

THESE DRAFT MINUTES ARE CONFIDENTIAL AND RESTRICTED TO MEMBERS OF THE AD HOC COMMITTEE, THE PLANNING COMMITTEE AND THE TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS DURING THE TRANSITION. THE MINUTES ARE STILL TO BE RATIFIED BY THE AD HOC COMMITTEE.

**DRAFT MINUTES OF THE MEETING OF THE AD HOC COMMITTEE ON FUNDAMENTAL RIGHTS DURING THE TRANSITION HELD AT 08h45 ON WEDNESDAY, 18 AUGUST 1993 AT THE WORLD TRADE CENTRE**

**PRESENT:** Mrs S Camerer (Convenor)  
Prof H Cheadle  
Chief Gwadiso  
Mr A Leon  
Mr P Maduna  
Mr S G Mothibe

**MINUTES:** Miriam Cleary (Administration)

**1. AGENDA:**

**It was agreed that** matters arising from the previous minutes would be discussed as well as the outstanding clauses, 23 - Property and 30 - Interpretation.

**2. AMENDMENTS TO PREVIOUS MINUTES:**

- 2.1. First paragraph on page 2 after item 2.3. The first sentence to have the word "generally" added and read as follows:  
  
"It was agreed that the general feeling of the Ad Hoc Committee was that the Bill of Rights should generally have vertical application only."
- 2.2 In the first line on page 5 there was a typographical error - the word should be "confirmed" instead of 'confirmed'.

3. **MATTERS ARISING:**

**It was agreed that** items 3, 7, 8 and 9 of the previous minutes would each be discussed separately and not under this heading.

3.1 Item 2. Horizontal and Vertical Application of the Bill of Rights.

**It was agreed** to leave this as the last item to be discussed at this meeting and to continue with the other matters.

3.2 Item 4. Clause 1 - Application - Subclause (4). The Ad Hoc Committee were awaiting the response to their recommendation from the Technical Committee.

4. **CLAUSE 2 - EQUALITY - SUBCLAUSE (2):**

(Horizontal and vertical application and the impact of the Bill on Customary Law)

4.1 Two members of the Ad Hoc Committee spoke to the legal experts (as listed in the previous minutes) regarding possible input and advice. Professor D S Koyana would not be available (due to medical reasons).

4.2 Mr Mac Maharaj joined the meeting to advise the Ad Hoc Committee that the Planning Committee **agreed to the recommendation** for input from legal experts, with two additional persons. The following persons were being approached by the Planning Committee:

- \* Judge Pierre Olivier
- \* Professor Charles Dhlamini
- \* Professor R B Mqeke
- \* Dr Cathi Albertyn
- \* Mrs Thuli Madonsela

The Planning Committee would request that the above persons submit their comments within seven days, if possible. Once these had been received and discussed, a meeting could be arranged between the Ad Hoc Committee and the Technical Committee.

Mr Maharaj took note of the Ad Hoc Committee's request that the S. A. Law Commission also be approached for comments on the Technical Committee's Seventh (or Ninth) Report.

4.3 Mr Leon said that Subclause (3) should be reformulated. **It was agreed** that that the best course of action would be that, where some new item did crop up for consideration as a result of the deliberations of the Ad Hoc Committee, the Ad Hoc Committee should place that particular clause on the agenda for future discussions after all other items had been dealt with.

4.4 Once Clause 2 - Equality has been resolved, Clause 11(2) could be dealt with (item 5 of previous minutes).

**5. CLAUSE 18 - ADMINISTRATIVE DECISIONS - SUBCLAUSE (1)**

A proposal was put before the Ad Hoc Committee and **it was agreed that** this Committee would study it further. Professor Cheadle would look at the Australian, Canadian and German Bills and fax the pertinent portions to each member of the Ad Hoc Committee prior to their next meeting.

**6. CLAUSE 20 - EVICTION**

After discussion **it was agreed that** this item be postponed until the next Ad Hoc Committee meeting.

**7. CLAUSE 21 - ECONOMIC ACTIVITY**

The Ad Hoc Committee considered the possible reformulation of this clause including the suggestion by the Technical Committee that the words "justifiable in an open and democratic society based on freedom and equality" should replace the words in the last two lines of the present draft after "opportunity", and Mr Leon's suggestion that "freedom" be substituted by "liberty". However some members requested more time to consider the wording and whether clause 21 should be included in a Bill of Rights. **It was agreed that** a decision on this clause would be held over until the next meeting.

**8. CLAUSE 23 - PROPERTY:**

**It was noted that** a submission had been received by the Technical Committee from one of the members from the National Land Committee.

**It was suggested that** Subclause (1) be amended to read:

"(1) Every person shall have the right to acquire and hold rights in property and to dispose of such rights where the nature of the rights permit."

in order to accommodate the problems of Traditional Leaders.

This would be considered and possibly confirmed at the next Ad Hoc Committee meeting when the rest of Clause 23 would also be discussed.

**9. OUTSTANDING ITEMS:**

9.1 Clauses 30 was not discussed by the Ad Hoc Committee due to lack of time.

9.2 See minutes.

**10. DATES OF MEETINGS:**

10.1 The next Ad Hoc Committee meeting would take place on Wednesday, 25 August 1993, at 08h30.

10.2 **It was suggested that** the meeting with the Technical Committee and the five experts on Customary Law be scheduled for Tuesday, 31 August and Wednesday, 1 September 1993.

**11. CLOSURE:**

The minute taker would fax these minutes to the Committee as soon as possible.

The meeting closed at 11h15.