

2/4/41/2/25 ..

**CONSTITUTIONAL ASSEMBLY**

**THEME COMMITTEE 4  
FUNDAMENTAL RIGHTS**

**22 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, 22 May 1995  
**Time** : 09h00 - 12h00; 14h00 - 17H00  
**Venue** : OLD ASSEMBLY

---

**PLEASE NOTE:**

**THERE WILL BE A SECOND SESSION OF THE THEME  
COMMITTEE AT 2.00PM AT THE ABOVE VENUE**

**AGENDA**

1. Opening
2. Matters Arising
3. Minutes:
  - 3.1 Theme Committee meeting 15 May 1995: Pages 3-8
4. Socio-Economic Rights
  - 4.1 Party Submissions: See Separate documentation entitled "Party Submissions".
5. General
  - 5.1 Constitutional Public Meetings
  - 5.2 Public Sector Hearings
6. Closure

---

**H Ebrahim  
Executive Director  
Constitutional Assembly**



**Enquiries** : John Tsalamandris and Zuleiga Adams  
Tel : 403 2266; Pager: 468 5050 code 4716

**CONSTITUTIONAL ASSEMBLY**

**MINUTES OF  
MEETING OF**

**THEME COMMITTEE 4  
FUNDAMENTAL RIGHTS  
MONDAY 15 MAY 1995 (AT 09H00)**

**PRESENT**

**Mdladlana MMS (Chairperson)**

Bakker DM  
Cachalia IM(alt)  
Camerer SM  
Chalmers J  
Coleman M  
Gamndana T  
Hajaij F  
Lubidla EN (alt)  
Mohamed IJ (alt)  
Mulder CP  
Myakayaka-Manzini YL  
Njobe MAA (alt)

Ntuli MIB  
Pandor GNM  
Piliso MM  
Radue RJ  
Rasmeni SM  
Saloojee E  
Sizani RK  
Surty ME  
Thabethe E (alt)  
Thompson B  
Tshivhase TJ  
Viljoen V

**APOLOGIES:** Asmal KA, Leon AJ.

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



## 1. OPENING

- 1.1 Mr Mdladlana opened the meeting at 09h05.
- 1.2 The Chairperson announced that due to an administrative problem the Committee would not deal with reports as identified in Item 5 of the agenda. The meeting will proceed with the rest of the agenda.
- 1.3 Members were reminded to take copies of Volumes 14 and 15 of Public Submissions.

## 2. MATTERS ARISING

- 2.1 **Public Hearing on Children's Rights:** Ms Pandor gave a verbal report:
  - 2.1.1 There was a good representation of MP's and organisations concerned with Children's Rights.
  - 2.1.2 Many of the stakeholders welcomed the hearing and had clearly defined views on children's rights.
  - 2.1.3 Concern was raised around the process of the recent release of children from prison and the need to consult organisations when such decisions are taken.
  - 2.1.4 There was concern from representatives from rural areas regarding communication around public hearings. The CA needs take into account that these areas do not have access to modern means of communication.
  - 2.1.5 Concern was raised by Ms Camerer during a break about the perception that the proceedings were dominated by ANC MP's. The Secretariat pointed out that all parties had an opportunity to volunteer members in the Theme Committee meeting of 8 May. The meeting decided that the issue will be taken up by the Core-Group and Sen. Radue.
- 2.2 **Public hearing on Traditional Leaders:** Senator Radue gave a verbal report:
  - 2.2.1 It was an impressive an historic occasion and well attended.
  - 2.2.2 Issues discussed were: 1) Whether traditional courts should be incorporated into the formal judicial system. 2) Representation of traditional leaders in the Senate. 3) The role of traditional leaders in local government.
- 2.3 Ms Camerer raised the problem with inefficiency on the part of the Administration regarding the processing of her travel forms. Mr Saloojee stated that he would like to place on record his acknowledgement of the efficient organisation of logistics on the part of the Administration. It was decided that the Core group would investigate Ms Camerer's complaint.



### 3. MINUTES

3.1 The minutes of the *Theme Committee meeting of 8 May 1995* were adopted with the following amendments:

3.1.1 Mr Sizani should be added to the list of apologies.

3.1.2 Ms Liebenberg should be recorded as present.

3.1.3 3.1 ii): The word "and" should be deleted before the phrase "The Right to Survival".

### 4. RIGHT TO LIFE: PARTY SUBMISSIONS

4.1 The **ACDP** was not present and their submission was noted.

4.2 The **ANC** submission was presented by Ms Myakayaka-Manzini who spoke to the document, "*Preliminary Submission of the African National Congress, Theme Committee Four: Life*".

Questions to the ANC included:

- Is the ANC arguing for a constitutional right to abortion?
- Since legislation on abortion is presently being amended, is it necessary for the constitution to have a clause on abortion?

The **ANC** responded as follows:

- The ANC believes that the conditions under which abortion is presently granted should be broadened and linked to other rights such as privacy and dignity.
- The purpose of paragraph 1.5 4) of the ANC submission is to ensure that the matter is not entirely left to the courts and that the legislature is not prevented from passing laws regulating abortion.

4.3 The **DP** submission was not present and their submission was noted.

4.4 The **FF** submission was presented by Dr Mulder, who spoke to the document, "*Freedom Front - Theme Committee Four: Preliminary Submissions on the Right to Life*".

Questions to Dr Mulder included:

- Why should the decisions of the Constitutional Court prevent political parties from developing their positions beforehand?

Dr Mulder responded as follows:

- Because the FF is awaiting a decision by the Constitutional Court on the death penalty, it does not mean that it has no position on the



death penalty. It merely wishes to incorporate the interpretation of the Court in its final submission. The CA as a whole may also be forced to reformulate its position as a result of the Court's interpretation.

- 4.5 The NP submission was presented by Senator Radue, who spoke to the document, "*National Party Preliminary Submission: Theme Committee 4: Item 13: The Right to Life*".

Questions to Senator Radue included:

- The NP's position on the Right to Life seems unclear and incoherent, especially on controversial issues.
- What evidence exist to suggest that abortion has been used as a family planning method?
- How does the NP justify its support for the death penalty and at the same time upholding the right to life?
- Does the NP regard the courts and the judiciary which is much less transparent than the CA and the Legislature as the best custodian of moral, ethical and religious will of the people of SA?
- How does the NP view the fact that there are many instances where the courts have imposed the death penalty on innocent people?

The NP responded as follows:

- The NP's position is quite clear in that it is in favour of retaining the present wording in the Interim Constitution. Any interpretation on the Right to Life must pass the test of the Limitations Clause.
- The use of abortion as a family planning method has been raised as a matter of concern at many international forums and documents as clear evidence exist that it has been used in many countries for family planning purposes.
- If adherence to the limitations clause and in particular the subclause (1) is ensured, the NP is convinced that the right to life is not negated for the rest of society where this right is threatened by the increase in capital crime. Ultimately it will abide by the decision of the Constitutional Court.
- The NP believes that the Constitutional Court is better equipped than the legislature to provide the nation with an interpretation of the application of the death penalty.
- New legislation which is being drafted around the death penalty will contain enough safeguards to prevent mistakes.

- 4.6 The PAC submission was presented by Mr Sizani, who spoke to the document, "*Preliminary Submissions of the PAC on the Right to Life*".

There were no questions to Mr Sizani.



**6. GENERAL**

6.1 National Sector Public Hearings: The following members volunteered to attend:

**i) Religious Groups: May 26**

Ms F Hajaij  
Ms BM Ntuli  
Mr E Saloojee  
Ms B Thompson  
Ms TJ Tshivhase

**ii) Youth: 27 May**

Sen. T. Gamndana  
Ms BM Ntuli  
~~Ms B. Thompson~~  
Ms TJ Tshivhase

**iii) Labour: 3 June**

Ms GNM Pandor  
Mr MLM Piliso  
Ms YL Myakayaka-Manzini  
Sen. SM Rasmeni  
Ms ED Thabethe

**iv) Women: 4 June**

Ms SM Camerer  
Sen. T Gamndana  
Ms F Hajaij  
Ms YL Myakayaka- Manzini  
Ms GNM Pandor  
Ms E Thabethe



6.2 Constitutional Public Meetings: The following names were submitted:

- i) ***Upington: 20 May***  
Mr MMS Mdladlana
  
- ii) ***Thohoyandou: 3 June***  
Ms TJ Tshivhase
  
- iii) ***Lusikisiki: 10 June***  
Ms V Viljoen
  
- iv) ***George: 24 June***  
Ms J Chalmers

7. **CLOSURE**

The meeting rose at 10h40.