CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 4

FUNDAMENTAL RIGHTS

- SUPPLEMENTARY REPORT ON BLOCK 1
FIRST REPORT OF THEME COMMITTEE 4  
ON BLOCK 1 OF WORK PROGRAMME  

Having agreed to the first block of the Theme Committee’s Work Plan ie. *Constitutional Principle II*, the Committee has the pleasure of submitting the following report.

All parties made submissions in relation to the meaning and interpretation of Principle II and their approach to a Bill of Rights in the Constitution and these are included (in document).

As at 16 January 1995, forty-seven (47) submissions were received from the public and civil society.

None of these addressed the content of Principle II (the content of Block 1). The submissions addressed the various "rights" that are going to be worked on in Blocks 2 to 10. The views of these submissions will be processed and included in future reports.

As far as the specific wording on clarifying phrases in the Principle is concerned:

1. *Everyone shall enjoy ... *(Whether the term "everyone" includes juristic persons, structured and unstructured groups, and organs of civil society, etc)*

1.1 *Contentious Issue(s):"Everyone"

1.1.1 The ANC states that rights referred to are rights of born person(s) or natural persons. The Bill of Rights refers to rights enjoyed by human beings and even Chapter 3 refers primarily to rights of natural persons. The term *everyone* therefore excludes juristic person(s).

1.1.2 The NP, DP and IFP stated that they believed *everyone* should include juristic persons.
1.3 The ACDP stated that unborn persons should be included under the term "everyone".

**Suggestion:** The matter be discussed and debated in greater detail.

1.2 **Contentious Issue(s): "Vertical and Horizontal Application of Rights"

1.2.1 The ACDP, ANC, DP, IFP and PAC supported a vertical and horizontal application of the Bill of Rights in principle.

1.2.2 The DP and FF said horizontal application should be approached cautiously.

1.2.3 The NP primarily supported vertical application, but were not against a extension of the application of the Bill, at the same time noting concern about the possible disruption of South Africa’s Private Law system.

**Suggestion:** Specific rights shall be examined and the implications or consequences in terms of horizontal application shall be evaluated. Expert advice can be sought by individual parties if required.

2. "all universally accepted fundamental rights, freedoms and civil liberties" (which rights etc., qualify as universally accepted fundamental rights)

2.1 **Non-Contentious Issue(s):**

2.1.1 All parties agreed that the UN Universal Declaration of Human Rights (1948) and other relevant Covenants on Human Rights, Civil Rights and Social and Political Rights can be used as important references for identifying universally accepted fundamental rights.

2.1.2 The parties will make submissions as to what they regard as universally
accepted fundamental human rights.

2.2 **Contentious Issue(s): "Universally accepted fundamental rights..."**

2.2.1 The NP is of the opinion that expert opinion shall first be obtained to interpret what can be regarded as universally accepted fundamental rights, but the ANC and other parties indicated that experts were not necessary to evaluate what the universally accepted fundamental rights were.

2.2.3 The DP believed that such a workshop could easily be accommodated within the schedule of ongoing meetings of the Theme Committee.

3. **"entrenched and justiciable provisions"**

3.1 **Non-Contentious Issue(s):**

3.1.1 The Bill of Rights should be entrenched, justiciable and enforceable.

3.1.2 All parties agreed that other organs of enforcement shall also be looked at eg. Human Rights Commission.

3.1.3 All parties supported a strong independent judiciary.

3.1.4 Parties agreed that there should be a provision allowing for further additions to be made to the Bill of Rights - As suggested by the FF and IFP).

3.2 **Contentious Issue(s):**

3.2.1 None

4. **"after having given due consideration to inter alia the fundamental rights contained in Chapter 3"**
4.1 **Non-Contentious Issue(s):**

4.1.1 Most parties agreed that due consideration must be given to each right in Chapter 3 of the Interim Constitution, but they do not regard these rights as exhaustive.

4.1.2 The parties also agreed that they are not limited to the rights in Chapter 3 only.

5. **General Discussion of Related Constitutional Principles such as I, III, V, IX, XI, XII, XIII(1), XXVIII, XXXIV**

5.1 A preliminary discussion was held in which each party gave their perspective on the Principles.

5.2 It was agreed that detailed submissions on Principles relevant to the Bill of Rights would be made by parties if necessary.

6. **Suggested approach as to the identification of rights not covered by Constitutional Principle II**

6.1 All the parties agreed that this had been covered by discussions in paragraphs 1 and 2 (See Above).

7. **Outstanding Issues**

7.1 The Committee agreed that the outstanding issues as reflected above would be dealt with in the following way:

7.1.1 The Technical Committee would produce an opinion for the Theme Committee on the following issues:

i) **Everyone shall enjoy ...** "(Whether the term "everyone" includes juristic persons, structured and unstructured groups, and organs of civil society, etc)

ii) "after having given due consideration to inter alia the fundamental rights contained in Chapter 3"
7.1.2 The deadline for the above would be 17 February 1995.

7.1.3 The issue of what constitutes "universally accepted fundamental rights" would be dealt with in 2 stages as follows:
   i) The political parties would submit submissions to the Theme Committee by the 17 February 1995.
   ii) The Technical Committee would submit an opinion to the Theme Committee by the 22 February 1995.

7.1.4 The issue of "Vertical and Horizontal Application of Rights" would be dealt with as follows:
   Specific rights shall be examined and the implications or consequences in terms of horizontal application shall be evaluated. Expert advice can be sought by individual parties if required.

7.2 It was agreed that the Theme Committee would submit a additional report to the Constitutional Committee once the outstanding issues had been dealt with (as above).
SUPPLEMENTARY REPORT OF
THEME COMMITTEE 4

ON BLOCK 1 OF WORK PROGRAMME

Having submitted its first report to the Constitutional Committee, Theme Committee 4 has the pleasure of submitting a supplementary report that deals with the outstanding issues as identified in the first report.

The first report (included in the documentation) of the Theme Committee dealt with Constitutional Principle II - "Everyone shall enjoy all universally accepted fundamental rights, freedoms and civil liberties, which shall be provided for and protected by entrenched and justiciable provisions in the Constitution, which shall be drafted after having given due consideration to inter alia the fundamental rights contained in Chapter 3 of this Constitution".

1. The report identified the following as an outstanding issue:
   1.1 The meaning of "after having given due consideration to inter alia the fundamental rights contained in Chapter 3"

2. The report identified the following as outstanding contentious issues:
   2.1 Whether the term "everyone" in "Everyone shall enjoy", includes juristic persons, structured and unstructured groups, and organs of civil society, etc.
   2.2 The meaning "universally accepted fundamental rights".

3. The Committee agreed that the outstanding issues as reflected above would be dealt with in the following way:
   3.1 The Technical Committee would produce opinions for the Theme Committee on the issues in 2.1 and 2.2 above.
3.2 Issue 2.2 would be dealt with in 2 stages as follows:
   i) The political parties would make submissions to the Theme Committee by the 17 February 1995.
   ii) The Technical Committee would submit an opinion to the Theme Committee by the 22 February 1995.

4. The Technical Committee would also prepare an opinion on the meaning of "after having given due consideration to inter alia the fundamental rights contained in Chapter 3" which was considered an issue that needed further elaboration.

5. It was agreed that once the outstanding issues had been dealt with (as above) the Theme Committee would submit a supplementary report to the Constitutional Committee, namely this report.

6. The above process was followed and the Theme Committee dealt with these issues in two meetings. In this regard, the Technical Committee's reports and party submissions are included in this document.

7. **SUMMARY OF PARTY SUBMISSIONS AND TECHNICAL COMMITTEE'S REPORTS ON THE OUTSTANDING ISSUES**

7.1 **Everyone shall enjoy ...** *(Whether the term "everyone" includes juristic persons, structured and unstructured groups, and organs of civil society, etc)*

7.1.1 According to the opinion of the Technical Committee, in the context of Constitutional Principle II, whether the term *everyone* includes juristic persons, structured and unstructured groups, and organs of civil society, the reference is to natural persons. This does not exclude however, that in some of the rights, consideration may be given to juristic persons.

7.1.2 Having noted the opinion of the Technical Committee, the parties agreed to
give due consideration to the Technical opinion when considering each specific right.

7.2 "after having given due consideration to inter alia the fundamental rights contained in Chapter 3"

7.2.1 All the parties and the Technical Committee opinion agreed that the rights contained in Chapter 3 should be given due and proper consideration.

7.2.2 The parties also agreed that they are not limited to the rights in Chapter 3.

7.2.3 It was agreed that in considering rights to be extended, changed or deleted, any alteration of the rights be subject to the requirements of Constitutional Principle II that everyone shall enjoy universally accepted fundamental rights.

7.3 "all universally accepted fundamental rights, freedoms and civil liberties" (which rights etc., qualify as universally accepted fundamental rights)

7.3.1 There was agreement that primary emphasis be given to the body of International Human Rights Law, including the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966) and the International Covenant on Civil and Political Rights (1966).

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ATTACHMENTS

1. Technical Committee


1.2 Opinion the meaning of the phrase, "... after having given due consideration to inter alia the fundamental rights contained in Chapter 3 of the Constitution" in Constitutional Principle II of this interim Constitution Act 200 of 1993.


2. Political Parties

2.1 ACDP:

2.1.1 Which rights qualify as universally acceptable fundamental rights.

2.1.2 The use of the term "Everyone" in Constitutional Principle II - Position of the unborn - Position of the juristic persons

2.2 ANC

2.2.1 What constitutes universally accepted fundamental rights: Preliminary Submission

2.3 DP

2.3.1 Block 2

2.4 FF

2.4.1 Submission on universally accepted fundamental rights

2.5 IFP

2.5.1 Supplementary Submission to Theme Committee 4 for Block No 1

2.6 NP
2.6.1 Notes on Aspects pertaining to Bill of Rights

2.7 PAC

2.7.1 Preliminary submission on what are "universally accepted fundamental rights".

3. First Report of Theme Committee 4 on Block 1 of Work Programme
- WORK PROGRAMME

DISCUSSION DOCUMENT