

Leola

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A29

**CONSTITUTIONAL
ASSEMBLY**

**THEME COMMITTEE 1
CHARACTER OF
DEMOCRATIC STATE**

31 JULY 1995

**ROOM M515
09H00**

DOCUMENTATION

TABLE OF CONTENTS

No.	Detail	Page
1.	Notice and Agenda	1 - 2
2.	Minutes of the meeting held on the 26 June 1995	3 - 8
3.	Draft report on Block 6: Representative government, Citizenship and Suffrage	9 - 20
4.	ACDP Submission	21 - 24
5.	ANC Submission	25 - 27
6.	DP Submission	28 - 34
7.	NP Submission	35 - 42
8.	ANC Submission - Block 8	43 - 44

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, 31 July 1995
Time: 09h00 - 12h00
Venue: Room M515 (Marks Building)

AGENDA

1. Opening
2. Apologies
3. Adoption of previous minutes
4. Matters Arising
5. Finalize draft report for Block 6 (Representative Government)
6. Tabling and discussion of submissions on Language, Name and Symbols, Seats of Government and National Territory
 - ACDP
 - ANC
 - DP
 - FF
 - NP
 - PAC
7. Public Participation
8. General — WCPCC

Dr. Shun Govender.

United Christian Action — Rev Peter Hammond.

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 26 JUNE 1995 09H00 ROOM M515**

**Present
Marais PG (Chairperson)**

**Booi MS
Chiba L
Chiwayo LLL
Goosen AD
Gumede DM
Janse Van Rensburg AP
Kuzwayo NEK
Lekgoro MK
Mabuza MC
Mahlangu NJ
Majola-Pikoli NT
Marais A
Meshoe KR
Momberg JH**

**Moorcroft EK
Mukhuba TT
Ncube BS
Niehaus CG
Nobunga BJ
Nzimande BE
Ripinga SS
Sisulu AN
Streicher DM
Van Zyl ID
Vilakazi BH
Williams AJ**

Apologies:

**Kekana NN
Macozoma NJ
Schoeman EA
Shope G
Van Deventer FJ**

Technical Experts present:

**Corder H
Heunis JC
Husain Z**

Leola Rammble and Susan Rabinowitz were in attendance.

1. OPENING

1.1 The meeting was opened by the Chairperson at 09h10.

2. ADOPTION OF PREVIOUS MINUTES

- 2.1 The Minutes of the Theme Committee meeting held on Monday 12 June 1995 contained in Document A28 [Pages 3 - 9] were adopted.

3. MATTERS ARISING

3.1 Report on Block 5: The Economy

The Chairperson referred to Point C VI on Page 5 of the Minutes where it had been agreed that this issue was Non-Contentious and to the Report on Block 5 on Page 16 Item B (VI) under Non-Contentious Issues. He reported that at the Constitutional Committee meeting on Friday 23 June 1995, it was agreed that this issue should be moved from Non-Contentious Issues and placed under Contentious Issues in the Report.

4. DISCUSSION OF DRAFT REPORT FOR BLOCK 6: REPRESENTATIVE GOVERNMENT [See Extra Documentation A28]

- 4.1 The Draft Report for Block 6 dealing with Representative Government [Extra Documentation A28 Pages 1 - 12] was tabled. Mr Husain spoke to the document and asked members to note that:

4.1.1 Page 1 Point 1 - Volume 21 would be inserted and the summary overview would be attached.

4.1.2 Page 1 Point 2 - the date of the orientation workshop would be inserted and the briefing document attached.

- 4.2 After discussion it was agreed that the following amendments should be made:

4.2.1 Page 3, Point 2.4 - the word "constitutional" should be replaced by "constituency"

4.2.2 Page 3, Point 2.5 - the words "public officials" should be replaced with the words "elected political representatives".

4.2.3 Page 7, Point 1.3 - the word "say" should be amended to read "stay"

4.2.4 Page 8, Point 2.4 - the last sentence reading "In its oral submission16 years" should be deleted.

4.2.5 Page 8/9, Point 3.4 - the second sentence should be amended to read as follows "It supports the grounds for

disqualification contained in present electoral legislation (Section 16 of Electoral Act No.202 of 1993), save for paragraph (d) thereof, in that the NP proposes disqualifying a person who is in prison, having been convicted and sentenced without the option of a fine in respect of offences such as murder, robbery with aggravating circumstances and rape, or any attempt to commit such an offence."

4.3 After further discussion of the qualifications under Non-Contentious Issues on Page 3, Point 2, it was agreed that items 2.1 - 2.6 should be categorised as follows :

2.1 This was a contentious issue.

2.2 This was a contentious issue.

2.3 This was a contentious issue.

2.4 This was a non-contentious issue.

2.5 This matter was contentious.

2.6 This matter was non-contentious with the qualification that this was in the spirit of Section 16 of the Interim Constitution.

4.4 It was agreed that, in the light of the discussions, the Report should be referred back to the Drafting Sub-Committee and the Technical Experts for redrafting and then re-submitted to the Theme Committee for further consideration. The Secretary was requested to arrange a meeting of the Drafting Sub-Committee and the Technical Experts during the course of this week.

5. **TABLING AND DISCUSSION OF SUBMISSION FOR BLOCK 8: FOREIGN RELATIONS AND INTERNATIONAL LAW**

5.1 **ACDP**

The ACDP tabled and talked to its submission contained in Extra Documentation A28 [Pages 13-16] and clarified the following:

- Page 15, 4th paragraph, third sentence - the word "republic" should read "public" and in the last sentence, the word "Spirit" should be "spirit";
- Page 15, 5th paragraph, last sentence reading "This is a necessity...in all law" should be deleted.

Questions of clarification were asked on whether the ACDP were religious fundamentalists, on the mechanisms for including citizens in decision-making and on what is meant by "foreign world". On the question of amending the Constitution in line with developments in international law, the ACDP did not envisage a problem if the amendment was in the interests of the country. On the question of secularism, the ACDP referred members to their submissions on the matter.

5.2 **ANC**

The ANC tabled its submission contained in a separate document and talked to the submission.

Clarification was given on what was meant by "national legislation" on Page 1, Point 3.

5.3 **DP**

The DP tabled its submission contained in Extra Documentation A28 [Page 17] and spoke to the document.

Questions of clarification were asked on the issues of the Vice President and on the application of international law.

5.4 **FF**

There was no submission by the FF and no member present at the meeting.

5.5 **NP**

The NP tabled its submission contained in Extra Documentation A28 [Pages 18 - 20] and talked to the document.

Questions of clarification were asked on the issue of the Executive Deputy Presidents and whether the NP envisaged the same arrangement as that which presently exists under the Interim Constitution. On the question of the Non-Proliferation Treaty, the NP supported South Africa signing the Treaty.

5.6 **PAC**

The PAC submission contained in Extra Documentation A28 [Pages 21 - 22] was tabled. No representative of the PAC was present and there was no discussion or clarification.

- 5.7 It was agreed that as all the parties were not present, the matter would stand over for further discussion until the next Theme Committee meeting and the Secretary would contact the FF to obtain their submission.

6. PUBLIC PARTICIPATION

6.1 Report back on CPMs

6.1.1 Maokeng

A member of the Theme Committee who had attended the CPM in Maokeng on 24 June reported that the meeting was well attended and the participation of the community was excellent with many interesting contributions.

6.1.2 Middleburg

A member of the Theme Committee who had attended the CPM in Middleburg on 17 June reported that the submissions which related to the work of Theme Committee One included:

- power of the provinces - the provinces should not be given more powers;
- voting age - varied views of 16 years and 18 years;
- proportional representation and a constituency system after 1999 with the majority party forming the government;
- child labour must be abolished;
- control of the police, military and parastatals;
- South Africa should be a unitary and not a federal state.

6.1.3 Pietermaritzburg

Members of the Theme Committee who had attended the CPM in Pietermaritzburg on 25 June reported that only the ANC was represented and expressed the hope that other parties would participate. Submissions made which related to the work of Theme Committee One included:

- definitely against a Volkstaat;
- separation of religion and state;
- character of the state should be unitary;
- traditional leaders should be apolitical;

REPORT FROM THEME COMMITTEE 1

BLOCK 6 : REPRESENTATIVE GOVERNMENT, CITIZENSHIP AND SUFFRAGE

26 June 1995.

1. Summary overview of submissions received and processed by Theme Committee 1 from sources outside the Constitutional Assembly (Volume 21) - see attachment.
2. The Technical Committee conducted an orientation workshop on 22 May 1995, to facilitate the submissions of parties on the subject matter of this Block. The briefing Documents used at the workshop are attached.
3. Submissions received at the National Sector Public Hearing for Youth held on the 27 May 1995, at the World Trade Centre were relevant to the agenda items being dealt with in this Block. *particularly the age qualification for suffrage*
(Refer to the document pack circulated to members on the 14 June 1995)
~~Include the views of the Public Hearing.~~
4. No public hearings were held in respect of the subject matter of this Block.
5. The following constitutional principles are relevant to the agenda items referred to:-

AGENDA ITEM 7: REPRESENTATIVE GOVERNMENT

i.

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

II.

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

VIII

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

XIV

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

XVII

At each level of government there shall be democratic representation. This principle shall not derogate from the provisions of Principle XIII.

GENERAL DISCUSSION OF THE MATERIAL

As will be seen hereunder, there was a large degree of consensus amongst the parties as to the system of representative government they would support and the main

elements of which they would like to see enshrined in the Constitution.

NON-CONTENTIOUS ISSUES

1. All parties called for representative government embracing multi-party democracy, regular elections and, in general, proportional representation.

Contentious

2. All parties support some form of constituency-based system within proportional representation, with the details thereof being spelled out in legislation.

except the FF

3. All parties emphasise the need for participatory democracy, encompassing the rights to petition, free assembly and demonstration (as in Section 16 of the transitional Constitution) and of access to information.

CONTENTIOUS ISSUES

1. The extent to which the notion of "representative government" includes a role for minority political parties in the executive government is contentious. While all parties acknowledge such a role "in the legislative process in a manner consistent with democracy" (see Constitutional Principle XIV above), the NP emphasised that both the legislature and the executive should be representative of the electorate, while the FF submitted that the participation of minority parties "in government" should be included. The ANC proposes such a role in Parliament (the legislature) alone.
2. The call by the ACDP and the PAC for the Constitution to provide for a system of recalling elected political representatives who are remiss in the execution of their functions is contentious.

including Executive

AGENDA ITEM 8 : CITIZENSHIP

I.

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

II.

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

GENERAL DISCUSSION OF THE MATERIAL

Whilst not all submissions dealt with the matters comprising this agenda item, there appears to be concurrence on the matters referred to in Sections 5 and 20 of the Interim Constitution.

NON-CONTENTIOUS ISSUES

1. The DP, NP and Freedom Front supported the provisions of Sections 5 and 20 of the Interim Constitution, namely that :-

- 1.1 there shall be common South African citizenship;

- 1.2 legislation is to deal with the acquisition, loss or restoration of citizenship;
 - 1.3 citizens are to enjoy all rights, privileges and benefits of citizenship and also to have corresponding duties of citizenship, every citizen is to have the right to enter, remain in and leave South Africa and there is to be no deprivation of citizenship without justification. The ACDP did not address these aspects of citizenship, whilst the ANC and PAC indicated the most important elements thereof, namely that there shall be a common South African citizenship, that the acquisition and loss of citizenship could occur in certain circumstances and that there was to be no arbitrary deprivation of citizenship.
 - 1.4 In the circumstances, and in the absence of any stated opposition to the sections of the Interim Constitution and of the Constitutional Principles dealing with citizenship, it is inferred that none of the said matters is contentious.
2. The only qualification to paragraph 1 above is made by the NP, which suggests that the constitution should guarantee the acquisition of citizenship by birth.

CONTENTIOUS ISSUES

None.

AGENDA ITEM 9 : SUFFRAGE

II.

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

VIII

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

GENERAL DISCUSSION OF THE MATERIAL

1.1 There is consensus on the general principle that the right to vote should be entrenched in the constitution and that all citizens shall be entitled to vote. There is however a large degree of disagreement as to the category of persons entitled to vote, and the extension of voting rights to certain categories of persons.

1.2 The NP is of the view that only citizens are eligible for elected political office. The FF wants separate voters' rolls for different provinces, apart from a common voters' roll. The other parties did not address these issues.

addition comment ~~14-D~~ TC agreed that ^{these} matters be discussed at TC2.
referred for discussion to

NON-CONTENTIOUS ISSUES

All citizens shall have the constitutional right to vote for all levels of government.

CONTENTIOUS ISSUES

1. Whether non-citizens should have the right to vote.

1.1 The ACDP submits that the vote should be extended to work and residence permit holders, whilst the DP, NP and Freedom Front submit that only South African citizens shall have the right to vote.

1.2 The DP qualifies its submission by stating that only citizens shall be entitled to vote at the National and Provincial levels, thereby suggesting that non-citizens, or certain categories thereof, would be entitled to vote at the level of local government.

1.3 The PAC submits that the vote should be extended to persons who have stayed in the country for at least 5 years and who declare their intention to stay permanently in South Africa.

1.4 The NP wants legislation to deal with permanent residents acquiring citizenship and thereby acquiring the right to vote.

2. The minimum voting age.

2.1 The ACDP, DP and NP want the constitution to provide that the minimum age for voting shall be 18.

- 2.2 The PAC submits that a voter should be "of age", without defining the term.
- 2.3 The Freedom Front does not want the constitution to determine the minimum age, but to retain the word "adult", which it says has been determined internationally, in the context of voting, to be 18 years of age.
- 2.4 The ANC does not want the constitution to provide for the minimum voting age, submitting that this should be a matter that should be legislated on.

3. Criteria for disqualification.

- 3.1 The ANC, PAC and FF did not specifically address themselves to the categories of persons who would be disqualified from voting.
- 3.2 The ACDP proposes that no person should have the right to vote whilst being in prison for serious offences. It does not distinguish between convicted or awaiting trial prisoners or define what serious offences are.
- 3.3 The DP refers to the disqualifications as they presently exist in electoral legislation and believe that legislation should continue to deal with the categories of disqualification.
- 3.4 The NP wants grounds for disqualification to be incorporated in the constitutional text. It supports the grounds for disqualification contained in present electoral legislation (Section 16 of Electoral Act No. 202 of 1993), save for paragraph (d) thereof, in that the NP proposes disqualifying a person who is in prison, having been convicted and sentenced.

NO.	CONSTITUTIONAL PRINCIPLES	ISSUES	CONTENTIOUS ISSUES	NON-CONTENTIOUS ISSUES	REMARKS
1.	I, II, VIII, XIV, XVII	Representative government	<p>1. Government to be representative <i>Minority participation in Executive</i></p> <p>2. Electoral system constituency-based within proportional representation</p> <p>3. Democracy to be participatory</p>	<p>1. Minority participation in executive government</p> <p>2. Right to recall elected representatives</p>	<p>Within jurisdiction of TCs 2 and 4.</p> <p>Within jurisdiction of TC 2</p> <p><i>The FF alone does not agree</i></p>

check with Corder.

17

NO.	CONSTITUTIONAL PRINCIPLES	ISSUES	CONTENTIOUS ISSUES	NON-CONTENTIOUS ISSUES	REMARKS
2.	I, II	Citizenship	None	<p>Common S.A. citizenship</p> <p>-----</p> <p>Acquisition, loss or restoration to be legislated</p> <p>-----</p> <p>Citizens to enjoy all rights, benefits and privileges of citizenship</p> <p>-----</p> <p>Citizens to abide by duties of citizenship</p> <p>-----</p> <p>Citizens to have right to enter remain in and leave South Africa</p> <p>-----</p> <p>No arbitrary deprivation of citizenship</p> <p>-----</p>	<p>Draft constitutional provision to be proposed by TC</p> <p>-----</p> <p>Constitution to guarantee acquisition of citizenship by birth (NP)</p> <p>-----</p> <p>Within jurisdiction of TC4.</p>

19

NO.	CONSTITUTIONAL PRINCIPLES	ISSUES	CONTENTIOUS ASPECTS <i>ISSUES</i>	NON-CONTENTIOUS ASPECTS <i>ISSUES</i>	REMARKS
3.	II, VIII	Suffrage	<p>Whether non-citizens should have right to vote</p> <hr/> <p>Minimum voting age.</p> <hr/> <p>Whether age requirement to be in constitution</p> <hr/> <p>Criteria for disqualification (particularly relating to prisoners).</p>	<p>All citizens to have constitutional right to vote</p> <hr/>	<p>I. Divergence of opinion as to grounds on which citizenship, and therefore right to vote, acquired.</p> <p>To be spelt out in legislation</p> <p>Draft constitutional provisions to be proposed by TC</p> <hr/> <p>Different views as to what minimum voting age should be and whether to legislate thereon or deal with in constitution</p> <hr/> <p>1. No agreement as to what grounds of disqualification should be.</p> <p>2. NP wants grounds of disqualification to be provided for in constitution, other parties in legislation</p>

FIRST DRAFT - 28 JUNE 1995

*Status: Prepared by Technical Advisors
Instruction by Theme Committee*

Citizenship

- 1) There shall be a common South African citizenship.
- 2) The acquisition, loss and restoration of South African citizenship shall be regulated by an Act of Parliament, subject to any provision of the Chapter on Fundamental Rights which deals with these matters.
- 3) Every South African citizen shall be entitled to enjoy all rights, privileges and benefits of such citizenship as are accorded to him or her in terms of this Constitution or an Act of Parliament.
- 4) Every South African citizen shall be subject to all duties, obligations and responsibilities of such citizenship as are imposed upon him or her in terms of this Constitution or an Act of Parliament.

The Franchise

Every South African citizen shall be entitled to vote in elections for the legislatures at all levels of government and in referenda contemplated in this Constitution, subject to the laws regulating such elections and referenda.

PARTY SUBMISSIONS

BLOCKS 7 & 9

**AFRICAN CHRISTIAN DEMOCRATIC PARTY
PRELIMINARY SUBMISSION
TO THE CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 1**

**NAME, SYMBOLS AND NATIONAL
TERRITORY**

One of the most important aspects of the negotiation phase recently entered, is that the spectrum of South Africans are beginning to build a national identity. Clearly the process should not be taken to imply that differences of opinion are somehow unwanted: as long as certain moral boundaries are observed and respected, there is wide scope for a meeting of minds and hearts of South Africans from diverse philosophy and culture.

In this regard the ACDP proposes keeping the national name and symbols and to observe such national territory as would not force any peoples to be a part of a sole nationality that they resent. If it can be accomplished that the cultural, religious and philosophic diversity be accommodated in a federal system with self-determination being a recognised as healthy aspects of regionality and locality, then it must be done.

The aim should not be to repress diversity, culturally or on other recognised and proven aspects of status (not behaviour) but to encourage a wider and more encompassing umbrella-identity incorporating a range of localised and regionalised identities.

It is indeed argued that a constitutional republic ordered on clear lines of federalism is an outstanding vehicle with which to realise this ideal. As long as identity-building and national pride is recognised as the process which it clearly is, which of necessity might mean a relatively lengthy process of acculturation that must never be forced, this country will truly be one in vision and spirit.

Another very important aspect to consider in dealing with the history and indeed the future of this country is that this country always has been and always will be a moral and religion-based nation, no matter what the political representatives of the nation's individuals might say. This being the case, the ACDP denotes that the two current anthems be used without trying to merge them into one so-called cohesive whole. They both reflect a rich cultural and historical tapestry and reflect the very uniqueness of this subcontinent on the southern most tip of Africa which we all call home.

29th June 1995

[SYMBOL.WPS]

**AFRICAN CHRISTIAN DEMOCRATIC PARTY
PRELIMINARY SUBMISSION
TO THE CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 1**

LANGUAGE

Aspects of language are very much an ingrained part of philosophy, identity and culture. This was clearly seen when the International Esperanto Association started introducing their work into the linguistic mainstream.

Clearly the notion makes sense - borrow a little bit from each language in the main recognised groupings and provide an easily taught alternative to the bewildering array of international tongues. Yet the idea did not enamour the world population the way the water does the proverbial duck. Upon analysis it was found that language and culture mutually support one another: one does not exist without the other in normal circumstances and because Esperanto was a deculturised language, while it soothed the ear, it did not feed the cultural soul.

This is the point that South Africa has now reached: having a multiplicity of languages dictates the need for a common identity and for understanding and comprehension to be nurtured between different language groups. The ACDP proposes that a transition phase give equal recognition to all the main language streams in this country through an innovative and history-making multi-language educative program, South Africans will learn an appreciation for other languages and this is seen to be a vital part of a Reconstruction and Development Programme for this country.

This phase should not endure indefinitely however, nor would it necessarily mean translating everything into eleven or so languages.

The aim should be to accommodate those who would otherwise be excluded, because of an inability to comprehend another language. The main thrust however would be to use and to empower through language training the use of a particular language found to best blend the citizens of this country together to form a particular South African culture and identity while simultaneously recognising the language-related cultural diversity of this society and realising the position of this country in the international community.

The ACDP recognises the need for an interim phase of cross-linguistic pollination that could eventually bear the seed of a new comprehension, awareness and respect among all South Africans for all other languages and yet a pride and confidence in a particular mother tongue. In this regard a system of home-schooling where the parents nurture the awareness of language diversity as the underlying link between language and character identity could prove an invaluable tool.

29 June 1995
[LANG.WPS]

PRELIMINARY ANC SUBMISSION

THEME COMMITTEE 1 - LANGUAGE

26 June 1995

South Africa is a multi-lingual country, its history having been made all the richer by the linguistic and cultural diversity of its people. Language has however for centuries been used as a tool of political manipulation in this country - particularly under Apartheid when through the recognition of only English and Afrikaans as "official" languages, the majority of South Africans were denied the right to communicate in an official and educational context in their own language.

We in the ANC believe that the past has taught us the importance of recognising, celebrating and preserving South Africa's rich language and cultural diversity and it is in this light that the following proposals are made.

ANC POLICY PROPOSALS

1. The Constitution must declare Afrikaans, English, isiNdebele, Sesoto sa Leboa, Sesotho, siSwati, Xitsonga, Setswana, Tshivenda, isiXhosa and isiZulu as the national official languages of South Africa.
2. Mechanisms for the development, enjoyment and promotion for equal use of all official languages must be created.
3. All official languages shall be equally recognised.
4. Every person shall have the right to communicate in courts, in Parliament and in Government in his or her own language.
5. National and Provincial governments may designate a language or languages as the official languages of communication for any particular purpose, or generally. However any designation of a language shall be subject to the principle of equal recognition of official languages. In addition, it shall take into account local language variations and shall not impinge upon a person's right to communicate in the courts or with structures of Government in his or her own language.

THEME COMMITTEE 1 -

PRELIMINARY ANC SUBMISSION ON BLOCK G

NAME

The name of a country carries more than just a name, it has to do with history culture and many other aspects that with goes that country. Therefore ANC maintains that the name the **Republic of South Africa** should be retained as it embodies all these aspects and is acceptable to majority of our country's citizens.

SYMBOLS

1. Coat Of Arms

Though it can be said that this symbol like many others have been associated with Apartheid, we maintain the fact that it carries so much history that has transcended colonial and Apartheid rule. Accordingly, we are of the view that it should be retained.

2. National Anthem

The ANC is alive to the emotion and cultural importance associated with a National Anthem. However, we believe that it is equally important that South Africans should symbolise new found nationhood by having one national Anthem for all its people. The current anthem combining parts of Nkosi Sikelela iAfrika and Die Stem, though not offensive in content, is long and believe it could be replaced by a new common anthem that could reflect rainbow nature of our society. Alternatively, an improved merger of the two anthems could be created.

3. Flag

The interim flag raised at the inauguration has become the proud symbol of the new South Africa and should be retained.

4. National Territory

The Constitution must declare South Africa to be one sovereign state and the territory of South Africa to be the whole territory of South Africa as it was on 27 April 1994, including our territorial waters, islands and airspace.

5. **Seat of Government**

The ANC believes that factors which should influence the decision as to the location of the seat of Government must be :-

- * Accessibility
- * Manageability
- * Consensus by majority of South African Citizens.

We believe that the Cabinet should consider the practicality, functionality and economic viability of the location of Parliament. The possibility of conducting surveys to determine the issue in all provinces (alternatively all provinces save for the Western Cape and Gauteng) needs consideration.

DEMOCRATIC PARTY

AGENDA ITEM 10:

T.C. 1/10,12

SUBMISSION ON LANGUAGE

1. Constitutional provisions. 11, X1.
 - 1.1 The DP strongly supports the constitutional recognition of South Africa's de facto multilingualism.
 - 1.2 However, we believe the interim constitution's language provisions (Article 3) to be too vague and sweeping to be practically realisable; in fact they may have the effect of reinforcing the drift towards unilingualism leaving the vast majority of South Africans excluded from equal participation in public, social and economic life, and creating a linguistically determined underclass.
 - 1.3 Eleven languages are currently accorded official status at the national level. We believe a distinction should be drawn between official and national languages and that devolution to the provinces is the key concept in achieving official status for all eleven languages.
 - 1.3.1 Official languages should be understood to be languages that a given level of government and its departments are required to use for defined functions.
National languages should be understood to be languages that enjoy formal recognition.
 - 1.3.2 A natural language concentration occurs in the provinces. The apparent reluctance to acknowledge this fact is no doubt rooted in rejection of the

Verwoerdian apartheid past and in fears that a geo-cultural constitutional approach may lend itself to ethnic mobilisation. However, to ignore the reality and simply to declare all eleven languages official does not serve the goal of multi-lingualism.

1.3.3 The provinces must clearly retain the power to adopt, by a two-thirds majority, a language or languages as the official languages "for the whole or any part of a province and for any or all powers and functions within the competence of that legislature". In this way, all eleven national languages will enjoy official status : every language, even the smallest, has its "home base".

1.3.3.1 The choice of official languages has been relatively straightforward in all provinces except Gauteng, which like any major metropole anywhere in the world reflects the whole of the rich national tapestry. However, even Gauteng is dominated by 3 languages.

Gauteng:	Afrikaans	1 380 205
	Zulu	1 206 975
	English	1 029 070
	Southern Sotho	689 700
	Northern Sotho	646 594
	Tswana	517 275
	Xhosa	387 956
	Tsonga	258 638
	Swati	86 213
	Venda	86 213
	Ndbele	43 106
	Other	342 598

- 1.3.3.2 With two or three official languages, a province has a realistic chance of developing and providing quality interpretation and translating services in its health and other services and of using language as a resource for empowerment and economic growth rather than simply formally observing it as a right; and all eleven languages have a realistic chance of actual and not just academic development.
- 1.4 At the national level, the focus should similarly sharpen. Instead of declaring all eleven languages to be official, all eleven could be declared national languages while 6 languages be constitutionalised as official for specifically defined purposes at the national level. e.g. English, Afrikaans, Zulu, Xhosa, Northern or Southern Sotho and Tswana.
- 1.4.1 The Nigerian model is instructive. The artificially created colonial boundaries of Nigeria resulted at the time of independence (1963) in a lack of historical allegiances between the people constituting the broad population, representing some 400 indigenous languages. With the primary political task seen to be than of developing an integrated society, English, followed by three national languages (Ibo, Hausa and Yoruba) together came to establish a distinct hierarchy of languages in Nigeria; yet another "level" below those comprised 12 regional languages, followed by the bottom level of 380 local languages. In spite of this hierarchical structuring, a strong sense of the functional value of languages prevails, with local, regional and national languages all recognised as important means of communication at various levels of government and the economy. Furthermore, the facility of multilingualism is regarded as valuable in building a unified society and for practical purposes such as conducting trade.

Nigeria has consequently adopted a three-tiered language policy for educational purposes, with English both as the official language and as the ultimate instruction medium at schools. The three other national indigenous languages may all be used in national government and all pupils are required to learn at least one of them at school, while the mother-tongue or language of any community within which a pupil resides is used as the first medium of instruction at school, and maintained all the way through to junior secondary level, after which it may be discontinued in favour of one of the national languages.

The Nigerian policy of multilingualism represents one of the most successful examples of the implementation of a specific language policy in Africa; not only does Nigeria have the highest percentage of people on this continent competent in the use of a non-indigenous language (more than 20%) but competency in regional or national languages is equivalent to English as an access point for empowerment with regard to economic and political opportunities for a significant number of citizens. Evidently, there are a number of positive factors in this country's society which have influenced the realisation of a more egalitarian social and political structure thanks to the implementation of a language policy which facilitates the potential empowerment of its citizens.

- 1.4.2 We do not propose as hierarchical a structure but note the following on the subject of English. English is SA's link language both internally and with the world. It is the language of politics and public life; it is our access route to the information highway and the technological revolution (conducted entirely in

English) which is the industrial revolution of our century; it is the language we use for trade and diplomacy. For future trade and sub-continental and continental economic relations, Portuguese and French may in due course require greater emphasis, but for the moment English is our greatest economic asset.

This implies that we make a choice for English as a lingua franca and not a minority language striving for cultural rights.

It also implies that we specifically choose the standardised English used throughout the world, and not the ~~Africanised~~^{Americanised} English for which a persuasive case is sometimes made.

DEMOCRATIC PARTY

AGENDA ITEM 12:

NAME, SYMBOLS AND NATIONAL TERRITORY

NAME

The Democratic Party proposes that the name "The Republic of South Africa" be retained.

Since this country effected its miraculous transition to democracy, South Africa has become a "brand name" with positive connotations throughout the world. This should be preserved and built on.

SYMBOLS:

The flag - the D.P. proposes that the present "new" flag be retained. It has been enthusiastically accepted by a majority of the population and there would be little point in re-opening the debate.

The anthem - we propose that the "official" shortened version as presented to Parliament, which includes both "Inkosi sikel' iAfrika" and "Die Stem" be accepted as the official anthem.

The Coat of Arms - we propose that a new design be called for in the same way that a new design for the flag was called for, and that a suitably qualified committee be called upon to make a choice.

NATIONAL TERRITORY:

The D.P. proposes that existing legislation in this regard be adhered to.

DEMOCRATIC PARTY

AGENDA ITEM 13:

SEATS OF GOVERNMENT

The D.P. does not believe in the concentration of power in any region, however, in the case of a National Legislative Capital it is of the opinion that the final decision will have to rest on the shoulders of the Constitutional Assembly. In order to enable the C.A. to make an informed decision, the process of information gathering should continue, and relevant matters, especially the cost of maintaining the status quo as opposed to the cost of moving, should be carefully computed.

NATIONAL PARTY SUBMISSION

THEME COMMITTEE 1

BLOCK 9:

ITEM 10: NAME OF THE REPUBLIC

ITEM 11: NATIONAL SYMBOLS

ITEM 12: NATIONAL TERRITORY

ITEM 10: NAME OF THE REPUBLIC

1. The National Party supports the retention of the name "Republic of South Africa".

ITEM 11: NATIONAL SYMBOLS

1. Flag

The National Party supports the retention of the current national flag. The flag has become "the people's flag" and symbolises unity and reconciliation in South Africa.

2. Coat of Arms

The National Party supports the retention of the current coat of arms in line with international practice.

3. National Anthems

The National Party supports the retention of Nkosi Sikelel iAfrika and Die Stem as national anthems of the Republic, with the proviso that the combined shortened version be allowed where appropriate.

ITEM 12: NATIONAL TERRITORY

1. We believe that the description of the national territory of the Republic in section 1(2) and Schedule 1 of the transitional constitution should be retained in principle. As pointed out in the briefing document of the Technical Committee reference to the provinces as constituent units of the Republic and their geographical boundaries and the magisterial districts which they comprise is an accepted method to describe the national territory of a state.
2. We believe that it is unnecessary in a description of the national territory of a state to refer to territorial waters, the contiguous zone and the exclusive economic zone. These are matters of international law and it is deemed fit and proper to deal with these matters in a separate law such as Act 15 of 1994.
3. As the Prince Edward Islands are properly declared to be part of South Africa and of the magisterial district of Cape Town in terms of Act 43 of 1948, it is also not necessary expressly to refer to them in the constitution.
4. Obviously the nine new provinces have now been accepted as the constituent units of the Republic and it could be considered to include in section 1(2) a reference to them. Section 1(2) could then read: "The national territory of the Republic shall comprise the [areas] provinces defined in Part 1 of Schedule 1. Reference by name is not recommended, because of the possibility of future name changes.

NATIONAL PARTY SUBMISSION

THEME COMMITTEE 1

ITEM 13: SEATS OF GOVERNMENT

The National Party is currently considering and evaluating this matter and will make a submission in this regard in August 1995.

NATIONAL PARTY SUBMISSION

THEME COMMITTEE 1

ITEM 8: OFFICIAL LANGUAGES

A. INTRODUCTION

It is the considered opinion of the National Party that section 3 of the transitional constitution should, in principle, be retained in the final constitution.

Section 3, together with section 31, brought about a dramatic change in the position of South African languages. For the first time, the language provisions of our constitution recognise the multilingual nature of our society unequivocally. For the first time, all indigenous languages are constitutionally recognised on a national basis. In addition, every South African has the constitutional right to speak the language of his or her choice. Clearly, the purpose behind those provisions is to break down language discrimination, to elevate our languages to the same status and to empower our people linguistically. Our aim should never be to escape all practical implications of this approach, but to further its realisation.

Accordingly, section 3 should be adopted by all as the proper starting-point for any future language policy.

B. PRINCIPLES UNDERLYING SECTION 3

1. The rights of the individual

Language has as much to do with the individual as with society. One cannot properly assess section 3 without reference to section 31, which guarantees the right to use the language of one's choice. The effect of section 31 is threefold. It recognises the importance of language and of freedom with regard to language in a multilingual society, by doing so it recognises the multilingual character of the state itself, and it puts the focus where it belongs - on the individual, he or she that speaks a language. As such, section 31 forms the cornerstone of the

language provisions in the transitional constitution. (Bear in mind also sections 32(b) and 107, which particularise the right created in section 31 in the case of education and court proceedings, respectively.)

Although with some qualifications, the right to use the language of one's choice is reflected in the provisions allowing individuals in the communication with the authorities to use languages of their choice. The qualifications are, *firstly*, that the right is restricted to the use of *official* languages only (and not any language as in section 31) and, *secondly*, that it may be exercised only where practicable (see section 3(3) and (6)).

2. Multilingualism

By providing for eleven official languages, the multilingual nature of our society has been recognised constitutionally. Without doubt, the purpose is to elevate all languages to the same status and not to favour one or more languages over others.

This is particularly evident from provisions such as section 3(1), which calls for the creation of conditions for the development of all official languages and the promotion of their equal use and enjoyment; and section 3(2), which envisages a law that will extend the rights relating to and the status of languages existing at regional level, to the national level. One can also refer to section 3(9), where this approach is reiterated in the principles on which laws and official policy and practice in respect of the official use of languages must be based.

In addition, provision is made for the development of *all* South African languages, *inter alia* by the establishment of a Pan South African Language Board (section 3(10)).

3. Existing rights and status

Existing rights relating to and the present status of languages shall not be diminished (section 3(2), (5) and (9)(f)). Again, the idea obviously is to elevate the new official languages to the same status *without* bringing down the status of the existing official languages. We wish to emphasise: our purpose is not to retain the advantageous position of certain languages. It would be presumptuous in the extreme to argue that the provision implies privileged treatment for or the perpetuation of the advantage enjoyed by any one or all of the existing official languages. It is nevertheless a logical and proper provision. The principle of multilingualism would not have been served had the present status of languages not been protected.

One must, of course, remember that this provision does not only refer to English and Afrikaans. It includes all those indigenous languages that through the years became official languages in the former independent and selfgoverning homelands. Thus, the status of isiXhosa in the former Transkei and Ciskei, Tshivenda in die former Venda, Setswana in the former Bophuthatswana, isiZulu in the former Kwazulu, Sesotho sa Leboa in the former Lebowa, Sesotho in the former Qwa-Qwa, and so on, may not be diminished in those areas.

4. Flexibility

Contrary to popular belief, section 3 is not a dogmatic, inflexible provision that casts our languages and their future use and development in stone. Section 3 provides for flexibility, *firstly*, by allowing each province to choose any national official language or languages as official language or languages for that province (section 3(5) and, *secondly*, by allowing parliament and provincial legislatures to provide for the use of an official language or languages by the government. Considerations of usage, practicality and expense must be taken into account in this (section 3(8)). Obviously, the equal *use* of languages is something else than

their equal *status*, and while the latter must be protected vigorously, room must be created for a practical approach to their actual use by the authorities. This has been done in section 3. Of course, the detail on this will have to be worked out, but potential practical problems, should not be allowed to undermine the principles guaranteed in section 3. In this regard, the language policy adopted by the Gauteng legislature may be worth referring to.

5. Section 3(9)

At all levels of government, all legislation and official policy and practice with regard to the use of languages are subject to the principles set forth in section 3(9). Their thrust, it seems, is to further equality, respect and opportunity and to eliminate and prevent exploitation, domination and division. In deciding on an official language or in shaping a language policy, these principles must be observed and every government body should ask itself to what extent it is furthering or frustrating these principles.

As a matter of fact, the whole of section 3 places a particular responsibility on governments at all levels not only to seek an easy way out of our multilingualism, but to participate in the development of all our languages and the promotion of their equality. No government body may approach section 3 with a view only to find loopholes that may enable it to sidestep possible practical or inconvenient difficulties. The attitude should rather be how, from government's side, the equality of all our languages can be furthered, how these languages can be developed, and how our constitutional multilingualism can be protected. In shaping a language policy, governments must decide not only on an official language or languages (in the case of the provinces), or a language or languages for use by the government, in the same breath they must also formulate action steps to further the equality and development of all languages.

C. THE FUTURE

It should be clear by now that section 3 should be retained in spirit and in substance. Section 3 is not a mere compromise hastily concocted at Kempton Park. It is also not a transitional arrangement on our way to a single official language. It recognises one of the most salient and enduring characteristics of our society, and breathes the spirit of reconciliation that should remain with us into the future. Moreover, section 3 acknowledges the dignity of all our people. Language is more than just communication. It is part of one's being, and by recognising and protecting our languages, we recognise and uphold the dignity of our people. If we approach the matter of official languages only as a question of cost and convenience, only as an exercise in finding a way around and not coping with our multilingual reality, we will violate the spirit of the constitution and the dignity of our people.

The National Party embraces all South African languages and undertakes to do its utmost to ensure their protection, development and eventual equality on the basis provided in section 3 of the transitional constitution.

ANC SUBMISSION

BLOCK 8

PRELIMINARY ANC SUBMISSION

THEME COMMITTEE 1 - FOREIGN RELATIONS AND INTERNATIONAL LAW

23 June 1995

The ANC believes that South Africa must take its place amongst the family of nations in Africa and the world. This implies that the government of our country must at all times conduct its affairs in consonance with accepted principles of international law and in a manner which builds mutual respect and co-operation between nations.

In particular, this implies a respect for the sovereignty and territorial integrity of states and an acceptance of the general principle of non-interference in the domestic affairs of other states. However, given our history and position in the world community, we believe that South Africa must also lead the way in the international promotion of human rights and where possible seek to achieve the peaceful resolution of conflicts.

ANC POLICY PROPOSALS

1. The Constitution must reflect South Africa's commitment to taking its place amongst the "family of nations in Africa and the world" and its respect for an international world order based on peace, mutual respect and co-operation between nations.
2. The ANC believes that South Africa must become party to the relevant international human rights conventions, particularly those dealing with racism, gender discrimination and the rights of children.
3. All International treaties which impact on South African legislation must be approved by Parliament by way of national legislation. Such obligation should be constitutionally entrenched.

PRELIMINARY ANC SUBMISSION

THEME COMMITTEE 1 - THE POWERS AND RESPONSIBILITIES OF THE HEAD OF STATE

23 June 1995

Given the important role of such office, the ANC believes that the powers and responsibilities of the Head of State should, where necessary, be constitutionally determined. All additional powers accorded to such office may be detailed in national legislation.

ANC PROPOSALS

1. The President shall be the Head of State, with both executive and ceremonial powers.
2. The President shall consult with the Cabinet at all times when taking important decisions.
3. The President shall have such additional powers as conferred upon such office by the Constitution or any Act of Parliament.
4. The President shall have the power to declare a state of national defence or war, subject to Parliamentary ratification.
5. The President shall have power over and ultimate responsibility for the intelligence services of the country and shall be accountable to Parliament in respect of all matters concerning such services.

