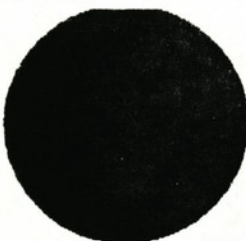


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(ESTABLISHED 1974)

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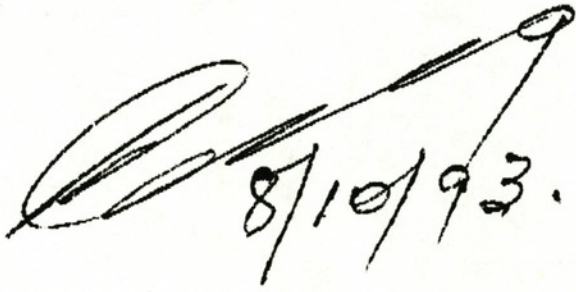
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Message: Comments for submission to Constitutional Technical Committee


8/10/93.

CONSTITUTIONAL ISSUES: CHAPTER 8: THE OMBUDSMAN

DIKWANKWETLA PARTY OF SOUTH AFRICA

The Dikwankwetla Party of South Africa wishes to make the following submission as far as the above issue is concerned:

1 TERMINOLOGY

The word Ombudsman should be retained in its present form. When it originated in Sweden in 1809, the *-man* in Ombudsman denoted the office (as it still does), not the gender. One or two countries in the world have shortened the term to *Ombud*, but have in the process been ridiculed by others because of that.

Dikwankwetla feels strongly that the original terminology, meaning and concept of the classical Swedish Ombudsman idea should not be tampered with. It should be quite clear that the present terminology is not sexist or discriminatory in any way whatsoever.

2 THE OMBUDSMAN MODEL

There are two federal Ombudsman models that could ideally be adopted for South Africa:

- 2.1 In the Canadian and Indian models there are only Ombudsman on the state (i.e. regional) level, without one national Ombudsman at the top.
- 2.2 In the Nigerian model, the Public Complaints Commission (PCC) has a Public Complaints Commissioner at the national level, with other Commissioners for the different states. However, he only fulfils a coordinating function, and the other Commissioners do not have to report to him or take orders from him.

Dikwankwetla favours the former approach. The reason is that it will be a logical extension of the federal idea, as it has been accepted at the World Trade Centre.

Such Ombudsmen could appoint Deputy Ombudsmen in every SPR to represent them in order to perform such functions as may be assigned to them, or on a subregional basis. The appointment of the Ombudsmen and their deputies should be in consultation with the SPR legislatures.

Should the Nigerian model be adopted, however, it must be quite clear that regional Ombudsmen should not in any way fall under the jurisdiction of the

national Ombudsman - that would make a complete mockery of the whole principle of strong regional government.

3 TERM OF OFFICE - CLAUSE 1(4)

Dikwankwetla recommends that each Ombudsman be appointed for a term of 10 years, with provision for one more term of 10 years after that. This will ensure continuity of the office, and will be in line with the appointment of most Ombudsmen world-wide.

4 INDEPENDENCE AND IMPARTIALITY - CLAUSE 2

No member of the Cabinet or the legislature shall improperly interfere with the Ombudsman in the exercise of his duties.

Improper interference would for example be withholding information from the Ombudsman in the exercise of his duties, putting pressure on the Ombudsman not to publish his findings or not to make a recommendation, prejudging or preempting the findings of the Ombudsman in an investigation, or refusing to meet with the Ombudsman on a matter that he is investigating.

5 POWER OF INVESTIGATION - CLAUSE 3

The powers of investigation of the Ombudsman should not be limited to government institutions only. He should (as is practice worldwide) be able to investigate all of the following:

- 5.1 any local authority
- 5.2 any authority or body constituted for carrying out duties on behalf of the Public Service or of a local authority
- 5.3 any organisation controlled or owned by the government
- 5.4 any organisation whose government body is appointed by the Cabinet or any Minister
- 5.5 any organisation the revenue of which consists wholly or mainly of moneys provided by the legislature.