

2/4/4/1/1/3

CONSTITUTIONAL ASSEMBLY

**THEME COMMITTEE 4
FUNDAMENTAL RIGHTS**

31 January 1995

Room M 46

- WORK PROGRAMME PROPOSALS

DISCUSSION DOCUMENT: FIRST REVISION OF RECOMMENDED WORK PROGRAMME

BLOCK NO	PROPOSAL NO 1
1	1. Constitutional Principle II
2	2. Equality 3. Human dignity 4. Privacy 5. Freedom and Security of the person
3	6. Right to life 7. Religion, belief and opinion 8. Freedom of expression 9. Freedom of association 10. Language and culture
4	11. Freedom of movement 12. Freedom of residence 13. Freedom of assembly, demonstration and petition 14. Citizen's rights 15. Political rights
5	16. Servitude and forced labour 17. Economic activity 18. Property 19. Labour relations
6	20. Administrative Justice 21. Access to information 22. Access to courts 23. Detained, arrested and accused persons
7	24. Children 25. Education rights 26. Environment
8	27. Other rights and directive principles 28. Customary and indigenous law 29. Linguistic, religious and cultural minorities 30. Horizontal application of Bill of Rights 31. Class actions
9	32. Limitation of rights 33. States of emergency and suspension of rights
10	

BLOCK NO	PROPOSAL NO 2
1	1. Constitutional Principle II
2	2. Nature and Application of Bill of Rights 3. Chapter 3 and the Bill of Rights 4. Relationship of Bill of Rights to other Charters and Covenants 5. Equality
3	6. Political Rights
4	7. Economic Rights
5	8. Social and Solidarity Rights 9. Legal Recognition of Social and Economic Rights
6	10. Group\ Minority\ Collective Rights 11. Relationship between Bill of Rights and Customary\ Traditional\ Common\ Muslim or Other Religious Laws
7	12 Rights of detained and\ or arrested people 13 Administrative Justice 14 Effect of Bill of Rights on Existing Law
8	15. Suspension and Limitation of Rights 16. States of Emergency 17. Obligations and Duties of Citizen
9	
10	

BLOCK NO	Proposal 3
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, XXXIV 3. 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>

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

Agenda item 6: Right to Privacy**Suggested framework for agenda item 6**

- (a) Aspects of personal privacy that need to be protected constitutionally.
- (b) Controversial aspects
 - intelligence services and state security
 - access to private information required for the exercise of one's rights

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

Agenda item 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

Agenda item 10: Freedom of language and culture

Content of these rights

See CP II, XII and XIII and sections 3, 31 and 32(b) and (c)

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

Agenda item 15: Right of detained, arrested and accused persons

See CP II and Section 25

5

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>

BLOCK NO	PROPOSAL 4
1	1. Constitutional Principle II
2	2. Nature and Application of Bill of Rights 2.1 Horizontal Application of Rights
3	3. Chapter 3 and the Bill of Rights 4. Relationship of Bill of Rights to other Charters and Covenants 5. Equality
4	6. Political Rights 7. Group\ Minority\ Collective Rights
5	8. Relationship between Bill of Rights and Customary\ Traditional\ Common\ Muslim or Other Religious Laws
6	9. Economic Rights and Social Rights
7	
8	10. Rights of detained and\ or arrested people 11. Administrative Justice
9	12. Effect of Bill of Rights on Existing Law
10	13. Suspension and Limitation of Rights 14. States of Emergency 15. Obligations and Duties of Citizen