

2/4/4/1/2/19

CONSTITUTIONAL ASSEMBLY

**THEME COMMITTEE 4
FUNDAMENTAL RIGHTS**

19 April 1995

Room M 46

DOCUMENTATION

TABLE OF CONTENTS

No.	Detail	Page
1.	Notice of meeting and Agenda	1 - 2
2.	Minutes of Theme Committee meeting 3 April 1995	3 - 9
3.	Theme Committee Schedule	10 - 13

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 4 MEETING

FUNDAMENTAL RIGHTS

Please note that a meeting of the above Group will be held as indicated below:

Date : Wednesday, 19 April 1995
Time : 08h30 - 13h30
Venue : M 46

AGENDA

1. Opening
 2. Minutes: Pages 3-9
 - 2.1 Theme Committee 3 April 1995
 3. Core Group Report: No documentation
 4. Matters Arising: See Agenda Items Below
 5. Party Submissions: See separate document entitled "**Party Submissions**"
 - 5.1 Freedom of Expression
 - 5.2 Right of Access to Information
 6. Theme Committee Schedule 20 - 24 April: Pages 10-13
 7. General
 8. Closure
-

H Ebrahim
Executive Director
Constitutional Assembly

Enquiries : John Tsalamandris and Zuleiga Adams
Tel : 403 2266; Pager: 468 5050 code 4716

CONSTITUTIONAL ASSEMBLY

**MINUTES OF
MEETING OF**

**THEME COMMITTEE 4
FUNDAMENTAL RIGHTS
MONDAY 3 APRIL 1995 (AT 18H00)**

PRESENT

Radue RJ (Chairperson)

Asmal KA
Cachalia IM (alt)
Camerer SM
Coleman M
Dlamini BO
Green LM
Hajaij F
Kgoali JL
Lubidla EN (alt)
Mathebe P (alt)
Mbuyazi L (alt)
Mdladlana MMS
Mfayela SB (alt)
Mfebe MW
Mncwango MA
Molekane RS
Mulder CP
Myakayaka-Manzini YL

Ntuli MB
Njobe MAA (alt)
Pandor GNM
Phenethi MM
Piliso MM
Ranchod BG
Rasmeni SM
Saloojee E
Selebi JS
Sizani RK
Solomon G
Surty ME
Thabethe E (alt)
Thompson B
Tyobeka VM (alt)
Viljoen V
Vos S

APOLOGIES: Bakker DM, Chalmers J, Gamndana T, Gasa FX, Govender D, Leon AJ, Skosana BM, Tshivhase TJ.

J Tsalamandris, Z Adams, S Liebenberg and H Cheadle were in attendance.

1. OPENING

- 1.1 The meeting was opened by Sen. Radue at 18h15.

2. MINUTES

- 2.1 The minutes of the Theme Committee meeting of 27 March 1995 were adopted with the following amendments:

2.1.1 The word "the" in Paragraph 1.1 in the phrase "...absence of the certain parties" to be deleted.

2.1.2 Paragraph 5.3.1 was amended as follows:

- i) The sentence "...Common Law provides for juristic persons" to be added in Mr Mfebe's response.
- ii) The word "link" should replace "links" in the phrase "...which links Privacy with"..

2.1.3 Paragraph 5.4.1 to read "- whether the concept of illegitimacy was being used to refer to children 'born outside of wedlock'".

3. MATTERS ARISING

- 3.1 None.

4. CORE GROUP REPORT

4.1 Mr Mdladlana gave a verbal report of the Core Group meeting of 27 March noting that the following issues were discussed: - the Public Participation Programme; - Computer Disks for submissions; - Media Advert; - Work Schedule and Oral Hearings.

4.2 Mr Mdladlana noted the following with regards to the issues noted above (4.1):

4.2.1 Public Participation Programme - The Secretariat informed the meeting that the proposals from the Theme Committee on the Public Participation Programme were forwarded to the Directorate and a report is forthcoming.

4.2.2 Computer Disks for party submissions would only be supplied to parties on request.

- 4.2.3 Work Schedule - It was agreed that: i) the outstanding submissions on Privacy and Human Dignity; Servitude and Forced Labour; and Freedom and Security of the Person would be dealt with in the meeting of 3 April. ii) The Freedom of Expression and Access to Information would be dealt with in the meeting of 19 April.
- 4.2.4 Media Advert - The advert for public submissions would include the rights above as well as Freedom of Religion, Belief and Opinion and Freedom of Association.
- 4.2.5 Oral Hearings - Political Parties must consider selection criteria for oral hearings and the Technical Committee was requested to review the public submissions and identify those to be considered for oral hearings.

5. PARTY SUBMISSIONS

5.1 Right to Privacy and Right to Human Dignity:

5.1.1 The **ACDP** submission on the Right to Privacy was presented by Mr Green who spoke to the document entitled, "*African Christian Democratic Party submission to the Constitutional Assembly Theme Committee 4: Fundamental Rights: Right to Privacy*".

5.1.1.1 Points of clarity and discussion:
Questions to Mr Green included:

- does the ACDP believe that moral values are absolute, irrespective of changing conditions and do human rights have to be interpreted in terms of absolute standards;
- is the ACDP not discriminating against those who do not believe in "God" and other faiths which do not specifically mention "God"?
- is the Bible the only standard considered by the ACDP as the definitive statement on Universal Fundamental Rights or does it recognise the validity of other international documents.

Mr Green responded as follows:

- All religions prescribe to certain basic ethical\ moral values that cannot be changed.
- The ACDP's election campaign was based on broad moral and biblical principles which it uses as a measure to interpret other parties' views.
- The ACDP does recognise the validity of international human rights documents.

5.1.2 The FF submission on Human Dignity and Privacy was presented by Dr Mulder who spoke to the documents entitled, "***Vryheidsfront: Theme Committee 4: Right to Human Dignity***" and "***Vryheidsfront: Theme Committee 4: Right to Privacy (additional submission)***".

There were no questions to Dr Mulder.

5.1.3 The DP were not present their submissions on Human Dignity and Privacy, and their submissions were noted by the Committee.

5.1.4 The PAC submission on Human Dignity was presented by Mr Sizani who spoke to the document entitled, "***PAC Preliminary Submission on the Right to Human Dignity***".

5.1.4.1 Points of clarity and discussion:

Mr Sizani was asked to clarify the statement that "there is no dignity in poverty".

Mr Sizani responded by saying that the PAC did not believe that there is no dignity in poverty, but that the state must endeavour to create the basic conditions for ensuring a quality of life that upholds the dignity of all persons.

5.1.5 The PAC submission on the Right to Privacy was presented by Mr Sizani who spoke to the document entitled, "***PAC Preliminary Submission on the Right to Privacy***".

There were no questions to Mr Sizani.

5.2 Servitude and Forced Labour

5.2.1 The ACDP submission was presented by Mr Green who spoke to the document entitled, "***African Christian Democratic Party Submission to the Constitutional Assembly Theme Committee 4: Servitude and Forced Labour***".

There were no questions or points of clarity.

- 5.2.2 Mr Mdladlana informed the Committee that the **ANC** submission on Servitude and Forced Labour had been included with their submission on Human Dignity and Privacy, which had been dealt with in the previous meeting.

There were no questions to Mr Mdladlana.

- 5.2.3 The **FF** submission was presented by Dr Mulder who spoke to the document entitled, "**Freedom Front Theme Committee 4: Submission on Servitude and Forced Labour**".

There were no questions to Dr Mulder.

- 5.2.4 The **IFP** submission was presented by Mr Mfayela who spoke to the document entitled, "**Inkatha: Theme Committee 4: Submission on Servitude and Forced Labour and Freedom and Security of the Person**".

There were no questions the IFP.

- 5.2.5 The **NP** submission was presented by Ms Camerer who spoke to the document, "**National Party Submission Theme Committee 4: Block 3: Servitude and Forced Labour**".

- 5.2.5.1 Points of clarity and discussion:

Questions to Ms Camerer included:

- the applicability of the right to individuals
- the NP's view on the wording of Section 12 and its correspondence to the NP submission on Servitude and Forced Labour.
- the suspension of this right in the event of a State of Emergency

Ms Camerer responded as follows:

- private individuals must be bound by this right, even in the case when a Bill of Rights is primarily vertical in application.
- the NP is satisfied with the current formulation of section 12 and does not see the need for detail. The limitations clause and legislation will be sufficient to cover specific situations.
- The issue of a State of Emergency are dealt with in a specific section in the Interim Constitution and if this does not adequately cover the issue the limitations clause could be used.

5.2.6 The PAC submission was presented by Mr Sizani who spoke to the document entitled, "*Preliminary Submission of the Pan Africanist Congress on the Freedom from Servitude and Forced Labour*".

There were no questions to the PAC.

5.3 Freedom and Security of the Person

5.3.1 The ACDP submission was presented by Mr Green who spoke to the document, "*African Christian Democratic Party Submission to the Constitutional Assembly Theme Committee 4: Freedom and Security of the Person*"

Mr Green was asked to clarify the meaning of the sentence "Detention without trial is one of the key instances where the state can become god, to serve its own purposes."

Mr Green responded by noting that in the past the state used detention to protect its own security instead of emphasising the freedom and security of the person.

5.3.2 The ANC submission was presented by Sen. Surty who spoke to the document, "*Preliminary Submission of the African National Congress on Blocks Two and Three - Theme Committee 4: Freedom and Security of the Person*". Sen. Surty also informed the meeting that the ANC have made certain amendments to their submission which will be forwarded to the Secretariat.

There were no questions to Sen. Surty

5.3.3 The FF submission was presented by Dr Mulder who spoke to the document, "*Freedom Front: Theme Committee 4: Submissions on Freedom and Security of the Person*".

There were no questions to Dr Mulder.

5.3.4 The IFP submission was presented by Mr Mfayela who spoke to the document, "*Inkatha: Theme Committee 4: Submission on Servitude and Forced Labour and Freedom and Security of the Person*".

5.3.4.1 Points of clarity and discussion:

Questions to Mr Mfayela included:

- the contradiction in reasoning in point 13 regarding "unlawful" arrest, detention and rehabilitation.
- Would the right to counsel for all persons not lead to 'bottlenecks' in the legal system.
- Does the provision for men and women to be incarcerated separately not conflict with the equality clause?
- The implication that only female parents spank their children in par. 1.1 of the submission.

The IFP responded as follows:

- The purpose of point 13 is to ensure adequate compensation for persons found to be unlawfully detained.
- 'Bottleneck' situations would be avoided if persons are provided with the right to counsel from the time of their arrest and not at the trial stage.
- Separate incarceration refers to men and women being kept in separate buildings not necessarily discrimination with regards to equality.
- The IFP agreed to amend par. 1.1 of their submission to refer to both male and female parents.

5.3.5 The NP's submission was presented by Ms Camerer who spoke to the document, "***National Party Submission Theme Committee 4: Block 3: Freedom and Security of the Person***".

5.3.5.1 Points of clarity and discussion:

Questions to the NP included:

- the meaning of the phrase "competency of a pregnant woman".
- the NP's reluctance to state any horizontality in the application of rights
- should legislation protect the violation of this right or should the courts be allowed to interpret the right
- does the NP regard the following as "cruel and inhuman treatment": spare diet; solitary confinement; corporal punishment and capital punishment?

Ms Camerer responded as follows:

- "Competency of a pregnant women" refers to legal competency and the submission will be reformulated.
- the NP believes that the Bill of Rights should apply vertically but does not exclude a horizontal interpretation of the courts with regard to some rights.
- The NP submission refers to corporal and capital punishment but does

not regard these as the only instances of "cruel and inhuman treatment".

5.3.6 The PAC submission was presented by Mr Sizani who spoke to the document entitled, "***Preliminary Submissions of the Pan Africanist Congress on the Freedom and Security of the Person***".

There were no questions to Mr Sizani.

6. PUBLIC SUBMISSIONS

6.1 The chairperson referred the Committee to the synopsis of public submissions on the rights covered in meeting, in the document entitled, "***Synopsis of Submissions: Vol 1-7: Right to Privacy; Servitude and Forced Labour; Freedom and security of the Person***", included in the documentation. The chairperson reminded the Committee of the need to take cognisance of the public submissions when preparing the report is drafted.

7. TECHNICAL COMMITTEE REPORT

7.1 Work Programme

7.1.1 Prof. Cheadle spoke to the document entitled, "***Recommended Revised Work Programme***", included in the documentation.

7.1.2 Prof. Cheadle noted that the Programme sought to accommodate all the parties views, while at the same time facilitating the work of the Committee. He further noted that the purpose of clustering rights was to incorporate linkages for the sake of convenience and to save time, and that the clustering did not imply any hierarchy or that rights are not indivisible.

7.1.3 The meeting accepted the revised Work Programme with the following amendment:

i) Children's rights would be separated from reproductive rights and shifted to No. 12 on the programme.

7.1.4 The meeting also agreed to the following:

- i) The meeting of 21 April would be shifted to the 20 April 1995.
- ii) Deadlines for party submissions on items 9, 10 and 11 would be 19 April and for item 12 (Children's Rights), 21 April 1995.
- iii) The CA Schedule be revised to reflect the changes agreed to.

8. ANY OTHER BUSINESS

8.1 None.

9. CLOSURE

The meeting rose at 20h40.

THEME COMMITTEE 4 SCHEDULE
20 - 24 APRIL 1995

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 4 MEETING

FUNDAMENTAL RIGHTS

Please note that a meeting of the above Group will be held as indicated below:

Date : Thursday, 20 April 1995
Time : 14h00 - 19h00
Venue : Old Assembly Chamber

**PLEASE NOTE:
THIS IS A REMINDER OF THE MEETING.
THE AGENDA BELOW IS A DRAFT**

AGENDA

1. Opening
2. Matters Arising: See Agenda Items Below
3. See separate document entitled "**Party Submissions**"
 - 3.1 Freedom of Religion, belief and opinion
 - 3.2 Freedom of Association
 - 3.3 Freedom of Demonstration
4. Public Submissions: Synopsis of Submissions (3.1 - 3.3 above)
5. Any Other Business
6. Closure

**H Ebrahim
Executive Director
Constitutional Assembly**

Enquiries : John Tsalamandris and Zuleiga Adams
Tel : 403 2266; Pager: 468 5050 code 4716

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 4 MEETING

FUNDAMENTAL RIGHTS

Please note that a meeting of the above Group will be held as indicated below:

Date : Friday, 21 April 1995
Time : 09h00 - 13h00
Venue : M 46

**PLEASE NOTE:
THIS IS A REMINDER OF THE MEETING. THE
AGENDA BELOW IS A DRAFT**

AGENDA

1. Opening
2. Matters Arising: See Agenda Items Below
3. Theme Committee Reports
 - 3.1 Nature and Application of Bill of Rights
 - 3.2 Right to Privacy
4. Any Other Business
5. Closure

**H Ebrahim
Executive Director
Constitutional Assembly**

Enquiries : John Tsalamandris and Zuleiga Adams
Tel : 403 2266; Pager: 468 5050 code 4716

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 4 MEETING

FUNDAMENTAL RIGHTS

Please note that a meeting of the above Group will be held as indicated below:

Date : Monday, 24 April 1995
Time : 14h00 - 18h00
Venue : M 46

**PLEASE NOTE:
THIS IS A REMINDER OF THE MEETING.
THE AGENDA BELOW IS A DRAFT**

AGENDA

1. Opening
2. Matters Arising: See Agenda Items Below
3. See separate document entitled "Party Submissions"
 - 3.1 Children's Rights
 - 3.2 Right to Life
4. Public Submissions: Synopsis of Submissions (3.1 - 3.2 above)
Pages
5. Any Other Business
6. Closure

**H Ebrahim
Executive Director
Constitutional Assembly**

Enquiries : John Tsalamandris and Zuleiga Adams
Tel : 403 2266; Pager: 468 5050 code 4716