

2/4/11/2

CONSTITUTIONAL ASSEMBLY

**THEME COMMITTEE 1
CHARACTER OF DEMOCRATIC STATE**

28 OCTOBER 1994

SUBMISSIONS AND REPORT

N.J.Mahlangu
Chairperson: Theme Committee No. 1
V417 (Ext.) 3036

AFRICAN NATION CONGRESS WORK PROGRAMME THEME COMMITTEE NO ONE.

A. Constitution issues to be attended

1. One Sovereign State (with emphasis on Democracy & Equality & Majority rule, (Principle 1)
2. Supremacy of the Constitution (Principle IV)
 - Constitution - Supreme law
 - Supremacy of Parliament in legislating
3. Representative Government (Principle VI)
 - Representation of Govt
 - Embodying of Multiparty democracy
 - Regular elections
 - Suffrage
 - Common voters roll
4. Separation of Powers (Principle VI)
 - Independence of
 - Judiciary,
 - legislature
 - Executive
 - checks and balances
5. PARTICIPATORY DEMOCRACY AND ACCOUNTABILITY (CONS.PIX)
 - Freedom of information
 - accountability of administration
6. CITIZENSHIP & FRANCHISE
 - common citizenship
7. NAME AND DESCRIPTION OF STATE & SYMBOLS
 - Symbols
 - Name
8. PREAMBLE
 - to be consistent with the text
 - to be consulted for interpretation of text.

B. CONSTITUTIONAL ISSUES TO BE DEALT WITH AS PRIORITY

1. One Sovereign State
2. Supremacy of the Constitution/Parliamentary Supremacy

C. AREAS OF OVERLAPPINGS

1. Representative Govt.
2. Separation of Powers.
3. Participatory democracy and accountability

D. ISSUES TO BE DEALT WITH IN COMMISSIONS

1. One Sovereign State
2. Representative Govt.
3. Separation of Powers
4. Name
5. Symbols

E. ISSUES FOR SUBMISSION OF SEPARATE REPORTS

1. One Sovereign State
2. Supremacy of the constitution.

F. NUMBER OF REPORTS AND DEADLINES:

We believe these can only be submitted precisely later as the process unfold.

G. ROLE PLAYERS TO BE CONSULTED

1. Provinces
2. Political organisations.
3. Mass organisations.
4. N.G.O.'s
5. Universities and Institutes.

6. Traditional Leaders.

H. COMMUNITY AND MEDIA LIAISON ASSISTANCE REQUIRED

1. We propose a fully fledged Communication Media Liaison Unit of the CA to service all the Theme Committees.
2. Communication through whatever Media must ensure that all members of the Public are kept informed of the process.

I. TECHNICAL ASSISTANCE REQUIRED

1. Admin support Staff for each Party allocated proportionally
2. Technical experts.
3. Other requirements will be submitted as the process unfolds.

NP REPORT TO THEME COMMITTEE 1 ON THE DIRECTIVE TO THE COMMITTEE, AND ITS EXECUTION

1. DIRECTIVE

The directive to the Theme Committee was formulated by the Constitutional Assembly (CA).

After scrutinising the 34 Constitutional Principles (CP), the NP is of the opinion that beside the Constitutional Principles mentioned by the CA, further Principles or sections of Principles, also have a bearing on the character of the State. Consequently we would recommend to the Constitutional Committee that the directive should be enlarged.

- 1.1 Preamble to the constitution.
- 1.2 Matters regarding the establishment of a single sovereign state (CP 1) as qualified by CP XIV; XVI; XIX; XX; XXI; XXII and XXXIV.
- 1.3 Supremacy of the constitution, CP IV.
- 1.4 Matters regarding representative government, regular elections, suffrage, CP VIII.
- 1.5 Matters regarding freedom of information and accountable administration, CP IX. The NP considers this directive and constitutional Principle not to have bearing on the character of the State and consequently refers the directive back to the Constitutional Committee.
- 1.6 Name and description of the State and its symbols. The NP holds the view that the definition and promotion of official languages form part of the national symbols and belong to the terrain of Theme Committee I. Therefore CP XI and XII should be added to the committees assignment.
- 1.7 Citizenship and franchise. The NP thinks this directive could be dropped seeing that it is covered in 1.2 and 1.4.
- 1.8 Matters regarding the separation of powers, CP VI and XX.

2. PLANNING FOR THE FULFILMENT OF THE ASSIGNMENT

Regarding each of the guidelines proposed by the Executive Director, the NP would like to propose a plan of action:

- a. See following report
- b. The NP is of the opinion that two matters should be dealt with as priorities, viz.
 1. the definition of the "single sovereign state" as qualified by minority rights, provincial government and possible volkstate; and
 2. the division of powers among the legislative, executive and judicial authorities. The continuation of the entire process of writing the constitution is dependent on progress made in respect of the first priority.
- c. The work of Theme Committee 1 may overlap with that of other theme committees. The NP would like to propose the following:
 1. That Theme Committee 1 should deal with the issue of official languages while Theme Committee 4 deals with language and cultural rights;
 2. That Theme Committee 1 should deal with the principle of minority rights within a "single sovereign state" while Theme Committee 2 deals with the detailed definition of minority rights;
 3. That Theme Committee 1 determines in principle the position of provinces and volkstate within "one sovereign state" while Theme Committee 3 gives the detailed definitions;
 4. That Theme Committee 1 considers the division of powers in principle while Theme Committee 2 gives a detailed description of the duties of every authority.
- d. Proposed commissions. None.
- e. The NP thinks it would be desirable to submit separate reports to the Constitutional Committee on the following:
 1. Preamble to the Constitution;
 2. "Single sovereign state" as qualified by "participation of minority political parties" (CP X1V); provincial government (CP X1X and XX11) and volkstate (CP XXX1V)
 3. Common South African citizenship;

4. Democracy;
 5. Supremacy of the Constitution (also in view of the right of the Constitutional court to test it);
 6. Regular elections (which include voters' rolls, CP V111)
 7. Suffrage (which includes direct and indirect suffrage);
 8. Representative government (including consideration of constituencies and/or proportional representation, etc);
 9. Name and definition of the territory of the State;
 10. National symbols;
 11. Official languages;
 12. Separation of powers among legislative, executive and judicial authorities; and
 13. Other matters as may be determined from time to time.
- f. The NP proposes that reports on all of the twelve above themes be submitted to the Constitutional Committee. Progress reports or trial reports could be submitted from time to time.

Nature of the reports

Since the theme committees may not negotiate, in other words may not take any decisions, it is recommended that all reports should analyse the problem, offer more than one solution or definition and leave the decision to the Constitutional Committee. The Theme Committee could, where possible, indicate preference.

Proposed Time Frames

The proposed reports 2 and 12 are crucial to the continuation of the entire process of writing the constitution, therefore the NP recommends:

1. That these reports take priority;
2. That the full Theme Committee gives joint consideration to these matters;
3. That technical assistance is obtained particularly in respect of those two matters; and

4. That at the same time as the above, subcommittees attend to reports 1 and 3 to 11 with a view to submitting it to the Theme Committee.

The reports mentioned in 4 ought to be completed by the end of March.

- g. The NP recommends that party structures are used for communication mechanisms. The NP would strenuously object if urban communities are consulted and not those in rural areas.
- h. The NP would like to recommend that all media (private and state owned) are requested to carry information programmes on the process as well as the substance.
- i. Seeing that the Theme Committee only defines and does not make decisions, a variety of experts should be invited from time to time to inform the committee on various subjects. The core group can decide who should be invited.

The NP recommends that all study material obtained during the Kempton Park phase of the negotiations should be made available to the theme committees.

INKATHA FREEDOM PARTY DISCUSSION DOCUMENT

THEME COMMITTEE I - CHARACTER OF THE DEMOCRATIC STATE

WORK PROGRAMME

26th October 1994

In a memorandum to Theme Committees the Executive Director recommended that reports from Theme Committees containing their proposed work plans should be structured into nine sections:

- a) Which constitutional issues within the broad theme need to be attended to;
- b) Which of these constitutional issues need to be dealt with as a priority;
- c) Which are the areas of overlap with each other in the Theme Committee.
- d) Which constitutional issues need to be dealt with in Commissions;
- e) Which groups of constitutional issues do the committee anticipate will require the submission of separate reports;
- f) How many such reports are to be issued and what are the deadlines for the submission of same;
- g) What are the structures and who are the role players that are to be consulted;
- h) What community and media liaison assistance will be required to facilitate the committee's work;
- i) Who and what technical assistance will be required to support the committee.

This document was drafted as a discussion document to enable Theme Committee I to focus on the kind of issues that it will have to deal with, and to give a preliminary indication of the kind of Technical Experts Theme Committee I will have to consider nominating to assist it in its work.

Until we know what kind of issues we will be dealing with we will not be able to conceptualise a way forward and produce a detailed work plan. This draft document therefore takes the liberty of listing issues and making some suggestions on what has to be done.

Theme Committee I must also be made aware of the urgency with which it should go about its business. Other Theme Committees will be held up if we are at all lax in our approach.

Theme Committees were established by a resolution of the Constitutional Assembly on Monday 5th September which concluded with a note which reads as follows: "It is also proposed that Theme Committee I (Character of the Democratic State) be dealt with as a matter of priority."

The concept 'the form of state' embodies in it the nature of the organisation of the state. In this regard an injunction in the constitution must also be borne in mind. It is that "the development of a system of provincial government shall receive the priority attention of the Constitutional Assembly." (section 161(1) of the Constitution)

Preliminary Determination of the Form of State

Theme Committees must precede from a preliminary determination of the form of state - whether South Africa shall be organized as a unitary, or regional/provincial, or federal state.

In fact, no Theme Committee may proceed very far with its work until and unless this preliminary issue is resolved. In other words, to perform their respective work both the first and the fourth Theme Committees would need to know whether Provinces have residual powers, while the form of government and the role of the Senate laboured the second Theme Committee will necessarily reflect the chosen form of state, and the work of the fifth Theme Committee will be shaped by a decision on whether there should be a single or more than one judiciary so as to complement the assignment of residual powers to the Provinces. The following simple issues are to be answered:

- (a) will Provinces have residual powers, which are those powers of Parliament which are not immediately and necessarily reflected in a governmental line function?
- (b) as a matter of principle, will all the powers and functions of government be assigned to the Provinces and only those powers which cannot be adequately and/or properly exercised at provincial level be devolved to the national level of government on the basis of the principle of subsidiarity/residuality?
- (c) will the Provinces be provided with an area of entrenched constitutional autonomy which the central government may not destroy or change at its own will?
[Indestructible Provinces in an indestructible Union]
- (d) will Provinces have final decision-making power in the area of their constitutionally recognized autonomy, or will the central government have the power to overrule them or otherwise subjugate the provincial policy making?
- (e) subject to the need for equalization grants, will Provinces have sufficient financial and

fiscal autonomy to support their functions and powers without depending on the discretion and control of the central government?

- (f) will Provinces have the power to participate as Provinces in the legislative decision-making process and possibly with respect to some executive functions of the central government?
- (g) will the constitutional system allow for asymmetry to enable each Province to use at its own option less powers and functions than the total amount of provincial autonomy allowed under the Constitution?

Once there is a negative or positive answer in principle to the foregoing question, each of the Theme Committees would have sufficient guidelines to develop their respective work.

The focus of Theme Committee I

The Constitutional Assembly resolution mentioned above lists headings under which Theme Committee I should order its work. This document takes those headings, notes some of the issues that fall under them, and suggests a plan of action in tackling them.

1. Preamble of the Constitution

ISSUE: Should the Constitution contain a Preamble?
What are contents of the Preamble

ALTERNATIVES: The Preamble could be with or without normative value
The Preamble may or may not contain matters of substance

AGENDA: Consider why in constitutions there are Preambles and how they affect the interpretation of the Constitution and the Legal system

IFP POSITION: If the Constitution contains a Preamble it shall have normative value.

2 Matters dealing with the establishment of a single sovereign state, common citizenship, democracy and equality

Constitutional Principle 1

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.

DEMOCRACY:

ISSUE: Is a rigid constitution that guarantees human rights the best guarantor of democracy?

ALTERNATIVES: There are democracies which do not have rigid constitutions.

AGENDA: Examine the requirements of plural societies such as ours, and examine how best to guarantee pluralism. Look at the relationship between judicial systems, constitutional guarantees of individual and group liberty, and the system of adjudication in rigid and non-rigid constitutions. Look at the inherent threat of group domination in plural societies and examine how best to ensure that groups in our society can live in a symbiotic relationship with each other.

IFP POSITION: The principle of participatory democracy should be constitutionally entrenched. The principle the autonomy of individuals as well as of economic, social and cultural formations should also be entrenched with respect to all activities for which any level of government does not have a compelling justification to regulate, control or directly exercise. The principles of transparency and political and civil accountability of governmental structures shall be constitutionally entrenched

EQUALITY:

ISSUE : What type of principle of equality should be entrenched in the Constitution?

ALTERNATIVES: Formal equality will need to be entrenched. In addition the Constitution may entrench the principle of substantive equality. This can be achieved either by promoting equal opportunities or equal access to opportunity. The principle of equality may be implemented and enforced exclusively by the National Government or by the National Government and the Provinces in their respective areas of jurisdiction.

AGENDA: All the main variations of the principle of substantive equality will need to be explored. The relation between substantive equality and the need of constitutional adjudication to be conducted by Constitutional Court only will also need to be explored. It will also be necessary to look at the many alternatives related to the application of the principle of formal equality with respect to the area of provincial autonomy. The difference between implementation and enforcement will also need to

be fully explored.

IFP POSITION: The principle of Equality should foster equal access to all political, social and economic opportunity and should mandate the Republic to remove all substantive hindrances to the implementation of this principle. Equal "access" to opportunities does not mean redistribution of wealth, assets or resources, nor does it mean "equal opportunities". However, special training opportunities and assistance to small business are required to substantiate equal access to opportunities, the principle of which should be constitutionalised.

The principle of Equality should be entrenched in the national constitution but implemented by the Provinces with respect to the matters of their competence (i.e. employment/labour, education, welfare, et cetera). The Republic might have the power to coordinate this implementing role of the Provinces.

1.3 The supremacy of the Constitution binding on all the organs of State

Constitutional Principle IV

The Constitution shall be the supreme law of the land. It shall be binding on all organs of state at all levels of government.

SUPREMACY OF THE CONSTITUTION:

ISSUE: In which form shall the Constitution be the supreme law of the land. Shall the Constitution apply in its entirety to interpersonal relations. To which extent should the Constitution apply with respect to the area of provincial autonomy.

ALTERNATIVES: The Constitution may apply to intergovernmental relations only or also to interpersonal relations. The constitution may also apply in its entirety with respect to provincial autonomy or in the alternative only some portions of the constitution may apply with respect to provincial autonomy. Furthermore, there might be differentiation between direct application of the text of the constitution to provincial autonomy and constitutional mandates which must be implemented by the provinces autonomously, with specific regard to the implementation of both sections of the Bill of Rights which require implementing government action (second, third and fourth generation human rights).

AGENDA: The full analysis of the position for various constitutions in the respect

to legal systems must be undertaken with specific attention to federal systems including the US, the German and the European Union models.

IFP POSITION:

The constitution shall not only apply to all organs of the Republic but shall also apply to legal relations under the control of the Republic. The Constitution in its entirety shall not apply to the Provinces, social and cultural formations, or individuals with respect of their area of constitutionally recognized autonomy, but some portions shall have some application. In this respect reference to the technique used in the Article IX and in 14th Amendment of the U.S., as well as to the proposed Constitution for a Federal Republic of South Africa tabled by the IFP at the World Trade Centre should be made.

LANGUAGE:

ISSUE:

What should be the official language(s) of the country? Should we have a unified notion of official language? What is the relation between national official language(s) and provincial official language(s).

ALTERNATIVES:

One or more languages might become official languages. A language may be official only with respect to some purposes but not with respect with all purposes. An official language might relate only to relations between subjects and government or may also apply to some interpersonal relations of significant importance.

AGENDA:

Full consideration should be given to the issue of official languages in plural societies across the world. A model should be developed to analyze the various segments of social life in which language plays a role which deserves constitutional attention.

IFP POSITION:

The IFP believe that there is need to move away from the present system of 11 official languages. Greater emphasis must be given to official languages in the Provinces. Once the Provinces become the "primary government of the people", any given language will have primary protection at Provincial level. Additional protection will derive from the recognition of constitutional autonomy for cultural formations, which the IFP has been advocating

4.

Matters dealing with representative government, regular elections, suffrage and proportional representation.

Constitutional principle VIII

There shall be representative government embracing multi-party democracy, regular elections, universal adult suffrage, a common voters' roll, and, in general, proportional representation.

PROPORTIONAL REPRESENTATION:

ISSUE: Systems of representation should take into account the degree of plurality that there is in a society and the degree of literacy in it. They should also be examined within the context of their being instruments of stability in party political relations.

Proportional representation is best in societies with high regional differences in population distribution.

ALTERNATIVES: Proportional and constituency representation are both theoretically democratic and both can be made to work.

AGENDA: Examine the numerous systems of proportional representation that there are in the world's democracies to determine the best system which ensures the greatest participation of minority parties in parliamentary democracy. Examine the best way to use the proportional system of representation taking into account the likelihood of smaller parties in South Africa not having an even geographical spread of support.

IFP POSITION: At national level the proportional system should be used to determine the number of political representatives elected by each party, but the selection of those who are elected from each party should rely on the constituency system. Decisions on the electoral system to be used in provinces should be left to provinces to decide autonomously within whatever form of representation is prescribed by the constitution. The constitutional prescriptions should be enabling prescriptions and not limiting prescriptions.

REPRESENTATIVE GOVERNMENT:

ISSUE: People must govern in South Africa if we are going to have a stable democracy. In order to achieve this government must be brought closer to the people and representative government must be made as autonomous as possible at all of the three levels of government.

ALTERNATIVES: In the final analysis political parties govern.

AGENDA: Examine the various models of representative government and seek to

determine the form of representative government that best accommodates democracy under a constitution which is the supreme law of the land.

IFP POSITION: The principle of political representation of government and regular elections should be constitutionally entrenched with respect to national, provincial and "primary" local governments (excluding local government substructures). The implementation of this principle with respect to provincial and local government should be left to the autonomy of the Provinces.

Provision shall be made for referenda.

SUFFRAGE:

ISSUE: Universal adult suffrage is a democratic must in South Africa and the age threshold for the right to vote should be set at the earliest age at which responsibility compatible with voting rights is generally achieved

ALTERNATIVES: Political stability will in part depend on accommodating the aspirations of our younger generation who must be made participant in the parliamentary democracy.

AGENDA: Research international and particularly African trends in setting voting ages.

IFP POSITION: Only South African citizens 18 years or older should have active and passive voting rights.

FREEDOM OF INFORMATION:

ISSUE: Years of apartheid oppression and autocratic government has created a specific South African need for openness and transparency in government.

ALTERNATIVES: There is no alternative.

AGENDA: Determine what procedures and mechanisms will be needed to make government as transparent as possible, and determine what the limits of discretion should be set for ministers of state charged with security matters. Determine the requirements of personal and organisational privacy in the face of abuses of open information being a threat.

IFP POSITION: The right to access all government information and private data bank's information shall be recognized with customary qualifications and exclusions, subject to judicial review.

5 Matters dealing with freedom of information and accountable administration.

Constitutional Principle IX

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

ACCOUNTABLE ADMINISTRATION:

ISSUE: Representative government must be an accountable government and a democratic administration can only be established if accountability goes hand in hand with criminal, social and economic justice being seen to be done.

ALTERNATIVES:

AGENDA: Determine what political, legal and judicial mechanisms are necessary to make government accountable to the electorate and to parliament in preemptive accountability which does not wait for accountability after being charged.

IFP POSITION: The notion of administrative justice and judicial reviewability of all administrative actions shall be constitutionally entrenched. Public official shall be personally responsible for gross negligence and malice. Provision shall be made for the recognition of the right to petition any government structure.

6 Name and description of State and symbols

NAME OF COUNTRY

ISSUE: Should the name of the country be changed.

ALTERNATIVES: As proposed by those who wish to change the name.

AGENDA: Different proposals should be collected along with the reasons supporting the position of those who wish to change the name.

IFP POSITION: The IFP does not see a reason justifying changing the present name of our country but will consider reasons which other parties or stakeholder may put forward to justify the need to change the name and to support alternatives names.

7 Citizenship and franchise.

CITIZENSHIP:

ISSUE: Who should be a citizen? What are the purposes of a constitutional definition of citizenship? Should there be a unified notion of citizenship? How does citizenship affect the relationship between provincial governments and their subjects?

ALTERNATIVES: Citizenship rights are established by birth.

AGENDA: Examine the relationship between regional/national citizenship and forms of representation and systems of franchise suitable to a form of state in which provincialism in a federal context is provided for.

IFP POSITION: The establishment of a common citizenship should not hindered the establishment of provincial citizenship with respect to the functions of the Provinces, which will be limited by the customary constitutional provisions prohibiting restrictions of inter-provincial commerce and the free circulation of goods, people, labour and services.

8 Matters dealing with the separation of powers etc.

Constitutional Principle VI

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

SEPARATION OF POWERS (Form of State):

ISSUE: Democratic checks and balances are maximised by the separation of

powers both between levels of government and between the executive and legislative arms of government, and between government and the judiciary- particularly in a society in which pluralism guarantees exceptional protection for individual and group rights.

ALTERNATIVES: A role of the executive in the legislature must be accepted as inevitable.

AGENDA: Examine the proposition that power of the state is maximised when it is put under the restraints of a democratic system in which the rigidity of the constitution, the accountability of government, the guarantees of human rights are enhanced by the separation of powers.

IFP POSITION: There shall separation of powers between national and provincial levels of government. National government shall have no overrides and Provinces shall have exclusive powers. Relations between the two levels of government shall be regulated by checks and balances, intended as a predetermined set of mutual interference among the powers of each level of government, based of the extension by relevancy or implication of the powers of one level of government into areas of competence of the other, as in theory is the case in the U.S. (i.e.: interstate commerce).

There shall be separation of powers between any level of government and civil society. To individuals as well as social, cultural and economic formations there shall be recognized an area of protected constitutional autonomy defined by the interests they are capable of self-regulating and administering and in respect of which no government has a compelling reason of public interest to intervene.

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

TEL: (021) 403-2911



SENATE
PO BOX 15
CAPE TOWN
8000

Ref No.

26 October 1994

TO: Secretariat, Theme Committee One
FROM: Errol Moorcroft
ATT: Leola Rammable
Managing Secretary
Room CA 210

Submission by Democratic Party to Theme Committee One :
Work Programme

The following issues need to be attended to as a matter of urgency:

- (1) The Preamble, on the grounds that much of the existing preamble is (or will be) no longer relevant.
- (2) The Electoral System, (Constitutional Principle VIII). This requires urgent attention, and will also require a Commission of Enquiry.

N.B. There is a possible overlap here with Theme Committee 2.

- (3) The issues involving Freedom of Information and Accountable need to be further investigated by experts but not necessarily a commission. There is also overlap here with Theme Committee 4.
- (4) Name and Description of State and Symbols. Here we need a commission of enquiry.

- (5) Citizenship and Franchise. There is a need for the rights of prisoners, expatriates and permanent residents in South Africa need to be re-investigated but not necessarily by a commission.

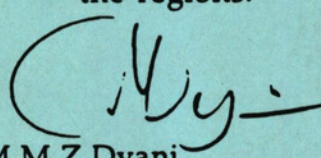
- (6) The Separation of Powers: Here we need technical assistance from appropriate constitutional experts.



26 October 1994

PAC's SUBMISSIONS ON THE WORK PROGRAMME FOR THEME COMMITTEE 1

1. We need to explicate all the constitutional principles and concepts relevant to issues we are assigned to handle in this committee.
2. Agreeing on the type of state we seek to establish must be a first priority. There is a need to agree whether our state is going to be a socialist one such as the overwhelming majority of the working people obviously desire or that we have a welfare state due to certain historical realities or that we have the present capitalist state unchanged and permanent or articulating the present capitalist state, constitutionally, for a peaceful transition to a state whose economy is orientated more towards the satisfaction of needs primarily and profit, secondarily.
3. We are aware of no overlaps.
4. The commissions must deal with the problem of how much power should be given to regional government and the question of the taxation of citizens in the regions.


M M Z Dyani

FREEDOM FRONT REPORT ON WORKPLAN — THEME COMMITTEE 1

26 October 1994.

1. Which constitutional issues within the broad Theme need to be attended to?

1.1 State formation: alternatives: Constitutional Principle 1 (Note: The various Constitutional Principles in Schedule 4 of the Constitution of 1993 as amended are referred to as "Principles" below.)

1.2 The essence of democracy as applied at local government level, provincial level, national level and any other relevant levels.

Principles: 1,2,8,14,17,34.

1.3 Separation of powers in a democratic state: legislative, executive, judicial.

Principle: 6.

1.4 Nominal aspects of the State: name of State; symbols; preamble and concluding provision of Constitution.

Principle: None

1.5 Supremacy of the Constitution (constitutional state).

Principle: 4.

1.6 Citizenship and civil rights.

Principles: 1,2,3,5,8,11,12,13,14,17 and sections 3, 31 and 107 of Constitution (languages).

1.7 Representation (voting systems and franchise).

Principles: 2,8,14,17

The South African Elections Commission.

1.8 Self-determination in the context of the form of state.

Principles 11,12,34 and sections 3,31 and 107 of Constitution (languages).

1.9 Government of national unity (interim measure).

Principles: 32,33.

2. Which of these constitutional issues need to be dealt with as a priority?

2.1 Numbers 1.1, 1.2 and 1.8

3. Which are the areas of overlap with each other in the Theme Committee?

3.1 Principle 1 : in sub-themes 1,2 and 6

3.2 Principle 2 : in sub-themes 2,6 and 7

3.3 Principle 8 : in sub-themes 2,6 and 7

3.4 Principle 14 : in sub-themes 2,6 and 7

3.5 Principle 17 : in sub-themes 2,6 and 7

3.6 Principle 34 : in sub-themes 2, and 8

4. Which constitutional issues need to be dealt with in Commissions?

4.1 To be discussed.

5. Which groups of constitutional issues do the committee anticipate will require the submission of separate reports?

5.1 All the priorities 1.1, 1.2 and 1.8.

6. How many such reports are to be used and what are the deadlines for the submission of same?

6.1 Can not yet be determined.

7. What are the structures and who are the role players that are to be consulted?

7.1 Commission on Provincial Government;

7.2 Provincial Governments;

7.3 Council of Traditional leaders;

7.4 Volkstaat Council;

7.5 Municipal and local structures and organisations
example Transvaalse Munisipale Vereniging, etc.

8. What community and media liaison assistance will be required to facilitate the committee's work?

8.1 The South African Communication Service to liaise with media.

9. Who and what technical assistance will be required to support the committee?

9.1 Constitutional experts

9.2 Financial and economic experts

9.3 International Constitutional experts

9.4 Volkstaat Council

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TO: The Members of Theme Committee 1
FROM: The Core Group

REPORT

Members are kindly requested to refer to the Preamble and Schedule 4 of the Constitution when referring to the following constitutional issues. Please note that the following information are guidelines extracted from the Principles.

a) Constitutional issues which need to be attended to by Theme Committee 1

1. PREAMBLE:

- 1.1 To be consistent with the text
- 1.2 To be consulted for interpretation

2. ESTABLISHMENT OF A SINGLE SOVEREIGN STATE

- 2.1 Emphasis on Democracy, Equality and Majority rule. (Principle I)
- 2.2 Participation of minority parties. (Principle XIV)
- 2.3 Government shall be structured at national, provincial and local levels. (Principle XVI)
- 2.4 The powers and functions of levels of government. (Principle XIX)
- 2.5 The allocations of powers between different levels of government. (Principle XX)
- 2.6 Criteria applied in the allocations of powers to the national and provincial

governments. (Principle XXI)

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

2.8 Right to self-determination. (Principle XXXIV)

3. SUPREMACY OF THE CONSTITUTION

3.1 The Constitution shall be the supreme law of the land. (Principle IV)

4. REPRESENTATIVE GOVERNMENT

4.1 Everyone shall enjoy all universally accepted fundamental rights. (Principle II)

4.2 There shall be representative government. (Principle VIII)

4.3 Provision shall be made for participation of minority political parties. (Principle XIV)

4.4 At each level of government there shall be democratic representation. (Principle XVII)

5. FREEDOM OF INFORMATION AND ACCOUNTABLE ADMINISTRATION

5.1 Provision shall be made for freedom of information so that there can be open and accountable administration at all levels of government. (Principle IX)

6. NAME AND DESCRIPTION OF STATE AND SYMBOLS

7. CITIZENSHIP AND FRANCHISE

7.1 A common South African citizenship. (Principle I)

7.2 Everyone shall enjoy all universally accepted fundamental rights. (Principle

II)

- 7.3 The constitution shall prohibit racial, gender and all other forms of discrimination. (Principle III)
- 7.4 The legal system shall ensure the equality of all before the law. (Principle V)
- 7.5 There shall be representative government. (Principle VIII)
- 7.6 The diversity of culture and language shall be acknowledged. (Principle XI)
- 7.7 Collective rights in self-determination. (Principle XII)
- 7.8 The institution, status and role of traditional leadership. (Principle XIII)
- 7.9 Provision shall be made for participation of minority parties. (Principle XIV)
- 7.10 At each level of government there shall be democratic representation. (Principle XVII)
- 7.11 Language and Culture. (Section 3, 31 and 107)

8. SEPARATION OF POWER

- 8.1 There shall be a separation of power. (Principle VI)
- 8.2 The powers and functions at the national and provincial levels of government. (Principle XX)

It is emphasized that the issues indicated above are provisional issues. It is understood that there can be further additions to the list and issues can also be removed from the list.

(b) Issues to be dealt with on a priority basis

- 1. Establishment of a "single sovereign state".
- 2. Supremacy of the Constitution / Parliamentary Supremacy.
- 3. Separation of powers.

(c) Areas of overlap with other Theme Committees

1. Representative government - Theme committee 2
2. Division of powers - Them Committee 2
3. Participatory democracy and accountability - Theme committee 4

(d) Issues to be dealt with in Commissions

1. Name and description of state and symbols
2. Representative government, regular elections, suffrage and proportional representation.

(e) Separate reports

Issues to be dealt with as priority including Citizenship and franchise.

(f) Number of reports required and deadlines

There are two views which are expressed here, viz.

1. It is too early to determine the above; **OR**
2. Reports on all the themes should be submitted to the Constitutional Committee and Progress or trial reports could be submitted from time to time.

(g) Structures and People to be consulted

1. Provinces
2. Political organisations
3. Mass organisations
4. N.G.O's
5. Universities and Institutes

6. Traditional Leaders

(h) **Community and media liaison assistance required**

1. SACS should be consulted.
2. A fully fledged Communication Media Liaison Unit of the CA to service all Theme Committees.

(i) **Technical Assistance required**

1. Technical experts to investigate the following:
 - a) Freedom of information and accountability
 - b) Citizenship and franchise
 - c) The Separation of Powers
2. Administration support staff for each Party allocated proportionally.
3. As the process unfolds other technical requirements would be submitted.

**CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE ONE
MINUTES OF CORE GROUP MEETING**

THURSDAY 27 OCTOBER 1994 (AT 16:00 P.M.)

PRESENT

N J Mahlangu (Chairperson)
E K Moorcroft
G Majola Pikoli
P G Marais
W S Felgate
R K Meshoe
P G Mulder

Apologies: None

Leola Rammble and Khulile Radu were in attendance.

1. OPENING AND WELCOME

The meeting was opened by Mr N J Mahlangu.

1.2 The agenda was adopted.

2 Development of work plan.

2.1 After a lengthy discussion, it was unanimously agreed that the secretariat of Theme Committee 1, will be responsible for collating the various party submissions which would be tabled for discussion at the Theme Committee meeting on Monday, 31 October 1994.

2.2 The document should be circulated to members of the Theme Committee by Friday, 28 October 1994.

3. Any Other Business

The meeting also noted that, sometimes the chairperson tended to dominate the discussion instead of giving direction to the meeting. After a brief explanation, the chairperson agreed to observe his steering responsibilities.

4. Closure

The meeting rose at 1700 hrs.