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CONSTITUTIONAL ASSEMBLY

**CORE GROUP
THEME COMMITTEE 4
FUNDAMENTAL RIGHTS**

22 March 1995

Room V 226

DOCUMENTATION

CONSTITUTIONAL ASSEMBLY

CORE GROUP THEME COMMITTEE 4 MEETING

FUNDAMENTAL RIGHTS

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

Date : Wednesday, 22 March 1995
Time : 14h00 - 14h30
Venue : Room V 226

AGENDA

1. Opening
2. Submissions
3. Work Schedule: See pages 2 - 8
4. Any Other Business
5. Closure

****** *Members are reminded to bring copies of the Constitution and Standing Rules for the Constitutional Assembly to the meeting.*

H Ebrahim
Executive Director
Constitutional Assembly

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4. Servitude and Forced Labour

INTERIM CONSTITUTION (Excerpts for consideration)

Constitutional 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 3 of this Constitution.

Servitude and forced labour

12. No person shall be subject to servitude or forced labour.

AGENDA ITEMS

1. Content of the right

- 1.1 See CP II and Section 12
- 1.2 Other issues (Parties can make suggestions)

2. Application of the right

- 2.1 Nature of the duty to be imposed on the state.
- 2.2 Application of the right to common law and customary law.
- 2.3 Should the right under discussion impose a constitutional duty on actors other than the state ?
- 2.4 Who should be the bearers of the right ?
Natural persons, citizens, juristic persons ?
- 2.5 Should the right under discussion be capable of limitation by the legislature ?
- 2.6 Other issues (Parties can make suggestions)

5. Freedom and Security of the Person

INTERIM CONSTITUTION (Excerpts for consideration)

Constitutional 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 3 of this Constitution.

Human dignity

10. Every person shall have the right to respect for and protection of his or her dignity.

Detained, arrested and accused persons

25. (1) Every person who is detained, including every sentenced prisoner, shall have the right :

(b) to be detained under conditions consonant with human dignity, which shall include at least the provision of adequate nutrition, reading material and medical treatment at state expense;

AGENDA ITEMS

1. Content of the right

- 1.1 See CP II and Sections 10, 25
- 1.2 Controversial issues:
 - Detention without trial
 - Physical and mental intergrity
 - Abortion
- 1.3 Other issues (Parties can make suggestions)

2. Application of the right

- 2.1 Nature of the duty to be imposed on the state.
- 2.2 Application of the right to common law and customary law.
- 2.3 Should the right under discussion impose a constitutional duty on actors other than the state ?
- 2.4 Who should be the bearers of the right ?
Natural persons, citizens, juristic persons ?
- 2.5 Should the right under discussion be capable of limitation by the legislature ?
- 2.6 Other issues (Parties can make suggestions)

6. Freedom of Expression

INTERIM CONSTITUTION (Excerpts for consideration)

Constitutional 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 3 of this Constitution.

Freedom of expression

15. (1) Every person shall have the right to freedom of speech and expression, which shall include freedom of the press and other media, and the freedom of artistic creativity and scientific research.

(2) All media financed by or under the control of the state shall be regulated in a manner which ensures impartiality and the expression of a diversity of opinion.

AGENDA ITEMS

1. Content of the right

- 1.1 See CP II and Section 15
- 1.2 Controversial issues:-
 - Press Freedom
 - State Controlled media
 - Hate speech
 - Commercial speech
 - Obscene speech
 - Conduct as an expression (picketing etc)
- 1.3 Other issues (Parties can make suggestions)

2. Application of the right

- 2.1 Nature of the duty to be imposed on the state.
- 2.2 Application of the right to common law and customary law.
- 2.3 Should the right under discussion impose a constitutional duty on actors other than the state ?
- 2.4 Who should be the bearers of the right ?
Natural persons, citizens, juristic persons ?
- 2.5 Should the right under discussion be capable of limitation by the legislature ?
- 2.6 Other issues (Parties can make suggestions)

7. Right of Access to Information

INTERIM CONSTITUTION (Excerpts for consideration)

Constitutional 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 3 of this Constitution.

IX

Provision shall be made for freedom of information so that there can be open and accountable administration at all levels of government.

Access to information

23. Every person shall have the right of access to all information held by the state or any of its organs at any level of government in so far as such information is required for the exercise or protection of any of his or her rights.

AGENDA ITEMS

1. Content of the right

- 1.1 See CP II, IX and Section 23
- 1.2 Controversial issues:-
 - Private information (financial, medical, security)
- 1.3 Other issues (Parties can make suggestions)

2. Application of the right

- 2.1 Nature of the duty to be imposed on the state.
- 2.2 Application of the right to common law and customary law.
- 2.3 Should the right under discussion impose a constitutional duty on actors other than the state ?
- 2.4 Who should be the bearers of the right ?
Natural persons, citizens, juristic persons ?
- 2.5 Should the right under discussion be capable of limitation by the legislature ?
- 2.6 Other issues (Parties can make suggestions)

8. Freedom of Religion, Belief and Opinion

INTERIM CONSTITUTION (Excerpts for consideration)

Constitutional 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 3 of this Constitution.

XII

Collective rights of self-determination in forming, joining and maintaining organs of civil society, including linguistic, cultural and religious associations, shall, on the basis of non-discrimination and free association, be recognised and protected.

Equality

8. (1) Every person shall have the right to equality before the law and to equal protection of the law.

(2) No person shall be unfairly discriminated against, directly or indirectly, and, without derogating from the generality of this provision, on one or more of the following grounds in particular: race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language.

Religion, belief and opinion

14. (1) Every person shall have the right to freedom of conscience, religion, thought, belief and opinion, which shall include academic freedom in institutions of higher learning.

Education

32. Every person shall have the right:
(c) to establish, where practicable, educational institutions based on a common culture, language or religion, provided that there shall be no discrimination on the ground of race.

AGENDA ITEMS

1. Content of the right

- 1.1 See CP II, XII and Sections 8(2), 14, 32 (c)
- 1.2 Controversial issues:-
 - Academic Freedom
 - Religious observances in state and state-aided institutions, such as schools, prisons etc.
 - Recognition of systems of law of communities professing to a particular religion.
 - Freedom to have and change religion
- 1.3 Other issues (Parties can make suggestions)

2. Application of the right

- 2.1 Nature of the duty to be imposed on the state.
- 2.2 Application of the right to common law and customary law.
- 2.3 Should the right under discussion impose a constitutional duty on actors other than the state ?
- 2.4 Who should be the bearers of the right ?
Natural persons, citizens, juristic persons ?
- 2.5 Should the right under discussion be capable of limitation by the legislature ?
- 2.6 Other issues (Parties can make suggestions)

WORK PROGRAMME

BLOCK NO	T/C	ITEMS
1	Completed	1. Constitutional Principle II
2	Completed 27 March 27 March	1. Nature of Bill of Rights and application 2. Human Dignity 3. Privacy
	3 April 3 April	6. Servitude and Forced Labour 7. Freedom and Security of the person
	18 April 18 April	8. Freedom of Expression 9. Access to Information
	19 April 19 April 20 April 20 April 20 April	10. Freedom of Religion, belief and opinion 11. Freedom of Association 12. Freedom of Language and Culture 13. Life 14. Equality

29/ March
7th April

ORIGINAL WORK PROGRAMME

BLOCK NO	ITEMS
1	1. Constitutional Principle II
2	2. Nature of Bill of Rights and application 3. Equality 4. Human dignity 5. Right to life 6. Privacy
3	7. Religion, belief and opinion 8. Freedom of expression 9. Freedom of association 10. Language and culture
4	11. Administrative justice 12. Access to information 13. Access to courts 14. Freedom and security of the person 15. Detained, arrested and accused persons
5	16. Servitude and forced labour 17. Economic activity 18. Property 19. Labour relations 20. Environment
6	21. Citizens' rights 22. Political rights 23. Freedom of movement 24. Freedom of residence 25. Freedom of demonstration and petition
7	26. Children's rights 27. Education rights
8	28. Other rights and directive principles 29. Customary and indigenous law 30. Linquistic, religious and cultural minorities
9	31. Limitation of rights 32. Effect of Bill of Rights on existing law 33. States of emergency and suspension of rights
10	34. Interpretation of Bill of Rights 35. Horizontal application of Bill of Rights 36. Class actions