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**CONSTITUTIONAL ASSEMBLY**

**NATIONAL PUBLIC SECTOR HEARING  
WOMEN**

**VENUE: WORLD TRADE CENTRE**

**03 JUNE 1995**

# MINUTES

8 June 1995  
Constitutional Assembly

## **NATIONAL SECTOR PUBLIC HEARING**

### **WOMEN**

#### **Panel 1: The Bill of Rights and Related Issues**

Ms Michelle O'Sullivan spoke on Women and the Constitution and stressed the importance of the horizontal application of the Bill of Rights. She felt the right to life proviso on abortion was not sufficient. Whereas rights were meant traditionally to protect citizens from the state, socio-economic rights put obligations on the state towards its citizens.

Ms Puli Moloto-Molamu spoke on Customary Law and said that inheritance law had to be reviewed in order to empower women. In cases that potentially oppress women, civil law should take precedence over customary law. The equality clause could not be applicable or enforceable without empowering women. Women had to challenge custom and socialisation of men to dominate. Powers of chiefs to apply customary law should be limited by the Bill of Rights. Customary marriages should also be recognised in law as well as Christian, Muslim, and Jewish marriages.

Dr Helen Rees spoke on Reproductive Rights and said that reproductive health rights had to be enshrined in the constitution. The right to abortion should be protected. Reproductive rights should be exercised free of discrimination, coercion and violence.

Ms Catherine Bailey of NADEL spoke on the Equality clause and stressed the need for substantive equality in order to correct racial and patriarchal wrongs of the past. Human dignity was inherent in equality. Affirmative action ruled out equity which did not accommodate corrective action. Equal opportunity and benefit of the law was an important clause in the interpretation of equality. It was important to acknowledge differences in people in order to achieve equality. The equality clause should provide especially for the disabled, historically disadvantaged, women and the young. The constitution should provide special value attachment to child bearing and child raising capacity. To protect women against violence, policing had to change.

#### **DISCUSSION**

**TC1:** "Substantive" should be added to the clause on equality. There should be philosophical definitions of equality, equity, substantive equality fair and unfair discrimination.

**TC2:** Separation of powers between traditional authorities and other

structures of government should be spelt out in the constitution.

**TC4:** Muslim Personal Practices to be recognised in the constitution especially in relation to marriage and the status of children. Equality clause should not exclude Muslims.

Socio economic rights to include health as a fundamental rights.

Violence against women is to be forbidden in the constitution. The clause on the freedom and the security of the person should be enhanced to provide for the application of Chapter 3 of the interim constitution.

The pro-choice position allows dignity, privacy and democracy.

Labour rights should include homemaking as a function deserving pay.

**TC5:** Customary law on inheritance and marriage should be recognised in the constitution. Capital punishment should not be abolished for certain types of crimes.

**TC6.1:** The Gender Commission should aim to facilitate upgrading of the lot of rural women.

## **PANEL 2: Other Aspects of the constitution**

Advocate Kgomotso Moroka spoke on the Judiciary and said that judicial officers had a key role to play in developing common law. The consequences of a particular view in informing common law could affect rights in the interpreting the law. In their exercise of discretionary judgements, judges who tend to be white and male, could be prejudiced against Blacks and women. A system of checks and balances should be enshrined in the constitution to avoid discrimination. Lay persons should be appointed to judicial positions under the criteria of fit and proper persons. The philosophy of non-subordination of women should be effected in gender sensitive jurisprudence.

Dr Ellen Kornegay spoke on Local Government and said that it could be the best vehicle for transformation and nation building. Services at local government level were felt directly by women. Hence it was important to ensure that there were more women in local government structures, to ensure that gender issues were advanced and to ensure that women voted. Language was one vehicle for change that would accommodate rural and other women. Equal access to services should be enshrined in the constitution especially for women headed households. Impeachment and

recall should also be exercised by women in order to ensure accountability to women structures.

## **DISCUSSION**

**TC1:** Dual citizenship of rural communities should be reviewed to accommodate all South African values.

Universal suffrage should incorporate the right to lobby. Education on lobbying would entrench accountability.

Equality clause should spell out affirmative action in the preamble.

Language should be gender sensitive in all publications including the constitution.

**TC2:** Eligibility to traditional leadership should exclude non-hereditary appointments. Traditional Authorities should have only an executive role in rural areas.

**TC3:** Local Government appointments should include women. A quota of up to 50% should be entrenched.

There should be interaction between various levels of the Gender Commission: National, Provincial and Local.

Local Government Tender Boards should include women.

Traditional Authorities should only function at local government level in an ex-officio capacity.

**TC4:** Religious rights should be protected by recognising religious holidays and certain rituals.

Tolerance of differences should be enshrined in the constitution e.g. Children's rights should be protected even if the children happen to be homosexual. Child maintenance should be enshrined in the constitution.

Education rights should include protection of teenage mothers and the eradication of illiteracy.

Reproductive rights of teenagers/minors should be assisted with counselling in cases where they want an abortion.

Right to privacy should be enshrined in HIV related cases.

Right to dignity should be entrenched in relation to marginalised people i.e. to avoid using names like hobo, bergie etc.

**TC5:** Traditional courts should be presided over by traditional authorities who value the rights of women. Traditional courts should be kept as community courts that operate within the framework of the Bill of Rights.

Fit and proper persons should not only be defined in Eurocentric terms. The whole legal system should be reviewed to accommodate Afro Asian values of the majority of South Africans.

Impeachment of judges should be implemented by civil society.

**TC6.1:** Public service should be user friendly and gender sensitive and a provision for a pro-active Public Protector should be made.

**TC6.2:** Access to financial institutions should be open to women.

**TC6.3:** The Gender Commission should conduct transformation seminars for rural women.

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