

**Transcript of :**

**TC4 Drafting sub-group Meeting 03-02-95 (1)**

I don't think we could obviate any dispute Chairperson if I could just mention this if each party could say what they want to go into as far as their party is concerned from their point of view. Its no good the ANC to say what the National Party attitude is and vice versa and we won't have a dispute because we would all know what we think.

Thank you very much Mrs. Camerer what we have before us is the report that was completed by the secretariat and that is one of the base documents then the ANC has compiled a report just to a draft to say what it feels was or should have appeared on the report. I believe Mrs. Camerer has a report prepared to that effect. If you look at the ANC.

That is no correct, I was asked to act as a scribe and I gave them the report and what appears in this is their amended version of my report which I think one or two things have gone wrong as far as we concerned but that fine we can amend it that not a problem.

There are two ways of proceeding .....

2/4/4/5/20

I have got any report.

What we could do for purpose of progress we could look at the report circulated by the secretariat. On the document the final document what would be useful to do is look at each sentence or clause of that report and see if there is consensus or disagreement and come to some terms about it. If there is any omission, if you feel there is something omitted from that document please raise it and then we can discuss it and include it in the report. In terms of my comment in regard with the draft report which was prepared by the ANC and circulated it is just a draft number one, number two it seeks to submit a report in the form prescribed in a document by the one that has to be submitted to the C.A. in terms of identifying contentious issues and non contentious issues and suggestion on how these ought to be resolved so primarily it covers the ground that we have covered so I think that what we should proceed on the basis that I have suggested unless somebody has got a suggestion in regard to that.

Can I just ask a question this format about contentions and non-contentious issues is that a kind of an instruction that we should stick to that format because if there is we should better stick to it.

Here is a suggestion which has come through from the Directorate of the administration that type of report submitted to the C.C.,

Ja, You promised to give us a copy of that.

It's on the notice of the meeting.

Chairperson, can I give my contribution it seems the point made is the correct one the point is directive we have, there is only three things to be done with this report. You break it down, you detail the contentious, non-contentious issues, suggested approaches to cover both. I think we making too much of a mountain out of a mole hill there. We are not here to seek a false consensus if there's an issue that people do not agree on we could just identifying it and move on if here's any party that think its position is not incorporated it then they must just state it and on those basis we could do this on considerable ease.

I endorse those sentiments and I think we can begin.

I agree but I don't think we should still stick on those headings or not.

We have a document before us which has been circulated and that would be a good base document to work on because there were discussions around that document among the members. Mr. Leon wasn't available unfortunately on that particular day. I could, you could any member could refer to any aspect that has been omitted or should have been included in the report as we go along.

Now we proceed with the document that has been circulated, the preamble to i.e. is having agreed to the first block the theme committee work plan that is the constitution principle 2. The committee has the pleasure of submitting the following report. I think we are all happy with that preamble would there be any consensus on that?

Yes.

1. All parties agreed that constitutional principles 2 is the guarding principle for all activities of the committee.

Any comment regarding that?

Well I think there's a snug blind self evident it doesn't have an.....

At what the ANC suggest at substituting that with the following statement the parties agreed by deliberating on and debating the nature's scope and interpretation of principle 2 schedule 4 the parties would be in a position to determine their approach to their work programme. We felt that encapsulate the agreement between the parties.

Chairperson, this phrase was kind of agreed on, at the drafting committee everybody agreed that was our introductory phase, that's how it got there but if you want to put this as well I've got no problem except that we would like to add something from our point of view because we, I've made a point repeatedly in all our meetings that we don't think that by debating it on our own we'll be in a position to determine the work programme. The National Party believe that we need expect input on certain issues we can go into detail if you like, we wouldn't agree on that unqualified statement.

Any other comment Mr. Skosana.

In our party we had a consensus when we looked at the report. The first sentence there concludes with attached we are being enforced that the constitutional committee would not deal with any attachments when it deals with the report, so we need to have our oppositions stated in details as a report if the constitution is not going to deal with the attachments.

Could we please get some clarity on that.

Chairman, couldn't we just say incorporated a Section A, Section B and then its in there no attach to it, its all part of it.

No then it has to be in the report. It won't be complete without those submission if we only say attach then it doesn't appear anywhere.

Why don't we say incorporated as Section A or Section B.

I have heard you, Mr. Leon, do you have anything to contribute in terms of your own interpretation of what should be done. The point that Mr. Skosana is rising is that it has indicated that the constitutional committee would not look at reports that are attached to this report of ours and the suggestion is that we set out our positions as it were in terms of report itself that would be a cumbersome process particularly in the fact that we have wide selection in submission. I'd like to hear you on that.

Yes, I would agree with the chair and with respect disagree with Mr. Skosana. I can't see we add very much by putting each party submission on sort of philosophy on the bill of Rights. I just don't know if that advances anything the documents are available they are in the record its really not a question of saying that they don't exist or waiters of questions hereof its a matter of practicality. If we want to submit a document that is 20-25 pages long then we could do that. That is the only merit on that as I see it, I'm not sure that we necessarily going to add anything on it.

Dr. Mulder: Chairperson, I hear what has been said that attached documents would not be seen as part of the report the question is we either then make provision in the report for various points of view of the party is going to be rather difficult or we include the submissions of the parties as being part of the report the way Mrs. Camerer has suggested. The problem is we are not in form of negotiation but the constitution committee is, and when the propel in the constitution committee debate the issue it would make it so much easier to have when they discuss the points of issue from various parties in their hands in one document included crisp and being there.

Chairperson: Could I make a proposal which could perhaps reconcile the different views. I feel if we were to say that all the parties have made submissions regarding the approach to the bill of Rights or regarding the principle 2 of the bill of Rights and these submission have been handed in full stop then we don't have to even refer to the attachments. Each party has handed in written submissions in relation to principle 2 of the bill of right and leave the point as is because it would be a point of reference, if there's a dispute they are all aware that there are written submissions that are made and handed in.

Mr. Leon: Can I make a suggestion Chairperson, and I'm sure it would accommodate Mr. Skosana. I hope it does, because in the opening in the second paragraph, each party made a written submission on the meaning and interpretation of principle 2.



These documents are filed separately with the secretariat and will be referred to by the parties at the appropriate time.

Mr. Skosana: Thank you Mr. Chairman, I hear that but I think ours is a matter of principle that what assurance do we have that when the constitutional committee deals with the report will also deal with the detailed submission we have a general and we also if go through the report we keep committing ourselves to making a detailed submission for instance the vertical and horizontal application we keep saying there would be detailed submission of this aspect when do we have the provision for these.

Chairperson: I hear you Mr. Skosana in what you have just said those are the matters of great concern but the we try and approach this, the way it has been suggested by Mr. Leon it would enable each party to raise any issue that its contain in that particular report hat is being submitted because invariably it forms part of the report so I don't think if there's a dispute or if the document has to be referred to at the later stage in terms of a discussion or debate well its my legal opinion that it could be referred to as a sourced document which the parties has used in their deliberations so I think that could breach the concern that you have.

Mr. Leon: May I ask a question of Mr. Sullian-Sundra, there are other theme committees on which for each block parties have made proposal when they or can we find out that they're drawn out their report and whether they have appended to each report, these submissions of every party what I think one should look for and I think Mr. Skosana would agree on is that there should be some form of consistency so there should be a form of uniformity not of the content would you have an idea through Mr. Chairman to Mr. Sulliman-Sundra.

I don't think our submissions have got the same status as outside submission because they weren't outside submission they were our party submission which really encapsulate the differences and the different answers of opinion I wonder if they were not embarking or barking up the wrong tree if we don't bring them in so the constitution committee as Mr. Skosana and Dr. Mulder say to have and up front the different emphasis placed on this by the various parties I don't know my part on the negotiating process if its part of the source document as long as they are all out I'm clearly for it if might assist the process if it was part of record.

Can I make a suggestion that if you also look at the issue. The matter be discussed and debated in greater detail now if you have effort going on like that towards like that at the end then we want to know what has been debated in greater detail here what I am suggesting here is that the drafting committee here should also propose to the theme committee that there ought to be a provision of some kind to look at the issues that has be suggested to be discussed in details.

Chairperson I don't think its worth us debating this any further but if Mr. Skosana is going to feel very unhappy but the omission of the report if other parties don't mind not to append the report, don't mind one way or the other there's no argument really about the size of the report then on the basis of the chicken soup issue it really doesn't harm. Attach the party submission to this report.

Chairperson: My suggestion is that we attach to the report but should there be a difficult then we use the alternative that is the alternative proposal by you, would that be accepted Mr. Skosana that we do it on the basis suggested by you Mr. Skosana that have an appended form part of the report.

Mrs. Camerer: So lets call it included as section and then we go back as attached as a separate issue, we don't use the word attached but included as subsection A.B.C.

Chairperson: I just thought I should draw your attention: you were referring to some aspects that I raised that matter submission will be made. These will obviously be made and form part of the report at a later stage in other words where there is no consensus, or whether there's a contentious issue and people are going to make submissions then those submissions are going to make part of the report. What we are looking at here are just preliminary submissions of a very brewing wine made. I fee I was expressing an opinion I'm really. Mr. Leon on this that by merely reporting to this report they become part of a source document and could be sued in any debate or discussion at a later stage.

Mr. Chairman you say they are going to be included then I will be happy with that because I was looking at the logic. We were dealing with block I and if are report and we don't have those submissions on Block I then where are we going to include them in which report.

What I'm saying to you Mr. Skosana is that what is the prefer. I would prefer that but should there be difficulties of a technical nature on the part of the constitutional committee accepting the report we would then accept the alternative proposed by Mr. Leon.

Mr. Chairman, I am happy that these proposals will be included therefore, I can always submit them to the secretariat to include in the report.

Just to be clear what include by the submission we've got.

On the various issues we have discussed.

I think all the parties have haven't they.

Chairperson: Mrs. Skosana for clarity are referring to all the submissions you have handed to the secretariat which have been circulated to everybody.

Now that is the comprehensive submission but now mere talking about a report here where we are talking about for instance. If we refer to juristic person, it is also said here that this is going to be our debate and submitted in detail now on that aspect we do have a position that we could put in detail.

That's a later debate, I think that debate hasn't closed, we are just summarizing about where we got to this.

Chairperson: I think we are now going to resolve the problem very easily Mr. Skosana and there's absolute merit in what you're saying. In terms of the issue you have raised juristic person horizontal and vertical applications for that matter those issues are going to be submitted at a later stage and those submissions are going to form part of a report because we have not as yet gone into discussions or debate in terms of these issues we have just raised them as contentious or non contentious issues at this point in time, so what we have achieved so far is that we have relented contentious and non contentious issues, we've had very preliminary and superficial discussion around those subjects without making detail submissions and I agree with you that at a later time each party would have to make a detailed submission which would make a part of a report so on those basis, if we in agreement in terms of your perspective on those issues which will be discussed at a later stage could we then proceed on the basis that we go we incorporate the report but if they are not accepted by the constitutional committee then we make, I'm talking about the first submission that was made by the ANC by Inkatha by various parties that these are incorporated but if they are not accepted by the constitutional committee then we use the approach that was suggested by Mr. Leon.

One last question what is the status of this submission.

Chairperson: I would give other members the opportunity the status of this report is merely to focus on the discussion that we held regarding this issue and to identify contentious and non contentious issues and will they exist what suggestions have been made to carry the process further which means if you have identified an aspect made by juristic persons that hasn't been debate din detail the suggestion is that submission be made and the matter would be debated at a later stage. This is my perception if any member feels I'm incorrect please correct me.

We must have regard for what was agree on at the constitution at committee it says 'seven four should political parties be unhappy with format of report this would discussed at the theme committees the issue would then be brought to the constitutional committee if the theme committee could not resolve it therefore at a certain point we are going to say this is how we are going to proceed but not all parties are happy with this format of report another suggestion is going to be XYZ.

OK, then we proceed on the basis that we would refer we would attach the submission to this report and should there be a problem. It would be included on the report. That was the one comment. I want to get back to that report that all parties made submission relation to approach to bill of right and these are included instead of attached.

Will there be consensus when we say all parties have made submission in relation to meaning and interpretation of principle 2 and the approach to the bill of Rights in the constitution these are included.

Consensus on that?

Thank you./

What about the submission of the ANC where the statement is as follows ' the parties agree that by deliberating and debating the nature scope and interpretation of principle 2 of schedule A the parties would be on the position of determining the approach to the recommended work programme' for purposes of background when the matter was discussed it was decided that one has to determine what was meant by principles 2 breaking up the phrase as we have done would give us an indication of what our understanding was and then would enable us to identify the kind of work programme we would undertake. I think there was a consensus on that basis there, I might be wrong on my interpretations if I am please correct me.

I would like to make sure that our consideration view amount of time (not audible).



Could I possibly add to that to leave it the way we have done it and say that the NP suggested further or expressed the view that expert opinion was necessary on this regard.

Or pestered about it because it is all said in the following page your and Mrs. Camerer.....

OK, can we delete that, we go on there are two phrases here. The first report that has been circulated to us is that as far as the specific wording clarifying phrases is concerned we propose the following specific phrases from principle 2 were discussed.

Would you say that is a much better, all right, so that's accepted.

The following phrases were discussed.

1. (a) The phrase quoted everyone shall enjoy and that could remain as is.

The report states the ANC state everyone should not only refer to human beings, natural persons here application clause 7 the ANC noted that the out in the interim constitution refer to human beings.

Mr. Chairman in the report we do have a section dealing with a vertical and horizontal application of right which follows what everyone .

What report are you looking at - the one from the ANC or the secretariat.

I'm looking at this one as a format which was agreed on.

That's the ANC's one you see aid that's not the one we are dealing with.

I was looking at the format and not the content.

That's not good enough because it is too messy it doesn't state out the categories clearly.

Could I suggest that we submit that ANC's submission has to be developed or should be restructured or reformed in sense that it showed both categories that we discussed the one being the juristic person, the natural person and the other one is the application of the vertical and horizontal right. We would draft the report in terms of setting out we would ask the secretariat to assist us so that it is done in a proper way.

Chairperson, I wonder if I could say something at this point. I really don't mind about this format, I have other competing obligations I would like to make sure that record of what of its says is a fair reflection of what the parties other parties want to discuss in great detail the exact detail of this.

Thank you Mr. Leon, I agree, I think we should use our time fruitfully and now we come t the issue of the vertical and horizontal application of Rights. The report says the ACDP, ANC, DP and IFP supported the vertical application and horizontal application of the bill of Rights in principle.

Can I suggest to adjustment to the paragraph that I have used because it's not compiled correctly.

All right, Mrs. Camerer.

I'm looking at the one that was incorporated into the report by the secretariat that I believe we all shake hands that the National Party primarily supported the vertical application but later they were not, the last line of that has gone to the wrong place so it should be they are not against the extension of the application of the bill.

Could you please give it Beaton.

The National Party primarily supported the vertical application but they were not against the extension of the application of the bill at the same time they were concerned about the interruption of the South African private law system.

The horizontal application.

No we don't mention that at all.

So what you suggest is that you never raised that I have no objection to the.

I thought you said that you were not opposed to the horizontal application but I'm not going to debate. Is there any objection to that Mr. Leon, Dr. Mulder, Mr. Skosana?

If we allow that type of process it means other parties will bring in new things now and it wouldn't reflect the proceedings of the last meeting we can we add further.

When I was appointed to scribe very reluctantly I undertook to do it these are the exact words I read out to the drafting committee the ones I have here that's the way it appeared to the draft that was handed to the secretariat for the reasons unknown to me the secretariat put the final version the mixed it up.

I think that one should keep to the words that you had during the discussion what the notes do reflect what has been discussed one shouldn't amend or turn the position in anyway.

Do you acknowledge Chairperson, that these are the notes I have read out to the committee that they agreed upon.

What I can note is that you circular the one that you form you submitted to secretariat there were inaccuracies there for example you said the Freedom Front supported you in the opposition to which was in fact. I don't want to engage in a personal battle what I'm simply saying is that the report was not accurate it did not reflect the true position and the concern of Mr. Skosana is correct that we should be very contentious about the way we state our report. We quite happy with your report and we would develop it on that basis.

There has been a contentious issue identified what is the suggestion the ANC has stated that specific right shall be examined and consequences of in terms of application shall be evaluated and expect advice can be sought by individual party if required that's the suggestion made I try to encapsulate the suggestion form the floor on this particular issue would you think that's the correct reflection of the way forward, can I just elaborate on that like Mr. Leon suggested that these aspects must be look at in terms of specific Rights when we look at the substantive right and specific issues then we would be able to decide at what extent they can apply horizontally. Would you be happy with the ANC draft in extent of the suggestion.

What's wrong with the other draft.

There is no suggestion we have identified a contentious issue Mrs. Camerer so we have to give a suggested approach regarding this contentious right and the suggestion is that when this issue is discussed then we would evaluate the extent to which they would apply horizontal or vertically as the case may be. You also raised and I tried to raise that in the report that it's necessary to get expert opinion and the suggestion was not opposed that you were at liberty to seek whatever expert opinion that was required for that particular purpose would you happy with report as a submission of the ANC.

Yes.

We substitute the word the with the word there would that be acceptable to you?

Yes.

Thank you very much Dr. Mulder.

We go to 1 (b). All universal accepted Fundamental Rights freedoms would remain as is as being typed in the report. The ANC indicated that it would evaluate within the party what the universal accepted Rights are.

There was no such suggestion, I don't know could I make a proposal in the part of the ANC.

**Transcript of:**

**TC4 Drafting sub-group Meeting 03-02-95 (2)**

Chairperson: The party that did not ..... what accepted Human Rights are /don't know there was no really suggestion, could I make a proposal on the part of the ANC in terms of identifying the contentious and non contentious issues, is there any comment on that. I thought it would reflect the issue the non contentious issue is that the universal declaration on human declaration in relevant human charters convention and covenant contain Fundamental freedom. I thought maybe what we could say that is that the United Nations Human Rights Declaration and the Covenant of 1966 Fundamental Human Rights and think seems to be the consensus with the Freedom Front and the IFP in particular.

Camerer: Now if we talk of non - contentious issues we basically saying that the agree that can be used as a reference point and not only these all the United Nation there are others besides this one.

Chairperson: OK, what we can say is that universal declaration of Human Rights in other convention and covenant contain Fundamental Rights and civil liberties.

Mrs. Camerer: Can we use as important reference to identify.



Chairperson: That means you would, can I just find you.

On Sub 3 on same page under the non contentious issues.

So can we delete I and leave III ANC and other parties agree that UN Charter and Covenant.

the ANC and other parties agree that UN and other international covenants on Human Rights, Civil Rights and Political Rights.

That's included in the covenant itself.

It is not here there are only two covenants and we say other covenants.

Are happy with the draft Gentlemen and Lady.

Can use as important references.

As important references, yes, have you got that on record.

Mr Skosana: On III, I see you have in the beginning you say ANC and other parties while we would prefer to say all other parties or all parties.

Mrs. Camerer: We don't even need to mention the ANC.

Chairperson: Perhaps we should read all that we have on contentious issues all parties except the NP agree on universal accepted Rights can be identified without expert advice.

Camerer: That complete distortion of our view.

We say it could be, I absolutely object to that.

All right, Mrs Camerer, we are trying to resolve a problem if you don't agree with what's said, you could just say I don't agree with this submission is not correctly I propose we amend it this way, I don't think there is no intent on the part of the ANC in terms, I'm primary draft's person of this document and (have no intent to reflect your position in any adverse way).

Could you put it differently then?

Please make your suggestion and then we could take it from there.

Well we would like to.

What about the second sentence the NP's opinion is that first the expert opinion must be obtained to be interpreted as what is regarded as universally accepted Rights that is exactly what you stated right.

So we delete the first sentence and leave second sentence as is the ANC's position and broad view was that the experts opinion was not a pre requisite in those Rights no party is adverse to such opinion but such an opinion.

Must is putting it strongly I think should.

I don't think we need that last bit in that sentence.

Well if you feel but I thought that was raised if I remember distinctly that Mr. Leon made that point, he is not opposed to expert opinion but he felt that could occur in the process of submission at a later stage.

Why don't we leave it open and say that no party explored expert opinion but sometime later in process.

Chairperson: But I think the parties are were in agreement except the NP that it was not a pre requisite to identifying the Rights because your position was very specific that you felt that before one can come to terms with which are universally accepted Rights one has to listen to expert opinion.

Camerer: There I was interrupted again because the say its an essential input before we finalise our position on what that is before we start an argument on what we think are universally accepted Rights before we finalise this debate we must have a broader view and expert opinion.

Chairperson: So what you are saying now, if I understand you correctly, is that the NP position as long as expert opinion is profit during the course of the deliberation.

Camerer: I'm sorry if this is irritating, but if you want to cast this as past or in the middle if you would want as to choose where we would want, it would preferable up front, but if you want to be

Are happy with the word that says it is preferable the NP's word it preferable.

Mr. Leon, Mr. Skosana.

The way it was put there was consensus on it so for the NP suggested could we add to that, we delete the first sentence of the ANC proposal retain the second sentence third we last sentence of that paragraph would be deleted and stated that the NP suggested that it would be preferable to.

Can we have it there way its said that the NP stated that this is the area that expert opinion was required to guide the committee that the workshop be held.

Chairperson: We'll slot that in thereafter. You know, no party was opposed to this but ANC and other parties indicated that experts were not necessary to evaluate, you suggested that the workshop be held. The way you're put your report Mrs. Camerer with great respect is nobody was opposed to having a Workshop. We'll just slot in your sentence there its quite in order.

Mr. Leon. Would you like us to include this sentence that the DP would like the workshop could easily accommodated with ongoing meetings of the theme committees, could we include that.

If it could help it won't do any harm

Could we include that also as an addition, and the suggestion is that the parties make the submission to which right are universally accepted Human Rights are discussed upon receiving the submission is that acceptable to everybody.

We'll actually repeating what we said under contentious.

Under contentious issues.

Are these submissions going to form part of the report?

Not this report they would form part or the next report.

I think the above two that would form.

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Entrenching judicial provision non-contentious issues are we have two documents, the ANC has suggested that organs of enforcement be looked at and all parties agreed, that was in the report that was circulated to us, was any disputes in terms of this. The NP strongly supported enforce by strong judiciary parties at parties should look at procedure to incorporate possible further additions. I think this last paragraph as suggested by the F.F. was Dr. Mulder would like to help us was that your position here, the parties agree that the committee should look at the procedures incorporate further addition to the bill of Rights at a later stage.

Chairperson: We were discussing the whole process of the entrenchment and the point that we made was that in terms of entrenchment there should also be a specific procedure made for future additions depending on the culture of Fundamental Human Rights develop in future so not only on entrenchment but on future addition in time for hiring we might no foresee at this stage.

I think on point 3 here point 2 we did concur with the ANC there on addition of institution of enforcement 3 we suggest strong independent judiciary I think.

We also did DP.

I think all parties.

This is the problem if you start isolating some parties it looks like they only have that view point.

Chairperson: Could I just revisit this whole thing, the first sentence per the draft that was circulated by secretariat the ANC suggested that other organ so the enforcement looked at and all parties agreed such as the Human Rights commission be looked at agreed. Can we.....

We agreed that we should look at other organs of enforcement that.

Lets say the parties agreed that other organs of enforcement be looked at and this was agreed upon the ANC suggested other enforcement such as the human Rights commission.

All parties strongly support enforcement by strong independent judiciary because that has been the DP, NP IFP Parties agreed that committee incorporated. I trying to develop that when Mr. Skosana came in on the issue of entrenchment the FF. suggested that one has to look at the expansion or development of Fundamental Rights at a later stage. What do you think.

It is quite correct as it is worded here.

Chairperson: I think we can leave it as it is there it's fine sorry Mr. Skosana.

Mr. Skosana: Its on the same point of the FF. three if we remembers very well in our first submission we had this evaluative clause which sparked a lot of debate so that is also our position there.

Chairperson: Could you say as suggested by FF. and the IFP sorry Mr. Leon.

Not audible.



Other parties NP, DP, reserve the position of state they believe, what I thought we could do here, if we could look at it as contentious or non contentious issues, it need not be accepted in document that has been circulated to you by the ANC well under contentious issues. The ANC states that right of born natural citizen the Bill of Rights refers right enjoy by human being sand even Chapter 3 refers primarily to Rights of natural persons and here term everyone the excludes juristic position that is the ANC's position, the DP, NP and IFP noted with interest, maybe we could change that.

Is there any suggestion to that particular sheet.

I look to your wording and I wanted to adjust it. I think one should say including DP, NP and IFP reserve their position or the IFP must answer for itself. We reserve our position as we stated we stated as a preliminary position that everyone should include juristic persons this is prior to the debate occurring.

I agree with Mr. Camerer.

OK, lets just draft this so that we have no dispute over this.

No not a draft in following sentence should.

In following sentence I would suggest that the matter be debated in greater detail because that was the suggestion having identified the contentious issue. I have it in the ANC submission.

I hope it is better if rise that as a contentious issue is everybody happy with that.

Yes may I ask are we going to put sub-heading.

When you talk of sub-heading are you talking about contentious issues and suggestion?

Yes.

I think it's necessary we do so we are trying as far as possible to get to the format that has been suggested it reads as follows from the constitutional committee meeting that was the agreement that the committee.

I think we are being misinterpreted ourselves here because we did say that, it does include juristic persons and we requested to make elaborated submissions on this that what we say.

Could we say that was the opinion of the Freedom Front.

Well we could say that other parties including DP, NP, IFP and the Freedom Front or should we say other parties because it virtually covers all the parties.

The three specific parties.

OK, we'll say other parties including DP, NP, IFP, stated that their view was everyone included juristic persons and they would like to make specific submissions in this regard at this stage.

Would make slight adjustment to that draft which you have in front of you that the other parties including the NP, DP and IFP reserve their position and state that their position that every one includes the juristic persons, it was agreed upon.

OK and agreed and instated that could you please repeat that Mr. Camerer, you talking now as if this document is an ANC draft.

These reports would include details of contentious and non contentious issues and suggested approaches so by saying suggestion you could say suggested approach I don't have a problem with that as a sub-heading.

Where does contentious issues come in.

There's no contentious issue that has to be raised in this. Contentious issue raised was word everyone, so there was only a contentious issue raised under this phrase there was a non contentious issue.

Can I just ask from the setting on I think the setting of this issue under everyone is very basic one must remember that in the constitutional committee they are not all experts or the human Rights thing and they are not all lawyers. That phrase everyone shall enjoy it encompasses that phrase in the debate encompassed both phrases juristic persons and vertical and horizontal principles.

Under that phrase there are two potential issues. I would put the phrase in full and then put contentious issues and applications and then there first one is natural persons, juristic persons and then we give the party position and the second contentious issue is vertical and horizontal application.

I see that there is merit in your, my suggestion on what you said Mrs. Camerer is under contentious issue we could put the juristic - natural persons.

The contentious issue in the application of .....

No that is the one aspect juristic/natural persons what is the view of the parties and we have set it out and the second aspect is the vertical and horizontal application of Rights if you look at the ANC document it is.

That the contentious issue here the subsection of that firstly is that whether the juristic person and atural person.

What I'm saying is that I would then put the juristic and the natural person as one category and the second category would then be vertical and horizontal application of right.

Leave it to the secretariat to set that better.

Ja, they could I have no problems with that they could work out a format for us.

**Transcript of:**

**TC4 Drafting sub-group Meeting 03-02-95 (2)**

Chairperson: The party that did not ..... what accepted Human Rights are /don't know there was no really suggestion, could I make a proposal on the part of the ANC in terms of identifying the contentious and non contentious issues, is there any comment on that. I thought it would reflect the issue the non contentious issue is that the universal declaration on human declaration in relevant human charters convention and covenant contain Fundamental freedom. I thought maybe what we could say that is that the United Nations Human Rights Declaration and the Covenant of 1966 Fundamental Human Rights and think seems to be the consensus with the Freedom Front and the IFP in particular.

Camerer: Now if we talk of non - contentious issues we basically saying that the agree that can be used as a reference point and not only these all the United Nation there are others besides this one.

Chairperson: OK, what we can say is that universal declaration of Human Rights in other convention and covenant contain Fundamental Rights and civil liberties.

Mrs. Camerer: Can we use as important reference to identify.

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On Sub 3 on same page under the non contentious issues.

So can we delete I and leave III ANC and other parties agree that UN Charter and Covenant.

the ANC and other parties agree that UN and other international covenants on Human Rights, Civil Rights and Political Rights.

That's included in the covenant itself.

It is not here there are only two covenants and we say other covenants.

Are happy with the draft Gentlemen and Ladies.

Can use as important references.

Mr Skosana:

On III, I see you have in the beginning you say ANC and other parties while we would prefer to say all other parties or all parties.

We don't even need to mention the ANC.

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Perhaps we should read all that we have on contentious issues all parties except the NP agree on universal accepted Rights can be identified without expert advice.

We say it could be, I absolutely object to that.

All right, Mrs Camerer, we are trying to resolve a problem if you don't Agree with what's said, you could just say I don't agree with this submission is not correctly I propose we amend it this way, I don't think there is no intent on the part of the ANC in terms, I'm primary person on the draft of this document and (have no intent to reflect your position in any adverse way).

Could you put it differently then?

Please make your suggestion and then we could take it from there.

Well we would like to.

What about the second sentence the NP's opinion is that first the expert opinion must be obtained to be interpreted as what is regarded as universally accepted Rights that is exactly what you stated right. So we delete the first sentence and leave second sentence as is the ANC's position and broad view was that the experts opinion was not a pre requisite in those Rights no party is adverse to such opinion but such an opinion. I don't think we need that last bit in that sentence.



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Well if you feel but I thought that was raised if I remember distinctly that Mr. Leon made that point, he is not opposed to expert opinion but he felt that could occur in the process of submission at a later stage.

Why don't we leave it open and say that no party explored expert opinion but sometime later in process.

But I think the parties are were in agreement except the NP that it was not a pre requisite to identifying the Rights because your position was very specific that you felt that before one can come to terms with which are universally accepted Rights one has to listen to expert opinion.

There I was interrupted again because they say its an essential input before we finalise our position on what that is before we start an argument on what we think are universally accepted Rights before we finalise this debate we must have a broader view and expert opinion.

Chairperson: So what you are saying now, if I understand you correctly, is that the NP position as long as expert opinion is profit during the course of the deliberation.

I'm sorry if this is irritating, but if you want to cast this as past or in the middle if you would want as to choose where we would want, it would preferable up front, but if you want to be.

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Are happy with the word that says it is preferable the NP's word it preferable.

The way it was put there was consensus on it so for the NP suggested could we add to that, we delete the first sentence of the ANC proposal we retain the second sentence third we last sentence of that paragraph would be deleted and stated that the NP suggested that it would be preferable to.

Can we have it there way its said that the NP stated that this is the area that expert opinion was required to guide the committee that the workshop be held.

We'll slot that in thereafter. You know, no party was opposed to this but ANC and other parties indicated that expects were not necessary to evaluate, you suggested that the workshop be held. The way you're put your report Mrs. Camerer with great respect is nobody was opposed to having a Workshop. We'll just slot in your sentence there its quite in order.

Mr. Leon. Would you like us to include this sentence that the DP would like the workshop could easily accommodated with ongoing meetings of the theme committees, could we include that.

If it could help it won't do any harm

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Could we include that also as an addition, and the suggestion is that the parties make the submission to which right are universally accepted Human Rights are discussed upon receiving the submission is that acceptable to everybody.

We'll actually repeating what we said under contentious.

Under contentious issues.

Are these submissions going to form part of the report?

Not this report they would form part or the next report.

I think the above two that would form.

1 © Entrenching judicial provision non-contentious issues are we have two documents, the ANC has suggested that organs of enforcement be looked at and all parties agreed, that was in the report that was circulated to us, were any disputes in terms of this. The NP strongly supported enforce by strong judiciary parties at parties should look at procedure to incorporate possible further additions. I think this last paragraph as suggested by the F.F. was Dr. Mulder would like to help us was that your position here, the parties agree that the committee should look at the procedures incorporate further addition to the bill of Rights at a later stage.

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Mr. Chairperson: We were discussing the whole process of the entrenchment and the point that we made was that in terms of entrenchment there should also be a specific procedure made for future additions depending on the culture of Fundamental Human Rights develop in future so not only on entrenchment but on future addition in time for hiring we might not foresee at this stage.

I think on point 3 here point 2 we did concur with the ANC there on addition of institution of enforcement 3 we suggest strong independent judiciary I think.

We also did DP.

I think all parties.

This is the problem if you start isolating some parties it looks like they only have that view point.

Could I just revisit this whole thing, the first sentence per the draft that was circulated by secretariat the ANC suggested that other organ so the enforcement looked at and all parties agreed such as the Human Rights commission be looked at agreed. Can we.....

We agreed that we should look at other organ of enforcement.

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Lets say the parties agreed that other organs of enforcement be looked at and this was agreed upon the ANC suggested other enforcement such as the human Rights commission.

All parties strongly support enforcement by strong independent judiciary because that has been the DP, NP IFP Parties agreed that committee incorporated I trying to develop that when Mr. Skosana came in on the issue of entrenchment the FF suggested that one has to look at the explanation or development of Fundamental Rights at a later stage. What do you think.

It is quite correct as it is worded here.