

2/4/4/1/2/27

CONSTITUTIONAL ASSEMBLY

**THEME COMMITTEE 4
FUNDAMENTAL RIGHTS**

29 May 1995

Room OLD ASSEMBLY

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, 29 May 1995
Time : 14h00 - 17h00
Venue : Old Assembly

AGENDA

1. Opening
2. Matters Arising
3. Minutes: Theme Committee meeting 22 May 1995 - Pages 2-7
4. **Reproductive Rights:** Party Submissions (See Separate documentation entitled Reproductive Rights)
5. General
 - 5.1 Sector Public Hearings
 - 5.2 Constitutional Public meetings - Pages 8
6. Closure

**H Ebrahim - Executive Director
Constitutional Assembly**

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CONSTITUTIONAL ASSEMBLY

**MINUTES OF
MEETING OF**

**THEME COMMITTEE 4
FUNDAMENTAL RIGHTS
MONDAY 22 MAY 1995 (AT 9H00)**

PRESENT

Radue RJ (Chairperson)

Bakker DM	Pandor GNM
Chalmers J	Rasmeni SM
Coleman M	Saloojee E
Dlamini BO	Sizani RK
Gamndana T	Smuts D (alt)
Green LM	Surty ME
Hajaij F	Thabethe E (alt)
Kgoali JL	Thompson B
Lubidla EN	Tshivhase TJ (alt)
Mashamba TGG	Viljoen V
Molekane RS	
Myakayaka-Manzini YL	
Njobe MAA	

APOLOGIES: Asmal KA, Camerer SM, Leon AJ, Lubidla EN, Mdladlana MMS

J Tsalamandris, P Crowley, S Liebenberg and J Dugard were in attendance.

1. OPENING

- 1.1 Sen. Radue opened the meeting at 09h00.

2. MATTERS ARISING

- 2.1 Sen. Surty referred to 2.2 and asked about the availability of the documents presented at the Public Hearing.

3. MINUTES

- 3.1 The minutes of the **Theme Committee meeting of 15 May 1995** were adopted with the following amendments:

3.1.1 The word "an" should be corrected to "and" in the para 2.2.1.

3.1.2 Para 2.2 should also note that Sen. Radue had also informed the meeting that submissions received from the hearing on Traditional Authorities would be available for circulation to members.

3.1.3 The word "as" in para 4.5, the NP response, second point, should be changed to "and".

3.1.4 Para 4.5, NP response, third point should read: " If adherence to the limitations clause and in particular the subclause (1) is ensured, the NP is convinced that the right to life itself is not negated for the rest of society, where the death sentence is imposed."

3.1.5 Para 4.5, NP response, third point, the phrase " Ultimately, it should ... Court", should be altered to " Ultimately the National Party will abide by the decision of the Constitutional Court".

3.1.6 Para 4.5, NP response, fourth point, the phrase " to provide the nation ... of the death penalty" should be changed to: "The NP believes that the Constitutional Court is better equipped than the legislature to provide the nation with an interpretation of the Constitution and the death penalty".

3.1.7 Para 4.5, NP response, fifth point, should read: "Legislation which was amended some years ago provides enough safeguards to prevent mistakes".

3.1.8 Para 4.2, ANC response, first point, should read: "The ANC believes that the Constitution should consider the right to abortion under reproductive rights".

4. SOCIO-ECONOMIC RIGHTS : PARTY SUBMISSIONS

- 4.1 The **ACDP** submission was presented by Mr Green who spoke to the document, *"Submission to the Constitutional Assembly - Theme Committee Four : Socio-Economic Rights"*

There were no questions to the ACDP.

- 4.2 The **ANC** submission was presented by Senator Surty who spoke to the document, *"Preliminary Submission of ANC on Item 14 of the Work Programme - Socio-Economic Rights"*

Questions to the **ANC** included:

4.2.1 Property

- i) Who defines public interest?
- ii) How would the ANC deal with marginal land?
- iii) With reference to public interest and public purpose, why has the ANC position changed on its position at the World Trade Centre ?
- iv) What is the ANC's position on Customary Law, and how could they be accommodated?

The **ANC** responded as follows:

- Public interest can be determined by the legislature, through an open and transparent process, taking into account the imbalances of the past.
- Public purpose could be construed in a narrow context. Public interest is a broader concept that could include moveable property.
- The issue of land applies to the Customary Law as well as to gender issues.

4.2.2 EDUCATION

- i) What is the ANC's position on home schooling?
- ii) In the case of schools created by communities - Is it right for the State to refuse subsidies ?
- iii) Is there a "means test" to determine those who cannot afford it ?

The **ANC** responded as follows:

- The ANC does not exclude this.
- The issue of subsidies has many facets which need to be taken onto account e.g. the overall needs of the people of the community especially for cultural and language

- purposes, the issue of infringements on other rights etc.
- There is no formula, the intention is to provide education for children who cannot afford it.

4.2.3 ENVIRONMENT

- i) What about the "moral environment", should it not be taken into account ?

The ANC responded as follows:

- The ANC does not support specific morals, but would not support an "immoral society".

4.2.4 ECONOMIC ACTIVITY

- i) Is the ANC adamant to oppose to any attempt to include this right in the final Constitution ?

The ANC responded as follows:

- The ANC will oppose any attempt to include this right in the new Constitution.

4.2.5 LABOUR

- i) Why does the ANC not support "lock-outs" ?

The ANC noted that it was opposed to "lock-outs" as they contradicted the ILO charter to which South Africa has subscribed to.

4.2.6 OTHER SOCIO-ECONOMIC RIGHTS

The ANC recommended that the Technical Committee attempt to identify socio-economic rights not included in the work programme.

- 4.3 The PAC submission which had not been submitted to the CA Secretariat, was presented verbally by Mr Sizani.

Questions to the PAC included:

4.3.1 PROPERTY

- i) Won't the redistribution of land damage the economy ?

Mr Sizani noted the concern about the economy, but emphasised that land redistribution had to take place.

- 4.3.2 There were no questions on: **ENVIRONMENT, ECONOMY and LANGUAGE AND CULTURE.**

4.3.3 LABOUR

- i) What about the rights of employers ?

The PAC responded by noting the need to protect collective bargaining.

- 4.4 The DP submission was presented by Ms Smuts who spoke to the document, *Democratic Party Submission on: Socio-Economic Rights*

Questions to the DP included:

4.4.1 PROPERTY

- i) Would the DP support the right to housing and the restitution of land ?
- ii) Was the Portuguese Constitution and its sections on socio-economic rights considered by the DP ?

The DP responded as follows:

- It supported the right to housing with regards to access to land and housing. - The DP had not considered the Portuguese constitution.

- 4.5 The NP submission was presented by Sen. Radue who spoke to the document, *National Party Preliminary Submission: Theme Committee 4 - Item 14: Socio-Economic Rights*

Questions to the NP included:

4.5.1 PROPERTY

- i) What about compensation to address imbalances of the past?
- ii) With regards to the restitution process, the NP has shifted the onus on the dispossessed to respond to land claims.
- iii) Would the NP agree to compensation?

The NP responded as follows:

- The NP supports this matter but it should be carried out by a court of law.
- It is the onus of the incumbent GNU to deal with the matter of land claims and dispossession.
- People should feel free to come forward to claim land which is rightfully theirs or be compensated.

4.5.2 EDUCATION

- i) Why is the NP's submission opposed to the ANC's?

The NP responded by noting the statements by the ANC and suggesting that further debate take place at the Constitutional Assembly level.

4.5.3 There were no questions on ENVIRONMENT, and LANGUAGE AND CULTURE.

- 4.6 The meeting noted that the FF had not submitted a submission on socio-economic rights.

5. GENERAL

5.1 Constitutional Public Meetings (CPM)

- 5.1.1 There were no volunteers to represent the Theme Committee at the meeting in Beaufort West on 25 May 1995.

5.2 Public Sector Hearings

- 5.2.1 The Committee nominated the following for the sector hearing on Religion:

- i) Mrs Hajaj - Welcome and Opening
ii) Mr Green - Panel on Bill of Rights

- 5.3 Parties were reminded that party submissions on "*Reproductive Rights*" were due on 22 May 1995.

6. CLOSURE

The meeting closed at 16h50.

MEMORANDUM

**TO: MANAGING SECRETARIES
CHIEF WHIPS**

FROM: UNA FOURIE, COMMUNITY LIAISON

DATE: 23 MAY 1995

SUBJECT: CONSTITUTIONAL PUBLIC MEETINGS

1. KWAZULU-NATAL

The following Constitutional Public Meetings are being planned for **24 JUNE 1995** in KwaZulu-Natal:

Newcastle	24 June 1995
Hammersdale	24 June 1995

2. CPMs - JUNE 1995

CPMs planned for June 1995 are:

Northern Cape	Kimberley	3 June 1995
Northern Transvaal	Thohoyandou	3 June 1995
Eastern Cape	Lusikisiki	10 June 1995
North West	Mafikeng	10 June 1995
Northern Cape	Carnarvon	17 June 1995
Northern Transvaal	Ellisras	17 June 1995
Eastern Transvaal	Mhluzi	17 June 1995
Western Cape	George	24 June 1995
Free State	Maokeng	24 June 1995
KwaZulu-Natal	Hammersdale	24 June 1995
KwaZulu-Natal	Newcastle	24 June 1995