

2/4/4/1/2/5

CONSTITUTIONAL ASSEMBLY

**THEME COMMITTEE 4
FUNDAMENTAL RIGHTS**

NOVEMBER 1994

DOCUMENTATION

TABLE OF CONTENTS

No.	Detail	Page
1.	Minutes of Theme Committee Meeting	1 - 3
2.	Work Programme	4 - 7
3.	Annexure 1 - CA Resolutions of Monday 5th September 1994	8 - 12
4.	Annexure 2 - CA ATC Report No 4 of Friday 28th October 1994	13 - 26
5.	Annexure 3 - Party Submissions	27 - 70
6.	Annexure 4 - Nominations of Experts for Technical Committee	71 - 72

CONSTITUTIONAL ASSEMBLY

**MINUTES OF
MEETING OF**

**THEME COMMITTEE 4
FUNDAMENTAL RIGHTS
MONDAY 14 NOVEMBER 1994 (AT 10h00)**

PRESENT

Mdladlana MMS (Chairperson)

Asmal AK
Bakker D
Chalmers J
Coleman M
Dlamini B
Green LM
Jooste JA
Kgoali JL
Lubidla EN
Mabandla BS
Mashamba TGG
Mfebe MW (alt)
Mncwango MA
Molekane RS
Mulder CP

Myakayaka-Manzini YL
Myburgh GB
Pandor GNM
Phenethi MM (alt)
Radue RJ
Rasmeni S
Rhoda RT
Saloojee E
Selebi JS (alt)
Skosana A
Surty ME (alt)
Tyobeka VM
Van Eck J
Vos S
Werth CH

Apologies : Leon AJ, Camerer SM

John Tsalamandris and Zuleiga Adams were present.

1. OPENING

- 1.1 The meeting was opened by Mr Mdladlana.

2. MINUTES

- 2.1 The minutes of the Theme Committee meeting of 7 November 1994 were accepted with one correction. Minister Asmal who was noted as absent, did register an apology for the meeting.

3. CORE GROUP REPORT

- 3.1 The minutes of the Core Group meeting of 9 November 1994 were adopted.

4. DEVELOPING A WORK PROGRAMME

- 4.1 Mr Mdladlana spoke to the document entitled "*Work Programme of Theme Committee 4 - Fundamental Rights*" included in the documentation.

- 4.2 The meeting agreed on the following changes to the document:

- i) The addition of the topics *women and gender* to the issues under Chapter 3 on page 10.
- iii) The addition to the issues on page 10 -that need review or are relevant- of :
 - *Obligations, rights and duties*
 - *The nature of the Bill of Rights*
 - *Rights of detained and \ or arrested people*
 - *Relationship between the Bill of Rights and Customary\Traditional and Muslim law*
 - *Group\ Minority\ Collective Rights*
 - *Relationship between Charters of Rights and the Bill of Rights*
 - *Legal application of Social and Economic rights*

- 4.3 In identifying the issues that need to be dealt with as a priority, the Committee agreed to be guided by point 3.3, particularly (c) and (d), pages 34-35CA of the **Constitutional Assembly ATC Report No. 4 of Friday 28th October 1994.**

- 4.4 The Committee noted that the list of areas of overlap as identified in the document would not be considered as exhaustive and reserved the right to add to this list.

- 4.5 Regarding what issues need to be dealt with in Commissions, the Committee noted that it wanted further clarity from the Management Committee on the definition of a Commission and its terms of reference.
- 4.6 Regarding issues that need separate reports, the Committee agreed that it was too early to identify the issues.
- 4.7 Regarding nominations for experts for the Technical Committee the following was noted:
- i) The ANC withdrew the name of Ms C Albertyn and replaced with S Liebenberg.
 - ii) The IFP nominated Prof. C Dlamini.
 - iii) Adv. Z Yacoob originally on the list was withdrawn as he has been nominated for the Panel of Constitutional Experts.
- 4.8 The Committee agreed that its report should be flexible and to attempt to be holistic and systematic in its approach.

5. ANY OTHER BUSINESS

- 5.1 The Chairperson referred to the proposal from the Raoul Wallenberg Institute to conduct a seminar on Human Rights for parliamentarians, with reference to Appendix 2 included in the documentation.
- 5.2 The Committee agreed that it would be interested in participating, and suggested the 3rd and 4th of February as the most suitable dates for the proposed seminar. It was also felt that the Institute be urged not to have the seminar on a Sunday, as it would be difficult for some members to attend.
- 5.3 The three chairpersons were nominated to be responsible for the co-ordination of the seminar programme.

6. CLOSURE

The meeting rose at 11h40.

WORK PROGRAMME OF THEME COMMITTEE 4
- FUNDAMENTAL RIGHTS

The work programme has followed the suggestions as set out by the CA Directorate memo on Work Programme.

i) **WHICH CONSTITUTIONAL ISSUES NEED TO BE ATTENDED TO BY THEME COMMITTEE 4**

It must be noted at the outset that the work of the Committee is guided by the relevant Constitutional Principles enshrined in the Interim Constitution of South Africa. These form the guidelines within which the Committee will seek to address Fundamental Rights or a Bill of Rights.

The foundation of these is Principle II which states :

" Everyone shall enjoy all universally accepted fundamental rights, freedoms and civil liberties, which shall be provided for and protected by entrenched and justiciable provisions in the Constitution, which shall be drafted after having given due consideration to *inter alia* the fundamental rights contained in Chapter Three of this Constitution"

Other relevant Principles relevant to Human Rights include:

- Principle I
- Principle III
- Principle V
- Principle IX
- Principle XI
- Principle XII
- Principle XIII
- Principle XXVIII
- Principle XXXIV

This list is however not complete, and the Committee wishes to note that it can reflect on other Principles should the need arise.

In relation to the above, the work is informed by *inter alia* the relevant Chapters in the Constitution, particularly Chapter 3 - "**Fundamental Rights**".

Included in this Chapter are the topics dealing with political rights :

- ▶ Equality; ▶ Life; ▶ Human Dignity; ▶ Privacy; ▶ Residence; ▶ Servitude and Forced Labour; ▶ Religion, Belief and Opinion; ▶ Freedom of Expression;
- ▶ Assembly, Demonstration and Petition; ▶ Freedom of Association; ▶ Freedom of Movement; ▶ Freedom and Security of the person; ▶ Citizens' Rights; ▶ Language and Culture; ▶ Economic Activity; ▶ Labour Relations; ▶ Environment; ▶ Education;
- ▶ Access to Information; ▶ Access to Courts, Legal Representation; ▶ Property;
- ▶ Political Rights; ▶ Administrative Justice; ▶ Children; ▶ Women and Gender;

The Committee has also identified *inter alia* the following issues that need review or are relevant:

- Nature of the Bill of Rights and its application thereof
- 2nd, 3rd, 4th Generation Rights and the indivisibility of rights
- Suspension and Limitation of Rights
- Obligations, Rights and Duties of Citizens
- States of Emergency
- Rights of detained and\ or arrested people
- Legal Recognition of Social and Economic Rights
- Relationship between the Bill of Rights and Customary\ Traditional\ Common\ or Muslim or other religious laws
- Group\ Minority\ Collective Rights
- Relationship between Charters of Rights and the Bill of Rights

This framework noted above should however be seen in light of the terms of reference of the Theme Committee as identified in the Constitutional Assembly Resolutions of Monday 5 September 1994 (*Refer Annexure 1*).

ii) **WHICH OF THESE ISSUES NEED TO BE DEALT WITH AS A PRIORITY**

Within the above framework, the Committee proposes an approach that is holistic and systematic. It will be guided by point 3.3, particularly (c) and (d), pages 34 - 35CA of the Constitutional Assembly ATC Report No 4 of Friday 28th October 1994 (*Refer Annexure 2*).

iii) **WHICH ARE THE AREAS OF OVERLAP WITH OTHER THEME COMMITTEES**

The following areas of overlap drawn from the CA Resolutions of 5 September 1994 (*Refer Annexure 1*)

- TIC 1 = Democracy and Equality, Freedom of Information and Administrative justice, franchise.
- TIC 2 = Status and role of traditional leaders
- TIC 3 = Relationship of citizen and local government
- TIC 5 = Enforcement of Constitution, traditional authorities, Constitutional Court.
- TIC 6 = Public Protector, Human Rights Commission, Gender Commission, Commission for Restitution of Land Rights, traditional authorities.

This list however is not exhaustive and the Committee reserves the right to add issues as the process unfolds.

iv) **WHICH CONSTITUTIONAL ISSUES NEED TO BE DEALT WITH IN COMMISSIONS**

The Committee feels it is too early to agree on what issues may need commissions. The Committee also seeks clarity from the Management Committee on the definition of a Commission and its terms of reference.

v) **WHICH CONSTITUTIONAL ISSUES DOES THE COMMITTEE ANTICIPATE WILL REQUIRE SEPARATE REPORTS**

The Committee feels it is too early to identify the issues that may need separate reports. It is felt that reports will cover major issues that the Committee will deal with which will be determined as the process unfolds.

vi) **HOW MANY SUCH REPORTS ARE TO BE ISSUED AND WHAT ARE THE DEADLINES FOR THESE**

The Committee as yet cannot determine the number of reports or the deadline for these.

vii) **WHAT ARE THE STRUCTURES AND ROLE PLAYERS TO BE CONSULTED**

Organised groupings of civil society; institutions; groups affected by above rights; unorganised or unrepresented broader public.

viii) **WHAT COMMUNITY AND MEDIA LIAISON ASSISTANCE WILL BE REQUIRED**

As proposed by Constitutional Assembly ATC Report No 4 of Friday 28th October 1994 (*Refer Annexure 2*) together with Theme Committee input. Of key concern in this regard that the Committee has a major part in determining its requirements and needs.

The Committee would like to emphasise that public feeling in the Constitution-making process rests with human rights, it is therefore suggested that the community and media liaison programme takes this into account.

ix) **WHO AND WHAT TECHNICAL ASSISTANCE WILL BE REQUIRED TO SUPPORT THE COMMITTEE**

The Committee feels that it is too early to decide on this matter but notes that it already has at its disposal, i) Technical Committees ii) Commissions iii) Working Groups involving T\C members and\ or other MP's.

x) **CONCLUDING REMARKS**

The Committee while reflecting the above, has however expressed a clear wish for flexibility in its approach and method. At the same time it is emphasised that the approach should be systematic.

ANNEXURE 1

- Constitutional Assembly Resolutions of Monday 5 September 1994

REPUBLIC OF SOUTH AFRICA

CONSTITUTIONAL ASSEMBLY
RESOLUTIONS

MONDAY, 5TH
FRIDAY, 2ND SEPTEMBER 1994

THE ESTABLISHMENT OF THEME COMMITTEES

1. **CHARACTER OF DEMOCRATIC STATE**
 - 1.1 Preamble of the Constitution
 - 1.2 Matters dealing with the establishment of a single sovereign state, common citizenship, democracy and equality (Constitutional Principle I)
 - 1.3 The supremacy of the Constitution, binding on all organs of State (Constitutional Principle IV)
 - 1.4 Matters dealing with representative government, regular elections, suffrage and proportional representation. (Constitutional Principle VIII)
 - 1.5 Matters dealing with freedom of information and accountable administration. (Constitutional Principle IX)
 - 1.6 Name and description of State and symbols
 - 1.7 Citizenship and franchise
 - 1.8 Matter dealing with the separation of powers etc (Constitutional Principle VI)

2. STRUCTURE OF GOVERNMENT

- 2.1 Matter dealing with the separation of powers etc (Constitutional Principle VI)
- 2.2 The adherence to formal legislative procedures by legislative organs (Constitutional Principle X)
- 2.3 Participation of minority political parties in legislative process in manner consistent with democracy (Constitutional Principle XIV)
- 2.4 Amendments to Constitution require special procedures involving special majorities (Constitutional Principle XV)
- 2.5 Structure of Government at national, provincial and local levels (Constitutional Principle XVI)
- 2.6 Democratic representation at every level of government - without derogating from the role of chieftainship (Constitutional Principle XVII)
- 2.7 National Assembly, the Senate and Parliament in general
- 2.8 The Electoral System
- 2.9 Matters dealing with the constitution, status and role of traditional leadership (Constitutional Principles XIII)
- 2.10 Traditional Leaders
- 2.11 The Executive

3. RELATIONSHIP BETWEEN LEVELS OF GOVERNMENT

- 3.1 The details and nature of the relationship (Constitutional Principle XVI and XVII)
- 3.2 Local Government in context of Constitutional Principle XXIV
- 3.3 Establishment of Provincial government
- 3.4 Establishment, status and powers of local government
- 3.5 Legislative competence of Provinces and concurrency

2 CRes

4 FUNDAMENTAL RIGHTS

- 4.1 The enjoyment of fundamental rights by all - entrenchment in Constitution etc (Constitutional Principle II)
- 4.2 The prohibition of racial, gender etc discrimination and the promotion of equality and national unity (Constitutional Principle III)
- 4.3 The diversity of language and culture to be recognised - promotion and encouragement (Constitutional Principle XI)
- 4.4 The collective rights of self-determination, civil society and free association (Constitutional Principle XII)
- 4.5 The right to form trade union and collective bargaining (Constitutional Principle XVIII)
- 4.6 Community self-determination based on cultural and language heritage (Constitutional Principle XXXIV)
- 4.7 Protection and enforcement of fundamental rights
- 4.8 First, second and third, generation of Rights
- 4.9 Relationship of various Charters of Rights to the Bill of Rights

5. JUDICIARY AND LEGAL SYSTEMS

- 5.1 Matter dealing with qualities of judiciary and enforcement of Constitution (Constitutional Principle VII)
- 5.2 The institution, status and role of traditional leadership and indigenous law (Constitutional Principle XIII)
- 5.3 Judicial functions, appointment of judges, Judicial Services Commission and Constitutional Court
- 5.4 Traditional authorities

6. SPECIALISED STRUCTURES OF GOVERNMENT

- 6.1 The independence and impartiality of the Public Service Commission, Reserve Bank and the Public Protector (Constitutional Principle XXIX)

- 6.2 The status and role of public service (Constitutional Principle XXX)
- 6.3 The performance of functions of police, military and intelligence to be in the national interest (Constitutional Principle XXXI)
- 6.4 Auditor-General, Reserve Bank and the Financial and Fiscal Commission
- 6.5 Establishment, powers and function of the Public Service Commission and Public Service
- 6.6 Powers and function of the Public Protector, Human Rights Commission, Gender Commission and the Commission on Restitution of Land Rights
- 6.7 Traditional authorities
- 6.8 South African Elections Commission (formerly IEC)

NOTE : There are other issues such as transitional provisions and the reception of international law into our domestic law which do not lend themselves very easily to allocation to a Theme Committee, and will have to be dealt by the Constitutional Committee of the Assembly. Not all of the structures under the Interim Constitution will be relevant under a permanent Constitution. Finally, international and comparative experiences can be discussed under any of the themes identified above.

The above categories are to be treated as a guideline and not adhered to mechanically. Theme Committees may establish Commissions on special topics. It is further proposed that certain principles and topics (for example; Constitutional Principle XXXIV dealing with community self-determination) may be discussed in more than one theme committee.

It is also proposed that Theme Committee 1 (Character of the Democratic State) be dealt with as a matter of priority.

ANNEXURE 2

**- Excerpts Constitutional Assembly ATC Report No 4
of Friday 28th October 1994**

3 THEME COMMITTEES

3.1 Introduction

3.1.1 Since the last meeting of the Constitutional Assembly, all six Theme Committees were successfully convened on 19 September 1994 and met for the second time on 24 October 1994.

3.1.2 The Theme Committees are made up of 30 members each and have from amongst their members appointed Core Groups, consisting of up to eight members of the Committee in question, to manage and co-ordinate their work programmes.

3.1.3 Three Chairpersons have in turn been appointed from each Core Group to chair meetings of Theme Committees on a rotational basis. It has been agreed that these positions shall not be remunerable.

3.2 Briefing Document

3.2.1 The Constitutional Committee has adopted a *Briefing Document for Theme Committees*. This document is intended to guide Theme Committees in their work by outlining the scope of their responsibility and their relationship with other structures of the Constitutional Assembly.

3.2.2 In terms of the document, the Constitutional Assembly confirms its right to debate in detail, oversee and direct the drafting of, and adopt the new constitutional text.

3.3 Role of Theme Committees

3.3.1 Further to the Constitutional Assembly Resolution² of 5 September 1994 which provides for the role, functions and structure of reports of Theme Committees, it has been agreed that:-

² See Constitutional Assembly Resolutions, pages 7 and 9

- (a) Drafting should be directed by the Constitutional Assembly.
- (b) The Constitutional Committee should be responsible for the co-ordination of all Constitutional Assembly work, including drafting.
- (c) Theme Committees are not negotiating fora. Their primary task should be to receive submissions and process them into reports for consideration by the Constitutional Committee.
- (d) By resolution of the Constitutional Assembly, these reports should therefore include details of non-contentious issues, contentious issues and suggested approaches.

3.3.2 Flexibility should be an important feature of the work programmes of Theme Committees. In view of possible overlaps, Theme Committees are not barred from dealing with an issue that another Theme Committee may be considering.

3.3.3 Theme Committee work programmes should be guided by the integrated nature of the constitution-making process as well as the time constraints.

3.4 Relationship with other structures of the Constitutional Assembly

3.4.1 Constitutional Committee

- (a) Theme Committees will compile reports for consideration and approval by the Constitutional Committee.
- (b) The Constitutional Committee may, after deliberating on a Theme Committee report, refer the report to the Constitutional Assembly.

PART 4 - PUBLIC PARTICIPATION

10 INTRODUCTION

- 10.1** The Constitutional Committee, on 24 October 1994, adopted a document entitled "Public Participation - A Strategic Overview" which set out the broad framework within which the media and community facilitation programmes will take place.
- 10.2** The process of public participation involves the development of media and community liaison strategies. Such strategies should be based on the resolutions of the Constitutional Assembly.

11 OBJECTIVES

- 11.1** The ultimate objective is to draft and adopt a credible and enduring constitution which will enjoy the support and allegiance of all South Africans.
- 11.2** The new constitution should represent the aspirations of all our people.
- 11.3** This process should serve to unite the country's people and produce a constitution which will become the cornerstone of the future South Africa. It should be people-driven and transparent.
- 11.4** The new constitution must be the product of an integration of ideas of all role players. In this regard, there should be maximum public participation.
- 11.5** There should be an effective strategy for media and community liaison.
- 11.6** The media and public participation strategies should aim at facilitating the required "dialogue" and channels of communication between the broader public and their elected representatives.
- 11.7** The programmes of the Constitutional Assembly should be "non-party political". Strict monitoring should ensure that the programmes promote the Constitutional Assembly and the interests of the country as a whole.

12 PROCESS

- 12.1** The media and public participation strategies must be placed within the context of the overall process of drafting the new constitution.
- 12.2** Whilst these processes may at one level appear distinct and separate, in practice they are interlinked and will overlap with one another.
- 12.3** This is especially true of community liaison and media-involvement. On one level it makes sense to think of these as two distinct processes as this will focus our attention on what is required to be effective in these two fields. At another level, however, it must be kept in mind that both public participation and media involvement will be a constant thread running throughout the process as a whole.

13 CONTEXT

- 13.1** The process of constitution-making takes place in the context of the first democratically elected government in the country,
- 13.2** It is therefore understandable that the attention of the public is focussed on their immediate needs. The programmes of the Government and the Reconstruction and Development Programme in particular, are uppermost in the minds of most South Africans.
- 13.3** The approach of the Management Committee should be to avoid detracting from the important issues of government that the public and media are presently seized with. However, we should seek to ensure that the programmes of government and those of the Constitutional Assembly complement, rather than contradict, one another.
- 13.4** The attention of the public is also caught up with the coming local government elections in 1995. The exact date of these elections will obviously impact on the programme of the Constitutional Assembly.
- 13.5** The implications of the time-frames stipulated in the Constitution for the finalisation of the new constitutional text by May 1996 are another factor we need to take into account in our strategic planning.

13.6 One of the implications of all the above is that the process has to be carefully and effectively managed.

13.7 Historical and geographical factors also make it necessary that effective and creative mechanisms be sought to reach rural communities in particular.

14 MEDIA

14.1 Objectives

The major objectives of a media strategy for the Constitutional Assembly should be to:

- ▶ Inform;
- ▶ Educate;
- ▶ Stimulate public interest; and
- ▶ Create a forum for public participation.

14.2 Key Message and Process of Message Determination

14.2.1 The process of message determination is central to any media strategy.

14.2.2 The most important message of our media campaign would be to let people know that an important process is unfolding which affects their lives and those of future generations; that every South African has a unique opportunity to take part in the drafting of a new constitution.

14.3 Mechanisms

There are two important considerations which should guide our approach to finding the most suitable mechanisms to implement a media strategy:

- a) The need to make optimum use of existing channels of mass communication and hence the need for effective media liaison;
- b) The need to supplement this with the production of our own media in the form of a brochure, regular bulletins, posters, leaflets, cassettes and videos; and
- c) The need to reach disadvantaged rural communities in particular.

14.3.1 Media Liaison

- (a) The transparency of the process is already a step in the right direction. The presence of media in all meetings of the Constitutional Assembly and its structures creates a dynamic link with the broader public.
- (b) The coverage provided by the mass media must form the basis of our approach.
- (c) For this to be effective, however, our media liaison approach must ensure that the debates and issues that emanate from Theme Committees and other structures of the Constitutional Assembly are contextualised.
- (d) This will include:
 - ▶ regular press conferences, interviews and briefings; and
 - ▶ ongoing media liaison, ensuring prompt and comprehensive responses to media queries.

46CA

- e) As envisaged in the Constitutional Assembly resolution itself, however, ways will be sought to involve the media more directly in the process by means of:
- ▶ ensuring live television and radio coverage of debates in the Constitutional Assembly;
 - ▶ organising radio talk-shows and television debates with public participation;
 - ▶ producing newspaper supplements and leader articles and discussing means whereby newspapers and magazines can function as forums for discussion on constitutional issues.

14.3.2 Media Production

The Administration would not be able to rely entirely upon existing channels of communication. These would need to be supplemented by production of our own media in the form of :

- ▶ an introductory brochure for the Constitutional Assembly;
- ▶ a regular bulletin;
- ▶ occasional posters, leaflets, cassettes and videos;
- ▶ an advertising campaign in both the print and electronic media and utilisation of outdoor advertising on billboards;
- ▶ use of other medium such as electronic bulletin boards, thereby gaining immediate access to both the national and international community.

47CA

Total Budget R20 million

14.4 Resources

- 14.4.1 An amount of approximately R20 million should be catered for in the Constitutional Assembly budget for 1995/96.
- 14.4.2 We would also seek to utilise the resources of the South African Communication Services and other government agencies and departments, where applicable.
- 14.4.3 Maximum use of existing channels of mass communication would represent a further cost-saving.
- 14.4.4 The services of a professional advertising and public relations agency would need to be contracted in view of time constraints and the human resources required to implement an effective media campaign.

14.5 Time Frames

- 14.5.1 It is not possible to give detailed time-frames for the process as a whole. This will follow when the campaign plan itself is drawn up.
- 14.5.2 However it is envisaged that the campaign would need to be launched early in 1995. This means tenders for advertising and public relations agencies would need to go out immediately and be finalised before the end of November 1994.
- 14.5.3 The first phase of the campaign would, in broad terms, seek to introduce the Constitutional Assembly and its work to the public and sensitize them to the importance of the process as a whole.

14.6 Evaluation

Evaluation would need to take place on a regular basis to ensure that the strategy is responsive and adaptable.

14.7 Management

- (a) The process would be managed on a daily basis by the Directorate and the Media Section of the Administration in particular. Regular reports to the Management Committee would enable this Committee to play its own managing role in the process. Particular aspects of the programme, as outlined above - for example the production of the brochure and advertising campaign - would be contracted out to professional agencies. The work of these agencies would be managed by the Directorate, in conjunction with the Management Committee.
- (b) Some parties have indicated an interest in the Management Committee establishing a special subcommittee to monitor the media and community liaison programme on an ongoing basis to ensure that all parties are involved in the process of message determination, thus preventing any party bias in the programme as a whole.

15 COMMUNITY LIAISON

15.1 Objectives

The objective of the community liaison strategy is to facilitate an interface or dialogue between the South African people and their elected representatives by consulting the population at various levels and at various stages of the process of constitution-making.

15.2 Mechanisms

15.2.1 Forums

- (a) Theme Committees would be the primary forum for interfacing with the public and it would be important for Theme Committees to establish stable channels of communication between themselves and the affected interest groups, noting of course that there

will be a great deal of overlap between Theme Committees in this regard.

- (b) It would be useful to divide the public into two categories, namely "affected interests" and "general public". Hence the proposal for two kinds of forums as outlined below.

15.2.2 Sector Forums

- (a) Forums for all major sectors will be arranged, in conjunction with sector representatives. Members of the Constitutional Assembly will be requested to participate in the various forums. The forums will be extensively publicised and groundwork will be done in the sectors beforehand to ensure optimum results.
- (b) Special programmes will be established to ensure the participation of disadvantaged sections of the population and rural communities in particular.

15.2.3 Area Forums

These forums will be addressed by members of the Constitutional Assembly and be open to the broader public in specific locations. They will be held throughout the country and will also be extensively publicised. These forums will be used for a short period of time when a first draft of the new constitutional text is available to "take to the people" before the final debate takes place in the Constitutional Assembly itself.

15.2.4 Political Party Programmes

Political parties both in and outside the Constitutional Assembly have a vital role to play in the process of ensuring maximum public participation in the process of constitution-making. Parties will be urged to ensure that their programmes are used to engage the public and their supporters on constitutional issues. The Administration will liaise with parties to obtain information on such programmes and to facilitate where required.

15.2.5 Government Programmes

- (a) Mention has already been made of the important programmes of the Government of National Unity. Urgent consultation will have to take place at national and provincial level to ensure, amongst other things, that government programmes and those of the Constitutional Assembly complement one another. This is particularly so in the case of the local government elections due to take place late in 1995.
- (b) The President, Deputy Presidents and Provincial Premiers and Ministers will be urged to ensure that all their speeches contain a "slot" about the importance of the constitution-making process.

15.2.6 Public Information Facility

- (a) A public information facility should be established to provide a readily accessible information service to the public. The languages used should ensure accessibility of information.

15.2.7 Provincial Information Offices

Information offices should be established in all provinces in conjunction with Parliament, the South African Communications Service and Provincial Governments to provide the public with street-level access to information about the constitution-making process and to assist in co-ordination of the public forums programme.

15.3 Resources

15.3.1 The resources of SACS will be used.

15.3.2 Some non-governmental organisations at national and international level have funds allocated for constitutional programmes and these could be pooled into the Constitutional Assembly programme.

15.3.3 The resources of the Department of Justice for facilitating programmes on the constitution should also be utilised.

15.3.4 Resources from the private sector will include video conferencing facilities, negotiated concessions from the media, and private sector funding for various aspects of the community liaison programme.

15.3.5 In addition to the above-mentioned resources an amount of approximately R24 million should be catered for in the Constitutional Assembly budget for 1995/96.

15.4 Evaluation

Mechanisms for regular evaluation should be built into all the programmes for community liaison to ensure responsiveness and adaptability.

15.5 Management

The process would be managed on a daily basis by the Directorate and by the Community Liaison section of the Administration in particular. Some aspects of the programme would be contracted out to professional agencies, for example the toll-free line. The work of these agencies would be managed by the Administration in conjunction with the Management Committee. Regular reports to the Management Committee by the Directorate on all aspects of work would enable this Committee to fulfill its own managing role in the process.

ANNEXURE 3

- Party submissions



PARLIAMENT OF THE REPUBLIC
OF SOUTH AFRICA

Room M554
Marks Building
Parliament
CAPE TOWN
8000

Tel. No. (021) 403 3520
Fax. No. (021) 461 9690

9 November 1994

Room CA208
Parliament Chambers
Church Street
Parliament
CAPE TOWN
8000

ATTENTION: J. TSALAMANDRIS AND ZULEIGA ADAMS

Dear J. Tsalamandris and Z. Adams

**RE: SUBMISSION OF THE ACDP REGARDING NOMINATIONS FOR
EXPERTS AND GROUPING OF RIGHTS**

Thank you for the documentation on Fundamental Rights, dated 9th November 1994.

The ACDP hereby wish to recommend the following persons to serve as constitutional experts for Theme Committee 4:

1. Pierre De Vos
2. Prof. Medard R. K. Rwelamira
3. Prof. Cheryl Loots
4. Prof. Johan van der Westhuizen
5. Prof. Christina Murray
6. Prof. Hugh Micah Corder

The ACDP has selected the above six persons, because after evaluating the CV's, we are convinced that they are eminently qualified, particularly in the field of fundamental Human Rights.

With reference to the groupings of rights into social, political and economic, the ACDP wishes to propose the following framework:

SOCIAL

RESIDENCE.
ACCESS TO INFORMATION.
ADMINISTRATIVE JUSTICE.
CHILDREN'S RIGHTS.
ENVIRONMENTAL PROTECTION.
LANGUAGE AND CULTURE.
RELIGION, BELIEF & OPINION.

POLITICAL

EQUALITY.
LIFE.
HUMAN DIGNITY.
FREEDOM & SECURITY OF PERSONS.
PRIVACY.
FREEDOM OF EXPRESSION.
ASSEMBLY DEMONSTRATION & PETITIONS.
FREEDOM OF ASSOCIATION.
FREEDOM OF MOVEMENT.
CITIZEN'S RIGHTS.
ACCESS TO COURT.
DETAINED, ARRESTED & ACCUSED PERSONS.

ECONOMIC

PROTECTION AGAINST SERVITUDE AND FORCED LABOUR.
FREEDOM OF ECONOMIC ACTIVITY.
RIGHT TO PROPERTY.

The abovementioned categories are interchangeable.

Miscellaneous rights can be included in one of the abovementioned categories. For example:

MISCELLANEOUS

SOCIAL

HEALTH.
NUTRITION.
SHELTER.
EQUAL MUNICIPAL SERVICES.
ADEQUATE RIGHTS & PROTECTION FOR THE DISABLED & THE AGED.
ALL-INCLUSIVE PENSION SCHEME.
RIGHT TO CENSORSHIP.

POLITICAL

RIGHT TO FORM & PARTICIPATE IN A POLITICAL PARTY.
RIGHT TO CAMPAIGN FOR A POLITICAL PARTY OR CAUSE.
FREEDOM TO MAKE POLITICAL CHOICES.
RIGHT TO VOTE & STAND FOR ELECTION TO PUBLIC OFFICE.

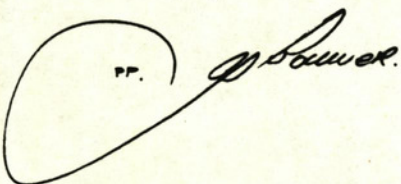
ECONOMIC

RIGHT TO FORM & JOIN A UNION.
RIGHT TO ORGANISE & BARGAIN COLLECTIVELY.
RIGHT TO WITHHOLD LABOUR FOR COLLECTIVE BARGAINING.
THE EMPLOYER'S RECOURSE TO LOCK-OUT.
RIGHT TO EQUAL PAY FOR EQUAL WORK.

The abovementioned categories are interchangeable.

Yours faithfully

L. GREEN (MP)
Deputy President for the ACDP

 pp.



PARLIAMENT OF THE REPUBLIC
OF SOUTH AFRICA

Room M554
Marks Building
Parliament
CAPE TOWN
8000

Tel. No. (021) 403 3520
Fax. No. (021) 461 9690

9 November 1994

Room CA208
Parliament Chambers
Church Street
Parliament
CAPE TOWN
8000

ATTENTION: J. TSALAMANDRIS AND Z. ADAMS

Dear J. Tsalamandris and Z. Adams

**RE: SUBMISSION OF THE ACDP REGARDING NOMINATIONS FOR
EXPERTS AND GROUPING OF RIGHTS**

Please note that, further to our submission of nominees of earlier this afternoon, we hereby wish to withdraw all nominations made, as I have consulted a further list of names which previously I had not seen.

We would like to amend our submission to read that we hereby recommend the following persons to serve as constitutional experts for the Theme Committee 4:

Adv. Roger Dyason Classen
Prof. Henning P. Viljoen

Please accept my apologies and amend your records accordingly.
Yours faithfully

L. M. GREEN (MP)
Deputy President for the ACDP

PP *L. M. Green*

AFRICAN NATIONAL CONGRESS

SUBMISSION ON WORK PROGRAMME FOR THEME COMMITTEE 4.

Priority Issues:

A) A conceptual framework :

i) The interim constitution presents chapter 3 as dealing with fundamental rights , it is the ANC's view that the committee needs to discuss the possibility of adopting the universal approach which speaks of a Bill of Rights.

ii) Constitutional Rights:

We believe that the committee should discuss the vital need to ensure that the Bill of Rights finally adopted by this government incorporates civil, economic, social and environmental rights. The work of the theme committee should be to provide the Management Committee with a document that incorporates this approach.

B. Review of Interim Constitution:

Our responses on (a) - (i) arise from the perspective described above.

a) (i) Each of the rights that the committee seeks to include in the Bill of Rights has to be examined in the light of the constitutional principles in order to assess whether the Rights as suggested by the committee fully reflect our intention to ensure that South Africans

enjoy the full range of Rights as described in A above. The formulation of each clause must ensure that we are precise in stating the exact intention of each clause.

(ii) Further deliberation on the following issues is necessary:

- i) the Preamble of the constitution
- ii) the Right to life clause
- iii) the Right to dignity clause
- iv) Right to legal representation
- v) Rights that relate to marriage and issues of sex and gender
- vi) Customary Law
- vii) Privacy
- viii) Freedom of religion
- ix) Education
- x) Sport and Recreation
- xi) Worker's rights
- xii) 2nd generation rights
- xiii) Incitement to race hatred
- xiv) Property

b) It is the ANC's belief that those clauses that relate to social and economic rights need to be urgently addressed, e.g., gender rights, worker rights, customary law, right to legal representation, property rights, education, and second generation rights.

c) Areas of overlap occur in several clauses. Detailed discussion within the committee will isolate areas of overlap. At this stage the issues of priority identified in A should be dealt with.

d) The committee requires time to engage in substantive discussion before a decision in this regard.

e) Once more further committee work will influence decisions on this point.

f) Each group of rights will require a report to be issued. We would suggest that the rights be grouped into broad categories of civil and political rights and social and economic rights and that reports be submitted within these categories.

g) The ANC believes that due cognisance should be taken of the Charters on Rights that have been produced by various stakeholders in the field of Human Rights. Some of examples of this are, the Charter on Children's Rights from the National Commission on Children's Rights, the Women's Charter and the Charter on Workers.

Furthermore, Several service organisations, research units and NGOs, that have been involved in the struggle for human rights in South Africa have produced work that would serve as a basis for much of our discussions. Decisions as to which organisations should be consulted by the committee would have to follow a thorough review of work that has been done in this area.

h) The committee would require media and community liaison assistance with the capability to prepare accessible summaries of the committee's deliberations for public consumption. Such assistance would also be used in the setting up of public hearings and other public events. We propose that once the committee has adopted a work programme, it should be published for purposes of stimulating public comment on the Bill of Rights . The committee should follow this with a call for submissions and the setting up of public hearings on the various aspects of the Bill. It is our belief that the committee should begin by seeking public discussion of our suggestion that we should work towards drawing up a Bill of Rights rather than revising chapter 3 of the Interim Constitution.

i) The ANC will make a submission in this regard at the next meeting of this committee.

ANC - DRAFT WORK PROGRAMME THEME COMMITTEE 4.

1. The ANC perspective on the Bill of Rights asserts that the Bill has to include Social, Economic, and Political Rights. The work of the committee has to involve an examination of each of the clauses mentioned in our initial submission. Our proposal for a work programme is thus as follows:

2. Technical experts- We believe the committee will need experts with experience in the following areas

- Constitutional Law
- Human Rights Law (incorporating the perspective mentioned above)
- Socio-Political Theory and practice.

Suggested Names (We retain the view that the list could be reviewed)

Prof. H. Corder

N. C. Steytler

Ms T. Madonsela

Ms C. Albertyn

Z. Yacoob

3. A Work Programme:

i) NOV. 14- The process of debate needs to begin here by reaching a view on whether we accept the identified principles (Nov 7) as those that impact on theme 4.

ii) The committee must then organise the principles into contentious and non-contentious issues (The ANC view is that this will be exploratory until we have received submissions and

processed them. The issue then is can the committee draft up a submission that indicates a committee view of contentious and non- contentious principles and clauses. These preliminary views will then be incorporated into our submission to the MC.

iii) TC4 work should then proceed in the following stages:

Stage 1- Nov. -Dec. 1994

Calling for submissions on the contentious and non- contentious issues.

Stage2- Jan - March 1995 Processing the submissions (a range of mechanisms could be used here)

Stage 3- April- June Preparing reports for submission to the Constitutional Committee

~~Demokratiese Party, 5de Verdieping, Ruskin-gebou, Roelandsstraat 2, Kaapstad 8001~~
~~Democratic Party, 5th Floor, Ruskin House, 2 Roeland Street, Cape Town 8001~~

NASIONALE HOOFKANTOOR
NATIONAL HEAD OFFICE

☎ 45-1431 ☎ 1475, CAPE TOWN 8000 FAX: 461-5276



Demokratiese Party
Democratic Party

25 October 1994

Mr John Tsalamandris
Managing Secretary
Theme Committee 4
Room 208
Parliament Chambers
Church Street
CAPE TOWN

Dear Mr Tsalamandris

I enclose herewith a memorandum from the Democratic Party concerning a work programme, themes and nominations for Theme Committee 4 on Fundamental Rights.

Yours sincerely


A J LEON MP

SUBMISSION BY DEMOCRATIC PARTY

THEME COMMITTEE 4

1. NOMINATION OF EXPERTS FOR TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS

We hereby nominate the following persons:-

Professor C J R Dugard, University of Witwatersrand
Professor Carole Lewis, University of Witwatersrand
Advocate David Unterhalter, Johannesburg Bar ...

Since these persons have also been nominated for consideration as members of panel of constitutional experts, we believe that such panel should first be selected and thereupon the technical committee appointed. We are of the view that few, if any, technical experts are outside the abovementioned list.

2. PROPOSALS FOR WORKING PROGRAMME AND PRIORITISATION THEREOF

2.1 Identification of areas of overlap with other Theme Committees

2.1.1 Theme Committee 1:

Matters dealing with the establishment of ... common citizenship, democracy and equality; freedom of information; franchise.

2.1.2 Theme Committee 5:

Enforcement of the constitution; judicial functions.

2.2 Constitutional Principles - Elaboration : Non-contentious

2.2.1 A review of chapter 3 of Constitution in conjunction with constitutional principles:

Principle 11 :
Equal Rights (S.8.1)
Civil Liberties (S.9-19 and 21)

Principle 111 : Prohibition of Discrimination (S.8.2)

Principle 4 : Equality before the Law (S. 22,25)

Principle XI : Diversity of Language and Culture (S.31)

**Principle XII : Collective Right of Self- Determination
(S.32(b) and (c))**

2.3 Other Non-contentious Rights in Chapter 3

- S.7(4) Enforcement of Rights
- S.20 Citizen's Rights
- S.34 State of Emergency and Suspension
- S.35 Interpretation of Bill of Rights

2.4 Constitutional Principles/Rights in Chapter 3 which are contentious and related matters

- 2.4.1 Principle III : Promotion of equality in respect of S.8.3, 8.4 - affirmative action)
- 2.4.2 Principle XXXIV : Community self-determination
- 2.4.3 Right to form trade unions and collective bargaining in respect of S.27, 33(5)(a) and (b) i.e. insulation of Labour Law from Bill of Rights
- 2.4.4 Application of Bill of Rights (S.7(1),(2),(3))
- 2.4.5 Freedom of/Access to Information (S.23)
- 2.4.6 Administrative Justice (S.24)
- 2.4.7 Bail (S.25(2)(d))
- 2.4.8 Economic Activity (S.26)
- 2.4.9 Property (S.28)
- 2.4.10 Second and Third Generation Rights in Chapter 3 (S.29,30)
- 2.4.11 Limitations (S.33)

2.5 Other Matters

2.5.1 Second and Third Generation Rights - Generally

2.5.2 Relationship of various Charters of Rights to Bill of Rights

A J LEON MP

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

TEL: (021) 403-2911



NATIONAL ASSEMBLY
PO BOX 15
CAPE TOWN
8000

Ref No.

GM/be

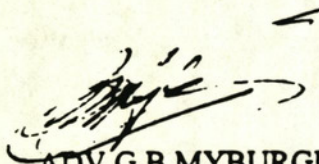
1994 10 27

The Secretary
Theme Committee 4

Dear Sir

Herewith NP Submissions on Work Programme for Theme Committee 4.

Yours faithfully

A handwritten signature in black ink, appearing to read 'ADV G B MYBURGH MP', is written over the typed name.

ADV G B MYBURGH MP

**WORK PROGRAMME : THEME COMMITTEE 4
SUBMISSIONS : NATIONAL PARTY**

**(A) CONSTITUTIONAL ISSUES WHICH NEED TO BE ATTENDED TO
BY THEME COMMITTEE 4**

1. The constitutional principles which have a bearing on Chapter 3 of the Constitution, should be identified and the rights in contained therein analysed with a view to ensuring that the rights, either as worded or with the necessary improvements are on conformity with the constitutional principles. This exercise could be contained in the first interim report to the Constitutional Committee.
2. The remaining rights contained in Chapter 3 should then be considered to determine on which rights there is consensus amongst all the parties. This can also be contained in a report to the Constitutional Committee.
3. At this stage we should identify and obtain inputs on contentious issues which we foresee will most probably include:
 - Second and third generation rights;
 - Group rights
 - Right to self determination

This can form the basis for a further report to the Constitutional Committee.

(B) ISSUES TO BE DEALT WITH ON A PRIORITY BASIS

After identifying the contentious issues an invitation should be extended for submissions to the Theme Committee as to which further rights should be contained in this Chapter of the Constitution. (For role players in this regard see under (G).) A return date for submissions should be set. Upon receipt of the submissions the parties should be asked to make their recommendations as to the rights they would like to be incorporated. Thereafter the matter should be debated and the question of additional rights reflected in a further interim report to be submitted to the Constitutional Committee.

2/....

2.

It should be borne in mind that universities are at present in an examination mode and sufficient time should be allowed.

Should a constitutional principle exist for which there is no corresponding rights in Chapter 3, rights should be drafted by the experts envisaged and also published for comments. A separate interim report could be submitted on this issue.

(C) **AREAS OF OVERLAP WITH OTHER THEME COMMITTEES**

An analyses should be made of the constitution to ascertain which other articles relate to the theme. The theme committee should then decide how this matter is to be dealt with and reported upon.

(D) **ISSUES TO BE DEALT WITH IN COMMISSIONS**

Depends upon the analyses conducted under (C).

(E) **SEPARATE REPORTS**

It is too early to contemplate how many separate reports, if any, will be needed.

(F) **NUMBER OF REPORTS REQUIRED**

Too early to say.

(G) **STRUCTURES AND PEOPLE TO BE CONSULTED**

- (1) All legal professional organisations, legal academics, judges, magistrates, para legals, all higher educational institutions, human rights organisations and all professional bodies of the legal fraternity.
- (2) The public at large.
- (3) Consultation must be sought through public advertisements as well as specific requests.

(H) **COMMUNITY AND MEDIA LIAISON ASSISTANCE REQUIRED**

Administrative assistants to send invitations to interested persons and organisations and to draft and release press statements.

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

TEL: (021) 403-2911



NATIONAL ASSEMBLY
PO BOX 15
CAPE TOWN
8000

Ref No.

FAX: (021) 461 9687
GBM/ad

1994 11 09

The Secretary
Theme Committee 4
CAPE TOWN

Dear Mr Tsalamandris

The National Party will nominate

Prof I M Rautenbach from Randse Afrikaanse Universiteit; and
Prof D van Wyk from University of South Africa

as members of the Technical Committee of Exports for Theme Committee 4

Yours faithfully

A handwritten signature in black ink, appearing to be 'G B Myburgh', is written over a circular stamp or seal. The signature is fluid and cursive.

G B MYBURGH MP



31 October 1994

TO: John Tsalamandris

FROM: PAC

RE: Submissions on the work programme of Theme Committee 4.

1. This Committee has the major task of identifying Rights that should be enshrined in a South African Bill of Rights. This task should be done in phases.

This should entail an analysis of the mandate:-

- (i) The Constitutional implications of the Constitutional Principles relevant to this Theme Committee. (see: documents setting up the Theme Committees)
 - (ii) Identifying a wish list of Rights that ought to be in our Bill of Rights.
 - (iii) Identifying Contentious and non-Contentious Rights.
2. Calling on submissions from political parties and the Public in general on,
 - (1) Non-Contentious Rights.
 - (2) Contentious Rights - The issues should be analysed and the Submissions properly focussed.

NB: This should be well structured, focussed and managed.

3. Periodic Reports should be submitted to the Constitutional Committee which will give the instructions on issues which must go to the Technical Committees for drafting.

NB: This process is supposed to be completed by 30 June 1995.



VRYHEIDSFRONT

Posbus 74693
Lynnwoodrif
0040

Tel. (012) 47-4477
47-4375
47-5165
47-5162
47-5142
47-4454/50/58

1ste Vloer Atrium 4
Perseuspark
h/v Camelia- en Prioryweg
Lynnwoodrif
Faks (012) 47-4387

9 November 1994

TO : THE CHAIRPERSONS (for the attention of Mr John Tsalamandris) Theme Committee No 4.

THEME COMMITTEE NO 4

1. NOMINATIONS FOR TECHNICAL EXPORTS:

We would like to nominate DR JR DE VILLE, who is number 2 on the Database list of Constitutional Exports for the Technical Committee 4.

2. GROUPING OF RIGHTS:

Please take note that our submission dated 27 October 1994 is our final submission on this issue. We remain of the opinion that principle 2 is a sound base of departure for a analitical approach which does not imply a hierarchial order of rights.

Kind regards

J. Basson
pp DR CP MULDER MP
Freedom Front

CPM/gb



VRYHEIDSFRONT

P.O. Box 74693
Lynnwood Ridge
0040

Tel. (012) 47-4477
47-4375
47-5165
47-5162
47-5142
47-4454/50/58

1st Floor Atrium 4
Perseus Park
cor. Camelia and Priory Roads
Lynnwood Ridge
Fax (012) 47-4387

27 October 1994

The Chairpersons, (for the attention of Mr John Tsalamandris)
Theme Committee No 4.

""
THEME COMMITTEE NO 4

PROPOSED WORK PLAN

Your letter dated 25 October 1994 refers.

It is proposed by the Freedom Front that the work plan of Theme Committee 4 (TC-4) should be as follows:

This is done in response to the letter by mr Hassem Ebrahim dated 18 October 1994.

1. (a) Which constitutional issues within the broad Theme need to be attended to?

THEME 4 : FUNDAMENTAL RIGHTS

1. Everyone entitled to all universally accepted fundamental rights, freedoms and civil liberties
Principle 2
2. General prohibition of discrimination
Principle 3
3. General provision: all universally accepted fundamental rights, freedoms and civil liberties to be entrenched and justiciable
Principle 2 (due consideration to be given to inter alia the fundamental rights contained in Chapter 3 of the Constitution)
4. Specific provisions: acknowledgment and protection of diversity of language and culture
Principle 11 and sections 3, 31 and 107 of the Constitution

5. Specific...2/-

-
5. Specific provisions: recognition and protection of certain collective rights of self-determination
Principle 12
 6. Specific provisions: recognition and protection of aspects of traditional leadership and indigenous law
Principle 13
 7. Specific provisions: self-determination
Principle 34
 8. Limitation, suspension and interpretation of rights
No Principles, but sections 33, 34 and 35 of Constitution
 9. Institutions relating to fundamental rights: various Commissions, etc (See Theme 6 paragraph 4 below)
Principles: None, but sections 115 to 123 of Constitution
 10. Equality of all before the law and an equitable legal process
Principle 5
 11. Freedom of information aimed at open and accountable administration
Principle 9
 12. Protection of certain rights in the labour field
Principle 28

- (b) Which of the constitutional issues need to be dealt with as a priority?

The following constitutional issues need to be dealt with as a priority: Items 1, 3, 4, 5, 6 and 7.

- (c) Which are the areas of overlap with each other in the Theme Committee?

All the themes identified are interlinked with one-another and would have a direct bearing on the development of each aspect.

(d) -...3/-

(d) -

(e) Which groups of constitutional issues do the committee anticipate will require the submission of separate reports?

Items 4, 5 and 7 as well as item 6.

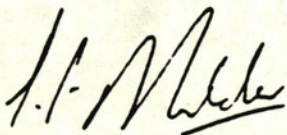
(f) -

(g) What are the structures and who are the role players that are to be consulted?

It is proposed that the following structures be consulted:

- * All institutes and structures dealing with fundamental rights
- * The Human Rights Commission, once established
- * The South African Law Commission
- * The Volkstaatraad
- * The Council of Traditional Leaders (when established)
- * Political Parties
- * The United Nations and other International Structures dealing with fundamental rights
- * The Venice Commission.

Kind regards



**DR CP MULDER MP
FREEDOM FRONT**

CPM/gb

THEME COMMITTEE FOUR

FUNDAMENTAL RIGHTS

SUBMISSION BY THE INKATHA FREEDOM PARTY

WEDNESDAY NOVEMBER 9, 1994

REF: AS AGREED - SOCIO, POLITICAL, ECONOMIC PARAMETERS

At the outset the IFP states that reference should be made to its full submission to Theme Committee Four, the categories of which should form the basis of the report of the Theme Committee with the addition of the positions expressed by other participants. In this document the Inkatha Freedom Party includes, as a given, the following INDIVIDUAL et al categories/clauses IN ADDITION to the requested work programme/discussion paper on SOCIO, POLITICAL AND ECONOMIC RIGHTS and requests that FIRST, SECOND, THIRD AND FOURTH GENERATION HUMAN RIGHTS, OBLIGATIONS AND DUTIES and GENERAL CONSTITUTIONAL FRAMEWORK (see below) be referred to holistically in the Committee's deliberations:

INDIVIDUAL ET AL RIGHTS (GENERAL)

INDIVIDUAL AND COLLECTIVE RIGHTS

JUSTICIABILITY OF RIGHTS

LIMITS ON THE EXERCISE OF THE RIGHTS

PHYSICAL AND PSYCHOLOGICAL INTEGRITY

FREEDOM OF COMMUNICATION

FREEDOM OF RELIGION

LIBERTY: Deprivation of liberty; rights of the accused; rights of the detainee; rights to a fair trial; rights to counsel

TRAVEL AND MOVEMENT

PRIVACY

FREEDOM OF THE MEDIA

ASSEMBLY AND ASSOCIATION

FAMILY RIGHTS

PROCREATIVE CHOICE

(Individual et al Rights cont.)

2

CULTURES AND TRADITIONS

RIGHTS OF PRISONERS

HUMAN RIGHTS IN THE CONSTITUTION

ECONOMIC RIGHTS

- * FREE ENTERPRISE
- * CONTRACTUAL AUTONOMY
- * COMMERCIAL AND INSOLVENCY LAW
- * PERMITS AND LICENSING REQUIREMENTS
- * PRIVATE PROPERTY
- * EXPROPRIATION
- * PROPERTY OF THE FEDERAL REPUBLIC
- * PUBLIC ENTERPRISE
- * COMMUNAL PROPERTY
- * PRACTICES IN RESTRAINT OF TRADE
- * AGRICULTURE

SOCIAL RIGHTS

- * RIGHT TO EDUCATION
- * RIGHT TO WORK
- * PROTECTION OF WOMEN
- * SENIOR CITIZENS
- * YOUTH
- * SCHOOLS
- * UNIVERSITIES
- * HEALTH CARE

(Social Rights cont.)

3

- * JOB CONDITIONS
- * HOUSING
- * RESEARCH, ARTS AND TEACHING
- * RIGHTS TO A PLEASANT AND CLEAN ENVIRONMENT
- * LABOUR RIGHTS

POLITICAL RIGHTS

- * RIGHT TO VOTE
- * RIGHT TO PETITION AND TO INITIATE LEGISLATION
- * FREEDOM OF INFORMATION
- * POLITICAL PARTIES
- * MEDIA OF MASS COMMUNICATION

OBLIGATIONS AND DUTIES

- * ALLEGIANCE TO THE CONSTITUTION
- * CONTRIBUTION TO PUBLIC EXPENDITURE AND NEEDS
- * MILITARY OBLIGATIONS
- * DUTY TO WORK
- * FAMILY DUTIES

FIRST, SECOND, THIRD AND FOURTH GENERATION HUMAN RIGHTS

FIRST GENERATION

- * FREEDOM OF SPEECH
- * FREEDOM OF RELIGION

INKATHA FREEDOM PARTY - SUBMISSION, NOVEMBER 9, 1994

(First, Second, Third, Fourth Rights cont.)

4

- * PHYSICAL AND PSYCHOLOGICAL INTEGRITY
- * LIBERTY
- * TRAVEL AND MOVEMENT
- * PRIVACY
- * ASSEMBLY AND ASSOCIATION
- * FREE ENTERPRISE
- * CONTRACTUAL AUTONOMY
- * PRIVATE PROPERTY
- * POLITICAL RIGHTS

SECOND GENERATION

- * FREEDOM OF THE MEDIA
- * FREEDOM TO ACCESS GOVERNMENT INFORMATION
- * FAMILY RIGHTS
- * CULTURE AND TRADITIONS
- * PROCREATIVE CHOICE
- * RIGHT TO WORK
- * FREE ENTERPRISE
- * FUNCTIONAL PRIVATE PROPERTY
- * COMMUNAL PROPERTY
- * RIGHT TO EDUCATION
- * HEALTH CARE
- * HOUSING
- * LABOUR LAW AND LABOUR RIGHTS

(First, Second, Third, Fourth Rights cont.)

5

THIRD GENERATION

* PROTECTION OF WOMEN, SENIOR CITIZENS AND YOUTH

* ENVIRONMENTAL RIGHTS

FOURTH GENERATION

* CULTURAL RIGHTS

* MINORITY RIGHTS

* RIGHTS OF ETHNICITY AND SELF DETERMINATION

* GROUP RIGHTS

* AUTONOMY OF SOCIAL AND CULTURAL FORMATIONS

* PRE-EMINANCE OF CIVIL SOCIETY

* PRESERVATION OF TRADITIONAL COMMUNITIES AND ROLE OF TRADITIONAL LEADERS.

GENERAL CONSTITUTIONAL FRAMEWORK

* NATURE OF THE BILL OF RIGHTS

* LIMITATION OF RIGHTS

* SUSPENSION OF RIGHTS

* EQUALITY CLAUSE

* EVOLUTIVE CLAUSE

* FUNDAMENTAL RIGHTS AND
CONSTITUTIONAL AMEDEMMENTS

REF: MEMORANDUM FROM THE MANAGING SECRETARY
THEME COMMITTEE 5

"ACCESS TO JUSTICE"

IFP RESPONSE:

- (1) Right to counsel in certain criminal matters: This is covered in our submission under "Individual" et al rights under the section on "Liberty";
- (2) Legal assistance in civil matters: We do not believe this should be included in the Constitution;
- (3) Alternative Dispute Resolution Mechanisms: We do not believe this should be included in the Constitution.

SCV - THEME 4(1)

=====



INKATHA

Inkatha Freedom Party

IQembu leNkatha yeNkululeko

PRELIMINARY SUBMISSION TO THE IV THEME COMMITTEES ON FUNDAMENTAL RIGHTS

ISSUES IDENTIFICATION AND AGENDA

(please note that the indication of the IFP positions
is of use also in assisting the identification of the relevant issues)

NATURE OF THE BILL OF RIGHTS:

ISSUE:

Should the Bill of Rights apply to relations between government and people only, or should it also apply to inter-personal relations?

ALTERNATIVES:

Should the Bill of Rights be implemented by the national government only, by the Provinces only, or by both?

The Bill of Rights may either have exclusively vertical application or may also have horizontal application. When the Bill of Rights also has horizontal application it will protect against violations of human rights which may occur within inter-personal relations. No constitution will make the Bill of Rights applicable to any type of inter-personal relations. Almost all modern constitutions have a horizontal application of the Bill of Rights and employ different tests to determine which inter-personal relations fall within the domain of the Bill of Rights. Usually this test consists of general principles which are subject to judicial interpretation.

A separate issue regards the implementation of those human rights, second, third and fourth generation human rights, which require an action by government in order to be implemented and fulfilled, such as the case of the right to work or the right to medical care. The implementation of these rights could be left to Provinces under the control of the national government. The control of the national government can be structured on the basis of several techniques and parameters.

AGENDA:

The different types of horizontal application of the Bill of Rights ought to be studied to analyse how human rights protection can be extended to inter-personal relations. Special attention should be given to the relation between a horizontal application of the Bill of Rights and the need for the interpretation of the applicable principles by means of

President: The Hon. Prince Dr. Mangosuthu G. Buthelezi

National Chairman: Dr. F.T. Mdlalose

Deputy Secretary General: Inkosi S.H. Gumede

Sub Committee Chairmen:

Political, Constitutional, and Legal: Dr. D.R.B. Madike

Economic and Finance: Mr. M.A. Nzuzo; Social and Cultural
Appointment and Disciplinary: Mr. E.S.

Publicity and Strategy: The Rev. C.J. Mterwa
Development: Mr. M.V. Ngema.

constitutional adjudication to be conducted by the Constitutional Court rather than by the ordinary judiciary.

The implementation of second, third and fourth generation human rights in federal states should be particularly analysed to determine how Provinces could be the level of government responsible for the implementation of these rights. Attention should also be given on the role to be played by the national government in ensuring the consistent implementation of these rights across the country.

IFP POSITION:

The Bill of Rights shall have horizontal application. The applicable test shall require that the Bill of Rights is extended to "all significant legal relations which are under the control of the State." The Bill of Rights shall be entrenched in the national constitution but shall be implemented by the Provinces with respect to the matters of their competence (i.e., employment/labour, education, welfare, et cetera). The Republic might have the power to coordinate this implementing role of Provinces.

LIMITATION OF RIGHTS:

ISSUE:

Should human rights be limited and how should such limitations operate?

ALTERNATIVES:

Human rights may be limited implicitly by virtue of their mutual interferences and there may be no need for a specific limitation clause in the Constitution. The Constitution may provide for a limitation clause specifying that a Legislature may limit human rights, in which case it may or may not provide for an applicable test. The test generally used refers to reasonable limitations as per manner, place and time. Usually the limitation clause is counter-balanced by a limit of the extent to which rights can be limited. Often the distinction between "right" and "exercise of right" is used as a parameter to direct the relevant constitutional adjudication, in which case the constitution states that the exercise of the right may be limited but not the right itself.

AGENDA:

Limitation clauses around the world should be analysed not merely in respect of the text of the constitution but especially in respect of the jurisprudence which has developed around such texts.

IFP POSITION:

The IFP believes that human rights shall not be limited but that the exercise of such rights can be limited for compelling reasons of public interest, provided that the essential core of such right is not affected.

SUSPENSION OF RIGHTS

ISSUE:

Should human rights protection be suspended under special circumstances?

ALTERNATIVES:

The suspension of human rights under exceptional extreme or extraordinary circumstances could be provided for in the Constitution or the constitution could be silent on this point, leaving the matter at a meta-judicial level.

AGENDA: Suspension clauses should be carefully analysed, bearing in mind that they constitute the weakest link of the constitutional chain and that as in the case of the Weimar Republic could lead to the collapse of the entire constitutional system.

IFP POSITION: Suspension of human rights should be limited to extraordinary and extreme situations and shall not affect a basic group of rights which relate to basic human freedom and dignity. The suspension of rights should be reviewable or alternatively should be approved by Parliament or in the absence of Parliament, by the President of the Constitutional Court, or the President of the Senate. Human rights should only be suspendable on the declaration of a state of emergency.

DUTIES AND OBLIGATIONS

ISSUE: Should the Bill of Rights contain a Bill of duties and obligations?

ALTERNATIVES: Several types of duties and obligations could be provided for in the Constitution.

AGENDA: There should be a full compilation of Bills of duties and obligations appearing in modern constitutions.

IFP POSITION: Reference is made to Attachment I.

LIST OF HUMAN RIGHTS

ISSUE: Which human rights should be entrenched in the Constitution? What are the differences in nature between various types of human rights?

ALTERNATIVES: Broadly speaking, there is an internationally recognised list of human rights. Broadly speaking four types of human rights have been identified and they are referred to as first, second, third and fourth generation human rights. The first generation human rights are individual rights which are self-implementing and require no action by government, and actually consist of freedom from adverse governmental action. Second generation human rights are individual rights which require the implementing action of government in order to be fulfilled. Third generation human rights are rights which require collective exercise and usually are also based upon the implementing action of government. Fourth generation human rights are group rights which are recognised to a group identified as a political, ethnic or cultural minority and also extend to the autonomy of social and cultural formations.

AGENDA: The full list of internationally recognised human rights should be acquired and carefully studied with special regard to the Universal Declaration of Human Rights, first, second and draft Third International Covenant on Human Rights, the European Declaration on the Safeguard of Human Rights and the OAU Declaration of Human Rights. Bills of Rights contained in modern constitutions such as Spain, Namibia, Fiji and Liberia should also be particularly considered. The following human rights are tabled for specific consideration:

FIRST GENERATION

- Freedom of speech
- Freedom of religion
- Physical and psychological integrity
- Liberty
- Travel and movement
- Privacy
- Assembly and association
- Free enterprise
- Contractual autonomy
- Private property
- Political rights

SECOND GENERATION

- Freedom of the media
- Freedom to access government information
- Family rights
- Cultural and traditions
- Procreative freedom
- Right to work
- Free enterprise
- Functional private property
- Communal property
- Right to education
- Health care
- Housing
- Labour law and labour rights

THIRD GENERATION

- Protection of women, senior citizens and youth
- Universities
- Environmental rights

FOURTH GENERATION

- Cultural rights
- Minority rights
- Rights of ethnicity and self determination
- Group rights
- Autonomy of social and cultural formations
- Pre-eminence of civil society
- Preservation of traditional communities and role of traditional leaders

IFP POSITION: Reference is made to **Attachment II**

EQUALITY

ISSUE

What type of principle of equality should be entrenched in the Constitution?

ALTERNATIVES:

Formal equality will need to be entrenched. In addition the Constitution may entrench the principle of substantive equality. This can be achieved either by promoting equal opportunities or equal access to opportunity. The principle of equality may be implemented and

AGENDA:

enforced exclusively by the National Government or by the National Government and the Provinces in their respective areas of jurisdiction. All the main variations of the principle of substantive equality will need to be explored. The relation between substantive equality and the need for constitutional adjudication to be conducted by the Constitutional Court only will also need to be explored. It will also be necessary to look at the many alternatives related to the application of the principle of formal equality with respect to the area of provincial autonomy. The difference between implementation and enforcement will also need to be fully explored.

IFP POSITION:

The principle of Equality should foster equal access to all political, social and economic opportunity and should mandate the Republic to remove all substantive hindrances to the implementation of this principle. Equal "access" to opportunities does not mean redistribution of wealth, assets or resources, nor does it mean "equal opportunities." However, special training opportunities and assistance to small business are required to substantiate equal access to opportunities, the principle of which should be constitutionalised.

The principle of Equality should be entrenched in the national constitution but implemented by the Provinces with respect to the matters of their competence (i.e. employment/labour, education, welfare, et cetera). The Republic might have the power to coordinate this implementing role of the Provinces.

**EVOLUTIVE CLAUSE OF THE BILL OF RIGHTS
OPEN OR CLOSED LIST OF RIGHTS**

ISSUE: Are the Bill of Rights protected in the Constitution only those specifically mentioned in the Constitution?

ALTERNATIVES: The Constitution could contain either a closed list or an open list of human rights. An open list of human rights would allow for the recognition by means of constitutional adjudication of new human rights as they emerge from changes and growth of society. In this case the Constitution would provide a test for constitutional adjudication which would direct the Constitutional Court in its process of interpreting the constitution and identifying new human rights.

AGENDA: The evolution of the protection of human rights in modern democracies by means of constitutional adjudication should be carefully studied to understand how all new and emerging human rights have been produced by means of interpretation of existing constitutions.

IFP POSITION: Reference is made to Section 29 of Attachment II.

FUNDAMENTAL RIGHTS AND CONSTITUTIONAL AMENDMENTS

ISSUE: Can the Constitution be amended to eliminate human rights?

ALTERNATIVES: Human rights could be entrenched in their entirety and protected from constitutional amendments or alternatively only their essential content could be shielded from constitutional amendment.

AGENDA: Limits to the amendability of the Constitution should be studied with special regard to the Constitutions of Germany, India, Namibia and Spain.

IFP POSITION: The essential content of fundamental rights other than economic, social and political rights shall not be modified by virtue of constitutional amendments.

7409
27.10.1994

ATTACHMENT II

FUNDAMENTAL RIGHTS

1. Individual and Collective Rights

All human rights set out in this constitution are recognised and shall be protected both in their individual as well as in their collective exercise, and they imply the right to establish institutions, adopt rules of conduct and regulate interests which are instrumental to the collective exercise of such rights. All powers established and recognised under this constitution shall protect and nourish the exercise of these rights and respect and foster their collective exercise.

2. Justiciability of rights

All rights and freedoms recognised and guaranteed under this constitution shall be justiciable to the fullest practical and reasonable extent. In the case of a violation of the rights and freedoms recognised and guaranteed under this constitution any aggrieved party shall be entitled to be heard by a court of record on the basis of urgency and, upon showing a *prima facie* violation of rights, shall be granted preliminary relief pending the final disposition of the case.

3. Limits on the exercise of the rights

The law may impose reasonable restrictions on the exercise of the rights set forth in this constitution to protect the rights of others and for compelling reasons of public interest. However, in such a case the law must respect the essential content of the rights, and the limitation on the exercise of the right must not have the practical effect of preventing or deterring the free exercise of the rights in their reasonable manifestations.

4. Physical and psychological integrity

a. The physical and psychological integrity of any individual shall be inviolable. No one shall be authorised to inflict any type of violence on another individual or to take a life. Capital punishment and any form of physical or psychological torture and punishment shall not be allowed.

b. No one shall be submitted to unusual or cruel punishment and all punishments shall aim at the personal and social rehabilitation of the person. During imprisonment juvenile delinquents shall be kept separate from other delinquents and so shall men from women. Failure by a public official to report any and all instances of physical or psychological violence on a person deprived of his or her liberty shall be a criminal offence.

5. Freedom of communication

a. All persons shall be free to express and communicate their thoughts in private and in public, in oral, written, visual or any other fashion, and to establish institutions for such a purpose. All forms of censorship or limitation on the contents of such communications shall be prohibited.

- b. Limitations on the contents of commercial speech may be imposed to guarantee the truth and the fairness of the representations made to consumers and to ensure fair competition, provided that there shall be no prohibition of comparative advertising.
- c. Limitations on the form of communication may be imposed as to time, place and manner so as to protect and respect the rights of others and compelling public interests, but not to the extent that the limitation on the forms communication becomes a limitation on the contents thereof.
- d. No one shall be compelled directly or indirectly to disclose or express his or her ideology, creed, religious belief, or political opinions.

6. Freedom of Religion

Religious freedoms are recognised and shall be guaranteed. Everyone shall have the right to profess and promote his or her religion or belief, and to establish institutions and organise activities for this purpose. The Federal Republic of South Africa shall not take any action supporting or endorsing any particular religious belief or confession or conditioning the exercise of religious freedom to any requirement, and shall promote conditions for the equal and free exercise of all religions and beliefs in the State.

7. Liberty

- a. No one shall be deprived of his liberty without cause and due process of law. Unwarranted arrest and detention shall be allowed only on the basis of probable cause related to an offence punishable by imprisonment. Anyone arrested or detained shall be informed of his or her rights in a language that he or she understands, shall be informed of the reasons for the arrest and detention with an indication of the charges, and shall have a court hearing within twenty four hours from the time of his or her arrest, after which the detention may continue only by court order based on factually corroborated allegations.
- b. Anyone detained or accused has the right to remain silent. Anyone detained or charged with an offence punishable by imprisonment has the right to consult counsel, and if he or she can not afford one the court shall appoint one at government expense. There shall be a right to counsel in any and all proceedings in which the accused participates.
- c. Detention prior to sentencing shall be limited to cases established by law and shall not exceed three months.
- d. Anyone detained, arrested or condemned unlawfully shall have the right to be rehabilitated, to receive indemnification and other rights determined by law.
- e. Any government authority shall inform anyone who is the subject of an investigation for any reason.

- f. No one may be tried twice for the same conduct. No one shall be charged for a conduct which at the time was not an offence, nor shall a penalty be imposed exceeding that which was applicable at the time when the offence was committed. There shall be no analogical or retroactive interpretation of criminal law.
- g. Anyone has the right to a speedy, open and public trial and to confront his or her accusers at trial. All trials shall be based on the accusatory principle and shall be subject to the right to appeal on the grounds of error of law.
- h. No one shall be removed from the authority of the judge with jurisdiction over the specific offence at the time the offence was committed. There shall be no special or *post facto* judges. Any accused person has the right to be tried in an impartial, independent and competent court. Anyone shall be presumed not guilty until proven guilty.
- 8. Travel and movement**
Everyone shall have the right to travel, move and reside within or outside the Federal Republic of South Africa. No government policy forcing the relocation of people shall be allowed. Any citizen of the Federal Republic shall have the right to take domicile in the any part of the territory.
- 9. Privacy**
a. Everyone shall have the right to the protection of privacy, of his or her personal life, of his or her domicile, and to protection of his or her personal dignity and reputation. All private communications and all aspects of private life shall be protected. Search and seizure may be allowed only on the basis of a warrant issued on the basis of corroborated allegations, and in the cases and with the guarantees established by the law. Personal search shall be allowed as an incident to a legitimate arrest and detention.
- b. Anyone has the right to access the information collected on him or her by the Government or by private data or information banks.
- 10. Freedom of the Media**
Anyone has the right to publish and distribute printed materials. The press and the media of mass communication shall have the right to inform the public on matters of public interest provided that they do not publish erroneous information as a result of gross professional negligence or malice. The media have the duty to rectify all erroneous information they publish which damages the reputation of others.
- 11. Assembly and Association**
Everyone has the right of peaceful assembly. No notice shall be required for assembly in a private place or in a place open to the public. For assembly in a public place prior notice shall be given to the competent authority which may prohibit the assembly only for reasonable apprehension of public security and safety. Everyone has the right to associate for any legal purpose. Associations pursuing directly or indirectly political

purposes by means of military training or association operating in a para-military fashion shall be prohibited.

12. Family rights

A man and a woman have the right to join in marriage in accordance with the rituals and with assumption of the obligations and privileges of their choice. However, both spouses shall have equal rights, obligations and dignity. Both parents shall have responsibility for the upbringing, formation and education of the children, even if born outside wedlock. The law shall ensure that comparable rights and social protection shall be extended to children born outside wedlock as they shall be recognised to children born in wedlock. Both parents have the right and the duty to exercise joint custody of the children unless a court otherwise decides in the interest of the children and on the basis of the specific circumstances of the case. Both parents have the right and the duty to choose an acceptable formation and education for their children.

13. Procreative Freedom

All people who so desire shall enjoy the freedom of procreative choice, including the right to receive sexual education, to use contraception and terminate unwanted pregnancy when safe. Anyone who finds these practices objectionable shall have the right to protect his or her own sphere of interests from any of these practices and from the exposure thereto.

14. Cultures and Traditions

Everyone shall have the right to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion.

15. Human rights in the Constitution

All fundamental human rights and all those other rights which are inherent to fundamental human needs and aspirations as they evolve with the changes and growth of society, and as they will be recognisable on the basis of the principles underlying the provisions of this constitution, are hereby entrenched in this constitution and in their essential content shall not be modified by virtue of constitutional amendments.

ECONOMIC, SOCIAL AND POLITICAL RIGHTS

Economic Rights:

16. Free Enterprise

The right to free economic initiative and enterprise shall be recognised, protected and encouraged by the Federal Republic and the member States. The Federal Republic shall assist the member States to assist small businesses and provide other incentives to encourage access to economic opportunities. Within the limits set forth by the law to protect the public interest, each enterprise shall be free to choose and organise the means of the production as it best sees fit.

- 17. Contractual autonomy**
Within the limits set forth by the law to protect the public interest, the Federal Republic shall assist the member States to recognise and protect the right of individuals to self-regulate and organise their interests in economic and other matters by means of legally enforceable contracts and by establishing legal entities to carry out their purposes and objectives.
- 18. Commercial and Insolvency Law**
Each member State shall promote uniformity of their commercial and insolvency laws with those of other states and countries.
- 19. Permits and Licensing requirements**
The Federal Republic shall not subject human conduct to unreasonable or unnecessary licensing and permitting requirements. Permits and licences shall be issued on the basis of objective and reasonable standards and criteria.
- 20. Private Property**
Private property shall be guaranteed and protected. Limitations on the use and enjoyment of private property may be imposed so as to satisfy social, environmental and collective needs. The right to convey one's own property by contract or inheritance shall be protected subject to the reasonable exercise of the power of taxation.
- 21. Expropriation**
The Federal Republic of South Africa or another entity authorised by law may expropriate property for public necessity subject to the prompt payment of a fair market value compensation.
- 22. Property of the Federal Republic**
The Federal Republic of South Africa or its instrumentalities may own property as private or public property. Public property shall not be alienated or encumbered and shall be related to the exercise of public functions or shall be held by the Federal Republic or its instrumentalities in the public interest. The law shall set forth the principles for the acquisition, administration and declassification of public property. Parliament shall publish a yearly report on the property owned by the Federal Republic indicating their current and planned use and their maintenance and carrying costs.
- 23. Public Enterprise**
No enterprise shall be acquired or conducted by the Federal Republic of South Africa or its instrumentalities either as a monopoly or as a free competition enterprise, and no service shall be provided to the public unless so authorised by a law demonstrating a public need and the inadequacy of the private sector to satisfy such need with comparable efficiency and reliability. When these requirements no longer exist the enterprise or the service shall be privatised.
- 24. Communal Property**

The Federal Republic shall assist the member States to recognise and protect Communal Property. Communal property shall be administered and regulated by traditional and customary Rules.

25. Practices in restraint of trade

All monopolies and practices and agreements in restraint of interstate trade, commerce and free market competition shall be prohibited.

26. Agriculture

The Federal Republic of South Africa shall assist the member States in encouraging productive agriculture, the socially just and responsible use and distribution of land and the access of citizens to land ownership. The Federal Republic of South Africa shall also assist the member States promoting agricultural cooperation and assisting farmers on a cooperative basis.

Social Rights:

27. Right to Education

a. All citizens shall have the right to receive a basic education and professional training. The Federal Republic of South Africa may set general standards to assist the member States in determining the period and the minimum educational requirements for compulsory education. The Federal Republic shall support the citizens' aspiration to higher education by means of scholarship and by promoting the highest standards of excellence in education.

b. Both private and public schools shall ensure open and equal access to educational opportunities. Parents shall be entitled to participate in the administration and operation of their children's schools.

28. Right to Work

Everyone shall have the right to access any job opportunity for which he or she is qualified. The Federal Republic shall assist the member States to promote the full employment of all citizens. No one's employment shall be terminated for political reasons or in violation of his or her constitutionally protected rights. Everyone shall have the right to receive a fair compensation for his or her work, shall be entitled to at least one vacation day a week, to a period of paid vacations during the year and to a severance payment. All workers shall be entitled to social security, pensions, invalidity and unemployment benefits as determined by law of the member States.

29. Protection of Women

The Federal Republic shall operate to ensure that both federal and state law extend special protection to women in recognition of their function and condition in society. The Federal Republic shall assist the member State to guarantee maternity leave, to provide assistance to mothers in the work force, and to ensure equal access of women to political, social and economic opportunities by means of special treatment and

privileges to be in force until such time when the condition of women in the Federal Republic has significantly improved.

30. Senior Citizens

The Federal Republic shall assist the member States to promote the economic sufficiency of senior citizens and provide social services to assist them in relation to their housing, care, health, cultural and leisure needs.

31. Youth

The Federal Republic shall assist the member States to promote conditions for the free and effective participation by the youth in political, social, economic and cultural developments.

32. Schools

Everyone shall have the right to establish private schools. Private schools shall have the power to determine their own curricula and syllabi within the general parameters set forth by law of the member States and by the Federal Republic for the purposes of recognition and equipollence of degrees.

33. Universities

All public universities and institutes of higher education in the Federal Republic shall be entitled to regulate their organisation and operations within the general parameters set forth by law of the member States.

34. Health Care

All citizens shall have the right to receive medical attention and care in case of need. The law of the member States shall determine the implementation of this right. The Federal Republic shall assist the member States to develop policies of prevention, treatment, rehabilitation and integration of those who are physically, sensorially and mentally handicapped, including those who are substance addicted.

35. Job Conditions

The law shall ensure safe job conditions and shall provide special protection for women, minors and untrained labour.

36. Housing

The Federal Republic shall assist the member States to promote conditions to ensure that all citizens have the possibility of living in a dignifying habitation and to facilitate the purchase of residences through credit facilitation and other programmes. All citizens have the right to receive shelter and shall have equal access to housing opportunities.

37. Research, Arts and Teaching

The freedom of scientific research, artistic expression in all its forms and teaching is recognised and shall be guaranteed.

38. Right to a Pleasant and Clean Environment

The Federal Republic of South Africa shall recognise the rights of present and future generations of citizens to live in and enjoy a pleasant and clean environment. The law shall determine the cases and the limits in which citizens may bring legal actions on behalf of the community against those who cause environmental damages. The Federal Republic shall assist the member States in protecting and promoting the quality of the human and natural environment, and may set forth environmental standards and criteria.

39. Labour Rights

Everyone shall have the freedom to form and join trade unions and employers' associations. Member States shall respect and protect the right to strike but may limit its exercise in cases determined by their law for reasons of public security and safety. Labour organisations shall have the right to negotiate and execute collective bargaining agreements to be effective with force of law vis-a-vis the category of workers covered by their provisions. During these negotiations the labour organisation shall be represented on the basis of the number of their members. Trade unions shall have the right to conduct reasonable activities in the work place aimed at improving labour conditions. Member States may impose requirements on the trade unions only to ensure that they are organised and operated with full internal democracy.

Political Rights:

40. Right to Vote

- a. All citizens of eighteen years or older shall have the right to vote. The vote shall be personal, secret, free, and equal. The right to vote may be suspended by a judicial adjudication of incompetence, or by an irrevocable sentence for major crimes specified by the law.
- b. The law recognises, and the Federal Republic of South Africa shall facilitate, the exercise of the right to vote by citizens who are outside the State.

41. Right to Petition and to Initiate Legislation

Any citizen has the right to petition Parliament and any branch or level of government. A citizen's legislative proposal signed by five hundred citizens may be submitted to Parliament.

42. Freedom of Information

Any citizen has the right to access and receive any information or document which is in the possession of the Government of the Federal Republic of South Africa or its direct instrumentalities or of any of the commissions or agencies established under this constitution, provided that such document or information is not privileged as established by law to protect privacy, commercial secrets or national or State security. During the process of judicial review of the government's decision to withhold information, the court shall have the power to examine *in camera* the information withheld.

43. Political Parties

The citizens have the right to form political parties to participate in all levels of democratic life. No one shall be directly or indirectly compelled in any way to join a political party or shall be penalised for not belonging to one. Political parties shall ensure internal democracy in their organisation and operations.

44. Media of Mass Communication

Anyone shall have the right to establish media of mass communication, including newspapers, cable, radio and television stations. The law shall regulate the rights of citizens and political parties to access media of mass communication under the control of the government or in situations of virtual hegemony or monopoly.

OBLIGATIONS AND DUTIES

45. Allegiance to the Constitution

All citizens shall have the duty to uphold this constitution and live by the rule of law. All those who hold any of the offices provided for in this constitution shall take an oath or a solemn affirmation to uphold and defend this constitution, obey the law and exercise their public functions with discipline and honour.

46. Contribution to Public Expenditures and Needs

- a. All citizens have the duty to contribute to the common needs and to public expenditure by reasons of their resources. The tax system shall follow principles of progressive taxation, but shall not create a disincentive for the production of wealth.
- b. The Federal Republic of South Africa shall encourage voluntary charitable activities and other forms of expression of social solidarity.

47. Military obligations

All citizens have the sacred duty to defend the territory of the Federal Republic of South Africa from any external enemy and from any threat to the enjoyment of freedom, democracy and pluralism in the Republic.

48. Duty to work

All capable citizens have the duty to contribute with their work and skills to the common development and growth of the Republic

49. Family duties

All citizens have the duty to provide moral and financial support to their spouses, to educate their children and to assist their parents when in need of care.

[...]

ANNEXURE 4

- Nominations of Experts for Technical Committee

THEME COMMITTEE 4
- FUNDAMENTAL RIGHTS

NOMINATIONS FOR EXPERTS FOR TECHNICAL COMMITTEES

PARTY	NOMINATION
ACDP	Adv. RD Classen
	Prof. HP Viljoen
ANC	Prof. HM Corder
	N.C Steytler
	T Madonsela
	S Liebenberg
DP	Prof. CJR Dugard
	Prof. CJ Lewis
	Adv. D. Unterlater
IFP	Prof. C Dlamini
NP	Prof. IM Rautenbach
	Prof. D van Wyk
PAC	RB Desai
	DB Ntsebeza
	BR Mqeke
	C Qunta
Vryheidsfront	Dr JR de Ville