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A30

**CONSTITUTIONAL
ASSEMBLY**

**THEME COMMITTEE 1
CHARACTER OF
DEMOCRATIC STATE**

1 AUGUST 1995

**ROOM M515
14H00**

DOCUMENTATION

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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: Tuesday, 1 August 1995
Time: 14h00 - 18h00
Venue: Room M515 (Marks Building)

AGENDA

1. Opening
2. Apologies
3. Adoption of previous minutes
4. Matters Arising
5. Oral submission by WCPCC (Dr. Shun Govender)
6. Discussion of draft report on Foreign Relations and International Law (Block 8)
7. Tabling and discussion of submissions on Language, Name and Symbols, Seats of Government and National Territory

ACDP
ANC
DP
FF
NP
PAC

8. Public Participation

10. General

11. 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 31 JULY 1995 09H00 ROOM M515**

Present

Mahlangu NJ (Chairperson)

Chiba L
Chikane MM
Cwele CS
Gumede DM
Janse Van Rensburg AP
Kekana NN
Mabuza MC
Marais A
Marais PG
Meshoe KR
Mngomezulu PG
Moorcroft EK

Mukhuba TT
Mulder PWA
Ripinga SS
Shope G
Sisulu AN
Streicher DM
Van Deventer FJ
Van Zyl ID
Vilakazi BH
Williams AJ

Apologies:

Goosen AD
Hangana NE
Lekgoro MK
Momberg JH
Ncube BS
Nzimande BE

Technical Experts present:

Corder H

Leola Rammble and Susan Rabinowitz were in attendance.

1. OPENING

1.1 The meeting was opened by the Chairperson at 09h20.

2. ADOPTION OF PREVIOUS MINUTES

2.1 The Minutes of the Theme Committee meeting held on Monday 26 June 1995 contained in Document A29 [Pages 3 - 8] were adopted.

3. MATTERS ARISING

3.1 Request from Western Province Council of Churches [Page 8, Paragraph 7.1]

The Secretary reported that Dr Shun Govender of the WPCC would address the Theme Committee on the issue of Church and State on Tuesday 1 August 1995 at 14h00.

3.2 With regard to the FF submission for Block 8 dealing with Foreign Relations and International Law [Page 7, paragraph 5.7], the Secretary reported that the FF had advised that they would not be submitting a submission for this block and that the drafting of the Report should proceed. The Secretary further reported that the draft report for Block 8 would be on the agenda for discussion at the Theme Committee meeting on Tuesday 1 August 1995.

4. FINALISE DRAFT REPORT FOR BLOCK 6 : REPRESENTATIVE GOVERNMENT (Document A29 Pages 9 - 20)

4.1 Prof Corder tabled the revised draft report for Block 6 and reported on the following amendments which had been made in consultation with the Drafting Sub-Committee:

4.1.1 Page 9 - Summary Overview of submissions (Volume 21) had been attached.

4.1.2 Page 11 - Non-contentious issues - Prof Corder reported that Points 2 and 3 had been rephrased.

4.1.3 Page 16 - Contentious Issues. Prof Corder reported that an amendment had been made to Paragraph 3.4 whereby the NP had widened the criteria for disqualification to include all convicted and sentenced prisoners.

4.1.4 Prof Corder further noted changes that had been made to the Analytical Survey on Pages 17 - 19 and pointed out that the Column Headings of Contentious and Non-Contentious Issues should be reversed on Page 17.

4.1.5 Prof Corder referred to the possible Constitutional Provisions on Page 20 which had been prepared by the Technical Advisors as instructed by the Theme Committee. All parties present approved the draft provisions as preliminary drafts for submission to the Constitutional Committee.

- 4.2 After discussion of the Draft Report by the Theme Committee, it was agreed that the following further amendments should be made:
- 4.2.1 Page 11 - Non-Contentious Issues, Point 2 - After discussion of the issue of a constituency-based system and due to an objection raised by the FF, it was agreed that this item should be placed under Contentious Issues.
 - 4.2.2 Under Contentious Issues on Page 11, it was agreed that the first sentence in Point 1 should be amended to read as follows:

"The extent to which the notion of "representative government" includes a role for minority political parties in the Executive is contentious".
 - 4.2.3 Under Agenda Item 9: Suffrage, Page 14, Point 1.2, the issue of separate voters' rolls was raised and after discussion it was agreed that a sentence should be added to the paragraph along the lines that: "The Theme Committee suggested that this matter be referred to the Theme Committee 2 for further discussion".
 - 4.2.4 Page 9, paragraph 3 - it was agreed that the words ",particularly the age qualification for suffrage" should be added at the end of the sentence.
- 4.3 It was agreed that with the necessary amendments made to the Report and the Analytical Survey, the Report was accepted and approved for submission to the Constitutional Committee.
- 5. TABLING AND DISCUSSION OF PARTY SUBMISSIONS FOR BLOCKS 7: LANGUAGE, AND BLOCK 9: NAME, SYMBOLS, SEATS OF GOVERNMENT AND NATIONAL TERRITORY**
- 5.1 The DP requested the Theme Committee to note the following amendment to its submission:

- Page 32, the second last line, the word Africanised should be amended to read "Americanised".
 - 5.2 It was agreed that this agenda item should stand over until the next Theme Committee meeting on Tuesday 1 August 1995.
- 6. PUBLIC PARTICIPATION**
- 6.1 There was no report.

7. GENERAL

7.1 None.

8. CLOSURE

8.1 The meeting rose at 10h30.

CHAIRPERSON

CONSTITUTIONAL ASSEMBLY

***THEME COMMITTEE ONE
CHARACTER OF
DEMOCRATIC STATE***

***REPORT ON BLOCK 6:
REPRESENTATIVE GOVERNMENT
CITIZENSHIP
SUFFRAGE***

31 JULY 1995

REPORT FROM THEME COMMITTEE 1

BLOCK 6 : REPRESENTATIVE GOVERNMENT, CITIZENSHIP AND SUFFRAGE

31 July 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)
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

1.

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

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

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. The Theme Committee agreed that these issues be referred for discussion to Theme Committee Two.

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.

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 Account No

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NO.	CONSTITUTIONAL PRINCIPLES	ISSUES	CONTENTIOUS ISSUES	NON-CONTENTIOUS ISSUES	REMARKS
1.	I, II, VIII, XIV, XVII	Representative government	1. Minority participation in executive government ----- 2. Right to recall elected representatives ----- 3. The FF rejects reference to constituency	----- 1. Minority participation in Executive to be representative ----- 2. Democracy to be participatory -----	Within jurisdiction of TC 2. ----- Within jurisdiction of TCs 2 and 4

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

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 Account No

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NO.	CONSTITUTIONAL PRINCIPLES	ISSUES	CONTENTIOUS ISSUES	NON-CONTENTIOUS ISSUES	REMARKS
3.	II, VIII	Suffrage	<p>Whether non-citizens should have right to vote</p> <p>-----</p> <p>Minimum voting age.</p> <p>-----</p> <p>Whether age requirement to be in constitution</p> <p>-----</p> <p>Criteria for disqualification (particularly relating to prisoners).</p>	<p>All citizens to have constitutional right to vote</p> <p>-----</p>	<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> <p>-----</p> <p>Different views as to what minimum voting age should be and whether to legislate thereon or deal with in constitution</p> <p>-----</p> <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 - 31 JULY 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.

BRIEFING DOCUMENT

THEME COMMITTEE ONE
BLOCK 6: BRIEFING DOCUMENT

AGENDA ITEM 8: CITIZENSHIP

1. **INTRODUCTION**

1.1 The subject "*citizenship*" falls exclusively within the domain of Theme Committee One.

1.2 The suggested framework for this agenda item involves the consideration of the following matters:

1.2.1 Aspects of citizenship appropriately to be dealt with in the Constitution.

1.2.2 Rights and responsibilities associated with citizenship.

2. **TRANSITIONAL PROVISIONS**

2.1 The Constitutional Principles which have relevance for the subject matter of this briefing document are the following (per Revised Work Programme p.14, Block 6):

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*

2 /.....

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."*

2.2 The transitional Constitution of 1993 deals, in one way or another, with citizenship or the rights associated therewith in the following sections:

Preamble - Extract

"WHEREAS there is a need to create a new order in which all South Africans will be entitled to a common South African citizenship in a sovereign and democratic constitutional state in which there is equality between men and women and people of all races so that all citizens shall be able to enjoy and exercise their fundamental rights and freedoms;

AND WHEREAS in order to secure the achievement of this goal, elected representatives of all the people of South Africa should be mandated to

3 /.....

adopt a new Constitution in accordance with a solemn pact recorded as Constitutional Principles;"

Section 5

- "(1) There shall be a South African citizenship.*
- (2) South African citizenship and the acquisition, loss and restoration of South African citizenship shall, subject to section 20 read with section 33(1), be regulated by an Act of Parliament.*
- (3) Every person who is a South African citizen shall, subject to this 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 this Constitution or an Act of Parliament."*

(The implication of the reference to sections 20 and 33(1) in subsection (2) simply is that a citizen's right to enter, remain in and leave the Republic and not to be deprived of his or her citizenship may not be limited by an Act of Parliament unless the provisions of the Act are -

- (a) reasonable;

- (b) justifiable in an open and democratic society based on freedom and equality; and
- (c) does not negate the essential content of the right in question.)

Section 6

"Every person who is -

- (a)
 - (i) *a South African citizen; or*
 - (ii) *not such a citizen but who in terms of an Act of Parliament has been accorded the right to exercise the franchise;*
- (b) *of or over the age of 18 years; and*
- (c) *not subject to any disqualifications as may be prescribed by law,*

shall be entitled to vote in elections of the National Assembly, a provincial legislature or a local government and in referenda or plebiscites contemplated in this Constitution, in accordance with and subject to the laws regulating such elections, referenda and plebiscites."

Section 20

"Every citizen shall have the right to enter, remain in and leave the Republic, and no citizen shall without justification be deprived of his or her citizenship."

Section 21

"(1) Every citizen shall have the right -

(a) to form, to participate in the activities of and to recruit members for a political party;

(b) to campaign for a political party or cause; and

(c) freely to make political choices.

(2) Every citizen shall have the right to vote, to do so in secret and to stand for election to public office."

Section 30(1)(a)

"Every child shall have the right to a name and nationality as from birth;"

(The reference to this section is included because the concepts

"citizenship" and "nationality" are often regarded as being synonymous whereas this is not necessarily the case. The term "nationality" is used to describe the juridical relationship between an individual and a state for purposes of international law whereas the term "citizenship" is a constitutional law concept which implies an entitlement to enjoy full political rights. Weis: Nationality and Statelessness in International Law, 1956 at 5-6 takes the view that the concepts "nationality" and 'citizenship' emphasise two different aspects of the same notion: State membership. 'Nationality' stresses the international, 'citizenship' the national, municipal aspect. Under the laws of most States citizenship connotes full membership, including the possession of political rights; some States distinguish between different classes of members ... (T)he terms 'national' and 'citizen' overlap. Every citizen is a national, but not every national is necessarily a citizen of the state concerned; whether this is the case depends on municipal law; the question is not relevant for international law." Quoted with approval by Olivier: Aspekte van Burgerskap- en Nasionaliteitsreelings in State met besondere verwysing na die Republiek van Suid-Afrika, unpublished LLD thesis 1977 at 107.)

Section 42(1)

"No person shall become or remain a member of the National Assembly unless he or she is a South African citizen and is and remains qualified in terms of section 6 to vote in an election of the National Assembly ...".

Section 43(a)

"A member of the National Assembly shall vacate his or her seat if he or she ceases to be eligible to be a member of the National Assembly in terms of section 42."

Section 50

"No person shall be qualified to become or remain a senator unless he or she is or remains qualified to become a member of the National Assembly."

Section 51(1)(a)

"A senator shall vacate his or her seat if he or she ceases to qualify to be a senator in terms of section 50."

Section 72(2)

"The Constitutional Assembly shall, subject to subsection (3), appoint an independent panel of five South African citizens being recognised constitutional experts, not being members of Parliament or any other legislature and not holding office in any political party, to advise it, or the Chairperson, on matters pertaining to its functions, and to perform such

other tasks as are provided for in this Constitution."

Section 77

The effect of this section is that the President has to be a South African citizen.

Section 84

The effect of this section is that an Executive Deputy President must be a South African citizen.

Section 88

The effect of this section is that, with the possible exception of one such Minister, Ministers must be South African citizens.

Section 99(2)(a)

"No person shall be qualified to be appointed President or a judge of the Constitutional Court unless he or she is a South African citizen;"

Section 110(4)

The effect of this section is that the Public Protector must be a South

African citizen.

Section 115(1)

"There shall be a Human Rights Commission, which shall consist of the chairperson and 10 members who are fit and proper persons, South African citizens and broadly representative of the South African community."

Section 119(2)

The effect of this section is that the Commission on Gender Equality shall consist of persons who are South African citizens.

Section 132(1)

The effect of this section is that members of provincial legislatures must be South African citizens.

Section 145(1)

The effect of this section is that a premier of a province must be a South African citizen.

Section 149(4)(b)

The effect of this section is that members of Provincial Executive Councils must be South African citizens.

Section 191(3)

This section provides that the Auditor-General must be a South African citizen.

Section 200(3)(a)

This section provides that no person shall be qualified to be appointed to the Financial and Fiscal Commission unless he or she is a South African citizen.

Section 211(2)(a)

This section provides that members of the Public Service Commission must be South African citizens.

Section 213(2)

The effect of this section is that members of Provincial Service

Commissions must be South African citizens.

Section 15(1) of the Electoral Act, No. 202 of 1993

"(1) Any person of the age of 18 years or older who is a citizen of or permanently resident in the Republic and who is in possession of a voter's eligibility document shall, in accordance with and subject to the provisions of this Act, be entitled to vote at the election."

3. CONSIDERATIONS POSSIBLY RELEVANT TO THE TASK OF THEME COMMITTEE ONE

3.1 The requirement in Constitutional Principle I that the Constitution must provide for a common South African citizenship underscores the fact that South Africa will remain as one state as contemplated by the requirement that South Africa shall be a sovereign state meaning, as has previously been indicated, an independent state which can either be a federal or unitary state. (See Basson: South Africa's Interim Constitution Text and Notes, 1994 at 344.)

3.2 Constitutional Principle II refers not to citizens but to "everyone". This concept is not synonymous with the citizenry. Chapter 3 of the Constitution generally extends fundamental rights to all persons with

the notable exceptions of sections 20 and 21 which single out citizens and consequently exclude non-citizens from entitlement to the rights enshrined therein. This is not at odds with universal practice. **Rautenbach: General Provisions of the South African Bill of Rights, 1995** at 35-36 states as follows:

"Like other bills of rights, the South African bill of rights guarantees particular political rights only to citizens: namely the right to vote; the right to enter, remain in and leave the Republic and not be deprived of citizenship without justification; rights concerning political parties, political activities and political choices; and the right to stand for election to public office. Only citizens are bearers of these rights because 'citizenship' is a status accorded to persons who are permanent inhabitants of the state. The rights reserved for citizens in the South African constitution are more limited than those in Germany, where only Germans are the bearers of the rights to freedom of assembly, association, movement and occupation and the guarantee against extradition."

See also Du Plessis & Corder: **Understanding South Africa's Transitional Bill of Rights, 1994** at 161-162.

3.3 **The acquisition of citizenship**

There are three generally recognised ways in which citizenship can be

acquired, i.e. birth in the territory of the state, descent from persons who are citizens of the state and naturalisation.

3.3.1 As far as citizenship by birth is concerned, the general rule is that all persons born in South African territory are South African citizens.

3.3.2 Citizenship by descent is acquired if a person is born outside the territorial limits of South Africa but the father (in the case of an illegitimate child the mother) is a South African citizen.

3.3.3 Naturalisation is the acquirement of citizenship by aliens who settle within the Republic and comply with certain statutory laid down requirements. See **Rautenbach & Malherbe: Constitutional Law, 1994 at 40-41.**

3.4 The following aspects would seem to warrant consideration by Theme Committee One:

3.4.1 Section 5 provides for a constitutional entitlement to certain rights, privileges and benefits associated with South African citizenship on a non-discriminatory basis. It also provides that citizens shall be subject to all duties, obligations and responsibilities associated with citizenship.

- 3.4.2 Basson *op cit* 11 points out that as a consequence there will no longer be second-class citizens who have so-called "bare" or "empty" South African citizenship and, as provided for in section 6, all persons will be accorded the full benefits of citizenship such as the right to vote.
- 3.4.3 He describes the implications of these sections as for the first time establishing citizenship across the board in the true constitutional sense of the concept, i.e. the legal relationship between state and individual which essentially is a status-determining factor and which brings in its wake certain competencies as well as certain obligations. Typical of the obligations would be the allegiance owed to the state and the state's entitlement to expect of citizens to defend its territorial integrity against any foreign threat or invasion.
- 3.4.4 It would seem that Theme Committee One is called upon to make a recommendation to the Constitutional Assembly as to whether or not a provision similar to section 5 should be provided for in the Constitution and possibly also make in principle recommendations regarding citizens' rights of the nature provided for in sections 6, 20 and 21.
- 3.4.5 Related matters that may require to be considered are

questions such as whether or not the entitlement to vote and to be eligible for political office should be restricted to South African citizens. As has been pointed out, the interim Constitution reserves membership of executive and legislative authorities at the central and regional levels of government for South African citizens whereas the right to vote for national and regional legislatures has been extended to permanent residents in the Electoral Act.

4. **CONCLUSION**

The above is an attempt to set the scene for a discussion of item 8. It will be expanded upon orally during the appropriate Orientation Workshop.

THEME COMMITTEE ONE

BLOCK 6: BRIEFING DOCUMENT AGENDA ITEMS 7: REPRESENTATIVE GOVERNMENT AND 9: SUFFRAGE

(Block 6 concerns three agenda items: those mentioned above and Item 8: Citizenship. A separate Briefing Document has been prepared on the latter issue. In this Briefing Document, the items will be dealt with separately).

A) AGENDA ITEM 7: REPRESENTATIVE GOVERNMENT

1) Introduction

The notion of "representative government" is integral to any democracy. Theme Committee One has already adopted as non-contentious that the core values of the character of the South African state shall be "accountability, democracy, equality, freedom and transparency." (See Report on Block 1, Non-contentious Point (D) on page 1). A further non-contentious point (see point (B)) was that "There shall be a multi-party political system, premised on regular elections, universal adult suffrage and a common voters roll".

The focus intended in this Agenda Item is broad, including issues surrounding elections, but also methods of ensuring representation of the population in its fullness both between elections and within the personnel of governmental institutions. The suggested framework (of 27 February's Revised Work Programme, p 3) is as follows:

"(a) The extent to which the Constitutional Principles already determine a particular system of representative government.

(b) Areas of flexibility within the Constitutional Principles.

(c) Broad outline of an appropriate system of representative government for South Africa.

(d) Referenda as an instrument of decision-making."

2. Transitional Provisions

The following Constitutional Principles and sections of the transitional Constitution are relevant to the agenda item.

2.1 Constitutional Principles

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.

IX

Provision shall be made for freedom of information so that there can be open and accountable administration at all levels of government.

X

Formal legislative procedures shall be adhered to by legislative organs at all levels of government.

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.

XXX

1. There shall be an efficient, non-partisan, career-orientated public service broadly representative of the South African community, functioning on a basis of fairness and which shall serve all members of the public in an unbiased and impartial manner, and shall, in the exercise of its powers and in compliance with

its duties, loyally execute the lawful policies of the government of the day in the performance of its administrative functions. The structures and functioning of the public service, as well as the terms and conditions of service of its members, shall be regulated by law.

2.2 These Principles outline the following features relevant to representative government:

- 2.2.1 a multi-party system;
- 2.2.2 regular elections;
- 2.2.3 universal adult suffrage;
- 2.2.4 a common voters roll;
- 2.2.5 proportional representation (in general);
- 2.2.6 open administration of government;
- 2.2.7 formal legislative procedures;
- 2.2.8 minority political party participation in the legislative process;
- 2.2.9 democratic representation at all levels of government; and
- 2.2.10 a Public Service broadly representative of all South Africans.

2.3 These features are generally stated and a fair degree of flexibility is apparent. It will be seen, however that detailed consideration of these matters seems, in the main, to have been allocated to other Theme Committees.

2.4 The transitional Constitution

Relevant sections are:

The franchise

6. Every person who is —

- (a) (i) a South African citizen; or
- (ii) not such a citizen but who in terms of an Act of Parliament has been accorded the right to exercise the franchise;
- (b) of or over the age of 18 years; and
- (c) not subject to any disqualifications as may be prescribed by law,

shall be entitled to vote in elections of the National Assembly, a provincial legislature or a local government and in referenda or plebiscites

contemplated in this Constitution, in accordance with and subject to the laws regulating such elections, referenda and plebiscites.

Political rights

21. (1) *Every citizen shall have the right —*
- (a) *to form, to participate in the activities of and to recruit members for a political party;*
 - (b) *to campaign for a political party or cause; and*
 - (c) *freely to make political choices.*
- (2) *Every citizen shall have the right to vote, to do so in secret and to stand for election to public office.*

Elections

39. (1) *Upon a dissolution of Parliament in terms of section 73(9) or 93(1) or (3)(c), the President shall by proclamation in the Gazette —*
- (a) *call an election of the National Assembly, which election shall take place within 90 days after the dissolution of Parliament on a date or dates specified in the proclamation; and*
 - (b) *request parties represented in the provincial legislatures to nominate persons as senators for the respective provinces in accordance with section 48(1)(b).*
- (2) *An election referred to in subsection (1)(a) shall be held in accordance with the Electoral Act, 1993.*

Composition of National Assembly

40. (1) *The National Assembly shall consist of 400 members elected in accordance with the system of proportional representation of voters as provided for in Schedule 2 and the Electoral Act, 1993.*
- (2) *A person nominated as a candidate for election to the National Assembly on a regional list contemplated in Schedule 2, shall, subject to subsection (3), at the time of the nomination be ordinarily resident in the province in respect of which that regional list applies.*
- (3) *Notwithstanding subsection (2), a regional list may contain the names of candidates who are not ordinarily resident in the province in respect of which that list applies, provided that no such list shall*

contain the names of more than one such candidate or more than 10 per cent of the total number of candidates the party concerned is entitled to nominate on that list, whichever is the greater number.

- (4) For the purposes of this section, a person shall be deemed to be ordinarily resident at the place where he or she normally lives and to which he or she returns regularly after any period of temporary absence, including the place where he or she was previously so ordinarily resident and to which he or she returns regularly after any period of absence.
- (5) If a regional list contemplated in subsection (2) contains more names of candidates not ordinarily resident in the province in respect of which that list applies than are permissible under that subsection, the surplus of such names so contained shall be deleted *mutatis mutandis* in accordance with section 22(8) of the Electoral Act, 1993.

Composition of Senate

48. (1) The Senate shall be composed of 10 senators for each province, nominated by the parties represented in a provincial legislature within 10 days of —
- (a) the first sitting of such legislature after an election of the legislature; or
 - (b) an election of the National Assembly held in pursuance of a dissolution of Parliament.
- (2) Each party represented in a provincial legislature shall be entitled to nominate a senator or senators for the relevant province in accordance with the principle of proportional representation as determined by the following formula:
- (a) The number of senators each party shall be entitled to nominate, shall subject to paragraph (b) be determined by multiplying the number of seats such party holds in the provincial legislature by 10 and dividing the result by the total number of seats in the legislature plus one.
 - (b) If the application of paragraph (a) yields a surplus not absorbed by the number of senators allocated to that party, such surplus shall compete with similar surpluses accruing to any other party or parties, and any undistributed senatorial seat or seats shall be allocated to the party or parties concerned in sequence of the highest surplus.
- (3) A member of a provincial legislature or local government nominated as a senator in terms of this section, shall vacate his or her seat in the

provincial legislature or local government upon his or her acceptance of such nomination.

Election of President

77. (1) (a) *The National Assembly shall at its first sitting after it has been convened in terms of section 46(2) elect one of its members as the President.*
- (b) *The National Assembly and the Senate shall thereafter, as often as it again becomes necessary to elect a President, elect at a joint sitting one of the members of the National Assembly as the President.*
- (2) (a) *The Chief Justice, or a judge of the Supreme Court designated by the Chief Justice for this purpose, shall preside over any sitting at which an election referred to in subsection (1) takes place.*
- (b) *An election referred to in subsection (1) shall be conducted in accordance with Schedule 5.*
- (3) *The election of a President in terms of subsection (1)(b) shall take place at a time and on a date fixed by the Chief Justice: Provided that*
-
- (a) *if such an election of a President is occasioned by reason of a dissolution of Parliament, it shall take place within 10 days after the Senate was convened after the election of the National Assembly held in pursuance of such dissolution; or*
- (b) *if such an election of a President is occasioned by reason of a vacancy in the office of President, it shall take place within 30 days after the vacancy arose.*
- (4) *On being elected, the President shall vacate his or her seat in the National Assembly.*
- (5) *During the period in which the President continues in office in terms of section 80(1)(b), he or she shall for the purposes of section 42(1)(e) be deemed not to hold an office of profit under the Republic.*

Cabinet

88. (1) *The Cabinet shall consist of the President, the Executive Deputy Presidents and not more than 27 Ministers appointed by the President in accordance with this section.*
- (2) *A party holding at least 20 seats in the National Assembly and which*

has decided to participate in the government of national unity, shall be entitled to be allocated one or more of the Cabinet portfolios in proportion to the number of seats held by it in the National Assembly relative to the number of seats held by the other participating parties.

Composition of provincial legislatures

- 127. (1)** *A provincial legislature shall consist of not fewer than 30 and not more than 100 members elected in accordance with the system of proportional representation of voters provided for in Schedule 2 and the Electoral Act, 1993.*
- (2)** *The number of seats in a provincial legislature shall, subject to subsection (1), be determined in accordance with Schedule 2.*
- (3)** *The members of a provincial legislature shall be elected from provincial lists of party candidates for the province in question.*

Elections

- 129. (1)** *If a provincial legislature is dissolved in terms of section 128(1), 154(1) or (3)(c) or 162, the Premier of the province shall upon such dissolution, by proclamation in the Provincial Gazette call an election of such legislature, which election shall take place within 90 days after the dissolution of the legislature on a date or dates specified in the proclamation.*
- (2)** *An election referred to in subsection (1), shall be conducted in accordance with the Electoral Act, 1993.*

Election of Premiers

- 145. (1)** **(a)** *The provincial legislature of a province shall at its first sitting after it has been convened in terms of section 130(1), elect one of its members as the Premier of the province.*
- (b)** *A provincial legislature shall thereafter, as often as it again becomes necessary to elect a Premier, elect one of its members as the Premier of the province.*
- (c)** *The provisions of Schedule 5 shall apply mutatis mutandis in respect of the election of the Premier of a province.*
- (2)** *A judge of the Supreme Court designated by the Chief Justice for this purpose, shall preside over an election referred to in subsection (1).*
- (3)** *The election of a Premier in terms of subsection (1)(b) shall take place at a time and on a date fixed by the judge so designated: Provided*

that —

- (a) *if such election of a Premier is occasioned by reason of a dissolution of the provincial legislature, it shall take place within 14 days after the election of the provincial legislature held in pursuance of such dissolution; or*
- (b) *if such election of a Premier is occasioned by reason of a vacancy in the office of Premier, it shall take place within 30 days after the vacancy arose.*

Elections

179. (1) *A local government shall be elected democratically, and such election shall take place in terms of an applicable law and at intervals of not less than three and not more than five years: Provided that the first local government elections after the commencement of this Constitution shall take place on the same day.*

(2) *The electoral system for a local government shall include both proportional and ward representation and shall be regulated by a law referred to in subsection (1).*

(3) *Subject to section 6, every natural person shall be entitled to vote in an election of a local government if he or she —*

(a) *is ordinarily resident within the area of jurisdiction of that local government or is under law liable for the payment of property rates, rent, service charges or levies to that local government; and*

(b) *is registered as a voter on the voters' role of that local government.*

(4) *A voter shall not have more than one vote per local government.*

(5) *No person shall be qualified to become or remain a member of a local government if he or she —*

(a) *is not eligible to vote in terms of subsection (3);*

(b) *is a member of the National Assembly or the Senate;*

(c) *is not qualified to become a member of the National Assembly;*

(d) *is an employee of a local government (unless, with due regard to the public interest, exemption of this disqualification is given by the Executive Council of the province in which the*

local government is situated and proof of such exemption accompanies the nomination of such person); or

(e) is disqualified in terms of any other law.

2.5 In addition, Schedule 2 to the transitional Constitution contains much detail as to the electoral process adopted in the April 1994 general election, as well as any elections which may be necessary during the life of this Parliament.

2.6 Points to be considered

2.6.1 A general election provides the opportunity for the most direct form of representation of the people in government. Reasons of stability, cost and logistics dictate, however, that elections cannot - perhaps should not - be frequent events.

2.6.2 For that reason, mechanisms which allow for the participation of the electorate in government between elections have come to be regarded as essential features of many modern democracies. Important aspects of this "participatory democracy" are: the giving of information on government initiatives and policies to those affected; the creation of opportunities for citizens to be consulted (through inquiries, lobbying, constituency pressure, even public protest, for example), the involvement of organs of civil society in government decision-making processes and the encouragement, or at least tolerance, of a free media. Such channels of representation are particularly effective at the level of local government.

2.6.3 The quality of representation at election time depends on many factors, among them: the "political literacy" of the electorate; voter education campaigns; the electoral system used; the trust which the electorate displays in the system; and the willingness of the political parties to abide by the outcome of the election.

2.6.4 The proportional representation concept has many variations, among them: the Single Transferable Vote and the List Systems. The 1994 election used the latter system, based on a combination of national and provincial preferences. Proportional representation can, of course, be adapted to a constituency-based system, with more than one member per constituency.

2.6.5 In exceptional circumstances, electoral opinion can be gauged between elections by means of a referendum. Some systems (e.g. Switzerland)

require referenda for the taking of all government decisions of a particular type. Referenda can also be "demanded" by the public, through the presentation of a petition requesting a referendum, signed by a certain minimum number of voters. The dictionary definitions of a referendum and a plebiscite, both of which are referred to in section 6 of the transitional constitution, appear to show no substantial difference between the two, other than national origin.

2.6.6 The success of any electoral system depends upon the willingness of the people to participate in it by standing for office, campaigning and voting. Modern political conditions necessitate the existence of political parties to facilitate such participation. The viability of political parties can be fostered by state support, financial and political, in order to achieve more representative government.

3. The task of Theme Committee One

3.1 Theme Committee One seems to be expected to recommend principles for a "broad outline of an appropriate system of representative government" (see para 1 above, point (c)), as well as ideas on "referenda as an instrument of decision-making" (point (d)).

3.2 Theme Committee Two seems to be expected to provide the details as regards "electoral systems" at national and provincial levels, while Theme Committee Three will apply its mind to an electoral system at local level (see Recommended Work Programme, Block 6). Theme Committee Four must recommend constitutional provisions in regard to citizens' and political rights, access to information and administrative justice. Theme Committee Six is reviewing the role of various advisory and standing commissions (such as the Gender and Human Rights bodies), which have the potential to bolster the ideal of representative government.

3.3 It seems, once more, as if Theme Committee One should express its view in broad principle on the kind of issue raised by the Constitutional Principles, and which are listed as points 2.2.1 to 2.2.10 above. Some of these points will probably not be covered by the other Theme Committees, and in such circumstances it will be appropriate for Theme Committee One to propose draft constitutional provisions. These might be included in the Preamble or as substantive provisions. It is important as well to remember that many constitutions (if not most) rely mainly on a broad framework of empowering or structural formulations, the detail being provided by legislation. This allows for greater flexibility to meet changing circumstances, and emphasises the special (durable) nature of the Constitution as a legal and governmental instrument.

B) AGENDA ITEM 9: SUFFRAGE

1. Introduction

This item falls exclusively within the ambit of the work of Theme Committee One. The arrangements for suffrage (or the franchise) are closely connected with the other items considered in this Block viz Representative Government and Citizenship.

The suggested framework for suffrage is as follows (Revised Work Programme, p 4):

- "(a) the constitutional right to vote;
- (b) minimum age and other qualifications;
- (c) the question of voting rights for non-citizens."

2. Transitional Provisions

2.1 The following Constitutional Principles are relevant in regard to suffrage:

//

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.

2.2 The following sections of the transitional Constitution are relevant to this item:

The franchise

6. Every person who is —

- (a) (i) a South African citizen; or
- (ii) not such a citizen but who in terms of an Act of Parliament has been accorded the right to exercise the franchise;
- (b) of or over the age of 18 years; and
- (c) not subject to any disqualifications as may be prescribed by law,

shall be entitled to vote in elections of the National Assembly, a provincial legislature or a local government and in referenda or plebiscites contemplated in this Constitution, in accordance with and subject to the laws regulating such elections, referenda and plebiscites.

Political rights

21. (1) Every citizen shall have the right —

- (a) to form, to participate in the activities of and to recruit members for a political party;
- (b) to campaign for a political party or cause; and
- (c) freely to make political choices.

(2) Every citizen shall have the right to vote, to do so in secret and to stand for election to public office.

2.3 It will be noted that the Constitutional Principles prescribe "universal adult suffrage" and the enjoyment of "universally accepted fundamental rights, freedoms and civil liberties" for inclusion in the final constitutional text. Read together with the current provisions in the transitional Constitution, and in the context of the world-wide acceptance of the fundamental right to participate in elections by at least exercising a vote, there is no doubt that the final constitutional text should include provisions essentially similar to sections 6 and 21 set out above.

2.4 A perennially difficult question which faces writers of Constitutions is the extent to which detailed arrangements and structures should be included in that instrument. As noted above ([A] para 3.3) the commonest approach is to set out a broad framework in the Constitution, leaving the detail to legislation.

2.5 In regard to electoral arrangements, this has always been the pattern in South African Law. The transitional Constitution is no exception, there being relatively succinct statements in regard to the franchise and citizens' rights, as has been seen. The detail is provided in the Electoral Act (202 of 1993) as follows:

"Section 15: Persons entitled to vote

- (1) Any person of the age of 18 years or older who is a citizen of or permanently resident in the Republic and who is in possession of a voter's eligibility document shall, in accordance with and subject to the provisions of this Act, be entitled to vote at the election.
- (2) For the purposes of this section a person shall be permanently resident in the Republic if he or she -
 - (a) holds a permit for permanent residence in the Republic in terms of section 25 of the Aliens Control Act, 1991 (Act 96 of 1991); or
 - (b) has been exempted from the requirement of holding a permit for permanent residence in terms of section 28 (2) of the Aliens Control Act, 1991.
- (3) For the purposes of this section a person shall be deemed to be permanently resident in the Republic if such person -
 - (a) is a former South African citizen, and, notwithstanding any requirement for the exercise of a discretion by the Minister of Home Affairs in terms of section 25bis of the South African Citizenship Act, 1949 (Act 44 of 1949), qualifies for the restoration of South African citizenship in terms of the said Act;
 - (b) was born to or is a spouse of a South African citizen or former South African citizen and has entered the Republic with the intention of residing permanently therein;
 - (c) establishes, to the satisfaction of the Commission, in the prescribed manner that he or she -

(i) entered the Republic on or before 13 June 1986;

[Sub-para. (i) amend by Proclamation 73 of 21 April 1994]

(ii) has been ordinarily resident in the Republic since the date of his or her entry into the Republic; and

(iii) is not a prohibited person in terms of the Aliens Control Act 1991; or

- (d) is a child of a person who satisfies the criteria referred to in paragraph (c) and who establishes, to the satisfaction of the Commission, in the prescribed manner that he or she was born in the Republic and has been ordinarily resident therein since the date of his or her birth.
- (4) Any person who satisfies the criteria referred to in paragraph (a), (b), (c) or (d) of subsection (3) shall be deemed to fulfil the requirements of section 4 of the Identification Act, 1986 (Act 72 1986), for the purposes of obtaining an identity document in terms of section 8 or a temporary identity certificate in terms of section 9 of the said Act or a temporary voter's card.

Section 16: Persons not entitled to vote

Notwithstanding the provisions of section 15, no person shall be entitled to vote in the election if that person is -

- (a) subject to an order of court declaring him or her to be of unsound mind or mentally disordered or affected;
- (b) detained as a mentally ill patient under the Mental Health Act, 1973 (Act 18 of 1973), or any other applicable law of the Republic, as the case may be;
- (c) detained under the Prevention and Treatment of Drug Dependency Act, 1992 (Act 18 of 1992), or any other applicable law of the Republic as the case may be; or
- (d) detained in a prison after being convicted and sentenced without the option of a fine in respect of any of the following offences irrespective of any other sentence in respect of any offence not mentioned hereunder which is served concurrently with the first-mentioned sentence:
 - (i) Murder, robbery with aggravating circumstances and rape; or
 - (ii) any attempt to commit any offence referred to in subparagraph (i)."

3. The Task of Theme Committee One

- 3.1 It seems, therefore, that it may be appropriate for Theme Committee One to concentrate on matters of broad principle in regard to this agenda item. As the matter of citizens' rights (the current section 21) falls within the scope of Theme Committee Four, the essential issue

before Theme Committee One appears to be the matters of principle which underlie the formulation of the "final" version of the transitional section 6.

3.2 These matters of principle turn on answers to the following sorts of questions:

3.2.1 should citizenship be a prerequisite for the franchise?

3.2.2 should there be different requirements for elections to different levels of government?

3.2.3 should the Constitution lay down minimum qualifications, such as age, and, if so, what should those qualifications be?

3.2.4 should the Constitution describe the grounds for disqualification (such as are contained in Section 16 of the Electoral Act above) and, if so, what should they be?
and

3.2.5 should provision be made for the holding of referenda and, if so, in what circumstances, who may participate in such referenda, should the government be bound by the outcome, and so on?

3.3 These are some of the questions which need to be answered in this agenda item. It is hoped that this briefing document and the oral presentation which will be based on it (on 22 May 1995) will assist parties in drawing up their submissions. Non-contentious points agreed on by the Theme Committee in this regard will have to be translated into draft constitutional provisions at the end of the exercise.

SUMMARY OVERVIEW

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

NAME AND LOCALITY	SUBJECT MATTER OF SUBMISSIONS GERMANE TO THEME COMMITTEE ONE	DATE SUBMITTED
	<u>INDIVIDUALS</u>	
C & M Coertze Empangeni	Acknowledge Almighty God throughout the Constitution. Against secular state (interpreted as anti-religious)	23/04/95
M du Toit Ferndale	State accountability	08/02/95
Pieter Duvenage Pretoria	(Incomplete) A holistic perception of citizenship, a "negotiating democracy"	08/03/95
W H de Goede Strand	Power must be subordinate to law	06/03/95
J B Gericke Tokai	Religious beliefs should be foundation of the Constitution, as also the Bill of Rights. Constitution has an educational role	15/05/95
J T Geddes Page Pietermaritzburg	Proposes the Swiss form of federalism	28/03/95
D Hamman Oak Glen	Do not omit God from the Constitution	09/03/95
A G Kotze Ruyter Wacht	Constituency system. Federalism. Against a Volkstaat. Give moderate blacks and women an opportunity	
RGL Mathias Greyville	Argues for a "Lawtocracy", but an ideal form of law, not the present "rule of law"	15/03/95
LJ Mathaler Blackheath	Relevant to TC 4	09/03/95
RGL Mathias Greyville	Demonstrates how Union Constitution (1910) vitiated - warns against the same.	30/04/95
J van der Merwe Alberton	Against suppression of Christianity	07/04/95
D Miya Tshiawelo	Federation (among other points)	30/03/95
E Muthivi Braamfontein	Foreign investors should contribute to improving quality of life of South Africans. Privatisation should be gradual, disadvantaged be enabled to own shares. Unitary state. Constituency-based system	
I G Mokawe Johannesburg	One sovereign unitary state. Equality will promote unity	28/02/95
L K Mofokeng Dobsonville	Equality	03/03/95
H L McDermid New Germany	Against suppression of Christianity; retain "In humble submission to Almighty God"	14/04/95

M A McLoughlin Johannesburg	Constitutional education at school; code of conduct for officials; devolution of power to lowest authority; referenda encouraged	26/04/95
A Nyathi Saulsville	Equality; concurrent central and provincial government powers	28/02/95
E Ntuli Louwville	Against federalism, volkstaat	10/03/95
D Nel Jamestown	Against exclusion of religion	25/04/95
M T Pieterse La Montague	Democracy	16/02/95
M F & A F Pretorius Lanseria	Federal system; must be based in christian norms	06/03/95
M H Stegen Elandskraal	Favours a Christian Democracy	01/05/95
G A Tredoux Durbanville	Do not remove reference to God, allow state buildings for religious meetings, do not restrict religious people from holding office in government	10/03/95
J M Vosloo Kraaifontein	Human rights, etc.	10/03/95
R N de Vos Pietermaritzburg	Strong federalism (Swiss), direct democracy (referendum, recall)	29/03/95
N R Williams Parow	(relevant to TC 4) Refer to triune God; religious freedom	06/03/95
	<u>ORGANISATIONS</u>	
Evangelical Lutheran Church in Southern Africa, Kimberley	Participation in civic and political activities. Prayer part of opening and closing of parliament	
Free Market Foundation of Southern Africa	Accountability through: popular initiative on law-making; popular veto on legislation; constitutional amendment initiative and voting by the people; right to recall - all by means of referendum. Direct democracy	
Maritzburg Christian Play School Scottsville	Supremacy of God Almighty	26/04/95
Reformed Church, Wapadrant (Several hundred signatures)	Scrap the reference to a "Supreme Being" ("Almighty God" in the Preamble)	14/02/95
Rapportryers Riebeeck West	Equality, regional sovereignty	08/03/95
SAN Civic Organisation Port Elizabeth	Triple alliance between private, public and civil sectors of society at basis of democracy	22/12/94
Kwa Sizabantu Ministers' Conference	State must be accountable to God	/03/95

PARTY SUBMISSIONS

**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~~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 Rammable
Managing Secretary
Constitutional Assembly

Ref: T.C. 1/45.

**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 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).

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.

amended

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.

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

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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 XVI.

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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Mr H Ebrahim
The Executive Director
Constitutional Assembly
PO Box 15
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29 June 1995

Dear Mr Ebrahim

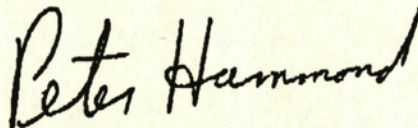
Some months ago UCA enquired as to whether it would be possible to present an oral submission to Theme Committee One regarding the proposed "Secular State". At that time we were informed that no oral submissions were to be received. Now I have been informed that oral submissions will in fact be presented.

Therefore, the members of United Christian Action respectfully request the opportunity to present an oral submission to Theme Committee One concerning our proposals in this regard.

Please inform us when it would be possible for our Executive to address the Theme Committee.

Thank you very much for your assistance in this important matter.

Yours sincerely



Rev Peter Hammond
Director

cc Mr P Marais, Chairperson - Theme Committee One.



CONSTITUTIONAL ASSEMBLY

5 July 1995

Rev Peter Hammond
Director
United Christian Action
Per Telefax: (021) 685 5884

Dear Sir

Thank you for your letter dated 29 June 1995 which has been referred to us by the Executive Director of the Constitutional Assembly, Mr Ebrahim.

Your request to address Theme Committee One regarding the issue of a "Secular State" will be referred to the Theme Committee at the first meeting after the mid-year recess, which will take place on the 31 July 1995.

Please note that we will communicate the response of the Theme Committee to you as soon as a decision has been taken. We hope that the above will meet with your approval.

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

Yours sincerely

Leola Rammble
Managing Secretary
Theme Committee One

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You've made your mark



Now have your say

THE NEW CONSTITUTION

