

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 4

5 JUNE 1995

THEME COMMITTEE 4

5 JUNE 1995

CHAIRPERSON:

Ladies and gentleman I would like you to take up your seats if possible. I'd like you to - to welcome you today to this meeting of Theme Committee 4. With your co - operation I don't think that we have anything of contention today, let's hope not and we'll try and get through the businesses as quickly as possible so that we can get on with more work in our offices.

Are there any apologies? We have Minister Asmal's apology as well as that of Mr Tony Leon and Ms Sheila Camerer. Doctor Ranshot will be sitting in for Ms Camerer but he unfortunately is at the moment also in Theme Committee 2.

10

Right if there are no further apologies we can go onto the next item of the agenda which is the minutes of the meeting of the 29th of May are there any amendments - any matters that occurred to any of the parties in regard to the minutes. I would just like to point out that the word to should be added if one looks at paragraph 4.8 page 5, the NP's response, the NP is not in favour of abortion on demand but recognises the need to review the current legislation.

20

THEME COMMITTEE 4

5 JUNE 1995

Other than that we have no comment on the minutes. Can we take them then that they are in order and confirm that? Anonymously accepted thank you very much. That allows for us to move on - are there any other matter arising out of the minutes at all, nothing.

Well we can move straight on to item 4 and I would like to suggest that if you will just note the ACDP's submissions are in the additional documentation at the back of that extra pack that was put on the table for you this morning.

10

I would like to suggest that we request the parties to deal with all four of these rights and freedoms in one presentation and then allow for questions on any of them from the other parties. Does that meet with your approval? I think it will be quicker it's a procedure we have adopted and I think it will probably help the meeting, thank you.

Right if that is the situation then I would like to ask Mr Louis Green to present the ACDP's submissions on the four rights concerned, Louis over to you.

20

5 JUNE 1995

MR GREEN:

Yes thank you chair, with regards to political rights, ACDP position is as follows it's found in the additional documentation, the smaller document. With reference to Section 21 of the Constitution we actually support that section. We believe that it actually reflects the essential principles of the right as far as political rights are concerned.

Now we regard this right as being essential to the democratic ideals of human activity. In act we feel that this is one of the most important rights in a human rights document. We say that in order to built political rights culture in a diverse society like South Africa it required democratic ideals reflecting a character of communality.

10

Now we believe that if one wants to raise the stature of the negotiation process. The culture of tolerance, the value of human dignity and programs like Masekani, to symbolic status, we will in still by doing this we will in still in our diverse population, a desire towards and integrative nation building. Which I just want to note that the spelling of integrative is - the R has been left out if you could just correct that.

20

THEME COMMITTEE 4

5 JUNE 1995

So our emphasise in terms of political rights is on the integrative nation building process. On the next page on page 2 we actually say the most essential things there and that the ACDP believes in political rights should develop a culture of accountability, integrity and the participatory democracy.

We are of the opinion that all laws should be equitable and righteous and above party all class interest and it should be designed for the upliftment of the people's moral. Now we believe as long as the rule of law is righteous and just a stable environment is established which sets the arena for political activity and then we also list the following principles which would support the following principles.

10

A sufficient identification of citizenship, the legitimacy of accountable authorities, participatory, democracy and efficient political machinery.

Now we believe that in those circumstances should political rights be brought in line with the thinking based upon authoritarianism, segregation, forced labour and all forms of oppression. We therefor support the right as stated in the

20

5 JUNE 1995

Interim Constitution.

As far as the application is concerned we believe there is a positive duty upon the State to respect and enforce the right of political freedom. We also believe that the right should apply to common and customary law. We believe that the bill of rights should have a horizontal and vertical application.

The right should also - this particular right should also apply to all natural persons. We believe that all efforts must be made to ensure that the right to political freedom is preserved and protected. But in terms of the limitations clause, Section 33 of the Constitution we say that as far as the security of the State is concerned if that is threatened or where the interest and safety of the public is undermined. We believe if it is undermined by the philosophies and aims of a subversive group in the country, we believe that the State in terms of Section 33 has in fact the right to limit this right.

10

20

Now as far as freedom of movement I don't know chair if I should continue or whether ... (intervention)

5 JUNE 1995

CHAIRPERSON: Please do.

MR GREEN: As far as freedom of movement is concerned it's stated in Section 18, 19 and 20 of the Constitution. Now I think as far as the content of the right is concerned we believe that this is a inter related group of rights which actually should be one, it's a cluster of rights. And it should actually be seen as one right.

In terms of freedom of movement we believe that the freedom of movement, the right should include the assemble to petition against grievances and we believe that's a fundamental right.

10

The right to movement is the reflection of self Government and the ability to organise human effort. Now when we speak about self Government we don't refer to self Government as in the - in the way the former Government as to self Government, we use it in a very personal context, personal self Government.

20

Now movement is by definition the basic freedom that exist which assert human beings to develop their full potential.

THEME COMMITTEE 4

5 JUNE 1995

And of course in South Africa that has not happened. We say that if a Government interferes this right and particularly here we refer to the past laws, then the fundamental human liberty is threatened and we've got a history of that.

The ACDP believes that the Government should not interfere with family and church Governments. That which of course is a very localised Government, as long as they do not aim to destroy the social fabric of a society.

10

We note the past experience and the hardship caused by the group areas policy and other socio economic restrictions that affected the upward mobilisation of the people and for which we are still reaping the consequences today.

At the end of that page 2 it is the ACDP's opinion that under no circumstances may any form of dead, stabilisation occur or any instability in neighbouring regions be encouraged under the (inaudible) ... of freedom of movement.

20

We support the development of the Southern African

THEME COMMITTEE 4

5 JUNE 1995

regions in that it aims to uplift the communities productive levels and then the ACDP's support the freedom of movement without any Government interference unless reasonable evidence exist that the interest of public of the public is threatened.

As far as freedom of residence is concerned we believe that there - this is a God given right as far as the family is concerned, as far as ownership and residence is concerned and in fact that is - it is necessary for this family Government to be exercised in order to have a stable environment.

10

The freedom to choose a residence is closely linked to the principle of dominion which further is inter rated to other forms of authorities. Now we believe that is when we discover our skills and our gifts to develop this planet and to enjoy the fruits of our labour that we reject any ideological system which teaches centralised economic believes or Government with top down (inaudible) ... decision making powers.

20

We further are of the opinion that anyone has the right to

THEME COMMITTEE 4

5 JUNE 1995

choose a residence and to have access to a healthy environment and the leisure - to leisure and entertaining centres and be subjected to taxation and the payment of services. And we believe that no-one should then be denied permits to reside in South Africa as long as they do not have a criminal record in their country of origin and is willing to contribute to the development of our country.

We also have the opinion that ownership or right to residence should be open to foreigners who do not wish to take out South African citizenship. And that this right should be available to South African citizens who wish to reside abroad as well.

10

We suggest that where ever the situation merits the need for dual residence, that this should be considered or allowed.

As far as freedom of citizenship is concerned the ACDP believes that citizenship is a covenant relationship between the exist - between the State and the people in pursuit of excellent and well being of all in society.

20

Now we know that in the past that citizenship was - was

5 JUNE 1995

defined by race and by class and by nationalism and we do not support this notion that nationalism is the criteria in which defined citizenship as it really gates us to the past where the supremacy of the 'volk' and language were the predetermined factors on which nationhood was built and perhaps here we say that as far as the 'Volkstaat' is concerned this is exactly why we don't support the notion of a Volkstaat because of this notion.

In South Africa we feel we are a multi cultural society, our citizenship should interpretively reflect a diversity, yet evoke a shared communality which a dignified allusions to a territorial (inaudible) A united South African territorial awareness should evolve among our citizens and a Volkstaat or sensation of a Province would definitely not promote territorial awareness amongst all citizens.

10

In South Africa we in the fortunate position that we are creating a new Constitution which is the supreme law of the land. And it is by establishing the Constitutional democracy to which all people adhere to, that citizenship can be defined. And that is our approach to citizenship.

20

THEME COMMITTEE 4

5 JUNE 1995

Now we say that the advantage of this position is that it transcends cultural barriers and moves towards a general sense of patriotism and civil responsibility. In as far as the creation of a Volkstaat is concerned, it would not create this general sense of patriotism and civil responsibility.

The status of equality is enshrined within this description and reduce group conflict and enhances group tolerances. We should endeavour to encourage a broad democratic citizenship building the Constitutional state with the objective to benefit the citizenship as a whole. And here we particularly refer to foreigners and immigrants and the Bible warns us in Exodus 22 and Leviticus 19 that we must treat aliens with respect and we must be concerned about aliens coming into our countries.

10

We often see that when the people come from the neighbouring countries they are not treated - they are treated as if they do not belong here and they should be chased back but the Bible is definitely against that kind of treatment of aliens.

20

Now we note that the political struggle has shown us that it

THEME COMMITTEE 4

5 JUNE 1995

is - it was those people - those friendly countries who welcomed our - who welcomed political exiles in the fight for justice and the fight for justice would have been a completely different one if those countries were not there and were not friendly.

So we should at all times be reminded at the discrimination and the prosecution many of us have experienced during the apartheid era and therefor should be aware of placing - of not placing others under similar sufferings. I think the word not has been left out.

10

So our history is a lesson onto us and our laws will ensure that aliens all though they are aliens or foreigners that they will require justice and protection within our borders. Now in conclusion true law gives a common protection to all those who are law biding and whether weak or unable to get such protection the law is non existent.

The ACDP therefor believes that the system is just only in as far as the citizens of a country experience a sense of justice and that their support for authority rests on - in the legitimacy of the State based upon the will of the people.

20

THEME COMMITTEE 4

5 JUNE 1995

Now we are proposing the following, we propose that the rights are as in numerated above be combined into the following sections as suggested by the South African law commission report on group and human rights and we actually have the following proposal.

Every person shall have the right to freedom of movement and residence anywhere within South Africa. Every citizen shall have the right to enter, remain in or returned to the Republic and no citizen shall be deprived of his or her citizenship.

10

In conclusion as far as the duty on the State. It is the duty of the State to ensure that all rights and freedoms be protected and everyone shall enjoy access to full benefit of the State. The ACDP puts it position at the biblical principles of justice, righteousness and equality are morally dependent upon the responsibilities of all citizens. And that these should be reflected in both common and customary laws.

20

We also believe that every right has a corresponding set of responsibilities and God has created us with the ability to

5 JUNE 1995

communicate and have social relationships. Human nature is intuitively inclined to explore and settle anywhere in their region and the world be uphold this right and hold the view that those who choose to operate outside of the protection of the law, or to illegally use usurp certain privileges, should be brought to justice.

All natural and juristic persons should be bearers of these rights and as far s limitation is concerned, all limitations apply to these rights, is dependent upon the nature of the right applied and whether such right exceeds legal or moral bounds.

10

The rights above clearly supports other rights of human dignity, freedom of force labour, freedom of oppression and discrimination. This right is a positive right and should therefor be encouraged. I thank you Chair.

CHAIRPERSON:

Thank you Mr Green. We now give the other parties an opportunity to ask any questions which might arise from this submission. Senator Surty of the ANC.

20

MR SURTY:

I thank you Mr Chairperson - (inaudible) ... I think

5 JUNE 1995

(inaudible) ... this right is specifically with the right of
(inaudible) ... - we think juristic persons should have a right
to (inaudible) ... it seems (inaudible) ... in terms of the
(inaudible) ... under which he discussed it. I almost
(inaudible) ...

I refer to page 7 of the submission.

MR GREEN: Ja.

10

MR SURTY: Under 2.4 you say all natural and juristic persons should be
the bearers of these rights, sorry to (inaudible) ...

MR GREEN: Ja, it is actually an error it's actually all natural persons and
not juristic persons - ja, sorry you right.

MR SURTY: (inaudible) ...

CHAIRPERSON: All right, any other questions of the ACDP, I think we'll
find ourselves in - on common ground today and I don't
think there will be much in contention. I'd also like to take
this opportunity of welcoming Professor Breytenbach and
Ms Liebenberg and I believe Professor Dugardt is also in

20

5 JUNE 1995

the wings, very happy to see the three of you it gives us a lot more confidence in this committee.

Thank you then I'd like to ask the ANC to present the four rights concerned and their submission. Ms Pandor.

MS PANDOR:

Thank you Chairperson, perhaps Mr Green if you could turn off your - thank you - chairperson in terms of the content of the rights we state at the beginning of our submission that political rights are dealt with in the various international human rights documents that we've sighted as including the universal rights that we - we will be dealing with.

10

We've made particular mention of article 21 of the universal declaration of human rights which reads as follows. Everyone has the right to take part in the Government of his and it should be or her country directly or through freely chosen representatives.

20

And two the will of the people shall be the basis of the authority of Government. This will be expressed in periodic and genuine elections which shall be by universal and equal

5 JUNE 1995

suffrage and shall be held by secret vote or by equivalent free voting procedure.

The ANC supports a formulation of political or participatory rights which must encapsulate the following.

1. South Africa as a multi party democracy in which all persons shall enjoy basic political rights on an equal basis.
2. Elections shall be regular free and fair based on universal franchise.
3. All men and women entitled to vote shall be entitled to stand for and occupy any position or office in any organ of Government or administration.

10

And I call the committees attention to footnote 1 which is at the bottom of the page that we reading at the moment.

The ANC is of the view that the debate as to the minimum age for voting is not over in fact has not really been held and that further consideration should be given to arguments in favour or reducing the legal voting age. Perhaps to 16,

20

THEME COMMITTEE 4

5 JUNE 1995

we believe that the debate should be held chairperson, it is not our view that the voting age should be 16, but that such arguments needs to be considered and we need to give some expression of thought to this particular issue.

4. All citizens shall have the right to form and join political parties and to campaign for social, political and economic changes and it should be whether directly or through freely chosen representatives.

10

The formulation in the Interim Constitution cogently expresses the right to free political activity which should occur in a multi party system of representative democracy. It is the ANC's believe that detailed principles of election and qualification of voters must appear elsewhere in the Constitution.

And perhaps the question of the voting age could go to the appropriate body that would discuss this particular issue as they elaborate, however it is ...

20

CHAIRPERSON: Theme Committee 1 is handling that.

5 JUNE 1995

MS PANDOR:

It is an issue that we believe we should take somewhere and it's perhaps time chairperson that we began to give the other Theme Committees some work because they assigning quite a lot to us.

In terms of the application of the right 2.1 states the State shall protect the political rights of it's citizens. 2.2 the right shall apply to both common law and customary law.

The right shall bind the State private persons, social structures and political organisations. The bearers of the right are human beings. And the limitations will occur only under strict justifiable necessary and reasonable conditions which apply in an open and democratic society. Just very much in reference to Section 33.

10

Citizens rights, freedom of movement and freedom of residence. Members will note that the ANC believes that this cluster of rights should be dealt with under one section as it is our believe that they very closely related and they that overlap considerably.

20

Further more if one looks at the universal declaration of

THEME COMMITTEE 4

5 JUNE 1995

Human Rights they are dealt with under one article and several other international instruments deal with them in the same way. We can't over emphasise the significance of these rights.

The former South African Governments abused of citizens rights in terms of the issue or denial of passport, in terms of deportations, pass laws etcetera gives these rights a significant dimension.

10

Restrictions in terms of freedom of movement and residence as experienced through the notorious pass laws, through laws prohibiting movement of civilians to other Provinces. Through influx control and the aboard group areas act all restricted free movement within the borders of our national territory.

he ANC believes that all South Africans shall have the right without discrimination to move freely and reside in any part of the country. To receive a passport which is now their right, given our new act, to travel abroad, to return to his or her country and to emigrate if he or she so wishes all though we hope very few do so.

20

THEME COMMITTEE 4

5 JUNE 1995

We support the formulation of the law commission which reads as follows.

Every person shall have the right to freedom of movement and residence anywhere within South Africa. Every citizen shall have the right to enter, remain in or return to South Africa and no citizen shall be deprived of his or her citizenship.

I assure you chairperson we didn't write our submission with the ACDP, but you will note the congruence. In terms of application of the right, the State we believe has a duty to protect the right. The right applies to both common law and customary law. The right shall bind the State private individuals, institutions and social structures.

10

And to prove that we did not write this with the ACDP we clearly and correctly state the bearers of the rights shall be human beings and finally any limitation shall have to be justifiable and reasonable in an open and democratic society.

20

Thank you.

CHAIRPERSON:

Thank you very much Ms Pandor. Do any of the parties

5 JUNE 1995

have any questions to the ANC? Mr Sizani of the PAC.

MR SIZANI:

Thank you Mr Chairperson, I would like the ANC to clarify point in page 2 the elections shall be regular free and fair based on universal franchise and that it's application that application of that in a system based under customary law.

MS PANDOR:

Okay thank you Chairperson. I think that one of the aspects perhaps not dealt with in our submission is the whole question of the hereditary nature of succession within the customary tradition and one would accept that we couldn't really have an interference within that particular tradition.

10

However we believe that one should attempt to promote democracy as far as possible in our country and that all though you don't wish to infringe on the customary tradition and of course cannot do so. But that all citizens should enjoy the right to participate in the process of franchise.

20

CHAIRPERSON:

Thank you, any other questions, there being none, I'd like to proceed to the Democratic Party if we could ask Ms Smuts to present their submission.

THEME COMMITTEE 4

5 JUNE 1995

MS SMUTS:

Chair I don't believe that it's necessary to go into any depth. We are happy to support the present formulations of the relevant rights. I am sure that we would be sympathetic to a clustering of the kind done by the law commission and followed by other parties here present and if you are happy, I am perfectly satisfied not to take us right through our submission.

If, however, people would like me to do so, I am happy to do so.

10

CHAIRPERSON:

Thank you, there you have a very brief submission from the DP. Any questions, thank you Ms Smuts I think that adequately dealt with your submission.

The Freedom Front is unfortunately not here. So we will note their submission, equally the IFP is not present at the present time. And so we come to the National Party, I would like to ask Mr Mdladlana just to sit in the chair where he is and take the chair just for our brief submission.

20

CHAIR HANDED TO MR MDLADLANA:

5 JUNE 1995

MR MDLADLANA: 'Met plesier'.

MR RADUE: Thank you, 'baie dankie'. Our submissions are contained from pages 21 through to 33, I also want to follow the example of the DP by not going through the rights in great detail. suffice to say that the political right to vote and to engage in political activity and the right to stand for and to hold public offices of vital importance as far as the National Party is concerned and we would like to see those rights retained unamended in it's present form in Section 21.

10

In regard to citizens rights contained on page 26, we believe that Section 5 of the Constitution creates a South African citizenship and provides that the acquisition lost and restoration of South African citizenship shall be regulated by law and that Section 20 provides that citizenship shall not be deprived without justification. And that a citizen should have the right to enter, remain in and leave the Republic at his own - and or her own wish.

20

In regard to the limitation of the right, the possibility that citizens rights may be limited as foreseen in Section 5 of the transitional Constitution which provides for a law that

THEME COMMITTEE 4

5 JUNE 1995

regulates the acquisition lost and restoration of South African citizenship. And to that extent the rights can be set out and limited in legislation.

But any law which is passed must of course comply with the limitations clause. It may be possible that these rights need redrafting and we are not opposed as well to the idea of a cluster formation as suggested by the law commission and by the ACDP and the ANC. I think we will leave that to the drafters to have a good look at it and that.

10

That comment also goes for the following two freedoms, freedom of movement. As you are well aware Section 11 of the transitional Constitution deals with the right to personal freedom and it is intimately bound up with that right. According to international law, the freedom of movement really covers six aspects freedom to move anywhere within the borders of the State. To reside, to enter a State, to leave a State, the freedom from expulsion from that State and the freedom from exile.

20

And except for the first one, that is the right to move around freely within the borders of the State all the others

5 JUNE 1995

are dealt with in other sections of the Constitution.

We believe that the right binds the State entirely and that all persons, citizens as well as aliens are bearers of this particular right or freedom.

And then on the question of freedom of residence this closely relates to the freedom of movement again as has already been pointed out and therefor we must have a look at the rephrasing and the possible cluster of these freedoms and rights.

10

We say that the right applies and that's the right to freedom of residence to all citizens and to aliens lawfully present in the country. We say that the limitation of this right should be subject to the limitation of the State. It should be possible to limit the free exercise of right for health or safety reasons. Or such limitation would always be subject again to Section 33 in the provisions of the limitation clause.

20

We think that this particular wording could be retained in any reformulation. That I think sets out very briefly the National Parties stand point on these four rights. Are there

5 JUNE 1995

any - sorry over to you Mr Chair.

CHAIRPERSON: Okay any - any questions, Mr Green.

MR GREEN: Thank you Chairperson, now with reference to the legacy of apartheid this right has been severely limited in the past and it is now caused various group areas and even if this right is now reversed.

MR RADUE: Which right?

10

MR GREEN: The freedom of residence even if we now say that there is freedom of residence because of what has happened in the past we now have clearly identifiable areas in which particular groups of people are living as a result of the legacy.

Now all though we are giving this freedom of residence right, is there - would there be a duty upon the State as a result of the past in order to address the legacy of apartheid to pro actively try and see how this right would not just be encouraged but how the right would be able to be applied retro gresively and also look at what has happened in the

20

5 JUNE 1995

past and look attempts of redressing the imbalance of the past.

CHAIRPERSON: Senator?

MR RADUE: Thank you Chair, the situation is that as you are aware the old apartheid laws including the group areas act have all been removed from the statued book, all of the apartheid legislation in regard to residence has been completely removed and as far as we are concerned, if one looks at page 31 at the bottom, the nature of the duty on the State in regard to residence is that the State may not infringe the right of a person freely to choose his or her place of residence and may not force a person to reside in any particular location.

10

So we have a completely open view in that regard and we regard that - that duty on the State as imperative and positive.

20

MR GREEN: The concern that I am raising is that look in the past these laws have applied now we've got an open society. And for - for persons who have been severely limited in the past to

5 JUNE 1995

now go and look for housing in the former white areas and so on, especially when you look at the plots and the land and the prices of land.

It is so exhorbitend that it is very difficult to actually you have the freedom of residence because - but because of the economic forces that - that are there it is almost impossible to really live out this right or apply this right. Because those forces are in effectively keeping people in - in certain areas.

10

And this is the concern that I am raising. There is freedom of residence, but if you look at the economic forces if you look at the cost of the plots, the cost of the housing it is almost impossible for persons who staying in the townships or where ever to move out of that situation. They kind of trapped in that situation because of the situation of the past. And this right is protecting the freedom yes, but it's not really addressing the past discrimination.

CHAIRPERSON:

Senator.

20

MR RADUE:

Thank you I really don't know if I understand exactly what Mr Green is saying. But the point is that the National Party

5 JUNE 1995

has already supported legislation to remedy that situation in another place, another house, namely the restitution of land act and so on and I am quite certain that the Government of national unity is addressing that problem.

Certainly the Department of Land Affairs is and so positive steps are being taken by the GNU to rectify that situation. But I don't think that in way interferes with the paper and the submission of the National Party. We are absolutely open and fully supportive of freedom of residence.

10

CHAIRPERSON:

Thank you Mr Green for those questions. I hope that we won't leave everything to the Lord, we'll also try and pray and ...

MR RADUE:

And use our hands.

MR SURTY:

Just for clarity Mr Chairperson, Senator Radue if you could possibly look at page 32 under 2.3. The right freely to choose one's place of residence is a right against the State and other actors are not bound by it.

20

Now could you just clarify what your interpretation is of that

5 JUNE 1995

particular - of that particular statement. In other words are you suggesting that only the State has to respect the right of freedom of movement and no other actors. There could in other words other actors could impose restrictive conditions in terms of access and residence. I don't you know I just want some clarity insofar as that is concerned please.

MR RADUE:

No we say that there is an absolute positive right against the State to allow the free choice of any - by any person of his or her place of residence. And State by that we mean not only central Government, we mean the State at every level of Government right down to local authorities and we believe that, that is absolutely imperative that the right of the person concerned, is entrenched as at against the State and the State may in future needless, to central provincial or local Government in any way interfere with the right to freedom of choice of residence.

10

CHAIRPERSON:

Yes (inaudible) ...

20

MR SURTY:

May I just, what I am trying to get at is assuming a developer - a company, juristic person undertakes a large development of residential area you know in a residential

5 JUNE 1995

area where there are houses made available. And that developer being a company or a private individual, imposes certain restrictions in terms of race for example, say this would only be accessible - residents in this area would be only available to people of white or people earning more than R10,000-00 or people who are professionals or whatever, other form of discriminatory measures that could be imposed.

In terms of my understanding of what you've got under 2.3 it would mean that this you know, whilst if it's State property it's fine, but if it's private property, restrictions could be imposed you know. Could you clarify that particular aspect.

10

MR RADUE:

Yes certainly the Constitution prohibits discrimination on the basis of race. And as far as we are concerned there is not fear of any contradiction there. That in any case racial discrimination itself will probably be dealt with in more and further legislation coming up shortly. Where civil rights in general will be protected and discrimination totally banned.

20

As it is at the moment the Constitution provides that there

5 JUNE 1995

shall be no discrimination and certainly no developer could possibly take advantage of the situation.

CHAIRPERSON: Yes (inaudible) ...

UNKNOWN: The may I ask the speaker just one question. What is the rational the reason for the last part of that statement?

MR RADUE: Basically the National Parties view is that in regard to freedom of residence, where you live, the State should not in any way be able to interfere in your freedom of choice to stay and live where you want to live. So that there is a vertical application of this right in this regard.

10

That is the - and it indicates that other actors are not bound by the choice, the freedom of choice of residence.

We say that legislation and the Constitution prohibits any racial discrimination so that, that will not be a problem. We just don't want the State in any way whether it's central, provincial or local Government to interfere with an individual's right to freedom of choice of residence. Thank you (inaudible) ...

20

5 JUNE 1995

CHAIRPERSON: Okay, Professor or you want to (inaudible) ...

PROF MOHAMED: (inaudible) ... if for instance eliminate the last part there, will that change your position in any way?

MR RADUE: I don't think we have any problem. I think basically as we've already indicated that we are quite happy to accept the wording of - of the law commissions suggestion as suggested by the other parties. I - we quite happy to live with that, we certainly in no mood to try and reintroduce apartheid through the back door if that's what the members are - are really looking for. Thank you.

10

CHAIRPERSON: Okay just two more - two more hands Professor Mohamed and Naledi.

PROF MOHAMED: Thank you Mr Chairman I think I've been covered by the question and basically the answer there is that we can delete that last part there, other actors are not bound by it. And if that's deleted then I am happy.

20

CHAIRPERSON: This is the last question so that at least we can - we can move.

5 JUNE 1995

MS PANDOR: Thank you Chairperson actually in it's relation to that very point I wasn't sure whether Senator Radue was saying it is deleted, I thought he said they wouldn't have objection, but I suppose the party would need to probably discuss it and the point of concern ...

MR RADUE: Clearly will just go back to my structures, I don't foresee any difficulty.

MS PANDOR: I am saying the point of concern is that it's not always the State that infringes the right. Often juristic persons are in fact the worst of the infringes, particularly against communities that are poor or disadvantaged in some way the aged you know often suffer when developers come along and want to place a road in a particular place or some other form of you know development. Then you find that there is this - this problem.

10

So this is - this is the concern I think that's being expressed about the last part.

20

MR RADUE: Very well I will go back to my structures and we can discuss it in the CC.

5 JUNE 1995

CHAIRPERSON: Okay Senator over to you.

CHAIR HANDED BACK TO MR RADUE:

MR RADUE: Thank you.

CHAIRPERSON: That concludes the National Parties contribution. We'll move to the PAC, Mr Sizani.

MR SIZANI: Mr Chairperson the submissions of the PAC as tabled on 10
the 29th of May 1995 on political rights, our submission is
clear and it resembles Article 21 of the Interim Constitution.

Again on citizen rights, we have maintained the same
position in Article 20 with the exception of moving that
aspect of mobility rights to mobility rights. And on mobility
rights basically we have followed closely the Canadian
charter on that submission. And we have drawn the sharp
distinction between - citizens and non citizens as it appears 20
in our submission.

And our little difference probably with other parties is

THEME COMMITTEE 4

5 JUNE 1995

where we have drawn a difference in point 3 on the question of residence and we have drawn the difference that between residence and merely visiting. And we thought visitation rights can be covered under 2 in terms of freedom of movement of every person. And therefor the right to residence be given to citizens and permanent residence.

That's all Mr Chairperson.

CHAIRPERSON:

Thank you Mr Sizani, any questions to the PAC? There being none that concludes the submissions of the parties and discussion of them. And we can move to general. I'd like you to look at page 7 of your agenda's to note the present work programme in regard to items 21, 22 and 23 there is one slight amendment the date will change from the 14th to the 15th of June, where there is a full day set down for debate, Wednesday the 15th of June from nine o'clock - Thursday 15th of June from nine o'clock until six in the evening.

10

After party - after party caucusus.

20

UNKNOWN:

Mr Chairperson I don't follow that.

THEME COMMITTEE 4

5 JUNE 1995

CHAIRPERSON: No I don't follow that either, just a second. I am advised it definitely is a Thursday the 15th of June firstly and that party caucus will take precedence. If there are party caucus then we will meet at two o'clock. If there are no party caucus and it's announced officially before hand then we will meet at nine. But we will receive a clear notice from the Secretariat.

I understand that the Constitutional committee will meet on Wednesday the 14th of June.

10

UNKNOWN: Chairperson does that mean that we are not meeting on the 14th - we're only meeting on the 15th.

CHAIRPERSON: The members of the CC will meet on the 14th. All clear. I noticed that the time for submission of those three items is the 7th of June, that is the final date. The right to equality was due today and if those parties who have not yet made their submission can do so, the Secretariat will be appreciative.

20

I think that's all in regard to the work programme. The I would like to draw members attention to the invitation from

THEME COMMITTEE 4

5 JUNE 1995

Theme Committee 1 which is included in the additional documentation which is being placed on the table this morning.

An invitation to a public hearing on Saturday the 10th of June in regard to the seats of Government, the language and the name and symbols of South Africa. So those of you who are interested, can attend Theme Committee 1's public hearing in that regard.

10

In addition to that there will be Constitutional public meetings on the 10th of June at Lusikisiki, and at Mafikeng and the names of those attending on behalf of Theme Committee 4 have already been indicated in documentation. If there are any others - members of this committee who would like to attend those meetings, we would encourage you to do so, if it's possible.

May I just add that we hope to have a Core Group meeting immediately after this committee is adjourned this morning and so those of you who are members of the Core Group could you please stay back.

20

THEME COMMITTEE 4

5 JUNE 1995

I would like to just finally give the opportunity - an opportunity to the panel - our experts and Constitutional advisors just to ask Ms Liebenberg whether she wants to comment on progress being made with regard to reports and so on, just to bring the committee up to date.

MS LIEBENBERG:

Yes thank you Chairperson, well the technical committee has been meeting a number of times and we hope to have finalised, we finalised the reports and explanatory memorandum and first drafts of a number of rights. And we hope to have available for the Constitutional committee meeting on the 15th, the explanatory memorandum and drafts on the following rights.

10

That's items 3, 2, 13 of the work programme, that's stopping just before socio economic rights. So it's basically human dignity, privacy, servitude and forced labour, freedom and security of the person, freedom of expression, access to information, freedom of religion, expression, demonstrations, children's rights and life.

20

So we would have those explanatory memorandum and drafts ready for that meeting.

THEME COMMITTEE 4

5 JUNE 1995

CHAIRPERSON: Thank you very much indeed are there any questions to the panel? I must say I know they have been very hard at work and we looking forward to receiving those draft reports.

Is there anything else under general, Ms Pandor.

MS PANDOR: Question to the Secretariat Chairperson, the CC indicated in the last CC meeting that they would prefer a situation where the Theme Committees gave reports and draft recommendations on more than one right. And I wonder in terms of what Ms Liebenberg has just said whether we actually going to be doing that when next we meet. Because the CC is going to be considering TC4 work.

10

SECRETARIAT: Thank you chairperson, following from the recommendations that the plan, so we will be delivering a range of the whole grouping of rights.

CHAIRPERSON: The other interesting matter which does arise from that is whether in fact all these rights are going to individually be debated in the Constitutional committee. If we going to do that, I think it's going to take a very long time. I don't know how we can avoid it, because that's where the

20

THEME COMMITTEE 4

5 JUNE 1995

negotiation situation is, but I just foresee that perhaps management will have to give very serious consideration to - to that aspect bearing in mind that there are something like nine committees submitting reports to the CC.

I am just a little concerned that the 30th of June is not far away and that we won't really succeed in completing our work by that date.

Are there any other matters arising under general, there being none then I just remind the Core Group if you could stay back and thank you all for your attendance. The meeting is adjourned.

10

[END]

TRANSCRIBER'S CERTIFICATE

I, the undersigned, hereby certify that in so far as it is audible, the foregoing is a true and correct transcription of the proceedings recorded by means of a mechanical recording of the:

THE CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 4

5 JUNE 1995

..... *L Wood*
TRANSCRIPTIONIST: L WOOD

H Potgieter
.....
EDITOR: H POTGIETER

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 4

12 JUNE 1995

[VOLUME I page 1 - 78]

2/4/4/5/15

THEME COMMITTEE 4

12 JUNE 1995

CHAIRPERSON:

I don't know perhaps we need a submission about Mondays that tell the world how to deal with Mondays, Mondays are always very problematic. But Fridays everybody wakes up very fresh I don't know why, it's because of thanks God it's a Friday, but a Monday is always very nasty.

Are there any apologies - Minister Kader Asmal, Ms Chalmers, any other apology - Ms Mabandla, Mr Bakker would be late, Mr Leon, Rasmeni - okay then we look at the minutes of the last meeting. I am sure myself and Senator Radue we have a lot of energy to take this Chairs, you remember that the last meeting was suppose to be chaired by Mr Tony Leon, and you chaired it, and today it was suppose to be you, but I have to Chair today because Mr Tony Leon again is not here.

10

Senator Radue.

MR RADUE:

Thank you Chair, if one could just have a look at page 5.

20

THEME COMMITTEE 4

12 JUNE 1995

CHAIRPERSON: Page 5 of the minutes.

MR RADUE: Of the minutes, item 4.5 the second paragraph which begins if other actors other than the State are not bound but this right, how does one prevent infringement of these rights, that should be corrected and further down in the responses, six lines from the bottom the NP believes that there is an absolute positive duty on the part of the State, not apart and two lines further down that private bodies do not infringe on these rights. If we could just make those corrections. 10

CHAIRPERSON: Thank you Senator Radue any other corrections on the minutes? Any matters arising Naledi?

MS PANDOR: Just perhaps one point which arises from the National Party submission, on page 5 at the bottom, the very section you've just referred to Senator has there been any decision as to that particular aspect?

MR RADUE: Yes the position is that other actors may be bound subject 20

THEME COMMITTEE 4

12 JUNE 1995

to the general limitations clause.

CHAIRPERSON:

Thank you, okay there being none we then move off to Core Group minutes just for noting for - by the Theme Committee please note that we have Those.

We ask the members to note item 5 in the Core Group minutes it was agreed that a public hearing on sosio economic rights be scheduled for the end of July. Please note that.

10

MS CAMERER:

Where is that, sorry?

CHAIRPERSON:

On page 9, I am just drawing the attention of the members on public hearings, no 5, item no 5. It was agreed that a public hearing on sosio economic rights be scheduled for the end of July.

Then we are moving now to - oh! yes Naledi sorry.

20

THEME COMMITTEE 4

12 JUNE 1995

MS PANDOR:

Thank you again Chairperson, we had asked that the technical committee guide the Theme Committee as to the formulation of those sosio economic rights that some parties believed had not be appropriately accommodated in the work programme such as how housing, etcetera. We wonder whether we could ask the Core Group in consultation with the technical committee to give consideration as to when we could make these submissions?

CHAIRPERSON:

Okay, the Core Group has noted that. Now we shall move to party submissions, now I am informed by the administration that this Theme Committee is most probably going to be the busiest Theme Committee because thus far we've received 2,500 submissions, and we have received 13,000 petitions and we are even finding it very difficult to look at them, but we are looking at those submissions, all of them.

10

Unfortunately we cannot take the public for a ride, we have to look at all those submissions, what they are raising and

20

THEME COMMITTEE 4

12 JUNE 1995

what the issues are. So it is 2,500 and we also have 13,000 petitions. Now we will be looking at the party submissions today whilst the technical committee is looking through all those submissions and there is a possibility that we may have to have public hearings on certain topics as we have started the sosio economic rights, and I am sure the one we are dealing with today may probably be one of those because of the rate of submissions that we have received.

So people are very much interested in this particular topic in our country. We shall then move to the party submissions on equality, Naledi.

10

MS PANDOR:

Thank you Chairperson, before we move on to the submissions could I ask that the Chairperson assist us by requesting the technical committee to perhaps look at the arrangement of the public submissions. We find the documents fairly difficult to read, there is often double photocopying of a submission, there isn't guidance in the front section as to what the particular topic of this - of the

20

THEME COMMITTEE 4

12 JUNE 1995

volume is.

You know if one could actually ask that perhaps they be arranged in terms of subject, that there be some form of index, that the list of individual names perhaps be at the end rather than at the beginning, that the beginning be a guide to the reader etcetera that it may assist us in actually making more useful use of the documents.

CHAIRPERSON:

Okay but I will also ask the Core Group members when we meet we find the way of assisting also the technical committee would - coming up with ideas as well as to how to deal with this because this committee is the committee that is receiving so many submissions.

10

So it's important that we meet as a Core Group perhaps after this particular meeting and see how we can assist in arranging those submissions. Mavivi.

MS MYAKAYAKA

20

THEME COMMITTEE 4

12 JUNE 1995

- MANZINI:

Ja Chairperson, I was being told here that we are going to go back to the various submissions on issues which have already dealt with, is that what the Core Group is going to look at or is going to look at the remaining rights.

Because I have thought that our programme was suppose to have, as we continue, say for instance today we are looking at equality, we should have had in front of us also public submissions regarding equality. And ...

10

CHAIRPERSON:

The problem is that I think everybody hasn't received submissions you should have volumes and volumes of submissions in your offices. The problem is that they come at different times, they don't come all at one time.

Now what we are requesting the technical committee and the Core Group to do, is on what Naledi is now proposing because we are finding it very difficult to read it some of them because of the way they have been duplicated. Some have been doubled spaced and so on, we want to have a

20

THEME COMMITTEE 4

12 JUNE 1995

systematic way so that we are able to look at each and every submission, but obviously it is not easy but we are receiving those submissions and I am sure they are in each and every Theme Committee member's office.

It's piles and piles and piles of it.

MR SURTY:

Mr Chairperson on another Theme Committee which I serve on the technical advisors have attempted to refer to the submissions and we have a subject for example this morning which is - which go to the very heart of a Bill of Rights, the principle of equality where I think the public submissions ought to be taken into account.

10

We cannot I don't think we will be fulfilling our responsibilities if we are going to only evaluate the submissions by the parties. And I think we're inviting the public to participate in this process and what we have before us today is basically the submissions of the parties and we not really in a position to take account of the public

20

THEME COMMITTEE 4

12 JUNE 1995

submissions, which I think is a great pity.

CHAIRPERSON:

Okay I don't want us to discuss this issue, the people who are in the Core Group and the technical committee understand the problem of Theme Committee 4. There is no feeling here in all this Theme Committees that are receiving the submissions at the rate we are receiving in Theme Committee 4.

But as we are dealing with reports of each and every right, all the submissions are stated quite clearly in the reports and again those are bulky documents. We have received the reports of some of the rights, that will be submitted to the Constitutional committee this week. And in those reports we do state the public submissions and all of them have been highlighted from whom it's coming from, what the issue is.

10

So that the Constitutional Committee which is the negotiating committee is able to be, to see those

20

THEME COMMITTEE 4

12 JUNE 1995

submissions. But also you must understand that - appreciate the work of this Theme Committee I mean for one topic, you receive 2,500 submissions and 13,000 petitions.

I mean one has to appreciate the work of this Theme Committee. But we will be looking at all those submissions, I can assure you that there is no way that we can dodge those submissions, absolutely no way. Otherwise we will be grilled by the Constitutional Committee, it is our task as Theme Committee 4.

10

And that is why they have referred by the same Theme Committee that perhaps might have forgotten to the Core Group and the technical committee. They might have forgotten that, but I wish to remind them that was our decision, that the Core Group and Theme Committee deals with those kinds of issues.

And then here we come with some kind of a synopsis which is being done on the basis of the reports.

20

THEME COMMITTEE 4

12 JUNE 1995

Shall we then move off to the party submissions, because we agreed that we allow the parties to make their submissions in each and every topic that were are coming up with. Today's topic is equality.

The party submissions are cast in your green documents. I am informed that the DP has an additional one, it's a tiny thin document, our alphabet requires yes - I think that's the one over there. Okay thank you, our alphabet requires that we start with the African Christian Democratic Party, Mr Louis Green.

10

MR GREEN:

Thank you Chairperson, our submission is quite substantial and I therefor just want to summarise very briefly the document has been circulated before and therefor I just want to highlight certain issues in the summary.

Now we start on page 1 by just looking briefly at the philosophy of equality and we actually look at the two approaches as far as the right of equality is concerned. We

20

THEME COMMITTEE 4

12 JUNE 1995

say that as far as the right of equality is concerned, there are two approaches and we just briefly describe what we understand to be the humanist approach to equality and then if you turn to the second page, we explain the Christian point of view as far as equality is concerned.

Maybe just to the point of the house - or to bring to the attention of the house on page no 2, the last paragraph on page no 2 I think summarises briefly what we understand to be the humanist approach to equality.

10

A humanist by the name of Hook made the following statement, he said:

That the rights of man depend on his nature, needs, capacities and aspirations not upon his origins. And children have rights not because they are our creatures, but because of what they are and what they will become.

It is not God but the human community that endowers his members with rights and that basically is our understanding

20

THEME COMMITTEE 4

12 JUNE 1995

of the humanist approach.

Then on page 3 we just briefly describe what we would say the Christian approach to Human Rights and we say the ACDP holds to an absolute immutable set of laws as given to man by God. These rights cannot be taken away arbitrarily as God's laws are clear and have been proven as the backbone to the British Magna Carte, the declaration of independence and the Constitution of the United States of America. Nor can it be surrender or abdicated.

10

And then we - we make several other statements about why we defend this position or this approach to equality. On page no 4 I think the second paragraph from the top to us if of importance, what follows hereafter must always be understood as flowing from this absolute Biblical moral and ethical view of equality and Human Rights.

So Chair if I present our position on equality I would want the house just to see it within this framework. It is from

20

THEME COMMITTEE 4

12 JUNE 1995

this particular framework that we approach the whole theme of equality.

Now in the ACDP we agree that equality is central to the Bill of Rights, we do not disagree with the house when it comes to the centrality of the theme of equality.

We believe that all shall have equal access and protection of the law. We should - like to stress that the origin of law has its roots in God's revelation through Biblical knowledge, that is our understanding. It might not be the understanding of my other brothers and sisters here in the house, but that is our approach.

10

We understand the general idea of the law is incorporate - it incorporates the two strands which is fundamental law and Constitutional law.

Now on page no 5 we - I just want to stress the following, the people can base their institution upon Constitutional law

20

THEME COMMITTEE 4

12 JUNE 1995

in conjunction with the higher or fundamental law. We just want to bring to the attention of the house that even our existing Constitution must have some higher law, it must have a law that it respects and which one can use to say whether it in fact reflects this higher law.

Now according to the ACDP all fundamental Human Rights should be measured and defined within the law as explained in our understanding in Biblical meaning and revelations. Equality before the law is a service and benefit to all and is in principle aimed to enhance the esteem of value - of all human beings, essentially in the understanding that we are formed in the image of God.

10

Equality before the law means that as Christ is no respect of persons, so the law shall not be respect of persons as state subjects.

On page no 6 we just briefly say the following:

Equality provides us with the further limitation in that all

20

THEME COMMITTEE 4

12 JUNE 1995

are born sinners and that no-one by nature is considered to be superior to any other person and that makes us equal.

Equality is therefor that - equality in - the equality in the Bill of Rights than brings all humanity together, in acknowledging it's temporal nature and to focus toward a oneness in individual and community responsibility through love and through common purpose.

So equality is that process that acknowledges human sinfulness by substituting laws of exploitation and depravation with laws are spiritual and social redemptive nature and basically it's to care for others.

10

Now Chair I think this is basically the ACDP's philosophical approach to equality. Now I want to go to specifics, on page no 7 we bring to the notice of the house what has happened in the past.

The legacy of apartheid and the historical legacy of - in

20

THEME COMMITTEE 4

12 JUNE 1995

equality and the fact that the Constitution wants to address that inherent legacy of apartheid as it expresses that in the Constitution.

But we actually, we want to warn in fact we want to sound a warning to this Theme Committee particularly that we should take care that we do not ensure that the one evil and that is the evil of apartheid is not simply exchanged for another different kind of evil. And we say that the values and purposes of the new South Africa should be careful scrutinised to make sure that which is carried forward is indeed what the majority of South Africans want and need in order to give substance to the hopes and ideals of all subject to God's laws. And so we just want to sound that warning.

10

As far as affirmative action is concerned Dr Ramfedi has actually made a submission to Theme Committee 1 and we actually looked at her submission and we looked at our understanding of affirmative action and we agreed to a great

20

THEME COMMITTEE 4

12 JUNE 1995

extend with what she is saying.

We say - we also say that affirmative action should aim to make people self sufficient and to contribute to the running of the country in all its sectors. We should be careful to have it written into the Constitution as a permanent right, this will only be counter productive.

So we accept affirmative action as a measure in which we have to use in order to address the inequalities of the past.

10

We also saying on page 9 that all individuals must be treated equal before the law and that of course we've mentioned that the need for just and fair treatment based upon a fair share in the national resources accordance with their needs and responsibilities in society.

We also the approach of addressing the hurts in a society caused by an unjust distribution of sources and we know

20

THEME COMMITTEE 4

12 JUNE 1995

that apartheid has left a legacy that has to be confronted in a way that would minimise conflict and the perpetuation of injustice.

And so the ACDP agrees that an equity focus would benefit the most disadvantaged communities as well as giving equal opportunity to individuals from an advantage history. And that redressing the past and benefiting the new South Africa in an esteem building process towards a prosperous future.

10

So Chair as far as the issue of affirmative action is concerned, we say that care should be taken not to focus on the short term goals with a programme of redressing, but to ensure long term benefits of the process of affirmative action and it should not be seen as a band aid to heal apartheid legacy.

We feel it should be - it should go to the core of addressing the in equality, it shouldn't just be used as band aid but it

20

THEME COMMITTEE 4

12 JUNE 1995

must actually ensure constructive change as far as that is concerned.

Now I think we say quite a lot more on the issue of black empowerment also in this document but I don't want to go into detail I am sure that we can read that ourselves.

Now on the issue as far as the sexual orientation clause is concerned or the issue of Section 8 the equality clause.

Now right from the beginning when we started talking in this committee we in fact asked for the removal of the sexual orientation clause and the reason why we've asked for the removal of the sexual orientation clause is based on what we are saying in this document.

10

Now on page no 11 and on particularly on page 12, 13 and right through almost to the end of this document, we actually defending Chairman the position why we are asking for the removal of the sexual orientation clause.

20

THEME COMMITTEE 4

12 JUNE 1995

Now on page no 12 we say in South Africa with the history of arbitrary discrimination in matter of status particularly as far as race is concerned, gay rights, activists uses the emotion of the moment and this is what we think that has been happening.

The genuinely sincere ideal of ensuring that unwarranted discrimination be brought to an immediate conclusion to force and uncritical acceptance of this new minority status. Thereby derailing a rational enquiry into the underlying behaviour and disguises the fact that this minority is bound together with sexual activity, a common inclination to commit sodomy and related sex acts with a member of the same sex.

10

And throughout the entire document Chair we actually defend why we cannot give this minority status to the issue of ensuring that the Constitution entrenches the sexual orientation right.

20

THEME COMMITTEE 4

12 JUNE 1995

We say that there is no analogy between groups defined by race or sex, religious conviction or national origin and those who practise a particular form of sexual behaviour. There cannot be any analogy and we also explain why we say there is no analogy.

Now of course many activist promoting sexual orientation rights, they use Kingsley, Kingsley reports dated from 1948 right up till 1953 and I think, I want to bring to the houses attention on page no 15 the American psychiatric association of course classify the homosexuality in the 1970's as a mental disorder.

10

But of course this was reversed as a result of pressure brought about by activist and they in fact changed that and it is no longer redeemed or seen as a mental disorder.

On page no 16 the whole debate about the homosexual gene and the use that was made and the so-called researched that was used to prove that homosexuality is caused by a gene,

20

THEME COMMITTEE 4

12 JUNE 1995

from page 16, 17 and 18 the ACDP describes in great detail why we feel that, that is not so, just to give an example.

There was the position that because homosexual - homosexuality can be found in the gene it - therefore identical twins would be found at - if one twin or one person is a homosexual the other one will also be a homosexual because of the identical genetic make up, but throughout this we have - we have shown through research that, that is no say, that a huge sector of identical twins who supposedly has the same genetic make up, that a huge percentage of those persons in fact are not homosexuals, so that defeats the argument that it is - it can be defended by means of genetics.

10

Now I just want to say that we haven't identified the homosexual community in order to lash at them particularly and in order to kind of hit out at them as far as the equality clause is concerned.

20

THEME COMMITTEE 4

12 JUNE 1995

We will - we will direct our attention to anything which we from a Biblical perspective feels is not Biblical correct. In our communities where we work we also sit with this and we also have to deal with this.

Our Christian position is that we must love the homosexual but from a Biblical perspective we should not love the sin of their homosexual and that is the ACDP's position. Love for the person, but not love for the practice.

10

In conclusion Chairman I would want to come to the application of the right. The nature of the duty to be imposed on the State. We feel that the State should reflect and protect South Africans by refusing to recognise sexual orientation and any conscience or believe that offence the morality of the large majority of citizens, this includes practises of witchcraft, satanism, bestiality, incenses and so on.

As far as the application of the right to common law and

20

THEME COMMITTEE 4

12 JUNE 1995

customary law is concerned where laws against sodomy, incenses and satanism etcetera, exist, there must not be derogated from.

As far as the Constitutional duty on other actors, other than the State the right should be applied vertically as well as horizontally. As far as the bearer of the right is concerned, all natural persons should be the bearer of this right, from conception to natural death. And as far as limitation is concerned, contentious issues such as special rights to homosexuals, capital punishment and abortion should ideally be decided by a referendum.

10

And Chair that is basically the ACDP position on the issue of equality, I thank you.

CHAIRPERSON:

That's the submission of the ACDP, Doctor Ranshot, you want to fire a shot, your first shot?

DR RANSHOT:

Thank you Chairperson, let's deal perhaps with the less

20

THEME COMMITTEE 4

12 JUNE 1995

controversial part of the submission. I think what is vital in South Africa when given recognition to the principle of equality is to ensure that there is equal access to education and equal access to employment opportunities.

This seems to have been skimmed over in the - in the submission of the ACDP as I read it. Flowing from that, and going onto the question of - of sexual orientation, I would like to know whether the ACDP would in fact support the non-interference by Government if persons are not employed because of their sexual orientations.

10

But furthermore we are dealing with a Bill of Rights where rights ought to be defined very generally and what does concern me is that there is a principle that has been accepted in our - in our law over many years that the right to privacy is something which we ought to respect.

And whatever conduct occurs, sexual conduct occurs between consenting adults, it's something which the law

20

THEME COMMITTEE 4

12 JUNE 1995

would not extrude upon. But what we have here is in fact an attempt to outlaw conduct which up to now, has to conduct between consenting adults if it is considered to be immoral.

So you know the definition of protected human sexuality or human sexual activity, is an issue which I think we need to debate. I don't have difficulty with the provisions in the Interim Constitution as it stands. But I think there are very far reaching consequences which could flow from the position which the ACDP indeed has adopted, thank you.

10

CHAIRPERSON:

Mr Green you want to respond?

MR GREEN:

Ja, thank you for the question Chairman - or Chairperson, when I started off with my submission I explained the two approaches. The one approach where the State would recognise and protect rights. Now from a humanist point of view of course the State would do that, the State would protect the rights of consenting adults to do whatever they

20

THEME COMMITTEE 4

12 JUNE 1995

want to do.

The Bible very clearly tells us in Romans 13 that the State or the Government is the servant of God reflecting that the Government protects and promotes the moral order which God has already ordained.

Now the reason why we would not support the view that the State should not do anything as far as certain immoral laws are concerned or immoral actions is concerned is because then the State would be condoning that, and our understanding that if the State is the servant of God, then the role of the State, the important role of the State has to - is to apply the moral order as God has ordained it in his word.

10

And so as far as that is concerned, there are limits to consenting even as far as adults has concerned. Let's take the new pornography bill, the new pornography bill even has limitations as far as adults are concerned and consenting

20

THEME COMMITTEE 4

12 JUNE 1995

adults are concerned.

Now on what basis are those restrictions made in fact the Bill bans child pornography and even the having in one's - in having in one's possession child pornography. Now that is a moral decision where the State is taking a moral decision.

Now we question where the State has the right to take a moral decision in banning certain kind of pornography based on a moral decision and when it comes to the issue of homosexual rights or sexual orientation rights, the State doesn't want to take that moral decision.

10

Now we say the State has to be consistent if the State is going to take moral decisions, it has to be in the system throughout.

DR RANSHOT:

Just on a point of clarity Mr Chairman if I may be permitted to ask.

20

THEME COMMITTEE 4

12 JUNE 1995

CHAIRPERSON: Yes.

DR RANSHOT: Am I understanding Mr Green correctly that we - in that what foresees is that there should be these acts should in fact be criminalised and we should back to the days when we had the morality act where we have a vice squad which will try and stamp out what he sees as an evil in our society?

MR GREEN: Chairperson I do not - I do not propose we to go back to the position of the past as far as the vice squad is concerned, if I should answer that correctly.

10

I do not think that the State should use resources like the police resources and go and watch what people is doing in their privacy. What we are saying and this is the different position is that we should not entrench this right in our Constitution under the equality clause.

And so there is a difference in the application and as far as the entrenchment of the Constitution is concerned. As far

20

THEME COMMITTEE 4

12 JUNE 1995

as the application is concerned, I do not foresee that the State should go back to the past as far as the application is concerned. I feel as far as the Constitution is concerned, this right should not be entrenched in the Constitution.

CHAIRPERSON: Okay, Naledi.

MS PANDOR: Thank you Chairperson, perhaps it's important to mention that the rights we wish to include in the Constitution is the right to equality, not the right to sexual orientation, sexual orientation is one of the categories that are referred to as needing to be guard to - to be protected in order that we don't have the discrimination that has been categoristic of this country and many societies in the past.

10

So the right is equality and I am - I am not sure whether Mr Green actually has addressed that particular issue. I have several questions I'd like to pose if you would allow.

CHAIRPERSON: Yes.

20

THEME COMMITTEE 4

12 JUNE 1995

MS PANDOR:

Chairperson, the ACDP's submission interestingly quotes Dr Ramfele in relation to affirmative action, it's interesting, I have before me a letter from her on sexual orientation and her believe that in fact this particular category should be included in the clause dealing with equality.

So quite an interesting difference of opinion in someone - sighted so extensively. In terms of the reference to her, which was made on affirmative action I would like the ACDP to just look at their page 9 and perhaps assist me and perhaps the Theme Committee to understand what they mean with the second sentence at the top of page 2, that the needs would be based on sharing of resources according to needs and responsibilities.

10

Does this mean that someone with perhaps a lessor role in society should get less, because they have less responsibility, I am rather puzzled by this and I find in fact that much of the ACDP's focus on affirmative action doesn't make useful reading when one begins to ask practically what does this

20

THEME COMMITTEE 4

12 JUNE 1995

mean?

Could they just address that particular statement.

CHAIRPERSON: Mr Green.

MR GREEN: Ja thank you - thank you Chair, I think if we look at the submission in terms of our understanding of affirmative action, we must look at the submission as a whole and we must look at the underlined ethos of our understanding as far as affirmative action is concerned.

10

Now we clearly say that affirmative action should aim to make people self sufficient and to contribute to the running of the country in all it's sectors. Now if we say in the first paragraph on page 9 the need for just and fair treatment based upon a fair share in the national resources and so on, then we are actually saying this within context of what we've said before. The fact that people, everybody that all the abilities that people have and the fact that in the past

20

THEME COMMITTEE 4

12 JUNE 1995

people have not been given the opportunity and I am talking of the greatest sector of society has not been given the opportunity to develop their full capacity that, that - the affirmative action should actually promote the development of every person in it's full capacity.

We also mentioned the past, we also mentioned the impact that apartheid has had on the majority of people and the fact that they were - they were - they couldn't develop their full potential. So it is within the context of that, that we are saying that treatment should be fair and that - as far as national resources is concerned that the needs and responsibility of persons in society is that, although we've got, we are giving them certain rights, there are also certain responsibilities in terms of the application of affirmative action.

10

CHAIRPERSON: Senator Surty.

MR SURTY: Mr Chairperson perhaps I could help and try to illustrate

20

THEME COMMITTEE 4

12 JUNE 1995

what Mr Green is trying to convey to his concepts of equity and equality.

I think what under pins your whole submission and you should tell me if I am correct Mr Green, is that everybody, a principle of equality is supreme in a sense that people should have equal access to opportunity, job opportunities, opportunities insofar as education is concerned to the various institutions of learning etcetera.

10

That is the underlined principle of equality. But in terms of addressing the in equality, one is to apply the principle of equity and fairness in a sense that those people who have been advantaged in the passed, would obviously get less than those people who do not - who have not had the advantages in terms of resources.

Is that your understanding of equality as a underlined principle and equity as a principle in terms whereof you could address the in equalities of the past, would I be

20

THEME COMMITTEE 4

12 JUNE 1995

correct in my submission.

MR GREEN:

Yes Chairman - yes Chairman we would support that view, the only thing that we are saying in terms - in terms of supporting that view is that we shouldn't put it in the Constitution in such a way that 50 years from now, a 100 years from now, where we have an equal society, that - that people still uses the issue of - of affirmative action and say the Constitution guarantees this right.

10

We feel that our - our aim is a society which is equal and we should write something into a Constitution that would in fact have the reverse, it should really be - the aim should actually be an equal society.

So our understanding is exactly correct that because of the in equalities, in order to bring the balance correctly we have to emphasise a particular sector of the community because of that.

20

THEME COMMITTEE 4

12 JUNE 1995

CHAIRPERSON: Follow up after you it will be Ms Camerer.

MR SURTY: Thank you very much, Mr Chairperson that is the aspect that I do understand, what I do not understand however, are the following and I would like Mr Green to look at these issues very-very carefully.

Firstly if you look at page 5 of the submissions, I do not know if this is a typographical error, I refer to the last line, last two lines equality before the law means that as Christ is no respecter of persons, so the law should be no respect of persons, State or subjects.

10

I find that very difficult to reconcile with my knowledge of Christian believes that Christ is not a respecter of persons. Or that the law would be no respect of persons. Is that contextually correct, or is it a typographical error. If so, you know why hasn't it been noticed.

And developing, I'd just like to take it further because it

20

THEME COMMITTEE 4

12 JUNE 1995

sort of follows up on page 6. If you look at the second paragraph and you know this is perhaps the difficulty with your submissions with respect. Is that there is so much of philosophical dimension to - to your submissions that it does not address the practical issues at hand. And the substantive issues, and I would suggest that ACDP looks at it, at putting forward it's points more crisply, submissions more crisply and concisely and you know related to the actual, existential experience.

10

Because if one looks at paragraph, the second paragraph, you say equality provides us with a further limitation in that all are born sinners. And that no one by nature is considered to be superior to any other.

Now it's a tautology, it's a contradictory statement. In a sense you say on the one hand it's a limitation and on the other hand you are suggesting that nobody is superior to the other. So I do not know whether it has a spiritual dimension which differs from our actual practical

20

THEME COMMITTEE 4

12 JUNE 1995

understanding of this concept. But I think you should develop a -or you know or assist us in developing and understanding of this particular aspect.

And then I would like to go further on the fourth paragraph. You make the following statement, equality is the process that acknowledges human sinfulness, by substituting laws of exploitation and depravation with laws of a spiritual and social redemptive nature.

10

In other words what you are now equating quality work, is an acknowledgement of human sinfulness. You are not saying that human sinfulness expresses itself in the form of discriminate - discriminate for your equality - you know treatment or unequal treatment to other human being.

You are simply saying that equality itself, presupposes inequality. Equality itself presupposes man's sinfulness and I find it difficult to come to terms with that and perhaps you should help us in developing a very understanding.

20

THEME COMMITTEE 4

12 JUNE 1995

But and finally by saying that, that acknowledges human sinfulness by substituting laws of exploitation and depravation with laws of the spiritual and social indemtive nature, are you not pre supposing that the laws of exploitation, depravation, preceded existed prior to the spiritual laws that you talked so much about.

Because when you substitute something with the other it means something exist already and you are now replacing those laws that are exploitative by nature with laws that are spiritually.

10

And that to again is in conflict with my understanding of what the Biblical you know perspective of spiritual laws are. Because insofar as my understanding of, I am not a Christian, but my understanding is that the spiritual laws existed prior to an exploited of laws.

So could you just develop that perception please so that we can understand it.

20

THEME COMMITTEE 4

12 JUNE 1995

MR GREEN:

Ja Chairperson the (inaudible) ... position as far as the last question is concerned. We not saying that the fact that as far as equality is concerned that the process that acknowledges human sinfulness by substituting laws of exploitation and depravation.

We actually referring to the existing situation in South Africa. Our position is not that, that in fact has existed before the spiritual and we saying that we are aware and we know of spiritual and social redemptive laws.

10

The law for instance which says that, thou shall love they neighbour as thou self, has social implication. It's not just a spiritual law, if we in fact believe in that law and we apply that law, then we in fact would be socially - we would do away with apartheid, we would do away with any measure that from a social perspective would apply unequally or unequally to either persons.

So as our position is concerned we are clear of what the

20

THEME COMMITTEE 4

12 JUNE 1995

spiritual laws are saying. What we are saying is that because of the sinfulness of man and because of what has happening in South Africa, we are actually connecting the two, because of the sinfulness of man, we have had a society that has been destroyed by apartheid.

We had a society that has been destroyed by exploitation, by depravation and that needs to be reversed by applying which we understand the laws of God, which does not - which in our understanding is not a respecter of persons in terms of your colour, your skin, your religious background.

10

In other words what we are saying is there is no respect of persons when it comes to equality before the law. When two persons stands before the law, the same law has to be applied to everybody, irrespective of the person, irrespective of the cultural background, the language.

That is what we say when we say no respect of persons.

20

THEME COMMITTEE 4

12 JUNE 1995

CHAIRPERSON: Okay, Ms Camerer.

MS CAMERER: Thank you Chairperson. I'd just like to take up this question of equality because of the equity again with Mr Green, if you let me.

You deal with it quite extensively Doctor Mapela - Rhamfela's suggestion of an equity commission. She actually talked about an equity commission instead of a gender commission for example in her submission on page 89. And your conclusion on page 20 is that you agree with Doctor Mapela-Ramfela in her illusive presentation that the core value should be equity rather than - well you give a loaded sort of description, equalitarian equality.

10

If I could just relate that to gender equality and non-discrimination on the basis of gender for example under 2. I'd like your comment on this, are you aware that the Woman's Conference is going to take place in Beijing, it has to adopt a document called a platform for action.

20

THEME COMMITTEE 4

12 JUNE 1995

Now in that document there is an extensive reference to equality for woman; full and effective equality for woman in every field and in relation to every topic and we talking - their extensive provisions on reproductive rights, reproductive hope and so on.

And the Islamic fundamentalist countries and the Holy Sea has apparently insisted on the word equality being bracketed and substituted by equity. In other words that these countries are not prepared to - or entities are not prepared to accept full equity and effectively equity for woman, but are prepared to be fair to them.

10

No it's become a bit of a loaded terminal context. Is that really what you are saying, and if so, could you tell us where you going to, because what you don't do here, is tell us how you going to adjust these clauses to substitute equity for equality.

And - and does this go to the whole root of your submission

20

THEME COMMITTEE 4

12 JUNE 1995

because I think a number of parties have said here that equality is central to this in fact we - our own Speaker said that, equality is central to the Bill of Rights.

Are you really suggesting that we replace it?

CHAIRPERSON:

Mr Green?

MR GREEN:

Ja Chairperson I think right from the beginning I actually made the point very clear in - as far as the - our position of equality is concerned. As far as equality is between men and women our understanding and we have no problems as far as total equality between men and woman.

10

When it comes to the issue of equity, we note what has happened in the past as far as the position of woman are concerned and in that situation there also has to be an a redress, because of the issue of equity, because of the fact that women were in fact put in a worst position as the result of oppression as a result of misunderstanding of the role of

20

THEME COMMITTEE 4

12 JUNE 1995

women in society.

The ACDP believes that there shouldn't be any discrimination between men and women as far as their role in society is concerned. And I think our position is in addressing that imbalance is that we should in exactly the same sense as affirmative action, we should also look at affirmative action for woman in addressing the whole issue of inequality in order to get that balance.

10

So I would say yes, sometimes one has to be a little bit of - you have to apply or you have to give more - not more rights, but I think people would see it as a unequal application of this right of equality. If you now suddenly allow persons who have been - who have been removed or have been - who have not been equally treated in the past now suddenly to be pushed and to be given more position.

I think in - for us to get our society normal, that in fact that kind of redressed needs to be done. That one has to give

20

THEME COMMITTEE 4

12 JUNE 1995

more where in the past they - those rights have been taken on - and persons had been put in a detrimental position.

So as far as our understanding of equality is concerned, I think yes.

MS CAMERER: How are you going to draft it?

MR GREEN: The - the drafting.

10

MS CAMERER: Yes.

MR GREEN: No I am - as far as legislation is concerned that is another position Chair, I am just referring to our understanding in terms of the Constitution, equality between men and woman. That there should be a redress of the past imbalances in terms of getting that equal.

CHAIRPERSON: Doctor Ranshot followed by Doctor Saloojee.

20

THEME COMMITTEE 4

12 JUNE 1995

DR RANSHOT:

Thank you Mr Chairman I am going to put a follow up question because I think some of my questions were not answered.

But let me put it very crisply, I would like to know from the ACDP whether it is averse to the protection of minority such as gay people from State interference, interference in their liberty.

Do you think that this should be Constitutionally protected, that people should not be discriminated against, because of their sexual orientation.

10

CHAIRPERSON:

Mr Green.

MR GREEN:

Chairman I think that our submission makes this very-very clear why we feel that the issue of gay rights, homosexual rights that, that is not a ground for discrimination. I mean we make this very-very clear, we say that the person is either male or female. And if there is protection against

20

THEME COMMITTEE 4

12 JUNE 1995

discrimination on the basis of being male or female, this person can say but I've been discrimination on the grounds that I am either a man or a woman, I am either male or female.

And so our concern is introducing into a Constitution a protection against discrimination which we feel but that is not a basis for discrimination and so - if that is the question then my answer is that we don't see that as a basis for discrimination.

10

CHAIRPERSON:

Okay, this is a follow up.

DR RANSHOT:

I think it's a - if I may because I think it's important that we get clarity on this. Either one sees the need for Constitutional protection of minorities and I would consider that gay people are members of a minority in our society, whether one - one likes their conduct or not.

The question is whether one should Constitutionally protect

20

THEME COMMITTEE 4

12 JUNE 1995

the rights of all people, not of men and a woman but of all members of our society.

Or should we be silent on it and indirectly because we morally disapprove but we make it possible for the State and for the Government to prescribe such conduct and if necessary to weed it out completely.

MR GREEN:

Chairperson the answer to that question is as follows. If it is a minority, a group of persons that because of inherent equalities, because what we are saying is that this is not the minority because of - we believe it's a minority because of a chosen lifestyle.

10

In other words it's - you can decide whether you want to become part of that minority or not. Now as far as race is concerned, as far as sex is concerned, nobody can choose whether he wants to be a male or female, nobody wants to be choose as are as race is concerned.

20

THEME COMMITTEE 4

12 JUNE 1995

But as far as sexual orientation in concerned, we say we don't agree with that protection, because that - that includes a choice and now when we look at other minorities. I mean there are many other minorities that are not protected in terms of where someone or people choose a lifestyle.

Are we going to protect a lifestyle that depends on choice, or are we going to protect minorities where persons have no choice in terms of who they are or what they are. That's the question.

10

CHAIRPERSON:

Comrade Mavivi want's to follow that last point I suppose.

MAVIVI:

Ja I would like to follow so that Mr Green could listen to context. How does that differ if their is a minority in religion as society decides to discriminate or say that there is not need to put that because religion is also a choice. People are not born into it. They make choices in their life to belong to a particular religion.

20

THEME COMMITTEE 4

12 JUNE 1995

How - how does it differ with that?

MR GREEN:

We have made a very clear input when it comes to the issue of freedom of religion. The ACDP has said that we should have - we should give - we should ensure that, that right is entrenched in the Constitution.

We have made a difference however, we have said as far as Satanism is concerned, and other things are concerned and we also say why we say that, that should be excluded.

10

So even in our submission to freedom of religion, we have made exclusions as far as that is also concerned. Because we felt that, that was in conflict with what the word of God is telling us. And so because the word of God makes certain pronouncements on Satanism and so on, we felt that, that should be excluded.

Now as far as gay rights is concerned, or as far as homosexuality is concerned, we felt that it's on the basis of

20

THEME COMMITTEE 4

12 JUNE 1995

God's word that we actually feel that, that should not be included as far as equality is concerned. And that is the reason why we say that we cannot include it.

That is our motivation for it.

CHAIRPERSON: I don't know whether Mr Mashamba you want to follow on this particular one, or ...

MR MASHAMBA: Yes I wanted to.

10

CHAIRPERSON: On this particular - yes okay, yes.

MR MASHAMBA: Because I think Mr Green evaded the question. The issues whether you are going to protect or rather refuse protection if a lifestyle is based on choice or not. Whether the choice is to be gay, is to be Christian, is to be a communist, etcetera.

Because we in responding to the former person, you said

20

THEME COMMITTEE 4

12 JUNE 1995

well you couldn't - accord or taking the gay rights, because it - it's a matter of choice.

Now I asking whether choice is the bottom line or not.

CHAIRPERSON: Mr Green.

MR GREEN: When it comes to protection a sexual lifestyle, then we do make a difference as far as that is concerned. When it comes to political choice, we not saying in the Constitution and when we defend the Constitution we not saying that if a person is a communist or if a person is a socialist or so that his rights are not protected. We are not saying that because that's a philosophy.

10

We say that they do have the right, because freedom of believe is protected. But as far as wanting to protect that as a natural minority as a minority in fact where they felt, where they say or people - persons say that those rights must be protected, we are saying are those - are those

20

THEME COMMITTEE 4

12 JUNE 1995

persons rights on - not already protected under the fact that there should be no discrimination between on the basis of sex.

Why are the persons not protected. Because again a person is either male or female. And so if there is discrimination on the basis of sex, then it - surely that person has the protection of the Constitution.

CHAIRPERSON:

Mr Saloojee.

10

MR SALOOJEE:

Ja, I have a very basic problem with the approach of the ACDP. I have known as a non-Christian, I have know many Christian people who have showed, you know show a profound tolerance and acceptance of other religions. Who in fact say that the great religions of the world - all the great religions of the world has much to offer when it comes to equality. When it comes to social justice. When it comes to developing a compassionate absence in society.

20

THEME COMMITTEE 4

12 JUNE 1995

I am afraid that the ACDP takes and I say that, that must be seen within the context of this discussion. It is an approach, you know it is suggesting a completely closed in system, a totalitarian system.

Within the context of the debate that is happening at the moment about the secular state, thereto people are saying that we want to praise the conditions where religion can flower in a proper way. That there must be - this is a country of many religions.

10

But the manner in which equality is expounded here, the ACDP is without any doubt suggesting that there is only one way and that is the ACDP's particular Christian view about it. And it is within that context I want to believe also that when they talk about - about affirmative action, Mr Green very limply says that in 50 years that will disappear.

We are very far from the kind of state that is going to ensure general, social and political justice for our country.

20

THEME COMMITTEE 4

12 JUNE 1995

We have a history where people have been horrifically oppressed to - to redress those kinds of disadvantages, to then say that we don't need affirmative action, no (inaudible) ... I say that too for me, a suggestion like that is made because of a particular view of Christianity.

And I think it is time that when we are now talking about rights and we are talking about building a just society, that at least they must give not just limply saying in the freedom for other religions too, but to recognise that people from all the other religions, have a deep and a profound contribution to make to develop the kind of vision that would allow our people the possibility of living in good justice.

10

Now I - I just have a very basic and I want Mr Green to respond to that, that there isn't only one way in or country (inaudible) ... rigid attitude that has been expounded. And I say that at this point in time, it could make things very difficult for us to have the kind of discussions that we should be having.

20

THEME COMMITTEE 4

12 JUNE 1995

CHAIRPERSON: Okay, that is most probably the last question to you Mr Green, it's a mouthful.

MR GREEN: Yes Chairman, Chairperson as far as the contribution is concerned, when it comes to the recognition of the dignity of either persons, we do not glibly when we say things we - I can assure the last speaker we do not glibly say things.

We say things because we believe them to be true. If they are not true, then we need to be convinced that they are not true. South Africa is the only Constitution - you show me any other Constitution in the country and I am referring to the Interim Constitution. 10

Where under Section 8, sexual orientation is protected on the grounds of - that it should not be discriminated against.

It's not the Christian view is not the only view where - where homosexuality in fact is not seen as a normal lifestyle. 20

THEME COMMITTEE 4

12 JUNE 1995

You go to any Islamic country and you look at the Constitutional of Islamic countries and you tell me and you show me where those rights in fact are entrenched and I can assure you it's a different religion. It's not the same religion like Christianity and yet the same feelings with regards to the protection of rights based on sexual orientation - exactly the same feeling.

Now as far as the great religions are concerned. The free religion, be it Islam, Christianity, and be it Judaism, has exactly the same approach as far as homosexuality and the protection of those rights are concerned. So it's not a unique position. I can - I can agree with the Speaker when he says there are different, there are other Christian views on this and I say that you reflecting that correctly.

10

But as far as the ACDP's position is concerned, our view is very clear in terms of the protection of that view. So there is - we don't support protection as far as orientation is concerned, sexual orientation.

20

THEME COMMITTEE 4

12 JUNE 1995

CHAIRPERSON:

Okay, well comrades, ladies and gentleman their being no further questions at this stage, we shall then move to the African National Congress.

MS PANDOR:

Thank you Chairperson. I think Chairperson I'd like to preface the presentation of the submission of the ANC. Why referring to some of what has been already said this morning. And perhaps it's important to say that when one speaks of sexual orientation we are being rather minimalist if we look at the issue of homosexuality as being the only aspect falling within this particular concept.

10

Most adults have a sexual lifestyle of some form or other, be it heterosexual, homosexual or some other form. And when we speak about the intuition surely we don't seem to regard it as referring purely to gay persons.

Secondly Chairperson it has been mentioned that our Constitution is the only one offering such protection. It is our believe that we should applaud our Constitution for

20

THEME COMMITTEE 4

12 JUNE 1995

providing such protection because experience internationally has in fact shown that many people who are gay, have had to make use of the law in order to seek access to protection against discrimination.

The various convenance of the United Nations have been questioned by a gay rights activist and the convenance has ruled that in the clauses that deal with equality, when one speaks of other status, this includes sexual orientation.

10

A third point is to mention that even persons such as Dr Ramfela who appears to enjoy great respect from the previous presenter, have asserted that they believe that the sexual orientation concept should be retained in the equality clause.

A final point with reference to our Constitutional principles, we speak in our principles of everyone, everyone shall enjoy in Constitutional Principle 2 a major principle informing the work of this Theme Committee, in Constitutional, Principle

20

THEME COMMITTEE 4

12 JUNE 1995

3 we say the Constitution shall prohibit all other forms of discrimination including those that we most usually mention seem to be comfortable with.

So I think with those remarks Chairperson we clearly state where the ANC stands on this question.

In terms of our submission I would just like to highlight one or two of the introductory paragraphs and then take us right through to the content of the right.

10

I'd like to just focus members on paragraph 2 where we state that in South Africa and we should remember always Chairperson we dealing with South Africa, a South Africa that has experienced massive forms of discrimination, the worst kinds of oppression judged to be criminal acts against humanity have been practised in our country and it is this that we are responding to as we draw up our new Constitution.

20

THEME COMMITTEE 4

12 JUNE 1995

And we therefore should be aware of reducing the excellent work that has been done thus far by cutting out protection rather than ensuring that in fact we elaborate the Constitution in such a way that we guarantee full rights to all citizens, in South Africa, inequality is the very essence of the lack of political freedom.

While some have been free to plunder the countries natural and human resources, others have lacked the most mondaine freedoms of movement, association and expression. Let alone social and economic security.

10

In this setting all freedom in our new democracy ought to be premised on the ideal of equality which must become the pivot and driving force of political cultural and personal life in South Africa.

This paragraph most cogently summarises the views of the ANC. With reference to affirmative action we deal with that in paragraph 3. It is in the context of the historical

20

THEME COMMITTEE 4

12 JUNE 1995

inequality and the legacy of unfair discrimination that affirmative action becomes compulsory.

While taking on a variety of forms, affirmative action means special measures which must be adopted to enable persons discriminated against on grounds of colour, gender and disability to break into fields from which there has been excluded by past discrimination.

It is sad to note that many of the submissions we have before us today makes very little effort to address the question of gender and we wonder what this means. It is an issue which has to be addressed both with firmness and sensitivity.

10

It must become clear attempts at achieving substantive equal rights and opportunities, for those discriminated against in the past, should be regarded as the fulfilment rather than a violation of the principles of equality.

20

THEME COMMITTEE 4

12 JUNE 1995

Affirmative action for disadvantage sectors of our community shall focus on black woman, the youth, both men and woman and the rural community.

Now Chairperson in terms of the content of the right, if we could look at the bottom of page 24. The ANC believes that all men and women shall have equal protection of the law in terms of both treatment and protection. The formulation of 8(1) in the Interim Constitution is acceptable.

10

Section 8(2) should not be regarded as numerous clauses of discrimination. Equality is a universally recognised right or norm and it is equality that we are dealing with which categorically excludes discrimination on the grounds of race, gender, sex, ethnic or social origin, colour, sexual orientation age, disability, religion, conscience, believe, culture or language.

The list is not exhausted, but is an inclusive and explicit list of distinct grounds for discrimination. It is our view

20

THEME COMMITTEE 4

12 JUNE 1995

therefor that the formulation of section 8(2) is acceptable.

As indicated earlier, affirmative action and also a restitution of rights in land are applications of equality and not qualifications, they reflect positive and practical mechanisms which must be used to progressively achieve a balance sense of equality in the various fields of human endeavour at various levels of Government.

While Section 8(3)(b) may be included under the category of property rights. It can also be appropriately dealt with under the right to equality. Section 8(4) and if we could corrections of some of the errors there, provides a favourable shift in the burden of proof which shall have the effect of creating a favourable avenue to challenge unfair discriminatory practises.

10

We believe that this subsection can therefore be maintained in the final Constitution.

20

THEME COMMITTEE 4

12 JUNE 1995

In terms of application it is our believe that the State has a duty to protect the right. We also believe that the right applies to customary and common law with due regard and a sensitivity towards practises of customary and religious law.

The right shall bind the State and all social structures but in it's application shall duly consider and be sensitive to customary and religious law. The bearers of the right shall be private persons or where appropriate groups or social structures. The right may only be reasonably and justifiably limited in an open and democratic society.

10

With those brief comments Constitution Chairperson and that overview of our submissions, I would like to pause by saying that we must recognise that the issue at hand, is equality and this is what we wish to guarantee in our country. Thank you.

CHAIRPERSON:

Thank you Ms Camerer.

20

THEME COMMITTEE 4

12 JUNE 1995

MS CAMERER:

Thank you chairperson, I'd just like to the previous Speakers comments on my perception of their submission which is that they come in roaring like a lion and go out rather meekly like a lamb. I mean in contrast to the varmint and rather loaded language of the introduction it seems that the ANC is perfectly happy with the clause as it stands.

And I - I mean am I wrong or am I correct in this. If I could just draw your attention to my reasons for saying this.

In the second paragraph whereas perhaps one could of said while some have been free to enjoy the countries natural resources, we talking about plunder, is it really necessary in the third paragraph.

10

In the - well maybe we will disagree about ...

CHAIRPERSON:

I'll give you a chance to apply.

MS CAMERER:

Mr Chairperson in this, if I could just motivate, perhaps I would appeal perhaps to previous - the ANC to amend their

20

THEME COMMITTEE 4

12 JUNE 1995

second - third paragraph where you say that affirmative action becomes compulsory, it sound extremely dictatorial is that really what the ANC means. Do they not mean essential in terms of the Constitution.

Because compulsory has a really unpleasant connotation and I would suggest that they not really intending to be that dictatorial about things. Then we talk about the disability to break into fields.

10

Really we - are not talking about having access. It's just this violent language that perhaps isn't really in tune with the eventual conclusion that the ANC reaches here. And we talking about violations, the principles of equality. I mean I - I would suggest that particularly the word compulsory should be adjusted Chairperson.

CHAIRPERSON:

The ANC your violent language. Why are you violent.

MS PANDOR:

It's pleasant Chairperson to be described as a lamb and then

20

THEME COMMITTEE 4

12 JUNE 1995

have violence ascribed to one. The two sometimes don't quite go together, however in terms of compulsory, one perhaps could return with the question. Do we have a choice as to whether or not to do something about the disadvantage and discrimination that has been part and parcel of the lie of the majority of the citizens of this country.

The perhaps use of the word compulsory is linked very much to the fact that it is our view that we do not have a choice. We actually do have to act - given a context of plunder from which we emerge. We do have to provide measures to ameliorate that situation.

10

However as the National Party is often so open and ready to reconsider its language and views, perhaps my party will give consideration to what has been said.

CHAIRPERSON:

Ms Smuts.

20

THEME COMMITTEE 4

12 JUNE 1995

MS SMUTS:

Chairperson may I ask if we may look at that, the real substance of the matter and the clauses. When - when we all started working our various parties and on the Interim Constitution, a kind of a consensus developed that we wanted affirmative action and that it was necessary to put in a qualifying clause. I think that's the way we all approached it.

A clause explicitly insulating affirmative action from challenge against the equality clause. In other words we worked on the basis that there is an inherent tension. But if - and I think that it's correct to say that there is a growing understanding that in fact if you - if you approach what we have begun to call affirmative action, but you needn't call it that. If you approach it in different ways it is in fact part and parcel of equality. And it's clear in at least two places in the ANC's submissions that, that approach is taken.

10

I refer to the last paragraph on the first page, a fulfilment rather than a violation of the principles of equality. And the

20

THEME COMMITTEE 4

12 JUNE 1995

second paragraph on page 25, affirmative action and also restitution are applications of equality and not qualifications.

Now if there is a growing understanding shared by all of us and we no longer have the fear that in fact you need to insulate from challenge. Maybe we feel more confident that there is a broad understanding in our courts as well as amongst political movements that you dealing with something which is an application on the party.

10

That has implications then for a affirmative action clause. And I wondered whether we saw, if the ANC would care to respond, I think - I see which clause they have used, their 3(a). Which in fact moves closer to -to something that we would like to see in 3(a) in the sense that it's reverted to the use of the old ANC verb designed which is better than (a).

But what I want to ask is, do we still need the shall not preclude formulation whether the ANC has thought of that.

Do we really need that if we agree that it's an application of

20

THEME COMMITTEE 4

12 JUNE 1995

equality.

And then secondly I - I'd like to ask you whether - whether you draw a distinction between substantive equality and the discriminations of the past. Now I am looking now at the last paragraph on page 23. It must become clear that attempted achieving substantive equal rights and opportunities for those discriminated against in the past should be regarded in the fulfilment.

10

Now I ask this because of all of us have been engaged in some deep debate over the last few weeks or so at public hearings and elsewhere. On - on substantive equality and equity and so forth, which I think are simply synonymous things. Substantive equality is what we all want.

One of the examples of substantive equality would be the ramp concept, quite literally and as a Constitutional or legal concept, those of our colleagues who cannot walk, not the ramps that are now being built at the entrances to

20

12 JUNE 1995

Parliament.

Use another example woman sometimes fall pregnant need differential treatment in order to enjoy equality. So that your - that's your substantive equality or your differential justified differential treatment in one context.

Does the ANC draw a distinction between that kind of substantive equality and the kind of RDP affirmative action.

Do you see what I mean.

10

UNKNOWN:

No - no.

MS SMUTS:

If - if you are saying that the discrimination of the past had certain specific sosio economic aspects, are you thinking of affirmative action specifically as the kind of programmes that would address the plunder that has just been referred to and is there a difference between that and substantive equality of the kind that builds a ramp.

20

THEME COMMITTEE 4

12 JUNE 1995

The difference may be that you are always going to have colleagues who use wheelchairs, that woman are always going to be - fall pregnant at certain times, it's a permanent kind of thing.

And that the discriminations of the past in South Africa may in fact be addressed within a certain number of decades. So I think that there might be a difference there.

CHAIRPERSON:

Okay.

10

MS PANDOR:

I think in terms of the last question yes, we would those sort of distinctions in terms of the way in which we respond to the various categories, if one can term them that of need and of response.

In terms of the use of the phrase shall not preclude, yes we definitely see it as requiring a retention in a future Constitution. Because of what I have sighted earlier which is the use of the courts in a situation where there isn't

20

THEME COMMITTEE 4

12 JUNE 1995

clarity as to how one may interpret sections of a Constitution.

You may have measures designed for amelioration being overturned because the clause does not state firmly enough the intention. So yes, we would say so.

CHAIRPERSON: Okay, Doctor Ranshot.

UNKNOWN: Mr Chairperson may I just ...

10

CHAIRPERSON: No Doctor Ranshot now.

UNKNOWN: All right.

DR RANSHOT: Thank you Mr Chairman I just want to highlight a point which is not intended to be criticism but rather sensitising colleagues that when we talk of equal protection in the sphere of education, we've have two major debates since the establishment of the new Parliament and very little attention

20

THEME COMMITTEE 4

12 JUNE 1995

has been given to children who - for no fault of their own, find themselves requiring remedial education.

And this a cross party lines, we are not giving sufficient attention to the needs of millions of kids out there. Or find themselves having no access to school or if they do have access it is extremely underfunded at the present time.

And when we talk of equality we should not only be looking at - at adults and putting right the wrongs of the past, but our future lies also with the children of South Africa and I was touched recently when I went to a - a function in Cape Town where a number of schools in the Western Cape participated in an Eistedford called children undergoing remedial education, there was hardly a black face to be seen.

10

And the problem out there is very substantial and I think that we as politicians need to also address those needs. There has been tremendous neglect in the past and I hop

20

THEME COMMITTEE 4

12 JUNE 1995

that this issue will be addressed, thank you.

[END OF VOLUME I]

10

20