

2/4/1/2/38

**A31**

**CONSTITUTIONAL  
ASSEMBLY**

**THEME COMMITTEE 1  
CHARACTER OF  
DEMOCRATIC STATE**

**7 AUGUST 1995**

**ROOM M515  
09H00**

**DOCUMENTATION**

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## CONSTITUTIONAL ASSEMBLY

### THEME COMMITTEE 1 CHARACTER OF DEMOCRATIC STATE

Please note that a meeting of the above Committee will be held as indicated below:

**Date:** Monday, 7 August 1995  
**Time:** 09h00 - 12h30  
**Venue:** Room M515 (Marks Building)

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#### AGENDA

1. Opening
2. Apologies
3. Adoption of previous minutes for the meetings held on the 31 July and 1 August 1995
4. Matters Arising
5. Discussion on draft report for Blocks 7 & 9 (Language, Name and Symbols, Seats of Government and National Territory)
6. Discussion on the report for Block 10 (Postamble / Preamble)
7. Request from United Christian Action to address the Theme Committee
8. Public Participation
9. General
10. Closure

*[Theme Committee 1 - 1 August 1995]*

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H EBRAHIM  
EXECUTIVE DIRECTOR  
CONSTITUTIONAL ASSEMBLY

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**CONSTITUTIONAL ASSEMBLY  
THEME COMMITTEE ONE  
CHARACTER OF THE DEMOCRATIC STATE**

**MINUTES OF THE MEETING OF THEME COMMITTEE 1  
TUESDAY 1 AUGUST 1995 14H00 ROOM M515**

**Present**

**Mahlangu NJ (Chairperson)**

**Chiba L  
Chikane MM  
Cwele CS  
Gumede DM  
Hangana NE  
Janse Van Rensburg AP  
Kuzwayo NEK  
Mabuza MC  
Majola-Pikoli NT  
Marais A  
Marais PG  
Meshoe KR  
Mngomezulu PG  
Momberg JH  
Moorcroft EK**

**Mulder PWA  
Nobunga BJ  
Ripinga SS  
Routledge NC  
Shope G  
Sisulu AN  
Streicher DM  
Van Deventer FJ  
Vilakazi BH  
Williams AJ**

**Apologies:**

**Chiwayo LLL  
Goosen AD  
Kekana NN  
Macozoma SJ  
Ncube BS  
Niehaus CG**

**Technical Experts present:**

**Corder H  
Heunis J**

**Representatives of the Western Cape Provincial Council of Churches:**

**Bishop J Gribble, Rev B Witbooi, Rev G Pillay, Dr S Govender**

**Leola Rammble and Susan Rabinowitz were in attendance.**

**1. OPENING**

- 1.1 The meeting was opened by the Chairperson at 14h15.

**2. ADOPTION OF PREVIOUS MINUTES**

- 2.1 It was agreed that the Minutes of the Theme Committee meeting held on Monday 31 July 1995 contained in Document A30 [Pages 3 - 6] should stand over for adoption at the next Theme Committee meeting.

**3. MATTERS ARISING**

- 3.1 Prof Corder referred to the Report on Block 6: Representative Government [Document A30, Pages 7 - 78] and noted that Page 17 of the Analytical Survey was not a true reflection of the Report. It was agreed that the Technical Experts would meet with the Secretariat to amend the Analytical Survey to reflect the accurate position.

**4. ORAL SUBMISSION BY WCPCC**

- 4.1 The Chairperson welcomed the representatives of the Western Cape Provincial Council of Churches to the Theme Committee meeting.

- 4.2 Dr Shun Govender of the WCPCC tabled a submission and spoke to the document, highlighting the main issues and presenting their recommendations to the Theme Committee for consideration.

- 4.3 Questions of clarification were asked on a number of issues including:

- the possible mechanisms the State should use to uplift the poor;
- their argument for references to the word "race" to be removed from the Constitution;
- their position on gay and lesbian rights;
- their belief in Biblical principles;
- their role in assisting politicians in reassuring those Christians amongst whom there was uncertainty regarding the new Constitution.

- 4.4 The Chairperson thanked the representatives of the WCPCC for their submission.

**5. DISCUSSION OF DRAFT REPORT FOR BLOCK 8: FOREIGN RELATIONS AND INTERNATIONAL LAW**

- 5.1 Dr Heunis tabled the Draft Report for Block 8 dealing with Foreign Relations and International Law, contained in a separate document and spoke to the Report, noting the following:

- 5.1.1 No submission had been received from the FF who had advised that

any submission they had, would be made when the Report was discussed at the Constitutional Committee.

5.1.2 Page 6, Paragraph 2, 3rd line, the word "effecting" should be amended to read "affecting".

5.1.3 On Page 7, Paragraph VII, the word "approved" should be amended to read "improved".

5.2 It was agreed that it was the responsibility of the Theme Committee to draft the new Constitutional Provisions before the Report was submitted to the CC and that the Technical Experts should attend to this matter.

5.3 After discussion of the Draft Report by the Theme Committee and clarification by the Technical Experts, it was agreed that:

5.3.1 Page 3, Paragraph III (a) should be placed under Contentious Issues.

5.4 It was further agreed that, subject to the approved amendments being made to the Report and the Analytical Survey and to new Constitutional Provisions being drafted by the Technical Experts, the Report was approved for submission to the CC.

## 6. **TABLING AND DISCUSSION OF PARTY SUBMISSIONS ON BLOCK 7: LANGUAGE AND BLOCK 9 NAME AND SYMBOLS, SEATS OF GOVERNMENT AND NATIONAL TERRITORY**

### 6.1 ACDP

The ACDP tabled its submission contained in Document A29 [Pages 21-24] and spoke to the document.

Questions of clarification were asked on the ACDP's proposal that there should be two national anthems. The ACDP clarified that they were flexible on this issue but for the sake of reconciliation, two anthems should be maintained at present. On the issue of "sole nationality" [Page 21, Paragraph 2], the ACDP clarified that this did not mean more than one nationality for the South African people, but rather that all cultures and beliefs must be protected.

### 6.2 ANC

The ANC tabled and talked to its submission on Language contained in Document A29 [Pages 25] and its submission on Name, Symbols, National Territory and Seat of Government contained in a separate document which they noted replaced Pages 26-27 of the submission in Document A29.

Questions and clarification focused on the financial and administrative implications of the ANC's language proposals. The ANC clarified that it would be necessary to find measures and resources to ensure all official languages were promoted equally, and that there was no distinction between official languages of communication and official languages. On the issue of the anthem and the coat of arms, the ANC clarified that the changes were to reflect the new democracy and that this was the mandate they had received. On the issue of the Seats of Government, the ANC clarified that their submission referred to the Seats of Parliament and the Executive and had not dealt with the Seats of the Courts.

6.3 DP

The DP tabled its submission contained in Document A29 [Pages 28 - 34] and talked to the document.

Questions of clarification were asked on whether the DP's language proposals undermined certain languages. The DP responded that their concern was the practical implications of 11 official languages. With regard to the issue of Seats of Government, the DP clarified that its submission referred to the Legislative Capital and had not addressed the issue of the courts.

6.4 FF

The FF tabled and talked to its submission contained in a separate document.

Questions of clarification were asked on the FF's language proposals and on their proposal for provincial symbols.

6.5 NP

The NP tabled their submission contained in Document A29 [Pages 35 - 42] and talked to the document.

Clarification was given by the NP on the promotion of the equal status of all languages.

6.6 PAC

The PAC submission contained in a separate document was tabled. It was noted that the PAC had submitted an apology for the meeting.

6.7 It was agreed that the Technical Experts together with the Drafting Sub-Committee should prepare a Draft Report for Blocks 7 and 9 and that the Secretariat should make the necessary arrangements.



**7. PUBLIC PARTICIPATION**

7.1 There was no report.

**8. GENERAL**

8.1 It was agreed that the Theme Committee meeting scheduled for Wednesday 2 August would be cancelled and that the next meeting of the Theme Committee would be held on Monday 7 August 1995 at 09h00 in Room M515. It was further agreed that the Secretary would circulate a schedule of the forthcoming meetings of the Theme Committee to the members.

8.2 The Secretary advised that the deadline for party submissions for Block 10 dealing with the Preamble/Postamble was Monday 7 August. It was, however, agreed that concerns relating to the issue of the Preamble would be discussed at the Theme Committee meeting on Monday 7 August 1995.

**9. CLOSURE**

9.1 The meeting rose at 17h35.

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**CHAIRPERSON**

***DRAFT REPORT ON  
BLOCKS 7 & 9***

**DRAFT REPORT FROM THEME COMMITTEE ONE**

**BLOCKS 7 & 9 : LANGUAGES, NAME AND SYMBOLS, NATIONAL  
TERRITORY AND SEATS OF GOVERNMENT**

**PART ONE**

1. Summary Overview of submissions received and processed by Theme Committee One from sources outside the Constitutional Assembly (Volumes 24, 24A, 26, 26A, 29, 31, 34, 37, 38, 39) - See attachment.

Petitions received and processed by Theme Committee One:  
Seats of Government - 696 782 (To keep Parliament in Cape Town  
Language - 1004 133 (Afrikaans as official language)

2. The Technical Committee conducted an Orientation Workshop on National Territory on the 26 June 1995 - before parties made their submissions - for which purpose the attached Briefing Document was compiled.
3. Submissions received at public participation events appear not to have dealt directly with these items.
4. A day of public hearings was held on these items on Saturday, 10 June in the Old Assembly Chamber. A transcription of the events of that day is to be found in the document pack entitled "Public Hearing: Language, Seats of Government and Name and Symbols, held on June 10, 1995" circulated to all members.
5. The following Constitutional Principles refer:

*II*

*Everyone shall enjoy all universally accepted fundamental rights, freedoms and civil liberties, which shall be provided for and protected by entrenched and justiciable provisions in the Constitution, which shall be drafted after having given due consideration to inter alia the fundamental rights contained in Chapter 3 of this Constitution.*

*XI*

*The diversity of language and culture shall be acknowledged and protected, and conditions for their promotion shall be encouraged.*

Sections of the transitional Constitution of 1993 relevant to languages are:

**3. Languages**

- (1) *Afrikaans, English, isiNdebele, Sesotho sa Leboa, Sesotho, siSwati, Xitsonga, Setswana, Tshivenda, isiXhosa and isiZulu shall be the official South African languages at national level, and conditions shall be created for their development and for the promotion of their equal use and enjoyment.*
- (2) *Rights relating to language and the status of languages existing at the commencement of this Constitution shall not be diminished, and provision shall be made by an Act of Parliament for rights relating to language and the status of languages existing only at regional level, to be extended nationally in accordance with the principles set out in subsection (9).*
- (3) *Wherever practicable, a person shall have the right to use and to be addressed in his or her dealings with any public administration at the national level of government in any official South African language of his or her choice.*
- (4) *Regional differentiation in relation to language policy and practice shall be permissible.*
- (5) *A provincial legislature may, by a resolution adopted by a majority of at least two-thirds of all its members, declare any language referred to in subsection (1) to be an official language for the whole or any part of the province and for any or all powers and functions within the competence of that legislature, save that neither the rights relating to language nor the status of an official language as existing in any area or in relation to any function at the time of the commencement of this Constitution, shall be diminished.*
- (6) *Wherever practicable, a person shall have the right to use and to be addressed in his or her dealings with any public administration at the provincial level of government in any one of the official languages of his or her choice as contemplated in subsection (5).*
- (7) *A member of Parliament may address Parliament in the official South African language of his or her choice.*
- (8) *Parliament and any provincial legislature may, subject to this section, make provision by legislation for the use of official languages for the purposes of the functioning of government, taking into account questions of usage, practicality and expense.*
- (9) *Legislation, as well as official policy and practice, in relation to the*

*use of languages at any level of government shall be subject to and based on the provisions of this section and the following principles:*

- (a) The creation of conditions for the development and for the promotion of the equal use and enjoyment of all official South African languages;*
  - (b) the extension of those rights relating to language and the status of languages which at the commencement of this Constitution are restricted to certain regions;*
  - (c) the prevention of the use of any language for the purposes of exploitation, domination or division;*
  - (d) the promotion of multilingualism and the provision of translation facilities;*
  - (e) the fostering of respect for languages spoken in the Republic other than the official languages, and the encouragement of their use in appropriate circumstances; and*
  - (f) the non-diminution of rights relating to language and the status of languages existing at the commencement of this Constitution.*
- (10) (a) Provision shall be made by an Act of Parliament for the establishment by the Senate of an independent Pan South African Language Board to promote respect for the principles referred to in subsection (9) and to further the development of the official South African languages.*
- (b) The Pan South African Language Board shall be consulted, and be given the opportunity to make recommendations, in relation to any proposed legislation contemplated in this section.*
  - (c) The Pan South African Language Board shall be responsible for promoting respect for and the development of German, Greek, Gujerati, Hindi, Portuguese, Tamil, Telegu, Urdu and other languages used by communities in South Africa, as well as Arabic, Hebrew and Sanskrit and other languages used for religious purposes.*

## **8 Equality**

- (1) Every person shall have the right to equality before the law and to equal protection of the law.*
- (2) No person shall be unfairly discriminated against, directly or indirectly, and, without derogating from the generality of this provision, on one or more of the following grounds in particular: race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language.*

- (3) (a) *This section shall not preclude measures designed to achieve the adequate protection and advancement of persons or groups or categories of persons disadvantaged by unfair discrimination, in order to enable their full and equal enjoyment of all rights and freedoms.*
- (b) *Every person or community dispossessed of rights in land before the commencement of this Constitution under any law which would have been inconsistent with subsection (2) had that subsection been in operation at the time of the dispossession, shall be entitled to claim restitution of such rights subject to and in accordance with sections 121, 122 and 123.*
- (4) *Prima facie proof of discrimination on any of the grounds specified in subsection (2) shall be presumed to be sufficient proof of unfair discrimination as contemplated in that subsection, until the contrary is established.*

#### **25 Detained, arrested and accused persons**

- (1) *Every person who is detained, including every sentenced prisoner, shall have the right-*
- (a) *to be informed promptly in a language which he or she understands of the reason for his or her detention;*
- (2) *Every person arrested for the alleged commission of an offence shall, in addition to the rights which he or she has as a detained person, have the right-*
- (a) *promptly to be informed, in a language which he or she understands, that he or she has the right to remain silent and to be warned of the consequences of making any statement;*

#### **31 Language and culture**

*Every person shall have the right to use the language and to participate in the cultural life of his or her choice.*

#### **32 Education**

- (b) *to instruction in the language of his or her choice where this is reasonably practicable; and*
- (c) *to establish, where practicable, educational institutions based on a common culture, language or religion, provided that there shall be no discrimination on the ground of race.*

#### 65 Signature and enrolment of Acts

- (1) *An Act of Parliament referred to in section 64 (2) shall be enrolled of record in the office of the Registrar of the Appellate Division of the Supreme Court in such official South African languages as may be required in terms of section 3, and copies of the Act so enrolled shall be conclusive evidence of the provisions of the Act.*
- (2) *In the case of a conflict between copies of an Act enrolled in terms of subsection (1), the copy signed by the President shall prevail.*

#### 107 Languages

- (1) *A party to litigation, an accused person and a witness may, during the proceedings of a court, use the South African language of his or her choice, and may require such proceedings of a court in which he or she is involved to be interpreted in a language understood by him or her.*
- (2) *The record of the proceedings of a court shall, subject to section 3, be kept in any official language: Provided that the relevant rights relating to language and the status of languages in this regard existing at the commencement of this Constitution shall not be diminished.*

#### 141 Signature and enrolment of provincial laws

- (1) *A law of a provincial legislature referred to in section 140 (2) shall be enrolled of record in the office of the Registrar of the Appellate Division of the Supreme Court in such official South African languages as may be required in terms of section 3, and copies of the law so enrolled shall be conclusive evidence of the provisions of such law.*
- (2) *In the case of a conflict between copies of a law enrolled in terms of subsection (1), the copy signed by the Premier shall prevail.*

Sections 46 (1), 53 (1) and 106 of the transitional Constitution stipulate that the National Assembly and the Senate shall sit in Cape Town and that the Constitutional Court shall sit in Johannesburg and the Appellate Division of the Supreme Court in Bloemfontein, respectively.

Constitutional Principles I, XVIII (I) and (3) are relevant to name, symbols and national territory, as follows:

*The Constitution of South Africa 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.*

## XVIII

1. *The powers and functions of the national government and provincial governments and the boundaries of the provinces shall be defined in the Constitution.*
3. *The boundaries of the provinces shall be the same as those established in terms of this Constitution.*

Relevant sections of the transitional Constitution in this regard are:

1 Republic of South Africa

- (2) *The national territory of the Republic shall comprise the areas defined in Part 1 of Schedule 1.*

2 National symbols

- (1) *The national flag of the Republic shall be the flag the design of which is determined by the President by proclamation in the Gazette.*
- (2) *The national anthem of the Republic shall be as determined by the President by proclamation in the Gazette.*
- (3) *The coat of arms of the Republic and the seal of the Republic under the previous Constitution shall be the national coat of arms of the Republic and the seal of the Republic under this Constitution.*

124 Establishment of provinces

- (1) *The following provinces are hereby established, which for the purposes of this Constitution, but subject to subsection (2), shall be recognised as the provinces of the Republic:*

- (a) *Eastern Cape;*
- (b) *Eastern Transvaal;*



- (c) *Natal;*
- (d) *Northern Cape;*
- (e) *Northern Transvaal;*
- (f) *North-West;*
- (g) *Orange Free State;*
- (h) *Pretoria-Witwatersrand-Vereeniging; and*
- (i) *Western Cape:*

*Provided that Parliament shall at the request of a provincial legislature alter the name of a province in accordance with the request of such legislature.*

- (2) *The areas of the respective provinces shall be as defined in Part 1 of Schedule 1: Provided that the establishment of the Northern Cape as a separate province, the establishment in the area of the Eastern Cape of one province, and the inclusion of the areas specified in paragraphs (a) to (f) and (i) to (n) of Part 2 of Schedule 1 within the provinces as defined in Part 1 of Schedule 1, shall be subject to alteration in accordance with this section.*
- (3)
  - (a) *A referendum may be held in terms of this section in each of the areas specified in paragraphs (a) to (n) of Part 2 of Schedule 1 (hereinafter referred to as an affected area) to determine the views of the voters ordinarily resident in such area regarding an issue referred to in subsection (5) or (6).*
  - (b) *A referendum referred to in paragraph (a) shall be held in an affected area within three months of the lodging with the Secretary to Parliament of a petition signed by persons entitled to vote and ordinarily resident in such area.*
  - (c) *The number of signatures on such a petition shall be at least equal in number to such percentage of the votes recorded in terms of subsection (4) in respect of the affected area in question, as may be determined by the Independent Electoral Commission.*
  - (d) *The Independent Electoral Commission shall not be dissolved in terms of the Independent Electoral Commission Act, 1993 (Act 150 of 1993), after the first election held under this Constitution until it has made a determination in terms of paragraph (c) in respect of all the affected areas.*

- (e) *Such a petition shall be lodged with the Secretary to Parliament within a period of six months of the commencement of this Constitution or a period referred to in subsection (10), whichever period expires first.*
- (4) *In the first election of the National Assembly and the provincial legislatures held under this Constitution, votes cast in each of the affected areas shall be counted separately and recorded for use for the purposes of this section.*
- (5) *Subject to subsection (7), the object of a referendum in respect of an area referred to in paragraph (e), (f), (g) or (h) of Part 2 of Schedule 1, shall be the determination of the views of voters ordinarily resident in such an area, concerning, as the case may be-*
- (a) *the continued inclusion of the area referred to in the said paragraph (e) in the provincial territory of the Eastern Cape, or its inclusion in the provincial territory of Natal;*
  - (b) *the continued inclusion of the area referred to in the said paragraph (f) in the provincial territory of Pretoria-Witwatersrand-Vereeniging, or its inclusion in the provincial territory of the Eastern Transvaal;*
  - (c) *the continued existence of the area referred to in the said paragraph (g) as one province, or its division into two separate provinces on either side of the line forming the eastern boundaries of the districts of Venterstad, Steynsburg, Hofmeyr, Tarka, Fort Beaufort, Albany and Bathurst; or*
  - (d) *the continued existence of the area referred to in the said paragraph (h) as a separate province, or its discontinuance as a separate province, in which event those districts of the said area north of the Orange River shall be included in the provincial territory of the North-West, and those districts south of the Orange River shall be included in the provincial territory of the Western Cape:*

*Provided that in the case of a referendum regarding an issue referred to in-*

- (i) *paragraphs (a) and (b) of this subsection, a majority of votes cast shall be required to sanction the inclusion of the areas in question in the provincial territories of Natal or the Eastern Transvaal, as the case may be;*
- (ii) *paragraph (c) of this subsection, a majority of at least 60 per cent of the votes cast in either of the two blocks mentioned in paragraph (g) of Part 2 of Schedule 1 shall be required to sanction the division of the said area into two separate provinces; and*
- (iii) *paragraph (d) of this subsection, a majority of at least 60 per cent*

*of the votes cast shall be required to sanction the discontinuance of the Northern Cape as a separate province.*

- (6) *Subject to subsection (7), the object of a referendum in respect of an area referred to in paragraph (a), (b), (c), (d), (i), (j), (k), (l), (m) or (n) of Part 2 of Schedule 1, shall be the determination of the views of the majority of the voters ordinarily resident in such an area, concerning-*
- (a) *in the case of the area referred to in the said paragraph (a), the continued inclusion of such area in the provincial territory of the Northern Transvaal, or its inclusion in the provincial territory of the Eastern Transvaal;*
  - (b) *in the case of the area referred to in the said paragraph (b), the continued inclusion of such area in the provincial territory of the Northern Cape, or its inclusion in the provincial territory of the Western Cape;*
  - (c) *in the case of the area referred to in the said paragraph (c), the continued inclusion of such area in the provincial territory of the Eastern Transvaal, or its inclusion in the provincial territory of the Northern Transvaal;*
  - (d) *in the case of the area referred to in the said paragraph (d), the continued inclusion of such area in the provincial territory of the Eastern Cape, or its inclusion in the provincial territory of Natal;*
  - (e) *in the case of the area referred to in the said paragraph (i), the continued inclusion of such area in the provincial territory of the Eastern Transvaal, or its inclusion in the provincial territory of Pretoria-Witwatersrand-Vereeniging;*
  - (f) *in the case of the area referred to in the said paragraph (j), the continued inclusion of such area in the provincial territory of the Orange Free State, or its inclusion in the provincial territory of Pretoria-Witwatersrand-Vereeniging;*
  - (g) *in the case of the area referred to in the said paragraph (k), the continued inclusion of such area in the provincial territory of the Western Cape, or its inclusion in the provincial territory of the Northern Cape;*
  - (h) *in the case of the area referred to in the said paragraph (l), the continued inclusion of such area in the provincial territory of Natal, or its inclusion in the provincial territory of the Eastern Cape;*
  - (i) *in the case of the area referred to in the said paragraph (m), the continued inclusion of such area in the provincial territory of the Northern Cape, or its inclusion in the provincial territory of the*

*North-West; or*

- (j) *in the case of the area referred to in the said paragraph (n), the continued inclusion of such area in the provincial territory of the North-West, or its inclusion in the provincial territory of Pretoria-Witwatersrand-Vereeniging.*
- (7) (a) *The Independent Electoral Commission shall be competent to make regulations or give directions concerning the implementation of this section, including-*

  - (i) *the formulation of the question to be put before the electorate in any particular referendum;*
  - (ii) *the determination of the sequence of referendums with reference to a province in respect of which more than one petition contemplated in subsection (3) (e) or (10) is received;*
  - (iii) *the drawing up and registering of party lists for an affected area;*
  - (iv) *the identification of persons entitled to vote in a referendum or election held in terms of this section;*
  - (v) *procedures relating to the drawing up of petitions for the purposes of this section; and*
  - (vi) *any other matters which it considers necessary for such implementation.*
- (b) *This subsection shall come into operation on the date of promulgation of this Constitution.*
- (8) *A party or parties representing a majority of voters in an affected area may within a period of one month of the date of the first election under this Constitution of members of the provincial legislature of the province within which such area falls in terms of Part 1 of Schedule 1, petition the Independent Electoral Commission to publish a notice in terms of subsection (9).*
- (9) *If a petition is lodged with the Independent Electoral Commission in terms of subsection (8), requesting that an affected area be altered as contemplated in subsection (5) or (6), and the Independent Electoral Commission is satisfied that the petition has the support of a party or parties representing a majority of voters in that affected area, it shall forthwith cause to be published in the Gazette, notice of the fact that it has received such a petition.*
- (10) *Within five months of the date of publication of a notice referred to in subsection (9) a petition may be lodged with the Secretary to*

*Parliament, calling for a referendum contemplated in subsection (3) to be held in the area in respect of which such notice was published.*

- (11) *If a petition for a referendum as provided for in subsection (10) is lodged with the Secretary to Parliament, the petition lodged with the Independent Electoral Commission under subsection (8) will lapse, and the result of the referendum in respect of such area will be decisive.*
- (12) *If a petition for a referendum as provided for in subsection (10) is not lodged with the Secretary to Parliament within the period referred to in that subsection, the Independent Electoral Commission shall, upon the expiry of that prescribed period, forthwith cause to be published in the Gazette, notice of that fact, and the alteration contemplated in the notice published in terms of subsection (9) shall thereupon be implemented in accordance with subsection (13).*
- (13) (a) *For the purpose of implementing an alteration in terms of subsection (12), or an alteration pursuant to a referendum held in terms of subsection (3), the Independent Electoral Commission shall, if it considers it necessary to do so as a result of an alteration to be made, give directions concerning-*
- (i) *the establishment of a new provincial legislature or the reconstitution of an existing provincial legislature;*
  - (ii) *the holding of an election of a new or reconstituted provincial legislature;*
  - (iii) *the allocation of seats within such new or reconstituted provincial legislature; and*
  - (iv) *the names of the persons who will become or remain members of such provincial legislature.*
- (b) *The Independent Electoral Commission shall for the purposes of any directions under paragraph (a) have regard to-*
- (i) *representations made to it by political parties who will or may be affected by any such directions;*
  - (ii) *party lists compiled by parties for the purpose of the election of the provincial legislatures which will be dissolved or reconstituted;*
  - (iii) *party lists compiled pursuant to any regulation made or directions given by it in terms of subsection (7);*
  - (iv) *the provisions of Schedule 2 (without necessarily being bound thereby in regard to the sequence in which seats are to be awarded or forfeited); and*

(v) *all other factors which in its opinion are relevant to such directions:*

*Provided that if it is of the opinion that any particular alteration does not require an existing provincial legislature to be reconstituted, it may direct that notwithstanding such alteration, such provincial legislature shall not be reconstituted.*

(c) *If a Premier, member of the Executive Council of a province, senator or other officer has been elected, appointed or nominated in terms of this Constitution by the members of any provincial legislature affected by directions given by the Independent Electoral Commission in terms of paragraph (a), the Independent Electoral Commission may also give directions that new elections, appointments or nominations be made, in which event such elections, appointments or nominations shall be carried out in accordance with this Constitution, and within such times as the Independent Electoral Commission may prescribe.*

(14) *The President shall by proclamation in the Gazette, to take effect on such date as may be determined by the Independent Electoral Commission, amend Subsection (1) and Schedule 1 to give effect to any alteration made in terms of this section.*

(15) *Notwithstanding the provisions of section 62, Parliament may by a majority of votes in each House, effect consequential amendments to this Constitution arising out of any alterations to provinces or provincial boundaries, or directions given by the Independent Electoral Commission in terms of this section.*

#### 248 National flag and anthem

(1) *The State President may at any time before the commencement of this Constitution or while continuing in office in terms of section 235 (1) (a), exercise, on the advice of the Transitional Executive Council, the powers conferred upon the President by section 2 (1) and (2), and if the State President in the exercise of such powers issues a proclamation referred to in that section, such proclamation shall for all purposes be deemed to form part of this Constitution.*

(2) *This section shall come into operation on the date of promulgation of this Constitution.*

## **PART TWO**

### **AGENDA ITEM 10: LANGUAGES**

#### **A. GENERAL DISCUSSION OF THE MATERIAL**

The parties put forward their views on this matter directly and in some detail. As will be seen, there are essentially two approaches, which overlap in several respects: those parties who wish the present constitutional dispensation to continue, with official, full and equal status being accorded to eleven languages, emphasising multi-lingual awareness and education as a means to cultural enrichment, human dignity and national unity, while acknowledging that national and provincial governments may explore practical mechanisms to rationalise languages in the context of official means of communication (the ACDP, ANC, NP and PAC); and those parties who propose the constitutional recognition of all eleven languages, but who advocate that only some of the languages ought to be regarded realistically as the languages of government (DP and FF). Discussion of submissions re-emphasised the emotive nature of the subject matter.

#### **B. NON-CONTENTIOUS ISSUES**

- 1) The Constitution should formally recognise Afrikaans, English, isiNdebele, Sesotho sa Leboa, Sesotho, siSwati, Xitsonga, Setswana, Tshivenda, isiXhosa and isiZulu as the national languages of South Africa.
- 2) Every person should have the right to use of the above languages in communication with government and in the courts.
- 3) While acknowledging (2), the national and provincial should have the power to designate certain of the above languages as official means of communication, and to devise practical mechanisms in this regard.

#### **C. CONTENTIOUS ISSUES**

- 1) In the light of the non-contentious issues above, disagreement exists on the necessity of constitutional regulation of point (3) i.e. a more limited range of languages as the means of official communication. The DP proposes the six most commonly-spoken languages, while the FF does not commit itself to any particular number. These parties motivate their view as follows: equality of linguistic status in a formal constitutional sense cannot be a realistic objective, leading to the de facto domination of a few languages or even one - it is therefore better to entrench and develop the languages used most, nationally and regionally. The other parties resist this potential diminution in formal status of some languages strenuously, arguing that equal recognition of all eleven languages marks an historic moment of reconciliation and the recognition of human dignity and cultural diversity in South Africa, which is vital to the development of a rich national heritage.

## **AGENDA ITEM 12: NAME, SYMBOLS AND NATIONAL TERRITORY**

### **A. GENERAL DISCUSSION OF THE MATERIAL**

In regard to the issues falling under this agenda item, the political parties have generally put forward simple points of view expressed clearly, with some exceptions. There were, too, very large numbers of submissions from the public on these matters.

### **B. NON-CONTENTIOUS ISSUES**

#### **i) Name**

All parties except the PAC support the retention of the name "Republic of South Africa". The PAC assumes that because this name is "entrenched in the interim constitution", it is constrained in proposing a change, a question which it feels ought to be canvassed generally among the electorate. However, the PAC proposes no alternative name.

#### **ii) Coat of Arms**

All parties except the DP support the retention of the existing coat of arms. Like the PAC as regards the name, the DP proposes no alternative, but advises that a new design be called for and that a suitably qualified committee be called upon to make a choice.

#### **iii) Anthem**

All parties support the retention of the current situation, with some reservations and qualifications, as follows:

**ACDP:** Desires Die Stem and Nkosi Sikilel iAfrika to be sung in full, without trying to combine them.

**ANC:** Proposes an improved merger of the current anthems, or a new anthem which reflects the "rainbow nature of our society".

**DP and NP:** Support the "official" shortened version of the two anthems as presented by Prof Khumalo.

**FF:** Prefers the "two national anthems" without stipulating the full or the combined versions.

**PAC:** As with all symbols, it "does not have any problem with the process that is managed by the CA" in this regard.

#### **iv) Flag**



All parties endorse the current flag.

v) **National Territory**

All parties endorse the current national territory, as reflected in section 1(2) and Schedule 1 to the 1993 Constitution.

[Drafter's Note to Theme Committee:

In regard to (i) and (iii) above, it is not clear from the submissions whether the qualified views from certain parties mentioned from time to time are of such a nature as to make the issues contentious, rather than non-contentious e.g. does the DP's suggestion that a committee should adopt a new coat of arms place the current coat of arms into contention? (Similar questions arise in regard to the name and anthem.) If so, the matter can, of course, easily be put into the contentious category.]

C. **CONTENTIOUS ISSUES**

i) **Name**

None

ii) **Coat of Arms**

None

iii) **Anthem**

Whether there should be a shortened combination of the current anthems, and what it should be.

iv) **Flag**

None

v) **National Territory**

Whether international law aspects, such as territorial waters, should be included in the Constitution. The NP proposes that such matters be regulated by legislation, while the ANC appears to propose their inclusion in the Constitution.

vi) **Symbols generally**

The FF proposes that provinces be empowered to adopt provincial symbols.

## **AGENDA ITEM 13: SEATS OF GOVERNMENT**

### **A. GENERAL DISCUSSION OF THE MATERIAL**

The submissions from the political parties are marked by a lack of clarity and an unwillingness to adopt a position as yet. It is thus very difficult to define issue of agreement clearly.

### **B. NON-CONTENTIOUS ISSUES**

None of the parties expressed a view on the seats of the Appellate Division and the Constitutional Court, both of which are clearly within the jurisdiction of this Theme Committee.

### **C. CONTENTIOUS ISSUES**

It is perhaps of greater assistance to summarise the parties' views on the issue of the seats of the legislature and the executive as follows:

- i) The ACDP and NP: no view expressed as yet.
- ii) ANC: believes that accessibility, manageability and consensus by the majority of South Africans should be factors in this decision; that the Cabinet should consider the issue of the location of Parliament, including the possibility of conducting opinion surveys in this regard.
- iii) DP: does not believe in the concentration of power in any region. As regards the national legislature, the decision should rest with the Constitutional Assembly, with the fullest information at its disposal, especially as to relative cost structures.
- iv) FF: would leave the decision to the conscience of its individual members.
- v) PAC: does not have sentiments and attachments, and is only interested in sound financial thinking and convenience in this regard.

**THEME COMMITTEE ONE**  
**ANALYTICAL SURVEY**

NO.	CONSTITUTIONAL PRINCIPLES	ISSUES	CONTENTIOUS ISSUES	NON-CONTENTIOUS ISSUES	REMARKS
1.	II and XI	Languages	1. Constitutional regulation of official means of communication by government.	1. Formal recognition of all eleven languages.  2. Right to use language in communication with government.  3. Certain languages designated as official means of communication at national and provincial levels.	Draft provisions to be drawn up by TC1.

<p>2.</p>	<p>I, XVIII(1) and (3)</p>	<p>Name, Symbols, National Territory</p>	<p>1. Whether and how the anthems should be combined and shortened.</p> <p>2. Whether international law aspects should be regulated in Constitution.</p> <p>3. Whether provinces should be empowered to adopt own symbols.</p>	<p>1. Republic of South Africa should be retained.</p> <p>2. Coat of Arms should be retained.</p> <p>3. Current anthems should be retained.</p> <p>4. Current flag should be retained.</p> <p>5. Current national territory should be retained.</p>	<p>Draft provisions to be drawn up by TC1</p>
<p>3.</p>		<p>Seats of Government</p>	<p>1. Whether the national legislature and executive should be combined.</p> <p>2. Factors to be taken into account in deciding this issue and nature of information available.</p>	<p>1. No views on seats of the national courts.</p>	

**THEME COMMITTEE ONE  
 ANALYTICAL SURVEY**

NO.	CONSTITUTIONAL PRINCIPLES	ISSUES	CONTENTIOUS ISSUES	NON-CONTENTIOUS ISSUES	REMARKS
1.	I, II, VIII, XIV, XVII	Representative government	<p>-----</p> <p>1. Minority participation in executive</p> <p>-----</p> <p>2. Right to recall elected representatives</p> <p>-----</p> <p>3. Constituency basis within proportional representation</p>	<p>1. Government generally to be representative</p> <p>2. Democracy to be participatory</p> <p>-----</p>	<p>Within jurisdiction of TCs 2 and 4.</p> <p>-----</p> <p>Within jurisdiction of TC 2</p> <p>-----</p> <p>The FF rejects the "constituency" element</p>

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CONSTITUTIONAL ASSEMBLY

**MEMORANDUM**

**TO:** The Chairpersons  
Theme Committee I

**FROM:** Hassen Ebrahim

**DATE:** 1 August 1995

**RE: SEAT OF NATIONAL PARLIAMENT**

I attach under cover hereof a copy of a telefax received from the office of the Premier of the Free State province dated 28 July 1995. Please also find under cover hereof my reply thereto.

I look forward to receiving your urgent advise as to how this matter should be dealt with.

**28**

P. O. Box 15, Cape Town, 8000  
Republic Of South Africa

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**You've made your mark**



**Now have your say**

**THE NEW CONSTITUTION**



CONSTITUTIONAL ASSEMBLY

B.1.1

1 August 1995

Mr M G P Lekota  
Premier of Free State  
Private Bag X20538  
**BLOEMFONTEIN**  
9300

Dear Mr Lekota

**RE: THE SEAT OF NATIONAL PARLIAMENT**

I refer to our telephonic conversation and your subsequent letter dated 28 July 1995.

I further wish to advise that the closing date for submissions on this matter has now been passed. However, this is a matter of some importance and I believe that there may very well be reasons for the structures of the Constitutional Assembly to consider your province's submission.

I am accordingly forwarding a copy of your letter to the chairpersons of Theme Committee I as well as the Management Committee. I will therefore revert to you as soon as I have had further instructions.

I believe that it may be in your interest to ensure that your submission and proposals reach the Constitutional Assembly soonest.

Yours faithfully

**HASSEN EBRAHIM**  
**EXECUTIVE DIRECTOR**

**29**

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**You've made your mark**



**Now have your say**

**THE NEW CONSTITUTION**



*Office of the Premier · Kantoor van die Premier · Kantoro ya Tonahgolo*  
**FREE STATE PROVINCE · PROVINSIE VRYSTAAT · POROFENSI YA FORRISSETATA**

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 Telephone · Telefoon · Mohala: (051) 405804/8, Fax · Faks: (051) 4054803

Attention: H Ebrahim  
 Director: Constitutional Assembly

28 July 1995

Fax: 021 241162

Sir

**THE SEAT OF NATIONAL PARLIAMENT DEBATE**

We are aware that submissions have been made by a number of leading centres, around the country inviting the Government to locate the Parliament of the country in those cities.

In our view, the time frame set for decision on this matter is, with respect, not enough given the significance and long-term implications of such a decision.

Understandably the authors of the interim consequently, (no: 200 of 1993) were faced with a myriad of pressing matters to decide on. Consequently, in setting the time frames for the resolution of all these matters they could not have foreseen some of the obstacles that would accompany the process.

It is with respect that we wish to draw attention to our invitation to make a provincial submission on this question.

Without going into detail we draw your attention to the fact that there are compelling historical, economic, social and geographical reasons why it would be erroneous and not in the National interest for this question to be decided without hearing the case for Bloemfontein - Mangaung as a seat for a National Parliament.

We must also advise that it is not in the National interest for this question to be decided at such an early stage of the drafting of the final Constitution for the country.

There exist real danger that the moment a decision is taken on this question investment patterns and property sales rates will be influenced and even permanently distorted. Some provinces will be negatively impacted upon by such an early decision.

It is our humble submission that to allow for further submissions and therefore more debates on this matter would encourage a fuller examination of the question and final decision to more of less coincide with the adoption of the final constitution.

We have already indicated that there are compelling reasons why a submission by our province for the City of Bloemfontein - Mangaung should be considered.

We urge that when the Theme Committees and the Constitutional Assembly convene, they should be advised of our position, supplied with and availed of the opportunity to study the said submission.

premier/hz/1/116

MGP LEKOTA

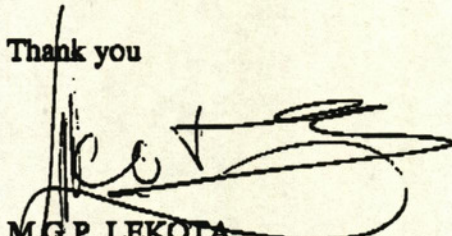
Free State Premier · Premier van die Vrystaat · Tonahgolo ya Forrissetata



We wish to advise that a detailed submission is in an advanced stage of preparation by ourselves and that it will be submitted to you in the next two weeks. Furthermore a team of Provincial representatives will be available to talk to such a submission before the relevant committees and Constitutional Assembly.

Kindly advise us of your position as soon as you can, so that we may follow up on the steps detailed above.

Thank you



M.G.P. LEKOTA  
PREMIER OF FREE STATE



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## THEME COMMITTEE 1 (CHARACTER OF DEMOCRATIC STATE)

### LANGUAGES, NAME OF STATE AND NATIONAL SYMBOLS

#### LANGUAGES

##### 1) Introduction

The transitional Constitution contains provisions relating to languages and official languages in different sections and different chapters, including sections 3, 31 and 107. The most fundamental provision is section 3, which contains extensive rules relating to language rights generally. This submissions deals mainly with section 3.

Section 31 does not deal with the use of official languages in relations between subjects and state authorities, but only with language in social intercourse between subjects. Section 107 contains commendable provisions relating to the use of languages in proceedings in courts of law, but these provisions do not ameliorate the general defective provisions of section 3, which are discussed below.

The Freedom Front submits that the most serious defects appear from section 3(3), 3(6) and 3(8). The Freedom Front has a specific objection to the wording of section 3 and a general objection to the tenor of section 3.

##### 2) Specific objection

The specific objection is that both sub-sections (3) and (6) confer on a person the right to use and to be addressed in his or her dealings with certain government institutions any one of the official languages of his or her choice, but only 'Wherever practicable'. This is a nugatory guarantee, which can be easily circumvented by officials acting in bad faith. This purported right of members of the public cannot be effectively enforced in a court of law, as a court would be unable to determine, according to law, whether the demand to be addressed in a particular language, is 'practicable'.

The same specific objection that can be raised in respect of sections 3(3) and 3(6) can also be raised against section 3(8), which also refers to 'practicality' in the context of legislation relating to the use of languages for government purposes. The two other criteria mentioned in section 3(8) are 'usage' and 'expense'. Both usage and expense can in a large measure be determined by a court of law, but not 'practicality'. The concept practicality is, therefore, non-justiciable, and should be deleted from any constitutional text. Constitutional provisions should be capable of being applied by courts of law.

Section 3 (or its successor in the new Constitution) should contain a prohibition of the repeal of the rights conferred on persons by subsection (3) (and the corresponding subsection relating to use of languages at provincial level) to be addressed in the official South African language of his or her choice, except on the basis of considerations of usage and expense, provided that a 90% majority of the total number of members in a legislature (Parliament or a provincial legislature) should be necessary for such repeal.

The provisions of section 3(9) and (10) relating to the powers of an independent Pan South African Language Board should be amended in order to increase the powers of such Board to include the implementation of the principles set out in sub-section (9), instead of merely promoting respect for such principles, as is at present required by subsection (10).

### 3) General objection

As far as the Freedom Front's general objection is concerned, we are of the opinion that section 3 unsuccessfully attempts to reconcile two irreconcilable premises, viz (i) equal treatment of eleven official languages, and (ii) no diminishing of rights relating to language and the status of languages existing at the commencement of the transitional Constitution. This section should be redrafted in its entirety after a fundamental rethink on matters of principle. In this regard the Freedom Front makes the preliminary proposals set out in the next paragraph.

The Freedom Front proposes (in broad terms):

- (i) There should not be eleven official languages, but a more limited number;
- (ii) The Constitution should contain a safeguarding provision protecting the status of official languages existing at the date of commencement of the Constitution, provided that their existing status prior to the commencement of the Constitution shall not be diminished (see the existing section 3(2));

- (iii) In each provinces there should in most instances be two official languages for the purposes of the functioning of government. This number may not be reduced, but may be increased. Any change in this regard should only be brought about by a decision of the legislature concerned, approved by at least two-thirds of all the members of such legislature;
- (iv) all persons should have the right to use and to be addressed in their dealings with any public administration at any level of government in any one of the official languages of his or her choice, referred to in (iii) above.

#### 4) Main proposal by Freedom Front

The Freedom Front wishes to stress that its general objection under 3 above is its primary objection, which should be dealt with first. The specific objection under 2 should be dealt with only in the event of the general objection not being upheld.

#### NAME OF STATE AND NATIONAL SYMBOLS

The Freedom Front submits that the present name of the country and all its national symbols, including the two national anthems, should be retained indefinitely. The fledgling South African democracy cannot afford acrimonious disputes relating to national symbols, as such conduct would be nationally divisive instead of nationally unifying. In the spirit of reconciliation reflected in the postscript to the interim Constitution of 1993 the name of the state and the existing national symbols should be retained.

Provision should be made, however, for provincial symbols, reflecting provincial institutional integrity (Constitutional Principle XXII: protection of institutional integrity of provinces), as different areas have different characters (Constitutional Principle XI: acknowledgment and protection of the diversity of language and culture in South Africa).

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THEMES/LANGUAGE 31/07/95



1 August 1995

### PAC SUBMISSION FOR BLOCK 9

The name of the country is entrenched in the interim constitution and as a result of that the Pan Africanist Congress is incapacitated by that constitutional constraint.

Were that not the case, the PAC would have much desired that the mere geographic expression and location, "South Africa" be removed and a name be canvassed among the electorate and be given to this country instead of the much tainted geographic expression.

Changing the name of this country would be of much symbolic significance for a country with a majority of people who have been so abused by exploitation and oppression that a lot of psycho-political symbols are needed for their all-round adjustment.

We feel that our people still need a lot of convincing that there is in power a government of their own.

If there is a sound reason for changing names of streets, airports and towns, there is surely a need to give this country a meaningful name and dispense with the geographic expression and identification of the mercantilist explorers and voyagers.

The PAC does not have any problems with the process that is managed by the CA concerning the symbols of our country.

The PAC also does not have any sentiments or attachments regarding the seats of government, all that the PAC is interested in is sound financial thinking and convenience in the consideration of the seats of government.

The PAC accepts the national territory of the Republic of South Africa as enshrined in the constitution.

The PAC would have much desired the amalgamation of Zimbabwe, Mozambique, Namibia, Swaziland, Botswana, Lesotho and the Republic of South Africa into a federation. We believe that the benefits of such a federation are patently self-evident for peoples of these states.

M M Z Dyani - MP



1 August 1995

PAC SUBMISSION FOR BLOCK 7

PAC accepts the present official languages of South Africa as recommended by the Pan South African Language Board and endorsed by the National Assembly.

The languages should at all material times be treated in law and in practice with equal respect for all intents and purposes as they constitute one vehicle for cultural enrichment and national unity.

Ways should be devised by which those people who do not know a Bantu language should be seriously encouraged to master one and that those who do not have knowledge of Afrikaans or English should also be seriously encouraged to master one.

It will also be of importance for those who speak only one Nguni language to be seriously encouraged to master a Sotho language. It must be the same for those who can only speak and write only a Sotho language.

This can be done primarily via the schools and also through a proliferation of cultural clubs and associations designed to promote this necessary multi-lingualism.

MMZ Dyani - MP

