on the second paragraph, my reading of Section 71 for the Constitution can only refer draft text so what does it mean here that the "issue" can be referred to Constitutional Court in the early stages.

Chairperson An issue as contained in a draft text. It's the only meaning which it can have.

Mr Smith But, Chair, so in terms of process, isn't it the case that we're only going to produce reports, interim reports, in the terms of the formulation that you seem to have consensus on, that they only arise in July.

Chairperson That, Mr Smith, with all due respect, that's not the job of the Theme Committee, but for ascertaining what the priority is, that process which is not in the hands of the Theme Committee is very important to decide our priority. You see what I mean? I think it's okay as it is.
2.1 This is the priorities is first serving up subcommittees and and commissions where necessary, the Core Group insisted and then soliciting public comment. I suggest it's in order. Overlapping areas...

Mr Smith Sorry, Chair, I have to have a chance. 2.2, we reject "subcommittees" please if it can be noted.

Chairperson I think that the committee must agree to it that it is noted that IFP rejects subcoms, not commissions. The DP, I think...

? The DP also took that view.

Chairperson ... plus DP. Agreed? Freedom Front? Also don't want subcommittees? No problem with that. National Party?

? We also have reservations. I would have referred to it under 4, but while it's now discussed...

Chairperson Rhetorically it must be in line with 4. National Party do you want a discussion on it or just record as set here?

? Yes, by committees yes, and subcommittees reservations.

Chairperson Plus NP. Thank you for your co-operation in getting this finished. I'm putting 3. We are already discussing, Mr Andrew. Mr Andrew, you must please help me, the typing didn't reflect what we did in the Core Group. I hope it's right now, the first new paragraph under page 6 was discussed.

Mr Andrew Paragraph 3 on page 6, the second paragraph. "The Committee noted, however, there may be uncertainty whether the terms of reference of this committee includes chapters 9 and 10 of the Interim Constitution which inter alia deals the structures, ?? and mechanisms. Well, you know, you say there may be uncertainty. There was a specific issue of any proof of any written evidence that these chapters were specifically referred to us. Some people on the Core Committee took the view that they don't recall them ever being referred, others thought that they were and they undertook to provide the written evidence that they were.

Chairperson The IFP must please remember we're in Cape Town now.

Mr Andrew I would therefore suggest that either the written evidence is available that they are referred to us, in which case there is no uncertainty, or the written evidence is not there, in which case they're not referred to us and there's no uncertainty.

Mr Andrew You will remember that Mr André Fourie had a strong opinion about this, if I remember correctly.

Mr Andrew No, what I do remember is that you said you're sure you had it in your documents and you would go and find it and if you haven't found it I suggest this should be coming out. I said I'd never seen anything of this sort and you felt you had, so I said "well, fine, maybe my memory's letting me down, or I've mislaid some document", but I'm sure you'd be able to produce it if it existed and then I would agree that I'd overlooked it or I'd not received the documents.

Chairperson Thank you, Mr Andrew. I'm sorry I didn't look it up. Couldn't we just refer the matter to the Constitutional Committee because it's just putting the matter before them at this stage.

Mr Andrew No, because I've actually got quite specific problems which lead on to other things and I suggest that sentence should be deleted.

Chairperson Of the first new paragraph on page 6, in view of the

uncertainty it seems advisable. Let me just see if it correlates now. Same paragraph. I've no problems to delete it at this stage. It will come up in the Constitutional Committee again. How do you feel? ANC? It could be deleted. You see, I could show you that in the original submissions before the Constitutional Committee it was drafted, but I don't know if it ever came down. Mr Gordhan?

Mr Gordhan

If you're referring to Chapter 9 and 10 I'm a bit confused because there is no real reference or connection between the Interim Constitution and ourselves so we can't have a chapter of the Interim Constitution referred to us. It doesn't sound logical at all. We can have the subject matter of that chapter referred to us, which is provincial government and local government and that is amply represented in a number of the Constitutional principles that have been in fact referred to the Theme Committee so I'm not sure what the debate was in the Core Committee. Firstly, I would recommend that references to chapters be deleted because it is not something that we've agreed on ever in the Constitutional Assembly and that if you want to there can't be any debate about provincial government and local government being referred to us because those are two of the three levels of government that we are dealing with.

Chairperson

Do I understand you right, Mr Gordhan? You support the idea that, that paragraph should be scrapped?

Mr Gordhan

We agree with this principle, Chair. We leave it to the Core Committee to find the right formulation. The references to Chapter 9 and 10 must certainly be deleted.

Chairperson

Refer to the Core Group, with a note on Chapters 9 and 10, which I think is the right way. Mr Andrew?

Mr Andrew

Yes, I just think this whole paragraph is superfluous. I mean I agree entirely with what Mr Gordhan said. I mean all over this document we refer to local and provincial government and so on so that there's no suggestion that local government hasn't been referred to us, it's referred to all over in our document and this is superfluous in that context.

Chairperson

I was actually hoping that someone request that it be scrapped. Always nicer to take something out than to put something in. Could I put forward to you now. The Core Group requested specifically that parties which are other parties that if the ANC want subcommittees, they can record that they want them, the other parties said they didn't want them, except the Freedom Front which is neutral on the matter, I believe?

?? Chairperson, we're not neutral. We said we haven't got a problem with some subcommittees, but we're not neutral on it.

Chairperson Could we put that point in for you? Freedom Front, something there. Then it's the ANC which recommend these. It was actually requested by way of a letter from the administration that if subcommittees are requested, then formulation should include terms of reference etc. Can we then consider point 4 finished. Agreed?

5. The same story except for one problem and that is that it's not clear whether commission should be only outside people, outside experts, which is the normal way in which a commission is constructed and whether members should also sit on commissions. Could we hear the ANC's view on this matter. It is referred here, recorded, and it's referred to the Constitutional Committee about this question of members plus experts, or not. Agreed, like the formulation there? Ms Mapisa?

Ms Mapisa We'd like it deferred to next year.

Chairperson Deferred to next year? And deferred to the Constitutional Committee as well? Thank you.
I put point 6.

(end of tape 2)

THEME COMMITTEE3 - 14 November 1994

Tape 3

- Mr Smith ...there's a whole. If so, we would like 2 taken out, record our objection to 2 at all.
- Chairperson Also the word "functions". You will see that it is "structures and functions".
- Mr Smith Yes, Chair, correct, yes, both. Well, you know that's a catch all, unfortunately, but in general terms we would oppose that formulation.
- Chairperson We can note it then there. We are talking on page 8, point 6 - Separate reports, interim ???? in the table. The IFP doesn't agree that it must be included. Mr Cronje?
- Mr Cronje No, I don't think you can suggest that they need not write the report about the powers and functions etc. of the Provincial Council, it's is one of our main tasks. If you want it reformulated, then submit it, I suggest, Mr Chair, to the Editing Committee.
- Mr Andrew Chairperson, I'm a bit confused. I think we are actually getting into deep water now. You see, when we discussed it in the Core Committee, a number of us, but including and I speak for the DP, we had severe reservations about the subcommittees, at this stage deciding to have subcommittees. We had additional reservations even if you were going to have them about the terms of references that were suggested. The commissions, we believe, one should have one or more. Some, we believe, you shouldn't have and some we would have disagreed with the terms of reference, and we disagreed very strongly that members of the Theme Committee should be members of commissions. And in the end, I thought that the way we decided to get around it - simply also because you get to 2 minutes to 6 and everybody has to go at 6, and half the people have already gone - was that one would say, okay, well look, if this was the ANC's point of view, put this in as the ANC point of view. Now, that's in a sense the way this has been put. This is an ANC point of view and that's interesting and maybe everybody agrees, maybe nobody agrees, whatever. Now, if one is talking about taking editorial suggestions for changing the terms of reference, it's now sort of moving it into a different category and I see that as problematic. I mean, if we are recording this here as an ANC suggestion, that's fine.

If we are now actually saying, well, it's an ANC suggestion, but somehow we are amending their suggestion, I ...

Chairperson Mr Andrew, I wonder whether you're not mistaken. We're on point 6...

Mr Andrew The same applies there, you see, because it's suggesting... Obviously a lot of these things arise from the commissions and the subcommittees and the terms of reference that you've given to them because clearly if you're going to have all these various bodies, they are going to produce reports. Clearly, the issue they're reporting on is going to directly relate to their terms of reference so that's...

Chairperson Do you then suggest that under 6, we also said: "This is a recommendation of the ANC"? That would solve the problem?

Mr Andrew I would say "arising out of points 4 and 5, the ANC recommends the following be interim reports" so it's a kind of procedure and structure that the ANC is suggesting.

Chairperson I've got it. Mr Gordhan?

Mr Gordhan I think there's a big difference between the subcommittee, paragraph 4, which even there we must reformulate. I think the subject is whether we have subcommittees or not. Some of the parties are in agreement that we have subcommittees, and others are not and that paragraph doesn't accurately reflect that. There's also, as I remember it, Chairperson, a provision in the decisions of the Constitutional Assembly that subcommittees can be convened by a Theme Committee should they require that to be done. So, it's not a matter of principle that we are talking about, it's whether in the process of dealing with our brief, we have subcommittees or not. And I think that must be made clear lest we confuse the two aspects. Then we go on, Chair, to paragraph 6. But paragraph 6 is a separate matter entirely, it's a question of reports. Did other parties have a view on whether reports should be submitted, when they should be submitted, how many there should be and what their topics should be because this paragraph must reflect their submissions in that regard. We can't reduce this to an ANC view if it was, I think, one of the requirements that Theme Committees report to the Constitutional Committee and the Assembly on the number of reports, the dates of their submission, and their subjects. What I am against, Chairperson, is reducing this to an ANC matter and what, I think, is clarity on whether parties made a submission in that regard and we as a Theme Committee now

need to make a decision. And that goes for, not as an ANC view, but as the Theme Committee's view.

Chairperson Well, it's clear that that's our main task, that the Theme Committee must say what reports and when they were going to give them. I will first give Mr Andrew.

Mr Andrew Let's just take 1 - Interim number 6, the Role of the Senate; or let's take number 3, Definitions of Provinces, which is presumably meant to mean provincial boundaries. Now, we don't see it as the work of this Theme Committee to discuss provincial boundaries or what should be in the new Constitution.

Chairperson Mr Andrew, with due respect, could I interrupt you, please. Then you must just refer to the introductory paragraphs on page 2, on top, which say that if that falls under the Theme Committee, then it falls under it. If it does not, it falls away automatically. You must please read it in that context. Can you continue?

Mr Andrew The point I'm making is, I did not object to item 6, but when interpretative remarks you were making in response to Mr Smith, you started dragging in the terms of reference of the subcommittees as something, well, in fact, it was suggested that Mr Smith send in amendments to terms of references. That is, somebody must...

Chairperson Mr Cronje, could you just explain yourself? Is it done? Then Mr Andrew can continue. Just a quick interruption. Mr Andrew you can continue.

Mr Andrew I have no problem with item 6 as it stands because it starts with saying "subject to a more precise ruling in the Constitutional Committee" so I've got no problem with that. My problem arose, was in discussion, when we were already on this heading, somebody suggested that Mr Smith could start sending in amendments to the wording of the terms of reference of either subcommittees or the commissions or both. Now, that was my problem that one was changing the status of paragraphs 4 and 5 as then being Theme Committee proposals as opposed to proposals being put in by the ANC. And that is where I came in. In terms of 6 itself, I don't have a problem.

Chairperson Thank you. Mr Cronje?

Mr Cronje I just want to correct that. We were discussing, I thought,

number 6 and with particular reference to the second report, Interim Report number 2, when Mr Smith said that he does not like the report like that to be submitted, at which I then said that a report about the provincial legislature and its functions and structures etc. is surely part of our brief because we are looking at that. And if he is not happy with the name of the report, then that is an editing story.

Chairperson Thank you. Mr Smith, could you please help us to carry on, our time is almost finished now.

Mr Smith Sorry, Chair, it's not being difficult, it's just that the wording does confuse me. The thing is in the Constitution, the current Constitution, provinces are entitled to have their own, in terms of provincial constitutions, structures and procedures. Now if this is suggesting that it could supersede that, I've got problems, you see? If it's meant to mean, in terms of allocation of legislative functions in terms of 1.1.3 earlier, then I've got no problem. It could be a phraseology issue, but if you're referring to the way the provinces structure their legislatures, their executives and their procedures, then I have a problem so I need help, what does this mean?

Chairperson Could I help you there? I think there's a fault in that ... it's my fault. Let me just put it to you this way, explaining to you what Interim 2 means. The idea was that it should be structures and functions of provincial legislatures and executives, but if the Constitutional Committee says structures are out, then it falls away and only the functions because is what it is about; the functions describe the relationship. I think it would be okay if we change the name of the report to... You see number 1 is the nature of the relationship between different levels, number 2 is the functions, that means this is the allocation of the powers, totally different levels. I think we could change it to that now.

Mr Smith As a proposal why not just keep it under the same headings as you have in the earlier part of the text, 1.1.2, 1.1.3, because one is the legislative competence of provinces and government in relation to each other, the second one is allocation of legislative power to national, provincial, local levels. I presume it's meant to reflect that kind of thinking.

Chairperson It was the idea originally. I think this went a bit corrupt in our Core Group. Could we change that editorially? I must admit the fault here. Mr Andrew, do I understand it wrong now?

Mr Andrew Yes, in fact your original Interim 2 as of Wednesday, was

provincial, legislative and executive structures full stop, and no reference to functions whatsoever

Chairperson Have you a suggestion, Mr Andrew? How we could finish it off quickly? Editorial matter, refer to editorial?

Mr Smith It's not editorial, chair. If this meant to be structures and not functions, I've got a big problem here, so it's not editorial here.

Mr Andrew I'd like to make two points. First of all, in terms of structures, the opening bit to this paragraph says the Constitutional Committee is going to give the scope, the terms of reference, so if they feel structure must be looked at elsewhere, they're going to say so and then it automatically comes out. Secondly, if they say it is going to be handled here, then I would see that it is an agenda item that needs to be discussed. It does not mean that we believe that the new Constitution should prescribe the structures. In other words, the report might be that the issue of provincial structures should be left to provincial governments for themselves to decide and the Constitution should not include it or it should include a pro forma which operates unless and until a province decides otherwise. So, against that background, in essence I share some of the concerns of Mr Smith about the end product, but I think it is a legitimate agenda item and therefore is a legitimate subject matter for a report and I would suggest that the wording should read "provincial legislative" and one should take out "structures" the first time it is mentioned so it should be "provincial, legislative and executive functions and structures".

Chairperson Shall we agree to that, the majority? Mr Smith even is happy with that. Thank you very much, Mr Smith.
Point 7.

Mr Smith Sorry, Chair, still on the same thing, Item 5, "Financial and fiscal affairs of provinces", it can't be "affairs", it should be "relations between" surely.

Chairperson It is a different matter as you put it now. How do you feel gentlemen, ladies? "Affairs" you see, for example, local government financing is one of the big problems in this country. Now that is not always a question of the relation between local government finance and say provincial and national finance. It's local government financial affairs which is the problem, now should this Theme Committee not take note of that? Agreed as it stands? Thank you.
I put 7. Really, there are just one correction of editorial note

here in 7.7...

Dr Rabinowitz Mr Chairman, I'm sorry we haven't finished yet. In terms of prioritisation, this doesn't take into account the IFP view that these should not have been done concurrently and if you change the date on the first Interim report with recommendation into March so that, that is handled first, then we could go along with the rest.

Chairperson Dr Rabinowitz, it seems we have a choice. Either it's done concurrently or it's done consequently. The problem of the ANC, if I remember, is that if you work consecutively, we'll sit until June with Interim Report 1 and the process will be delayed if the provincial fiscal matters etc. are not done in the meantime running concurrently. That was a strong position, I think, which the ANC took. Your consecutive approach has been mentioned in the report and I'm sure in the Constitutional Committee you will be able to address it again. Point 7, I refer you to 7.4 and 7.7 on page 9. The Volkstaatraad should actually move up to 7.4 and the provincial houses of traditional leaders should move up to 7.4 just logically. Could I put point 7. Should the Department of Constitutional Affairs be included? Could I put the question to you? It's actually not a role-player, it's part of government. I'm talking 7.4 on page 9, should the Department of Constitutional Affairs be included? No, it's not a role-player. Taken out? Mr Andrew?

Mr Andrew Mr Chairman, 7.3. This issue of representation of provinces on this committee you use this wording "it is interpreted in such a way that the inputs it is established is of the utmost importance". Now, it's interpreted by who? The Democratic Party specifically believes, and I think, you know, we've seen it in a variety of bodies in the representation, for example, of women, that in fact if you want to make sure that the views are heard and the communication is adequate on any particular thing, you actually need those people there and that's why for similar reasons, or identical reasons, we feel very strongly that when we get down to our substantive work that you actually want people from the provinces here who then go back to their provinces are able to communicate directly and not simply people getting minutes.

Chairperson Thank you, Mr Andrew. Sorry, I'm in haste because our time is already up and we must conclude this. Could I just say that there was a legal objection raised by the ANC in the sense that membership of Theme Committees as subcommittee of the Chamber of ..., the CA, is a bit problematic, but in the

commissions that problem can be addressed and in the question of hearings. Reaction?

Mr Andrew

Well, you know, I take the legal point, but I think one would then incorporate them as being participating observers entitled to attend our meetings, so clearly when you get to votes, they can't vote, but there's no reason, legally, why they cannot be invited in that capacity. And I don't believe in terms of hearings - that's the whole point! You are not going to get the communication if all you do is they get various documents and once every now and then you say "would you like to come and give us some evidence, we will ask you some questions, then you go away".

Chairperson

Mr Andrew I'm sure you used a very useful word now "participating observers" and I'm sure that everyone will be agreed that, that should be the interpretation given to your thing and I think it is acceptable, "participating observers" for premiers and that type of people. Thank you.
I put 8. Mnr Cronje?

Mr Cronje

Just under 7, I don't know if people see it as simply editorial so seeing that in principle 13.2 traditional monarchs in provinces are mentioned as a separate structure from the traditional council, I would suggest that it should also then be included under 7.4.

Chairperson

7.4 - Traditional monarchs. It is a constitutional point actually, traditional monarchs. Let me just quickly write "traditional monarchs in the provinces". Mr Cronje, you're going for the Afrikaner community's traditional monarch here apply? Thank you.

8 - Community and media. There was only thing lost here from the National Party and that is on point 6 that the National Party wanted to register that it disagrees strongly with the idea of people's forums. It's actually a part of the general agendas of the Constitutional Committee. Could we have reaction to this, please? That's the point you wanted to make, Mr Saaiman? That the National Party on point 6, under 8, wants "(the National Party disagrees)". I didn't put it in previously, should it be put in? Ms Coetzee?

Ms Coetzee

We keep it as it is because we believe as the ANC is the majority of the people and especially the illiterate people who should have a say in the new Constitution of South Africa and so a people's forum is needed for those things.

Chairperson

Mr Smith?

Mr Smith Mr Chair, I think leave it as is, but register the National Party's problems as a footnote.

Chairperson Shall we register the National Party's problem with this democratic method? Sorry, forgive me, please, for this terrible observation. Thank you. Mr Saaiman, you are satisfied. ANC satisfied?

?? Is it possible to have that words written in under 8? Your Theme Committee suggestion that the National Party disagrees with 6, in that paragraph instead of a footnote.

Mr Gordhan Again we have the same problem as the subcommittees. We cannot disagree with something that the CA has already agreed, which is that there shall be these various forms of consultation which would enable public participation. All that the National Party can do, is to say that when it comes to the programme of this Theme Committee, it does not want to engage in a people's forum and as in other instances, it should be put in as a footnote.

Chairperson Thank you. I think I must rule that now, otherwise we won't finish.
Technical assistance? The submissions can go through and there's time open for the parties like the National Party, IFP specifically requested that they want until January to submit further names. Can we go, submit it as it stands here? Perhaps we should take out 5 because this is so uncertain at this stage; on page 10 in the table, should that thing stay there at this stage? Stay? Good. Operational schedule follows. Am I too quick for you, Mr Andrew? Or are my English wearing off now?

Mr Andrew You're too slow for me because you put it in, in the first place when we suggested it be out and now you suggest it out and I agree it should be out, and now you say it's in.

Chairperson I'm depending on the meeting. Mr Cronje, what do you say?

Mr Cronje Out.

Chairperson Out. We did it just to please you, Mr Andrew. Operational schedule. Ms Coetzee? ??

Ms Coetzee Sorry, Mr Chair. Under 9, in the meantime the following whereby the IFP has not submit yet names for the nominees, I would like that whenever, say in the time of January, when we submit names, please to state it clear whether it's South

Africans or people from outside.

Chairperson

Already ruled by the Constitutional Committee we want South Africans. I think that's already... Thank you very much for the valuable contribution, Comrade Coetzee. Are we finished? The Core Group meets... Could I just announce something quickly, quickly, quickly.

Could I request a mandate from this Theme Committee that the Core Group be given a mandate now to draft the final work plan for submission today? No, no, I meant tomorrow. Could I then call on the Core Group members in 216 is booked now for us, for the Core Group, and that we proceed there, E216. Thank you.

(end of tape 3)