

23 January 1995

**THEME COMMITTEE 4**

**NATIONAL PARTY PROPOSALS**

**REGARDING CONSTITUTIONAL PRINCIPLE II (FUNDAMENTAL RIGHTS AND FREEDOMS)**

1. There shall be, as part of the Constitution, an entrenched and justiciable bill of rights (Appropriate alternative names for "bill of rights" might include "catalogue of fundamental rights" or "charter of fundamental rights")
2. Human dignity, as an inviolable and inalienable universal principle, shall be the fundamental value on which the bill of rights be premised. In order to attain that objective, a pre-script to the actual catalogue of fundamental rights (in a similar vein as is contained in certain Continental basic law) could be considered
3. The new bill of rights should, in principle, contain all the universally accepted fundamental rights and freedoms currently forming part of chapter 3. Where necessary, current formulations may be reconsidered. A list containing rights which currently are part of Chapter 3 but which, due to their transitional nature, should be deleted or re-formulated, will be submitted at the appropriate time.
4. The contents of the bill of rights shall bind all executive and legislative organs of state at all levels of government and shall be directly enforceable.
5. The locus standi bestowed by the current section 7 (4) (b) shall be retained.
6. In the drafting process care should be taken not to undo very positive achievements in the development of a human rights jurisprudence, which had

already been achieved by the Courts, the legal fraternity, NGO,s and the public at large.

7. The bill of rights shall make provision for the application, where appropriate, of international public law (including international human rights law) and human rights protocols, treaties and other similar instruments.

8. The bill of rights shall primarily apply to the "vertical" relationship between the state and the citizenry. However, it should be ensured that non-public law areas of the law (e.g. all statutory law, the common law and customary law) be equally influenced by the letter and spirit of the bill of rights.

9. The inclusion of more socioeconomic rights in the bill of rights itself, is legally untenable and will, moreover, give rise to immense practical problems for government. Alternative mechanisms to redress issues pertaining to socioeconomic rights, could be utilised and should result in an even more effective protection of such rights one such method would be to make use of directive principles which could link up with the objectives of the RDP.

This

method has been utilised successfully in, e.g. The constitutions of India and Namibia.

10. The principle of the limitation of fundamental rights according to strict criteria, should be retained. The criteria set forth in section 33(1) could, in principle, be retained.

11. The basic and pivotal value currently underpinning Chapter 3 is that of "an open and democratic society, based on freedom and equality". This basic normative value should be retained.

12. Further and detailed proposals regarding specific sections which should be added, deleted, amended or re-formulated, will be put forward in the course of the work of the Theme Committee and when appropriate.