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**CONSTITUTIONAL
ASSEMBLY**

**CONSTITUTIONAL
COMMITTEE**

**FRIDAY
15 SEPTEMBER 1995
09h30 - 18h00
OLD ASSEMBLY
CHAMBER**

***DOCUMENTATION: VOLUME ONE
REPORT ON FOREIGN RELATIONS
& INTERNATIONAL LAW***

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CONSTITUTIONAL ASSEMBLY

MEETING OF THE CONSTITUTIONAL COMMITTEE

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

Date : Friday 15 September 1995

Time : 09h30 - 18h00

Venue : Old Assembly Chamber

REVISED AGENDA

1. Opening
2. Minutes: *Pages 2 - 8*
3. Matters Arising: *As set out in agenda*
4. Tabling and Discussion: 4th Draft of Chapter on Security as at 22 August 1995: *Vol. 5*
5. Tabling and Discussion: Theme Committee 1 Report on Foreign Relations and International Law *Vol. 1, Pages : 9 - 94 P. Marais*
6. Tabling and Discussion: Theme Committee 6.3 Report on Land: *Vol. 2*
7. Tabling and Discussion: Theme Committee 6.3 Report on Gender: *Vol. 2*
8. - Tabling and Discussion: Theme Committee 2 Report on Provincial Structures : *Vol. 3*
9. - Tabling and Discussion: Theme Committee 2 Report on Senate: *Vol. 3*
10. - Tabling: Theme Committee 3 Report on Local Government: *Vol. 4 Drafting*
11. - Tabling: Theme Committee 3 Report on Financial and Fiscal Relations: *Vol. 4*
12. - Tabling: Theme Committee 3 Report on Inter-governmental Relations: *Vol. 4*
13. - Tabling and Discussion: Management Committee Report on Process: *To Be Distributed when available*
14. AOB
15. Closure

H EBRAHIM
EXECUTIVE DIRECTOR

Enquiries : Ms MM Sparg, Tel 245-031, Page 418 4616 code 6970

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7. Tabling and Discussion: Theme Committee 2 Report on Provincial Structures : *Vol. 3*
8. Tabling: Theme Committee 2 Report on Senate: *Vol. 3*
9. Tabling: Theme Committee 3 Report on Local Government: *Vol. 4*
10. Tabling: Theme Committee 3 Report on Financial and Fiscal Relations: *Vol. 4*
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CONSTITUTIONAL ASSEMBLY

MINUTES OF THE TWENTY EIGHTH MEETING OF THE CONSTITUTIONAL COMMITTEE

FRIDAY 8 SEPTEMBER 1995

Present

Ramaphosa MC (Chairperson)
Wessels L (Deputy Chairperson)

Ackermann, C	Mahlangu, N J
Alant, T G (Alt)	Majola-Pikoli, N T (Alt)
Asmal, K	Marais, P G
Beyer, A S	Mbete-Kgositsile, B
Chauke, P	Meshoe, KR
Davies, R H	Moosa, M V
De Beer, S J (Alt)	Mulder, C P
De Lange, J H	Myakayaka-Manzini, Y L M
Du Toit, D C	Nzimande, B E
Ebrahim, A. G. (Alt)	Pahad, E G
Eglin, C W	Rabie, J A
Gogotya, N J	Ripinga, S S
Green, L M (Alt)	Sifora, T V
Hofmeyr, W A (Alt)	Sizani, R K
Jacobz, F	Skweyiya, Z (Alt)
King, T J	Van Breda, A
Ligege, M G	Van Deventer, F J
Lockey, D	Van Heerden, F J (Alt)
Mahlangu, M J (Alt)	Viljoen, C L

Alternates for this meeting: NP: F van Deventer, T Alant, S de Beer, F van Heerden; PAC: A Ebrahim

Apologies: ANC: G Fraser-Moleketi, F Ginwala, Z Kota, B Mabandla, E S Mchunu, M W Moosa, and B Ngcuka; DP: K Andrews NP: S Camerer, A Fourie, D Makhanya, R Meyer and D Schutte; PAC: P de Lille

Absent: O C Chabane, S P Holomisa, J L B Kgoali, L P H M Mtshali, S Mzimela, and P F Smith.

In attendance:

Staff: H Ebrahim, M Sparg, L Zondo, A Meyer, N Msizi, and M Keegan.

Panel: M Sedibe-Ncholo, J van der Westhuizen and Z Yacoob.

Technical Advisors: H Corder, A Raath and W Breytenbach (TC2).

1. OPENING

The Chairperson opened the meeting at 09h19. The meeting adopted the agenda.

2. MINUTES

The meeting adopted the Minutes of the Twenty Seventh Meeting of the Constitutional Committee on 1 September 1995 with the following amendments:

- i. It would be noted that Mr. Sifora had apologised for his absence;
- ii. The word "*formuation*" would be spelled correctly in paragraph 3.1.5(i); and
- iii. The word "*in*" would be inserted in paragraph 6.9(1) to read: "*included in the Constitution.*"

3. MATTERS ARISING

There were no matters arising.

4. DISCUSSION: PROCESS

4.1 DISCUSSION DOCUMENT TABLED AT MANAGEMENT COMMITTEE

4.1.1 Mr. Ramaphosa withdrew the document entitled, "*Discussion Document: Proposal on Process*," included in the documentation. He reported that the document needed to be redrafted to reflect agreements reached in the Management Committee on 7 September 1995.

4.1.2 The meeting agreed that:

- i. The Constitutional Assembly would seek to meet the May 1996 deadline set out in the Interim Constitution;
- ii. In order to achieve this, the Sub-committee and possibly the Constitutional Committee would need to meet during the recess to deal with substantive issues;
- iii. A first "working draft" of the constitution would be published for public comment by the end of the year.
- iv. Following the opening of Parliament in 1996, the Constitutional Assembly should take precedence over

all, except the most essential parliamentary work. The Administration should renegotiate the allocation of time for the CA once parliament re-opened to ensure that the CA was provided with set blocks of time for its work, instead of the present arrangement of Mondays and Fridays. It was stated that it was critical for the CA to have such an arrangement to allow for intensive and concentrated work to meet the May 1996 deadline.

- v. The revised discussion document would incorporate views expressed at the Constitutional Committee and set out stages and a work programme for the period between now and the opening of Parliament in 1996. The revised document would be forwarded to the Management Committee for its consideration.

4.1.3 The ANC expressed concern that the Constitutional Assembly was not taking decisions and asked the Management Committee to consider a mechanism for more effective decision-making in the constitution-making process.

4.1.4 The NP said that the Chairpersons should give public assurances that progress would be evaluated in February 1996, and that should it appear then that the deadline would not be met, there would be an amendment to the constitution.

4.2 MANDATES FROM CONSTITUTIONAL ASSEMBLY

4.2.1 The Chairperson withdrew the document entitled "*Mandates from Constitutional Assembly and Work Programme*," included in the documentation. He reported that it would be redrafted and the revision submitted to the Constitutional Committee for its consideration.

4.2.2 The meeting agreed not to convene the Constitutional Assembly on 15 September 1995:

- i. The Management Committee already had the mandate to work out the Constitutional Committee's programme;
- ii. The meeting noted that subsections 68(2) and 72(1) of the Interim Constitution, read together with the revised rules and orders, allowed the Constitutional Committee to publish a draft of the new constitution as part of the drafting instructions, for the purpose of drafting;
- iii. The meeting agreed that it would be within the powers

and the mandate of the the Constitutional Committee to publish a working draft of the new constitution.

4.2.3 The NP queried whether, when convening meetings, the Constitutional Assembly would pay for members' air tickets, transport, and hotel accommodation. The Chairperson ruled that it would, but added that meetings would be held in Cape Town and that accomodation costs would therefore not be met.

4.2.4 It was agreed that the Constitutional Committee would meet on the morning of 15 September 1995 and the Subcommittee in the afternoon.

4.3 WORKING DRAFT OF NEW CONSTITUTION

4.3.1 The meeting noted the preliminary document entitled, "*Working Draft: Constitution of the Republic of South Africa*," tabled at the meeting.

4.3.2 The ANC suggested that the language and technical aspects of the draft formulations be "tidied up" before publication.

4.3.3 The Chairperson ruled that these suggestions would be taken into account when preparing the document for publication. In addition, the format of the document would be improved and additional formulations would be inserted once they had been finalised.

5. THEME COMMITTEE 2 ON SELF DETERMINATION

5.1 Mr. Mahlangu introduced the document entitled, "*Self Determination, TC2*," included in the documentation.

5.2 The meeting noted that Prof. Raath's submission would be forwarded to Theme Committee 4 for its consideration. The NP expressed concern that Theme Committee 4 would not be meeting. The Chairperson ruled that the Administration would facilitate the matter.

5.3 Regarding the proposals made by the Ad hoc Committee on Self-determination/Volkstaat in paragraph six:

5.3.1 The meeting forwarded the following **guidelines**: the political process should continue and include discussions and negotiations among parties to arrive at a solution.

5.3.2 It was agreed that the political process would include

discussions between parties on the agreements reached before April 1994, and particularly on the issue of proven support.

5.3.3 It was agreed that constitution-makers would adopt an open-ended approach to the issue of self-determination, while further deliberations take place, including the formulation of positions on self-determination that may assist in expediting the draft constitution.

5.3.4 There was consensus that negotiations should continue on self-determination: in all its forms.

5.3.5 It was agreed that other Theme Committees would take note of the thinking and implications emanating from the Ad Hoc Committee's deliberations so far.

5.3.6 The meeting noted that the Ad Hoc Committee proposed that

- i. The retention of Constitutional Principle XXXIV might serve as an interim measure should the deadline arrive before agreement was reached; and
- ii. *"The most appropriate form of constitutional provision is one that would not preclude the pursuit and/or realisation through negotiations, of the right of self-determination in some form, the outcome of which will be binding on any future government."*

It was agreed, however, that no decisions would be made as to whether or not these proposals would be taken up until consultations between political parties had taken place.

5.3.7 The meeting noted that the NP and FF proposed that the principle of cultural self-determination at least be accepted and provided for in the final constitution, the details of which may be the subject of further negotiations.

5.4 It was agreed that the report would be referred to the Constitutional Committee Sub-committee for its consideration. The Sub-committee would ensure that the necessary discussions between political parties took place.

6. REPORT FROM THEME COMMITTEE 6.2 ON FINANCIAL AND FISCAL COMMISSIONS

- 6.1 Mr. Davies spoke to the document entitled, "*Theme Committee 6.2 Report and Draft Formulations on the Financial and Fiscal Commission*," included in the documentation. He made the following corrections to the document:
- i. **Regarding subsection 2(1)(d):** the NP did not agree that the Financial and Fiscal Commission should have powers in relation to local government loans, and said that this should be handled by the Loan Committee of the Department of Finance.
 - ii. **Regarding footnote 10,** the DP and FF said that these clauses needed to be looked at again in the light of the report from Theme Committee 3 on inter-governmental forums and structures.
 - iii. **Regarding footnote 13,** the ANC's position was that none of these matters should be included in the constitution, but rather dealt with in legislation.
 - iv. The NP had expressed an additional view that the composition of the Board should be limited to 4 or 5 people; and
- 6.2 The meeting agreed to defer further discussion on this report until Theme Committee 3 had forwarded its report on inter-governmental forums and structures, so that the two reports could be considered together.

7. THEME COMMITTEE 6.2 REPORT ON GENERAL FINANCIAL MATTERS

- 7.1 Mr. Davies spoke to the document entitled, "*Theme Committee 6.2 Report and Draft Formulations on General Financial Matters*," included in the documentation.
- 7.2 The meeting accepted subsections 1(1) and 1(2) of the draft formulation.
- 7.3 Regarding section 2, that reads:

Annual budget

2. ...

- i. The meeting accepted the following formulation:
 2. *The Minister responsible for national financial affairs shall in respect of every financial year lay an annual budget before Parliament, reflecting the estimates of revenue and expenditure."*

- ii. It is noted, however, that the DP asked that the section be revisited at a later stage.
 - iii. The Chairperson ruled that the DP would forward its own formulation on a balanced budget to the Sub-committee of the Constitutional Committee for its consideration.
 - iv. The Chairperson also ruled that the section would contain a footnote indicating that, from the DP's viewpoint, the matter of a balanced budget was still outstanding.
- 7.4 The meeting agreed that section 3, under "*Procurement administration*" could be shortened.
- i. The ANC suggested that the section should simply state that the procurement of goods and services at a government level would not be done arbitrarily and would be dealt with by national law.
 - ii. The NP asked that the revised formulation also include four principles: 1) independence and impartiality; 2) fairness; 3) no improper interference; and 4) transparency. The NP expressed particular concern that the principle of transparency be included.
- 7.5 The meeting accepted section 4.
- 7.6 The meeting agreed to delete section 5.
- 7.7 It was agreed that the matter would be referred to the Constitutional Committee Sub-committee for its consideration.

8. ANY OTHER BUSINESS

There was no other business.

9. CLOSURE

The meeting closed at 12h45.

CONSTITUTIONAL ASSEMBLY

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

REPORT ON BLOCK 8:

***FOREIGN RELATIONS AND
INTERNATIONAL LAW***

28 AUGUST 1995

REPORT FROM THEME COMMITTEE ONE

BLOCK 8: FOREIGN RELATIONS AND INTERNATIONAL LAW
31 JULY 1995

PART ONE

- A) Summary Overview of submissions received and processed by Theme Committee One from sources outside the Constitutional Assembly (Vol 25, 28, 30, 33, 42, 44, 45, 50, 53 and 54) - see attachment.
- B) The Technical Committee conducted an Orientation Workshop on 29 May 1995 - before parties made their submissions on the subject matter of this Block - for which purpose the attached Briefing Document was compiled.
- C) Public Participation Programme:
None of the submissions received from the public during the CPMs was relevant to the agenda item being dealt with by the Theme Committee in Block 8.
- D) No public hearings were held on this agenda item.
- E) The following Constitutional Principles refer:

/

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

XXI(3)

Where there is necessity for South Africa to speak with one voice, or to act as a single entity - in particular in relation to other states - powers should be allocated to the national government.

PART TWO

AGENDA ITEM 11: FOREIGN RELATIONS AND INTERNATIONAL LAW

A. GENERAL DISCUSSION OF THE MATERIAL

There appears to be widespread support for the notion that South Africa must take its rightful place in the international community and become a party to international human rights conventions. Parties generally emphasise the importance of adherence to public international law in all spheres of state activity and the need for Parliamentary involvement in respect of approval for and incorporation into national law of international treaties to which the Republic may become a party.

Again some parties emphasised certain issues which were not referred to by others and a number made no or few specific proposals regarding the current and suggested future constitutional provisions canvassed in the Briefing Document and the contribution by Professor D J Devine. The division into "*non-contentious*" and "*contentious*" issues is thus complicated. However, since the Briefing Document deals extensively with all pertinent issues and had been at the disposal of the various parties, it can be assumed that matters raised therein with which issue has not been taken by any party can safely be regarded as "*non-contentious*".

B. NON-CONTENTIOUS ISSUES

- I) Although the way in which the President will in future be required to exercise his power may vary, he should in principle retain the powers currently provided for in section 82(1)(f) and (i) namely -
 - (a) to appoint, accredit, receive and recognise ambassadors, plenipotentiaries, diplomatic representatives and other diplomatic officers, consuls and consular officers; and
 - (b) to sign (not negotiate) international agreements.
- II) The President should remain the Commander-in-Chief of the National Defence Force as currently provided for in section 82(4)(a) of the Constitution.
- III) The President should continue to have authority as currently provided for in section 82(4)(b) of the Constitution -
 - (a) to employ the National Defence Force in accordance with and subject to provisions similar to those provided for in sections 227 and 228 of the Constitution; and
 - (b) to confer upon members of the National Defence Force permanent commissions and cancel such commissions.

IV) As currently provided for in sections 227(1)(a) and (b), 2(a)(i), (ii) and (iii), (d) and (e) the National Defence Force -

- (1) may, subject to the Constitution, be employed -
 - (a) for service in the defence of the Republic, for the protection of its sovereignty and territorial integrity;
 - (b) for service in compliance with the international obligations of the Republic with regard to international bodies and other states,

(2) shall-

- (a) exercise its powers and perform its functions solely in the national interest by -
 - (i) upholding the Constitution;
 - (ii) providing for the defence of the Republic;
and
 - (iii) ensuring the protection of the inhabitants of the Republic,

in accordance with the Constitution and any law,

- (3) not breach international customary law binding on the Republic relating to aggression; and
- (4) in armed conflict comply with its obligations under international customary law and treaties binding on the Republic.

V) The checks and balances currently provided for in section 228(4) and (5) are regarded as acceptable.

- (1) Subsection (4) provides that -
 - (a) the President, must when the National Defence Force is employed for service, inform Parliament of the reason for such employment; and
 - (b) in the case of employment referred to in section 227(1)(a) and (b) and if Parliament is not sitting, the President must summon the appropriate joint standing committee of Parliament to meet

expeditiously, but not later than 14 days after the commencement of such employment, and must inform the committee of the reasons for such employment.

(2) Subsection (5) provides that Parliament may by resolution terminate any employment referred to in section 227(1)(a), (b) or (e), without such termination affecting the validity of anything done in terms of such employment to the date of such termination or any right, privilege, obligation or liability acquired, accrued or incurred as at the said date under and by virtue of such employment.

VI) Subject to the proviso that in subsection (1) the reference to the current Constitution should become a reference to the final Constitution and that more appropriate and practical provision should be made for Parliamentary approval for and incorporation into national law of international treaties in accordance with remarks contained in the Briefing Document as well as those contained in Professor Devine's contribution, a section similar to the current section 231 which deals with the status of international law and the conclusion and incorporation of international treaties, should be retained.

VII) If possible all other relevant sections should be improved upon from a drafting point of view.

C. CONTENTIOUS ISSUES

The conditions under which the President may declare a state of National Defence. All parties except the ANC support the provision as reflected in section 82(4)(b)(i) which provides that the President may do so "*with the approval of Parliament*". The ANC maintains that these powers should be exercised "*subject to parliamentary ratification*".

D. ADDITIONAL ASPECTS

The following additional aspects were raised by the parties concerned:

ACDP: Proposes that the new Constitution, in line with the right of access to information, should require of the national government to also include citizens in its decision-making regarding the conclusion of international agreements since they could have a direct or indirect influence on individuals in the country. Openness in international dealings is also called for.

ANC: Advocates that South Africa must lead the way in the international promotion of human rights and where possible seek to achieve the peaceful resolution of conflicts. Important decisions need to be taken by the President in consultation with the Cabinet and his functions and powers

should be determined by the Constitution or Parliamentary legislation. The President should have power over and have ultimate responsibility in respect of the intelligence services and be accountable to Parliament in respect of all matters concerning such services.

DP: Raises the question as to the desirability or otherwise of the inclusion of a section in the Constitution dealing with international law but makes it clear that it is not opposed to such inclusion.

NP: Makes the point that the royal prerogatives previously contained in the South African Constitutions have been replaced by the provisions of section 82. There is consequently no need to retain these prerogatives. Stresses that the South African National Defence Force should not breach binding international customary law relating to aggression and that it should in armed conflict comply with binding international customary law and treaties. The retention of a section similar to section 231 is regarded as of vital importance. Raises as ancillary matters the desirability of the retention of section 218(1)(e) of the Constitution which provides that the National Commissioner of the SAPS shall be responsible for international police liaison and section 116(2) which provides that the Human Rights Commission must report to a relevant legislature any legislation which may be contrary to the relevant norms of international human rights law.

PAC: Emphasises the judicial sanctity of **jus cogens** (the highest principles of law recognised by civilised nations) and the importance of adherence to public international law generally.

**Analytical Survey of Report by Theme Committee One on Block 8 -
Foreign Relations and International Law**

Constitutional Principles	Contentious Aspects	Non-contentious Aspects	Remarks
I, XXI(3)	Necessity for approval of Parliament before state of National Defence declared	<ol style="list-style-type: none"> 1) Powers of the President regarding South African representatives abroad and foreign representatives in South Africa and in respect of international agreements ----- 2) President to be Commander-in-Chief of National Defence Force ----- 3) President's authority in respect of the deployment of the National Defence Force ----- 4) Purposes for which the National Defence Force may be employed ----- 5) Checks and balances in respect of the employment of the National Defence Force ----- 6) The status of international law, the conclusion of treaties and the incorporation of the terms thereof ----- 7) If possible, relevant sections should be improved from a drafting point of view 	Drafting of a new section is required

**PROPOSED NEW TEXT FOR SECTIONS OF THE CONSTITUTION
WHICH DEAL WITH FOREIGN RELATIONS AND INTERNATIONAL LAW**

1. It is proposed that the following definition be inserted in the definition section:

"International agreement" an agreement governed by international law and concluded in written form -

(i) between one or more states; or

(ii) between one or more states and one or more international organisations,

whether that agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation;".

2. The contents of the current section 35(1) should be retained in unamended form.

3. The contents of the current section 82(1)(f) should be retained in unamended form.

4. The following should be substituted for the present contents of section 82(1)(i):

"to sign international agreements and to approve resolutions of international organisations and to appoint persons, either generally or specifically, to exercise these functions on behalf of the Republic;".

5. The following paragraph should be inserted at the appropriate place in section 81(1)'s successor:

"to recognise foreign states and governments;".

6. Save that the reference to *"norms of international law"* should become *"norms of public international law"* the provisions of section 116(2) should be retained in unamended form.

7. Subject to the recommendations which follow, the contents of section 227 and 228 should be retained.

8. Section 227(2)(d)'s successor should be formulated as follows:

"The National Defence Force shall...

- (d) *not breach any international agreement or rule of customary international law binding on the Republic relating to aggression;*".

9. Section 227(2)(e)'s successor be formulated as follows:

"The National Defence Force shall...

- (e) *in armed conflict comply with obligations under international agreements and customary international law binding on the Republic;*".

10. The following is to be substituted for the contents of the current section 231:

- (1) *All rights and obligations under international agreements which immediately before the commencement of this Constitution were vested in or binding on the Republic, shall be vested in or binding on the Republic under this Constitution.*
- (2) *The President or a person authorized in terms of section 82(1)(i) or any other law may enter into an international agreement on behalf of the Republic that does not require ratification or accession under international law.*
- (3) *An international agreement referred to in subsection (2) shall be tabled in the respective Houses of Parliament within two months of it having been entered into if Parliament is then in session, or if Parliament is not in session, within two months of the commencement of the next session of Parliament: Provided that an international agreement published in the Government Gazette in terms of an enabling law other than this Constitution shall not be required to be so tabled unless the enabling law provides otherwise.*
- (4) *Parliament shall be the competent body to ratify or accede to any international agreement that requires ratification or accession under public international law for which purpose it shall express its approval for such international agreement by resolution in each House.*
- (5) *An international agreement entered into by the President or any other person pursuant to the provisions of subsection (2) shall become part of the law of the Republic when it is incorporated by Act of Parliament or*

by proclamation in the Government Gazette if an enabling law so provides.

- (6) An international agreement approved by Parliament pursuant to the provisions of subsection (4) shall become part of the law of the Republic if Parliament so directs by way of resolution when it ratifies or accedes to the international agreement or if the international agreement is incorporated by Act of Parliament.
- (7) The procedures for entering into, tabling, ratifying, acceding to and incorporating international agreements referred to in subsections (2) to (6) shall apply to all international agreements signed on behalf of the Republic under the present Constitution or previous Constitutions.
- (8) A resolution of an international organisation approved by the President or a person authorized in terms of section 82(1)(i) shall become part of the law of the Republic when it is incorporated by Act of Parliament or by proclamation in the Government Gazette if an enabling law so provides.
- (9) The rules of customary international law binding on the Republic, shall, unless inconsistent with this Constitution or an Act of Parliament, form part of the law of the Republic.
- (10) In interpreting any law, or in considering any apparent inconsistency between customary international law and this Constitution or any law, a court of law shall presume that it was not the intention of the legislature to legislate in conflict with customary international law, unless a law by necessary implication or expressly provides otherwise."

in context

11. The Theme Committee has authorised that the ANC's contentious proposal regarding the declaration of a state of national defence be given expression in the form of draft provisions. The desired result would be achieved if the following were to be substituted for sections 82(4)(b)(i) and 228(4) and (5):

11.1 "(b) The President may -

- (i) declare a state of national defence subject to subsections (4) and (5) of section 228;".

- 11.2 "(4)(a) *The President shall, when declaring a state of national defence or when the National Defence Force is employed for service referred to in section 227(1)(a), (b) or (e), forthwith inform Parliament of the reasons for such declaration or employment.*
- (b) *If, in the case of such declaration or an employment referred to in section 227(1)(a) or (b), Parliament is not sitting, the President shall summon the joint standing committee referred to in subsection (3) to meet expeditiously, but not later than 14 days after the date of such declaration or the commencement of such employment, and shall inform the committee of the reasons therefor.*
- (5) *Parliament may by resolution terminate any state of national defence or employment referred to in section 227(1)(a), (b) or (e), but such termination of a state of national defence or employment shall not affect the validity of anything done in terms of such state of national defence or employment up to the date of such termination, or any right, privilege, obligation or liability acquired, accrued or incurred as at the said date under and by virtue of such state of national defence or employment."*

NOTE: This draft was prepared with reference to a previous draft presented by Prof. John Dugard and in consultation with him, the Chief State Law Adviser (International Law) and other State Law Advisers (International Law) attached to the Department of Foreign Affairs as well as with reference to the submissions that have been made in writing to the Constitutional Assembly.

1. INTRODUCTION

1.1 The agenda item foreign relations and international law falls naturally within the domain of Theme Committee One.

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

BRIEFING DOCUMENT

1.2.1 Head of State's powers and responsibilities.

1.2.2 Employment of military apparatus for external purposes.

1.2.3 International law and treaties.

2. TRANSITIONAL PROVISIONS

2.1 The constitutional principles which have relevance for the subject matter of this briefing document are the following (Revised Work Programme p.16; Block 3 refers only to the second one being quoted below but the first one is also regarded as being relevant):

1. The Constitution of South Africa shall provide for the establishment of one sovereign state, a common South

THEME COMMITTEE ONE

BLOCK 8: BRIEFING DOCUMENT

AGENDA ITEM 11: FOREIGN RELATIONS AND INTERNATIONAL LAW

1. **INTRODUCTION**

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2. **TRANSITIONAL PROVISIONS**

2.1 The constitutional principles which have relevance for the subject matter of this briefing document are the following (Revised Work Programme p.16, Block 8 refers only to the second one being quoted below but the first one is also regarded as being relevant):

I *"The Constitution of South Africa shall provide for the establishment of one sovereign state, a common South*

African citizenship and a democratic system of government committed to achieving equality between men and women and people of all races."

(The significance of the reference to South Africa being a single sovereign state has been canvassed previously and signifies that it is independent *vis-à-vis* other states and also that in terms of public international law it is the equal of all other states.)

XXI(3) *"Where there is necessity for South Africa to speak with one voice, or to act as a single entity - in particular in relation to other states - powers should be allocated to the national government."*

(The conduct of foreign relations is one of the most obvious competences which, of necessity, is the responsibility of the government at national level.)

- 2.2 The transitional Constitution of 1993 deals, in one way or another, with the subject matter in the following sections:

Section 1(1)

"The Republic of South Africa shall be one, sovereign state."

Section 35(1)

"(1) *In interpreting the provisions of this Chapter a court of law shall promote the values which underlie an open and democratic society based on freedom and equality and shall, where applicable, have regard to public international law applicable to the protection of the rights entrenched in this Chapter, and may have regard to comparable foreign case law.*"

Section 82(1)(f) and (i), (2)(a), (d) and (e), (3) and (4)

"(1) *The President shall be competent to exercise and perform the following powers and functions, namely -*

(f) *to appoint, accredit, receive and recognise ambassadors, plenipotentiaries, diplomatic representatives and other diplomatic officers, consuls and consular officers;*

(i) *to negotiate and sign international agreements;*

(2) *The President shall consult the Executive Deputy Presidents -*

(a) *in the development and execution of the policies of the*

national government;

(The "*national government*" is the Cabinet. Basson: South Africa's Interim Constitution Text and Notes (1994) at 118 states as follows:

"It is submitted that the policy of the Cabinet and the policy of the national government is one and the same thing and that this can be determined without need to do so in consultation with the Cabinet."

As has been pointed out below, the requirement that he or she "*shall consult*" with the Executive Deputy Presidents does not mean that he or she requires their consent but has the meaning ascribed to "*after consultation with*" in section 233(4).)

- (d) *regarding appointments under subsection (1)(f); and*
- (e) *before exercising any of the competences referred to in subsection (1)(g) to (k).*

- (3) *The President shall exercise and perform all powers and functions assigned to him or her by this Constitution or any*

other law, except those specified in subsections (1) and (2) or where otherwise expressly or by implication provided in this Constitution, in consultation with the Cabinet: Provided that the Cabinet may delegate its consultation function in terms of this subsection, with reference to any particular power or function of the President, to any Minister or Ministers.

(4)(a) *The President shall be the Commander-in-Chief of the National Defence Force.*

(b) *The President may -*

(i) *with the approval of Parliament, declare a state of national defence;*

(ii) *employ the National Defence Force in accordance with and subject to sections 227 and 228; and*

(iii) *confer upon members of the National Defence Force permanent commissions and cancel such commissions."*

Section 227(1)(a) and (b), (2)(a)(i), (ii) and (iii), (d) and (e)

"(1) *The National Defence Force may, subject to this Constitution,*

be employed -

- (a) *for service in the defence of the Republic, for the protection of its sovereignty and territorial integrity;*
- (b) *for service in compliance with the international obligations of the Republic with regard to international bodies and other states;*

(2) *The National Defence Force shall -*

- (a) *exercise its powers and perform its functions solely in the national interest by -*
 - (i) *upholding the Constitution;*
 - (ii) *providing for the defence of the Republic; and*
 - (iii) *ensuring the protection of the inhabitants of the Republic,*

in accordance with this Constitution and any law;

- (d) *not breach international customary law binding on the Republic relating to aggression;*

- (e) *in armed conflict comply with its obligations under international customary law and treaties binding on the Republic;"*

Section 228(4) and (5)

"(4)(a) *The President shall, when the National Defence Force is employed for service referred to in section 227(1)(a), (b) or (e), forthwith inform Parliament of the reasons for such employment.*

(b) *If, in the case of such an employment referred to in section 227(1)(a) or (b), Parliament is not sitting, the President shall summon the joint standing committee referred to in subsection (3) to meet expeditiously, but not later than 14 days after the commencement of such employment, and shall inform the committee of the reasons for such employment.*

(5) *Parliament may by resolution terminate any employment referred to in section 227(1)(a), (b) or (e), but such termination of employment shall not affect the validity of anything done in terms of such employment up to the date of such termination, or any right, privilege, obligation or liability acquired, accrued or incurred as at the said date under and by virtue of such*

employment."

Section 231

- "(1) *All rights and obligations under international agreements which immediately before the commencement of this Constitution were vested in or binding on the Republic within the meaning of the previous Constitution, shall be vested in or binding on the Republic under this Constitution, unless provided otherwise by an Act of Parliament.*
- (2) *Parliament shall, subject to this Constitution, be competent to agree to the ratification of or accession to an international agreement negotiated and signed in terms of section 82(1)(i).*
- (3) *Where Parliament agrees to the ratification of or accession to an international agreement under subsection (2), such international agreement shall be binding on the Republic and shall form part of the law of the Republic, provided Parliament expressly so provides and such agreement is not inconsistent with this Constitution.*
- (4) *The rules of customary international law binding on the Republic, shall, unless inconsistent with this Constitution or an Act of Parliament, form part of the law of the Republic."*

Section 233(3) and (4)

"(3) *Where in this Constitution any functionary is required to take a decision in consultation with another functionary, such decision shall require the concurrence of such other functionary: Provided that if such other functionary is a body of persons it shall express its concurrence in accordance with its own decision-making procedures.*

(4) *Where in this Constitution any functionary is required to take a decision after consultation with another functionary, such decision shall be taken in good faith after consulting and giving serious consideration to the views of such other functionary."*

3. DISCUSSION ACCORDING TO THE SUGGESTED FRAMEWORK

3.1 Head of State's powers and responsibilities

3.1.1 In terms of the interim Constitution of 1993 the President must as a general rule exercise and perform all powers and functions assigned to him or her by the Constitution or any other law in consultation with the Cabinet. Effectively this means that he or she requires Cabinet approval for the

exercise of such powers and functions. (See sections 82(3) and 233(3).)

3.1.2 There are, however, a number of exceptions to this rule which find expression in subsections (1) and (2) of section 82 of the Constitution. Thus the President can -

3.1.2.1 appoint, accredit, receive and recognise ambassadors and other diplomatic representatives; and

3.1.2.2 negotiate and sign international agreements,

without having to do so in consultation with the Cabinet. He must, however, consult the Executive Deputy Presidents before exercising any of these powers and functions. Basson *op cit* 116-117 convincingly argues that the requirement that the President "*shall consult the Executive Deputy Presidents*" in respect of the exercise of any of these powers and functions, does not mean that he or she has to act "*in consultation with*" the Executive Deputy Presidents but that he or she has to act "*after consultation with*" them.

3.1.3 Basson *op cit* 119 suggests that these powers and functions of the President should not be equated to the royal

prerogatives. **Rautenbach & Malherbe: Constitutional Law** (1994) at 150 is of the same view and state as follows:

"Although all these powers have been prerogatives, it makes no sense to continue to refer to them as 'prerogatives'; the prerogatives have now been enacted and the term usually refers to common law powers only."

3.1.4 Section 82(2)(a) provides that the President shall consult the Executive Deputy Presidents in the development and execution of the policies of the national government (Cabinet). It stands to reason that such policies can include policies in respect of foreign relations. Interestingly this is a matter in respect of which the President is not constitutionally obliged to act in consultation with the Cabinet nor to follow the advice of the Executive Deputy Presidents, although they have to be consulted. See Basson *op cit* 116-118, Rautenbach & Malherbe *op cit* 152-153.

3.2 Employment of military apparatus for external purposes

3.2.1 The employment of the military apparatus for external purposes clearly also involves certain powers and

responsibilities of the President which will be discussed under this heading.

3.2.2 In his capacity as Commander-in-Chief of the National Defence Force (section 82(4)(a)) the President may, with the approval of Parliament, declare a state of national defence (section 82(4)(b)(i)) and employ the National Defence Force, in consultation with the Cabinet, *inter alia* -

3.2.2.1 for service in the defence of the Republic, for the protection of its sovereignty and territorial integrity (section 227(1)(a)); and

3.2.2.2 for service in compliance with the international obligations of the Republic with regard to international bodies and other states (section 227(1)(b)).

(For example contributing to a United Nations Peacekeeping Force.)

3.2.3 When the National Defence Force is employed for service of this nature, the President must forthwith inform Parliament of the reasons for such employment or, if Parliament is not sitting, summon the joint standing committee referred to in

section 228(3) to meet within 14 days after the commencement of such employment and Parliament may, by resolution, terminate any employment of such nature (section 228(4) and (5)).

- 3.2.4 The provisions referred to in the preceding two subparagraphs represent an expression of the concept of separation of powers as well as that of accountability.

3.3 International law and treaties

- 3.3.1 For the first time (in section 231(4)) a South African Constitution expressly provides that customary international law forms part of the law of the Republic unless inconsistent with the Constitution or an Act of Parliament.

- 3.3.2 In its written submission of 15 February 1995 the Department of Foreign Affairs proposed that this subsection should be included in the new Constitution without amendment. It is submitted that the subsection can be improved upon from a drafting point of view by the deletion of the words "*binding on the Republic*" which appear to serve no purpose and beg the question. The suggestion that a section which achieves the same result should be included in the new Constitution is supported from a technical point of view.

3.3.3 It has been pointed out that in interpreting the provisions of Chapter 3 a court of law must, where applicable, have regard to public international law applicable to the protection of the rights entrenched in that Chapter as provided for in section 35(1) of the Constitution. **Du Plessis & Corder: Understanding South Africa's Transitional Bill of Rights (1994)** at 121 point out that the inclusion of this provision was not at all controversial among the negotiators at Kempton Park. It is submitted that there is no reason why it should not be retained and its retention will also be in conformity with Constitutional Principle II.

3.3.4 As far as treaties (international agreements involving other states or international organisations) are concerned, Foreign Affairs identified a number of difficulties with the present wording of section 82(1)(i) as well as with the wording of subsections (2) and (3) of section 231.

3.3.5 Section 82(1)(i) provides that the President shall be competent to negotiate and sign international agreements. Foreign Affairs experience practical difficulties with the provision as it stands:

"When South African delegates are invited to attend an

international conference where an agreement will be drafted, it is usually not clear at the outset what the parameters are within which the text will be negotiated. The conduct of international negotiations is a dynamic process of interaction between states. With regard to most international agreements it is extremely difficult to anticipate at the outset how the tactics of other role players will evolve. The mandate required from the President within which negotiations are to take place could therefore not be formulated concisely before the start of the process. Delegates attending such drafting conferences should in any event negotiate within the parameters of South Africa's foreign policy. When unforeseen circumstances arise, they can easily consult with their office telephonically or by means of fax to obtain further instructions. We therefore propose that the new Constitution should not include the requirement of Presidential approval for negotiating the text of an international agreement."

From a technical point of view this objection is regarded as valid and it is proposed that presidential authorisation to "negotiate" international agreements should be dispensed with. It is, after all, the actual conclusion of such agreements which is important. Consideration may also be given to the

desirability or otherwise of defining "*international agreement*".

- 3.3.6 The Department of Foreign Affairs has also suggested that there would be no need to retain a provision similar to the present section 231(1) which provides for the continued validity of international agreements which were binding on the Republic prior to the commencement of the Constitution unless otherwise provided by an Act of Parliament. In this regard the argument against its retention has been articulated as follows:

"The reason why it was included in the present Constitution, was to give parliament the opportunity to scrutinize agreements entered into by the previous unrepresentative government. When the new Constitution enters into force, parliament would have had ample opportunity to review previously entered into agreements which may not coincide with its policy. There will also be no reason to question agreements entered into under the present Constitution as the legality of the current Government is above board."

- 3.3.7 For the following reasons it is submitted that this reasoning is flawed and that the recommendation should not be

followed:

3.3.7.1 The fact that Parliament would have had ample opportunity to review previously entered into agreements does not mean that it would actually have done so when the Constitutional Assembly is called upon to approve the text of a new Constitution.

3.3.7.2 Any similar provision in the new Constitution will not be referring to the 1983 Constitution but to the interim Constitution of 1993.

3.3.7.3 The real reason why similar provisions appear in constitutions is not to afford the legislature an opportunity to review previously entered into agreements which may or may not coincide with government policy, but to signify to the international community at large an intention to honour international commitments.

3.3.8 The department's criticism of section 231(2) appears to be fully justified. This section provides for parliamentary approval for ratification of or accession to international agreements which have been negotiated and signed in terms

of section 82(1)(i). The department's concerns may be summarised as follows:

3.3.8.1 The inclusion of the negotiation requirement has already been dealt with in the context of section 82(1)(i).

3.3.8.2 The reference to international agreements signed in terms of section 82(1)(i) is problematic in respect of multilateral agreements (conventions) which are no longer open for signature but only for accession. As currently formulated section 231(2) allows only for accession to agreements negotiated and signed in terms of section 82(1)(i). It has consequently been proposed that the words "*negotiated and signed in terms of section 82(1)(i)*" be deleted to enable Parliament to agree to accession to agreements not open for signature, or which were not signed under section 82(1)(i).

3.3.8.3 The provision that Parliament is competent to agree to the ratification of or accession to international agreements of the nature contemplated in section 231(2) is open to two interpretations. Firstly, that all international agreements must be referred to

Parliament before they can bind the Republic. This would include (unnecessarily it is submitted) international agreements requiring neither ratification on an international level nor incorporation into municipal law and would place an unnecessarily heavy burden on Parliament which will be required to scrutinise and debate all international agreements. In terms of the second approach Parliament is merely competent, but not obliged, to agree to the ratification of or accession to international agreements. This competence would be exercised where a particular international agreement requires accession or ratification to bring it into force on the international plane or where international agreements require municipal application and have to be incorporated into South African law as contemplated in section 231(3).

3.3.9 It is submitted that the technical problems experienced with particularly subsections (2) and (3) of section 231 can be partly attributed to the fact that, as has been pointed out by Dugard: International Law: a South African Perspective (1994), section 231(3) does not reflect what was agreed upon at the Multi-Party talks held at Kempton Park. At 341 he

states as follows:

"The draft Constitution approved by the Negotiating Council provided that an international agreement approved by Parliament for the purpose of ratification or accession would form part of South African law unless it was inconsistent with the Constitution or was 'excluded by express provision in an Act of Parliament' (s 192A(2)). This would have resulted in a treaty automatically becoming part of municipal law once approved by Parliament without more ado. Section 231(3) is substantially different. It requires Parliament, when it ratifies or accedes to a treaty, expressly to provide that the treaty is to form part of municipal law. At this stage it is not clear how this is to be done. An Act of Parliament is apparently not envisaged for this purpose. Thus it would seem that a resolution accompanying the resolution of ratification or accession approved by both Houses of Parliament, indicating that the treaty is to form part of municipal law, would be sufficient."

- 3.3.10 The Department of Foreign Affairs has confirmed the accuracy of Dugard's remarks and has proposed that the new Constitution should rectify this position by providing that

international agreements in respect of which Parliament has agreed to the ratification or accession, shall form part of South African law unless inconsistent with the Constitution or excluded by express provision of Parliament.

4. CONCLUSION

The above is an attempt to set the scene for a discussion of item 11. It will be expanded upon orally during the appropriate Orientation Workshop.

SUGGESTED CONSTITUTIONAL PROVISIONS ON THE STATUS OF INTERNATIONAL TREATIES

(i) Instead of s82(1)(i) of the Interim Constitution the following is suggested.

Powers and functions of President

X(1) The President shall be competent to exercise and perform the following powers and functions, namely -

- (a)
-
- (w) to negotiate international agreements;
- (x) to sign international agreements where such signature does not result in the Republic becoming a party to such agreement;
- (y) to perform any act whereby the Republic becomes a party to an international agreement provided that the National Assembly agrees in terms of sY(2);
- (z) to conclude bilateral international agreements.

Instead of s231(2) and (3) of the Interim Constitution the following is suggested.

Continuation of international agreements and status of international law

- SY (1)
- (2) The National Assembly shall, subject to this Constitution, be competent to agree to the performance of any act whereby the Republic becomes a party to any international agreement.
- (3) Where the National Assembly agrees to the performance of an act whereby the Republic becomes a party to an international agreement under subsection (2) and where such act has been duly performed in terms of section X(1)(y) such

international agreement shall be binding on the Republic.

- (4) A bilateral international agreement concluded in terms of section X(1)(z) shall be binding on the Republic and shall be laid before the National Assembly within a period of fourteen days after such conclusion or at the beginning of the next parliamentary session following such conclusion should parliament not be in session when such period of fourteen days expires.

- (5) An international agreement binding on the Republic under subsection (3) or (4) shall form part of the law of the Republic
[provided that an Act of Parliament expressly so provides and insofar as such agreement is not inconsistent with this Constitution];
[unless inconsistent with this Constitution or an Act of Parliament];
[unless otherwise provided by an express provision in an Act of Parliament or insofar as such agreement is inconsistent with this Constitution].

- (6)

Note: The texts in the present s231(1) and (4) would become sY(1) and (6) respectively in the new dispensation.

Note: Three alternatives are presented in SY(5). A policy decision would have to be made here. For the implications of the potential policy decisions see enclosed paper.

'Some problems relating to treaties in the interim South African Constitution and some suggestions for the definitive constitution' particularly at pp30-31.

For background discussion in general see above paper and in particular pp27-31.

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

FOREIGN RELATIONS,
INTERNATIONAL LAW AND THE
CONSTITUTION

***PARTY SUBMISSIONS
BLOCK 8***

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

**FOREIGN RELATIONS,
INTERNATIONAL LAW AND THE
CONSTITUTION**

One of the key questions that any developing country has to face today, South Africa, being no exception to this rule, is how to slot into the international community.

Due mainly to the legacy of apartheid, South Africa was denied fully-fledged membership of international organisations and even treaties and conventions leading to international isolation across a wide spectrum.

The ACDP recognises that a country's foreign policy depends greatly on its domestic policies. Currently, there is a very real desire to break with the past internally and to include, rather than exclude, accommodate rather than deny. It follows that this philosophy will tend to repeat itself in non-domestic matters.

This is clearly evidenced in the light of the numerous treaties agreements and conventions that the new government entered into between 27 April 1994 and the 3rd of March 1995, or is about to enter into.

This shows that the national political power-bearers are keen to be as inclusive and accommodating in matters of foreign relations as with domestic negotiation politics. We see ties being formed (and where it previously existed, strengthened), with the United Nations and its organs, the International Labour Organisation, the World Health Organisation, the World Bank and the International Monetary Fund.

And yet, South Africans at grass-roots, the very individuals who entrust their lives and those of their families to those in power, knows precious little, if anything about the impact these agreements and instruments will have on their daily existence.

The ACDP is concerned when articles such as appeared in the Sunday Tribune, dated January 29th of this year, mentions that included in a treaty on inter-state relations, between South Africa and India, affirmations of "the shared principals of the two countries on secular governance, their common resolve to fight against...religious fundamentalism..."

In terms of Sec.14 of the interim constitution, (Act 200 of 1993), religious freedom is guaranteed. Several cabinet ministers tried to allay the suspicions of Christians in this country only weeks ago, that their religious rights and freedoms were secure.

The ACDP proposes that the new constitution, in line with the right to access to information, demands from national government to also include citizens in its decision-making as the international agreements have a direct and indirect influence on every individual person in this country.

Some sound principles of proper foreign policy was set forward by George Washington in his Farewell Address in 1796 - this by a man who was solidly grounded in Biblical teaching and principles (Quoted in *Liberating the Nations*, McDowell & Beliles, Va):

1. *Cultivate peace with all nations and maintain impartiality*

"Observe good faith and justice towards all nations; cultivate peace and harmony with all. Religion and morality enjoin this conduct...It will be worthy of a free, enlightened, and ...great nation to give to mankind the...novel example of a people always guided by an exalted justice and benevolence..."

"Harmony, liberal intercourse with all nations, are recommended by policy, humanity, and interest."

2. *With trading, keep political connections to a minimum.*

"The great rule of conduct for us, in regard to foreign nations, is, in extending our commercial relations, to have with them as little political connections as possible...But, even our commercial policy should hold an equal and impartial hand; neither seeking nor granting exclusive favours or preferences; consulting the natural course of things...constantly keeping in view, that it is folly in one nation to look for disinterested favours from another; that it must pay with a portion of its independence for whatever it may accept under that character..."

3. ***No long-term entangling alliances.***

"It is our true policy to steer clear of permanent alliances with any portion of the foreign world...taking care always to keep ourselves by suitable establishments, on a respectable defensive posture, we may safely trust to temporary alliances for extraordinary emergencies."

A nation that shows impartiality toward all nations and does not engage in long-term enlarging economic, political, or military alliances would be in a position to be an example to other nations and the ACDP states this to be a goal of central importance in matters of foreign relations: to positively affect all other nations by treating all nations equally, ready to provide sound advice and judgement, when called upon by other nations to do so.

In terms of section 23 of the interim constitution, international agreements and public international law are incorporated into municipal law as to substance. The Constitutional Principles only require that "universally accepted" human rights principles be incorporated in the new constitution. This implies that the framers of the constitution left the incorporation of the rest of international human rights principles to the national representatives.

The ACDP calls for an openness in international dealings due to the fact that the lives of South African families are impacted upon. One way to do this would be to constitutionally oblige government to inform the South African republic through the electronic and print media of the text and most importantly, of the impact the particular instrument due to be ratified will have, to widely publicise this and request feed-back even before the matter is brought up to the Houses for ratification. This will ensure that South Africans will be much more aware of the trend of international law, the Spirit behind it and how it will affect them daily.

The ACDP further sees an incorporation along the lines of Sec.231(4) as prudent to provide that rules of customary international law will not be binding on the Republic of South Africa if it is inconsistent with the new constitution. This is a necessity due to the two postulations on the religious nature and the source of power inherent in all law.

While it may sound cultured to talk of "the global village" or "the international community" truth be that these so-called entities are comprised of a multitude of unique and individual societies with widely divergent customs and culture.

This is the way the Lord meant it when, according to Genesis 11:4, the descendants of Noah, having one language and one culture, decided that they would build a tower which could have been seen from afar, so that they would not move away from that one location.

But that was against God's design and so he gave them different languages, and so the different groups formed the different cultures in different settings across the globe.

The ACDP states that the sovereignty and autonomy of this nation must not be sacrificed in order to become what in effect is only a mere state in the larger confederation of the earth.

20th June 1995
[FOREIGN.WPS]

PRELIMINARY ANC SUBMISSION

THEME COMMITTEE 1 - FOREIGN RELATIONS AND INTERNATIONAL
LAW

23 June 1995

ANC SUBMISSION

BLOCK 8

PRELIMINARY ANC SUBMISSION

THEME COMMITTEE 1 - FOREIGN RELATIONS AND INTERNATIONAL LAW

23 June 1995

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

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

ANC POLICY PROPOSALS

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

PRELIMINARY ANC SUBMISSION

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

23 June 1995

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

ANC PROPOSALS

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



Demokratiese Party
Democratic Party

AGENDA ITEM 11 : FOREIGN RELATIONS AND INTERNATIONAL LAW

(a) Head of State's powers and responsibilities:

Under the interim constitution these powers and responsibilities are defined under Clause 81 and 82. The D.P. is in agreement with these provisions as defined. There could, of course, be an amendment to Clause 82(2) in the event of there being a change in the number of Vice Presidents.

(b) Employment of military apparatus for external purposes:

The functions of the National Defence Force with regard to the above item are spelled out in the interim constitution Clause 227. The D.P. has nothing to add to these provisions.

(c) International law and treaties:

Rights and obligations under international law are dealt with under Clause 231 of the I.C. The question that needs to be asked is whether or not there is a need for any particular article of international law or treaty to be included in the constitution, or whether it could be dealt with satisfactorily under normal legislation. Only if it were deemed necessary for good reason to include such laws or treaties in the constitution should this be done.

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NATIONAL PARTY PRELIMINARY SUBMISSION

THEME COMMITTEE 1

Block 8: Agenda Item 11: Foreign Relations and International Law

1. Introduction

1.1 Foreign relations and international law are dealt with in the Constitution in relation to three issues: the powers of the head of state to conduct foreign relations, the deployment of the military beyond South African borders and international law and treaties.

2. Constitutional principles

2.1 Constitutional Principle I states that the Constitution shall provide for the establishment of one *sovereign* state.

2.2 Constitutional Principle XXI(3) provides that where there is necessity for South Africa to act as a single entity, as is the case in respect of foreign relations, powers should be allocated to the national government.

3. Head of State's powers and responsibilities

3.1 Section 82(1)(i) of the Constitution of the Republic of South Africa, Act 200 of 1993 ("the Constitution") states that the President may "negotiate and sign international agreements", whilst section 82(1)f empowers him or her to appoint and receive diplomatic representatives.

3.2 Section 35(1) *inter alia* directs courts of law to have regard to public international law applicable to the fundamental rights entrenched in the Constitution when adjudicating the charter of fundamental rights. Indirectly, therefore, functions exercised by the head of state having relevance to fundamental rights will need to be exercised in accordance with regard to public international law.

3.3 The principle relating to the head of state having to exercise his or her powers in consultation with the Executive Deputy Presidents and Cabinet is not at present in issue, as this matter more properly should be dealt with by Theme Committee 2, although the exercise of powers and performing of functions by him or her in respect of foreign relations needs to be assessed subject to consensus on the principle of consultation between the President and other functionaries. Subject to the National Party's submission to Theme Committee 2, it is sub-

mitted that the present situation in this regard be retained, so that the President shall exercise his or her powers vis-à-vis foreign relations after consultation with the Executive Deputy Presidents.

3.4 It is submitted that the so-called royal prerogatives previously contained in South African constitutions have been replaced by the statutory provisions of section 82. There is no need to retain these prerogatives as the powers listed in section 82 adequately provide for the effective performance of duties by the head of state.

4. Employment of the military beyond South African borders

4.1 Section 82(4)(a) of the Constitution states that the President is the Commander-in-Chief of the SANDF. This provision, as well as paragraph (b) which lists the President's powers in this respect, should be retained in principle.

4.2 Section 227 of the Constitution lists the functions of the SANDF. Subsections (1)(a) and (b) state that the SANDF may be employed for service in the defence of the Republic, for the protection of its sovereignty and territorial integrity and for service in compliance with the international obligations with regard to international bodies or other states. Section 228(4) provides for the President having to inform Parliament of his or her decision to employ the SANDF under the aforementioned circumstances.

4.3 It is submitted that these provisions be retained in principle, as they provide for accountability of the President's decisions and as the separation of powers between the Executive and the Legislature is also re-emphasized.

4.4 Section 227(2)(d) and (e) provides that the SANDF shall not breach binding international customary law relating to aggression, and that it shall in armed conflict comply with binding international customary law and treaties. Reflecting the values underlying an open and democratic society based on freedom and equality and respect for the rule of law, these measures should be retained.

5. International law and treaties

5.1 The retention of this section 231 of the Constitution is of vital importance. The increasing role that bi- and multilateral relations play in the South African agenda, the global nature of many problems and the need for South Africa to deal with other nations underlines the necessity for a measure dealing with international agreements. It is also important that the Legislature have a say in something which directly affects the progress of the country and its people. In support of the concepts of openness and accountability which permeates the

Constitution, it is important that the power to enter into or accede to international agreements be balanced by empowering Parliament to ensure that checks and balances are placed on the exercise of the Executive (and the President in particular) of its powers in this regard.

5.2 Certain changes to section 231 are however proposed.

5.2.1 Subsection (1) can remain as it is except for the deletion of the words "within the meaning of the previous Constitution". These words no longer have any significance in view of the changed position in respect of the territory of the Republic.

5.2.2 Subsection (2) can remain as it is except for the deletion of the words "negotiated and signed in terms of section 82(1)(i)". Many (multilateral) international agreements are no longer open to negotiation and signature, but only to accession. Furthermore, a number of international agreements are in their particular nature not law-making, but create a platform for good relations between countries and therefore do not need ratification. The retention of the above-mentioned phrase in those circumstances creates a contradiction. Furthermore, Parliament need not be occupied with non-law-making agreements, or pro forma agreements establishing diplomatic and consular relations. Parliament would therefore be competent to ratify agreements where a particular agreement requires accession or ratification to bring it into force on an international plane.

5.2.3 Subsection (3) can largely be retained. It might, however, be useful to qualify the word "expressly" by adding the phrase "by Act of Parliament", thereby removing any doubt which may exist.

5.2.4 Subsection (4) can be retained without amendment.

6. Ancillary matters

6.1 Section 218(1)(e) of the Constitution provides that the National Commissioner of the SAPS shall be responsible for international police liaison. This provision should be retained.

6.2 Section 116(2) of the Constitution provides that the Human Rights Commission shall report to a relevant legislature any legislation which may be contrary to the relevant norms of international human rights law. This measure should be retained in principle.

Ref No.



12 June 1995

PRELIMINARY SUBMISSIONS OF THE PAC ON FOREIGN RELATIONS AND INTERNATIONAL LAW.

All states which engage in foreign relations and want to be taken seriously by other states or nations, have to abide by a certain code of conduct which requires, inter alia, that they,

1. Respect international Law and international obligations they have undertaken.
2. Observe principle of non-intervention in domestic affairs of other states.
3. Prohibition on the use of force to settle conflicts unless it is in self defence.
4. Respect the principle of equality of states, their sovereignty and territorial integrity.
5. Peaceful co-existence of all states.
6. Promotion of the need to observe and protect Human Rights.

These are some of the principles that should guide foreign relations and can be found in the United Nations Charter and the United Nations' Resolution 2625, 1970 on principles of international law concerning friendly relations. These are part of customary international law and bind all states.

International Law and the FINAL South African Constitution.

The FINAL Constitution will be Supreme Law of the country. What about its relationship with International Law?

The PAC subscribes to the notion that our country should respect national law but should also ensure that our law is in line with international law, International norms and those obligations we have undertaken under international law.

It is within the above context that we can support the Constitutional position that international law shall apply to South Africa as long as it is not in conflict with the constitution or Statute law. (see S231(4) of the interim constitution). We also support the notion that there is an assumption in this regard that the law makers will not deliberately legislate so as to violate international law or obligations undertaken under international law. So, courts should seek to find an interpretation that reconciles, where possible, national law with international law.

However, it must be said that we do accept the Jus Cogens doctrine. This means that there are certain norms of international law which would not accept any limitation by national law. These norms include, the rule against torture and genocide and the non-discrimination principle. Our constitution should reflect this position.

M Dyani
MP

12 June 1995

PRELIMINARY SUBMISSIONS OF THE PAC ON FOREIGN RELATIONS AND INTERNATIONAL LAW

All states which engage in foreign relations and want to be able to carry out their states or nations have a stake in a certain code of conduct which requires that all states...

1. Respect international law and international obligations they have undertaken.
2. Observe principle of non-intervention in domestic affairs of other states.
3. Prohibition on the use of force in international relations unless it is self-defence.
4. Respect the principle of equality of states, their sovereignty and territorial integrity.
5. Partial co-existence of all states.
6. Promotion of the need to observe and protect human rights.

These are some of the principles that should guide foreign relations and can be found in the United Nations Charter and the United Nations Resolution 2625 (1970) on principles of international law governing friendly relations. These are part of customary international law and bind all states.

International law and the FINAL South African Constitution

The FINAL Constitution will be separate law of the country. What about its relationship with international law?

The PAC subscribes to the notion that our country should respect national law but should also ensure that our law is in line with international law. International norms and those obligations we have undertaken under international law.

It is within the above context that we can support the Constitutional position that international law should apply to South Africa as long as it is not in conflict with the constitution or State law (see Section 23(1) of the interim constitution). We also support the notion that there is an assumption in the regard that the law makers will not deliberately legislate so as to violate international law or obligations undertaken under international law. It should not be just an interpretation that reconciles what national law with international law.

SUMMARY OVERVIEW OF SUBMISSIONS FROM
SOURCES OUTSIDE PARLIAMENT
Volume 25

NAME AND LOCALITY	SUBJECT MATTER OF SUBMISSIONS (NAME TO THOSE COMMITTEE USE)	DATE SUBMITTED
A. Argente Dart	Preamble Refer to Throne God	
V. Argente Reims	Authority to other groups, self- determination within United States	01/03/95
B. Argente Proton	Preamble Refer to God	
J. Argente St. Louis	Vehemently against secular state	17/05/95
	Against Secular State	09/05/95
G. Argente Evanston	Against Secular State	08/05/95
J. Argente St. Louis	Preamble: Preamble Refer to God and His	11/04/95
D. Argente St. Louis	Issue of the religious and Antislavery, Xmas, Election every 3 years, Continuation of government of national unity.	
H. Argente St. Louis	Against Secular State	08/05/95
F. Argente St. Louis	Preamble: submission to God	
J.B. Argente Canton	Economic fair taxation, Provincial governments - Devolution of private accountable system and British boundaries of Profiter	20/04/95
W. Argente St. Louis	Preamble recognition to Almighty and Throne God	08/05/95
E. Argente Hayfield	Democracy and regular and free elections	21/02/95
F. Argente Pondicherry	Develop boundaries from determination to issue. Against economic model. Vote for individual members	15/05/95
A. Argente Pondicherry	Against Secular state	10/05/95
A. J. Argente Fish Hoek	Against secular state. Preamble: refer to God	13/03/95

**SUMMARY OVERVIEW OF SUBMISSIONS FROM
SOURCES OUTSIDE PARLIAMENT
Volume 25**

NAME AND LOCALITY	SUBJECT MATTER OF SUBMISSIONS GERMANE TO THEME COMMITTEE ONE	DATE SUBMITTED
Augustine Delft	Preamble: Refer to Triune God	
V Arbuckle Richmond	Autonomy to ethnic groups, self-determination within United State	01/03/95
E Arderne Pinetown	Preamble: Refer to God	
J Arrowsmith Natal	Vehemently against secular state	17/05/95
R De Beer Muizenberg	Against Secular State	02/05/95
G Blades Edenvale	Against Secular State	06/05/95
J P J Botha Pretoria	Preamble: Recognise Holy Trinity and His sovereignty, against Secular State	11/04/95
K Beviss-Challinor Diocesan College	Democracy based American Constitution three official languages only, English, Afrikaans, Xhosa. Elections: every 3 years. Continuation of government of national unity.	22/04/95
H F Chiappero Roodepoort	Against Secular State	09/05/95
P Cooper Knysna	Preamble: submission to God	06/05/95
J G Coetzee Carnarvon	Economy: fair taxation, Provincial government - Devolution of powers, accountable system and British boundaries of Provinces	20/04/95
W Conradie Somerset West	Preamble: recognition to Almighty and Triune God	08/03/95
K Dickerson Hayfield	Democracy and regular and free elections	21//02/95
R Davis Rondebosch	Develop democracy from personalities to issues. Against eurocentric model. Vote for individual ministers	15/05/95
A Eloff Potchefstroom	Against Secular state	10/05/95
A J Erasmus Fish Hoek	Against secular state. Preamble: refer to God	13/03/95

V B Field Durban	Embrace God in Constitution and state. Object to secular state	29/03/95
P Ferguson Dinnwiddie	Opposed to secular state	29/03/95
S Galpin Montclair	Suffrage: Prisoners and undischarged bankrupts disqualified. Only high tax non- citizens allowed otherwise suffrage depends on citizenship	26/05/95
L Cader Woodstock	Federal system, proportional representation, retain name "Republic of S. A." and new flag, preamble: "one nation under God.. "	24/04/95
H Gabrielse Elsies River	Accountability and transparent government	02/06/95
D Hanafin Mossel Bay	Federal constitution and future United States of Southern Africa	
H Halloures Pietermaritzburg	Against secular state	10/05/95
D Kilpin Elgin	Regions with more power, submit regional proposals to constitutional assembly	03/05/95
G Myburgh Helderkruin	Against secular state	23/05/95
W Lowe Woodlands	Financial accountability of parliamentary members	09/05/95
L Lloyd Witbank	Against secular state	26/04/95
R Van der Merwe Rondebosch	Against affirmative action - best person for the job. Government tough on crime	28/02/95
L Madonsela Msindo	Rule of law, truth and reconciliation as basis for state	07/03/95
T Msweu Sandringham	Against secular state	07/05/95
N Motlhala Hillbrow	Responsibility and accountability through constituency system. Blend of proportional representation and constituency	02/03/95
R Mathias Greyville	Equality based on personal obligations. Against unitary state without constitutional safeguards against concentration of power. Rule of law.	16/05/95
V Maharaj Tongaat	Federal democratic state. Constitution to be supreme. Accountable government, freedom of press essential	11/04/95

J McGill Secunda	Against secular state	30/03/95
B Nsele Greytown	Central government must be strong. Accountability and representative. Supremacy of constitution and constitutional court.	13/03/95
M Nkala	Against secular state	
B Nsele Greytown	Financial accountability of government	10/03/95
R Oosthuizen Queenswood	Equality (against inverse discrimination) transparent government administration	
V Pillay Leondale	Preamble: "We believe in the sovereignty of Almighty God."	28/02/95
M Prozesky Pietermaritzburg	Preamble: "United in our dedication to justice, equality and freedom for all, many of us in obedience to the God we serve, others in pursuit of the common good, we, the people of South Africa together declare that whereas..."	29/05/95
C Rack Riebeeckwest	Government based on rule of law rather than democracy, which is mob rule. Each province right to develop republican form of constitution.	26/05/95
B Reddy Natal	Against secular state	04/04/95
G Robertson Camps Bay	Republic with federations, equality. Each state with ombudsman. Constituency system with registered voters	09/04/95
C Rogers Strubenvale	Transparency of government at all levels. Equality, unified democratic country	14/02/95
B Saunder Austerville	Majoritarian democracy, consultation, opposed to secular state	08/05/95
L Swart Littlebrak River	Preamble: Acknowledge God, against secular state, constitutional republic	09/05/95
A Schneemann Linkhills	Against secular state	13/05/95
C Sahibdeen Tongaat	Objects to secular state	05/04/95
M Tseki Pretoria	Name: Azania. Accepts new flag. Equality and legislated affirmative action	
S Viljoen Natal	Against secular state	05/04/95
R Vigeland Mitchells Plain	Against secular state	13/03/95

P Vermeulen Eikenhof	Opposed to secular state	07/04/95
M Wilson J De Villiers J Vermeulen	Open and free government based on Christian values	13/03/95
Anonymous	Equality and one sovereign state	08/03/95
L Abiot Hammanskraal	Unitary state, majority rule, medium of instruction - English	07/04/95
Coles S & 11 signatures Plumstead	Maintain "In humble submission to Almighty God..." in Preamble	03/05/95
(Rev) G Davies Kokstad	Equality and one sovereign state, state regulation in economy	09/03/95
R Horwitz Rondebosch	Universal franchise, market economy, consultative government	18/04/95
S Kovensky Bishopscourt	Accountable and transparent government, financial accountability of members on all levels of government	21/05/95
A Mbelwa Joubertpark	Preamble declare belief in triune God. Equality	17/02/95
I Mechnig Somerset West	Opposed to secular state. Keep Preamble "Almighty God..."	11/04/95
D Stegmann Fish Hoek	Against secular state. Retain Preamble "Almighty God..."	10/05/95
M Schouw Belville	Against secular state; Preamble ref. also to triune God	08/03/95
L Wilkinson La Lucia	Against secular state and Preamble: "In humble submission to Almighty God who is creator and judge over all universe, whose principles we uphold and in whose love and mercy we trust ..."	17/03/95
B Wardle Cathcart	Equality, against secular state Proportional representation	31/03/95
P K Cronje Paarl	New constitution must establish true democracy avoiding one-party dictatorship. Coalition government ensures this by creating trust. Senate must act in over-seeing capacity. Constitution must make reference to God's role. All languages have a right to be recognised. English and Afrikaans to be languages of government. Self- governing powers to be extended to provinces as far as possible. Group and individual rights to be protected by law.	07/02/95
	<u>ORGANISATIONS</u>	

<p>Apostolic Church in Zion A Phafuli Orange Farm</p>	<p>Against secular state. Acknowledge God in Preamble</p>	
<p>Afrikaner-Bond Auckland</p>	<p>Preamble: "In humble submission to Almighty God we, the people of South Africa, declare ..." Constitutional supremacy, sovereign state, national anthems, Die Stem and Nkosi Sikeleli; 11 official languages with permissible regional differentiation. Autonomous provinces with provincial constitution establishment of cultural councils.</p>	<p>03/05/95</p>
<p>Redemption Centre Ennerdale</p>	<p>Need for input from people when Constitutional Court makes decisions. Strong central government. Representation to be constituency based.</p>	<p>12/04/95</p>
<p>Reformed Churches in South Africa Noordburg</p>	<p>Christian Reformed convictions to be entrenched in Constitution. Application of fundamental rights to ensure protection of individual and group rights. Diversity of cultures and languages to be recognised. Must be a balance between the needs/uniqueness of the individual and that of the larger group.</p>	

**SUMMARY OVERVIEW OF SUBMISSIONS FROM
SOURCES OUTSIDE PARLIAMENT
VOLUME 28**

NAME AND LOCALITY	SUBJECT MATTER OF SUBMISSIONS GERMANE TO THEME COMMITTEE ONE	DATE SUBMITTED
	<u>INDIVIDUALS</u>	
S Abalamuli	International mediation necessary to ensure truth.	
Anonymous	Everyone to be involved in development of S A.	
D Baisley Ontdekkers Park	No secular state	25/05/95
M Bush Vredehoek	Objection to secular state	17/05/95
N Brunsdn Rant-en-Dal	Fundamental rights to be applied in context of Christian principles. No secular state.	2/05/95
F De Buys Brackenfell	Accountability to God only.	
M J Vanderberg Durbanville	Constitution to refer to God	
B C Cowin Hilbrow	Use of church in politics can lead to abuse of power.	16/03/95
K J Critchfield	No secular state	
P Dougherty Illovooglen	No secular state	
W Damsell Sea Point	Reference to God to be retained.	2/05/95
E V Dingle Diep River	No secular state. Christianity must be given official recognition.	
G Ekama Claremont	Fundamental rights applied within Christian context. Reference to Deity in Preamble.	25/05/95
M Erasmus Kraaifontein	Building future democracy according to Christian principles.	25/05/95
S G Fourie Newcastle	No secular state	22/04/95
S Galpin Durban	All elected officials must be accountable	17/05/95
S Galpin Durban	SA cannot be governed effectively from a central point. Central government must only supervise provincial governments.	17/05/95
T G Grout Nerlspuit	Objection to secular state.	24/04/95
P H Henning Somerset West	No secular state	

C J Hinhage Menlo Park	SA to be governed under unitary system. Retain some federal characteristics in order to protect diversity. Must be flexible system. Constitutional Court to decide whether a regional law is contrary to Constitutional provisions.	10/05/95
L Jacobs Monte Vista	Reference to God in Constitution.	
S Jivanada Melkbosstrand	Government and specific religion cannot be linked.	31/05/95
P Kitts Benoni	No secular state	15/05/95
B J Kruger Saidanha	No secular state	
C Lumley Bellville	Reference to God in Constitution.	10/04/95
P N Malherbe Constantia	Accountability of local government must be ensured through right to call a referendum. Ensures that no action contrary to wishes of majority is taken.	19/05/95
H Martin	Application of fundamental rights according to Christian principles. No secular state.	
J Mulligan Malvern	No secular state	18/05/95
J G Mpetha, Khayelitsha	Transitional arrangements to be excluded from Constitution. Acknowledgement of international law.	18/05/95
F S Moeko Itsosomg	New Constitution to be based on compromise. Provinces to have certain powers, but not in conflict with central government.	
M Mostert Somerset West	Constitution to be based on Christian principles.	26/05/95
A Nicklos Roosevelt Park	No secular state	3/05/95
Mr & Mrs Newman Athlone	SA to be acknowledge as Christian nation.	
J J Oberholzer Ficksburg	Reference to Deity in Preamble	
S Pare Fish Hoek	Reference to God in Preamble	11/05/95
G Phillips	No secular state	8/05/95
J Pietersen Kuil's River	Application of fundamental rights	9/03/95
B Pietersen Oostersee	Christianity to be basis of Constitution.	

H S Pretorius Newcastle	Application of Christian beliefs to Constitution.	20/04/95
M H Prozesky University of Natal	Preamble to be inclusive.	29/05/95
K M E Parker Salt River	No secular state	23/05/95
D van Reenen Parktown	No secular state	1/05/95
P Te Roller Platteklouf	Reference to God in Constitution.	20/03/95
P J Le Roux	Volkstaat must exist in order to provide for communities sharing cultural heritage. Federation preferred. Preamble to reflect Christian character.	26/05/95
S Z Skhosana	SA to use Taiwanese model for its development.	7/03/95
G L Short	Constitution to refer to God.	19/03/95
D Twigg Belhar	Constitution to refer to God.	19/03/95
U S Trikam University of Durban- Westville	Constitution to establish one sovereign state, common SA citizenship and a democracy. Fundamental rights must not contradict ideals of democracy. Eg: right to information must be upheld in all circumstances. Elected representatives must be accountable.	
K R S Matlou Itsoseng	Privilege of SA citizenship must be guarded carefully. Idea of Volkstaat is akin to apartheid "Bantustans".	
R M Longden-Thurgood Milnerton	Democracy must be ensured through complete transparency and openness in government and public administration. Accountability ensured through easy access to public representatives and state officials. Office of Ombudsman to be a direct forum for public raise issues of unfair administrative action. Access to government information limited by need for security. Combination of proportional and constituency based systems. Referenda vital where contentious matters arised. Preamble must be flexible to allow for future changes.	27/05/95
A Taylor Bromhof	No secular state	
Unknown	No secular state	
R J Vincen Goodwood Park	Must be no disparity between political rights at provincial level as opposed to national. Uniform standards to apply throughout SA.	30/05/95

B Watson East London	Accountable government to be ensured through: transparency in the actions of representatives, direct access to information via open media and report-backs to constituencies. Provincial and local representation must occur on constituency basis to ensure accountability.	13/06/95
B Watson East London	Central government must play stronger role in finance sphere. Local government to be based on representation of rate-payers.	13/06/95
J M H Wardle Cathcart	No secular state	28/03/95
C de Witt	No secular state. Constitution to be based on "Christian values"	15/05/95
A Walaga	No secular state	
I J V Zacks	Constitution to refer to God.	14/03/95
	<u>ORGANISATIONS</u>	
Free Market Foundation of Southern Africa	Equal application of fundamental rights to all. Limitations to rights must be clearly spelled out. Accountability can be ensured by allowing public access to the political process viz; through referenda. Will allow for veto of political decisions and the implementation of direct democracy. State cannot be bound to one religion in a heterogenous society.	
Five Freedoms Forum of Pietermaritzburg	Combination of proportional and constituency systems. SA to be unitary state. Provincial powers not to conflict with those of central government.	29/05/95
St Joseph's Catholic Church Merrivale	Federalism can be implemented, but must be adapted to circumstances in SA. Central government must therefore continue to play strong role. Provinces to determine policies to suit their inhabitants, but not in conflict with central government.	10/05/95

**SUMMARY OVERVIEW OF SUBMISSIONS FROM
SOURCES OUTSIDE PARLIAMENT
Volume 30**

NAME AND LOCALITY	SUBJECT MATTER OF SUBMISSION GERMANE TO THEME COMMITTEE ONE	DATE SUBMITTED
P Anderson Parktown	Object to Secular State	8/05/95
J Arendse Kraaifontein	Recognition of God in Preamble	8/03/95
Anonymous Strand	Object to Secular State, Preamble to recognise God.	
Anonymous Gauteng	Retain words: "God Almighty" in Preamble reject Secular State.	1/06/95
36 signatures Vista University	Retain present words of Preamble	May 95
Anonymous	Opposed to Secular State	
Anonymous	Federal state with central government as controlled. Three tier government. Office of Prime Minister reinstated without Deputy Presidents. Representative chosen for knowledge not party politics.	22/05/95
Anonymous	Non-interference in religious and cultural customs by state unless community adversely affected.	
Anonymous Allens Nek	Against Secular State	4/05/95
Anonymous Randburg	Against Secular State	
A Burger Strand	Against Secular State, Preamble retained as is.	
H Bekker Vryburg	Recognise Holy Trinity in Preamble, against Secular State	5/06/95
N Brink Brackenfel	State guided by christian principles	1/06/95
M Boonsaier Parow	Reject Secular State	21/05/95
P Conradie Gauteng	Equality and require anti-discrimination clause	
C Clark	Against Secular State, retain present Preamble with further reference to God's guidance.	16/-3/95
S Clapham Wynberg	Constitutional republic based on Christian principles. Against Secular State	25/05/95
A Clark Noordhoek	Reference in Preamble to Triune God. Against Secular State	6/04/95

M Chapman Rondebosch	Against Secular State	28/05/95
G Cloete Parowvalley	Reference in Preamble to Triune God.	7/03/95
C Crawford Howick	Against Secular State, retain Preamble	9/05/95
P Dowling Kommetjie	"Transparency" needs clear definition with practical mechanisms. Public accountability especially to minorities. Government most strong at local level. Retain present Suffrage.	2.06/95
S Faure Vryburg	Against Secular State	25/05/95
I Fredericks Bellville	Preamble acknowledge Triune God. Against Secular State	
N Gibb Saxonwold	Retain present Preamble. Democratic State	13/05/95
S Galpin Durban	Financial accountability and transparency	26/05/95
R Green Randburg	Against Secular State	29/05/95
J C Groenewald Parow	Rejects Secular State	21/05/95
T Hugo Witbank	Against Secular State	3/05/95
E Hardwick Greytown	Against Secular State	2/05/95
N van Hayward Florida Hills	Equality before the law, especially in money judgements.	7/05/95
D Hirsch Parkview	Supremacy of the constitution but court assisted by a Council of State.	2/06/95
Joubert Montague	Against Secular State	28/02/95
John (Pastor) Johannesburg	Against Secular State as not representative of majority. Preamble refer to God.	
I de Kock Strand	Against Secular State	14/05/95
C Loggenberg	Against Secular State, Democratic State	2/05/95
Anonymous Strand	Against Secular State. Retain present Preamble	16/05/95
K Mcmillan Bellville	Acknowledge Triune God in Preamble	
E Mans Goodwood	Against Secular State. Retain present Preamble	

H van der Merwe Irene	Against Secular State, Retain present Preamble. Majority South Africans are theists.	12/05/95
L Moss East London	Against Secular State	22/05/95
S Ntsiko Khayelitsha	Unitary State, Democracy and Separation of Powers. Constitution Supreme.	11/04/95
C Oberholzer Ficksburg	Recognise Triune God	19/02/95
E Opperman Monte Vista	Against Secular State	
S Oberholzer Ficksburg	Recognise Holy Trinity	
C Oosthuizen Harding	Against Secular State	28/02/95
H van Rensburg Mossel Bay	Retain English & Afrikaans as official languages.	17/05/95
H van der Pool Sasolburg	Recognise Sovereign God in Preamble	2/03/95
R Retief Strand	Against Secular State. Retain present Preamble	15/05/95
J Smart Rustenburg	Constitutional supremacy with federal system	25/04/95
G Stein Claremont	Against Secular State. Recognise Triune God in Preamble	26/05/95
P Schreve Wellington	Recognition of God in Preamble	7/05/95
M Cronje Pretoria	Retain present Preamble and retain Ascension Day as holiday.	23/05/95
J Vermeulen Kenhard	Against Secular State. Preamble: Recognise Triune God	3/04/95
D Vermeulen Richards Bay	Against Secular State	20/04/95
N v d Westhuizen Strand	Against Secular State. Retain present Preamble	
D van Zyl Little Brak River	Against Secular State	3/05/95
	<u>ORGANISATIONS</u>	
J Bodenstein University of Bophuthatswana Law Clinic	Representative government based on combination proportional & constituency based systems. Retain present franchise frequency of elections varied according to proximity to voters. National 5, Provincial 3, Local 2 year intervals. Retain present qualifications of Suffrage.	18/05/95

K Naidoo Arm Scor	Participate in international arms trade. Economy developed through consultation. Civil society participation. Free market economy. Government policy	6/04/95
COSATU	Worker's rights in constitution. Strong national government, unitary state. Combination of constituency and proportional representation systems to improve accountability.	3/06/95
Council of Southern African Bankers Marshalltown	Reference to type of Economy and intent of socio-economic rights in Preamble. Constitutional supremacy. Open and accountable administrative discretion.	17/02/95
The Christian Voice [500 signatures] George Branch	Against unrighteousness of some proposals. Constitutional Republic based on Christian principles.	25/05/95
Evangelical Fellowship of South Africa Mayor's Walk	Retain present Preamble. Postamble - Retain "Nkosi Sikelele iAfrika". Against secular state. Omit reference to nature of state in constitution. Strong Local Government.	26/05/95
The Free Market Foundation of Southern Africa	No State interference in religion. Division between church and State.	

**SUMMARY OVERVIEW OF SUBMISSIONS FROM
SOURCES OUTSIDE PARLIAMENT
VOLUME 33**

NAME AND LOCALITY	SUBJECT MATTER OF SUBMISSIONS GERMANE TO THEME COMMITTEE ONE	DATE SUBMITTED
D Maki Kwazakele	Central government and not provincial government to control army and police. Provincial power must be controlled. Constitution to ensure that provoking violence is outlawed.	
J A Downs T Jelbert	Objection to SA becoming a "secular" state.	
T Anderson	Objection to SA becoming "secular" state. Reference to "God" in Constitution to be retained.	
Anonymous	Acknowledgement of "God" in Preamble.	
Various Persons	Objection to secular state	28/05/95
L Bouwer White River	No secular state. Government is accountable to God.	29/05/95
K Cressey	Christian principles to guide application of fundamental rights.	
K Cressey	Government has responsibility to protect life, liberty and property. Military and police power vital but must be controlled. Police to be controlled regionally and locally and separate from military.	
K Cressey	Accountability to be ensured through frequent elections. Must be commitment to peaceful transition. Various sections of government organs to be subject to regular elections.	
K Cressey	Taxation to be fairer. Cuts government handouts and encourages responsible citizenship.	
K Cressey	No interference by government in the application of fundamental rights.	
H Clack	Objection to secular state.	
M F Driessen Kommetjie	God to be acknowledged in Constitution.	2/06/95
M F E Dreyer Strand	S A to be based on Christian principles.	15/05/95
C A Erasmus Bellville	Acknowledge of God in Constitution.	
T Fairbairn Kuilis River	Application of fundamental rights in relation to equality.	8/03/95
G W Foulds Milnerton	Objection to secular state	29/05/95

A Hoffenberg Birnam Park	Democracy can only be ensured through federalism. Centralised control is inaccessible and unaccountable. Accountability can be ensured through local control of resources and referenda.	
Prof. C Tsehloane Keto University of Durban-Westville	System of representation must ensure accountability and proportional representation. Proportional system must reflect support received for party. Must make allowance for single-member constituencies.	7/06/95
D Kotze Unisa	Role of international mediation in creating a climate conducive to settlement and ongoing negotiations.	
D J Kok Strand	Objection to secular state.	17/03/95
A Leese Port Elizabeth	Effective democracy only achieved through tolerance. Avoid absolute rights for minorities. Constitution must be based on "moral" values.	25/05/95
M M Mortimer Diep River	No separation of state and religion	18/07/95
A Y Moosa Crawford	Total accountability of public servants from President downwards. Freedom of access to information. Proportional representation.	17/05/95
M V Marais Lyttleton	Objection to secular state	
P F Mntoza Ntleko location	S A to be unitary state.	
J D McMillan	Principles of "secular humanism" go against Constitution. Government must be guardian of public's moral values.	8/05/95
A M Mckenzie Port Edward	Reduction of provincial powers frustrates ideals of sovereignty. (viz. in Kwa-Zulu Natal)	30/06/95
G D F Piek Northern Cape Agricultural High School	Objection to secular state	29/05/95
H L Ryan Muizenberg	Extension of voting rights	
M Retief Strand	Objection to secular state	15/05/95
M Swain Mowbray	Objection to secular state. Preamble to refer to God.	19/05/95
S Thiel Botha's Hill	Christianity must be acknowledge in the Constitution.	29/03/95
M A Tager Irene	Preamble must refer to Deity.	
	<u>ORGANISATIONS</u>	

The Christian Association Pretoria	Preamble must refer to God. Christian Church to be actively involved in formulation of Constitution.	7/06/95
Five Freedoms Forum of Pietermaritzburg	Representatives to be elected on 50-50 basis of proportional representation and Constituency representation to be decreased to limit costs. SA to be unitary state with devolution of specific powers to provinces.	
The Free Market Foundation of Southern Africa	State cannot be bound to one specific religion in a heterogenous society.	
The Full Gospel Church of God in Southern Africa	Reference to be made to God in new Constitution.	29/05/95
The Southern Life Association Limited.	Constitutional Principles are sound basis for new Constitution. Constitution must aim at embodying objectives of RDP as well as growth. Application of fundamental rights will ensure environment in which growth can occur. Ability of provincial to make law must be limited in order to avoid inefficiency. Will ensure economic growth.	
Faculty of Law Unisa	Inclusion of Constitutional provision which provides that international customary law is part of SA law as well as international agreements would assist the emerging democracy in SA.	

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

VOLUME 42

NAME AND LOCALITY	SUBJECT MATTER GERMANE TO THEME COMMITTEE ONE	DATE SUBMITTED
	<u>INDIVIDUALS</u>	
[Illegible]	Democracy and equality	
P M Adams Downside	Include reference to God in the Constitution preamble. Democracy	20/03/95
[Illegible] Parrot Valley	Reference to christianity in the Post/Preamble	15/03/95
uMaphumulo	Include Christian religion in constitution	30/04/95
Anonymous	Democracy - fair elections and no traditional leaders. Accountable government.	
K Botha Parow	Include freedom of Christianity	
A concerned South African citizen	Christianity to be mentioned.	3/05/95
J Bock Wynberg	Constitution to be based on Biblical Christian values.	30/05/95
H & W Petersen Silverton	Must honour God in the Constitution.	11/03/95
W Bertram Parow	God to be included in the Constitution.	14/03/95
D A Boltmann Kenridge	Do not write God out of the Constitution.	14/03/95
Botes Family (4 people) Witbank	Objection to secular state.	20/04/95
M P Barnard Nelspruit	Objection to South Africa becoming a secular state.	
D Christians Cape Town	Protest against secular state.	11/04/95
J Dale Hillcrest	Include word of God in the Constitution.	
O Dlamini Newcastle	Strong objection to a secular state.	
Engelbrecht Greyton	Objection to secular state.	25/04/95
G Erasmus Newcastle	Objection to secular state.	25/04/95
Esterhuysen Strand	Reference to God in introduction to Constitution. Objects to secular state.	

S Gordon Durban	S A not to be a secular state.	21/03/95
L Greef Yeoville	Opposed to taking religion out of the state.	28/03/95
H Fisher-Holloway Saldanha	Strong objection to secular state.	21/04/95
Barbour et al (3 people) Durban	Oppose a secular state. Extend and amplify the present preamble.	23/03/95
L Hipkin Umbilo	Include Almighty God in preamble. Against secular state.	20/03/95
L Johnson Howick	Important not to leave Almighty God out of preamble. Wording should be extended.	7/04/95
G Jacobs Southfield	S A not to be secular state.	27/04/95
M Jacoman Elsies River	Objection to secular state.	
A Jacobs Marshalltown	Object to secular state.	23/03/95
G Kundulu JHB	Objection to secular state.	29/03/95
H Kotze Bethlehem	Strongly oppose S A becoming a secular state.	8/04/95
S & H Knights	Accountable government. Representative government. Voting qualifications - over 18 years, and S A citizen. Terms to be defined in pre/postamble to ensure certainty of interpretation.	
Louw Maitland	Oppose declaration of S A as secular state.	
B A Lyne Berea	Opposition to secular state.	17/03/95
J Munsamy	Retain the words "Xhosi - Secaela Africa".	25/04/95
B Martin Joubert Park	Opposition to South Africa becoming a secular state.	28/03/95
L Meintjies JHB	Constitution should acknowledge God and Jesus.	22/03/95
K Mthabela Creighton	God's name must be acknowledge in the Constitution. Opposition to secular state.	24/04/95
Maphumulu Pine Town	S A must remain a Christian state.	
D H Moore Durban	Objection to declaration of S A as secular state.	9/05/95
Anonymous	Democracy	

A Norwie Nahoon	Strong opposition to secular state.	
G Naicker	Must include "Almighty God". Opposed to S A becoming a secular state.	
T Naicker Rosettenville	Inclusion of God in Constitution. No secular state.	28/02/95
W Ngcayiya	Democracy. No volkstaat.	
Oosthuizen Saldanha	Strong objection to secular state.	21/04/95
I Robertson Welgemoed-North	Objection to secular state.	15/03/95
P J Robinson	Accountable government	18/05/95
[Illegible] Milnerton	Constitution must acknowledge Almighty God.	31/05/95
P Pitout Hillcrest	Objection to secular state. Extend and include present preamble.	24/03/95
M Philemon Charlesville	Acknowledge God. Opposed to secular state.	
S Pienaar & Family Nelspruit	Opposed to secular state.	20/04/95
C Spammer Oudtshoorn	Base Constitution on the Holy Bible.	
DIQ Scott Kriel	Not a secular state.	23/03/95
Y D Singery Anerley	Equality	7/03/95
I Szabo Elsark	Strong objection to secular state.	28/04/95
J P van Stittert Van Der Kloof	Protest against secular state. Should include God Almighty.	10/04/95
A Thompson PE	Preamble above politics and religion, including - rights and responsibilities.	
R Thomas Ravensmead	Include reference to God. No secular state.	
Mr & Mrs Tessendorf Blairgowrie	One official language - English. Accountable government. Representative government. Franchise only to citizens, and only vote if only 18 years. The reference to Almighty God to be retained.	
D van Wye Thornton	Recognition to God in the Constitution.	4/05/95
M van der Westhuizen Umhlanga	Strong objection to proposed secular state.	16/03/95

S Wheeler Joubert Park	Strong objection to secular state.	
L Xaba Yeoville	Religion to be separate from government, as it conflicts with African custom.	29/04/95
	<u>ORGANISATIONS</u>	
Mayor's Office; petition from Christian community of Port Elizabeth	Objection to South Africa becoming a secular state.	27/05/95
Transvaalse Onderwysvereniging Pretoria	International instruments must be ratified, and serve as basis for the Constitution. Equality. State to assume neutral role regarding practice of religion; must create environment in which all religions can be voluntarily practised. Freedom of choice of language. Equality.	29/06/95

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NAME AND LOCALITY	SUBJECT MATTER OF SUBMISSIONS GERMANE TO THEME COMMITTEE ONE	DATE SUBMITTED
Signature Melville	Object to becoming secular state	06/05/95
Signature Kriel	Democracy means ability to practice religion and not to separate religion from public life	24/03/95
A S Auret Strand	Preamble: Holy Trinity, Father, Son and Holy Spirit. Object to secular state	14/05/95
B Adair Middelburg	Democratic right to practice religion. Against separation of state and religion	
C P Browne Plumstead	Opposed to secular state	28/05/95
Boshoff	Opposed to secular state	10/04/95
T Bridge Newcastle	Opposed to secular state	
M H Bloum Belhar	Recognise God in constitution, against secular state	19/03/95
M Barry Kangray	Opposed to secular state	07/05/95
H Dunn & 3 others Highlands North	Opposed to secular state	
B Swartz Dundee	Opposed to secular state. Retain present Preamble	30/04/95
A Smit Newcastle	Objection to secular state	19/04/95
C V D Vyver Universitas	South Africa to be Constitutional Republic based on biblical principles. Opposed to secular state. Democracy	26/04/95
S Valentini	Retain current preamble as acknowledgement to God	
H Vita Florida	Opposed to secular state	29/04/95
Willemse Family Bellville	Retain present Preamble and ensure freedom of religion in democracy	07/05/95

M & B Groenewald Goodwood West	Opposed to secular state	
A Williams Parow	Opposed to secular state	15/03/95
V Southey Newcastle	As a democracy which represents majority, therefore be christian. Opposed to secular state	29/05/95
Doyle & 3 others Joseph's Scholasticate, Cedara, Kwa-Zulu Natal	Central Government, South Africa not ready for federal system	10/05/95
S Francesioni Gallomanor	Opposed to secular state	07/04/95
T Gilbert Garsfontein	Refer to God in Preamble, opposed to secular state	11/03/95
H Legrange Belhare	Opposed to secular state	20/03/95
T & D Van Den Heever Newcastle	Opposed to secular state	25/04/95
J Knight Inchanga	Object to secular state. Right to recognise Almighty God in the Preamble	26/03/95
B Kingston Newcastle	Opposed to secular state	25/04/95
L Laight Roodepoort	Objection to secular state	02/05/95
N Botha Pretoria	Binding international agreements to have Parliamentary approval. Vital role of public international law in a democracy	03/06/95
E Mallamphy Hillcrest	Objection to secular state in so far removes prayer from schools	
M Mousana Tembisa	Acknowledge Almighty God in Preamble. Accepts separation between state and religion but retain reference to God	27/03/95
R Munsamy Benoni	Object to secular state	25/04/95
Mfiki Vereeniging	Christians want peace and joy	02/04/95
Micheals Uitsig	Preamble: reference to Triune God and observe God in all institutions	
B Mnisi Balfour	Democracy by equality before the law Keep GNU as character of state with one Head	

R V D Merwe	Object to secular state as deprives fundamental freedom of religion	
N D Murray Eersteriver	Opposed to secular state. Allow officials to have religion and freedom of religious practice	
A Nelson Linton Grange	Object to secular state	07/05/95
E N Arcadia	Against secular state	28/03/95
J Noah Diepkloof	Object to South Africa as secular state	09/05/95
Van Oordt Blackheath	Retain present preamble, object to secular state	22/03/95
D Phipps Port Elizabeth	Opposed to secular state	01/04/95
J Peterson Stellenryke	Opposed to secular state	
J Prinsloo Strand	Opposed to secular state, retain current preamble	10/04/95
J Pheiffer Yellowwood Park, Durban	Freedom of religion, opposed to secular state	08/05/95
K Rama Joubert Park	Retain present preamble, opposed to secular state	
B Shortridge Brackenfell	Preamble be amplified to include Godly principles. As a majority, opposed to, secular state	04/04/95
L Stores Port Elizabeth	Objection to secular state	10/04/95
	<u>ORGANISATIONS</u>	
Council of South African Bankers	Preamble incorporate two principles relating to "Economic Constitution": 1. open, outward economy on international standards 2. statement of intent re: socio-economic rights and goals of governance. Open and democratic government by reasons in writing for administrative action esp. re. economic and tax matters	

Free Market Foundation of South Africa	Accountability requires additional mechanisms: 1. direct democracy by referenda 2. right of appeal and review of admin action 3. civil service code of conduct and responsibility for actions 4. rule of law 5. performance audit	04/06/95
Institute for Defence Policy Halfway House	Constitutional supremacy, accountable and effective government in defence and police services as central power. Binding international customary law	06/03/95
Organisers of March for Morality held in Port Elizabeth	Rights of majority be recognised in opposition to secular state, retain present preamble, and challenge referenda on issues: abortion, porn etc	07/06/95

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VOLUME 45

NAME AND LOCALITY	SUBJECT MATTER OF SUBMISSIONS GERMANE TO THEME COMMITTEE ONE	DATE SUBMITTED
N S Aaron Pietermaritzburg	Volkstaat will lead to segregation. People to be consulted in decision-making process	
Various	Constitution must normalize relationship between state and individuals. State also to be subject to duties imposed by Constitution. Equality before the law is foundation of Constitution. SA to be one sovereign state without volkstaats. Volkstaat will be divisive Government abuses to be checked by Public Protector	
Anonymous Pacaltsdorp	Federalism must be seen in a South African context in order to avoid past mistakes	25/05/95
L Bosch Bethlehem	No secular state	18/04/95
L P Botha Newcastle	No secular state	19/04/95
G Blades Edenvale	A secular state would mean that spiritual and moral integrity would be undermined	06/05/95
D V Benjamin Uitenhage	Elected officials to be accountable. Parliament to be structured so as to ensure effective government. Regional government to be subordinate to Central government. Government at all levels to occur generally within Christian framework	17/05/95
E Basson	No secular state	
K Combrink	No secular state. Application of Christian principles	23/04/95
M Fletcher Aston Manor	No secular state	24/05/95

S Galpin Durban	Constitution to ensure accountability of officials. Previous unilateral decisions have damaged SA. Officials not to enrich themselves at public's expense. SA too large to be governed from single central structure. Central government play overseer role to regional government. Pure federalism is unworkable, diversity of population must be safeguarded. Union to be flexible with powers devolving to regional government. All laws to be subject to the Constitution	17/05/95
F Judge Ferndale	No secular state	12/05/95
M S Levy Pinegowrie	Constitution must eliminate divisiveness. Must provide for total equality	27/06/95
L Lloyd Sybrand Park	No secular state	
F S Moleko Itsosong	Constitution to be balanced. Regional powers to be subordinated to Central government	
S Makhathini	Unitary state	
J Enraght-Moony Summerstrand	Democracy to be defined very clearly in order to avoid abuses. Rights to have correlative duties. Cultural diversity to be accommodated by federal system	17/02/95
Anonymous Marble Hall	Government structure is wasteful. Structures such as senate are irrelevant and unrepresentative	13/02/95
I G Mokawe Johannesburg	Federation is divisive, will lead to new apartheid. SA to be a unitary state. Fundamental rights applied	28/02/95
A Mosikidi Phutaditjhaba	Equality before the law	
L N Naude Hanover	No secular state	21/06/95
B B Ndlela Pietermaritzburg	SA to be unitary state. Central government to be supreme. Role of traditional leaders	
A L Nicholas Brakpan North	No secular state	
B Ndawonde	Unitary state	
P B Oshupeng Dryharts	Constitution to be supreme	

A M van Rooyen Transvaalse Onderwysersvereniging	Application of fundamental rights. State must not prohibit all forms of religious expression on state property. Equality before the law to be ensured via rights such as access to information and administrative justice. Public Service Commission has become obsolete and needs to be redefined	29/06/95
A Robinson White River	No secular state	29/05/95
P Setaka Yeoville	No secular state	
R A P Tielman IHEU	Constitution must be impartial. Any religious references undermines this	26/06/95
A Voster Roodepoort	No secular state	30/07/95
H Wilson Milnerton	SA to be based on Christian principles	29/05/95
H G H Zwanziger Boksburg	Constitution must address real issues. It is only an instrument through which change can occur. It must protect and promote cultures and must encourage participation in the democratic process. Relationship between government and citizens needs to be clearly defined. Rights of citizens to be protected through proper representation at all levels. SA to adopt federalism	03/95
M A Zondi Plessislaer	Application of fundamental rights	

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VOLUME 50

NAME AND LOCALITY	SUBJECT MATTER OF SUBMISSIONS GERMANE TO THEME COMMITTEE ONE	DATE SUBMITTED
Anonymous Illinge	Constitution must ensure real liberation by addressing basic problems. Constitution must eliminate racism	
Anonymous Somerset West	No secular state	23/05/95
A Chabalala Lebowakgomo	Accountability. Proportional representation to be retained. Central government to retain power	
V Cele Dorpspruit	SA to be unitary state. Provinces to retain limited powers	
F M Dlamini	Federal system will create homelands. Central government to retain power	
K & R Day Randburg	No secular state	
J Gale Lynwood	Retain reference to God in Preamble	
P Holm East London	No secular state	
R Jonga Thokoza	Government must serve the people	27/06/95
T Mashalane Treves	SA to be united sovereign state	
D B Kilpin Eglin	Accountability	24/05/95
S Lazarov	Acknowledgement to God in Constitution	29/06/95
M P Letsoalo	Constitution must ensure real democracy	05/06/95
C Madonda	Central government to exercise economic control	
V Mashaba Sekhukhune	Constitution must be sacred. Only amended by means of referendum	
K D Molangwane	Application of fundamental rights. Equality before the law	

W Moruwe Seleka	No secular state	
E Mogokonyane Vryburg	SA to be unitary state. Provincial government to have limited powers	
M Abdurahman	Government must be directed at normalising society	
K V Ndlela Loskop	No secular state	25/05/95
E C Nel Benoni	No secular state	
G Naicker Leondale	No secular state	
P Nyapisi	Government must be accountable to people it is meant to serve	
H K J Nefale Thohoyandou	No secular state	17/05/95
M Pendlebury Wits	Personal autonomy of individuals to be developed to ensure growth of democracy. Role of state must however not be negated totally. State must act in the public interest. Thereby no interference with personal autonomy. Creates culture in which autonomy can develop. Such environment created through downward devolution of powers - Citizen must participate in government process. Citizens must however first be empowered to participate as equals in this process	26/06/95
D Owen Fish Hoek	Dictatorship must be avoided	05/06/95
S A Otte Nkandla	No secular state	31/05/95
E Rametsi Warmbaths	Proportional representation	
M Rakomana Bergvlei	SA to be unitary state. No federalism. Will lead to separation	
S G Stuart Durban	Application of fundamental rights	31/05/95
Anonymous	SA to be unitary state	
M P Shibambe Saselamani	All South Africans to participate in process of Constitution making	

B J Smit Bloemfontein	No secular state	30/05/95
J L Vos Umtata	No secular state	06/07/95
G Webster Johannesburg	Constitution to enshrine personal duty towards others	02/06/95
N Zungu Pietermaritzburg	Application of fundamental rights	
	<u>ORGANISATIONS</u>	
Free Market Foundation	Democracy to be protected through transparency achieved by right of access to information. Growth must be limited. Politicians who act for the state must be strictly accountable and must act in the service of the "public". Accountability can be achieved through checks and through direct participation by citizens in the democratic process	

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VOLUME 53

NAME AND LOCALITY	SUBJECT MATTER OF SUBMISSIONS GERMANE TO THEME COMMITTEE ONE	DATE SUBMITTED
Concerned Citizen Atteridgeville	Voting age should be 16 years	30/06/95
A Hoffenberg Birnam Park	There should be mechanisms to ensure democracy such as the right to hold referenda, the right to trial by jury, smaller units having local autonomy (Federalism)	14/04/95
B & B Wilson Melkbostrand	The Constitution should take Christian beliefs into account	15/05/95
R Holder Erasmia	Proposal for new flag	26/05/95
S Mohumapele Mafikeng	State to remain as it is There should be equality and the government should be accountable There should be freedom of information English and Afrikaans together with regional languages should be official	27/06/95
N Maqetuka-Peter Port Elizabeth	Nkosi Sikelele should be the national anthem Politicians should speak in the African vernacular	20/06/95
E Ashwell Somerset West	Retain the words "Almighty God" in the preamble of the constitution	27/05/95
G T Oats Bedfordview	Retain the words "Almighty God" in the constitution	07/05/95
G Selematsela Gauteng	Each province must decide on the official languages The flag and national symbols must be retained Parliament should remain in Cape Town and the Appeal Court should be moved to Bloemfontein	
T L Naidu Verulam	Retain the present flag Parliament should be relocated to Pretoria	05/05/95
W W Steyn Moreleta Park	Official languages: English, Afrikaans and Zulu or Sotho or Xhosa Parliament should be moved to Pretoria 20/05/95	

D Taylor Roodepoort	Objection that SA should be a secular state - separation of state and religion is not democratic	27/04/95
K Gibson Durbanville	SA should be a secular state	29/05/95
Rev O van Niekerk The Methodist Church of Southern Africa	Preamble must have reference to "Almighty God"	02/06/95
P Khumalo Pretoria North	Democracy should be exercised genuinely Character of state: state officials should meet the demands of the people	20/02/95
Rev D Ragavaloo Durban	English should be the official language	22/05/95
M Horrell	Retain the present flag and name of the country Include reference to God in the constitution	08/06/95
J Louw Skeerpoort	Democracy means a strong local government Retain the federal characteristics of the present constitution	09/05/95
J J Bothma Robertson	Against a secular state - no reference to God in the constitution and Christian leaders will not be allowed to hold any office of state	
D R Zuma Mpohomeni Township	Nkosi Sikelele should be the national anthem	
C O Brown George	Each province will have the same powers that the German states have English should be the official language	22/06/96
M A Mertenton Riverlea Extension	Against SA become a secular state	
R Naidoo Goodwood	Against a secular state	
J M Smit Table View	Against a secular state	13/03/95
J M J Kemm Durbanville	Reference to a Triune God in the Preamble of the constitution	12/04/95

J A Machatu Arcadia	Reference to "Jesus Christ" must be made in the preamble Access to information should be enshrined in the constitution A Social Market economy Proportional representation and constituency based combination Voting age - 18 years 5 year election period Reference to the "Christian Ubuntu code of good Citizenship" Application of International Law - Affirmation of those tenets which agree with a new Christian Republican Democracy Constitution	30/05/95
Signature Krugerdorp	Against SA becoming a secular state Retain the name of God in the Preamble	22/05/95
A Cruywage Heideveld	Retain the name of God in the preamble	19/03/95
M Hearth Dorpspruit	Parliamentary representation cut by half SA to be divided into autonomous federal states Retain the name of the country	21/03/95
S Chamanelmbali Cumberwood	All SA must have equal rights	
S Moholoane Johannesburg	SA citizens should be born in SA, should be anyone whose parents are SA or one of his/her parents is a SA, anyone who was in SA before the 1994 election	16/05/95
M R Maluleke Elim Hospital	Retain the present flag Nkosi Sikelele should be the national anthem	25/05/95
N J Khabanyana Westville	The national anthem should Nkosi Sikelele and Die Stem combined	22/05/95
B Hans Pietermaritzburg	Unitary state - central government should have full control Name of the country should be changed	
G Palmers	English, Afrikaans and Zulu to be the official languages	29/05/95

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VOLUME 54

NAME AND LOCALITY	SUBJECT MATTER OF SUBMISSIONS GERMANE TO THEME COMMITTEE ONE	DATE SUBMITTED
G Bester Strand	Almighty God must be recognised in the Constitution.	23/05/95
FC Sutherland Jeffreys Bay	Seat of Parliament should remain in Cape Town.	20/05/95
Albany Christian Fellowship Grahamstown	Proposal for Preamble. Against South Africa being a secular state.	25/03/95
Carletonville Christian Fellowship Carletonville	Proposal for Preamble. Against South Africa being a secular state.	27/03/95
GJ Hardres Williams Somerset West	Parliament should remain in Cape Town. Name of country should remain South Africa. Retain present flag.	06/06/95
B Hans Pietermaritzburg	South Africa should be a unitary state. Name of South Africa should be changed in consultation with the SA community.	
JV Ntimaba Nelspruit	All South Africans and foreigners who have lived for 5 years in South Africa should be given proof of residence as SA citizens.	17/05/95
Dikwankwetla Party of SA Witsieshoek	Principle of 11 official languages must be upheld. Coat of arms, flag and anthem shall be determined by a law adopted by a two-thirds majority of the Assembly. All citizens 18 years or older should have right to vote.	27/05/95
SH Thaker Durban	Name of country should be "Federal Republic of South Africa". Official language at national level must be English and at regional level, English plus the regional language. Universal adult franchise for everyone over 18 years, except those convicted of serious crime. Accountability and responsibility must be enforced at all levels of government.	05/06/95
JM Maluleta Soshanguve	South Africa should not be a secular state.	19/05/95
CJ Van Vuuren Cradock	Almighty God must be recognised in the constitution. Christians should be allowed to take up positions in the civil service and to practice beliefs in state buildings.	

E Miya Benrose	The Economy - Blacks should be given a bigger share of the economy. Government should encourage agriculture. Should be penalties for employing foreigners.	03/02/95
JA Shaw Addis Ababa	Overview of interim constitution.	12/06/95
LB Swelankomo Kwa Thema	Should be influx control of foreigners.	
MJ Poni Lusikisiki	South Africa should be a unitary state with one government and one president.	
R Pole	Oppose South Africa being declared a secular state. SA should be declared a constitutional republic based on Christian principles.	
S Zondi Greytown	Should be one official language.	
M Kubheka Pietermaritzburg	English should be official language. Each province should identify a dominant language in addition to English and ensure use of that language in the province.	
GR Hare Kloof	Retain present flag. English should be official language.	
MP Ramela Durban	Proposal on equality. Constitution should protect and recognise each South African's rights and equality should be maintained.	11/04/95
A Hoogervorst Jacobs	Proposal that preamble should emphasise not only rights but also responsibilities.	18/02/95
J Van Niekerk Koster	Retain present flag. Afrikaans and English should be retained as official languages.	18/05/95
Christian Community of P.E. Port Elizabeth	Object to the proposal that South Africa become a secular state. Preamble should include "In humble submission to Almighty God".	27/05/95
V Horler et al Cape Town	Retain present flag.	16/05/95
Methodist Church of SA Worcester	Preamble should include "In humble recognition of Almighty God,..." South Africa should be declared a Christian nation and not a secular state.	19/05/95
V Hofman Benonyn	Proposes "Shosholoza" as national anthem. Toyi-toyi should be national dance.	21/06/95
Parow Wesley Methodist Church Parow	Retain the words "Almighty God" in the Constitution.	22/05/95

Free Market Foundation of Southern Africa Johannesburg	Promotes local participation and decision making. Keeping government close to the people promotes accountability.	
Ned. Geref. Gemeente Witbank Panorama	Constitution should include reference to Triune God.	13/06/95
Signature Jeffreys Bay	Existing rights in regard to language and existing status of languages should not be limited.	22/05/95
AHI Western Cape Cape Town	Retain Seat of Parliament in Cape Town.	30/05/95
Junior Rapportryers Western Cape Worcester	Opposes proposal that South Africa should be a secular state.	30/05/95
J Van Zyl Jeffreys Bay	Existing rights in regard to language and existing status of languages should not be limited.	22/05/95
NGK Gardenia Park Bloemfontein	Opposes division of church and state and proposal that South Africa should be a secular state.	19/06/95
JC Mentz Krugersdorp	Proposal for national anthem. (Words attached)	19/06/95
Laerskool Kenmare Krugersdorp	Opposes proposal that South Africa should be a secular state.	23/05/95

