

**REPUBLIC OF SOUTH AFRICA**

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**CONSTITUTIONAL ASSEMBLY**

**RESOLUTIONS**

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**MONDAY, 14th NOVEMBER, 1994**

- 1 That the Constitutional Assembly authorises the Constitutional Committee to exercise the powers relating to commissions vested in it under Standing Rules 36 to 42, subject to ratification by the Constitutional Assembly.
- 2 That notwithstanding the provisions of Standing Rules 54, 60, 63, 65, 66, 67, 68, 70 and 71 to the contrary, in the consideration of the Constitution of the Republic of South Africa Sixth Amendment Bill by the Constitutional Assembly -
  - (a) The bill may be introduced by a member of the Constitutional Assembly;
  - (b) the member in charge of the bill may introduce the bill by submitting it, together with a memorandum on its objects, to the Chairperson before or at the same time as the motion that the bill be read a first time is delivered to the Secretary;
  - (c) notice of a motion proposing a stage of the bill is not required; and the bill shall not be referred to a select committee.
- 3 That the following persons be appointed in terms of section 72(2) of the Constitution of the Republic of South Africa, 1993, to form the independent panel of experts envisaged in that section: Prof M G Erasmus; Prof J Kruger; Prof C Murray; Adv M P Sedibe-Ncholo; Adv I Semanya; Prof J van der Westhuizen; Adv Z Yacoob.

## **4 STRUCTURES OF THE CONSTITUTIONAL ASSEMBLY**

### **4.1 CONSTITUTIONAL COMMITTEE**

4.1.1 The Constitutional Committee has met once since the last sitting of the Constitutional Assembly: 7 November. A further meeting has been scheduled for 14 November.

4.1.2 The progress of the sub committee<sup>1</sup>, established to develop a short list of candidates for appointment to the Independent Panel of Constitutional Experts<sup>2</sup>, was considered. The sub committee is scheduled to submit a unanimous report to the Constitutional Committee at its sitting of 14 November.

4.1.3 This Committee has, at its sitting of 7 November, agreed to reconvene during recess in December to consider and approve a report on the work programme for Theme Committees for the session beginning in January 1995.

### **4.2 MANAGEMENT COMMITTEE**

4.2.1 The Management Committee has met to attend to matters between sittings of the Constitutional Assembly.

4.2.2 The Management Committee has also approved an advertised invitation to all parties to submit proposals in terms of the media strategy as approved by the Constitutional Assembly. A further report on this will be tabled at the next sitting of the Constitutional Assembly.

### **4.3 THEME COMMITTEES**

4.3.1 All Theme Committees have been meeting regularly and are presently in the process of finalising their work programmes which are to be submitted to the Administration by 15 November 1994.

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<sup>1</sup> See below.

<sup>2</sup> See Constitutional Assembly Resolution of 31 October, 1994, par 4.

4.3.2 The Committees have, where necessary, been holding joint meetings to discuss matters of common interest pertaining to their terms of reference.

4.3.2 Arising from the reports of Theme Committees thus far is the recommendation for the establishment of several Commissions. These Commissions would have to be established in terms of Sec 72 (1) of the Constitution. Since the Constitutional Assembly is only due to sit again in January 1995 and the Constitutional Committee would be sitting in December to approve the work programme of Theme Committees, it is necessary to empower the Constitutional Committee with the necessary authority to appoint, after approval, these Commissions.

## **5 INDEPENDENT PANEL OF EXPERTS**

### **5.1 INTRODUCTION**

5.1.1 The sub committee to establish a short list of candidates was established and met on 7 and 8 November.

5.1.2 The sub committee was guided by the Resolution of the last sitting of the Constitutional Assembly. In this regard the sub committee has satisfied itself that their recommendation takes into account the criteria and requirements as stipulated in both the Constitution and the Resolution.

5.1.3 The sub committee has advised that it is possible to arrive at a unanimous decision provided that the Panel is extended from 5 to 7 members. Accordingly, the recommendation of the sub committee, which is to be placed before the Constitutional Committee at its sitting of 14 November for approval, is as follows:-

- a) that a Bill amending Section 72(2) of the Constitution be passed so as to enable the Panel to include 7 members;
- b) to appoint the following persons to the Independent Panel of Constitutional Experts:-
  - i) Prof. M G Erasmus
  - ii) Prof. J Kruger

- iii) Prof. C Murray
  - iv) M P Sedibe-Ncholo
  - v) Adv I Semanya
  - vi) Prof. J Van der Westhuizen
  - vii) Adv. Z Yacoob
- c) The subcommittee is satisfied that all the persons has recommended comply with the requirements of Section 72(2) of the Constitution in that they are;
- i) South African citizens,
  - ii) recognised constitutional experts,
  - iii) not members of Parliament or any other legislature, and
  - iv) not holding office in any political party.
- d) Summaries of the relevant details of the persons recommended by the subcommittee are presented below:

**PROF M.G. ERASMUS**

Date of birth: 6 February 1949

B Iuris LL B(law School, UOVS 1969 - 73)

On staff of Attorney - General in 1974; admitted as Advocate of the Supreme Court.

Doctorandus Iuris (University of Leyden, 1975-6)

Research Scholar (1977-8) at Max Planck Institute for International and Comparative Public Law

MA (Fletcher School of Law and Diplomacy & Harvard Law School, 1978-9) in *inter alia* American Constitutional Law

LL D (University of Leyden, 1979)

Professor, Faculty of Law, University of Stellenbosch (1984). At present Head of Dept of Public Law in this faculty.

Co-drafter of Namibian Constitution (1989-90)

Involved at Codesa and the Multi-Party Negotiations

Assisted in drafting of New Malawian Constitution 1994

He published extensively, nationally and internationally, on constitutional and other legal statutes

**PROF DR T J KRUGER SC**

Date of birth: 21 July 1947

B.luris et Artium (1969) and LL.B (cum laude) in 1971, Potch Univ

LL D (PUCHE) (1990), Thesis: "The coming into being of a South African human rights dispensation."

Joined the Pretoria Bar in 1972, advocate until 1986

Served as secretary of the Bar Council (1979 - 81)

Took silk during 1986

Prof of Law, Potch Univ (1987 - )

Director: Legal Aid Clinic, Potch Univ (1991 - 1993)

Director: Community Law centre, Potch Univ (1993 - )

Head: Department of Applied Legal Studies (1991- )

Acted as constitutional adviser to the South African Government at the Multi Party Negotiations Process, April -December 1993.

Areas of specialisation include Human Rights Law, Constitutional Law

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Legal hermeneutics pertaining to the interpretation of Bill of Rights, Constitutional procedural law and Constitutional adjudication and court structures

**PROF C MURRAY**

Date of birth: 3 September 1956

BA LL B (University of Stellenbosch, 1978)

LL M (university of Mitchigan, 1981) focusing on American Constitutional Law

Lecturer in law, University of the Witwatersrand from 1982, promoted to Senior Lecturer from 1984, teaching International Law, Human Rights Law and Contract Law

Visiting Research Fellow, Research Centre for International Law, Cambridge (1987)

Senior Lecturer in Public Law, University of Cape Town 1988-90 (teaching *inter alia* Constitutional Law)

Visiting Fellow, Corpus Christi College, Cambridge (research on constitutional rights for women)

**M.P. SEDIBE-NCHOLO**

Date of birth: 27 May 1963

BA (Law) (University of Lesotho)

MA (Cambridge University, 1987-89))

PhD (Kings College, University of London, 1989 to date)

Researcher at South African Constitution Studies Centre (Commonwealth Studies, University of London, 1989-91; University of Western Cape, 1993) (research topics include free enterprise and the constitution, human rights, population control and policing)

Senior Researcher at the South African Legal Defence Fund, 1993

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Observed Human Rights processes in the USA,  
September-November 1993

Legal Investigator for the IEC, February-June 1994

Pupillage August-November 1994

**ADV I. SEMENYA**

Date of birth: 15 March 1959

B Juris (University of the North, 1983)

LL B (University of Natal, 1985)

Dip. in Trial Advocacy (Nova University, Florida)

Negotiating International Contracts and Development  
Finance Agreements (U.C.T. and the World Bank)

Advocate of the Supreme Court of South Africa

Publications and works include a submission on the  
Namibian constitution, a constitution for a democratic  
South Africa, trial advocacy training, human rights  
litigation techniques, constitutionality in Bophuthatswana  
and Transkei

**PROF VAN DER WESTHUIZEN**

Born in Windhoek, Namibia

BA(law) (University of Pretoria, 1973)

LL B (*cum laude*) (University of Pretoria, 1975)

LL D (University of Pretoria, 1980) doctoral thesis dealt  
with criminal law

Admitted as an advocate of the Supreme Court of South  
Africa, 1978

Passed National Bar Examination, 1988

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Grants and fellowships include the Grotius Medal for best final year student University of Pretoria, awarded by the Pretoria Bar Council, 1975; Alexander von Humboldt fellowship, Germany, 1982-82, 1984, 1990-91 and Southern Africa Program fellowship, Yale University, 1991-92

Currently teaches mainly Jurisprudence, Human Rights and Legal History and has taught Comparative Law, Roman Law

Presented guest lectures and acted as an external examiner at ten South African universities

Researched in Europe, especially in Germany on subjects including, criminal law, human rights and the German Federal Constitutional Court

Presented papers lectures and talks at conferences, universities and discussion groups in Europe, North America and several African countries

Visiting lecturer in the Yale Law School, USA, co-teaching an advanced course on the regional enforcement of the international human rights system

Convenor of task groups of the Law and Order Subcouncil of the Transitional Executive Council

Conferences organised include, "Women and the Law", 1984, "A Bill of Rights for South Africa", 1986, "A New Jurisprudence for a Future South Africa", 1989, and "De Facto Racial Discrimination in a Future South Africa", 1992

Involved in the establishment of the Centre for Human Rights At the University of Pretoria, 1986

Contributed to the human rights reports of the South African Law Commission

Participated in radio and television programmes in USA, Germany, Japan and South Africa

Involved in human rights litigation including arguing censorship appeal for the film "Roots"



*[Monday, 14th November, 1994 No5 - 1994]*

Published numerous articles and edited books on legal history, criminal law, jurisprudence and human rights.

**ADV. ZAC YACOOB**

Born on 3 March 1948.

Matriculated at the Arthur Blaxall School for the Blind at the end of 1966.

Obtained the LLB degree at the University of Durban-Westville at the end of 1972.

Practised as an advocate as part of the Natal Bar since June 1973.

Took silk during May 1991.

Served on the Technical Committee of Fundamental Rights of the Multi-party Negotiating process during 1993.

Was a commissioner on the Independent Electoral Commission during 1994.

- 5.1.4 Accordingly, it is also necessary to grant the Management Committee with the necessary authority to finalise and approve the terms and conditions of the appointment of the above experts. The Administration will attend to the provision of the necessary premises and administrative assistance.