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

ROUGH NOTES ON MEETING HELD ON MONDAY, 10th MAY 1993

PRESENT: Prof. Lourens M. du Plessis
Mr. Gerrit Grove
Ms. Ndongile Nene
Prof. Hugh M. Corder
Adv. Zac Yacoob
Mrs. Miriam Cleary - Secretary

Mr Mac Maharaj joined the Meeting to briefly discuss the issues that this Committee should address, the main item being to address the basic Rights in the Transition, and what basic Rights should be guaranteed in the Transition Period.

1. Prof. Lourens du Plessis was nominated Convenor for this Committee.
2. Adv. Zac Yacoob stated that the Basic Rights could be addressed in four categories:
 - 2.1. The essential or minimum Rights.
 - 2.2. The desirable Rights.
 - 2.3. Rights in respect of debates and disputes.
 - 2.4. Rights which ought not to be in the Interim Constitution.

He also suggested that the Committee obtain documentation to ascertain what these Rights are. The Committee could then discuss them more fully and carry on from there. Each Committee Member would have to do some reading right away to get some ideas on these Rights so that they could meet before this coming Friday's deadline when the first Preliminary Report has to be submitted. He suggested this coming Wednesday evening for a few hours.

3. Mr Gerrit Grove said that the Committee should look for common ground. He handed out schedules prepared by a private consultant and said that, as far as the Remarks Column was concerned, if anyone did not agree with this it could be cut off.

4. Prof. Hugh Corder said that his feeling was that the Committee could work with Component Rights, etc. His concern would be the two matters important to him - Debatable Rights - enforceability where these are going to be enforceable during the Process. With a theme of Charter for Social Justice. The Committee would have to make proposals regarding which are not Rights and enforce them. Questions of enforcement mechanisms would arise and a support group for the different levels of legitimacy may be required. A division of the Appellate Division should be responsible for considering the Bill of Rights. Or a separate Group for this. Our present Group Structure is not the right group. For example, do we prohibit speech, i.e. violent or extreme speech? An Interim Tribunal should see to this before the Election.

He suggested a way of proceeding - possibly before this Friday, using the fax, prepare a list of Minimum Rights culled from the document handed out by G.G. and indicate to the Meeting what our Committee's timetable would be. After reading all the documentation to hand our Committee needed a few days together, if possible, to hammer out these categories.

5. Adv. Yacoob suggested the Committee meet next week for three or four days or even look at working weekends.
6. Ms. Nene stated that the Committee might need technical assistance with the documentation on how it is working, and would have to review enforceability and what about access availability? There are three Bills dealing with Women's Rights. Also women who fall under Customary Law. What are the implications and are there any other categories of South African Citizens who are excluded - what are the resources available to these people? Ms. Nene wished these to be addressed within this Group.

The three Bills - have none of the twenty-six Groups raised the three Bills which are hot issues. She would request access and an Instrument or Party should be presented to address these Bills. Women from nine countries were addressing a recent Conference on these Bills.

7. Prof. du Plessis asked Ms Nene whether documentation could be obtained regarding her request. Ms Nene said she would obtain such documentation before this coming Friday.
8. Prof. du Plessis stated that Ms Nene could get these Women's Groups to make the submissions to the Committee before Friday in outline form, and the final by the following Tuesday. Gender equality as an essential Right during the Transitional Period would have to be looked at by our Committee.

Mr Grove was not sure whether our Committee should deal with the Technical issues. Ms Nene said that exclusion clauses were very serious issues and certain sectors of women or other human beings being excluded were very serious factors to look at.

9. Prof. du Plessis said that the Committee would have to produce something which will be used, and the right steps and process will have to be taken and we would have to be very careful how we do this. We must be open to reason in our submissions, discuss them and deal with them in certain ways. We should not create an impression that we are not open to fundamental Rights. We must be open to receiving them and the possibilities of addressing them here. We must also not be pushed into this, as well as not being too ambitious at this stage.
10. After discussing each Committee Member's schedules for this week, it was agreed to meet in Cape Town on Thursday evening 13th May, 1993. The Secretary was instructed to arrange the venue for the meeting at the Breakwater Campus, U.C.T. and accommodation at the Breakwater Lodge. She would also attend to the airbookings where required.
11. It was agreed that the four Categories on Basic Rights as outlined in Point 2.1. above, would be discussed for submission on Friday, 14th May, 1993.

Categories would be discussed in tandem i.e. 2.1. Essential or Minimum Rights together with 2.4. Rights which ought not to be in the Interim Constitution.

Mr Grove said we should identify the areas - we cannot negotiate and would have to sort out all the documentation.

Prof. Corder mentioned freedom of speech and said we could not have any disagreements on that Right. However Mr Grove said we could point out the differences.

Adv. Yacoob said regarding limitations that we could give five or six or seven alternative formulations and choose one or the other, so that these are centered on a concrete foundation.

Prof. du Plessis said that we should discuss which are the Rights and which are the limitations on each issue. We could not propose limitations as we would have to find these out for ourselves.

Mr Grove said we would have to find the common ground to submit our proposals.

Adv. Yacoob said that everything we said as a Technical Committee would be our recommendations. Four or five formulations could set out the advantages and disadvantages of each. Our job was to draw attention to all the advantages and disadvantages so that conclusions can be made.

12. Mr Grove asked whether this Committee should attend to Constitutional Principles. Adv. Yacoob suggested that the Committee got down to the Rights and if we found ourselves too much at sea, will find out whether these can be done or whether we will get bogged down. Prof. Corder said that every Right has a limit but Constitutional Principles. We, as a Committee, have to attend to this.

Prof. du Plessis said we might want to meet with the other Committees on this. Prof. Corder asked regarding Independant Elected Committees, what was the acceptable propaganda.

Prof. du Plessis said that co-operation would be indispensible and Committees would have to co-operate especially on Constitutional Principles and Judicial Structures.

13. Prof. Corder stated that the proposal by Government regarding equal opportunities must also be looked at by our Committee.

14. The following were set as dates for the Committee to meet:

14.1. Thursday, 13th May, 1993:

Venue: Breakwater Campus, Cape Town.

The secretary would make all necessary arrangements. The First Report would be faxed to the Negotiating Council as early as possible on Friday, 14th May, 1993.

14.2. Tuesday to Thursday, 18th to 20th May, 1993:

Venue: W.T.C. Kempton Park

The secretary would make all necessary arrangements.