

SALDEF
South African Legal Defence Fund

Unit 20 - 1 (b) The Waverley, Wycroft Road,
Mowbray, 7700, Cape Town
PO Box 23161, Claremont, 7935
Tel: (021) 47-4052 Fax: (021) 47 4397

OUR REF:

YOUR REF:

SALDEF FAX: 021-474397

FAX TRANSMISSION - COVER SHEET

TO: Chairperson, Multi-Party Negotiating Process

FAX NO: 011 397 2211

FROM: LOUISE ASMAL

DATE: October 28, 1993

RE: Interim bill of rights

No of pages (including cover sheet) **4**

MESSAGE: Enclosed a submission for your urgent consideration.

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October 28, 1993

The Chairperson,
Planning Committee,
Multi-Party Negotiating Process,
Johannesburg.

Fax: 011 397 2211

Dear Madam or Sir,

The South African Legal Defence Fund, SALDEF, is an organisation dedicated to the upholding and promotion of human rights for all in South Africa.

As such, we feel it is our duty to comment on some aspects of the interim bill of rights which do not, in our view, adequately provide for human rights for all.

1. **Article 7 on application** is inadequate as it excludes private institutions from complying with the provisions for ensuring that fundamental human rights are observed. The interim government must make a complete break with the apartheid past and reject all unjust discrimination on grounds of race. It is unacceptable that any South African can be refused accommodation in a hotel, be denied a job, or see his or her child denied entry to a school or clinic, on grounds of race alone.
2. **Article 25 on detention and arrest**, clauses 1 (c) and 3(e) make provision for a person detained or arrested "where substantial injustice would otherwise result, to be provided with the services of a legal practitioner by the State". It seems to us that this provision is too narrow, and does not allow for the difficulty of knowing in advance whether there might be a substantial injustice. Previously the clause said "where the interests of justice so require", but apparently this was made more restrictive on grounds of cost. It is SALDEF's view that access to justice always requires legal representation.

3. **Article 32, on customary law, states, inter alia, that every person who of free and informed choice observes the rules and practices of customary law and associates with other persons observing the same rules and practices shall have the right to live under customary law. If it were agreed as it stands, it would seriously affect the right to equality on grounds of race and gender. Obviously this particularly applies to women and indeed the whole clause may be in conflict with Article 8 on equality.**

It has frequently been observed in the past that the majority of women in South Africa suffer from a triple oppression, once as women, once as blacks and once as workers. Their position in traditional communities is one of subservience to men, both because of their economic position and because of their exclusion from the all-male councils. Free choice is simply not open to them. Their 'right' to live under customary law will in practical day to day life become the right of their menfolk to compel them so to live.

All laws evolve or are changed to cope with the changing conditions of society. Apartheid froze African customary law in a mould which is inappropriate for women today, and it would be a disaster if our new constitutional arrangements froze it for yet a further period.

SALDEF firmly believes that the equality clause in the bill must take precedence.

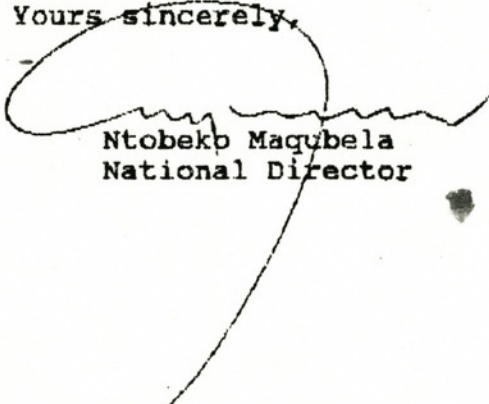
4. Finally, we have a problem with the terminology used where it refers to 'race'. The scientific definition of race does not correspond with the South African one. People who in South Africa are called whites and Indians all belong to the caucasoid race, Africans belong to the negroid race, and Coloureds are a mixture of the two. There is a possibility that the legal system might interpret the legislation according to the letter rather than the spirit of the language in which it is written, in which case this clause might have the effect of permitting discrimination on grounds of colour. For example, a school for Afrikaans-speaking children might, under the wording of **article 33c, on education**, be legally permitted to discriminate against coloured children, or a school for English-speaking children be permitted to discriminate against Indians.

SALDEF therefore advocates the addition of the words "and colour" where race is mentioned.

5. We would have liked to comment further on various points, but time does not unfortunately allow us. In particular, we would strongly urge that the wording of the article concerned with property rights does not preclude those who were forcibly removed from their land in the apartheid past from claiming redress in the future.

We urge the multi-party negotiators to take these points into consideration in their decisions.

Yours sincerely,



Ntobeko Magubela
National Director