CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 4

FUNDAMENTAL RIGHTS

FINAL INTERNAL REPORT
1. **INTRODUCTION**

Theme Committee Four was one of the six Theme Committees created as per resolution of the Constitutional Assembly. Its function or objective was to draft a Bill of Rights.

The mandate and work of the Committee was guided by Constitutional Principle II which states:

"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 Three of this Constitution"

Based on the above Principle, and its reference to Chapter 3 of the Interim Constitution, a work programme was drafted which was the basis from which the Committee worked.

2. **WORK PROGRAMME**

The Committee drafted a work programme which identified the following agenda items as a basis for discussion.

1. Constitutional Principle II
2. Nature of Bill of Rights and application
3. Human Dignity
4. Privacy
5. Servitude and Forced Labour
6. Freedom and Security of the person
7. Freedom of Expression
8. Access to Information
9. Freedom of Religion, belief and opinion
10. Freedom of Association
11. Life
12. Equality
13. Socio-Economic Rights
14. Property
15. Education  
16. Environment  
17. Economic Activity  
18. Labour Relations  
19. Freedom of Language and Culture  
20. Other socio-economic rights  
21. Reproductive Rights  
22. Political Rights  
23. Citizens' rights  
24. Freedom of movement  
25. Freedom of residence  
26. Freedom of demonstration and petition  
27. Children's rights  
28. Administrative justice  
29. Access to Courts  
30. Detained, arrested and accused persons  
31. Limitation of rights  
32. States of emergency and suspension of rights  
33. Interpretation of Bill of Rights

Parties were then asked to table submissions on these, and these were tabled and discussed at meetings of the Committee. The public and civil society were at the same time also asked to submit on these issues, and their submissions were also considered by the Committee which received full copies of all the public submissions received.

The Theme Committee did not find it helpful to consider such questions as the horizontal application of the Bill of Rights, who the bearers of the rights should be and whether the rights should be subject to limitation in isolation.

It was therefore decided to proceed with a detailed examination of these questions and their consequences in relation to each of the rights in the work programme. In this way many of the issues were clarified, and the number of contentious issues reduced.

Certain of the matters that were initially identified as contentious are in fact matters which in the end were accommodated in other ways or elsewhere in the Bill of Rights, and were thus identified as outstanding.

It remained for the parties in the Constitutional Committee to consider their positions on these matters in the light of the solutions suggested by the Technical Committee in their Explanatory Memoranda.

2.2 PARTY SUBMISSIONS
The Parties made submissions on the following aspects of the various rights:

1. *The content and scope of the right;*
2. *The nature of the duty imposed on the State;*
3. *The application of the right to common law and customary law;*
5. *Limitations on the right.*

2.3 THEME COMMITTEE REPORT

The Theme Committee reported on each right, after the parties had made their submissions and had these discussed in the Theme Committee.

In the Theme Committee Report contentious, non-contentious and outstanding issues were identified in relation to the aspects above (see 2.2). The submissions from the public were used both to inform the party submissions, and to assist the Technical Committee in preparing their explanatory memorandum and draft text.

2.4. EXPLANATORY MEMORANDA

The Technical Committee prepared the explanatory memoranda based on the Theme Committee Report. This memoranda covered the following areas in relation to the particular rights:

6. *Compliance with Constitutional Principle II*
7. *An overview of relevant public international law*
8. *An overview of comparative law*
9. *Relevant South African law*
10. *The Theme Committee Report, including suggested resolutions of contentious and outstanding issues;*
11. *A provisional draft formulation of the right.*

Explanatory memoranda on the rights to health and social assistance were not prepared as the relevant party submissions were received too late. However, suggested draft formulations of these rights were drafted by the Technical Committee.

2.5 STYLE AND LANGUAGE

The draft formulations prepared by the Technical Committee were
based on the party submissions to Theme Committee 4 and on the discussions in the Constitutional Committee relating to those rights. The principles of plain language were applied in drafting the various clauses to ensure the clarity and accessibility of the Bill of Rights. The Technical Committee were assisted by Phil Knight in identifying the principles of plain language to assist in their drafting.

The Technical Committee aimed at achieving logical consistency and flow in presenting the various sections of the Bill of Rights.

3. STAFF DEPLOYED

John Tsalamandris - Managing Secretary
Zuleiga Adams    - Minute Secretary
Pamela Crowley  - Administrative Secretary

4. TECHNICAL COMMITTEE

Prof H Cheadle
Prof J Dugard
Ms S Liebenberg
Prof I Rautenbach
5. THEME COMMITTEE MEMBERS

The 3 rotating chairpersons of the Committee were:

- AJ Leon (DP)
- MMS Mdladlana (ANC)
- GB Myburgh (NP) later replaced by RJ Radue

Members:

Asmal K  Mohamed IJ (Alternate)
Bakker D  Molekane RS
Cachalia IM  Mulder CP
Camerer S  Myakayaka-Manzini YL
Chalmers J  Njobe MAA (Alternate)
Coleman M  Ntuli MIB
Dlamini BO  Pandor GNM
Ebrahim G (Alternate)  Phenethi MM (Alternate)
Fenyane SLE  Piliso MM
Gamndana T  Radue RJ
Gasa XF (Alternate)  Rasmeni SM
Govender D  Ranchod B
Govender P (Alternate)  Rhoda RT
Green LM  Saloojee E
Hajaij F  Sizani RK
Jooste JA (Alternate)  Skosana BM
Kgoali JL  Smuts D (Alternate)
Leon AJ  Solomon G
Lubidla EN (Alternate)  Sosibo JE
Mabandla BS  Surty ME
Mashamba TGG  Thabethe E
Masher MG (Alternate)  Thompson B
Mathebe P  Tshivhase TJ
Mbuyazi LR (Alternate)  Tyobeka VM
Mdladlana MMS  Viljoen V
Meshoe KR (Alternate)  Vos SC
Mfayela SB (Alternate)  Werth CH (Alternate)
Mfene MW (Alternate)  Xingwana LM (Alternate)
Mncwango MA
6. SCHEDULE OF MEETINGS

SEPTEMBER 1994 - AUGUST 1995

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<tr>
<th>No</th>
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Other non T\C meetings involving T\C members

4/03/95
5/03/95

Core Group meetings
NO.  DATE
1.  23/09/94
2.  24/10/94
3.  2/11/94
4.  9/11/94
5.  14/11/94
6.  26/01/95
7.  8/02/95
8.  9/02/95
9.  20/02/95
10.  9/03/95
11.  22/03/95
12.  27/03/95
13.  3/04/95
14.  18/04/95
15.  20/04/95
16.  15/05/95
17.  5/06/95
18.  12/06/95
19.  8/08/95

7. SUBMISSIONS

Five thousand six hundred and thirty-four (5634) submissions were
processed and catalogued by the Theme Committee by 30 June 1995.
Subsequently, after the Committee had completed its work another one
thousand three hundred and sixty (1360) submissions were received.

Over 12 000 petitions were received by the Committee.

8. WORKSHOPS

A workshop on Human Rights and International Law was held in April
1995. This was organised by ourselves, the Speaker's Office and the
Raoul Wallenberg Institute from Sweden. Speakers included both foreign
and local.

Members also attended workshops on Gender, Pornography, Abortion,
Expression. These were organised by various private organisations such
as the Univ. of Western Cape Community Law Centre, the MPD, the
Freedom of Expression Institute.
9. **PUBLIC HEARINGS**

A number of CA public sector hearings were also attended by members and members of the Technical Committee. The sectors called were -
- Children's Rights
- Labour
- Women
- Religion
- Traditional Authorities
- Youth
- Business
- Land
- Socio-Economic Rights

10. **CONCLUSION**

There is no format or method for drafting a Bill of Rights. The Theme Committee, Technical Committee and Secretaries from the outset accepted this and attempted to deal with the matter in a way that avoided conflict between parties, while allowing for a consideration of the issues in a systematic manner. By dealing with the rights in the Bill of Rights in an individual manner, ie. right by right, it was felt that the implications and consequences of these rights would be properly considered and thorough investigation of the issues could take place.

We feel we succeeded in doing this, and managed by the end of the process to present 33 reports and explanatory memoranda, and a Draft Bill of Rights which was tabled at the Sub-Committee of the Constitutional Committee on 9 and 10 October 1995.