

CONSTITUTIONAL ASSEMBLY

Theme Committee 1 Meeting

9 FEBRUARY 1995

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CHAIRPERSON:

Ladies and Gentlemen we will make a start. Let the people in the foyer come in please. We're already some few minutes after time but we're realizing that some people might have gone to the yesterday's venue, but received notices later so - so hope everybody is here or will be here in a short space of time. May we be called to order so that we start with our meeting please.

Thank you. Ladies and Gentlemen you have the agenda - you're welcome again to this meeting. The copy of the previous meetings - the copy of the previous - the minutes of the previous meetings have been circulated I think now and hopefully the sharp minds of members have gone through the major points of the minutes. May we get any proposals for adoption of the - sectors of the minutes - the minutes of the two last meetings yesterday and the previous one. May we get a proposal. Any proposal. Is there no proposal? (inaudible)...

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UNKNOWN:

Beg your pardon. We the Democratic Party have a real problem. We didn't know until two minutes ago where this meeting is going to be scheduled. So we haven't seen the

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minutes, we haven't read the agenda, so sorry you'll just have to be patient with us while we quickly read it please.

CHAIRPERSON: All right should we then hang on till later on in the meeting or do you want us to postpone it as on next day?

UNKNOWN: I think we should deal with this on the next meeting.

CHAIRPERSON: All right I don't think we should have any problem - any problem with that. Right. Thank you very much for dealing 10 with that item so quickly. Then we are at item three. Hopefully we won't be able to tackle the matter arising (inaudible)... minutes unless other people are so acute that they can do that. We shouldn't prevent anybody who can do it. Anyway, in the absence of any hand rising we will postpone that matter to go with the minutes.

Item four. Report from the sub committee. I hope we have had read the tabled report - the report is on the table. Yesterday while you was busy dealing with this, I think the 20 Inkatha Freedom Party, indicated that they would like to consult with their principal before they would be happy to

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continue with the rest of the discussion. Perhaps it will be ideal to hear from Inkatha if they are now in position to continue and in what state - may we request. Anybody from Inkatha if it pleases them to inform us what the position is.

MS SEATON:

Mr Chairperson we would seek your indulgence for a few minutes. Mr Mtshali is just getting the documentation, which is being typed, and will be here shortly. So I would ask the - for the indulgence of this meeting for a few minutes for him to arrive. Thank you.

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CHAIRPERSON:

It would seem that is the only item to be discussed. Now what does it mean? Does it mean any agenda?

MS SEATON:

He is on his way here.

CHAIRPERSON:

Mr Gumede.

MR GUMEDE:

Yes I believe part of the exercise is for us to discuss the issue of managing our disagreements particularly beyond the agreed procedure. We have agreed that where we have disagreed we leave issues as non contentious as contentious.

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Where we agree we register them as non contentious.
Yesterday we have had an experience where we had to go
beyond this mechanism.

So I think it is incumbent upon us as a theme committee to
now agree how then do we do we disagree. Do we continue
and then if perhaps we are not in the position to accept or
not to accept we ask for a caucus and then, if that is the
case, how long this, the caucus should be because there are
caucuses that could last for a reasonable amount of time
given our program, but there are caucuses that could take
weeks and so forth.

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So it is I think proper management for us to deliberate on
this issue of managing, issues on which we disagree,
otherwise if we are going to be silent about it we have
already got a president and that president say whenever a
party is not ready to respond one way or the other, or is not
sure, it is for indefinite adjournment which I believe for
management purposes is not acceptable. Thank you Mr
Chairperson.

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CHAIRPERSON: Thank you Mr Gumedede. Mr Moorcroft.

MR MOORCROFT: Chair I'm not sure if the honourable member made a definite proposal there, a formal proposal, but I should like to make a formal proposal now and that is that we proceed and that you Chair start with the non contentious points. You put to the house from point A through to point J individually starting with point A and calling for any objections and so we'll work our way through the list. Finding out if there are objections and if so who the objector - who the objectors are. So at least we can make progress.

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I believe it was put by the honourable member yesterday, I don't think that it was put as a formal motion that we go through item for item, but I should like to put that forward now as a way forward and that we go through this list item for item with you Sir calling for any objections should there so be.

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CHAIRPERSON: There is a proposal. Any seconder to that? Any seconder to the proposal or perhaps is it seconding the other

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member? Which is which? Because if you're seconding that member who are making - making a separate motion on the question of progress or procedure. What to do?

MS SEATON: I propose ...

CHAIRPERSON: So the matter is seconded. Any assent to that? Ms Seaton Ms Seaton. Oh.

MR STREICHER: Chairman I agree with Mr Gumede about the position that you can't have a caucus postponed indefinitely because that obviously would effect the work of this committee very seriously. No doubt about that. But I think we should also be a bit lenient when the request has come to us that we should wait a few minutes so that we could hear the submission of the of the Inkatha Party I think. That would only be fair. All of us might be placed in that sort of situation from time to time. But he is perfectly right that one shouldn't, when we create this sort of precedent, it should be without qualification and that is that you can't postpone discussion indefinitely in order to give parties an opportunity.

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So I would like to see us not proceeding with this in the fashion suggested by Mr Moorcroft, but if we if there are certain points that we feel that we should discuss why don't we rather do that and give Mr Mtshali an opportunity of coming back to this meeting and giving us the views of the Inkatha Party.

CHAIRPERSON:

I don't know if there are points to discuss, I see it as general thus closure. I don't know what is the - Mr Streicher - what you're saying is - are you opposing the motion put forward by - I don't just get it very clearly where ...

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MR STREICHER:

A motion is proposed and so anyone can talk for it or against it. We might as well have a look at all these issues that we have because I think Mr Marais yesterday, on behalf of the National Party, also indicated that there were points which were subject to one's broader approach to the whole Constitutional development. So perhaps we could if it's if it's at all possible if there are further questions even questions to be put to the Technical committee. Why shouldn't we allow that until Mr Mtshali is back?

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UNKNOWN:

Mr Chairperson may I also say something. I have full understanding for the for the honourable ministers members frustrations, I have that. But we must remember that we are now responsible for dealing with quite a number of issues. This is block one and we still have to go right down to block ten. This is this is these are early days and we should avoid confrontation if it is at all possible at this stage and I believe that if we should now proceed dealing and start dealing with all the various items that we have on the preliminary framework report and we and we ignore the request from Ms. Seaton on behalf of her party, there is an element of confrontation involved that I would like to avoid if that is at all possible.

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Let's wait another fifteen minutes or so, ask Ms Seaton then to go to a telephone to try to get in touch with Mr Mohale and let them after that discussed the matter again if he arrives in the meantime and let we then proceed.

CHAIRPERSON:

Ja. I see Prof Ripinga is raising a hand.

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PROF RIPINGA:

Thank you Chairperson. I think Ms Seaton's request is

accepted but in the meantime we can't just sit for fifteen minutes and do nothing. What we should do is to modify the proposal that has been put, that we are carrying on with this second clarification but not taking a decision by saying I second this I don't second this. We seek clarification on contentious issues non contentious issues point by point. And when Mr Mohale comes, then we can discuss now substantial issues by just seeking clarification so that we don't return to clarifications when we are suppose to deal with substantive issues when Mr Mtshali arrives.

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CHAIRPERSON: Do you have any problem with that Ms Seaton?

MS SEATON: Mr Chairman only to the extend that if it's going to be decided at this stage whether an issue is contentious or non contentious, then I would have a problem because as I as I think we indicated to you yesterday the document as it stands at the moment is contentious as far as we are concerned until such time as we can bring forward our problem areas which will be done shortly.

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CHAIRPERSON: What I'm trying to say Ms Seaton, if I understood the

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amended proposal, is that there is actually no decisive decision taken by then the - seek clarification on each of the items so that later on it is a question of giving decisions if necessary, but no decision are taken (inaudible)... item by item. Is there any problem with that?

MS SEATON:

Mr Chairman I would hope not. The problem might still arise that if in fact we're going to going to some detail on discussion those or seeking clarity, and then when Mr Mtshali comes in it's going to then be said but we have already discussed that. That's the problem I have.

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CHAIRPERSON:

I can give assurance that we'll give Mr Mtshali a hearing on all the items whenever he needs it so there won't be any. I won't prevent him from putting anything he would like to put forward. Thank you very much for your cooperation. Let's start then with non contentious points on page fifteen Item A. Any problem any clarification or any point of clarity or perhaps formulation or amendment or whatever. Mr Macozoma ...

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MR MACOZOMA:

Mr Chairman if you look at today's minutes this issue was

discussed and the decision was that the formulation in the Constitutional principles should be used instead of this one. So I don't - I don't I think we should pass it.

CHAIRPERSON: Thank you very much. Is that is that the feeling that we go to the next item?

UNKNOWN: Agreed.

CHAIRPERSON: Thank you. Then B. Any input on that? Are members 10
okay with B?

UNKNOWN: Agreed.

CHAIRPERSON: Right we can go to the next item there. C. It would seem that the members are okay even there. Mr Kekana.

MR KEKANA: (Inaudible)...

(MEETING NOT RECORDED - MICROPHONE NOT ON)

CHAIRPERSON: Are our experts maybe able to help?

UNKNOWN: Chairperson I think in the line of that question is - what we doesn't see here is reference to the criteria with which with reference to which discrimination has to be prohibited. And the reason for that is because in some of the submissions we have had exclude the criteria which you will presently find in the existing Constitution.

So what we've done here is to simply postulate the fact (a) 10
that there must be a fundamental bill of rights and (b) that
it must be enshrined, the principle of non discrimination.

Thinking as we did, the other committee or theme
committee that deals with the bill itself, will have to sort out
what the criteria with reference to - which discrimination is
going to be prohibited should be. So this is merely a
position whereby the committee will say, if it want to do, so
that non discrimination shall be built in as matter of
principle. Any new dispensation regarding fundamental 20
rights, but that we don't go so far as to identify what the
criteria should be because in that regard there is a

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difference of opinion which I think should not be resolved here because that's not part of this committee's mandate.

CHAIRPERSON:

Thank you. Is the clarification perhaps sufficient? It seems that Prof Ripinga want to add something or to say something.

PROF RIPINGA:

Chairperson I just want to find out from the Technical Committee whether there would be anything wrong if we end off at the end of rights and we leave the whole portion, because the question of an independent judiciary and all the other issues which create structures parameters whereby this things is going to work, are details which could be addressed by the relevant committees. If we just say fundamental rights shall be protected and entrench and entrench bill of rights and then we'll try to complete the sentence correctly there, but not try to create, you know, structure and other issues that will make this thing clouded because I think in current of state we're just stating the principles but the other committees are going to go into details about how this thing is going to be done.

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CHAIRPERSON: Now let's hear quickly from the Technical Committee whether they can offer any help.

UNKNOWN: Can I just say in response that if that we build in at least the justifiability by an independent judiciary. At least that part was definitely common to every single parties submission and it did seem to us that both that, and with respect, the next principle were fundamental when one talks about the character of the state which is what we were trying to confine it to, but it's clearly in the hands of the members. 10

It was just a suggestion. We could have list it, for instance we could have list it that there shall be an independent judiciary separately because that was a was a principle mentioned by all the parties. We combined it with the fundamentally of the bill of rights.

CHAIRPERSON: Is the clarification sufficient or is there still feelings of a doing something about this? Mr Gumede.

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MR GUMEDE: In fact I would like to be clarified particularly with the word individual. Does this not mean that a collective bargaining

rights protruded from this phrase? Thank you.

CHAIRPERSON:

Again perhaps unfortunately we will have to go back to our experts and hear whether if they can offer any help with that.

UNKNOWN:

I think - thank you. I think it would be it is normally a case whether the rights of the individual are protected. Then the rights in association with other individuals are protected in other words on a principle of freedom of a association. And assuming that there will be some work place rights and duties also included in the bill of rights which is very often the case and is in the interim Constitution.

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The right of the individual to freely association with other individuals implies collective bargaining in all sort of situations.

CHAIRPERSON:

Thank you Mr - I think Ms Routledge has been raising a hand for quite some time.

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MS ROUTLEDGE:

Okay I'm still on this issue and it's not whether I don't want

to list the different forms of discrimination, but maybe the Technical Committee can assist here. I see in the formulation they say that the individual rights shall be protected. To what extent does that protection actually entail the pro active action by the state to prohibit as well as to as well as to promote equality as far as I read the principle three in schedule four of the Constitution? It says that the Constitution shall prohibit discrimination and shall promote equality. To what extent does the protection actually entail that pro active action by the state through the Constitution?

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CHAIRPERSON:

Thank you. I hope the Technical Committee won't feel that they are in a dock - that they are being cross examined. It's a question of people who want to be helped understanding the matters better. Could they be of help, again, on this matter?

UNKNOWN:

Chairperson if I may try. I'm sure my colleagues will assist me to the extent that it may be required. Firstly it's not precluded, state action is not precluded. Presently the fundamental bill of rights list an exception to the principle

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of non discrimination, the fact that the state can act pro actively as you no doubt know.

Secondly I think it is implicit to the extend that if fundamental rights are to be are to be protected and the provision maybe made for them to be actively advanced, precisely to give effect to the principle of non discrimination. I don't think it precludes it as it is stated here, it doesn't go all the way. I mean it doesn't try and prescribe what has to be or prescribe what has to be in the 10 Constitution or in the bill of rights ultimately. It simply lists something which is common to most of the submissions that have been made to a to this Theme Committee. And as far as the individual rights are concerned as Professor Corder, as a co-author of the present bill has pointed out, there is a clause in that bill who actually says that with the extend that a right is capable of applying also to a cooperate entity it shall be so applied and in other jurisdictions where there is not a similar provision, the courts have held it to be applicable to cooperate persons and to voluntary 20 associations to the extend it can be so applicable.

CHAIRPERSON: Thank you very much. Any further clarification? Can we go to the next item? Sorry. Mr Meshoe.

REV MESHOE: Thank you Mr Chairperson. I want to go back to the question that was asked by Professor Ripinga because looking at point C it is not easy enough the way it is put. I propose that we add and fundamental rights of the individual shall be protected in an entrenched bill of rights full stop and that there be other sentences if who want to accommodate the need for a independent judiciary but putting them all in the same sentence complicates it. Thank you. 10

CHAIRPERSON: Thank you. Mr Macozoma.

MR MACOZOMA: Mr Chairperson it seems to me that there are two issues being dealt with in one discussion. When we had defining a bill of rights the justifiability by an independent judiciary is an issue that needs to be contained in the sentence that deals with that. You can't be (inaudible)... from it. If we want to move on into a, the next issue, we were talking about an independent judiciary but that's a separate 20

question.

So I would suggest therefor that the full stop should come in after justiciable by an independent judiciary. And then we can come up with a different phrase for an independent judiciary or even the principle of non discrimination, but there's no way we should (inaudible)... because it's a it's an inherent quality of the particular bill of rights that we wanted. It should just be justiciable, the fact that we have an independent judiciary elsewhere does not make it 10 justiciable in the sense which we want.

CHAIRPERSON: Thank you. Professor you wanted to say something.

UNKNOWN: No, except in that it sound an immanently sensible suggestion.

CHAIRPERSON: Right. Any further clarification on this? Can we go to the next item? Mr Hussein.

MR HUSSEIN: Just to cater for the possible problem of the definition of the individual and to remove any doubt that one is intending

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to refer to corporate persona as well. Perhaps in C the words - the word of individual should be replaced by person so that it would account for juristic person as well as natural persons. Fundamental rights extend in certain respects to corporate personalities as well as it is contained in the present Constitution.

CHAIRPERSON: Any..

UNKNOWN: Support that Mr Chairperson (inaudible)... 10

CHAIRPERSON: Any problem with that? Right, thank you very much. Can we go to D? Any comment? In the absence of any comment then can we go to E? Any comment on E? In the absence of any comment then we go to F. Professor?

UNKNOWN: With regard to F I think we I think our comments of yesterday are being noted. We don't want to repeat them.

UNKNOWN: Mr Chairperson may I say something about that? Shouldn't 20
we try to move closer to the wording of a Constitution principle 8 by saying elections shall be proceed in general on

the basis of proportional representation?

CHAIRPERSON: Mr Macozoma.

MR MACOZOMA: Chair I we don't have a problem with reflecting or approximating that principle as closely as possible. The part which was raised yesterday were the tension between proportional representation and constituency representation. So I would rather we go with the formulation that says elections shall proceed on the basis of proportional representation. Taking into account the need for effective constituency representation or some wording to that effect because in the end the Theme Committee that is dealing with that, might come up with a hybrid system and I think our formulation should enable them to do so if they do so decide. 10

UNKNOWN: Chairperson ...

CHAIRPERSON: Mr Marais. 20

MR MARAIS: That's exactly the problem that I have because we have a

problem with simple reference to proportion representation, in our submission actually, we suggested that we should consider making the - consider the possibility of preferring to proportion representation but then also consider that the inclusion of elements of geographical representation should also be explored. And something in that along those lines will satisfy us, otherwise if it's if it remains like this it will have to be taken away here and included under contentious issues.

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CHAIRPERSON:

Is the Technical Committee perhaps in a position to perhaps to look at the phrasing there, perhaps which might accommodate these views expressed.

UNKNOWN:

Mr Chairperson we've we've taken note of the views that have been expressed. The views that have been expressed now are in line with at least two submissions that we've had and not against any that we've had. So I think we would be able to formulate something along the lines that have been suggested because the suggestions don't seem to be at odds with one another.

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CHAIRPERSON: Thank you. Can we go to the next - Oh. Doctor Nzimande.

DR NZIMANDE: Ja Chairperson before we go to the next one. Yesterday we have suggested that the Technical Committee are experts - maybe should assist us by researching this issue. I just wanted to check whether that's agreeable.

UNKNOWN: Sorry I don't want to barge in. If I remember correctly we've argued that. We thought it was necessary and then the point was made that there's a specific block and I think 10 that there's just two, but it focuses on exactly this and that we might do double work if I'm correct.

CHAIRPERSON: Am I still a Chairperson? Thank you very much if I still am. Will I be accorded that status. Thank you Mr Moorcroft you're allowed.

MR MOORCROFT: Chairperson yes. Yes I've just given a reference that was agreed to, that was Technical Committee Two block five electoral system. So they will be dealing - their mandate 20 will be to deal with the whole ins and outs of the whole question of what kind of system.

CHAIRPERSON: Thank you very much. If the clarification is sufficient can we go to the next item? Thank you very much for that. G. Any problem - clarification?

UNKNOWN: In Constitutional principle one mentioned is made of one sovereign state. Now in this sub paragraph G mention is made of an undivided state. Now I have had a uneasy feeling there might be a subtle difference between the two and I want to know if I'm right or not?

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CHAIRPERSON: Can we be helped possibly by the Technical Experts. You are allowed.

UNKNOWN: This particular non contentious point is being presented I think, more from a international law perspective than from a Constitutional law perspective, whereby the sovereignty refer to does not preclude federalism to the full extend, but does not apply - imply a confederation and independence vis a vis the world at large as it were. So it is it is formulated from a inter law international law perspective as opposed to a Constitutional law perspective. For instance, if I may use an example, one will find in the constitutions of many

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federal states, properly so called, a reference to the state as being independent, sovereign and undivided. So I don't think if that is the concern that the reference to undivided here, means that federalism to the fullest extent is in any way precluded but it is in mind what - in some of the submissions that we've had.

CHAIRPERSON: Mr Meshoe.

REV MESHOE: I want to ask if there is not a better simple way that can be used that can be understood even by the late person in the street who thinks South Africa at the moment is divided into nine provinces. Now if we say on the one side we have nine provinces we have divided the country into nine provinces and here we're talking about an undivided state, is there no way a simpler word that can be used? 10

CHAIRPERSON: Well there is a question posed - I don't know. Well, I think the Technical Committee is very much ready with a very good answer like a (inaudible)... 20

UNKNOWN: Mr Chair it is possible that you can say a united state if you

wish to. That certainly is possible. I think just to emphasize Dr Heunis's this is being seen, it's almost like looking like looking at South Africa from the outside. South Africa is a sovereign state. It's an independent state in the world, and to people looking in from outside as it is the United States, it's an undivided state. It's a united state and that's the essence of this principle G or point G here.

CHAIRPERSON:

Thank you very much. Are you clarified? I hope the meeting is clarified. We're asking for the meeting not for ourselves I hope.

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UNKNOWN:

I just ask Chairperson, why can't we use the wording as it stands in Constitutional principle one? Why can't we say South Africa shall be a shall be one sovereign independent state?

CHAIRPERSON:

There's a question posed.

UNKNOWN:

Chairperson we can. We certainly can. The only reason why we refer to it to be undivided, and no one seems to be punting it, and it's certainly not the only reason why it's

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there, it's because it is in one or more of the submissions. So if you tell us you want it out by all means we will take it out or you will take it out as a matter of fact.

CHAIRPERSON: Mr Macozoma.

MR MACOZOMA: Chair I think the explanation given does satisfy me that in fact it is needed there. And I think we have to accept that we moved from a legacy and an experience in which a definition is still in our minds. And I think it doesn't do harm, especially as the insurance has been given that it doesn't delegate from those who want to propose a federal state. So none of us will come back and argue and say you agreed to be undivided and therefor you can't have a province. I think that takes care of the concern but I do think it is important for us to make the point sovereign independent and undivided because there are still political forces that want a division in South Africa. We need to make the point clear and unambiguous.

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UNKNOWN: Chairperson I have listened to all the arguments, I'm quite happy to accept the wording the reference to an undivided

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state and I would prefer that to a reference to a united state.

CHAIRPERSON: Any comment? Any problem? Dr Mulder.

DR MULDER: No I'm listening to Mr Sakkie Macozoma, he argued keep to the principles on the previous one . Now he prefer this one (inaudible)... stick to the principles (inaudible)... my reaction because that was worded in a certain sense and be acceptable maybe we can then keep it non contentious. 10
That's not a problem.

CHAIRPERSON: Do you need further clarification? Dr Nzimande.

DR NZIMANDE: Maybe in response to Dr Mulder, I'm not saying that I'm, and, and my colleagues Mr Macozoma's mind, but as a loyal member of the ANC I can read the mind of another loyal member of the ANC. I think that the reason why on, A we preferred to follow the principle is because we thought it would capture quite nicely and well what we we're wanting 20
to say, but we did say in fact Mr Macozoma did highlight that, that we bound them to follow the formulation as they

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are in the present constitution because that might be to limiting where we think it is not necessary.

CHAIRPERSON: Thank you. It seems we no longer have any comment on that. Mr Zondi. I'm sorry I forget the name.

MR ZONDI: Thank you Mr Chairperson. I (inaudible)... as far was the point referring to an undivided state? I just want to notify this house that in the presentation that the IFP will be tabling, we do raise some concerns about it. We think it doesn't cover our position. The position of those who want to propose a federal option. Thank you Mr Chairperson. 10

CHAIRPERSON: Thank you very much Mr Zondi. I hope the comments have been exhausted now. Can we go to the next item? That is H. Any pro - any comment or - okay we go. There is no hand I go to I. Any problem?

UNKNOWN: Chairperson as it stand there it says there shall be a separation between state and religion. I just want to enquire of the Technical Committee isn't church a better word than religion? 20

UNKNOWN: No we think not because church is more restrictive than religion is where religion is more encompassing to take into account other people with other faiths.

CHAIRPERSON: In the absence of any other comment then we can go to O. Mr Meshoe.

REV MESHOE: Mr Chairperson I want to have an explanation what does this really mean. The separation of state and religion. The reason I ask the question is because you, I'm hoping this does not mean keeping religious people out of the state, I need an explanation. 10

CHAIRPERSON: Thank you very much. Is there any answer? Perhaps is it just a good question?

UNKNOWN: Perhaps I could just respond and that is that in all the submissions, and there have been a number including among the private from private organizations and private individuals, which we work through in the last day or so. 20

This issue has been brought up on a number of occasions

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and there's never been any suggestion in any of the submissions. Indeed this particular issue, it was suggested to us by the ACDP's submission, and we put in the spirit of the ACDP submission just substitute the word religion for the word church because several other non Christian faiths religious organizations had suggested the substitution of religion for church. But it seems to be they all went together with absolute assistance on there be freedom of worship and freedom of religion.

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CHAIRPERSON: Thank you very much. Reverend are you making a follow up?

REV MESHOE: Well if that is put in response to what the ACDP put forward, I need to say that in the same document I say that we agree in the separation of the institutions but we do not mean that religious people can not be in the state. I think if we are clear and need an agreement on this one then I have no problem. Thank you.

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CHAIRPERSON: Any further comment? Thank you. Go to I. Any problem?
Oh! We are through with I. I'm sorry - J. In the absence

of any problem there we go further. Contentious points any problem?

UNKNOWN:

Chair can I suggest it will be better to give the IFP an opportunity now because there is no point in going through those contentious issues without knowing what the IFP's input is going to be.

UNKNOWN:

I agree.

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CHAIRPERSON:

No problem. I don't think we have any problem with that. Mr Kekana (MICROPHONE OFF) meaning the previous list.

UNKNOWN:

No I'm saying that I propose that there should be a point R there, something that we have raised in our submission that the executive should be accountable to parliament. So accountability of the executive to parliament I believe it is really non contentious. All the parties here agree with that.

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CHAIRPERSON: .

Is there any problem for inclusion of that phrase, it seems the phrase is to little to be to have to raise any contentions.

So perhaps the people who are writing can write that. Dr Mulder.

DR MULDER: If you're going, let me going to add I also want to add one but I think but I think one of the non contentious ought to be one of the contentious ought to be with the non contentious, but then if you want me to argue it now or so we do it later.

CHAIRPERSON: Do I understand what you say Dr Mulder? 10

DR MULDER: Yes I hope you understand. I said I think one of the points that is now put under contentious points I think we can put under the non contentious.

CHAIRPERSON: Oh you mean the transference (inaudible)...

DR MULDER: The transference of one.

CHAIRPERSON: So you are not responding to point K ... 20

DR MULDER: No, not that one.

CHAIRPERSON: Oh.

DR MULDER: No, if you're still adding names, you must tell me, should I be arguing it now or should we do it later when you're arguing the non con - the contentious points.

CHAIRPERSON: Which one? Perhaps it might be easy to go through it.

UNKNOWN: It will be point D Sir. Can I argue it for you then?

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CHAIRPERSON: Point D.

UNKNOWN: Yes.

CHAIRPERSON: Yes perhaps you can just put in short your reason why you feel it must go to the other side without going at length.

DR MULDER: No sure. I think the argument is been here and first I must put the Freedom's points the point of view. We do not agree with a lot of the points at the moment, not a lot but of some of the points in what is now non contentious points from a political point of view, but as I said we are not part

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of this Constitution, we were not part of all the negotiations but we at the moment are part of the process. So it is not argue, use for us to argue against them and try to retrench them because it's the principles that can not be changed. So in that sense we accept A to J as a reality but if then if I look at principle eleven and I can read it to you. If I can just find us here eleven. It says the diversity of language on culture shall be acknowledged and protected and conditions for the promotions shall be encouraged as well as the principles. And if you look at twelve again.

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It says collective rights of self determination in forming joining and maintaining organs of soul society including juristic, culture and religious associations shall be on a basis of non discrimination and free association be recognized and protected and also if I can go to thirty four. I've just read the first part of it. It says the schedule and recognition thereof, the right of self determination shall not be construed as precluding Constitutional provision for the notion of the right of self determination by any community sharing a common culture and language heritage whether in the Republic or in any other recognized way.

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Now against that background if you again look at D and you read it, it says representation and rights of cultural and linguistic minorities including group self determination. The argument from the Freedom Front would be it is in line with the principles and therefor it ought not to be contentious and it should then be shifted to a non contentious point as such.

CHAIRPERSON: Thank you Dr Mulder. Professor Ripinga.

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PROF RIPINGA: (Inaudible)...that matter is contentious. I would suggest that we proceed as a - the meeting as proposed. That matter is very contentious.

DR MULDER: Well. I'm quoting from the principles Sir. Principles can not be contentious.

UNKNOWN: No, that principle is contentious. I think when we come to that point it will be very clear that it is contentious.

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DR MULDER: Well then, the other principles are also contentious then. We will fight all of them ...

CHAIRPERSON:

May I direct the meeting to perhaps proceeding - I think somebody suggested that instead of going to the contentious issues let's give the Inkatha the opportunity and when we come to this, members will have ample of opportunity arguing that this does not belong to contentious, but it belongs to non contentious whatever. Seeing that after - no the so called non contentious list there's been an unopposed request that Inkatha be given the opportunity. Dr Nzimande.

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DR NZIMANDE:

Chairperson I think that we must treat this quite sympathetically from the Freedom Front and find a way of dealing with this in a manner perhaps we can all be comfortable with, because I think the fear of the contentious dimension would be - how this could be abused for instance without the provocative. Coming from Kwa Zulu Natal I always react very negatively to notions of Zulu self determination as if Zulu's were a single political group and so on.

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In other words from my point of view it could be abused. Similar I'm sure within the Afrikaners there's a debate and

so on but I'm quite sympathetic. I think I do understand your point. Such that one could possibly consider the principle itself is one way of dealing with this particular matter because I think it's principle - what - twelve.

DR MULDER: Eleven and twelve more or less ...

DR NZIMANDE: Eleven and twelve, yes that - maybe one should be looking at those kind of formulation in a manner that perhaps would cater for Dr Mulder's concern and also be able to cater for the kinds of concern that we would have on the side of the ANC in particular. 10

CHAIRPERSON: Thank you very much. I think that - Reverend has still one on this one. Something else. I thought we're really just clarifying this question raised by Dr Mulder. We are going back to the presentation by Inkatha according to the ruling of the meeting.

MR STREICHER: Chairman let's get to that point. When we get to E then we can raise these issues. 20

CHAIRPERSON: Thank you. Mr Meshoe are you preventing us from going to the presentation of Inkatha?

REV MESHOE: Not really Sir. Please allow me to go back to that point. I - because I'm - I gave it some thought and I want to propose an amendment that we say there shall be separate (inaudible)... state (inaudible)...

CHAIRPERSON: Mr Meshoe I think just a minute. I think we indicate that we are merely discussing this matter. We are going to take resolutions later. Perhaps when we come back to it then you can raise it, because now it will be very bad for us to say we now give Inkatha an opportunity but we go back to (inaudible)... We go back to the Inkatha submission. I mean we must have a structured way of discussing matters. So I would think at this stage we do one thing at a time. The meeting has felt that we give Inkatha the opportunity and I think nobody opposed that. So Inkatha you are given the platform.

MR MTSHALI: Chairperson and colleagues in the first place may I, on behalf of my political party, express our apology there for

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haven't being able within the time constraint to produce the document and have it read here for the meeting at two o'clock. This morning we had our party meetings and then the typing had to go on. Please accept our apology. It was not intended in any manner to disorganize the work as scheduled for this afternoon. Thank you.

The IFP is not in the position to subscribe to and therefore objects to the document as tabled yesterday as a framework to the report of Theme Committee One. In the first place 10
it must be noted that the Constitution making process as it is presently envisaged and structured would not, will not allow political parties to make any substantial submission to either the Constitutional Committee or the Constitutional Assembly. I'm sorry.

Therefore all parties inputs are to be made in Theme Committees and will be considered in the future stages of negotiation and Constitution making only to the extent that they are embodied in the report of a Theme Committee. In 20
other words any issue raised in a party submission which is not part of a report will no longer be considered in further

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stages of Constitution making and is going to be obliterated.

Paragraph two. Accordingly the Constitutional Assembly has given the binding instruction that all Theme Committees provide details of all issues which had been raised within their respective scope of work including the parties submissions. Specifically the Constitutional Assembly has instructed each Theme Committee to draft a report which is to list all contentious and non contentious issues and shall contain and describe the full details of such issues as they're 10
being proposed by each party concerned. Reference is made to resolutions adopted by the Constitutional Assembly on the thirty first of October 1994.

Three. The Constitutional Assembly has also decided that Theme Committees shall not be negotiating in fora, but shall merely be a conduit for information and positions to the Constitutional Committee, therefore their activities should be limited to collect, collate and organize the various parties positions on all relevant issues. Theme Committee 20
reports shall reflect the purpose of the Theme Committee and shall be an inventory of positions and arguments

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discussed in a Theme Committee in each relevant block. The report on block one of Theme Committee One should be an extensive document.

The IFP doesn't accept a double spaced, one and a quarter page draft report attempting to summarize very complex issues submitted by parties.

Five. The IFP specifically objects to the intention shown in many places of the report which tries to reconcile different positions. It is not the role of the report to use very broad expressions which in their generality may seem to subsume and reconcile the details of conflicting positions expressed by the various parties. This attempt to reconcile positions avoiding their characterizing details, so as to subsume contention into broad and often meaningless generalities, is not an illegitimate exercise, specifically a broad range of issues raised in the IFP's submission, which in the opinion of the IFP are germane to the identification of the character of the state, are not even mentioned in the report.

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For instance the following issues raised by the IFP are not

listed. The supremacy of the Constitution paragraphs two and three, Separation of Powers paragraph's two, three, four, five, six and seven, Type of Democracy paragraph's one, two and three, Representative Democracy paragraph one second part and two and three, Participating Democracy paragraphs one, two, three and four, Transparent and Accountable Democracy paragraphs one, two, three and four, Type of State paragraphs one, two and three.

All these issues relate to the fundamental characterization 10
of the State as a Unitary or a Federal State or to the
Constitutional structuring of a democratic society on the
basis of the principle of pluralism or of the principle of
social organicism.

Six. The entire set of IFP formats have been completely
ignored in the above mentioned document and the IFP
request that it's entire submission be included in one form
or the other in the report. The IFP does not see how the
Theme Committee can decide to take out any single 20
statement by the IFP in their submission without either
becoming a negotiating forum or failing to provide full

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details about the relevant contentious issues or non contentious issues. No statement made by the IFP in it's submission is either not germane to block one or is redundant or can be further summarized without elementary fundamental characterizing details.

Seven. The report may not contain only those common denominated issues which are addressed by all parties, for these will allow any party to frustrate discussion on relevant and necessary issues by virtue of it's non taken positions of them. The Constitutional Assembly has instructed that all issues be taken from the Theme Committee to the following stage of consideration. 10

Eight. Specifically the IFP objects to point 2G of the report which indicates that there is an agreement on the statement that South Africa shall be an undivided state. The IFP believes that provinces shall not be part of the strict sense of State but should rather be autonomous entities organized under the Constitution an Independent formed State. 20

Nine. The IFP also objects to all the other points which had

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been listed as non contentious issues. In fact they are non contentious only to the extend that, and because of the fact, that none of the relevant and characterizing details submitted by the IFP in it's position paper have been taken into account and reported on the issues of transparency, accountability and political representation may be mentioned in this regard. More over the list of non contentious points also list items which have not been addressed by the IFP because they will be the subject of submissions in subsequent blocks.

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If the Theme Committee wishes to consider items which are not part of this block one, such as Separation of State and Church, it should make reference to the IFP preliminary submission to the Constitutional Assembly which list IFP's preliminary positions and view points which are not covered in the submission made for block one.

Finally with respect to issues indicated as non contentious points or contentious points the IFP raises also an objection. In fact the list of issues is not descriptive of the issues at hand and fails to define the Constitutional dimension,

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dimensions and the terms of the political debate. With respect to each relevant issue in this respect, reference can be made inter alia to the issue of pluralism and the autonomy of civil society, the autonomy of Provinces with respect to list of powers and relation between levels of government and the relation between the supremacy of the Constitution and provincial autonomy. The fundamental division of powers between any level of government and civil society and whether South Africa should be a Liberal, a Social or a Socially State.

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Reading the report it could appear that non of this issues which this Theme Committee has debated for three months have ever been considered. Thank you.

CHAIRPERSON:

Thank you very much Mr Mtshali for presenting this matter to the Theme Committee One. I have here, the secretary tells me I can not look at all sides. I've been told I must look at all sides. The secretary told tells me that Dr Blade is the first person, then Moorcroft then Mr Macozoma.

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DR BLADE:

We would like to suggest as the ANC that perhaps we break

up for about fifteen minutes to be able to caucus as different parties in order to be able to try to take the process forward and also to get caucus of the in the mean time make of the IFP's submission.

UNKNOWN: How long do you suggest we break ..

DR BLADE: I said just fifteen minutes. I don't know.

CHAIRPERSON: What's the feeling? There is a suggestion from the ANC for 10
breaking or for having a adjournment of fifteen minutes for
the purpose of trying to enhance the process? Dr Mulder
you have any problem with that?

DR MULDER: The Freedom Front hasn't got any problems with that. Our
caucus can come together immediately but I think it is
sensible. Let's do it and see what happens from that.

UNKNOWN: Chairperson you may want to then consider at your various
caucus meetings that the following positions that I take on 20
behalf of your Technical Committee. We firstly regard
ourselves as being uninstructed experts. That means that we

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have a loyalty to this Theme Committee as such and not to any of the political parties represented here and also that we're not answerable to any of the political parties.

We were mandated by the Theme Committee qua Theme Committee to extract from the various submissions that were made by the political parties represented in this Theme Committee contentious matters and non contentious matters. We have honestly endeavoured to do that. We think that all the matters that have been referred to can be validated to the contentious and non contentious issues in one way or another that we have identified, and unfortunately we need to record that we take exception to the fact that our work is being referred to as meaningless and effectively exceeding our mandate. We don't have to stand for that. We have other work to do and if need be we are going to do that.

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CHAIRPERSON:

Mr Mtshali it seems there is, well there is no problem I think, in political parties being engaged in political debates. There is no problem with that but the moment it comes to the neutrality it touches the neutrality of the Technical

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Committee which is suppose to be non partisan. Could you perhaps try and heal the wounds which seemingly have been caused, but it's unintentionally to the Experts?

UNKNOWN: As a point of order comrade Chair.

UNKNOWN: Chairperson.

CHAIRPERSON: Point of order.

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UNKNOWN: Yes I don't know, there has been a request by the ANC for a ten minutes to fifteen minutes caucus. You haven't made a ruling on that.

CHAIRPERSON: I think it's unanimous on that one. It's only that the experts are raising a problem of being the - their work being referred (inaudible)...

UNKNOWN: Point of order overruled.

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CHAIRPERSON: I'm the Chairperson. Look at me Mr (inaudible)...

UNKNOWN:

What I'm saying Mr Chairman is that I thought this was a comment and of course it may be important that in our caucus also we include this you know, then we can come back then and parties can then respond to the situation in totality.

CHAIRPERSON:

You see the problem with that. If the feeling of the meeting is that let's leave everything the way it is then (inaudible)... problem with that. Ms Routledge.

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MS ROUTLEDGE:

Thanks comrade Chair. I would like to further request perhaps during the break the technical team, and I'm sure we'll all agree with this request, assist us with the resolution that keeps being referred to by the IFP, because I have a feeling that the IFP is misreading that particular resolution.

It's resolution thirteen point one I think of the CA thirty first of October. It is just an additional request that during the break the technical team also look at that particular resolution.

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CHAIRPERSON: Thank you very much. Then at this stage I'll declare the meeting as adjourned for exactly fifteen minutes.

UNKNOWN: Mr Chairperson I had my hand up.

CHAIRPERSON: Ja would you like to say something?

UNKNOWN: Yes.

CHAIRPERSON: Before we adjourned very short.

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UNKNOWN: Yes please. Chairperson and colleagues may I make this point very clear that it was not our intention in any manner to create an impression which in any manner impairs on the integrity of the Technical Committee. If this document has created this impression, may I formally express our apology. Thank you.

CHAIRPERSON: Thank you very much for such healing. I hope it will go well - shouldn't we adjourned at this stage. Ja, the meeting is adjourned.

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ADJOURNMENT

CHAIRPERSON:

Ten minutes is over. Could everybody come in and we proceed with - where we stopped. It seems members are going out. I thought we are saying all members should now get in we've start with the work. May we respect the fifteen minutes. We've just agreed that it be taken. People in the foyer are requested to got in. The meeting's suppose to start. People in the foyer are all requested to got in. The fifteen minutes are over. People in the foyer are requested to got in. The fifteen minutes is over. Thank you for responding. Dr Mulder and his team is not in. Still on the - still on the fellow break.

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UNKNOWN:

Chairperson can I suggest that you give two more minutes because I suspect there might also be some inter party lobbying which I think is helpful.

CHAIRPERSON:

I'm trying to wait for them - in the meantime calling them in.

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UNKNOWN:

Oh.

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CHAIRPERSON:

We will wait for one or two minutes but we are encouraging everybody to get in. Thank you Mr Marais for coming in. We thought you have a new caucus without the National Party delegates.

The Freedom Front is caucusing perhaps. Just scream next to them that the fifteen minutes seems to be over. Could somebody with a sharp voice do that please? Well we are coming to twenty minutes now - abegg yours. We're running out - running two minutes to make twenty minutes agenda. I think exactly twenty two would be enough to - as much as I would love everybody each party to be represented when we come back but we can not wait beyond twenty two. Now it's exactly twenty to four.

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I'm bound by the decision of this Committee to declare that the meeting is resumed again. Thank you very much for having given us for giving everybody the opportunity to go on caucus or perhaps get mandates from the principle I hope. Now at this stage we should come back and look at the impact or perhaps the understanding from the IFP document. I will see by the raise of hand who want to say

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something about it. I have Mr Macozoma, Mr Vilakazi, Mr Marais, Mr Moorcroft in that order.

MR MACOZOMA:

Chairperson it is our believe that this Theme Committee has reached a critical situation. We listen, we write very carefully what the IFP has presented to us here. We believe that it constitutes an assault on the entire process of Constitution making and I think the implications I'm going to raise them as I'm proceeding in my argument. The decision in fact, if you read the very first sentence, the issue here seems to be the Constitution making process itself and not so much the provisions or the issues that are in the in the report of this particular Committee, but the IFP seems to be objecting to how the Constitutional process is proceeding.

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Now we do grant the IFP the right to object to that but we would like to point out that this process has been agreed upon at the level of the CA at the level of the CC and various other levels and up to this point we have not had the impression that the IFP was opposed per se to the process itself and this document leads us to conclude that in

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fact, the IFP is opposed to the process per se rather to the specifics of the issues that have been raised. Secondly we believe that many of the points that appeared in the summarized position of this Theme Committee are actually contained in the Constitutional principles that appear in schedule four of the Constitution and therefor we fail to see that in fact, that the IFP could respond in such an all encompassing way in rejecting this positions; and our understanding therefor is that it cause the question as to whether in fact the IFP does accept the Constitutional principles, does accept that the Interim Constitution enjoins us to proceed in a manner that actually encompasses those particular principles. 10

We would like to make, to put the - our view on record because we think that as I've said earlier on it is a turning point. However we believe that there is a way in which we can proceed as this particular Theme Committee, and that way will be that we have identified as a Theme Committee those areas that are contentious and those areas that are not contentious. In fact we've gone through the non contentious forms. We go now to the contentious forms. 20

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We propose that we proceed with that process and we give a report to the CC and to it we attach the objections of the of the of the IFP as they are contained in this particular document and let the CC decide with that. We're proposing this because we believe that we need to we need we need to proceed. Many of the issues that the IFP raises here are actually contained in, except that they are not being contained in the language in which they want it etc. etc. The point that they make for instance is to whether other positions would be considered or that other positions will only be considered if they are part of the of the report of the Committee, is to us incorrect because there is a way in which any other submissions can be considered if they are not part of the of the report of this Committee.

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So we suggest that, rather than go through this document and exchange in discussion that we will produce more heat than light, we'll proceed with the discussion on the contentious and non contentious. We include a paragraph that says the IFP objected to all the issues raised and find attached here to a memorandum from the IFP indicating the areas of objection.

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CHAIRPERSON: Mr Vilakazi.

MR VILAKAZI: (Inaudible)...

CHAIRPERSON: Oh, Oh Thank you very much. I think the next one was Mr Marais.

MR MARAIS: Chairperson I'm not going to disagree with what Mr Macozoma has said. I just want to make a few other remarks also and also to state the same point of the National Party very clearly. 10

I want to try link on to this first sentence of the comments that we heard from the Inkatha this afternoon. It says preliminary it must be noted that the Constitution making process, as it is presently envisaged and structured, will not allow political parties to make any substantive submissions to either the Constitutional Committee or the Constitutional Assembly. 20

Now Chairperson, I disagree with that and I was in any case going to make the following statement, and that would been

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from the from National Party side, we want it to we want to ensure that there is a clear understanding that by endorsing the general trend of the draft report we do not renounce our right to argue in favour of or to promote in the Constitutional Committee or the Constitutional Assembly any of the points or all of the points that we've making our submission to the Theme Committee.

And secondly we don't agree to the derogation from any provision of any of the Constitutional principles set out in 10
schedule four of the Constitution. And we want this stand point of or of ours to be part of the report. Now I would like to appeal to Inkatha to consider following the same line. I think that is very important. We also agree with what with the suggestions made by Mr Macozoma that we should put forward and a as a independent document not as an annexure to the report but separate loose standing document of the comments made by Inkatha.

CHAIRPERSON: Thank you Mr Marais. Mr Moorcroft. 20

MR MOORCROFT: Thank you Chair. Chair I agree entirely with the suggestion

put forward by Mr Macozoma. We have a clear choice before us. Either we can move in the direction he has indicated or else we can now engage in a long and heated debate about the pros and cons of this document before us. It is not, I repeat, it is not our brief to achieve unanimity in this Committee.

If a party such as Inkatha disagrees fundamentally with the way in which we are setting about our business it is their right to state that and to do so by way of a document such as they have done and then I believe it is incumbent upon us to present that document as fairly as possible. Mr Marais has indicated how that could be done. If Mr Macozoma has put forward his proposals as a formal proposal to you, I'm happy to second it and move that we then proceed as suggested by Mr Macozoma.

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CHAIRPERSON: Move.

MR MARAIS: Propose I - I second.

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CHAIRPERSON: Thank you. Ms Seaton. I'm noting that after Ms Seaton I

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will ask whether anybody descending but I would allow Ms Seaton to comment on what has been said.

MS SEATON:

Mr Chairperson I just want to raise one concern with regard to the proposal - that we continue to discuss and debate the document. My understanding prior to the Inkatha Freedom Party's submission was that the issues raised were not to be seen as contentious or non contentious. They were merely to seek clarity at that stage and the discussion as to whether they were contentious or non contentious would only be after the IFP's submission.

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I just, I seek clarity on that because I made it clear that until the point that we've had made had an opportunity to make input we see that the entire document is contentious.

CHAIRPERSON:

Thank you very much. We, I think we have had all the people who wanted to talk on this. Dr Nzimande.

DR NZIMANDE:

Ja, I will like to respond to this later statement. I think that Mr Marais in fact has put it quite clearly that when we write our report we will include the IFP's document as part of the report and no less a significant part of the report. But what

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we would not like to see happening here, and we must just place this on record, as the African National Congress is the kind of World Trade Centre - kind of behaviour where we get bogged down. We are not saying we are undermining nor we are looking down upon what the IFP is saying or what it feels but most of the parties here are committed to continuing, that we discuss the rest of the document and as part of the report we will indicate that the parties felt this adequate captures non contentious and contentious with the exception of the IFP and their report will be in there otherwise the we cannot accept the fact that we have to stop now it means in essence there tantamount dissolving this Theme Committee because, as Mr Moorcroft is saying what is the way forward. We don't want to discuss this document here. We don't believe that is within our brief to actually go into detail in relation to this document that the matter belongs to CC but we must not be stopped in terms of continuing going through this report which is before us. Thank you.

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CHAIRPERSON:

Thank you Dr Nzimande. There was Lekgoro and then Mr Mtshali.

MR LEKGORO: (Inaudible)...

CHAIRPERSON: Thank you. Mr Mtshali.

MR MTSHALI: Thank you. Chairperson and colleagues may I make the statement that the document which was prepared for the Sub Committee was meant as a preliminary framework document. Now if that is the status of the document there is therefor need for flesh to be added onto that document as it proceeds. Thank you.

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CHAIRPERSON: Thank you. I will like to go back to the suggestions - proposal, formal proposal has just been made. I think I have allowed few comments from the people who have raised that. Now there's been a proposal by Mr Macozoma, it's been seconded by Mr Moorcroft and some parties have talked in favour of that view. Is there any descend from the proposal made by Mr Macozoma which came - boils down that this document will go to together - will go to the CC together with the written report we would come out with from the work we've been doing before this document was in. Any descend?

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MR VAN DEVENTER: Chairperson ...

CHAIRPERSON: Are you descending fully?

MR VAN DEVENTER: (Inaudible)... to what Mr Marais said because Mr Marais also indicated that this document, I'm talking about the preliminary framework, is acceptable to us, to the National Party but at the same time when we come to the final decision what we are going to submit to the CC we must taken to cognisance, that we have got a broad document 10 which is already been submitted.

So we don't take an attitude different to the Inkatha Freedom Party. We have the same view because one doesn't want to have any misunderstandings as to what one's attitude is, but we are quite happy quite happy with the wording of the preliminary framework and obviously the Inkatha Freedom submission should be included but at the same time have some profusion in the report that although accepting the preliminary framework, one should view it 20 against the background of the submission made, total submission made, by the National Party in this Theme

Committee on the first on the first issue.

CHAIRPERSON:

Thank you very much. I hope that was the understanding Mr Macozoma.

MR MACOZOMA:

Yes it is the understanding but I think it does give a different flavour with due respect to Mr van Deventer. I didn't understand Mr Marais to be Mr Streicher excuse me with due with due respect, I didn't understand Mr Marais to be suggesting that we need to add a clause in the report of this Theme Committee saying because all of this things are understood otherwise if we're going to be, you know, finding ways of that kind of issue in every report those things are understood. 10

We have discussed this thing yesterday. It was understood that no political party would be prevented from raising any issue that they want to raise at any point at which they want to do so. But we can't take a report to the to the CC that says we have agreed on this issues and then say in effect every party is entitled to (inaudible)... because it's (inaudible)... it is totally unnecessary to the extreme to this 20

issue and it does depart from the understanding that we have here.

UNKNOWN:

Chairperson thank you very much. I think I'll try to be helpful. The points I have made, the two points, I'll be quite satisfied if we decided that can be minuted as part of the proceedings of this meeting. It can become part of the minutes of this meeting of Sub Committee One.

CHAIRPERSON:

Thank you. Mr Zondi.

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MR ZONDI:

Chairperson I just wanted to ask a question. The question is whether the suggestion that this house continue to discuss the points, as are reflected in the framework and the attached, the document which was tabled by the IFP here, whether the discussions that would be continued with here pre - suppose that the IFP would then be excluded from that process or whether the house expected the party, the IFP, to participate.

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CHAIRPERSON:

Is there anybody who will attempt an answer to that?
Comrade, I'm sorry Mr Blade ...

DR BLADE:

No you can call me Comrade that's fine. That's even much nicer than Dr Nzimande. Chairperson I don't think that we're excluding the IFP. I think that we must just say we specifically said that what the IFP has raised here is gonna be part of the report. Therefor the IFP can not expect that it's report becomes the main - and those of us who want to grapple with the rest of the document are therefor prevented. I thought that gives everybody an equal chance because if we don't continue it's like then in effect what we are taken for what is the IFP's objection.

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That's all and our own views the rest of the other parties that want to grapple with these - will then be submerged in essence they will not be there. It is in that spirit that we, I think, that we should proceed. We have accepted the document. Mr Marais has outlined it quite clearly what the status of this will be as part of the report. Let also the other parties who want to continue to finish off this be allowed to do the same and all of that will be part of one and the same report.

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CHAIRPERSON:

Thank you very much. I think we must come to a

conclusion about this matter, this subsidiary matter, but haven't allowed the PAC to raise a view. Mr Mtshali. And I hope this is the last person on this, then we must get the view of the house what should I do.

MR MTSHALI:

Chairperson I'm covered by Mr Nzimande but now relating to the question of whether Inkatha should stay or not stay I think it rest entirely on them. If they are not satisfied with a, I mean, with a majority decision here that we must continue, they can not say Inkatha must go. Thank you Mr 10
Chairperson.

CHAIRPERSON:

Well, now I put the question to the house. There is a formal proposal put. What is the view of the house?

MS MOHALE:

There was, there was a motion by Comrade Sakkie and it was seconded and nobody opposed that motion. So I don't think we need to (inaudible)...

CHAIRPERSON:

It's exactly where I am Ms Mohale. I'm asking whether if 20
it's okay. What are - what are the parties feeling about it?
I just want to hear a noise. That's all I'm trying to get.

Okay! Any descend? All right, thank you very much then we proceed. I have now the mandate of going back to the document. We are busy, we have completed looking at the now, the, page fifteen. We are just about to go to page sixteen. Professor.

UNKNOWN:

Chairperson I would like to say that we have been given the assurance that this document was never intended as being a reflection on our impartiality and professional integrity and we accept that unreservedly. Thank you Sir.

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CHAIRPERSON:

Thank you very much for having had such clarification. Point A on page sixteen. Any comment on that? On page sixteen. I say we are on page sixteen A contentious issues, contentious points. Any comment or input on A? Mr Meshoe.

REV MESHOE:

You promised that you will give me a chance to state my point on page fifteen.

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CHAIRPERSON:

Ja I say - at present. We will go back to that. We are at page sixteen A. Ms Routledge.

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ME ROUTLEDGE: I'm not sure if we actually want to go through it point by point. I thought there was a suggestion yesterday that in fact a lot of this contentious points don't even belong to our Theme Committee's ambit of work. I see the first one and it seems to refer to separation of powers, which item is dealt with by Theme Committee Two. So I'm I'm suggesting rather than going through the whole - I mean from A to F, I mean to E, could we not just have a blanket thing that says - no this issues we feel as a Theme Committee did not actually fall in the ambit of our terms of reference.

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CHAIRPERSON: Could I get a understanding. You mean all of them or are there some which you feel must be taken out and some we put in. Now, what I was trying to do by going (inaudible)... one that not belong then we strike it off the who belong here - we leave it there.

MS ROUTLEDGE: I withdraw Chairperson.

CHAIRPERSON: Thank you very much. A. Is there any input on A?

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PROF CORDER: Chairperson I think the suggestion that's just been raised is

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a good one. We shouldn't just dismiss it too lightly I think, but we can just modify it. I think we can just go through these and with the assistance of our technical experts we could just identify, for the purposes of our report and recommendation, where these properly fit, for example A does not fit under both two Theme Committee Two and particularly Theme Committee Three. We might just mention that as that's our recommendation that this - these were seen as contentious issues in our Theme group and should rather been dealt with in the specific Theme groups and so forth with B and so with C so with D and so with E.

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That way we identify the most contentious points, but also are in the position to give recommendations as to what we believe should be done with it for example B is Theme Committee Two's responsibility, but then I think our technical experts will be better placed to assist us.

CHAIRPERSON: Professor Ripinga.

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PROF RIPINGA: But Chairperson I thought Professor Corder made attempt to explain this issue. The issue of the interdependence that,

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you know, the definition that we are having is merely academic. Theme One deals with the character of the State. All the issues here, the broad principles, will actually be defined in Theme One. So I think let's proceed. We are not getting to details. We are looking at broad principles.

CHAIRPERSON:

So there is no comment on A. B Mr Kekana.

MR KEKANA:

I think if a, if one reach a - you see we are talking about the nature and the extend of powers of various levels of government. I don't know if that could be said to be a principle that is contentious. I don't think this I don't think this is a principle and therefor it belongs to that other Theme Committee. You know I don't see us saying as a principle the nature and extend of powers of various levels of government. 10

It doesn't, there is no substance as it is. You know if we elevate it to a level of principle maybe there could be a reformulation and then we will understand why it is contentious, but to me if we get rid of A, not even put it in our report, it doesn't really change anything at all. It was 20

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anyway, belongs to another thing, but maybe the others could still go on then.

CHAIRPERSON: Mr Moorcroft.

MR MOORCROFT: To respond Chairperson. I don't want to disagree. Actually that is covered under Constitutional principle eighteen section two, so it's a Constitutional principle, but as the honourable member rightly says, it doesn't really fit under our Theme Committee, so let us let us discard it. Let us not waste time over it. 10

CHAIRPERSON: So you propose that we discard it?

MR MOORCROFT: Be reflected Chairperson, because that has come up out of the reports, but our recommendation is that we do not need ourselves to further continue debating it because it would be more properly dealt with by a more relevant Theme Committee. 20

CHAIRPERSON: All right thank you. Dr Mulder.

DR MULDER:

No that helps me. I just thought that (inaudible)... we actually discard it, because then we must go back to the contentious non contentious ones as well, because a lot of them is also broadly spoken and I agree with this point being put over there. We must reflect them in the contentious and the non contentious, so I think I'm being covered now.

CHAIRPERSON:

So we say it stays the way it is? Right B, then if there's no problem, then C. Dr Mulder.

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DR MULDER:

Now if it get to C Sir, I think the emphasis if I read it correctly is parliamentary supremacy as law maker and then the emphasis on in the context of provincial autonomy. But, just not to be nervous, I would like to amend maybe to start with subject to the Constitution comma parliamentary supremacy as a law maker, because it can just be thought that maybe we're now doing parliamentary supremacy. It depends where the emphasis is, on the first part or the second part.

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As the first amendment I don't think it changes much. Is

the emphasis here on the provincial legislative autonomy or is it on the parliamentary supremacy as lawmaker. Which one is the contentious one and I think the - idea is the second part and therefor, just with this sort of subject, that the Constitution comma I think we should have made it clear.

CHAIRPERSON: Any other comments on this?

UNKNOWN: I support it.

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CHAIRPERSON: You support the proposal?

UNKNOWN: Yes.

CHAIRPERSON: Any other, Mr Macozoma.

MR MACOZOMA: Chair ...

CHAIRPERSON: Comments. Comrade Mr Macozoma.

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MR MACOZOMA: Chair we have debated this question quite at length and our

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preference was that the issue of the Constitution and the supremacy of parliament should be separated and therefore, if you look at the non contentious issues in one, the Constitution is dealt with there and we're not contesting it, so it's right there. What we were raising was the issue of the supremacy of parliament in making the laws of the lands, not in relation to regions.

In fact that formulation that includes in the context of the provincial legislative authority I have a difficulty, because it shifts the issue from what was a contentious issue of the supremacy of parliament in making law. And I think that if it needs to be covered it can be covered elsewhere and I don't think it belongs to this Committee anyway and so what is the issue of contention is parliament's supremacy of - full stop then you can that contention raises out of out of the people who feel that it should be a subject to the Constitution or particular formulation of that issue. Others feel that it so be subject to the provincial legislative autonomy etc, etc, various other issues.

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Those are reasons why it's contentious. It is not that those

things themselves are contentious. So the thing should read parliament's supremacy as law maker - full stop. That's what is contentious. It's contentious from various view points from people saying it should be subject to and people saying legislative autonomy etc, etc.

CHAIRPERSON: You're proposing a formal amendment?

MR MACOZOMA: Proposing a formally that it should read parliament's supremacy.

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CHAIRPERSON: Any seconder. Seconded. Any descend on that. Right. In the absence of any descend ...

DR MULDER: Chairperson can I just say, it's very its very clever of the other side, I get what you mean. So I think it is correct in the sense that is the contentious point, but I personally thought the interest is on the second part and I think it changes a bit but maybe we misunderstood each other from the beginning that I thought that argument is done with point A on the other side Constitution etcetera.

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So one way is wording it from the parliaments point of view the other way is wording it from the provincial point of view. And I understand why the ANC prefers the first one. I'm not necessary sure the best wording from my point of view. So can I still keep it open to think about it but you can continue now.

UNKNOWN: The fact that this is included under contentious points should actually satisfy ...

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DR MULDER: Sorry I prefer it to be worded in my way the contentious. And I think they are very contentious.

CHAIRPERSON: Dr Mulder if I understand you, you don't have problem with this contentious. You still think about why it's contentious. So if you fully agree you then go to non contentious. Is it what it means?

DR MULDER: It is Thursday afternoon. I'm happy. We make it is. We'll fight later on.

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CHAIRPERSON: Thank you very much. Then we go to the - amendment. I

hope that people who are noting are noting that. D. Any comment or is it okay? Dr ...

UNKNOWN:

Chairperson there was the point raised by Dr Mulder. I'm not speaking on his behalf. This time I can't read the mind of the member of the Freedom Front but, I had thought that we need to try to come to some kind of understanding. I think that the Constitutional principles, I think eleven and twelve, either we could take that as is and put it under non contentious issues or we find a formulation that is closer to that. Maybe the technical experts could assist us.

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It's just that I'm reluctant. Sometimes if we say, if there is a formulation already, if the Freedom Front is happy with that formulation rather lets not get into detailed formulations because we get into long negotiations at this stage, but as I said from the side of the ANC we feel that there is a certain level of non contentious in so far as that issue is concerned and that it should be properly reflected. What am I suggesting comrade?

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CHAIRPERSON:

(Inaudible)... you know what you are suggesting so that we

put it forward.

UNKNOWN: The Constitutional principles ...

DR MULDER: I think he ...

UNKNOWN: If it depends though on Dr Mulder if (inaudible)...

DR MULDER: The comrade tries to get into the Freedom Front's head and there he got trouble now. He does not understand it. No 10
I think it is quite complicated. Maybe the experts must help us on this one because I hear what's been said there. I'm not worrying about the wording but the contentious non contentious I would like to see if it is possible to get it as non contentious, of course it will be important to us.

CHAIRPERSON: Mr Macozoma's.

MR MACOZOMA: Can I make a suggestion that we find a formulation of elev - that combines eleven and twelve but also thirty four because 20
eleven and twelve are qualified by thirty four? It would sit comfortable with me if in fact we get a combination of

eleven and twelve with some reference to thirty four. In order to take care of what Blade had said is an uncomfortable situation of abuse of that principle. And I believe that thirty four was actually an attempt to try and put in within certain parameters.

So if the Constitution expert can be asked to do it then I would accept it as a non contentious.

UNKNOWN:

Excuse Sir ...

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CHAIRPERSON:

Are the, are the experts able to give any guidelines on this for us? To solve this problem?

UNKNOWN:

Perhaps I could just respond. Now Sir, one of the difficulties is that we're dealing with two different fishes here in some ways or two different kettles of fish. On the one hand we've got the thirty fourth Constitutional principle which I understand the Constitution are immutable it may not be changed. They are the framework against which the final Constitution must be drafted. And therefor these words are almost in a sense written in stone.

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On the other hand what we were attempted to do here was to capture the kinds of concerns raised by a number of parties, but the Freedom Front in particular, and perhaps it would be more accurate said that what was what was contentious was the extend of representations and rights of cultural and linguistic but now it includes self determination. That is what is contentious. What is not contentious as I as I gather also now from the debate, is that there should be some representation and rights of cultural linguistic minorities including group self determination. Is ...

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CHAIRPERSON:

I think the Professor - what Dr Nzimande are raising is C not D. Yeah D. Okay.

UNKNOWN:

Thank you. That's really all I wanted to say, is that it's going to be quite difficult to redefine eleven twelve and thirty four. I mean we can give it a go and I'm not scared of that if that is your wish but in a sense I would suggest that eleven, twelve the essence of eleven twelve and thirty four are captured in this statement in but if it if it is not sufficiently well captured then we will have to think again and come with another proposal.

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MR MARAIS:

I believe that the fact that reference is made to representation together with rights and so on really makes this a contentious issue and it doesn't mean that it's not going to be discussed again and that the and that the an opportunity will be given to argue all (inaudible)... to the Freedom Front, for instance to argue their case but I'll think the fact that representation is mentioned here it (inaudible)... it actually means that what is what is said there goes beyond what is said in the Constitutional principles.

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CHAIRPERSON:

So you maintain it is contentious from the National Party.

UNKNOWN:

Chairperson whilst I understand Mr Marais and in fact I do share as I have said many and I don't think anyone does not understand that this is ... When one start flashing this out it got elements of contention but I would still argue let's give our technical experts a chance to have a go at it. See if we can't get what is it that because there is that there is something that is non contentious around this issue. And we need them to find a way of capturing that and not just loose everything just because you know mean that is what I would plead for.

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CHAIRPERSON: The computer expert yesterday was having a way of solving this problem. Say that (inaudible)... there is some days there you can put things you are not yet clear of (inaudible)... So I wonder if this is not one of the things which can be put into the parking bay, to facilitate our report to the CC which is immediate. If the meeting does so feel. Because it seems the matter must still be looked at but there is not much contention. It seems there is contention and so something which belongs to a midway say where you they say it's not a scrap yard but a parking bay.

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UNKNOWN: Chair ...

UNKNOWN: While it is still not uncontentious I believe that it should stay here but I see no reason why it can't become a point on which all parties could agree. So in view of that possibility I think it should still stay where it is and give each and everyone a chance of thinking about it and perhaps formulating something which will included eleven twelve and thirty four.

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CHAIRPERSON: Dr Mulder.

DR MULDER:

I would agree with Dr Nzimande in the sense that maybe we can have both (inaudible)... in the sense that I think it would be possible to try and word something that is non contentious. But surely then maybe it's right that the representation or whatever going further maybe other principles then it would be contentious and it might be on both sides. The argument and I understand the argument of abuse and therefor the nervousness on the other side.

The argument from our side would be surely in the non contentious points there's a lot of things that also can be abused but at the moment we just sort of putting issues we are not going into detail. There's divided undivided all these things. It's just sort of getting the issues on to the table and therefor it would make it easier for my party. If that is also non contentious and there we can word this one as contentious more specific or critical whatever. And I don't think ought to be that problem because it is in the principles as such it ought to be easier to put in on both then.

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CHAIRPERSON:

Thank you very much Dr. Mr Moorcroft.

MR MOORCROFT: Chairperson yes. I would agree that it would be desirable if we could. The more things we can take out of the contentious bucket the better we've done our work I think. And I would like to see the suggestion taken up that our technical experts should have a look at it but perhaps feel free to call on knowledgeable people. Perhaps Dr Nzimande and perhaps Dr Mulder, just to assist them, so that they can come to back to this Committee with something which is acceptable to all sides.

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CHAIRPERSON: It seems I have seen Mr Hussein raising a hand.

MR HUSSEIN: I was going to say Chairperson, that there wouldn't be any difficulty in reflecting eleven twelve and thirty four in both contentious and non contentious. It has been discussed and I think we will give that formulation a bash.

UNKNOWN: When are we going to consider that?

CHAIRPERSON: That is my little problem.

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UNKNOWN: We I think we are under pressure that we must now submit

our report (inaudible)...

CHAIRPERSON: That is why I was talking of parking bay - so that while they've been investigated the report is gone to the CC. Well I don't know let me be ...

UNKNOWN: Sorry

CHAIRPERSON: (Inaudible)... by the house.

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UNKNOWN: Can the Core Group consider a formulation (inaudible)...

UNKNOWN: With the with the technical issues.

MR MACOZOMA: With the Ja. Chair. I don't know if the chair has heard me now.

CHAIRPERSON: I've heard you. I'm listening. Hopefully (inaudible)... house.

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MR MACOZOMA: I'm suggesting that, I'm suggesting that the Core Group should look at that report. If secondly, if it is not ready by

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the time the report is going to be made the issue remains in the contentious issues and we'll come back to it on a later stage.

CHAIRPERSON: Dr Nzimande.

DR NZIMANDE: I would like to support Mr Macozoma but add that I think what we've been trying to do since we started really getting into the meeting issues is to try taking everybody on board. I think the IFP might feel otherwise but we have tried. We stopped the meeting yesterday, and even today we said that the report of the objections of the IFP -I mean the document will go into the report, such that we try to take everybody on board. Such that also that it would be important that the kind of issues raised like by Dr Mulder we try also that kind of presentation in a manner that will make the Freedom Front also to be on board, also goes into the report.

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That is why I think that we must also ask the Core Group to strive to ensure that every party is on board. At least we will be satisfied that you know not everything but some of

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the key things that each party feels about at least are taken into account.

UNKNOWN:

Mr Chairperson as long as we don't expect the Core Group now to start negotiating because we are getting very close to negotiations and we must really try to steer away from that.

CHAIRPERSON:

Thank you very much. Mr Kekana.

MR KEKANA:

You know the impression that I'm getting here is that formulation representation is one that is really contentious. And that if you take principle number twelve as it stands I think - I, you know, it accommodates linguistic, cultural and religious you know all that. And I don't know if there is any way, maybe the technical experts could help us, that principle number twelve could for our report could be included under non contentious.

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I think that will cater - and then the representation might have to stay there as contentious because I think some of us are a bit uneasy about it. I don't know what's the opinion of the technical experts on that.

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CHAIRPERSON: Mr Lekgoro I am looking at you. Could we just get an explanation or you want to come in before the technical expert?

MR LEKGORO: Mr Chairperson I just think (inaudible)... taking everybody on board. I'm sure the one of the basic things we're striving to achieve, you know, to add to our agreements and where there's an opportunity that we are likely to agree on an issue. I think we'll have to make, you know, every effort to go there. Now I realize now we start with a problem of procedure. That we can't do it now and formulate it now. If we could that will be okay but, will bearing in mind that we should not shift things to the Core Group for negotiations, but we believe that after having discussed this even our representatives in the Core Group would be save to make up a formulation after consulting the experts. 10

What I'm saying is that if we fail to do it now let on Monday before the report goes in go in, the Core Group should look at it and see if they cannot. 20

CHAIRPERSON: It must go in tomorrow not Monday. The management

want to see it tomorrow.

MR LEKGORO: Okay all I'm saying is that the Core Group is the only body left reaching now the submission.

CHAIRPERSON: Thank you. I'll do. The technical expert want to comment on this?

UNKNOWN: We're happy to incorporate twelve or eleven in the non contentious and leave as contentious the extend of that representation. I don't think it can be a difficulty. 10

CHAIRPERSON: Will that be agreeable to the meeting? Right. Dr Mulder.

DR MULDER: Sorry I don't want to be difficult. I've been patient here and it's not my problem that we only get to this at half past five on Thursday. I've been here around . I've been listening to a lot of people and a lot of frustrations. The problem is we went through the process and I did put in the Core Committee as a member (inaudible)... that I go back to my principle and this came from there and I'm going back to report back there. 20

So there is no way around that from that point of view. I'm a bit nervous about eleven and twelve. That was not formulated by us, it is not our principle in that sense. Thirty four is more ours and so if you can get combination in thirty four eleven and twelve in a non contentious that would be the ideal if possible. And I know the procedure is now a problem but I honestly don't think it is my problem that I created that. So if possible the Technical Committee come back, maybe you can come back I think maybe this afternoon, it might be tomorrow. I don't think it is that complicated to solve it if possible. 10

CHAIRPERSON:

Thank you. So can we pass it with that note - if it is not formulated then it remains in contentious but if it is reformulated and it is agreed that it will go to non contentious. Well of course minus the representations if I understood the meeting well.

Should we go to E? Is that Okay? Any problem with E? Right. Perhaps then let me put this general question. Now under contentious is it all that you wanted to include or is there any other thing you believe is of importance to you? 20

It should have come in under contentious. Just to - just to close there the gap in - Mr Kekana, Mr Gumede, Ms Seaton.

MR KEKANA:

I think the ANC would love to propose that just in line with our submissions that majority rule as a principle should be contentious because it is our believe that we don't really believe in proposed government - we don't believe in proportional any form of proportional representation at the level of the executive, therefor majority rule to us is a principle which of course, it is not the NP is not happy with that and therefor it's a contentious point. So we think we need to have F there that reflects on majority rule.

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UNKNOWN:

No problem with that Chairperson. I was I was considering making the point myself but I thought that the fact that E is included here actually made it unnecessary but if the honourable member would like that to be included fine with us.

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ME SEATON:

Perhaps actually it is not contentious. Is that contentious, that issue, because then you can just, because from what I

remember from the submission of the National Party what they requesting is that they be assisted or same or the minority party be assisted to become a majority. So they are not against majority rule.

UNKNOWN: We are against majority rule.

CHAIRPERSON: Professor Corder.

PROF CORDER: Could I just say that from a technical point of view we did 10
attempt without using the word majority to include that
point under E. That was our intention in E because it was
the it was the it seems to us that what was the problematical
was the Constitutional entrenchment of minority party
participation in government.

CHAIRPERSON: Mr (inaudible) ...

UNKNOWN: We considered quite carefully the IFP's proposal. I'm not 20
talking about the latest letter and whether in fact, as we did
the other political parties proposals, whether they were
covered by these points. There is one particular issue that

we think should go in here, in addition to whatever proposal this house decide, about attaching their letter. That's under contentious as F. Adding in the words The Constitutional Entrenchment of Participating Democracy which from our point of view we think we have covered a lot of issues raised by them.

But this particular issue from our point of view wasn't covered. So to repeat, we will add on to contentious points a fresh point the Constitutional Entrenchment of Participating Democracy. 10

DR NZIMANDE: Ja, Chair.

CHAIRPERSON: Mr Nzimande.

DR NZIMANDE: Chair Chairperson I can understand what the experts are trying to get at but if it's formulated in that way I think it might be misleading. For instance, I am a great supporter of Constitutional Entrenchment of Participating Democracy 20 but now it's just that, when it comes to defining that is whether there might be difference is to what we mean by

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Participating Democracy such that I would be reluctant that we put it that way rather if that is to be a substitute for majority rule. I would prefer that we put majority rule because majority rule is an issue of contention and that has been said.

And if you allow me Chairperson, want to I would like to say I mean to motivate that I mean Mr Marais has said it, you know, I mean that they are against a majority rule. I think also Mr Moorcroft did indicate the other day along 10 the they is different from the NP, but when we look at the details and if the ANC would like to put it because we feel very strongly about this issue of majority rule, put as majority rule because that is what we want in this new Constitution is majority rule. That the party that wins the election forms the government on it's own exclusively. We feel very important that is what should be in the Constitution.

And I (inaudible)... to suggest further more if that's 20 acceptable of course that we would over and above been put sharply and straight in this manner that we also ask the

technical experts to investigate this issue from all angles in terms of from all sides of the position. If I were to articulated from the ANC's position is there a place anywhere in the world, for instance it would be interesting to find out about that, where you have a Constitutional entrenchment that departs from what the ANC is saying. We are not asking that (inaudible)... to prove our point but in order to enrich the discussion. You know we might find that there is a country somewhere where it has that kind of a thing. If there if there are countries that would be interesting to inform us if there are not also, it would be interesting that we be informed about that, but to state it very clearly it's majority rule that is at stake and we would like it to be put a majority rule as the point of contention.

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CHAIRPERSON: Mr Hussein.

MR HUSSEIN: Thank you. I may have conveyed the wrong impression or you misunderstood me. The formulation is not a substitute for the formulation added by one of the honourable members regarding majority rule. They it's a totally separate issue all together. In the submission of the IFP

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they mentioned that they would like a Constitutional Entrenchment of Participating Democracy.

What is implicating here is a representative democracy and you could then in turn interpret that to mean majoritarianism but I don't think that what we have here actually caters for the point made which will - which is clearly a point of contention that the content of participating democracy and the Constitutional entrenchment of that is contentious. So it's not (inaudible)... substitute the majority rule provision. 10

We put that in, but if I'm maybe allowed, my colleague has point it out to me quite correctly that perhaps the additional one which is F or G I think it would be, because F will be a majority rule if you've agreed that goes in as such. That will read the content and Constitutional Entrenchment of Participating Democracy. The Content and the Constitutional Entrenchment of participatory Democracy.

So that would cater for the members personal problem which maybe the party problem that was participatory 20 democracy as he understands it is not objectionable. We therefor would put in the content also is been a matter of

contention including as to whether it should be
Constitutionally entrenched.

CHAIRPERSON: Thank you. Now is there another question of majority rule
such as that to be included or not? May I get clarity?

UNKNOWN: If that will make the ANC happy we will go along with it.

CHAIRPERSON: So is it agreed that let majority rule come as a contentious
issue? Right. So that I hope the people noting will include 10
it.

UNKNOWN: (Inaudible) ...

CHAIRPERSON: Is that the ANC's formulation? Is that is that government
shall be formed by majority rule full stop. Just in that way.
Not just majority rule on it's own. Government shall be
formed by majority, by the majority party full stop.

UNKNOWN: Chair ... 20

CHAIRPERSON: Ms Seaton.

MS SEATON: Mr Chairperson two issues. First of all we would just like to know that, as per the minutes, we did asked that our original submission also be submitted with this report and is that in fact going to take place?

CHAIRPERSON: Is that the problem in having the original submission submitted? I beg yours. I see there is just a sound which I can not, really I can not hear what people are saying.

UNKNOWN: Which is original. 10

MS SEATON: Mr Chairperson as minuted and agreed to, we had requested that our original submission to this block one be attached to the report. That was minuted and we approved the Minutes earlier this afternoon. The second point Mr Chairperson I just want to make sure that my comment did in fact, and is recorded, that the that the IFP is in fact taking that full document to be in contention in view of the submission that we had made. Thank you.

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CHAIRPERSON: Any reply? I can not only advise that the minutes are not, have not yet been approved. They've been postponed to

some other day but at any rate what - can somebody attempt an answer on the merits what Ms Seaton is saying. Doctor?

DR NZIMANDE:

Chairperson I'm open for correction, even from my own party if I'm talking nonsense. I wouldn't mind being told. I was under the impression that all the submissions by all the parties will be attached as annexure. Is this report of the IFP, which will have a different status in other words, but all the parties submissions in terms of block one will be attached to the report to the Constitutional Committee. I 10
thought that is what we had agreed upon, not selectively (inaudible)...

CHAIRPERSON:

Is that the understanding of all the people here? Right. Professor do you want to take a different view?

UNKNOWN:

Yes. I agree with what comrade Nzimande said. That is the procedure. But I think the problem in future in fact will be on the issue of the process because we have agreed that there will be no minority reports. I will object to that. That 20
minority report will be accommodated under contentious. That there will be no separate reports by parties that will go

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to the CC. I think for this particular one, I think, it is an exception in the sense that the IFP is making an objection to the process and the CC has to rule on that. We are trying to, we are not trying to create a president that in future each party can put a minority report on the issues that are discussed in the Theme Committee.

CHAIRPERSON: Thank you very much. I think that right has been noted.

DR NZIMANDE: Chairperson I'm sorry I think I must just add because the Professor there is very correct my comrade. This is not a minority report the way we understand this. We understand that it's an objection and the contention by the IFP in relation to the rest of the process so that we are clear. But I do agree, even if we can play around with English which is my fifth language, it does come closer to violating what we might have agreed upon. 10

But I don't think let's make it a principle issue. I think the definition of that is not a minority report should satisfy the purpose of the report. 20

UNKNOWN:

(Inaudible)... the guidelines that was were approved by the Constitutional Committee on the second of December last year makes provision for the following. Should a party be unhappy with the format of the reports this should be discussed in the in their Theme Committees. The issue would only be brought to the Constitutional Committee if that the Theme Committee couldn't resolve it. In this particular case we could not resolve the issue and this is the way in which we are bringing it under the attention of the CC.

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CHAIRPERSON:

Thank you very much. I think we have come to the last part of the report. Now just to have the record straight. We have said when we started with these with the non contentious issues that we are not taking decisions but we are brain storming, looking at points of argument of correction. May I formally put points from A in other words on page fifteen from A to K to you? What are you agree? Do you now take a decision that this are non contentious issues? Thank you very much for that. Mr Meshoe did asked me that he is not happy with one or other clause. I'll give him the opportunity just to say, that I hope

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it won't bring a debate which will take twelve hours.

REV MESHOE: It's a small issue Mr Chairperson. Thank you. I just want to propose a little amendment that we, and I say, there shall be a separation between State and religious organ religious institutions. You got it.

CHAIRPERSON: Unfortunately my secretary was talking to me. I couldn't hear.

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REV MESHOE: All right. Point I. Are you listening now? There shall be a separation between state and religious institutions.

CHAIRPERSON: Is that your proposal?

REV MESHOE: An amendment.

CHAIRPERSON: What does the meeting say about (inaudible)...

REV MESHOE: You see, once you add institutions there it becomes 20
contentious because we are talking about religion in total,
not just the institutions and therefor we are weighing the

state on the one hand and religion as concept. We are not talking about state as an institution versus another institution here. We are talking about the institution and a particular concept call religion.

CHAIRPERSON: Ja Mr ...

REV MESHOE: Well in that case then it would have to go under contentious, because men is a religious being whether you believe men is this supreme but everybody is religious 10 ancestral worship is a form of religion. Men is religious.

UNKNOWN: Chair.

CHAIRPERSON: Let's just get the Professor, Mr Hussein to help us.

PROF HUSSEIN: I think what we're trying to get at in I, in the wording there, is to convey the fact that it's not contentious, that the state should be a cellular state. To add the words, There shall be a separation between the state and religious institutions, 20 doesn't actually take that any further. It in fact blurs the fact that you need this to be a cellular state. You could for

argument sake say this is a Christian state and yet have a separation, a Christian state and have a separation between that state and the institution of religion.

So I don't think it takes it any further to say institutions . This simply attempts to convey the fact that you need, you want a cellular state and your fears I think with respect are unfounded, it would not prevent any religious animal in the form of a human being to participate in any organ of state.

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CHAIRPERSON:

(Inaudible)... are you satisfied with the explanation. I've been informed that tea is available there but I would allow that people should not all go out but only one or two at the time please.

UNKNOWN:

Chairman I don't think we should spend to much time on this. It's obvious that reverend Meshoe isn't happy with this one and that means at least from his point of view that it's a contentious issue. And I think we should try to resolve the matter now by put as contentious and it can be discussed at another forum.

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CHAIRPERSON: Mr Kekana.

MR KEKANA: I think it would be misleading if we take I as it is and put it under contentious. I think once we add institutions, so I think what we are saying there is that under contentious points it shall read as follows, which is, what is it G or H. There shall be a separation between state and religious institutions. That is what is contentious but as it as it stand it is not. Religious institutions that is what is contentious because I think it will be misleading to take the I and put it under contentious because then we have to explain, you know, because we don't think it is contentious if it stands on just like that. 10

CHAIRPERSON: Ms Routledge.

MS ROUTLEDGE: Chairman. Sorry.

CHAIRPERSON: Give Ms Routledge a chance.

MS ROUTLEDGE: I'm just wondering comrade Chairperson, whether the ACDP would be happy with the explanation that was given. 20

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And maybe we used the formulation that was proposed from the, I think it is something like the state will be a cellular state. I'm not sure exactly how they put it. Would you be happy with that?

CHAIRPERSON: Mr Meshoe can you solve the problem quickly for us. I'll come to you Mr ...

UNKNOWN: Sorry.

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REV MESHOE: To respond to that Mr Chair, we have not agreed on a cellular state yet. So we can not agree to that because we have not discussed that yet. It's a presumption that we have agreed on a cellular state. We have not.

UNKNOWN: Chairperson we voted here. If we keep it where it is under non contentious, but just change it, there shall be freedom of religion and the state shall not interfere.

UNKNOWN: Also I want to capture that religious also won't interfere with the state.

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CHAIRPERSON: Professor Corder could you take us out of this mud that we find ourselves in?

PROF CORDER: I wondered if I can because I'm just quoting here (inaudible)... quote it all but the ACDP's submission paragraph three is headed separation of Church and State. Now all we've done is to is to is to change the word church which several submissions said (inaudible)... Christianity with religion which encompass all types of institutions of faith. So it was an attempt merely to do that and I would, I would go further and say that what follows in the rest of paragraph three of the ACDP's submission is exactly what is meant by the separation between state and religion. There is no difference from that. The first line in fact say the ACDP believes in the separation of state as we have it at the moment.

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CHAIRPERSON: Mr Meshoe we should bring it to an end at least. We can not be debating whole one thing for the whole period.

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REV MESHOE: I accept that Mr Chair. But if anybody is doing something or drawing a conclusion from what I have written, if I am

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not well represented, I have the right to say it. The heading is true. I put separation of church and state and when I made a second submission, I said I give that because we were not at that time given the breakdown in block that we are now given. So I can also be right to say that must be scrapped from the report until we come to block three on separation of church and state. At the moment this sentence does not go with block one.

So if - either we delete it all together or I would propose 10
that we speak of separation of church and state institutions, because I can not agree that by separations between church and state I mean separation at church of state and religion. Religion and Church are two different things.

CHAIRPERSON: Ja, a way forward ...

MR BLADE: Can we get clarity?

UNKNOWN: Blade you must talk through Chairperson please. 20

MR BLADE: Just clarity, then we can close the matter. Is the ACDP in

other words calling for a Christian state as it negotiating stance.

REV MESHOE: No I said no. That question was asked before ...

MR BLADE: For a religious state.

REV MESHOE: That question was asked, but I said no. What we want is separation between state and religious institutions. That's what we want.

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UNKNOWN: Comrade Chair.

CHAIRPERSON: Could the participants still recognize me as Chairperson please, so that we avoid the dialogue. Mr Lekgoro.

MR LEKGORO: I was pleading that comrade Chair. We have to find a way of reaching a conclusion on this matter to take us from pillar to post, because at the beginning his main, central worry was that this should not mean that religious people would be kept out of the state and we said categorically no, you see, and now he changes to something else.

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I fear - I appeal. I think that there is not (inaudible)... that he is given us with the inclusion of that word there and that we leave it under non contentious issues.

CHAIRPERSON: Try and give the Professor chance to help us perhaps we might come ...

PROF CORDER: The character of the state are dealt with here. Many of them are revisited such as the separation between church and state in later blocks. In other words, in trying to compile these points of contention and non contention, we had to take an overview. One of the points which was suggested to us yesterday by the ACDP submission was in fact that there should be separation between church and state. We alter only one word in that in order to take a count of a number of other submissions which should said that they should be separated. Church was not the right word to use in that case. So the fact that it's agreed to now certainly doesn't mean that it can't be reopen at a future block. I don't know if that's at all helpful.

CHAIRPERSON: Mr Meshoe, I'm going to give you the last chance because

we can not repeat the same - it's very clear that you are adamant your argument. It seems that the other people also - I mean if you are parallel we can not make you to convert someone. We give you the last time to put your case and from then we will hear what the house say.

REV MESHOE:

Ja, I promise it's the last time you'll hear from me. It's either, it's either we delete that point on separation between church and state in this report or you note my objection, because to say the word religion was used to accommodate what I said, is misrepresenting what I said. So if we keep the statement in the report, that with it must go a objection from the ACDP. Thank you.

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CHAIRPERSON:

Now we must bring this matter to a conclusion. We should not debate - second. Dr Nzimande.

DR NZIMANDE:

Chairperson I think the issue really is about whether we have a religious or a cellular state. That's, that's the issue. Now the best way to deal with this is to scrap that sentence and we go and put a sentence like, South Africa shall be a secular state, under contentious issues and that is how we

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move forward.

CHAIRPERSON:

Is it agreed by the meeting? Right. Let's have that. Professor (inaudible)... thank you for helping us out of this little thing which held us so long. We are now almost complete. The same question I put regarding, I mean of regarding A. I must but in regarding to B, the contentious issues, we'll just discussing them but we have gone through all the details.

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I mean this is just a formal way for the for the people sorting that (inaudible)... We're adopting the contentious issues as set out as discussed already. Thank you very much. It would seems, if I look at my program, then that would have been the last item of the day except the general.

UNKNOWN:

(Inaudible)...

CHAIRPERSON:

All right, perhaps let me have one item on the general before I come, just an announcement there. The Core Group is to meet tomorrow at ten thirty and in room two o one. I hope the members of the Core Group are noting

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that. Professor.

PROF CORDER: Chair I don't know how it would sound to the members of the Core Group. Is there any chance of the Core Group meeting now? Okay. Thank you.

UNKNOWN: I tried, my colleague my colleague is anxious to get back to Johannesburg.

CHAIRPERSON: Right, under general. Is there anything under general? I 10
hope not. Ja, it's only one item which I must read to you
then I close at under general again. This is a notification
from the Administration from the Executive. Ja.

UNKNOWN: (Inaudible)...

CHAIRPERSON: Thank you. Thank you very much. The letter is addressed
to the Chairperson Theme Committee One. Dear Sir.
Launch of the public participation program for the
Constitution making process. 20

The Constitutional Assembly is arranging a public meeting

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in the Paarl town hall in conjunction with the Paarl Town Council and KWV to launch the public participation program. The meeting will start at thirteen hundred hours and on eleventh of February 1995. Thirteen hundred hours on the eleventh.

UNKNOWN:

(Inaudible)...

CHAIRPERSON:

Could the members (inaudible)... until I finish the letter please. Thank you very much. Thank you very much for listening and for be being so orderly. Thank you very much. Right. The aim of the meeting is to inform organizations and individuals about the Constitution making process and how they can participate in the process. Participation from the public at the meeting will be especially welcome. Mr Cyril Ramaphosa, Chairperson of the Constitutional Assembly and Mr Leon Wessels, Deputy Chairperson, will address the meeting. Kindly ask your Theme Committee or party caucus who will like to attend the meeting the K the KWV - Ja I mean I'm reading what is written, please, I don't know what it means but I'm reading but I'm reading Ja the KWV will hold a finger lunch at eleven hours thirty

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at the Laboria Estate in Paarl. Direction attached.

Transport will be provided from parliament to depart ten hours thirty am sharp from outside the National Assembly building. Attach please find a copy of the agenda. Please to reply to Florence (inaudible)... no later then sixteen hundred hours on the ninth of February 1995. That is today. Thank you. Well there is then a program there. I think I conveyed the message which was requested to convey. Any other details will be available from the Secretary. With that Ms Routledge before we close... 10

MS ROUTLEDGE:

I'm sorry comrade Chairperson I hope this will not require a debate. I'm hearing a concern, a request, from the Technical Committee that one member has to leave. I was just wondering if we couldn't say, they go ahead with the amendments as proposed by the meeting and perhaps one or two of them can come to the Core Group meeting to present their amendments. I'm just worried that you are not listening to the plea from a member of the Technical Committee. 20

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CHAIRPERSON:

Let's hear. Will the Core Committee have any problem to be approached tomorrow? It's not today it's tomorrow. I think that is a very, that is an easy item we don't even need to ask for the Core Group will attend. There's no problem at all. Thank you very much for cooperating. Have a nice weekend.

[END]