

TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS
DURING THE TRANSITION

02/08/93

ANC PROPOSED AMENDMENTS TO THE SIXTH PROGRESS REPORT

NOTE: The following document is the 6th report with the amendments proposed by the ANC at this stage. **New wording is in bold.** ~~Wording that is to be deleted is crossed through.~~ *Comment is in italics.*

CHAPTER [....]

FUNDAMENTAL RIGHTS AND FREEDOMS

Enforcement

- (1) The provisions of this Chapter shall -
 - (a) bind the legislative and executive branches of government at all levels as well as statutory bodies and functionaries.
 - (b) bind other bodies and persons to the extent expressly provided for in this chapter

COMMENT: This provision gives effect to the proposal made by the ANC in its response to the 5th report. As a general rule the rights should only be enforceable against the state and its organs and that exceptions to this rule must be considered with circumspection. There are several reasons why making rights self-enforcing or "horizontal" ought to be treated carefully : the unintended effects and the limits on time to exhaustively consider the implications and the appropriate wording; no provision is made for the judicial limitation of self-enforcing rights (the limitations clause is designed to take account of legislative limitation only); there is also no clarity either

conceptually or textually as to the relationship between a self-enforcing right and a statute that the legislature may have passed to give effect to the right. The previous proposal to leave it to the courts to decide 'where appropriate' is fraught with indeterminacy. This will not only encourage unnecessary constitutional litigation, it will mean that it will be left to the courts to decide to give horizontal effect to rights that the parties themselves have decided specifically to limit to vertical rights - see the NMC's agreed position on the vertical application of the labour rights provision.

The ANC is of the view that only the equality clause at this stage should be self-enforcing and to that end, the wording changes to that provision have been drafted with the above considerations in mind. If it is to have self-enforcing effect then it cannot be open-ended. It must be specific as to the classes of discriminated persons.

(c) be guaranteed and enforced by the [designated authority] which, in interpreting such provisions, shall :

(i) **strictly scrutinize any laws or executive actions that may affect free and fair elections or the integrity of the constitution making process. All other legislation or executive action shall be presumed to be constitutionally valid until the contrary is established, provided that no law shall be**

pronounced constitutionally invalid if it can be interpreted in a manner consistent with the rights and freedoms specified in the Chapter and such law shall be interpreted accordingly.

- (ii) interpret the provisions in a manner consistent with the state's international law obligations to the extent that it is possible,**
- (iii) promote the values which underlie a free, open and democratic society based on the principle of equality**

NOTE: This wording gives effect to the ANC proposal to distinguish between those political and civil rights that need to be zealously guarded by the courts and those that are socio-economic in nature and in respect of which the courts ought to give due deference to the legislature, given the complex nature, the fiscal implications etc of such legislation. It alters and incorporates the wording proposed by the Technical Committee in 1(9). It also includes the state's international law obligations as an interpretive reference.

- (2) Save as provided for in this chapter, no rule of the common law, custom or legislation shall limit any right or freedom contained in this Chapter.
- (3) The entrenchment of certain rights and freedoms in this Chapter shall not be construed as denying the existence of any other right or freedoms recognised by South African law.

- (4) In the case of an infringement of any provision of this Chapter, the [designated authority] may, where appropriate, put any body or person referred to in subsection (1)(a) and (b) on terms as to how and within what period such infringement should be remedied.
- ~~(5) The rights and freedoms contained in this Chapter may be added to or amended by an enactment of the [elected constitution making body], provided that such enactment does not detract from the essence of any of the rights and freedoms included in this Chapter.~~
- (6) The provisions of this Chapter shall apply to all laws in force and all administrative decisions taken during the operation of this chapter.
- ~~(7) All juristic persons shall have be entitled to the rights and freedoms contained in this chapter to the extent that the nature of these rights and freedoms permit~~

NOTE : The effect of this clause is to leave it to the discretion of the courts to decide when and under what circumstances corporations shall be entitled to the rights under the chapter. The instances where artificial persons shall be entitled to the rights and freedoms ought to be expressly stated in order to avoid unnecessary constitutional litigation contained in the Chapter. The fear that the exclusion of artificial persons will have the effect of excluding churches, political parties, trade unions, etc can be

addressed by reference to the representative action provided for in section 1(8). Many of the rights in the Chapter that accrue to the association as distinct from the natural persons that constitute it and represent it are economic rights - the right to economic activity and the right to property. Both can be phrased in an intransitive manner: 'The right to economic activity shall be protected ...' and 'The right to property shall be guaranteed and protected ...' (as in the German constitution).

To the extent that the committee is of the view that the rights and freedoms of association, access to courts, access to information and the right to administrative decisions ought to be extended to artificial persons, in the interim, then the distinction between 'natural persons' and 'juristic persons' ought to be drawn in each case.

- (8) (a) Every person who alleges that his or her rights or freedoms, or every association which alleges that its members' rights or freedoms, entrenched in this Chapter have been infringed or are threatened, shall be entitled to apply to a competent [designated authority] for appropriate relief, which may include a declaration of rights.
- (b) Nothing in this subsection shall prevent a person from applying for relief on behalf of a group or class of persons whose rights or freedoms entrenched in this Chapter are alleged to have been infringed or are threatened.

~~(9) (a) A law limiting a right or a freedom entrenched in this Chapter shall be presumed constitutionally valid until the contrary is proved: Provided that a law limiting a political right or freedom shall be strictly scrutinized for constitutional validity.~~

~~(b) No law shall be constitutionally invalid solely by reason of the fact that the wording used exceeds the limits specified in this Chapter, provided that such a law is capable of a narrower interpretation which does not exceed such limits, and such a law shall be interpreted accordingly.~~

COMMENT: It is proposed that this section be incorporated in the draft amendment to 1(1)(c) above.

(10) Section 1(1)(b) shall apply to sections 2 only.

2 Equality

- (1) Notwithstanding the provisions of this chapter,** every person shall have the right to equality before the law and to equal protection of the law.
- (2) No person shall be unfairly discriminated against, directly or indirectly.**
~~"on any ground whatsoever" and, without derogating in any way from the~~

~~generality of this provision~~, on the ground of race, ~~or gender~~. in particular **sex, ethnic origin, colour, sexual orientation, age, disability, religion, belief, conscience, creed, birth, culture or language.**

COMMENT: If this right is to operate horizontally then the wide ambit of its reach must be restricted to the list. It is after all only an interim measure. The list covers the known list of discriminated categories. In the final bill one may have to cater for discrimination in a more general way. The unrestricted wording will encourage a whole range of litigation that has nothing to do with discrimination or the advancement of the disadvantaged.

For the interim at least, the equality provision should at least identify the disadvantaged groups to be protected in the provision. Anyone reading the clause should know the kind of cases it is intended to deal with. This is particularly important in respect of vulnerable groups whose rights ought to be respected and who might have difficulty in securing legislative attention. Unless there is express objection to any of the categories mentioned, we see no reason why they should not be listed. They have great significance for persons who stand to be affected and who look to the Chapter for express recognition of their right not to be discriminated against.

- (3) This section shall permit measures aimed at the adequate protection and advancement of persons disadvantaged by discrimination. ~~(In order to enable the full and equal enjoyment of their rights and freedoms.)~~

COMMENT: The purpose of corrective action should not be restricted in this way. It will not only be "rights" that will be the purpose of such measures but humanitarian aid, poverty relief, housing, educational loans issues in respect of what they do not yet have rights.

- (4) In interpreting this section it shall be presumed that any conditions or circumstances under which a person is discriminated against is included within subsection (2) until the contrary is established.

3 Life

- (1) Every person shall have the right to life.

~~(2) A law in force at the commencement of subsection (1) relating to capital punishment or abortion shall remain in force until repealed or amended by the [legislature].~~

COMMENT: Sub-paragraph (2) should be deleted. The issue of abortion should not simply be raised under the question of the right to life. It could also be referred to the right to dignity and the right to privacy. Once it is agreed that be no capital punishment shall be carried out until the issue has been finally pronounced upon by the constituent assembly, no further provision is required at this stage.

~~(3) No sentence of death shall be carried out until [the elected constitution making body] has pronounced finally on the abolition of capital punishment.~~

4 Human Dignity

Every person shall the right to respect for and protection of his or her **personal integrity and** dignity.

COMMENT: The rights protected by sections 4 and 5 are of a special importance for groups who in their daily lives are subjected to various forms of discrimination and oppression. To mention one example: overcoming sexism relates to combating psychological and other forms of day-to-day oppression which are the more pernicious because they are either hidden or disguised as culture or attributed to nature. Protection from oppression should start off from the foundation of a fundamental right to respect for the person in all its dimensions. There are three elements of personhood that should be recognised at a constitutional level. The first relates to physical security, the second to reputational standing in the community and the third to

integrity/self-esteem. The first two are well catered for in sections 4 and 5 respectively. The third, however, is only partially covered by the term "dignity". We accordingly propose that section 4 be amended as above.

5 Liberty and Security of the Person

- (1) Every person shall have the right to liberty and security of the person which shall include the right not to be detained without trial.

- (2) No person shall be subject to torture of any kind, whether physical, mental or emotional, nor shall any person be subject to cruel, inhuman or degrading treatment or punishment.

6 Servitude and Forced Labour

No person shall be subject to servitude, forced labour.

7 Privacy

Every person shall have the right to his or her personal privacy and no person shall be subject to searches of his or her person, home or property, seizure of private possessions or the violation of private communications **provided that this section shall not prevent lawful searches based upon reasonable suspicion of the commission of an offence, nor shall it prevent reasonable steps from being taken to prevent domestic violence and abuse..**

COMMENT: *In view of the fact that the doctrine of privacy has been invoked to prevent reasonable steps from being taken to prevent domestic violence and abuse, we propose an explicit proviso as above.*

8 Religion and Belief

- (1) Every person shall have the right to freedom of conscience, religion, thought, belief and opinion.

- (2) Without derogating from the generality of subsection (1), religious observances may be conducted at State or State-aided institutions under rules established by the appropriate authority for that purpose provided that such observances are conducted on an equitable basis and attendance thereat is free voluntary

COMMENT: *Sub-paragraph (2) is particularly controversial. It pre-empts the constitution making authority deciding whether or not there should be a state sponsored religions or whether there should be an anti-establishment clause in the constitution. Employing the criteria identified by the Committee in its Third Report, the proviso ought to be limited on the grounds of controversy. In any event, it is our view that the freedom of conscience and religion is in no way inconsisted with school prayers. The USA Constitution has a special formulation which forbids religious observance (as opposed to the study of religion) at state schools. It is not even*

necessary to raise the problem here; doing so introduces unnecessary prescriptiveness.

9 Freedom of Expression

Every person shall have the right to freedom of speech and expression which shall include freedom of the press and other media.

COMMENT: The Technical Committee has not accept the ANC'S proposal concerning diversity of expression on the grounds that this is a matter for the Technical Committee on Media. Provision must be made then that the laws agreed to in respect of an independent media commission and the rules governing media in the interim should not be subject to constitutional litigation - they, together with the independent electoral commission laws in respect of section 10 and section 15 below, should be insulated from constitutional attack under this Chapter.

10 Assembly, Demonstration and Petition

Every person shall have the right to assemble and demonstrate with other persons peacefully and unarmed, and to present petitions.

11 Freedom of Association

(1) Every person shall have the right to freedom of association.

- (2) Without derogating from the generality of the provisions of section 2(2), nothing in this section shall ~~permit~~ **[preclude legislation preventing]** discrimination on the ground of race **[and sex]**.

12 Freedom of Movement

Every person shall have the right to move freely anywhere within South Africa.

13 Residence

Every person shall have the right freely to choose his or her place of residence.

14 Citizen's Rights

Every citizen shall have the right to enter, remain in and leave South Africa, and no citizen shall be deprived of his or her citizenship.

15 Political Rights

(1) Every person shall have

(a) the right to form, participate in the activities of and to recruit members for a political party,

(b) the right to campaign for a political party or cause, and

(c) the freedom to make political choices.

(2) Every citizen of voting age shall have the right to vote in secret and to stand for election to public office.

16 Access to Court

Every person shall have the right of access to a court of law, or where appropriate, another independent and impartial forum.

NOTE: The right to access to court, as it presently reads, still seems to allow all matters to go to court. It will, in all probability, be interpreted so as to limit its ambit to legal matters or disputes, but that is no reason not to be clear.

17 Access to Information

Every person shall have the right of access to all such information as is necessary for the protection or exercise of his or her rights.

18 Administrative Decisions

(1) Every person shall have the right to lawful and procedurally fair administrative decisions.

(2) Every person shall have the right to be furnished with the reasons for an administrative decision which affects his or her rights or interests.

COMMENT: The ANC strongly opposes the proposal that the substantive nature of administrative decisions be the subject of judicial review. Any administrative decision that conflicts with the rights of this Chapter is a sufficient safeguard. Subjecting the

substantive nature of administrative decision making, conflicts with the doctrine of the separation of powers.

19 Detained, Arrested and Accused Persons

- (1) Every person who is detained, including every sentenced prisoner, shall have the right -
- (a) to be informed promptly in a language which he or she understands of the reason for his or her detention.
 - (b) to be detained under conditions consonant with human dignity, including the provision of **[reading materials, access to media, educational facilities]**, adequate nutrition and medical treatment at State expense;
 - (c) to consult with a legal practitioner of his or her choice, to be informed of this right promptly and, where the interests of justice so require, to be provided with the services of a legal practitioner by the State, and
 - (d) to be given the opportunity to communicate with, and to be visited by, his or her spouse, next-of-kin, religious counsellor and a medical practitioner of his or her choice;

(2) Every person arrested for the alleged commission of an offence shall, in addition to the rights which he or she has as a detained person, have the right -

(a) to be informed promptly, in a language which he or she understands, that he or she has the right to remain silent and to be warned of the consequences of making any statement;

(b) to be brought before an ordinary court of law **as soon as reasonably possible but not later than within 48 hours of** after arrest or the first court day thereafter, and to be charged or to be informed of the reason for his or her further detention, failing which he or she shall be entitled to be released;

(c) to be tried by an ordinary court of law within a reasonable time after arrest or charged, and

(d) to be released from detention with or without bail, unless the interests of justice require otherwise.

(3) Every accused person shall have the right to a fair trial, which shall include the right -

- (a) to a public trial by an ordinary court of law;
- (b) to be informed with sufficient particularity of the charge;
- (c) to be presumed innocent and to remain silent during plea proceedings or trial and not to testify during trial;
- (d) to adduce and challenge evidence;
- (e) to be represented by a legal practitioner of his or her choice or, where the interests of justice so demand, to be provided with legal representation at State expense, and to be informed of these rights;
- (f) not to be convicted or an offence in respect of any act or omission which was not an offence at the time it was committed, and not to be sentenced to a more severe punishment than that which was applicable when the offence was committed;
- (g) not to be tried again for an offence or which he or she has previously been convicted or acquitted;

- (h) to have recourse by way of appeal or review too a higher court than the court of first instance;
- (i) to be tried in a language which he or she **sufficiently** understands for the **purposes of a fair trial** or, failing this, to have the proceedings interpreted to him or her, and
- (j) to be sentenced within a reasonable time after conviction.

20 Eviction

No person shall be removed from his or her home, except by order of a court of law after taking into account all relevant factors, **which may** include the availability of appropriate alternative accommodation and the lawfulness of the occupation.

21 Economic Activity

- (1) Every **citizen** shall have the freedom to engage in economic activity.
- (2) Nothing in this section shall prevent legislation to improve the quality of life, economic growth, human development, social justice, **reasonable measures for the regulation of the economy**, basic conditions of

employment, fair labour practices or equal opportunity for all, provided such legislation is justifiable in a free, open and democratic society based on the principle of equality.

COMMENT: We reiterate that we regard section 21 as unnecessary, particularly as it is not balanced out by a right to work, rights to the minimum decencies of life, and rights to health and welfare. The proposed sub-section goes some way to meeting concerns we have previously stated, but falls far short of justifying a most controversial and little understood provision.

We feel it is dangerous to guarantee to any person anywhere in the world freedom to engage in economic actifity in South Africa, possibly to the prejudice of South African citizens. We accordingly propose that this clause is to be included at all, it must be amended as we have proposed above.

22 Labour Relations

- (1) Workers shall have the right to form and join trade unions, and employers shall have the right to form and join employers' organisations.

- (2) Workers and employers shall have the right to organise and bargain collectively.

- (3) Workers shall have the right to take collective action, including the right to strike, and employers shall have the right to lock out workers.

COMMENT: We reiterate our opposition to constitutionalising the right to lock-out. It has no place in a bill of fundamental rights. We understand that the National Manpower Commission has expressed the concern that the existing labour law regime should not be affected by the rights contained in this Chapter and have, accordingly, agreed to retaining the labour relations rights drafted by the Technical Committee provided that they operate vertically only and that a limitations clause such as that contained in section 28(2) insulates the existing law from the rights.

23 Property

- (1) Every person shall have the right to acquire and dispose of ~~rights in~~ property.
- (2) Expropriation of property by the State shall be permissible in the public interest and shall be subject either to agreed compensation or, failing agreement, to compensation to be determined by a court of law as just and equitable, taking into account all relevant factors, including the use to which the property is being put, the history of its acquisition, its market value, the value of the owners investment in it, **the availability to the State of resources** and the interests **of the public and** of those affected.

NOTE: The factors to be taken into account in determining compensation have been tilted too far in favour of existing title-holders. We can accept the inclusion of market value and the owner's investment, but not the exclusion of question of availability of funds. The true compromise is to achieve an appropriate balance, on a case by case basis, between legitimate claims of titleholder and the need to facilitate access to property by those excluded by past forced removals and race discrimination. The level of compensation, as well as the mode and timing of payment, should take account of available resources. Shortage of funds should not of course become a reason for effectively denying any compensation at all, but it should be a legitimate factor entering the equation.

The original text, taken from a provision in the German Constitution, balanced the public interest and the interests of those affected. The present formulation reinforces the interests of those affected while diminishing the weight of the public interest. Note that the wording does not include the following suggestions made in the ANC's response to the Fifth Report : the price paid, the rate of financial return, the investment made, the state's guarantees in respect of bonds held over the property, the justification and the cost of the legislative programme of which the expropriation is part etc.

- (3) Every person who did not receive effective compensation for removal from land when the removal was pursuant to apartheid policies and practices shall be entitled to the restoration of the land**

in question: provided that where restoration is not feasible such person will be entitled to compensation or some other form of equitable relief.

NOTE: There is growing South African consensus that restoration for the abrogation of past property rights is necessary, not just in the interests of justice, but to ensure the stability and legitimacy of any future system of any future property rights.

- *The South African Agricultural Union - SAAU - has supported the ANC's proposal for a land claims court.*
- *The Minister of Finance, Derek Keys, has recently said that restitution for forced removals is a political necessity whatever the cost.*
- *The government has recently empowered its own process of historical restitution through amendments to the law governing the State President's Advisory Commission on Land Allocation.*

However, this commitment to restoration is not reflected in the transitional bill of rights. The effect is that any future restoration process is opened up to a host of possible constitutional challenges by the other rights introduced in the new dispensation. These could be on the basis of the property clause, the equality clause, the "due process" provisions and the separation of powers doctrine, to name but a few.

To redress this unintended imbalance it is imperative that a clause providing for restitution for forced removals be included at a constitutional level. It has always been the ANC's policy that such a Land Rights Clause would be included in the final bill of rights to balance the proposed property clause. Because of the unexpectedly inclusive nature of the transitional rights presently being negotiated it is imperative that such a Land Restoration Right be included now.

24 Environment

Every person has the right to an environment which is safe and not detrimental to his or her health or well-being.

25 Children

Every child shall have the right to security, basic nutrition and basic health services and not to be subject to neglect or abuse. **In all proceedings affecting children, the best interest of the child shall be of paramount consideration.**

26 Language and Culture

Every person shall have the right to use the language and to participate in the cultural life of his or her choice.

27 Education

Every person shall have the right -

- (a) to basic education and to equal access to educational institutions;
- (b) instruction in the language of his or her choice where this is reasonably practicable, and
- (c) to establish, ~~where practicable~~, education institutions ~~based on a common culture, language or religion~~, provided that there shall be no racial discrimination.

COMMENT: As far as this section is concerned, we feel that paragraph (c), particularly by its reference to a common culture, opens the way to indirect discrimination. While being relatively weak on the question of guaranteeing full educational rights for all, section 27 read as a whole leans heavily in favour of satisfying the interests of a particular cultural/racial group.

28 Limitation

- (1) The rights freedoms entrenched in this Chapter may be limited by law of general application, provided that such limitation -
 - (a) shall be permissible only to the extent
 - (i) reasonable, and

(ii) justifiable in a free, open, and democratic society based on the principle of equality, and

[(ii) consistent with South Africa's international law obligations]

(b) shall not negate the essential content of the right or freedom in question.

(2) Notwithstanding the provisions of this chapter, the provisions of a law in force at the commencement of the Act promoting fair employment practices, orderly and equitable collective bargaining and regulating industrial action shall remain in force unless repealed or amended by the legislature.

29 Suspension

(1) The rights and freedoms entrenched as fundamental may be suspended only to the extent demanded by the situation and in consequence of the declaration of a state of emergency proclaimed prospectively under an act of [the legislature].

(2) Any such suspension shall comply with the following requirements:

- (a) A state of emergency may be declared only where the security of the State is threatened by war, invasion, general insurrection or disorder or at a time of natural disaster, and if such declaration is reasonably necessary to restore peace and order.

- (b) The declaration of a state of emergency and any action, whether a regulation or otherwise, taken in consequence of that declaration, shall cease to have any effect unless the declaration is ratified by a majority of the total number of the directly elected members of [the legislature] within fourteen days of the declaration.

- (c) No state of emergency shall endure for longer than six months provided that it may be renewed, subject to the ratification of such renewal in the manner referred to in paragraph (b).

- (d) The **[the designated authority]** shall be competent to enquire into the validity of any declaration of a state of emergency, any renewal thereof, and of any action, whether a regulation or otherwise, taken under such declaration.

(3) Neither the enabling legislation which provides for the declaration of a state of emergency, nor any action taken in consequence thereof, shall permit or authorise -

(a) the creation of retrospective crimes;

(b) the indemnification of the State or persons acting under its authority for unlawful actions taken during the state of emergency or

(c) the suspension of this section.

(4) Any person detained under a state of emergency shall have at least the following rights:

(a) an adult family member or friend of the detainee shall be notified of the detention as soon as is reasonably possible;

(b) the names of all detainees and the measures in terms of which they are being detained shall be published in the Government Gazette within five days of their detention;

- (c) the detention of a detainee shall be reviewed within ten days of his or her detention by [a court of law] which shall be entitled to order the release of such a detainee if satisfied that such detention is not reasonably necessary to restore peace and order. The State shall submit written reasons to justify the detention of the detainee to the [court], and shall furnish the detainee with such reasons not later than two days before the review;

30 Duration

This chapter shall be of full force and effect until a Bill of Rights duly enacted by the elected constitution - making body has come into effect.

OTHER RECOMMENDATIONS:

1 Application of the Chapter of Rights

We believe that the Chapter should come into force with the creation of a Constitutional Tribunal by the Constituent Assembly, chosen en bloc as soon as possible after the elections. The pre-election revocation of discriminatory legislation and levelling of the political/electoral playing field should be done directly by the Transitional Constitution and supporting legislation, and not by the courts. New legislation to give effect to the rights and establish appropriate limitations where necessary should await the formation of a Government of National Unity rather than be dealt with in an ad hoc manner by the present authorities. It is important that the rights and freedoms have nation-wide extent

and coincide with rather than precede re-incorporation. It is also crucial that the testing right and the creation of a new constitutional jurisprudence awaits the creation of a Constitutional Tribunal enjoying the greatest legitimacy and credibility.

2 Constitutional Tribunal

We accordingly envisage that the Constitutional Tribunal will have sole jurisdiction to:

- (1) Decide whether agreed constitutional principles have been incorporated in and not violated by the Constituent Assembly;
- (2) Receive and decide upon requests from the legislature as to the constitutionality of proposed legislation.

All other matters involving claims by individuals will proceed through the court of appeal. Leapfrogging procedures should be considered to facilitate the rapid transmission of cases to the Constitutional Tribunal. While current members of the Appeal Court would be eligible for nomination to the Constitutional Tribunal, the Constitutional Tribunal should not be a section or division of the Appeal Court, but a separate and superior body with competence in relation to constitutional matters.

3 Re Technical Committee's Further Recommendations

(1) Ad 4(1)

Although this statement is implicit in the Chapter, we feel that it would be useful to put it in so as to remove any possible doubt or confusion.

(2) Ad 4(2)

We regard this as a highly controversial provision that is not appropriate for a Chapter of Rights. If necessary, a political understanding could be arrived at to ensure that the considerations mentioned would be given full weight.

(3) Ad 4(3)

The question of pension benefits is also highly controversial. The matter has to be fully researched and discussed before an agreed and balanced position can be arrived at.

4 Existing Laws

The ANC is of the view that the Technical Committee ought to recommend that the Negotiating Council establish a committee of experts to urgently review all laws in the light of the rights and freedoms contained in the Chapter in order to limit constitutional litigation. The amendments (or many of them) ought to be made in the September sitting of Parliament.

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