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CONSTITUTIONAL ASSEMBLY  
**MEMORANDUM**

**TO: Participants in the Multi-lateral Discussions on the Draft Bill of Rights**  
**FROM: Executive Director**  
**DATE: 21 February 1996**  
**RE: Memorandum from Technical Committee 4 on Section 11: Freedom and Security of the Person**

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We enclose for your consideration a memorandum from Technical Committee 4 on Section 11: Freedom and Security of the Person.

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**H EBRAHIM**  
**EXECUTIVE DIRECTOR**  
**CONSTITUTIONAL ASSEMBLY**

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# TECHNICAL COMMITTEE 4

## MEMORANDUM

**TO:** Chairpersons and Executive Director of CA  
**DATE:** 15 February 1996  
**RE:** Technical Committee 4 Memorandum on Section 11: Freedom and Security of the Person

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1. Based on the discussion at the CC Sub-Committee meeting on 7 February 1996, the Panel of Experts and Technical Committee were requested to suggest an alternative formulation for section 11(2).

### 2. PROPOSED REVISED FORMULATION

**11 (1) Everyone has the right to freedom of the person, including the right not to be -**

- (a) deprived of liberty arbitrarily or without just cause; or**
- (b) detained without trial**

**(2) Everyone has the right to security of the person, including the right -**

- (a) to be free from all forms of violence;**
- (b) to psychological integrity;**
- (c) to make decisions concerning their body free of coercion.**

**(3) No one may be -**

- (a) tortured in any way;**
- (b) treated or punished in a cruel, inhuman or degrading way;**
- (c) subjected to medical or scientific experimentation without that person's consent;**

### 3. NOTES

3.1 As bodily integrity and the right to security of the person protect the same aspects of personal safety and autonomy, it was considered undesirable to use both phrases. However, the right to psychological integrity is an important dimension of security of the person. It is included in s. 11(2)(b) to avoid an unduly restrictive interpretation of security of the person which should not only be confined to physical infringements. It may find application in range of situations, particularly in relation to the psychological and psychiatric treatment of people.

3.2 Section 11(2)(c) has been drafted to protect the aspect of bodily autonomy - the right to make decisions concerning one's body free of coercion. This refers not only to decisions concerning sexuality and control of one's fertility. It also potentially applies to a wide range of other decisions such as forced marriages, enforced contraception programmes, organ donations, decisions concerning burial.

3.2 The basis of the rights protected in section 11(2) can be found in a number of international and comparative documents protecting human rights. For example:

**The African Charter on Human and Peoples' Rights (1981) -**

**Article 4:**

"Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."

**The American Convention on Human Rights (1969) -**

**Article 5:**

(1) Every person has the right to have his physical, mental, and moral integrity respected.

(2) No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person."

...

**The Basic Law of the Federal Republic of Germany**

**Article 2:**

(1) Everyone shall have the right to the free development of his personality insofar as he does not violate the rights of other or offend against the constitutional order or morality.

(2) Everyone shall have the right to life and to physical integrity. The liberty of the individual shall be inviolable. Intrusion on these rights may only be made pursuant to a statute.

**Constitution of the Portuguese Republic**

**Article 25**

(1) The moral and physical integrity of the persons shall be inviolable.

(2) No one shall be subject to torture or to cruel, degrading or inhuman treatment or punishment.

**Article 27**

(1) Everyone shall have the right to freedom and security.

...

**Convention on the Elimination of All Forms of Discrimination against Women (1979) [ratified by S.A.]**

**Article 16**

(1) States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

...

(f) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights

**International Conference on Population and Development - Programme of Action (Cairo Declaration) [September 1994]**

**Chapter VII, para. 7.3**

"...reproductive rights embrace certain human rights that are already recognised in national laws, international human rights documents and other relevant United Nations consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes the right of all to make decisions concerning reproduction free of discrimination, coercion and violence as expressed in human rights documents."

**Beijing Declaration and Programme of Action (September 1995) [South Africa has committed itself to this document without reservations]**

**Paragraph 97**

"The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.

**Equal relationships between women and men in matters of sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent and shared responsibility for sexual behaviour and its consequences."**

