

1/18/6

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE REPORTS

INFORMATION PACK

MONDAY 13 MARCH 1995

TABLE OF CONTENTS

<i>No</i>	<i>Document</i>	<i>Page</i>
1.	Memorandum	1
2.	Theme Committee 1 Report	2 - 47
3.	Theme Committee 6.4 Report	48 - 84

CONSTITUTIONAL ASSEMBLY

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10 March 1995

To All CA Members

Last month we distributed copies of Theme Committee Reports to all CA members for your information. This consisted of progress reports and three reports from Theme Committees 2, 4 and 3. We are now sending you two further reports that Theme Committees have completed which are presently being discussed by the Constitutional Committee. These are reports from Theme Committee 6.4 and 1.

We are aware that CA members who are not members of Theme Committees do not receive a lot of information about developments in the constitution-making process. We therefore intend to send all final Theme Committee reports to all CA members as a matter of course to attempt to keep you informed of developments.

Once these reports have been considered by the Constitutional Committee and a CA is convened, the Constitutional Committee will ofcourse be reporting on its discussions to the CA as a whole.

HASSEN EBRAHIM
EXECUTIVE DIRECTOR

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CONSTITUTION ASSEMBLY

**THEME COMMITTEE 1
CHARACTER OF
DEMOCRATIC STATE**

**FINAL REPORT ON BLOCK 1
(DEMOCRACY AND CHARACTER OF STATE)**

28 FEBRUARY 1995

TABLE OF CONTENTS

NO.	DETAILS	PAGE
1.	Amended Report from Theme Committee One as at 15 February 1995	1 - 5
2.	Supplementary Report to the Report of the 15 February 1995	6 - 8
3.	Annexure A - Party Submissions	9 - 32
4.	Supplementary Report on Private Submissions	33 - 42
5.	Rationalisation of Work Programme	43 - 44

CONSTITUTIONAL ASSEMBLY

AMENDED REPORT FROM THEME COMMITTEE 1 15 FEBRUARY 1995

I) INTRODUCTION:

A preliminary report was completed by the sub-committee together with the technical experts. The latter were given the task to extract contentious and non-contentious points from party submissions pertaining to Block 1.

After debate and modification at the Theme Committee meetings of the 8th and 9th February 1995, we are pleased to report that the Theme Committee was able to find consensus on the following eleven points as embodying the character and nature of a democratic state.

II) NON-CONTENTIOUS POINTS:

- A) The Constitution shall be the supreme law of the land. It shall be binding on all organs of state at all levels of government.
- B) There shall be a multi-party political system, premised on regular elections, universal adult suffrage and a common voters' roll.
- C) Fundamental rights of the person shall be protected in an entrenched Bill of Rights, justiciable by an independent judiciary.
- D) The normative values underlying the Constitution shall be accountability, democracy, equality, freedom and transparency.
- E) There shall be a common South African citizenship.
- F) Elections shall proceed, in general, on the basis of proportional representation. The possibility of constituency representation shall be explored.
- G) • South Africa shall be a sovereign, independent and undivided state.
- H) There shall be three levels of government i.e. National, Provincial and Local.
- I) There shall be separation of legislative, executive and judicial powers in the State.
- J) The Executive shall be accountable to Parliament.

- K) The recognition and protection of collective rights of self-determination in forming, joining and maintaining organs of civil society, including linguistic, cultural and religious associations, on the basis of non-discrimination and free association, and possible constitutional provision for a notion of the right to self-determination by any community sharing a common cultural and language heritage, whether in a territorial entity within the state or in any other recognized way.

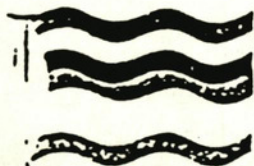
The following points were identified as contentious points:

III) **CONTENTIOUS POINTS:**

- A) The nature (legislative, executive, administrative and judicial) and extent of the powers of the various levels of government.
- B) Whether Parliament shall be bi- or unicameral in structure.
- C) Parliament's supremacy as a law-maker.
- D) The nature and extent of representation and rights of cultural and linguistic minorities, including group self-determination.
- E) The constitutional entrenchment of minority party participation in government.
- F) Government shall be by majority rule.
- G) The content and constitutional entrenchment of participatory democracy.
- H) South Africa shall be a secular state.

The IFP announced that it rejected the form and content of the preliminary framework document. The IFP also announced that it viewed the entire preliminary report as being contentious and tabled a document in this regard. Noting that the thrust of the said party's document constituted a frontal assault on the entire constitution making process, the meeting resolved to proceed with the process of identifying contentious and non-contentious issues. The meeting further agreed that the report to the Constitutional Committee should be accompanied by the document dated the 9 february 1995, from the IFP.

* It was resolved at the Core Group meeting, held on the 10 February 1995, that Principle G under non-contentious points, shall not anticipate that the State will be structured along Federal or unitary lines nor shall it preclude any party from arguing in favour of Federalism or unitarianism.



INKATHA

Inkatha Freedom Party

IQembu leNkatha Yenkululeko

COMMENTS ON THE DOCUMENT ENTITLED:

"REPORT OF THE TECHNICAL COMMITTEE TO THEME COMMITTEE I"

February 9, 1995

The IFP is not in a position to subscribe to, and must object to the above-captioned document.

1. Preliminarily, it must be noted that the constitution-making process as it is presently envisioned and structured will not allow political parties to make any substantive submission to either the Constitutional Committee or the Constitutional Assembly. Therefore, all parties' inputs are to be made in Theme Committees and will be considered in the further stages of negotiation and constitution-making only to the extent that they are embodied in the report of a Theme Committee. In other words any issue raised in a party's submission which is not part of a Report will not longer be considered in further stages of constitution-making and is going to be obliterated.
2. Accordingly, the Constitutional Assembly has given the binding instruction that all Theme Committees provide details of all issues which have been raised within their respective scope of work, including the parties' submissions. Specifically, the Constitutional Assembly has instructed each Theme Committees to draft a Report which is to list all contentious and non-contentious issues and shall contains and describes the full details of such issues as they have been proposed by each Party concerned. Reference is made to the Resolution adopted by the Constitutional Assembly on October 31, 1994.
3. The Constitutional Assembly has also decided that Theme Committees shall not be negotiating fora but shall merely be a conduit of information and positions to the Constitutional Committee. Therefore, their activities should be limited to collect, collate and organize the various parties' positions on all relevant issues. Theme Committees' Reports shall reflect the purpose of the Theme Committee and shall be an inventory of positions and arguments discussed in a Theme Committee in each relevant Block.
4. The Report of Black 1 of Theme Committee 1 should be an extensive document. The IFP can not accept a double-spaced one-and-a-quarter page draft Report attempting to summarize very complex issues submitted by parties.

5. The IFP specifically objects to the intention shown in many places of the Report which tries and reconcile different positions. It is not the role of the Report to use very broad expressions, which in their generality may seem to subsume and reconcile the details of conflicting positions expressed by the various parties. This attempt to reconcile positions avoiding their characterizing details so as to subsume "contention" into broad and often meaningless generalities is not a legitimate exercise. Specifically, a broad range of issues raised in the IFP submission, which in the opinion of the IFP are germane to the identification of the character of the state, are not even mentioned in the Report. For instance the following issues raised by the IFP are not listed.

- Supremacy of the constitution : paragraphs 2 and 3
- Separation of powers : paragraphs 2, 3 and 4, 5, 6 and 7
- Type of democracy : paragraphs 1, 2 and 3
- Representative democracy : paragraphs 1 [second part] 2, and 3
- Participatory democracy : paragraphs 1, 2, 3 and 4
- Transparent and accountable democracy : paragraphs 1, 2, 3 and 4
- Type of state : paragraphs 1, 2 and 3

All these issues relate to the fundamental characterization of the State as a unitary or a federal State or to the constitutional structuring of or democratic society on the basis of the principle of pluralism or of the principle social organicism.

6. The entire set of IFP thematics have been completely ignored in the above captioned document, and the IFP requests that its entire submission be included in one form or the other in the Report. The IFP does not see how the Theme Committee can decide to take out any single statement made by the IFP in its submission without either becoming a negotiation forum or failing to provide full details about the relevant contentious issues or non-contentious issues. No statement made by the IFP in its submission is either not germane to Block 1, or is redundant, or can be further summarized without eliminating fundamental characterizing details.
7. The Report may not contain only those common-denominator issues which are addressed by all parties, for this would allow any party to frustrate discussion on relevant and necessary issues by virtue of its non-taking positions of them. The Constitutional Assembly has instructed that all issues be taken from the Theme Committee to the following stage of consideration.
8. Specifically, the IFP objects to point II-G of the report which indicates that there is agreement on the statement that South Africa shall be an "undivided state". The IFP believes that Provinces shall not be part of the *strictu sensu* "state" but should rather be an autonomous entities organized under the constitution and independent from the State.
9. The IFP also objects to all the other points which have been listed as non-contentious issues. In fact, they are non-contentious only to the extent that, and because of the fact that none of the relevant and characterizing details submitted by the IFP in its position paper have been

taken into account and reported on. The issues of transparency, accountability and political representation may be mentioned in this regard.

Moreover, the list of "non-contentious points" also lists items which have not been addressed by the IFP because they will be the subject of submissions in subsequent Blocks. If the Theme Committee wishes to consider items which are not part of this Block 1, such as separation of State and Church, it should make reference to the IFP Preliminary Submission to the Constitutional Assembly which lists IFP preliminary positions and viewpoints which were not covered in the submission made for Block 1.

10. With respect to the issues indicated as "contentious points", the IFP raises also an objection. In fact, the list of issues is not descriptive of the issues at hand and fails to define the constitutional dimensions and the terms of the political debate with respect to each relevant issue. In this respect reference can be made *inter alia* to the issues of pluralism and the autonomy of civil society, the autonomy of Provinces with respect to list of powers and relation between levels of government, and the relation between the supremacy of the constitution and provincial autonomy, the fundamental division of powers between any level of government and civil society, and whether South Africa should be a liberal, a social or a socialist state. Reading the Report it could appear that none of these issues which this Theme Committee has debated for three months have ever even been considered.

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THEME COMMITTEE 1
SUPPLEMENTARY REPORT TO AMENDED REPORT
FROM THEME COMMITTEE 1

28 FEBRUARY 1994

I) INTRODUCTION

As per the Guidelines for Theme Committee Reports and the decision of the Constitutional Committee of the 27 February 1995, Theme Committee One has completed further deliberations on the contentious points which are found in the Amended Report dated the 15 February 1995.

The following is report detailing Party positions on contentious issues and serves to give the Constitutional Committee a better insight into the discussions which took place in the Theme Committee meetings.

III) CONTENTIOUS POINTS:

A) The nature (legislative, executive, administrative and judicial) and extent of the powers of the various levels of government.

This is often known as the "vertical separation of powers", as opposed to the horizontal separation of powers (see Non-Contentious point I). What is at stake here is the type of power which should be devolved from central government, and the extent of such devolution. On the first issue, should the provinces (or regions) and local authorities have executive (or administrative) powers alone (as the PAC argues in the last paragraph of its submission), or should they have legislative, executive and judicial powers - the full range exercised at central level (as the IFP argues, see "Separation of Powers" point 4)?

All parties seem to agree on some form of decentralisation or regionalism, but they differ substantially on the nature and extent of such decentralisation. The PAC propagates the most limited powers for provincial and local government (administrative and advisory) while the FF, the DP the NP and the ACDP argued to verifying degrees for systems where central government is limited but effective with strong provincial and local government. The ANC appears to contemplate a more extensive role for central government, with a correspondingly more limited role for provincial government. The IFP sees provinces as "the primary government of the people" - "the powers of central government ought to be listed in the constitution" with all other powers being left to the provinces.

There is one particular aspect which has not thus far been clearly spelt out, except by the IFP and ANC. This is the strictness of the

separation of powers between central and provincial governments. The IFP (see "Separation of Powers", point 5) propagates exclusive powers at each level, with the national government having no "overrides" i.e. no power to overrule government action within the constitutionally-recognised sphere of provincial autonomy. The ANC would subject regional and local powers to "the need for national uniformity, national reconstruction and development and the values in the Bill of Rights" (see "Democracy", point 6).

This is a quite critical point of difference which is the focus of constitutional disputes in almost all governmental systems which admit of some degree of devolution of power. Constitutional Principles XVIII, XIX, XX, XXI, XXII, XXIII and XXIV are relevant to this question. It is clear that these Constitutional Principles envisage at least some measure of concurrency between national and provincial powers, and for national legislative override in certain circumstances (see Principles XXI(2) and XXIII).

B) Whether Parliament should be bi- or unicameral in structure.

Here there is a difference of opinion between at least the PAC, which contends that the Senate should not exist, and at least the ACDP, the NP and the DP, who propose a continuation of the present bi-cameral structure. The other parties have not yet clearly enunciated their view on this point in submissions to the Theme Committee. [This subject is not covered in the Constitutional Principles.]

C) Parliament's supremacy as a law-maker.

This point is closely allied to A) above, in that the essence of the contention is that Parliament should or should not have supreme legislative power throughout the nation. At stake is the existence of Parliamentary legislative jurisdiction concurrent with provincial legislative jurisdiction, and the circumstances and extent of such "override". While none of the parties has yet gone into detail on this point in their submissions, it is clear that the IFP regards "provincial autonomy" as its departure point (see Separation of Powers, points 2 and 5), while the ANC and the PAC would seem to envisage at least a degree of parliamentary supremacy as law-maker. [See the same Constitutional Principles referred to under (A) above].

D) The nature and extent of representation and rights of cultural and linguistic minorities, including group self-determination.

While the "recognition and protection of collective rights of self-determination of organs of civil society, including linguistic, cultural and religious associations" is non-contentious (see [K] under Non-contentious above), the nature and extent of such rights, including the representation of

such groups is contentious. In particular, the notion of, "Afrikaner self-determination", as proposed by the Freedom Front is contested. [See Constitutional Principles XI, XII and XXXIV].

E) The constitutional entrenchment of minority party participation in government.

The contentious element here seems to turn on the words "constitutional entrenchment". No party denies the possibility of the participation of minority parties in a coalition or national unity government (such as exists at present). Some parties propose, however, that this possibility becomes a constitutional requirement, while other parties resist such an idea. [Constitutional Principles VIII and XIV are relevant here].

F) Government shall be by majority rule.

This point in effect repeats point (E) in different words. In sum, there should be no coalition "forced" by the Constitution. The same comments apply.

G) The content and constitutional entrenchment of participatory democracy.

What is at stake here is what is meant by "participatory democracy", and whether such a notion should be entrenched in the constitution or not. "Participatory democracy" emphasises continuing participation by the citizenry in government between elections (which are the times when "representative democracy" comes to the fore - on which there is no contention, see point (F) under Non-contentious above). While all parties appear to agree that some form of popular participation in government between elections is an ideal, there is as yet no clarity on what forms this should take, and whether it should be entrenched in the constitution. [See Constitutional Principle XVII].

H) South Africa shall be a secular state.

There is no disagreement between the parties on the fact that the constitution should provide for a separation of religion (often expressed as "Church") and State. What is contentious is what this means in practice : should there be references to deity (deities?) in the constitution; should the State allow religious observances in its institutions; would religious office-bearers be barred from holding offices of State? These are some of the questions on which differences of opinion exist. [Constitutional Principles II and XII refer]

ANNEXURE A
PARTY SUBMISSIONS



INKATHA

Inkatha Freedom Party

Iqembu leNkatha Yenkululeko

471

THEME COMMITTEE No. 1 CHARACTER OF THE DEMOCRATIC STATE

FIRST REPORT ON DEMOCRACY AND CHARACTER OF THE STATE¹

SUPREMACY OF THE CONSTITUTION:

1. The Constitution in its entirety shall be the supreme law of the land. Therefore, the Constitution shall be fully and entirely justiciable by means of a Constitutional Court, and shall be the parameter for the validity and legality of the legislation of Parliament.
2. The constitution shall bind not only all organs of the Republic but shall also apply to all legal relations.
3. In relation to their respective areas of constitutionally recognized autonomy, the Constitution shall be implemented not by the national government but rather by the Provinces, and by social and cultural formations, or by individuals, respectively. For instance, the constitutional right to health entrenched in the national constitution shall be implemented exclusively by the provincial legislation and administrative action.

SEPARATION OF POWERS (Form of State):

1. There shall be separation of powers between national and provincial levels of government.
2. Provinces shall be the primary government of the people and shall be entitled to exercise any type of power and function which can adequately and properly be exercised at provincial level.
3. Only the powers of the national government ought to be listed in the constitution, while all other powers should be left to the Provinces.
4. Provinces shall have full judicial powers in all matters of their competence.

¹ The IFP makes this submission under protest, for the Constitutional Committee should withhold consideration of the matters covered in this report and further development of the work program so as to allow international mediation to take place.

5. National government shall have no overrides and, as a rule, Provinces shall have exclusive powers. Both the national and the provincial levels of government shall enjoy exclusive powers. Relations between the two levels of government shall be regulated by checks and balances, intended as a predetermined set of mutual interferences among the powers of each level of government, also based on the extension by relevancy or implication of the exclusive powers of the national level of government into the areas of competence of the Provinces, as in theory is the case in the U.S. system (i.e.: interstate commerce). In specific areas of provincial competence, the techniques of national framework legislation regulating exclusive provincial powers could also be used in matter which requires concurrence between the national and provincial levels of government, provided that national legislation shall not be so detail to actually regulate, or exercise the actual function in the matter concerned.
6. There shall be separation of powers between all levels of government and civil society.
7. Individuals as well as social, cultural, political and economic formations shall be recognized and guaranteed a sphere of protected constitutional autonomy defined by the interests which they are capable of self-regulating and administering and in respect of which no government has a compelling reason of public interest to intervene.

WHAT TYPE OF DEMOCRACY:

1. The principle of participatory and/or direct democracy should be constitutionally entrenched in addition to the principle of representative democracy [see *infra*].
2. The principle of the autonomy of individuals as well as of economic, social, political and cultural formations should also be entrenched with respect to all activities for which any level of government does not have a compelling justification of public or national interest to regulate, control or directly exercise.
Inter alia, the foregoing principle recognizes the autonomy of churches, political parties, professional associations, chambers of commerce, universities, arts and culture organization, family structures, traditional communities, economic enterprises, civics, private contractual autonomy in economic and personal matters, et cetera.
3. The principles of (a) transparency, (b) political accountability and (c) civil accountability of governmental structures shall be constitutionally entrenched.

REPRESENTATIVE DEMOCRACY:

1. The principle of political representation of government and regular elections should be constitutionally entrenched with respect to national, provincial and "primary" local governments (excluding local government substructures, including traditional communities)².
2. The implementation of this principle with respect to provincial and local government shall be within the exclusive competence of the Provinces.

². This principle relates to what the constitution should require. The law may extend proportional representation to substructure.

3. The electoral system is a fundamental element characterizing the form of government and the type of democracy. Therefore the constitution should set out the general principles of the national electoral system, leaving to the law the task of implementing such principles, so as to leave sufficient flexibility for future developments³. The provincial electoral systems should be within the exclusive competence of provincial constitutions.

PARTICIPATORY DEMOCRACY:

1. The constitution shall entrench the notion of participation of affected public and private interests in the formative process of an administrative action or regulation.
2. The constitution shall entrench the notion of participation of affected public and private interests in the legislative process.
3. Provision shall be made for referenda at all levels of government to be held at the request of a reasonably small number of dissatisfied citizens.
4. Provision shall be made for the recognition of the right to petition any government structure.

TRANSPARENT AND ACCOUNTABLE DEMOCRACY

1. The right of access to all government information and private data banks information shall be recognized in the constitution, with customary qualifications and exclusions, subject to judicial review.
2. The notion of administrative justice and judicial reviewability of all administrative actions shall be constitutionally entrenched.
3. Public officials shall be personally responsible for gross negligence and malice.
4. War shall be prohibited as a means to solve international controversies and shall only be allowed to defend the State's sovereignty over its territory.

TYPE OF STATE

1. South Africa should be a social but not a socialist state.
2. Private property and free-market enterprise shall be protected and the direct interference of government in economic matters shall be severely limited⁴.
3. The constitution should contain all recognized socio-economic rights along with constitutional imperatives which mandate the legislature to operate to remove social injustice, and promote the social growth of all South Africans.

³ The details of the IFP proposals on suffrage, proportionality and electoral systems will be tabled in the IFP submission for the 7th Report, per approved work program.

⁴ The detailed aspects of this principles will be set out in the third Report to this Theme Committee relating to the Economic Constitution, as per approved work program.

SUBMISSION BY THE ACDP THEME COMMITTEE ONE

I DEMOCRACY

1. We would like to see a multi-party democracy with regular elections.
2. A common citizenship for all and a system of voting based on a common voters roll and proportional representation.
3. There must be a clear separation of powers between the legislative, executive and judiciary.
4. All basic God-given human rights must be protected by law.
5. The government in power must be subject to the constitution which must be the supreme law of the land.
6. The individual's right to life, liberty and property must be guaranteed and protected

II CHARACTER OF STATE

1. To ensure that the government is kept as close to the people as possible, we would like to see a small but effective central government and strong provincial and local governments.
2. The powers of the central and the provincial governments must be clearly defined and entrenched in the constitution.
3. Parliament, as the law maker, shall comprise of two Houses, viz, the National Assembly and the Senate, which will be representing provinces at national level

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○ 30 JANUARY 1995

THEME COMMITTEE 1 - SUBMISSION BY THE PAC

DEMOCRACY AND THE CHARACTER OF THE STATE

PAC believes in the classical definition of democracy, viz, a government of the people by the people for the people. It, thus, believes that all citizens of South Africa are the people, naturally entitled to a democratic rule.

○ The entirety of the constitution shall enshrine legal principles that buttress and protect the democratic rights of all citizens of the South African State.

Allegiance to the state shall be premised on the visible democratic actions and processes followed by the government of the state.

Periodic elections of the government should be constitutionally established and protected

The Constitution shall be the supreme law of the country.

The bearing of rights by the individual citizens of the state shall not be based on any phenomenon except citizenship. There shall, therefore, be no regard to race, class, status, sex or religion in the exercise and enjoyment of rights.

The constitution shall legally and philosophically view the citizens as of equal worth in everything within its ambit.

The state shall be a constitutional one. Parliament shall be the supreme law maker under the sovereignty of the constitution.

There shall be a unitary state aiming to merge the culturally heterogeneous people of this land into one politically, economically and socially homogeneous nation through politically unhindered evolutionary process.

A Bill of Human Rights shall protect the fundamental and non-fundamental rights of all citizens without any regard to race, culture, sex, class, status or creed. It is only the right of the individual that shall be protected.

The government shall be accountable to the civil society via its elected representatives, the National Assembly, primarily, and directly through its social formations when such a need does arise.

There should be one legislative chamber, the National Assembly with revisionary process of the statute making resting with the Select Committees.

The executive of the government shall be accountable to Parliament.

An independent constitutional court shall be the bulwark of the rights of citizens

There shall be a three tier government, viz ,

- (a) National
- (b) Provincial and
- (c) Local

The provincial and Local governments must serve the purpose of the decentralisation of administrative functions and also that of representing and enlightening the National government on the peculiar problems and wishes of their respective domains.

M Dyanu - MP

ANC SUBMISSION TO THEME COMMITTEE ONE ON THE CHARACTER OF THE STATE AND DEMOCRACY

CHARACTER OF STATE

- 1) South Africa shall be a united and undivided nation.
- 2) The Constitution shall commit the country to a non-racial and non-sexist order based on the inherent dignity of all persons.
- 3) There shall be a Bill of Rights guaranteeing all accepted human rights including socio-economic rights that shall be applicable against all sources of power.
- 4) South Africa shall be a multi-party democratic state.

DEMOCRACY

- 5) There shall be regular elections on a common voters' roll based on adult universal suffrage
- 6) There shall be elected government at Regional and Local levels whose powers shall be set out in the Constitution, but whose powers shall be subject to the need for national uniformity, national reconstruction and development and the values in the Bill of Rights.
- 7) Government shall be formed by the majority party.
- 8) Parliament shall be the supreme law-maker, and the expression of the will of the people. The executive will be accountable to Parliament.

NATIONAL PARTY PROPOSALS : DEMOCRACY AND THE CHARACTER THE STATE

The concept of "democracy" as encapsulated in the letter and spirit of the Constitutional Principles, implies the following fundamental characteristics:

1. A Constitutional State (Rechtsstaat) based on an entrenched Constitution which constitutes the supreme law. The formal aspects of the Constitutional State include:
 - (i) the vertical and horizontal separation of powers in a balanced way, and which will prevent the abuse of power by any organ of state at all levels;
 - (ii) the principle of legality viz the basis of all state action is the law, of which the Constitution forms the basic normative standard;
 - (iii) the protection of fundamental rights and freedoms in a justiciable and entrenched bill of rights;
 - (iv) state action shall be transparent, predictable and proportional to the objective(s) it sets out to achieve;
 - (v) an independent judiciary shall protect and enforce the

Constitution and all fundamental rights;

- (vi) the exercise of state power shall be controllable and within set limits.

The material aspects of the Constitutional State imply that all organs of state will exercise their powers with a view to the advancement of the higher values which are encapsulated in and reflected by the spirit of the Constitution and which, e.g., include the promotion of a rights culture and respect for the Constitution by all state organs as well as by the citizenry.

2. One sovereign state, a common citizenship, and adult suffrage based on a common voter's roll.
3. Representative Government at all levels of government viz national, provincial and local. This principle implies proportional representation in all legislative and executive structures.
4. A multi-party system and regular elections.
5. An electoral system based on proportional representation, which may possibly include elements of geographical representation.
6. Transparent, anti-totalitarian and accountable government.

7. The vertical separation of power shall be founded on autonomous and original powers for each level of government.
8. At the national level Parliament shall comprise of two Houses viz, the National Assembly and the Senate. The Senate shall represent the provinces at national level and its members shall be empowered to act authoritatively on behalf of the provinces.
9. Levels of decision-making will be determined with regard to the quality and effectiveness of the rendering of services in accordance with the principle of subsidiarity.
10. The role and function of civil society and its institutions shall be recognised and protected as will collective rights of self-determination of inter alia, linguistic, cultural and religious groups. The viability of corporate self-determination, as a method for furthering these objectives and the letter and spirit of Constitutional Principle XII, should be explored.
11. Loyalty to the single sovereign state shall be premised on the enhancement of national reconciliation whilst, simultaneously, the richness of the diversity of language, culture and religion shall be protected and conditions for their promotion be encouraged.

12. The preamble shall embody the encompassing and encapsulating philosophy of the Constitution and should, as such, have normative value.
13. The principle of the Constitutional State (Rechtsstaat) and the Constitution as the Supreme Law, shall be inviolable and non-repealable.
14. Proposals regarding national symbols and official languages will be put forward in due course.

In the final analysis the "democracy" envisaged in the Constitutional Principles and with which the new Constitution shall comply, shall be premised on the values of freedom and equality. Those values imply:

- that the state obtains its value by securing the liberty of the people;
- that no discrimination on whatever grounds shall be tolerated or allowed in the pursuit to achieve substantive equality for all;
- the minority must have the right to political opposition and the chance to itself becoming the majority;

- that the majority has to respect the liberty of the people and the rights of the minority. Hence, "the majority" is not identical with "the people" and "the state" is not identical with "society".

THEME COMMITTEE ONEDEMOCRACY AND THE CHARACTER OF THE DEMOCRATIC STATESubmission by the Democratic Party

The Democratic Party believes that the hallmark of the democratic state is the existence of a representative system of government which makes possible the reasonably regular alternation of government, or the realistic possibility of this through free and fair elections at regular intervals.

In our deeply divided society, in which voting along racial lines was a characteristic of our first free election, the problem is very much that of how will democracy prove compatible with the racially based voting that seems likely to continue? Put another way, how does one avoid the tyranny of the majority which has so characterized other deeply divided societies in Africa and elsewhere? In these societies the nationalist party wins the founding election, further entrenches itself in power in future elections and forms a mutually parasitical relationship with the state until removed by a COUP or, after long decades, by a convulsive election.

The DP believes that 50% + 1 gives a party the right to govern (because that is democracy), but 50% + 1 does not give a party exclusive right to unfettered power. In any democratic state worthy of the name there have to be checks on the executive.

Examples of these include regular free and fair elections, freedom of the media and information, and the protection of Human Rights.

In terms of constitutional principle XIV of Schedule 4 of the interim Constitution, the final Constitution is obliged to provide for the "participation of minority political parties in the legislative process in a manner consistent with democracy". The Democratic Party believes that this constitutional injunction will be best furthered by a constitution containing the following provisions:

- (1) Supremacy of the Constitution over the ordinary law. (The Interim Constitution (I.C.) provides that the constitution shall be the supreme law - Sec.4 and principle 4)
- (2) The maximum devolution of power. For this reason the DP supports federalism, since it distributes power, brings government closer to the people, is a defence against tyranny and accommodates pluralism. (The I.C. makes provision for the establishment of provinces and local government with provincial legislative and executive authorities with exclusive and coordinate powers principles - 16, 18, 19, 20, 22.)
- (3) The power of the Federal Government and the States to be specially defined and entrenched. (The I.C. lays down the powers of the provinces in Schedule 6 of the Constitution Sec 61 provides for limited entrenchment.)

- (4) A system of voting based on Proportional Representation (P.R.). (The I.C. makes provision for P.R. in Sec. 40 principle 8.)
- (5) Protection of all basic human rights of each citizen under a justiciable Bill of Rights. (The I.C. makes provision for the protection of Fundamental Rights in Chap 3 principle 2).
- (6) A separation of powers between the legislature, executive and judiciary, with appropriate checks and balances to ensure accountability, responsiveness and openness. (This is provided for in Schedule 4 (VI) of the I.C.)
- (7) The creation of the office of Public Protector and a Commission to safeguard Human Rights and gender rights. (The I.C. makes provision for both of these under Chap. 8)

DIE VRYHEIDSFRONT / THE FREEDOM FRONT

THE SPIRIT AND THE VISION OF THE CONSTITUTION

1. INTRODUCTION.

What do we expect from the new, final constitution? What ideas must inspire the constitution? How can the Constitution correct the wrongs of the past? Can we expect the Constitution to ensure a better future for South Africa and how can we best secure this better future by means of a specific constitution written with a view of the specific needs of the people of South Africa? These are the questions we ask when we talk about the spirit and the vision of the Constitution.

2. THROUGH CONSENSUS — ACCEPTABILITY AND LEGITIMACY OF THE NEW CONSTITUTION.

The new Government is important and it has a great responsibility to govern in such a way that the country will rise from agony and strife to greatness and peace. But even more important than the new government of the day and certainly of more lasting importance for all governments that will come is the constitution we are about to write. It is the signal and the qualification of the new start.

The Constitution must therefore command the respect of all peoples and South African citizens. It is an effort to obtain once and for all legitimacy of government. Due regard must therefore be given to all opinions and the search for consensus must be painstaking. The Constitution must win the hearts and the minds of the people(s) of South Africa.

It must not bring discord. It therefore will reflect the crisis in which this country finds itself and indicate the hope we have of transcending the conflicts of the past and moving into a new future. It must bring solutions and certainly not create new problems. Constitutions are more than academic formulations of legal principles that relate to the functioning of the state. They grow from the agony of human suffering and from the determination of the creative human mind.

3. MADE IN SOUTH AFRICA.

What has been happening in the hot spots all over the world is happening in SA today as we attempt the writing of a constitution for all the people of this land. It happened in South America, Portugal, Spain, Africa and many other areas. Decades of suppressive control of different shades make way for popular constitutionalism in search of peace and progress.

The constitution we make must be truly South African however. It will reflect the South African political situation because of the essential political nature of constitutionalism. We cannot suffice with a description in general terms of

the distribution of powers and functions within different constitutional models. It must be related to and constructed upon the specifics of the political realities of South Africa. What we are after is constitutional legitimacy which is often more validated by political and social realities than by formal legal criteria.

The historical experience of countries like Britain and the USA differ substantially from that of countries in Africa and Asia. This will affect approaches to and the evaluation of their political and constitutional practices. Issues for instance like ethnicity and nationhood makes the application of British liberal constitutionalism or the proverbial American melting pot philosophy in an undiluted form in developing countries a strategy with considerable risk. The successful introduction of liberal constitutionalism presupposes the existence of a homogenic society based on established shared value-systems and cultural life and it also presupposes a general level of political education with all components of society.

As in other parts of Africa it will be fatal to introduce from above foreign western orientated constitutional practices rather than allow a genuine community based democratic culture to grow from below. Such imposition could be authoritarianism in itself. The spirit of the Constitution must emanate from the people (all the people) if it is to be accepted by the people as their own.

4. SECURITY TO THE INDIVIDUAL AND PARTICULAR GROUPS.

Above all the constitution must bring security to the individual and particular groups.

In accordance with international concepts of human rights, which have, in particular, been shaped since World War II, the fundamental rights of the individual must be guaranteed. The Constitution must invite personal loyalty and dedication with all citizens.

It is in the context of generally-recognised fundamental rights referred to above, but qualified by statutory provisions and other agreements, that the formulation of the concept of self-determination in South African context must be considered.

Although the concept of self-determination of peoples arose in the context of the oppression of colonial peoples by their mother countries, its ambit has been extended by modern developments in international law.

To a large extent modern concepts of self-determination acknowledge the self-determination of minorities inside sovereign states. These minorities often constitute cultural entities, of whom individual members are linked by language and religion. The interests of such a group have been recognised not only in legal theory, but also in the provisions of the constitutions of a number of modern states. Modern examples of minority protection or autonomy, often also on the level of local government, appear from the constitutions of a number of states, e.g. Switzerland, Canada, Germany, Spain and Belgium.

The examples referred to above may serve as analogies for the Afrikaner situation, but the overriding consideration in formulating a concept of self-determination in the context of South Africa is the unique circumstances

existing in South Africa. A balance should be negotiated between the desire of the Afrikaner for self-determination and the ideal of peaceful well-being of the larger whole of society.

5. CONCLUSION

World wide discussions in different situations have come up with articulated features of genuine constitutionalism, which could be formulated as follows:

It is a commitment to limitations on ordinary (also majoritarian) political power; it revolves around a political process, one that overlaps with democracy in seeking to balance state power and individual and collective rights; it draws on particular cultural and historical contexts from which it emanates; and it resides in public consciousness. (Greenberg e.a. (ed) Constitutionalism and democracy. Transitions in the contemporary world. O.U. Press. 1993).

Recapitulation

The Freedom Front sees the spirit and the vision of the Constitution as including:

1. Freedom for all. No arbitrary domination by any political party.
2. Control of state power over individuals and over citizens in collective context.
3. Conflict resolving and the pursuit of lasting peace.
4. Promoting respect for all components of the pluralist SA society and yet providing the value system for seeking common objectives.
5. Inviting loyalty of all citizens.
6. Bringing stability, development and progress to a conflict-ridden society.
7. Ensuring conditions and opportunities for the full development of the potential of the creative minds of all citizens.
8. Ensuring a system of equitable justice for all in society.
9. Creating space for the free unlimited development of the Afrikaner and of all cultures in accordance with the accepted universal values of human rights.
10. Creating a constitutional framework for the devolution of political power.

11. *Responsible government and accountability*

DIE VRYHEIDSFRONT / THE FREEDOM FRONT

DEMOCRACY

1. INTRODUCTION.

When we try to become more specific about the spirit and the vision of the constitution we must first and foremost say that the constitution must constitute a state and promote a culture that is in essence and in practice democratic.

Democracy is not a magic formula in the form of a slogan that will simply solve all problems. Different people understand different things under democracy. Also the concept and the practice have gone through a long history with many adaptations. Certainly many disguised dictators used the popular concept of democracy to suit their own purposes.

Finer in his book, Comparative Government, says the following of the term democracy. "No political term have been so subjected to contradictory definitions as 'democracy' and 'democratic' since it has become fashionable and profitable for every and any state to style itself in this way."

However, even though we must be aware of all the misuse of the term democracy and of the great variety of practical applications, the system of democratic government allows, and even of the potential pitfalls we may face, democracy still remains the most acceptable form of government. It is also good to remember that democracy has brought stability, growth and hope for many peoples who suffered from authoritarian regimes, who brought them untold suffering.

2. DEMOCRACY AND STABILITY.

Furthermore, in the last two decades democracy has shaped a considerable number of stable societies, of which some are in Africa. The inequities and instability of alternative systems that have been employed by way of experimentation have even moved the International Monetary Fund to put the existence of a stable democracy in government as a prerequisite for the supply of any monetary aid. It is also important to note that in the assessment of the IMF whether a country is a true democracy or not, the protection and treatment of minorities in such a state is the yardstick and not merely whether a system of one person one vote exists. A properly structured democracy and stability goes hand in hand.

3. CONSTITUTIONAL REGULATION FOR DEMOCRACY - UNIVERSAL DEMANDS.

For the purposes of this presentation we propose to refrain from academic discussions about all the aspects of democracy in its long history. We would rather select those accepted features of democracy, that have direct bearing

to our situation and therefore to the constitutional process. In doing so we need to look to the past asking ourselves what needs to be done by way of constitutional regulation to change to a system that would be more genuinely in line with true democracy to build upon for the future.

The most common definition of democracy is government by the people.

This means:

- 3.1. Participation in government must be by all the adult people of South Africa. Never again must there be any one group of people dominating others by unilateral decision against their will. The principle of democracy must be adhered to, i.e. that government can only take place with the consent of the governed. This will be the only basis for lasting peace.
- 3.2. We believe, though, that the constitution must be negotiated and eventually written with the serious desire to invite loyalty and agreement of all significant components of South African society. The constitution must create unity, not try to enforce it.

4. DEMOCRACY AND OUR PLURALISTIC SOCIETY.

- 4.1. Having stated in 3 the universal demands of an inclusive democracy which we accept as the basis of true freedom, we in the Freedom Front submit with respect that the "people" which is to govern in South Africa should not be seen as a conglomerate of individuals. We believe that South African society consists of more than a specific number of individuals in that the communal aspects within our pluralistic society is well expressed and not all in one single way. As examples we want to list the following:
 - The desire expressed by the Zulu king for a kingdom.
 - The need expressed by many traditional leaders to be included in the democratic solution through some form of structures of internal self-government.
 - The desire expressed by many Afrikaners to be free to exercise selfdetermination, which includes a territorial component.

We are convinced that true democracy is flexible enough to accommodate the realities of the pluralistic society in a way that will suit the unique SA complexities, some of which we have mentioned above. We draw attention to the fact that in many situations in the world workable solutions have been hammered out for similar problems and that they have enhanced unity and strengthened statehood. They have brought peace and prosperity with growing mutual respect.

We must warn that our society is, for debatable reasons admittedly, still a deeply divided society that may not fit the pattern of British or American models based on individualism and functioning in a standardised culture. We can ignore these realities only at our own peril. Part of the problem, according to F van Zyl Slabbert and David Welsh (South Africa's Options - strategies for sharing power, 1979, p.32) is that the democratic

model of society was developed in the relatively homogeneous societies of the West, and exported by them, largely through the instrumentality of colonialism, to much of the Third World. The general concept of democracy, as expounded above, must necessarily be made to fit heterogeneous societies, in which group interests require special protection. If some satisfactory solution is not found to accommodate the strongly developed sense of national pride or ethnic coherence of certain groups within the overall structures of democracy, these groups will feel disempowered and suppressed by a political majoritarianism that will inevitably alienate them and set the scene for future discord. For they will see their fate clinched by what they can only consider as disrespect or disdain for what they consider is their "own". The problem of dissenting minorities must be addressed. Therefore modern democracy has developed to much more than simple majoritarianism and one-man-one-vote. In this regard the right of self-determination of a community (e.g. the Afrikaners) is of such importance that it has been entrenched in the Constitutional Principles.

- 4.2. Similarly the concept or ideal of a strong state can only be enhanced by co-opting all significant groups as willing partners in this state, even if that means asymmetric arrangements on the powers and functions of substructures within the state.

It can make the regional dispensation more meaningful for there can develop a sense of identity and intense loyalty in addition to the fact of regional administration.

5. DEMOCRACY AND LOCAL GOVERNMENT.

- 5.1. Furthermore we want to make the point that a strongly developed local government system closely related to the communities will best serve the democratic ideal of government by the people. It is generally agreed that the system of direct democracy which operated in the Greek city states like Athens probably represent the safest and more genuine manifestations of democracy.

While we cannot employ the system of direct democracy to the larger and diverse societies and states that we have today and therefore have to rely on representative democracy at all levels of government, it is also true that the closer involvement of people and communities with government at local level allows for the better implementation of democratic ideals. It is probably the place where a divided South African society will best be trained in the virtues of democratic behaviour.

We also propose that communities who, for reasons of cultural coherence wish to run their own community life, be allowed to do so according to the principle of freedom of association. In this respect, for instance, we insist on the availability of public educational facilities for all children in every place but we also want education to be a community concern where the education of its children can be done according to the particular cultural demands of each community.

- 5.2. We furthermore expect that at the local level the position of

traditional leaders should be respected within the general democratic principle of government by the people.

We would also want to see accepted traditional leaders who represent their communities to become a structured part of civic government at the local and possibly at other levels of government as well. The concept of representation is at stake here. If the traditional leader represent his or her community this leader must be included in structures of civic government.

The meaningful incorporation of this fact of versatility of South African society in the constitutional framework needs to be looked at very carefully. The question is how to employ that reality within the context of a democratic culture that is based both on existing diversities and the dynamics of change in an effort to build unity in the whole and achieve stability all along. This is in the first instance a challenge at the local level.

6. DEMOCRACY - GENERAL PRINCIPLES.

- 6.1. The essential goal of democratic government is the pursuit of the common good for society, which must be negotiated in the forum of the people and agreed to.

It is not acceptable that the state can control and determine the lives of its citizens in an arbitrary fashion. In a democratically structured society the rights of the individual to life, to property, to freedom, etc. must be constitutionally enshrined and judicially guaranteed.

The citizen must be adequately protected also against administrative malice, inefficiency and arbitrary treatment, including discrimination. In addition to judicial redress an effective system of the Ombudsman or public protector must be provided for by the constitution.

- 6.2. Representation must be authentic. Elections must be free and fair and it must be possible for the judiciary to scrutinize the nomination of representatives. We believe that a code of conduct for political representatives must be agreed upon and in the case of proportional representation, the list of candidates in order of priority must be published ~~in~~ before an election for public scrutiny and possible judicial investigation in the cases where objection is registered.

The past has taught us that where legitimacy is in doubt respect for and loyalty to government fail. Legitimacy must be the constant demand. We also propose therefore a system where even during the term of appointment such representatives can be impeached by public demand of a substantial nature. Accountability must be accompanied by available constitutional measures for suspension and dismissal from office.

- 6.3. The standard checks and balances in democracy against abuse of power must be included. This includes the administrative, legislative and judicial levels.

- 6.4. At the same time the constitution must create overall trust, hope and loyalty that could facilitate peace and prosperity in society with general acclamation of a kind that would never again give rise to the need for resistance and revolutionary activity similar to that which we had in the past and caused severe measures from the state for the sake of maintaining its position.**
- 6.5. We believe that the freedom of the press must be constitutionally guaranteed and that the critical surveillance of public events by the press must be welcomed at all times.**

We also believe that public control of the SABC must effect diligent scrutiny of any form of abuse.

The independence of the SABC must be constitutionally enshrined.

THEME COMMITTEE 1

CHARACTER OF DEMOCRATIC STATE

SUPPLEMENTARY REPORT

ON PRIVATE SUBMISSIONS

27 FEBRUARY 1995

All the parties present at the meeting of the 27 February 1995, agreed that the supplementary report on private submissions should include classification of issues dealt with according to the contentious and non-contentious points found in the Amended Report on Block 1.

Taking the above into account, we are pleased to report that on a rough classification, approximately 12% of these private submissions deal with non-contentious issues, about 45% with contentious issues and the balance with issues which are to be considered by Theme Committee One later in the Constitution-making process. They will be taken into account when those items are reached.

Attached to the supplementary report is "Annexure B" which contains a Summary Overview of Public Submissions received.

ANNEXURE B

The Summary Overview which follows seeks to provide members of the Theme Committee with brief notes on the main points of relevance contained in submissions from members of the public. Some of the submissions were long, with only a few points germane to this Theme Committee's task.

In the view of the compiler, Prof. H Corder, several issues stand-out for the frequency of their occurrence, and the urgency with which they are expressed viz. (a) accessibility of Members of Parliament (including methods of direct contact and a return to some form of constituencies);

(b) accountability of those in public office (including incorruptibility and a possible mechanism of recalling those who fail to live up to standards of accountability);

(c) that the Constitution should be simple, concise, principled and understandable; and

(d) there is a clear difference of opinion on the extent to which religious reference should be made in the Constitution.

These issues form part of the forthcoming work of this Committee.

It is hoped that this compilation will be of assistance. As with any such exercise, however, it is no substitute for a perusal of the originals.

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

NAME & LOCALITY	SUBJECT MATTER OF SUBMISSION GERMANE TO THEME COMMITTEE 1	DATE SUBMITTED
Dir-General, Dept Env. Affairs and Tourism	Embodiment of a reference to a "healthy environment" in the Preamble to the Constitution	05/01/1995
Pretoria Buddhist Group	Reference to the "Declaration on Religious Rights and Responsibilities" as impacting on the Character of the State: essentially, freedom of religion and conscience, equality of religious communities before the law, the right to religious education, religious access to media, religious ownership of property and exemption from taxation, etc.	28/12/1994
WS Bennett Johannesburg	Popular contact with Parliament: suggests a "Freepost" service available at all Post Offices for questions to be put to Parliamentarians	05/01/1995
O Bothma Mossel Bay	Sets out scheme for division of powers vertically, relying on three levels of independence for provinces (States)	27/12/1994
E R Jenkins	Language Policy: Language rights should be individual rights; all eleven official languages should continue to be so recognised; the emphasis should be on putting language to use; the Pan-South African Language Board should be retained	27/12/1994
M S Dimba Plessislaer	Democracy must be "proper and pure". SA must be a unitary state, with a strong central government; a Volkstaat must be rejected	09/01/1995
Council of Muslim Theologians Durban	Muslims cannot use the words "Woza Moya" in the National Anthem, as they contravene the belief in the Doctrine of monotheism	10/01/1995
G B McIntosh Estcourt	Concerned about the absence of constituency links of MPs, also about section 43(b) of the transitional constitution. Reduce the size of representative bodies. The spirit of Human Rights should be included in the Preamble, following immediately after the reference to Almighty God	28/12/1995

K R Maughan-Brown Fish Hoek	Constitution must provide a framework, the local community being the most important element. Individual apathy and antipathy must be countered. There should be direct democracy at local level, and representative democracy at higher levels. Popular ballots, referenda and initiatives should be used.	10/01/1995
Rev M A Mncwabe Wartburg	In Zulu - no translation	02/01/1995
B J Mnisi Balfour	Equality must be preserved, the "GNU is correct"	11/01/1995
R Porteous Eikenhof	Emphasis should be on non-establishment of religion, not on the separation between religion and state	11/01/1995
H B Narian / Richmond	No fear or intimidation, a Federal state	29/12/1994
H Prozesky Pietermaritzburg	Separation of state and religion; freedom of belief, equality for all forms of religious and secular beliefs; remove "In humble submission to Almighty God", "Nkosi sikilel' iAfrika" and "so help me God"	10/01/1995
T M Shaku Atteridgeville	Use "Sepedi" not "Nothern Sotho"; Motswana - Batswana; and Mopedi - Bapedi	02/01/1995
R Southall Grahamstown	Proofs of an article reviewing the 1994 elections, and speculation on the re-emergence of a dominant-party state in South Africa	
(Unknown) Plettenberg Bay	Education on democracy is needed; State must value openness, honesty and fairness and be positive and progressive and above all uncorrupt	07/01/1995
ETM Tshigeng Phokeng	Statehood should embrace local custom	
D Verster Westgate	Emphasis on democracy and a Bill of Rights, as well as freedom inside the law of the land	
S Abrahams Yeoville	Rights must be accompanied by responsibilities (obligations or duties); liberty not licence	21/12/1994
D Black / Parklands	In favour of minimalist government, not majoritarianism	08/01/1995
R Brijraj Durban	Promote nation-building and democracy; and affirmative action	03/01/1995

T W Button Somerset West	Sees social structure as three-fold: cultural, social and economic; government should provide for free expression of culture, have greatest responsibility in social matters on basis of equality, and should not be directly involved in economic matters i.e. liberty, equality and fraternity	13/01/1995
A J Caser Pietermaritzburg	Greater public information and parliamentary accountability to ordinary people	12/01/1995
R E Chalom Johannesburg	Citizenship should be further regulated in a constitution	11/01/1995
D Drummond Gardenview	All voters and all parties should be represented in government	15/01/1995
S Evans Cape Town	There should be guidelines for ethical conduct of officials	10/01/1995
N K Govind Durban	There must be a secular state, with English the only official language	07/01/1995
K Hunter Greenside	Federal nature with one official language; those who pay more tax should have a greater say. The constitution should be simple	20/12/1995
S Kirchoff (Natal?)	Direct election of President and Senate; Federal character of state	12/01/1995
J Katz Kimberley	Favours Democracy, transparency and accountability	08/01/1995
T Maxegabo Pretoria	Constitution must be understandable, simple, and accessible, with a mechanism for the proactive enactment of enabling legislation	
J A McMorran Florida Hills	Education, ethics and efficiency are important values	
M Peer / Odin Park	Elections every four years; accountability, etc; delimited voting wards; basic rights protection; benign state; racists and criminals not to hold public office	12/01/1995

J Roux / The Threefold Working Group Cape Town	On approach of Rudolph Steiner, see three sub-systems in modern society: the economy, the political-legal-rights life (government), and the spiritual-cultural-educational realm (individual development) - in other words, Fraternity, Equality and Liberty. Twelve proposals are made towards a threefold Constitution: among them - - a government to protect human rights and promote social justice; - intensive democracy and accountability; - meaningful regional and local government; - visible and limited government; - independent education and management of national finances; - co-operation via negotiation	
J Thuynsma Mitchells Plain	Right to recall MPs on certain grounds; two-tier government (no provincial level); unitary state	13/01/1995
J M Smalberger George	Votes on basis of income tax paid: one vote for every R100 paid; basic one vote for all	12/01/1995
E van Wyk Witbank	Central government override	11/01/1995
A Wilson Fish Hoek	Strong central government over provinces; English as official language	15/01/1995
African National Council of Churches (Pastor Masinga) Marshalltown	Freedom of worship; non-interference by State with religion; State should support certain aspects of Church Life (e.g. feeding schemes)	26/12/1994
United Christian Action Claremont, W. Cape	The rule of law; checks and balances; bi-cameral national legislature; a federal system; free enterprise market economy. Education independent of State; taxation powers of central government less than 10%	28/12/1994
Evangelical Fellowship of SA Pietermaritzburg	Power close to the people; State impartial as to religion but not secular; retain "In humble Submission..." and "Nkosi ..."	11/01/1995
Africa Muslim Party Cumberwood	Minority group participation at all levels of government; particular attention to Muslim interests in a range of government spheres	11/01/1995
Organisation Development Institute of SA Cape Town	Towards a Threefold Constitution (see above, <u>sub nom</u> J Roux / Threefold Working Group)	12/01/1995

English Academy of SA	Greater clarity to "equal use" of languages, and to activities of Pan-SA Language Board; no return to former (pre - 1993) style of Preamble	12/01/1995
Novalis Institute	Support for right to education and children's rights	11/01/1995
N Arthinodorou Pretoria	Right to recall government which fails to live up to campaign promises, by referendum	18/01/1995
TA de Bruyn Overport	Election of individuals, not parties, to Ministerial portfolios; Ministerial salaries to be negotiated with the people	18/01/1995
R C Haw Somerset West	A maximal devolution of power; the Swiss canton model; problems with the Westminster system in Africa	16/01/1995
P Lausberg Noordbrug	Separate governments for different "minorities" ("blacks" are largest minority)	
J O Kellermann Pretoria	Restrictions should be placed on increase in government spending, and on the ratio between government revenue and citizens' income	17/01/1995
A Stemmett Bonnievale	Concentrates on international law aspects of Constitution. Proposes new formulations of section 231 (4), and fundamental rights relative to international law	02/01/1995
T Xerokefalo Jeppestown	Must be some constituency aspect to proportional representation	23/01/1995
J A N Venter Pretoria	Free market, government by the people, for the people	10/01/1995
J M Vosloo Brackenfell	A non-entrenched Bill of Rights; various suggestions for organisation of government	18/01/1995
H W Brussow Honeydew	No right to strike; no race discrimination including affirmative action; recognition of social and cultural stratification must be respected	20/01/1995
P A Brussow Bethlehem	Minority parties should be heard; no socialistic ideas; uphold law and order; leaders of the State should <u>serve</u>	17/01/1995
H C & M I Botha Mtwalume	Vote for individuals, not parties; a code of conduct for governors; federalism	16/01/1995
H C de Villiers Empangeni	Constituency representation; no third level of government	09/01/1995

S Galpin Durban	The State exists to serve the citizen; Strict limit of period of arrest before court appearance; no limit on right of defences, including arms; every five years, a Council of Review, to recommend constitutional amendments, with the approval of 75% of Parliament; no privileges for MPs	19/01/1995
R I Emery Nelspruit	Full transparency, to avoid corruption	23/01/1995
M Innes Melkbosstrand	Government from the bottom up; Christian nature of SA society	15/01/1995
VW Meyer Wingate Park	Capitalism and free market; multi-party democracy; Christian values; affirmative action on merit; fair balanced taxation; ownership of private property; etc.	24/01/1995
D S Mahabeer Reservoir Hills	In favour of: Bill of Rights, local to national democracy, House of Traditional Leaders, religious freedom, constituencies. Against: Traditional authorities, Volkstaat, proportional representation for minorities.	16/01/1995
H Smith Lindley	Freedom of the individual; an independent Republic; a President without legislative powers; a small legislative assembly	
L P Morris / Durban	Constituency representation	16/01/1995
G R Oliver / Cape Town	Federation	13/01/1995
A Hoffenberg Birnham Park	Referendum and recall of representatives; trial by jury; direct election of public officials; smaller political units; American constitutionalism; information on the Bahai faith	16/01/1995
National Spiritual Assembly of Bahai Houghton	Non-discrimination on race, creed, class, economic condition; personal rights and freedoms; right to basic education, to work; decentralised federation; solidarity of family; rights of men and women; one common language; etc.	09/01/1995
R Smit / Durban	Respect for one another	16/01/1995
J F Pretorius Pretoria	Code of ethics for political parties	12/01/1995
D Tim Johannesburg	Family life is the backbone of society; qualities must be instilled in children	
J J Steenekamp Constantia	Simple, concise and understandable constitution; concentrate on principle; no recognition of any religion; separation of powers	15/01/1995

M G Buthelezi Dept Home Affairs	Citizenship regulated along the lines of Citizenship Bill (1995?); franchise to SA citizens for national and provincial elections; may be widened by Act of Parliament for local elections	18/01/1995
Concerned South Africans Sun City	Control unscrupulous businessmen; legislate affirmative action; control the flow of expatriates and imported labour; scrutinise applications for citizenship; free enterprise	20/01/1995
SA Civil Liberties Union Rondebosch	Comment that SA run by an elite group	23/01/1995
World Conference on Religion and Peace Johannesburg	Separate State and religion; conduct the state free from bias to one or other religion; recognise public role of religious communities to promote moral and spiritual standards, and the duty of the State to support such. (Declaration on Religious Rights and Responsibilities attached - November 1992)	20/01/1995
Laissez Faire Books San Francisco, USA	Catalogue of books submitted	
J Carter Clifton	Retain "In humble submission to Almighty God"	29/12/1994
Boere-Vryheids Beweging Pretoria	A Christian republican Boerestaat; will be a blessing for South Africa, will promote peace, will accept responsibility, will not be a threat, will export food. (Authority sought in UN principles on the rights of indigenous people, 1994)	15/09/1994
T Oosthuizen Alberton	Right of recall of MP when changes party	20/01/1995
G Salzer Yeoville	Disturbed by pornography	24/01/1995
(J M Lasrag?) Durban	English the only official language	26/01/1995
R C Haw Somerset West	Maximum devolution of power	
A Reynolds San Diego, USA	An investigation of the application of five different electoral systems to the actual results of the 1994 Malawian and South African elections	18/01/1995
J E Stokes Goodwood	Power-sharing and fundamental rights	26/01/1995
Dr J L Steyn Pretoria	General subscription to the values embodied in the constitutional Principles	23/01/1995

Anonymous Springs	Retain the death penalty and abortion laws; withhold gay rights, stricter censorship	30/01/1995
M Durr Constantia	Stricter censorship, no gay rights, no prostitution	28/01/1995
A Reynolds San Diego, USA	An article on the importance of electoral system and constitutional design to the new democracies of Southern Africa. Attempts to show divided societies need proportional representation and parliamentary systems of government. Proportional representation needs to emphasise geographical representativeness and democratic accountability of MPs.	18/01/1995
N Romm Benmore	Non-sexism needs to be entrenched at all levels and in all structures and procedures; not marginalised in a Gender Commission (22 pages)	22/01/1995

**RATIONALISATION OF THE WORK PROGRAMME
OF THEME COMMITTEE 1**

I) INTRODUCTION

At the Core Group meeting of 22 February 1995, after input from Mr. H Ebrahim and discussion on the manner of drafting reports and on the difficulties caused by the overlapping jurisdiction of Theme Committees (which particularly affects Theme Committee One in the early stages of its work), the Core Group mandated the convener of the technical advisers, Prof. H Coder as follows:

- a) to review the Blocks and Agenda Items as they appear in the Revised Work Programme, with a view to identifying those areas of the work of the Theme Committee shared with other Theme Committees, to some degree;
- b) to confer with the technical advisers of the other Theme Committees, where appropriate, in order to devise a manner of dealing with this common ground; and
- c) to submit a proposal to the Theme Committee as to how it might most usefully and rationally proceed with its work, guided by the terms of reference of the Theme Committee and the Technical Committee, as well as observations of the process thus far.

The above steps have been carried out, in consultation with Dr. J Heunis and Mr. Z Husain. At the meeting with the conveners of Technical Committees it was agreed that the areas of overlap should remain with the respective Theme Committees but that Theme Committees should plan their work programmes well in advance and that all Theme Committee's should be informed of each Theme Committee's work through the Secretariat so that joint meetings could be planned if necessary (i.e. members of other Theme Committees could attend to hear "evidence" given by the outside experts).

At the Core Group meeting of the 28 February 1995, the meeting agreed that a joint meeting with the other core groups should be set-up by the Secretariat to discuss the issue further.

A suggested catalogue of shared issues follows, for the consideration of the Theme Committee.

II) SHARED ISSUES

Areas which are shared to some extent with other Theme Committees:

	BLOCK	AGENDA ITEM	THEME COMMITTEE
a) Democracy and Character of State	1	1	2,3,4 and 5
b) Equality	2	2	4
c) One sovereign state	2	3	2 and 3
d) Supremacy of the Constitution	3	4	5 (to limited extent)
e) Accountable Government	4	5	4 and 6
f) The Economy	5	6	4
g) Representative Government	6	7	2 and 3

Some of the issues, in our view, fall chiefly within the jurisdiction of Theme Committee One i.e. (d) and (f). As regards the other issues, it seems that Theme Committee One is being expected to provide agreement on broad issues of principle, while the other Theme Committees are being expected to flesh out the details.

The Theme Committee should consider how it wishes to deal with such issues. It is reminded that provision exists for joint meetings of Theme Committees, as well as joint meetings of Technical Committees. It may well be that broad issues of principle could be outlined in such joint meetings, allowing Theme Committee One thereafter to proceed with its next item, and the other Theme Committees concerned to meet separately to attend to matters of detail.

Theme Committee 6.4

**Specialised structures of government:
Security Apparatus**

Final report to the Constitutional Committee

**"Supremacy of the Constitution and
accountability and control
of the Security Forces"**

Blocks 1 & 2

27 February 1995

PART ONE

PARTICULARS OF MATERIAL PROCESSED BY THE THEME COMMITTEE

1 SUBMISSIONS RECEIVED

The following submissions have been received by the Subtheme Committee:

1.1. Political parties

- * African National Congress
- * Democratic Party
- * Freedom Front
- * Inkatha Freedom Party
- * National Party
- * Pan Africanist Congress

1.2. Organisations of civil society

- * Conscientious Objector Support Group
- * International Committee of the Red Cross
- * Military Research Group
- * SANDF/ Ministry of Defence

1.3. Individuals

- * Faull, J
- * Hamelberg, M
- * Links, B
- * Mc Moran, J A

Deliberations have focused on submissions from political parties. The submissions received from the public so far have tended to be broad and short. The Committee is being proactive regarding submissions for the rest of the work of the Subtheme which focuses in detail on Police, Defence and Intelligence, and perhaps Correctional Services. The Committee intends holding provincially based public hearings in the course of the work programme.

2 SEMINARS ORGANISED BY THE COMMITTEE

Information seminars, which also form part of proactive approach to submissions have covered:

- * Correctional Services and their location in the Constitution;
- * Control and accountability of the Intelligence Services, Defence Force and Police;
- * There are plans for information seminars on policing and the Constitution.
- * These will be followed by seminars dealing with Defence and

Intelligence in their respective blocks.

The information seminar on Correctional Services generated debate on its location within the Constitution making process. This is addressed in the section below entitled "Where should security apparatus be located within the Constitution".

PART TWO

Explanatory note:

- I. Current titles of Ministries have not been used as this is not conventionally a constitutionally defined matter. Names of the forces/services have been used as this should be defined in the Constitution.
- II. No submissions relating to prisons/correctional services have been included pending the outcome of a decision regarding the appropriate Theme Committee in which this issue should be dealt with.
- III. The term "security apparatus" is used throughout to avoid wordiness due to service and force and agency all being stated.
- IV. A schematic table indicating the areas of agreement and contention and areas requiring further clarity, as set out in bold type throughout the report, is attached as annexure "A".

1. WHAT GOES INTO A CONSTITUTION ON SECURITY APPARATUSES?

Agreement:

Constitution should cover long standing principles. However it may be necessary to flesh out these principles because South Africa is a new democracy with a particularly troubled security apparatus history.

2. WHERE SHOULD SECURITY APPARATUS BE LOCATED WITHIN THE CONSTITUTION?

Agreement:

Various possible places, which are not necessarily mutually exclusive - Preamble, Bill of Rights, Powers of the State President, separate chapters dealing with each of security apparatuses, or one chapter dealing with all of them. No finality at this stage, will be an ongoing thread of discussion in work of Sub Theme 4.

Also Directive Principles

Further clarity:

That correctional services is not part of security apparatus and should be dealt with under Theme 5 in relation to judiciary and legal system.

3. SUPREMACY OF THE CONSTITUTION

ANC: Both the Constitution and the Bills of Rights are supreme and South African National Defence Force (SANDF) and South African Police Service (SAPS) must be bound by that supremacy.

- ANC: The intelligence structures shall operate on the basis of constitutional sovereignty. Their work shall be in defence of the constitution and not in defence of the government of the day.
- IFP: Security apparatus must operate within the Constitution and Bill of Rights.
- DP: Constitution shall be supreme law, with which all Executive action and legislative measures should have to conform. Constitution should describe the architecture of government and relationships which exist between various levels and different institutions of government. Constitution should lay down powers, duties, responsibilities and entitlements of levels and institutions of government, procedures for adhering to these and avenues to resolve disputes which may arise between various levels or institutions of government.
- NP: Constitution should be supreme law of Republic, binding on all legislative, executive and judicial organs of government. The security apparatus should not be used, nor should they demand, to defend or protect the Constitution.
- PAC: Constitution is supreme law but cannot on its own regulate Defence Force.

Agreement:

1. *Constitution is the supreme law in South Africa.*
2. *The Constitution must be binding on Security Apparatus.*
3. *The Constitution should prohibit Security Apparatus acting on their own and bypass Parliament and the Executive.*
4. *The Constitution should state that the Executive cannot use the Security Apparatus to violate the Constitution.*

4. **DECLARATION OF STATE OF EMERGENCY**

- ANC: Only declaration of State of emergency or State of War should lead to some regulated suspension of human rights.
- IFP: Any suspension of some human rights will only be regulated through declaration of a state of Emergency or of War which will bind both SAPS and SANDF.
- NP: President must be empowered to suspend certain fundamental rights in state of war/emergency, in terms of criteria laid down in Bill of Rights.

Who

- DP: Constitutional limitations of power of executive(s) to deploy security apparatuses in the form inter alia, of limiting power of executive(s) to declare state of war or emergency, requiring executive(s) to report to legislature(s) and/or for legislature(s) to endorse action taken by executive(s) by resolution, and requiring legislature(s) be convened within a defined period after deployment of forces by executive.
- NP: Provision must be made for crisis or interim Parliament of reduced number which could, in time of crisis through natural disaster or war and at a time when the President has been incapacitated declare immediate state of emergency or state of national defence/war subject to ratification by full parliament within 14 days.
- IFP: Head of Government may declare an emergency in Republic or in determined areas thereof.
- IFP: Declaration of Emergency shall provide a general indication of type of emergency and shall indicate in general terms which powers and resources of Government, the Provinces and local governments, or of citizenry the Head of Government intends to employ to respond to the emergency, how such powers and resources are expected to be employed and for how long, and other measures and action the Government intends to undertake.
- IFP: Within twenty four hours the Head of state shall summon Parliament to a joint session to ratify the Declaration of Emergency. Parliament may modify the Declaration of Emergency.
- IFP: If the emergency is such that Parliament may not be summoned into session, the declaration shall be submitted to the Constitutional Court for approval. Should this not be possible, the Declaration of Emergency shall be submitted for approval to the President of the Constitutional Court, the President of the Senate or the Speaker of the National Assembly, in this order.
- IFP: The Head of Government shall modify the Declaration of the Emergency to provide additional information, to detail information previously provided and to report on the action undertaken to respond to the emergency.
- IFP: Parliament or the Constitutional Court may terminate or modify the terms of the Declaration of Emergency at any time.

IFP: The Head of State may require that Parliament or the Constitutional Court meets behind closed doors to discuss any matter related to the emergency, and that the contents of the Declaration of Emergency be kept secret.

IFP: Any action taken during a situation of emergency shall respect to the fullest extent possible under the circumstances the rights and liberties of the citizens of the State recognised and guaranteed in the constitution.

IFP: The declaration of emergency shall employ the defence force only when and to the extent that the police services are not sufficient to respond to the emergency.

IFP: Provinces shall have the right to declare State of Emergency and shall have the right to lift State of Emergency. This shall include right to deploy police in provincial State of Emergency

Agreement:

1. *The Constitution should provide for Presidential power to declare a State of Emergency, and to regulate suspension of human rights in that context, and right of Parliament to review/overturn such decisions.*
2. *The Constitution should provide for the Judicial right to overturn decisions to declare a state of emergency if procedure has not been followed correctly.*

Contention:

1. *The powers of provinces to deploy police in provincial state of emergency.*
2. *The right of Provinces to review or overturn the declaration of a state of emergency.*

Further clarity:

1. *Length of time allowed to lapse before convening of Parliament.*
2. *Deployment of the Defence Force within South Africa and relationship between Police and Defence Force within this deployment.*

5. DECLARATION OF STATE OF NATIONAL DEFENCE/WAR

ANC: Only declaration of State of emergency or State of War should lead to some regulated suspension of human rights.

IFP: Any suspension of some human rights will only be regulated through declaration of a state of Emergency or of War which will bind both SAPS and SANDF.

- IFP: South African troops may be employed in possible combat situations outside the country only on the basis of a declaration of war in hostility, the latter including so called peace-keeping exercises.
- IFP: The constitution must state that South Africa shall strive to respect and maintain all its international law obligations, and shall reject the use of war or international violence as means to resolve international conflicts.
- IFP: The Head of State in consultation with the Head of Government may declare war or the status of international hostility. The Declaration of War or hostility shall provide a general indication of the type of military and logistical resources to be employed and effects of the declaration on the Government of the Republic, the Provinces and the citizenry. The declaration must indicate for how long the status of war or hostility is expected to last and the measures which the Government in undertaking to try to solve by diplomatic means the underlying international crisis.
- IFP: Within twenty four hours the Head of State shall summon Parliament to a joint session to ratify the Declaration of war or hostility. Parliament may modify the Declaration of War or hostility. If the situation is such that Parliament may not be summoned into session, the Declaration shall be submitted to the Constitutional Court for approval. Should this not be possible the Declaration shall be submitted for approval to the President of the constitutional Court or the President of the Senate or the Speaker of the National Assembly in that order.
- IFP: Parliament may terminate or modify the terms of the Declaration of War or Hostility at any time. The President may require that Parliament meets behind closed doors to discuss any matter related to war and that the contents of the Declaration of War or Hostility are kept secret.
- IFP: Any government's action taken within the Republic during a situation of war shall respect to the fullest extent possible under the circumstances the rights and liberties of the citizens of the State recognised and guaranteed in the constitution.
- DP: Constitutional limitations of power of executive(s) to deploy security apparatuses in the form inter alia, of limiting power of executive(s) to declare state of war or emergency, requiring executive(s) to report to legislature(s) and/or for legislature(s) to

endorse action taken by executive(s) by resolution, and requiring legislature(s) be convened within a defined period after deployment of forces by executive.

- NP: Constitution should provide for definition of state of national defence. Separate provision for declaration by President of state of war or national defence, subject to ratification by Parliament within seven days, and that such state of war/national defence may only be declared upon attack originating from outside the borders of Republic of South Africa
- NP: President must be empowered to suspend certain fundamental rights in state of war/emergency, in terms of criteria laid down in Bill of Rights.
- NP: Provision must be made for crisis or interim Parliament of reduced number which could, in time of crisis through natural disaster or war and at a time when the President has been incapacitated declare immediate state of emergency or state of national defence/war subject to ratification by full parliament within 14 days.
- NP: President should be able with the approval of Parliament to declare a state of national defence/war. The President must inform Parliament of reasons for the deployment of SANDF where such deployment relates to the defence of Republic, compliance with international obligations or the maintenance of internal law and order. Parliament should have the power to terminate any such deployment.
- FF: Parliament must be accountable as to committing or not committing the Defence component to war in and outside the borders of the Republic.

Agreement:

The Constitution should provide for Presidential power to declare a state of national defence/war, subject to Parliamentary confirmation.

Further clarity:

1. *Time period allowed for the review of such a decision by Parliament.*
2. *Deployment of the Defence Force within South Africa and relationship between Police and Defence Force within this deployment.*

6. DEFINITION OF ACTION IN NATIONAL INTEREST AND NATIONAL SECURITY

ANC: National security policy shall seek to protect and promote the security of both the state and its citizens, through promotion of military, social, economic and political dimensions of security.

ANC: Threats to security shall not be interpreted as being limited to external military aggression but shall include poverty, social injustice, economic deprivation, abuse of human rights and destruction of the environment.

*David
(accepting)
see same
Nelson*

ANC: The objectives of national security policy shall therefore go beyond achieving an absence of war and physical violence to include the consolidation of democracy, respect for human rights, social justice, sustainable economic development and protection of the environment.

IFP: Constitution must state that operations and policy formulations of security apparatuses must reflect the national interest and be consistent with the letter and spirit of the constitution.

IFP: SAPS must operate only to ensure prevention and investigation of crimes rather than act on the basis of the broad "national interest"

IFP: Action of the security apparatus should be oriented to the implementation and execution of statutory, constitutional and international law.

NP: SANDF must perform its task in the national interest by providing for the defence of Republic and ensuring the protection of inhabitants of Republic.

FF: Defence component must not be given any function pertaining to police duties and the Police component not given any function pertaining to military duties.

Agreement:

1. *The Constitution should provide that the Defence Force's primary function is to defend the territorial integrity of SA.*
2. *The Constitution should provide that action of the security apparatus should be orientated to the implementation and execution of statutory, constitutional and relevant international conventions and law on armed conflict.*

Contention:

1. ***The Constitution should define national interest and national security policy in broad non-militarist terms focusing on the quality of life of citizens in economic, political, social and environmental terms.***
2. ***The Constitution should provide for the definition of national interest as the interests of the citizenry and the interests of the state.***

7. PARLIAMENTARY OVERSIGHT

ANC: There must be parliamentary oversight of security apparatuses.

IFP: Parliamentary committees, representative of all political parties, on defence, intelligence and police shall have special functions to oversee all aspects related to these apparatuses. They may hold hearings, investigations, take evidence and subpoena witnesses.

IFP: Parliamentary committees shall have the power to make recommendations about the submission of budgets of the security apparatuses prior to the inclusion into the national budget.

IFP: Joint committees drawn from both the National Assembly and the Senate shall have oversight over both defence and intelligence apparatuses.

IFP: Parliamentary committees shall consider and make recommendations on all legislation relating to the security apparatuses and related matters and initiate legislation in connection with the relevant security apparatus.

IFP: Parliamentary committees will be empowered to review and make recommendations on regulations pertaining to the security apparatuses, inter-departmental cooperation, rationalisation, demarcation of line functions, and investigate complaints made against the apparatus.

IFP: Parliamentary committees will be empowered to refer any alleged violations of human rights committed by a security apparatus to the Human Rights Commission.

IFP: Parliamentary committees shall submit to the President and Parliament, a report on the activities of the committee, within two months of the opening of Parliament.

DP: Constitution should draw clear distinction between command and control. Legislature should control security apparatuses.

DP: There must be oversight and prior sight of executive action or proposed action by an appropriate multi-party committee or committees of legislature, meeting if necessary in camera. Issue of secrecy is warranted because in balance between national security and effective parliamentary control. Committee(s) should have power to subpoena witnesses, including responsible members of executive, take evidence and call for papers, and should present reports to legislature at regular intervals.

a. Police

ANC: There must be a portfolio committee with multi-party representation on proportional basis to oversee police.

b. Defence

NP: Constitution should provide for establishment of Multi Party Joint Parliamentary Committee on Defence, with powers inter alia, to deal with defence related bills and monitor, investigate, inquire into and make recommendations relating to any aspect to the Department of Defence. Committee should have power to convene itself as a commission of inquiry into any matter related to Department of defence. Membership of the committee should be as inclusive as possible. Further regulation of the committee should occur in terms of rules and orders of Parliament.

NP: Parliament must annually approve defence budget.

PAC: Parliamentary Select Committee should be allowed an important role in defence matters.

ANC: Defence review necessary in order to ensure that Parliament received sufficient information to make informed choices and avoid merely rubber-stamping decisions.

IFP: Parliamentary oversight through joint Intelligence/Defence Committee which would enjoy relationship of trust and cooperation with executive, without compromising the principle of the separation of powers.

c. Intelligence.

ANC: There shall be a Standing Multi-party Parliamentary Oversight Committee. The total number of the committee, its powers and functions shall be determined in recognition of the unique role of the committee and will be governed by legislation. The Committee provides the cornerstone of public accountability of Intelligence.

NP: Provide for the establishment of a multi-party joint standing committee of Parliament on intelligence which could meet in camera and should oversee all intelligence activities, budgets etc.

Agreement:

The Constitution should provide for oversight by multi-party Oversight Committees for Defence and Intelligence

Further clarity:

1. ***The Constitution must enable the Legislature to have multi party Oversight Committees to control the security apparatus. Such Committees must be empowered to deal with legislation relating to security apparatus and related matters, make recommendations prior to submission of budgets, investigations, hear evidence, subpoena witnesses, convene themselves as a Commission of Inquiry.***
2. ***Parliamentary oversight before, during and after Executive action.***
3. ***Number and nature of oversight committees, need for both Portfolio and Oversight Committees in relation to defence and intelligence.***

8. EXECUTIVE CONTROL

DP: In line with clear distinction between command and control, executive should command security apparatuses.

DP: Parliament must have right to sufficient information, including regular report by the executive to the legislature, parliamentary questions, mechanism of control over expenditure via select committees of finance and public accounts and the approval or variation of security apparatus budgets by Parliament after public debate.

a. Police

ANC: The President shall appoint the National Commissioner of the SAPS, who shall in turn appoint a Provincial Commissioner for each province through a consultative process, still to be defined, with the Provincial MEC responsible for police.

ANC: The National Commissioner shall be accountable in the first instance to the Minister responsible for police. Powers and functions of both the Provincial MEC and Provincial Commissioner must be spelt out including clear lines of command that reflect the unitary nature of the South African state.

IFP: The Commissioner of the SAPS will be responsible for the implementation of national legislation.

- IFP: The Commissioner of a Provincial Police Service will be responsible for the implementation of provincial legislation and the administration of police functions at provincial level.
- DP: Day to day management of police at all levels should vest with a commissioner who should report to the member of the executive in charge of police services. At the same time metropolitan commissioners would be responsible to provincial commissioners who in turn would be responsible to the national commissioner for the standards, efficiency and discipline of the force in question.
- NP: President must charge a Minister and appoint a National Commissioner who are responsible for SAPS. National Commissioner must have executive command of SAPS subject to the competence of Provincial Commissioners.
- NP: Premier of province shall charge a member of Executive Council for performance of provinces police service and such member must have certain specific powers of control.

b. Defence

- NP: President shall be Commander-In-Chief of SANDF.
- NP: President shall appoint Chief of SANDF, who shall exercise military executive control subject to directions of Minister responsible for Defence, and during a state of national defence/war, of the President..
- NP: No Deputy Minister should be part of executive chain of command between either President and Chief of SANDF or Minister and Chief of SANDF. No person such as a Secretary for Defence shall be appointed in executive command chain above Chief of SANDF
- IFP: The President will be the Commander in Chief of the SANDF and will appoint the Chief of the SANDF and A Secretary of the Department of Defence.
- FF: The State President should be the Commander-in-Chief with command and control restricted to the final approval of the overall policy of the defence of the state.
- FF: The Commander of the Defence component must be accountable to the State President for all functions laid down in the Sect for the defence component.

FF: The Defence component is commanded by the State President through the Commander of the Defence component and controlled by the State President through the Minister of Defence to the Commander and/or Chiefs of Staff of the Defence component.

c. Intelligence

ANC: The State President has ultimate control over the intelligence structures. He/she provides national leadership of intelligence and is responsible for the effective intelligence system. In exercising this responsibility, the President draws on the executive support of a political functionary (Minister/Deputy Minister/Secretary of State). Together they exert ministerial control over intelligence. They are in turn accountable to Parliament for intelligence.

ANC: Operational control and management of the intelligence structures will be exercised by the Co-ordinator of NICOC and the Director's General of the various structures.

d. Declaration of State of Emergency and State of War

See section 2 and 3 above.

Agreement:

- 1. The Constitution should provide that the security apparatus are accountable to an appropriate member of the Executive.*
- 2. The Constitution should provide that each arm of the security apparatus is accountable to a member of the Executive at the appropriate level of competence.*
- 3. The Constitution should provide that the State President is the Commander-in-Chief of the Defence Force.*
- 4. The Constitution should provide that the State President appoint the Chief of the SANDF, the Directors General of the National Intelligence Agency and SA Secret Service and the National Commissioner of the SAPS.*

Contention:

National and Provincial competencies

Further clarity:

- 1. Constitutional provisions relating to powers of Provincial MECs and Provincial Commissioners of Police and Heads of Defence.*
- 2. The extent to which the Executive and Parliament interact in confirming the appointments of the Chief of the Defence Force, the Director General of the National Intelligence Agency, SA Secret Service and the National Commissioner of the Police.*

9. CIVILIAN CONTROL OF MINISTRY

DP: Civilian control of security apparatuses. This should mean that political control should be firmly located with a member of executive who should be accountable to legislature for activities of each force. The constitution should provide for mechanisms for the legislature to censure this member.

IFP: The principle of civilian control of the security related departments will be upheld and civilian control by the executive over the forces to achieve accountability should be ensured.

a. Police

ANC: Police shall be under civilian control with Minister appointed by the President. Minister shall report annually to Parliament and be accountable to Cabinet and Parliament for all police related matters.

ANC: The Ministry concerned with police should be staffed largely by civilians.

b. Defence

ANC: Defence Force shall be under civilian control with Minister appointed by the President. Minister shall report annually to Parliament and be accountable to Cabinet and Parliament for all defence related matters.

ANC: Ministry concerned with defence shall have Secretary for Defence whose responsibility should be inter alia to assist in formulation of defence policies and designation and overseeing of programmes of Defence Force.

NP: The Minister responsible for Defence must be accountable to Parliament for the SANDF.

PAC: Defence Force should be under civilian control through constitutional provision. Accepts need for Secretary for Defence.

FF: The Secretary for Defence must be accountable to the Minister for all functions laid down in the Act for the Secretariat.

FF: The Minister responsible for Defence must be accountable for formulating, approval and execution of the defence policy of the state.

c. Intelligence

ANC: The State President has ultimate control over the intelligence structures. He/she provides national leadership of intelligence and is responsible for the effective intelligence system. In exercising this responsibility, the President draws on the executive support of a political functionary (Minister/Deputy Minister/Secretary of State). Together they exert ministerial control over intelligence. They are in turn accountable to Parliament for intelligence.

PAC: Security structures should be under civilian control.

Agreement:

1. ***The Constitution must provide definitions for clear lines of political accountability, command and operational accountability.***
2. ***The Constitution must provide for civilian control of the Ministries responsible for Defence and Police.***

Further clarity:

1. ***Concept of civilian control, as it is not clear if an ex-soldier or police officer in civilian position is civilian control.***
2. ***Chain of command and its relationship to civilian control.***

10. JUDICIAL AND LEGAL CONTROL

ANC: Privacy of the individual is inviolable. Intrusions by the intelligence structures will be permissible only with the authority of a judge.

NP: SANDF should conform to international law on armed conflict which is binding on South Africa.

DP: Legislative control should include a legislative framework which lays down powers and functions of security apparatuses and imposes limitations on their powers. Constitution must establish definite relationships between executive deployment of security apparatuses and legislative control or review of this deployment.

Agreement:

The Constitution should state that the security apparatus should act within the law, Bill of Rights, Constitution and relevant international law and Conventions on armed conflict.

11. OMBUD STRUCTURES

ANC: Parliament shall appoint an independent Ombusperson for each Security Apparatus to deal with complaints, labour related disputes.

- ANC: Each intelligence structure will have an Inspector General, independent from the service/agency.
- IFP: There shall be an internal ombudsperson appointed for each apparatus charged with the task of addressing internal conflicts and disputes related to the human rights of members of the security apparatuses.
- DP: Police Act should make provision for Police Ombudsperson or for Police Review Board whose duties include investigation into breaches of Code by members of the police service at all levels. Such Ombudsperson or Review Board might be structured on national, provincial or local levels.
- DP: Institution of military Ombudsperson or defence commissioner who has right to investigate alleged violations of Code of Conduct and report his/her findings directly to Parliament.
- NP: Do not support separate office of Ombudsperson as scope of Human Rights Commission and Public Protector cover the need.
- ANC: There must be relevant Inspectors General for each security apparatus.

Contention:

The Constitution should provide for an Ombudsperson, or similar structure, for each of the Security Apparatus.

Further Clarity:

Role of the Ombudsperson or similar structure, in each arm of the Security Apparatus and relationship to the Public Protector and Human Rights Commission.

12. RIGHTS OF SECURITY APPARATUS MEMBERS IN RELATION TO THE STATE

a. Military discipline and human rights

ANC: SANDF shall respect the rights and dignity of its members, subject to normal constraints of military discipline as provided for in Defence Act.

b. Anti- discrimination policy

ANC: SANDF shall ensure that composition of leadership and rank and file reflect racial, ethnic and gender composition of South Africa.

SANDF shall not discriminate against any of its members on grounds of race, ethnicity, sexual preference, religion or gender.

- ANC: Ministry responsible for defence and Secretary for Defence shall design and oversee equal opportunities programme within SANDF and shall report annually to parliament on the implementation of this programme.
- IFP: There shall be gender equality in all of the security apparatuses including the SANDF.
- NP: Principles of international humanitarian law and in particular the basic values of freedom and equality shall apply to all members of the security forces. Within the security forces no discrimination on any grounds will be allowed. To extent that justifiable differentiation, as opposed to discrimination is allowed by international humanitarian law principles, members shall be deployed in ways which best suit their ability.
- PAC: Members of the Defence Force should be bound by the constitution equally. No regard to anything except citizenship should be taken into account in eligibility for defence Force and exercise of rights and privileges.
- c. Employment and working conditions**
- ANC: There must be a Security Service Commission, separate from Public Service Commission, to see to the conditions of service, promotions, salary scales, working conditions etc of members of the SANDF, SAPS and Intelligence Services.
- ANC: Members of the intelligence structures will not fall under the jurisdiction of the Public Service Commission.
- IFP: There shall be a separate Security Apparatus Service Commission to facilitate the effective functioning of the security apparatuses.
- NP: There should not be a separate Security Apparatus Service Commission.
- PAC: Defence force should not fall under Public Service Commission because of peculiar nature and functions.
- IFP: The law may provide measures to restrict the right to strike, setting out compulsory dispute resolution mechanisms. The law could draw a differentiation between members of the civilian apparatuses

and members of the SANDF in limiting the right to strike.

NP: Members of security apparatuses should not have right to strike and to assemble and demonstrate. Provision should obviously be made elsewhere for effective dispute resolution mechanisms.

d. Code of Conduct

ANC: There should be a Code of Conduct for all who join the security services.

ANC: Members of the intelligence structures will be bound by an oath of secrecy and allegiance to the constitution.

DP: Constitution must contain a justiciable Bill of Rights, supplemented by Code of Conduct for security apparatuses which would be contained in appropriate legislation. Code of conduct should establish rights and entitlements of members of security apparatuses as well as limitations of their ordinary civil rights while serving. Constitution should provide for enactment of such a Code.

DP: Enforceable Code of Conduct for all police officers at whatever level.

IFP: All members of security apparatuses shall make solemn affirmation or oath to uphold and defend the constitution.

IFP: Members of the security apparatuses shall have the right to disobey a clearly unlawful order.

NP: Members of SANDF must be entitled to refuse to execute any order where such execution would constitute an offence or would breach international law on armed conflict which is binding on South Africa.

PAC: Defence Force members shall unconditionally execute constitutional and legal commands of the Defence Force, but shall reserve the right of refusing to execute immoral, amoral and unlawful commands from an officer of the Defence Force.

PAC: Absolute loyalty to the constitution in public affairs should be required of the personnel serving in the security structures. Such loyalty should also be steadfastly inculcated.

IFP: The law may provide for special sanction for desertion of duty,

mutiny, and treason. With respect of the SANDF, special differentiation may be allowed between times of peace and a declared state of war.

e. Political rights of members of security apparatuses

IFP: Members of the security apparatuses may hold membership of political parties, but may not hold office in them.

PAC: The possibility of individual members of the security structures taking out membership of political parties, thus putting themselves in a situation of also having to carry out political party decisions and obligations is problematic, despite the PAC's embrace of the principle of unfettered exercise of political rights by all individual South Africans.

Agreement:

1. *The Constitution should curtail the rights of members of the security apparatus to strike. The Constitution should provide for alternative compulsory mediation and arbitration procedures.*
2. *The Constitution should provide that members of the Defence Force should be constitutionally obliged to disobey an unlawful order.*

Contention:

The Constitution should provide for Security Apparatus Service Commissions. Members of the security apparatus should not fall under the Public Service Commission.

Further clarity:

1. *Status of members of the security apparatus regarding membership of political parties, holding of office, standing for election.*
2. *Further discussion needs to take place with Theme 6.1 on the exact nature of the relationship of the Security Apparatus Service Commission and the Public Service Commission.*

13. POLITICAL NEUTRALITY OF SECURITY APPARATUSES

ANC: Education of members of security apparatuses shall equip members to uphold the constitution by covering the Constitution, international law on armed conflict and human rights.

PAC: Defence Force should be educated to be conversant with constitution, law, international law on armed conflict and human rights.

ANC: National intelligence agencies/services are national structures and

shall therefore be politically non-partisan.

IFP: The SANDF, SAPS and Intelligence apparatuses should be specifically excluded from any involvement in political activity.

NP: No party-political activity should be allowed on premises occupied by or under the control of the security apparatuses. Regular members of the security apparatuses should not be allowed to stand for election to public office.

NP: The SANDF must refrain from furthering or prejudicing any party political interest.

NP: Intelligence structures must be politically non-partisan. No intelligence agency may carry out operations or activities that undermine, promote or influence South African political party or organisation.

Agreement:

- 1. The Constitution should provide that members of security apparatus should be educated to be conversant with the law, Constitution, international law and Conventions on armed conflict and human rights.***
- 2. The security apparatus constitute non-partisan professional bodies; the security apparatus themselves cannot participate in partisan political activity, and cannot allow partisan political activity within themselves.***

PART THREE

MATTERS DISCUSSED BUT NOT DEBATED

These issues will be discussed further in forthcoming blocks.

A DEMILITARISATION

ANC: There should be a civilian Ministry of Safety and Security, established as part of the broad demilitarisation of the SAPS. Clear lines of command and control between the Ministry and the operational structure of the SAPS must be stipulated.

ANC: There should be a change away from military ranking in the SAPS as part of the demilitarisation process.

B CONTROL OF INTELLIGENCE FUNCTIONS

ANC: There will be a Military Intelligence Division of the SANDF, which will gather, correlate, evaluate and use foreign military intelligence relating to national strategic intelligence to the National Intelligence Co-ordinating Committee, operating only in an overt manner; will gather, correlate, evaluate and use domestic military intelligence excluding covert collection, except when deployed by the Cabinet or President internal to South Africa; to institute counter-intelligence measures within the SANDF.

ANC: Police intelligence should be restricted to crime intelligence by constitutional provision. Oversight of crime intelligence must be constitutionally situated firmly under the Parliamentary Intelligence Oversight Committee, along with Military Intelligence, and Civilian Domestic and Foreign Intelligence.

NP: The mission, structure etc of various intelligence agencies should be contained in ordinary legislation.

PAC: In executing the work of national security and safety, all the state security structures have to work in concert. That is, there should be a mechanism designed to prevent individual structures pursuing conflicting strategies that may inadvertently harm, neutralise or render one or more structures ineffective.

C CONTROL OF ARMS INDUSTRY:

ANC: Constitution must clearly stipulate conditions of production, procurement and of arms trade.

DP: Parliament must have right to information about arms production, arms procurement and arms sales.

PAC: Arms production should fall outside of duties and functions of Defence Force.

Further clarity:

How the Special Defence Account would be seen in future. Once the Cameron Commission has reported proposals relating to arms procurement to be considered. This will be debated in the block on Defence.

D COMMUNITY POLICING:

ANC: The philosophy of community policing should be constitutionally entrenched. The role, function, structure and funding of Community Police Forums must be established.

Agreement:

There is agreement on the need for Community Policing.

Further clarity:

Funding of community policing as determined by allocation of national and provincial powers. This will be debated further in the 'block' on Police.

E STRUCTURE OF SECURITY APPARATUSES:

a. Police

ANC: There shall be one police service, SAPS, for the country, with powers, functions and personnel decentralised to the Provinces.

DP: There should be one police structures dedicated to upholding on body of law, even is there are different police services specialising in different aspects or serving different communities. All police officers should have jurisdiction throughout South Africa.

NP: Police service must be structured at both national and provincial level and clear division of responsibilities must be made between National and Provincial levels of policing. Division of responsibilities should be

entrenched in constitution. Those aspects relating to "normal" policing must fall within the legislative competence of the various provinces.

b. Defence

ANC: There shall be only one national defence force, the SANDF.

PAC: All agencies of defence Force shall be viewed by constitution as constituting single unit within SANDF and shall therefore exercise no autonomy.

FF: To alleviate the task of the SAPS and SANDF regarding the security of other state property and other aspects such as ceremonial duties also not directly related to their functions, it is suggested that a third component be established along the lines of the National Republican Guard of Portugal. The policy relating to such a component should be written into the constitution.

FF: Certain control, specified by an Act of the part-time forces, such as the Commando's and Citizen Force, should be allocated to the provinces.

Contention:

1. *Provincial competency in relation to police services*
2. *Allocation of any powers in relation to the SANDF to Provincial legislature.*

F MONOPOLY OF FORCE:

IFP: The State shall not suppress the citizens right to bear arms, but may limit it in special cases and circumstances.

IFP: Provincial constitutions may regulate matters such as police reserve and neighbourhood watches to supplement police action.

IFP: Provincial legislation should regulate community protection formations.

Agreement:

Constitution should enshrine individuals right to self defence.

Contention:

The Constitution should enshrine the right to bear arms.

G ACCESS TO INFORMATION:

IFP: The right to access all government information and private data bank's information shall be recognised in the constitution, with customary qualifications and exclusions, subject to judicial review which can take place in camera when necessary.

IFP: Intelligence information may not be classified as secret information without showing of their sensitiveness with respect to national security.

NP: The final Fundamental Rights should provide for the right to access to all information held by the state or any of its organs at any level of government in so far as such information is required for the exercise or protection of any fundamental rights.

H FURTHER ITEMS HELD OVER FOR LATER BLOCK DISCUSSIONS

IFP: Defence is competence of national government and armed forces are not under authority of provinces. Regimental structure to be maintained whereby regiments can be drawn from communities and mobilised in times of war.

Paramilitary force

IFP: Constitution should provide for paramilitary force between defence force and police service. Would be responsible for supporting police when breakdown of civil order and available in times of war to support defence force. Under normal circumstances would fall under control of civilian ministry at provincial level and in times of war and state of emergency to a national minister. Role should be carefully limited by constitution to make sure functions do not overlap with defence force or police. Police would then be totally civilian force which uses minimum force. Final accountability would rest with a Ministry such as Ministry of Interior. Paramilitary force would be resourced and funded from provincial budgets and deployment determined by National Minister. Use on a day to day basis would be responsibility of provincial MEC. Jurisdiction of police would be determined by nature of legal system.

Contention:

The need for, nature of and location of paramilitary force.

ANNEXURE "A"

**REPORT THEME COMMITTEE 6.4
SUMMARY: AREAS OF AGREEMENT AND CONTENTION
27 February 1995**

Constitutional issue	Agreement	Contention	Further clarity
1. What goes into a Constitution on security apparatus	The Constitution should cover long standing principles. However it may be necessary to flesh out these principles because SA is a new democracy with a particularly troubled history with regard to security apparatus.		
2. Where should security apparatus be located within the Constitution	There are various possible places, which are not necessarily mutually exclusive - Preamble, Bill of Rights, Powers of the State President, separate chapters dealing with each of the security services, or one chapter dealing with all of them. No finality at this stage, will be an ongoing thread of discussion in work of Subtheme.		That Correctional Services is not part of security apparatus and should be dealt with under Theme 5 in relation to judiciary and legal systems.

74

Constitutional issue	Agreement	Contention	Further clarity
3. Supremacy of the Constitution	1. The Constitution is the supreme law in South Africa. 2. The Constitution must be binding on the Security Apparatus. 3. The Constitution should prohibit the Security Apparatus from acting on their own and bypassing Parliament and the Executive. 4. The Constitution should state that the Executive cannot use the Security Apparatus to violate the Constitution.		

- 1-2 Supremacy clauses in the context of security apparatus. Is it necessary
- 3 Entrenchment of Executive + Parliamentary oversight.
- 4 inviolability of the Constitution.

Constitutional issue	Agreement	Contention	Further clarity
<p>4. Declaration of a state of emergency</p>	<p>1. The Constitution should provide for Presidential power to declare a State of Emergency, and to regulate suspension of human rights in that context, and right of Parliament to review/ overturn such decisions.</p> <p>2. The Constitution should provide for the Judicial right to overturn decisions to declare a state of emergency if procedure has not been followed correctly.</p>	<p>1. The powers of Provinces to deploy police in a provincial state of emergency</p> <p>2. The right of Provinces to review or overturn the declaration of a state of emergency in that Province.</p>	<p>1. Length of time allowed to lapse before convening of Parliament.</p> <p>2. Deployment of the Defence Force within South Africa and relationship between Police and Defence Force within this deployment.</p>
<p>5. Declaration of a state of national defence/war</p>	<p>The Constitution should provide for Presidential power to declare a state of national defence/war, subject to Parliamentary confirmation.</p>		<p>1. Time period allowed for the review of such a decision by Parliament.</p> <p>2. Deployment of the Defence Force within South Africa and relationship between Police and Defence Force within this deployment.</p>

Constitutional issue	Agreement	Contention	Further clarity
<p>6. Definition of action in the national interest and national security</p>	<p>1. The Constitution should provide that the Defence Force's primary function is to defend the territorial integrity of SA.</p> <p>2. The Constitution should provide that action of the security apparatus should be orientated to the implementation and execution of statutory, constitutional and relevant international conventions and law on armed conflict.</p>	<p>1. The Constitution should define national interest and national security policy in broad non-militarist terms focusing on the quality of life of citizens in economic, political, social and environmental terms.</p> <p>2. The Constitution should provide for the definition of national interest as the interests of the citizenry and the interests of the state.</p>	

Constitutional issue	Agreement	Contention	Further clarity
7. Parliamentary oversight	The constitution should provide for oversight by multi party Joint Oversight Committees for defence and intelligence.		<ol style="list-style-type: none"> 1. The Constitution must enable the Legislature to have multi party Oversight Committees to control the security apparatus. Such Committees must be empowered to deal with legislation relating to security apparatus and related matters, make recommendations prior to submission of budgets, investigations, hear evidence, subpoena witnesses, convene themselves as a Commission of Inquiry. 2. Parliamentary oversight before, during and after Executive action. 3. Number and nature of oversight committees, need for both Portfolio and Joint Oversight Committees in relation to defence and intelligence.

Constitutional issue	Agreement	Contention	Further clarity
<p>8. Executive control</p>	<p>1. The Constitution should provide that the security apparatus are accountable to an appropriate member of the Executive.</p> <p>2. The Constitution should provide that each arm of the security apparatus is accountable to a member of the Executive at the appropriate level of competence.</p> <p>3. The Constitution should provide that the State President is the Commander-in-Chief of the Defence Force.</p> <p>4. The Constitution should provide that the State President appoint the Chief of the SANDF, the Directors General of the National Intelligence Agency and SA Secret Service and the National Commissioner of the SAPS.</p>	<p>National and Provincial competencies.</p>	<p>1. Constitutional provisions relating to powers of Provincial MECs and Provincial Commissioners of Police and Heads of Defence.</p> <p>2. The extent to which the Executive and Parliament interact in confirming the appointments of the Chief of the Defence Force, the Director General of the National Intelligence Agency, SA Secret Service and the National Commissioner of the Police.</p>

Constitutional issue	Agreement	Contention	Further clarity
9. Civilian control of the Ministry	<p>1. The Constitution must provide definitions for clear lines of political accountability, command and operational accountability.</p> <p>2. The Constitution must provide for civilian control of the Ministries responsible for Defence and Police.</p>		<p>1. Concept of civilian control, as it is not clear if an ex-soldier or police officer in civilian position is civilian control.</p> <p>2. Chain of command and its relationship to civilian control.</p>
10. Judicial and legal control	The Constitution should state that the security apparatus should act within the law, Bill of Rights, Constitution and relevant international law and conventions on armed conflict.	<i>How does this differ from Supremacy clause?</i>	
11. Ombud structures		The Constitution should provide for an Ombudsperson, or similar structure, for each of the Security Apparatus.	Role of the Ombudsperson or similar structure, in each arm of the Security Apparatus and relationship to the Public Protector and Human Rights Commission.

Constitutional issue	Agreement	Contention	Further clarity
<p>12. Rights of members of the security apparatus in relation to the state</p>	<p>1. The Constitution should curtail the rights of members of the security apparatus to strike. The Constitution should provide for alternative compulsory mediation and arbitration procedures.</p> <p>2. The Constitution should provide that members of the Defence Force should be constitutionally obliged to disobey an unlawful order.</p>	<p>The Constitution should provide for Security Apparatus Service Commissions. Members of the security apparatus should not fall under the Public Service Commission.</p>	<p>1. Status of members of the security apparatus regarding membership of political parties, holding of office, standing for election.</p> <p>2. Further discussion needs to take place with Theme 6.1 on the exact nature of the relationship of the Security Apparatus Service Commission and the Public Service Commission.</p>

Constitutional issue	Agreement	Contention	Further clarity
13. Political neutrality of security apparatus	<p>1. The Constitution should provide that members of security apparatus should be educated to be conversant with the law, Constitution, international law and Conventions on armed conflict and human rights.</p> <p>2. The security apparatus constitute non-partisan professional bodies; the security apparatus themselves cannot participate in partisan political activity, and cannot allow partisan political activity within themselves.</p>		

PART 3 <i>Matters discussed but not debated</i>			
Constitutional issue	Agreement	Contention	Further clarity
A. Demilitarisation			
B. Control of intelligence functions			To be debated in the block on Intelligence
C. Control of arms industry			How the Special Defence Account would be seen in future. Once the Cameron Commission has reported proposals relating to arms procurement to be considered. This will be debated in the block on Defence.
D. Community policing	The need for Community Policing		Funding of community policing as determined by allocation of national and provincial powers. This will be debated in the block on Police.

Constitutional issue	Agreement	Contention	Further clarity
E. Structure of security apparatus		1. Provincial competency in relation to police services. 2. Allocation of any powers in relation to the SANDF to Provincial legislature.	
F. Monopoly of force	The Constitution should enshrine individual's right to self defence.	The Constitution should enshrine the right to bear arms.	
G. Access to Information			To be debated in the blocks on Police, Intelligence and Defence.

