

2/4/4/1/2/8

CONSTITUTIONAL ASSEMBLY

**THEME COMMITTEE 4
FUNDAMENTAL RIGHTS**

1 February 1995

Room M 46

DOCUMENTATION

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CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 4 MEETING

FUNDAMENTAL RIGHTS

Please note that a meeting of the above Group will be held as indicated below:

Date : Wednesday, 1 February 1995
Time : 14h00 - 18h30
Venue : Room M 46

AGENDA

1. Opening and Apologies
2. Report from previous meeting - Tuesday 31 January 1995.
3. Matters Arising: See Agenda Items Below
4. Work Programme: Block 1 - Outstanding Issues
5. Report of Block 1: Discussion
6. Closure

****** *Members are reminded to bring copies of the Constitution and Standing Rules for the Constitutional Assembly to the meeting.*

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WORK PROGRAMME OF THEME COMMITTEE 4

BLOCK NO	ISSUES TO BE DEALT WITH
1	<p><u>1: Constitutional Principle II</u></p> <p><u>Suggested framework for item 1</u></p> <ol style="list-style-type: none">1. General notes on Principle II clarifying phrases such as<ul style="list-style-type: none">- <u>Everyone</u> shall enjoy ... "(Whether the term "everyone" includes juristic persons, structured and unstructured groups, and organs or civil society, etc)- "all universally accepted fundamental rights, freedoms and civil liberties" (which rights etc., qualify as universally accepted fundamental rights)- "entrenched and justiciable provisions"- "due consideration to <i>inter alia</i> the fundamental rights contained in Chapter 3"2. General discussion of related Constitutional Principles such as I, III, V, IX, XI, XII, XIII(1), XXVIII, XXXIV3. Suggested approach as to the identification of rights not covered by CP II. <p><u>Relevant sections of Interim Constitution:</u> Preamble, Sections 3, 4, Chapter 3, Sections 98(2), 101(3), 115 - 123</p>

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2: Nature of Bill of Rights and application

3: Right to equality

Suggested framework for agenda item 3

- (a) Content of the right.
- (b) Equality as a human right of the individual and the question of juristic persons.
- (c) Prohibited grounds for discrimination.
- (d) Affirmative action.
- (e) Effects on customary law, including the rules and customs of religious and traditional communities.

Relevant Constitutional Principles: I, II, III, V, XI, XII, XIII(I)

Relevant sections of Interim Constitution: Preamble, Sections 3, 8, 10, 12, 17, 32, 33(4), 119 - 123

4: Right to human dignity

Content of right

See CP II and Sections 10,12, 25(1)(b)

5: Right to life

Suggested framework to agenda item 5

- (a) The right to life as a fundamental right.
- (b) Controversial issues such as -
 - capital punishment
 - abortion
 - euthanasia

See CP II and Section 9

6: Right to Privacy

Suggested framework for agenda item 6

- (a) Aspects of personal privacy that need to be protected constitutionally.

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7: Freedom of religion, belief and opinion**Suggested framework for agenda item 7**

- (a) Content of this right.
- (b) Separation between church and state.
- (c) Religious observances in state and state-aided constitutions such as schools, prisons and the security services.
- (d) Academic freedom.
- (e) The recognition of systems of law of communities professing to a particular religion.

See CP II, XII and Sections 8(2), 14, 32(c)

8: Freedom of expression**Suggested framework for agenda item 8**

- (a) Content of the right to freedom of speech and expression.
- (b) Press freedom.
- (c) State controlled media.
- (d) Private radio and television stations.
- (e) Hate propaganda or expression.

See CP II and Section 15

9: Freedom of association**Suggested framework for agenda item 9**

- (a) Content of the right
- (b) Specific issues such as private discrimination

See CP II, XII and XVIII and Section 17

10: Freedom of language and culture

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11: Administrative Justice**Suggested framework for agenda item 11**

- (a) Content of right
- (b) Horizontal application of right against private institutions

See CP II and Sections 7(2), 24

12: Right of access to information**Suggested framework for agenda item 12**

- (a) Content of right
- (b) Horizontal application of right against private institutions

See CP II, IX and Section 23

13: Right of access to courts**Suggested framework for agenda item 13**

- (a) Content of right
- (b) Question of "ouster" clauses

See CP II, VII and Sections 7(4), 22, 98, 101

14: Freedom and Security of the person**Suggested framework for agenda item 14**

- (a) Content of the right
- (b) Specific related questions such as detention without trial

See CP II

15: Right of detained, arrested and accused persons

See CP II and Section 25

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16: Servitude and forced labour

See CP II and Section 12

17: Freedom to engage in economic activity

See CP II and Section 26

18: Rights to property**Suggested framework for agenda item 18**

- (a) Individual and collective ownership
- (b) The land issue and restoration
- (c) Compensation for expropriation

See CP II and Sections 28, 121 - 123

19: Labour relations**Suggested framework for agenda item 19**

- (a) Aspects of labour relations that need be protected as constitutional rights.
- (b) Question of constitutionalising rights contained in labour statutes.

See CP II, XII, XXVIII and Sections 27, 33(5)

20: Environment

See CP II and section 29

6	<p><u>21: Citizens' rights</u></p> <p>Content of these rights</p> <p>CP I, II and Sections 5, 20</p> <p><u>22: Political rights</u></p> <p><u>Suggested framework for agenda item 22</u></p> <p>(a) Content of these rights</p> <p>(b) Qualifications on the right to vote</p> <p>(c) Political rights of non-citizens</p> <p>See CP II, VIII and Sections 6, 21</p> <p><u>23: Freedom of movement</u></p> <p>Content of right</p> <p>See CP II and Section 18</p> <p><u>24: Freedom of residence</u></p> <p>Content of right</p> <p>See CP II and Section 19</p> <p><u>25: Freedom of assembly, demonstration and petition</u></p> <p>Content of right</p> <p>See CP II and Section 16</p>
7	<p><u>26: Children's rights</u></p> <p>See CP II and Section 30</p> <p><u>27: Educational rights</u></p> <p>See CP Section 32</p>

8	<p><u>28: Other rights and directive principles</u></p> <p><u>29: Customary, indigenous and religious law</u></p> <p>See CP II, XIII and Sections 33(2) and (3), 35(3), 181</p> <p><u>30: Protection of linguistic, religious and cultural minorities</u></p> <p>See CP XII, XXXIV and Sections 3, 8(2), 14, 17, 31</p>
9	<p><u>31: Limitation of rights</u></p> <p>See CP II and Sections 5(2) and (3), 6, 7(2), 8(3), 14(2) and (3), 26(2), 28(2) and (3), 33</p> <p><u>32: Effect of Bill of Rights</u></p> <p><u>Suggested framework on agenda item 31</u></p> <p>Effect on</p> <ul style="list-style-type: none"> - existing statutes - common and customary law - previous actions <p>See CP II and XIII(I) and sections 7(2) and 33(2) and (3)</p> <p><u>33: States of emergency and suspension of rights</u></p> <p>See CP II and Section 34, 82(4)</p>
10	<p><u>34: Interpreting Bill of Rights</u></p> <p>See section 35</p> <p><u>35: Horizontal application of Bill of Rights or any particular rights</u></p> <p>See section 33(4)</p> <p><u>36: Class actions</u></p> <p>See sections 7</p>

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 4

FUNDAMENTAL RIGHTS

DRAFT DISCUSSION DOCUMENT FIRST REPORT OF THEME COMMITTEE 4 ON BLOCK 1 OF WORK PROGRAMME

Having agreed to the first block of the Theme Committee's Work Plan ie. Constitutional Principle II, the Committee has the pleasure of submitting the following report.

All parties agreed that Constitutional Principle II is the guiding Principle for activities of the Committee.

All parties made submissions in relation to Principle II and their approach to a Bill of Rights in the Constitution and these are attached.

As far as the specific wording on clarifying phrases in the Principle is concerned:

- 1a) *Everyone shall enjoy ... (Whether the term "everyone" includes juristic persons, structured and unstructured groups, and organs or civil society, etc)*

The ANC stated that "everyone" should refer only to human beings\ natural persons (See Application Clause 7). The ANC noted that the rights as set out in the Interim Constitution refer primarily to human beings.

Other parties inter alia the NP and DP reserved their position or stated that they believed "everyone" should include juristic persons.

It was agreed that a more detailed debate should be held on this issue and that parties should make submissions in this regard preparatory to the debate.

Vertical\ Horizontal application of a Bill of Rights was discussed.

The ACDP, ANC, DP and IFP supported a vertical and horizontal application of the Bill of Rights in principle.

The NP supported vertical application and noted they were not opposed to horizontal application in certain instances, at the same time noting they were concerned about the possible disruption of South Africa's Private Law system. The NP were not against the extension of the application of the Bill.

It was agreed by all parties that a note of caution be sounded as far as the application of horizontality to certain rights is concerned. It was agreed that further debate and expert input was required in relation to this.

1b) ***"all universally accepted fundamental rights, freedoms and civil liberties" (which rights etc., qualify as universally accepted fundamental rights)***

The ANC indicated that it could evaluate within the party what "universally accepted" human rights are.

The NP and IFP agreed with the ANC that a good starting point would be the Universal Declaration on Human Rights or other relevant Conventions on Human Rights.

The NP stated that this an area where expert opinion was required to guide the Committee and suggested that a workshop be held to give the topic a wide airing. No party was opposed to this, but the ANC and other parties indicated that experts were not necessary to evaluate what the rights were.

The DP believed that such a workshop could easily be accommodated within the schedule of ongoing meetings of the Theme Committee. Parties are to make submissions as to what they understand to be "universally accepted fundamental rights".

1c) ***"entrenched and justiciable provisions"***

The ANC suggested that other organs of enforcement be looked at and all parties agreed.

The NP strongly supported enforcement by a strong independent judiciary.

Parties agreed that the Committee should look at procedures to incorporate possible further additions to the Bill of Rights at a later stage (As suggested by the FF).

1d) ***"due consideration to inter alia the fundamental rights contained in Chapter 3"***

Most parties agreed that the new Constitution should include at least all the rights set out in Chapter 3 of the Interim Constitution.

The parties agreed that Chapter 3 did not include all the rights implied in Principle II.

The ANC noted that the rights in Chapter 3 were interim rights for an Interim Constitution and therefore did not cover the full ambit of fundamental rights.

The DP noted that the Chapter provides a good starting point and foundation for the Theme Committee's work.

The ACDP said it would not like to be bound by all the rights in Chapter 3.

Parties also committed themselves to look at the incorporation of further rights.