

2/4/19/2

***CONSTITUTIONAL ASSEMBLY***

***THEME COMMITTEE 1***

***CHARACTER OF  
DEMOCRATIC STATE***

***REPORT FOR BLOCK 2:***

***EQUALITY AND SINGLE  
SOVEREIGN STATE***

***20 APRIL 1994***

**TABLE OF CONTENTS**

<b>NO.</b>	<b>DETAILS</b>	<b>PAGE</b>
1.	<i>Report from Theme Committee One Block 2: Equality and Single Sovereign State</i>	1 - 13
2.	<i>Summary Overview of Public Submissions</i>	14 - 40
3.	<i>Perspectives which emerged from Public Hearings</i>	41 - 42
4.	<i>Annexure A: Party Submissions for Block 2</i>	
	4.1 <i>ACDP</i>	43 - 46
	4.2 <i>ANC</i>	47 - 50
	4.3 <i>DP</i>	51 - 61
	4.4 <i>FF</i>	62 - 66
	4.5 <i>IFP</i>	67 - 75
	4.6 <i>NP</i>	76 - 84
	4.7 <i>PAC</i>	85 - 86

**REPORT FROM THEME COMMITTEE ONE  
BLOCK 2: EQUALITY AND SINGLE SOVEREIGN STATE**

20 APRIL 1995

**PART ONE**

- A) List of submissions received and processed by Theme Committee, from parties, individuals, etc.
- B) No reports submitted by Technical Committee.
- C) Perspectives which emerged from public participation programme (to be supplied by members of the Theme Committee):

*None of the submissions received from the public during the CPMs was relevant to the agenda items being dealt with by the Theme Committee in Block 2.*

- D) Perspectives which emerged from Public Hearings (on 6 March - Prof. D. Meyerson and Dr. M Ramphele).
- E) The following Constitutional Principles refer:

**AGENDA ITEM 2 : EQUALITY**

**I**

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

**II**

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

**III**

***The Constitution shall prohibit racial, gender and all other forms of discrimination and shall promote racial and gender equality and national unity.***

**V**

***The legal system shall ensure the equality of all before the law and an equitable legal process. Equality before the law includes laws, programmes or activities that have as their object the amelioration of the conditions of the disadvantaged, including those disadvantaged on the grounds of race, colour or gender.***

**XI**

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

**XII**

***Collective rights of self-determination in forming, joining and maintaining organs of civil society, including linguistic, cultural and religious associations, shall on the basis of non-discrimination and free association, be recognised and protected.***

**XIII**

- 1. The institution, status and role of traditional leadership, according to indigenous law, shall be recognised and protected in the Constitution. Indigenous law, like common law, shall be recognised and applied by the courts, subject to the fundamental rights contained in the Constitution and to legislation dealing specifically therewith.***
- 2. Provisions in a provincial constitution relating to the institution, role, authority and status of a traditional monarch shall be recognised and protected in the Constitution.***

*[Constitutional Principle XIII substituted by sec 2 of Act 3 of 1994]*

**AGENDA ITEM 3: ONE SOVEREIGN STATE**

**I**

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

**XI**

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

**XIII**

- 1. The institution, status and role of traditional leadership, according to indigenous law, shall be recognised and protected in the Constitution.***

*Indigenous law, like common law, shall be recognised and applied by the courts, subject to the fundamental rights contained in the Constitution and to legislation dealing specifically therewith.*

- 2. Provisions in a provincial constitution relating to the institution, role, authority and status of a traditional monarch shall be recognised and protected in the Constitution.*

*[Constitutional Principle XIII substituted by sec 2 of Act 3 of 1994]*

#### **XIV**

*Provisions shall be made for participation of minority political parties in the legislative process in a manner consistent with democracy.*

#### **XVI**

*Government shall be structured at national, provincial and local levels.*

#### **XVIII**

- 1. The powers and functions of the national government and provincial governments and the boundaries of the provinces shall be defined in the Constitution.*
- 2. The powers and functions of the provinces defined in the Constitution, including the competence of a provincial legislature to adopt a constitution for its province, shall not be substantially inferior to those provided for in this Constitution.*
- 3. The boundaries of the provinces shall be the same as those established in terms of this Constitution.*
- 4. Amendments to the Constitution which alter the powers, boundaries, functions or institutions of provinces shall in addition to any other procedures specified in the Constitution for constitutional amendments, require the approval of a special majority of the legislatures of the provinces, alternatively, if there is such a chamber, a two-thirds majority of a chamber of Parliament composed of provincial representatives, and if the amendment concerns specific provinces only, the approval of the legislatures of such provinces will also be needed.*
- 5. Provision shall be made for obtaining the views of a provincial legislature concerning all constitutional amendments regarding its powers, boundaries and functions.*

#### **XIX**

*The powers and functions at the national and provincial levels of government shall*

***include exclusive and concurrent powers as well as the power to perform functions for other levels of government on an agency or delegation basis.***

**XX**

***Each level of government shall have appropriate and adequate legislative and executive powers and functions that will enable each level to function effectively. The allocation of powers between different levels of government shall be made on a basis which is conducive to financial viability at each level of government and to effective public administration, and which recognises the need and promotes national unity and legitimate provincial autonomy and acknowledges cultural diversity.***

**XXII**

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

**XXXIV**

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

*[Principle XXXIV inserted by sec 13 (b) of Act 2 of 1994.]*

**PART TWO**

**" NOTE:**

**Not all parties have dealt with the agenda items referred to below in the same detail. The parties have agreed that no significance should be attached to this."**

## **AGENDA ITEM 2 : EQUALITY**

### **A) GENERAL DISCUSSION OF MATERIAL**

On this issue the submissions show a remarkable degree of consensus on the necessity for the entrenchment of all forms of equality in the Constitution. (It is to be noted that details in this regard are the proper provinces of Theme Committee Four).

### **B) NON-CONTENTIOUS ISSUES**

I) All parties endorse the notion of "Equality" as one of the basic values underlying the final Constitution. This notion includes at least two elements:

- formal equality, that each person should enjoy the equal protection of the law, on the basis of non-discrimination on the kind of grounds listed in section 8 (2) of the Constitution of 1993; and

- substantive equality, seen to imply the sanctioning, for a reasonable period, of measures designed to improve the situation of those disadvantaged by past discrimination (now outlawed), in order to enable such persons to achieve the full and equal enjoyment of their legal rights (as in section 8 (3) (a) of the 1993 Constitution). Substantive equality also implies the sanctioning, for a reasonable period, of measures designed to provide equal access to opportunities to those disadvantaged by unfair discrimination.

II) Differences from and refinements or emphases of the above statements are to be seen in the following aspects of the submissions from parties on this Agenda Item:

**ACDP:** A rejection of "sexual orientation" as a ground for non-discrimination, from a Christian view-point.

Support for the temporary nature of schemes for furthering access to equal opportunities.

**ANC:** The maintenance of a balance between equality and freedom, the latter based on the protection of personal dignity rather than economic privilege. This balance especially to be ensured in the horizontal application of the Bill of Rights, which is endorsed.

**DP:** Proposed that "discrimination" be deemed to be unfair, by definition not neutral, as distinct from "differentiation". Further, that "indirect" discrimination should be outlawed (as in section 8 (2)).

As regards substantive equality, that any measures adopted should satisfy the test of "rationality" or "reasonableness".

**FF:** Support the notion that discrimination is a neutral term, and that only "unfair" discrimination should be outlawed. Measures taken to ensure substantive equality should not be counter-productive such as to amount to "reverse discrimination": they should be aimed solely at equality of opportunity, and implemented only on the basis of merit. Points to the special problems associated with potential clashes between indigenous law and fundamental rights, in particular equality.

**IFP:** Emphasises the importance of equal dignity as part of formal equality. As regards substantive equality, views the "entitlement to equal access to socio-economic opportunity" as the best approach. Counsels against the use of the label "affirmative action" in this regard, preferring the following formulation: "All citizens ... shall have an equal right to access to political, social and economic opportunities..." Strongly rejects the relegation of "substantial equality" to the status of "political directive" or, worse, its absence from the Constitution. Would include "personal status" as a ground for non-discrimination. Proposes that "equality should be entrenched in the national Constitution but should be implemented by the Provinces with respect to the matters of their competence..."

**NP:** Stresses the balance which must be struck between freedom and equality. Uses the term "active equalization" in regard to substantive equality. Active equalization "is based on the premise of a temporary state of unequal treatment in order to attain the set objectives in fact and circumstances". It must "come to an end when the objectives have been attained". Raises questions about inter-relationship of equality and customary law, which should be treated with circumspection. Proposes a qualified horizontality for the Bill of Rights, perhaps along the lines of section 35 (3) of the 1993 Constitution.

**PAC:** The Constitution must succinctly define what is meant by equality. Believes "that it is only when individual members of the nation enjoy equal access to all national resources that South Africa will be truly free..."

III) It must be stressed that, apart from the particular emphasis or refinement specified above, the basic notions of formal and substantive equality are firmly supported by all political parties participating in the CA.



**C) CONTENTIOUS ISSUES**

- I) The exclusion of "sexual orientation" as a ground for non-discrimination, on the basis that non-heterosexual activities are not in accordance with Christian teaching. This point is argued by the ACDP and FF, and in a number of submissions received from the public.
  
- II) The requirement that measures taken to achieve "substantial equality" should be "reasonable", in order to prevent the unlimited (in time) or unfair preferential treatment of those discriminated against in the past. This point is argued by the DP, although both the ACDP and NP stress the temporary nature of such measures.
  
- III) The potential clashes between customary or indigenous law and the protection of equality, in that gender inequality is a "central" tenet of the former systems of law. This point is raised by the FF and NP - the other parties are silent on this issue at this stage.

**AGENDA ITEM 3: ONE SOVEREIGN STATE**

**A. GENERAL DISCUSSION OF MATERIAL**

This is clearly one of the most crucial points of discussion and difference as regards the final Constitution. The parties' submissions treated the issue with varying degrees of detail, making direct cross-comparisons difficult at times. In particular, the suggested topics (see Revised Work Programme pp 12-13) of minority participation, community self-determination and the "volkstaat" issue, and traditional monarchies were not dealt with by each party (see the cautionary note in this regard at the head of Part Two of this report). After all the parties had made their submissions and the discussion of those submissions, the Technical Advisers reminded the Theme Committee members that the issue of "sovereignty" could be viewed from the international law as well as the (internal arrangements) constitutional law point of view. This had indeed been noted in Non-Contentious Point G, and the note to it, on pages 1 and 2 of the Committee's Final Report on Block One.

As a result of the centrality of the dispute between the parties as to the internal division of legislative and executive "sovereignty" in the future South African Constitution, the contentious issues outnumber the non-contentious issues. It is not possible to reflect all the details and nuances of each party's position in this Report. As the detailed implementation of this Agenda Item (from an internal point of view)

falls squarely within the jurisdiction of Theme Committees Two and Three, points of principle or a basic framework will be the focus of this Report.

## **B. NON-CONTENTIOUS ISSUES**

- i) All parties are unanimous in the view that South Africa is and shall be one sovereign state, when viewed from the perspective of public international law i.e. that it has a settled territory, a permanent population, and that the government exercises effective control over that territory and population.
- ii) All parties are unanimous in the view that the notion of "one sovereign state" (see Constitutional Principle I), as a requirement of the final Constitution and from an internal perspective, precludes both a confederation and the endorsement of secession as a constitutional option by any geographical part of the territory of the state.
- iii) All parties are unanimous in the view that government should be structured at national, provincial and local levels in the final Constitution (see Constitutional Principle XVI).

## **C. CONTENTIOUS ISSUES**

These will be considered under the headings suggested in the Revised Work Programme (pp 12 and 13) as referred to above.

### **i) Provincial autonomy**

Here the chief issue in contention is the degree of provincial autonomy, which connotes the extent of legislative and executive "override" or "concurrent power" of the national government. While no party proposes complete autonomy (as this would depart from the binding principle of "one sovereign state"), there are substantial levels of disagreement as to the extent of provincial powers and their relative insulation from concurrent action by the national government.

The positions of the parties can be summarised as follows, moving from the party which attaches the highest priority to central government to that which places greatest emphasis on provincial "autonomy".

**PAC:** States that provincial and local governments "derive their power" from a central government. In particular, expresses concern with the element of "ethnicity" of provincial governments and propagates the evolutionary development of a "de-ethnicised and de-racialised" nation. Refers to South Africa as a "unitary state" in which the sovereignty of the nation vests in the Constitution.

ANC: Believes in bringing government as close to the people as possible, "while ensuring considerations of national unity and reconciliation, national reconstruction and development and national uniformity", and guarding against "fragmentation of the country". Proposes elected government at local, provincial and national level, whose powers shall be subject to the above considerations. The primary aim of provincial legislative and executive competence is to bring government closer to the people, to facilitate national reconstruction and development and to ensure the delivery of service to the people. Further, proposes that state power should at no level be used for the purposes of ethnic domination and intolerance. The people will participate in the planning of policy and decision-making through local government.

ACDP, DP AND NP: The position of these parties is dealt with together as each proposes a "federal" arrangement in the final Constitution, though with difference of emphasis and detail.

The ACDP calls for limited government, "a small, but effective central government and strong provincial and local governments", as the latter bring "government closer to the people" and facilitate effective administration and decision-making. (The ACDP also vehemently rejects the notion of a secular state).

The DP proposes maximum devolution of power in a federal system, bringing government closer to the people. Federalism also, in its view, helps to accommodate the cultural, linguistic, geographic and political diversity of South Africa, by "multiplying the sites of power".

The NP points out that the notion of "one sovereign state" accommodates a unitary and a federal possibility. It interprets the Constitutional Principles as stipulating that provinces shall have "original powers" (i.e. certain exclusive competences, not merely those delegated from the centre). It proposes that the "federal characteristics enshrined in the current Constitution shall... be retained and strengthened. The provincial "autonomy" in this system should "in no way infringe the character of the one, sovereign state".

FF: Reminds the Theme Committee that "one sovereign state" does not necessitate a unitary form of government. This concept "should be read in the light of all the Constitutional Principles as a whole, some of which prescribe limitations on the central authority in favour of provincial autonomy", which bind the Constitutional Assembly. Concentrates on placing the phrase "one sovereign state" in its proper perspective.

IFP: Disregards the notion of "one sovereign state", as the "People" are sovereign. The "state" is only one of the channels of sovereignty, and provinces are not regarded as "organs" of that state, (the "state"

refers only to central government), as this "would destroy the foundation of a federal system". Provinces and provincial constitution-making will be defined in and bound by the final Constitution. The provinces are the primary government of the people.

ii) Minority Participation

The following parties expressed themselves specifically on this issue in the ways indicated:

IFP: Minority participation is adequately catered for by a comprehensive vision of pluralism. There is thus no need for mandatory power sharing, "in a properly structured federal system".

NP: Legislative and executive government shall be structured so as to give full effect to the principle of inclusiveness and to reflect broadly all interest groups at all levels of government.

DP: Supports principle of participation of "minority political parties in the legislative process in a manner consistent with democracy" (see Constitutional Principle XIV). Isolates the following constitutional devices as achieving this: federal government, voting on proportional representation and the protection of all basic human rights.

iii) Community Self-determination (including "volkstaat")

The following parties expressed themselves specifically on this issue as follows:

DP: Would oppose any notion of self-determination based on race.

NP: Non-party political interests served through the structures of civil society. Language and cultural interests should be promoted by means of formalised statutory bodies receiving financial assistance from the State, in accordance with the letter and spirit of Constitutional Principle XXXIV.

IFP: Self-determination should not be reduced to community level, but fully-fledged self-determination "should be the building block ideology of a federal and pluralistic constitutional order".

FF: Referred to Constitutional Principle XXXIV in this regard.

iv) Traditional Monarchies

The following parties expressed themselves specifically on this issue as follows:

ANC: Emphasises the important unifying role of traditional leadership and its performance of ceremonial functions, subject to the Constitution and other laws. A structure for traditional leaders shall be created "to advise Parliament on matters relevant to custom and... to the powers and functions of chiefs".

DP: The importance of traditional leaders and custom in certain areas of the country makes it necessary to create regional councils through which the views of these leaders can be ascertained.

IFP: States that "a king without a kingdom is not a monarch, while a monarchy and a kingdom are a mutually necessary implication". Further, that the "Kingdom of Kwa-Zulu Natal exists as a living historical reality", and so "is entitled to its autonomy and self-rule within the parameters of a federal relation with the rest of South Africa", irrespective of constitutional arrangements in the rest of South Africa. Within this Kingdom, the king shall be the constitutional monarch who "reigns but does not govern".

-----

### PART THREE:

The Theme Committee will be dealing with the issue of the "Supremacy of the Constitution" in the next Block. An orientation workshop was conducted with members of the Theme Committee by Prof. H. Corder on Monday 27th March 1995, in an attempt to narrow the issues involved.

The public should be encouraged in regard to their submissions on the "Supremacy of the Constitution" to focus on issues like: the concept of constitutionalism and constitutional state; mechanisms needed to establish, entrench and protect constitutionalism; the question whether the Constitution binds only organs of state among themselves and in their dealings with citizens or also binds individuals in their legal relations with each other; and constitutional values such as participation, transparency and accountability as essential foundation-stones of a supreme constitution.

**ANALYTICAL SURVEY OF REPORT BY THEME COMMITTEE 1 IN BLOCK 2**  
**3RD APRIL 1995**

NO.	CONSTITUTIONAL PRINCIPLES	ISSUES	CONTENTIOUS ASPECTS	NON-CONTENTIOUS ASPECTS	REMARKS
1.	I, II, III, V, XI, XII, XIII	Equality	<p>1) Potential clash with indigenous / customary law values</p> <p>-----</p> <p>2) Whether "sexual orientation" should be a ground of non-discrimination.</p> <p>-----</p> <p>3) Measures taken should be "reasonable" or "rational"</p>	<p>1) Equality as core value of the Constitution</p> <p>-----</p> <p>2) Protection of formal equality in the eyes of the law.</p> <p>-----</p> <p>3) Substantive equality, seen to imply the sanctioning, for a reasonable period, of measures designed to improve the situation of those disadvantaged by past discrimination (now outlawed), in order to enable such persons to achieve the full and equal enjoyment of their legal rights (as in section 8 (3) (a) of the 1993 Constitution). Substantive equality also implies the sanctioning, for a reasonable period, of measures designed to provide equal access to opportunities to those disadvantaged by unfair discrimination.</p>	<p>While chiefly to be provided for in the Bill of Rights, equality ought to find expression in the Preamble at least (Block 10)</p> <p>-----</p> <p>Includes idea of non-discrimination on certain grounds</p> <p>-----</p> <p>Draft legislative proposals to be made in regard to all these issues by Theme Committee Four</p>

<p>2.</p>	<p>I, XI, XIII, XIV, XVI, XVIII, XIX, XX, XXII, XXXIV</p>	<p>One sovereign state</p>	<p>-----</p> <p>-----</p> <p>-----</p> <p>1) Extent of provincial legislative and executive competence and of national concurrent powers.</p> <p>-----</p> <p>2) Minority Participation as a constitutional requirement.</p> <p>-----</p> <p>3) Community self-determination (including "Volkstaat").</p> <p>-----</p> <p>4) Traditional Monarchies, the extent of their recognition and protection.</p>	<p>1) SA one sovereign state in international law.</p> <p>-----</p> <p>2) "One sovereign state" precludes confederalism, secession.</p> <p>-----</p> <p>3) Government should be structured at national, provincial and local levels.</p> <p>-----</p>	<p>Constitutional Principle I</p> <p>-----</p> <p>-----</p> <p>Constitutional Principle XVI</p> <p>-----</p> <p>Wide ranging views of parties. Details to be worked out by Theme Committees Two and Three.</p> <p>-----</p> <p>CP XIV. Again an issue for Theme Committees Two and Three.</p> <p>-----</p> <p>At what level should self-determination be set - the community or centrally. Again issue for Theme Committee 2.</p> <p>-----</p> <p>An issue which interlinks TCs 1, 2, 3, 4 and 5.</p>
-----------	---	----------------------------	--	---	---

***SUMMARY OVERVIEW OF  
PUBLIC SUBMISSIONS***



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

<b>NAME &amp; LOCALITY</b>	<b>SUBJECT MATTER OF SUBMISSIONS GERMANE TO THEME COMMITTEE ONE</b>	<b>DATE SUBMITTED</b>
	<b><u>(i) POLITICAL PARTIES</u></b>	
Conservative Party Pretoria	Full set of Constitutional Proposals, including supporting memoranda. Rejection of transitional Constitution. Rejects "single state" concept, a negation of democracy in a multi-ethnic state. Detailed comments on each aspect of CA's work. Proposes right of self-determination of Afrikaner people in own independent state; recognition of this right to other peoples; recognition of a federal state, in confederal association with other unitary or federal states. Afrikaner people means: "afstammeling van die Afrikanervolk en daardie anderstalige patriotte wat met die Afrikanervolk lotsverbonde is op die basis van wedersydse aanvaarding en gemeenskaplike vryheidstrewes". Constitution based on Christianity. Flag of the "Boerevolksrepubliek" the "Vryheidsvlag", anthem is "Die Stem", languages Afrikaans and English. Includes a Charter of Rights and Duties. Detailed memorandum on educational matters (30 pages).	26/01/95
KISS Heidelberg	Free economy, constitutional limit on power to tax (10%). Return to four provinces.	14/02/95
House of Royal	Layered structure of government within monarchy system. Use of UN Charter of Rights as a founding document	07/02/95
SADTU	Accountability of public service guided by government's policy	10/03/95
Muslim Judicial Council	Constitution to incorporate Islamic principles - fundamental rights interpreted in terms of "Holy Quran"	
	<b><u>(ii) ORGANS OF CIVIL SOCIETY</u></b>	
Darling Ratepayers Association Committee	South Africa should not be a one-party State.	08/02/95
IDASA National Cape Town	Survey results re: site of Parliament, favouring Cape Town	15/02/95
IDASA National Cape Town	Accountability of political representatives, ethical considerations and disclosure of interests.	15/02/95

Institute for advancement of human rights, democracy and individual right to mother tongue and own culture and Land in S.A.	Elections on a constituency basis; strong regional government; guarantee of group cultures; punishment for anti-white racist speech by ANC politicians; extreme punishment for violence against whites (including the death penalty); affirmative action scrapped as part of Constitution or government policy; exclude nationalisation and socialism; eliminate corruption; establish Volkstaats and enclaves for Europeans, Indians and Coloureds; "delink" politics from the judiciary.	02/02/95
Die Afrikanerbond	Explicit reference to constitutional state in the Constitution; constitution must ensure order; many references to Constitutional Principles. Proposes clear and "economic" constitutional formulations.	26/01/95
Reform International Churches Association of SA Klerksdorp	No government intervention in religious matters	06/02/95
Afrikaner Freedom Foundation (AVSTIG)	Proposals (16 pages) for establishment of a Christian republican Volkstaat for Afrikaners in the Northern Cape. Must be accepted by compatriots, authorities and inhabitants of the RSA, and internationally	03/02/95
Free Africa Foundation Washington, DC, USA	A confederate type of government proposed, based on the "Indigenous African Constitution" and a Bill of Native Rights	18/01/95
Retired Municipal Employees' Association Durban	Rights of the elderly, irrespective of race or sex. UN "Declaration of the Rights of the Elderly" should be written into the Constitution	22/12/94
Africa Christian Action Glosderry	Submits a "Declaration of Universal Rights" prepared by Christians for Justice, International (TC 4) (generally in favour of property and against taxation)	09/02/95
Homebased Business Association Somerset West	Proposes a national philosophy of self-employment, the right of people to earn a living from their homes	13/02/95
Association of Muslim Schools Lenasia	Argues for Capital Punishment (TC 4)	16/02/95
Free Market Foundation of SA Sandton	Direct democracy (referendums) and the right to recall; the devolution of power, secession (by adequate majority in a referendum)	01/02/95
African Christian Action Glosderry	A decentralised Christian Republic	09/02/95

Council of Southern African Bankers Marshalltown	Preamble should contain reference to open, outward-looking economy, and to socio-economic rights. Emphasise the supremacy of the Constitution over properly-defined "organs of state", and the right to information as part of accountable administration	17/02/95
People's Endeavour to Reform Taxes (PERT) Greenbushes	Detailed proposals re tax and fiscal issues, as submitted to Katz Commission. Generally against taxes except a single-rate consumption tax. (a 60 page submission)	18/01/95
Southern African Tourism and Safari Association Benmore	Tourism should be a national function	28/02/95
POPCRU Eshowe	65% majority for the winning party if there are less than 3 contesting parties	14/01/95
Contralesa Braamfontein	SA is a union of traditional kingdoms, name should reflect this, as well as geography and history	13/02/95
Small Business Development Johannesburg	Economy - Privatisation, free enterprise, open market economy. Staff reduction in public sector cuts costs. Introduction of rational governmental accounting system. Rational and transparent activity of public service and government	20/01/95
Vista University Pretoria	Continuation of 11 official languages. Abolition of non-diminution clause. Emphasis from protection of, to usage of language. Development of national language policy	27/02/95
The Baptist Union of South Africa Roodepoort	Democracy - devolution of power. Federalism. Religiously impartial state. Preamble - well worked viz. reference to "Almighty God"; and closure with "Nkosi Sikelele i Afrika". Private enterprise to be encouraged. Accountable government and public service. Supremacy of Constitution	14/03/95
International Goju Karate Federation Pietersburg	Equality. Extensive autonomy to provinces. Limit taxation	19/02/95
South African Association of the Age of Enlightenment Johannesburg	Democracy	15/02/95
SA Blind Workers organisation Mayfair	Equality. Right of all blind persons to vote in private without interference from officials at polling stations. Accountability and transparency of government - open to blind persons to insist on this	14/02/95

University of South Africa (Professor Z. Roelotse - Campbell) Pretoria	Democracy - equality. Majority, representative government - protection for minority rights. Legality and legitimacy. Basic political freedom. Federal state. Constitutional supremacy - super entrenchment mechanisms. Territorial distribution of power, autonomy for nationalities and regions. Strong civil society	07/02/95
Northern Amandebele National Organisation Mamelodi West	Official languages - National level: policy based on usage by significant number of people in any part of the country; anthropological evidence of existence of language; the role and recognition of the language would have in advancing democracy; socio-linguistic criteria. Advocates acceptance of Northern Ndebele as official language. Provincial level: more crucial as relates to diversity of people; costs involved in implementation. IsiNdebele is recognised presently. Unclear if it pertains to Northern or Southern Ndebele (presumably Southern). Clarification necessary.	08/03/95
Straight Talk Pretoria	Equality - specifically regarding non-discrimination on the basis of sexual orientation	17/02/95
Ligstryders Lynnwoodrif	Sovereignty of God, political sovereignty not based on will of majority, under authority of God	01/02/95
House of Royal Minnerbron	All kingdoms unite. Democracy, universal suffrage. Representation in Parliament of House of Royal. New name: United Kingdom	20/02/95
Christian Digest	Character founded on will of God. Universal suffrage. Do not follow international law but God. Preamble acknowledges God's authority. Devolution of power stress on community	
United Christian Action Menlo Park	Christian State. Preamble recognise God. No dual positions in state and church if full time	10/03/95
South African Saivite Association Port Shepstone	Equality. Secular state - Religions not to be enforced by state	04/03/95
Women's Lobby Bryanston	Gender quota for representivity. Follow international law re: women	12/10/95

Standard Bank Investment Corporation Johannesburg	Postamble & Preamble: Fundamental values 1) Economic constitution - open and in accordance with international standards 2) Statement of intent - socio-economic rights 3) Goals of government	02/02/95
	(iii) <u>INDIVIDUAL SUBMISSIONS</u>	
A Berger et al (36 replicated submissions)	Concurrent competence of Parliament and provincial legislatures; regarding environmental issues.	02/03/95
PB Wright Johannesburg	Supports equitable federal system; representative government; competent, responsible and accountable public servants. Embodiment of capitalism, free of monopolies and distribution of natural wealth.	25/01/95
B Koen Cape Town	Embraces equality. Rejects affirmative action in the workplace as discriminatory.	26/01/95
Dr AJ Van Jaarsveld Potchefstroom	Appeal to have prohibition on monopolies made law.	18/01/95
Daniel Nina Cape Town	Clear guidelines concerning interaction between state and civil society.	04/01/95
Dr A H Taute Johannesburg	Federal constitution. Representative government. Ten provinces, Eastern Cape divided into Eastern Cape and Southern Cape.	16/01/95
Chris Taylor Rivonia	Accountable Government and public service - ombudsman - mechanism available to local residents necessary.	23/01/95
JH Cosgrave Durban	One official language - English. Equal coverage for 10 other languages in newspapers, TV, etc. All schools taught in English.	26/01/95
V Every Port Elizabeth	Democracy	23/01/95
Z Rajah Roshnee	Free economic activity. Protection of informal sector	01/02/95
M Ronchhod Dunswart	Democracy. Accountable Government, mechanisms dealing with corruption.	19/01/95
N Muzezewe Bendor	Representative government Equality. One sovereign state	17/01/95
MVS Mnguni Settlers	Equality, protection of minority rights. Volkstaat recognition	17/01/95

JM Karle Beaufort West	Supreme Constitution - periodically adopted. Representative government - majority rule. Democracy	25/01/95
RGL Mathias Greyville	Accountable government and civil service independent of government. Representative government. Democracy. Free economic activity.	
William Martin Irene, Pretoria	Strong federal system. Recognition of Volkstaat principle. No right to strike for public servants.	10/02/95
Peter Maddox Vredehoek	Prevent monopolies in private and public sectors. Stop political corruption - accountable government.	26/01/95
JP Driver-Jowitt Cape Town	Accountability of each member of public services. Separation of powers. Federal government - restricted to specific areas; including protection of the currency.	11/01/95
FM Joyner Camperdown	Entrench principle that the nation's wealth lies in the productive ability of its people.	30/01/95
DM Du Toit Gordon's Bay	Representative and accountable government. Democracy	14/01/95
R Dekenah Cape Town	Addresses gender discrimination in workplace - inequality in payment. Representative government	24/01/95
Dr DC D'Arcy Penlyn Estate	Protection of minority rights Representative and competent government.	06/02/95
R B Croft Hermanus	Democracy. Hands off approach to economy. Financial accountability. Equality. Prohibition of monopolies and encouragement of competition.	28/01/95
S Maclean Durban	Representative, accountable, and competent government. Abolish concept of minimum wage.	22/02/95
P Kiernan Durban	International recognition of SA drivers' licences. Reciprocal agreement with foreign states required.	19/02/95
RGL Mathias Kingsburgh Natal South Coast	Supremacy of Constitution. Accountable and representative government.	15/6/1960
Ev	Central government, federal states - united but retaining internal independence. Supremacy of the Constitution.	

T Lugalo Port Alfred	Parliament in Pretoria Equality	30/01/95
VW Meyer Pretoria	Afrikaans to retain status as second language in all spheres. Addition of other endemic languages.	24/01/95
R Solomons Cape Town	Supremacy of the Constitution Representative, transparency, accountable public service. Public protector. Constitution should not provide for Public Services Commission - unnecessary bureaucracy. One language of correspondence.	10/03/95
D Varkevisser Midrand	Equality One sovereign state	06/03/95
A Stemmet Hilton	Responsible government, representative. Free market economy.	27/02/95
Dr A Hoffenberg Birnam Park	Democracy Accountable government	16/01/95
Prof G N Barrie Pretoria	Extensive power for regions Constitutional democracy underlined by federalist characteristics.	14/11/94
N Irish Johannesburg	English to be the language used by peace- keeping forces.	24/12/95
KT Van Warmelo Mellville, Johannesburg	Prevent possibility of one party state. Equality before the law. Free enterprise - minimum state interference.	15/02/95
W Nyembe Duduza	Protection of minority rights. Rejection of Volkstaat Accountable government Strong provincial government Equal pay for equal work	
F J Borman Kimberley	Democracy Economy - rational and intelligent expenditure.	18/01/95
DW Le Roux Pretoria	Advocates "selective multilingualism". Retention of 11 official languages. But, Government publications in one of 4 selected languages - at National level. Provincial level - retain provisions in interim constitution.	22/02/95
R Pentecost Oranjezicht, Cape	One central government Equality before the law	09/03/95
AH Hare Port Elizabeth	No person convicted of criminal or major financial offence eligible for position in public services, or government.	26/02/95

D Rose Durban	Representative Government, through constituencies. Transparency of government election.	23/02/95
Jacob Molaba Boksburg	Equality before the law and equal protection of the law.	10/94
M J Xaba Empumalanga	Accountable Government Federalism	21/02/95
OHA Groenewald Clubview	Equality One sovereign state - independent Kwazulu-Natal.	06/03/95
AN Gavendar Shellcross	Equality One sovereign state	02/03/95
Anonymous Durban	Referendum to determine: single central government vs federation one party rule vs GNU Volkstaat issue (whites only referendum)	07/02/95
HM Engelbrecht Auckland Park, Jhb	Equality One sovereign state - measure of federalism included	26/02/95
AHG Munro Pretoria	True democracy - decentralisation of power.	22/02/95
W Wilson Port Elizabeth	Federation Name - United States of South Africa	16/02/95
Mr X - Anonymous	Independent Reserve Bank - subject to scrutiny by committees.	
J Kirkpatrick Greyton	Retention of new flag. Name - New South Africa	14/02/95
L Geza Bisho	Equality in divorce and marriage matters.	17/02/95
P E Bailes Greyton	Members of Parliament individually accountable to people they represent - mandatory report backs in the press.	16/02/95
Std 8 pupils (x41) Motse Maria High School Lebowa	Suffrage for <u>all</u> persons over 18 years. Representative government (candidates over 30 years).	13/02/95
MJ Du Plessis Waterpoort	Federalism. Provinces determined geographically by ethnicity.	20/02/95
CW Theys Empangeni	Democracy. Accountable Government. Equality - redistribution of resources.	26/02/95
M Manqele Hlabisha	Federal system of government. Strong local self-government.	
S Galpin Durban	Transparency and accountability Media publication of financial spending	27/02/95



PJL Davies Rustenberg	Suffrage as follows: 1 vote for people under 19 years of age; 2 up to 29 years, 4 up to 39 years, 6 up to 49 years, 10 over 50 years.	21/02/95
FJ Prinsloo Levubu	Equality before the law.	28/02/95
K Hlekane Johannesburg	Equality before the law. Males accorded own status.	18/02/95
SE Erasmus Eersterivier	Equality	08/03/95
JM Karle Beaufort West	Protect basic rights (expression, association, life) to ensure freedom; electoral system on a national basis with declining preferences.	25/01/95
TJ Van Esch Johannesburg	Federation; wide power to provinces and towns; an open economy	17/01/95
GL Coggin Sandton	A balanced charter of rights; against federalism - top heavy in bureaucracy; accountability to the electorate - no official should have criminal record; against a Volkstaat.	23/01/95
R Urban Emmarentia	Minority interests not sacrificed; avoid failed forms of government; submits thoughts of Catholic leaders ( <u>Nobility and Analogous Traditional Elites</u> )	30/01/95
J Thwala and L Macheke	Limited provincial powers, most power centrally based; strict rules against foreigners.	
D Hattingh Moreletapark	Federal and democratic system (like USA); a Volkstaat for those who cannot adapt	24/01/95
SM Ponnen Chatsworth	Concentrates on labour and education; proposes English, Zulu and Afrikaans as compulsory school subjects in Kwazulu Natal.	26/01/95
T Mzamo Vosloorus	Proposes constitutional supremacy (judicial review)	
T Singiswa Johannesburg	Proposes accountability and elimination of corruption.	15/01/95
MH Maasdorp Johannesburg	The individual should be the "unit of justice" in the Constitution; the language of the Constitution must be clear and unambiguous; no limits in Constitution which modify protections in any way.	27/01/95
SG Stuart Durban	Strongly opposes power-sharing, should be "simple majority rule" after 1997.	16/01/95

RJ Thompson Pretoria	Separate head of state from head of government, for symbolic and practical reasons.	23/01/95
W Grindley Vincent	Institute the right of recall of all politicians and officials for corruption or incompetence.	30/01/95
D Boyd Cascades	Qualified franchise - perhaps on educational grounds.	30/01/95
M Jadwat Durban	Balance the budget; financial accountability of political parties; abolish feudalism.	08/02/95
R Shea Sybrand Park	GNU should continue; direct election of President; right to recall politicians.	03/02/95
I Swartzberg Pretoria	Declaration of belief regarding Government and Laws, of the Church of Jesus Christ of Latter-day Saints, adopted in 1835.	30/01/95
RW Sykes Cape Town	Recognise right to "succeed" (sic) and self-government for ethnic grouping.	02/01/95
Noord-Transvaler	Role of traditional leaders in government; National Ministry in the President's office to bring uniformity to the institution of traditional authorities.	30/01/95
TM Begere Venda	Unfairness of learning three languages	
AS Phakhathi Evaton	Senators and Cabinet directly elected; gender equality; abolish Afrikaans as language of the SAP.	01/02/95
R Martin Ritchie	Electoral system as in Westminster system; no more government of national unity.	05/02/95
MJ Hlakudi Burgersfort	One official language - English	08/02/95
L Masemola Kwaxuma	Non-tribalistic constitution; no bureaucratic control over the constitution; control immigration.	27/01/95
"Voter" Durban	Stop MP's operating businesses (especially in the Eastern Cape)	02/02/95
PA Tessendorf Randburg	Prevention of elected official abusing privileges and taxpayers' money	
A Duvenage Ladysmith	Tax clearance before voting; birth control methods; no tax paid by pensioners	24/01/95
AM Chonco Empangeni	Control immigration; English the language of government; forbid "cessation" (sic) of independent Natal or Volkstaat.	03/02/95

E Dinther Vredehoek	Incorruptibility of public service; less foreign travel by Government Ministers; demands Coalition Government always.	
BH Sawers Parkhurst	Concern for elderly; free medical and hospital treatment for the elderly.	30/01/95
CD Uys (and 10 others) Randfontein	Eliminate intimidation; forbid procreation to those who cannot afford to look after children; establish the right to kill in defence of property.	
MS Ramedien Lansdowne	Reduce colours in flag - expensive for body-painting by sports fans.	
WF Kantor Bothas Hill	Retain reference to deity in Preamble; federalism; against simple majoritarianism; include all groups (CP and AZAPO) in next government.	30/01/95
J Broodryk Waterkloof	Constitution should refer to uBuntu	
Weramerewa Soweto	Transparency and honesty are essential.	
HJW Ehrlich Henley on Klip	Unbiased SABC; care for elderly (safety); environmental concerns.	04/02/95
A Friedman Northlands	Accountability for corruption	08/02/95
? Benrose	Authority for traditional leaders; restitution of land	
MR Bila Soweto	Exchange provincial governments to entrench democracy	01/02/95
E Blignaut Cape Town	Gender equality; as well as sexual orientation equality.	01/02/95
"The Man on the street"	Consultation should be by form/questionnaire.	
T Wolfaardt Lothair	Afrikaans may not be denigrated	
ZJ Tshouyane Thlabane	Plead for federal country (like USA); national boundaries must include the traditional leaders (and returned to them).	
RR Tusenius	Real federalism; reject unitarianism, based on lessons of history.	16/02/95
M Kollmer Benoni	No abortion or pornography. Firm action against those who abuse positions of trust.	21/02/95
J Suskin Hillcrest	90% majority entrenchment for constitutional amendment; English the one official language.	13/02/95

M Dreyer Sunnyside	An essay on Democracy, its various forms and meanings	15/02/95
NT Sibeko Standerton	People must be educated about the flag.	17/02/95
RH Addison Kloof	Adequate checks and balances; the Upper Chamber small and representative of organs of civil society and the professions, with clear executive and legislative powers.	15/02/95
NW Mindel Sandringham	Accountability	12/02/95
JF Theunissen Atlasville	10 regions; 100 MPs; people over 65 should pay no taxes.	17/02/95
SG Abrahams Yeoville	Recognition of the disadvantages of rural areas.	16/02/95
GA Herselman Umhlanga	Proposes a federation, English as the official language.	14/02/95
J Kelly Howick	Federation	20/02/95
IR Monsieur Halfway House	No reference to Affirmative Action in the Constitution.	14/02/95
G Ngirane Gaborone, Botswana	Multiparty democracy, federal system with strong central government. Voting age lowered to 16 years.	20/02/95
Rentmeester- belegings Pretoria	Competition and deregulation principles must be in the Constitution.	13/02/95
MI Osborne Parklands	Obligation, responsibility and a culture of discipline are needed.	17/02/95
B Macnab Observatory, W Cape	Constituency MPs; no entrenched power-sharing.	13/02/95
W Fischer Green Point	Auditor-General nominated by official opposition in Parliament. Right of recall of MPs.	14/02/95
M Karbary Roshnee	Free enterprise; opposed to legalisation of street hawkers.	03/02/95
Z Rajah Roshnee	Free enterprise	01/02/95
MR Sahib Roshnee	Reduce alcoholism	03/02/95
M Govender Roshnee	Foreign trade barriers	01/02/95
AM McNeil Grahamstown	General encouragement to CA	28/01/95

BS Hiddleston Durban	Cabinet must function with 75% majority where no consensus; Chapter on Human Rights entrenched with 80% majority of each House of Parliament with 80% majority of each Provincial Legislature - Constitutional Principles should be unchangeable. Named powers with national government, residual with provinces. Constitution to be written in plain language. Retain existing flag and anthems.	30/01/95
D Hattingh Moreletapark	Parliament should be in Pretoria	30/01/95
Y Olsen Durban	TC 2: Separation of Powers; also, heads of Government and departments (2 submissions)	30/01/95
D Shepherd Durban	Constituencies for MPs	29/01/95
A McDonald Pietermaritzburg	Retain interim Constitution, entrench it by 75% majority	30/01/95
P J Knock Pinetown	Some form of coalition government mandatory at provincial and national level. MPs must have constituencies; reduce number of MPs	17/02/95
M H H Warren Pretoria	Opposes affirmative action	22/02/95
P Dickerson Pietermaritzburg	Project life, liberty and property by punishing evildoers and rewarding those who do good	19/02/95
H P Gorrige Verwoerdburg	Mainly concentrates on taxation and economic issues	28/02/95
S Dalhouzie, W Ridley, D J Theron and E Damon	Provincial legislative concurrent competence with Parliament to make laws concerning the environment	28/02/95
H Ferreira Bracken Gardens	Only four languages (English, Afrikaans, Zulu and Xhosa) or less. Stamp out corruption	17/02/95
G R Theron, Walmer	Opposes homosexuality	26/02/95
M E Munro George	The right of Minority Groups to be part of government	28/02/95
R M Longden- Thurgood Milnerton	57 points made re: Constitution, among them: majority government; no nepotism or corruption; etc	28/02/95
J Bignaut Wierda Park	Major decisions of Parliament to be referred to referendum	28/02/95

A Mhayi ?	Unitary state; universal suffrage; mixed economy; committed to the principles of the UNO and OAU	30/01/95
A R Clark Hazyview	Maximal devolution of power to communities, English the official language	25/02/95
D Vester Westgate	Democracy is freedom inside the law of the land; character of the State determined by the results of general elections	
R Southhall Rhodes University	Proofs of an article on the re-making of a dominant-party State in South Africa	10/11/94
R W Sykes Cape Town	Federal and confederal elements must be built into the Constitution. Should be a "bottom-up" system i.e. decentralised democracy	29/01/95
R G L Mathias Illovo Beach	Apply Eternal Principles of Western Christian Civilisation	28/02/95
J What Pretoria	English as one official language	22/02/95
G Tait Scottsville	Education based on Christianity. Government must protect life, liberty and property (see P Dickerson above)	15/02/95
C G Schmidt Pinetown	Reduce size of Parliament by 200, saving cost, promoting efficiency	20/01/95
P & N Stratten Plettenberg Bay	Emphasis on democracy at local government level. State must be open, honest, fair, positive and progressive	07/01/95
M Seal Kenilworth	GNU must continue	22/01/95
H M Cooke Somerset West	Head of State should be non-executive; openness of government	23/01/95
A M Mtshali Rossburgh	Government must do as the people want - for us all	
A M Matlhako Hartswater	Democracy means consultation. Communities of Ga-Mothibi wish to be in the Northern Cape, not North West province	29/12/94
A D Mafujeba Noordkaap	Government must mediate with the mining industry on wages, etc.	22/01/95
E M Langenhoven Bon Accord	Suggests a qualified franchise	26/01/95
T Burton Glencairn	Attention paid to children and child-care	25/01/95
M T Dlamini Clermont	Government should attend to social welfare of all	07/01/95

J M Richfield Dennesig	Constitution to be clear to allow easy access - suggested three tier construction - formal statement to illustrative examples - English to be definitive medium	
J O Kelleman Pretoria	Government spending to be limited by Statute - equitable taxation	17/01/95
D Jacobs Glenstantia	Parliament to be in Pretoria - will cut excessive spending and would help RDP	08/02/95
Unknown Kuils Rivier	Respect for fundamental rights	08/03/95
L van Niekerk Kuils Rivier	All must join in the process of "give and take"	08/03/95
J Reynolds Kuils Rivier	Rights must protect the individual	08/03/95
J R Carenjee Kuils Rivier	Use of public opinion polls in contentious matters	07/03/95
D Aquisto Kryber Court	Decentralised government - more effective. "Gods law" to be used	06/03/95
V Amory Kelder Park	Law-making must be careful	
F Abrahamson Victory Park	Fairness when applying the fundamental rights	08/03/95
P Fenwick Bellville	Preamble: emphasis on "Triune God"	07/03/95
W S Diale Potgietersrus	Need to have flexible government - will ensure effective democracy. Government must reflect the "feelings" of the ordinary persons	22/02/95
R S Masango Umtata	Democracy: all must have equal rights to vote - representatives to represent respective constituencies institutional changes only when subject to a referendum. The State: Unitary, with one national government - provincial governments not totally independent. Layered government structure to ensure community participation	12/02/95
N Murray & N Williams Eersterivier	Preamble: reference to "Triune" God	06/03/95
E Syaer	Decrease size of Assembly for more effective government - constituency based representation. Constitution must be clear. Citizens have duty to uphold it	22/02/95
Keitumeise	Preamble: use of "Trinity"	17/02/95

K Chasha	Preamble: must declare obedience to God	17/02/95
H Kustner	Preamble: support for notion of higher power - constitution to enshrine right of self-determination in order to live in preferred communities	
C Bentley Johannesburg	Preamble: Declaration of belief in "Holy Trinity"	17/02/95
E J Davis Bloemfontein	Preamble: incorporate Biblical commandments	15/02/95
W Kruger Roodekrans	Accountability - public right to vote incompetent representatives out of office	16/02/95
J B Labia Sea Point	Maximum distribution of power through decentralised government and federal system will strengthen central government. Will also promote self-determination. Private enterprise and free market to be encouraged	17/02/95
J M Durban	Respect for the rights of all. Emphasise future to build "New SA" together	15/01/95
Unknown	Forget the past; work together with everyone - mutual respect for all - protection of minority rights	28/01/95
K Burger Worcester	Equality for languages	29/01/95
R Shone Greyton	Public affairs to be conducted openly - public participation in debates. Constitution to be as simple as possible	02/02/95
J C Jacovides Pinetown	Federal government - will ensure impartiality. Conflict to be overcome through unified government	09/02/95
T Ntomi Langa	Rights to have recourse to International Human Rights Law (UNO)	09/02/95
A Minies	Preamble: must reflect religious convictions - uphold Christian norms	30/01/95
E Schoeman	Retain "Afrikaner" place-names	
D M & J M C Joubert	Democratic system to be implemented generally	30/01/95
O Huckschlay Knysna	Respect for fundamental rights, democratic state	01/03/95
K Smith Belhar	Authority of God's word	
A E De Kock Stellenbosch	Equal taxation	03/02/95
L Rajaram Pietermaritzburg	Proportional representation answers SA's complex situation	



Unknown	Constitution to be upheld	
C S Payne Boksburg	Economic growth to be encouraged	03/01/95
C R L Davies Platwal	"one-man, one-vote" unsuited to SA. Qualified franchise to be protected in the Constitution	03/02/95
M Biyela Newcastle	Name of South Africa to be retained as well as symbols - Gives a sense of origin. Preamble must reflect diverse nature of South Africa's religions. Idea of Volkstaat is unrealistic	
R K Stocks Pretoria	Progressive negotiation, leads to greater understanding of governmental problems	06/02/95
H de Boer Cape Town	Recognition of "full and equal rights" for all - people should be able to participate in decision-making power of central government to be curtailed, more power to federal governments. Should have regard to foreign constitutions, viz. Germany, Switzerland, Canada - English to be used as common medium	
T F Keane Fish Hoek	"Founding" American Constitution is a good model - greater public participation in local government will ensure greater accountability - power to "recall" representative should be enshrined in the constitution	18/01/95
E M Grant Cape Town	"Supreme laws of God" to be in Constitution	23/02/95
R Greenberg Houghton	English to be used in public places. "Open" economy will allow us to compete internationally	
A Hoffenberg	Economy can't be controlled centrally, the market must be free	14/02/95
B M Brown Kraaifonten	We must be obedient to the laws of God	15/02/95
M Selamulela Thohoyandou	Emphasis on "Triune"	17/02/95
B Halleday Paarl	Equality for women	17/02/95
T Ndlovu Johannesburg	Belief in the "Triune"	17/02/95
P Galefa Kwa-Xuma	Constitutional recognition for male rights	
W Hammond Diep Rivier	RDP to be encouraged	07/02/95

P du Preez Pretoria	Federal government will encourage democracy. Provincial and central government is to balance each other's powers. Separation of powers. English to be common medium. Uphold fundamental rights. No right of secession from the Republic. Retention of current flag, coat of arms and both national anthems	
C Cairns Pietermaritzburg	Governmental accountability to be ensured by code of conduct enshrined in the Constitution	13/02/95
A P	Support for GNU - Religion not to be abused - Federal system will lead to strife. Uphold fundamental rights	13/02/95
D Kabani Epumalanga	Democracy to be entrenched. State must play an active role in the development of people. Provinces to have sufficient powers	13/02/95
V Meyer Wingate Park	Multi-party democracy to be upheld. Privatization and free-market economy to be encouraged. Retain historical place-names and memorials	24/01/95
Z Mtiki Lusikisiki	Fairness in implementing development programmes	10/02/95
T Shaku Atteridgeville	Constitution to be drafted to break from the past - recognition of other languages used in SA and correct use of African languages	
P Du T Fourie Gordon's Bay	Uphold fundamental rights in relation to environment	
E Osman Durban	Minority rights questionable - better to entrench individual rights for every person - English to be chief communication medium - leads to greater unity	
D le Roux White River	Preamble: based on Biblical reference (Psalm 33) - Constitution to uphold Christian values	23/02/95
M Zoti Westville	Equality - sexual orientation	
A Group	Government must be accountable to general public for undiscipline and abuse of power. Money to be spent where most needed. Illogical to focus on past	26/02/95
Unknown	English to be common medium - will cut down expenses. Economic equality to be applied - no tax discrimination	26/02/95
A & P Guerreiro Gillview	Respect each other's rights	24/02/95

M Mackeller Constantia	Equal application of fundamental rights	01/03/95
A Steiner Pinegowrie	Public right to initiate referendum. Accountability to be ensured by: - public right of recall - easy access to representatives - access to information	14/02/95
I Sampson	Equality - sexual orientation	
J Katz Kimberley	Government must be accountable - there must be transparency	08/01/95
R Scott Durban	One official language only	09/02/95
T Bedford London	Constitution cannot be written without proper planning. A true democratic constitution serves the people, not the politicians - parties should not write the Constitution - Constitution must be understandable to all	31/01/95
B Mashanen Mahopane	Volkstaat to provide equal rights for all; all are the "volk" of SA - uphold fundamental rights - unitary state	23/02/95
Unknown	Current provinces to stay in a federation - will have certain powers	
L Sigasa Tembisa	Constitution must ensure accountability - Constituency system can achieve this - layered structure of authority	17/01/95
J Solomon	English to be official medium - right to learn other languages besides Afrikaans. One National Anthem only re: "Nkosi Sikelele". No creation of white or black homelands	
P De Wet Randburg	Citizens must be informed and responsible in democratic state - education system to ensure this	
D Rabie Cape Town	System of Federalism (no volkstaat) - Political representation must be fair and must occur through due procedures.	
S Dodge South Hills	Federation	02/03/95
Gift Nkuna Guyani	Preamble : include God	17/02/95
Itekeng Mathbathe Mabopane	Preamble: God is King	17/02/95
Marlon Green Johannesburg	Preamble: Trinity	17/02/95

Sakkie Nell Secunda	Preamble: Reconciliation	
Miss White Kraaifontein	Equality for all	01/02/95
IJ Van der Merwe Groot Brakrivier	International sign language official. All can communicate.	26/01/95
Erika Ochse Elandspoor	Preamble: Kingdom of Christ. Language rights protected.	28/01/95
NP Cloete Verwoerdburg	Small and lean accountable government	30/01/95
Ashley Hendricks Blackheath	Suffrage: Age 15	08/03/95
N Msimango Hillbrow	Preamble: God must be worshipped	17/02/95
K Mathabathe Pretoria	Preamble: Trinity and love between blacks and whites.	17/02/95
Bongani Kunene Orlando	Preamble: We believe in Trinity	17/02/95
NS Gida Hospital Hill	Preamble: "We pledge allegiance to flag on new democratic South Africa, one nation before God the Father, Son, Holy Spirit"	17/02/95
Florence Nunes Bez Valley	Preamble stress education	17/02/95
Tracey Butler Lorentzville	Preamble: Believe in Trinity	17/02/95
Stanley Mkgoale Hillbrow	Recognise diversity of languages	27/02/95
Eric Tshigeng Phokeng, North West	Statehood embrace local custom. Be His Majesty's state	
P Ramantswana Dobsonville North	Equal before law and country	
JL Mnisi Phalaborwa	Accountable: Premiers to be elected	17/01/95
V Meshack Sinezi Welkom	Too many holidays. Remove 21 March, Good Friday, Family Day	18/01/95
Juliane Vorster Bellville	Preamble: Reference to True God	07/03/95
R Bodington Monte Vista	Equality before the law. Central government with strong regional governments.	07/03/95
Riegaana Benjamin Eerste River	Citizens treated equally . Freedom to live where want.	08/03/95

D Drummond Gardenview	Democracy. Character shared all majority and not only one party.	15/01/95
N Govind Durban	Secular state, no reference to God. English official and respective provinces can have another. 8 provinces - N Cape and North West combine.	07/01/95
Vulindlela Mbotoli Port Elizabeth	Federalism. One citizenship for all, free enterprise. Eastern Cape region divide - Ciskei and Transkei.	14/02/95
A Saley Vereeniging	Equality through nationalisation. Islamic state. Leave America.	20/10/94
Sam Hillbrow	Human rights guarantee in Preamble.	17/02/95
JW Conroy Benoni	Parliament - 200, financial accountability, ombudsman, cabinet -12	01/03/95
Graeme Tucker Parktown North	Democracy. Free vote in Parliament.	
Unknown Lombardy East	Federation with national responsibilities. Privacy of information individual.	05/03/95
Stemmet Hilton	Frequent elections. Free market, freedom of religion.	27/02/95
Peter M Ralston Weltevreden Park	Closed economy	15/02/95
LP Mabunda Giyani		13/01/95
J Fray Kuilsvier	Need a truly national consciousness. Guarantee participation and representation.	08/03/95
Anne Carswell Beacon Bay	No criminal records if Member of Parliament	03/03/95
Peaceful Hillbrow	Preamble: "Lord be with us everyday"	
Bob Dlamini Hillbrow	No more illegal immigrants	17/02/95
JS Swart Rustenberg	Regional government. Free market entrenched, privatisation. Free trade agreements.	
TA Ntoni Langa	Do not use national figures on ballot papers. Democracy. Return DEBI	17/02/95
Anthea Bosch Kuilsvier	Financial Accountability	08/03/95
Elmary Thomas Kuilsvier	Equality. Participative democracy.	08/03/95

Sibongiseni Hintsho	No government of national unity. Fully accountable. Supremacy of national government.	02/03/95
AS Maharaj Seatides	Accountable government. No golden handshakes.	08/03/95
PI Meakin Claremont		22/02/95
Cyril Siboyani Joubert Park	Preamble: Father, Son and Holy Spirit	17/02/95
Kriston Kuilsriver	Retain official languages	08/03/95
Michael Mallinick Howick	United States role model for federal state. Reject sovereign. Rename: "United States of Southern Africa"	05/03/95
Ezakheni	Transparency	16/12/94
Erik Tonsing Monument Park, Pretoria	Creation of states, based on race with umbrella institution for economic unity.	18/01/95
? Constantia	Afrikaans, full and rightful place	31/01/95
? Constantia	Instead of changing name, demolish e.g. Verwoerd Dam, then rebuild	31/01/95
AA Jacobs Bryanston	Inclusive democracy. "Coloured" must vote and be represented.	16/12/95
M Mogrun New Brighton, P.E.	Change whole state machinery. Opposed to Government of National Unity. Answerable. Simple constitution.	30/01/95
EM Casey Halfway House	Share power	01/02/95
IJ Hetherington	Short constitution, 4-5 devolve much to lowest levels.	17/02/95
Alpheus M Teffo Northern Transvaal	Privatisation enterprise system, investment policy, economic power.	
Peter Sage Clark Pinetown	English: Official. Balanced representative democracy. Elected citizens 18 years. National Assembly average world size. National Population register. Federation.	
Stanley Stcagoma Sedgefiled	Free choice languages. Preamble: "Father, Son, Holy Spirit"	17/02/95
Debbie Goodman Hillbrow	Preamble: I believe in the Lord Jesus because he died on the cross for our sins and because he first loved us.	17/02/95
JC Underhay Nelspruit	Executive to be white. Loves "Die Stem"	19/01/95

J Wiegand Flamewood	Esperanto as official language.	20/01/95
Norman Greenfield Craighall	Accountable government. Strong individual rights. Against corruption. Financial affairs in trust.	11/02/95
Lerato Tlhogologo Khanye	Preamble: "We believe in a true God" Tuition: English	17/02/95
EG Long-Innes Scottsville	Name change: RSA to South Africa	21/02/95
Ndulela Ntloko Berea, Johannesburg	Preamble: "We believe in a true God"	
M Wepener Bloemfontein	Afrikaans language retained.	25/01/95
Nigel Shepstone Durban	"Inherent structure" - central and provincial. Representative democracy	19/02/95
J Kriel Welkom	Electoral process at lowest levels of society i.e. wards, town council, advance through the levels. No national elections.	07/02/95
Marianne Hall Homestead	Discard affirmative action.	12/02/95
Patrick Thabiso Kay Rustenburg	Democracy, nationalisation of big business, government business control service.	20/02/95
J Turkstra Jeffreys Bay	No affirmative action	12/01/95
? Fichardpark	Preamble: distinguish clearly which God. Afrikaans, first language or equal status.	30/01/95
AG Hawarden Pietermaritzburg	Federal state	
CG Snyman Tzaneen	National Assembly reduced to 200 members. Senate, wherein minorities equal representation. Stengthen federalism, limit economic interference by state, entrench language rights but documents only English and Afrikaans. Only SA citizens vote.	15/01/95
Solomon G Matlou Carltonville	Democracy. constitution based on Freedom Charter.	14/01/95
No name Hawston	English and Afrikaans entrenched official languages.	17/01/95
Dan Rabie Cape Town	Federalism, Volkstaat impractical	20/01/95
M Calitz	Laws to regulate state spending	29/01/95

Brendon Hynes Northcliffview	Parliament supreme, rule of law apply to everyone, sovereign state with minorities right to hearings.	04/03/95
PD Smuts Parow	Divide RSA into constituencies, represented by Member of Parliament.	30/01/95
CJ Snyman Newcastle	Ministers and MPs to be punctual.	30/01/95
Lad Simphiwe and Ronald Movoko Umtata	Opposed to Government of National Unity	09/02/95
Erich Trautman Ladysmith	Free enterprise, voting age 21, Federal states or cantons with powers: police, education, infrastructure, taxation.	10/02/95
D Sardi Port Elizabeth	National Assembly to be constituted by Provincial Councillors, who in turn to be constituted by Sub-Provincial Councils, eventually drawn from Ward Committees in urban and rural areas. Nine Provincial Facilitators to co-ordinate functioning of Civil Society Forums.	31/01/95
M Gagiano Cape Town	Rejects sexual orientation as a ground for non-discrimination	07/02/95
J S Du Plessis Jacobsdal	Proposes Federal Government. Self-determination to be provided for, diversity of cultures to be recognised and protected to extent that cultural groups to be consulted on legislation. Equality of cultural groups, equal opportunities under the law, racial groups to constitute second tier of government.	25/01/95
E Stott Cape Town	Secession to be allowed, federal nature of government.	23/01/95
C C Verwoerd Pretoria	Protection of language and culture, equality of status of languages and cultures.	16/01/95
R C Haw Durban	Advocates strong federal structure, minorities to be accorded self-determination, central government to have minimum powers. Cultures to be protected. Draws distinction between "discrimination" and "differentiation". Boundaries in provinces to be determined by people at grassroots.	12/01/95
D Van Heerden Knysna	Equality of religion. If traditional leaders recognised, "right wingers" to be recognised as well.	18/01/95
G R Oliver Cape Town	Federal structure proposed, provinces to be totally self-governing.	13/01/95



G J Selikow	High degree of provincial autonomy, protection of minorities.	17/01/95
F Porrill Roosevelt Park Johannesburg	Equality provisions to be subject to teachings of Christianity, affirmative action considered to be "reverse apartheid".	20/02/95
N J H Anderson King William's Town	Federal structure essential.	13/02/95
A N Mphephu	Common South African citizenship, provinces to be controlled by central government.	24/01/95
E Clerkin Durban	Concept of equality frustrated by traditional leadership.	30/01/95
J Banda Johannesburg	Affirmative action strongly motivated, with primary objective being economic empowerment.	
B Deller Sandton	Affirmative action to have cut-off date (the year 2000), in order to prevent flight of "intelligentsia".	15/01/95
A H Hattingh New Germany	Maximum devolution of power to regional and local government on regional and local matters respectively, equal opportunity for all, without any discrimination.	08/02/95
N Connel Saxonwold Johannesburg	Constitution should protect "non-block" groups from reverse racism, which may result from affirmative action. Section 8 of the constitution, which refers to "persons disadvantaged by unfair discrimination", to be amended by the insertion of the word "presently" before the word "disadvantaged", so as to allow the present circumstances of a person belonging to a disadvantaged group to be taken into account in implementation of affirmative action.	05/02/95
J M Mzizi Sebokeng	Equality before the law.	27/02/95
D O Bowen Discovery	Central government to have as much power as possible for national uniformity.	05/02/95
U A Naicker Darmall	Traditional leaders are products of apartheid and should not be retained.	01/02/95
O J Ladell Port Elizabeth	Calls for racial and gender equality.	02/02/95
M Ashfield Glenstantia	Rejects sexual orientation as a ground for non-discrimination, affirmative action measures to be restricted to a period of 8 to 10 years.	01/02/95

A Jacob Brwonstone	Strong call for corrective action to be entrenched.	16/02/95
W Muhali Thohoyandou	Argues strongly for a unitary State.	08/02/95
H Voges Pretoria	Supports federalism and protection of minority rights.	01/02/95
Mr & Mrs D Pottinger Johannesburg	Equal rights for all, affirmation that sexual orientation should not be grounds for discrimination.	27/02/95
C A Spero Port Elizabeth	Calls for scrapping of "traditional chiefs" as they are a "burden to the taxpayer" and of no benefit.	08/02/95
C Walker Durban North	Affirmative action means reverse discrimination and not to be included in the constitution.	30/01/95
M E Lekhooa Brits	South Africa to be independent, unitary State. Formal and substantive equality to be entrenched.	09/01/95
M M Bowen Port Elizabeth	Rejects sexual orientation as a ground for non-discrimination.	26/01/95
R W Parker ?	Opposes affirmative action.	09/02/95
	(iv) <u>GOVERNMENT STRUCTURES</u>	
Minister of Foreign Affairs - A Nzo	Foreign Affairs to be maintained as function of central government. Recognition of International Law in SA law - Presidential approval in negotiating international agreements problematic - International agreements to be part of SA law unless inconsistent with Constitution or expressly excluded by Parliament. Internationally accepted human rights to be upheld in Constitution - reference to various conventions.	15/02/95
Ministry of Arts, Culture, Science and Technology	Multilingualism should be clearly enshrined as the guiding principle in language provisions of the Constitution. Sets out 5 options from "radical multilingualism" to "radical elite closure".	02/02/95
Transvaal Municipal Association Marshalltown	Proposes a local government model on the basis of federal and confederal principles in the Belgian and Swiss Constitution. In particular Belgian Community Councils (Flemish, French and German-speaking) and the Swiss Canton System. Detailed proposals re local government (TCs2 and 3) (30 pages, in English and Afrikaans.)	10/01/95

Volkstaat Council Pretoria	Democracy realised through the division of power between different organs of state and territorial units and the recognition of the self-determination of different peoples. Diversity of cultures and languages recognised, as well as right to equality within a federal system. SA is a single federated national state, the fundamental right of self-determination is recognised. The binding force of the Constitution derives from the consent of different peoples and nations of SA.	28/02/95
-------------------------------	---	----------

***PERSPECTIVES WHICH EMERGED  
FROM PUBLIC HEARINGS***

D. **PERSPECTIVES WHICH EMERGED FROM PUBLIC HEARINGS**

Theme Committee One held Public Hearings on the morning of Monday 6 March. The focus of the hearings was Block 2. A brief summary (full texts are available from the Secretariat) of what the three speakers said on that occasion follows.

i) **PROFESSOR DENISE MEYERSON**

(Department of Philosophy, UCT) addressed the issue of equality, and sexual equality in particular. She argued that the concept of "sex discrimination" was an ineffective means of "outlawing detrimental treatment on the grounds of such characteristics as pregnancy", even though it may effectively outlaw blatant manifestations of sexism. She preferred the concept of "fairness" as the basis for outlawing such statements, but noted that foreign case law rather tends to stick to an artificially expanded notion of "discrimination" to try to encompass such treatment.

She concluded that we should give up the "conceptual apparatus of discrimination entirely" and seek: rather to determine whether particular policies which impact adversely on women's interests are fair? Professor Meyerson also set out the notions of "formal and substantive equality" and "direct and indirect discrimination in greater detail", noting the consequences of each idea.

ii) **PROFESSOR DAVID WELSH**

(Department of Political Studies, UCT) focussed initially on the concept of democracy and the factors vitally affecting its establishment in a deeply-divided society. He then concentrated on some of the practical problems of the implementation of voting behaviour, the fate of minority parties and coalitions etc...

He offered seven brief propositions concerning ways of sustaining democratic government in deeply-divided societies among them: that maximal consensus across party lines and broad-based coalitions support the development of democracy in such circumstances, while noting that constitutions can only address only a small part of the problem.

Professor Welsh submitted two articles written by him on the subjects: "Liberals and the Future of the New Democracy in South Africa" (Optima November 1994 pp 39 - 44) and "The Governing of Divided Societies: A South African Perspective" (Book not identified, Ch4 pp49-61).

iii) **DR MAMPHELA RAMPHELE**

(Deputy Vice chancellor, UCT, and Director, Public Information Centre, IDASA) concentrated on equality, in particular affirmative action and equal opportunities.

She acknowledge the need to create a more equitable distribution of resources as part of nation building and "to articulate a vision of equity which addresses race, class, gender, age and geographical inequalities within a holistic framework to minimise potential conflict around competing demands and claims".

She stressed the importance of choosing a strategy for equal opportunities which would ensure the best outcome over the medium and long term to enhance both social and individual capacities to realise full potential. "Goals, targets and time tables are essential to ensure that the process of reducing inequalities properly monitors", she argued.

Finally, Dr Ramphele emphasized that "proper and creative management of the fears, anxieties (and) expectations of all citizens (was) essential to success". She singled out fears related to "Affirmative Action politics" as likely to be particularly costly for the nation, especially in some provinces.

***ANNEXURE A***

***PARTY SUBMISSION***

**AFRICAN CHRISTIAN DEMOCRATIC PARTY**  
**SUBMISSION TO THEME COMMITTEE ONE**  
**BLOCK TWO**

**2. EQUALITY**

The ACDP agrees that equality is central to a Bill of Rights. We further believe that all shall have equal access and protection of the law.

Equality before the law is beneficial to all and is principally aimed at enhancing the esteem of the value of all human beings, essentially in the understanding that we are created in the image of God. (Genesis 1:26 - 27).

Equality before the law means that as Christ is no respecter of persons, so the law should be no respecter of persons (James 2:8-9). The ACDP maintains that because all are born sinners, no one is to be considered to be superior to any other by birth or by nature.

Although we are all equal in value before God, we are at the same time different. We are different in our colour, belief, size, talent, attitude, gender, strengths, interests and so on. We have separate bathrooms for men and women to endorse this fact. This differentiation is not discrimination. The ACDP would like the Bill of Rights to recognise this differentiation in some cases and that, in such cases, it be justified.

The ACDP endorses Chapter 3:8.2 of our interim constitution that says "no person shall be unfairly discriminated against, directly or indirectly, and, without derogating from the generality of this provision on one or more of the following grounds in particular: race, gender, sex, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture or language. The clause "sexual orientation" is dropped because it is misplaced.



As God-loving Christians, we in the ACDP cannot endorse or condone what God calls abomination. Attempts to legalise what we view to be perversion is an attempt to impose on Christians, religious people and those who still maintain their cultural beliefs and traditional values, that which is unacceptable, unhealthy, immoral, sinful and unnatural.

The ACDP opposes giving unacceptable and sinful lifestyles like homosexuality, lesbianism, sodomy, bestiality and paedophiles any constitutional protection. It is wrong to legalise immorality. People involved in these lifestyles have chosen to do so and they are protected already by Chapter 3:13, that guarantees the right to privacy. We do not want our country to be another Sodom and Gomorrah. (Gen.19:1-25, Rom.1:25-32). Our right to freedom of conscience, religion, thought, belief and opinion must be respected.

#### Affirmative Action

The ACDP believes that affirmative action should be defined as a temporal measure to make right the wrongs of the past in order to ensure individual, family and nation building and human resource development. It should aim at making people self-sufficient and to contribute to the running of the country in all its sectors. We do not wish to see this concept written into the constitution as a permanent right because in a few years time, it may turn into another form of apartheid.

The ACDP applauds the approach taken by Dr M. Ramphele of Idasa. We wish to express our appreciation for the pragmatic and thorough presentation she made to Theme Committee One. She cautioned us against applying the imported concept of affirmative action from the USA because their social conditions are different to ours. Dr Ramphele continued to say that affirmative action must be "situated within an equity framework to ensure that it is an appropriate strategy in a given case, and that it achieves the goals of making equal opportunities accessible.

A free standing affirmative action programme runs the risk of bedevilling social relations." "An equal opportunity environment must be created to bring out the best in all citizens."

### 3. SINGLE "SOVEREIGN" STATE

We as the ACDP agrees with the concept of a "sovereign" state, only in the context of an independent country within a prescribed jurisdiction. We do not believe a state should be absolute, all powerful, unlimited or supreme, but rather, it should be the constitution that is supreme.

The ACDP recognises the state as a God-ordained institution. Along with the institutions of the family (marriage and home), the church, religious organisations, the state occupies an important place in God's order of things. The ACDP believes that government is established with limited powers to do only certain things in society. We call for limited government, falling somewhere between no government (anarchy) and total government (totalitarianism). Caesar has his role, but other institutions like the family and the church have their roles too.

A good government is one that administers justice, protecting the weak from the bully, the poor from the rich and powerful, the innocent from the criminals. It will promote equality before the law, working diligently to restrain evil: raising revenues; avoiding deficit spending and so on.

Within the single "sovereign" state, the ACDP would like to see a small, but effective, central government and strong provincial and local governments. We believe strong provincial and local governments bring the government closer to the people and help create effective governing and improved administration and communication. In this case, decision making is allocated to the lowest level where it could best be exercised and it allows for improved identification of needs and for the development of local and provincial leadership.

### Secular State

The ACDP vehemently rejects any plan to turn South Africa into a secular state. It is totally unacceptable and undemocratic. According to statistics, about 80% of South Africans believe in the teachings of the Christian faith. Their voice must be heard. We do not want to have a constitution that does not acknowledge God the Almighty in its preamble because of a few politicians who do not believe in a sovereign God. Most South Africans believe in God and that must be reflected in the constitution.

It is inconceivable that an attempt can be made by members of this parliament to deny Christians, who are the majority of tax payers, from using State institutions that are built and maintained with their tax money for religious observances. Millions of Christians who voted for the ANC are using school classrooms and community halls for their church services. Is the ANC now turning their back on them, attempting to deny them that right by calling for a secular state?

A secular state would bar Christian leaders and religious office bearers from holding offices of State. This would be highly unconstitutional, undemocratic and the worst form of discrimination. The ACDP totally rejects such plans. Those who claim to support the concept of participatory and representative democracy must live up to their claims. South Africans must be allowed to exercise their democratic right of choosing who should represent them in any office of State, without any State interference.

The ACDP is calling for a Constitutional State, based on Christian principles like honesty, truth, love, respect for life, law and property, justice, reconciliation and many more that are universally accepted as indispensable for building a healthy, prosperous and normal society.

Golden rules like "love your neighbour as yourself" (Matt. 22:39) and "do to others what you would have them do to you" (Matt. 7:12) would save the world from poverty, misery, rape, murder and all other evils that are destroying precious lives, if they can be taught and applied. All nations of the world would agree that these rules can make our world a peaceful and better place to live.

These are some of the biblical principles that we, the ACDP would like to see undergirding our constitution.

Rev. K. R. Meshoe  
15th March 1995

# **AFRICAN NATIONAL CONGRESS**

## **SUBMISSION TO THEME COMMITTEE ONE**

### **BLOCK TWO**

#### *SOVEREIGNTY OF THE STATE AND EQUALITY*

##### **1 Introduction**

The ANC takes seriously the strong desire for unity, justice and peace for which we have fought relentlessly over decades. We therefore emphasise the need for transforming all the major areas of political life so that the people can truly govern.

We believe strongly that the constitution must assert unequivocally the creation of a non-racial, non-sexist democracy which systematically eradicates the devastation of apartheid and reduces the social inequalities that exist. For it is only through active participation at all levels of government that our people can begin to share a common national vision. Such a national vision should be underpinned by the principles of respect of human dignity and universally accepted rights of all people, inside and outside our borders.

We further believe that a situation must be created for the government to be as close to the people as possible, while ensuring considerations of national unity and reconciliation, national reconstruction and development and national uniformity. We believe that when we address the matter of devolving powers to local levels of government, we must guard against balkanisation and fragmentation of the country.

##### **2 A Single, United and Undivided Sovereign State**

- 2.1 The Constitution of South Africa shall provide for the establishment of a single, united and undivided sovereign state whose national territory shall comprise the areas defined in Schedule 1 of the Interim Constitution.

2.2 There shall be elected government at local, provincial and national levels whose powers and functions shall be spelt out in the constitution. Such powers and functions shall be subject to national uniformity, national reconstruction and development and the values enshrined in the Chapter on Fundamental Rights. The principles of non-racialism, non-sexism and democratic accountability shall apply at all levels of government.

### 2.3 The National Legislature

2.3.1 The National Legislature shall consist of a National Assembly and Senate.

2.3.2 The National Legislature will have primary responsibility for the preparation and adoption of the country's main laws. The Constitution shall empower National Parliament to ensure that the laws passed in the Provincial Legislatures are not inconsistent with the provisions of the Constitution and the Bill of Rights.

2.3.3 The Senate will represent the provinces and will have a special responsibility for promoting provincial development and ensuring respect for the Bill of Rights. It will have the power to review, refer and delay legislation except legislation dealing with the National Budget.

2.3.4 The legislative process shall include the system of parliamentary committees that will be formed and structured to enable the active participation of elected representatives during law making and to ensure accountability of the Executive to an informed Parliament as well as a role for minority parties and the public.

2.3.5 Amendments to the constitution shall be effected by a two thirds majority of both houses sitting together.

2.3.6 Both the President and the Executive shall be accountable to parliament.

### 2.4 Provincial Government

2.4.1 The Constitution shall provide for the establishment of Provincial Legislatures and Executives in respect of the provinces as provided for or amended under the Interim Constitution.

- 2.4.2 The primary aim of provincial government is to bring government closer to the people and to facilitate national reconstruction and development as well as to ensure the delivery of services to the people.
- 2.4.3 The Provincial Legislatures will have such powers and functions as determined in the Constitution.
- 2.4.4 It must be stressed here that political mobilisation on the basis of race, ethnicity or language should be discouraged and that state power at any level should not be used for the purposes of ethnic domination and intolerance.
- 2.4.5 The Constitution shall ensure that a mechanism is set up to address the disparities in the development of the provinces through fair distribution and reallocation of the countries resources.

## 2.5 Local Government

- 2.5.1 The Constitution shall provide for the establishment of Local Government through which the people will participate in the planning of policy and decision making.
- 2.5.2 Comprehensive provision for local government, including its powers, functions and structures shall provide that the implementation and supervision of legislation and financing of local governance be delegated to provinces.
- 2.5.3 Traditional leadership has an important role in unifying our people and performing ceremonial and other functions allocated to them by law. The powers of chiefs shall be exercised subject to the provisions of the constitution and other laws.
- 2.5.4 Provisions will be made for an appropriate structure consisting of traditional leaders to be created by law, to advise parliament on matters relevant to custom and matters relating to the powers and functions of chiefs.

### 3 Equality

The ANC strongly supports the principle of equal rights for women and men in all spheres and the creation of special agencies to ensure that equal opportunity operates in practice.

The right to equality and protection by law of all persons shall be guaranteed in the constitution in the chapter on fundamental human rights. The Bill of Human Rights will be binding upon all legislative and executive organs of state at all levels of government.

The Bill of Rights shall be made applicable both vertically and horizontally while ensuring that a balance is maintained between equality and freedom. The concept of freedom shall be understood to be based on the protection of the dignity of the person rather than protection of economic privilege. At the same time, a balance must be maintained between the democratic government and the protection of individual liberty.

No person, man or woman, shall be unfairly discriminated against directly or indirectly, on any grounds, such as race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language. This shall not preclude measures designed to achieve the adequate protection and advancement of persons or groups or categories of persons disadvantaged by unfair discrimination, in order to enable their full and equal enjoyment of all rights and freedom. The constitution will make it clear that seeking to achieve substantive equal rights and opportunities for those discriminated against in the past should not be regarded as a violation of the principles of equality.

The Constitution shall ensure that mechanisms are created for enforcing and promoting these rights and ensuring that all obstacles to substantive equality are removed.

07.03.95

**CONSTITUTIONAL ASSEMBLY : THEME COMMITTEE 1**  
**CHARACTER OF DEMOCRATIC STATE**  
**SUBMISSION BY THE DEMOCRATIC PARTY ON BLOCK 2 AGENDA ITEM**  
**2 : EQUALITY**

Introduction

The questions of Equality is the focus of Theme Committee 4. "Fundamental Rights." Included in the work program of this committee is the agenda item "Rights to Equality."

I hereby resubmit the submission made by the D.P. in TC 4 which covers the same ground. The D.P. believes that equality of opportunity, the administration of vertical and horizontal discrimination and the promotion of racial and gender equality must be provided for in the Bill of Rights. (see chapter 3. IC)

**CONTENT OF THE RIGHT**

For democracy to flourish, equality is fundamental. Racial discrimination predominated in the South African social order in the past. The Bill of Rights needs to set its face against discrimination.

What is discrimination? A successful society must distinguish between the meritorious and unmeritorious, the just and the unjust, the productive and unproductive. When is differentiation permissible and when not? The Bill of Rights should provide the answer that differentiation is permissible when it is justified and impermissible when it is not. Only when differentiation is not justified does it merit the pejorative 'discrimination'.

The effect of this is that the court that enforces the Bill is permitted to condemn as



discrimination, an arbitrary exercise of power thought to fall outside the 'best' categories of differentiation, such as racism or sexism, e.g. a court can outlaw a particular differentiation made on the ground of pregnancy. If differentiation on the ground of pregnancy is unjustified it is discrimination and therefore unconstitutional. The court need not go so far as to engage in complex debates about whether differentiation that prejudices only women, but not all women, discriminates against women.

Despite the generality of this approach, the Bill of Rights should recognise that differentiation on the specific grounds of race, ethnic origin, colour, gender, sexual orientation, age, disability, religion, creed and conscience are generally arbitrary and therefore generally unjustified. But discrimination has created pervasive inequality in this country, and if we are to take the commitment to equality seriously, we have to acknowledge the need for reasonably drawn and rationally justifiable affirmative action programmes to undo existing inequalities.

However unpalatable it may be, we have to acknowledge too that if such programmes are to benefit the legitimate beneficiaries, they will have to use the same criteria for differentiation as those which brought about the inequality. The clause which authorises such programmes must provide that such programmes are reasonable and rational. A programme would not be rational if it was not focused to reach its intended beneficiaries or if it continued to operate after it had done its work. It should also, on proper interpretation, outlaw fixed race/gender quotas.

The Bill should also recognise that although differentiation on any of the grounds listed in the equality clause, unless it is part of a reasonably and narrowly focused affirmative programme intended to undo inequality, is usually abhorrent, sometimes it may be desirable, e.g. to educate members of different religious persuasions separately about their religions and for that reason it may be necessary to differentiate on the ground of religion. Or it may be necessary to segregate lodgings by gender in order to protect women residents from sexual harassment or assault.

These are justified differentiations and not discrimination. The Bill of Rights should

consequently recognise that differentiation even on one of the grounds listed and not for the sake of countering inequality, may be justified. It is for this reason that differentiation on one of the grounds listed should be presumed unjustified. The presumption can be rebutted by demonstrating a justification of the kind outlined above. This formulation should be flexible enough to permit a court to require a more compelling justification to legitimise some types of differentiation (e.g. racial) than others (e.g. religion).

Some favour a constitution which seeks to outlaw discrimination only when the state may be considered responsible for the discrimination. But there is an important sense in which the state is always responsible for discrimination: it can always legislate to outlaw it (unless the constitution forbids it to legislate, in which case the state is responsible because of the constitution).

Despite that, few would argue for state intervention against all discrimination anywhere. Almost everyone recognises the need for some sphere of privacy in which the choices that individuals make can be made on any ground, however arbitrary, without any liability to justify them, e.g. the choice of whom to invite into one's home, whom to favour with one's charity, whom to marry - these fall into that category.

Rather than confining equality to the area in which the state is responsible it is better to recognise that there is a sphere of privacy within which decisions to differentiate need not be justified. The Bill of Rights should recognise that the constitutional commitment against discrimination should not intrude into the sphere of privacy.

This recognition could invite racists and other discriminators to take shelter therein; many will try improperly to expand the need to protect privacy to further discriminatory ends: immunity invites abuse. To guard against this danger the Bill of Rights should confine immunity to decisions made in the exercise of private choice necessary to preserve personal autonomy.

There are perhaps some in South Africa anxious to retain the privileges bestowed by apartheid. Many hope to remove activities hitherto in the public domain, to the private,

expecting that those activities will be insulated from the commitment of the new social order to root out discrimination.

Neither the constitution nor the Bill of Rights must be party to those efforts. Its recognition of a sphere of privacy immune from any need for justification, something essential to protect against Orwellian state intervention, cannot be permitted to become a shield for private apartheid. The relevant provision should be drawn narrowly to guard against that possibility.

What society considers to belong within the sphere of privacy, changes with time. At one stage it was commonly accepted that the terms of private employment were a matter for employer and employee, and the state should not intrude. Today, legal regulation of private employment is pervasive and commonplace. And it was generally accepted that when social clubs fell into the sphere of privacy and chose to exclude Jews, blacks or women, that was their prerogative. There is now a growing body of opinion that clubs often supply public goods such as business opportunities, to which all should enjoy equal access.

The boundaries of privacy are constantly shifting and the constitution or the Bill of Rights cannot finally define them. The court entrusted with interpreting the Bill of Rights will have to define and redefine the boundaries of privacy as society's conception of that ideas matures and develops.

The prohibition on discrimination in the Bill of Rights should outlaw both direct and indirect discrimination. Direct discrimination is overt discrimination. The concept of indirect discrimination hits at apparently neutral practices which have differential impact, e.g. a recruitment policy requiring all mathematics teachers to be six feet tall. Such a policy, although it makes no reference to race or sex, would favour men over women and some races over others. Since the policy would not be justified in fostering good mathematics teaching, it would be discriminatory.

The prohibition on discrimination should be expressed to be a consequence of the right to equal treatment; it cannot exhaust the content of that right. It can be as much of a denial of equal treatment to fail to differentiate as to differentiate.

It has been observed for instance, that some of the most serious denials of equality to women take the form of expecting women to be the same as men, or treating them as

though they were. The relevant provision should be framed widely enough to strike at inequality in that shape.

The Bill of Rights must demand of government, rational, honest justifications for policy decisions providing entitlements such as equality or affirmative action. Rationality and reasonableness should be the standards of justification provided for in the Bill of Rights.

### **JURISTIC PERSONS**

The Democratic Party reiterates submissions made under Block 1 and 2 on the question of juristic persons, and the horizontal application of the Bill of Rights. With specific reference to applying the equality clause to juristic persons and individuals, the Democratic Party believes the following sub-clause should be added to the general equality (and prohibition of discrimination) clause:

"Differentiation (discrimination) shall be considered justified when it is the result of a decision made in the exercise of the type of private choice which preserves personal autonomy".

(For explanation see P3-4 hereof)

### **PROHIBITED GROUNDS FOR DISCRIMINATION - (Section 8 of the Interim Constitution)**

The Democratic Party supports the provisions of these sections, subject to the reservations it expresses in respect of S.8(3) which will be elaborated under the section on affirmative action, and further subject to the amendment detailed above under 3(b) (Juristic Persons).

The purpose of S.8(2) would appear to ensure that there should be no differentiated treatment on the grounds or elements which are vital to the nature of human identity. The words 'without derogating from the generality of this provision' would allow a court to take account of a range of elements of the human personality which have hitherto not been considered in the express words. Thus, groups affected by poverty, unemployment and lack of access to power, can be considered under S.8(2).

Among the designated criteria are gender and sex. The inclusion of gender implies that the constitution acknowledges that significant differences between men and women in respect of skills and social roles cannot be explained by biological differences, but must be located in social and political origins. The inclusion of gender as a designated prohibition allows a court to examine those social forces and power relationships which promote discrimination between men and women.

The concept of unfair discrimination doubtless represents an attempt to distinguish between a process of benign and malign distinction. It presupposes that discrimination itself can be freed from a pejorative content. To an extent the policy of affirmative action could be construed to be a form of positive treatment which would therefore fall within the concept of fair discrimination.

The Democratic Party believes discrimination means unjustified differentiation. Differentiation on the ground of race, ethnic origin, colour, gender, sexual orientation, age, disability, religion, creed or conscience, shall be presumed unjustified unless it is part of a rational programme intended to remedy substantial inequality.

Differentiation shall be justified when it is the result of a decision made in the exercise of the type of private choice which preserves personal autonomy.

In its General Comment 18, the Human Rights Committee established under the International Covenant on Civil and Political Rights noted: "The term 'discrimination' is used in the Covenant and should be understood to imply any distinction, exclusion, restriction or reference which is based on any ground such as race, colour sex, language,

religion, political or other opinion, national or social origin, property, birth or other status, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons and on equal footing of all rights and freedoms. Not every differentiation or treatment will constitute discrimination. If the criteria for such differentiation are reasonable and objective and if their aim is to achieve a purpose which is legitimate under the Covenant." General comment 18(37) (UN. N York 1989) para.7. The Democratic Party supports this reasoning.

Article 14 of the European Convention on Human Rights provides: 'The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, religion, political or other opinion, national minority, property, birth or other status'.

In general, the European Court of Human Rights has found that a violation of Article 14 arises if there is differential treatment in circumstances where there is no objective and reasonable justification, or in the event that there is such justification, proportionality is lacking between the aims sought and the means employed.

In the US, the justification for differentiation has been fundamental to anti-discrimination jurisprudence. Classifications based on racial criteria are considered suspect and the doctrine of strict scrutiny has been applied to them. The classification must be shown to be a necessary means to the promotion of a 'compelling and overriding' state interest.

#### **AFFIRMATIVE ACTION**

The Democratic Party agrees that the Bill of Rights should have a clause protecting affirmative action programmes from challenge under the Equality Clause. This is because we believe that, properly drafted and subject to certain key limitations, affirmative action need not conflict with the notion of equality. The Democratic Party believes that affirmative action must aspire to deliver equality by undoing inequality. This requires that affirmative action programmes should be explicit authorised by the constitution. Section 8(3) of the interim constitution, insulates from challenge "measures aimed at the adequate protection and advancement of persons disadvantaged by discrimination in order to enable

full and equal enjoyment of all rights and freedoms."

The Democratic Party believes that clause 8(3) is deficiently drafted. Its most conspicuous flaw is its reliance on the vacuous notion of "adequate protection and advancement." The clearest thing about "adequacy", is its inadequacy as a criterion for decision-making.

Less conspicuous, but more important, is the inadequacy of the word "aimed" which makes the validity of an affirmative action programme depend solely on the intentions of its designers to the exclusion of its effects.

Many such programmes, because they are poorly focused or misconceived or badly executed, can do nothing but squander resources or destroy productivity or aggravate inequality or comprehensively apply a non-authoritarianism in the form of so-called "reverse discrimination" programmes.

To avoid these consequences, an affirmative action clause has to empower the court that applies it, to review not only the aims of the programme, but also the means by which it seeks to realise those aims. It has to empower the court to ask whether the programme is in fact one reasonably likely to achieve its goal of undoing disadvantage.

To avoid the legislature imposing group based reverse discrimination measures which do not necessarily advantage excluded individuals from previously disadvantaged groups, the Democratic Party proposes that S.8(3) of the interim constitution be amended by the interposition of the word 'reasonable' in the following context:-

3(a) This section shall not preclude reasonable measures designed to achieve the adequate protection and advancement of persons or groups or categories of persons disadvantaged by unfair discrimination, or to enable them full and equal enjoyment of all rights and freedoms.

"Reasonableness" as a standard of justification will allow the courts to enquire into - and ensure - that affirmative action programmes do not become limitless, discriminatory or oppressive.

**Democratic Party.**

**Agenda Item 3. "One, sovereign state."**

In respect of (a) a single, Sovereign State, its Constitutional Assembly is required to give effect to the following constitutional principle:

Schedule 4 (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"

The Democratic Party is committed to the creation of a single Sovereign State as required in terms of the above principle.

**(a) Provincial autonomy.**

The D.P. will argue strongly in favour of a federal system of government because it believes in the maximum devolution of power. The D.P. believes that the people must govern and that there is no more effective way of giving this expression than for the constitution to provide for a variety of sites of power in which the people themselves can participate in making decisions affecting them. By providing a variety of different sites of power, federalism enables more people to take part in the process of government. It brings government closer to the people. This promotes accountability of political office-bearers to their constituents, and promotes the establishment of a democratic culture. It can also reduce the intensity of the struggle for power at the central government level as it ceases to be a 'winner take all' contest.

The Democratic Party believes that an over-concentration of power in central government leads to the retention of power for its own sake, and the use of power and patronage for the advantage of the party or group which is in power. South Africa's history is littered with examples of the use of the monopoly of centralized political power to impose an oppressive philosophy on the entire country. A federal structure makes this very much more difficult, and the system also provides a variety of sites of power in which more people can exercise power, making the retention

of central government power relatively less important. The Democratic Party accepts the cultural, linguistic,



geographic and political diversity of South Africa. This diversity is a national asset which needs to be developed in a spirit of mutual respect, tolerance and conciliation. Federalism helps to accommodate this diversity by multiplying the sites of power. Moreover, by multiplying sites of power and competition, new and transcending alliances based on regional or common interests can be forged, which can lead to the resolution of problems and issues at a localized level. This will certainly make the resolution of seemingly intractable problems far easier.

(b) **Minority participation**

In terms of constitutional principle XIV of Schedule 4 of the interim Constitution, the final constitution is obliged to provide for the "participation process of minority political parties in the legislative process in a manner consistent with democracy." The D.P. fully supports this principle and suggests that it can best be served by introducing a number of constitutional devices. These are:-

- (i) A federal system of government ( as discussed above)
- (ii) A system of voting based on proportional representation as provided for in Section 40, principle B of the interim constitution.
- (iii) The protection of all basic human rights in a justiciable Bill of Rights as provided for in chapter 3 principle 2 of the I.C.

(c) **Community self determination.**

The D.P. would be opposed to any notion of self determination which was based on race. It would need to be convinced that the "Volkstaat" issue contained no element of racial discrimination before debating it.

(d) **Traditional Monarchies.**

Because of the important position which traditional leaders occupy amongst some communities, in some parts of the country, and in some areas of customary law and procedure, it becomes necessary to create an institution through which the views of and leaders can be ascertained. This should take the form of councils organised on a regional basis and remain

geographic and political diversity of South Africa. This diversity is a national asset which needs to be developed in a spirit of mutual respect, tolerance and conciliation. Federalism helps to accommodate this diversity by multiplying the sites of power. Moreover, by multiplying sites of power and competition, new and transcending alliances based on regional or common interests can be forged, which can lead to the resolution of problems and issues at a localized level. This will certainly make the resolution of seemingly intractable problems far easier.

(b) **Minority participation**

In terms of constitutional principle XIV of Schedule 4 of the interim Constitution, the final constitution is obliged to provide for the "participation process of minority political parties in the legislative process in a manner consistent with democracy." The D.P. fully supports this principle and suggests that it can best be served by introducing a number of constitutional devices. These are:-

- (i) A federal system of government ( as discussed above)
- (ii) A system of voting based on proportional representation as provided for in Section 40, principle B of the interim constitution.
- (iii) The protection of all basic human rights in a justiciable Bill of Rights as provided for in chapter 3 principle 2 of the I.C.

(c) **Community self determination.**

The D.P. would be opposed to any notion of self determination which was based on race. It would need to be convinced that the "Volkstaat" issue contained no element of racial discrimination before debating it.

(d) **Traditional Monarchies.**

Because of the important position which traditional leaders occupy amongst some communities, in some parts of the country, and in some areas of customary law and procedure, it becomes necessary to create an institution through which the views of such leaders can be ascertained. This should take the form of councils organised on a regional basis.



# VRYHEIDSFRONT

P.O. Box 74693  
Lynnwood Ridge  
0040  
Tel. (012) 47-4477  
47-4375  
47-4450/54/14/58

1st Floor Atrium 4  
Perseus Park  
cor. Camelia and Priory Roads  
Lynnwood Ridge  
Fax (012) 47-4387

## FREEDOM FRONT

### THEME COMMITTEE 1 : EQUALITY BEFORE THE LAW :

#### GENERAL PRINCIPLES

1. The Freedom Front is of the opinion that the right of every person to equality before the law is one of the elements of democracy, which can, as a general concept, be defined as a system of government by all the people collectively, usually through elected representatives, based on the recognition of equality of opportunities, rights and privileges, accommodating minorities, and ignoring hereditary class distinctions. In view of the fact that the new Constitution must be democratic (in terms of the Constitutional Principles) it must make provision in its chapter on fundamental rights for equality of all persons before the law.
2. Secondly, we adhere to the view that equality before the law is indeed one of the most fundamental of human rights. It is not only expressly required by Constitutional Principle 5 (equality of all before the law and and equitable legal process), but is implicit in Constitutional Principle 3 (general prohibition of discrimination).

(a) Equality before the law

In the present context we subscribe generally to the provisions of section 8(2) of the transitional Constitution, noting that only 'unfair' discrimination should be prohibited, for it is conceivable that differentiation between persons on one of the grounds enumerated in section 8(2) would be justified in certain circumstances. So, for instance, it should be permissible to take sex into account where relevant (e.g. maternity benefits), or age where relevant (e.g. military activities). We are also of the opinion that it should not be prohibited to take sexual orientation of a person into consideration in certain circumstances, as there could otherwise be an infringement of freedom of religion (at present section 14(1) of the transitional Constitution), as homosexual practices are contrary to some religions.

...2/-

(b) Equitable legal process

Equality of all before the law and an equitable legal process requires constitutional provisions ensuring what can generally be termed 'access to justice'.

The concept 'access to justice' covers many aspects of the judicial system, but two predominant aspects should be mentioned at this stage, viz the plight of indigent litigants and the need to conduct legal proceedings in a language understood by parties to litigation, accused persons and witnesses (see, in this regard, section 107 of the transitional Constitution).

Whereas section 107 purports to deal with the latter problem, it is submitted that the provisions of section 3 of the transitional Constitution are inadequate to afford sufficient protection to at least some of the present official languages, and that these provisions, if re-enacted without amendment in the new Constitution, will have a bearing on any section in such Constitution that will replace the present section 107.

As far as indigent litigants are concerned, statutory provisions governing legal aid and a right to legal representation pose special problems, if not of a juridical nature, then at least of an economic nature (a question of financial resources and of manpower).

3. Thirdly, a distinction should be drawn between legal and factual equality (or inequality). By subscribing to the principle of equality before the law we must not be understood to allege that all people are in fact equal. People differ in various respects that may be relevant and justified in considering, for instance, their appointment to particular types of work. There is support by eminent scholars throughout the ages for the proposition that equality and justice are synonymous, and that things that are alike should be treated alike, while things not alike should be treated differently. Relevant differences should not, therefore, preclude different treatment. This factor is relevant, too, in the context of affirmative action, referred to below.
4. In the fourth place the Freedom Front is not averse to measures such as those referred to in section 8(3)(a) of the transitional Constitution, conveniently referred to here as 'affirmative action', subject to an important caveat. We hold the view that affirmative action requirements should not be so extensive as to be counter-productive and in effect bring about reverse discrimination. Affirmative action should be aimed solely at equality of opportunity, coupled with implementation on the basis of merit only. Any other formula would be neither in the interest of the individual concerned, nor that of his employer or principal, nor of the country as a whole.

...3/-

5. Fifthly, the Freedom Front is of the opinion that the requirement of equality before the law poses special problems as far as the co-existence of indigenous law on the one hand and fundamental rights contained in the Constitution and concomitant legislation on the other hand (Constitutional Principle XIII) is concerned.

Constitutional Principle XIII deals with the protection of the institution, status and role of traditional leadership, according to indigenous law. According to this Principle indigenous law as well as the common law shall be recognised and applied by the courts, but subject to the fundamental rights contained in the Constitution and legislation dealing specifically with the latter.

The application of the common law poses no special problems. However, the application of indigenous law is now made subservient to the fundamental rights set out in the Constitution and related legislation. This means that there is a potential conflict between rules of indigenous law on the one hand and the Constitution and the above-mentioned related legislation on the other hand. To avoid a clash of these two legal systems, with its potential for social and political discord and strife, the Constitution should be drafted in a manner that preserves indigenous law to the greatest extent possible. Conflict of other laws with indigenous law should in this way be reduced to a minimum.



# VRYHEIDSFRONT

P.O. Box 74693  
Lynnwood Ridge  
0040  
Tel. (012) 47-4477  
47-4375  
47-4450/54/14/58

1st Floor Atrium 4  
Perseus Park  
cor. Camelia and Priory Roads  
Lynnwood Ridge  
Fax (012) 47-4387

## FREEDOM FRONT

### THEME COMMITTEE 1

**BLOCK 2 : (a) ONE SOVEREIGN STATE  
: (b) SUPREMACY OF THE CONSTITUTION**

**The Freedom Front makes the following submissions:**

**(a) ONE SOVEREIGN STATE**

- (i) The concept of 'one sovereign state' in Constitutional Principle 1 does not presuppose that the form of state should necessarily be unitary.

Constitutional Principle 1 was based on the preamble to the Declaration of Intent adopted at Codesa 1 in 1992, which referred to a future 'undivided' South Africa and to the future South Africa as a 'united' state. Inkatha's initial reluctance to sign the Declaration of Intent, because it feared that the Declaration could be interpreted as prescribing a unitary state as opposed to a federal state, disappeared when it was formally made clear that 'any proposal consistent with democracy' (including federalism) could be freely submitted to the Convention.

The understanding referred to above is still, in February 1995, one of the cornerstones of the constitutional process. The report on Block 1 from Theme Committee 1 to the Constitutional Assembly was based on the premise that the concept 'South Africa shall be a sovereign, independent and undivided state' (G under 'Non-contentious Points') 'shall not preclude the state being structured along federal lines nor shall it preclude any party from arguing in favour of federalism'.

- (ii) The concept 'one sovereign state' in Constitutional Principle 1 should be read in the light of all the Constitutional Principles as a whole, some of which prescribe limitations on the central authority in favour of provincial autonomy.

Examples of the above-mentioned limitations occur inter alia in the following:

Constitutional Principle XVIII (2) (powers and functions of provinces not to be substantially less than or substantially inferior to those provided for in the transitional Constitution);

Constitutional Principle XVIII(4) (special procedures, special majorities, etc, required for amendments to the Constitution altering the powers, boundaries, functions or institutions of provinces);

Constitutional Principle XXI (criteria to be applied in the allocation of powers to the national government and the provincial governments, which indicate that the national government should have the ultimate power only in specified fields (wide though they are) and that the level at which certain decisions can be taken most effectively should be the level empowered by the Constitution to do so);

Constitutional Principle XXII (national government not to exercise its powers (exclusive or concurrent) so as to encroach upon the geographical, functional or institutional integrity of the provinces);

Constitutional Principle XXXIV (contemplated constitutional provision for a notion of the right to self-determination by certain communities in certain circumstances).

The Constitutional Assembly is bound by all the Constitutional Principles. It cannot interpret the phrase 'one sovereign state' in Constitutional Principle 1 in a vacuum, but should do so in the context (inter alia) of Constitutional Principle XXXIV, which envisages various methods of giving effect to the concept of self-determination, including the creation on appropriate territorial entity within the Republic. It should be borne in mind that Constitutional Principle XXXIV was superimposed on all the other Constitutional Principles at a special session of Parliament aimed at an all-inclusive settlement representing the major parties participating in South Africa's first democratic general election. Constitutional Principle XXXIV does not detract from Constitutional Principle 1, but adds a rider to it.

The aim of the submission above is not to expound fully the Freedom Front's submissions in respect of Constitutional Principle XXXIV, but merely to place the phrase 'one sovereign state' in Constitutional Principle 1 in its proper perspective.



# INKATHA

Inkatha Freedom Party

IQembu leNkatha Yenkululeko

**THEME COMMITTEE No. 1  
BLOCK No. 2  
SUBMISSION ON EQUALITY  
AND "ONE, SOVEREIGN STATE"**

**PART 1  
"ONE SOVEREIGN STATE"**

**SOVEREIGNTY**

1. Constitutional Principle I requires that the constitution establishes a "one sovereign state".
2. Constitutional Principle I does not require that the state have the monopoly of sovereignty nor does it require that the attributes of sovereignty be ascribed exclusively to the state. In fact in modern constitutionalism the "state" is not sovereign, but rather it is the "people" who are the bearers of sovereignty.
3. The people are sovereign and they exercise their sovereignty through and/or by means of the state. The notion that the state, and not the people, is sovereign conflicts with any known principle of modern constitutionalism as well as with all the other Constitutional Principles of Schedule 4. For this reason we must accept that Constitutional Principle I contains a fundamental and incurable incongruity which forces us to isolate and disregard the normative value of the expression "sovereign state" as impossible, unacceptable and meaningless when compared to the other Constitutional Principles.
4. The notion of a "sovereign state" is to be disregarded. The sovereignty must be ascribed to the People who are to exercise it in terms of the Constitution. This means that the sovereignty of the people would primarily be exercised by means of the governmental structures set out in the Constitution, but not exclusively. In fact the People --regarded both as individuals and as members of the social, cultural and economic formations to which they belong-- should be recognized a sphere of constitutional entrenched autonomy in which they



are "sovereign" such as the case of human rights protection. Furthermore, the people may exercise their sovereignty directly by means of referenda and other institutions of direct or participatory democracy, which were discussed in the IFP's submission for Block No. 1.

5. The recognition that the "People" are sovereign, carries the following necessary normative consequences:

a. The People have inherent rights which the constitution does not "grant" upon them but must "recognize" and protect. This notion is captured by the following proposed text:

**Inherent Rights and Obligations**

The Republic acknowledges and recognizes that all individuals have the natural right to life, liberty and the pursuit of happiness, and to the enjoyment of the rewards of their own industry; that all individuals are equal and entitled to equal rights, opportunities and protection under the law, and that all individuals have corresponding obligations to the State and a general obligation of social responsibility to the people of the Republic.

The "state" is only one of the means or channels of sovereignty. The "state", the "people" [both as individuals and as institutions of civil society] and the other structure of government form the "Republic". The Republic equates to South Africa as it is shaped by the Constitution. In the Republic the "residual sovereignty" belongs to the people: These notions may be captured by the following proposed text:

**Source of Government**

All political power is inherent in the people. All government originates with the people, is founded only upon their will, and is instituted only for the good of the people as a whole. Government shall respect and encourage the exercise of the power of the people to organize and regulate their interests autonomously.

**Rule of Freedom**

All conduct and activities which are not prohibited shall be permitted. The Republic may prohibit and regulate conduct and activities for a demonstrable State's interest founded on public interests and welfare.

All powers not reserved by this constitution to the State shall belong to Provinces and to the people respectively.

[...] the Republic shall [...] nourish the people's right to the pursuance of happiness both as individuals and as members of their social formations [...]

**Other Powers**

Individuals and social, cultural, religious and political formations when exercising their powers or their autonomy within the freedom and liberties recognized and guaranteed by this constitution, shall have equal standing as the powers of the Federal Republic.

In the normative content of the foregoing provisions is the link between the recognition that the people are sovereign and the notion of social, cultural and economic pluralism which the IFP has often submitted to this Theme Committee.

- c. The Constitution is to be written in the name of "We, the people". A strict application of Constitutional Principle I would force us to write a constitution in the name of the "State"! People should be constitutionally regarded not only as individuals but also as members of social, cultural and economic formations. The following is the IFP proposed language:

*WE, the people of South Africa*, mindful of our unique and diverse heritage, inspired by the desire to secure the blessings of democracy, freedom and pluralism for our and future generations, respecting the equality of all men and women, recognizing the right of people to organize themselves in autonomy and independence at all levels of society, desiring to ensure that individual rights and liberties are accompanied by obligations of social solidarity to others, determined to guarantee that the rights of all people are protected both as individuals and members of social and cultural formations, do now ordain and establish this constitution for the Federal Republic of South Africa to provide the people of South Africa and the member States with a Federal government to serve their individual and collective needs, wants and aspirations.

The language of this proposed Preamble, which will be more fully discussed in our submission for Block No. 10, shows the connection between recognition of the "people" as the sovereign and pluralism, which goes beyond the political philosophy of the French revolution based on the non-recognition of any subject other than the "state" and the "individuals". In fact, since the end of WWI there has been increasing awareness that "intermediate formations" are also entitled to constitutional recognition and protection.

## PROVINCIAL AUTONOMY

1. As indicated above, the notion of sovereignty being ascribed to the "state" rather than to the "people" is to be disregarded, and therefore has also no bearing on provincial autonomy.
2. The IFP has made extensive submissions on provincial autonomy, both in this and in other Theme Committees, to which reference is made. The IFP has made a clear proposal for the establishment of a federation of provinces either on a symmetric or an asymmetric basis.
3. Provinces shall not be "organs" of the state. To us, the word "state", as used in the Constitutional Principles and as it shall be used in the next constitution, refers only to the central government, its agencies and instrumentalities. Provinces are autonomous entities which exist immediately under the constitution on the same level as the "state" entity, with their own competence. From a legal viewpoint, the constitution re-establishes the "state" as

a legal entity which exists because of the constitution. The constitution also establishes provinces which are entities to the same extent as the state. Several Constitutional Principles determine criteria for the distribution of powers and functions between the state and the provincial entities. In terms of the Constitutional Principles the state entity is subject to the constitution which "shall be binding on all organ of the state at all levels of government" [CP IV]. In terms of CP XVIII Provinces may adopt, and therefore are subject to their own constitutions which have the necessary and implicit purpose of "binding all the organs of the Province at all levels of government]" Also in terms of CP XVIII, the power of adopting provincial constitutions shall be "defined in the [national] Constitution", which will ensure that Provinces and provincial constitution-making are bound by the national Constitution to the extent desired and determined by the Constitutional Assembly. This proves that in terms of the Constitutional Principles there is no legal or logical necessity in the conclusion that Provinces are organs of the State, which conclusion would destroy the foundation of a federal system.

4. The IFP contends that the "Republic" must be divided into one "state" and into autonomous Provinces<sup>1</sup>. The "state" shall not be sovereign, and depending on one's perspective it may be said that the people are sovereign or a constitution written in the name of the people is sovereign. It is often said that in a constitutional state the constitution not the state is sovereign.

## PLURALISM

(including minority participation, community self-determination "monarchies" and the "volksstaat" issue)

1. The IFP has tabled in this and other Theme Committees a comprehensive vision of political, social, economic and cultural pluralism, the main features of which are:
  - a. the people shall have the "residual" sovereign powers;
  - b. the people, regarded both as individuals and social, economic, and cultural formations shall be entitled to a sphere of constitutionally entrenched autonomy defined by the interests they are able to administer and regulate by themselves, and in respect to which no government can show a compelling reason of public interest to regulate them;

---

<sup>1</sup> It may be recalled that when in May 1993 Constitutional Principle I was adopted at the WTC after about three hours of debate on the point, at the suggestion of Mr. Slovo the words "single sovereign state" were substituted with the words "one sovereign state" specifically to accommodate those who wanted to ensure that the state would not be "single", i.e. the only entity to the exclusion of Provinces as separate entities, and that the "one state" could also be "divided".

- c. establishment of a federal system in which the Provinces -- rather than the central government-- are the primary government of the people and only powers which cannot be adequately and properly exercised at provincial level are devolved upward to the central government;
  - d. protection of political minorities in Parliament by means of adequate provisions of parliamentary and electoral law;
  - e. participatory democracy, including necessary participation of affected interests in legislative and administrative decision-making process, referenda, right to petition, et cetera;
  - f. special human right protection for collective interests; and
  - g. limitations on the scope and role of all levels of government, with special regard to economic matters.
2. "Minority participation" shall be adequately catered for within the parameters of a comprehensive vision of pluralism. Therefore, in a properly structured federal system, there is no need for mandatory power sharing.
  3. "Self-determination" may not be reduced to "community self-determination" but should be the fundamental idea which inspires the establishment of a federation of provinces based on the principle of pluralism. The notions of "community" or "corporate" self-determination are likely to become the sugar-coating for the bitter pill of a constitution which repudiates both federalism and pluralism, and as such they should be rejected. True and full-fledged self-determination should prevail and the building-block ideology of a federal and pluralistic constitutional order.
  4. A "monarchy" is a political form of societal organization on a territorial basis headed or symbolized by a monarch.. A cultural movement does not exercise "political" powers on a territory and is not a monarchy. A person's entitlement to use the name of "king" does not make him a monarch or anything more than a cultural or ceremonial figure. It is only the existence of a Kingdom which makes a monarchy. Simply put, a king without a kingdom is not a monarch, while a monarchy and a kingdom are mutually necessary implications
  5. The Kingdom of KwaZulu-Natal exists as a living historical reality, and its right of self-determination shall be fully recognized and protected. Because of its right of self-determination the Kingdom of KwaZulu-Natal is entitled to its autonomy and self-rule within the parameters of a federal relation with the rest of South Africa, irrespective of what type of government the rest of South Africa chooses to ordain for itself. Within the autonomy of the Kingdom, the position of His Majesty the King of KwaZulu-Natal shall be recognized as the constitutional monarch of the Kingdom who reigns but does not govern.

## PART 2 EQUALITY

The Principle of "formal" equality shall be entrenched in the constitution.

Usually a reference to the principle of equality can also be found in the Preamble: This matter will be discussed more completely in our submission for Block No. 10. However the following IFP proposed verbiage may show how equality intertwines with the other fundamental notions which underline the constitutional order and may be expressed in the Preamble:

***WE, the people of South Africa***, mindful of our unique and diverse heritage, inspired by the desire to secure the blessings of democracy, freedom and pluralism for our and future generations, respecting the equality of all men and women, recognizing the right of people to organize themselves in autonomy and independence at all levels of society, desiring to ensure that individual rights and liberties are accompanied by obligations of social solidarity to others, determined to guarantee that the rights of all people are protected both as individuals and members of social and cultural formations, do now ordain and establish this constitution for the Federal Republic of South Africa to provide the people of South Africa and the member States with a Federal government to serve their individual and collective needs, wants and aspirations.

The principle of formal equality may include the following

- a. equal protection of law, which historically is its the first formulation
- b. equal entitlement to rights provided for in the law, which is a more advanced formulation of (a)
- c. equal dignity or equal social dignity, which is a constitutionally entrenched political concept with relevant legal implications in constitutional adjudication

### **Inherent Rights and Obligations**

The Federal Republic of South Africa acknowledges and recognizes that all individuals have the natural right to life, liberty and the pursuit of happiness, and to the enjoyment of the rewards of their own industry; that all individuals are equal and entitled to equal rights, opportunities and protection under the law, and that all individuals have corresponding obligations to the Federal State and a general obligation of social responsibility to the people of the Federal Republic.

### **Equality**

All citizens of the Federal Republic of South Africa have equal social dignity, shall be equal before the law and shall share an equal right of access to political, social and economic opportunities irrespective of sex, race, colour, sexual orientation, language, traditions, creed, religion, political affiliation and belief, and social and personal status.

The Federal Republic of South Africa shall remove social and economic hindrances which operate as a factual limitation on the freedom and equality of all its citizens, prevent their human and social growth and diminish their equal access to political, economic and social

**opportunities. For this purpose the Federal Republic of South Africa may take measures in favour of segments of the population requiring special assistance.**  
[the underlined words refer to formal equality]

In addition to formal equality the Constitution shall entrench the principle of "substantive" equality. In order to achieve substantive equality the law may treat individuals differently, rather than equally, so as to recognize and adjust to existing social, cultural and economic differences.

For instance, while the principle of formal equality would require that everybody pays an equal amount of taxes, the principle of substantive equality justifies the fact that people are taxed differently in "proportion" of their income or wealth.

It is said that at times formal equality may justify discrimination not "against" but rather in "favour of" particular individual or collective interests. This formulation has gained recognition and support and has become constitutionally accepted even is not logically tenable, for rarely does a differentiation in favour of some not detract from the position of others, and is not therefore accompanied by a differentiation "against". For instance, once the tax system is no longer "proportional" but becomes "progressive" those on the higher tax bracket are discriminated against in favour of those in the lower tax bracket.

Therefore, substantive equality is usually anchored to a constitutionally entrenched political goal, such as "removing the social injustice". The IFP has suggested that the following goal be stated:

- (1) **remove social and economic hindrances which operate as a factual limitation on the freedom and equality of all its citizens, prevent their human and social growth and diminish their equal access to political, economic and social opportunities.**

This language derives from established and tested European jurisprudence and has the merit of avoiding the vague and pernicious notion of "social justice", focusing on the notion of those "hindrances" which make formal equality insufficient or at times even meaningless.

However, the most salient characteristics of formal equality is the type of implementing techniques to be used to achieve the goal set out under (1) above. There are various options, and different verbiage is used to describe them. In synthesis, the following could be used as reference points:

- a. promotion of access to equal opportunities
- b. entitlement to equal access to socio-economic opportunity
- c. entitlement to equal socio-economic opportunities
- d. entitlement to equal socio-economic positions, which usually means mandatory redistribution

The debate seems to be focusing on the alternative between options (b) and (c). The difference between the two approaches may be exemplified with respect to affirmative action programs in public employment. Under option (a) the government would merely make a special effort to advertise the job openings among members of the "protected class". In terms of option (b) the

government would need to set up special programs for training or provide other form of assistance to enable the members of the protected class to qualify and get the jobs, for which they would still need to compete with everybody else. Under option (c) the job opportunities would be reserved only for the members of the protected class irrespective of their qualifications. Similar distinctions would apply in other fields of social intervention. At times it might be difficult to draw a clear distinction between options (b) and (c) while on other occasions the two options support substantially different approaches to social problems.

Historically the IFP has abided by the culture of self help and self reliance as the real path for social growth and liberation of the oppressed people of our country. The IFP does not believe that a culture of entitlement will help in developing sound and long-lasting solutions to our problems. For this reason the IFP has always sponsored alternative (b). The IFP also suggests that the expression "affirmative action" not be used in the constitution, because, even if it is highly politically charged, it has less normative value and constitutional significance than other language, among which the one proposed by the IFP, whiz:

- (2) **All citizens [...] shall share an equal right of access to political, social and economic opportunities [...]**

**The Republic of South Africa shall remove social and economic hindrances which operate as a factual limitation on the freedom and equality of all its citizens, prevent their human and social growth and diminish their equal access to political, economic and social opportunities. For this purpose the Republic of South Africa may take measures in favour of segments of the population requiring special assistance.**

The Combination of (1) and (2) above defines the main characteristics of substantive equality. However, the most important aspects in the system of constitutional equality relates to its enforceability, implementation and development over time. Any type of substantive equality is a vague but constitutionally charged test which cannot be applied by an ordinary judiciary which operates on the basis of legal syllogisms. Therefore, there is a necessary connection between substantive equality and constitutional adjudication being conducted exclusively by a Constitution Court. While a Constitutional Court can be charged with the task of developing constitutional policies which implement and interpret the Constitution, the ordinary judiciary shall merely abide by the jurisprudence of the Constitutional Court and by the law.

The IFP rejects the proposal that substantive equality ought not to be mentioned in the Constitution and should be left to the political agendas of political parties. The IFP also rejects the notion of making substantive equality part of the text of the constitution but relegating it to a section of the constitution which from a constitutional viewpoint is not "constitution" but is merely political directives and enunciation of principles without any force of law. Substantive equality is part of the guaranteed constitutional protection of almost all European countries.

Finally, the last aspect of equality relates to its field of application and it applies almost identically to both formal and substantive equality. The IFP has suggested the following language, which

reflects both commonly used international standards as well as the language of the interim Constitution

- (3) [...] irrespective of sex, race, colour, sexual orientation, language, traditions, creed, religion, political affiliation and belief, and social and personal status.

It is important to stress that no discrimination shall take place on the basis of "personal status", since this is the field where the most insidious forms of discrimination are taking place in our country. It can be noted that this criterion, as all the aspects of equality, are subject to a rule of reason. In the final analysis only discrimination which cannot be reasonably justified are unconstitutional, as it is stated in world-wide constitutional jurisprudence on matters of equality. Depending on the development of Constitutional jurisprudence, "personal status" might end up also subsuming the guarantee against discrimination on the basis of "age", which is typical of advanced democracies, but at this juncture might not be appropriate to be prescribed in the Constitution.

It should also be noted that the principle of equality may be implemented and enforced exclusively by the central Government, or alternatively by the central Government and the Provinces in their respective areas of jurisdiction. The IFP believes that the principle of equality should be entrenched in the national constitution but should be implemented by the Provinces with respect to the matters of their competence (i.e. employment/labor, education, welfare, family law et cetera). The Republic might have the power to coordinate this implementing role of the Provinces.

In the development of a constitution, the principle of equality is usually explicated in respect to some legal relations which are particularly constitutionally "sensitive". Among them:

- a. the equal and free exercise of all religions and beliefs in the State
- b. equal rights, obligations and dignity of spouses
- c. equal access to educational opportunities
- d. equal access of women to political, social and economic opportunities
- e. equal access to housing opportunities
- f. equal right to vote
- g. equal right to access job opportunities



NATIONAL PARTY SUBMISSION

THEME COMMITTEE 1 : BLOCK 2

1. EQUALITY

The concept of "equality" should not be viewed in isolation but should be seen in its interrelatedness to the concepts of "liberty" (or "freedom") and "human dignity".

The interrelatedness between dignity, equality and freedom is perhaps best illustrated by saying that the dignity of mankind is the point of reference for the ideas of equality and freedom; in its basic substance it allows the ideas of equality and freedom to be attributed to the guarantee of human dignity, (Cf Würtenberger T "Equality" in Karpen (ed) The Constitution of the Federal Republic of Germany at 68).

The concepts of "freedom" and "equality" are also central to the value system which underpins the current Chapter 3.

That fact becomes evident when one looks at the wording of Section 35(1). The two concepts also appear in s. 33(1)(a)(ii) and in s. 26(2). It can thus be argued that the concept of "an open and democratic society based on freedom and equality" (s. 35(1)) establishes the basic

values on which Chapter 3 is premised. Hence, the two concepts go hand in hand, qualifying and balancing one another. The one cannot be given content without regard

being had to the other.

This basic balance between the two concepts should be retained as the ground norm of the new bill of rights and the Constitution as a whole. In the sense as set out, the concepts of "equality" and "freedom" entail more than each being a fundamental right; each represents an encompassing value system.

The idea of equality includes two seemingly opposite viewpoints: on the one hand the formal equal treatment, and on the other hand the active equalization of unequal fact and circumstances. Equal voting rights, equality before the law and access to the law, and access to public institutions can be regarded as examples of formal equality.

On the other hand, active equalization attempts to even out existing inequalities e.g. inequalities at economic, social or educational levels. Through unequal treatment, attempts are made to attain a situation of substantive equality. On the other hand, an overwhelmingly strong dynamism of the equality principle contradicts the idea of freedom, just as much as an exclusively freedom-orientated

policy gives the opportunity for the more skilled and more advantaged to achieve prosperity at the cost of the disadvantaged.

The balanced view entails that equality and freedom are mutually related and dependent upon each other.

Hence, in order to attain substantive equality, affirmative action programmes are necessary as they embody active equalization. However, as the process of active equalization is based on the premise of a temporary state of unequal treatment in order to attain the set objectives in fact and circumstance, active equalization can never be a limitless exercise: in principle, it must come to an end when the objectives had been attained. Therefore, any affirmative action clause should include a qualification to that effect.

The encompassing prohibitions concerning discrimination as are contained in s. 8(2) should be broadly retained.

Questions pertaining to the effect that the principle of equality may have on customary law, are intricate and complex. In principle, equality should prevail over discriminatory practices. However, it should be left to the individual in each instance to seek relief from the courts. Due to a conglomerate of factors, the issue

should be treated with circumspection in order not to unduly disturb traditional patterns of authority.

2. ELIMINATION OF VERTICAL AND HORIZONTAL DISCRIMINATION

The primary mechanism through which discrimination, horizontal and vertical, should be addressed, is the bill of rights.

There can be no doubt that bills of rights had initially been intended to only apply vertically. There seems to be unanimity of opinion amongst South African commentators that the current Chapter 3 although primarily designed to apply vertically, also finds definite and substantive horizontal application.

Apart from the fact that bills of rights by definition are devised to primarily apply vertically, the necessity for their horizontal application has been given recognition in most jurisdictions. Horizontal application, however, never applies in an unqualified way. For example, in the USA, horizontal application is mostly tied up with the doctrine of "state action"; "It is state action of a particular character that is prohibited. Individual invasion of individual rights is not the subject-matter of the Amendment" However, the US Supreme Court, in order to strike down discriminatory practices in private-law relations, at times bent backwards to construct "state action". Also, the Civil Rights Acts were utilized to

stamp out discriminatory practices which fall out of reach of the Bill of Rights itself.

The current s. 35(3) of the interim Constitution shows some remarkable similarities with the method followed in Germany. In that country, the Constitutional Court has applied the principles enshrined in the catalogue of fundamental rights to non-public law spheres of the law in a more disciplined and consistent manner than its American counterpart. The Court thus identified a certain "objective order of values" that derives from the specific provisions of the Basic Law and which serves as a guide in the construction of all branches of the law. In this way, the guiding principles of the Basic Law find application in private law, particularly to the extent that such application will result in a "betterment" of private law. Similarly, our s. 35(3) provides: "In the interpretation of any law (1) and the application (2) and development (3) of the common law (4) and customary law (5), a court shall (6) have due regard to the spirit, purport and objects (7) of this chapter" Thus a court is obliged (shall (6)) when interpreting any law (1) (viz. including all statutory law) and the development (3) (i.e. betterment / improvement) of the common law (4) (i.e. all private law and non-state law) and customary law (5) (including indigenous law), to apply the spirit, purport and objects (7) (i.e. the values underpinning) Chapter 3.

Any remaining possibility of "private discrimination" viz discrimination on the horizontal level is moreover, eliminated by s. 33(4).

3. ONE, SOVEREIGN STATE

The concept of "one, sovereign state" primarily distinguishes the nature of the state model from a model such as the confederalist model. Whereas the latter concept implies that "member states" are autonomous except for specifically defined areas where they act as one, the concept of "one, sovereign state" basically calls for loyalty to that state in a primary sense.

Given that basic point of departure it does not, however, follow that the internal structuring of the "one sovereign state" cannot make provision for different levels of government, each based on original powers. Concepts such as a "unitary state" or a "federal state" relate to the method in which a particular state is internally structured. Hence, the concepts of "one sovereign state" and a "unitary state" bear different meanings : the latter relates to the internal structure of the state whereas the former relates to the overall model of the state. The two concepts are, accordingly, not synonymous and should not be equated to one another.

In the sense as set out above, the concept of provincial autonomy should be evaluated vis-a-vis the constitutional position of provinces within one, sovereign state. The position of provinces will basically be determined by the internal structure of the single, sovereign state. For example : should the single, sovereign state have the internal structure of a unitary state, provinces will only have delegated (as apposed to original) powers. Should the single sovereign state have a federalist - like internal structure, provinces will have original powers (i.e. powers which are defined in the Constitution).

Hence, the extent of provincial autonomy is determined by the Constitution. On the basis that there shall be a single, sovereign state, provinces could thus never claim a degree of autonomy which will usurp the role and functions bestowed on them by the Constitution and which would moreover imply that a province could function as an entity not falling within the encompassing authority of the Constitution.

Constitutional Principle XVIII (1) clearly provides that provinces shall have original powers ("shall be defined in the Constitution") (See also Constitutional Principle XVIII (27)). The powers and functions of the provinces thus defined shall determine the actual degree of provincial

autonomy.

Within the parameters thus set, it is the position of the National Party that the federal characteristics enshrined in the current Constitution, shall accordingly be retained and strengthened. The provincial autonomy thus attained will in no way infringe the character of the one, sovereign state.

#### MINORITY PARTICIPATION AND SELF-DETERMINATION

The envisaged democracy shall be a participatory democracy based on the principle of inclusiveness. The latter principle is reflected by elements which are encapsulated by the letter and spirit of the Constitutional Principles and which inter alia include: proportional representation; a multi-party system and the protection of the role of minority parties; the promotion of conditions for the encouragement of the diversity of language and culture; and the protection of the organs of civil society.

Hence, government (i.e. legislature and executive) shall be structured in a way that gives full effect to the principle of inclusiveness and accordingly broadly reflects all interest groups at all levels of government.

In order to realise these objectives, it may be necessary



to draw a distinction between political representation on the one hand, and the need for non-party political representation on the other hand. Party political interests will be served by means of participation in the formal structures of government (i.e. legislative and executive) on a proportional basis. Non-party political interests, on the other hand, will obviously be served through the usual means of the structures of civil society.

However, given the diversity of, in particular, language and culture, mechanisms should be devised to give additional promotion to those interests through the means of formalised statutory bodies which will receive financial assistance from the state. Such a step would be in accordance with the letter and spirit of Constitutional Principle XI, and may also, arguably, comply with the "any other recognised way" envisaged in Constitutional Principle XXXIV (1).



22 February 1994

**PAC SUBMISSION TO THEME COMMITTEE 1 ON BLOCK 2 AND 3**

- 2.1 The South African constitution like that of the United States of America should in its preamble enshrine the reality and truism of the equality of all human beings in general but should entrench that equality in the body of the constitution in respect of the nationals of the South African State.
- 2.2 The constitution should not couch the equality of South African Nationals in impalpable terms that allow the possibility of various jurisprudential interpretations. Neither should the constitution give way to intellectual contests on the nation of the equality of all South African nationals. The constitution must succinctly define and spell out what is meant by the equality of all South African nationals.
- 2.3 PAC believes and prays that the constitution should be designed to facilitate the fast but not forced transition from political emancipation to economic emancipation where social justice shall be founded in the ruins of a social stratification based on institutionalised economic advantage and disadvantage. PAC firmly believes that it is only when individual members of the nation enjoy equal access to all national resources that South Africa will be truly free and foundation for peace and security is attained.
- 3.1 South Africa should be a single sovereign state with provincial and local governments that derive their power from a central government.
- 3.2 PAC feels a dire need for galvanising all the presently, culturally heterogeneous people of South Africa into a single whole, not by means of force of whatever nature but through allowing the now freed people to freely and equally interact in the united economy that South Africa happens to have. Taking ethnicity,

race or territorial ethnicity into account in the practice of politics and economics in South Africa, is anathema to PAC and cannot be contended because that is bending backwards in favour of divisive and retrogressive tendencies of those who still represent in our society the vestiges of racialism and racism. PAC strongly believes that the logic of South African history which is even attested to by the national aspirations and ideals of the south African liberation movement, is leading towards the realisation of a homogeneous nation via the evolutionary path. PAC is, thus, loath to any constitutional attempts aimed at obstructing the existing evolutionary movement towards a de-ethnicised and de-racialised nation.

- 3.3 The mainly ethnically demarcated provincial governments such as we have today in South Africa are worrying to PAC as they perpetuate ethnic identity and affinity. The emergence of scourges such as the policies of ethnic cleansing find fertile ground for germination in such political arrangements.
- 3.4 From its inception, PAC is politically committed to the propagation and promotion of a politically joined commonwealth through the establishment of a federation of Southern Africa. South Africa needs to join that federation as a unitary state inhabiting a united people.
- 4.1 PAC believes that a constitution written by democratically elected persons with the interested members of the nation freely contributing in the formulation of the same, has to be the supreme law and all political decisions and actions must therein find their legitimacy and justification.
- 4.2 All law, statutory or otherwise and all ordinances, political policies and commands must of necessity conform to the provisions of the constitution to be of legal force
- 4.3 In the constitution must vest the sovereignty of the nation.

M Dyani - MP

