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A33

**CONSTITUTIONAL
ASSEMBLY**

**THEME COMMITTEE 1
CHARACTER OF
DEMOCRATIC STATE**

15 AUGUST 1995

**ROOM M515
09H00**

DOCUMENTATION

TABLE OF CONTENTS

No.	Detail	Page
1.	Notice and Agenda	1
2.	Minutes of the meeting held on the 14 August 1995	2 - 7
3.	Amended draft Report on Blocks 7 & 9: Language, Name and Symbols, National Territory and Seats of Government	8 - 27
4.	Amended ANC Submission on Name, Symbols and Seat of Government	28

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: Tuesday, 15 August 1995
Time: 09h00 - 12h30
Venue: Room M515 (Marks Building)

AGENDA

1. Opening
2. Apologies
3. Adoption of previous minutes of the meeting held on the 14 August 1995
4. Matters Arising
5. Finalization of draft report for Blocks 7 & 9 (Language, Name and Symbols, Seats of Government and National Territory)
6. Discussion on the report for Block 10 (Postamble / Preamble)
7. Public Participation
8. General
9. Closure

**H EBRAHIM
EXECUTIVE DIRECTOR
CONSTITUTIONAL ASSEMBLY**

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

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

**MINUTES OF THE MEETING OF THEME COMMITTEE 1
MONDAY 14 AUGUST 1995 09H30 ROOM M515**

Present

Marais PG (Chairperson)

**Booi MS
Chiba L
Chikane MM
Fani LM
Gumede DM
Hangana NE
Janse Van Rensburg AP
Kekana NN
Kuzwayo NEK
Mabuza MC
Mahlangu NJ
Majola-Pikoli NT
Marais A
Meshoe KR
Mngomezulu PG**

**Moorcroft EK
Mukhuba TT
Mulder PWA
Ncube BS
Niehaus CG
Nobunga BJ
Routledge NC
Schoeman EA
Shope G
Sisulu AN
Streicher DM
Van Deventer FJ
Van Zyl ID
Vilakazi BH**

Apologies:

**Chiwayo LLL
Macozoma SJ
Nzimande BE
Williams AJ**

Technical Experts present:

Corder H

An apology was noted from JC Heunis.

In attendance:

Representatives of United Christian Action

Premier Lekota and Bloemfontein Capital City Bid delegation.

Leola Rammable and Susan Rabinowitz were in attendance.

1. OPENING

- 1.1 The meeting was opened by the Chairperson at 09h45.

2. ADOPTION OF PREVIOUS MINUTES

- 2.1 The Minutes of the Theme Committee meeting held on 1 August 1995 [Document A31 Pages 3 - 7] were adopted.

- 2.2 The Minutes of the Theme Committee meeting held on 7 August 1995 [Document A32 Pages 3 - 5] were adopted with the following omissions being duly noted:

2.2.1 NE Hangana was noted as being present at the meeting.

2.2.2 Apologies were noted from NN Kekana, BS Ncube and EA Schoeman.

3. MATTERS ARISING

- 3.1 Matters arising from the Minutes of Theme Committee meeting of 1 August 1995:

3.1.1 Page 4, Paragraph 3.1 - The Chairperson reported that the Report on Block 6 dealing with Representative Government had been submitted to and had been adopted by the CC.

3.1.2 Page 5, Paragraphs 5.2 and 5.4 - With regard to the Report on Block 8 dealing with Foreign Relations and International Law, the Technical Expert reported that the draft constitutional provisions were in the process of being prepared in order that the Report could be finalised for submission to the CC.

3.1.3 Page 7, paragraph 8.1 - The Secretary reported that a schedule of meetings had been circulated to Theme Committee members and that the next Theme Committee meetings were scheduled to take place on Tuesday 15 August 1995 at 09h00 in Room M515 and on Monday 21 August at 14h00.

- 3.2 Matters arising from the Minutes of Theme Committee meeting of 7 August 1995:

3.2.1 Page 5, Paragraph 7.1. - With regard to the forthcoming CPM's in Kwazulu Natal, the Secretary reported that names had not yet been received from members who wished to attend and advised that the deadline for submission of names was 10 a.m. Tuesday 15 August 1995.

4. ORAL SUBMISSION BY UNITED CHRISTIAN ACTION

4.1 Representatives of United Christian Action, P Hammond and C Van Wyk, tabled a submission entitled "The Christian Voice of Southern Africa" and made an oral presentation to the Theme Committee, addressing the issue of a secular state. They expressed the view that a godless State is a hopeless state, that God is the supreme law and South Africa should therefore be a state that is based on Christian principles where God should be honoured and respected in the Constitution and that this in no way infringes upon the other religions. They did not want a Christian state but a state that recognises biblical values and the law of God, and this should not only be reflected in the Preamble.

4.2 Questions focused on the problem of various definitions of a "secular state". UCA expressed concern about a definition that is hostile to Christian values and religious education and would prefer the term "secular state" not to be used.

In response to questions regarding their views on specific issues such as homosexuality, the right to life and Aids, UCA referred to the views expressed in Christian Voice and expressed the opinion that homosexuality should not be granted special privileges, that they were opposed to immorality and that they supported the right to life of the pre-born child and the rights of women to be protected against pornography.

Questions were raised concerning the representativeness of UCA and the need to approach the matter holistically. Concerns were expressed that there was a lack of knowledge of the processes of the CA and that the Theme Committee report had been misinterpreted.

4.3 The Chairperson thanked the representatives of United Christian Action for their presentation.

5. ORAL SUBMISSION FROM THE BLOEMFONTEIN CAPITAL CITY BID

5.1 The Chairperson welcomed Premier Lekota and the members of the Bloemfontein delegation to the meeting.

5.2 Premier Lekota tabled a document, Mangaung, The Centre Capital City Option Masterplan, contained in Document A32 [Pages 6 - 29] and a separate document entitled "Bloemfontein for Capital City" to which he talked. He requested that their team be permitted to make a detailed presentation to the Theme Committee on the financial considerations at a later stage.

5.3 Questions were raised with regard to the administrative arm of government, which the Premier clarified should be situated in the same place as the legislature and the judiciary.

On the question of the importance of trade with other neighbouring countries, the Premier distinguished between trade and government.

On the question of cost, they had not yet presented the financial implications of moving Parliament and on the issue of what time frame was envisaged, they responded that the critical issue was the in principle decision to move Parliament and thereafter to examine stages and phases of the move.

Questions were raised on Bloemfontein's communications infrastructure, on the situation of foreign embassies and on whether the capital city had to be centrally situated.

5.4 The Chairperson thanked the delegation for their submission and informed them that their request for a further presentation would be examined by the Theme Committee during the course of the meeting and they would be advised accordingly of the decision.

5.5 It was agreed that the Bloemfontein Capital City Bid should be requested by the Secretary to submit a written submission on the financial aspects for consideration by the Theme Committee who would then consider the request for a further oral presentation.

6. DISCUSSION ON DRAFT REPORT FOR BLOCKS 7 AND 9 (LANGUAGE, NAME AND SYMBOLS, SEATS OF GOVERNMENT AND NATIONAL TERRITORY) [See Document A31]

6.1 ANC Submission:

With regard to Block 9, the ANC reported that it was withdrawing both previous submissions and tabled its submission dated 10 August 1995 contained in a separate document and talked to the submission, noting that with regard to the seats of the courts, this issue was referred to the CC.

In response to the issue of the flag, the ANC clarified that this matter was referred to the CC.

6.2 Prof Corder tabled the Draft Report for Blocks 7 and 9 (Language, Name and Symbols, Seats of Government and National Territory) contained in Document A31 [Pages 8 - 26] and reminded the meeting of the typographical changes which had been approved in the Minutes of the meeting of 7 August 1995. He further noted that the issue of the Seal of the Republic would be considered in the changes to be made to the Coat of Arms. With regard to the seat of the courts, he referred to Page 24 of the Draft Report which stated that this matter was within the jurisdiction of Theme Committee 1.

6.3 After discussion of the Draft Report, it was agreed that the following amendments should be made:

6.3.1 With regard to the Constitutional Principles which refer under Part One, Constitutional Principles XXII and XXXIV should be added.

6.3.2 Agenda Item 10: Languages

Page 21 Paragraph C. Contentious Issues

C. 1) , 4th line - the words "in the National Assembly" should be added after "most commonly spoken languages"

C. 2) - the following paragraph should be added:

"The NP proposes that the status of Afrikaans and English as official languages (as it was at the commencement of the 1993 Constitution) should not be diminished."

6.3.3 Agenda Item 12: Name, Symbols and National Territory

It was agreed that B i) Name and v) National Territory should remain non-contentious issues.

It was agreed that a further category of "Outstanding Issues" should be created and that the issues of Anthem and Flag should be placed in this category.

It was further agreed that ii) Coat of Arms should become a contentious issue.

6.3.4 Agenda Item 13: Seats of Government

It was agreed that this issue should be placed under the category of "Outstanding Issues".

6.4 It was agreed that the Technical Experts should prepare a further Draft Report taking into account the amendments and adjusting the analytical survey accordingly and that this would be considered by the Theme Committee at its next meeting.

7. DISCUSSION ON THE REPORT FOR BLOCK 10 (PREAMBLE/POSTAMBLE)

7.1 It was agreed that the discussion on the issue of the Preamble and Postamble should stand over until the next Theme Committee meeting.

8. PUBLIC PARTICIPATION

8.1 There was no report.

9. GENERAL

9.2 None.

10. CLOSURE

10.1 The meeting rose at 12h40.

CHAIRPERSON

***DRAFT REORT ON
BLOCKS 7 & 9***

AS AT 14 AUGUST 1995

DRAFT REPORT FROM THEME COMMITTEE ONE

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

PART ONE

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

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

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

II

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

XI

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

XXII

The national government shall not exercise its powers (exclusive or concurrent) so as to encroach upon the geographical, functional or institutional integrity of the provinces.

XXXIV

1. *This Schedule and the recognition therein of the right of the South African people as a whole to self-determination, shall not be construed as precluding, within the framework of the said right, constitutional provision for a notion of the right to self-determination by any community sharing a common cultural and language heritage, whether in a territorial entity within the Republic or in any other recognised way.*
2. *The Constitution may give expression to any particular form of self-determination provided there is substantial proven support within the community concerned for such a form of self-determination.*
3. *If a territorial entity referred to in paragraph 1 is established in terms of this Constitution before the new constitutional text is adopted, the new Constitution shall entrench the continuation of such territorial entity, including its structures, powers and functions.*

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

3. Languages

- (1) *Afrikaans, English, isiNdebele, Sesotho sa Leboa, Sesotho, siSwati, Xitsonga, Setswana, Tshivenda, isiXhosa and isiZulu shall be the official South African languages at national level, and conditions shall be created for their development and for the promotion of their equal use and enjoyment.*
- (2) *Rights relating to language and the status of languages existing at the commencement of this Constitution shall not be diminished, and provision shall be made by an Act of Parliament for rights relating to language and the status of languages existing only at regional level, to be extended nationally in accordance with the principles set out in subsection (9).*
- (3) *Wherever practicable, a person shall have the right to use and to be addressed in his or her dealings with any public administration at the national level of government in any official South African language of his or her choice.*
- (4) *Regional differentiation in relation to language policy and practice shall be permissible.*

- (5) *A provincial legislature may, by a resolution adopted by a majority of at least two-thirds of all its members, declare any language referred to in subsection (1) to be an official language for the whole or any part of the province and for any or all powers and functions within the competence of that legislature, save that neither the rights relating to language nor the status of an official language as existing in any area or in relation to any function at the time of the commencement of this Constitution, shall be diminished.*
- (6) *Wherever practicable, a person shall have the right to use and to be addressed in his or her dealings with any public administration at the provincial level of government in any one of the official languages of his or her choice as contemplated in subsection (5).*
- (7) *A member of Parliament may address Parliament in the official South African language of his or her choice.*
- (8) *Parliament and any provincial legislature may, subject to this section, make provision by legislation for the use of official languages for the purposes of the functioning of government, taking into account questions of usage, practicality and expense.*
- (9) *Legislation, as well as official policy and practice, in relation to the use of languages at any level of government shall be subject to and based on the provisions of this section and the following principles:*
- (a) *The creation of conditions for the development and for the promotion of the equal use and enjoyment of all official South African languages;*
 - (b) *the extension of those rights relating to language and the status of languages which at the commencement of this Constitution are restricted to certain regions;*
 - (c) *the prevention of the use of any language for the purposes of exploitation, domination or division;*
 - (d) *the promotion of multilingualism and the provision of translation facilities;*
 - (e) *the fostering of respect for languages spoken in the Republic other than the official languages, and the encouragement of their use in appropriate circumstances; and*
 - (f) *the non-diminution of rights relating to language and the status of languages existing at the commencement of this Constitution.*
- (10) (a) *Provision shall be made by an Act of Parliament for the establishment by the Senate of an independent Pan South African Language Board*

to promote respect for the principles referred to in subsection (9) and to further the development of the official South African languages.

- (b) The Pan South African Language Board shall be consulted, and be given the opportunity to make recommendations, in relation to any proposed legislation contemplated in this section.*
- (c) The Pan South African Language Board shall be responsible for promoting respect for and the development of German, Greek, Gujerati, Hindi, Portuguese, Tamil, Telegu, Urdu and other languages used by communities in South Africa, as well as Arabic, Hebrew and Sanskrit and other languages used for religious purposes.*

8 Equality

- (1) Every person shall have the right to equality before the law and to equal protection of the law.*
- (2) No person shall be unfairly discriminated against, directly or indirectly, and, without derogating from the generality of this provision, on one or more of the following grounds in particular: race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language.*
- (3) (a) This section shall not preclude measures designed to achieve the adequate protection and advancement of persons or groups or categories of persons disadvantaged by unfair discrimination, in order to enable their full and equal enjoyment of all rights and freedoms.*
 - (b) Every person or community dispossessed of rights in land before the commencement of this Constitution under any law which would have been inconsistent with subsection (2) had that subsection been in operation at the time of the dispossession, shall be entitled to claim restitution of such rights subject to and in accordance with sections 121, 122 and 123.*
- (4) Prima facie proof of discrimination on any of the grounds specified in subsection (2) shall be presumed to be sufficient proof of unfair discrimination as contemplated in that subsection, until the contrary is established.*

25 Detained, arrested and accused persons

- (1) Every person who is detained, including every sentenced prisoner, shall have the right-*
 - (a) to be informed promptly in a language which he or she understands*

of the reason for his or her detention;

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

31 Language and culture

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

32 Education

Every person shall have the right

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

65 Signature and enrolment of Acts

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

107 Languages

- (1) *A party to litigation, an accused person and a witness may, during the proceedings of a court, use the South African language of his or her choice, and may require such proceedings of a court in which he or she is involved to be interpreted in a language understood by him or her.*

- (2) *The record of the proceedings of a court shall, subject to section 3, be kept in any official language: Provided that the relevant rights relating to language and the status of languages in this regard existing at the commencement of this Constitution shall not be diminished.*

141 Signature and enrolment of provincial laws

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

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

Constitutional Principles I, XVIII (1) and (3) are relevant to name, symbols and national territory, as follows:

I

The Constitution of South Africa shall provide for the establishment of one sovereign state, a common South African citizenship and a democratic system of government committed to achieving equality between men and women and people of all races.

XVIII

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

Relevant sections of the transitional Constitution in this regard are:

1 Republic of South Africa

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

2 National symbols

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

124 Establishment of provinces

- (1) *The following provinces are hereby established, which for the purposes of this Constitution, but subject to subsection (2), shall be recognised as the provinces of the Republic:*
- (a) *Eastern Cape;*
 - (b) *Eastern Transvaal;*
 - (c) *Natal;*
 - (d) *Northern Cape;*
 - (e) *Northern Transvaal;*
 - (f) *North-West;*
 - (g) *Orange Free State;*
 - (h) *Pretoria-Witwatersrand-Vereeniging; and*
 - (i) *Western Cape:*

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

- (2) *The areas of the respective provinces shall be as defined in Part 1 of Schedule 1: Provided that the establishment of the Northern Cape as*

a separate province, the establishment in the area of the Eastern Cape of one province, and the inclusion of the areas specified in paragraphs (a) to (f) and (i) to (n) of Part 2 of Schedule 1 within the provinces as defined in Part 1 of Schedule 1, shall be subject to alteration in accordance with this section.

- (3) (a) *A referendum may be held in terms of this section in each of the areas specified in paragraphs (a) to (n) of Part 2 of Schedule 1 (hereinafter referred to as an affected area) to determine the views of the voters ordinarily resident in such area regarding an issue referred to in subsection (5) or (6).*
- (b) *A referendum referred to in paragraph (a) shall be held in an affected area within three months of the lodging with the Secretary to Parliament of a petition signed by persons entitled to vote and ordinarily resident in such area.*
- (c) *The number of signatures on such a petition shall be at least equal in number to such percentage of the votes recorded in terms of subsection (4) in respect of the affected area in question, as may be determined by the Independent Electoral Commission.*
- (d) *The Independent Electoral Commission shall not be dissolved in terms of the Independent Electoral Commission Act, 1993 (Act 150 of 1993), after the first election held under this Constitution until it has made a determination in terms of paragraph (c) in respect of all the affected areas.*
- (e) *Such a petition shall be lodged with the Secretary to Parliament within a period of six months of the commencement of this Constitution or a period referred to in subsection (10), whichever period expires first.*
- (4) *In the first election of the National Assembly and the provincial legislatures held under this Constitution, votes cast in each of the affected areas shall be counted separately and recorded for use for the purposes of this section.*
- (5) *Subject to subsection (7), the object of a referendum in respect of an area referred to in paragraph (e), (f), (g) or (h) of Part 2 of Schedule 1, shall be the determination of the views of voters ordinarily resident in such an area, concerning, as the case may be-*
- (a) *the continued inclusion of the area referred to in the said paragraph (e) in the provincial territory of the Eastern Cape, or its inclusion in the provincial territory of Natal;*
- (b) *the continued inclusion of the area referred to in the said paragraph (f) in the provincial territory of Pretoria-Witwatersrand-Vereeniging, or*

its inclusion in the provincial territory of the Eastern Transvaal;

- (c) the continued existence of the area referred to in the said paragraph (g) as one province, or its division into two separate provinces on either side of the line forming the eastern boundaries of the districts of Venterstad, Steynsburg, Hofmeyr, Tarka, Fort Beaufort, Albany and Bathurst; or*
- (d) the continued existence of the area referred to in the said paragraph (h) as a separate province, or its discontinuance as a separate province, in which event those districts of the said area north of the Orange River shall be included in the provincial territory of the North-West, and those districts south of the Orange River shall be included in the provincial territory of the Western Cape:*

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

- (i) paragraphs (a) and (b) of this subsection, a majority of votes cast shall be required to sanction the inclusion of the areas in question in the provincial territories of Natal or the Eastern Transvaal, as the case may be;*
 - (ii) paragraph (c) of this subsection, a majority of at least 60 per cent of the votes cast in either of the two blocks mentioned in paragraph (g) of Part 2 of Schedule 1 shall be required to sanction the division of the said area into two separate provinces; and*
 - (iii) paragraph (d) of this subsection, a majority of at least 60 per cent of the votes cast shall be required to sanction the discontinuance of the Northern Cape as a separate province.*
- (6) Subject to subsection (7), the object of a referendum in respect of an area referred to in paragraph (a), (b), (c), (d), (i), (j), (k), (l), (m) or (n) of Part 2 of Schedule 1, shall be the determination of the views of the majority of the voters ordinarily resident in such an area, concerning-*
- (a) in the case of the area referred to in the said paragraph (a), the continued inclusion of such area in the provincial territory of the Northern Transvaal, or its inclusion in the provincial territory of the Eastern Transvaal;*
 - (b) in the case of the area referred to in the said paragraph (b), the continued inclusion of such area in the provincial territory of the Northern Cape, or its inclusion in the provincial territory of the Western Cape;*
 - (c) in the case of the area referred to in the said paragraph (c), the continued inclusion of such area in the provincial territory of the Eastern Transvaal, or its inclusion in the provincial territory of the*

Northern Transvaal;

- (d) *in the case of the area referred to in the said paragraph (d), the continued inclusion of such area in the provincial territory of the Eastern Cape, or its inclusion in the provincial territory of Natal;*
 - (e) *in the case of the area referred to in the said paragraph (i), the continued inclusion of such area in the provincial territory of the Eastern Transvaal, or its inclusion in the provincial territory of Pretoria-Witwatersrand-Vereeniging;*
 - (f) *in the case of the area referred to in the said paragraph (j), the continued inclusion of such area in the provincial territory of the Orange Free State, or its inclusion in the provincial territory of Pretoria-Witwatersrand-Vereeniging;*
 - (g) *in the case of the area referred to in the said paragraph (k), the continued inclusion of such area in the provincial territory of the Western Cape, or its inclusion in the provincial territory of the Northern Cape;*
 - (h) *in the case of the area referred to in the said paragraph (l), the continued inclusion of such area in the provincial territory of Natal, or its inclusion in the provincial territory of the Eastern Cape;*
 - (i) *in the case of the area referred to in the said paragraph (m), the continued inclusion of such area in the provincial territory of the Northern Cape, or its inclusion in the provincial territory of the North-West; or*
 - (j) *in the case of the area referred to in the said paragraph (n), the continued inclusion of such area in the provincial territory of the North-West, or its inclusion in the provincial territory of Pretoria-Witwatersrand-Vereeniging.*
- (7) (a) *The Independent Electoral Commission shall be competent to make regulations or give directions concerning the implementation of this section, including-*
- (i) *the formulation of the question to be put before the electorate in any particular referendum;*
 - (ii) *the determination of the sequence of referendums with reference to a province in respect of which more than one petition contemplated in subsection (3) (e) or (10) is received;*
 - (iii) *the drawing up and registering of party lists for an affected area;*
 - (iv) *the identification of persons entitled to vote in a referendum or*

election held in terms of this section;

- (v) *procedures relating to the drawing up of petitions for the purposes of this section; and*
 - (vi) *any other matters which it considers necessary for such implementation.*
 - (b) *This subsection shall come into operation on the date of promulgation of this Constitution.*
- (8) *A party or parties representing a majority of voters in an affected area may within a period of one month of the date of the first election under this Constitution of members of the provincial legislature of the province within which such area falls in terms of Part 1 of Schedule 1, petition the Independent Electoral Commission to publish a notice in terms of subsection (9).*
- (9) *If a petition is lodged with the Independent Electoral Commission in terms of subsection (8), requesting that an affected area be altered as contemplated in subsection (5) or (6), and the Independent Electoral Commission is satisfied that the petition has the support of a party or parties representing a majority of voters in that affected area, it shall forthwith cause to be published in the Gazette, notice of the fact that it has received such a petition.*
- (10) *Within five months of the date of publication of a notice referred to in subsection (9) a petition may be lodged with the Secretary to Parliament, calling for a referendum contemplated in subsection (3) to be held in the area in respect of which such notice was published.*
- (11) *If a petition for a referendum as provided for in subsection (10) is lodged with the Secretary to Parliament, the petition lodged with the Independent Electoral Commission under subsection (8) will lapse, and the result of the referendum in respect of such area will be decisive.*
- (12) *If a petition for a referendum as provided for in subsection (10) is not lodged with the Secretary to Parliament within the period referred to in that subsection, the Independent Electoral Commission shall, upon the expiry of that prescribed period, forthwith cause to be published in the Gazette, notice of that fact, and the alteration contemplated in the notice published in terms of subsection (9) shall thereupon be implemented in accordance with subsection (13).*
- (13) (a) *For the purpose of implementing an alteration in terms of subsection (12), or an alteration pursuant to a referendum held in terms of subsection (3), the Independent Electoral Commission shall, if it considers it necessary to do so as a result of an alteration to be made, give directions concerning-*

- (i) *the establishment of a new provincial legislature or the reconstitution of an existing provincial legislature;*
 - (ii) *the holding of an election of a new or reconstituted provincial legislature;*
 - (iii) *the allocation of seats within such new or reconstituted provincial legislature; and*
 - (iv) *the names of the persons who will become or remain members of such provincial legislature.*
- (b) *The Independent Electoral Commission shall for the purposes of any directions under paragraph (a) have regard to-*
- (i) *representations made to it by political parties who will or may be affected by any such directions;*
 - (ii) *party lists compiled by parties for the purpose of the election of the provincial legislatures which will be dissolved or reconstituted;*
 - (iii) *party lists compiled pursuant to any regulation made or directions given by it in terms of subsection (7);*
 - (iv) *the provisions of Schedule 2 (without necessarily being bound thereby in regard to the sequence in which seats are to be awarded or forfeited); and*
 - (v) *all other factors which in its opinion are relevant to such directions:*

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

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

(14) *The President shall by proclamation in the Gazette, to take effect on*

such date as may be determined by the Independent Electoral Commission, amend Subsection (1) and Schedule 1 to give effect to any alteration made in terms of this section.

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

248 National flag and anthem

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

PART TWO

AGENDA ITEM 10: LANGUAGES

A. GENERAL DISCUSSION OF THE MATERIAL

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

B. NON-CONTENTIOUS ISSUES

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

C. CONTENTIOUS ISSUES

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

diversity in South Africa, which is vital to the development of a rich national heritage.

- 2) The NP proposes that the status of Afrikaans and English as official languages (as it was at the commencement of the 1993 Constitution) should not be diminished.

AGENDA ITEM 12: NAME, SYMBOLS AND NATIONAL TERRITORY

A. GENERAL DISCUSSION OF THE MATERIAL

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

B. NON-CONTENTIOUS ISSUES

i) Name

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

ii) National Territory

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

C. OUTSTANDING ISSUES

i) Anthem

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

ACDP: Desires Die Stem and Nkosi Sikilele iAfrika to be sung without trying to combine them.

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

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

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

The ANC proposes that this issue be referred to the Constitutional Committee.

ii) **Flag**

All parties except the ANC endorse the current flag. The ANC has opted to reserve its position as to the current flag and recommends that this issue be referred to the Constitutional Committee.

D. **CONTENTIOUS ISSUES**

i) **Name**

None

ii) **Coat of Arms (including the Seal)**

All parties except the DP and ANC support the retention of the existing coat of arms and seal. The DP and the ANC propose no alternative, but advise that a suitable mechanism be established to determine a new coat of arms and seal acceptable to most South Africans.

iii) **Anthem**

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

iv) **Flag**

None

v) **National Territory**

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

vi) **Symbols generally**

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

AGENDA ITEM 13: SEATS OF GOVERNMENT

A. GENERAL DISCUSSION OF THE MATERIAL

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

B. NON-CONTENTIOUS ISSUES

None of the parties expressed a view on the seats of the Appellate Division and the Constitutional Court, both of which are clearly within the jurisdiction of this Theme Committee. This issue will have to be resolved after considering the proposals of Theme Committee 5 in this regard, and will also need to take into account the final decision on the seat of the executive and the legislature.

C. OUTSTANDING ISSUES

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

- i) The ACDP and NP: no view expressed as yet.
- ii) ANC: believes that cost effectiveness and efficient government should be factors in this decision and that these matters should be referred to the Constitutional Committee for final decision.
- iii) DP: does not believe in the concentration of power in any region. As regards the national legislature, the decision should rest with the Constitutional Assembly, with the fullest information at its disposal, especially as to relative cost structures.
- iv) FF: would leave the decision to the conscience of its individual members.
- v) PAC: does not have sentiments and attachments, and is only interested in sound financial thinking and convenience in this regard.

THEME COMMITTEE ONE
ANALYTICAL SURVEY

NO.	CONSTITUTIONAL PRINCIPLES	ISSUES	CONTENTIOUS ISSUES	NON-CONTENTIOUS ISSUES	OUTSTANDING ISSUES	REMARKS
1.	II and XI	Languages	<p>1. Constitutional regulation of official means of communication by government.</p> <p>2. Diminution in the pre-1994 status of Afrikaans and English.</p>	<p>1. Formal recognition of all eleven languages.</p> <p>2. Right to use language in communication with government.</p> <p>3. Certain languages designated as official means of communication at national and provincial levels.</p>		Draft provisions to be drawn up by TC1.

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

10 August 1995

THEME COMMITTEE 1 -

PRELIMINARY ANC SUBMISSION ON BLOCK G

NAME

The ANC maintains that the name the **Republic of South Africa** should be retained as is acceptable to majority of our country's citizens.

SYMBOLS

1. **Coat Of Arms**

It is the view of the ANC that a mechanism should be established to determine a new coat of arms which shall be both acceptable and have meaning for the majority of South Africans.

2. **National Anthem**

We propose that the issue of the national anthem should be referred to the Constitutional Committee for final decision.

3. **Flag**

We propose that the issue of the flag be referred to the Constitutional Committee for final decision.

4. **National Territory**

The Constitution must declare South Africa to be one sovereign state and the territory of South Africa to be the whole territory of South Africa as it was on 27 April 1994, including our territorial waters and islands.

5. **Seat of Government**

The ANC believes that any decision concerning the location of the seat of government must take into account issues of cost effectiveness and efficient government. We propose that this important issue be referred to the Constitutional Committee for final decision.

