

Transcript of:**Theme Committee 4 Meeting - 6-03-95 (1)**

We proceed with the agenda as detailed in your green paper with today's statement. There are no minutes to consider because the core committee hasn't met since the last meeting and the minutes would first be referred through them, so while that meeting has yet to happen, we will proceed to deal with matters which arose from the meeting last time. At last week's meeting you recall that the technical experts gave us their opinion on the outstanding issues and the parties were asked to go back and consider the conclusions reached by the technical committee particularly on the issue of everyone shall enjoy. What is the meaning of the word everyone you have the experts view ready on Page 13 onwards of the green document. Documentation dated 27 February that was ventilated last week's meeting.

Parties were asked to go back and consider the conclusions of that report and I think it might be an opportunity to ask parties for any further submission in the light of the experts consideration.

Do we have any party views on this matter?

We don't have (Mrs. Camerer) you hope you don't have a view, I'm sorry you're on the side this is not to put you on the spot (laugh). OK, the only question is to how do we take it from here the question really does as the technical experts tell us, we must at some point resolve the question of juristic person's at some point in time because whether everybody refers to natural persons or beyond it doesn't tell us as in 2.1 resolve the question whether it includes juristic persons within its scope.

The drafting committee has to meet anyway to consider the report on block one.

When is the drafting committee scheduled to meet?

The drafting committee could meet immediately after this meeting and if there are no further intervention at this stage we could consider the compilation of that report bearing in mind what the experts have said.

OK, did anyone need to raise anything under 3.2 or 3.3 in addition to what was discussed last week and the report. The question of the university accepted Fundamental Rights and due consideration given to chapter 3 (Professor Duggard).

Mr. Chairman, could I just make a correction under 3.1 before you leave it, the minutes on page 6 8.2 I don't wish to take credit for something which I did not do the opinion of the meaning of everyone was presented by Ms. Liebenberg not by me, if that correction could be made.

Yes, thank you we will take that to the core group and the minutes will be dealt with there and then brought back to the theme committee.

Yes (interruption in recording).

I wonder whether you couldn't build in to somehow into this programme opportunity for parties to consult to, you know caucus I mean there is some time for parties to caucuses it's Thursday but the point is this is a general caucus for all the parties. I mean we sit the whole morning in general situation and in fact not all morning but I mean there is an early part of the morning that the management committee of the C.A. also takes up so there is no chance to consult then and it seems to me we faced with a hell of a lot of decisions to be made and party position to be finalized, because we have all put in submission, we have all read the experts opinions and their extremely valuable but it might lead in fact to a situation where we would be, there are nuances to change but we as a party we haven't had enough opportunity to sit down and discuss this at any length so we could perpetuate our areas of disagreement forever.

As far as I can see unless we have opportunity as party caucuses to really workshop these situation and have time to do that unless we do this in middle of the night at this stage there doesn't seem to have anytime available to do it, if you look at the program of the C.A.

I just want to understand what you're saying because as I understand it theme committee meets once a week.

Yes

On a Monday and presume that one has between meetings a week in which to consult with your own party to take matters which arise from previous meeting and to obviously adjust your position if necessary at the next meeting. I don't know maybe I misunderstood your question.

No that's fine except that the committees of parliament meet the rest of the time and they meet suddenly I mean as you would be aware, Chairperson.

Can we note this for core group and see we can adjust the programme or whether this proposal of (Mrs. Camerer) enjoys support.

I don't see that there's serious problem if there's a party would want to adjourn for a couple of minutes on a particular issue.

But if, I'm not sure what she's up to because last Monday we couldn't finish the report on the opinion of the technical committee because we felt very strongly that the parties must be given an opportunity to study that report so that if there any changes or nuances as you are saying we are able to hear them today you specifically asked this question at the beginning, if there are any so quite clearly the parties are sticking to their positions, so some of the issues remain contentious so if you cannot resolve any issues here therefore the constitutional committee is under forum that could deal with them so the National Party could have enough time to caucus before the constitutional committee, before we could even draft our own report because we still have to draft this report for the constitutional committee, I thank you.

I don't intend to pursue this matter here. Can I ask this to be raised at the core group. Let it be noted for the core group to be dealt with there, I also take it from the lack of response there are no further party submissions or adjustments to be made subsequent to the both delivery and the reading of the technical committees report and I therefore propose that we move on unless there is some intervention in member party wishes to make to deal with issues from block 2 which we haven't dealt with. We did last week deal with university accepted Fundamental Rights we completed that, we now go on to the nature of the Bill of Rights. Question of party submissions, we don't have a representative from the ADP they are not present today if we do this alphabetically, the second part if I do it alphabetically is the ANC would someone like to represent the ANC viewpoint on this (Senator Surtee).

Thank you Mr. Chairperson, the submission of the ANC set out on Page 29 of documentation dated 27 February 1995, I think at the outset I should respond to what Dr. Mulder has raised at the previous meeting which impacts on what the nature of the Bill of Rights is, Dr. Mulder suggested if I understood him correctly that having regard to the statement made in our submission and that would appear in the ultimate paragraph of under the nature of the Bill of Rights that's page 30 the submission reads as follows: In conclusion, the ANC wishes to assert that the inclusion of social and economic Rights is justified by the needs, circumstances and requirement of our society, but Mulder raised the argument or suggested that inference can be drawn from that statement that the social economic Rights that we have included are based on the needs and circumstances in our society and as such could not and as such can have been incorporated in our schedule of Rights, I beg to differ with him or the ANC does beg to differ that in its submission regarding what constitutes universally accepted Fundamental Rights clearly the ANC points out and I refer the baton, to the following submission in addition there are certain universally accepted Fundamental Rights which are not reflected in Chapter 3 they are the following:

The right to home like, women's right, viable person's Rights, social economic right including freedom from hunger, right to shelter, right to work. In other words.

The starting point of the ANC regarding those Rights are that they are universally accepted Rights which are not incorporated in Chapter 3 but this is reinforced by the fact, in other words we regard them as universally accepted Fundamental Rights they are not in Chapter 3 in any event the existence or the introduction to our new constitution would be justified not only on the basis that they are universally accepted Rights but also on the basis that the circumstances in our country are such that they are justifiable they are necessary and there is a need for it.

Now having heard made this submission here one has to turn around the argument of Dr. Mulder the Freedom Front. The Freedom Front would refer to the same token of minority Rights, these Rights occurred under circumstances that are totally different to circumstance of this country, minority Rights had to be protected where they were overlooked, where there was an oppressive government.

We now have an open society, a democratic society and the question is we have a present a strong Bill of Rights and we hope to have an even stronger Bill of Rights, is necessary then to regard those minority Rights which are included in declaration as the Fundamental Rights, so if one takes the argument of the Freedom Front one could argue quite correctly that the circumstances and needs of our society have changed to such an extent that the minority group Rights which will necessarily at some stage the path under different circumstances are no longer necessary because we are an open society.

I am merely saying that if we develop the argument of Dr. Mulder, it would really fly smack in the face of the Freedom Front in terms of interpretation. Mr. Chairperson, I'm not going to go and label with all the issues here, we have made the original submissions regarding what constitutes Fundamental Rights and what is the nature of the Rights, we are in keeping with our original submission and also the ANC position is largely consistent with the submission of the technical committee and at this note I must say they have done an extremely good job. The submission made by them was extremely comprehensive very concise and I think they deserve our compliments and our comments in this regard.

The ANC's approach to the Bill of Rights would then be on basis of Fundamental Rights as I have indicated as included as indicated in the declaration of Human Rights, covenants Civil and Political Rights, Economic Social and Cultural Rights and other Rights that have been identified in the submission under Nature of Rights.

We also believe that there is some responsibility in the part of the government to ensure that having regard to the historical disadvantages of the disadvantaged community as also the female population it is important to introduce a measure of affirmative action in restoring the balance in other words there were inequalities in the past and one has to, through something positive address this particular issue, so the ANC would want certain qualifications in terms of its right to restore the balance, as a result of certain inequalities in the past.

The ANC also believes that the system that we lived under in the past was so unfair and unequal to the large majority of people that one has to focus very, very seriously on social and economic issues and this would impact on education, on your right to access to job and so forth on issues that would affect the basic dignity, the quality principle that are so necessary.

Mr. Chairperson, that would be in so far as the nature of Bill of Rights is concerned in so far as the application is concerned we believe the application of the Bill of Rights being purely vertical would not serve the interests of the people in this country it has to be horizontal in so that it should apply effectively and positively to the needs of the people in our society and therefore we believe that the Bill of Rights should not only be vertically but also horizontal we do qualify however that horizontal application cannot be absolute or unqualified it has its limitation in certain instances, so this would be the position of the ANC in regard to the Bill of Rights we also say we try to avoid as you can see submission on Page 30 the use of words horizontal and vertical, we say instead that the Rights would apply as per private individuals and as not between state and individuals because this term has not been clearly understood by people at grass root levels. Thank you very much.

Right we will take questions here, I wonder if from Chair I could ask the question of the Senator and the ANC your submission does not address the question which seems to me somewhat problematic and that is the question of judiciary under application are the judiciary bound by the Bill of Rights?

Because the provision under Chapter 3 as conclude is a little ambiguous on that question, do you have a specific view on this?

Yes. Certainly the judiciary would be bound by the Bill of Rights. The Bill of Rights has to be entrenched and it has to be judicable. We believe and we have indicated in our previous submission that not only do we look at the judiciary as the organ or component which would enforce the Bill of Rights, we also look at the other organ such as human Rights commission and social institution which could be created to enforce or entrench the Bill of Rights so we do agree that we should have consensus on that particular issue Mr. Chairperson, regarding having a strong judiciary that would back or support the Bill of Rights and other institution like the Human Rights Commission, I hope that is satisfactory or is adequate response to the question.

Questions to the ANC's submission by other parties or individuals or by the technical committee because they might need clarification or some of the issues raised before they prepare a report, there are no questions.

OK, can we move on the ADP have now joined us (Mr. Green) would like we are now dealing with Nature and the Bill of Rights this particular heading and subject matter would you like to briefly summarize and present your party's submission.

Chairperson: I was under the impression that the issue with regards to our position on terms everyone I would be given an opportunity to present that.

Yes. I'm sorry in fact you were late for the meeting so we did in fact ask the parties at the beginning if they wished to reposed to the technical committee's report on this issue so obviously you can preface before we go on to your submission on Nature application, now would be the appropriate time.

So now you are giving me the opportunity on the term everyone.

Yes in response to what the technical committee's report said.

Ja.

Party response have now been given is now response to the technical committees report from last week, it's within those perimeters that you must confine it and you can go on and deal with Nature application.

As to clarity as to what is going on now, understanding is that we are dealing with Nature and application and we have passed the stage of references to everyone but now are on the Nature and application.

Chairperson: I am aware that as I did explain earlier on Mr. Green who is sole representative of ADP, arrived late for the meeting so when I asked parties to respond to the technical committees report which parties were asked to respond to today and no party at the beginning of the meeting indicated the wishes to respond to this issue.

However, in the simple fact of the matter, Mr. Green was not here at the beginning of the meeting, he then raised with me when I asked him to present the ADP view on the Nature and Application that in fact he would first like the opportunity to respond to the question raised at the beginning of the meeting and since he was not here therefore his party was not represented I have said he can deal with that issue then he can move on to the Nature and Application, should this present a problem.

No.

OK.

I think I would object to the idea that the technical committee should ask questions, otherwise their position in the long run would be compromised as far as I'm concerned.

Chairperson, I did touch on that, I'm trying actually to help the process, believe it or not and I did actually suggest that for clarifications sake, if the technical committee did not understand or needed clarification on the party position, they should be able to enquire to party for the purpose of clarity. Does that present a problem to the meeting.

It's a great expense that the technical committee is brought to Cape Town once a week they are only here on Mondays they then have to go and prepare a report and it helps the report if the issues that need clarification that they clarify I'm very happy if people wish to muzzle the technical committee in this regard we could do so, I'm in the hands of the meeting are there any views on this matter?

I think Comrade, what we agreed to do is that they may not intervene in the process, and I think we are sensitive on this particular issue, there are parties it certainly not us that say they must not be involved in political debates and so, that is why we are very sensitive, they are so far dealing with our committee very well and providing reports and I don't believe that we must allow them to engage in what's name and also in relation to reports we agreed that for instance that when we made the core group they will have an opportunity there and looking at the aspects of that particular report not necessarily here so will be drafting our own report.

Chairperson: I don't think retain us any longer they have not indicated that they wanted to ask questions, and now I am going to rule from the chair that Mr. green is entitled to deal with first issue I can't see any prejudice being caused. I can see considerable pressure of sole representative of a party not being able to participate in a debate so now he will be able to proceed with that first and then we will proceed with the ADP presentation on the Nature and application of the Bill of Rights.

Mr. Green: Thank you Chairperson, with regards to the submission, in the and the response to the use of the word everyone in constitutional principle 2 we have actually taken a strong position with the regard to the unborn person we say the term everyone should include all human beings from conception to natural death and I think the technical term has defined the term everyone from a legal perspective, we also practice from a moral perspective we are saying that in terms of the international human Rights documentation they actually afford an unborn child fundamentally human Rights specifically the right to life, chief to these Rights we want to quote the American convention on human Rights and the declaration of the right of a child 1959 which respectively refers to the conception and prenatal condition of the child and in fact in our Human Rights Bill there's no reference made to that. In January 1993, South Africa signed convention on the right of the child dated 1989 which stated that any person under the age of 18 years. We take it that imply the unborn child by implication. Now with reference to Section 30 of the Interim Constitution it stops short of including the safe guard that children have got Rights before as well as after birth. Our party submitted amendment be made to insert the missing clause in order to conform with the spirit of the child full Rights as described surely to deny the child all of its Rights because age is prohibited even in the language of his constitution so we feel its discrimination on the grounds age if that right is not extended to the unborn child. The arguments levelled against the unborn person do not take into account the growing body of evidence in foetology that proves that life doesn't begin at birth but birth is merely a change in the environment for the unborn person.

And medical boundaries are shifted as to

Chairperson: I'm sorry to interrupt Mr. Green, but you have to continue your argument at this stage to the actual submission made by the technical experts, this is not necessarily the forum for the entire submission which already made which your party has already had a chance to advance on everyone and universally acceptance is specific reports on the technical could you just confine to that.

Mr. Green: Thank you Chairperson. I actually want to turn to the position of the juristic person and the response in terms with that. In terms of the interim constitution Section 73, it states that the nature of the individual right should dictate applicability to juristic persons, now the ADP disagreed with ruling of the German Federal Court which promotes the concept of Fundamental Rights in it is based on the liberty of individual as a natural person. We actually want to respond that most right would apply to natural persons but we feel that there are certain Rights that should apply to juristic persons and there is no way we could accommodate the latter if we cannot accommodate them now in the Bill of Rights, despite the traditional reluctance in South African jurisprudence to cloak juristic persons with human characteristics it is submitted to granting of Rights to legal persons will be acceptable provided the activities of such juristic persons be of nature in order to that particular right be applicable.

Now pattern example would be a religious body or a church would have a freedom of religion and that right would be entrenched and justifiable right, that's why we argue in certain instances that principle must be applied to juristic persons as well, I think generally chairperson that is our response to the technical committees report on the way they introduce the term everyone.

That is the response I don't think it requires questions to be asked of the response would you now like to address the subject matter of today's Nature and Application in so far as you have not does already you have dealt with aspects of nature but would wish to give your party formal submission on Block 2.

Chairperson, would it be possible for me to get back to that during the course of the day or

No during the course of the meeting.

My party is next but I would leave it last because I'm in the chair. Could we please get the Freedom Front formulation Dr. Mulder.

Thank you Chairperson. Maybe I should start with small clarification in response to what Senator Surtee said in the beginning in terms of the argument we had last Monday. I think colleagues will remember that the discussion was not on the Nature and Application of the Bill of Rights.

But on the concept of universally accepted fundament of human Rights what that entails and the party proficiency in terms of what it regards as the universally accepted Fundamental human Rights, I clearly remember that Professor Asmal specifically asked different parties when they put their position forward what was the basic justification behind the reasoning of the party this or that would be universally accepted Fundamental Rights. And the only point I was making was that when I had a look at the ANC documentation on Page 30, where it first goes back to Page 29, where it states that in the last paragraph that the ANC perspective that what the Bill of Right should include and then it says also social and economic Rights but when it came to the last paragraph, I saw that the justification in terms of why it justified the wording, which said the impression should be in terms of because of the circumstances and requirements of our society that was the justification of the paper before us.

Dr. Mulder: I referred that to Freedom front's proposal in terms of Page 37 where argued and said that after we have gone through the process of identifying all universally accepted Fundamental human Rights, then we should look at South Africa specific position and if it should become clearer there are Rights that need to be accommodated then it could be done in that circumstances it was in response to that specific issue and I take note of what Senator Surtee said and I would come to you on our question of, proposal of National application. Chairperson, our proposal is on Page 42 of the documentation dated 27 February which is not on today's documentation but in the last one.

In general I'll make a few points the Freedom Front's view is that the concept of human rights is part of law concept dealing with the subject and state and not with private law between person and themselves, the Fundamental purpose of the Bill of Right has judicially been to protect the citizen against the harsh or oppressive measures by the state or government. This effect which can be called vertical should be the primary effect of the South African's Bill of Right as our view as terms of the application. In some legal systems Bills of Right has also horizontal effect between persons and the private law relation with one another and it is quite possible that in any comprehensive Bill of Right will contain right should be by reason by the reason of the nature of being enforceable not against the state but also against fellow citizens. Secondly, the Bill of Right also entrenched the very reason for such entrenchment is that the legislature would empower the citizen would not amend or appeal the Fundamental right of citizens and it's not the general need to entrench to private law Rights as citizens will not power over one another that is now vertical operation but stand along one another horizontal operation of the law in so far as the legal relations are concerned or related concepts. What we have done further was to answer the question drafted by the experts in terms of Nature application which I won't take through now and on the last paragraph in conclusion we say it should be clear from the above that the scope of the horizontal effect of the Bill of Rights can only be determined when all the Rights have been formulated and the vertical scope has been determined likewise the applicability of such provision to juristic persons can only be determined at a later stage depending on what we agree upon with universally accepted Fundamental Rights. Thanks.

Chairperson: Thank you Dr. Mulder. Are there any questions on the Freedom Front's at this stage. Yes (Mrs. Camerer).

Mrs. Camerer: Chairperson, would the Freedom front agree then that if one wants the bill to have an application on fairly broad basis to the juristic persons, we would need that provision under applicability clause in the final version that it does apply to the juristic person as does when is appropriate.

Yes, we said from the beginning it will depend on some Rights as some Rights might be applicable to juristic persons so in that sense, yes.

Dr. Mulder, I'm not going to develop that argument any further. I have taken note of what you have said regarding the application of the bill of Rights one has to accept that there were inequalities in the past that need to be addressed and I think the Freedom Front is fully conscious of it and is in agreement with that and in order effect to equality one has to look at excess of opportunity one has to look at equality in terms of job creation even in affirmative action process that to be functional will have to have a vertical application which encompasses other institutions, what will the position of the Freedom Front be regarding horizontal application in such circumstance.

Well the question in the end would be I understand in terms of the legacies of the past the question still remains should that be made practical in terms of the bill of

Rights or should it be the other measures in legislation's other programmes of government to get that through to address the wrongs of the past, the question being I haven't, I'm not clear in my mind that the only way to do that is to put in the bill of Rights and make it enforceable, I'm not sure if you look in there might be other way also to address that.

Would it mean that you do not exclude the horizontal application you haven't taken a firm position in so far as that is concerned.

No we don't exclude horizontal application at all, we say we should look at all the factors in this regards and the implication of applying the horizontally.

We can have only the bill of Rights applying only vertically not applying to private persons and I wanted to ask specific question on the issues within the family is it one of your considerations that relation within that can be subjected to horizontal application.

Well in that I would prefer that family relations be not subject to bill of human Rights and have to go to court to have effective family relations there should be other ways and means of trying to deal with that. We are saying we should be careful not to infringe on South African private law and the involvement with private law which deals with these aspects and it takes us back to specific issues.

I would not like to see private law especially what involved in the family should necessarily be dealt with concerning the bill of Rights, we have common law, private law thing that lack within that can be extended but it would not be right to entrench that in the bill of Rights in terms of how a family should deal with relationships internally.

Think that Chairperson that the concern as far as horizontal application is concerned centres around the situation which we find ourselves in our country, where it is very clear that private and common law haven't worked to serve the interests of the majority of the citizen of this country and of women in particular a range of persons that one can refer to I was concerned you have qualified what you said concerned what you reading the last four lines of your paragraph 2 on Page 42 because I wondered which country you talking about our direct experience contradicts what it's state there individual have overpowered over person and seem the bill of Rights needs to start to address the question of Rights and the arising from the Rights one would look at mechanisms to ensure that all these Rights are protected be it the system of law or through out these mechanisms.

The next group unfortunately is absent in Ulundi. Inkatha Freedom party I'm not sure how it is going to be addressed but I presume that it will are they here I was afraid that we would need to revisit these. Lets move on the National Party (Senator Radua).

Sen. Radua: Thank you Chairperson. Our situation is set out in Page 56 and the pages that follow are briefly sketched a historical background to the whole situation of the bills of Rights and then on page 58 our attitude is that a South African bill of Rights should be decisively anti-discriminatory, pro equality while simultaneously upholding liberty, it should preserve all these accomplishments which have already been attained in the establishment to human Rights culture in this country and it should incorporate the universally accepted Fundamental principle contained in this issue international instrument to the extent that South African conditions require such applications.

We have not set out our starting point as you would know Chapter 3 of the present constitution and the bill of Rights must be entrenched must justifiable, it must be enforceable perhaps not necessarily enforceable by the courts but by other means by legislation and also by human Rights body and other bodies of that nature. We have not specifically set out a list of Rights as other parties have done. We have adopted the approach in general terms but at the same time our view is that we must examine each substantive right as it comes up and looks at its full implications and examines whether each right should be included in the bill of Rights. Our starting point being Chapter 3. In regard to the application there is no doubt that the nature of the bill of Rights will determine the application and we continue to apply to the subscription that juristic persons must be included, that may be qualified and we have to examine that when it comes to the negotiating process when it comes to the Constitutional Committee.

But we do believe there is a place in the constitution for the juristic persons finally in the regard to the vertically and horizontally just to comment although we have indicated the primarily we regard the bill of Rights as applicable vertically that does not exclude the socio-economic Rights if one looks at Chapter 3 of the present constitution one come to the conclusion that there are already elements of socio-economic Rights included therein, we're not adverse to examining those Rights if we go into the substantive Rights put before us by other parties and as we go through our work programme and every block we have something of a flexible attitude there and we are ready to ensure that Rights should be preserved in the bill of Rights which are in the best interests of the people of South Africa and I think apart from that we have the technical committee's report extremely value and interesting and that substantially sets out position.

Chairperson: Thank you Senator, are there any questions (Senator Surtee).

Sen. Surtee: Their statement (Senator Radu) was absent at the last meeting.

I was. When there was an undertaking by certain members, I think it was (Mr. Baker) who undertook to provide the meeting with a list of specified Rights. His attention was drawn to the fact that the submission does not refer to a specific right and he said that could be done he would provide this meeting with it, I don't know if he has any knowledge about that.

Yes I do. I have knowledge about that, Mr. Baker the position is that at the moment we have placed our position in general terms and that we would examine each right as it comes in substantively in the block programme and then we would deliver our position in each of right.

The second question arises from the content of second paragraph of page 61 if you look at the third line the necessity therefore the second line apart from the fact the bills of Rights by definition are devised to primarily apply vertically in the necessity for the horizontally application has been given recognition in most jurisdictions. You have acknowledged that it has been given recognition in various jurisdictions all over the world, what will be the position of the National Party be specifically regarding to the horizontal application.

Our position is quite clear it is placed on record in page 61 and the situation is we are not adverse to horizontal Rights but certainly in most cases we would say they must be carefully stipulated and quite in every instance as you would indicated that the ANC's position is approximately the same in that regard that they cannot be absolute and we would examine each one its merits.

Mr. Chairman, on behalf of the ANC, I would like to place on record our disappointment and also our great dissatisfaction about the approach of the National Party I think if.

We decide jointly as parties that a specific submission is required all parties in terms of the earlier discussion supposed to provide a list of right and I think it's unacceptable that we should continue to be party to this wait and see attitude by the National Party when it does not want to come out clearly to say what these Rights are, if are willing to co-operate I cannot understand why the person who was represented by the National Party last time we did express our dissatisfaction and he said he would provide that and still you are saying in general terms if we are too serious we have to stick to our commitment and agreements reached at this house. I think we have to condemn and compel the National Party not to bog down the process.

Condemn and compel is not the theme of this committee. I think it drives the process forward produces use of terms like that but (Professor Roodt) do you want to respond to (Mr. Mfebe) specifically.

I note his comments. I was not unfortunately not present so I cannot subscribe to the view, I have not seen the minutes of the last meeting I don't know if anything as recorded in that regard but as far as I'm concerned we are quite happy to deal with each and particular right on it's merits during our programme as we go through it and prepared to consider the proposals of each party as the wish to include in the bill of Rights and to consider it on its merits.

So its not lack of co-operation on our part we stated our position generally we have indicated that we are not adverse to socio-economic Rights provided they are qualified and provided we can approach each right on its merit.

The minutes are going to be available in due course to see what was agreed up in the last meeting or not as the case might be. (Ms. Pandor).

Thank you Mr. Chairperson. As I recall the words were that if that's what you and my v party will produce it, there is no problem with

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Pandor : Thank you Mr. Chairperson , In fact , If I recall the words were that if that is what you want my party can produce it, there is no problem with doing that if one could recall the words of that meeting.

I wanted to pose a question on the last three lines on paragraph 2 on page 58 it would seem that the National Party already has a sense of what the unproven principles that should not appear in the Bill of Rights are an^d I wondered if there would be any elaboration of those three lines, 'that it should incorporate universally accepted and proven principles to the extent that South African conditions require and permit one would assume that arises from somewhere and we could ask for more elaboration in that regard.

N.P. : Thank you Mr. Chairperson. The position is that normally accepted phrase of language and we say the Bill of Rights should incorporate the universally accepted and proven principles that are generally accepted in the international world and we are quite happy to look at these principles as they come up one by one and to consider them on their merits .

Camerer : We make a point on page 64, I gathered from what Mr. Baker told me that was discussed in some detail last time around but we actually make out a case for the inclusion of for those Rights and principles that are included in the universally

accepted in the UN declarations and so on. We list these under the universally accepted Rights, I think we are making a very strong point for inclusion of those Rights. Just to add to Senator Radua's point, I want to see if anyone else wants to ask a question

Chair : Is there a follow up?

Pandor : I want to say that in due respect that what once one says there are proven elements then it seems that there are elements that don't work we would be very interested in knowing what those aspects are.

Camerer : Can I draw Ms. Pando's attention to the paragraph on page 64 where we take a certain approach to those proven principles. Look at the last paragraph on page 64 of our submission.

Senator Surtee:

Just to comment Mr. Chairperson, and in terms of carrying the process further, I throw this open to the house here. We have the technical committee who've done a wonderful work here in preparing and compiling reports which cover the aspects which have been outstanding. What we have not done is really given the technical committee an indication whether we are in agreement with the sentiments expressed by them in the report in other words what does that role have in terms of achieving a measure of consensus.

I'm not saying that has to be done today but the core committee could look at that aspect in particular, in the sense that it has been addressed comprehensively and concisely by the technical committee, there seems to be a broad base of agreement regarding the issues that have been raised by them and if the parties could align themselves with these positions set out by the technical committee it would make the task of carrying the process further very much easier that through their assistance also achieve consensus in this chamber without having to refer it to the C.A. to make a decision on those issues that is the one aspect and the other aspect that I would like to raise I'm not going to be strong in terms of what I setting here but if Senator RDA could look at providing a schedule of Rights it does not have to be a comprehensive list the ANC has just done a very short document. It would make the process of reporting very much easier in the sense that the parties there's a consensus that these Rights are universally accepted Rights. It doesn't mean by any virtue that there are fundamentally accepted Rights they have to be incorporated in the constitution as such so thought in terms of the process of reporting a schedule would help in carrying the process swiftly forward.

Chair : I think there's value in the first submission, Mr. Senator Surtee , makes , however , if you look at actual report of the experts there are a lot of issues that obviously the aspects themselves cannot deal with. I mean if you look at paragraph 3 on page 17 they say 'our opinion in this regard is only deals with the meaning of everyone the effect of conclusion is still open to the constitution that the juristic person should be allowed to be bearers of some entrenched of right of constitution.

Anyone can align themselves to that because that is simply telling us what the options are it doesn't deal with which options to choose so, it is yes, a complete waste of money, time, effort of the constitution experts just to produce pieces of paper that are acted upon seriously and I think we must the core committee and drafting committee must take this report and incorporate them into its drafting report back to the theme committee and bring it back here. So I think that is a very timely warning . Now look , we cannot oblige any party to answer in a specific way the N.P. had three opportunities to deal with this issue. I don't think any purpose is going to be served in badgering them or anyone else about it.

The point is that our discussion this morning Mr. Soolman, the secretariat there was some confusion in preparation of this because was a lot of notes that came from the secretariat about how to prepare these reports. The proposal henceforth is going to be too much more specifics set of question and a format so every party is going to be obligated not give us a correct or incorrect answer but to follow a certain format in presenting the submissions. Otherwise there is going to be always problems that people are going to interpret a kind of a wide general question in a wide general way. I think if we can leave this issue there . Any further question to the N.P.

Mr. Mfebe: Please exercise patience on me as I'm still bringing up this is in response to what you have just said now.

I think that I should bring to the attention of this committee the fact that we were discussing what was a universally accepted right was in response to what the National Party said previously, we could have long finished with Block 1, the fact that we engage in that exercise it was the request from the National Party and we can go back and check the minutes and the deliberations and we all agreed that parties need to add what they regard as universally acceptable right and those Rights that are not reflected on Chapter 3 of the Constitution so if now you say we cannot compel parties to be specific about issues then a party should indicate at that stage we are not prepared to do what is requested because it would be a waste of time' we could have long finished with block one. We could all have said we all subscribe to the universally accepted Rights as enunciated in international documents finish and klaar. So we went to that exercise of specifics simple because of the reaction from the National Party so therefore we do not agree with you that we cannot make a party to fulfill its commitment in terms of deliberations of this house , otherwise it would be a futile exercise that is the point I wanted to make Chairperson without opening discussion .We should be serious and committed to the agreements that we reach here .

Chair : That point has been made .

N.P. : May I shortly respond it's quite clear from our initial document and the subsequent submission as well that our starting point is all the Rights contained in chapter 3 now we all know what all those Rights are in Chapter 3.

We have not made the lists because all the Rights are contained in Chapter 3 of the constitution beyond that we have indicated that we are flexible regarding with other proposals and we are prepared to stand by them.

Chair : I don't know that everyone is happy but there we are. I seem to recall the National Party did want the assistance of the experts to determine what these universal Rights were. So maybe that process could be speeded up and we might get some agreement or a catalogue.

N.P. : May I just respond to that point. I found the points of submission enormously helpful and I think I was one of the people who recorded my anxiety about getting the expert opinion but are we going to have an opportunity to ask them seeing they are here, one or two questions about their submission , or just talk to our own .

Chair : I understand that this was largely dealt with last week in the interchange between the committee and the members here. I have to finish the process we have started ,in the first instance , every party has to make a presentation. Next party is Pan African Congress. Mr. Sizani would you like to make a presentation. Please don't respond to the debate you've hearing lets more on to nature of the Bill of Rights submission the P.A.C.

Mr. Sizane: Thank you Mr. Chairperson. The name of my organization is Pan Africanist Congress, looking at our submission I will not be taking much of your time.

Chair : It is page 67 of your submission.

Mr Sizani : 68, the one I am dealing the first point I would like to make is on the, of the Bill of Rights we have already made our initial submission in under block 1 material . I would like to emphasize two or three points under that initial submission. The point we made there was that a Bill of Rights in South Africa will have to protect Rights of individual citizens when allowing the state to provide for the well being of all members of our society this implies that not only civil and political Rights must be allowed but also socio-economic Rights and solidarity Rights, so a compliance of South African Bill of Rights will have to take into account all those three facets of Rights.

The second point we made under the nature of the Bill of Rights is that while the Bill of Rights should not ignore South African realities it should however , meet the national norms and standard and must be compatible with the South African obligations under the international law. We want to emphasize this point again Mr. Chairperson because although we know that has been made by the technical committee that most national documents do not necessarily encompass all the internationally acclaimed Rights, they do tend to include some national peculiarities in their own national documents but we must bear in mind that we have certain obligations in South Africa and we are creating a new culture of human Rights which has never been there before and its important therefore that the international obligations and the norms accepted under the international law must at least be taken very seriously in our own national document.

A third point that I would like to emphasize is also when we talk about this is that the character of the Bill of Rights must be basically be a document that will show that there has been a shift and a change in South Africa, that still we are not perpetuating majority Rights and privileges we are moving to a more egalitarian and equal society and that document must therefore must clearly state that it is the Bill of Rights is by whom for whom. I would leave it at that coming to basically to the application of a Bill of Rights we basically going to put in a principle position here, that in principle the P.A.C. would promote and accept both the horizontal and vertical application of the Bill of Rights. That you would find in B1 in our submission that we also include the judiciary we include it to strength the aspect of the horizontal application of the Bill of Rights that if the judiciary is bound by the Bill of Rights , therefore , they will not refuse when a case is brought before them to apply that Bill of right on the basis that it is vertical applicable so we would like to see the judiciary also , of course , included, under B2 included all laws there in terms of enforcement all laws of course we would still make some arguments under customary law in terms of applicability of the Bill of Rights, but in principle we accept that as stated in the principles that a Bill of Rights should apply to customary law but we can discuss that further as a need comes.

And the third point that we would to emphasise is of course that we are very keen to see that in a society that has been ravaged by racism and apartheid we cannot pretend that all is well now since we have a new democratic government.

It is important that the aspect of racism in our society must be fought especially privatised apartheid that is apartheid or discrimination between individuals and therefore we would like the Bill of Rights in such relations and also in relations to companies therefore we would like a Bill of right that would ensure affirmative action not voluntary by companies but also compulsorily and we would like to see the question of privatized apartheid dealt with firmly and we would want to see anti indiscrimination legislation which would deal with aspects like that and which is also allowed in our Bill of Rights to be implemented as soon as possible. Thank you Mr Chairman .

Chair : Are there any questions to the P.A.C., Mrs. Camerer ?

Mrs. Camerer :

Chairperson, Mr. Sizani touched on this but if one looks at the draft questions on page 22 of our document there is an example of the sort of dispute or problem that could arise on the horizontal application of the Bill of Rights and Mr. Sizana said they would be prepared to go into more detail at a later stage. I wonder if they could give a hint on what direction they are heading, if you look at point 3 if a dispute between private individuals comes before a the court, the court would have to apply either common law or African customary law should the Bill of Rights apply to the Rights.

Now if we are looking at horizontal Bill of question rise should right to equality apply to the legal status of women in African customary law when its a dispute between private individuals i.e. horizontal with specific reference to the right of inheritance for example and access to acquiring property contractualized, I wonder if Mr. Sizana would like be prepared to go a little into more detail of which way they are heading .

Mr Sizani : Three things I would like to emphasize on that point Mr Chairperson , I did take into account those questions, I am not bound by those questions in making my submission they are guidelines I can answer and not answer certain sections of it , if I want .

Secondly we have never as the P.A.C. its known our position vis a viz. customary law in the Bill of Rights it has been argued and it was led by me at the World Trade Centre and when that case comes for the detailed discussion of those issues and we are going to discuss them as soon as possible under equality. I will make all my points quite clear.

I have just made a principle submission that customary law is a case we are going to argue for but we accept the Bill of Rights even under customary law when we deal with the principle of equality that argument is going to come and will place our views on record in that matter.

Chair : Anything else? Good we move on . Mr. Green are you ready to present the A.C.D.P. view point at this stage .

Mr Green : Yes Chairperson, our view is contained within the additional documentation dated 27 February and it is on page 9, 10 and 11 so its not included in the same document.

Now the first paragraph is an introductory paragraph. The third one actually puts in a position that we would like to bring to your attention we believe that the nature of the Bill of Rights should be a document endorsing the heritage of divine authority with corresponding duties inevitably come from being granted responsibility in discharging the authority, so feel that the nature of Bill of Rights that the foundation must be based on ethics and ethics of course must be based on certain approach to life. We are also saying that it is not a surprise that notorious human rights violators have lengthy and impressive sounding lists of Rights but yet disregarded those lists Rights, what we are saying is identifying and listing human right does not necessarily say guarantee those human Rights. Now often we find that authorities wanting to safeguard against those abuses those look at the mechanism and the mechanism we as South African society has looked at is the issue of the constitutional court, we want to caution with the regards of the Constitutional Courts; in the situation of the constitution court we are placing more power in hands of a select few with judicial backgrounds and there is no checks and balances to that with regards to that.

The theory in placing such a lot of power in the Constitutional Court is that these individuals are not accountable to an illiterate and therefore they will discharge their position of authority with sense of wisdom, fairness and justice, but we think that this is fallacy because a juristical back ground does not ensure fairness as we have experienced legally trained offers in despotic governments have clearly shown and proven this . We believe there should be checks and balances even when it comes to the Constitutional Courts. The way to share fair distribution of power in the application of the Bill of Rights is to ensure that there is a balance of power even for the Judicial Court. And secondly to ensure that the courts does not make law by interpreting the constitution and the Bill of Rights from a particular perspective for instance a circular humanist perspective, that would be a slanted approach and not reflect the majority views of people in the country.

On page 2 we also clearly spell out that it must not be left open for the constitution court or any component body to adversely affect morality in this country, we believe that we cannot elevate atheism and acrotism to the level of organized and accepted religion occuppies, equally we also believe that is the right to life should make provision to the death penalty while ruling out abortion and euthanasia. The sanctity of the family must be protected and the same sex relationships should not be recognized.

The Bill of Rights currently does not make provision for protection of sanctity of marriage between a man and a woman and the attending issues of a family, we feel that it should be included .

Most human right documents afford the family, as the core unit of society with certain right and South African document lacks and we feel this has to be addressed urgently. A balance has to be struck between the innocent law a binding citizen and that of criminal intent perpetrator who show contempt to the laws that regulate society, we usually find that criminal use the Bill of Rights to protect themselves and they want to be protected by this Bill of Rights but they violate the Rights of other and they have no respect for others and we feel there ought to be a balance. We should constantly remind ourselves that the ideology of human right and human Rights instruments has at its core the limitation of state authority and achievement of maximum freedom and liberties for the individual. In conclusion as far as the application of the Bill of Rights is concerned if we accept the reasoning for proper limitation of boundaries it becomes apparent what is true of the individual will be equally true of the associations in which they organize themselves. We believe that power corrupts those who are entrusted with it

The first thing is to safeguard, will have to be employed with the government and its organs and structures so and Bill has to be applicable where a person or association is in a position of power and has the ability to abuse that position and if there is no remedies already to be found in the positive and common law. We believe that the weak should be assisted and the Bill of Rights should always look at the weakened elevate the weak as opposed to the strong in society but we also say that care should be taken in the misguided sense of ensuring equity and justice that we do not do away with the well developed legal system that has practical advantage of having been successfully applied for several centuries.

Thank you Chair .

Chair : Thank you Mr. Green . Just before Ask for questions perhaps I could give of my own just to get the ball rolling and I think that many people have this view that the constitution and the Bill of Rights is a sort of the charter for criminals and doesn't do enough to protect victims I think that is a commonly held view, what specific proposals would you make to in this regard to redress the balance and then my second question I would like to ask you, you talk about the slant pervading the Constitutional Court circular humanism was I think the term you used what other, what other view points or slants would you like to be alleviated to the bench of the Constitutional Court to redress this balance .

A.C.D.P. : Chairperson, I would address your last question first, I think on the Constitutional Court there should also be persons with legal knowledge or legal experience that has both the biblical approach to life as well as the Islamic views or Islamic understanding of on law and justice in society because if we are going t have a group of jurists having only one particular I'm including people with biblical Islamic, as well as people with a Jewish understanding of the application of biblical law, now I do not think that looking at the existing person sitting on the bench that is there, I always think that the people sitting there are all having a certain humanistic approach to the application of law and I think that is not balanced.

The first question with regards to the issue of criminal detentions and so forth we do give Rights and everybody has got rights in Section 25 with regards to detention and accused persons, but has been happening as a result of this Bill of Rights person have insisted on getting bail we have an instance where a person has committed a murder given, a bail committed another given bail again and committed a third murder now surely any society that person uses the Bill of Rights surely there's something drastically wrong not only with the Bill of Rights but with our criminal system or the way bail is being given to those persons what we are saying is that the Bill of Rights must actually recognise at the realities of where criminals b Bill of Rights for not for the entire society but for the benefit of themselves only .

Chair : Are there any questions to Mr. Green, Mr. Maseko.

Mr Maseko : I thought you were referring to me as Mr Green . I must say that I would not vote for Mr. Green as our minister of justice. If one goes through the documents one still finds we always say , inherent contradictions in what he is presenting. I would like to refer the meeting to their submission on page 10, the very last sentence and ask Mr. Green if he really believes in the statement that he is making there because if one through the submission he actually goes in goes to detail about how certain Rights need to be limited or excluded but in that sentence he is actually making the point that the achievement of maximum freedom and liberty is for the individual is one of the objectives of Fundamental right ideology.

I just want to know if he really believes in that statement because the essence of his submission is in fact how individual Rights needs to be restricted and using a biblical approach for that restriction.

Mr Green : I think in principle the A.C.D.P. supports the last paragraph that we believe in the achievement of maximum freedom and liberty for the individual but we also want to substantiate that, that does not mean that we agree with licentiousness or to give persons the right to use the Bill of right to denigrate the Rights of others . What we are saying is that the principle we believe in the Bill of right is that it must protect all the citizens as much freedom and maximum freedom and liberties for the individual but within a particular perspective as we have explained throughout this document.

Mrs. Pandor : Thank you Chairperson .I wonder if in line with Mr. Green's fourth paragraph on page 9 in the submission he would accept that in fact the imposition of a range of doctrines including biblical approaches has led to a massive abuses of human Rights, South Africa's basis for apartheid was often, premised on the reference to the Bible the inquisition that we had centuries ago in Europe , was premised on particular interpretation of Biblical doctrines, it seems to me the abuses being are practised on a range of basis including the biblical one, how do we avoid such a situation.

Mr Green : Thank you for that question .I think Mr. Chairperson, the speaker is quite correct, I'm sure that history proves that if we look at our own system here is that apartheid was justified using the Bible, in fact the apartheid policy of separation , in fact , our national education policy was called Christian national education . What we are saying is that, that does not make it right the fact that a person can use the Bible incorrectly, there must be a balance when giving powers to various instruments like , I have been referring to the Constitutional Court , the legislative what I am saying here . The fact that we are making a long list of human of Rights does not mean that those human Rights are going to be protected what I am saying is that as far as the Constitutional Court is concerned there may interpret those human right in such a sense that it would in fact infringe the right of others who would perhaps not have the same understanding, so I think it is the understanding of the balancing of the important balance that needs to be struck.

Chair ; Mfebe

Mr Mfebe ; I'd like to know if the A.C.D.P. believes in justice if it does further I'd like to ask if they believe in the principle that a person is considered innocent until proven guilty and why I'm asking that you referred to the murderers that are released and roaming around . At what stage do you regard that person a murderer before he has had a fair trial or just condemn him and say he is a murderer because he is accused.

Mr Green : Chairperson, I would agree with the understanding justice but when we talk of justice we have to look at the person who perpetrates the crime as well as the victim, we should not approach justice just form the person who perpetrated the crime.

Now in terms of your question I believe that person should have a fair trial and a fair hearing that he is in fact innocent until proven guilty so I don't disagree with that. What I'm saying is that in the South African context we often find that person's who've had long records of crime and in fact violent crimes and that is not considered when bail is granted a bail that does not do justice because we believe in the right to life and the person has taken the life of a first person, there must be a balance the victim and the perpetrator.

Chair : That point has been made already . Mrs. Mabandla

Mrs. Mabandla:

I'm not sure whether I'm going to ask a fair question. I have a sense that the root of the A.C.D.P.'s philosophy is intolerance in fact its an assumption I make from reading their submission and at the same time one gets a sense they are advocating they do say that the stand for the Bill of Rights and human Rights that entrenches right of people etc., but I don't know if that they are aware that, there's a declaration of the UN that seeks to promote tolerance in order to enable democracy to take root. I would like to know whether they are aware of that and what their attitude is towards that kind of approach to Rights.

I am worried because when we begin to discuss the substantive issues Rights themselves we are going to find ourselves again in a corner because their philosophy , really in my view is based on intolerance of other people's Rights such as the right of people to choose their sex.

Mr Green : Thank you Mrs. Mabandla for the question, I think with reference to tolerance and particularly with equality there reason we have a problem with the issue of sexual orientation is because we our approach is different because we believe differently, we believe that sexual orientation is to a great extent is a matter of choice and that is where we differ because you see we are not saying that we are intolerant but we are saying in terms of what we believe is right and wrong we are just pointing out in our understanding what we believe is morally correct and what morally wrong, so if we are going as she puts it to be tolerant, are we going to allow our churches to marry same sex or that is one of the things that we are getting to in terms of the issue of families are we going to allow children to be brought up by same sex , persons that have same sex .

Chair : Sorry , I think we are anticipating or the specifics Ms. Mabandla did mention it but the question of homosexuality and gay Rights will be dealt with specifically under the debate on equality, so if you could deal with the submission of intolerance, I think you've responded to it by saying you are not intolerant.

Mr Green : Yes we are not intolerant but that does not mean we cannot distinguish between right and wrong.

Chair : May we move on unless there are questions for A.C.D.P.

Input : Just one small question Tony because I don't really believe we must waste much time but I think in looking in all these Biblical text about unborn and so on I would like them to get ready to answer this question for me whether they believe in life after death and whether the people who are dead who live after death have rights and then that would reconcile the issue of the unborn people? I thank you .

Chair : You can answer that in due course with your next submission, I think we have it on the block life after death and rights flowing from that , particular state . May I now just to move the meeting forward hand the chair over to Senator RDA on my immediate left so that I can give my presentation on behalf of the Democratic Party, because it is a bit unfair if I do so in the chair . If you can just consider me out of the chair and I am wearing the Democratic Party hat and Senator RDA will chair this particular short session .

Senator RDA : Thank you with your permission , everybody happy , all right can we hear the D.P. submission please.

Mr Leon : Chairperson, I will take you through it very briefly, firstly on the nature of the Bill of Rights obviously the Fundamental question on the nature is the question of first, second and third generation so called socio-economic and green Rights.

Now we are going to deal with them separately. There's a separate provision made on our work programme for this and one is best of leaving the submission until them. Our departure point as a party is that really is a Bill of right trust do one Fundamental thing and that is prescribed in our constitution already and that is to promote liberty and equality to promote .Those Rights which advance liberty and equality should be included as to go back to our previous submission as a core of settled rights we already there's an enormous amount to be said for a whole range of topics that deserve consideration from domestic violence to battered women to contemporary social issues whether you specifically enumerate and elaborate upon them in a Constitutional Bill of Rights which is the most difficult part of the constitution to amend in our view would be a major mistake in other word you don't lessen the importance of those right but it's for better to have a general equality clause then it is to try and cater for every specific category that requires protection in society, that frankly is the view is the task and the job of the legislature itself and it changes over time as to what those right are and what the application of them will be , and that is our departure point on the nature of the Bill of Rights we don't have to go to the universal core because that was dealt with on last time paragraph 2, 3 deals with that continuing my document which starts on page 31 to page 33 we deal with the question of application which is to us a number of problems of which arise many have been ventilated this morning .

We agree with the P.A.C. that the question of the judiciary actually the judiciary should be covered by the Bill of Rights, in our view looking at the current constitution the position is ambiguity if you look at the difference between section 7 (1) and section 35 (3) there's a slight grey area which has emerged we would also value the view of the committee of experts on this particular question because this might be a question of interpretation and indeed one of clarity we think it should be made clear beyond viewpoint . We think it is implicit at the moment .

Question of application obviously really does rest upon us as politicians as political parties resolving the question of horizontality and verticality as you now. I have stated the D.P. believes that subject to proper safeguards and I think Dr. Mulder has indicated that you've got to review every right against the background of it being horizontal and then adjusting the wording accordingly subject to that kind of safeguards there's no reason to good argument in logic or in law why the Bill of right should not be horizontally applied indeed it would seem to us a major pity to take issue from the National Party as I understand their position that the private law sector of society should actually be made congruent to the laws which apply to state action subject of course to the necessary safeguards and we give two examples whether they are valid or not can be determined on page 34 because you can see some of the discrepancies which can arise if you have the Bill of Rights only applying to state action and not to corporate action ,for example , and we leave those to the table for consideration.

Now the Bill of Rights should not in our view just draw an arbitrary line in a sense between state power and social power generally speaking children's right, labour right and Rights to free speech do not have much meaning and impact if they are solely confirmed to conferring obligation onto the state. Obviously they should have wider implication but we say it has to be carefully considered. Now the two remaining questions chairperson which we do draw your to attention we'll attempt to answer, we were asked to answer these answer, the one was the obligation of the state in terms of Bill of rights once again you'll end up back in the court of how far does the Bill of Rights extend is it a negative document or negative restraint against the state is it a shield or is it a sword. The Bill of Rights would operate generally best as a shield rather than as a sword simply because the persons interpreting and adjudicating and empowering the Bill of Rights do not have the power of the purse that is the trite point if we are going to introduce the second third generation Rights, they are obviously going to be Rights which have a positive obligation which compels certain things to happen and we often think that is best left to legislature rather than the judiciary. These are great questions which require our careful deliberation and we look forward to debating them at the appropriate time. There was a question which was raised initially and I don't really think it was addressed by other parties and perhaps in passing that is the obligations which Bill of Rights imposes on the citizen.

We have addressed that question to the extent that it is still relevant to this block or it is going to come up elsewhere perhaps I could summarize our position in the line.

In our view the citizen's rights to the state and to his or her fellow citizen are actually limitless they are limited really only by the Bill of Rights itself and by regular elections and the Fundamental duty of the citizen is to obey the law and everything that is done to promote that abeyance we will fully support as a political party.

Transcript of:**Theme Committee 4 Meeting 06-03-95 (3)**

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Perhaps I could summarize our position in a line. In our view the citizens right to the state and to his/ her fellow citizen are actually limitless they are limited really only by the Bill of rights itself and by regular election and the fundamentals duty of a citizen basically is to obey the law and everything that is done to promote that obedience we will fully support as a political party but really the function of the Bill of Rights in our view is not to try and codify the citizens obligation to the state or indeed to his or hers fellow citizen because by codifying them you are in fact limiting them and they should actually be limitless, subject only to the safeguard of the constitution itself and safeguards ensured by having regular elections, that is our view point Chairperson, if there are any questions, I would be happy to try and answer them.

Thank you very much Mr. Leon the matter is open.

Chair : Senator Surtee

Senator : Just as a matter of interest Mr. Leon, I notice in your submission just bear with me for a moment you referred to the concept of liberty and equality as the basis of the Bill of Rights. I notice that they are paired together now I understand the classical theorists so far as the Bill s of Rights is concerned so far S. A. the constitution is concerned there is always the term liberty and equality or freedom and equality will always been used together .

Would you in principle have any objection if they were separated as they are perhaps in the present constitution where equality is dealt in with in one category and freedom in another category . What would your position be because at times they are in conflict , you would understand that equality and freedom are not always congruent with each other , they are at sometimes in conflict with each other .

Mr. Leon : Chairperson, I think Senator Surtee has highlighted what for us is a Fundamental philosophical point , if I can go back to the negotiations at Kempton Park there was a very long battle to get liberty made co-equal with equality in the limitations clause of the Bill of Rights Section 33 so we will at that level insist that that be the standard of justification for the departure from the Bill of Rights. They are often in conflict there is no doubt that there are many programmes in provisions that which advance equality but which do so in a way which extinguish individual liberty and contra their are many provisions which promote the liberty of an individual which can be very deleterious to the concept of really to us that is the Fundamental battle of Rights in equality and the late part of the twentieth century is to balance, those two consideration accordingly they do have attention at times, that tension has to be resolved not by us politicians but by those interpreting the Bill of Rights and trying to give that balance correctly.

Obviously equality as a section in the constitution which we support and equally those provisions that enforce and buttress us individual and civil liberties which are dealt with in great detail must be dealt with as they are now but we would like to see in the clause which deals with the interpretation of the Bill of Rights and its limitation that liberty and equality remain coequal.

Chair : Thank you . M r Sizani of the P. A. C.

Mr. Sizani: Thank you Mr. Chairperson, Mr. Leon, I just want to take you to a few philosophical problems which I usually have with your party, I do respect your party as you know very much but when it comes to ,it really in this philosophical area that some of your projection and proposals do probably give some problems. I would like to get your comment for instance on your conception of the rule of law do you see it probably as a merely as a law and order conception without necessarily seeing it also as imposing some obligation on the part of the state to provide some meaningful amenities of life to its citizenry therefore you would emphasize that citizens regardless of the condition should obey the law as it is stated and nothing more. Also attended to that I would like you comment on the some of the statements that are usually made like what is the use of the right to speak if you are so illiterate that you would have nothing to contribute in a debate or what is the use of the right to stay in the Ritz hotel if you simply can't afford that . So how do you draw a balance there.

Mr. Leon : I think that it's a very good question , Mr. Chairperson , and I am just anxiously watching a clock in my other capacity trying to conclude this meeting and I hope we all spend a long time debating these issues . You see us in parliament last week I said that this government has got to do something preferably through the roots of tax and incentives to promote adult literacy just to deal with the one point you have just mentioned, because nearly 50% of adults are illiterate or semi-illiterate in South Africa black adults. That is completely unacceptable for a whole range of reasons economic, social and Rights reasons , But can you write that kind of right into a Bill of Rights is that the best place to deal with it. The question of having a core of settled Rights, we have in our own draft of Bill of Rights, I think in clause 11 which we will certainly introduce in the right time at this debate something called the right to the essentials of life where we actually create a duty on the state at least justify why it is not providing the essentials of life, shelter, education, etc., because we think that is the best way to do it . Just that one is insensitive to it , it is a question of what is the best means our great worry is putting into a Bill of Rights in South Africa frankly , what is the word I am looking for , the whole panoply of human perfection and aspiration just like there were Bill s of Rights in Soviet Union, China, which promised perfection of the human condition and flirted only to deceive because they never ever delivered upon it because they were incapable of any kind of justiciability, that to us is a question more of practice rather than one of philosophical difference, but I mean the Bill of Rights does have to deal with those issues but the question of how you deal with them is critical to whether the Bill of Rights itself succeeds or fails .

But no matter the person's condition is I think the only excuse not for obeying the law perhaps is the legitimacy or otherwise of the regime which imposes the law on the citizenry and that is the era we have come through. I am not sure that any condition negate obviously in criminal law or other law there's going to be various categories of defence , justification , necessity , self defence that does not derogate from that but we also got to have a rule of law re-established in South Africa that we equally have to have the provision of the state to provide the entitlements of life to its citizenry where the citizenry cannot provide for itself but I don't think that the one issue can be allowed to start qualifying for the other.

Chair : Thank you , Senator Surtee.

Senator : Mr. Leon, I refer you to page 32 2.3 where you set out an irreducible core call of Rights. I notice included in that core of Rights item number 26, the right to free economic activity which obviously does not fall into within the ambit of universally accepted Fundamental Rights but in any event been included in your core, you have included the right for free economic activity but you however have excluded from the core of fundamentally accepted Rights the social and economic right . Could you give a reason or justification of introducing the right to free economic activity and excluding particularly in the light of the disparities of the past the social and economic rights from your submission. Thank you .

Mr. Leon : Mr. Chairperson, I actually dealt with this particular paragraph in the last meeting because this really comes under universal core and I particularly dealt with this in a discussion I had with Professor Asmal . First of all this has got to be read. We have taken Chapter 3 here as the starting point all the Rights listed down here currently appear in Chapter 3 and we say there can certainly be an argument about the inclusion of further Rights but we believe that the afore mentioned there are therefore reducible are minimum consistent for a free society. I acknowledged last time that free economic activity would not probably not be in the settled core of universally document, it happened to be peculiarly introduced into our own Bill of Rights and seen Fundamental to the provisions of Chapter 3 I am pretty relaxed about it and I think my party would be as well . One simply going through Chapter 3 it exists in saying which fell into which category and really that is the basis of subject of qualifications in 2.4.

Chair : Naledi

Perhaps I have not followed Mr. Leon's response properly but I do not seem to get an understanding of why out of the irreducible core you have left out labour relations for example and education.

Mr. Leon : Chairperson, I have got I mean the whole of labour relations, question and the way it is dealt with in our interim Bill of right in our my party's view it is a complete mess because at one level it is included as sort of a Fundamental right and then the Bill of Rights itself is precluded from inquiring into whether or not the current labour legislation has validity in terms of Right as opposed to jurisdiction so God forbid that we should introduce that particular view point there here I do not think it is part of the core as it now appears in Chapter 3. Bearing in mind these come from Chapter 3 . On the question of education, I would like to deal with the question of education if we could under the question of second and third generation rights because the problem with the current Chapter 3 is that it is highly selective. I mean certain things were thrown in there and others were kept out on basis which had nothing to do with the creating a core of irreducible Rights but which had everything to do with meeting the political necessities in terms of this interim constitution was granted . So to me education is co-existent with certain other very Fundamental basic provision, some of which are not included in the Bill of Rights at the moment, so that is the problem of elaborating with some and not others.

Mrs. Pandor. If I could just follow up what Mr. Leon agreed that in fact access to education is an important component for individuals in terms of the exercise of the irreducible core that has been outlined by the Democratic Party.

It's bid is not alone the problem is that you also find the question of shelters the moment you start the access to education of course it goes without saying but what about the people who say right to shelter and what about the people who say the right to nutrition because without these Rights other Rights become theoretical and very problematic or that is the problem of highlighting certain of them, I don't regard some people might see in the right to free economic activity which seems to excite some interest in the way it is put there as being anymore than thing like people having a fundamental right to trade , to sell their labour to produce and that is also a part of the meanings core of settled. I don't see this as some defensive so sort of 19th century free enterprise robber bank capitalist that is not what we are trying to achieve with this but its easy to say Education this and that, but you could actually the thing has got to be looked at as part of whole and that's my problem of selecting certain and excluding others and then how do you it costs nothing to us the right to free economic activity costs nothing on state in terms of positive obligations says to its citizens you can trade you can carry your profession where you wished. When we get to the question of education, let's go and look at the current white paper. I mean it's very problematic in certain aspects flowing from that because the state says it has got obligations to provide a certain minimum standard and length of schooling what happens if the state cannot do it in one year, what happens to the right to shelter or housing starts to overwhelm the need for education what do we do there, that is the problem it is very easy to state and to set Fundamental Rights but in this.

I think be careful about how we write them and the obligations we impose on the state entitlements we give we're going to land in the situation where we promise to the people of South Africa something that no government can deliver upon and that really is said by a party which currently modestly speaking , is not going to form the next government of South Africa so in a sense easy for us to say it we are sitting in the opposition we are not in government but if I was in government that would be my departure point . Are we actually giving something credible or which can be delivered upon or are we just putting words on paper.

Chair : Thank you . Any more questions ? If here are no more questions then, I would like to close this aspect and go back to our Chairperson Mr. Leon. Thank you.

Mr. Leon : Yes . Thank you very much Ray, ladies and gentlemen for your politeness. We have got a real time problem now. We now have finished the party political submissions everyone has spoken who was here to speak the Inkatha proposal you will find in the documentation between pages 46 and 55 let me put that on record. There's no one here to present their view point. I , immediately would you like to move on to general .. I move on to general. There's no point in belabouring that which we have just discussed before going to the items there , apparently 3 parties have a somewhat overdue in their submissions over a week overdue in their submissions on the equality you recall last Monday evening you all had to hand in your party political submission so that we could make progress with the next block, those parties who haven't done so you're in serious default and you must please do so.

We move on to question of community liaison and can I draw your attention to the following issue please.

There are you will be pleased to know because you are all politicians , you enjoy speaking , three public meetings being held , four public meeting being held this weekend, yes exciting , Northern Cape, Western Transvaal, Gauteng and the Western Cape, 2 are being held on a Saturday the Northern Cape and Northern Transvaal are being held on Saturday the 11th and Gauteng is that in Johannesburg or Pretoria ?. You do not know Johannesburg

It looks like Johannesburg.

Gauteng and the Western Cape on Saturday , the 11 March Northern Transvaal and Northern Cape on Sunday the 12th of March, the proposals which has come from whoever forces from on high is that this theme committee as a whole send three members to each venue in other words that the theme committee should provide 12 speakers for this weekend , in case if you have nothing more exciting on your diaries or any other obligations you can go and orate at one of these public meetings, there is also a proposal the larger parties.

O.K. each of these meetings, I don't know who constitutes the larger parties obviously the ANC and the NP and I do not know if Inkatha is taking part they would they would fall into the larger party category that the ANC and NP and Inkatha if they are participating provide 2 speakers and this which is correct because their are so many of you that the smaller parties which is the DP, PAC., Freedom Front and the ACDP come up with one as between the three now we can't belabour or elaborate here is to what the meeting is about there is a briefing on Wednesday. Whoever is in charge of the parties here we got the ANC lists right have they provided enough people.

Chair : All right, the National Party.

Input : No comment so far.

Input : Let me just say that this is becoming a difficult thing for those of us who have a contingent of five people in this theme committee if we are expected to send those delegates virtually every first or second week to these participation programme when they have other commitments as well its getting very difficult now I can understand the smaller parties so called smaller we are the small parties in this theme committee several of our members, are not from the Western Cape so they got commitments in the Transvaal and elsewhere and it really is becoming a real problem , Mr. Chairman .

Chair : There is no compulsion , obviously this is voluntary exercise so the point is made try and be in charge of party of one member. Here I must tell you its even worse I no doubt the secretariat will in their normal style will send out frequent and constant reminders if everyone defaults We'll see what everyone can do and the other issues that arises is the media following statement. I must bring your attention to the media department of the C.A., is launching weekly media briefings where theme its members will have an opportunity of discussing progress as theme committee members in the media. Theme committee is requested to nominate one or two of their committee members to the briefings they will be held every Thursdays 14.00 Ridges house.

I would like to comment abuse my position for the moment. I think this is going to go the same as the constitutional way s chit chat whatever that newspaper is called where deadlines are set and therefore obliged to fill it with something. It seems to me that there is going to be media briefing every week which someone will feel obliged to say something even if there isn't much to say and declined mandate this thing every week from my point of view it's actually a mistake. I think there should be media briefings when there is something to brief the media about. There won't always be something to brief the media about every week . Just speaking for myself I think actually devalue it . I think one should have a facility available to be used when you have something concrete to put to the media but when every week I think is going to set an unfortunate limitation on the thing .

That is my view point . Could this be left to the core committee. Defer this to the core group O.K. Any comments?

At this stage. Those in the drafting team must please stay behind to consider drafting report due.

Mrs. Pandor : On the general matter if you will allow you mentioned earlier that there may be a need at some point to return to the submissions of the IFP and I was wondering if they take six weeks to come back what is this theme committee going to do could we seek some guidance from the Constitutional Court or the management committee on this matter.

Chair : Very valid point mine was just a normal throw away line. I think the issue here is what do we do about the IFP on issues that we have moved and we've covered they might wish to reopen could we please seek some guidance from the Constitutional Court I think in the first instance the management committee and deal with that issue Mr. Sizani.

Mr. Sizani : Yes, Mr. Chairperson, one other aspect in this it also depends on whether they have made a submission if they made a return submission those are reporting are bound to take account to what is said and also their submission attached to their report so it might be the problem in the future.

Chair : Indeed . We did specifically draw a table on the IFP document today even if there is no one to speak to it and it's there .

Input : Have they also made submission on the next block.

Chair : They also made a submission they have to be quite well prepared they made a submission of the next block as well , so they are here if not in corpus than in animas . You're also welcome to attend the core of the Constitutional meeting this afternoon where block one report is going to be tabled . Yes .

Input : Mr. Chairperson, can I take you back to community liaison programme because in the meeting we had agreed that we need to review that programme evaluate it and make submissions about the way forward because they are clearly there a lot of problem associated with the public events that have been had . So I want to propose that in our next meeting we table this issue too formal discussion in the theme committee but at the same time we request all the parties to make submissions about how the programme could actually be improved because we can't just assume that the programme has been moving smoothly there have been a number of problems our discussion in the programme is limited to simply nominating people I think that will be perpetuating the problem that is existing . So I am requesting that we urgently review the whole community liaison and participation programme .

Chair : Yes I think that's quite correct, we did discuss it before or we just left it there I suppose the Constitutional Count is really the best forum where the whole thing should be looked at there is no reason why we cannot have our own input so we put on the agenda for the next time but parties have to make submissions . My party has a view point that is already expressed in the C C meeting . I suppose I will just repeat it here . Well parties are requested to make submissions on the issue and those that do not can just react to the other submissions on this or other submissions . All right , you have got make submissions if you have a view point on this community liaison question by Thursday 2pm is the deadline for submissions . So please make submissions and they can be in your capacity as a group within this Theme Committee . It does not have to embrace every view point every party .

Input : I do not want to delay the meeting any further but I think there are two additional points that I think I should to bring to the attention of the theme committee and I had hoped Senator Roger would report back on the meeting that we attended this morning of the Ad hoc committee on traditional leaders and the possible overlap with the work of this Theme Committee and just briefly to report back that the decision of that meeting was that the whole question of traditional authorities would be dealt within theme committee two.

And that we would come to consider overlapping aspects on customary law and the application of the Bill of Rights on indigenous law and customary law in blocks 8 & 9 the technical experts the ad hoc group technical experts will be arranging a workshop at which we will be asked to participate or the Theme Committee members will be asked to participate so that issues of relevance to this question when we comes to deal with it can be canvassed and noted and worked into our programme . Then secondly just on the question of public submissions just to report back that our technical committee in accordance with the mandate we've been given I've made quite a progress with that we have handed to John sort of the summary of submissions and the nature and where they fit into the blocks of the work programme and it would be up to the theme committee to decide on how to integrate that into the work of the theme committee. Thank you

Chair : Thank you very much Ms. Liebenberg . Just to indicate as well that Professor Rautenbach had to leave early and Professor Chiddle is ill today. Right can we adjourn and the drafting committee please remain behind.

Tape 1**Theme Committee 4 Meeting 13-03-95 (1)**

Chairperson: We will start with our meeting and I do want to apologize though that the notices were out on Thursday, there could be problems identified by the co-group when we met on Thursday afternoon. We anticipated what is happening now. So we met on Thursday and we agreed that in as far as supplementary reports on block one which is in your documents. That perhaps we need to give people time today to be able to study the report and to come up with amendments if there are any. Also looking at the programme there seems to be a problem in as far as equality is concerned. People are concerned that it is so loaded that we may most probably get into problems. So there is a proposal of a change in the programme. It is also attached in your documents. Then we will look at the community liaison because this is now the time for us to assess and review the whole public participation programme. I remember that there were proposals that the rural areas were ignore and perhaps now is the time we look at that. So now I am not so sure that we should look at the minutes because our feeling as a co-group was that we need to give the parties time.

1. To study the supplementary report.
2. To look at the proposed programme and then
3. To look at the community liaison and then we converge here again and finalize the supplementary programme on block one and then also deal with the programme whether we agree with the proposal that is coming from the management.

So we may either agree now that we take minutes, the matter arising from the minutes and there after we again for as the parties to look at all the aspects that I have mentioned for an hour and then come back here and conclude our business. Can I get some views at what I am proposing looking first at the minutes and we will allow the parties to again look that I have just raised. What is your feeling Comrades, ladies and gentlemen?

Respondents: We agree.

Chairperson: Thank you, we have the minutes on page 359 and other ones on 10, 11, 13, 14, 15 and 16. The minutes of the last two meetings of the theme group. Comrade Surtee.

Respondent: Comrade Chairperson, in terms of the minutes in page 12, 4.2.1. I thought what had occurred was that one of the questions regarding whether the ANC finds itself sound to the judiciary. It followed that it was bound to the judiciary and also that other institutions such as the Human Right Commission and social institutions shall be created or established to enforce Human Rights. Is that the way in which the minutes read at this point in time its a further element that the Bill of Rights is enforced and entrenched. I think that one could further delete that sentence and say that in addition to the judiciary, the Human Rights commission and other social institutions shall be responsible for the enforcement of force Rights. Any other points on the minutes? Naledi.

Respondent: On the same page 43.3.3, Mr. Green's response on the last line I thought I had understood Mr. Green to be saying that he technical committee's opinion was presented from a perspective they as the ACDP regarded as not encompassing the biblical view, now the suggestion conveyed by the last line is that they would oppose a legal framework which seems very peculiar to me because it states that they define their opinion in terms of a legalistic perspective. Surely we need a legal perspective in a document which forms part of our constitution. So perhaps Mr. Green, you know I do not want to put words in your mouth, the statement conveyed may not be what you mean.

Respondent: Thank you Mr. Chairman. I think our position is as far as the input made by the technical committee. Our criticism is not that it is not a proper or correct input from their perspective. I think that the understanding for the input that was made is that from our perspective with regards to the issue of human right we have also looked at Human Rights from a model in biblical perspective and I do not think that was the aim of the technical committee in fact to make a submission in terms of that particular perspective and I think that the note or the input that I have actually made. Not that to say that their input was not a correct input. From their legal understanding back ground it was a perfectly excellent input made by the technical committee but it did not cover aspects which we have raised as far as Human Rights a concerned.

Chairperson: So in other words what you are saying Mr. green is that the technical committee have defined their opinion in terms of a legalistic perspective not in terms of biblical and moral perspectives. So Naledi, Mr. Green stands by that.

Answering: Chairperson the question raised is that do we want a document that is non-legal that is the question raised on my mind.

Mr. green: If I could answer I do not think that we want a document that is non-legal but we are just concerned that he moral issues or biblical approach which we emphasize, that it is not undermined or not looked at. So as far as the legal approach is concerned we have no problem with that we are just feeling that as far as our concern it must be much , much wider than just the narrow legalistic approach.

Chairperson: OK, that's that in the minutes so perhaps when we ask the technical opinion next time the ACDP will be able to say that we should not forget to look at biblical and moral perspectives. I do not know perhaps we will do that next time. He wants to stand with that Comrades.

Any other points on the minutes? Senator Radua.

Respondent: Just a topic here we have to delete Chairperson six lines from the bottom of page seven second last paragraph - into account was typed twice.

Chairperson: OK, we have two into accounts I suppose we are emphasizing the into account and we have to make sure that it was double. Another issue on the minutes OK no matters arising. OK, there being no ladies and gentlemen as I indicated right at the beginning that the co-group did propose that we need to look at the supplementary report on block one so that we finalize and finish and conclude block one. So that was the feeling from the co-group. We need to say that we have finished block one so we want all our members that is the various parties to look at that supplementary report. So that we amend it we do whatever we have to do today and put it aside. The second thing is that there is a proposal of a change in the programme which is attached in our document. That is instead of starting, we move equality right to the end but we want the parties to discuss because we want a consensus whether we do agree with that line of an approach. It's on page twenty two in your documents and then the third point we would like the parties to look at is the community liaison. We have reached that point of reviewing and assessing the community liaison and also we would to have the parties looking at the public submissions. Page eighteen because when we conclude people have a tendency of saying that we are not dealing with public participation's. It could happen that people are not perhaps looking there reports but there public participation's on page 18. So we want you to look at these. Lets synchronize, I do not know whether my time is the best time its two minutes after nine. Is it the best time or the wrong time. So its two minutes after nine so perhaps my watch seems to be the best time so far. Will an hour be enough?

Response: Yes.

OK, shall we then come back at 5 past ten. Is that agreed? The meeting stands adjourned until five past ten. Thank you.

Chairperson: You are reminded not to forget to sign the attendance register. We will immediately move to number five in the agenda - the supplementary report on block one. So we have given the time to the parties to look at the report. Who of the drafters is here Surtee and who else.

OK, could you take us through the report.

What's your feeling do we, right the opportunity was there let's check it. There are any issues that the party would raise. Yes senator.

Respondent: The last time on Page 2 we left on the word given, it should be given due and proper consideration. It does not make any sense. Agreed? Yes. Any other point?

On page 1 anything? Of the supplementary report? Comrade Chairperson.

Ja! Ja!

Both substantive and whatever I am ready for you

Respondent: Naledi, er Comrade Chairperson under two on page 1 of the supplementary report we have stated er 2.3 states that the issue of horizontal and vertical application of Rights is one of the outstanding contentious issues. Now I have referred to our first report that we handed to the CC's and in fact in that report we had highlighted horizontal and vertical applications as a contentious issue but had made the suggestion as to how we deal with it. So it was not as outstanding contentious issue. It was a contentious issue than represented with a resolution as to how we can address it. OK. So I am not sure whether that statement is accurate, statement 2.3. In fact at some point I cannot find the place at the moment we repeat what we have said which I also think should not appear.

On the documentation, today's documentation the last page on page 72, I think that, that's er what Naledi is talking about 7.1.4. What has happened is that we have repeated that by writing it gain whereas it was already submitted an they have already dealt with it and that's how we are going to be dealing with it. So er, yes, yes, Mr. Surtee, Mr. Chairperson. In fact I am glad that it has been raised because it was raised when we had the meeting with the co-ordinate to set the draft report it would appear Ms. Camerer has a passion for vertical and horizontal and consequently insisted that this be re-introduced into the report the argument was certainly that er, it was not necessary to do so with regards to the fact that a suggestion had been made as to how to deal with the issue was simply redundant but because she insisted that we incorporate it into the report we have to deal with it as it were.

So what's the feeling of the committee. Is it that. Is your feeling that we are repeat this because have already highlighted in the previous report.

Mr. Msizane (Respondent):

Well er we can either delete it or if there is a feeling that it should remain then we can have a 6.4 which basically says that the issue of application will be dealt with in block 2 of our work.

Chairperson: OK - still with the first point first do we agree that we delete it?

Senator Radua Respondent:

Because its been there in our report that has been submitted already on page 73. What they have done, they have taken it as is and just put it back there. I see no reason therefore to repeat it. It was suggested that one of the things we have to do in our reports is to make suggestions as to how we should resolve the issues and the suggestion is perfectly clear. So I do not think that there is any problem in that regard. It stands in the original report.

Chairperson: OK - there seems to be consensus that we delete that 2.3 and 3.3 any other issues on the report? Comrade Chairperson.

Respondent: Yeah! Yeah! Technical typographical error 6.2.2 line 3 and organs of civil society. It would appear that this error is made quite frequently then the other technical lapse is paragraph five has been repeated that is beneath paragraph five there is another paragraph five. OK - that perhaps is not a serious issue now because the numbering will change anyway.

Chairperson: OK, any other issues?

Respondent: 3.2 Comrade Chairperson Page 1 the political parties will make submissions. I think would submitted submissions is correct. Would make submissions on Page 1 3.2 small one.

Mrs. Force: On 6.1.1 the issue of juristic persons the paragraph does not exclude however that in some of the right consideration may be given to juristic persons. It sounds weird that this leave it to why it opens up to the exclusion of consideration of right to jurist persons. So what we would like to see is consideration shall be given.

Audience: Yes! yes!, right, Yes.

Respondent: Comrade Chairperson, the reason for the manner it was phrased as reflected to the report is that we have on the one hand a report from the technical committee which focuses on the fact that word everyone particularly refers to primarily to natural persons. Then there is the issue that the word everyone could refer to juristic persons. Now what we had tried to do is try to marry the diverging views of the parties and the report by the experts so that the experts reports does not hang in a vacuum. The ANC's position is that the bears of those reports are natural persons. The IFP would say that it is natural persons as also juristic persons so to accommodate, both so that it does not become a contentious issue in the light of the report that has been submitted we have chosen the word may which does neither, does not include or exclude as it were, it's neutral, it does not close the door it opens the door to both points of view and this is why the word may have been selected as such. Mrs. Force - I understand with respect I think in terms of an instruction, this leaves it too open for exclusion. I see precisely what has happened here where it says does not exclude however, but some of the right considerations may be or may not be. We are saying that they should be.

Chairperson: All right. The issue as far as I am concerned remains contentious anyway and there is still room to discuss even in the constitutional committee. So we do not necessarily have to agree here. We could further open the issue for further negotiations. Perhaps that gives us a chance to think about it. So what's your view, is it we leave may and write shall. So let me just get a consensus of what will say.

Mavivi: Ja, yes - Ja Chairperson. In my view, I do not think that this is an issue to go to war with because I think what we say is that as we are going through our work each and everyone of us will be able to raise in every right we will be considering whether this applies to the natural person of the juristic. And in my view there is no way we can reach a conclusion or give an instruction that shall, we are all here, and we will all be here to participate and raise those points of view. And the instruction I think is it us and there is nothing really binding to say that we should actually say shall! shall! shall! because we are here, we will be making it clear throughout submissions that this right must apply to jurist persons and natural persons. I think we should argue it throughout so I do not have a problem with this formulation.

Mr. Sizana: I think that the question of the application of these Rights will be a case by case issue as we go down the line and I think and that will be the way. I see no reason why it should be changed.

Chairperson: OK. Do you really want to divide yourselves on the issue because what is, what comes clear is that we will be dealing with the specific Rights. As we are dealing with those specific Rights it is at that point that we decide whether that one will apply to that person on to that person whatever the case might be. And then of course the next point is having noted the opinion of the technical committee the parties agreed to give due consideration to the technical opinion when considering each specific right. So are we agreed that we leave may there.

Mrs. Force: But then you see this is where the problem comes in when one reads the way it has been phrased that we have agreed with due consideration to the technical opinion we do not agree specifically with the technical opinion that is the problem. That we are bound by that technical opinion, we have a problem. Watch out as well that the parties have agreed to give due consideration, the consideration that is due we asked them, the theme committee to give us an opinion. I mean we shouldn't waste people's time and then we do not give due consideration to their opinion.

Respondent: Yes Chairperson, all right maybe just to wrap up there are two issues. Firstly when this word, sentence as it you said it was discussed. It was discussed with the representative of the IFP being present and consideration was given to differing or diverging views and the issue of individual right was also discussed on that if for example when we deal with specific right it may well be that a party may feel that a juristic person is included under that specific right. Whereas in terms of another party may feel that the Jurassic person is excluded. So by putting in inserting the word shall it would mean all the particular parties will be bound to the interpretation of the specific right. That is why we left the word may which means that when we evaluate the specific right you can either include it or exclude it. That is the reasoning behind the insertion of the word may and this was discussed at length at the time the co-ordinates met to draw up this report. Thank you.

Chairperson: OK, then we will leave it as it is. Is there any other point that you could like to raise?

Senator: If we could just go back I would like to be absolutely clear in regard to horizontal and vertical application. Are we deleting 2.3 and 3.3 Yes, both of them OK that concludes then the supplementary report with the amendment that have been made here and therefore it is ready for submission to the constitutional committee. I just want to clear something because there is a co-group who did indicate that the report must be given to the constitutional committee. Well I do not know, lets be transparent and democratic. We did ask as a co-group that the report must be given to the technical committee for technical advice whatever the cause might be as requested by the technical management and the CC.

Chairperson: You have looked through the report now as the technical committee any comment?

Sandy: Thank you Chairperson. There is just a typographical error of 6.2.1. I think that there should be all the parties and the technical committee opinion agree that the Rights contained in chapter three should be given due and proper consideration. The word 'given' has been omitted.

Chairperson: All right. But I think that generally the technical committee is happy with the supplementary report as it stands. Thank you Sandy. Then we shall then pass it tot he constitutional committee. We shall move on off to the programme. Maybe let me start with the programme before we look at the submissions that is being proposed on page 22, 23 up to 24. You will remember that it used to be like it is on page 21. There I as proposal now that we shift it as it is on page 22, 23, 24.

Any serious objections? To the programme as proposed that we start with the right to human dignity, right to privacy, the right to life and end off with the right to equality. Comrade Sizana.

Respondent: Mr. Chairperson. Myself I would support this suggestion particularly it will also give us a chance to look at this and apply ourselves to the new formal rule that has been suggested. Particularly the right to equality may be likely to be controversial whilst I have got use to this process it might be helpful later on particularly on this block.

Chairperson: OK, the programme is supported. Mrs. Force.

Respondent: We do not have any problem with the programme as such but we would like to suggest that on the issue of right of privacy the issue of procreative choice come in, in the block on right to privacy.

Chairperson: Could you repeat that Mrs. Force the issue of procreative choice is under right to life. We would like to see also if not exclusively under the right to privacy.

Respondent: I did not get the suggestion Mr. Chairperson. Is the suggestion going to be written down? What is the suggestion? That it should also be written under privacy. Yes.

Because anyway when you are arguing about abortion you will still argue the question of the right to privacy of the women. So I really do not understand because it is not a closed up issue anyway. Those to write will discuss it as the issue come up. OK. I think the understanding is that Mr. Chairperson what is written down under that right is merely a guideline. In fact it does say 1.3 there right at the end, there issues parties can make suggestions.

Chairperson: OK, shall I take then that we agree that we will move as proposed right to Human dignity would be the point that we need to deal with. I believe that we could deal with this issue next Monday which means that we have to make a proposal that we must have a submission deadline. It was today. It was today? All right and what we have to do is to synchronize for Monday as a debate. So are we saying that on Monday we will be debating the right to Human dignity. Is that agreed. Can we push it to Wednesday afternoon - do not push it that far they say its today. With the Queens permission. Yes Monday what time are we meeting on Monday? Monday morning.

Naledi: Thank you Chairperson could we perhaps, given that we have agreed on this programme I suggest that parties re look at their submissions to ensure that the incorporate the three elements that appear within that suggested programme suggested outline and that by Thursday this week we all have submissions provided to the secretariat so that we would have perhaps next week to look through the weekend to look through the submissions.

I am not sure what Monday's programme would be like but I think we would be meeting later in the afternoon, is that right? Morning, morning - we would not be able to make it anyway. Mr. Tony Leon, I just would like to say that without anticipating the debate the right to dignity would no doubt take about five minutes to reach a conclusion. Because practically every charter human Rights every human right submission is the same. I do not think that it will be contested. Well maybe one will see that until Monday. Every person shall enjoy the right to dignity I can almost guarantee that, that will be the consensus. Therefore I am not sure whether we have to do that and dispose of it because I think I sure its going to be incontestable and the perhaps anticipate providing right at least have a submission on another fight because I do not think that there is any point of having a debate or discussion about something which we are all going to agree upon anyway. So you are proposing that we add on another right most probably the right to privacy let me check the members here. There is a proposal that instead of just taking one human dignity why don't we include most properly the right to privacy as well. Checking. Point of clarification is Leon referring to the right of human dignity which should enforce labour detailing which should enforce labour detailing and the rest of the accused person or is he referring to all in the specific right to human dignity - I cannot hear.

Respondent: Sorry, if you look at page 22, the heading title is the right to human dignity and it states three specific Rights, elements are you referring to all three elements? Are suggesting that we do the three elements plus a further element or are you suggesting that we do the three elements on that page. Page 22.

Chairperson: All right are you there Tony.

Respondent: Well Chairperson there, the one the human dignity numbered 10, clause 10 is there and serves should not enforce labour I think that they are in the same bracket in terms of being in contestable and there will be inter party agreement. Now as to regards to detained and accused person I think that this is all here as well. This is only part of clause twenty five and the thing goes on at great length in the interim constitution with a whole range of points. Now I do not quite understand how it stopped at 25.1 because I think there is a great administrative problem as to how it is depicted here. Because the whole provisions in the interim constitution on detained and accused person. I think that there are a whole lot of details and they do not stop at twenty one. and I do not I think that they should be dealt with we should deal with the question of arrested, detained persons accused person bailed persons.

Should have been taken out of here. Perhaps we should have been notified beforehand that it does not actually belong under the right to dignity. By the way, the word dignity happens to be mentioned there, human dignity does not belong there. I think it should be dealt with in a separate place. But to answer Senator's point human dignity serve should enforce labour of with respect to sort of motherhood.

The Bill of Rights they are not going to detain us in a discussion at any length I do not believe it. But I think that we should take out 25.1 out of here. Mr.Sizana?

Respondent: Yes, Mr. Chairperson even myself I am inclined to agree with Mr. Leon. I do not understand why 25 is included there. The right to human dignity is basically an ambiguous right which includes almost everything I think it is possible that we can invoke it against any type of violation. So I thought basically that it was going to stand alone and if it is going to stand with other Rights it includes quite a number of things. So all that I actually feel is that it should stand alone. OK, because I think all that they are doing at 1.1 they say see construction spool 2 and section 12 and what have you. I do not think that it necessarily mean that we must deal with that. Senator Radua?

Respondent: Thanks Chairperson. For your reference. I think that it is quite clear that the reason why that those have been placed in the programme is specifically that they to an extent refer directly to or involve human dignity and I do not think that it needs along discussion on the detained, and accused person. It merely I think it emphasizes that whoever is arrested or detained should dealt with on a basis that his or her human dignity is not impaired in any way. That's all what that means I do not think that we will go into the merits of section 25 of the present constitution under this heading. But there is specific reference to human dignity in section 25 and to the extend that people must be guarded against the misuse or the abuse of that human dignity to that extent a simple sentence in the position paper s is all that is necessary.

Chairperson: OK - what I am trying to get is that we are saying that on Monday we will be dealing with human dignity under the agenda items. You may use 25 as a reference if so wish as pointed there. But the point I am trying to drive to is whether you are going to be dealing with only human dignity on Monday. I want you to decide on that or you want to add the right to privacy so that we do not talk in circles. Then the other issues will solve themselves.

Mavivi: Ja Chairperson. I think on my part I do not think there is any problem with the suggestion made that we deal with human dignity and that we also consider privacy and also under dignity we deal with 25.1. And of the problem is that we are only dealing with 25.1 B and could extend it to others. I think we should agree on that because I do not think that there is any magic in terms especially if we believe that all the Rights we have here, we have said that they are inter dependent and related. Thus I think our task as a theme committee is actually to start considering this and especially with the deadlines we are having of starting to consider these Rights and pass whatever for drafting in order to move the process of constitution making. I would suggest that then on Monday since there would seem there is an agreement on issues of human dignity and also of privacy. That will not take us long. That we will also consider the next issue which is the question detained arrested and accused persons and maybe we do not only confine it to 1.B but maybe to other issues which apply on that and that will serve our discussion on that day. Mr. Sizana.

Respondent: Well Mr. Chairperson, I feel I should strongly push this point that we do not really have to include twenty five and also in the programme you have only mentioned the right to privacy but according to the programme that was going to be followed it was the right to life was going to follow. And I would suggest myself that if probably we take the right to dignity and the right to life. So that we can finish this block. This problem that we are going to jump to other blocks include section 25 and then take section 25 B. I think it will actually confuse the block we are dealing with. Actually I thought that we were still going to follow that block as it is. It is only changing now equality and putting it at the back rather than including a number of other issues in this block.

Chairperson: OK, as proposed here the programme we are agreed is the right to human dignity and on page twenty three it is right to privacy and then page twenty four it is right to life and the last one would be right to equality. So what people are proposing is that on Monday it must be the right to human dignity, the right to privacy now the bone of contention now is whether we include, detained, arrested and accused persons. I think that lets address that there seem to be consensus - we have human dignity and the right to privacy. Now the issue we are debating now is whether we include 25 in our deliberations and that one. I am going to ask people to take on that one.

Naledi: Thank you Comrade j, I think what is being done is that we have had an extrapolation of 25 which is 1B we are talking of 25 in our input but it is actually 1B, 25.1b which specifically refers to those conditions that lend themselves to human dignity.

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Respondent: Active on this particular extrapolating not the totally of twenty-five which is a large section but that component which is being pulled out because of the reference that it makes to human dignity and I think parties have to really except that we have a program that we work flexibly in terms of our concerns and interest within its ambled and therefore can raise aspects which we feel should be raised and those we feel have to be left out

Chairperson: Okay any other view?

Respondent: Comrade chair I maybe a little mischievous by stating what I'm going to state but when one looks at twenty five itself it deals with detention, detention of a person mean arrest I mean that impact directly on the dignity of a person. When a person is castrated or is placed under arrest it affects his freedom and therefore by the very nature it affects his dignity. And the manner in which he is placed under custody. What I'm saying is that we are trying to make progress here and I can see no reason why although we refer directly to human dignity why we cannot deal with section 25 and I think that this is what comrade Mavivi said that all these rights are interrelated and if dwell deal with the entire section say 25.1.

For example we would be making progress in terms of substantive rights and also we would be making progress in terms of issue emanating from the Bill of rights which affect the issue of dignity I mean look at the issue of enforced labour it has to do with the issue of dignity and has to do with the freedom of movement, you talking about freedom , you talking about dignity. So I do not see now why we want to try to move away from a program we can make effective progress on because once we move on to privacy there is a great potential of getting bogged down in privacy in terms of section 25. Section 25 would move on swiftly as a whole than privacy on its own. I believe for purposes of progress we should section 25 as it stands. At least section 25.1 for our work program look at right number 10, 12 and 25

Chairperson:

Okay can we leave it as it is there was a proposal here that the parties could add those issues that they feel a significant and leave that are not. Therefore I think at some stage we will be dealing with the right of detained, arrested and accused persons. And therefore if a party wants to deal with, when dealing with human dignity wants to add something about arrest but you must remember that we will be dealing with this issue which part of our program the right of detain, arrested and accused persons you are reminded that it is part of our program. Therefore if you want to add it now it is up to you but you are reminded that we will be dealing this issue at some other stage. I real would not like us to be delayed by this point

Respondent:

Let me just come back for the last time, if you follow the ANC logic in this regard you could easily have human dignity as a topic then under it you could have subsection the right to privacy, you can have the subsection of freedom and security of a person and what I'm asking is why them. But those are separate sections in the constitution including the question of detained persons because the right to privacy, the right to human dignity would to involve these question of torture and in human cruel treatment. But those are separate sections. So why do you go and pick up these sections on servitude and pick up the section on detained persons only. If those are independent sections in this and we are going to deal with them as topical issues. Why do we now include them under human dignity. We can deal with human dignity alone in the some sense that it is section 10 in the constitution. But it does involve quite a number of issues I don't see why dwell on section 25 only if that's the logic we have to follow.

Chairperson:

My proposal is that we do not have to argue until we are pink or blue or red in the eye or faces. The fact of the matter is that if you look closely in our program that this issue is going to be dealt with at length therefore I my soft approach would be if parties want to include it you can include it but you must remember that its going to be part our program so I really wouldn't like us to argue until we are knocking other peoples heads here. So its not an issue that we can fight about human dignity on Monday and the right to privacy.

Remember that the deadline is Thursday morning in particular if you want this to be circulated to all the members. If then you do not keep that deadline on Thursday morning then we may have serious problems. So the parties must meet in the evenings in the mornings. The best time is 5 am in the morning for parties to meet and conclude this business. Then I'm going to ask you have you done that, I'm going to ask you to move off to community or yes. May sign the application this is related to. On page is the public participation. Ag ! sorry the public submitting on the nature and application. Is there any comments? Public submissions. Professor

Respondent: Chairperson I just would like to point out that was submitted only a week ago

Chairperson: Senator Radue

Respondent: Thank you chair. One of the things that has obviously come out is from various quarters a suggestion that there should also be a list of duties on a list of obligations built into our Bill of Right. Now I'm wondering whether this isn't the opportune time to ask out panel to give us some views or give us some opinion whether not duties should be written into our Bill of Rights and least open the aspect for the discussion I think it would be useful. I do not know what their reaction might be.

But I think it something that, it might even be a contentious issue.

But it is something which the public seems to be really, pretty concerned about and I think we should take due note of that

Chairperson: Would you like to comment? Yes, okay, Sandy

Respondent: Thank you chairperson I think that this is a feeling that the theme committee would like us to produce an opinion if we would be willing to do that as a formal mandate theme committee

Chairperson: Right if that's what you are requesting I think we shall do that. To look at obligations and duties in the Bill of Right. What's the view other members. Do not forget these are the public participation I mean public submissions the second one from the bottom is even more interesting it solves our problems. There are no such thing as human rights nobody entitled to anything - that one solves our problems. Can I ask them to save time can I ask the drafting theme committee Mr. Surtee, Mr. Sizane, Mr. Green and Mr. Skosana to take note of those public submissions because they must be included in the report to the CC. How is that? Well lets come back to the point raised by senator Radu. While you are quiet silence means concern. Obligation and duties senator is proposing to ask the technical committee to give us an opinion on obligation and duties. Naledi

Respondent:

Comrade chair I think that the route we should follow especially given that there is significant concern around this insert of obligation and duties that perhaps we should allow room for discussion at some point and perhaps a technical committee report. But I believe that we need to do far more work in looking at the various rights as per say and then not totally on the obligations and duties for the sake of time I think we need to focus on the rights we have , and particularly in completing block 2.

Respondent:

Senator. Before I could respond the point is that if we are going to deal with is the nature of the Bill of Rights then we are going to produce and it falls directly under block two and even item one you will see that it is within the ambit of the program under block 2 and that is why I thought we are going to get some guidance from the technical committee at this stage. And then I quite agree lets set a general debate on it and see how we feel. Tony yes

Respondent:

Mr. Chairman my party already made a submission under block 2 on this very question although there was some confusion but the administration indicated that's what we should include right at the beginning. So we duly did it about a page I think it is valid to talk about the obligations question this is a about the nature of the bill of rights. I mean its really the sort of all encompassing thing and one can express a view point whether it is competent to put in a bill of obligations as such.

So I do not think its a particular difficult exercise having already been on it. Although no doubt there might be various considerations its really a philosophical question rather than a specific one and while its true that you can look at all the rights and then come to a conclusion which one's go before obligations. That's equally true to the other general questions we have answered under this block and the previous one chairperson. Okay is there any person who has serious objections with this request to the technical committee? The obligations and duties given an opinion but they would not be doing it now.

Respondent:

Chairperson if you will allow me, my problem with it is that now at this time that despite the fact that some of the parties have made submissions in this regard they have never raised them for discussion by the theme committee. We haven't really had a debate on it I'm not saying that the are not any submissions. The theme committee has not debated this matter so I'm not sure why. Before actually having some discussion we should immediately get a report from the technical committee. I feel that's a straight route to go.

Respondent

When we discuss the obligations I'm out saying that it s not necessary for scope discussion within this committee but we may be sitting with much the same situation in terms of the vertical and horizontal application of rights.

Where it may be decided that its best to discuss obligations as we discuss substantive and individual rights. Now I just quote from Mr. Leon's report we understand this topic to be largely redundant in so far we are dealing with the vertical application of the Bill of Rights which are universally acceptable, fundamental freedoms it is has tried to observe that such rights are essentially defensive or negative in character form and such right frustrate they constrain the state from doing certain things. For example state shall not do x or y. My submission is very much similar to that of the honourable Tony Leon. Its that when we discuss it is really redundant when one looks at application of the right whether its horizontally or vertically applied whether there a positive or a negative duty on the part of the state or individuals. The one can look at this issue in context. We have already moved away from the principles in term of the nature of right to the substantive rights and I see no reason why they should be excluded from any discussion around those individual or specific rights that is just a submission if however it is felt that one should look at it in philosophical terms then let it be so.

Chairperson:

All right in order to conclude this let me propose that the parties must re-discuss this issue with their various Caucuses. But the other thing that you must take note of you are not going to avoid some of these questions because there are questions, as we will dealing with each and every specific right you are going to be asked like 2.1 for example on human dignity, nature of the duty to be imposed on the state.

Either way if one like it or not, one way or the other we have to address it in the process. So we can discuss it as we are discussing the specific rights. But I would ask the parties to discuss and come up with perhaps something concrete. Whether we should give this to the technical committee to give us an opinion on the obligation and duties at a later stage. I'm giving you a homework. Mr. Green

Respondent

Thank you chair with reference to the nature of the Bill of Rights and the horizontality of the application of human rights. I think if the technical committee could consider as far as the horizontal application of the Bill of Human Rights is supplied we would also want to insert the issue of the obligations applied horizontally and also not only as far as the state is concerned. But the horizontal in their research consider their answer if they could consider that as well.

Chairperson:

Okay I have said that the ruling is that you will not be coming with an opinion until the parties re-discuss this issue because there are different views now some are saying that its reluctant and some are saying you will be engaging with it.

So I'm saying that the political parties should re-discuss the issue and come up with solutions.

I want to move off to community liaison 7 I have finished this issue now, community liaison number seven. Now the parties have asked to look at this issue of community liaison, public participation you will remember that there was a program from the community liaison for the whole of February up to the last weekend. Now it is time for us to leave you to and assess. Now you are given an opportunity to raise your concerns as political parties, community liaison. Tony

Respondent:

Thank you chairperson. The view point of my party is that the community liaison is becoming fetish in other words we have now turned it into an almost, we will have public meetings whether every weekend or not, it is very difficult for a political party like mine to effectively participate in this process participate in this program of voter. To us it is the first priority of business and therefore or at least until the close of registration which is in a few weeks six weeks time and there are very few registered voters in South Africa since we have to find our resources my party has to participate in that program. Secondly I have to ask on what I have seen on the actual meeting so far whether they, what purpose are they meant to achieve. I mean if we are genuinely going to go into a dialogue with the people which I think its an excellent idea. We actually have to have something to take to them and at the moment sitting at this committee there is very little that we have actually agreed with or agreed to in terms of having a real debate out there.

I mean we can say as the advert says write whether you like in the constitution which actually is misleading in my point of view because you cannot write what you like in the constitution. Because the 34, 38 principle which actually affect and bind and dictate how the constitution is going to be written and no one has ever bother to explain that as far as I have seen the media campaign to the public. There is misinformed debate taking place. But secondly I think community participation is great but lets do it on a structure basis we actually have an issue we have actually agreed to something here. Lets take it out there. Now we haven't agreed to an issue at the moment which is really going to excite the public because understand these programs say that the discussion take place around what would you like to see in the constitution? Well lets go and say the next item in the constitution is going or the position we have adopted, agreed, reached a consensus is that we one shall enjoy a right to privacy. Privacy consists of he following, what do you think about that or do it before we have a debate here. But at the moment as I understand it there is no connection between the activities in this particular theme committee on a specific topic and the actual public participation program. Now I just like to also say Chairperson several weeks ago right at the beginning at the session of parliament I was meeting the chairperson and the chairperson of the constitutional assembly and I made expertly this point to Mr. Ramaphosa and he said you absolutely correct, he absolutely agreed. But we seem to be following public meeting by route but not on a specific topic.

You are told listing committee to provide three speakers because we need to discuss this theme committee meeting at a public meeting Ivory Park, Phola Park or wherever it is I do not think that's the way to do it I think we should decide ourselves that there is a topic that we would like to go to the public on. It very relevant highly debatable and then go on to have a public participation event. Not us, to be simply at the receiving end of a dictate saying there is a public meeting on Saturday you must please provide three or four speaker. I think that is a fundamental problem. Okay I think the issue should be put an hold for a while so we can get on with the municipal registration next month and we ourselves as a theme group have canvassed some ideas between ourselves. Okay

Chairperson:

I want to remind members this is not the first time that this item is the agenda and we have been appealing to all the parties to come up with proposals and I'm sure that those who are chairpersons of the core-group would agree with me when I say this is coming to the agenda for the last time if we are going to talk encircles when we are asked to make proposals. Otherwise the management and constitutional committee will continue with their public participation proposals. Comrade George.

Respondent:

We have got some proposal from the ANC firstly we would like to see the fact that we endorse the mission statement of the public participation program and our proposals are meant simply to make sure that the objections stated there in are true. Our view is that the PPP should try by all means that the project of the spectrum population is reached by those programs and in that regard we contend that particular attention should be paid to the participation of women, the unemployed, the youth, the rural poor and also various sectors such as education find health, social welfare etc. The proposals that we have to make are a follows: regarding past the venues that were suggested have not really been accessible to the ordinary people. And as a result quite a few of them have not seen very much of a success. If you take for example the Drumcoreg in the Eastern Transvaal who would have thought that would be inappropriate and that concluded to the poor attendance. Similarly was Klerksdorp next door to the Northern province was also problematic. Further regarding venues we think that it is not adequate to have simply one venue for each province. Some ways should be found to be able to touch a number of places. And then on community participation we think that will be much helpful in the planning will be much able to involve the communities we are going to address and in that regard it would be good touch the churches, for example the civics, trade unions, teacher's organisations etc. to make sure that we are able get as many people as possible. And where applicable traditional leaders should be put into this picture.

If one many mention in passing some of us come from the rural areas we know that when we were canvassing. It is much easier to get the peasantry to a meeting if you liase the chief and we also think that would be important if some MP's and senators go out there to be part of the planning process before we go to those venues so that we are sure that if we go to those places there would be people. And then we know that it is difficult and we do not have resources well I mean all parties do not have resources. But it would be good if we could utilise our party structures to help mobilise people to attend our these public events. And then so far as the planning committee is concerned we think that the has to be a planning committee that will be able to plan or serve the PPP and its our contention that the whole process will be driven by political parties with the assistance of the community liaison and no visa versa or if that is not possible or is not appreciated we could extend the plea to the management committee to include the overseeing of the PPP. And the idea of a National Committee as proposed by the community liaison team should be discussed. > Would you turn to page 9 with regard to the appointment of a chairperson then coming to media we think that the PPP lacks a clear media strategy regarding this issue of public events. And we should have a strategy which is able to announce and cover the public events and this should actually be planned by the planning committee in consultation with the media liaison and the community liaison officers.

And in that regard we think that use of radio, television should be an essential element of the PPP but again we think that the choice of language is very important because so of our constituencies have not had an advantage of being eloquent with the former two formal languages. We mentioned this because in some areas for example in Phalaborwa some of the pamphlet's advertising the meeting were only written in Afrikaans and we think that should be taken into consideration. And lastly when you think that the role of sex should be one which is, sex will not be left in organisation a public event but should be asked to play as a resourceful activity. And the regarding guest speakers we thought it is important to have outstanding personalities to be guest speakers as such events, say cabinet Minister. We say so because we think the presence of the chairperson of the CA at the public launched in Paarl did contribute of the success of that public event in Paarl. So we could deploy some personalities who would be able to attract people to come to such public events. And then coming to the issue of housekeeping we think we need to be more fully briefed regarding transport cost of member who travel to those events because there have been complaints that it is not clear who should bear the burden - is the members or at the member's expense or the CA and we think well we should, theme committee should be fully informed about the total budget of the trips so that proper plan should be effective.

And then regarding the notice of public events its our concern that well the, in the past the notice people were being given short notice of these events and theme committees have not been able to really deploy heir members properly, effectively. The last point chairperson on public events, our proposal if the planning committee is established or we agree that we establish a planning committee that planning committee should ensure that the chairperson are selected in advance and that these chairperson should be briefed thoroughly about the purpose of the meeting and procedures to be followed to avoid confusion. Chairpersons should also brief the meeting about the various theme committees and guide the meetings. To comment on matters regarding the CA and its various structures. And in conclusion we would like to enclose a proposal that public events should be attended by members of various theme committees. Both the theme committees should ensure that those members who are selected actually do attended those gatherings. Because as of now certain theme committees have not be represented at these gatherings. That's our submission

Chairperson: Thank you any other. Yes senator

Respondent: I just want to understand I think if I heard correctly you said that the whole process of this PPP shouldn't actually be driven by the political parties. As I understand the CA these public participation's should in fact be anolitical.

Could you perhaps explain what you meant by that particular point of the suggestion you made. You said that the process

Chairperson: - Our idea is that it would - well maybe the phrase is not proper what we are saying is that the theme committee members should play an important role in passing the process. The theme committee member happen to be members of political parties. Maybe the phrase is not quite proper but our intention is that the theme committee play an important role in our process.

Chairperson: Yes Senator Radue

Respondent: One other aspect well from our point of view we think that we one would reach far more people if we had to have what was held before the last general elections and namely panel discussions on the radio. I believe that this is a possibility that we must get into where all the parties perhaps sit around a table and are interviewed and have a lively discussion over some of the real important issue and stimulate thought and stimulate the explanation of the whole process. I think that the radio is going to enable us to go far further to reach far more people if we have that sort of program in the future. I do not think that there is enough of that.

Chairperson: Any other view on public participation. Mr Cingane.

Respondent:

Well my view on this matter Mr Chairman would only be in regard to the provision of the program in terms of taking care of the rural areas think a lot of focus is being made on the urban situation as it were and I want to say Mr. Chairman that the rural people need to be taken on board by this program and also reaching on to them. It is not always right, or correct Mr. Chairman to assume that rural people all have radios and they all read newspapers and not to mention television because we all know that these people do not even have electricity. So it is an impossible dream for them to have television. So I would suggest then that a provision is made specifically for the rural people. In order participate in this program.

Chairperson:

In fact I think comrade George did highlight that when you go to those areas you should consult the chief. Didn't you say that? Yes George.

Respondent:

I said so, even the question of language. The modern technology such as radios usually has the tendency of reaching the middle class element. That's why I would agree that we have to get a mechanism that will be able to reach the poor of the poor in those areas particularly through the chiefs.

Chairperson:

Okay Moruti.

Respondent: Mr. Chairman I really feel that well even the question of this debate of Mabuza - Suttle at least sometimes must also be conducted in Black languages for the sake of ordinary, simple people especially when it comes to the question of constitution. I feel it is very , very important because now the whole thing now is monopolised by foreign languages and ordinary simple people may not understand what is actually going on. This is my feeling.

Chairperson : Okay, all right the er.. yes Naledi.

Respondent: Thank you chairperson I think it a pity Mr Leon has left because I wanted to so how respond to what he said. I really think that we shouldn't lose sight of the reason behind having public participation programs and that was to allow our people outside these chambers the opportunity to inject their voice, their views, their opinion for many of them, many of those who come to the public participation meetings, the adverts in the papers, adverts on the radio, the advert on television mean nothing they don't reach them these meetings are the only time that they have an opportunity to come out and articulate their view. What we need to improve is the opportunity to articulate the view and not stop people from having the opportunity.

We need to improve it by a multi - lingual use of media and for people to articulate their views in their own languages etc. But we must allow people to feel that they are part and parcel of the process of framing a new constitution. In order to have national support for it I do not think we could ever question that objective.

Chairperson:

Okay ladies and gentlemen comrades your comment have been taken note of we would appreciate that those parties that have written document please forward them so that when the e whole management committee is evaluating the process our concerns are taken note of. We would be pleased if parties could do that. Therefore I think what I'm getting from theme committee 4 is that the public participation is not going to be put on hold. It's a pity that I'm saying this in the absence of Mr. Tony Leon. We want to interact with the masses of people in this country in the constitution making process. Those who were not in government in the past will remember the problem of illegitimacy. It is important that we make sure that the process is illegitimate and it is acceptable to the millions of our people and in fact one should not undermine the act that even the submissions are hand writing. There was one I was trying to devise how to read it. It was written in free hand and as a teacher I appreciated that and I was very happy to read it in a free-hand written in Zulu. And one was even talking about cows, how cows should be sold and all those kinds of things. Some of us appreciate this and therefore we must not put public participation on hold.

We must continue to engage our people so it is going to be important that we make all the submission and put them forward. And all those in the core-group we must make sure that these concerns are taken note of. There certain things that we can never right off in our country, that there are peasants in this country, there are chiefs in the rural areas. I do not think that we can rub that one off. We must find a way of interacting with those people so that they do not become enemies of the state that they become friends of the state. With that note, unless there is something under IBA. I'm willing to close the meeting. Mr. Green.

Respondent:

Yes chair I just want find out to what extent is the constitutional talk being made available in public places. Where in fact if we circularise in public libraries, schools, college etc. Because I think it must become much more public committed.

Chairperson:

Thank Mr. Green. Chairperson please do not forget to sign the register don't forget our deadline on Thursday morning. Remember Monday human dignity and privacy. The meeting is urged until Monday eight thirty. We will invite the Queen.