

Tape 1

20 - 31.01.95 THEME COMMITTEE 4 MEETING

Lady: I don't quite know what the rules are as to quota status of meetings etc., but I noticed that in fact a number of parties are missing oh, and in addition to that I do recall that this morning as we drove in on the radio there was an announcement that there is an unusual heavy traffic on the N1 and a number of members drive from that direction.

- 1) Just one matter to do.
- 2) To Senator
- 1) To Senator, the minutes of the 25th on Page 11, the RAU Wallenburg Institutes seminar. It is not the 4th and 5th of March?
- 2) Range noted.

- Any other corrections? Right.

I now propose on behalf of the Courtroom to deal with certain matters arising and to really say this when we talked of the decisions yesterday afternoon in the courtroom that.

Another person:

There is a great need to get on with a substance of our work here, we can spend the rest of the year looking at the form, at the process at the way ahead, at what the structure but really I think people both in the constitutional assembly and outside expect us to get down to work on the actual substance of the question of Fundamental Rights and it will this remind that we will really not make any progress in this theme committee if we keep on going backwards and forwards over the same some what tied ground of respect of the way ahead what is the role and place of chapter 3 etc. We have actually got to bite the bullet. What we had presented to us yesterday were really taking all the range options really in terms of a framework, where a number of sort of unpacking, a number of ways that we suggested headings for our future procedure could be dealt with, the Rights to be dealt with the (history inside) and if you look at them the substance is not usually different between what you might call proposal 1, 2, 3 and so forth. They really do cover more or less the same ground, and the CO-group is also strongly of the view that it is necessary for us to start and although we follow a procedure which we are going, which we would like to discuss this morning that is what the exclusionary of issues which are not dealt with this, as we go along we obviously going to find when we are looking at a particular right, or a particular issue that we need to look at something else. That is not excluded by simply adopting a particular process. But adopt a process we certainly have to do. Because you know otherwise we just being dealing with generalities without getting down to substance.

It seems of those curviets and reservations and qualifications in mind, you should bear in mind, to the CO-group, that really the interest of every party, group so on, was most adequately catered for if this theme committee followed more or less the suggested framework of proposal 3 which is in your documentation and that really is up for discussion this morning.

Subject to reservations, you are going to find that not every I is dotted and not every t is crossed it does not matter we need at some points when you think of points you should sooner rather than later to actually get on with work in hand and not just examine our neighbors about, how do we proceed, which process, what is the meaning of chapter 3 and so on. And we thought that the proposal 3 actually dealt with the issues that people wanted to raise and wanted to be discussed and so on. And do it in a manner which isn't going to exclude any particular party or view point that is a view of the CO-group and is real up for consideration this morning.

Whatever the view of the meeting is we clearly have to adopt a particular approach and we think that is the way to do it.

So I would like to put that on the table as it were and get views of the members if there are any just to indicate that we are also more or less subject to conformation today in a position to get the show on the road because there has been agreement reached in the other committee dealing with the technical experts, in other words that is about to be put on track and since we have not had the benefit of those experts yet.

It would be useful if we could present them with the programme as well, so they could all start preparing themselves.

So I would like to put that proposal that broadly speaking we follow proposal 3 as a medium for discussion and care views from the members.

Mr. Chairperson:

I would like to support the proposal, I think that it is the right way to go about the work of this theme committee. I think we must have a sense of urgency at this stage and I would very much be in favour of proceeding along the lines of proposal 3. Just one thing on Page 5, under item 7, small paragraph C. I think it should be religious observances in state and state added institutions not constitution.

But other than on that support will be very happy to follow proposal 3.

Other person:

Mr. Chairperson - Obviously there must be typing errors, there might be even issues of substance and what I would propose is because we just go to the document now, we do not have, we going to, is it not the blind sort of tasting, we do not have to accept what we are given, we can obviously make adjustments as we go along. But I think you will see its actually a very open kind of proposal but it does give us some structure.

Mrs. Now that you have asked me to speak, Mr. Chairperson, I think we would say that for the purposes of argument in work we would support that we look at proposal 3, particularly block 1 as the starting block that we may in fact propose revisions to subsequent blocks, however, we would be looking at moving on with block 1 of that proposal.

Zach, I think there is a consensus at this meeting. Proposal 3 in broad terms is acceptable as a means of process, specifically block 1 as we have called it here, we get really confused between the blocks here and the blocks in the worksheet, but anyway, Block Number 1 on Proposal 3 is agreeable. There is a lot of generalities here all these constitutional principles and so forth but we can get on to that. And we will schedule a discussion on meaning and the substance, and the views on block 1 for when. Lets just deal with it.

Another person:

OK, we can have the parties again if they want.

Can I just.

Broadly speaking, many of the parties, OK not many, but the majority of parties here who made exhibitions on constitutional principle 2, have also in some great measure also dealt with block 1 here but obviously knew aspect here parties might point to reconsider or add to their submissions and we can certainly.

That is what we should do so I think we would schedule that for next week's meetings, a discussion on the meaning content and impact and parties either can just stay with the proposals they have or add to their submissions. But on reminder to the fact, and I think its only fair, that before we go on to a discussion of this new framework which we have agreed to today, that 2 other parties, a slight problem one of them isn't present I don't think 2 other parties haven't presented verbally their proposals on constitutional principle 2, as you will recall as a subject matter of our discussion last week.

And I would propose seems we have agreement on this, that we spend the remainder of meeting hearing the proposals form the ACDP and the Freedom Front, but the Freedom Front isn't here, so that will those will come in on this with the other parties.

We've got the written submissions that I think in the interest equity. We should ask Mr. Green to take use through his proposal verbally because that is an opportunity offered to all other parties and I think Dr. Mulder is going to forfeit that opportunity. We have just to talk under this I and ignore him bringing submissions under this.

Professor: I am sorry, valid time I am not at this meeting of theme committee 4 as for the cabinet is meeting and I apologize for that, but I think you will appreciate that how important this committee's work is, I have to go to cabinets meeting and there for I don't know what you have discussed in the past or the CO-group. There seems to me that, why could we not continue our discussion and conclude the discussion on Block 1 constitutional principle 2. Why do we have to postpone it to next week?

Chairperson: We are interviewing to continue our discussion but the problem was only several parties made the submissions verbally to having, the problem that we have is why we can't really conclude it today is the Freedom Front's representative is absent, so we are going to

The question is what do we do with constitutional principle 2 other than to get the parties views on the meaning and counting the constitutional principle 2 which we've heard now from the ANC, the DP the National Party and the Inkatha Freedom Party of course. They have all made their submissions in writing, they have spoken to them, they have answered questions. That's the format that we've followed. We are going to hear now this morning, from the ACDP, and that really is then constitutional principle 2 at this point. What we've done with the new proposal under this submission number 3 is to sort of make it to slightly extend it if you look it, its not just constitutional principle 2 it brings in certain other issues and that how we are going to proceed from next week professor, on the basis of this which is met agreement from all the parties proposal 3, OK, does that deal with the issue?

Another person:

I'm concerned about, because we were meeting a constitutional committee yesterday, to an extent we were still dealing with process there is in fact, what the constitutional committee said, they should move on to substance and out of the fourth that possibly over the next maybe we can't be 3½ hours you know energy may not last that long, but we might resolve constitutional principle 2 with all items today.

Another person:

Well we can certainly try

I just want to see how to get to temperature of the meeting later on, but I still propose that we hear the ACDP on constitutional principle number 2. Mr. Green.

Mr. Green: Thank you Chairperson, the ACDP's response to Fundamental Rights and freedom constitutional principle 2 is that we would like to take a biblical approach to the granting of Fundamental human Rights, now, we believe that God is the giver of human Rights because he is the giver of life and therefore we question the legitimacy of the human Rights that have not been God given, I just like to say that from a biblical perspective we know that there are certain human Rights that are not directly referred to in the bible and it needs to be discussed and one needs to weight whether its in conflict with what we believe the bible is saying about human Rights. Now, we also believe that Clause 8.2, Chapter 3, needs to be revisited because we feel that the sexual orientation Clause, in particular is to us unbiblical now because it legitimizes the practice of homosexuality, we just like to say that this might no be the view of all Christians but it is definitely the view of the persons who are supporting the ACDP. The bible literally and clearly forbids homosexuality, it is not valid to use an argument that the state can not legislate morality whilst the introduction of Clause 8.2 has lead to the protection and wont lead to the possible legislation of immorality. So, we also believe that homosexuality is a life style or it is a subculture and if we call on the protection of this one subculture on what basis are other subcultures excluded. The right to life clause, we think should also be revisited because unborn children should also be protected by this right.

In conclusion the ACDP would support any first, second, third or fourth generation Rights on condition that these Rights are not condemned by the word of God. And that basically is our approach to Principle 2.

Another Person:

If any questions to Mr. Green? On the ACDP proposal.

Another Person:

What happens to that view of human Rights if you are not a Christian either because you are not a confessional or you belong to another religion, to what extent then, should the state or the legislature in order to protect and enhance what is your interpretation of Christian values.

ACDP:

We believe that when the elections took place in April, a lot of people voted for the various political parties not on confessional basis, not because of the issue of moral Rights. A lot of the major political parties were supported by votes mainly because of the liberation issue at stake and that was the main situation. A lot of the voters they voted for the major liberation parties we believe as not been tested with regards to the issue of morality or moral issues. So we believe that the view that we representing is not necessarily just an ACDP view, it could also be views of Christians in the major liberation movements and other political and could therefore not be contradict with the moral understanding, with Christian understanding of the lot of members of the other political parties.

I think in order for us to engage whether this is reflected very, very widely we should use some kind of mechanism and I think the constitutional committee has looked at mechanisms of testing the public. So I think that this issue should be thrown open and submissions should be allowed as far as widely as possible to test both for and against our approach.

Another Person:

Ja, I wanted to ask the ACDP if it believes in tolerance, and the right to choice for people to determine their lives?

ACDP: Yes we do believe in right of choice, the freedom of choice and we also believe in tolerance. However, when you approach human Rights, we approach human Rights from the biblical prospective, in other words we look at what the bible says in terms of human Rights. Now God doesn't tolerate homosexuality according to the word of God. Our understanding is God doesn't tolerate, it is an abomination to God. And therefore as practicing and believing Christianity and not just practicing and believing Christianity, practicing and believing Muslims as well do not support the issue of homosexuality. So its not an issue of tolerance its an issue of what do we stand for, what do we believe in and because you believe you won't tolerate racial discrimination, you wouldn't allow someone to tell you that he is going to practice racial discrimination and there is nothing that you can do about it, because of your understanding because of your moral believe that racial discrimination is wrong. Equally, you cannot expect us as believing Christianity to support homosexuality.

chairperson: Just before we get involved in a full scale debate on gay Rights and homosexuals and so forth. May I point out that we really are as the ACDP quite liberty to submit whatever submissions we want and whatever head want to. But really the submission here deals with a broad trust of constitutional principle 2. We are going to deal with quality for an example equality and now we can have the debate now and then revisit the whole thing again. But I am quite sure you will, when we come to the specific clause which deals with equality whether gay or homosexual people should be treated on equal basis, you can then put on a specific proposal and we can have a full debate about it then. We move on to a more general discussion of the ACDP.

Another person:

Thank you Sir, with reference to principle 2 then, would the ACDP's position, would be understanding it correctly if we understand it to say that in fact the broad and all encompassing statement of principle 2 actually needs to be limited in some way. Is this the position of the ACDP?

ACDP: I think Chairperson that is the correct interpretation, particularly with regards to that one reference to sexual orientation. We feel as far as that is concerned and we would not want that principle to cover that particular aspect.

chairperson: Thank you - any other questions or observations?

Mr. Green: Thank you, Chairperson, I think what we are saying broadly is that our understanding with the biblical view of what we believe of saying we have been ordained by God and we've specifically referred to the alternative or homosexual as the alternative life style. Now the persons who prefer the alternative life style believe it is the human right, now what we don't believe we should subscribe to that human right because it is not ordained by God according to the bible. Because there are definite references in the bible according to our understanding that does not protect that human right, so why should we protect that human right? So that is our approach.

Another person:

Mr. Chairman, I wonder what would be the reply of the ACDP if with the same Christian people do differ theologically of their point, what is going to be their attitude?

ACDP: As far as our attitude is concerned is the political parties represent a constituency, the ACDP also represent a constituency but our constituency support this view in terms of human Rights if other constitutions also consist Christianity and not just Christianity. Other believers as well, Muslims, Jews and so on and they support our view or they differ with our view then they should actually state but our view form a prospective is this view, but we also believe it is not the ACDP view only, I agree with the last speaker that there may be persons that could differ publicly from us like many Churches differ publicly from one another, but this is our position as far as the ACDP's political stand is concerned, and we want to reflect our supporters views and this is basically the view of the ACDP voter as well.

Another person:

Thank you Chairperson, I would like to go back to my question as reference to principle 2 and to in fact to remind the honorable member from the ACDP that, there is in fact no mention of categories in principle 2. Broad principle stating that everyone shall enjoy all universally accepted Fundamental Rights etc., etc. So I am just trying to fit in the submission fitted into this broad principal and I wonder how it is located there.

ACDP:

With regards, Chairperson, with a broad approach to Fundamental human Rights, as the ACDP we support the principle. We believe that all persons should have these Fundamental human Rights, so in terms of racial discrimination all these discriminations would definitely take a stand against her, because we can't find a biblical support for that, but in terms of the one, and we've isolated the one issue only.

Chairperson: Mr. Mashamba.

Mr. Mashamba:

I just want to find out if the ACDP stand point is not negotiable, what they put on the table is not to be discussed because mean if they come up with the point view that this is ordained by God in other words you are saying we are not talking across - debited upon. I wonder if that will be helpful in our deliberations.

ACDP: Chairperson, we are here part of this gathering because we're part of the negotiation process. What we are saying is that, when negotiate or talk about anything

We won't compromise our stand in terms of that. So, its not a matter of negotiation, its a matter of what we believe is the correct thing, just as you who have been in the liberation movement for a long time, wont compromise your understanding of freedom or the liberation of your people, in the same sway we wont compromise the issue of where we feel from the biblical perspective, those right ordained by God.

So we will talk about it and be prepared to find out what are the other vies, the other ordinary members views on the principle so we open to discuss and talk about it. At this point in time, we feel that we wont compromise what we believe in.

Chairperson: The parties views have been already been presented so they are on the table as they were
Mr. Skosana.

Mr. Skosana: Thank you Mr. Chairman, to understand I seem to understand Mr. Vuncu, because
of the association and the expression of cultures and how Mr. Green's party interpret
the of religion really

Chairperson: I would like to hear after lets say some compelling issues draw this particular discussion to
a close.

Professor: I was trying to assist the Chairperson really that I think that Mr. Green is tilting at windmills and it's not a very creative exercise to tilt at windmills. Now that it says in principle 2, which is what we are discussing that human rights as to use as Mr. Green's language. The Chairman is only right when we discussed the question of individual discrimination or the equality clause it's a question of status.

Are you entitled to discrimination, on the basis of a status or orientation and I think the question that Ms. Paulo put is very relevant that we are really talking about constitutional principle 2, and is the ACDP going to continue and when a constitutional principle does not refer to abortion, or contraception or for that matter other issues that the ACDP has the passionate desire to combat and so therefore either we move on your direction and the appropriate place we discuss this or ACDP says it wants to revise constitutional principle 2 which we are bound by and much as the ACDP might like to revise it, we can not do so.

Chairperson: Respond to that Mr. Green or can we live with the messes there?

ACDP: Professor Asmal, in terms of the principle, as a principle, we subscribe to the principle in terms of principle 2, but as I say when we come to that particular issue we would raise our objections with regards to that point.

Chairperson: Right, I think there are some consensus. We are now, we don't have the Freedom Front representative present as I said, then general discussion of principle 2 will have to be held over, and I think we will have to try and fit them in, but if they are not here, they are not here.

Questions, we now move on, and how do we progress in terms of having accepted that we will deal now with block number 1 of proposal 3, further in fact.

We are in a position to look at the items there. I think though what we can generally say is that without having had from the Freedom front and I haven't read their submission, that all the parties don't have any option because they are bound anyway by principle 2 but it did enjoy the support of world parties in their submission, the various items of interpretation which need to be flashed out and it presented no particular problem, in this committee, we can certainly say that. We also have to deal with later Mrs. Camerer suggestion that we have a workshop on what was the call meaning for university accepted Rights and so on and we are a number of proposals on that regard we are going to deal with that right now but that matter ponds. Now in terms of proposals you had before, there are a number of issues which we should try and discuss if possible, resolve here, the first one which we, are certainly know 3 other parties submissions have touched upon, the ACDP have not addressed it and I am not sure about the F.F.

The question of the applicability of the bill of Rights is it a vertical application of the bill of Rights is it a vertical application only, which is the more or less the current situation with the interim bill of Rights although there is allowance for something called Tret Winkeng, so spill over the fact into the horizontal spear or should in fact the bill of Rights be extended into personal relations, juristic persons and so on. What is the term everyone means, now that is consequential form the acceptance of constitutional principle 2 of being governed by constitutional principle 2. Is the issue we need to discuss the proposal is that we deal with it up front, it does have consequences on how you draft the clauses in your charter. You have a vertical bill of Rights, your language does not often have to be as expert or as limited as if you have a horizontal one and so forth, I don't want to anticipate the debate.

The question is an we usefully discuss that now without preparation and people haven't thought about it, we do have general submissions from the parties, do you wish to look at these issues after having done some preparations and given them some thought I am really in the hands of the meeting.

Professor: I don't think we need technical experts frankly to assist us on this. I don't think we need debating or discussion technical discussion. We are to look at the policy behind this, now there are 2 different aspects which I think you may have decided the two, one of them is that whom does the bill of Rights bind as one aspect and the other one is who can claim the legislator, now at Kempton Park.

We had a dispute about this issue, first of all, as to whether it biased only biblical authority in public path, or it binds everybody to a respected where appropriate. Secondly not everyone has the Rights, so the clause 2 is entirely correct there are some other Rights, now there is two things for alliance for an example, because the restriction clause allows legitimate restriction so that without revising clause 2 we may reflect in the bill of Rights of the absolute Rights, all I am trying to say now is, I think that we should have a preliminary discussion and that, I was going to suggest as process where the preliminary discussion parties can consider the tone and flavour and the next section next week possibly came to a conclusion so they can write up our conclusion for the constitutional committee and I think we should do that for nearly every right we look at where the preliminary discussion then we come to a conclusion, with or without a vote but we come to a conclusion at the right time, so I suggest that we should discuss it now.

Chairperson: I would like with some indication to be earlier on the parties hadn't had a chance even to discuss, although we had agreed to proposal 3, I would like to give people about 5 minutes doesn't apply to my party, to actually discuss among themselves so that they can come up with the position not that, you have to be embarrassed if you have a theoretical viewing in your own party, it is not binding, it doesn't get written down and stain here, but, just one of the parties did indicate that to me earlier on, so we will just have a quick discussion, may suggest reassemble at 9.30

Senator: If I may Mr. Chairperson, we go along with the idea that preliminary informal discussion to embroil on what we've discussed before we've already had a discussion on principle 2 and we've presented our positions, but it is very definitely the view of the National Party that we should in fact get some expert advise on precisely what all universally accepted Fundamental Rights freedoms and civil liberties meaning which are they I think that we if I understand it correctly are now in a position where 4 experts have in fact been appointed to this committee, that we have the opportunity now to move and ask them for the advice on specific matters and just like clarity on when they possibly would be available and if they could be incorporated into a workshops on this basis, I think that we should have a look at precisely, what are all universally accepted Fundamental right in want or not. There is a division of you in regard to 3rd and 4th generation Rights and I think we must get ourselves clear on this aspect.

Chairperson: There is no problem with that, but really you are not actually with respect looking at the universality of Rights under this heading. We are looking really at the first aspect which is the juristic persons, who is bound by the bill of Rights and who may claim under it, really these are the 2 issues we are looking at. In the first instance, I want a point made by Mrs. Camerer was agreed to by this meeting of principle that we do have Conferences on the universality of Rights issue, now when are these 4 experts been appointed? Well I hope they will be available, because I think the balance might be upset if one is not available and the other 3 are, but anyway. Yes! last point.

Professor: We are not conducting a seminar here this is not first year university course in human Rights. We are actually represent interest as representatives parities, I wasn't here when Mrs. Camerer proposes workshop.

There has been tense debate in NP produce their own Fundamental Rights document which took a position your expect is going to defect the NP or from the ANC on this and I mean seriously if we were to make progress because in fact this could be a permanent postponement of the issue. I think we should discuss ourselves what we mean by universal accepted Rights and then establish the differences between us and I think we haven't discussed this, and on our side we would oppose the idea this time in a workshop of what is universal rights human Rights. I have a United Nation compilation of human rights here

Chairperson: Professor Asmal, lets not get divided my own religion, I am a bird lead in the chicken soup principle it does not harm. I cannot see that having a seminar because there spaces for it on contemporary discussion it might members the universality of Rights what do they mean, what's the content, I am not saying it going to bound anyone here, or delay the programme but I think that really, I think Mrs. Camerer's proposal we are not treating it as a fully bust but really a desire for information's, and I took information in various documents such as United Nations completion, but if we put the seminar together and it can be done locally we got the people here, then I think we should do so. I'm just more worried about something that are much more immediate issue, just say this, you say that you going to check on expects.

The problem is that the way that the experts have been chosen is that they have been chosen also because they represent various interests. And if one isn't available, it is not that you could put the other 3 into places and will do that without the 4th, so, we understood that the checking had been done before the experts were nominated at the last list. Mrs. Mabandla.

Mrs. Mabandla:

I apologise for coming after I had to see a doctor. I want to know more about the workshop, who conducts the workshop. I think that it's a different issue if we request the experts, the technical experts to do an investigation and come forward and in that capacity, not a workshop as who is conducting it coming from where?

You know, because otherwise it would be cumbersome and it made detractors in fact if we have workshops of other supposed experts coming from outside, then you would find parties wanting to have special experts on their side. I think we have technical people who are going to help us and I think perhaps what we should be seized with is how to use them.

Chairperson: I think Mrs. Cameron's proposal was that we have a workshop at some point as other theme committees are having workshop this provision on the question of what is the universal content of Rights in these days. And actually there is nothing specific yet on the table on this regard. I don't see it as diversion, I think it would fit in with the rest of the programme it cannot do any harm.

It is not going to bind any member here, it doesn't bind any party but really with respect it is a bit of a red herring. I mean it's part of the programme, we don't have to deal with it today, it is a proposal, the proposal made broad acceptance when it was discussed a few weeks ago and there it remains. So, lets try to deal with once again with substance and not with form but

Other person: Help us with streamlining our work and I think part of it make sure that the issues which has been raised of getting a clarification on what is Fundamental or universally accepted Rights should be done for the theme committee and I think the CO-group must go and sit down say how this can be done we can not discuss it here and I think that's the task of the experts. We shouldn't involve other.

Chairperson: Well, you leave that and cup the question whether we need a specific workshop on the issue to the CO-group and we will come back with the specific recommendation and some concrete proposals.

Another person:

But in addition, that should not mean we cannot discuss the issue, we should continue with the discussion of the issue the way we understand what is universal accepted

Chairperson: That suites, but we don't continue discussion exactly who is going to address a seminar if we had a seminar, that the detail of a procedure that we don't have to

In still propose we will take 5 minutes, can we just 5 minutes so that consider the question on the first issue that's raised under proposal 3.

Another person:

Point of clarification, I am a bit lost here, there are 2 issues which you and Professor raised one was on the application of these Rights horizontal or vertical or both and then Professor raised a point we take each right and relate it to the application, I am not sure what are we going to discuss really, what are we expected to

Chairperson: Going to discuss the meaning and content of the phrase and everyone shall enjoy.

Whether everyone juristic person, structured and unstructured groups and organs of civil society in the first instance.

Who does the bill of Rights binds that going to be the first part of the inquiry, second issue is whom does the bill of Rights protect, and in other words obligations and rocks under it and which is dealt with to an extent in the interim bill of Rights that the question will not bind by that, its simply a guard, lets deal with this whole argument of vertical and horizontal to start with problems, issues and so on. And for secondary part we can deal with when we've exhausted the first.

Chairperson: Prejudiced here you can come back next week and may we have a further

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Tape 2

Rm.M46 - 31-01-95

Chairperson: Under it and which is dealt with what an extent to the interim bill of Rights. That question we are not kind by that its simply a guide, lets deal with this whole argument and of vertical and horizontal to start with, problems, issues and so on, and at the secondary point we can deal with when we've exhausted the first.

You are not bind as this is all done without prejudice here, how can come back next week and say we have had a further chance but

Chairperson : Could I just make a preliminary announcement by arranging with the CO-committee yesterday. I have to vacate this chair at 10,30 to attend another meeting which is unavoidable. My colleague, Shepherd Ndalade sorry will take the chair we desperately need of some other Chairpersons incidentally, the other parties could confirm who is going to be their representative or going to be their Chair would also help. OK, now we are going to look, I would also like to make the point that it would be very useful, I think for members here if there is some disinterested persons around, could take the committee through.

The consequences of the applicability of the Bill of Rights simply vertically applicable , what the consequences that is, it doesn't fall under it , it's capitalist , if its horizontal application what the consequences were . If I can as a preliminary point to this discussion indicate that at Kempton Park, the most compelling argument against having horizontal application of the Bill of Rights was simply that if you are going to have a bill of Rights horizontal application you have got to draw up every clause with that in mind, so we have a blank sheet as it were before us, that must also be born in mind. If I could just read you because we must have regard to inter alia Chapter 3, means not exclusively, but just as a starting point, currently, the interim bill of Rights on this question states in 7.1 this chapter shall bind all legislation and executive organs.

RM. M46 31 JANUARY 1995 TAPE (2)

Under it and which is dealt with to an extent to the interim bill of rights that question we are not bound by that it's simply a guide. But let's deal with this whole argument of vertical and horizontal to start with, problems, issues and so on and at the secondary point we can deal with, when we've exhausted the first. You're not bound as this is all done without prejudice here you can come back next week and say we've had a further chance but.

Chairperson:

Could I just make a preliminary announcement by arrangement with, the core-committee yesterday, I have to locate this chair at 10:30 to attend another meeting which is unavoidable my colleague Sherpard Ndalade sorry will take the chair, we desperately need some other chairpersons incidentally, the other parties could confirm who is going to be their representatives, or going to be their chairs, who could also help. Now I would also like to make a point that it would be very useful, I think for members here, if some disinterested, if there is such a person around, if some disinterested person could take the committee through the consequences of the applicability of the Bill a Rights, simply vertically applicable what the consequences of that is, it doesn't fall under it, under its corpus, if its horizontal in application what the consequences were.

If I can as a preliminary point to this discussion indicate that at Kempton Park the most compelling argument against having horizontal application of the bill of rights was simply that if you are going to have bill of rights horizontal application you've got to draw up every clause with that in mind. So we have a blank sheet as it before for us that must also be born in mind. If I could just read you because we must have regard to inter earlier chap. 3 means not exclusively, but just as a starting point, currently currently the interim bill of rights on this question states in 7,1 this chapter shall bind all legislature and executive organs of state, all levels of Government, this chapter shall apply to all laws I force and all administrative decisions taken as performed, then 3 Juristic persons shall entitled to the Rights contained in this chapter, where one to the extend that the nature of the right permits and then it is also worth bearing in mind, it says right at the end 35.3, in the interpretation of any law and the application and development of any common law and customary law a court shall have due regard to the spirit per port and objects of the chapter. Now that's simply a starting point, that's what the interim bill of rights says on the subject. We have the submissions of the various political parties on this issue, as I recall, the you'll have to help me along, certainly the DP is in favour of horizontal and vertical application where applicable and with due regard to, then drafting every clause with that in mind. The ANC is also I recall in favour of the horizontal application of the bill of rights and they obviously are here in considerable number to add what over qualifications that as it might be the case.

Inkatha Freedom Party is also in favour of the horizontal and vertical application of the bill of rights. Now we will hear from the National Party, I think their position might be little more complicated than that. Freedom Front, we haven't had their submission yet and the ACDP did not indicate specifically on this question in Mr. Green's presentation. Can I just take some views from the floor?

Input:

I think yours is a fair summary, but again I think that we mustn't try to reinvent the wheel. There have been 3 commentaries on this provision, 3 books have been written already. It's very interesting that there is a juristical argument that taking section 7 and 35 and other provisions that there is horizontal application effectively. I think that is too technical to juristical, I have nothing against jurists but there is approach that is adopted and I think that we are to be quiet clear about language and words and we wanted it to be understandable by lay people at present it doesn't, because we use big words of horizontal and vertical, and if we were to explain, you try to explain that to a tenants this organisation, horizontal and vertical, they say, but excuse me. Obviously there are certain things that essentially private matters, this is the law of privacy. What people do in the privacy of a particular relationship, is the function of the courts or the bill of rights to relate to, so clearly we don't want the bill of rights to apply to every area of human life, nobody said so, and the DP draw it out in you own bill of right, core - private areas where the bill of right and the constitution should have nothing.

What we are talking about is social arrangements relay to what extend in social arrangements. The bill of rights control the capacity of the government or the individual to cause harm and its largely means discrimination. And I will give an example of a Christmas I went to a be for breakfast with my family and I didn't get access to the bed for breakfast on colour, on grounds of colour, now that's a very imported matter there, that because it's a countering of a privilege or is it a right and that is why we are to be clearer along the lines of that the chairperson has said and that is that we look at this provision and remember in relation to other people who are talking about unstructured groups , organs of Civil society that's controlled by section 7(b) when people sick relief, we have possibly the most enlighten, the most far reaching right of access to the courts, anyway, any bill of rights any of the Ouse that I read, they use this right of look at Standi, so I end on our part by saying that our view is we should be clearer about this the terms of the bill of rights should be binding upon the state and organdies of government at all levels and where appropriate on all social institutions and persons, that means in other words it is equals to constitutional court will determine, where its appropriate for the bill of rights to apply and that's effectively the view of most of the human rights provision written in the last 20 yrs. I end by saying you see, unless we have a chairs like this. Within the United States they had to wait 200 yrs or forbid discriminations on grounds of race, in letting of houses and the sale of houses. They had to wait 200 yrs to forbid discrimination on railways which are privately owned.

They had to wait 200 yrs to forbid discrimination on hospitals where there was access to the public. We can't afford to wait 200 yrs on grounds of race, or gender or sexual orientation when we come to it. And I think its an unnecessary task for us now to say specifically without using these big words like horizontal and vertical that its for the court to determine where appropriate the application of the Bill of Rights.

Chair:

Thank you Professor Asmal, I find myself in strange agreement with everything you said. That will make your party reconsider its position ...I would if just I might from the chair , wearing my other hat, as the member of this theme committee. Just make 2 points on notes, I actually agree with what professor Asmal said. Certainly my party's bill of rights is drawn as the horizontal and vertical document to use those orphascatry terms. The one is that the consequence obviously becomes for an example to core-operate entireties. What is the consequence for a public company for example to be bound by this bill of rights, not just a question of it can't discriminate but, disclosing information and so forth. And as you like, allied to a public company for an example another a collective entity a trade union. And that's where there were quit a few cautionary notes sounded the last time there was a debate about this. So I think that's got to be considered as well. Can we get some other views Mrs. Camera.

Mrs. Camerer: I think you know very well chairperson that the National Party's view at the previous negotiations on this was that the bill should apply vertically primary, and this means that to primarily regulate the legal relationships between the state and subject and not directly intervene in regulating the relationships between the subjects themselves. And I think that our position was influenced by the fact that our whole body of law is actually designed on that bases that if one introduced, I mean we will know what we're talking about when we say horizontal application but I'm happy to use any words that can make it clear to lay people, that if you interfere in private law to that extent, it would disrupt the legal system, now we had a lot of very learned opinion given to us at that bases and particularly I recall how professor Chiddle who on that stage was acting for the Communist Party and who I see is one of our technical advisors made a very strong stand against horizontal application on the bases that is would be too disruptive for our law and he supported at that stage, one doesn't know where he stands now. The principle that was introduced through the interpretation clause. The principle of briefing from where the courts within bound to interpret laws in terms of the spirit of the bill of rights, now I think we would have no problem taking that principle further but in a sense I mean one could elaborate that perhaps but I think our position has been the anti-discrimination provision.

The equality provisions in the bill plus the court been bound to interpret the laws in the spirit of the bill of rights would be sufficient and the trice down effect would be in fact be of such a nature that the sort of things that happen to Professor Asmal that his mentioned wouldn't be able to occur because you'll would be looking at laws that would prevent that sort of thing and the courts, and of the court it would e all be interpreted idiom that sort of thing from occupant. But one wouldn't need to go so far as to put it in to bill of rights and stop. I think he is talking about private apartheid in a sense as it was called before the tender government during the previous round of negotiations. So I think that we would remain committed to our previous stand point and we have actually said that in our submission.

Chair: Presumable with immediate problem meanwhile negotiate this could be overcome by civil rights act being introduced in parliament.

Camerer: Can I just add, that a lot of the debate at the World Trade Centre, centred on the problems that would occur in traditional and tribal life if the bill was made horizontal immediately, and that it would be in that sense too this disruptive for the various systems of laws that do operate in the country I'm really just repeating the thought to expert advise that we had at that time but we were very much influenced by expert advise in our position.

Asmal:

This is the problem here about the so called experts advise. The thing is the subjective thing in the and its a political assessment. And I think I'll go back to this and you dismiss that with the way of your hand Mr. Chairperson I said this earlier I think in the end we can not hide behind so called expect advise. In the end we have to make our own party position very clear. And I say this look at this statement of **Mrs. Camera**. But what happened in Kempton Park was a private arrangement and there is no point in quoting who said what, under what who represented. We are dealing here, very openly, our fundamental assignation is the bill of rights with tramp, private law, traditional law and all of the common law rules. The bill of rights is the controlling agency for us. Its the central part of this presentation. Its the highest law in the land. Obviously it has to be interpreted by the constitutional court. So since we start off on that bases, we have no problems about the bill of rights tramping other areas and creating lots of problems in other areas because that is our fundamental isolation. And no expect con tell us but you mustn't interfere with the century of that wonderful edifies of SA private law which many of us have you know, for all our lifetime have been fighting. And therefore we want to give primacy to the bill of rights and expect will not deflect us from that is the matter in the inner negotiations.

If you look at the terms I read where appropriate in all social institutions, in a sense is that committees, all we are saying is the court must not tie itself in that extra-ordinary technicality the European Court in human rights where they say it applies to certain in this way because of some policy position not elsewhere and there are people with a lot of expertise about drief-werking and the reason why they want to put life the DP and the ANC specifically here is the court does not have to pipe behind greater equalities. The bill of rights says its appropriate, we should apply it. And remember there is also the restrictions clause. One of the problems by looking at this isolation is a lot of restrictions that our legitimate both the court and parliament can say this right will not apply in this area, for example information from private companies if that's one of the issue. It's open to the court to say this provision of bill of rights will not apply in this particular area because courts take policy decisions, they don't take decisions and that is why we should not look at this clause in isolation to the other provisions of the bill of rights

Chair:

Sorry, just before you do there are 2 points here and I'll just like to make from the chair. The first those who are not familiar with Germans, but rusty. Driefwerking if I might really freely translate its in exactly unprofessional translating really means spill over. So although the bill is kind of designed vertically the is a spill over into so called horizontally.

But there is probably a better explanation than that. If I might just say before Mrs. Camera's response. I think one of the influential arguments used at world trade centre, its the last time we discuss the bill of rights in a forum, was that there was a need to be quite conservative than because after all we are dealing with and interim bill of rights, this is chapter 3 yrs ready for the judicial just of this parliament, duration till the new constitution drawn up. Perhaps that consternate, that I think was also material in the expects vision must be born in mind here that we don't have a similar consternate we are drawing up a bill of rights in perpetuity.

Mrs. Camerer:

I do agree with what you said chairperson. But I do think we would also drawing up something, we were really entering uncharted waters, where, in fact we were in the same uncharted waters as we sit here today because the institutional court hasn't met yet. And I think people felt that once the constitution court had been insetting for a year or so one would get a better idea of where we were going with the provisions that we have already. Can I just say that I was really mentioning what has happened in the past in order to motivate the National Party's position because we are against private apartheid as everybody just to use a catch phrase.

But we're very much in favour of maintaining stability in our legal system and I think, we also very much against greyness in terminology in the bill and I think we must be go for specifics where we can. I would like to respond on the question of experts if it may because we're in joined as we sit here in the committee to put in to the final constitution universally accepted human rights. Now, if I look around I would say there are every few people sitting here who would be able to tell us what the authorities wards days are, perhaps Professor Asmal is in fact one of them who can. You've got squads of experts, but then we would like to draw up squads of experts too, as Professor Asmal said himself that there is a various of expert's opinion and I think this committee shouldn't close its eyes to these various experts opinions and pretend we are the experts ourselves. We are politicians and I do think in an area of human rights, we do need the benefit of expert's opinion because there is huge amount of learning in this field, but we are not perhaps necessary all of us aware of.

Chair:

Thank you, but I did not intend to allow any debate on the question of experts, that matter will be dealt with in the core-committee we don't have to address it here we have to deal with the matters of substance. The core-committee will deal with both the question of the workshop which was discussed several meetings ago and the role of experts beckon the 4 who have been appointed to this committee.

I've been drawn to my attention by the secretary that Dr. Mulder has joined us from the Freedom Front, and, although we are discussing a specific aspect of the consequences of principle 2, we haven't yet been informed verbally of the Freedom Front's approach to principle 2 as such. All the other parties have reported briefly and its an opportune moment, we don't mind we're slightly re-arranging things for Dr. Mulder to lead us through the Freedom Front's proposal on principle 2. So Dr. Mulder over to you and then to entertain questions and then we will revert to this other discussion when that is concluded. Thank you.

F.F:

My apologies to be late, I had some other things to attend to. The submission of the Freedom Front. I did take the committee briefly through it during our last meeting on the last occasion. The document is within the submissions was held into the secretary, if you don't mind, I'm not going to keep the committee busy in that thing, it is there for everyone to have a look at it and there are any specific questions I'm free to answer them.

Chair:

Are there any questions for Dr. Mulder on the F.F. document? You all have it in front of you? Yes Ms.....

Another:

Perhaps we should proceed and later meetings may allow us an opportunity to actually pose some questions or comments on the submission of the F.F. We haven't really had the opportunity to look at the submission carefully and we haven't had a presentation, so , could we perhaps hold over and allow to for some questions to discussion at a later meeting.

Chair:

Well, I am just anxious to get this part of proceedings behind us Dr. Mulder indulge us just briefly take us through your submission if you don't mind. Or you did, so there are no questions arising from.....tothere aint any. All right, just want you have been threaded equitably and we can always revert to specifics and you are quite liberty to bring you up.

Another person:

You could invite him to comment on the issue we've been discussing.

Chair:

.... gathered since you arrived, various parties have expressed themselves they are not all, so you can not do it immediately. Is this whole question of the rich and range of the bill of rights deter-everyone who is entail under principle 2 to enjoy the rights and the universal explicit rights what ever they might be we have not resolved that question yet include Juristic persons, structured and instructed groups organs of civil society as presented in proposal 3. So called vertical and horizontal issue is what we're looking at, at the moment.

So parties are invited to make preliminary submissions on that okay, Mr Green.

Mr. Green: Thank you Chairperson. The ACDP preliminary view on this issue, we understand the way everyone should apply vertically as well as horizontally, its because we believe it has to be applied horizontally that we are so corned that we have certain aspects regarded as human rights that will have that application that will be applied horizontally that we raise our objections. We can not see how the issue of discrimination and the racial discrimination as in example can be forded vertical level and continue as the horizontal level. So as far as that is concerned, in essence we believe that it should be applied vertically as well as horizontally as far as it is practically possible as well as technically possible.

Another person: I wave my rights because it was on the previous discussion.

Chair: Anyone else? All right well, at some points the secretary have to draw a report on the issues. Now you been taking care for most of the debate, you will submit the report to the core-group on this stage because as we go along, but it does seem summarised from the chair and not only hear every party on this issue.

A very significant area of consciences on this question of applicability because even the reservations against the horizontally are really reservations not based on the objection and principle that a cautionary note about potential consequence, so I think that we can safely assume that an parties here have a desire to see the reach of the bill of rights widest as far as it possible and as far as we can do so within the bounds of legal and other certainty. Now this is something which will inform when we address each and every specific of the Charter when we get to those specifics.

Another person:

I would like to agree with your summation. We thought you were asking Ms. C to comment as she has raised her hand before. We were not sure we were asking her to give our view point. We certainly agree with that. We feel very strongly that the bill or rights has got to have a horizontal application as well and we are not convinced that we can hope on a try down effects that if it has vertical application somehow it will have some vertical application as well, because it does not apply only to the question of equality, it applies in all sorts of areas as well, for instance a company allowed to public telephone of a union and vice versa at its a private citizen usually before I became a parliamentarian I used to go to the banks and other organisations only to be told that I not qualify for credit facilities. And I and not told why. And there could be justified reasons that I could put forward.

Why certain things are not in my favour. I think all those issues need to be addressed and if our bill of rights has got only the vertical application, we would not have that kind of use in practice.

Chair:

I do understand that the IFP to be strong supporter of horizontally. Any other party or individual views point on this issue before we move on and present some kind of summary.

Another person:

My Chairman I've heard your summary that in principle there is no problem amongst the parties in terms of the scope of the bill to be extended as far as possible. We agree with that normally the concept of the bill of rights used to protect the individuals against the so called state on the vertical level, but we understand the necessity to broaden the scope but we want to give a word of caution perhaps the implication I haven't followed the discussion well this morning unfortunately, but the problem that it could interfere with the implications of that, so it's not a problem in principle but the practical application one will have to be very careful in how far the scope will be extended. That's our position with the state.

Chair:

The secretary should note the reservations which they were although there is general agreement on the fundamental principle of extension. Before Shephard takes the chair, I just went to inaugurate the next aspect as it were. Now, we're back to Ms. Camera's hobby horse, to follow the script here, the University accepted fundamental rights freedom, civil liberties to an extent that they all get unpacked in a subsequent pages of this proposal 3 that we are going to follow in broad outline for a thing and to the extent that we also have to have due consideration to, among other charters chap. of the interim constitution. I don't quite know how in general terms, we can usefully discuss this, we can certainly do it in an item bite and bases and what we perceive among ourselves in various parties to be the university excepted norms and principles and rights themselves. Can I just ask you, is there any purpose now, notwithstanding the NP desire for this workshop which we can as far as I am concerned certainly have it at some point, is there any purpose having a general discussion on this now, over and above our discussion on principle 2 which we've had and the question of applicability which we've also dealt with. Are there any voices in favour of having a general discussion of this general point.

Another person:

The National Party though well in the anticipation of the workshop. We rectify the covenant and civil predict rights and the covenant that cover the social rights which we will be rectifying very soon. We are bind by that list of human rights, now I don't see the problem, this is the hydrological battle as to what is universal.

We rectified only the 2 covenants, we are bound to report, there will be an assessment of what our local consist of 2 covenants that's it. We are not asking you to look at the universal declaration human rights which is the standard laid down, which every text book written, every common jetta excepts provides the core elements, the core, I don't see the problem Mr. Chairperson, I don't know whether I can attend the workshop but nobody is going to be able to tell me there is a problems about our universal reference here because these are the 2 covalence that we will be bound by. So if that's the point of departure, these really no problem, is the special issue the NP may have, which they may titillate it at the workshop problem they have otherwise for the theme committee the 2 covenants are the bases and I am pleased to let Mr. Green know it doesn't refer to sexual orientation in the....

Another person: Mr. Chairman the successes of this theme committee is where at the end of the day shall have written something applicable to the people whose minded we have. The success of this also while writing, we shall be learning and teaching ourselves, amongst ourselves and we can go through this clause after clause, we don't need to rush when we think we want to do the right thing and I don't feel bestiary here when I talk about no need to rush.

But while we are handling this, we need also to know caning to the point of expects, everybody is an expect here in terms of what we think people need and we'll correct ourselves as seem to say the best way forward so to look at most of those things that makes us agree as we said earlier on and then rush on to those because we have common grounds and then we'll go back and stripe re-dress those where we think the is a slight difference. I've seen at the world trade centre how we wasted time. When you look back there was very little which actually was a point of difference and I hope we are not going to get into the same problems again.

Chair:

I hope you've had happy experiences in this constitutional assembly than one notorious day you had at the world trade centre as many, many people remember that. All right I think, Mr. Banda, you want no add. My feeling with the meeting now is that we don't need to have a sort of general discussion we should go on to slightly more specific areas, that is the feeling of the meeting. Now happy to hand over to Shepherd to share us through the specific but I think we should just.....yes.

Another person:

I am not certain what you actually by specifics. I just wanted to raise a further point about our understanding of the phrase, the clause everyone not only in terms of applicability hereupon in terms of you know. Again in the contest of chap. I think that is important for the group too.

We are saying we would like to have the entitled to the rights that we seek to entrench to be born persons in fact, to be human beings. In other words we would like to exclude in this category Juristic persons and I thought this is imported for me to place on record in case an assumption is made that in fact we go along with the description of person in chap. of the interim constitution.

Chair: Just to clarify, you suggesting that for e.g. 7.3 says Juristic person shall be entitled to rights content the chapter, where to an extent that the nature of the right permits, you would be in favour of that not appearing in the final constitution.

Another: In fact we would go along with the formulation in the deterioration of the universal declaration of the human rights, which describes persons as persons born as human beings. Its article for the declaration.

Chair: Won't you just motivate this because I think is an interesting debate.

Another:

No, its a position in the ANC, I thought other people would like to participate in fact, I think I said as much in plenary when I argued that we believe that essentially this rights should belong to people and that they shouldn't be extended to core operate bodies. And really we are informed by the realities of our situation. We believe that when we as ANC agreed to having an entrenched rights, a bill of rights we were interested in the well being of people of S.A as a whole. If you want me to elaborate that, I could go further, but let me give other people a chance to respond.

Another:

Chairperson I would like to agree that we were also motivated in the National Party by the well being of the people of South Africa as the whole. When we entered into this whole debate of human rights, but we would like to reserve our position, I mean this clearly. If we're going to start changing radically section 7, I think we are going to have to have a detail debate on this I don't think at this stage we can agree with Mrs. Mabandla if that's the ANC's position then we'll have to debate it quite extensively.

Chair:

Could just from a chair, abusing my position for a moment. We would agree that the Juristic persons should be entitled to the relief under the bill of rights as a preliminary, but the top signing that one is married to Mr. Green.

Green:

Chairperson , I think its just the view with the regards to the definition of person. I think Mrs. Mabandla has refer to all born person. Specifically when it comes to the right to life the ACDP position is that at should include the unborn as well as far as that is concerned. Thank you.

Chair:

No, as far as the right to life specifically. As far as the other point view we agree with her when it comes to other Juristic in terms of the mentioned clause 7 the definition should not extend further beyond to include Juristic person. We don't have problem with that we just a problem with the definition of person.

Prof.:

I don't think I agree with Ms. Camera say that it was a radical departure. We are in fact drafting final bill of rights. And I think we are to drill up the implications of Juristic persons where appropriate having the defence for the bill of rights comrade Briget has said, the owners is on those frankly who want Juristic persons protecting the bill of rights to show cause. And then we ought to react because the division is in an upholding record of giving rights to Juristic persons, like for an example town councils have a reputation in a law of defamation wealth while protecting it upholding but companies can sue for defamation not for valuation individual reputations but that scares us.

But if in fact in areas where departure this has had an upholding effect of the field of press for example the companies weren't able to sue, local authorities weren't able to sue newspaper or get injunctions to stop disclosure of information. Now the most important thing is as comrade Briget rightly said, the whole assumption of human rights, is that it is a natural born persons and we find difficulty in the present provision says where extend the nature of rights permits we find difficulty. Because the whole assumption of the bill of rights from equality, been born free & equal, rights in freedom sets out, right to life, liberty and security a person, these are human individual rights but corporate rights and what we are afraid of as happened in the United State is by legislative slight of hand, courts have protected companies in social legislation where in fact the rights that have in vouldedkwas meant for human beings. So I and by saying if Miss Camerer wants debate then I think the National Party must produce not from expects but from its own talent and ability, must produce the arguments why Juristic person's have to have an application of the bill of rights and I think that's our position and really will reserve our position until the National Party comes up with the arguments.

N.P:

Chairperson can I respond, yes I did point out in my responds to Mrs. Mabandla that we would like the opportunity to get into this in detail and which implies, that we will certainly put up some documentation and submissions in this regard and perhaps we can have a fruitful debate, but this is been suddenly roused after we've left the item. We'll prepare ourselves and we'll certainly look forward to this debate.

Chair:

Okay, perhaps we should live it there, but lets hear Mr. Skosana.

Mr. Skosana:

Mr. Chairman on the same point, I think when it comes to our submissions when we look at the categories especially on the economic rights. We find that we have to in extend, talk about Juristic person's rights and therefore we would at that stage also put on a thinking cap and see whether we may come up with a, because I think we see some contradictions when it comes to the horizontal applications of rights when it comes to groups, co-operates and so on. If we do are favour horizontal application of rights we see contradiction if they are excluded at some point. So we would like to put on a thinking cap if the group agrees.

Another person:

Chairman, we think the debate perhaps on what does everyone exactly mean might be premature in the sense that the emphases would rather be from our point of view from the 2nd part when we come to principle 2 which refers to an universal excepted fundamental rights etc. And that great approach could be first identify what all those precisely are before.

You see whether they are such rights that could apply to other things than natural born people. So, perhaps we should look at it the other way round rather than first saying who is everyone before we come to the various rights. We might find that when we go to the 2nd phrase, there are no specific votes that apply to the Juristic persons or maybe the other way round and then one should determine what everyone exactly means.

Chair: Is it not possible for us take this as one area that will need a follow up from this group. Okay , that will obviously move us to the other point. The last 2 point there, entrenched and justifiable provisions.

N.P: When we reverted to the first point. So can I beg your indulgence through that. The 2nd point, just to respond to what Professor Asmal said about all these various universal declamations. The N.P has no problem with him either. He keeps saying what's the problem. There is no problem from our side with these universal declarations. But I do believe that we should get expects opinion. I would like to support what Mr. Mulder said that, in fact he is supporting what I said earlier. That the first thing we need to know is what are these universal accepted rights, we're happy with the universal declarations, the international conventions that we're going to silence.

So that must be our starting point but there are other thing, documents that would inform our debate here but we still feel we need an experts opinion and a thawing of this whole question of what are universally accepted principles. We can not rely on Professor Asmal alone.

Chair: Okay I saw two hands, comrade Bridget and Mamokase.

Bridget: You know in the ANC we do research ourselves and we have been working on these issues for more than 6 yrs now if I recall and we also know all the argument against the inclusion of social rights, as arguments that these are policy are indeterminable and the essence is that we are trying to, we can give you the authority, we can share. In fact we'll give you fall data for you to go back and read before you consult experts so that you know which one to choose. We refer to authority, we read in order to fad that we can establish justifiable legal arguments for our positions and we do have, we can advance those we think all the arguments that have been advanced against the inclusion of social rights, they are not convincing they can be challenged effectively and Madam Camera I think it would also help not to notice that the human rights juris prudence, the constitutional juris prudence its not static, its developing and it may help you in fact to look at current authorities yourself and.....

Tape 2

Rm.M46 - 31-01-95

..... under it and which is dealt with to an extent to the interim bill of Rights that question we are not bound by that it's simply a guide. But let's deal with this whole argument of vertical and horizontal to start with problems issues and so on and at the secondary point we can deal with, when we've exhausted the first.

You're not bound this is all done by prejudice here you can come back next week and say we've had a further chance

Could I just make a preliminary announcement by arrangement, the co-committee yesterday, I have to vacate this chair 10.30 to attend another meeting which is unavoidable my colleague Sherperd Ndalade will take the chair, we desperately need some other chairpersons, the other parties could confirm, who is going to be their representatives, or going to be their chairs, who could also help. Now, I would also like to make a point that it would be very useful, I think for members here, if some disinterested, if such a person around, if some disinterested person could take the committee through the consequences of the applicability of the Bill of Rights, simply vertically applicable what the consequences of that is, it doesn't fall under it, under its capitalist, if its horizontal application what the consequences were.

The preliminary point of this discussion indicates that at Kempton Park the most compelling argument against having horizontal application of the Bill of Rights was simply that if you are going to have Bill of Rights horizontal application you've got to draw up every clause with that in mind. So we have a blank sheet as it works for us that must also be born in mind. If I could just read you because we must have regard to inter alia Chapter 3 means not exclusively, but just as a starting point, currently the interim Bill of Rights on the question states in 7,1 the clip shall bind all legislature and executive organs of State, all levels of Government, the clip shall apply to all laws and force and all administer decisions taken as performed, then 3 juristic persons shall entitled to the Rights contain in this Chapter, where and to the extend that the nature of the right permits and then is also worth bearing in mind, it says right at the end 35.3, in the interpretation of any law and the application and development of any common law and customary law a court shall have due regard tot he spirit per port and objects to the Chapter. Now, that's simply a starting point, that's what the interim Bill of Rights says on the subject. We have the submissions of the various political parties on this issue, as I recall, the you'll have to help me along, certainly the DP is in favour of horizontal and vertical application where applicable and with due regard to, then drafting every clause with that in mind. The ANC is also in favour of the horizontal application of the Bill of Rights and they obviously are here in considerable numbers to add whatever qualification to that as it might be the case. Inkatha Freedom Party is also in favour of the horizontal and vertical applications of the Bill of Rights. Now we will her form the National Party, I think their position might be little more complicated than that.

Freedom Front, we haven't had their submission yet and the ACDP did not indicate specifically on this question in Mr. Green's presentation. Can I just take some views from the floor?

I think yours is the first summary but again I think that we mustn't should re van de Iwe. There have been 3 commentaries on this provision, 3 books have been written already. It's very interesting that there is an actual argument that taking Section 76 and 35 and other provisions that there is horizontal application effectively. I think that to technical to juridical, but there is approach that is adopted and I think that we are to be quiet clear about language words and we wanted to be understand by lay people at present it doesn't, because we use big words of horizontal and vertical, I mean if we explain, it will be explained that to attend this organisation, horizontal and vertical, they say, but excuse me. Obviously there are certain things that actually prove that matters, this is a law of privacy. What people do in the privacy of a particular relationship, is that the function of the courts or the Bill of Rights to relate to, so clearly we don't want the Bill of Rights to apply to every area of human life, nobody said so, and the DP draw it out in your own Bill of Rights, co-private areas were the Bill of Rights and the constitution should have nothing. What we are talking about is social arrangements really at what extend in social arrangements the Bill of Rights control the capacity of the government or the individual to cause harm and it's likely means discrimination.

And I will give an example of a Christmas, I went to a bed and breakfast with my family and I didn't get access to the bed and breakfast on grounds of colour, now that's a very important matter then, that because it's a confirming of a privilege or is it a right and that is why we are to be clearer along the lines of that the Chairperson has said and that is that we look at this provision and remember in relation to other people who were talking about unstructured groups,Civil Society that's controlled by Section 7 be when people seek relief, we have possibly the most enlightened, the most for reaching right of access to the court, anyway, any Bill of Rights any of the ones that I read, they use this right of look at Sandie, so I ain't no by saying that all vies is we should be clear about this, the terms of the Bill of Rights should be binding upon the state and organs of government at all levels and where appropriate on all social institutions and personas, that means it is equal to constitutional court, where its appropriate for the Bill of Rights to apply and that's effectively the view of most of the human Rights provision written in the last 20 years. I end by saying you see, I have we have a clause like this but in the United States they had to wait 200 years to forbid discriminations on grounds of race in building of houses and the sale of houses. They had to wait 200 years to forbid discrimination on railways which are privately owned. They had to wait 200 years to forbid discrimination on hospitals where there was access to the public. We can't afford to wait 200 years on grounds of race, or gender or sexual orientation when we come to it. And I think its an unnecessary task for us now to say specifically without using these words like horizontal and vertical that its for the court to determine whether appropriate the application in the Bill of Rights.

Chairperson: Thank you Professor. I find myself in stronger agreement with everything you said. I would if I might from the chair, wearing my other hat as the member of the theme committee. Just make 2 points on notes, I actually agree with what Professor Asmal said certainly my party's Bill of Rights so drawn as the horizontal and vertical document to use those orphascatry terms. The one is that the consequence is not just in social relations, the consequence obviously becomes for an example to co-operate entity. What is the consequence for a public company for example to be behind by this Bill of Rights, not just a question of to discriminate it, disclosing the information and so forth and as you like, allied the public company for an example not a collective entry but trade union. And that is where there were quite a few commissioner notes sounded the last time there was a debate about this. So I think that's got to be considered as well. Can we get some ?? Mrs. Camerer.

Mrs Camerer: I think you know very well Chairperson that the National party's view at the previous negotiations on this was that the bill should apply vertically primarily, and this means that to primarily regulate the legal relationships between the State and subject and not directly intervene in regulating the relationships between the subjects themselves. And I think that our position was influenced by the fact that our whole body of law is actually designed on that basis that if one introduced.

I mean we will know what we're talking about when we say horizontal application but I am happy to use any words that can make it clearer to lay people, that if you interfere in private law that extend, it would disrupt the legal system, now we had a lot of very laded opinion given to us at that basis and particularly I recall how Professor Chiddel who at that stage was acting for the Communist Party and who I see is one of our technical advisors made a very strong stand against horizontal application on the basis that it would be too distinctive for our law and he supported at that stage, and one doesn't know where he stands now. The principle that was introduced through the interpretation clause. The principle of great from where the courts within bound to interpret laws in terms of the spirit of the Bill of Rights, now I think we would no problem taking that principle further but in a sense I mean one could elaborate that perhaps but I think our position is been that the anti-discrimination provision, the equality provisions in the bill plus the courts been bound to interpret the laws in the spirit of the Bill of Rights could be sufficient and the trickle down in fact would be in fact be of such a nature that the sort of things that happen to Professor Asmal that his mentioned wouldn't be able to occur because you would be looking at laws that would prevent that sort of thing and the courts, and of course it will be all interpret don that basis. Laws in fact should prevent that sort of thing from occurring. But one wouldn't need to go so far as to put it into Bill of Rights and stop. I think he is talking about private apartheid in a sense, as it was called before the tender government during the previous round of negotiations, so I think we would remain committed to our previous stand point and we have actually said that in our submission.

Chairperson: Presumed with the immediate problem even our negotiators could be caused by civil Rights have been introduced in parliament.

Another Person:

Can I just add, a lot of debate at the world trade centre, centred on the problems that could occur in traditional and tribal life if the bill was made horizontal immediately and it would be in that sense too disruptive for the various systems of laws that do operate in the country I am really just repeating that thought to expect advise that we had at that time but we were very much influenced by expert advice in that position.

Another: This is the problem here about the so called experts advise. The

Tape 3

Chairperson: I like to welcome you here all this morning its good to see you in refreshed after the weekend of hard work no doubt . This is the first time I'll be chairing Theme Committee floor and I do hope that you will bear with me and I remember I am familiar with most of members faces virtually but there are new forces on this occasion and say if you be with me please and perhaps it I ask it do so under stand and identify yourself. Thank you very much.

We move to the Agenda and could I have your apologies and do have recorded apology of Mr. Kadar and Asmal any others, Thank you.

The attendance register will be circulating that we calculated, please make sure that you signed it.

Chairperson: Mrs. Gasa... Mrs. Gasa. Thank you we move on to the minutes have been circulated to all members one or two small connections to the report which will allow this and which just slip through but, if we can deal firstly with the minutes may I take them as amendments can somebody propose please are a speech you all happy with the minutes. If you are then lets move on.

- (2) Matters arising: from the minute we have to deal with the role Waneburg institute and community liaison on programme and later so I don't prepare that we should deal with them and the matters arising that's also through with the University of the Western Cape and agenda conference report. Two small corrections amendments if we can deal with, are there any amendments to the actual minutes in the meeting with matters of co-group meetings that's for information as well and members only at this stage we only deal with the matters arising on the meeting of 7 February.

Nothing from the minutes and matters arising we can move on.

I just want to point out in regard to Block 1 which is the report itself, which has been submitted to the Constitutional Court, there are two little small areas set through in an integrate fiscal basis but there were being connected, I refer specifically to item one of the report the Heading which should read on organs of Civil Society not all and then on Page 3 of the report Item 4. The word "after" should appear before the word due consideration in the heading after having given due consideration and then also apply on Page 4 on the same report 7.1.1.2 after having given due consideration.

Speaker: Could I just read the point I don't it could be agreed on lots of discussion yesterday in the Constitutional Committee about the question of hozontality and verticality one of the points were discussed in Block 2 and in fact since the discussion it seems there was a lot of confusion which has been mentioned under point 1. Specifically as I understood we were could include that in our submissions.

Speaker: Can I suggest that can we get a full Report on what happened on the Constitutional Court Committee for all the members not only pickup this issue to counter contactation lise the report and for everyone it's understood of what we are talking about.

Chairperson: All right we would take it now or you want to take now, I believe Mr. Mdlalane was in fact through and reported through the Committee to the Constitutional Council, if he can just lead us there on what happened in the CC yesterday briefly.

Mr. Mdlabane:

Comrade Chairperson, fortunately I left my other big documents. I've so many documents, I presented the report because I was asked message to go to the CC and present the report of the Theme Committee and they were looking for the Chairpersons they couldn't find any others ultimately I was found, I presented the report as it was presented by the Theme Committee, but obviously one of the problems I was that mostly as I probably it would have clipped but we did indicate that the submissions coming from the Civil Society were not doing with Constitutional principles 2.

And as a result could would not deal with those but they were synopsis of about the various we did receive those as Theme Committee members.

But after we're satisfied ourselves but I don't mean Constitutionally principle (2) that why are didn't include those submissions but as we are dealing with the specific issues will be dealing with in the submission of various members of the public the other thing that we highlighted Senators Radu the little mistakes not mistakes amendments that we made here after giving due consideration and so on and of course the other problem was the deadline was Thursday in fact in the evening and the deadline was Thursday and things were moving very fast and could treat us like that next time I give us enough time to prepare our report so that we don't get bashings unnecessary bashings as we get them, that our report were garbage and so on but that was dealt with the Constitutional Committee and some of us we hurt taking so much time preparing this report, but I defended the Theme Committee members that we are not garbage collectors and garbage thinkers here. Perhaps other Theme Committees are like that but not us, we are superb here we work very hard preparing our reports but also the point raised by Sheila Camera yesterday but yes there was an argument about this horizontally and vertically but quite clearly I think those who are members of this Committee will remember that in block 2 that we are going to start with nature and the application of Bill of Rights and obviously there is no way we can avoid horizontally and vertically of those Rights when we are dealing with the application of the Bill of Rights, so perhaps parties need to remind I that, the application of the Bill of Rights includes whether this Rights are going to be vertical or horizontal so that you don't forget that in your submissions because if you do, so you don't be having arguments debating after the 17th the nature of the application of the Bill of Rights.

The other decision perhaps we need to include in future the submissions from the public and also we were allowed to continue with the outstanding issues and to submit those report to the C.C., the report was not discussed extensively except broad outline because we have not yet completed Block 1 because of the outstanding issues, we did highlight that our party submissions have not been attachment but calling to the decision of this meeting, those submissions are included in the report and therefore and in the sense are part of the report they must be no way attached in purpose of decorating our reports, I did highlight that in the Constitutional Committee because it was our decision. I don't think there is anything I forgetting in members who are part of the Constitutional Committee should remind me. Thank you very much.

Chairperson: Mrs Camera, thank you Chairperson.

Mrs. Camerer :

Just to take up the point made Mr. Shepherd that under application there two basic item that we discuss that one is jurist person and about the what is the meaning of everyone and then when one is vertical and horizontal application that is the whole point the report in 7.1.1 the question of the application in terms was to apply to jurisdiction persons or natural persons of each and every one stood is highlighted but the whole question of horizontal and vertical application isn't mentioned specifically and that was question at that point to make it clear and that was one of the points it raised.

Chairperson: As I understand it, the decision is that in general, the nature and application of the Bill of Rights parties would normally take up positions regarding to verticality and horizontally and it would be discussed after submissions have been held on 17 of this month.

Mrs. Camerer:

What would be the applications deals specifically with applications for juristic persons and nature persons concerned on the one hand and on the other hand not an example application and that's why the one mentioned it is not specifically the other give rise to this long discussion in a sense.

Chairperson: I understand that the Constitutional Committee meeting would like us to report of the 2 outstanding items on Block 1 and basically which occurred and I think the dealt would be once we deal with the debate, after we have finished with filling and documentation on both of these aspects.

Speaker: Comrade Chairperson can I just highlight one thing which is related to what Sheila is saying we were given the guidelines but unfortunately what I picked up yesterday it is what Constitutional Committee not 100% with clear about the guidelines that they given us for instance that issue verticality and horizontality of in the Bill of Rights that issue it a contentious issue the fact of the matter is that we cannot reach an agreement here and that is why it has been tabulated on this contentious therefore I don't believe there is anything further we can do because we are not negotiating in this particular forum.

There are forums that are negotiating and make process and pass it through and it is in the report and a contextual issue that there are disagreements about it and we cannot resolve it here, there are structures that can resolve the particular issue.

Chairperson: Thank you Mrs Camera, are you satisfied now. Page 2 in fact of the report clearly indicates the position of parties in regard on verticality and horizontality basically and that the debate is to come.

Vivi: Trudie to be helpful to the Committee yesterday at the C.C. meeting or when I think when the parties were represented were first to know that this were the courts which were presented to the C.C. to the various Theme Committees, and various Theme Committees it will seem have problems in which compiling their reports for instance we on our party are to promote the guidelines on the C.C.

And I think we all know that those guidelines have not been tested and for me I think yesterday meeting and the first report one actually testing the guidelines which we are agreed upon in the C.A. in all of us, and that was the spirit in all of us yesterday that all of us must look into those guidelines learn from the first report which we have done and come up with suggestions on how the next day of report should be done meaning that we can be able to guide to come up with guidelines to the satisfaction of everyone which will capture the discussion in our various Theme Committees and one of the things was pointed out was that our report did try to follow the guidelines but it fell short of certain issues like we should have mentioned something like vote the submissions even if they were not related but at least we should write it down to say that we did receive submissions in the very clear that we didn't overlook the submissions but Shepherd did say that verbally in the meeting but it wanted to be written down and the (2) it was very clear that amongst the things contentious were only said that the things were contentious but we didn't say these are the options this is the way we suggest the C.C. or the C.A. takes the process forward whether it's us who are to deal with the issues further or whether it is going to be shifted to the C.C. and now clarified again verbally.

I think the other problem is that at the back of our report on the last part we did suggest some way forward but I don't think members of the C.C. paid attention to that way forward it was also very brief and would really like to elaborate apart from the contentious issues like the horizontality and verticality in the Theme Committee and the matter is not yet closed; it's still fixturing in Block 2, to those are the things cost a bit of problem.

But I will say that in continue at our report must contentious within that and actually come with suggestions in the Theme Committee and how to think the report of the various Theme Committees should look like especially ours, I think ours is actually one of the most important Theme Committee and we definitely have to be able to do things right and in order to be able to do things as forward as fast as possible.

Chairperson: Thank you very much; Anything to add on that.

I'm just debating to miss myself how relevant my input is to this particular discussion. I think it is and we must find a way in which we can use technical expertise that is at our disposal and may be time for us now to in fact request the technical experts to look at principle 2 and give us some kind of legal opinion on the essential elements of that principle and present them as options and it is important to have that kind of input this of course should not prevent us making submissions as parties for Block 2 which talks about the nature in kind of help deeming more along as expertise are disposal and I think there is a key issue of the jurisdiction persons horizontality and meaning of universal Rights and they couldn't in fact react from profession angle with influencing us.

And perhaps that particular input needs to be given time and need really to go through a lot of paper work and so we do make a request and make a response within 10 days but shouldn't preempt or the discussion that we have on further submissions on principle of Block 2 it is those kind of options taken from Mavivi point that Mavivi caused at the C.C.

We could then present well argued arguments on typical experts on political views and positions to the C.C. I don't think what people say about this way forward and I must stress I'm saying in report on technical expertise should have come before preparation or submission were discussed before as political parties.

Chairperson: Thank you, Bridget. The Technical Committee has in fact discussed this when taken among in the co-group and we discussed this matter in conjunction with the technical experts in a meaning withheld already and perhaps we gave to Item 5 of the technical Committee could comment on source made by Bridget, Mr. Sizane you want to say something.

Mr. Sizani: It's not rectified by Comrade Mavivi said from the ANC with the report basically I think the followed on the guidelines and the problem now I want to suggest is that it was only the way we structured and probably the way we presented the issue and this is the most in which I've reported useful it now drawn in the component of the technical expert and I think there are a few amendments we should make to actually clarify those issues.

I think we need in these report the final report in this one to actually state about members of the public about their submissions what happened it should be reflected and secondly if we should come out we need at a sudden approach that needs so on that verticality and in Block 2 and covered nature in so on and that are the suggested ways and also we can say state lastly that all the matters will be dealt in the in a supplementary report so that we have converted everything that we have said and those three aspects are covered here the contentious and non-contentious suggested approaches it we stick to that formal and covered as long a we just sharply focus on those issues on the last aspect of principle 2 which has been raised by Comrade Bridget.

My own opinion is that we were dealt quietly professional with principle 2 and those sticky legal aspects of principle 2. We have raised them sharply on the universal Fundamental Rights the aspect of after due consideration the question of everyone and others these in that principle and the feedback is going to come form the technical committee out of this in terms of the mandate of where we are started quite well and so I accept in principle the question of the legal implications of principle 2 but I think all the aspects are covered and the supplementary wish that had been required and actually satisfied that legal requirement of principle 2 and the way we are moving if we go now with Block 2 with the notion application and we either get the conceptual framework to deal with rites and we can deal with specific Rights.

Chairperson: Thank you very much Mr. Sizani. I like the idea. There is also stately idea to prepare a very short supplementary report so to tribute it with the report to the C.C. the matters Mr. Sizani raised.

Response: Miss Vos: I wouldn't like to give instructions to the technical committee and I want to propose the isolation in terms of principles 2 in fact we need all the constitutional principles as has affected in this theme committee holistically because of 1,2,3,4,5,6,7,8,11,12,28 and 34 in particular if we looked our programmes it is interrelated if we I think if we were to ask just to extrapolate one legal without looking at it holistically cause many problems for later on we need to look on and extrapolate the technical committee not just in it to give information between isolation because they are inter related.

Chairperson: Thank you - then we should proceed with discussion to put it now the suggestion from Mr. Sizani should prepare a supplementary report in which we would highlight the aspects raised by the C.C. in particular we must have a look on the aspect that Mr. Sizani in fact raised and I don't know if members have agreed on the basis of the preparing a supplementary report in fact it can be referred back tot he co-group to prepare that additional report. My main aspect which is missing is the question submission on the public , the C.C. in fact what's to know we did receive submissions on the public in regarding principle 2 we did not hear of any submissions take in the report regarding clarity on that aspect.

Chairperson: Mrs Molly Response: Thank you, I think we are not in this supplementary report what we doing is finalizing this report by making additions in emanating from the C.C. meeting discussion this morning. I think we should in a frame it in that way rather than supplementary reports finalizing this report with the suggestion and amendments propose in that discussion. We have just had.

Chairperson: Is that the general feeling first the existing report before us.

Mr. Sizani: Thanks, Chairperson. Of that one say on this report is prime and the supplementary report will come in the work we given to political parties and also the technical committee to deal with the outstanding issues and then is where we could have our supplementary report to our first report. But as to just concluding this is to finalise those points we were needing and lead us to. These are the two.

Chairperson: In that will be done.

Speaker: Bridget. On the question of submission and I think that we would find scrutinising submissions are made by public we have missed submissions that are related and relevant to Block 1 and perhaps we should see it again we can ask the technical expert to assist us in this regard. I don't know the feeling of the house is, the point is the parties do have the submissions through our caucus.

That submissions are needed by the public and I think parties can agree and do need at the level of the Theme Committee itself because we are expected to collective reports on such submissions and need mechanism probably the co-group could do the sweeping first through the submissions obviously they will be bringing observations made readings made by caucuses and also need to have expertise that can in fact look deeper submissions at a later proposal.

Chairperson: The position as far as I am concerned the administration or volume 1 & 2 of public submission been tabled already and perhaps had been handed to the expertise when we get to Item 5 they can perhaps tell us just how far that can get on our analysis proposed in those documents what their plans are in those respects.

Mrs. Skosana:

Thank you Chairperson. There are two issues I want to raise first (1) when report Mr. Mdlalane made report came in contention by the garbage and I then saw people we not and this I wondering if this came from us came to us (2) I agreed because I was part of the people were drafting the report I also take exception of that even if it came from us and now alternative format proposed proposal.

Chairperson: We are in Stage of feelings and I think all Theme Committee are confused most from the instructions how the C.A. some definition in which you pointed out from Mrs. Mvivi Manzini that in general I can say as far as the I.F.P. is concerned the contentious years present was part and parcel of the completion of the first report you were satisfied with and unanimously adopted by the Theme Committee so I think at this stage we can move on; are any other matters arising in respect of the report?

Response: Comrade Chairperson, just to cover up the issue by Comrade Bridget, you remember that in the co-group on Friday, we did indicate that the Technical Committee would ask the isolate Constitutional choice issues and issues arising from the submissions we did also say when we were discussing with them you remember giving ask to give a report of the co-group it was also agreed that the Technical Committee will assist with the categorization of the submissions on the item. I think it was raised but I want an impression.

Chairperson: I proposed to be the next item - and it was raised. I don't want to be given that in the issues.

Response: Thank you Senator Reddy: This is the suggestion if you should raise perhaps controlled the discussion in the terms of the agenda because the thing developing in the discussion are matters could be raised adequately if we stick to the agenda.

Chairperson: So I have to close the agenda on matters arising and the report being submitted and move to the co-group report as you are aware the co-group has met twice and our last meeting we discuss the amendment on Block 2 and the nature application with Bill of Rights and experts of all sub compiled a set of basic questions relating to this issue which they handled to the parties of this co-group for attention.

I wish to point out that party submissions on the two outstanding items that is the question of juristic persons and the question what is meant by universally accepted fundamental rights due by Friday the 17 February and in addition to that the co-group also wishes is to remind people members that party to the submissions to the location of the Bill of Rights are also due on Friday basically that was transpired was on that briefly was the question of the Wallenburg institute similar to also the 4th and 5th March separate items on the agenda to deal separately and some applies tot he public participation programme will deals with separate things. I think that basically what happened on the co-group meeting.

Any comments?

Response of Com:

Thank you Chairperson, I think of the course that similar:

Chairperson: I just wanted to say that some first receive this documents this morning and I see there are certain decisions here form the co-group minutes and suggestion which will need us to look at and come up I think our views in our caucus we haven't discuss those issues so I'm going to find it very difficult to make a contribution in this for instance reading here 2.2.3. on page 7 in my view seen within the C.C. the various political parties are still discussing the issue drafting of the final report the Constitutional Drafting and I see here there is a suggestion already made.

And I think we need to further discuss this issue to give our opinion on such issues I will be guided by you on what do we do because we cannot pass this report today.

Chairperson: I quite agree this we in the minute of the co-group meeting there is not been confirmed by co-group and asking items which are obviously up for discussion the co-group first they brought the committee specifically particular item 2.2.3. I believe that the group read on the Constitution process must be driven by the Theme Committee not the Constitutional Drafting process because this Committee does not do anything with drafting so to lay affairs on that matter would be amendment accordingly is the Theme Committee that must write the Constitutional process but certainly not drafting of the new Constitution. We merely with our own in House Committee and Technical Expertise Draft report to the C.C.

Chairperson: There are other matters as well, I do urge must appreciate the co-coup will have to confirm this minutes to be approved and the decisions are yet finalised. They will be brought to this Theme Committee once the minutes have been approved next meeting of the co-group. Anything further rising form the report of the co-group.

Response: My question is Page 7 regarding Technical experts know listen to read about final understanding that we have reached with the Technical Experts in pattern with the valuability, especially if we can look also to get some comments on the Fourth technical Experts sometime last week the indication was that I cannot certain about the valuability of the Fourth expert so that the issue of technical expert is being facilitated our work in the Theme Committee

Chairperson: Thank you very much, I think into a logic sentence a report will be given by the Technical Committee and in particular the convener, Ms. Liebenberg, to this meeting a little but later, the co-gournd discuss this matter and in particular welcoming Professor Ighad back to the 2nd meeting if the co-group so he is present and he is available and they will give you an idea of the availability of the experts when they make that report.

Chairperson: I think further that I propose to move to the next item on the agenda and is the which is item 5 a short verbal report by the Technical Committee in the form of the convener.

Miss Liebenberg:

Thank you Chairperson. That arising out of the discussion I've structured my reporting to three areas now clarify the point which has been in the discussion and basically coming from the last point (1) on the question of availability as one issue ideal with the (2) understanding of our present research mandate as it has have to us by the Theme Committee. (3) Systems in the process of the work of the Theme Committee so with your permission Chairperson, I could first deal with those three and it would be helpful to those committees and other question availability all four of the experts have undertaking valuable in the Theme Committee meeting is on Monday's Professor Bach on Monday morning but he will attend on Monday mornings.

And as far as the co-group meeting are concerned are various dates are concerned and it would not be possible for all forms to attend all 4 co-group meetings but what we'll do as to try and make sure that at least one of us because I'm the only technical expert leaving in Cape Town trying to attend co-group meetings on the basis in which reached to working arrangements minus the role and co-operate and it wont be necessary for all of us to attend meetings .

If there are issues which will raise again on the anticipation there would be a agreement that will seek mandate from our fellow Technical Committee meeting members and that is what the availability is concerned this is how the research is concerned as we understand and the present I should deal with basically through out standing issues on Block 1 and that's the question of it says as availability to jurisdiction persons and the 2 meaning the phase in due consideration to inter alia on Chapter 3 and those 2 parts will due be submitted on Friday the 17 of this month this week and in third aspect the research mandate the meaning which can be attributed to the universal accepted Universal Fundamental Rights civil invincible and Constitutional principle 2 that report was agreed can we make that aspect in submitted on Wednesday 22 after the parties submissions have seen forth coming on Friday so that why are we search now the date, on the question of how are facilitating the work in the proposes of the Theme Committee and our first task was to draft and set up questions which could be used the basis on public submissions on Block 2 and this we didn't handle it to the co-group are also found the of this principles will be relevant to assist the Theme Committee discuss the work in respect right like they consider.

I obviously like this question would have to be taken on the question of applicability of the Constitutional principle and this relate to the point that was raised by Mrs. Vos and consent to concerning the interrelatedness related principles and is a principle applicable to the matter which should our replacement role and our role should be clear and that regard. There is regard to actually public submissions.

As I understood in regard to the public submission the administration was going to do some of the public submissions and it wasn't clear where our role would fit in process in the submissions one of the suggestion could be that in considering our report in universal acceptable Rights in the point of the block 1 that could perhaps senetinisie submissions that have been received to date and looking on the basis of either submissions relating to the interpretation of existing Rights in Block 3 other submissions relating to Rights not included in Block 3 which can reasonably regarded as universal acceptance Rights and Human Rights in this could be taken to the accounting structure in the future work programmed. I see these are examples in Block 5 and Block 8 many of the issues is mainly related to horizontality and verticality and also otherwise, arise later in the programme so perhaps we could deal with no comprehensively because of time constraint but just said that the theme Committee ran at least some consideration on public submissions its work on Block 1 and 7 that would be proposal role in the process.

Chairperson: Thank you very much indeed.

Bridget: Mrs Mabandla: I think that we need I want to recommend to have a report from the Technical Experts in writing it would help us a great deal when we go to back our parties to consult, I don't know what the house feels about that proposal and the sooner the better.

Chairperson: Thank you Bridget, Mrs. Leibenberg.

Mr. Liebenberg:

We understood out of mandate is to clear the report in writing if there are any diversions amongst those to be reflected in writing in our reports.

Chairperson: Any matters arising from this report request the co-group being verbal, I think we very much more clear picture were the panel of the experts will lead us in our work.

Respondent: Can I raise one more point the question of horizontal and capability I don't understand as our present mandate but is clearly raised with Constitutional Principle 2 I think this is an issue which could apply through Block 2 and perhaps appropriate to do one with that once given out fresh mandates in Block 2 in the approach in this suggestion.

Chairperson: Thank you, I think that's the sensible suggestion that then also looking at the party position on that whole aspect.

Respondent: I wanted to follow this input by finding out where the question that the Technical Committee put together were reside are members given assess to those questions.

Chairperson: They are actually handed to each member of the co-groups. I think Mr. Mdladlana was there this probably have a copy and it could make it available to your contingent so he have it apparently Mrs Buden so that we must market some that are given to the P.A.C. and I.F.P., I ask the administration to make sure of that. So that is the disposes off the Technical Committee to report at this stage.

I would like to move on to the role of the Wallenburg Institute Workshop members will notice is in fact the agenda papers a rough draft of a seminar which is proposed for the 53 and 5 February and which I understand in fact not to take place because in earlier one would be in November and it is not over to members to comment on the draft as such and to ask whether and for me whether to ask in fact a draft of this nature with the speakers concerned would be acceptable whether would you like any amendments or additions actually due to the proposed Draft Agenda or who do you like our parties to need speakers I'm opening up for general discussion of this stage.

Tape 3**RM M46 31-01-95**

Constitutional jurisprudence is not static. It's developing and it may help you in fact to look at current authorities yourself and by the time we call experts, the problem is if when we start calling experts now, we might not even agree on the experts until you do your research. So we believe that Rights can be enforceable and that is why we believe by universally accepted Rights that the drafters of the principle were mindful of these contemporary developments and in fact wanted us to apply our minds and on a serious note, I do agree that we need to, whether its ourselves requesting our technical advisers, we do need to look at the whole debate around justifiability and social Rights. We can not avoid it, but it's just to say we did do our work, that's the point I was making.

Chairperson: Ladies, Gentlemen, Comrades. I think right at the beginning we were informed about UN declarations and so on and that also, the human for experts would be coming, we also agreed last time that we should have one person per party here to be part of the drafting of the particular report. So I don't think this issue will not be dealt with again so I really wouldn't like to see you be-labouring the point at this point in time. I think we have felt, but we cannot literally think that will come to an agreement at this particular meeting. So even if I allow people to engage, but you are definitely not going to come to an agreement at this particular point in time.

Another Person:

Mr. Chairperson, there is a point that I want to raise, in fact I was going to give the example of everyone that our debate around everyone has equally all sensitized us to actually have a closer look at everyone and then we decided to say OK. Let us go back and have a think. So what I was just going to recommend a way forward but I'm a bit worried about the expert story. But I think we'll discuss it outside this because we really do have experts but some of them have not been discovered and if we come to that I still think it will hold if we agree first because when the experts come before an agreement by us we'll be more confused before we met the experts. So I also feel that we can not brush away experts for the sake of UBUNTU and to feel with other people that they don't like experts advice and I do conceive that we need experts advice of many issues but lets first agree, take each other through the steps, shake idea, this is the position of the IFP that at the end we'll find it ourselves in the long run. So I agree with you Mr. Chairperson.

Another person:

Comrades, do you want to follow this up, or are we satisfied.....?

Prof:

I was going to say just to assist this theme committee when we talk of universal accepts Rights. This is as our previous Chairperson reminded us, this is an interim.

There are Rights not identified in this, and I think parties now as a function write down what are the rights not identified here which we need to put on the agenda because I am afraid here when there is a moment of work we might come to the end and might not be anytime to look at issues that are not identified in the interim bill of Rights and so parties should now start preparing and possibly by next week provide a list of the Rights. Thank you.

Chairperson: OK, I really wouldn't like us to be- labour this particular point.

Other person: points that have been made, I think I just like to appeal.

Another person:

Which points?

Dunswa : On this universally accepted principles. I mean I've heard 2 speakers now from the ANC and I just like to respond on what was said. I just like to appeal to the ANC, to be tolerant.

Chairperson: Let me just clear one thing. The problem is that we may discuss in circles this is what I'm trying to avoid, I hear you saying there are 2 speakers form the ANC but that is definitely not what I was intending when I was trying to summarize the meeting to silence. Other political parties, that is not definitely the point. So you are pushing too far when you push it like that but I will allow you to speak.

Another person:

I just wanted to make the point that we would appeal to the ANC to be tolerant and perceive ignorance of parties on the other side of the floor, but I just like to register once again that we as the party do feel the need of experts input on this question and my I suggest that seeing we have now 4 experts appointed to assist this committee that a good starting point might be a briefing section by these experts of what they understand and they may have varying points of view, but I think that really underpins the point that's being made several times today. Lets get an overview of what our experts think are universally accepted human Rights and then go on to discuss whether we need a workshop to get an even wider input.

Chairperson: OK, but also Comrades, I think what it's been proposed is that as Comrade Grasser has indicated or Mrs. Gander that the debate around everyone has made all of us to rethink, in other words, everybody now will be beginning to write something about what is meant by everyone. That also does not stop us from writing down what are these accepted Fundamental, universally accepted Fundamental Rights. And obviously it does not stop any particular political party from getting experts advice on how they make they inputs, I don't think that is what has been said here. That political parties must not go and seek expert advice and then as Mrs. Garsen has indicated we feel ourselves before we actually engage those experts for the theme committee because it was agreed that the experts are not going to be the people who will be drafting our reports.

It will be the political parties themselves and therefore it is going to be what is coming from the political parties and then we get those experts to help us submitting that to the Constitutional Committee. So, I really do not think that we need to be- labour the point at this pointing time, because I would like us to proceed to our understanding of the trench and justifiable provisions and the last point due consideration alien what ever we understand about inter alia Rights contained in Chapter 3. So that we bring the meeting to a close at some stage. Right, we move to the next point, entrenched and justifiable provisions Comrade Naledi.

Naledi: Thank you Comrade Chairperson. Before you move to the next point I think it's very important for us to get our terminology correct. I am just getting a bit worried that we are beginning to endow the technical committee with characteristics that are actually not part of the agreement in the Constitutional Committee. We must recall that we're talking of the technical committee and the panel of experts is quite a different body. I just want us to remember that. Thank you.

Prof. : Well, Comrade, this is put in although it is not necessary what Bill of Rights entrench, in other words they can't be changed by order legislation and so that's the nature of written constitution, that we have to amend it by following special procedure. Entrench also means that its beyond the reach of a parliamentary majority even 65% parliamentary majority it can't change these provisions so there is a dispute about it.

There's a word on our part as Comrade Bridget has said that Rights can be enforced in different ways. One of them is by going to a court of law that's what justifiable means and when we look at the other provisions, particularly the work of the human Rights commission we will see that justifiable doesn't necessary mean the enforcement, and so on our part we will try to develop paragraph 2 by saying that the human Rights are justifiable, that one way, and forced and I think we are to be aware of the fact that laws can be enforced by administrative measures, by the force of public opinion, by values that the laws established which the structures of government have been account. So on our part we accept entirely this and would like to develop it further or may look at the indivisibility of human Rights but you don't only look to the courts to enforce Rights there are other ways of enforcing Rights and so we will add enforceability to this approach. Thank you very much.

NP: Thank you Chairperson. We would like to go all the way with Professor Asmal on this one. I don't think there is anything but general agreement in regard to the meaning that we have in front of us here and it's only a question of expanding it. We personally, NP believe that the protection and enforcement of Fundamental Rights and the bill itself which will be in encapsulated in the constitution can only really be ensured by very strong and a very independent judiciary as your basis be still for preservation and to that extent we already have the Constitutional Court in place. So I don't think there is much in dispute here.

Chairperson: There is any other view. Yes Comrade.

Another person:

Sure, we also do not see any dispute here, we are in agreement with what the Professor and the previous speaker has said we believe that all Rights should be entrenched and should be justifiable through the Court. And we also in agreement with the issue that other instruments, other than the courts should be involved in the enforcement of Rights and also in terms of entrenchment we also believe that there should make provisions such that in terms of the changing of the Rights and amendments of the Rights there should be involvement of the people outside the legislative processes.

Another person:

Mr. Chairperson on the statement in claims stands as about it reads is basically self explanatory and I think we all agree. Maybe the explanation we can talk about. As far as the entrenchment is concerned we think that one must also make their provision for the reality that constitutional law, Fundamental Rights are also in a changing process that its not only question of entrenchment but it might be, it needs to be possible in future also to add and to make provision for new things that might arise which we can not foresee now and that will have to be taken into consideration in terms of entrenchment.

Chairperson: OK, there seems to be a general agreement about that particular one, is there any other view because then I will ask that we move off to the last point. OK, then we move off to the last point.

Due consideration to inter alia the Fundamental Rights contained in Chapter 3.
Comrade Kabe.

Prof. : Comrade Chairperson, without opening up the debate we started last year. We take Chapter 3 as the basis but of course we have to revisit the found relation of the provisions in Chapter 3. There are large issues involved in the formulation and we are bound to take it in to account but its only 1 factor as article 2 based on. One factor when we start drafting the different provisions or when we have an agreement on the different provisions. The provisions of paragraph 2. The other point I've mentioned already, the word inter alia simply invites us among other things this is, so that includes therefore there are Rights that are not mentioned here, which I mentioned earlier, which the parties now must turn their attention to and identify. It does not mean we are bound either by what is in Chapter 3. or we are bound to ignore other Rights that are not in Chapter 3. So I think its an invitation to us to revisit Chapter 3. That's the only thing it means and we in our part will sit and look on these 2 grounds what Chapter 3 does. Thank you.

Chairperson: Any other view, Corne' and Mr. Skosana.

Mr. Chairperson, once again, I think the formulation is self explanatory but we will have to look inter alia to Chapter 3 in the interim constitution but not only in a sense of reformulating but also perhaps in terms of omissions which is not contained in Chapter 3 but which will be relevant if you go back to the whole concept of Fundamental Rights you could go back to movements been mentioned, the omission also which will have to be addressed.

Mr. Skosana: I think in our submission last week we also made it very clear that we will take Chapter 3 as a basis but we will not be limited by the sentiments, the expressed and in fact our submissions may go beyond what is in Chapter 3 but we would not lessen the Rights in Chapter 3.

Chairperson: Any other views?

Another person:

Yes, I think that we are very much and aid idiom there Chairperson we also feel that we shouldn't reduce the Rights that are set out in Chapter 3. We support all the Rights that are there. Entrenched but we have indicated that we would like to explore the various additions as other parties have done.

ACDP: Chairperson we also agree to use Chapter 3 as a basis but I think with regards to the last comment with regard to reduction of Rights.

I just wish to add that there are certain Rights given that we believe we should not have been given and I mentioned earlier with regard to certain clauses and of course during our debate we will concentrate on that.

OK, it seems there is a broad consensus of this particular issue that we are not going to be bound by that but we will make additions, as Comrade Grem has said remove certain aspects I don't there is serious disagreement, so we seem to be reaching the consensus. But perhaps before we bring the meeting to a close today the parties are reminded that the last theme committee there was an agreement that we need to nominate people who will be responsible for drafting of our report. We agreed in the previous meetings, that we need to nominate those people. I think we need those names now because we would be moving once we get our ball rolling, we will need to organize meetings so that those people can meet so that use draft that report. Can we be given those names.

Another person:

Shall we give them to the secretary?

Chairperson: OK, all right, if for instance the parties are not ready now can we ask them to take it seriously. It was your decision and last week the same agreement was reached that we will forward the names to the secretariat I think we did agree, but we can not continue allowing that process to go like that if you don't submit the names.

Yes. Sortie.

Some of the smaller parties we have only one member on the committee. So I guess it will only be that member. So in that sense from the FF it will be myself.

Chairperson: OK, all right. Mr. Green is that the same.

Mr. Green: Same application to us Mr. Chairperson.

Another person:

We would like to nominate Mr. Skosana. We will send the name.

Chairperson: All right, I think we must ask those political parties that couldn't do it, now please take it seriously, make sure you submit the names to the secretariat so that when the time comes to organize meetings we are able to. That time is coming Mr. Skosana.

Can I ask the members of the theme committee just for your attention, just a couple minutes or so tomorrow I like to have a meeting from 2 o'clock now I want to know whether we want to have that meeting or we meet on Thursday. We are due to meet on Thursday and tomorrow, but I want to check whether you want both meeting or you would like to meet on Thursday, I just wan to check.

Another person:

We should also build into the programme the writing of the reports and already a lot of things have come up here, I don't know provided already we have submission for the next thing we are to discuss but if we don't have I would say that let us have the people doing the reports starting to draft by tomorrow and give them that time to

Chairperson: OK, Comrade Karder.

Karder: I know there is no point having readings for second meetings but we have to show progress and we might be the first theme committee. Is it possible to have a short meeting tomorrow? For half an hour or so, just to receive the report of what has been done. Even if it's a 2 page report to the constituent committee. A short one and then we will have our fall deliberation on Thursday. Can I support that. We have now to get, although we are not in a negotiating forum, we have to get into a negotiation mode Comrade really. And unless these things done by expedition, we're going to miss the boat, our own intellectual boat the one that we are committed to. And it's not an inordinate thing to say that, because we are ending 2 hours before meeting suppose to end, it's not an unusual demand that the report should be written some time between now on 1 o'clock and there is a short meeting of half an hour just to receive the report and then we again tomorrow.

Chairperson: OK, lets check that proposal. There is a proposal putting pressure on the political parties to give us the names. Let me see, are there any other views. There is a proposal here definite one because we are breaking fairly early that we could ask those people to meet and then we begin to make that draft and submit it tomorrow let me check, the co-group in particular, I want to check them.

Another person:

Thank you Chairperson. With respect Chairperson, I am not quite sure that we've arrived at the point where the sub-committee would be able to write up the report as I look out at the proposal we've been dealing with I see we haven't actually given attention to point 2 and 3 in our discussion I wasn't sure that we had in fact covered them. So I am not convinced that we've arrived at a point where we can have a report drawn up. I certainly believe work can begin on the report. But it seems to me tomorrow's meeting should complete our discussion of this block that we come prepared to do so, and that we then would have the draft report presented to us for Thursday's meeting.

Chairperson: Ladies and Gentlemen if we agree that we need to draft a report, because it seems as if nobody is against that need to make a draft. The problem is perhaps No. 2, and 3 then I can not understand why we could be closing a meeting if really you would like to look at point 2 & 3 because we could do that now so that we at least have a draft by tomorrow if that is the consensus.

Another person:

By when have we got to submit the report? That's tomorrow.

Chairperson: I don't know now, I know there were changes, but it was supposed to be the first as far as I know. So I don't know if there are nay particular changes now. Is it still the first? The date has been extended but we need to check exactly what are the dates.

Mr. Chairperson, what's going to go into the report? This whole block because if it is, why are we arguing, I mean I think I support your question.

Chairperson: Yes Comrade.

Another person:

We are not bound by the adjourning process. A few can finish block 1, then I think we should write the report and submit and I think it will be 25 minutes we can finish to, in fact less than 15 minutes because this is quick parties' response, is this a matter for debate or it can be general agreement on this. 3 might give rise a little bit difficulty but I don't think 3 will give but 2 is very simple and again I don't think we can talk about process if we are in a position to prepare a report by tomorrow we should, if we are in a position to finish this in a half an hour we should I suggest that.

Chairperson: Is there any person who is opposed to that we deal with 2 & 3 now, lets attempt.
Anybody opposed to that?

All right, then I am going to allow you to start shooting. Where we are looking at the general discussion of related Constitutional principles such as their mentioned there. Who wants to break the ice? General discussion of related Constitutional principle such as 1, 3 are there any

Unless you want to re-check them in case that people have forgotten what those principles are, you should be having your Constitutional around here. Do you want 2 minutes or 3 minutes to look at them as parties?

Chairperson: Yes Commy.

I don't want to chance the order or whatever. We've got meetings scheduled for tomorrow as well. I think 2 & 3 are rather important things that we should really look into and discuss in detail. Wouldn't it make sense for this report writing committee to write the first part of the report on number 1 which we discussed, then we discussed tomorrow that part of report and use our section tomorrow to take 2 & 3 further then the report can be finalized for Thursday's meeting t discuss the final report on all we've discussed under 1, 2 & 3.

Another person:

Mr. Chairperson, I am also in agreement because a report yes its true, some people may agree it should be a very loaded report, but the actual reporting of how far we are as the theme committee is what I think would be visible enough people to handle. And I also to think that one or two of these clauses may cause a little bit of a problem 3 minutes, 15 minutes may not suffice so we come straight for 2 & 3 and submit our report at the given time.

Can I check whether there is consensus on this particular one of saying we draft a report on which we've discussed today and we look at that draft tomorrow in the meeting. And the second item we would be looking at number 2 % 3 because some parties would like to look at that 2 & 3 is that agreed. Then that's concludes the business of this day.