

1/12/9

CONSTITUTIONAL ASSEMBLY

**NATIONAL PUBLIC SECTOR HEARING
LABOUR**

VENUE: WORLD TRADE CENTRE

03 JUNE 1995

MINUTES

**MINUTES OF PUBLIC HEARING
LABOUR SECTOR
WORLD TRADE CENTRE, GAUTENG
SATURDAY, 3 JUNE 1995**

Present:

Delegates representing Cosatu, Nactu and Fedsal were present.

1. WELCOME

1.1 The meeting was opened by Mr I Jenkins, Idasa Director, who welcomed the delegates and congratulated the CA for arranging the hearing thereby demonstrating their commitment to public consultation.

1.2 Mr Jenkins explained that the aim of the hearing was to afford the labour sector the opportunity to present their submission and that it was not a forum to reach consensus/resolutions.

2. SESSION ONE:

Chair: Ms N Pandor: Theme Committee 4

Constitutional Issue: The Bill of Rights and related issues.

Mr Abraham spoke to Fedsal Document (attached). Fedsals's main points premised on Preamble of Interim Constitution.

- a. Labour has duty to ensure prosperity, growth and workplace democracy.
- b. The rights of the individual should be protected and never infringed.
- c. The right to religion, culture, education etc. should be protected.
- d. Further, support
 - a). Right to Freedom of Association
 - b) Right to Freedom of Speech
 - c) Right to Freedom of Expression
- e. Right to organise as union for advancement and protection of their members rights.
- f. The Unions/federations should have the Right to Strike.

Input: Mr S. Shilowa (General Secretary of COSATU). Mr Shilowa spoke to Cosatu Document (attached).

- a. The Bill of Rights should include
 1. The Right to Strike
 2. The Right to Picket

- b. The Right to lock-out should not be in the constitution. This can be dealt with adequately under labour legislation.
- c. Collective bargaining - no formal position

Nactu:

Input by Mr C Ngcukana (General Secretary). Mr Ngcukana explained that he was requested at last minute to attend the Public Hearing and therefore had no formal written submission. He would submit this later to the Constitutional Assembly.

- a. He expressed seriousness of drafting new constitution and that it should not be seen as mere smokescreen.
- b. There should be no negative rights, only positive eg. Right to Education V Right not to Education.
- c. Constitution must ensure Right to:
 - 1. Strike
 - 2. Picket
 - 3. Associate
 - 4 Safety
- d. Constitution should not allow employer to act against these rights.
- e. International law should become part of S.A. set up.
- f. Rights should be protected eg. Malawi (President Banda) has all rights but no legislative framework. This country has right to strike but other state powers abuse this right i.e. Police Riots Act used to break up a strike.

PLENARY

The main issue focused on by the delegates were:

- i. Right to Religion
- ii. Right to Strike - Limitation and Suspensive Clause
- iii. Equality Clause

RECOMMENDATIONS

- i. The Right to Religion should protect all religions and allow all forms of religious groupings to practise freely.
- ii. The Right to Strike should be protected. A proposal was made that the Right to Strike should have no limitations. Limitations should be dealt with legislatively. Only possible exceptions should be the Right

to Safety, Life, Health. The Right to Strike should not be criminalised.

- iii. Equality to be dealt with in Session Two.

SESSION TWO: SOCIO-ECONOMIC RIGHTS

Chairperson: S Rasmenti (Theme Committee 4)

Fedsal:

Input by J Abraham (Assistant General Secretary) Section 26 of Interim Constitution.

- i. Fedsal supports policies for a positive S.A.
- ii. Citizens to negotiate individually and separately.
- iii. Citizens to negotiate individually and separately with employers.
- iv. 3 main Role Players (Business, Labour, Government) have common interest to secure positive S.A. eg. Wages.
- iv. Right to property should be in constitution.
- v. Individual workers have the Right to free-economic activity.
- vi. Supports Equality Principle of Interim Constitution - No further elaborations needed.

Cosatu:

Input by S Shilowa (General Secretary).

- i. Socio-Economic Rights should be included in the Constitution.
- ii. Should not be as strict and legally binding as other rights i.e. Should be weighed against basic standard of living - access to:
 - a. Shelter
 - b. Health
 - c. Food
- iii. Directive Principles - Executive and Legislative Action
- Realise Basic Standard of Living
- iv. Constitutional Court should use objectives other than legal facts.
- v. No proper formulation as yet but should be included to allow for enabling legislation.

- vi. Right to property should not be in constitution because:
 - a. Linked to Colonial Conquest
 - b. Restrict implementation of RDP

Nactu:

Input by C Ngcukana (General Secretary)

- i. Judicial application of 2nd Generation Rights is problematic.
- ii. Supports eg. following S.E.R.
 - a. Right to Education and Training till 16/18. State should provide education.
 - b. Right to Health, Welfare
- iii. State should provide Infrastructure and Social Services and not private sector.
- iv. Primary Health Care should be constitutionally guaranteed.
- v. State should control Reserve Bank and not private sector.
- vi. Labour Law is issue of National Competence.
- vii. All Unions support the sexual orientation clause.

RECOMMENDATIONS

The Constitutional Assembly should consider the Joint Labour Submission on Vertical/Horizontal Application to Nedlac. The Union delegates will forward this submission directly to the CA.

PUBLIC HEARING: LABOUR

**World Trade Centre
Saturday 3 June 1995**

SESSION 3: Levels of government
Chair: A Blaas (CA Theme 3)

3. INPUT FROM THE SECTOR

3.1 COSATU

Cosat proposed a unitary state with industrial and labour laws decided at the centre. Provincial powers should not include labour relations. Public Service Commissions should also be centralised. Provincial Governments should be rendered inoperable if not compatible with national legislation. The pre-eminence of national legislation should be spelt out in the constitution. **Cosat** was concerned that provincial fiefdoms could undermine local government.

3.2 FEDSAL

Fedsal was committed to a tripartite process between labour, business and government. Although **Fedsal** recognised the need for nine regions, they were concerned that some existing local structures were being superseded by Provincial Government. The hierarchy of the constitutional structures had led to overlapping ambit os power in levels of government especially in relation to labour issues. This could lead to a reduction in ability to deliver functions and resources which could in turn lead to retrenchments. The reality was that overshadowing Provincial power over national and local could affect workers rights due to duplication or overlap of powers. Provinces should have a clearly defined task of executing national legislation.

3.3 NACTU

Nactu supported the existence of a unitary state and was opposed to federalism in all its forms as they felt it encouraged corruption. Having looked at socio-economic, cultural and ideological factors, **Nactu** felt provinces were a duplication of Bantustans. National Government should have in place an administrative co-ordination function at regional level. There should be no parliamentarians at provincial level and even councillors than envisaged in the Interim Constitution. Local Government should deliver services within the national framework. Municipal bye-laws should be line with national legislation.

3.4 PLENARY DISCUSSION

It was agreed that the constitutional principles already stipulated that there shall be nine provinces in South Africa. However, a possibility of scaling down Provincial Governments could be looked into. The problem of competition for limited resources between the three levels of government was raised as a concern by all the three stakeholders. Fedsal was concerned that primary health care provision had been taken away from the portfolio of Local Government and given to the not so experienced Provincial Government. All stakeholders agreed that provinces should not have any residual powers. They should not be governments within government, but should only exist to execute overall national policy.

SESSION 4: Other aspects of the constitution

Chair: W Hofmeyr(CA Theme Committee 5)

4. INPUTS FROM SECTOR

4.1 COSATU

Role of civil society: State should strengthen the role of civil society. The composition of the Constitutional Court should be inclusive of civil society.

Right to Recall

Accountability of the Public Service: A constituency based electoral system would make easier to provide accountability and recall. If possible a combined system of proportional representation and a constituency based system should be applied.

Majority Rule: There should be no enforced coalition prescribed in the constitution. Majority rule should apply even in the Cabinet.

Referendum: Referenda should be triggered to review legislation. The minimum threshold should be high enough to avoid trivialisation, but so too high as to be impossible.

Financial Institutions: Cosatu accepted the need for the FFC based that it be broadly representative of civil society. The national government should not guarantee loans made by provinces. Revenue should be collected nationally and allocated on a need based formula in order not to perpetuate poverty in provinces. The SARB should be transformed to provide for the following:

- (i) Representativity of the SARB Board
- (ii) Operational autonomy within the national economic framework
- (iii) Open, transparent, free and equal in all its operations

Privatisation: Cosatu was opposed to privatisation of national assets. Delivery of basic services should not be left to profit making organisations.

4.2 FEDSAL

Public Administration: Various tiers of government should not determine conditions of employment. No Provincial Public Service Commissions should be allowed. National legislation based on merit, equity and representativity should be enshrined in the constitution. A limited number of executive appointees should be allowed for. The tenure of the Public Service Commission should be reviewed. Police should form part of the public service. There should be one national ombudsperson.

Accountability for administrative decisions should not be upon request but should be supplied as a matter of course.

Individual Rights: There should be democracy in the workplace, equality, socio-economic rights, preservation of life, dignity, expression without infringing on rights of others, accountability in private or public, advancement of individual based on merit, freedom of cultural identity, media and own language.

Auditor General: The post could not be compromised by conflict of interest with audited departments. Transparency should be maintained in this position.

South African Reserve Bank: The SARB should be an independent, separate entity.

4.3 NACTU

Institutions of civil society: should be supported and strengthened in order to entrench democracy. Political parties were a transient system. Civil society would monitor delivery of services between elections. There should be a strong and independent press.

Right to recall: Regular elections should be in-built in the constitution. There should be provision for a vote of no confidence to allow parliament to dissolve because of misconduct of government and cabinet. Details for effecting the right to recall should be put in the constitution.

Majority rule: Winner takes all. There should be no forced coalitions.

Financial Institutions: The SARB should not be too independent. Government should influence macro-economic policy. Fiscal and monetary policy should base its framework of operation on stabilisation policies of the country even if they are inflationary in nature.

Public Enterprises: should not be privatised but should be commercialised. Management should be contracted for professionalism and skills. National assets should be self financing and Government should not rely on profits for development.

4.4 PLENARY DISCUSSION

Institutions like **NEDLAC** should be empowered to set incomes policy without fear of the impact on the external value of the rand.

Members' incompetence should be monitored by means of constituencies, the media and parliamentary rules of conduct.

Limited executive appointments should be allowed at senior level and to allow for confidentiality.

Government should be accountable to civil society by means of public hearings on major issues of policy.

Referenda should be used to initiate and overturn legislation. A limitation of this right could be built in to prevent abuse e.g. legislation relating to tax dispensation could be excluded from the category of review by referendum.

Affirmative action should be applied when awarding tenders to small scale enterprises.

SUBMISSIONS

**COSATU SUBMISSION TO PUBLIC HEARINGS OF THE
CONSTITUTIONAL ASSEMBLY JUNE 3 1995**

1. **BILL OF RIGHTS**

1.1. **Right to Strike**

- 1.1.1.(a) The right to strike should specifically include the right to defend and promote social and economic interests of workers. The report of the Fact Finding and Conciliation Commission on Freedom of Association concerning the Republic of South Africa (International Labour Office Geneva, 1992) accepted this principal as stated by the Committee of Experts on the Application on Conventions and recommendations:

"the Committee considers that trade union organizations ought to have the possibility of recourse to protest strikes, in particular where aimed at criticising a Government's economic and social policies" (Report, paragraph 647).

The Commission also accepted this principal as stated in the digest of decisions and principles of Freedom of Association Committee of the governing body of the ILO (1985) in paragraph 388:

"the right to strike should not be limited solely to industrial disputes that are likely to be solved by the signing of a collective agreement; workers and the organizations should be able to express in a broader context, if

necessary, their dissatisfaction as regards economic and social matters affecting their interests".

This approach is endorsed in Section 4.8.3.2 of the RDP, which calls for the constitutional right to strike and picket on all social and economic matters.

Furthermore, South Africa is about to ratify Conventions 97 (Convention concerning Freedom of Association and Protection of the Right to Organize) and 98 (Convention concerning the application of the principles of the right to organize and to bargain collectively) of the ILO which makes these principles directly applicable to South Africa.

We would propose the following wording :

"Organised workers shall have the right to strike to promote and defend the social and economic interests of workers".

Note: our legal advice is that the right to strike includes the right not to be criminally prosecuted, civilly sued, interdicted or dismissed. If the Constitutional Assembly is advised to the contrary, we would want this protection to be explicitly provided for. Further, the right to strike without fear of dismissal, implies that there should be no replacement or 'scab' labour, permanent or temporary. Consideration needs to be given on how to give effect to this.

1.1.2.(b)

The right to picket

The right to picket should be stated explicitly in the provisions of the Bill of Rights dealing with labour relations.

Accordingly we propose the following wording :

"Trade unions and workers shall have the right to picket at the premises of employers"

1.1.3.

Lock-outs

There is a fundamental misconception in certain circles that the employers 'right' to lock-out balances workers right to strike. This fails to understand the nature of the relationship between employers and workers. It incorrectly assumes that we are dealing with equal partners. Workers have only their labour to sell. Employers own and control the means of production. The right to strike attempts to balance this huge inequality in power. This is recognised in the RDP, now supported by all parties in the GNU, which states in 4.8.4 that "the right to lock out should not be included in the constitution".

There is no reason why lock-outs need special constitutional protection, and all references to the lock-out should be excluded from the constitution. The recourse to lock-outs can be dealt with adequately under labour legislation. The right to lock-out is not a universally accepted right for the purpose of Constitutional Principle II and there is no constitutional reason for its inclusion in the Bill of

Rights. Most constitutions do not include the right or freedom to lock-out.

1.2.

Property Rights

COSATU does not believe that a right to property belongs in our constitution. Constitutions in a number of democracies, including New Zealand and Canada, do not contain an entrenched right to property. It is particularly inappropriate in the South African context, where existing property rights are directly linked to colonial conquest and racial domination. To constitutionally entrench property rights, would perpetuate existing patterns of inequality ad infinitum. This would limit the ability of society to realise many aspects of the RDP, particularly in areas such as land reform and restitution. Property rights and their limitation are more appropriately dealt with in legislation.

1.3.

The Right to Privacy

The privacy clause as contained in s13 of the interim Constitution, deals mainly with search and seizure and the protection of citizens against abuses by the police. However, the right to privacy is often used to circumscribe a zone of freedom that the State cannot interfere with, and has provided a hiding place for private discrimination in other jurisdictions, for instance, in the case of private clubs that discriminate on the grounds of race. The right to privacy also needs to be formulated in a way which prevents employers from abusing this right to deny workers access to information

1.3. **The Right to Economic Activity**

The right to economic activity is not an internationally recognized fundamental right, and should not be included in the Constitution. This right effectively entrenches one economic system and should be removed. It is fundamentally undemocratic to constitutionally prescribe to people that they adopt a particular type of economic system.

1.4. **The Right to Information**

South Africa is a country where a veil of secrecy has existed, not only in relation to the state, but also in relation to employers. Lack of access to information by workers, consumers and society as a whole, has enormously prejudiced their human rights. This is true whether in relation to the right to a healthy living and working environment, the right to work, and so on.

The right of access to information held by the State or State organs only, and only insofar as such information is required for the exercise or protection of a person's right, is not adequate.

In particular, workers employed by a company need to be constitutionally empowered to gain access to information which is of vital interest to their lives and their future. This could be covered by a clause such as:

"Workers and trade unions shall have the right to organise which shall include the right to information for matters of mutual interest".

Consideration would need to be given to broaden this to protect consumers and society as a whole, in gaining access to information which is vital to

their interests.

1.5. **Freedom of Association**

The Constitution must guarantee the right of Freedom of Association and, more specifically, *the right to form and join trade unions*. The Constitution should not include the right to disassociate or the right not to associate. The ILO leaves the question of closed shop agreements to individual nation states to decide, and does not deem the closed shop and agency shop to constitute an infringement of Freedom of Association.

Accordingly the rights to freedom of association and the right to form and join trade unions should be qualified in such a manner in the limitations clause as to permit closed and agency shops. The wording of such a clause might read as follows :

"Nothing in the Bill of Rights shall preclude measures permitting trade unions and employers concluding union security agreements".

Further, no law should prevent representative trade unions from negotiating collective agreements binding on all workers covered by such agreements.

1.6 **Limitation on Trade Union and Workers Rights**

Provisions of the current Public Safety Act do not include the power of the state to suspend the right to strike, under states of emergency. COSATU is of the view that the constitution needs to ensure that fundamental trade union and worker rights are not subject to suspension, including during states of emergency.

1.7 **Workers Rights**

To convey the importance which the constitution attaches to workers rights, all provisions dealing with trade union and workers rights, should be grouped under a heading in the constitution called "Workers Rights".

2. **SOCIO-ECONOMIC RIGHTS IN THE NEW CONSTITUTION**

It is possible to include socio-economic rights in the Bill of Rights while not imposing legal obligations that are as strict and binding as those guaranteeing civil and political rights. Socio-economic rights must be costed against an audit of available resources.

We should include directive principles for progressive realization by the State, as was done in the Irish, Indian, and Namibian Constitutions. Such directives of state policy would put an obligation on the state to undertake appropriate legislative and executive action to the maximum of its available resources in order to achieve the progressive realization of basic social, educational, economic and welfare rights for the whole population.

3. **SEPARATION OF POWERS BETWEEN NATIONAL AND PROVINCIAL GOVERNMENT**

A number of parties and business have made constitutional proposals which will lead to the continued fragmentation and balkanisation of our country- politically, economically, and otherwise. The Interim Constitution itself leans in this direction, which undermines effective implementation of the RDP.

The RDP attempts to overcome our history of balkanisation, division, and deep inequality, by building a united nation. A nationally co-ordinated programme of reconstruction and development requires an effective and strong national government, a national framework, and national standards. This would normally be true. It is particularly so in the context of the legacy which centuries of colonialism and decades of apartheid have left us with.

National government should exercise authority over labour, economic, trade, industrial policy and other strategic areas like education, health, transport, policing, local government. There should be a unitary state- we reject fragmentation and an ethnic based state. Provincial powers should not include the power to determine conditions of employment of public servants or any industrial relations powers.

The RDP attempts to overcome the legacy of huge inefficiency, duplication, and bureaucracy which characterised apartheid. Yet, minority interests in the country continue to attempt to entrench a system which would have precisely the same result. In particular, proliferation of expensive and unwieldy provincial government structures and bureaucracies would have the effect of draining the countries resources, and undermining effective national co-ordination. COSATU supports the objective of bringing government closer to the people. The emergence of provincial fiefdoms, however, could if anything have the opposite result, as it is likely to undermine the effective operation of the third tier of government-local government.

The powers of provincial governments and the national government should

be more closely circumscribed. Specifically, the pre-eminence of national legislation should be spelled out, and it should be made clear that provincial legislation becomes inoperable to the extent that it is incompatible with national legislation. At the moment, provincial legislatures have overriding powers in respect of the matters in schedule 6, subject to five exceptions. This balance should be shifted to give the national legislature overriding powers in the event of conflict, especially where it is necessary for the implementation of national reconstruction and development, labour standards and maintenance of economic unity.

Constitutional Principle XIX provides that the powers and functions at the national and provincial levels of government shall include exclusive and concurrent powers as well as the power to perform functions for other levels of government on an agency or delegation basis. The criteria to be applied in the allocation of powers to the national government and provincial governments are set out in Constitutional Principle XXI. On the whole these principles do not preclude a state with strong powers of central government. The powers of provinces should be clearly defined.

Where it is effective to do so, provincial governments should have the task of giving effect to national legislation with provincial legislation specifically designed for the needs of that province.

The principles set out above underpin COSATU's approach on the question of separation of powers. COSATU would want to make more detailed submissions on this matter at a later stage.

4. **DEEPENING DEMOCRACY IN GOVERNMENT**

4.1. **Accountability and The Right to Recall**

In a constituency based electoral system, the right to recall would be much easier to exercise. Under a national system of proportional representation, the Constitutional Assembly will have to create a mechanism providing for a minimum number of voters demanding the recall of a parliamentarian. COSATU is in favour of combining a system of proportional representation (required by Constitutional Principle V111) with a constituency based system, which will allow for accountability of elected representatives, and recall by their constituencies.

4.2. **Majority Rule**

The principle of majority rule must apply at all levels of government including cabinet.

4.3. **The Role of Civil Society**

The state shall have an obligation to promote and strengthen civil society organisations, consult with them in policy formulation, and create a conducive environment for them to operate without interference.

The Constitutional Court should be broadly representative of society. The procedure to appoint it should include a cross section of civil society, including trade unions.

4.4 **Referenda**

COSATU supports the right of citizens in principle to trigger referenda to overturn legislation. This right is included in a number of constitutions internationally. The constitution would have to determine a minimum threshold of support required to call referenda. Further discussion would be needed on numbers. The figure arrived at would need to be high enough to avoid frivolous referenda being triggered, which would place an unnecessary burden on the state and undermine democracy. On the other hand, it should not be so high as to make it impossible for citizens to have recourse to the referendum instrument.

4.5 **Media Diversity**

The state should have a responsibility to promote freedom and diversity of the media.

5. **PUBLIC ADMINISTRATION**

5.1. **Nature of the Public Service**

- 1 The final constitution should contain only a framework for the regulation of the Public Service.
- 2 The Public Service should be:
 - 2.1 professional and career-orientated,
 - 2.2 broadly representative of the South African society,
 - 2.3 efficient, effective and responsive in terms of the delivery of service to the public,
 - 2.4 loyal to the government of the day,
 - 2.5 transparent and accountable to the public and Parliament.

- 3 National legislation should be adopted to ensure merit, equity and representivity in appointments and promotions, and create ability for change, development and administrative reform.
- 4 The rights of public sector workers at all levels of government, as well as the terms and conditions of service of its members, should be regulated by national labour law. Provision should be made for an ombud relating to the Public Service.
- 5 The extent of the Public Service Commission's powers and functions shall be compatible with democratic governance and accountability. Provision shall be made for limited executive appointments, only at senior levels of the Public Service, and with posts requiring confidentiality. The composition of the Public Service Commission needs to be reviewed.
- 6 During their tenure of office no public official shall use his or her position to directly or indirectly enrich themselves or to directly or indirectly benefit any person in a manner which is not fit and proper in the circumstances.
7. The police shall be regarded as part of the public service.

6. FINANCIAL INSTITUTIONS AND PUBLIC ENTERPRISES

6.1. Financial and Fiscal Commission

1. A Financial and Fiscal Commission (FFC) broadly representative of society shall be established to advise government of the apportionment of revenue to the provinces. Its function should be broadly similar to the existing FFC.
2. National government shall not guarantee loans by Provincial and Local Government unless the FFC confirms that such loans comply with national norms as set out in an Act of Parliament.
3. Revenue collection should be national and allocation to provinces should be based on equity considerations.
4. The Constitution should not be too detailed or prescriptive in determining the functioning of the FFC.

6.2. The Reserve Bank

There is inevitably a tension between the independence of a central bank

on the one hand, which is designed to obviate problems of corruption, lobbying, and manipulation of interest rates, and the problem of an independent central bank subverting national economic policy on the other hand. In Germany, the Central Bank is completely independent, while in France it falls under the control of the Ministry of Finance, while the Central Bank of Canada is quasi-independent.

COSATU would favour a constitutional provision on the Reserve Bank which incorporates the following principles:

- * representivity of the Reserve Bank Board
- * while having operational autonomy, the Reserve Bank would have the obligation to promote the socio-economic development of the entire society
- * the Reserve Bank should be open and transparent, subject only to limitations acceptable in a democratic society based on freedom and equality.

3 June 1995

FEDSAL SUBMISSION TO THE PUBLIC HEARINGS OF THE CONSTITUTIONAL ASSEMBLY OF SOUTH AFRICA

1. INTRODUCTION:

It is a privilege as one of the 3 labour federations of South Africa to be invited to make this contribution to creating a democratic foundation for our country, our people and more importantly, to paving the way for a democratic, equitable and just working environment at this fundamental level.

FEDSAL would also take this opportunity to congratulate the Constitutional Assembly and its theme-committees on the effort you are investing in creating a new constitution, the time you spend on hearings and gathering relevant contributions and submissions and the way in which you are dealing with the task at hand.

FEDSAL makes this submission to the Constitutional Assembly as a frame of reference in which it advocates the compilation of a new constitution. FEDSAL reserves the right to make concrete proposals on the Constitutional Bill once it is published for public comment.

2. FUNDAMENTAL RIGHTS

The interim Constitution, as the preamble reads, strives

"to create a new order in which all South Africans will be entitled to a common South African citizenship in a sovereign and democratic constitutional state in which there is equality between men and women and people of all races so that all citizens shall be able to enjoy and exercise their fundamental rights and freedoms."

FEDSAL, in representing members of its 17 Affiliates as blue and white-collar workers in the electrification, finance, local government, mining, motor, postal and telecommunications, public service, steel and petrochemical, tertiary and other parastatals and transport sectors of the South African market, concentrates on the fundamental rights and interests as defining being human and being a worker in the present and the future.

2.1 Definition, protection and promotion of fundamental rights

Chapter 3 of the interim constitution (sections 7 - 36)

is the statute of fundamental rights which FEDSAL regards as essential to every person's dignity and ability within the citizenship of South Africa. By way of example, FEDSAL emphasises the right to association, right against discrimination, right to freedom of expression and exercise of religion, belief and opinion irrespective of that in which the individual may believe. More broadly, the rights of trade unions and trade union federations to conduct their business to the advantage and always, to the protection of workers' rights.

Section 27 of the interim constitution provides that every person has the right to fair labour practice and that people may consequently, establish trade unions and associate with groupings of their choice with the aim of organising and bargaining collectively. Furthermore, workers have the right to strike on issues of fundamental importance, within the parameters of their fundamental rights. FEDSAL conveys this to the Constitutional Assembly in the opinion that it and its members, accept no infringement or diminishing of these positive rights, or any of the fundamental rights contained in Chapter 3. Section 27 in particular, is the paradigm for our existence as unions and federations and any infringements on these rights is strongly discouraged by FEDSAL.

FEDSAL proposes that the Constitutional Assembly pay great attention to Chapter 3 for the reason that it gives expression to the rights of humanity and our fate in this life to be workers, also comprehensively setting out the rights to which workers and trade unions are entitled and function by. Chapter 3 is the essence of our purpose as organised labour, it is the all-encompassing text for the concepts of "work/labour" and "worker" and the new constitution must clearly reflect this.

2.2 Specific fundamental rights

FEDSAL departs from the point that the fundamental rights and interests such as the rights of exercise of religious freedom, cultural association, the right to education, but to highlight a few, are the core interests and rights of the members FEDSAL represents.

FEDSAL in the interest of its members, must emphasise sections 8, 14, 15, 16 and 17 as being not only regarded as the essence of the statute of humanity, but also the statute of labour. We as federations are compelled to secure fundamental rights for everyone in South Africa. We as federations are compelled to promote these fundamental rights and fight for the protection of equality, life, human dignity, freedom and security of person, abolition of servitude and forced labour, privacy, religion, belief and opinion, freedom and political rights, justice, economic activity, labour relations, the environment, education et al. These are the rights inherent and owing to every person and labour without whole and dignified people is nothing at all.

2.2.1 Religion, belief and opinion (section 14)

This is the fundamental right, one supported, lobbied and promoted by FEDSAL. It is in the interest of the nation as a whole that the exercise of religion or belief, in thought or in action, in private or in public be regarded as a fundamental pillar of strength and fortitude of the nation and thus also the working community of South Africa. FEDSAL supports the principle and right that all convictions, beliefs and religions in South Africa exist and are freely practised. The fact remains that within this religious diversity of the South African Community, we as FEDSAL reaffirm the right to practice, promote and support Christianity in all ways without infringing on the rights of others.

Christian values have a place in labour. It is through meaningful labour that a person reacts in a responsible manner to God. The labourer/worker has God-given ability and the worker is thus responsible for his/her labour through the employment and utilisation of such ability. Labour implies service and service is applied for the greater relief of human suffering as weighed against material gain. The worker in so doing, honours God and is encouraged to renew, to develop and preserve the world and the environment in which he/she finds himself/ herself. Labour creates possibility and opportunity which in turn creates a stable environment in which we are entitled to live and strive to live in.

2.2.2 Equality, Life and Human dignity (sections 8, 9 & 10)

FEDSAL is here for the worker and not the worker here for FEDSAL. FEDSAL will pursue the protection of these rights and freedoms as being fundamental to each worker's pride and dignity. Based on these values, labour and service constitute the basis for improving the quality of life of all workers in South Africa. More contentious examples such as the unacceptable drive for redistribution of wealth to resolve economic problems in South Africa or economic activity on Sundays for example, does not directly increase production and income. Is it in fact even necessary? What is necessary however, is greater representation in Labour relations, the right to associate and so promote your individual interests and the right to education and development. These in turn, promote equality, life and dignity.

The Constitutional Assembly and its delegated theme committees must never infringe on the individuals all encompassing right to life and dignity. The Constitutional Assembly, in their task of creating a new order and constitutional foundation for South Africa should at all times consider three principles which are democracy, equality and life.

3. SOCIO-ECONOMIC RIGHTS

Section 26 of the interim constitution clearly defines the right of the individual to freely engage in economic activity and to pursue a livelihood anywhere in the national territory.

In view of this FEDSAL represents the members of its affiliates as workers, consumers, taxpayers and citizens, and FEDSAL supports policies that will turn South Africa into a winning nation in a global context.

FEDSAL strives to secure the right of all citizens to negotiate individually and collectively on economic matters and to enter into legally enforceable contracts. We also encourage the rights to training and development of workers by government, business and the labour movement, jointly and separately, as an essential means of improving upward mobility, national efficiency and international competitiveness. In so doing, FEDSAL also believes that sustainable economic development requires a fair distribution of income among workers, managers, owners, clients, creditors and other stakeholders in private and public enterprise.

FEDSAL consequently, advocates the principles of market-related economy, individual economic activity and again democracy as principles in the interest of economic development both nationally and internationally, with the aim that economic growth and development will go to addressing social concerns and interacting with such concerns to find relief and development. FEDSAL reiterates that this must be a common interest of government, business and organised labour is to constantly improve South Africa's national standard and international competitiveness. If actions of any one of these parties makes the achievement of this goal impossible, not only that party, but all the social partners will carry the consequences. This highlights the important interaction of socio-economic factors and the importance of constitutional ability for the individual worker which entrenches his/her rights to free economic activity and social upliftment as safeguards against political decisions which may harm the interests of FEDSAL's members as workers, consumers, taxpayers and citizens.

3.1 Right to own private property

FEDSAL contends that the right to own private property is an important cornerstone of individual advancement and therefore supports the entrenchment of this right in the new constitution. Modern economies depend on the use of money as a means of exchange, a unit of calculation of prices and wealth, and a store of value. Private property also then includes money and financial assets. The rights to these assets must be ensured if the economy is to function well and sustain itself.

3.2 Other economic aspects

Reference is made under point 5, to aspects of economic importance which do no doubt, impact on the socio-economic circumstance within South Africa.

4. LEVELS OF GOVERNMENT

FEDSAL reiterates its commitment to the tripartite process involving organised labour, organised business and government in their common interest of constantly improving South Africa's national and international situation. FEDSAL is an apolitical federation, having no affiliation with any South African political party, and it and its members can thus objectively view the levels of government in this country without being accused of bias or promoting hidden agendas. FEDSAL only seeks an equitable distribution for its members.

FEDSAL raises one concern at this stage of the debate. The debate being one which has been heard and thrashed out many times without a clear and apparent solution. This is the concern that local governments of the pre-1994 era had much governing power and ability and that with the redefinition of provincial boundaries and the consequent establishment of 9 Provincial legislatures, these local governing structures have lost some of the power and ability to govern effectively. Supersession of local bodies by provincial bodies is of concern to FEDSAL.

This is admittedly to some extent a debate of academic trend ie. Federalism vs Regionalism vs Nationalism. But it must be clearly understood that Chapters 9, 10 & 11 providing for provincial, local and traditional authorities, are not finalised and that the theme-committees take heed of the dangers lurking in a seemingly academic debate.

4.1 Supersession of local governing ability

FEDSAL is aware of and needs to point out that the creation of the hierarchy of constitutional structures and national, provincial and local structures / constitutional bases, may lead to an over-lapping of ambits of power between either the national and provincial and/or between the provincial and local levels of government.

Points in case are examples such as the provision of electricity, water, sewage facilities and other domestic services which are now being regarded as provincial concerns rather than local concerns. This directly

influences the availability of jobs on local government levels.

This issue is raised purely in the interests of the labour force represented by FEDSAL, since the overlapping of institutionalised and constitutional structures may result in the loss of ability, functions, powers and resources of the respective governments with a consequent loss on job availability or security. And as we know from experience such loss may even result in mass-retrenchments and dismissals.

Based on these facts, FEDSAL must in the interest of national unity, protection and preservation of labour opportunities, emphasise that the Constitutional Assembly consider the reality of the supersession of power by provincial government over local government and provide the legislative framework for such protection of workers at the respective levels and not only regard it as an academic debate.

FEDSAL must ensure protection of workers' rights and growth and neither the country, the workers nor the national economy can be saddled with mass-retrenchments or job losses when we are currently headed on the road to progress, simply because local government functions (and consequently jobs) have been swallowed in the greater provincial or national structures.

5. OTHER ASPECTS OF THE NEW CONSTITUTION

5.1 Fundamental rights

At this point FEDSAL returns to the fundamental rights of the individual worker as contained in Chapter 3. Throughout this submission the words democracy, workplace-democracy, equality and development, are repeated in the hope that FEDSAL may convey to the Constitutional Assembly its great social, economic, moral and practical efforts to creating a new constitution for South Africa.

In view of this, FEDSAL must reiterate its pursuit of the interests in life, dignity and identity. Whether this be in terms of society at large, race, gender, language, religion or opinions, each and every individual has the fundamental right to expression and protection without infringing on the fundamental rights of others.

5.2 Accountability

FEDSAL within the reaches of life, dignity and freedom, stands firm on aspects such as accountability in private and public (more so in public) business, the need to level the economic playing-field through affirmative action for the actual advancement of the individual based on merit, and technological advancement and industrial restructuring that all play in on and may affect job

security.

Accountability for one, reaches from the right to recall all the way down to individual accountability. FEDSAL supports the principle of accountability and emphasises the fact that no-one should be regarded as being above the law. More specifically we look at section 24 concerning accountability for administrative decisions. FEDSAL requires justification for such decisions to be built into the legal framework of the constitution. In all instances, considering the provisions of section 24, justification for administrative decisions should be given and not simply when applied for on request by a party.

The four steps for justification should be applied on not only rights issues (ie. rights contained in chapter 3) but also in respect of rights, interests and legitimate expectations not specifically mentioned in chapter 3.

5.3 The Auditor-General

(Sections 181-184) FEDSAL is of the opinion that this post must be filled by a person(s) who cannot be compromised by the departments he/they are to audit. The complete findings and recommendations are to be made known to the public, together with such department's reply and any proposals or follow-up decisions to be published in the interest of transparency.

5.4 The Reserve Bank

(Sections 195-197) As central bank of South Africa, it should stand apart and be operated independantly of the government of national priority in the interest of protecting internal and external value of the currency in the interest of balanced and sustainable economic growth in South Africa.

5.5 The question of whether or not a provision on public enterprise should be included in the final text of the constitution?

FEDSAL reaffirms its position that such provision should be included to make special mention and guard against misappropriation and provide for situations where the questions of privatisation/commercialisation would be relevant.

8. CONCLUSION

FEDSAL reaffirms its congratulations to the Constitutional Assembly for the manner in which they are proceeding with the task of drafting a new constitution, and similarly FEUSAL reaffirms that the views set out in this submission are aimed at aiding the drafting but FEDSAL will again deliver comment once the Bill is published for public comment.

LIST OF PARTICIPANTS

CONSTITUTIONAL ASSEMBLY NATIONAL SECTOR PUBLIC HEARINGS
PUBLIC HEARING : LABOUR

Saturday 3 June 1995

DELEGATES:

ABRAHAM James
FEDSAL
P.O. Box 2096
NORTHCLIFF 2115
Phone (011) 476 5188/59
Fax (011) 476 5131

BEYER Jennifer
FEDSAL (Hospersa)
6 Berea Terrace
Berea
EAST LONDON
Phone (0431)57446 (H) (0431) 491181 (W)

BLAAS A
C A
P.O. Box 15
CAPE TOWN 8000
Phone (021) 403 3332
Fax (021) 403 3332

BURGER J W
S.A. Iron and Steel & A Union
P.O. Box 19299
PRETORIA WEST 0117
Phone (012) 327 4914
Fax (012) 327 4923/6

BUTHELEZI Ernest
COSATU
P.O. Box 10261
JOHANNESBURG
Phone (011) 337 6450 or (021) 637 9040
Fax (011) 333 4451 or (021) 638 3761

CHANNING E
NEDLAC
P.O. Box 442
AUCKLAND PARK
Phone (011) 482 2511

CLOETE Henry
FEDSAL (Hospersa)
Victoria Hospital
Alphen Hill Road
WYNBERG Cape
Phone (021) 799 1111

COLEMAN Max
Constitutional Assembly
P.O. Box 15
CAPE TOWN
Phone (021) 403 3104

COLEMAN Neil
COSATU

CONRADIE Gizelle
SASBO
P.O. Box 31537
BRAAMFONTEIN 2017
Phone (011) 403 3115
Fax (011) 339 7963

DAVIS Anthony
FEDSAL
56 10th Avenue
GONUBIE 5256
Phone (0431) 403 485 (h) (0431) 491326 (w)

DE VOS C J
FEDSAL
P.O. Box 31100
BRAAMFONTEIN 2017
Phone (011) 339 2884/5/6/7
Fax (011) 339 2888

DEETLEFS J P
FEDSAL
P.O. Box 193
PRETORIA 0001
Phone (012) 327 1069
Fax (012) 327 1069

DUBE June
COSATU
P.O. Box 9451
JOHANNESBURG 2000
Phone (011) 331 9326/7
Fax (011) 331 5418

DYANTYI Bennett Zinikele
Black Trade Union of Transnet
PO Box 7197
EAST LONDON 5200
Phone (0431) 433614
Fax (0431) 438025

FERREIRA Danny
FEDSAL
12 Lanark Crescent
NEW GERMANY 3610
Phone (031) 705 2883 (H) (031) 363 2007 (W)
Fax (031) 706 2883

FOURIE GJ
FEDSAL
Frere Hospital
East London 5200
Phone (0431) 491003
Fax (0431) 435 317

FREEBORN Robert
FEDSAL
26 Burt Drive
Newton Park
PORT ELIZABETH 6045
Phone (041) 413 251
Fax (041) 411 466

GAMNDANA Tembeka
Constitutional Assembly
P.O. Box 15
CAPE TOWN 8000
Phone (021) 403 2906

GEORGE Cyril M
C A
49 Browns Grove
SHERWOOD 4091
Phone (031) 207 1761 Fax (031) 207 1761

GODONGWANA Enoch
COSATU
P.O. Box 260483
EXCOM 2023
Phone (011) 832 203
Fax (011) 833 6330

GUMBI Thembi
Abspersa - FEDSAL
14 Steenbok Koedoespoort
PRETORIA
Phone (012) 333 6252
Fax (012) 333 9248

GRATZ Charmaine
FEDSAL
39 Irvine Road
Bonnie Doon
EAST LONDON 5241
Phone (0431) 352 932

GROBLER L
FEDSAL
P.O. Box 35343
MENLO PARK
Phone (012) 466 276
Fax (012) 346 1157

GUMEDE D M
C A
P.O. Box 15
CAPE TOWN 8000
Phone (021) 403 2733
Fax (021) 403 2070

GWALA Sanku
SARHWU
P.O. Box 8059
JOHANNESBURG 2000
Phone (011) 336 5429
Fax (011) 336 1100

HOFMEYER Willie
CA - TC5
P.O. Box 15
CAPE TOWN 8000
Phone (021) 403 2727
Fax (021) 461 0462

HOWARD Randall
COSATU
P.O. Box 9451
JOHANNESBURG 2000
Phone (011) 331 9321 - 8
Fax (011) 331 5418

HUSY Dave
FRRP
P.O. Box 114
WITS 2050
Phone (011) 339 6671
Fax (011) 339 6808

JACKSON Denis
FEDSAL (Hospersa)
3 Retief Street
DESPATCH
Phone (041) 933 3055

JORDAAN W G
Private
605 Lodge Indwe
Sunnyside
PRETORIA 0001
Phone 083 7788491

KGOALI Joyce
M P
P.O. Box 15
CAPE TOWN 8000
Phone (021) 403 2845
Fax (021) 403 2372

KHAILE Setena
SACCAWU (COSATU)
P.O. Box 10730
JOHANNESBURG 2000
Phone (011) 337 1110
Fax (011) 337 3827

KLEIN Frank
Dutch TV
12 Marmion Road
Oranjezicht
CAPE TOWN 8001
Phone (021) 45 4442
Fax (021) 461 2123

KöSTENS Hermann
FEDSAL (Misa - Durban)
P.O. Box 2187
DURBAN 4000
Phone (031) 304 8256
Fax (031) 306 3895

KöSTLICH Liesel
SATA - FEDSAL
P.O. Box 2823
BELLVILLE 7535
Phone (021) 948 9595
Fax (021) 949 1417

KHUBEKA Solomon
NACTU
P.O. Box 5718
JOHANNESBURG 2000
Phone (011) 833 1040/5
Fax (011) 833 3480

MALINYE Kenneth
CAWU (COSATU)
P.O. Box 1962
JOHANNESBURG 2000
Phone (011) 337 7895
Fax (011) 337 6367

MARTINSICH Eric
FEDSAL
P.O. Box 2823
BELLVILLE 7535
Phone (021) 981 7080 W (021) 948 9595
Fax (021) 949 1417

MASERUMULE Bethuel
FRRP
P.O. Box 114
WITA 2050
Phone (011) 339 6671
Fax (011) 339 6808

MASHISHI Petrus
COSATU
P.O. Box 4384
JOHANNESBURG 2000
Phone (011) 331 2821
Fax (011) 331 8695

MASILWANE Pat
FEDSAL
P.O. Box 11817
KLERKSDORP 2570
Phone (018) 462 1362
Fax (018) 462 1362

**MOMAPI Dan
COSATU**

Phone 873 2610
Fax 873 1272

**MEYER Kurt
FEDSAL (Hospersa)**

P.O. Box 5075
KARL BREMER 7531
Phone (021) 918 1257 (W) (021) 981 6721
Fax (021) 948 6608

**MFEKA Themba
COSATU**

P.O. Box 3528
JOHANNESBURG 2000
Phone (011) 331 7721
Fax (011) 331 3750

**MLAZI Cwane Ian
COSATU**

E.420 Ntuzuma
DURBAN 4000
Phone (031) 304 1690

**MODISE Tumediso
National Union of Farmworkers**

7th Floor Lekton House
Wanderers Street
JOHANNESBURG 2001
Phone (011) 333 3054/5

**MOHOMANE Lucky
FEDSAL - Hospersa**

14 Steenbok Street
KOEDOESPOORT
Pretoria
Phone (012) 933 2054
Fax (012) 933 3135

**MOLAHLEHI Edwin
IMMSA**

Phone (011) 482 2390
Fax (011) 726 2540

MOLEFE Mapopi
NACTU
P.O. Box 1585
GAUTENG 2000
Phone (011) 333 9058/9300/1
Fax (011) 337 1908

MOTLANTHE K
COSATU
P.O. Box 2424
JOHANNESBURG 2000
Phone (011) 833 7012
Fax (011) 836 9615

MQWATHI Mncedisi Simon
COSATU Western Transvaal
P.O. Box 6070
VANDERBIJLPARK 1900
Phone (016) 551 855/6
Fax (016) 225 105

MULAUDZI Mighty
NACTU
JCI Services
Private Bag 976
RANDFONTEIN 1760
Phone (011) 411 2298 (W) (011) 693 5910 (H)

NAMISE Simphiwe
COSATU (NUM)
P.O. Box 2424
JOHANNESBURG 2000
Phone (011) 833 7012
Fax (011) 836 6051

NGALEKA Victor
TLRIG
P.O. Box 213
SALT RIVER 7924
Phone (021) 47 6375

NKOSI November
NACTU
P.O. Box 5718
JOHANNESBURG 2000
Phone (011) 833 1040/5
Fax (011) 333 3480

PAPANE Shele
COSATU
P.O. Box 3435
VEREENIGING 1933
Phone (016) 55 1855
Fax (016) 22 5105

PATEL Ebrahim
COSATU
P.O. Box 194
SALT RIVER 7925
Phone (021) 474 570
Fax (021) 474 593

RASMENI S M
Constitutional Assembly
P.O. Box 15
CAPE TOWN 8000
Phone (021) 403 2888
Fax (021) 403 2473

RONNIE Roger
COSATU
P.O. Box 49
ATHLONE 7760
Phone (021) 697 1153
Fax (021) 696 9175

SCHROEDER Ighsaan
KHANYA COLLEGE
Newkirk Building
c/o Kerk and Nugget Streets
JOHANNESBURG 2001
Phone (011) 337 8604
Fax (011) 337 2728

SELEPE Anthony
COSATU
Phone 315 6300
Fax 315 0584

SENNA Violet
COSATU
P.O. Box 9559
JOHANNESBURG 2000
Phone (011) 337 2147
Fax (011) 337 2148

**SEPTEMBER Connie
COSATU**

c/o Cosatu House
Leyds Street
BRAAMFONTEIN
Phone (011) 339 4911
Fax (011) 339 4060

**SKULU Bones
COSATU (SACCAWU)**

P.O. Box 10730
JOHANNESBURG 2000
Phone (011) 337 1110/9
Fax (011) 337 3827

**SMITH Cornelius
FEDSAL**

Private Bag X4
MAYORSWALK 3208
Phone (0331) 950 280
Fax (0331) 949 657

**STRYDOM Ingrid
FEDSAL - Hospersa**

P.O. Box 165
MEYERTON 1960
Phone (011) 933 8000
Fax (011) 933 3135

**THABETHE Elizabeth
MP / CA**

P.O. Box 15
CAPE TOWN 8000
Phone (021) 403 3225
Fax (021) 403 2073

**VAN HEERDEN F J
NP Theme committee 5**

P.O. Box 15
CAPE TOWN 8000
Phone (021) 403 2911

**VAN NIEKERK Peter
FEDSAL**

119 Kerk Street
PAROW WEST
Cape Town 8001
Phone (021) 930 3461

VAN VUUREN Willem

FEDSAL

P.O. Box 40172

ARCADIA 0001

Phone (012) 323 7819

Fax (012) 326 8100

WATKINS Angela

COSATU

P.O. Box 7113

BLOEMFONTEIN 9300

Phone (051) 354 000

Fax (051) 353 605

WATSON A

C A

P.O. Box 15

CAPE TOWN 8000

Phone (021) 403 3577

Fax (021) 403 3568

