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TO ALL MEMBERS OF THE TECHNICAL COMMITTEE ON
FUNDAMENTAL RIGHTS DURING THE TRANSITION

From: Lourens du Plessis

Herewith a draft of the first part of our first report for your perusal, recommendations and for discussion on our meeting Thursday in Cape Town.

C O N F I D E N T I A L

MULTI-PARTY NEGOTIATING PROCESS

TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS DURING THE
TRANSITION

FIRST INTERIM REPORT

1 Introductory remarks

The Committee first met on 10 May 1993 at The World Trade Centre ('the first meeting') and thereafter on 13 May 1993 in Cape Town ('the second meeting'). It has also scheduled a meeting for 18-20 May 1993 at The World Trade Centre ('the third meeting'). Dates for further meetings will be determined at the third meeting. Meetings with other technical committees,

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such as the Committees on Constitutional Matters and the Repeal of Discriminatory Legislation, may also be necessary, since this Committee envisages that it will, from its particular perspective, somehow have to address concerns such as the mechanisms for the enforcement of fundamental rights and constitutional principles relative to their effective protection and judicious demarcation.

2 Guiding considerations

At its first meeting the Committee agreed that the following considerations -- which could of course still be amplified -- should guide it in its further deliberations:

- 2 1 The means and mechanism for the protection of fundamental rights in the interim period should be optimally legitimate so as not to subvert the legitimacy of similar means and mechanisms in a final dispensation.
- 2 2 Apart from identifying fundamental rights which are to be protected in the interim period, their enforceability and the enforcement mechanisms invoked to this end, are vital questions which will have to receive the Committee's serious attention. The said mechanisms should also be accessible and practicable.
- 2 3 The Committee should start off by exploring 'common ground', i.e. areas of agreement on minimal or essential fundamental rights which could simply not be excluded in the interim period. To this end the Committee ought to be down-to-earth and practical in, for instance, comparing bill of rights proposals which are already on the table.



3 Methodology

As a guide to its deliberations, the Committee distinguishes the following four categories of rights which somehow feature in the context of the interim protection of fundamental rights:

- 3 1 minimal or essential rights which will simply have to be accommodated;
- 3 2 rights which ought to be accommodated;
- 3 3 rights of which it is debatable whether they should be accommodated, and
- 3 4 rights which should not be accommodated.

At its second meeting the Committee dealt with 3 1 and 3 2. This report therefore reflects the Committee's initial position on the accommodation of these two categories of rights in the interim period. The Committee's position is, however, subject to change in view of the submissions which may still be received from interested parties.

4 Rights identified

[Committee members,

It will help a lot if, for our Cape Town meeting, you can cull rights belonging to categories 3 1 and 3 2 from proposed bills of rights in the South African context (but you can of course also consult other bills of rights). Please also consider whether we should in any way prioritise the rights we are going to include.

Also give thought to possible limitations on rights you include in your lists -- and to all other matters relative to such rights which you think ought to receive special attention, e.g. a (further) stay of executions in relation to the right to life.

Thank you