

2/21/18/4

CONSTITUTIONAL ASSEMBLY

**CONSTITUTIONAL COMMITTEE
SUB-COMMITTEE**

**DRAFT REPORT OF DISCUSSIONS
21 AUGUST 1995**

CONSTITUTIONAL ASSEMBLY

DRAFT REPORT OF THE CONSTITUTIONAL COMMITTEE SUBCOMMITTEE HELD ON 21 AUGUST 1995

PART I

NATIONAL AND PROVINCIAL LEGISLATIVE AND EXECUTIVE COMPETENCIES

- 1 Professors Basson, Davis and Venter spoke to the document entitled, "*Constitutional principles applicable to the allocation of national and provincial competencies*", contained in the documentation for the meeting.
- 2 It was agreed that this document would help to guide the Subcommittee in its work, but was not binding.
- 3 It was agreed that the Technical Advisers would draft one text which the Subcommittee could use as a basis for further discussion.

CONSTITUTIONAL ASSEMBLY

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PART II

PRESENTATION ON FREEDOM OF EXPRESSION

- 1 Representatives of the **Black Editors Forum** made a submission to the Sub-Committee highlighting the following issues:
 - 1.1 The media should be able to fulfil its role without hindrance from the state or any other institution.
 - 1.2 The media should reflect the diversity of South Africa's population and anti-trust legislation should be introduced to do this.
 - 1.3 The Constitution should limit the control of the media by foreign interests to, at most, a 20% share of the market.
 - 1.4 Section 33 of the interim Constitution should be amended to in order to elevate freedom of expression to the highest plane of values recognised by the Constitution.
 - 1.5 Section 23 of the interim Constitution should be amended to limit access to information for personal use.
- 2 Representatives of the **Conference of Editors** made a submission to the Sub-Committee highlighting the following issues:
 - 2.1 The need for an amendment to section 33 of the interim Constitution in order to elevate freedom of expression to the highest plane of values recognised by the Constitution. This would be achieved by deleting section 15 from section 33(1)(b)(bb).
 - 2.2 The need to ensure the application of the common law to the Constitution, as the law of defamation is regulated by the common law. As such section 4(1) of the interim constitution should be amended to read:

This Constitution shall be the supreme law of the Republic and any law including the common law, or act inconsistent with its provisions

shall, unless otherwise provided expressly or by necessary implication in this Constitution, be of no force and effect to the extent of inconsistency.

And section 7(2) of the interim Constitution should be amended to read:

This Chapter shall apply to all law, including the common law, in force and all administrative decisions taken and acts performed during the period of operation of this Constitution.

- 2.3 The need to protect the right of every person to access to all information held by the state. This would be achieved by an amendment to section 23 of the interim constitution to read:

Every person shall have the right of access to all information held by the State or any of its organs at any level of government.

