

WOMEN'S NATIONAL COALITION

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Date: 15/06/93 Receiver's Fax No.: 011 397-2211

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Message: HEREWITH COMMENTARY ON THE DRAFT PROPOSALS OF THE TECHNICAL COMMITTEE ON CONSTITUTIONAL PRINCIPLES. PLEASE CIRCULATE TO THE MEMBERS OF THE TECHNICAL COMMITTEE AND TO ALL THE FEMALE DELEGATES OF THE NEGOTIATION FORUM. THANK YOU VERY MUCH FOR YOUR PROMPT RESPONSE. PP. SANDRA

Convenor: Frene Ginwaia • Co-Convenor: Anne Letsebe • Sec Gen: Thoko Msane
Dep. Sec Gen: Sandra Botha • Co-Treasurers: Miriam Stein ; Jennifer Kinghorn

customary law; but also to all systems of custom and customary law that affect the inhabitants of South Africa (including muslim law).

2 Principles dealing with the allocation of power to different levels of government:

2.1 It should be stated as a first or second principle that the national, SPR and local levels of government will be subject to the national bill of rights. This is crucial in strong regional government, especially if powers such as the use of systems of customary law are granted to regions (see 3.9.1.5).

2.2 The control of (for example) education, customary law, the delivery of services (housing, water, energy etc) is crucial for women. Women need to be part of the regional debate as to how the allocation of powers and resources is going to happen.

3 Assymetry:

3.1 Assymetry of resources will affect women more than men (eg. women in rural areas). It is important that there are effective systems for redistributing resources between regions to allow for development of poorer regions. This is probably part of section three on principles dealing with the allocation of power to different levels of government. Should this added as a specific principle?

4 Matters requiring the consideration of the Negotiating Council:

4.1 The final model should not only promote national unity, legitimate regional authority and cultural diversity, but also equality (subject to principles of non-racism and non-sexism and to the bill of rights).

COMMENTS ON THE THIRD REPORT OF THE TECHNICAL COMMITTEE ON CONSTITUTIONAL MATTERS

1 General Constitutional Principles:

- 1.1 **2.1** This no longer specifies that the future state will be "non-racist and non-sexist". This should be re-incorporated. It is crucial that non-sexism is a fundamental principle of the new constitution.

- 1.2 **2.2** Wherever race is mentioned, gender/sex should be mentioned. 2.2 should read ...shall prohibit racial, gender and all other forms of discrimination....

- 1.3 **2.8** The promotion of diversity is a positive goal. As is stands, this principle only refers to this goal and not to the content of various cultures and religions. But the principles do not deal with the question of the clash between culture and equality or religion and equality. This should be dealt with and can be done so in a number of ways:
 - 1.3.1 Equality can override the exercise of cultural and religious rights;
 - 1.3.2 Equality can override cultural rights only; or
 - 1.3.3 Equality can override cultural and religious rights where these provide lesser to rights to persons (and particularly women) than they would obtain if they were subject to the system of civil law.

- 1.4 **2.11** This refers to the entrenchment of the principle of equality in the legal system. Clearly we want this to mean "substantive equality" and this should be stated if possible. The inclusion of affirmative action as part of the principle of equality is the correct approach.

- 1.5 **2.12** This principle must clearly state that customary law will be applicable in so far as it is compatible with the provisions of the fundamental rights contained in the constitution and in particular with the right to equality and non-discrimination. This should not only apply to "Indigenous law" or african

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