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CONSTITUTIONAL ASSEMBLY

**THEME COMMITTEE 4
FUNDAMENTAL RIGHTS**

15 May 1995

Room OLD ASSEMBLY

DOCUMENTATION

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CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 4

FUNDAMENTAL RIGHTS

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

Date : Monday, 15 May 1995
Time : 09h00 - 13h00; 14h00 - 17h00
Venue : OLD ASSEMBLY

PLEASE NOTE:

THERE WILL BE A SECOND SESSION OF THE THEME COMMITTEE AT 2.00PM IN THE SAME VENUE

AGENDA

1. Opening
2. Matters Arising
3. Minutes: Theme Committee 8 May 1995 - Pages 3 - 8
4. Right to Life:
 - 4.1 Party submissions: **See Separate document entitled Party Submissions"**
 - 4.2 Public submissions: **See Separate document entitled "Reports and Synopsis of Public Submissions"**
5. Reports: **See Separate document entitled "Reports and Synopsis of Public Submissions"**
 - 5.1 Freedom and Security of the Person
 - 5.2 Freedom of Expression
 - 5.3 Access to Information

- 6. General
 - 6.1 National Sector Hearings - Page 9
 - 6.2 Constitutional Public Meetings - Pages 10
- 7. Closure

H Ebrahim
Executive Director
Constitutional Assembly

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CONSTITUTIONAL ASSEMBLY

**MINUTES OF
MEETING OF**

**THEME COMMITTEE 4
FUNDAMENTAL RIGHTS
MONDAY 8 MAY 1995 (AT 08H00)**

PRESENT

Leon AJ (Chairperson)

Bakker DM
Cachalia IM (alt)
Coleman M
Green LM
Jooste JA (alt)
Kgoali JL
Lubidla EN (alt)
Mdladlana MMS
Mohamed IJ (alt)

Njobe MAA (alt)
Pandor GNM
Radue RJ
Rhoda RT
Saloojee E
Surty ME
Thabethe E (alt)
Tyobeka VM
Viljoen V

APOLOGIES: Asmal KA, Camerer SM

J Tsalamandris, Z Adams, P Crowley and T Kgosidintsi were in attendance.

1. OPENING

- 1.1 The meeting was opened by Mr Leon at 08h43.
- 1.2 The Chairperson noted the poor attendance.
- 1.3 The Chairperson announced that the meeting will deal with Items 3 and 4 of the Agenda. Item 2 (Reports) will be dealt with in this afternoon's meeting.

2. MINUTES

- 2.1 Theme Committee meeting of 19 April: The following corrections was made:
 - i) Page 7: "...the state cannot recognise provisions which does not accord the same rights to men and women." should read "...which do not accord the same rights to men and women.'
 - ii) Page 7, last paragraph of Mr Leon's response: "Section 15(2)...to all media should be altered to read "The DP does not support the application of Section 15(2) to all media."
- 2.2 Theme Committee meeting of 20 April: the following correction was made:
 - i) Page 12: The word "apparently" should be inserted before "associated" in Mr Leon's response.

3. GENERAL

- 3.1 Sector Public Hearings: The Chairperson spoke to the document, "Public Hearings and CPM's", included in the documentation.
 - i) 8 May- Business Sector: Mr Leon will be chairing. Speakers include Mr Bobby Godsell, Raymond Parsons and one from NAFCOOC.
 - ii) 13 May- Children's Rights: The meeting decided on the following:
 - 3 members of Theme Committee 4 will attend:
 - Ms Pandor: will deliver the opening and welcome,
 - Mr Saloojee: will chair the session on "The Right to Survival"
 - Dr Coleman: will chair the session on "The Right to Protection".
 - iii) 12/13 May- Traditional Authorities: Mr Mdladlana, Senator Radue and Senator Surty will attend from Theme Committee 4.

3.2 CPM's:

- i) The meeting was informed of the cancellation of the CPM in Ingwavuma on the 13 May.
- ii) The Theme Committee needs to send one member to the CPM in Standerton on 13 May. Confirmation forms are included in the documentation.
- iii) The Chairperson suggested a proportional allocation to CPM's. The DP will send a representative to the CPM in Hammersdale on 24 June. Other parties will confirm their attendance by Friday 12 May.

3.3 Work Programme:

3.3.1 The Secretariat reported that all submissions on Children's Rights and Life have been received. There are still 4 party submissions outstanding on Socio-economic Rights.

3.3.2 The meeting decided on the following changes to the Work Programme:

- i) 15 May: The Theme Committee will discuss the **Right to Life**
- ii) 22 May: The Theme Committee will discuss **Socio-Economic Rights**
Deadline for party submissions is the **15 May**.

4. CLOSURE

The meeting rose at 09h00.

CONSTITUTIONAL ASSEMBLY

**MINUTES OF
MEETING OF**

**THEME COMMITTEE 4
FUNDAMENTAL RIGHTS
MONDAY 8 MAY 1995 (AT 14H00)**

PRESENT

Leon AJ (Chairperson)

Bakker DM
Cachalia IM (alt)
Chalmers J
Coleman M
Gamndana T
Green LM
Kgoali JL
Lubidla EN (alt)
Mdladlana MMS
Mohamed IJ (alt)
Myakayaka-Manzini YL
Njobe MAA (alt)

Ntuli MIB
Pandor GNM
Piliso MM
Radue RJ
Rasmeni SM
Saloojee E
Solomon E (alt)
Surty ME
Thabethe E (alt)
Tshivhase TJ
Viljoen V
Ndzanga RA (alt)

J Tsalamandris, Z Adams, L Meyer and S Liebenberg were in attendance.

1. **OPENING**

- 1.1 Mr Leon opened the meeting at 14h05.

2. **MATTERS ARISING**

- 2.1 None

3. **CHILDREN'S RIGHTS: PARTY SUBMISSIONS**

- 3.1 The ACDP's submission was presented by Mr Green who spoke to the document, "*African Christian Democratic Party Submission to the Constitutional Assembly, Theme Committee Four: Children's Rights*"

Questions to Mr Green included:

- How does one enforce the right of a child to "spiritual guidance" and what if a child lives in a home where parents have chosen not to provide "spiritual leadership".

Mr Green responded as follows:

- The ACDP merely wishes to protect the right of every parent, in terms of existing practices in SA today, to impart a religion or a particular world view to their children.

- 3.2 The ANC submission was presented by Ms Njobe who spoke to the document, "*Preliminary Submission of the ANC on Item 12 of the Work Programme: Children's Rights*"

There were no questions.

- 3.3 The DP submission was presented by Mr Leon who spoke to the document, "*Democratic Party Submission on Item 12: Children's Rights*"

Questions to Mr Leon included:

- The DP submission is unclear on whether the constitution should exclude or include a clause on children's rights.
- Why does the DP introduce economic activity as a core right and which has no basis in international human rights documents, yet it excludes special protection for children. The aim of Section 30 in the Interim Constitution was precisely to sensitise the judiciary to the vulnerability of children already recognised in international documents.
- What is the DP's comment on the right of children to a name and nationality?
- If the DP does not favour special protection for children because of their emotional, mental and physical immaturity how will it ensure that other rights in the constitution will not be abused to the detriment of children.

The right to economic activity, for example can be used to engage in child pornography.

- If the "the right to parental care" cannot be enforced constitutionally, what mechanisms would the DP suggest for enforcing it?

Mr Leon responded as follows:

- The DP does not see the need for special provisions in the constitution for children, nor does it insist on its exclusion. Those rights accorded to children in the Interim Constitution are catered for in the general rights applicable to all citizens. The right to health and basic nutrition are catered for under socio-economic rights; the Common Law and the Statute Books provide further protection against child abuse and exploitative labour practices.
- The DP's basic premise is that a Bill of Rights must reflect a Core of Rights with as little detail as possible, hence the less chance of being amended. However, nothing in the constitution should prevent Parliament from amending legislation based on submissions from e.g. NCCR or other children's lobby groups.
- The DP has removed the right to economic activity from its proposals on socio-economic rights.
- Children should not be isolated as a special group with rights to a name and nationality. The right to a nationality raises legal and constitutional implications in terms of government policy and the Theme Committee should perhaps consider expert opinion on the matter.
- Section 26(2) provides adequate protection against exploitative child labour. The limitations clause can also be invoked to prevent the abuse of rights. The DP is not opposed in principle to special protection for Children, but questions whether such protection is not already catered for in the statute books.
- The "right to parental care" can be enforced legally as the existing common law and legislation already makes provision for the right against parental abuse and neglect.

3.4 The FF submission entitled, "***Freedom Front Theme Committee 4(Fundamental Rights): Submissions on Children's Rights***" was taken as read.

3.4 The NP submission was presented by Senator Radue who spoke to the document, "***National Party Preliminary Submission: Theme Committee 4: Item 12: Children's Rights***".

There were no questions.

4. THEME COMMITTEE REPORTS:

4.1 *Nature and Application of Bill of Rights*

4.1.1 The following amendments were made:

- i) 2.1 should be altered to 2.1.1.
- ii) 3.2 "Suggestion" should be altered to reflect that parties did come to a conclusion.

4.2 *Freedom of Religion, Belief and Opinion*

4.2.1 The following amendments were made:

- i) 2.2.1 should reflect that parties agreed that the location of academic freedom under the right to freedom of religion, belief and opinion was incorrect, but differed as to exactly where it should be located.
- ii) 2.2.1.2 should reflect the ANC position that academic freedom are best dealt with not only under freedom of expression but also other sections.
- iii) Mr Green will redraft the ACDP's position to reflect its position that freedom of religion should be extended to all forms of worship except Satanism and will forward the reformulation to the secretariat.

4.3 *Servitude and Forced Labour*

4.3.1 No amendments were made.

4.4. The following general comments were made:

4.4.1 All reports to the Constitutional Committee must contain two documents:

- i) The Theme Committee Report outlining the contentious, non-contentious, outstanding issues and party perspectives.
- ii) A First Draft with explanatory notes referring the CC back to the Report. This Draft will reflect the Theme Committee decision on either a broad or detailed formulation.

4.4.2 The Secretariat outlined the administrative process as follows:

- i) Reports, once approved by the Theme Committee, goes to the Technical Committee who will then prepare the First Draft.

- ii) The Technical Committee reports back to the Secretariat, who then reports to the Theme Committee.
- iii) Once the Theme Committee has approved the First Draft it goes to the Constitutional Committee.

5. GENERAL

- 5.1 The meeting was reminded of the Public Sector Hearings on Traditional Authorities and Children's Rights.

6. CLOSURE

The meeting rose at 15h30.



CONSTITUTIONAL ASSEMBLY

MEMORANDUM

TO: The Secretariat
FROM: Hassen Ebrahim
DATE: 10 May 1995
SUBJECT: Hearing Dates

This memo serves to confirm the National Sector Public Hearing dates as follows:

<u>SECTOR</u>	<u>DATE</u>	<u>VENUE</u>
Traditional Authorities	12/13 May	National Assembly
Children's Rights	13 May	HSRC - Pretoria
Religious Groups	26 May	World Trade Centre
Youth	27 May	World Trade Centre
Labour	3 June	World Trade Centre
Women	4 June	World Trade Centre

There will also be a National Conference on National Machinery and the Advancement of Women - 2/3 June 1995.

Ref.a:\memnvn10.5a

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THE NEW CONSTITUTION

MANAGEMENT COMMITTEE REPORT

20 APRIL 1995

1. INTRODUCTION

In the Management Committee meeting held on Thursday 23 March 1995, it was agreed that 18 Constitutional Public Meetings be held around the country. This report aims at providing an outline on the said meetings.

2. DATES AND VENUES

The Management Committee of 27 March approved the following venues for CPMs. It is proposed that CPMs be held at these venues on the following dates:

PROVINCE	VENUE	DATE
Eastern Cape	Peddie	6 May
Kwazulu-Natal	Ingwavuma	13 May
Eastern Transvaal	Standerton	13 May
Northern Cape	Upington	20 May
Free State	Harrismith	20 May
North West	Taung	20 May
Western Cape	Beaufort West	27 May
Kwazulu-Natal	Newcastle	27 May
Northern Cape	Kimberley	3 June
Northern Transvaal	Tohoyandou	3 June
Eastern Cape	Lusikisiti	10 June
North West	Mafikeng	10 June
Northern Cape	Camarvon	17 June
Northern Transvaal	Ellisras	17 June
Eastern Transvaal	Mthuzi	17 June
Western Cape	George	24 June
Free State	Maokeng	24 June
Kwazulu-Natal	Hammersdale	24 June

~~The Gauteng province has already hosted five public participation events.~~ Thus given the limited period of 27th April to 30th June, the PPP has concentrated on those provinces which have not hosted as many events.

3. COMMUNITY INVOLVEMENT

It is necessary that at each of the Constitutional Public Meetings representatives of the various organisations of civil society and other formations be properly represented and be invited to make submissions. To ensure achievement of this objective regional and national initiatives have been put into place.