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Our ref. / Ons verw. K1/48

Fax / Faks no. 011 397 2211

Date / Datum 1992-03-02

Your ref. / U verw.

To / Aan The Chairman, Convention for a Democratic South Africa, PO Box 307,
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From / Van Joan de Beer, Deputy Director on behalf of Prof Anna Louw, Honorary Secretary
of the South African Institute for Librarianship and Information Science

Pages / Bladsye 12 + 7 = 19 (incl. fax cover sheet / faks-dekblad ing.)

MESSAGE / BOODSKAP

Sir

Included herewith please find the submission of SAILIS to CODESA on behalf of The
Honorary Secretary, Prof Anna Louw.

Yours faithfully

Joan de Beer

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Our ref. / Ons verw.

Fax / Faks no. 339-7559 Date / Datum 1992 03 02

Your ref. / U verw. SAILIS submission to Codesa: Social Responsibility

To / Aan Ms Clare Walker, Wartenweiler Library, Wits.

From / Van Joan de Beer, for dr. P J Lor.

Pages / Bladsye

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MESSAGE / BOODSKAP

1. As promised by dr. Lor, the SAILIS submission to Codesa.
2. Compiled by Prof. R. B. Zaaiman and amended by dr. P. J. Lor.
3. Kind regards

Joan

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TO: AAN The Chairman
Convention for a Democratic South Africa
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Submissions to Codesa

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FAX MESSAGE

Dear Sir

Included herewith please find the submission by SA LIS for consideration by CODESA in drawing up a constitution for South Africa.

The submission relates to the contribution libraries can make to the relevant assignments of the CODESA Working Groups.

Yours sincerely

Prof. Anna Louw
HONORARY SECRETARY

SOUTH AFRICAN INSTITUTE FOR LIBRARIANSHIP AND INFORMATION SCIENCE
SUBMISSION TO CODESA

4

WORKING GROUP 1

PREAMBLE

The success of a democratic society depends on informed and educated citizens.

Libraries serve as sources of information and education for all citizens regardless of economic or educational status, language, origins, age or sex. Libraries assemble and make available information that reflects many viewpoints. They complement the mass media by retaining information on topics and events that are quickly forgotten as the media move on to the latest headlines. They retain for use publications that are out of print or have been withdrawn from retailers' shelves due to flagging sales. This information serves as essential background for responsible opinion forming and decision making by individual citizens as well as community and party leaders. Libraries thus provide an essential service for the successful functioning of a democratic state.

There are over one thousand public library service points distributed throughout South Africa. They provide invaluable support for formal education programmes and, if mobilized in support of programmes of literacy training, community education and development, they have enormous potential as sources of nonformal and informal education.

The existing network of libraries constitutes a ready-made, politically neutral infrastructure for the dissemination of information about Codesa and for the creation of a climate of mutual understanding and tolerance.

Codesa should therefore make use of libraries in attaining its objectives, and its decisions and recommendations should promote the use and support of libraries.

The South African Institute for Librarianship and Information Science offers its services whenever consultation on library matters is required.

Libraries enter into the following assignments of Working Group 1:

1 First assignment: Creation of a climate for free political participation

Through their educational and informative functions, libraries help to create a basis for equality among all members of a democracy. Libraries specifically address the following issues:

1.1.4(k) fair access should be ensured to libraries as they provide information and knowledge that promote the creation of a climate for free political participation. The South African Institute for Librarianship and Information Science submitted a declaration on this matter to the South African Law Commission in regard to a law on human rights. A copy of the declaration is attached

1.1.4(m) a lasting improvement in socio-economic conditions can only be achieved by the exertions and achievements of the individuals forming the population. Libraries assist them in gaining the knowledge and skills they require for increasing their capabilities. Library services should therefore be fully exploited

1.1.4(n) by providing information reflecting multiple viewpoints, libraries promote understanding and political tolerance

1.1.4(o) libraries can serve as distribution points for the materials used in educative and informative campaigns

1.1.4(p) because of their wide acceptance and use, libraries provide fair and reasonable access to information on political issues and stances to potential voters, while the libraries themselves remain politically neutral.

2 Second assignment: Role of international community

Libraries do not receive adequate public funding. Their role in the advancement of South African democracy justifies increased funding. It is essential that adequate library services be rendered to all South Africans. Vigorous action is needed to eliminate current inequalities in this respect.

2.1.1 The international community and/or organisations can effectively help to promote democracy in South Africa by supporting library services. Working Group 1 may obtain funds directly for this purpose, or may recommend that a percentage of specific development aid funds be allocated to library development.

ADDENDUM TO WORKING GROUP 1
First assignment 1.1.4 (k)

From: Newsletter of the South African Institute for Librarianship and Information Science
vol 10 (7), July 1990

SAILIS contribution to S.A. Law Commission

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This is a copy of recommendations made by SAILIS to the South African Law Commission Working Paper 25, Project 58: Group and human rights and submitted to them in August 1989.

The Executive Committee of SAILIS felt that this document should be brought to the attention of SAILIS members, and requested that it be published in *SAILIS Newsletter*.

South African Institute for Librarianship and Information Science

Contribution to

SOUTH AFRICAN LAW COMMISSION WORKING PAPER 25

Project 58: Group and human rights

1 Introduction

This South African Law Commission (SALC) conducted an investigation into the protection of group and human rights in South Africa, at the request of the Minister of Justice. The SALC produced a working paper, which was intended to serve as a basis for deliberation leading to a final report. The SALC issued a general invitation for comment, contributions and suggestions.

The South African Institute for Librarianship and Information Science (SAILIS) prepared a contribution, which it hereby submits to the esteemed Commission.

2 Requests

2.1 SAILIS is committed to the protection of the human right that everyone shall have equal freedom of access to the use of tax-supported libraries, which means that these libraries may not select their users on the ground of race, colour, language, sex, religion, ethnic origin, social class, birth, political or other views, or any disability or other natural characteristic.

We therefore urgently request that the protection of this human right should be provided for in the recommendations of the South African Law Commission on a bill of rights for South Africa.

2.2 SAILIS considers that the right of equal freedom of access to tax-sup-

ported libraries forms part of the underlying human right of freedom of access to information. The latter right also touches on factors that affects the availability of information in libraries, such as censorship and the withholding of information.

We therefore request that the validity of the right of freedom of access to information in its many connotations should be argued in the Final Report of the South African Law Commission.

Because of the pervasive nature of this right, SAILIS will not further deal with it in this contribution which is limited to access to libraries.

3 Motivation for access to libraries

SAILIS accepts the definition that —

A human right is a capacity or benefit which people must be deemed inherently entitled to exercise, use, suspend or relinquish as they choose if they are to function effectively together as fulfilled autonomous beings. (Prozesky et al., quoted in SALC, 1989, p. 201).

We also agree with the view that to come out for or against human rights is to say where one stands. It is to say what one's philosophical view of man, life and the world is. (Visage, quoted in SALC, 1989, p. 294).

We noted that

Experience has shown that individual liberty is safest not in the hands of rulers, statesmen, politicians or bureaucrats, however distinguished, but in the hands of Courts of Justice. . . (Brislowe, quoted in SALC, 1989, p. 300).

As SAILIS is philosophically dedicated to the best use of libraries for the development of the minds of the people of South Africa, we support the defence in a bill of rights of their capacity to use with equal freedom the resources for development contained in tax-supported libraries in the country.

4 Philosophical base

SAILIS concurs with Spencer's opinion that —

. . . if life is justifiable, there must be a justification for the performance of acts essential to its preservation; and, therefore, a justification for those liberties and claims which makes such acts possible. (Spencer, quoted in SALC, 1989, p. 11)

He shows that this is the origin of the conception that "natural rights" exist.

In our view the development of the human mind is the most essential act for the preservation of human life. Human beings therefore possess a natural right to gain knowledge and information that will enable them to take care of their lives to the best of their ability.

We recognise this natural right and, in view of the essential nature of a natural right, acknowledge it as a human right.

We agree that "the existence of human rights does not depend on the will of a State". (Tanaka, quoted in SALC, 1989, p. 22) The supra-governmental existence of human rights exacts moral commitments from the state in the exercise of its will. This relates to the view that

(the legislators') power in the utmost bounds of it is limited to the public good of society. It is a power that hath no other end but preservation, and therefore can never have the right . . . designedly to impoverish the subjects. . . (Locke, quoted in SALC, 1989, p. 10)

A person's emotional and intellectual development provides him with powerful tools for controlling his own life and for contributing to the good of society. Therefore, if discriminatory legislation excludes members of a particular population group from using sources of development which are available to members of another population group, the legislature designedly impoverishes persons in the excluded group in a most fundamental way. The effect of this impoverishment is that a privileged group gains arbitrary power by preventing other groups from achieving the same levels of development.

The right of all to the equal use of library resources for self-development should therefore be protected by the legislature in its framing of laws and by the executive in its application of the laws. This approach harmonises the conceptions of natural rights and of the rule of law. It is pointed out that

. . . the rule of law is that legal-political code of conduct for the government which at a given moment is best able to afford and to guarantee the individual maximum enjoyment of those subject claims which in the light of the prevailing

(Continued on p. 11)

circumstances of the polity concerned are regarded as fundamental. (Sanders, quoted in SALC, 1989, p. 19)

Legal protection of the claim to equal freedom of access to the resources for development will assist the individual in using his talents unobstructedly in satisfying his needs, in solving his problems, in freely choosing his own state of life, and in "combining personal satisfactions and continuous self-development with significant work". (Lamont, quoted in SALC, p. 29) These abilities will enable him to act in his turn as a valuable resource within society, and contribute to his human dignity.

When development of the individual is indeed protected by law, we agree with the view that —

The rule of law has come to be regarded as the mark of the free society... everywhere it is identified with the liberty of the individual. (Wade and Phillips, quoted in SALC, 1989, p. 21).

5 Resources for development in libraries

Libraries are historically known as institutions that collect, systematise, store and make available records of knowledge and information. These records cover the full range of humanistic, scientific, philosophical, mathematical and theological "modes of knowing the real" identified by Henle. (Henle, 1969).

Libraries as purveyors of recorded thought have long been regarded as exerting powerful influences on thinking and mental development. In South Africa, for instance, the institution of free, tax-supported library services during the 1940s and the 1950s was deliberately intended for the advancement of the then less developed white rural community, because "An enlightened and thinking people is an indispensable condition of any democracy. An indispensable condition of such enlightenment is free access to books and free opportunity to read them". (Stirling, 1943, p. 76). The same argument today applies to the whole population of South Africa.

For the individual, the value of recorded thought is closely linked to the fact that South Africa is becoming an information society, in which the informedness of a person provides him with skills and abilities that determine his level of self-realisation and his lifestyle.

The developing communities, of which Africans is the largest, are in-

creasingly aware of the value of knowledge. This is seen in an intense and widely-encountered desire to learn, especially among young people. Where available, libraries are used intensively by secondary school pupils and university students for study purposes. This also applies to public libraries.

The closing of tax-supported libraries to specific population groups constitutes a violation of the individual's basic human right to develop his mental ability to the full. This is particularly true in circumstances where the schooling of a large part of the developing population sector is not at an advanced level. The library can serve them as a community centre for development through informal and non-formal education. It also can play an important part as an adjunct to the formal education system, as is mentioned above.

6 Libraries affected

Not all libraries are affected by the right of equal freedom of access. If freedom of association is protected by a bill of rights, freedom of disassociation should also be recognised, as is pointed out in the investigation conducted by the Human Sciences Research Council (HSRC) into Inter-group Regulations. (HSRC, quoted in SALC, 1989, p. 275) The right of disassociation implies that a particular group may institute libraries which are intended for use only by members of that group.

The situation is qualified, however, by the principle that all tax-supported libraries must protect and practise the right of equal freedom of access. This principle has been stated in a broader sense in a Bill of Fundamental Rights and Objectives instituted for South West Africa/Namibia by the State President of South Africa through Proclamation R101 of 1985. Article 3 of the proclamation reads as follows:

Everyone shall be equal before the law and no branch or organ of government nor public institution may prejudice nor afford any advantage to any person on the grounds of his ethnic or social origin, sex, race, language, colour, religion or political conviction. (Quoted in SALC, 1989, p. 224)

The implication of this ruling is that no branch or organ of government or any public institution may provide income derived from taxes to a library which practises disassociation on the grounds listed in the above proclamation.

Tax-supported libraries may for good management regulate their use

on other grounds than the discriminatory ones listed in the above quotation. University libraries may, for instance, limit their users to students enrolled at their universities.

7 Legal position

The Central Government is directly responsible for the two National Libraries. The National Libraries Act of 1985 prescribes that these two libraries shall "promote the rendering of information services to the population of the Republic". The legislation excludes any discrimination on the part of the National Libraries.

University libraries are open to all students enrolled at their institutions and all universities are open. The libraries of research institutes do not practise discrimination.

In regard to public libraries, provincial administrations are concerned with broad library policy only, such as that a public library should be placed within reach of each member of the community.

The Government accepts that public libraries may be open to all races, but leaves this decision in the hands of the local authority, usually a municipality.

Public libraries that offer completely equal access to all sections of the community form a minor portion (27.8 %) of the libraries that responded to a survey of all public libraries conducted by Stabbins. A further 25.7 % were partially open to a mix of ethnic groups. The result of the survey cannot be extrapolated to South Africa as a whole without further investigation, as 49.3 % of the subjects did not respond. (Stabbins, 1988)

It is clear that many local authorities are not yet prepared to open their libraries, for a variety of given reasons.

(See note at end of article)

8 Discrimination: Domestic reaction

SAILIS has repeatedly expressed its concern that there should not be discrimination in library services and in the library profession.

In 1986 the Annual Conference of SAILIS adopted the following resolution —

We, the members of SAILIS, confirm that we regard SAILIS as a body above political and ideological doctrine, which grants membership irrespective of race, colour, sex or creed and accepts and allows differing views amongst its members.

We strive to raise the standard of library and information services in all communities throughout the country and.

(Continued on p. 13)

(Continued from p. 11)

We believe

— that all libraries in the country should be as fully developed as resources will allow according to the needs of the communities they serve. The quality of the service should be maintained regardless of the race, colour, sex or creed of members using it. These criteria should not be used as a basis for membership of a library service.

— that the status, salary, recognition and opportunities for promotion of library staff members should be determined according to their abilities, experience and qualifications without regard to race, colour, sex, creed, national origin or political affiliation. (SAILIS Council Minutes, 19 Sept. 1986)

In 1987 SAILIS issued the following views in a policy statement on censorship. This statement reflects its stand on the right of freedom of access to information, which in turn requires equal freedom of access to tax-supported libraries.

Our objective as librarians and information scientists is the full utilization of recorded information for the benefit of all. To achieve this we should, in the interest of scholarship and cultural and personal development, help to create and maintain conditions under which freedom of enquiry, of thought and of its expression can exist.

We must therefore:

- promote the free flow of information;
- give everyone access to public information sources and services;
- avoid bias in the acquisition and presentation of information.

We believe

that wilfully impeding or restricting the pursuit of this objective is in conflict with the ethics of the profession. (SAILIS takes a stand against censorship, 1987, p. 1)

In 1988 SAILIS published a report on the use of libraries for the development of South Africa, which contained a series of proposals for improving library services. One of its findings was that libraries should make their services available to whomever finds it convenient to use a particular library. (Zaaiman, Roux en Rykheer, 1988, p. 230)

The organised library profession in South Africa thus was growingly involved itself in pursuing equal freedom of access for all the resources for development available in libraries.

9 Discrimination: Foreign reaction

Discrimination in the provision of library services in South Africa has engendered enduring and increasingly harsh criticism and punishment from individuals and organisations in other countries. Often these actions are related to the system of apartheid as a whole.

Foreign librarians mostly refuse to visit South Africa. Some take strong activist positions against South African librarians, libraries and library organisations. Visits by South African librarians are resisted by the management or staff of some libraries or library-related institutions.

In 1971 the International Federation of Library Associations (IFLA), the most significant international body in this field, refused membership to the South African Library Association. Individual South African libraries which are institutional members of IFLA have over the past two years been subjected to severe scrutiny to ensure that they do not practise any form of discrimination.

Some publishers no longer sell their books directly to South African libraries. The interlending of books between South African and foreign libraries is being hampered by the decisions of governments, cultural bodies and library authorities.

Though the South African Government and provincial administrations themselves do not practise discrimination in regard to public libraries, the international view is in accord with Lauterpacht's interpretation of the charter of the United Nations, namely that "if a person or group of persons practises discrimination or oppression, the State must see to it that this is stopped". (Lauterpacht, quoted in SALC, 1989, p. 56)

The principles contained in a number of international agreements support the international view that discrimination in admission to libraries violates a human right. (SALC, 1989, ch. 3)

These agreements do not mention libraries by name, but refer to wider issues, such as access to education and free participation in the practising of culture, which may be seen as extending to the use of libraries.

The foreign opposition to South African libraries and librarians proves the conclusion at which the SALC arrives, namely that

The international community has certainly given concrete shape, in many different ways, to the idea that every individual has fundamental rights that must be respected by

the State. The protection of the individual's rights has become a universal demand and is recognised even when no enactments, conventions or treaties exist under positive law. It has become part of the modern international legal consciousness and of the contemporary law of nations. (SALC, 1989, p. 70-71)

Indeed, the prevention of discrimination is seen as one of the most important tasks of the United Nations (SALC, 1989, p. 331)

On the above grounds foreign librarians and institutions consider international criticism and action against discrimination in South African libraries to be justifies as "... the view world wide is that the violation of human rights is not just a domestic matter but something that justifies international intervention in one form or another" (SALC, 1989, p. 298)

10 Bill of rights

The question arises as to how discriminatory decisions can be abolished and prevented.

Judges have to apply the law as it exists, except when they have the right to test laws in regard to their violation of basic human rights. They are enabled to test laws when a bill of rights is accepted by the legislature. If judges subsequently find that laws are inconsistent with human rights protected in a bill of rights, they can declare the laws invalid. The value of a bill of rights is so marked that Cahn says:

... every democratic nation owes its judges a bill of rights with which they can safeguard basic human privileges and immunities. In the deepest moral sense, it is no longer optional to adopt or not to adopt a national bill of rights: it has become a categorical duty. (Cahn, quoted in SALC, 1989, p. 96)

Some 129 countries have bills of rights of varying value in application.

The Bill of Rights of West Germany contains the following basic rights as directly enforceable law:

"Article 1(1) The dignity of man shall be inviolable. To respect and protect it shall be the duty of all State authority.

Article 2(1) Everyone shall have the right to the free development of his personality in so far as he does not violate the rights of others or offend against the constitutional order or the moral code.

Article 3(3) No one shall be prejudiced or favoured because of his sex, his parentage, his race, his language, his homeland and origin, his faith, or his religious or political

(Continued on p. 14)

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(Continued from p. 13)

opinions" (Quoted in SALC, 1989, p. 98-99)

The HSRC, in its investigation into Intergroup Relations, espouses the principle of providing equal opportunities for the realization of the potential of everyone. This implies that "The education systems should make provision for freedom of information dissemination among all components of the social system". The HSRC also finds that "The legitimate claim to the basic necessities of life also emerges clearly in the case of intergroup relations in the form of equal access to resources..." (Quoted in SALC, 1989, p. 276-277)

An hierarchical grouping of rights leading from one to the other would be arranged as follows:

- (a) the right of access to resources
- (b) the right of access to information as a resource
- (c) the right of access to libraries as sources of information

These considerations, suitably framed, can serve in a South African bill of rights as guidelines for equal freedom of access to tax-supported libraries.

11 Kind of rights to be included in a bill of rights

A bill of rights can protect a specific right only. In this case the right will be that of equal freedom of access to tax-supported libraries. The bill of rights will protect this right in a negative way, which means that the protection of the bill of rights can be sought when the right is infringed.

It might be contended that this right would be adequately protected by the adjacent right of freedom of choice with regard to education and training. However, the State does not view public libraries as educational institutions. (Zasiman, *et al.*, p. 13). These libraries indeed do not form part of the system for formal education. In provincial administrations, for instance, separate departments deal with public libraries and with formal education. The main contribution of libraries lies in the areas of informal and non-formal education, though they are used as adjuncts to the formal education system by pupils and students. In law, however, public libraries will not be covered by a protection providing for the choice of institutions for formal education.

The protection of equal freedom of access to tax-supported libraries will not in itself bring about immediate sat-

isfaction with the provision of library services. Remaining inequalities in service will need to be addressed.

It may be thought tempting to right particular cases of inequality by means of stipulations in the bill of rights. However, it has been pointed out that —

A bill of Rights is not a political manifesto, a political programme. Primarily it is a protective device. It is a shield... rather than a sword. It can state, effectively and quite easily, what shall not be done. It cannot stipulate with equal ease or effectiveness, what shall be done. The reasons is not only that the courts, its enforcers, lack the expertise and the infrastructure to get into the business of legislation or administration. It is also, and more tellingly, that they cannot raise the money. They cannot levy the taxes needed to finance those accomplishments they may like to see, and the idea of their ordering the legislature to do so presents certain difficulties. (Didcott, quoted in SALC, 1989, p. 420)

The provision of suitable book-stocks and adequate numbers of libraries therefore rests with political manifestos and programmes, or with professional and administrative action, rather than that they should be included in a bill of rights, where their provision would be unenforceable.

The bill of rights may, however, include an affirmative action clause.

Affirmative action is a recognised way of promoting the principle of equality of opportunities in societies where this principle has suffered as a result of discrimination... (SALC, 1989, p. 440)

While an affirmative action clause will not force the legislature to act, it can permit the legislature to make laws to grant a group, that has been discriminated against, temporary advantages in order to achieve equality but not in order to give one group an advantage over another (SALC, 1989, p. 440)

This is in line with the action already taken by most provincial administrations which give preference to the provision of library services to underprivileged groups. (Zasiman, *et al.*, p. 230)

12 Group rights

SALIS noted that the history of the legal protection of group rights goes back to the sixteenth and seventeenth centuries. (SALC, 1989, p. 326)

In South Africa the rights of indigenous and traditional groups need to

be protected in order to maintain peace and national harmony.

Though a group does not necessarily constitute a minority, SALIS accepts the following definition of a group —

(A minority is) a group in a country possesses, and has a common will... to preserve certain habits and patterns of life and behaviour which may be ethnic, cultural, linguistic or religious, or a combination of them, and which characterize it as a group. Further, such a minority may be politically dominant, or non-dominant (Fawcett, quoted in SALC, 1989, p. 345-50)

The present authoritative agreement on group rights is incorporated in the International Covenant on Civil and Political Rights. Article 27 of the Covenant reads as follows —

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion or to use their own language. (Quoted in SALC, 1989, p. 336)

The protection of group rights should not, however, lead to discrimination and inequality as far as the other members of the population are concerned.

The SALC points out that it is most difficult, if not impossible, to define in advance the precise rights, interests and values in regard to culture, religion and language that must be protected by a bill of rights. No international agreement attempts such a definition. A bill of rights should include the principle of the protection of group rights, while the application of the principle to particular instances should be left to the courts.

It is precisely in this field that the courts play a valuable and responsible role. Personifying public sentiment, the courts formulate the legal, moral and ethnic concepts of society... Our courts have always fulfilled this function very competently and responsibly. There is no reason to believe that the courts will not be able, likewise to determine what the cultural, religious and linguistic values of a community are.

The courts will likewise be able to determine whether certain legislation or an executive act infringes cultural, religious or linguistic values that merit protection under the law. (SALC, 1989, p. 393)

(Continued on p. 15)

(Continued from p. 14)

In view of the above considerations, SAILIS approves of the following principles proposed by the SALC for inclusion in a bill of rights.

1. No legislation or executive act shall infringe the exercise by an individual, separately or jointly with others, of his culture, religion and language.
2. No legislation or executive act shall discriminate against or give privileged treatment to the culture, religion or language of a particular individual or group of individuals over those other provided that legislation may determine the official languages of a region.
3. When in legal proceedings instituted by an interested individual it is alleged that legislation or an executive act infringes the cultural, religious or linguistic values of the individual or of a group of individuals, the court shall adjudicate the said allegation having regard to the interests of all other individuals and groups of individuals. (SALC, 1989, p. 408)

13 SALC's proposed bill of rights

Several of the articles in the SALC's proposed bill of rights may be related to the use of libraries. Attention is drawn particularly to Article 8, which mentions the right to obtain and disseminate information, and to Article 17 which provides means to ensure equal freedom of access to tax-supported libraries.

In each of the following cases a remark by SAILIS is followed by the indented text of the article. (SALC, 1989, ch. 15)

Article 2 may protect equal freedom of access to tax-supported libraries, which normally operate on a delegated legal authority. It also provides for affirmative action

The right to human dignity and equality before the law, which means that there shall be no discrimination on the ground of race, colour, language, sex, religion, ethnic origin, social class, birth, political or other views or any disability or other natural characteristic: Provided that such legislation or executive or administrative acts as may reasonably be necessary for the improvement, on a temporary basis, of a position in which, for historical reasons, persons or groups find themselves to be disadvantaged, shall be permissible.

Article 5 is basic to the recognition of rights and obligations under the bill

of rights, which possibly also applies to the right to equal freedom of access to tax-supported libraries.

The right to be recognised legally, economically and culturally as having rights and obligations and as having the capacity to participate in legal, commercial and cultural affairs.

Article 8 refers to the basic human right to obtain information, of which the right of equal freedom of access to tax-supported libraries forms part. Because of the fundamental nature of the right to obtain information, SAILIS requests that the SALC should in its Final Report fully argue the validity of its inclusion in the bill of rights. The right to disseminate information may also touch on the functioning of libraries.

The right to freedom of speech and to obtain and disseminate information.

Article 9 may possibly apply to doing research in tax-supported libraries.

The right freely to carry out scientific research and to practise art.

Article 10 may possibly apply to the choice of libraries if "education" is read in the broad meaning of informal, non-formal and formal education. It will not apply if the article is limited to formal education and training.

The right to freedom of choice with regard to education and training.

Article 16 provides freedom to associate possibly also in the library context.

The right to associate freely with other groups and individuals.

Article 17 states the penalties of disassociation on a discriminating basis, which presumably will apply directly to the protection of the right promoted by SAILIS.

The right of every person or group to disassociate himself or itself from other individuals or groups: Provided that if such disassociation constitutes discrimination on the ground of race, colour, religion, language or culture, no public or state funds shall be granted directly or indirectly to promote the interests of the person who or group which so discriminates

Article 21 grants freedom to practise a person's own culture, presumably also in libraries.

The right of every person, individually or together with others, freely to practise his culture and religion and use his language.

Article 22 safeguards every person from discrimination against his culture, presumably also in libraries.

The right of every person to be safe-

guarded from discrimination against his culture, religion or language and to be safeguarded from preferential treatment of the culture, religion or language of others. Provided that legislation may determine the official languages of a region: Provided further that when in proceedings instituted by an interested person or persons it is alleged that legislation or an executive or administrative act infringes the cultural, religious or linguistic values of any individual or group of individuals, the court shall in adjudicating such allegation have

regard to the interests of other individuals or groups of individuals.

If the South African Law Commission is of the opinion that the proposed articles fully provide for equal freedom of access to tax-supported libraries, SAILIS accepts their view with appreciation.

If there is any doubt whether adequate protection is provided, we shall be glad if the position can be rectified.

14 Implementation of a bill of rights

SAILIS supports the following points made to the SALC in regard to the implementation of a bill of rights—

- (i) Such a bill will have a chance of being generally accepted and respectfully observed... only if it is accepted and trusted by a considerable majority of the population as a whole.
- (ii) To be accepted and trusted, such a bill will have to be an honest piece of work which is not merely cosmetic in character. Where there are unfair advantages or infringements at the moment, matters will have to be objectively and honestly put to rights.
- (iii) To be accepted as legitimate, such a bill should, least of all, protect the position of one group... Absolute fairness and equal treatment are essential, or else the whole effort should be abandoned.
- (iv) In the final analysis, legitimacy is ensured by open acceptance of the bill by the great majority of the population...
- (vii) Finally, legitimacy also demands that, so far as the content of the bill is concerned, it shall not be unilaterally formulated by one group and simply be submitted for approval. All population groups must work together in preparing such a bill and the greatest possible measure of consensus must be reached before it

(Continued on p. 16)

(Continued from p. 15)

is laid before the nation for approval. (SALC, p.482-483)

It must be stated that there is no public consensus at present on the granting of equal freedom of access to all tax-supported libraries. To achieve agreement will require processes of negotiation such as that involved in the implemental phases set out by the SALC, namely —

Phase 1 Acceptance in principle by the Parliament that a bill of rights be adopted in future.

Phase 2 The repeal or amendment of legislation conflicting with a bill of rights.

Phase 3 An educational process to inform the population on the role and value of a constitution of which a bill of rights form a part.

Phase 4 Reaching consensus on a future constitution and finalising the bill of right

Phase 5 Legitimation, by referendum, of a new constitution which includes a bill of rights. (SALC, 1989, p. 487-491)

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shall be glad to participate in any of these phases, or in any other negotiation processes which may be used, in order to promote the right of equal freedom of access to tax-supported libraries.

Note:

The legal base for excluding anyone from public libraries on the basis of race, has since been scrapped. The House of Parliament repealed the Reservation of Public Amenities Act on 19 June 1990.

The scrapping of the Act makes it illegal for local authorities throughout South Africa to exclude any person from any public amenity, including libraries, on the basis of race.

References

1. Henle, R.J. Science and humanities, in *Philosophy and science as modes of knowing: selected essays*, Fisher, A.L. & Murray, G.B. (eds.), New York: Appleton-Century-Crofts, 1969, p. 1-21
2. SAILIS Council. *Minutes*, 19 Sept. 1986, Appendix 3.
3. SAILIS takes a stand against censorship. *SAILIS newsletter*, vol. 7, no. 10, October 1987, p.1.

4. South African Law Commission.

Project 58: Group and human rights. Pretoria: The Commission, 1989, 491 p. (Working paper, 25).

5. Stabbins, Patricia Ann. SAILIS Public Libraries Division survey of public libraries in South Africa 1988. Paper read at SAILIS Conference, 1988.

6. Stirling, M.M. The need for rural free library services. *South African Libraries*, vol. 10, no. 3, Jan. 1943.

7. Zaiman, R.B., Roux, P.J.A. & Rykheer, J.H. *The use of libraries for the development of South Africa: final report on an investigation for the South African Institute for Librarianship and Information Science*. Pretoria: University of South Africa, 1988. 277 p.

Museumbibliotekaresse vergader by konferensie

'n Ontmoeting van museumbibliotekarisse word in die vooruit sig gestel by die komende SAIBI Konferensie. Meer besonderhede hieroor sal later bekend gemaak word.

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SOUTH AFRICAN INSTITUTE FOR LIBRARIANSHIP AND INFORMATION SCIENCE**SUBMISSION TO CODESA****WORKING GROUP 2****PREAMBLE**

The success of a democratic society depends on informed and educated citizens.

Libraries serve as sources of information and education for all citizens regardless of economic or educational status, language, origins, age or sex. Libraries assemble and make available information that reflects many viewpoints. They complement the mass media by retaining information on topics and events that are quickly forgotten as the media move on to the latest headlines. They retain for use publications that are out of print or have been withdrawn from retailers' shelves due to flagging sales. This information serves as essential background for responsible opinion forming and decision making by individual citizens as well as community and party leaders. Libraries thus provide an essential service for the successful functioning of a democratic state.

There are over one thousand public library service points distributed throughout South Africa. They provide invaluable support for formal education programmes and, if mobilized in support of programmes of literacy training, community education and development, they have enormous potential as sources of nonformal and informal education.

The existing network of libraries constitutes a ready-made, politically neutral infrastructure for the dissemination of information about Codesa and for the creation of a climate of mutual understanding and tolerance.

Codesa should therefore make use of libraries in attaining its objectives, and its decisions and recommendations should promote the use and support of libraries.

The South African Institute for Librarianship and Information Science offers its services whenever consultation on library matters is required.

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Libraries enter into the following assignments of Working Group 2:

1 First assignment: General constitution principles

1.1.1 The provision of information and knowledge to citizens is a key contribution to the maintenance of a sound democracy. Working Group 2 should therefore include the provision of a generally accessible and adequate library service in its deliberations. Components of an adequate national library and information system will require funding at all levels of a future constitutional framework. The South African Institute for Librarianship and Information Science is prepared to provide information and expert advice on the place, functions and funding of libraries and related information services in a future constitutional framework.

2 Second assignment: Constitution-making body/process

2.1.4(f) in the transfer of responsibilities provision should be made for the funding and operation of libraries as a nation-wide service. The relations between library systems in existing regions should be considered in order to ensure optimal use of the nation's library resources.

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SUBMISSION TO CODESA

WORKING GROUP 3

PREAMBLE

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Libraries enter into the following assignment of Working Group
3:

Assignment: Transition arrangements

1.1 During any transitional arrangements for government, it is in the interest of South Africa that the administration of libraries continue unimpeded. This will assist in the provision of information and knowledge at a time when it will be greatly needed to keep the population informed and to advance their development. This also applies to libraries in the TBVC states.

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SUBMISSION TO CODESA

WORKING GROUP 4

PREAMBLE

The success of a democratic society depends on informed and educated citizens.

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There are over one thousand public library service points distributed throughout South Africa. They provide invaluable support for formal education programmes and, if mobilized in support of programmes of literacy training, community education and development, they have enormous potential as sources of nonformal and informal education.

The existing network of libraries constitutes a ready-made, politically neutral infrastructure for the dissemination of information about Codesa and for the creation of a climate of mutual understanding and tolerance.

Codesa should therefore make use of libraries in attaining its objectives, and its decisions and recommendations should promote the use and support of libraries.

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Libraries enter into the following assignments of Working Group 4:

Assignment: Future of TBVC states

1.1.4(d) the existing libraries in the TBVC states can be used as a channel for keeping the people informed

1.1.5(e) libraries are part of the existing infrastructure and should be used optimally for the development of the people. Specifically, the national library services of the TBVC states should be incorporated into the existing national and regional structures for the provision of library and information services to the entire population of South Africa. These structures will need to be appropriately revised, expanded and funded to ensure, inter alia, that members of rural communities can benefit from them.

1.1.5(f) because of the relatively underdeveloped state of libraries in the TBVC states, high priority should be given to their full use as an essential instrument for social, economic and political development, while so-called "national" library functions should receive a lower priority

1.1.5(h) unimpeded continuation of existing library services should be ensured in the interest of advancing democracy and the development of the people. Specifically, a smooth transfer of legal deposit of publications, bibliographic and document delivery functions must be insured in consultation with the State Library, Pretoria, and the South African Library, Cape Town.

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SOUTH AFRICAN INSTITUTE FOR LIBRARIANSHIP AND INFORMATION SCIENCE**SUBMISSION TO CODESA****WORKING GROUP 5****PREAMBLE**

The success of a democratic society depends on informed and educated citizens.

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There are over one thousand public library service points distributed throughout South Africa. They provide invaluable support for formal education programmes and, if mobilized in support of programmes of literacy training, community education and development, they have enormous potential as sources of nonformal and informal education.

The existing network of libraries constitutes a ready-made, politically neutral infrastructure for the dissemination of information about Codesa and for the creation of a climate of mutual understanding and tolerance.

Codesa should therefore make use of libraries in attaining its objectives, and its decisions and recommendations should promote the use and support of libraries.

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Libraries enter into the following assignment of Working Group 5:

Assignment: Time frames and implementation of Codesa's agreements

1.1.4(e) the extensive library system existing in South Africa can be utilised as a channel for disseminating information on progress made in the consultations. Library users are mostly students, people who desire to develop their abilities, and community leaders. Library users therefore tend to be influential in forming opinions and attitudes in their communities.