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**A03**

# **CONSTITUTIONAL ASSEMBLY**

**THEME COMMITTEE 1  
CHARACTER OF DEMOCRATIC  
STATE**

**14 NOVEMBER 1994**

**ROOM M46**

**4TH DRAFT REPORT**

**REPORT A001  
FOURTH DRAFT**

The following report notes the various issues raised by the parties under the sub-headings of the the Themes agreed to.

**A) ISSUES TO BE DEALT WITH ON A PRIORITY BASIS**

**1. DEMOCRACY**

NO.	PARTY	PARTY POSITION
1.	IFP	<p>1. SEPARATION BETWEEN CHURCH AND STATE</p> <p>1.1 Church and State should be totally separated.</p> <p>1.2 The limitations on the State to take any action which promotes, supports or hinders any given church or religion in general.</p> <p>1.3 The State should not be involved in any religious matter.</p> <p>1.4 Churches and politics.</p> <p>2. TYPE OF STATE</p> <p>2.1 The ideal of South Africa being a social State but not a socialist state.</p> <p>2.2 Private property and free-market enterprise and the role of government in economic matters should be severely limited.</p> <p>2.3 Recognition in the constitution of all recognized social and economic rights.</p> <p>2.4 Constitutional imperatives which mandate the legislature to remove social injustice, and promote the social growth of all South Africa.</p> <p>3. SEPARATION OF POWERS</p> <p>3.1 The power of the state is to be exercised within the restraints of a democratic system in which the rigidity of the constitution, the accountability of government, the guarantees of human rights are enhanced by the separation of powers.</p>

No.	PARTY	PARTY POSITION
1.	IFP	<p>5. CITIZENSHIP</p> <p>5.1 Entitlement to citizenship.</p> <p>5.2 The purpose of a constitutional definition of citizenship.</p> <p>5.3 Unified notion of citizenship.</p> <p>5.4 Citizenship and the relationship between provincial governments and their subjects.</p> <p>6. WHAT TYPE OF DEMOCRACY?</p> <p>6.1 How far should the principle of democratic representation extended?</p> <p>6.2 How does the democratic principle related to:</p> <ul style="list-style-type: none"> <li>- pluralism</li> <li>- the notion of autonomy of social, cultural and economic formations?</li> </ul> <p>6.3 Participatory democracy.</p> <p>6.4 Recognition and entrenchment of an area of protected constitutional economy for social, cultural and economic formations.</p> <p>7. SUFFRAGE</p> <p>7.1 Active and passive voting rights.</p> <p>7.2 Different notions could be employed for active and passive voting rights.</p> <p>7.3 Different notion of suffrage could be employed at national and provincial levels.</p> <p>8. SEPARATION OF POWERS (FORM OF STATE)</p> <p>8.1 How are the powers between national and provincial levels of governments to be separated?</p> <p>8.2 Concurrent powers versus exclusive powers.</p> <p>8.3 Relation between national overrides, or framework legislation, or general principles of legislation and concurrent or exclusive provincial powers.</p> <p>8.3.1 Relations between provincial and national levels of government regulated by checks and balances.</p>

No.	PARTY	PARTY POSITION
1.	IFP	<p>8.3.2 Intended as a predetermined set of mutual interference among the powers of each level of government, based of the extension by relevancy or implication of the powers of one level of government into areas of competence of the other, as in theory is the case in the U.S. (i.e.: interstate commerce).</p> <p>8.4 The separation of powers between any level of government and civil society.</p> <p>8.5 Separation between the powers of any government and civil society: recognition of an area of autonomy for individuals as well as social, cultural and economic formations.</p> <p>8.5.1 Autonomy in terms of the capability of interests to self-regulating and administering in respect of which no government has a compelling reason of public interest to intervene.</p>

2.	FF	<p>1. Democratic rule in South Africa. The nature, excellence and limitations of democracy. Democratic governance at all levels. The origins and scope of democratic thinking.</p> <p>2. Systems of democracy:</p> <ul style="list-style-type: none"> <li>* Liberal Democracy</li> <li>* Multiparty Democracy</li> <li>* Democracy in traditional African communal societies.</li> <li>* Traditional leaders and democracy.</li> <li>* The Freedom Charter and democracy.</li> </ul> <p>3. Pluralistic Society and democratic rule. Minority rights in a democracy? Group domination and democracy. Self-determination and inclusive democracy.</p> <p>4. A democratic culture in Society in South Africa.</p> <ul style="list-style-type: none"> <li>* Freedom of information</li> <li>* Press freedom</li> <li>* Tolerance</li> <li>* Direct democracy: referendum, petitions, mass action</li> </ul> <p>5. Democracy and State formation</p>
3.	PAC	<p>Since democracy has throughout history been understood differently for implementation, we felt that it should, in our case, mean a constitutional right to representation in the entire governing process. This constitutional right should vest in all citizens of the country without any regard as to race, class, religion or gender.</p> <p>We also maintain that our democracy shall mean nothing if it will not guarantee equal access of the citizens to economic empowerment. We held as idiomatic that political democracy with no economic democracy is no democracy.</p>

No.	PARTY	PARTY POSITION
4	DP	1.1 Universal Adult Suffrage 1.2 Regular free elections. 1.3 The guarantee of Civil Liberties especially freedom of expression and association. 1.4 The independence of the judiciary.  (the above "lock together" as a cluster)  1.5 Built-in, racially / ethnically defined majorities are critical to democracy because democracy presupposes the reasonable alternation of government and / or the shifting bases of coalition.
5	ACDP	What do we understand by democracy? What type of democracy? a) Liberal democracy b) Christian democracy c) Democracy d) Multiparty democracy
6	ANC	1. Representative Government (Principle VI) 2. Participatory democracy and Accountability (Principle IX) 3. Equality, Affirmative action 4. Sovereignty 5. Citizenship and Franchise 6. Separation of Powers 7. Majority Rule
7	NP	Single Sovereign State, including: * Common Citizenship * Democracy * Equality * Minority rights * Regionalism / Federalism

## 2. EQUALITY

No.	PARTY	PARTY SUBMISSION
1	IFP	<p>1.1 Principle of equality to be entrenched in the Constitution in the context of:</p> <p>1.1.2 Formal equality to be entrenched.</p> <p>1.1.3 Entrench the principles of substantive equality.</p> <p>1.1.4 Promoting equal opportunities.</p> <p>1.1.5 Promoting equal access to opportunity.</p> <p>1.2 Implementing the principle of equality and the areas of national and provincial jurisdiction.</p> <p>1.2.1 The principle of equality to be implemented and enforced exclusively by the National Government.</p> <p>1.2.2 The principle of equality to be implemented exclusively in their areas of competence.</p>
2	FF	<p>Brotherhood, freedom, equality and justice for all citizens.</p> <p>Political and economic democracy.</p> <p>Citizenship.</p> <p>Universal suffrage.</p> <p>Equal responsibilities. Conscription, taxes.</p> <p>Constitutional protection of citizens.</p> <p>Fundamental Rights</p> <p>Civil Rights</p> <p>Religious Freedom</p> <p>Freedom of conscience</p> <p>Cultural protection.</p>
3	PAC	<p>Equality should mean an implementation of the process that will in an evolutionary undermine and eventually and finally do away with class cleavages founded on economic exploitation</p>
4	DP	<p>1.1. Equality before the law.</p> <p>1.2 Equality of worth ( dignity, respect).</p> <p>1.3 Equality of opportunity.</p>
5.	ACDP	<p>Every person shall have the right to equality before the law and equal protection of the law. Every person, including unborn children shall have equal right to life.</p>

### 3. SUPREMACY OF THE CONSTITUTION

NO	PARTY	PARTY POSITION
1	IFP	<p>1.1 The form in which the Constitution shall be the supreme law of the land.</p> <p>1.1.1 Shall the Constitution apply in its entirety to interpersonal relationships?</p> <p>1.1.2 To which extent should the Constitution apply with respect to the area of provincial authority?</p>
2	FF	<p>A Concepts of the Constitution and the role of the Constitution: The Supremacy of the Constitution - A Rechtstat</p> <p>B One Sovereign State: The principles and practice of Statehood. Sovereignty, unity and integrity. Police and defence. Pluralism and State Loyalty. Nation building. The name of the State, symbols of statehood. Official languages. International positions.</p>
3	PAC	The Constitution must be where all state power resides.
4	DP	Clause 4 (Chap1) of the present interim Constitution reflects our position admirably.
5	ACDP	The Constitution shall be the supreme law of the land. It shall be binding on all organs of State at all levels of Government.
6	ANC	Supremacy of the Constitution
7	NP	Supremacy of the Constitution



#### 4. REPRESENTATIVE GOVERNMENT

No.	PARTY	PARTY POSITION
1	IFP	<p>1.1.1 Political representation, participatory democracy, direct democracy and individual and collective autonomy.</p> <p>1.1.2 Systems of representations to reflect the plurality of our society, the degree of literacy and to promote the empowerment of people at all levels.</p> <p>1.1.3 Representative government must be made as autonomous at all levels of government.</p> <p>1.2 The type of provision should the Constitution make for representative government?</p> <p>1.3 The principle of political representation of government and regular elections should be Constitutionally entrenched with respect to national, provincial and " primary" local governments ( excluding local government substructures, including traditional communities)</p> <p>1.3.1 The implementation of this principle with respect to provincial and local government should be left to the autonomy of the provinces.</p> <p>1.4 Provision shall be made for referenda to be held at the request of a reasonably small number of dissatisfied citizens at all levels of government.</p> <p>1.5 Principle of electoral representation in the Constitution.</p> <p>1.5.1 Provincial autonomy and principle of electoral representation in provinces.</p>
2	FF	<p>Participation at all levels Representation and systems of representation Elections, voters roll, regularity of elections, the electoral commission.</p>
3	PAC	<p>The Constitution should enshrine the fact that the government and as such no person shall be committing any crime is either disobeying it or seeking to overthrow.</p>

4	DP	Democracy by definition is representative government, but care must be taken to ensure that all sections of society are effectively able to be represented in government if by (government) is understood the executive arm of government.
5	ACDP	We would like to see the principle of party representation in government entrenched in the Constitution. There should also be regular elections at local, provincial and national level.

5. ACCOUNTABILITY

NO	PARTY	PARTY POSITION
1	IFP	<p>Freedom of Information :</p> <p>1.1 Procedures and mechanisms needed to make government as transparent as possible. The limits of discretion which should be set for Ministers of State charged with security matters.</p> <p>1.2 The Constitution and the right to access government information,            1.2.1 The right to access all government information and private data banks information entrenched in the Constitution subject to :            1.2.2 Customary qualifications and exclusions, subject to judicial review.</p> <p>Accountable administration:</p> <p>2.1 Political, legal, and judicial mechanisms to make government accountable.</p> <p>2.2 How should the Constitution deal with the principle of administrative accountability?</p> <p>2.3 The notion of administrative justice and judicial reviewability of all administrative actions shall be Constitutionally entrenched.</p> <p>2.4 Public official shall be personally responsible for gross negligence and malice.</p> <p>2.5 Provisions to be made for the recognition of the right to petition any government structure.</p> <p>2.6 The Constitution should entrench the notion of participation of the affected public interest in the formative process of an administrative action or regulation.</p>

2	FF	<b>Administration and control mechanisms,          Transparency          Impeachment of representatives          Controlling the abuse of power:              Separation of power          a. Legislative. Consultation on, preparation of,              promulgation of bills. Parliamentary process.          b. Executive          c. Judicial</b>  Houses of parliament The role of political parties Fiscal Control  Budget and Audit
3	PAC	The government must be seen to be accountable to the electorate. The Constitution should facilitate the easy challenging of the government or the State by any individual citizen.
4	DP	The principle is that the government is in the first place accountable to Parliament and in the second place to the electorate ( including for every cent that it spends).
5	ACDP	The government must be accountable to those who put them into power. Administrative and moral accountability must be looked at very carefully.
6	NP	Accountability

**6. ISSUES LEFT TO BE CONSIDERED**

No.	PARTY	PARTY POSITION
1	IFP	Preamble Name and symbols of country, Language, Economy constitution, Relation of international law and international legal system

**B. ISSUES TO BE DEALT WITH IN COMMISSIONS**

No.	PARTY	PARTY POSITION
1	ACDP	1) Name of the state and symbols The geographical position of our country suits the name "South Africa" perfectly. Because of this, the ACDP does not see the need of changing the present name. It is the symbols that may have to be changed.  2) Division of Power The power allocated to each level of government must be divided into legislative, judicial and executive powers.
2	ANC	1) Name of State and Symbols 2) Division of Powers
3	NP	1) Symbols 2) Separation of Power  Each commission should have six members, one to be nominated by each participating party.  The Commissions should investigate the matters referred to them with a view to providing the Theme Committee with all relevant information relating thereto.

**C. TECHNICAL ASSISTANCE REQUIRED**

No.	PARTY	PARTY POSITION
1	DP	Proportional Representation - Prof Hennie Kotze, Dept of Political Science, University of Stellenbosch.
2	ACDP	The rights of prisoners must be looked very carefully by the theme committee and technical committee. Criminals cannot have exactly the same rights as law abiding citizens. They must forfeit some if they are found guilty and receive a prison sentence.
3	NP	The service of three appropriately trained and experienced experts should be made available to the Committee <u>without delay</u> . Appointments should be made from the list published by the Directorate.

**D) AREAS OF OVERLAP WITH OTHER THEME COMMITTEES**

No.	PARTY	PARTY POSITION
1	NP	* Separation of Powers; and * Proportional representation are matters that also fall within the ambit of the work to be done by Theme Committee 2.

**E) STRUCTURES AND PEOPLE TO BE CONSULTED**

No.	PARTY	PARTY POSITION
1	NP	The consultation process should be in accordance with the Constitutional Assembly resolutions regarding public participation.

## 2. EQUALITY

No.	PARTY	PARTY SUBMISSION
1	IFP	<p>1.1 Principle of equality to be entrenched in the Constitution in the context of:</p> <p>1.1.2 Formal equality to be entrenched.</p> <p>1.1.3 Entrench the principles of substantive equality.</p> <p>1.1.4 Promoting equal opportunities.</p> <p>1.1.5 Promoting equal access to opportunity.</p> <p>1.2 Implementing the principle of equality and the areas of national and provincial jurisdiction.</p> <p>1.2.1 The principle of equality to be implemented and enforced exclusively by the National Government.</p> <p>1.2.2 The principle of equality to be implemented exclusively in their areas of competence.</p>
2	FF	<p>Brotherhood, freedom, equality and justice for all citizens.</p> <p>Political and economic democracy.</p> <p>Citizenship.</p> <p>Universal suffrage.</p> <p>Equal responsibilities. Conscription, taxes.</p> <p>Constitutional protection of citizens.</p> <p>Fundamental Rights</p> <p>Civil Rights</p> <p>Religious Freedom</p> <p>Freedom of conscience</p> <p>Cultural protection.</p>
3	PAC	<p>Equality should mean an implementation of the process that will in an evolutionary undermine and eventually and finally do away with class cleavages founded on economic exploitation</p>
4	DP	<p>1.1. Equality before the law.</p> <p>1.2 Equality of worth ( dignity, respect).</p> <p>1.3 Equality of opportunity.</p>
5.	ACDP	<p>Every person shall have the right to equality before the law and equal protection of the law. Every person, including unborn children shall have equal right to life.</p>

**F) SEPARATE REPORTS**

No.	PARTY	PARTY POSITION
1	NP	<ul style="list-style-type: none"> <li>* Preamble</li> <li>* Single Sovereign State</li> <li>* Supremacy of the Constitution</li> <li>* Separation of Powers</li> </ul>
2	FF	<ul style="list-style-type: none"> <li>* Preamble</li> <li>* Single Sovereign State</li> <li>* Division of Powers</li> </ul>
3	ANC	<ul style="list-style-type: none"> <li>* Single Sovereign State</li> <li>* Supremacy of the constitution</li> </ul>

**G) NUMBER OF REPORTS REQUIRED AND DEADLINES**

No.	PARTY	PARTY POSITION
1	All Parties	Commission reports should be completed by the end of February and the cut-off date for Theme Committee reports should be the 15 March 1995, which should be submitted to the CC on the 31 March 1995.



