

2/4/1/2/34

Susan

A28

**CONSTITUTIONAL
ASSEMBLY**

**THEME COMMITTEE 1
CHARACTER OF
DEMOCRATIC STATE**

26 JUNE 1995

**ROOM M515
09H00**

DOCUMENTATION

(Repeat on Block 5: Economy)

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Report on the 1st Session

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CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 1 CHARACTER OF DEMOCRATIC STATE

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

Date: Monday, 26 June 1995
Time: 09h00 - 12h00
Venue: Room M515 (Marks Building)

AGENDA

1. Opening
2. Apologies
3. Adoption of previous minutes
- ✓ 4. Matters Arising
- ✓ 5. Discussion of draft report for Block 6 (Representative Government)
[See Extra Documentation]
6. Tabling and discussion of submissions for Block 8 (Foreign Relations and International Law)
[See Extra Documentation]
 - ✓ ACDP
 - ✓ ANC
 - ✓ DP
 - FF
 - ✓ NP
 - PAC
7. ✓ Public Participation

- 8. General
- 9. Closure

H EBRAHIM
EXECUTIVE DIRECTOR
CONSTITUTIONAL ASSEMBLY

Enquiries: L Rammble and S Rabinowitz (Tel: 24 5031 Ext 2266)

**CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE ONE
CHARACTER OF THE DEMOCRATIC STATE**

**MINUTES OF THE MEETING OF THEME COMMITTEE 1
MONDAY 12 JUNE 1995 14H00 ROOM M515**

**Present
Mahlangu NJ (Chairperson)**

**Chiba L
Chikane MM
Chiwayo LLL
Cwele CS
Fani LM
Goosen AD
Green LM
Gumede DM
Hangana NE
Kuzwayo NEK
Lekgoro MK
Mabuza MC
Majola-Pikoli NT
Marais A
Marais PG**

**Meshoe KR
Momberg JH
Moorcroft EK
Mulder PWA
Ncube BS
Nobunga BJ
Nzimande BE
Ripinga SS
Schoeman EA
Shope G
Shope NR
Van Deventer FJ
Van Zyl ID
Williams AJ**

Apologies:

**Booi MS
Janse Van Rensburg AP
Macozoma SJ
Mukhuba TT
Niehaus CG
Sisulu AN
Streicher DM
Vilakazi BH**

Technical Experts present:

**Corder H
Heunis JC
Husain Z**

Susan Rabinowitz, Aziza Parker and Penny Carelse were in attendance.



1. OPENING

- 1.1 The meeting was opened by the Chairperson at 14h05.

2. ADOPTION OF PREVIOUS MINUTES

- 2.1 The Minutes of the Theme Committee meeting held on Monday 5 June 1995 contained in Document A27 (Pages 3 - 7) were adopted.

3. MATTERS ARISING

- 3.1 There were no matters arising from the previous minutes.
- 3.2 A query was raised as to the purpose of the inclusion of the Cape Times article on Page 8 (Document A27). The Chairperson reported that this was not an item on the agenda for discussion and was inserted by the Secretariat merely for information purposes.

4. DISCUSSION OF DRAFT REPORT FOR BLOCK 5: THE ECONOMY

- 4.1 The Draft Report for Block 5 dealing with the Economy contained in Document A27 Extra Documentation (Pages 1 - 5) was tabled. Prof Corder talked to the document and explained that Part One A) and B) would be attached to the final report. He further reported that in preparing the draft there was difficulty in putting the issues into Contentious and Non-Contentious categories and thus a separate category "C" (Page 3) had been added entitled "Issues raised by at least one party not directly placed in contention by another party".
- 4.2 It was agreed that the meeting should examine these issues to ascertain party positions and these could then be categorised either as Contentious or Non-Contentious.
- 4.3 C I)
After clarification on what was meant by "total transparency", it was agreed that this item should be rephrased to read "transparency in respect of public financial matters, and then the issue would be categorised as Non-Contentious.
- C II)
After discussion of the issues of access to land, the removal of inequities and the question on unpaid labour, it was agreed that this issue should be placed under Contentious issues.
- C III)
It was agreed that this issue should be placed under Non-Contentious.

C IV)

After discussion, it was agreed that the issue should be moved to the Non-Contentious category but with a footnote which explains that the Contentious Issue is the "right to strike" and the "right to lockout".

C V)

It was agreed that this issue should be placed in the Non-Contentious category.

* **C VI)**

It was agreed that this issue was Non-Contentious.

C VII)

It was agreed that this sentence should be rephrased as follows "an equitable allocation of national revenue (considering economic need) from the central to provincial governments, and the establishment of institutions (such as the Financial and Fiscal Commission) to advise on such matters" and should then be placed under Non-Contentious issues.

D I)

It was agreed that the Technical Experts should redraft this item along the suggestions of "Affirmative action measures should be in place until the objectives have been attained" and then this issue could be placed under Non-Contentious Issues.

It was further agreed that D II) and D III) should remain as Contentious Issues.

4.4 Prof Corder reported that the Analytical Survey on Page 5 would now have to be redrafted in the light of the discussions.

4.5 It was agreed that the Technical Experts should make amendments to the Draft Report, and that the Final Report should then be submitted to the Constitutional Committee, with copies being made available to all Theme Committee members.

5. TABLING AND DISCUSSION OF SUBMISSIONS FOR BLOCK 6: REPRESENTATIVE GOVERNMENT

5.1 ACDP

The ACDP tabled its submission contained in Document A27 Extra Documentation (Pages 6 - 7) and talked to the document.

Questions of clarification were asked on the minimum voting age of

18 years, and whether there were objections to the age of 16 years. The ACDP stated that they were negotiable on this issue. On the question of whether the ACDP favoured constituencies and whether those who had criminal records but who had completed their sentences were eligible to vote, the ACDP supported these positions.

5.2 ANC

The ANC tabled its submission contained in Document A27 Extra Documentation (Pages 8 - 9) with the following amendments:

Page 8, second line, the word "Preliminary" should be added before ANC Submission, as there may be further submissions;

Page 9, point 3, first sentence should be deleted and should be replaced with the following: "There shall be a common citizenship for all South Africans".

Page 9, point 3, second sentence, third line, the words "/her" should be inserted after "his" .

Questions of clarification were asked on circumstances which might lead to the loss of citizenship, on what is meant by "adult suffrage" and by "Parliament shall not be prohibited from legislating for the extension of citizenship for specified categories of people".

5.3 DP


The DP tabled and talked its submission contained in Document A27 Extra Documentation (Pages 11 - 13).

Clarification was asked for on a voting age of 18 years and whether there would be any strong objection to 16 years.

5.4 FF

The FF tabled its submission contained in a separate document (which had not been available for distribution to the Theme Committee) and talked to the document.

Questions of clarification was asked on how the issue of the right to vote would be determined both within a Volkstaat and in the broader South Africa, and on the issue of the extension of the franchise to non-citizens.



5.5 NP

The NP tabled its submission in a separate document and talked to the submission with the following amendment:

Item 9: Suffrage, Page 3, Point 3.1 the last sentence should read "It is therefore submitted that citizenship should be a prerequisite for the franchise in respect of all levels of government. Point 3.2 should be deleted.

Questions of clarification were asked and the NP stated that they were not in favour of referenda as a standing Constitutional Principle and that citizenship should be given at birth irrespective of the legal status of the parents. Clarification was further asked on whether a person convicted of any crime, while in prison, should not be entitled to vote.

5.6 PAC

The PAC submission contained in a separate document was tabled but, as no representative of the PAC was present, there was no discussion or clarification.

5.7 It was agreed that the Drafting Sub-Committee together with the Technical Experts should prepare a Draft Report for Block 6 which would be distributed for discussion at the next Theme Committee meeting.

6. PUBLIC PARTICIPATION

6.1 Report back on Public Hearing on Seats of Government, Language, Name and Symbols - 10 June 1995

Several members of the Theme Committee who had attended the Public Hearing expressed anger at the treatment of the Pretoria delegation in respect of their exhibition and expressed concern about the importance of upholding freedom of speech. It was agreed that the Secretariat should compile a report outlining all the facts in the matter and this would be distributed to the members of the Theme Committee who would formulate a response at the next Theme Committee meeting.

It was further reported that the Public Hearing had gone well and was very informative but concern was expressed about the programme being too full for the time available. The Secretariat was requested to investigate the possibility of inviting representatives from the three bids on Seats of Government to an in-house hearing when the Theme

Committee deals with this Block.

6.2 Report back on CPM's on 10 June 1995

6.2.1 Kwazulu/Natal - Newcastle

A member of the Theme Committee who had attended the CPM in Kwazulu/Natal reported that issues raised relating to the work of Theme Committee One included:

Minimum voting age - majority were in favour of 16 years.
Secular state - majority were in favour of a secular state.
Strong central government with overriding powers.

Other issues raised related to salaries of chiefs, human rights issues, the right to strike and protection for those who do not, abortion and the death sentence.

6.2.2 North West - Mafikeng

A member who attended the CPM reported that the meeting was well attended, very representative and with good participation. Issues raised included: Unitary state against a Volkstaat, in favour of a secular state, provincial powers but accountable to central government, legislature, executive and judiciary accountable to the Constitution, the size of the National Assembly should be reduced and the question of the Preamble.

6.2.3 Eastern Cape - Lusikisiki

A member who had attended the CPM reported that two parties had been represented at the meeting which was a success with an attendance of approximately 3000 people and that documentation would be made available.

7. **GENERAL**

- 7.1 The ACDP tabled a document entitled "Follow-up Submission on Separation between State and Religious Institutions" and noted their objection to misleading information which was circulating. A member of the Management Committee reported that this matter had been discussed at the Management Committee meeting on Thursday 8 June and it was agreed that the Theme Committee would await a report from the Secretariat on the decision of the Management Committee. It was further agreed that the ACDP's objection was

noted for the record.

7.2 It was agreed that there would be no Theme Committee meeting on Thursday 15 June 1995.

7.3 It was further agreed that the deadline for party submissions for Block 8: Foreign Relations and International Law would be postponed until Monday 19 June 1995.

8. CLOSURE

8.1 The meeting rose at 17h20.



CHAIRPERSON



CONSTITUTIONAL ASSEMBLY

15 June 1995

Chairpersons - Theme Committee One

Re: Request from Minister Chris Nissen

Please find attached a letter from Minister Chris Nissen as regards his suggestion that the Western Province Council of Churches addresses the Theme Committee on the topic Church and State as well as a response from Ms Marion Sparg on behalf of the CA chairperson, Mr C Ramaphosa.

I trust that the Theme Committee would consider the matter at its next meeting.

Thanking you.

HASSEN EBRAHIM
EXECUTIVE DIRECTOR
CONSTITUTIONAL ASSEMBLY

P. O. Box 15, Cape Town, 8000
Republic Of South Africa

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Tel: (021) 245 031, 403 2252 Fax: (021) 241 160/1/2/3, 461 4487, E-mail: conassem@iaccess.za



You've made your mark



Now have your say

THE NEW CONSTITUTION



CONSTITUTIONAL ASSEMBLY

15 June 1995

Minister Chris Nissen
Minister of Economic Affairs and RDP
Provincial Administration Western Cape
Cape Town
8001

Per Telefax: 021 - 4833483

Dear Minister Nissen

Thank you for your letter of 2 June 1995 which has been referred to us by the Chairperson of the Constitutional Assembly, Mr Ramaphosa.

Your suggestion that the Western Cape Provincial Council of Churches address the CA on the topic of Church and State will be referred to Theme Committee One, which is the Theme Committee dealing with this matter.

You will no doubt be aware that a mid-year recess begins on 1 July 1995. Theme Committees will meet for the last time before recess on 26 June 1995. This will probably mean that the Committee will not be able to entertain this request before August 1995.

Thank you for the interest in the constitution-making process.

Yours sincerely

Marion Sparg
Deputy Exective Director

cc Lucille Meyer, Head of Department, Secretariat (CA)

P. O. Box 15, Cape Town, 8000
Republic Of South Africa

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Tel: (021) 245 031, 403 2252 Fax: (021) 241 160/1/2/3, 461 4487, E-mail: conassem@iaccess.za



You've made your mark



Now have your say

THE NEW CONSTITUTION

ENQUUES
NAVRAE
IBHLELO

TELEPHONE
TELEFON
UMXHEBA

REFERENCE
VERWYSING
IBINGQOSHO

DATE
DATUM
UMHLA

LUCILLE FESTER

48 4301/2/4445

2 JUNE 1995

PROVINCIAL ADMINISTRATION: WESTERN CAPE
Ministry of Economic Affairs and RDP

PROVINSIALE ADMINISTRASIE: WES-KAAP
Ministerie van Ekonomiese Sake en HOP

IPHONDO LENTSHONA KOLONI
Isebe Lezoqoqosho Kunye neRDP

RECEIVED 02 JUN 1995

MR C RAMAPHOSA
CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY
PO BOX 15
CAPE TOWN
8000


Dear Mr Ramaphosa

I have had discussions with members of the Western Cape Provincial Council of Churches (WCPCC) and the Ecumenical Foundation of South Africa (EFSA) around issues relating to the current debate on religiosity in our new South African Society.

These two organisations have a history of struggle for political and religious freedom and I value their opinion highly. They are planning to host a **NATIONAL CHURCH AND DEVELOPMENT CONFERENCE, EXHIBITION AND FAIR** on **24-26 SEPTEMBER 1995** which they are preparing for and have discussed with me. As their input is likely to be invaluable in terms of the present discussions in the media and elsewhere, I would like to propose that the WCPCC, through its director, Dr Shun Govender, be given an opportunity to address the Constitutional Assembly Committee on the topic of Church and State.

As this is a very critical debate currently and one which challenges our resolve in terms of religious freedom I have suggested that Dr Govender meets with you during next week at your convenience.

Yours sincerely,



MINISTER CHRIS NISSEN
MINISTER OF ECONOMIC AFFAIRS AND RDP

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE ONE

***CHARACTER OF
DEMOCRATIC STATE***

REPORT ON BLOCK 5:

THE ECONOMY

12 JUNE 1995

REPORT FROM THEME COMMITTEE ONE

BLOCK 5: THE ECONOMY
12 JUNE 1995

PART ONE

- A) Summary Overview of submissions received and processed by Theme Committee One from sources outside the Constitutional Assembly (Vol 20) - see attachment.
- B) The Technical Committee conducted an Orientation Workshop on 15 May before parties made their submissions on the subject matter of this Block, for which the attached Briefing Document was compiled.
- C) Public Participation Programme:
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 5.
- D) No public hearings were held on this agenda item.
- E) The following Constitutional Principles refer:

II

Everyone shall enjoy all universally accepted fundamental rights, freedoms and 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.

XXV

The national government and provincial governments shall have fiscal powers and functions which will be defined in the Constitution. The framework for local government referred to in Principle XXIV shall make provision for appropriate fiscal powers and functions for different categories of local government.

XXVI

Each level of government shall have a constitutional right to an equitable share of revenue collected nationally so as to ensure that provinces and local government are able to provide basic services and execute the functions allocated to them.

XXVII

A Financial and Fiscal Commission, in which each province shall be represented, shall recommend equitable fiscal and financial allocations to the provincial and local governments from revenue collected nationally, after taking into account the national interest, economic disparities between the provinces as well as the population and developmental needs, administrative responsibilities and other legitimate interests of each of the provinces.

XXVIII

Notwithstanding the provisions of Principle XII, the rights of employers and employees to join and form employer organisations and trade unions and to engage in collective bargaining shall be recognised and protected. Provision shall be made that every person shall have the right to fair labour practices.

XXIX

The independence and impartiality of a Public Service Commission, a Reserve Bank, an Auditor-General and a Public Protector shall be provided for and safeguarded by the Constitution in the interests of the maintenance of effective public finance and administration and a high standard of professional ethics in the public service.

PART TWO **AGENDA ITEM 6: THE ECONOMY**

A. GENERAL DISCUSSION OF THE MATERIAL

The submissions of the parties cover a large number of issues relative to the economy, as will be seen. A common approach seems to be

that the parties wish the Constitution to deal with economic matters in broad outline, leaving the detail to legislation. As will be seen below, each party has raised what for it are the appropriate guiding principles, without necessarily responding to matters raised by other parties. The division into "non-contentious" and "contentious" issues is thus complicated. In order to deal with the divergence in approaches, an intermediate category has been introduced.

B. NON-CONTENTIOUS ISSUES

- I) All parties (except the FF, which did not specifically deal with this matter in its submission on this Block) endorse the notion of constitutional measures to assist those disadvantaged by past discrimination in the economic sphere. Different labels are used to describe this: "upliftment and greater equity" (ACDP); "affirmative action to correct racial and gender imbalances" (ANC); "substantive equality" (DP); "active equalisation" (NP); and "economic equity" (PAC). Such measures should be temporary in nature, until their objectives have been attained.
- II) Transparency in respect of public finances should be provided for in the Constitution.
- III) The Constitution should provide for a protected and sustainable environment, in the light of economic development needs.
- IV) Labour relations should be dealt with in the Bill of Rights and in labour legislation. (The precise extent and content of such entitlements are contentious - see below).
- V) The Constitution should outlaw servitude, forced labour and labour practices which exploit children.
- VI) The Constitution should regulate the economy in the context of a democracy.
- VII) The Constitution should provide for an equitable allocation of national revenue (considering economic need) from central government to provincial governments, and the establishment of institutions (such as the Financial and Fiscal Commission) to advise on such matters.

C. CONTENTIOUS ISSUES

- I) In regard to labour relations in the Constitution, there is a difference of opinion on the precise rights which should be included in the Bill of Rights, in particular the rights to withdraw labour and to lock out workers.

II) Free economic activity/free market system

The ACDP, DP, FF and NP argue for constitutional recognition of the above. The PAC places this in contention indirectly by arguing that "national economic interests" and policies adopted by Parliament to attain "national economic upliftment and a society of economic equity and social equality" should prevail, although acknowledging that the "state shall follow no orthodoxy in working to satisfy the economic needs of the South African people". The ANC calls for the promotion of "greater democratic participation in economic life".

III) Property rights

The ACDP, DP, FF and NP also argue for entrenched rights in private property.

The PAC believes that "no individual or group can have a right...over the wealth or a fraction thereof, within the boundaries of the Republic, that may constitutionally and legally supersede the right of the national Parliament". It thus argues that, while individual property rights shall be constitutionally protected against other individuals or groups, they shall not be protected against Parliamentary action in pursuit of national economic interests.

The ANC also places the protection of private property rights in contention. It argues in particular that the Constitution should provide for access to land and the removal of inequities in that regard.

IV) The inclusion in the Constitution of measures to address the barriers to full and equal participation in the economy by women (including their unpaid labour), as put forward by the ANC.

PART THREE

The Theme Committee will be dealing with representative government, citizenship and suffrage in the next block. An orientation workshop in this regard was held on 22 May. Advertisements to seek public reaction on these issues have been placed.

**Analytical Survey of Report by Theme Committee One
on Block 5 - The Economy**

No.	Constitutional Principles	Issue	Contentious Aspects	Non-contentious Aspects	Remarks
1.	II, III, V, XXV, XXVI, XXVII, XXVIII, XXIX	The Economy	<p>1) Whether rights to withdraw labour and lock out included</p> <hr/> <p>) Free market system / free economic activity</p> <hr/> <p>3) Property rights/ access to land.</p> <hr/> <p>4. Barriers to participation in the economy by women.</p>	<p>1) Measures to assist those disadvantaged by past discrimination</p> <hr/> <p>2) Transparency in public finances.</p> <hr/> <p>3) Sustainable environment in context of economic development.</p> <hr/> <p>4) Labour relations and outlawing of exploitative labour practices in general.</p> <hr/> <p>5) Regulation of the economy in the context of democracy.</p> <hr/> <p>6) Equitable allocation of national revenue to provinces.</p>	<p>Within the jurisdiction of TC 4</p> <hr/> <p>Within the jurisdiction of TC6</p> <hr/> <p>Within the jurisdiction of TC 4</p> <hr/> <p>?Preamble/ Postamble?</p> <hr/> <p>? TC2 / TC3 ?</p> <hr/> <p>Within the jurisdiction of TC4</p> <hr/> <p>TC6? (Commission on Gender Equality) ?Preamble/Postamble?</p>

SUMMARY OVERVIEW

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

NAME AND LOCALITY	SUBJECT MATTER OF SUBMISSIONS GERMANE TO THEME COMMITTEE ONE	DATE SUBMITTED
M M Anderson Donnybrook	Separation Head of State from Head of Government; propose federalism	23/3/95
L G Chalmers White River	Constitution must deliver people from fear	8/4/95
F R Calitz Heidelberg (G)	Constitution should be enforceable against all organs of state	13/4/95
P A Donovan Umhlangu Rocks	Simplicity, pure democracy and lack of bureaucracy the main features. Basic principles; the protection of individual and community rights, and people over Government	25/1/95
A Duncan Johannesburg	Federalism	2/3/95
P Duvenage Pretoria	Multi - cultural democracy	27/2/95
M Evans Honeydew	Opposed to "Secular State"	27/4/95
J Jacobs Florida	Incompetence in regard to Suffrage spelt out in constitution; mechanisms to achieve access to Government information.	15/3/95
E M Langenhoven Bon Accord	A federation of nations with an umbrella "Council"	6/3/95
D N McDermid New Germany	Supports a theocratic state and a religious basis for morality	8/4/95
D M Beal Preston Cathcart	Pride in the country, protection of natural resources	6/2/95
L V Read Touws Rivier	Review of some African experiences; argues for disarmament.	15/4/95
A Sinovich Green Point	Limit taxation to 10% of income	9/2/95
R G F Toms	Federal system; constituency representation	13/4/95
A J Venter Johannesburg	Executive authority: a multi-party coalition achieved by flexible constitutional engineering	20/4/95
S Verhoef Phalaborwa	Retain proportional representation; elect President and Premiers directly	25/3/95
R N de Vos Pietermaritzburg	Federalism, direct democracy through referendum, petitions and recall.	29/3/95

C Liebenberg Oberholzer	Recognise "Almighty God" in the Preamble and the Bill of Rights; base morality in religion; retain proportional representation, also in composition of judicial bodies.	27/4/95
A Hoogervorst		18/2/95
<u>ORGANISATIONS</u>		
Institute for Plant Conservation Cape Town	Environmental rights concerns	18/2/95
Student Leadership, University of Cape Town (21 persons)	Retain "In humble submission to "Almighty God" in Preamble.	

**BRIEFING DOCUMENT
BLOCK 5**

THEME COMMITTEE ONE

BLOCK 5: BRIEFING DOCUMENT

AGENDA ITEM 6: THE ECONOMY

1) INTRODUCTION

Most constitutions do not prescribe directly what form of economy should exist in the state concerned. Economic arrangements are to be implied from sundry statements in the Constitution about the form of state, the institutions which are provided for, and the rights which are entrenched, for example.

So, the Basic Law of the Federal Republic of Germany reads as follows (in Article 20(1)):

"The Federal Republic of Germany shall be a democratic and social federal state." From this the courts have deduced the constitutional sanctioning of a fair degree of social welfare measures as part of the politico-economic system.

Again, the American Constitution has been interpreted as envisioning a free enterprise capitalist economy, especially when seen in its historical context. Changing political circumstances, however, particularly during the 1930's, forced the U.S. Supreme Court to acknowledge a fair level of government intervention in economic affairs, in the form of President Franklin Roosevelt's "New Deal" legislation. [Appearances are not always what they seem. Canada, an acknowledged "free market" economy, does not protect property rights in its Charter of Fundamental Rights.]

The "Suggested Framework for Agenda Item 6" proposes that Theme Committee One considers "constitutional regulation of economic matters" and "constitutional mechanisms to achieve substantive equality, economic empowerment and socio-economic development" in this Block. What follows is an attempt to amplify these issues, as an aid to parties in drawing up their submissions in this regard.

2. TRANSITIONAL PROVISIONS

Various provisions which affect economic matters are to be found in the Transitional Constitution of 1993.

2.1 The relevant Constitutional Principles are the following:

II) *Everyone shall enjoy all universally accepted fundamental rights, freedoms and liberties, which shall*

be provided for and protected by entrenched and justiciable provisions in the Constitution, which shall be drafted after having been give 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.*
- XXV) *The national government and provincial governments shall have fiscal powers and functions which will be defined in the Constitution. The framework for local government referred to in Principle XXIV shall make provision for appropriate fiscal powers and functions for different categories of local government.*
- XXVI) *Each level of government shall have a constitutional right to an equitable share of revenue collected nationally so as to ensure that provinces and local government are able to provide basic services and execute the functions allocated to them.*
- XXVII) *A Financial and Fiscal Commission, in which each province shall be represented, shall recommend equitable fiscal and financial allocations to the provincial and local governments from revenue collected nationally, after taking into account the national interest, economic disparities between the provinces as well as the population and developmental needs, administrative responsibilities and other legitimate interests of each of the provinces.*
- XXVIII) *Notwithstanding the provisions of Principle XII, the rights of employers and employees to join and form employer organisations and trade unions and to engage in collective bargaining shall be recognised and protected. Provision shall be made that every person shall have the right to fair labour practices.*
- XXIX) *The independence and impartiality of a Public Service Commission, a Reserve Bank, an Auditor-General and a*

Public Protector shall be provided for and safeguarded by the Constitution in the interests of the maintenance of effective public finance and administration and a high standard of professional ethics in the public service.

- 2.2 These Principles emphasise the following aspects of constitutional regulation of the economy:
- 2.2.1 the entrenchment of the notion of substantive equality and the removal of discriminatory practices;
 - 2.2.2 a requirement of defined fiscal powers in national and provincial government jurisdiction, including the constitutional right of each level of government to an "equitable share of revenue collected nationally";
 - 2.2.3 the regulatory role (in regard to 2.2.2) of the Financial and Fiscal Commission, and of the Reserve Bank generally; and
 - 2.2.4 the recognition and protection of employers' and employees' rights in their mutual relationships.
- 2.3 Each of the above stipulations contemplates a degree (and sometimes a particular form) of legislative, executive and even judicial involvement in and regulation of economic life. The power to impose taxation is one of the most obvious such forms.
- 2.4 The transitional Constitution further provides the following measures which influence economic life:

Servitude and forced labour

12. No person shall be subject to servitude or forced labour.

Economic activity

26. (1) Every person shall have the right freely to engage in economic activity and to pursue a livelihood anywhere in the national territory.
- (2) Subsection (1) shall not preclude measures designed to promote the protection or the improvement of the quality of life, economic growth, human development, social justice, basic

conditions of employment, fair labour practices or equal opportunity for all, provided such measures are justifiable in an open and democratic society based on freedom and equality.

Labour relations

27. (1) Every person shall have the right to fair labour practices.
- (2) Workers shall have the right to form and join trade unions, and employers shall have the right to form and join employers' organisations.
- (3) Workers and employers shall have the right to organise and bargain collectively.
- (4) Workers shall have the right to strike for the purpose of collective bargaining.
- (5) Employers' recourse to the lock-out for the purpose of collective bargaining shall not be impaired, subject to section 33(1).

Property

28. (1) Every person shall have the right to acquire and hold rights in property and, to the extent that the nature of the rights permits, to dispose of such rights.
- (2) No deprivation of any rights in property shall be permitted otherwise than in accordance with a law.
- (3) Where any rights in property are expropriated pursuant to a law referred to in subsection (2), such expropriation shall be permissible for public purposes only and shall be subject to the payment of agreed compensation or, failing agreement, to the payment of such compensation and within such period as may be determined by a court of law as just and equitable, taking into account all relevant factors, including, in the case of the determination of compensation, the use to which the property is being put, the history of its acquisition, its market value, the value of the investments in it by those affected and the interests of those affected.

Environment

29. Every person shall have the right to an environment which is not detrimental to his or her health or well-being.

Children

30. (1) Every child shall have the right
- (e) not to be subject to exploitative labour practices nor to be required or permitted to perform work which is hazardous or harmful to his or her education, health or well-being.
- 2.5 In addition, sections 155 to 159 and 178, and the whole of Chapter 12 of the 1993 Constitution govern provincial and local financial and fiscal affairs, as well as the establishment, powers and functions of the financial institutions of central government, particularly the Reserve Bank, the Financial and Fiscal Commission and the Auditor-General.

3. THE TASK OF THEME COMMITTEE ONE

- 3.1 Once more, much of the detail in relation to the above matters appears to have been allocated to the jurisdictions of other Theme Committees:
- 3.1.1 matters pertaining to rights protection are being dealt with by TC4;
- 3.1.2 public finances and associated institutions by TC6; and
- 3.1.3 the division of fiscal powers between central and provincial governments seems to be a necessary factor for TCs 2 and 3 to consider.
- 3.2 It seems, therefore, that Theme Committee One might consider the general principles of the form and extent of constitutional regulation of the economy, and constitutional mechanisms to achieve socio-economic development. Questions which may arise are:
- 3.2.1 should South Africa be described as a particular type of economic state (e.g. capitalist, socialist, social-democratic, free market, etc) in the Constitution?

- 3.2.2 should the power to acquire, hold and dispose of legal rights in property become constitutional rights?
- 3.2.3 should the sphere of labour relations be constitutionally regulated?
- 3.2.4 should environmental regulation be dealt with in the Constitution? and
- 3.2.5 are there mechanisms (other than those mentioned above) of economic regulation which ought to be contained in the Constitution?

4. CONCLUSION

It is clear that economic life will inevitably be affected by measures taken in the Constitution. Some of those measures have already been prescribed in the Constitutional Principles. If parties consider it advisable that direct reference be made to one or another economic form of state, they might like to suggest how this could be expressed in the Constitution e.g. in the Preamble or the Postamble, or as a substantive provision.

It is hoped that this briefing document has provided some assistance to members. It will be expanded on orally at the Orientation Workshop on 15 May 1995.

PARTY SUBMISSIONS

**AFRICAN CHRISTIAN DEMOCRATIC PARTY
(ACDP)**



ECONOMICS

The ACDP supports in full the need for transparency in civil government, equally so in all financial aspects.

We believe that the time is past when tax-paying South Africans (of which at least 78% are Christian), are totally left in the dark to what happens to their hard-earned money.

The Bible is clear about the principle that debt and credit leads to slavery. The ACDP, therefore, calls for all conventions and treaties with financial implications to be canvassed with South African citizens before they are adopted and ratified. It is specifically important that any conditions set by the other contracting party be made public knowledge. We also call for all loans, which are binding on this country to be made known to the public.

It needs further be said that South Africans will not further tolerate international agreements which will affect their non-economic domestic lives. If the constitution currently being written, is indeed to be a bridge between the old and the new, then the time has now come to make known to South Africans, the extent to which their autonomy has been signed away through far-reaching international economic agreements.

While the ACDP agrees that defence is indeed one of the very few areas in which civil government needs to be involved, we have to question the wisdom of in effect lending more than a billion rands in order to purchase naval vessels. Surely using what we have in finances to address pressing problems of housing and poverty and bringing down the balance of payment would make more sense.

Closer to home, the ACDP calls for an economic system stripped of artificial regulators such as deciduous fruits boards and the like. We need to return to a system of supply and demand.

Having subsidies and similar regulatory measures might seem to work for a period, but it will simply mean that more and more money needs to be pumped into the system to protect producers. Leaving the producer to turn his skill to another product where a need exists will mean that we do not have surpluses of certain foodstuffs hidden away in cold storage facilities to be brought back to the market when supply is low. This will only again drive the prices down through the increased supply and the need will, again, arise for the regulator to step in.

The interim constitution recognizes the right to free economic activity large monopolies including those in financial, petroleum and precious metals sectors actively prevent these from being realised.

The president in his budget speech, noted that inflation turned around in 1994. While we continue to have paper money being printed and distributed, coupled with the system of fractional reserve banking, these figures are relative. The new Bills still do not guarantee that they will be honoured on presentation to the Reserve Bank, nor that they are backed up tangibly by gold or other reserves.

Concerning the Reserve Bank, it must be said that this institution is necessary in the present economic climate.

Being a very powerful system, prone to manipulation, there is pressing need for total transparency. It should be public knowledge who the shareholders are, the extent of their shareholding and as to the basis of its operations.

In a discussion about how to incorporate economic particulars in the Constitution, the following aspects are to be addressed:

In the constitution the ACDP wants clearly stated that South Africa will have a free-market economy based on a constitutionally entrenched right to private ownership of property, and minimum state intervention. The constitutional right to own private property must be understood as an integral part of the socio-economic right to private property as envisaged in our submission to Theme Committee 4.

We further see the need to provide in the constitution for legislation that will enable small business to flourish. By stimulating entrepreneurship and small business-skills, South Africa will be best able to finance the RDP as only economic strength ensures better socio-economic circumstances.

We agree that a programme of upliftment and greater equity has to be introduced.

The programme should be clearly limited to a specific period of five years and, again, only the existence of the programme for the specific time period must be recognised coupled with a clause that this particular subscription will cease to be of any force or effect in 2001. The details should be fleshed out in an entirely different document, alleviating the constant tampering with the Constitution.

We further endorse the need for Affirmative Action, but note that it is not strictly speaking a principle of equality.

speaking a principle of equality. It has the potential, if approached incorrectly, of creating the situation of *unequality*.

Affirmative Action should be defined as a temporary measure to make right the wrongs of the past, and to constitute for legal protection that will ensure individual, family and nation building, and *human resource development*.

Affirmative Action should aim to make people self-sufficient, to contribute to the running of the country in all its sectors; (Genesis 2:15: *"The Lord God took the man and put him in the Garden of Eden to work it and take care of it."*)

We should be careful to have it written into the constitution as a *permanent right*. This will only be counter-productive.

ANC SUBMISSION

The Economy

Constitutional Assembly Submission to Theme Committee 1 Block 5

Guiding Principles

1. The ANC submits that the following guiding principles are relevant for the question of the Economy and should be taken into account in any reference to economic issues in the formulation of the constitution:
 - 1.1 The Constitution should promote greater democratic participation in economic life.
 - 1.2 The Constitution must include the application of principles of affirmative action to correct racial and gender imbalances in the economy.
 - 1.3 The Constitution shall recognise the development, growth, and promotion of the economy.

Constitutional regulation of economic matters

2. Labour relations will be dealt with in the Bill of Rights and the Labour Relations Act:
 - 2.1 Workers' rights to set up trade unions will be protected.
 - 2.2 Workers' rights to engage in collective bargaining, including the withdrawal of labour will be protected.
 - 2.3 Slave labour and forced labour will be expressly prohibited.
 - 2.4 The exploitation of children in the workplace will be prohibited.
3. The Constitution should include provisions for access to land and for the redress of inequities.
4. The Constitution will direct that the environment be protected from degradation and nurtured, on a sustainable basis, for the benefit of South Africa and future generations.

Constitutional mechanisms to achieve substantive equality, economic empowerment and socioeconomic advancement

5. The Constitution will address the social, economic, and ideological barriers to full and equal participation in the economy by women, including their unpaid labour.

2

To: Leola Rammable
Managing Secretary
Constitutional Assembly

Ref: T.C. 1/45-6

DEMOCRATIC PARTY SUBMISSION TO THEME COMMITTEE ONE ON:
THE ECONOMY

In respect of Constitutional regulation of the Economy, the Constitutional Assembly is required to give effect to a wide range of Constitutional Principles which influence economic life. These are:

(II), (III), (V), (XXV), (XXVI), (XXVII), (XXVIII), (XXIX).

These emphasize:

1. the entrenchment of the notion of substantive equality and the removal of discriminatory practices
2. a requirement of defined fiscal powers in national and provincial government jurisdiction, including the constitutional right of each level of government to an "equitable share of revenue collected nationally"
3. the regulatory role of the Financial and Fiscal Commission, and of the Reserve Bank generally; and
4. the recognition and protection of employers' and employees' rights in their mutual relationships.

The transitional Constitution further provides for the following measures which influence economic life and with which the Democratic Party would strongly concur:

- Clause 12 No person shall be subject to servitude or forced labour.
- Clause 26 (1) Every person shall have the right freely to engage in economic activity and to pursue a livelihood anywhere in the national territory, etc.
- Clause 27 (1-5) This clause covers the rights of employers and employees to fair labour practices.
- Clause 28 (1-3) This clause covers the rights of persons to acquire and hold rights in property.
- Clause 30 Protects children from exploitative labour practices.

The Democratic Party would favour the retention of all of the above clauses. In particular it would support the right to hold property since we believe that this is a basic human right upon which the entire edifice of a sound and prosperous economy will rest.

Representative Government

In respect of Representative Government, the Constitutional Assembly is required to give effect to a wide range of Constitutional Principles relating to it. These are:

(I), (II), (VIII), (IX), (X), (XIV), (XVII), (XXX)

These emphasize:

1. a multi-party system
2. regular elections
3. universal adult suffrage
4. a common voters' roll
5. proportional representation (in general)
6. open administration of government
7. formal legislative procedures
8. minority political party participation in the legislative process
9. democratic representation at all levels of government
10. a Public Service broadly representative of all South Africans

The Transitional Constitution further provides for measures which spell out in detail certain measures relating to representative government, and with which the Democratic Party concurs. These are:

- | | |
|-----------|--|
| Clause 6 | The franchise |
| Clause 21 | Political rights |
| Clause 39 | Elections |
| Clause 40 | Composition of National Assembly
(Here we would argue for a reduction in the number of members from 400 to 300) |

- Clause 48 Composition of the Senate
 (Here we would argue for a reduction in the
 number of Senators to 63, i.e. 7 from each
 Province)
- Clause 77 Election of President
- Clause 88 Cabinet
- Clause 127 Composition of provincial legislatures
- Clause 129 Elections
- Clause 145 Election of Premiers
- Clause 179 Local Government Elections

Citizenship

In respect to Citizenship, Constitutional Principle 1 provides for the establishment of, inter alia, a common South African citizenship.

The Transitional Constitution deals with citizenship in a number of sections including:

Preamble, Section 5, Section 6, Section 20, Section 21, Section 30(1)(a), Section 42(1), Section 43(a), Section 50, Section 51(1)(a), Section 72(2), Section 77, Section 84, Section 88, Section 99(2)(a), Section 110(4), Section 115(1), Section 119(2), Section 132(1), Section 145(1), Section 149(4)(b), Section 191(3), Section 200(3)(a), Section 211(2)(a), Section 213(2), Section 15(1) of the Electoral Act 202 of 1993.

The Democratic Party does not find itself at variance with these provisions of which the most important is that there shall be a South African citizenship, and that every person who is a South African citizen shall subject to the Constitution, be entitled to enjoy all rights, privileges and benefits of South African citizenship, and shall be subject to all duties, obligations and responsibilities of South African citizenship as are accorded or imposed upon him or her in terms of the Constitution or an Act of Parliament.

Suffrage

In respect of Suffrage the Constitutional Assembly is required to give effect to Constitutional Principle VIII "There shall be representative government embracing multi-party democracy, regular elections, universal adult suffrage, a common voters' roll and, in general, proportional representation.

In order to achieve the above in respect of universal adult suffrage, the Democratic Party believes that the Constitution must contain the following provisions:

1. That citizenship should be a prerequisite for the franchise at National and Provincial level.
2. That the Constitution should lay down a minimum age qualification, and that this should be 18 years and older.
3. That the franchise should be subject to disqualification as prescribed by laws regulating elections, referenda or plebiscites.
4. That such disqualification should be described in the Electoral Act rather than in the Constitution.
5. That provision should be made for the holding of referenda/plebiscites, but that this provision be subsumed under the Electoral Act rather than the Constitution.



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FREEDOM FRONT

THEME COMMITTEE 1 (CHARACTER OF DEMOCRATIC STATE)

SUBMISSIONS ON THE ECONOMY (BLOCK 5)

The Freedom Front makes the following submissions in regard to the economy under the new Constitution, within the mandatory provisions laid down by the Constitutional Principles.

There are, within the present context, twin themes running throughout the Constitutional Principles: (a) democracy; and (b) regulation of certain matters relating to the economy. The exposition below will put into perspective the relationship between these two themes.

Democracy

The concept of democracy is reiterated in various Constitutional Principles, but nowhere comprehensively defined. Constitutional Principle I merely refers to 'a democratic system of government'. Constitutional Principle VIII refers to a 'multi-party democracy'. Constitutional Principle XIV refers to the requirement of participation of minority political parties in the legislative process in a manner consistent with democracy (stress supplied). Principle XVII refers to 'democratic representation' at each level of government.

The nett result of the above-mentioned provisions taken collectively is the mandatory regulation of the future state on the basis of a true democracy, including guarantees relating to the interests of minority parties.

The inevitable conclusion is that the Constitutional Principles require that the future state will not be a one-party state. A further implication is that the economy should be controlled by the government only to the limited extent allowed by the Constitutional Principles. This aspect is more fully dealt with below.

Economic and fiscal aspects of the Constitutional Principles

Principle XXI contains some indication in the direction of the centralisation of economic policies. This Principle, setting out the criteria to be applied in the allocation of powers to the national government and the provincial governments, mentions in paragraph 2 'the maintenance of economic unity', and provides in paragraph 5 as follows: 'The determination of national economic policies, and the power to promote interprovincial commerce and to protect the common market in respect of the mobility of groups, services, capital and labour, should be allocated to the national government' (stress supplied).

Constitutional Principle XXI has a precursor in section 126 of the transitional Constitution. In this section provision is made for concurrent powers by provincial legislatures and Parliament. Section 126 provides for the predominance of parliamentary legislation in respect of, inter alia, certain aspects of the economy. Nevertheless, the general tenor of this section (reflected in Constitutional Principle XXI as far as the new Constitution is concerned - see above) must not be interpreted as a pointer in the direction of a centralised economic system. Other Constitutional Principles prohibit this. For instance, Constitutional Principle XXII prohibits the national government from exercising its powers (exclusive or concurrent) so as to encroach upon the geographical, functional or institutional integrity of the provinces.

Various Constitutional Principles indicate that the economy should not be centrally controlled, but that there should be free enterprise at all levels. For instance, Principle XX provides, inter alia, that 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 which recognises the need for and promotes legitimate provincial autonomy....' Principle XXV provides, inter alia, that the national government and provincial governments shall have fiscal powers and functions which will be defined in the Constitution. Principle XXVI carries the matter further and provides that each level of government shall have 'a constitutional right to an equitable share of revenue collected nationally' so as to ensure certain goals.

Principle XXVI is further bolstered by Constitutional Principles XXVII and XXIX. Principle XXVII provides, inter alia, that a contemplated Financial and Fiscal Commission shall recommend equitable fiscal and financial allocations to the provincial and local governments from revenue collected nationally, after taking into account, amongst other things, economic disparities between the provinces. Principle XXIX contemplates, inter alia, the independence and impartiality of the Reserve Bank and of the Auditor-General.

Despite the indications to the contrary in Constitutional Principle XXI, it is clear from all the above-mentioned

Constitutional Principles, read together, that the intention of the authors of these Constitutional Principles was not to make the economic system subservient to the will of one party or to the mechanism of a one-party state. On the contrary, the indications are overwhelming that the regulation of the economy would be subjected to the democratic process, including the legitimate role of minority parties in the governance of the state. The mere fact that different levels of government shall have a constitutional right to an equitable share of revenue collected nationally (Constitutional Principle XXVI) indicates that of centralised and authoritarian control of the economy was never contemplated.

Conclusion

The inevitable conclusion is that a democracy, including a free market system, is implied by the Constitutional Principles, taken collectively.

CONSTITUTIONAL ASSEMBLY

NATIONAL PARTY SUBMISSION TO THEME COMMITTEE 1:

THE ECONOMY

A thriving economy is a pre-requisite for a true and sustainable democracy and thence for justness and fairness.

In order to achieve that the National Party believes that conditions should be created under which free enterprise and private initiative can flourish within a market-orientated environment, whilst furthering the capacity of all citizens to utilise the opportunities of such a system on an equal footing.

In order to attain substantive equality, affirmative action programmes are necessary as they embody active equalisation. However, as the process of active equalisation is based on the premise of a temporary state of unequal treatment, active equalisation 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.

Private ownership, also in regard to land, must be maintained as one of the fundamental rights of individuals.

The rights of workers must be protected.



The rights of employers must be protected.

There must be a healthy balance between nature conservation and economic growth.

The rights of persons to an environment which is not detrimental to his or her health or well-being must be recognised.

No person must be subject to servitude or forced labour.

Every child must have the right not to be subject to exploitative labour practices nor to be required or permitted to perform work which is harmful to his or her education, health or well-being.



29 May 1995

PAC Submission To Theme Committee 1 Block 5

The Pan -Africanist Congress maintains that all the land mass, all the waters and the sea bed within the perimeter defined by the constitution of the Republic of South Africa as the state of the Republic of South Africa and is accepted as such by international law, form the joint property of the lawful citizenry of the Republic and heritage of its posterity.

Based on the above premiss the Pan - Africanist Congress believes that no individual or group can have a right or rights over the wealth or a fraction thereof, within the boundaries of the Republic, that may constitutionally and legally supersede the right of the national parliament.

All property rights shall be constitutionally protectable by an individual against all other individuals or groups but shall not be constitutionally protectable against national economic interests and against policies issuing therefrom which are promoted and carried out by the national parliament with clear lack of prejudice against any individual or group but are pursued in the best economic interest of the totality of national individuals, the nation or ^{the} country.

The state shall follow no orthodoxy in working to satisfy the economic needs of the South African people. The guiding vision must be that of getting the surest path to national economic upliftment and a society of economic equity and social equality where the notion of equal opportunities will have its true meaning. PAC believes that without economic equity the idea of equal opportunities lacks substance.

The reason for production shall be consumption, primarily and profit making, secondarily. If the primary motive remains that ~~the~~^{of} profit making, the dumping and destruction of desperately needed goods by profit seekers in their quest to artificially create scarcity shall persist.

The land, the basic wealth of the people shall constitute the core or substance of the national sovereignty, which shall vest in the constitution.

All production and distribution of wealth by the citizens of the country shall be geared towards the upliftment of the economic standard of all citizens.

MMZ Dyani MP

NATIONAL PARTY PRELIMINARY SUBMISSION

THEME COMMITTEE 1

Block 6

Item 8: Citizenship

Item 9: Suffrage

ITEM 8: CITIZENSHIP

1. Introduction

1.1 Section 5 of the Constitution of the Republic of South Africa, Act 200 of 1993 ("the Constitution") establishes a South African citizenship. The fundamental right guaranteed in section 20 provides that every citizen shall have the right to enter, remain in and leave the Republic, and that no citizen shall without justification be deprived of his or her citizenship.

2. Constitutional Principles

2.1 Constitutional Principle I provides *inter alia* that the new Constitution shall provide for one sovereign state and a common South African citizenship.

2.2 Constitutional Principle II provides that 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 the Constitution.

2.3 Constitutional Principle III provides *inter alia* that the new Constitution shall prohibit all forms of discrimination and shall promote equality.

3. Citizenship

3.1 Legislation which governs aspects of citizenship is subject to the provisions of sections 5 and 20, as well as the preamble which states that all South Africans shall be entitled to a common South African citizenship in a sovereign and democratic constitutional state. Section 5 recognizes citizenship in its true constitutional sense. It confirms the relationship between the individual and the sovereign state.

This implies that the state has certain responsibilities vis-à-vis that individual, and it confers certain competencies, powers and rights on that individual. It also places a limited number of obligations on the individual. In essence, it determines the status of that individual in respect of the state itself as well as other citizens. Section 8 of the Constitution in general prohibits any form of discrimination, and different "classes" of citizenship are consequently not allowed.

3.2 Citizenship also includes the right of an individual to decide on a change of citizenship for him- or herself.

3.3 Citizenship also implies the right to a passport and in general the right to be assisted by South African diplomatic representatives outside of the national territory where possible and practicable. Rights to citizenship also imply that the state cannot bar any citizen from leaving or re-entering the national territory. No citizen can be forced to live in exile.

3.4 Section 6 of the Constitution provides that a citizen shall have the right to vote in elections at all levels of government.

4 3.5 Citizenship can be acquired in a number of ways, of which birth is indirectly referred to in section 30(1)(a) of the Constitution (the rights of children to a name and nationality) and which is probably the most important one. It is submitted that the acquisition of citizenship by birth within the national territory should be guaranteed in the Constitution. The difference in the concepts of "nationality" and "citizenship" should be borne in mind: the former refers to membership of a particular state vis-à-vis the international community, and the latter refers to the status of an individual vis-à-vis his or her own state and its citizens. Other ways of acquiring citizenship should continue to be prescribed by ordinary legislation.

3.6 It is submitted that the principles of the present sections 5 and 20 be retained in the constitutional text subject to paragraph 3.5 above.

3.7 It is furthermore submitted that the reasons supporting the entitlement of non-citizens (i.e. a person with rights to permanent residency) to vote existed initially, are no longer valid and that political rights be restricted to citizens only. Section 21 of the Constitution limits the right to vote to citizens only, and it is submitted that this principle should be extended in the constitutional text as well as other legislation. Provision should however be made for persons with rights to permanent residency to acquire full citizenship if they are currently not able to do so.

3.8 Provisions restricting eligibility for political or public office to citizens only should be retained.

ITEM 9: SUFFRAGE

1. Introduction

Section 6 of the Constitution provides that every person who is a citizen or a person who in terms of legislation has been accorded the right to exercise the franchise, who is older than 18 years and who is not subject to disqualifications prescribed by law, shall be entitled to vote in elections for government at all levels. Section 21 guarantees the right of every citizen to take part in the activities of a political party, to campaign on behalf of political parties, to freely make political choices, to vote in secret and to stand for election to public office.

2. Constitutional Principles

2.1 Constitutional Principle I provides that the Constitution shall provide for a democratic system of government, and Constitutional Principle II states that everyone shall enjoy all universally accepted fundamental rights, freedoms and civil liberties.

2.2 Constitutional Principle VIII provides that there shall be representative government embracing multi-party democracy, regular elections, universal adult suffrage, a common voters' roll, and, in general, proportional representation.

3. Suffrage

3.1 Citizenship confers certain rights, as well as responsibilities, on a person. One of the rights so conferred is the right to vote. On the other hand, it also implies that the state may, for example, require of the citizen an oath of allegiance or a duty to help to defend the national territory and its inhabitants against foreign armed aggression. It could therefore be argued that a citizen's rights in this respect represent the one side of the coin, whereas the citizen's responsibilities represent the other. It is therefore untenable that a person who holds right to permanent residency should have the "advantages" of citizenship, but not its "disadvantages". It is therefore submitted that citizenship should be a prerequisite for the franchise in respect of ~~national and provincial level~~ of government.

amend-ment

all levels

3.3 A vote should always be an informed choice, and a general age limit should therefore be prescribed. International practise supports the notion of age restrictions and it is therefore submitted that the constitutional text regulate the matter. Other minimum requirements, for example citizenship in respect of the right to vote at national and provincial level, should also be prescribed in the Constitution. It is therefore submitted that, in addition to the submissions under paragraphs 3.1 and 3.2 of this Item, a minimum age of 18 years be prescribed in the constitutional text.

1. Kusan
3.4 Given the spirit and purport of the Constitution, it is submitted that grounds for disqualification be incorporated into the constitutional text. This would ensure uniformity and would remove any perception of manipulation of requirements by political parties. It is submitted that the present grounds for disqualifications contained in section 26 of the electoral Act 202 of 1993 should be retained in principle, except for paragraph (d) thereof, which should be amended to include any convicted prisoner irrespective of the crime committed or the sentence imposed.

3.5 Subject to the decision in principle on the question of referenda, dealt with under Item 7 of Block 6 of this Committee under the heading "Representative Government", it is submitted that the requirements in respect of suffrage with regard to referenda should be the same as those required in respect of elections.



National Party
Nasionale Party

Federal Council
Federale Raad

9 June 1995

Mr Hassen Ebrahim
The Executive Director
Constitutional Assembly
Regis House
Adderley Street
CAPE TOWN

Dear Mr Ebrahim

Enclosed please find the National Party proposal regarding subject matters pertaining to Theme Committee 1, regarding Representative Government.

Kind Regards

P.P.P. G MARAIS MP

NATIONAL PARTY SUBMISSION

THEME COMMITTEE 1

REPRESENTATIVE GOVERNMENT

A. INTRODUCTION

Representative government is one of the most fundamental characteristics of a democratic system and one of the most basic principles with which the final constitution must comply. Representative government means that government authority shall not be exercised arbitrarily, but on behalf of the people. That, in turn, requires that the people shall be involved in the designation of the government so that the government shall be representative of the people. It took centuries to develop, until today representative government is ensured through direct elections by the people of their representatives in government.

Representative government, therefore, assumes the entrenchment of principles such as universal adult franchise, a common voters' roll, freedom of political choice and activity, free, fair and regular elections, a multi-party system and a fair and suitable electoral system. In our view, the Constitutional Principles already contain these principles.

Traditionally, representative government was associated with the legislature only, on the assumption that the executive shall be appointed from the legislature (specifically from the majority party) and, thus, indirectly, still be representative of the people. This led to the attitude that as long as the legislature is representative of the people, the position of the executive and its relationship with the electorate is not that important. The twentieth century has shown that this is an oversimplified view in modern societies. *Firstly*, there has been a manifest transfer of authority

from the legislature to the executive. The executive is nowadays the most powerful and prominent branch of government. With the vast bureaucracy at its disposal, the executive is the only branch of government that has the expertise, information and infrastructure effectively to cope with the demands made on modern governments. The result is that Parliament has been relegated to being a *de facto* rubber stamp of executive initiatives. For this reason, the position and role of the executive has become as important as that of the legislature to the concept of representative government. *Secondly*, the phenomenon in Western European democracies that, more often than not, no party obtains an absolute majority, has led to the emergence of coalition governments in which more than one party serve in the executive. Contrary to tradition, therefore, representative government for these countries came to mean government by more than one party. *Thirdly*, the establishment of the modern concept of the state in much less homogeneous societies than ever before, especially in the less developed part of the world, has led to the formation of governments on the simple majority basis which too often were not at all representative of those diverse societies.

In view of these facts, the principle of representative government should apply both to the legislature and the executive. The National Party has made another submission to the relevant Theme Committee on the composition of the executive.

B. ELECTORAL SYSTEM

Constitutional Principle VIII expressly prescribes a system of proportional representation. This is not a contentious matter. The National Party has already submitted a detailed paper in this regard to the relevant Theme Committee.

C. DEGREE OF FLEXIBILITY

Although the principles underlying representative government are stated generally and they obviously allow for flexibility in respect of their detailed implementation, it would be impossible to depart from the essence of those principles. For example, it would be possible to determine the term of Parliament, in other words, how often elections must take place, but not to abolish the principle of regular elections. It would be possible to determine the voting age, but not to abolish the principle of universal adult suffrage. Similarly, the *type* of proportional electoral system could be determined, but it would be in breach of the Constitutional Principles to adopt a constituency system.

D. PARTICIPATORY DEMOCRACY

1. Involvement in parliamentary process

We agree that representative government does not stop at regular elections for decision-making bodies, but that it extends to the continuous involvement of the electorate in the decision-making process. For this reason, it is necessary to provide sufficient mechanisms and opportunities for the people to participate in the parliamentary process. This applies to the lawmaking function of Parliament, as well as its function to reflect and articulate the views of the public on all matters of interest to it. With reference to Constitutional Principle X, the legislative procedures of Parliament should be formulated to provide for all this. Much has been done already, for example, in the case of prior publication of bills, but more can still be achieved. In this regard, the recently adopted Standing Orders of the Gauteng Legislature, which make express and extensive provision for public participation and for the presentation of petitions, could serve as a convenient point of departure.

2. Right of free access to information

The principle of free access to information (Constitutional Principle IX and section 23 of the transitional constitution) is of particular relevance to the practical implementation of the idea of optimum public participation. In order for the public to enjoy an informed involvement, its needs information. All decision-making processes, at legislative as well as executive levels, should be aimed at efficiency, but also at providing the public with as much information as possible.

3. Referenda

Whereas we are in favour of optimum public participation, we do not believe, however, that regular referenda as a standing constitutional feature of our decision-making system would be feasible. Switzerland is the only country where referenda are used on a regular basis and there it can be justified on account of the small size of the country and population, as well as the sophistication of the electorate and the efficiency of the administration and infrastructure. In contrast, referenda on a regular basis would be too costly and difficult in South African geographical, demographic and other circumstances.



9 June 1995

PAC SUBMISSION TO THEME COMMITTEE 1 (BLOCK 6)

PAC believes in a government that governs according to the will of the people, the citizens. The citizens, through their elected representatives have to rule themselves and should not be ruled by any junta clique of whatever kind or a cabal of whatever nature. Not a single stratum of the political agency shall have any power that has not constitutionally or conventionally been delegated to it by the Constitution.

Through periodic elections the people, as the embodiment of the sovereignty of the state, shall elect their representatives to different levels of government for the sole purpose of the promoting and protecting their interests and further to bring governance closer to them. Mechanism(s) should be put in place wherein representatives who fail the mandate of the constituents is easily and swiftly recalled and made to account for those particular action. This will speed up the process wherein the representative would be recalled from his office without having to wait for the next round of elections.

In this scenario the PAC believes that different mechanisms of recall or reasons for the recall should differ as one moves from one level of Government to the other as embedded in Constitutional Principle XV1.

Following from the above, the PAC submits that the electorate should be protected against contending parties that would seek to exploit the electorate

in order to gain their support without a relative duty to develop those communities from which those electorate reside. This becomes essential given the nature of underdevelopment in this country and the expectations that is being created by the various contending parties. The PAC thus submits that this be incorporated into the new Constitution or should be a Constitutional Principle.

All citizens of age shall be entitled to vote and be voted for without regard to any other factor except for that of citizenship.

All individuals who were born in South Africa and accept South Africa as a permanent home shall be lawful citizens. All individuals who have stayed in South Africa for a continuous period of five (5) years and declare an intention of staying in South Africa permanently for their benefit and that of south Africa shall be elligible for the citizenship of South Africa.

M. M. Z. Dyani - MP



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FREEDOM FRONT

THEME COMMITTEE 1 (CHARACTER OF DEMOCRATIC STATE)

SUBMISSIONS ON REPRESENTATIVE GOVERNMENT, SUFFRAGE AND CITIZENSHIP

The Freedom Front makes the following submissions in respect of representative government, suffrage and citizenship.

1) REPRESENTATIVE GOVERNMENT

For present purposes representative government can be equated with democracy. In this regard we refer to two descriptions of democracy and then provide a definition of our own, in the context of the position in South Africa.

M Walker The Oxford Companion to Law (1980):

Democracy. Rule by the people, the form of government in which the general body of the people ultimately exercise the power of government. It is distinguishable into direct democracy, in which political decisions are made by the whole body of citizens, the majority view being accepted, and representative democracy, in which political decisions are made by persons chosen to represent, and be responsible to, the whole body of citizens. The term is extended to social and economic contexts where the emphasis is on minimizing inequalities of power, rights, privileges, and property.

.....
Modern democratic ideas were influenced by the concept of law as a restraint on autocratic powers of monarchs and by the need to consult representatives of the community particularly to secure assent to the raising of money.in the nineteenth and twentieth centuries the cardinal features of democracy came to be representative assemblies freely elected on a very broad franchise, to which the executive is nominally responsible and from which it must obtain its powers.

The major defects of democracy are the incapacity of the majority of citizens to understand the extremely difficult and complicated issues of social and economic policy involved in modern government, the constant danger of their being deluded by popular leaders to support courses which are attractive and easy, the low intelligence of the great mass of voters and their liability to be influenced by motives of greed, jealousy, and selfishness.

.....
Other features normally associated with democracy are regular and free elections, an independent judiciary, large measures of freedom of the Press, of speech, of assembly and of association, and the idea of the rule of law, namely that the executive and the administrators are subject to the rules of law and can be called to account for infringements thereof! (p 350)

Chambers Twentieth Century Dictionary (1972):

'**democracy**, a form of government in which the supreme power is vested in the people collectively, and is administered by them or by officers appointed by them: the common people: a state of society characterised by recognition of equality of rights and privileges: political, social or legal equality ...'

'**democratic**, -al, relating to democracy: insisting on equal rights and privileges for all' (p 343)

DEMOCRACY as a general concept is a system of government by all the people collectively (sovereignty of the people), usually through elected representatives (representative democracy, as opposed to direct democracy), based on the recognition of equality of opportunities, rights and privileges, tolerating minority views, and ignoring hereditary class distinctions.

Prerequisites for a democracy are the following: (a) the government being ultimately responsible or accountable to the majority of the grown members of the political community; (b) the genuine possibility of an alternative government (e.g. by means of regular elections), and (c) universal franchise.

By virtue of the fact that democracy in itself is no guarantee against abuse of power or the tyranny of the majority, the concept necessarily implies that there should be a limitation of government power, so that certain fundamental rights of citizens are not subject to the will of the majority. Such limitation should be brought about by (inter alia) the spreading of power by means of various 'checks and balances' in the constitution. This will give effect to the principle of the 'rule of law', according to which the government itself can be held accountable, not only politically, but legally (i.e. in courts of law).

Because the democratic model developed in the relatively homogeneous societies of the West, the general concept of democracy, as expounded above, must necessarily be made to fit heterogeneous societies, in which minority interests require special protection. In this regard the right of self-determination of communities is of such importance that it has been entrenched in the Constitutional Principles that must be complied with in drawing up the new Constitution.

Constitutional Principle I requires a democratic system of government for South Africa. Constitutional Principle VIII reads: 'There shall be representative government embracing multi-party democracy, regular elections, universal adult suffrage, a common voters' roll, and, in general, proportional representation' (stress supplied). Constitutional Principle XIV requires the new Constitution to make provision for participation of minority political parties in the legislative process in a manner consistent with democracy. Constitutional Principle XVII provides that there shall be democratic representation at each level of government.

The Freedom Front submits that the new Constitution should make provision for representative government in accordance with the democratic principles referred to above and in particular the relevant Constitutional Principles, but subject to possible qualifications mentioned below in respect of citizenship and suffrage.

2) CITIZENSHIP

Constitutional Principle I requires 'a common South African citizenship'. To a large extent the content of citizenship will be reflected in a bill of rights or a chapter of fundamental rights in the new Constitution. These rights will, however, be supplemented by other rights provided for by legislation.

The acquisition, loss and restoration of citizenship is often dealt with in legislation instead of a constitution. The Freedom Front accordingly has no objection to a provision in the new Constitution corresponding with section 5 of the transitional Constitution (South African citizenship), read with section 20. The Constitution should, therefore, contain a provision prohibiting the legislature from depriving a South African citizen of his citizenship, or at least from doing so arbitrarily. In the latter event the Constitution should specify all possible grounds for such deprivation.

In so far as legislation may be authorised extending South African citizenship to specified categories of people, this should always be subject to overriding provisions relating to the franchise.

3) FRANCHISE (SUFFRAGE)

We are of the opinion that only South African citizens should have the franchise. A provision such as section 6(a)(ii) of the transitional Constitution, which confers the franchise also on

non-citizens, should not be re-enacted in the new Constitution. It was a special provision, justified only by the special circumstances of the first democratic election in South Africa - a unique transition to democracy.

The Freedom Front is opposed to any provision in the new Constitution that would authorise Parliament to determine a minimum voting age. In this regard Constitutional Principle VIII requires 'universal adult suffrage' (see above). A minimum age for voters has overwhelmingly been accepted by the world community to be 18 years, including the great democracies of the United Kingdom and the United States of America.

We submit that the contemplated periodic elections should, in accordance with the provisions of article 25 of the International Covenant on Civil and Political Rights 1966, be held by secret ballot, guaranteeing the free expression of the will of the electors.

The Freedom Front also submits that suffrage in the context of the Constitutional Principles implies that there should be separate voters' rolls for the different provinces, apart from a common voters' roll. The same applies to franchise at the local level (see Constitutional Principle XVII, referred to above).
