

## **WOMEN FOR RESPONSIBLE RIGHTS**

### **THE RIGHT ON THE PROTECTION OF THE FAMILY AND OF MARRIAGE: SUPPLEMENTARY ARGUMENT**

Further to our submission regarding the inclusion of a fundamental right to the protection of family and marriage, the following:

- 1 . The fact that so many foreign and international instruments contain such a right, is an important indication that it is meaningful and necessary to afford marriage and family express constitutional recognition and protection. In fact it is incomprehensible that our proposed bill of rights, which is strong on second and third generation rights, omits such a basic right.
- 2 . The inclusion of a right to the protection of marriage and family obviously does not mean that divorce should not be permissible. Our present Divorce Act 1979 may probably be seen as an acceptable limitation to any possible fundamental right regarding marriage and family.
- 3 . A fundamental right regarding family and marriage would safeguard these institutions against being eroded by other constitutionally protected rights. From Canadian perspective it has been suggested that the rights of children vis-a-vis their parents have come up and with no constitutional recognition of the family, there are no principles to guide the courts other than unbridled individual rights.
4. The fact that some people against the constitutional recognition and protection of the family argue that it is impossible to find an acceptable definition of "family" or even "marriage", should not be taken seriously.

We trust that these brief submissions will be properly considered by the Constitutional Court in the exercise of function of certifying the draft Constitution. If necessary, we are prepared to brief counsel to further argue the submission.

**MS R. Z. DEKKER**  
**Vice-chairperson**  
**MENLOPARK**

**JUDGE K. O'REGAN**  
**NEW CONSTITUTIONAL TEXT ARGUMENT FROM PARLIAMENT PARTIES**  
**ACDP**

12 June 1996

Dear Mr Worrall-Clare

## **CERTIFICATION OF NEW CONSTITUTIONAL TEXT**

Thank you for faxing us the copy of the ACDP's objections to the certification of the new constitutional text.

I have been asked by the President of the Constitutional Court to inform you as follows:

1. We still have been unable to trace the copy of the objections you sent us on 31 May 1996. May we assure you, however, that your objection will now be circulated immediately to all the judges. Furthermore, the ACDP, as a Parliamentary party, will be entitled to advance oral argument on or after 1 July 1996, the date on which oral argument will begin. Further directions in this regard will be given to yourselves and the other parties who will be advancing oral argument.
2. We enclose a copy of the Directions issued by this Court in terms of Rule 15. You will see from paragraph 2 that the ACDP should have informed me by not later than 20 May 1996 that it wished to submit oral argument to the Court. Thereafter paragraph 3 of the Directions required 25 copies of the written argument in support of ACDP's contention to be lodged with me by 4 June 1996. It seems that the ACDP has followed the directions in paragraph 4, which referred to "any body or person, other than a political party". In any event, the material has arrived in good time for it to be considered by the Court.
3. May we remind you that the function of the Court is not to ratify the constitutional text, as your letter indicates, but to certify that it complies with the 34 Constitutional Principles contained in Schedule 4 of the Constitution, Act 200 of 1993. The Court cannot add to, amend, or delete anything from the constitutional text. Should you wish to amplify your objections with further written argument directed towards the question of non-compliance with the 34 Constitutional Principles, please lodge it in succinct form with me by 12:00 on 21 June 1996. In the absence of such further argument, the Court will treat the facsimile which we received last night as setting out your written argument.

**MS NIENABER**

11 June 1996

Dear Ms Nienaber

**re: A.C.D.P. objection to the ratification of the National Constitution.**

According to your records the Constitutional Court has not received an objection to the aforementioned Bill by the A.C.D.P. We find this fact very disturbing, as we have documentary proof of having sent an objection both via a facsimile number and registered post ( both of which

were published in the Sunday Times). We also limited our objection to 1000 words as instructed, although it would seem that other political parties have not done the same.

As a result of all this the A.C.D.P. feels that it has been already prejudiced, and wish to be assured as to the fact that we will be treated equally in the process. We therefore relax the aforementioned objection, after which we will send via registered post 25 copies thereof A.S.A.P.

The A.C.D.P. confirms it would like an oral hearing on the certification of the constitutional text, but we re-affirm our fears as to the prejudice already suffered. We would appreciate the immediate rectification of this, as well as the assured equal treatment of the A.C.D.P. and its objection.

Together with this facsimile we submit proof of the registered objection. Facsimile proof will be provided by the National Caucus Chairperson within three days of this facsimile ( please understand as she is in Germany at this moment)

Kurt Worrall-Clare BA.LLB.  
Provincial Legal Advisor A.C.D.P (KwaZulu-Natal)

## **THE AFRICAN CHRISTIAN DEMOCRATIC PARTY: Objection to the certification of the National Constitution 1996 (8 May).**

The ACDP (hereinafter referred to as the Party) hereby serves notice to object to the certification of the National Constitution, as adopted by the Constitutional Assembly on the 8 May 1996. Our objection is based on the clear violations of the following principles:

### **1. Preamble**

#### **Sch 4 - XIV**

Guarantees the right of minorities to participate in the legislative process. The preamble was entirely formulated by the two majority parties without any such “minority participation”. This is inherently undemocratic being contrary to the due process of a democratic legislature.

- that participation must be qualitative.

#### **Sch 4 - II**

Recognises that “everyone” is entitled to those rights as enunciated in Ch 3. The Christian voice has been exempt from this reality. The words “In humble submission to Almighty God” were wholly excluded thereby negating the essential content of the religious voice. This in itself is a clear violation of the Ch 3 rights as guaranteed.

See: Accurate statistical submissions in this regard (Annexure One).

#### **Sch 4 - III**

The Christian Church was discriminated against through the application of interpretative policy. Both the ACDP and the Christian church when exercising their Ch 3 rights, should be protected from such violation. This has not happened.

The same principle also guarantees that Christian Law be afforded the same dignity and recognition as African Customary Law, anything less would be a manifest discrimination. This discrimination has occurred.

#### **Sch - V & Sch 4 - XII**

Re-establishes the equality of Christian Law and its equitable legal process. The National Constitution has grossly violated this.

### **2. Rounding Provisions**

#### **Sch 4 - 1**

Provides for a “sovereign state” and not a sovereign / supreme Constitution. Ch 1 (c) and 2, are therefore inconsistent with this provision.

#### **Sch 4 - 11**

Recognises the equality of ‘every-one’ and thus it becomes constitutionally impossible to have a “supreme constitution”, without derogating from those fundamental human rights as guaranteed in this principle.

#### **Sch 4 - 111**

The application of a “supreme constitution” would ultimately result in unnecessary and unjustifiable discrimination.

#### **Sch 4 - V & Sch 4 - XII**

Bible believing Christians and Biblical Law recognises the God of Abraham as both supreme and sovereign. A “supreme constitution” negates this opinion, belief and religious expression. It is both undemocratic and discriminatory.

### **3. Bill of Rights**

#### **Sch 4 - 11**

Ch 2 (11) recognises that “everyone has the right to life”. Medical fact proves that human life begins at conception. The fact that the unborn child was not expressly included in this

provision (but is under debate) is discriminatory against that child: A child who cannot speak for him/herself.

Ch 2 (12) a, b

Is both vague and embarrassing. These “rights” are not absolute, and must be balanced against the unborn child’s rights to the same “security and control” over its body.

**Sch 4 - XIV**

The ACDP participation in the formulation of this provision (11 and 12) was not provided for.

**Sch 4 - X & Sch 4 - IX**

Provided for a formal legislative process which by virtue of principles I and II must recognise and protect the formal public submissions to the Constitutional Assembly. The treatment of these submissions were not “open and accountable” , and were not formally adhered to. (See Annexure One).

**Sch 4 - III**

Ch 2 (15) sub. 2 (a)

Public authorities do not have the authority to either limit or dictate religious practise. To give such authority to an institution of government would be to discriminate against the rest of society.

**Sch 4 - XII**

Ch 2 (15) sub 2 (a)

Also negated the essential content of the aforementioned principle. Collective rights to self-determination in forming, joining and maintaining religious associations are not negated by state ownership.

**Sch 4 - III & Sch 4 - XXVII**

Ch 2 (23) sub. 3

The absence of the lockout clause inherently discriminated against the employer. The result is a manifest disparity in the collective bargaining rights of the employer. Either the right to strike must be removed from the constitution, or the employers right to lockout must be included. Anything less would be discriminatory and against principle III.

#### **Sch 4 - XXI**

##### Ch 2 (23) sub. 3

Requires the constitution to protect the common market. The absence of the lockout clause has resulted in a marked decline in foreign investment confidence. (See the effect that the American Dow Jones has had on the JSE since the adoption of the Constitution.)

#### **Sch 4 - III, Sch 4 - XII & Sch 4 - II**

##### Ch 2 (39) sub. 39 (3)

These principles guarantee the equal treatment and protection of religions and their laws. The absence of “Biblical law” from the interpretation of the Bill of Rights, is a manifest violation of the aforementioned principles. Religious law should be afforded the equal treatment, protection and interpretative value, as Customary Law. Anything less would be discrimination. In other words the Constitution has discriminated against religious law, as well as its essential content.

#### **4. The President and the National Executive**

##### **Sch 4 - XVII (2)**

##### Ch 5 100 sub. 1

This national override is a clear diminishment of the provincial powers as the guaranteed in the Interim Constitution. The diminishment is such that it substantially lessens the integrity of the province and its powers.

##### **Sch 4 - XVII (2)**

##### Ch 5 100 sub. 2

The abovementioned far-reaching provision could be misused by the dominance of a majority political party by virtue of this section. The vagueness of the test for a “legitimate” control of a province by the National Executive substantially lessens the provincial powers and functions.

##### **Sch 4 XVII (5)**

The National Constitution must consult the Constitution of the province (KwaZulu Natal), as well as its legislatures views when there are amendments to the powers, boundaries and functions of the province. This has not been done for the province of KwaZulu Natal. Some powers have been removed without such consultation: power over the police, lotteries, public service commission etc. See Schedule Six of the Interim Constitution.

#### **Sch 4 - XXI (6)a**

Ch 10 sub. 196

The removal of the Public Service Commission from the provincial powers, amounts to a substantial diminishment of those powers inherent to Schedule 6 of the Interim Constitution. The province should be afforded the power to render this essential “service”.

### **THE CONSTITUTION OF KWAZULU NATAL**

#### **Sch 4 - XVII (2), Sch 4 - XVII (5) & Sch 4 - XX**

There exists a contractual agreement between the ACDP, the IFP and the NP to hold a referendum on the issue of abortion. This has not been considered by the Constitutional Assembly. The aforementioned agreement was promulgated legitimately and fulfils the Constitutional requirements for calling a referendum. To ignore this would be to substantially diminish the provincial powers of the provinces legislature.

#### **Sch 4 - XVII (2), Sch 4 - XVII (5) & Sch 4 - XX**

The abovementioned referendum was founded on the integrity of the Province of KwaZulu - Natal, as well as its legitimate provincial autonomy. To diminish its integrity would be to substantially lessen that autonomy.

#### **5. Parliament**

#### **Sch 4 - I, Sch 4 - II, Sch 4 - III & Sch 4 - XII**

62 sub. 4 (d).

The ACDP considers this re-entrenchment of 43(b) of the Interim Constitution to be a gross and manifest violation of religious opinion and conviction. In effect it would amount to the political searing of religious consciousness. A member must be free to choose, and be wholly accountable to God. Members must be afforded the democratic right to “cross the floor”. To prevent this from occurring would be both undemocratic and contrary to the religious convictions of the ACDP.

### **MINORITY PARTICIPATION IN THE PROCESS**

#### **Sch 4 - XIV**

The ACDP has the democratic right and protection to participate in the legislative process of the Constitutional Assembly and the formulation of the content of the Constitution. This

did not occur: the constitution was formulated entirely by the ANC and the NP with no substantial provision for minority participation in regards thereof to specific and essential content thereof.

The ACDP was not afforded the provision of being involved in the formulation of the following; the preamble, the lockout clause, the education clause, etc.

## **FRAUD?, NEGLIGENCE? AND ADMINISTRATIVE INCOMPETENCE?**

### **Sch 4 IX, Sch 4 - X & Sch 4 - I**

Places a duty on the Constitutional Assembly to ensure that democratic due process is at all times adhered to . It also makes the CA accountable at all levels to the people it serves. This has not occurred.

(See Annexure One - for statistical information and analysis.)

## **6. General Provisions**

### **Sch 4 - I, Sch 4 - II and Sch 4 - III**

Religious law should be included as a legitimate source of South African Law: International Law should also be consistent with it. Its value and significance should be afforded the same dignity and respect as Customary Law. Anything less would be a clear discrimination against religious law - the burden of proof would then be the state's to prove that the discrimination is justifiable and necessary.

The African Christian Democratic Party thus respectively prays that the Constitutional Court would consider the abovementioned arguments. It is hoped that the provisions may be amended so as to make the National Constitution more democratic, and less hostile to the religious convictions of the Christian community and constituency of the ACDP.

**MR K. WORRAL-CLARE**  
**ACDP**  
**WESTVILLE**