

**CONSTITUTIONAL ASSEMBLY**

**MULTI-LATERAL  
WAENHUISKRANS**

**SUB-COMMITTEE 1  
BILL OF RIGHTS**

**DRAFT REPORTS OF DISCUSSIONS  
MONDAY 1 APRIL 1996  
TUESDAY 2 APRIL 1996  
WEDNESDAY 3 APRIL 1996**

**DRAFT REPORT 1**

**1 April 1996, 01h30**

**Status:** Draft report of meeting of  
Sub-Committee 1: Bill of Rights  
**Typed by:** Susan Rabinowitz  
**File Name:** 2-1.apr

**CONSTITUTIONAL ASSEMBLY**

**DRAFT REPORT**

**MULTI-LATERAL DISCUSSIONS**

**SUB-COMMITTEE ONE**

**BILL OF RIGHTS**

**MONDAY 1 APRIL 1996**

**PROGRESS RECORDED**

**1. Section 8: Equality**

**1.1 Regarding Section 8(3)**

The meeting noted the following memoranda from the Panel of Experts and Technical Committee 4 who spoke to the documents:

*"Equality Clause ("Affiliation " and "Any other grounds" in Section 8(3), Bill of Rights)"*

*"Equality Clause (Section 8(3))*

*"The words "But not limited to" in Section 8(3) (Equality)"*

- 1.2** The meeting agreed to defer discussion of this section until tomorrow to allow parties time to consider the memoranda from the Panel of Experts and Technical Committee 4 and to allow further discussion amongst the parties.

**2. Section 10: Life**

- 2.1** The meeting agreed to defer discussion of this section.

**3. Section 11: Freedom and security of the person**

**3.1 Regarding 11(2) and (3)**

The meeting agreed to defer discussion of this section until Tuesday 2 April.

4. **Section 13: Privacy**

4.1 The Panel and Technical Advisors tabled a document entitled "*Section 13: (Bill of Rights - "Unreasonable search and seizure"*" which they had drafted after meeting with Prof Nico Steytler.

4.2 The meeting agreed to defer discussion of this matter for further consideration by the ANC who stated that they would still prefer the clause to be amended to include a qualification.

4.3. The NP stated that it accepted the opinion of the Panel on this matter.

5. **Section 14: Freedom of religion, belief and opinion**

5.1 The meeting agreed that Section 14(2)(a) should be amended to read:

*"those observances follow rules made by **the appropriate public authorities;**"*

5.2 The meeting noted the following:

i The DP stated that the issue of "state-aided" institutions under the Education clause should also be considered under this section.

ii The NP stated that it would prefer the phrase in Section 14(3)(b) "*with the provisions of the Constitution*" to read "***with the provisions in the Bill of Rights***".

6. **Section 15: Freedom of expression**

6.2 The meeting agreed to Section 15(2)(c)

6.3 Regarding Section 15(3)

6.3.1 The meeting referred to the document "*Memorandum from the Panel of Experts and Technical Committee 4 on Free Expression and the Media (Section 15(3) of the Bill of Rights and Chapter 7)*" contained in the documentation.

6.3.2 Regarding the various options proposed in the Memorandum, the parties stated their positions as follows:

i The NP stated that it would want a right to be included in the Bill of Right along the lines of Option C and in addition would be happy to have a monitoring mechanism in Chapter 7 along the lines of Option B(2).

ii The ANC and the DP supported Option B2.

6.3.3 The meeting agreed to defer discussion on this section to allow the NP to provide a formulation for distribution to the parties for further consideration on Tuesday 1 April.

**7. Section 16: Assembly, demonstration and petition**

7.1 The meeting agreed to defer discussion of this section to allow further consideration of the words *"to picket"*.

**8. Section 20: Freedom of movement and residence**

8.1 The meeting agreed to this section.

**9. Section 21: Freedom of occupation**

9.1 The ANC proposed that the section be amended along the following lines:

*"Every citizen has the right to choose freely their trade, occupation or profession. The practice of this right may be regulated by law."*

9.2 The meeting agreed to this proposed reformulation with the inclusion of the word *"trade"* but noted the DP concern with regard to the use of the words *"every citizen"*.

9.3 The DP stated that the right should not be limited to citizens but should apply to other categories of persons and to *"juristic persons"* and proposed that *"every citizen"* be amended to read *"everyone"*.

9.3 The NP stated that even if this section were phrased *"every citizen"*, this would not prohibit rights being conferred to other non-citizens through legislation.

**10. Section 22: Labour relations**

10.1 The meeting agreed to defer this section to allow for further discussions.

**11. Section 23: Environment**

11.1 The ANC reported as follows:

i Section 23(a) - There was still contention around the issue of *"and quality of life"* which the NP wished to include.

ii Section 23(b)  
There was agreement to include *"for the benefit of present and future generations"*.

iii Sections 23(i) and (ii) would remain as they are.

- iv Sections 23(iii) and (iv) should be combined.
- v Section 23(v) should be deleted.

11.2 The ANC therefore proposed that the section should be amended to read:

*"Everyone has the right -*

- (a) to an environment that is not harmful to their health and well-being;*
- (b) to have their environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that:*
  - (i) prevent pollution and ecological degradation;*
  - (ii) promote conservation; and*
  - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.*

11.3 The meeting agreed to that the section should be reformulated along the lines of the ANC proposal but noted that there was still contention around the issue of *"quality of life"* and that the NP reserved its position on this issue.

## **12. Section 24: Property**

12.1 The meeting agreed to defer discussion on this matter until Tuesday 1 April 1996.

## **13. Section 24A: Land**

13.1 The meeting agreed to defer discussion on this matter until Tuesday 1 April 1996.

## **14. Section 25: Housing**

14.1 The DP proposed that Section 25(1) and (2) be amended to read:

- (1) Everyone has the right to have access to adequate housing.*
- (2) This right is not directly enforceable by a court but the State must take reasonable and other measures , within the state's available resources, to achieve the progressive realisation of this right.*

14.2 The ANC and NP stated that they were happy with the present wording.

14.3 The meeting agreed to note the DP proposal which they would circulate to parties for their consideration.

#### 14.4 Regarding Section 25(3)

The meeting agreed that the TRT should consider refinement of the wording of this section. The ANC proposed that the section should be separated into two sentences reading as follows:

*"No one may be evicted from their home or have their home demolished without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions."*

#### 15. Section 28: Education

15.1 The meeting agreed that this section was deferred, to allow for further discussions between the parties.

#### 16. Section 30: Language and culture

16.1 The NP did not support the proposed reformulation and suggested a phrase along the lines *"These rights must be consistent with the other rights in the Bill of Rights."*

16.2 The ANC preferred the wording in the draft in the 4th edition which reads:

*"but no one exercising these rights may violate the rights of anyone else."*

16.3 The meeting agreed that the ANC should reformulate this section taking into account the memorandum from Technical Committee 4 and the views expressed and distribute this reformulation to the parties for further for consideration.

#### 17. Section 31: Access to information

17.1 The meeting agreed to defer this section to allow parties time to consider the memorandum from the Panel of Experts and Technical Advisors.

#### 18. Section 32: Just administrative action

18.1 The meeting agreed to defer this section to allow parties time to consider the memorandum from the Panel of Experts and Technical Advisors.

#### 19. Section 34: Arrested, detained and accused persons

19.1 Regarding Section 34(4)

- i The meeting agreed that the wording of this section be replaced with the wording proposed in the memorandum from the Panel of Experts

and Technical Committee 4 - "Exclusionary Rule - Section 34(4) - Bill of Rights" reading as follows:

*"Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if it **would/could** render the trial unfair or otherwise be detrimental to the administration of justice."*

- ii The meeting agreed that parties would give further consideration overnight to the use of the word "would" or "could" in the section.

## **20. Section 35: Limitations**

20.1 The NP supported the section as reformulated.

20.2 The ANC stated that it was in broad agreement with the clause but disagreed with some of the detail.

20.3 The meeting agreed that the matter should be deferred to allow the ANC to give further consideration to the section.

## **21. Section 36: States of emergency**

21.1 The ANC stated that there were a number of issues which had to be discussed including:

- i The inclusion of a reference to an emergency committee in order to provide for the continued functioning of the National Assembly during a state of emergency;
- ii The list of non-derogable rights;
- iii The concept of one single emergency clause dealing with all matters of emergency including a state of war or the proposal that Section 36(1) and (2) be placed elsewhere in the Constitution, under the Powers of the President.
- iv The provisions under Section 7 would apply to states of emergency other than war.
- v The ANC was strongly against the two thirds majority referred to in Section 36(2)(b).

2.1.2 The meeting agreed to defer this section for further discussion between the parties.

## **22. Section 38: Application**

22.1 The meeting agreed that the following issues were still outstanding:

- i The issue of "juristic persons"
- ii The use of the word "*applicable*" or "*appropriate*" which was still being considered by the Panel of Experts and the Technical Advisors.

**DRAFT REPORT 2**

2 April 1996, 12h50

**Status:** Draft report of meeting of  
Sub-Committee 1: Bill of Rights  
**Typed by:** Susan Rabinowitz  
**File Name:** 2-2.apr

**CONSTITUTIONAL ASSEMBLY**

**DRAFT REPORT**

**MULTI-LATERAL DISCUSSIONS  
SUB-COMMITTEE ONE  
BILL OF RIGHTS  
TUESDAY 2 APRIL 1996**

**1. Section 8: Equality**

**1.1 Regarding Section 8(3):**

- i The NP stated that it still favoured inclusion of "*affiliation*" and if that was not acceptable then "*association*". The NP further proposed the insertion of "*pregnancy*" as a ground to be included in the list of grounds.
- ii The Technical Advisors pointed out that "*affiliation*" or "*association*" lacked content and was not a ground of discrimination.
- iii With regard to the inclusion of "*pregnancy*", the advisors explained that this could be implied in other grounds.
- iv The ANC stated that they were not objecting to the inclusion of "*pregnancy*" but wished to give the matter further consideration.
- v The meeting agreed that the NP would take this matter back to their principals.

**1.2 Regarding Section 8(2):**

- i The DP stated that they were not in agreement with the phrase "*measures designed and likely to achieve*" in this section and proposed "*measures that are **appropriately** designed for the protection*

*and advancement*".

- ii The meeting agreed to defer this section for further consideration by parties.

**2. Section 10: Life**

- 2.1 The meeting agreed to defer discussion of this section.

**3. Section 11: Freedom and security of the person**

- 3.1 The meeting agreed to the following:

- 3.1.1 Inclusion of the draft proposed by the ANC as set out in the footnote on Page 14 of the "Draft 20 March 1996" ("*Blue Book*") with the following amendments:

- i Deletion in Section 11(2)(a) of the ANC proposal of the words in brackets "*free from coercion, discrimination and violence*";
- ii Inclusion in Section 11(2)(c) of "*informed*" before "*consent*".

- 3.1.2 The meeting noted that the NP reserved its position on this section and would take the matter back to its principals.

- 3.2 The proposed reformulation would therefore read as follows:

- (1) *Everyone has the right to freedom and security of the person, including the right -*

- (a) *not to be deprived of liberty arbitrarily or without just cause;*
- (b) *not to be detained without trial;*
- (c) *to be free from all forms of violence from both public and private sources;*
- (d) *not to be tortured in any way; or*
- (e) *not to be treated or punished in a cruel, inhuman or degrading way.*

- (2) *Everyone has the right to bodily and psychological integrity, including the right -*

- (a) *to make decisions concerning reproduction;*
- (b) *to security in and control over their body;*

- (c) *not to be subjected to medical or scientific experiments without their informed consent.*

**4. Section 13: Privacy**

- 4.1 The meeting agreed to defer discussion of this matter for further consideration by the ANC who stated that although they would still prefer the clause to be amended to include a qualification they would be prepared to reconsider the matter.
- 4.2 The NP and DP reaffirmed their positions that this qualification was not necessary.

**5. Section 14: Freedom of religion, belief and opinion**

- 5.1 The meeting again noted that:

- i Section 14(2)(a) should be amended to read:

*"those observances follow rules made by the appropriate public authorities;"*

- ii The DP stated that the issue of "state-aided" institutions under the Education clause should also be considered under this section.

- iii The NP stated it still had reservations about the phrase in Section 14(3)(b) *"consistent with the provisions of the Constitution"* and would prefer it to read *"consistent with the provisions in the Bill of Rights"*.

**6. Section 15: Freedom of expression**

- 6.1 The meeting agreed to Section 15(2)(c).

- 6.2 Regarding Section 15(3):

- i The meeting agreed to the inclusion in Chapter 7 of a provision along the lines of Option B2 as proposed by the Panel and Technical Advisors in their Memorandum tabled previously entitled *"Memorandum from the Panel of Experts and Technical Committee 4 on Free Expression and the Media (Section 15(3) of the Bill of Rights and Chapter 7)"*.

- ii The ANC and DP reiterated that they supported the inclusion of Option B2 in Chapter 7.

- iii The NP reaffirmed that it would want a right to be included in the Bill of Right in addition to a monitoring mechanism in Chapter 7 and

tabled the following proposal for consideration:

*"Everyone has the right to editorial impartiality and fairness in State or State-aided media."*

- iv The meeting noted that the ACDP and the FF supported the NP on this issue.
- v The ANC and DP raised doubts about whether this was a right or a duty on the state.
- vi The meeting noted the views expressed by the parties and agreed that the NP reserved its position and would take further advice on this matter.

**7. Section 16: Assembly, demonstration and petition**

- 7.1 The meeting agreed to defer discussion of this section to allow further consideration of the words *"to picket"*.

**8. Section 20: Freedom of movement and residence**

- 8.1 The meeting agreed to this section.

**9. Section 21: Freedom of occupation**

- 9.1 The meeting agreed to this section. The DP withdrew its reservation regarding *"every citizen"*.

**10. Section 22: Labour relations**

- 10.1 The meeting agreed to defer this section to allow for further discussions.
- 10.2 The meeting noted the proposal tabled by the ANC that the following provision be included in Section 22 to deal with the question of trade union security arrangements:

*"The provisions of the Bill of Rights do not prevent legislation recognising union security arrangements contained in collective agreements."*

**11. Section 23: Environment**

- 11.1 The NP stated that it would prefer the words *"and quality of life"* to be retained in the formulation. The meeting agreed to include in brackets the words *[and quality of life]* and agreed that the section would be amended to read as follows:

*"Everyone has the right -*

- (a) to an environment that is not harmful to their health, well-being [and quality of life];*
- (b) to have their environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that:
  - (i) prevent pollution and ecological degradation;*
  - (ii) promote conservation; and*
  - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.**

11.2 The meeting agreed that the Technical Refinement Team should consider possible refinement of the wording of Section 23(b)(iii).

## 12. Section 24: Property

12.1 The meeting agreed to defer discussion on this matter.

## 13. Section 24A: Land

13.1 The meeting agreed to defer discussion on this matter.

## 14. Section 25: Housing

14.1 The meeting noted the proposal tabled by the DP that Section 25(2) and Section 26(2) be amended to read:

***This right is not directly enforceable by a court but the State must take reasonable legislative and other measures, within the state's available resources, to achieve the progressive realisation of this right.***

14.2 The ANC and NP stated that they were happy with the present wording.

14.3 Regarding Section 25(3):

The meeting agreed to separate this subsection into two sentences reading as follows:

***"No one may be evicted from their home or have their home demolished without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions."***

## 15. Section 27: Children

15.1 The meeting agreed to amend this section to include the following two new

subsections as recommended in the Analysis of Submissions on Page 48 of the documentation:

- i Section 27(1)(g) - *"to have a legal practitioner provided by the state in civil matters affecting the child if substantial injustice would otherwise result";*
- ii Section 27(1)(h) - *"to be protected in armed conflict and not to be used in armed conflict"*

## **16. Section 28: Education**

16.1 The meeting agreed that this section was deferred, to allow for further discussions between the parties.

## **17. Section 30: Language and culture**

17.1 The NP did not support the proposed reformulation and suggested a phrase along the lines *"These rights must be consistent with the other rights in the Bill of Rights."*

17.2 The ANC preferred the wording in the draft in the 4th edition of the Working Draft which reads:

*"but no one exercising these rights may violate the rights of anyone else."*

17.3 The meeting agreed that the TRT should reformulate this section along the lines proposed by the NP but taking into account the ANC's concern about the extent of the qualification. The meeting agreed that the NP would take the reformulation back to its principals.

## **18. Section 31: Access to information**

18.1 The meeting agreed to the formulation proposed in the Memorandum from the Panel of Experts and Technical Committee 4 entitled *"Access to information (S31) and Just Administrative Action (S32)"* but parties expressed reservations about the inclusion of the transitional arrangements suggested in the Memorandum. The meeting agreed that the TRT should consider reformulation of Paragraph 1 of Transitional Arrangements. The NP suggested wording along the lines of *"Parliament must pass and the state must implement national legislation to give effect to this right within 3 years."*

## **19. Section 32: Just administrative action**

19.1 The meeting agreed broadly to the proposed formulation in the Memorandum from the Panel of Experts and Technical Committee 4 but noted that the DP

would give further consideration to the details of the formulation.

## 20. Section 34: Arrested, detained and accused persons

### 20.1 Regarding Section 34(2)(e)

The meeting agreed to insert "*basic physical exercise*" in this section as recommended in the Analysis of Submissions on Page 52 of the documentation.

### 20.2 Regarding Section 34(4)

i The meeting agreed that the wording of this section be replaced with the wording proposed in the memorandum from the Panel of Experts and Technical Committee 4 - "*Exclusionary Rule - Section 34(4) - Bill of Rights*" but that the word "*could*" should be deleted and "*would*" retained in the formulation.

ii The section would read as follows:

*"Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if it would render the trial unfair or otherwise be detrimental to the administration of justice."*

## 21. Section 35: Limitations

21.1 The NP and DP supported the section as reformulated in the Draft - 20 March 1996 ("*Blue Book*").

21.2 The ANC tabled the following proposal:

(1) *The rights in the Bill of Rights may be limited in terms of law of general application only to the extent that the limitation is justifiable in an open and democratic society based on human dignity, equality and freedom which must be determined taking into account -*

(i) *the nature of the right;*

(ii) *the importance of the purpose of the limitation;*

(iii) *the nature and extent of the limitation*

(iv) *whether the limitation is related to the purpose;*

(v) *whether the purpose of the limitation can reasonably be achieved through less restrictive means.*

- (2) *Except as provided in subsection (1) and (2) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.*

21.3 The ANC expressed the following concerns:

- i The word "must" in Section 35(2) of the Draft of 20 March was too rigid and they preferred to replace it with words similar to "having regard to".
- ii Section (2)(b) - limit the right as little as is reasonably possible implied a higher threshold than reasonableness.

21.4 The ANC stated that it was prepared to reconsider the inclusion of Section 35(2)(b) as formulated in the Draft of 20 March 1996 ("*Blue Book*") to replace (2)(v) of their proposal.

21.5 The meeting agreed that the matter should stand over for further discussion.

21.6 The meeting further agreed that consideration should be given by the TRT to the insertion in the beginning of the Bill of Rights of a brief statement which would explain that rights are limitable and how the Bill of Rights applies. It was agreed that this was not to include the physical relocation of Section 35.

## **22. Section 36: States of emergency**

22.1 The ANC stated that there were a number of issues which had to be discussed including:

- i The inclusion of a reference to an emergency committee in order to provide for the continued functioning of the National Assembly during a state of emergency;
- ii The list of non-derogable rights
- iii The concept of one single emergency clause dealing with all matters of emergency including a state of war or the proposal that Section 36(1) and (2) be placed elsewhere in the Constitution, under the Powers of the President.
- iv The provisions under Section 7 would apply to states of emergency other than war.
- v The ANC was strongly against the two thirds majority referred to in Section 36(2)(b).

22.2 The DP expressed concern about the moving of Section 36(1) and (2) to the

Powers of the President and the removal of the two thirds requirement in 36(2)(b).

22.3 The meeting noted that there was broad agreement that the list of non-derogable rights be reduced.

22.4 The meeting agreed to defer this section for further discussion.

**23. Section 38: Application**

23.1 The meeting agreed that the following issues were still outstanding:

- i The issue of "juristic persons"
- ii The use of the word "*applicable*" or "*appropriate*" which was still being considered by the Panel of Experts and the Technical Advisors.

23.2 The meeting agreed to defer discussion of this section until the equality clause was finalised.

**DRAFT REPORT 3**

**4 April 1996, 18h30**

**Status:** Draft report of meeting of  
Sub-Committee 1: Bill of Rights  
**Typed by:** Susan Rabinowitz  
**File Name:** 2-3.apr

**CONSTITUTIONAL ASSEMBLY**

**DRAFT REPORT**

**MULTI-LATERAL DISCUSSIONS**

**SUB-COMMITTEE ONE**

**BILL OF RIGHTS**

**WEDNESDAY 3 APRIL 1996**

**1. Section 8: Equality**

- 1.1 The meeting agreed to defer this section for further consideration by parties of the options suggested by the Technical Committee 4 and the Panel of Experts.

The meeting noted that para 1.2 (i) of the minutes of 2 April should be amended to read "The DP stated that they were not in agreement with the phrase '*measures designed to achieve*'..."

**2. Section 10: Life**

- 2.1 The meeting agreed to delete Options 2 and 3 and to include Option 1 as a provisional formulation but a footnote would be added stating that the NP, FF and ACDP wanted a provision on the death penalty included in the constitution, while the PAC wanted a provision that would expressly forbid it.<sup>1</sup>

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<sup>1</sup> Parties submitted the following wording for inclusion in the footnote:

**NP:** *"The NP remains firmly committed to securing a special constitutional limitation of this right which will provide for the death penalty following conviction for specified crimes laid down by Act of Parliament and after due process of law."*

**ACDP:** *"Everyone has the right to life from conception until natural death except by execution of a court sentence following conviction for a crime for which the death penalty is prescribed by an Act of Parliament."*

2.2 The ACDP further wanted the inclusion of a proviso that "*Everyone has the right to life from conception until natural death*".

**3. Section 11: Freedom and security of the person**

3.1 The meeting agreed to include the formulation included in the minutes of 2 April but noted that the NP reserved its position and recorded its opposition to Section 11(2)(b).

3.2 The proposed reformulation would therefore read as follows:

(1) *Everyone has the right to freedom and security of the person, including the right -*

(a) *not to be deprived of liberty arbitrarily or without just cause;*

(b) *not to be detained without trial;*

(c) *to be free from all forms of violence from both public and private sources;*

(d) *not to be tortured in any way; or*

(e) *not to be treated or punished in a cruel, inhuman or degrading way.*

(2) *Everyone has the right to bodily and psychological integrity, including the right -*

(a) *to make decisions concerning reproduction;*

(b) *to security in and control over their body;*

(c) *not to be subjected to medical or scientific experiments without their informed consent.*

**4. Section 13: Privacy**

4.1 The meeting agreed to this section. The ANC withdrew its proposal to insert a qualification in this section.

**5. Section 14: Freedom of religion, belief and opinion**

5.1 The meeting agreed to this section with the amendment that Section (14)(2)(a) should read "*the appropriate public authorities*". The NP withdrew its reservation to Section 14(3)(b). The ACDP, however, expressed concern that the section needed to express the right to proselytise and evangelise.

**6. Section 15: Freedom of expression**

6.1 The meeting agreed to Section 15(2)(c).

6.2 The meeting agreed to the inclusion in Chapter 7 of a provision along the lines of Option B2 as proposed by the Panel of Experts and Technical Committee 4 in their memorandum "*Free Expression and the Media (Section 15(3) of the Bill of Rights and Chapter 7)*" and the NP withdrew its proposal on the inclusion of a right in Section 15(3).

**7. Section 16: Assembly, demonstration and petition**

7.1 The meeting agreed to remove the brackets from "*to picket*" and noted that the NP reserved its position and would take the matter back to its principals.

**8. Section 20: Freedom of movement and residence**

8.1 The meeting agreed to this section .

**9. Section 21: Freedom of occupation**

9.1 The meeting agreed to this section.

**10. Section 22: Labour relations**

10.1 The meeting agreed to defer this section to allow for further discussions.

10.2 The meeting noted the proposal tabled by the ANC that the following provision be included in Section 22 to deal with the question of trade union security arrangements:

*"The provisions of the Bill of Rights do not prevent legislation recognising union security arrangements contained in collective agreements."*

10.3 The DP expressed the view that it was not necessary to include such a provision as this would be covered by the general limitations clause.

10.4 The NP expressed reservations about this proposal as there was legislation which would deal with this concern.

**11. Section 23: Environment**

11.1 The NP stated that it still preferred the words "*and quality of life*" to be retained in the formulation while the ANC position was that the range of provisions in the clause address "quality of life" and it was not necessary to include these words.

**12. Section 24: Property**

- 12.1 A proposed draft property clause was referred to a sub-committee of the meeting who would table this document for consideration at the CC Sub-Committee on Thursday 4 April.

**13. Section 25: Housing**

- 13.1 The meeting agreed to this section with the refinement of Section 25(3) which the ANC had suggested be divided into two sections.

**14. Section 28: Education**

- 14.1 The meeting agreed that this section was deferred, to allow for further discussions between the parties.

**15. Section 30: Language and culture**

- 15.1 The meeting agreed that the Minutes of 2 April did not quite accurately reflect the discussion but rather that it had been agreed that the TRT should reformulate this section along the lines proposed by the DP that the wording should read "*but no one exercising these rights may violate the constitutional rights of anyone else*" and that the NP would take the reformulation back to its principals. The NP stated that its original position was that it did not want a qualifier in the clause but would be prepared to look at the reformulation.

**16. Section 31: Access to information**

- 16.1 There was broad agreement with the formulation proposed in the Memorandum from the Panel of Experts and Technical Committee 4 entitled "*Access to information (S31) and Just Administrative Action (S32)*".
- 16.2 Parties would give further consideration as to whether the phrase [*and that is required for the exercise or protection of any rights*] would apply to both (a) and (b) or just to (b). The ANC proposed that the phrase apply to both (a) and (b). The DP again expressed the view that it did not think that the right to information held by the state should be qualified. The NP and ACDP position was that the brackets should be removed and the phrase included in 31(b).

Parties requested that the Technical Experts attempt to prepare a unanimous opinion on the application of the qualification for consideration by the parties.

- 16.3 The meeting agreed to insert a transitional clause as proposed in the memorandum but requested the TRT to consider reformulation of Paragraph 1 of the proposed Transitional Arrangements. The NP proposed wording

along the lines: *"Parliament must pass and the state must implement national legislation to give effect to this right within three years."*

The ANC expressed reservations about the transitional arrangements as suggested in the Memorandum and proposed that a clause similar to Section 32(3) be included in Section 31 as it was awkward to have this provision in the transitional arrangements.

**17. Section 32: Just administrative action**

17.1 The meeting agreed broadly to the proposed formulation in the Memorandum from the Panel of Experts and Technical Committee 4. The meeting noted the ANC's proposals that the words *"and is of general application"* should be inserted in Section 32(1) and the phrase *"whose rights have been adversely affected by"* be inserted in Section 32(2) and agreed that parties give further consideration to these proposals.

17.2 The meeting agreed to insert the phrase *"where appropriate,"* after *"or"* in 32(4)(a) and *"human dignity"* before *"freedom"* in Section 34(4)(c).

**18. Section 34: Arrested, detained and accused persons**

18.1 The meeting agreed to insert the right to *"exercise"* in Section 34(2)(e).

18.1 The meeting agreed that Section 34(4) should read as follows:

*"Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if it would render the trial unfair or otherwise be detrimental to the administration of justice."*

**19. Section 35: Limitations**

19.1 The meeting agreed to defer discussion to allow parties to give further consideration to the ANC proposal tabled at the meeting of 2 April.

19.2 The ANC proposal reads:

(1) *The rights in the Bill of Rights may be limited in terms of law of general application only to the extent that the limitation is justifiable in an open and democratic society based on human dignity, equality and freedom which must be determined taking into account -*

(i) *the nature of the right;*

(ii) *the importance of the purpose of the limitation;*

(iii) *the nature and extent of the limitation*

- (iv) *whether the limitation is related to the purpose;*
- (v) *whether the purpose of the limitation can reasonably be achieved through less restrictive means.*

(2) *Except as provided in subsection (1) and (2) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.*

19.3 The ANC stated that it was prepared to reconsider the replacement of Section 35(1)(v) of their proposal with the wording of Section 35(2)(b) as formulated in the Draft of 20 March 1996 which reads "*limit the right as little as is reasonably possible*".

19.4 The NP and DP preferred Section 35 to be retained as it is formulated in the Draft - 20 March 1996 ("*Blue Book*").

19.5 The meeting further agreed that consideration should be given by the TRT to the insertion in the beginning of the Bill of Rights of a brief statement which would explain that rights are limitable and how the Bill of Rights applies. It was agreed that this was not to include the physical relocation of Section 35.

## 20. Section 36: States of emergency

### 20.1 Regarding Section 36,

- i The ANC proposal to move sections 36(1) and (2) to the Powers of the President was not supported by the other parties and the ANC would take the matter back to its principals.
- ii Parties did not support the inclusion of a reference to an emergency committee but expressed concern that subsection (2) might need amendment, because if in recess the National Assembly would not meet before the 21 days had expired.
- iii Parties would give further consideration as to whether to accept a two thirds or simple majority for extending a state of emergency in 36(2). The FF proposed a compromise to allow a simple majority to approve the first extension, but to require a two-thirds majority for a second extension.
- iv Concern was expressed about retrospective crimes in Section 36(4).
- v Parties agreed to shorten the list of non-derogable rights in Section 36(4)(c) and that Technical Committee should prepare a list based on the Syracuse principles and along the lines suggested in the Memorandum from the Panel entitled "*Tentative Draft for discussion*"

*on states of emergency and comments arising from a multilateral*" contained in the "*Blue Book*".

- vi The meeting agreed in principle to the formulation of Section 36(6)(i) in the Memorandum from the Panel but that it should be redrafted to ensure that S36(6) and (7) do not apply to persons detained as a result of international armed conflict but that they must be accorded treatment no less favourable than those standards binding on the Republic under International Humanitarian Law and its Protocols.

## **22. Section 38: Application**

22.1 The meeting agreed that the following issues were still outstanding:

- i The issue of "juristic persons"
- ii The use of the word "*applicable*" or "*appropriate*" which was still being considered by the Panel of Experts and the Technical Advisors.

22.2 The meeting agreed to defer discussion of this section in order that parties could give further consideration to the Panel/Technical Committee 4 recommendation to insert a new section 38(3) on common law and horizontal application of rights. In addition it was agreed that this clause could not be finalised until the equality clause was finalised.

Box 6