

2/21/5/1/1

**CONSTITUTIONAL ASSEMBLY**

**CONSTITUTIONAL COMMITTEE  
SUB-COMMITTEE ON  
PREAMBLE, LANGUAGE AND  
NATIONAL TERRITORY**

**DOCUMENTATION ON PREAMBLE**



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## **Preamble**

As a starting point it needs to be pointed out that "[p]reambles are included in Constitutions for symbolic and ideological purposes. One of the functions of Constitutions is to legitimise the state and government, and preambles, together with national symbols such as the flag, motto and anthem, are prominent in this objective. Reference is invariably made to the Almighty guidance bestowed on the state in the past, and to the benevolent principles by which it will be governed in the future."

Thus, writes Boule *et al.* (Constitutional and Administrative Law) Cape Town: Juta 1989 on p58). He continues "...[W]hile Constitutions are a form of statute law, they do more than just define rights and prescribe procedures, but also, in their preambles, espouse values and principles. . ."

It is thus clear that aspects such as the distribution, exercise and control of authority and accession to and succession of the power bearers, with which Constitutions are concerned, form as it were, the *skeleton* of the Constitutional body. The *lifeblood* that animates this body, namely values and principles, is partly to be found in the Preamble.

While this section of a Constitution may thus be of lesser legal importance where the interpretation of Constitutions is concerned, it is undoubtedly important to the inhabitants of a nation as it reflects the hopes, aspirations and value beliefs and it acknowledges the diverse nature of a national culture.

The *South African Law Commission* (Report on Constitutional models, Pretoria: 1991, from page 366) sums up this aspect as follows:

"... *the preamble, though of little value in juridical terms, nevertheless plays an important role as a practical reflection of the aspirations of a country's population.*"

The reflection mentioned undoubtedly includes a reference to a belief system for the vast majority of all South Africans and, as such, a reference to the guidance of the Almighty God is definitely not inappropriate while it will simultaneously reflect





the diverse aspects of religion that are so inherent in and inseparable from the national character.

The ACDP, therefore, desires that wording similar to the following be introduced into the Preamble of the new Constitution to form a focus point for the role that a belief system such as is adhered to by the vast majority of all South Africans has to play in the process of nation-building that takes due cognisance of the vital role that these aspects play in aspects of cultural and national life:

Option 1:

**WHEREAS the People of South Africa**

*affirm* that the Nation of South Africa shall be founded upon principles which acknowledge the supremacy of God, faith in human rights and fundamental freedoms, the position of the family in a society of free men and women, the dignity of the human person and the equal and inalienable rights with which all members of the human family are endowed by their Creator, including the right to enjoy and defend life and liberty, to acquire, possess, and protect property, and to pursue and obtain happiness and safety;

*recognise* that men and women remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law.

While the abovementioned wording constitutes the most favoured wording for inclusion into the Preamble from the ACDP's perspective, we are prepared to discuss the following additional options in order of preference:



**Option 2:**

**WHEREAS** South Africa under the authority of God, is a sovereign and democratic constitutional state;

**WHEREAS** recognition of the inherent dignity of the individual, respect for fundamental human rights and freedoms, and the central position of the family as the bastion essential for a stable society, are enshrined within the constitution; and

**WHEREAS** such rights as constituted involve the individual responsibilities, and include the rights to life, freedom to pursue personal development and contentment, justice, faith and worship, equality of economic opportunity and unrestrained movement, regardless of colour, creed or race; and

**WHEREAS** the government is governed by the democratic principle of being a government for the people by the people by virtue of its service to the people and are elected representatives of the people, operating under a sovereign Constitution and a free and independent judiciary; and

**We, therefore, adopt this constitution as the fundamental law of our sovereign, independent South Africa.**

**Option 3:**

**That the current phraseology of *"In humble submission to Almighty God"*, as contained in the Interim Constitution be retained.**



## **DRAFT ANC PROPOSAL ON PREAMBLE - 13 MARCH 1996**

**We, the people of South Africa -**

**Recognising the injustices of our past, resolve to heal the divisions among us and strive to improve the quality of life of all citizens;**

**Honouring the countless men and women who have suffered for freedom and justice in our land, affirm that our country belongs to all who live in it;**

**Believing that people of diverse backgrounds can live together as equals and compatriots, united in common loyalty to build a new nation;**

**Celebrating the diversity of our nation, aspire to achieve our full economic, social and cultural development by freeing the potential of each person;**

**Committed to open a new chapter in our history, establish a society founded on the principles of equality, dignity, fundamental rights and personal freedom, in which every South African is equally protected by law;**

**Determined never again to permit our diversity to render our nation apart, lay the foundations for a free and open society based on the sovereignty of the people and democratic values;**

**Respectful of international law, build a united democratic South Africa, able to take its rightful place in the family of nations in Africa and as an active member of the world community;**

**Solemnly agreeing to live together in harmony, respect the rule of law, and govern ourselves as a constitutional democracy, we adopt this Constitution as the supreme law of the Republic.**

**Nkosi Sikelela iAfrika. Morena boloke sechaba sa heso. God seen Afrika. May God bless our country. Mudzimu fhatutshedza Afrika. Hosi ketkisa Afrika.**



**DEMOCRATIC PARTY**

**PREAMBLE TO THE CONSTITUTION**

**WE THE CITIZENS OF SOUTH AFRICA, IN HUMBLE ACKNOWLEDGEMENT OF THE INNER STRENGTHS OF OUR PEOPLE, WHICH UNITED US THROUGH A PROCESS OF PEACEFUL NEGOTIATION TO A NEW ORDER FOR OUR COUNTRY AND NATION, HEREBY ADOPT AND PLEDGE TO HONOUR THE FOLLOWING PROVISIONS, AS THE CONSTITUTION FOR OUR COUNTRY, THE REPUBLIC OF SOUTH AFRICA.**

**LET THE PROVISIONS OF THIS CONSTITUTION ENTRENCH IN THE GOVERNMENT OF THIS LAND THE NOBLE IDEALS OF A FREE AND OPEN DEMOCRACY, OF EQUALITY AMONGST ITS PEOPLES, RESPECT FOR THE DIGNITY AND WORTH OF EACH INDIVIDUAL AND ACCOUNTABILITY TO ALL ITS CITIZENS.**

**FURTHERMORE, WE THE CITIZENS OF THIS LAND, IN DEFERENCE TO THE PROVISIONS OF THIS CONSTITUTION, PLEDGE TO RESPECT AND HONOUR THE DIVERSITY OF OUR PEOPLES, WHILE UNITING IN A COMMON NATIONALITY AND LOYALTY TO OUR COUNTRY, THE REPUBLIC OF SOUTH AFRICA.**





**National Party  
Nasionale Party**

**Federal Council  
Federale Raad**

20 March 1996

Mr Hassen Ebrahim  
Executive Director  
Constitutional Assembly

Dear sir

Please find attached the National Party submission pertaining to the  
"Preamble".

Kind regards

Mr P G Marais MP



**PREAMBLE**

In humble submission to Almighty God,  
We, the people of South Africa, declare that—

**WHEREAS** we wish to create an order in which all South Africans will be entitled to a common South African citizenship in a sovereign and democratic constitutional state based on justice and equality so that everybody shall be able to enjoy and exercise their fundamental rights and freedoms;

**AND WHEREAS** we pursue national unity and harmony amidst the recognition of the diversity of our society and we wish to create an order in which everybody can participate and in which common values and loyalties can be extended and promoted on the basis of the freedom and responsibility of every human being;

**AND WHEREAS** we wish to create an efficient and people friendly system of government and to build South Africa into a land in which everybody may dwell safely, peacefully and prosperously;

**AND WHEREAS** we wish to restructure and advance our society so that poverty can be eradicated, everybody share equitably in our prosperity and can realise their potential through initiative, diligence and competitiveness;

**NOW THEREFORE** the following provisions are adopted as the Constitution of the Republic of South Africa:





Ref No.

29 February 1996]

PAC submission on the preamble.

In total submission to humankind and humble submission to Almighty God, we, the African people forming the nation of the republic of Azania declare that: the land mass within the boundaries of Azania rightly belongs to all the individuals who hitherto were members of sovereign kingdoms and chiefdoms that obtained in this republic before the advent of colonial land dispossessions, which individuals at this time constituted the overwhelming majority of the multi-cultural nation of the republic of Azania that later came into existence.

As land dispossession and the resistance to it constituted the primary feature of the interaction between the African people and the colonialists up until the discovery of gold, which merely changed the methods of exploitation and oppression and ushered in political resistance in the stead of military resistance, we hold that not until the land mass of the republic of Azania has been equitably and economically redistributed, shall, the idea of freedom, contain any substance.

Following from the above we are absolutely convinced that all contradictions of history, politics and nationhood in our country cannot be reconciled except through the complete end to the colonial dispossession and the rigorous economic restructuring by way of economic distribution that results in economic equity for all, the only true basis on which political equality and enjoyment of human rights in a non-racial society can be firmly founded.

Therefore, there is the need to create a society of politically free, decolonised and economically satisfied citizens of one democratic Azania on this basis, who share a common patriotism paying allegiance only to a united Republic of Azania whose sovereignty shall vest in the totality of



political and constitutional power of each and every individual citizen regardless of race, sex, class or creed.

There is therefore a need for the writing by elected representatives of the people of a constitution that puts the freedom and dignity of citizens and humanity at the centre of all things and activity. Such a constitution shall be a constitution spelling out the inter-dependence of political freedom, decolonisation and socio-economic justice and equity which only a democratically elected African government can promote.

M.M.Z. Dyani, MP.



**TO:** The Executive Director  
**FROM:** Research Department  
**DATE:** 18 March 1996  
**RE:** Explanatory memorandum on the preamble

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**1. WHAT ROLE DOES THE PREAMBLE PLAY IN CONSTITUTIONAL INTERPRETATION?**

- 1.1 The preamble to the constitution is likely to play a significant role in future interpretations of the constitutional text. In this respect, constitutional preambles are accorded a greater interpretive weight than has been the case with statutory preambles until now.
- 1.2 Statutory preambles are regarded as structurally part of a legislative enactment, but South African courts in the past have only invoked the preamble as an aid to statutory interpretation where the language of a statutory provision was uncertain or ambiguous or to limit the generality of words. (cf. Colonial Treasurer v Rand Water Board 1907 TS 479 at 482; Law Union and Rock Insurance Company v Carmichaels' Executors 1917 AD 593 at 597; S v Kola 1966(4) SA 322 AD; and G Devenish, Interpretation of Statutes 1992 at 102)
- 1.3 The constitutional preamble on the other hand will often play a substantive role in interpretation. That is, a court may invoke it as an aid in determining the actual meaning of a particular constitutional provision, and not merely in cases where there is uncertainty or ambiguity, or as a textual source for a general theory or philosophy of constitutional interpretation. (cf. Kauesa v Minister of Home Affairs and Others 1995(1) SA 51 51 (NmHC) at 811) and Ex Parte Attorney -General, Namibia: In re Corporal Punishment by Organs of State 1991 (3) SA 76 (NM); and for a statement of similar stance in Canadian law see also R v Keegstra 19 CCC (3d) 254 (Alberta QB).
- 1.4 The preamble to the interim constitution for instance is seen as the "value-footprint" of the whole constitution, announcing the basic values, principles and purposes of the constitution. In a recent Constitutional Court decision, Justice Sachs had the following to say about the preamble:

"The preamble in particular should not be dismissed as a mere aspirational and throat clearing exercise of little interpretive value. It connects up, reinforces and underlies all of the text that follows. It helps to establish the basic design of the Constitution and indicates its fundamental purposes." (cf S v Mhlungu and Four Others; see also Baloro and Others v University of Bophuthatswana and Others 1995 (8) BCLR 1018



(B) and Qozeleni v Minister of Law and Order and Another 1994(3) SA 625 (ECD) at 633).

- 1.4 It is however unlikely that the preamble will be interpreted by a court as conferring substantive rights and powers in its own right.

## 2. WHAT SHOULD GO INTO THE PREAMBLE?

- 2.1 There are broadly four elements to the constitutional preamble, corresponding to the basic functions of the preamble.

- (a) First, a preamble identifies who we are who are writing the constitution;
- (b) Secondly, it tells the story of where we have come from - our political, social and historical reasons for writing the constitution;
- (c) Thirdly, it spells out our collective aspirations and our vision for the future of our country;
- (d) Fourthly, it sets out the basic values we as a nation hold sacred and carry with us.

- 2.2 If the preamble is a calculus of our most basic values, the values we have sought fit to constitutionalise, what values ought the preamble to express? The identity of these values is of course a matter of political choice. The contours of this choice will be shaped by the constitutional principles. But, by looking at the values which undergird the preamble and the postamble to the interim constitution, it is possible to spot some of the values that might be included. Some of these are:

Representative Democracy  
Nationhood  
National Unity  
State sovereignty  
Common citizenship  
Political participation  
Equality  
Freedom  
Dignity  
Respect  
Accountability  
Justice  
Constitutionalism  
Peace  
Reconstruction and development



### **3. THE LANGUAGE OF THE PREAMBLE**

- 3.1** The preamble is the constitution's keynote address. It sets the tone for what is contained in the constitutional text. If the constitution encodes our most exalted values then the preamble ought to proclaim those values in the most suitable language and style. This language ought to capture the full majesty of our constitutional moment.
- 3.2** The statutory preamble should be avoided as a model for how to draft a preamble. The language of the statutory preamble is dry, mundane, functional, uninteresting. Indeed the same might be said of the preamble to the interim constitution - it lacks poetry and rhetorical flourish. The language of the preamble should announce to the nation and the world that this document is no ordinary piece of legislation but a constitution afterall.



