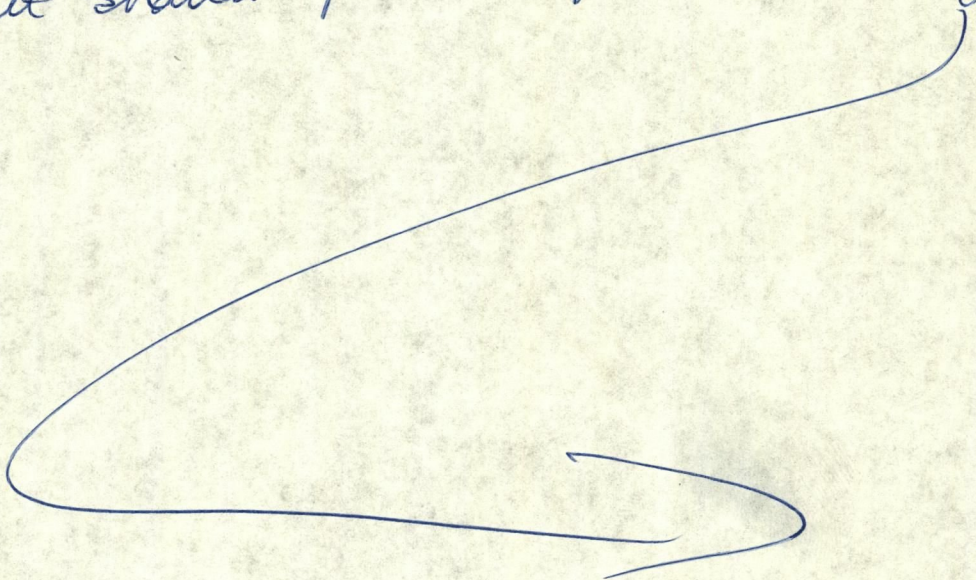


By affirmative action we mean the duty on the State and other bodies to take active steps to alter the structures of inequality inherited from the past. Its advantage to the formerly oppressed is that it states clear goals and can be <sup>legally</sup> enforced <sup>(with the full power of the state).</sup> Its advantages to those obliged to make alterations to patterns of employment, housing and so on, ~~are~~ are that it gives scope for negotiation and voluntary acquiescence, ~~and~~ ~~is~~ ~~a~~ ~~process~~ ~~that~~ ~~can~~ ~~be~~ ~~governed~~ ~~by~~ ~~clear~~ ~~criteria~~, and encourages an orderly reduction of inequalities that takes account of priorities and the time factor. Since this is a key and ~~an~~ innovative concept in the South African context, its implications merit full study.

(ii). How to reconcile freedom of speech,  
and organisation and electoral activity with  
the need to combat the dissemination of  
racial and tribal hatred.

This is relatively easy in constitutional terms. The Freedom Charter as well as international conventions require that 'the practice of national, race or colour discrimination and contempt shall be a punishable crime.' In this sense, freedom of speech and of organisation shall be subject to the <sup>express and</sup> overriding constitutional provisions preventing the dissemination of racist ideas.) ~~As far as electoral activity is concerned, we feel~~  
~~that~~ We feel that the promotion of tribalism and tribal division should be covered in the same way. ~~As far as~~  
~~electoral activity is concerned, the Electoral~~  
~~Act should prevent participation by~~

Our constitutional draft presupposes <sup>in general</sup> a  
multiplicity of ~~political~~ parties and the  
existence of what is referred to as  
political pluralism. This would not  
permit, however, the formation of parties  
restricted on racial or tribal bases,  
or parties dedicated to programmes of  
racial or tribal division. Nor would  
other parties or individuals be permitted  
to indulge in racialist or tribalist  
propaganda or activity. As far as  
electoral activity is concerned, the  
Electoral Act should prevent participation by



organisations constituted on purely racial or tribal bases or which campaign for racial or tribal division. The Constitution should make it clear that campaigning on the basis of promoting the ~~existence~~ ~~perpetuation~~ perpetuation or re-introduction of apartheid shall be prohibited.

(iii). How to devise an electoral system and appropriate structure of government that will encourage the achievements of the principles contained in the Constitution.

The two major problems in this area related to whether to propose a Presidential or a Prime Ministerial type of government, and whether to adopt a voting system based on single member constituencies or <sup>or</sup> proportional

representation. The two questions are interlinked and definitive answers cannot be given in the absence of hard and reliable information on population distribution and likely political ~~preferences~~ preferences. The first elections will be the most important ones, for they will determine who will hold the reins of legislative and executive power at the time when the constitution comes into force. What we offer at this stage are certain preliminary preferences based on general information <sup>presently</sup> available to the movement.

In Presidential systems, the President is both head of state and head of government. The so-called Executive President, such as in the United States or

~~Today in part SA~~  
France, ~~it~~ exercises considerable power, both directly and through the patronage he or she has to offer. Normally the President is elected by direct vote of the total population and holds office independently of the composition of the legislature.

In the Prime Ministerial system, the Head of State may be a constitutional monarch or a President chosen by Parliament, but the ~~key person in~~ <sup>head of the</sup> government is the Prime Minister, normally chosen to form a government on the basis of leading the party or coalition of parties that commands a majority in ~~the~~ Parliament. The Prime Ministerial system originated in Britain and owed its existence to the fact that the continuation of the monarchy after the establishment of Parliamentary sovereignty meant that different persons should be head of State and head of Government, ~~respectively~~. Today, the Prime

Ministerial system is to be found in former British colonies as well as certain Scandinavian and other northern European ~~countries~~ ~~Many of~~ states. Some of these countries are monarchies, but most are republics, with a President as head of State. (Similarly, certain countries with Executive Presidents have Prime Ministers as well e.g. <sup>Zambia,</sup> France. In these countries, the Prime Minister attends to much of the business of the government and of the legislature, but the person really in command is the President). ~~South Africa~~ The ~~South African~~ Republic of South Africa recently changed from a Prime Ministerial to a Presidential style of ~~government~~ ~~of the system~~ government, ~~without any noticeable changes~~ of power in the country in the system as a whole.

Our preference at this stage is for an Executive President. We feel that the country will need strong, clear and

directly legitimated leadership, especially  
in the early years of the new Constitution.  
Since the ANC has undoubtedly more  
popular support than any other grouping,  
and since it has personalities of major  
projection, a Presidential election would  
~~appear to~~ seem to be a relatively secure  
means of ensuring ANC leadership of the  
government. <sup>the ANC would succeed</sup> Certainly, ~~if~~ the system used  
in many Latin American countries were adopted,  
namely, the Presidential candidate who gets  
the highest number of votes ~~is elected~~  
on the first round is elected, even if  
he or she does not get an absolute  
majority. But if the French system were  
adopted, ~~it might be possible for~~  
namely, if no candidate gets an absolute  
majority on the first round, a second  
round is held at which all the candidates



stand down except the top two, the chances of an ANC victory, although still strong, would be somewhat reduced. ~~At least~~

If the ANC were to command a clear <sup>the order of,</sup> absolute majority in the country of say, 60 per cent, then either the Presidential or the Prime Ministerial system would guarantee an ANC-led government. If, however, the

ANC had more support than any other body, but commanded support of only, say, 40% of the voters, a study would have to be made of where the second preferences would go of the other 60%. Would they all rally behind a "compromise" candidate in an alliance against the ANC, or would at least 10% go for the ANC candidature?

There are circumstances where a solid 40% vote for candidates for Parliament running in <sup>a multi-party ~~run~~ contest in</sup> single-member constituencies

is more reliable than the same percentage  
~~of the electorate~~ in a two-person run-off  
in a Presidential race. Thus in Britain  
today, the Conservative government has a  
huge majority in Parliament with only  
about 40% of the vote, Labour, the SDP and  
the Liberal Party sharing the rest of the  
votes between them. In recommending a  
demographic and opinion survey, we are  
not suggesting that each and every  
proposal of ours should be ~~linked to~~  
made dependent on <sup>opinion poll</sup> knowledge of our  
popularity at any stage. But we feel  
we should be armed with as much  
~~knowledge~~ <sup>information</sup> as is obtainable in order  
to make the best decisions.

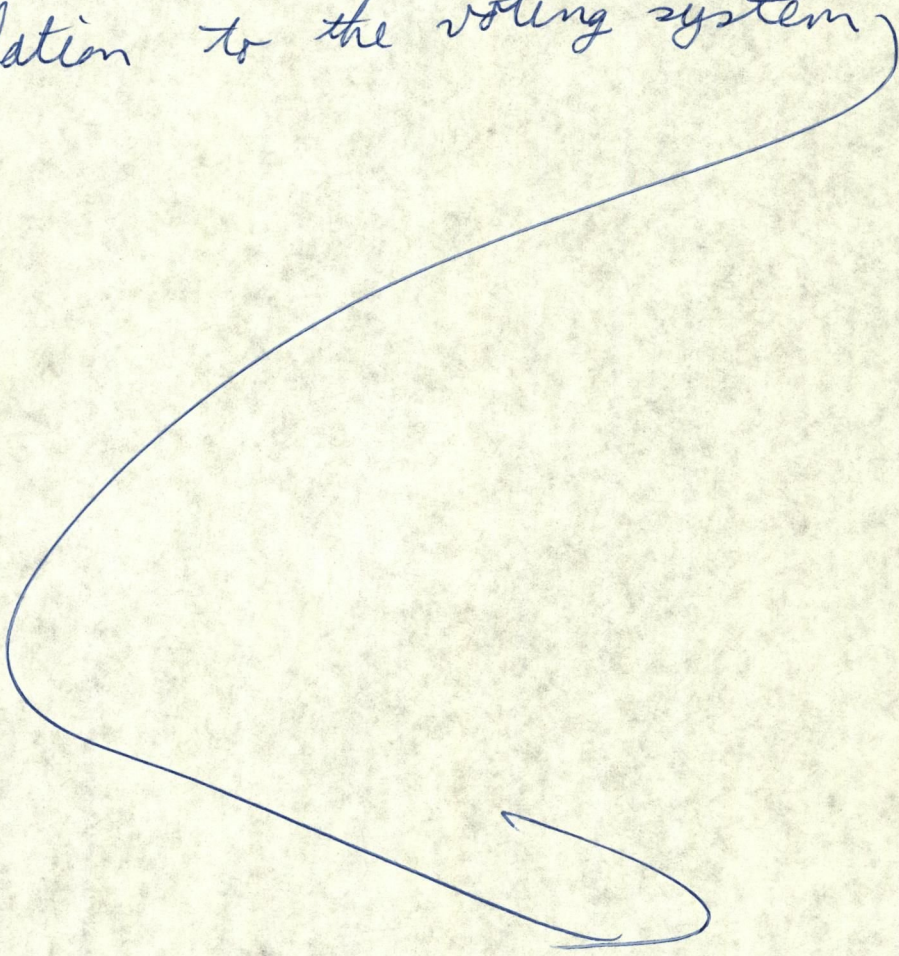
These same considerations apply  
in relation to the voting system

~~INSERT in Section on Presidency~~

Our provisional view was that, given the importance of the President's office, consideration should be given to having a Vice-President running on the same ticket as the President. As in the American system, ~~the President and Vice-President~~ ~~would~~ candidates for President and Vice-President would run together. The disadvantage of having a Vice-President is that it detracts from the office of President, and keeps an important figure in an office without clear functions, save to be a reserve in case the President is incapacitated. The advantage is that in the event of incapacitation or death, the succession is guaranteed without the need for fresh elections until the term of office runs out. In our concrete case, <sup>assuming an ANC person were elected President,</sup> we feel the vice-President could exercise important functions inside

the ANC itself. A third leading figure in the government would be the Prime Minister, whose function it would be to chair the normal business meetings of the Cabinet and to steer legislation through Parliament.

These same considerations would apply in relation to the voting system)



for the legislature. The two main possibilities are the single-member constituency <sup>system</sup> or proportional representation.

Until now, the racist legislatures of South Africa have been elected on the basis of single member constituencies. This is derived from the British system.

The country is divided up into voting areas called (constituencies) delimited according to certain criteria, mainly population strength. In the South African system, the candidate in each constituency who gets the highest vote - even if not a majority of the votes cast - is declared elected.

In the French system a second round of voting is held between the top two candidates to ensure that the winner has at least 50% of the votes cast. If the question of delimitation is important in

present day South Africa, it will be even more so under the new constitution.

The effect of the apartheid system is to divide the population spatially in terms of race.

Constituency boundaries could be drawn in such a way as to encourage cross-race voting, or else they could follow existing housing patterns, or else have a mixture of the two.

Our objective should be to create an ~~electoral~~ electoral system that:

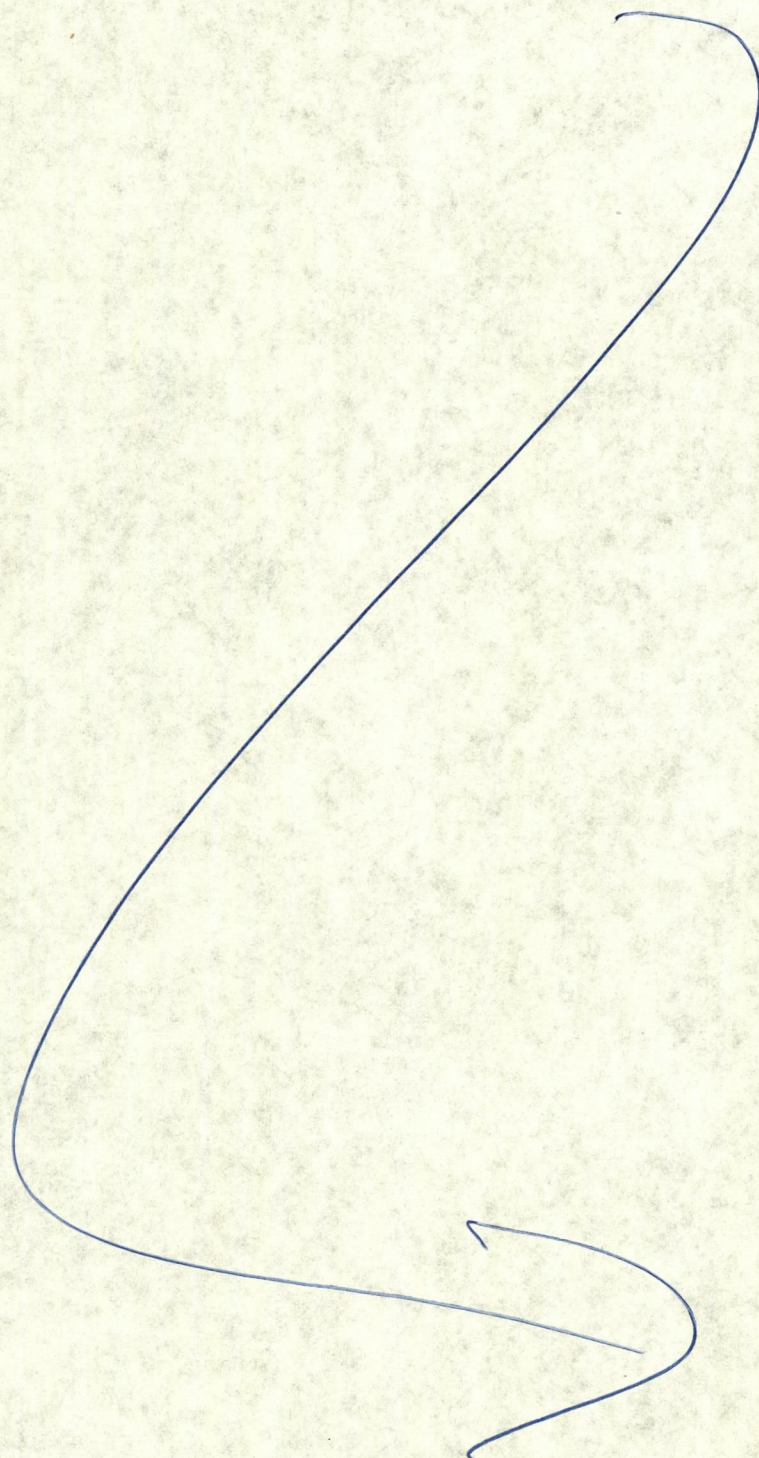
Ensures that the true leaders of the formerly oppressed are well represented in Parliament;

That all sections of the population are well represented in Parliament;

That the most progressive elements in each community have the best chance of election.

Thus, we would like a system that encouraged black support for progressive whites without encouraging white support

for reactionary blacks! Though the details of delimitation at this stage need not be gone into, it is important not to forget their significance in the overall scheme.



~~INSERT A~~ <sup>would have to</sup>  
Special consideration ~~should~~ be given to  
the position of mineworkers and other  
migrant workers. The general feeling was  
that they should vote in the area where  
they worked, so as not to encourage  
ethnic identification. But consideration  
should also be given to their feelings  
on the matter (an extra item for the  
proposed Demographic-political enquiry),  
and also to the impact on voting  
balance in areas where the ANC is  
relatively strong and relatively weak.  
In general terms, we feel that the  
Constitution should appear manifestly  
fair and democratic and not loaded  
in favour of the ANC. But at the  
same time, it would be worse than foolish  
to gratuitously introduce provisions which weakened  
the <sup>electoral</sup> prospects of the ANC.



Given their great strategic significance in relation to the achievement of the goals of the Constitution, the composition of the three Commissions takes on special importance.

~~for reactionary blacks! Though the details of delimitation at this stage need not be gone into, it is important not to forget their significance in the overall scheme.~~

~~INSERT/A \*~~

Proportional representation rests on a different idea. In its fullest form parties put up lists on a national basis, with candidates in order of preference. The number of candidates elected will be proportional to the votes cast for that list in relation to the total number of votes cast. Thus if a party list gets 20% of the votes, the party will get 20% of the seats. To prevent a proliferation of small parties, a minimum percentage, say 5%, is sometimes required. Many variations of this system are possible. In Zimbabwe, p.r. applies, but in relation to lists in eight different provinces. This gives some

intimacy in relation to voters and candidates, while maintaining the principle of seats in proportion to votes.

In terms of efficient, stable government sensitive to the will of the people, there are arguments for and against both systems. The question is not one of 'pure' theory of government, but of which, in the concrete situation of South Africa would be most likely to promote the implementation of the Freedom Charter. There is nothing in the Charter itself to favour one system over the other. Our initial preference is for the single member constituencies, which encourage the formation of national parties, and which have the advantage of being already well-known to our people (it might be possible simply to take the existing ~~provisions~~ provisions for the white Assembly and simply delete the racist clauses - it would be difficult

to refute the argument that if ~~it~~ it was good enough for the whites for 75 years, why is it not good enough for us? ] .

(iv) How to establish forms of regional and local government that will be consistent with the aims of the Constitution.

This is an area that needs much attention. The old system of ~~national, provincial and local levels~~ administrative division based on national, ~~and~~ provincial and local levels ~~is already being~~ with which most of us are familiar is already being dismantled by the regime, which seeks to establish tri-cameral type local government <sup>with (an element of)</sup> 'urban black' participation, as the basis for building

up from the bottom and perhaps one day making the region the decisive unit in the whole government structure. At the same time, popular insurrectionary-type struggles at the local level have created the embryos of future units of community ~~government~~ government at the local level.

The question of regional and local government therefore ~~has~~ <sup>has already</sup> assumed especial significance, and since ~~they~~ it is at these levels that concrete questions such as housing, services and education are dealt with on a day to day basis, they will obviously be even more important in the future.

As far as the region is concerned, there are evident administrative advantages in sub-dividing such huge areas as the Cape Province into regions. But care has to be taken not to allow regionalisation to become another way of incorporating the Bantustans as ~~fixed~~ permanently underdeveloped,

feudal and reactionary units into the new governmental structure. In general terms, we have to avoid permitting the term 'regions' to become an apparently neutral description for a South Africa divided into ethnic homelands. On the contrary, the regions we envisage should be designed to counteract the isolation of the ~~so-called homelands~~ Bantustans and <sup>to promote</sup> the introduction ~~of~~ to them of democratic organs of self-government.

As the Pondoland uprising demonstrated many years ago, the peasant communities have strong traditions of community government. In our view, boundaries should be drawn, both at the regional and local levels, so as to ensure that rich and poor areas are included side by side. This has important implications for finance as well as for breaking down patterns of inequality.

Our point of departure therefore should be that regional and local government structures are important because:

They deal with concrete questions directly affecting the lives of the people;

They involve large sections of the population directly <sup>and actively</sup> in questions of government;

They will be the scenes of direct transformation of the lives of the people.

We do not, however, envisage the regions as being a substitute for ~~central~~ a centre, or that national policy should be made at the regional level. We have to encourage all the people in all areas to think of themselves as South Africans, to take on a national vision, to be sensitive to and aware of the complexity and diversity of ~~the whole country~~ <sup>all of South Africa</sup>, to take on the dimension of the country as a whole. We should oppose Balkanization

of our thinking as much as we oppose it in relation to our ~~political~~ political system.

Any system of local government we devise must also take account of the realities of our cities and towns. Most of the white population lives in the urban areas, since there are likely to be more black reactionaries than white progressives, an alliance of whites and reactionary blacks might be able to capture control of major cities, if careful attention is not paid to the problem. Democratic control of SOWETO is one thing. Democratic control of Greater Johannesburg is another (one sees here the importance of black unity as the basis for winning over <sup>significant</sup> ~~considerable~~ sections of the white ~~community~~ community to support the Freedom Charter).

It is obvious that a supplementary part of the demographic/opinion study



should be a study of local government, including questions of finance. The possible ~~of~~ administrative division of South Africa into regions also requires more precise information than we possess at present.

(v). The mechanics for maintaining an ongoing legal <sup>and administrative</sup> system while rapidly dismantling the legislative and institutional structures of apartheid.

As far as the law itself is concerned, it will be possible to have a general constitutional clause to the effect that all laws not ~~in~~ repugnant to the Constitution remain in force until amended or repealed. Certain apartheid laws could be listed in a schedule and repealed automatically (e.g. those that restrict freedom of

choice in <sup>relation to</sup> where to live, trade etc.).

Others that are obnoxious because of their racist character, ~~could be repealed~~ but which have important practical consequences, such as payment of teachers' wages, payment of rent etc., could be repealed in part (the openly racist clauses) but not in toto, pending submission to the Affirmative Action Commission pending new legislation. The Roman-Dutch Law, the Companies Acts and so on will continue until altered by subsequent legislation. Special attention would need to be paid to the future of traditional (customary) law, but this need not be a constitutional question, unless it is felt that exceptions to the section on Fundamental Rights and Duties of Citizens should be made so as to ~~permit traditional law~~ permit inconsistent traditional law practices to continue.

Our provisional view is that no such exceptions should be permitted, and that throughout the country as a whole ~~democratic~~ ~~and~~ community courts at a grass roots level be created to resolve disputes within a defined competence according to ~~the~~ ~~principles~~ relevant legislation (perhaps to be codified and simplified for application at this level) interpreted in the light of the principles of the Constitution (or the Freedom Charter), applying traditional norms and practices <sup>in certain areas</sup> where these are not inconsistent with the Constitution.

Thus long overdue reforms such as that relating to the subordinate position of African widows, would be immediately effected, while other questions, such as the legal status of lobola could be studied.

The miserable record of the South African courts in recent years strengthens the

claim that the judiciary needs to be transformed to make it a truly representative organ that can be relied upon to implement rather than frustrate the terms of the Constitution. The judiciary as at present constituted, with a few honourable exceptions, consists of persons largely imbued with the apartheid philosophy, who, far from mitigating the evil effects of apartheid, and far from using the limited power at their disposal to denounce torture and abuses, have covered up for the police and authority. As such it is the last organ that could be given the position of watchdog of the Constitution. In particular, ~~that~~ it would be unthinkable to entrust the vast programme of social and economic reform contemplated by the concept of affirmative action, to the scrutiny of these judges. Parliament is the place where social and economic issues are

decided. Our proposal is that consideration be given to the creation of a Constitutional Commission under the control of Parliament to supervise the application of the Constitution. The Commission could have a Judicial Section to ~~make~~ give advisory opinions on points of interpretation. The Constitutional Commission would liaise closely with the Affirmative Action Commission, but not be drawn directly into its day to day activities.

A third ~~one~~ commission with important functions especially in the period of transformation would be the Public Service Commission. The present body bearing this title would have to be thoroughly democratised so that a new body could supervise access to and promotion within the Public Service. Although 'party political' criteria in the narrow sense should not be used, willingness and proved capacity to work for the fulfilment

of the Constitution should be regarded as an important factor to be taken into account together with technical qualifications.

The great problem here will be to give the public service a democratic and non-racial character as quickly as possible while causing the least possible disturbance to the carrying out of ~~governmental functions~~ <sup>functions</sup> related to such as transport and telecommunications,

granted the strategic importance of these three commissions in carrying out the fundamental goals of the Constitution, great attention would have to be paid to their membership. Our proposal is that appointments should be made by the President subject to ratification by a special committee appointed by Parliament. This would signify the involvement of both the Executive and the Legislature in ensuring that the best Commissions are appointed.

Background dossier

Louy d'David - Kader:

Italy, Portugal

Dossier: 3 countries SA. / Frontline, +  
~~Switzerland, Yugoslavia~~

Summary - → USA, France, S.U.,  
Federal Switzerland, Yugoslavia, Cuba.

~~Switzerland~~

Summary - electoral systems

Presidential / ~~Prime Ministerial~~ Prime Ministerial.

Partition  
Confederalism

Federalism - various forms. Confederation.

Unitary.

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Demographic / opinion survey.

Assessment - area by area.