

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 4

7 AUGUST 1995

2/4/4/5/18

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CHAIRPERSON: Right there is a tiny document that has our - Oh! John I am looking at various documents here. What document is that now - same one but the change of venue, Oh! it's the same thing. Now that's fine - Comrades you are welcomed in the Theme Committee 4 meeting. We are going to tackle the reports that have been stated there in our agenda.

Now I see Sheila's hand up, there is no item in the agenda at the moment. But all right.

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MS CAMERER: Can I raise a preliminary procedural matter chairperson, can you let me know when, can I do it now or later on?

CHAIRPERSON: A procedural matter.

MS CAMERER: Ja.

CHAIRPERSON: On today's meeting you want to add something in the agenda.

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MS CAMERER: No, I want to complain Chair.

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CHAIRPERSON: You want to complain. Can we first deal with the minutes and matters arising and then we will ...

MS CAMERER: It's about the time of meeting.

CHAIRPERSON: The time of the meeting. The time of this meeting all right.

MS CAMERER: Thank you Chair, I - I wish I hadn't read my documents over the weekend because the first one I would of arrived here at ten, but unfortunately the second notice said nine, nine to one. Now there was no - there was no answer at the telephone number of the Secretariat to try and get clarification.

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So I arrived here at nine just in case because as you see the - I have to be here and - of course there was nobody here. And now I just feel that perhaps to avoid future confusion, and this sort of thing is really irritating particularly for a Gauteng member of Parliament because the first plane from Gauteng to Cape Town is twenty to seven in the morning and that means that you cannot make a nine o'clock meeting on time. I got here at about quarter past nine.

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Can - can we please make it a rule on Mondays that we always meet at ten. Because otherwise it's discriminatory against Gauteng MP's.

CHAIRPERSON:

Ja, okay we will discuss the question of time. But for other reasons and I am sure the other parties are having other reasons not necessarily discriminating Gauteng or Cape Town or Durban. But we will discuss the question of time I think it's an issue that we'll also be raising.

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But I want us to - Mr Leon?

MR LEON:

Yes, Mr Chairman if I could just raise two matters at this stage. The first is a personal matter I have to unfortunately receive some visitors from overseas at quarter to twelve. So I just have to excuse myself at that time, I don't want that to be taken a miss or to regard I am leaving because of anyone particular contribution at that moment.

The second matter is this, I just wondered and looking around I might be wrong, we don't seem to have any of our experts present today. Is that a problem in the sense that if

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we are going to make certain things, we are looking at reports. Is it not slightly problematic if they are absent?

CHAIRPERSON: What happened to them John, could you explain?

MR SOLOMANDRIS: There were a number of reasons why we didn't bring them in. One was that because they busy with the memorandums and the draft text we said they could take the miss the meetings.

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They also because we looking at reports only, there is - we felt there was no need but if members feel there is a need we can bring them in that's not a problem on our side. We can arrange for members - for them to be here tomorrow.

Professor John Dugardt and Professor Rautenbach cannot make it on Monday's but Sandy Liebenberg can make it so we can invite.

CHAIRPERSON: Okay, perhaps when we are dealing with the reports we will realise that we - there are aspects where we wanted to ask some questions directly to them, the technical committee on

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some of the issues. Perhaps if we can get at least one available so that - unless the minute taking will be as clear, concise - no mistakes and so on. If you hope that, that would happen then that's fine. But we would like to see them present in our meetings.

Now can you look through our minutes, all though the minutes are dated 26th June 1995,

I don't know whether there is any person who would like to raise anything on the minutes besides spelling, Louis.

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MR GREEN: Chairperson my name has been omitted from page 2. I think that's an omission on page 2.

CHAIRPERSON: Your name.

MR GREEN: Ja.

CHAIRPERSON: Mr Leon?

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MR LEON: Yes, Chairperson I just want to make a substantive correction to the minutes in respect of the DP submission on

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the limitation of rights which is on page 5 of the minutes I think.

CHAIRPERSON: Ja.

MR LEON: Which is not reflected in the minutes all though I did deal with it verbally when we had this discussion and that relates to the limitations clause - proposal which we made which was to have an abbreviated limitations clause.

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I also indicated there and it should be reflected in the minutes that we were very keen or had previously made a submission on freedom of expression that, that should enjoy a higher form of protection under the old limitation clause. If in fact you have a new truncated or abbreviated and simple limitation clause, then I did make the verbal submission that the freedom of expression clause itself, could receive additional strengthening and I would like that to be reflected in the minutes, thank you.

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CHAIRPERSON: All right, anything else from the minutes? Okay there being none we move straight then into the reports. May I remind

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the members that we are looking at the reports for the purposes of submitting it to the CC.

So it's - we are not repeating - presenting submission per se, we are merely looking at those reports. Now the first one would be right to life.

MR LEON: Chairman.

CHAIRPERSON: Yes Chief.

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MR LEON: (inaudible) ... what you actually looking for from the various parties here today is to see whether the report accurately reflects the parties viewpoints, submissions etcetera.

CHAIRPERSON: Correct.

MR LEON: I mean that is really what we engaged with nothing more than that.

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CHAIRPERSON: Correct.

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MR LEON: Okay well then that's it.

CHAIRPERSON: Number one you got it, and there are some people who don't have copies is that so. Okay who wants to start the bite? It will be easier as well if we look at what we call this form - a schematic presentation Mavivi.

MS MYAKAYAKA

- MANZINI: Ja thank you Chairperson, on the schematic ...

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CHAIRPERSON: Just - just before you - Mavivi I am sorry, may I draw the attention of the members on part 1 where we indicate submissions received from political parties, the parties are mentioned there, ACDP, ANC, DP, Freedom Front, IFP, NP and the Pan Africanist Congress and we - there are submissions that have been received from the public, individuals, organisations, but this section that is dealing with submissions from the public and civil society will be completed once all the submissions received had been processed.

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So I hope that you will understand why we do not have them

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attached there. But you have all of them in your offices and I am sure you have piles and piles of green documents in your offices. But once a section has been completed, all the submissions received, once they are processed, you will be receiving them.

I am informed that a synopsis is coming tomorrow as well on all the public documents that had been received on the issue, okay. You want to talk on part 1.

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MS CAMERER:

Yes, Chairperson just to respond to what you've just been saying about the public submissions. Isn't it a little premature perhaps to sort of finalise this report to the CC before we've actually had an opportunity here in this committee to discuss the public submissions. Particularly on a thing like the right to life, you know.

In the light of the National Parties position that before we go into what should go into the final Constitution specifically on this point that one should go through a process of public hearings or consultation with the public the way we suggested was a referendum and we got shot down in flames.

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But I mean the point is, that it's the principle that counts rather than perhaps the method and that is to consult the public. Because if you read the papers, there is an - you can be in no doubt as to what a lot of members of the public think about the right to life and limitations on that right and the way it should be qualified perhaps in relation to a possible death sentence.

Now I wonder whether it's - I mean are we going to - you see what worries me is that in my two previous experiences of Constitution - Constitutional negotiations ...

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CHAIRPERSON:

Which we do not have.

MS CAMERER:

The public always came aboard and sent in a lot of submissions which were never really taken into account properly. There was always a time construct - now that we don't seem to have this huge pressure on us, isn't it - I mean and we've made a lot of points about the 2 million submissions that - the inclusively and I mean I think all due praise to the Constitutional Process and so isn't it - shouldn't

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we built in a way of ordinary members in the Theme Committees debating the public submissions.

Because if we sent this off to the CC then all the tricky points are going to be sent to the sub committee of the CC which is you know very small committee, and I mean will the public - will we as the public preventatives ever to get a chance ...

CHAIRPERSON:

Can I - can I cut you Sheila - can I cut you. I am going to definitely going to cut you. Because I believe you are unfair to the members of the Theme Committee if you want to raise those issues you can go to the management. We are - we are (inaudible) ... there as a Theme Committee and it has not been changed thus far.

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So if there are changes you want to propose go to the powers that be, the management and the Constitutional committee and those kind of people.

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MS CAMERER:

Proposing a change Chair, I just (inaudible) ... to your points in ...

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CHAIRPERSON: No my point was it's written on page 1 this section will be completed all the submissions received had been processed.

MS CAMERER: Process by (inaudible) ... I mean aren't - isn't part of the process that ...

CHAIRPERSON: By the technical committee as per the agreement of this Theme Committee.

MS CAMERER: Chairperson can I make the point that I mean all these submissions that are coming to us in these green bound volumes. I read - I mean I find them quite fascinating, actually but we never ever had an opportunity in our Theme Committee to discuss what these people are saying to us.

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Now are they - is this reading that I've been doing utterly pointless where are we ever going to discuss in relation to the particular brief that we have. I mean all the right to life things, volumes from the pro life's and the anti abortionist and ...

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CHAIRPERSON: Sheila, can you ask this under - under AOB, please because

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we are now going to engage AOB - to the debates that we already went through. I am going to ask you that we would discuss that point if you want to raise it seriously under - under AOB so that you engage other people as well. So that you won't talk alone here, all right - under general.

MS CAMERER: Oh! right.

CHAIRPERSON: We'll give you - we will give you that opportunity to do so. Right we - straight into the reports I stopped comrade Mavivi when she was ready to - to engage, comrade Mavivi. I am sorry for calling you down.

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MS MYAKAYAKA

- MANZINI: No thank you comrade chairperson. I just wanted to make some addition to this schematic report. If we look at Roman letter IV, and I think it's under no 2 on content of the right. Under contentious issues no 1 that Roman letter I.

I think that was said by the ANC so that contentious issues should be attributed to the ANC I think it's not indicated in the report.

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And on Roman letter VI, VII under the limitations the very last paragraph, talking about non suspendible. If we look at the ANC's submissions which is on page - on page 4 of that submission, 2.5 the ANC puts forward the fact that the right could also be limited under various conditions in a rebellion and the proportionate and necessary force in self defence and defence of life, and that is not covered here. Actually what is covered in this paragraph is only self defence and it's only attributed to the PAC. And we would like that to be added.

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CHAIRPERSON: Okay, thank you.

UNKNOWN: And ...

CHAIRPERSON: Yes Chief.

UNKNOWN: If I may just add that is not reflecting the PAC position at all as it is put here, it is totally not a PAC positions.

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CHAIRPERSON: Yes.

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MR LEON:

I was just wondering (inaudible) ... that one party should indicate whether or not another party is - submission is adequately presented or not.

CHAIRPERSON:

Okay, Webster - don't wear a PAC cap. Okay any other issue that members would like to raise on the report, the right to life? Okay we have a number of reports to look at, so I am prepared to move forward, Mr Green?

MR GREEN:

Yes Chair the ACDP's submission makes mention under the limitation of the right to life. That there is a limitation in terms of page 19 and it doesn't appear under limitation of right. It doesn't say anything about out input as far as the limitation to that right is concerned.

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The wording that we put in our submission is that the ACDP contents that life is so vital that those who want to take it, must suffer the same consequence of the deed. And there is no accommodation for that input under limitation of the right. And we - we would think that, that is quite a severe limitation.

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CHAIRPERSON: Okay, Sheila.

MS CAMERER: Chairperson, there seem to be a few things under contentious issues that are - I mean they specifically marked as outstanding. I think we've got two outstanding, ACDP has got one, DP's got one, how do you propose dealing with those?

CHAIRPERSON: Well, if - you might have read through the reports the - the technical committee does explain to us what is meant by outstanding. It's surely noted that items marked outstanding do no signify contention amongst political parties. But parties felt that this matters could be best dealt with at the level of the Constitutional committee when negotiations could take place.

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Are we together?

MS CAMERER: Yes, Chairperson I mean there are certain further submissions that we are intending to make in this connection, now where do we make them here, or later on?

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CHAIRPERSON: I don't believe that's also a serious issue, because we have agreed in the last meeting any party is free to make any further submissions but to the Constitutional Committee.

MS CAMERER: They think they won't (inaudible) ...

CHAIRPERSON: Well they will - I am sure they will decide how to deal with those because you can - and what I've noted is that many of the parties have made preliminary submissions, I don't know when your submissions will become final, so I mean that also - it's one of the issues that could be dealt with by the Constitutional Committee.

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MS CAMERER: Just to get clarification chair, so when we make our further submission which is in the work so to speak, will it not come here at all, we just make it to the Constitutional Committee?

CHAIRPERSON: Okay I think the best way to deal with it would be to make your further submission and the technical committee obviously will incorporate it in the report and then it would be submitted to the Constitutional committee.

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Because I mean you have a right to make a further submission if you so wish. There is nothing that blocks anybody. But I don't believe you must - each time there is a party who wants to make a further submission, a Theme Committee must be convened each time. We may - we may land up having serious problems if that's how we are going to deal with it.

So I am sure there is - there is a rule for that.

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I must not decide for you in the chair, if I am wrong please feel free to cut me into pieces and I am ready to be a mincemeat especially in winter. There being no further business on that one, we will put that one aside. We'll move to the next one, freedom of assemble, demonstration and petition. Anything there, Mr Green?

MR GREEN:

Yes, Chairperson with reference to the summary on numeral the Roman numeral III, there should be no limitations on the rights in the ACDP's position.

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CHAIRPERSON:

Right.

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MR GREEN: I think we have a limitation to that right if I understand it correctly - our submission clearly limits the right. It says that no right is absolute, the right is as worded provides it's own specific limitation. So - so we are saying that the wording in that right would limit the right, so that's not entire correct.

In other words it's not - it is as the right has stated the words peaceful and unarmed is in itself a limitation.

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CHAIRPERSON: Okay - 'enige iets' - anything else. So the parties are happy that they have been reflected correctly. All right let's move to freedom of association.

MR LEON: (inaudible) ... a small ... (intervention)

CHAIRPERSON: Okay, Chief.

MR LEON: Now, this really does create a slight problem because the experts aren't here and I (inaudible) ... to get clarification from them.

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For example I mean in the schematic summary on page little Roman numeral III when it talks about Section 33 limitations right, the DP in it's submission said basically the general limitations clause in Section 33 should apply and that really was as far as we went and we thought that was fine. Whatever we finally make of the general limitation clause.

Now that is represented in this schematic summary there and I don't know whether that's simply because we went along with the current Constitution as it's worded at the moment.

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Because essentially what we saying is exact the same as the ANC and the Freedom Front in their thing without saying it in so many words.

We simply said that Section 33 should apply. Now I don't feel particularly slighted that we omitted from this, but I don't want people to think that on the other hand we think the right should be eliminable which is the ACDP position. Or on the other hand that we haven't considered the matter at all.

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CHAIRPERSON:

Thank you Mr Leon - 'Ja mnr Bakker'.

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MR BAKKER: The bearers of a right says, contentious outstanding aspects - juristic persons should be included, DP and ACDP. But our submission specifically state that in addition where and to the extend that the nature of the right permits juristic persons are also bearers of this right - (inaudible) ... and it's quite important that we to note that we are in favour of juristic persons also having this right.

CHAIRPERSON: Anything else? Okay yes Sir.

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UNKNOWN: Comrade Chair I understood ACDP when that contentious right on limitation of rights is no longer contentious therefor they should not fall under that section. It's no longer a contentious matter on the question of limitations.

CHAIRPERSON: He agrees - okay we'll move to the next one, freedom of association. Anything there? All right your party submissions have been indicated correctly, we'll move off to the next one political rights. Okay.

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Anything there - yes.

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MS CAMERER: Chairperson sorry (inaudible) ... very rapidly I see that I had circled something under point 5.

CHAIRPERSON: Are you on political rights?

MS CAMERER: Freedom of association.

CHAIRPERSON: Can we - we'll come back to that, just in case there are some many green documents that we can get confused if we go to another one now, political rights. Anything on political rights - (inaudible) 10

MR SURTY: Mr Chair just give me a moment because I left a note with another document (inaudible) ... Comrade Chair on schematic Roman numeral III under contentious and outstanding aspects, if you take the third paragraph - the right to vote in free and fair periodical elections should be added in Section 312.

You know that was the position of the ANC and if I understood it correctly that was the position of all the parties here. Because they all subscribe to the provisions of Section 20

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21 of the declaration. So the suggestion here is that item be moved to the non contentious column.

That would actually also apply to the following paragraph that is the right to stand for elections, to public offices in Section 21 should be appended with - in accordance with the Constitution or any other law and that was not contentious at all. And there seem to be consensus insofar as that is concerned.

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The suggestion here is simply just that these are general provision which were accepted and should not be identified under a particular - (inaudible) ... a submission of any particular party. And then that it should be regarded as non contentious.

And if I go on to the next page it's Roman numeral IV, the vote shall be personal, secret, free and equal. That is listed as an outstanding item by the IFP, but I mean I think all the parties were in agreement that it should be secret, it should be free and be equal. So there was, I don't see why should the - either listed as an outstanding issue or as a contentious

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issue.

The issue regarding the - and the last paragraph there, political parties shall ensure internal democracy in their organisation and operations. The submission here is that this is not - does not fall within the ambit of the Constitution. It's a remark that should be - you know should be listed under remarks and not to be dealt with under the Constitution.

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So, I think the appropriate place for that particular item would be on the extreme right hand column under remarks. Those are the suggestions in regard to these particular issues comrade chair, thank you.

CHAIRPERSON: Okay, anything else Comrade Ben.

UNKNOWN: Ja, I just want to suggest that I think our position was not periodical elections but regular elections. And that seems to have been accepted by everybody else too.

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CHAIRPERSON: Okay anything else, Mr Bakker.

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MR BAKKER: (inaudible) ... again ...

CHAIRPERSON: Bearers of the right.

MR BAKKER: It says citizens are the bearers of rights and (inaudible) ...
and ...

UNKNOWN: I can't hear.

CHAIRPERSON: Okay, sorry.

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MR BAKKER: Outstanding aspects will be aspect that I do not see here is
persons under age that is not suppose to be bearers of this
right. A specific age which must be decided upon but I think
it must be included here as an issue.

UNKNOWN: It is (inaudible) ...

MR BAKKER: I haven't seen it.

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CHAIRPERSON: Okay, yes Chief.

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UNKNOWN: (inaudible) ... what is that for us, we did not hear what was ...

CHAIRPERSON: He - he says the contentious issue is natural persons and they have specific understated the age and that's what he wants to be reflected. Am I reporting you correctly Mr Bakker?

MR BAKKER: Ja, I see it is noted under point no 2, the content of a right, that the ANC stated further attention should be given to reduce the legal voting age. But qualifications of voters must elsewhere appear in the Constitution.

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CHAIRPERSON: Okay.

MR BAKKER: The thing that I mentioned is under the bearers of a right, I think this qualification of the age of a voter must be noted.

CHAIRPERSON: Okay, so you feel the qualification must be noted in the Constitution.

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MR BAKKER: Yes because all citizens are not bearers of this right, only

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citizens above a certain age are bearers of this right.

CHAIRPERSON:

All citizens above a certain age, okay. Are you getting that - okay. All right so the age is debated by Theme Committee 1 okay no that's fine, it has been noted. Is there anything else? Okay there being none, before I conclude, you wanted to ask something on freedom of association.

MS CAMERER:

Thank you Chair, I just (inaudible) ... something. The duty under point 5 application of the right, the duty shall not be imposed on private actors.

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I think that's a very simplistic way of putting our position in fact that's not what we said.

CHAIRPERSON:

Simplistic.

MS CAMERER:

Well it doesn't really put fully what we said if you look under application of the right. Under - on page 2, 2.1. Measures to - ja in the submission if you look on page 2 of our submission ...

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CHAIRPERSON: On the submission ...

MS CAMERER: We - you could say that say through legislation that would be our position. We do say that it's possible to have the - you know private discrimination prevented through legislation.

CHAIRPERSON: But I think the problem we have ...

MS CAMERER: It would qualify our position slightly in a way it's described.

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CHAIRPERSON: No you must remember this is schematic.

MS CAMERER: Ja, I do but let's be accurate even if we schematic, there are a lot of (inaudible) ...

CHAIRPERSON: So in other words you are not saying the duties are not be imposed on the private actors.

MS CAMERER: We saying it can be that through legislation (inaudible) ...

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CHAIRPERSON: Okay, all right. Okay I think we are through with that chunk of reports. Now under general I had indicated before that

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perhaps we need to look at the question of the time of the meetings and Sheila wanted to engage us on some other issue.

Now can we start with the time of the meeting. Tomorrow we meet at nine o'clock according to the schedule. Is it still M46, so the venue won't be changed tomorrow okay, nine o'clock is everybody happy with this nine o'clock.

MR SURTY:

Comrade Chair may I make a proposal that we schedule our meetings for ten o'clock instead of nine o'clock. The reason being two for one is that it be convenient for everybody and secondly is that we receiving quite a few volumes of documents you know and we have to consider it in a very short space of time.

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So I think the parties should be given an opportunity to consult with one another before coming to the meeting and that would make our meetings much more swift in terms of finalising programs. So I propose that we meet regularly at ten o'clock on an uniform basis.

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CHAIRPERSON: There is a definite proposal.

MS CAMERER: Can I second that proposal Chairperson because then it will also obviate this confusion where we get two notices, one saying nine, one saying ten on a Monday of all peak times you know. So we know it's always ten, we won't have different times for different days and then we won't get confused.

CHAIRPERSON: Okay.

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MS CAMERER: I'd like that seconded.

CHAIRPERSON: Okay there is a reminder that except Thursday, Thursday we can only meet in the afternoons, because of party caucus in the morning.

MS CAMERER: But can I suggest that on Thursday this week - there are no caucus as far as I know this Thursday because Parliament is not sitting only the CA. So what I - you've seemed to have scheduled a meeting for Thursday. I don't know but it looks like - I mean anything could happen of course but it

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looks as though we may finish well before the time today.

And we have a meeting scheduled for tomorrow morning and I mean this - our agenda seems to be spread out over the week in a way that perhaps isn't necessary and I was wondering whether we couldn't try and deal with Thursday tomorrow as well.

Because I mean if we going to just meet for an hour and disappear again for another two days and come back another hour or so. I mean wouldn't it be advisable to try and deal with our agenda. And get on with it and if anything urgent arises it could be different.

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But also it assists members of Parliament who come from a long way off that they would have at least two days to go back to the constituencies instead of one you know if they are needed back in the North so to speak.

CHAIRPERSON:

Okay, I think we - I am sure that one we can look at because one of the problems is receiving reports, pretty late and this is why this whole thing is spread because the reports

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sometimes are coming pretty late to the members themselves because there is a lot of work that has to be done by the technical committee around these reports.

I am sure one can look at that as the issue and most probably what's happening on Monday, shift that meeting to Monday I don't know. But I am sure we can formally inform the members tomorrow whether that has been agreed that we meet on Monday instead of Thursday.

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And then we get enough time to look at those reports that we are quicker when we meet on Monday. We'll meet for fifteen minutes, in fact even if the time of the meeting is scheduled from ten o'clock to 13:00 I am not a person who like meetings for the sake of meetings.

UNKNOWN:

Hear - hear.

CHAIRPERSON:

And so if we can finish within thirty minutes we get into a meeting, that's fine -that's fine. There is nothing wrong with that.

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MS CAMERER: Can we go even further and deal with tomorrow's agenda now Chairperson then we don't have to meet tomorrow.

CHAIRPERSON: The only problem is that we are only receiving the documents now. So I mean we cannot this is a (inaudible) ... proposal in our caucus as well that we deal with tomorrow's agenda today. The reason why we are only receiving the documents this morning. And so we would like to read through the documents, that one is a problem.

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So I think let's - let's read the documents for tomorrow and I am sure even tomorrow we can only be here for only thirty minutes and then we are gone.

Now we are waiting for you now to delay us Sheila, over to you.

PROF ASMAL: This is not a one person meeting of the Theme Committee. I am told by the Secretary of Parliament that tomorrow there is a special session in the afternoon.

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CHAIRPERSON: In the afternoon.

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PROF ASMAL:

According to my diary Theme Committee is suppose to be meeting tomorrow afternoon too, only tomorrow morning, so my office obviously had an earlier minute which we changed seemed to be changing. Thank you very much, that's clarified.

So can I issue this invitation that to those who haven't received it that the National Assembly meeting under Rule 12 tomorrow at 2:15 to celebrate National Woman's Day.

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CHAIRPERSON:

Okay, also the - apparently the Constitutional Assembly has received this note from the powers that are controlling Parliament. So Parliament has decided to convene on Tuesday 8th August from 14:15 - 15:00 thank you comrade Kader to remind us in order to pass a resolution to mark the National Woman's Day on August 9, 1995.

And I am told that basically all members have received a note to that effect. I have received one, I don't know whether all the members have, but also the Theme Committee -I mean the Constitutional committee is changing tomorrow's timetable so we'll only meet in the morning

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tomorrow and not in the afternoon.

Sheila you want us to delay us - to delay us for two minutes?

MS CAMERER:

Thank you for the opportunity Chair. I am just worried about the submissions from the public. Particularly if we - we look at the nature of these submissions. I mean there are volumes on - on the whole question of the right to life and there are also volumes on freedom of expression.

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And you know isn't it - shouldn't we deal with these submissions in a more differentiated way. I mean you can say you know of the 80 volumes you know - they cover a wide range of things and they can be dealt with somewhere else and we'll get synopsis, but I mean anybody looking at those submissions, would be left with a clearer impression that the public is very concerned about certain issues in this Bill of Rights.

And are we as a Theme Committee going to just ignore this and pretend it's all happening somewhere else. I mean the fact it, it's all happening here and all these volumes of

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submissions are coming to us and we are meant to be the duly elected representatives of the people.

Are we going to discuss these submissions at all. I just wonder whether we shouldn't consider doing that?

CHAIRPERSON: Okay Mavivi and Professor Kader.

MS MYAKAYAKA

- MANZINI:

Ja, if you remember very well at the beginning when we started as a Theme Committee we did get some summary of the various submissions. And later on we stopped having them, maybe it was because of the load of work.

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And we did decide here as a Theme Committee that we are going to mandate the Technical Committee to help us with the submissions. And bring to us those issues which we think are contentious, especially to our submissions which can contribute to the work of the Theme Committee.

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And I think so far the technical committee hasn't brought that and which makes it very difficult. Because if you look

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at the submissions, I think we actually informed that our Theme Committee has the most of the submissions and that it's very difficult to deal with them. But the technical committee will be alive to bringing in those issues which they think should be brought to the Theme Committee.

So, maybe what we should get from the technical committee unfortunately they are not here. If - that would mean that since they haven't brought anything there hasn't been any contentious issues which they would like to bring here.

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But in addition I think we as political parties, also have a duty to look at those submissions who have also participated in various forums, public forums etcetera, workshops etcetera.

And I think it's also our duty to bring those issues and I find it very difficult now that they are being brought at the end. Because what I had - I think should have happened is that as we are discussing a right, then we go through those submissions even ourselves as parties and bring them here. And we see how those issues can be taken on board.

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And in view of the time left to us as a Theme Committee maybe we should hear from the technical committee how they suggest the way forward. Because if I look at their suggestion here is that they are actually preparing something which will go together whether to the CC as part of our report, which will include also submissions from the public.

CHAIRPERSON: Professor Kader.

PROF ASMAL: Yes I don't think ms Camerer should be allowed to say that, we are ignoring the submissions. They have informed apart from the points that comrade Mavivi has made which are very (inaudible) ... and very relevant, they certainly informed the way our minds has worked.

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Now I think it may be a problem with the National Party because of the two ends there are in (inaudible) ... stick and I say this seriously. In the first their right to life for merely a year the standing committee of Parliament has been looking at one aspect of the right to life which I think is the aspect of Ms Camerer want's to emphasise rather than other aspects of the right to life.

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And they've been looking at the issue of abortion. Systematically and they have an interim report, and many of us have attended those proceedings and we certainly have heard the submissions made. Nearly all of the submissions that were made to the standing committee in favour of one particular view, have been virtually printed and subjected to this Theme Committee if you look at them carefully.

As it was a large industry who is organised the typewriter to be nearly the same also.

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So in fact we have looked at it texturally, thematically and the contents. And has certainly informed certainly our views on this matter.

In the same way there is a major three volume report and I think I want to say this - a three volume report has been a public delay on this report on the basis of which the Bill has been introduced.

Now as far as exposure is concerned, the full frontal or limited exposure, there has been a vast amount of work has been done. I don't think under the (inaudible) ... of a kind

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of populist view that we are ignoring, that we should impede the work of this Theme Committee.

Because there are - all of us are participating in one way or another on the standing committees, or in our ANC we have technical workshops in these areas. We are being informed and sensitised by the responses we've have from the public apart from those responses had been highly organised and virtually identical which means that there has been a special lobby on this.

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So I think that we await whatever assistance the technical committee will give us and honour their hand I think it's necessary for us to say in these sensitive areas. The other venues that exist will continue to be used and then we'll of course mould the Constitutional committees work.

A final point I am making is this, there has been a very valuable procedure that is taking place on economic and social rights in the National Assembly. I am not sure that people here who wanted to be sensitised by that who are present at that section. And there is a very good reason for

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that, there is no alternative venue to discuss economic and social rights, that was the point. And that is why the management committee organised that.

And I think that's the route really Mr Chairperson to follow. It's a management committee's workout that for example I'd like to hear the editors on newspapers, they generally concerned about the freedom of the press issue. How we should characterise that right, because there has been a lot of half baked stuff spoken about this.

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Now that may be the management committee that could instruct us - or provide another venue for this. But apart from that, I think the even flow of the submissions, the management committee should be maintained, thank you very much.

CHAIRPERSON:

Okay, I don't really believe that you want to belabour the point because the technical committee will be here tomorrow they will give us a report of how they have gone.

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MS CAMERER:

Just one point (inaudible) ... Chairperson if I could just

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respond to Professor Asmal the lot of the - I mean it's true that a committee of Parliament dealing with legislation has gone into the whole question of abortion extensively.

But one must always remember that the Constitution sets the norm and the test for any legislation and we looking at the final model of the Constitution. So all though a lot of submissions have been made in connection with legislation or amending legislation, that legislation one day is going to have be tested against what we decide here in the Constitutional Assembly.

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And we kind of ignored this topic not necessarily the abortion aspect because I do believe that quite a lot has been done about that. But particularly you know there have workshops also. But on the other aspect of the right to life, I wonder whether I am just putting a suggestion to this committee that we should discuss it, you know workshops have been dealt with, have been arranged to deal with all sorts of aspects and as Professor Asmal says, a very valuable workshop were held in connection with sosio economic rights.

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And in view of the fact that the whole question of the death penalty and the right to life is of enormous public interest, are we not going to have a workshop on that or at least a discussion relating or a debate in this committee relating to the submissions that we've received.

I wonder whether we can actually ignore this point because we're into a process of public consultation for this final model. And if we say not a word about these volumes of submissions I wonder whether we doing the right thing
Chairperson.

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CHAIRPERSON: Okay.

PROF ASMAL: I don't want to reply - I don't want to reply.

MS CAMERER: Just to mention the editors, if I could just have a final word about the freedom of expression.

CHAIRPERSON: I don't - I don't want us to please Ms Camerer, with due respect there is a proposal which is very definite here. That tomorrow the technical committee would be here in order

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that we follow what they have written there about processing these public submissions.

I think therefor let's wait for that report because it was our decision anyway that they process all and it was us who were saying we are receiving quite a number of submissions and piles and piles of them are in our offices. And you have those submissions, I have them and everybody else here has those submissions.

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And therefor why can't you wait for that processed report from the technical committee or wait for the technical committee tomorrow to give us a report. if you want to debate the issue further, we can do so as from tomorrow.

MR LEON:

Chairperson can I just respond, I think Ms Camerer is protesting to much with respect to my friend. Let - she mentioned just in a sort of throw away line what the conference of editors, I just want to deal with this very matter. Because I think it's highly (inaudible) ... to the question of public participation.

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Every party, well anyway at the very least the three parties who share the chair of this particular Theme Committee got a very detailed submission by way of a public submission from the conference of editors.

Now I read it, red it since it was sent to me and I incorporate a large way than what they said in my party submissions. Senator Ray Radue of the National Party was equally sent a copy of that and the fact that the National Party chose to ignore the submission ...

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MS CAMERER:

I don't know that we did.

MR LEON:

Well you did because we - it was sent to us before the submission was made, we were the only party which actually took up this specific point made. Senator Radue was sent a copy and he didn't include it.

Now I mean you know or pay any attention to this. Now I think you know that it's up to us as political representatives, to either read those submissions, consider those that we think are critical incorporate them into our submissions, or

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not.

I mean we are not here to - I mean I don't know what in fact the consequence of Ms Camerer is saying would mean, that every party will now revise all their submissions in the light of certain submissions from the public which have been available for us to read or not.

I look at the public submissions as being an aid to the compilation of each particular section and you ignore, you take in, you disregard those which you think can be advanced. I don't see what else we can do as party political representatives.

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CHAIRPERSON: Okay I am ...

MS CAMERER: I must (inaudible) ...

CHAIRPERSON: I am prepared to be unpopular Ms Camerer by the way and I am prepared that the people can hate me. But I am not going to belabour the point now and at this junction I am going to remind people that the meeting tomorrow starts at

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ten o'clock. And this - at M46 and this particular meeting
is now closed.

[END]

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THE CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 4

7 AUGUST 1995

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.....
TRANSCRIPTIONIST: L WOOD

H Potgieter

.....
EDITOR: H POTGIETER

CONSTITUTIONAL ASSEMBLY

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CHAIRPERSON:

... and gentleman my pleasure this morning to lead this meeting. I would like to welcome you all here. I am sure it was done yesterday and in the meeting yesterday but unfortunately I wasn't here yesterday. But it's quite pleasant to be back to see all the old faces and - with young spirits. So with any - without any further ado. I think we can get on to the meeting itself.

There are no minutes to deal with this morning. So we will go straight to item 3, reports of Theme Committee on several of the rights. As I understand it, the documentation for (inaudible) ... have not received any of these reports is before you on the table and you may collect that documentation.

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There is also today a synopsis of submissions received this is Volume 1 of the synopsis which gives you a very detailed clear index of all submissions made to Theme Committee 4 by the public with references and makes our task a lot easier and I'd like to express my appreciation to firstly the technical committee and secondly to the personnel of Theme Committee 4 for the tremendous job they are doing in this regard. It is time consuming I understand we've also

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brought some students in to give a hand and to all of them I'd just like to say a very big thank you on behalf of the Theme Committee.

I understand that we have adopted a procedure in terms of which we will not have detailed debates on any of these reports but that each party will be free to comment on anything that has possibly been omitted from each particular report. I think that the technical committee has been very careful to ensure that there are no omissions and that the stand point of each party is carefully recorded for onward transmission to the Constitutional committee.

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So I would like to suggest that we go to item 3.1 and deal with citizens rights and call for any comment at all or for approval of that report to go forward to the CC. The matter is open for discussion on citizens rights. Senator Surty.

MR SURTY:

Chairperson on this schematic Roman numeral V, it's page 5 the last sentence under contentious or outstanding aspects, I would just rephrase that, it's written no deprivation of citizenship for political reasons. I would rather suggest that

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we put there or insert citizenship should not be deprived for political reasons, you know it sounds much better, it sounds more English and correct.

Then on ...

CHAIRPERSON: Do I have general approval of that, just an improving of the grammar as such?

MR SURTY: The - there is just a grammatical change, not the 10
(inaudible) ...

CHAIRPERSON: A grammatical change.

MR SURTY: No deprivation of citizenship ...

CHAIRPERSON: It seems that there is general consensus there Senator.

MR SURTY: It's on numeral V and on the first - right on top on the -
under the same column, second line instead of the word 20
exist, I'd insert the exists, in other words I'd add an 's' to
exist, that the second word on the second line of the same
column under Roman numeral V, thank you Mr

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Chairperson.

CHAIRPERSON: Thank you.

UNKNOWN: And just two more points.

CHAIRPERSON: Yes certainly Mr Mdladlana.

MR MDLADLANA: (inaudible) ... of the rights.

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CHAIRPERSON: Are we dealing with the schematic report or the ...

MR MDLADLANA: Schematic - schematic.

CHAIRPERSON: The schematic report all right.

MR MDLADLANA: (inaudible) ... schematic no 3 application, we have noted that the contentious (inaudible) ... - (inaudible) ... why it is contentious and then also on no 4 the last two, we do not believe that there is any contentious about - about those.

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CHAIRPERSON: Right, so you think that they should be described ...

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MR MDLADLANA: As non contentious.

CHAIRPERSON: As non contentious unfortunately the Freedom Front isn't here at the moment to comment on that. But they ...

MR MDLADLANA: No I am merely talking about it being, I am not - we are not raising - we are taking this, what is contentious about that - it is what we cannot check. The report is not coming from the Freedom Front by the way, it's coming from the technical committee.

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CHAIRPERSON: Yes, so it should be recorded as non contentious then.

MR MDLADLANA: That's the point we are just raising.

CHAIRPERSON: Thank you, Ms Camerer did you have any comment?

MS CAMERER: Ja, I am not sure if I understood Shepherd, but I mean clearly if we all agree that - if something that the Freedom Front has said which the technical committee thinks it's contentious and none of us do, and the Freedom Front clearly doesn't then it should be contentious. And I would support it to that extend.

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CHAIRPERSON: Yes I think the point to perhaps Ms Liebenberg would be able to help us here.

MS LIEBENBERG: Yes thank you chairperson, I didn't myself draft this report, but I think it was intended to be an outstanding issue if one has regard to the heading of - of the list of rights, not as a contentious issue per se but it would need - the details would need to be clarified I mean it's quite a broad statement. But it's not meant to be classified as a contentious issue per se.

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With regard to the second point raised regarding the Constitutional provisions to supersede the common law, I think that one could agree would fall into a non contentious aspect as that would be required by the Constitutional principles.

So certainly the second aspect could fall under the non contentious category, thank you.

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CHAIRPERSON: Thank you very much. So we will definitely move that item 4 then to - to the non contentious column. I'd like to welcome the leader of the Democratic Party Mr Tony Leon

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to the meeting after what I understand was a very successful and exorbitant conference.

Right after a little bit of (inaudible) ... are there any other items which arise out of citizens rights and the report of the technical committee? If there are none then I propose that we do not waste time but that we then accept those suggested amendments and then move it forward to the Constitutional committee. Is that all in order, all happy with that, thank you.

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Then we'll move on to the next item on the agenda, 3.1 freedom of movement and I open it to all parties to make any comments in regard to the report before us. It seems straight forward, certainly Senator.

MR SURTY:

Chairperson the same comment that Ms Liebenberg has made regarding well the schematic page 3.

CHAIRPERSON:

Yes.

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MR SURTY:

Under the contentious column we could just move as per suggestion previous time.

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CHAIRPERSON: Item 4.

MR SURTY: It will be item 4 yes.

CHAIRPERSON: Ja.

MR SURTY: To the non contentious column.

CHAIRPERSON: We will do that. If there are no other comments, then can we take it that we therefor accept the report and move it to the Constitutional committee? Thank you it appears to but anonymously accepted.

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We move to freedom of residence, once again we have the same comment under item 4.

MR SURTY: Ja, and Mr Chairperson ...

CHAIRPERSON: Senator.

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MR SURTY: Schematic page Roman numeral II under outstanding issues, Roman numeral I, you know under the column contentious, just a spelling correction there line 2 instead of once it

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should be one, in one section. Freedom of movement, residence and citizenship in one section, that's just a correction.

CHAIRPERSON: Everybody picked that up?

MR SURTY: Ja and Mr Chairperson this also occurs in the narrative, but it's under the report on freedom of residence.

CHAIRPERSON: Right, yes it appears on page 2, part 2 - 2.2 outstanding issues, freedom of movement, residence and citizenship in one section, the view of the ANC and the ACDP. 10

Thank you Senator, and we move in item 4 as well on page Roman III of the schematic report the comment there to the non contentious column. Thank you any other comments, no other comments then that report will go forward to the CC.

We deal with the question of children's rights and I would just like to comment that if one looks at page 1 of the report, I was thrown off balance there until I realised that there is a mistake at the top of the heading, it should be a 20

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report on children's rights not a report on the right to freedom of association. So if you will please make that amendment I think the rest is all correct and applies to children's rights.

Page 1 of the full report right at the top the - the heading report on - it shouldn't be a right to freedom of association but on children's rights. Other than that, are there any comments, Mr Leon?

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MR LEON:

Well Mr Chairman I don't understand when just referring to the DP proposal here, contentious outstanding aspect, this no doubt is shorthand for something else.

CHAIRPERSON:

Where - what page is that.

MR LEON:

Sorry, I beg your pardon, it's on page 4 - ja it is 4.1 V, Roman - it says all actors other than the State with DP, I don't quite know what that means. Because our submission in fact just to clarify this, does say that it says a positive duty is imposed upon the State and on other actors including especially parents and other persons acting in loco parentis or those exiles in temporarily or custodial control over

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children.

CHAIRPERSON: Yes I think that this is in fact a reflection of the heading under which we made every report, all actors other than the State.

MR LEON: Oh! I see.

CHAIRPERSON: DP, I agree with you, it makes absolutely no sense and it should be corrected. 10

MR LEON: Well perhaps they could just clarify that.

CHAIRPERSON: In other words you say horizontal and vertical applications.

MR LEON: Yes in appropriate circumstances, yes. We also I mean not that I wish to revisit this, I have you know we just have some doubts about the applicacy of including children's rights in the Bill of Rights as a separate category all though as our report does make clear, we have no objection as such, it's not - but we raise certain practical problems. 20

No that isn't reflected in this schematic summary at all. So

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it's not wrong this, and it doesn't necessary omit that and ...

CHAIRPERSON: If you would like it included just for clarity sake, then I am sure that the technical committee can make that adjustment.

MR LEON: Well I just think it should be - it should be left at that we noted it a practical what we perceive to be a practical question of it's applicability or inclusion.

CHAIRPERSON: Ms Liebenberg will you be able to make that adjustment.

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MS LIEBENBERG: Yes, certainly Chairperson if that's what Mr Leon would like that reflected.

CHAIRPERSON: Thank you Sandy. Any other comments?

UNKNOWN: Ja, also omitting - if you follow this sequence of pages in the schematic report we go from 4 - 4 is repeated we then go to 6, page 5 is omitted and no 6 is omitted.

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CHAIRPERSON: Thank you very much for pointing that out, I think that is an omission and if someone has the original text if they could just look at that for us. Sandy have you perhaps got an

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original text, you perhaps did not prepare this particular report.

MS LIEBENBERG: No - no we didn't the schematic report isn't report by the technical committee per se, just the - you know the full one.

CHAIRPERSON: Right.

MS LIEBENBERG: But I also don't have the original on my at the moment.

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CHAIRPERSON: All right it's been pointed out to my Mr Solomandris that if one looks at page 6 - we item 4 we may be able to follow more correctly the situation. So the report itself, the full report is correct, but the schematic report is not quite correct and I think we must amend that schematic report so that when it goes to the CC it is correct. Can we do that Mr Solomandris, that will be done thank you. Max did you ...

DR COLEMAN: (inaudible) ...

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CHAIRPERSON: Okay, are there any other items arising out of the report on children's right which - Naledi.

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MS PANDOR:

Chairperson points of grammar, that very page - item 4 which starts on page 6 application under contentious or outstanding issues, on page 7 at the top, that sentence is phrased rather strangely and I think one, I am finding it difficult to make sense of it, so that just needs to be corrected.

CHAIRPERSON:

Yes, I agree with you, that will definitely have to be corrected I would suggest that we should - it in fact should read rights that promote discipline, accountability and propose - no it still doesn't make sense. It's a quote actually from the ACDP's submission and I think it must be correctly quoted.

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Apparently the ACDP's submission actually reads precisely like that, so it's - perhaps we should put in (sic). That's no pun Louis, I didn't intend it to be, are you with us, perhaps you can help us here.

MR GREEN:

Are you referring to page 4?

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CHAIRPERSON:

On we referring to page 7 of the report at the top, paragraph 4.2 it doesn't seem to read quite correctly the

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ACDP's view 4.2.1 right at the top of the page, it doesn't seem to make sense. Ms Camerer in the meantime?

MS CAMERER:

Where that (inaudible) ... are you going to be (inaudible) ... if I could just I am a little bit puzzled about why something that's attributed to us would I know is one of our positions is contentious and outstanding. I could seek clarification on - under point 5 in the schematic representation it says, the right to parental care is enforceable against parents, well I think that stands to reason Mr Chairman but anyway also against the State.

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Whereas the right not be maltreated, neglected or abused is enforceable against any person why I really wonder what is contentious or outstanding about that Chairperson, I am ...

CHAIRPERSON:

Good question, you say it's an outstanding standpoint. Any comments on that, is it contentious? I think we're all against child abuse by any person, it's a simple statement and certainly it's also enforceable against parents if they abuse their children. So it will come out of the contentious column thank you Ms Camerer.

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Louis are we further Mr Green with that other problem, have you picked it up.

MR GREEN: Chairperson I am just trying to find the quotation in our original submission.

CHAIRPERSON: If you look at page 7 of the report, okay the full report by the technical committee at the top of page 7 is 4.2.

MR GREEN: Ja I've got that.

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CHAIRPERSON: And have you read 4.2.1

MR GREEN: Yes.

CHAIRPERSON: It doesn't seem to make grammatical sense.

MR GREEN: Ja but now I am - I am looking for that quotation from our report but I don't seem to find it ...

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CHAIRPERSON: Right if you look on page 4 of your submission under 2.2.

MR GREEN: I think the grammatical error should read or should be

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changed that promote discipline. So the only change that I would suggest is the rights of children that promote discipline, accountability and purpose and human dignity.

CHAIRPERSON: Is it purpose or proposed - and proposed.

MR GREEN: The rights of children that promotes ...

CHAIRPERSON: You see that's our problem, we just like you to have the opportunity to correct that so that it goes forward to the CC 10 correctly. Ms Pandor?

MS PANDOR: Chairperson if I could ask that we actually don't dwell on this but afford the ACDP an opportunity in consultation with the administrative staff ...

CHAIRPERSON: Ja to make a technical adjustment.

MS PANDOR: To make that adjustment and could I also ask in terms of the comments raised by Ms Camerer that in order to move 20 that view from the contentious to the non contentious that the context of that particular view be looked at, I think that's quite important because there may have been a

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rational in you know it's location.

So I - if it of course is in broad agreement with what we all just said, then of course it should move to the non contentious, however, if the context renders it contentious, it could remain where it is.

So I am saying we need to take a holistic look we cannot just decide in that way.

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CHAIRPERSON: We'll have a look at it. Ms Liebenberg?

MS LIEBENBERG: Yes, just I was just puzzling over this very point, I think possibly when Professor Rautenbach did this report that as the right to parental care might also be enforceable not just against parents but also the State it wasn't really understood why it was limited in that way and this would be something that would be need to be clarified or sorted out and therefor put in the outstanding column.

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CHAIRPERSON: Ms Camerer?

MS CAMERER: Chairperson may I just respond to that, I think we made

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clear throughout our submissions that we see this as a vertical bill so all the rights are enforceable against the State if - if it wasn't said specifically. Buy I thought it was, then I mean that's the reason we included it because we felt it was something that ought to be enforceable against the State.

So I - I don't think there is any - I mean inter alia I mean obviously there are other role players. But I do think the point - I mean the only reason for raising it, is that we don't want to sent rather big - you know silly looking things up to Constitutional Committee.

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I mean you know I think we should try and clarify our - our statements from the - our reports from this committee so that they make sense, that's all.

MS PANDOR:

(inaudible) ... there further examination (inaudible) ...

CHAIRPERSON:

Right and no doubt it will receive attention when we get to the CC. We'll just bear that in mind and flag it so to say.

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Any other comments on children's rights which occur in the

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report, are you all happy? Then we'll pass that on to the CC and we'll deal with the administrative justice.

Are there any comments, I would just like to ask the technical committee has in any way clarified the issue raised by the National Party in Roman III in the schematic drawing or schematic report under item 2 the third paragraph under outstanding items, the NP requires clarification of the technical committee on the scope of Sections 24(c) and 24(d) whether that has been dealt with.

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MS LIEBENBERG: Yes thank you chairperson that is dealt with in our explanatory memorandum on the points.

CHAIRPERSON: So it's quite clear. That will no doubt be debated in the CC. Any other comments, Ms Pandor?

MS PANDOR: Thank you chairperson, in relation to the schematic outline I found some difficulty in actually following the way in which the various sequences of the clause are dealt with in the outline. Because there is a jump from (d) to (c) then (a) and (b) are dealt with at some point and I thought perhaps for purposes of ease of reading, it would be useful to

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actually outline this sequentially.

CHAIRPERSON: In other words follow the format of the Constitution and deal with each clause and ...

MS PANDOR: Yes you know if one could actually deal with 24(a) and outline the issues that are raised there under contentious and (b) and then (c) and (d).

CHAIRPERSON: Is that possible?

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MS LIEBENBERG: Yes, Mr Chairperson it's a good point.

CHAIRPERSON: Thank you, it will make for easier reading. So we will do that, Max.

DR COLEMAN: A small point the numbering of the last page of the schematic should be Roman V and not I.

CHAIRPERSON: Thank you, all these small little adjustments just go to show the volume of work that has been done and the difficulty in can't coping with it. If there no further comments in regard to administrative justice well then we will pass that on to the

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CC with those adjustments and move to access to courts.

The matter is open for discussion Senator Surty.

MR SURTY:

Mr Chairperson schematic Roman numeral II under contentious column second - well item 2 second paragraph may I suggest that the - this paragraph the word judicable to be replaced with - be moved to the column of under remarks in other words it's not a Constitutional aspect, it's just a comment for purposes for drafting. So move that paragraph to the right hand column, extreme right hand column under remark.

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CHAIRPERSON:

Could you just give me the reference again.

MR SURTY:

It's Roman numeral II of the schematic, page 2.

CHAIRPERSON:

Right.

MR SURTY:

Page 2, item no 2, second paragraph under contentious or outstanding aspects.

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CHAIRPERSON:

You just want that second paragraph moved to remarks.

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MR SURTY: To remarks yes - to remarks that was made regarding ...

CHAIRPERSON: It's not contentious. That shall be done, no problem. Any other comments by members? It seems that the report is acceptable to the Theme Committee and we will then forward it to the CC.

We come to the final one 3.7 - detained, arrested and accused persons, this is quite a thick volume. And I take it that it correctly reflects all the views of the various parties, Ms Pandor?

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MS PANDOR: Thank you chairperson, I just have one or two points.

CHAIRPERSON: Certainly.

MS PANDOR: The first occur - first one occurs on Roman numeral III in the schematic outline. Under non contentious chairperson the two last paragraphs I am not certain whether they say the same thing or different things from the first paragraph within contentious. So if those three paragraphs could be looked at in order to arrive I think at a appropriate formulation both for non contentious and contentious.

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Then within the contentious ...

CHAIRPERSON: Could we deal with them one at a time, and then we can finalize them.

MS PANDOR: Yes I wasn't sure that we would be able to deal with them chairperson there - points that from the ANC's side we'd like to flag and ask that the technical committee look at particular in terms of those three paragraphs because it would mean a bit of a detailed reading of the parties submissions in order to resolve the confusion that we believe arises.

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So I am not sure that we could deal with it right here.

CHAIRPERSON: All right.

MS PANDOR: Then again with reference to the submissions in the contentious column on that very page Roman numeral III the third paragraph which refers to the ANC, refers to right to council. And it says that the ANC's view is that right to council in clause 25 those sub clauses goes to far and the ANC view actually does not state that if one looks at the

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submission carefully.

And we would like an appropriate wording to be found because we do not say it goes to far, we actually say that one needs to examine the degree to which Government would be able to be responsive to providing an equitable access to council. We do not say that it goes too far, it's not stated in those - you know I think quite negative terms.

CHAIRPERSON: So, what you want in fact is just that, that should be re- 10
examined?

MS PANDOR: Yes.

CHAIRPERSON: All right, are there any objections, Mr Leon have you any
comment in that regard?

MR LEON: No on Ms Pandor's point, one of our own.

MS PANDOR: I've got one to go. 20

CHAIRPERSON: She's got one to go.

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MR LEON:

Oh! sorry.

MS PANDOR:

Yes, and then Chairperson from that very column again a formulation should be reconsidered if one looks at the submission of the ANC it actually states that there are various points that need to be taken into account as what - as we move towards formulating this particular right. Not that you know so it's just merely you know a demand for - for accuracy.

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Then again on page 5, Roman numeral V under contentious aspects in the ANC submission we deal to some degree with the - the clause that deals with access to information. And attempts to (inaudible) ... oppose this, with 25(3)(b) which speaks of the right of the accused to be given information as to the charge that they facing.

And we saying that we need to examine the degree to it - access to information may guarantee this access and whether in fact Section 25(3)(b) doesn't raise problems for us. So we not - you know I don't know what's this evoked actually refers too and we would just like the submission to be re-read in order to reflect the view more appropriately in terms

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of the access to information clause.

CHAIRPERSON: Right, is that clear Ms Liebenberg?

MS LIEBENBERG: Yes thank you chairperson.

CHAIRPERSON: Does that take care of the ANC's position, thank you. Mr Leon?

MR LEON: Mr Chairman in our submission, our written submission on 10
this topic we spent several paragraphs on page 8 and 9 of
our submission which is contained here dealing with the
provisions of Section 25(2)(d) of the Interim Bill of Rights.

And if I could just detain it for one minute by reading the
relevant part we said we are in agreement with Section 25
except for the provisions of Section 25(2)(d) relating to bail.
While we believe the arrested persons are entitled to bail
and carefully defined circumstances. We extremely
concerned with the extraordinary laxity of the lower courts 20
in granting bail in clearly undesirable circumstances.

Whether it is a fault of the general wording of Section

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25(2)(d) or the failure of the courts or prosecuting authorities to apply properly the limitations clause is unclear. Simultaneously the discussion occurring this Theme Committee the Minister of Justice is in the process of introducing legislation which will have the effect as we understand of tightening up the conditions of granting of bail.

Well we still in that process apparently.

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We believe that this matter is of sufficient importance and urgency for an opinion to be obtained and for this section to be considered afresh so that proper balance may be struck between the interest of society and the criminal justice system and the context of our crime ravaged country on the one hand and the individual bail applicant on the other.

Now all right well this position is still unresolved and I think - I only read it out, I think that should find some reflection under a contentious matter.

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CHAIRPERSON:

Thank you Ms Liebenberg?

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MS LIEBENBERG: Yes thank you chairperson this was obviously a mistake in transposing the full reports onto the schematic report because it is in fact reflected in the full reports. If you have regard to page 3 of the full report and sub section 2.2.5 at the top and I think the issue which Mr Leon raised is dealt with also in our explanatory memorandum which will be before the Constitutional Committee.

So I think that would just need to be transposed onto the schematic report which is - it is omitted from that.

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CHAIRPERSON: Thank you, will that keep you happy Mr Leon?

MR LEON: Yes, Mr Chairperson (inaudible) ... I have no - I have (inaudible) ...

CHAIRPERSON: Apparently you and the ANC are in agreement in this regard.

MR LEON: (inaudible) ...

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CHAIRPERSON: ACDP?

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MR GREEN:

Ja, thank you Chairperson on page 3 Roman numeral III the second paragraph I think it doesn't really - correctly reflect our position convicted persons should be treated more harshly than detainees. I think what we are saying in our submission - ja we don't say more harshly we actually saying here there should be a greater limitation on the rights and we explain exactly what those limitations ought to be. So it's not harsher treatment of people, so I just want to correct that.

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CHAIRPERSON:

Yes, I didn't think that the ACDP at any stage anywhere promotes harshness. Will we make a suitable amendment there please, thank you. Senator Surty I think in fact before you Ms Pandor wanted to say something, air jumping - Senator Surty.

MR SURTY:

Mr Chairperson schematic page 3, Roman numeral III non contentious aspects under item 2, the last paragraph. It is just a suggestion I think the intention here was all parties agreed that the rights of accused persons should be dealt with separately rather than treated separately, you know the - should be dealt with separately and I propose that, that be accordingly amended, that was the intention of the proposal.

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CHAIRPERSON: Yes otherwise it confuses the previous paragraph where they shall be treated humanly.

MR SURTY: Certainly (inaudible) ... certainly just following up on what the comment of Mr Green, this is the proposal I make in relation to this particular paragraph.

CHAIRPERSON: Thank you, so we will deal with them separately. Any other comments?

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MR GREEN: Ja, Chairperson ...

CHAIRPERSON: Mr Green?

MR GREEN: On page no 4 the top paragraph the Roman numeral IV I think we have - we've actually corrected this in saying that the right to be informed of the reasons for detentions in a language understandable to the detainee, should be subject to the availability of an interpreter.

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We've actually - that was a typing error, which we corrected in our presentation. And we said that, that the State should make available the interpret, the duty is upon the State to

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provide the interpreter, there should always be an interpreter, that is what we've said. And it's not correctly reflected here.

CHAIRPERSON:

Fine that will be adjusted the technical committee is nodding agreement. Right are there any other matters arising out of this right and the report in connection there with? There being none, we seem to have consensus on that report and that will also go to the CC. You may be excused certainly.

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And that concludes the reports of the Theme Committee available for discussion today. We move on to item 4 general there is one aspect which I think we must just clarify and that is the question of whether or not we should hold a special Theme Committee meeting on Thursday in respect of sosio economic rights.

As I understand the position the parties do have the feeling that this could be moved to Monday and that we need not necessarily gather on Thursday. Is there general agreement on that Ms Camerer?

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MS CAMERER: I thought that ...

CHAIRPERSON: So is that generally agreed then that we will not meet on Thursday but we will carry the item that was proposed to be dealt with then to Monday morning?

MR LEON: May I just enquire.

CHAIRPERSON: Yes certainly.

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MR LEON: This discussion on sosio economic rights we going to have the report by then, when are we likely to receive the report by?

MR SOLOMANDRIS: Thank you Chairperson the report should be on the way - you should have them in your pigeon holes right now or by the end of today at the latest.

CHAIRPERSON: So you will have approximately six days to deal with that Mr Leon.

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MR LEON: I am leaving the proceedings, I am going to Johannesburg tomorrow I just wondered if I'd have it before I left.

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CHAIRPERSON: I understand, we hope that you'll have possession of them by then. All right that deals with that then we will not meet on Thursday. Ms Camerer.

MS CAMERER: Thank you Chairperson, I just wanted to point out something in connection with this synopsis of submissions received Volume 1. And it relates to something I raised yesterday.

In the first place there is - what apparently or could be a freudian slip under point 3 the right to life. Where it's indicated that the right to human dignity goes on to page 31 from page 14 and in fact goes on to page 15 and the right to life is dealt with in page 15 to 47. In other words 32 pages. 10

Now, as people will see it is overwhelmingly the largest section of this first Volume Chairperson. And even if you just glance kosherly at those pages, there is an overwhelming number of submissions that's for the death penalty. 20

Now, I raised the point yesterday that wouldn't it be

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appropriate in the circumstances to have a process of public consultation on this issue. We all know I mean that it is a matter of great public importance and interest. The Constitutional court has delivered a ruling in terms of the present Constitution.

We are in the business of considering a new Constitution. And in the light of what appears to be according to all the opinion polls also an overwhelming view of the public. Are we just going to ignore the public Chairperson ...

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MR SURTY:

Point of order Mr Chairperson, quite honestly you know Ms Camerer is with respect shuffling ground that was completely covered yesterday. In other words she is re-asserting what she stated yesterday, there were counter arguments to it, there were responses in regard to this submissions she's made. I do not know what the intent and purpose of having you know - of raising the issue today again on the same basis.

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In other words there is nothing new to add other than the fact that reference is being made to submissions regarding this particular issue that are incorporated in this document.

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I believe with respect sir that we have already covered this terrain and it is unnecessary to burden us with arguments of this nature again.

CHAIRPERSON: Thank you I will give Ms Camerer an opportunity just to respond to that and then Mr Leon. Ms Camerer.

MR LEON: (inaudible) ... that she does want to respond (inaudible) ...

MS CAMERER: I might not respond (inaudible) ...

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CHAIRPERSON: Right then Mr Leon will ...

MR LEON: Ja well Mr Chairman really this is another -I am very fond of Ms Camerer she knows but real sort of self indulgence from the National Party.

I mean let's be perfectly frank and clear about this since Ms Camerer is only making this to make a party political broadcast here. Let's just - let's just be quite clear.

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These submissions which were received from the public have been available to us for several months now and that's not

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in dispute. The National Party when it came to the right to life clause, make a proposal to the Theme Committee which is not amended as we sit here today. But the matter be disposed of by the Constitutional court whether or not there was capital punishment in South Africa.

That is the National Parties position. So we could have actually 150,000 public submissions and do go for public sector hearings, I am not actually opposed to this route.

But the National Parties proposal on the actual merits of the death penalty is that it not be decided legislatively or Constitutionally but it be decided by the Constitutional court.

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And the Constitutional court has now ruled on the matter. So I actually in terms of coherence and some kind of logical flow I don't understand the point that Ms Camerer is making in terms of the specific example which she has picked and in view of her own parties proposals on this matter.

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CHAIRPERSON:

Thank you, Mr Leon I will give Ms Camerer an opportunity to respond on that legal basis.

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MS CAMERER:

Yes, Chairperson to both the previous speakers, as I understood it when I raised the matter yesterday. I was asked to wait until we received this - a summary of the submissions because we hadn't received it yet.

And I am merely responding to the receipt of the submission which I must say when you - when you know I was appealed to that I should look at this and see what - a note when it was all put together by the experts.

And they have now done that and firstly I want to point out a mistake which I presume is a valid point. And the second point is that it sort of confirms the point that I made yesterday in a sense and now that we have it in front of us, that there is a definite view coming from the public.

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Now we may disagree with that view, I personally do Chairperson, that's not the point. The point is that we seem to have entered into a process of public consultation on all the other points that we regarded as contentious or particularly appropriate for consultation like children's rights, just to give one example. Like abortion for another example.

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So, I am not quite sure why people are reluctant to even consider this and I am just making a suggestion. We consider this route - Chairperson in view of what is apparently an overwhelming public - bit of public opinion on a particular issue, that's all.

So, if we as a committee decide not to do that, well there it is. In fact it is response to Mr Leon's point. We certainly did make that point, but as I pointed out yesterday we are also putting in a further submission which will be in next week. I did mention that Chairperson in your absence.

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So, you know it's open to all parties to carry on putting submission in connection with the Constitution until there is an agreed document in front of us. So we certainly proposing to do that and I mean really I don't take Mr Leon's point about that one at all. Because he did hear me say that we are going to put in a further submission yesterday.

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CHAIRPERSON:

All right, I don't propose to allow long lengthy debate on this issue. Ms Camerer has made the point as you are well aware the submissions which have been made by all parties

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at this stage are preliminary. The negotiation will take place in the Constitution committee and parties are free to make further submissions on any of the rights completely without any prohibition or objection.

And so in the circumstances, I think it's important that we allow the matter rest at that in regard to the right to live and at this stage I don't propose to make any - any statement on the merits from the Chair.

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The last aspect I would like to take up, however, is to refer - suggest that we refer Ms Camerer's suggestion - request in regard to consideration of whether or not there should be a public hearing in this regard to the Core committee for - for and the executive of this Theme Committee for further consideration and possibly from then on pass it on to management.

MR MDLADLANA: Can I ...

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CHAIRPERSON: Certainly.

MR MDLADLANA: Can I also say that I am going to have problems with people

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who forget decisions that have been made by this Theme Committee. These are honourable members and their memories are also honourable, if there are any people who have problems with their memory skills then I suppose that as a junior primary teacher I can cater for that.

Because we have decided also in the Chairperson's meeting when we came here last Monday that it was - a decision of this Theme Committee and the technical committee members all the submissions - those people are requesting to make oral submissions we must be given that report. And then we decide on the basis of that.

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And that again was hammered in the chairperson's meeting that we re-look at that situation and it is not only the right to life for her information that people are requesting to make this oral submissions. There is property rights, socio economic rights, there is a freedom of expression and all those kinds of issues.

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And therefor I - I really would like to appeal to members not to repeat what has been decided already. At least we have decided on this issues and we will be following - as I

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said exactly the same thing yesterday.

CHAIRPERSON: Thank you Mr Mdladlana. Well I think we can't take it any further at this stage. Have we general agreement that we can allow this matter to stand down for the Core Committee to look at and to pass on to management if necessary.

Are you all happy about that.

MR MDLADLANA: Thank you.

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CHAIRPERSON: All right then, then that is - that disposes of that aspect of the matter. Are there any further matters under general, please Senator Webster.

MR WEBSTER: Comrade Chair I'd be asking to leave but before I leave I would like to leave Ms Camerer with a question whether he is for a majority if okay she sorry, whether ...

MS CAMERER: It's woman's day.

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MR WEBSTER: Oh! it's a woman's day. Whether she is for a majority view on any submission if there is a majority view if she is

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suggesting that we must take a majority view on each and every issue that we are discussing?

MS CAMERER: Is this a chicken run Chairperson or am I allowed to ask him a question?

CHAIRPERSON: The suggestion is you should wait for the answer. You have - have you any comment at all Ms Camerer?

MS CAMERER: No I was just wondering whether Mr Webster actually supports a free vote on issues like this which could be an issue of conscience in Parliament if there should be a vote on this issue. 10

CHAIRPERSON: All right.

MR WEBSTER: So if she is not answering me you know why I am asking this question. I do not want to enter into a debate I just want to be clear in my mind on the basis that there are a lot of submissions on the right to life, therefore she wants us to overturn the decision of the Constitutional court on the basis that there are a lot of people who are for the restoration of capital punishment. 20

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If for an example a lot of people say scrap completely property rights and there are a lot of submission, should we go by that majority view in terms of the submission that we - we received that is the question that I wanted her to answer.

MS CAMERER: Respond?

CHAIRPERSON: Yes.

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MS CAMERER: I mean the only point I am making is that you know a case of a matter of great public interest like property rights, possibly it's a good idea in the interest of inclusivity and transparency to hold a public hearing because that's exactly what we did in the case of property rights.

And possibly it's something that we should do in the case of the death penalty and the right to life because of the interest that the public has shown in this matter.

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CHAIRPERSON: Right I think we will leave the matter at that - this stage. Are there any fresh alternative items under general - none - there is just one comment here.

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MR SOLOMANDRIS: Just to remind members on Monday as per yesterday's agreement we will be starting at ten o'clock, venue right now is the Old Assembly but please confirm your - with your notices and - Thank you.

CHAIRPERSON: Right I'd like to thank members for their presence and the meeting is adjourned.

[END]

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THE CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 4

8 AUGUST 1995



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CONSTITUTIONAL ASSEMBLY

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CHAIRPERSON:

I have requested that the heating be turned down because apart from the natural conversation which might reduce sleep, I am a bit worried that if the heat continues you might all lose your sharp cutting edge.

The - you missing a document 4.1 on education which is enroot, so but I think there is no point in us waiting, we will just rearrange that on the agenda. If we can commence with the minutes which we will confirm, the minutes of the 7th and 8th of August.

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We are now dealing with the minutes of Monday the 7th of August. If there are any comments or corrections, that is page 2 - 5 of the documentation folder. Can we take that as being correct?

We then turn to the minutes of Tuesday the 8th of August, oh! sorry yes.

UNKNOWN:

Thank you Chairperson could we raise for the record purpose the apologies for three people on ...

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CHAIRPERSON:

All right I'll do that as soon as soon as we've done the

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minutes.

UNKNOWN: Okay but they are not ...

CHAIRPERSON: Oh! apologies, you mean they weren't reflected in ...

UNKNOWN: Yes - yes.

CHAIRPERSON: Sorry please do it now, is this on the meeting of the 8th?

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UNKNOWN: It is that is both for two days, Monday and Tuesday.

CHAIRPERSON: Yes will you just give the names.

UNKNOWN: E Thabete, and B Ntuli and T Gamndana, three.

CHAIRPERSON: Is that all - you got that. Sorry the third name.

UNKNOWN: Chairman, Gamndana (inaudible) ...

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CHAIRPERSON: Thank you Senator.

MR RADUE: Also myself for the 7th.

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CHAIRPERSON: The meeting of the 8th.

MR RADUE: 7th.

CHAIRPERSON: The 7th, Senator Radue.

UNKNOWN: (inaudible) ...

CHAIRPERSON: You got that, noted any other apologies for those meetings. All right any points of substance - now we dealing with the meeting of Tuesday the 8th. Right that then is disposed off, can I ask before we proceed with the substance of today's agenda whether there apologies for today's meeting, no apologies noted.

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All right the format we going to adopt today is the same as last weeks meeting except we just got a few more items to deal with and we will deal with item 41 later in the program because we don't have the report before us.

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We are going to go through each of these reports. Hopefully we can do so expeditiously because we have actually covered the ground. The purpose of the report of

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this method just to remind ourselves about it is simply to make sure that both the schematic summary or report accurately summarises the parties positions under the relevant headings and more particularly that the actual report rather than the schematic summary contains an accurate snapshot of the parties positions.

This is not and I think it's worth emphasising, this is so that the draft text can be prepared, it is still obviously open to parties at the next round outside the Theme Committees to put - make additional suggestions. We not irrevocably committed to the propositions here, but these must just simply reflect the content of the reports you've submitted up until this stage bearing in mind that certain of them are preliminary draft and they are not unalterable. So please bear that in mind.

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I therefor propose that we start immediately with item 4.2 on the agenda which is property rights, report 13, property rights.

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MS CAMERER:

(inaudible) ...

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CHAIRPERSON:

Well I read a report in the - I was reading yesterday that someone complained that of 13 South African Airways flights, they had undertaken this week 12 were delayed, it sounds common to all our experiences.

Okay, property rights please just, if there are any comments on the report please let's have them otherwise we will take the report as being an accurate reflection and summation of the party submissions.

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Just bear in mind that these property language and environment labour were initially all covered under sosio economic rights and the parties split them up and these reports really are a split up of all the submissions who is a big folder called sosio economic rights which these are taken from. Are there any problems with that report or can we move on to the next stage.

Right, the next one 4.3 language and culture, I wonder if I could answer a query which apparently is not clear from my own party submission, it says it is not clear from their submission whether the DP is proposing the right to instruction of language of choice and to establish

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educational institutions, based on common culture, language or religion, being included in the scope of this right. We answer that as the affirmative yes we do so intend that it be contained just to clarify that.

Any other parties, Senator?

MR RADUE:

If I could just raise something that just for clarification on page - on the second page of the schematic analysis. There is a reference at the bottom of the outstanding aspects to mechanisms to promote the development of both official languages and other languages used by communities in South Africa.

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It seems to me we should correct that. That the - I know - I think I know what they getting at, but in fact all eleven languages are official languages.

CHAIRPERSON:

(inaudible) ... no 15 okay. All right labour rights no 16 - yes.

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MS PANDOR:

There are two points, one or two very quick points, on page 4 of the schematic outline, in the contentious column I think

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the first paragraph there which refers to Section 27(4) just needs to be reformulated. Because I think what's being said and certainly in our submission is that it needs to be reconsidered in order to take account of the right of workers in essential services.

I am not sure that it's correctly at the moment conveying that view. It's just really a formulation which needs to be addressed there.

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Then in the second paragraph of that very column, on the second line the last word included, should actually be include, okay.

CHAIRPERSON:

(inaudible) ... the second issue is clear, we'll just change the tense of the verb. The first one well presumably the - I haven't read them myself, the Freedom Front and the National Party do think the amendment and alternation - the ANC is asking for a reconsideration of this in the light, perhaps you could just draw that distinction between the parties.

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MS PANDOR:

Yes we saying that provisions should you know be made if

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necessary in the labour rights. We feel that you have to address the whole question of workers in essential services and provide for at least some forum through which they can negotiate their rights and interest.

Then the third column Chairperson the last word in that reference to the ACDP, I believe that word should be precepts and not percepts and that was all.

CHAIRPERSON: Right, noted - Ms Camerer.

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MS CAMERER: Yes I - may I ask you if I can raise a point (inaudible) ... and I am trying to look for a point and I don't see it. Perhaps we have to go to the end (inaudible) ...

CHAIRPERSON: (inaudible) ...

MS CAMERER: I am not against (inaudible) ...

CHAIRPERSON: (inaudible) ... but I did say Ms Camerer this is not the last word, you do not get irrevocably bound because you know - this is simply as a guide or - so that various formulations can be drawn up in draft form. You are not being stuck

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with the draft which you cannot (inaudible) ... of the Constitutional committee or whatever this other committee is called - you certainly are then at liberty to say that the draft should be amended to read this and then and then have the negotiation about that.

MS CAMERER: (inaudible) ...

CHAIRPERSON: No sure if we can at this stage, it is so much the better for the later process. All right everyone - labour we happy with. Right the next report is 4.6 report 17, sorry ...

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MS PANDOR: (inaudible) ...

CHAIRPERSON: (inaudible) ...

MS PANDOR: Yes again just a minor perhaps a minor correction and that is in the contentious or outstanding column on Roman numeral II in the schematic outline and it probably would occur I think it does in the report as well. The clause is either the first paragraph of the second part of the column, the content of the right. The last word territory should actually be activity.

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CHAIRPERSON: (inaudible) ...

MS PANDOR: It's page 2, Roman numeral II of the schematic outline, the contentious, the second column which is under no 2 here content of the right, the first paragraph, the last word reads territory, it's activity in our submission.

CHAIRPERSON: (inaudible) ...

MS CAMERER: To ask about the first non contentious aspect that it's not a universal accepted fundamental right. I am not sure that, that's entirely non contentious. Because if you look at some of the universal declarations, they certainly cover the territory whether they do it in the same words or not, it's perhaps open to debate. 10

And it's certainly not our parties view, and we'd certainly being supported in a lot of submissions that have been put to the - from members of the public. So I am just wondering whether one can say that this in entirely non contentious. 20

CHAIRPERSON: All right so will the National Party is of a contrary opinion

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that this is a - this does have universal acceptances of fundamental right, and that is their view. It's not something here for debate, it's a viewpoint. So perhaps we could note that and just slightly rearrange that text to reflect that. That's in order, Senator.

MR RADUE: Just in clarification the one party all but one party supported the exclusion of this clause. I assume that is the National Party. I think we should say ...

MS CAMERER: It is the ACDP also then?

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UNKNOWN: Chairperson the first point raised - I really don't understand what (inaudible) ... because I was - various submissions (inaudible) ... has (inaudible) ...

So I think that those who say this, I think must (inaudible) ... so whatever is going to (inaudible) ...

CHAIRPERSON: Well let's just (inaudible) ...

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MS CAMERER: Mr Green didn't you support this right?

MR GREEN: Ja.

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MS CAMERER: Well then that's inaccurate it's more than one party, the first point.

CHAIRPERSON: (inaudible) ...

MS CAMERER: But I can't raise this on your behalf.

MR GREEN: Yes I know.

CHAIRPERSON: (inaudible) ...

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MS PANDOR: Excuse me chairperson.

CHAIRPERSON: Yes.

MS PANDOR: (inaudible) ... the ACDP submission in fact elaborates the notion of the economic activity but doesn't actually state whether this section should be reflected in the new Constitution. However, they elaborate the work ethic and they support for it etcetera but they'll speak for their submission.

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But I cannot read here that there is a call that this section

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be retained in their submission. The National Party submission does not make reference to any recognised international documents.

CHAIRPERSON: (inaudible) ...

MS PANDOR: It's right at the end, page 63.

CHAIRPERSON: (inaudible) ...

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MR RADUE: Right at the end.

MS CAMERER: (inaudible) ... to say we don't (inaudible) ...

MR RADUE: It's right at the back.

CHAIRPERSON: Yes well I think that's what the National Party must do is in order for - is simply to educe whatever evidence it wishes too and I think an indication must just be made that all though there is not supporting evidence to date on the universal acceptance, the National Party says that there is and they will make a report educing the evidence at the appropriate time and the appropriate forum. I'd think it's

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really where we must just leave this matter.

MS CAMERER: Ja (inaudible) ...

CHAIRPERSON: I mean you know I don't want to get into a whole debate on merits. My parties view is that the existing section, which the National Party supports actually is meaningless because the second part that cancels out the protection given in the first one - is you not going to move that debate further on and we might as well move on.

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But I mean that is our position as one based on pragmatism not in this case on moral conviction of whether it's a good or a bad thing. Because - ja.

MS CAMERER: Chair we (inaudible) ... have to debate the issue in another forum, we merely saying that it seems to be in the wrong column. Because we don't agree that it non contentious.

CHAIRPERSON: Well no - Ms Camerer if I could just and without being departing from the new neutrality of the Chair to use a pompous phrase. Ms Liebenberg and her colleagues have drawn up the schematic report based on the evidence

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presented them to date. There is nothing in the National Party submission which addresses the contention you've raised this morning, ie. you say it is a universally accepted fundamental right that there should be freedom of economic activity.

Now with respect to whether what Ms Liebenberg and the other drafters have put in this report that what she says that no party - the right is not a universally accepted, there is no evidence that has been put forward by the National Party on this particular clause, to suggest that it does have any universal application.

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And that is why that is non - that aspect is non contentious, the universality of the right. Now it might very well be that there are 55 Human Rights documents which have universal acceptance and which the right does appear. And you are perfectly at liberty to make such a submission.

But based on submissions to date there is no such evidence seduced. Therefor this is an accurate reflection that it is - that aspect is non contentious. Whether the right itself should be included in the Bill of Rights is contentious and

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that is accurately reflected in the adjoining column. So I think to be fair and to be accurate that this is a summation that is in keeping with the representations to date.

But a note will be made that you will be submitting evidence to educe the universality of this right and I don't - I think we must reflect what's happened, gone here to for, not what is going to happen in prospects and you quite at liberty to advance that evidence.

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All right - are there any - any other points under - yes Senator.

MR RADUE:

Roman page 4, item 3 under the contentious outstanding aspects the second last line it should read state to act to ensure the free exercise of this right, not that free exercise.

CHAIRPERSON:

(MR LEON:)

Fine, noted - I wonder if I can just ask a question to Ms Liebenberg just from wearing my party hat. We certainly did propose under the sosio economic rights broadly a new clause the entitlement to the essentials of life, which reflect here.

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I don't quite understand why it's brought under freedom of economic activity. I don't know whether this is the most appropriate place in which this right should appear. That - I just ask the question.

MS LIEBENBERG:

Yes thank you Chairperson, in fact you would have noticed that in the report dealing with other social and economic rights, which is the most appropriate place that it argued to include it. I am not clear why the drafter of this particular report hasn't included it there. But I would certainly agree with you that's in appropriate support, that (inaudible) ...

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CHAIRPERSON:

All right any other remarks on this particular clause that needs to be amended or rectified, (inaudible) ... please switch on your microphone.

UNKNOWN:

Roman numeral 2, the second clause in the DP proposal it is the Province of Parliament to decide.

CHAIRPERSON:

No that's all been (inaudible) ...

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UNKNOWN:

Okay.

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CHAIRPERSON: It's no longer under sosio economic rights.

UNKNOWN: It does not appear.

CHAIRPERSON: (inaudible) ...

UNKNOWN: Okay.

CHAIRPERSON: Any other (inaudible) ... right we now move on to 4.5 which is the labour rights report 16.

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UNKNOWN: (inaudible) ...

CHAIRPERSON: Reference - sorry?

UNKNOWN: (inaudible) ...

CHAIRPERSON: Oh! sorry I beg your pardon. I beg your pardon 4.7 - 4.7 equality which is report 18, you have in front of you. Any comments everyone gone through the document the schematic outline, can we accept that as accurate, Ms Camerer, okay?

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MS LIEBENBERG: Sorry Chairperson.

CHAIRPERSON: Yes.

MS LIEBENBERG: Can I make one minor correction to the report.

CHAIRPERSON: Please.

MS LIEBENBERG: Which is actually just a typographical error, it's on Roman III the first column non contentious aspects, the third paragraph, it should read both direct and indirect discrimination with the deletion of the word unfair before discrimination.

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Because the explanation that follows relates to a description of what is indirect discrimination, which is the sense of what should be included.

CHAIRPERSON: All right, okay. All right we now (inaudible) ... equality, (inaudible) ... 4.8 report 19, limitations clause. I wonder if I could just from my own - our own point of view just make an observation to Ms Liebenberg and I wonder if it could be included in Here.

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Because we haven't raised, we never raised this specifically during the debate on limitations, but we did raise it specifically with reference to the limitations clause in freedom of expression for example.

And that is this that the (inaudible)... or dual standard approach while - it shouldn't be there as a general - as part of the general limitations clause - it certainly might be appropriate with providing certain limitations or standards of limitations - or higher standards for limitation in certain specific clauses of the Bill such as freedom of expression.

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Otherwise our submission on freedom of expression becomes a little incoherent. And I have made that point before. If you get what I mean, and I think that is - it does capture a certain consistency, if that could just be noted from our point of view.

Every - all the other parties happy - (inaudible) ... all the other parties happy? Right we now (inaudible) ... - we move to report 20 state of emergency and suspension of rights. Right, that is also dealt with and passed as accurate, 4.10 interpretation of the Bill of Rights which is report 21,

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it's a little back to front in the (inaudible) ...

MR RADUE: Could I just ask one question - clarification there, Roman II of the schematic drawing.

CHAIRPERSON: Yes.

MR RADUE: Under non contentious content of clause, all the parties that made written submissions favour the retention of Section 35(1) with the exception of the Freedom Front. They 10 favour the retention of this Section in it's present form.

CHAIRPERSON: (inaudible) ... right here in the (inaudible) ... observation (inaudible) ...

MS LIEBENBERG: Unfortunately Chairperson I can't at all it seems completely - we'll have to investigate that one yes and have a look, I don't know why that's being included in that form.

CHAIRPERSON: You (inaudible) ... 20

MS LIEBENBERG: No I ...

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CHAIRPERSON: (inaudible) ... favours and everyone favours it or no-one favours it (inaudible) ...

MS PANDOR: I think Chairperson to some degree the confusion might be answered by the first paragraph of the contentious column under 2, content of the right, where the Freedom Front's view is in some way elaborated. Because they are proposing it appears an amendment 2.35.2.

CHAIRPERSON: (inaudible) ... the text itself where it says all the parties that made written submissions favour the retention of Section 35(1) with the exception the Freedom Front they favour the retention, the section in it's present form.

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Well it says then the Freedom Front propose a simpler version of 35(2) - okay let's hear from Ms Liebenberg (inaudible) ...

MS LIEBENBERG: Chairperson I am just trying to make sense of this myself but perhaps it should be the Freedom Front they favour the amendments of the present Section, because it certainly seems from the second column that they are proposing some form of amendment to it.

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CHAIRPERSON:

May I suggest I mean I don't think we going to - if we going to have to dig through every report now and try and see what it means, it really would be a time wasting exercise.

Can we ask to refer this matter back, this particular report to get that clarified so that the meaning of the summary becomes clear and we will just shelf it at this stage if we might. If that meets with everyone's concurrence.

We move on then to - yes - which one is this, state of emergency, no-no we haven't got there yet, state of emergency and suspension of rights, we've dealt with (inaudible) ... we are now on reproductive rights.

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Yes - on interpretation - oh! yes please just note on the clause which has just been pended and it's now just been drawn to my attention if you - that not every party made a submission on interpretation of rights. Particular a very small party in the Assembly of the ANC did not make a submission.

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Now - so the report is in the sense - it's a report of what was received but not of every party that just please must be

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noted, it doesn't preclude the ANC from making a submission. But at this stage it's the report of everyone's submission except the ANC's okay. So just if the ANC would note that.

Now reproductive - ja Section 22, reproductive rights. You will notice that there is a departure from the usual format because the nature of the submissions did not lend itself to the normal kind of formatting. In fact every party who made submissions opposed the formulation of a specific clause. So that's why we have nothing to report on.

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Once again the ANC there was - they did make a submission - they made a verbal - no written submission. Once again the ANC has not made a written submission, so this - captures the other parties viewpoints to date.

There is really nothing to discuss under this, there is our note incidently a report of the ad hoc committee on abortion, sterilisation published over the weekend which might take this matter forward, but we certainly are not going to discuss it here.

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Now the next heading or matter is other sosio economic rights. Not every party submitted (inaudible) ... - yes all right well they've captured these from submissions made on sosio economic rights generally. And they have particularly - this might be the place where my party's submission on the essentials of life could appear or should appear here - it does.

MS LIEBENBERG: It is there - ja.

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CHAIRPERSON: And some parties didn't specifically submit on other but they submitted in the course of the general sosio economic rights, they've also tried to capture some of those, yes Senator.

MR RADUE: I was going to suggest in regard to this particular item that we should perhaps as a Theme Committee suggest that the technical committee should draw up based on a number of submissions that have been made, draw up a number of provisional text for our consideration. I don't know if that would meet with the approval of the rest?

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CHAIRPERSON: (inaudible) ... you see what is actually happening I suppose

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out of sight, is that in fact provisional text as I understand it, are being drawn up on all these reports to try and capture the various - where there different, where there is - where obviously there is a general agreement then there is sort of one provisional text being prepared where there three divergent viewpoints, this would drawing up text to capture each of the contentious things and those will then be presented at the next state.

So I think that is actually being done, And look the categorisation I think is very arbitrary whether it's sosio economic rights containing five and then other, I mean essentially it all covers the same general area and the specification will obviously be in one clause, the final Bill of Rights or Constitution isn't going to have five and then say well now we got a section called other. So it will be incorporated into a whole, Ms Camerer?

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MS CAMERER:

Just a follow up that Chairperson it was - I found it very impressive that sosio economic rights of the kind that aren't in the Constitution yet become more acceptable the more one studies the way they are drafted.

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And I wondered as a - you know if they draft in a particular way, it was suggested by some of the Speakers at the workshop. I think that you know one might be able to reach a measure of consensus on them and if we don't have an opportunity to discuss these rights, or the proposed rights for inclusion then I don't know that we've completed our work.

I mean it might be - I am just suggesting that it might be advantageous for the Constitutional committee if this committee has actually discussed proposed drafts of the sosio economic rights that aren't before us yet. And we haven't had an opportunity to look at them, so that we could file a report that's more specific.

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CHAIRPERSON:

Yes - well there has been - the Core Group itself should look at some of the drafts in the first instance and perhaps we could arrange that. I don't - what - how advanced the drafting process is at this stage. Could we just get an indication.

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MS LIEBENBERG:

Yes Chairperson drafts have been prepared of most of the other rights in the Bill of Rights, but this is one of the main

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outstanding categories at the moment on which no drafts have been prepared.

CHAIRPERSON: (inaudible) ...

MS LIEBENBERG: Yes if that is the consensus here of the Theme Committee it can certainly be done.

CHAIRPERSON: (inaudible) ... held and perhaps we could do that
(inaudible) ...

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MR SURTY: Thank you Mr Chairperson I just wanted to make a note of the fact that we are in the process of submitting additional rights, the right to housing, right to health and social security and this would be handed over to the technical committee and circulated to the other parties shortly.

And the submissions would in fact incorporate a suggested draft of those specific rights, so just for the record, thank you.

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CHAIRPERSON: I just want to get clarity just before we take this discussion further. What is the sort of time table and schedule, I mean

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my impression was that we should try and finish the Theme Committee's stages as expeditiously as possible and - you see it doesn't really matter in which forum you deal with it, I mean as long as it is dealt with properly and in a full sense.

I mean is there much purpose in keeping the Theme Committee structure going whereas in fact we know that the Theme Committee is not mandated to negotiate. It's simply mandated to really ventilate if I could use that term rather than to actually reach a decision. I mean I really agree with what Ms Camerer says that obviously especially on very highly charged - because often a debate which is - is noted more for its sort of vehemence that necessary - a disagreement on the merits, that if one can - you know it will be helpful but would it be helpful to deal with it here or to deal with it at the forum which can actually make a decision on it, I just put that in, Ms Pandor.

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MS PANDOR:

Thank you I think I am not sure in fact where you know the best place is to deal with the issue would be. But I'd understood that there is scope for further submissions on the part of the various parties. And certainly we working with that in mind.

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What I might suggest would be that the Secretariat consults with the management committee or some other decision making structure to find out exactly what role Theme Committees would be playing once this process is complete.

CHAIRPERSON: Ja.

MS PANDOR: Because we don't really have a guidance as to that.

CHAIRPERSON: Well I think that's a very sensible suggestion, I think we should do that and then we must just play it by ear as it were and just see, ms Camerer? 10

MS CAMERER: Yes Chairperson I mean we might like to follow up our preliminary views that was stated that you know we suggested the minimum at least. But we haven't really thought about it or put any words on paper since the workshop and I think we found the workshop fairly valuable from the point of view of forming our view on it.

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So we would also possibly like the opportunity to make submissions, but the point is will these never be ventilated here or ...

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CHAIRPERSON: Yes (inaudible) ... because you know I think the intention was to (inaudible) ... but you see it doesn't actually matter I mean no one is prejudice whether it's dealt with here or there. But there (inaudible) ... because in the sense that includes more (inaudible) ... but really (inaudible) ...

If one (inaudible) ... the Constitution (inaudible) ... anonymous view for example (inaudible) ... I don't know. But that's (inaudible) ... out there (inaudible) ...

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MS CAMERER: (inaudible) ...

CHAIRPERSON: (inaudible) ... dealt and you know (inaudible) ... here (inaudible) ... it's obvious (inaudible) ... nothing here (inaudible) ... simply a reflection of what's taking place.

But I think we must just really we can't take that further between ourselves. I mean (inaudible) ... obviously (inaudible) ... as soon as possible.

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All right 4.12 other sosio economic rights well this (inaudible) ... any comments?

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MS CAMERER: Just the same point Chairperson this is such an important debate and we not holding it, you know it's seems a (inaudible) ... way, because this is - this is new.

CHAIRPERSON: (inaudible) ...

MS CAMERER: Yes but we not really going into the detail of what these rights should look like, where on principle you can say unless rights are justiciable they don't conform to the Constitution. The question is how just - how they are justiciable and it seems to me that one can take this debate further, it's just - it seems a pity when this is actually new ground from the Constitution's point of view and we not dealing with it in a detailed way as we've dealt with other rights.

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CHAIRPERSON: Well with respect we did, I mean if you look at this folder here, sosio economic - I mean this is just a categorisation with respect. I mean what they did, the administration, was to say well the sosio economic rights in the Constitution more or less are the following and they then listed them, education, environment, labour for some reason was put in there, but there it was.

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Property rights were also put in there, you put it somewhere else and then various other and parties at that stage did make submissions. I mean such as the ANC and the DP for example on a whole range of rights which weren't formally within that you know tight stereo type. The there were others, there was a category called other, and so those that weren't quite put in there, would then appeared in here.

So I think we have had a debate on both - both well on principle and on the practicalities and on the justiciability. Now you saying and I am not in any sense trying to stifle. I am simply trying to get it to the forum where we can deal with it most affectively.

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You are saying well as a consequence of attending this workshop there is greater clarity or there are other observations that need to be made. And absolutely that no-one is contesting. The only question is do we have that discussion here or do we have it in another forum.

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Now that - what I said a minute ago is equally applicable to your latest observation it was to the previous one.

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Right, now that is other sosio economic rights, we are still - there are two points that still are outstanding, Ms Camerer wanted to raise a matter under language and culture, but before I do that, can I just enquire we haven't dealt with education is it - well ja we can't hold up - once Ms Camerer has dealt with her point under language and culture, and it still hasn't arrived, it seems we are going to have another meeting specially on education.

Well we'll take a ten minute break once Ms Camerer is disposed of her point and then if it's still not here, then we will simply adjourn and I will then propose that we send the education report to every member and that you simply and I don't we should convene quite frankly I think it's a waste of time and resources to convene a meeting just over that report and if people have objections or problems or amendments, that they be referred to you in the first instance and if it requires amendment I am sure we can delegate that to the Core Committee just to deal with it.

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I don't think - I am sure there won't be submission - there haven't been any substantive problems in any of the reports, there have been some amendments have been (inaudible)

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... and I am sure we can deal with this in the same basis, Ms
Camerer.

MS CAMERER:

Chairperson I am beginning to think that my point may be covered in the education report because it was really the point where we talking about application of the right under language rights. The duties on the State - what seems to have slipped through the net and not mentioned on either side of the line where either contentious or non contentious is the duty on the State not to discriminate in it's subsidies for instance on language and - but I think that, now that I see we haven't dealt with education it may well be that it's going to be under that.

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So I'll hold my point over.

CHAIRPERSON:

(inaudible) ... break now for ten minutes until quarter past
(inaudible) ... if the report is not here by quarter past eleven we will then adjourn (inaudible) ... subject to clarification
(inaudible) ...

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MS CAMERER AND MR RADUE IS HAVING A DISCUSSION ON THEIR OWN WHILE THE CHAIRPERSON IS TALKING - THE CHAIRPERSON'S MIC IS FAULTY

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AS WELL

CHAIRPERSON:

May I just ask at this stage to safe time later are there any points under general that need to be raised concerning the Theme Committee not on the agenda - no points, very good.

Yes - well don't you know I did ...

[END]

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