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SUMMARY OF THE FIRST PROGRESS REPORT OF THE TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS DURING THE TRANSITION

The Committee has met twice. It agreed that the foremost guiding consideration in its consultation should be to devise legitimate means and mechanisms for the entrenchment of fundamental rights and freedoms in the Transitional Period.

The Committee therefore explored areas of agreement on minimal or essential fundamental rights and freedoms on the basis of a comparison of proposals submitted to it. 31 such rights and freedoms, contained in the full Report, have been identified.

This Report is submitted for consideration and approval.

TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS DURING THE TRANSITION

FIRST PROGRESS REPORT - 14 MAY 1993

1. Introductory Remarks

The Committee first met on 10 May 1993 at The World Trade Centre ("the first meeting") and thereafter on 13 May 1993 in Cape Town ("the second meeting"). It has also scheduled a meeting for 18-20 May 1993 at The World Trade Centre ("the third meeting"). Dates for further meetings will be determined at the third meeting. Meetings with other Technical Committees, such as the Committees on Constitutional Matters and the Repeal of discriminatory Legislation, may also be necessary, since this Committee envisages that it will, from its particular perspective, somehow have to address concerns such as the mechanisms for the enforcement of fundamental rights and freedoms, and constitutional principles to be embodied in an interim constitution which will serve as guidelines for the eventual drafting of the final bill of rights by a constituent assembly.

2. Guiding Considerations

At its first meeting the Committee, after having appointed Prof L M du Plessis as its convener, agreed that the following consideration - which could in due course still be amplified - should guide it in its further deliberations:

- 2.1 The means and mechanisms for the entrenchment of fundamental rights and freedoms in the transitional period should enjoy legitimacy among the vast majority of the population so as to facilitate the legitimacy of similar means and mechanisms in a final dispensation.
- 2.2 Apart from identifying fundamental rights and freedoms which are to be protected in the transitional period, their enforceability and the enforcement mechanisms invoked to this end, are vital questions which will have to receive the Committee's serious attention. The said mechanisms should also be accessible and practicable.

- 2.3 The Committee should start off by exploring "common ground", i.e. areas of agreement on minimal or essential fundamental rights and freedoms which can simply not be excluded in the transitional period. To this end the Committee ought to start by comparing bill of rights proposals for South Africa which have already been published.

3. Methodology

As a guide to its deliberations, the Committee distinguishes the following three categories of rights and freedoms in the context of the entrenchment of fundamental rights and freedoms during the transitional period:

- 3.1 Minimal or essential rights and freedoms which must be accommodated;
- 3.2 Desirable rights and freedoms i.e. those which ought to be accommodated; and
- 3.3 debatable rights and freedoms the inclusion of which is uncertain at this stage.

At its second meeting the Committee dealt with 3.1 This report therefore reflects the Committee's initial position on the accommodation of the first category of rights and freedoms in the transitional period. The Committee's position is, however, subject to change in view of the submissions only just received or which may still follow.

4. Rights and Freedoms Identified for Purposes of Category 3.1

1. The right to life.
2. The right to dignity.
3. Freedom of speech and expression which shall include freedom of the press and other media.
4. Freedom of conscience, religion, thought and belief.
5. The right to personal freedom, including the right not to be detained without

trial.

6. The right to the security of the person.
7. The right to assemble and demonstrate with others, peacefully and unarmed, and to draw up and submit petitions.
8. The right to equal protection and equal benefit of the law which shall not prevent measures which have as their objectives the improvement of the conditions of disadvantaged people.
9. Freedom from slavery, servitude and forced labour.
10. The right to form trade unions and employer's organisations and to engage in collective bargaining.
11. Freedom from physical, mental or emotional torture, or inhuman or degrading treatment or punishment.
12. Freedom of association.
13. The right to vote and stand for election to public office.
14. The right to form and join political parties and the freedom to make political choices.
15. The rights to move freely and to reside and to pursue a livelihood at any place within South Africa.
16. The right to leave and to return to South Africa, including the right to a passport.
17. The right to language and culture.
18. The right of an accused person:
 - * to be brought before a Court within 48 hours of arrest;
 - * to be informed immediately of the reason for the arrest, to remain silent and to have access to a lawyer;
 - * to a lawyer provided by the State where the interest of justice so require;
 - * upon good cause shown to a court of law to be released from detention with or without bail;
 - * to a fair trial in public within a reasonable period.
19. The right of detained and convicted persons to be treated with dignity.

20. The right to be released when the reason for detention falls away.
21. The right to physical and mental integrity.
22. The right to privacy.
23. Freedom to participate in economic activity.
24. The right to have disputes settled by a court of law or other independent forum.
25. The right to reasonable, procedurally-proper and lawful administrative decision-making.
26. The right of access to that information which is necessary for the implementation of a person's rights.
27. The right to reasons for administrative action which affects a person's rights.
28. The right to an environment which is safe and not detrimental to health.
29. Freedom from eviction from a person's lawful home.
30. The right of children not to be subject to neglect, abuse or forced labour.
31. The right of equal access to State or State-aided educational institutions.

Almost all these rights will have to be subject to a limitations clause which will be provided for by this Committee in a later Report. The Committee will also attend to the circumstances in which these rights may be legitimately suspended.

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