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**CONSTITUTIONAL ASSEMBLY
MEMORANDUM**

TO: Participants in the Multi-lateral Discussions on the Draft Bill of Rights
FROM: Executive Director
DATE: 21 February 1996
RE: Memorandum from Technical Committee 4 on Section 30: The Right to Language and Culture

We enclose for your consideration a memorandum from Technical Committee 4 on Section 30: The Right to Language and Culture

**H EBRAHIM
EXECUTIVE DIRECTOR
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TECHNICAL COMMITTEE 4

MEMORANDUM

TO: Chairpersons and Executive Director of CA
DATE: 19 February 1996
RE: Technical Committee 4 Memorandum on Section 30: The Right to Language and Culture

1. The Technical Committee was requested at the CC Sub-Committee Meeting of 7 February to research the position in international human rights instruments regarding guarantees of language and cultural rights for the purposes of the drafting of section 30.

2. Language and cultural rights in international human rights law

2.1 Article 27, International Covenant on Civil and Political Rights (1966)

"In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group to enjoy their own culture, to profess and practise their own religion, or to use their own language."

The Human Rights Committee which is responsible for supervising States obligations under this Covenant has said the following in regard to article 27:

"The Committee observes that none of the rights protected under article 27 of the Covenant may legitimately be exercised in manner or to an extent inconsistent with the other provisions of the Covenant."¹

2.2 UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities [UN General Assembly resolution 47/135 of 18 December 1992]

Article 4(2)

"States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards."

¹General Comment 23 (Fiftieth session, 1994) UN doc. CCPR/C/21/Rev.1/Add.5, para. 8.

Article 8(2)

"The exercise of the rights set forth in this Declaration shall not prejudice the enjoyment by all persons of universally recognised human rights and fundamental freedoms."

2.3 Framework Convention for the Protection of National Minorities (Council of Europe, 8 November 1994) [not yet in force]

Article 20

"In the exercise of the rights and freedoms flowing from the principles enshrined in the present framework Convention, any person belonging to a national minority shall respect the national legislation and the rights of others, in particular those of persons belong to the majority or to other national minorities."

2.4 UN Draft Declaration on the Rights of Indigenous Peoples [E/CN.4/Sub.2/1993/29]

Article 33

"Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive juridical customs, traditions, procedures and practices, in accordance with internationally recognised human rights standards."

2.5 Convention on the Elimination of all Forms of Discrimination against Women (1979) [ratified without reservations by South Africa]

Article 5

"States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

3. Conclusion

Although the Technical Committee recognises an overlap with the general limitations clause, it supports the inclusion of the phrase in section 30 of the Working Draft to make it clear, in view of international precedents, that the rights

of others is a legitimate purpose for limiting the right to culture.

