

2/4/12/31

A26

**CONSTITUTIONAL
ASSEMBLY**

**THEME COMMITTEE 1
CHARACTER OF
DEMOCRATIC STATE**

5 JUNE 1995

**ROOM M515
14H00**

DOCUMENTATION

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

AGENDA

1. Opening ✓
2. Apologies ✓
3. Adoption of previous minutes ✓
4. Matters Arising ✓
5. Finalize draft report for Block 4 (Accountable Government)
[See: Extra Documentation A25] ✓
6. Discussion on draft clause on the "Supremacy of the Constitution" ✓
[See: Extra Documentation A25]
7. Tabling and discussion of submissions for Block 5 (The Economy)

ACDP ✓

ANC ✓

DP ✓

FF - Apology

NP

PAC - Apology

8. Public Participation

9. General

10. 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 29 MAY 1995 09H00 ROOM M515**

**Present
Marais PG (Chairperson)**

**Chiba L
Chikane MM
Chiwayo LLL
Cwele CS
Dyani MM
Fani LM
Goosen AD
Green LM
Gumede DM
Hangana NE
Janse Van Rensburg AP
Kekana NN
Kuzwayo NEK
Lekgoro MK
Majola-Pikoli NT**

**Marais A
Meshoe KR
Momberg JH
Moorcroft EK
Mulder PWA
Ncube BS
Nobunga BJ
Nzimande BE
Routledge NC
Shope G
Sisulu AN
Streicher DM
Van Zyl ID**

Apologies:

**Booi MS
Mahlangu NJ
Niehaus CG
Schoeman EA
Van Deventer FJ
Williams AJ**

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 09h15.

2. ADOPTION OF PREVIOUS MINUTES

- 2.1 The Minutes of the Theme Committee meeting held on 22 May 1995 contained in Document A25 (Pages 2 - 6) were adopted with the amendment that Mr JH Momberg would be recorded as having submitted an apology for the meeting of 22 May.

3. MATTERS ARISING

3.1 Report for Block 3 (Point 4 on Page 3 of the Minutes of 22 May)

Prof Corder reported to the meeting that the Report for Block 3 had been tabled at the Constitutional Committee meeting on Friday 26 May 1995 and noted that the draft clause which forms part of this report is a simplified version of the present Section 4 of the Interim Constitution. He further reported that the question had been raised at the Constitutional Committee meeting as to how this clause would fit together with the opening clause of the future Bill of Rights and that when the final Constitution is drafted this clause might have to be amended so that it is not contradictory to the opening clause of the Bill of Rights.

3.2 Matters arising from Point 5.2 on Page 4 of the Minutes of 22 May

Prof Corder reported the following:

3.2.1 With regard to the question of payment for unpaid labour, research had drawn a blank in terms of constitutional entrenchment but that legislation exists in a few countries with regard to social welfare legislation where the spouse stays at home to raise children.

3.2.2 The documents dealing with Alternative Electoral Systems and Prisoners' Voting Rights were included in Document A25 (Extra Documentation - Pages 7-9).

3.2.3 With regard to the question of voting ages in different countries, research was not complete and the information would be provided to members with the next documentation.

4. DISCUSSION OF DRAFT REPORT FOR BLOCK 4

- 4.1 The Draft Report for Block 4 dealing with Accountable Government contained in Document A25 (Extra Documentation - Pages 1-5) was tabled.

Prof Corder talked to the Report and noted that Part One A) and B)

were still to be attached to the Report. He further suggested that the Theme Committee might consider the inclusion of accountable government in the Preamble in order to entrench this in the Constitution.

A number of concerns were raised by members of the Theme Committee, including the accountability of provinces, Non-Contentious Point iii) (Page 3) and the separation of powers. It was therefore agreed that discussion of the Draft Report for Block 4 would stand over until the next Theme Committee meeting so that parties would have the opportunity to make further submissions.

5. ORIENTATION WORKSHOP FOR BLOCK 8: FOREIGN RELATIONS AND INTERNATIONAL LAW

- 5.1 The Briefing Document for Block 8 dealing with Foreign Relations and International Law contained in Document A25 (Pages 45 - 65) was tabled. Dr Heunis talked to the document and he and Prof Corder gave clarification to a number of questions regarding international law and international agreements.

6. PUBLIC PARTICIPATION

6.1 Reportback from Public Hearings held on 26 and 27 May

6.1.1 Religious Sector Hearing

A member who had attended the religious sector hearing on Friday 26 May gave a short report noting the main views emerging from the hearing were as follows:

Non-contentious issues:

- The need for a secular state that respects all religions was expressed in most of the submissions.
- The importance of the separation between religion and the state.
- Allowance for chaplaincy and religious accommodations.

Contentious issues:

- Related to civil law and traditional and personal law.
- Preamble mentioning God
- Need for a Bill of Rights to enshrine morality.

Another member who had attended the hearing reported that there was no clarity on the definition of a secular

state.

Discussion took place on the issue of a secular state and the Theme Committee's Report on Block 1 where this matter had been dealt with. It was agreed that this matter was not an item for discussion on the agenda and that the Secretariat would provide a transcription of the meeting where the issue had been discussed and would make this available to the Theme Committee members. It was further agreed that the Theme Committee would also await the decision of the Management Committee on this matter.

6.1.2 Youth Sector Hearing

Members of the Theme Committee who had attended the hearing on 27 May raised a number of concerns: that more youth organisations could have been present, that the way the agenda was structured should be examined, that more preparation needed to be done to ensure that the contributions made by the sector are meaningful for the process and that the events needed to be more focused.

They further reported that the voting age of 16 years was supported by participants at the Hearing.

6.2 CPM - Beaufort West 27 May 1995

A member of the Theme Committee who had attended the CPM in Beaufort West gave a short report, noting that despite poor attendance due to bad weather, the meeting had gone well and had the participation of General Viljoen. Questions around the issues of land and the volkstaat were raised at the meeting.

6.3 CPM's in Kwazulu Natal

The Secretary reported that two CPM's were being planned in the province, in Newcastle and Hammersdale, on 24 June and names of those members wishing to attend would be called for closer to the time.

6.4 CPM's on 3 June 1995

The Secretary reported that two CPM's would be held on 3 June, in Northern Cape (Kimberley) and Northern Transvaal (Thohoyandou). It was agreed that names of members wishing to attend should be submitted to the Secretary by 10h00 on Tuesday 30 May 1995.

7. GENERAL

7.1 Deadline for Party Submissions for Blocks 5 and 6

The Secretary reminded the Theme Committee that the deadline for party submissions for Block 5 dealing with the Economy would be Wednesday 31 May. It was agreed that the deadline for Block 6 (Representative Government, Citizenship, Suffrage) would be Monday 5 June.

7.2 Public Hearing on 10 June 1995

The Secretary reported that the issue of National Territory would not be dealt with at the Public Hearing. It was agreed that further information should be obtained as to whether the Theme Committee should examine provincial boundaries under this agenda item.

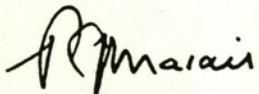
The Secretary further reported that a list of speakers for the Public Hearing was in the process of being finalised and would be provided to the Theme Committee members by Wednesday 31 May.

7.3 Draft Clause on Supremacy of the Constitution (Document A25 Extra Documentation - Page 6)

The status of the Draft Clause on Supremacy of the Constitution was questioned and the Chairperson reported that this would be dealt with in context with all the other provisions.

8. CLOSURE

8.1 The meeting rose at 11h15.

 30 May 1995.

CHAIRPERSON



CONSTITUTIONAL ASSEMBLY

CONSTITUTIONAL ASSEMBLY

MEMORANDUM

TO: THEME COMMITTEE 1
FROM: EXECUTIVE DIRECTOR
DATE: 30 May 1995
RE: NOTIFICATION OF MATTERS REFERRED

Please note that the following matters have been referred to Theme Committee 1 for its consideration.

1. **Referenda:** The Constitutional Committee on 27 February 1995 referred the matter of referenda to Theme Committee 1. The matter was raised as a contentious issue in the report of Theme Committee 3 on Block 1, and the minute reported:

*5.vi.iii. Regarding point 3 ... which reads...
"Provision shall be made for referenda at all levels of government to be held at the request of a reasonably small number of dissatisfied citizens:"
the meeting agreed that the matter would be referred to Theme Committee 1."*

2. **Minority participation:** during the discussion of Theme Committee 1's report on Block 2, Theme Committee 2 formally requested that submissions on minority participation be forwarded to it. The minute reported:

4.6 A request was noted that Theme Committee 1 forward all representations it might have on "Minority Participation" to Theme Committee 2."

Agreed to.

8

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You've made your mark



Now have your say

THE NEW CONSTITUTION

**AFRICAN CHRISTIAN DEMOCRATIC PARTY
(ACDP)**



ECONOMICS

The ACDP supports in full the need for transparency in civil government, equally so in all financial aspects.

We believe that the time is past when tax-paying South Africans (of which at least 78% are Christian), are totally left in the dark to what happens to their hard-earned money.

The Bible is clear about the principle that debt and credit leads to slavery. The ACDP, therefore, calls for all conventions and treaties with financial implications to be canvassed with South African citizens before they are adopted and ratified. It is specifically important that any conditions set by the other contracting party be made public knowledge. We also call for all loans, which are binding on this country to be made known to the public.

It needs further be said that South Africans will not further tolerate international agreements which will affect their non-economic domestic lives. If the constitution currently being written, is indeed to be a bridge between the old and the new, then the time has now come to make known to South Africans, the extent to which their autonomy has been signed away through far-reaching international economic agreements.

While the ACDP agrees that defence is indeed one of the very few areas in which civil government needs to be involved, we have to question the wisdom of in effect lending more than a billion rands in order to purchase naval vessels. Surely using what we have in finances to address pressing problems of housing and poverty and bringing down the balance of payment would make more sense.

Closer to home, the ACDP calls for an economic system stripped of artificial regulators such as deciduous fruits boards and the like. We need to return to a system of supply and demand.

Having subsidies and similar regulatory measures might seem to work for a period, but it will simply mean that more and more money needs to be pumped into the system to protect producers. Leaving the producer to turn his skill to another product where a need exists will mean that we do not have surpluses of certain foodstuffs hidden away in cold storage facilities to be brought back to the market when supply is low. This will only again drive the prices down through the increased supply and the need will, again, arise for the regulator to step in.

The interim constitution recognizes the right to free economic activity large monopolies including those in financial, petroleum and precious metals sectors actively prevent these from being realised.

The president in his budget speech, noted that inflation turned around in 1994. While we continue to have paper money being printed and distributed, coupled with the system of fractional reserve banking, these figures are relative. The new Bills still do not guarantee that they will be honoured on presentation to the Reserve Bank, nor that they are backed up tangibly by gold or other reserves.

Concerning the Reserve Bank, it must be said that this institution is necessary in the present economic climate.

Being a very powerful system, prone to manipulation, there is pressing need for total transparency. It should be public knowledge who the shareholders are, the extent of their shareholding and as to the basis of it's operations.

In a discussion about how to incorporate economic particulars in the Constitution, the following aspects are to be addressed:

In the constitution the ACDP wants clearly stated that South Africa will have a free-market economy based on a constitutionally entrenched right to private ownership of property, and minimum state intervention. The constitutional right to own private property must be understood as an integral part of the socio-economic right to private property, ~~as envisaged in our submission to Theme Committee 4.~~

We further see the need to provide in the constitution for legislation that will enable small business to flourish. By stimulating entrepreneurship and small business-skills, South Africa will be best able to finance the RDP as only economic strength ensures better socio-economic circumstances.

We agree that a programme of upliftment and greater equity has to be introduced.

The programme should be clearly limited to a specific period of five years and, again, only the existence of the programme for the specific time period must be recognised coupled with a clause that this particular subscription will cease to be of any force or effect in 2001. The details should be fleshed out in an entirely different document, alleviating the constant tampering with the Constitution.

We further endorse the need for Affirmative Action, but note that it is not strictly speaking a principle of equality.

~~speaking a principle of equality. It has the potential, if approached~~^{stet}
~~incorrectly, of creating the situation of inequality.~~

Affirmative Action should be defined as a temporary measure to make right the wrongs of the past, and to constitute for legal protection that will ensure individual, family and nation building, and human resource development.

Affirmative Action should aim to make people self-sufficient, to contribute to the running of the country in all its sectors; (Genesis 2:15: "The Lord God took the man and put him in the Garden of Eden to work it and take care of it.")

We should be careful^{not} to have it written into the constitution as a permanent right. This will only be counter-productive.

ANC SUBMISSION

The Economy

Constitutional Assembly Submission to Theme Committee 1 Block 5

Guiding Principles

1. The ANC submits that the following guiding principles are relevant for the question of the Economy and should be taken into account in any reference to economic issues in the formulation of the constitution:
 - 1.1 The Constitution should promote greater democratic participation in economic life.
 - 1.2 The Constitution must include the application of principles of affirmative action to correct racial and gender imbalances in the economy.
 - 1.3 The Constitution shall recognise the development, growth, and promotion of the economy.

Constitutional regulation of economic matters

2. Labour relations will be dealt with in the Bill of Rights and the Labour Relations Act:
 - 2.1 Workers' rights to set up trade unions will be protected.
 - 2.2 Workers' rights to engage in collective bargaining, including the withdrawal of labour will be protected.
 - 2.3 Slave labour and forced labour will be expressly prohibited.
 - 2.4 The exploitation of children in the workplace will be prohibited.
3. The Constitution should include provisions for access to land and for the redress of inequities.
4. The Constitution will direct that the environment be protected from degradation and nurtured, on a sustainable basis, for the benefit of South Africa and future generations.

Constitutional mechanisms to achieve substantive equality, economic empowerment and socioeconomic advancement

5. The Constitution will address the social, economic, and ideological barriers to full and equal participation in the economy by women, including their unpaid labour.

2

To: Leola Rammable
Managing Secretary
Constitutional Assembly

Ref: T.C. 1/5-6

**DEMOCRATIC PARTY SUBMISSION TO THEME COMMITTEE ONE ON:
THE ECONOMY**

In respect of Constitutional regulation of the Economy, the Constitutional Assembly is required to give effect to a wide range of Constitutional Principles which influence economic life. These are:

(II), (III), (V), (XXV), (XXVI), (XXVII), (XXVIII), (XXIX).

These emphasize:

1. the entrenchment of the notion of substantive equality and the removal of discriminatory practices
2. a requirement of defined fiscal powers in national and provincial government jurisdiction, including the constitutional right of each level of government to an "equitable share of revenue collected nationally"
3. the regulatory role of the Financial and Fiscal Commission, and of the Reserve Bank generally; and
4. the recognition and protection of employers' and employees' rights in their mutual relationships.

The transitional Constitution further provides for the following measures which influence economic life and with which the Democratic Party would strongly concur:

- | | |
|-----------|---|
| Clause 12 | No person shall be subject to servitude or forced labour. |
| Clause 26 | (1) Every person shall have the right freely to engage in economic activity and to pursue a livelihood anywhere in the national territory, etc. |
| Clause 27 | (1-5) This clause covers the rights of employers and employees to fair labour practices. |
| Clause 28 | (1-3) This clause covers the rights of persons to acquire and hold rights in property. |
| Clause 30 | Protects children from exploitative labour practices. |

The Democratic Party would favour the retention of all of the above clauses. In particular it would support the right to hold property since we believe that this is a basic human right upon which the entire edifice of a sound and prosperous economy will rest.

Representative Government

In respect of Representative Government, the Constitutional Assembly is required to give effect to a wide range of Constitutional Principles relating to it. These are:

(I), (II), (VIII), (IX), (X), (XIV), (XVII), (XXX)

These emphasize:

1. a multi-party system
2. regular elections
3. universal adult suffrage
4. a common voters' roll
5. proportional representation (in general)
6. open administration of government
7. formal legislative procedures
8. minority political party participation in the legislative process
9. democratic representation at all levels of government
10. a Public Service broadly representative of all South Africans

The Transitional Constitution further provides for measures which spell out in detail certain measures relating to representative government, and with which the Democratic Party concurs. These are:

- | | |
|-----------|--|
| Clause 6 | The franchise |
| Clause 21 | Political rights |
| Clause 39 | Elections |
| Clause 40 | Composition of National Assembly
(Here we would argue for a reduction in the number of members from 400 to 300) |

- Clause 48 Composition of the Senate
 (Here we would argue for a reduction in the
 number of Senators to 63, i.e. 7 from each
 Province)
- Clause 77 Election of President
- Clause 88 Cabinet
- Clause 127 Composition of provincial legislatures
- Clause 129 Elections
- Clause 145 Election of Premiers
- Clause 179 Local Government Elections

Citizenship

In respect to Citizenship, Constitutional Principle 1 provides for the establishment of, inter alia, a common South African citizenship.

The Transitional Constitution deals with citizenship in a number of sections including:

Preamble, Section 5, Section 6, Section 20, Section 21, Section 30(1)(a), Section 42(1), Section 43(a), Section 50, Section 51(1)(a), Section 72(2), Section 77, Section 84, Section 88, Section 99(2)(a), Section 110(4), Section 115(1), Section 119(2), Section 132(1), Section 145(1), Section 149(4)(b), Section 191(3), Section 200(3)(a), Section 211(2)(a), Section 213(2), Section 15(1) of the Electoral Act 202 of 1993.

The Democratic Party does not find itself at variance with these provisions of which the most important is that there shall be a South African citizenship, and that every person who is a South African citizen shall subject to the Constitution, be entitled to enjoy all rights, privileges and benefits of South African citizenship, and shall be subject to all duties, obligations and responsibilities of South African citizenship as are accorded or imposed upon him or her in terms of the Constitution or an Act of Parliament.

Suffrage

In respect of Suffrage the Constitutional Assembly is required to give effect to Constitutional Principle VIII "There shall be representative government embracing multi-party democracy, regular elections, universal adult suffrage, a common voters' roll and, in general, proportional representation.

In order to achieve the above in respect of universal adult suffrage, the Democratic Party believes that the Constitution must contain the following provisions:

1. That citizenship should be a prerequisite for the franchise at National and Provincial level.
2. That the Constitution should lay down a minimum age qualification, and that this should be 18 years and older.
3. That the franchise should be subject to disqualification as prescribed by laws regulating elections, referenda or plebiscites.
4. That such disqualification should be described in the Electoral Act rather than in the Constitution.
5. That provision should be made for the holding of referenda/plebiscites, but that this provision be subsumed under the Electoral Act rather than the Constitution.

CONSTITUTIONAL ASSEMBLY

NATIONAL PARTY SUBMISSION TO THEME COMMITTEE 1:

THE ECONOMY

A thriving economy is a pre-requisite for a true and sustainable democracy and thence for justness and fairness.

In order to achieve that the National Party believes that conditions should be created under which free enterprise and private initiative can flourish within a market-orientated environment, whilst furthering the capacity of all citizens to utilise the opportunities of such a system on an equal footing.

In order to attain substantive equality, affirmative action programmes are necessary as they embody active equalisation. However, as the process of active equalisation is based on the premise of a temporary state of unequal treatment, active equalisation can never be a limitless exercise; in principle it must come to an end when the objectives had been attained. Therefore, any affirmative action clause should include a qualification to that effect.

Private ownership, also in regard to land, must be maintained as one of the fundamental rights of individuals.

The rights of workers must be protected.

The rights of employers must be protected.

There must be a healthy balance between nature conservation and economic growth.

The rights of persons to an environment which is not detrimental to his or her health or well-being must be recognised.

No person must be subject to servitude or forced labour.

Every child must have the right not to be subject to exploitative labour practices nor to be required or permitted to perform work which is harmful to his or her education, health or well-being.



29 May 1995

PAC Submission To Theme Committee 1 Block 5

The Pan -Africanist Congress maintains that all the land mass, all the waters and the sea bed within the perimeter defined by the constitution of the Republic of South Africa as the state of the Republic of South Africa and is accepted as such by international law, form the joint property of the lawful citizenry of the Republic and heritage of its posterity.

Based on the above premiss the Pan - Africanist Congress believes that no individual or group can have a right or rights over the wealth or a fraction thereof, within the boundaries of the Republic, that may constitutionally and legally supersede the right of the national parliament.

All property rights shall be constitutionally protectable by an individual against all other individuals or groups but shall not be constitutionally protectable against national economic interests and against policies issuing therefrom which are promoted and carried out by the national parliament with clear lack of prejudice against any individual or group but are pursued in the best economic interest of the totality of national individuals, the nation or ^{the} country.

The state shall follow no orthodoxy in working to satisfy the economic needs of the South African people. The guiding vision must be that of getting the surest path to national economic upliftment and a society of economic equity and social equality where the notion of equal opportunities will have its true meaning. PAC believes that without economic equity the idea of equal opportunities lacks substance.

The reason for production shall be consumption, primarily and profit making, secondarily. If the primary motive remains that ~~the~~^{of} profit making, the dumping and destruction of desperately needed goods by profit seekers in their quest to artificially create scarcity shall persist.

The land, the basic wealth of the people shall constitute the core or substance of the national sovereignty, which shall vest in the constitution.

All production and distribution of wealth by the citizens of the country shall be geared towards the upliftment of the economic standard of all citizens.

MMZ Dyani MP

**TRANSCRIPTION OF DEBATE ON SECULAR STATE
THEME COMMITTEE MEETING
DATE: 09/02/95**

Rev Meshoe: I just want to propose an amendment (point I - non-contentious) that I say that there shall be separation between state and religious institutions

Mr. Kekana: Once you add institutions it becomes contentious because we are talking about religion in total not just the institutions and therefore you are weighing the state on the one hand and religion as a concept. We are not talking about an institution versus another institution. We are talking about an institution and a particular concept called religion.

Rev. Meshoe: Well in that case it will have to go under contentious because man is a Religious being whether you believe in God or believe that man is the supreme but everybody is religious - Ancestral Worship is a form of Religion so man is religious.

Mr Hussain: I think what we trying to get at in (I) in the wording there is to convey the fact that its not contentious that the state shall be a secular state. To add the words that there shall a separation between State and Religious institutions does not take the point any further, it in fact blurs the fact that you need this to be a secular state. You could for argument sake say this is a Christian State and have a separation between that state and institutions of religion - so I don't think it takes it any further to say institutions - this simply intends to convey the fact that you want a secular state and your fears with respect to (inaudible) would not prevent any religious animal in the form of a human being to participate in any organ of state.

Chairperson: Rev Meshoe are you satisfied with the information?

Mr Marais: I don't think that we should spend too much of time on this. It is obvious that Rev Meshoe is not happy with this one and that means that from atleast his point of view, that it is a contentious matter and I think that we should try and resolve the matter now by putting it under contentious and it can be dealt with at another forum

Mr Kekana: I think it will be misleading to take (I) as it is and place it under contentious points once you add institutions. I think under contentious points it shall read as follows:

(H) There shall be a separation between State and Religious Institutions

because it will be misleading to take (I) and place it under contentious because we will have to explain, because we don't think it is contentious if it stands as it is presently under non-contentious points

Ms Routledge: I was just wondering if the ACDP would be happy with the explanation which was given - maybe we could use the formulation that was proposed - I think that South Africa will be a secular state - I'm not sure how they put it - Would you be happy with that?

Chairperson: Mr Meshoe could you solve the problem quickly for us

Rev Meshoe: to respond to that Mr Chair, we have not agreed on a secular state yet so I cannot agree to that because we have not discussed that yet. It is a presumption that we have agreed on a secular state - we have not

Mr Streicher: Would it help us if we keep it where it is under non-contentious and just change it - there shall be freedom of religion and the state shall not interfere

Chairperson: Prof Corder could you take us out of this muck that we find ourselves in?

Prof Corder: I wonder if I can because I'm just quoting here the ACDP submission paragraph 3, is headed Separation of Church and State - now all we've done is to change the word Church which several submissions said connoted Christianity with religion which encompasses all types of institutions of faith, so it was an attempt merely to do that and I would go further and state what follows in the rest of paragraph 3 of the ACDP submission is exactly what is meant by the separation between State and Religion, there is no difference from that. The 1st line states the ACDP believes in separation between Church and State, as we have it at the moment.

Chairperson: Mr. Meshoe we should bring it to an end - we cannot be debating the same thing for the whole period

Rev Meshoe: I accept that Mr Chair, but if anybody is doing something or drawing a conclusion from what I have written, if I am not well represented I have the right to say it. The heading is true, I put Separation between Church and State and when I made a second submission, I said I divert because we were not at that time given the breakdown in Blocks that we are now given, so I have the right to say that, that must be scrapped from the report until we come to Block 3, on separation of Church and State at the moment this sentence does not go with Block 1 so its either that we delete it from Block 1 or I would propose that we speak of separation between Church and State institutions because I do not agree that by separation between Church and State I mean separation of Church of State and religion. Religion and Church are two different things.

Mr Nzimande: Can we get clarity and than we can close the matter. Is the ACDP in other words calling for a Christian State as its negotiating stance or a religious state?

Rev Meshoe: I said no, that question was asked before but I said no, what we want is a separation between state and religious institutions that is what we want.

Chairperson: Mr Lekgoro

Mr Lekgoro: I was pleading that we need to find a way of reaching a conclusion on this matter and not allow the Honourable member to take us from pillar to post because at the beginning his main central worry was that this should not mean that Religious people would be kept out of the State and we said categorically "no", now he changes to something else. I appeal, there is no major deviation that he is giving us with the inclusion that we leave it under non-contentious issues.

Chairperson: Prof Corder

Prof Corder: Issues of the Character of the State are dealt with here, many of them are revisited such as the separation between Church and State in later Blocks. In other words in trying to compile these points of contention and non-contention we had to take an overview. One of the points which were suggested to us as I said yesterday by the ACDP submission was in fact there must be separation between Church and State we altered only one word in that in order to take into account a number of other submissions which had said Church was not the right word to use in that case, so the fact that it is agreed to now certainly doesn't mean that it can't be re-opened at a later Block. I don't know if that is at all helpful.

Chairperson: Mr Meshoe I am going to give you the last chance now - it is very clear that you are adamant in your argument

Rev Meshoe: Its either we delete that point of separation between Church and State of this report or you note my objection because to say the word religion was used to accommodate what I said is misrepresenting what I said so if we keep that statement in the report then with it must go an objection from the ACDP

Chairperson: Mr Nzimande

Mr Nzimande: Chairperson I think the issue really is about whether we have a religious or secular state and the best way to deal with this is to go and scrap that sentence and we go and put a sentence like SA will be a secular state under contentious issues and that is how we move forward.

Chairperson: Is it agreed to by the meeting?

Response from Meeting: Yes

Dr. Heunis mentioned this last year
Prof. D. J. Devine.

SUGGESTED CONSTITUTIONAL PROVISIONS ON THE STATUS OF INTERNATIONAL TREATIES

(i) Instead of s82(1)(i) of the Interim Constitution the following is suggested.

Powers and functions of President

X(1) The President shall be competent to exercise and perform the following powers and functions, namely -

- (a)
-
- (w) to negotiate international agreements;
- (x) to sign international agreements where such signature does not result in the Republic becoming a party to such agreement;
- (y) to perform any act whereby the Republic becomes a party to an international agreement provided that the National Assembly agrees in terms of sY(2);
- (z) to conclude bilateral international agreements.

Instead of s231(2) and (3) of the Interim Constitution the following is suggested.

Continuation of international agreements and status of international law

- SY (1)
- (2) The National Assembly shall, subject to this Constitution, be competent to agree to the performance of any act whereby the Republic becomes a party to any international agreement.
- (3) Where the National Assembly agrees to the performance of an act whereby the Republic becomes a party to an international agreement under subsection (2) and where such act has been duly performed in terms of section X(1)(y) such

international agreement shall be binding on the Republic.

- (4) A bilateral international agreement concluded in terms of section X(1)(z) shall be binding on the Republic and shall be laid before the National Assembly within a period of fourteen days after such conclusion or at the beginning of the next parliamentary session following such conclusion should parliament not be in session when such period of fourteen days expires.

- (5) An international agreement binding on the Republic under subsection (3) or (4) shall form part of the law of the Republic
[provided that an Act of Parliament expressly so provides and insofar as such agreement is not inconsistent with this Constitution];
[unless inconsistent with this Constitution or an Act of Parliament];
[unless otherwise provided by an express provision in an Act of Parliament or insofar as such agreement is inconsistent with this Constitution].

- (6)

Note: The texts in the present s231(1) and (4) would become sY(1) and (6) respectively in the new dispensation.

Note: Three alternatives are presented in SY(5). A policy decision would have to be made here. For the implications of the potential policy decisions see enclosed paper.

'Some problems relating to treaties in the interim South African Constitution and some suggestions for the definitive constitution' particularly at pp30-31.

For background discussion in general see above paper and in particular pp27-31.

AGES FOR FRANCHISE

SOURCE: BLAUSTEIN CONSTITUTIONS OF COUNTRIES OF THE WORLD

18 Years:

Albania; Angola; Australia; Bahamas; Bangladesh; Belgium; Belize; Benin; Bolivia (if married); Brazil (obligatory); Cambodia; Central African Republic ("of full age" = 18?); Chad ("of age" = 18?); China; Comores; Congo; Cote d'Ivoire ("age of majority"); Croatia; Czech Republic; Dominica; Estonia; France ("age of majority"); Gabon; Germany; Ghana; Grenada; Guyana; Honduras; Hungary ("of full age"); Iceland; India; Ireland; Israel; Italy ("of age"); Kazakhstan; Kiribati; Liberia; Lithuania; Macedonia; Malawi; Mali (? "of voting age"); Mauritania (? "adult"); Mauritius; Mexico; Mongolia; Mozambique; Myanmar; Namibia; Nepal; Niger; Paraguay; Peru; Philippines; Poland; Portugal; Norway; Panama; Papua New Guinea ("voting age"); Romania; Rwanda ("majority"); Senegal; Seychelles; Slovenia; Solomon Islands; South Africa; Spain; Sri Lanka; Syria; Tajikistan; Togo; Trinidad and Tobago; Turkmenistan; Tavalu; Tanzania; Uzbekistan; Vanuatu; Venezuela; Vietnam; Yemen; Yugoslavia; Zaire; Zambia; Zimbabwe.

(84 countries)

More than 18 years:

Austria (21); Bolivia (21- if unmarried); Botswana (21); Bulgaria (21); The Gambia (21); Haiti (21); Kenya (21); Latvia (21); Lesotho (21); Liechtenstein (20); Malaysia (21); Maldives (21); Monaco (21); Nauru (20); Suriname (21); Swaziland (21); Taiwan (20); Tonga (21); Tunisia (21); Turkey (20); Uganda (21).

(21 countries)

Less than 18 years:

Brazil (optional 16-18 years); Cuba (16), North Korea (17); Nicaragua (16).

(4 countries)

Age for franchise not in the Constitution:

Afghanistan; Algeria; Andorra; Antigua; Argentina; Bahrain; Barbados; Belarus; Brunei; Burkina Faso; Burundi; Cameroon; Canada; Cape Verde; Costa Rica; Cyprus; Denmark (determined by referendum); Greenland; Faroe Islands; Egypt; El Salvador; Equatorial Guinea; Fiji; Finland; Greece; Guatemala; Iran; Jamaica; Japan; Jordan; Korea; Kuwait; Kyrgyz Republic; Laos; Lebanon; Libya; Madagascar; Morocco; Netherlands; New Zealand (18 years); Nigeria; Oman; Pakistan; Qatar (hereditary); Russian Federation; St Christopher and Nevis; St Lucia; St Vincent; Sao Tome and Principe; Saudi Arabia; Sierra Leone; Singapore; Slovak Republic; Somalia; Sweden; Switzerland; Thailand; United Arab Emirates; United Kingdom (18 years); United States of America (18 years); Uruguay; Western Samoa.

(62 countries)

