

214/6/5/1/9

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 6.3

SPECIALISED STRUCTURES OF GOVERNMENT

22 May 1995

E305

DOCUMENTATION

Entire document embargoed until 9:00 on 22/5/95

TABLE OF CONTENTS

| | | |
|-----------|---|-----------|
| 1. | Memo | pg 1 |
| 2. | Agenda 22 May 1995 | pg 2 |
| 3. 3.1 | Minutes 15 May 1995 Annexure 'A' - Freedom Front comments on the draft formulations on the Public Protector | pgs 3-8 |
| 4. | Draft agenda for Workshop on National Machinery for the Advancement of Women | pgs 9-11 |
| 5. | Invitation from Konrad Adenauer Stifting | pgs 12-15 |

CONSTITUTIONAL ASSEMBLY
SUBTHEME COMMITTEE THREE
TRANSFORMATION, MONITORING AND EVALUATION
OF
THEME COMMITTEE SIX
SPECIALISED STRUCTURES OF GOVERNMENT

MEMORANDUM

TO: ALL MEMBERS OF SUBTHEME COMMITTEE THREE
FROM: Bronwen Levy (Secretariat)
RE: Subtheme Committee 6.3 meeting
DATE: 18 May 1995

Please be advised that there will be a meeting of Subtheme Committee 6.3, the details of the meeting are as follows:

VENUE: E305
TIME: 9:00
DATE: 22 MAY 1995

Enquiries Ms B Levy 403 2182 or 245 031 ext 234

CONSTITUTIONAL ASSEMBLY
SUBTHEME COMMITTEE THREE
TRANSFORMATION, MONITORING AND EVALUATION
OF
THEME COMMITTEE SIX
SPECIALISED STRUCTURES OF GOVERNMENT

22 May 1995

AGENDA

- 1. Opening and Welcome**
 - 2. Adoption of minutes**
 - 2.1 Minutes of the meeting of 15 May 1995**
 - 3. Draft constitutional text on the Public Protector**
 - 3.1 Reportback from meeting with drafters**
 - 4. Draft report on the Human Rights Commission**
 - 4.1 Input by Technical Advisors**
 - 4.2 Discussion**
 - 4.3 Process towards finalisation of report**
 - 5. National Sector Public Hearings/Constitutional Public Meetings**
 - 6. Gender Workshop**
 - 7. Any other business**
 - 8. Closure**
-

HASSEN EBRAHIM
EXECUTIVE DIRECTOR

Enquiries Ms B Levy 245 031 ext 234 or 403 2182

CONSTITUTIONAL ASSEMBLY
SUBTHEME COMMITTEE THREE
TRANSFORMATION, MONITORING AND EVALUATION
OF
THEME COMMITTEE SIX
SPECIALISED STRUCTURES OF GOVERNMENT

15 MAY 1995

PRESENT
Kgositsile B (Chairperson)

Fenyane SLE
Malan TJ
Mokoena LM
Netshimbupfe MA
Turok M
Van Wyk A
Van Zyl ID

Apologies: Moatshe P, Tshabalala ME

Levy B, Albertyn C and Erwee R were in attendance

1. Opening and Welcome

Ms Kgositsile opened the meeting at 9:00 and welcomed the members.

2. Adoption of Minutes

2.1 The minutes of the 18 April 1995 were adopted with the following change;

3.1.9 iv) should be read as, socio economic rights would fall within

the jurisdiction of the Human Rights Commission **only if** " all universally accepted fundamental rights, freedoms and civil liberties ... " as contained in Constitutional Principle II are interpreted to include socio economic rights.

2.2 The minutes of 8 May 1995 were adopted.

3. Draft Constitutional Text on the Public Protector

3.1 The Secretariat reported the following as per the agreements of the meeting of 5 May 1995 with regard to the draft formulations:

3.1.1 The Freedom Front was the only Party to submit comments on the Public Protector draft (see annexure 'A').

3.1.2 The minutes of 5 May which contained the Technical Advisors comments on the draft text had been submitted to the law advisors.

3.2 The Parties (with the exception of the Freedom Front) reported that they needed time to make comprehensive comments on the draft.

3.3 It was suggested that the Technical Advisors needed to be drawn into the drafting process.

3.4 Concern was raised that this draft needed to be submitted to the Management Committee for the next Constitutional Committee (CC) to be held on 26 May 1995.

3.5 *The Committee agreed to the following:*

3.5.1 That a meeting be set up between the Law Advisors, the Technical Advisors and one representative from each Party in the Subtheme Committee. This meeting would finalise the first draft formulations on the Public Protector, which formulations would be submitted for consideration by the CC at it's meeting on the 26 May 1995.

3.5.2 It was proposed that this meeting occur before the end of the week in order to facilitate the above process.

4. Draft report on the Human Rights Commission

4.1 It was reported that the technical advisors still needed to reconcile their views with regard to draft report on the summary of submissions

on the Human Rights Commission.

4.2 The Committee agreed to the following:

4.2.1 The technical advisors would need to draft reports as a team.

4.2.2 That if possible all reports from the advisors should be submitted to the Secretariat by Thursday so that they are able to be distributed to the members before Monday Subtheme meetings.

5. National Sector Public Hearings

5.1 The Secretariat reported that the following National Sector Public Hearings had been scheduled:

5.1.1 Religious Groups, 26 May 1995, World Trade Centre

5.1.2 Youth, 27 May 1995, World Trade Centre

5.1.3 Labour, 3 June 1995, World Trade Centre

5.1.4 Women, 4 June 1995, World Trade Centre

5.2 The Committee agreed that members would indicate to the Secretariat which hearings they would be able to attend.

6. Constitutional Public Meetings

6.1 The Secretariat reported that the following Constitutional Public Hearings had been organised:

6.1.1 Northern Cape, 20 May 1995

6.1.2 Free State, 20 May 1995

6.1.3 North West, 20 May 1995

6.1.4 Western Cape, 27 May 1995

6.2 The Committee agreed that members would indicate to the Secretariat which constitutional public meetings they would be able to attend.

7. Any other business

There was no further business.

8. Closure

The meeting rose at 10:15.

Chairperson..... Bulke Date.....



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THEME COMMITTEE 6 (SPECIALISED STRUCTURES OF GOVERNMENT)

COMMENT ON DRAFT FORMULATIONS: THE PUBLIC PROTECTOR (Documentation 8 May 1995)

1. Clause 1(2):

We do not consider that a clause describing the role, purpose or object of the Public Protector is necessary, as these matters are dealt with in clause 3 (powers and functions of the Public Protector). The existing two sentences of clause 1(2) should be retained.

2. Clause 1(4):

We are of the opinion that interference with the Public Protector should not merely be prohibited, but should be made a criminal offence. The clause as it stands is devoid of criminal sanction.

3. Clause 2(2):

In our view this clause should be redrafted, to read as follows: "All reports by the Public Protector shall be open to the public forthwith upon report to Parliament" (stress supplied).

4. Clause 3(1)(a)(ii):

The words "or discourteous" should be deleted, as it is virtually impossible to treat discourteous conduct in this manner.

...2/-

5. **Clause 3(1) generally:**

We do not consider the draft clause 3 to be "too specific" (see page 25 of Documentation of 8 May 1995). In fact, we prefer it to the cryptic alternatives suggested. If, however, one of the alternatives is to be adopted, we prefer the more elegant Option 2. We have, however, the following objection to both these alternatives: it is not advisable that the powers and functions of the Public Protector should be described as "at least substantially the same as those vested in the Public Protector immediately before the commencement of this Constitution". This is too vague and not readily ascertainable.

6. **Clause 3(2):**

We consider that not only the performance of judicial functions by the courts should be excluded from the competence of the Public Protector, but also the performance of judicial (or quasi-judicial) functions by any judge (out of court) or by any judicial commission. The Public Protector should not be able to investigate the activities of a judge or judicial commission, as a judge is an independent functionary with exalted status.

7. **Clause 4(2)(a) to (c):**

The words "qualified in terms of this Constitution" presumably refer to clause 1(2), but this is not clear, as clause 1(2) does not really enumerate qualifications. We once more draw attention to submission (iii) of our submissions on the Public Protector, which starts with the sentence: "It is of fundamental importance that the Ombudsman should be legally qualified".

We do not support the suggestion that it should be the Judicial Service Commission that compiles a short list of candidates, in particular because the role of the Judicial Service Commission in the appointment of judges to the Constitutional Court did not prevent persons of high political profile being appointed. The same considerations apply here.

8. **Clause 4(3):**

We agree with the view that the Public Protector should not be a member of a political party. The nature of his office requires independence and political objectivity.

9. **Clause 4(6):**

This provision should also stipulate that a Public Protector who is temporarily suspended and later dismissed is entitled to his emoluments until the date his employment terminates. This is the common law and, moreover, will preclude a Public Protector from being forced to resign from office because of lack of means.

CONSTITUTIONAL ASSEMBLY

**SUBTHEME COMMITTEE 6.3
THEME COMMITTEE 6
SPECIALISED STRUCTURES OF GOVERNMENT**

**WORKSHOP ON NATIONAL MACHINERY FOR THE ADVANCEMENT OF WOMEN -
JUNE 2/3 1995**

DRAFT PROGRAMME

Friday 2 June 1995

- 9:30 - 10:00 Registration and Tea**
- 10:15 - 10:30 Opening and Welcome**
Speaker: Ms Baleka Kgositsile (Chairperson Subtheme 6.3)
Facilitator: Ms Jenny Malan (Member of Subtheme 6.3)
- 10:30 - 11:00 Introduction and recent history of women's struggle for equality
(including discussion on the Commission for Gender Equality in
the interim constitution and the status of National Machinery in
South Africa - using the Beijing Report):**
- Speaker: Ms Mavivi Myakayaka - Manzini (Member of Parliament)
Facilitator: Ms Jenny Malan (Member of Subtheme 6.3)
- 11:00 - 11:30 What is National Machinery**
- Speaker: Dr Catherine Albertyn (Co-ordinator Gender Project,
Centre for Applied Legal Studies, University of Witwatersrand and
Technical Advisor to Subtheme Committee 6.3)
Facilitator: Ms Patricia De Lille (Member of Parliament)
- 11:30 - 12:30 What are the needs of South African women?**
- Panelists: Prof Harriet Ngubane (Academic), Ms Rhoda Kadalie
(Gender Equity Unit, University of the Western Cape)
Facilitator: Ms Patricia De Lille (Member of Parliament)
- 12:30 - 13:30 Lunch**

13:30 - 14:30

What is already in place? - Identification and explanation of existing structures and how they will advance the rights of women including:

- a) **Human Rights Commission**
- b) **Public Protector**
- c) **Gender in the RDP**
- d) **Courts**
- e) **Parliamentary caucus**

Panelists: Ms Sheila Camerer (Member of Subtheme 6.3), Advocate Janet Kentridge, Ms Mmatshilo Motsei (Gender Co-ordinator Reconstruction and Development Programme).
Facilitator: Mr Leon Louw (Member of Subtheme 6.3)

14:30 - 16:30

Small group discussion on the following:

What are the needs of South African women? This discussion should be an attempt to identify some of the needs that a Commission for Gender Equality or other structures could meet.

What structures (other than Commission for Gender Equality) are already meeting/could meet those needs?

What are the constraints facing us - economic, political, social.

16:30 - 18:30

Report back from small group discussion

Facilitator: Ms Baleka Kgositsile (Chairperson Subtheme 6.3)

Saturday 3 June 1995

8:30 - 9:00

Tea

9:00 - 11:00

Comparative survey of national machinery in Commonwealth countries, including benefits, constraints and limitations. In addition this would also examine examples of both enforcement and policy models.

Speakers: Commonwealth

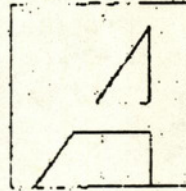
Facilitator: Ms Dene Smuts (Member of Subtheme 6.3)

Respondents: Prof Ronel Erwee (Graduate School of Management, University of Pretoria and Technical Advisor to Theme Committee 6.3), Ms Thuli Madonsela (Centre for Applied Legal Studies).
Facilitator: Ms Dene Smuts (Member of Subtheme 6.3)

- 11:00 - 13:00 Small group discussion on the following:
Should we have a Commission for Gender Equality and what form would it take?
- 13:00 - 14:00 **Lunch**
- 14:00 - 15:00 Small group discussion on the following:
How should the Commission be constitutionalised, if at all?
- 15:00 - 17:30 Reportback to plenary and consensus or identification of options.
Facilitator: Ms Baleka Kgositsile (Chairperson Subtheme 6.3)
- 17:30 - 17:45 Vote of thanks - Mr Hassen Ebrahim (Executive Director Constitutional Assembly)

Representative for South Africa

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Konrad
-Adenauer-
Stiftung

Ms Bronwen Levy
Constitutional Assembly/Sub Theme Committee 6.3
P.O. Box 15
Cape Town 8000

15.05.1995

Dear Ms Levy

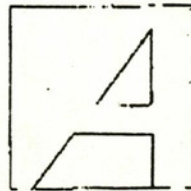
Please find attached the completed programme for the information seminar on **Abortion** scheduled for **26 May 1995**.

We would like to invite the women members of the Sub Theme Committee 6.3 and we would be very grateful if you assisted by circulating copies.

Yours sincerely *Thank you*

Annkathrin Bollig

Annkathrin Bollig
Project Co-ordinator



Konrad
-Adenauer-
Stiftung

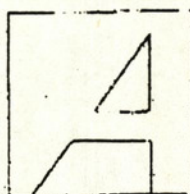
Reminder

The Workshop for
**Women Parliamentarians on
Labour Legislation**

will take place in the
Good Hope Chamber in the Good Hope Building in Parliament
on Friday, 19 May 1995
from 13:30 to 18:30
followed by a cocktail reception

➤ If you have an **advisor/consultant** with regard to your
parliamentary work you are welcome to invite her as well ◀

**CONTACT: ANNKATHRIN BOLLIG, KONRAD-ADENAUER-FOUNDATION,
TEL.: 011/484 79 40 FAX: 011/642 40 20**



**Konrad
-Adenauer-
Stiftung**

**THE CENTRE FOR HUMAN RIGHTS
FACULTY OF LAW, UNIVERSITY OF PRETORIA
and the
KONRAD-ADENAUER-FOUNDATION**

invite you to an

**INFORMATION SEMINAR ON
ABORTION
FOR WOMEN PARLIAMENTARIANS**

at the Good Hope Chamber in the Good Hope Building,
Parliament, Cape Town

on 26 May 1995

12:00 - 18:15

followed by a cocktail reception

To RSVP by 22 May 1995 please contact:

Ms Louisa Mokwena

Tel: (012) 420-3628 Fax: (012) 43-4021

or

Ms Annkathrin Bollig

Tel: (011) 484-7940/1 Fax: (011) 642-4020

or

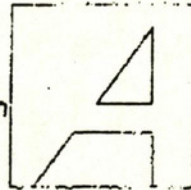
Prof Johann van der Westhuizen

Tel: (021) 403-2623 Fax: (021) 461-3679

➤ **Please note: If you have an advisor/consultant** regarding
your parliamentary work please feel free to invite her as well. ◀

Programme

Time: Friday 26 May 1995
 from 12:00 - 18:15
 followed by a cocktail reception
 Venue: Good Hope Chamber
 in the Good Hope Building,
 Parliament, Cape Town



**Konrad
 Adenauer-
 Stiftung**

- | | |
|---------------|---|
| 12:00 | Registration |
| 12:30 - 12:45 | Welcoming Address by <i>Prof. Johann van der Westhuizen,</i> Director of the Centre for Human Rights (Faculty of Law, University of Pretoria) and <i>Ankathrin Bollig,</i> Konrad-Adenauer-Foundation |
| 12:45 - 14:00 | Legal and Constitutional Implications International and Comparative Perspectives: USA, Germany, South Africa <i>Prof. June Sinclair,</i> Deputy Vice-Chancellor, University of the Witwatersrand |
| 14:00 - 14:45 | A Medical Perspective <i>Dr Carol Thomas,</i> FCOG, University of Cape Town |
| 14:45 - 15:30 | A Population and Development Perspective <i>Ms Barbara Klugman,</i> Coordinator, Women's Health Project |
| 15:30 - 16:00 | Tea/Coffee |
| 16:00 - 17:00 | Religious and Ethical Perspectives <i>Rev. Paul Germond,</i> Dept. of Religious Studies, University of the Witwatersrand |
| 17:00 - 17:45 | Cultural Perspectives <i>Prof. Thandabantu Nhlapo,</i> Law Faculty, University of Cape Town |
| 17:45 - 18:15 | Questions and Closing Remarks |
| 18:15 | Cocktail Reception |