

8/4/12/32

**A27**

**CONSTITUTIONAL  
ASSEMBLY**

**THEME COMMITTEE 1  
CHARACTER OF  
DEMOCRATIC STATE**

**12 JUNE 1995**

**ROOM M515  
14H00**

**DOCUMENTATION**

## TABLE OF CONTENTS

<b>NO.</b>	<b>DETAILS</b>	<b>PAGE</b>
1.	Notice and Agenda	1 - 2
2.	Minutes of Theme Committee Meeting held on the 5 June 1995	3 - 7
3.	Article from Cape Times of 2 June 1995	8
4.	Report for Block 4: Accountable Government	9 - 48
5.	FF Submission for Block 5: The Economy	49 - 51

## 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, 12 June 1995  
**Time:** 14h00 - 17h00  
**Venue:** Room M515 (Marks Building)

---

#### AGENDA

1. Opening
2. Apologies
3. Adoption of previous minutes *[Pages 3 - 7]*
4. Matters Arising
5. Discussion of draft report for Block 5 (The Economy)  
*[See: Extra Documentation A27]*
6. Tabling and discussion of submissions for Block 6 (Representative Government) *[See: Extra Documentation A27]*

ACDP  
ANC  
DP  
FF  
NP  
PAC

7. Public Participation

- 8. General
- 9. Closure

---

H EBRAHIM  
EXECUTIVE DIRECTOR  
CONSTITUTIONAL ASSEMBLY

---

Enquiries: L Rammble and S Rabinowitz (Tel: 24 5031 Ext 2266)

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

**MINUTES OF THE MEETING OF THEME COMMITTEE 1  
MONDAY 5 JUNE 1995 14H00 ROOM M515**

**Present  
Mahlangu NJ (Chairperson)**

**Booi MS  
Chiba L  
Chikane MM  
Cwele CS  
Gumede DM  
Janse Van Rensburg AP  
Kuzwayo NEK  
Macozoma SJ  
Majola-Pikoli NT  
Marais A  
Marais PG  
Meshoe KR  
Momberg JH  
Moorcroft EK**

**Mukhuba TT  
Ncube BS  
Nobunga BJ  
Routledge NC  
Shope G  
Shope NR  
Sisulu AN  
Streicher DM  
Van Deventer FJ  
Van Zyl ID  
Vilakazi BH  
Williams AJ**

**Apologies:**

Chiwayo LLL  
Goosen AD  
Kekana NN  
Lekgoro MK  
Mulder PWA  
Niehaus CG  
Nzimande BE  
Ripinga SS  
Schoeman EA

**Technical Experts present:**

Corder H  
Heunis JC

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

**1. OPENING**

1.1 The meeting was opened by the Chairperson at 14h05.

**2. ADOPTION OF PREVIOUS MINUTES**

- 2.1 The Minutes of the Theme Committee held on Monday 29 May 1995 contained in Document A26 (Pages 3 - 7) were adopted

**3. MATTERS ARISING**

- 3.1 None.

**4. FINALIZE DRAFT REPORT FOR BLOCK 4 (ACCOUNTABLE GOVERNMENT)  
(Extra Documentation A25 - Pages 1 - 5)**

- 4.1 It was agreed that, as there were no further submissions by parties on this issue, the Report was approved for submission to the Constitutional Committee.

**5. DISCUSSION ON DRAFT CLAUSE ON "SUPREMACY OF THE  
CONSTITUTION" (Extra Documentation A25 - Page 6)**

- 5.1 Prof Corder reported to the Theme Committee that when the draft clause had been tabled at the Constitutional Committee meeting on Friday 26 May, the question had been raised as to how this clause would fit together with the opening clause of the Bill of Rights as there might be a contradiction between the draft clause and the opening clause of the Bill of Rights.
- 5.2 It was agreed that this matter would stand over for discussion until Theme Committee 4 had drafted the opening clause to the Bill of Rights.

**6. TABLING AND DISCUSSION OF PARTY SUBMISSIONS FOR  
BLOCK 5: THE ECONOMY**

**6.1 ACDP**

The ACDP tabled its submission contained in Document A26 (Pages 9-12) and talked to the document making the following amendments:

- Page 11, paragraph 3, the last sentence, the words "as envisaged in our submission to Theme Committee 4" should be deleted.
- Page 12, third line, the words "speaking a principle of equality" should be deleted.

Questions of clarification were asked on whether the ACDP believed in the Biblical concept of "jubilee" and if so, whether this did not

contradict their submission. The ACDP did not see any contradiction in this matter. Clarification was also sought on whether our current system did not regulate government spending of taxpayers money adequately. With regard to the question of affirmative action being limited to 5 years, the ACDP noted that it was flexible on this issue.

6.2 ANC

The ANC tabled and talked to its submission contained in Document A26 (Page 14).

Questions of clarification focused on the reference to unpaid labour, to the time limit on affirmative action programmes and to workers rights in relation to employers' rights.

The ANC stressed that these are guiding principles which should be taken into account in the Constitution.

6.3 DP

The DP tabled its submission contained in Document A26 (Page 15 - 16) and talked to the document.

Clarification was asked for on the issue of how to determine an "equitable share of revenue collected nationally". The DP clarified this was this wording was taken from Constitutional Principle XXVI and that they were in agreement with the full wording and spirit of the Constitutional Principle.

6.4 FF

The FF submission contained in a separate document was tabled. It was agreed that, as FF had submitted an apology for the meeting and were unable to be present, there were no questions of clarification.

6.5 NP

The NP tabled its submission contained in Document A26 (Pages 19-20) and talked to the document.

Questions of clarification were asked on the issue of private ownership of land and on the issue of child labour, which the NP clarified that they did not support.

6.6 PAC

The PAC submission contained in Document A26 (Pages 21-22) was tabled. As no member of the PAC was present, the submission was

noted for the record and there were no questions of clarification.

- 6.7 It was agreed that members of the Drafting Sub-committee would meet this week with the Technical Experts to draft the report for this block and that the Secretary would arrange the meeting.

## 7. PUBLIC PARTICIPATION

### 7.1 CPM's in June 1995

The Chairperson reported on the proposed CPM's for the month of June and asked that parties submit names of members wishing to attend to the Secretariat. With regard to Kwazulu/Natal, concern was raised about the change of location and the bringing forward of the date of one of the CPM's in the province as members had made prior commitments. It was suggested that the CPM on 10 June be moved to 24 June but it was agreed that members would keep the 24 June open until further information had been obtained, and that the Secretary should raise these concerns with the administration.

## 8. GENERAL

- 8.1 Prof Corder drew the members attention to the document on Page 26 and 27 of Document A26 entitled "Suggested constitutional provisions on the status of international treaties" and noted that this was to assist parties in their submissions for Block 8 on Foreign Relations and International Law.

He further tabled the document "Ages for Franchise " on Page 28 of Document A26 which was information members of the Theme Committee had requested in order to assist parties in preparing their submissions for Block 6 (Representative Government, Suffrage and Citizenship).

- 8.2 The Memorandum from the Executive Director regarding "Notification of Matters referred" contained in Document A26 (Page 8) was tabled. It was agreed that Item 1. dealing with referenda would be dealt with by the Theme Committee in the next block, Block 6 (Representative Government).

It was further agreed that submissions pertaining to Item 2. (Minority Participation) would be referred to Theme Committee 2 as requested in the memorandum.

- 8.3 A suggestion was made by the Technical Experts that a request be made that all submissions pertaining to International Law should be referred to Theme Committee 1 so that Theme Committee 1 could



deal with this issue in its entirety. It was agreed that this request should be made and that the Secretary should convey this to the administration.

- 8.4 A member of the Theme Committee who had attended the CPM on 3 June in Kimberley reported that the meeting had gone well.

**9. CLOSURE**

- 9.1 The meeting rose at 15h55.

  
\_\_\_\_\_  
CHAIRPERSON

(N. S. Mahlangu)  
06/06/95

# Christians and the secular state

JOHN W DE GRUCHY

**V**ARIOUS religious communities in South Africa have expressed strong feelings against the proposals before the Constitutional Assembly that South Africa become a secular state. Recently a group of Christians marched to Parliament to express their misgivings.

Many other Christians, including well-known church leaders, who might have been engaged in protest marches under the previous regime, were notably absent. What are the issues, and what is at stake?

A secular state is a modern political invention which was made necessary, initially in Europe and North America, after the collapse of Christendom in the 16th Century, and especially after the 18th Century Enlightenment. It took into account the fact that there was no longer a religious consensus based on the authority of the Roman Catholic Church.

State churches continued to exist in various parts of Europe, such as the Church of England, but, after a considerable struggle on the part of dissenting or free churches, it soon came to be accepted that all religious communities should have the freedom to worship and witness according to their conscience.

Hence the separation of church and state in the United States, and the passing of the Voluntary Act by the Cape Parliament in 1875. The fact that in most modern countries today many different religious traditions and faiths co-exist has made this even more necessary. The alternative is the domination of one religion.

A secular state does not mean a state without moral values; a religious state does not mean one that is highly moral. The

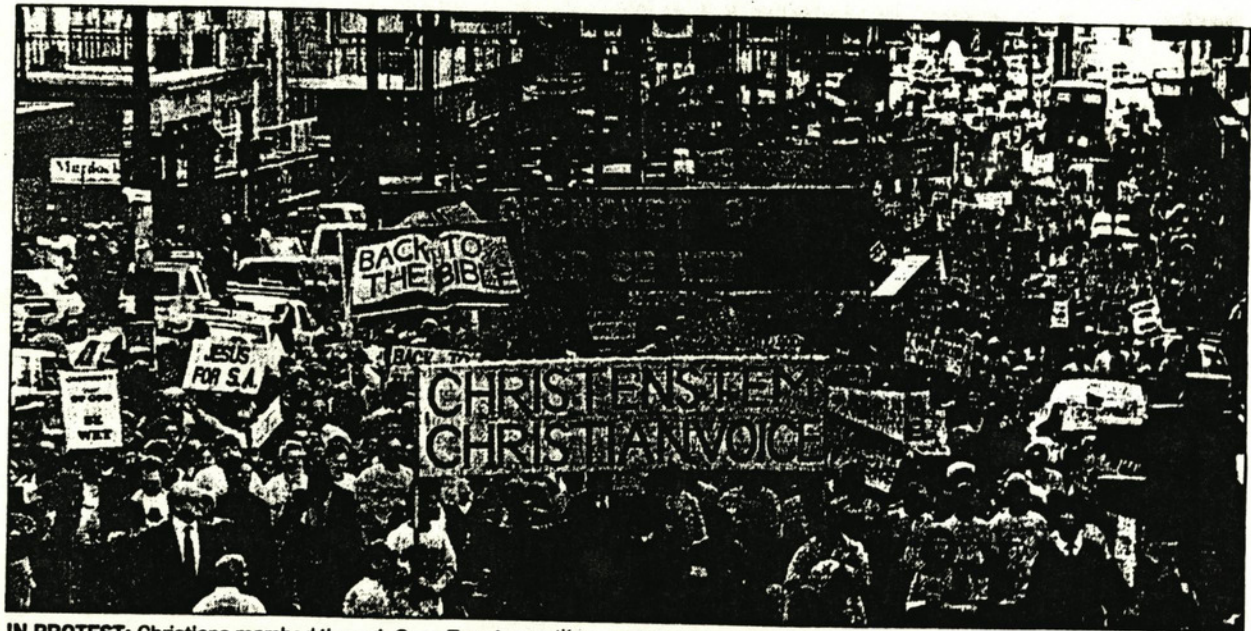
apartheid constitution insisted that South Africa was a religious country and specifically a Christian one. But we all know that this did not prevent South Africa from embarking on a process of racist legislation that was the very antithesis of Christian values.

We also know that this did not prevent corruption in high (and low) places; neither did it prevent certain people from visiting the homelands for a gambling binge and dirty weekends. We would have needed vast hordes of "moral policemen" to prevent such breaches of our religious constitution. They tried at Sandy Bay, and failed. In any case, they were too busy trying to keep apartheid's law and order. So we ended up, not with moral values, but with a great deal of self-righteous hypocrisy.

Some Christians now claim that because South Africa is a predominantly Christian country (75% is the figure usually quoted), this entitles Christians to determine the values of the country.

Two things need to be said. The first is to applaud those who have taken to the streets to protest against an erosion of values. At long last some Christians, who previously argued that they should not be engaged in political action, have come to recognise that this is a Christian responsibility. Let's hope they will also protest as strongly against all forms of injustice and oppression, including the oppression of women.

The second is to remind us that even though 75% of the population may be Christian, there is certainly no agreement among all Christians on the issues at stake, otherwise all Christians would have voted for the same party. Some churches, for example, are against abortion on any account because they uphold the sanctity of life, but they disagree with other Christians



IN PROTEST: Christians marched through Cape Town's streets on Tuesday to express their misgivings about a secular state.

PICTURE: NIC BOTHMA.

who are against capital punishment for precisely the same reason.

So if we had a Christian state we would have to decide which Christians should determine dominant values for everyone else.

Even if we agree that the Bible should be the basis, we would have to agree on its interpretation, and not even so-called "Bible-believing Christians" agree on everything.

So we come back to the need for a secular state. But not a state without moral values,

nor a state which rides roughshod over religious communities or infringes the freedom of religious conscience.

I, too, am concerned about pornography because of the way in which it degrades women and distorts sexuality.

Laws may well be needed to prevent this, but laws can only function if they are able to be implemented. What is of greater importance is the creation of communities which are committed to moral values, and therefore communities which can act as the "salt of the earth".

What is of equal importance is to ensure that the church exercises its true prophetic role in society, keeping those in power accountable to the norms of justice and equity, for upholding these is the primary responsibility of the state.

The failure of the state to maintain moral values in a country which is so religious — and 75% Christian — is surely not a judgement on its constitution nor on the government, but on the churches themselves. [John de Gruchy is Robert Selby Taylor, Professor of Christian Studies at UCT.]

***CONSTITUTIONAL ASSEMBLY***

***THEME COMMITTEE ONE***

***CHARACTER OF  
DEMOCRATIC STATE***

***REPORT ON BLOCK 4:***

***ACCOUNTABLE  
GOVERNMENT***

***5 JUNE 1995***

**REPORT FROM THEME COMMITTEE ONE**

**BLOCK 4: ACCOUNTABLE GOVERNMENT**  
**5 JUNE 1995**

**PART ONE**

- A)** Summary Overview of submissions received and processed by Theme Committee One from sources outside the Constitutional Assembly (Vols 18 and 19) - see attachment.
- B)** The Technical Committee conducted an Orientation Workshop on 19 April before parties made their submissions on the subject matter of this Block, for which the attached Briefing Document was compiled.
- C)** Public Participation Programme:
- None of the submissions received from the public during the CPMs was relevant to the agenda items being dealt with by the Theme Committee in Block 4.
- D)** No public hearings were held on this agenda item.
- E)** 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.*

**VI**

*There shall be separation of powers between the legislature, executive and judiciary, with appropriate checks and balances to ensure accountability, responsiveness and openness.*

**IX**

*Provision shall be made for freedom of information so that there can be open and accountable administration at all levels of government.*

## XXVII

*A Financial and Fiscal Commission, in which each province shall be represented, shall recommend equitable fiscal and financial allocations to the provincial and local governments from revenue collected nationally, after taking into account the national interest, economic disparities between the provinces as well as the population and developmental needs, administrative responsibilities and other legitimate interests of each of the provinces.*

## XXIX

*The independence and impartiality of a Public Service Commission, a Reserve Bank, an Auditor-General and a Public Protector shall be provided for and safeguarded by the Constitution in the interests of the maintenance of effective public finance and administration and a high standard of professional ethics in the public service.*

## XXX

*1. There shall be an efficient, non-partisan, career-orientated public service broadly representative of the South African community, functioning on a basis of fairness and which shall serve all members of the public in an unbiased and impartial manner, and shall, in the exercise of its powers and in compliance with its duties, loyally execute the lawful policies of the government of the day in the performance of its administrative functions. The structure and functioning of the public service, as well as the terms and conditions of service of its members, shall be regulated by law.*

*2. Every member of the public service shall be entitled to a fair pension.*

## PART TWO

### AGENDA ITEM 5: ACCOUNTABLE GOVERNMENT

#### A. GENERAL DISCUSSION OF THE MATERIAL

All the parties confined their submissions to issues of broad principle, and there was a substantial degree of concurrence between them. As is the case in other Blocks, much of the detailed consideration of these issues falls within the scope of the work of other Theme Committees, so that the focus on broad principle is appropriate.

#### B. NON-CONTENTIOUS ISSUES

**I)** All parties support the goal of accountable government, and that structures and mechanisms to achieve this object be included in the final constitutional text. The following particular aspects of accountability enjoyed general support as important contributors to

the achievement of accountability:

- i) the concept of the separation of powers between legislature, executive and judiciary, and the concomitant checks and balances between these branches of government;
- ii) the executive's accountability to the legislature, and the legislature's accountability to the electorate, through fair and regular elections;
- iii) the establishment (or continuation), independence and impartiality of institutions, such as the Public Protector, various Commissions, the Auditor-General and the Reserve Bank, as mechanisms to foster accountability and expose maladministration;
- iv) the pursuit of the principles of "transparency" or "accessibility to information"; and
- v) the creation of an effective regime for the protection and furtherance of fundamental rights, based on the principles of equality and freedom.

II) Beyond the above central aspects of accountability, the following additional aspects were stressed by the parties concerned:

**ACDP:** Emphasized that all power is derived from God, and that accountability starts with individual self-control. Proposed a two-chamber system of government to further mutual checking of power, and a code of conduct for members of government at all levels, which recognised the aspects of morality, servanthood and honesty, among others.

**ANC:** Mentioned the parliamentary committee system as a means "to ensure executive accountability to an informed parliament". Stressed the independence of the judiciary and the need for the members of the Bench to be drawn from the fullness of South African society.

**DP:** Concentrated on the fundamental rights of every citizen to hold the government accountable, as well as the indispensability of access to government information.

**FF:** Divided its submission into sections on legal and political accountability, the former (the government's subjection to the law) being the "first curb on government powers". Emphasized the political accountability (embodied in the Constitutional Principles) of the government towards minority political parties (XIV) and other

particular communities (XXXIV, read with XI and XII), in addition to the aspects mentioned above.

**NP:** Added the following mechanisms to those mentioned: the "full range of parliamentary control mechanisms", and the "distribution of powers among different levels of government".

**PAC:** Concentrated on the accountability of the bureaucracy.

**C. CONTENTIOUS ISSUES**

None.

**PART THREE**

The Theme Committee will be dealing with the issue of "the economy" in the next Block. An orientation workshop based on a briefing document drawn up by the Technical Committee was held with the Theme Committee on Monday 15 May. Reaction from the public on this issue has already been sought by means of media advertisements.

**ANALYTICAL SURVEY OF REPORT BY THEME COMMITTEE ONE  
ON BLOCK 4 - ACCOUNTABLE GOVERNMENT**

NO.	CONSTITUTIONAL PRINCIPLES	ISSUE	CONTENTIOUS ASPECTS	NON-CONTENTIOUS ASPECTS	REMARKS
1.	II, VI, IX, XXVII, XXIX, XXX	Accountable Government	None	<p>Accountable Government pursued through:</p> <p>1) checks and balances through separation of powers</p> <p>2) the legislature's accountability to the electorate through elections;</p> <p>3) institutional mechanisms to check maladministration and corruption and to further equality;</p> <p>4) transparency and freedom of information;</p> <p>5) the protection of fundamental rights</p>	<p>concept to be included as a goal in the Preamble/postamble</p> <p>-----</p> <p>Within the jurisdiction of TC 2</p> <p>-----</p> <p>Within the jurisdiction of TC 6</p> <p>-----</p> <p>Within the jurisdiction of TC 4</p>



# ***SUMMARY OVERVIEW***

**SUMMARY OVERVIEW OF SUBMISSIONS FROM  
SOURCES OUTSIDE PARLIAMENT**

NAME AND LOCALITY	SUBJECT MATTER OF SUBMISSIONS GERMANE TO THEME COMMITTEE ONE	DATE SUBMITTED
<b>INDIVIDUALS</b>		
S Abrahams Yeoville	Devolution of Powers as determined by Kwazulu-Natal and applicable to other provinces To assure democracy - united provinces of South Africa Strong Local Government	15/3/95
Anonymous St Michaels-on-sea	Afrikaans, along with English, retain official language status	29/3/95
Anonymous	Accountable Government on all levels - if corrupt to be fired and jailed.	
L Brink Klerksdorp	Recognition of Afrikaans	
M von Bentheim Southfield	Constitution as fundamental basis of law & rights. Desecration of national symbols an act of aggression. N'kosi Sikelela kept as unofficial anthem. Tune of "land of hope and glory" with pertinent S A lyrics reflecting history as new anthem.	
K R Brown Northmead	Representative government on regional basis and recognition of "Tribes" democracy Recognises geographical and representation related to actual voter support. Consult constituency and provide proof thereof.	23/3/95
K Cressey Petersmaritzburg	Accountable government, free market	20/2/95
R E Chalom Bruma	State which adheres to rule of law	8/3/95
M Choice Diep River	Supremacy of biblical principles on constitution	16/2/95
K Durman Wetton	Inclusion of reference to "Almighty God" in the post/preamble.	
G F Davies Kokstad	Equality for all and Sovereign State. No laissez-faire economic constitution but assistance and restrictions by government.	9/3/95
M J De Jager Fochville	Sovereignty of whites, no equality as people not equal and reintroduce segregation. Only four provinces Suffrage: only land owners. Union flags and Die Stem only.	15/2/95

NAME AND LOCALITY	SUBJECT MATTER OF SUBMISSIONS GERMANE TO THEME COMMITTEE ONE	DATE SUBMITTED
M Dreyer Sunnyside	Electoral College, who nominate those on the party lists. Democracy is essential information necessary component and access to delegates in Parliament. Public debate makes accountable universal franchise.	15/2/95
M Ebrahim et al (18 individuals) Cape Town (environs)	No GNV - one party rule. One anthem (No to the stem) Own flag - Black, Green & Gold	
C Errington Mowbray	Flag to be kept. English, Afrikaans and main African languages of the area to be official. Retain name: South Africa . Anthem: "I vow to thee, my country" by Gustav Holst.	5/4/95
S Frank Caledon	Franchise qualified by age, academic qualifications, contribution to the integrity of the state (military service)	
Z Hoffman Marina Da Gama	Equality before the law	27/2/95
C H Hutchinson Saldanha	Transparent & accountable government. Representative democracy - devolution of power to local authorities.	26/4/95
L Hugo Botrivier	Accountable government	14/2/95
A Hoogervorst Jacobs	Preamble must include reference to responsibilities which come with freedom. Mandatory universal franchise Transparent government Independent audit of assets and Speaker of Parliament to call members to account.	18/2/95
R Haw Somerset West	Economy: Restore control of currency and credit to government from banks. Advocates new mechanisms to control inflation and national debt. International trade on "Barter" basis - equal exchange. Old debt written off.	6/3/95
Prof W A Kleynhans Brooklyn Pretoria	Direct elected parliamentary representatives from constituencies, not through proportional representation. Franchise only to those with standard six. Multiparty democracy not power-sharing Parliamentary sovereignty, majority rule in unitary state.	21/1/95
R Kruger Orange Grove	Preamble: Insert words "...By the collective will of South Africa's people..." Parliament as servant of political will of people. Constitutionally enshrined accountability. Democratic imperatives in all decision-making bodies.	23/3/95

NAME AND LOCALITY	SUBJECT MATTER OF SUBMISSIONS GERMANE TO THEME COMMITTEE ONE	DATE SUBMITTED
J H Kemp	Preamble to include: In humble submission to Almighty God who is judge over all universe, and whose principles we uphold, we, the people of South Africa declare..."Against secular state. Separation church and state and no established department of religion. Proportional representation.	
P Kasi Mdaulsane Ext	Democracy and equality but with corrective action to address past inequalities.	19/1/95
M A Kollmer Benoni	Equality guaranteed, leaders to be accountable to the law. Moral state	19/3/95
J Kisten Malvern	Education in english requested. Preamble: Christian reference	17/2/95
J Kilbey Claremont	Keep flag and name as is, consider tremendous cost to change.	5/4/95
H Mohammed Lotus River	Majority rule on universal franchise united S A with equal common citizenship, strong central parliament. Democracy	
N Morland Sandton	Equality and no discrimination on basis of age.	21/2/95
M Mulandzi Mulima Location Louis Trichardt	Equality, Sovereign state	6/3/95
I J Morolo Themba (Hammanskraal)	Changing names last thing to be done due to lack of money. Redraw bantustan boundaries	12/2/95
V Mpaku Atteridgeville	Cope of conduct for government economic equality	3/3/95
D P G Makoare Katlehong	Revision of national anthem - two verses of "N'kosi Sikelele i Africa" & two verses of Morena SechabaSe Heso (Sotho version).	16/3/95
S Mokhothu Matwaberg	Equality	
M M Mokoena Witsieshoek	Devolution of power to provinces. Supremacy of constitution.	13/3//95
A Midgley	Federalism - accountable government Equality - not included on basis of sexual orientation in non discriminatory grounds.	13/3/95
E J Marais Sannieshof	Equality, Sovereign state. Serious criminal taken off voters' roll.	28/2/95
J C Mentz Krugersdorp	Democratic federal system. Government not too large flexible boundaries determined by cultural characteristics. Free movement. No Volkstate	2/3/95

NAME AND LOCALITY	SUBJECT MATTER OF SUBMISSIONS GERMANE TO THEME COMMITTEE ONE	DATE SUBMITTED
M Ndevu	Unitary state. Central government - no federalism Equality	
S G Nothard Northcliff	Equality. Sovereign state. Free market	5/3/95
Dr M Peer Odin Park	Constitution supremacy. One constitution for whole of South Africa. Provincial government to be regulated nationally	
R Patterson Eerste River	Inclusion of Holy God (Trinity) in constitution (post/preamble)	10/3/95
A Rousseau Tygerpark	Name of god to be included in Preamble religious leaders represented in government, at least be able to.	5/4/95
M Ranjee Lenasia	Equality. One Sovereign State Accountable government	3/3/95
H L Ryan Muizenberg	Unitary state with substantial devolution constitutional supremacy. Economic accountability	11/4/95
Reich et al (17 signatures) Cape Town	Sitting of parliament to remain in Cape Town.	4/4/95
J Selfe Cape Town	Bicameralism as means of accountability. More representative of provincial interests.	7/3/95
D P Stoffberg Pretoria	New flag, more aesthetically acceptable. Four colours - orange, white, blue & green. Afrikaans not to be given inferior status. Sport emblem must be the springbok.	20/2/95
T Seffore Chaneng	Democracy Zulu "Volkstaat"	2/3/95
D Strong Durban	Provision requiring governance of country based on christian value.	29/3/95
B Smith Vanderbyl Park	Do not change names, too costly	19/2/95
H B Sigupa Lamontville	Strong national government. Accountability, equality. One official language	21/2/95
F Schoeman Kinross	Free market system	13/2/95
A Smith Knysna	Federal with doctrine of subsidiarity. Regional equality. Constitutional supremacy	21/3/95
D V Thompson Umhlali	Not secular. Preamble to be "In humble submission to Almighty God who is judge over all the universe, whose principles we uphold and in whose mercy we trust, we the".	

<b>NAME AND LOCALITY</b>	<b>SUBJECT MATTER OF SUBMISSIONS GERMANE TO THEME COMMITTEE ONE</b>	<b>DATE SUBMITTED</b>
G J van Tonder Wonderboom	Not secular state. Character based on majority morality.	6/4/95
J Thuynsma Mitchell's Plain	Democracy, universal franchise. Constituencies unitary state in multi-party system. Supreme constitution. No provinces.	
D F Voy Havick	Preamble/Postamble: "We people of SA declare our submission to Almighty God, who is judge over all the universe, whose principles we uphold & mercy we trust..." Accountable government	30/3/95
E De Wit Klerksdorp	Equality Federalism	
M M Wilkinson Hillcrest	Strong federal government	1/2/95
N A Yazbele Sunnyside	Equality: One Sovereign State	
<b>ORGANISATIONS</b>		
Centre for conflict resolution	Spell out content of international law. Economic & other relations with Southern African States. Equality	
Institute for defence policy	Constitutional supremacy. Rule of law. Central government functions in residual powers like defence. Recognise international law agreements and custom.	
Jam'latul Ulama Natal	Muslim community problems with anthem, as contravenes belief in monotheism.	15/1/95
Lugnos Congregation Linden	Secular not majority view. Spiritual accountability. Separation church & state. Preamble: Include reference to god as judge over universe, and whose principles we uphold.	
English academy of Southern Africa Johannesburg	Secular constitution. Transparency entitled to language of equal use.	12/1/95
Redhouse Ratepayers Association Redhouse	Suffrage on local level only property owners	26/2/95
South African Students Congress	Maintenance of language rights. Accountability governance through administrative justice. Unitary democracy	
Transvaal Municipal Association	Federal/Confederal system 3 tiers of representative government. Constitutional supremacy citizenship, basis of suffrage.	9/2/95

NAME AND LOCALITY	SUBJECT MATTER OF SUBMISSIONS GERMANE TO THEME COMMITTEE ONE	DATE SUBMITTED
Free Market Foundation of Southern Africa (Johannesburg)	"The Republic of SA shall be one, independent state, in which the people are sovereign". Supremacy of the constitution universal franchise. Maximum devolution of power - regional & local governments with real decision making powers. Accountability Sovereignty must lie with the people. Free society - limited government, decentralisation, devolution of powers, individualism & personal responsibility. Free economy - governed by market forces	
Dikwankwetla Party of South Africa Witsieshoek	Federal system - division of powers between national and constituent autonomous regional governments. Constituencies and proportional representation. Eleven official languages	3/4/95
The Federal Party Johannesburg	No representative democracy. Direct democracy implemented through referendums. Decentralisation of political power to regions and cities. Accountable government - recall procedure	
<b>GOVERNMENTAL INSTITUTIONS</b>		
Volkstaatraad	Language-retention of 53, qualified by stating that the status of the language should be that as at 27 April 1994. Eleven (11) official languages at National level. Regional differentiation w.r.t. language policy is permissible. Right to use and be addressed in language at one's choice, for public and administrative purposes. Citizenship - single South african citizenship defined by legislation. This does not preclude a specific volkstaat citizenship within a afrikaner volkstaat. Franchise restricted to persons over 18 years, not subject to any disqualification set out in legislation. Also includes right to vote for volkstaat, regional government and in referendums.	

NAME AND LOCALITY	SUBJECT MATTER OF SUBMISSIONS GERMANE TO THEME COMMITTEE ONE	DATE SUBMITTED
CPG - Commission on Provincial Government	National constitution should provide for provincial constitutions as this has through decentralisation. Provincial legislatures should be entitled to increase, but not reduce their powers. CPG doesn't support any change to relevant provisions in interim constitution. Changes to legislative procedures and structures must comply with constitutional principles. Fiscal powers and functions of provinces outlined in constitution.	24/3/95
Provincial Administrator Western Cape Cape Town	More extensive powers for provinces wording clearly define functions, viz - "planning and development of strong nation concept". Special constitutional protection of minorities. Creation of capital territory totally independent of a province, for seat of Parliament and other important structures 10th province - eg's Washington DC & Cranberra. Change schedule 6 to allow provinces to administer national parks and other resources.	24/2/95



***BRIEFING DOCUMENT  
FOR BLOCK 4***

# THEME COMMITTEE ONE

## BLOCK 4: BRIEFING DOCUMENT

### AGENDA ITEM 5: ACCOUNTABLE GOVERNMENT

#### 1. INTRODUCTION

In its Final Report on Block 1, Theme Committee One agreed that the following points were not contentious:

- C) "Fundamental rights of the person shall be protected in an entrenched Bill of Rights, justiciable by an independent judiciary.
- D) The normative values underlying the Constitution shall be accountability... and transparency.
- I) There shall be a separation of legislative executive and judicial powers in the State.
- J) The Executive shall be accountable to Parliament".

Thus the Theme Committee has already noted the importance of the idea of accountable government. The issue is wider than the above points, however, and what follows below is, in summary form, an attempt to set out background facts for consideration by the members of the Committee.

Once more, it is important to stress the non-prescriptive nature of what follows.

#### 2. TRANSITIONAL PROVISIONS

Discussion occurs against the background of various provisions to be found in the Transitional Constitution of 1993.

- 2.1 The relevant Constitutional Principles are the following (per Revised Work Programme p14):

## 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.*

## VI

*There shall be a separation of powers between the legislature, executive and judiciary, with appropriate checks and balances to ensure accountability, responsiveness and openness.*

## IX

*Provision shall be made for freedom of information so that there can be open and accountable administration at all levels of government.*

## XXVII

*A Financial and Fiscal Commission, in which each province shall be represented, shall recommend equitable fiscal and financial allocations to the provincial and local governments from revenue collected nationally, after taking into account the national interest, economic disparities between the provinces as well as the population and developmental needs, administrative responsibilities and other legitimate interests of each of the provinces.*

## XXIX

*The independence and impartiality of a Public Service Commission, a Reserve Bank, an Auditor-General and a Public Protector shall be provided for and safeguarded by the Constitution in the interests of the maintenance of effective public finance and administration and a high standard of professional ethics in the public service.*

## XXX

*1. There shall be an efficient, non-partisan, career-orientated public service broadly representative of the South African community, functioning on a basis of fairness and which shall serve all members of the public in an unbiased and impartial manner, and shall, in the exercise of its powers and in compliance with its duties, loyally execute the lawful policies of the government of the day in the performance of its administrative functions. The structures and functioning of the public service, as well as the terms and conditions of service of its members, shall be regulated by law.*

*2. Every member of the public service shall be entitled to a fair pension.*

- 2.2 These principles emphasize the following aspects of accountability:
- 2.2.1 the key role of protecting certain fundamental rights as inalienable by government and as providing the basis for constitutional action;
  - 2.2.2 that the vertical separation of powers (between legislative, executive and judiciary) provides another foundation for the checks and balances crucial to accountability;
  - 2.2.3 that access to government information and openness of government processes are indispensable to accountability;
- and
- 2.2.4 that certain mechanisms crucial to accountability have been specified to be included in the final Constitution e.g. Financial and Fiscal Commission, Public Protector and Auditor-General.
- 2.3 The Transitional Constitution of 1993 provides for these matters as follows:

- 4. (1) *This Constitution shall be the supreme law of the Republic and any law or act inconsistent with its provisions shall, unless otherwise provided expressly or by necessary implication in this Constitution, be of no force and effect to the extent of the inconsistency.*
- (2) *This Constitution shall bind all legislative, executive and judicial organs of state at all levels of government.*
- 7. (1) *This Chapter shall bind all legislative and executive organs of state at all levels of government.*
- (2) *This Chapter shall apply to all law in force and all administrative decisions taken and acts performed during the period of operation of this Constitution.*

22. *Every person shall have the right to have justiciable disputes settled by a court of law or, where appropriate, another independent and impartial forum.*

23. *Every person shall have the right of access to all information held by the state or any of its organs at any level of government in so far as such information is required for the exercise or protection of any of his or her rights.*

**24.** *Every person shall have the right to –*

- (a) lawful administrative action where any of his or her rights or interests is affected or threatened;*
- (b) procedurally fair administrative action where any of his or her rights or legitimate expectations is affected or threatened;*
- (c) be furnished with reasons in writing for administrative action which affects any of his or her rights or interests unless the reasons for such action have been made public; and*
- (d) administrative action which is justifiable in relation to the reasons given for it where any of his or her rights is affected or threatened.*

**92.** *(1) A Minister shall be accountable individually both to the President and to Parliament for the administration of the portfolio entrusted to him or her, and all members of the Cabinet shall correspondingly be accountable collectively for the performance of the functions of the national government and for its policies.*

**110.** *(1) There shall be a Public Protector for the Republic.*

**111.** *(1) The Public Protector shall be independent and impartial and shall exercise and perform his or her powers and functions subject only to this Constitution and the law.*

**112.** *(1) The Public Protector shall, in addition to any powers and functions assigned to him or her by any law, be competent –*

- (a) to investigate, on his or her own initiative or on receipt of a complaint, any alleged –*
  - (i) maladministration in connection with the affairs of government at any level;*
  - (ii) abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function;*
  - (iii) improper or dishonest act, or omission or corruption, with respect to public money;*
  - (iv) improper or unlawful enrichment, or receipt of any improper advantage, or promise of such enrichment or advantage, by a person as a result of an act or omission in the public administration or in connection with the affairs of government at any level or of a person performing a public function; or*

- (v) *act or omission by a person in the employ of government at any level, or a person performing a public function, which results in unlawful or improper prejudice to any other person;*
- (b) *to endeavour, in his or her sole discretion, to resolve any dispute or rectify any act or omission by –*
  - (i) *mediation, conciliation or negotiation;*
  - (ii) *advising, where necessary, any complainant regarding appropriate remedies; or*
  - (iii) *any other means that may be expedient in the circumstances; or*
- (c) *at any time prior to, during or after an investigation –*
  - (i) *if he or she is of the opinion that the facts disclose the commission of an offence by any person, to bring the matter to the notice of the relevant authority charged with prosecutions; or*
  - (ii) *if he or she deems it advisable, to refer any matter which has a bearing on an investigation, to the appropriate public body or authority affected by it or to make an appropriate recommendation regarding the redress of the prejudice resulting there from or make any other appropriate recommendation he or she deems expedient to the affected public body or authority.*
- (2) *Nothing in subsection (1) shall be construed as empowering the Public Protector to investigate the performance of judicial functions by any court of law.*
- 115. (1) *There shall be a Human Rights Commission, which shall consist of a chairperson and 10 members who are fit and proper persons, South African citizens and broadly representative of the South African community.*
- 153. (1) *A member of an Executive Council of a province shall be accountable individually both to the Premier and the provincial legislature of the province for the administration of the portfolio allocated to him or her, and all members of an Executive Council shall correspondingly be accountable collectively for the performance of the functions of the provincial government and for its policies.*
- 185. (1) *There is hereby established a National Revenue Fund, into which shall be paid all revenues, as may be defined by an Act of Parliament, raised or received by the national government, and from which*

*appropriations shall be made by Parliament in accordance with this Constitution or any applicable Act of Parliament, and subject to the charges imposed thereby.*

- 186.** *The Minister responsible for national financial affairs shall in respect of every financial year cause to be laid before the National Assembly an annual budget reflecting the estimates of revenue and expenditure, which shall, inter alia, reflect capital and current expenditure of the government for that year.*
- 187. (1)** *The procurement of goods and services for any level of government shall be regulated by an Act of Parliament and provincial laws, which shall make provision for the appointment of independent and impartial tender boards to deal with such procurement.*
- 191. (1)** *There shall be an Auditor-General for the Republic.*
- 192. (1)** *The Auditor-General shall be independent and impartial and shall exercise and perform his or her powers and functions subject only to this Constitution and the law.*
- 193. (1)** *The Auditor-General shall audit and report on all the accounts and financial statements of all the accounting officers at national and provincial level of government, other than that of the office of Auditor-General, and of all other persons in the national and provincial public services entrusted with public assets, trust property and other assets.*
- 198.** *There is hereby established a Financial and Fiscal Commission.*
- 199. (1)** *The objects and functions of the Commission shall be to apprise itself of all financial and fiscal information relevant to national, provincial and local government, administration and development and, on the basis of such information, to render advice and make recommendations to the relevant legislative authorities in terms of this Constitution regarding the financial and fiscal requirements of the national, provincial and local governments, including –*
- (a) financial and fiscal policies;*
  - (b) equitable financial and fiscal allocations to the national, provincial and local governments from revenue collected at national level;*
  - (c) taxes, levies, imposts and surcharges that a provincial government intends to levy;*
  - (d) the raising of loans by a provincial or local government and the financial norms applicable thereto;*

- (e) *criteria for the allocation of financial and fiscal resources; and*
  - (f) *any other matter assigned to the Commission by this Constitution or any other law.*
- 209. (1)** *There shall be a Public Service Commission for the Republic, which shall have the powers and functions entrusted to it by this Constitution or by a law of a competent authority.*
- 212. (1)** *There shall be a public service for the Republic, structured in terms of a law to provide effective public administration.*
- (2)** *Such public service shall –*
- (a) *be non-partisan, career-orientated and function according to fair and equitable principles;*
  - (b) *promote an efficient public administration broadly representative of the South African community;*
  - (c) *serve all members of the public in an unbiased and impartial manner;*
  - (d) *be regulated by laws dealing specifically with such service, and in particular with its structure, functioning and terms and conditions of service;*
  - (e) *loyally execute the policies of the government of the day in the performance of its administrative functions; and*
  - (f) *be organised in departments and other organisational components, and the head of such department or organisational component shall be responsible for the efficient management and administration of his or her department or organisational component.*

### **3. THE TASK OF THEME COMMITTEE ONE**

**3.1** As with much of the early work of Theme Committee One, the details in regard to the above matters have been allocated to other Theme Committees, as follows:

**3.1.1** all matters relating to the fundamental rights of access to justice, to information and of administrative justice, as well as the scope of application of the Bill of Rights (TC4);



3.1.2 the separation of powers and consequential accountability between branches and organs of government (TC's 2 and 3);

3.1.3 the Public Protector and Human Rights and Financial and Fiscal Commissions, Auditor - General and Public Service matters (TC's 3 and 6); and

3.1.4 the role, structure and independence of the courts and judiciary (TC5).

3.2 The Revised Work Programme (p13) suggests the following framework for discussion in regard to accountability:

(a) "Constitutional mechanisms to ensure government accountability.

(b) Accountability with reference to: national and provincial legislatures, the electorate and affected individuals.

(c) Access to government information.

(d) Administrative justice and accountability to the judiciary".

#### 4. THE SIGNIFICANCE OF THE NOTION OF THE ACCOUNTABILITY OF GOVERNMENT

4.1 The idea of government accountability is central to the very notion of democracy.

In its most basic form, it exists in the electorate's right to vote a government out of office. (In this regard, it is perhaps interesting to note that many submissions from the public call for the "right to recall" public representatives who fail to live up to their promises or are corrupt. Some submissions also raise the issue of referenda as a means of electoral accountability).

4.2 In between elections, citizens rely crucially on their fundamental rights as contained in the Constitution.

Here it is important to note that South Africa's transitional bill of rights (in particular sections 23 and 24) breaks new ground, and is regarded with some admiration elsewhere in the world. In addition to entrenched rights, the ordinary legal system also provides the means of judicial control over executive action (through what is known as administrative law).

- 4.3 As regards legislative action, accountability to the judiciary is exercised through measuring Acts of Parliament (and provincial legislation) against the standards and provisions set out in the Constitution.
- 4.4 Most modern democracies also provide for specialist, impartial and independent bodies to monitor government, particularly as regards corruption and maladministration. This is where the Public Protector, Auditor-General and the various Commissions become significant.
- 4.5 As regards finance as a whole, the fact that the executive must request Parliament to approve the spending of money through an annual Budget is a key element of accountability between the branches of government.

Other means of accountability in this regard are the idea of ministerial responsibility to Parliament (both individually and collectively) and the existence of Parliamentary Committees to scrutinise legislation and the actions of Government departments.

## **5. CONCLUSION**

The above are some of the issues which needs to be discussed under the heading, "accountability of government". It may be that what is required of Theme Committee One is an endorsement of the very notion of accountability as a key element of the final constitution, a reference to the desired form which such accountability should take, and a specific reference to accountability and openness in the Preamble (Block 10). Further details could then be left to the appropriate Theme Committee's.

This decision is, of course, entirely in the hands of the Theme Committee, but it is hoped that this document has provided a useful starting point.

It will be expanded upon orally at the Orientation Workshop on 19 April 1995.

***PARTY SUBMISSIONS***

**AFRICAN CHRISTIAN DEMOCRATIC PARTY  
(ACDP)**



**SUBMISSION TO THE CONSTITUTIONAL ASSEMBLY  
THEME COMMITTEE ONE**

**ACCOUNTABLE GOVERNMENT**

Government is inherently seen to turn on the twin axes of power and money. The erroneous idea is accepted that curbing those elements will bring accountable government. Let it immediately be said that the ACDP fully supports measures to control the abuses of power and finances as these will go some way towards establishing responsible government, but we clearly wish to state this is not enough.

All authority and its limitations are delegated. According to the Bible, which 78% of South Africans accept as the ultimate truth, all authority comes from the Creator God. Therefore, no person or group has any rightful power over others, which is not derived from God. The government that God instituted in Romans 13 is to be His servant to the good of all citizens.

This provides a clear test for any government anywhere in the world. The citizens who base any code of conduct for their leaders on this simple and profound truth will indeed prosper.

It is further impossible to deny that it is crucial to grasp the question of the source and function of governmental authority. The authority of any system of thought is the god of the system. If a national government establishes the will of the people, an elected elite, a court of law, or an individual as the ultimate authority, that is the nation's god.

Hugo Grotius (1583 - 1645) said it well when he spoke of the importance of commanding authority in ever-growing spheres when he stated:

*"He knows not how to rule a kingdom, that cannot manage a Province, nor can he wield a Province, that cannot order a City, nor he order a City that knows not how to regulate a Village, nor he a Family that knows not how to Govern himself, neither can any Govern himself unless his reason be Lord, Will and Appetite her Vassals, nor can Reason rule unless herself be ruled by God, and (wholly) be obedient to Him."*

This is indeed the key to responsible government: begin with responsible individuals.

In Exodus 18:21 (N.I.V.), we see that the first civil government was to consist of able men who feared God, [a primary consideration], men of truth, and those who hated dishonest gain. [It is the duty of the citizens to know those being selected.]

He must manage his own family well and see that his children obey him with proper respect...He must also have a good reputation...they must first be tested; and if there is nothing against them, let them serve... — *cancel* -

It is clear that the accountability starts with the individual - and the same goes for accountable government: A self-governed individual is someone who can regulate his attitudes and actions without the need for external coercion. A self-governed individual will exercise control and obey the law of God from the heart, while someone who lacks self-control must be forced to obey.

This is the reason why the Bible states in no uncertain terms "that the law is not made for [the] righteous, but for those who are lawless and rebellious, for the ungodly and sinners, for the unholy and profane, for those who kill their fathers or mothers, murderers and immoral men and homosexuals and kidnappers and liars and perjurers and whatever else is contrary to sound teaching. (1 Timothy 1:9-10).

The ACDP maintains that it will be a pointless exercise to draw up codes of conduct for parliamentarians and government officials at all levels, without recognising the aspect of morality.

Any society that has a history of self-control among its citizens has a foundation stone of biblical morality. The nations that attempt to copy the fruit of such a moral society, without also incorporating the root, is destined for ultimate collapse. Christian virtues will be counterfeited and attempts will be made by those in civil government to force a humanistically conceived morality in the name of "the people" in a sincere desire for a man-centred utopia. Such regimes will never succeed and indeed, history has shown that it will breed discontent, injustice and denigration of traditional values.

It is important to realise that power, and consequently, the abuses thereof, flows in hierarchies. It most often happens that power-abuses take place where the individuals at the top of the pyramid perceive themselves to be accountable only to themselves. Because they, at that point, become a law unto themselves, they will seize more and more power.

The best way to counter this is to ensure that power is divided equally. It is submitted that a two chamber system of government will allow one chamber to keep members of the other in check, which will be conducive to a balance in power.

The ACDP proposes the following to be included in any proposed code of conduct:

- A member shall at all times adhere to the constitution and its principles. He or she shall acquaint himself or herself with the constitution of the country.

- A member will at all times behave in keeping with his/her status, as a representative of this country - both nationally and internationally. He or she will adhere to all the laws of the country, irrespective of the level of government promulgating them, and will, at all times, behave in a self-controlled and dignified manner - as befits a representative of the people.
- A member will put the interests of the citizens before his or her own, whenever possible - this illustrates the character of servanthood.
- A member will, at all times, be honest in business and personal matters. Dishonesty in any form must be strictly dealt with.
- A member will render all possible assistance to the Offices of the Receiver of Revenue, the Auditor-General and for any other bodies concerned with the auditing of his or her matters of finance.
- Members will respect the religious convictions of others.
- Members will lead by way of example in observing basic human rights and in personal and business matters.
- Members will acknowledge the spheres of Authority of God, of the family, the Church, and civil government after first acquainting themselves with these.

# AFRICAN NATIONAL CONGRESS SUBMISSION TO THEME COMMITTEE 1

## BLOCK 4:

### ACCOUNTABILITY

In a democratic South Africa there shall be democratic accountability of all organs of state power. This should be underpinned by principles of transparency, freedom of information, creation of a culture of human rights and promotion of appropriate participation in government decision making processes.

### SEPARATION OF POWERS

There shall be a separation of power between:

1. Executive,
2. Parliament, and
3. Judiciary

### STRUCTURAL ACCOUNTABILITY

#### a) Executive Accountability

1. The Executive shall be accountable to parliament.
2. There shall be a parliamentary committee system, structured to ensure executive accountability to an informed parliament. The committee shall have a right to consider forthcoming legislation and to initiate new legislation to the relevant ministry.

#### b) Parliament

1. There shall be regular elections every five years.
2. The constitution shall be the Supreme Law of the country.
3. The parliament shall be the Supreme Law maker of the country and shall be the expression of the will of the people.

#### c) Judiciary

1. There should be an independent judiciary within the context of a democratic society.
2. The appointment of judges shall be democratised to reflect the composition



and aspirations of South African society.

## **INSTITUTIONAL MECHANISMS**

There shall be:

1. Constitutional Court and Public Protector.
2. Financial and Fiscal Commission.
3. Effective and independent Auditor General and Reserve bank.
4. Public Service Commission.
5. Human Rights Commission.

To: Ms Leola Rammable  
Managing Secretary  
Constitutional Assembly

Ref: T.C.1/4

DEMOCRATIC PARTY SUBMISSION TO THEME COMMITTEE ONE  
ON ACCOUNTABLE GOVERNMENT

In respect of Accountable Government, the Constitutional Assembly is required to give effect to the following Constitutional Principle.

Schedule 4  
IX

"Provision shall be made for freedom of information so that there can be open and accountable administration at all levels of government".

By "Accountable Government" the DP understands the right of every citizen to hold the government to account for the manner in which it discharges its responsibility towards the powers which have been vested in it. These powers include the capacity which a government might have to influence an individual's rights to life, equality, human dignity, freedom, security, privacy, religion, belief, opinion, expression, association, movement, demonstration, residence and any other right generally contained in the category known as "fundamental human rights".

Accountability also includes the right of any individual to hold the government to account for the manner in which it has discharged its duties towards the administration of the Department of State for which it is responsible. This particular right is exercised through granting an individual the right to vote in a free and fair election.

Constitutional provision for accountable government should be made by binding all legislative and executive organs of state at all levels of government to certain fundamental rights as contained in the constitution.

The DP proposes that this might best be effected by devoting a chapter of the Constitution to fundamental rights and then making provision for the application of these rights to government.

Accessibility to government information is an indispensable adjunct to accountability and should be provided for, except in exceptional cases where the security of the state would be placed in jeopardy by disclosure.



# VRYHEIDSFRONT

P.O. Box 74693  
Lynnwood Ridge  
0040

Tel. (012) 47-4477  
47-4375  
47-4450/54/14/58

1st Floor Atrium 4  
Perseus Park  
cor. Camella and Priority Roads  
Lynnwood Ridge  
Fax (012) 47-4387

## THEME COMMITTEE 1

### CHARACTER OF THE DEMOCRATIC STATE

#### SUBMISSIONS ON ACCOUNTABILITY

##### 1) General

The concept of accountability in the context of the new Constitution is of a dual nature, legal and political. There is a link between the two: the broad parameters of political accountability are drawn by law, as will appear from the Constitutional Principles referred to below. Reference to legal accountability is therefore necessary as a background for submissions in respect of political accountability.

##### 2) Legal accountability

Legal accountability is the result of the concept of 'the rule of law', according to which not only citizens but even the government itself is subject to law (both common law and statute law).

Legal accountability means that the government can be held civily accountable as a defendant or respondent in a court of law for unlawful acts committed by persons officially representing the state, from ministers of state down to the humblest officials. (The government cannot be held criminally responsible, although government officials can incur personal criminal liability for official acts, unless indemnified by law).

The legal accountability of the state or state officials is governed by administrative law, which is technically a subdivision of constitutional law that has developed considerably in South Africa during the past three or four decades.

Administrative law prescribes that official acts performed outside the scope of enabling statute are ultra vires and therefore void or invalid; that executive or administrative discretions that are performed with an ulterior motive (ie an

object not contemplated by the enabling legislation), or capriciously (not taking relevant considerations into account), or mala fide, etc. are invalid. In the case of so-called quasi-judicial administrative acts additional rules apply, i.e. the so-called 'rules of natural justice', viz that the official or body concerned must not be biased and must hear other interested parties before making a decision. Some of these rules are reflected in section 24 (Administrative justice) of the transitional Constitution.

Legal accountability is the first curb on government powers where illegal action by or on behalf of the state is alleged, as legal rules, when invoked in a court of law, must be complied with. Political accountability, however, is not dependent on a breach of the law and is therefore enforced not in courts of law but in the political arena, according to political expediency.

### 3) Political accountability

There are a number of examples of political accountability reflected in the Constitutional Principles contained in Schedule 4 of the transitional Constitution, some of which are mentioned below.

- 1) The concept of 'a democratic system of government' (Constitutional Principle 1) implies political accountability inherent in the concept of democracy, the essentials of which have been noted elsewhere.
- 2) The 'separation of powers' referred to in Constitutional Principle VI refers to appropriate checks and balances to 'ensure accountability, ...' etc. (stress supplied). In this context not only legal accountability (responsibility of the government, executive or state administration to the courts - see the reference to administrative law above) is meant, but also political accountability (responsibility of the executive to the legislature).
- 3) The 'representative government' referred to in Constitutional Principle VIII implies political accountability of the government to the electorate, as this Principle requires regular elections, universal adult suffrage, etc.
- 4) Constitutional Principle XIV requires 'participation of minority political parties in the legislative process in a manner consistent with democracy'. This requirement implies political accountability of majority political parties towards minority political parties.
- 5) Constitutional Principle XXIX requires the 'independence and impartiality of a Public Service Commission, a Reserve Bank, an Auditor-General and a Public Protector'. This requirement is aimed at ensuring the

professional accountability (legal and political) of the said institutions and persons to the public service and to the public generally.

6) Constitutional Principle XXX, describing the attributes of the public service, reflects the legal and political accountability of the public service towards the public and towards the government of the day whose lawful policies it must execute.

7) Constitutional Principle XXXII requires the national executive to function 'substantially in the manner provided for in Chapter 6 of this Constitution' (ie the transitional Constitution). This duty reflects political accountability of the government towards the country as a whole.

8) Constitutional Principle XXXIV provides for the possibility of 'constitutional provision for a notion of the right of self-determination by any community sharing a common cultural and language heritage, whether in a territorial entity within the Republic or in any other recognised way'. This Principle reflects the legal and political accountability of the Constitutional Assembly towards particular communities.

This above-mentioned accountability should be considered in conjunction with the mandatory provisions of Constitutional Principle XII (protection of collective rights of self-determination in forming, joining and maintaining organs of civil society) and the more general provisions of Constitutional Principle XI (acknowledgment and protection of diversity of diversity of language and culture). Both Principles XI and XII impose political and legal duties and therefore accountability on the Constitutional Assembly.

#### 4) Submission by the Freedom Front

Theme Committees generally (and in this instance Theme Committee 1) should give effect to the exposition of legal and political accountability set out above.

-----

## NATIONAL PARTY SUBMISSION

### THEME COMMITTEE 1

#### BLOCK 4: ACCOUNTABLE GOVERNMENT

In terms of Constitutional Principle VI, there shall be a separation of powers between the legislature, the executive and the judiciary, *with appropriate checks and balances to ensure accountability, responsiveness and openness.* (Italics added.) This commitment refers to a crucial aspect of any democratic constitutional system. In the final analysis, any democratic system is based on two indispensable premises, namely *representative* government (those in government must be representative of the people, which can be determined only through free and fair elections) and *responsible* government (the elected government must be responsible to the representatives of the people and to the people themselves and may govern only with their continuous support). The reference to accountability in Constitutional Principle VI can be said to represent this latter essential component of a democratic system.

For this reason, we, *firstly*, concur with the inclusion of an express commitment in the constitution (for example, in the Preamble), to the principle of responsible (or, in the words of Constitutional Principle VI, accountable) government as suggested by the Technical Committee. For the reasons advanced below, this, however, is not essential and in itself will have no concrete effect.

The principle of responsible or accountable government can be given effect only through specific arrangements and,

therefore, we, *secondly*, support the approach of the Technical Committee to refer to all the various mechanisms and instruments without which a mere commitment to responsible government will have no substance. We also agree with the categories of mechanisms mentioned by the Committee, namely (i) judicial review (mainly on the basis of the bill of rights), (ii) the separation of powers and concomitant checks and balances, including an express provision on executive responsibility to the legislature (sections 92 and 153), (iii) access to information and transparency, and (iv) various offices and commissions.

However, without going into detail, and only to complete the picture, we wish to add the following aspects to the list of mechanisms that need to be employed to comply with the principle of responsible government:

(a) free, fair and regular elections, which is probably the most important mechanism to ensure responsibility, because it enables the voters to express themselves on the government's performance, either to demonstrate rejection or continuous support;

(b) the full range of *parliamentary control mechanisms*, such as motions of no-confidence, approval of the budget, questions, interpellations and hearings, and reports by the auditor-general. Parliament remains the primary arena for enforcing government responsibility and these mechanisms must be provided and protected in full;

(c) distribution of powers among different *levels of government*, because it brings government closer to the people and facilitates accountability.

As pointed out by the Technical Committee, the detail on these as well as the other aspects mentioned by the Committee, will be provided by the appropriate Theme Committees.



TEL: (021) 403-2911

NATIONAL ASSEMBLY  
PO BOX 15  
CAPE TOWN  
8000

Ref No.

9 MAY 1995

## PAC SUBMISSION ON GOVERNMENT ACCOUNTABILITY

The issue of Government accountability is well established and a widely accepted democratic principle. The present government has committed itself to the principles of accountability and transparency.

There are different mechanisms which one could put in place in order to ensure that government is accountable and views have been expressed in this regard. At issue is the fact that there is a tendency to reduce government accountability only to elected representatives of government and forget about the bureaucracy, the administrative arm of government which wields enormous discretionary power. The history of forced removal and building of toilet cities bears testimony to this.

In the new dispensation there has been an inheritance of the bureaucracy (which has and is still unable to annihilate skewed administrative procedures of the past. The fact that a new policy guideline in the form of RDP which is essentially geared to delivery (especially to the previously neglected communities) means that more than ever, mechanisms of accountability should be in place. Where a particular administrative body fails to carry out its duty, the public must be able to question that immediately. This does not mean that his mechanism should enjoy constitutional status for it is designed to change the framework from which the administration operates in this transitional phase.

One could cite examples to support the need for this namely: The then Minister of Housing - Joe Slovo had to appoint a new Director -General

Minister of Public Works had the same schisms.

Minister of Water Affairs and Forestry voiced the same frustration.

There is more a pre-occupation with paperwork than with assisting the communities which are in dire need. Thus the need to formulate procedures that are going to expose the inactivity of the bureacracy notwithstanding the other mechanisms that have been developed by the courts of law.

M M Z DYANI

MP -PAC



# VRYHEIDSFRONT

P.O. Box 74693  
Lynnwood Ridge  
0040  
Tel. (012) 47-4477  
47-4375  
47-4450/54/14/58

1st Floor Atrium 4  
Perseus Park  
cor. Camelia and Priory Roads  
Lynnwood Ridge  
Fax (012) 47-4387

## FREEDOM FRONT

### THEME COMMITTEE 1 (CHARACTER OF DEMOCRATIC STATE)

#### SUBMISSIONS ON THE ECONOMY (BLOCK 5)

The Freedom Front makes the following submissions in regard to the economy under the new Constitution, within the mandatory provisions laid down by the Constitutional Principles.

There are, within the present context, twin themes running throughout the Constitutional Principles: (a) democracy; and (b) regulation of certain matters relating to the economy. The exposition below will put into perspective the relationship between these two themes.

#### Democracy

The concept of democracy is reiterated in various Constitutional Principles, but nowhere comprehensively defined. Constitutional Principle I merely refers to 'a democratic system of government'. Constitutional Principle VIII refers to a 'multi-party democracy'. Constitutional Principle XIV refers to the requirement of participation 'of minority political parties in the legislative process in a manner consistent with democracy' (stress supplied). Principle XVII refers to 'democratic representation' at each level of government.

The nett result of the above-mentioned provisions taken collectively is the mandatory regulation of the future state on the basis of a true democracy, including guarantees relating to the interests of minority parties.

The inevitable conclusion is that the Constitutional Principles require that the future state will not be a one-party state. A further implication is that the economy should be controlled by the government only to the limited extent allowed by the Constitutional Principles. This aspect is more fully dealt with below.

Economic and fiscal aspects of the Constitutional Principles

Principle XXI contains some indication in the direction of the centralisation of economic policies. This Principle, setting out the criteria to be applied in the allocation of powers to the national government and the provincial governments, mentions in paragraph 2 'the maintenance of economic unity', and provides in paragraph 5 as follows: 'The determination of national economic policies, and the power to promote interprovincial commerce and to protect the common market in respect of the mobility of groups, services, capital and labour, should be allocated to the national government' (stress supplied).

Constitutional Principle XXI has a precursor in section 126 of the transitional Constitution. In this section provision is made for concurrent powers by provincial legislatures and Parliament. Section 126 provides for the predominance of parliamentary legislation in respect of, inter alia, certain aspects of the economy. Nevertheless, the general tenor of this section (reflected in Constitutional Principle XXI as far as the new Constitution is concerned - see above) must not be interpreted as a pointer in the direction of a centralised economic system. Other Constitutional Principles prohibit this. For instance, Constitutional Principle XXII prohibits the national government from exercising its powers (exclusive or concurrent) so as to encroach upon the geographical, functional or institutional integrity of the provinces.

Various Constitutional Principles indicate that the economy should not be centrally controlled, but that there should be free enterprise at all levels. For instance, Principle XX provides, inter alia, that the 'allocation of powers between different levels of government shall be made on a basis which is conducive to financial viability at each level of government..... and which recognises the need for and promotes ..... legitimate provincial autonomy.....' Principle XXV provides, inter alia, that the national government and provincial governments shall have fiscal powers and functions which will be defined in the Constitution. Principle XXVI carries the matter further and provides that each level of government shall have 'a constitutional right to an equitable share of revenue collected nationally' so as to ensure certain goals.

Principle XXVI is further bolstered by Constitutional Principles XXVII and XXIX. Principle XXVII provides, inter alia, that a contemplated Financial and Fiscal Commission shall recommend equitable fiscal and financial allocations to the provincial and local governments from revenue collected nationally, after taking into account, amongst other things, economic disparities between the provinces. Principle XXIX contemplates, inter alia, the independence and impartiality of the Reserve Bank and of the Auditor-General.

Despite the indications to the contrary in Constitutional Principle XXI, it is clear from all the above-mentioned

Constitutional Principles, read together, that the intention of the authors of these Constitutional Principles was not to make the economic system subservient to the will of one party or to the mechanism of a one-party state. On the contrary, the indications are overwhelming that the regulation of the economy would be subjected to the democratic process, including the legitimate role of minority parties in the governance of the state. The mere fact that different levels of government shall have a constitutional right to an equitable share of revenue collected nationally (Constitutional Principle XXVI) indicates that of centralised and authoritarian control of the economy was never contemplated.

#### Conclusion

The inevitable conclusion is that a democracy, including a free market system, is implied by the Constitutional Principles, taken collectively.

---

