

2/4/41/2/32

CONSTITUTIONAL ASSEMBLY

**THEME COMMITTEE 4
FUNDAMENTAL RIGHTS**

7 August 1995

Room OLD ASSEMBLY

DOCUMENTATION

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 4

FUNDAMENTAL RIGHTS

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

Date : Monday, 7 August 1995
Time : 09h00 - 13h00
Venue : OLD ASSEMBLY

PLEASE NOTE THE NEW VENUE ABOVE

AGENDA

1. Opening
2. Matters Arising
3. Minutes:
 - 3.1 Theme Committee 26 June 1995 : Pages 2 - 5
4. **Reports of Theme Committee (See separate document entitled "Reports"):**
 - 4.1 Right to Life
 - 4.2 Freedom of Assembly, Demonstration and Petition
 - 4.3 Freedom of Association
 - 4.4 Political Rights
5. General
6. Closure

CONSTITUTIONAL ASSEMBLY

**MINUTES OF
MEETING OF**

**THEME COMMITTEE 4
FUNDAMENTAL RIGHTS
Monday 26 June 1995 (AT 09H00)**

PRESENT

Leon AJ (Chairperson)

Asmal AK
Bakker DM
Cachalia IM (alt)
Camerer SM
Chalmers J
Coleman M
Dlamini BO
Gamndana T
Govender D
Hajaij F
Kgoali JL
Lubidla EN (alt)
Mdladlana MMS
Mfebe MW

Mohamed IJ (alt)
Myakayaka-Manzini YL
Ndzanga RA (alt)
Njobe MAA
Ntuli MIB
Pandor GNM
Radue RJ
Sizani RK
Surty ME
Thabethe E
Thompson B
Viljoen V
Tambo AF

APOLOGIES: Dlamini BO, Rasmeni SM

J Tsalamandris, Z Adams, H Cheadle, J Dugard, S Liebenberg and R Rautenbach were in attendance.

1. OPENING

- 1.1 Mr Leon opened the meeting at 0914.
- 1.2 The Chairperson noted the request by Senator Radue to present the NP submission first as he had to depart early.

2. MINUTES

- 2.1 The minutes of the meetings of Theme Committee 4 of 12 and 15 June 1995 were adopted.
- 2.2 The minutes of the Core Group meeting of 12 June 1995 were noted.

3. MATTERS ARISING

- 3.1 The meeting noted that not all parties had tabled submissions on the **Interpretation of Rights**. It was agreed that outstanding submissions will be delivered in writing to the secretariat by the end of the week.
- 3.2 The meeting agreed to a request that verbal submissions on the outstanding issues would be allowed.

4. PARTY SUBMISSIONS: LIMITATION OF BILL OF RIGHTS; STATES OF EMERGENCY AND SUSPENSION OF RIGHTS; INTERPRETATION OF RIGHTS

- 4.1 The NP submission was presented by Senator Radue who spoke to the documents, *National Party Preliminary Submission - Theme Committee 4: The Limitation of Rights; National Party Preliminary Submission - Theme Committee 4: Item 24: States of Emergency and suspension of rights; National Party Preliminary Submission - Theme Committee 4: Interpretation of the Bill of Rights*.

Questions to the NP included:

- Is the NP suggesting that the Interpretation Clause should include explicit reference to horizontal application?

The NP responded as follows:

- Section 35(3) implies that there is an indirect limitation in interpreting the application of the Bill of rights to private law relations. In certain circumstances, where unequal power structures exist, certain rights will definitely have a horizontal application.

- 4.2 The **ANC** submission was presented by Prof. Asmal, who spoke to the documents, *Preliminary ANC Submission: Theme Committee 4 - Limitation of Rights; Preliminary ANC Submission: Theme Committee 4 - States of Emergency and the Suspension of Rights.*

Questions to the **ANC** included:

- The ANC's proposed redraft of Section 33 ("The rights and freedoms ...are subject to such reasonable limitations...as can be demonstrated to be justifiable in an open and democratic society...") is based on the Canadian Charter of Rights ("The Canadian Charter...guarantees ...rights and freedoms subject to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society"). The difference seems to suggest a higher onus to justify limitations of rights in the Canadian Charter.

The **ANC** responded as follows:

- There is no significant distinction in terms of the onus placed on the state to justify limitations of rights in the above two formulations. The ANC does, however, tend to favour a more liberal approach as opposed to the restrictive interpretation of the NP.

- 4.3 The **PAC** submission was presented by Mr Sizani who spoke to the document, *Preliminary Submission of the PAC on limitation of Rights; Preliminary Submission of the PAC on Suspension of Rights in the Bill of Rights.* Mr Sizani also presented a verbal submission on the Interpretation of the Bill of Rights.

There were no questions to the **PAC**.

- 4.4 The **ACDP** submission was presented by Mr Green who spoke to the documents, *African Christian Democratic Party Submission to the Constitutional Assembly, Theme Committee Four: Limitations of Rights and the Constitution; African Christian Democratic Party Submission to the Constitutional Assembly, Theme Committee Four: State of Emergency.*

Questions to the **ACDP** included:

- The ACDP's proposal that the constitution must stipulate "an identifiable range of non-derogable rights suitable to the SA context" applicable during States of Emergency is already covered in Section 34(5)(c) of the Interim Constitution.

The **ACDP** responded as follows:

- The ACDP sees the need for a clear articulation of additional measures to protect rights during a State of Emergency especially in relation to Paragraphs 2, 3, 5 and 6 of Section 34.

4.5 The DP submission was presented by Mr Leon who spoke to the documents, *Constitutional Assembly - Theme Committee 4: Democratic Party Submission: 24 Limitation of Rights; 25 States of Emergency and Suspension of Rights; 27 Interpretation of Bill of Rights*

Questions to the DP included:

- Why does the DP feel that Section 33(3) is "superfluous"?
- Does the DP view Section 33(3) as having horizontal application?
- Could the DP elaborate on their proposal that certain rights fall in the category of "illimitability" and how would one deal with a situation when the exercise of a right considered to be "illimitable" infringes on other rights?
- Would the DP agree to the inclusion of Servitude and Forced Labour in the category of "illimitable rights"?

The DP responded as follows:

- Once the CA resolves the issue of horizontality in relation to the whole Bill of Rights, then Section 33(3) which provides for indirect horizontal application will be superfluous.
- Placing certain rights in a special category should not allow its abuse or infringement on other rights. Placing Freedom of Religion, for eg. in the category of "illimitability" does not mean the right to commit criminal acts in its name. In formulating a core of "illimitable rights" each right must be checked carefully against other rights outside of that category.
- The DP would have no objection to the inclusion of the right to human dignity and freedom from forced labour and Servitude in a category of "illimitable rights".

5. GENERAL

- 5.1 The meeting noted a memorandum from the Executive Director regarding the establishment of a Sub-Committee of the Constitutional Committee to facilitate the effective negotiation of constitutional issues.
- 5.2 It was agreed that those parties who wished to make submissions on the Applications Clause (Section 7) must do so within 14 days so that the Technical Committee can deal with it.
- 5.3 Members were reminded that today's meeting was the last of the session and that the next Theme Committee meeting will take place on the 31 July 1995.

6. CLOSURE

The meeting rose at 11h15.