

2/4/4/1/2/14

CONSTITUTIONAL ASSEMBLY

**THEME COMMITTEE 4
FUNDAMENTAL RIGHTS**

13 March 1995

Room M 46

DOCUMENTATION

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 4 MEETING

FUNDAMENTAL RIGHTS

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

Date : Monday, 13 February 1995
Time : 08h30 - 12h30
Venue : Room : Old Assembly Chamber

AGENDA

1. Opening
2. Minutes
3. Matters Arising
4. Core Group Report
5. Supplementary Report on Block 1
6. Block 2: Item 1 - **Nature and Application of Bill of Rights**
7. Community Liaison
8. General
9. Closure

**** Please note that documentation for this meeting will only be circulated after the Core Group meeting on Thursday 9 March 1995.**

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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THEME COMMITTEE 4

FUNDAMENTAL RIGHTS

SYNOPSIS OF SUBMISSIONS

VOL 3: Part 1 - 4

**RE: NATURE AND APPLICATION OF
BILL OF RIGHTS**

BLOCK 2 ITEM 1: - NATURE OF THE BILL OF RIGHTS

BJ Alberts (4): Proposes a Bill of Obligations in stead of a Bill of Rights.

D Black (5): The Bill of Rights must be balanced by a Bill of Duties. The Bill of Rights should only include fundamental rights and liberties and no "secondary rights".

D Drummond (9): Bill of rights must be in favour of all.

K Hunter (11): Bill of rights to be balanced by obligations or duties.

ME Lekhoda (13): The bill of rights to be based on the ANC Freedom Charter. All basic rights to be included such as freedom of association, thought, worship, and press. Furthermore, the state must have the duty to protect the right to work and the right to education and social security.

L Makaula (14): Second and third generation rights need not be protected in a bill of rights but mechanism should be made for these groups of rights to be protected not as fully fledged rights but in order to avoid them to affect the first generation rights.

Community Peace Foundation (27): Private persons should be bound by the bill of rights by inserting a provision that entrenches this duty.

Human Rights Institute of South Africa (31): The norm for the Constitutional process should be the international treaties (on human rights). It follows thus that the hierarchy and status of the international human rights treaties should therefore be established in the constitution. I present the US Constitution as an example of the power of such provision ... Article IV which included all treaties in the supremacy clause ... I am not advocating an exact replica for the SA Constitution, I am putting it up for discussion . SA has signed these treaties it will have to ratify them and the question will then be: what is the status of these treaties? Will it be merely interpretative as the present article 35(1) would have us believe, or should it become more in line with international developments?

Algemene Kommissie Leer en Aktuele Sake, Ned Geref Kerk (34): A Comprehensive bill of rights based on biblical principles is needed.

Tabor DI (Women's Legal Status Committee) (52): The constitution should make provision for the rights of legal persons under all circumstances.

Innes M (55): There are no such things as human rights. Nobody is entitled to anything; each has duties.

Anonymous (Nelspruit) (57): For every right there shall be a definition of the responsibility coupled with the exercise of that right.

Minister of Home Affairs - Dr Buthelezi MG (55): It is proposed that a clear distinction be made between the rights of citizens and the rights of prohibited and illegal aliens. The financial expenditure to the State to deport prohibited and illegal aliens is already excessive. The rights of prohibited aliens and illegal aliens to engage the State in costly litigation pending deportation exacerbates the financial drain on State funds.

Rape Crisis (endorsed by various other organisations) (59): Clause 7(1) of the Interim Constitution to read: "This chapter shall bind all legislative and executive organs of state at all levels of government, and all persons in the Republic of South Africa." Motivation ... the horizontal application of the rights contained in the chapter of human rights is essential to the elimination of gender based violence. The distinction between the private and public has historically been instrumental in maintaining the inequality between men and women, in that it has failed to recognise that women's experience of violence is in the private sphere of their lives.

Galpin S (61): The following be written in the constitution: "It is to be clearly understood that the state, all its facilities and all its actions must be directed towards the good of all the citizens. The state exists entirely to serve the citizens. The citizens do not exist to serve the state."

African Enterprise (76): Proposal:

Responsibilities and Rights

- i. There can be no human rights without respect for the dignity of all human beings and without all people committing themselves to fulfilling their responsibilities and duties to their families, communities, country and God. Each person has the moral responsibility to respect and maintain the rights of others and especially the rights of the weak, the poor and voiceless.
- ii. Such rights and responsibilities can only flourish when society respects the moral law of God and encourages each person's moral and spiritual development.

Maasdorp MH (86): The constitution should be formulated on the basis that the individual rather than the nation or any other collective body is the "unit of justice".

ARAG (Abortion Rights Action Group) (125): The Bill of Rights to be applicable horizontally. It is within personal relationships in the home and the workplace that women suffer greatly from gender oppression.

Conference Report, Community Law Centre, UWC (168): Submission of workshops on Custom and Religion and Violence against Women: The Bill of Rights must be enforceable both horizontally and vertically ... particularly in regard to key rights of relevance to the protection of women against violence: the rights to life, to dignity, to security of person, to be free from torture and cruel, inhuman or degrading treatment or punishment, and the fundamental right to equality.

Selikow GJ (171): All personal, social, economic, labour and cultural rights must be guaranteed.

Conservative Party of South Africa (173): A bill of rights is proposed for a Volkstaat within a confederal Southern Africa. Rights regarding citizenship, franchise, access to public office and public service, political parties and activities, and immovable property are reserved for citizens. Non-citizens will be bearers of other rights. Bill of rights only to apply vertically.