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# CONSTITUTIONAL ASSEMBLY

Theme Committee 1 Meeting

13 NOVEMBER 1994

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UNKNOWN: Have you decided to go about our business.

UNKNOWN: You know, I think we should now.

MR MARAIS: I also for my own purposes, just in my own handwriting, prepared the documents that I think we should, if you have one, we should table that first and let's see what develops out of the discussion that surrounds it.

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UNKNOWN: No, I'm not talking written document.

MR MARAIS: Oh.

UNKNOWN: All I've done is for my own convenience separated what each party says on a separate paper under the same headings.

MR MARAIS: Now I think the issue that we should really start discussing first is what our approach should be. How do we understand our job, the job that we have to do. Do we understand it that we also have to deal with the substance

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or is it only process that we are dealing with. I still maintain that we need to establish a frame work for the process and that immediately after that we, the substantive issues will have to be dealt with. I don't agree with you in any way that those issues must be dealt with and very soon also, as a matter of urgency but I think that is not what we need to do at the moment.

CHAIRPERSON:

This is a matter of reaching consensus between us, I would say that we would be guided by a number of things. Firstly, the nature of the report to the Constitutional Committee must be such that what is common to the party positions is listed. And secondly, where there are, this, I don't want to keep, like the words that they use, contentious issues, issues not agreed.

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MR MARAIS:

Ja, contentious or not contentious.

CHAIRPERSON:

Bear in mind we basically describing a character of the state so we need to put submissions in hand which lists what we think should be examined to determine the character of the state or go up to describe the character of the state. So the

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character of the state, we've got different visions of it, to what extent, we are looking at the character of the state do all the parties agree on, it must be this it must be that it must be other. So it is a fairly straight forward process as I see it. The prime purpose of Theme Committee 1 is to look at the character of the state, is that not true.

MR MARAIS:

Ja, that's so.

CHAIRPERSON:

So we've got what numerous parties said about democracy. Now, I work in a strange way, I just separated what different parties have said about democracy, imagine we go through a process of saying we all agree, everybody's made a submission on democracy, democracy means it must be one character of the state, the DP says, in universal, in looking at democracy, we must look at a universal adult suffrage as an element in the character of the state. The National Party hasn't listed that so can we say that National Party also agrees that universal adult suffrage is part of a democratic state.

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MR MARAIS:

Ja, but I, you see why I differ from you is I see that as the

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next stage, because what is said here is that all Theme Committees are required to submit a detailed report to the Management Committee, detailing their work plan. Now once we have a work plan, we, in the work plan, we indicate what should be discussed but with no detail. The next step, the moment we start working on democracy, that is the way that we should go about and see if we can find common ground. But I see it's not necessary for this stage but as I said the other day I don't want to be obstructive. If there is a way to deal with it, and at the same time, attending to it in such a way that you are satisfied then we should do that. 10

CHAIRPERSON:

Could we put it this way to try and find consensus. We agree that we need details of a work plan. My point of view is, you can't have a work plan unless you know what you are going to work at. So we need a work plan that will enable us to look at universal adult suffrage. To enable us look at common citizenship, to enable us to look at equality. When we have looked at those then you say, Ja, but on the question of equality, being contentious, and is of great public interest, then we must have consensus on that. Then on the question of universal adult suffrage, it's not 20

contentious, we don't even need a technical expert to, so we agree? On universal adult suffrage, we make a statement we don't have to research it, we don't have to. When it comes to qualifications for voting or some of those would say, we must examine the question of whether you need separate citizen lists for provinces and for nation. Now that would be a contentious issue. It was at least in the last negotiations. We are saying that if you've got a state that question of citizenship is tied to franchise and you've got citizenship which is tied to two issues. You've got latent citizenship, which is a citizen that can be elected to a body and you've got active citizenship, you've got citizenship which can vote for people. And they are not necessarily the same. So citizenship is something which requires technical experts, require a bit of research so common franchise wouldn't technically, citizenship might, if we agree on it. So our work plan would be to refer citizenship by common agreement to technical experts because it's a complex, we all agree that it's subject.

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MR MARAIS:

Yes, but then we needn't, at this stage, try to find common ground. That's for later.

MS FELGATE:

I think on my side, we could move like you've mentioned the point about democracy and for me I think the best way of going about it without trying to reach consensus in this time, (inaudible) ... Is to list what is the, I mean with democracy is common, but perhaps we can maybe begin to list if parties feel strongly that under democracy they would still like to itemize like we have seen under the part of African (inaudible) ... systems of democracy that (inaudible) ... We then itemize that and just leave it like that, you know, rather than getting into the details of that. We just itemize 10  
it and leave it as it is. But if perhaps then the IFP will want to get into much more detail we can then separate it, try to indicate those parties that feel like certain things should be retained in detail and we write it as that. You know. And I think that we will be able to move forward.

MR MARAIS:

Can I just, have you finished, give an indication of what I extracted. First we are supposed to deal with the contents of five constitutional principals. That's 1, 4, 6, 6, 8 and 9. Now I've taken that from that it's clear to me that we have to 20  
deal with the following. 1. Sovereign State. Citizenship  
The Democratic system of government. Equality between

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men and women and people of all races. That I took it out of the, of the constitution. The supremacy of the constitution and its enforceability and all organs of state at all levels of government. Representative government embracing a multi-party democracy. Regular elections. Universal adult suffrage. A common voters roll. Proportional under presentation. Freedom of information. Open and accountable administration at all levels of government. That's what I extracted from the principals, but then there are a few matters that form part of our terms of reference but does not form part of any principal, any of its thirty-four principals. And those are preamble of the constitution, name of state, description of state, symbols of state and then I added there official languages because I see nowhere where official languages are going to be dealt with in any of the Theme Committees. So I believe that we should do that. So that's what I extracted and I believe that's about all that we should say at this stage. And that's in reply to the first question or the, which forms part of the Executive Directors recommendations as contained in his letter of the 18th October. So, in this, I've actually, I actually went through the constitution and if one looks at



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the constitution principal number 1. I've taken it word for word out of there. That's what it says here, the constitution of South Africa shall provide for the establishment of one sovereign state, a common South African citizenship and a democratic system of government, committed to achieving equality between men and women and people of all races. Those are all the sub-issues that we have to deal with in terms of constitutional principal 1. Now, the next stage, but then we take, then we take for instance a subject such as one sovereign state and we get all the parties inputs and, we can even at this stage decide whether we should, that is something that should be referred to the commission also but,

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MS FELGATE:

Explain your position. I don't know how long we shall take before we actually get going with something. But if we look at why we met in terms of the Core Group discussion, we met that day under headings in the fourth report talks about a list of issues. For us, well I feel it's important to establish commonality and areas of difference. Otherwise there won't be proper debate in either Theme Committee or Constitutional Committee on this report, so if you look at

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the CA's resolutions requiring the Constitutional Committee that reports to the CA setting out areas of commonality, but non-contentious issues and setting out contentious issues and that says in detail. Our report was enable the CC to do that job, which is required of it by the CA resolution so I would suggest that somewhere half way between your position and the more detailed position I'm arguing is possibly the only way forward.

MR MARAIS:

Yes, as I said earlier, I'm not going to obstruct the process and I want to accommodate you, we cannot now, at this early stage, not be able to resolve a deadlock, we shouldn't even create deadlocks, so I'm prepared to go along but then we must now start working.

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CHAIRPERSON:

Then you just, you take what you've written there, just read from the beginning again .

MR MARAIS:

Yes, I'll, can't we read the whole thing. I've made copies but it's not good copies because I made them on my fax machine, there's one for you to, and we can go through it quickly and you, I am not sense difficult but you can

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criticise wherever you wish to, shall I read it and then you follow it, or do you want to go through it yourself?

CHAIRPERSON:

No, I just want to stop at A, first paragraph. The (inaudible) ... Is understood to be character or democratic states. I thought it was listed under 1 to 1.8 in the CA resolution

MR MARAIS:

In the constitutional issues.

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CHAIRPERSON:

Now, the character state by common agreement must be a democratic state,

MR MARAIS:

Ja, this on the 1 to 8 list.

CHAIRPERSON:

Now you say, your statement here, investigation and research programs will be launched by Theme Committee 1 into the nature meaning the (inaudible) ... Or the following concepts. A. Concepts shall be, one sovereign state. Now what has, what have we separately said about one sovereign states?

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MR MARAIS:

Up to now we have as my party actually, we haven't said anything because, because we felt that all we need to do now is to just itemize the matters that we should be discussed, but this is where we can now try to converge our (inaudible) ...

MS FELGATE:

You see, On our side, on the issue of citizenship, we decided that it wasn't those issues that need to be dealt with in Commission and we also said that we would require separate reports on the submissions. But if we look at the further finding that we did, we could submit a second submission during this week. We've actually taken the issue of sovereignty and put it under democracy, ok, so that in the process of characterizing the state in terms of it's nature, it's scope and all that, we think that we have to go back to that topic but, of sovereignty and have on our side we just have its a subtopic under democracy.

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CHAIRPERSON:

Can people just bear with me. Just take the major issue of democracy. The DP says universal adult suffrage, the National Party did not list a universal adult suffrage as an item under democracy, the PAC didn't either, they want to

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determine whether it should be a socialist state or otherwise. Now the Freedom Front didn't list. The ACDP didn't list it, the ANC didn't list it. Now my concern I've got no problem as I'm actually saying Yes, the universal adult suffrage is an element of democracy, regular and free elections is mentioned by the DP but not in the others. I've got no problem to saying yes to that. There are going to be civil liberties. Why do you want to group that under democracy.

MR MARAIS:

It's in any case in this list that I've read to you because its part of their the principals.

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CHAIRPERSON:

The IFP view that democracy can mean different things to different people. The word democracy is so vague. What democracy are we talking about. So we want to list the issues that parties see as democratic made for democracy. So there's common ground to be noted in these matters.

MS FELGATE:

Can I just ask whether we could not adopt a method of saying where we begin this (inaudible) ... Topics in the Theme Committee 1 that are in this report. And from that perhaps we just ask what is it that the various parties themes

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should be discussed under democracy. And we just list and we put those things under the and we don't discuss it whether we want it to be there or we do not want what, we just put it there as part of the report and then we can listen to what the Theme Committee will then say tomorrow, you know, in terms of what has been put there because I think if we, as the ANC, will come up with items that are not there, I don't think it's for any other party to say we wouldn't like you to discuss that. Yes. So maybe as a way for once, we should just look at that and do it like that. 10

CHAIRPERSON:

But that is, the report does just that. It doesn't say democracy and lists all the issues that different parties have raised.

MR MARAIS:

In my previous submission I said an investigations that need to be conducted by the Theme Committee should cover all aspects of the broad theme but the Democratic party should be therefore be allowed to add any items which they would like to be investigated. I have no problem with that. As 20 long as we now, as we now start working because I am concerned about tomorrow morning. We are going to be

blamed by our colleagues for not having produced a proper report yet, I fear that.

MS FELGATE:

It is going to be difficult, because I think we are, I needs are difficult, it's going to be very difficult, why don't we leave it then. We leave it as this is what has transpired and we have, then the broader Theme Committee has to meet for a longer period and we all sort it out.

MR MARAIS:

It's going to be difficult for thirty people to do this report. 10  
And the day after tomorrow is the deadline. If one looks at this now, if you go on my theme to page 3, then it says there after official languages, the investigation and research mentioned above will be undertaken with the following two objectives in mind. 1. To determine the individual and connective relevance and applicability of the concepts to South Africa in its total context including its geographical and demographical diversity, its economy, its economic and social order, its level of development, its resources, its international relations, the cultural and other diversity of its 20  
people, their different levels of development, their individual and collective needs, regional interests and other factors

which may be identified in the course of the investigations to be searched, and secondly to enable the Constitutional Assembly to reach agreement on a form of state and government as well as government structures that will serve the interests of the country and its people optimally. Because that's what we and we can add anything to that because I obviously could'nt have thought of everything, sitting there on my own.

MS FELGATE:

In other words, Mr Marais, what you trying to deal with is the terms of reference of the Commission that shall be set up for this (inaudible) ...

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MR MARAIS:

Ja, well in a way, those are all the various aspects that should be taken into account once we start working on the sub-issues.

CHAIRPERSON:

Can I just have a look at 1 to 8.

DR MARAIS:

I heard some of them are no longer repeatable. And the other yellow paper is where the Executive Directors let loose. (Inaudible) ... But you see those items are only short

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summaries of the actual constitutional principals, so I went back to the constitutional principals and I worked on them.

CHAIRPERSON:

I would say got a report which takes the word democracy, gives it a heading and lists everything the parties have raised as issue, there's not a equality. The report takes equality and lists all the issues. Regular elections, representative government, there's a heading in this order issues.

MR MARAIS:

Can I just say that nowhere in any of the constitutional principals is there a simple reference to democracy. As I said that was a summary. What is said about democracy is what I have in my paper, a democratic system of government and then there's another reference in number 8 to multi-party democracy. There's no specific simple reference to a term such as democracy.

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CHAIRPERSON:

Yes, there we say look at the ANC. They say democracy and they list under democracy, participative democracy and they list accountability. The ANC are saying democracy must be a democracy in which there's accountability.

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MR MARAIS:

Ja, but they were work from that, from the eight items whereas one should actually work from the constitutional principals themselves.

CHAIRPERSON:

I disagree with that.

MS FELGATE:

I think we moved a step further, Mr Marais, in Theme Committee 1. We moved a step further by then, you know, picking out the titles that seem to be of commonality amongst the various parties, you see, which are now then set as result in this minutes. And hence the understanding was that we then fit most of the things that have been raised that belong under these subtitles under, put them under there. But I would like to say, why don't we submit the broader topics that have come up in our Theme Committee, but the various parties have then raised the following issues as they have calculated in the documents. And perhaps what we can then agree on is. Our suggestion is that we take all that has been raised by various parties and we deal with them at the time when we then go into the real discussion . We see how then the discussion develops at the time. But rather than leave out what somebody thinks is very vital and the

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other one thinks is not an issue. I think for this stage maybe we leave it as it is.

MR MARAIS:

May I just say to Miss de Fargot, the fact that I referred to the constitutional principals, that's now with my old legal ad hoc, doesn't mean that I am against using a heading like democracy, I'm not against it. That's just a way of clinically evaluating it from the viewpoint of (inaudible) ... I'm not against it. And I'm not against being as inclusive as possible, not against it.

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CHAIRPERSON:

Can I just try one other tactic. We take the notion that, well we already have got the issues, headings and issues listed, and that we should report as such. Where the report is also thin is in terms of what issues should go to Technical Committees, what issues should go to Constitutional issues. Our report is actually very thin on that side and that is, that's an important aspect of workload and arrangements for work. Would it be worth it to run through these. Separation of Church and state. Is that an issue for Technical Committee or issue for Theme Committee. Technical, Commission or Theme Committee.

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MS FELGATE: I would bring it party by party.

CHAIRPERSON: We'll just decide on page 1, line 1. And go party by party.

MR MARAIS: I think I,

CHAIRPERSON: The Church and state has been a contentious issue in South Africa, apparently we are moving out of that contention. As a Theme Committee do we believe that we need a commission to look at our question of Church and State. 10

MR MARAIS: Perhaps if we include that in our work program I believe that's something that we should get independent expert advice on so that's perhaps one of the issues that should go to commission.

CHAIRPERSON: I wouldn't be adverse to putting to commission and one would have to eventually decide whether we are giving to much to commission and times out. 20

MR MARAIS Ja. That's what I'm worried about.

MS FELGATE: Ja, the times been gone.

MR MARAIS: Because we're starting out and not going to have many  
(inaudible) ...

CHAIRPERSON: Ja, one can go through a quick process, type of state, how  
do we deal with the type of state.

MR MARAIS: I think that's something that will have to be dealt with  
politically.

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CHAIRPERSON: Politically.

MS FELGATE: (inaudible) ...

CHAIRPERSON: Separation of powers.

MS FELGATE: Separation of powers we have said can go to commission.

MR MARAIS: There's not much to be said about it, because we, I believe  
we are all in favour of separation of powers and it's already,  
we adequately covered actually in the present constitution.

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The separation of powers between the Judiciary and the Executive and the Legislature. And I don't think we have any differences of opinion on that.

MS FELGATE:

But I think to some extent the level of that independence is something that was beginning to grapple with (inaudible) ... If you look at, if you look at how parliament is going on by legislature the same as the executive. It's something we might want to investigate on the part of the ANC.

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CHAIRPERSON:

I would say that's a matter for the Technical Committee because its ja, it is actually a technical issue, I mean rules of parliament come into it there, the whole democratic parliamentary system, the nature of the executive, the relationship of the executive and the, it's all this, so it's a very complex technical issue which is handled differently by different constitutions all over the world. So I would like to see that go to a Technical Committee. Or (inaudible) ... It's actually a Commission.

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MR MARAIS:

Ja, I don't think that's a matter for commission, Technical Committee.

CHAIRPERSON:

Do we have, some under broad agreement, commissions are normally used, as I understand it, where the general public have got views which a democratic system should take into account. On the borders of the provinces, but aren't they at the commission. Because there's vested interests. It wasn't a technical issue, we had to go and find out what people thought, we had to take evidence, so commissions go do anything it needs to take the evidence, technical people may take evidence but they are more concerned with mechanics of things.

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MR MARAIS:

Now, it says here. Commission may be appointed, this is just one of the rules 37, by the CA to investigate any matter in which the CA or the Committee or other party appointed by the Constitutional Assembly requires information. And they operate in terms of the commissions act.

CHAIRPERSON:

Citizenship? Is it.

MS FELGATE:

OK, Can it be noted that the ANC would (inaudible) ...  
Commission.

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CHAIRPERSON: Commission. Separation of powers. National Party.  
Separation of powers.

MR MARAIS: I don't have a very firm stand on that. I believe it would be better to have a Technical Committee but, I am not going to argue about it.

CHAIRPERSON: OK. Citizenship?

MR MARAIS: But are we going to use this now as a basis for our report. 10  
With all the various parties standpoints taken out. Our work plan

CHAIRPERSON: I thought that was emerging as the only thing we can do.

MR MARAIS: I'll go along with it. It's very unsatisfactory, to my mind.  
But we must now make progress so I'm prepared to fall in with that.

CHAIRPERSON: Ok, citizenship? 20

MS FELGATE: Citizenship. I think it can go through (inaudible) ...



CHAIRPERSON: The type of democracy?

MR MARAIS: That's something perhaps for a commission.

CHAIRPERSON: I can't agree there. ANC's view on that.

MS FELGATE: (Inaudible) ... We are not specific on that matter.

CHAIRPERSON: Suffrage?

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MR MARAIS: Technical Committee.

MS FELGATE: I think the Technical Committee (inaudible) ...

CHAIRPERSON: Separation of powers?

MR MARAIS: This is now the federalism, regionalism concepts.

CHAIRPERSON: Ja, that's technical, highly technical. Technical yes. Do we all agree that's technical or is it.

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MR MARAIS: Yes, I think that should be dealt with technically.

CHAIRPERSON: The ANC's view on that.

MS FELGATE: Separation of powers?

CHAIRPERSON: Separation of powers.

MR MARAIS: This is different from the previous separation of powers. The previous one referred to the, what is called the (inaudible) ..., the judiciary, the legislature and the executive.

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CHAIRPERSON: Now this one deals with the provinces.

MR MARAIS: With the levels with. Ja, provinces, national and even local, I believe.

MS FELGATE: I also believe that it is technical.

CHAIRPERSON: Freedom Front. (Inaudible) ... At all levels.

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MS FELGATE: Some of the issues, I mean, why can't they be dealt with. For instance on the issue of what the Freedom Front is

given, I think we can deal with those issues in sub-committees or Theme Committees where the (inaudible) ... where the sub-committee can investigate the issues concerned.

MR MARAIS:

Yes, I haven't been at the last meeting but I was given to understand that the smaller parties objected because they wouldn't be able to take part in the, in sub-committees, is that so, somebody told me that.

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CHAIRPERSON:

Yes, sub-committees are a problem with small parties.

MR MARAIS:

(Inaudible) ... No mercies.

MS FELGATE:

But it wasn't (inaudible) ...

MR MARAIS:

Somewhere, maybe, because somebody reported that to me.

CHAIRPERSON:

If a decree, as an NS report or minutes, objections to sub-committees because they are outside of the (inaudible) ... LA CA structures it. I think (inaudible) ... They've picked

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up the issue.

MR MARAIS:

I mean since the ACDP they've got only two members in parliament so they, and they already run from one meeting to the another. It's going to be very difficult for them.

CHAIRPERSON:

We're running here into a difficulty, if you look at Freedom Front submission number 2, under democracy heading mainly, Democratic Rule in South Africa, the nature and accents are limitation on democracy, Democratic governments at all levels. The reasonable scope for Democratic (inaudible) ... Now, we would say that, we've already said that type of democracy would go to the Commission and the ANC is silent on the matter. We don't what the Freedom Front will think, whether we could group that under the same Commission, systems of democracy. We've got one Commission dealing with the IFP issues as listed under 6 on page 1. You see, the way we're dealing with all these various party political inputs is going to cause a lot of confusion for us, unless we do it in a simpler way as I have suggested or something along those lines, we are going to run into enormous problems. There's no doubt

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about it.

MS PIKOLI: (Inaudible) ...

MR MARAIS: we will have to try and simplify the process, the work plan. Because I would, for instance, because I never, I never had it in my day, we should at this stage go into such detail, for that reason I haven't even, by any means, tried to submit a full stand point on democracy yet.

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CHAIRPERSON: You see, the IFP has got a particular view on these matters, because we've been in situations where we've had a meeting, disastrous long jams and stalemates.

MR MARAIS: I realise that.

CHAIRPERSON: So to avoid that, we don't want again to be in the position where we dig our heels in and say no and walk out and have to object violently and strongly to this. So to avoid that, we are look at, for Goodness Sake, where we can reach consensus, let us do so, let us be clear right at the beginning where difficulty is lying. When the difficulties only crop up

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right at the end, when we are doing the final reporting, we can't handle that. It's take it or leave it then. So, for us, the detail is important to avoid conflict situations and log jams.

MR MARAIS:

I realise that. I said to myself that is why you are so adamant about this because I haven't been part of the negotiations last round, the Kempton Park and Codesa, but I get myself report that was your, the reason why you had this particular approach but for the work plan, for the sake of the work plan, it's going to cause a lot of confusion.

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CHAIRPERSON:

Unless Theme Committee 1 can arrive at a clear notion of where we've got common ground and where the real differences lies, we can't work and get documentation, do the research, so that the differences could be addressed and determine into a consensus.

MR MARAIS:

I agree with you, but I thought that was, that's the next space, the moment we have this work plan then we take the work plan and then we say, Now listen we have to attend, it's part of our brief to attend to the issue of the democratic system of government and represented the government in

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placing a multi-party democracy, let's say we are going to address the whole issue of democracy, how are we going to address it. Where, on what items do we have commonality, where do we disagree. What are we going to refer to the commission, what are we going to refer to a sub-committee, what's going to be dealt with in the Technical Committee. Because in each and every case where we refer a matter to a commission, I believe you will agree with me. The commission will have to be receive from us full terms of reference.

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CHAIRPERSON:

Oh, absolute ridiculous.

MR MARAIS:

And that's where your point then comes in. Then I'll be all the way fully behind you. You needn't even doubt about it.

MS PIKOLI:

But you see, as I'm busy. I've been going through this process. My question is when do the actual discussions take place in the Theme Committee itself. Because at the end of the day it would seem we will end with a situation because everything is sent to the, either the Technical Committee or the Theme Committee. This is where I have a feeling and I

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need perhaps to, I need some explanation, maybe our understanding is not the same.

CHAIRPERSON:

Theme Committee is the Constitutional Assembly at work voting the constitution. In (inaudible) ... members must be fully involved. That I think we all agree on. The Theme Committee here refers everything to commissions. You will rob the Theme Committee of its essential role.

MR MARAIS:

What I also think, if I may, have you finished? Is, there will have to be a debate. For instance, should we decide, should it be part of our work plan that we should, say for instance, refer the whole issue of democracy as such to a Commission or to a Technical Committee, then the terms of reference of that Commission or of the Technical Committee will have to be discussed in the Theme Committee. There we can, in that discussion we will see in, to what extent we have commonality, where we disagree, what is contentious, what is non-contentious. So it will have to be discussed in terms of reference then. I can fully understand how you feel, because, and we don't want to go through all the painful deadlocks and stalemates that was part of the last process.

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We must avoid it too. I will be on your side whenever.

MS PIKOLI: (inaudible) ... even the drafting of this draft report or  
(inaudible) ... Report on the Core.

MR MARAIS: On the work plan. Ja.

MS PIKOLI: We are just differing on the process and (inaudible) ...

MR MARAIS: You see, I differ from Ms Pikoli on what is needed now, but 10  
I would be prepared to, for the sake of making progress to  
accept virtually anything that's put on the table. I only  
caution, but I only caution you that we shouldn't make this  
so difficult that it's going to lead to nothing. We must have  
the report, we must have a draft work plan to put before the  
committee tomorrow.

MS PIKOLI: (Inaudible) ...can I ask some of you, what work could be  
done in the process of (inaudible) ... By way of coming out 20  
with the report. I'm not sure whether we are completing the  
(inaudible) ... But do you think you could (inaudible) ...  
assistance.

MR MARAIS:

Who's she talking to.

MS PIKOLI:

I'm not in a position to (inaudible) ... I want to repeat what I said earlier. I think we leave the report as Leonie and Ferida have done, except to move on the point where arising out of the issues that were raised by other parties which have not been covered in the report. We then at least suggest how to go about those issues, at least we then say something. Especially the issues that have been left out as not part of those issues that are of commonality. Maybe we just leave some articulation that we suggest is, how we deal with them. Or at which stage are we suggesting that they would consider because then if parties have made a point on that, at least we should make a (inaudible) ... They would have to be dealt with at some stage or another. (Inaudible) ... What then about that.

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CHAIRPERSON:

I perhaps don't follow you. Could you just go over that again.

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MS PIKOLI:

I'm trying to say, for instance, if we looked at what is a commonality as represented by what items, five items in this

report that is in the minutes of the Theme Committee 1. I'm then saying give them the submissions that we had done earlier on and our argument that we just work on the issues where we think we have this in agreement. And we just list them as priorities. Those issues that were then left out from the various parties what do we suggest on our side should be done. Shall they just go as contentious issues, straight to the Constitutional Committee and that's it. Or are we further make a suggestion that they are contentious issues but this how we think that item by item should be dealt with. Still 10 doesn't make sense?

MR MARAIS:

I am hesitant to say again, we are making this thing to difficult for us. Because as I've said in now earlier, we are really complicating a simple matter because the work plan is a simple framework. After that all the difficult, more difficult discussions will have to follow and we are complicating the issue.

MS PIKOLI:

Well let's note it then. I really think we should. We are not 20 able to apply anything.

CHAIRPERSON: Can we just go to the process then. We've got a proposal of a formative report from the National Party.

MR MARAIS: This is my personal effort.

CHAIRPERSON: Your personal effort, whatever. It's a proposal.

MR MARAIS: It's more an effort than anything else.

CHAIRPERSON: Is this helpful. Is this, can this be edited into a report. 10

MR MARAIS: I would believe so but it's difficult for me because this is something that I produced myself. I was just sitting there in my study doing, trying to sort of get my own thinking processes together and this is what came out of it.

CHAIRPERSON: It's the one we got this as a proposal the way it board. You've got an alternative proposal the way it board, of taking exactly what each party said, grouping it into wherever everybody is agreement and listing the sent in 20 views on whether that item belongs under the heading democracy. To that, so that we've got a list of commonly

accepted views and views under dispute. Now that has been made a proposal and that has been rejected. Third proposal, we leave the report as it is and we talk to it in Constitutional Committee.

MR MARAIS: Constitutional Committee.

CHAIRPERSON: Ja, anything that with the Theme Committee first. The Theme Committee first with the added notion that we should just report to the Constitutional Committee from 10  
Theme Committee the difficulties and let it be discussed and negotiated at the Constitutional Committee, because we're not negotiating.

MR MARAIS: I'm prepared to go along with that. But then you must please protect me tomorrow, because I'm in the chair tomorrow and I'll, you must explain to the meeting because it's going to be difficult for me in that position to take part in the debate, as long as you, from your side, put a full picture, make the full picture clear to the meeting, then I'm 20  
alright. Because I'm worried about how I'm going to deal with it tomorrow.

CHAIRPERSON: I sat in this chair, I'm not sure if it will remove all of the resistance.

MR MARAIS: Ja, I'll leave it to you because when I'm in the chair I prefer not to be talking, not to talk to much.

CHAIRPERSON: That's a very welcome statement.

MR MARAIS: I think that's what we should do. The two of you can then put the problem before the meeting. 10

CHAIRPERSON: The other thing, I would certainly go through the process of trying to do what I think we should've been doing to see what it turns out to be.

MR MARAIS: You see what you should do is you should do what I did. Sit and try to arrange your thinking and to put it in writing, that can only be helpful.

CHAIRPERSON: It could simply be avoided having herewith a draft of what 20  
I think this thing should be. Then it's not joint drafting.

MR MARAIS:

Ja, it is always good to have something before you.

MS PIKOLI:

Perhaps we'll come with that tomorrow. Now what is our understanding of (inaudible) ...

MR MARAIS:

Ja, I won't see it in a negative light, not by any means.

CHAIRPERSON:

When we think of that, the report goes in as it is here, I would certainly speak to my view of the way forward and actually probably table a brief document, doing, having done myself what I think we should have done, ANC can table a notion about the problem of process, I mean we are actually a bit log jammed on process not on federal content or anything, we are log jammed on process, and leave the Theme Committee to discuss the difficulties we actually tabled. This work group, the sub-committee work group hasn't been properly instructed or briefed so we trying to define our own job. We haven't come here to do something we are told to do. I thought we were told one thing, but other people are hearing differently. I thought we were told to take the items, list them under contentious and non-contentious so that we can report accordingly to the

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Constitutional committee.

MR MARAIS:

I just want to make it clear once again, that even though I differ from you, I wouldn't, I would be prepared to go along with what you (inaudible) ... If that (inaudible) ... Progress. It's not that I disagree in the sense that I want to obstruct anything that you, that's not my purpose, sorry.

MS PIKOLI:

Ja, I think it will be helpful but I think we can, our different understandings of the various parties what we think the position is and it might be helpful because we will compare what is being presented by the various parties which are taken (Inaudible) ... this discussion and articulating our problem with process because I think people will then be able to see where the problem lies. And it might mean that we just put the two differences together.

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CHAIRPERSON:

See, then we are saying as value because if we have a work program and your clear agreement on process then the work program is easy to define and to get on with. But you have different views of process, you have different views of work program, you have different views. So the process issues are

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the key issues and I think we should report that with, from our point of view, work programs are a lengthy process of issues. There is insufficient clarity on process and Constitutional Committee can report and should have a discussion on process. Ok.

MR MARAIS:

Right, I'm going to leave it to you two to do the explanations tomorrow.

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# CONSTITUTIONAL ASSEMBLY

**Theme Committee 1 Meeting**

**14 NOVEMBER 1994**

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CHAIRPERSON:

I hope our discussions will be fruitful this morning. We actually need to make progress in this meeting because tomorrow is the deadline for the submission of our work plan. Before we start, I should like to point out firstly that an alternate member may only take part in the proceedings if he or she is standing in for a full member, so whenever alternate members wish to speak they must please indicate to the secretary who they are standing in for today. Thank you very much for your cooperation. Well, colleagues, we have quite a lot of work to do so without any further ado, let's move onto item 2 on our agenda, the agenda is to be found in the document numbered A 02. I believe that we are all in possession of the minutes that's mentioned in the second item on the agenda, it has been circulated. May I ask is this document a true reflection of what has happened at the last meeting of the Committee?

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Are we all satisfied that it truly, I have a proposal there, seconder? So if we are all satisfied, we can accept this document, this minutes and it will then be duly signed. We now have to deal with matters arising from the minutes, that's item 3 on the agenda. As far as I can see there's only

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1 item that we need to attend to and that's paragraph 4.8 on page 3, which says, "the administration was also charged with the responsibility of seeking legal opinion on the scope and the effect of the Rule 37, 36 and 37", those are the rules relating to the appointment of commissions. And may I ask the secretary to please report to us.

MS ROUTLEDGE:

Ok, what is happening is that the legal department of the constitution, of the CA, is seeking legal assistance and guidance with regard to the Commission. There hasn't been a response or a firm response as yet and we are still awaiting for that. Which will probably take place by this afternoon or tomorrow morning, at the latest.

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CHAIRPERSON:

Thank you very much. Any discussion on that. No discussion. We take note. Now, colleagues, that brings us to the real work that we have to do today, that's item 4 on the agenda, development of the work program. We've been provided by the secretariat with a document entitled "Fourth Draft Report". The document is number A 03. Now, ladies and gentlemen, you would have noticed that this isn't yet a work plan. The situation is that since our last meeting the

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Core Group met on three occasions. They couldn't yet structure a work plan which is completely in accordance with the recommendations contained in the Executive Directors letter to us, dated the 18th October.

Even yesterday morning, on the Sunday, three members of the Core Group met for about an hour and a half, the secretary and her colleague also attended, thank you very much for that. And those three member then agreed that the matter should again be referred to the Theme Committee. Now to start our discussions I have asked two members to explain to us what the problem really is about. The two members being Ms Pikoli and Mr Felgate. And I would like to call on Ms Pikoli to start the discussion.

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MS PIKOLI:

Thank you Mr Chairperson. I must report that having met for two occasion during the past week as Core Group Members, however we were not able to come up with any further input in terms of how we move forward with the work program and the report itself. I think the problem arises because we differed on the process of taking the whole thing forward.

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In fact let me not say, I think, we actually differed on how we moved the process forward and having differed on the process it became very difficult to even take a step in any direction in any way. It was because of that we decided that we then call the meeting off and we come back to this forum and make the submission. And making the submission by way of seeking guidance given our deadline tomorrow and the fact that the report must be in. So, with those few words, I'll stop then.

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CHAIRPERSON:

Thank you very much, Ms Pikoli. Mr Felgate please.

MR FELGATE:

Thank you Mr Chairperson. Perhaps we could table some of the issues that made progress not possible and I would table them as an IFP perspective and not as a Core Group perspective. In our submissions to the Theme Committee contained in the document dated the 26th October, we listed issues and attached to each of the issues proposed agendas to tackle the issues. Those agendas have not been discussed. We have not got before us actual agenda items of how we are going to go about tackling issues. We have got issues themselves and I, particularly, am very pleased

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that the issues as listed in the Fourth Draft Reports are comprehensive of all party interests and has been a very inclusive program that we've been pursue.

So, the scope of our enquiry is still open-ended and I think it's the feeling that it's remain open-ended but when you look at how we are going to actual tackle those issues, we come to difficulties. Could I just give an example. If you look at the question of equality, parties made submissions and there are a number of listed issues under the heading "equality". But we need to find common ground on the fact that formal equality needs to be entrenched. Then there's the question of substantive equality. And this can be achieved either by promoting equal opportunities or equal access to opportunities. The principal of equality may be implemented and enforced exclusively by the national government, or by the national government and provinces in their respective area of jurisdiction. 10

All the main variations of the principal of substantive equality will need to be explored. The relation between substantive equality and the need of constitutional 20

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adjudication to be conducted by the Constitutional Court will also need to be explored. It will also be necessary to look at the many alternatives related to the application of the principal of formal equality with respect to the area of provincial autonomy. The difference between implementation and enforcement will also need to be fully explored. Now if you take equality, there are issues but there is no agenda yet of tackling those issues. Consequently, during this recess, the secretariat will be expected to collate or co-ordinate the various reports from all the Theme Committees and in December produce a set of documents on the way forward of the actual work programs.

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So, until such time as we've got an in-house Theme Committee 1 agreement about how we are going to tackle problems, we are going to be left in the hands of the secretariat which will then make suggestions and proposals for the way forward. Secretariats have always been valuable and our secretariat, in particular, I think is beyond reproach, but at the same time this Theme Committee must drive it's own process forward. This Theme Committee has got a

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particular set of responsibilities, which are actually prioritized by a Constitutional Assembly resolution.

The proposal that I would make as a step forward is take sets of proposals from parties about how to tackle issues. At this stage, we've only got listed issues, we don't even know the extent to which there's all party agreement on whether a particular issue under particular headings is an issue everybody feels should be pursued. What has happened is that no issues have been barred. When you actually start working at them, the prioritization of them should be based on assessment alone. Then I want to add one more dimension to what I'm saying and it's this. By Constitutional Assembly resolution the Constitutional Committee has to report to the CA and in that report it must list areas of contention and non-contention. Unless Theme Committee reports to the Constitutional Committee, comment on what is contentious and not contentious the Constitutional Committee itself will not be able to fulfil its proper function, so the inclusive process to bring all parties, give all parties the opportunity to table their issues has been a very welcome one.

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But now I need to get onto the question of focusing. I brought with me a document which I'm going to submit on this subject as a working document, a submission from the IFP, and I think that other parties should also tend to the issue. As Ms Pikoli said, when you've got process difficulties then its very difficult to agree to a way forward. Let us look at the process. Let's isolate the difficulties and let's find a way forward.

CHAIRPERSON:

Thank you very much Mr Felgate. Ladies and Gentlemen 10  
this matter is now open for discussion. Mr Mahlangu.

MR MAHLANGU:

Thank you Mr Chairperson. Mr Chairperson, I think our  
difficulty is not as much as we seem to look at it. Because  
in the last Theme Committee meeting, from the meetings  
which have been approved now, the Theme Committee  
came up with what, and it was not contentious, in other  
words all parties agreed to that, if one looks at the third  
draft of the report submitted by the administration to the  
Core Group, in other words, extracting from the minutes of 20  
the Theme Committee of last week.

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The topics were clearly put there, for instance, democracy, equality, supremacy of the constitution representative government, accountability, matters of priority and matters to be referred to the commission are also mentioned. Matters which need technical assistance are also mentioned and you name them all. Then from those matters not dealt with in the Theme Committee then the party position we put there. I think that document which sets out that is a basis for a program. What is contentious is only the details under each of those items and the parties have not challenged the major headings concerned. All what is contentious is the more information given which gives party positions, so I will say to take the matter forward. We start where we agree and where we agree is the items concerned put under priority and those to be referred to the commissions are not contentious.

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I mean that is the matter which we have agreed last week and it has been amplified now in adopting the minutes. Now I would suggest from the advice we have received within the Core Group, from the Executive Director, that this document, the fourth draft, is dealing more information

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which is perhaps he said the other Theme Committees did not, they merely itemized this matters and they did not come with that but he had no quarrel with that, he said as far as he was concerned it even if this might be seen as working document but it does comply. Because it does give the work program although it gives more. I would formally move that we adopt the third draft, I can't refer to this numbering of the, in other words the third draft, in other words which refers to the third draft being the report which was drafted by the administration pursuant to the decisions of the Theme Committee. 10

It be accepted as point 1 as the work program and then amplified perhaps together with the fourth draft which contains contentious matters under the same sub-heading, because it's merely adding more information to what has been decided. So I would formally move that we adopt the third, the third draft as our report, as our work program and number 2, the fourth report as a supplement to that. In other words we accept both these documents so that we don't become mutually exclusive of any party and we leave the contentions. 20

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Because even if we have given more information which is not necessary it doesn't detract the question of the document being a working, a work program. It's only a work program with more information. So if we adopt both we would be able to submit a work program and then we add also the decisions we have taken in the Core Group unanimous, the time frames. You will remember that in the Core Group we have said the commission should finish their work by the 28th February, I think the administration has that, and also that the submissions from the public and other interested parties and role players should submit their representation by the 15th March, if I'm still having the days correct. And then by the 31st March, we submit the final comprehensive report from the Theme Committee. In other words if we just add those details to the two reports, I think our work program will be complete. Thank you. Mr Chairperson, I formally put that proposal on the table.

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CHAIRPERSON:

Thank you Mr Mahlangu. Is there anybody who would like to second Mr Mahlangu's proposal. I've received, I've seen Ms Pikoli's hand. Is that to second? And then Mr Moorcroft please. You can go beyond the motion also as

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far as I'm concerned.

MR MOORCROFT: I just wanted to ask.

CHAIRPERSON: The Mic please.

MR MOORCROFT: I should like to ask the mover of the motion, Mr Mahlangu, why he should insist we include the earlier document and not just submit the revised document. It seems to me we are making unnecessary complications because the revised document A 03 arises out of the earlier document, it's an amplified document. We all added to it and it's a more up to date, it is the up to date. It just seems to me. I would be very happy to support this document as being the latest and most up to date document and which, in fact, the Executive Officer, Mr Sam Coetzee, was very happy with. And my suggestion is that we just take this as the official document. 10

CHAIRPERSON: Mr Mahlangu, I'm going to give you an opportunity to respond. 20

MR MAHLANGU:

Thank you Mr Chairperson. Mr Chairperson, the reason why I believe the earlier document should be approved as a work program, my belief is that is the work program. The other one has more contentious information, in other words the party positions. Although the party puts it under the same work program. In other words my difficulty with the second one its more detailed with party positions rather than a work program. While the first one was unanimously accepted as the fills to be covered so I believe having them both we are having a work program plus party positions included. Thank you Mr Chairperson.

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CHAIRPERSON:

Thank you Mr Mahlangu. I see Mr Felgate's hand. And then Dr Nzimande.

MR FELGATE:

Mr Chairperson. This is rather disturbing. At the last Theme Committee it was agreed to that all the issues submitted by parties would be included in the draft. It was agreed to in Core Group. It is on that agreement in the Core Group and in this Theme Committee that the third draft was seen as a deficient and not sufficiently inclusive. What is being proposed is a process of excluding certain

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issues and Mr Mahlangu himself is motivating that by saying the fourth draft contains contentious issues. I find it astonishing that we are now faced with this motion and I believe that the extent that this Theme Committee can be driven by the majority party in it, we are at the mercy of the majority party.

If this Theme Committee is looking for a consensus on the way forward then I think Mr Mahlangu's motion is detrimental. I would just like to add one more thing briefly 10 if I may, Mr Chairperson. We've all in our own different ways been involved in constitutional negotiations and one of the issues that we bring from our past experience is that the process can move faster than we can introduce issues. Issues, if they are not introduced at the right point in time, are left behind by the process. If we're going to continue dealing only with happy contentious, consensus issues we'll build up a backlog of ever greater proportions of contentious issues and as the process moves into the bottleneck which it's bound to move into, there just will not 20 be any scope of handling it. We'll end up with a drafting process which is totally unacceptable to some people. So



the question exclusivity is a crucial issue and the fourth draft has all the headings of the third draft.

It has them in such a way that it is more inclusive than the third draft so I would really move strongly that I ask Mr Mahlangu to withdraw his motion if he would at all do so.

CHAIRPERSON:

Thank you Mr Felgate. I'm going to give Dr Nzimande an opportunity to address us, but in the meantime I would like to appeal to Mr Mahlangu to consider the possibility of amending his motion so as to make the fourth draft the basis for moving forward. I'm going to give you time to consider that, to think about it. In the meantime Dr Nzimande. 10

DR NZIMANDE:

Ja, thank you Mr Chairperson. Firstly I think that there's no reason for Mr Felgate to feel that we, the majority is driving this. I understood Mr Mahlangu to be placing a motion for discussion and for the house to consider it. Otherwise it makes it difficult for us now, as the ANC, to make proposals because then we are going to be made to feel guilty that we are trying to impose a majority here. I would strongly 20

support Mr Mahlangu's proposal that we adopt the earlier report.

If we want, and if our task is to produce a work program, because I think that the fourth draft begins to, not really to place a work program but to begin to argue and advance party positions. And by so saying, one is not, by any means, to assure Mr Felgate perhaps saying that these party positions should not at any other stage be presented here.

What we are saying is that once we agree on a work program which outlines what is it that we want to discuss then for instance the IFP will be totally free to advance it's own positions. 10

You know once we start discussing. Because otherwise there are contentious issues, for an example, I'm just making it an example of the IFP because it seems its the most detailed rather than isolating the IFP's submission. I mean that whole thing of separation between churches and state, whilst we might all agree perhaps on that, but it's actually on the work program beginning to present a party political position and that begins contentious. Type of state, being 20

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a social state but not a socialist state. The PAC feels very strongly that South Africa should be a socialist state and that is what we must write into the constitution. As an example. Now you begin then to get into that debate. I'm not so sure, for instance, that in that case the PAC would like to see a work program that has got a statement that puts something like this when its actually against its own position. One could cite quite a number of things. And my view, Mr Chairperson, is that this is going to get us into endless debates.

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We will be getting into debates in future. I think that we adopt what is a minimum program on which we agree, mainly the topics and the issues to be discussed and avoid this kind of detail, at this stage. The IFP, for an example, or all the other parties will be free to come in then and use this as their basis for an input. You know, they can submit documents, flashing out their positions. But if the work program is to reflect consensus of this Theme Committee I think that it's better that we leave it as that earlier draft. So that's in support of Comrade Mahlangu's motion.

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CHAIRPERSON:

Thank you Dr Nzimande. Mr Mahlangu as I understood you, you moved the adoption of the third draft as a work program. But you also said that it should then be amplified by the issue, by some of the, by including some of the issues contained in the fourth draft. Could you please elaborate on that. I don't know whether I understand you really correctly.

MR MAHLANGU:

Thank you Mr Chairperson. I may just indicate before I elaborate that I don't contemplate withdrawing my motion in any manner, I stand by it. Then let me explain. Mr Chairperson, as I've indicated the third draft, it's in my view the actual work program.

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In other words, the syllabus, if one can say, it doesn't give a lot of details, it's not even. In other words it doesn't come with party positions. Any party, for instance, if you take democracy, any party can raise any kind of democracy. Liberal democracy. Multi-party democracy. Any time. It's open. In other words, if parties, it's not binding parties to a certain position. Now I say that is a proper work program. But then I'm mindful of the desire of the parties

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to have more information under each item.

Now to accommodate that. In fact I don't understand why the IFP should have problem, because I say the fourth, let the first draft be accepted, I mean the third draft be accepted as the work program together with the third draft, in other words the fourth draft. In other words we are not excluding it. We put it in but now, in other words, why I emphasize the first draft is because the other one is giving party position, the other one is just giving a work program. In other words I'm not excluding any party's information which they feel they must put it forward. In other words, I'm taking the two together, not to exclude any party which says, we have made this submission in the fourth draft and we are excluded. Thank you Mr Chairperson.

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CHAIRPERSON:

Thank you Mr Mahlangu for that amplification. Mr Felgate, you know after having listened to Mr Mahlangu, how do you feel now.

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MR FELGATE:

Chairperson. The fourth draft is a very false, gives a very false view or image of what the IFP's raised issues are. The

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third draft is grossly inadequate and all we are asking for is that all the issues that all the parties raised should be listed so that they do give proper attention. The fourth, third draft, is a selective privatisation which we disagree with. And I really feel very strongly that the movement from the third draft to the fourth draft is an absolutely essential movement.

I just can't say it more clearly than that. Where, to meet the criticism that some issues that the IFP has listed would be disagreeable to another party in the Theme Committee, it just doesn't make sense to me. We are going to list issues. And those issues will in the end emerge as contentious issues or issues in dispute or contentious issues. That's the very purpose of this Theme Committee. We're not negotiating. We are not making decisions but if there's a process which precludes parties listing issues on the grounds that they are contentious and other parties may disagree with them, which was actually stated, then I've got a very serious problem.

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CHAIRPERSON:

May I ask you a question? Are you completely against the

possibility of submitting the first draft together with the fourth draft as I understood Mr Mahlangu to have said. Are you completely against the idea of submitting the third draft? Don't you want it to be submitted at all? May I ask you that? And then I'm going to give Mr Mahlangu a turn.

MR FELGATE:

Chairperson. I don't know in the idem of this committee what the strongest form of protest could possibly be. But I would adopt the strongest form of protest at adopting the third draft because however much you attach additional issues, the third, fourth draft, the third draft, if it becomes the main report is so selective and excludes so much of what really is of such vital importance that it's just untenable. I feel very strongly on the matter, Mr Chairperson.

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CHAIRPERSON:

Thank you very much Mr Felgate. I have three names on my list now. To start with Mr Booie and I also have Mr Niehaus' name and then Ms Pikoli. Ok, Mr Booie. Is that Mr Booie? Oh is that Mr Macozoma? Sorry, you're the first one.

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MR MACOZOMA:

Chairperson, I think that, in fact I find difficulties

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understanding the controversy in this issue. My understanding of what Mr Felgate is saying, and I would like him to correct me if I'm wrong, is that he doesn't want to see a report that has the potential of excluding certain issues. That are important to the IFP. If that is the view that he holds, I support that view. There should no program that excludes the possibility of any issue being put and we are not trying to do that.

I therefore want to de-emphasize the position that says 10  
issues must not be included because they are contentious or they are party political. There is nothing wrong with including contentious issues even party political issues. We are political parties. The problem, however, is when you are doing a work program, you need to put a topic and say we are going to address this topic. And once you've done that you could take the route where you try to find every conceivable thing that could be said about that topic and detail it in the program. And this is where, I think, the IFP, the direction of the IFP is taking. On the other hand, you 20  
could decide that we are going to discuss, as an example, church and state and anything conceivable under the F or



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above it, relating to church and state can be raised by anybody to their satisfaction.

There is nothing that precludes people or parties from raising these issues in the context of the debates that will arise. My real difficulty with the fourth draft is a situation where, in effect, we are going to decide now that this issue and that issue must be in this program and three months later, I may be, I may think, I may change my mind on an issue and feel that there's a new issue that I want included. 10

If, in fact, that happens and I'm unable therefore to raise an issue because the issues are so detailed that I'm unable to go back to the program, I would have a difficult. It is much better when we say we agree that no view may be excluded.

That we take the minimalists position in relation to the topics that we put there. We give a guarantee that all the views will be included and that those party political positions will actually find their way into the program eventually. I think that would solve the problem, I don't see, you know, 20  
why we want to proceed in the manner in which has been suggested. I therefore would appreciate it if Mr Felgate

would respond to the view as I attitude.

CHAIRPERSON:

Yes, I'm going to give Mr Felgate an opportunity later on.  
I now see the next name is Mr Niehaus. Mr Niehaus.

MR NIEHAUS:

Chairperson, I'm to a large extent covered by what Mr Macozoma has said, except to add that by going now for a detailed program I think we actually may run right into the danger of considering that detailed program as a program covering all issues and that could possibly lead us into further problems of excluding some issues. If we have the broad frame work as it has been suggested and we can then include as further information also what is contained in the fourth draft and many other submissions that will be made, then it will be much better anyhow. For me the definition of what a work program is, is not a detailed program, point by point but a broad framework within which we can include everything that all the different parties want to raise. 10

Just as an addition to what Mr Macozoma said. 20

CHAIRPERSON:

Thank you very much Mr Niehaus. Ms Pikoli.

MS PIKOLI:

Mr Chair, I also want to reiterate that, you know. I think last week in the Theme Committee 1, there was general agreement, there was general agreement on the broad topics that are here. And the further request that we then put in flesh that arose out of last weeks meeting is what we then came out with in terms of the fourth draft report. And for me, I do not understand where we differ really. I do think that we have achieved what we could and that the circumstances because at some stage or another we are bound to disagree on certain issues.

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And that disagreement has been catered for by ensuring that in the flesh we still make sure that each of the political parties positions on certain issues which I think, which they feel are very, feel very strongly about are exactly contained in the document and I really think that it takes us a step further to then say the third draft report is something that some parties are not in agreement with. Because we did agree. We did agree in Theme Committee 1. And I want to reiterate that I think I still support the fact that we've put these two together but the real work program is the, is what is contained as the topics and the flesh is there to further

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strengthen political parties that whatever you have uttered is not lost. It has not dwindled and it will never be seen again.

CHAIRPERSON: Thank you Ms Pikoli. Any further discussion.

MR STREICHER: Chairman.

CHAIRPERSON: Mr Streicher.

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MR STREICHER: Chairman, I think we would all like to get on with the job. And if you, if one has got to decide on a work program there is no possibility of every excluding any of the subjects that have been raised so far. As to the function and the responsibilities what this Theme Committee should do. So in other words, I think that we should go for the report that is the most comprehensive. Because none of these issues that have been mentioned, whether it's in the third report or in the fourth report will ever be excluded.

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So if we really want to get on with the job, then I think we should know exactly how broad our vision is going to be,

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what the issues will be that we are going to discuss so whether we say any party can add this and add that, that means nothing to me because if you've got the fourth report, which is the most comprehensive, then you've got everything included. Then we know exactly where we stand, how long we are going to take and what the issues are going to be that we should discuss.

So I personally think that the fourth report, which is the most comprehensive is the ideal agenda for this, for this committee to work on. So I have difficulty in understanding why one should, at this stage, go for the report which is a less comprehensive than the fourth one. And I think the moment we accept this, then members will be able to know exactly where they stand and we've got a full picture. So without repeating myself, I think the fourth report is actually the document on which we should really base our whole work program. 10

CHAIRPERSON:

Thank you Mr Streicher. Any further inputs. Dr Miller, Dr Mulder. 20

DR MULDER:

So sorry I was a bit late. Not from bed but from a previous appointment. So I didn't follow the debate from the beginning as far as I know this morning actually we should have discussed a fifth report. So something happened so we're back to the fourth report and now to the third one. Now, I've tried to follow more or less and I said I'm still struggling with what the task of this committee is. If it is just to generate ideas, to brainstorming whatever, then I must be honest with you then the fourth report is better than the third one.

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Because if you go back you end up, and there was some criticism in the past on just headings, because you can make it all smaller and smaller until it is just democracy in the end of the day and that's the total issue. In the end, as far as I'm concerned, the character of the state is an issue. So if we are not going to negotiate, if we are not going to make conclusions, I think it's more honest to go for the fourth report in the sense that well that's the issues and that's the issues where we differ in a certain sense and that's where we on all. And we are willing to go for the fifth to try even to get common ground on that and then I said something

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happened along the road.

The secretary had said Mr Mohammed whoever was there on our meeting on Friday, he said he was quite impressed with the fourth report because it's so comprehensive. Mr Ebrahim, sorry Ja. He was there and he said, before because of that. If he's going to exclude and then Mr Macozoma is correct, if it is the final and no more issues are allowed, whatever then we must look again at it. But if it is the work that has been done up to now, we've generated a lot of ideas, there can still be ideas added. There's nothing final as far as I'm concerned. Then I must be honest with you the fourth seems to be better than the third.

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CHAIRPERSON:

May I ask you. Is, as you see it, should the third report be now, be ignored completely?

DR MULDER:

No, it cannot be ignored because it's been the parent of the fourth. So it originated the fourth, it makes the fourth maybe the better understanding, but therefore I would like Mr Mahlangu just to explain again how we could use both because there's a lot of things that came forward in the

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fourth that makes it more comprehensive and more understandable.

And make the party positions more clear, that we can see more or less where we going and where we might differ, what's contentious and what's not contentious. So the third and fourth go together, but the fourth is the advanced, second generation type of.

CHAIRPERSON:

Thank you very much, Dr Mulder. Mr Mahlangu. I have your name next on my list.

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MR MAHLANGU:

Chairperson, we see to have conceptual differences here of what constitutes a work program. Because I look, for instance, on the fourth draft and I hear the comprehensiveness and I'll address that a little later. On the fourth draft, if you look at 1.3, it says here that the state should not be involved in any religious matter.

Now I may agree with that or not agree with that. That is immaterial, what is material is the fact that is an opinion, it does not constitute an issue that is part of the program. It

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is a view that can be placed at any time when we discussing the separation between church and state and therefore once it details and then says the state should not get involved with a religious matter and you want to submit that as part of a work program, that I have a difficulty with. Because it is not, it is an opinion that can be expressed at any point in time and that's where I think the conceptual differences come around. The comprehensiveness, we have to ask ourselves comprehensiveness of what? The comprehensiveness must be that there should be no possibility that anything should be excluded at any point, that's what the comprehensiveness is. 10

It's not that I want, we want to, I may want to put ancestor worship there as part of the program. What are people going to say when we raise the issue that we want this to be part of the program. The issue to be decided is a relationship between the church and state and under that topic there are many issues that can come around. But you can't, we cannot put views and want to make views on the particular issue as if they are part of the program. They're issues that we will raise as and when the matter comes 20

before the committee.

CHAIRPERSON:

Thank you, Mr Macozoma. The gentleman in front

MR KEKANA:

Ja, thank you chair. I think here we are really going to be in danger of actually engaging in some kind of debate that goes in a circle and a circle all the time, you see. I understand the motion to be stating it clearly that there is no way that we could consider the fourth draft or the third draft. It's like looking at generations, you can't exclude the first generation and then corner the second one. Because the first one gave birth to the fourth one. 10

I think that is, that is my understanding of the motion. And if there are objections to the fact that the third draft has a problem and so maybe we need to understand what is the exact problem, you see. It was our emphasize here and from the input that was given here is that a work program in our understanding is not a detailed, it doesn't contain party political views as such. But seeks to prioritize areas that need to be dealt with at the level of the Theme Committee and so on and that is what we need to submit 20

and so on.

Ok, and if, for instance, as far as the ANC is concerned, we haven't made our views clearly on majority rule. Surely, you know, we still have a chance of actually amplifying that at a later stage. So to me I don't understand the actual objection from Mr Mahlangu's motion. As far as Mr Felgate is concerned. But he doesn't want to take into consideration the third draft and wants to look at the fourth draft only.

Let me also say that I think we are going to be in a situation where we are beginning to. For instance if my understanding of adoption is that if once I start adopting the fourth draft, the fourth report, I'm actually saying that, I might be perceived to be saying that I agree with what the IFP is saying then. And I don't want to do that. 10

But I think for the sake of progress we are saying that the two are together, you cant separate them. The third generation and fourth generation, maybe today we should be looking at the fifth one if people feel that there are certain things that are not included in the actual work program. I think that is what my understanding of the item on the 20

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agenda. But somehow, maybe it is important that we get clarified as to what are the objection to the actual third draft, because that lays the basis for what we call a work program. I think that is what we are saying.

CHAIRPERSON:

Thank you very much Mr Kekana. I've seen ...[ **END OF RECORDING** ]