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CONSTITUTIONAL ASSEMBLY

**THEME COMMITTEE 4
FUNDAMENTAL RIGHTS**

5 June 1995

Room M 46

DOCUMENTATION

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 4

FUNDAMENTAL RIGHTS

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

Date : Monday, 5 June 1995
Time : 08h30 - 13h00
Venue : M 46

AGENDA

1. Opening
2. Matters Arising
3. Minutes: Theme Committee meeting 29 May 1995 - Pages 2-6
4. **Political Rights, Citizen's Rights, Freedom of Residence, Freedom of Movement** : Party Submissions (See Separate document entitled Party Submissions)
5. General
5.1 Work Programme: Page 7
6. Closure

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CONSTITUTIONAL ASSEMBLY

**MINUTES OF
MEETING OF**

**THEME COMMITTEE 4
FUNDAMENTAL RIGHTS
MONDAY 29 MAY 1995 (AT 14H00)**

PRESENT

Mdladlana MMS (Chairperson)

Asmal K	Njobe MAA (alt)
Bakker DM	Ntuli MIB
Cachalia IM (alt)	Piliso MM
Chalmers J	Ranchod BG (alt)
Coleman M	Rasmeni SM
Dlamini BO	Rhoda RT
Green LM	Saloojee E
Hajaij F	Solomon G
Kgoali JL	Thabethe E (alt)
Mashamba TGG	Thompson B
Mathebe P (alt)	Viljoen V
Mohamed IJ (alt)	Werth CH
Mayakayaka-Manzini YL	Xingwana LM
Njobe MAA (alt)	

APOLOGIES: Camerer SM, Lubidla EN, Mabandla BS, Mulder CP, Pandor GNM, Radue RJ, Sizani RK.

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

1. **OPENING**

- 1.1 Mr Mdladlana opened the meeting at 14h12.

2. **MINUTES**

- 2.1 The minutes of the Theme Committee 4 meeting of 22 May were adopted with the following amendment:

Imam Solomons should be added to the list of members present.

3. **MATTERS ARISING**

None.

4. **REPRODUCTIVE RIGHTS: PARTY SUBMISSIONS**

- 4.1 The Chairperson noted that the ANC submission is not included in the document.
- 4.2 Mr Mdladlana requested that the meeting allow the ANC time to caucus to enable them to present a submission.
- 4.3 Mr Leon expressed concern that the absence of a submission by the ANC as the majority party will render the debate on Reproductive Rights futile. It should be made clear whether deadlines for party submissions are mere guidelines or actual deadlines.
- 4.4 The meeting decided to deal with those party submissions tabled and adjourn after which the ANC will present its submission.
- 4.5 The **ACDP** submission was presented by Mr Green who spoke to the document, "*Submission to the Constitutional Assembly - Theme Committee Four: Reproductive Rights*"

Questions to the **ACDP** included:

- If procreative rights are restricted to a family unit, does it mean that single parents will be denied the benefits of social welfare policies?

The **ACDP** responded as follows:

The state should promote procreative rights within the family, not outside it. This does not imply a neglect of assistance to single parent families.

- 4.6 The DP submission was presented by Mr Leon who spoke to the document, "**Democratic Party Submission on: Reproductive Rights**".

Questions to the DP included:

- What is the reference citing the example of the Federal Republic of Germany where legislation has been enacted permitting abortion in the early months of pregnancy and outlawing it in the later months.
- Did the DP take into considerations all the moral and ethical views of its members when it adopted a pro-choice position at its Federal Congress in 1994?

The DP responded as follows:

- The reference to the example of the Federal Republic of Germany is cited in June D. Sinclair, "**Rights and Constitutionalism: Family Rights**"
- Differences of opinion on the question of abortion remain within the DP. Before the DP Federal Congress in 1994 members were free to act according to the dictates of their individual conscience. A strong Women's lobby demanded that the DP take a position which led to the Federal Congress decision of 1994.

- 4.7 The FF submission was presented by Senator Werth who spoke to the document, "**Submissions on Rights Relating to Reproduction**"

Questions\ Comments included:

- The repeal of the 1975 Abortion and Sterilisation Act will lead to an increase in deaths resulting from illegal abortions as the only recourse for many people will be the Common Law which is more restrictive.
- The 1975 Act is racist and discriminates against the poor. Research statistics indicates that the 20 000 who die of illegal abortions are mostly black.
- In terms of the 1975 Act out of 1000 people who procured a legal abortion, 750 were white. This indicates indirect discrimination.

The FF responded as follows:

- Matters of principle must take precedence over the need to eradicate illegal practices. Abortion on demand sacrifices principles for expediency.
- The intention of the 1975 Act was not discriminatory as it does not stipulate afford as one of the conditions for the granting of a legal abortion.
- The FF 's position does not imply an infringement on the right to dignity and privacy.
- The FF is not against the granting of abortions under certain conditions

- 4.8 The **NP** submission was presented by Dr Ranchod who spoke to the document, "*National Party Preliminary Submission: Theme Committee 4-Item 15: Reproductive Rights*"

Questions to the **NP** included:

- What is the NP's position with respect to abortion on demand?
- Is the NP in favour of liberalising the 1975 Act given the fact that it was in power when the Act was passed?

The NP responded as follows:

- The NP is not in favour of abortion on demand but recognises the need review the current legislation in the light of a new culture of human rights emerging in SA.
- South Africa is changing and so is the NP. Many laws passed during the Apartheid era need to be reviewed

- 4.9 The **ANC** submission was presented by Dr Asmal who presented a verbal submission:

- The 1975 Abortion and Sterilisation Act granted the right to abortion on arbitrary grounds. The debate in South Africa is therefore about the parameters in which an abortion should be granted and not whether it should be granted.
- The 1975 Act granted the right to abortion on purely physical and psychological grounds. The ANC believes that social and economic grounds should also be considered as these directly impact on the psychological health.
- Freedom of choice implies the absence of compulsion. The 1975 Act compelled many women to resort to illegal abortions resulting in their death or serious impairment to their health.
- The ANC's position on reproductive rights is guided by Article 12 of the Convention on the Elimination of all forms of Discrimination Against Women (CEDA). Article 12 makes provision for health rights for women which include access to family planning. It also imposes an obligation on the state to provide appropriate services for pregnancy and postnatal care.
- Reproductive rights is therefore not just concerned with the right to abortion.
- The ANC believes that the constitution must include a separate section on Women's Rights. This section must contain provisions on health care in which reproductive health should be dealt with.

There were no questions to the **ANC**.

- 4.10 The Chairperson announced that the **PAC** did not make a submission but have informed the Secretariat that their position on Reproductive Rights have been covered in their submission on the Right to Life.

5. GENERAL

5.1 Sector Public Hearings:

5.1.1 The Chairperson informed the meeting of a briefing session to be held for those attending the Public Hearings on Labour and Women in **M201 at 15h00 on Tuesday 30 May**

5.1.2 Ms Kgoali indicated that her name should be added to the list of Theme Committee 4 members that will be attending both hearings.

5.2 Constitutional Public Meetings (CPM)

5.2.1 Members were reminded to contact the Secretariat if they wished to represent the Theme Committee at any of the CPM's.

5.2.1 Ms Kgoali indicated that she will attend the CPM in **Mafikeng on 10 June**. Ms Dlamini and Ms Thompson indicated that they will attend the CPM in **Hammersdale on 24 June**.

5.3 The next Theme Committee meeting will take place on **5 June 1995**.

6. CLOSURE

The meeting rose at 15h50.

**THEME COMMITTEE 4
WORK PROGRAMME AND DEADLINES FOR PARTY SUBMISSIONS**

DEADLINES PARTY SUBMISSIONS	T/C MEETING	ITEMS
		13. Life
		14. Socio-Economic Rights i) Property ii) Education iii) Environment iv) Economic Activity v) Labour Relations vi) Freedom of Language and Culture vii) Other socio-economic rights
22 May	29 May 1995	15. Reproductive rights
25 May	5 June 1995	16. Political Rights 17. Citizens' rights 18. Freedom of movement 19. Freedom of residence
5 May	12 June 1995	20. Equality
7 June	14 June 1995	21. Administrative justice 22. Access to Courts 23. Detained, arrested and accused persons
9 June	14 June 1995	24. Limitation of rights 25. States of emergency and suspension of rights 26. Other fundamental rights and directive principles
15 June	26 June 1995	27. Interpretation of Bill of Rights 28. Other issues