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FUNDAMENTAL RIGHTS

**TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS
DURING THE TRANSITION : SEVENTH REPORT :
NEGOTIATING COUNCIL MEETING : 30 JULY 1993**

Mr L Landers in the Chair.

Chairperson:

A warm word of welcome to the Technical Committee on Fundamental Rights During the Transition. Ladies and gentlemen, you will no doubt recall that the last time we discussed this Technical Committee's Report we gave them certain decisions on certain issues and clauses and then there were others that were outstanding or referred back to the Technical Committee, or the Ad Hoc Committee of the Council. Now I'm going to ask the Technical Committee whether they would like to first address the Council in terms of this Seventh Progress Report and then we will look at discussing those outstanding issues in the Report.

Prof du Plessis:

Thank you Chairperson. Very briefly the Seventh Report took into consideration the discussions on the Council at the previous meeting when the Sixth Report was discussed. It also takes into account submissions received by the parties since then and also certain proposals which were made by the Ad Hoc Committee appointed by the Planning Committee. I think the best way to proceed would be to go article by article and we can indicate where changes have occurred and where certain re-arrangements were affected. It would be easier than merely high-lighting the changes that were made.

[seems to be a part missing here as the tape is silent and then goes onto another discussion]

Chairperson:

Chief Nonkonyana, I take it you have a problem with that proposal. We can't hear you sir.

Chief Nonkonyana:

Sorry, Chairperson, I have no problem with that proposal but before we even discuss I want to raise a matter which is of fundamental importance to us concerning the Report. I just wanted to come immediately after he has spoken.

Chairperson we are very pleased to hear from the Technical Committee that in drafting the Seventh Report they had regard to the debate that took place when we were discussing the Sixth Report and of course the submissions that were submitted. I would like to remind this House Chairperson, that when the Sixth Report was discussed, we the Traditional Leaders raised the point of Fundamental Rights entrenched in terms of our tradition and culture and that was noted in the minutes which was approved subsequently by this Council and I must say, Chairperson, notwithstanding the remarks from the Technical Committee no regard

whatsoever having read through this Report, did they have any regard to what was stated even in this Council, not for the first time, though, and also they did not consider at all our comments which from a document I have before me which is dated the

Chairperson:

Chief Nonkonyana, can I just interrupt you. I think you are referring to a matter that is contained under Section 30 on page 12 of the Seventh Progress Report. That being the case I am not intending in any way curtailing or pre-empting what you are trying to say but would it be appropriate for you to raise it when we get to that particular stage of the Seventh Progress Report.

Chief Nonkonyana:

Sir, with due respect I think you are referring me to 30(1) to 30(2). Now

Mr Cronje:

On a point of order wouldn't it be more appropriate fully accepting the seriousness with which it is regarded to afford the Chairperson to go through the Report and then those things addressed or not addressed would be more properly discussed then because what we are having is a discussion on the fundamental issues then in the Report there may be others who may have serious problems with it. Would it not be better if we allowed them to present the Report and then discuss what is in it, or is not in it, and what should have been in it.... to table their Report.

Chairperson:

[seems to be a bit missing here in the tape] because that's my problem Chief.

Chief Nonkonyana:

No Chairperson, I accept that - why I deem it proper that I should actually address the Council at this stage is because from the Technical Committee they are saying in this Report they have taken consideration of our submissions, and with due respect nothing, they did not even consider anything which is contained in our comment. So if therefore the Technical Committee was giving us a report saying we had regard to the comments from the Traditional Leaders we don't see - they must tell us, "We don't agree with that", I would be happy, what I'm not happy about, Chairperson, is the fact that I raised this matter which is of fundamental concern to the Traditional communities of this part of the world and it is so central to us Chairperson that we need to be assured by the Technical Committee that they have considered the matter. So in view of that I wanted Chairperson to give me five minutes to address the Council as to why we are feeling strongly that this issue must be considered by this Council, because seemingly the Technical Committee has snubbed us as far as we are concerned, has not considered at all our views in this regard. So the only thing that we can appeal to is this Council to hear us.

Chairperson:

All right, I'm going to follow the procedure that we agreed upon. Prof du Plessis perhaps in your introductory remarks you could make some response to Chief Nonkonyana or you could raise it at the appropriate stage in your Seventh Progress Report.

Prof du Plessis:

Thank you, Chairperson. May I just state right at the outset as a fact that we did receive the submission referred to, it was taken into account, but the appropriate place as you correctly pointed out to deal with the issue would be when we deal with clause 30 and there we could explain how it was taken into account and how clause 30 addresses the concerns of the people who made the submission.

You will see Chairperson that clause 1 has been changed, we took certain provisions out of clause 1 and we formulated, actually we didn't formulate a new clause but we moved them to the end of the Chapter to clause 30, the reason for that being that provisions previously contained in clause 1 mainly dealt with the application or enforcement of the Chapter whereas there were also certain provisions included which dealt with the interpretation and we thought for systematic reasons it would be better to separate the two issues to begin with the application and then at the end of the Chapter to include a clause on the interpretation of the Chapter. So basically the clause 1 you have before you at the moment says less than the clause that was in the previous Report, clause 1 of the previous Report. Now in that particular clause there are two significant changes - the first one 1(1)(a) where it says "bind the legislative, executive" and then the words were inserted "and where appropriate the judicial branches of government" Now that ties in with the proposal we make in 1(1)(b) "bind where just and equitable other bodies or persons". Now you would recall, Chairperson that this has to do with the horizontal application of the Chapter. In the previous Report we proposed, but it was very tentatively, that the Chapter should operate vertically only. We have received submissions from parties to the effect that that is not good enough and there were discussions to that effect from the Council as well, and after deliberation we decided to propose a limited horizontal application of the Chapter and the reason for doing so is set out in the comment to 1(1)(b). The other option we had was to identify certain rights in the Chapter for horizontal application and thereby leaving the others for vertical application too, but that is very difficult at this stage for us, for anybody to predict that certain rights, there will be no need for certain rights to operate horizontally and we therefore took a cautious middle road leaving it open like in most other jurisdictions for the courts to develop the whole notion and develop jurisprudence of horizontal application. I think there is nothing else in this particular clause which changed fundamentally.

Chairperson:

Tony Leon, DP, followed by Chief Nonkonyana and Mr Sisane and then Mr Penwell Maduna.

Mr Leon:

Thank you Mr Chairman. May I preface my remarks here and if the Prof du Plessis is an exponent or knowledgeable expert on statutory interpretation will he please accept that this applies to all future comments as well which I'm going to make. I'm going to address a specific criticism of this clause but I do not wish the Technical Committee to take it as a reference to themselves personally, but to the problems which are attendant on a document of this kind, and I think Prof du Plessis has highlighted one of them and I would like to address it. The Democratic Party among others, was very insistent that a Bill of Rights generally should apply horizontally in other words, as between citizen and citizen, and

corporation and citizen, and not just between the citizen and the State which would be the vertical application because otherwise you have a very anorexic document. However, sir, with due respect the way that this has been formulated now I think bristles with problems and implications of an unforeseen kind which I would just like to give one example of. What this Technical Committee I don't think have done and perhaps the instructions were not clear in this regard and they need to be reformulated, was to consider that once you making this Bill horizontal as well as vertical it is going to actually impact on other clauses which have been drafted when the Bill was not intended to be horizontal and simply to be vertical and can I give you one example of that sir. If you turn to clause 17 using, bearing in mind that it is now going to apply horizontally and vertically - it says here "Every person shall have the right of access to all information necessary for the protection or exercise of his or her rights." Now we are in general terms giving that now horizontal application. If the Bill was first to be drawn up that it was going to be applied vertically and where applicable, horizontally, you would obviously have limited that in specific terms, for example you will have said "Every citizen shall have the right to obtain from the State from any organs of State information concerning one, two and three." But here its completely open-ended and what are the qualifications on that sir. Well the qualifications are that it must be just and equitable. I don't know what that means sir as a qualification, is it vacuous, does it have a precise meaning in law, will it act as a limitation because the fundamental limitations sir on this whole Bill of Rights, which is not very great, is that all the rights here may be limited provided that the limitation is consonant with the free, democratic society founded or governed by the principle of equality. Now let me take this example one step further, once you've got those are the only limitations what is to prevent a shareholder from saying that he wants the confidential minutes of the directors meetings in order to properly exercise his rights as a citizen who is entitled to equal protection of the laws and I believe sir that once you bring in horizontality, which in the abstract is a very good thing and something that my party is insistent upon, then you've got to recast your whole Bill of Rights in that light, you've got to look at every clause in this Bill of Rights and say what will the impact of this be, or you've got to have a limitation which is going to be far more precise than the one which is offered here.

Chairperson:

The Technical Committee can, is free to respond immediately after a speaker has made a submission or you can wait until you've heard the others. Its entirely in your hands Professor.

Prof du Plessis:

You see, Mr Chairman, perhaps it would be best to respond to that immediately and I'll do as briefly as possible - the problem with that particular right Mr Leon referred to is that once we say that right operates vertically only, it operates vertically only and there may be instances where there is a need for this right to operate horizontally. For instance there are many mighty organisations in our society which are not statals which go around collecting information about people and very often far reaching information for instance credit agencies, and as we have formulated 1(1)(b) at the moment a person can bring an action to court to have access to that sort of information and it will be left to the court to decide whether in view of all the provisions of the Bill of Rights and in view of the nature of the right

protected and in view of the needs of the particular situation, it would be just and equitable to have access to that information whereby the Bill would then operate horizontally. So the point I made right at the beginning - it should be left to the courts to develop the jurisprudence with respect to the horizontal application of the Bill of Rights. There is the other way Mr Leon is suggesting we can identify certain rights and say that these operate horizontally or can formulate them in such a way that they operate horizontally and others vertically only. The problem is that it is a very mechanical way of dealing with the issue. We thought, specially given the history of this Chapter that it is to operate during the transition that we don't want to cast things in a final mould forever and ever - there should be the opportunity for the body for the competent authority, the designated authority interpreting this Bill to develop a jurisprudence in this regard. That is what has happened in most other jurisdictions where the whole notion of horizontal application develop. There are very few Bills of Rights which provide expressly for an unqualified horizontal application and the jurisprudence in that regard is being developed by the bodies interpreting and applying the provisions of the Bill of Rights.

Mr Leon:

Mr Chairman if I could respond briefly, I don't want to get bogged down to debate on this but I think Professor du Plessis has now raised another issue which to my party goes to the heart of the Bill of Rights as it is now drawn, and that is Professor du Plessis' explanation be perfectly acceptable were it not for the fact that the Bill of Rights as it is now formulated has taken its own view sir, of what the nature of the democratic South Africa is going to be. It says it is going to be a free, open and democratic society based on the principle of equality. So you are actually limiting with respect, the judicial interpretation of any of these clauses because they are going to have to be in accord with that particular prescription and that appears in no less than three or four absolutely fundamental and crucial places in this Bill. Now that, sir is an ideological perspective, it might or it might not be the correct one, I don't know, I wouldn't prescribe what the form of democracy should be in the future South Africa, but you have decided sir, that its going to be based on equality to the exclusion, or as the super-imposed virtue of society where the liberty and others are not more important is not going to be determined by the courts, its going to be determined by this document, because this document is going to bind the courts in their interpretation, and that sir is the problem, with great respect, not just of this clause but of many other clauses in this Bill.

Prof. du Plessis:

Chairperson, Mr Leon is raising another issue now - its a formula on which this Council has agreed - free, open, democratic society based on the principle of equality. His party did suggest the inclusion of the term "liberty" together with "equality" but we deal with this and we state in a comment to clause 30, subclause (1), comment there we state our reason why we havn't included that in the formula, but for the rest that formula has been agreed on by the Council and its the first time this kind of objection is being raised to it.

Mr Leon:

Sorry, with respect, I disagree sir, because not only did the Democratic Party make written submissions in that regard, my colleague, Mr Gibson, actually made those verbally and I understand, I wasn't here, and repeatedly in very strenuous terms, and the effect of Mr

Gibson's qualification which I understand was also accepted by this Council last week. The effect of Mr Gibson's qualification that "equality and liberty" is identified by you because you say in your response "the concept could moreover create tension between the concepts of liberty and equality" and that is precisely sir what we wished so that the courts could then evaluate for themselves which of these concepts was to prevail in a specific circumstance. But sir, with respect, the way the Bill is now formulated it has been decided that equality is going to trump all other principles and rights in this Bill.

Mrs Jajula:
Mr Chairperson on a point of order.

Chairperson:
Mrs Jajula.

Mrs Jajula:
Chairperson, on a point of order I don't think this Council is here to listen to a dialogue between the DP and the Technical Committee - please proceed.

Chairperson:
Mrs Jajula, it is a fundamental issue, just as the debate that took place earlier in the Council on the question of Constitutions for SPRs was a fundamental issue, this too is a fundamental issue - no I understand what you are saying and perhaps Mr Leon should direct his remarks and comments through the Chair but it is not, I can't curtail the debate it is an important one and I'm not going to curtail.

Mrs Jajula:
Chairperson it is not the debate to be curtailed but should conduct it in the right position.

Chairperson:
All right, accepted. Any further comments, Mr Leon, Professor du Plessis.

Prof du Plessis:
Mr Chairperson may I just say we didn't ignore that we regarded it as a suggestion coming from the Council, it was once again raised in the DP's proposal. Our problem goes further than merely the creation of tension between liberty and equality but the particular way in which it would be created if we add the word "liberty" there. The formula we use is a free open and democratic society, now that freedom and openness and democracy already presupposes liberty - it includes liberty, but it does not necessarily include the notion of equality. Therefore the particular reference to equality. If we have these notions referring to liberty and we add liberty, then Mr Leon will know there is a rule of interpretation saying every word must be afforded its own meaning. Now then the question is going to arise - does that liberty refer to there, does that mean something different from free open and democratic, and that is going to create all kinds of interpretation problems. Its either retaining this formula "Free open and democratic society based on the principle of equality" or "in a society based on the principles of liberty and equality". You cant have them both. The reason why we preferred "free, open and democratic society" is because it is a formula

used in other Bills of Rights as well, there is a whole body of jurisprudence on that and if we use this formula in our own Chapter here then reference can be made to that jurisprudence as well.

Chairperson:

Mr Leon, I'm going to allow you this last opportunity, and when I say this I am not curtailing debate - there are other speakers on my list, and I 'd also like to afford them opportunity which doesn't preclude you from coming back into it.

Mr Leon:

Mr Chairperson, I'm not attempting to monopolise the debate, I do regard this Bill as in a sense being even more fundamental than the Constitution because its actually going to govern every single regulation in the future society we are trying to start fashioning here but may I through you Mr Chairman, actually respond to that. You see in our view "free open and democratic" is the correct way in interpreting any Bill of Rights in fact its in the Democratic Party's Bill of Rights proposal which we in turn borrowed from the Canadian Constitution, but its not just that there are three or four qualifying adjectives here because the wording is "free open and democratic based on the principle of equality" and sir, I have taken some legal advice last night and I'm convinced by two advocates at least and its perhaps a matter of discussion, that this in fact its then equality which governs free open and democratic and I think it is equally true to say, although Professor du Plessis, Mr Chairman doesn't accept this, that if you don't need to put in the word "liberty" you don't need to put in the word "equal" because "free open and democratic" is capable of both interpretations.

Chairperson:

Chief Nonkonyana.

Chief Nonkonyana:

Thank you Chairperson, honourable members of this Council. We are having a problem with accepting the application clause (1) in the light of the fact that the Technical Committee is ignoring and has in fact ignored our plea that a provision should be made for cultural rights that are entrenched in the traditional communities. Chairperson, we need to state that as far as we are concerned we know that these fundamental human rights are the rights that should be entrenched during the transition, that is the main objective of theirs. They are saying in 1(1)(a) that at all levels of government these fundamental human rights would be applicable. Chairperson, with respect, the whole set of these fundamental human rights is based on the western culture and nothing was taken into consideration about the culture of the people in this part of the world, and we find it extremely difficult to impose a western culture over and above our own culture in this part of the world. We are of the view therefore Chairperson, that as far as we are concerned, the whole set of fundamental human rights we cannot agree that they should be applicable at all levels because it has not taken into consideration the cultural rights of the people. Chairperson, I can just cite one thing which I quoted and I submitted to the Technical Committee, that at this stage we are having a problem in traditional communities, for instance I have provided them with a cutting from a newspaper in the Cape Province where there is a clash presently between the community and church groupings on the question of the application of the cultural rights of the people

and 200 people who were arrested and some people died. We are quoting this Chairperson to state one thing, that it is fundamental, the question of custom to the people, the question of a culture to the people of this country is so fundamental it cannot be ignored. There is an urban bias here, Chairperson, in that everything that is pro-western type of culture, then it is the thing that

[end of the tape and the start of a new one - some part of this debate therefore missing]

Prof du Plessis:

..... these rights shall not be denied it is subject though to the provision of clause 30, subclause (2), which says "save as provided for in this Chapter no rule of the common law custom or legislation shall limit any right entrenched in this Chapter". That means if there's a conflict between any rule of common law custom or legislation then the provisions of the Bill of Rights will take precedence in those instances only, so if the Chief's concern is that certain people should, on account of their culture not be subject to the provisions of the Bill of Rights, then we will have to attend to it and the Council will have to attend to it, but we must refer you to the Constitutional principles which were adopted by the Negotiating Forum and I think its Constitutional Principle 2(12) in particular provides for customary law to be subject to the provisions of the Bill of Rights. I can read the formulation here if you want me to Mr Chairman, if that would facilitate a discussion.

Chairperson:

Thank you Professor. Do you want to respond to that?

Chief Nonkonyana:

Yes, Chairperson, am I out of order?

Chairperson:

Mrs Manzini, a point of order.

Mrs Manzini:

Perhaps I'm lost but I wanted to be guided by the Chairperson as to how we are going to discuss this document because I see us jumping from one point to the other. For instance I thought if we go clause by clause with this all the issues will be handled. We are discussing horizontal and vertical application of the Bill and then we went to culture and to tradition and I think I find it very much confusing as to exactly how we are discussing this document.

Chief Nonkonyana:

Thank you Chairperson I find it surprising that the delegate from the ANC finds it more confusing when the Traditional Leaders are actually raising that matter under 1(1)(a) when why that point was not raised when Leon when he was discussing this question. He even touched on Equality on 2. There was, it was not suggested that he was out of order. [voices - cant hear what they say] Yes exactly. So I too have a lawyer he's on my side. So what you are saying Chairperson here is that I would like to respond therefore, Chairperson to the honourable members of the Technical Committee. Clause 30(2) is clear and it says that "no

rule or custom shall limit any right entrenched in this Chapter" and in the same vein 2(3) says we can, we recognise custom. It says "the entrenchment of the rights included in this Chapter shall not be construed as denying the existence of any rights or freedoms recognised and conferred by custom" Chairperson, these clauses in my respectful submission are contradictory. They are most destructive as I am concerned, it is very clear, again it reminds me Chairperson when I remarked in this Council, that we are given a positive as Traditional Leaders and immediately thereafter a negative, which comes to zero and to me, Chairperson, I think it insults our understanding. What we are saying Chairperson is that there are, when I say that people must not, cultural people must not be - Chairperson I'm having a problem.

Chairperson:

I'm having a problem with the conversations, the caucuses, and lobbying that's taking place, in particular on my right hand side.

Chief Nonkonyana:

Thank you Chairperson, for your protection. Our problem is that, it lies in the fact that we are saying that in these rights which are entrenched no rights which are entrenched in our Constitution are provided for here. Only the rights recognised in terms of the Western Roman Dutch Law legal system. We are saying even if we agreed in this Council that the Roman Dutch Law as well as the Indigenous Law would be equal, then the fundamental human rights entrenched in terms of both systems of law, should be provided for - that's all. We are objecting therefore, Chairperson, to say that only one set of fundamental human rights should be applicable to all, even ourselves. We are not suggesting for a moment that no fundamental human rights should not be applicable in our culture, no, what we understand, we want to understand by saying that, we had agreed, Mr Chairperson, there must be universally accepted human rights. It means in our understanding that the rights of the people in Ulundi, the rights of the people in the Eastern Cape, the rights of the people in the Chris Hani Squatter Camp, should in other words, if that right is universal in that sense then it must be protected, but if that right exists only in Ulundi and not existing in the squatter camps then it is not universal, and as such, my respectful submission should not be protected. So what I am trying to say therefore, Chairperson, those rights that are here are those rights that are applicable I know, in towns, in townships they are accepted, but they are not accepted in our traditional communities at all. I'm having a problem therefore - are they universal? I'm saying no, they're not universal. So to cater for my concern therefore, I say I suggest to the Council that cater for those rights that I would love to be catered for amongst the fundamental human rights, if you regard the fundamental human rights in that regard. Thank you Chairperson.

Mr Wessels:

Mr Chairman, can I address you on a point of order please? I believe what we've been listening to is very important and I don't want to stifle the debate in any manner, but I would suggest the following route. I am of the opinion that we have only one hour at our disposal for this debate today, we've been discussing this matter now for approximately 45 minutes. I believe it would be the correct way if we ask the Technical Committee just to high-light and tell us with one sweep what they had done since we have the previous debate because I see at the end of this Report it is suggested that this Report be referred to very important

people for their comment. I'm referring to the Chief Judges, the Judges President etc. Associations of Law, and then we start at the time at our disposal with a complete picture of what they have achieved because we are also aware of the fact that a special committee had been formed representing various points of view as it was reflected during the previous debate and I think we're losing touch on the one hand of the work the Technical Committee had done, on the other hand of the work that particular sub-committee had done and the way the debates continue now, we may have to wait another couple of days before we can submit this Report to the important persons I have indicated, and then we could schedule and have a proper debate on the very important issues that have been mentioned here.

Chairperson:

I take the point you have made Mr Wessels but it would seem that given what we've heard from Mr Leon and the DP and given what we've just heard from Chief Nonkonyana, that this Seventh Progress Report tabled by this Technical Committee has raised the temperatures somewhat. Now we have also allocated to ourselves just two hours and I think certain individuals in the Council are afraid that the points they want to raise in this Report we may not get to within that two hours. Now we've already agreed my assistant Chair and the Administration that should we not complete discussion of this Report today, it would probably number one on Substantive Issues for Monday's Agenda. That depends of course on whether the Technical Committee will be available on Monday but I'm going to make a special appeal to delegates to please let us go through the Report in the proper manner as we normally go through all reports. It is quite true as was pointed out to me by Ms Manzini that we haven't properly discussed Item 1 of the Report and we have already jumped to item 30 on more than two or three occasions. Fine, we've had to but it also does not make for proper discussion structure of the Report. I'm not in any way apportioning blame to the Technical Committee in this regard, perhaps it is necessary to do so because the one impacts on the other.

Mr Wessels:

Mr Chairman could I just, what has happened with great respect, we've had a preface or a preamble to Mr Leon's submissions to follow and we've listened to a concern of Chief Nonkonyana which is a fundamental one and as we sit here we have the Technical Committee's Report before us, but we've had nothing from the Technical Committee except responses to these very important matters raised. All I'm asking is that the Technical Committee maybe just run through tell us what they have achieved or not achieved and let's return to Clause 1.

Chairperson:

Fine. Mr Gordhan, I was going to rule that that is the way we're going to follow it.

Mr Gordhan:

Chairperson, then further that if a new, and the last occasion we identified four areas of differences and we referred that to the Ad Hoc Committee who were able to help us to resolve those differences as a result of which the Technical Committee was able to attend to reformulating those sections. If there are acute differences once again lets identify them, lets

refer them to an appropriate structure without taking up too much time here because debate here is not necessarily going to solve their problem, and perhaps that guideline might help you Mr Chairperson.

Chairperson:

Thank you very much it does help me because what we are having here is really a debate between delegates and members of the Technical Committee, which is not healthy because that is not what the Technical Committee are here for. Mr Leon. Is it on the point of order?

Mr Leon:

Yes, I'm very sympathetic to what Mr Wessels and Mr Gordhan have said and I've no problem but I must point out a fundamental problem we have. The Democratic Party and no doubt many other parties, have made detailed submissions to each one of the Reports of the Technical Committee. Now I would, and I don't want to jump clauses, but every time we've made many of the submissions we've made have not been met, and I'm not saying they have to be and we ultimately come back to some point. Now where is that point going to be resolved, sir? Is it going to be resolved here or is it going to go back to the Technical Committee and do we just repeat our objections, our problems, our qualifications, our amendments and the Technical Committee comes back and says we can't deal with it because we don't agree that administrative decisions should be governed by the concept of reasonableness to give you one example, which we regard as crucial to the administration of the entire new state of South Africa, does it not get resolved because I don't know sir how many times we, in the DP now, and no doubt other parties who've made detailed submissions, actually have to respond to the same points because they cannot be resolved by the Technical Committee as such in terms of the mandate that the Technical Committee exercises.

Chairperson:

Mr Beyers

Mr Beyers:

Could I, Chairman, say that if Mr Leon was here two days ago he would have heard the same being said in the Technical Committee on Constitutional Matters, so officially I say to the Democratic Party welcome to the club.

Mr Gordhan:

Of course creating clubs doesn't quite help Mr Chairperson if I might intervene. I think the proposal that I've put forward actually takes care of Mr Leon's concerns, that it is not the Technical Committee that will look at the political issues that arise out of the differences its the Ad Hoc Committee structured in an appropriate way that will look into them. So I think, lets identify those differences if there are any and lets have the debate there in the committee and have solutions.

**TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS
DURING THE TRANSITION**

1. Aspects of Reports Agreed Upon in the Negotiating Council:

The inclusion of the following rights and freedoms have been agreed upon:

- 1.1 Equality
- 1.2 Human dignity
- 1.3 Liberty and security of the person
- 1.4 Privacy
- 1.5 Religion and belief
- 1.6 Freedom of expression
- 1.7 Assembly, demonstrations and petitions
- 1.8 Freedom of association
- 1.9 Freedom of movement
- 1.10 Citizens rights
- 1.11 Political rights
- 1.12 Access to court
- 1.13 Access to information
- 1.14 Administrative decisions
- 1.15 Detained, arrested and accused persons
- 1.16 Eviction
- 1.17 Environment
- 1.18 Children

2. Aspects of Reports Not Agreed Upon in the Negotiating Council:

2.1 Must decide on the following rights and freedoms:

- 2.1.1 Life
- 2.1.2 Servitude and forced labour
- 2.1.3 Residence
- 2.1.4 Economic Activity
- 2.1.5 Labour relations
- 2.1.6 Property
- 2.1.7 Language and culture
- 2.1.8 Education

2.2 Still to agree on the principles embodied in:

- 2.2.1 Enforcement

- 2.2.2 Limitation
- 2.2.3 Suspension

2.3 None of the formulations have been approved as yet.

3. Those Issues Referred Back for Debate:

3.1 No issues have been explicitly referred back to date but it would appear that three issues especially are controversial, namely

3.1.1 Property

3.1.2 Economic activity

3.1.3 Life

3.2 Still to be debated:

3.2.1 Pension rights

3.2.2 Preservance of the religious character and medium of instruction of education institutions.

4. Aspects Relating to Substantive Issues in the Reports of Other Technical Committees:

4.1 The inclusion of a provision to provide for the diversity of expression and opinion in the public media. This will have to be referred to the Technical Committee on Media.

4.2 The co-ordination of the political rights with provisions proposed by the Electoral Committee.

4.3 Mechanisms for the enforcement of entrenched rights and freedoms. This overlaps with the work of the Constitutional Issues committee.

These issues have been or will be mentioned in the Reports of the Technical Committee on Fundamental Rights but have not been formally noticed by the Negotiating Council.

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- 1.16 Eviction
- 1.17 Environment
- 1.18 Children

2. Aspects of Reports Not Agreed Upon in the Negotiating Council:

2.1 Must decide on the following rights and freedoms:

- 2.1.1 Life
- 2.1.2 Servitude and forced labour
- 2.1.3 Residence
- 2.1.4 Economic Activity
- 2.1.5 Labour relations
- 2.1.6 Property
- 2.1.7 Language and culture
- 2.1.8 Education

2.2 Still to agree on the principles embodied in:

- 2.2.1 Enforcement

- 2.2.2 Limitation
- 2.2.3 Suspension

2.3 None of the formulations have been approved as yet.

3. Those Issues Referred Back for Debate:

3.1 No issues have been explicitly referred back to date but it would appear that three issues especially are controversial, namely

3.1.1 Property

3.1.2 Economic activity

3.1.3 Life

3.2 Still to be debated:

3.2.1 Pension rights

3.2.2 Preservance of the religious character and medium of instruction of education institutions.

4. Aspects Relating to Substantive Issues in the Reports of Other Technical Committees:

4.1 The inclusion of a provision to provide for the diversity of expression and opinion in the public media. This will have to be referred to the Technical Committee on Media.

4.2 The co-ordination of the political rights with provisions proposed by the Electoral Committee.

4.3 Mechanisms for the enforcement of entrenched rights and freedoms. This overlaps with the work of the Constitutional Issues committee.

These issues have been or will be mentioned in the Reports of the Technical Committee on Fundamental Rights but have not been formally noticed by the Negotiating Council.

**TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS
DURING THE TRANSITION**

1. Aspects of Reports Agreed Upon in the Negotiating Council:

The inclusion of the following rights and freedoms have been agreed upon:

- 1.1 Equality
- 1.2 Human dignity
- 1.3 Liberty and security of the person
- 1.4 Privacy
- 1.5 Religion and belief
- 1.6 Freedom of expression
- 1.7 Assembly, demonstrations and petitions
- 1.8 Freedom of association
- 1.9 Freedom of movement
- 1.10 Citizens rights
- 1.11 Political rights
- 1.12 Access to court
- 1.13 Access to information
- 1.14 Administrative decisions
- 1.15 Detained, arrested and accused persons
- 1.16 Eviction
- 1.17 Environment
- 1.18 Children

2. Aspects of Reports Not Agreed Upon in the Negotiating Council:

2.1 Must decide on the following rights and freedoms:

- 2.1.1 Life
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These issues have been or will be mentioned in the Reports of the Technical Committee on Fundamental Rights but have not been formally noticed by the Negotiating Council.

**TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS
DURING THE TRANSITION**

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4.3 Mechanisms for the enforcement of entrenched rights and freedoms. This overlaps with the work of the Constitutional Issues committee.

These issues have been or will be mentioned in the Reports of the Technical Committee on Fundamental Rights but have not been formally noticed by the Negotiating Council.

**TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS
DURING THE TRANSITION**

1. Aspects of Reports Agreed Upon in the Negotiating Council:

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2.1 Must decide on the following rights and freedoms:

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These issues have been or will be mentioned in the Reports of the Technical Committee on Fundamental Rights but have not been formally noticed by the Negotiating Council.

**TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS
DURING THE TRANSITION**

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These issues have been or will be mentioned in the Reports of the Technical Committee on Fundamental Rights but have not been formally noticed by the Negotiating Council.

**TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS
DURING THE TRANSITION**

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2.2 Still to agree on the principles embodied in:

- 2.2.1 Enforcement

- 2.2.2 Limitation
- 2.2.3 Suspension

2.3 None of the formulations have been approved as yet.

3. Those Issues Referred Back for Debate:

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4.2 The co-ordination of the political rights with provisions proposed by the Electoral Committee.

4.3 Mechanisms for the enforcement of entrenched rights and freedoms. This overlaps with the work of the Constitutional Issues committee.

These issues have been or will be mentioned in the Reports of the Technical Committee on Fundamental Rights but have not been formally noticed by the Negotiating Council.

PLANNING COMMITTEE 24 MAY 1993

5.1.4 Technical Committee on Fundamental Human Rights During the Transition:

5.1.4.1 After discussion it was agreed that there is a need to clarify the definition of "Fundamental Human Rights during the Transition". It was suggested that the Chairperson of the Negotiating Council guide discussion in the meeting with a view to achieving this clarity.

5.1.4.2 It was agreed to put forward the following recommendations of the Technical Committee to the meeting of the Negotiating Council:

- * Item 5.1 of the Technical Committee Report refers : That comments are invited from the Negotiating Council on the various rights and freedoms in the first and second categories with a view to give the Technical Committee some feedback on their proposals;
- * Item 5.2 of the Technical Committee Report refers : That the Negotiating Council accepts the principle of justiciability and that discussion be invited with regard to the relevant institution;
- * Item 5.3 of the Technical Committee Report refers : That the Technical Committee be instructed to submit formulations;
- * Item 5.4 of the Technical Committee Report refers : That discussion on the third category be continued.

PLANNING COMMITTEE 25 MAY 1993

5.3 Technical Committee on Fundamental Human Rights During the Transition:

5.3.1 It was agreed that the Sub-Committee convey the following to the Technical Committee on behalf of the Planning Committee:

- * That the Technical Committee provide draft criteria for assessing human rights during the transition and indicate what criteria were used. This report should be completed for submission to the meeting of the Negotiating Council on Friday

28 May 1993;

- * Item 5.3 of the Technical Committee's Second Report refers :
That the Technical Committee be instructed to submit formulations;
- * Item 5.4 of the Technical Committee's Second Report refers :
That discussion on the third category be continued.

PLANNING COMMITTEE 10 JUNE 1993

5.1.3 Technical Committee on Fundamental Human Rights During the Transition:

It was noted that although the report from the Technical Committee would be distributed at the meeting of the Negotiating Council in the afternoon, the report itself would not be discussed in that meeting but at the next meeting of the Negotiating Council on 3 June 1993.

PLANNING COMMITTEE 3 JUNE 1993

9.3 Proposed Amendments to the Agenda:

Due to time constraints, it was agreed to recommend to the Negotiating Council that the Reports of the Technical Committee on the Independent Election Commission and the Independent Media Commission be tabled, accepted in principle, the TEC and its Sub-Councils be dealt with at the next meeting of the Negotiating Council and the Reports from the Technical Committees on the Amendment or Repeal of Legislation Impeding Free Political Activity and Discriminatory Legislation and Fundamental Human Rights during the Transition be tabled only.

Addendum B

This Negotiating Council meeting on Thursday 3 June 1993 at the World Trade Centre:

Noting:

1. The Declaration of Intent on the Negotiating Process adopted on 7 May 1993;
2. The expectation of all South Africans that the Negotiating Process is concluded constructively, urgently and peacefully;

Further Noting:

1. That the Resolution on Constitutional Issues adopted on 1 June 1993 provides a facilitating framework for discussion on these issues;
2. The progress made by -
 - 2.1 the tabling of generally acceptable proposals emanating from the Technical Committee on Violence;
 - 2.2 agreeing to a substantial number of general constitutional principles;
 - 2.3 establishing the commission on boundaries of regions which will commence its work shortly;
 - 2.4 receiving proposals on the powers, functions and structures of regions in the transition;
 - 2.5 the acceptance in principle of the Fundamental Rights mentioned in paragraph 5.1 and 5.2 of the Second Report of the Technical Committee on Fundamental Rights during the Transition;

Believing:

1. That the setting of a date for the elections will send a ray of hope and optimism throughout the country;
2. That it is vital to inject confidence in the negotiating process;

Therefore resolves that:

1. The Negotiating Council recommends to the Negotiating Forum of 25 June 1993 that the date of the election shall be 27 April 1994; however, should a final settlement be reached at an earlier date to enable an election to be held earlier, the Negotiating Council should set an earlier date; while the period over which the election is to be held will have to be decided upon in co-operation on with the Independent Electoral Commission;
2. Participants wishing to consult with their principals on this matter may do so and report to the Negotiating Forum meeting of 25 June 1993 on their position;

We further resolve:

1. To move towards finality in our negotiations on the constitutional issues referred to in the resolution of 1 June 1993 before the meeting of the Negotiating Forum on 25 June 1993;
2. To work towards the achievement of those goals that will allow for an adequate time-frame for the implementation of decisions on binding constitutional principles, the constitutional framework and the constitution making process and procedures for elections, for the election to take place on that date; and

3. To work towards the creation of conditions conducive to free and fair and peaceful elections;

We Commit Ourselves -

1. To refrain from the use of violence against anyone as a means of attaining political objectives;
2. To reject actions like the above and pronouncements designed or likely to be conducive to a climate of violence;
3. To take effective steps against anyone within our organisations who transgresses in these respects; and
4. To actively and visibly promote a climate conducive to peace, harmony and goodwill among all.

PLANNING COMMITTEE 21 JUNE 1993

15.2 It was agreed to allocate time from 16h00 to 19h00 to the Technical Committee on Fundamental Human Rights as this Technical Committee would not be available for the meeting of the Negotiating Council on Friday 25 June 1993.

17. General Issues

17.1 The Administration was requested to clarify as to whether the Technical Committee on Fundamental Human Rights in the Transition was available to present its report to the Negotiating Council. A reportback should be given informally to PJ Gordhan, the current Planning Committee Chairperson.

PLANNING COMMITTEE 24 JUNE 1993

5.1.4 Technical Committee on Fundamental Human Rights During the Transition:

- 5.1.4.1 After discussion it was agreed that there is a need to clarify the definition of "Fundamental Human Rights during the Transition". It was suggested that the Chairperson of the Negotiating Council guide discussion in the meeting with a view to achieving this clarity.
- 5.1.4.2 It was agreed to put forward the following recommendations of the Technical Committee to the meeting of the Negotiating Council:

- * Item 5.1 of the Technical Committee Report refers : That comments are invited from the Negotiating Council on the various rights and freedoms in the first and second categories with a view to give the Technical Committee some feedback on their proposals;
- * Item 5.2 of the Technical Committee Report refers : That the Negotiating Council accepts the principle of justiciability and that discussion be invited with regard to the relevant institution;
- * Item 5.3 of the Technical Committee Report refers : That the Technical Committee be instructed to submit formulations;
- * Item 5.4 of the Technical Committee Report refers : That discussion on the third category be continued.

PLANNING COMMITTEE 24 JUNE 1993

5.1.4 Technical Committee on Fundamental Human Rights During the Transition:

5.1.4.1 After discussion it was agreed that there is a need to clarify the definition of "Fundamental Human Rights during the Transition". It was suggested that the Chairperson of the Negotiating Council guide discussion in the meeting with a view to achieving this clarity.

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- * Item 5.1 of the Technical Committee Report refers : That comments are invited from the Negotiating Council on the various rights and freedoms in the first and second categories with a view to give the Technical Committee some feedback on their proposals;
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- * Item 5.3 of the Technical Committee Report refers : That the Technical Committee be instructed to submit formulations;

- * Item 5.4 of the Technical Committee Report refers : That discussion on the third category be continued.

NEGOTIATING COUNCIL 18 MAY 1993

5.4 **Technical Committee on Fundamental Human Rights during the Transition:**

- 5.4.1 The members of the Technical Committee on Fundamental Human Rights During the Transition were welcomed.
- 5.4.2 An overview and issues to be highlighted or requiring decision/guidance from the Negotiating Council in the report was presented by a spokesperson of the Technical Committee. Discussion followed.
- 5.4.3 The Technical Committee was requested to take into account the concerns and views of delegates in formulating its second report.
- 5.4.4 It was suggested that participants submit clear submissions with regard to the issue of the right to private ownership.
- 5.4.5 It was agreed to mandate the Technical Committee to proceed with their work on the basis as proposed by the Technical Committee.
- 5.4.6 The members of the Technical Committee were thanked for the work so far completed.

AD HOC COMMITTEE ON FUNDAMENTAL RIGHTS 27 JUNE 1993

5.4 **Ad-hoc Committee on Fundamental Human Rights during the Transition:**

It was noted that Planning Committee had discussed the issue of points of difference arising out of the debate on the Report from this Technical Committee and recommended the following:

- * That an ad-hoc committee be appointed to deal with the issues;
- * That the ad-hoc committee be composed as follows:
 - S Camerer (Convenor)
 - H Cheadle
 - P Maduna
 - Mothibe
 - Gibson

5.1.4 Technical Committee on Fundamental Human Rights During the Transition: 24/5/pc

5.1.4.1 After discussion it was agreed that there is a need to clarify the definition of "Fundamental Human Rights during the Transition". It was suggested that the Chairperson of the Negotiating Council guide discussion in the meeting with a view to achieving this clarity.

5.1.4.2 It was agreed to put forward the following recommendations of the Technical Committee to the meeting of the Negotiating Council:

- * Item 5.1 of the Technical Committee Report refers : That comments are invited from the Negotiating Council on the various rights and freedoms in the first and second categories with a view to give the Technical Committee some feedback on their proposals;
- * Item 5.2 of the Technical Committee Report refers : That the Negotiating Council accepts the principle of justiciability and that discussion be invited with regard to the relevant institution;
- * Item 5.3 of the Technical Committee Report refers : That the Technical Committee be instructed to submit formulations;
- * Item 5.4 of the Technical Committee Report refers : That discussion on the third category be continued.

5.3 Technical Committee on Fundamental Human Rights During the Transition:25/5/pc

5.3.1 It was agreed that the Sub-Committee convey the following to the Technical Committee on behalf of the Planning Committee:

- * That the Technical Committee provide draft criteria for assessing human rights during the transition and indicate what criteria were used. This report should be completed for submission to the meeting of the Negotiating Council on Friday 28 May 1993;
- * Item 5.3 of the Technical Committee's Second Report refers : That the Technical Committee be instructed to submit

formulations;

- * Item 5.4 of the Technical Committee's Second Report refers :
That discussion on the third category be continued.

5.1.3 Technical Committee on Fundamental Human Rights During the Transition:10/6/pc

It was noted that although the report from the Technical Committee would be distributed at the meeting of the Negotiating Council in the afternoon, the report itself would not be discussed in that meeting but at the next meeting of the Negotiating Council on 3 June 1993.

3/6/pc 9.3 Proposed Amendments to the Agenda:

Due to time constraints, it was agreed to recommend to the Negotiating Council that the Reports of the Technical Committee on the Independent Election Commission and the Independent Media Commission be tabled, accepted in principle, the TEC and its Sub-Councils be dealt with at the next meeting of the Negotiating Council and the Reports from the Technical Committees on the Amendment or Repeal of Legislation Impeding Free Political Activity and Discriminatory Legislation and Fundamental Human Rights during the Transition be tabled only.

Addendum B

This Negotiating Council meeting on Thursday 3 June 1993 at the World Trade Centre:

Noting:

1. The Declaration of Intent on the Negotiating Process adopted on 7 May 1993;
2. The expectation of all South Africans that the Negotiating Process is concluded constructively, urgently and peacefully;

Further Noting:

1. That the Resolution on Constitutional Issues adopted on 1 June 1993 provides a facilitating framework for discussion on these issues;
2. The progress made by -
 - 2.1 the tabling of generally acceptable proposals emanating from the Technical Committee on Violence;
 - 2.2 agreeing to a substantial number of general constitutional principles;
 - 2.3 establishing the commission on boundaries of regions which will commence its work shortly;
 - 2.4 receiving proposals on the powers, functions and structures of regions in the

- transition;
- 2.5 the acceptance in principle of the Fundamental Rights mentioned in paragraph 5.1 and 5.2 of the Second Report of the Technical Committee on Fundamental Rights during the Transition;

Believing:

1. That the setting of a date for the elections will send a ray of hope and optimism throughout the country;
2. That it is vital to inject confidence in the negotiating process;

Therefore resolves that:

1. The Negotiating Council recommends to the Negotiating Forum of 25 June 1993 that the date of the election shall be 27 April 1994; however, should a final settlement be reached at an earlier date to enable an election to be held earlier, the Negotiating Council should set an earlier date; while the period over which the election is to be held will have to be decided upon in co-operation on with the Independent Electoral Commission;
2. Participants wishing to consult with their principals on this matter may do so and report to the Negotiating Forum meeting of 25 June 1993 on their position;

We further resolve:

1. To move towards finality in our negotiations on the constitutional issues referred to in the resolution of 1 June 1993 before the meeting of the Negotiating Forum on 25 June 1993;
2. To work towards the achievement of those goals that will allow for an adequate time-frame for the implementation of decisions on binding constitutional principles, the constitutional framework and the constitution making process and procedures for elections, for the election to take place on that date; and
3. To work towards the creation of conditions conducive to free and fair and peaceful elections;

We Commit Ourselves -

1. To refrain from the use of violence against anyone as a means of attaining political objectives;
2. To reject actions like the above and pronouncements designed or likely to be conducive to a climate of violence;

3. To take effective steps against anyone within our organisations who transgresses in these respects; and
4. To actively and visibly promote a climate conducive to peace, harmony and goodwill among all.

21/6/pc

- 15.2 It was agreed to allocate time from 16h00 to 19h00 to the Technical Committee on Fundamental Human Rights as this Technical Committee would not be available for the meeting of the Negotiating Council on Friday 25 June 1993.

17. General Issues

- 17.1 The Administration was requested to clarify as to whether the Technical Committee on Fundamental Human Rights in the Transition was available to present its report to the Negotiating Council. A reportback should be given informally to PJ Gordhan, the current Planning Committee Chairperson.

5.1.4 Technical Committee on Fundamental Human Rights During the Transition:

- 5.1.4.1 After discussion it was agreed that there is a need to clarify the definition of "Fundamental Human Rights during the Transition". It was suggested that the Chairperson of the Negotiating Council guide discussion in the meeting with a view to achieving this clarity.

- 5.1.4.2 It was agreed to put forward the following recommendations of the Technical Committee to the meeting of the Negotiating Council:

- * Item 5.1 of the Technical Committee Report refers : That comments are invited from the Negotiating Council on the various rights and freedoms in the first and second categories with a view to give the Technical Committee some feedback on their proposals;
- * Item 5.2 of the Technical Committee Report refers : That the Negotiating Council accepts the principle of justiciability and that discussion be invited with regard to the relevant institution;
- * Item 5.3 of the Technical Committee Report refers : That the Technical Committee be instructed to submit formulations;
- * Item 5.4 of the Technical Committee Report

refers : That discussion on the third category be continued.

5.1.4 Technical Committee on Fundamental Human Rights During the Transition: 24/6/pc

5.1.4.1 After discussion it was agreed that there is a need to clarify the definition of "Fundamental Human Rights during the Transition". It was suggested that the Chairperson of the Negotiating Council guide discussion in the meeting with a view to achieving this clarity.

5.1.4.2 It was agreed to put forward the following recommendations of the Technical Committee to the meeting of the Negotiating Council:

- * Item 5.1 of the Technical Committee Report refers : That comments are invited from the Negotiating Council on the various rights and freedoms in the first and second categories with a view to give the Technical Committee some feedback on their proposals;
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- * Item 5.3 of the Technical Committee Report refers : That the Technical Committee be instructed to submit formulations;
- * Item 5.4 of the Technical Committee Report refers : That discussion on the third category be continued.

5.4 Technical Committee on Fundamental Human Rights during the Transition: 18/5/nc

5.4.1 The members of the Technical Committee on Fundamental Human Rights During the Transition were welcomed.

5.4.2 An overview and issues to be highlighted or requiring decision/guidance from the Negotiating Council in the report was presented by a spokesperson of the Technical Committee. Discussion followed.

5.4.3 The Technical Committee was requested to take into account the

concerns and views of delegates in formulating its second report.

5.4.4 It was suggested that participants submit clear submissions with regard to the issue of the right to private ownership.

5.4.5 It was agreed to mandate the Technical Committee to proceed with their work on the basis as proposed by the Technical Committee.

5.4.6 The members of the Technical Committee were thanked for the work so far completed.

5.4 **Ad-hoc Committee on Fundamental Human Rights during the Transition:**
27/7/nc

It was noted that Planning Committee had discussed the issue of points of difference arising out of the debate on the Report from this Technical Committee and recommended the following:

- * That an ad-hoc committee be appointed to deal with the issues;
- * That the ad-hoc committee be composed as follows:
 - S Camerer (Convenor)
 - H Cheadle
 - P Maduna
 - Mothibe
 - Gibson

VERY.

Brief notes:

The Negotiating Council delegates representing the various political parties were almost all in agreement in commending the Technical Committee on Fundamental Rights on their Third Report with various comments, etc, with the exception of the following:

Dr Delpport - Government:

However he backed down when he afterwards put forward a proposal which was accepted by all present. (see below)

Mr de Jager - Nationalist Party:

Cannot agree with Fundamental Rights as presented because they would be here today and gone tomorrow, as the emphasis was on "during the transition". A right is a right. He also asked about property rights not being included.

Towards the end, Adv. Jacob, on behalf of the Nationalist Party and the Afrikaner Nation, objected very strongly to the fact that when Dr Delpport spoke a few words in Afrikaans to Prof. du Plessis, there was booing from certain Delegates and he would be making this objection very strongly to the Planning Committee.

Dr de Villiers said that, in his opinion, the Afrikaans was merely a joking aside and the booing as such, was against the content of the phrase and not an insult intended because Afrikaans was spoken. Mr de Jager was adamant that he would complain as a point of order to the Planning Committee.

Conservative Party:

Agreed in full with the Nationalist Party and said that we are living in a violent society and the State needs to curb some rights to deal with violence. This has not been addressed by the T.C. on F.R. and has this T.C. taken into consideration the ethnic position of this country? They do not accept the Third Report from this T.C.

Mr Radjansi:

What about property rights? Went on about this, but said nothing about accepting the Third Report with this item not laid down as a fundamental right.

Inkhata Freedom Party:

Mr Feldgate said the T.C. on F.R. should reconsider and simplify the whole issue as, unless one had all the reports/documentation in front of one, one would get lost in all the points. etc. They could not accept the Third Report as it was.

Ciskei:

Rejected the T.C. on F.R.'s report.

The following proposal was put forward by Dr Delpont (Government) which was noted and accepted by the Delegates:

The Technical Committee on Fundamental Rights to be given a mandate:

- * Fundamental Rights to be entrenched during the transitional period: points 5.1. and 5.2. of the Second Report excluding the rights set down in paragraph 3 of the Third Report. This would be a move forward and move those rights which do not seem to be in dispute.
- * Various formulations of rights, point 7.3. in Third Report. The list of 8 rights which are in dispute.
- * Content of each and every right is to be formulated. i.e. Right to life - does this say no abortion? and how to put limitations on this.
- * All other rights - indicate what possibilities there are.

Mr Mac Maharaj on behalf of A.N.C. accepted the Third Report. He said that there was no need for the Delegates to blame the T.C. on F.R. for doing things they were instructed to do. It was not for this T.C. report on how to distinguish rights during the transition from rights to be laid down in the Constitution. Point 7.2. is correct for moving forward on. Category I - agreed on 14 rights with 3 set aside for special attention. Category II - 14 rights with 6 set aside for special attention. The whole of Category II set aside. He asked the Delegates to agree with the T.C. on F.R.'s recommendation for acceptance of 7.1, 7.2 and 7.3. The question was how to address them. However point 7.3. was not the work for the T.C. but for the Negotiating Council to apply their minds and see a way in addressing these.

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Dr de Villiers as chairperson, proposed that the above two proposals be accepted. After this was typed out and distributed to the Delegates, Dr Delpont suggested a few minor amendments to his proposal. The proposals were accepted by the majority of the Delegates.

**ISSUES REFERRED TO THE PLANNING COMMITTEE
BY THE NEGOTIATING COUNCIL**

1. Technical Committee on Fundamental Human Rights during the Transition:

1.1 The Planning Committee was requested to suggest a mechanism to resolve the differences arising from the following items:

- * Item 2 (2)
- * Item 3
- * The right to vote
- * Item 30 (item on eviction)

1.2 The Planning Committee was requested to clarify the brief of the Technical Committee.

1.3 The Planning Committee was requested to set a deadline for the receipt of submissions from participants. It was agreed that the date should be Monday 26 July 1993.

2. Technical Committee on the Repeal of Discriminatory Legislation:

2.1 To look into what mechanisms need to be employed or what suggestions can be made in respect of the date of implementation of the Bill of Rights.

2.2 To look into the issue of "verticality" and "horizontality" pending the report from the Technical Committee on Fundamental Human Rights, and establish some mechanism to resolve these particular issues.

2.3 To consider the issue of the need for democratic government and the rule of law government between the present time and the elections (getting from point A to point B).

2.4 To look into the issue of the uniformity of application of the Bill of Rights and the principles with regard to the elections.

2.5 The Fundamental Rights Committee and the IEC have suggested or are considering a set of enforcement mechanisms. Enforcement mechanisms are also necessary for the enforcement of the Bill of Rights. The Planning Committee should apply its mind to this issue and bring various recommendations on how the overlaps could be avoided. This will give guidance to the Technical Committee on the Repeal of Discriminatory Legislation.

2.6 The Planning Committee should submit recommendations as to how to deal with the part of the Second report of the Technical Committee, with regard to specific pieces of legislation.

2.7 How the tribunals would work.

**ISSUES REFERRED TO THE PLANNING COMMITTEE
BY THE NEGOTIATING COUNCIL**

1. Technical Committee on Fundamental Human Rights during the Transition:

1.1 The Planning Committee was requested to suggest a mechanism to resolve the differences arising from the following items:

- * Item 2.2
- * Item 3
- * The right to vote
- * Item 30 (item on eviction)

1.2 The Planning Committee was requested to clarify the brief of the Technical Committee.

1.3 The Planning Committee was requested to set a deadline for the receipt of submissions from participants. It was tentatively agreed that the date should be Tuesday 27 July.

2. Technical Committee on the Repeal of Discriminatory Legislation:

2.1 To look into what mechanisms need to be employed or what suggestions can be made in respect of the date of implementation of the Bill of Rights.

2.2 To look into the issue of "verticality" and "horizontality" pending the report from the Technical Committee on Fundamental Human Rights, and establish some mechanism to resolve these particular issues.

~~2.3~~ To consider the issue of the need for democratic government and the rule of law government between the present time and the elections (getting from point A to point B).

3 2.4 To look into the issue of the uniformity of application of the Bill of Rights and the principles with regard to the elections.

4 2.5 The Fundamental Rights Committee and the IEC have suggested or are considering a set of enforcement mechanisms. Enforcement mechanisms are also necessary for the enforcement of the Bill of Rights. The Planning Committee should apply its mind to this issue and bring various recommendations on how the overlaps could be avoided. This will give guidance to the Technical Committee on the Repeal of Discriminatory Legislation.

5 2.6 The Planning Committee should submit recommendations as to how to deal with the part of the Second report of the Technical Committee, with regard to specific pieces of legislation.

(2.6) How the tribunals would work.

*Rationalised
enforcement
- into Tribunal*