

# **FUNDAMENTAL RIGHTS**

## **TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS DURING THE TRANSITION**

### **1. Aspects of Reports Agreed Upon in the Negotiating Council:**

The inclusion of the following rights and freedoms have been agreed upon:

- 1.1 Equality
- 1.2 Human dignity
- 1.3 Liberty and security of the person
- 1.4 Privacy
- 1.5 Religion and belief
- 1.6 Freedom of expression
- 1.7 Assembly, demonstrations and petitions
- 1.8 Freedom of association
- 1.9 Freedom of movement
- 1.10 Citizens rights
- 1.11 Political rights
- 1.12 Access to court
- 1.13 Access to information
- 1.14 Administrative decisions
- 1.15 Detained, arrested and accused persons
- 1.16 Eviction
- 1.17 Environment
- 1.18 Children

### **2. Aspects of Reports Not Agreed Upon in the Negotiating Council:**

2.1 Must decide on the following rights and freedoms:

- 2.1.1 Life
- 2.1.2 Servitude and forced labour
- 2.1.3 Residence
- 2.1.4 Economic Activity
- 2.1.5 Labour relations
- 2.1.6 Property
- 2.1.7 Language and culture
- 2.1.8 Education

2.2 Still to agree on the principles embodied in:

- 2.2.1 Enforcement
- 2.2.2 Limitation

2.2.3 Suspension

2.3 None of the formulations have been approved as yet.

**3. Those issues Referred Back for Debate:**

3.1 No issues have been explicitly referred back to date but it would appear that three issues especially are controversial, namely

3.1.1 Property

3.1.2 Economic activity

3.1.3 Life

3.2 Still to be debated:

3.2.1 Pension rights

3.2.2 Preservance of the religious character and medium of instruction of education institutions.

**4. Aspects Relating to Substantive Issues in the Reports of Other Technical Committees:**

4.1 The inclusion of a provision to provide for the diversity of expression and opinion in the public media. This will have to be referred to the Technical Committee on Media.

4.2 The co-ordination of the political rights with provisions proposed by the Electoral Committee.

4.3 Mechanisms for the enforcement of entrenched rights and freedoms. This overlaps with the work of the Constitutional Issues committee.

These issues have been or will be mentioned in the Reports of the Technical Committee on Fundamental Rights but have not been formally noticed by the Negotiating Council.

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## **PLANNING COMMITTEE 24 MAY 1993**

### **5.1.4 Technical Committee on Fundamental Human Rights During the Transition:**

- 5.1.4.1 After discussion it was agreed that there is a need to clarify the definition of “Fundamental Human Rights during the Transition”. It was suggested that the Chairperson of the Negotiating Council guide discussion in the meeting with a view to achieving this clarity.
- 5.1.4.2 It was agreed to put forward the following recommendations of the Technical Committee to the meeting of the Negotiating Council:
  - \* Item 5.1 of the Technical Committee Report refers : That comments are invited from the Negotiating Council on the various rights and freedoms in the first and second categories with a view to give the Technical Committee some feedback on their proposals;
  - \* Item 5.2 of the Technical Committee Report refers : That the Negotiating Council accepts the principle of justifiability and that discussion be invited with regard to the relevant institution;
  - \* Item 5.3 of the Technical Committee Report refers : That the Technical Committee be instructed to submit formulations;
  - \* Item 5.4 of the Technical Committee Report refers : That discussion on the third category be continued.

## **PLANNING COMMITTEE 25 MAY 1993**

### **5.3 Technical Committee on Fundamental Human Rights During the Transition:**

- 5.3.1 It was agreed that the Sub-Committee convey the following to the Technical Committee on behalf of the Planning Committee:

- \* That the Technical Committee provide draft criteria for assessing human rights during the transition and indicate what criteria were used. This report should be completed for submission to the meeting of the Negotiating Council on Friday 28 May 1993;
- \* Item 5.3 of the Technical Committee's Second Report refers : That the Technical Committee be instructed to submit formulations;
- \* Item 5.4 of the Technical Committee's Second Report refers : That discussion on the third category be continued.

## **PLANNING COMMITTEE 10 JUNE 1993**

### **5.1.3 Technical Committee on Fundamental Human Rights During the Transition:**

It was noted that although the report from the Technical Committee would be distributed at the meeting of the Negotiating Council in the afternoon, the report itself would not be discussed in that meeting but at the next meeting of the Negotiating Council on 3 June 1993.

## **PLANNING COMMITTEE 3 JUNE 1993**

### **9.3 Proposed Amendments to the Agenda:**

Due to time constraints, it was agreed to recommend to the Negotiating Council that the Reports of the Technical Committee on the Independent Election Commission and the Independent Media Commission be tabled, accepted in principle, the TEC and its Sub-Councils be dealt with at the next meeting of the Negotiating Council and the Reports from the Technical Committees on the Amendment or Repeal of Legislation Impeding Free Political Activity and Discriminatory Legislation and Fundamental Human Rights during the Transition be tabled only.

### **Addendum B**

This Negotiating Council meeting on Thursday 3 June 1993 at the World Trade Centre:

#### **Noting:**

1. The Declaration of Intent on the Negotiating Process adopted on 7 May 1993;
2. The expectation of all South Africans that the Negotiating Process is concluded constructively, urgently and peacefully;

#### **Further Noting:**

1. That the Resolution on Constitutional Issues adopted on 1 June 1993 provides a facilitating framework for discussion on these issues;
2. The progress made by -
  - 2.1 the tabling of generally acceptable proposals emanating from the Technical Committee on Violence;
  - 2.2 agreeing to a substantial number of general constitutional principles;
  - 2.3 establishing the commission on boundaries of regions which will commence its work shortly;
  - 2.4 receiving proposals on the powers, functions and structures of regions in the transition;
  - 2.5 the acceptance in principle of the Fundamental Rights mentioned in paragraph 5.1 and 5.2 of the Second Report of the Technical Committee on Fundamental Rights during the Transition;

**Believing:**

1. That the setting of a date for the elections will send a ray of hope and optimism throughout the country;
2. That it is vital to inject confidence in the negotiating process;

**Therefore resolves that:**

1. The Negotiating Council recommends to the Negotiating Forum of 25 June 1993 that the date of the election shall be 27 April 1994; however, should a final settlement be reached at an earlier date to enable an election to be held earlier, the Negotiating Council should set an earlier date; while the period over which the election is to be held will have to be decided upon in co-operation on with the Independent Electoral Commission;
2. Participants wishing to consult with their principals on this matter may do so and report to the Negotiating Forum meeting of 25 June 1993 on their position;

**We further resolve:**

1. To move towards finality in our negotiations on the constitutional issues referred to in the resolution of 1 June 1993 before the meeting of the Negotiating Forum on 25 June 1993;

2. To work towards the achievement of those goals that will allow for an adequate time-frame for the implementation of decisions on binding constitutional principles, the constitutional framework and the constitution making process and procedures for elections, for the election to take place on that date; and
3. To work towards the creation of conditions conducive to free and fair and peaceful elections;

#### **We Commit Ourselves -**

1. To refrain from the use of violence against anyone as a means of attaining political objectives;
2. To reject actions like the above and pronouncements designed or likely to be conducive to a climate of violence;
3. To take effective steps against anyone within our organisations who transgresses in these respects; and
4. To actively and visibly promote a climate conducive to peace, harmony and goodwill among all.

#### **PLANNING COMMITTEE 21 JUNE 1993**

- 15.2 It was agreed to allocate time from 16h00 to 19h00 to the Technical Committee on Fundamental Human Rights as this Technical Committee would not be available for the meeting of the Negotiating Council on Friday 25 June 1993.

#### **17. General Issues**

- 17.1 The Administration was requested to clarify as to whether the Technical Committee on Fundamental Human Rights in the Transition was available to present its report to the Negotiating Council. A report-back should be given informally to PJ Gordhan, the current Planning Committee Chairperson.

#### **PLANNING COMMITTEE 24 JUNE 1993**

##### **5.1.4 Technical Committee on Fundamental Human Rights During the Transition:**

- 5.1.4.1 After discussion it was agreed that there is a need to clarify the definition of "Fundamental Human Rights during the Transition". It was suggested that the Chairperson of the Negotiating Council guide discussion in the meeting with a view to achieving this clarity.



5.1.4.2 It was agreed to put forward the following recommendations of the Technical Committee to the meeting of the Negotiating Council:

- \* Item 5.1 of the Technical Committee Report refers : That comments are invited from the Negotiating Council on the various rights and freedoms in the first and second categories with a view to give the Technical Committee some feedback on their proposals;
- \* Item 5.2 of the Technical Committee Report refers : That the Negotiating Council accepts the principle of justifiability and that discussion be invited with regard to the relevant institution;
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## **NEGOTIATING COUNCIL 18 MAY 1993**

### **5.4 Technical Committee on Fundamental Human Rights during the Transition:**

- 5.4.1 The members of the Technical Committee on Fundamental Human Rights During the Transition were welcomed.
- 5.4.2 An overview and issues to be highlighted or requiring decision/guidance from the Negotiating Council in the report was presented by a spokesperson of the Technical Committee. Discussion followed.
- 5.4.3 The Technical Committee was requested to take into account the concerns and views of delegates in formulating its second report.
- 5.4.4 It was suggested that participants submit clear submissions with regard to the issue of the right to private ownership.
- 5.4.5 It was agreed to mandate the Technical Committee to proceed with their work on the basis as proposed by the Technical Committee.
- 5.4.6 The members of the Technical Committee were thanked for the work so far completed.

## **AD HOC COMMITTEE ON FUNDAMENTAL RIGHTS 27 JUNE 1993**

### **5.4 Ad-hoc Committee on Fundamental Human Rights during the Transition:**

It was noted that Planning Committee had discussed the issue of points of difference arising out of the debate on the Report from this Technical Committee and recommended the following:

- \* That an ad-hoc committee be appointed to deal with the issues;
- \* That the ad-hoc committee be composed as follows:
  - S Camerer (Convenor)
  - H Cheadle
  - P Maduna
  - Mothibe
  - Gibson

### **5.1.4 Technical Committee on Fundamental Human Rights During the Transition : 24/5/pc**

- 5.1.4.1 After discussion it was agreed that there is a need to clarify the definition of “Fundamental Human Rights during the Transition”. It was suggested that the

Chairperson of the Negotiating Council guide discussion in the meeting with a view to achieving this clarity.

5.1.4.2 It was agreed to put forward the following recommendations of the Technical Committee to the meeting of the Negotiating Council:

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- \* Item 5.3 of the Technical Committee Report refers : That the Technical Committee be instructed to submit formulations;
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### 5.3 **Technical Committee on Fundamental Human Rights During the Transition : 25/5/pc**

5.3.1 It was agreed that the Sub-Committee convey the following to the Technical Committee on behalf of the Planning Committee:

- \* That the Technical Committee provide draft criteria for assessing human rights during the transition and indicate what criteria were used. This report should be completed for submission to the meeting of the Negotiating Council on Friday 28 May 1993;
- \* Item 5.3 of the Technical Committee's Second Report refers : That the Technical Committee be instructed to submit formulations;
- \* Item 5.4 of the Technical Committee's Second Report refers : That discussion on the third category be continued.

### 5.1.3 **Technical Committee on Fundamental Human Rights During the Transition: 10/6/pc**

It was noted that although the report from the Technical Committee would be distributed at the meeting of the Negotiating Council in the afternoon, the report itself would not be discussed in that meeting but at the next meeting of the Negotiating Council on 3 June 1993.

### 3/6/pc 9.3 **Proposed Amendments to the Agenda:**

Due to time constraints, it was agreed to recommend to the Negotiating Council that the Reports of the Technical Committee on the Independent Election Commission and the Independent Media Commission be tabled, accepted in principle, the TEC and its Sub-Councils be dealt with at the next meeting of the Negotiating Council and the Reports from the Technical Committees on the Amendment or Repeal of Legislation Impeding Free Political Activity and Discriminatory Legislation and Fundamental Human Rights during the Transition be tabled only.

### **Addendum B**

This Negotiating Council meeting on Thursday 3 June 1993 at the World Trade Centre:

#### **Noting:**

1. The Declaration of Intent on the Negotiating Process adopted on 7 May 1993;
2. The expectation of all South Africans that the Negotiating Process is concluded constructively, urgently and peacefully;

#### **Further Noting:**

1. That the Resolution on Constitutional Issues adopted on 1 June 1993 provides a facilitating framework for discussion on these issues;
2. The progress made by -
  - 2.1 the tabling of generally acceptable proposals emanating from the Technical Committee on Violence;
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  - 2.4 receiving proposals on the powers, functions and structures of regions in the transition;
  - 2.5 the acceptance in principle of the Fundamental Rights mentioned in paragraph 5.1 and 5.2 of the Second Report of the Technical Committee on Fundamental Rights during the Transition;

#### **Believing:**

1. That the setting of a date for the elections will send a ray of hope and optimism throughout the country;
2. That it is vital to inject confidence in the negotiating process;

**Therefore resolves that:**

1. The Negotiating Council recommends to the Negotiating Forum of 25 June 1993 that the date of the election shall be 27 April 1994; however, should a final settlement be reached at an earlier date to enable an election to be held earlier, the Negotiating Council should set an earlier date; while the period over which the election is to be held will have to be decided upon in co-operation on with the Independent Electoral Commission;
2. Participants wishing to consult with their principals on this matter may do so and report to the Negotiating Forum meeting of 25 June 1993 on their position;

**We further resolve:**

1. To move towards finality in our negotiations on the constitutional issues referred to in the resolution of 1 June 1993 before the meeting of the Negotiating Forum on 25 June 1993;
2. To work towards the achievement of those goals that will allow for an adequate time frame for the implementation of decisions on binding constitutional principles, the constitutional framework and the constitution making process and procedures for elections, for the election to take place on that date; and
3. To work towards the creation of conditions conducive to free and fair and peaceful elections;

**We Commit Ourselves -**

1. To refrain from the use of violence against anyone as a means of attaining political objectives;
2. To reject actions like the above and pronouncements designed or likely to be conducive to a climate of violence;
3. To take effective steps against anyone within our organisations who transgresses in these respects; and
4. To actively and visibly promote a climate conducive to peace, harmony and goodwill among all.

15.2 It was agreed to allocate time from 16h00 to 19h00 to the Technical Committee on Fundamental Human Rights as this Technical Committee would not be available for the meeting of the Negotiating Council on Friday 25 June 1993.

17. **General Issues**

17.1 The Administration was requested to clarify as to whether the Technical Committee on Fundamental Human Rights in the Transition was available to present its report to the Negotiating Council. A report back should be given informally to PJ Gordhan, the current Planning Committee Chairperson.

5.1.4 **Technical Committee on Fundamental Human Rights During the Transition:**

5.1.4.1 After discussion it was agreed that there is a need to clarify the definition of "Fundamental Human Rights during the Transition". It was suggested that the Chairperson of the Negotiating Council guide discussion in the meeting with a view to achieving this clarity.

5.1.4.2 It was agreed to put forward the following recommendations of the Technical Committee to the meeting of the Negotiating Council:

- \* Item 5.1 of the Technical Committee Report refers : That comments are invited from the Negotiating Council on the various rights and freedoms in the first and second categories with a view to give the Technical Committee some feedback on their proposals;
- \* Item 5.2 of the Technical Committee Report refers : That the Negotiating Council accepts the principle of justifiability and that discussion be invited with regard to the relevant institution;
- \* Item 5.3 of the Technical Committee Report refers : That the Technical Committee be instructed to submit formulations;
- \* Item 5.4 of the Technical Committee Report refers : That discussion on the third category be continued.

5.1.4 **Technical Committee on Fundamental Human Rights During the Transition: 24/6/pc**

5.1.4.1 After discussion it was agreed that there is a need to clarify the definition of "Fundamental Human Rights during the Transition". It was suggested that the Chairperson of the Negotiating Council guide discussion in the meeting with a view to achieving this clarity.

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- \* Item 5.1 of the Technical Committee Report refers : That comments are invited from the Negotiating Council on the various rights and freedoms in the first and second categories with a view to give the Technical Committee some feedback on their proposals;
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- \* Item 5.3 of the Technical Committee Report refers : That the Technical Committee be instructed to submit formulations;
- \* Item 5.4 of the Technical Committee Report refers : That discussion on the third category be continued.

#### 5.4 **Technical Committee on Fundamental Human Rights during the Transition: 18/5/nc**

- 5.4.1 The members of the Technical Committee on Fundamental Human Rights During the Transition were welcomed.
- 5.4.2 An overview and issues to be highlighted or requiring decision/guidance from the Negotiating Council in the report was presented by a spokesperson of the Technical Committee. Discussion followed.
- 5.4.3 The Technical Committee was requested to take into account the concerns and views of delegates in formulating its second report.
- 5.4.4 It was suggested that participants submit clear submissions with regard to the issue of the right to private ownership.
- 5.4.5 It was agreed to mandate the Technical Committee to proceed with their work on the basis as proposed by the Technical Committee.
- 5.4.6 The members of the Technical Committee were thanked for the work so far completed.

#### 5.4 **Ad-hoc Committee on Fundamental Human Rights during the Transition: 27/7/nc**

It was noted that Planning Committee had discussed the issue of points of difference arising out of the debate on the Report from this Technical Committee and recommended the following:

- \* That an ad-hoc committee be appointed to deal with the issues;
- \* That the ad-hoc committee be composed as follows:

- S Camerer (Convenor)
- H Cheadle
- P Maduna
- Mothibe
- Gibson

## **TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS : 28 MAY 1993**

Very brief notes:

The Negotiating Council delegates representing the various political parties were almost all in agreement in commanding the Technical Committee on Fundamental Rights on their Third Report with various comments, etc., with the exception of the following:

### **Dr Delpport - Government:**

However he backed down when he afterwards put forward a proposal which was accepted by all present. (see below)

### **Mr de Jager - Nationalist Party:**

Cannot agree with Fundamental Rights as presented because they would be here today and gone tomorrow, as the emphasis was on “during the transition”. A right is a right. He also asked about property rights not being included.

Towards the end, Adv. Jacob, on behalf of the Nationalist Party and the Afrikaner Nation, objected very strongly to the fact that when Dr Delpport spoke a few words in Afrikaans to Prof. du Plessis, there was booing from certain Delegates and he would be making this objection very strongly to the Planning Committee.

Dr de Villiers said that, in his opinion, the Afrikaans was merely a joking aside and the booing as such, was against the content of the phrase and not an insult intended because Afrikaans was spoken. Mr de Jager was adamant that he would complain as a point of order to the Planning Committee.

### **Conservative Party:**

Agreed in full with the Nationalist Party and said that we are living in a violent society and the State needs to curb some rights to deal with violence. This has not been addressed by the T.C. on F.R. and has this T.C. taken into consideration the ethnic position of this country? They do not accept the Third Report from this T.C.

### **Mr Radjbansi:**



What about property rights? Went on about this, but said nothing about accepting the Third Report with this item not laid down as a fundamental right.

### **Inkhata Freedom Party:**

Mr Feldgate said the T.C. on F.R. should reconsider and simplify the whole issue as, unless one had all the reports/documentation in front of one, one would get lost in all the points. etc. They could not accept the Third Report as it was.

### **Ciskei:**

Rejected the T.C. on F.R.'s report.

The following proposal was put forward by Dr Delpont (Government) which was noted and accepted by the Delegates:

The Technical Committee on Fundamental Rights to be given a mandate:

- \* Fundamental Rights to be entrenched during the transitional period: points 5. 1. and 5.2. of the Second Report excluding the rights set down in paragraph 3 of the Third Report. This would be a move forward and move those rights which do not seem to be in dispute.
- \* Various formulations of rights, point 7.3. in Third Report. The list of 8 rights which are in dispute.
- \* Content of each and every right is to be formulated. i.e. Right to life - does this say no abortion? and how to put limitations on this.
- \* All other rights - indicate what possibilities there are.

Mr Mac Maharaj on behalf of A.N.C. accepted the Third Report. He said that there was no need for the Delegates to blame the T.C. on F.R. for doing things they were instructed to do. It was not for this T. C. report on how to distinguish rights during the transition from rights to be laid down in the Constitution. Point 7.2. is correct for moving forward on. Category I - agreed on 14 rights with 3 set aside for special attention. Category 11 - 14 rights with 6 set aside for special attention. The whole of Category 11 set aside. He asked the Delegates to agree with the T.C.on F.R.'s recommendation for acceptance of 7.1, 7.2 and 7.3. The question was how to address them. However point 7.3. was not the work for the T.C.but for the Negotiating Council to apply their minds and see a way in addressing these.

Dr de Villiers as chairperson, proposed that the above two proposals be accepted. After this was typed out and distributed to the Delegates, Dr Delpont suggested a few minor amendments to his proposal. The proposals were accepted by the majority of the Delegates.

# **ISSUES REFERRED TO THE PLANNING COMMITTEE BY THE NEGOTIATING COUNCIL**

## **1. Technical Committee on Fundamental Human Rights during the Transition:**

1.1 The Planning Committee was requested to suggest a mechanism to resolve the differences arising from the following items:

- \* Item 2 (2)
- \* Item 3
- \* The right to vote
- \* Item 30 (item on eviction)

1.2 The Planning Committee was requested to clarify the brief of the Technical Committee.

1.3 The Planning Committee was requested to set a deadline for the receipt of submissions from participants. It was agreed that the date should be Monday 26 July 1993.

## **2. Technical Committee on the Repeal of Discriminatory Legislation:**

2.1 To look into what mechanisms need to be employed or what suggestions can be made in respect of the date of implementation of the Bill of Rights.

2.2 To look into the issue of “verticality” and “horizontality” pending the report from the Technical Committee on Fundamental Human Rights, and establish some mechanism to resolve these particular issues.

2.3 To consider the issue of the need for democratic government and the rule of law government between the present time and the elections (getting from point A to point B).

2.4 To look into the issue of the uniformity of application of the Bill of Rights and the principles with regard to the elections.

2.5 The Fundamental Rights Committee and the IEC have suggested or are considering a set of enforcement mechanisms. Enforcement mechanisms are also necessary for the enforcement of the Bill of Rights. The Planning Committee should apply its mind to this issue and bring various recommendations on how the overlaps could be avoided. This will give guidance to the Technical Committee on the Repeal of Discriminatory Legislation.

2.6 The Planning Committee should submit recommendations as to how to deal with the part of the Second report of the Technical Committee, with regard to specific pieces of legislation.

2.7 How the tribunals would work.

## **ISSUES REFERRED TO THE PLANNING COMMITTEE BY THE NEGOTIATING COUNCIL**

### **1. Technical Committee on Fundamental Human Rights during the Transition:**

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- \* Item 2.2
- \* Item 3
- \* The right to vote
- \* Item 30 (item on eviction)

1.2 The Planning Committee was requested to clarify the brief of the Technical Committee.

1.3 The Planning Committee was requested to set a deadline for the receipt of submissions from participants. It was tentatively agreed that the date should be Tuesday 27 July.

### **2. Technical Committee on the Repeal of Discriminatory Legislation:**

2.1 To look into what mechanisms need to be employed or what suggestions can be made in respect of the date of implementation of the Bill of Rights.

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## **TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS DURING THE TRANSITION : TENTH PROGRESS REPORT NEGOTIATING COUNCIL MEETING : 7 OCTOBER 1993**

Extract from debates of the Negotiating Council - Dr D de Villiers in the Chair:

### **CLAUSE 8. EQUALITY:**

#### **Prof. du Plessis:**

8(2) - all grounds of discrimination have been inserted as a result of the discussion in the Council previously. The one is "sex" together with "gender" - I think we had that debate here that sex and gender could actually mean two different things, and then we included "social origin" in order to cater for the concern that birth, class and status are not mentioned in particular and we are of the opinion that "social origin" would cater for that need and we also said "on one or more of the following grounds". One or more of the following grounds is just to create the possibility that people can also allege discrimination on, not only on account of one of the grounds, but on a combination of the grounds. For instance, a black woman would be able to say "We constitute a class for the purposes of the discrimination clause".

#### **Chairperson:**

Thank you, does the Council approve of "sex" being inserted in (2)? Minister Coetsee.

#### **Minister Coetsee:**

Just for the sake of clarification and not for the sake of revisiting a topic that's always worthy of a revisit, sex - could I have clarification on the reason for finding a difference between "gender" and "sex"?

#### **Prof. du Plessis:**

Chairperson, the people who are well-versed in feminist literature tells us that in other parts of the world it has come to, it has become clear that “sex” is usually used as a reference to the biological differences whereas “gender” includes also the social constructs surrounding those biological differences. In other words it would be, the issue would be “sex” if one would refer to the biological ability of a women to give birth, but if added to that there’s a social construct saying that women are less intelligent than men, for argument sake, then that’s a social prejudice which belongs more appropriately in the category of “gender”.

**Chairperson:**

Thank you - its not to make sex more complicated? Can we agree to - Minister Coetsee?

**Minister Coetsee:**

I know this is a matter that has been settled but having applied my mind of course now again to the whole clause with the improvements, the question is whether the concept of sexual orientation does not perhaps give room for interpretations and consequences that are unintended?

**Chairperson:**

Professor?

**Prof. du Plessis:**

Chairperson, I don’t know what Minister Coetsee has in mind but should I once again draw attention to the fact that that is limitable in terms of the Limitation Clause and if there are undesirable consequences I don’t know what he is referring to but it will have to be argued in front of the Constitutional Court and say that in order to avoid, well if they are real undesirable consequences then the Limitations Clause could provide for their limitation and their exclusion.

**Minister Coetsee:**

Especially since the Limitations Clause in sub clause 34(2) also draws into the debate the concept of any rule of common law, it seems to me that we may meandering in an area which perhaps we should not complicate if we could perhaps relieve the duty of the court by being more specific. For that reason I was wondering whether it would be possible for the Technical Committee to review and just address the question of perhaps unintended consequences with too wide a definition.

**Chairperson:**

Mr Gordhan.

**Mr Gordhan:**

Mr Chairperson I don’t want to get into the debate about unintended consequences because I still don’t understand what they are in relation to that particular phrase, but what I do have pre-lunch qualms about is revisiting an aspect that has been now contained for the tenth time in a sense in a

report because we might have some qualms which could have been raised in the Ad Hoc Committee, which could have been raised in previous discussions in the Council and with the greatest of respect, endurance and tolerance, I think it would be difficult for this House to now entertain debate on a matter that has been put forward on a number of occasions and perhaps it may be something to think about over lunch without dwelling on it