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Demokratiese Party
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19 May 1993

FAX NUMBER : 011 3972211

The Convenor
 Technical Committee on
 "Fundamental Rights During The Transition"
 Multiparty Negotiation Forum
 World Trade Centre
 KEMPTON PARK

Dear Professor Du Plessis

DEMOCRATIC PARTY COMMENTS ON FIRST PROGRESS REPORT

We refer to your first progress report dated 14 May 1993 and wish to make the following comments:

1. **AD PARAGRAPH TWO**

We are in agreement with these guiding considerations and wish to add the following:

- 1.1. Regarding suitable enforcement mechanisms, we would strongly recommend article 16 of our Draft Bill of Rights to the Technical Committee. It was drafted specifically with a view to ease enforcement and accessibility.
- 1.2. We would suggest that the inclusion of a Bill of Rights in any form of "Interim Constitution" would immediately lead to the development of a human rights jurisprudence in South Africa. Any Bill of Rights agreed to should thus be sufficiently comprehensive to stand the scrutiny of the courts.

2. **AD PARAGRAPH FOUR**

We are in broad agreement with the rights and freedoms identified for the purposes of your category 3.1, subject to the following qualifications:

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- 2.1. One of the greatest threats to human rights during an unstable period of transition, is the ability of the government to declare a state of emergency. We believe strongly that the conditions under which the government can declare a state of emergency, as well as the rights that will be inviolate even in those circumstances, should be included in a Bill of Rights contained in an "Interim Constitution".
- 2.2. Tensions during the transition will run high. Many of these tensions will focus on individual and personal property. To exclude a right to property from a Bill of Fundamental Rights and Freedoms, would be to invite disputes and even conflict. We would strongly recommend our article 9 to your attention.
- 2.3. We believe that "the right to form trade unions and employers' organisations and to engage in collective bargaining", and "the right to an environment which is safe and not detrimental to health" should strictly be included in your category 3.2 and not in 3.1. The inclusion of these in 3.1 could lead to unnecessary disputes.

We are not entirely sure what is meant by "the right to have disputes settled by a court of law or other independent forum". Does this simply refer to access to the courts, or does it also include an entitlement to legal assistance from the state to enable an individual litigant to have his disputes settled?

We wish you well with your endeavours and trust that your committee will make a substantial contribution towards the establishment of a culture of human rights in South Africa.

Yours sincerely

Hennie Bester

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