

2/4/1995

A16

**CONSTITUTIONAL
ASSEMBLY**

THEME COMMITTEE 1

**CHARACTER OF
DEMOCRATIC STATE**

13 MARCH 1995

ROOM V227

DOCUMENTATION

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CONSTITUTIONAL ASSEMBLY

MEETING OF THEME COMMITTEE 1

CHARACTER OF THE DEMOCRATIC STATE

Please note that a meeting of the above committee will be held as indicated below:

Date: Monday, 13 March 1995

Time: 09h00 - 12h30

Venue: Room V227

AGENDA

1. Opening
2. Adoption of Previous Minutes
3. Matters arising
4. Setting up of Commissions
[See memo in Document A15]
5. Joint Core Group Meeting
6. Public Participation Programme
7. Discussion on Party Submissions for Block 2

ACDP
ANC
DP
FF
IFP
NP
PAC

8. Discussion on Report for Block 2

9. General

10. Closure

H EBRAHIM
EXECUTIVE DIRECTOR:
CONSTITUTIONAL ASSEMBLY

Enquiries: L. Rammble and S. Rabinowitz (Tel: 24 - 5031 Ext 266)

CONSTITUTIONAL ASSEMBLY

**THEME COMMITTEE 1
CHARACTER OF THE DEMOCRATIC STATE**

**MINUTES OF THE ELEVENTH MEETING OF THEME COMMITTEE 1
MONDAY 6 MARCH 1995 11H00 GOOD HOPE CHAMBER**

Present

Marais P G (Chairperson)

Booi M S	Mtshali L P H M
Chiba L	Mukhuba T T
Chikane M M	Mulder P
Cwele C S	Ncube B S
Dyani M M	Seaton S
Fani L M	Shope G
Gumede D M	Sisulu A N
Hangana N E	Streicher D M
Kekana N N	Van Deventer F J
Lekgoro M K	Van Zyl I D
Majola-Pikoli N T	Vilakazi B H
Marais A	
Meshoe R K	
Mngomezulu P G	
Momberg J H	
Moorcroft E K	

APOLOGIES:

Chiwayo L L L
Mahlangu N J
Nzimande B E
Ripinga S S
Schoeman E A

Technical Experts present:

Husain Z

Apologies were received from Prof H Corder and Dr J Heunis.

Leola Rammble and Susan Rabinowitz were in attendance.

1. OPENING

The meeting was opened by the Chairperson at 11h35.

2. ADOPTION OF PREVIOUS MINUTES

The minutes of the Theme Committee of 27 February 1995 contained in document A15 were adopted.

3. MATTERS ARISING

None

4. CORE GROUP REPORT

4.1 The minutes of the Core Group meeting of 28 February 1995 contained in document A15 were tabled.

The following amendment was pointed out in the Supplementary Report to Amended Report from Theme Committee 1. Under Contentious Issues Point (A) the second sentence in the second paragraph, the word "verifying" should read "varying" as stated in the minutes of the Core Group meeting.

4.2 Matters arising

Setting up of Commissions

It was agreed that this matter would stand over until the next Theme Committee meeting.

Joint Core Group meetings

It was agreed that this matter would stand over until next week's Theme Committee meeting.

5. REPORT BACK OF CONVENERS MEETING

Mr Husain gave a report back on the meeting of the Technical Conveners held on Monday 27 February 1995, where the issue of areas of overlap between Theme Committees was discussed. He reported that the following decision was taken: that the areas of overlap should remain with the respective Theme Committees but that the Conveners of Technical Committees should hold regular meetings and that Theme Committees should plan their work programmes well in advance and that all Theme Committees should be informed of each Theme Committee's work through the Secretariat so that joint meetings could be planned if necessary.

6. PUBLIC PARTICIPATION

The meeting was informed that there would be four public participation events over the weekend of 11 and 12 March and that the names of members of the Theme Committee participating in the events had been forwarded to the Community Liaison Department. The meeting was further advised that there would be a briefing for those participating in these CPM's on Wednesday 8 March 1995 at 14h00 in Room V227.

7. GENERAL

7.1 Weekly briefings on the constitution-making process

A letter from the Secretariat regarding weekly media briefings on the constitution-making process to members of Theme Committees was tabled. Briefings would be held every Thursday at 14h00 in the Boardroom, 10th Floor, Regis House, Adderley Street. The meeting nominated two members, M S Booie and L P H M Mtshali, to attend the meeting on Thursday 9 March.

7.2 Amendment to Supplementary Report to Amended Report from Theme Committee 1

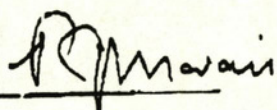
The ACDP wished the following amendment to the Report to be tabled. Under Contentious Issues (II) Point H) should read as follows: "There is no disagreement between the parties, with the exception of the ACDP, on the fact that the constitution should provide for a separation of religion (often expressed as "Church") and State.

The IFP noted that it supported the ACDP and wished its position recorded.

8. CLOSURE

The meeting rose at 11h55.

CHAIRPERSON



08/03/1995.

CONSTITUTIONAL ASSEMBLY

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PO Box 15
CAPE TOWN 8000
REPUBLIC OF SOUTH AFRICA

REF No:

MEMORANDUM

To : Theme Committees
From : Chairperson
Date : 7 March 1995

Re : Theme Committee Report Formats

As you will be aware, the Constitutional Committee has begun the process of discussing the first reports issued by Theme Committees. In the course of these discussions, it has become clear that we need to arrange Theme Committee reports in such a manner that it facilitates quick and easy decision-making in the Constitutional Committee in view of the limited time at the disposal of the Constitutional Committee.

Theme Committee 6.4 has adopted a particularly useful approach in that it has attached to its report a table which lists the various category of issues dealt with. This provides a quick visual guide which assisted the Constitutional Committee a great deal in discussing this report.

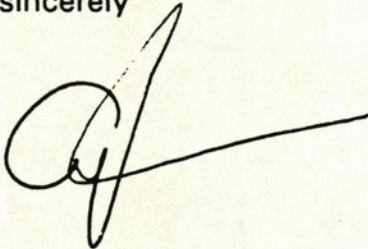
Theme Committees are therefore requested to follow this approach in attaching such a table to all future reports for the Constitutional Committee. This table should be laid out in " landscape " page format and should contain the following five columns :

Issues	Constitutional Principle	Consensus/ Non-contention	Contention	Outstanding Issues/Further Clarity

It is hoped that this table will allow for better decision-making in the Constitutional Committee. We emphasise that reports should continue to be drafted in the same manner as previously agreed. What is being requested here, is that this additional table be provided with all reports for discussion in the Constitutional Committee.

We are all on a learning curve and your assistance in this regard will be greatly appreciated.

Yours sincerely

A handwritten signature in black ink, appearing to be 'M. Ramaphosa', with a long horizontal stroke extending to the right.

MC RAMAPHOSA
CHAIRPERSON

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.

For Submission on One Sovereign State see overleaf

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.

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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 compromise 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.

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.

