

M22 2/1/2/13
CONSTITUTIONAL ASSEMBLY

TELEPHONE: (021) 403 2252
FAX: (021) 461 4339
INTERNATIONAL: (27) 21 403 2252
FAX: (27) 21 461 4339

PO Box 15
CAPE TOWN 8000
REPUBLIC OF SOUTH AFRICA

REF No:

**CONSTITUTIONAL COMMITTEE
MONDAY 13 MARCH 1995
14H00 - 18H00**

ADDITIONAL DOCUMENTATION

9 March 1995

To All Constitutional Committee Members

Please find attached a document prepared by the CA's Law Advisors to facilitate discussion of Theme Committee One's report in the Constitutional Committee on Monday 13 March 1995.

**H EBRAHIM
EXECUTIVE DIRECTOR**

Enquiries : Ms MM Sparg, Tel 245 031 ext 212, Page 418 4616 Code 6970

ANALYTICAL SURVEY OF REPORT BY TC 1 IN BLOCK ONE
8 MARCH 1995

No	Constitutional Principle	Issue	Contentious aspects	Non-contentious aspects	Remarks
1.	VI	Supremacy of Constitution		Constitution to be supreme law binding all organs of state at all levels	Decision to draft relevant provisions already taken.
2.	VIII	Political system		(1) Multi-party system (2) Regular elections (3) Universal adult suffrage (4) Common voters' roll	Restatement of CP VIII. Agreement on non-contentious aspects requires further development before drafting can commence. TC 1, 2 and 4 will flesh out the detail in Block Six.
3.	VIII	Electoral system		(1) Basis to be proportional representation (2) Constituency representation to be explored.	Restatement of CP VIII. Agreement lacks specifics. Further clarity needed. TC 2 will provide further clarity on national and provincial electoral systems in Block Six.

No	Constitutional Principle	Issue	Contentious aspects	Non-contentious aspects	Remarks
4.		Fundamental rights		(1) To be protected in an entrenched Bill of Rights (2) Justiciable by independent judiciary.	Restatement of CP II. Detail required on manner of entrenchment (special majorities, etc.) and court system. TC 4 and 5 will provide further clarity.
5.	II, VI, IX	Normative values underlying Constitution		(1) Accountability (2) Democracy (3) Equality (4) Freedom (5) Transparency	The agreed position is that these principles will underlie the whole Constitution and that all provisions of the Constitution should give effect to them. As such no decision to draft specific provisions is required.
6.	VI	Accountability		Executive to be accountable to Parliament	The manner in which the executive will be accountable to Parliament to be developed further by TC 2 in Block Two.

No	Constitutional Principle	Issue	Contentious aspects	Non-contentious aspects	Remarks
7.	I	South African citizenship		Common South African citizenship	Restatement of CP I. Clarity needed on the aspects of citizenship that need to be entrenched in the Constitution. TC 1 will deal with citizenship in greater detail in Block Six. Drafting instruction can stand over.
8.	I	Establishment of one, sovereign state	Whether State should be structured along federal or unitary lines.	South Africa to be sovereign, independent undivided State.	The concept of "one, sovereign state" is an agenda item for TC 1 in Block Two. Drafting instruction can stand over to Block Two.
9.	VI	Horizontal separation of powers		Separation between legislative, executive and judicial powers	Restatement of CP VI.
10	XVI	Levels of government		National Provincial Local	Levels of government need to be further developed. Falls within TC 2's mandate.

No	Constitutional Principle	Issue	Contentious aspects	Non-contentious aspects	Remarks
11	XVIII, XIX, XX, XXI, XXII, XXIII, XXIV	Vertical separation of powers	<p><u>Nature</u> and <u>extent</u> of powers and functions at various levels of government</p>		This issue falls within TC 3's mandate. Powers and functions of judiciary dealt with by TC 5.
12	XVIII, XIX, XX, XXI, XXII, XXIII	Parliament's supremacy as law-maker	<p>Whether Parliament should in relation to provincial functional areas have</p> <ul style="list-style-type: none"> - zero powers - concurrent powers - framework powers - overriding powers 		Matter closely allied to No. 11 above. Falls within TC 3's mandate. TC 1 will also deal with provincial autonomy in Block Two.
13	XVI	Parliamentary structure	Whether Parliament should be bi- or unicameral		Question of second chamber is to be dealt with by TC 2 in Block Two.

No	Constitutional Principle	Issue	Contentious aspects	Non-contentious aspects	Remarks
14	XII, XXXIV	Collective rights of self-determination	(1) Nature and extent of such rights. (2) Representation of cultural and linguistic minorities. (3) Afrikaner selfdetermination.	Recognition and protection of collective rights of organs of civil society, including linguistic and cultural associations.	TC 1 will develop the question of self-determination within the context of "one, sovereign state" in Block Two. The aspect agreed on needs fleshing out before drafting instruction can be given.
15	XIV	Minority party participation in government	(1) Coalition government "forced" by Constitution. (2) Majority party government.	Participation by minority parties in legislative structures on basis of proportional representation.	Question of minority parties' participation in executive structures will be dealt with by TC 2.
16		Participatory democracy	(1) Meaning, form and effect of "participatory democracy". (2) Entrenchment of this notion in Constitution.		

No	Constitutional Principle	Issue	Contentious aspects	Non-contentious aspects	Remarks
17	II, XII	Secular state	Practical effects of the notion of a secular state, for instance <ul style="list-style-type: none"> - references to deity in constitution - religious observances in State institutions - holding of offices of State by religious office-bearers. 	(1) Freedom of religion. (2) Separation of religion and State.	This issue impacts on TC4's mandate. Decision should stand over until TC 4 submits its report on freedom of religion. This issue also affects the Preamble which will be dealt with by TC 1 in Block Ten.

