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Quality of transcription
is good. But there
are a few corrections
to be made.

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CC SUBCOMMITTEE

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7 FEBRUARY 1996

CC SUBCOMMITTEE

7 FEBRUARY 1996

TAPE 1 - SIDE A

CHAIRPERSON

...It is our fault. All of us collectively .. I think, having been away from this room for quite a while and having not seen each other, we needed to touch basic here and let us change whatever and renew our friendships. You will find in the documents that have been distributed quite a number of documents. The panel of experts, memoranda, agenda, which is a green document. You will also find ACDP letters - two letters. May I just immediately warn you, for those who thought the ACDP is about to split, it isn't.

UNKNOWN

It has split.

CHAIRPERSON

No, No. It isn't. This is a letter from Mr Green telling us that we must ignore the other letter because it was written by somebody who doesn't have the authority to write it. It is the youth league and you know that the youth league is always problematic in many of our organizations.

The agenda before us, sets out language, bill or rights and any other business. Is there anything any one of us would like to add to that agenda? Nothing? So the agenda is adopted.

Today is the 7th of February - when we met - I think a week ago or so, we were discussing the question of the bill of rights and we did say from the Chair that we want to urge political

parties to make sure that they compete. That their discussions and bi-lecturals, by the 7th, meaning today, That statement has been interpreted in a number of ways in the media as well as by a number of organizations. Some people thought that we were bringing the deadline or the cut of day for making submissions forward - the deadline we said was the 20th of February. That announcement was by no means meant to cut the deadline short. The deadline still remains the 20th of February for the public, organizations and various sectors, to make submissions to the constitutional Assembly. Today's deadline was to urge the political parties to speed up the process of concluding the bileturals. I am informed that bileturals have been taking place on a furious basis over the past few days and the progress will be reported and that they have not really concluded everything that they meant to deal with. A great deal of progress has been recorded. That is what the statement, we made earlier, was meant to achieve - to facilitate the speeding up of the bilaturals and the discussions that we manage to have. When we hear the report I am sure we will all agree that we have in a number of ways speeded up the process of negotiations and the bileturals and we will then decide how best we are able to take everything further.

I think we should now start with the question of the language. A number of meetings have been taking place on the question of language and the anthem. We had agreed that we would start with those. I don't know if anyone present here is able to report on the question of the language.

MARAIS

Excuse me Sir. The ANC and the NP has a very serious

bilateral, upon the question of languages. Official languages. I am quite convinced that we have made progress - we have not yet reached agreement. Yet, we do not record a dead lock. We have found common ground in certain very important areas. We have actually agreed that to make certain remarks to that.

CHAIRPERSON

Thank you Mr Marais. We have met a few times and made progress. You have not recorded dead lock and you found a number of areas where there is common ground. Is that true Mrs Kgositsile?

MRS KGOSITSILE

Chairperson, that is true that we met this morning and we discussed the matter of language, we acknowledged and recognized the fact that English and Afrikaans are two languages that have been developed - that have been advantaged in the past. We also agreed that the 9 other official languages, therefore need to be prioritized till development in future, in terms of resources - we also agreed that it will not be desirable for South Africa - for any one language to be prioritized at the expense of other official languages, so those are three issues that we did agree on this morning and discussions continue. We hope that we will be able to agree on the formulation shortly.

CHAIRPERSON

The report from Mrs Kgositsile. Is there anyone who would like to add to this report? Anyone who would like to raise an issue or question for clarification. So, there is some progress then. This progress as reported by Mr Marais and Mrs Kgositsile. There is nothing in writing. There is no formulation - we can

just go by what they are telling us. That they are making progress and we hope that when we next meet, we will be able to have a formulation on this question of language. Is there any progress on the question of the anthem?

UNKNOWN

Chairperson, the same group - who is suppose to attend also to the anthem and who had to spend so much time on the language question, we couldn't even get to the anthem.

CHAIRPERSON

So, you would like more time to deal with this one?

MR EGLIN

Chairperson, we are not directly involved but to the extent of the other people looking at the anthem seriously, I would like to say - I listen to the anthem as played prior to the Bafana Bafana victories. It was announced that the National anthem was played and was played in a condensed form. The singing actually ended with the last part of Die Stem in English. I just don't know whether that particular rendition of the two anthems, one anthem, in that form, has been looked at seriously. I would not have looked at it seriously, till I heard it. I realized it was sufficient to inspire the Bafana Bafana to win. I just think much, look at that seriously because it was announced that we should stand for the National anthem and it was then rended in that form. I think we should look to see whether that form is an acceptable way of dealing with it. I am raising it as an issue in that way.

UNKNOWN

I would like to remind the meeting that

CHAIRPERSON

Mr Marais, just one minute. Mr Wessels would like to say

something.

MR WESSELS

I am sure that Mr Marais and I will going to say the same thing. What was sung and as it was sung, was the officially approved version of the combination of Nkosi and Die Stem at that occasion and I will leave some of my other profound remarks for the tea break.

CHAIRPERSON

Thank you Mr Wessels. Mr Wessels was also at the soccer match. So, I think was Mr Eglin. That was what he was trying to announce here. That he was at the soccer match.

MR EGLIN

... higher place given tickets. I watched it on TV.

CHAIRPERSON

You were high place enough and fortunate enough to be there.

UNKNOWN

I was high enough but not fortunate to be in high placed tickets.

UNKNOWN

We would like to know where you were?

CHAIRPERSON

I was at the soccer match. I was fortunate enough to have received a ticket to watch the soccer match, in a place, if it had rained, I would have been soaking wet. I was that fortunate that it didn't rain.

MR MARAIS

Just to add to what Mr Leon Wessels has said, the short version is on record here as being a proposal from the NP side. It is

.....

CHAIRPERSON

The question of the National anthem continues. Lets watch this

space - there will probably progress. Bafana Bafana playing again in March on the 24th against Brazil. If we have settled this matter, then they can even have a greater inspiration from the anthem that will be sung then.

That then takes us to the bill of rights. Which is chapter 2 on page 4. We would like to devote as much time as we possibly can to this most important chapter of the constitution and we will be receiving reports from the various people who are involved in the bilateral, the committees and so on. We agreed that 7 will be dealt with later, once we have completed all the others. That will be dealt with later. The quality one - nr 8 - has there been any progress? When we last met, formulation has been proposed. Which I thought was seeking to bring all parties closer to each other. Has there been any progress on this one?

MRS PANDOR

Chairperson, there has been no progress beyond the reformulation suggested at our last meeting. We have agreed in bilaterals with one of the parties, that we accept that reformulation - however, the DP has indicated that they would prefer their formulation to be 8.2 I don't know whether we handle this by having further, new options in this section. But just to report that with the NP, we have agreed that the formulation that we propose in the last meeting, is the formulation that we hold to.

CHAIRPERSON

Right. So, these new formulations we find in the thinner document. The green one. Written draft report of discussions. 31 January. Thank you.

MRS CAMERER

Chairperson, as far as I can see, on page 3, the version that is printed there, doesn't really reflect the version that has been agreed. So it reads rather differently. Perhaps we should correct it for the sake of record. Because we want to record as much as possible in this meeting.

CHAIRPERSON

I believe you are absolutely right. The intention is to record as much agreement as possible today and I am pleased that you are in that mood.

MRS CAMERER

Yes. ... on record, then we all know where we are.

CHAIRPERSON

Thank you very much.

MRS CAMERER

It says that are designed to achieve. I mean, that our designed ... must be objected.

CHAIRPERSON

Just do it again.

MRS CAMERER

If you look on page 3 - the bit in italic, the second last paragraph, the sentence starting - to prevent the ... of quality legislative and other measures that are designed for the protection. I think that is the wording that we agreed in our valid. There is one other point. The other thing that we are very glad to see that in this draft unfair is no longer bracketed but we have been advised by the ANC, in bilaterals, that they still want to consider the bracketing of unfair. As far as we are concerned, we are very happy with it being unbracketed. That is what we would like to agree to, but we haven't had finality from the NP on that score.

CHAIRPERSON Good. Mrs Pandor is that a true reflection of what has been agreed in your billecturals?

MRS PANDOR That is correct Chairperson and we have in fact, I don't know if Mrs Camerer has not heard us, in the last meeting we have agreed that the brackets around unfair should be removed.

CHAIRPERSON So that is progress. The brackets are removed and it is reformulated in the way that Mrs Camerer has stated. The DP however, does not support this. Mrs Manzini do you want to record the sanction, disagreement and division in the ANC ranks on this? Total agreement.

MRS MANZINI Yes, I think - my colleague, has missed one of the meetings when we discussed this issue. The position of the ANC is that unfair should actually be removed and not bracketed. The sentence should read - To promote the achievement of equality, legislating and other measures, that are designed to have in their objective the protection and advancement of persons or categories of persons - disadvantaged by discrimination maybe used. That is how it should be.

CHAIRPERSON Alright.

UNKNOWN The sentence we agreed that we would come back to this once we have sorted it out.

CHAIRPERSON That is right. I think Mrs Myakayaka let us just leave it as bracketed for the moment. You will settle that in time.

MISS SMUTS

Chairperson, I would like clarification on what in fact we are going to do with the DP clause. The decision last time around was that it will now appear as a side bar. The same question has just be raised byMrs Manzini. Whether we now have options again or whether we use side.... From our side we would like to put it either as a side bar or as an option.

CHAIRPERSON

What would you like to put as a side bar?

MISS SMUTS

The DP proposal which was - our solution

CHAIRPERSON

That is right. What I thought you would be reporting is that there hasn't been any progress to what ... in the DP and the other parties, to reach an agreement on this clause, your provision. There hasn't been any progress?

MISS SMUTS

No, unfortunately not on that particular clause. Therefore I am asking whether it can be reflected either in the side bar.

CHAIRPERSON

I think in view of the fact that there hasn't been any further progress, I think it is fair that it should be reported on the side bar that the DP still insist that there should be a formulation as reflected on page 4.

MISS SMUTS

I would like it even better if the formulation could appear. As we think it is very instructive. Would that be in order?

CHAIRPERSON

Precisely. I think we will make sure that the formulation appears at the side bar. OK. That is fair enough.

MR EGLIN

The question of presentation. If you read the two alternatives, say for 4 words, they are the same. There are certain phrases in contention that .. It is one says - have as their objective the protection and advancement and the other say - protecting and advancing. It would be quite useful if somehow, other by underlining, if one could indicate that those are the areas in contention. Not the whole of the clause as it stands. People can focus their mind on that ... to be resolved.

CHAIRPERSON

That is a very good proposal or suggestion from Mr Eglin

MR HOFMEYER

Chairperson, I think we should also just note as something for further discussion. But I think at some stage, some of these issues have to be resolved one way or the other. You know, we have been very disappointed in the discussions around this clause. I think both the NP and ourselves, have been willing to make some compromises to get to an agreement. I think the difficulty we had with the DP is that they have simply come with demands without being able to make any concessions of any kind. I think at some stage or other, if we are to have progress, if we are to start cutting down on options, and actually make moving forward, we are going to have to look at a formula of when options are discarded because they do not have sufficient support in this case.

MISS SMUTS

I ... formula, I see Mr Gordhan is quite using the word sufficient consensus, if correctly reported - we don't always get correctly reported - I certainly don't. I hope that mechanism isn't a referendum. All I wish to say is, this clause represents a concession from us. It is a clause that does concede. It is a

clause that still sufficiently satisfies us and surely with certain days remaining before the participatory process ends, its not unreasonable to ask that it be reflected. If we are serious about the life ourselves, to be influenced by the submissions, I mean, clearly then there must be scope and room. Certainly, at the end of the day we will have to arrive at a position where we agree and I think in the case of the bill of rights, that is essential. You really cannot have a bill of rights who's first purpose is to protect individuals and minorities, not achieving consensus. We are committed to that. We are committed even to the pressure ... we want to achieve consensus. We would like to see that clause reflected because we think there is still that space built in by the participation process. We have also under the equality clause, chairperson, brought very constructive solutions under sub-clause three. I don't know know whether that is going to be discussed.

CHAIRPERSON

No, no - everything will be discussed. I, Mr Eglin has actually come up with a good proposal. That on the side bar notes you just highlight the earliest, the wording that is still a bit dissimilar.

MR SIZANI

Thank you Mr Chairperson. I was just going to say, since the bilaterals have been going on for quite some time, and that some issues have been discussed, I think it will be useful for you some time to remind us about other issues that really are being discussing - probably the question that has to be considered or limited in some of these things. I have been trying to listen very hard to get what is what has to be achieved around equality and the concession that it will make. Sometime I do get lost, so I would like to appeal to you that

sometime remind us what is the real issue that are holding the parties in the bilaterals. Around some of the issues.

CHAIRPERSON

Fair enough. I think we should do that as we precede. Could we also ask the people who are reporting to also give some insight into the issues that parties were differing on. That will help a great deal as well. As you report, it is out of your bilateral.

So, we agree that on this one, we have a side bar note, on sub 2. Can we look at sub 3 - what has happened with regard to sub 3?

UNKNOWN

Chairperson, with reference to sub 3 there are two issues that have come up. The first is with reference to the more .. Person phrase. The NP has sorted The ANC does not accept its deletion and we are therefore dead lock on this one. With reference to the second bracketed phrase in the second line, but not limited to - the NP had indicated that they wish to study the few of experts more closely. That now indicated to us in a subsequent bilateral, that they are considering a formulation which they would like to bring before the sub-committee at some stage. We allowed that that can happen. We hope that we will have some progress here.

CHAIRPERSON

Right

UNKNOWN

Our opinion Chairperson, within the ANC we would prefer the formulation as it exists on one or more grounds including. Without the ... limited to. However, we open to the NP's refined

formulation which they say they will be tabling at some stage.

CHAIRPERSON

Mrs Pandor reports correctly that we had also ask for an opinion from the experts which we now have before us and it was distributed on the 2nd. I'd like the parties, if they report, to also inform us to what extent their opinion from the experts has been helpful. That we try and get them to address and resolve this matter. Do you want to report that Mrs Pandor before I go to Mrs Camerer.

MRS PANDOR

If we can just conclude the report on this particular section very quickly. Chairperson - before we go to the panel. I think in order to respond to Mr ... request, we need to explain that - part of the discussion has been that the National Party believes that you need a phrase which would allow for a greater elaboration of the list that appears in paragraph 3. We have ... that we believe the phrase one or more grounds, including does in fact allow for more then what is listed. To be considered in cases of discrimination. So this is - and the experts view has supported the view that we hold. This is the matter of contention with this sub paragraph. There is also an additional element, Chairperson, and that is the proposal by the NP - that the list be standard to incorporate the word affiliation. As one of the grounds. The ANC's response has been that affiliation is in fact addressed in the bill of rights by a range of other provisions, within this chapter. This matter therefore also remains unresolved.

CHAIRPERSON

I see in paragraph one, the experts, they seem to be saying that words ... is not necessary.

MRS CAMERER

Thank you Chairperson. Before I get to the experts opinion, could I just venture(?) a slight correction to what Naledi Pandor said. I should hate more dead locks than necessary to be reported. I don't think the NP be at the dead lock position on the inclusion of the words nor person made. All we ask is that that inclusion - the inclusion of those words till we have had the discussion on the horizontal and verticle application on the bill of rights. So, we are certainly not dead locked on those words. That depend - the outcome of that discussion and the resolution of the question. So, if we could just record that. The experts opinion is very technical but very helpful and it certainly assisted us in resolving our views on the matter, but we still left with a slight unease, because a lot of the argumentation relates to the question of the similarity of the kinds of grounds that are included here or the dissimilarity. There appear to be two groups of grounds. One the grounds you are born with and the other grounds you make by choice. Whether it is marital status or beliefs and so on. The fact that we shouldn't be forced to change your choice in order not to be discriminated is - so, that apparently leaves to the possibility of a wider interpretation, should another ground come to light. It still might have to be in one of those two categories. We also, we studied the opinion with interest. So, we would just like to consider and we won't hold up the process. We will submit some suggestion ... wording very soon, for consideration by the other parties. The thing we don't want to loose sight of, is that there could in the future be other grounds. That would be included. We are a kind of discrimination arises, we wouldn't like it to need a constitutional amendment. To become an unfair piece of discrimination resumption to operate. If you - in fact, the cases

arise during this period between the adoption of the present constitution and the consideration of the amended wording, marital status does not appear as a ground as has been specifically included because very many instances arose - for instance the ... tax rate on married women where we ... rushed through the list of grounds under discrimination and failed to find marital status listed specifically. One could perhaps argue about gender. Something, we have chairperson, and other grounds may arise in the future. So, we believe that we want to be absolutely certain that if another, such grounds should arise, that it could be included. The matter of if we fully comforted by the wording, that we proposed as adopted, we wouldn't particularly require affiliation to be listed. Specifically, but if not, then we would, because we believe that it falls in the category of grounds for discrimination such as religion, belief, culture, language - where you make a choice to join in association. It is true as and Willie Hofmeyer have been pointing out, that the right of freedom and association is there - but so is the right of freedom of religion. And the right of freedom of belief and language use and so on. We believe that there are grounds for arguing that the non-discrimination, on the basis of affiliation which relates to the right of freedom of association, could well be listed here. To ensure that that is recognized as the grounds. So, we have an open mind. We will table an alternative wording and I don't believe that ... dead lock at this stage.

CHAIRPERSON

Right. There is no dead lock here. It is a clear message that is coming through from Mrs Camerer. The NP would like to have an opportunity of making a submission or so, to the other

parties, but I think more importantly, you would like this to be finalized when we deal with the horizontality and the verticality of the right. Now, what I want to find out from you, is how do you propose meeting with it? Should we deal with it on the basis of a side bar note - just ... you call them conditions or those points. Points not conditions - very good. Just points. That will be recorded like that.

MS SMUTS

Chairperson, may I bring to the attention of the meeting what we think is a solution to the problem surrounding the three words -nor any person. I think that the dispute has been indicated. The ANC has indicated that they want the three words in and the NP has indicated that they would want the three words out. Now we are in favour of the horizontalization of the bill of rights and we think the solution in this case is the following - we think the solution is to remove the words - nor any person - from this clause.

CHAIRPERSON

Just repeat that - nor any person?

Yes, you remove the words -nor any person - and they are perhaps not fortunately placed where they are. Because if you phrase it like this you generate grounds for private courses between individuals. If you have a lot of individuals going to court on discrimination cases, you are going to see a juris... having to develop case by case, where it is much more desirable to remove the three words there and put in a sub section 3(b) which requires the State to legislate reasonable legislative measures combating private discrimination. You will find the clause along those lines under the limitation clause

presently 35.2 and it really doesn't sit in the right place there. It doesn't work there. What we are proposing is that that clause which requires the State to pass legislation of dealing with private discrimination be brought into the equality clause where it sits more happily. If that takes the place of the three words, nor any person - in the existing clause, then you have dealt with the problem but you have also escaped the problems of what could turn into horizontalization. We are quite pleased with this solution. We urge the other parties to look at it. They have already indicated that they will indeed look at it - so the question then becomes, whether we offer you this clause, whether the formulation goes into a side bar or whether you note the fact that we are offering a solution. That perhaps is for the meeting to decide. We have a formulation which we can offer.

CHAIRPERSON

Good. There is a formulation being offered earnestly by the DP and it is our and it is the ultimate answer. So says Dene....

I think it has been noted. There is really no dead lock on this clause. I think it is just re-wording that needs to be taken into account and I think we can add to the side bar note the proposal by the DP. To remove those words - nor any person - and to put in a sub 3 providing for the legislation

UNKNOWN

The legislation combating private discrimination.

CHAIRPERSON

I hope it is being properly recorded. Reverend Meshoe

REVEREND MESHOE

Thank you Chair. It is known that we have a big problem with the clause as it stands. But removing - any person - will ... the

size of our problem. So, we would encourage the NP not to be afraid of insisting on the removal of the words - nor any person, because that makes the size of our problem much lesser. If we include those words, then an individual cannot make decisions based on his own conscious. If I couldn't do my personal conscious, I feel I cannot employ another person. I want that right to be guaranteed and protected in the constitution. So we would urge that those three words ... as proposed by the NP.

CHAIRPERSON

Good. That is the view of ACDP. OK. That is word to the NP to urge them not to appose the removal of those words. Any other view on this one? Right. I think we have made quite a bit of progress on 2. 3 - there is no dead lock. It is just the wording to be finalized, so I think that should not constitute so much of a problem. The Freedom Front would like 4 to be deleted, but I think they changed their position at the last meeting. So, they dropped their opposition. So 4 stands as it is. I think we are able to say on the quality clause, part of that of progress has been made. We look forward to this clause being fully finalized when we next meet. I am quite pleased with the progress that has been made. 9 is no problem. Then there is 10. Am I about the hear a report on resolution, total and full resolution of this clause. Everyone has the right to life and the death penalty is hereby abolished as one. Everyone has the right to life and the right not to be deprived of life except by the of a court sentence, following conviction for a crime so forth and so forth. Is there a good, positive report on this question - the right to life. Which other people call the death penalty clause.

UNKNOWN

There is a total and full dead lock.

CHAIRPERSON

Right

UNKNOWN

I am sorry to agree with the lady, there is a deadlock on this clause.

CHAIRPERSON

Ok, there is still a deadlock on this clause. Now have you all dealt with any proposals on how we can resolve this deadlock? I would want to know, whenever we have a deadlock, how do we resolve the deadlock. How do we move forward?

Reverend Meshoe do you have a proposal on how to resolve the deadlock?

REVEREND MESHOE

Yes I have.

CHAIRPERSON

Please let me hear the proposal and I will resolve it.

REVEREND MESHOE

The ANC and the NP cannot resolve this matter. There must listen to what the public is saying. I have two housewives at the moment that are busy collecting the signatures and they have about one and a half million.

CHAIRPERSON

Two housewives

Correct, housewives who say we want the restoration of the death penalty. So, if the NP and the ANC would consult the public, they would tell them that people don't want the death penalty not to be abolished by

CHAIRPERSON

People want the death penalty, is what Reverent Meshoe is

saying. There are two housewives who are going all over the country collecting signatures. They have so far collected one million and another half a million of signatures. Then Mr Ebrahim reports that yesterday we received 160 033 petitions on the death penalty. So, what are they doing collecting their 1.5 million?

That confirms what I just said. They just started.

CHAIRPERSON So they just started. So they are going to collect 1.5 million?

REVEREND No, they have

CHAIRPERSON So they collected 160 000?

REVEREND No, that is the first question. More still come.

CHAIRPERSON Right, Reverend Meshoe says that the ANC and the NP should just listen to the public on this matter. The voice of the ordinary person in the street.

MISS MYAKAYAKA Chairperson, I don't think it is the best way of resolving the issue. By calling people on the streets to resolve such an important issue. I think we have debated the issue for quite some time, even in the world trade center. The NP at that time was against the death penalty. I think the best way of resolving it is within the NP to resolve back to its position. I think it is as simple as all that. Because I think at the moment, we are actually playing on the emotions of the people on the streets. We are using their present rate of crime to deal with this issue.

We have got a constitutional court ruling, and if we are now saying that we are going to use our power now to overturn some of the decisions of the constitutional court, which are actually even saying it should still continue - we are given provision in the new constitution ... the constitutional court still exist. I think we have a problem. I would say I don't think the solution lies in rely revoking emotions of the people on the street - the question of crime in the country have to be apposed on a bolistic basis and not on imposing a death penalty. Recently, I think we have witnessed what happened in the United States where a man was executed through fire - the firing squad. For me, I don't know what it makes of human beings. Those four men who were involved in firing, at that man, who none of them actually know, who exactly shot the man - what type of society are we building? Those four men, do we regard them as still normal human beings who have to be incorporated and function as normal people in our society. Aren't we creating more murderers in our community, by now employing people with the permission of the State to continue to matter. What message are we actually standing, even to the people who are murderers in our society. That the state can also matter. I think really we must consider this question very seriously.

CHAIRPERSON

You know Miss Mayakayaka I wasn't really asking for the type of speech that you have raised. I was .. Say - how do we resolve this deadlock? That was my question. Now, Miss Camerer would like to make exactly a similar political speech. You don't want to do that? I am so pleased. I would like to get proposals on how we resolve this deadlock. This is not a time to be making political speeches on an emotive issue like this.

It isn't. Time for political speeches will come. We will convene a constitutional Assembly meeting where you will be able to speak to 489 people. Alone. You will be able to address them on this and many other issues. At a platform, you will stand out and address them with live country wide coverage. New SABC style - all the three channels. That - we will give you an opportunity to do that. Not today.

END OF THIS SIDE.

CC SUBCOMMITTEE

7 FEBRUARY 1996

TAPE 2 - SIDE A

.... The court want to advise us on how we resolve this deadlock.

YACOOB

Yes, chairperson, we can be very helpful, but I wonder whether

it would be helpful to the parties to consider whether the death penalty, the retention of ... the imposition of it, complies with the constitutional principle in the light of the judgement of the constitutional court on the death penalty. There need just be something there. It might be of the parties.

CHAIRPERSON

That is the question that advocate Yacoob is posing to us. The present constitution, one doesn't say on the question of the right to life. It says any one shall have the right to life. That is what it says. One of the options here is, everyone has the right to life and bracketed and what was inserted I think by the PAC. Advocate Yacoob is posing the question, that maybe we should consider what the constitutional court has said, in the light of what the principle say and in the light of what is also in the constitution. Mrs Camerer?

MRS CAMERER

Thank you chairperson. I am not going to make a political point, but I really do think you should allow me to make the point that the NP finds it on the same side as the very large majority of the partitioners to the CA and all those that have made submissions. Quite apart from the submissions and partitions that the Reverend has mentioned, there are several volumes. I think it is half a dozen of listed submissions. That are really here and somehow have been overlooked in this whole discussion, but I mean from way back, there are volumes and volumes. In fact, it is by far the largest category of submissions that the CA has ever received. On any issue. I just want to correct one point if I may - that mentioned - that we were for or against the death penalty in the earlier round and we are now for it - in fact, we were always for the death penalty, but we

agreed to leave the interpretation of the right to life as it stands in the present constitution - to the constitutional court. In terms of the limitations, skills and how to deliver their view. Third point I want to make, if we are looking for solutions, I think the advocate Yacoob's suggestions are very helpful. It is not the NP is asking that the death sentence be constitutionalized. Not at all. All we are saying is perhaps that we should allow, in terms of the constitution, in early legislation, to be past at a future date. Should the Government or the majority party in this country believe that this is necessary and desirable. So, in fact, all it does is leave the door open for such legislation to be passed should the whole country believe it. You know, the representatives of the people, the vast majority. Believe this is essential in the light of circumstances prevailing the time. I don't think one should reject option 2 on the grounds of that it constitutionalizes the death penalty. We don't believe that we should go that route and we don't believe this clause does.

CHAIRPERSON

Thank you Mrs Camerer.

MISS SMUTS

Chairperson, just allow me a single point. I don't want to respond to Miss Manzini's argument or speak about the substance of the death penalty - debate it. There is one thing she said that I think one should respond to. She referred to the people in the street being used for the purposes of campaigning or what ever. I think that was highly inappropriate. There is a kind of assumption that the people in the street don't hold that position in the first place - that they are being manipulated and being used and every person in the street, in this country has the democratic right to express his or her view and why not

through a petition, irrespective of the merits of the substance of this argument. I thought it was an unfortunate way to refer to citizens who have been given the full right to influence this process.

CHAIRPERSON

Thank you. I will have Reverend Meshoe and then you and then Mr Sizani

MESHOE

Chairperson, I want to comment on the ruling of the constitution on court on this issue and there we are basing the ruling on the interim constitution - that did not have the input of the public. Now we are dealing with a final constitution where we have said, the public must choose what must go into that constitution. So, it is unfair to always, to be reminded of what the constitutional court has said when they were using a document that the public did not have an input in. Now we want the public to be listened to. Because we have said to them - your opinion is very important. What the public is saying, it has to be taken seriously into consideration.

CHAIRPERSON

Thank you Reverend. Miss Pandor

MISS PANDOR

Thank you chairperson. It is a dangerous path that we are treading, I think. Once we begin to reduce the status of the constitutional court. The NP indicated that they wanted to away the decision of the constitutional court. The decision has come down and it indicated that option 1 would be the option that one would go to and we fully support the investigation and the whole process that the constitutional court went through to arrive at its decision. I just wondered chairperson, whether we could get

some indication, particularly from the parties that support the petition route about the degree to what they are prepared to allow us to write the bill in this way, because I am sure we could find some women who could get a million signatures for us on abortion. I am right, we could get 10 million. So, how far should we take this?

CHAIRPERSON

What was your last question? How far should we take the petition route? So you are saying you could get petitions in anything? Any other issues. Mr Wessels would like to make a profound statement.

MR WESSELS

Mr Chairman, I think we have now had the opportunity to listen to the report back from the parties. Clearly the parties hold their convictions deeply and it is not going to resolve the cost of floor of this meeting today. I think some of the arguments raised are fair arguments in the course of debate, but it is not going to help us to solve the problem. We are solution orientated, suppose to be in this particular committee. Therefore I would suggest a route to follow - is that we just leave this particular right as - with its various options - as it stands in the constitution and we continue with the other rights in front of us where there is more room for parties and for positions to be manouvred around. As we go along we will of course have to return to this specific position, parties re-think their options and I think we will get some clarity as we go along.

CHAIRPERSON

This proposal from Mr Wessels. Mr Sizani? You want to wave your right. Mr Hofmeyer

MR HOFMEYER

Chairperson, I would like to make a concrete suggestion. Because I think that advocate to some extent has made a suggestion that I think Sheila also indicated will take us forward. We do have a constitutional principle, nr 2 - which says that everybody in this country, the constitution has to intrench universally accepted fundamental rights. I think it could be useful for us, to get a sense here about the extent to which it is a universally accepted principle that legislation should be able to qualify your right to life clause. I think it would also be useful for us to know that of those countries on which we would like to base ourselves, rights based democratic cultures, what the situation is, in those kinds of countries in terms of the death penalty.

CHAIRPERSON

You like to say something. Have the experts before you say something, have they not dealt with that aspect? Prof Rautenbach and miss Liebenberg?

RAUTENBACH

Yes, chairperson, I don't know whether it was sufficiently done, but in our very thick 300 page memo of November - we had a sub section on public international law and a short paragraph on comparative law. Maybe that was not sufficient and they wanted a more extensive investigation. We dealt with that.

CHAIRPERSON

Thank you sir. What did you say, if you dealt with it?

RAUTENBACH

We gave an overview on the International ... there are ... the American convention, you are very quick on me now- for instance the American convention foresees that there could be a death penalty. It is not a very clear picture. One could say

there is definitely a trend towards the abolition of that. But on the hard clauses, provisions of the international instruments, there is one at least that provides for it. Comparative law is also a mixed picture of even democratic States allowing - again I want to emphasize there is definitely a trend towards abolishing it all over the world. It is difficult to say that there is definite International norm now - established that it must be abolished.

CHAIRPERSON

You want to add Mr Liebenberg? No. Mr Sizani

MR SIZANI

I just want to add on what Mr Hofmeyer has said about - I agree fully in terms of the principles and also the trend Internationally. I also want to add that in looking into that, we must not forget about the use of death penalty in the country - not always stand past. If what we look as comparative, we must also compare ... the death penalty has been used in this country and to whom it has been applied in this country and I think those comparison might be revealing also. So that when the take the International trend and so on - we must also take the counter conditions inside the country. About how we think they operate it.

CHAIRPERSON

That is something that should be looked into. Now, Mr Wessels has said, that we are not going to resolve this matter. A number of proposals has been made. One by Mr Hofmeyer which builds up on what advocate Yacoob also said and clearly the one by Mr Wessels - there is a proposal that has let us look at it - at a later stage, because we still have a deadlock. Now, I think that is possible the way we should go, but I would like to say that should not preclude this matter being discussed further in bilaterals and I think there is still a need for parties at a

bilateral level to look closely at what advocate Yacoob has also said. What Mr Hofmeyer has added. I would like to say that, much as there is a deadlock on this matter, it is not one of those deadlocks that are unresolvable. It is a deadlock around which we can find a solution. I am hoping that within the next few weeks a solution will also be found on this one, just as we have started finding solutions on a whole range of other matters on which the parties differed - which the many other submissions we have been receiving were completely We will come back to this matter and we will resolve it in due course. The next one is provision 11 - Freedom and security of the person. 11.1 there is no problem. 11.2 - the (b) part there of is problematic. I thought that the experts have also been asked to draft something for us in this regard. Is that what our minutes record? Or is it just a fiction of my own imagination? It is the minutes. Did we receive anything in writing? The experts have had to write so many things, they have really been ... with a lot of work and my heart goes out to them. If they haven't written down anything, I will not be surprised. It so happens that I am told - you have written something on this one.

PROF MURRAY

We have written something that is contained in a document with a green cover and contains two memorandum from us. One on section 11 and one on the clause relating to children. If you want one of us to speak through it, we could do that.

CHAIRPERSON

Yes, thank you. I now have it in front of me. You want to speak through it?

PROF MURRAY

Firstly, I didn't understood the question the panel has put in this

regard. It focussed directly on the issues of abortion and prostitution in relation to sub clause 2(b). The memo is more broadly than that, because the right to security of person is a much broader and very complex right and it is not really very fairly dealt with only in relation of those two issues. The security of person clause, is not a clause about abortion and prostitution. The only use it in campus(?) where inevitably being raised in those debates. But it isn't a clause that focusses on those issues. Instead the clause, I think as a whole, and the way it is explained in the wording of sub 2 - is the clause about respect to people and our commitment to insuring the people free from violence and that their decisions are respected. What we suggested in the memo is that the provision in sub (b) relating to ones control over ones body, will be seen as relevant in a debate about abortion and about prostitution. It will be a factor that will be considered when the question of the liber... of abortion laws and prostitution laws is raised. I think there are two important things that should be kept in mind though. Firstly, it is not likely to be conclusive. I think abortion provides a good example of that. If the constitution remains silent (?) On the issue of abortion, a whole range of rights are going to be used in dealing with the issue. Secondly, in other jurisdictions, particularly, as far as abortion is concerned, the bear right to security of person has been used in those debates. Even though it hasn't necessary been expanded on in the wording of those constitutions and different decisions in different countries go different ways - so our opinion on those two specific issues - the abortion issue and the prostitution issue is in these words, are likely to be used in those debates. They will - there weight will be on the side of the people who argue for legalization of

both abortion and prostitution laws, but they are not going to be conclusive.

CHAIRPERSON

Thank you Prof Murray. Mrs Camerer?

MRS CAMERER

Chairperson, I don't know if the lady wants to leave the discussion on this. As far as clause 2 goes, the first line, everyone has the right of security of the person and then there is an attempt in brackets to explain what this means. We believe that we shouldn't have all these included explanations. We should either use security of the person or physical and psychological or physical and mental integrity. Now the opinion seems to say that security of the person isn't perhaps as clear as it ought to be. I mean, the opinion starts - of its own meaning right of security of the person is not very clear. That is the view of the panel. They go on to say although physical and psychological integrity is not a phrase that appears in other bill of rights. Its inclusion is consistent with International developments. We would be happy to go along with that. Not to have both. It just seems to be very clumsy. But the point I want to follow up - we have an open mind on which ever phrase the panel would suggest we use in that first line. As far as 2(b) is concerned, we made the point that we would not agree to the constitutionalization of the right of abortion on demand and we, in fact, the panel's opinion is re-confirmed us in our view that the wording in 2(b) should go. Particularly where this opinion should say, for this reason a court may interpret the words to support arguments in favour of liberalize abortion legislation, although Prof Murray said it is not conclusive. We believe that it goes far enough to, for us to really believe that these words

are inappropriate here. In bilaterals the ANC has assured us that they also don't want words that could constitutionalize the right to abortion on demand in the constitution. So, I don't know how far apart we are on that. Our position at this stage, in the light of the opinion by the experts is that we would not like the words under 2(b) to be included.

CHAIRPERSON

To be included. Mr Hofmeyer?

MR HOFMEYER

Chairperson, I think from our side, we also - we weren't clear from the memorandum whether it have been considered. We had wanted some view on the relationship between the first and the second part of the introductory words. Perhaps if people could just apply their mind to it, if they have not. But whether wants to use both sets of words and whether they are linked by an "and" or by an including or if there is a relationship between them. I think broadly that we would like that to be clear. We wouldn't like it to repeat it if it means the same thing. But if it does give greater clarity, we would consider that. I think in regard to (b) we believe, I know as Sheila has pointed out, I don't think that we want to constitutionalize abortion on demand, else we would have put a proposal to that effect. But we believe that the right to be secure in ones body is a very important part of the security of a person and whether that is spelt out or not, I think it is going to be a factor that is balanced against essentially the right to life when it does come to decide on abortion. So we would still want to be there, when we believe it is an important part of this right.

CHAIRPERSON

As it is or explained in a way that you say does not

constitutionalize the right to abortion?

MR HOFMEYER

I think the opinion is clearly that it does not constitutionalize the right to abortion, as it is. I think our only real question is around those introductory words to a and b.

CHAIRPERSON

Mrs Camerer, your opinion does not say that it constitutionalizes the right to abortion. That is what Mr Hofmeyer is telling us. Prof Murray, is that what you are saying?

PROF MURRAY

Yes, that is what I am saying. I wanted to respond to the point about the first words.

CHAIRPERSON

Which words?

PROF MURRAY

The question of just the position of security of person and body and psychological integrity.

CHAIRPERSON

I will come back to that. I want to settle the (b) first. The opinion is - it does not constitutionalize the right to abortion, so therefore it does no great harm in retaining it.

UNKNOWN

Chairperson, we don't really read the opinion like that. As far as we can see, in two places in this opinion, it makes it pretty clear that it would assist anybody applying for the right to abortion on demand. I mean, the inclusion of this clause will certainly assist their case. Even if it is not conclusive. The only qualify that is introductive of this opinion, is that it is not conclusive. So we believe that this goes too far. If we can add a qualify, this might

give us some counter fit. We do not like the words as they stand - in the light of the opinion.

CHAIRPERSON

Right, in the light of the opinion - you don't like the words as they stand, but you agree that it does not constitutionalize the right to an abortion. Very well. I am going to ask - one of them is talking to people on the back bench. Prof ..., Prof Rautenbach, and Miss Liebenberg - this is the time now to apply your minds to what is now being said here.

We are doing that.

CHAIRPERSON

I am glad to hear that you are doing that. I am going to want to come back to you because there seems to be an agreement here. There is just one little thing in between that stops the parties from reaching an agreement. Reverend Meshoe the parties are urging towards an agreement. Please, I beg you, pray to you, don't mess this thing up.

MESHOE

Well, I ... for the parties are saying. This (b) does constitutionalize abortion. It is open to be interpreted to be constitutionalizing abortion. Now secondly, I am interested in knowing which countries have constitutions with a clause like this. This is going to create problems. If we talk of having a constitution, that is lean and thin, that does not have to include, the unnecessary - this is an unnecessary that is going to create problems. It must be

CHAIRPERSON

OK. Right. Prof, Rautenbach, do you have anything to say?

UNKNOWN Chairperson, I think this is on (b) - you only want us to address...

CHAIRPERSON I want (b) and then we can go back to 2.

UNKNOWN I think you are very near consensus.

CHAIRPERSON Just what I want to hear.

UNKNOWN I knew you would love to hear that. None of the parties wants to constitutionalize abortion and to be secure and in control of their bodies, as the opinion say - may add a little bit weight perhaps, not - there could be an abortion, but I must emphasize that even if it is not there, as was pointed out by the panel, simply the words - a right to security of the person can also be interpreted to support the case. So, it is not very material whether I think 2(b) is in or not. Either way.

CHAIRPERSON So, it is not really that material.

UNKNOWN It could be in and it could be out. It wouldn't make that much difference.

CHAIRPERSON So, Miss Liebenberg?

MISS LIEBENBERG(INAUDIBLE)Why security of the person was specifically separated out towards that in some jurisdiction, that in some International law jurisdictions, security of the person was given a very narrow interpretation linked only to deprivation of liberty in the context of detentions and so forth and these broader

aspects and was pointed out in the memorandum, relating to organ transplants consent for medical experiments and the influence of abortion debates, weren't specifically considered and this is why and this aspect, as I understand the submission, when it came in from the ANC was to make it clear that these aspects would also be covered by the concept of the security of the person.

UNKNOWN

Makes it much clearer to me now.

CHAIRPERSON

I am, I meant it seriously. Organ transplanted - Mr Wessels was disturbing me here. I didn't hear the other part. And Mr Sam de Beer. Adv Yacoob.

ADV YACOOB

I just wanted to emphasize the same thing that was just been pointed out by Sandy. That controlling ones body actually goes slightly beyond the issue of abortion. It deals with issues of whether you want to donate your organs - if you are ill or whether you die. Whether you want to be cremated or you want to be thrown in the sea. There are many other things which are really broader than the narrow issue of the abortion debate. So I think if it has to be qualified, those are other broader issues will have to be taken on board.

CHAIRPERSON

How do we address that then? Reverend Meshoe and Mrs Camerer? If you say this must be out, how do you give me the right to be able to decide that I can give one of my kidneys - how many kidneys do I have? Two. Then I want to give away one - I must have the right to do so. How do you cater for that Reverend?

MESHOE I don't see anything that would stop you from doing that in the constitution.

CHAIRPERSON The first one, only one has the right to secure ... has been interpreted in a narrow way. To even exclude the right or the possibility of me having the right to be able to give my kidneys, my eyes, my lungs away and so forth.

MESHOE If you want to give your kidneys, and you want that to cover you, then you have to qualify - by that you don't need the right to legalizing free abortion

CHAIRPERSON You say you can then qualify.

MRS CAMERA Chairperson, I understood the argument, it is by .. Liebenberg to relate to the first line of clause 2, which is basically explaining why it is perhaps the phrase of security of the person isn't enough. Because it has been interpreted in a certain restrictive way.

CHAIRPERSON She was saying, but because there is a view that we must cut out (b), because (b) then covers the issues that they were elaborating.

MRS CAMERER If I can just an argument on that basis. We have said, we are perfectly happy to replace security of the person with physical and mental integrity. Which I think is the alternative suggested in the opinion in that first line. But if you look at and psychologically integrity and just to be sure you add to be secure and control your own body under (b) , it is really

excessive and it seems to be leading in a way towards what Prof Rautenbach said is tipping it over towards the possibility that the court could entertain abortion on demand - which is indeed what is confirmed in this opinion. So, we believe that if all the parties are against abortion on demand being constitutionalized, let us be sure it isn't constitutionalized. So let us be satisfied with either security of the person, if that doesn't go far enough, you can control your own organs, that you have physical and psychological integrity and we leave it at that.

CHAIRPERSON

I think Mrs Camerer agrees. Yes, we mentioned organs somewhere there. Mr Hofmeyer

MR HOFMEYER

Chair, I am not sure that we should continue to have a lengthy debate. I think that we agree with what Prof Rautenbach said and that is that at the end of the day, it is probably not going to, in terms of what - how the courts interpret the security of person, is spelled out in the pre-amble to this (a) and (b). There is not going to make a hell of a lot of difference, whether you have (b) there or not - or (a) for that matter. We believe that those are important facets of this right though and it is for that reason that we would like for them to appear here so that people reading this clause can understand that they are indeed covered here. The words ... and psychological integrity, I think are very abstract words. That are not necessary going to mean a hell of a lot to people who read this. I think in terms of how the courts are going to interpret this at the end of the day, I really don't think that it is going to make very much difference whether one explicitly mentions (a) or (b). I also want to say that - I think the

argument as I understand it, is that any security of persons clause, that applies, that relates to bodily(?) and psychological integrity will obviously be a factor that is used in the abortion debate. It will be a factor that tends to support the liberalization of abortion law. It will be used against the other rights and weighed against the other rights in the constitution, such as the rights to life. I did not understand the debate here, to be saying, that this is going to decisively tip the debate one way or the other. I think it really leaves it within the ambit of the court to interpret this and to interpret it within an ongoing and probably changing circumstances of the future.

CHAIRPERSON

Mrs Camerer?

MRS CAMERER

Chairperson, in response to Willie Hofmeyer, we believe the inclusion of 2(b) goes too far and it is unnecessary as is being said, we believe that the courts would be perfectly able to interpret the case on the basis of the first part of the clause, adjusted as the experts feel is desirable in terms of their opinion. We certainly would not support the inclusion of 2 (b) as it stands.

CHAIRPERSON

You are coming down very heavily now. Can I propose the following? I would like to have - Mr Wessels and I - have a ... with the technical experts and the panel of experts during the tea break and to see whether anything can be done here. Because I think this matter can be resolved quite easily and quickly. So maybe you and I can broke an agreement.

MESHOE

Sir, when you consult with the experts, please find out what still

has to be covered under (b) besides the right to donate your organs. If that is the major one or the only one, that we have in mind, then just spell it out clearly. Everyone has the right to donate their organs. So I want to know what other concerns are there. That should be covered by that (b).

CHAIRPERSON

OK. That is a good point I think.

MISS SMUTS

I just want to decide for the record, because I am sure it is resolvable. That I have opposed to the inclusion of (b) was simply that it was it was in addition to what was in the first line and therefore it is not an objection of great substance. On the other hand, because we think it is we might - all I want to say is, I think it is resolvable. I don't think it is a particular difficult issue for us. We wish you good luck in resolving it.

CHAIRPERSON

Thank you. We will come back to this one after the tea break. Soon after the tea break or little later in the day. They say tea will be ready at quarter to. It is now 20 to. There is no problem with slavery. forced labour. Privacy. The DP was supposed to come back to us and they have failed to do so.

MR EGLIN

Chairperson, I problem arose, because we wanted the word in sub paragraph (d) to include intercepted and violated. That was the issue. That lend to us looking at all these other phrases - we referred that for legal opinion - we haven't got what I call an omnibus legal opinion, but what we have got is a very strong view that most appropriate word under (d) would be the privacy of their communications rather than violated. We can get rid of our concept of interceptance but legal people say, that

would be aborting where violent is an extreme word - it has to be an extreme Before they violate it, where as infrenchment would it cover any infrenchment. So we would any interception ... we would put on to legal advice given to us not political advice. A more appropriate word that .. That intercept or just violate, would be to change to violate to intrench. So that is our suggestion.

CHAIRPERSON

There is a proposal from the DP. I haven't got my dictionary in front of me, but something tells me it shouldn't constitute a major problem. I think I know what intrench (?) Means. I think I also know what violated means.

MRS PANDOR

Chairperson, the problem that one has, that word intrench - within the context of human rights or bill of rights, instruments is one that one hasn't seen used widely and violated is most often the word of choice in circumstances where you need such a phrase. We have difficulty with really seeing the fit of intrench, but we have indicated to the DP in bilaterals that we would look at their proposal and we are still doing so.

UNKNOWN

I don't think our expert panel of experts has looked at the point that is being raised by Colin about the fact that all your constitutionalizing here is the right not to be radically - to have your privacy of your communications radically infrenched or radically intercepted. In the sense, that if somebody got hold of my E-mail address and have a little peak at my incoming E-mail that might not be violated, because it is not as if they have grabbed all my post and went off with it. This is the indication, because it is only a radical thing, that it is outlawed, perhaps a

minor infrenchment wouldn't be covered. I don't know if the panel would venture comment on that. I would be interested to know if they agreed with that view.

CHAIRPERSON

Prof Rautenbach

PROF RAUTENBACH

Chairperson, I think in the panel's opinion, it was stated, I think - I sense there is consensus on this - that the idea of 13 (d) is to give the most extensive possible protection to communications. If that is so, the DP drop their proposal on interception, that was too - that was not wide enough. Violation, I think it has indeed, could have this connotation of only serious restrictions or interferences with communications. Which is why we have a general limitations clause - can be dealt with in terms of that. That's why I thought the parties could also consider if they really want to give wide protection. Could consider the word "interfere" here. The right not to have their communications interfered with.

CHAIRPERSON

No, that wouldn't be interfere - would it? If you open it, then you will be interfering. Interfering?

UNKNOWN

Chair, can I just make a suggestion - I have just looked quickly at some other parts of the constitution. I think for example at clause 34.4 - it says any evidence obtained in a manner that violate any right in the bill of rights. I have looked at clause 30. No one exercising these rights may violate the rights of anyone else. I don't think that we have a particularly strong view on one or the other, but I just think we need to use some - a word consistently when we mean you are violating people's rights.

Our understanding of our violating other people's rights is always that it has been a meaning not that different from intrench. Perhaps we can look at that and try and find something that we use consistently in this chapter.

PROF

V.D.WESTHUIZEN

Yes, Chairperson, just another possibility which is enjoying no official status at all, but if the words violate are considered together with interference or infrenchment, the idea was raised by one member of the ... team and therefore I say it is simply an idea, it doesn't have any official status in the sense that it represents the opinion of the panel or of any specific group - but another possibility would be consider to drop the verbs all together. To work only with the right to privacy including the right to .. Person were home, their property, their positions, their communications. To get rid of the verbs all together if that is where the problem lay, when different verbs are used. As I say, it is not necessarily a proposal that I or anybody else at this stage support - it is just a possibility to be considered in the broader debate.

CHAIRPERSON

Anyone has the right to privacy including their home, violated property, violated possessions, violated communications, violated ... Mrs Pandor?

MRS PANDOR

Chairperson, we would like the question that Mr. Hofmeyer asked as to consistency. Consistent use in return - we would like some response to that - we do not find ourselves leaning towards what is just being said by the panelist. We think it raises a range of difficulties that make this particular clause

wider - I think than is intended and we really would have problems in accepting what has been said. So we would like to focus on the issue at hand, which is 13(d) and how we conclude that particular sub paragraph.

CHAIRPERSON

Prof V.d. Westhuizen, it occurs to me that it would raise more - much more debate than we have at the present moment. So, maybe it is best just to leave it for now. Mr Hofmeyer has argued for consistency throughout the constitution. Mr - Reverend Meshoe.

REVEREND MESHOE

Since all parties are happy with the word, violate or intercept, why not use them both in the same sentence? We are happy with violate, we are happy with intercept, so lets use both words in the same sentence.

CHAIRPERSON

OK

MISS SMUTS

I just want to address the idea of consistency of formulation which Mr Hofmeyer rose. That is fine generally speaking, but surely not in this context, that the ANC has just indicated that they would rather have this clause dealt with the way it is. ... the kinds of infrenchment that one is talking about and that has been our problem from the start. Reverend we said from the start we wanted intercept and violate - now we haven't one Mr Colin Eglin, quite early on pointed out, but the way the rest of the section is structured is very specific and particular. Their personal home search, their property search. Their possession seised and it is therefore that the broad would violate - it doesn't sit with that kind of formulation. So if we are going to stay with

this kind of sub section, then lets use interfere when we come to communications. So the point about the general consistency surely doesn't apply here since you are dealing with the particular good reason, particular ... section.

CHAIRPERSON

Right. It doesn't seem like you are in the mood of reaching any agreement on these matters. There won't be a tea break until we resolve this one.

MR HOFMEYER

Chair, I don't think that the ANC would have a do or die attitude on the use of the word intrench or violate. I think as long as we use the one consistantly throughout this chapter and if we use throughout the chapter violate, for instance, no court is going to say that the violation has only a serious violation as appose to minor infrenchments or the argument that the DP have put forward. I think, for us, perhaps - that is a matter that can really be disposed of at a technical level rather than trying to make a big political issue about it.

CHAIRPERSON

OK. Thank you. I saw a hand among the panel.

ADV YACOOB

Thank you chairperson, the problem that was expressed, the answer to the requirement that there should be intercepted and violated, was a problem that if you used a narrow word, intercept first, you somehow qualify the use of the word violate which theoretically is quite understandable.

END OF THIS TAPE.

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TAPE 3 - SIDE A

..... understandable. That problem is actually removed if you use violated or intercepted, but if we use a wider or violated quote and use the intercepted second, you may not do much harm to the clause as the other way round and that maybe another way of seeing this.

CHAIRPERSON

Saying that we violate that .. Into subject. Or or and - I think it should be or. And / or.

ALL TALKING TOGETHER.

CHAIRPERSON

Ok. Let us go. The rooms that are located ... is proposing.

Yes

CHAIRPERSON

I will make a ruling now

UNKNOWN

My colleagues say that they will consider the matter

CHAIRPERSON

That I think is a major concession to enable to agree and that we should have tea. Otherwise we will not have tea today. Ok. Then we take a tea break. Those two matters will be considered during the tea break. Thank you.

ALL TALKING TOGETHER.

CHAIRPERSON

I am told that we do have a major break through on the privacy clause. But perhaps we should allow Mrs Pandor to report on this one.

MRS PANDOR

I am not sure that I will call this a major break through and I will say that the ANC given its concern about insuring that we do actually get the constitution written - it is prepared not to waste too much of the meetings time on this and we have said that with reference to 13 (d) we don't believe that violated or intercepted really proves the options that have been presented. We would like the opportunity to seriously consider the use of communications in frenched and will return with the report to the next meeting. We suspect in favour of that particular use.

CHAIRPERSON

Good. OK, we can insert the word in frenched and then obviously the ANC will want to come back to this one - to confirm whether it is so or not. It is a major advance forward. Mrs Camerer, you want to dilute this? No. Thank you.

Now, on the security of the person, to be secure and in control of their body - the bodily and psychological integrity - the experts whom we consulted have said that we should hold this back for a while - they may want to work on something which we can look at later, so we will do so. We will come back to this one before the end of the day.

That then takes us to freedom of religion. Belief and opinion.
14.3. Mrs Pandor, do you want to address us on this one?

MRS PANDOR

Thank you Chairperson, we have in our various bilaterals

considered the view of the panel on the question that we have posed with reference to the last life of 14.3 We have agreed certainly in the bilateral of the NP. That we would want to see a reformulation of 14.3 in a way that would insure that all the systems referred to in 14.3 are actually covered by the limitation that appears at the end of that sub paragraph. I hope that is clear. It is a bit that is stated.

CHAIRPERSON

It is clear, but it doesn't take us any further. We agreed that we remove the brackets around "all other recognized traditions"

CHAIRPERSON

So that has been agreed.

Yes, sir.

CHAIRPERSON

Good. Now the reformulation - when is that going to be available.

MRS PANDOR

Well Chairperson, it is a small technical, I think, amendment that the panel of experts will have to make. They are going to have to look at the whole sub paragraph. And reformulate it, so that it is clear that in the second to last line, professing up a particular religion etc. The word system there, does apply to all the systems that I mentioned from line 2 onwards.

MRS CAMERER

We agree. But our agreement with the ... is subject to our being satisfied with the new draft. It does qualify all the systems in a way.

CHAIRPERSON

The agreement is dependent on our will be reformulated and

the panel of experts and other experts will help the technical refining team, I should call them - will help in having a reformulated sub 3 presented to us.

MR EGLIN

Chairperson, we also had a reservation about that final phrase because the word - the system, could apply in the second system and not the earlier one. In other words, it should be expanded to say - any such system. Something like that, because it is intended to be inclusive and not necessary referred to one. May I say, if it is going back to the technical refining team, I want to make a suggestion of drafting which is not political. I find it is actually to say the constitution does not prevent etc. I would suggest that that should be looked at and saying, you should start that sentence and saying - the virility of marriages conclude under religious law and ... personal family law, refreshing a particular region, maybe recognized by legislation to the extent. the constitution doesn't ... prevent legislation. It is a recognition that may be regulated by legislation. The positive way. I just look at that as a suggestion. Getting rid of the rather untidy phrase and in the constitution, you actually say the constitution does not prevent that.

CHAIRPERSON

I hope that suggested reformulation has been properly captured. Saw a few heads nodding away. So, maybe we should propose that the technical refining team should take that up as well as reformulating it in line that Mrs Pandor has said. I detect broad agreement on this one. Subject to how the reformulation ... cause will come out. I see progress of that one. The next one is freedom of expression. Freedom of expression

- there is a problem with 15.2. The two options there - how have you progressed on this one?

MRS PANDOR

Chairperson, I would like to address first of all a proposal that we incorporate academic freedom, freedom of artistic creativity and scientific research within this particular section. That we ask the technical, the panel to look at how we do this incorporation, we have agreed as the end of bilaterals, that in fact academic freedom could be located within freedom of expression. With reference to 15.2 - the ANC has tabled a proposal that states a reference to a State media, to its financing, its ... etc. Is dealt with in the chapter that addresses institutions promoting democracy and you see this as a new section that would refer to bodies regulating the media in the manner described. I beg your pardon - in 15.3. Yes, with reference to 15.3. In terms of 15.2 there is currently no change.

CHAIRPERSON

I have essentially 3 things here. The first one is that in 15.1 that we deal with this, the question of academic freedom when we ask the panel experts to see how the question of academic freedom can be dealt with here. Then, the question of regulation of the media. That goes to the other chapter dealing with the institutions supporting democracy. Then there is no change on 15.2. Is that what you are saying?

MRS CAMERER

Chairperson, I could slightly bend some of that. Or at least add one acute perspective there. As far as the addition of the clause on academic freedom is concerned, we had agreed on some possible wording. But we said that our acceptance of it

changing from being a specific clause in to being a sub clause of freedom of expression - would depend on how we deal with the question of application of rights to jurisdicit persons and so we would like to revisit the question when we deal with that aspect of the bill of rights. Although in principles, the wording that we agreed, we don't find fault with. But we want to be sure that juristic persons would be able to exercise that right.

CHAIRPERSON

Wording which you agreed - which are that words?

MRS CAMERER

We have some wording here - it is to the effect - everyone has the right to academic freedom, freedom of artistic creativity and signtific research. As the first component of the right. There was a suggestion from the ANC that they were going to - I think that is what it was. Sorry. It ends there, but the whole question of who may exercise this right and whether it applies to person who has been left and abandoned at this point.

CHAIRPERSON

Shouldn't we have that wording?

Yes I think we should

CHAIRPERSON

..we want to send their refining team ... technical experts on a fishing expedition.

UNKNOWN

Chairperson, we are going to require a mere/ new (?) assistance of the experts. Because what we are doing is suggesting that academic freedom such ... etc. being incorporated within this section. We have had proposed wording which would suggest a new sub paragraph. But I am

not sure that the experts would agree that that is the way you deal with it. This is why we are saying, we refer it to them for a possible formulation. They may very well return and say that it could be 15.1© and therefore it would be phrased differently.

CHAIRPERSON

What I am saying is the wording that is proposed from your biletural needs then to be forwarded to the experts. OK. So, that deals with 15.1.

UNKNOWN

There are a couple of other points

CHAIRPERSON

Yes, indeed.

UNKNOWN

Thanks. Right. So that wording have been recorded now and will go forward. We understand. The other point about state regulation of media - we try and get the wording we agree on and that is why we thought we would explore the possibility of the question being dealt with under chapter 7. The structures of Government that support democracy, but we are not entirely satisfied with that is the way to go. One of the reasons being is the right does appear in the present constitution under freedom of expression and we are very cheery (?) Of disappearing rights. If you take my meaning, so we wouldn't like the right of it to appear to - we certainly would like the right of it appears to be captured in the new constitution. We are not particularly hooked on how it is captured. So, that we would like to note that that we wouldn't like this right to disappear in any way, in fact. So, our agreement would be very much dependent on how it is dealt. Now what I am not quite sure, is who is going to produce a draft? Whether we could ask the panel of experts to

look into it - how it would fit in with the structures of Government supporting democracy - what they would actually say there. Whether we shouldn't have a basic right recorded here as well. Could they comment on that? One thing - the question of sub section 2(a), (b) and © basically - I think all of them are being looked at because at this point, at least before the bilateral got more serious, we, our opinion was that we shouldn't have to (a), (b) or (c). In the interim, while we were having the bilaturals, we received the opinion of the experts. Which has been, it is a very technical opinion again, but it does say that in the end a political decision needs to be made. Which we found very interesting. So, I suppose we have to shelve it in that sense. But the conclusion in that opinion did raise another question to a person. That was the whole question of the panel seems to guide us. The whole question of special limitations built into individual rights here ought to be addressed. Now we would support that. We believe that this whole issue needs to be aired and it doesn't only apply to this right, it applies to other rights as well, so we are not sure what your suggestion would be and how we deal with it. I mean, we would like to have the benefit of the experts present when we deal with the the pro's and cons. Unless they would like to deliver a more in-depth opinion on this specific aspect of the matter. It has been dealt with in the ALS's document as well. The whole ... position of special limitations built into rights and the whole - as suppose to the General limitations clause. It is quite a technical area but we believe it is important, because of the spectra that's been raised by both the panel of experts. We have, and the ALS's opinion. But this leads to confusion and the watering down of rights. We believe that that would be most

undesirable. So we would like to deal with this whole aspect in some detail, when the occasion arises.

CHAIRPERSON

OK. Those are the three issues covered. Before

MS SMUTS

Thank you chairperson. On the three points, although we said ... by a free standing academic freedom clause, we have indicated when advised of the direction in which the other parties, I think we have indicated that we will certainly entertain such a thought and we will look at the formulation. That is exactly what we will do as soon as we have it on paper. On the second one, just to follow on Mrs Camerer, we still believe that there is nothing to stop the Government under the limitation clause from passing ... speech legislation, in fact, that they would have several international behind them. We still think it is undesirable to leave people without the protection of free speech right. If Mr for example, would be charged under an unitization like this, he wouldn't have the freedom of expression to protect him under a two stage inquiry. The way in which the limitation clause finally is going to be structured and the way the courts applied, will have an effect upon all of this. At this stage we still prefer not to see this immunization take place, but in the solution seeking spirit, we have indicated that if we are persuaded to change position, perhaps what we would be looking at and trying to persuade, the ANC to take on board, would be further definition under 2(c), the and what we make then, as a proposal, is a harm test so that at least you have a requirement of demonstrable harm before this immunization springs into action. That is where you find us, still in discussion. On sub section 3 - the media - we have come to

the conclusion like the ANC that it is a great emission (?) Not to include the independent broadcasting authority under the institutions protecting democracy. No doubt the result of the fact that at Kempton Park, those things were dealt with slightly separate so we are fully in agreement that it must in fact being in-corporated there. That fact, notwithstanding, we like the NP, we now discover - think that there is a strong case to be made for retaining the essence of what was in the interim constitution. The problem of course is, the way it was drafted or crafted for the interim constitution, doesn't reflect the way it ought to work, and nor does it reflect the way things now do work in South Africa. Now that we do have an independent regulatory body. And we have therefore compiled a redraft, subsection which we would like to distribute at a later stage to draw people's attention. Obviously the question is going to hang until we sort out the institutions, but we would urge you to consider returning a clause also under this right - in the same way that the European convention does. Because it does address the matter of freedom of expression. The European convention explicitly provides that the state may, never the less, licence broadcasters. It is broadcasters and broadcasters only that we are talking about, so we would like to table that for the attention of other parties. Would you like me to read it out or not? It is very short.

INAUDIBLE COMMENT

I beg your pardon. We don't agree with the ALS position at all. We will just let that pass Chairperson. The formulation is as follows. The State must provide, with the independent

regulation and licensee of broadcasters to insure a diversity of voices. Any public broadcaster must be impartial and present a diversity of opinion.

INAUDIBLE COMMENT

Not at all. It is a DP - this is the DP draft and it reflects the way things ought to work. Unlike the interim constitution and unlike the ILS.

CHAIRPERSON

It is getting quite heavy now. That is the draft. Reverend Meshoe did I say I would come to you after Miss Smuts? No. It is my error.

MRS KGOSITSILE

Chairperson, I just want to go over the issue of juristic persons who is by Mrs Camerer. I do believe that it actually, they appropriating belongs to a discussion when we get to the clause 38 on the application of the bill of rights. All I wanted to do, as by way of giving notice, is to indicate that we believe that the bill of rights is a bill of human rights and I think that that position of the ANC is to be noted and we will argue it further when we reach that clause. Thank you.

CHAIRPERSON

The bill of rights is a bill of human rights. I think that will be noted.

MESHOE

I want to make a proposal. Presiding 15.2(c). That we put a full stop after religion. And delete that - the last part of the sentence. If I have to tell Should I explain?

CHAIRPERSON

Yes, please.

MESHOE

The reason why we propose, putting a full stop behind the word religion, is that the way it stands, it is pointing to a particular religion that maybe, it maybe interpreted that it discriminates others, which I think would in french on freedom of speech. If I could give an example - Religions believe different things. Now if one religion believes that they are right, and that is said publicly, then that would be to say there is a discrimination against others. Must I say that again?

CHAIRPERSON

Yes. I have heard what you've said. Mr. Hofmeyer, that is a proposal of Reverend Meshoe that he believes can help solve the problem. Mr Hofmeyer?

MR HOFMEYER

Chairperson, I will come back to that in a moment. I just want to talk to the DP's proposal. I don't think that the DP is using the European example correctly although I have not been able to find it. I think the European reference to media is constituted as a limitation on the right to free expression. Because it authorizes the state to licence. It doesn't say anything about diversities of opinions or anything of that nature. So, we wouldn't mind in building in something here that authorizes the state to licence and I think that is the only real sort of thing that is an International instrument and we would consider under the bill of rights. I think otherwise, the direction that we have gone in this country is to set up a regulatory authority that is suppose to be insuring these things and we do not believe that that fits appropriately in the bill of rights at all, because it is not the right of fact, it is an obligation on the state that we are talking about.

That is why we have proposed that it should be moved to another chapter and the principles that we are talking about here could be protected there, with as much protection as there are in the bill of rights. On the issue raised by Reverend Meshoe. I don't think that stopping at that point, would really assist us at all. I think there are two tests there that limit the restriction on freedom of speech. The one is that hatred has to be ad... and the other one is that it must be based on an intencement to discriminate - so both those things have to be - have to happen before this clause applies and I think the effect of that amendment would be in fact to delete the second text there and to make it possible a much wider range of speech than otherwise.

CHAIRPERSON

The clarification

UNKNOWN

I thought the ANC position was that you wanted that line to stop after the word hatred.

It is not the way it was yesterday

CHAIRPERSON

You know, I am feeling a bit frustrated with this 15. In that I don't have the sense that political parties have taken this 15 much further. 15.2 I can understand, you argue that you still have differences, but 15.1 you come with proposals for re-formulation and so forth and 15.2 as well. I mean, 15.3 rather. Now, I am going to make a proposal in this regard. I think at this stage we should not use us as a sub committee where you try to make further proposals where you still want to work shop issues. The proposal I will make is a proposal you are going to

be very happy with. You will walk out of this room smiling away to resolve this matter, but I will make the proposal in due course. I therefore say we won't have any further discussion on this part for now. It may just be for 30 minutes, an hour or slightly more, but I will come back and make a proposal. We now go to 16. With 16 there is no problem. 17 - there is no problem. Are there a problem with 16? OK

UNKNOWN

If I can draw your attention to the fact that in November last year the NP tabled a possible, the inclusion of a possible further right, a right to collect itself determination which will include the rights to join and form associations, organs of civil society, etc. Now we have discussed this widely in bilaterals and there was a suggestion that we should possibly look at extending the rights of freedom of association to make specific reference to the right to join and form and maintain independent organs of civil society. Really as an of that right to cover the point that we raised in our suggestions of last November. There appear to be some willingness to consider this, but we have had subsequently a negative response from the ANC. But it was agreed, as I understood this morning, that we could refer this matter to the jointly, to the experts, to ask, to the panel, to sort of really give us advice to whether the elements of the rights that we propose are covered in all the rights as they stand or whether it would be more easy to meet the component for this right. That we are suggesting being included if we extend the right of freedom of association with these specific, namely as I said to you, these rights to join civil society etc. So perhaps, could we refer that to the panel for an opinion?

CHAIRPERSON My good friend here tells me - the technical committee has already considered this matter. They are in a position now or slightly later to give their well considered opinion. If you want to do it later, that is fine. You want to think about it?

RAUTENBACH Are you addressing us Mr Chairman?

CHAIRPERSON You are the technical committee. They are the panel of experts. Somehow some of you work together with some other people, they are the technical refinery .. And something like that.

RAUTENBACH It is useful to know who.

CHAIRPERSON You are who the constitution say you are and you are who we say you are.

RAUTENBACH From what I have heard, that maybe a mistake, we could have the formulation in writing. From what I have heard, it sounds as if it will be covered by all the instances of freedom of association. The right to find, the right to organize, the right to decide on membership and of course the whole right to freedom of association , dealings with organs of civil society. That is the main instrument by means of which you create such organs. So, we could have proper consideration when we have the formulation, but as if it will be covered.

UNKNOWN Chairperson, could we forward the formulation to the

CHAIRPERSON Yes, that can be forwarded to Mr Rautenbach. Then just for advice on 17 today. Advice today. That then moves us to 18.

18.2 - the technical refinement team was asked to refined reformulation. Right? Prof Murray are you able to say anything?

PROF MURRAY

The technical refinement team is meeting tomorrow for the first time.

CHAIRPERSON

OK. Mrs Pandor

MRS PANDOR

Chairperson, I think if we could just definitively restate what this is we are asking for. With reference to 18.2 so that when the committee meets it is quite clear what the parties are asking. We are asking that 18.2 should be reformulated and that it should be restricted to political rights - the right to vote, to free, fair elections, secret ballot, matters that relate to the access to franchise, such as age and so on should be addressed in the section dealing with franchise.

CHAIRPERSON

Yes. That deals with that one. Citizenship - no problem. Movement, freedom of movement - no problem that is now being agreed to. Economic activity. Mrs Pandor?

MRS PANDOR

Chairperson, we have had a bilateral on this one as well. The parties agree that we should get rid of the economic activity title and should have a new section that would be called freedom of occupation. Which would be worded along the lines suggested in option 3 - the wording that we have agreed to reads as follows - every citizen has the right to choose freely their occupation, their place of work and their place of training. The practice of an occupation maybe regulated by law.

CHAIRPERSON

That sounds good. Mrs Camerer

MRS CAMERER

Chairperson, I agree, that sounds good as far as it goes, but we did point out that we would like to consider this and consider possible additions to that and that's been agreed by the ANC that we will come back to that with possible addition and we want to look at the wording of that has been added at the end, very carefully. So we make suggestions for amendments to that as well. But in principle the freedom of occupation and the ... of it, we agree in principle.

MISS SMUTS

Chairperson, having been the first person to suggest it, we call freedom of occupation, that is not a problem for us. However, all we have agreed to is to look at the re-formulations. We have not gone beyond that. We were advised yesterday that there was a - that the thinking was to re-formulate it. We have indicated simply that we will look at that in depth.

CHAIRPERSON

Right. I think a proposal has been made, parties do not seem to be violently opposed to this proposal - they want to look at it. The NP may want to make some one or other suggestion. I have too, may want to look at it as well.

MRS PANDOR

Chairperson, I think it is quite worrying for us to find that in bilaterals one gets a positive reception of an issue and then when we get to the sub committee meeting, you suddenly have an about so we find this rather worrying. It makes us wonder about the purpose of our bilaterals.

UNKNOWN

If I could respond to that Chairperson, according to my notes

from bilaterals - that were held last week and the clear note here that we would like to consider, making certain additions which we have repeatedly pointed out, to the negotiators of the NP - we have agreed in principle to the way it has been handled, but we have repeatedly that we may want to make certain additions and we did promise them a draft very soon. So, I really think it is a bit unfair to state that here.

CHAIRPERSON

I think let us just leave it. They ... use another right of sanctuary against you, which will be approach the bench so that Mr Wessels and I deal with the agreement. So, Mrs Pandor do you accept that that they will need to come back.

MRS PANDOR

I think when ever to anyone coming back. It is just when it happens too many times.

CHAIRPERSON

Let us agree that they will want to come back. I am recording that the ... should be broad in principle type of urging towards agreement. That is what I am recording in my note book. Then there is 22 - the simplest of all. Labour relations. Nobody can be opposed to a well drafted clause like this. It has 4 sub clauses. Is there anyone in this house who doesn't want to see good labour relations in this country? No. So we have an agreement.

MR HOFMEYER

Chairperson, I wouldn't put it quite like that. I think we have initially some tentative proposals that we thought may solve the problem here but it has not been solved and I think, personally,(?) the issue is that the NP and the DP insist on both the right to strike and the right to lock out either both be in

or both being out. I think we are not prepared to compromise on that from our side, so we have a heavy deadlock on that issue.

CHAIRPERSON Heavy deadlock?

MR HOFMEYER A heavy lock out.

CHAIRPERSON There is a heavy deadlock on this issue.

UNKNOWN I thought we have agreed to send it upstairs to the real experts that are sitting there. We would like to table a clause - I don't know whether you are interested in the light of the deadlock, but I will table it along with all of our other formulations. It doesn't sound as if it is just what the ANC has in mind.

CHAIRPERSON simple, equivalent

MR HOFMEYER I think it is fair to say that there is an irreconcilable deadlock.

CHAIRPERSON Mr Wessels says - Jy kan nie so sê vir hierdie ding nie. (You can't call this like that). He obviously believes that this one can be resolved. You agree? It needs petitions.

SOMEONE TALKING

CHAIRPERSON So how many petitions Miss are you going to organize on this?

Miss (Inaudible)

CHAIRPERSON

How many petitions will you have on this one?

Many of them.

CHAIRPERSON

OK. It needs petitions. I think we agree to come back to this one. Can we agree to come back to this one? We have no choice - we will need to come back to it. I am recording that there are two major areas where there are heavy major deadlocks. It is 10 and 22. That's seems to be areas where major differences are. I will tell you in a little while how my score card is looking like of all this. Then there is environment. Is there any problem with environment? I didn't think there was. OK. There is no problem with environment. Is there a problem? You wanted something to be shortened? Yes.

UNKNOWN

(Inaudible)

CHAIRPERSON

Let us forget it. Forget it. It is not that crucial. Leave it. Who doesn't like that anyway?

Inaudible

UNKNOWN

Chairperson, perhaps we can come back to it under horizontality, because it really are ... sub clause 2 in environmental the Government

CHAIRPERSON

I think when we deal with horizontality Miss ... we are going to obviously be looking at many of these drives. I don't just want to single just the one out. It is now 1 o'clock. I am told that we can go now for lunch. Right, it has been put out. I record the

following. I just want to put this out for your record. I have done 7 columns - one which has turned to one says deadlock, one says further (?) Bilaterals today, and then one which says parties will come back, they still want to consider and another one which says technical refining team will look at it and bring a formulation today. Then the other one says, technical refining team to advise, not today, but later. Then the other one says Technical refining team to draft. Now, under that local report 2 - the right to life and the lock out. Further bilaterals today is 15. The freedom of the expression one. And where parties will come back to it. Which under is 21 which deals with economic activity - a proposal has been made and I think that the NP and the DP wants to come back to a proposal ... by the ANC. 11 and 14 - Freedom of security of person and 14 - the one that deals with system 14.3 - I would like the Technical refining team to look at it during the lunch hour and see if they can bring something back today. I would like us to record real progress. There is - then 15 would like the parties to hold bilaterals or multi laterals. Mrs Pandor, that is the one where I felt I express a bit of frustration. I didn't really sentence that your discussions had led to any

MRS CAMERER

May I address on that. The question I raised about further debate on that, the whole question of specific limitations and their relationship to the general limitations clause were certainly inform our view as to whether we are deadlock on that or not. Our problem was, to build a specific limitation into clause 2 - especially in the light of these various opinions on these subjects as the need expressed to discuss this further - has really made us ... let us keep it out until we have resolved that

question. I wonder if I bilateral would take it further at this point?
Possibly we could have the discussion with the experts at the
panel, on this whole question

END OF THIS SIDE.

CC SUBCOMMITTEE

7 FEBRUARY 1996

TAPE 4 - SIDE A

..... the question of specific and general limitations before,
because we may not be deadlocked at all on that issue.
Depending on whether we are satisfied with what the experts
tell us.

CHAIRPERSON

We agree with that.

PROF

V.D. WESTHUIZEN

Can I just add something to that Chairperson. To just clarify - we have given as much explanation as we can for the moment in these, in what Mrs Camerer previously called the technical part of the memorandum on height (?) speech. What we try to say in the end, where we said that the issue regarding spes.... general limitations needs attention in general, we didn't try to raise any specter. I think all we tried to say there is that some issues, such as limitations and certainly also issues such as horizontality - juristic persons and so on cannot only be discussed on an ad hoc basis but finally also when one has a look at the entire bill of rights and the consistency and decoherence(?) And so on. So, we were not expressing some alarming dissatisfaction or anything like that, we just said, in the end, it does need an overall discussion. So, for the moment we are more non-prepared I think, to be helpful as far as we can to point out the implications of specific and general limitation clauses but we were not trying to express a general sort of warning about any of these, we say in the end, it would also need discussion again. But we could help if we can help now and further elaborate and provide information on what is in the memorandum that we provided. We are certainly prepared to do so.

MISS SMUTS

Chairperson, it seems to us, what would really help is, is to resolve the limitations section of our constitution. Once we know what we have got there, because that has a direct effect on how a double limitation like this will work and how in practice it really will. So the one thing we can really usefully do is, to say we sort out the limitation clause and after that we sit down and

... our expressions.

MRS PANDOR

I think what the parties are trying to say, but perhaps more likely to you Chairperson, is that we don't really believe a bilateral at this time is going to assist us. I don't think it will.

CHAIRPERSON

You want to add something?

UNKNOWN

Chairperson, it is not only, you see, we have only just received these opinions and we try to digest them. It is not only the panel's opinion, it is also the association of Law Society's opinion which is - this opinion that has been delivered to the CA, is born against in quite fierce terms. Have just opposing specific limitations and general limitations. I believe that we could set our minds at rest - we could take up the points that for instance the ALS who are, after all, know what they are talking about in terms of technical and legal points. Then we can take this up at the panel and thrash it out. Then when we are satisfied with that, then perhaps live more easily with this specific limitations put in here. I mean, there are all sort of questions I would like to ask. I would like to have an opportunity to consider these two in a sensible way - oppose questions to the panel.

CHAIRPERSON

I am ... to know that we are laying quite a lot of emphasis on submissions that have been made by organizations and people and so forth. I mean, the association of law societies is an important body in terms of the ... that they represent. They also have other members, who also lawyers, who are members who differ with them. Then we have to have a balance on all these

matters. There are more submissions by the way - we still have to take into account as we move on. Put the deadline to the 20th. Now, as we are proceeding like this, we will have to revisit quite a number of these other things that we have already reached some tentative agreement on. Because there may be fresh views, new ideas that we will need to take into account. We can't advise the public to make submissions and there after just disregard what they are saying. So, we will need to keep that window of submission of opportunity open. I saw two hands. The message that I am getting, Mr Hofmeyer and Mrs Pandor, is that, we shouldn't refer this one - Freedom of expression one, to bilaterals yet, but you see the one thing that I wanted clarified in bilaterals was 15.1 and 15.3. I am recording that you are still differing on 15.2. That I am recording. I didn't get the sentence that you are urging towards agreement on 15.1 and 15.2. A proposal has been made on academic freedom to be included in 15.1. There is a proposal also from the DP on the media and so forth. The ... speech one, we will obviously need to deal with at a later stage. Hold on. Mr Hofmeyer, address me on that.

MR HOFMEYER

Chair, just on 15.1. I think essentially the proposal, I think that there is an agreement on, is that in something like 15.1© - we should have the word "freedom, academic freedom, artistic creativity and scientific research." All we really have said, is we would like our experts to look at the exact words and to make sure that that is the correct wording. I don't think that there is - it is a merely technical problem. I don't think much is going to be achieved in bilaterals that way. I think on 15.3 we have promised the other parties that we would give them a formulation. I don't think we are going to have the formulation

today. We are doing our utmost to have it by tomorrow or the day after. I think in principle that would then become an issue, that is not dealt with in this chapter anymore. I think in principle, the parties are happy to accept that provided that they are happy with the formulation. I think on 15.2 - that seems to be - we are not getting a clear message from the other parties on this. I cannot quite understand what the DP is saying - that this needs to be discussed when we have finalized the limitation clause. Because they have already put forward the views that on any formulation of the limitation clause, this would fall within the ambit of limitation anyway. So this is not, I think, the question that is being argued here. The question is that some parties argue that they will not just like to see this here because they believe it is a bad thing and may give the court some sort of message that freedom of expression should unnecessarily. I am not sure, we have explored 15 to extensively in bilaterals up to now. I think, unless other parties are going to come with views that are different or have reconsidered or something, I am not sure to what extent we continue exploring, as it were.

CHAIRPERSON

Alright, I think, the other parties are saying on 15.2 - we need to come back to it once we have looked at the limitations clause. I think maybe we should accept that. On 15.1 I accept what you say. We will ask the technical experts to look at reformulation. To insert academic freedom and so on. On 15.3 you will come back with a draft. Proposed wording and also show us where you want that to be certain. That then removes that then from further bilaterals today. Now, when we return from lunch, we will have to deal with property and all the others. I will need to

get an indication from the people who be bilaterals on how far you progress on this, so that we know, Mr Wessels and I, and the Executive Director here, whether we are wasting every bodies time or not or whether we are going to record progress. But so far, I think, we have recorded quite a lot of progress. I think we are very pleased with the work we have done so far. Much as we have two areas where is irreconsiderable deadlock. Could I propose that we then have lunch and be back at 2 o'clock to resume. Thank you.

MISS KGOSITSILE

Thank you chairperson. Chairperson, at the last CC subcommittee meeting, we tabled a document where we agreed as the three parties that were involved in that point in tri-lateral discussions as well as bilateral discussions - that we all go back to our principles. Indeed we have all since done that and what we would like to propose is that each party should actually indicate what feedback they have brought from their principles on the basis of that document that we have tabled here. But I must also report that there have been some further(?) bilateral discussions in particular between the ANC and the NP on this clause which I personally did not participate in on Monday. We have since agreed here that we would all indicate how we would like this clause to be treated. Having said that Chairperson, I would like to then report that we went to our principles on Sunday and our principles, including all our provinces, have mandated us to put forward the following view. Starting off with indicating that our preferred position as the ANC would be to have no clause in this.

CHAIRPERSON

Very similar to the PAC position.

MISS KGOSITSILE Quite similar. That is our preferred position. However, we have decided that it isn't the interest of progress for us to indulge in the discussion, however, much in fact it has been identified as perhaps the most divisive issue in the negotiations according to the ALS and perhaps correct to say that. It has been proposed by our people, Chairperson, that in sub clause 2, sub clause 1 remains the same as in that document.

CHAIRPERSON Where are you reading now?

MISS KGOSITSILE I am reading the document we gave to this body. The last subcommittee. Chairperson had it.

CHAIRPERSON OK. Carry on.

MISS KGOSITSILE I seek your guidance Chairperson.

CHAIRPERSON Do other people have this document? Oh, you do.

MISS KGOSITSILE But it might be proper for the chairperson to get a copy. Why we are finding a copy for you chairperson, you might be interested to just share - this morning when I was listening to the ... on SAFA I heard that the South African Agricultural Union intends making sure that the Constitutional Assembly does not come up with a position that takes away what the interim constitution has by way of guaranteed property rights. If that happens, I don't know, do something perhaps very ghastly to contemplate.

CHAIRPERSON Like what?

MISS KGOSITSILE I don't know. March in the streets. Don't know what.

CHAIRPERSON That has been done before.

MISS KGOSITSILE That is people that we are representing here. In fact, they have the capacity to do exactly that.

CHAIRPERSON So you are issuing a threat to yourself too?

MISS KGOSITSILE No, I am issuing a response in an appropriate

CHAIRPERSON It sounds like a threat to me. Thank you. You may continue.

MISS KGOSITSILE Chairperson we are happy with sub section 1. The State shall respect bla, bla, bla. We propose, with sub section 2 that the word "nature" being said after the - so that it read "the nature" content and the needs of property shall be determined by law and the rest remains the same. Of course we will like the formulation which is in brackets. The one that says - no one may be property. Further, when it comes to the factors to be conceded and that is sub section 4, sub section 3 remains the same. When you come to sub section 4, when it comes to the list of sectors to be considered, it was proposed that we have the purpose for expropriation as one of the factors. We have already added the state investment and subsidy in addition to the ... of the state to be. As those of the ANC. Believes are very very important. So we add an (f) The purpose for expropriation.

CHAIRPERSON F goes for?

MISS

Expropriation. Or the purpose for which it has been expropriated. Those were the main points that were raised Chairperson. Some points were raised with regards to the fact that this property clause tends to be such that is referring to ...property. In fact, it is true that it has been mainly around length that has debated and going on. That is partly why we are inserting that word "nature" so that in fact it is clear that is not only one type of property that we are looking at here. It might be ... it might be many other things. So that would be regulated or determined by law. The question of the possibility of the State needing or wanting to rezone property was also raised as a factor. But we just need to find a formulation and the best way of incorporating that in this clause and we would continue discussing those in the bilaterals that continue on this clause. I think at a later stage we talk about the next clause which refers to land and we have a further proposal about that. We will make it at that point and not at this point. Thank you chairperson. I think my colleague would like to add something.

CHAIRPERSON

Who is your colleague? Willie Hofmeyer.

MR HOFMEYER

Chairperson, maybe that is something we need to clarify. I thought that we had proposed it ... that things like rezoning and so one, would be able to be dealt with in terms of ... sub section 2, so I am not - I don't know if we are proposing that as a specific factor to be considered.

CHAIRPERSON

That is agreed to.

MRS CAMERER

Thank you, we agreed that should use the tentative ANC

proposals as a basis for discussion. I think that is all we agreed to. I thought we also agreed to something else in principle. That was that what our goal is, in this exercise, is to secure property rights in a way that doesn't inhibit land reform and I think one should say, that if there is disagreement, certainly between the ANC and the NP, that we should say this will surely assist the way I think we did agree that that would be our approach to the facts. Chairperson, on that basis, we also felt that there might be some merit in dealing with the land issue on its own. Dealing with property rights, perhaps as an exercise to get towards agreement, but issues that relate exclusively to land, crop up all over this clause in a way that they, and they don't, this specific references to land don't really have an relevance to property in the wide So, as I understood it, the ANC would go to..... where consider whether one couldn't deal with land as an issue on its own. The whole question of restitution of land, access to land, that now crops up in the next clause on housing and I think we did get agreement that .. To get out ... if we have a clause on land itself, that that would go out of housing and be dealt with under land. The whole question of 10 year reform and the issue that is dealt with under point 6, which isn't on this tentative draft, but it does appear under option 2 in the draft constitutions about people and communities who's land is legally insecure. 10 years legally insecure. All those issues, the restitution issues should be dealt with under a clause on land. So, we have proposed to the ANC that we would go away and produce a texture draft on that basis. To see if we could get closer together on the issues. Just to deal, but those two principles, I think, ... just mentioned
....

UNKNOWN

Can I have clarification on these before Mrs Camerer goes on?
If she will allow me.

UNKNOWN

..... clarification on this point Mr Chairman and I seek clarification from the ANC. Because we had understood yesterday from them, that what was being looked at now, was related only to land and immovable property and therefore this clause deals with land and immovable property, which instantly raises the question - what about things like shares. Next thing you will have the Johannesburg stock exchange threatening with unmentionables like the Agricultural society and with some justice. So we need to clarify that. Is this dealing only with land and immovable property or as I think, a minute ago, which she explained - the meaning of the word nature - to be inserted after content. I think she said at that point did it refer not only to land and immovable property and we had the third view from Mrs Camera that land issues might be dealt with else where. It is not clear to me at this stage what the situation is. Please.

UNKNOWN

Chairperson, in the discussions of the ANC - principles, the issue of the fact that the way the debate is being going on around this clause has tended to be referring mainly to land as we tend it mainly to refer it to movable and immovable property - was raised and therefore the need to look at the implications of the formulations to other types of property was also raised. However, it was then said, while we look at that, in the meantime we are saying, these are the positions that we are putting forward. In addition we are also saying, with regards to the next clause, that we are going to discuss in this meeting, the issue of land needs to be separated out and there is a need for

a clause on land rights. Separated from the housing issue. In addition to the property clause and however it arises in a property clause.

UNKNOWN

I want to respond to that. That is how I understood it. That we would actually explore the possibility of dealing with land as a separate issue - that is not to say that we won't have to deal with all the issues set out here, as relating to property in general. That there may be a case for a specific clause dealing with land and that may once we have formulated those, two clauses, it may bring us closer together and closer to an agreement on the whole issue of property and land. I mean, that is how we approached it in principle, but if I could just get back to the specifics then.

UNKNOWN

Is it then the case that we are also looking at share holding and intellectual property and all the rest to be encompassed in this clause but that we could see that the debate is tending to concentrate on land. Is that it?

We are dealing with a clause here, we understand to be with dealing with property of all kinds. We believe that in the course of our discussion it has the increasing ... appear that there is an argument between the land the two things a lot of ... wanting to consider the possibility to ... together. What they are addressing now is ... property clause

CHAIRPERSON

So this is the one. The full property proposal. Then there is also suggestion that we should also have a land rights one. I am waiting for the other bilateral.

UNKNOWN Unfortunately wasn't present when that idea was

CHAIRPERSON Who was present?

INAUDIBLE

CHAIRPERSON Mr Hofmeyer, you wanted to say something. Prof. ... it is really great pleasure to see you. I welcome you. I haven't seen you for quite a while. Thank you very much. I didn't hear all that. In your absence I became a bit hard of hearing. They have been giving me a real rough time. Mr Hofmeyer. So you do not want to add anything? Please proceed.

UNKNOWN Thank you Mr Chairperson. If one looks at this proposed ANC tentative ANC proposal, we believe that there is an element missing and that is the statement of the ... itself, because we are very happy that the State respect property and we wouldn't be against that clause at all. But we feel that the second part of the clause, one actually is focused on land, so it might be more appropriately dealt with in a land right clause. Because it seems that that is the great need that people have, rather than just shares and jewellery and so on. I mean, if you say that the State has given foster conditions to enable people to gain access to jewellery - I mean I don't think one can have so much sympathy with the idea, but it is land we are talking about here.

CHAIRPERSON (inaudible)

Although we are happy with clause one as far as it goes, we think there might be an adjustment if we consider a separate

land clause, but we do - before we get to clause one, we believe there should be a statement of the right property itself.

CHAIRPERSON

How would you word that?

That is the problem. We haven't agreed on wording. We are open to suggestion on how that right should be worded. I believe the word "guaranteed" isn't finding favour in the NP, so we are happy to consider an alternative to that. We actually said, sorry I .. When we repeated that we would come up with a draft in relation to lands clause and also in relation to the general property clause.

CHAIRPERSON

The LP will produce a draft.

Yes, we did promise that to the ANC. I don't know whether it should serve in a bilateral at first, as it tends to a proposal. We can also canvas with the other parties.

CHAIRPERSON

Continue. Don't let Mr Tony Leon's regal entrance disturb you. Welcome Mr Leon.

Chairperson, when we look at sub clause 2 - we have no objection principle to the adding of the word "nature", but we don't know if that will solve the problem that we keep talking about and that is the mixing up of the two ideas. Property generally and land. Then we do like the wording - no one may be arbitrary deprived of property - we believe that that is the way we would like to go as a clause. We have no objection. Then we move to clause 3. We have no objection to property being

expropriating in terms of a law of general application. For public services we are happy with the inclusion of land reform as a subject of public interest. But we believe there is an element missing in 3 (b) and that is that we should refer to the fact that there will be just an equitable compensation. We believe that that's very important. When it comes to sub clause 4, chairperson, we have actually tabled an alternative in our document that was tabled last week. Since then the ANC has suggested further additions to the factors - the purpose for which the land will be used - the purpose of expropriation. It is as I have got here and the amount of state and private investment and subsidy of the land. We would consider all those elements as factors. If they were introduced in the way that we suggest, in our draft, I don't think we have a principle objection to the factors, because we believe there are possibly things that should be considered, but perhaps some of them are more appropriate to consideration of expropriation of land. We believe that there is a lot of merit in the introducing of the reference as a State investment. Because we believe there is an argument for saying that where an organ of state like a local authority owns land and the state, the central Government wishes to acquire that for a good public purpose in the public interest for land reform. Perhaps the fact that it's owned by ...State would influence the amount of compensation in a way one wouldn't have to look so carefully at market value as you would if it is privately owned. So we believe it is a very strong argument for introducing that factor. We support it. Then, I think we have a principle objection beside, there are quite a few things missing from the tentative proposals which are actually set out in 2. We prefer the way that that, those clause, sub

clause 5 and sub clause 6 in option 2 particularly sub clause 5, is dealt within our option 3. But we haven't specifically addressed that. I think we have really been concentrating on the expropriation section of that thing and how you deal with that.

CHAIRPERSON

Miss Smuts

MISS SMUTS

Chairperson, if I may give our response. Firstly we may help the NP with the concern that they have just expressed about the articulation of the right itself. Perhaps our formulation will please them. It goes as follows - the State must guarantee property and it must foster conditions which enable people to gain access to property on an equitable basis. Then what, as all of our negotiating partners will know, is most important to us - from our point of view this is what everything else depends upon. The expression - no one may be arbitrarily deprived of property - if we can agree that that is stated as the principle to kick off sub 2, then we would be happy to take on board the German formulation, the content, the nature of adding the nature and limited property - in other words, it would read as follows - no one may be arbitrarily deprived of property. Subject to that, the contents may change. Limited property will be determined by law. That would render us satisfied and the ANC if it cast its eye down to sub section 4, will see what we are offering as a concession. I move on to sub section 3. Property may be expropriated etc. Only in terms of the law of general application. We have added here, to the existing formulation, the expropriation may take place for public purposes or in the public interest which includes land reform which was a position

which we all jointly reached. We have added to that - to redress the results of past racial discrimination - because it does appear to us as we have said before, that land reform requires some definition. Land reform can mean many things to many people and it means different things to different kinds of countries and we think that is the kind of land reform we are all talking about, so we suggest that we add it - subject to the payment of compensation. Now I just like to say that the concept of justice and equitability means a very great deal to us. We have never the less decided to try to meet the ANC by retaining the equitability test in sub section 4. Even though we ourselves think that the fact that the court must determine an equitable balance between the public interest and the interest of those affected in in an assumption, that those two sets of interests are in conflict. Which they didn't necessary be. Be that as it may, we have decided, that is our address to - we are prepared to accept that test. The listing, the factors appear below that we consider appropriate, they are the current use of the property. The history of its acquisition is market value. The level of State and private investment in the property. The purpose of the expropriation as the ANC has indicated - would like to see. The ability of the State ... is not something we would like to see there. So that is our respons Chairperson. Sub section 5, we don't deal with here since our approach to it would result from what happens above.

CHAIRPERSON

Thank you. Prof Asmal do you want to say anything?

PROF ASMAL

I haven't had a consultation

CHAIRPERSON

You haven't had a deep consultation.

PROF ASMAL

May I ask the ... party as to what political and legal distinction arises, apart from that the State shall guarantee property. Which I think is the normal way of reading it. What fundamental is between the State shall guarantee property or the State shall respect property. Is there some, because I think, I find the rest of the DP approach very exciting. I think it meets many of the points that have been raised in the debate in my absence this morning. But is there any fundamental difference between the State shall respect property and the State shall guarantee property?

MISS SMUTS

....we like everybody else have fallen under the spell and charms of the plain language people. I don't know how much of their sessions you yourself have attended. I think it would be rather a pity in your case, should you fall under their spell. May I hope you never stop speaking the way you do. This is purely a plain language approach. Personally I like shall, but we try to

CHAIRPERSON

Before you fall under the spell and charm of Miss Smuts, can I allow Mr Eglin to speak.

MR EGLIN

Chairperson, I have a question which is directed equally to Miss Smuts as it is to Mrs Pandu of the ANC. the State shall respect or guarantee property. That is fine. 2 it says, no where ... be deprived of property. That seems fine or they would be of property, that is fine. Then it says, the contents of liber.... on of property shall be defined by law. Once you

say that, I don't know how fine those other clauses are. We say constitutionally property shall be protected, but in terms of ordinary laws, you shall define what you mean by property and because it discussion today property various from land to shares of a stock exchange and actually maybe money in my pocket. I just don't know what is the meaning, the contents of liberty shall be ... by law. When you state the rights of when you are defining the content that is now something to ordinary law. So I really like some explanation from Dean Smuts and the ANC - doesn't that ... what appears to be a very substantial guarantee. When you then say we guarantee something but the ordinary law can define what we guarantee. I may be wrong, I may be right. The question is, what does it mean?

CHAIRPERSON

Mr Hofmeyer, do you want to explain?

MR HOFMEYER

Chair, I thought Mr Eglin was a great fan of the German constitution and really we try to see him as a kind of compromise we can get somewhere towards the formulation and the German constitution. The approach that is taken there, as far as we understand is that the institution of property is guaranteed and I just want to make clear that I think what we have tried to say is, let us discuss this clause in so far as it takes the land and if we need to then see how we then accommodate other forms of property, we do that afterwards, but try not to confuse the two. I think in the German constitution a non absolute form of property is guaranteed while the constitution guarantees the institution of properties - it does not guarantee each and everyone of the rights that they may be over property and I think that we have got to some sort of

agreement, that if we can look at a non absolute form of property in the constitution, we can get to an agreement on that and I think it goes with saying in the modern society that you have all sorts of rezoning and environmental laws and other ones that interfere with property rights in any event, so it would be very difficult if the constitution guarantees a very absolute form of ownership. So I think that, the second clause about the nature and content, being regulated by law, obviously seen in the context of the first guarantee. I think it is a very intake law part of any attempt to try and reach agreement on the formulation of this clause.

CHAIRPERSON

Miss Smuts

MISS SMUTS

To my colleague - property as a right is not important. I think the rest of the argument follows from that. It is the institution that one wishes to guarantee and since the very heart of the property clause .. Is to address how and under what circumstances and in what parameters you will deprive, or do the narrow - I think compensate. That is why, from our point of view, that you want to fix for ever and for sure. Is that arbitrariness will not enter into it. Therefore fairness will be present, justifiable action and we feel that if that is secured, we can meet the ANC by adding on this German which we are not very fond of. We are very fond of many things in the German constitution, this one we are not very fond of, because it does - it is very wide. It does appear to say to Parliament - you do just what you like. Therefore we will take it on board with pleasure if we can have the non arbitrariness there. Which is I think an idea that the ANC also accepts.

CHAIRPERSON

Miss Kgositsile.....

MISS KGOSITSILE

Chairperson, the problem with the no one the question is - what is arbitrariness? Who defines that? On what basis? Using what yard sticks (?) I just, to move on to the other issue that say, the two parties that indicated a problem with - and that is the ability of the State to pay. It seems to me again that is precisely the heart of the whole thing. As to whether the State will be able to pursue land reform in this country or not. Because if the State is going to have to immediately and unconditionally, on the basis of whatever price is being dictated by market value, it has to pay millions to present property owners who will never be able to pursue land reform in this country and that is one thing that we need to say - it must be a factor, among other factors. As to whether, in terms of whatever time period the state is able to pay. So for us, those issues are not negotiable.

UNKNOWN

Do you want me to respond to her question?

CHAIRPERSON

Let us hear your response.

UNKNOWN

Arbitrariness is the opposite of justify ability and the word could be replaced by those words that the DP always uses - the reasonable and the fairness. What you are looking for is reasonableness, fairness and justifiability. When you say no one may be arbitrarily deprived of property, which is the classic formulation from the universe and declaration of human rights. You say that no one may be deprived in a way that is not fair. Reasonable. Justifiable.

CHAIRPERSON

Mr Green

MR GREEN

Chairperson, I wish to respond to the issue of arbitrariness. I think we need to look at it in its historical context. There were persons in the past that have been dispossessed of their land arbitrarily and unjustly. To say now, well we must have a property clause to protect property is good as in principle, but how do we address the dispossession of land where thousands of people have been dispossessed and there were no laws, there was no constitution then to protect the right of our nation. Now, this issue of arbitrariness must be addressed within its historical context. That is the first point. Secondly, the issue of - it will not be possible for Parliament or for Government to have a proper policy of land reform unless they have their funds in order to be able to put that into action. The ACDP - I think what we could offer, as suggestion, is to what extent can we look at the issue of land acts in the combination to property rights, because I think, if we combine it with land act and land acts of all land to make it difficult for people to hang on to land, and to speculate with that land - and that is the main problem that you have. You have persons sitting with huge tracks of land using it as speculation and there is no legislation that actually addresses that issue. So I think is, our solution is to combine the property clause with some kind of land reform as well as land acts.

CHAIRPERSON

Are you addressing the chair Mr Leon?

TONY LEON

I say that I agree with his views mr Chair.

CHAIRPERSON

It might be good for you to switch on the mike. So that your well

considered profound views find their way into the recording system.

Part of the historical context that we will need to look into Mr Leon, when we re-write the constitution in a 100 years.

MRS CAMERER

Thank you Chairperson. On this issue of the factor referred to as the ability of the State to pay, we have made it very clear - that we really don't think that should be included as a factor, but it strikes me in the argumentation and the sort of ...including the factor, that the ANC constitution negotiators aren't entirely into with the green paper on land reform. Now, it may be that they do intend to change Mr Hanekom's work. Which I gather he has agreed to. He himself read every single word before it is published. The indication there, that the first focus of the land reformers, will be a market related price for land at its propriated or taken for the purposes of land reform. That the land reform policy will never loose sight of that as a basis for taking land. So, I am a little surprised. This does not seem to be in tune with the green paper on land - as far as I know. I believe that perhaps one, somehow the constitution should be in tune with the Governments policies. Should it not at this stage? I mean, I think there is agreement that we need land reform. But this certainly

END OF THIS SIDE.

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7 FEBRUARY 1996

TAPE 6(5) - SIDE A

.....We want to change that position. Having investigated it. One really just can't go - there is a wavy line. I won't give you the whole argument. There is a wavey line between the State and other semi public institutions which one would wish to reach politic facts. It is not difficult, but neither Sweden, nor New Zealand nor other countries have managed the course of many commissions to find the answer. In fact, we don't believe you can make this right and apply horizontally until some answers have been found here or else where and I do not recall that other parties that the B option, but for our part we no longer do.

CHAIRPERSON

I ... wise party always needs to be reviewed in this position and changing it - never arises. I think we have to credit the DP with that. The question they ask is - whether the other parties in this group, would follow the DP's example with regard to the other rights where they keep on saying they are holding onto their positions. Lets find out if the NP has changed his mind on a few other things.

UNKNOWN

Chairperson, I wouldn't like our point of view to be lent out. ...to decide I think we have another problem. We are the ANC's redraft. But we want to point out that we are flagging this for reconsideration when it comes to the whole question of

horizontal application of the bill of rights or not - or what the case may be and also the issue of juristic persons.

CHAIRPERSON

Very well. So we will come back to this. That is fair enough. Administrative justice or just administrative action - did we deal with this one? Just record that this one would be held so we haven't ... with this one. Answers to the court - no problem at all. That is agreed to.

UNKNOWN

Could I just point the facts that I have tabled, in the sense that I have given to you Mr and the bigger parties, the due process clause been ... and has been handed over and this would be the appropriate place. I just indicate that.

CHAIRPERSON

On answers to the court?

UNKNOWN

I would say just before access to court. It is a short single line, due process clause and the people would kindly

CHAIRPERSON

OK. I propose that we have a break for tea and be back in 15 minutes. There after we will complete our work. Thank you.

CHAIRPERSON

.... arrested, detained and accused persons. You are still considering your positions?

UNKNOWN

We are still waiting for the ANC to consider its position.

CHAIRPERSON

Oh, you are waiting for the ANC.

INAUDIBLE

CHAIRPERSON

Can we urge parties to try and speed up their discussions or considerations on this one? Right? 35 - Limitations. If you haven't reached agreement on this one, you tell me whether you want to arrange a whole day session for some ... to do that. Have you reached agreement? No? No agreement here on Limitation.

UNKNOWN

Chairperson, we have take it on my side to meet the ANC's position - the end which satisfies our party. We find that the bottom of page 2 of the document we distributed, somehow the ANC could look at that.

UNKNOWN

The law society (inaudible) ...

CHAIRPERSON

Which one is this now? There is one written due process from Chambers?

UNKNOWN

There is the one called Democratic party bill of rights - ... on the second page(inaudible)

CHAIRPERSON

Have you seen it?

INAUDIBLE

CHAIRPERSON

Looks like other have it, others don't. Alright. Is it Democratic bill of rights. Democratic party limitations. Right. Mrs Camerer have you seen this before?

MRS CAMERER

Chairperson, I have just looked at it now. I mean, I haven't really had time to study it, but I just want to make the point,

there seems to be all sorts of versions floating around. We were also, in the bilateral with the ANC, we agreed to go and have another look at Prof Rautenbach's draft version on page 76 and 77 of the additional documentation volume dated the 26nd of January. So we would take that back and this back and perhaps come back with our own suggestion.

MRS PANDOR

Chairperson, in order not to delay the meeting any further, your initial statement, that we we hadn't progressed to the point where we would be ready with the view, was the correct one for all the parties.

CHAIRPERSON

What I sense is that draft discussion is in progress. There are proposals that are being exchanged. That is a good sign. It is a fairly important issue. That will need some serious consideration and maybe we should allow the parties to consider it a little further and come back to us. I will add it on my list. Parties will come back and I don't think it is a matter where we will report in the end that there is a deadlock. I think it is resolvable. It must be resolved. Is that a promise?

UNKNOWN

.... the whole bill of rights chairperson.

INAUDIBLE

CHAIRPERSON

No, it is a promise from the DP that the ... bill of rights must be resolved, it must find consensus.

INAUDIBLE

CHAIRPERSON That is very good. That is very very positive. Positive approach to these negotiations.

MRS CAMERER Chairperson, I just want to raise my point again about possibly having a session with the panel present on the whole question of specific limitation and general limitations and the result - the effect of one on the other. to raise the questions in relations to the submissions that have been made to the CA in that connection.

CHAIRPERSON So what was the initial part of your input now?

MRS CAMERER We should have a session on the whole question where we .. The whole question on the relationship between a special limitation built into a right and then the effect of the general limitation clause and what any down side potention may be as far as confusion or watering down of rights and all the fears that has been raised and various points that we put to the CA.

CHAIRPERSON I was just trying to interpret what session means. You are not referring to a conference? You are not referring to a work shop? You are not referring to a ship overseas? You are not referring to - you are just saying that we must have a meeting.

MRS CAMERER We are having a multi lateral session with the experts on property - possibly, because this is an important issue too.

CHAIRPERSON So we should actually have a session, a meeting, where we will discuss this matter. I will agree with that. OK. We need a session on this.

MR HOFMEYER

Chairperson, I think it is a good idea to have this, but I am just wondering if we should have it only on this issue. I am just wondering if we should not have a meeting with our technical experts, the panel and people from a sort of multi lateral meeting, but where we actually do try and resolve a number of the issues that are outstanding. Perhaps one can draw up an agenda when we are a bit closer - of those issues that seems resolvable. It seems to me, that a lot of the issues that we quibbling about at this stage are technical ones. At one stage or the other the bullet has to be bitten and decisions will have to be made. We are ... on that Friday ... and perhaps do that later in the day. Combine it in some way.

It is a good idea.

CHAIRPERSON

The administration informs me that the 16th - a date that we all had unanimously agreed to. That is problematic for them, because they say a lot of money has already been paid out to have this work shop. Where some of you are actors. They would like to propose that we do it on the 23rd. The following Friday. Then we could take all day. The 23rd February. Still in February.

INAUDIBLE

CHAIRPERSON

The deadline will just have expired and should we agree to that. 23rd then. We will deal with quite a number of issues, but principally the property rights and I think a few others, including the limitations. I think we should touch on it a bit. That will be an all day session. Tell me something - on the state of

emergency, how far have you come? Am I recording - you will come back?

UNKNOWN

We are going to come back on that one, specifically where it relates to 36.4 and we are still considering the position that were put forward by the NP and we will come back on that issue. We had in our bilaterals, I believe, agreed that we would actually welcome a comment from the Technical experts and perhaps that that work shop of the 23rd will may, or that date, may put the question to the panel and so that they could actually respond on that date. That is ... 36.4

CHAIRPERSON

Alright. The enforcement of rights - there is no problem there. None what so ever. Then there is application - there are two options.

UNKNOWN

There is a third in the sense that we party ... draft which is in the end of that two

CHAIRPERSON

There is a third one? Miss Smuts

MISS SMUTS

Yes. That is the one that refers to the zoneautonomy ... it is our proposal on how to achieve I am referring all sorts

CHAIRPERSON

There are only two options. Where is the third one?

MR HOFMEYER

Chair, can I just clarify it. I think there are only still two options under sub 3. The DP is talking about another issue.

CHAIRPERSON

Oh yes. So there is a proposal on sub clause one. There is no

option. There is just the one that we have there. So the DP is putting forward a proposal. Now, tell me something - how far are we in regard of solving option 1, 2 and 3. Are we still reserving our positions on that? Will you be terribly offended if I had to say - we leave the whole of 38 in a balance for a while.

UNKNOWN

We won't be offended. It would be a good subject for the 23rd. It doesn't mean

CHAIRPERSON

38.2 we will deal with. Interpretation of bill of rights. How do you want to deal with this one? Mrs Pandor?

MRS PANDOR

We have proposed to the other parties that 39.1(a), the last line, be re-worded to incorporate and human dignity - so it would be freedom, quality and human dignity. There hasn't been any opposition to that request.

CHAIRPERSON

That is generally agreed to. Nobody is against human dignity. So, that then deals with all of them and we've covered quite a lot of ground - we still have a few of these clauses that we need to give consideration to. Now there are a few other formulations - 14, we asked the panel, - 14, remember 14.3 - we did ask the panel to draft something for us there and it is being distributed now. The panel and the technical committee. So they are working together. No problems. 3(a) The vid.... of marriages concluded under a system of religious law or other recognized tradition or a system of personal and family law adhered to by person, professing a particular religion - maybe recognized by legislation. (B) The applicable rules of the systems or traditions recognized in paragraph (a) must be consistent with the bill of

rights. Do ask them if they understand this? Do they understand?

INAUDIBLE

CHAIRPERSON

That is a reformulation. Is there, does it constitute any problem for any one of us? Agreed to? Is there a problem?

UNKNOWN

I think we would like to study this before we say that we agree with it. We are concerns about some of the phraseology - maybe recognize etc. and we would like to take a closer look at it.

CHAIRPERSON

May be recognized by legislation. May. Why is it "may" and not something else? May I ask?

UNKNOWN

Chairperson, it is always been may in the interim

UNKNOWN

Can I ask some clarification?

CHAIRPERSON

Please do.

UNKNOWN

Is there a distinction between the and the system of ... law on a recognized tradition or a system of personal and family ... due to by persons professing a particular religion. Is there a distinction? What is the distinction? This is therefore, exclude a system of family relations, of family law. Which is not associated with a particular religion. Simply that we have got culture. ... question to get further explanation about (a).

UNKNOWN

(Inaudible) the question should be directed

MISS LIEBENBERG

Chairperson, the second part of the question relating of Prof relating to the culture, would perhaps been incorporated in the term recognized traditions. That would be recognized. As to whether a system of personal and family and person facing a particular religion is different from a system of religious law and I think we with it somewhere ourselves(?) Is not present, because he actually felt there was a distinction there in the two and that the two should be separated out. It is certainly correct that we did not try and tamper with the actual substance of the formulation as it is presently tabled.

PROF

I said ... there is much improvement on subsection 3, therefore I was ... asking for some explanation of this I think we require note if one I think what is in brackets, square brackets, other like traditions is quote here - so in fact, there is no reservation on that. I have no problem with (b). Simply a question of explaining 3(a). I think if adv please ... difference . I think we should get a note as to what is the difference. Thank you.

MR HOFMEYER

My point is largely similar. In my - my flawed understanding is that just that the religious law may be a narrower term and the second term may be a much broader term. In which case it probably includes the first one. So, I think if we could just get clarity on the need to have both of those terms.

CHAIRPERSON

OK. We will come back to this one and I think we've - the experts and the technical committee have assisted us in redrafting this one. There is one other - 11. 11- were you able in any way to do anything on 11? 11.2(b) to be secure and in

control of your own bodies.

PROF MURRAY

Chairperson, when I saw Mr Ebrahim talking to you, we have done some on 11.2 - we've spent some time on 11.2 I think there was a misunderstanding initially between Mrs Camera and myself - I hadn't idea this morning that we would try and redraft it today. We have tried. It is a difficult clause. I hope we can come back with something soon.

CHAIRPERSON

It is a difficult clause. I think we all agree. We will take your word for it. I think in terms of coming back to us. I think we must allow the technical committee and the panel of experts some time to redraft this one. OK. Those are the two issues we needed to deal with before concluding. We have identified a number of others. That we will need to come back to. All and all there are 10 issues that we still need the parties to discuss further. I think in the end, ladies and gentlemen, we have done well for today. We have recorded a great deal of progress. I think we can say there is progress on towards finalizing the bill of rights. There are few issues that remain in contention. I have counted about 3 issues that are still in deadlock. 10 issues that we still need to deal with. A party still need to consult in 17 areas of agreement. That is on my score card and I think we have done very well and I would like to congratulate the people who have been involved in the bilaterals, the panel and technical committee for assisting us to get as far as we did today. The bilaterals will continue. There are already here quite a lot of Monday we meet to discuss the National Assembly. The National executive, courts and administration of justice. Farm hands and any other business. A number of

bilaterals have been taking place on many of these, including consultation. So we can say that we are making a lot of progress and I am confident that we should be able to conclude within our time frame or even earlier. Thank you very much comrades, friends and ladies and gentlemen. Thank you.