

NATIONAL PARTY (NP)

NP NOTES ON THE REFINED WORKING DRAFT OF THE BILL OF RIGHTS

The NP requests that all its concerns raised during the previous meetings in respect of the Bill of Rights be noted in the sidebar notes. In addition, the NP requests that the following be added to or noted in the sidebar notes;

Add Clause 4(2)

The NP does not agree with the present formulation of the second sentence of this clause. It does not accurately reflect Constitutional Principle V. The NP does not view affirmative action measures as an end in themselves, but as a means to an end. The NP suggests the following alternative:

"This section shall not preclude measures likely to achieve the adequate protection and advancement of persons or categories of persons disadvantaged by unfair discrimination, in order to enable their full and equal enjoyment of all rights, freedoms and liberties".

Add Clause 4(3)

For the sake of certainty the NP suggests the inclusion of the words "without derogating from the generality" or "but not limited to" after the word "including", in line 3, as is done in Clause 33(3) where reference is made to "derogation".

Add Clause 7(1)

The NP proposes the insertion of "security of the person". We suggest that "plain language" would indicate that this should be preferred over "physical and psychological integrity".

Add Clause 7 3)(c)

The problems associated with the withholding of consent to medical treatment by guardians of minors has not yet been addressed.

Add Clause 7(1)

The NP opposes the ANC proposal referred to in the sidebar.

Add Cause 9

Provided that option 1 in clause 35(3) is retained, subclause 9(2) will not be necessary.

Add Clause 10(3)

This clause must be qualified by the addition of the words "to the extent consistent with this bill" to bring it into line with the bill's treatment of customary law.

Add Clause 11(2)

The NP opposes the inclusion of this subsection and proposes its deletion in toto as an alternative option.

Add Clause 17

The NP proposes the inclusion as a further option, the relevant clause in the German constitution in respect of economic activity for consideration, as discussed in the CC. The NP is opposed to option 1.

Add Clause 20

The NP requests that the property rights clause reflected as option 1 on page 19 of the draft bill of rights published on 9 October 1995 be included as an alternative option. The NP is opposed to much of the clause as it stands.

Add Clauses 21, 22, 23 and 24

The NP proposes that access to land be separated from the right to housing/shelter. The NP opposes the provision of clause 21(2)(b). The NP wishes to propose the reconsideration of this section in relation to the regrouping and rewording of all socioeconomic rights. The NP seeks clarity on the word "home".

The following proposal is made:

"in recognising and protecting human dignity, the state must provide for reasonable, appropriate and progressive measures in accordance with its resources and priorities for the promotion of the following rights:

- (1) Everyone has a right to adequate housing/shelter.
- (2) Everyone has the right not to be evicted from his or her housing/shelter or to have that housing/shelter demolished without an order from a court of law.
- (3) Everyone without adequate resources has the right of access to health care, including reproductive health care, which must at least include the necessary medical treatment.
- (4) Everyone who is unable to support himself or herself has the right to receive reasonable and appropriate social assistance for a reasonable period.
- (5) Everyone has the right of access to clean water and sufficient food.
- (6) Every child has the right ---
 - (a) [retain text]
 - (b) family and parental care etc.
 - (c) basic nutrition, health and social services and shelter
 - (d) be protected from maltreatment, neglect and all forms of abuse and degradation.
 - (e) etc.....”

Add Clause 25

The alternative wording is suggested for subclause (1)(c), not (2)(c) - typing error.

The NP supports the alternative wording.

Add Clause 27

The NP proposes the retention of section 31 of the interim constitution and proposes that be inserted as an alternative option.

Add Clause 30

The NP proposes as an alternative option the suggested wording of the draft with the words "where appropriate or necessary" between the words "or" and "another" in line 3 of this section.

Add Clause 31(5)

The NP supports the inclusion of the proposed subclause (5).

Add Clause 32

1. In respect of subclause (1)(a), the NP favours "reasonable and necessary"
2. The NP opposes the inclusion of subclause (2), because a provision for affirmative action is already adequately catered for in clause 4(2).
3. The NP proposes the inclusion after the words "no law" in line 2 of subclause (3) of the words' including the common law, customary law or legislation or any other measure with legal effect or impact.
4. The NP seeks clarity on the words "or in any other provision of the constitution" in subclause (3), especially in regard to the possibility of such other provisions being amended by a majority of 50% plus 1.

Add Clause 33

The NP opposes the inclusion of subclause (5).

Add Clause 35

1. The NP seeks clarity on the inclusion of "the judiciary" in subclause (1), in view of the provisions of section 7(1) of the interim constitution as well as clauses 36(3) and 35(2) of this draft.
2. The NP supports subclause (3) of option 1.