

2/4/4 | 5/4

THEME COMMITTEE 4 MEETING 1 FEB. 1995 (TAPE 01)

Chairperson : Ladies and Gentlemen I apologise For the delay in starting which is uncharacteristic as you know but I was getting my instructions outside. But I do try to start on time and I bear from commenting on it but now we can are in a position to start off. I have just been trying to finalise with the secretariat certain matter in fact we need them inside. I do not know, where is John, yes. all right we can in a position to start. You have the document for today's meeting, headline documentation. Can we make a note of apologies. Any apologies for today's meeting? None, does the secretariat have any apologise for us to note. Yes Asmal

Respondent : Mr. Myburg.

Chairperson : Yes I have got his apology

Chairperson : Okay noted. Okay if there are any other apologies we haven't recorded at this time. You can hand them in during the break or at the end of the meeting to the secretariat Mr. Sizane.

Respondent : Have you been getting my apologies

Chairperson : Well you will have to check with the secretariat

Chairperson : Okay, we have er, I just want to incentivise today's meetings by saying that if we can get through the business today it might obviate the need to meet on Friday, so that should concentrate everyone's mind and perhaps we should work towards that as a goal to dispense Fridays meetings if we can finish what has to be finished today which will bring us on stream in terms of the target and the blocks and so fourth

The report from Tuesday's meeting we do not need it except to verbally tell you what happened which is going to virtually apparent from documentation. As you know appointed a drafting, writing committee to go and prepare a report on what we agreed on or not agreed upon so far, under the block one work program. There is a report that we will discuss later it is not written in stain which we must just go through but I, we would like to complete the remainder of the block business. If I can also report back to you from the letter I have constitutional assembly confirming the appointment of constitutional experts we will be getting a copy of this I will just read you the preliminary letter, kindly be advise the following technical experts will be appointed by decision of the constitutional committee on 30 January. Kindly however note that the appointment of professor Thomas House is in not relevant however to the work of this committee. As has not been confirmed because he is not a South African citizen.

This matter has to be reviewed by the management committee. They say we are nevertheless proceeding with our confirmations to each technical expert to the appointment. An arrangement has been made for an orientation work to be held with the technical expert. The workshop is to be held on Monday the 6th of January 1995 and there will be other arrangements to familiarise the experts with the workings of the Theme committee and the Constitutional to also advise that the terms of reference and the terms and conditions of appointment of each technical expert has been presenting finalised. We will attending to this matter with the experts directly. If you have any queries please phone the administration. I'll just mention the technical experts for this theme committee there are Professor Chiddle, Professor Douglas, Miss Liebenburg and Professor Rautenbach and presumably they will be in the saddle sometime next week on not so that is the proposal. It is not really important expert for this committee to note that. So I leave it there I do not think that we need any discussion on it. We now move onto the issues which remain outstanding. The proposal to subject to your concurrence is that what we do, is that we deal with - turn to page 2 of the document that you have for today's meeting.

We will do shortly. Number one, general models and principle etc. We have not yet had a discussion on the other two items which form part of block one and that is paragraph two joint discussion of the related principles and suggest the approach as to the identification of the rights not covered by the constitution, by constitutional principle two and the relevant section of the interim constitution. Now if I could just make a suggestion I do not know frankly if we need a really huge discussion on these issue because we have agreed that we are going to follow a specific program which deals with the collaboration, enumeration of certain rights and that at any point in the procedure members or parties are free to introduce other aspect which we not covered. And if at the end of going through the existing rough set or tabulated. In the program we find out, we haven't discussed rights. In other words not things on chapter 3, things that are not elaborated on we will do so. Now whether we are going to therefore gain or succeed in doing very much by looking at the other constitutional principles it remains to be seen.

In other words. Is it necessary for us to dispose of this matter now. I really am in the hands of the meeting and this is the view as it were from the chair. That you are quite at liberty now to give view on preliminary basis on the other constitutional principles which do have an impact on the charter or Bill of Rights, they are listed there. How do members wish to proceed? I mean we can for example if you turn the copies of the constitution and you look at the rights that are listed or the principles.

Principle 1 the constitution of South Africa shall provide for the establishment of one sovereign state one South African citizenship and a democratic system of government committed to achieving equality between men and women and people all races well the relevant right that is elaborated upon is there which is specifically for our attention is the right to equality which we are going to deal with further on. There might be some content about the democratic state which might be a province of another theme committee. Now I do not know if there is anyone who would like to say anything except for that.

Respondent :

Chairperson , I was just wondering that we have agreed Yesterday and that reflected in the report that the guiding principle is 2 you know that was totally agreed upon. And these other one's are ones that have some bearing on human rights as a whole. Actually it was interesting I mean we had identified those principles. Well I do not know whether there much of disagreement expect that some other parties will feel that some principles are of relevance. Isn't that all we need to do not to see any point of getting into it at this point because we are going to get into the substance of those right later.

Chairperson :

With respect Mrs. Camera I hear Miss Mabandla now is correct because if you look through the enriched right as it is unpacked we actually repeat those principles.

For example if you look in block 2 number 3 the right to equality at constitutional principles 1,2,3,5,11,12 and 13 I don't know if we move than notice this. Miss abandla

Respondent : I think chairman these are very relevant and important principles. Relevant to our discussion because they do give the correct framework and we in the ANC believe that in fact what principle is essentially saying is that the form of state when determining defining the form of state in South Africa. The form of state shouldn't be inconsistent with the principle of democracy and equality. And I think that its important that we recognise that this principle does impact on our work in this committee because its really one of those building blocks for us, it draws the parameters for us.

Chairperson : Let me just ask you this question. I do not think that anyone will dispute the common cause. But isn't it a practical way, do we deal with that now? Because it we do essentially, I mean now of the parties depart from the general submissions we already have, to the extent that we have elaborated on these principles how in a practical sense do we deal with it now? Apart from to note that these principles have direct relevance to the specific rights and to the overall formulation of the charter that the principle must be born in mind.

The charter that we are going to suggest or recommend, must be consistent with all these principles.

That - do you have a specific proposal other than that at this point.

Respondent : If by nothing chairman that we recognise that these do impact on our work that's fine. But I thought that it would be important for us to go through them formally and note formally. By that we mean that we do recognise that they do impact on work and that is why I was saying that because here it doesn't talk of formal but its implied in the form of State and now I was given an understanding of the ANC of that principle.

Chairperson : I'm sorry to have put you in that stand but I just want to get clarity so that we get going either we deal with this or move on. Are we in a position actually as parties to actually give a impact on the Bill of Rights at this stage or is there something that we must postpone so that the parties have a chance to specifically address the actual principles that are detailed there . Is there a view? You don't have to answer immediately, let me hear from other people Mrs. Manzini

Respondent : Chairperson I thought that yesterday we actually postponed discussions on this issue so that parties go and prepare on this issue so that today we have preliminary views on this issue. In view of the fact that we realise that they will have an impact on the work to come. Say for instance if there is contention on the issue of the form of state.

I think we must hence forth be able to start working along those lines. To know that this is an unfinished business. I think at the world Trade Centre we ended with funny phrase like the SPRs because right from the beginning we couldn't get an agreement of what we talking about and where is it about SPRs at the moment there is no agreed on the form of state I think we must start form there because otherwise it will come. Time and again when discussing the issues. The SPR stood for State, province or Region because so people were saying that they don't envisage a unitary State, they were talking of religion. Some we talking of provinces so we couldn't each an agreement right from the beginning but we felt that this should not hamper our work we must operate within a certain framework until those issues get resolved in the process and they got resolved in the process. So we need that framework.

Chairperson: I just want to, you have to forgive me because I was absent from the meeting yesterday afternoon oh yesterday morning the last half of it and I wasn't specifically briefed on this point are all the parties then in a position to give preliminary submissions on the specific constitutional principles? The ANC clearly is, the National Party are you in a position to do so?

Respondent: Chairperson as I said the National Party agrees that all these principles have a relationship to the Bill of Human Rights. They are relevant principles. But there was no question yesterday.

I cannot agree with Mrs Manzini here that the parties are going to go where and prepare a submission on this. But certainly if the committee feels that we should do that we will do it. We understood that we were going to discuss whether these principles, can I just finish. That whether these principles were related to our activities and yes we agree. The point I raised with you is that whether other parties feel that there were other principles that might also have a bearing on it. We do not want to discuss any other principles we feel that these are the relevant principles. We would go along with the proposition here. We don't want to extend the discussion to any other principles we feel that we certainly feel that we won't have any depth submission to make at this point but we will if you want to rule that we discuss this at a later stage on the basis of submissions in relation to each principle, what it entails and soon.

Respondent:

I've been advised by the secretary that unfortunately we do not have the minutes of yesterday's meeting us. I do know if we have to get into an dispute about that. I'm advised by Mr. Simon Andrews that there was no decision to have formal submissions today. Okay now there is common cause about that. The question is you know to what extent do we have a general chat about that or would be better off actually sitting with submissions on these principles. Do we need such an exercise? I think if we decided that we do need such an exercise then we must do it properly.

It would be no good to have people talking and us not having a piece of paper in front of us saying that this policy is exerted. It will make the subsequent execution of a discussion or consequence of it much more difficult. But Mrs Gaza do you want a view on it.

Respondent:

I'm slightly confused if I have to say. But looking at what we said yesterday I'm in agreement that we look at the constitutional principles. With no submissions presently but to have a look at the constitutional one and then we perhaps talk about it. And then if you think we are stabling on to something which does not assist us to get to a certain point. Then we can say. The Theme Committee one because it is declining with the States- it will assist us and then we go to the second one you know not actually getting deep into this I think that this what we agreed upon yesterday. I believe in consistency gentlemen and ladies and if we think we want to change tell me when to change. Tell the IFP because what we are trying to do here, its not actually going deep and deep. We look at one do we agree here, don't we are agree here. Okay let us say Theme Committee. One will deal with this and then we will come back if we need any submission. Okay let theme one look at it and lets come up with submission. Lets go to the next one and then we can sort of talk about it and finish it. Only those that are gibing problems can be referred and we must say where we are referring then to. And then we must say what it is that we are going to do as parties. Now nonke enikhulumayo

Chairperson:

Sorry there is a speaking list here no, no I'm not criticising your choice of language because I heard some murmurings on the other side. And I just want to say that we have some other people to speak. We have indicated Mrs Gaza the only problem I have with what you are saying is that last year we actually went through the which constitution principle dealt with by other theme committee were impacting on our. To focus and say now looking on these principles how do the impact on our work should be sent to other theme committees. That exercise has been done and largely agreed to by this theme committee. Before we take Mrs. Pandor really we are not going to spent the rest of the afternoon deciding on the way ahead as Mr. Sizani has indicated

Respondent:

Okay thank you. Well Mr. Chairperson I'm worried by the fact that I thought that we agreed on principles two and we were basically going to deal with the general framework. And looking now at points two and three in this work program. Those to a certain extent do go towards more of a substantive deliberation or substantive issue relating to the work we are going to do and for all intended I think that those principles stated in two and three are also covered by some of the submissions we are going to do with other principles. So Aim worried that we will never move from block one if we even try to deal with them.

I think the more recognition and identification of those issue is relevant. It was sufficient for the purpose of block one and do not think that really there is any need for submission nor any need for detailed submission on those issues. So I think we should proceed to block two for submission rather than reopen block one.

Respondent:

Mr. Chairperson I'll try to assist. It was my proposal yesterday that we deal today with number 2 and 3 and 4 and the reason being that yesterday we discussed as a point of departure principle two as a point of departure for block one. We then did not proceed with point 2 and 3 within block one and the proposal was we draft a temporary report on item one of block one but then we proceed today in doing what point two and exert indicates mainly a general discussion for the sort of reason that principle two is fine. But we indicated that there other relevant works as well as sections in the constitution and the idea was that we need a general discussion on had a general discussion, all we have done up to this point is that we have identified theme as relevant to our work. And thus how we cause to where we are now

Chairperson:

I think that there is a lot of logic in what you are saying to the extent that I also agree with Mr Sizani that he is quite right and we've got to make progress. What I'm proposing is subject to your approval is that we allow a limited discussion on both these issues in paragraph 2 and 3.

Then at the end of it we have to see what we can do in terms of getting some kind of report on what we have discussed here. We really do not have to have a definitive position because now most of these principles crop up along the way further on. So if we are in a position to have a general information discussion. We can proceed on that discussion and can hear the submissions of the parties informally of the parties on paragraph two and three of block one but we are not going to just simply I think occupy all that the time first have of this report to finalise and the writing committee must meet to see if how we need to deal this paragraph two and three of block one at this stage. Bear in mind its not, you do not exchange all your rights and remedies. Now to me this is going to come up again and again and again but a preliminary view along the lines Dr. Mulder addressed it does seem sensible. Mrs. Pandor is that sensible to you.

Respondent:

Thank Mr. Chairperson for being granted the opportunity I would just like to request you not to constrain the committee opportunity for discussion far too much. I understand that in fact we do have a time table, would you like to adhere to that timetable? We would also like to get through agreed items and we had agreed yesterday at the end of the meeting that two and three would be the basis of our discussion this afternoon.

I really do not see that there is anything wrong in proceeding as outlined by Dr. Mulder and I suggest that we get on and so that.

Respondent: That's right.

Respondent: Thank you Mr. Chairman. In the IFP we did look at the principles under point two and we found that we less agree fully with virtually the principles set out there. As far as principle one is concerned we found the category on the form of state belongs to a different theme committee and thirdly we may have to in terms of block two. We thought that we may have to prepare another examination on this principles on two which also thought that we should fare into point three. We fully agree with the sentiments of those principles as stated in point two. But need to submit elaborate points on many principles which will impact on block two

Chairperson: Thank you very much Mr. Skosana, could I just take the opportunity before proceeding any further to announce that we have with us today in the gallery as it were judge or Mrs. Layle Serf who is a high court judge from India. You are very welcome, we are pleased to have you with us and she has recently been at a conference a gender conference I think at in the Cape and she is with us I'm not sure for how long but we are very pleased to have you with us.

You are most welcome. Thank very much Mr. Skosana.

Any other indications on paragraphs two and three. Paragraph two as we are discussing at the moment. Dr. Mulder.

Respondent:

Chairperson from Freedom Front's point of view we look at, in block two the principles we have indicated to be relevant into our work program and I will try to go down a list of principles those which I think we would like to say something on at this stage. In terms of principle one our perception is that the relevance of that quality specifically to the work of our committee is the question of equality and the emphasis should be on the equality part not so much on the form of state seeing that theme committee one should deal with that specific issue. That also goes for the whole concept of the principles that or not agree with that. Chaplain, principle three is the whole question of the prohibition this also is relevant for our specific work in our committee. The principle which I would like to place emphasis on from our point of view is principle 11 and 12 as well as 34. Eleven dealing with the diversity of language and culture which should be acknowledge, protected and conditions for the relationship should be encouraged. Specifically principles eleven we think goes with the relevant clause in the constitution section three of the constitution dealing with language. The recognition of the eleven different languages as official languages at this stage do not form a part of this stage of the Bill of Rights in chapter three.

But that one should take recognition of the fact that in terms of principles eleven we should make provision for that also goes terms of principle twelve the collective right of self determination. Yesterday in the discussion I think Professor Asmal made it clear that from the ANC's point of view their point of departure to certain extent to the point of the fundamental right to recognise covenant. We agree with that and in terms of specifically like the covenant I refer at this stage the international one in serving political rights. There a certain rights indicated in that specific covenant which are not dealt with in chapter three as at this stage but those specifically also relate in terms of right of minorities to enjoy own culture preference and practice own religion and language etc. which also look up again principles eleven and twelve and thirty four. The question with principle thirty four should be part of the Bill of Fundamental rights. At this stage we would reserve our own position if that should be the case or not. Thank you.

Chairperson: Any further speakers or submissions?

Respondent: I think from our point of view as comrade Bridget has already stated with regard to constitutional principle one we believe that the principles that should apply irrespective of the form of state whether it will be Unitary or federal because that aspect does not belong here its a brief of another theme committee.

But we would like to emphasise two basic principles. The principle of democracy and equality. And with regard to principle two we have already stated yesterday that our understanding of our universal acceptable rights are documented in certain international documents for example the document of the United Nations declaration rights and its subsequent treaties i.e. the covenant on civil and political rights and the other covenant on social, economic and cultural rights. And those rights we agree with Dr. Mulder are not shown here in chapter three and we need perhaps in that regard to mandate perhaps the core-group to investigate and find out which, what those rights are in terms of those covenants and be put forward for discussion and those who said that they do not know what international acceptable rights are, could be assisted in that process. And as far as principle three is concerned we have our policy positions with regards to the question of gender. For example we agree totally with that principle because we believe discrimination grounds of gender, single parenthood legitimacy of birth or sexual orientation then shall be outlawed. And we further believe that legislation shall provide remedies for oppression, abuse, harassment and discrimination based on gender and sexual orientation and further with regard to that question of gender we believe that educational institutions, the media, advertising and other social institutions shall be under the duty to discourage sexual and other stereotyping.

And that is our position as far as that issue is concerned we believe it should be there. And further we go for principle five and we have our understanding of what equality means and we regard equality as very important principle of all these principles and our position is best put under three clauses. And the first one our understanding is that all South Africans are born free and equal in dignity and right. And number two no individual or group shall receive privileges on grounds of colour, language creed, political or other opinion, birth or other status and further that all men and women shall have equal protection under the law. And we believe that is a very important principle to look at and further more we believe that when we talk about the question of equality as if you look at the principle it further states that there should be certain programs and activities that are aimed at removing the conditions that were there due to past discrimination and we believe that also nothing in the constitution shall prevent the enactment of legislation or the adoption by any public or private body by special measures designed to procure the advancement and the opening up of opportunities including access to educational skills, employment and land general advancement in social, economic and cultural spheres of men and women who in the past have been disadvantaged by discrimination. And also the point that we want to emphasise is that any action in terms of the above shall not be deemed to contradict the principle of equal right for all South Africans as we have stated in that principles of equality. So I was just elaborating on our understanding, policy in regard to that.

And further we have this principle number eleven diversity of language and culture shall be acknowledged and protected and conditions for their promotion shall be recognised I do not think that we have any problem with that principle. But there are certain things that we would like to highlight. For as long as language and culture is not used as a reason to deny other people access to institutions of their choice. The right of freedom of association and choice should be respected. It should not be based on ground of race and of course that is still the debatable we can debate that further. In connection with principle number twelve, yes we agree with that principle totally and even take that principle further that there shall be freedom of association including the right to form and join trade unions religious, social and cultural bodies and participate in non governmental organisations. And we believe strongly in that and further we believe that legislation shall provide for the right of such association to be heard in appropriate cases before any action is taken or measures proposed by any public or private body which could directly affect the interest of members of the association. And I think here we bring a new element which says nothing about us without us. And that is important that no one should just decide on unilateral action without consulting or forming those involved and the further we take another principle thirteen we recognise these institutions.

But the point we want to emphasise is that I think that this principle put it nicely is that they should be subject to fundamental right contained in the constitution and to the legislation detailed specifically here with because we recognise especially looking at traditional law in this country, that this country is a patriarchy so to speak and especially those rights the traditional law is disadvantaging women and especially African women and the provisions of the constitution. One provision is the clause of equality that whatever system might be decided upon by the women and all other people shall always have the right to invoke their rights as contained in the constitution. And I think that is important and also I would like to also add. There is something I forgotten in principle eleven. As the equality clause should always direct us there and other rights contained in the Human Bill of Right continuing with that issue of language and culture. That is very important. And then when looking at here will place more impact on work drawing a Bill of Right more than others. The second aspect is that why that is so is that the really enquiring as far as we can with these principles is that its in the first instance has to be mechanically exercise. Do we incorporate them. For example the right to equality that we obvious going to deal with. But then when we get to more problematic as Dr. Mulder has indicated the right to self - determination problematic not because it question has to be dealt with in this constitution assembly. To us the question of the mechanical one which principle deal under the Bill of Right and principles are constitution.

The constitution has to reflect every principle state here similarly to the constitution and we cannot draft any provision of this Bill of Rights which is in conflict with the principles here. And if there is a conflict it will invalidate the Bill of Rights it potentially invalid the whole constitution. To the extent that we are obliged to follow all these principles which directly impact on our work here. We have to just keep up. We have submitted our own Bill of Rights which deals with our specific approach on these principles and at this stage I would like to live it there. I would like to revert to the chair Mrs. Camera.

Respondent:

Thanks Chairperson if we are sort of required or call onto we would make a more extensive presentation I would like to make a few points on this regard and we would also like to make an extensive submission on detailed submission which become part of the record of these proceedings I think a number of important points are involved here. Our pledge is also that these principle also govern what is in the Bill of Rights they have enormous implications for a member of aspect have been already been raised here I do not think there is a problem for one and two if we get into the areas for instance principle nine. Principles nine, eleven, twelve and thirteen have enormous implications if you consider that there is a possibility of these Bill of Rights to have horizontal application. It's been mentioned by the provision I always miss your name Mfebe of our freedom of information.

The question that is raised by a lot of these principles is if you draft a bill as a horizontal bill have you actually gone counter as to what these principles state. There is another question of collective right if you draft under principle twelve. If you draft as excluding jurist persons have not gone counter to this principles. Our position is that when you really examine these principles in the bill you have to measure all of them against the principle that is the norm that we have to be guided by and we feel that these principle impact tremendously on sort new aspects that we are a raised here. I think that these principles are really draft with a Bill of Rights that was vertical and not a horizontal one. If you consider principle thirteen can I give an example if we consider principle thirteen where you are looking at traditional law customary law and so on. If you are looking the Bill of Rights the question is whether you can actually comply with that principle and I think its as interesting question and that we have to look at it in detail. If look at collective rights twelve the rights of association in civil society where you have a bill that only indicates human beings and natural persons I mean I would like to take up the point that Dr. Mulder took up as well for instance eleven section 31 does protect languages but its our position very strongly that the whole question of rights of minority groups, cultural groups and so on will have to be looked at in more detail and I think there we are going to be very much guided by principle eleven and of course principle thirty four the rights of minorities.

And we believe that there is an area of the Bill of Rights that has to receive more attention and infix the way has been paved for it to receive more attention through these principles. So you know that's another point that we would like to make in connection with the principles. But any detailed examination of these principles we feel will really come when we consider the substance of the Bill of Right because we always have to go back and examine what we are wanting to do in terms of the principles to see if we are on the right track. Implied as Mr. Mfebe in some of these rights are our responsibilities and that's another area that the National Party would like to put forward for consideration in relation to the rights and principles in the constitution at the present time. As I said I think that is why we have not really prepared a detailed submission on this principle. It's because we felt I think like Mr Leon indicated the DP's approach was that the detailed examination of the principle would come when we consider the rights in detail but we can also submit something in detail bringing in all these points in a more detailed manner if that's required at this stage.

Chairperson: Are there any further views? Well if there aren't sorry I beg your pardon

Mrs. Gaza

Respondent: The discussion all I'm saying is we must be guided by the fact that as the DP put it. There isn't much we are going to do to change the constitutional principles but a simple example comes to mind it is the bible which everybody reads and interprets differently. So each and every political party as we seek to come to what we want to the end we are going to be interpreting them in terms of the policy of the different political parties and then come to an agreement. I'm saying this because after a long discussion hinging on what Mr. Skosana said on the position of the IFP in the different constitutional principles. As we look.....

THEME COMMITTEE MEETING 1 FEB. 1995 (TAPE 02)

Respondent:

As we look on the cultural aspect, the religions aspects and all aspect, the religions aspects and all aspects. We must be reminded of the interplay and intertwine of indigenous and Western cultures. The United Nations in 1993 came up with this indigenous aspect which we have not been able to look at. Some have and some have not. So when we look at this without getting technical about it. We should be in a position to know that we are dealing with a society which needs to encompass both Western and indigenous. What is good in South Africa is that both parties now seem to be ready, the indigenous and the Western seem to be ready to want that we encompass both. So that's where I say as we get deeper we want to say in our presentation there shall come these different intertwining and overlapping. If we take the position of the DP here to say there isn't much we can do. We have to do the best and interpret it in terms of what we cannot change. I just want to add to what Ben was saying

Chairperson:

Are there any additional view points? I think what we will do now, we have had this discussion on this paragraph. Is really try to synthesis these points of agreement. There is a general point of agreement its a point of obligation on us that we have to ensure the constitution overall as with every constitution principle here.

We will ensure as a theme committee that all the one's which are relevant to our specific mandate will be considered under the appropriate heads of the rest of the work program. Where find that they do not useful fit in we will consider them separately and we will ensure that in as far as they can be accommodated under this head that each and everyone of them will be considered and elaborated upon in compliance with the constitutional principles. On the party political proposals each of the political parties have submitted or most their draft bill of rights already. So we have that information on record. For example with reference to earlier submissions Mr. Mfebe's point of view was really an ANC view point on the elaboration these principles from a party political stand point which in a sense is on record but we haven't gone through in great detail until today. Is there anything that obviously we can dot the (I)s and cross the (t)s that we need to deal with in respect of paragraph two over and above this expression user which I think there will be a significant there is consensus on the process and on the obligation upon us to consider each of these constitutional principles where appropriate. And that is also going to require upon us and particularly on the secretariat feedback to what stage principles have been elaborated upon, dealt with etc. by other theme committees I mean cannot have a bottle neck situation where we elaborate here and come up with proposal on that theme committee number three or whatever its dealing with constitutional principle eleven so some sort of clearing house that could be fed back to us. Forgive me . Sorry

Respondent:

Mr. Chairman I would also like to place on record that the ANC recognises those constitution principles as binding and we should not be construed that maybe we try to go around them. We are constitutionally bound by those principles as you have stated earlier on. We would like to place that on record but to give effect to the meaning and interpretation of those principles the different parties will have to state their views of their understanding of what they actually mean in real terms. Thank you

Chairperson:

In fact I made that point that all parties here consider themselves then so obliged, we have consensus on that point and that is common cause there is no dispute or disagreement about that as that is unanimous observation as it were.

Respondent:

I would like to ask to clear this point because I think if there is such a thing which Mrs. Camera mentioned that the constitutional principles which binds us here were drawn only taking into consideration that they are going to apply vertically that's not my understanding and if there is such an understanding I think that we must thresh it out because some of us are actually saying that the new constitution should apply both vertically and horizontally. And for the constitution principles which binds us only speak about vertical then I think our discussion will have to take a different view all together.

Chairperson: Miss Manzini. Thank you I do not think but she can speak for herself that's what Mrs. Camera said. As I understood her submission here she said when we go through these principles if we do have horizontal application if we do have horizontal application of the Bill of Rights generally we have to look at them very carefully to make sure that we take everything into consideration.

Respondent: I wouldn't dream of pre - emptying the ANC's point of view. Thank you

Chairperson: This is Mrs Camera's opinion.

Respondent: I think that its important that we raise this point for the sake of clarity because the issue of vertical and horizontal was previously discussed and it was, there was unionise amongst the members that it would apply vertically and if you could give me the opportunity to complete because really there isn't horizontally the only reservation, hold on, hold on I'm still busy Mr Leon's any attack on any particular person or Mrs. Camera as such. What if my recollection is correct the position with all the parties I'm excluding specifically the NP at this instance, was that the Bill of Rights, the application would be both vertical and horizontal. A strong word of caution was expressed the DP, by the Freedom Front and also by Inkatha Freedom Party in regard to the horizontal application of the Bill the of Rights.

If it was qualified there wouldn't be absolute unqualified application. In so far as the NP is concerned or was concerned the Bill of Rights would have a vertical application this spill over effect which would result in horizontal application but the position or perspective of the NP regarding the application was primarily that of a vertical application. Now I think the positions of the parties regarding this particular issue must be clarified and understood. I would very much like Mrs. Camera to explain, express her perspective in terms of the applicability of the Bill of Rights so that if discuss this at a later stage we understood what the perception of the NP is regarding the application of the Bill of Rights, you know whether it would be excessively vertical or vertical and on occasion horizontal. I think this is for purposes of clarify, it not for purposes of a debate or an attempt to discredit any particular party. It must be understood in that particular kind of light. Thank you

Chairperson:

To the issue of whether it should be, whether we should debate it now. Just before you respond its in the report and in fact in the ANC's draft version report but we haven't discussed but obviously if going to require discussion. It says, it describes it under your head as being a contentious issue we perhaps accept the NP that it should be vertically and horizontally applied. So in your own report which you have submitted for later on your, the ANC view point you indicate the this, I hope you won't say that the National Party didn't support this proposal.

At any event it under this heading of a contentious issue.

Now we are going to useful dispose of that now? Or do we try to present a useful package as it were of the issues which should be asked later and a suggested process of dealing with it. (Respondent) Could I also respond to this because I

Chairperson: Sorry.

2nd Respondent: As a point of clarification I think in the report Mr. Chairperson, which was drafted in the afternoon we do have this point here which I think would be discussed at a point in time. When we discuss the report from the group yesterday.

Chairperson: I accept that draft report itself there isn't going to be a debate about except to an agreement of sending that forward. But anyway I mean you know I do not want to be accused of inhibiting discussion. So er... Mrs. Camera would like to respond specifically to the point made. Let there be an agreement in the meeting that she should respond to the issue now. Should we hear more debates. Mrs. Camera's feeling that she has been unfairly treated I think. Now should I give Mrs. Camera an opportunity to respond? Yes. Certainly

Respondent:

To the best of my recollection we have had this discussion it appeared to be controversial and contentious. But toward the end my own impression was that we accepted that there must be vertical application but then after a discussion we said that it appeared that there was agreement that would be horizontal application. And we used the word appropriate. Now you see we do not have an accurate report of these discussions but I made a note here that we did use the word appropriate and I want to suggest that I do not think that there would argue that the Bill of Rights could only be applied vertically I do not think that anybody is going to say that its only vertical. If we accept that there has to be to some extent horizontal application. I don't think we have to go to a long vigorous debate now. We should be only going into the debate if there are parties here who are saying that can only be vertical. Now if we can get some clarity on that then we can decide whether we should have a long debate on whether it should be horizontal or vertical now.

Chairperson:

Before I call on Mrs. Camera could I refer members it a bit pre-emptive but if you look at this report draft in fact drawn up by Mrs. Camera subject to correction on her own view point. The last two paragraphs on page nine have got how she like the National Party's view point has got to be recorded. Maybe I'm wrong I think Mrs. Camera should elaborate.

The question is whether this issue could be resolved here and now or whether we do it further down the track. It doesn't really matter. We can have the discussion now. Would you like to respond Mrs. Camera.

Respondent:

Thank Chairperson there are two points. One is that the record of the proceedings or the report goes to the management Committee so to say and the other is the National party's approach to the principles. If I could deal with latter one first in response to, the point that I was making is that we are absolutely bound by the principles all of us and we the National Party feel that just as bound. The point I'm raising is a conveyed in a sense and that is that when we come to discuss the issues like horizontality and verticality and the question of whether the, those should apply to Juristic persons or natural persons or whatever. We going to have to look very carefully at the principles because the principles in our view may inhibit the extension in application in the principle of the Bill of Rights the way the principles are worded. Perhaps you understand my point now. In relation I think it was principle thirteen, I specifically said that we may find ourselves in some sort of difficulty if you have complete horizontal application of the Bill of Rights because we are looking at traditional and customary law situations there. I think we are all aware that we have horizontal bill. A possible problem was certainly indicated to me in the past. I see a lot o of head shaking but I do not want to get into this debate now. But we are going to have to get into it eventually. So that's the one issue Chairperson.

The other issue is the report of this committee now I do not know if we should deal with it now perhaps we should deal with it when we get there.

Respondent:

I have to address this to the chair the only thing our discussion has brought to the fore. Its something we have to think about. As I see its all very well for us to report what one wants to report on consensus I mean it's not the job of the forum to reach agreement on each and every issue nor should we try and do so. There might be very well differences, the might be very differences at the end of the day that can only the be resolved on a vote in the end of the day where two third majority it going to be obtained in this Bill. Obviously we should readily unpack the issues as I understand look at them and try to see where there is agreement. But we do not have to all point ourselves into a corner. And say well we cannot proceed if we cannot agree on this point or we can't proceed until we got consensus we might not reach consensus on these issues and I think if we can almost go through a process of identification without on every occasion be obliged to find that consensus. But to explore the issue in case there is a consensus lacking around which will come out as a result of elaboration Mrs Panda.

Respondent:

In fact we have to allow some discussion to proceed when there is a time, a point which members would like a clarification from each other or a great elaboration.

The chair should allow that I don't think it's actually seeking to throw stones or discuss ugly symptom I mean it's really seeking of clarity or elaboration of a point and you should allow that there a sense coming across you are attempting to move us on even where we would like to have some extended understanding of the points that are made. I may be mistaken but I seek your patience in allowing proceed so that we all understand each other.

Chairperson: I'm simply a function of the meeting Mrs. Panda have no greater powers than the collective members. I'm not trying to do anything in particular expect try where possible to assist to suggest ways and means for us to progress without necessarily creating an artificial consensus. Are there any view point which, on this particular issue before we go back to the general discussion. Yes, Sir.

Respondent: On the specific issue, Mr. Chairman I think you must just develop what has been said earlier the purpose of the intervention of my side was mainly to obtain clarity I think that should be put in mind specifically. If at all we have a perspective of what the MP feels about horizontal and vertical application of rights it would assists us and clarify the position. We are not demand that it creates itself to a position maybe we could say we are not certajin about the application of these right we would like to consider it and we would make submissions at a later stage.

That's no problem at all. What we try to see here was the perspective in terms of how the MP sees these rights Mrs. Camera has the freedom to say that I'm not in a position to commit myself we are considering it or whatever. I mean she cannot be intimidated into taking a particular position I think that must be put forward clarity the ANC is not trying to harass anybody or put anyone in a particular corner as indicated in your remarks. Thank you very much

Chairperson: I think we should continue

Chairperson: It does sort of arise in this book although specifically in the first half

Respondent: And also in block two we are supposed to deal with the nature of right and application to, so I do not know how long are we going to deal with this or are we fishing for work so that we reach 6:30

Respondent: Thank you are we perhaps correct in understanding that what Mrs. Camera was saying in terms of the possible vertical application or implication of the principle was her opinion and not a National Party position is that correct.

Respondent:

It something that we need to examine when we get to those issues. I mean as er perhaps I should just say it again. We are committed to the principles but we sending a word of caution, perhaps should I say a covenant that when we get to issues like horizontality and verticality these principles may impinge on the whole question for whether can apply the Bill vertically or horizontally and we would want to examine that point. That's what we are saying we will debate in future in relation to that issue, in relation to the principles

Respondent:

I still stick to my earlier suggestion that we do have this point in the draft report and if we read that statement in the draft report I think we can identify with that statement because it's in principle and it was drafted and it was discussed here. I think initially for the purpose of this discussion I think we should read that statement and see whether there is any decision join the principle

Respondent:

I think Mr. Chair we are getting side tracked again here and I'm not sure in terms of the agenda before you. At what stage are we going to get to the report? If we discuss the report piece meal as issues are raised. If any issue is contained in that report I would suggest that let go to it and discuss the report in detail and then we can dwell on those issues members need clarity on but for the purpose of sustaining progress lets dispose of issues and then get to two next.

Chairperson:

Mfebe that's precisely what have been trying to do this afternoon however my attempts were clearly not meet with the pleasure of certain members and I have been accused is just putting it to strongly of stifling the debate as far as I'm concerned we can stay up to until six o'clock and we can discuss in broad term whatever issues in the general sense arise from each for these paragraph as we are discussing them I don't want to be accused I can assure you the last thing on my mind is to stifle the debate but I do have a very interesting progressing matters along. And you know I don't want to be accused I absolutely do enjoy being a chair of this committee. So I do not want to the one to have to bear the responsibility in some sense trying to stifle the debate. It's very difficult to please everyone.

Respondent:

Chairperson it's an appeal to the chair I know the remarks you have made with audience. I request the chair to be patient with the audience otherwise we won't be able to make any progress. Well Mrs. Panda did accuse you of trying to stifle the debate but I didn't think would take it that hard really because it will get you into an abnormal state of mind.

Chairperson:

This seems to be a confuses that we have elaborated upon. Subject on paragraph two we did as best we can we will get to the report drawn up to the discussion here along the lines suggested. We now go to paragraph three suggested approach as to identification of rights not covered by constitutional principle number two.

The only question we have in our report is common cause but without anticipating any discussion on the report that most parties were agree on the what the universally accepted fundamental rights freedom and civil liberties are there's one party which is view point should be elaborated upon and some consensus should be reached through the mechanism of conference discussion workshop so forth can we usefully add to this under paragraph 3 deal with any other matter which is not covered or won't be covered by the accepted or elaboration of universally accepted fundamental rights freedoms and civil liberties of universally accepted norms. That point has already been taken care of as it were in our report on this block, the question is are there any matters left outside of that?

Respondent:

How is that taken care of in that report you said it has already been taken care of what exactly do you mean about that.

Chairperson:

What the report does it to say that as we discuss and I 'am not trying to introduce discussion were is that constitution principle two deals with among other things were all the accepted rights freedoms civil liberties question is what outside of that and the way mechanism for as elaborated upon those as in chapter 3 can we or should talk about now that is really the question what are the issues which fall outside of the way that we are going to deal with the universally accepted human fundamental freedoms what is there which we can talk about now, which we are not going to deal with in any event through the elaboration of those human right freedom civil liberties and the principles themselves.

Respondent:

I would like to make a proposal when I was making a presentation I think I did indicate that I did make reference to the UN chapter and other subsequent tracheas and I made the suggestion that the core-group.

THEME COMMITTEE 4 MEETING 1 FEB. 1995 (TAPE 3)

It with the document prepared by the ANC that we should then have a draft before us which we can discuss on Friday which probably will show the there's considerable amount of consensus but that there are points of differences and that we must accept that we are not going to achieve total consensus on this. There are going to be points of difference and the report must go forward to the CC on the basis that these are the points on which we agree and these are the points on which we differ and that the job of this committee put in simple terms.

Respondent: There is to act according to the document that guide our activity. In that as I understand it, this is a theme committee. So it seems to me that a sensible approach is to actually give the task that Senator Radu refer to be drafted. To actually see to it is finality.

Chairperson: That's a suggestion that we have, that we take back as it were this document report. The alternative suggestion for the report and send it back to the drafting committee Mrs Camera is member of that committee. She is the drafter

Respondent:

As a very reluctant drafter but I'm sure that it will be an rotating task. Anyway Chairperson I think the one we have learnt out of this exercise is that we set an unrealistic deadline because you know we as the drafter I attempted to comply with the deadline we read in the drafting committee but I think that it was impossible but we had all sorts of other meetings for all the parties to feed their input timeously. Now it doesn't really matter whether it happens at the secretariat level because I'm aware as a ruling that secretariat mustn't produce reports. But I think the point we've made in the past as Senator Radu was saying that it's actually quite, it might be easier to get the secretariat to draft as if they are drafting minutes. Draft a report which has no status until the drafting committee has toyed with it. I do not really mind I mean I have an open mind on it. The one thing we didn't do is comply with the deadline because obviously the ANC wanted more time to think about the report and wanted to adjust it more extensively than they initially did which one understands but in fact there are a couple of points in the report that is attached to the documentation, that somehow from our point of view has also gone slightly wrong. So we want to make adjustments as well. I leave it in your hands but I think we mustn't set these unrealistic deadline for important things like the record of what happens here.

Chairperson:

Well I think that, Mr. Sizani do you want to deal with this point specifically. Please proceed

Respondent:

Well first on this point I support the suggestion by Senator Radu as amended by Mrs. Panda. But what I'm not clear about is what constitutes the report. Is it a record of the discussions that took place in a particular meetings? Is it the summary of the submissions that have been made by various political parties and thirdly what also happens to individual contributions? As it is now I do not know what really this report reflects. Does it reflect a discussion merely that took place yesterday and where is this report going is it going to the CC.

Chairperson:

Well let one just deal with your last point first as I understand it. It needs to be clarified the report really does go to the constitutionally committee if and for that matter the Constitutional Assembly. On what we have to report on block one which there has been some detail added and it is really meant to report the suggested, suggestions coming up onto of this theme committee on the actual decisions made in respect of answering the questions and the issue posed under block one. Now obviously if you feel or any party feels that a particular view point of theirs has not been represented but that it relates to a decision, not just the fact that obviously every party has substantive views which reflect in the documentation but on the point of dealing with the various items that are headlined here then at that point you must obviously comment when we have a report in front of us and that you are free to do.

But we all need to send a written report from this theme committee on every block as it were. The end of every block we make recommendations to the constitutional committee, the Constitutional Assembly for how items have been disposed of how they are going to be disposed of in the future and in so far as the particular relevant view point is not expressed in the report then at the stage that we are discussing the finalisation report that would be the appropriate moment to deal with the idea of having all the parties represented on the drafting committee. Is that when the draft is being proposed that they can make their inputs then. That is a matter of convenience. So I do not know if that clarifies what the purpose and status of the report will be Mr Sizane but that is what the intention is. There seems to be consensus unless we have any other point on Senator Radu's suggestion. That's the, as elaborated upon that the matter be referred back to the drafting committee to incorporate the proposals or amendments which have come out of the ANC together with all the others which are reflected in this report and see if a merged and conceptual document, it doesn't have to be consensual since there is agreement in it on the issues. But that there is agreement that this fairly represents the various views point and attitudes on the agreement reached. all right Miss, Dr. Mulder you indicated first.

Respondent:

Yes Mr. Chairperson I'm not sure if I understood the proposal of Senator Radu to be exactly that another respondent in the audience as amended

1st Respondent: Because we feel strongly that the task of the theme committee to write the report and not of the secretariat and that one should take into consideration that the drafting committee in representative of all the parties and they can only draft a draft which then comes back to the theme committee to be amended until we are satisfied and agree upon it.

Respondent: If that wasn't clear that's what I'm proposing from the chair that this go back to the drafting committee. The two any other people who have any other thoughts and who have any other interpretations they want to be put in and that the drafting committee in the first instance be mandated to prepare and revise the draft and come back here for finalisation amendment

Chairperson: Do we have any other points on this.

Respondent: I think chairperson Mr. Sizani has raised a very important point I suspect that what his question is say if you could allow me to interpret it. Is that in fact block one doesn't consist of a reflection of our submission. We began on block one quite a while ago and believe that what he is saying is that the report gives the impression that block one is, has been dealt with in substance only by those parties that were present yesterday .

And I think in fact the drafting committee has a responsibility to consider what proceeded yesterday's discussion and what incorporates that into the report.

Also chairperson we do have a format suggested by the Constitutional Assembly or Committee as to how our reports should be structured and that the drafting committee should make use of that format.

Chairperson:

Right that will be taken into account by the drafting committee and obviously Mr. Sizani is a member of the drafting committee so no one will be prejudice and no one need have to be prejudice because even if Sizani and I are operate under some constraint in this regard, even if I cannot be present to the draft committee you are obviously present at the theme committee before the report was finalised. So any of those stages those inputs can be put in so its easier to do it with a group of five or so people rather than a group of thirty people. All right so that is in the proposal the only question now is agreement on we can realistically get this group together and have an opportunity before the parties consent to consider the report. The parties are at liberty we do not necessarily have to have the draft report. We have in a sense already several draft floating around from the various parties I think which would progress the matter than it could have been yesterday I think that's important I do not know if its necessary that parties agree before we come back here again to the theme committee.

Once the exercise is gone through because that might create more delays. Lets just see what the position is as far as meeting to all concerned. All right we are meeting on Friday that is the theme committee is meeting on Friday and the, at 8:30 in the morning that scheduled. Should we rather use that time for the drafting committee to meet and then for them to come back with their draft of what's here what was discussed today and which goes under block one as well which was dealt with in today's discussions and then to come back here to the theme committee on Tuesday. In other words what is being proposed is that the theme committee as a theme committee do not meet on Friday but that the drafting committee meets on Friday and that we then consider an expanded report which will incorporate today's discussions and decisions next Tuesday which is the next date of the theme committee's meeting. Does that meet with the general approval? The drafting committee can then set a specific time for Friday it doesn't have to meet at 8:30 in the morning. Does that meet with the approval? It seems that we spent slightly more time and less haste on the drafting process we might on Tuesday be able to reach some clarity and finality on this particular report which is fairly critical to the next stage.

Sorry

Respondent:

I was saying that the report will now have to cover the whole block one not only as been done but also the work we did today and ...yes

Chairperson:

If that is an agreement then the members of the drafting committee can just briefly meet now to set a time and fix a venue. We will then meet again as a theme committee on Tuesday at, you get a notice of the venue on time on Monday or Friday. Thank you the meeting is now adjourned

2/4/4/5/4

Tape 1

Rm M46 07-02-95

Chairperson: Morning Comrades. Welcome. Perhaps firstly I need to announce that we had a vacancy in the core group created by the appointment of Adv. Gert Myburg as deputy minister and I'm happy to announce that the National Party has nominated Senator Dr. R.J. Radua to replace Adv. G. Myburg both as a Chairperson of the core group. So we welcome and congratulate Senator Dr. R.J. Radua. Not a doctorate. It doesn't matter.

Another announcement we have a panel of experts with us and three of them are part of this meeting. They are here on my right Professor Duggard, I hope I'm not giving him an honorary Professorship, Dr. Hutling Children I hope I'm not doing another wrong thing It's honorary Dr.

We also have Miss Sandy Liebenburg. You are also welcome and I hope that the sprits that were high at some stage will now drop because the experts are here and we've been talking about them a lot when they were not here, now they are here. You're welcome gentlemen and a lady. Are those any apologies? Professor Asmal. Mrs. Sheila Camerer.

those are the ones I know are there any other apologies?

OK. Please don't forget to sign the attendance register. It is circulating at the present moment. There is another request that if members of the theme committee there are any crèche needs the questionnaire to assess crèche needs for members of the theme committee there are forms if there are people who would like to fill in the questionnaires to assess the need.

There is an agenda No. 2 of which is minutes 31.02.95 and those of 11 February, 1995. Now when you look at the agenda perhaps I just need to check if there are any additions. Any person who would like to add anything in the agenda. OK, there being none then we'll move to No. 2. Minutes of our last meeting. Any corrections on the minutes of the 31st? I'll start with 31st.

Chairperson: Yes, Comrade.

It's just a small thing on the attendance list of the 31st my name does not appear I was present on this day visible from the last part of these minutes.

Chairperson: Yes that's a very big error because you're mentioned somewhere in the minutes that you did talk in the meeting OK. Another is Tony.

Chairperson: Can we just go back and I'm sorry to do this to the agenda since we have the presence of the 3 of the 4 experts and advisors I think that it would be productive for them and for us to discuss the interaction of their inputs with the theme committee of how it's going to work even on an informal basis.

Rather than to just proceed with the meeting as though in a sense they're not here.

Chairperson: So Comrades, ladies and gentlemen that we allow our experts to briefly, have a brief discussion on how we'll be interacting. Can I get your views. Is that agreed? Is that supported. Thank you. Yes.

One clarification I would like to know is whether, I understand yesterday there was a meeting of the Chairperson and so on whether j and the core group didn't need the experts yesterday? or whether was there any briefing in your meetings about their role? So that at least you can lead the debate on that.

Chairperson: At the moment no. Nothing was raised about them yesterday. Comrade Naledi and Mavivi.

Naledi: Thank you Chairperson. Chairperson in response to the proposal I think the interaction suggested would be premature at this time given that as I understand it the technical committee members have not been briefed as yet. I think it would be useful for us to have the interaction once they've some knowledge of what their particular brief is, and once they've had some discussion with members of the secretariat/the management committee.

Chairperson: Now I'm not so sure how to handle that now because I'm informed that they have not been briefed indeed. So they're coming to this meeting for the first time and I believe they'll be briefed at some stage I don't know when is their meeting.

Is it tomorrow? I'm told it is today this evening. Can I check whether are still want to proceed with those discussions even though they've not been briefed.

Just on a point of clarification, Mr. Chairperson supposing/are we given the assurance that even after this all of them will still be here. In case, well probably, they'll be short. One of them will not be here. Are they all going to be here? After the tonight's meeting?

Chairperson: Well, I don't know whether we want then to answer that question whether they'll be here because I don't think I'm competent to answer that one, whether they'll be here.

Response: Mr. Chairman, do we haveunclear .

Chairperson; OK, Now we get some other information. What, I don't know now which is which. I'm a little bit, I'm in your hands now. Because they say they've been briefed by the Chairperson of the Constitutional Committee and the duty and they've been informed that they're in our hands. So I need to check exactly.

Can we just briefly have few inputs so that we save some time.

Input: Mr. Chairperson please.

Chairperson: Can I just see your hands up. I was once intimidated but I'm immune to it now.

Input: Only as a point of

Chairperson: OK, just hold I want to record the people who will be speaking. There are a number of people before you any learned friend. On a request please.

Chairperson: A request?

Response: Yes.

Chairperson: How do you discuss a request? - the request is that the technical people take their seats in that bench over there where there have facilities of microphones because we can't hear them and I can't see them.

Chairperson: OK, we'll arrange that when we give them the opportunity to speak, but at the moment we're still discussing what do we do with them. Comrade Mfebe.

Mfebe: Chairperson, Mr. Tony Leon, the reply given by Professor Duggard really just strengthens the need to interact with the expert advisors and as soon as possible. Quite frankly I don't think we made huge progress on our own as it were on the last time that we had to get through the previous general items and I'm sure that the sooner we can use the expertise that is available the better, and I think it's better actually to start the process with the theme committee and the advisors at the beginning in anticipation of the next items on the agenda.

So we can have some modus operandi and we can try and get the show on the road. This is I think a sense of frustration that many of the parties are feeling that is that we aren't making substantial progress and I'm sure the sooner that we can get everyone on board and we reach some common approach the greater the progress will be.

Mavivi: Thank you Chairperson. I think it's very clear that we've not made preparations as a theme committee as to how we're going to proceed with the technical committee and I find it very difficult to actually put it on the agenda without the core group members who are supposed to be the one who process issues which are brought here discussing it. Thus I would suggest that there is no way at the moment that we could have a fruitful interaction with the theme committee without having structured it exactly what we want to say. Because I think we'll be speaking in different tongues here. I would suggest that the core group members meet and structure whatever we have to present to begin the interaction with the theme committee, with the technical committee because I think they need the briefing as to where we are, how we started and what are the issues which are contentious and non-contentious and our programme etc. I don't think we can just plunge them into a discussion of interaction. I don't know what Mr. Leon envisages in this interaction. That's my suggestion, and we'll have interaction in the next meeting.

Chairperson: I'm still in the hands, I want to get more views because it will be more like a dual now. Can I get more of the views of other people on this issue. There are 2 proposals here. One is that we deal with it at the core group meeting, we come with some kind of a proposal to the theme committee. One is that we ask them and we debate it here, today. Can I get other vies.

Response: Chairperson. I hear what has just been said. I don't think we are bound to what we discuss today if we should discuss the interaction in what we discuss today. But I think it could also help the core committee in our deliberations if we prematurely basis get some input form the technical people how they see from their side what they think and what they expect. None is going to be bound by what we discuss in that premature discussion and I think it can be a fruitful exercise. The fact is if we do not do it this way we're just delaying the process and it's going to take another day or two before we get going.

Skosana: Mr. Chairperson could we just briefly hear their feelings about this. If I, I just wanted to know if you're put in a situation like this at the outset what would you feel. Do you want to start interacting, do you want to have a briefing first. We should hear their feelings.

Chairperson: All right lets have the following speakers. Do you also want to speak. James, OK.

Response: Thank you Comrade Chairperson, I wonder why, I want to ask myself why do we have a core group because I thought that the core group should be the one that is briefing the technical experts and we don't want to hear from them, they must hear from us and I think it's the suitable way to let the core group go and brief them as Comrade Mavivi has outlined not for them to come and tell us what to do.

Next: I would just like to echo the sentiments already exposed by this Comrade and Comrade Mavivi. I think it would be wrong if we expect the technical experts to tell us what they think their role will be. We must tell them what we want them to do and I think the right forum to do so is at the core group meeting and as already suggested get a thorough briefing up to the stage where we are right now and I think that would provide us with a fruitful basis from which to depart when we discuss the interaction and this broad forum and I would strongly suggest that my colleagues will accept this and without waste of time we proceed to the next item on the agenda.

Chairperson: Mr. Radua

Radua: Thank you Chairperson. I was under the impression that perhaps Professor Duggard would just want to make a few brief opening remarks and I would have thought that the committee would be prepared to just hear what they have to say not necessarily on what their work is or their procedure but just opening remarks.

This is after all the first occasion on which we do have their present with us, and perhaps if they just want to make one/two opening remarks without going into detail on anything to do with their actual work we should perhaps just hear them. Thank you Mr. Chairperson. I'm not sure what we want the technical experts to say to us, because as it is there are many parties who have not even made their submissions so we have not even begin to discuss serious issues. So unless we want to indulge in discussing generalities and get into some kind of a wild goose chase expedition then we can start talking with them. But really it does not make any sense to me why we should actually allow the technical people unless we have real issues that we want to table before them.

James: Thank you Chairperson. To an extent I find this discussion a bit embarrassing because we've got experts here and we are saying we don't know why we invited them what role we want them to play etc. etc., but be that as it may it is for us to have a discussion with the theme committee, prepare a brief and then the theme committee, the core group of the theme committee can have a discussion with the experts so that there's a thorough and proper briefing because at the end of the day they are going to be servicing us. We need to be very clear in our own minds what role we want them to play. So my proposal will be that we've some discussion as a theme committee at some stage/alternatively we can even say parties can make submissions about what role they think experts can actually play. The core group can has a thorough and more substantive discussion about the role of the experts and then we take it from there. Mr. Mulder the last speaker.

Mulder: Mr. Chairperson I was asked to explain what actual purpose this would serve so let me explain. Paragraph 5 on the agenda says block 2 of work programme preliminary discussion. I would have thought, maybe I'm wrong, that we would actually have an enhanced discussion if members of the technical committee gave us some input at this stage because I don't think our progress and amount of time it took to us to deal with block one was particularly illustrative of the fact that we would not benefit from some professional and technical expertise. I would think that we would. The second point is really this: the experts are here, we are dealing with the tax payers money in so far as the retention of experts is concerned it would seem to me extraordinary if we just expected the experts to hang around until we ourselves unilaterally have defined the whole position for them and then said go and do it. I would like to hear how they even on the basis of what the Constitutional Committee has determined quite some months ago. The general role of the experts and the technical committee which is all laid down in the papers. I'm sure they've been given to the members of the technical committee who are assisting us. And I don't actually understand what the reluctance is because I think sir it must be understood that the core committee is not possessed of some magic/formula which is absent from this group as a whole. I mean the core group is simply a smaller group of the whole. It's nothing more or less than that and I would like to see us making some substantive progress. Someone has talked about a waste of time get onto paragraph 5 we took block 2 of the work programme preliminary discussion the point is we should try and facilitate on the most constructive basis.

On the other hand we can carry on having meetings and we'll go backwards and forwards on the ground that we could have more usefully covered on another occasion. I really don't know what it achieves. We have the people here their presence is paid for remunerated by the state and I think it would be a waste of money, of resources of their time if we don't interact with them as soon as possible and as Dr. Mulder has said the downside, I don't see any downside because nothing is cast in stone as we well know from our previous meetings and everything can be revisited if necessary. But here the three people are, let's use them.

Chairperson: Comrades, ladies and gentlemen, I think this is not as difficult as many of us might think it is. I would propose that when we have tea at 4.00 because after then we the people who are in the core group are supposed to be the people who are proposing the agenda. Why can't we decide as a core group that we discuss this, particular issue how we are going to deal with this particular issue because I cannot make a decision at this point in time, some only salvation is the core group - the executive of this theme committee. I propose that we leave this at that but we must make sure that we meet today as a core group and decide how we are going to deal with this particular situation because the meeting will be off at 18.30 and check whether they have any particular inputs that they would be prepared to make as a core group in this meeting if there is any need for that. But I would propose that we allow for core group to discuss this issue. We were dealing with the minutes No. 2. I hope we're not going to go back to which items we must add to the agenda.

I remind you that we are dealing with minutes because I'm going to rule you out brutally if you come with something else, but I won't shoot you don't worry.

OK, No. 2, 2.1, we're still on the theme committee meeting 31/1/95 we had one correction. Any other corrections? Mr. Skosana.

Skosana: In the minutes I see that my name has been omitted there and I was present.

Chairperson: OK. To alleviate this let's make sure that all of us sign the register.

Chairperson: OK any other corrections. Naledi.

Naledi: Thank you Chairperson, it's just a minor one. It occurs on Page 7 of these minutes under point 6.2 and it does occur in the later minutes as well and other areas where this phrase is used. The title of 6.2 "organs of civil society" and that's on many pages where this appears that these is this.

Chairperson: OK. Any other? Let us look at 2.2 if we've finished those. Any corrections on the ones 1/2/95?

Chairperson: On Page 11, Paragraph 4.1.3 where the position of the Freedom Front is given these are just for 2 corrections.

In the second sentence it refers to the special importance of principles 11 and 12 and it should include 34 and then the second sentence should read as follows the FF. wished to reserve its opinion whether section 34 should be included not in "a" bill but in "the" bill of Rights or somewhere else in the constitution.

Chairperson: Any other correction? Mr. Tony Leon.

Tony: the minutes are a little but out of date because the 1st of February 1995 this is 1994.

Chairperson: That's a glaring mistake. Any other correction. Naledi and Comrade Max.

Naledi: Chairperson, on Page 13 under report of block on 5.1.5. I think the sentence should end after the word discussion. Because I believe the document was tabled for discussion by all parties and then I'm not sure that under 5.2. We in fact had a detailed discussion. I don't believe that that is a correct reflection of the process.

I just want to check on that 5.1.5. In fact it was a document that was drafted by the ANC and handed in by the ANC it came specifically from the ANC. We had one draft document which was for the record and then the ANC filled the second document which was circulated at the meeting and then we decided to marry the two.

Chairperson: I don't think that denies that 5 says a draft prepared by the ANC was also circulated for discussion by the ANC. That's what is presently in the minutes. I think what's being corrected is that we didn't say it must also be discussed by the ANC that prepared the same document.

Comrade Max:

Chairperson, on page 6 & 5, ream 4. The ANC noted that others forms of entrenching human Rights should also be looked at I think it should read 'other forms of enforcing human Rights'.

Chairperson: Just a small technical point on that same issue just mentioned. I think there are tow 6.5's.

Chairperson: Correction. Thank you. We're doing fine matters arising other than those that are included in the agenda. OK. Are the minutes confirmed? Then there being no reply, I take it that is so. We move to report on block 1 of the theme committee discussion in the second draft. I'll ask our drafters to try to take us through the report. The drafting committees.

The meeting was held on Friday last week a representative meeting with myself I was appointed as chair for the meeting. Mr. Leon was present, Mr. Skosana from the IFP as also Dr. Mulder and Mrs. Sheila Camerer was representing the NP. We used the document that was circulated earlier by the secretariat as a basis on which we could compile the minutes.

The entire meeting was recorded by the secretary so that there's no misunderstanding of what was said/what was agreed upon by the parties. The meeting was a very fruitful and productive one. In fact what has been presented or what is being submitted here is in my view reasonably accurate reflection of our agreements on that particular day. I do not know whether you wish me to go through each one of the items and discuss the basis on which agreement was reached in terms of each one of these aspects or whether we should just proceed to adopt or to inquire whether there's any changes that are proposed.

Chairperson: OK. I would be happy with that one. I don't think there's need for you to go through it point by point unless there's somebody who is requesting that. I would ask for any corrections, proposals whatever the case might be but it's open to you now for discussion. Coming from our drafting committee and I thank them very much for presenting this report. Comrade Max : you want to start and Comrade Naledi.

Max:: Thank you Chairperson. On page 17 under item 3.1.1. I've a concern here. We were agreed that it should read the bill of Rights should be entrenched and enforced. But I think at the time we perhaps overlooked the issue of entrenchment or the degree of entrenchment. We didn't give any attention to how this entrenchment would come about in other words are we talking about a 100% entrenchment 66% and 2/3, 75/90%.

No attention was given to this issue and my proposal would be at this point in time that we record this fact in some kind of a way and perhaps allocate a discussion within block 10. I think block 10 does not have anything at the moment. It could be referred at that point in time and by which time each party will have been able to assess their own position in terms of what level of entrenchment they would wish. Thank you Comrade Chairperson.

Com Naledi: Thank you. We are going to pick up on this point later Chairperson?

Chairperson: Well, it didn't really mean much because we are not dealing with the details as yet.

Naledi: I think there are to a greater degree, minor points as of corrections and so on for purposes of the record. Under 1.1 contentious issues points of grammar within 1.1.1 we need to make some changes to add some essence there to allow for the paragraph to read accurately. I wondered if we could get some clarity as to whether in 1.1.2 it is correct for us to speak of reserving positions and then believing in a particular thing. It seems as if the two are actually contradictory. Is it appropriate to have the sentence reading in that particular way? If I could move on perhaps we can deal with them together. On Page 16 under 2.2.1 I think in the second line we should have universally accepted Fundamental Rights then Page 17 under 4.1.2, I just again need some assistance as to the phrasing of that sentence the parties agreed they're not limited by the Rights in Chapter 3 "Is that discussion is not to be limited to those Rights?"

The sense doesn't come through quite clearly and I wondered if we couldn't perhaps elaborate a little bit or clarify that particular sentence. Thank you Chairperson.

Chairperson: Comrade Surtee would you like to respond to that point Comrade Tony Leon?

Tony: I don't want to respond to that but to raise another point before Mr. Surtee responds. Chairperson 3.1.3. All parties supported a strong judiciary that is clear. But certainly I think in the first document one party was specifically labelled but certainly we didn't discuss this point specifically in the report. My party as well and I'm sure the others support a strong and independent judiciary and I think that was the overall feeling of everyone in the meeting so that would help I think the difference between a strong judiciary and strong independent judiciary quite significant.

Chairperson: OK, Comrade Sizani.

Sizani: Thank you Mr. Chairperson. On page 15 point 1.2 I think the reading of that point is misleading especially if it includes also the PAC under other parties. I don't know which other parties are included there. I would suggest that those parties that express an opinion on that issue should be titled, precisely because even in my submissions we didn't make any comment on that issue and when it was discussed, I was not present. So I neither believe nor reserve anything. I can state my position but I don't think it's necessary it should just be silent on it.

Mfebe: Page 17 point 3.1.1 where it says the Bill of Rights should be entrenched and enforced and there's something missing there. That it should also be justifiable in that same sentence and I would propose that it should read a Bill of Rights should be entrenched, justifiable and enforceable that we did discuss.

Chairperson Let's check the drafters. Any comments from the drafters? Senator Radua.

Radua: Sorry. Just to come back to the 2 points raised by Siphendu. 1.1.2 perhaps it would be more correct to read reserve that position and stated that the term everyone should include juridic persons. As far as the NP is concerned there we're quite happy to deal the word reserve their position stated that the term everyone should include juristic persons.

Chairperson: OK. So Comrade Naledi and other people who are experts in English can assist us as to how we put that sentence.

Interjection: And the second point Mr. Chairperson 4.1.2. just change the word "by" to "to" the parties also agreed they're not limited to the Rights in Chapter 3 only. That is all.

OK, I've got 2 more hands. Mama and Mr. Chairperson perhaps we could come back to 1.1.2. I agree that there could be some grammatical/English precision which we're looking for but the tone and spirit of the meeting when we were discussing this issue.

I'm not protecting the writers I think the tone and spirit in the house led them to write it like this. Because it was a matter of are we saying everyone is interim's of what other parties are saying. So at the end it was agreed that though for now we reserve our position but we believe you see when we look at the tone at that time. So that by the time when we correct the language we must not loose sight of what was being discussed at that time.

Chairperson: Just to respond. Yes Mr. Skosana.

Skosana: Thank you Mr. Chairperson, I'm one of the drafters. I believe that we were trying to capture the mood of the proceedings of that day. And I also believe that it's only the parties themselves which can clarify their positions visa a versa the draft. As the PAC has done just now. On point 1.1.2 Mr. Chairperson our reservation these as the IFP was not reserving anything - else but reserving the right to submit details on that aspect. I think we can have this situation in a more fruitful way so that was avoid wasting time, we can discuss even further as a core group together with the drafters as to how we can put it. So that we don't expose one another unnecessarily. I'm not expert in English so I may not be able to guide this house. If it was Xhosa yes I would tell you what you must say.

Skosana: As I believe Mr. Chairperson it's not only the language it's also the positions involved. It's not only the language.

Chairperson: Any other comment from drafters?

My Chairperson in attempt to resolve the problem here, the difficulty here. Perhaps we can attempt to reconcile everybody's views about 1.1.2 should look like by inquiring from the FF what their view is does it reflect their position in other words do they identify with what is set out in 1.1.2.

FF: Chairperson could I respond. Yes.

FF: I would agree with that proposal that we clarify the issue once and for all because it's not only the issue of English and grammar it's the positions of the parties.

Chairperson: Could I then on that similar point inquire from ACDP?

FF: Could I then give the FF position and could they note that or the report? Our position in terms of the question of everyone is that we reserve our final position but that we believe it should include everyone but we also indicated that it could depend on right to different Rights whether it would be applied to jurisdictional persons or not. So our position was that yes it should also include them but it would depend on different Rights one by one it should be examined whether it should apply to jurisdictional persons or not.

Yes Chairperson, I think the ACDP position is that we actually look at Chapter 3 in looking at principle 2 and our Fundamental position is that why we didn't put a strong emphasis on juristic persons is because we believe that Fundamental Rights in Chapter 3. Our approach is particularly that it refers to Fundamental basic human Rights and I think we would go along with the position in particular circumstances where it needs to be applied to juristic person. There would be particular incidences that we would say we should isolate them but as a general rule it should apply to persons because it deals with basic human Rights.

Another party: We believe that a very similar approach to the FF and that I've no problems the way that it's formulated here. That would capture DP position but subject obviously to the fact reservation means that it is not cast in stone.

Another Party: We confirm exactly the same position as the DP in that we'll reserve our final position, it's not cast in stone but really the term should include juridic persons should include.

Chairperson: all right I'm just checking with the drafters whether they're happy with the drafters with what we've received thus far.

Drafters: We're quite happy Mr. Chairperson what we have to do now when we adjourn within a matter of a minute we'll just formulate the proper sentence which will encompass what we've heard, agreed upon now.

Chairperson: OK. Is that agreed? Let's look at in there was another one. Anything to say on 2.2.1 where it says should be universally Fundamental Rights not accepted Rights.

OK. Right the last one, is that agreed?

Agreed.

OK. 3.1.1. There was an added term there, justifiable and enforceable three terms.

Mr. Chairperson I think the intention was to put the word justifiable after entrenched and I think there seems to be consensus on that aspect. Meanwhile whilst I'm on the floor may I suggest that 3.2.1. if we could add from the ANC point of view and this has been raised from the meeting and there seemed to be some consensus e.g. in other words or 3.1.2 e.g. human Rights commission. All parties agreed that the other organs of enforcement be looked e.g. human Rights commission. This was raised and nobody seemed to have any difficulty with that. We just include the word e.g. human Rights commission.

DP: Chairperson, I see there's an immediate problem with the way we formulated because what it says justifiable means it is capable of being adjudicated upon in the courts and provided that is generally understood meaning then we just leave it at that. But when we say all possible means other means of enforcement be looked at it almost looks a bit curious because you wonder then what the primary organ/arena of enforcement is.

That's the only point that perhaps we did miss. I mean none of this needs to be started because it's all actually in the Constitutional principle. We're really decoding that Constitutional principle but for that reason perhaps we should put that in. That the primary before you put the others organs of enforcement that the primary organ of enforcement will be through the judicial process or the courts or something.

Drafter: May I respond to that Mr. Chairperson. If we were to add on 3.

2/4/4/5/4

Tape 1

Rm M46 07-02-95

Chairperson: Morning Comrades, Welcome. Perhaps firstly I need to announce that we had a vacancy (excuse me) in the core group created by the appointment of Adv. Gert Myburg as deputy minister and I am happy to announce that the National Party has nominated Senator Dr. R.J. Radue to replace Adv. Gert Myburg both as a Chairperson of the the core group. So we welcome and congratulate Senator Dr. R.J. Radue. Not a doctorate. It does not matter.

Another announcement we have a panel of experts with us and three of them are part of this meeting. They are here on my right Professor Duggard I hope I am not giving him an honorary Professorship, Dr Huitling Childtio I hope I'm not doing another wrong
It's honorary Doctor.

Chairperson: No, no Dr wait.

We also have Miss Sandy Liebenberg. You are also welcome and I hope that the spirits are high at some stage will now drop because the experts are here and we've been talking about them a lot when they were not here now they are here. You are welcome gentlemen and a lady. Are there any apologies? Professor Asmal. Mrs. Shelia Camerer.

Those are the ones I know are there any other apologies? Okay, please don't forget to sign the attendance register. It is circulating at the present moment. There is another request that if members of the theme committee there are any create needs the questionnaire to assess creche needs for members of the theme committees there are forms if there are people who would like to fill in the questionnaires, to assess the need.

There is an agenda No. 2 of which is minutes 31.01.95 and those of 1st February, 1995. Now when you look at the agenda perhaps I just need to check if there are any additions. Any person who would like to add anything in the agenda. Okay, there being none then we will move off to No 2. Minutes of our last meeting. Any corrections on the minutes of the 31st? I'll start with 31st.

Chairperson: Chairperson, hello.

Chairperson: Yes, Comrade.

It's just a small thing on the attendance list of the 31st my name does not appear I was present on this day visible from the last part of these minutes.

Chairperson: Yes, that is a very big error because you're mentioned somewhere in the minutes that you did talk in the meeting okay. Another is Tony.

Chairperson: Can we just go back and I'm sorry to do this to the agenda since we have the presence of the 3 of the 4 experts and advisors I think that it would be productive for them and for us to discuss the interaction of and their inputs with the theme committee and how it is going to work, even on an informal basis. Rather than to just proceed with the meeting as though in a sense they are not here.

Chairperson: So Comrades, ladies and gentlemen that we allow our experts to briefly, have a brief discussion on how we'll be interacting. Can I get your views. Is what agreed? Is that supported. Thank you. Yes.

One clarification I would like to know is whether, I understand yesterday there was a meeting of the Chairperson and so on whether the chairpersons and the core group didn't need the experts yesterday? Or whether was there any briefing in your meetings about their role? So that at least you can lead the debate on that.

Chairperson: At the moment no. Nothing was raised about them yesterday. Comrade Naledi and Mavivi.

Naledi: Thank you Chairperson. Chairperson in response to the proposal I think the interaction suggested would be premature at this time given then as I understand it the technical committee members have not been briefed as yet. I think it would be useful for us to have the interaction with them once they've some knowledge of what their particular brief is, and once they've had some discussion with members of the secretariat/or management committee.

Chairperson: Now I'm not so sure how to handle that now because I am informed that they have not been briefed indeed. So they are coming to this meeting for the first time and I believe that they'll be briefed at some stage I don't know when is their meeting. Is tomorrow? I'm told it is today, this evening. So can I check whether we still want to proceed with those discussions even though they've not been briefed. Just on a point of clarification, Mr Chairperson supposing are we given the assurance that even after this all of them will still be here. In case, well probably, they'll be short. One of them will not be here. Are they all going to be here? After tonight's meeting.

Chairperson: Well, I think, I don't know whether we want them to answer that question whether they'll be here because I don't think I'm competent to answer that one, whether they'll be here.

Response: Mr Chairman, we do have (unclear on tape)

Chairperson: OK, Now we get some other information. What, I don't know now which is which. I'm a little bit, I'm in your hands now. Because they say they've been briefed by the Chairperson of the Constitutional Committee and the deputy and they've been informed that they're in our hands. So I need to check exactly.

Can we just briefly have a few inputs so that we save some time.

Input: Mr. Chairperson, please.

Chairperson: Can I just see your hands up. I was once intimidated and I'm immune to it now.

Input: Only as a point of.....

Chairperson: Okay, just hold I want to record the people who will be speaking. There are a number of people before you any learned friend. On a request please.

Chairperson: A request?

Response: Yes.

Chairperson: How do you discuss a request? - the request is that the technical people take their seats in that bench over there where they have full facilities of microphones because we can't hear them and I can't see them.

Chairperson: Ok, we'll arrange that when we give them the opportunity to speak, but at the moment we're still discussing what do we do with them. Comrade Mfebe.

Tony Leon: Chairperson, the reply given by Professor Duggard really just strengthens the need to us to interact with the expert advisors and as soon as possible. Quite frankly I don't think we made huge progress on our own as it were, on the last time we had to get through the previous general items and I'm sure that the sooner we can use the expertise which is available the better, and I think it's better actually to start the process with the theme committee and the advisors at the beginning in anticipation of the next items on the agenda. So we can have some modis operandi and we can try and get the show on the road.

This is I think a sense of frustration that many of the parties are feeling that is that we aren't making substantial progress and I'm sure the sooner that we can get everyone on board and we reach some common approach the greater the progress will be.

Mavivi: Thank you Chairperson. I think it's very clear that we've not made preparations as a theme committee as to how we're going to proceed with the technical committee and I find it very difficult to actually put it on the agenda without the core group members who are supposed to be the one who process issues which are brought here discussing it. Thus I would suggest that there is no way at the moment I think we could have a fruitful interaction with the theme committee without having structured it exactly what we want to say. Because I think we'll be speaking different tongues here and I would suggest that the core group members meet and structure whatever we have to present to begin the interaction with the theme committee, with the technical committee because I think they need the briefing as to where we are, how we started and what are the issues which are contentious and non-contentious and our programme etc. I don't think we can just plunge them into a discussion of interaction. I don't know what Mr Leon envisages in this interaction. So that my suggestion that the core group go and discuss it and structure it and we'll have whatever interaction in the next meeting.

Chairperson: I'm still in the hands, I want to get more views because it will be more like a dual now. Can I get more of the views of other people on this issue. There are 2 proposals here. One is that we deal with it at the core group meeting, we come with some kind of a proposal to the theme committee. One is that we ask them and debate hit here, today. Can I get other views.

Response: Chairperson, I hear what has just been said. I don't think we are bound to what we discuss today if we should discuss the interaction in what we discuss today. But I think it could also help the core committee in our deliberations if we, on a prematurely basis get some input from the technical people how they see from their side what they think and what they expect. No one is going to be bound by what we discuss in that premature discussion and I think it could be a fruitful exercise. The fact is if we d not do it this way we're just delaying the process and it's going to take another day or two before we really can get going.

Chairperson: Skosana.

Skosana: Mr. Chairperson could we just briefly hear their feelings about this. If I, just wanted to know if you're put in a situation like this at the outset what would you feel. Do you want to start interacting, do you want to have a briefing first. We should hear their feelings.

Chairperson: Alright let's have the following speakers. Do you also want to speak. James, OK.

Response: Thank you Comrade Chairperson, I wonder why, I want to ask myself why do we have a core group because I thought that the core group should be the one that is briefing the technical experts or whatever and we don't want to hear from them, they must hear from us and I think it's the suitable way to let the core group go and brief them as Comrade Mavivi has outlined not for them to come and tell us what to do.

Next: I would just like to echo the sentiments already exposed by this Comrade and Comrade Mavivi I think it would be wrong if we expect the technical experts to tell us what they think their role will be. We must tell them what we want them to do and I think the right forum to do so is at the core group meeting and as already suggested get thorough briefing up to the stage where we are right now and I think that would provide us with a fruitful basis from which to depart when we discuss the interaction at this broad forum and I would strongly suggest that my colleagues will accept this and without waste of time & we proceed to the next item on the agenda.

Chairperson: Mr. Radue

Radue: Thank you Chairperson. I was under the impression that perhaps Professor Duggard would just want to make a few brief opening remarks and I would have thought that the committee would be prepared to just hear what they have to say not necessarily on what their work is or their procedure but just a few opening remarks. This is after all the first occasion on which we do have their present with us, and perhaps if they just want to make one/two opening remarks without going into detail on anything to do with their actual work we should perhaps just hear.....new input. Thank you Mr. Chairperson. I'm not sure what we want the technical experts to say to us, because as it is there are many parties who have not even made their submissions who we have not even begun to discuss serious issues. So unless we want to indulge in discussing generalities and get into some kind of a wild goose chase expedition then we can start talking with them.

But really it does not make any sense to me why we should actually allow the technical people to say anything unless we have real issues that we want to table before them.

Chairperson: James

James: Thank you Chairperson. To an extent I find this discussion a bit embarrassing because we've got experts here and we are saying we don't know why we invited them what role we want them to play etc. etc., but be that as it may I think that the most logical thing to do is for us to have a discussion with the theme committee, prepare a brief and then the theme committee, the core group of the theme committee can then have a discussion with the experts so that there's thorough and proper briefing because at the end of the day they are going to be servicing us. We need to be very clear in our own minds what role we want them to play. So my proposal will be that we've some discussion as a theme committee at some stage/alternatively we can even say parties must make submissions about what role they think experts can actually play. The core group has a thorough and more substantive discussion about the role of the experts and then we take it from there. Chairperson Mr. Mulder the last speaker.

Mulder: Chairperson I was asked to explain what actual purpose this would serve so let me explain. Paragraph 5 on the agenda says block 2 of work programme preliminary discussion.

I would have thought, maybe I'm wrong, that we would actually have an enhanced discussion if members of the technical committee gave us some inputs at this stage because I don't think our progress and amount of time it took to us to deal with block one was particularly illustrative of the fact that we would not benefit from some professional and technical expertise. I would think that we would. The second point is really this: the experts are here, we are dealing with the tax payers money in so far as the retention of experts is concerned it would seem to me extraordinary if we just expected the experts to hand around until we ourselves unilaterally have defined the whole position for them and then said well go and do it, I would like to hear how they even on the basis of what the Constitutional has determined quite some months ago, the general role of the experts and the technical committee which is all laid down in the papers. I'm sure they've been given to the members of the technical committee who are assisting us. And I don't actually understand what the reluctance is because I think sir it must be understood that the core committee is not possessed of some magic/formula which is absent from this group as a whole. I mean the core group is simply a smaller group of the whole. It's nothing more or less than that and so I would like to see us making some substantive progress. Someone has talked about a waste of time get onto paragraph 5 we took block 2 of the work programme preliminary discussion the point is we would be, I think we must try and facilitate on the most constructive basis. On the other hand we can carry on having meetings and we'll go backwards and forwards on the ground that we could have more usefully covered on another occasion. I really don't know that this achieves. I think we have the people here their presence is paid for remunerated by the state and I think it would actually be a waste of money, of resources of their time if we don't interact with them as soon as possible and as Dr. Mulder has said you know the downside.

I don't see what the is, there is no downside because nothing is cast in stone as we well know from our previous meetings and everything can be revisited if necessary. But here the three people are, let's use them.

Chairperson: Okay Comrades, ladies and gentlemen, I think this is not as difficult as many of us might think it is. I would propose that when we have tea at 4.00hrs because after all, we the people who are in core group are supposed to be the people who are proposing the agenda. Why can't we decide as a core group that we discuss this, particular issue how we are going to deal with this particular one because I cannot make a decision at this point in time, so my only salvation is the core group - the executive of this theme committee. I propose that we leave this at that but we must make sure that we need today as a core group and decide how we are going to deal with this particular situation because the meeting will be off at 18.30hrs and check whether they have any particular inputs that they would be prepared to make as a core group in this meeting if there is any need for that. But I would propose that at least that we allow for core group to discuss this issue. We were dealing with the minutes no. 2. and I hope we're not going to go back to which items we must add to the agenda. I remind you that we are now dealing with minutes because I'm going to rule you out brutally if you come with something else, but I won't shoot you, don't worry.

OK NO. 2, 2.1, we're still in the theme committee meeting 31/01/95 we had one correction. Any other corrections? Mr. Skosana

Skosana: In the minutes I see that my name has been omitted there and I was present.

Chairperson: OK. To alleviate this we must just make sure that all of us sign the register.

Chairperson: OK any other corrections. Naledi.

Naledi: Thank you Chairperson, it's just a minor one. It occurs on Page 7 of these minutes under point 6.2 and it does occur in the later minutes as well and other areas where this phrase is used. The title of 6.2 organs or civil society. I think it should be "organs of civil society" and that's on many pages where this appears, that there is this error.

Chairperson: OK. Any other? Let us also look at 2.2 if we've finished those. Any corrections on the ones 1/2/95?

FF: Chairperson on Page 11, Paragraph 4.1.3 where the position of the Freedom Front is given there is just 1 or 2 corrections. In the second sentences it refers to the special importance of principles 11 and 12 and it should include 34 and then the second sentence should read as follows: the FF wished to reserve its opinion whether principle 34 should be included to in "a" bill but in "the" bill of Rights or somewhere else in the constitution.

Chairperson: Any other correction? Mr. Tony Leon.

Tony: the minutes are a little but out of date because it's 1st of February 1995 this is 1994.

Chairperson: That's glaring mistake. Any other correction. Naledi and Comrade Max.

Naledi: Chairperson, on Page 13 under report of block one 5.1.5. I think the sentence should end after the word discussion. Because I believe the document was tabled for discussion by all parties. And the I'm not sure that under 5.2. we in fact had a detailed discussion, I don't believe that is a correct reflection of the process.

Input: I just want to check on that 5.1.5. in fact it was a document that was drafted by the ANC and handed in by the ANC and it came specifically from the ANC. We had one draft document which was for the record and then the ANC filled the second document which was circulated at the meeting and then we decided to marry the two.

Chairperson: I don't think that denies that 5 says a draft prepared by the ANC was also circulated for discussion by the ANC. That's what is presently in the minutes. I think what's being corrected is that we didn't say it must also be discussed by the ANC that prepared the same document.

Comrade Max:

Chairperson on page 6,5 remnant 4. The ANC noted that other forms of entrenching human Rights should also be looked at I think it should read 'other forms of enforcing human Rights'.

Input: Chairperson just a small technical point on that same issue just mentioned. I see there are two 6.5's.

Chairperson: Correction. Thank you. We're doing fine matters arising other than those

that are included in the agenda. OK. Are the minutes confirmed? Then there being no reply, I take it that is so. We move to report on block 1 of the theme committee in the second draft. I'll ask our drafters to try to take us throughout the report. The drafting committee.

Drafting Committee:

The meeting was held on Friday last week a representative meeting with myself I was appointed as chair for the meeting. Mr. Leon was present, Mr Skosana from the IFP as also Dr. Mulder and Mrs. Sheila Camerer was representing the NP. We used the document that was circulated earlier by the secretariat as a basis on which we could compile the minutes

The entire meeting was recorded by the secretariat so that there could be no misunderstanding of what was said/what was agreed upon by the parties. The meeting was a very fruitful and productive one. In fact what has been presented or what is being submitted here is in my view a reasonably accurate reflection of our agreements on that particular day. I do not know whether you wish me to go through each one of the items and discuss the basis on which agreement was reached in terms of each one of these aspects or whether we should just proceed to adopt it or to inquire whether are any changes that are proposed.

Chairperson: OK. I would be happy with that one. I don't think there's need for your to go through it point by point unless there is somebody who is requesting that. I would ask for any corrections, proposals whatever the case might be but it's open to your now for discussion. Coming from our drafting committee and I thank them very much for presenting this report.
Comrade Naledi.

Max: Thank you Chairperson. On page 17 under item 3.1.1 I've a concern here. We agreed that it should read the bill of Rights should be entrenched and enforced. But I think at the time we perhaps overlooked the issue of entrenchment or the degree of entrenchment. We didn't give any attention to just how this entrenchment would come about in other words are we talking about a 100% entrenchment, 66% and 2/3, 75/90% no real attention was given to this issue and my proposal would be at this point in them that we record this fact in some kind of a way and perhaps allocate a discussion within block 10. I think block 10 does not have anything at the moment. It could be referred at that point in time by which time each party will have been also to assess their own position in terms of what level of entrenchment they would wish. Thank you Comrade Chairperson.

Com Naledi: Thank you. We are going to pick up on this point later Chairperson?

Chairperson: Well, it didn't really mean much because we are not dealing with the details as yet.

Naledi: Alright I just have some..... again. I think there are to a greater degree, minor points as of corrections and so on for purposes of the record. Under 1.1 contentious issues, there is I think points of grammar within 1.1.1 we need to make some changes to add some essence there to allow for the paragraph to read accurately.

I wondered if we could get some clarity as to whether in 1.1.2 it is correct for us to speak of reserving positions and then believing in a particular thing. It seems as if the two are actually contradictory. It is appropriate to have the sentence reading in that way? If I could move on perhaps we can deal with them together. On page 16 under 2.2.1 I think in the second line we should have universally accepted Fundamental Rights then on Page 17 under 4.1.2, I just again need some assistance as to the phrasing of that sentence in 4.1.2 the parties agreed they're not limited by the Rights in Chapter 3.

“ Is that discussion is not to be limited to those Rights?” The sense doesn't come through quite clearly and I wondered if we couldn't perhaps elaborate a little bit or clarify that particular sentence.
Thank you Chairperson.

Chairperson: Comrade Surtee would you like to respond to that point Comrade Tony Leon?

Tony: I don't want to respond to that but to raise another point before Mr. Surtee responds. Chairperson 3.1.3 All parties supported a strong judiciary well that is clear. But certainly I think in the first document one party was specifically labeled but certainly we didn't discuss this point specifically in the report. My party as well and I'm sure the others support a strong and independent judiciary and I think that was the overall feeling of everyone in the meeting so I think that will help I think the difference between a strong judiciary and strong independent judiciary quite significant.

Chairperson: OK, Comrade Sizani.

Sizani: Thank you Mr. Chairperson. On page 15 point 1.2 I think the reading of that point is misleading especially if it includes also the PAC under other parties. I don't know which other parties are included there. I would suggest that those parties that express an opinion on that issue should be listed precisely because even in my submissions for the PAC we didn't make any comment on that issue and when it was discussed, I was not present. So I neither believe nor reserve anything. I can state my position but I don't think it's necessary except that it should just be silent on this.

Chairperson: Maybe.

Mfebe: Page 17 point 3.1.1 where it says the Bill of Rights should be entrenched and enforced and there's something missing there. That should also be justifiable in that same sentence and I would propose that it should read a Bill of Rights should be entrenched, justiciable and enforceable that we did discuss.

Chairperson: Let's check the drafters. Any comments from the drafters? Senator Radue.

Radue: Sorry. Just to come back to the 2 points raised by Siphendu. 1.1.2 perhaps it would be more correct to read reserve that position and stated that the term everyone should include jurisdic persons. As far as the NP is concerned there we're quite happy to say delete the words reserve their position stated that the term everyone should include jurisdic persons.

Chairpersons: OK, So Comrade Naledi and other people who are experts in English can assist us as to how we put that sentence.

Interjection: And the second point Mr. Chairperson 4.1.2 just change the word "by" to "to" the parties also agreed they're not limited to the Rights in Chapter 3 only. That is all.

Chairperson: OK. I've got 2 more hands.

Mama: Mr. Chairperson. perhaps we could come back to 1.1.2 I agree that there could be some grammatical English precision which we're looking for but the tone and spirit of the meeting when we were discussing this issue I'm not protecting the writers I think the tone and spirit of the meeting when we were discussing this issue I'm not protecting the writers I think the tone and spirit in the house led them to write it like this. Because it was a matter of are we saying everyone is in terms of what other parties think or are we saying what other parties are saying. So at the end it was agreed that though for now we reserve our position but we believe you see when we look at the tone at that time. So that by the time when we correct the language we must not lose sight of what was being discussed at that time.

Chairperson: Just to respond. Yes Mr. Skosana.

Skosana: Thank you Mr. Chairperson, I'm one of the drafters. I believe that we were trying to capture the mood of the proceedings of that day. And I also believe that it's only the parties themselves which can clarify their position visa versa all this. As the PAC has done just now.

On point 1.1.2 Mr. Chairperson our reservation these as the IFP was not reserving anything - else but reserving the right to submit details on that aspect. I think we can have this situation in a more fruitful way so that was avoided also wasting time, we can discuss even further as a core group together with the drafters as to how we can put it. So that we don't dispose one here another unnecessarily. I'm not an expert in English so I may not be able to guide this house. If it was Xhosa yes I would tell you what you must say.

Skosana: As I believe Mr. Chairperson It's not only the language it's also the positions involved. It's not only the language.

Chairperson: Any other comment from drafters?

Mr Chairperson in attempt to resolve the problem here, the difficulty here. Perhaps we can attempt to reconcile everybody's views in terms of 1.1.2 should look like by inquiring from the FF what their view is does it reflect their position in other words do they identify with what is et out in 1.1.2

FF: Chairperson could I respond. Yes.

FF: I would agree with that proposal that we then clarify the issue once and for all because it's not the issue of language and grammar it's the position of of parties.

Chairperson: Could I then on that similar basis inquire from ACDP?

FF: Could I then give the FF position and can they note that as the report? Our position in terms of the question everyone is that we reserve our final position but that we believe it should include everyone but we also indicated that it could depend on right to different Rights whether it would be applied to jurisdictional persons or not. So our position was that yes it should also include them but it would depend on different Rights one by one it should be examined whether it should apply to jurisdictional persons or not.

ACDP: Yes, Chairperson, I think the ACDP position is that we actually look at Chapter 3 in looking at principle 2 and our Fundamental position is that why we didn't put a strong emphasis on jurisdictional persons is because we believe that Fundamental Rights in Chapter 3. Our approach is particularly that it refers to Fundamental basic human Rights and I think we would go along with the position in particular circumstances where it needs to be applied to jurisdictional persons. There would be particular incidences that we would say that we should isolate them but as a general rule it should apply to persons because ideals with basic human Rights.

DP: We believe that a very similar approach to the FF and that I've no problems the way that it's formulated here. That would capture DP position but subject obviously to the fact reservation means that it is not cast in stone.

Another party:

We confirm exactly the same position as the DP in that we'll reserve our final position, it not cast in stone but really the term everyone should include jursidic persons should include.

Chairperson: Alright, I'm just checking with the drafters now whether they're happy with this. The drafters with what we've received so far.

Drafters: We're quite happy Mr. Chairperson what we have to do now when we adjourn we could just get together within a matter of a minute or two we'll just formulate the proper sentence which will encompass what we've heard, agreed upon now.

Chairperson: OK. Is that agreed? Let's look at whether there was another one. Anything to say on 2.2.1 where it says should be universally Fundamental Rights not accepted Rights. OK, Right..... the last one, is that agreed.

Agreed.

OK. 3.1.1. There was an added term there, justifiable and enforceable the three terms.

Mr Chairperson I think the intention was to put the word justifiable after entrenchment and I think there seems to be consensus on that aspect. Meanwhile whilst I'm on the floor may I suggest that in terms of 3.2.

If we could add from the ANC point of view and this has been raised from the meeting and there seemed to be some consensus e.g. in other words or 3.1.2 e.g. human Rights commission. All parties agreed that the other organs of enforcement be looked e.g. human Rights commission. This was raised and nobody seemed to have any difficulty with that. We just included the word e.g. human Rights commission.

DP: Chairperson, I see there's an immediate problem with the way we formulated. Because when it says justifiable it means it is capable of being adjudicated upon in the courts and provided that is generally understood meaning them we just leave it at that. But when you say all possible means other means of enforcement be looked at it almost looks a bit curious because you wonder then what the primary organ/arena of enforcement is. That's the only point that I think that perhaps we did miss. I mean none of this needs to be started because it's all actually in the Constitutional principle. We're really decoding that Constitutional principle but for that reason perhaps we should put that in. That the primary organ of enforcement will be through the judicial process or the courts or something.

Drafer: May I respond to that Mr. Chairperson. If we were to add on 3.

Tape 2

Rm M46 - 07.02.95

..... these are the courts or something.

May I respond to that Mr. Chairperson. If we were to add on 3.1.2 all parties agree that other organs of enforcement shall also be looked at, that presupposes that besides the courts of law we will be looking at others. I suggest that we say all parties agreed that other organs of enforcement shall also be looked at e.g. human Rights commission. I think that would cover both Mr. Leon's concern and would satisfy the ANC position too and the other parties position in fact.

Chairperson: OK. Senator Radua.

Sen. Rada: I would just like to revisit 3.1.1. I think Mr. Mfebe said that the last word should read enforceable rather than enforced. Thank you.

Chairperson: That has been noted. OK 3.1.3 all parties supported a strong and independent judiciary. Yes Naledi.

I think why one needs to say at a later stage perhaps the language could be cleared up but I think, are we not saying that the constitution should make provision for the updating and it doesn't say that it is correct meaning and evolution of Human Rights protection which is obviously a changing field of law. So, I think we're specifically wanting to leave it open.

Chairperson: So are we agreeing that we leave at a later stage as is? OK, Max.

Max: Wouldn't a more embracing term be amendments rather than additions because there could be deletions, there could be modifications there could be additions.

Chairperson: all right shall I propose that the drafters we're listening to you. Perhaps you need to phrase it in a proper way at some stage. Just minutes after we've met. Mr. Skosana.

Skosana: Chairperson I would support it as it stands, because I don't envisage a stage where we would now begin deleting now Rights.

Chairperson: Alright, I propose that ladies and gentlemen that we allow "at a later stage" as is, if there are problems that perhaps are developing I'm sure we can deal with that issue. It's a report for the constitutional committee which will be debated even at the constitutional committee and also the Constitutional assembly so I want us also to remember that.

Naledi: Sorry Chairperson, I just would like to take you back a bit to 3.1.4

Chairperson: Let's dispose of this one just before you take us back. Is that in order. Thank you. Yes you can take us back.

Naledi: Thank you. Under 3.1.4. the second line it said further additions should be made to the Bill of Rights. A provision allowing for further additions to be made to the Bill of Rights. Couldn't we stop after Rights. What does "at a later stage" mean?

Chairperson: Any particular problems with that, leaving at a later stage.

It could be misleading if we stop after Bill of Rights then it could refer to the present Bill of Rights. The idea was that the Bill of Rights to be negotiated now are going to get some more Rights out of the present Bill of Rights and then there should also be provision for adding at a later stage after the finalisation of the one we are now negotiating to add. I'm concerned that if we stop after right it could refer to the present Bill of Rights and that is exactly what we're going to do. Sorry Elda, fine.

Chairperson: OK, yes.

Perhaps just in order to assist to feel our way around this sentence here what if we were to suggest "parties agreed that there should be provision for further development of the Bill of Rights with the evolution of the time". You know that possibly would capture what was being suggested. But just a suggestion.

Chairperson: You don't want to leave it. OK Naledi and Vos.

Naledi: If I could help Chairperson I think once you say there's a provision that doesn't suggest a limitation in terms of the number of times in which one can make amendments/changes to the Bill of Rights. A provision is put in place allowing for changes to be made to the later stages in fact is superfluous and shouldn't be there.

Ms. Vos: My initial proposal that we put in place that the constitution will make provision for the updating and evolution of Human Right protection.

Chairperson: Ja, they'll have to put it in Xhosa at some stage. Clear that at some stage we're not going to agree exactly that is why I was proposing that the drafters must look at it and see what is the best word to fit in. If of course we trust our drafters.

Chairperson: that's what I wanted to propose. That we just give the drafters a chance to look at this even if it's at tea time.

Chairperson: I'll see to it that they come back to us. There was also where it, 4.2.1. any problems with that Sizani? OK, I shall take it that there's no problem with that.

Yes another point please. Mr Sizani.

Sizani: It's a point which we raised Mr. Chairperson in our submissions a SAPAC under 4 which we thought probably might actually be contentious at some stage.

Because what we wanted to know is what is really meant by the phrase "after having given due consideration" to inter alia Chapter 3. What would constitute giving due consideration because we foresee others people arguing for instance that in order to depart and this has already come in some form here, in order to depart from a right here, form a right that is in Chapter 3 you would have to give a strong rationale why for instance that right which is in Chapter 3 should be departed from or what. So we would like to understand or get an opinion at some stage which is meant by "giving due consideration to those Rights", in Chapter 3. Does it necessarily mean if you look at it and see the rationale giving due consideration. Thank you very much but we want this clause to come that will satisfy giving due consideration/is there something much more that we have to do. We thought that should be raised somewhere.

Chairperson: I'm glad that you're saying want an opinion at some stage, it needs to be raised somewhere. So I think, it has been noted, then the core group will be looking at that at some stage. Comrade Naledi. Any other issue on the report.

DP Chairperson:

Could I take us all back to 2.1.2. The parties will make submissions as to what they regard as to what they regard as universally accepted Fundamental human Rights. Do we leave it up to the parties/do we set a target date/what do you do with that specific issue?

Chairperson: That's a very important point. Do we set a target date. I think it's a correct view because we cannot just say the parties will make submissions to what they regard as universally accepted Fundamental human Rights and stop there full stop. We need to follow that up because I remember in our discussion we said that needs a follow up. I'm going to, again perhaps my ruling will be that the core group takes note of that particular one and see how to move it forward. Any other point. So with the amendments, of course there's one that needs to come back here when we break for tea. With that particular clause excluded there are no serious problems with the report. But the drafters will have to relook at that one again at that one and return here with that particular clause, Comrades, ladies and gentlemen, we're drafting. Then if..... please excuse me. Ladies and gentlemen we're then in number 5. We've dealt with the report and I really would like to take this opportunity and thank the drafters on behalf of the theme committee for drafting this report. It is painful to attend many , many meetings but I'm pleased that the Comrades have met ladies and gentlemen on Friday and drafted the report and we have the report in front of us and I'm sure the theme committee is happy to receive this report from our drafters.

Thank you very much, Ladies & Gentlemen

Now block 2 of the work programme. I think the main thing about that plenary discussion that we're talking about was that we've now concluded almost block 1. We are therefore moving to block 2 which is dealing with the nature of Bill of Rights and the application, equality, the right to life I can't remember all of them and so on.

Now what we want you to briefly discuss now is to how we'll be tackling block 2. Are we going to use the same procedure that we use to wait for political parties to make submissions. We want some little guidance how are we going to deal with that..... what's name. Mr. Skosana.

Skosana: I have a problem here. When I look at the report there the second paragraph where we say all parties made submissions in relation to the meaning and interpretation of principle 2 and their approach to the Bill of Rights in the constitution and these are included in document. Now how do you handle that? Where are they going to be included? Does it mean we are through with block 1 when in fact we don't have those submissions included in any documents or report. Because if you look through the report you find that there are other clauses and commitments there where we say submissions will be made by parties in order to complete the report/ in order to complete block 1.

Chairperson: Comrade Sizani you want to help us?

Sizani: No.

Skosana: The other problem Mr. Chairperson is what has happened to the individual submissions that were made by other people other than political parties?

Secondly, I would suggest also that the actual submissions of political parties should also be attached here because this report as it is, is really not comprehensive in any way it's more of a discussion that happened in the theme committee than a comprehensive report of these actual submissions of political parties and I'm also very interested in what happened to the individual submissions because I also have some views as to how we deal with individual submissions in block 2. Both in terms of advertising issues and so on, but I would like to know what happened to those submissions

Chairperson: Let me just remind the meeting that we agreed that when we finalize the report we'll attach all party submissions and submit together with the report to the constitutional committee. We agreed in the last meeting that's what we'll do. All party submissions will be attached. Yes they'll be with the report.

Vos: there's a big difference between attaching something and including something in a report and our position would be that for instance if we could make a suggestion perhaps to help the matters along is that for instance when you have an issue we include the positions of the party in detail, we extrapolate from their submissions and put them, include them in the report not attach thereto.

Chairperson: I'm not so sure but all I know is that it's written here in the report as well that these are included in document. So I'm not so sure whether how do we see inclusion. Do we want to discuss inclusion now?

DP: Chairperson, if I can try and help that specific paragraph when we drafted the report there was a problem that if you just attach the submissions it could be said in the constitutional court that they do not form part of the report as attachments. That is why we said we include them in the report but physically it means they would go in one bundle with the report to the Constitutional Committee as part of the report included.

Chairman: Any other view?

IFP: Mr Chairman, I think the reason why we are saying it becomes difficult for us to jump to block 2 without a clear explanation in terms of the unfinished matters on block 1 will be handled. I think our position here is that we feel uncomfortable that there are so many things hanging in terms of even our report here and this we're by no means criticizing the drafters, in fact we join with you Chairperson for sort of thanking them for the sacrifice and the work they've done. But all we are asking for is if we go to block 2 we go to block 2 knowing that we've fully exhausted block 1. Otherwise at the end of the day we're going to have a fragmented picture of the way we're developing things.

Some of the things now it seems are waiting for submission some of the things are waiting for a full discussion on great debate in detail.

So all we are trying to saying is at what level are we going to say we've exhausted block 1 and if we've not what are we going to do with this, what are we going to do with that if that is properly explained and we all agree then we've no problems in getting to block 2. The problem is getting to block 2 knowing that there are things that are hanging which we've all not agreed, some now, this very debate about inclusion and hintoni lento, this other thing, the attachment and all those things, are a clear picture as to really we are not agreed. Let's have a neat bundle of block 1 then we get to block 2.

Chairperson: The other way of dealing with this is toso that we don't discuss in the air. We find out from you how are we going to deal with the outstanding issues? That will solve my problem. Comrade Mavivi and Naledi and Comrade Faith.

Mavivi: Chairperson, I think the are issues here which as a Theme Committee based on our mandate won't be able to resolve because we're not a negotiating forums but we are here to discuss issues and write a report to the CC and the CA for further debates. So maybe some of the things we must state when we say they need to be further discussed, by who whether were saying we've exhausted this and we're sending it to the CC and the CA for further debate, I think that's what our report should reflect.

But on those ones like the submissions we've to make on universally accepted Fundamental Rights which we think it's still outstanding we've not dealt with it as a Theme Committee then we bring it here.

I think that's what is lacking in our report I would say that perhaps the drafters and maybe members of the core group who are supposed to process our agenda should go and look at this report and say on this issue we think these are the issues which must go to the CC and we actually reflect then on our report that this should go to the CC and the CA and the others we can further debate here.

Chairperson: OK, there's one proposal. Naledi.

Naledi: Thank you Chairperson. The report is an accurate reflection of discussions that we've had in this Theme Committee. The report responds to the requirements laid out by the Constitutional Committee in terms of the kind of format of the reports that they expect from the Theme Committee. It identified contentious and non-contentious issues, gives some overview of the discussion and the views of the various parties. I think sending in the party submissions with the report is actually the proper way to proceed and the Constitutional Committee will have before it the full ambit of what we've been about in the last week or 2 I think Chairperson in terms of what has been raised concerning block 2. I recall that right at the beginning when we looked at the work programme we in fact said that we were not limited to dealing with block 2 as it exists at this time.

So in fact members of the Theme Committee or the core group as suggested and the drafters are actually able to reformulate block 2 so that it allows for a response to the outstanding matters that have been addressed as contentious and non-contentious.

But I believe that we should be weary of moving onto these issues before the Constitutional Committee has had time to consider the report that we would have submitted. And it seems to me perhaps we need to address whether we actually going to take on some of those contentious and non-contentious issues/the report writing etc. We can easily identify what the unfinished elements are and perhaps begin to explore how we deal with them, either through the way that has been suggested by my colleague Comrade Mavivi here on in a broad discussion by the Theme Committee.

Chairperson Mrs Gaza.

Mrs. Gaza: Mr. Chairperson I think I leave it to a wider discussion on to move on. I don't want to compound anything but I was just reminding you that even the PAC raised this and we're not raising it because we're taking our cue from anywhere else. Our cue we're taking the fact that we've got to pin each other to submissions. If we say submissions so that we all know our positions we must pin ourselves and agree. I do understand the explanations that has been given to me in terms of our mandate of operation and I'm fully aware of what we should be doing here. But

I'm still saying, if we've agreed on something perhaps I'm a stickler for that which could be wrong too but I'm not apologetic when I'm saying it becomes very wrong for us to go to another block when in essence we're not yet agree on certain issues.

I would go along with let's sit down and see what is hanging what it is we need to tie up or when are we supposed to give our full details because I remember even our drafters we didn't want to pack them with quite a lot of things. Knowing that at a later stage more details from the party have got to come along. What is worrying is that we don't want our positions to be lost in the process. That is all I'm saying.

Mr. Chairperson I'm just following or Mrs. Gaza there thinking that if maybe this would be something that the Theme Committee can through the core- committee refer to the technical aspect/committee for them to just look at block 1 and see whether they would or see that all the elements of block 1 has been addressed so that they could maybe make a recommendation so that this is a nicely tied up piece of work and should settle block 1 before we can carry on to block 2.

Chairperson: What comes very clear is that we have unfinished business form block 1. I would appeal to the members that they allow the members & the core-group to extract the unfinished business and then we need to come back here and decide how we're going to deal with this unfinished business so I would appeal to members.

If members are agreeable to that, that we take it to the core group, re look at all those issues that are unfinished at this point in time. OK, I suppose that includes therefor as to our block 2. But I'm going to make an appeal to the parties that we stop only talking.

You must remember that you've been given the programme and we tried to change the programme here we said we'll be dealing with the nature of the Bill of Rights and it's application and the core group cannot do anything without the guidance from the members of the theme committee. There's absolutely nothing that we can do because ours is not to do your work, ours is merely to facilitate the process. So I'm going to ask the parties when we do come back let's not reopen discussion on this particular issue. We want to move and S.A. is waiting.

Vos: Just on a point of clarification the request that the technical committee now look at what I would consider some what our meagre effort to date on block 1 I was not clear what came out of that request.

Chairperson: We agreed right at the beginning that the core group will be meeting with the technical experts right at the beginning. When I say the unfinished business it is therefore obvious to me that the technical experts we already agreed earlier in the meeting that the drafters, core group, technical experts will be together in drafting a report. That decision was already taken.

So when I say refer it to core group it includes drafters it includes the technical experts. then during that discussion we'll be able to flash out how we deal with unfinished business including some of these outstanding issues then we'll come with the proposal. That's why I did not follow it Mr. Jooste. Mr. Sizana.

Mr. Sizani: One outstanding issue that has not been addressed which I still want to know is what do we do, what is the process of dealing with individual submissions by members of the public that we've received up to date. Up to now I dont know what the state does with those submissions that were made by members of the public.

Naledi: If I could attempt a brief response. I think we haven't discussed how we'll deal with them and the reason was that we were dealing with constitutional principle 2 and all we had had on that particular area of block 1 was party submissions. We had said that when we arrive at block 2 given that many of the public submissions deal with Rights we'll address how we actually deal with individual submissions.

Sizani: So does that mean that the report should then reflect the fact that we didn't receive any submissions on principle 2 from the public. I think It will be important for the purpose of the report to reflect that.

Chairperson: OK, because at least in the meeting of the Chairperson we did highlight that as well. I'm sure Thank you Mr. Sizani. It will be wise to include in the report. Comrade Bridget. OK, then I think the biggest problem is tomorrow.

The core group has a lot of work to do therefore I do not see us, the whole, the broader theme committee meeting tomorrow.

I see the core group members meeting tomorrow together with the drafters and the experts. Because I was going to ask them to meet today and finish the unfinished business but seeing that tomorrow it maybe difficult for us to call you as a theme committee as a whole without the core group meeting, finishing the outstanding business of the core group we may have problems with that particular meeting. So I hate proposing form the Chairperson but I would propose that we humbly cancel the meeting, tomorrow's meeting and the core group must then meet and technical experts. Comrade Bridget you want to say something.

Bridget: Yes Com, I assume that the meeting you are proposing tomorrow for is a planning meeting and I really think that we need them the core group will have look at the submissions. We have to be certain that the submissions that are in, the submissions that are before us we must be sure that they somebody must look at them professionally and I think that the technical committee should be helping and in that regard. Because some of the submissions may in fact relate to conceptual issues about Rights in a very abstract way. There probably could be some and also the other question that we might want to look at is hearing if there are persons who have made submissions and would like to appear before us and maybe would like to deal with the whole conceptual thing of Rights, Bill of Rights, you as the core group and the experts you might want to consider inviting such persons. I just thought maybe we should influence your agenda for tomorrow.

Chairperson: OK. Last point then will be general. We were going to request the people who were part of the UWC gender conference to report to this meeting but it seems that there's a little, I'm asked to postpone the report because there's some body who is supposed to give that report who is not here today.

Community liaison programme the parties are asked to look at the community liaison programme which is included here. You are requested to look at it and make suggestions. So when we meet again our next meeting It is possible that we may be forced to meet on Friday as this particular Theme Committee.

Sizani: Just a point of information. Are you clear about when actually is the final date of submission for block 2. Do you have any idea about that date?

Chairperson: I'm told that it needs to be finalized by us. So it means the core group has a lot to chew tomorrow, that includes you Mr. Sizani.

Now we are going to close the meeting but please let me remind all core group members of the various political parties please be present in our meeting tomorrow at 9.00 am where would be our meeting here because this has been booked already for this Theme Committee. So we meet here tomorrow 9 o'clock
All core group members please be present when we meet tomorrow! Friday.

Vos: The ad hoc gender commission is meeting at 8.30 on Friday and many of us here are involved in that.

Chairperson: Can we move it to the administration and we'll sort that out, I'm sure. Where Friday, decision as yet we'll sort that out with the administration because you must remember that we must communicate this to them. That we've cancelled tomorrow's meeting OK. The administration will look at that because there are caucuses on Thursday. You don't want to accept that the administration must look at this. You really don't want to accept it.

Naledi: Thank you Chairperson. On a different point. In terms of the public participation programme, I understood from a meeting yesterday that was called for core group members and Chairpersons that in fact there is a public event this weekend in the Boland part of this province and according to the request of the Chairperson of the constitutional assembly theme committees actually had to nominate some members who would attend that event. I am not sure of the exact details as to numbers etc., but perhaps the secretariat could help us out here and the parties could give it some thought.

DP: Could I just ask a question, I wasn't at the meeting yesterday, where you were Mr. Chair. Are members of this theme committee meant to go along there as stage prop or are they to participate, what is the desire to have members there?

Chairperson: What is happening is that they are addressing, I'm sure the members of the CC and Management will know it better than myself because it is launch briefings of the constitution process. So whatever you may term it but it will be addressed by our Chairperson Cyril Ramaphosa and Leon Wessels and you're also requested to be present so if you don't want to decorate the stage I don't think you should bother by making any.....

Tony: Can we just ask about time and venue? When, where, how we have had no details

Chairperson: I'm informed that details will be circulated tomorrow. Are we going to ask people here or shall we ask the core group to deal with this issue as well? Core group Comrades we must really close now. We are just playing now please.

Mrs. Gasa No Mr. Chairperson I am not playing.

Chairperson: I was not referring to you how can I do that to my mom.

Mrs. Gasa: Mr. Chairperson, just 2 things. The first one is just to say really it would assist us to be at some These meetings because how else will we test how the people feel. Then secondly I was going to say it seems like when we don't want to take a decision then we just say core-group. I mean it is us who know where is your venue, where you are the nearest. Now I mean I can detect that it's when we're playing when we say core group all the time.

We've got to be specific and say OK, I'm closer to this venue or circumstances even if I'm closer here but circumstances won't permit me to be at this venue so you choose the next venue. It would be futile that at the end of the programme you've not attended any of the hearings. I don't know.

Chairperson: Thank you Mama for protecting me. Bridget and Mavivi.

Bridget: I would like to give Ma a chance first.

Chairperson: Your hand was up first.

Bridget: I think that Tony is raising an important point. We've to influence management, we've to influence the administration about the design of public participation and we've to make the point that we do want to participate and not to be some kind of show pieces around some few speakers all the time if that would happen. So I think there's a point there that we need to say we would like to actually maybe after this first event we have to review and make suggestion to the effect that we would like to participate effectively.

Mavivi: Chairperson, I thought we were referring this issue to the core group because we couldn't get the details for instance I'm not aware how many people are supposed to go and even if you tell us we've to consult as political parties as to who goes because we've got other engagements weekends.

Number 2 I think I agree with Bridget and Tony because I think Theme Committees are supposed to go there and the public participation should not only to go and inform people about the structures, the process at the CA only but also to start tackling some of the issues which are railing as theme committees and perhaps those are the things we must take concretely to the management committee and say that we would like to participate but this is provided that we know that it's structured we are going to actually as theme committees going to raise some of the things we are dealing with which are contentious or there's agreement on with the public, so that we don't just go there and sit around.

Chairperson: OK, in closing the meeting I want again to say there are documents from the community liaison. They have their programme which is explaining in this package why they're engaging in this process. But also I would request that because I know that political parties are represented in the management committee and constitutional committee please also remember the sentiments expressed by our theme committee members when you are in those committees. Don't take decisions there and then when it comes to this particular meeting we're forced again to interact with the management committee and yet we've got members of our parties in those particular meetings.

It will help us a great deal. We already have a report which was not discussed by us here it was discussed elsewhere. So we would like to request all of you to read that and if you have any suggestions to make please feel free to make suggestions and we are prepared to forward them.

But all parties are represented in the management committee and the constitutional committee.

On that note I wish to

Another person:

It does not spell out in any way at all on how the theme committee members are going to be participating in this process in that programme. And in fact we should ask them specifically to spell out very clearly what role the theme members. Then when they come out with proposals we can look at it and respond. They have a whole elaborate programme and should know exactly what we are supposed to be doing.

Chairperson: Let us close now ladies and gentlemen. We've taken note of all the comments.