

11/8/11/2/12

CONSTITUTIONAL ASSEMBLY

**CONSTITUTIONAL COMMITTEE
SUB-COMMITTEE**

**DRAFT REPORT OF DISCUSSIONS
09 OCTOBER 1995**

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DRAFT REPORT OF THE CONSTITUTIONAL COMMITTEE SUBCOMMITTEE

9 OCTOBER 1995

DRAFT BILL OF RIGHTS

SECTION 1 : STATE DUTY TO RESPECT AND PROTECT RIGHTS

1. It was agreed that the Bill of Rights would be self-standing.
2. The meeting agreed to defer decisions on:
 - i. What the final name of the Bill of Rights would be; and
 - ii. Where the Bill of Rights would be situated in the Constitution.
2. The meeting agreed in principle to section 1. It agreed, however, to refer it to the Technical Committee to consider whether the first clause should be separated from the rest of the section to begin constructing a preamble to the chapter.

SECTION 2 : EQUALITY

1. The meeting agreed to subsection 2(1) with the inclusion of the words "and benefit".
2. For subsection 2(2), the DP proposed the deletion of the words "and the state may engage in other measures," and the insertion of the words "and likely" to read: "designed and likely to protect."

The meeting agreed to refer the matter to the Technical Committee to consider the DP proposal. At the same time, the Technical Committee would evaluate whether the section gives expression to Constitutional Principle 5 and consider subsection 1 of the Canadian Charter.

3. In subsection 2(3) the meeting agreed to include the words "marital status" after "gender".

The meeting accepted subsection 2(3) with this amendment, noting the ACDP's objection to the inclusion of "sexual orientation".

4. It was agreed that subsection 2(4) would be referred to the Technical Committee for reformulation.

SECTION 3 : HUMAN DIGNITY

The meeting agreed to section 3.

SECTION 4: LIFE

The ANC and the DP supported Option 2; the NP and FF supported Option 4; and the ACDP proposed a combination of Options 3 and 4 and tabled a provisional text.

The meeting agreed to defer discussion of section 4 to allow political parties to consider the ACDP proposal that was tabled at the meeting.

SECTION 5: FREEDOM AND INTEGRITY OF THE PERSON

The meeting agreed to defer discussion of section 5 to allow political parties and the Technical Committee to consider the ANC proposal that was tabled at the meeting.

SECTION 6: SLAVERY, SERVITUDE AND FORCED LABOUR

The meeting accepted section 6.

SECTION 7: PRIVACY

1. The meeting agreed to subsection 7(1).
2. It was agreed that subsection 7(2) would be flagged for discussion when considering the possible clause on the rights of juristic persons.

SECTION 8: FREEDOM OF RELIGION, BELIEF AND OPINION

1. The meeting accepted subsection 8(1), but noted that the ACDP suggested the addition of the words "proselytise and to" to read "including freedom to proselytise and to change religion..."
2. The meeting accepted subsection 8(2) but noted that the ACDP reserved its position regarding 8(2)(a).
3. It was agreed that subsection 8(3) would be referred to the Technical Committee who would reconsider it in the light of draft formulations on customary law in the chapter on the Judiciary.

SECTION 9: FREEDOM OF EXPRESSION

1. The meeting agreed to subsection 9(1).
2. It was agreed that the Technical Committee would look again at subsection 9(2) to see how it could accommodate the following suggestions:
 - i. The DP said that subsection 9(2)(b) be amended to read "advocacy of hatred that constitutes incitement to imminent violence;"
 - ii. The ANC said that subsection 9(2)(a) be amended to read "propaganda for war or incitement to imminent violence"; and
 - iii. The ANC said that subsection 9(2)(b) should be amended, by inserting the words "grounds including" to read "and that is based on grounds including race, ethnicity".

The meeting noted that the ACDP reserved their position on the inclusion of the word "gender" in subsection 9(2)(b).

3. The meeting agreed to that the Technical Committee would reformulate subsection 9(3) to better distinguish state and state-aided media.

SECTION 10: ASSEMBLY, DEMONSTRATION AND PETITION

The meeting agreed to section 10.

SECTION 11: FREEDOM OF ASSOCIATION

The meeting agreed to section 11.

SECTION 12: POLITICAL RIGHTS

The meeting accepted subsections 12(1) - 12(3), but agreed to delete subsection 12(4).

SECTION 13: CITIZEN'S RIGHTS

The meeting agreed to section 13 with two corrections:

- i. The title of the section would be corrected to read "Citizenship"; and
- ii. The word "their" would be deleted.

SECTION 14: FREEDOM OF MOVEMENT AND RESIDENCE

The meeting agreed to section 14, including subsection (4).

SECTION 15: ECONOMIC ACTIVITY

The ANC supported Option 1. It said that Option 2 was too wide and was not found in any international instruments.

The NP supported Option 2, because it was similar clauses in the Interim Constitution that it believes are quite appropriate.

The DP supported an amended version of Option 2, whereby subsection (2) would be amended to read:

"In order to develop an open and democratic society based on freedom and equality, reasonable measures may be taken to protect or improve the quality of life, economic growth, human development and social justice."

The meeting agreed to defer a decision on the matter to allow the Technical Committee to have a closer look at international instruments taking into account what was said by the ANC, NP and DP.

The meeting agreed that the Technical Committee would also report on how it understood the term "economic activity" and why it found the term problematic in this context.

SECTION 16: LABOUR RELATIONS

1. It was agreed that paragraph 2.2.5 of the Explanatory Memorandum would be corrected to accurately reflect the NP position.
2. The meeting agreed to subsections 16(1) and (2).
3. The meeting agreed to subsection (3). It agreed that subsection (3)(c) would be retained in brackets and returned to at a later stage.
4. The meeting noted the DP proposal that subsection (4)(a) be amended to read:

"to determine its own administration, programmes and activities which promote honest, efficient, democratic and accountable governance."

The meeting agreed, however, to defer the matter to give political parties the opportunity to discuss it further.

SECTION 17: ENVIRONMENT

1. The meeting agreed to remove brackets around "or well-being" and with this amendment agreed to subsection 17(a).

2. The meeting agreed to subsection 17(b).
3. The meeting agreed to delete subsection 17(c).

SECTION 18: PROPERTY

The meeting agreed to defer discussion of section 18 until the next meeting of the Subcommittee.

SECTION 19: ADEQUATE HOUSING

The meeting agreed to defer discussion of section 19 until the next meeting of the Subcommittee.

SECTION 20: HEALTH

The meeting agreed to hold section 20 over until the next meeting of the Subcommittee.

SECTION 21: SOCIAL ASSISTANCE, FOOD AND WATER

The meeting agreed to hold section 21 over until the next meeting of the Subcommittee.

SECTION 22: CHILDREN

The meeting agreed to section 22, except subsection 22(1)(b), which would be held over to allow the NP to consider the term "family care" as opposed to "parental care".

SECTION 23: EDUCATION

It was agreed that discussion of section 23 would be deferred until the next meeting of the Subcommittee.

SECTION 24: ACADEMIC FREEDOM

The meeting agreed to defer discussion of section 24 until the next meeting of the Subcommittee.

SECTION 25: LANGUAGE AND CULTURE

The meeting agreed to hold section 25 over until the next meeting of the Subcommittee.

SECTION 26: ACCESS TO INFORMATION

The meeting agreed to Option 3.

SECTION 27: ADMINISTRATIVE JUSTICE

The meeting agreed to defer discussion of section 27 until the next meeting of the Subcommittee to give political parties the opportunity to consider the DP proposal that was tabled at the meeting.

SECTION 28: ACCESS TO COURTS/JUSTICE

The meeting agreed to adopt Option 2.

SECTION 29: DETAINED, ARRESTED AND ACCUSED PERSONS

The meeting agreed that three corrections would be made to section 29:

- i. Subsection 29(1)(d) would be amended to read "As soon as reasonably possible, but at least within 48 hours of being arrested,..."
- ii. Subsection 29(3)(c) would be amended to read "without unreasonable delay"; and
- iii. The Technical Committee would correct subsection 29(1)(b) by replacing "the accused person" with a general pronoun.

It was agreed, however, that discussion of section 29 would be deferred until the next meeting of the Subcommittee.

SECTION 30: LIMITATION OF RIGHTS

The meeting agreed that discussion of section 30 would be held over until the next Subcommittee meeting to give political parties an opportunity to consider the DP submission that was tabled at the meeting.

SECTION 31: STATES OF EMERGENCY

The meeting agreed in principle to section 31, but noted that the language could be tidied up. The meeting also noted the ANC request that subsection section 5(3) be added to the list in section 31(4)(c).

SECTION 32: ENFORCEMENT OF RIGHTS

The meeting agreed to section 32, with the insertion of subsection 32(1)(e), which reads:

SECTION 33: APPLICATION

1. The NP expressed concern about the applicability of juristic persons. The meeting agreed to consider Option 1 on pages 275-76 of the Explanatory Memoranda at the next Subcommittee meeting.
2. The meeting agreed to section 33.

SECTION 34: INTERPRETATION OF THE BILL OF RIGHTS

The meeting agreed to defer discussion of section 34 to allow parties to consider the following suggestions:

- i. The ACDP said that the term "generally accepted moral values" should be included in subsection (1)(a);
- ii. The ANC said that their late submission proposed that section 34 (1)(a) be amended to read "an open, equal and democratic society."
- iii. The DP said that the term "application" be inserted in subsection 34(3).

The meeting agreed to the Technical Committee's proposal that subsection (2) be amended to read "legislation that is consistent with this Bill of Rights..."

