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CONSTITUTIONAL ASSEMBLY

**CONSTITUTIONAL COMMITTEE
SUB-COMMITTEE**

**FRIDAY
8TH SEPTEMBER 1995
E249
14H00**

DOCUMENTATION

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CONSTITUTIONAL ASSEMBLY

MEETING OF THE CONSTITUTIONAL COMMITTEE SUB-COMMITTEE

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

DATE: Friday, 8th September 1995

TIME: 14H00 - 18H00

VENUE: E249

DRAFT AGENDA

1. Opening
2. Judiciary - Amended formulations on the Courts and Attorney General *Pages 2 - 15*
3. Independent Institutions, including the Electoral Commission - Amended formulations *Pages 16 - 32*
4. Language, Name and Symbols, National Territory and Seat of Government *Pages 33 - 51*
 - (i) Name and National Territory - draft formulations *Pages 35 - 36*
 - (ii) Language
 - Pan South African Language Board - Opinion *Pages 38 - 39*
 - (iii) National Flag - A comparative study *Pages 40 - 44*
5. Any other Business
6. Closure

*N.B. * Please bring along the CC document of 1 September 1995 dealing with Languages, Name and Symbols, National Territory and Seats of Government*

**HASSEN EBRAHIM
EXECUTIVE DIRECTOR**

Enquiries: Ms MM Sparg, Tel 245031, page 4184616 Code 6970

DRAFT MEMORANDUM

To: The Constitutional Committee

From: Hassen Ebrahim

Date: 6 September 1995

RE: MATTERS RELATING TO THE DRAFT FORMULATIONS ON THE JUDICIARY CHAPTER

=====

1. COURTS AND THE ADMINISTRATION OF JUSTICE

1.1 The amendments and reformulations as per the CC meeting of 1 September 1995 are as follows:

1.1.1. Judicial Authority

1(8) The words "national law" replace the reference to "Acts of Parliament or regulations or rules made thereunder" as formulated in the previous draft. *agreed*

1.1.2 The Judicial System

2(i) The words "four of whom shall be appointed from among the judges of the Supreme Court of Appeal or the High Court" have been deleted as it is now dealt with in clause 5(4)(f).

2(v) The NP proposal to move "other courts of similar status" to clause 2(vi) ✓

1.1.3 Jurisdiction of the Constitutional Court

3(1)(b) The reformulated clause as per the CC instruction reads, "to consider the constitutionality of any parliamentary or provincial Bill referred to it in terms of the provisions of this constitution or any provincial constitution"

This clause is also subject to the debate on clause 21(2) of the draft formulations on the National Assembly.

1.1.4 Jurisdiction of other courts

4(1)(2) This subsection has been reformulated to clarify the jurisdiction of the Courts concerned, and that jurisdiction vested exclusively in the Constitutional Court by section 3(1) is not conferred upon other courts.

1.1.5 Appointment of Judicial Officers

5(5) The opinion of the law advisors on the words "on the advice of the Judicial Service Commission" is as follows:

In order to make it quite clear that the President is bound to act on the advice of the Judicial Service Commission, it might be necessary to insert a provision to that effect in the section dealing with interpretation (as was done in e.g., the Independent Broadcasting Act, 1993).

1.2 The Law Advisers are attending to the technical refinement of the draft and taking into account the comments made by Judges of the Constitutional Court.

2. CONSTITUTIONAL JURISDICTION OF THE MAGISTRATES' COURTS AND OTHER COURTS

2.1 Clause 4(2) has been reformulated as per CC instruction.

2.2 Theme Committee 5 Technical Advisers will present further options for the formulation of this clause at the subcommittee meeting.

3. ATTORNEYS-GENERAL

Draft formulations on the Attorney-General, as per CC instructions, are included in the documentation, page 14-15

DRAFT - 4 SEPTEMBER 1995

Status: As per instruction of the Constitutional Committee

CHAPTER...

COURTS AND ADMINISTRATION OF JUSTICE

Judicial Authority

1. (1) The judicial authority of the Republic shall vest in the courts established by the Constitution or an Act of Parliament.
- (2) The courts shall be independent and subject only to this Constitution and the law.
- (3) The courts shall apply the Constitution and the law impartially and without fear, favour or prejudice.
- (4) No person and no organ of state shall interfere with the courts in the performance of their functions.
- (5) The orders issued by the courts within their respective jurisdictions shall bind all persons and organs of state.
- (6) Organs of state shall, through legislative and other measures, give the courts the necessary assistance to protect and ensure their independence, dignity and effectiveness.
- (7) The constitutional jurisdiction¹ of all courts and the jurisdiction of the Supreme Court of Appeal shall be determined only by this

¹ "Constitutional jurisdiction" - used here and in sections 3(1) and 4(1) - to be defined in a definition section - as "jurisdiction in respect of all matters relating to the interpretation, protection and enforcement of this Constitution and all Provincial Constitutions."

Constitution; the ordinary jurisdiction of all other courts shall be determined by an Act of Parliament.

- (8) All other matters pertaining to the functioning of any court shall be regulated by **national law**.^{2a} ✓

The judicial system

2. There shall be the following courts of law in the Republic:

- (i) The Constitutional Court, which shall be the highest court with constitutional jurisdiction, and which shall consist of a President, a Deputy President and nine other judges. [four of whom shall be appointed from among the judges of the Supreme Court of Appeal or the High Court.]^{2b}
- (ii) The Supreme Court of Appeal³, which shall be the highest court of appeal in all matters other than those within constitutional jurisdiction, and which shall consist of the Chief Justice, a Deputy Chief Justice and such number of judges of appeal as may be determined.
- (iii) Such Courts of Appeal as may be established by Act of Parliament⁴,

System
Lawyer

^{2a} The words in bold replace the reference in the previous draft to "Acts of Parliament or regulations or rules made thereunder."

^{2b} The words in square brackets have been deleted; the matter is now being dealt with in section 5(4)(f).

³ The SCA is a redesignation of the Appellate Division, with the addition of constitutional jurisdiction. Transitional provisions must provide for any reference in any other law to the AD to be construed as a reference to the SCA.

⁴ The creation of Courts of Appeal (intermediate between the High Court -currently the inappropriately named "Supreme Court" - and the Supreme Court of Appeal - currently the AD) was canvassed in materials before TC5 and has been under discussion since February. It is supported by the Chief Justice, the President of the Constitutional Court and Justice Ackermann, Judge President Eloff, the ALS, BLA, GCB and by the Law Commission. They are accepted in principle by the parties, but their exact ambit will have to await the Hoexter

ending para 5.

to hear appeals from the High Court or courts of similar status.

- (iv) The provincial and local divisions of the High Court and other courts of similar status^{5a}.
- (v) Magistrates' Courts and other courts of similar status.^{5b}
- (vi) Other courts established by law.⁶

Jurisdiction of the Constitutional Court

- 3. (1) Only the Constitutional Court shall have jurisdiction:
 - (a) to determine constitutional disputes between the national and provincial governments or between provincial governments.
 - (b) to consider the constitutionality of any parliamentary or provincial Bill referred to it in terms of the provisions of this Constitution or any provincial constitution.⁷
- (2) A decision of the Constitutional Court shall bind all persons and all legislative, executive and judicial organs of state.
- (3) The final decision as to whether a matter falls within its jurisdiction lies with the Constitutional Court.

Commission Report and a consequent consultative process. The Chief Justice has, however, stressed the need for a provision of this kind for their future establishment to be included in the Constitution.

^{5a} Such as the Water Court, Labour Appeal Court, Special Income Tax Court, and perhaps now the Land Claims Court.

^{5b} The NP proposal to move "other courts" to paragraph (vi) has been deferred to allow other parties to consider the proposal.

⁶ This section makes provision for the establishment of courts such as traditional land community courts, should this upon further investigation be determined to be desirable and feasible.

⁷ This clause is subject to the debate on sub-clause 21(2) of the draft formulation on the National Assembly. Reformulated as per instructions of the Constitutional Committee.

- (4) There shall be direct access to the Constitutional Court, with leave of the court, where the interests of justice so require.
- (5) (a) If the Constitutional Court finds any law, executive or administrative act to be inconsistent with the Constitution, it shall declare such, law or act invalid to the extent of its inconsistency.
- (b) The Constitutional Court may in any matter make such further order as it may deem just and equitable, including whether or to what extent any declaration of invalidity is to have retrospective operation, and an order as to costs.
- (c) The Constitutional Court may suspend a declaration of invalidity for a specified period to allow the competent authority to correct the defect, and impose such conditions in that regard as it may decide.
- (6) (a) All other courts having constitutional jurisdiction may make the orders set out in subsection (5).
- (b) If any court other than the Constitutional Court holds a national or provincial statute or any executive action of the President to be inconsistent with the Constitution, such finding shall have no force or effect unless confirmed by the Constitutional Court on appeal to it or on application to it by any person or organ of state with a sufficient interest.

Jurisdiction of other courts⁸

4. (1) The Supreme Court of Appeal, a Court of Appeal, a provincial or local division of the High Court and any other court of similar status shall have -
- (a) such inherent jurisdiction as vested in it at the commencement of this Constitution⁹ ;
 - (b) constitutional jurisdiction, subject to section 3(1); and
 - (c) the other jurisdiction conferred by an Act of Parliament.
- (2) All other courts, including Magistrates' Courts shall have¹⁰ -
- (a) constitutional jurisdiction, excluding jurisdiction to enquire into or rule on the validity of an Act of Parliament or a law of a provincial legislature or **any other law determined by law**, and
 - (b) the other jurisdiction conferred by an Act of Parliament.

Appointment of judicial officers

5. (1) No person shall be qualified to be appointed a judicial officer or acting judicial officer unless he or she is a South African citizen and is a fit and proper person to be a judicial officer.
- (2) A judicial officer shall, before commencing to perform the functions

⁸ This section has been reformulated in order to clarify the jurisdiction of the Courts concerned, and to ensure that jurisdiction vested exclusively in the Constitutional Court by section 3(1) is not conferred upon other courts.

⁹ Transitional provisions must ensure that inherent jurisdiction vesting in the present divisions of the Supreme Court continues in respect of the High Court, any Court of Appeal which may be established, and Supreme Court of Appeal.

¹⁰ Reformulated as per instruction of the Constitutional Committee that these Courts should have constitutional jurisdiction, but that they should not have the power to declare laws invalid. The words in bold refer to subordinate legislation, such as regulations.

of his or her office, make and subscribe an oath or solemn affirmation in the terms set out in Schedule (...) before a judge.

(3) The Chief Justice and the President of the Constitutional Court shall be appointed by the President in consultation with the Cabinet and after consultation with the Judicial Service Commission.¹¹

(a) The judges of the Constitutional Court shall be appointed by the President in consultation with the Cabinet after consultation with the President of the Constitutional Court.¹¹

(b) When an appointment needs to be made, the Judicial Service Commission shall draw up a recommended list of nominees of not more than three persons in excess of the number of persons to be appointed.

(c) The President shall make the required number of appointments from such a list with due regard to the reasons for such recommendations.

(d) If the President decides not to accept any or some of such recommendations, he/she shall inform the Judicial Service Commission and furnish it with reasons for his/her decision.

(e) After having been informed in terms of paragraph (d), the Judicial Service Commission shall, in accordance with paragraph (b) submit further recommendations, whereafter the President shall make the appointment or appointments from the

¹¹ The National Party reserved its position and argued that their agreement to these formulations was subject to how the matter of the National Executive was finalised.

recommendation as supplemented in terms of this paragraph.

- (f) Four judges of the Constitutional Court shall be appointed from among the judges of the Supreme Court of Appeal, the Court of Appeal or the High Court.
- (5) The Deputy Chief Justice, Deputy President of the Constitutional Court, and all other judges shall be appointed by the President on the advice¹² of the Judicial Service Commission.
- (6) The appointment of other judicial officers shall be regulated by an Act of Parliament.
- (7) Members of the Constitutional Court shall hold office for non-renewable terms not exceeding nine years.
- (8) The five oldest members of the Constitutional Court in office at the time of the expiration of the terms of office of the present judges of the Constitutional Court shall retire at such expiration and all other members after the expiration of a further period of four years.¹³
- (9) Acting judges shall be appointed by the Minister of Justice on the advice of the President of the Constitutional Court, the Chief Justice, or the Judge President of the appropriate division of the High Court or other court constituted in terms of section 2(v), as the case may be. An Acting judge to the Constitutional Court shall not serve for

¹² In order to make it quite clear that the President is bound to act on the advice of the Judicial Service Commission, it might be necessary to insert a provision to that effect in the section dealing with interpretation (as was done in, e.g., the Independent Broadcasting Authority Act, 1993).

¹³ This is a transitional mechanism and subject to further debate. It could be shifted to the part dealing with transitional provisions.

a total period exceeding 6 months.

Removal of judges from office

6. (1) The President may remove a judge from office on grounds of incapacity, gross misconduct or gross incompetence upon a finding to that effect by the Judicial Service Commission and the adoption by Parliament in joint session and by a majority of two-thirds of members of a resolution calling for the removal of such judge from office.
- (2) A judge who is the subject of an investigation may be suspended by the President on the advice of the Chief Justice pending the finalisation of such investigation.
- (3) The emoluments and pension and other benefits of judges and acting judges shall be prescribed by national law and shall not be subject to reduction.

Judicial Service Commission

7. (1) There shall be a Judicial Service Commission, which shall, subject to subsection (3), consist of -
- (a) the Chief Justice, who shall preside at meetings of the Commission;
 - (b) the President of the Constitutional Court;
 - (c) one Judge President designated by the Judges President;
 - (d) the Minister responsible for the administration of justice or his or her nominee;

- (e) two practising advocates designated by the advocates' profession;
 - (f) two practising attorneys designated by the attorneys' profession;
 - (g) one professor of law designated by the deans of all the law faculties at South African universities;
 - (h) four senators designated *en bloc* by the Senate by resolution adopted by a majority of at least two-thirds of its members;
 - (i) four persons, two of whom shall be practising attorneys or advocates, who shall be designated by the President in consultation with the Cabinet;
 - (j) on the occasion of the consideration of matters specifically relating to a provincial division of the High Court, the Judge President of the relevant division and the Premier of the relevant province.
- (2) The functions of the Judicial Service Commission shall be -
- (a) to make recommendations regarding the appointment and removal from office of judges in terms of sections 5 and 6;
 - (b) to advise the national and provincial governments on all matters relating to the judiciary and the administration of justice;
- (3) When the Commission performs its functions in terms of subsection 2(b), it shall sit without the four senators referred to in subsection 1(h).

- (4) The Commission shall determine its own procedure, provided that the support of at least an ordinary majority of all its members shall be required for its decision.
- (5) The Commission may appoint committees from among its number and assign any of its powers and functions to such committee.

Need to indicate which draft.

DRAFT - 25 AUGUST 1995

Status: Draft on instructions of the CC of the 25 August 1995 for debate in the CC.

ATTORNEY GENERAL¹

Establishment

ref. minister
board
ANC'S view

There shall be an office of the Attorney General

1. (1) There shall be a National Attorney General.² Every Province shall have a Provincial Attorney General.³

(2) The Attorneys General shall be independent and impartial.⁴

agreed

(3) The functions of the National Attorney General shall be -⁵

(a) to formulate policy guidelines in consultation with Provincial Attorneys General;

(b) to coordinate the work of and liaise with Provincial Attorneys

General.

¹ There is no agreement on the recognition of this office in the Constitution. ANC and PAC are of the view that there is no need to provide for the office in the Constitution, they argue that it can be dealt with elsewhere. The whole formulation of this clause is based on the instructions given at the CC to Law Advisers to produce this draft to facilitate its debate on this.

² The parties are not in agreement as to a need for a N.A.G. nor if such office is established, that its incumbent should be called National Attorney General. DP and ACDP are of the view that there is need for this office. FF has an opposite view. The ANC whilst not seeing a need to constitutionalise this office, agrees that there should be a N.A.G.

³ The NP and DP argue for establishment of these office in all provinces.

⁴ All parties are agreed on the independence of the A-G.

⁵ There are diverse views on what the functions of the N.A.G. should be.

(4) The authority to institute criminal proceedings on behalf of the state vests in the Provincial Attorneys-General.⁶

Appointment⁷

2. (1) The National Attorney General shall be appointed by the President on the recommendation of⁸

(2) A Provincial Attorney General shall be appointed by the Premier of his or her province⁹

⁶ There is no agreement on this.

⁷ There is an agreement that the AG has to be independent and such independence has to be protected by the mechanism for the appointment of the incumbent.

⁸ The NP proposes that the AG be appointed by the President on recommendation of the Judicial Service Commission (JSC), and for that reason the composition of this body has to be reconstituted to include two Attorneys General. The matter requires further debate.

⁹ The FF proposes that the PAG be appointed by the Premier of the Province in consultation with the Judicial Service Commission. The matter requires further debate.



CONSTITUTIONAL ASSEMBLY
MEMORANDUM

TO: The Subcommittee
FROM: Hassen Ebrahim
Executive Director
DATE: 7 September 1995
RE: DRAFT ON "INDEPENDENT INSTITUTIONS"

=====

1. The Subcommittee meeting of 28 August 1995 considered the draft on "Independent Institutions" and instructed the Law Advisers to;
 - (a) change the name of the draft,
 - (b) distinguish institutions that can be provided for in this draft from those that should be provided for separately, and
 - (c) determine which institutions are not adequately provided for by the clauses governing the general principles, appointments and removal of office relating to the institutions provided for in the draft.

2. With regard to 1(a), above:

The name, "Institutions to Protect Public Interest", was suggested at the subcommittee meeting and is used in the current draft.

3. With regard to paragraph 1(b), above:
 - 3.1 The meeting agreed that the institutions that should be provided for in the draft are those whose key role is to perform monitoring/watchdog functions and not those that are organs of state and primarily vested with policy making functions.

 - 3.2 The following institutions fall into the category of organs of state and therefore will not be provided for in the draft dealing with the

"Institutions to Protect Public Interest":

- a) Financial and fiscal Commission
- b) Public Administration Commission
- c) Central Bank

3.3 The following institutions fall into the category of monitoring/watchdog institutions and can be provided for in the draft:

- a) Auditor General
- b) Public Protector
- c) Electoral Commission
- d) Commission on Gender Equality
- e) Human Rights Commission

4. With regard to paragraph 1(c), above:

4.1 It is suggested that criteria for determining whether the General Principles are adequate for any particular institution provided for in the draft may be useful. Elements of the criteria may include:

- a) the need to enshrine a peculiar degree or form of independence, impartiality, accountability and credibility in respect of the institution, and
- b) the need for specific provisions to ensure the effectiveness of the institution.

4.2 Noting that different appointment mechanisms were suggested by the Theme Committees that considered the various institutions provided for in the draft, it is suggested that criteria for determine appropriate appointment mechanisms be considered. Elements of the criteria may include:

- a) the need to ensure that;
 - i) an appointee or appointees with the required qualifications holds office,
 - ii) the independence, impartiality, accountability and credibility of the appointee or appointees are promoted,
 - iii) the effectiveness of the office is not hampered, and
 - iv) the principle of representivity is adequately taken into

*Weger, Zehner
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*Issue
Bank?*

account.

- 4.3** There is agreement that the removal mechanism should correspond with the appointment mechanism.

DECISIONS REQUIRED:

1. General principles:

- a) What constitutes the appropriate criteria for determining whether an institution is adequately covered by the general provision?
- b) Applying the criteria, which institutions are not adequately covered by the general provision and require specific provisions?

2. Appointment and dismissal mechanisms:

- a) What would constitute the appropriate criteria for determining the mechanism or mechanisms?
- b) Applying the criteria, what mechanism or mechanisms should be enshrined in respect of the various institutions?

FOURTH DRAFT - 30 AUGUST 1995

Status: Processed as per instruction of CC Subcommittee of the 28 August 1995 for further discussion by the Subcommittee.

PP
HKG
Gender
Eke
Aud.
Law
Adv. Secs to
look at
order.

Chapter ...

INDEPENDENT INSTITUTIONS

INSTITUTIONS TO PROTECT PUBLIC INTEREST¹

AUDITOR GENERAL

Establishment and functions

1. (1) There shall be an Auditor General for the Republic.²

[(2)]³

[(3)]³

[(4)]³

(2) The Auditor General shall audit, and report on, the accounts and financial statements of all national and provincial state departments and administrations and of all local governments, and also all such other accounts and financial statements as may be required by law to be audited by the Auditor

¹ This is a term for consideration by CC Subcommittee for possible use to refer to:

Auditor General, Electoral Commission, Public Protector, Human Rights Commission and Commission on Gender Equality.

As suggested by the CC Subcommittee these Institutions have been dealt with separately in this document. Suggestions as to an appropriate term to be used for these Institutions were made at the Subcommittee though no decision was taken. There was a strong feeling that the word Independent to describe these Institutions should not be used.

² Agreed to.

³ The previous Subsections (2); (3) and (4) have been moved to Section 16 the general principles clause are to be moved to section 21 as per instructions of the CC Subcommittee.

DP: Efferdine named. →
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new address
Paul for in upon

Third draft: 23 August 1995

General.⁴

(3) The Auditor General may audit, and report on, the accounts and financial statements of any institution funded from public money, as may be regulated by law.⁵

[(3)]⁶

(4) The Auditor General shall submit reports on audit to all authorities which have a direct interest in the relevant audit and also to any authorities as may be prescribed by law. All reports shall be made public.⁷

5. The AG + any person acting under the authority of the AG shall not be liable

Qualifications of the Auditor General and Tenure of Office⁸

2. [(1)]

(2) The Auditor General shall be a South African citizen who is a fit and proper person to hold such office. The Auditor General shall be appointed with due regard to his or her specialised knowledge of or experience in auditing, state finances and public administration, and shall not hold office in any

⁴ Formulation as approved by the CC Subcommittee.

⁵ Agreed to in the Subcommittee, the DP reserving its position.

⁶ It was agreed in the Subcommittee that the previous subsection (3) dealing with the AG's access to information be deleted. The DP reserved its position.

⁷ The CC Subcommittee agreed that this formulation should replace the previous one.

⁸ The previous Subsections (1)(a) - (b), (5) and (6) dealing with Appointment and Dismissal have been moved to the general provisions clause where various options on Appointment and Dismissal Mechanisms regarding all Institutions to Protect Public Interest are dealt with as per instructions of the CC Subcommittee.

Get regulation to protect

political party or organisation.⁹

(3) The Auditor General shall be appointed for a non-renewable term of not less than 5 years and not more than 10 years.¹⁰

[(4)]¹¹

[(5)]¹²

[(6)]¹²

[Assignment of powers and functions and provision of funds

5.]¹³

ELECTORAL COMMISSION¹⁴

Establishment and functions

3. (1) There shall be an Electoral Commission.

(2) The Electoral Commission shall be responsible for the

⁹ Agreed to in the CC Subcommittee.

¹⁰ The previous subsection (3) has been amended as per instructions of the CC Subcommittee to capture the agreement on the Term office of the A.G.

¹¹ It was agreed in the CC Subcommittee that the provision on conditions of service of the AG be deleted. The DP reserved its position.

¹² See footnote 8.

¹³ It was agreed in the CC Subcommittee that the previous section 5 be deleted, the DP reserving its position.

¹⁴ It was agreed that these provisions shall be held in abeyance until the discussion by the CC Subcommittee.

management of free and fair elections conducted at national, provincial and local levels of government.

Composition of the Commission¹⁵

4. The Electoral Commission shall be composed of a minimum of three persons.

PUBLIC PROTECTOR

Establishment and functions

5. (1) There shall be a Public Protector for the Republic.¹⁶

[(2)]¹⁷

[(3)]¹⁷

[(3)]¹⁷

(2) The Public Protector shall have power, as regulated by law, to investigate and report on any conduct in the affairs of the State or public administration at any level of government which is alleged or suspected to be improper or to result in any impropriety or prejudice, and to take such remedial action as is appropriate in the circumstances. In addition, the Public Protector shall

¹⁵ The previous title, Appointments, has been changed to Composition as appointments shall be dealt with in the general provisions clause (see Footnote 8).

¹⁶ Agreed to by the CC Subcommittee.

¹⁷ The previous subsections (2) to (4) have been moved to the general provisions clause as per instructions of the Subcommittee.

have such other powers and functions as may be prescribed by law.

(3) The Public Protector shall be accessible to all persons and communities.¹⁸

(4) The Public Protector shall not have the power to investigate the performance of judicial functions by the courts of the Republic.¹⁹

(5) Reports issued by the Public Protector in connection with the discharge of his or her powers and functions shall except in exceptional circumstances be open to the public.²⁰

[(4)]²¹

Qualifications of the Public Protector and Tenure of Office²²

¹⁸ Agreed to in the CC Subcommittee. The NP has reserved the right to revisit this clause.

¹⁹ This clause was criticized on a number of points in the CC, viz

- that the negative nature of the provision is inappropriate;
- that its operation should be limited to judicial decisions;
- that it should be moved to the chapter on the administration of justice.

The CC decided to defer further discussion of this clause pending discussion of the Draft on the Administration of Justice.

²⁰ Agreed to by the CC Subcommittee, the NP reserving its right to revisit the clause.

²¹ The Subsection has been moved to the general provisions clause.

²² Appointment and dismissal have been moved to a general provisions clause (See footnote 8).

6. (3) The Public Protector shall be a South African citizen who is a fit and proper person to hold such office and who complies with any other requirements prescribed by law.²³

(4) The Public Protector shall be appointed for a period of seven years.²⁴

Provincial public protectors/Deputy Public Protectors²⁵

7. ...

HUMAN RIGHTS COMMISSION

Establishment and functions

8. (1) There shall be a Human Rights Commission for the Republic.²⁶

[2]²⁷

[3]

(2) The Human Rights Commission shall promote the development, protection and attainment of, and respect for, human rights and, generally, the development of a culture of human rights in the Republic. It shall for this purpose

²³ Agreed to in the CC Subcommittee.

²⁴ Agreed to in the CC Subcommittee.

²⁵ Stands over for discussion on provincial competencies.

²⁶ Agreed to.

²⁷ The CC Subcommittee agreed that Subsections (2) to (5) shall be moved to general provisions clause.

have the necessary powers accorded to it by law, including powers to monitor, investigate and report on the observance of human rights, to take steps to secure appropriate redress where human rights have been breached and to perform research and educative functions.²⁸

²⁸ As agreed to in the CC Subcommittee.

Appointment of members²⁹

9. ..³⁰

*To be dealt with
later.*

²⁹ Although the HRC falls under the category of Institutions to Protect Public Interest, a concern was raised in the CC Subcommittee that because of the nature of its role; function and the manner of operation, appointment of its Commissioners should be different from that of other Institutions in this category and therefore cannot be put in the general provisions clause on Appointments and Dismissals

³⁰ There is no agreement among the parties on the method of selection and appointment of commissioners. There are two views, the one supports the approach in section 115(3) of the interim Constitution. The other view calls for the creation of an independent panel to select and recommend persons to the President for appointment as commissioners. Qualifications for members of the Commission also need further debate. These are the two options:

Option 1:

"4. (1) The members of the Human Rights Commission shall be appointed by the President on recommendation by Parliament.

(2) Parliament shall only recommend a person for appointment to the Commission -

(a) who has been nominated by a committee of Parliament composed of one representative of each party represented in Parliament and willing to participate in the committee; and

(b) whose nomination has been approved by Parliament by a resolution adopted by a majority of at least 75% of the members present and voting.

(3) A member of the Commission shall be an independent and impartial person of integrity who has a personal commitment to the promotion of fundamental rights."

Option 2:

"4. (1) The members of the Human Rights Commission shall be appointed by the President on recommendation by an independent panel of human rights experts, who do not hold office in any political party or organisation.

(2) Such panel of human rights experts shall be appointed by a multi-party parliamentary committee by resolution of a majority of at least two-thirds of its members.

(3) A member of the Commission shall be an independent and impartial person of integrity who has a personal commitment to the promotion of fundamental rights."

The Subcommittee must consider whether members of the Commission should be appointed in terms of the standard procedure clause, in which case the above can be replaced by the following:

"A member of the Human Rights Commission shall be appointed in accordance with the requirements set out in the general provisions clause."

GENDER COMMISSION

10. ...³¹

GENERAL PROVISIONS³²

General principles

11. (1) The institutions [provided for in this Chapter]³³ shall be independent, impartial and subject only to the Constitution and the law. They shall discharge their powers and functions without fear, favour or prejudice.

(2) Organs of state shall through legislative and other measures accord the said institutions the necessary assistance and protection to ensure their independence, impartiality, dignity and effectiveness.

(3) No person and no organ of state shall interfere with the said institutions in the discharge of their powers and functions.

(4) The said institutions shall be accountable to Parliament and shall report to Parliament on their activities at least once per year.³⁴

³¹ The draft for this Commission is still to be considered.

³² These are provisions that are to be considered for general application to all Institutions to Protect Public Interest.

³³ This supposes that the Institutions to Protect Public Interest shall be put in a Chapter of their own.

³⁴ This principle was not contained in the now adjusted provisions of the Auditor General, but there does not seem to be any reason why this principle should not apply to that office. All the Principles in this Section can be applied to all the Institutions to Protect Public Interest.

Appointments³⁵

12. (1) Where the Constitution requires an appointment to be made in accordance with this section, such appointment shall be made by the President acting on the recommendation of Parliament.

(2) The person recommended by Parliament shall be a person -

(a) nominated by a committee of Parliament ...;³⁶

and

(b) approved by Parliament by a resolution adopted by a majority

³⁵ The appointment mechanisms in this clause are for consideration for possible applications to all the Institutions to Protect Public Interest except the HRC (See footnote 29). It became apparent in the Subcommittee that due to the differences between these Institutions a uniform clause on the Appointment Mechanisms may not be practicable. The Subcommittee has to consider various options for possible application to the various institutions as was decided in the Subcommittee.

³⁶ These are the four options suggested at the Subcommittee, as to the composition of such Committee.

Option 1:

(a) nominated by a committee of Parliament which is broadly representative of the parties in Parliament,

Option 2:

(a) nominated by a committee of Parliament composed of one representative from each party in Parliament,

Option 3:

(a) nominated by a committee of Parliament consisting of at least one representative of each party in Parliament,

Option 4:

(a) nominated by an ad hoc or portfolio committee of Parliament,

of at least ... %³⁷ of the members present and voting.

Removal from office³⁸

13. (1) Where the Constitution provides for the removal from office of a person in accordance with this section, that person may be removed from office only on the grounds of misbehaviour, incapacity and incompetence upon -

- (a) ...³⁹ and participating in the committee; and
- (b) the adoption by Parliament of a resolution supported by at least ...⁴⁰ of the members present and voting calling for his or her

³⁷ There has been no agreement as to the majority required here. The matter requires further debate.

³⁸ The Subcommittee has directed that the Removal Procedures should conform to the Appointment Procedures.

³⁹ These options are the same as those applicable to Appointment Procedure.

- (a) A finding to that effect by -

Option 1:

a committee of Parliament that is broadly representative of the parties in Parliament,

Option 2:

a committee of Parliament consisting of one representative of each party in Parliament,

Option 3:

a committee of Parliament consisting of at least one representative of each party in Parliament,

Option 4:

an ad hoc or portfolio committee of Parliament,

⁴⁰ There has been no agreement regarding the majorities required.

removal from office.

(2) The President may suspend a person from office when his or her removal from office is under consideration by Parliament, and shall without delay dismiss him or her from office upon adoption of the said resolution.⁴¹

OTHER INDEPENDENT INSTITUTIONS⁴²

FINANCIAL AND FISCAL COMMISSION

14. ...⁴³

CENTRAL BANK⁴⁴

Establishment

15. The South African Reserve Bank, established and regulated by national law, shall be the central bank of the Republic.

SA R Bank which shall be the central bank of the Republic

2) Central Bank shall be independent, impartial & subject only to ^{the} law to ^{the} extent & the ~~provision~~

⁴¹ This clause can be considered for application to all the Institutions to Protect Public Interest.

⁴² The CC Subcommittee agreed that these institutions be separated from the Institutions to Protect Public Interest. They have been put together here under the heading, "Other Independent Institutions", for ease of reference. It is suggested that the categorisation and the heading be given further consideration.

⁴³ A draft on the provisions of this Commission is still to be considered by the Constitutional Committee.

⁴⁴ The CC Subcommittee agreed that the provisions on the Central Bank would remain as they are and would not form part of the general provision.

Primary objective

16. (1) The primary objective of the South African Reserve Bank shall be to protect the value of the currency in the interest of balanced and sustainable economic growth in the Republic.

(2) The South African Reserve Bank shall, in the pursuit of its primary objective [referred to in subsection (1)], exercise its powers and functions independently and without fear, favour or prejudice, subject only to a national law: Provided that there shall be regular consultation between the South African Reserve Bank and the Minister responsible for national financial matters.

Powers and functions

17. The powers and functions of the South African Reserve Bank shall be those customarily exercised and performed by central banks. Such powers and functions shall be determined by a national law.⁴⁵

PUBLIC ADMINISTRATION COMMISSION

Establishment and functions

18. (1) There shall be a single Public Administration Commission for the Republic as prescribed by national law. Each of the provinces shall be entitled to nominate a representative for appointment to the Commission.

⁴⁵ It was agreed in the CC Subcommittee that the previous subsection (3) dealing with the AG's access to information be deleted. The DP reserved its position.

[(2) The Public Administration Commission shall be independent and impartial.]⁴⁶

(3) The functions of the Public Administration Commission shall be to promote the basic values and principles governing public administration set out in Chapter ...⁴⁷ as prescribed by national law.

(4) The function of the Public Administration Commission shall be to promote the values and principles of public administration set out in chapter ... as prescribed by law.⁴⁸

(5) Provincial representatives in the Public Administration Commission shall be competent to exercise and perform the powers and functions of the Commission with regard to provinces as prescribed by national law.

Nals
Appointments / Members
A.G. →

⁴⁶ As there has been no decision to classify this Commission with any other Independent Institution there is no need for consideration of the removal of this clause to a general clause. For now it is proper where it is.

⁴⁷ The provisions of the Draft on the P A Commission dealing with principles governing public administration and the public service have an effect and application beyond the scope of the Commission. It would therefore be inappropriate to include these provisions in this Chapter under the heading "Independent Institutions". It is suggested that these other provisions be included in a separate chapter under "Public Administration" to precede the chapter on the Security Services.

⁴⁸ This formulation is per instructions of the CC Subcommittee.



CONSTITUTIONAL ASSEMBLY

To: CC Sub-Committee
From: Hassen Ebrahim
Re: Theme Committee 1 report on Blocks 7 - 9
Date: 6 September 1995

1. Name and National Territory

- 1.1 The Chairperson allowed the PAC to withdraw its submissions on Block 9 in order to reformulate it. A revised submission is attached.
- 1.2 A revised formulation on Name and National Territory is attached.

2. National Anthem

It was agreed that the **national anthem** would be left in abeyance to allow the ANC and PAC to prepare submissions on the matter.

3. National flag:

- 3.1 A comparative study is attached.
- 3.2 PAC, FF and ANC given time to finalise their positions.

4. Coat of Arms

The meeting agreed that:

- 4.1 The new constitution would contain a clause stating that there would be a coat of arms as described in a proclamation.
- 4.2 The Management Committee would seek expert advice to investigate a new coat of arms and the financial implications of changing the coat of arms. The Management Committee would forward proposals to the Constitutional Committee for its consideration.

5. Seat of Government

The meeting agreed to let the matter stand over, to allow political parties to finalise their positions.

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

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Tel: (021) 245 031, 403 2252 Fax: (021) 241 160/1/2/3, 461 4487, E-mail: conassem@iaccess.za



You've made your mark



Now have your say

THE NEW CONSTITUTION

6. Language

The meeting agreed to:

- 6.1 Ask the Technical Experts to advise the Sub-Committee on whether the question of sign language could be catered for by Constitutional Principle 3(1)(c). This matter is being attended to.
- 6.2 The NP requested that the Law Advisors also provide an opinion on whether section 3(10)(b) of the Interim Constitution required that the Pan South African Language Board be consulted before draft formulations on language could be finalised. This opinion is attached.

MEMORANDUM

TO : Executive Director
FROM : Law Advisers
DATE : 6 September 1995
RE : NATIONAL TERRITORY

1. Attached hereto is a reformulation of the draft appearing on page 39 of the CC documentation for 1995.09.01 - as per ruling of the Chairperson at the CC meeting of that date (par. 4.4.iv of the draft minutes).
2. While the reformulated draft will in our opinion, from a legal point of view, comply with the relevant Constitutional Principles (see footnotes), we do not feel comfortable about it. The problem lies with the proposed subclause (3), which refers to Schedule 1 of the 1993 Constitution. That Schedule defines the territories of the provinces mainly with reference to magisterial districts, but some areas are described geodetically or with reference to various laws. Many of those laws emanated from or relate to the former TBVC states or self-governing territories. It does not seem right to perpetuate those laws in our new constitutional text.
3. Judged by the difficulties that were experienced in finalising the description of the areas in Schedule 1, I am not so sure that it can be said without any doubt that every inch of South African soil is covered in that Schedule.
4. It is an open question as to which islands and waters should be covered (specifically) in the definition of the national territory. Especially as far as the waters are concerned, this would seem to involve complicated issues of the International Law (of the Sea).
5. In view of these problems it is recommended that the whole question of the definition of the national and provincial territories should be referred to a committee of experts for investigation and report. The committee ought to include the Chief Surveyor-General and an expert on Maritime Law from the Department of Foreign Affairs.

CONSTITUTIONAL ASSEMBLY LAW ADVISERS

SECOND DRAFT - 4 SEPTEMBER 1995

Status: Second draft prepared by TC 1, Technical Advisers and Law Advisers pursuant to discussion in the CC on 1 September 1995.

CHAPTER 1

FORMAL PROVISIONS

Republic of South Africa

1. (1) The Republic of South Africa shall be one, sovereign state.¹
- (2) The national territory of the Republic comprises the areas of the provinces of -
 - (a) ...²
- (3) The areas and boundaries of the provinces shall be as defined in the Constitution of the Republic of South Africa Act, 1993.³

¹ Constitutional Principle 1; as per agreement in Block 2 of TC 1 analytical survey.

² The names of the provinces to be inserted when that issue has been finalised.

³ In terms of Constitution Principle XVIII(1) the boundaries of the provinces must be defined in the Constitution. Furthermore, the boundaries must be the same as those established in terms of the Interim Constitution (CP XVIII(3)).

Special provision will have to be made in the section dealing with amendment of the Constitution with regard to the alteration of provincial boundaries - see CP XVIII(4) and (5).

PAC's RE-SUBMISSION ON FRANCHISE AND ON SOME ITEMS OF BLOCK 9 THEME COMMITTEE 1.

1. The Pan Africanist Congress holds that the age of 16 years should be the age of eligibility for voting for citizens of our country.

2. Name

The Pan Africanist Congress for the reasons advanced in the original submission submits that the name of our country should be changed to Azania.

Secondarily, the name, Azania and other names in the patriotic bosoms of the hitherto oppressed people and their fellow oppression-haters should be submitted to the constitution making body for processing. Nothing less than this shall be deemed to be fair and respectable in the eyes of the Pan Africanist Congress.

3. Symbols

The Pan Africanist Congress rejects the flag presently used in our country. It is of much importance that the nation should be called to make submissions on this vital and crucial of national symbols.

4. Coat of Arms

What the PAC holds for the national flag is the same for the coat of arms.

5. National Anthem

The Pan Africanist Congress submits that NKOSI SIKELELA IAFRIKA should be the only anthem for this country. The constitutionalisation of NKOSI SIKELELA IAFRIKA as the country's national anthem shall effectively symbolise the triumph of virtue over vice, of liberty over bondage. Singing this anthem together, former foes and now new Africans, unified in the crucible of social justice shall be a soothing balm for the hitherto physically pained majority and it will be a healing experience for those needing to be exorcised of the unholy ghost of racial supremacy.

If this is denied, then let the constitution making body call for submissions from the citizens of this country.

M.Z Dyani

**CONSULTATION BETWEEN THE CONSTITUTIONAL ASSEMBLY AND THE
PAN SOUTH AFRICAN LANGUAGE BOARD
IN TERMS OF THE INTERIM CONSTITUTION.**

1.

We have been requested to produce an opinion on whether the Interim Constitution, particularly section 3(10)(b), introduces a requirement that the Constitutional Assembly has to consult the Pan South African Language Board before formulations on language are finalized.

2.

In terms of section 3(10)(b), the Pan South African Language Board shall be consulted, and be given an opportunity to make recommendations, in relation to any proposed legislation contemplated in section 3.

3.

In drafting and adopting a new constitutional text, the Constitutional Assembly is bound by the provisions of Chapter 5 of the interim Constitution in general, and by specific provisions in the interim Constitution in particular. Therefore, in the absence of a specific provision in the Constitution binding the Constitutional Assembly to solicit the views of the Pan South African Language Board before deciding any language issue, the Constitutional Assembly will not be constitutionally bound to consult the Pan South African Language Board.

4.

Section 3(10)(b) imposes a constitutional duty to consult, but only in respect of legislation contemplated in section 3. Therefore, Parliament and provincial legislatures are under a duty to consult the Pan South African Language Board on such legislation.

5.

However, the legislation referred to in section 3 does not include the new constitutional text. Therefore, there is no constitutional duty on the Constitutional Assembly to consult the Pan South African Language Board on language matters as contemplated in section 3 of the interim Constitution, as there is no provision in the interim Constitution specifically requiring it to do so. In any event, the Board has not yet been established. Of course, there is nothing preventing the Constitutional Assembly or the Theme Committee concerned from consulting the Board once it has been established.

**CA Law Advisers
5 September 1995**

REPORT:

CONSTITUTIONAL SURVEY: FLAG, NATIONAL ANTHEM AND TERRITORIES

1. INTRODUCTION

1.1 Objective

The object of this research is to identify Constitutions which contain provisions relating to the national flag, the national anthem and territories.

1.2 Method

A survey was conducted of a spread of Anglo-American, European, Asian, African and Middle-Eastern Constitutions.

Altogether, a total of nineteen Constitutions were analysed. These included:

Bangladesh	Italy
Belgium	Malawi
Canada	Malaysia
Chile	Namibia
France	Pakistan
Germany	Poland
Ghana	Portugal
Hungary	Romania
India	Spain
Israel	

1.3 Checklist of Issues

In analysing the various Constitutions the following criteria were employed:

1.3.1 Does the Constitution contain provisions relating to the flag of the country, the national anthem and territories?

1.3.1.1 Where are these provisions situated in the Constitutional text and under what heading?

1.3.1.2 How are they described?

1.3.2 Does the Constitution provide that the provisions relating to the anthem, flag and territories are to be prescribed or defined in legislation?

2. FLAG AND ANTHEM

Most Constitutions make provision for both a flag and an anthem, usually under the same article or section:

Bangladesh: The article relating to the flag and the anthem is found in the main body of the Constitution and is entitled National Anthem, Flag and Emblem. The Constitution provides that "the national anthem of the Republic is the first ten lines of 'Amar Sonar Bangla'." (article 4(1)). The Constitution of Bangladesh also makes reference to its national flag and provides a description thereof. ie. Article 4(2) provides: "The national flag of the Republic shall consist of a circle, coloured red throughout its area, resting on a green background. It is also provided that provisions relating to the national anthem, flag and emblem shall be made by law.

Chile: In the main body of the Constitution under the heading Bases of Institutionality, article 2 provides as follows: "The national flag, the coat of arms of the Republic and the national anthem are the emblems of the Nation." No further details are provided and no reference is made to other legislation.

France: Article 2 of the Constitution merely specifies the colours of the French flag (further details are not provided) and the name of the national anthem. ie. the article reads as follows: "The national anthem is the tricolour flag, blue, white and red. The national anthem is the Marseillaise."

Hungary: The Constitution of Hungary goes into a little more detail than other Constitutions with regard to the anthem and makes reference not only to the title of the anthem but also to the names of its writer and composer: Section 75 reads, "The national anthem of the Republic of Hungary is the poem entitled 'Hymn' [Himnusz] by Ferenc Kolesy with music by Ferenc Erkel: The provision relating to the flag (section 76) provides that the rules affecting the arms and the flag of Hungary and the treatment/usage thereof shall be provided by a Constitutional Act. These provisions fall under the Chapter entitled The Capital and the National Symbols of the Republic of Hungary.

Israel: Under the heading General Provisions, Section 4 of the Constitution provides a description of the flag, a description of the official emblem and the name of the national anthem. It is further provided that provisions relating to the use and non-desecration of the flag, emblem and anthem of the state shall be prescribed by law.

Italy: The flag is described in article 12 by its colour and design.

Malawi: Under the Chapter entitled The Republic of Malawi, provision is made for the existence of a flag, an anthem and a public seal but no details pertaining to colours of the flag, the name of the anthem etc are provided. Section 2 reads as follows: "Malawi shall have a National Flag, a National Coat of Arms, a National Anthem and a Public Seal."

Namibia: Chapter 1 entitled The Republic makes provision for national symbols. Article 2 provides that Namibia shall have a national flag but that the description thereof is set out in one of the schedules of the Constitution: Schedule 6 gives a very detailed description of the flag mentioning its shape, proportions, colours and design. Provision is also made for the National Anthem (as well as a National Coat of Arms and a National Seal) which shall be determined by an Act of Parliament. It is further provided that this Act of Parliament shall require a two-thirds majority of all the members of the National Assembly for adoption and amendment.

Poland: Article 103 of the Polish Constitution describes the colours of the Republic and the name of the anthem but provides that the details shall be specified by law. In addition however a further article (article 104) provides for the respect and protection of the coat-of-arms, colours and national anthem.

Portugal: Article 11 entitled National Symbols does not specify the colours of the flag but rather describes what the flag symbolises (sovereignty of the Republic, the independence, the unity and the undivided nature of Portugal). It also provides that the flag shall be "the flag that was adopted by the Republic established by the Revolution of 5 October 1910". The national anthem is described by its name.

Romania: Article 12 pertaining to the flag and anthem are situated in the Constitution under the heading General Principles. The flag is described by both its colour and design. The national anthem is described by reference to its name.

Spain: The flag of Spain is described by reference to its colours and design. (Preliminary Titles-article 4) Provision is also made for the recognition of flags of the autonomous communities.

3. TERRITORIES

The following Constitutions which were analysed make reference to territories:

Belgium: Title 1 entitled Federal Belgium, its Components and its Territory specifies the names of the various regions. Mention is also made as to how boundaries may be altered: It is provided that the boundaries may only be altered or rectified by law. Similarly, it is provided that the sub-divisions of the provinces can only be established by law.

Canada: In addition to naming the four different provinces of Canada, Schedule 1 of the Constitution lists the various counties, ridings of counties, cities, parts of cities and towns.

Ghana: Article 4 of the Chapter entitled Territories of Ghana specifies in general the territories of which Ghana is comprised. The individual territories, however are not individually named and/or described.

India: In the Indian Constitution, Territories are provided for in the First Schedule which gives a list of the Union Territories and the extent of each territory.

Italy: Article 131 provides a list of Regions which are instituted. (Title V - The Regions, Provinces and "Comuni")

Malaysia: Article I of the Constitution relates to the territories of the Federation and specifies by name what the states of the Federation shall be.

Namibia: Chapter 1, entitled The Republic identifies the territory of Namibia. Article 1(4) merely describes generally what the national territory of Namibia shall consist of and the extent of its boundary.

Pakistan: In the introductory section to this Constitution only the major territories of Pakistan are mentioned by name. (article 1)

Portugal: Article 5 entitled Territory provides that "Portugal comprises the territory defined by history on the European continent and the archipelagos of the Azores and Madeira." Reference is also made to other legislation in the provision stating that the extent and limits of territorial waters, the exclusive economic zone and the rights of Portugal to adjacent sea beds shall be laid down by law.

4. CONCLUSION

The following conclusions can therefore be drawn from this survey of the worlds' Constitutions:

- 4.1 Most of the Constitutions surveyed contain provisions pertaining to the national flag and the national anthem.
- 4.2 In addition to the flag and the anthem, some Constitutions also make reference to its national emblem (eg. **Bangladesh** and **Israel**) or coat of arms (eg. **Poland**, **Malawi** and **Namibia**) or public seal (eg. **Malawi**).
- 4.3 Some Constitutions refer to other legislation and provide that details pertaining to the flag and national anthem shall be prescribed/established by law (eg. **Israel**, **Namibia** and **Poland**). In the case of **Hungary** reference is made to a Constitutional Act.
- 4.4 Most of the provisions relating to the flag and national anthem are contained in the main body of the Constitution, except for **Namibia** which describes the flag in a schedule.
- 4.5 With regard to provisions pertaining to territory, only **Belgium** and **Portugal** make reference to other legislation. Most of the provisions relating to territories are contained in the main body of the Constitution except for the Constitutions of **Canada** and **India** which deal with territories in a schedule.

SYNOPSIS

COUNTRY	FLAG	ANTHEM	TERRITORY
Bangladesh	constitution	constitution	
Belgium			legislation
Canada			constitution/s
Chile	constitution	constitution	
France	constitution	constitution	
Germany	constitution		
Ghana			constitution
Hungary	Constitutional Act	constitution	
India			constitution/s
Israel	constitution & legislation	constitution & legislation	
Italy	constitution		constitution
Malawi	constitution	constitution	
Malaysia			constitution
Namibia	constitution/s	legislation	constitution
Pakistan			constitution
Poland	legislation	legislation	
Portugal	constitution	constitution	constitution & legislation
Romania	constitution	constitution	
Spain	constitution		

GUIDE: constitution = dealt with in the constitution

 constitution/s = dealt with in the constitution, in a schedule

 legislation = specified in the constitution that this issue is dealt with in other legislation

 Constitutional Act = specified in the constitution that this issue is dealt with in a Constitutional Act

 Blank space = This issue is not mentioned at all in the Constitution

CONSTITUTIONAL ASSEMBLY

***CONSTITUTIONAL
COMMITTEE***

***THEME COMMITTEE ONE
CHARACTER OF
DEMOCRATIC STATE***

***SUPPLEMENTARY REPORT
FOR BLOCKS 7 & 9***

5 SEPTEMBER 1995

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

VOLUME 51 & 52

NAME AND LOCALITY	SUBJECT MATTER OF SUBMISSIONS GERMANE TO THEME COMMITTEE ONE	DATE SUBMITTED
B B Mkhize	Interested in designing new flag	14/05/95
R T Ndov WITS	Anthem should include all 11 languages including Venda and Tsinga or consist of English and sign language	
Odendaal Family Pretoria	Retain the name of the country	
F Fisher Umhlangu Parks	English to be the official language	
J I F Marais Noordhoek	Retain the name of the country	18/05/95
L A Hopkins Gillits	Afrikaans should be recognized as an official language	22/05/95
H Erasmus Zeerust	There should be 4 official languages namely: Northern or Southern Sotho Afrikaans Xhosa English The National Anthem should be sung according Prof Khumalo's proposal	24/05/95
F & U Webb	Keep the present flag	01/06/95
D Sargeant Durban North	English should be the official language as it is understood by 90% of the population	17/05/95
B Hughes Port Elizabeth	English should be the official language - it would be too costly to have more than one	
N Ngcayiya Malvern	Proposal for new flag	
B B Mkize Kwa Mashu	Proposal for new flag	14/05/95
L Mohamed Salt River	The line "Come Holy Spirit" be retained in the anthem	20/07/95
J Combrink Foundation for Afrikaans	Proposals on the official languages of SA, Fundamental Language Rights and other Language Provisions in comparison to the relevant sections of the interim constitution	
M B O Jack Oudtshoorn	Retain the present flag	02/06/95
Rouxville Municipality	Please retain the flag and the anthem	25/05/95

N G Sihlangu Meadowlands	Nkosi Sikelele should be accepted as the national anthem and people should be allowed to sing it in the various official languages	03/07/95
G de Klerk Belville-South	Afrikaans should be an official language	07/03/95
C Ndou	All 11 languages should be given official status	
L Makhabane Eastern Transvaal	English to be the official language Retain the name of the country	19/05/95
J Tshoshi Mont Clare	Retain the present flag Change the name of the country to be more African The country should have one national anthem	15/06/95
Anonymous	Official languages: English Afrikaans Xhosa Zulu	
Anonymous	English Zulu	
A Joubert Eastern Cape	Keep the existing flag	18/05/95
W Ntombela	The following languages should be used in Kwazulu Natal: Zulu Xhosa Ndebele Swazi English	
S S Mhlongo Mlanza	Zulu should be the official language	
S P Siyaya Mandini	The flag should have the picture of President Mandela	20/05/95
K Phakathi Randburg	Proposal for new anthem - "Beautifully South Africa"	
M A Nechoda Sea Point	The implications of changing the name of the country	
A G L Wheeler Hillcrest	Proposal for new flag	
Anonymous	Retain present flag	
L J Korte Kenilworth	Retain the name of the country English should be the official language	29/05/95

R K C Horne Dept of Political Science University of Durban- Westville	Conducted a survey on the name of the country, the flag and symbols and the following results were obtained: Name: Keep present name Flag: retain the present flag Symbols: there were mixed feelings on the retention of some symbols of apartheid	
C Mallett Kimberley	English to be the official language	
Anonymous	No domination of one language upon another on TV One national flag and the national anthem shall be Nkosi Sikelele translated into English Parliament to remain in Cape Town and the Administration in Pretoria The Appellate in Bloemfontein National Symbols to be suggested	
A de Villiers Bethlehem	Proposal for new flag	
G T Robertson Camps Bay	Parliament should be in Port Elizabeth	21/05/95
J C G De Kock Pinegowrie	Proposal for national anthem	22/05/95
C G Naude Bethal North	Keep the present flag	12/05/95
L Herbst Caledon	Keep the present flag	15/05/95
A Linsky Skukuza	Retain present national anthem	22/05/95
L M Fourie Irene	Retain present national anthem	20/05/95
M E Smith B Olivier R C Cowen Cape Town	Retain present national anthem	22/05/95
A van Niekerk Alberton	Development of all 11 official languages on a National level and provinces to decide on official languages	16/05/95
M C Le Roux Grabouw	English, Afrikaans, and two of the African languages to be official languages	17/05/95
P Gqubile Diepkloof	English to be the official language	04/07/95
Signature	Retain the present flag	
W Friedman	Proposal for new flag	
F Kint Hermanus	Proposal for new anthem	

ANC Western Cape Province	Parliament to remain in Cape Town - committed to the principles of the RDP (the upliftment and empowerment of our people) and to nation building and reconciliation. Loosing Parliament will be severe economic losses for Cape Town and the relocation of Parliament would also be costly	18/05/95
R Moeken The Reeds	Retain present national anthem	
M Ellis Oudtshoorn	"Die Stem" should become the national anthem	
N Hawkins Sedgefield	Proposal for new anthem	22/05/95
N W H Smit	Proposal for new anthem	01/06/95
C O van der Rheede Kuilrivier	Proposal for new anthem - "Geliefde Land Suid-Afrika"	19/05/95
L Taljaard Olivelede	Retain present national anthem	20/05/95
J R Davidtsh	Retain present national anthem	20/05/95
Signature St Michaels	Proposal that "Die Stem" should be the national anthem	25/05/95
M Steyn Frankfort	Retain present national anthem	23/05/95
Anonymous	Retain present national anthem	
J Esterhuysen	Retain present national anthem	22/05/95
M Oberholzer Montagu	Retain present national anthem	
N Kotze Vryburg	The combined anthems to be sung	
A M Lowu Strand	Versus from "Die Stem" "Nkosi Sikelele" should be sung	27/05/95
M E Steyn Krugersdorp	Retain present national anthem	25/05/95
G D L Schreiner Pietermaritzburg	Retain present flag	12/06/95
O Ahlers Kenmare	Retain present flag and name of the country Retain the Springbok (and Protea) as sports symbols	30/05/95
S Johnson East London	Retain the name of the country	19/05/95
S J Adendorff Rosettenville	English should be the official language	20/05/95

L Hitchcock Durban	English to be the official language	16/05/95
L Jordaan Claremont	English to be the official language	17/05/95
K Cornish Durban	English to be the official language	17/05/95
B D frank Storms River	Retain the present flag	
Soames Cresta	Retain the present flag	12/06/95
E Lipman Bramley Manor	Retain the present flag	
H Ramsay Pinetown	Suggestion that a new national anthem be found which all people could be proud of and identify with	04/06/95
V Hofman Benoryn	Proposal of anthem from the Dali Tambo show Retain the present flag	06/06/95
D M Rhenis Natal	English to be the official language	06/06/95
L Davie Parkview	English to be the official language	
M J Slaven Benmore	Proposal for new anthem - "Plea for Africa"	25/05/95
T F Hagen Bergvliet	Nkosi Sikelele iAfrika to be sung as the national anthem	30/05/95
R King Pinegowrie	Die Stem should be sung as the national anthem	23/05/95
R Naidoo Univ of Natal	Retain the name of the country	03/07/95
J D Poppleton Braamfontein	English to be the official language	26/05/95
L T Mabitle Seloshesha	Language rights to be protected. English to be recognised as an official language together with another language in each province	
S Mobo S Hotz Wynberg	Retain the present flag and the shortened version of the national anthem	25/05/95
R Consani Belville	Retain present flag New anthem based on Nkosi Sikelele embracing more languages	
J G Roux Mountview	Keep parliament in Cape Town - job creation and natural tourist attraction	24/05/95

C S Friedman	There should be one capital and parliament should be located in a place which will require the least expenditure (probably Pretoria)	
C Charbonnel Bryanston	English will be the lingua franca Voting rights should not be given to foreigners	29/05/95
K Allen Woodstock	Keep the combined national anthems	24/05/95
P P Morgan Macassar	Proposal for new anthem - "Africanthem"	
K Moosa Woodstock	Change the national anthem	24/05/95
L Ritchie Kempton Park	Use the words of Nkosi Sikelele to the tune of Die Stem	21/05/95
C M Rampfumedzi Soweto	3 Official languages: English, N Sotho, Zulu	
M Matjiu Potgietersrus	Concentration of resources should not be given to one province - do not rush into changing the present locations of government	
E Forster Kenilworth	Government departments should remain where they are	27/05/95
P Foley Northcliff	Government Departments to remain as they are - too costly to move	22/05/95
Anonymous	Government departments to remain as they are - do not waste time, money and effort	

