

2/4/4/2/1/1

CONSTITUTIONAL ASSEMBLY

**CORE GROUP MEETING
THEME COMMITTEE 4**

FUNDAMENTAL RIGHTS

DOCUMENTATION

**- DEVELOPING A WORK
PROGRAMME : A DISCUSSION
DOCUMENT**

2 November 1994

DEVELOPING A WORK PROGRAMME : A DISCUSSION DOCUMENT

CONSTITUTIONAL PRINCIPLES

Principle II

" Everyone shall enjoy all universally accepted fundamental rights, freedoms and civil liberties, which shall be provided for and protected by entrenched and justiciable provisions in the Constitution, which shall be drafted after having given due consideration to *inter alia* the fundamental rights contained in Chapter Three of this Constitution"

The Principle identifies 3 groupings of rights.

These are :

- i) **Fundamental rights**
- ii) **Freedoms**
- iii) **Civil Liberties**

i) **Fundamental Rights**

Sections 8 - 15 of the Interim Constitution

- * Equality
- * Life
- * Human Dignity
- * Freedom and Security of the person
- * Servitude and Forced Labour
- * Privacy
- * Religion, belief and opinion (Some commentators identify this as a freedom)
- * Freedom of Expression (Some commentators identify this as a freedom)

ii) Freedoms

Sections 15 - 19 of the Interim Constitution

- * Assembly, demonstration and petition
- * Freedom of Association
- * Freedom of Movement
- * Residence

iii) Civil Liberties

Sections 20 - 31 of the Interim Constitution

- * Citizens' Rights
- * Political Rights
- * Access to Rights
- * Access to Information
- * Administrative justice
- * Detained, arrested and accused persons
- * Economic activity
- * Labour relations
- * Property
- * Environment
- * Children
- * Language and Culture
- * Education

Some Explanatory Comments on Chapter Three (effectively a Bill of Rights).

- i) No right embodied in Chapter Three is absolute. All may be limited provided that the limitation complies with the requirements stipulated in s 33.
- ii) Stipulations in the Chapter make provision for exemption, limitation and suspension of rights. Also within some clauses there exist provisions for exemption, limitation and suspension of rights.
- iii) The Constitution explicitly makes the Chapter binding upon both the legislative and executive branches of government. Chapter 1 however declares the Constitution as a whole binding on all legislative, executive and judicial organs of the state.

In this sense, there does appear to be a vertical application of the Chapter, ie. an application between citizens and the government. The relationship between citizens is not clear.

It has been noted by social scientists that the Chapter, appears to have horizontal application only in so much " as one citizen relies on a provision of the law, which is contrary to the fundamental rights, in enforcing his\ her rights against another citizen".

- iv) Language in Chapter Three has much in common with bills of rights and international human rights instruments throughout the world.
- v) The rights contained in this Chapter seem to apply to "natural persons", giving rise to the question of artificial or juristic persons.

OVERVIEW OF SUBMISSIONS RECEIVED

TOTAL NUMBER OF SUBMISSIONS	5
Party Submissions	
<ul style="list-style-type: none">- Democratic Party- African National Congress- National Party- Freedom Front- Inkatha Freedom Party	

**SUMMARY OF SUBMISSIONS RECEIVED BY THEME COMMITTEE 4
WITH REGARDS TO A WORK PROGRAMME**

The summary has followed the suggestions as set out by the CA Directorate memo on Work Programme. It should also be noted that it does not represent the full suggestions of all the parties, but attempts to summarize the various positions into a working document.

The suggested structure should include:

- i) Which Constitutional issues need to be dealt with;
- ii) Which of these issues need to be dealt with as a priority;
- iii) Which are the areas of overlap with other Theme Committees;
- iv) Which Constitutional issues need to be dealt with in Commissions;
- v) Which Constitutional issues does the Committee anticipate will require separate reports;
- vi) How many such reports are to be issued and what are the deadlines for these;
- vii) What are the structures and role players to be consulted;
- viii) What community and media liaison assistance will be required;
- ix) Who and what technical assistance will be required to support the committee;

This suggested structure can in essence be grouped into 4 sub-groups :

- 1. Issues\ Themes
- 2. Reporting Method
- 3. Technical experts\ Commissions
- 4. Public Participation\ Media

** Please note this table represents an overview of suggestions from the party submissions and other comments which have been brought up in the Theme Committee meetings.

<p>Constitutional Principles that need review or are relevant to Theme</p>	<ul style="list-style-type: none"> - Preamble to Constitution - Principle II - Principle III - Principle V - Principle XI - Principle XII - Principle XIII - Principle XXVIII - Principle XXXIV
<p>Constitutional Issues as reflected in the Interim Constitution that need review or are relevant to Theme</p>	<ul style="list-style-type: none"> - State of Emergency - Suspension and Limitation of Rights - Economic Activity - Legal Representation - Customary\Traditional law - Group\ Minority Rights
<p>Prioritizing the work: A Suggested Approach (This has been drawn from the party submissions)</p>	<p>i) Separate Principles and Clauses in Fundamental Rights into contentious and non-contentious.</p> <p>ii) Process non-contentious and submit to Constitutional Committee.</p> <p>iii) Deal with contentious issues and Principles.</p>
<p>Areas of Overlap with other Theme Committees</p>	<p>- There is a general feeling that there is overlap with a number of Theme Committees, eg. T\C 1, 5, 6.</p>
<p>Issues that need to be dealt with Commissions</p>	<p>- None identified so far</p>

Issues that separate reports are needed	<ul style="list-style-type: none">- First report can be based on non-contentious Principles and Clauses.- Separate reports on the Contentious Principles and issues.- An alternate approach is that reports be based on groups of rights as identified in Principle II, namely Fundamental rights, Freedoms and Civil Liberties.
Deadlines for submitting the various reports to the Constitutional Committee	<ul style="list-style-type: none">- Not determined yet.
Structures to consult	<p>General agreement on :</p> <ul style="list-style-type: none">- the need for flexibility on this issue.- the need to attempt to be all encompassing and included all structures of civil society, ngo's etc.
Community and Media liaison	<p>General agreement that public participation is crucial for the success of the Constitution-making process.</p> <p>In terms of media and public participation there is a need for the Theme Committee to assess the Administration's suggestions and proposals.</p>
Technical Assistance	<ul style="list-style-type: none">- the technical experts that are to be nominated by the Theme Committee and other relevant people that may be deemed necessary.- General agreement that there is a need for flexibility

Other suggested issues that may need review

- Relationship with other Charters
- Reformulation of Chapter into a Bill of Rights
- Vertical and Horizontal Application