(8)

BRIEF NOTES ON THE MEETING HELD BETWEEN THE AD HOC COMMITTEE AND THE TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS DURING THE TRANSITION : TUESDAY 31 AUGUST AND WEDNESDAY 1 SEPTEMBER 1993

The Technical Committee handed to the Ad Hoc Committee a draft of their suggested reformulations of certain clauses from the Seventh Report:

1. **Application - Clause 1(4) - Juristic Persons -**

   After discussion it was agreed that the Technical Committee would reformulate this clause.

2. **Equality - Clause 2(2) -** (especially the implication of customary law)

   No agreement has yet been reached. A list of principles was drawn up (Annexure A) and it was agreed that the Technical Committee draft a formulation for presentation to the Ad Hoc Committee at the next meeting incorporating these principles.

3. **Access to Information - Clause 17. -**

   This reformulation was acceptable.

4. **Administrative Decisions - Clause 18. -**

   See attached Annexure B. The Technical Committee would reformulate this clause in accordance with the discussions.

5. **Eviction - Clause 20. -**

   The Technical Committee presented their motivation for the inclusion of this clause. (see Annexure C). It was decided that this clause be excluded.

6. **Property - Clause 23. -**

   The Technical Committee put forward a motivation - see Annexure D.

The Ad Hoc Committee were very unhappy about the Comment in subsection (3) of this clause and requested that the Technical Committee revise it (see Annexure E).

The Technical Committee were requested to formulate a separate clause regarding restoration, to state inter alia "Restoration where feasible, and failing restoration, compensation be provided" as it was felt that this could not be incorporated in the property clause as it stands.

7. Horizontal and Vertical Application -

Its application and how it impacts on both customary law and a Bill of Rights was discussed. The Technical Committee gave their reasons for horizontal application and the fact that this would not have any impact on customary or traditional law. The Ad Hoc Committee would revert on this at the next meeting.

8. Next Meetings -

8.1 The Technical Committee would meet on Tuesday 7th and Wednesday 8th September 1993.

8.2 The Ad Hoc Committee would meet on Wednesday 8th September 1993 at 09h00.

8.3 A combined meeting of the Ad Hoc Committee and the Technical Committee would take place on 8th September 1993 from 11h00 for the rest of the day.

Annexure A

1. The importance of customary law is recognised.
2. Fundamental Rights will impact on customary law.
3. There must be an opportunity for widespread grassroots consultation and necessary legislation to regulate the impact.
4. The prevailing situation to be dealt with as follows:

   4.1 A limited and conditional exemption of some sort to the equality clause to allow the processes in 4 to be implemented

   4.2 In the case of any inconsistency within any particular customary law regime itself, the equality clause will prevail

   4.3 In the case of any customary law rule conflicting with the equality clause, the rule will prevail until legislation is passed

   4.4 Room should be left for free and informed choice in individual cases where feasible

5. The exemption should be limited in time after which the equality clause shall apply.

Annexure B

18. **Administrative decisions**

The Ad Hoc Committee agrees that the following principles shall apply:

(1) No person's rights shall be determined or infringed by public administrative decisions, proceedings or actions which are unlawful, procedurally unfair or not justifiable.

(2) The rights set out in 1 shall only apply to persons with a direct and substantial interest in such decisions, proceedings or actions.

(3) The concept of lawfulness is included in order to address the concern regarding "ouster" clauses. The Ad Hoc Committee asks the Technical Committee to consider whether this issue should be dealt with differently by including a clause to the effect that the courts have inherent jurisdiction to review administrative decisions. Certain members of the Committee feel that it is not necessary as the rights in a bill of rights are always justiciable.

(4) The Ad Hoc Committee supports the proposal made by Judge Olivier (copy attached) that the principle of procedural fairness be contained in a separate sub-clause together with the right to be furnished with reasons. The Committee also supports the inclusion of a reference to the rules of natural justice in the clause. This provides for continuity of concepts in present law.

5. The concept of justifiability should be included to compel the decision maker to link reason for the decision and the decision itself and to oblige systematic and proper decision making; equally the prerogative of the decision maker to make policy choices in the interests of good governance should not be usurped.

(NB. The Ad Hoc Committee suggests the use of "justifiable" rather than "reasonable" because of the legal uncertainty which could be attached to the use of "reasonable." In contrast "justifiable" has specific meaning with reference to Australian and United States provisions (copies attached).

6. In principle the onus should rest with the person alleging an unjustifiable administrative decision.

A CLAUSE ON ADMINISTRATIVE DECISIONS IN A BILL OF RIGHTS

Clause 18 of the Draft Interim Bill of Rights

Clause 18 of the Draft Interim Bill of Rights makes provision for certain rights of the individual concerning administrative decisions. It reads as follows:

> 18 (1) Every person shall have the right to lawful and procedurally fair administrative decisions.
>
> (2) Every person shall have the right to be furnished with reasons in writing for an administrative decision which affects his or her rights or interests.

Subclause (1)

Subclause (1) of clause 18 is drafted in wide terms. The proposed right relates to "lawful and procedurally fair administrative decisions". The term "lawful" is very wide and is closely related to the concept of "legality", upon which the validity of administrative decisions are based. In other words, the term "lawful" can refer to and include all the requirements for a valid administrative decision. The phrase "procedurally fair" is in essence a formulation of what is termed "the duty to act fairly" which is the modern formulation developed by the courts of the principles of natural justice, that is the "audi alteram partem" and "nemo index in sua causa" maxims.[1] Nevertheless, it should be noted that the right to procedurally fair administrative decisions is not qualified. This implies that all administrative decisions must comply with the requirements of procedural fairness. However, at present the principles of natural justice are applicable only where an individual's rights, interests or legitimate expectations are affected. In other words, the

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1 See, for example, Administrator, Transvaal v Traub 1989 4 SA 731 (A) at 758H-I and Administrator, Cape v Ikapa Town Council 1990 2 SA 882 (A) at 889I.

proposed formulation appears to extend the application of the principles of natural justice to all administrative decisions irrespective of whether such decisions affect an individual's rights, interests or legitimate expectations. It follows that all decision-makers, who make administrative decisions, will be obliged to give notice of all impending administrative decisions and to give the individual concerned an opportunity to be heard either orally or in writing. It is submitted, with respect, that the application of the very important principles of natural justice or the duty to act fairly or the principle of procedural fairness is simply too wide.

The following comment is appended to clause 18(1) of the Draft Interim Bill of Rights:

> One of the parties suggested the inclusion of the words (sic) "reasonable" after the word "lawful". This will have far-reaching consequences for South African Administrative Law and it is for the Council to decide on this issue. The Committee does not support the introduction of this notion at this stage.

Unfortunately, the Committee does not give reasons for its proposition that the introduction of the standard of reasonableness will have far-reaching consequences for our administrative law. It also does not explain why it does not support the introduction of the said standard at this stage.

It might be argued that the standard of reasonableness could give the courts an almost unlimited power to interfere on review with administrative decisions. However, this argument cannot be supported. The Commission has already recommended in its Report on the Investigation in the Court's Power of Review of Administrative Acts that the standard of reasonableness should be one of the requirements for valid administrative decisions.[2] In this regard the Commission stated the following:[3]

> The Commission agrees with the principle that the quality of the decision should carry more weight than the manner in which the decision is made. Moreover, by applying this principle together with the requirement of reasonableness, the Commission is convinced that the courts will be able to clearly obviate a waste of time and expenditure with regard to the review of administrative acts and that the quality of administrative acts will inevitably improve.

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2 See clause 3(1)(f) of the proposed Bill on Judicial Review at 252 of the Report.

3 Report at 246.

The recommendation of the Commission is based upon the submission of the Honourable Mr Justice H J O van Heerden, Judge of Appeal and Chairman of the Commission, and is supported by all the members of the judiciary who commented on it.

Moreover, the standard of reasonableness is contained in section 5(2)(g) of the Administrative Decisions (Judicial Review) Act, 1977, of Australia. The standard has recently been provided for in Article 18 of the Namibian Constitution of 1990. Similarly, in terms of section 10(e) of the American Administrative Procedure Act, 1946, the requirements for valid administrative decisions, if taken together, form a wide requirement that such decisions must be reasonable and bona fide.

It is submitted therefore that there appears to be no reason whatsoever why reasonableness should not be provided for in a provision relating to administrative decisions in a Bill of Rights.

Moreover, clause 18(1) of the Draft Interim Bill of Rights does not explicitly provide for the entrenchment of the Supreme Court's inherent jurisdiction to review administrative decisions. This is absolutely essential if one wishes to outlaw the so-called ouster clauses.

It is also submitted that a provision relating to the entrenchment of the Supreme Court's inherent jurisdiction and the provision of reasonableness and lawfulness as standards for valid administrative decisions should be included in a subclause relating to an individual's right of access to the courts.

It is further submitted that the standard of procedural fairness or the principles of natural justice should be accommodated in a separate Article in the Interim Bill of Rights.

Subclause 18(2)

Subclause 18(2) of the Draft Interim Bill of Rights grants to an individual the right to be furnished with reasons in writing for an administrative decision that affects his or her rights or interests. It is submitted that the provision of such a right is vitally important for rational and informed decision-making. Nevertheless, the restriction of the application of the right to every person whose rights or interests are affected by an administrative decision is too limited. What about the case where

a person has a legitimate expectation? It is submitted that a far better and acceptable approach would be to link the right to be furnished with reasons with the right to the application of the principles of natural justice.

Recommendations

In view of what has been stated above, the following recommendations are made:

(a) Clause 16 should be amended by the insertion of the following subclause:

(2) Everyone prejudiced or affected in his or her interests by an unreasonable or unlawful administrative act has the right to have recourse to the Supreme Court to review the said act by virtue of its inherent jurisdiction or any other relevant legislation.

(b) Clause 18 should be deleted in its entirety and be replaced with the following clause:

Rules of natural justice

Everyone has the right to have the rules of natural justice applied in administrative proceedings and actions in which, on the grounds of findings of fact and of law, the rights or legitimate expectations of an individual or a group are infringed or likely to be infringed, and in such cases every person having an interest in the matter has the right to be furnished in writing to him or herself on demand with the reasons for a decision.

4/N/pjjo/admin.dec

— US : Administrative Procedure Act (1946)

§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(A) and (E) are mutually exclusive alternatives, applicable in different contexts

Appendix A

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

The Administrative Decisions (Judicial Review) Act (Australia) 1977 also attempts to spell out as fully as possible the grounds on which a decision may be reviewed, as follows:

'(a) that a breach of the rules of natural justice occurred in connection with the making of the decision;

AUSTRALIA

(b) that procedures that were required by law to be observed in connection with the making of the decision were not observed;

(c) that the person who purported to make the decision did not have jurisdiction to make the decision;

(d) that the decision was not authorized by the enactment in pursuance of which it was purported to be made;

(e) that the making of the decision was an improper exercise of the power conferred by the enactment in pursuance of which it was purported to be made;

(f) that the decision involved an error of law, whether or not the error appears on the record of the decision;

(g) that the decision was induced or affected by fraud;

(h) that there was no evidence or other material to justify the making of the decision;

(j) that the decision was otherwise contrary to law' (s5(1)).

Review may be sought on any one or more of these grounds. Note the omnibus nature of sub-section (j), clearly indicating the intention to leave the door open for the development by

(from Corder)

annexure C

ep/eviction

EVICTION

South African Law does not require a court to consider the availability of alternative accommodation before making an order of ejectment. It the occupier has no contractual or other right to occupy and the court is asked for an order of ejectment by the owner or any other right holder, the order of ejectment will be granted. Some concern has been expressed concerning the social consequences of such a regime more particularly in the case of occupiers of state or state owned land.

It is obvious that any law which prevents the court form granting an order of eviction unless there is alternative accommodation is highly dangerous. The rights of owners of property are rendered non-existent with the result that investors would find it impossible to put their money into property especially where the investment involves the construction of low cost housing. The Committee cannot and does not recommend this because of the chaos which would probably result.

The alternative drafts of the clause as proposed are new. Depending on which option is chosen the Court dealing with an ejectment case is either obliged or permitted to take into account the availability of alternative accommodation as only one of the factors before reaching a decision as to whether the eviction order should be granted. In doing so the court will need to arrive at an equitable decision by balancing various factors

against each other. If an occupier has for example paid no rent for many months, is unlikely to pay any rent in the future and has no alternate accommodation, the order will probably be granted because the balance is in favour of the owner. On the other hand if a tenant's occupation has become unlawful because he paid rent a day late and if such a tenant is capable of paying rent in the future and undertakes to do so, the ejectment order may not be granted where there is no alternative accommodation.

Between these two extremes lie a number of factual possibilities. All that the clause does is to give the court a little more latitude by authorising it to take into account a wider range of factors to arrive at a sensitive conclusion. The committee believes this will be of social advantage and that the clause should be retained for this reason.

Annexure D.

PROPOSED AMENDMENT TO SECTION 29 (PROPERTY) OF THE REPORT OF THE TECHNICAL COMMITTEE ON CONSTITUTIONAL ISSUES COMBINED REPORTS 10 AUGUST 1993

1. PROPOSAL

That the wording of section 29 be changed as follows:

"29. (1) Every person shall have the right to acquire, hold and dispose of rights in property.

(2) Expropriation of property by the State shall be permissible in the public interest and shall be subject either to agreed compensation or, failing agreement, to compensation to be determined by a court of law as just and equitable, taking into account all relevant factors, including the use to which the property is being put, the history of its acquisition, its market value, the value of the owner's investment in it and the interests of those affected.

(3) Nothing in this section shall preclude measures aimed at restoring rights in land to or compensating persons who have been dispossessed of rights in land as a consequence of any racially discriminatory policy, where such restoration or compensation is feasible.

(4) Nothing in this section shall preclude measures aimed at regulating the use and development of property where such regulation is in the public interest."

2. EXPLANATION

The concern that motivates this proposed amendment lies with the wording of Section 29 (Property) in so far as it distinguishes between **rights in property** (section 29(1)) and **property** (section 29(2)) and the implications thereof.

2.1 Background

Existing Town Planning or Zoning Schemes allocate specific **use and development rights** to specific properties. These rights include the right to use the land for a particular purpose and to develop the land to a particular extent, eg permitted height and floor area.

These rights are protected in all four provinces by the relevant Ordinances. In each Ordinance these rights may only be taken away where **compensation** is paid to the owner of the land[1].

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[1]. Land Use Planning Ordinance, 15 of 1985 (Cape) - section 19; Town Planning Ordinance, 27 of 1949 (Natal) - section 60; Townships Ordinance, 9 of 1969 (Orange Free State) - section 34; Town-Planning and Townships

They are further protected by the courts' interpretation of ownership rights. This approach is clearly shown in the Appellate Division's 1988 judgment in *Sandton Town Council v Erf 89 Sandown Extension 2 (Pty) Ltd* 1988 (3) SA 122 (A). The right to use and enjoy land for **"all lawful purposes"** was held to be one of the "aggregate of distinct and valuable rights inhering in the owner" (at 129E-H). The taking of such a right - in this case the right to realise the full benefits of land zoned for business purposes in terms of a Town Planning Scheme - was "akin to expropriation" and thus compensation was payable. The Court also held that compensation clauses should not be interpreted restrictively. Quoting from a 1918 Privy Council decision[2] the Court argued that such clauses should always be interpreted in favour of the holder of the rights. In other words where there is doubt a presumption operates in favour of the individual's economic interests over the broader public interest.

The current position thus with regard to use and development rights is that they enjoy a high degree of protection both through Provincial ordinances and judicial precedent. The effect of this is to cripple planning authorities' capacity to influence patterns of development where such rights exist. These rights, initially created by planners up to fifty years ago as planning tools, now enjoy such powerful protection that they effectively block current planning initiatives.

The problems facing our towns and cities today are enormous. Urgent and expeditious restructuring efforts[3] are needed. Every effort must be made to facilitate such restructuring. The current status of use and development rights however make this task extremely difficult and often impossible. The cost of compensating landowners is so high that few, if any, planning authorities can afford it. Thus any efforts to redress the impact of apartheid and colonial planning will be crippled by the patterns of development formulated by planners over the last fifty years and the rights they allocated to achieve those patterns. A primary task of planning in the post-apartheid South Africa will have to be the tackling of this issue. In the interests of creating cities that are equitable and sustainable any constitutional protection, intended or otherwise, afforded to these rights must be avoided at all costs.

2.2 The United States' Experience

The experience of the United States is very useful in this regard. The Fifth Amendment of their Constitution states: " ...nor shall private property be taken for

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Ordinance, 15 of 1986 (Transvaal) - section 44.

2. *Minister of Railways and Harbours of the Union of South Africa v Simmer and Jack Proprietary Mines Ltd* 1918 AC 591 (PC) at 603 - "general or ambiguous words should not be used to take away legitimate and valuable rights from the subject without compensation".

3. What constitutes "urban restructuring" is not simply defined. For the purposes of this document it is enough to say that it includes the direction of infrastructural and commercial investment to areas previously neglected, the conservation of natural resources and the integration of cities and towns previously divided by apartheid.

public use without just compensation." This clause was originally held by the courts to mean that any loss of or reduction in **any rights in property**, including use and development rights, required compensation. It took many years before the courts were prepared to hold that the limitation of an owner's use and development rights did not necessarily constitute a "taking" of property as referred to in the Constitution[4]. In every case the court has to weigh up the public interest at stake against the economic impact on the property owner to determine whether there is regulation or a taking of rights.

Now in South Africa we have the opportunity to remove any doubts as to the distinction between the regulation of use and development rights and the expropriation of property. By doing so we will avoid the uncertainty and protracted litigation that has vexed the USA for so long. We will also substantially facilitate the process of urban restructuring.

2.3 Amendment of Section 29

There is thus considerable concern over the wording of section 29(1) which entitles people to "acquire, **hold** and dispose of **rights in property**". This effectively gives Constitutional protection to the holders of use and development rights. Section 29(2) entitles the state to expropriate **property** with the payment of compensation.

Depending on how Section 29 is interpreted there are two possible consequences, neither of which is desirable. They are either

1) Use and development rights are regarded as falling within the "bundle of rights" that constitute the traditional notion of ownership. Any limitation or regulation of such rights would constitute expropriation of property and compensation would thus be payable in terms of section 29(2).

or

2) Use and development rights are regarded as being distinct from **property** as contemplated in Section 29(2). As **rights in property** in terms of **Section 29(1) however they are constitutionally protected** and **thus exempt from any form of limitation or regulation.**

Clearly neither of these interpretations is acceptable in a society where land is such an important and contentious resource. In the light of the precedent set by the *Sandton Town Council* case the former approach is the one most likely to be followed.

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4. For example in the Supreme Court case of *Penn Central Transportation Company v City of New York* 438 U.S. 104 (1978)

Use and development rights are **not** property rights as such[5] and thus do not warrant Constitutional protection. They are created by the legislature and thus should be capable of being similarly regulated.

It is therefore critical that a clear and unambiguous statement is made that permits the regulation of use and development rights without incurring an obligation to pay compensation. **The distinction must be made between expropriation of property that gives rise to compensation and regulation of the use and development of property that does not give rise to compensation.** A massive obstacle to such a goal is Section 29 as it currently stands. Section 29 effectively gives the holders of use and development rights more protection than they currently enjoy at the very time that the needs of our cities and towns dictate that in fact they ought to have less.

South African property law is currently moving, albeit very slowly and dogged by judgments such as that in the *Sandton Town Council* case, towards a notion of ownership rights that is more concerned with the social and environmental function of land than its commercial value. This move is one that needs all the encouragement that it can get. The current section 29 will have precisely the opposite effect.

2.4 Section 34 - the Limitation Clause

Section 34 of the Draft Constitution does allow the legislature, in certain restricted cases, to limit the rights granted elsewhere in the Constitution. In order to comply with section 34 though the proposed legislation would have to:

i) apply "generally and not solely to an individual case";

ii) be permissible only to the extent that it is a) "reasonable" and b) "justifiable in a free, open and democratic society based on the principle of equality"; and

iii) not "negate the essential content of the right in question".

While planners might well believe that the regulation of use and development rights complies with the requirements of section 34 this opinion is unlikely to be universally shared. Until such time as there is a court decision either way there will be considerable uncertainty and confusion. This can only have a negative impact on processes of urban restructuring. Moreover the risk remains that a court will eventually find that the regulation of use and development rights in fact does not fall within the ambit of section 34, thereby further crippling planning endeavours.

Section 34 as it currently stands cannot be seen as more than a last resort for the

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[5]. Increasingly the notion that our Common Law gives property owners the right to do with their land as they please is being challenged. Not only is such an approach utterly inappropriate in a society such as ours but its historical legal basis has been shown to be erroneous.

problems created by section 29. If the legislature relies on section 34 to justify the regulation of use and development rights it will be opening the way for excessive and costly litigation, giving rise to uncertainty and confusion. These negative consequences can be avoided by the timeous amendment of section 29.

2.5 Conclusion

It is important not to see the proposed amendment as more than it is meant to be. It is not intended to be a full frontal assault on property rights and landowners. It is simply aimed at preventing the entrenchment of rights in the Constitution that do not belong there. As indicated above these rights are already strongly protected both by the four planning Ordinances and by judicial precedent. This existing protection is, from a planning and natural resource protection perspective, regrettable enough. To elevate this protection to a Constitutional status would be disastrous. And surely not a consequence intended by the drafters of section 29?

— US : Administrative Procedure Act (1946)

§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(A) and (E) are mutually exclusive alternatives, applicable in different contexts

Appendix A

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

Administrative Decisions (Judicial Review) Act (Australia) 1977

The Act also attempts to spell out as fully as possible the grounds on which a decision may be reviewed, as follows:

> '(a) that a breach of the rules of natural justice occurred in connection with the making of the decision;
>
> (b) that procedures that were required by law to be observed in connection with the making of the decision were not observed;
>
> (c) that the person who purported to make the decision did not have jurisdiction to make the decision;
>
> (d) that the decision was not authorized by the enactment in pursuance of which it was purported to be made;
>
> (e) that the making of the decision was an improper exercise of the power conferred by the enactment in pursuance of which it was purported to be made;
>
> (f) that the decision involved an error of law, whether or not the error appears on the record of the decision;
>
> (g) that the decision was induced or affected by fraud;
>
> (h) that there was no evidence or other material to justify the making of the decision;
>
> (j) that the decision was otherwise contrary to law' (s5(1)).

Review may be sought on any one or more of these grounds. Note the omnibus nature of sub-section (j), clearly indicating the intention to leave the door open for the development by

(from Corder)

Annexure E

+ Indicates amendments to the Seventh Report. Insertions are underlined and deletions are also indicated.
* Indicates matters referred to the Ad Hoc Committee.
# Indicates matters/formulations which have to be reconsidered by this Committee.

(2) Expropriation of rights in property by the State shall be permissible in the public interest and shall be subject to the expeditious payment either of agreed compensation or, failing agreement, of compensation to be determined by a court of law as just and equitable, taking into account all relevant factors~~; including the use to which the property is being put, the history of its acquisition, its market value, the value of the owner's investment in it and the interests of those affected.~~

Not bold

[Comment: The deletion indicated above was agreed on by the Ad Hoc Committee.]

(3) Expropriation of rights in property aimed at restoring rights in land to ~~or compensating~~ persons who have been dispossessed of these rights as a consequence of any racially discriminatory policy, shall for the purposes of subsection (2) be deemed to be expropriation in the public interest.

Bold

[Comment: This subclause was reformulated as a result of discussions with the Ad Hoc Committee. The new formulation does not provide for the payment of compensation to persons who have been dispossessed because the Ad Hoc Committee regards it as inappropriate in this clause.]

Environment

29
~~24.~~ Every person shall have the right to an environment which is safe and not detrimental to his or her health or well-being.

Children

+ 30
~~#25.~~ (1) Every parent shall have the right to have his or her child live with him or her and to care for and bring up such child.