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COMMISSION ON THE EMANCIPATION OF WOMEN

SUBMISSION ON THE 14TH REPORT ON CONSTITUTIONAL ISSUES : OMBUD & HUMAN RIGHTS COMMISSION

October 26th. 1993

Ombud

TERMINOLOGY:

The Commission for the Emancipation of Women does not accept the rationale of the Technical committee in recommending the use of the word Ombudsman, and specifically the assumption that the word has no gender connotations. Whilst we have no reason to doubt the Committee's statement that in the Swedish language the word simply means representative, we would submit that this argument is irrelevant in South Africa where the majority of South Africans would consider the word in the English language, in which it has a definite gender connotation. The Committee also errs in its assumption that women find the word acceptable.

We concur with the recommendation of the Technical Committee on Fundamental Rights, and would urge that the designation OMBUD be accepted.

APPOINTMENT:

We accept that the relationship between the National Ombud and the SPR Ombud be as set out in the recommended second model. However, while recognising that there should be one National Ombud, we consider that provision should be made for a deputy-Ombud who would function in the office of the National Ombud, and who would be of a different sex from the Ombud. The respective functions would have to be worked out.

In most countries the Ombud is not a lawyer and the Commission does not agree with the Technical Committee's attempt to conceive the office as a judicial one. We do not accept that the method of appointment should be the same as that for the appointment of members of the constitutional court. A process involving organs of civil society would be more appropriate in our society, and would lend legitimacy and respect to the Ombud's office.

The People Shall Govern!

The Ombud should be appointed by the President after widespread consultations and representations by parties following on an invitation to organisations in civil society and citizens to make submissions of names of candidates.

QUALIFICATIONS:

We consider that the most important qualifications should be that the Ombud and Deputy are persons of integrity and high reputation who enjoy the confidence of the community.

POWERS

We consider that the Ombud's powers and jurisdiction have been unnecessarily restricted and accordingly propose:

Clause 2 (1) The Ombud should not be subject to the law of privilege. As presently framed, this clause could unduly restrict the capacity of the Ombud, and deny access to documents and other information. The words "and the law" should be deleted, and it be sufficient that the Ombud carry out duties subject to the Constitution.

In Clause 3 (a) add "misuse of discretion ";

In Clause 3 (b) (iii) add "including the ordering of corrective action..."

Clause 3 (d) : This clause needs to be reframed in order to ensure that it only excludes decisions or the official role of a judge, and not abusive action by a court official such as the clerk.

Human Rights Commission

COMPOSITION

Given the history of South Africa we consider that the membership of the Commission should be 15 including a President and Deputy. Those appointed should be persons of standing in the community with an interest in human rights. Collectively the Commission should be broadly representative of the population and in particular the disadvantaged communities. Women should form at least half the membership of the Commission.

APPOINTMENT

The Commission should not be assimilated to the Constitutional Court. Whilst some members may be drawn from the legal profession, the Commission's function would be primarily a policy function. The Commission would have legal services available to it.

We do not agree that the procedures for appointment should be similar to those for appointment of the members of the Constitutional Court. We recommend the same procedure as that put forward above for appointment of the Ombud; namely, that the Commissioners be appointed by the President after the widest consultation, and on the basis of nominations from the public and representations from parties.

POWERS / DUTIES

A. The duties recommended in Clause 6. (3) should be amended:

1. The Commission should involve civil society in the undertaking referred to in 6.(3)(a). It should also strive to create a culture of Rights.
2. In developing an awareness of fundamental rights special attention should be paid to gender awareness. 6.(3) (b)
3. Among the recommendations referred in 6.(3) (c) should be included the duty to develop programmes for affirmative action for submission to the National Assembly

4. In addition to 6.(3) (d) the Commission should have the duty to investigate patterns of discrimination and effects of disadvantage and inequality;

5. In addition to 6 (4) the Commission should have the duty to publish in respect of all proposed legislation (including the budget) a report on the implications and impact of the legislation on Human Rights including specific reference to the status and condition of women.

B. The powers of the Commission should include:

1. Authority to establish separate mechanisms for disadvantaged groups
2. To receive and investigate complaints and publish reports thereon.
3. To assist individuals to bring class or individual actions
4. To institute proceedings where appropriate.
5. Adequate powers of enforcement. Without such powers the Commission would be a purely advisory body.

Gene Finvale.