

2/4/11/2/10

**CONSTITUTIONAL ASSEMBLY**

**THEME COMMITTEE 4  
FUNDAMENTAL RIGHTS**

**20 March 1995**

**OLD ASSEMBLY CHAMBER**

**DOCUMENTATION**

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# CONSTITUTIONAL ASSEMBLY

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## THEME COMMITTEE 4 MEETING

### FUNDAMENTAL RIGHTS

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

**Date** : Monday, 20 March 1995  
**Time** : 14h30 - 18h30  
**Venue** : Room - Old Assembly Chamber

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#### AGENDA

1. Opening
2. Minutes: Pages 3-21
3. Matters Arising
4. Block 2: Party Submissions: Separate Document
  - 4.1 Right to Human Dignity
  - 4.2 Right to Privacy
5. Block 2: Public Submissions: Separate Document
6. Supplementary Report on Block 1: Separate Document
7. General
  - 7.1 Theme Committee meetings 18 - 21 April 1995: Page 22
  - 7.2 Request for Oral Submission
    - 7.2.1 Freedom of Expression Institute: Page 23-26
    - 7.2.2 Conference of Editors: Pages 27-28
  - 7.3 Human Rights Treaties: Pages 29-31
  - 7.4 Work Programme - Block 2: Pages 33-44

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**\*\*** *Members are reminded to bring copies of the Constitution and Standing Rules for the Constitutional Assembly to the meeting.*

**H Ebrahim  
Executive Director  
Constitutional Assembly**

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## CONSTITUTIONAL ASSEMBLY

### MINUTES OF MEETING OF

### THEME COMMITTEE 4 FUNDAMENTAL RIGHTS WEDNESDAY 6 MARCH 1995 (AT 10H30)

#### PRESENT

Leon AJ (Chairperson)

Cachalia IM (alt)  
Camerer SM  
Chalmers J  
Coleman M  
Dlamini BO  
Gamndana T  
Govender D  
Green LM  
Hajaij F  
Lubidla EN  
Mabandla BS  
Maseko TMJ  
Mathebe P (alt)  
Mdladlana MMS  
Mfebe MW  
Mohammed IJ (alt)

Molekane RS  
Mulder CP  
Myakayaka-Manzini YL  
Njobe MAA (alt)  
Pandor GNM  
Piliso M  
Radue RJ  
Rasmeni S  
Rhoda RT  
Selebi JS  
Sizani RK  
Surty ME  
Thabethe E (alt)  
Thompson B  
Tyobeka VM (alt)  
Viljoen V

**Apologies:** Asmal KA, Kgoali JL

J Tsalamandris, Z Adams, Prof. J Dugard, Prof. I Rautenbach and Ms S Liebenberg were in attendance.

## 1. OPENING

- 1.1 The meeting was opened by Mr Leon.

## 2. MATTERS ARISING

- 2.1 The outstanding issues from the meeting of 27 February 1995 were noted as follows:

- 2.1.1 The conclusion to the Technical Committee's opinion to the Theme Committee regarding the issues:

i) Everyone shall enjoy ... "(Whether the term "everyone" includes juristic persons, structured and unstructured groups, and organs of civil society, etc).

ii) "after having given due consideration to inter alia the fundamental rights contained in Chapter 3".

iii) What constitutes "universally accepted fundamental rights".

- 2.1.2 The need for the Drafting Sub-Group to meet to draft the Supplementary Report on Block 1.

- 2.2 Prof. Dugard noted that the minutes of 27 February 1995, should reflect that the Technical Committee's opinion on the issue of "Everyone" was presented by Ms Liebenberg and not Prof. Dugard.

## 3. BLOCK 1: OUTSTANDING ISSUES

- 3.1 There were no further party submissions or comments on the Technical Committee's opinion on items 2.1.1 (i), (ii) and (iii) above.

## 4. BLOCK 2: NATURE AND APPLICATION OF BILL OF RIGHTS:

- 4.1 The chairperson opened the discussion on item of Block 2 - **Nature and Application of Bill of Rights.**

Parties were then asked to present their submissions to the Committee. Each party presented their submissions following which points of clarity and questions were asked.

4.2 The ANC submission was presented by Senator Surty who spoke to the document entitled **"The Nature and Application of a Bill of Rights: Preliminary Submission of the ANC"**, included in the documentation of 27 February 1995.

4.2.1 Points of clarity and discussion :

- i) There were no questions other than a clarifying point on the ANC's position on the judiciary.

Senator Surty noted that the judiciary is bound by the Bill of Rights. He further added that it is essential that the Bill of Rights is enforced and entrenched.

4.3 Mr Green requested permission to present the ACDP submission on the meaning of **"Everyone"** as arrived late in the meeting and was not present when the agenda item was under discussion.

4.3.1 Following discussion, the chairperson ruled that the ACDP should be given the opportunity to present their submission.

4.3.2 Mr Green spoke to the document **"African Christian Democratic Party: Submission to Theme Committee Four/Block 1: Submission on the use of the term "everyone" in Constitutional Principle II"**.

4.3.3 Mr Green also responded to the opinion of the Technical Committee on this matter by noting that the ACDP disagrees with the conceptualization of applying fundamental rights to natural persons only. He also added that in the opinion of the ACDP, the Technical Committee have defined their opinion in terms of a legalistic perspective.

4.4 The FF's submission was presented by Dr CP Mulder who spoke to the document entitled **"Submission on the Nature of the Proposed Bill of Rights and its Application"**, included in the documentation of 27 February 1995.

4.4.1 Points of clarity and discussion :

- i) Questions included: - The issue of application of the Bill of Rights; the issue of horizontality and verticality and how a Bill of Rights can address the inequalities of the past.

Dr Mulder responded by noting that applicability must be determined by looking at each right separately, and that the FF does not exclude horizontal application entirely. Dr Mulder also added that the FF

believed that social inequalities could be addressed by other measures such as legislation and specific government programs.

- 4.5 The NP submission was presented by Senator Radue who spoke to the document entitled **"Theme Committee 4: National Party Submission Blocks 1 & 2: Notes on aspects pertaining to Bills of Rights"**, included in the documentation of 27 February 1995.

4.5.1 Points of clarity and discussion :

- i) Questions to Senator Radue included: - how the NP correlates an acknowledgement of the international recognition of horizontality while at the same time not being clear on this matter; the reference by the NP to "universally accepted and proven principles contained in other instruments", with no reference to what they are.
- ii) The ANC also registered their concern at the fact that the NP has still not complied with an undertaking made at the previous meeting to provide the Theme Committee with a list of what it regards as "universally accepted fundamental rights".

Sen. Radue responded as follows:

- i) The NP does not feel it is necessary to list specific rights at this point in time, as the NP will state its position to each right as they arise in the work programme. It was also noted that the NP use Chapter 3 of the Interim Constitution as a starting point in their approach.
  - ii) The NP is not averse to horizontality, provided it is carefully stipulated and qualified in each instance and not applied in absolute terms.
  - iii) Proven principles are those that are generally accepted in the international community
- 4.6 The PAC submission was presented by Mr Sizani who spoke to the document entitled **"PAC Preliminary Submissions on Block 2: The Nature and Application of a Bill of Rights"**, included in the documentation of 27 February 1995.

4.6.1 Points of clarity and discussion :

- i) Questions to the PAC related to its opinion on the conflict between an equality provision and the recognition of customary law as it pertains to women.

Mr Sizani noted that the PAC have taken the opinion of the Technical Committee into account, but is not bound to it. The PAC supports customary law but accepts that it should be subject to the Bill of Rights. Mr Sizani said that the PAC would make more substantial submissions in this regard when the Theme Committee dealt with the issue of Equality.

- 4.7 The ACDP's submission was presented by Mr Green who spoke to the document entitled "**Submission by the ACDP Theme Committee 4, Block One: The Nature and Application of a Bill of Rights**", included in the documentation of 27 February 1995.

4.7.1 Points of clarity and discussion :

- i) Questions to Mr Green included the following:
  - Proposals the ACDP has in relation to making the Constitution and the Bill of Rights more responsive to the rights of victims rather than criminals.
  - The alternatives to a secular\ humanist approach to the Bill of Rights and particularly to the Constitutional Court?
  - The relationship between the ACDP recognition of "maximum freedom and liberties for the individual " and the ACDP's suggestions for the restrictions thereof.
  - The ACDP philosophy that seems to be rooted in intolerance which is in direct conflict with the UN Declaration.

Mr Green responded as follows:

- i) The present Interim Constitution which stipulates the rights of detained and accused persons (s25) has been abused by criminals at the expense of victims, and it is important that the a new Bill of Rights takes cognisance of this.
- ii) An alternative approach to a secular\ humanist Bill of Rights and Constitutional Court would be to include members with a sound knowledge of religious law.
- iii) The ACDP supports "maximum freedom" in principle but the Bill of Rights must not be used to denigrate the rights of others. It must protect all citizens.



vi) The ACDP's are not intolerant but are based on belief.

4.8 The Democratic Party's submission was presented by Mr Leon who spoke to the document entitled "**Democratic Party Submission: Block 2: Theme Committee 4**", included in the documentation of 27 February 1995.

4.8.1 Points of clarity and discussion :

i) Questions to the DP included the relationship between liberty and equality as a basis of a Bill of Rights, and the conflict that may arise between the two; - the DP view on the rule of law as only maintaining law and order; and the exclusion of social and economic rights from what it calls the "Core of rights".

Mr Leon responded by noting that liberty and equality must be given equal recognition in a Bill of Rights, although the one must not qualify the other. If conflict does arise it will have to be addressed by those mandated to interpret the Bill of Rights. With regards to the rule of law, Mr Leon emphasised that rule of law need to be re-established in the country. On the issue of "Core of rights", Mr Leon said that this was based on Chapter 3 of the Interim Constitution, while accepting that other rights not in the Chapter may need to be added.

4.9 The IFP Submission on item 1 of Block 2 included in the documentation of 27 February 1995, was noted by the Committee. The submission could not be discussed as the IFP delegates were absent.

4.10 During the presentation of submissions, the Committee had a brief discussion on the role of the Technical Committee opinions and whether parties could reconsider their positions and re-submit reports. No decision on this matter was taken.

## 5. GENERAL

5.1 The chairperson informed the meeting of 4 public meetings planned by Community Liaison Department of the Administration of the CA on Saturday 11 March 1995 and Sunday 12 March 1995, in Gauteng, Northern Transvaal, Northern Cape and Western Cape. The meeting in the Northern Transvaal meetings would be the only one taking place on Sunday.

5.1.2 The Theme Committee was requested to send 3 members to each of the public meetings. Two of the members were expected to come from the 3 largest parties and one from the smaller parties.

- 5.1.3 The chairperson informed the meeting that a briefing for the members attending would take place on Wednesday 8 March 1995.
- 5.1.4 It was noted that the ANC had provided the Secretariat with 3 names already. The NP informed the meeting that it had difficulty in general to these meetings as it is a small party in this Theme Committee.
- 5.2 The chairperson informed the meeting that the Media Department of the CA Administration is planning weekly media briefings on every Thursday. The Theme Committees are requested to send representatives to brief media representatives on progress of work in the Theme Committees.
- 5.2.1 The Theme Committee raised concern that they may always have matters to brief the media on, and as such regular weekly meetings may not be necessary.
- 5.3 Ms Liebenberg reported on the Joint Chairpersons Meeting on Traditional Authorities which had taken place earlier in the day. She noted the following decisions which had been taken at the meeting:
- i) The question of traditional authorities would remain with Theme Committee 2.
  - ii) The Joint Adhoc Technical Committee would organise a workshop for Theme Committees 2, 4, 5, and 6 to develop a Work Program to deal with overlapping issues.
- 5.4 Ms Liebenberg reported that the Technical Committee had made substantial progress with public submissions. The Technical Committee had handed to the Secretariat a summary of the submissions and where they fit into the Work Programme.
- 5.5 The chairperson requested the Drafting Sub-Group to meet after the meeting to draft the Supplementary Report on Block 1.

## 6. CLOSURE

The meeting rose at 12h40.

**CONSTITUTIONAL ASSEMBLY**

**MINUTES OF  
CORE GROUP**

**THEME COMMITTEE 4**

**9 MARCH 1995 (16h00)  
VENUE E 216**

**Present**

Mdladlana MMS (Chairperson)

Green LM  
Mncwango MA  
Pandor GNM  
Radue RJ

**Apologies:** Leon AJ

J Tsalamandris and Z Adams were in attendance.

**1. OPENING**

- 1.1 Mr Mdladlana opened the meeting at 16h05. He announced that Sen. Radue would have to leave the meeting at 16h30.

**2. MINUTES**

- 2.1 The minutes of the Theme Committee meeting of 27th February 1995 were accepted with the following correction:
- 2.1.1 Paragraph 7.4.1 (b) should read "The ANC believes..." and not the "ANC believed..."
- 2.1.2 Mr Green queried paragraph 7.3.1 where "God-given" is placed in inverted commas. It was explained that the purpose of the inverted commas is to indicate that it is a direct quote from the ACDP submission.

**3. MATTERS ARISING**

**3.1 Caucusing during Theme Committee meetings**

- 3.1.1 The meeting agreed that no formal arrangement had to be made regarding caucusing during meetings, but parties would be allowed to be asked for an adjourned caucus on any matter deemed necessary in the course of a discussion during a Theme Committee meeting.

**3.2 Public Participation Programme**

- 3.2.1 The meeting noted that the last events in the pilot phase of the Public Participation Programme were scheduled for 10 and 11 March 1995. Only 3 names, submitted by the ANC, had been put forward by the Theme Committee. The other parties had noted that they were unable to send any representatives.

**3.3 Supplementary Report on Block 1**

- 3.3.1 The Group agreed that the Supplementary Report would have to include the views of the Technical Committee and all the relevant party submissions.

#### 4. THEME COMMITTEE MEETINGS

##### 4.1 Work Programme

4.1.1 The Group considered a proposal included in the documentation (pages 11-18) for a revised Work Programme.

4.1.2 The Group were informed that the proposal was intended to facilitate the work of the Theme Committee and to ensure the target date of 30 June 1995 for the completion of Theme Committee reports is met.

4.1.3 It was agreed to table the proposal at the Theme Committee meeting of Monday 13 March 1995.

4.1.4 It was also agreed that the parties would be given an opportunity to caucus on the issue between 08h30 - 09h30 on the 13 March meeting.

##### 4.2 Meeting of 13 March 1995

4.2.1 Concern was expressed about the need to have regular structured Core Group meetings to ensure proper planning for Theme Committee meetings and to aid the Secretariat in their tasks. This would also ensure that documentation is distributed timeously allowing the political parties to prepare for Theme Committee meetings.

4.2.2 It was agreed that the Core Group would set a date to meet after every Theme Committee meeting.

#### 5. SUPPLEMENTARY REPORT ON BLOCK 1

5.1 The chairperson spoke to the document entitled, "*Supplementary Report of Theme Committee 4 on Block 1 of Work Programme*", included in the documentation.

5.2 Mr Tsalamandris explained that the documentation included the first and second drafts of the Supplementary Report. The Core Group was expected to finalize the Report.

5.2.1 The following changes were made to the Report:

- i) Paragraph 1.3 should be deleted.
- ii) Paragraph 1 should refer to an outstanding issue, "the meaning of "after having giving due consideration...", and paragraph 1 in the Report should be changed to No 2.
- iii) Paragraph 2.3 should read: "With regards to horizontal\ vertical..."
- iv) Paragraph 3 should end with "contained in Chapter 3".
- v) Paragraph 5 should refer to the Technical Committee's report and not opinions of Technical Committee.
- vi) The phrase "Technical Committee opinion" should read "Technical Committee's Reports".
- vii) Paragraph 6.1.1 should read: "According to the opinion of...". The paragraph should end with the phrase "... consideration may be given...".
- viii) Paragraph 6.2.1 should read " ... should be given due and proper consideration".
- ix) The word only to be deleted in paragrapg 6.2.2.

5.2.2 It was agreed that the above changes would also affect the numbering of the Report.

## 6. TECHNICAL COMMITTEE

6.1 The meeting noted the document entitled, "*Relationship between Theme Committees and Technical Experts*", included in the documentation.

## 7. COMMUNITY LIAISON

7.1 It was agreed that the Theme Committee meeting of Monday 13 March 1995 address the issue of Community Liaison and the Public Participation Programme. It was further agreed that the political parties consider the matter and prepare to discuss the issue in the Theme Committee meeting.

## 8. GENERAL

### 8.1 Media Briefings

8.1.1 It was noted that the Media briefings planned by the CA Administration for every Thursday were not fixed and compulsory. The Theme Committees were not expected to attend the briefings if they had nothing to report.

8.1.2 It was further noted that the Media briefings should be seen as an opportunity for Theme Committees to publicize their activities.

8.2 Theme Committee Report Format

8.2.1 Mr Tsalamandris spoke to the memorandum from the CA Executive Director entitled, "**Theme Committee Report Formats**", included in the documentation.

8.2.2 The Group noted the new format and agreed to follow this when drafting their next report for the Constitutional Committee.

8.3 Party Submissions

8.3.1 The meeting was informed about a request by the Management Committee that parties make available their submissions on disk.

8.3.2 It was agreed that the Secretariat make available computer diskettes for this purpose.

9. CLOSURE

The meeting rose at 17h10.

**CONSTITUTIONAL ASSEMBLY**

**MINUTES OF  
MEETING OF**

**THEME COMMITTEE 4  
FUNDAMENTAL RIGHTS  
WEDNESDAY 13 MARCH 1995 (AT 08H30)**

**PRESENT**

**Mdladlana MMS (Chairperson)**

Chalmers J (alt)	Ntuli MB
Coleman M	Pandor GNM
Dlamini BO	Phenethi MM (alt)
Gamndana T	Radue RJ
Govender D	Saloojee E
Green LM	Selebi JS
Kgoali JL	Sizani RK
Leon AJ	Sosibo JE
Lubidla EN (alt)	Surty ME
Mashamba TGG	Thabethe E
Mdladlana MMS	Thompson B
Mfebe MW	Tshivhase TJ
Mncwango MA	Vos SC
Molekane RS	Werth CH
Mulder CP	Wyngaard CA
Myakayaka-Manzini YL	Xingwana LM
Njobe MAA (alt)	

**Apologies** : Asmal KA, Gasa FX, Mabandla BS, Skosana BM,  
Maseko TMJ

J Tsalamandris, Z Adams, P Crowley, T Mngadi-Kgosidintsi, S Liebenberg,  
Prof I Rautenbach and Prof J Dugard were in attendance.



## **1. OPENING**

- 1.1 The meeting was opened by Mr Mdladlana at 09h05.
- 1.2 Mr Mdladlana informed the meeting of a Core Group decision to allocate the first hour of the meeting for parties to caucus the following issues:
  - i) The final draft of the Supplementary Report on Block 1.
  - ii) The revised Work Programme Proposal.
  - iii) The parties' proposals for the Public Participation Programme.
- 1.3 The meeting decided to deal with the minutes before adjourning to caucus the above issues.

## **2. MINUTES**

- 2.1 Minutes of Theme Committee Meeting of 27 February 1995:
  - 2.1.1 Paragraph 7.6.1 was corrected to read "...the NP does take into account..." and not "...the NP does take into account into account...".
- 2.2 Minutes of Theme Committee Meeting of 6 March 1995:
  - 2.2.1 Paragraph 4.2.1 was corrected to read "In addition the Human Rights Commission and other social institutions shall be responsible for the enforcement of rights."
- 2.3 At this point the meeting adjourned for the parties to caucus. It was agreed to reconvene the meeting at 10h05.

## **3. MATTERS ARISING**

- 3.1 The Committee was informed that the Revised Work Programme was a matter that had arisen from the Core Group meeting and that the matter would be dealt with under agenda item 6.

**4. CORE GROUP REPORT**

4.1 See Agenda item 1.2 above.

**5. SUPPLEMENTARY REPORT ON BLOCK 1**

5.1 Senator Surty spoke to the document, "*Supplementary Report of Theme Committee 4 on Block 1 of the Work Programme*", and opened discussion on the Report.

5.2 After some discussion the meeting decided that paragraphs 2.2 and 2.3 should be deleted as the issues were dealt with in the First Report on Block 1.

5.3 The following corrections were made to the document:

5.3.1 Paragraph 3.2 i) should read "The political parties would make submissions".

5.3.2 Paragraph 5 should be numbered paragraph 6.

5.3.3 Paragraph 6.1.1, should read "organs of civil society" and not "organs or civil society".

5.3.4 Following a discussion on the phrase "may be given to juristic persons" in paragraph 6.1.1, it was agreed that the wording shall remain unchanged.

5.3.5 The word "given" should be inserted in paragraph 6.2.1.

5.4 The chairperson asked the Technical Committee to comment on the Report. Ms Liebenberg stated that in general the Technical Committee was satisfied with the report as it stands.

**6. BLOCK 2: ITEM 1 - NATURE AND APPLICATION OF BILL OF RIGHTS**

6.1 Public Submissions:

6.1.1 Professor Rautenbach gave a brief report on the synopsis on public submissions included in the documentation.

6.1.2 It was noted that the synopsis covered the submissions recieved up to Volume 3, Part 4.

6.1.3 It was noted that the public submissions raised the issue of the duties and obligations of citizens in a Bill of Rights. Following discussion on whether the Technical Committee should prepare an opinion on this item, it was agreed that the parties consider the matter before any request is made to the Technical Committee.

6.1.4 The chairperson reminded the meeting that in terms of the new proposed Work Programme, parties are compelled to consider the duties and obligations of citizens with respect to each right.

## 6.2 Revised Work Programme Proposal

6.2.1 The chairperson spoke to the revised Work Programme proposal for Block 2 included in the documentation on pages 22 - 24.

6.2.2 It was noted that in terms of the new programme, Block 2 of the Work Programme would deal with the issues of:

- Right to Human Dignity
- Right to Privacy
- Right to Life
- Right to Equality

6.2.3 In discussing the new programme, a number of issues were raised including:

- A suggestion by the IFP to include procreative choice under the item Right to Privacy.
- The role of Section 25 under Right to Privacy.
- The possibility of adding issues to deal within terms of the Right to Privacy and the Right to Human Dignity.

6.2.4 After a lengthy discussion, the Committee agreed to deal with the 2 items in the next Theme Committee meeting, namely the Right to Human Dignity and the Right to Privacy.

6.2.5 It was further agreed that the deadline for party submissions to the Secretariat would be Thursday 16 March (in the morning), to allow for the documentation to be prepared in time and circulated by the Secretariat. The parties were also informed by the chairperson that they could add items they considered important under the relevant agenda items in the Work Programme.

## 7. COMMUNITY LIAISON

- 7.1 The chairperson opened the discussion on this matter by noting that this matter had been on the agenda a number of times. The chairperson requested the parties to make proposals on the Public Participation Programme (PPP hereafter) as had been agreed to in the previous Theme Committee and Core Group meeting.
- 7.1 The DP's proposal was presented by Mr Leon:
- 7.1.1 Mr Leon said that meetings should not take place simply because they appear on the work schedule. He said the purpose of the PPP was unclear as it is not issue driven, and at presently there was no link between the Constitutional Public Meetings (CPM's) and the discussions in the Theme Committees.
- 7.1.2 Mr Leon added that the program of the Theme Committee should determine the content and timing of the CPMs.
- 7.1.3 Noting the DP difficulty in participating in the PPP, Mr Leon said that his party's priority lay in the registration of voters for the local government elections. As such, the DP felt that the PPP should be put on hold until after the registration of voters is complete.
- 7.1.4 With regards to advertising, the DP felt advertising campaign was misleading by creating the impression amongst the public that they could draft the constitution. The DP felt that no mention was made to the Constitutional Principles which bind parties in the drafting of a new constitution.
- 7.2 The ANC proposal was presented by Mr Mashamba, who spoke to the document entitled "**ANC Proposal on the C.A. Public Participation Programme (PPP)**", handed in separately to the Secretariat.
- 7.2.1 Mr Mashamba noted that the ANC endorsed the mission statement of the PPP, but would like to emphasise the need to reach the broadest spectrum of people with particular emphasis on women, the unemployed, the youth and the rural poor.

7.2.2 The following issues were raised by Mr Mashamba:

i) The choice of venues must be determined by their accessibility to ordinary people.

ii) Communities should be directly involved and consulted in the planning process, in particular traditional leaders must also be consulted.

iii) CA members should visit the area prior to an event and parties should utilise local party structures to assist with mobilisation for the event.

iv) A Planning Committee should be established to oversee the whole PPP and should be driven by political parties with the assistance of the Community Liaison Department (CLD).

v) The language factor should be taken into account.

vi) While the resources of SACS may be utilised, the organisation of PPP events should not be left to SACS alone .

vii) Well-known national leaders e.g. the Chairpersons of the CA and Cabinet Ministers should be used to attract attendances to CPM's.

viii) Members should be given advance notice of PPP events and chairpersons of events should be elected in advance.

ix) The ANC supports joint attendance at CPM's by different Theme Committee members.

7.3 Sen. Radue stated that the NP felt that the PPP would reach far more people through more effective use of panel discussions and the use of radio.

7.4 The IFP felt that the rural areas were not emphasized enough and there was an overemphasis on urban areas. This was even the case when radio advertisements presupposed the existence of electricity in the rural areas.

7.5 Taking the various points into consideration, the chairperson said the the political parties should also raise their concerns at Management Committee level.

7.6 The **ACDP** requested that issues of "Constitutional Talk" circulated in libraries and schools.

**8. GENERAL**

None

**9. CLOSURE**

The meeting rose at 11h30.

# CONSTITUTIONAL ASSEMBLY

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REPUBLIC OF SOUTH AFRICA

REF NO:

**13 March 1995**

## MEMORANDUM

**To all Theme Committees**

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The period from 18 April to 21 April immediately after the Easter recess has been set aside for CA business only. Theme Committees are requested to please make urgent recommendations as to how these four days can be best utilised for CA work. It would be the recommendation of the Administration that Theme Committees meet as follows :

### **Tuesday 18 April**

TC1,2 and 3	09h00 - 13h00
TC4,5 and 6	14h00 - 18h00

### **Wednesday 19 April**

TC4,5 and 6	09h00 - 13h00
TC1,2 and 3	14h00 - 18h00

### **Thursday 20 April**

Management Committee	08h00 - 10h00
Party Caucuses	10h30 - 13h00
TC 4,5 and 6	14h00 - 18h00

### **Friday 21 April**

TC1, 2 and 3	09h00 - 13h00
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HASSEN EBRAHIM  
EXECUTIVE DIRECTOR

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# **FREEDOM OF EXPRESSION INSTITUTE (FXI)**

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## **Executive Committee:**

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**Mandla Seleokane**

**Norman Manoim**

**Clive Emdon**

**Andries Oliphant**

**Ruth Muller**

**Mathatha Tsedu**

**Raymond Louw (deputy chairperson)**

**Japan Mthembu**

**Connie Molusi**

**Willie Currie**

**Hugh Lewin**

**Gerry Davidson**

**JP Louw**

## **Co-ordinators:**

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Theme Committee 4 (Fundamental Rights)  
FAX: (021) 461-4319/4487; 241-160/1/2/3  
10 March 1995

**RE: Request for appointments for oral submissions on Access to Official Information, Freedom of Expression, Limitation and Suspension clauses in Bill of Rights, Theme Committee 4.**

The Freedom of Expression Institute was formed from a merger between the Anti-Censorship Action Group (ACAG), the Campaign for Open Media (COM) and recently, the Media Defence Trust (MDT). COM was an influential media policy group which played a central role in defining the agenda for steps to be taken during South Africa's transition to democracy to enable the media to play its proper role in the run up to and during the country's first democratic election. Through the Campaign for Independent Broadcasting, which it was instrumental in forming in 1991, the following goals were identified:



\* the appointment of a new Board of the South African Broadcasting Corporation (the public broadcaster) through a public and transparent process which would render the Board independent of the influence of any government of the day or the influence of other political parties;

\* monitoring the media in the run-up to the election, especially the SABC, to ensure that as the public broadcaster it would play an impartial role;

\* lobbying for the establishment of an Independent Broadcasting Authority to regulate the broadcasting industry. Again this authority had to be independent of the influence of any government and other political parties;

\* Identifying the laws which curb the free flow of information and lobbying for their removal or amendment;

\* Establishing new bodies for the adjudication of public complaints against the media and to uphold ethical Codes of Conduct for the media.

Nearly all of these objectives have been achieved and COM played a central co-ordinating role in achieving the first three.

The Anti-Censorship Action Group (ACAG) was engaged mainly in monitoring censorship in South Africa, drawing attention to it and campaigning against it. ACAG issued a monthly newsletter, "Update" which recorded daily instances of censorship, including assassinations, the banning of marches and meetings, the detention and torture of people and other restrictions on free political activity. Information from Update has been used in the past by international organisations such as Article 19, Committee to Protect Journalists and Index on Censorship, as well as by many teachers, students, lawyers and academics locally and internationally.

ACAG was also active in co-hosting anti-censorship conferences and festivals with the Weekly Mail & Guardian newspaper and hosted many public panel discussions on censorship as well as poetry readings of works which had been banned. The FXI is continuing this work and has inherited ACAG's resource centre, consisting of press clippings, magazines and books on censorship, as well as the "Update" publication. The resource centre is used extensively by students, academics, lawyers and other researchers interested in censorship issues.

ACAG also regularly gave advice to victims of censorship and drew attention to their predicaments by publicising these incidents.

The Media Defence Trust (MDT) was formed in December 1988 as a Registered Charitable Trust in response to the wave of state action against the media, such as the closure of newspapers (New Nation, Weekly Mail, South), the seizure of publications (Al Qualem, Crisis News, Learn and Teach) and the detention of journalists (Vincent Mfundisi, Zwelakhe Sisulu and Brian Sokhuthu). It has fought for freedom of expression by successfully fending off many attacks by the apartheid state against sections of the free press that would not have been able to afford litigation in a variety of noted cases and actions.

Not only did the MDT assist the media in protecting themselves against censorship and harassment, it also provides funding for pre-publication advice to independent newspapers on

a day-to-day basis. It ran a "hotline" for journalists who experienced intimidation in the volatile atmosphere of political reporting and it provided funds to particular projects which are aimed at producing research and policy guidelines in the area of democracy and freedom of expression. One of its projects was the establishment of a legal media resource centre and research project, based at the Centre for Applied Legal Studies. The research project has yielded contributions to the drafting of the transitional legislation relating to the media, namely the Independent Media Commission Act and the Independent Broadcasting Authority Act. More recently, research into the existing censorship laws has been completed, and research into different Freedom of Information Acts is still being conducted. This information is being used by the FXI on an ongoing basis to inform its activities.

The FXI will be making detailed submissions to Theme Committee 4 on specific clauses in the Interim Constitution, namely the right of Access to Official Information and the right to Freedom of Expression. However, by way of introduction, the FXI wishes to submit some general thoughts on the nature and scope of a Bill of Rights, and whether the State should have the right to limit these rights.

The Interim Bill of Rights lists a series of first, second and third generation rights. In interpreting the Bill of Rights, one is obliged to balance rights against one another, and ultimately give precedence to some rights over and above others. While it may be necessary to limit and even suspend some of these rights in certain circumstances, we are nevertheless very uneasy about limitations to, or suspensions of the rights to Freedom of Expression and of Access to Official Information.

This is a result of the kind of history we have just come through, where States of Emergency have been used as instruments of repression, and the rights to freedom of expression and access to information have been trampled on so blithely. Without casting aspersions on the present government, one has to draft a Constitution with the future in mind, as one does not know what type of future government's one will have. In order to counter a future situation where a government may attempt to implement repressive measures, we believe that the fewer constitutional provisions and legislation that could be used for these purposes, the better.

The FXI intends to make submissions to Working Group 4 on the Freedom of Expression clause, the Access to Official Information clause and the limitations and suspension clauses. The FXI has already been involved in activities to ensure the free flow of information, and has used these clauses in the course of argument.

For example, when the FXI made a verbal submission to the Task Group on Publication, arguing for the scrapping of the Publications Act, we used the clause to argue the unconstitutionality of the act. We are pleased to note that many of our recommendations, and especially the basic point of its unconstitutionality has been accepted by the Task Group. In particular, we are pleased to note that our recommendations on dealing with hate speech, namely that it should not be legislated against and that the Freedom of Expression clause in this instance should take precedence over the Right to Dignity.

Other activities the FXI has engaged in using these clauses are the campaign to ensure open hearings at the Cameron Commission of Inquiry into arms transactions between Lebanese arms dealer Eli Wazan and ARMSCOR, and another transparency-related campaign in relation to the Truth and Reconciliation Commission.

In addition, the FXI has been actively involved in consultative processes surrounding the Open Democracy Act, and is in the process of organising civil society consultative workshops to deepen the debate about what should be included in the Act, and its mechanisms of implementation to ensure its relevance to all citizens, even the non-literate and those in rural areas.

Needless to say, the strengths and weaknesses of these clauses have been revealed to us in the course of our work, and we have much to say on how we think these clauses should be recast. For example, we are disturbed that the Access to Official Information clause recognised merely a need to know, and not a right to know. Therefore, an individual has to argue that he/she is defending his/her rights to access information. This is a very limited formulation, and should be changed to recognise a right to know. We have also developed a series of very narrowly defined criteria by which the Freedom of Expression and Access to Official Information clauses can be limited, and would like to offer these experiences for consideration by the Committee in relation to the limitations and suspension of these rights. In addition, the FXI is planning a one-day workshop with the news media, members of the legal profession and other interested parties to discuss the limitations and suspension clauses. The outcome of this workshop will then be included in our submission to Theme Committee 4.

**To this end, we are preparing detailed submissions on these clauses, and would urge the Committee to consider granting us a chance for an oral submission (or several oral submission, depending on how the later blocks are organised.)**

# CONSTITUTIONAL ASSEMBLY

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PO Box 15  
CAPE TOWN 8000  
REPUBLIC OF SOUTH AFRICA

REF NO:

## MEMORANDUM

**TO: CHAIRPERSONS: THEME COMMITTEE IV  
MEMBERS OF THEME COMMITTEE IV**

**FROM: HASSEN EBRAHIM**

**DATE: 14 MARCH 1995**

### **RE: CONFERENCE OF EDITORS - FREEDOM OF EXPRESSION**

Kindly find a copy of a request received from the Conference of Editors.

As you will remember, the submission was entered by the Conference of Editors dealing with the constitutional provision of freedom of expression. The request has now been made to address your Theme Committee.

I look forward to your advice and guidance on this matter.

**&&&&**

# Sunday Times

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March 2, 1995

Mr H Ebrahim  
P.O. Box 15  
Cape Town  
8000

Dear Mr Ebrahim

This is a formal request for a delegation from the Conference of Editors to appear before you to put the case for amendment of the constitution as it affects freedom of expression.

The delegation elected by the conference consists of Mr John Patten, editor of the Natal Mercury, Mr Anton Harber, editor of Weekly Mail, Mr Raymond Louw, former editor of the Rand Daily Mail, Mr Khulu Sibiyi, editor of City Press, Mr Willie Kuhn, editor of Beeld and myself.

We would be prepared to come to Cape Town to testify, but would appreciate reasonable advance notice to coordinate our appearance before the theme committee.

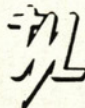
We look forward to hearing from you.

Yours sincerely



**K F Owen**  
**EDITOR**

cc Members of the delegation



A TIMES MEDIA LIMITED PUBLICATION

DIRECTORS P F RETIEF (CHAIRMAN) R H PALLSON (MANAGING) N S BRUCE C CILLIERS L R CLARK W M GRINDROD C J TAYLOR  
ALTERNATE N JACOBSON  
CORREGENDUM 20

# **THEME COMMITTEE 4 FUNDAMENTAL RIGHTS**

## **SOUTH AFRICA'S STATUS REGARDING INTERNATIONAL HUMAN RIGHTS INSTRUMENTS**

-----

### **1. South Africa is Party to the Following Instruments**

- 1.1 Slavery Convention (1926).  
Ratified on 18 June 1927.
- 1.2 Slavery Convention of 1926 as amended.  
Ratified on 18 June 1927.
- 1.3 1953 Protocol Amending the 1926 Convention.  
Definite signature on 29 December 1927.
- 1.4 Convention for the Suppression of the Traffic in Persons and of the  
Exploitation of the Prostitution of Others (1949).
- 1.5 Convention on Consent to Marriage, Minimum Age for Marriage and  
Registration of Marriages (1962).  
Acceded to on 29 January 1993.

### **2. South Africa is A Signatory to the Following Instruments**

- 2.1 Convention on the Elimination of All Forms of Discrimination Against Women  
(1979).  
Signed on 29 January 1993.  
The Department of Foreign Affairs is co-ordinating ratification and hopes that  
this can be done in the near future.
- 2.2 Convention on the Political Rights of Women (1953).  
Signed on 29 January 1993.  
The Department of Foreign Affairs is co-ordinating ratification and hopes that  
this can be done in the near future.
- 2.3 Convention on the Nationality of Married Women (1957).  
Signed on 29 January 1993.  
The Department of Foreign Affairs is co-ordinating ratification and hopes that  
this can be done in the near future.

- 2.4 Convention on the Rights of the Child (1989).  
Signed on 29 January 1993.  
The Department of Foreign Affairs is co-ordinating ratification and hopes that this can be done in the near future.
- 2.5 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987).  
Signed on 29 January 1993.  
The Department of Foreign Affairs is co-ordinating ratification and hopes that this can be done in the near future.
- 2.6 International Covenant on Economic, Social and Cultural Rights (1966).  
Signed on 3 October 1994.  
The Department of Foreign Affairs is co-ordinating ratification and hopes that this can be done in the near future.
- 2.7 International Covenant on Civil and Political Rights (1966).  
Signed on 3 October 1994.  
The Department of Foreign Affairs is co-ordinating ratification and hopes that this can be done in the near future.
- 2.8 International Convention on the Elimination of all Forms of Racial Discrimination (1963).  
Signed on 3 October 1994.  
The Department of Foreign Affairs is co-ordinating ratification and hopes that this can be done in the near future.
- 3. Instruments to Which South Africa is Neither Party Nor Signatory But Has Indicated An Intention of Becoming Either A Signatory Or A Party.**
- 3.1 Convention Relating to the Status of Refugees (1951).
- 3.2 Hague Convention on the Civil Aspects of International Child Abduction (1980).  
The Government agreed in principle in 1993 that South Africa should accede to this instrument. The Department of Justice is at present in the process of finalising enabling legislation with a view to promulgation later this year. Accession could therefore follow in 1995.
- 4. Instruments of Which South Africa is Neither A Party Not A Signatory But Which Can Be Considered for Signature Or Ratification.**
- 4.1 Optional Protocol to the International Covenant on Civil and Political Rights (1966).
- 4.2 Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty (1989).
- 4.3 International Convention on the Suppression and Punishment of the Crime of Apartheid (1973).

- 4.4 International Convention against Apartheid in Sports (1985).
- 4.5 Convention on the Prevention and Punishment of the Crime of Genocide (1948).
- 4.6 Convention on the Non-Applicability of Statutory Limitations to War Crimes against Humanity (1968).
- 4.7 Convention on the Reduction of Statelessness (1954).
- 4.8 Convention relating to the Status of Refugees (1950).
- 4.9 Protocol relating to the Status of Refugees (1966).
- 4.10 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956).
- 4.11 African Charter on Human and People's Rights (1986).



**THEME COMMITTEE 4**

**WORK PROGRAMME**  
**BLOCK 2**

### 3. Right to human dignity

#### *INTERIM CONSTITUTION (Excerpts for consideration)*

##### **Constitutional Principle II**

Everyone shall enjoy all universally accepted fundamental rights, freedoms and civil liberties, which shall be provided for and protected by entrenched and justiciable provisions in the Constitution, which shall be drafted after having given due consideration to inter alia the fundamental rights contained in Chapter 3 of this Constitution.

##### **Human dignity**

10. Every person shall have the right to respect for and protection of his or her dignity.

##### **Servitude and forced labour**

12. No person shall be subject to servitude or forced labour.

##### **Detained, arrested and accused persons**

25. (1) Every person who is detained, including every sentenced prisoner, shall have the right –  
(b) to be detained under conditions consonant with human dignity, which shall include at least the provision of adequate nutrition, reading material and medical treatment at state expense;

#### **AGENDA ITEMS**

##### **1. Content of the right**

- 1.1 See CP II and Sections 10,12, 25(1)(b)  
1.2 Controversial issues (Parties can make suggestions)

##### **2. Application of the right**

- 2.1 Nature of the duty to be imposed on the state.  
2.2 Application of the right to common law and customary law.  
2.3 Should the right under discussion impose a constitutional duty on actors other than the state ?  
2.4 Who should be the bearers of the right ?  
Natural persons, citizens, juristic persons ?  
2.5 Should the right under discussion be capable of limitation by the legislature ?  
2.6 Other issues (Parties can make suggestions)

## 4. Right to Privacy

### *INTERIM CONSTITUTION (Excerpts for consideration)*

#### Constitutional Principle II

Everyone shall enjoy all universally accepted fundamental rights, freedoms and civil liberties, which shall be provided for and protected by entrenched and justiciable provisions in the Constitution, which shall be drafted after having given due consideration to inter alia the fundamental rights contained in Chapter 3 of this Constitution.

#### Privacy

13. Every person shall have the right to his or her personal privacy, which shall include the right not to be subject to searches of his or her person, home or property, the seizure of private possessions or the violation of private communications.

#### Access to information

23. Every person shall have the right of access to all information held by the state or any of its organs at any level of government in so far as such information is required for the exercise or protection of any of his or her rights.

### AGENDA ITEMS

#### 1. Content of the right

- 1.1 See CP II and Sections 13, 23
- 1.2 Controversial issues:-
  - intelligence services and state security
  - access to private information
  - searches and seizure by police
  - protection of vulnerable persons
- 1.3 Other issues (Parties can make suggestions)

#### 2. Application of the right

- 2.1 Nature of the duty to be imposed on the state.
- 2.2 Application of the right to common law and customary law.
- 2.3 Should the right under discussion impose a constitutional duty on actors other than the state ?
- 2.4 Who should be the bearers of the right ?  
Natural persons, citizens, juristic persons ?
- 2.5 Should the right under discussion be capable of limitation by the legislature ?
- 2.6 Other issues (Parties can make suggestions)

## 5. Right to Life

### *INTERIM CONSTITUTION (Excerpts for consideration)*

#### Constitutional Principle II

Everyone shall enjoy all universally accepted fundamental rights, freedoms and civil liberties, which shall be provided for and protected by entrenched and justiciable provisions in the Constitution, which shall be drafted after having given due consideration to inter alia the fundamental rights contained in Chapter 3 of this Constitution.

#### Life

9. Every person shall have the right to life.

### AGENDA ITEMS

#### 1. Content of the right

- 1.1 See CP II and Section 9
- 1.2 Controversial issues:-
  - capital punishment
  - abortion
  - euthanasia
- 1.3 Additional issues for consideration:-
  - quality of life
- 1.4 Other issues (Parties can make suggestions)

#### 2. Application of the right

- 2.1 Nature of the duty to be imposed on the state.
- 2.2 Application of the right to common law and customary law.
- 2.3 Should the right under discussion impose a constitutional duty on actors other than the state ?
- 2.4 Who should be the bearers of the right ?  
Natural persons, citizens, juristic persons ?
- 2.5 Should the right under discussion be capable of limitation by the legislature ?
- 2.6 Other issues (Parties can make suggestions)

## 6. Right to Equality

*INTERIM CONSTITUTION (Excerpts for consideration)*

See Below

### AGENDA ITEMS

#### 1. Content of the right

- 1.1 See Relevant Constitutional Principles: I, II, III, V, XI, XII, XIII(I)  
Relevant sections of Interim Constitution: Preamble, Sections 3, 8, 10, 12, 17, 32, 33(4), 119 - 123
- 1.2 Controversial issues:-
  - Prohibited grounds for discrimination.
  - Affirmative action
  - Effect on customary law, including the rules and customs of religious and traditional communities
- 1.3 Other issues (Parties can make suggestions)

#### 2. Application of the right

- 2.1 Nature of the duty to be imposed on the state.
- 2.2 Application of the right to common law and customary law.
- 2.3 Should the right under discussion impose a constitutional duty on actors other than the state ?
- 2.4 Who should be the bearers of the right ?  
Natural persons, citizens, juristic persons ?
- 2.5 Should the right under discussion be capable of limitation by the legislature ?
- 2.6 Other issues (Parties can make suggestions)

## CONSTITUTIONAL PRINCIPLES

### I

The Constitution of South Africa shall provide for the establishment of one sovereign state, a common South African citizenship and a democratic system of government committed to achieving equality between men and women and people of all races.

### II

Everyone shall enjoy all universally accepted fundamental rights, freedoms and civil liberties, which shall be provided for and protected by entrenched and justiciable provisions in the Constitution, which shall be drafted after having given due consideration to inter alia the fundamental rights contained in Chapter 3 of this Constitution.

### III

The Constitution shall prohibit racial, gender and all other forms of discrimination and shall promote racial and gender equality and national unity.

### V

The legal system shall ensure the equality of all before the law and an equitable legal process. Equality before the law includes laws, programmes or activities that have as their object the amelioration of the conditions of the disadvantaged, including those disadvantaged on the grounds of race, colour or gender.

### XI

The diversity of language and culture shall be acknowledged and protected, and conditions for their promotion shall be encouraged.

### XII

Collective rights of self-determination in forming, joining and maintaining organs of civil society, including linguistic, cultural and religious associations, shall, on the basis of non-discrimination and free association, be recognised and protected.

### XIII

1. The institution, status and role of traditional leadership, according to indigenous law, shall be recognised and protected in the Constitution. Indigenous law, like common law, shall be recognised and applied by the courts, subject to the fundamental rights contained in the Constitution and to legislation dealing specifically therewith.

### PREAMBLE

In humble submission to Almighty God,  
We, the people of South Africa, declare that —

**WHEREAS** there is a need to create a new order in which all South Africans will be entitled to a common South African citizenship in a sovereign and democratic constitutional state in which there is equality between men and women and people of all races so that all citizens shall be able to enjoy and exercise their fundamental rights and freedoms;

**AND WHEREAS** in order to secure the achievement of this goal, elected representatives of all the people of South Africa should be mandated to adopt a new Constitution in accordance with a solemn pact recorded as Constitutional Principles;

**AND WHEREAS** it is necessary for such purposes that provision should be made for the promotion of national unity and the restructuring and continued governance of South Africa while an elected Constitutional Assembly draws up a final Constitution;

#### Languages

3. (1) Afrikaans, English, isiNdebele, Sesotho sa Leboa, Sesotho, siSwati, Xitsonga, Setswana, Tshivenda, isiXhosa and isiZulu shall be the official South African languages at national level, and conditions shall be created for their development and for the promotion of their equal use and enjoyment.

(2) Rights relating to language and the status of languages existing at the commencement of this Constitution shall not be diminished, and provision shall be made by an Act of Parliament for rights relating to language and the status of languages existing only at regional level, to be extended nationally in accordance with the principles set out in subsection (9).

(3) Wherever practicable, a person shall have the right to use and to be addressed in his or her dealings with any public administration at the national level of government in any official South African language of his or her choice.

(4) Regional differentiation in relation to language policy and practice shall be permissible.

(5) A provincial legislature may, by a resolution adopted by a majority of at least two-thirds of all its members, declare any language referred to in subsection (1) to be an official language for the whole or any part of the province and for any or all powers and functions within the competence of that legislature, save that neither the rights relating to language nor the status of an official language as existing in any area or in relation to any function at the time of the commencement of this Constitution, shall be diminished.

(6) Wherever practicable, a person shall have the right to use and to be addressed in his or her dealings with any public administration at the provincial level of government in any one of the official languages of his or her choice as contemplated in subsection (5).

\*The English text of the Act shall, for the purposes of its interpretation, prevail as if it were the signed text. [See sec 15 of Act 2 of 1994.]

(7) A member of Parliament may address Parliament in the official South African language of his or her choice.

(8) Parliament and any provincial legislature may, subject to this section, make provision by legislation for the use of official languages for the purposes of the functioning of government, taking into account questions of usage, practicality and expense.

(9) Legislation, as well as official policy and practice, in relation to the use of languages at any level of government shall be subject to and based on the provisions of this section and the following principles:

(a) The creation of conditions for the development and for the promotion of the equal use and enjoyment of all official South African languages;

(b) the extension of those rights relating to language and the status of languages which at the commencement of this Constitution are restricted to certain regions;

(c) the prevention of the use of any language for the purposes of exploitation, domination or division;

(d) the promotion of multilingualism and the provision of translation facilities;

(e) the fostering of respect for languages spoken in the Republic other than the official languages, and the encouragement of their use in appropriate circumstances; and

(f) the non-diminution of rights relating to language and the status of languages existing at the commencement of this Constitution.

(10)(a) Provision shall be made by an Act of Parliament for the establishment by the Senate of an independent Pan South African Language Board to promote respect for the principles referred to in subsection (9) and to further the development of the official South African languages.



- (b)The Pan South African Language Board shall be consulted, and be given the opportunity to make recommendations, in relation to any proposed legislation contemplated in this section.
- (c)The Pan South African Language Board shall be responsible for promoting respect for and the development of German, Greek, Gujerati, Hindi, Portuguese, Tamil, Telegu, Urdu and other languages used by communities in South Africa, as well as Arabic, Hebrew and Sanskrit and other languages used for religious purposes.

### **Equality**

- 8.(1)Every person shall have the right to equality before the law and to equal protection of the law.
- (2)No person shall be unfairly discriminated against, directly or indirectly, and, without derogating from the generality of this provision, on one or more of the following grounds in particular: race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language.
- (3)(a)This section shall not preclude measures designed to achieve the adequate protection and advancement of persons or groups or categories of persons disadvantaged by unfair discrimination, in order to enable their full and equal enjoyment of all rights and freedoms.
- (b)Every person or community dispossessed of rights in land before the commencement of this Constitution under any law which would have been inconsistent with subsection (2) had that subsection been in operation at the time of the dispossession, shall be entitled to claim restitution of such rights subject to and in accordance with sections 121, 122 and 123.
- (4)Prima facie proof of discrimination on any of the grounds specified in subsection (2) shall be presumed to be sufficient proof of unfair discrimination as contemplated in that subsection, until the contrary is established.

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### **Human dignity**

- 10.Every person shall have the right to respect for and protection of his or her dignity.

### **Servitude and forced labour**

- 12.No person shall be subject to servitude or forced labour.

### Freedom of association

17. Every person shall have the right to freedom of association.

### Education

32. Every person shall have the right —

- (a) to basic education and to equal access to educational institutions;
- (b) to instruction in the language of his or her choice where this is reasonably practicable; and
- (c) to establish, where practicable, educational institutions based on a common culture, language or religion, provided that there shall be no discrimination on the ground of race.

### Limitation

33.(1) The rights entrenched in this Chapter may be limited by law of general application, provided that such limitation —

(a) shall be permissible only to the extent that it is —

- (i) reasonable; and
- (ii) justifiable in an open and democratic society based on freedom and equality; and

(b) shall not negate the essential content of the right in question, and provided further that any limitation to —

(aa) a right entrenched in section 10, 11, 12, 14(1), 21, 25 or 30(1)(d) or (e) or (2); or

(bb) a right entrenched in section 15, 16, 17, 18, 23 or 24, in so far as such right relates to free and fair political activity, shall, in addition to being reasonable as required in paragraph (a)(i), also be necessary.

41 (2) Save as provided for in subsection (1) or any other provision of this Constitution, no law, whether a rule of the common law, customary law or legislation, shall limit any right entrenched in this Chapter.

(3) The entrenchment of the rights in terms of this Chapter shall not be construed as denying the existence of any other rights or freedoms recognised or conferred by common law, customary law or legislation to the extent that they are not inconsistent with this Chapter.

- (4) This Chapter shall not preclude measures designed to prohibit unfair discrimination by bodies and persons other than those bound in terms of section 7(1).
- (5)(a) The provisions of a law in force at the commencement of this Constitution promoting fair employment practices, orderly and equitable collective bargaining and the regulation of industrial action shall remain of full force and effect until repealed or amended by the legislature.
- (b) If a proposed enactment amending or repealing a law referred to in paragraph (a) deals with a matter in respect of which the National Manpower Commission, referred to in section 2A of the Labour Relations Act, 1956 (Act No. 28 of 1956), or any other similar body which may replace the Commission, is competent in terms of a law then in force to consider and make recommendations, such proposed enactment shall not be introduced in Parliament unless the said Commission or such other body has been given an opportunity to consider the proposed enactment and to make recommendations with regard thereto.

### COMMISSION ON GENDER EQUALITY

#### Establishment

- 119.(1) There shall be a Commission on Gender Equality, which shall consist of a chairperson and such number of members as may be determined by an Act of Parliament.
- (2) The Commission shall consist of persons who are fit and proper for appointment, South African citizens and broadly representative of the South African community.
- (3) The object of the Commission shall be to promote gender equality and to advise and to make recommendations to Parliament or any other legislature with regard to any laws or proposed legislation which affects gender equality and the status of women.

#### Composition and functioning

120. The Act of Parliament referred to in section 119 shall provide for the composition, powers, functions and functioning of the Commission on Gender Equality and for all other matters in connection therewith.

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[Sec 120 amended by sec 9 of Act 13 of 1994]

## RESTITUTION OF LAND RIGHTS

### Claims

- 121.(1) An Act of Parliament shall provide for matters relating to the restitution of land rights, as envisaged in this section and in sections 122 and 123.
- (2) A person or a community shall be entitled to claim restitution of a right in land from the state if —
- (a) such person or community was dispossessed of such right at any time after a date to be fixed by the Act referred to in subsection (1); and
  - (b) such dispossession was effected under or for the purpose of furthering the object of a law which would have been inconsistent with the prohibition of racial discrimination contained in section 8(2), had that section been in operation at the time of such dispossession.
- (3) The date fixed by virtue of subsection (2)(a) shall not be a date earlier than 19 June 1913.
- (4)(a) The provisions of this section shall not apply to any rights in land expropriated under the Expropriation Act, 1975 (Act No. 63 of 1975), or any other law incorporating by reference that Act, or the provisions of that Act with regard to compensation, if just and equitable compensation as contemplated in section 123(4) was paid in respect of such expropriation.
- (b) In this section “Expropriation Act, 1975” shall include any expropriation law repealed by that Act.
- (5) No claim under this section shall be lodged before the passing of the Act contemplated in subsection (1).
- (6) Any claims under subsection (2) shall be subject to such conditions, limitations and exclusions as may be prescribed by such Act, and shall not be justiciable by a court of law unless the claim has been dealt with in terms of section 122 by the Commission established by that section.

### Commission

122.(1) The Act contemplated in section 121(1) shall establish a Commission on Restitution of Land Rights, which shall be competent to —

- 43
- (a) investigate the merits of any claims;
  - (b) mediate and settle disputes arising from such claims;
  - (c) draw up reports on unsettled claims for submission as evidence to a court of law and to present any other relevant evidence to the court; and

(d) exercise and perform any such other powers and functions as may be provided for in the said Act.

(2) The procedures to be followed for dealing with claims in terms of this section shall be as prescribed by or under the said Act.

#### Court orders

123.(1) Where a claim contemplated in section 121(2) is lodged with a court of law and the land in question is —

(a) in the possession of the state and the state certifies that the restoration of the right in question is feasible, the court may, subject to subsection (4), order the state to restore the relevant right to the claimant; or

(b) in the possession of a private owner and the state certifies that the acquisition of such land by the state is feasible, the court may, subject to subsection (4), order the state to purchase or expropriate such land and restore the relevant right to the claimant.

(2) The court shall not issue an order under subsection (1)(b) unless it is just and equitable to do so, taking into account all relevant factors, including the history of the dispossession, the hardship caused, the use to which the property is being put, the history of its acquisition by the owner, the interests of the owner and others affected by any expropriation, and the interests of the dispossessed: Provided that any expropriation under subsection (1)(b) shall be subject to the payment of compensation calculated in the manner provided for in section 28(3).

(3) If the state certifies that any restoration in terms of subsection (1)(a) or any acquisition in terms of subsection (1)(b) is not feasible, or if the claimant instead of the restoration of the right prefers alternative relief, the court may, subject to subsection (4), order the state, in lieu of the restoration of the said right —

(a) to grant the claimant an appropriate right in available alternative state-owned land designated by the state to the satisfaction of the court, provided that the state certifies that it is feasible to designate alternative state-owned land;

(b) to pay the claimant compensation; or

(c) to grant the claimant any alternative relief.

~~#~~ (a) The compensation referred to in subsection (3) shall be determined by the court as being just and equitable, taking into account the circumstances which prevailed at the time of the dispossession and all such other factors as may be prescribed by the Act referred to in section 121(1), including any compensation that was paid upon such dispossession.

(b) If the court grants the claimant the relief contemplated in subsection (1) or (3), it shall take into account, and, where appropriate, make an order with regard to, any compensation that was paid to the claimant upon the dispossession of the right in question.