

2/4/1/2/33

A27

**CONSTITUTIONAL
ASSEMBLY**

**THEME COMMITTEE 1
CHARACTER OF
DEMOCRATIC STATE**

12 JUNE 1995

**ROOM M515
14H00**

**EXTRA
DOCUMENTATION**

TABLE OF CONTENTS

NO.	DETAILS	PAGE
1.	Draft Report for Block 5 : The Economy	1 - 5
2.	Party Submissions for Block 6: Representative Government ACDP ANC DP	6 - 7 8 - 9 10 - 13

FIRST DRAFT 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 ~~been~~ 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 ISSUE

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).

The duration of such measures has, however, been placed in contention (see below).

C. ISSUES RAISED BY AT LEAST ONE PARTY NOT DIRECTLY PLACED IN CONTENTION BY ANOTHER PARTY

Several such issues have been identified, as follows, with the supporting party/ies in parenthesis. In each case, it is contended that the Constitution should provide for:

- I) total transparency in respect of financial matters, and legislative measures to promote small businesses (ACDP);
- II) access to land, the removal of inequities in that regard, and addressing the barriers to full and equal participation in the economy by women (including their unpaid labour) (ANC);
- III) a protected and sustainable environment, in the light of economic development needs (ANC and NP);
- IV) labour relations to be dealt with in the Bill of Rights and labour legislation (ANC, DP and NP);
- V) the outlawing of servitude, and forced labour (DP and NP) and exploitative labour practices on children (ANC and NP);
- VI) the regulation of the economy in the context of a democracy (ANC, FF and NP); and
- VII) an equitable division of national revenue (considering economic need)

from between the central ^{to} and provincial governments, and the establishment of institutions (such as the Financial and Fiscal Commission) to advise on such matters (DP and FF).

IT MUST BE EMPHASISED ONCE MORE THAT THE FACT THAT A PARTY DID NOT EXPRESS ITSELF ON ONE OR MORE OF THESE MATTERS IN THIS BLOCK DOES NOT NECESSARILY SIGNAL AGREEMENT OR OTHERWISE

D. CONTENTIOUS ISSUES

I) Duration of measures to assist the disadvantaged

Both the ACDP and the NP contend that "affirmative action" measures should be temporary in nature, either for a fixed period (ACDP) or until the objectives have been attained (NP).

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 argues for constitutional regulation of the redressing of inequalities in regard to access to land.

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	Matters put forward but not directly countered	Remarks
1.	II, III, V, XXV, XXVI, XXVII, XXVIII, XXIX	The Economy	<p>1) Duration of such measures</p> <p>-----</p> <p>2) Free market system / free economic activity</p> <p>-----</p> <p>3) Protection of property rights</p> <p>-----</p>	Measures to assist those disadvantaged by past discrimination	<p>-----</p> <p>-----</p> <p>-----</p> <p>-----</p> <p>1) Transparency</p> <p>2) redress inequities in access to land</p> <p>3) remove barriers to participate in economy by women</p> <p>4) sustainable environment</p> <p>5) regulation of labour relations and exploitative labour practices generally</p> <p>6) the relationship between democracy and economy</p> <p>7) division of revenue vertically between governments.</p>	<p>Within the jurisdiction of TC 4</p> <p>? Mention in the Preamble/Postamble ?</p> <p>-----</p> <p>Right to free economic activity within jurisdiction of TC 4</p> <p>-----</p> <p>Within the jurisdiction of TC 4</p> <p>-----</p> <p>Some aspects may appropriately be included in the Preamble / Postamble</p>

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

**REPRESENTATIVE GOVERNMENT,
CITIZENSHIP AND SUFFRAGE**

The ACDP supports the idea of making provision in the constitution for structures of civil government to be representative. Citizens should be able to vote for people who will represent their interests and the values they esteem highly.

From this basis flows the following corollaries. Firstly, in order to reflect balanced and differing opinions, there is need for more than one political party. This may be limited to two diametrically opposed parties representing all the major interests as with the Republicans and Democrats in the U.S. with provision being made for those citizens who do not feel that their aspirations are being properly addressed, to mobilise and associate themselves into another representative political grouping.

Secondly, the need arises to allow citizens to mobilise support for their particular legitimate interests, both in and outside government. The ACDP therefore, strongly objects to a member of any one political party using the national broadcaster unchallenged, to inform the largest interest group in this country that they do not have to exercise their rights in terms of sec 16, of Act 200 of 1993 because their interests are being taken care of. This flies in the face of the right to assembly, demonstration and petition and does not bode well for the future.

Thirdly, individuals and parties in government should be accountable to ordinary people - both politically and morally. We refer to the submission made on accountable government and incorporates those terms herein. This necessitates the need for elections with secret ballots to be held on a regular basis every 5 years.

We equally call, however, for the constitution to enable voters to remove office bearers from national regional and local government following a petition supported by two-third of a particular constituency based on non-compliance with a code of conduct drawn up by all political parties collectively.

SUFFRAGE

Voting is at the heart of democracy - the right to make one's voice heard through the ballot paper vindicates the existence of a democratic system. The ACDP therefore, supports the right and further proposes that the constitution should lay down a minimum of 18 years as a qualification to vote. With every right comes responsibility and equally so with suffrage. This is why we state that all citizens should have the to vote if they are legal majors and conform to specific requirements that will show they did take up their responsibility as citizens. This includes *inter alia* not having a criminal record for serious offences.

The ACDP feels that citizenship and suffrage go hand in hand. Ideally, only citizens should be able to vote. We, however, acknowledge a shrinking of the world due to progress in modes of transportation and the like. There is also a need to stimulate the economy of this country by including the expertise of the holder's of work and residence permits. Because of their interest and investment into the economic growth of South Africa, the ACDP feels that they should be given the opportunity to vote.

The emphasis in suffrage always is on citizens, with non-nationals being exceptions to the rule who may become entitled to vote after meeting certain requirements - e.g. duration of stay in this country.

6th June 1995
[REPRES.WPS]

5 June 1995

ANC SUBMISSION (*PRELIMINARY*)

TO THEME COMMITTEE

BLOCK 6 REPRESENTATIVE GOVERNMENT

FRANCHISE AND SUFFRAGE AND CITIZENSHIP

1. REPRESENTATIVE GOVERNMENT:

(a) There shall be regular elections for Parliament at least every ⁵ years based on proportional and constituency representation in such a manner that the representation of parties in Parliament reasonably and equitably reflects their electoral support. There shall be a common voters roll and universal adult suffrage.

(b) The details of the percentage division between constituency and proportional representation is a matter to be spelt out in legislation.

(c) The details of constituency definition is a matter of discussion under Theme Committee2.

2. SUFFRAGE:

There shall be multi-party democracy, regular elections and universal adult suffrage. The minimum voting age shall be determined through an act of parliament.

3. CITIZENSHIP:

There shall be a common S.A. citizenship.
All South Africans shall be entitled to equal citizenship, Full citizenship may be acquired by birth, decent, ~~marriage~~ or naturalisation. No citizen shall be arbitrarily deprived of his citizenship though legislation may set out circumstances in which citizenship shall be lost. Parliament shall not be prohibited from legislating for the extension of citizenship for specified categories of people.

To: Leola Rammble
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.
