

2/4/41/2/34

**CONSTITUTIONAL ASSEMBLY**

**THEME COMMITTEE 4  
FUNDAMENTAL RIGHTS**

**14 August 1995**

**Room: GOOD HOPE CHAMBER**

**DOCUMENTATION**

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## CONSTITUTIONAL ASSEMBLY

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### THEME COMMITTEE 4

### FUNDAMENTAL RIGHTS

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

**Date** : Monday, 14 August 1995  
**Time** : 10h00 - 13h00  
**Venue** : GOOD HOPE CHAMBER

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#### AGENDA

1. Opening
2. Matters Arising
3. Minutes:
  - 3.1 Theme Committee 7 August 1995
  - 3.2 Theme Committee 8 August 1995
  - 3.3 Core Group 8 August 1995
4. **Reports of Theme Committee (See separate documents entitled "Reports"):**
  - 4.1 Education
  - 4.2 Property
  - 4.3 Language and culture
  - 4.4 Environment
  - 4.5 Labour
  - 4.6 Economic activity
  - 4.7 Equality
  - 4.8 Limitation of Rights
  - 4.9 State of Emergency and Suspension of Rights
  - 4.10 Interpretation of the Bill of Rights
  - 4.11 Reproductive Rights
  - 4.12 Other Socio-Economic Rights
5. General
6. Closure

**CONSTITUTIONAL ASSEMBLY**

**MINUTES OF  
MEETING OF**

**THEME COMMITTEE 4  
FUNDAMENTAL RIGHTS  
MONDAY 7 AUGUST 1995 (AT 10H00)**

**PRESENT**

**Mdladlana MMS (Chairperson)**

Asmal AK  
Bakker DM  
Cachalia IM (alt)  
Camerer SM  
Chalmers J  
Coleman M  
Dlamini BO  
Green LM  
Kgoali JL  
Leon AJ  
Lubidla EN (alt)  
Mfebe MWW

Mohamed IJ (alt)  
Myakayaka-Manzini YL  
Njobe MAA (alt)  
Ndzanga RA (alt)  
Pandor GNM  
Piliso MM  
Rasmeni SM  
Saloojee E  
Surty ME  
Turok B  
Viljoen V

**APOLOGIES:** None

J Tsalamandris and Z Adams were in attendance.

1. OPENING

1.1 Mr Mdladlana opened the meeting at 10h10.

2. MATTERS ARISING

2.1 Mr Leon raised the matter of the absence of the Technical Committee as he felt their presence was necessary while reports are being discussed by the Theme Committee. The Secretariat explained that the members of the Technical Committee felt that their presence was not essential as the meetings would not deal with the draft texts and memoranda but only with the schematic report.

2.2 The meeting decided that at least one member of the Technical Committee should be present at the Theme Committee meetings.

3. MINUTES

3.1 Theme Committee meeting of 26 June 1995: the following alterations were made:

- i) **Mr Green** should be added to the list of members present.
- ii) 4.5(p.5): The minutes should reflect the DP submission that the "existing clause on freedom of expression in the Interim Constitution needs additional strengthening".

4. REPORTS OF THEME COMMITTEE

4.1 *Right to Life:*

4.1.1 The following amendments were made:

Limitation of the Right:Contentious\Outstanding Issues:

i) The ANC position should be reflected as follows:

"Limitations subject to self-defence and war, rebellion, and defence of life ".

ii) The ACDP position should be reflected as follows:"

Limitation subject to "Those who wantonly take it(life) must suffer the same consequence for the deed " .

4.1.2 The NP indicated an intention to make a further submission and it was agreed that the Technical Committee will incorporate it into the amended report to be submitted to the Constitutional Committee.

#### **4.2 Freedom of Assembly, Demonstration and Petition:**

4.2.1 The following amendments were made:

##### Bearers of the right: Contentious\outstanding issues:

- i) NP should be added to paragraph one which reads: "Juristic persons should be included - DP & ACDP."
- ii) ACDP position should be reflected as follows: "The actual wording of the right should be a limitation in itself e.g., "peaceful and unarmed"
- iii) DP position should be reflected as follows: "The General Limitations Clause apply to this right".
- iv) The ANC noted that the amendment to the ACDP position means that the issue is no longer a contentious issue.

#### **4.3 Freedom of Association: :**

4.3.1 The following amendments were made:

##### Application of the right: Contentious\Outstanding issues:

- i) The NP position should be reflected as follows: "The right can be imposed on private actors through legislation."

#### **4.4 Political rights:**

4.4.1 The following amendments were made:

##### Content of the right: Contentious\Outstanding issues:

- i) The paragraph reading, "The right to vote in free, fair and periodic elections should be added in Section 21(2)" is a general position and should be moved to the non-contentious column.
- ii) The word "periodic" in the above paragraph should be replaced by "regular".

- iii) The paragraph reading, "the vote shall be personal, secret, free and equal" should be reflected as a general position and moved to the non-contentious column.
- iv) The paragraph reading, "Political parties shall ensure internal democracy in their organisation and operations - IFP.", should be moved to the Remarks Column.

## 5. GENERAL

### 5.1 Meetings:

5.1.1 It was agreed that meetings will start at 10h00 to give parties time to study the documentation and to take into consideration the needs of members from Gauteng.

5.1.2 The Theme Committee meeting planned for Tuesday 8 August will be scheduled until 13h00 instead of 17h00 because of the programme of the National Assembly commemorating National Women's Day at 14h15.

### 5.2 Public Submissions:

5.2.1 Decisions taken by the Theme Committee regarding public submissions were reiterated viz, that the Technical Committee was mandated by the Theme Committee to bring to the attention of parties contentious issues.

5.2.2 Parties were also reminded that it was their prerogative to decide which public submissions they will take into account when preparing party submissions. It is not possible at this late stage when the work of Theme Committees are drawing to a close to initiate a series of public hearings on substantive issues.

## 6. CLOSURE

The meeting rose at 11h10.

**CONSTITUTIONAL ASSEMBLY**

**MINUTES OF  
MEETING OF**

**THEME COMMITTEE 4  
FUNDAMENTAL RIGHTS  
TUESDAY 8 AUGUST 1995 (AT 10H00)**

**PRESENT**

**Radue RJ (Chairperson)**

Bakker DM  
Cachalia IM (alt)  
Camerer SM  
Chalmers J  
Coleman M  
Green LM  
Kgoali JL  
Leon AJ  
Lubidla EN (alt)  
Mashamba TGG  
Mdladlana MMS  
Mfebe MW

Mohamed IJ (alt)  
Myakayaka-Manzini YL  
Njobe MAA (alt)  
Ndzanga RA (alt)  
Pandor GNM  
Piliso MM  
Rasmeni SM  
Saloojee E  
Surty ME  
Tshivhase TJ  
Viljoen v

**APOLOGIES:** None

J Tsalamandris, Z Adams and S Liebenberg were in attendance.

**1. OPENING**

- 1.1 Senator Radue opened the meeting at 10h05.

**2. MATTERS ARISING**

- 2.1 None

**3. REPORTS OF THEME COMMITTEE**

- 3.1 *Citizens' rights:*** The following amendments were made:

**3.1.1 Application of the right:Contentious\Outstanding Issues**

- i) Item 4, Paragraph 1 to be moved to the non-contentious column.
- ii) Item 3, Paragraph 3 is an outstanding issue and cannot yet be moved to the non-contentious column as it needs further clarification.

**3.1.2 Limitation of the Right:Contentious\Outstanding Issues**

- i) Item 7, Paragraph 1 should be corrected to read, " Limitable only when reasonable evidence exists that the interest of the public is threatened -ACDP."
- ii) Item 7, Last Paragraph should be amended to read, " Citizenship shall not be deprived for political reasons".

- 3.2 *Freedom of Movement:*** The following amendments were made:

**3.2.1 Application of the right:Contentious\Outstanding Issues**

- i) Item 4, Paragraph 1 to be moved to the Non-Contentious Column.

- 3.3 *Freedom of Residence:*** The following amendments were made:

**3.3.1 Content of the Right:Outstanding Issues**

- i) Item 2, Paragraph (i) should be corrected to read, " Freedom of movement, residence and citizenship in one section-ACDP, ANC".



**3.3.2 Application of the right: Outstanding Issues**

- i) Item 4, Paragraph 1 should be moved to the non-contentious column.

**3.4 *Children:*** The following amendments were made:

**3.4.1 Application of the right:Contentious\Outstanding Issues**

- i) The DP position described by Paragraph 3 "All actors other than the state" require further elaboration.
- ii) The ACDP position is incorrectly reflected because of mistakes in the ACDP submission. The ACDP will liaise with the Technical Committee to effect the necessary changes.
- iii) Item 5, Paragraph 5 to be moved to the non-contentious column provided the context is clarified.
- iv) The DP 's reservations regarding the inclusion of a special clause on children's rights in the Bill of rights should be added to the report.

**3.5 *Administrative Justice:***The following amendments were made:

**3.5.1 Content of the Right:Contentious\Outstanding Issues**

- i) Item 2, Paragraph 3: The NP position requires further clarification.
- ii) The last page should be numbered (v) and not (1).
- iii) The numbering sequence used in Section 24 of the Interim Constitution should be used here for the sake of clarity.

**3.6 *Access to Courts:*** The following amendments were made:

**3.6.1 Content of the Right:Contentious\Outstanding Issues**

- i) Item 2, Paragraph 2 should be moved to the Remarks Column.

**3.7 Detained, Arrested and Accused Persons:** The following amendments were made:

**3.7.1 Content of the Right:Non-Contentious Issues**

- i) Item 2, Paragraph 3 and 4 seems to express the same ideas as Paragraph 1 of the Contentious Column, and should be re-examined by the Technical Committee.
- ii) Paragraph 4 should be amended to: "All parties agree that the rights of accused persons should be dealt with separately".

**3.7.2 Content of the Right:Contentious Issues**

- i) The ACDP position should be amended as follows:  
"Convicted persons should be treated more harshly than detainees and awaiting-trial prisoners" to "More limitations must be placed on the rights of convicted persons".
- ii) Paragraph 4 does not reflect the ANC position accurately and should be amended as follows: "The ANC would like to examine the extent to which it is possible for the state to be made responsible for equitable access".
- iii) Paragraph 5, which reads: "Formulation should be reconsidered - ANC" should be amended by detailing the issues to be considered in formulating.
- iv) The DP position on Section 25(d) should be added to the report under contentious issues. the Technical Committee should refer to page 8 of the DP submission.

**3.7.3 Content of the Right:Outstanding Issues**

- i) Paragraph 1 should be amended to reflect the ACDP position that "The state has a duty to provide an interpreter".
- ii) Paragraph 5 should be amended to reflect the ANC's reservations about the degree to which access to information can be used to guarantee the rights of accused persons to legal information.

**4. GENERAL**

- 4.1 The next meeting of the Theme Committee will take place on Monday 14 August 1995.
- 4.2 New submissions from parties will be dealt with by the Constitutional Committee.
- 4.3 Requests for public hearings were referred to the Core group and the Management Committee.

**5. CLOSURE**

The meeting rose at 11h00.

**CONSTITUTIONAL ASSEMBLY**

**MINUTES OF  
CORE GROUP OF**

**THEME COMMITTEE 4  
FUNDAMENTAL RIGHTS  
8 August 1995 (AT 11H00)**

**PRESENT**

**Radue RJ (Chairperson)**

Green LM  
Leon AJ  
Mdladlana MMS  
Pandor GNM

**APOLOGIES:** None

J Tsalamandris, Z Adams and S Liebenberg were in attendance.

**1. OPENING**

1.1 Senator Radue opened the meeting at 11h10.

**2. PUBLIC HEARINGS**

2.1 The Core Group considered the matter of public hearings, following a general discussion in the Theme Committee meeting of 8 August 1995.

2.2 It was agreed that:

2.2.1 Requests for public hearings will be deferred until after the publication of the complete draft Bill of Rights.

2.2.2 The request but the Conference of Editors will be referred to the Constitutional Committee.

**3. CLOSURE**

The meeting rose at 11h30.