

## **PAC SUBMISSIONS ON CONSTITUTIONAL PRINCIPLE II: An Entrenched Bill of Rights:**

### **INTRODUCTION**

It must be remembered that chapter 3 of the Interim Constitution covered mainly, Rights which were necessary during the Transitional phase. It therefore, paid more attention to those rights which limited the abuse of power by the State and restore human dignity. Chapter Three dealt mostly with Civil and Political Rights - a less controversial area.

It is important therefore, to note that this is a limited rights' Chapter and not a fully fledged Bill of Rights. In addition, The undemocratic nature of the World Trade Centre process would not have been suitable for drafting a Bill of Rights for South Africa.

It is against this background that we should view the injunction of Constitutional principle II that the Constitutional Assembly should draft an entrenched and justiciable Bill of Fundamental Rights, Freedom and Civil Liberties after due consideration of Chapter Three of the Interim Constitution.

### **CONSTITUTIONAL PRINCIPLE II AND ITS IMPLICATIONS**

- (i) It is not quite apparent to us what is meant by "After having given due consideration to inter alia the fundamental rights contained in Chapter 3 of this Constitution." The PAC will be comfortable with an interpretation of this provision which does not impose any limitations on the Constitutional Assembly as to which rights can be included or excluded in the final Bill of Rights. We humbly submit that this section merely implores the Constitutional Assembly to, as it goes about drafting the Bill of Rights, take into consideration the jurisprudence which will be generated by Chapter 3 and the reasons why certain provisions were inserted in that chapter.
- (ii) The constitutional Assembly therefore is expected to draw a comprehensive South African Bill of Rights. It must be a Bill of Rights that will protect the rights of individual citizens while allowing the State to provide for the well - being of all members of our Society without any unfair discrimination and within reasonable environmental constraints. This implies that not only Civil and Political Rights must be included but also Socio-Economic and Solidarity Rights.

- (iii) While this Bill of Rights should not ignore South African Realities, it should however, meet International norms and standards and must be compatible with South African obligations under International Law.
- (iv) The PAC does support the concept of an entrenched and justiciable Bill of fundamental Rights and freedoms. Indeed, it is imperative that it should not be a document composed of "ringing declarations of Human rights" that are "more impressive in terms of literary style than in practical enforceability."

Further, we submit that "practical enforceability" should go beyond justiciability in the narrow sense of enforcement only by the courts. Other fora/forums and mechanisms should be devised to give meaning to the Rights in the Bill of Rights. For instance, an institution modelled along the lines of the European Human Rights Commission can be designed so as to assist in enforcing the South African Bill of Rights.

- (v) A South African Bill of Rights should reflect clearly the shift of power from an oppressing minority group to a more democratic and representative dispensation. It must answer unambiguously the question, "A Bill of Rights: By whom and for whom?" It must also therefore be accessible and people-oriented.

## CONCLUSION

The PAC will, when the process deals with substantive provisions, make its humble contribution towards making the document, a Bill of Rights that our people can claim as their own as they would have participated in its drafting and more importantly as it will be encompassing their rights and aspirations.

R K Sizani - MP

19 January 1995