

*Fundamental
Rights*

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TO : The Chairman of the Planning Committee for the
TECHNICAL COMMITTEE ON CONSTITUTIONAL ISSUES

FOR ATTENTION OF : DR THEUNS ELOFF

FAX No : 011 397 2211

DATE : 4 November 1993

FROM : Margaret Lessing DMS
Executive Director
Women's Bureau of South Africa

MESSAGE : Attached.

No OF PAGES :

OPERATOR :



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TO: The Chairman of the Planning Committee for the
Technical Committee on Constitutional Issues
Attention: Dr Theuns Eloff

Fax no: 011 397 2211

SUBMISSION ON FUNDAMENTAL RIGHTS

The Women's Bureau of South Africa draws your attention to the fact that we believe customary law and family traditions should be respected but women must not be discriminated against.

We recognise that in accordance with the 10th Progress Report of the Technical Committee on Fundamental Rights during the Transition customary law will have the right to recognition in terms of the proposed Constitution. However this is subject to the provision that, if there is conflict or tension between customary law and the proposed equality clause to be embodied in the Constitution, any court will have a testing right.

The mechanism to be introduced facilitating resolution allows the court to determine what measures and within what time they should be imposed in order to bring the particular rule of customary law in line with the equality provisions.

We understand this means that customary law will be recognised but always subject to the basic law which protects human rights and in our instance the position of women and we support the suggestions embodied in the Technical Committee's Report. We believe that to specify areas in which women's position is invidious would weaken the clout which is presently embodied in the proposed protective measures.

Against this background:

- 1) We support in principle the stance of the Women's National Coalition that recognition of culture should always be subject to equality. In this regard women and gender issues should be specifically included in constitutional equal rights provisions
- 2) Rather than specify certain areas of protection that are either notorious (such as female circumcision for example) or at least widely disclaimed (such as those with regard to succession rights and the acquisition of

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property by women) it would be better that ALL of African customary law and indeed of any system of law, for example Muslim law or Civil law, should be subject to equality provisions.

To specify certain areas only involves the risk that other perhaps more invidious hardship goes unredressed. We believe the Government of the day must stand by the terms of the Convention on the Elimination of ALL Forms of Discrimination against Women which the present Government signed ten months ago and which to date has been ratified by 122 countries. We would draw your attention to the fact that representatives of the world's women will gather in New York in January 1994, at the start of the United Nations Year of the Family, to attend a meeting of the United Nations Committee on Discrimination against Women.

This meeting will have before it a study on human rights and the family against the background of women's equality.

THE WOMEN'S BUREAU OF SOUTH AFRICA

The Women's Bureau was established 14 years ago independent of Government and supported by private sponsors. It is a registered company not for gain. It was early listed in the United States of America as a Human Rights organisation. It brings together most of our major women's organisations, has a large individual membership, 42 working groups and 17 branches countrywide.

Our aims are:

- *to improve the socio-economic conditions of women of all races
- *to watch over all legislation of concern to women, to children and to the family
- *to protect women's interests
- *to save them from violence and abuse
- *to work for women's empowerment
- *to adapt to a changing world and thereby make women aware of their vital role in society.

It has a comprehensive Resource Centre on all matters concerning women which is widely consulted locally nationally and internationally.

Margaret Lessing
MARGARET LESSING DMS
EXECUTIVE DIRECTOR
4 November 1993