

2/12/43

**CONSTITUTIONAL
ASSEMBLY**

**CONSTITUTIONAL
COMMITTEE**

**FRIDAY
15 SEPTEMBER 1995
09h30
OLD ASSEMBLY
CHAMBER**

***DOCUMENTATION*
VOLUME 2B
COMMISSION FOR
GENDER EQUALITY**

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CONSTITUTIONAL ASSEMBLY

**THEME COMMITTEE 6.3
SPECIALISED STRUCTURES
OF
GOVERNMENT**

REPORT ON BLOCKS 7-8

**COMMISSION FOR GENDER
EQUALITY**

11 SEPTEMBER 1995

CONSTITUTIONAL ASSEMBLY

SUBTHEME COMMITTEE 3;
THEME COMMITTEE 6

26 June 1995

FINAL REPORT : COMMISSION FOR GENDER EQUALITY

Prepared by Technical Advisors:
Dr Catherine Albertyn
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PART 1 - INTRODUCTION

1 Submissions received

This report summarises the issues and debates emerging from submissions received from political parties, organisations of civil society, a public workshop held on 2 & 3 June 1995 and an information seminar held on 31 January 1995.

1.1 *Political parties*

- 1.1.1 ACDP
- 1.1.2 ANC (final submission not yet received)
- 1.1.3 DP
- 1.1.4 FF
- 1.1.5 IFP
- 1.1.6 NP
- 1.1.7 PAC (no submission)

1.2 *Public submission and organisations of Civil Society*

Written submissions were received from the following organisations:

- 1.2.1 Agenda
- 1.2.2 ANC Women's League
- 1.2.3 Association for Rural Advancement
- 1.2.4 Bahai Centre
- 1.2.5 Black Housewives League
- 1.2.6 Black Lawyers Association
- 1.2.7 Black Sash
- 1.2.8 BP
- 1.2.9 Centre for Applied Legal Studies
- 1.2.10 Centre for Women's Studies, UNISA
- 1.2.11 COSATU
- 1.2.12 Development Bank of South Africa
- 1.2.13 GL
- 1.2.14 Gauteng Public Service Commission
- 1.2.15 GETNET

- 1.2.16 Gender Advisory Committee, National Party
- 1.2.17 Independent Development Trust
- 1.2.18 Legal Resources Centre
- 1.2.19 Labour Research Unit, University of Pretoria
- 1.2.20 Nadel
- 1.2.21 National NGO Secretariat
- 1.2.22 National Women's Resource and Service Centre
- 1.2.23 Olive
- 1.2.24 Oranje Vrouevereniging
- 1.2.25 Public Service Commission
- 1.2.26 Reproductive Rights Campaign
- 1.2.27 SAAUW
- 1.2.28 SACCAWU
- 1.2.29 South African Democratic Teachers Union
- 1.2.30 South African National Council for Child and Family Welfare
- 1.2.31 TWL
- 1.2.32 Union of Jewish Women
- 1.2.33 University of the Western Cape, Gender Equity Unit
- 1.2.34 Women's Bureau
- 1.2.35 Women's Legal Status Committee
- 1.2.36 Women's Lobby
- 1.2.37 Women's Leadership Training Programme, Gauteng
- 1.2.38 Women for South Africa
- 1.2.39 Women's National Coalition
- 1.2.40 Women's World Day of Prayer
- 1.2.41 Women for South Africa
- 1.2.42 Jong Dame Dinamiek

1.3 *Information seminars*

Two information seminars were delivered on 31 January 1995.

- 1.3.1 Dr Catherine Albertyn - "The Commission for Gender Equality in the Context of National Machinery for Women" (31/01/95)
- 1.4.1 Professor Ronel Erwee - "Recommendations: Commission for Gender Equality" (31/01/95)

1.4 *Interim reports prepared by the technical advisors:*

Various interim summaries of public submissions were prepared:

- 1.4.1 First summary of submissions (Ronel Erwee, 08\03\95)

1.5 *Public Participation*

A workshop was organised at the World Trade Centre 3 and 4 June 1995. Members of the Theme Committee and at least 74 organisations attended. These organisations are listed below:

- 1.5.1 Abortion Rights Action Group
- 1.5.2 ACDA
- 1.5.3 ANC
- 1.5.4 African Women Health Initiative
- 1.5.5 African Women Research

- 1.5.6 Agency for African Women in Development
- 1.5.7 Agenda
- 1.5.8 The Bahai Centre
- 1.5.9 Black Lawyers Association
- 1.5.10 Black Sash
- 1.5.11 Business and Professional Women
- 1.5.13 Call of Islam
- 1.5.14 Centre for Applied Legal Studies
- 1.5.15 CIT
- 1.5.16 Commissioner on Women, N Transvaal
- 1.5.17 COSATU
- 1.5.18 Dames Actueel
- 1.5.19 Democratic Party
- 1.5.20 Development Bank of South Africa
- 1.5.21 Disabled People South Africa
- 1.5.22 Domina
- 1.5.23 Eastern Cape Provincial Legislature
- 1.5.24 Executive Women's Club
- 1.5.25 FABCOS
- 1.5.26 FAK
- 1.5.27 Federation of Women Institutes
- 1.5.28 Gender Equity Unit
- 1.5.29 Human Rights Committee
- 1.5.30 IDASA
- 1.5.31 Ikageng Women's Club
- 1.5.32 Independent Development Trust
- 1.5.33 Inkatha Freedom Party
- 1.5.34 International Prayer Women's League
- 1.5.35 Kontak
- 1.5.36 Lawyers for Human Rights
- 1.5.35 Legal Resources Centre
- 1.5.36 Mother's Union, CPSA
- 1.5.37 Muslim Youth Movement Gender Desk
- 1.5.38 Muslim Women's Federation
- 1.5.39 Nadel
- 1.5.40 NAWA
- 1.5.41 National Council of African Women
- 1.5.42 National Council for Physically Disabled in South Africa
- 1.5.43 National Council of Women
- 1.5.44 National Land Committee
- 1.5.45 National Party
- 1.5.46 National Women's Resource and Service Centre
- 1.5.47 NGO Secretariat for Beijing
- 1.5.48 PAC
- 1.5.49 Phalibili National Women's Organisation
- 1.5.50 Provincial Services Commission, Gauteng
- 1.5.51 Public Service Commission, National
- 1.5.52 Public Service Commission, E Cape

1.5.53	Rape Crisis
1.5.54	RDP Women's Empowerment Commission
1.5.55	Rural Council of Women
1.5.56	Rural Foundation
1.5.57	South African Catholic Bishops Conference
1.5.58	SACP
1.5.59	SA Chemical Workers Union
1.5.60	SADTU
1.5.61	SANCO
1.5.62	SA Police Service
1.5.63	SA National Council for Child and Family Welfare
1.5.64	SATA
1.5.65	UNISA
1.5.66	Women's Bureau
1.5.67	Women's College
1.5.68	Women and Environment
1.5.69	Women's Leadership Training
1.5.70	Women's Legal Status Committee
1.5.71	Women's Lobby
1.5.72	Women's National Coalition
1.5.73	Women for Women in Government

2 **Extension of Brief to include National Machinery**

After the information seminar on 31 January 1995 and discussions within Theme Committee 6.3. It was decided to extend the brief of the Theme Committee to consider the Commission for Gender Equality within the broader context of National Machinery. This was accepted by Theme Committee 6 on 14 February 1995 (minutes of Theme Committee 6 - 14/02/95).

3 **Constitutional Principles**

The Constitutional Principles applicable to this Commission appear to be those dealing with human rights and gender equality, namely:

3.1 Principle I

The Constitution of South African shall provide for the establishment of one sovereign state, a common South African citizenship and a democratic system of government committed to achieving equality between men and women and people of all races.

3.2 Principle III

The Constitution shall prohibit racial, gender and all other forms of discrimination and shall promote racial and gender equality and national unity.

3.3 Principle V

The legal system shall ensure equality of all before the law and an equitable legal system.

PART II - DISCUSSION OF MATERIAL PROCESSED BY THE COMMITTEE

4 General Overview

4.1 Political party submissions are summarised in paragraph 5 below

4.2 Written submissions from organisations of civil society:

During the initial seminar programme and debates, the Committee identified a range of questions that were sent to women's organisations for public submissions. These were:

4.2.1 What kind of structure do we want? What should its powers and functions be?

4.2.2 What functions should be performed by other structures?

4.2.3 Should the Commission for Gender Equality be entrenched in the Constitution?

4.2.4 If the Commission for Gender Equality is entrenched in the final constitution, how much of the detail of its powers, functions and composition should be included?

4.2.5 What should be the relationship between national and provincial commissions for gender equality?

4.2.6 Any other issues that you want to raise?

The relevant issues emerging from written submissions received from these organisations are summarised in paragraph 6 below.

4.3 Public workshop - 3 & 4 June 1995

Members of Theme Committee 6 and representatives from at least 75 organisations participated in a two day workshop at the World Trade Centre. The relevant details of this workshop are set out in paragraph 7 below.

The majority of the submissions referred to above, as well as the workshop proceedings, tended to cover a lot more detail than is required or the final constitutional text. This detail is omitted from this report. However, some of it is included in an annexure. It may also be obtained from the submissions themselves and from the minutes of the workshop.

5 Submissions of the Political Parties

5.1 Constitutionalisation of the Commission:

5.1.1 *Entrenchment of a Commission for Gender Equality:* Support for the constitutionalisation of the Commission for Gender Equality is given by the ANC, DP and IFP. The FF gives qualified support.

5.1.1.1 The DP requires a specific sunset clause to be built in indicating that the Commission may be absorbed into the Human Rights Commission when the objective of equality is judged to have been accomplished to a sufficient degree.

5.1.1.2 The Freedom Front provides three options. It is (a) firstly of the opinion that there is no need for a Commission for Gender Equality. It believes secondly that the Human Rights Commission could be specifically empowered to deal with gender matters. However, if there is a decision that there should be a Commission for Gender Equality, then it should be entrenched.

5.1.2 *Entrenchment of a Commission:*

5.1.2.1 The NP calls for the constitutionalisation of a Commission the terms of reference, powers and functions of which should be broadly framed. Although initially its focus would be on gender issues this could be extended to include other disadvantaged groups ie. to promote gender equality and the interests and development of all disadvantaged groups and communities with specific emphasis on development.

5.1.2.2 The ACDP supports the creation of an Equity Commission, dealing with a broader range of issues than gender, but does not say whether it should be constitutionalised.

5.1.3 *How should the Commission be entrenched?* Most parties did not specify the nature of entrenchment, but the tenor of most of the party submissions appears to support entrenchment in broad terms only. However, the Freedom Front requires that all the functions and powers of the Commission, together with all other fundamental rules be included in the Constitution.

5.1.3.1 The ANC motivates for the entrenchment of a general provision in the constitution, allowing the

Commission to be flexible in its structure and operation and to adapt to the changing conditions of women. Particularity concerning the composition, powers and functioning should be more appropriately dealt with by national legislation. For example, apart from referring to the role of the Commission in advancing gender equality, all the powers and functions should be left to legislation.

- 5.1.3.2 The DP supports a broad approach to constitutionalisation, which includes listing the general powers and functions (eg. monitoring etc) as well as a catch-all phrase along the lines of "and such other functions and powers as may be considered advisable" to avoid any future restriction.
- 5.1.3.3 The NP specifically refers to the nature of entrenchment by calling for "not too much detail", allowing legislation to "establish the Commission and determine its powers and functions".

5.2 Independence and Accountability

- 5.2.1 There seems to be general agreement among the parties that the Commission should be independent - although some parties do not mention this expressly.
- 5.2.1.1 The ANC and DP support the establishment of an independent Commission for Gender Equality.
- 5.2.1.2 The NP describes the Commission as an independent and autonomous organ of state.
- 5.2.1.3 Independence appears implicit in the submissions of the ACDP and FF.
- 5.2.1.4 The submission of the IFP refers to members of parliament selecting commissioners and to the role of the Commission in co-ordinating the activities of provincial governments.
- 5.2.2 The nature of accountability of the Commission differs:
- 5.2.2.1 *To Parliament:*
- 5.2.2.1.1 The ANC and NP supports the Commission being accountable to parliament.
- 5.2.2.1.2 The position of the IFP is unclear. However, given the fact that Parliament selects the Commissioners, it appears to suggest accountability to Parliament.
- 5.2.2.2 *To the Executive:*
- 5.2.2.2.1 The DP states that it should be accountable

to the executive, and suggests the same procedure as set out in the Interim Constitution for the Human Rights Commission.

- 5.2.3 Some parties comment on the selection procedure and criteria:
- 5.2.3.1 The DP and NP suggests the same appointment procedure as that for the Human Rights Commission and Public Protector. The NP suggests between 6 and 10 commissioners.
 - 5.2.3.2 The IFP requires selection of male and female commissioners by women members of parliament.
 - 5.2.3.3 The ANC states that the selection procedure should be dealt with in legislation and not in the Constitution.

5.3 Powers and functions

All parties agree that the Commission should be concerned with gender equality in the substantive sense of full political, social and economic equality for women. The ACDP and NP make specific reference to equity (ACDP) and development (NP) for all disadvantaged groups.

- 5.3.1 The ANC in its preliminary submission suggests powers of *advice* in respect of policy and legislation, enhancing the *information* flow between government and civil society (education), *implementation and enforcement* of laws, and *monitoring*. It also believes that it would be the role of the Commission to advise on the structure and composition of National machinery and to oversee its creation and development. However, these powers should not be constitutionalised (see 5.1.3.1).
- 5.3.2 The DP envisages the Commission as conducting *research* (for example on the harmonisation of customary law with human rights) *monitoring and advising* on a range of issues, including the economic status of women and in respect of law reform and executive action in all fields covered by the Convention on the Elimination of Discrimination against women. The broad powers should be constitutionalised (5.1.3.2).
- 5.3.3 The FF does not suggest any specific role for the Commission beyond a concern with gender equality and human rights.
- 5.3.4 The IFP states that the Commission should *co-ordinate provincial programmes* to promote gender equality, as well as *draft and recommend legislation*, engage in *research*, *monitor*

and report on any matter relating to the betterment of the condition of women in society. The Commission should also be *consulted* by government departments on affirmative action and other programmes concerning women. The IFP identifies several priority areas for action relating to violence, property, the family, the workplace, procreative choice, traditional law and women's access to political, economic and social opportunities.

- 5.3.5 The NP states that the constitution should indicate that the Commission is chiefly an *advisory* body, with powers to *monitor, educate, lobby and conduct research*. Education should inter alia explain the meaning of gender as including men and women. It states a particular concern with the *development of disadvantaged communities* and the realisation of people's full human potential. More detailed proposals are listed for legislation, including the encouragement of greater socio-political and economic participation of women and other disadvantaged groups, monitoring and assisting in the implementation of the RDP and the implementation of programmes to effect attitudinal changes.

The agreed functions therefore concern the broad promotion of substantive gender equality. They envisage a primarily advisory role with powers of research, monitoring and reporting, education and advocacy.

5.4 The Commission and National Machinery

Although the Theme Committee has been considering the Commission for Gender Equality in the context of National Machinery, only the ANC (preliminary submission) and the NP make specific reference to National Machinery.

- 5.4.1 The NP states that the Commission should be seen as part of National Machinery and supports the establishment of such Machinery, commenting on the international obligations in this respect and the general consensus among representative women's groups on the need for such machinery. However, the NP does not agree with the entrenchment of a constitutional obligation to establish National Machinery.
- 5.4.2 The ANC argues for the constitutionalisation of an obligation on government to set up National Machinery. It also states that the Commission should work within the context of a National Machinery of a set of co-ordinated structures aimed at redressing gender imbalances. These structures should not absolve bodies such as the Human Rights Commission and the

Public Protector, ministries and government departments from ensuring that the task of enforcing and implementing gender equality is integrated into the work of such structures.

- 5.4.3 The DP believes that the establishment of National Machinery lies within the executive function and should not be constitutionalised. It deals with this question by suggesting a clause on reporting lines to "the President for transmission to such executive structures as may be established in the President's Office and within ministries" as well as requiring reports to be tabled in parliament.

6 Submissions by public organisations

Submissions by public organisations contain a wealth of carefully considered and valuable detail on the structure, powers and functions of the Commission which cannot be given the attention they deserve within the constraints of this report. Only the key constitutional issues have been extracted. The detail can be sought in the submissions themselves and the annexure to this report. However, most of the submissions demonstrate a clear concern that the Commission for Gender Equality is established and is an effective and well-resourced institution for the advancement of substantive gender equality. A minority of submissions disagree with the establishment of a Commission, some preferring to see it as part of the Human Rights Commission.

6.1 Constitutionalisation of the Commission

- 6.1.1 The majority of public submissions support the establishment of a commission for Gender Equality and its entrenchment in the constitution (Agenda, BC, BP, BHL, BS, CWS, COSATU, DBSA, GL, GPSC, LRC, LRU, GETNET, NADEL, NWRSC, Olive, OV, PSC, SACCAWU, SADTU, SANCCFW, TWL, UJW, UWC, WB, WLSC, WLTP, WNC).

- 6.1.2 The majority of public submissions support a minimalist approach to constitutional entrenchment with details left to legislation. The submissions nevertheless provide a wealth of carefully considered detail on the structure, powers and functions of the Commission.

6.2 Independence and accountability

The majority of public submissions envisage the Commission as an

independent body accountable to parliament. Independence in this sense refers to politically independent and extra-parliamentary. Commissioners should be "fit and proper" persons, South African citizens and representative of all communities. They should include gender-sensitive men and women.

6.3 Powers and functions

It is clear that the organisations of civil society have devoted much time and thought to a careful conceptualisation of the role of the Commission and much detail is provided in the public submissions in respect of powers and functions. The broad range of functions set out below should be read in conjunction with the submissions:

- 6.3.1 The promotion of an observance, protection and awareness of, and respect for, *gender equality* was seen to be a general goal of the Commission. Most submissions were concerned with the advancement and implementation of effective and substantive equality for women, especially for disadvantaged groups of women.
- 6.3.2 A second key theme was the *development of women*.
- 6.3.3 *Research, studies and investigations* were seen to be important in identifying and uncovering inequality. Many suggestions were made in respect of auditing programmes, laws and policies for gender sensitivity, compiling a gender data-base and substantive areas of research. There was a particular concern with the investigation of systemic problems of inequality.
- 6.3.4 *Advise* government and parliament, *make recommendations* on policy, legislation, programmes etc. The need to advise and make recommendations in respect of national and regional policy, legislation and programmes to promote gender equality was seen to be crucial. The actual formulation of policy and drafting of legislation was seen to be part of this. Again, the written submissions provide many concrete proposals in this respect.
- 6.3.5 *Monitor* government and *report* to government and civil society. The importance of monitoring government and all organs of state at all levels in order to supervise and evaluate all programmes, laws and policies impacting on gender equality was identified in many submissions. This was combined with a reporting function to civil society and a power to recommend changes to government.
- 6.3.6 *Provide information* to civil society. The need for the dissemination of information by way of public reports, programmes and education was also identified.
- 6.3.7 *Education and training*. The Commission should promote community awareness and assist in providing education

- about gender equality.
- 6.3.8 *Advocacy.* Some submissions identified an advocacy role for the Commission. For example, to campaign for a greater representation of women in all decision-making structures.
- 6.3.9 Ensuring the *ratification and implementation of the Convention on the Elimination of Discrimination against women.*
- 6.3.10 A *"catch-all" clause:* Many submissions suggested that the Commission should be given all the necessary powers to promote the protection, awareness and fulfilment of gender equality.

A minority of submissions suggest that the Commission should investigate individual complaints, mediate and settle disputes and/or enforce anti-discrimination laws.

6.4 The Commission and National Machinery

Some of the public submissions explicitly envisage the Commission as part of National Machinery (Agenda, CALS, GPSC, LRC, LRU, PSC, WL, WLSC). However many of the public submissions did not deal with this issue. This issue was discussed in more detail in the workshop (para. 7 below).

6.5 Collaboration with other structures

6.5.1 A minority of submissions expressed a concern with the overlapping functions of the Commission for Gender Equality and the Human Rights Commission. Some called for the CGE to be incorporated into the HRC.

6.5.2 All submissions argued that the relationship with other structures such as the Human Rights Commission and the Public Protector should not be formalised in the Constitution, but should be left to develop and evolve.

7 The World Trade Centre Workshop 2 & 3 June 1995

The workshop dealt with a range of issues and details relating to the Commission for Gender Equality and National Machinery. These will be summarised in a report of the Workshop being prepared by the Constitutional Assembly. The following issues are relevant to the final constitutional text.

7.1 Constitutionalisation of the Commission

This was discussed by the workshop in four group discussions. All four groups agreed on the need for the Commission for Gender Equality to be entrenched in the constitution. Group 4 stated that this should be permanent, not vulnerable to political whims, give priority to gender issues and be granted substantial funds.

7.2 Independence and accountability

These issues were generally supported in the workshop, although not discussed at length. Most were dealt with in the written submissions. It was clear, however, that there was a general concern for openness and transparency in the process of developing legislation and selecting commissioners.

7.3 Powers and functions

This was discussed at length by all participants and generally reflected the ideas of the written submissions (para. 6.3 above). The ideas that were put forward are summarised in the annexure to this report and in the written submissions. Again, it is clear that not only has a lot of time and thought gone into the conceptualisation of the Commission, but there is also a high expectation of the ability of the Commission to "deliver" to women.

7.4 National Machinery and the Commission

There was general agreement that the Commission should be part of National Machinery. There was a majority agreement of three groups out of four that a general constitutional obligation should be placed on the state to establish National Machinery both within and outside of government.

7.4.1 Group 1: The Commission for Gender Equality should be entrenched, with a sentence added obligating the government to create additional machinery.

7.4.2 Group 2: The Constitution should make provision for the establishment of National Machinery, with specific reference to the Commission for Gender Equality.

7.4.3 Group 3: The Commission for Gender Equality should be entrenched.

7.4.4 Group 4: The constitution should entrench an obligation to establish National Machinery both within and outside of government. Specific reference should also be made to the establishment of an independent Commission for Gender

Equality.

SECOND DRAFT - 11 SEPTEMBER 1995

Status: Prepared by C A Law Advisers and
Technical Advisers for discussion in
the Theme Committee.

COMMISSION FOR GENDER EQUALITY¹

Establishment² [and governing principles³] functions

1. (1) There shall be a Commission for Gender Equality for the Republic.

(2) The Commission shall be independent, impartial and subject only to this Constitution and the law. It shall discharge its powers and functions without fear, favour or prejudice.⁴

¹ The TC has not reached an agreement as to the name to be given to this Commission as is reflected in Par.5.1.1 and 5.1.2 of its Report. The IFP; ANC; DP and FF have no problem with the present name. The NP refers to what it calls "a Commission" and the ACDP to an "Equity Commission".

² All parties accept the establishment and constitutionalisation of this Commission, except that the ACDP has not indicated whether or not it wants it to be included in the Constitution. However, the FF accepts this with reservation as it is of the view that there is no real need for this Commission as its tasks could be assigned to the Human Rights Commission, whilst the DP proposes an inclusion of a sunset clause somewhere in the Constitution which would allow for this Commission to be eventually absorbed by the Human Rights Commission once its objectives are realised. (See par. 5.1.1 and 5.1.2 of the TC Report.)

³ The principles covered in Subsection (2) and (3) shall be removed to the general principles clause and the title of the section shall read "Establishment and Functions." Functions shall accordingly be brought into Section 1.

⁴ This is per agreement of TC as contained in par. 5.2 of its Report. The formulation is in keeping with other Independent Structures.

[3] The Commission shall be accountable to ⁵ *Parliament* for its activities and shall report to ⁵ *Parliament* on such activities.

[Powers and functions⁶]

2. (1)⁷

⁵ There is a difference of opinion as to whom the Commission shall be answerable. The NP, ANC and implicitly, IFP are of the view that it should be accountable to Parliament and the DP argues that it should be accountable to the Executive. The other parties have not committed themselves on this issue. (See Par. 5.2.1 & 5.2.2 of the TC Report.)

⁶ See footnote 3 - this heading shall then be removed.

⁷ All the parties are in agreement as to what the general Powers and Functions of this Commission should be. However, the ACDP and NP have slightly different views. The ACDP envisages a Commission dealing with issues broader than gender equality. The NP is of the view that the Commission has to deal with gender issues at first and eventually be broadened to cover other disadvantaged groups and communities. (See par. 5.1.2 and 5.3 of the TC Report).

Despite the agreement as to what the Powers and Function of the Commission should be, there is disagreement as to whether or not these should be included in the Constitution or not. The ANC is against the listing of the Powers and Functions of the Commission in the Constitution, preferring only an inclusion of a clause that defines the role of the Commission in advancing gender equality. The NP and DP prefer inclusion of a broad definition of these. The other parties have not committed themselves to any choice. The formulations contained below are to cater for both choices.

2. (i) The role of the Commission shall be to advance gender equality and all its powers and functions shall be prescribed by national law.

(ii) The Commission shall promote the development, protection, attainment of, and respect for gender equality. It shall for this purpose have the necessary powers accorded to it by national law, including powers to monitor, research, educate and advise on issues relating to gender equality.

(2)⁸

Appointment of members⁹

⁸ There was contention that a range of structures need to be established in and outside of governments, of which this Commission is but one structure. A draft that could be considered as a starting point for this may read something like the following:

"There shall be adequate structures established both within and outside government for the promotion/advancement of gender equality (... and any other objects ...)"

These structures shall include, but not be limited to:

- (a) an independent Commission for Gender Equality; and
- (b) a structure or structures in the executive branch of government.

⁹ No procedure has been agreed to, as is reflected in par. 5.2.3 of the Report. The DP and NP suggest the same procedure as adopted for the Human Rights Commissioners and Public Protector, the IFP requires a selection of both male and female Commissioners by women members of Parliament and the ANC has not committed itself to any preference but submits that the Appointment Procedure should be left to legislation. There is to be considered whether Appointment Procedure of members of the Commission should not be in terms of the standard procedure clause for other independent structures presently under consideration by the CC Subcommittee, which would include Public Protector and Human Rights Commissioners and Auditor General. In which case the formulation would be:

A member of the Commission for Gender Equality shall be appointed in accordance with the requirement set out in ... (this being the general clause).

PARTY SUBMISSIONS

**AFRICAN CHRISTIAN DEMOCRATIC PARTY
SUBMISSION TO THE CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 6, SUB-THEME COMMITTEE 6.111**

**THE COMMISSION ON GENDER
EQUALITY**

The ACDP views women as an extremely important asset in the role of building a new nation.

The Lord God created us male and female with each having unique and yet complementary characteristics that allow them to function as a team.

It is true that wives stand under the authority of husbands in biblical context, but this is because their relationship reflects the authority of God under which man resides. Paul even states in 1 Corinthians 11:11 that men and women are mutually dependent. The one cannot exist without the other. One is never without the other, for as the woman was originally formed out of the man, so the man is born of the woman.

With the dawning of the enlightenment age, however, with its attendant emphasis of secular humanism, men started forcing women into one of two roles, based on their affluence in society: less affluent women were subjected to mandatory physical labour while the "privileged" women became and ornamental and useless person with virtually no rights. This was a definite change from 17th century England where women were often in business, were highly competent managers and involved in the merchant marine as insurance brokers and manufacturers.

A legal revolution followed the enlightenment and gradually attained the diminished status of women. This period saw men as reason incarnate and women as emotion and will and, as such, inferior. The battleground was set between the Age of Reason and the Age of Faith. Religion came to be accepted as women's domain and, as the Enlightenment reasoning gained ground, the more church life came to be viewed as women's and children's business. As the triumph of the Age of Reason grew, the more religion came to be seen as a useless, but charming ornament and so too with women.

These ideas were introduced by the British into the American culture by Chief Justice Edward Cone's influence on the eminent jurist, Sir William Blackstone.

Women had no choice but to rebel to claim back their position of rightful authority beside men. Instead of this, however, and possibly thought the resistance of men, women's rights because feminism - the emasculation of women and the feminization of men leading to both being dissatisfied, resulted.

The Age of Reason ushered in an irrational supremacy for men and has led to a war between the sexes. As a result, the laws today work not to establish Godly order, but to favour one sex or the other.

The ACDP wants to see women take their original position of authority beside men. The position is undeniably clearly spelt out in Proverbs 31:10-31, as constituting a woman whose value is far above that of valuable ruby stones.

The biblical doctrine shows us the wife as the competent manager who is able to take over all business if needed:

1. Her husband can trust her moral commercial and religious integrity and competence (vss. 11,12,29-31).
2. She not only manages her household completely, but she can also manage a business with ability. (vss 13-19, 24-25).

3. She is good to her family, good to the poor and the needy (vss 20-22).
4. When she speaks, it is with wisdom about important things and not out of malice. This shows she is a sophisticated, intelligent individual in her own right who has a strong sense of kindness toward others.
5. She is a good mother who nurtures her children, although she is first a help mate to her husband and then mother. She is praised and esteemed by her husband. (vs 28).

This picture is very different from the pretty doll of Humanism of the 20th century, who is out to prove she is better than any man around.

The ACDP supports the goal of having one body to control the process of change from an ethical and equity perspective, rather than separate commissions to look at separate areas of discrimination. This will ensure that national resources be distributed for the national good. The ACDP agrees with Dr Mamphela Ramphele in her lucid presentation to theme committee one, that the core value should be **equity** (for the whole period of transition), rather than egalitarian equality. Equity denotes the just and fair treatment of all, based upon a fair share in the national resources in accordance with their needs and responsibilities in society. This approach will address the hurts of Apartheid in a way as to minimize conflict and the perpetuation of injustice.

No doubt, the concept of Affirmative Action will be instrumental in the work of the proposed body to oversee the transitional aspects of human rights issues.

No doubt, a single organisation with a united vision will be much more effective than several smaller bodies, whose frames of reference could easily overlap - leading to expensive duplicity and superfluous work being done.

5th June 1995
[GENDER.WPS]

DRAFT ANC SUBMISSION

THEME COMMITTEE SIX - SUB-THEME THREE

COMMISSION ON GENDER EQUALITY

The ANC believes that the principle of racial and gender equality shall be embodied at all levels in government policy. To this end the state shall establish appropriate institutions to ensure the effective protection and promotion of equality for women. These institutions shall be accessible to all women in South Africa (Women's Charter)

The following are some of the institutional options to be considered:

1. Commission for Gender Equality, as provided for in the Interim Constitution: What should be its role and functions (confined in IC to promoting gender equality and advising on legislation affecting women)? These could include:

- * the injection of gender concerns into policy making and legislation
- * information flow within government and between government and civil society
- * implementation and enforcement of laws and policies
- * monitoring government departments and the Budget.

It has been suggested that the Commission could result in the marginalisation of women's issues especially in respect of tasks which could be carried out by the Human Rights Commission? However this need not occur if tasks related to the advancement of gender equality were properly located.

The Gender Commission could :

- * ensure the HRC developed and promoted the concept of gender equality,
- * could engage in public education on gender where this did not conflict with the role of the HRC
- * could monitor progress in the area of gender equality where this did not fall within the ambit of the HRC.
- * act as an interface between government and civil society

The Commission could be complemented by other institutions.

2. A Women's Ministry: This would be costly in terms of staff and resources. Would it be able to influence other Ministries and ensure that gender women's needs are addressed? Would it have enough clout to improve the status and conditions of women? (Women's Ministries in Africa have generally been ineffective.)

3. Women's desks in various Ministries: To whom should these be responsible? should they be represented in the Cabinet? Would they result in conflict in lines of authority? What powers should they have?

4. A Cabinet Committee convened by the President and chaired by a gender sensitive Minister: This would ensure that at the level of the executive, with specific reference to policy and budget allocation, responsibility would be taken and women's status attended to. Questions have been raised regarding accessibility and visibility to women. How would this committee co-ordinate with line Ministries in the Cabinet? These are all matters which need more debate.

5. A focal point for women in an appropriate Ministry at national and provincial level which could review policies and programmes in all Ministries and departments and

ensure that women's disparities are addressed. Would there be a danger of gender issues being side-lined in competition with other priorities?

THEME COOMITTEE 6.3
ANC SUBMISSION ON ISSUES RAISED BY DRAFT REPORT OF TECHNICAL
ADVISOR: COMMISSION ON GENDER EQUALITY

1. ACCOUNTABILITY OF THE COMMISSION

The ANC believes that as an independent structure of government, the Commission on Gender Equality must be accountable to Parliament and not to the executive.

2. SELECTION PROCEDURE AND REQUIREMENTS FOR SELECTION

The ANC does not believe that such detail concerning the Commission must be constitutionalised.

3. POWERS AND FUNCTIONS

Save for its role in advancing gender equality, the remaining powers and functions of the Commission should not be constitutionalised.

4. NATIONAL MACHINERY

The ANC does believe that a constitution obligation must be placed upon government to set up National Machinery as such. The further establishment of appropriate Machinery is a matter to be dealt with by legislation.



Demokratiese Party
Democratic Party

SUBTHEME COMMITTEE 6.3

DP SUBMISSION ON COMMISSION FOR GENDER EQUALITY

1. A clear case can be made for discontinuing a separate and potentially marginalised CGE and including its work with that of the Human Rights Commission, especially since SA has made great strides at the level of public representation generally and more than half of the first Human Rights Commissioners in particular are female.

2. However, the DP will support the constitutionalisation of a CGE on the following grounds and with the following suggested proviso:

2.1 The single strongest argument for a separate gender commission is the fact that it can link directly with a "constituency". Examples of direct consultation with and representation of women's organisations may be found in models like the Canadian and German Gender Commissions. The merit of the constituency link lies in the avenues opened for promoting gender equality and for establishing facts and avenues for research of the lack thereof. Since ours is a gender Commission and not a women's Commission, it goes without saying

that male constituencies organised around gender questions (e.g. The Unmarried Fathers Fight) would likewise form part of the constituency.

The Commission should be required to report to the executive, but also directly to the public, as in the Canadian model.

2.2 The proviso we would suggest is that an explicit sunset clause should be built in.

A direct link with the Human Rights Commission should be introduced, with the requirement that the HRC after a reasonable time should set up a specific gender division or Commissioner and take over from the Gender Commission. The area of family law under customary and religious regimes and its harmonisation with the chapter on rights, for example, merits the full, constituency-linked attention that a CGE could give for a specified time, but should then, once largely legally resolved, be handed over to the HRC.

Another example is the economic status of women. The CGE could profitably do monitoring and research in this field, especially while Equal Opportunity or discrimination complaints machinery is being developed elsewhere, but a time will come when this work can be included in the broader mechanisms.

3. We believe the functions of the CGE should essentially be to monitor, research and advise both on law reform and executive action. It should do so in all fields covered by the Convention on the Elimination of Discrimination against Women, the implementation of which (including the 4 year reports) could be considered the CGE's terms of reference.

Affirmative action is described as justified when temporary (article 4). The Commission itself as an entity separate from the HRC and future equal opportunity bodies should likewise be temporary, though not necessarily short-lived.



INKATHA

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THEME COMMITTEE No. 6 SUBCOMMITTEE ON TRANSFORMATION AND MONITORING

FIRST REPORT ON THE COMMISSION ON GENDER EQUALITY¹

PROMOTION OF GENDER EQUALITY

1. The constitution shall ensure the equal treatment of all individuals irrespective of gender.
2. In order to ensure substantial gender equality, the Republic shall undertake constitutionally mandated proactive protection and promotion of women in all aspects of society.
3. The following constitutional text ought to be considered:

43. Protection of Women²

The Federal Republic shall operate to ensure that both federal and provincial law extend special protection to women in recognition of their function and condition in society. The Federal Republic shall assist the Provinces to guarantee maternity leave, to provide assistance to mothers in the work force, and to ensure equal access of women to political, social and economic opportunities by means of special treatment and privileges to be in force until such time when the condition of women in the Federal Republic has significantly improved.

COMMISSION ON GENDER EQUALITY

1. A Commission on Gender Equality shall be constituted as follows:
 - a. The women members of each of the provincial legislatures shall elect three members for each Province, provided that at least one of such three members must be a woman.
 - b. The women members of the national Parliament shall elect six members, provided

¹. The IFP makes this submission under protest, for the Constitutional Committee should withhold consideration of the matters covered in this report and further development of the work program so as to allow international mediation to take place.

². This constitutional text in an excerpt from the draft constitution of the Federal Republic of South Africa, submitted by the IFP to the World Trade Centre in June 1993.

that at least two of such six members must be women.

2. The Commission shall coordinate the activities of provincial Governments which shall have the primary responsibility of developing and implementing programs to promote gender equality.
3. The Commission may submit to Parliament framework legislation to be implemented by means of provincial legislation and administrative action, provided that the central Government shall not act in lieu of a Province.
4. The Commission may express recommendation to Parliament and/or the provincial legislatures on laws affecting women, and may commission study, research and investigation in any matter related to the betterment of the condition of women in society.
5. The Commission shall be consulted by any relevant national and provincial Department's office, inter alia with respect to the development of affirmative action programs, assistance to small business programs, community development programs, planned parenthood programs, professional training programs and educational programs.
6. The Commission shall be specifically mandated to consider the following items as priorities for its action:
 - a. Policy to combat violence against women
 - b. Promotion of women's land tenure and home ownership
 - c. Promotion of substantial spouses' equality in the family
 - d. Protection of maternity in the workplace
 - e. Women conditions in the workplace
 - f. Sexual harassment and freedom of procreative choice
 - g. Promotion of women's access to employment and career opportunities
 - j. Promotions of women's access to political, economic and social opportunities
 - k. Preservation of the protections of tradition law as it relates to women.
7. The Commission shall establish special monitoring and reporting mechanisms to follow any progress in the betterment of women's condition in South Africa.



**National Party
Nasionale Party**

**Federal Council
Federale Raad**

12 May 1995

Mr Hassen Ebrahim
Constitutional Assembly
Regis House
Adderley Street
CAPE TOWN

Dear Mr Ebrahim

Enclosed please find the National Party submission to Theme Committee 6.3 in respect of the Work Programme, on Gender Equality.

Yours faithfully

Eckey
PP Mrs Jenny Malan MP

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PRELIMINARY NP SUBMISSION TO THEME COMMITTEE 6.3

COMMISSION ON GENDER EQUALITY

1 INTERIM CONSTITUTION

The present position is that in terms of sections 119 & 120 of the Interim Constitution a Commission on Gender Equality ("CGE") must be established "to promote Gender Equality . . ." etc. An Ad Hoc Select Committee of Parliament is at present considering legislation to establish the CGE. The problem is that at best the CGE is unlikely to be operational before the end of the year and in the meantime Theme Committee 6.3 is tasked with considering whether to constitutionalise the CGE in the final constitution which must be ready 6 months thereafter. It will therefore be impossible to assess whether the CGE has managed to make an impact. The National Party has therefore based its submission to Theme Committee 6.3 on its basic approach to gender equality and on its submission to Parliament. However we believe that ultimately such a Commission in the final Constitution should not be too limited in its scope.

2 GENERAL

The NP supports the establishment of a Commission to promote gender equality, particularly in relation to the development of our disadvantaged communities in terms of the final constitution for the following reasons:

- 2.1 Although much has been done in recent years to promote equality between men and women in South Africa, nevertheless our history of discrimination has caused backlogs which has resulted in women in particular are being a disadvantaged group, and especially in underdeveloped communities.

The incontrovertible evidence of this past deprivation is set out in our country's report on the Status of Women in South Africa which will become part of the record at the UN's 4th International Conference on Women at Beijing in September 1995. It is important that the equality provisions of the Bill of Rights are not seen as hollow protections and that real and effective equality will be achieved.

- 2.2 Discrimination against women is not peculiar to South Africa, but is recognised internationally as a problem and a focus of United Nations action.

- 2.3 A number of international documents and covenants such as the 1985 forward looking strategies adopted by the UN's 3rd International Conference (which will be revisited and updated at the Beijing Conference), and the international convention on the elimination of all forms of discrimination against women, which South Africa signed in 1993 and hopes to ratify this year, call for national machinery to monitor and improve the status of women to be established where it is lacking. It is particularly important for South Africa at this junction to participate fully in the international community and fulfil its international obligations.
- 2.4 Such national machinery has been successfully established in countries such as Australia, Canada, India, Argentina, Brazil and similar institutions and mechanisms operate in inter alia Germany, Denmark and England. South Africa is in a position to draw on their experience and expertise.
- 2.5 The establishment of such national machinery for gender equality very much accords with the goals of the RDP to transform our country into one in which there is "equality between men and women and people of all races". The development function of such a body should be emphasised. For example sustainable development as indicated at the International Conference on Population and Development in Cairo, Egypt last year by the promotion of economic, social and gender equity based on respect for human rights, especially the right to development. Relevant references to the RDP are inter alia on pp 9, 10, 46, 61, 76, 77, 79, 84, 93, 115-6, 121-2, 136 and 145.
- 2.6 South Africa's interim constitution has been well received internationally and at home for its commitment to equality and gender equality. It would therefore be entirely inappropriate to remove the Commission from the constitution even before it has become operational. However we believe that ultimately there is a strong case for such a Commission to have a broader relevance than just gender issues.
- 2.7 The general consensus among representative women's' groups on the need for machinery such as a gender Commission.

3. SPECIFIC PROPOSALS:

- 3.1 An appropriate name for the Commission should be considered in terms of the projected equal opportunities and gender equality activities of the Commission. The focus of the Commission should be in the first place the creation of an environment in which women and all disadvantaged people in our society will be able to realise their full potential.
- 3.2 Not too much detail should be included in the constitution itself so that

legislation to establish the Commission and determine its powers and functions may be amended to suit any future developments and requirements.

- 3.3 The constitution must provide that the Commission is an independent and autonomous organ of State. The constitution should indicate that the Commission is chiefly an advisory body but with powers to monitor, educate, lobby and conduct research. The NP would prefer a smaller streamlined body subject to the requirement of representivity. The NP would therefore suggest a commission comprising 6 - 10 commissioners of whom at least 2 should be full time. The appointment procedure followed should be the same as for the Human Rights Commission and the Public Protector.

3.4 LEGISLATION:

Legislation should include the objects, powers and functions and provide that the commission should be properly funded with its own office and secretariat.

The legislation establishing the Commission should set out its objects in detail. These should include submitting proposals to government; monitoring legislation; conducting research and investigating and referring complaints of discrimination, and particularly Gender discrimination to the Human Rights Commission or the Public Protector; raising public awareness and educating society so as to encourage greater socio-political and economic participation of women and other disadvantaged groups; monitoring and assisting in the implementation of the goals of the RDP, a key focus of which is to ensure a full and equal role for women and other disadvantaged groups; devising and assisting in the implementation of programmes to achieve attitudinal changes and lobbying both the public sector and civil society.

The commission should have powers and functions appropriate for it to achieve its objects.

CONCLUSION:

The NP would support a Commission to promote gender equality and the interests and development of all disadvantaged groups and communities with particular emphasis on development, but would favour wording in the Constitution which would permit future flexibility of such a Commission as to its main focus.



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FREEDOM FRONT

THEME COMMITTEE 6 (SPECIALISED STRUCTURES OF GOVERNMENT)

SUBTHEME COMMITTEE 6.3 : COMMISSION ON GENDER EQUALITY

1) The need or otherwise for a Commission on Gender Equality

The Freedom Front is of the opinion that there is no need for a separate Commission on Gender Equality, as the interests involved can adequately and more feasibly be dealt with in the manner set out below.

The 'Report on the Central Issues, Debates and Questions on the Commission for Gender Equality' contains the following paragraph: 'Although no national machinery is in place, it is important to remember that the Constitution already makes provision for a Human Rights Commission, a Public Protector and Courts. All of these institutions can and should advance the interests of women within the limits of their powers'. Elsewhere in the report the following sentence occurs: 'The Constitutional Court has the power to strike down legislation which contravenes women's human rights'.

The Freedom Front agrees with the above-mentioned statements, and only wishes to add that in its view the limits of the powers of the bodies and persons referred to in this regard will probably be wide enough to accommodate all genders.

The Freedom Front is convinced that an equality clause in the chapter on fundamental rights in the new Constitution, if substantially similar to the present section 8 of the transitional Constitution (which is very likely), will make adequate provision for gender equality.

The present section 8 prohibits all forms of unfair discrimination, and proceeds to mention at least twelve particular grounds of discrimination, including gender and sex. If a separate gender commission is warranted, then it would be logical to create eleven other commissions (such as a race commission, a colour commission, an age commission, a disability

commission, etc.) to cover all the other grounds mentioned in section 8. This would, however, not be feasible., for obvious reasons. The alternative, viz that gender should be singled out for special treatment by way of a special commission, is also not acceptable. The result would be that the Human Rights Commission would deal with all types of human rights except gender, and the Gender Commission would deal solely with gender equality. Gender falls under the general rubric of human rights as much as all other human rights do.

2) Alternative proposal of the Freedom Front

The Freedom Front proposes that the Human Rights Commission should be specifically empowered (if this is statutorily necessary) to deal, through a subcommittee, with gender matters. (The same would apply to all the other grounds of discrimination mentioned in the present equality clause (clause 8 of the transitional Constitution)). Apart from being more practical, this would also be less costly than creating a separate Gender Commission, and would not have the effect of slighting or disparaging the members of the Human Rights Commission, in so far as they, despite their expertise, would be regarded as not capable of dealing with gender matters.

3) Further alternative submission of the Freedom Front

If a separate Commission on Gender Equality should be created, the Freedom Front submits that it should be done by way of entrenchment in the Constitution, in order to provide the same degree of protection as the Human Rights Commission will have. In such event all powers and functions of the Commission should be set out in the Constitution, as well as all other fundamental rules relating to such Commission. Only unimportant or subsidiary matters should in such event be dealt with in ordinary legislation.
