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**CONSTITUTIONAL ASSEMBLY**

**THEME COMMITTEE 4  
FUNDAMENTAL RIGHTS**

**20 April 1995**

**OLD ASSEMBLY CHAMBER**

**DOCUMENTATION**

## TABLE OF CONTENTS

No.	Detail	Page
1.	Notice of meeting and Agenda	1
2.	Synopsis of submissions	2 - 9

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# CONSTITUTIONAL ASSEMBLY

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## THEME COMMITTEE 4 MEETING

### FUNDAMENTAL RIGHTS

Please note that a meeting of the above Group will be held as indicated below:

**Date** : Thursday, 20 April 1995  
**Time** : 14h00 - 18h00  
**Venue** : Old Assembly Chamber

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#### AGENDA

1. Opening
  2. Matters Arising: See Agenda Items Below
  3. See separate document entitled "**Party Submissions**"
    - 3.1 Freedom of Religion, belief and opinion
    - 3.2 Freedom of Association
    - 3.3 Freedom of Demonstration
  4. Public Submissions: Synopsis of Submissions (3.1 - 3.3 above)
  5. Any Other Business
  6. Closure
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**H Ebrahim**  
**Executive Director**  
**Constitutional Assembly**

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**SYNOPSIS OF PUBLIC SUBMISSIONS**

**1. FREEDOM OF RELIGION, BELIEF AND OPINION**

**McMorran JA (17); Brussow FA (82); Van Heerden (91); Mahabeer (128):** Right to be included.

**Christian Science Committee on Publication for the Northern Province of South Africa (26):** Provision be made for the practice of Christian Science relating to the choice of therapy (the right to choose health care and the right to refuse medical treatment) and the right to practice spiritual healing through prayer.

**Prozesky MH (19) :** Following should be retained: freedom of belief both religious and secular, freedom to express such beliefs openly, freedom from discrimination on grounds of belief both religious and secular, equality for all forms of religion. As a logical consequence, the first six word of the Preamble ... plus the word of "Nkosi sikelel' iAfrika" etc at the end and the words "So help me God" in the oaths of office, should be replaced with appropriate alternatives.

**The English Academy of South Africa (30) :** Equal protection to all religions.

**Conscientious Objector Support Group (29) :** Every person shall have the right to freedom of conscience, religion, though, belief, and opinion, which shall include academic freedom in institutions of higher learning and the right to conscientious objection to military service.

**United Christian Action (39) :** Freedom of worship, and the right of parents to educate their children according to their religious convictions, to be included.

**IFP (41) :** Proposal in clause 20 of Attachment II:

**21. 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.

**Prinsloo E (73) :** Complete freedom of belief and religion.

**African Enterprise (76) :** Proposal:

**5. Religious Freedom**

i Everyone has the right to freedom of thought, conscience and

religion. This right includes the freedom of change one's religion or belief, and the freedom to profess and disseminate one's religious beliefs either alone, or in community with others, in public or in private.

- ii Religious beliefs should never be subjected to adjudication before a secular court. Further, the state should refrain from any attempt to define religion or prescribe religious behaviour, except where it is "contra bonos mores", against good morals.
- iii Freedom of religion also involves the right to international affiliations and fund-raising.
- iv We affirm the autonomy of religious bodies over their theological and ecclesiastical affairs. This does not imply that the state should be secularistic or that it has not spiritual accountability or that the church may not challenge the state if it falls short of its divinely ordained responsibilities. But it does affirm that there shall be no established state religion.
- v Religious people and communities, singly, jointly or collectively, shall have the right through their own representatives to address or make representation to the state in public or in private and enter into dialogue on matters important to them. This being the case, a state Department of Religion would be totally unacceptable.

#### **8. SPIRITUAL RESPONSIBILITY OF PARENTS AND COMMUNITIES**

- i The faith development of children is the primary responsibility of parents, guardians and religious communities and parental consent is required in all matters pertaining to their religious instruction and worship in schools.
- ii As children mature into adulthood, they have progressively more constitutional rights concerning freedom of debate, conscience and religion, and these should be promoted and protected.
- iii There should be freedom within school hours for the provision of religious and/or moral ethical education.
- iv In schools that offer religious education, each child may attend either single-faith instruction in the religion of his or her family or instruction in world religions or both.
- v In the case of a single-faith curriculum, school communities should ensure that suitably qualified persons from churches or other religious communities give religious instruction to their own adherents.
- vi Religious communities shall be entitled to establish and maintain their own educational institutions at all levels. Such institutions shall have the right to financial support by the state, provided that they comply with recognised academic norms.

**South African Anglican Theological Commission of the Church of the Province of South Africa (81)** : The State should be secular and should affirm those of different religions and those who have none. Each person should have the freedom to propagate his or her faith as long as it is not oppressive to another. The State should guarantee religious expression and freedom of conscience. Each has the right to worship.

**Dekenah R (105)** : The right to believe what one likes, to hold opinions about matters without having to back them up to express views, to be included.

**World Conference on Religion and Peace: South African Chapter (106):**

**Submission 5:** Whilst section 14(2) of the Interim Constitution does make provision for religious observances to be conducted in state or state-aided institutions, this should also include provision for prescribed private religious observances.

**Submission 7:** Section 14(1) of the Interim Constitution should be amended after the words 'opinion' by adding the words '*including the right to change their religious allegiance*' and by omitting the phrase about academic freedom which should be in a more appropriate position.

**Submission 8:** Holidays for Religious Festivals. It is current practice to declare certain Christian festivals as public Holidays. Consideration should be given to affording members of other religions the constitutional right to paid holidays for specified religious festivals.

**National Assembly of the Bahai'is of SA (165)** : Guarantee free choice in religious faith and practice.

**Conservative Party of South Africa (173)** : Clause 11.5 of the Draft Constitution:

1. The fundamentally Christian nature of the State shall concur with the contents and intention of the Confessio Belgica.
2. Provided that the Christian nature of the State shall not be affected, every person shall have the right to freedom of belief and conscience and the freedom of religious and political beliefs shall be guaranteed.
3. Undisturbed religious practice shall be guaranteed.
4. Christian religious ministry of the defence force, the police forces, the security services of the State, Public Service Institutions, and Christian religious instruction or Christian religious practice in schools and Christian religious broadcasts by the lawful services shall be guaranteed.

**Stokes JE (182)** : Right to be included.

**Moodley I (185)** : Right to be included.

**Singery MAR (194)** : Rights to freedom of religion, religious expression and services, to freely evangelise be included.

**Underberg Christian Fellowship (205)** : Right to educate children according to religious beliefs.

**Hague ES (222)** : On the grounds of freedom of speech and belief, no restrictions should be placed on the practice of one's religion, that is, religious faiths should have the right to gather and worship according to their beliefs, and have the right to propagate their faith without hindrance.

**Johnson V (247)** : Freedom of religion, religious expression and religious association to be included.

**Jeftha AJ (248)** : All marriages should be recognised and given equal status especially Moslem marriages. The law should not discriminate regarding religion.

**Conscientious Objector Support Group (264)** : Every person shall have the right to freedom of conscience, religion, thought, belief, and opinion, which shall include academic freedom in institutions of higher learning and the right to conscientious objection to military service.

**Boyd D (299)** : Freedom of religion to be included.

**Ayittey GBN - Free Africa Foundation (311)** : Proposal:  
'The right to practice any religion of his/her choosing.'

**Religious Society of Friends (326)** : Supports submission of *Conscientious Objector Support Group (264)*

**Ashfield M (344)** : Suggested amendment: This should include the right to profess and disseminate one's religious beliefs either alone, or in community with others, in public or in private and this right includes the freedom to change one's religion or belief.

**Blignaut E (354)** : The law allowing religious freedom should also make it possible for any group to register itself as a church.

**Egleton DM (388)** : Add to section 14(1) of the Interim Constitution .... except religions involving occultic and satanic or other evil beliefs. Secular Humanism shall have the status of religious belief.

**Ndlovu N (442)** : Everyone must have his choice of worship.

**Nottingham C (445)** : Any new religion should be allowed without the need to show links with accepted religious thinking.



**ML Sultan Technikon (Dr SM Qono) (486)** : The right to practice one's own religion must be confined to their own privacy, in this way, respecting the right of privacy of the individual.

## 2. FREEDOM OF ASSOCIATION

**JA McMorran (17); Confederation of Employers of Southern Africa (28); Algemene Kommissie Leer and Aktuele Sake, Ned Geref. Kerk (34); United Christian Action (39)** : Right to be included.

**IFP (41)** : Proposal in clause 25 of Attachment II:

### 25. Assembly and Association

Everyone has the right to 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 associations operating in a para-military fashion shall be prohibited.

Legislative proposal signed by five hundred citizens may be submitted to Parliament.

**South African Anglican Theological Commission of the Church of the Province of South Africa (81)** : Each has the freedom to associate freely. No community or group can claim for itself special human rights which do not belong to others.

**Ninow & Associates (130)** : Individuals should be free to associate freely.

**National Assembly of the Bahai's of SA (165)** : Freedom of association with people of all background.

**Selikow GJ (171)** : Components of civil society must be protected from domination by government.

**Conservative Party of South Africa (173)** : Right to form associations in clause 11.8.1 of the Draft Constitution reserved for citizens of the Boer Republic.

**Kabu C (177)** : All legal groups should derive only from the individual rights forming that group - rights of voluntary association - and all such individuals should always have rights of disassociation if they come to feel later that they no longer wish to be part of the group.

**Van Jaarsveld AJ (218) (129)** : Monopolies like the Broederbond should be banned.

**Ayittey GBN - Free Africa Foundation (311)** : Proposal:

"The rights to associate with any group - socially, economically, and politically - if a person so chooses. A person may belong to an age group, a social club, a secret society, a guild, or a political faction if he/she wishes. It is not the business of the chief or king to ban associations."

**Minister of Sport and Recreation (334)** : The Government of National Unity accepts the authority and responsibility of national federations and sports institutions regarding their exclusive and decisive say in connection with their own matters. This autonomy comprises the freedom, authority and duty of national federations and sports institutions to arrange matters pertaining to their internal organisation, administration and international liaison. This autonomy should, however, not be seen in absolute terms. It is a qualified freedom that should take place within the framework of existing legislation.

**Maghopeni (429)** : An association be formed which will look after the contract of employment between farmers and their employees.

**Roskam K (456)** : Organised racism should no longer be allowed legitimate existence. The new constitution should clearly deal with the subject of banning racist parties and organisations.

### 3. FREEDOM OF ASSEMBLY, DEMONSTRATION AND PETITION

**McMorran JA (17)**: Right to be included.

**IFP (41)**: Proposal in clauses 25 and 55 of Attachment II:

#### 25. Assembly and Petition

Everyone has the right to 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 associations operating in a para-military fashion shall be prohibited.

#### 55. 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.

**National Assembly of the Baha'is of SA (165):** The right to assemble peacefully.  
**Selikow GJ (171):** Petitions of the citizenry should enable legislation to be brought to Parliament or to be overturned by referenda.

**Conservative Party of South Africa (173):** Right to free assembly in clause 11.7.1 of the Draft Constitution reserved for citizens of the Boere Staat. Clause 11.7.4 reads:

Every person shall have the right to draw up petitions and present them to the relevant government persons; provided that petitions to and of the House of Assembly shall be drawn up and presented according to the procedures contained in an act of the House of Assembly.

**Veerasamy VP (224):** The new constitution should cater for people like myself, who should be given some form of non-parliamentary status to bring to the Government attention any issues that is of its people. Some form of remuneration be set aside, or allowance the national budget should set aside for this purpose.

**Bell J (349):** Strikes, demonstrations, processions and demands must be illegal and prohibited.