

THESE DRAFT MINUTES ARE CONFIDENTIAL AND RESTRICTED TO MEMBERS OF THE AD HOC COMMITTEE, THE PLANNING COMMITTEE AND THE TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS DURING THE TRANSITION. THE MINUTES ARE STILL TO BE RATIFIED BY THE AD HOC COMMITTEE.

**DRAFT MINUTES OF THE MEETING OF THE AD HOC COMMITTEE ON FUNDAMENTAL RIGHTS DURING THE TRANSITION HELD AT 9H00 ON WEDNESDAY, 8 SEPTEMBER, 1993 AT THE WORLD TRADE CENTRE.**

**PRESENT:** Mrs S Camerer (Convenor)  
 Prof H Cheadle  
 Chief Gwadiso  
 Mr A Leon  
 Mr P Maduna

**APOLOGIES:** Mr S G Mothibe

**MINUTES:** Ms N Sithebe-Tsotetsi (Administration)

**1. AGENDA**

- 1.1 Discussion of the last draft bill of the Technical Committee on Fundamental Rights.
- 1.2 Memorandum submitted by the Chief Justice of South Africa.
- 1.3 Mr Leon was congratulated on his appointment as chairperson of the Democratic Party's Transvaal Region

**2. DISCUSSION OF THE LAST DRAFT BILL OF THE TECHNICAL COMMITTEE**

- 2.1 The Ad Hoc Committee agreed (subject to final confirmation) that it had reached preliminary consensus on the following:
  - \* Clause 20 (Eviction)  
It was suggested that this clause should be deleted.
  - \* Clause 21 (Economic Activity)  
It was suggested that this clause should be retained in its present form.
  - \* Clause 11 (Freedom of Association)  
It was suggested that this clause should be retained.

- \* The Ad Hoc Committee suggested that both the interpretation and any limitation of the Bill of Rights should be consistent with South Africa's obligations under Public International Law.
  - \* That the Bill should have vertical application.
- 2.2 The Ad Hoc Committee noted that the following clauses had been agreed to in principle subject to approval by the Technical Committee
- \* Clause 17 (Access to information)
  - \* Clause 18 (Administrative Decisions)
  - \* Clause 23 (Property) - Subject to reconsideration in the light of any new clause on restoration.
- 2.3 Matters still under discussion and nearing completion:
- \* Clause 1.4 application to individuals and juristic persons.
  - \* Relationship between the Bill and Customary Law.
  - \* The equality clause.
- 2.4 The Committee noted that aspects of the following further controversial clauses should be reconsidered:
- 19, 24, 25, 27, 28 (limitations), 29, 30

THE MEETING WAS ADJOURNED SO THAT THE AD HOC COMMITTEE COULD FIND OUT FROM THE TECHNICAL COMMITTEE IF THERE WERE DRAFTS THAT COULD BE DISCUSSED. THERE WERE NONE. THE MEETING RECONVENED AT 10H00.

### 3. DISCUSSION OF THE MEMORANDUM SUBMITTED BY THE CHIEF JUSTICE OF SOUTH AFRICA

- 3.1 Clause 1(1)(a)
- \* Paragraph 2.1  
The Ad Hoc Committee would refer this clause to The Technical Committee.



\* Paragraph 2.2  
This paragraph was supported by Committee, however, the Committee would suggest to the Technical Committee that there might be a problem with the wording on administrative decisions [Clause 24 (Old 18)]. The Committee suggested that there should be consistency with the wording i.e. "executive and administrative" throughout the report

\* Paragraph 2.3  
The Committee would refer this paragraph to the Technical Committee.

3.2 Clause 1(1)(b) (Paragraph 3)

The views expressed in the memorandum were supported by the Committee.

3.3 Clause 1(1)(c) (Paragraph 4)

It was noted that this clause was already being dealt with by the Technical Committee on the Constitution.

3.4 Clause 1(2) (Paragraph 5)

This clause was noted by the Committee for discussion with the Technical Committee.

3.5 Clause 1(3)

\* Paragraph 6.1 and 6.2  
These paragraphs were supported by the Committee and would be referred to the Technical Committee.

\* Paragraph 6.3  
This paragraph would be referred to the Technical Committee.

\* Paragraph 6.4  
The last paragraph of this paragraph would be referred to the Technical Committee regarding the wording (see 3.1 paragraph 2.2 of these minutes).

3.6 Clause 1(4) (Paragraph 7.1)

The wording in this paragraph would be referred to the Technical Committee for consideration.

3.7 Clause 1(5)(a) (Paragraph 8.1)

It was suggested that this paragraph should be referred to the Technical Committee. (The Technical Committee subsequently rejected the Chief Justice's point).

3.8 Clause 1(5)(b)

\* Paragraph 9

It was suggested that this paragraph should be referred to the Technical Committee regarding the issue of "busybodies" for reformulation.

The Technical Committee's new draft was considered.

\* Clause 5 [7(4)(b)(ii) - new numbering]

The Committee supported the Technical Committee's draft, however, there was concern regarding access. It was suggested that the scope should be wider. It was also suggested that the submission by the Democratic Party should be reconsidered by the Technical Committee. Further, it was suggested that the wording in this clause should be, **"that the person acting on behalf of another person or class, which is not reasonably able....."** The Committee suggested that the Technical Committee should reconsider this clause to include **"enforce rights."**

It was suggested that in the Technical Committee's redraft "unable" should be substituted by "not reasonably able."

\* Clause 7(4) - new numbering

It was suggested that this clause which is in the latest draft of the Technical Committee should be, **"A person who is a member of a group/class can bring action."**

It was suggested that the Technical Committee's draft should be revised in light of the suggestion made by the Chief Justices, paragraph 9.

3.9 Clause 2(2) (Paragraph 10)

It was suggested that:

- \* this section should be referred to the Technical Committee,
- \* basically a distinction should be made between the words "discrimination" and "differentiation,"
- \* possibly the word "discrimination" should be defined



3.10 Clause 2(3)

\* Paragraph 11.1

This paragraph was supported by the Committee.

\* Paragraph 11.2

This paragraph was noted by the Committee.

\* Paragraph 11.3

The Committee suggested that this paragraph should be referred to the Technical Committee for consideration.

3.11 Clause 2(4) (Paragraph 12)

It was noted that this clause had not been deleted from the latest draft of the Technical Committee, and the Ad Hoc Committee would consider the new wording.

3.12 Clause 3 (Paragraph 13)

The Chief Justice's point was noted by the Committee.

3.13 Clause 5(2) (Paragraph 14)

It was noted that a provision would be incorporated in the Bill regarding South Africa's commitment under International Law.

3.14 Clause 6 (Paragraph 15)

It was suggested that this clause should be referred to the Technical Committee, as there was concern whether the limitations clause [Clause 28(1)(b)] would meet the concerns raised by the Chief Justices, specifically whether the clause on prisoners' rights would meet the problems raised in this paragraph.

3.15 Clause 7 (Paragraph 16)

The Ad Hoc Committee would ask the Technical Committee to reconsider the implications of 28(1)(b) in the light of the Chief Justice's memorandum with specific reference to the **privacy clause**.

4. **NEXT MEETING**

It was agreed by all members of the Committee present that the next meeting should be held in Cape Town on Tuesday, 14 September, 1993 between 10h00 to 16h00. Mrs Camerer would arrange the venue and lunch. The secretary would arrange flight bookings.

5. **CLOSURE**

The meeting was adjourned at 11h00 when the Ad Hoc Committee was joined by the Technical Committee.