

**DRAFT AGENDA AND DOCUMENTATION**

for the meeting of the

**PLANNING COMMITTEE**

to be held at 11h30 on Monday

**18 OCTOBER 1993**

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FOR THE MEETING TO BE HELD ON  
18 OCTOBER 1993 AT 11H30**

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**DRAFT AGENDA FOR THE MEETING OF  
THE PLANNING COMMITTEE TO BE HELD ON  
18 OCTOBER 1993 AT 11H30  
AT THE WORLD TRADE CENTRE**

**Chairperson : Z Titus**

1. **Moment of prayer/meditation**
2. **Welcome and attendance**
3. **Ratification of agenda**
4. **Minutes (Report by Z Titus)**
5. **Substantive Issues**
  - 5.1 **Constitutional Issues referred to bilateral meetings:**
    - 5.1.1 Issues related to SPR's:
      - 5.1.1.1 Citizenship and citizenship laws
      - 5.1.1.2 Competencies (including the provision of electricity)
      - 5.1.1.3 Taxes and fiscal arrangements
      - 5.1.1.4 Constitutions
      - 5.1.1.5 Name
      - 5.1.1.6 TBVC States
      - 5.1.1.7 Boundaries
      - 5.1.1.8 The powers of the Constitutional Assembly with regard to the number, boundaries and competencies of SPR's
      - 5.1.1.9 The fleshing out of the adopted Constitutional Principles
    - 5.1.2 Self-Determination and confederalism
    - 5.1.3 Languages
    - 5.1.4 The deadlock-breaking mechanism in Chapter 5 of the Draft Constitution
    - 5.1.5 The composition and functioning of the Constitutional Court
  - 5.2 **Constitutional Issues referred to the Planning Committee:**
    - 5.2.1 Independent non-partisan statutory body on rationalisation of existing administrations (plus recommendations by the Planning Committee at the appropriate time)
    - 5.2.2 Technical group on financial and fiscal matters with regard to SPR's
    - 5.2.3 Local Government
    - 5.2.4 National Electrification Forum:  
The meeting that had been scheduled between the liaison committee and representatives of the NELF had to be postponed : A new date

- will have to be established
  - 5.2.5 The term "Ombudsman"
  - 5.2.6 The establishment of an independent non-partisan statutory body to consider rationalisation (Sub-Committee)
  - 5.3 **The establishment of the Transition Structures:** (Sub-Committee)
    - 5.3.1 The TEC:
      - 5.3.1.1 Locality
      - 5.3.1.2 Informal establishment of Subcouncils
      - 5.3.1.3 Letter for nomination of members
    - 5.3.2 The IEC:
      - 5.3.2.1 Locality
      - 5.3.2.2 Process of nomination
    - 5.3.3 The IMC:
      - 5.3.3.1 Locality
      - 5.3.3.2 Process of nomination
    - 5.3.4 The IBA
  - 5.4 **Commissions:** (Sub-Committee)
    - 5.4.1 Regional demarcation/delimitation:
      - Structure of the in-depth discussion of the Report
    - 5.4.2 National Symbols
  - 5.5 **Technical Committees and Task Groups:** (Sub-Committee)
    - 5.5.1 Fundamental Rights during the Transition : Progress by the Ad-Hoc Committee needed before discussion in the Negotiating Council
    - 5.5.2 Repeal or Amendment of Discriminatory Legislation:
      - 5.5.2.1 Bophuthatswana's co-operation with the Task Group
    - 5.5.3 Violence
    - 5.5.4 Draft Electoral Bill : Composition of the Ad-Hoc Committee as decided by the Negotiating Council on 15 October 1993
  - 5.6 **Processing of the Draft Bills through Parliament:**
    - Report from the Task Group on the IBA and other legislation scheduled for the November session of Parliament
  - 5.7 **Voter Education** (Report from PJ Gordhan available at the meeting)
  - 5.8 **Telecommunications/Cellular Telephones** (ANC & SA Government)
  - 5.9 **Traditional Leaders** (Report from the Ad-Hoc Committee)
  - 5.10 **Issuing of Election Documents** (Sub-Committee)
6. **Procedural issues**
- 6.1 The National Economic Forum Liaison Committee : Suggested date of



meeting to be established

- 6.2 Appeal to participants at present outside the Multi-Party Negotiating Process to rejoin
- 6.3 Incident in Negotiating Council around distribution of AVU document
- 6.4 National Education and Training Forum (Reportback from Administration on preliminary meeting)
7. **Administrative and Financial matters**
  - 7.1 Security
  - 7.2 Correspondence to be noted:
    - 7.2.1 Minister of External Affairs of the Republic of the Gambia (see Addendum A, p4)
    - 7.2.2 African Womens Organisation, PAC of Azania (see Addendum B, p6)
    - 7.2.3 Resolution of the Annual General Meeting of the National Association of Democratic Lawyers (see Addendum C, p7)
    - 7.2.4 Office of the Namibian Representative (see Addendum D, p9)
    - 7.2.5 Lawyers for Human Rights (see Addendum E, p11)
    - 7.2.6 Association of Law Societies : Submissions to Technical Committee on Fundamental Rights during the Transition (see Addendum F, p18)
    - 7.2.7 Association of Law Societies : Comment on the 12th Report of the Technical Committee on Constitutional Issues (see Addendum G, p38)
    - 7.2.8 Centre for Science Development (see Addendum H, 46)
  - 7.3 Correspondence to be dealt with:
    - 7.3.1 Panel of Religious Leaders for Electoral Justice (see Addendum I, p47)
    - 7.3.2 National Association of Democratic Lawyers (see Addendum J, p48)
  - 7.4 Financial Matters:
    - 7.4.1 Financial assistance to groups/individuals submitting oral evidence to the Commission on Regions
  - 7.5 Reportback by Administration on the distribution of documents (see Addendum K, p50)
8. **Agenda and Programme for the Negotiating Council** (available in the meeting)
9. **Schedule of Meetings** (available in the meeting)
10. **Closure**

~~SECRET~~ **Appendix A**

TO : ROUTE DESA - *DR C J STREETER*

COPY TO : AA70  
OA35

FROM : SA EMBASSY, LONDON  
P SCHABORT

DATE : 19930920 *42213*

REF : 8/3/1/4/2  
8/1

SUBJECT : MESSAGE OF CONGRATULATION FROM THE MINISTER  
OF EXTERNAL AFFAIRS OF THE REPUBLIC OF THE  
GAMBIA

A DIPLOMATIC NOTE DATED 14 SEPTEMBER 1993 HAS BEEN RECEIVED FROM THE GAMBIAN HIGH COMMISSION, REQUESTING THIS EMBASSY TO TRANSMIT THE ACCOMPANYING CONGRATULATORY MESSAGE FROM THE GAMBIAN MINISTER OF EXTERNAL AFFAIRS TO THE CHAIRMAN OF THE MULTI-PARTY NEGOTIATING COUNCIL.

YOUR ASSISTANCE IN FORWARDING THE MESSAGE TO THE CHAIRMAN WOULD BE APPRECIATED.



FAX N° 011-397-2211

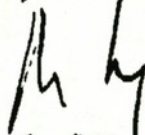
CONGRATULATORY MESSAGE TO THE CHAIRMAN  
OF THE MULTI-PARTY NEGOTIATING COUNCIL - SOUTH AFRICA

Mr Chairman,

As the Multi-Party Negotiating Council has just adopted a resolution on Walvis Bay and the Off-Shore Islands, restoring the said territories to Namibia, it gives me great pleasure to congratulate you most sincerely on my own behalf and indeed on behalf of the Government of The Gambia, and through you, the entire Multi-Party Negotiating Council on this far-reaching decision which thus completes the decolonization process of Namibia.

By taking this step in the right direction, the Multi-Party Negotiating Council has clearly demonstrated a spirit of pragmatism and realism which will go a long way to further consolidating relations between South Africa and Namibia.

Please accept the assurances of my invariable friendship and esteem.

  
Omar B Sey  
MINISTER OF EXTERNAL AFFAIRS  
OF THE REPUBLIC OF THE GAMBIA

The Chairman  
c/o Mr Cyril Ramaphosa  
Chief Negotiator of the ANC  
Multi-Party Negotiating Council  
World Trade Centre  
Johannesburg  
Republic of South Africa

5



AFRICAN WOMENS ORGANISATION  
(PAC) OF AZANIA

PO Box 25245  
FERREIRASTOWN  
2048 SOUTH AFRICA

Tel: (011) 836-0407/42/57  
Fax: (011) 838-3705

YOUR REF:  
OUR REF:

13 OCTOBER 1993

MULTI-PARTY NEGOTIATIONS PROCESS

MR CHAIRPERSON

MURDER OF INNOCENT CHILDREN

MOTHERS OF AZANIA ARE LIVID WITH ANGER!!!

WE ARE HERE TO EXPOSE THE HYPOCRISY OF THE INTERNATIONAL WORLD. WHEN AFRICAN CHILDREN ARE MURDERED THE WORLD SAYS NOTHING BUT WHEN THE " SO CALLED WHITE " CIVILIANS GET KILLED, THE WORLD JUMPS AROUND. THIS SERVES TO ILLUSTRATE THAT THE AFRICAN LIFE IS CHEAP.

AFRICAN WOMEN REALISES THAT THIS NEW SOUTH AFRICA WILL NOT BE A SAFE PLACE TO BE. IF NOBODY ACTS, WE THE AFRICAN WOMEN AND THE DAUGHTERS OF THE SOIL WILL CALL UPON THE LEGITIMATE ARMY OF THE PEOPLE, APLA, TO DEFEND THIS AFRICAN SOIL.

THIS INCIDENCE OF UMTATA VINDICATES PAC'S POSITION, THE REGIME IS STILL HOSTILE TOWARDS THE AFRICAN COMMUNITY. ATTACKING PAC IS ATTACKING THE AFRICAN PEOPLE, THAT SHOULD BE CLEAR TO THE REGIME.

- WE THEREFORE DEMAND A MUTUAL CESSATION OF HOSTILITIES.
- THAT SADF SHOULD BE CONFINED IN BARRACKS WHERE IT BELONGS.

ELLEN MTHOPENG  
AWO NATIONAL CHAIRPERSON



SENT BY:

5-10-93 ; 10:37 ;

MILLER GRUSS- MULTIP NEG PROCESS:# 1/2

*Assessment C* <sup>CC</sup><sub>TE</sub>

**FACSIMILE TRANSMISSION**

**URGENT**  
**DRINGEND**

TO: NEGOTIATING COUNSEL MULTI PARTY NEGOTIATING FORUM

FAX: 011 3972211

**DRINGEND  
URGENT****DRINGEND  
URGENT****RESOLUTION OF THE ANNUAL GENERAL MEETING OF THE NATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS HELD AT PRETORIA ON THE 2ND AND 3RD OF OCTOBER 1993****NOTING**

That the conference on "Custom and religion in a non-racial non-sexist South Africa" convened by the Gender Programme of the Community Law Centre University of Western Cape resolved inter alia that the Constitution and Bill of Rights should provide equal rights for all women with no exceptions so that no section of the female population of South Africa shall have lesser rights.

**BELIEVING**

That the issue of gender equality is central to the formation of a new and just political dispensation.

**RESOLVES**

That any clause contained in the constitution or Bill of Rights relating to the

- \* continued operation of indigenous and common law
- \* and the law relating to traditional leadership
- \* and religious law

insofar as such clause lends itself to an interpretation which may have the effect of limiting, restricting or derogating from any of the fundamental rights, in particular the right to equality, shall be amended to ensure that no such limitation restriction or derogation shall be constitutional.

Nadel shall make the appropriate representations to the relevant structures in this regard.

Nadel further commits itself to the education of in particular traditional rural communities around the above issues.





*ADDENDUM* *TD*  
*SS*

REPUBLIC OF NAMIBIA

MINISTRY OF FOREIGN AFFAIRS

Tel.: (061) 2829111  
Telex: 656 MINFA  
Telegrams: MINFORA  
Fax: (061) 223937 / 221145 / 35664

Private Bag 13347

WINDHOEK

Ref.:

Enquiries: C. Karuaithe/ys

6th October 1993

H.E. Mr. Joshua Hoebeb  
The Namibian Representative to South Africa  
P.O. Box 29806  
Sunnyside  
0132  
PRETORIA


Dear Ambassador,

The attached is a letter received from the Indonesian Minister for Foreign Affairs, Mr. Ali Alatas, to the Honourable Minister Mr. Theo-Ben Gurirab, congratulating the Government and people of Namibia on the concurrence of the Namibian and South African Governments for reintegration of Walvis Bay and the Off-Shore Islands.

He also commended the Multi-Party Negotiating Council for their concerted efforts in resolving the issue.

I will appreciate it if you could kindly transmit the message to the Multi-Party Negotiating Council accordingly.

Yours sincerely,

  
ANDREAS GUIBEB  
PERMANENT SECRETARY

TC  
SB



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## OFFICE OF THE NAMIBIAN REPRESENTATIVE

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**TULBAGH PARK  
EIKENDAL PLAT SUITE 2  
1234 CHURCH STREET  
COLBYN  
PRETORIA**

**PO Box 29806  
Sunnyside  
0132**

**Tel: (012) 342-3520  
Fax: (012) 342-3565**

**Ref: NPTA/WB/14/93**

**Enq:**

The Office of the Representative the Republic of Namibia presents its compliments to the Multi Party Negotiating Council and has the honour for forward the message from the Honourable Minister of Foreign Affairs of Indonesia to the Honourable Minister of Foreign Affairs of Namibia and with particular reference to your untiring efforts on the issue of Walvis Bay.

The Office of the Namibian Representative avails itself of this opportunity to renew to the Multi Party Negotiating Council the assurances of its highest consideration.

**8 OCTOBER 1993**



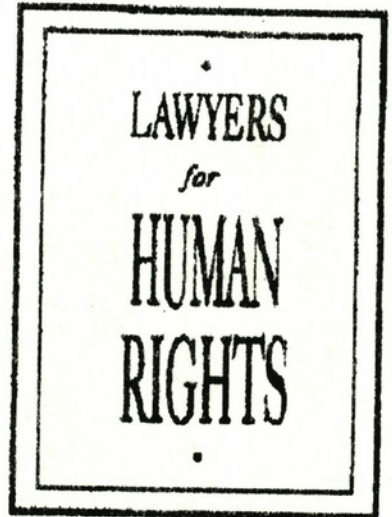


• NATIONAL DIRECTORATE •

730 Van Erkam Building  
Pretorius St., Pretoria 0002  
Telefax: (012) 325 6318  
Telephone: (012) 21 2135  
Docex 113, Pretoria

Our ref: UMT  
Your ref:  
Date:

14 October 1993



TO ALL PARTIES AT THE NEGOTIATING COUNCIL  
WORLD TRADE CENTRE  
KEMPTON PARK

The killing of 5 youths in Umtata on the 8 October 1993 has justifiably caused national and international concern.

In so far as the incident has an effect on the political processes presently underway in our country, we are pleased that the Negotiating Council has set aside the 15 October for purposes of debating the matter. Our organisation has conducted an independent investigation into the incident and arising out of such an investigation we have prepared a written \*Report which we annex hereto. We believe that the Report speaks for itself but we refer you in particular to the recommendations we make at the end thereof and in this regard we call upon you, in the interests of all South Africans, to support those recommendations.

We are of the belief that if we as a nation are to move towards a society that is just and has a respect for human life and dignity, it is incumbent upon us to do all within our power to ensure those responsible for this brutal incident are brought to book.

Yours sincerely,

BRIAN CURRIN  
NATIONAL DIRECTOR.

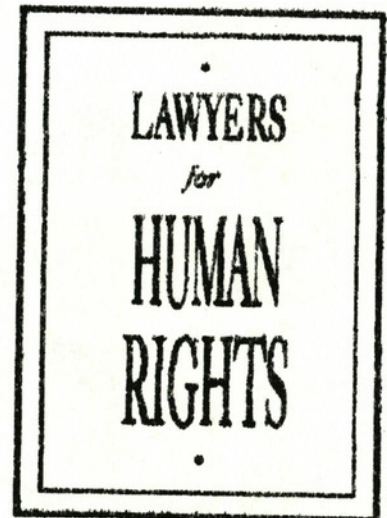
Enclosure



# · NATIONAL DIRECTORATE ·

730 Van Erkom Building  
 Pretorius St, Pretoria 0002  
 Telefax: (012) 326 6318  
 Telephone: (012) 21 2135  
 Docex 113, Pretoria

Our ref:  
 Your ref:  
 Date: 12.10.1993



## REPORT ON INVESTIGATION INTO UMTATA KILLINGS ON OCTOBER 8, 1993

LAWYERS FOR HUMAN RIGHTS has undertaken an independent investigation into the killing by the SADF of five youths in Umtata, Transkei, on October 8, 1993.

### Our investigation included the following:

1. An interview with Sgqibo Mpendulo, the father of the 16 year old twins who died in the attack and owner of the house where the shooting took place.
2. An interview with the family attorney Dumisa Ntsebeza who was at the scene before the bodies were removed.
3. An interview with Major Dlanjwa head of murder and robbery and with Lt. Magadlela the investigating officer.
4. An inspection in loco at the house where the attack occurred.
5. An inspection of the five bodies.
6. Perusal of statements issued by the South African Government, the SADF and the SAP in relation to the attack.

### We are able to make the following findings:

1. One of the boys, Sandiso Yose was pre-puberty. People we spoke to who knew him said he was 12 years old. On our own observations he was a young boy somewhere between 12 and 14 years old.
2. Three of the boys, the twin sons of Sgqibo Mpendulo and Mzandile Mfeya were of a similar age. We are satisfied from discussions with Mr Mpendulo, copies of baptismal certificates and our own observations of the bodies that they were approximately 16 years old.



3. On our own observations Tandu Mtembu, the oldest of the victims was somewhere between 18 and 20 years. People who knew him say that he was 19 years old.
4. The five victims were NOT identified by the SADF as either APLA or PAC members prior to the attack. On analysing the various statements issued by the S A Government, they attacked the house because they believed it to be an APLA base. On their own admission they did not know who was in the house at the time of the attack. It is, however, likely that Sgqibo Mpendulo was the intended target. He is a well known political activist PAC member and ex Robben Islander. As already stated the house where the attack took place belongs to him.
5. The five boys did not live in that house. The Mpendulo twins and Mfeya lived in Mquanduli with Mrs. Mpendula, 36 km from Umtata, where they went to school at the Holimisa Senior Secondary School. They were visiting their father for the weekend.
6. We cannot say whether or not fire arms were found in the house. The allegations by S A Security Forces that some arms and ammunition were found is denied by Mr Mpendulo.
7. Furthermore, the alleged finding of those weapons is totally irrelevant to the maximum force, shoot to kill tactics used by the SADF in the attack.
8. According to the investigating officer, more than 100 spent cartridges were found on the scene. They were all 9mm. From his observations, both in relation to how the cartridges dispersed and the bodies which were riddled with bullet wounds, light automatic handguns were probably used in the attack. No other firearms were discharged which would tend to dispel any suggestion that there was a shoot out.
9. The SADF, in an attempt to justify the brutality of the attack, have hinted but without giving any specific detail, that there was some form of resistance. If that were true, we would have expected that at least one or two of the boys would have been on their feet when the shooting began. The evidence at the scene of the attack indicates strongly that all the shooting was downwards towards the floor. If the boys were standing at the time of the shooting, bearing in mind that more than 100 rounds of automatic fire was sprayed into the room, the walls would have been riddled with bullet holes. We could only find four such holes in the room where the killing occurred. All those holes were lower than knee high, with two just above the skirting board, indicating downward shooting.
10. We conclude therefore that the victims were lying down when they were fatally shot. All the bodies were riddled with bullet holes, mostly in the chest area and head. The 19 year old who would have been the most capable of some form of resistance, although given the circumstances we cannot imagine the nature or extent of such resistance, has no marks on the front of his body. On the back of his head, neck and upper back we found at least twelve bullet wounds. From our observations the youngest, Yose, was hit 18 times, with nine shots in the left upper chest and four in the head.



11. According to official SADF statements, their soldiers were ordered to avoid killing, to capture prisoners and take them back to the Republic. If that is correct, the attackers wilfully and recklessly disobeyed orders. The facts suggest that they entered the target house with the specific intention to shoot to kill anything or anyone who happened to be in the house at the time, irrespective of who they were, how old or how young they were and irrespective of their individual personal political affiliations and/or involvement.

In the light of the above, we wish to make the following recommendations:

- That there exists a prima facie case of murder arising from this incident is without question. Statements issued by the responsible Minister have indicated that the planning of this murder occurred in South Africa and we therefore recommend that the case is handed over to the Attorney General with a view to investigating charges of murder, conspiracy to commit murder and all related charges.
- This act of wilful aggression by the Government is a flagrant breach of the Peace Accord to which they are a signatory. We have therefore lodged a formal complaint with the Peace Secretariat against the South African Government for breach of the Accord.
- Official SADF statements have stressed that the soldiers were ordered to avoid killing. If this is true then the soldiers wilfully and recklessly disobeyed these orders and should at the very least have been suspended following the attack. This has not happened, for reasons known only to the SADF, and we therefore call upon them to suspend with immediate effect all members who participated in the killings.
- The attack demonstrates quite clearly the inability of the SADF to carry out the functions of a defence force. Legislation for the establishment of the TEC Sub Council on Defence is already in place and we call for this legislation to be put into effect without further delay.
- This Sub Council on Defence should then ensure that the participants in this attack are court martialled and that a proper enquiry into the events takes place.
- The Minister of Defence, Mr Kobie Coetsee, who has unashamedly admitted to his authorisation of this attack is entirely unfit for public office and should be removed from his post with immediate effect.
- We further call on the Government to make public the information which led them to believe that this house was an APLA base.
- By the Government's own admissions regarding the motives for the attack, this constitutes an act of political violence and we believe therefore that President de Klerk should [despite his own involvement] refer this question to the Goldstone Commission for additional investigation.

LAWYERS FOR HUMAN RIGHTS.



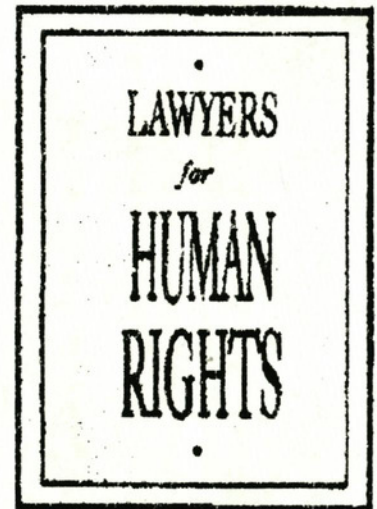
OCT 14 '93 08:15 L H R

P.1

**- NATIONAL DIRECTORATE -**

730 Van Erkom Building  
Pretorius St, Pretoria 0002  
Telefax: (012) 325 6318  
Telephone: (012) 21 2135  
Docex 113, Pretoria

Our ref:  
Your ref:  
Date: 12.10.1993

**PRESS STATEMENT**

LAWYERS FOR HUMAN RIGHTS has undertaken an independent investigation into the killing by the SADF of five youths in Umtata, Transkei, on October 8, 1993.

Our investigation included the following:

1. An interview with Sgqibo Mpendulo, the father of the 16 year old twins who died in the attack and owner of the house where the shooting took place.
2. An interview with the family attorney Dumisa Ntsebeza who was at the scene before the bodies were removed.
3. An interview with Major Dlanjwa head of murder and robbery and with Lt. Magadla the investigating officer.
4. An inspection in loco at the house where the attack occurred.
5. An inspection of the five bodies.
6. Perusal of statements issued by the South African Government, the SADF and the SAP in relation to the attack.

We are able to make the following findings:

1. One of the boys, Sandiso Yose was pre-puberty. People we spoke to who knew him said he was 12 years old. On our own observations he was a young boy somewhere between 12 and 14 years old.
2. Three of the boys, the twin sons of Sgqibo Mpendulo and Mzandile Mfeya were of a similar age. We are satisfied from discussions with Mr Mpendulo, copies of baptismal certificates and our own observations of the bodies that they were approximately 16 years old.
3. On our own observations Tandu Mtambu, the oldest of the victims was somewhere between 18 and 20 years. People who knew him say that he was 19 years old.



15



4. The five victims were NOT identified by the SADF as either APLA or PAC members prior to the attack. On analysing the various statements issued by the S A Government, they attacked the house because they believed it to be an APLA base. On their own admission they did not know who was in the house at the time of the attack. It is, however, likely that Sgqibo Mpendulo was the intended target. He is a well known political activist PAC member and ex Robben Islander. As already stated the house where the attack took place belongs to him.
5. The five boys did not live in that house. The Mpendulo twins and Mfeya lived in Mquanduli with Mrs. Mpendula, 36 km from Umtata, where they went to school at the Holimisa Senior Secondary School. They were visiting their father for the weekend.
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8. According to the investigating officer, more than 100 spent cartridges were found on the scene. They were all GMM. From his observations, both in relation to how the cartridges dispersed and the bodies which were riddled with bullet wounds, light automatic handguns were probably used in the attack. No other firearms were discharged which would tend to dispel any suggestion that there was a shoot out.
9. The SADF, in an attempt to justify the brutality of the attack, have hinted but without giving any specific detail, that there was some form of resistance. If that were true, we would have expected that at least one or two of the boys would have been on their feet when the shooting began. The evidence at the scene of the attack indicates strongly that all the shooting was downwards towards the floor. If the boys were standing at the time of the shooting, bearing in mind that more than 100 rounds of automatic fire was sprayed into the room, the walls would have been riddled with bullet holes. We could only find four such holes in the room where the killing occurred. All those holes were lower than knee high, with two just above the skirting board, indicating downward shooting.
10. We conclude therefore that the victims were lying down when they were fatally shot. All the bodies were riddled with bullet holes, mostly in the chest area and head. The 19 year old who would have been the most capable of some form of resistance, although given the circumstances we cannot imagine the nature or extent of such resistance, has no marks on the front of his body. On the back of his head, neck and upper back we found at least twelve bullet wounds. From our observations the youngest, Yose, was hit 18 times, with nine shots in the left upper chest and four in the head.
11. According to official SADF statements, their soldiers were ordered to avoid killing; to capture prisoners and take them back to the Republic. If that is correct, the attackers wilfully and recklessly disobeyed orders. The facts suggest that they entered



the target house with the specific intention to shoot to kill anything or anyone who happened to be in the house at the time, irrespective of who they were, how old or how young they were and irrespective of their individual personal political affiliations and/or involvement.

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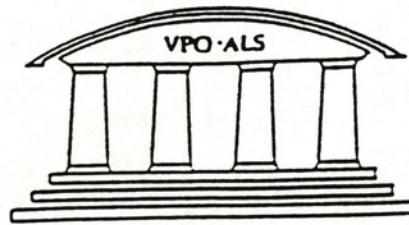
- That there exists a prima facie case of murder arising from this incident is without question. Statements issued by the responsible Minister have indicated that the planning of this murder occurred in South Africa and we therefore recommend that the case is handed over to the Attorney General with a view to investigating charges of murder, conspiracy to commit murder and all related charges.
- This act of wilful aggression by the Government is a flagrant breach of the Peace Accord to which they are a signatory. We have therefore lodged a formal complaint with the Peace Secretariat against the South African Government for breach of the Accord.
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- This Sub Council on Defence should then ensure that the participants in this attack are court martialled and that a proper enquiry into the events takes place.
- The Minister of Defence, Mr Kobie Coetsee, who has unashamedly admitted to his authorisation of this attack is entirely unfit for public office and should be removed from his post with immediate effect.
- We further call on the Government to make public the information which led them to believe that this house was an APLA base.
- By the Government's own admissions regarding the motives for the attack, this constitutes an act of political violence and we believe therefore that President de Klerk should [despite his own involvement] refer this question to the Goldstone Commission for additional investigation.

LAWYERS FOR HUMAN RIGHTS.



17





**ASSOCIATION OF LAW SOCIETIES**

**SUBMISSIONS TO TECHNICAL COMMITTEE ON  
FUNDAMENTAL RIGHTS DURING THE TRANSITION**

**RE: TENTH PROGRESS REPORT**



## 1. INTRODUCTION

1.1 These submissions are made on behalf of the Association of Law Societies ("the ALS") an association comprised of the various provincial law societies and representing the overwhelming majority of legal practitioners in South Africa.

1.2 The submissions of the ALS are not directed in general at the substance of the Interim Chapter of Fundamental Rights ("the Chapter of Rights") or in regard to the concept of an entrenched and judicially reviewable rights instrument. Indeed, the ALS welcomes the introduction of such an instrument enshrined in the constitution.

1.3 The ALS makes no submissions regarding the general substance of the rights proposed in the Chapter of Rights for the following reasons:

1.3.1 The process of negotiating the general content of a Chapter of Rights is the task of the political parties involved in the negotiating process, and the ALS is not a political party.

1.3.2 The membership of the ALS embraces diverse political views and it is not the task of the ALS to express its members' political aspirations.

1.4 The ALS does however have a legitimate concern in the precise formulation of the Chapter of Rights for the following reasons:

1.4.1 Its members will have to advise on and apply the said Chapter of Rights.



- 1.4.2 The ALS represents the overwhelming majority of legal practitioners in South Africa which practitioners will have to breathe life into the Chapter of Rights and ensure that the Chapter is consistent with the requirements of legality and certainty.
- 1.5 The ALS is accordingly concerned to address the proposed formulations in the Tenth Progress Report of the Technical Committee on Fundamental Rights During the Transition with specific reference to the following considerations:
- 1.5.1 Whether the drafting will have unintended consequences or implications;
- 1.5.2 Whether the Chapter contains provisions which would give rise to legal uncertainty;
- 1.5.3 Whether the provisions of the Chapter are capable of enforcement and whether those provisions which deal with procedure are consistent with contemporary standards, and are not unduly and unnecessarily disruptive.
- 1.6 The ALS is also concerned that the Technical Committee, alternatively the Negotiating Council should have due regard to the concerns and interests of the attorneys' profession itself given the central role this profession will have in applying, interpreting and defending the Chapter of Rights.

## 2. **CLAUSE 7 (1): APPLICATION**

In order to avoid the sterile debate between state and non-state action,



particularly in regard to the performance of quasi-state functions by non-statutory bodies, the concept "organs of the state" should be amended to include institutions that perform quasi-state functions. Our concern however is that the phrase "all statutory bodies" is ambiguous in that it also carries the meaning that all bodies established by statute, (many of which are private in nature, i.e. the stock exchange and industrial councils), which do not perform a state function, are included. Accordingly we propose that the phrase "statutory bodies" be replaced by the words "state funded institutions" or "institutions performing state functions" or other similar wording.

3. **CLAUSE 7 (2): APPLICATION**

The drafters intend to include acts performed pursuant to decisions taken before the commencement of the Chapter, by distinguishing between "decisions" and "acts" in this clause whilst using the generic "actions" elsewhere in the Chapter. However this intention is implicit and there is no reason why it should not be made explicit. The following clause is proposed:

"The provisions of this Chapter shall apply to:

- (a) all laws in force, and
- (b) all administrative decisions taken during the period of operation of this Chapter, and
- (c) all administrative acts performed pursuant to administrative decisions taken either before or after the operation of this Chapter."

4. **CLAUSE 7 (3): JURISTIC PERSONS**

4.1 The wording of 7 (3) of the draft Chapter of the Technical



Committee is the following:

"All juristic persons shall be entitled to the rights contained in this Chapter where, and to the extent that, the nature of these rights permits."

The comment explains that this is derived from the relevant clause in the German constitution or Basic Law, which translated into English, reads as follows:

"The basic rights shall apply also to domestic juristic persons to the extent that the nature of such rights permit."

4.2

There is no doubt that juristic persons in German constitutional law have basic rights and that they can go to court to enforce these rights. However, this is only the case when the nature and activities of these juristic persons are such that it relates to the free exercise of the rights of natural persons or when the activities of the juristic person are such that they amount to a meaningful exercise of individual human freedom. In one of the decisions of the German Federal Constitutional Court the following (very freely translated) was said:

"The value system of the concept of fundamental rights is based on the liberty of the individual as a natural person. The fundamental rights should in the first place protect the sphere of liberty of the individual against interference by the state and ensure for such individual the necessary conditions for the free exercise of these rights within the



community."

In other words, drawing juristic persons into the sphere of protection of fundamental rights is only justified when the activities of such juristic persons embody the freedom of natural persons.

4.3 In regard to the phrase "to the extent that the nature of such rights permits", the German Constitutional Court has ruled that the right to life and the inviolability of the person is not applicable to juristic persons. Nor are rights regarding marriage and family life.

However, the following has been held to be applicable and available to juristic persons:

- 4.3.1 the right to the free development of a personality, insofar as this does not violate the rights of others or offend against the constitutional order or the moral code;
- 4.3.2 freedom of religion and conscience, in the case of religious organisations and other juristic persons whose aims and activities revolve around the promotion of religious activities or the preaching of a certain faith;
- 4.3.3 freedom of the press and freedom to broadcast;
- 4.3.4 the freedom to choose a trade, occupation, profession, place of work, place of training, etc;
- 4.3.5 property and the right of inheritance;



4.3.6 in regard to universities and faculties, the right to freedom of art and science, research and teaching;

4.3.7 equality before the law (as embodied in Article 3 (1) of the German Basic Law).

4.4 However it is possible that Clauses 7 (3) and 8 (1) of the Draft Chapter of Rights could lead to competitive corporate challenges on the grounds that legislation or even an executive act that treats one corporate entity less stringently than another infringes the equality clause. The underlying philosophy concerning fundamental human rights, namely that corporate entities as juristic persons have these rights only insofar as their basic nature and activities embody the free exercise of individual liberty and the spiritual products of natural persons as human beings should be made explicit and competitive corporate challenges in areas of purely commercial activity should be expressly excluded. This can be done by specifying that the Chapter shall apply to juristic persons to the extent that such persons embody or express the freedoms of natural persons.

4.5 It is also clear there is one difference between 19 (3) of the German Basic Law and 7 (3) of the South African draft, namely the fact that the German clause specifically mentions "domestic" juristic persons, whereas this does not occur in the draft Chapter. It is not clear why this is the case and we propose that this addition be made.

## 5. **CLAUSE 7 (4): STANDING**

5.1 Clause 7 (4) (a) is restrictive in that it is open to the interpretation that only parties alleging an infringement or threat to a right may



seek declaratory relief. This may exclude intervenor or amicus curiae briefs, the purpose of which is to assist the courts in formulating constitutional principles rather than seeking relief. In addition, this constitutes an undue limit on our present common law which empowers parties to a dispute to seek declaratory relief in certain circumstances without having to allege an infringement or threat to a right.

5.2 Clause 7 (4) (b) should refer to a person acting in his/her/its own interest rather than in his/her/its own name, and in the interest of other persons rather than on behalf of other persons. It is the concept of interest that is fundamental to legal standing. An applicant will be cited in its own name even where it is claiming relief in the interest of others. The reference to "on behalf of" is problematic in that it implies the requirement of agency or authority, which means that constitutional actions may be thwarted on purely technical grounds, i.e. the lack of authority.

5.3 It is imperative that associations also be permitted to act in the public interest and bring class action suits, and that the clause be widened to include the right to act in the public interest. This has been accepted in inter alia, Canadian and Indian constitutional jurisprudence.

5.4 A proposed formulation is as follows:

"Applications referred to in paragraph (a) may be brought by:

- (i) a person acting in his or her own interest;
- (ii) an association acting in its own interest or in the interest of its members;



actions provided its requirements are satisfied.

**7. CLAUSE 11: FREEDOM AND SECURITY OF THE PERSON**

7.1 The clause as presently formulated is basically in line with the type of guarantee to be found in international instruments intended for the protection of the freedom and security of the person.

7.2 The most pressing concern arising out of Clause 11 (2) is whether or not the death penalty would constitute a form of cruel, inhuman or degrading treatment or punishment. This is undoubtedly a matter of which is central to the administration of justice and such an important matter should not be left to the judiciary to determine. This comment is equally applicable to the right to life clause.

**8. CLAUSE 13: PRIVACY**

8.1 We note the comments in regard to the limitations clause in securing the interest of the State to regulate anti-social conduct on private property. We assume that the reference to "persons" is meant to exclude the power of juristic bodies or artificial persons claiming privacy as a ground for evading appropriate inspections or regulations by duly authorised agencies seeking to protect the public health, safety and security. We would however prefer that these considerations receive more explicit recognition.

8.2 We believe that the current formulation of the Clause may lead to confusion and that the right to privacy and the protection against search and seizure powers should be set out in separate clauses.



9. **CLAUSE 15: FREEDOM OF EXPRESSION**

9.1 Clause 15 (1) should end after the word "expression". The remainder of the sentence is superfluous as incorporated and the additional words, far from adding certainty can only give rise to confusion in interpretation. Similarly, the addition of the specific references to "artistic creativity" and "scientific research" are redundant. Secondly, the separation of freedom of expression from the freedoms envisaged in Clause 14 (1) is notionally unsound and leads to unfortunate results as we explain more fully below.

9.2 Clause 15 (2) is an unusual provision to find in a Chapter of Rights. Concerns about the diversity in the state media are legitimate, but are better addressed in subordinate legislation, as has been done in the Independent Broadcasting Authority Act, where these concepts have been:

9.2.1 more adequately defined; and

9.2.2 where specific remedies are available, that would be more appropriate and effective, than giving aggrieved parties a constitutional remedy.

9.3 Secondly, such a clause might inhibit future policy to create media diversity through a system of state subsidies encouraging the development of new media in the broadcasting and print fields. An application of this clause to such media since they might initially be financed by the state, would require their regulation by the state which would clearly be undesirable. We would recommend that Clause 15 (2) be deleted.



**Freedom of expression clauses in relation to other clauses  
in the chapter:**

- 9.4 Freedom of expression clauses have created the greatest difficulty for constitutional courts where courts have been required to balance them against other constitutional interests.
- 9.5 Because freedom of expression has been notionally divided, by virtue of the provisions of Clause 14 (1) (dealing with religion, belief and opinion), an anomalous result has occurred in the interpretation of Clause 36 (2) (a), which provides for strict constitutional scrutiny of Clause 14 (1) rights, but not for Clause 15 (1) rights, except insofar as they concern free and "fair political activity".
- 9.6 This means that the same right is subjected to different rules of interpretation depending under which clause it is adjudicated.
- 9.7 Freedom of expression, religion, belief and opinion are not susceptible to arbitrary division and must be accorded equal constitutional protection. Once again the United States First Amendment is the appropriate example, where one clause deals with all these rights.
- 9.8 In general, a freedom of expression clause should be minimalist in construction, so that courts have the flexibility to interpret it more or less restrictively to reflect changing attitudes in society toward freedom of speech. The interim nature of this Chapter may however suggest otherwise.



10. **CLAUSES 18, 19, 20: MOVEMENT, RESIDENCE, CITIZENS' RIGHTS**

Insofar as certain rights are accorded inter alia, to "persons" and others to "citizens", clarity is required as to the definition of "person" in order to resolve potential ambiguity.

11. **CLAUSE 22: ACCESS TO COURT**

We propose that the clause be extended to provide for a litigant to be represented by a legal practitioner of his or her own choice, whether an attorney or an advocate. South Africa appears to be the only country which still maintains the archaic split-bar in its pristine form. Whereas corporate litigants can afford this division of professions, the person on the street cannot.

12. **CLAUSE 23: ACCESS TO INFORMATION**

Whilst the provision of a clause granting freedom of information is to be welcomed, restrictions placed on that right in its current formulation are problematic. A person has a right to information provided that the information required is for the protection or exercise of any of that person's rights. This requirement in Clause 23 should be deleted. The rationale for allowing citizens access to information should not be solely dependent on that information being linked to any "assertive" right needed to be protected or exercised. In practice access to information rights are exercised most frequently by journalists or researchers who may then make such information public. The right to information should mean simply the public's right to "know". However this might be one of the clauses that does not take immediate effect in order to enable Parliament to pass legislation to balance the interests of ordinary, interest-free government on the one hand and transparency on the other.



13. **CLAUSE 24: ADMINISTRATIVE JUSTICE**

13.1 **Clause 24 (b):** Insofar as the existing legitimate expectation doctrine is generally held to create a right to a hearing and not a substantive benefit, this clause is tautologous in that it appears to create a right to a hearing when a legitimate expectation to a hearing is threatened by administrative action.

13.2 It is unclear how a court would interpret subclauses (a) and (b) together, in that they afford a right to lawful action when rights or interests are affected, and a right to a hearing when rights or legitimate expectations are affected.

13.3 It is regrettable that this clause, save for the requirement of the provision of reasons does not go far enough to create a protective and effective system of administrative justice. The history of this clause has shown a steadfast refusal to include reasonableness as a ground of constitutionally protected review. An extension of the clause to include reasonableness is amply justified and it would bring South African administrative law in line with modern systems of administrative law the world over.

14. **CLAUSE 25: DETAINED, ARRESTED AND ACCUSED PERSONS**

14.1 The clause as presently framed, subject to what is said below, conforms with internationally accepted standards. There are, however, certain specific concerns.

14.2 The most obvious failing of the clause as presently formulated is that Clause 25 (1) (c) (dealing with the rights of detained persons) and Clause 25 (3) (e) (dealing with the rights of accused persons) limits the provision of legal representation at State expense only



to cases where "**substantial injustice would otherwise result**". The requirement of "**substantial injustice**" is a more stringent one than appeared in previous drafts. The justification, apparently, is the question of expense.

- 14.3 The starting point is to reiterate the observations of Corbett C.J. in **S v RUDMAN**, 1992 (1) SA 343 (A) at 392F - G where he stated:

**"The ideal ... of ... the provision of free legal representation to all indigent persons accused of serious crimes who desire such representation, is unquestionably a most worthy one. Indeed, it is a sine qua non of a complete system of criminal justice; and any system which lacks it is flawed."**

- 14.4 While the question of cost cannot be ignored, it would be most unfortunate if a constitutional limitation were placed upon this right. The American experience has been that constitutional rights are capable of incremental development. The question of the provision of legal representation is a prime example of a such incremental development. There is no reason why the same process will not take place in South Africa.

- 14.5 It is further suggested that the question of illegally / unconstitutionally obtained evidence should be squarely addressed in the constitution. We understand that a provision dealing with the issue in an earlier draft has been omitted from the 10th Report. In this regard, the observations of Mr Justice Brandeis in **OLMSTEAD v UNITED STATES**, (1928) 227 US 438 are worthy of repetition:



"Decency, security and liberty alike, demands that Government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a Government of laws the existence of the Government will be imperilled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher, for good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a law-breaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means - to declare that the Government may commit crimes to secure the conviction of a private criminal - would bring terrible retribution."

14.6           The words "legal practitioner" in this clause should be clarified as referring only to duly admitted attorneys and advocates.

15.    **CLAUSE 26: ECONOMIC ACTIVITY**

15.1           The present formulation of the clause is confusing in that it attempts to encompass both a mobility right and a novel right to work provision. It is in the interests of legal clarity that these should be separated.

15.2           There is also an inherent risk in having, in effect, two limitations clauses applying to the area of economic activity. A court may interpret subclause 2, read with the limitations clause, as implying that there is a narrower range of justifications which can support laws which regulate economic activity than laws which restrict other rights and freedoms which do not have specific limiting



clauses attached to them.

15.3 Until this novel right, and the limitations clause have been given meaning by the courts this provision will remain somewhat obscure.

16. **CLAUSE 28: PROPERTY**

16.1 The term "expropriation" of rights excludes the state's policing power, and therefore the power to plan, develop and to seize property in certain circumstances, e.g. after the commission of a crime as evidence. We do not believe that the limitations clause would necessarily encompass a policing power as envisaged in the case law in the USA and Europe.

16.2 Secondly, we would like to point out that as we understand it, the terms just and equitable have been given a specific meaning in international human rights jurisprudence, i.e. market value and it is not clear what constitutes other "relevant factors".

16.3 From the point of view of legal certainty we are not certain what this formula would mean in the absence of any indication of what the relevant factors would be.

16.4 Save for the above we wish to state that this clause concerns a political issue, which is best left for the Negotiating Council to resolve.

17. **CLAUSE 31: LANGUAGE AND CULTURE**

It may be advisable to give greater meaning to the words "language of choice" and whether this would apply to, for example, the right to communicate with the



authorities in exotic languages. The limitations clause is not always of much use in allowing for reasonable regulation of this right.

18. **CLAUSE 32: CUSTOMARY LAW**

18.1 The formulation of the customary law clause is problematic. It is unclear. It does not adequately resolve the tension between the right to equality in the Chapter of Rights and customary law and could even provide, for example, for spouses in the same union to have contradictory regimes applying to them.

18.2 We would prefer that the primary values of society should have universal application, but concede that arrangements must be made to allow for personal choice in matters of tradition and culture. We do not believe this has been resolved in the current formulation. In view of the fact that this matter has been referred for further discussion, we would reserve our more detailed comments until the final draft is available.

19. **CLAUSE 33: EDUCATION**

Clarity is required as to what constitutes "basic education".

20. **CLAUSE 34: LIMITATIONS**

20.1 We merely wish to point out that Subclause 1 (b) derives from European and early Canadian jurisprudence. However the Supreme Court of Canada has moved away from this formulation because it has been argued that it is a concept with limited utility. Subclause 1(b) presumes that rights consist of an essential core and a margin. This will force the courts to engage in a definitional, interpretive exercise which is highly subjective and



may result in rather arbitrary lines being drawn. For example is the right to produce pornography at the essence or core of freedom of expression because of its artistic nature, or is it a marginal right?

20.2 Removing the reference to the essential core of the rights will not necessarily mean that the constitution will be unable to protect people against the most abusive and intrusive violations of their rights. Quite the contrary. Even without any reference to the "essential content of a right" laws which impose substantial limitations on basic aspects of human freedom will be most vulnerable to being struck down unless a very compelling justification can be advanced.

21. **CLAUSE 35: SUSPENSION**

It should be made clear in Clause 35 (2) (c) that only a Constitutional Court has jurisdiction in regard to the validity of a declaration of a state of emergency.

22. **CLAUSE 36: INTERPRETATION**

We would support the submissions made by the Judiciary to the effect that it is inadvisable to lay down any rules for interpretation in the Chapter of Rights. In addition, singling out a certain set of laws for special (strict) scrutiny is almost certainly going to result in all other laws being reviewed much less seriously than they should and much less vigorously than the proportionality principles in Clause 34 would allow.

11 OCTOBER 1993

The ALS wishes to acknowledge the contribution of the following persons in the

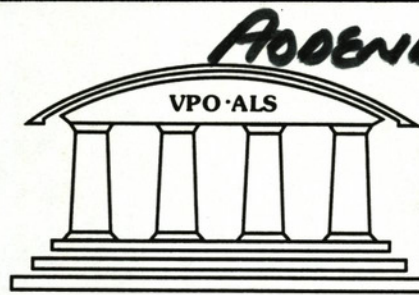


preparation of these submissions:

- Dr C Albertyn, Centre for Applied Legal Studies, Wits University
- Prof David Beatty, University of Toronto, Canada
- Geoff Budlender, Legal Resources Centre, Johannesburg
- Prof C Lewis, Wits University
- Cheryl Loots, Wits University
- Adv G Marcus, Johannesburg
- Ronalda Murphy, Wits University
- E Poskanzer, S Barrett and J MacDonald of Sack, Goldblatt, Mitchell Barristers and Solicitors, Toronto, Canada
- Prof Johan van der Westhuizen, Centre for Human Rights, Pretoria
- Urmila Bhoola, Attorney Cheadle Thompson & Haysom
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The Association of  
Law Societies  
of the RSA



*cc  
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October 14, 1993

Dr T Eloff  
Head of Administration  
Multi-Party Negotiating Process  
World Trade Centre  
Jones Street  
Jurgen Park  
**KEMPTON PARK**

Dear Dr Eloff

**COMMENT ON THE 12TH REPORT OF THE TECHNICAL COMMITTEE ON  
CONSTITUTIONAL ISSUES**

As discussed, we hand you herewith our association's comment. We shall be grateful if you could place it before the relevant committees, for which we thank you.

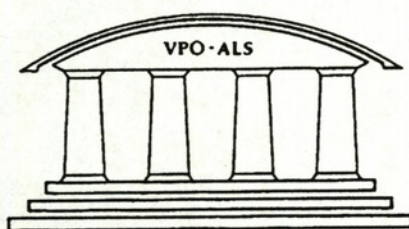
Yours faithfully

**A L J VAN VUUREN  
DIRECTOR-GENERAL**

encl



# **The Association of Law Societies of the RSA**



## **Comment on the Twelfth Report of the Technical Committee on Constitutional Issues**



**THE ASSOCIATION OF LAW SOCIETIES  
OF THE REPUBLIC OF SOUTH AFRICA**

**COMMENT ON THE TWELFTH REPORT OF THE  
TECHNICAL COMMITTEE ON CONSTITUTIONAL ISSUES**

**1 INTRODUCTION**

These submissions are made by The Association of Law Societies of the Republic of South Africa (ALS) which represents the more than 11 300 practising and candidate attorneys of South Africa. As such, the ALS represents the overwhelming majority of legal practitioners in the country.

The ALS has a legitimate concern over the structure and functions of the courts, in particular the proposed Constitutional Court, as

- 1.1 its constituents will have to practice in these courts; and
- 1.2 it will be the duty of attorneys, in the first instance, to ensure that all the people of South Africa's constitutional rights are protected and where necessary, enforced.

**2 PRINCIPLES**

The ALS did not attempt to draft legislation or rules, but has taken decisions on a number of principles. The ALS urges the Negotiating Council to consider these, which are:

- 2.1 these comments relate specifically to the transition period;
- 2.2 the Constitutional Court should be a proper court and not a forum of sorts;



- 2.3 the Constitutional Court should be separate from the Appellate Division, but parallel in status;
- 2.4 the Constitutional Court should be the ultimate court to rule on constitutional issues;
- 2.5 every lower court shall be competent to rule on the constitutional rights of an accused or litigant, but not on the constitutional validity of an act of parliament. On the latter, only the Constitutional Court shall be allowed to rule;
- 2.6 every party against whom a court has ruled on a constitutional issue, shall be entitled to appeal to either a higher court or directly to the Constitutional Court;
- 2.7 it is envisaged that the Constitutional Court will in the main be a court of appeal, but may also be a court of the first instance (see 2.8 below);
- 2.8 any party who has a dispute on a constitutional matter may approach the Constitutional Court directly after having petitioned a panel consisting of the Chief Justice and the President of the Constitutional Court for leave to do so; and
- 2.9 irrespective of whether attorneys are granted rights of audience in the existing supreme courts, it will be of cardinal importance that they be allowed to appear before the Constitutional Court for the same reasons as set out in the introduction hereto.

3 The ALS has taken notice of the addendum to the 12th report (constitutional issues) and would like to comment as follows:

3.1 **Section 88**

We suggest that it be amended to read:

41



**Composition of the Constitutional Court and appointment of Judges of the Constitutional Court**

3.1.1 The President and Judges of the Constitutional Court shall be appointed by the President in accordance with the provisions of subsection 3.

3.1.2 No person shall be qualified to be appointed President or Judge of the Constitutional Court unless he or she -

- (a) is a South African citizen; and
- (b) is a fit and proper person to be a Judge of the Constitutional Court; and
- (c) is a Judge of the Supreme Court of South Africa or has for a cumulative period of at least 10 years after having so qualified:
  - (i) practised as an advocate or an attorney in the Republic of South Africa, or
  - (ii) lectured in law at a university in the Republic of South Africa.

3.1.3 A joint standing committee of parliament, composed of one member of every political party represented in the National Assembly and the Senate shall, subject to subsection 4, within 30 days of the first sitting of the senate and after having interviewed in public all candidates that are nominated or who make themselves available -

- (a) unanimously nominate a person to be appointed as the President of the Constitutional Court; and



- (b) unanimously nominate 10 persons to be appointed as Judges of the Constitutional Court

and the nominees, if their nomination is approved *en bloc* by resolution adopted by 75% of the members present at a joint sitting of the National Assembly and the Senate, shall be appointed as such by the President under his or her hand and the Seal of the Republic of South Africa.

- 3.1.4 If the joint standing committee referred to in subsection 3 is unable to reach unanimity on the nomination of the President and Judges of the Constitutional Court, the President and eight Judges of the Constitutional Court may be nominated by a majority of 75% of the members of the said committee, and the two remaining Judges may be nominated by the majority of the remaining 25% of the members of said committee.
- 3.1.5 If the nominations are not approved at the joint sitting as contemplated in subsection 3, the matter shall be referred back to the joint standing committee for reconsideration according to subsections 3 and 4.
- 3.1.6 Vacancies on the bench of the Constitutional Court shall be filled in accordance with the procedure prescribed in subsection 3.

[Comment:

- 1 From the above, it will be noted that Section 88(2)(d) has been deleted, as the ALS is concerned that unfit people may be appointed.
- 2 The ALS is of the opinion that the interviews should be held in public, so that the candidates can be properly scrutinized.
- 3 There shall be a proper debate on the resolutions.]



**3.2 Section 89(1)**

We suggest that it be amended to read:

- (1) The conditions upon which the Constitutional Court may be siezed of any matter in terms of this Constitution or any other law, and all matters relating to the conduct of proceedings before the Court, shall be regulated subject to the provisions of this Constitution by rules prescribed by the President of the Constitutional Court after consultation with the Chief Justice published in the *Government Gazette*.

**3.3 Section 91**

As regards the establishment, jurisdiction, composition and functioning of the courts, the ALS submits very strongly that these be uniform in all the envisaged different regions.

**3.4 Section 93 ad subpara 1(e) thereof**

In view of the number of practitioners that the ALS represents, it should have three members on the judicial service commission. Also note that the correct designation is : The Association of Law Societies of the Republic of South Africa.

**3.5 Oath of Office of Judges**

We suggest that a similar oath be prescribed for magistrates.



4 The ALS is in agreement with the following sections:

Section 86

Section 87

Section 90

Section 92

Section 94

Section 95

Section 96

Section 97

Section 98

These are the written submissions of the ALS, but we are quite willing to appear before either the Technical Committee or the Negotiating Council to elaborate hereon, or to give further evidence.



*Assenour H***CENTRE FOR SCIENCE DEVELOPMENT***Humanities and Social Sciences*

11 October 1993

Dr T. Eloff  
Multi-Party Negotiating Process  
P.O. Box 307  
ISANDO  
1600

Reference: Prof. P.J.H. Titlestad  
Enquiries: (012) 420 2351

Dear Dr Eloff

The purpose of this letter is to inform you of the formation of the Consortium of Human Sciences Societies of Southern Africa (CoHSSSA). This is an association of the professional societies of the various relevant academic disciplines in the humanities and the social sciences.

The aim of the Consortium is to lobby for funding, to maintain a high profile for the humanities and social sciences, and to assist member societies. Research must form part of the activities of member associations and the Consortium will, among its activities, give attention to the academic journals in which accredited publications appear. I enclose a copy of our mission statement and constitution.

Forty-five societies were represented at our founding meeting. The first AGM will take place in October 1993, when the first elected committee will take over from the steering committee.

As you are aware, the differential of funding for the Human Sciences and natural sciences in South Africa recently increased. The ratio used to be 1 : 1.5, but is now 1 : 2.7. Meanwhile, in Britain, the ratio is 4 : 5, although the division of disciplines is a little different: for example, Psychology is considered a laboratory subject and falls into the second category.

Until 1995 the Secretariat of the Consortium will be the Centre for Science Development at the HSRC.

Yours sincerely



pp Prof. P.J.H. Titlestad  
Chairman: Steering Committee  
CoHSSSA



**PANEL OF RELIGIOUS LEADERS  
FOR ELECTORAL JUSTICE**

**P.O. BOX 4921  
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cc  
to  
me

*Appendix I*

Multi-Party Negotiations Forum  
P.O. Box 307  
Isalda 1600  
ATTN: Working Group of the Negotiations Forum

07 October 1993

To the Working Group of the Multi-Party Negotiations Forum:

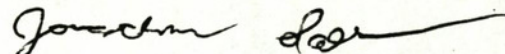
I am writing on behalf of the Panel of Religious Leaders for Electoral Justice in South Africa. The Panel is composed of leaders of every major religious faith in South Africa. It is a unique non-partisan grouping which is capable of staying above the political process. For this reason, the Panel is in a special position to monitor the transition to democracy, and to help guarantee a free and fair electoral process. Among its members are Bishop Mogopa, Archbishop Desmond Tutu, and Reverend Frank Chikane.

To help achieve these ends the Panel has produced a Code of Conduct for the elections. The Code includes guidelines on political party behaviour before, during and after the election. The entire Panel is also meeting on 26-27 October to determine how it can contribute to free and fair elections, and to review the legislation for levelling the playing field produced by the Multi-Party Negotiating Forum.

I would like to request a meeting between a delegation from the Panel and the working group of the Multi-Party Negotiating Forum in November. The meeting would provide an opportunity for the Panel to formally present its Code of Conduct, to share the outcome of its 26-27 October meeting, and to offer any contribution it might to both the Negotiating Forum and the Transitional Executive Council. I understand the fact the working group is very busy, but I feel that such a meeting could be extremely important. I would appreciate it if you would reply promptly with any possible date and time in November for a meeting. The Panel is very flexible in this regard because it views a dialogue between itself and the Negotiating Forum as a major priority.

If you have any questions feel free to contact me at the above phone number, extension 255, or fax number.

With thanks  
Sincerely,



Jonathan Sacks  
Facilitator  
Panel of Religious Leaders for Electoral Justice

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# NATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS

2nd Floor Nedbank Mall  
145 Commissioner Street  
Johannesburg  
2001

P.O. Box 3934  
Johannesburg 2000  
Tel: (011) 3319726/7  
Fax: (011) 3319728

6 October 1993

Dr T. Eloff  
The Administrator  
Multi Party Negotiating Process  
P.O. Box 307  
Isando  
1600

FAX NO.: 011 - 3972211

Dear Sir

The NATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS held a conference on the theme "Reshaping the Structures of Justice for a Democratic South Africa" at the Farm Inn, Pretoria on 30 September and 1 October 1993. This was a widely representative gathering of lawyers, judges, academics and others who are involved in the administration of justice.

A wide range of subjects was discussed and, arising out of that conference, the NADEL Annual General Meeting passed the resolution which is annexed hereto on the subject of "property rights".

We request that the resolution be distributed among the delegates to assist in the discussion on the Interim Bill of Rights. We share the very strong feeling which was expressed at the conference that:

- (a) the Property Clause should be left out of the Interim Bill of Rights, and that
- (b) Parliament ought to be empowered to pass appropriate legislation to regulate both public and private discrimination and that the provisions of the Bill of Rights should be of application both vertically and horizontally.

Yours sincerely

**P. N. LANGA (ADVOCATE)**  
**PRESIDENT**

**BOARD OF TRUSTEES**

President: Adv. Pius Langa; Vice Presidents: Adv. Abdullah Omar, Coqantile Klaas, JB Sibanyoni  
General Secretary: Adv. Selby Baqwa; Assistant General Secretary: Poobie Govindarany; Treasurer: Silas Nkomo  
Publicity Secretary: Krish Govender; Other Members: Junaid Husain, Vincent Saldanha, Nontosi Mhlanje, Phumzile Mjoko.



RESOLUTION

This Conference of the National Association of Democratic Lawyers

1. Recognising that constitutional provisions should not impede attempts to provide reparation, restitution or compensation with victims of resettlement and other apartheid legislation;
2. Recognising further that access to land and the demand for land redistribution have been central to the demands of the democratic movement;
3. Holds the view that any property clause within the Interim Bill of Rights should not affect the right of a National Parliament to establish a Land Claims Tribunal;
4. Demands that the property clause in the Interim Bill of Rights recognises the need for an equitable balance between public needs and private right in all issues concerning the expropriation of land for public purposes and in computing compensation;
5. Demands further that in the absence of any provision relating to the striking of such a balance between public and private interests, that there should be no property clause in the Interim Bill of Rights;
6. Resolves to submit urgently the text of this resolution and the argument in support of it to the Multi Party Negotiating Process or the Technical Committee dealing with the Bill of Rights as well as to all democratic structures;
7. Reiterates its support for the proposition that the Bill of Rights shall apply to public organs and to all other transactions between persons when it is appropriate and equitable.



**REPORTBACK FROM ADMINISTRATION ON THE DISTRIBUTION OF THE 12TH  
REPORT OF THE TECHNICAL COMMITTEE ON CONSTITUTIONAL ISSUES**

1. On 6 September 1993 the Planning Committee took a decision that the 12th Report should be made available to Advocate W Trengove of the General Council of the Bar by Administration (Addendum A, Item 5.1.3.3).
2. The said report was hand delivered to Advocate Trengove on 10 September 1993 (Addendum B).
3. The last sentence of item 5.1.3.3 of the Minutes of the Planning Committee meeting of 6 September 1993 was understood to mean that the 12th Report should be made available to the other bodies on request (by them).
4. Some time elapsed and the issue arose again on 23 September 1993 when Mr Z Titus enquired whether copies of the 12th Report had been sent to NADEL and the Black Lawyers' Association. This was in reaction to a letter from W Trengove (Addendum C).
5. In following this up, the sub-committee and T Eloff discussed the issue on Monday 27 September and came to the conclusion that copies had not been sent to NADEL and the Black Lawyers' Association, but that as they had copies in their possession the issue was overtaken by events.
6. T Eloff was still under the (erroneous) impression that the 12th Report had, in fact, been sent to the other bodies, i.e. the GCB and Association of Law Societies.
7. When Advocate Trengove raised the issue with Mr Z Titus on 28 September 1993, Administration was requested to ascertain the facts.
8. It is therefore clear that the 12th Report had been made available to Advocate W Trengove but not to the other bodies. The latter is an oversight for which Administration apologises.

**T ELOFF**  
**HEAD: ADMINISTRATION**  
**29 September 1993**



following issues until a future meeting of the Planning Committee:

- The name for SPR's
- Definition of the National Territory
- Languages
- Whether the Constitutional Assembly will have the power to alter the number, boundaries and powers of SPR's described in the Constitution for the transitional period
- The issue of the TBVC States
- Submission by the National Electrification Forum
- The fleshing out of the adopted Constitutional Principles
- The Constitutional Court - its composition and functioning
- The deadlock-breaking mechanisms
- The issue of boundaries
- Self Determination
- Confederalism
- Traditional Leaders

**5.1.2 Report from R Meyer on K Coetsee's meeting with the Chief Justice:**

5.1.2.1 An oral report was presented to the meeting.

5.1.2.2 It was noted that a submission had been received by the Administration from the Chief Justice and this had been forwarded to the Technical Committee on Constitutional Issues.

**5.1.3 Meeting with the General Council of the Bar:**

5.1.3.1 Z Titus gave a reportback on the meeting held with W Trengove (Chairperson of the General Council of the Bar).

5.1.3.2 It was agreed that, with regard to W Trengove's request/suggestion that he co-ordinates the views of the Advocates, the Association of Law Societies, NADEL, the Law Commission and the Black Lawyers Association, Z Titus conveys the view of the meeting to W Trengove.

5.1.3.3 It was agreed that the Administration should make available the 12th Report of the Technical Committee on Constitutional Issues to W Trengove. It was noted that W Trengove was prepared to make written



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submissions to the Technical Committee on the 12th Report. It should be noted that the report was still under embargo. It was further agreed that the Advocates, the Association of Law Societies, NADEL, the Law Commission and the Black Lawyers' Association should receive copies of the 12th Report directly from the Multi-Party Negotiating Process Administration and not via W Trengove's office.

5.1.3.4 It was noted that the Sub-Committee was scheduled to meet with the Technical Committee on Constitutional Issues on this issue.

5.1.4 The procedure/process for the drafting of citizenship legislation - recommendation from Sub-Committee:

It was noted that the Sub-Committee was scheduled to meet with Technical Committee on Constitutional Issues on this issue.

5.1.5 Financial Matters in the run up to the elections (transformation and rationalisation) - Recommendation from the Sub-Committee with regard to the technical input on this issue:

It was agreed to defer discussion on this issue until a future next meeting of the Planning Committee.

5.2 **Commission on the Demarcation/Delimitation of Regions:**

It was noted that there was nothing to report at this stage on the progress of the work of the Commissioners and the Technical Support Team.

5.3 **Planning for the implementation and practical application of the three (four) Bills, including informal preparation for the operation of the structures:**

5.3.1 It was noted that the Sub-Committee would report back on this issue to the Planning Committee after Wednesday 8 September.

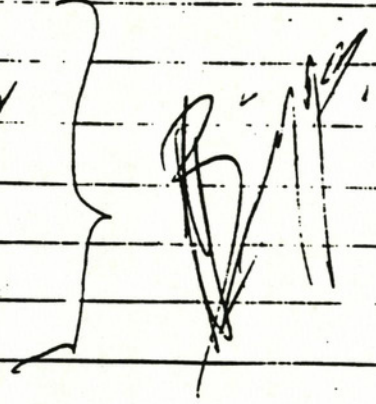
5.3.2 It was noted that the document prepared by PJ Gordhan and Z Titus was an overview document with regard to the process (see Planning Committee minutes of 30 August 1993 - Addendum A). It was further noted that the Sub-Committee should draw the attention of the Planning Committee to issues that were not in line with the envisaged time frames as laid out in the said document.



10.09.93

ENVELOPES delivered by hand

- 2 small envelopes cheque }
- 3 Small envelopes: MR. A. CHASKALSON }
- 1 Medium envelope ADU. TRENORIVE }
- 1 big envelope MS SHELIA SISULU }



33) (33)

13.09.93

Ms N.C Madlala

P. O. Box 738 TORCAAT 11400

Mr Y MOOLA

P. O. Box 202 STADER 11450

Ms A CHABOYALA

" " 1075 Lebowatje 073



ADDENDUM A

TO : ROUTE DESA - DR C J STREETER  
COPY TO : AA70  
OA35  
FROM : SA EMBASSY, LONDON  
P SCHABORT  
DATE : 19930920  
REF : 8/3/1/4/2  
8/1  
SUBJECT : MESSAGE OF CONGRATULATION FROM THE MINISTER  
OF EXTERNAL AFFAIRS OF THE REPUBLIC OF THE  
GAMBIA

42213

A DIPLOMATIC NOTE DATED 14 SEPTEMBER 1993 HAS BEEN RECEIVED FROM THE GAMBIAN HIGH COMMISSION, REQUESTING THIS EMBASSY TO TRANSMIT THE ACCOMPANYING CONGRATULATORY MESSAGE FROM THE GAMBIAN MINISTER OF EXTERNAL AFFAIRS TO THE CHAIRMAN OF THE MULTI-PARTY NEGOTIATING COUNCIL.

YOUR ASSISTANCE IN FORWARDING THE MESSAGE TO THE CHAIRMAN WOULD BE APPRECIATED.

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FAX N° 011-397-2211

DR C STREETEK

CONGRATULATORY MESSAGE TO THE CHAIRMAN  
OF THE MULTI-PARTY NEGOTIATING COUNCIL - SOUTH AFRICA

Mr Chairman,

As the Multi-Party Negotiating Council has just adopted a resolution on Walvis Bay and the Off-Shore Islands, restoring the said territories to Namibia, it gives me great pleasure to congratulate you most sincerely on my own behalf and indeed on behalf of the Government of The Gambia, and through you, the entire Multi-Party Negotiating Council on this far-reaching decision which thus completes the decolonization process of Namibia.

By taking this step in the right direction, the Multi-Party Negotiating Council has clearly demonstrated a spirit of pragmatism and realism which will go a long way to further consolidating relations between South Africa and Namibia.

Please accept the assurances of my invariable friendship and esteem.

Omar B Sey  
MINISTER OF EXTERNAL AFFAIRS  
OF THE REPUBLIC OF THE GAMBIA

The Chairman  
c/o Mr Cyril Ramaphosa  
Chief Negotiator of the ANC  
Multi-Party Negotiating Council  
World Trade Centre  
Johannesburg  
Republic of South Africa