

212/11/6/39



CONSTITUTIONAL ASSEMBLY

SECTION 13: "UNREASONABLY"

MEMORANDUM

TO: CONSTITUTIONAL COMMITTEE SUB-COMMITTEE
FROM: EXECUTIVE DIRECTOR
DATE: 18 MARCH 1996
RE: POSSIBLE AMENDMENT TO SECTION 13 ("UNREASONABLY")

We enclose for your consideration a memorandum from the Panel of Experts entitled "*Possible Amendment to Section 13 ("unreasonably").*"

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EXECUTIVE DIRECTOR

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You've made your mark



Now have your say

THE NEW CONSTITUTION

Asmat: Laws passed - basic law detail,
national legis expl properly mandated.

Chabane:

Tglin: Refer to national legislation.

De Lange: - Haven't disc local govt or
decided on whether it is
contained in the schedule.
- DISCUSS how place local govt in
these parameters.

Ackermann: Mandate from the provinces

Legislative
Authority:

LEGISLATION

PANEL OF CONSTITUTIONAL EXPERTS TECHNICAL COMMITTEE 4

MEMORANDUM

TO: CHAIRPERSONS AND EXECUTIVE DIRECTOR OF THE CA
DATE: 15 MARCH 1996
RE: POSSIBLE AMENDMENT TO SECTION 13 ("UNREASONABLY")

1. The CC, after considering the memorandum in connection with Section 13 submitted by the Panel and Technical Committee on 11 March 1996, requested an opinion concerning the effect of the qualification of the rights encapsulated in Section 13 by the concept of **unreasonableness**.
2. We are of the view that the qualification of the right by the concept of unreasonableness has generally the same impact as that described in the previous memo in relation to the concept of **arbitrariness**.
3. There is however an additional complication which arises if the concept of **unreasonableness** is used. The **limitation clause** as presently formulated encompasses the concept of **unreasonableness** to a considerable degree. The use of the concept of reasonableness will therefore bring about an unfortunate overlap between the definition of the right on the one hand and the application of the limitation clause on the other.
4. The use of the word reasonable in other sections of the draft (secs. 25 & 26 for e.g) does not occasion this difficulty because of the difference in context.

NCOP

- no agreement → 2nd house.

- 2(1)(d) 30 days,

do need a time period

→ no a/mnt.

2(2)(d) a/mnt on mediation.

(e) mediation fails. DP does not support $\frac{2}{3}$ NA — still support.

→ DP proposal on FFC.

(8) Appointments (JSC, 4 senators)
Need to concretise.

(9) Need further discussion

(11.2) NP add in TA (maatsi)
ANC + NP to discuss further

→ Eglin: concerned about it as it stands.
governments ✓ not sure what
it means at present

— open mandate ito of their
committees.

PA: structure of local governments.
statutory body, would mandate
delegates
Assoc of local govts
voluntary later statutory.