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CONSTITUTIONAL ASSEMBLY

CONSTITUTIONAL SUB-COMMITTEE

SUBMISSIONS

**RECEIVED AS AT
29TH JANUARY 1996**

VOLUME 4

***PART 1
ORGANISATIONS***

CONSTITUTIONAL ASSEMBLY

SUMMARY OF SUBMISSIONS RECEIVED AS AT 29TH JANUARY 1996

VOL 4 NO	GOVERNMENT INSTITUTION	SUBJECT	SUMMARY
4.1	Ministry of Provincial Affairs & Constitutional Development	IGF documentation	IGF approved para 5 of the document for submission to the CA; and the rest of the document is submitted as background.
VOL 4 NO	ORGANISATION	SUBJECT	SUMMARY
4.1	Presbyterian Church of Southern Africa	Anthem	Die Stem.
4.2	Siraatul Haq Islamic School & Madrasah	Religion	Chapter 2 S14(3) - allows for recognition of person & family law of a religious group, however, this is subjected to paradoxical condition - '... consistent with the Bill of Rights'.

CONSTITUTIONAL ASSEMBLY

REGISTER OF SUBMISSIONS RECEIVED AS AT 29TH JANUARY 1996

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MINISTRY OF PROVINCIAL AFFAIRS AND CONSTITUTIONAL DEVELOPMENT

Reference: 3-A5/8/40/1
HPS16/4/1

11 September 1995

Co-Chairperson
Theme Committee 3
Constitutional Assembly
P O Box 15
CAPE TOWN
8000

Dear Co-Chairperson

CONSTITUTIONAL PROVISION FOR INTERGOVERNMENTAL RELATIONS

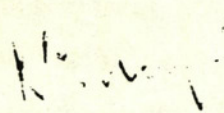
Attached please find a document pertaining to constitutional provision for intergovernmental relations, for your attention.

The *Intergovernmental Forum* discussed the document on 21 August 1995 and resolved that:

- (a) paragraph 5 of the document be approved by the *Intergovernmental Forum* for submission by the *Forum* to the Constitutional Assembly; and
- (b) the rest of the document be submitted to the Constitutional Assembly as background.

It would be appreciated if the document could be submitted to Theme Committee 3, with paragraph 5 of the document as being the official position of the *Intergovernmental Forum*.

Kind regards


R P MEYER
MINISTER OF PROVINCIAL AFFAIRS AND CONSTITUTIONAL DEVELOPMENT

CONSTITUTIONAL PROVISION FOR INTERGOVERNMENTAL RELATIONS

1. INTRODUCTION

1.1 Intergovernmental relations between all tiers of government are playing an increasingly important role in the governmental process in South Africa. The nature and scope of these relations, especially at the multilateral level, resulted in the question being raised whether specific provision for these relations should be made. In view of the fact that intergovernmental relations are the result of constitutional provisions with regard to the division of powers and responsibilities between the respective levels of government, it has also been suggested that the new Constitution represents the most appropriate legislative means through which this could be achieved.

1.2 The purpose of this document is to comply to a resolution of the Intergovernmental Forum, taken on 12 June 1995, that a document should be drafted on proposals with regard to intergovernmental relations, which could be considered for inclusion in the new Constitution. These proposals will, after consideration by the Forum, be submitted to the relevant Theme Committee of the Constitutional Assembly.

2. THE NATURE AND CONTENT OF INTERGOVERNMENTAL RELATIONS

2.1 Intergovernmental relations result from the division of powers and functions between levels of government and refer to the interaction between governments on matters of common or shared interest in a multitier governmental system. The objectives of intergovernmental relations can broadly be described as to:

- i) improve the information base and quality of analysis of information in order to contribute to better decision-making and to reconcile policy differences between governments;
- ii) promote cooperation and coordination between governmental policies in areas where jurisdiction is shared or complementary;
- iii) achieve national objectives; and
- iv) promote the management of the public sector.

2.2 Intergovernmental relations deal with all spheres of governmental activity. In broad terms, these spheres include the spheres of policy management, programme management and resource management. The intergovernmental process, however, also differs from the governmental process in that the importance attached to certain activities associated with the governmental process, is emphasised at the expense of others. In this regard, the policy management process and the resource management process, play a dominant role in the intergovernmental process. The reason for this domination is to be found in the fact that the strategic functions of guidance and leadership of a jurisdictional or territorial arena associated with the policy management process and the resources employed in the implementation of policy, determine the results of the programme management process to a large extent. These functions are furthermore the responsibility of the elected officials of government which increase their relevance from an intergovernmental perspective.

2.3 Intergovernmental relations are an essential aspect of all multitier political systems including decentralised unitary systems, such as those found in Japan, Britain and France. The reason for this significance is to be found in the impossibility of compartmenting or avoiding overlaps of functions and the integrated nature of all government functions. Provision for intergovernmental relations has therefore been required whether the multilevel governmental system

has been established from the bottom up, as was the case in the USA and Australia, or top-down, such as in India and Belgium.

3. PROVISION FOR INTERGOVERNMENTAL RELATIONS

3.1 A number of issues should be considered when provision for intergovernmental relations is made. These issues include *inter alia* the following:

- i) characteristics of the governmental system;
- ii) the accountability of the respective levels of government;
- iii) how provision should be made; and
- iv) what the provision should entail.

i) **Characteristics of the governmental system:**

Intergovernmental relations are to a large extent determined by the characteristics and functioning of the system of government. In this regard, the following variables are of particular importance:

- the constitutional jurisdiction allocated to each level of government, in particular the extent of concurrent jurisdiction, and the specific functional matters assigned;
- the form of executive and legislative institutions at each level of government;

- the character of the central second chamber and whether it is constituted to serve as a forum for representatives of provincial governments;
- the political party system and particularly the character of the linkages between central and provincial branches of political parties;
- the courts and the extent to which intergovernmental conflict is resolved through appeal to the courts; and
- the financial situation of provincial and local government and in particular the degree to which they have autonomous resources to match their expenditure responsibilities or are dependent upon transfers from another level of government. Furthermore, the degree of disparity of financial resources among provinces or among local governments requiring arrangements for redistribution of resources.

Clarity on these variables, as well as the interactive functioning of the respective governmental structures, institutions and levels of government should be obtained, before specific provision for intergovernmental relations is made.

ii) **The accountability of the respective levels of government:**

The matter of accountable government is another very important determining factor of the institutionalisation of intergovernmental relations. Intergovernmental relations are often being referred to as the "fourth level of government", which tends to undermine the democratic accountability of elected representatives of the respective levels of government. The intergovernmental process in most coun-

tries is dominated by the executive branch, with the legislative branch of government to a large extent being excluded from the process. The exclusion of the elected representatives from the intergovernmental decision-making process, raises certain questions with regard to the accountable government. The establishment of intergovernmental structures through the Constitution may exacerbate the accountability problem, in that intergovernmental structures will be awarded a constitutional status more or less on par with that of the legislative structures.

iii) **How provision for intergovernmental relations should be made:**

Intergovernmental relations could be constitutionally prescribed, could be established by legislation or could be left to develop through practice and convention.

Intergovernmental relations in South Africa are still very much in a developing phase. The nature and extent of cooperation and interaction between the respective governments and levels of government, are expected to change and adapt significantly over the short, medium and long-term. Intergovernmental relations are therefore required to be adaptable and flexible. In view of this requirement, the establishment of intergovernmental relations through the Constitution should be carefully approached. Constitutions are by nature difficult to change, which may hamper the ability of intergovernmental relations to adapt to changing needs and may thus contribute to their inefficiency. This problem could be overcome by providing for intergovernmental relations through legislation. Legislation is easier to amend and thus to provide for the changing institutional requirements of the intergovernmental process.

The development of intergovernmental relations through practice and convention is an alternative to provision through either the Constitution or legislation. This is also the route adopted in the majority of older federations such as the USA and Canada. The question could, however, be asked whether this approach would be suitable to the situation in South Africa, where the need and importance of intergovernmental relations in terms of effective governance, are already widely accepted and where the important role of government in addressing a large number of pressing societal issues is comparable to any of the other countries with multitiered governmental systems.

iv) **What the provision should entail:**

Provision for intergovernmental relations focuses generally almost exclusively, on the establishment of intergovernmental structures. The importance of intergovernmental structures are, however, often over-emphasized at the expense of the purpose for which these structures are established, namely the facilitation of these relations. Intergovernmental relations constitute in broad terms a negotiation and consultation process between governments, aimed at harmonising governmental actions and decision-making. The process develops very specific requirements as far as its facilitation is concerned. These requirements have structural implications which have to be accommodated. Intergovernmental relations may, for example, at times be of a more conflicting and competitive nature, which may necessitate different structural and institutional provision for its facilitation. Seen from this perspective, intergovernmental structures are to a large extent determined by the process and not *visa versa*. Given the importance of the process, its fluidity in terms of its different structural requirements and the different forms it can take, it should be clear that constitutional provision which focus on the structural dimension of intergovernmental structures, may further contribute to the over-

emphasising of this dimension of intergovernmental relations, to the detriment of the more important process itself.

4. CONSTITUTIONAL PROVISION FOR INTERGOVERNMENTAL RELATIONS

4.1 The important role of intergovernmental relations in the governmental process at the respective levels of government makes it imperative that sufficient provision for these relations will have to be made. A balanced approach is however required, if the provision is to serve the required purpose, namely relations between governments which will contribute to good governance. Constitutional as well as legislative provision could play an important role in this regard, while sufficient room should also be left for the further development of intergovernmental relations through practice and convention. This approach has important advantages in that it:

- promotes the relevance of the provision in terms of the establishment of efficient and effective intergovernmental relations;
- provides intergovernmental relations their due recognition and status;
- emphasises the importance of the process dimension of intergovernmental relations;
- provides for the flexibility and adaptability required from intergovernmental relations;
- brings the structures and institutions responsible for facilitating intergovernmental relations, within direct parliamentary supervision and therefore enhances accountability and transparency; and
- promotes good governance through coordination and co-operation between governments and levels of government.

4.2 The purpose of the constitutional provision for intergovernmental relations should be to lay a foundation for these relations, which could serve as framework for their further development. This could be achieved through the inclusion of certain principles which governments at all levels should adhere to in the performance of their powers and functions and in their interaction with each other. These principles lie at the heart of intergovernmental relations and represent the philosophical and legal basis from which to view, conduct and evaluate the activities of government in a multitier governmental system. It is also the application of these principles which serves as framework for intergovernmental relations and gives rise to a network of intergovernmental relationships, structures and institutions which characterise modern multitiered constitutional systems. Provision for the establishment of intergovernmental structures could be made through providing in the Constitution for the promulgation of legislation in this regard.

4.3 **Constitutional principles for intergovernmental relations:**

4.3.1 Principles for intergovernmental relations which could be included in the new Constitution should refer to the nature of the relationship between governments, as well as the specific obligations on the part of governments in conducting their affairs. As far as the nature of the relationship between governments is concerned, governments should be required to conduct their affairs towards each other in a spirit of trust, good faith, friendship, and mutual respect. Due cognisance should be paid by governments to the interests of the country as a whole, as well as to the specific interests of other governments. The national government must treat provincial governments equally and refrain from encroaching on their rights, while provincial governments should act in a similar manner towards local governments.

4.3.2 In the conduct of their affairs, governments should be required to assist and support each other and to inform and consult with each other. Governments should also cooperate and coordinate their activities and adhere to procedural matters:

- The duty to assist and support each other, requires that a government is obliged to take the necessary steps to enable another government or level of government, to reach its objectives or to fulfil its responsibilities, providing that it does not adversely affect the interests of that government;
- The duty to inform and consult requires that governments inform each other on matters of common concern and that they consult with each other on the handling of these matters. If differences do occur, acceptable compromises should be reached through negotiation;
- The duty to cooperate and coordinate refers to the obligation on the part of governments to cooperate with each other in the realisation of their objectives and to harmonise their decision-making and actions in an effort to promote the realisation of their objectives;
- The duty to adhere to procedural matters refers to the obligation to comply to requirements with regard to the way in which interaction occurs, in an effort to create a culture of partnership and mutual trust.

4.4 **Constitutional provision for legislation with regard to intergovernmental relations:**

4.4.1 Provision could also be made in the new Constitution for further legislation to make more extensive provision for intergovernmental relations. The legislation should provide specifically for the establishment

and functioning of intergovernmental structures and institutions responsible for the facilitation of intergovernmental relations. This provision could *inter alia* also refer to the following:

- whether there should only be one national law to regulate intergovernmental relations or whether each province should adopt its own legislation;
- measures to harmonise legislation on intergovernmental relations;
- whether the passing of legislation should be mandatory or voluntary;
- the time-frame within which the legislation has to be promulgated;
- specific requirements and procedures that have to be met in the drafting, passing and amendment of the legislation; and
- specific intergovernmental structures and/or institutions which have to be established.

5. RECOMMENDATIONS

5.1 It is recommended that the Intergovernmental Forum agree that provision for intergovernmental relations should be made in the new Constitution and in this regard that:

- Theme Committee 3 of the Constitutional Assembly should be requested to include principles for intergovernmental relations in the new Constitution;
- the principles should refer to both the nature of the relationship between governments and the obligations on the part of governments in the conduct of their affairs; and

- provision should also be made in the new Constitution for legislation with regard to the establishment of intergovernmental structures and institutions to facilitate intergovernmental relations.

A363(11)

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21st November 1995

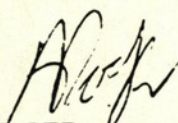
The Secretary
Constitutional Assembly
PO Box 15
CAPE TOWN
8000

Dear Sir,

The recent General Assembly of the Presbyterian Church of Southern Africa, held in Atteridgeville, Pretoria, adopted a report on *Die Stem* and on a future national anthem to be adopted in South Africa. I have been instructed to send a copy of this report to the Constitutional Assembly and to the State President as an expression of the mind of the Presbyterian Church of Southern Africa on this issue. We trust that it will enjoy the favourable consideration of the Government of National Unity and the Constitutional Assembly.

With best wishes.

Yours sincerely,


A RODGER
CLERK OF ASSEMBLY

Encl

Appendix C

DIE STEM

Background

After the British occupied the Cape in 1795 and again in 1806, *God Save the King* was played at official and festive occasions. For the Dutch settlers, however, it was and remained an imposed foreign symbol. Even though their political bond with the Netherlands was now severed, the Dutch anthem *Wien Neerlands bloed* became popular among them and remained so late into the 19th century. Then other Dutch and Afrikaans patriotic songs began to replace it.

A move towards a specifically Afrikaans anthem developed in the wake of political and cultural developments in the 20th century. Especially important was the development of a South African and a more specifically Afrikaner nationalism after the Anglo-Boer War. J.B.M. Hertzog expressed the developing South African nationalism in 1912 in the slogan: "*Suid-Afrika se belange eerste*" (South Africa's interests first, i.e. as distinct from Britain's).⁷⁴ He also stood unequivocally for the interests of the Afrikaners and held that the Union should be ruled by *ware* Afrikaners only (though by this he did not mean to exclude English-speaking Whites who put South Africa first).⁷⁵ Tensions between Hertzog and the conciliatory policy of Louis Botha and Smuts towards Britain eventually led to a split. Hertzog broke with the South African Party in power and in 1913 formed the National Party.

C.J. Langenhoven

The next year, in 1914, a young lawyer named Cornelis Jakob Langenhoven stood for the National Party and was elected to the Cape Provincial Council. Langenhoven was already an outstanding journalist, orator and champion of the Afrikaans language. It was he who later composed *Die Stem*.

Langenhoven had been born in Hoeko (Ladismith) on 12.8.1873. He graduated BA from the Victoria College in Stellenbosch and LLB from the University of the Cape of Good Hope. He worked first as an attorney in Oudtshoorn. Later he edited the local newspaper, *Het Zuid-Westen*, and used it to lead a campaign for the recognition of Afrikaans. He argued that Dutch (which the Constitution of Union in 1910 recognized along with English) was a dead language in South Africa, so that the more Afrikaners clung to it, the more they would be driven eventually to use English.

Two months after his election Langenhoven persuaded the Provincial Council to recognize Afrikaans as a medium of instruction instead of Dutch in schools up to Standard IV. The other Provincial Councils in the Transvaal, Orange Free State and Natal then followed suit. Langenhoven also campaigned for the Dutch Reformed Church to accept Afrikaans as its

⁷⁴ C.F. Albertyn et al. (eds): *Ensiklopedie van die Wêreld* (Stellenbosch C.F. Albertyn, 1972), Vol.3, p.431.

⁷⁵ E.A. Walker: *A History of Southern Africa*, p.546

moedertaal or official language. This it finally did in 1919, on the motion of Dr. D.F. Malan, then Minister of the Interior and Education.

Langenhoven went on to become the leader of the National Party in the Cape Provincial Council and was elected to the Legislative Assembly in 1920. In 1921 he lost his seat in the general election, but was then elected to the Senate. He became a leading politician. In particular he took the lead in the joint parliamentary committee appointed to look at the status of Afrikaans and wrote the report as a result of which Parliament in 1925 made it an official language.

Langenhoven realized that his political campaign on behalf of Afrikaans would be in vain without making reading material available, and in less than 20 years he himself wrote over 50 books in Afrikaans. His newspaper column, "*Aan still waters*" (Beside still waters), which appeared in *Die Burger* every Monday from 1922 until his death, was also enormously popular. Republished in book form these articles made him the foremost essayist in Afrikaans. He became chairman of the Cape National Party and remained a Senator until he died in 1932.

Die Stem

Langenhoven finished composing *Die Stem* on 31 May 1918 (Union Day), while preparing for a series of election meetings. He set it to music and in July 1918 published it under a pseudonym in *Die Burger*. Readers responded with acclaim, but one correspondent pointed out that the poem lacked the religious element characteristic of the Afrikaner *volk*. In response Langenhoven immediately composed and added the fourth stanza. As the tune he had given it did not prove popular, he also invited musicians to compose a more suitable one. In 1921 M.L. de Villiers, a *dominee* in the DRC, composed the present tune.

In the following years de Villiers travelled through South Africa to promote *Die Stem* as *volkslied* or anthem, especially in Afrikaans schools. Meanwhile the political struggle, for example around the issue of a South African flag, and the coming to power of the National Party in 1924 helped move Afrikaners to feel that they needed a *volkslied* of their own. After Langenhoven died in 1932 the *Federasie van Afrikaanse Kultuurvereniginge* (FAK) held a competition for the best *volkslied*. Of the 50 entries the FAK chose *Die Stem* along with de Villiers's tune. By 1934 the majority of Afrikaners accepted it as their *volkslied*. In 1938 Prime Minister Hertzog ordered the band to play *Die Stem* as well as *God Save the King* at the opening of Parliament. When criticized for this, he replied that *Die Stem* was

a genuine South African song...which has sprung from the heart of the Afrikaans-speaking people and breathes the spirit of South Africa in a way that is wholly alien to *God Save the King* and in this regard is matched by no other South African song.⁷⁶

After this *Die Stem* was played at every official occasion along with *God Save the King*. The SABC also began to play it along with *God Save the King* to end its programmes at night, and cinemas followed suit at the end of films.

⁷⁶ *Ensiklopedie van die Wêreld*, Vol 3, p 433

In 1948 the National Party came to power under Dr D.F. Malan. One of his Ministers, Dr T.E. Döriges, pressed the need for an English translation of *Die Stem*. A committee was set up under Justice H.A. Fagan. 226 translations were submitted to it, and from them it composed a text. Parliament in 1952 declared this the official English translation. Paradoxically this meant that the English text became official before Parliament officially declared the Afrikaans version a national anthem. In 1957 under Prime Minister J.G. Strijdom the Government finally declared *Die Stem* along with its translation *The Call of South Africa* as the (only) official anthem of South Africa. Later that year Parliament approved alterations to the English translation.

Text

There are four stanzas to *Die Stem*, but the first is best known and usually sung alone:

*Uit die blou van onse hemel, uit die diepte van ons see,
Oor ons ewige gebergtes waar die krantze antwoord gee,
Deur ons verlate vlaktes met die kreun van ossewa -
Ruis die stem van ons geliefde, van ons land Suid-Afrika.
Ons sal antwoord op jou roepstem, ons sal offer wat jy vra:
Ons sal lewe, ons sal sterwe, ons vir jou, Suid-Afrika.*

The official English text, *The Call of South Africa*, reads:

Ring out from our blue heavens, from our deep seas breaking round;
Over everlasting mountains where the echoing crags resound;
From our plains where creaking wagons cut their trails into the earth -
Calls the spirit of our Country, of the land that gave us birth.
At thy call we shall not falter, firm and steadfast we shall stand,
At thy will to live or perish, O South Africa, dear land.

Critique⁷⁷

Die Stem is without doubt a deeply patriotic and moving anthem, especially to those who stand in the tradition of the Afrikaners in South Africa with their dramatic and often tragic history. It swells with love for the folk, the fatherland and the world of nature. In contrast to *Nkosi sikelel' iAfrika*, which is a hymn and prayer to God, however, *Die Stem* is a hymn to the nation. And as such it falls prey to the same temptation many national anthems fall prey to: it gives the land and its people absolute value and so in effect tends to divinize them. This is clearly expressed in the last two lines of the first stanza (in a more literal translation):

We shall answer to your call, we shall sacrifice what(ever) you ask:
we shall live, we shall die, we for you, South Africa.

Equivalent words in the third stanza of *The Call* read:

We are thine, and we shall stand,
be it life or death, to answer when you call, beloved land.

⁷⁷ This is not the first time that a report to the Assembly has criticized *Die Stem*, though previous comments have been briefer. See the *Papers for General Assembly 1981*, p.72, and 1990, p.45f

These are words of absolute commitment --commitment to live and to die for the country, to give up to it whatever it asks, even life itself. This is further emphasized in the lines in the third stanza of *Die Stem*:

*Op jou roep seg ons noot nee nie, seg ons altyd, altyd ja:
om te lewe, om te sterwe- ja, ons kom, Suid-Afrika.
(In response to your call we shall never say no; we shall always, always say yes:
to live, to die--yes, we come, South Africa.)*

This sentiment is to some extent understandable in terms of the political context in which the anthem was written and the reaction of Afrikanerdom to British imperialism. From a Christian point of view, however, it is unacceptable. Indeed from a Christian point of view it is idolatrous. It makes the "stem" or "call" of the country, the *vox populi*, equivalent in the authority of its claim to the *vox Dei*. One may compare the words of the American Stephen Decatur in his famous, or notorious, toast to his nation in 1876:

Our country! In her intercourse with foreign nations may she always be in the right; but our country, right or wrong!

We may compare also the words of the first stanza in the German anthem:

*Deutschland, Deutschland uber alles,
Über alles in der welt.*

These words were exploited by Hitler who wanted to make the German *Volk* and country the supreme and absolute value in the minds of all Germans:

Whoever is prepared to make the national cause his own to such an extent that he knows no higher ideal than the welfare of his nation, whoever has understood our great national anthem, '*Deutschland uber Alles*', to mean that nothing in this wide world surpasses in his eyes this Germany, people and land --that man is a [National] Socialist.⁷⁸

Today, however, many Germans realize that such words are idolatrous. As a result this stanza is no longer officially sung as the national anthem at official occasions in Germany.

Exactly the same criticism applies to Cecil Spring-Rice's ardently patriotic British hymn:

I vow to thee, my country --all earthly things above -
Entire and whole and perfect, the service of my love,
the love that asks no question: the love that stands the test,
That lays upon the altar the dearest and the best:
The love that never falters, the love that pays the price,
the love that makes undaunted the final sacrifice.

⁷⁸ Quoted in K W Clements: *A Patriotism for Today. Love of Country in Dialogue with the Witness of Dietrich Bonhoeffer* (London: Collins, 1986), p.46. This is an excellent book on the whole subject of patriotism.

The traditional British anthem too is jingoistic even if not idolatrous, and its modern revised version is much to be preferred in changing the lines:

Send her victorious, happy and glorious long to reign over us	to	Guard us in liberty, bless us with unity, save us from tyranny.
---	----	---

The words of the American theologian H.R. Niebuhr are relevant here:

As a rule men are polytheists, referring now to this and now to that valued being as the source of life's meaning. Sometimes they live for Jesus' God, sometimes for country and sometimes for Yale. For the most part they make gods out of themselves or out of the work of their own hands, living for their own glory as persons and as communities.

By contrast with the sentiments in all such super-patriotic hymns like *Die Stem, Deutschland über alles* and "I vow to thee, my country" Jesus Christ upholds as the first and most basic of all commandments the *Shema*, the creed of Judaism:

Hear, O Israel: the Lord our God, the Lord is one, and you shall love the Lord your God with all your heart, with all your soul, with all your mind and with all your strength (Mk. 12:28-31||Matt. 22:34-40||Lk. 10:25-28 cf. Deut. 6:4f.).

And the first of the Ten Commandments declares: "You shall have no other gods besides me" (Ex. 20:3). If one takes these commandments seriously, one can give absolute commitment only to God and absolute priority only to his Word and commandments. For God alone may claim from us absolute commitment, surrender and obedience. To give the kind of allegiance to the demands of one's country that *Die Stem* or *Deutschland über alles* calls for would have made it quite impossible for prophets like Amos or Jeremiah or for Jesus Christ himself to take the stand they did and preach as they did *against* what their people and their country were calling for in their day.

It is true that the fourth stanza of *Die Stem* sounds a religious note and even says
Knegte van die Allerhoogste, teen die hele wêreld vry
(Servants of the Most High and as regards the whole world free).

It is significant, however, that this stanza was added as a postscript, an afterthought, after the other three had already been written. Its sentiment is not really compatible with them. If only the theology of this line had controlled the whole, the anthem would have recognized that the land, the country and its call, are themselves part of what it calls "*die hele wêreld*", so that the call of the country can never be absolutized in the way the first and third stanzas absolutize it. This would have been even more true if the sentiments in the fourth stanza of the English version in *The Call* had controlled the whole of *Die Stem*:

Bondsmen only to the Highest and before the whole world free
...guard our land and guide our people in Thy way to do Thy will.

This last line in the English version, however, has no equivalent in the Afrikaans, which ends instead:

Met ons land and met ons nasie sal dit wel wees, God regeer.
(With our land and with our nation it will go well, for God reigns.)

The sentiment of these Afrikaans words, however, is by no means necessarily true from the biblical perspective: one need only think again of the quite contrary warnings of Amos, Jeremiah and Jesus to their nation! This is so precisely because the prophets and Jesus put first not the nation but God alone and saw the future of the nation as dependent on whether it did the will of the Most High. Precisely because God reigns, things will go badly for a sinful nation! *Die Stem* leaves no room for that point of view. Indeed by adding the religious element in the fourth stanza in the context of what precedes it exacerbates the problem: for this adds an explicitly religious sanction to national idolatry.

Of course defenders of *Die Stem* would argue that the two sentiments of commitment to God and commitment to the land or the *volk* are meant to stand side by side without being in conflict with each other: we should be absolutely committed to God in the religious and private areas of life and at the same time absolutely committed to the *volk* or nation, or the land, in the cultural and political area. But this kind of "two realm" theology is the heresy to which the so-called "German Christians" fell prey in Nazi Germany: they too wished to have a theology in which Jesus Christ was Lord over the inward and spiritual realm of life only but not over the political realm. And a similar "two sphere" theology formed the basis of the Dutch Reformed Church's apartheid theology from the 1940s to the end of the 1970s.

This apartheid theology culminated in the "Landman Report" of 1975, *Ras, Volk en Nasie en Volkeverhoudinge in die Lig van die Skrif*, also published in English under the more innocuous title, *Human Relations and the South African Scene in the Light of Scripture*. It made *creation*, i.e. the given creation of human beings in different races, reinforced by God's division of people into different *volkere* at the Tower of Babel (as this theology interpreted Gen. 11), normative for politics. It thus excluded Jesus Christ from having normative authority in political matters: the differences between the *volke*, and *a fortiori* between the races, and so the need to separate them in order to preserve their distinct integrity, was given in creation and so had to be accepted as an *a priori* "premise"⁷⁹ by the gospel.⁸⁰ Thus all that the gospel said about unity between people could not serve as a norm for political behaviour, because it was qualified from the beginning by the right of any race to preserve its integrity by means of "separate development". In this way it undercut the gospel by attaching absolute value to the *volk* and thus to its preservation as racially pure. It was this that was the very heart of the apartheid heresy.

Like the heresy of the "German Christians", then, the apartheid heresy denied a fundamental principle of the New Testament and indeed of true Reformed theology: that Jesus Christ is Lord over all the world and therefore over every area of life, and his Word is supreme in every area. Hence the South African Council of Churches' *Message to the People of South Africa* in 1968 declared:

The Gospel of Jesus Christ declares that Christ is our master, and that to him all authority is given. Christians betray their calling if they give their highest loyalty which is due to Christ to...the so-called "South African way of life"...or...the customs and laws of this country.... Christ is Lord and South Africa is part of his world.

⁷⁹ *Human Relations and the South African Scene in the Light of Scripture*, p 32, par 13 6

⁸⁰ See further D S Bax *A Different Gospel. A Critique of the Theology Behind Apartheid* (Johannesburg: Presbyterian Church of Southern Africa, 1979).

It was also to make a stand for the same principle of the universal Lordship of Christ and the priority of the gospel with its message of transcending unity against the heretical apartheid theology that:

- the PCSA approved *The Declaration of Faith for Southern Africa* in its original form in 1973 and then accepted it more definitely as a confessional statement in 1985-6; and
- the *NG Sendingkerk* (Dutch Reformed Mission Church) accepted *The Belhar Confession* in 1982;
- and other Churches also declared apartheid an ideology contrary to the teaching of Christ.

The national synod of the Church of the Province of Southern Africa in June 1989 explicitly called for *Nkosi sikelel' iAfrika* to replace *Die Stem* on the grounds that "Christians serve their country best when they put God and the values of his Kingdom first" and so far from doing that *Die Stem* "encourages people to place their country before God" and "idolizes the State".⁸¹ The Afrikaner theologian, Prof. J.N.J. Kritzinger, likewise criticized *Die Stem* in 1990 for making an idol of South Africa as a white man's country, which one must be prepared to die for to preserve as such.⁸²

Defenders of *Die Stem* will no doubt also argue that if people are not prepared to live or die for their country, then it will be threatened by every foreign power and will have no option but to surrender to them. But that is to misunderstand the point. The whole basis of the doctrine of "the just war" (i.e. the morally justifiable war), most specifically in its Protestant form, is that Christians should *not* be willing to fight any war at the mere behest of their country or on the simple patriotic basis of "My country, right or wrong." Instead there are certain criteria that determine whether their country is fighting a *justifiable* war and they should evaluate the position before God and determine their response on the basis of these. They should, in other words, put first *not* the behest or call of their country but God's will, God's justice, God's call, in the particular situation.⁸³

Under the Nationalist regime there was a definite attempt to deny people the right to debate whether the country was using its defence force in a justifiable way in opposing the forces of liberation both in South Africa and in Namibia. Already in 1970, when he was Minister of Defence, P.W. Botha declared in Parliament: "The honour and duty to defend one's country should not be made subservient to one's religious convictions."⁸⁴ And when in 1974 the annual conference of the South African Council of Churches passed its "Hammanskraal" resolution questioning the morality of military service in the situation in South Africa, the Government under B.J. Vorster passed a bill prohibiting any advocacy of conscientious objection with huge civil penalties.

⁸¹ Synod minute 31, 1989.

⁸² *The Cape Times* 11.5.90, p.6.

⁸³ See further, for instance, the report of the Ad Hoc Committee on the Bellum Justum on "The Different Approaches to the Ethics of War and Conscientious Objection" in the *Papers for General Assembly 1990*, p.44-57.

⁸⁴ *Hunsard RSA*, 28.8.70, col.2851. Mr Botha made this remark with particular reference to the Jehovah's Witnesses, but it is the principle he enunciated that is important.

In this regard, however, Luther quoted what "St Peter said to the rulers of the Jews", namely: "One must obey God rather than men" (Acts 5:29). He added:

For example, if a prince wished to go to war and had an openly unjust cause, in such a case one should by no means follow or help [him], and this because God has commanded that we shall not kill our neighbour or do him injustice.... In such cases one should rather give up goods, honour, body and life so that God's command may remain standing.⁸⁵

One may also recall Calvin's famous words about which *stem* we must listen to:

The Lord...is the King of kings who, when he has opened his holy mouth, must alone be listened to, before and above all people; after him we are subject to those who rule over us, but subject only in the Lord. If they command anything against him, let us not pay the least attention to it.⁸⁶

None of what is written here is meant to deny that C.J. Langenhoven was a great Afrikaner or a great writer or even a man of "steadfast...personal faith"⁸⁷. The problem, however, is well expressed in the *Standard Encyclopaedia of Southern Africa* in a comment on some of Langenhoven's own words. In his autobiographical work *U dienswillige dienaar* (1932) Langenhoven wrote: "Two things have made life worth living for me—the love I gave and the love I received." The *Encyclopaedia* comments: "Love was, for him, in the first place, love for his people."⁸⁸ Of course it is natural and appropriate to love one's people and one's land. In the words of Sir Walter Scott:

Breathes there the man with soul so dead,
Who never to himself hath said,
'This is my own, my native land!'

The question, however, is what one loves in the first place and so gives one's absolute commitment to. And in that regard the teaching of Ex.20, of Deut.6 and of Jesus Christ himself is clear. It means that one can never give one's people or one's country the absolute or unqualified commitment *Die Stem* ascribes to them. On the contrary precisely because there is only one God to whom, and to whom alone, we are called to give absolute commitment, all our other loyalties must be qualified. Patriotism itself must always be a critical patriotism, a critical solidarity, not an absolute or unqualified commitment.

⁸⁵ Martin Luther. *Von den guten Werken*, in Clemen, O. (ed.): *Luther's Werke in Auswahl* (Berlin: de Gruyter, 1933), p.287. There is a less precise translation in J. Pelikan (ed.): *Luther's Works*, American Edition, Vol.44, p.100. See also *Whether Soldiers, Too, Can Be Saved* in *Luther's Works*, Vol.46, p.130f., *Temporal Authority in Luther's Works*, Vol.45, p.125f.

⁸⁶ *Institutes*. IV:xx.32.

⁸⁷ D.J. Potgieter et al. (eds). *Standard Encyclopaedia of Southern Africa* (Cape Town: NASOU, 1972), Vol.6, p.541.

⁸⁸ *Ibid.*, p.540.

Recent Developments

Ever since his inauguration our new State President has strongly upheld the spirit of the compromise reached by the various political parties in their negotiations before the general election in 1994. Part of that compromise, written into the interim constitution, was that *Nkosi* and *Die Stem* would be sung side by side as national anthems, and he has gone out of his way to encourage all groups to do this. Singing two anthems, however, takes up time and also suggests division rather than unity. Mr Mandela therefore commissioned Deputy President Thabo Mbeki to appoint an Anthem Committee to look at the problem and see if it could draft a shorter, combined anthem. The Committee began meeting early this year under Professor Mzilikazi Khumalo. It timed *Nkosi* and *Die Stem* as together taking 5 minutes 2 seconds to sing, whereas the average time for 27 other national anthems was 1 minute 27 seconds.⁸⁹ It tried to save what it saw as the best from both anthems but agreed to drop the chorus of *Nkosi* (*Yihla Moya, yihla Moya, / Yihla Moya Oyingcwele*, meaning "Come down, O Spirit, / Come down, O Holy Spirit") as offensive to Muslims. The result was the following short combined version in four languages, Xhosa, Zulu Sesotho, Afrikaans and English (printed below with a translation):

Nkosi sikelel' iAfrika,
Maluphakanyis' uphondo lwayo,
Yizwa imithandazo yethu,
Nkosi sikelela, thina lusapho lwayo.

O Lord, bless Africa:
Let its horn[=strength] be held high.
Listen to our prayers:
O Lord, bless us, her children.

Morena boloka setjhaba sa heso,
O fedise dintwa le mathwenyeho,
O se boloke, O se boloke setjhaba sa heso,
Setjhaba sa South Africa—South Africa!

O Lord, save our nation;
End all its wars and troubles
Save, O save our nation
The nation of South Africa—South Africa!

Uit die blou van onse hemel,
Uit die diepte van ons see,
Oor ons ewige gebergtes,
Waar die kranse antwoord gee

Out of the blue of our sky/heaven,
Out of the depths of our sea,
Over our eternal mountain ranges,
Where the crags their answer make

We can hear the land rejoicing
With a voice not heard before,
Let the people of our country
Live in peace for evermore.

We can hear the land rejoicing
With a voice not heard before,
Let the people of our country
Live in peace for evermore.

This version was sung for the first time at the Caltex Massed Choir Festival in the Good Hope Centre in Cape Town on 7 May 1995 by a choir of 1 200 conducted by Professor Khumalo and accompanied by the Cape Town Symphony Orchestra. It was received with applause. But Professor Khumalo said the song still had to be changed, as the Cabinet wanted the last stanza to be:

*Ons sal lewe, ons sal sterwe, ons vir jou, Suid-Afrika.*⁹⁰

⁸⁹ Reported in the television programme *Two Way* on NNTV and CCN on 2.7.95.

⁹⁰ *Cape Times* 8.5.95, p.4.

It would indeed have been ironic indeed if the ANC-dominated Cabinet had insisted on retaining the very words that provided so much emotional support for the apartheid State! In the event, however, when the combined anthem was presented to the Cabinet on 17 May, it agreed that for reasons of length and musical harmony only the first stanza of *Die Stem* in Afrikaans should be retained. The Cabinet therefore accepted as the national anthem of South Africa the shortened version as above but with the concluding stanza in English changed to one submitted by Prof. Khumalo's committee as an alternative:

Sounds the call to come together,
And united we shall stand;
Let us live and fight for freedom
In South Africa our land.

Christians would surely prefer the final verse that the Committee produced with its reference to peace rather than the one substituted for it with its reference to fighting. Nevertheless they will welcome the omission of the problematic elements of *Die Stem* from the combined shorter version. The problem with the new version is a musical one, for it combines two very different melodies. A critical newspaper correspondent called it "a musical mongrel".⁹² On the other hand a member of the Anthem Committee argued that it is a "very successful composite".⁹³ At the Rugby World Cup the organizers preferred to play and sing *Nkosi* and *Die Stem* separately; the exception was at the semi-final in Durban, where the crowd completely lost their way in trying to sing the combined version—because of unfamiliarity with it. (It was for that reason that *Nkosi* and *Die Stem* were sung separately at the final game in the Rugby World Cup.)

For the time being, then, until the Constitutional Committee finalizes the matter, the shortened combined version is the national anthem of South Africa. It still remains to be seen if it will win general acceptance. In a discussion of the anthem in the television programme *Two Way* on 2.7.95 a few members of the PAC came out strongly for retaining *Nkosi sikelel' iAfrika* and attacked the new version as an attempt to appease the old apartheid regime, but the majority in the audience was clearly in favour of the new version. Bishop Peter Storey urged that the combined version should be seen as a marriage rather than a compromise and accepted for the sake of nation-building.

If, on the other hand, the shortened combined version does not win final acceptance and if *Die Stem* continues to be sung along with *Nkosi sikelel' iAfrika* or the last two lines of the first stanza of *Die Stem* are considered for inclusion in some alternative version, we would press strongly for these lines to be amended to something like:

*Here, ons sal u gehoorsaam, ons sal offer wat u vra.
Laat u stem ons wees tot leiding in ons land, Suid-Afrika.
(Lord, we will obey you, we will sacrifice what you ask.
Let your voice guide us in our land, South Africa.)*⁹⁴

This would avoid the idolatrous element in *Die Stem*. It would also mean that it would end as a prayer to God, which the whole of *Nkosi sikelel' iAfrika* is.

⁹² *Star* 22.6.95, p.18.

⁹³ In the television programme *Two Way* mentioned above.

⁹⁴ This amendment has been proposed by R.J.D. Robertson, *minister emeritus* of the PCSA.

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15 January 1996

Working Draft of the new constitution:
Section 14 (3) of Chapter 2

1. In upholding the fundamental rights of Religious Freedom the above Section 14 (3) allows for the recognition of a system of personal and family law of a religious group.
2. However, this recognition is being subjected to a paradoxical condition and stipulation that such a system has to be "consistent with the Bill of Rights", thus harnessing any freedom the Bill purports to protect.
3. This anomaly and inconsistency must be removed so that the fundamental rights of Religious Freedom can be maintained without any form of muzzle or strait-jacket upon Religious Beliefs.

Yours faithfully

P.P.

CONSTITUTIONAL
ASSEMBLY

18 JAN 1996

