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**CONSTITUTIONAL ASSEMBLY**

**THEME COMMITTEE 4**  
**FUNDAMENTAL RIGHTS**

**CONSTITUTIONAL PUBLIC MEETINGS :**

**KLERKSDORP**

# CONSTITUTIONAL

## ASSEMBLY

CPM MEETING

NORTH WEST

**VENUE:**

**MARKOTTER STADIUM  
KLERKSDORP**

**TIME:**

**14:00**

**TRANSCRIBED BY:**

**INTERNATIONAL DATA SOLUTIONS**

CHAIRPERSON: Goeie middag, good afternoon. Ladies and gentlemen, it is a pity, we are running a bit late behind our schedule, but we are going to start immediately with our proceedings. Let me take the opportunity of welcoming you all present here this afternoon. This whole meeting has been convened so that you, the people of Klerksdorp, can interact with the people of the constituency assembly and inform them as to how the new constitution should be written and I see this is a rather important moment here, unfortunately we don't have so much people present, but suffice to say that your views today will be taken very seriously and at the end of the day what you say might even influence the future of this country. So, let us take this whole matter very seriously this afternoon and I hope that you will have a fruitful time of discussion. Without any waste of time, I am going to call upon the major of Klerksdorp, his worship the honourable Mr Martin Gouws to come and give us an official welcome. Over to you, Mr Gouws.

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MR GOUWS: Maybe I will rather speak English because I don't speak Tswana that well, but I am learning very fast. I am learning faster than Mr Kascus, he will promise you that. Mr Master of Ceremonies, guests of honour, ladies and gentlemen, it is indeed a privilege to welcome in the first place our guests of honour here today. From the national assembly we have Mr Sam Louw. We have Mr Andries Beyers. We have Ms A Themba and P Vilikazi, to them all, I think they are all the way from Cape Town, the most of them, a hearty word of welcome to you here in Klerksdorp.

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But, we also have here our members of the executive committee of our provincial parliament, Ms Riani de Wet, as well as Mr Martin Kascus and fellow citizens of Klerksdorp. I was telling them just now that it is good to see our government coming to the people. When we put these people in power, we said that we are voting to see government being governed by the people and therefore, our government, a hearty welcome here in Klerksdorp.

I would also like to welcome the various staff of the South African Communications Services who are hosting this occasion here today, as well as our different delegates from out Cape Town. A special word of welcome to all you people here from the greater Klerksdorp, the city of people. A great pleasure to have you here today.

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Ladies and gentlemen, it is of utmost importance that we all become actively involved in the constitution making process and I am all glad and I am glad that we all today will learn how to take part in this important step in the history of our country.

Ladies and gentlemen, to be able to write your own constitution is a privilege and I think very little people all over the world have ever had that privilege. Despite the fact that we do have a history of oppression, we do have a history of conflict in this country, but we are all, as fellow South Africans, going to write our new constitution.

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Mr Cyril Ramaphosa has recently made an appeal on all our citizens to take an active interest in the constitution making process. This will be possible

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if all of us attend the workshops and the public hearings which will be arranged in all the cities, towns, farms and rural areas. Members of the constitutional assembly will visit the various areas and places to inform on the process as we see today. We will all get the opportunity to make proposals on what we think about our constitution. We, today ladies and gentlemen, even if we aren't a very large crowd, that we here today will have the opportunity to say our say and we, as we sit here, I see people who are young people, 14 years old. I see people who are adult people. We must say our say today.

Ladies and gentlemen, I was just informed that we are going to ask for a translator so that we can all understand what I am saying. To be able to write your own constitution is a great privilege. It is a privilege which very few people all over the world have had. Despite the fact that we do have a history of oppression and conflict we are going to write the new constitution as fellow South Africans. Mr Cyril Ramaphosa has recently made an appeal on all citizens to take an active interest in the constitution making process. This will be possible if all of us attend the workshops and public hearings which will be arranged.

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Members of the constitutional assembly will visit the various areas and places to inform us on the process. We will all get an opportunity to make proposals on what we think about the constitution. We will today have the opportunity to say our say, the young ones and the adult ones. I therefore make an earnest appeal to you to all get involved in this process. Thank you once

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again for attending this and a hearty word of welcome. Thank you.

CHAIRPERSON: Well, ladies and gentlemen, if the major of Klerksdorp says you are welcome then, I think, you are welcome. Thank you counsellor Gouws for that word of welcome.

I am now going to call upon Ms Riani de Wet, the MEC for media and broadcasting from the Northwest Province to come and make an input on the whole process of communication here, over to you Ms de Wet.

MS DE WET: Thank you very much honourable Chairperson. Both Mr Kascus and Mr Gouws made a point of greetings in Tsetswana. I want to congratulate them on that. I cannot say anything in Tsetswana that they have not already said, but I am also fairly sure that they couldn't say anything more in Tsetswana than they have already said. At least I am sure I can say to Mr Gouws I know some more slogans than he does, so we.

Ladies and gentlemen, we are gathered here today to witness a great symbol, but the practice of something which is very important to South Africa. We are witnessing the act of participation. We are witnessing openness and transparency. These are words that we have used so often in the past. Yet, it is so important to see these things transpiring between government and people. The writing of a constitution is probably the single most important event in the life of any nation.

However, as the honourable major so rightly pointed out, very few people have the advantage and the privilege of sharing in that experience. We, as

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South Africans, are indeed fortunate to share in this experience and when the new constitution is completed, we will be one of very few nations in the world who can say we all participated and whether you are unemployed and homeless or the president of South Africa, you will have had the opportunity to contribute to the constitution and whether you are 10 years old and still at school or 40 years old and a rich business person, you will have had the opportunity to contribute.

The writing of the constitution puts us all on equal footing. Differences in race, gender, age, richness, all disappear. For once in our lives we will be equal. But with every privilege goes duties. It is fine for us all to participate in writing the constitution, but we cannot write that constitution with our secret thoughts. In order to write the constitution we have to say what we think and what we want. Unfortunately so many times when we talk about transparency, openness, consultation it is seen as a one way process. It is so often seen as something that government does for people, but transparency and consultation can only work if it is a two way process. There is no use in government communicating with people if, okay, if at the same time we do not create the opportunities for people to communicate with us. 10

As much as government has to listen, as much as government has to tell you what government is doing, it needs to listen to you to hear what you want. Democracy is not voting once every five years. Democracy is to keep in communication constantly, because your aspirations and your needs, when you 20

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voted for this government in April of last year, may not be the same as it is today and for these reasons it is important that you always remember that there is a government for the people in place and you have to use the opportunity to inform government of your needs, your wishes, your fears, your aspirations and similarly government has a duty and an obligation to listen when you voice your concerns. Today you are here to tell us what you want in the new South African constitution and you might have an idea that you think is a silly idea. You may think it is a small and unimportant idea. I am telling you that it is not. No idea that you would like to convey today is to silly or to unimportant to mention, because even the smallest little idea might turn out to be that one thing that nobody thought about. It might be the one vital little component of the constitution that will make it an even greater constitution. So, I want to beg with you today, share your aspirations with us. Don't disregard any ideas. If you have something that you think would fit into the new constitution, you owe it to yourself and to your fellow South Africans to tell us about that thing and the pride that people who participated in writing the Freedom Manifests has taken in that manifesto will pale in comparison to the pride that you are going to take in the new constitution and when that constitution is finally written, you will be able to take it in your hands and know in your hearts that you have contributed to this constitution and you will be able to show that constitution to your children and your grandchildren and your great grandchildren and say I helped to write this constitution and in that way not only all of us, but all our

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children, our grandchildren and all the generations to come will have ownership in the constitution of South Africa.

Our nation has the opportunity to write a unique constitution. You have the opportunity to help write that unique and wonderful constitution. Take that responsibility and give us your ideas and your thoughts on the constitution for South Africa. Thank you very much.

CHAIRPERSON: I would like to thank the honourable MEC, Riani de Wet, for that inspiring talk on the constitution writing process. I just want to, before I give over to the facilitator of this afternoon, let me just clear up some few ground rules. First and foremost I need to inform this audience that this whole meeting, it is not a political meeting. This meeting hasn't been called by the ANC, neither by the National Party or the PAC, but this is a meeting, a non party political meeting which has been convened by the constituency assembly and we have members here from parliament, from different political parties and their role here this afternoon is to come and listen to what the people has got to say about the constitution. Their brief this afternoon is to actively listen. They will not engage much in discussion with you, but will primarily listen carefully and report to the constituency assembly and let us this afternoon respect our political diversity and focus on one common objective and that is to make sure that South Africa has the best constitution possible.

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I will now call upon Mrs Kathleen Matolo, she will facilitate the rest of the program and explain you how the process, the process that we are going to

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engage in in soliciting your views this afternoon. Over to you Ms Matolo.

MS MATOLO: Good afternoon ladies and gentlemen, our honourable MECs, our honourable major and our honourable members of parliament. Ladies and gentlemen, I feel so honoured to be here today, to come and share this historical meeting with you and the most exciting thing is that where else have you sat with members of parliament on the same, at the same time with people. We are proud of our MPs coming to listen to us. We have elected them and we really feel honoured that they shall be here today.

Ladies and gentlemen, what I wanted to say that there are similar meetings takings place all over the country and the purpose of these meetings are to get an input, questions and submissions, from you ... [TAPE TWO] ... and whatever is going to be written in the constitution is what we have asked our government to write and I appeal to you once again please raise your questions. Give your submissions. We need a constitution that we will be proud of.

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The constitution is written, has different Theme Committees. The Theme Committees appointed was the Constitutional Assembly. They are working at the moment at this following issues. There is Theme Committee number one which is currently discussing the democracy and the character of the state. There is a Theme Committee number two which is dealing with separation of powers and there is Theme Committee number three which is dealing with the nature and the status of the provincial system in local government and there is

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Theme Committee number four which is dealing with constitutional principles.

The, principle, there is Theme Committee number five which is dealing with the appropriate judicial system and there is Theme Committee number six which is dealing with specialised structures of the government. Each Theme Committee has a duty to report to the Constitutional Assembly. Members of different Theme Committees are here, that is going to take over their questions to the Constitutional Assembly and I wish to emphasise again, they are not, I am the only one that is going to speak today. At least they have their chance in the parliament.

Okay, thank you ladies and gentlemen. I will start by asking questions. Is there anyone who wants some clarifications from what I have just said. You can use any language. I can understand and members of parliament do understand.

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SUBMISSION: (Inaudible) ... Constituent Assembly (inaudible) ... now, my question is here, there are some (inaudible) ...

MS MATOLO: I do understand. It is quite difficult but they are actually not allowed to speak but to listen. Only questions for clarifications and answers for clarifications can be given.

SUBMISSION: In English the gentlemen who has just spoken was saying he is of the opinion that we as South Africans also helped in the writing of the interim constitution that was written at the World Trade Centre. He is of the opinion that we as South Africans also helped with the constitution writing process that

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took place at World Trade Centre. So, his problem at the moment is we don't know as yet what happened to that interim constitution or the contents of that interim constitution and if we have got to improve on that, on which aspects of that constitution are we supposed to do it.

SUBMISSION: The convener, I was of the opinion that (inaudible) ... with regard to all that things, so that now we can come, taking things one by one and (inaudible) ... let us get down to the job now. If we accept the clarification (inaudible) ... and then (inaudible) ... accordingly. If we talk of a (inaudible) ... number one. We handle theme number one. We finish and we move on and on and on. That will be my proposal. Thank you.

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MS MATOLO: Okay, thank you Mr Speaker. On the same issues, our members of parliament were, are not expected to speak, but I will ask just a small explanation about the issues and the theme from them, with their permission. Is it okay with you. Theme one, they just want to know what theme one is doing and what (inaudible) ... okay. Ladies and gentlemen, with the, I suggest that we start with Theme number one. Just a brief explanation what does, what that Theme Committee is dealing with. The name of the Theme number one, I will repeat again, is democracy and the character of the state.

UNKNOWN: The theme that I am concerned with, that is theme number one, it deals with the character of the state. It deals with aspects such as the relationship between the government and church. The relationship between the government and the people and the relationship between the government and the

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provinces alike.

This theme number one committee also deals with the government with the relations to the different political parties and how the government is going to handle the issue of the elections and so on and is also going to look into the things such as are we in the future, after the elections, going to have maybe a government of national unity or are we going to go for majority rule or whatever.

Okay, in this theme number one also all the political parties that are represented in parliament make their submissions on how the, should the government look like and today we are going to now listen to your submissions.

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MS MATOLO: Ladies and gentlemen, do we have any questions regarding what was said about theme number one. Do you want to have an input to how you want your. the character of the state to be. There is a question over number three. Okay.

SUBMISSION: In short the previous speaker just said that his submission is he believes that we have got to go for majority rule in the future. The party that is going to get the most votes should be the party that is going to rule the country and he is also of the opinion that the church should also play a role in, on an advisory capacity, to the government to see to it that people's rights are protected and so on.

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MS MATOLO: Your submission has been noted, Sir. Can we move over to you.

SUBMISSION: In short the speaker just said that he is of the opinion that in

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the next elections in 1999 we must go for majority rule in South Africa as he has just put it, the winners takes all situation and then secondly he was saying that he feels, also feels that the tribal authorities must also be afforded an opportunity to make an input into the writing of the new constitution and then lastly he feels that the king should not take part in politics.

MS MATOLO: Your submission has been noted, Sir. Any other question or submission. We got at, number one. You can go ahead, Sir.

SUBMISSION: Chairperson, Sir, I rise to totally second the proposal that was made earlier on that in the next election we have a majority rule. Secondly, I want to table this as my view, the role of religion in government, in my understanding, is going to complicate matters in a sense that South Africa has a whole range of religions. But, I understand that in our opinion and basing that on the past, that when we talk about the religion taking part in government, we are talking about Christianity, but there is other religions in South Africa, then we should also have to note points as to how we place those religions. So, I am saying the church should not take part or should not be part of government so that it will then be the role of the church to be vocal in case things are not going the right way. Can I for now stop here. Maybe I will come at a later stage and thank you.

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MS MATOLO: Thank you, Sir, your submission has been noted. You can go ahead, Sir. Thank you, Sir.

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SUBMISSION: The speaker in short was also talking in support of the previous

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speakers, briefly saying that he also yearns for majority rule and then secondly he also support the previous speakers when they say the church should not take part in politics, but the church should act as a watchdog for the people.

MS MATOLO: Over to you, Sir.

SUBMISSION: Thank you, comrade Chair. My submission lies on the character of the state in the next coming election. Irrespective of the majority rule state or one party rule, right now we seems to realise a most important problems, so my submission is that in the next coming elections we don't need (inaudible) ... people to be in power. That was my submission. I think that is very important.

MS MATOLO: Can you repeat that, Sir, the last sentence.

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SUBMISSION: Ja, shortly, what I have just said is that in the next coming elections, no matter what the kind of state it will be in power, but the most important thing is that we don't need people who are (inaudible) ... What I am trying to say that is that I am commenting on the character of state. What I am saying is that we don't need people who are still lacking character in the next coming elections.

MS MATOLO: Okay, that is noted. Thank you. The next speaker is speaker number two. Thank you, Sir. Your concern has been noted.

SUBMISSION: The speaker was just saying his submission is for a unitary united South Africa with one parliament. He does not agree with the present set up of different provinces and every province having its own provincial parliament. He says it is a waste of money. That money could have been

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channelled to the RDP, if we had one government governing us. So, he says that at the moment the RDP is not working because the money is being wasted by these provincial governments.

MS MATOLO: Thank you. There is a speaker, speaker number four. You can go ahead, Sir.

SUBMISSION: Thank you. I want to thank you convener. I anticipate and I take the sentiments of the last speaker. But, I think, we are not talking of democracy. We are talking, we are going back to the old apartheid system. I think we are, when we talk of democracy, we are talking of the government for the people, by the people and it is very important that the information must go via the whole hierarchy. I wouldn't like to waste time on that. What we were talking about was how we should formulate the government. The characteristics of our government. 10

Firstly and very foremost, I think, it is very important that the three channel system of a government should be very much promoted. The local government, which used to be in the old apartheid system the municipality which was very much exclusive, should be vested where the people are to deliver. Take up all the problems. Put them over provincially, because if should we have one state, talking of the population of South Africa, I think, we might not be able to reach the national government in order to make it our as what should happen. 20

So, what I am trying to say is, it is very much important that we should

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come up locally, put our problems over to the province, so that the province can make the decision making body, which will be national and secondly the powers should be limited. The only decision making body should be national. The province should be the problem carrying body to put it over. So, what I am trying to highlight is our local participation should be very much respected and honoured.

Coming to the second issue of religion. To me, I take religion just as good as the tribal point of it. I would propose that religion, as well as the chiefs and you name it, should please not be party political, because they are very much above party politics. Still supporting the last statement which said the winning party, irrespective, should be the decision making body, because for now, we just wanted the transition to take place. That is why we opted for the government of national unity. That is why we are having the difficulties of people coming in and out unceremoniously. If the party has won, it should be, just like it happened from 1910, when we went over to the Union of South Africa. The people who never participated were very much exclusive. So, then I would like us to please co-opt and say the party which will win in 1999 must go ahead with decision making. I am very much pleased because it will be democratic. It is not going to be anything else.

By saying this, I am saying we want a unitary state which is going to be all inclusive. Let us forget about federalism. Let the decision be made by our top body, because should we come up and say Klerksdorp must make its own

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decisions, but still falling under the province we might find ourselves lost. So and I thank you Mr Convener or Ms Convener.

MS MATOLO: Thank you very much, Sir. Your concerns have been noted. Thank you. The speaker on mike number two. Thank you, Sir. I really appreciate that.

SUBMISSION: The previous speaker is making an appeal to all of us that for the sake of progress and because our program is very, is still very long, we shouldn't repeat what other speakers have said like the issue of the church not taking part in politics. If you are going to repeat that, please don't say it, because it is already noted. But if you have got something contrary to that, that is what you can say and then secondly he is saying people should try to be as brief and to the point as possible so that we can be in a position to finish our program on time. 10

MS MATOLO: Thank you, Sir. There is a speaker on mike number two. Thank you, Sir.

SUBMISSION: Briefly the speaker is saying he doesn't agree with the issue or with the question that the, with that the questions of chiefs and kings should be discussed at parliament because he is of the opinion that it is not a very decisive because ultimately it leads people to saying I am a Metswani or I am a Zulu. So, he feels very, very strongly that that should not be discussed. Our chiefs and kings must still be there and must still be respected, but it is not an issue, according to him, that should be discussed at parliament and that it 20

should be included in the new constitution.

MS MATOLO: Thank you, Sir. I would like to appeal to the speakers to be short. We are running against time. I will take only two submissions from now. Then we will have to move to the next Theme Committee and please, I will rather give people who haven't spoken a chance to say something and I feel very jealous because men only are making all the submissions. Women must also make submissions. We need to be heard. Thank you. I will take a submission on mike number three.

SUBMISSION: Chairlady, I want to, I differ to that I differ with other speakers that has made submission that the church should be separated in politics. The church has played a very prominent part during the apartheid structure and even in the new government the church has always remained neutral in solving the conflict, both in government and out of government.

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Now, when you are going to say that the church must stay out of politics, you mean that the politician of the day should legalise things such as pornography of which we, as the Christian in the country, or to paying 78% tax, saying that the government of the day must ban things as pornography because it decline the standard of family morals in our country.

The second proposal that I want to make is that there has been always a lack of transparency in the past government. Information has been concentrated in the hand of senior official and both the public and frontline workers have been denied the access to information on which key decision are based. This

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has the negative consequences on the credibility and accountability of the government and the ability of the citizen to participate inconvenience.

MS MATOLO: Thank you, Sir. Your submission has been noted. Thank you. The speaker over mike number three. I was starting to be worried. Thanks, there is a woman who is making a submission.

SUBMISSION: Thank you. We would like to see in the next election that the party that has got the majority of the vote should elect parliamentarians that are able to function or do their duties as the, the duties that are transmit. I am not saying that they should be, even if a person has been, is able to do those duties, is unable, but she should show an potential to be able to do those duties, otherwise we get the feeling at the moment that certain people that are in government, because they were in the struggles or they were throwing stones, is measured against the ability to deliver. So, we wouldn't like to see that. In other words, I am saying, I don't know, people seem to think because you threw stones or you are in the struggle, that you are qualified to be in parliament. We all threw stones in different ways. Thank you.

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MS MATOLO: Now, thank you. That is the last question I will take on this Theme Committee. I put it to you, all those who have other submissions to make on this Theme Committee number one, the democracy and character of the state, as I have indicated earlier, you can make written submissions. Then I will organise a box to put those written submissions in it. Can we move over to Theme Committee number two, the separation of powers. I will hand over to

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Theme Committee member to just give us a brief overall of what this Theme Committee is all about. Thank you. Thank you, over to you.

MR BEYERS: Honourable facilitator, in Theme Committee Two we have three representatives here today. It is myself, my name is Andries Beyers from the National Party, Mr Sam Louw from the ANC and Ms Sethema also from the ANC. Other parties in that committee are not present here today.

Our committee handles with the following aspects, in, broadly speaking our committee handles ... (inaudible) ... [TAPE THREE] ...

MS MATOLO: Thank you, Sir. Your submission has been noted.

SUBMISSION: The speaker, the previous speaker just wanted to take up the issue of the president of the country. He says he doesn't have a problem with who the president, the next president is going to be, but his main concern is, we have got to look at the issue of this new president, where does he come from. Where was he born in South Africa. In actual fact what he wants to say or what he said in his, at the end of his speech was he want to know who this person is. Where he comes from and whether he was born in South Africa. If he was born in South Africa, whether his forefathers, his parents and the like, were also born in South Africa.

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MS MATOLO: Thank you.

SUBMISSION: Thank you, thank you, Mr Observer. Ms Convener.

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MS MATOLO: Okay.

SUBMISSION: I would like to come up with this issue here. The question of

the president is not a problem as such, because it will be another problem who will reverse apartheid in other way because I believe that this is democracy and in democracy we have got different views as we have come up here with those views and my question is based here (... African language) ... because this is South Africa and we are all in South Africa, regardless of our colour and the other one, the other one is (... African language) ... It means if it is castle, it is castle. Now, in other words (inaudible) ... Volkstaat is going to be another problem. We will change apartheid in other way round by creating another homeland and it will be a question of money and there are so many black people in all the content of South Africa. So, I don't think that one (... African language) ... If no constitution (... African language) ... we say no homelands and Volkstaat. I think (... African language) ... Thank you very much.

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MS MATOLO: Thank you.

SUBMISSION: In short the previous speaker just said that he believes we are all South Africans and in South Africa and he is of the opinion that every party that wins the elections must elect a president, irrespective of his colour and then he is against the issue of the Volkstaat because he sees it as apartheid in reverse and because it is going to be now another homeland and the other question is if there is going to be a Volkstaat for a certain population group, it means that South Africa is so populated in such a way that you will find people of all population groups in, all over South Africa.

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MS MATOLO: Thank you.

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INTERPRETER: I am going to ask Mr Swanepoel to help me with the translations.

MS MATOLO: Thank you, Sir. The speaker on speaker number three.

SUBMISSION: Okay. There is no need for us in South Africa to have a Volkstaat because we believe that we are one nation, although ... (African language) ... We should not go for such. What we should do is that we should promote reconciliation among ourselves ... (African language) ... as one nation living in South Africa. Then there will be no need for a Volkstaat. I thank you.

MS MATOLO: Thank you, Sir. Thank you, ladies and gentlemen. I would like to make an appeal to you, please make your submissions short, if possible and one by one and we must give people who haven't spoken yet, a chance to speak. As I said, there will be a box which will take all your submissions. It is not the end of the world. I know everybody wants to feed into this constitution, but unfortunately we are running against time. I will have to more speakers on this issue.

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SUBMISSION: Dankie. Most separation of powers. A strong national parliament with a president and vice president only and (African language) ... and provincial government must go with certain powers. Now, on elections, I think, the best election will be on constituency basis and then ...

UNKNOWN: Let us take them one by one. If you are taking them, we are loosing them. The first one ...

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SUBMISSION: A strong national parliament.

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UNKNOWN: A strong national parliament. All you English speakers you understand that, perhaps, I know and the second one.

SUBMISSION: With a president and vice president only and then provincial government must go. That means the Volkstaat it is (inaudible) ... and then when the election is, election on constituency basis so that you can vote for somebody very close to you, not somebody far from you in Klerksdorp or Rustenburg, et cetera, et cetera. Okay, he doesn't want proportional representation. The chiefs can only be in the central parliament, not here at home. Thank you.

MS MATOLO: Thank you, Sir. I will take only one more submission. I am really running out of time. You can go ahead, Sir. 10

SUBMISSION: I am happy what I have heard that people have said now. This government at the moment, he want to stick to this present state of governing together and he wants to see where it will end up.

MS MATOLO: Thank you, I think I am going to move over to Theme number four. I repeat again, I still have my box. All the submissions which have not been voiced over, please will you put your submissions in the box for me please. The Theme Committee number four deals with constitutional principles.

Ladies and gentlemen, we have handled theme number four which deals with constitutional principles. It is related to all what we have been saying. I will have to move back to theme number three which talks about the nature and status of the provincial system and the local government. 20



Ladies and gentlemen, from your submissions we have spoken about the nature. We have spoken about the nature and status of provincial government already and it seems they overlap each other. The separation of powers we have overlapped into the provincial. We have gathered some submissions regarding the provincial system and the local government.

Okay, alright. We move over to Theme Committee number five which is very, very interesting, which talks about the appropriate legal judicial system. I will hand over to one of the Theme Committee members just to give us a brief overall of what the Theme Committee is all about. Ja.

MS MAHLANGU: Good afternoon ladies and gentlemen. My name is Gwen Mahlangu from the ANC and as it has been mentioned I am in Theme Committee five which deals with the legal systems and the judicial. 10

Now, I will just give a summary of what is expected of Theme Committee five and what is expected of your participation this afternoon. We deal with issues like should the constitution spell out the legal system in detail or should it provide only a framework and the legislation will fill in the details. Should there be a separate constitutional court or a unified high court with one or two chambers.

Ja, and then if there is a separate appellate division, should it have constitutional jurisdiction. Should the Supreme Court and appellate division have the power to declare national legislation unconstitutional. Should justice become a provincial competence with provincial appeal courts or constitutional 20

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courts and then should there be a separate provincial division for each province. Should there be community courts. Should there be a judicial service commission and, if so, what should the composition be. Should the constitution spell out more detailed criteria for the appointment of judges. Should there be a greater accountability of the judiciary.

That is should we have a complaints procedure. Should the appellate division be restricted to have a criminal appeal court or to provide for circuit court service, I mean, to service different parts of the country. Okay and the last thing, does the appeal system have to be restructured to allow a proper right to appeal as spelt out in Section 25 of the Bill of Rights. I thank you.

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MS MATOLO: Thank you ladies and gentlemen. I think the lady from the Theme Committee has actually gave us a broad overview of what this Theme Committee is dealing with. Can we take questions from the floor as and I want to emphasise again can you please be brief and give submissions. We shouldn't try and criticise the previous speakers. Just give your submissions. Thank you.

SUBMISSION: Chairperson, I rise to make a number of submissions. One, under the legal system and judiciary within the brief was the question of constitution should deal with details or only principles. I am of the view that the constitution should only deal with principles and the details will be dealt with by the judicial system. The other way round, yes.

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Second submission deals with the appellate division. There was a

question whether should we have one or two appellate divisions. Now, my submission is, my submission is we must have one appellate division. This is an informed position, so that we have uniformity throughout the Republic of South Africa. So that we don't have different rulings for different appellate divisions.

My third submission is on community courts. I am saying the constitution needs to be very vocal on that. The community courts, in my view, are very important in a sense that in every locality within the Republic of South Africa each community has got unique problems and therefore each community would have then the capacity to deal with the problems in their particular environment. I thank you.

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MS MATOLO: Thank you, Sir. Any other questions or submissions on this judicial system.

SUBMISSION: If we are here we must be very strong when we are dealing with these judicial system. What we are recognising is lots of murder in this country. If the law is not very strict here, we will be, for example, lost, lost our lives. We must hold it very strict. There mustn't be differences here and there and there. It must be very short. At this very moment someone is killing someone here. The following day you will see him in the street and what can we say then ...

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MS MATOLO: Therefore.

SUBMISSION: Therefore, yes. I want this judicial system to work. It must

work in a fine way. It must start from the very lowest bottom at the community and going upwards. Up to the top. We must go along with one system. I am happy. Thank you.

MS MATOLO: Thank you, Sir. Your submissions have been noted. I will take two other submissions on this subject. Can you go ahead, Sir.

SUBMISSION: Ja, Mr Chairperson ...

MS MATOLO: Excuse me, I would like to interpret what you have just said, otherwise I loose you. The last speaker just said the government shall be strong and the legislation makers must have the powers to decide that the law must go from the government and be enforced through the courts and the lawyers must tackle it.

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SUBMISSION: Number two. We ask for the next government to make law to be even. It shouldn't apply only to white areas and exclude black areas. The law must be equal and it must affect all South Africans. Thank you.

MS MATOLO: There is a speaker. Can you please move to that speaker, please, to that mike.

SUBMISSION: My input is I have to repeat what the other gentlemen said, but it is just agreeing with him in the sense that I believe that the legal system should be from, you know, the government, the top part of the government and not necessarily like the other gentlemen was saying to the communities. The legal system must be governed by ... [TAPE FOUR] ...

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SUBMISSION: We don't like a system where you have an appeal and you are

waiting five years for it to be heard. He wants a system that from top down, that everybody is using the same system, but there must be somebody appointed that can go as a watchdog and tell the president, for instance, that this law isn't applicable.

MS MATOLO: Thank you, Sir. Your submission has been noted. Shall we give it over to you. You are the last but one speaker.

SUBMISSION: Thank you, Mam.

MS MATOLO: Okay, you can go ahead.

SUBMISSION: The problem is here, we are the taxpayers and then at the same time (African language) ... Now, my point is here, how about in this new constitution (African language) ... Thank you.

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MS MATOLO: Thank you.

SUBMISSION: Ja, he stressed the fact that the people who are stealing and who are taking other people's goods, they are having it for all free and they are staying in the jail for free. There must be a system to let them pay for what they did and he feels that also must be in the constitution.

MS MATOLO: Thank you, Sir. Your submissions have been noted. The last speaker. Can you go ahead, Mam.

SUBMISSION: Thank you. I am standing here concerned. I really don't know whether we have the expertise to discuss this. So, I am making just an appeal that maybe the government needs to go down and educate communities about all these legal issues. Because, you know, when you look at all these terms here, I

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really don't know whether we are giving the input that we should be giving.

Thank you.

MS MATOLO: Just to elaborate on the last speaker's concerns. I understand the government is organising educational programmes. We thought by now, before we came to this meeting, at least the educational programmes would have been done with the community. But, unfortunately, due to time constraints, I think that educational program is going to follow. As I say, it is still not the end of the whole issue. An education program will come and your submissions can be done later. Thank you. I thank you. Can you go ahead then.

SUBMISSION: I am just speaking on one aspect. Somebody kills somebody. 10  
He is being jailed. He is in the court, in the jail. He gets bail. Yes, there mustn't be bail. He mustn't be bailed out because he will come and kill another person again. Somebody steals. He is given bail again. He will steal again. He must be in jail until he has been found guilty. At this time long so this culpitness will be solved there. In the end if somebody kills somebody a second time he must be killed. It must be the same with somebody who steals.

MS MATOLO: Thank you, Sir.

SUBMISSION: Comrade Chairperson, I am aware that this was the last speaker. I am very sorry. I have got just one little point which I was supposed to make mention of it right from the beginning. 20

MS MATOLO: I think I will make ...

SUBMISSION: But it was an oversight on my part.

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MS MATOLO: I will make that exception. As long as it is very short.

SUBMISSION: Thank you ever so much.

MS MATOLO: Okay.

SUBMISSION: It is very short. If you look in South Africa as a whole, most of us have been oppressed, but after 27 April some of us have seen change, but there is that sector of our community that hasn't seen the change and there is no even a hope that they will see that change, those are farm workers and now I am saying the legal system and the judicial must be very strong and vocal on that matter, particularly in terms of working conditions. If you look into every township in South Africa, in every township there are shacks. There are people 10 who have been working for more than 50 years in baas Koos se plaas. Baas Koos has chased those people away for (inaudible) ... Having worked for baas Koos for 60 years. Now, it is my submission that the constitution should not only be vocal on that, but should be firm and constant and to deal with that baas Koos. So that baas Koos begin to change and become South African. He should not be a son of Verwoerd. We don't need those Verwoerd and thank you very much.

MS MATOLO: Thank you, Mr Speaker. But I think you have tricked me on this one, because you just said a second and you went on for 10 minutes. Okay, thank you.

SUBMISSION: I want people to take notice what happen at the police stations. Somebody is reporting a case and there is no reaction at all immediately. If

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there is something like a man beating up his wife, they come running and they will, they don't talk to him in a proper way, yes. If it is rape they will take time to come there and then thereafter there must be no distinction between people before the police and before the law. Let me say prime ministers or MECs and also that children of the MECs they mustn't be treated in a separate way.

MS MATOLO: Thank you. Thank you that is, thank you. That is the last submission I took on this subject. I will move over to theme number six, number four which speaks about the constitutional principles. I will hand over to one of the Theme Committee members. Thank you.

UNKNOWN: Ladies and gentlemen and comrades, I am reporting to you the work of Theme Committee four in parliament. It deals with fundamental rights and their application, whether they must be applied vertically or horizontally. When we talk about vertically, we mean whether they should bind the government from, the central government to the local government. When we talk horizontality, we mean whether they must bind everyone, ourselves as groups, as individuals.

This rights, comrades and friends, some of them include the following, it is the enjoyment of fundamental rights by all. That all those rights should be entrenched in the constitution. The prohibition of racial gender and other forms of racial discrimination and promotion of equality and national unity. The diversity of languages, culture to be recognised and promoted and encouraged. Collective rights of self determination, civil society and freedom of association.

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The rights to form trade unions and collective (inaudible) ... A key to this is the protection and enforcement of fundamental rights. Lastly, the relationship of various charters of rights to the Bill of Rights. We know there are charters like women's charters, worker's charters, et cetera, et cetera. Thank you very much.

MS MATOLO: Thank you, Sir, for giving us that brief over view of the contents of theme number four which deals with constitutional principles.

Ladies and gentlemen, we are really running out of time. I know this is one of the most interesting themes. I please ask you to shorten your questions and submissions and I will have to cut it down. We will have to end at about ten to five about this and this time I am not going to bend backwards. Thank you. Can we start taking submissions regarding the Bill of Rights. Thank you. Ladies and gentlemen, I will suggest that people who want to speak, must as well move forward to the mikes that can be used to try and save time.

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I will have to interrupt you. I am trying to, can I interrupt you, because otherwise I loose you. I am trying to interpret. What the last speaker has just said he says the first thing that the government must try and repeal is the laws within the family because husbands are still living with that old tradition that what is his is his and the wives are still subordinate. They have to start changing that.

Men must stop using their power to undermine women rights. The laws of the country must be designed to protect even women so much that men may be, we must be equal and the same laws of the same, of the country must apply.

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The next speaker, please.

SUBMISSION: Thank you, Mam. The trade unions see they play a major role in South Africa and abroad and then in that way and then at the same time those people are exploited, harassed and the working conditions, especially coming to the question of the salaries, safety, they don't use safety equipment and then you will find that the people are living hazardly. They are not happy. You will find that Piet is having a farm here and the next five kilometres another farm and he is not looking after the people.

MS MATOLO: I am sorry, I am sorry, Mr Speaker. I am sorry, Mr Speaker, I will have to interrupt you there. This is actually not a forum. There are specialised fields of the law, like the Labour Relations Forums where this, such issues can be raised. What we need to here is just brief summary of what rights you want in the constitution, but not to discuss how it is done. Thank you.

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SUBMISSION: Thank you. He wants the laws to be written down in the constitution so that they can easily be dealt with.

MS MATOLO: Thank you. The next speaker, please.

SUBMISSION: I want to add something on tradition and languages. We, but as far as I know we are having 11 official languages. But what is amazing is that most (inaudible) ... that is English and Afrikaans. I want to notify this, all the languages must be official. They must be used officially in all those 11 languages in the full sense of the word. I thank you. He wants all the traditions of each and every group be protected by the Bill of Rights.

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MS MATOLO: Thank you, ladies and gentlemen. I will take two more speakers on this subject. As I said earlier all the people who haven't submitted their submissions, I have got a box where you can write your submissions. I have got an address. If you have to, want to sit at home and think about what we have been through today, we still have an address where you can send your submissions. The address of the Constitutional Assembly where you can send it. The box is just with the organiser.

UNKNOWN: Where is the box.

MS MATOLO: There it is. Those who want to write directly to the Constitutional Assembly the address is to the Executive Director, the Constitutional Assembly, P O Box 15, Cape Town, code, 8000. The address is the Executive Director, the Constitutional Assembly, P O Box 15, Cape Town and the code is 8000. Be assured that all your submissions will be attended to. Okay, I will take another question from the speaker over there.

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SUBMISSION: Okay, thank you. My point on this constituency principles. I would like to look at them collective right. I think if we are, on this quoting us, if all of us, if all in all (inaudible) ... the rights of all the people in general must be given the first priority in our government in order to balance, to cover all our nationals. So, but, I am still having that thing of the minority. The minority rights must not be ignored in this country, as we are different nations with different cultures. I think if you will help us a lot to make always our (inaudible) ... to be properly look upon. Thank you.

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MS MATOLO: Thank you, Sir. Your submissions have been noted. I will take the last, but one.

SUBMISSION: Thank you, Chairman. I want to stress something on language. Land, sorry.

MS MATOLO: Thank you, Sir.

SUBMISSION: Land mustn't be owned by somebody. It must be handed over to another person. You only have it to use it.

MS MATOLO: Ladies and gentlemen, I know that this is a very, very interesting topic, everybody wants to say something, but I still say this is not the end of the process. This is just the beginning of the process. We can make written submissions. You can attend workshops. There will be workshops arranged all over the country. You still have, can make an input on how you want your constitution to be. With that I would like to end the, any questions on this theme. Thank you. 10

SUBMISSION: Chairperson, I am speaking for the last time. Ja, I think the fundamental human rights are sufficiently covered in the present constitution. That could also serve as a basis for fundamental human rights in the new constitution. But, you see, we speak of experience here. Now, this is my submission, the fundamental human rights that I am saying they are sufficiently covered within the present constitution are being interpreted out of context, deliberately by a certain group of people, like the language rights. Some people are using the language rights to segregate against other South Africans. 20

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Now, I am saying the new constitution should guard against that. If you guard against people interpreting fundamental human rights so as to suit a special type of apartheid, a special type of segregation. Like maybe to give that more life. To say here is a group of people, are saying because we have got the language right, we want to build up a school there, where we will only be teaching people in Afrikaans. You see, those, that kind of issues are totally unacceptable.

So, I am saying the constitution should guard against the syndrome of people interpreting the fundamental human rights within their context, not within the context of the constitution and not within the context of the national unity and I thank you. 10

MS MATOLO: Thank you, ladies and gentlemen. If you promise me to talk for two seconds then I will give you the permission.

SUBMISSION: Okay, I am asking for the people who are going to write the new constitution, people from 50 years upwards must get pension. I thank you.

MS MATOLO: Thank you the speaker. We have noted your submissions. Ladies and gentlemen, I propose that I, we end our submissions, but please, as I have said earlier on, there is a box where you can put in your written submissions or a post box in Cape Town where you can write your submissions.

But, at the same time, but I would really encourage people to attend constitutional talks and constitutional workshops. At least you will have more input into what you want the constitution to look like. I encourage every word, 20

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please encourage everybody who is not even here, that this is a very important and it is a very historical process of our lives. We have never done this before and I think this is a very important phase of our live. Thank you ladies and gentlemen. I will hand over to our MEC, Riani de Wet, to propose closure. Thank you.

MS DE WET: Thank you Madam Facilitator. Ladies and gentlemen, I was just thinking that I have seldom seen anything arranged by government with so many people from Klerksdorp sitting on the stage. I would like to extend a special word of welcome to the people who joined us late. Gwen, Maracial, whom you all know, and Rachel Rasmeni and then of course there is myself and Martin Kascus who are also from Klerksdorp. Now, we are not suppose to promote provincialism, but I can say that Klerksdorp is great. 10

Ladies and gentlemen, I want to thank the members of the Constituent Assembly and the people from the South African Communication Services who have taken the initiative in arranging this historical meeting. But most of all I would like to thank you who, as private citizens of this country, have identified this very important process that our country is undergoing.

I want to thank you for taking the courage, to take the matter into your hands and to start shaping it. We are still a long way from the finished product. This is just the beginning of the process and I hope, I sincerely hope that as this process continues, that you will all continue to take part in it. That you will attend all the other workshops in your areas and continue to give such a 20

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positive and thought out input as you have demonstrated today.

I have been asked to sum up today's events and I have diligently been taking notes of everything that people said. However, it is very difficult to summarize as this is not a decision making event. A number of contradictory positions have been raised. However, on some issues consensus seem to have been reached. We have heard a strong voice for majority rule in South Africa. We have discussed the role of the church and there are conflicting positions on this and I think it is clear to our colleagues from the CA that this is one position which need further consultation.

There seems to be a general consensus that traditional leadership play a very important role in South Africa. That they cannot be ignored. But that the role that they play should not be a political one. We have had advocates for provincial governments and we have had advocates against provincial governments. Clearly another area that we need to reflect on is the

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There has been very strong voices against the idea of a unitary state and a number of proposals for one president and only one department.

We have discussed the issue of courts and laws and what that came up time and time again here is fairness and that all people should be before the law and should be treated as such not only in courts, but also by the police.

With specific emphasis on non racialism and non sexism.

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We have looked at human rights and fortunately an area where we did not have a lot of time for discussion. But, we had a brief look at traditional laws

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and especially where those laws discriminate against woman. Another important issue that came out under rights is the issue of land, language and culture.

If there is one area that I have to express my disappointment it is the very little participation we have seen from women. To those women who have contributed I want to thank you. To all the women here I want to make a special plea, we come from a long history of male domination and very often we find women scared to speak out. I want to impress on you that we are writing this constitution not just for ourselves. We are writing it for our sons and our daughters. We are writing it for our grandsons and our granddaughters. For their sake reflect on the future that you would like them to have and make your inputs to the constitution making process throughout the process. 10

The convener has given you the address of the Constituent Assembly. It is a address that you will see in many newspapers repeated quite frequently. I believe there are posters being printed with the same address on that are distributed through government offices. But, most important of all, there will definitely be more forums of this nature held in the Klerksdorp area and I would like to ask you to canvass amongst your friends and acquaintances and families so that the whole community can become involved in writing this constitution.

I would like to remind you, however, of what I said when opening this meeting. That in your very presence here you have earned the right to call yourselves co-writers of the South African Constitution and for that I congratulate you. Thank you very much for your participation. 20

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*CavanderBergh*

C A VAN DER BERG  
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*Potgieter*

H POTGIETER  
EDITOR

INTERNATIONAL DATA SOLUTIONS  
P O BOX 7715  
PRETORIA  
0001  
TEL: 012- 335-6707  
FAX: 012-808-2601