

**TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS  
DURING THE TRANSITION**

**BRIEF NOTES OF MEETING WITH THE NEGOTIATING COUNCIL  
TUESDAY, 22 JUNE 1993**

The Technical Committee were called in to answer briefly questions put to them regarding their Fifth Progress Report.

Prof. du Plessis (Convenor) gave the following explanations:

- \* In accordance with the Council's instructions certain rights have not been included in the Report, and the Committee would have to receive instructions from the Council to consider any additional rights and freedoms.
- \* The words in square brackets were not suggested by this Committee for inclusion in the formulation of rights and freedoms as it is not the Committee's task to draw up a Bill of Rights.
- \* The Committee had not yet dealt with the enforcement mechanisms as they were of the opinion that these should be done in conjunction with the Committee on Constitutional Issues, and the Committee had only put forward what these should look like.
- \* In formulating rights for a constitutional instrument this must be taken with the utmost circumspection and the rights and freedoms already presented cannot be taken as final.
- \* The Committee was presently working on the Sixth Report which will include improved formulations of the rights.

The following questions were raised by various members of the Negotiating Council:

Mr de Jager:           Regarding the legal processes to enforce these rights, who would be responsible for the costs? We may have a Bill of Rights but these might not be enforced due to legal costs. It is no use having rights if we do not have the means of enforcement. Has the Committee considered the Declaration of Rights set out by the United Nations in their publication of 1 December 1992.

Prof. du Plessis:       First clause (1. Enforcement) pre-empts discussion on enforcement and the Committee contemplated on dealing with this issue. There were various models from other parts of the world on how to cut down costs of enforcement of rights, and no particular recommendation has been made in that regard. Would Mr de Jager's committee submit a copy

- of the U.N. document with suggestions on which clauses should be included.
- Mrs Camerera: There are a number of points and questions but if the Committee is formulating rights are they going to do another report?
- Chairperson: Prof. du Plessis, is your Committee going to change anything?
- Prof. du Plessis: We may have to go back on some of the formulations, but somewhere we have to put a full stop as this could go on forever, and could the Council help with further recommendations?
- Mr Jacobs: What is the relationship between Constitutional Principles and Fundamental Rights or is there no basis?
- Prof. du Plessis: There are many relationships between constitutional principles and the formulating of what should be included in fundamental right entrenched in the transition. The rights which our Committee considered are the rights which the Council have instructed us to consider. We have not pre-empted any instructions of the Council. These have not been considered because we have not received any instructions from the Council.
- Ms Smuts: Regarding sex discrimination as well as racial. What about equality?
- Prof. du Plessis: It is stated in the Report in broad terms that no person shall be discriminated against - Clause 2, subclause (2) and the Explanatory Note.
- Chief .....: Reference to S A Law. This should be clarified - S A Common Law or to take into consideration Indigenous Law.
- Prof. du Plessis: S A Law would include Customary Law as well.
- Chief ...: There is a difference between S A Common Law which is Roman Dutch Law and our people's law which must be made very clear. In terms of these two systems of law there are fundamental human rights. It would be better when we are dealing with Traditional leadership.
- Mr Kane Andrew: Regarding Equality 2(2) - discrimination in universities. There is a long list where there is discrimination on racial grounds.
- Prof. du Plessis: This is being taken care of and would be via the limitation clause - Clause 30.
- Mr Kane Andrews: Regarding forced labour - what is a legal definition?
- Prof. du Plessis: Same sense as servitude and was put in the report as a result of a submission received from one of the Parties. There are particular

situations in South Africa which might relate to this such as child labour. This would be subject to the limitation clause.

Mr Kane Andrews: What about the privacy clause - there is no qualification and does the limitation clause also apply here.

(Could not hear the reply from Prof. du Plessis)

Mrs Camerera: (Informed the meeting of a women's gathering and concern about children's rights) Is there any way we can reassure these women of the inclusion of children's rights as many rights are not addressed in this document?

Chairperson: There are 26 Parties and organisations present here and perhaps some of the delegates would accept such views and make presentation to the Committee.

Mr Jacobs: Do the fundamental rights apply between only the State and subject or between only the subjects?

Prof. du Plessis: Not only operating vertically but could also operate against non-State instruments.

(Could not hear anything from other delegates at this stage)

Mrs Mopedi: Is there any reason why basic education has been left out?

Prof. du Plessis: Clause 29 - Fifth Report deals with basic education. If dealt with again it would become repetitive. We are in a difficult position where the children's rights are concerned as we were instructed by the Council not to deal with the rights of the second generation.

Chairperson: This Committee has produced five reports which is indicative in the way in which they are addressing the instructions of the Council. They have produced sufficient for discussions to take place on Wednesday. Although there may be many differences they have had many difficulties in trying to reconcile with what they had been given to do. They are to be congratulated in presenting an excellent report.