

2/4/4 | 1/2/21

**CONSTITUTIONAL ASSEMBLY**

**THEME COMMITTEE 4  
FUNDAMENTAL RIGHTS**

**8 May 1995**

**Room M 46**

**DOCUMENTATION**

# CONSTITUTIONAL ASSEMBLY

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## THEME COMMITTEE 4

## FUNDAMENTAL RIGHTS

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

**Date** : Monday, 8 May 1995  
**Time** : 08h30 - 10h00  
**Venue** : M 46

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### PLEASE NOTE:

**THERE WILL BE A SECOND SESSION OF THE THEME COMMITTEE AT 2.00PM IN THE OLD ASSEMBLY CHAMBER. PLEASE SEE ATTACHED AGENDA**

### AGENDA

1. Opening
2. Reports: Separate documentation
  - 2.1 Nature and Application of Bill of Rights
  - 2.2 Right to Human Dignity
  - 2.3 Right to Privacy
  - 2.4 Freedom and Security of the Person
  - 2.5 Servitude and Forced Labour
3. Minutes:
  - 3.1 Theme Committee meeting 19 April 1995: Pages 4-9
  - 3.2 Theme Committee meeting 20 April 1995: Pages 10-12
4. General
  - 4.1 Sector Public Hearings: Pages 13-14
  - 4.2 Constitutional Public meetings: Page 15
  - 4.3 Work Programme: Page 16
5. Closure

**H Ebrahim  
Executive Director  
Constitutional Assembly**

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# CONSTITUTIONAL ASSEMBLY

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## THEME COMMITTEE 4

### FUNDAMENTAL RIGHTS

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

**Date** : Monday, 8 May 1995  
**Time** : 14h00 - 18h00  
**Venue** : Old Assembly Chamber

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**PLEASE NOTE THE VENUE - OLD ASSEMBLY CHAMBER**

#### AGENDA

1. Opening
  2. Matters Arising
  3. Children's Rights: See separate document entitled "**Party Submissions and Synopsis**"
  4. Public Submissions: Synopsis of Submissions (2 above)  
See separate document entitled "**Party Submissions and Synopsis**"
  5. General
  6. Closure
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**H Ebrahim**  
**Executive Director**  
**Constitutional Assembly**

**CONSTITUTIONAL ASSEMBLY**

**MINUTES OF  
MEETING OF**

**THEME COMMITTEE 4  
FUNDAMENTAL RIGHTS  
19 APRIL 1995 (AT 08H30)**

**PRESENT**

**Leon AJ (Chairperson)**

Cachalia IM (alt)  
Camerer SM  
Chalmers J  
Coleman M  
Gamndana T  
Green LM  
Hajaij F  
Kgoali JL  
Lubidla EN (alt)  
Mashamba TGG  
Mfebe MW  
Mulder CP  
Myakayaka-Manzini YL  
Ntuli MB  
Njobe MAA (alt)  
Pandor GNM  
Selebi JS  
Thabethe E (alt)  
Tshivhase TJ (alt)  
Tyobeka VM (alt)  
Viljoen V

**Apologies:** Asmal KA, Ranchod B, Rasmeni SM, Rhoda RT, Sizani RK,  
Xingwana LM.

J Tsalamandris, Z Adams, Ms S. Liebenberg and Prof I Rautenbach were in attendance.

1. **OPENING**

- 1.1 The meeting was opened by Mr Leon at 09h05.

2. **MINUTES**

- 2.1 The minutes of the Theme Committee meeting of 3 April 1995 were adopted.

3. **CORE GROUP REPORT**

- 3.1 There was no Core Group Report.

4. **MATTERS ARISING**

- 4.1 There were no matters arising.

5. **PARTY SUBMISSIONS: FREEDOM OF EXPRESSION AND RIGHT OF ACCESS TO INFORMATION**

- 5.1 The Chairperson noted that the PAC representative was absent and that the PAC did not make any submissions.
- 5.2 The meeting agreed to begin with the ANC submissions and that parties would present submissions on Freedom of Expression and Right of Access to Information jointly.
- 5.3 The **ANC** submission on Freedom of Expression and Right of Access to Information was presented by Mr Mfebe, who spoke to the document, ***"Preliminary Submission of the African National Congress on Blocks Two and Three - Theme Committee 4: Freedom of Expression and Right of Access to Information."***

5.3.1 Points of clarity and discussion:  
Questions to the ANC included:

- The right to freedom of expression could be abused( e.g. hate speech; inciting racial hatred). How does one ensure that legislation to prevent abuse will not infringe on this right ?
- Are the provisions in paragraph 2 of the ANC submission on freedom of expression not covered by the limitations clause in the Interim Constitution?
- If the AWB uses the right to incite racial hatred, should their political rights be curtailed?

- Does the ANC envisage juristic persons as bearers of this right, e.g. a newspaper?
- The Interim Constitution makes provision for impartiality as well as access to a diversity of opinion. Why has the ANC not specifically mentioned impartiality in their submission?
- The ANC submission imposes on all newspapers an obligation to express a diversity of opinion. What does this mean concretely?

The ANC responded as follows:

- The formulation of the right should protect those groups vulnerable to acts clearly intended to cause hostility or acrimony.
- The rights in the Constitution are not absolute and under South African conditions it is necessary to limit those rights, like Freedom of Expression, which could be abused to incite racial hatred.
- The provisions in Clause 2 of the ANC submission is not an injunction to legislate restrictions to the right, but the wording implies that such restrictions must be the result of discussions and consultations with relevant role players.
- The ANC believes that in so far as juristic persons consists of individual citizens they have access to the right. The submission also explicitly makes provision for freedom of the press and other media.
- In SA the press is controlled by a monopoly, which has limited people's access to a diversity of opinion. Impartiality is provided for by monitoring bodies such as the IBA. The ANC formulation provides for a wide range of media to exist and allow for different forms of ownership.

5.4 The DP submission was presented by Mr Leon who spoke to the document, "***Democratic Party Submission on Topic 6: Freedom of Expression and Topic 7: Right of Access to Information***"

5.4.1 Points of clarity and discussion:

Questions to the DP included:

- The DP submission excludes the right of access to information held by non-state bodies, e.g. workers needing information for collective bargaining purposes.
- Is the DP convinced that there are no instances where the right to access to information should apply against juristic persons?
- How would the DP deal with a situation where a newspaper for e.g. consistently preaches the extermination of a particular community?
- Surely all rights are limited by the invoking other rights provided for in the constitution?
- If the DP supports Freedom of Expression as stipulated in Section 15 of the Interim Constitution, then surely it must support the application of Section 15(2) to all media and not just state media?

Mr Leon responded as follows:

- The Bill of Rights should provide for the rights of individual citizens. The rights of Trade Unions fall within the scope of Labour Relations. If the Collective Bargaining process protects the rights of Trade Unions it is unnecessary for the right of access to information to apply to them or other juristic persons. A constitution is the only bargaining tool citizens have to protect their rights.
- The DP does not accept that obligations imposed on the state should apply to a private authority. The state and its bureaucracy are directly mandated by citizens and should be accountable to them. The same does not apply to a private authority.
- In the DP's view the limitations clause is the most effective method of dealing with abuses of any right. In terms of this clause the state is entitled to take positive action because of the obligations imposed on it. The danger of codifying restrictions in a constitution is that it could be used as a weapon to wipe out dissent. The present formulation in the ANC submission sets such a dangerous precedent.
- Section 15(2) cannot apply to party political newspapers which exists for the express purpose to propagate a particular party political view. Therefore the DP does not support the application of Section 15(2) to all media.

5.5 The FF submission was noted.

5.6 The ACDP submission was presented by Mr Green who spoke to the documents, "*African Christian Democratic Party Submission to the Constitutional Assembly - Theme Committee Four: Freedom of Expression*" and "*African Christian Democratic Party Submission to the Constitutional Assembly - Theme Committee Four: Right of Access to Information*"

5.6.1 Points of clarity and discussion:

Questions to the ACDP included:

- The ACDP submission refers to the "...normal values of monogamy...". Some religions for e.g. Islam allows for polygamy under certain conditions.

Mr Green responded as follows:

- The state must exercise a choice with respect to the legalisation of marriages. While the ACDP accepts that the government has in the past discriminated against Muslims, the state cannot recognise provisions which does not accord the same rights to men and women.

5.7 The NP submission was presented by Mr Radue who spoke the documents, "*National Party Preliminary Submission - Theme Committee 4: Bloc 4, Item 7: Freedom of Expression*" and "*National Party Preliminary Submission - Theme Committee 4 Block 4, Item 8: Right of Access to Information*"

5.7.1 Points of clarity and discussion:

Questions to the NP included:

- The deletion of the phrase "in so far as such information is required for the exercise or protection of any of his her rights" from Section 23 of the Interim Constitution leaves the exercise of the right to access to information open to abuse.
- The Constitution is the supreme law of the land and if the right of access to information is invoked in the form suggested by the NP it will lead to conflict of interpretation.

Mr Radue responded as follows:

- The NP believes that legislation is necessary to regulate the relationship between the right to privacy and the right to access to information and if that legislation is put into place before the final constitution is approved the limitations on the right in the Interim Constitution should fall away.
- The NP fully supports the Limitations Clause in Section 33 which will always apply to each individual right and be the final arbiter should a conflict of interpretation arise.

## 6. THEME COMMITTEE SCHEDULE 20 - 24 APRIL

6.1 The meeting noted the memorandum from the Executive Director detailing CA activities for the period 18 April to 12 May. The memorandum confirmed that there will be no CA activities in the week 24 - 28 April. The next Theme Committee meeting after the week of the 24 -28 April will be on 8 May 1995.

6.2 The meeting decided on the following regarding the program of the Theme Committee up to 21 April:

- i) The Theme Committee meeting scheduled for Thursday 20 April 1995 will go ahead. The rights to be discussed are:

Freedom of Religion, Belief and Opinion  
Freedom of Association  
Freedom of Demonstration

- ii) Outstanding Party submissions on the above rights must be handed in to the Secretariat by 9.am on Thursday 20 April.

**7. GENERAL**

7.1 None.

**8. CLOSURE**

The meeting rose at 11h15.

## CONSTITUTIONAL ASSEMBLY

### MINUTES OF MEETING OF

### THEME COMMITTEE 4 FUNDAMENTAL RIGHTS THURSDAY 20 APRIL 1995 (AT 14H00)

#### PRESENT

Radue RJ (Chairperson)

Camerer SM  
Chalmers J  
Coleman M  
Gamndana T  
Green LM  
Kgoali JL  
Leon AJ  
Lubidla EN (alt)  
Mashamba TGG  
Mfebe MW  
Mohamed IJ (alt)  
Myakayaka-Manzini YL  
Ntuli MB  
Njobe MAA (alt)  
Pandor GNM  
Phenethi MM (alt)  
Rasmeni SM  
Selebi JS  
Smuts D (alt)  
Solomon G  
Thabethe E (alt)  
Tshivhase TJ (alt)  
Viljoen V  
Xingwana LM

**Apologies:** Asmal KA, Bakker DM, Cachalia IM, Hajaij F, Rhoda RT, Sizani RK.

J Tsalamandris, Z Adams and Prof. I Rautenbach were in attendance.

1. **OPENING**

- 1.1 The meeting was opened by Sen. Radue at 14h15.
- 1.2 The meeting agreed to follow the procedure of the previous meeting where each party presents their submission on all the rights instead of each right being dealt with separately.

2. **MATTERS ARISING**

- 2.1 See Agenda items below.

3. **PARTY SUBMISSIONS: - FREEDOM OF RELIGION, BELIEF AND  
OPINION  
- FREEDOM OF ASSOCIATION  
- FREEDOM OF ASSEMBLY, DEMONSTRATION  
AND PETITION**

- 3.1 Mr Green presented the ACDP submissions, and spoke to the documents, "*African Christian Democratic Party Submission to the Constitutional Assembly, Theme Committee Four: Freedom of Religion, Belief & Opinion*"; "*African Christian Democratic Party Submission to the Constitutional Assembly, Theme Committee Four: Freedom of Association*" and "*African Christian Democratic Party Submission to the Constitutional Assembly, Theme Committee Four: Freedom of Demonstration & Petition*"

There were no questions to the ACDP.

- 3.2 Ms Pandor presented the ANC submissions and spoke to the document, "*Preliminary Submission of the African National Congress - Block 2: Freedom of Religion, Belief and Opinion; Freedom of Association; The Right to Assemble, Demonstrate and Petition*"

There were no questions to the ANC.

- 3.3 The DP submissions were presented by Mr Leon who spoke to the document, "*Constitutional Assembly Theme Committee 4, Fundamental Rights: Democratic Party Submission on Freedom of Religion; Freedom of Association; Freedom of Demonstration*".

3.3.1 Mr Leon was asked the DP's view on Satanism as a form of religion, and whether the DP would tolerate it?

Mr Leon responded as follows:

Although there are many criminal activities associated with Satanism, it cannot be proscribed as a system of belief or a form of conscience. One has to separate Satanism as a belief system from criminal activities associated with its practice such as incest, rape etc. The limitations clause could also be invoked if it infringed on other rights.

3.4 The Committee noted the FF submissions as Dr Mulder was not present in the meeting.

3.5 NP:

Ms Camerer spoke to the documents, "*National Party Preliminary Submission - Theme Committee 4: Block 5, Item 9: Freedom of Religion, Belief and Opinion*"; "*National Party Preliminary Submission Theme Committee 4: Block 5, Item 10: Freedom of Association*"; "*National Party Preliminary Submission - Theme Committee 4: Block 5, Item 11: Freedom of Demonstration*"

There were no questions.

#### 4. PUBLIC SUBMISSIONS:

4.1 The meeting noted the Synopsis of Public Submissions on Freedom of Religion, Belief and Opinion; Freedom of Association and Freedom of Demonstration, included in the documentation.

4.2 The Chairperson reminded the meeting that the synopsis must be taken into account when reports are prepared for the Constitutional Committee.

#### 5. ANY OTHER BUSINESS

5.1 There will be no Theme Committee meetings next week (24 - 28 April). The next Theme Committee meeting will take place on 8 May 1995.

#### 6. CLOSURE

The meeting rose at 15h10.



CONSTITUTIONAL ASSEMBLY

## MEMORANDUM

**DATE:** 19 April 1995  
**TO:** Theme Committees  
**FROM:** Hassen Ebrahim  
**SUBJECT:** Sector Public Hearings

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The National Sector Public Hearings Programme has the following developments:

### 1. BUSINESS

- The event for the 22 April has been postponed.
- The Public Hearing will now take place on the 8 May 1995, from 11-1pm at the Old Assembly Chamber followed by a finger lunch at the Palm Court.
- Please let your managing secretary know whether you will attend this event by 2 May 1995.
- Relevant documentation will reach you by the 3 May, together with the final Programme.

### 2. CHILDREN'S RIGHTS

- The Public Hearing will take place on the 13 May at the HSRC in Pretoria.
- This meeting has been organised with NCRC and the HSRC will be helping with the logistics.

### 3. TRADITIONAL AUTHORITIES

- The Public Hearing will tentatively take place on the 12/13 May in Cape Town. It will be held in the Old Assembly Chambers in Parliament.
- The event will be organised with the assistance of the Multi-Party Democracy (MPD).
- Further information and the Programme will be circulated in the week of the 2 May.

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4. **RELIGIOUS GROUPS**

- Tentative Date : 27 May 1995
- Venue : World Trade Centre (to be confirmed)

5. **YOUTH**

- Tentative Date : 28 May 1995
- Venue : World Trade Centre (to be confirmed)

6. **WOMEN**

- Tentative Date : 3 June 1995
- Venue : World Trade Centre (to be confirmed)

7. **LABOUR**

- Tentative Date : 4 June 1995
- Venue : World Trade Centre (to be confirmed)

**NB** \* Public Hearings 4-7 will be arranged with the assistance of IDASA.

\*\* For Public Hearings 4-7, more detailed information and the respective Programmes will follow as soon as they are available.

\*\*\* We note that there will be a Constitutional Assembly Meeting on the 12th May 1995 finishing at 14:00 (2pm). Public Hearings 2 and 3 will clash with the CA. However, given the tight time constraints this is unavoidable. We hope this won't be too much of an inconvenience.

# MANAGEMENT COMMITTEE REPORT

20 APRIL 1995

## 1. INTRODUCTION

In the Management Committee meeting held on Thursday 23 March 1995, it was agreed that 18 Constitutional Public Meetings be held around the country. This report aims at providing an outline on the said meetings.

## 2. DATES AND VENUES

The Management Committee of 27 March approved the following venues for CPMs. It is proposed that CPMs be held at these venues on the following dates:

PROVINCE	VENUE	DATE
Eastern Cape	Peddie	8 May
Kwazulu-Natal	Ingwavuma	13 May
Eastern Transvaal	Standerton	13 May
Northern Cape	Upington	20 May
Free State	Harrismith	20 May
North West	Taung	20 May
Western Cape	Beaufort West	27 May
Kwazulu-Natal	Newcastle	27 May
Northern Cape	Kimberley	3 June
Northern Transvaal	Thohoyandou	3 June
Eastern Cape	Lusikisiti	10 June
North West	Mafikeng	10 June
Northern Cape	Camarvon	17 June
Northern Transvaal	Ellisras	17 June
Eastern Transvaal	Mhluzi ??	17 June
Western Cape	George	24 June
Free State	Maokeng	24 June
Kwazulu-Natal	Hammersdale	24 June

~~The Gauteng province has already hosted five public participation events.~~ Thus given the limited period of 27th April to 30th June, the PPP has concentrated on those provinces which have not hosted as many events.

## 3. COMMUNITY INVOLVEMENT

It is necessary that at each of the Constitutional Public Meetings representatives of the various organisations of civil society and other formations be properly represented and be invited to make submissions. To ensure achievement of this objective regional and national initiatives have been put into place.

## WORK PROGRAMME AND DEADLINES FOR PARTY SUBMISSIONS

DEADLINES PARTY SUBMISSIONS	T/C MEETING	ITEMS
28 April 5 May	8 May	12. Children's Rights 13. Life
11 May	15 May 1995	14. Socio-Economic Rights i) Property ii) Education iii) Environment iv) Economic Activity v) Labour Relations vi) Freedom of Language and Culture vii) Other socio-economic rights
17 May	22 May 1995	15. Reproductive rights
24 May	29 May 1995	16. Political Rights 17. Citizens' rights 18. Freedom of movement 19. Freedom of residence
29 May	5 June 1995	20. Equality
7 June	12 June 1995	21. Administrative justice 22. Access to Courts 23. Detained, arrested and accused persons
12 June	19 June 1995	24. Limitation of rights 25. States of emergency and suspension of rights
12 June	20 June 1995	26. Other fundamental rights and directive principles
15 June	21 June 1995	27. Interpretation of Bill of Rights 28. Class actions 29. Other issues

Party submissions can be forwarded to Room 906, Regis House, Adderley street.