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A20

**CONSTITUTIONAL
ASSEMBLY**

THEME COMMITTEE 1

**CHARACTER OF
DEMOCRATIC STATE**

19 APRIL 1995

**ROOM M515
14H00**

**EXTRA
*DOCUMENTATION***

***BRIEFING DOCUMENT
FOR BLOCK 4***

THEME COMMITTEE ONE

BLOCK 4: BRIEFING DOCUMENT

AGENDA ITEM 5: ACCOUNTABLE GOVERNMENT

1. INTRODUCTION

In its Final Report on Block 1, Theme Committee One agreed that the following points were not contentious:

- C) "Fundamental rights of the person shall be protected in an entrenched Bill of Rights, justiciable by an independent judiciary.
- D) The normative values underlying the Constitution shall be accountability... and transparency.
- I) There shall be a separation of legislative executive and judicial powers in the State.
- J) The Executive shall be accountable to Parliament".

Thus the Theme Committee has already noted the importance of the idea of accountable government. The issue is wider than the above points, however, and what follows below is, in summary form, an attempt to set out background facts for consideration by the members of the Committee.

Once more, it is important to stress the non-prescriptive nature of what follows.

2. TRANSITIONAL PROVISIONS

Discussion occurs against the background of various provisions to be found in the Transitional Constitution of 1993.

- 2.1 The relevant Constitutional Principles are the following (per Revised Work Programme p14):

II

Everyone shall enjoy all universally accepted fundamental rights, freedoms and civil liberties, which shall be provided for and protected by entrenched and justiciable provisions in the Constitution, which shall be drafted after having given due consideration to inter alia the fundamental rights contained in Chapter 3 of this Constitution.

VI

There shall be a separation of powers between the legislature, executive and judiciary, with appropriate checks and balances to ensure accountability, responsiveness and openness.

IX

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

XXVII

A Financial and Fiscal Commission, in which each province shall be represented, shall recommend equitable fiscal and financial allocations to the provincial and local governments from revenue collected nationally, after taking into account the national interest, economic disparities between the provinces as well as the population and developmental needs, administrative responsibilities and other legitimate interests of each of the provinces.

XXIX

The independence and impartiality of a Public Service Commission, a Reserve Bank, an Auditor-General and a Public Protector shall be provided for and safeguarded by the Constitution in the interests of the maintenance of effective public finance and administration and a high standard of professional ethics in the public service.

XXX

1. *There shall be an efficient, non-partisan, career-orientated public service broadly representative of the South African community, functioning on a basis of fairness and which shall serve all members of the public in an unbiased and impartial manner, and shall, in the exercise of its powers and in compliance with its duties, loyally execute the lawful policies of the government of the day in the performance of its administrative functions. The structures and functioning of the public service, as well as the terms and conditions of service of its members, shall be regulated by law.*

2. *Every member of the public service shall be entitled to a fair pension.*

2.2 These principles emphasize the following aspects of accountability:

2.2.1 the key role of protecting certain fundamental rights as inalienable by government and as providing the basis for constitutional action;

2.2.2 that the vertical separation of powers (between legislative, executive and judiciary) provides another foundation for the checks and balances crucial to accountability;

2.2.3 that access to government information and openness of government processes are indispensable to accountability;

and

2.2.4 that certain mechanisms crucial to accountability have been specified to be included in the final Constitution e.g. Financial and Fiscal Commission, Public Protector and Auditor-General.

2.3 The Transitional Constitution of 1993 provides for these matters as follows:

4. (1) *This Constitution shall be the supreme law of the Republic and any law or act inconsistent with its provisions shall, unless otherwise provided expressly or by necessary implication in this Constitution, be of no force and effect to the extent of the inconsistency.*

(2) *This Constitution shall bind all legislative, executive and judicial organs of state at all levels of government.*

7. (1) *This Chapter shall bind all legislative and executive organs of state at all levels of government.*

(2) *This Chapter shall apply to all law in force and all administrative decisions taken and acts performed during the period of operation of this Constitution.*

22. *Every person shall have the right to have justiciable disputes settled by a court of law or, where appropriate, another independent and impartial forum.*

23. *Every person shall have the right of access to all information held by the state or any of its organs at any level of government in so far as such information is required for the exercise or protection of any of his or her rights.*

24. *Every person shall have the right to —*

- (a) *lawful administrative action where any of his or her rights or interests is affected or threatened;*
- (b) *procedurally fair administrative action where any of his or her rights or legitimate expectations is affected or threatened;*
- (c) *be furnished with reasons in writing for administrative action which affects any of his or her rights or interests unless the reasons for such action have been made public; and*
- (d) *administrative action which is justifiable in relation to the reasons given for it where any of his or her rights is affected or threatened.*

92. (1) *A Minister shall be accountable individually both to the President and to Parliament for the administration of the portfolio entrusted to him or her, and all members of the Cabinet shall correspondingly be accountable collectively for the performance of the functions of the national government and for its policies.*

110. (1) *There shall be a Public Protector for the Republic.*

111. (1) *The Public Protector shall be independent and impartial and shall exercise and perform his or her powers and functions subject only to this Constitution and the law.*

112. (1) *The Public Protector shall, in addition to any powers and functions assigned to him or her by any law, be competent —*

- (a) *to investigate, on his or her own initiative or on receipt of a complaint, any alleged —*
 - (i) *maladministration in connection with the affairs of government at any level;*
 - (ii) *abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function;*
 - (iii) *improper or dishonest act, or omission or corruption, with respect to public money;*
 - (iv) *improper or unlawful enrichment, or receipt of any improper advantage, or promise of such enrichment or advantage, by a person as a result of an act or omission in the public administration or in connection with the affairs of government at any level or of a person performing a public function; or*

- (v) *act or omission by a person in the employ of government at any level, or a person performing a public function, which results in unlawful or improper prejudice to any other person;*
- (b) *to endeavour, in his or her sole discretion, to resolve any dispute or rectify any act or omission by —*
- (i) *mediation, conciliation or negotiation;*
 - (ii) *advising, where necessary, any complainant regarding appropriate remedies; or*
 - (iii) *any other means that may be expedient in the circumstances; or*
- (c) *at any time prior to, during or after an investigation —*
- (i) *if he or she is of the opinion that the facts disclose the commission of an offence by any person, to bring the matter to the notice of the relevant authority charged with prosecutions; or*
 - (ii) *if he or she deems it advisable, to refer any matter which has a bearing on an investigation, to the appropriate public body or authority affected by it or to make an appropriate recommendation regarding the redress of the prejudice resulting there from or make any other appropriate recommendation he or she deems expedient to the affected public body or authority.*
- (2) *Nothing in subsection (1) shall be construed as empowering the Public Protector to investigate the performance of judicial functions by any court of law.*
115. (1) *There shall be a Human Rights Commission, which shall consist of a chairperson and 10 members who are fit and proper persons, South African citizens and broadly representative of the South African community.*
153. (1) *A member of an Executive Council of a province shall be accountable individually both to the Premier and the provincial legislature of the province for the administration of the portfolio allocated to him or her, and all members of an Executive Council shall correspondingly be accountable collectively for the performance of the functions of the provincial government and for its policies.*
185. (1) *There is hereby established a National Revenue Fund, into which shall be paid all revenues, as may be defined by an Act of Parliament, raised or received by the national government, and from which*

appropriations shall be made by Parliament in accordance with this Constitution or any applicable Act of Parliament, and subject to the charges imposed thereby.

- 186.** *The Minister responsible for national financial affairs shall in respect of every financial year cause to be laid before the National Assembly an annual budget reflecting the estimates of revenue and expenditure, which shall, inter alia, reflect capital and current expenditure of the government for that year.*
- 187. (1)** *The procurement of goods and services for any level of government shall be regulated by an Act of Parliament and provincial laws, which shall make provision for the appointment of independent and impartial tender boards to deal with such procurement.*
- 191. (1)** *There shall be an Auditor-General for the Republic.*
- 192. (1)** *The Auditor-General shall be independent and impartial and shall exercise and perform his or her powers and functions subject only to this Constitution and the law.*
- 193. (1)** *The Auditor-General shall audit and report on all the accounts and financial statements of all the accounting officers at national and provincial level of government, other than that of the office of Auditor-General, and of all other persons in the national and provincial public services entrusted with public assets, trust property and other assets.*
- 198.** *There is hereby established a Financial and Fiscal Commission.*
- 199. (1)** *The objects and functions of the Commission shall be to apprise itself of all financial and fiscal information relevant to national, provincial and local government, administration and development and, on the basis of such information, to render advice and make recommendations to the relevant legislative authorities in terms of this Constitution regarding the financial and fiscal requirements of the national, provincial and local governments, including –*
- (a) financial and fiscal policies;*
 - (b) equitable financial and fiscal allocations to the national, provincial and local governments from revenue collected at national level;*
 - (c) taxes, levies, imposts and surcharges that a provincial government intends to levy;*
 - (d) the raising of loans by a provincial or local government and the financial norms applicable thereto;*

- (e) *criteria for the allocation of financial and fiscal resources; and*
 - (f) *any other matter assigned to the Commission by this Constitution or any other law.*
209. (1) *There shall be a Public Service Commission for the Republic, which shall have the powers and functions entrusted to it by this Constitution or by a law of a competent authority.*
212. (1) *There shall be a public service for the Republic, structured in terms of a law to provide effective public administration.*
- (2) *Such public service shall —*
- (a) *be non-partisan, career-orientated and function according to fair and equitable principles;*
 - (b) *promote an efficient public administration broadly representative of the South African community;*
 - (c) *serve all members of the public in an unbiased and impartial manner;*
 - (d) *be regulated by laws dealing specifically with such service, and in particular with its structure, functioning and terms and conditions of service;*
 - (e) *loyally execute the policies of the government of the day in the performance of its administrative functions; and*
 - (f) *be organised in departments and other organisational components, and the head of such department or organisational component shall be responsible for the efficient management and administration of his or her department or organisational component.*

3. THE TASK OF THEME COMMITTEE ONE

3.1 As with much of the early work of Theme Committee One, the details in regard to the above matters have been allocated to other Theme Committees, as follows:

3.1.1 all matters relating to the fundamental rights of access to justice, to information and of administrative justice, as well as the scope of application of the Bill of Rights (TC4);

- 3.1.2 the separation of powers and consequential accountability between branches and organs of government (TC's 2 and 3);
 - 3.1.3 the Public Protector and Human Rights and Financial and Fiscal Commissions, Auditor - General and Public Service matters (TC's 3 and 6); and
 - 3.1.4 the role, structure and independence of the courts and judiciary (TC5).
- 3.2 The Revised Work Programme (p13) suggests the following framework for discussion in regard to accountability:
- (a) "Constitutional mechanisms to ensure government accountability.
 - (b) Accountability with reference to: national and provincial legislatures, the electorate and affected individuals.
 - (c) Access to government information.
 - (d) Administrative justice and accountability to the judiciary".

4. THE SIGNIFICANCE OF THE NOTION OF THE ACCOUNTABILITY OF GOVERNMENT

- 4.1 The idea of government accountability is central to the very notion of democracy.
In its most basic form, it exists in the electorate's right to vote a government out of office. (In this regard, it is perhaps interesting to note that many submissions from the public call for the "right to recall" public representatives who fail to live up to their promises or are corrupt. Some submissions also raise the issue of referenda as a means of electoral accountability).
- 4.2 In between elections, citizens rely crucially on their fundamental rights as contained in the Constitution.
Here it is important to note that South Africa's transitional bill of rights (in particular sections 23 and 24) breaks new ground, and is regarded with some admiration elsewhere in the world. In addition to entrenched rights, the ordinary legal system also provides the means of judicial control over executive action (through what is known as administrative law).

- 4.3 As regards legislative action, accountability to the judiciary is exercised through measuring Acts of Parliament (and provincial legislation) against the standards and provisions set out in the Constitution.
- 4.4 Most modern democracies also provide for specialist, impartial and independent bodies to monitor government, particularly as regards corruption and maladministration. This is where the Public Protector, Auditor-General and the various Commissions become significant.
- 4.5 As regards finance as a whole, the fact that the executive must request Parliament to approve the spending of money through an annual Budget is a key element of accountability between the branches of government.

Other means of accountability in this regard are the idea of ministerial responsibility to Parliament (both individually and collectively) and the existence of Parliamentary Committees to scrutinise legislation and the actions of Government departments.

5. CONCLUSION

The above are some of the issues which needs to be discussed under the heading, "accountability of government". It may be that what is required of Theme Committee One is an endorsement of the very notion of accountability as a key element of the final constitution, a reference to the desired form which such accountability should take, and a specific reference to accountability and openness in the Preamble (Block 10). Further details could then be left to the appropriate Theme Committee's.

This decision is, of course, entirely in the hands of the Theme Committee, but it is hoped that this document has provided a useful starting point.

It will be expanded upon orally at the Orientation Workshop on 19 April 1995.

***DRAFT REPORT FOR
BLOCK 2***

**DRAFT REPORT FROM SUB-COMMITTEE TO
THEME COMMITTEE FOR BLOCK 2**

30 MARCH 1995

PART ONE

- A) List of submissions received and processed by Theme Committee, from parties, individuals, etc.
- B) No reports submitted by Technical Committee.
- C) Perspectives which emerged from public participation programme (to be supplied by members of the Theme Committee).
- D) Perspectives which emerged from Public Hearings (on 6 March - Prof. D. Meyerson and Dr. M Ramphele).
- E) The following Constitutional Principles refer:

AGENDA ITEM 2 : EQUALITY

I

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

II

Everyone shall enjoy all universally accepted fundamental rights, freedoms and civil liberties, which shall be provided for and protected by entrenched and justiciable provisions in the Constitution, which shall be drafted after having given due consideration to inter alia the fundamental rights contained in chapter 3 of this Constitution.

III

The Constitution shall prohibit racial, gender and all other forms of discrimination and shall promote racial and gender equality and national unity.

V

The legal system shall ensure the equality of all before the law and an equitable legal process. Equality before the law includes laws, programmes or activities that have as their object the amelioration of the conditions of the disadvantaged, including those disadvantaged on the grounds of race, colour or gender.

XI

The diversity of language and culture shall be acknowledged and protected, and conditions for their promotion shall be encouraged.

XII

Collective rights of self-determination in forming, joining and maintaining organs of civil society, including linguistic, cultural and religious associations, shall on the basis of non-discrimination and free association, be recognised and protected.

XIII

- 1. The institution, status and role of traditional leadership, according to indigenous law, shall be recognised and protected in the Constitution. Indigenous law, like common law, shall be recognised and applied by the courts, subject to the fundamental rights contained in the Constitution and to legislation dealing specifically therewith.***
- 2. Provisions in a provincial constitution relating to the institution, role, authority and status of a traditional monarch shall be recognised and protected in the Constitution.***

[Constitutional Principle XIII substituted by sec 2 of Act 3 of 1994]

AGENDA ITEM 3: ONE SOVEREIGN STATE

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.

XI

The diversity of language and culture shall be acknowledged and protected, and conditions for their promotion shall be encouraged.

XIII

- 1. The institution, status and role of traditional leadership, according to indigenous law, shall be recognised and protected in the Constitution. Indigenous law, like common law, shall be recognised and applied by the courts, subject to the fundamental rights contained in the Constitution and to legislation dealing specifically therewith.***
- 2. Provisions in a provincial constitution relating to the institution, role,***

authority and status of a traditional monarch shall be recognised and protected in the Constitution.

[Constitutional Principle XIII substituted by sec 2 of Act 3 of 1994]

XIV

Provisions shall be made for participation of minority political parties in the legislative process in a manner consistent with democracy.

XVI

Government shall be structured at national, provincial and local levels.

XVIII

- 1. The powers and functions of the national government and provincial governments and the boundaries of the provinces shall be defined in the Constitution.***
- 2. The powers and functions of the provinces defined in the Constitution, including the competence of a provincial legislature to adopt a constitution for its province, shall not be substantially inferior to those provided for in this Constitution.***
- 3. The boundaries of the provinces shall be the same as those established in terms of this Constitution.***
- 4. Amendments to the Constitution which alter the powers, boundaries, functions or institutions of provinces shall in addition to any other procedures specified in the Constitution for constitutional amendments, require the approval of a special majority of the legislatures of the provinces, alternatively, if there is such a chamber, a two-thirds majority of a chamber of Parliament composed of provincial representatives, and if the amendment concerns specific provinces only, the approval of the legislatures of such provinces will also be needed.***
- 5. Provision shall be made for obtaining the views of a provincial legislature concerning all constitutional amendments regarding its powers, boundaries and functions.***

XIX

The powers and functions at the national and provincial levels of government shall include exclusive and concurrent powers as well as the power to perform functions for other levels of government on an agency or delegation basis.

XX

Each level of government shall have appropriate and adequate legislative and executive powers and functions that will enable each level to function effectively. The allocation of powers between different levels of government shall be made on a basis which is conducive to financial viability at each level of government and to effective public administration, and which recognises the need and promotes national unity and legitimate provincial autonomy and acknowledges cultural diversity.

XXII

The national government shall not exercise its powers (exclusive or concurrent) so as to encroach upon the geographical, functional or institutional integrity of the provinces.

XXXIV

- 1. This Schedule and the recognition therein of the South African people as a whole to self-determination, shall not be construed as precluding, within the framework of the said right, constitutional provision for a notion of the right to self-determination by any community sharing a common cultural and language heritage, whether in a territorial entity within the Republic or in any other recognised way.***
- 2. The Constitution may give expression to any particular form of self-determination provided there is substantial proven support within the community concerned for such a form of self-determination.***
- 3. If a territorial entity referred to in paragraph 1 is established in terms of this Constitution before the new Constitutional text is adopted, the new Constitution shall entrench the continuation of such territorial entity, including its structures, powers and functions.***

[Principle XXXIV inserted by sec 13 (b) of Act 2 of 1994.]

PART TWO

" NOTE:

Due to the wide ambit of the agenda items in the first few Blocks of the work of Theme Committee One, parties have understandably emphasised different aspects in their submissions in respect of different blocks. Thus it is that not every party has dealt with the same issues under each agenda item below. No significance should be attached to this fact, particularly as earlier submissions have dealt with such matters on occasion, while later submissions to this or another Theme Committee may still do so."

AGENDA ITEM 2 : EQUALITY

A) GENERAL DISCUSSION OF MATERIAL

On this issue the submissions show a remarkable degree of consensus on the necessity for the entrenchment of all forms of equality in the Constitution. (It is to be noted that details in this regard are the proper provinces of Theme Committee Four).

B) NON-CONTENTIOUS ISSUES

- I) All parties endorse the notion of "Equality" as one of the basic values underlying the final Constitution. This notion includes at least two elements:
- formal equality, that each person should enjoy the equal protection of the law, on the basis of non-discrimination on the kind of grounds listed in section 8 (2) of the Constitution of 1993; and
 - substantive equality, seen to imply the sanctioning of measures designed to improve the situation of those disadvantaged by past discrimination (now outlawed), in order to enable such persons to achieve the full and equal enjoyment of their legal rights (as in section 8 (3) (a) of the 1993 Constitution).
- II) Differences from and refinements or emphases of the above statements are to be seen in the following aspects of the submissions from parties on this Agenda Item:

ACDP: A rejection of "sexual orientation" as a ground for non-discrimination, from a Christian view-point.

Support for the temporary nature of schemes for furthering access to equal opportunities.

ANC: The maintenance of a balance between equality and freedom, the latter based on the protection of personal dignity rather than economic privilege. This balance especially to be ensured in the horizontal application of the Bill of Rights, which is endorsed.

DP: Proposed that "discrimination" be deemed to be unfair, by definition not neutral, as distinct from "differentiation". Further, that "indirect" discrimination should be outlawed (as in section 8 (2)).

As regards substantive equality, that any measures adopted should satisfy

the test of "rationality" or "reasonableness".

FF: Support the notion that discrimination is a neutral term, and that only "unfair" discrimination should be outlawed. Measures taken to ensure substantive equality should not be counter-productive such as to amount to "reverse discrimination": they should be aimed solely at equality of opportunity, and implemented only on the basis of merit. Points to the special problems associated with potential clashes between indigenous law and fundamental rights, in particular equality.

IFP: Emphasises the importance of equal dignity as part of formal equality. As regards substantive equality, views the "entitlement to equal access to socio-economic opportunity" as the best approach. Counsels against the use of the label "affirmative action" in this regard, preferring the following formulation: "All citizens ... shall have an equal right to access to political, social and economic opportunities..." Strongly rejects the relegation of "substantial equality" to the status of "political directive" or, worse, its absence from the Constitution. Would include "personal status" as a ground for non-discrimination. Proposes that "equality should be entrenched in the national Constitution but should be implemented by the Provinces with respect to the matters of their competence..."

NP: Stresses the balance which must be struck between freedom and equality. Uses the term "active equalization" in regard to substantive equality. Active equalization "is based on the premise of a temporary state of unequal treatment in order to attain the set objectives in fact and circumstances". It must "come to an end when the objectives have been attained". Raises questions about inter-relationship of equality and customary law, which should be treated with circumspection. Proposes a qualified horizontality for the Bill of Rights, perhaps along the lines of section 35 (3) of the 1993 Constitution.

PAC: The Constitution must succinctly define what is meant by equality. Believes "that it is only when individual members of the nation enjoy equal access to all national resources that South Africa will be truly free..."

III) It must be stressed that, apart from the particular emphasis or refinement specified above, the basic notions of formal and substantive equality are firmly supported by all political parties participating in the CA.

C) CONTENTIOUS ISSUES

- I) The exclusion of "sexual orientation" as a ground for non-discrimination, on the basis that non-heterosexual activities are not in accordance with Christian teaching. This point is argued by the ACDP and FF, and in a number of submissions received from the public.

- II) The requirement that measures taken to achieve "substantial equality" should be "reasonable", in order to prevent the unlimited (in time) or unfair preferential treatment of those discriminated against in the past. This point is argued by the DP, although both the ACDP and NP stress the temporary nature of such measures.

- III) The potential clashes between customary or indigenous law and the protection of equality, in that gender inequality is a "central" tenet of the former systems of law. This point is raised by the FF and NP - the other parties are silent on this issue at this stage.

AGENDA ITEM 3: ONE SOVEREIGN STATE

A. GENERAL DISCUSSION OF MATERIAL

This is clearly one of the most crucial points of discussion and difference as regards the final Constitution. The parties' submissions treated the issue with varying degrees of detail, making direct cross-comparisons difficult at times. In particular, the suggested topics (see Revised Work Programme pp 12-13) of minority participation, community self-determination and the "volkstaat" issue, and traditional monarchies were not dealt with by each party (see the cautionary note in this regard at the head of Part Two of this report). After all the parties had made their submissions and the discussion of those submissions, the Technical Advisers reminded the Theme Committee members that the issue of "sovereignty" could be viewed from the international law as well as the (internal arrangements) constitutional law point of view. This had indeed been noted in Non-Contentious Point G, and the note to it, on pages 1 and 2 of the Committee's Final Report on Block One.

As a result of the centrality of the dispute between the parties as to the internal division of legislative and executive "sovereignty" in the future South African Constitution, the contentious issues outnumber the non-contentious issues. It is not possible to reflect all the details and nuances of each party's position in this Report. As the detailed implementation of this Agenda Item (from an internal point of view) falls squarely within the jurisdiction of Theme Committees Two and Three, points of principle or a basic framework will be the focus of this Report.

B. NON-CONTENTIOUS ISSUES

- i) All parties are unanimous in the view that South Africa is and shall be one sovereign state, when viewed from the perspective of public international law i.e. that it has a settled territory, a permanent population, and that the government exercises effective control over that territory and population.
- ii) All parties are unanimous in the view that the notion of "one sovereign state" (see Constitutional Principle I), as a requirement of the final Constitution and from an internal perspective, precludes both a confederation and the endorsement of secession as a constitutional option by any geographical part of the territory of the state.
- iii) All parties are unanimous in the view that government should be structured at national, provincial and local levels in the final Constitution (see Constitutional Principle XVI).

C. CONTENTIOUS ISSUES

These will be considered under the headings suggested in the Revised Work Programme (pp 12 and 13) as referred to above.

i) Provincial autonomy

Here the chief issue in contention is the degree of provincial autonomy, which connotes the extent of legislative and executive "override" or "concurrent power" of the national government. While no party proposes complete autonomy (as this would depart from the binding principle of "one sovereign state"), there are substantial levels of disagreement as to the extent of provincial powers and their relative insulation from concurrent action by the national government.

The positions of the parties can be summarised as follows, moving from the party which attaches the highest priority to central government to that which places greatest emphasis on provincial "autonomy".

PAC: States that provincial and local governments "derive their power" from a central government. In particular, expresses concern with the element of "ethnicity" of provincial governments and propagates the evolutionary development of a "de-ethnicised and de-racialised" nation. Refers to South Africa as a "unitary state" in which the sovereignty of the nation vests in the Constitution.

ANC: Believes in bringing government as close to the people as possible, "while ensuring considerations of national unity and reconciliation, national reconstruction and development and national

uniformity", and guarding against "fragmentation of the country". Proposes elected government at local, provincial and national level, whose powers shall be subject to the above considerations. The primary aim of provincial legislative and executive competence is to bring government closer to the people, to facilitate national reconstruction and development and to ensure the delivery of service to the people. Further, proposes that state power should at no level be used for the purposes of ethnic domination and intolerance. The people will participate in the planning of policy and decision-making through local government.

ACDP, DP AND NP: The position of these parties is dealt with together as each proposes a "federal" arrangement in the final Constitution, though with difference of emphasis and detail.

The ACDP calls for limited government, "a small, but effective central government and strong provincial and local governments", as the latter bring "government closer to the people" and facilitate effective administration and decision-making. (The ACDP also vehemently rejects the notion of a secular state).

The DP proposes maximum devolution of power in a federal system, bringing government closer to the people. Federalism also, in its view, helps to accommodate the cultural, linguistic, geographic and political diversity of South Africa, by "multiplying the sites of power".

The NP points out that the notion of "one sovereign state" accommodates a unitary and a federal possibility. It interprets the Constitutional Principles as stipulating that provinces shall have "original powers" (i.e. certain exclusive competences, not merely those delegated from the centre). It proposes that the "federal characteristics enshrined in the current Constitution shall... be retained and strengthened. The provincial "autonomy" in this system should "in no way infringe the character of the one, sovereign state".

FF: Reminds the Theme Committee that "one sovereign state" does not necessitate a unitary form of government. This concept "should be read in the light of all the Constitutional Principles as a whole, some of which prescribe limitations on the central authority in favour of provincial autonomy", which bind the Constitutional Assembly. Concentrates on placing the phrase "one sovereign state" in its proper perspective.

IFP: Disregards the notion of "one sovereign state", as the "People" are sovereign. The "state" is only one of the channels of sovereignty, and provinces are not regarded as "organs" of that state, (the "state" refers only to central government), as this "would destroy the foundation of a federal system". Provinces and provincial constitution-making will be defined in and bound by the final

Constitution. The provinces are the primary government of the people.

ii) Minority Participation

The following parties expressed themselves specifically on this issue in the ways indicated:

IFP: Minority participation is adequately catered for by a comprehensive vision of pluralism. There is thus no need for mandatory power sharing, "in a properly structured federal system".

NP: Legislative and executive government shall be structured so as to give full effect to the principle of inclusiveness and to reflect broadly all interest groups at all levels of government.

DP: Supports principle of participation of "minority political parties in the legislative process in a manner consistent with democracy" (see Constitutional Principle XIV). Isolates the following constitutional devices as achieving this: federal government, voting on proportional representation and the protection of all basic human rights.

iii) Community Self-determination (including "volkstaat")

The following parties expressed themselves specifically on this issue as follows:

DP: Would oppose any notion of self-determination based on race.

NP: Non-party political interests served through the structures of civil society. Language and cultural interests should be promoted by means of formalised statutory bodies receiving financial assistance from the State, in accordance with the letter and spirit of Constitutional Principle XXXIV.

IFP: Self-determination should not be reduced to community level, but fully-fledged self-determination "should be the building block ideology of a federal and pluralistic constitutional order".

FF: Referred to Constitutional Principle XXXIV in this regard.

iv) Traditional Monarchies

The following parties expressed themselves specifically on this issue as follows:

ANC: Emphasises the important unifying role of traditional leadership and its performance of ceremonial functions, subject to the Constitution and other laws. A structure for traditional leaders shall

be created "to advise Parliament on matters relevant to custom and... to the powers and functions of chiefs".

DP: The importance of traditional leaders and custom in certain areas of the country makes it necessary to create regional councils through which the views of these leaders can be ascertained.

IFP: States that "a king without a kingdom is not a monarch, while a monarchy and a kingdom are a mutually necessary implication". Further, that the "Kingdom of Kwa-Zulu Natal exists as a living historical reality", and so "is entitled to its autonomy and self-rule within the parameters of a federal relation with the rest of South Africa", irrespective of constitutional arrangements in the rest of South Africa. Within this Kingdom, the king shall be the constitutional monarch who "reigns but does not govern".

[NOTE: The positions on these matters of private submissions will still have to be incorporated in the Report. "Possible approaches" ought also to be proposed in this regard, bearing in mind that Theme Committees Two and Three are attending to Item 3, and Theme Committee Four to Item 2.]

PART THREE:

The Theme Committee will be dealing with the issue of the "Supremacy of the Constitution" in the next Block. An orientation workshop was conducted with members of the Theme Committee by Prof. H. Corder on Monday 27th March 1995, in an attempt to narrow the issues involved.

The public should be encouraged in regard to their submissions on the "Supremacy of the Constitution" to focus on issues like: the concept of constitutionalism and constitutional state; mechanisms needed to establish, entrench and protect constitutionalism; the question whether the Constitution binds only organs of state among themselves and in their dealings with citizens or also binds individuals in their legal relations with each other; and constitutional values such as participation, transparency and accountability as essential foundation-stones of a supreme constitution.

ANALYTICAL SURVEY OF REPORT BY THEME COMMITTEE 1 IN BLOCK 2
3RD APRIL 1995

NO.	CONSTITUTIONAL PRINCIPLES	ISSUES	CONTENTIOUS ASPECTS	NON-CONTENTIOUS ASPECTS	REMARKS
1.	I, II, III, V, XI, XII, XIII	Equality	<p>1) Potential clash with indigenous / customary law values</p> <p>-----</p> <p>2) Whether "sexual orientation" should be a ground of non-discrimination.</p> <p>-----</p> <p>3) Measures taken should be "reasonable" or "rational"</p>	<p>1) Equality as core value of the Constitution</p> <p>-----</p> <p>2) Protection of formal equality in the eyes of the law.</p> <p>-----</p> <p>3) Furtherance of substantive equality, through measures designed to provide equal access to opportunities to those disadvantaged by past discrimination.</p>	<p>While chiefly to be provided for in the Bill of Rights, equality ought to find expression in the Preamble at least (Block 10)</p> <p>-----</p> <p>Includes idea of non-discrimination on certain grounds</p> <p>-----</p> <p>Draft legislative proposals to be made in regard to all these issues by Theme Committee Four</p>

<p>2.</p>	<p>I, XI, XIII, XIV, XVI, XVIII, XIX, XX, XXII, XXXIV</p>	<p>One sovereign state</p>	<p>-----</p> <p>-----</p> <p>-----</p> <p>1) Extent of provincial legislative and executive competence and of national concurrent powers.</p> <p>-----</p> <p>2) Minority Participation as a constitutional requirement.</p> <p>-----</p> <p>3) Community self-determination (including "Volkstaat").</p> <p>-----</p> <p>4) Traditional Monarchies, the extent of their recognition and protection.</p>	<p>1) SA one sovereign state in international law.</p> <p>-----</p> <p>2) "One sovereign state" precludes confederalism, secession.</p> <p>-----</p> <p>3) Government should be structured at national, provincial and local levels.</p> <p>-----</p>	<p>Constitutional Principle I</p> <p>-----</p> <p>-----</p> <p>Constitutional Principle XVI</p> <p>-----</p> <p>Wide ranging views of parties. Details to be worked out by Theme Committees Two and Three.</p> <p>-----</p> <p>CP XIV. Again an issue for Theme Committees Two and Three.</p> <p>-----</p> <p>At what level should self-determination be set - the community or centrally. Again issue for Theme Committee 2.</p> <p>-----</p> <p>An issue which interlinks TCs 1, 2, 3, 4 and 5.</p>
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**SUMMARY OVERVIEW OF SUBMISSIONS FROM
SOURCES OUTSIDE PARLIAMENT**

NAME & LOCALITY	SUBJECT MATTER OF SUBMISSIONS GERMANE TO THEME COMMITTEE ONE	DATE SUBMITTED
	<u>(i) POLITICAL PARTIES</u>	
Conservative Party Pretoria	Full set of Constitutional Proposals, including supporting memoranda. Rejection of transitional Constitution. Rejects "single state" concept, a negation of democracy in a multi-ethnic state. Detailed comments on each aspect of CA's work. Proposes right of self-determination of Afrikaner people in own independent state; recognition of this right to other peoples; recognition of a federal state, in confederal association with other unitary or federal states. Afrikaner people means: "afstammeling van die Afrikanervolk en daardie anderstalige patriotte wat met die Afrikanervolk lotsverbonde is op die basis van wedersydse aanvaarding en gemeenskaplike vryheidstrewes". Constitution based on Christianity. Flag of the "Boerevolksrepubliek" the "Vryheidsvlag", anthem is "Die Stem", languages Afrikaans and English. Includes a Charter of Rights and Duties. Detailed memorandum on educational matters (30 pages).	26/01/95
KISS Heidelberg	Free economy, constitutional limit on power to tax (10%). Return to four provinces.	14/02/95
House of Royal	Layered structure of government within monarchy system. Use of UN Charter of Rights as a founding document	07/02/95
SADTU	Accountability of public service guided by government's policy	10/03/95
Muslim Judicial Council	Constitution to incorporate Islamic principles - fundamental rights interpreted in terms of "Holy Quran"	
	<u>(ii) ORGANS OF CIVIL SOCIETY</u>	
Darling Ratepayers Association Committee	South Africa should not be a one-party State.	08/02/95
IDASA National Cape Town	Survey results re: site of Parliament, favouring Cape Town	15/02/95
IDASA National Cape Town	Accountability of political representatives, ethical considerations and disclosure of interests.	15/02/95

Institute for advancement of human rights, democracy and individual right to mother tongue and own culture and Land in S.A.	Elections on a constituency basis; strong regional government; guarantee of group cultures; punishment for anti-white racist speech by ANC politicians; extreme punishment for violence against whites (including the death penalty); affirmative action scrapped as part of Constitution or government policy; exclude nationalisation and socialism; eliminate corruption; establish Volkstaats and enclaves for Europeans, Indians and Coloureds; "delink" politics from the judiciary.	02/02/95
Die Afrikanerbond	Explicit reference to constitutional state in the Constitution; constitution must ensure order; many references to Constitutional Principles. Proposes clear and "economic" constitutional formulations.	26/01/95
Reform International Churches Association of SA Klerksdorp	No government intervention in religious matters	06/02/95
Afrikaner Freedom Foundation (AVSTIG)	Proposals (16 pages) for establishment of a Christian republican Volkstaat for Afrikaners in the Northern Cape. Must be accepted by compatriots, authorities and inhabitants of the RSA, and internationally	03/02/95
Free Africa Foundation Washington, DC, USA	A confederate type of government proposed, based on the "Indigenous African Constitution" and a Bill of Native Rights	18/01/95
Retired Municipal Employees' Association Durban	Rights of the elderly, irrespective of race or sex. UN "Declaration of the Rights of the Elderly" should be written into the Constitution	22/12/94
Africa Christian Action Glosderry	Submits a "Declaration of Universal Rights" prepared by Christians for Justice, International (TC 4) (generally in favour of property and against taxation)	09/02/95
Homebased Business Association Somerset West	Proposes a national philosophy of self-employment, the right of people to earn a living from their homes	13/02/95
Association of Muslim Schools Lenasia	Argues for Capital Punishment (TC 4)	16/02/95
Free Market Foundation of SA Sandton	Direct democracy (referendums) and the right to recall; the devolution of power, secession (by adequate majority in a referendum)	01/02/95
African Christian Action Glosderry	A decentralised Christian Republic	09/02/95

Council of Southern African Bankers Marshalltown	Preamble should contain reference to open, outward-looking economy, and to socio-economic rights. Emphasise the supremacy of the Constitution over properly-defined "organs of state", and the right to information as part of accountable administration	17/02/95
People's Endeavour to Reform Taxes (PERT) Greenbushes	Detailed proposals re tax and fiscal issues, as submitted to Katz Commission. Generally against taxes except a single-rate consumption tax. (a 60 page submission)	18/01/95
Southern African Tourism and Safari Association Benmore	Tourism should be a national function	28/02/95
POPCRU Eshowe	65% majority for the winning party if there are less than 3 contesting parties	14/01/95
Contralesa Braamfontein	SA is a union of traditional kingdoms, name should reflect this, as well as geography and history	13/02/95
Small Business Development Johannesburg	Economy - Privatisation, free enterprise, open market economy. Staff reduction in public sector cuts costs. Introduction of rational governmental accounting system. Rational and transparent activity of public service and government	20/01/95
Vista University Pretoria	Continuation of 11 official languages. Abolition of non-diminution clause. Emphasis from protection of, to usage of language. Development of national language policy	27/02/95
The Baptist Union of South Africa Roodepoort	Democracy - devolution of power. Federalism. Religiously impartial state. Preamble - well worked viz. reference to "Almighty God"; and closure with "Nkosi Sikelele i Afrika". Private enterprise to be encouraged. Accountable government and public service. Supremacy of Constitution	14/03/95
International Goju Karate Federation Pietersburg	Equality. Extensive autonomy to provinces. Limit taxation	19/02/95
South African Association of the Age of Enlightenment Johannesburg	Democracy	15/02/95
SA Blind Workers organisation Mayfair	Equality. Right of all blind persons to vote in private without interference from officials at polling stations. Accountability and transparency of government - open to blind persons to insist on this	14/02/95

University of South Africa (Professor Z. Roelotse - Campbell) Pretoria	Democracy - equality. Majority, representative government - protection for minority rights. Legality and legitimacy. Basic political freedom. Federal state. Constitutional supremacy - super entrenchment mechanisms. Territorial distribution of power, autonomy for nationalities and regions. Strong civil society	07/02/95
Northern Amandebele National Organisation Mamelodi West	Official languages - National level: policy based on usage by significant number of people in any part of the country; anthropological evidence of existence of language; the role and recognition of the language would have in advancing democracy; socio-linguistic criteria. Advocates acceptance of Northern Ndebele as official language. Provincial level: more crucial as relates to diversity of people; costs involved in implementation. IsiNdebele is recognised presently. Unclear if it pertains to Northern or Southern Ndebele (presumably Southern). Clarification necessary.	08/03/95
Straight Talk Pretoria	Equality - specifically regarding non-discrimination on the basis of sexual orientation	17/02/95
Ligstryders Lynnwoodrif	Sovereignty of God, political sovereignty not based on will of majority, under authority of God	01/02/95
House of Royal Minnerbron	All kingdoms unite. Democracy, universal suffrage. Representation in Parliament of House of Royal. New name: United Kingdom	20/02/95
Christian Digest	Character founded on will of God. Universal suffrage. Do not follow international law but God. Preamble acknowledges God's authority. Devolution of power stress on community	
United Christian Action Menlo Park	Christian State. Preamble recognise God. No dual positions in state and church if full time	10/03/95
South African Saivite Association Port Shepstone	Equality. Secular state - Religions not to be enforced by state	04/03/95
Women's Lobby Bryanston	Gender quota for representivity. Follow international law re: women	12/10/95

Standard Bank Investment Corporation Johannesburg	Postamble & Preamble: Fundamental values 1) Economic constitution - open and in accordance with international standards 2) Statement of intent - socio-economic rights 3) Goals of government	02/02/95
	(iii) <u>INDIVIDUAL SUBMISSIONS</u>	
A Berger et al (36 replicated submissions)	Concurrent competence of Parliament and provincial legislatures; regarding environmental issues.	02/03/95
PB Wright Johannesburg	Supports equitable federal system; representative government; competent, responsible and accountable public servants. Embodiment of capitalism, free of monopolies and distribution of natural wealth.	25/01/95
B Koen Cape Town	Embraces equality. Rejects affirmative action in the workplace as discriminatory.	26/01/95
Dr AJ Van Jaarsveld Potchefstroom	Appeal to have prohibition on monopolies made law.	18/01/95
Daniel Nina Cape Town	Clear guidelines concerning interaction between state and civil society.	04/01/95
Dr A H Taute Johannesburg	Federal constitution. Representative government. Ten provinces, Eastern Cape divided into Eastern Cape and Southern Cape.	16/01/95
Chris Taylor Rivonia	Accountable Government and public service - ombudsman - mechanism available to local residents necessary.	23/01/95
JH Cosgrave Durban	One official language - English. Equal coverage for 10 other languages in newspapers, TV, etc. All schools taught in English.	26/01/95
V Every Port Elizabeth	Democracy	23/01/95
Z Rajah Roshnee	Free economic activity. Protection of informal sector	01/02/95
M Ronchhod Dunswart	Democracy. Accountable Government, mechanisms dealing with corruption.	19/01/95
N Muzezewe Bendor	Representative government Equality. One sovereign state	17/01/95
MVS Mnguni Settlers	Equality, protection of minority rights. Volkstaat recognition	17/01/95

JM Karle Beaufort West	Supreme Constitution - periodically adopted. Representative government - majority rule. Democracy	25/01/95
RGL Mathias Greyville	Accountable government and civil service independent of government. Representative government. Democracy. Free economic activity.	
William Martin Irene, Pretoria	Strong federal system. Recognition of Volkstaat principle. No right to strike for public servants.	10/02/95
Peter Maddox Vredehoek	Prevent monopolies in private and public sectors. Stop political corruption - accountable government.	26/01/95
JP Driver-Jowitt Cape Town	Accountability of each member of public services. Separation of powers. Federal government - restricted to specific areas; including protection of the currency.	11/01/95
FM Joyner Camperdown	Entrench principle that the nation's wealth lies in the productive ability of its people.	30/01/95
DM Du Toit Gordon's Bay	Representative and accountable government. Democracy	14/01/95
R Dekenah Cape Town	Addresses gender discrimination in workplace - inequality in payment. Representative government	24/01/95
Dr DC D'Arcy Penlyn Estate	Protection of minority rights Representative and competent government.	06/02/95
R B Croft Hermanus	Democracy. Hands off approach to economy. Financial accountability. Equality. Prohibition of monopolies and encouragement of competition.	28/01/95
S Maclean Durban	Representative, accountable, and competent government. Abolish concept of minimum wage.	22/02/95
P Kiernan Durban	International recognition of SA drivers' licences. Reciprocal agreement with foreign states required.	19/02/95
RGL Mathias Kingsburgh Natal South Coast	Supremacy of Constitution. Accountable and representative government.	15/6/1960
Ev	Central government, federal states - united but retaining internal independence. Supremacy of the Constitution.	

T Lugalo Port Alfred	Parliament in Pretoria Equality	30/01/95
VW Meyer Pretoria	Afrikaans to retain status as second language in all spheres. Addition of other endemic languages.	24/01/95
R Solomons Cape Town	Supremacy of the Constitution Representative, transparency, accountable public service. Public protector. Constitution should not provide for Public Services Commission - unnecessary bureaucracy. One language of correspondence.	10/03/95
D Varkevisser Midrand	Equality One sovereign state	06/03/95
A Stemmet Hilton	Responsible government, representative. Free market economy.	27/02/95
Dr A Hoffenberg Birnam Park	Democracy Accountable government	16/01/95
Prof G N Barrie Pretoria	Extensive power for regions Constitutional democracy underlined by federalist characteristics.	14/11/94
N Irish Johannesburg	English to be the language used by peace- keeping forces.	24/12/95
KT Van Warmelo Mellville, Johannesburg	Prevent possibility of one party state. Equality before the law. Free enterprise - minimum state interference.	15/02/95
W Nyembe Duduza	Protection of minority rights. Rejection of Volkstaat Accountable government Strong provincial government Equal pay for equal work	
F J Borman Kimberley	Democracy Economy - rational and intelligent expenditure.	18/01/95
DW Le Roux Pretoria	Advocates "selective multilingualism". Retention of 11 official languages. But, Government publications in one of 4 selected languages - at National level. Provincial level - retain provisions in interim constitution.	22/02/95
R Pentecost Oranjezicht, Cape	One central government Equality before the law	09/03/95
AH Hare Port Elizabeth	No person convicted of criminal or major financial offence eligible for position in public services, or government.	26/02/95

D Rose Durban	Representative Government, through constituencies. Transparency of government election.	23/02/95
Jacob Molaba Boksburg	Equality before the law and equal protection of the law.	10/94
M J Xaba Empumalanga	Accountable Government Federalism	21/02/95
OHA Groenewald Clubview	Equality One sovereign state - independent Kwazulu-Natal.	06/03/95
AN Gavendar Shellcross	Equality One sovereign state	02/03/95
Anonymous Durban	Referendum to determine: single central government vs federation one party rule vs GNU Volkstaat issue (whites only referendum)	07/02/95
HM Engelbrecht Auckland Park, Jhb	Equality One sovereign state - measure of federalism included	26/02/95
AHG Munro Pretoria	True democracy - decentralisation of power.	22/02/95
W Wilson Port Elizabeth	Federation Name - United States of South Africa	16/02/95
Mr X - Anonymous	Independent Reserve Bank - subject to scrutiny by committees.	
J Kirkpatrick Greyton	Retention of new flag. Name - New South Africa	14/02/95
L Geza Bisho	Equality in divorce and marriage matters.	17/02/95
P E Bailes Greyton	Members of Parliament individually accountable to people they represent - mandatory report backs in the press.	16/02/95
Std 8 pupils (x41) Motse Maria High School Lebowa	Suffrage for <u>all</u> persons over 18 years. Representative government (candidates over 30 years).	13/02/95
MJ Du Plessis Waterpoort	Federalism. Provinces determined geographically by ethnicity.	20/02/95
CW Theys Empangeni	Democracy. Accountable Government. Equality - redistribution of resources.	26/02/95
M Manqele Hlabisha	Federal system of government. Strong local self-government.	
S Galpin Durban	Transparency and accountability Media publication of financial spending	27/02/95

PJL Davies Rustenberg	Suffrage as follows: 1 vote for people under 19 years of age; 2 up to 29 years, 4 up to 39 years, 6 up to 49 years, 10 over 50 years.	21/02/95
FJ Prinsloo Levubu	Equality before the law.	28/02/95
K Hlekane Johannesburg	Equality before the law. Males accorded own status.	18/02/95
SE Erasmus Eersterivier	Equality	08/03/95
JM Karle Beaufort West	Protect basic rights (expression, association, life) to ensure freedom; electoral system on a national basis with declining preferences.	25/01/95
TJ Van Esch Johannesburg	Federation; wide power to provinces and towns; an open economy	17/01/95
GL Coggin Sandton	A balanced charter of rights; against federalism - top heavy in bureaucracy; accountability to the electorate - no official should have criminal record; against a Volkstaat.	23/01/95
R Urban Emmarentia	Minority interests not sacrificed; avoid failed forms of government; submits thoughts of Catholic leaders (<u>Nobility and Analogous Traditional Elites</u>)	30/01/95
J Thwala and L Macheke	Limited provincial powers, most power centrally based; strict rules against foreigners.	
D Hattingh Moreletapark	Federal and democratic system (like USA); a Volkstaat for those who cannot adapt	24/01/95
SM Ponnien Chatsworth	Concentrates on labour and education; proposes English, Zulu and Afrikaans as compulsory school subjects in Kwazulu Natal.	26/01/95
T Mzamo Vosloorus	Proposes constitutional supremacy (judicial review)	
T Singiswa Johannesburg	Proposes accountability and elimination of corruption.	15/01/95
MH Maasdorp Johannesburg	The individual should be the "unit of justice" in the Constitution; the language of the Constitution must be clear and unambiguous; no limits in Constitution which modify protections in any way.	27/01/95
SG Stuart Durban	Strongly opposes power-sharing, should be "simple majority rule" after 1997.	16/01/95

RJ Thompson Pretoria	Separate head of state from head of government, for symbolic and practical reasons.	23/01/95
W Grindley Vincent	Institute the right of recall of all politicians and officials for corruption or incompetence.	30/01/95
D Boyd Cascades	Qualified franchise - perhaps on educational grounds.	30/01/95
M Jadwat Durban	Balance the budget; financial accountability of political parties; abolish feudalism.	08/02/95
R Shea Sybrand Park	GNU should continue; direct election of President; right to recall politicians.	03/02/95
I Swartzberg Pretoria	Declaration of belief regarding Government and Laws, of the Church of Jesus Christ of Latter-day Saints, adopted in 1835.	30/01/95
RW Sykes Cape Town	Recognise right to "succeed" (sic) and self-government for ethnic grouping.	02/01/95
Noord-Transvaler	Role of traditional leaders in government; National Ministry in the President's office to bring uniformity to the institution of traditional authorities.	30/01/95
TM Begere Venda	Unfairness of learning three languages	
AS Phakhathi Evaton	Senators and Cabinet directly elected; gender equality; abolish Afrikaans as language of the SAP.	01/02/95
R Martin Ritchie	Electoral system as in Westminster system; no more government of national unity.	05/02/95
MJ Hlakudi Burgersfort	One official language - English	08/02/95
L Masemola Kwaxuma	Non-tribalistic constitution; no bureaucratic control over the constitution; control immigration.	27/01/95
"Voter" Durban	Stop MP's operating businesses (especially in the Eastern Cape)	02/02/95
PA Tessendorf Randburg	Prevention of elected official abusing privileges and taxpayers' money	
A Duvenage Ladysmith	Tax clearance before voting; birth control methods; no tax paid by pensioners	24/01/95
AM Chonco Empangeni	Control immigration; English the language of government; forbid "cessation" (sic) of independent Natal or Volkstaat.	03/02/95

E Dinther Vredehoek	Incorruptibility of public service; less foreign travel by Government Ministers; demands Coalition Government always.	
BH Sawers Parkhurst	Concern for elderly; free medical and hospital treatment for the elderly.	30/01/95
CD Uys (and 10 others) Randfontein	Eliminate intimidation; forbid procreation to those who cannot afford to look after children; establish the right to kill in defence of property.	
MS Ramedien Lansdowne	Reduce colours in flag - expensive for body-painting by sports fans.	
WF Kantor Bothas Hill	Retain reference to deity in Preamble; federalism; against simple majoritarianism; include all groups (CP and AZAPO) in next government.	30/01/95
J Broodryk Waterkloof	Constitution should refer to uBuntu	
Weramerewa Soweto	Transparency and honesty are essential.	
HJW Ehrlich Henley on Klip	Unbiased SABC; care for elderly (safety); environmental concerns.	04/02/95
A Friedman Northlands	Accountability for corruption	08/02/95
? Benrose	Authority for traditional leaders; restitution of land	
MR Bila Soweto	Exchange provincial governments to entrench democracy	01/02/95
E Blignaut Cape Town	Gender equality; as well as sexual orientation equality.	01/02/95
"The Man on the street"	Consultation should be by form/questionnaire.	
T Wolfaardt Lothair	Afrikaans may not be denigrated	
ZJ Tshouyane Thlabane	Plead for federal country (like USA); national boundaries must include the traditional leaders (and returned to them).	
RR Tusenius	Real federalism; reject unitarianism, based on lessons of history.	16/02/95
M Kollmer Benoni	No abortion or pornography. Firm action against those who abuse positions of trust.	21/02/95
J Suskin Hillcrest	90% majority entrenchment for constitutional amendment; English the one official language.	13/02/95

M Dreyer Sunnyside	An essay on Democracy, its various forms and meanings	15/02/95
NT Sibeko Standerton	People must be educated about the flag.	17/02/95
RH Addison Kloof	Adequate checks and balances; the Upper Chamber small and representative of organs of civil society and the professions, with clear executive and legislative powers.	15/02/95
NW Mindel Sandringham	Accountability	12/02/95
JF Theunissen Atlasville	10 regions; 100 MPs; people over 65 should pay no taxes.	17/02/95
SG Abrahams Yeoville	Recognition of the disadvantages of rural areas.	16/02/95
GA Herselman Umhlanga	Proposes a federation, English as the official language.	14/02/95
J Kelly Howick	Federation	20/02/95
IR Monsieur Halfway House	No reference to Affirmative Action in the Constitution.	14/02/95
G Ngirane Gaborone, Botswana	Multiparty democracy, federal system with strong central government. Voting age lowered to 16 years.	20/02/95
Rentmeester- beleggings Pretoria	Competition and deregulation principles must be in the Constitution.	13/02/95
MI Osborne Parklands	Obligation, responsibility and a culture of discipline are needed.	17/02/95
B Macnab Observatory, W Cape	Constituency MPs; no entrenched power-sharing.	13/02/95
W Fischer Green Point	Auditor-General nominated by official opposition in Parliament. Right of recall of MPs.	14/02/95
M Karbary Roshnee	Free enterprise; opposed to legalisation of street hawkers.	03/02/95
Z Rajah Roshnee	Free enterprise	01/02/95
MR Sahib Roshnee	Reduce alcoholism	03/02/95
M Govender Roshnee	Foreign trade barriers	01/02/95
AM McNeil Grahamstown	General encouragement to CA	28/01/95

BS Hiddleston Durban	Cabinet must function with 75% majority where no consensus; Chapter on Human Rights entrenched with 80% majority of each House of Parliament with 80% majority of each Provincial Legislature - Constitutional Principles should be unchangeable. Named powers with national government, residual with provinces. Constitution to be written in plain language. Retain existing flag and anthems.	30/01/95
D Hattingh Moreletapark	Parliament should be in Pretoria	30/01/95
Y Olsen Durban	TC 2: Separation of Powers; also, heads of Government and departments (2 submissions)	30/01/95
D Shepherd Durban	Constituencies for MPs	29/01/95
A McDonald Pietermaritzburg	Retain interim Constitution, entrench it by 75% majority	30/01/95
P J Knock Pinetown	Some form of coalition government mandatory at provincial and national level. MPs must have constituencies; reduce number of MPs	17/02/95
M H H Warren Pretoria	Opposes affirmative action	22/02/95
P Dickerson Pietermaritzburg	Project life, liberty and property by punishing evildoers and rewarding those who do good	19/02/95
H P Gorringe Verwoerdburg	Mainly concentrates on taxation and economic issues	28/02/95
S Dalhouzie, W Ridley, D J Theron and E Damon	Provincial legislative concurrent competence with Parliament to make laws concerning the environment	28/02/95
H Ferreira Bracken Gardens	Only four languages (English, Afrikaans, Zulu and Xhosa) or less. Stamp out corruption	17/02/95
G R Theron, Walmer	Opposes homosexuality	26/02/95
M E Munro George	The right of Minority Groups to be part of government	28/02/95
R M Longden- Thurgood Milnerton	57 points made re: Constitution, among them: majority government; no nepotism or corruption; etc	28/02/95
J Blignaut Wierda Park	Major decisions of Parliament to be referred to referendum	28/02/95

A Mhayi ?	Unitary state; universal suffrage; mixed economy; committed to the principles of the UNO and OAU	30/01/95
A R Clark Hazyview	Maximal devolution of power to communities, English the official language	25/02/95
D Vester Westgate	Democracy is freedom inside the law of the land; character of the State determined by the results of general elections	
R Southall Rhodes University	Proofs of an article on the re-making of a dominant-party State in South Africa	10/11/94
R W Sykes Cape Town	Federal and confederal elements must be built into the Constitution. Should be a "bottom-up" system i.e. decentralised democracy	29/01/95
R G L Mathias Illovo Beach	Apply Eternal Principles of Western Christian Civilisation	28/02/95
J What Pretoria	English as one official language	22/02/95
G Tait Scottsville	Education based on Christianity. Government must protect life, liberty and property (see P Dickerson above)	15/02/95
C G Schmidt Pinetown	Reduce size of Parliament by 200, saving cost, promoting efficiency	20/01/95
P & N Stratten Plettenberg Bay	Emphasis on democracy at local government level. State must be open, honest, fair, positive and progressive	07/01/95
M Seal Kenilworth	GNU must continue	22/01/95
H M Cooke Somerset West	Head of State should be non-executive; openness of government	23/01/95
A M Mtshali Rossburgh	Government must do as the people want - for us all	
A M Matlhako Hartswater	Democracy means consultation. Communities of Ga-Mothibi wish to be in the Northern Cape, not North West province	29/12/94
A D Mafujeba Noordkaap	Government must mediate with the mining industry on wages, etc.	22/01/95
E M Langenhoven Bon Accord	Suggests a qualified franchise	26/01/95
T Burton Glencairn	Attention paid to children and child-care	25/01/95
M T Dlamini Clermont	Government should attend to social welfare of all	07/01/95

J M Richfield Dennesig	Constitution to be clear to allow easy access - suggested three tier construction - formal statement to illustrative examples - English to be definitive medium	
J O Kelleman Pretoria	Government spending to be limited by Statute - equitable taxation	17/01/95
D Jacobs Glenstantia	Parliament to be in Pretoria - will cut excessive spending and would help RDP	08/02/95
Unknown Kuils Rivier	Respect for fundamental rights	08/03/95
L van Niekerk Kuils Rivier	All must join in the process of "give and take"	08/03/95
J Reynolds Kuils Rivier	Rights must protect the individual	08/03/95
J R Carenjee Kuils Rivier	Use of public opinion polls in contentious matters	07/03/95
D Aquisto Kryber Court	Decentralised government - more effective. "Gods law" to be used	06/03/95
V Amory Kelder Park	Law-making must be careful	
F Abrahamson Victory Park	Fairness when applying the fundamental rights	08/03/95
P Fenwick Bellville	Preamble: emphasis on "Triune God"	07/03/95
W S Diale Potgietersrus	Need to have flexible government - will ensure effective democracy. Government must reflect the "feelings" of the ordinary persons	22/02/95
R S Masango Umtata	Democracy: all must have equal rights to vote - representatives to represent respective constituencies institutional changes only when subject to a referendum. The State: Unitary, with one national government - provincial governments not totally independent. Layered government structure to ensure community participation	12/02/95
N Murray & N Williams Eersterivier	Preamble: reference to "Triune" God	06/03/95
E Syaer	Decrease size of Assembly for more effective government - constituency based representation. Constitution must be clear. Citizens have duty to uphold it	22/02/95
Keitumeise	Preamble: use of "Trinity"	17/02/95

K Chasha	Preamble: must declare obedience to God	17/02/95
H Kustner	Preamble: support for notion of higher power - constitution to enshrine right of self-determination in order to live in preferred communities	
C Bentley Johannesburg	Preamble: Declaration of belief in "Holy Trinity"	17/02/95
E J Davis Bloemfontein	Preamble: incorporate Biblical commandments	15/02/95
W Kruger Roodekrans	Accountability - public right to vote incompetent representatives out of office	16/02/95
J B Labia Sea Point	Maximum distribution of power through decentralised government and federal system will strengthen central government. Will also promote self-determination. Private enterprise and free market to be encouraged	17/02/95
J M Durban	Respect for the rights of all. Emphasise future to build "New SA" together	15/01/95
Unknown	Forget the past; work together with everyone - mutual respect for all - protection of minority rights	28/01/95
K Burger Worcester	Equality for languages	29/01/95
R Shone Greyton	Public affairs to be conducted openly - public participation in debates. Constitution to be as simple as possible	02/02/95
J C Jacovides Pinetown	Federal government - will ensure impartiality. Conflict to be overcome through unified government	09/02/95
T Ntomi Langa	Rights to have recourse to International Human Rights Law (UNO)	09/02/95
A Minies	Preamble: must reflect religious convictions - uphold Christian norms	30/01/95
E Schoeman	Retain "Afrikaner" place-names	
D M & J M C Joubert	Democratic system to be implemented generally	30/01/95
O Huckschlay Knysna	Respect for fundamental rights, democratic state	01/03/95
K Smith Belhar	Authority of God's word	
A E De Kock Stellenbosch	Equal taxation	03/02/95
L Rajaram Pietermaritzburg	Proportional representation answers SA's complex situation	

Unknown	Constitution to be upheld	
C S Payne Boksburg	Economic growth to be encouraged	03/01/95
C R L Davies Platwal	"one-man, one-vote" unsuited to SA. Qualified franchise to be protected in the Constitution	03/02/95
M Biyela Newcastle	Name of South Africa to be retained as well as symbols - Gives a sense of origin. Preamble must reflect diverse nature of South Africa's religions. Idea of Volkstaat is unrealistic	
R K Stocks Pretoria	Progressive negotiation, leads to greater understanding of governmental problems	06/02/95
H de Boer Cape Town	Recognition of "full and equal rights" for all - people should be able to participate in decision-making power of central government to be curtailed, more power to federal governments. Should have regard to foreign constitutions, viz. Germany, Switzerland, Canada - English to be used as common medium	
T F Keane Fish Hoek	"Founding" American Constitution is a good model - greater public participation in local government will ensure greater accountability - power to "recall" representative should be enshrined in the constitution	18/01/95
E M Grant Cape Town	"Supreme laws of God" to be in Constitution	23/02/95
R Greenberg Houghton	English to be used in public places. "Open" economy will allow us to compete internationally	
A Hoffenberg	Economy can't be controlled centrally, the market must be free	14/02/95
B M Brown Kraaifonten	We must be obedient to the laws of God	15/02/95
M Selamulela Thohoyandou	Emphasis on "Triune"	17/02/95
B Halleday Paarl	Equality for women	17/02/95
T Ndlovu Johannesburg	Belief in the "Triune"	17/02/95
P Galefa Kwa-Xuma	Constitutional recognition for male rights	
W Hammond Diep Rivier	RDP to be encouraged	07/02/95

P du Preez Pretoria	Federal government will encourage democracy. Provincial and central government is to balance each other's powers. Separation of powers. English to be common medium. Uphold fundamental rights. No right of secession from the Republic. Retention of current flag, coat of arms and both national anthems	
C Cairns Pietermaritzburg	Governmental accountability to be ensured by code of conduct enshrined in the Constitution	13/02/95
A P	Support for GNU - Religion not to be abused - Federal system will lead to strife. Uphold fundamental rights	13/02/95
D Kabani Epumalanga	Democracy to be entrenched. State must play an active role in the development of people. Provinces to have sufficient powers	13/02/95
V Meyer Wingate Park	Multi-party democracy to be upheld. Privatization and free-market economy to be encouraged. Retain historical place-names and memorials	24/01/95
Z Mtiki Lusikisiki	Fairness in implementing development programmes	10/02/95
T Shaku Atteridgeville	Constitution to be drafted to break from the past - recognition of other languages used in SA and correct use of African languages	
P Du T Fourie Gordon's Bay	Uphold fundamental rights in relation to environment	
E Osman Durban	Minority rights questionable - better to entrench individual rights for every person - English to be chief communication medium - leads to greater unity	
D le Roux White River	Preamble: based on Biblical reference (Psalm 33) - Constitution to uphold Christian values	23/02/95
M Zoti Westville	Equality - sexual orientation	
A Group	Government must be accountable to general public for undiscipline and abuse of power. Money to be spent where most needed. Illogical to focus on past	26/02/95
Unknown	English to be common medium - will cut down expenses. Economic equality to be applied - no tax discrimination	26/02/95
A & P Guerreiro Gillview	Respect each other's rights	24/02/95

M Mackeller Constantia	Equal application of fundamental rights	01/03/95
A Steiner Pinegowrie	Public right to initiate referendum. Accountability to be ensured by: - public right of recall - easy access to representatives - access to information	14/02/95
I Sampson	Equality - sexual orientation	
J Katz Kimberley	Government must be accountable - there must be transparency	08/01/95
R Scott Durban	One official language only	09/02/95
T Bedford London	Constitution cannot be written without proper planning. A true democratic constitution serves the people, not the politicians - parties should not write the Constitution - Constitution must be understandable to all	31/01/95
B Mashanen Mahopane	Volkstaat to provide equal rights for all; all are the "volk" of SA - uphold fundamental rights - unitary state	23/02/95
Unknown	Current provinces to stay in a federation - will have certain powers	
L Sigasa Tembisa	Constitution must ensure accountability - Constituency system can achieve this - layered structure of authority	17/01/95
J Solomon	English to be official medium - right to learn other languages besides Afrikaans. One National Anthem only re: "Nkosi Sikelele". No creation of white or black homelands	
P De Wet Randburg	Citizens must be informed and responsible in democratic state - education system to ensure this	
D Rabie Cape Town	System of Federalism (no volkstaat) - Political representation must be fair and must occur through due procedures.	
S Dodge South Hills	Federation	02/03/95
Gift Nkuna Guyani	Preamble : include God	17/02/95
Itekeng Mathbathe Mabopane	Preamble: God is King	17/02/95
Marlon Green Johannesburg	Preamble: Trinity	17/02/95

Sakkie Nell Secunda	Preamble: Reconciliation	
Miss White Kraaifontein	Equality for all	01/02/95
IJ Van der Merwe Groot Brakrivier	International sign language official. All can communicate.	26/01/95
Erika Ochse Elandspoort	Preamble: Kingdom of Christ. Language rights protected.	28/01/95
NP Cloete Verwoerdburg	Small and lean accountable government	30/01/95
Ashley Hendricks Blackheath	Suffrage: Age 15	08/03/95
N Msimango Hillbrow	Preamble: God must be worshipped	17/02/95
K Mathabathe Pretoria	Preamble: Trinity and love between blacks and whites.	17/02/95
Bongani Kunene Orlando	Preamble: We believe in Trinity	17/02/95
NS Gida Hospital Hill	Preamble: "We pledge allegiance to flag on new democratic South Africa, one nation before God the Father, Son, Holy Spirit"	17/02/95
Florence Nunes Bez Valley	Preamble stress education	17/02/95
Tracey Butler Lorentzville	Preamble: Believe in Trinity	17/02/95
Stanley Mkgole Hillbrow	Recognise diversity of languages	27/02/95
Eric Tshigeng Phokeng, North West	Statehood embrace local custom. Be His Majesty's state	
P Ramantswana Dobsonville North	Equal before law and country	
JL Mnsi Phalaborwa	Accountable: Premiers to be elected	17/01/95
V Meshack Sinezi Welkom	Too many holidays. Remove 21 March, Good Friday, Family Day	18/01/95
Juliane Vorster Bellville	Preamble: Reference to True God	07/03/95
R Bodington Monte Vista	Equality before the law. Central government with strong regional governments.	07/03/95
Riegaana Benjamin Eerste River	Citizens treated equally . Freedom to live where want.	08/03/95

D Drummond Gardenview	Democracy. Character shared all majority and not only one party.	15/01/95
N Govind Durban	Secular state, no reference to God. English official and respective provinces can have another. 8 provinces - N Cape and North West combine.	07/01/95
Vulindlela Mbotoli Port Elizabeth	Federalism. One citizenship for all, free enterprise. Eastern Cape region divide - Ciskei and Transkei.	14/02/95
A Saley Vereeniging	Equality through nationalisation. Islamic state. Leave America.	20/10/94
Sam Hillbrow	Human rights guarantee in Preamble.	17/02/95
JW Conroy Benoni	Parliament - 200, financial accountability, ombudsman, cabinet -12	01/03/95
Graeme Tucker Parktown North	Democracy. Free vote in Parliament.	
Unknown Lombardy East	Federation with national responsibilities. Privacy of information individual.	05/03/95
Stemmet Hilton	Frequent elections. Free market, freedom of religion.	27/02/95
Peter M Ralston Weltevreden Park	Closed economy	15/02/95
LP Mabunda Giyani		13/01/95
J Fray Kuilsriver	Need a truly national consciousness. Guarantee participation and representation.	08/03/95
Anne Carswell Beacon Bay	No criminal records if Member of Parliament	03/03/95
Peaceful Hillbrow	Preamble: "Lord be with us everyday"	
Bob Dlamini Hillbrow	No more illegal immigrants	17/02/95
JS Swart Rustenberg	Regional government. Free market entrenched, privatisation. Free trade agreements.	
TA Ntoni Langa	Do not use national figures on ballot papers. Democracy. Return DEBI	17/02/95
Anthea Bosch Kuilsriver	Financial Accountability	08/03/95
Elmary Thomas Kuilsriver	Equality. Participative democracy.	08/03/95

Sibongiseni Hintsho	No government of national unity. Fully accountable. Supremacy of national government.	02/03/95
AS Maharaj Seatides	Accountable government. No golden handshakes.	08/03/95
PI Meakin Claremont		22/02/95
Cyril Siboyani Joubert Park	Preamble: Father, Son and Holy Spirit	17/02/95
Kriston Kuilsvier	Retain official languages	08/03/95
Michael Mallinick Howick	United States role model for federal state. Reject sovereign. Rename: "United States of Southern Africa"	05/03/95
Ezakheni	Transparency	16/12/94
Erik Tonsing Monument Park, Pretoria	Creation of states, based on race with umbrella institution for economic unity.	18/01/95
? Constantia	Afrikaans, full and rightful place	31/01/95
? Constantia	Instead of changing name, demolish e.g. Verwoerd Dam, then rebuild	31/01/95
AA Jacobs Bryanston	Inclusive democracy. "Coloured" must vote and be represented.	16/12/95
M Mogrun New Brighton, P.E.	Change whole state machinery. Opposed to Government of National Unity. Answerable. Simple constitution.	30/01/95
EM Casey Halfway House	Share power	01/02/95
IJ Hetherington	Short constitution, 4-5 devolve much to lowest levels.	17/02/95
Alpheus M Teffo Northern Transvaal	Privatisation enterprise system, investment policy, economic power.	
Peter Sage Clark Pinetown	English: Official. Balanced representative democracy. Elected citizens 18 years. National Assembly average world size. National Population register. Federation.	
Stanley Stcagoma Sedgefiled	Free choice languages. Preamble: "Father, Son, Holy Spirit"	17/02/95
Debbie Goodman Hillbrow	Preamble: I believe in the Lord Jesus because he died on the cross for our sins and because he first loved us.	17/02/95
JC Underhay Nelspruit	Executive to be white. Loves "Die Stem"	19/01/95

J Wiegand Flamewood	Esperanto as official language.	20/01/95
Norman Greenfield Craighall	Accountable government. Strong individual rights. Against corruption. Financial affairs in trust.	11/02/95
Lerato Tlhologelo Khanye	Preamble: "We believe in a true God" Tuition: English	17/02/95
EG Long-Innes Scottsville	Name change: RSA to South Africa	21/02/95
Ndulela Ntloko Berea, Johannesburg	Preamble: "We believe in a true God"	
M Wepener Bloemfontein	Afrikaans language retained.	25/01/95
Nigel Shepstone Durban	"Inherent structure" - central and provincial. Representative democracy	19/02/95
J Kriel Welkom	Electoral process at lowest levels of society i.e. wards, town council, advance through the levels. No national elections.	07/02/95
Marianne Hall Homestead	Discard affirmative action.	12/02/95
Patrick Thabiso Kay Rustenburg	Democracy, nationalisation of big business, government business control service.	20/02/95
J Turkstra Jeffreys Bay	No affirmative action	12/01/95
? Fichardpark	Preamble: distinguish clearly which God. Afrikaans, first language or equal status.	30/01/95
AG Hawarden Pietermaritzburg	Federal state	
CG Snyman Tzaneen	National Assembly reduced to 200 members. Senate, wherein minorities equal representation. Stengthen federalism, limit economic interference by state, entrench language rights but documents only English and Afrikaans. Only SA citizens vote.	15/01/95
Solomon G Matlou Carltonville	Democracy. constitution based on Freedom Charter.	14/01/95
No name Hawston	English and Afrikaans entrenched official languages.	17/01/95
Dan Rabie Cape Town	Federalism, Volkstaat impractical	20/01/95
M Calitz	Laws to regulate state spending	29/01/95

Brendon Hynes Northcliffview	Parliament supreme, rule of law apply to everyone, sovereign state with minorities right to hearings.	04/03/95
PD Smuts Parow	Divide RSA into constituencies, represented by Member of Parliament.	30/01/95
CJ Snyman Newcastle	Ministers and MPs to be punctual.	30/01/95
Lad Simphiwe and Ronald Movoko Umtata	Opposed to Government of National Unity	09/02/95
Erich Trautman Ladysmith	Free enterprise, voting age 21, Federal states or cantons with powers: police, education, infrastructure, taxation.	10/02/95
	(iv) <u>GOVERNMENT STRUCTURES</u>	
Minister of Foreign Affairs - A Nzo	Foreign Affairs to be maintained as function of central government. Recognition of International Law in SA law - Presidential approval in negotiating international agreements problematic - International agreements to be part of SA law unless inconsistent with Constitution or expressly excluded by Parliament. Internationally accepted human rights to be upheld in Constitution - reference to various conventions.	15/02/95
Ministry of Arts, Culture, Science and Technology	Multilingualism should be clearly enshrined as the guiding principle in language provisions of the Constitution. Sets out 5 options from "radical multilingualism" to "radical elite closure".	02/02/95
Transvaal Municipal Association Marshalltown	Proposes a local government model on the basis of federal and confederal principles in the Belgian and Swiss Constitution. In particular Belgian Community Councils (Flemish, French and German-speaking) and the Swiss Canton System. Detailed proposals re local government (TCs2 and 3) (30 pages, in English and Afrikaans.)	10/01/95

Volkstaat Council Pretoria	Democracy realised through the division of power between different organs of state and territorial units and the recognition of the self-determination of different peoples. Diversity of cultures and languages recognised, as well as right to equality within a federal system. SA is a single federated national state, the fundamental right of self-determination is recognised. The binding force of the Constitution derives from the consent of different peoples and nations of SA.	28/02/95
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THEME COMMITTEE 1

BLOCK 2

SUMMARY OF PUBLIC SUBMISSIONS - VOLUMES 9 and 10

NAME AND LOCALITY	SALENT POINTS OF SUBMISSION	DATE OF SUBMISSION
D Sardi, Port Elizabeth	National Assembly to be constituted by Provincial Councillors, who in turn to be constituted by Sub-Provincial Councillors who will be drawn from District Councils, eventually drawn from Ward Committees in urban and rural areas. Nine Provincial Facilitators to co-ordinate functioning of Civil Society Forums	30/01/95
M Gagiano, Cape Town	Rejects sexual orientation as a ground for non-discrimination	7/02/95
J S Du Plessis, Jacobsdal	Proposes Federal Government. Self-determination to be provided for, diversity of cultures to be recognised and protected to extent that cultural groups to be consulted on legislation. Equality of cultural groups, equal opportunities under the law, racial groups to constitute second tier of government	25/01/95
E Stott, Cape Town	Secession to be allowed, federal nature of government	23/01/95
C C Verwoerd, Pretoria	Protection of language and culture, equality of status of languages and cultures	16/01/95
R C Haw, Durban	Advocates strong federal structure, minorities to be accorded self-determination, central government to have minimum powers. Cultures to be protected. Draws distinction between "discrimination" and "differentiation". Boundaries in provinces to be determined by people at grassroots	12/01/95
D Van Heerden, Knysna	Equality of religion. If traditional leaders recognised, "right wingers" to be recognised as well	18/01/95
G R Oliver, Cape Town	Federal structure proposed, provinces to be totally self-governing	13/01/95

G J Selikow	High degree of provincial autonomy, protection of minorities	17/01/95
F Porrill, Roosevelt Park, Johannesburg	Equality provisions to be subject to teachings of Christianity, affirmative action considered to be "reverse apartheid"	20/02/95
N J H Anderson, King William's Town	Federal structure essential	13/02/95
A N Mphephu	Common South African citizenship, provinces to be controlled by central government	24/01/95
E Clerkin, Durban	Concept of equality frustrated by traditional leadership	30/01/95
J Banda, Johannesburg	Affirmative action strongly motivated, with primary objective being economic empowerment	
	END OF VOLUME 9	
B Deller, Sandton	Affirmative action to have cut-off date (the year 2000), in order to prevent flight of "intelligentsia"	15/01/95
A H Hattingh, New Germany	Maximum devolution of power to regional and local government on regional and local matters respectively, equal opportunity for all, without any discrimination	08/02/95
N Connel, Saxonwold, Johannesburg	Constitution should protect "non-black" groups from reverse racism, which may result from affirmative action. Section 8 of the constitution, which refers to "persons disadvantaged by unfair discrimination", to be amended by the insertion of the word "presently" before the word "disadvantaged", so as to allow the present circumstances of a person belonging to a disadvantaged group to be taken into account in implementation of affirmative action	05/02/95
J M Mzizi, Sebokeng	Equality before the law	27/02/95
D O Bowen, Discovery	Central government to have as much power as possible for national uniformity	05/02/95

U A Naicker, Darmall	Traditional leaders are products of apartheid and should not be retained	01/02/95
O J Ladell, Port Elizabeth	Calls for racial and gender equality	02/02/95
M Ashfield, Glenstantia	Rejects sexual orientation as a ground for non-discrimination, affirmative action measures to be restricted to a period of 8 to 10 years	01/02/95
A Jacob, Brownstone	Strong call for corrective action to be entrenched	16/02/95
W Muhali, Thohoyandou	Argues strongly for a unitary State	08/02/95
H Voges, Pretoria	Supports federalism and protection of minority rights	01/02/95
Mr & Mrs D Pottinger, Johannesburg	Equal rights for all, affirmation that sexual orientation should not be grounds for discrimination	27/02/95
C A Spero, Port Elizabeth	Calls for scrapping of "traditional chiefs", as they are a "burden to the taxpayer" and of no benefit	08/02/95
C Walker, Durban North	Affirmative action means reverse discrimination and not to be included in the constitution	30/01/95
M E Lekhooa, Brits	South Africa to be independent, unitary State. Formal and substantive equality to be entrenched	09/01/95
M M Bowen, Port Elizabeth	Rejects sexual orientation as a ground for non-discrimination	26/01/95
R W Parker, ?	Opposes affirmative action	09/02/95

DISCUSSION

1. 94 submissions were contained in volumes 9 and 10. The majority of the submissions did not relate to the matters under consideration in Block 2. However, to the extent that the submissions touched on the constitutional principles which are relevant to Block 2, the salient points of such submissions are contained above.

2. Regarding **EQUALITY**, all of the submissions supported the general notion that formal equality should be entrenched in the constitution. However, 35% of persons rejected sexual orientation as a ground for non-discrimination. Approximately 15% of the persons opposed the entrenchment of substantive equality provisions, while the same percentage felt that affirmative action measures should be restricted to a few years.
3. Regarding **SOVEREIGNTY**, 25% of the submissions called for South Africa to be an independent and unitary State. These submissions expressly rejected federalism. The balance of the submissions were in favour of federalism in some or other form, with only one submission being in favour of allowing secession.
4. All the submissions advocated the protection of cultural and minority groups. One submission went as far as to suggest that the protection of minority and cultural groups should manifest itself in the structuring of the second and third tiers of government on a strictly racial basis.
5. As to traditional leaders, whilst a few expressed themselves on the matter, there was an equal division of opinion as to whether traditional leadership ought to be accorded some protection in the constitution. One submission argued against the protection of traditional leaders and customary law in the constitution, since it was argued that this clashed with equality principles of the constitution. Others argued that traditional leaders were relics of apartheid and should therefore be accorded no protection.

M J HUSAIN

JOHANNESBURG

D. **PERSPECTIVES WHICH EMERGED FROM PUBLIC HEARINGS**

Theme Committee One held Public Hearings on the morning of Monday 6 March. The focus of the hearings was Block 2. A brief summary (full texts are available from the Secretariat) of what the three speakers said on that occasion follows.

i) **PROFESSOR DENISE MEYERSON**

(Department of Philosophy, UCT) addressed the issue of equality, and sexual equality in particular. She argued that the concept of "sex discrimination" was an ineffective means of "outlawing detrimental treatment on the grounds of such characteristics as pregnancy", even though it may effectively outlaw blatant manifestations of sexism. She preferred the concept of "fairness" as the basis for outlawing such statements, but noted that foreign case law rather tends to stick to an artificially expanded notion of "discrimination" to try to encompass such treatment.

She concluded that we should give up the "conceptual apparatus of discrimination entirely" and seek: rather to determine whether particular policies which impact adversely on women's interests are fair? Professor Meyerson also set out the notions of "formal and substantive equality" and "direct and indirect discrimination in greater detail", noting the consequences of each idea.

ii) **PROFESSOR DAVID WELSH**

(Department of Political Studies, UCT) focussed initially on the concept of democracy and the factors vitally affecting its establishment in a deeply-divided society. He then concentrated on some of the practical problems of the implementation of voting behaviour, the fate of minority parties and coalitions etc...

He offered seven brief propositions concerning ways of sustaining democratic government in deeply-divided societies among them: that maximal consensus across party lines and broad-based coalitions support the development of democracy in such circumstances, while noting that constitutions can only address only a small part of the problem.

Professor Welsh submitted two articles written by him on the subjects: "Liberals and the Future of the New Democracy in South Africa" (Optima November 1994 pp 39 - 44) and "The Governing of Divided Societies: A South African Perspective" (Book not identified, Ch4 pp49-61).

iii) **DR MAMPHELA RAMPHELE**

(Deputy Vice chancellor, UCT, and Director, Public Information Centre, IDASA) concentrated on equality, in particular affirmative action and equal opportunities.

She acknowledge the need to create a more equitable distribution of resources as part of nation building and "to articulate a vision of equity which addresses race, class, gender, age and geographical inequalities within a holistic framework to minimise potential conflict around competing demands and claims".

She stressed the importance of choosing a strategy for equal opportunities which would ensure the best outcome over the medium and long term to enhance both social and individual capacities to realise full potential. "Goals, targets and time tables are essential to ensure that the process of reducing inequalities properly monitors", she argued.

Finally, Dr Ramphele emphasized that "proper and creative management of the fears, anxieties (and) expectations of all citizens (was) essential to success". She singled out fears related to "Affirmative Action politics" as likely to be particularly costly for the nation, especially in some provinces.

